



# KANSAS

OFFICE OF THE SECURITIES COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR  
CHRIS BIGGS, COMMISSIONER

August 25, 2006

Archie Guevarra  
Chief Compliance Officer  
Collins / Bay Island Securities  
567 San Nicolas Drive, Suite 460  
Newport Beach, CA 92660

RE: Request for Interpretive Opinion No. 07-001  
Sales to Institutional Investors  
File No. 2007X-3

Synopsis: An out-of-state third party marketing organization dealing in transactions between an issuer of securities and institutional investors specifically listed in K.S.A. 17-12a102(11) is engaged in exempt transactions pursuant to K.S.A. 17-12a202(13) and is exempt from broker-dealer registration pursuant to K.S.A. 17-12a401(b)(1)(C).

Dear Mr. Guevarra,

You have requested confirmation that our “no-action” position granted on November 13, 2001 remains in effect under current Kansas law. According to your letter dated July 18, 2006, your business activities in Kansas remain unchanged from what you described in your earlier no-action request. Therefore, I incorporate by reference the facts represented in your company’s letter dated April 19, 2001.

The Kansas Securities Act was repealed on July 1, 2005 and replaced by the Kansas Uniform Securities Act. The new act is modeled after the Uniform Securities Act of 2002 (USA 2002), which varies significantly from the former act in its treatment of institutional buyers. Unlike former K.S.A. 17-1262(f), our new act does not use the term “institutional buyer.” Instead, we have a new transactional exemption for sales to “institutional investors” in K.S.A. 17-12a202(13). The term “institutional investor” is defined in K.S.A. 17-12a102(11), which is derived from section 102(11) of USA 2002.

The Official Comment to section 102(11) of USA 2002 contains a discussion of the relationship between the new definition of “institutional investor” and the federal definitions of “qualified institutional buyer” in Rule 144A and “accredited investor” in Rule 501(a) under the Securities Act of 1933. The “institutional investor” definition parallels the federal definitions, but there are some important differences. The primary difference is a \$10 million asset threshold for several types of institutional investors.

From the facts described in your letter, it appears that your sales are limited to entities that would fall within our new definition of "institutional investor," assuming that your activities are limited to prospective investors who meet the requirement of \$10 million dollars in assets. Therefore, your transactions with those investors are exempt from securities registration under K.S.A. 17-12a202(13) and your company is exempt from broker-dealer registration pursuant to K.S.A. 17-12a401(b)(1)(C).

This opinion is based on the written representations in letters dated April 19, 2001, and July 18, 2006, and it does not extend to any other fact situation. Any variance from the facts expressed in your letters could result in a different conclusion. This opinion is intended solely as an expression of enforcement policy, and its legal conclusions are not binding on any court, legal tribunal, or any other person.

Sincerely,

A large black rectangular redaction box covering the signature of Rick A. Fleming.

Rick A. Fleming  
General Counsel