



State of Utah

DEPARTMENT OF COMMERCE DIVISION OF SECURITIES

Protecting Investors; Promoting Commerce

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February 13, 2001

Mr. Thomas M. Kelly
Kelley, Drye & Warren
Two Stamford Plaza
281 Tresser Boulevard
Stamford, CT 06901-3229

RE: Robbins & Henderson Interpretive Opinion
File # B00236847

Dear Mr. Kelly:

This letter is in response to your request for an interpretive opinion from the Utah Division of Securities ("Division"). You asked the Division to opine whether Robbins and Henderson, LLC ("Robbins and Henderson") would be required to license as a broker-dealer, pursuant to §61-1-3 of the Utah Uniform Securities Act ("Act"), to transact business with a financial services holding company (the "Company") with a place of business in Utah. For the reasons stated below, it is the Division's opinion that Robbins and Henderson need not be licensed as a broker-dealer to transact business in this state solely with a financial services holding company.

Section 61-1-3 of the Act states "it is unlawful for any person to transact business in this state as a broker-dealer or agent unless the person is licensed under this chapter." To determine whether Robbins and Henderson would be required to license as a broker-dealer, the Division looks to the definition of broker-dealer set forth in § 61-1-13 (3) of the Act. "Broker-dealer means any person engaged in the business of effecting transactions in securities for the account of others or for his own account." Section 61-1-13 (3) continues, "[b]roker-dealer does not include. . . d) a person who has no place of business in this state if: i) the person effects transactions in this state exclusively with or through . . . banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees."

Because financial services holding company is not expressly listed in § 61-1-13 (3) of the Act, the Division must determine if a financial services holding company would be considered a financial institution and/or institutional buyer for purposes of this definition. "financial services

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holding company” is a designation created under section 4 of the Bank Holding Company Act (12 USCS § 1841 et seq.) and granted by the Federal Reserve. With this designation, the financial services holding company can engage in financial activities, insurance and securities underwriting and agency activities, merchant banking and insurance company portfolio investment activities. Companies with no place of business in this state, and dealing only with the entities specified in § 61-1-13 (3)(d) of the Act, are excluded from the definition of broker-dealer based upon the experience and sophistication of the customer. A financial services holding company, designated as such and regulated by the Federal Reserve, has the experience and sophistication that would qualify it as a financial institution and/or institutional buyer. Accordingly, Robbins and Henderson, having no place of business in this state, need not be licensed to transact business in this state if its sole client in Utah is a financial services holding company regulated by the Federal Reserve.

Please note that this opinion relates only to the circumstances described above. Because this opinion is based on representations made to the Division, it should be further noted that any different facts or conditions of a material nature might require a different conclusion.

Very truly yours,
UTAH DIVISION OF SECURITIES



Paula W. Faerber
Staff Attorney

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December 19, 2000

VIA FEDERAL EXPRESS

Paula Faerber, Esq.
Utah Division of Securities
160 East 300 South, 2nd Floor
P.O. Box 146760
Salt Lake City, Utah 84145-6760

Re: Robbins & Henderson, LLC

Dear Ms. Faerber:

We represent Robbins & Henderson, LLC ("Robbins" or the "Firm"), a broker-dealer registered with the United States Securities and Exchange Commission and the New York Stock Exchange, Inc. ("NYSE" or the "Exchange"). On behalf of Robbins, we are respectfully requesting from the Utah Division of Securities (the "Division") an interpretive opinion under Section 61-1-13(3) of the Utah Code Annotated, 1953, as amended (the "Code") with respect to certain securities transactions effected by the Firm. The basis for this request is that certain material terms, relevant to a determination of Robbins' status as a "broker-dealer," have not been defined in the Code or the Utah Administrative Code (the "Rules") and require interpretation.

Robbins is a limited liability company organized in the State of New York whose sole place of business is located in New York City. The Firm conducts an independent NYSE Floor brokerage business which consists of accepting and executing orders in NYSE-listed securities on the Floor of the Exchange for other NYSE member organizations. The Firm has recently applied to the NYSE for approval to conduct a "public business" so that it may accept orders directly from public customers. Once approved to do a public business, Robbins intends to accept and execute orders for a certain New York-based corporation (the "Company"),

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amongst other public clients. It is contemplated that a portion of the Company's orders will be telephoned to Robbins directly from the Company's Utah offices.¹

All Company orders transmitted to Robbins will be initiated by the Company for its own account. The Company will not submit orders to Robbins as an agent for others. Furthermore, the Company maintains full investment discretion over the security, the number of shares, and the price of each trade. Robbins will not solicit any purchase or sale to the Company or provide investment advice. The Firm will simply act as an execution vehicle for trades in NYSE-listed securities.

The Company is a financial services holding company engaged in personal and commercial lines of property and casualty insurance, banking and lending and manufacturing activities. The Company's common stock is listed on the NYSE and has a current market capitalization of nearly \$1.6 billion. In addition to the execution of trades in NYSE-listed securities of potential targets, the Company will utilize Robbins' services to trade its own common stock.

We believe that Robbins is excepted from the definition of a "broker-dealer" under Section 61-1-13(3) of the Code and that the Firm is, therefore, not required to comply with the registration provisions contained Section 61-1-4(1)(a). Under Section 61-1-13(3), the term "broker-dealer" is defined as any person engaged in the business of effecting transactions in securities for the account of others or for his own account. However, Section 61-1-13(3)(d)(i)(C) of the Code excludes from the definition persons who have no place of business within the state and who effect transactions in the state with or through financial institutions or institutional buyers, whether acting for themselves or as trustees. We believe that the Company is a financial institution or institutional buyer acting for itself, and that, therefore, Robbins' dealings with the Company do not bring the Firm within the definition of broker-dealer.

The terms "financial institutions" and "institutional buyer" are not specifically defined in the Code or in any Rule. In such a situation, Section 61-1-13(27) of the Code states that the meaning of a term neither specifically defined in the Code or in a Rule shall be the meaning commonly accepted in the business community. It seems clear, based upon its holdings, market capitalization, and investment sophistication and strategy, that the Company would be considered to be both a "financial institution" and "institutional buyer" by the business community. Furthermore, it is our view that the Company's experience and sophistication removes much of the need for the protections afforded by requiring Robbins to apply for Utah broker-dealer registration. It is our understanding that such an investor's ability to make informed investment decisions and to appreciate the risks involved was the rationale underlying the definitional exclusion contained in Section 61-1-13(3)(d)(i)(C).

¹ It is contemplated that the Company is the only Robbins' customer who will communicate orders to the Firm from a Utah location.

KELLEY DRYE & WARREN LLP

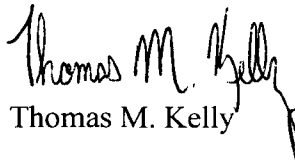
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We believe that due to the Company's investment experience, sophistication and financial strength, it is a "financial institution" or "institutional buyer" acting for itself and that, by virtue this classification, Robbins' activities with the Company do not conform with the definition of "broker-dealer" provided in the Code.² We respectfully request that you confirm that the Company is, indeed, a "financial institution" or "institutional buyer" within the meaning of Section 61-1-13(3)(d)(i)(C), thus excluding Robbins from the definition of "broker-dealer" and the registration requirement.

Finally, with respect to Rule 164-25-5, Robbins represents that there is no legal action, judicial or administrative, which relates, directly or indirectly, to the facts set forth. Furthermore, as previously stated, the Firm has applied to the NYSE for approval to conduct a "public business". The Firm's application to conduct a public business has not been approved as of the date of this letter.

If you require additional information or have any questions about this request, please do not hesitate to contact me at the telephone number previously provided. We have enclosed our check in the amount of \$120.00 in payment of the filing fee for this request. Thank you for your consideration.

Sincerely,


Thomas M. Kelly

TMK:tk

² We further believe it to be evident that Section 61-1-13(3)(d)(i)(A) of the Code specifically excludes Robbins from the definition of broker-dealer with respect to Company repurchases and other trades in its own common stock effected by the Firm. Section 61-1-13(3)(d)(i)(A) states that "broker-dealer" does not include a person who has no place of business in this state if the person effects transactions in the state exclusively with or through the issuers of the securities involved in the transactions.