

SECURITIES AND EXCHANGE COMMISSION
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DIVISION OF MARKET REGULATION

David S. Mitchell
Direct Dial: (212) 504-6285
Direct Fax: (212) 504-6666
Internet: David.Mitchell@cwt.com

Securities Exchange Act § 15(a)

November 23, 2004

VIA FEDERAL EXPRESS

Office of Chief Counsel

Catherine McGuire, Esq.
Associate Director/Chief Counsel
Division of Market Regulation
Securities and Exchange Commission
Mail Stop 10-1
450 5th Street, N.W.
Washington, D.C. 20549

2004

Re: R & H Management, L.L.C.

Dear Ms. McGuire:

On behalf of R & H Management, L.L.C. ("R & H"), an Illinois limited liability company, we respectfully request that the Division of Market Regulation (the "Division") confirm that it will not recommend to the Securities and Exchange Commission (the "Commission") that the Commission take any enforcement action under Section 15(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") in circumstances where R & H or an affiliate of R & H offers certain employee leasing services as described below to securities broker-dealer firms that are registered with the Commission pursuant to the Exchange Act.¹

¹ R & H has two affiliates, R & L Management, L.L.C. ("R & L") and R & M Management, L.L.C. ("R & M"), each of which is also an Illinois limited liability company wishing to offer employee leasing

We believe that the Exchange Act and relevant staff no-action letters permit R & H or its Affiliates to provide employee leasing services to broker-dealers without registering as a broker-dealer under Section 15 of the Exchange Act. Such precedent includes Headway Corporate Staff Administration, SEC No-Action Letter, 2002 SEC No-Act. LEXIS 692 (Aug. 30, 2002), EPIX Holdings Corporation, SEC No-Action Letter, 2001 SEC No-Act. LEXIS 466 (April 2, 2001), and Staff Management, Inc., SEC No-Action Letter, 2000 SEC No-Act. LEXIS 608 (April 27, 2000). As was the case in the correspondence to your office from counsel for Headway Corporate Staff Administration, EPIX Holdings Corporation, and Staff Management, Inc., R & H and its Affiliates do not furnish temporary staffing services or facilities management. R & H and its Affiliates also do not have a core of employees whom they send to various companies, as do firms that provide temporary help or contract staffing. Nor is R & H or its Affiliates a broker-dealer or an associated person of a broker-dealer.

Rather, R & H and its Affiliates offer certain administrative employer services to the existing worksite employees of their clients. Each of R & H and the Affiliates places its clients' employees onto its respective payroll, providing them with R & H's or the Affiliate's benefits, as the case may be, and furnishing the client and the employee with human resource functions. These functions include human resources consulting services pertaining to advice regarding compliance with applicable employment laws, the provision of benefit services (e.g., health, dental, life, and accidental death and disability insurance policies, and 401(k) plans), the provision of workers' compensation benefits (including risk management services), the provision of unemployment compensation benefits, and the provision of payroll processing services. The insurance products to be provided by R & H and its Affiliates are traditional insurance products and would not be "securities" as defined under the federal securities laws.

Neither R & H nor its Affiliates manage the business of their clients. The employees placed on R & H's or an Affiliate's respective payroll are at all times subject to the client's supervision. R & H and its Affiliates have no control over the worksite at which, or from which, clients' employees perform their services. The client retains the right and the obligation to direct its worksite employees as is necessary for the operation of such client's business, including the discharge of any fiduciary duty or compliance with any applicable registration, licensing, regulatory or statutory requirements. As such, the client is subject to oversight and discipline by the Commission, other relevant governmental regulatory authorities and applicable self-regulatory organizations (each, an "SRO") for any inappropriate actions engaged in by the client or the client's employees at its worksite. In sum, while the employees placed on the payroll of R & H or an Affiliate are employees of R & H or the Affiliate, respectively, for purposes of applicable employment laws, they are employees of the client for purposes of the securities laws, rules and regulations in all respects.

The agreement between R & H or an Affiliate, as the case may be, and the broker-dealer will provide, among other things, the following:

- Broker-dealer clients will be obligated to comply with all applicable federal, state, and local regulations and registration and licensing requirements.

services to registered broker-dealers as described in this letter. We refer to R & L and R & M hereinafter individually as an "Affiliate" and collectively as "Affiliates."

- Broker-dealer clients will have sole and exclusive control over the day-to-day activities of all of their employees.
- Broker-dealer clients will be responsible for recruitment, proper registration, licensing, training, and supervision of all of their employees with respect to a broker-dealer client's obligations under all applicable securities laws, rules, and regulations.
- Broker-dealer clients will retain the right to discipline and terminate all of their employees.
 - All books and records in the possession of R & H or an Affiliate relating to the services provided to a broker-dealer client will be made available for inspection by the Commission, any SRO, or any other regulatory authority with jurisdiction over the broker-dealer's business.
 - All employees of a broker-dealer client who are, or are required to be, registered or licensed by the Commission, any SRO or any other regulatory authority with jurisdiction over the broker-dealer's business will be deemed to be employees of the broker-dealer client for such registration, licensing, or regulatory purposes.
 - Broker-dealer clients will not assert that the existence of an employee leasing arrangement with R & H or an Affiliate in any way affects the ability of the Commission, any SRO, or any other relevant regulatory authority to regulate or discipline any broker-dealer client or employee of such broker-dealer client.
 - R & H and its Affiliates will not engage in any securities-related activities that would require registration as a broker-dealer such as brokerage services.

Control of the day-to-day operations of the broker-dealer will remain with the broker-dealer. In this regard, the broker-dealer will continue to maintain and handle all books and records that the Commission, any applicable SRO or any other relevant regulatory authority may require of a broker-dealer, and will continue to make such books and records available for inspection by the Commission, any other relevant regulatory authority and any SRO of which the broker-dealer is a member.

Similarly, the broker-dealer will continue to maintain and handle all funds and securities of the broker-dealer's customers. Each of R & H and the Affiliates will receive payment from the broker-dealer for compensation that R & H or the Affiliate will then pay to broker-dealer personnel who have been placed on their respective payrolls. In this regard, each will impose an administrative fee for its services by adding a profit margin to its costs based on gross payroll. Such charges will not be based upon brokerage commissions earned by either the employees of the broker-dealer or the broker-dealer itself. R & H and its Affiliates will have no discretion concerning the amount or frequency of the salary, wage, commission, or bonus payments to employees of the broker-dealer who have been placed on each one's respective payroll. The broker-dealer will be responsible for informing R & H or the Affiliate, as the case may be, of the payments that are to be made to such personnel. Such books and records relating thereto will be deemed property of the broker-dealer and will be available for inspection by the Commission and any SRO of which the broker-dealer is a member.

In addition, the broker-dealer will retain the traditional rights of an employer, including the right to hire, set compensation for, terminate, discipline, and reassign personnel of the

broker-dealers who have been placed on the payroll of R & H or the Affiliate. The broker-dealer will retain the responsibility for supervision and control with regard to the employees' performance of their securities duties, and the same individuals will continue in their capacity as registered representatives of the broker-dealer after the contract between R & H or the Affiliate, as the case may be, and the broker-dealer client is executed. Similarly, the broker-dealer will be responsible for registration and training of the employees with regard to any regulated function. Each employee of the broker-dealer will continue to be held out to the public as the broker-dealer's registered representative and agent in effecting securities transactions. The broker-dealer will be liable for the acts or omissions of each employee after the agreement between R & H or the Affiliate, as the case may be, and the broker-dealer is entered into, to the same extent that it had been liable prior to execution of such agreement. In this regard, each employee of the broker-dealer, as well as the broker-dealer, will be subject to the same administrative jurisdiction of the Commission and of other relevant regulatory authorities and SROs both before as well as after entering into such agreement.

In any promotional material that R & H or an Affiliate distributes, they will not in any way distribute promotional advertisements related to brokerage activities. In any promotional activities, they will mention that they offer employee leasing services, but will in no way mention that they are in any way engaged in any brokerage services. In addition, they will not identify or endorse any broker-dealer in their promotional materials.

Employee leasing companies such as R & H and its Affiliates possess neither the expertise nor the desire to manage a client's business. Thus, they will not presume to tell a brokerage firm how to transact its business or attempt to exercise any influence or control with respect to the broker-dealer's conduct of its business.

Section 3(a)(4) of the Exchange Act defines the term "broker," in relevant part, as "any person engaged in the business of effecting transactions in securities for the account of others." Section 3(a)(5) of the Exchange Act defines the term "dealer," in relevant part, as "any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise."

Based upon the facts set forth above, we are of the view that each of R & H and its Affiliates does not become a broker-dealer by entering into a contract with a broker-dealer to provide the employee leasing services described herein. As noted above, the staff has adopted this position in a number of recent no-action letters.²

Consistent with the foregoing, we respectfully request that the Division advise R & H that it will not recommend to the Commission that it take any enforcement action under Section 15(a) of the Exchange Act if R & H or an Affiliate carries out the employee leasing activities described above without registering with the Commission as a broker-dealer.

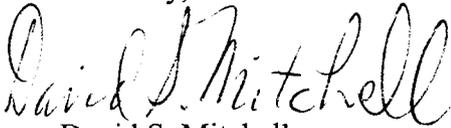
² See also Investacorp Group, Inc., SEC No-Action Letter, 2003 SEC No-Act. LEXIS 709 (Sept. 26, 2003) (permitting an affiliate to provide certain payroll processing services to another affiliate without registering as a broker-dealer).

If you believe that the staff of the Division cannot issue a letter in accordance with this request based upon the facts specified above, we respectfully request that you contact the undersigned at (212) 504-6285.

Enclosed please find seven additional copies of this letter for your use.

Please stamp the enclosed copy of this letter to acknowledge receipt of this submission and return the same in the self-addressed stamped envelope provided for that purpose.

Sincerely,

A handwritten signature in cursive script that reads "David S. Mitchell". The signature is written in black ink and is positioned above the printed name.

David S. Mitchell

Enclosures