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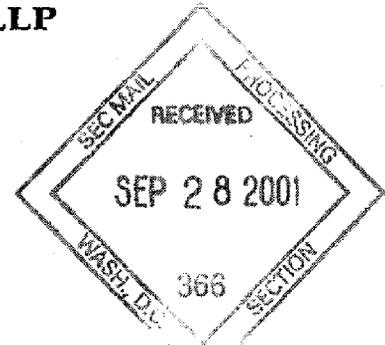


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September 27, 2001



SECURITIES AND EXCHANGE COMMISSION  
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DIVISION OF MARKET REGULATION

Office of the Chief Counsel  
Division of Market Regulation  
U.S. Securities and Exchange Commission  
450 Fifth St. N.W.  
Washington, D.C. 20549

**Re: CBIZ Financial Solutions, Inc.  
Century Business Services, Inc.  
Request for No-Action Letter  
Securities Exchange Act of 1934, Sections 15(a), (b)**

Ladies and Gentlemen:

We are counsel for CBIZ Financial Solutions, Inc. ("CFS"), a broker-dealer, registered investment adviser, and NASD member firm headquartered in Cumberland, Maryland, and Century Business Services, Inc. ("Century"). CFS is registered with the SEC under Section 15 of the Securities Exchange Act of 1934, and is a wholly-owned subsidiary of Century. On behalf of CFS and Century we request the assurance of the Division of Market Regulation that the Staff will not recommend enforcement action against Century and its business unit affiliates, as described further below, if Century and/or any of these affiliates do not register as broker-dealers in accordance with Section 15(b) of the Exchange Act. There are two elements to our request for No Action advice:

(1) Whether an arrangement for the payment of transaction based compensation by an independent third party broker-dealer to independent contractor registered representatives of that broker-dealer through the company employing those individuals acting solely as a payroll agent subjects the employing company to registration as a broker-dealer; and

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(2) Whether an arrangement involving CFS and the independent registered broker-dealer firm, whereby commission revenues net of payments to registered representatives who are employed by CFS affiliates are split between the two broker-dealers, with the revenue received by CFS ultimately contributing to earnings and profits of CFS that are distributed as dividends to Century, its parent company, and thereafter, as part of revenues from all operations, by Century through business units and compensation of employees in the normal course of its entire business, subjects Century or any Century business unit to registration as a broker-dealer(s).

### THE OPERATIVE FACTS

Century is a leading provider of outsourced business services to small and medium-sized companies in areas including accounting and tax, employee benefits, wealth management, property and casualty insurance, payroll, information systems consulting, and human resource consulting to clients through a network of professional business units, or operating companies, including accounting firms. As a broker-dealer subsidiary of Century, CFS provides financial planning and investment advisory services as well as securities brokerage for clients of Century's network of business units.

As a result of a strategic alliance previously entered into between Century and an independent third-party broker-dealer registered under the Exchange Act and which is an NASD member firm, Century business units currently employ approximately thirty (30) individuals who are licensed, trained, and directly supervised in securities sales activities and compensated for the sales of securities as independent contractor registered representatives of the third-party broker-dealer. These individuals are not registered representatives of, or employed by, CFS. Their securities activities are, under the terms of an agreement between the third-party broker-dealer and Century, entirely supervised and controlled by the third-party broker-dealer, which has assumed full responsibility for the securities activities of the individuals. However, these individuals render professional and other services not related to the sale of securities through their respective employing Century business units, and are compensated by Century or its business units in their employment unrelated to the sale of securities.

In order to maximize administrative efficiencies, to provide for withholding of appropriate funds for purposes of federal, state and local income taxes, and to assure the eligibility and maximum access of Century business unit employees to employment benefit programs that are tied to a compensation base, Century has determined that transaction based

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compensation from the sale of securities by employees of the Century business units will be paid by the third-party broker-dealer to the individual registered representatives through the particular Century business unit at which the individual is employed. That business unit will act solely as a payroll agent for purposes of W-2 reporting of the income. To effectuate this mechanism, each individual involved has entered (or will enter) into an agreement providing for the assignment of 100% of the individual's transaction-based compensation from the third-party broker-dealer to the appropriate employing Century business unit, which unit, as payroll agent, will then pay to the individual as IRS W-2 reported income the net amount after withholding and deductions.<sup>1</sup> The employing unit will have no rights to any of the funds paid by the third-party broker-dealer to the affected individuals.

The balance of gross commission revenue from sales of securities by individuals employed by Century business units will be split between the third-party broker-dealer and CFS pursuant to the terms of an agreement that is part of the strategic alliance between Century and that third-party firm. CFS, like any broker-dealer subsidiary, will distribute profits from all aspects of its business by way of dividends to its parent, Century, in the normal course of business. CFS does not retain earnings and profits, and thus any dividends to its parent ultimately include profits, if any, attributable to the receipt of commission revenues from the third-party broker-dealer. It is also the case that ultimately Century compensates employees of its business units. The distribution of compensation throughout Century business units is determined in part on the basis of overall productivity of a unit and its contribution to the overall success of Century.

Neither Century, CFS, nor any of the Century business units that employ individuals who are also registered representatives of the third-party broker-dealer, exercises or has the power to exercise any control or supervision over the securities sales activities of those individuals. To the contrary, by agreement with the third-party broker-dealer, that firm has full responsibility for supervision and control in the conduct of securities business. The individuals are not dually licensed with or through CFS, and the fact that all securities are offered through the third-party broker-dealer is fully disclosed in accordance with applicable NASD requirements. Locations at which the individuals conduct securities sales activities are identified and registered by the third-party broker-dealer as branch offices to the extent required by NASD rules and any applicable state laws. Century and its business units employing these individuals, and other employees, are

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<sup>1</sup> The role of each Century business unit in this process is ministerial. Records kept with respect to commission payments will be properly reflected on the books and records of the third-party broker-dealer maintained by that firm, and will be available for inspection by the SEC and NASDR.

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not involved in any capacity in the securities transactions effected by these individuals through the third-party broker-dealer.

REGULATORY/LEGAL ANALYSIS

On the foregoing facts it is our opinion that neither the individual Century business units employing the individuals who are independent contractor registered representatives of the third-party broker-dealer, nor Century itself, would be required to be registered under the Exchange Act as a broker-dealer(s). Our conclusion is based upon various No Action Letters and principles discussed below. In all of this we have particularly considered the Staff's partial denial of the No Action Request in *1st Global, Inc.* (Available May 7, 2001).

A. As to the first element of our request, based on a series of No Action Letters including *Moran Asset Management, Inc.* (Available June 29, 1988); *Time Insurance Co.*, (Available Oct. 17, 1989); *National Pension Administrators, Inc.* (Available Oct. 19, 1985); and most recently *EPIX Holdings Corp.* (Available Apr. 2, 2001), we have concluded that simply by receiving and disbursing transaction-based compensation paid by the third-party broker-dealer to independent contractor registered representatives, Century business units that employ those individuals would not be deemed to be broker-dealers. The Century business units have no role in the conduct of securities activities by these individuals, and the mechanism for payment through the unit neither directly nor indirectly involves any control over those activities. All supervision, control and training responsibility contemplated by section 15(b)(4)(E) of the Exchange Act is assumed by the third-party broker-dealer and its principals, with which these individuals are associated persons as defined in section 3(a)(18) of the Act.<sup>2</sup>

The cited No Action Letters all make clear that a "payroll agency" function, the objective of which is to facilitate the orderly disbursement of commissions, provide for withholding of appropriate sums for taxes, and to ensure qualification for employee benefit programs, will not result in the intermediate entity being deemed to be a broker-dealer. *Time Insurance Co.*, *supra*, is particularly instructive on this point. In *Time*, the Staff approved the mechanism for disbursement of commissions from the broker-dealer to registered representatives through the representatives' employer, which acted functionally as a payroll agent for reasons that specifically included the determination of an employee's compensation base for fringe benefits.

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<sup>2</sup> See also *Transamerica Insurance Securities Sales Corp.* (Available Sept. 9, 1987) (Broker-dealer to train, supervise and control registered persons that sell insurance securities products as part of doing business as incorporated general insurance agents and insurance brokers).

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Here, each of the Century business units that will receive payments from the third-party broker-dealer for disbursement to the affected individuals will perform only the function of collection and distribution of commissions that are due and payable on account of transactions that have been completed through that third-party firm. We note too that the business units will serve only as a conduit for commissions, and that all commissions (net of withholding and any deductions) will be passed on directly for the benefit of individuals who are registered representatives of the third-party broker-dealer. In this, we believe that any concern addressed in *Ist Global, Inc.* is eliminated, as all of transaction-based compensation due individuals will be paid to that individual. There is no retention, and the business units will have no discretion in determining the amount of payments. The level of commission pay-outs by the third-party broker-dealer to all registered representatives involved here is fixed as a matter of the contract between Century and the third-party firm. Century has no other involvement or authority in determining compensation paid by the third-party broker-dealer to registered representatives, and has no involvement in any securities activities that generate the compensation.

B. The second element of our request focuses on the relationship among CFS, the third-party broker-dealer, and Century itself. As described above, Century and the third-party broker-dealer are involved in a strategic alliance which, among other things, obligates the third-party firm to pay 85% of gross commissions from sales of securities by individuals employed by Century business units (less payouts due individual registered representatives under the arrangement described in Part A above) to CFS. We are of the opinion that as a registered broker-dealer and NASD member firm, CFS may properly be paid a portion of the transaction-based compensation generated through the third-party broker-dealer as a result of securities activities of those registered representatives who are also employed by Century business units. It is our further opinion that the ultimate receipt of revenue from CFS by its parent company, Century, would not render Century subject to broker-dealer registration. Similarly, we do not believe that the ultimate distribution by Century of revenue and compensation to its business units and employees would subject those business units to registration requirements simply because revenues eventually distributed throughout the corporate family include in some measure what is traceable to commissions received by CFS, and indeed, ultimately to securities activities of business unit employees who are registered representatives of the third party broker-dealer.

The corporate relationship between CFS and Century, and between Century and its business units, coupled with the fact that both Century and its other business units and employees ultimately share in revenues that include the net profits derived from all operations led us to assess whether, simply by reason of ultimately receiving such revenues, either Century or its

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individual business units would be deemed to be a broker-dealer(s). We made this assessment in the light of the most recent partial denial of No Action Advice in *1st Global, Inc.*, in which the Staff, citing to the *Birchtree* line of No Action Letters,<sup>3</sup> concluded that receipt of transaction-based compensation related to securities transactions is a "key factor" that may require an entity to register as a broker-dealer. The Staff also spoke in *1st Global, Inc.* concerning the fact that an unregistered entity might exercise such a degree of control over the activities of a broker-dealer or its registered representatives that registration by the entity would be required.

The scope of the broker-dealer registration requirements under the Exchange Act must always be defined in terms of the objective of regulation. Extending the scope of broker-dealer regulation to those persons or entities who are positioned to direct or influence a registered representative's securities activities is consistent with the objective of assuring adherence to customer protection standards by those who directly interact with investors and are in actual intermediary roles. We are certain, however, that a line may, and should, fairly be drawn between the "salesman's stake" in a securities transaction that the Staff spoke of in *1st Global, Inc.* and the corporate family affiliations that involve revenue flowing through those entities.

In the circumstances presented here, the registered broker subsidiary of Century receives revenue attributable to securities activities of registered representatives of the third-party broker-dealer, who are in all aspects of their securities activities controlled, trained and supervised by that third-party firm. To the extent those revenues contribute to earnings and profits for CFS they are ultimately transferred to Century, as in any parent and wholly-owned brokerage subsidiary setting. Century does not control, and has no power to control, those individuals who are registered representatives of the third-party broker-dealer in the conduct of their securities activities. Its ultimate stake is in the overall success in the operations of all of its business units. When Century, in turn, determines to distribute revenues through compensation to employees in business units it likewise does so based in part on the successful overall operations of a unit, but no business unit has the power to control or direct the securities activities of any employee who

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<sup>3</sup> *Birchtree Financial Services, Inc.* (Available Sept. 22, 1998). *Birchtree* focused on the routing of commissions or transaction-based compensation directly from a broker-dealer to an unregistered entity established and controlled by the registered representative. That is not the situation presented here, as all commissions are paid either to the registered representative through his/her employer as payroll agent, or to CFS, a registered broker-dealer.

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is also a registered representative of the third-party broker-dealer, and who is compensated by that third-party firm for the sales of securities through the mechanism described in Part A above.<sup>4</sup>

In preparing this request we have reviewed numerous prior No Action Letters and requests, and have found no instance in which the Staff has concluded that the kind of ultimate economic stake traceable to securities activities that is presented by either brokerage subsidiary affiliations or third party brokerage affiliations presented here requires registration by the parent company or the non-broker alliance affiliate. To the contrary, in considering networking and other arrangements between independent broker-dealers and which involve employees of one entity being registered representatives of another for purposes of conducting securities activities, the Staff has focused on the fact that all personnel involved in securities activities will be fully subject to regulatory requirements and the applicable rules of self-regulatory organizations, *see, e.g., Somerset Group* (Available Dec. 20, 1996). In addition, the Staff has determined that the mere "presence" of transaction-related compensation in arrangements with an unregistered entity will not give rise to the necessity of broker-dealer registration, *see, e.g., Merrill Lynch, Pierce, Fenner & Smith, Inc.* (Available July 9, 1987) (Broker-dealer compensation of affinity groups based on transaction-related revenues).

Similarly, we have discovered no instance in which ultimate determinations by a parent organization to distribute revenues among business units or compensate employees generally has been viewed as presenting any degree of control over the securities activities of registered representatives who by contract are controlled and directed in those activities by a registered broker-dealer. Today, in the era of third party brokerage affiliations, we are even more certain that the relationships here involve no control over securities activities as envisioned in *1st Global Inc.*, and no receipt of transaction-based compensation by a non-registered entity in any degree or manner that would trigger broker-dealer registration requirements.

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<sup>4</sup> In *Retirement System Distributors, Inc.* (Available Feb. 7, 1992), the staff favorably reviewed an affinity and networking arrangement that operated as a functional analog of what is presented here. In one element of *Retirement System Distributors* "joint employees" of financial institutions or participating associations and a broker-dealer engaged in securities activities as well as other employment activity. The securities activities were conducted entirely under the control and supervision of the broker-dealer. While the circumstances in *Retirement Systems Distributors* were more complex than those presented here, the point that a registered broker-dealer controlled, supervised and was responsible for all securities-related activities of the "joint employees" was central in the analysis. That is critical here as well.

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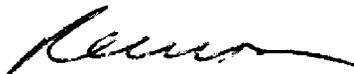
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**CONCLUSION**

On the foregoing analysis, we respectfully request the Staff to advise us that it will not recommend any enforcement action to the Commission if CFS, Century and Century's business units proceed with arrangements described above, under which commissions and any other transaction-related compensation is paid by the third-party broker-dealer to registered representatives through their respective Century business unit employers, and Century ultimately receives earnings and profits from its brokerage subsidiary and distributes revenues and compensation to business units and employees, without Century and/or its various business units other than CFS registering as broker-dealers. Please call if you have any questions or require any further information. As business strategies and plans are directly impacted by your determination, we ask that consideration of this request be expedited to the extent possible.

Thank you for your consideration.

Very truly yours,



Robert N. Rapp

RNR/jd

cc: Mr. Chris Mathews  
Nancy M. Mellard, Esq.