

May 14, 2003

Deborah Truby Riordan
Perkins & Trotter, PLLC
PO Box 251618
Little Rock, Arkansas 72225-1618

Re: Big Cypress Land & Timber Company, LLC
No Action 03-9000308-NA008

Dear Ms. Riordan:

The Department is in receipt of your letter dated May 6, 2003, in which you ask for guidance concerning the issuance of membership interests in Big Cypress Land & Timber Company, LLC ("Big Cypress"). You implicitly ask that the staff of the Arkansas Securities Department (the Staff) adopt a no action position on the issuance of these membership interests because they do not fit the definition of security found at Ark. Code Ann. §23-42-102(15).

From your letter and the accompanying Operating Agreement, the following facts concerning this matter can be gleaned. Big Cypress will be acquiring 1000 acres of real property in Arkansas that will be developed and operated for use by its members as a hunting club. Initially, Big Cypress will offer eight memberships at a cost of \$15,000 each. Thereafter, Big Cypress shall offer membership interests to up to 25 additional members at a cost of either \$15,000 or \$30,000 each, depending on the prospective member's current status as a member in another hunting club.

According to your letter and the Operating Agreement, the members of Big Cypress will be permitted to hunt on the land and use its facilities. Members will not have any proprietary interest in the assets of Big Cypress and will be subject to periodic assessments to cover operating expenses and improvements to the property of Big Cypress. Big Cypress is not being organized with a goal of appreciating the value of the memberships or to make a profit.

The management of Big Cypress will be vested in a management pool, which will consist of four of the initial eight members. A vote of at least two thirds of the members of Big Cypress will be required to amend the Operating Agreement or Articles of Organization, compromise an enforceable obligation of a member to make a contribution to Big Cypress, voluntarily dissolve the company, limit hunting rights of the members on its property, purchase or lease property other than the initial 1000 acres at a cost in excess of \$25,000 and make any capital expenditures or borrow monies for the operations of the company in excess of \$1000 in any one instance or in excess of \$5000 in the aggregate.

Members will be allowed to sell their membership interests in Big Cypress subject to certain restrictions on transfer as contained in the Operating Agreement. With a few exceptions, the approval of all of the members shall be required to transfer a member's interests. If a third party wishes to acquire a member's interest, then the company shall have the right of first refusal for ninety days, and then the approval of all of the members is required to transfer the membership.

Big Cypress submits that the proposed membership interests of the members of Big Cypress do not constitute securities under Arkansas law. It has been held that a security exists under Arkansas law when there is the expectation of some benefit to the investor as a result of the investment. See *Cook v. Willis*, 305 Ark. 442, 808 S.W.2d 758 (1991), and *Smith v. State*, 266 Ark. 861, 587 S.W.2d 50 (1979). According to your letter and the Operating Agreement, there is no investment of money with the expectation of profits. Rather, the price of a membership interest in Big Cypress is more akin to an initiation fee, and the expectations of the members are not of profits but of the use of its facilities and participation in its activities. The proposed arrangement is more of a cooperative association of sportsmen interested solely in recreation than a profitable business. In any economic benefit should accrue to any member, it would be purely incidental.

Accordingly, the Staff will recommend that the Arkansas Securities Commissioner take no enforcement action against Big Cypress for not registering its membership interests or filing a proof of exemption for it if the facts remain as stated in your letter.

Please note that the position of the Staff is based solely upon the representations made to the Department in your letter and the attached Operating Agreement and applies only to the facts set out therein. Different facts or circumstances might and often would require a different response. The positions expressed deals only with anticipated enforcement action by the Department and does not purport to be a legal opinion. Lastly, it is important to note that this position applies only to sales in Arkansas. If you are planning on selling shares to persons in other states, it is recommended that you obtain a similar no action letter from the securities regulatory agency in that state or seek a legal opinion from counsel in that state.

Sincerely,
Ann McDougal
Deputy Commissioner