

CARL J. KUNASEK
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COMMISSIONER



ARIZONA CORPORATION COMMISSION

BRIAN C. McNEIL
EXECUTIVE SECRETARY

MARK SENDROW
DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007-2996
TELEPHONE: (602) 542-4242
FAX: (602) 594-7470
E-MAIL: accsec@ccsd.cc.state.az.us

March 6, 2000

Darcy M. Norville
Tonkin Torp LLP
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204

RE: David Evans and Associates, Inc.
A.R.S. § 44-1801(9)

Dear Ms. Norville:

On the basis of the facts set forth in your letters of October 20, 1999, December 20, 1999 and February 11, 2000, 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 letters.

As this position is premised upon the facts set forth in your letters, 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 photocopies of your letters containing the facts upon which this position is based.

Very truly yours,

MARK SENDROW
Director of Securities

MS:MD
Attachments

DARCY M. NORVILLE

1600 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204
503-221-1440
503-802-2036
FAX 503-972-3736
darcy@tonkon.com

October 20, 1999

Director of Securities
Arizona Corporation Commission
1300 West Washington Street, Third Floor
Phoenix, AZ 85007-2996

Re: David Evans and Associate, Inc. Request for Interpretive Opinion

Dear Commissioner:

We are counsel for David Evans and Associate, Inc. ("DEA" or the "Company"), an Oregon corporation. On behalf of DEA we request an interpretive opinion regarding whether DEA will be a "dealer" within the meaning of ARS §44-1801(9) if it allows its employees who reside in Arizona to participate in its internal market, described below. In connection with this request please find a check in the amount of \$200 in payment of the opinion request filing fee.

Facts

DEA is an engineering and consulting firm headquartered in Portland, Oregon with offices in Arizona and six other states. DEA has 132 employees who reside in Arizona. DEA has provided many of its employees with the opportunity to acquire DEA common stock through its incentive stock option and employee stock ownership plans. DEA's objective in providing its employees with an equity interest is to increase their proprietary interest in the Company's success. As of September 30, 1999 DEA had 106 shareholders, of whom 92 are current employees, 11 are former employees and 3 are non-employee directors of the Company. Five of the Company's shareholders currently reside in Arizona. DEA has no plans for a future public offering of its stock. As a result, while DEA has promoted and encouraged the benefit of employee stock ownership, it has been unable to provide liquidity for the stock held by employees, except when employees leave the Company.

DEA has developed a program to create an internal market for its stock, in order to provide shareholders with some degree of liquidity. Pending the Commission's response to this request for an interpretive opinion, DEA employees residing in Arizona will be excluded

from participation in the internal market. The basic structure of the program will be as follows:

- DEA will maintain a list of shareholders who have notified the Company at one time or another that they are interested in either selling their shares of DEA stock or acquiring additional shares. The list will also include non-shareholder employees who have been employed by DEA for at least two years, and who have notified the Company that they are interested in acquiring shares of DEA stock. The list will include the names, addresses and telephone numbers of interested buyers and sellers, the number of shares offered for sale or desired to be purchased, and the sale price at which the shares are offered or desired to be purchased.
- DEA will make available to shareholders interested in selling shares a list of shareholders and eligible employees who have expressed an interest in buying shares of DEA stock. Conversely, DEA will make available to shareholders and eligible employees interested in buying shares a list of shareholders interested in selling shares of DEA stock. The lists will be made available twice a year, following the release of DEA's annual audited financial reports and six month's unaudited financial reports. The lists will be provided by mail or on an electronic bulletin board accessed through DEA's intranet.
- Stock transactions will be permitted between shareholders and eligible employees during a two-week period after the release of the annual and six month's financial information.
- DEA will not match buyers with sellers, participate in negotiations between buyers and sellers, provide opinions or advice about the merits of any transaction, provide financing or handle payment for shares transacted through the internal market.
- All negotiations concerning the number of shares to be bought or sold, the price per share, payment terms and other terms of sale will be negotiated directly between the buyer and seller. All arrangements regarding payment for stock purchased through the internal market will be made directly between the buyer and seller. DEA acts as the transfer agent for all of its stock transactions, and will do so for internal market transactions.
- DEA will not promote sales or solicit buyers. DEA will receive no fees, commissions or other direct or indirect compensation in connection with any shareholder transaction. No fees will be charged for providing access to the internal market. The

maintenance and operation of the internal market program will not constitute a substantial part of any DEA employee's duties to the Company.

- Shareholders will be permitted to offer for sale shares that have been held by the shareholder for two years or longer. Executive officers and members of DEA's board of directors will be permitted to sell, during a single trading period, a maximum number of shares that does not exceed one percent of the shares of DEA common stock then outstanding. It is not anticipated that any offers or sales of this magnitude will occur.
- Persons who have employed by DEA for two years or longer will be eligible to buy shares through the internal market. All DEA shareholders are required to enter into DEA's Stock Purchase Agreement, which restricts the transferability of DEA shares and gives the Company a right of first refusal. Potential buyers who are not already parties to DEA's Stock Purchase Agreement must agree to enter into the Agreement, in order to be eligible to participate in the internal market.

Broker-Dealer Issues

DEA does not believe that the establishment and maintenance of its internal market, as outlined above, would cause it to be acting in the capacity of a "dealer" within the meaning of the ARS §44-1801(9).¹ DEA's proposed activities do not include any of the usual attributes of engaging in the business of dealing or trading in securities. Rather, DEA proposes to act as passive intermediary for the exchange of information between interested buyers and sellers, and will receive no direct or indirect compensation for providing this

¹ "Dealer": (a) Means a person who directly or indirectly engages full-time or part-time in this state as agent, broker or principal in the business of offering, buying, selling or otherwise dealing or trading in securities issued by another person, and who is not a salesman for a registered dealer or is not a bank or savings institution the business of which is supervised and regulated by an agency of this state or the United States.

(b) Means an issuer, other than an investment company, who, directly or through an officer, director, employee or agent who is not registered as a dealer under this chapter, engages in selling securities issued by such issuer.

(c) Does not include a person who sells or offers to sell securities exclusively to dealers registered under this chapter, and who has no place of business in this state.

(d) Does not include a person who buys or sells securities for his own account, either individually or in a fiduciary capacity, but not as a part of a regular business. ARS §44-1801 (9)

service to shareholders and eligible employees. The program is intended solely as a benefit to shareholders and eligible employees of the Company.

We have found no published guidance on this issue under the Arizona statute. At the federal level, the Securities Exchange Commission's recent rulings on proposals similar to DEA's internal market hold that companies that act as passive intermediaries for the exchange of information between interested buyers and sellers and do not receive any financial benefit from doing so, are not engaged in the business of effecting transactions in securities for purposes of the Securities Exchange Act of 1934 (the "Exchange Act"). The Exchange Act, like to the Arizona statute, requires registration of a "broker" or "dealer," defined as a person engaged in the business of effecting transactions in securities for the account of others ("broker"), or for his own account ("dealer"). Securities Exchange Act §3(a)(4), (5).

In *Orincon Corp.*, SEC No-Action Letter (Dec. 11, 1991) the SEC determined that it would recommend no action if Orincon and its employees maintained and distributed to shareholders lists of shareholders interested in buying or selling Orincon stock, without registering as a broker-dealer, based on the following facts: (1) the company and its employees would receive no direct or indirect compensation in connection with any shareholder transaction; (2) the company would not match buyers and sellers or participate in negotiations; (3) the company would not arrange financing, or handle funds or securities in connection with any transactions; and (4) the maintenance and distribution of the lists would not constitute a substantial part of the duties of the company's employees involved in the program. Orincon Corp., like DEA, is a non-public company.

In 1996 the SEC issued a no-action letter stating that it would recommend no enforcement action against Real Goods Trading Corp. ("RGTC") if the company operated a passive electronic "bulletin board" providing information to prospective buyers and sellers of the company's stock without (1) registering as a broker-dealer or investment adviser; (2) registering the offers or sales made through the system under the Securities Act; or (3) registering the system as a national securities exchange. *Real Goods Trading Corp.* SEC No-Action Letter (available June 24, 1996). RGTC stock was registered under the Exchange Act and traded on the Pacific Stock Exchange and RGTC proposed to advertise the availability of its system to members of the public as well as to employees and shareholders.

The SEC issued two subsequent no-action letters on facts virtually identical to the RGTC case, reaching the same conclusion. *Perfect Data Corp.*, SEC No-Action Letter (available Aug. 5, 1996); *The Flamemaster Corp.*, SEC No-Action Letter (available Oct. 29, 1996). Both *Perfect Data Corp.* and *Flamemaster* involved publicly traded companies that proposed to operate passive "electronic bulletin boards" on terms identical to RGTC's proposal. The SEC announced in the *Flamemaster* decision that it would no longer respond

October 20, 1999


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to no-action letter requests with respect to substantially similar systems, unless they present unusual or novel issues.

DEA operates its internal market squarely within the parameters that the SEC has determined do not constitute acting as a broker-dealer. DEA believes that it will not be engaged in the business of effecting transactions in securities for the account of others or for its own account, by virtue of its operation of its internal market, and therefore should not be considered a "dealer" or "salesman" under ARS §44-1801 (9) or (20).

thank you for your consideration of our request for your opinion. Please contact me if you require further information in connection with this request.

Very truly yours,



Darcy M. Norville

cc: Mr. David Evans
Mr. Brian G. Booth

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Tonkon Torp LLP
ATTORNEYS

1600 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204
503-221-1440

DARCY M. NORVILLE

(503) 802-2036
FAX (503) 972-3736
DARCY@TONKON.COM

December 20, 1999

Via Facsimile
602/594-7407

Mr. Mark Dinell
Arizona Securities Division
1300 West Washington Street, Third Floor
Phoenix, Arizona 85007-2996

Re: David Evans and Associates, Inc. Request for Interpretive Opinion

Dear Mr. Dinell:

In follow-up of our telephone conversation of December 14, enclosed please find a copy of the Internal Market Rules that describe the operation of the David Evans and Associates, Inc. ("DEA") Internal Market, and a copy of the Investment Letter that individuals who purchase shares as a result of the Internal Market will be required to execute.

The following securities disclosure language will appear on DEA's intranet site for the Internal Market:

"State and federal securities laws (including anti-fraud and anti-manipulation provisions) apply to any offer made or transaction consummated using the Internal Market. The registration requirements of state and federal securities laws apply to all offers and sales through the Internal Market, absent an available exemption. A sale will not be effective until DEA has determined that the sale will not violate any applicable state or federal securities laws.


The information set forth on the Internal Market electronic bulletin board does not consist of firm quotes. It is merely a list of names, addresses and telephone numbers of interested sellers and buyers, the number of shares of Common Stock offered or desired to be purchased, and the price at which the proposed transaction would occur. DEA does not assure that any particular transaction will occur as to any particular number of shares or at any particular price. All transactions

Mr. Mark Dinell
December 20, 1999
Page 2

between Internal Market must be executed by the participants,
independent of DEA."

Call me if you have any further questions or concerns.

Very truly yours,


Darcy M. Norville

Enclosures

cc: Janet Freiling, Director of Human Resources
David Evans and Associates
Brian G. Booth, Esq.

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Tonkon Torp LLP
ATTORNEYS1600 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204
503-221-1440

DARCY M. NORVILLE

(503) 802-2036
FAX (503) 972-3736
DARCY@TONKON.COM

February 11, 2000

Via Facsimile
602/594-7407Mr. Mark Dinell
Arizona Securities Division
1300 West Washington Street, Third Floor
Phoenix, Arizona 85007-2996

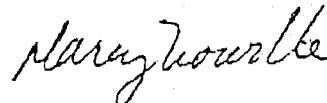
Re: David Evans and Associates, Inc. Request for Interpretive Opinion

Dear Mr. Dinell:

In follow-up of our recent telephone conversations, enclosed please find a copy of a Transfer Restrictions Letter that DEA proposes to use in connection with the operation of its Internal Market in Arizona. DEA no longer proposes to use the Investment Letter previously furnished to the Division, in connection with the operation of its Internal Market in Arizona.

Call me if you have any further questions or concerns.

Very truly yours,



Darcy M. Norville

Enclosures

cc: Janet Freiling, Director of Human Resources
David Evans and Associates
Brian G. Booth, Esq.

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