

RENZ D. JENNINGS  
CHAIRMAN

MARCIA WEEKS  
COMMISSIONER

DALE H. MORGAN  
COMMISSIONER



JAMES MATTHEWS  
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION  
(602) 542-4242  
(602) 255-2600  
FAX: (602) 255-2617

April 21, 1992

Joseph P. Martori, Esq.  
Brown & Bain  
2901 North Central Avenue  
Phoenix, AZ 85012-2788

RE: International Leisure Enterprises Incorporated  
A.R.S. §44-1801(18)

Dear Mr. Martori:

On the basis of the facts set forth in your firm's letters of March 11, 1992 and April 20, 1992, the facts set forth in telephone conversations with Carol Columbo, Esq., your firm's oral representation on April 2, 1992 that no benefits will accrue to ILE as a result of this transaction, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona (the "Act") should the transaction take place as set forth in your letter. This no-action position is conditioned upon your firm's representation that the Members receiving the restricted common stock will be subject to a two year holding period from the date of issuance of the stock and that ILE will provide to each Member its most recent Annual Report and Proxy Statement.

As this position is premised upon the facts set forth in your firm's letters and oral representations, it should not be relied on for any other set of facts or by any other person.

To the extent that the transaction does not take place as set forth in your letters and representations, or a material change in circumstances causes the transaction to be deemed a "sale" for purposes of the Act, then the provisions of the Act including, but not limited to, the registration and anti-fraud provisions would be applicable ab initio.

We have attached photocopies of your letters. 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  
Attachments

cc: Carol A. Columbo, Esq.

# BROWN & BAIN

A PROFESSIONAL ASSOCIATION

2901 NORTH CENTRAL AVENUE  
PHOENIX, ARIZONA 85012-2788

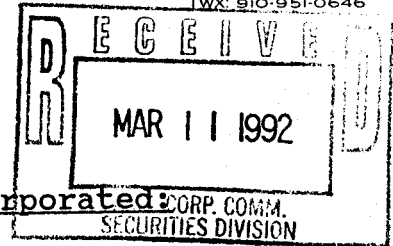
(602) 351-8000

MAILING ADDRESS  
P. O. BOX 400  
PHOENIX, ARIZONA 85001-0400

FACSIMILE: (602) 351-8516  
CABLE: BRAINS  
TWX: 910-951-0646

JOSEPH P. MARTORI  
DIRECT DIAL: (602) 351-8300

March 11, 1992



International Leisure Enterprises Incorporated CORP. COMM.  
No-Action Letter SECURITIES DIVISION

Ladies & Gentlemen:

We are writing on behalf of International Leisure Enterprises Incorporated, an Arizona corporation ("ILE"), to request the Securities Division of the Arizona Corporation Commission (the "Commission") to concur with our opinion that the transfer of ILE's common stock in the manner provided for below will not require registration under A.R.S. Section 44-1841 because the transfer does not involve a "sale" of securities within the meaning of A.R.S. Section 44-1801(18).

### The Company

ILE was organized in 1986 for the purpose of developing, operating and marketing ownership interests in resort properties and engaging in other leisure business activities. ILE is a public company and its stock is traded on NASDAQ. ILE is in full compliance with the reporting requirements set forth in the Securities and Exchange Act of 1934.

Los Abrigados Partners Limited Partnership ("LAP"), is an Arizona limited partnership that owns and operates the Los Abrigados Resort in Sedona, Arizona (the "Resort"). The managing general partner of LAP, ILE Sedona Incorporated, an Arizona corporation, is a wholly-owned subsidiary of ILE. Sedona Vacation Club ("SVC") is an Arizona non-profit corporation whose membership is comprised of all the current owners of timeshare interests in the Resort (the "Members").

### The Proposed Stock Transfer

ILE would like to transfer 100 shares of its restricted Common Stock to each of the Arizona-resident Members of SVC.<sup>1</sup> The Members would not be requested to pay, and ILE would not accept, any monetary consideration for the stock. The purpose of the transfer is to thank the existing Members for their patience and forbearance

<sup>1</sup> In order to insure each Member's status as an Arizona resident, ILE proposes to escrow the stock for a nine month period after issuance to the Members.

March 11, 1992

during the recent period when the Resort was involved in bankruptcy court proceedings and to solidify their commitment to the Resort and SVC. The Members are not currently aware of ILE's desire to give them shares of ILE's Common Stock.

ILE is willing to provide each Member with a copy of its most recent Annual Report and Proxy Statement.

### Discussion

#### Registration Under the Arizona Sales of Securities Act Should Not Be Required.

A.R.S. Section 44-1841(A) states that "[i]t is unlawful to sell or offer for sale within or from [Arizona] any securities unless such securities have been registered by description . . . qualification . . . [or are] exempt securities . . . or securities sold in exempt transactions . . ." (Copy of A.R.S. § 44-1841(A) attached as Appendix A.) "'Offer to sell' or 'offer for sale' means an attempt or offer to dispose of . . . a security or interest in a security for value . . ." A.R.S. § 44-1801(10). (Copy attached as Appendix B.) Although ILE will be giving the stock to the Members, and although the Members are not required to provide, nor would ILE accept, any monetary consideration for the stock, and although the Members would not be required to make any investment decisions about the stock issuance, an overly broad reading of the statute could result in a characterization of the stock transfer as falling within the definition of a sale, thus requiring registration of the stock. For the reasons set forth below, we believe that such an interpretation is inconsistent with the purpose and intent of the Arizona Sales of Securities Act.

The purpose of the federal securities acts is twofold: one is to provide investors with the information necessary to make an informed investment decision (disclosure); the other, which applies not only to offerings by an issuer but to sales generally, is to curb fraud and deception by imposing liability for misrepresentations. See Wilko v. Swan, 127 F. Supp. 55, 58 (S.D.N.Y. 1955). The same is true of its Arizona counterpart. See Jackson v. Robertson, 90 Ariz. 405, 368 P.2d 645, 647 (1962) ("[T]he purpose and spirit of the Arizona Securities Act . . . is to prevent the public from being imposed upon by questionable and unsound financial schemes of fortune dreamers and dishonest promoters.") (quoting Loss & Cowett, Blue Sky Law, 3-10 (1958)). Because Arizona's securities law is based on the federal law, Arizona courts look to the interpretation of the federal law for guidance in interpreting the state law. See First Citizen's Fed. Sav. & Loan Ass'n v. Worthen Bank & Trust Co., 919 F.2d 510 (9th Cir. 1990) (Arizona's Securities Act is based on federal securities law; cases interpreting federal statutes are helpful in interpreting

Arizona Corporation Commission  
Securities Division

-3-

March 11, 1992

Arizona's Act). To achieve the stated aim of protecting the investing public, the Securities Acts, federal and state, require full disclosure of material information through stock registration and prospectus delivery requirements and regulate the sale of securities to protect against manipulative or deceptive sales. See Wasson v. SEC, 558 F.2d 879, 886 (8th Cir. 1977); SEC v. Continental Commodities Corp., 497 F.2d 516, 528 (5th Cir. 1974). The laws concerning registration of securities apply only when there has been a "sale" or an "offer for sale." Wasson, 558 F.2d at 886; see also, Shaw v. Dreyfus, 172 F.2d 140, 143 (2d Cir.) cert denied, 337 U.S. 907 (1949) (stock gift is not a sale and hence, securities laws requiring registration do not apply); Gurvitz v. Bregman & Co., 379 F. Supp. 1283, 1286 (S.D.N.Y. 1974) (stock split is not a sale for value).

The essential characteristic of a "sale" is that a "purchaser" parts with something in exchange for a security. 11 Hugh Sowards, Business Organizations: The Federal Securities Act, § 2.02[1] (A.A. Sommer, Jr. ed. 1991). The notion that a sale contains a quid pro quo requirement is supported by the statutory language and traditional common law principles of sales. See Note, Looking a Gift of Stock in the Mouth: Donative Transfers and Rule 10(b)-5, 88 Mich. L. Rev. 604, 619 (1989).

As A.R.S. § 44-1801(18) indicates, a "'sale' or 'sell' means a sale or other disposition of a security or interest in a security for value." (Emphasis added). Neither the Arizona statute nor its federal counterpart provides a definition of value. However, case law indicates that there is a sale for value in circumstances where: (1) the stock is exchanged for traditional common law consideration, (2) the stock recipient receives some intangible benefit, (3) the stock recipient forgoes a legal right, (4) the stock recipient's investment undergoes a fundamental change, or (5) the stock recipient is afforded the opportunity to make an investment decision.<sup>2</sup> If the stock transfer is not supported by consideration, no value is given and no sale results.

<sup>2</sup> See, e.g., SEC v. Continental Commodities Corp., 497 F.2d 516, 528 (5th Cir. 1974) (agreement to forbear legal action in exchange for stock constituted sale); Ingenito v. Bermec Corp., 376 F. Supp. 1154, 1180-82 (S.D.N.Y. 1974) (additional maintenance obligation resulting from gift of merchandise constituted sale); Carter v. Signode Ind. Inc., 694 F. Supp. 493, 496 (N.D. Ill. 1988) (finding sale where plaintiff gave consideration in form of securities swap and made investment decision); Ahern v. Gaussoin, 611 F. Supp. 1465, 1478 (D.C. Or. 1985) (requiring risk and investment decision before finding sale).

Arizona Corporation Commission  
Securities Division

-4-

March 11, 1992

ILE's proposed transfer of stock to existing Members does not involve a sale for value. The Members are not required nor would ILE accept any tangible benefit; the Members are not required to make an investment decision because they have no control over whether the stock is issued; nor do the Members have to refrain from taking any action, legal or otherwise.

The SEC no-action letters that have addressed this issue indicate that ILE's proposed stock transfer to Arizona-based Members of SVC would not be "for value." For example, in a no-action letter to Midwest Grain Products Inc., the SEC decided that the company's proposed stock bonus to employees who had performed exceptional service to the corporation would not result in a sale for purposes of the securities laws. Midwest Grain Pro. Inc., SEC No-Action Letter, [1990 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 79,410, at 77,156 (Dec. 19, 1990). The SEC focused on the fact that the employee had no control over participation in the stock bonus program and that "[t]he employee [gave] nothing for value in order to receive the bonus stock." *Id.*; see also Howmedia, Inc., SEC No-Action Letter, [1971-1972 Binder] Fed. Sec. L. Rep. (CCH) ¶ 78,479, at 81,030 (Nov. 26, 1971) (issuance of shares as bonuses to reward outstanding service was not a sale); Pollution, Research & Control Corp., SEC No-Action Letter, [1971-1972 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 78,519, at 81,119 (Oct. 5, 1971) (finding that stock gift to trust was not a sale). The SEC issued a general statement of its position in a 1980 release wherein the SEC staff noted that before value is given such that a sale of securities is occasioned there must be "ordinary forms of consideration, such as cash, property, services or the surrender of a legal right." Employee Benefit Plan, Exchange Act Release No. 33-6188 1 Fed. Sec. L. Rep. (CCH) ¶ 1051 at 2073 (Feb. 1, 1980). The SEC has also taken the position that in situations where the stock recipient has no control over whether to receive the stock there is no investment decision and therefore no sale. See Shell Oil Co., SEC No-Action Letter, [1989 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 78,919, at 78,595 (Dec. 12, 1988) (no sale where change in stock benefit to employee did not allow investment decision); Professional Food-Serv. Management, Inc., SEC No-Action Letter, [1989 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 78,968, at 78,831 (Feb. 1, 1989) (same).

Although the Members will give nothing in exchange for the stock, it might be argued that some form of value is created due to the goodwill that might be generated as a result of ILE's transfer of stock to existing Members. There is no case law directly on point. However, an examination of above-mentioned federal decisions and SEC no-action letters suggests that the creation of goodwill between the transferor and the transferee of a security, where the transferee has not been required to provide consideration for the security, does not result in a sale for value for purposes

Arizona Corporation Commission  
Securities Division

-5-

March 11, 1992

of the securities laws. In fact, one could argue that every stock transfer that does not require the recipient to furnish some form of consideration could result in the generation of goodwill between the recipient of the stock and the transferor. Nevertheless, the courts and the SEC have not even addressed the concept of goodwill as a basis for creating value. By negative implication, the courts and the SEC appear to have concluded that the goodwill generated by a gratuitous stock transfer does not, in and of itself, constitute "value."

For the reasons set forth above, we submit that ILE's proposed transfer of Common Stock to existing Members of SVC, on a one-time-only basis, would not constitute a "sale for value" and hence, the provisions of Arizona's securities law requiring registration of stock prior to transfer should not apply. In addition, because the Members are not being asked to invest their financial resources, and are not otherwise required to make any investment decisions with respect to the stock, we believe they do not need the protections afforded by Arizona's securities laws and application of the law under these circumstances would not be consistent with public policy. Accordingly, we respectfully request the Securities Division of the Arizona Corporation Commission to concur in our opinion that ILE need not register its stock with the Commission prior to the proposed transfer to existing Arizona-resident Members of SVC.

If you have any questions concerning this letter or are in need of additional information, please call me at your earliest convenience. Your timely response to this request will be appreciated.

Sincerely,



Joseph P. Martora

Arizona Corporation Commission  
Securities Division

Attn: Sandra Forbes, Assistant Director  
for Law and Policy

1200 West Washington  
Phoenix, Arizona 85007

HAND DELIVERED

JPM/enj

RECEIVED  
APR 21 1992  
MAILING ADDRESS  
P.O. BOX 14007  
PHOENIX, ARIZONA 85001-0400  
FACSIMILE: (602) 351-8516  
CABLE: BRAINS  
TWX: 910-951-0646

**BROWN & BAIN**

A PROFESSIONAL ASSOCIATION

2901 NORTH CENTRAL AVENUE  
PHOENIX, ARIZONA 85012-2788

(602) 351-8000

**CAROL A. COLOMBO**

DIRECT DIAL: (602) 351-8145

April 20, 1992

Los Abrigados Resort  
Sedona Vacation Club Timeshare Interests

Dear Ms. Block:

The following information is provided pursuant to your request.

The Membership Plan of Sedona Vacation Club (the "Membership Plan") which governs the sale of timeshare interests in the Los Abrigados Resort does not authorize, and Los Abrigados Partners Limited Partnership ("LAP") prohibits, any sort of rental pooling arrangements concerning said timeshare interests.

In addition, Section 2.09 of the Membership Plan, entitled "Restrictions on Resale of Club Memberships" requires that in the event a Member wishes to sell his or her Membership, the Member must first offer to sell Membership back to LAP. The Member is permitted to resell its Membership to a third party only if LAP elects not to exercise its right of first refusal.

Finally, prior to purchasing a Membership, each potential purchaser is required to read and sign a document entitled "Sedona Vacation Club Owner's Understanding And Acknowledgement" (the "Acknowledgement"). Section 15 of the Acknowledgement states:

"I acknowledge that no representations of any kind have been made to me to the effect that the membership purchased can be resold or rented in the future at a profit. No resale, repurchase or rental services are provided by Sedona Vacation Club Incorporated to persons acquiring memberships and I have been urged to enter into this purchase only if I intend to use such rights for my own personal enjoyment."

LAP has prohibited rental pooling arrangements, retained a right of first refusal on the resale of Membership interests, and required the execution of the Acknowledgement in order to insure that potential Members do not expect to receive a profit from their

BROWN & BAIN P.A.

Ms. Leslie Block

-2-

April 20, 1992

investment based solely on the efforts of others. See, SEC v. W.J. Howey Co., 328 U.S. 293 (1946).

Please do not hesitate to call if you have any further questions concerning this matter. We look forward to receiving your Department's response to our no-action letter request.

Very truly yours,



Carol A. Colombo

Ms. Leslie Block  
Securities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

TELECOPIED: 255-2617

CAC/lav