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JACK D. LADD  
MEMBER

July 1, 2002

Mr. Budge Collins, President  
Collins/Bay Island Securities LLC  
840 Newport Center Drive  
Newport Beach, California 92660

RE: Dealer Registration of Collins/Bay Island Securities LLC

Dear Mr. Collins:

This is in response to your letter dated May 1, 2001 and received by this Agency on May 8, 2001. Your letter was supplemented by facsimiles from Katie Nguyen-Kalvoda received on March 5, 2002, and May 1, 2002.

Your letter describes a proposed plan of business whereby Collins/Bay Island Securities LLC ("Collins") would act as a third party marketing organization and make offerings and sales of securities to institutional investors. Specifically you represent that Collins would represent investment managers for the purpose of soliciting investment monies for private placements exclusively from institutional investors. You stated that the scope of Collins' solicitation, offer, and sale of securities would be restricted to entities that are considered to be a "qualified institutional buyer" as that term is defined in Rule 144A of the Securities Act of 1933. The March facsimile added an additional category of "family offices with assets above \$500 million" ("Family Offices") and represented that in its solicitation of family offices, Collins would not call upon the individual, but rather the organization and/or investment professional that represents the wealthy individual for investment purposes.

You stated that due to the specific nature of Collins' business and the limited scope of transactions with institutional investors, you believe that Collins may rely upon the exemption from registration as a dealer in the State of Texas provided by Section 5.H of the Texas Securities Act ("Act") and §109.3(e) of the Rules and Regulations of the State Securities Board ("Rules").

The types of institutional investors described in your letter, "qualified institutional investors," are named in §109.3(c)(2) of the Rules. Although not mentioned in your letter, we point out that the definition of "qualified institutional buyer" in SEC Rule 144A, incorporated into §109.3(c)(2) of the Rules, also includes within its terms restrictions that certain of these named entities must be "acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the entity," and that another must "in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with it and that has an audited net worth of at least \$25 million. . ." See 17 C.F.R. §144A(l)(i) and (vi). Accordingly, it is possible

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that the institutional investors you have described - depending upon their respective ownership, investment, and net worth values - may fall within the terms of the definition of "qualified institutional buyer" used in §109.3(c)(2).

Section 109.3(e) of the Rules provides an exemption from dealer registration for a person engaging in the offer or sale of securities to a financial institution or other institutional investor listed in Section 5.H of the Act or §109.3(c). In order to satisfy this exemption from dealer registration, §109.3(e) further provides that the financial institution or other institutional investor must be acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the specific securities or the investment advisory services for which the dealer is claiming an exemption under Section 5.H or §109.3(c).

Based on the foregoing understanding, and if each institutional investor meets all of the criteria of the rule and is acting for its own account or as bona fide trustee of a trust organized and existing other than for the purpose of acquiring the specific securities, the exemption provided by §109.3(e) of the Rules would be available and registration of Collins as a dealer would not be required. Further, the staff of the State Securities Board will recommend no action to require registration of Collins or its agents as a dealer or agent to engage in the transaction described above with the Family Offices.

Please note that this Agency has not made an independent investigation of the facts, but has relied solely on the information you have provided. If this information is incorrect or changes substantially, the staff would reconsider the matter and the opinion stated above would be void.

Further, this Agency does not grant nor confer an exemption. Its availability depends entirely on full compliance with the language of the exemption. If a dispute arises about availability of an exemption, the burden of proof falls on the party claiming the exemption.

Finally, the opinions expressed by this Agency are not binding on civil litigants in future proceedings.

I trust this letter answers your inquiry. Please feel free to write us if you need further information.

Very truly yours,

DENISE VOIGT CRAWFORD  
Securities Commissioner

David Weaver  
General Counsel

DW/ms