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ALABAMA SECURITIES COMMISSION

POLICY STATEMENT CONCERNING QUALIFICATION OF PLANS COMPLYING WITH RULE 701 AND § 3(b) OF THE SECURITIES ACT OF 1933 FOR EXEMPTION FROM REGISTRATION UNDER THE ALABAMA SECURITIES ACT PURSUANT TO § 8-6-10(10).

The Alabama Securities Commission receives numerous requests for interpretation and no-action opinions relating to plans which qualify for exemption from registration under the Securities Act of 1933 pursuant to Rule 701 and § 3(b). Primarily these requests deal with whether or not the inclusion of non-employee consultants, affiliate employees, directors and independent contractors or agents under a qualified plan will disqualify the plan from the securities registration exemption at Code of Alabama 1975, § 8-6-10(10).

The Alabama Securities Act, § 8-6-10(10) exempts, "any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan...", from securities registration under §§ 8-6-4 through 8-6-9. Thus, the question is whether this exemption is limited to those plans which only allow participation from direct "employees" or whether a qualified plan which allows participation by affiliated individuals who are not employees may be eligible.

It has consistently been the position of the Commission staff that the conditions of § 8-6-10(10) will be met if the Plan qualifies for exemption pursuant to Rule 701 of the Securities & Exchange Commission and § 3(b) of the Securities Act of 1933, the plan is strictly intended to provide incentives and rewards to those persons qualified to participate in the plan, and the plan is not intended as a capital raising mechanism of the corporation.