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## ARKANSAS SECURITIES DEPARTMENT

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March 7, 2000

Theodore M. Gizewski  
ALLEN MATKINS LECK GAMBLE & MALLORY LLP  
333 Bush Street 17<sup>th</sup> Floor  
San Francisco, California 94104-2806

**Re: Interpretive letter request of February 11, 2000**

**Case No.:** 00-031-M  
**No-Action:** 00-003

Dear Mr. Gizewski:

I am responding to your letter of February 11, 2000, addressed to Rick Weaver of the Arkansas Securities Department. You request an interpretation of provisions of the Arkansas Mortgage Loan Company and Loan Broker Act, § 23-39-101 *et seq.*, (the "Act") as they pertain to the manner in which your client will be conducting business in the State of Arkansas through the internet.

You describe your client's business as a web-based business that "connects the potential buyer and the potential seller." Potential buyers/customers will complete a questionnaire that provides certain basic information about the customer's business as well as the type of loan or financing that the customer is seeking to obtain. Various "lenders" and "loan brokers" will "register" with your client. These lenders and loan brokers, whom you cumulatively refer to as "vendors," will provide your client with basic information about the type of products and services that they offer. Your client acts as a repository and conduit for customers seeking loan financing and vendors who seek to accommodate the customers' borrowing needs.

From the facts and descriptions presented in your letter, it appears that your client is a "loan broker," as that term is defined at Ark. Code Ann. 23-39-102(6). Your client "acts as a go-between, finder, or agent of a lender or borrower of money for the purpose of procuring a loan of money . . ." In addition, if any of the loans by those who lend money to your client's customers, or, if any of the loans procured by loan brokers serving as agents for persons lending money to your client's customers, are secured by a lien or mortgage on Arkansas real property, then those lenders and loan brokers are "mortgage loan companies" as defined in Ark. Code Ann. § 23-39-102(5)(A). Equally, your client would appear to be a "mortgage loan company." Section 102(5)(A) describes a "mortgage loan company" as:

- "any person who directly or indirectly:
- (i) Holds himself out for hire to serve as an agent for any person in an attempt to obtain a loan which will be secured by a lien or mortgage on real property;
  - (ii) Holds himself out for hire to serve as an agent for any person who has money to loan, which loan is or will be secured by a lien or mortgage on real property;
- . . . .

Ark. Code Ann. § 23-39-301 provides that it is unlawful for any person to transact business in Arkansas, whether directly or indirectly, as a mortgage loan company or loan broker without first being registered as provided within the Act. Section 306 of the Act provides various exemptions to registration, one of which you believe applicable. It is your opinion that your client is exempt from registration pursuant to 23-39-306(a)(11). That section exempts "[a]ny loan broker who does not receive a fee or other consideration other than from the lender after financing is actually obtained, if the lender is registered or exempted from registration pursuant to the provisions of this subchapter." You indicate that each of the three types of fees received by your client for its services: "quote fee," "contact fee," and "success fee" are all paid by the lender. However, it appears that the fees are paid prior to, as opposed to after, financing actually being obtained by the borrower. In fact, whether or not the borrower actually receives the financing does not appear to be determinative as to whether or not the fee is owed/paid. Accordingly, your clients do not fall within the

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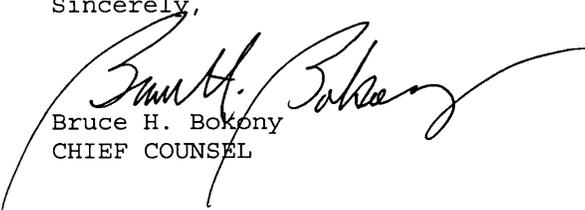
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terms of the exemption. Moreover, your letter does not indicate the name(s) of any of the lenders involved in these transactions. Thus, it is unknown whether these lenders are "registered or exempted from registration", a required condition in order for Section 306(a)(11) to be applicable.

Finally, with regard to the equipment leasing aspects of your letter, the exact nature of the transactions proposed between your client and its customers is unclear. If your client merely places lessors and lessees together, then the provisions of the Act do not seem to apply. However, if your client places lessors and lessees together by providing a mechanism by which money can be borrowed for the purpose of financing the lease, then the "loan broker" provisions of the Act appear to apply.

The appropriate forms required for registering with the Department as a mortgage loan company or loan broker may be found at our website indicated above. If you need the Department to mail these forms to you, please let me know by mail or by telephone. Should you have any questions regarding any of the matters addressed in this letter, please contact me at my direct line listed above.

Sincerely,



Bruce H. Bokony  
CHIEF COUNSEL