

5-14-94 file

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ARIZONA CORPORATION COMMISSION

JAMES MATTHEWS
EXECUTIVE SECRETARY

SECURITIES DIVISION
1300 West Washington
Third Floor
TELEPHONE: (602) 542-4242
FAX: (602) 542-3583

May 25, 1994

Ruth Pinkham Haring, Esq.
Rosenberg & Liebentritt, P.C.
Two North Riverside Plaza, Suite 1600
Chicago, Illinois 60606

RE: ERP Operating Limited Partnership
A.R.S. § 44-1844(A)(8)

Dear Ms. Haring:

On the basis of the facts set forth in your letter of May 2, 1994, 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 ERP sell notes to "qualified institutional buyers" as defined by Rule 144A of the Securities Act of 1933. The Division is not interpreting A.R.S. § 44-1844(A)(8) to include all institutional accredited investors as defined in Rule 501(a)(1), (2), (3) and (7) under the Securities Act of 1933. Those entities will need to be considered on a case-by-case basis.

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 anti-fraud provisions of the Act continue to be applicable.

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

DEE RIDDELL HARRIS
Director of Securities

DRH:lb
Attachment

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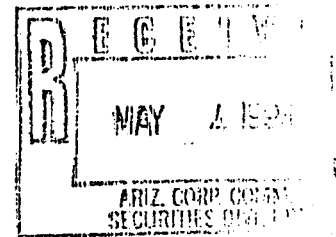
May 2, 1994

VIA FEDERAL EXPRESS

Corporation Commission
Securities Division
1300 West Washington, 3rd Floor
Phoenix, Arizona 85009

Attention: Leslie Block

Re: ERP Operating Limited Partnership ("ERP")



Dear Ms. Block:

On behalf of ERP, a request is made for a No-Action Letter from the Commissioner of the State of Arizona regarding the availability of the exemption from registration pursuant to Section 44-1844(A)(8) of the Arizona Revised Statutes, as amended (the "Act") based on the following facts:

ERP, an Illinois limited partnership, will issue notes in an aggregate principal amount of \$150 million (the "Notes") to qualified institutional buyers (as defined under Rule 144A of the Securities Act of 1933, as amended [the "Securities Act"]) and institutional accredited investors (as defined in Rule 501(a)(1), (2), (3) and (7) under the Securities Act). Rule 144A is a safe harbor exemption from the registration requirements of the Securities Act for the resale of specified, restricted securities to qualified institutional buyers ("QIB's"). The safe harbor provides that resales by institutions or dealers in compliance with Rule 144A will not constitute a distribution or public offering requiring registration under the Securities Act. Rule 144A is limited to offers and sales to QIB's. The definition of a QIB is intended to include sophisticated institutions with experience in investing in securities who do not require the protections of the registration provisions of the Securities Act. The definition of a QIB includes but is not limited to:

1. Institutions that own and invest on a discretionary basis at least \$100 million in securities of non-affiliates (banks under Section 3(a)(2) of the Securities Act and savings and loans under 3(a)(5) of the Securities Act must meet an audited net worth testing of \$25 million at certain dates in addition to the \$100 million test); and
2. Dealers registered under the Securities Exchange Act of 1934, as amended, who own or invest on a discretionary basis \$10 million of securities of unaffiliated issuers.

Based on the foregoing, we are of the opinion that a QIB would be included in your state's exemption for institutional investors and exempt from registration under the Act. Accordingly, on behalf of ERP we respectfully request a No-Action Letter with respect to the described transaction and concurrence of the Arizona securities division that it will interpret the transaction to be within the statutory language of Section 44-1844(A)(8) of the Act.

LAW OFFICES

ROSENBERG & LIEBENTRITT, P.C.

Ms. Leslie Block
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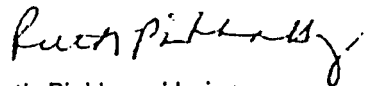
This request for a No-Action Letter is being submitted with a check in the amount of Two Hundred Dollars (\$200.00) in payment of the required filing fee along with a copy of the preliminary offering memorandum to be used in connection with this offering.

Please acknowledge receipt of this filing by stamping the enclosed copy of this correspondence and returning it in the enclosed self-addressed postage-paid envelope.

If you have any questions or require any additional information, please contact Sarah B. Livingstone at (312) 466-3650 or the undersigned at the above direct dial number.

Very truly yours,

ROSENBERG & LIEBENTRITT, P.C.



Ruth Pinkham Haring

RPH/lh

Enclosure

cc: Sarah B. Livingstone
Kristine A. Hemlock