JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah
Department of Commerce

Division of Securities

FRANCINE A. GIANI
Executive Director

THAD LEVAR
Deputy Director

WAYNE KLEIN
Director of Securities

February 28, 2008

Marc Porter
Snell & Wilmer L.L.P.
15 West South Temple Ste. 1200
Salt Lake City, UT 84101

Re: The Artisan Group, LLC No-Action Request

Dear Mr. Porter:

The Utah Division of Securities ("Division") has reviewed your February 27, 2008 request for a no-action letter concerning The Artisan Group, LLC ("Artisan Group") and Artisan Investments, LLC (the "Fund"). Your request for a no-action letter from the Division is authorized by Section 61-1-25(5) of the Utah Uniform Securities Act ("Act") and Utah Administrative Code Rule R164-25-5.

Your letter requests that the Division take a no-action position with respect to Artisan Group's anticipated role as manager of the Fund. Specifically, you request that the Division staff recommend no enforcement action if Artisan Group acts as manager of the Fund without being licensed as an investment adviser.

Based upon the representations made in your letter and in subsequent discussions with the staff, we will not recommend any enforcement or administrative disciplinary action, should the activities proceed in Utah as outlined in your request.

In making this determination, we note several points. First, Artisan Group is not in the business of advising others (including affiliates) as to securities and will not otherwise hold itself out as an investment adviser. Second, while a Rule 506 offering will be made to accredited investors in order to raise funds for the business of the Fund, nothing contained in investor disclosure materials relating to that offering or in any other representations to potential investors will give the issuer (the Fund) or its manager (Artisan Group) any discretion in using the funds, apart from the secured real estate lending activities described in the accompanying offering materials. Third, the Division renders no opinion as to whether the notes memorializing the loans are securities under the Act.

As this recommendation is based upon the representations made to the Division, any different facts or conditions of a material nature might require a different conclusion. Furthermore, this no-action letter relates only to the activities described above and will not apply to future similar factual circumstances. This response does not purport to express any legal conclusions regarding the applicability of statutory or regulatory provisions of federal or state securities laws to the questions presented. It merely expresses the position of the Division staff on enforcement or administrative actions. The issuance of a no-action letter does not absolve any party from complying with the anti-fraud provisions contained in Section 61-1-1 of the Act.

Finally, due to the Division's serious concerns with fraudulent investment schemes in Utah that are tied to real property transactions, we take this opportunity to make clear that the relief described herein is expressly limited to Artisan Group and will have no precedential effect whatsoever for any other party.

Very truly yours,

UTAH DIVISION OF SECURITIES

Chip Lyons

Charles M. Lyons
Securities Analyst

Snell & Wilmer
L.L.P.
LAW OFFICES

15 West South Temple
Suite 1200
Beneficial Tower
Salt Lake City, UT 84101
801.257.1900
801.257.1800 (Fax)
www.swlaw.com

Marc Porter
801.257.1536
mcporter@swlaw.com

DENVER
LAS VEGAS
ORANGE COUNTY
PHOENIX
SALT LAKE CITY
TUCSON

February 27, 2008

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

Re: No-Action Letter on Behalf of The Artisan Group, LLC
Exemption from Licensing as Investment Adviser

Dear Mr. Klein,

We represent The Artisan Group, LLC, a Utah limited liability company ("**Artisan Group**"), and Artisan Investments, LLC, a Utah limited liability company (the "**Fund**"). On behalf of Artisan Group, we respectfully request a no-action letter from the Utah Division of Securities (the "**Division**") under Section 61-1-25(5) of the Utah Uniform Securities Act, as amended (the "**Act**"), and Rule 164-25-5 of the Utah Administrative Code. Specifically, we request that the Division declare that it will take no action if Artisan Group, as manager of the Fund, is not licensed with the Division as an "investment adviser."

I. BACKGROUND

Artisan Group intends to raise up to $50 million for the Fund[1] through the offer and sale of Units (the "**Offered Units**") only to accredited investors in accordance with Rule 506 of the

[1] The Fund would impose minimum investment requirements.

Securities Act of 1933, as amended (the "**Securities Act**").[2] The Fund would file a Form D with the Securities and Exchange Commission and Division in accordance with the requirements of applicable law and the rules promulgated thereunder. The investors would include persons other than those identified in Section 61-1-3(3)(b) of the Act. The Fund would be managed by Artisan Group and Artisan Group would hold all of the outstanding voting Units of the Fund.[3] Artisan Group would be entitled to receive an annual management fee (based on the assets under management) and, through its ownership of the voting Units, would be entitled to receive distributions from the Fund in certain circumstances. Artisan Group would have a place of business in Utah.

The Fund would make 100% secured loans for resort, residential and commercial real estate acquisitions, development and construction. Pending their use for secured loans, the funds raised by the Fund would be placed in short-term money market instruments. Neither the Fund nor Artisan Group would have any discretion to use the funds other than for making secured loans and paying the costs and expenses (including Artisan Group's management fee) associated with the management and operation of the Fund. The offering documents of the Fund and Artisan Group would include restrictions to this effect.

While each loan made by the Fund would be a unique and distinct transaction, with varying terms for each loan (such as the maturity date, interest rate and payment terms), each loan would have the following characteristics in common:

- Artisan Group would have full discretion in selecting borrowers and negotiating the terms of the loans. All of the loans would be made to entities controlled by or affiliated with Kenny North, the President and Chief Executive Officer and 50% owner and manager of Artisan Group. This would be prominently disclosed in the Fund's offering documents.
- Each loan would be evidenced by customary loan documentation and would be fully collateralized by the underlying real estate. The Fund, and not Artisan Group, would be the secured party for each loan and Artisan Group would not be able to release any security interest in underlying real estate (absent repayment of the applicable loan in full) without giving advance notice to the members of the Fund.
- The value of all real estate underlying loans would be appraised by an independent appraiser or would be subject to third party evaluation, and in no

[2] Three separate classes of Offered Units (designated as Class B Units, Class C Units and Class D Units) would be offered and sold. The classes (and in some cases, the series) of Offered Units would have different rights, preferences and privileges with respect to the amount of the preferred return, the frequency of distributions and redemption rights. None of the Offered Units would have voting rights with the limited exception of alterations of the economic rights associated with the Offered Units, any proposed increase to the management fee to be paid to Artisan Group and certain amendments to the operating agreement of the Fund. The holders of the Offered Units would be entitled to receive quarterly and annual financial statements of the fund in addition to the information and inspection rights afforded by the Utah Revised Limited Liability Company Act. The Fund would have the right to redeem any of the Offered Units at any time.

[3] The Units would be designated as Class A Units.

event would the total amount of all loans with respect to any real estate exceed 100% of the appraised value.

- No promissory note would be convertible into equity of the borrower.
- Trust deeds (or similar instruments) would be signed and recorded with the applicable county or state agency, and the security interest in the real estate would be properly perfected.

Some of the loans may be made for the purpose of refinancing outstanding loans and this would be prominently disclosed in the Fund's offering documents. In addition, some of the loans would be subordinate to senior debt, and some loans would contain customary covenants, the violation of which may accelerate the borrower's obligation to repay, or have other consequences.

II. ANALYSIS

Persons who are treated as investment advisers under the Act are required to be licensed with the Division.[4] An investment adviser is any person or entity who:

- for compensation engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities; or
- for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.[5]

Although Artisan Group would not provide advice to the members of the Fund based on their individual investment objectives, Artisan Group would advise the Fund itself as to the advisability of making loans. Therefore, there are two critical questions in determining if Artisan Group is an investment adviser under the Act. The first question is whether Artisan Group is "engag[ed] in the business of advising others" with respect to securities.[6] The second question is whether the secured promissory notes evidencing the loans would be treated as "securities" under the Act. If Artisan Group is not engaged in the business of advising others with respect to securities, or if the secured promissory notes would not be treated as securities, then Artisan Group should not be treated as an investment adviser and should not be required to be licensed with the Division.

We respectfully submit that Artisan should not be treated as an investment adviser for the reasons set forth below.

---

[4] *See* Section 61-1-3 of the Act.

[5] *See* Section 61-1-13(1)(o) of the Act. Certain persons are excluded from the definition of investment adviser, including federal covered advisers, banks, savings institutions, trust companies, and professionals whose performance of the above services is solely incident to his or her profession. Artisan Group does not currently qualify for any of these exclusions. Certain persons are also exempt from the licensing requirements. See Section 61-1-3(2)-(3). Artisan Group does not currently qualify for any of these exemptions.

[6] Section 61-1-13(o)(i) of the Act.

A. Engaged in the Business of Advising Others

Through its activities, Artisan Group would not be "engag[ed] in the business of advising others" as to the advisability of investing in certain securities and Artisan Group would not hold itself out as an investment adviser. Rather, arranging the loans would be merely incidental to Artisan Group's core business of facilitating the operation of affiliated entities and real estate development. The Fund would be making the fully-secured loans only to entities that are either owned by or affiliated with Kenny North, who is the President and Chief Executive Officer and a manager and 50% owner of Artisan Group. As such, Artisan Group's business would not be advising others as to securities.

B. Application of *Reves* Test

The term "notes" (other than notes that have a term of nine months or less, are issued in denominations of at least $50,000 and receive a rating in one of the three highest rating categories from a nationally recognized statistical rating organization, which are exempt from the registration requirements of the Act[7]) is included within the definition of "security" under the Act. However, the term "note" is not interpreted literally to mean every note. Instead, notes are examined under the "family resemblance" test articulated by the United States Supreme Court in *Reves v. Ernst & Young*.[8]

The *Reves* test begins with the presumption that every note is a security. The test then considers a list of certain notes that have been categorically excluded from the definition of security, such as:

- consumer financing notes;
- notes secured by a mortgage on a home;
- short-term notes secured by a lien on a small business or some of its assets;
- notes evidencing "character" loans to bank customers;
- short-term notes secured by an assignment of accounts receivable; or
- notes which simply formalize an open-account debt incurred in the ordinary course of business.[9]

If the note in question does not fit into one of the categories above, the *Reves* test then examines four factors to determine whether it bears a strong resemblance to one of the foregoing types of notes. The four factors are utilized in an effort to explore the "economic realities" of the transaction.[10] The *Reves* test "avoids subjecting routine commercial transactions to federal securities regulation."[11] The four factors of the *Reves* test are:

- the motivations of the buyer and seller;

---

[7] *See* Section 61-1-14(1)(i) of the Act.
[8] 494 U.S. 56, 63 (1990).
[9] *See id.* at 65.
[10] *See id.* at 61; *see also* LeBrun v. Kuswa, 24 F.Supp.2d 641 (E.D.La. 1998).
[11] Singer v. Livoti, 741 F.Supp. 1040 (S.D.N.Y. 1990).

- the plan of distribution;
- the public's reasonable perceptions; and
- features that reduce the instrument's risk.

We believe that, on balance, the application of the *Reves* test, and in particular the fourth factor, weighs strongly against treating the secured promissory notes as securities. The fourth factor asks whether some other feature of the instrument reduces its risk.[12] The court in *Reves* indicated that this fourth prong, standing alone, may be dispositive in certain cases since it considers whether some feature of the instrument "significantly reduces the risk of the instrument, thereby rendering application of the Securities Acts unnecessary."[13] The Fund's level of risk associated with the secured promissory notes would be greatly reduced since the loans would be 100% secured by real estate, the real estate would be subject to independent appraisal or third party evaluation, and the security interests would be properly perfected.

In summary, we believe that under the *Reves* test the secured promissory notes would not be treated as securities.

III. CONCLUSION

Artisan Group should not be required to license with the Division as an investment adviser. First, Artisan Group would not be engaged in the business of advising others with respect to securities and would not hold itself out as an investment adviser. Second, the secured promissory notes to be issued to the Fund in consideration for resort, residential and commercial real estate acquisition, development and construction loans should not be treated as securities under the Act.

As required by Rule 164-25-5 of the Utah Administrative Code, Artisan Group and the Fund affirmed that there is no legal action, judicial or administrative, which relates directly or indirectly to the facts set forth here, and that the actions described in this letter have not been commenced.

[12] *See* Reves, 494 U.S. at 67.

[13] *Id.* at 67; *see also*, Resolution Trust Corp. v. Stone, 998 F.2d 1534 (10th Cir. 1993) ("The existence of other risk-reducing factors diminishes the need for protection under the Securities Act.").

We ask that the Division contact Marc Porter at 801-257-1536 or John G. Weston at 801-257-1931 or with any comments or questions before issuing an official response. We also respectfully request that we have the right to withdraw our request in the event that the Division determines that it cannot issue the requested no-action letter.

Sincerely,

Snell & Wilmer L.L.P.

Marc Porter

cc: John G. Weston
M. Lane Molen
The Artisan Group, LLC