

Statute file

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ARIZONA CORPORATION COMMISSION

JAMES MATTHEWS  
EXECUTIVE SECRETARY

SECURITIES DIVISION  
1300 West Washington  
Third Floor  
TELEPHONE: (602) 542-4242  
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January 25, 1994

David M. Abrahams, Esq,  
Moses & Singer  
1301 Avenue of the Americas  
New York, NY 10019-6076

RE: York Research Corporation  
Rule R14-4-137

Dear Mr. Abrahams:

On the basis of the facts set forth in your letter of December 28, 1994, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

DEE RIDDELL HARRIS  
Director of Securities

DRH:lb  
Attachment

# MOSES & SINGER

A LAW PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

1301 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10019-6076

WRITER'S DIRECT DIAL  
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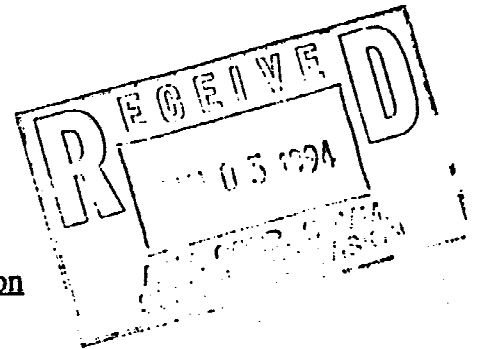
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December 28, 1993

Arizona Corporation Commission  
Securities Division  
1300 West Washington Street, Third Floor  
Phoenix, Arizona 85007

Re: No-Action Request Regarding Issuance  
of Warrants by York Research Corporation



Ladies and Gentlemen:

We are writing on behalf of York Research Corporation (the "Company") in connection with the Company's issuance of warrants to purchase up to 780,000 shares of the Company's Common Stock as described below. The warrants will be issued to individuals residing in a number of states, possibly including Arizona. Any warrants distributed in Arizona would be exempt from registration under the Securities Act of 1933, as amended (the "Securities Act"), by virtue of Section 3(a)(10) thereof. The warrants would be exempt from registration under the Arizona Revised Statutes ("A.R.S.") by virtue of Section 44-1843(7) thereof. For the reasons set forth below, however, the Company would like to issue the warrants in reliance upon the exemption from registration provided by Rule 14-4-137 of the Arizona Corporation Commission (the "A.C.C.") Regulations. We respectfully request that the Commission take "no action" against the Company in connection with the issuance of the warrants in reliance on that exemption.

The relevant facts are as follows.

The Company is to issue warrants in connection with its settlement of a class action proceeding (the "Settlement"). The Settlement was approved by a federal court (the "Court") on May 26, 1993 pursuant to a Final Judgment of Dismissal With Prejudice (the "Final Judgment") and provides for the issuance to the Class Members of 780,000 warrants each exercisable for one share of Common stock. The warrants may not be exercised until a registration statement covering the Common Stock underlying the warrants is declared effective by the SEC and all further action to qualify the issuance of the underlying common Stock under federal and state laws has been taken. The American Transfer & Trust Company (the "Warrant Agent") will act on behalf of the Company in connection with the

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issuance, transfer, exchange, redemption and exercise of the warrants. The Warrant Agent is not a registered dealer in Arizona. We have enclosed herewith for filing (i) the Final Judgment of Dismissal with Prejudice in which the federal court approved the issuance and decreed the Settlement to be "fair, reasonable, and adequate," and (ii) the Stipulation of Settlement outlining the terms and conditions of the warrants issuance.

Under the Final Judgment, the Court approved the issuance of the warrants pursuant to Section 3(a)(10) of the Securities Act under which a security is exempt from registration where it is "issued in exchange for one or more bona fide . . . claims . . . where the terms and conditions of such issuance and exchange are approved . . . by any court." Because the underlying Common Stock will be designated on the NASDAQ National Market System, the warrants (and the underlying stock) will also be exempt from Arizona registration pursuant to the exemption provided for exchange-listed securities by A.R.S. § 44-1843(7). While transactions exempt under A.R.S. § 44-1843 are generally exempt from the requirement that the dealer of the securities be registered, Rule 14-4-104(A)(1) of the A.C.C. Regulations provides that no dealer shall engage in transactions exempt from registration pursuant to A.R.S. § 44-1843(7) unless such dealer is registered under the statute's dealer registration provisions. A "dealer" under A.R.S. § 44-1801(9)(b) includes

"an issuer who, directly or through an officer, director, employee, or agent who is not registered as a dealer under this chapter, engages in selling securities issued by such issuer."

Id. Accordingly, in the absence of another exemption, if the Company is deemed to be such an issuer, it would have to register as a dealer in Arizona.

The Company, however, would not be required to register as a dealer if it were to qualify for the exemption provided by A.C.C. Rule 14-4-137. Rule 14-4-137 exempts from registration both the securities and the dealer involved in

"[a]n issuance of securities in exchange for bona fide claims or property interests within or from this State which is made pursuant to a final judgment or order, in either event no longer subject to appeal, of a federal or state court of competent jurisdiction or other governmental authority expressly authorized by law."

Id. Because (i) the warrants will be issued by the Company pursuant to a settlement between the Company and the warrant recipients, (ii) the settlement was approved and deemed fair

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under a Final Judgment of the United States District Court, and (iii) the Final Judgment is no longer subject to appeal, Rule 14-4-137 would appear to apply, and, accordingly, exempt the Company from dealer registration.

However, Rule 14-4-137 also provides that to qualify for the exemption, certain conditions must be met, including:

"1. The issuer shall file with the Commission one copy of a notice of the hearing upon the fairness of the terms of the issuance, no less than ten calendar days prior to the hearing . . . .

"4. The issuer shall file with the Commission one copy of the final signed order of the court or other governmental authority within ten calendar days of the issuance of such order."

Neither of these ten day requirements has been or can be met in the instant case as the Final Judgment was rendered on May 26, 1993, long before the Company even contemplated contacting the Arizona Corporation Commission. But while the Rule may not have been complied with in a technical sense, we respectfully submit that the manner of issuance of the warrants satisfies the intent of Rule 14-4-137. We should note further that in a prior No-Action Letter, dated May 14, 1992 (CCH Blue Sky Law Reports ¶ 9637), the Commission opined that the exemption provided in Rule 14-4-137 was applicable even though the final order had not yet been filed with the Commission and it had been much longer than ten days since the issuance of the final judgment approving the settlement. In the No-Action Letter, the Commission stated simply that "[i]n order to perfect [the Rule 14-4-137] exemption, the Issuer would be required to file with the Commission one copy of the final signed order of the court." As mentioned above, the Company, in the instant case, has enclosed such final signed order herewith.

Based upon the foregoing, we respectfully request that the Commission confirm that the Company is not obligated to register as a dealer in Arizona in connection with its forthcoming issuance of warrants in reliance upon the exemption set forth under A.C.C. Rule 14-4-137.

Sincerely yours,



David M. Abrahams