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State of Utah
Department of Commerce
Division of Securities

FRANCINE A. GIANI
Executive Director

THAD LEVAR
Deputy Director

WAYNE KLEIN
Director of Securities

April 30, 2007

Shawn D. Stewart
Holland & Hart
60 East South Temple, Suite 2000
Salt Lake City, UT 84111

Re: Request for No-Action Letter
Finders Fees for The Enterprise Engineering Group

Dear Mr. Stewart:

Summary

The Utah Division of Securities (Division) has reviewed your February 26, 2007 request for a no-action letter on behalf of The Enterprise Engineering Group (Enterprise). The request asks that the staff of the Division recommend no enforcement action if Enterprise does not become licensed as a broker-dealer with the Division when providing certain consulting and matchmaking services for clients.

You have described Enterprise's proposed activity as assisting profitable micro to middle-market companies, in need of additional capital, to obtain financing from private equity investors (including hedge funds and money managers). Because of its business experience and relationships, Enterprise understands the capital needs of these micro and middle-market companies and also has established relationships with multiple private equity investors who are in need of "quality deal flow."

When a client company desires additional funding and is ready to accept the changes required by private equity investors, Enterprise would seek authority from the companies to introduce them to the private equity funds and assist the companies in obtaining additional capital. Enterprise would receive professional consulting fees from these client companies and also receive "finder's fees" from the private equity firms. To the extent that Enterprise would receive finder's fees from the private equity firms, it intends to reimburse the consulting fees.

For the reasons described below, the staff of the Division is unwilling to grant no-action relief as you have requested.

Analysis

The Utah Uniform Securities Act (Act) defines broker-dealer as “any person engaged in the business of effecting transactions in securities for the account of others or for the person’s own account.” §61-1-13(1)(c)(i). Types of investments described in your letter would appear to meet the criteria of this definition: Enterprise would be engaged in the business of providing these services to clients and for private equity firms and the transactions would be for the accounts of others.

Enterprise does not appear to dispute that the contemplated transactions ordinarily would require licensing as a broker-dealer. Instead, Enterprise asserts that the contemplated transactions should exclude Enterprise from the definition of broker-dealer based on §61-1-13(1)(c)(ii)(J) as a type of person that the Division should designate by rule or order as not within the intent of subsection (1)(c). Enterprise explains that licensing as a broker-dealer should not be required because:

- The private equity fund investors are highly sophisticated, large private equity funds. Because of this sophistication, these investors do not require the protection of the Act.
- The securities transactions would be exempt from the registration requirements of the Act under §61-1-14(2)(h) (offers and sales to institutional investors) and §61-1-14(2)(s) (transactions where the Division finds registration is not necessary or appropriate).

We disagree for several reasons.

First, there is nothing in the Act (or, to our knowledge, under the federal securities laws) that suggests that licensing as a broker-dealer is excused because an entity is providing brokerage services to only institutional investors. As described in your letter, the activities contemplated by Enterprise appear very similar to those of licensed broker-dealers who perform investment banking functions and receive transaction-based compensation. Accordingly, licensing is appropriate. Broker-dealers need to be licensed when executing securities transactions for hedge funds, banks, pension funds, and other institutional investors. Under your suggested rationale, brokerage firms who focused on providing services for hedge funds or other institutional investors would not be expected to be licensed as a broker-dealer. Whether or not institutional investors need the protection provided by the licensing requirements, the licensing requirement serves to protect the integrity of the securities markets and market participants. Regulatory requirements imposed on broker-dealers such as best-execution, avoiding conflicts of interest, safe-keeping, and recordkeeping all are imposed by virtue of a firm’s licensing as a broker-dealer.

Second, the fact that the transactions contemplated between Enterprise and the private equity funds might be exempt from registration¹ does not answer the very different question whether licensing should be required. We think it is notable that the existence of the exemptions upon

¹ We note that the institutional investors described in your letter are not the only parties to the contemplated securities transactions. The companies receiving the funding are selling securities. It is not at all clear that these companies, despite their \$10 to \$50 million in annual sales, would be considered institutional investors.

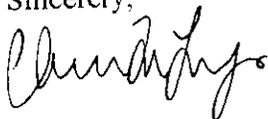
which you rely (sales to institutional investors and other transactions not needing registration) is conditioned on the exempt transactions being conducted by a licensed broker-dealer. If, in fact, Enterprise were not a licensed broker-dealer, the transactional exemptions claimed would not be available. It was very intentional that the Act states that the existence of these transactional exemptions does not exempt compliance with the licensing requirements of §61-1-3. Because the availability of the exemption presumes the participation of a licensed broker-dealer, we believe that Enterprise should not be exempted from the broker-dealer licensing requirements.

Moreover, the Division Staff does not believe that public policy is furthered by permitting firms to receive compensation for negotiating and facilitating the investment of money into companies needing funding. If Enterprise were not required to be licensed as a broker-dealer, the Division would lack authority to a) expect the firm to maintain certain books and records, b) examine the firm's books to determine whether funds were being misappropriated, or c) take action against the firm's license if misconduct were found. To the contrary, we think it is more consistent with good public policy to ensure that conduct such as this is subject to the examination authority and enforcement authority of the Division.

Conclusion

For the reasons described above, the Division Staff believes that requiring Enterprise to be licensed as a broker-dealer before negotiating or executing the contemplated transactions is consistent with the language of the Act and the policy purposes underlying the Act. Therefore, we will not grant no-action relief and decline to recommend that rules be adopted or orders issued to exclude Enterprise from the definition of a broker-dealer.

Sincerely,



Charles M. Lyons
Securities Analyst

February 26, 2007

RECEIVED

FEB 26 2007

R. Wayne Klein
Director, Department of Commerce
Division of Securities
State of Utah
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111

Department of Commerce
Division of Securities

Re: No-Action Letter
Exemption from Utah Broker-dealer Registration Requirements

Dear Sir:

We represent The Enterprise Engineering Group ("Enterprise"). On behalf of Enterprise, we respectfully request a no-action letter from the Utah Division of Securities (the "Division") pursuant to Section 61-1-25(5) of Utah Uniform Securities Act, as amended (the "Act"). We specifically request a no-action letter declaring that Enterprise, in its proposed business practice of management consulting, and more particularly in its proposed business practice of acquiring private equity funds for local entities, is exempt from registration as a broker-dealer in the State of Utah pursuant to Sections 61-1-13(3), 61-1-14(2)(h) and 61-1-14(2)(s) of the Act.

Proposed Business Activities of Enterprise.

The primary service offered by Enterprise is to work with officers of profitable micro to middle market companies in providing an Enterprise Engineering Assessment designed to take the opportunities of change and point to a direction of strategic future value. Enterprise's mission is to make end-to-end consulting, once the sole province of large corporations, available to smaller firms by creating a collaborative consultancy. Enterprise's experience has shown that companies with sales ranging from \$10 to \$50 million are generally underserved by global consulting firms, the financial services industry and, for the most part, below the radar of institutional investors. Indeed, Enterprise intends to only target companies with \$10 million to \$50 million in sales with earnings before interest, taxes, depreciation and amortization ranging from \$2 million to \$10 million. Enterprise expects that, on rare occasions, it will be retained by larger corporations.

Enterprise's management has established relationships with private equity investors over time that are constantly in need of quality deal flow. Enterprise has active relationships with each of the following private equity investors:

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| <u>Private Equity Fund</u> | <u>Website</u> | <u>Typical Investment Size</u> | <u>Assets Under Management</u> | <u>Primary Offices</u> |
|--|--|--------------------------------|--------------------------------|----------------------------------|
| Citigroup Property Investors | www.citigrouppropertyinvestors.com | \$12 – \$100 Million | \$8.5 Billion | New York, NY and Los Angeles, CA |
| Bessemer Trust | www.bessemer.com | \$10 - \$200 Million | \$42 Billion | New York, NY and Palo Alto, CA |
| WhiteCap Private Equity Management | www.whitecapllc.com | \$19 Million - \$1.9 Billion | Unknown | Chicago, IL |
| ComVest | www.comvest.com | \$5 – \$50 Million | \$1 Billion | West Palm Beach, FL |
| Sterling Capital Partners | www.sterlingcap.com | \$5 – \$100 Million | \$1.2 Billion | Chicago, IL |
| Med Opportunity Partners | www.medopportunity.com | \$5 – \$200 Million | Unknown | Stamford, CT |
| KPMG Corporate Finance | www.kpmgcorporatefinance.com | \$5 Million | Unknown | Los Angeles, CA |
| Court Square Capital Partners (Recently Acquired Citigroup Venture Partners) | Website under construction | \$20 Million | \$3 Billion (raising) | New York, NY |
| MedEquity Capital Partners | www.medequity.com | \$10 – \$30 Million | \$900 Million | Boston, MA |
| Endeavour Capital Partners | www.endeavourcapital.com | \$5 – \$50 Million | \$450 Million | Portland, OR |

Enterprise's objective is to first enter into enterprise engineering engagements with client companies to create strategic future value (Enterprise's collaborative model brings specific areas of expertise from other firms as needed). When a client is ready and accepts what it will take to deal with an institution, Enterprise seeks authority to introduce them to major institutional investors and assist them in obtaining growth capital, enhance value and potentially lower client management's financial risks. Enterprise's average client is expected to require an investment of \$20 million to propel growth and achieve common negotiated goals of a potential financial partner.

The initial phase of an Enterprise engineering engagement requires that the client pay professional fees at customary rates for both Enterprise time and any of its collaborative consulting team. Since the effort is to create a strategic overview and not to implement recommendation, fees are limited. At the same time, the proposed private equity, hedge funds or money managers are desperate for quality deal flow. As such, they are willing to pay industry standard finder's fees. If Enterprise is allowed to accept finder's fees, its intention is to reimburse consulting fees to the extent possible. The offset of consulting fees is an extremely attractive benefit for client companies. Perhaps most importantly, solid Enterprise engineered client business models can make it efficient for institutions to invest in smaller firms.

The Public Interest Does Not Require the Registration of Enterprise as a Broker-dealer.

Section 61-1-3(1) of the Act states that, "it is unlawful for any person to transact business in this state as a broker-dealer or agent unless the person is licensed."

Section 61-1-13(3) (emphasis added) of the Act defines "broker-dealer" as:

Any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. "Broker-dealer" does not include: . . . (j) other persons as the division, by rule or order, may designate, consistent with the public interest and protection of investors, as not within the intent of this Subsection.

As discussed below, the potential investors involved in Enterprise's proposed business activities are large private equity funds. Each fund is highly sophisticated. The private equity funds manage billions of dollars worth of assets and are involved with some of the largest private equity transactions in the country. As such, the private equity investors do not require the protection of the Act. As a result, Enterprise requests that the Division determine that entities effecting transactions solely with highly sophisticated private equity funds are exempt from the Act's broker-dealer registration requirements.

Enterprise Exclusively Participates in Transactions That Are Exempt From Registration.

The Act states:

The following transactions are exempted from Sections 61-1-7 and 61-1-15: (h) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, *or other financial institution* or institutional investor, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity; (s) any transaction as to which the division finds that registration is not necessary or appropriate for the protection of investors.

UTAH CODE ANN. § 61-1-14(2)(h), (s) (2006) (emphasis added).

In an interpretive opinion dated November, 1, 1995, the Division indicated that the intent of the Section 61-1-14(2)(h) exemption is to apply a higher standard to sophisticated buyers because sophisticated buyers have “knowledge and experience related to the purchase of securities.” Additionally, R164-14-25s indicates that the Section 61-1-14(2)(s) is meant to exempt transactions involving accredited investors, as that term is defined in 17 CFR 230.501(a). In sum, transactions involving highly sophisticated financial institutions or accredited investors are exempt from the Act’s registration requirements found in Section 61-1-7.

Enterprise exclusively participates in transactions that are likely exempt from registration. Each private equity fund which Enterprise may contact on behalf of various entities is highly sophisticated and likely meets the definition of an accredited investor. Because such transactions are likely exempt from the registration requirements of Section 61-1-7 of the Act, those effecting such transactions should likewise be exempt from the broker-dealer registration requirements of Section 61-1-3 of the Act.

This reasoning correlates with the public policy purpose of the Act, which is to provide for the protection of investors. The private equity funds potentially involved in Enterprise’s business are not the type of investors in need of the Act’s protection. Because the ultimate investment decision makers involved in this proposed business are highly sophisticated financial institutions, Enterprise should be exempt from the broker-dealer registration requirements.

Enterprise Representations.

Enterprise represents that there is no legal action, judicial or administrative, which relates, directly or indirectly, to the facts set forth above.

Enterprise also represents that the transaction in question has not been commenced.

Enterprise is Exempt From the Broker-dealer Registration Requirements under the Act.

Based on the foregoing and due to the specific nature of Enterprise’s business and the limited scope of the transactions exclusively between issuers and institutional investors, Enterprise should be exempt from registration as a broker-dealer in the State of Utah and respectfully requests that a no-action letter be issued accordingly.



Enclosed is the required fee of \$120.00 for filing this no-action letter request.

Thank you for your attention to this matter. Please direct any questions regarding this request to Shawn Stewart at (801) 799-5907 or Greg Lindley at (801) 799-5829.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn D. Stewart", written over a horizontal line.

Shawn D. Stewart
for Holland & Hart LLP

cc: Ron Crosby, The Enterprise Engineering Group