UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

DIVISION OF
TRADING AND MARKETS

November 13, 2014

Andre E. Owens
Partner
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006

**Re: Social Finance Inc.**

Dear Mr. Owens:

In your letter dated November 12, 2014, you requested assurances that the staff of the Division of Trading and Markets ("Staff") would not recommend enforcement action to the Commission under Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") if Social Finance Inc. ("Social Finance") and its employees engage in the activities described in your letter in connection with the offer and sale of Social Impact Bonds ("SIBs") without registering as a broker-dealer pursuant to Section 15(b) of the Exchange Act.

Based on the facts and representations in your request, particularly those described below, the Staff would not recommend enforcement action to the Commission under Section 15(a) of the Exchange Act if Social Finance were to assist various not-for-profit social service providers in obtaining funding for their operations or social programs through the offer and sale of SIBs without registering as a broker-dealer pursuant to Section 15(b) of the Exchange Act.[1] Different facts and circumstances may cause us to reach a different conclusion. The Staff's position is limited solely to the transactions described in your letter.

In taking this position, we note in particular your following representations:

1. _Social Finance – Generally_. Social Finance operates as a nonprofit, tax-exempt organization as described in Section 501(c)(3) of the Internal Revenue Code, and is recognized by the Internal Revenue Service as a 501(c)(3) organization. Social Finance intends to engage in a range of activities designed to assist social service providers to find capital for their activities. Among other things, Social Finance intends to assist with the creation and development of SIBs, which are debt or equity instruments – sometimes referred to as "pay-for-success," "social innovation

[1] For purposes of this letter, the Staff does not opine as to whether Social Finance is an investment adviser.

financing" or "outcome based financing arrangements" – through which third-party investors take on the financial risk associated with expanding social programs.[2] Additionally, in some instances, Social Finance will play a role in identifying and approaching investors. Social Finance also intends to be involved in selecting a nonprofit provider, administering the deployment of capital, and the pricing and managing of the risks of the SIBs.

2. *Issuance of SIBs*. The SIBs will be issued in private placements under Section 4(2) of the Securities Act of 1933 or in reliance on Regulation D; investors in SIBs will be accredited investors under Rule 501(a) of Regulation D. Social Finance expects that, in most instances, the SIBs will be issued by a special purpose vehicle ("SPV"), typically a limited liability company or limited partnership, formed for the specific purpose of the transaction. The SPV would disperse the proceeds from the sale of SIBs to the service provider(s) that deliver programs to the needy.

3. *Independent Evaluator or Validator*. Social Finance will not act as the independent evaluator or validator of whether SIB target goals have been met. An independent evaluator or validator will measure and report the outcomes of the social program to the special purpose vehicle and the government.[3] The evaluator or validator will have no affiliation with Social Finance, and the appointment of the evaluator or validator is likely to be subject to the approval of the governmental entity involved.

4. *Fees*. Social Finance expects to receive Intermediation Management Fees and Service Outcome Fees for its services in SIB offerings. Intermediation Management Fees are annual payments to Social Finance commencing at the closing of a SIB offering (along with payments to the non-profit service provider) to ensure successful project oversight, performance management and related activities throughout a SIB project, as defined in your letter. Service Outcome Fees would be tied to social impact metrics related to a SIB project and would not be paid to Social Finance by the payor in a SIB project unless project target outcomes have been determined to have been met by an independent evaluator or validator. Service Outcome Fees payable to Social Finance may vary based on the extent to which target social outcomes have been met. Other fees are charged at Social Finance's costs. Social Finance will not receive any fees or other compensation otherwise based on the number or value of securities issued in connection with a SIB project.

5. *Handling Customer Funds or Securities*. Neither Social Finance nor its personnel will handle funds or securities. For larger offerings that involve a broker-dealer,

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2 For purposes of this letter only, SIBs are considered to be securities. The Staff does not opine as to whether SIBs are securities under the federal securities laws.

3 You note that although it is anticipated that in the overwhelming majority of instances the outcome payor in a SIB arrangement will be a governmental entity, in some instances the payor may be another type of entity, such as a foundation or corporation. For ease of reference, "government" should be read to include any other entity that provides social services in a SIB arrangement.

funds will be handled by the broker-dealer or the administrator. In other offerings, all funds will be handled by an administrator. Similarly, Social Finance will not handle securities; instead, investor interests in SIBs will be recorded by the administrator for a SIB offering on the books of the issuer.[4] Social Finance expects that the financial statements of any SPV issuing SIBs will be audited by independent auditors and that the financial statements will be distributed to all investors in the SIBs.

6. *Associated Persons*. Social Finance employees serving as associated persons of an SPV will not be statutorily disqualified, associated with a broker-dealer, or receive transaction-based compensation.[5]

As noted above, this Staff position is based strictly on the facts and representations you have made in your letter, and any different facts or representations might require a different response. This position is subject to modification or revocation at any time the Staff determines that such modification or revocation is consistent with the public interest or the protection of investors. Furthermore, this response expresses the Staff's position on enforcement action only and does not purport to express any legal conclusions on the questions presented. The Staff expresses no view with respect to any other questions that the proposed activities may raise, including the applicability of any other federal or state laws, or self-regulatory organization rules. Finally, this position concerns Social Finance only. The Staff expresses no view on whether other participants in SIB transactions would be required to register as broker-dealers pursuant to Exchange Act 15(b).

Please contact Joseph Furey, Joanne Rutkowski, Shauna Sappington Vlosich, or me at (202) 551-5550 if you have any question regarding this letter.

Sincerely,

Paula Jenson
Acting Chief Counsel

cc: Matthew A. Chambers, WilmerHale

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4 To the extent that Social Finance employees serve as directors, officers, employees, or managing members of an SPV, they may play a role in instructing the administrator to disburse funds to service providers as part of the SPV's business. Social Finance expects that any such disbursements will be made pursuant to the methodology described in the offering document or the operational documents of the SPV and that any instructions to the administrator will document the basis on which the disbursement is being made. Because this is a new area, Social Finance expects that disbursements would be made and financial statements audited as described above. To the extent the market or practices develop differently, Social Finance will seek additional regulatory relief as may be necessary.

5 Social Finance employees will not receive compensation from an SPV for their service as directors, officers, employees, or managing members. Instead, their compensation will be provided by Social Finance out of its resources. Social Finance's employees will be compensated almost entirely by salaries, with the possibility of small, discretionary bonuses not related to securities transactions.

**Andre E. Owens**

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November 12, 2014

***By Email***
Paula Jenson
Acting Chief Counsel
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Request for No-Action Relief for Social Impact Bond Activity

Dear Ms. Jenson:

We are writing on behalf of our client, Social Finance, Inc. ("Social Finance") in connection with Social Finance's plans to assist various social service providers in obtaining funding for their operations or social programs through the use of pay for success arrangements commonly referred to as "social impact bonds" or "SIBs." Specifically, Social Finance respectfully requests that the Division of Trading and Markets (the "Division") of the Securities and Exchange Commission ("SEC" or "Commission") not recommend enforcement action to the Commission under Section 15(a) of the Securities Exchange Act of 1934 (the "Exchange Act") if Social Finance and its employees engage in the activities described below.

Social Finance and SIBs

Social Finance. Social Finance was founded in January 2011 and is incorporated in the state of Massachusetts. It operates as a nonprofit, tax exempt organization as described in Section 501(c)(3) of the Internal Revenue Code, and is recognized by the Internal Revenue Service as a 501(c)(3) organization. To date, substantially all of Social Finance's funding has been supplied through grants and charitable contributions.[1]

Social Finance is dedicated to mobilizing investment capital to drive social progress. Social Finance helps design public-private-nonprofit partnerships that tackle complex social

[1] In addition to grants and charitable contributions, Social Finance has earned revenue pursuant to government contract work and performance monitoring and management fees from the SIB transaction discussed infra at n. 7. Management fees cover performance monitoring and management, quarterly reporting to investors, and answering investor questions.

challenges such as poverty, crime, education, health, and workforce success. Among other things, Social Finance does this through the creation and development of SIBs.[2]

SIBs Generally. SIBs are not truly bonds. Instead, they are instruments – sometimes referred to as "pay for success," "social innovation financing," or "outcomes based financing arrangements" – through which philanthropic and impact investors,[3] not governments, take on the financial risk associated with expanding social programs. Nonprofit intermediaries raise money from philanthropic and impact investors to deliver a specific social program. The effectiveness of the program is monitored by an independent evaluator and a governmental entity pays the private investors only if the program succeeds, such as by reducing homelessness or recidivism rates.[4] If the outcomes are not achieved, the government is not required to repay investors. The amount that an investor earns also may vary based on the levels of outcomes a service provider achieves.

Thus, SIBs provide numerous benefits to investors, service providers, and governmental entities:

- Investors in SIBs put capital to work in a way that both may achieve meaningful social impact and provide financial returns. Investors also participate in a new asset class that may provide portfolio diversification and open new financing channels for service providers.

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[2] In addition to SIBs, Social Finance engages in other projects such as feasibility studies, market landscape analysis, and other activities designed to assist governments and nonprofit organizations finding capital for their social programs, which may involve an assessment of unmet need, identification of possible financing strategies, creations of partnerships, identification of sources of grants, commercial loans and other forms of capital, and collaboration through the completion of the project. To date, these activities have involved projects funded through grants. This no-action request pertains solely to Social Finance's activities related to SIBs. Social Finance is not seeking relief for its other activities.

[3] Generally, impact investors make investments with the intent of receiving both a financial and a social or environmental return. *See, e.g.,* Background on the White House Roundtable on Impact Investing: Executive Actions to Accelerate Impact Investing to Tackle National and Global Challenges, available at http://www.whitehouse.gov/sites/default/files/microsites/ostp/background_on_wh_rountable_on_impact_investing.pdf; US. National Advisory Board on Impact Investing, Private Capital Public Good: How Smart Federal Policy Can Galvanize Impact Investing – and Why It's Urgent, June 2014, available at http://static.squarespace.com/static/539e71d9e4b0ccf778116f69/t/53aa1681e4b04a6c515fac31/1403655809489/Private_Capital_Public_Good.pdf.

[4] Although it is anticipated that in the overwhelming majority of instances, the payor in an SIB arrangement will be a governmental entity, in some instances, the payor may be another type of entity, such as a foundation or corporation.

- Service providers are provided with access to a new form of capital to expand and fund their operations. This allows them to spend less time fundraising and more time focusing on their core competencies and operations while also allowing them to invest in their organizational infrastructure, like data management systems.

- SIBs permit governments to transfer the financial risk of funding prevention programs[5] to the private sector. As a result, governments only pay for those evidence-based programs that have been proven to work. Thus, governments have better accountability for taxpayer dollars. This is particularly important given severe long-term budget challenges facing many governmental organizations.

Structure of SIB Arrangements. SIBs are new and still evolving. Thus far, there typically have been five groups or parties involved in an SIB arrangement: service providers; federal, state, or local governments; investors; intermediaries responsible for overall project management; and independent evaluators or validators responsible for determining if SIB targets are met. Social Finance is an intermediary. In larger transactions, there may be a registered broker-dealer that is involved with the placement of the SIBs, although the economics of smaller transactions may make the involvement of a broker-dealer less likely. In either instance, Social Finance plans to use its knowledge of and relationships with the social investing community to identify and initiate conversations with sophisticated investors who want to align their investment portfolio with their social consciousness. In addition to these parties, the intermediary may hire a third-party administrator to carry out certain tasks, as discussed below. Social Finance expects that the third-party administrators in its SIB arrangements will be banks.

Although SIBs are evolving, it is expected that SIBs will be in the form of debt or equity issued by a special purpose vehicle ("SPV"), typically a limited liability company or limited partnership, formed for the specific purpose of the transaction. The SIBs will be issued in private placements under Section 4(2) of the Securities Act of 1933 ("Securities Act") or in reliance on Regulation D; investors in SIBs will be accredited investors under Rule 501(a) of Regulation D. The SPV would disperse the proceeds from the sale of SIBs to the service provider(s) that deliver social programs to the needy.

Intermediaries such as Social Finance are necessary to help structure SIBs and to provide ongoing monitoring of service providers. Social Finance typically will assess the social problem, decide whether a research-based intervention could improve results, identify effective service

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[5] A prevention program is a service or initiative that aims to improve life outcomes, such as health, education, or labor force participation, for the target population.

providers, and decide whether social impact investing could play a role, although the exact nature of its responsibilities will depend on the particular governmental initiative. Social Finance will perform due diligence to understand the intervention, project cash flows, and assess service providers. Social Finance also will be involved in selecting a service provider, administering the deployment of capital, and the pricing and managing of the risks of the SIBs. However, Social Finance will not act as the independent evaluator or validator of whether SIB program goals have been met.

As noted, to date, substantially all of Social Finance's funding has been through philanthropic gifts and grants. Social Finance plans to become more sustainable over time by obtaining fees related to its nonprofit mission. Specifically, Social Finance proposes to receive Intermediation Management Fees and Service Outcome Fees for its services in SIB offerings. Intermediation Management Fees would be annual payments to Social Finance commencing at the closing of a SIB offering (along with payments to the service provider) to ensure successful project oversight, performance management, and related activities throughout a SIB project (e.g., data analysis, site visits, on-going operating calls, and associated overhead). Service Outcome Fees would be tied to social impact metrics related to a SIB project and would not be paid to Social Finance by the payor in a SIB project (typically a governmental entity) unless project target outcomes have been determined to have been met by an independent validator. Service Outcome Fees payable to Social Finance may vary based on the extent to which target social outcomes have been met, but in no instance would a Service Outcome Fee or any other fee payable to Social Finance be based on securities transactions. Finally, it should be noted that, as a nonprofit organization, Social Finance's cost structure serves as the basis for its fees. Fees are charged at Social Finance's costs.[6]

The independent validator will measure and report the outcomes of the social program to the special purpose vehicle and the government. The validator will have no affiliation with Social Finance and the appointment of the validator is likely to be subject to the approval of the governmental entity involved. If the validator determines that target outcomes are met, the government pays the scheduled amount to the SPV, which would pay investors. The amount paid to investors may vary based on the degree to which various target outcomes are met.

Although there have been only a few SIBs issued thus far,[7] Social Finance believes that more will be issued in the future. The President's Fiscal Year 2014 budget includes funding for

[6] Costs incurred by nonprofit organizations such as Social Finance may include both direct costs and indirect or overhead costs.

[7] The SIBs that have been issued thus far have been primarily issued in the United Kingdom. In 2010, the world's first SIB was issued, in the United Kingdom. There are five total SIBs in the United States as of November 11, 2014. The first SIB in the United States was issued in 2012 with the city of New York, Bloomberg

several pay-for-performance programs. In addition, a bipartisan sponsored Social Impact Bond Act (H.R. 4885) was introduced by Representatives Young and Delaney in June of this year. Soon after, Senators Bennet and Hatch introduced a companion Pay-for-Performance bill in the Senate. New York State and the Commonwealth of Massachusetts budgets include funding for the second round of such programs. Many other states are pursuing SIBs.[8] Accordingly, the issuance of SIBs is likely to increase.

Need for Relief

Although we are not aware of any precedent directly on point, we believe that in certain cases SIBs may well be securities, either as notes, evidences of indebtedness, or investment contracts. Accordingly, the question is whether Social Finance's activities in structuring and managing SIBs raise broker or dealer registration issues under the Exchange Act. Section 15(a) of the Exchange Act prohibits any broker or dealer from effecting transactions in securities unless registered as a broker or dealer. In relevant part, Section 3(a)(4) of the Exchange Act defines a broker to be a person engaged "in the business of effecting transactions in securities for the account of others," and Section 3(a)(5) defines a dealer to be a person engaged "in the business of buying and selling securities for his own account." As described below, we believe that when Social Finance and its employees structure and manage an SPV issuing SIBs, they will not be acting in a manner that implicates the need for broker-dealer registration, given the limited nature of their activities.

Activities of Social Finance. As an initial matter, as a nonprofit 501(c)(3) organization, Social Finance is engaged in the business of helping address critical social problems. Although Social Finance will play a role in structuring SIBs and, in some instances, identifying and approaching investors, these activities are just two of many that Social Finance performs.[9] Before engaging in such activities, Social Finance conducts feasibility studies and proof of

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Philanthropies, Goldman Sachs, and MDRC (formerly the Manpower Demonstration Research Corporation), in a program to reduce reincarceration rates among adolescents at Rikers Island. In late 2013,Social Finance launched an SIB to expand comprehensive reentry employment services to 2,000 formerly incarcerated individuals in New York. Forty impact investors invested $13.5 million via the Bank of America/Merrill Lynch's wealth management platform.

[8] SIB/pay for performance legislation or technical assistance projects are underway in Connecticut, California, Colorado, the District of Columbia, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, and Utah.

[9] The staff has permitted similar financial consulting services without broker-dealer registration in other contexts. For example, the staff has granted no-action relief under Section 15(a) to persons engaged in valuing of the assets of a business as an ongoing concern, even when such activity might result in the receipt of transaction based compensation. *See* Country Business, Inc., SEC No-Action Letter (Nov. 8, 2006).

concept projects related to service providers. It also conducts due diligence related to the service provider, assists in the selection of outcome metrics, analyzes the public sector cost savings and value associated with selected outcome, and assists in the design of evaluation criteria. After the issuance of SIBs, Social Finance engages in performance, compliance, and ongoing investor relations activities, such as the provision of information as to the progress of a project. More broadly, Social Finance will continue to devote significant time to market education and advocacy to support the development of SIBs. Thus, structuring SIBs and contacting potential investors are only part of Social Finance's overall activities; the majority of the firm's efforts are tied more directly to understanding and evaluating the mission of social service providers.

Moreover, the protections afforded by broker-dealer registration are unnecessary because neither Social Finance nor its officers, directors, or employees will receive any compensation based on the sale of a security.[10] Instead, as noted, Social Finance will receive the Intermediation Management Fees described above and designed to ensure successful project oversight, performance and management.[11]

Social Finance may receive a separate Service Outcome Fee at the conclusion of an SIB project, but that fee will not be based on securities transactions, but on whether the social goals required of a service provider in the program were met. Moreover, the determination of whether the social goals have been met will be made by the independent validator, and will not be subject to the discretion of Social Finance.

Nor will Social Finance handle funds or securities in connection with SIB transactions.[12] For larger offerings that involve a registered broker-dealer, funds will be handled by the broker-

[10] The SEC and its staff have stated that the receipt of transaction-based transaction is a key factor in determining whether a person or an entity is acting as a broker-dealer. Absent an exemption, an entity that receives transaction-based compensation in connection with securities-based activities that fall within the definition of "broker" or "dealer" generally is required to register as a broker-dealer. *See, e.g.,* Brumberg, Mackey & Wall, LLC, SEC No-Action Letter (May 17, 2010) (noting receipt of transaction-based compensation in denying no-action request); and FundersClub, SEC No-Action Letter (Mar. 26, 2013) (noting that applicant would not receive transaction-based compensation in granting no-action relief). *See also* Order Exempting the Federal Reserve Bank of New York, Maiden Lane LLC and the Maiden Lane Commercial Mortgage Backed Securities Trust 2008-1 from Broker-Dealer Registration, Securities Exchange Act Release No. 61884 (Apr. 9, 2010).

[11] The Intermediation Management Fee also will allow Social Finance to recoup its up-front costs related to a SIB as well as cover on-going costs associated with successful project oversight. The staff has permitted similar arrangements involving, for example, the recovery of costs related to the formation of investment vehicles by third parties. *See* AngelList LLC and AngelList Advisors LLC (Mar. 28, 2013).

[12] Like the receipt of transaction-based compensation, the SEC and its staff have stated that the handling of funds or securities in connection with securities transactions is a hallmark of broker-dealer activity. *See, e.g.,*

dealer or the administrator. Even for smaller offerings, all funds will be handled by an administrator. Similarly, Social Finance will not handle securities; instead, investor interests in SIBs will be recorded by the administrator for a SIB offering on the books of the issuer.

To the extent that Social Finance employees serve as directors, officers, employees, or managing members of an SPV, they may play a role in instructing the administrator to disburse funds to service providers as part of the SPV's business. Social Finance expects that any such disbursements will be made pursuant to the methodology described in the offering document or the operational documents of the SPV and that any instructions to the administrator will document the basis on which the disbursement is being made. Any disbursements to the account of Social Finance also will be made pursuant to methodologies described in the offering document or the operational documents of the SPV. Finally, Social Finance expects that the financial statements of any SPV issuing SIBs will be audited by independent auditors and that the financial statements will be distributed to all investors in the SIBs.[13]

Employees Involved in SIB Offerings. We also request confirmation that the staff will not recommend enforcement action as to the employees of Social Finance who also are "associated persons" of SPVs issuing SIBs. Social Finance employees serving as associated persons of an SPV will not be statutorily disqualified, associated with a broker-dealer, or receive transaction-based compensation. Social Finance employees will not receive compensation from an SPV for their service as directors, officers, employees, or managing members. Instead, their compensation will be provided by Social Finance out of its resources. Social Finance's employees will be compensated almost entirely by salaries, with the possibility of small, discretionary bonuses not related to securities transactions. Thus, there is no incentive for such employees to engage in the high pressure sales tactics often associated with the receipt of transaction based compensation.

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Roland Berger Strategy Consultants, SEC No-Action Letter (May 28, 2013) (noting that applicant would not handle funds or securities in granting relief); S3 Matching Technologies, SEC No-Action Letter (July 19, 2012) (same).

[13] We note that the SEC, in a somewhat analogous situation, has determined that having audited financial statements distributed to investors is a sufficient safeguard to obviate concerns about self-dealing by a manager of an SPV. Specifically, although Rule 206(4)-2 under the Investment Advisers Act of 1940 provides that an investment adviser will be deemed to have custody of a client's assets if it has the ability to deduct its advisory fee from the client's assets, the rule permits an adviser to a pooled investment vehicle to deduct its advisory fee if the financial statements of the pooled investment vehicle are audited by an independent public accountant registered with the Public Company Accounting Oversight Board and the financial statements are distributed to the owners of the vehicle within 120 days of the end of the fiscal year. Rule 206(4)-2(b)(4). *See also* Advisers Act Release No. 2968 (Dec. 30, 2009) at Section II.B.1.

Based on the foregoing, we respectfully request that the Division not recommend enforcement action to the Commission against Social Finance or any of its employees under Section 15(a) of the Exchange Act.

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Thank you for consideration of this matter. Please do not hesitate to contact me at 202-663-6350 or Matthew Chambers at 202-663-6591 regarding this request.

Sincerely,

Andre E. Owens

cc: Joseph M. Furey, Assistant Chief Counsel
Joanne Rutkowski, Branch Chief
Shauna Sappington, Special Counsel