

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-2590/803-190]

Gates Capital Partners, LLC/Bear Creek Inc.; Notice of Application

February 16, 2007

Agency: Securities and Exchange Commission (“SEC”).

Action: Notice of Application for Exemption under the Investment Advisers Act of 1940 (“Advisers Act”).

Applicants: Gates Capital Partners, LLC (“GCP”) and Bear Creek Inc. (“Bear Creek”).

Relevant Advisers Act Sections: Exemption requested under section 202(a)(11)(F) from section 202(a)(11).

Summary of Application: GCP and Bear Creek (collectively, the “Applicants”) request that the SEC issue an order declaring them and their employees acting within the scope of their employment to be persons not within the intent of section 202(a)(11), which defines the term “investment adviser.”

Filing Dates: The application was filed on December 21, 2005, and was amended and restated on May 23, 2006, and on January 25, 2007.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC’s Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 13, 2007 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC’s Secretary.

Addresses: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington,

D.C. 20549-1090. Applicant, Gates Capital Partners, LLC, 3575 Cherry Creek North Drive, Denver, Colorado 80209. Applicant, Bear Creek Inc., P.O. Box 4742, Jackson, Wyoming 83001.

For Further Information Contact: Vivien Liu, Senior Counsel, or David Blass, Assistant Director, at (202) 551-6787 (Division of Investment Management, Office of Investment Adviser Regulation).

Supplementary Information: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations:

1. GCP was formed in September 2005 to provide investment advice to the Gates family by advising and managing Evergreen 37, LLC ("Evergreen"), a Wyoming limited liability company recently formed by the Family to facilitate the Family's investments, and by advising individual Family members and trusts.

For purposes of this application, "Family" means:

- the lineal descendants of Charles C. Gates and Hazel R. Gates and the spouses of such descendants;
- trusts established by and for the sole benefit of individual Family members;
- charitable trusts established by Charles C. Gates and Hazel R. Gates or individual Family members;
- companies wholly owned by such trusts or individual Family members; and

- Future Family Investment Pools (investment pools that are exempt from the definition of “investment company” under section 3(c)(1) and section 3(c)(7) of the Investment Company Act of 1940 (“Investment Company Act”) and that are wholly owned by the Family but for the limited non-voting interest owned by a small number of senior level employees of GCP or Bear Creek who regularly provide investment advice on behalf of GCP or Bear Creek to such investment pools).

2. GCP represents that Evergreen is exempt from the definition of “investment company” under section 3(c)(1) of the Investment Company Act and is wholly owned by the Family, except for potential limited employee ownership of non-voting interests by senior level employees of GCP.

3. GCP represents that it will act as investment adviser and sole manager of Evergreen, and its compensation will be limited to reimbursement from Evergreen of reasonable fees and out-of-pocket expenses in performing its obligations to Evergreen.

4. GCP represents that a small number of senior level employees of GCP who regularly provide investment advice on behalf of GCP to Evergreen may participate in the ownership of non-voting membership interests in Evergreen, as well as other Future Family Investment Pools. GCP represents that upon the termination of their employment, such employees may be permitted to retain their interest in Evergreen or Future Family Investment Pools but their interest would be limited to their investment at the time of termination plus any accretion or distribution on their investment.

5. Bear Creek was organized as a Wyoming corporation in 1998 to serve as trustee of trusts then in existence as well as of those to be formed in the future, created by and for the sole benefit of the Family.

6. Bear Creek previously applied for, and received in 2001, an order of the SEC pursuant to section 202(a)(11)(F) of the Advisers Act declaring that Bear Creek is a person not within the intent of the Advisers Act (Bear Creek Inc., Investment Advisers Act Release No. 1931 (March 9, 2001)).

7. Bear Creek requests additional exemptive relief in the event that it provides investment advice to Future Family Investment Pools. Bear Creek represents that a small number of its senior level employees who regularly provide investment advice on behalf of Bear Creek to Future Family Investment Pools may participate in the ownership of non-voting membership interests in Future Family Investment Pools. Bear Creek represents that, upon the termination of their employment, such employees may be permitted to retain their interest in Future Family Investment Pools but their interest would be limited to their investment at the time of termination plus any accretion or distribution on their investment.

8. The Applicants represent that they do not hold themselves out to the public as investment advisers and do not engage in any advertising, attend any investment-related conferences as vendors, or conduct any marketing activities. Neither GCP nor Bear Creek is listed in any phone book or other directory as an investment adviser.

9. The Applicants represent that their sole clients are, and will continue to be, the Family.

Applicant's Legal Analysis:

1. Section 202(a)(11) of the Advisers Act defines the term “investment adviser” to mean “any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. . . .” Section 202(a)(11)(F) of the Advisers Act authorizes the SEC to exclude from the definition of “investment adviser” persons that are not within the intent of section 202(a)(11).

2. Section 203(b) of the Advisers Act provides several exemptions from registration under section 203(a) of the Advisers Act. GCP asserts that it does not qualify for any of the exemptions provided by section 203(b). GCP also asserts that it is not prohibited from registering with the SEC under section 203A of the Advisers Act.

3. GCP requests that the SEC declare it and its employees acting within the scope of their employment to be persons not within the intent of section 202(a)(11). GCP states that there is no public interest in requiring that they be registered under the Advisers Act because it will offer its services only to the Family. In addition, the Applicants request that the SEC provide exemptive relief under section 202(a)(11)(F) to them and their employees acting within the scope

of their employment if, in the future, they manage or provide investment advice to any Future Family Investment Pools.

For the SEC, by the Division of Investment Management, under delegated authority.

Florence E. Harman  
Deputy Secretary