

October 6, 1999

Robert T. Schendel
Shughart, Thomson & Kilroy
Twelve Wyandotte Plaza
120 West 12th Street
Kansas City, MO 64105

Re: IBT, Inc.
No Action 99-012

Dear Mr. Schendel:

The Department acknowledges receipt of your letter, dated September 28, 1999, regarding the Key Employee Stock Investment Program ("KESIP") created by IBT, Inc. ("IBT") to foster IBT stock ownership among executive officers, certain managers and other key employees, wherein you request confirmation that the staff will recommend that the Commissioner take no action to enforce the registration provisions of the Arkansas Securities Act (the "Act"), with respect to the transactions. The facts of the proposed transactions, as understood from your letter, are briefly stated below.

IBT is a closely held corporation, with a large majority of the shares being held by the members of one family in Kansas. As part of a long-term transition plan, and to aid in retaining and providing incentive to certain key employees, IBT has developed the KESIP. A new Kansas limited liability company ("LLC") will be formed as the vehicle to operate the program. The LLC will invest in IBT stock and short-term cash investments. Initially, the LLC will purchase approximately ten percent (10%) of the outstanding capital stock over a five-year period at a price equal to the book value per share of IBT as set forth on the audited financial statements as of the end of the prior calendar year. Membership interests in the LLC will be offered for sale only to qualified employees of IBT. Participation in the KESIP by qualified employees is optional. Approximately 10 managers and key employees residing in Arkansas will be eligible to participate in the KESIP. The operating agreement of the LLC contains restrictions on the sale or transfer of the LLC interests by the members. Participants in the KESIP will purchase the membership interests in the LLC through payroll deductions. IBT will fund a bonus program that will match a portion of each employee's capital contribution. This bonus program is designed to encourage participation in the KESIP and retention of key employees. IBT will pay the organizational and development costs of the LLC, as well as the ongoing management expenses.

Although the proposed KESIP does not involve the direct transfer of stock from the employer to the employee, you contend that the plan has the clear purpose of encouraging a type of beneficial ownership of IBT stock by key employees. Therefore, you argue that the plan is an "employee stock purchase plan" under Ark. Code Ann. §23-42-503(a)(8), notwithstanding the indirect nature of the participation.

Based upon the opinions and representations contained in your letter, the Department will recommend that the Commissioner take no action to enforce the registration provisions of the Arkansas Securities Act, if the proposed KESIP relies on the exemption provided for under §23-42-503(a)(8). In your letter, you acknowledge that IBT must file a notice filing meeting the requirements of Rule 503.01(A)(8) of the Rules of the Arkansas Securities Commissioner prior to any offer or sale in this State. Please note that the position of the Department is based solely upon the representations in your letter and applies only to the transactions identified therein. Different facts or circumstances might, and often would, require a different response. The position expressed deals only with anticipated enforcement action by the Department and does not purport to be a legal opinion.

If you have any questions regarding this matter, please contact the undersigned.

Sincerely,

Ann McDougal
Deputy Commissioner