ROBIN CARNAHAN
SECRETARY OF STATE
STATE OF MISSOURI

JAMES C. KIRKPATRICK
STATE INFORMATION CENTER
(573) 751-4936

MATTHEW D. KITZI
COMMISSIONER OF SECURITIES
(573) 751-4136

February 28, 2007

VIA FACSIMILE & U.S. MAIL

Matthew S. Volkert, Esq.
Van Matre, Harrison, and Volkert, P.C.
1103 East Broadway, Suite 101
Columbia, Missouri 65201

Re: Request for a No-Action Determination under Section 409.6-605(d), RSMo.
Missouri File No. 2007-00164

Dear Mr. Volkert,

This letter responds to your letter of January 23, 2007 regarding a no action request from the Commissioner. In that letter, you stated that Van Matre, Harrison, and Volkert, P.C. ("Van Matre") has proposed performing certain activities related to the maintenance of a shareholders list for one of its clients. You asked that the Commissioner take no action to require Van Matre to register as a broker-dealer under the Missouri Securities Act of 2003 for performing those activities. A copy of your letter has been enclosed for your reference.

Based solely on the representations you made in the enclosed letter, the Commissioner will take no action to require Van Matre to register as a broker-dealer. This "no-action" position does not constitute an exclusion from the anti-fraud provisions of the Missouri Securities Act of 2003. This position is based on the facts presented, and, should the facts prove to differ from those presented in any manner, the position of the Commissioner may differ. This determination is applicable only to the matter at hand and the specific facts related to the same by the requesting party. This determination sets no precedent and is no way binding on the Commissioner when applied to any other matter, requesting party, or set of facts.

Sincerely,

Matthew D. Kitzi
Commissioner of Securities

Enclosure

VAN MATRE, HARRISON, AND VOLKERT, P.C.

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW
1103 EAST BROADWAY, SUITE 101
POST OFFICE BOX 1017
COLUMBIA, MISSOURI 65201

(573) 874-7777
TELECOPIER (573) 875-0017
WRITER'S E-MAIL matt@vanmatre.com

CRAIG A. VAN MATRE
THOMAS M. HARRISON
MATTHEW S. VOLKERT*

EVERETT S. VAN MATRE
(1922-1998)

CARLA K. WILLIAMS
GARRETT S. TAYLOR
ROBERT N. HOLLIS
KATHLEEN D. PITZER**

*ADMITTED IN MISSOURI AND ILLINOIS
**ADMITTED IN MISSOURI, ILLINOIS, AND WASHINGTON, D.C.

January 23, 2007

Matt Kitzi, Commissioner of Securities
Securities Division
Office of the Missouri Secretary of State
600 West Main Street
Jefferson City, Missouri 65101-1276

Re: Request for a No-Action Determination Regarding Broker-Dealer Registration Under Section 409.4-401(a) of the Missouri Securities Act of 2003.

Dear Mr. Kitzi:

Van Matre, Harrison, and Volkert, P.C., is a Missouri professional corporation. Our offices are located in Columbia, Missouri. This letter is being submitted, on our own behalf, pursuant to Section 409.6-605(d) of the Missouri Securities Act of 2003 (the "Act"). We would like you to please issue a determination that you will not institute any proceeding or action against us under the Act if we engage in the activities outlined herein without registration as a broker-dealer.

Background

This firm practices primarily in the areas of real estate and commercial law, including securities law. One of our clients, which is not identified for reasons set forth herein, is a corporation organized and with its principal place of business in Missouri (the "Client"). We provide general corporate, securities, and other transactional services to the Client in our capacity as its attorney, such as assistance in structuring securities offerings and preparing disclosure documents, evaluating and negotiating acquisitions, advising on shareholder matters including proposed stock transfer issues, and maintaining its stock register (including by accepting and cancelling stock certificates and preparing replacement certificates in connection with stock transfers).

The Client has several hundred shareholders. The Client has a shareholders agreement providing for a right of first refusal in favor of the company in the event of a proposed stock transfer by one of its shareholders, which is frequently waived. The Client is a private company and as such is not a reporting company under the Securities Exchange Act of 1934 (the

"Exchange Act") and its stock is neither registered nor listed on an exchange. There is no practical way for shareholders to buy or sell the stock, and transactions in the stock are relatively rare. From time to time, the Client is approached by existing shareholders who desire to buy or sell stock. In an effort to facilitate shareholder liquidity, the Client has asked us to maintain and make available a list of these existing shareholders who are prospective buyers and sellers of stock (the "List").

Proposed Activities

The List would include only the names and contact information of existing shareholders who have indicated they may be interested in buying or selling stock and would not include any price, quantity, or other information concerning the Client or its stock. A shareholder's information will be added to the list only if the shareholder contacts the Client indicating an interest in buying or selling stock and, upon disclosure of the List, wishes to participate (the "Participants").

Our role will be entirely passive, and neither we nor the Client will approach or solicit anyone to be a Participant. The existence of the List will not be advertised or otherwise made public and will only be disclosed in response to any unsolicited inquiries described above. For this reason, because this request is a public record we do not wish to identify the Client herein. We will not hold ourselves out as brokers to a Participant or anyone else. With the exception of this request, we will not publicly announce our ability or willingness to engage in these or similar activities.

Upon receipt of relevant inquiries, the Client will refer the Participants to us. If we are contacted, we will confirm the Participants' identity, residency, and, if they desire to sell, stock holdings. In this latter regard, we will verify that their stock is not restricted stock or subject to transfer restrictions, including that the Client agrees to waive its right of first refusal. We will disclose the List to them and, if requested, add them to the List. A Participant would remain on the List until such time as we are informed that the transaction is complete or the Participant is no longer interested in buying or selling. We will provide the List to the Client and will reserve the right to remove any Participant from the List or to discontinue the List at any time, as directed by the Client.

No transactions will be effected or recorded on the List. All transactions will be effected only by direct contact between the Participants. Participants will be solely responsible for relying on their own exemption, including under Section 4(1) and Rule 144 under the Securities Act of 1933. We will not give any opinion or indication of the value or price of the stock or comment or provide information as to the advisability of buying or selling the stock in any respect. We will take no action to encourage, negotiate, or effect any transactions and will not receive, hold, or transfer funds or securities, except to perform our ordinary, ministerial functions, e.g., to verify that the stock is not subject to transfer restrictions and that the Client will waive its right of first refusal and, if a seller surrenders a stock certificate and instructs us to cancel it and arrange for the issuance of a replacement

certificate to the buyer, to comply with those instructions and update the stock register accordingly.

At all times, we will be acting in the capacity as attorney to the Client. We will not claim to be acting as brokers or in any other capacity on behalf of any Participant. We will only charge the Client a nominal fee, based on actual time spent by an attorney, at standard hourly rates, plus any actual, out-of-pocket expenses incurred. This fee will not vary or be contingent upon the outcome or completion of any transaction. The amount of this fee will be negligible compared to the amounts paid by the Client for other legal services, and we will receive no other compensation from the Client, any Participant, or any other person relating to the List. We have never engaged in these activities for any other client nor do we envision doing so in the future.

Discussion

Subject to specified exceptions, Section 409.4-401(a) of the Act prohibits a person from transacting business in Missouri as a "broker-dealer" unless the person is registered under the Act. In relevant part, Section 409.1-102(4) of the Act defines a broker-dealer as "a person engaged in the business of effecting transactions in securities...." To our knowledge there is no Missouri case or other interpretation elucidating this definition. However, it is identical in all relevant respects to the definition of "broker" under Section 3(a)(4) of the Exchange Act, and there is voluminous guidance from federal authorities on the meaning of that definition. Therefore, the following discussion will analyze this issue by applying relevant federal interpretations.[1]

In general, federal courts have stated that a person fits this definition where there is "a certain regularity of participation in securities transactions at key points in the chain of distribution."[2] Further, courts have typically identified six main factors, which are whether the person: (1) receives commissions or other transaction-based compensation, (2) actively solicits investors, (3) is involved in negotiations, (4) gives valuations or advice on the merits, (5) is an employee of the issuer, and/or (6) acts on behalf of other issuers.[3]

Recently, the staff of the Securities and Exchange Commission (the "SEC"), in no-action letters, has used the following standard:

> A person effects transactions in securities if he or she participates in such transactions 'at key points in the chain of distribution.' Such participation

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[1] See Moses v. Comm'r, 186 S.W.3d 899, 904 (Mo. App. W.D. 2006) (stating that Missouri courts will look to federal law to "aid in comprehending the *definitional* limitations of the Act, particularly when the language of the federal and state securities statutes involved is nearly identical.").

[2] Massachusetts Fin. Servs. v. Securities Investor Protection, 411 F. Supp. 411, 415 (D. Mass. 1976), aff'd, 545 F.2d 754 (1st Cir. 1976).

[3] See, e.g., SEC v. Hansen, 1984 WL 2413 (S.D.N.Y. 1984).

> includes, among other activities, assisting an issuer to structure prospective securities transactions, helping an issuer to identify potential purchasers of securities, soliciting securities transactions (including advertising), and participating in the order-taking or order-routing process (for example, by taking transaction orders from customers). Factors indicating that a person is 'engaged in the business' include, among others: receiving transaction-related compensation; holding one's self out as a broker, as executing trades, or as assisting others in settling securities transactions; and participating in the securities business with some degree of regularity. In addition to indicating that a person is 'effecting transactions,' soliciting securities transactions is also evidence of being 'engaged in the business.'[4]

The most important of the foregoing factors is whether the person receives a commission or other transaction-based compensation that depends upon the size or success of the transaction.[5] Secondarily, another of the most important factors is if the person solicits transactions.[6]

In the present case, we do not believe that our proposed activities will constitute "the business of effecting transactions in securities." We will not receive any transaction-based compensation. We will not be involved in soliciting, structuring, negotiating, taking or routing, or otherwise giving advice on transactions or orders in connection with the List. We will not accept funds, act as escrow agent, or provide any other services to facilitate any transaction in connection with the List. We will not advertise, hold ourselves out to be brokers, or perform a similar service for any other person. Our only involvement in effecting transactions will be disclosing the names of interested seller or buyers and performing our ordinary functions as attorneys for the Client and on its behalf, such as canceling and issuing certificates and transferring record ownership, as instructed.

The SEC has responded to a number of inquiries regarding matching or listing services, and several of their recent responses are illustrative here. First, matching or listing services have been granted no-action relief, including some charging a fee (albeit not transaction-based compensation).[7] Furthermore, in many respects these services performed

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[4] MuniAuction, Inc., SEC No-Action Letter (March 13, 2000) (citations omitted). See also Bond Globe, SEC No-Action Letter (February 6, 2001); Progressive Technology, Inc. SEC No-Action Letter (October 11, 2000).

[5] See, e.g., Birchtree Financial Services, Inc., SEC No-Action Letter (September 22, 1998). Cf., John W. Loofbourrow Assocs., Inc., SEC No-Action Letter (June 29, 2006) (refusing to grant a no-action request based solely on the presence of transaction-based compensation).

[6] See SEC v. Century Inv. Transfer Corp., 1971 WL 297, *5 (S.D.N.Y. 1971).

[7] See, e.g., Angel Capital Electronic Network, SEC No-Action Letter (October 25, 1996) (matching prospective investors of multiple companies for an administrative fee); Charles Schwab & Co., Inc., SEC No-Action Letter (November 27, 1996) (connecting existing and prospective investors with a registered broker for a flat fee); Portland Brewing Company, SEC No-Action Letter (December 14, 1999) (matching existing and prospective investors of one company for no fee).

activities that are more indicative of engaging in the business of effecting securities transactions. For example, the services were all advertised publicly, open to both existing and prospective investors, and contained much more information such as price, quantity, and company information. Therefore, the activities outlined herein are even more limited than what has been found permissible in the past.

On the other hand, in recent responses where the SEC has refused to grant no-action relief to a proposed matching or listing service, the SEC has indicated that a service that holds itself out as being in the business of bringing together companies and investors, solicits transactions, and accepts or facilitates orders or indications of interest would be required to register as a broker (or be under the supervision of a registered broker), even in the absence of transaction-based compensation.[8] The activities outlined herein do not include any of these functions.

Moreover, our continued performance of the above-described ordinary, ministerial functions for the Client should not alter this analysis. Generally speaking, the SEC has recognized that attorneys, acting as such, are not required to register.[9] The addition of one more limited function, which in and of itself does not constitute engaging in the business of effecting securities transactions, does not change the nature of our activities so fundamentally as to affect the analysis.[10]

Finally, one of the primary, generally-accepted benefits of registration is for the protection of investors. Here, requiring us to register as a broker-dealer would not provide any such additional protection to the Participants. Requiring us to meet minimum capital requirements is unnecessary because we will not handle any Participant's funds, so a financial failure would not result in the loss of such funds, and the cost of compliance with reporting or record-keeping requirements would far outweigh any benefits.[11]

Conclusion and Requested Action

By engaging in the activities outlined herein, we will not be engaging in the business of effecting transactions in securities. Thus, we may do so without registration as a broker-dealer.

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[8] See MuniAuction, supra note 4; IPONET, SEC No-Action Letter (July 26, 1996).

[9] Labron K. Shuman, SEC No-Action Letter (March 4, 1977) (noting that "where a person, *other than a professional such as a lawyer or accountant acting as such*, plays an integral role in ... effecting ... transactions in securities for others, such person generally may be deemed to be a broker..." (emphasis added)); see also Garrett/Kushell/Associates, SEC No-Action Letter (September 7, 1980).

[10] Cf. Portland Brewing Company, supra note 7 (noting that neither the issuer, which is to maintain the listing service, nor its transfer agent, which handles the stock certificates and register on its behalf, are registered).

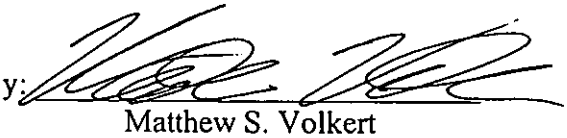
[11] Cf. Id.

In view of the foregoing, we hereby respectfully request that you, as Commissioner of Securities, issue a determination that you will not institute any proceeding or action against us under the Act if we engage in the activities outlined herein without registration as a broker-dealer under Section 409.4-401(a) of the Act.

I appreciate your consideration of this matter. If you seek any clarification, have any questions, or would like more information concerning this matter, including if you believe new or different representations may be necessary for such a determination, please contact the undersigned at (573) 874-7777. Thank you.

Very truly yours,

VAN MATRE, HARRISON, and VOLKERT, P.C.

By: 
Matthew S. Volkert