

1843(7)
Statute
file



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ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION
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June 24, 1991

44-1843(7)

Mr. Victor J. DiGioia
Goldstein, Axelrod & DiGioia
369 Lexington Avenue
New York NY 10017

RE: Mercury Air Corporation, Inc.

Dear Mr. DiGioia:

On the basis of the facts set forth in your letter of June 12, 1991, 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 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:MB:wjw

Attachment

GOLDSTEIN, AXELROD & DIGIOIA

ATTORNEYS AND COUNSELORS AT LAW

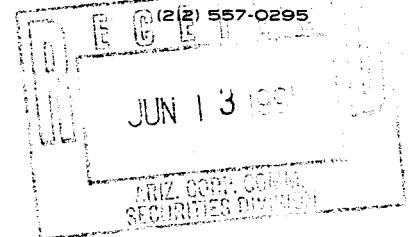
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June 12, 1991



BY FACSIMILE AND FEDERAL EXPRESS

Ms. Sara Ziskin
Assistant Director for Corporation Finance
Securities Commission
234 North Central Avenue
Suite 425
Phoenix, Arizona 85004

Dear Ms. Ziskin:

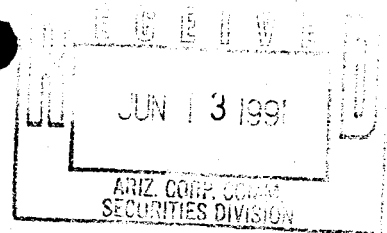
In accordance with our conversation of Thursday, June 6, 1991, we represent Mercury Air Corporation, Inc. (the "Issuer") in connection with a proposed public offering of units, each unit consisting of one share of Series A 8% Convertible Cumulative Redeemable Preferred Stock (the "Preferred Stock") and one Redeemable Series A Common Stock Purchase Warrant (the "Series A Warrant"). Each Series A Warrant will entitle the holder to purchase one share of Common Stock and, if exercised during the first year after issuance, one Series B Warrant. The Series B Warrant will entitle the Holder to purchase one share of Common Stock. The Preferred Stock is senior to the Common Stock and the Common Stock is currently listed on the American Stock Exchange ("Amex"). The units will not be listed on Amex but will be included in the National Association of Securities Dealers Automatic Quotation System ("NASDAQ") upon the effective date of the offering. It is anticipated that upon the separation date the components of the units will be listed on Amex at which time the units will be deleted from NASDAQ.

We request the staff's views regarding the availability of the exemption provided by Section 44-1843(7) for the sale of the units in Arizona.

Section 1843(7) exempts "all securities senior or equal in rank to any securities so listed or approved for listing ... and any warrant or right to purchase or subscribe to any of the forgoing." Under this provision if the offering consisted of Preferred Stock and Warrants which were immediately separable, the sale of these individual securities would be exempt. However, since the security the Issuer is selling is "units" and, not Preferred Stock or Warrants, a question is presented as to

GOLDSTEIN, AXELROD & DIGIOIA

Ms. Sara Ziskin
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whether the units would be exempt under this provision. We view the sale of units consisting of components which would have been entitled to the exemption as no different, from an investors point of view, than the sale of the individual components. It is, therefore, our opinion that the sale of the units would be exempt under the Section 1843(7). We request advice that, if based on our opinion, the Issuer proceeds as outlined above, the staff would not recommend any enforcement action.

Further to our conversation, we have been orally advised on June 11, 1991 by the Texas State Securities Commission that it will apply a similar exemption to the sale of the units in Texas.

As the Issuer is attempting to commence this offering next week, I would appreciate any effort you can make to expedite your review of this matter. We have also enclosed a check in the amount of \$200 representing filing fees for this request.

Please stamp the enclosed copy of this letter and return same in the self-addressed, stamped envelope provided to acknowledge receipt of the enclosed.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Victor J. DiGioia". The signature is written in a cursive style.

Victor J. DiGioia

VJD/sc
Enclosure

ZISKIN