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ARIZONA CORPORATION COMMISSION

June 27, 2001

Budge Collins, President  
Collins/Bay Island Securities LLC  
840 Newport Center Drive  
Newport Beach CA 92660

RE: Collins/Bay Island Securities LLC  
A.R.S. § 44-1844(A)(8)

Dear Mr. Collins:

On the basis of the facts set forth in your letter of April 18, 2001, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the antifraud provisions of the Act continue to be applicable.

We have attached a photocopy of your letter containing the facts upon which this position is based.

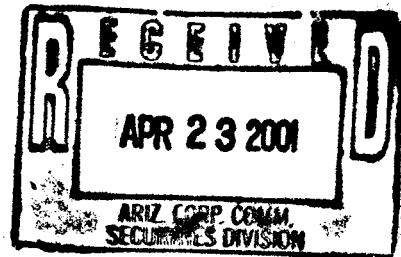
Very truly yours,

A handwritten signature in cursive script that reads "Mark Sendrow".

MARK SENDROW  
Director of Securities

MS:lp  
Attachment

COLLINS/BAY ISLAND SECURITIES LLC



April 18, 2001

BY FACSIMILE AND U.S. MAIL

Associate Attorney General  
Securities Division  
Arizona Corporate Commission  
1300 West Washington Street, Third Floor  
Phoenix, AZ 85007

Re: No Action Letter – Exemption for Broker-dealer State Registration

Dear Sir or Madam:

This letter constitutes a request by Collins/Bay Island Securities LLC (hereafter "Collins") that your office issue a declaration of "no action" pursuant to the Securities Act of Arizona (the "Act") that Collins, its business practices as a third party marketing organization and that its exclusive offerings and sale of securities to institutional investors are exempt from registration; Collins as a dealer is exempt as a Broker-dealer in the State of Arizona pursuant to A.R.S. Title 44 Chapter 12 Article 4 Sections 44-1844 (*Exempt Transactions*) and 44-1842 (*Transactions by unregistered dealers etc.*) of the Act.

Collins represents that it was granted registration as a broker or dealer pursuant to Section 15 (b) of the Securities Exchange Act of 1934 effective February 22, 2001. In addition, Collins obtained membership to the National Association of Securities Dealers ("NASD") effective February 22, 2001 and registration in the State of California where it is domiciled effective February 23, 2001.

**Collins exclusively participates in transactions that are exempt from registration:**

Pursuant to A.R.S. Article 4 Section 44-1844.A.8 of the Act which states:

*"Except as provided in subsections B and C of this section, sections 44-1841 and 44-1842, section 44-1843.02, subsections B and C and sections 44-3321 and 44-3325 do not apply to any of the following classes of transactions...an offer or sale of securities to a bank, a savings institution, a trust company, an insurance company, an investment company as defined in the Investment Company Act of 1940, a pension or profit-sharing trust or other financial institution or institutional buyer or a dealer whether the purchaser is acting for itself or in a fiduciary capacity."*

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Collins attests that it is in the business of representing investment managers for the purpose of soliciting investment monies for private placements exclusively from institutional investors. The scope of Collins' solicitation, offer and sale of securities encompasses entities, which to the best of our knowledge, are covered by the term "other financial institution or institutional buyer," as stated in the citation above.

Collins represents that its solicitation is limited to the following entities included in the definition of such "*qualified institutional buyers*," as set forth in Rule 144A of the Securities Act of 1933 (the "Securities Act"), which is consistent with the list of institutional investors previously cited in Article 4 Section 44-1844.A.8 of the Act:

- (a) Any bank as defined in section 3 (a) (2) of the Securities Act, any savings and loan association or other institution as referenced in section 3 (a) (5) (A) of the Securities Act, or any foreign bank or savings and loan association or equivalent institution, acting for its own account or the accounts of other qualified institutional buyers;
- (b) Any insurance company as defined in section 2 (13) of the Securities Act;
- (c) Any investment company registered under the Investment Company Act of 1940;
- (d) Any plan established and maintained by a state, its political subdivisions or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees;
- (e) Any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974;
- (f) Any trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in (d) or (e) above, except trust funds that include as participants individual retirement accounts or H.R. 10 plans.

Furthermore, Collins represents that it may conduct transactions defined as an "*offer to sell*" in Article 1 Section 44-1801.15 and "*sale or sell*" in Article 1 Section 44-1801.21 of the Act, with the following additional "*qualified institutional buyers*" as set forth in Rule 144A of the Securities Act:

- (g) Any organization described in Section 501 (c) (3) of the Internal Revenue Code.

Collins asserts that the entities listed above would qualify as institutional buyers by reasonable interpretation. Tax-exempt organizations as described in Section 501 (c) (3) of the Internal Revenue Code includes corporations, and any community chest, fund, or foundation, organized exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition.

Within this category, Collins' transactions will be restricted to foundations and university endowments with minimum assets of \$100,000,000 or \$100MM (one hundred million dollars). Examples of such organizations domiciled in the State of Arizona include the Arizona State Endowment Fund (\$1.013 Billion), Lincoln Foundation (\$300MM), Flinn Foundation (\$159MM), Arizona Community Foundation (\$145MM) and American Graduate School of International Management (\$121MM).<sup>1</sup> Typically, larger endowments and foundations will have one or more internal portfolio manager(s) and formal investment committees whose responsibilities include investment research and investment manager review. These professionals are highly educated and experienced individuals and are knowledgeable about different investment products. Consequently, Collins qualifies these entities to be institutional buyers, who are not in need of the protection of the Act.

On two separate occasions, May 25, 1994 and April 6, 1995, the Commission decided to take a "no-action" position with respect to the sale of notes in a private offering and the sale or preferred securities, respectively, to "qualified institutional buyers" as defined by Rule 144A of the Securities Act of 1933, which the Commission interpreted as falling within the definition of "institutional buyer" in Article 4 Section 44-1844.A.8 of the Act.

**Collins is lawful and acting in compliance as a person to offer or sell securities in the State of Arizona under this Act:**

A.R.S Section 44-1842.A of the Act states that:

*"It is unlawful for any dealer to sell or purchase or offer to sell or buy any securities, or for any salesman to sell or offer for sale any securities within or from this state unless the dealer or salesman is registered as such pursuant to the provisions of article 9 of this chapter."*

By the fact that Collins will exclusively undertake transactions that are exempt under Article 4 Section 44-1844.A.8, Section 44-1842 does not apply to Collins and consequently, Collins is a lawful person to offer or sell securities in the State of Arizona.

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<sup>1</sup> Assets are approximate figures as reported in Standard & Poor's 2001 Money Market Directory.

Associate Attorney General  
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**Collins is exempt from registration as a Broker-dealer in the State of Arizona under this Act:**

Collins certifies that the transaction described is not directly or indirectly the subject of any pending or final judicial, SRO or administrative proceeding and that the transaction described has not been commenced.

Based on the foregoing and due to the specific nature of Collins' business and the limited scope of the transactions with institutional investors, Collins is exempt from registration as a Broker-dealer in the State of Arizona and respectfully requests that a "no action" letter be issued accordingly.

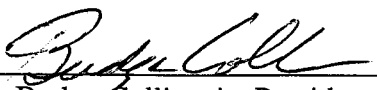
Enclosed is a check in the amount of \$200.00 (two hundred dollars) made out to the Arizona Corporate Commission for your consideration of this no-action request.

Please acknowledge receipt of this letter and the enclosures by date stamping the enclosed copy of this letter and returning it to our office in the enclosed stamped self-addressed envelope. Collins acknowledges that the documents and information submitted in addition to the response from the Commission is public information that may be released for publication, except as otherwise provided by law.

Thank you for your attention to this matter. Questions may be directed to Budge Collins or Katie Nguyen at 949.644.5771.

Respectfully,

Collins/Bay Island Securities LLC

By:   
Budge Collins, its President