

STATE OF COLORADO

Division of Securities
Department of Regulatory Agencies

1580 Lincoln, Suite 420
Denver, Colorado 80203
Phone: (303) 894-2320
TDD/V: (303) 894-7880
FAX: (303) 861-2126

Fred J. Joseph
Securities Commissioner



Bill Owens
Governor
Tambor Williams
Executive Director

January 20, 2006

Scott Strohl
Marcus & Millichap
28411 Northwestern Highway
Suite 750
Southfield, Michigan 48034

RE: Assignment of Rights in a Purchase and Sale Agreement
Our Files Nos. OP 2006-30-947 and A-06-004

Dear Mr. Strohl:

The staff of the Division of Securities ("Staff") is in receipt of your letter dated December 5, 2005, regarding the above-captioned matter. In your letter, you request, on behalf of your client, a Michigan limited liability company ("Your Client"), that the Staff confirm it will not recommend enforcement action if Your Client markets and sells its rights in a purchase and sale agreement with the owners of a casino property ("Casino") located in Colorado, without complying with the registration provisions of the Colorado Securities Act ("Act") since the transactions and instruments identified in your letter do not constitute the "offer or sale" of a "security," as that term is defined under the Act.

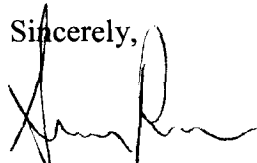
According to the representations in your letter, we understand Your Client is a Michigan limited liability company with a total of four members including a managing member. Your Client was organized for the purpose of purchasing the Casino. The current owner of the Casino is a Texas sub-chapter S corporation ("S-Corp"). The S-Corp is privately held by two individuals including a managing director. Your Client is under contract to purchase 100% of the interest and assets of the S-Corp, including all real estate. For various reasons, Your Client now desires to sell or assign all of its rights in the purchase and sale agreement for the Casino.

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Based on the representations in your letter, the Staff cannot confirm that the offer and sale of Your Client's rights in the purchase and sale agreement for the Casino under the circumstances described in your letter does not constitute a "security" as defined under the Act. However, without taking a position whether the offer and sale of such rights in the purchase and sale agreement constitutes a "security," the Staff will not recommend to the Securities Commissioner that formal enforcement proceedings be initiated under the Act against Your Client, or their respective officers, managing members, or agents in connection with the offer and sale of the rights in the purchase and sale agreement.

It should be noted that by this letter, the Staff only expresses its position as to the recommendation of formal enforcement proceedings under the Act and does not purport to express any formal opinion or conclusion. Also, it should be noted that the position taken by the Staff is done so based on the facts as presented, and any change in those facts or circumstances described in your letter might require a different response.

If there are any questions, please feel free to contact the undersigned.

Sincerely,

Gerald Rome
Deputy Securities Commissioner

Marcus & Millichap

Real Estate Investment Brokerage Company
of Detroit

28411 Northwestern Highway
Suite 750
Southfield, MI 48034
Tel: 248 415 2600
Fax: 248 352 3813

*Offices throughout
the United States*

December 5, 2005

Mr. Gerald L. Rome
Deputy Securities Commissioner
Colorado Division of Securities
1580 Lincoln
Suite 420
Denver, CO 80203

RE: Request for an Opinion Letter

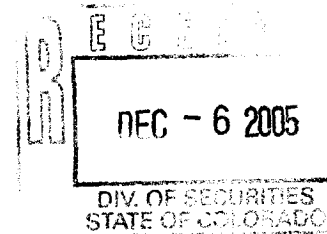
Dear Mr. Rome:

After having lengthy, and extremely helpful and informative, phone conversations with two (2) of your Senior Examiners and your Chief Examiner, I was assured that a future real estate offering that our company wanted to pursue would not be considered a security offering by your office. However, it was suggested by your Chief Examiner that for a more definitive answer, I should write and request from you an "Opinion Letter".

Please find enclosed a check for One Hundred (\$100.00) Dollars as our fee for an Opinion Letter as to our representation of certain real property assets located in Colorado which are contractually controlled by our Client located in Michigan. Our Corporate Attorney has minor concerns regarding listing this opportunity and whether what we want to represent could be construed as a security sale instead of a real estate sale. Marcus & Millichap is the largest investment real estate company in the US with brokerage offices in over 40 markets including Colorado. This year we will generate over \$22 billion in sales. It is always our intention to practice within our licensing rules and regulations and provide complete disclosure of information regarding our listings. The following are the facts to the opportunity as known.

Our Client recently entered into a purchase and sale agreement with the owners of a casino property located in Colorado. A new Michigan Limited Liability Corporation (LLC) was formed as the ownership purchasing entity in the contract. The LLC (which is private) has a total of four (4) members including a Managing Member. The Casino which they are under contract to purchase is held under a Texas Sub-Chapter S Corporation (S Corp). The S Corp (which is also private) has a total of two (2) members including a Managing Director. The LLC is under contract to purchase 100% of the interest and assets of the S Corp including the real estate.

After much thought, our Client has decided that he does not want to run a casino operation. Additionally he feels that the value for which he is under contract to purchase the casino for is significantly under market. Because of these reasons he has asked our company to help the LLC sell the contractual position of the LLC, in its entirety (inclusive of all member interests in the LLC) at a significant increase of the value. Essentially, he wants us to sell the asset for a higher value to a different buyer who will close on the transaction with the Seller (S Corp) rather than my Client (LLC).



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of Detroit

Here is the concern that our Corporate Attorney has. The S Corp (whose two members hold restricted securities in the private S Corp) is under contract to transfer 100% of the interest of the S Corp to the LLC in its entirety (whose members also hold restricted securities in the private LLC). This transfer is being done as part of a "Stock Purchase Agreement" and the transaction is being brokered by a licensed Colorado Real Estate Broker. Now the LLC wants to sell 100% of its position in the Contract prior to closing at a significant gain. So the question is:

- If we are employed by our Client to market the position that the LLC has in the contract (the entire interest of the four member LLC), is this a Securities Offering and therefore would we be in violation of various security laws? **OR** Because 100% of all interest of the private LLC and the private S Corp and their respective restricted securities are being transferred as part of the real estate offering, would this in fact make the securities incidental to the real estate transaction and our Colorado real estate brokerage license would be sufficient, similar to why the Colorado Broker was able to sell the casino to my Client in the first place?

Additionally, the Contract does expressly permit the right for my Client to sell the position of the LLC in the Contract to a third party as long as it is not conducted as a securities offering and with proper notice to the S Corp.

I know this might seem a little confusing. After your review it is our hope that you will issue a **No Action Opinion Letter** as was suggested by your examiners. If you have any questions, please feel free to call me at anytime, my contact information can be found below. I look forward to your favorable response.

Sincerely,



Scott D. Strohl
Senior Associate
Marcus & Millichap
28411 Northwestern Highway
Suite 750
Southfield, MI 48034

O: 248-415-2657
C: 248-320-2474
e-mail: sstrohl@marcusmillichap.com