

~~Security~~
Sale

JAMES MATTHEWS
EXECUTIVE SECRETARY

44-1801 (18)

SECURITIES DIVISION
(602) 542-4242



MARCIA WEEKS
CHAIRMAN

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COMMISSIONER

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COMMISSIONER

ARIZONA CORPORATION COMMISSION

December 21, 1990

J. Christopher Lynch, Esq.
Wilson, Sonsini, Goodrich & Rosati
Two Palo Alto Square
Palo Alto, California 94306

RE: Collagen Corporation

Dear Mr. Lynch:

The Securities Division is in receipt of your letter of December 12, 1990 requesting a no-action position for the above captioned issuer. We are unable to concur with your conclusion that the transaction is not an "offer to sell" or a "sale" as defined in A.R.S. § 44-1801(12) and (18). The Division's position remains that such a distribution if "for value" and would require registration.

In addition, the Division cannot concur that the transaction is exempt from registration as a stock dividend. Arizona Revised Statutes § 44-1844(A)(5) requires that the distribution be "out of retained earnings." Likewise, the transaction is not exempt as a reorganization under A.R.S. § 44-1844(6), as it is not "incident to a vote by securities holders."

As a possible alternative to registering Collagen's securities, the Division suggests that you consider the simplified filing provisions of Rule 14-4-101 if the distribution to Arizona shareholders will not exceed \$500,000.

For the foregoing reasons, then, the Securities Division declines to take a no-action position with respect to the proposed activities of Collagen Corporation. We have attached a photocopy of your letter.

Very truly yours,

DEE RIDDELL HARRIS
Director of Securities

DRH:sw

Enclosure

WILSON, SONSINI, GOODRICH & ROSATI

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JOHN ARNOT WILSON
COUNSEL

December 12, 1990

VIA OVERNIGHT COURIER

Katrina Rogers, Esq.
Securities Division, Suite 201
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Re: Collagen Corporation -- Proposed Spin-Off of Subsidiary

Dear Ms. Rogers:

I am writing to you on behalf of Collagen Corporation, a Delaware corporation ("Collagen") in connection with the proposed distribution (the "Distribution") to the holders of Collagen Common Stock of all the outstanding Common Stock of Celtrix Laboratories, Inc., a Delaware corporation ("Celtrix") which is a wholly-owned subsidiary of Collagen. Celtrix is an operating subsidiary of Collagen which was formerly a division of Collagen, and will continue the development of specific therapeutic products based on naturally occurring peptides.

On behalf of Collagen, I respectfully request that the Arizona Securities Division (the "Division") either (a) concur that the Distribution would not constitute a "sale" of the Celtrix Common Stock under Section 44-1801.18 of the Arizona Revised Statutes, as amended, (the "Securities Act") or (b) confirm that it will not recommend that enforcement action be taken if the Distribution is effected without registration of the Celtrix Common Stock under the Securities Act.

Collagen is headquartered in Palo Alto, California, and its principal business consists of the development and manufacture of Collagen-based products for the augmentation and repair of human tissues. Through Celtrix, Collagen has also engaged for more than the last five years in the research and development of therapeutic products based on naturally occurring, biologically active peptides. One such peptide is Transforming Growth Factor Beta which has potentially important biological effects in the areas of dermal ulcers, retinal detachment, psoriasis and other immune mediated diseases of the skin, osteoporosis, local bone and

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cartilage defects and cancer. This line of research and development has evolved into a distinct pursuit, different from Collagen's traditional business. Collagen's Common Stock, \$.01 par value, is registered pursuant to Section 12(g) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), is traded in the over-the-counter market and is reported on the National Market System of the National Association of Securities Dealers, Inc. Automated Quotation System (the "NASDAQ System").

The Board of Directors of Collagen has determined that it is in the best interests of Collagen and its stockholders and Celtrix to separate the businesses conducted by Collagen and Celtrix and to spin-off all of the outstanding shares of Celtrix to Collagen stockholders by making the Distribution. The Distribution will be effected by means of a pro rata dividend of all the Celtrix shares held by Collagen to the stockholders of Collagen. One share of Celtrix Common Stock will be distributed for each four shares of Collagen Common Stock held by such stockholders. No consideration will be paid by Collagen stockholders for the Celtrix Common Stock received by them, and no fractional shares of Celtrix Common Stock will be distributed; instead, any Collagen stockholder entitled to a fractional share interest shall receive one full share of Celtrix Common Stock therefor.

Upon consummation of the Distribution, Celtrix will become a publicly-held corporation. Celtrix has applied to the National Association of Securities Dealers, Inc. to include its Common Stock in the NASDAQ System and, if possible, to designate the Celtrix Common Stock as a National Market System security. In connection therewith, Celtrix will file a registration statement on Form 10 pursuant to Section 12(g) of the Exchange Act with the SEC prior to the Distribution.

Under Section 44-1841 of the Securities Act, registration must be effected with the Division prior to a "sale" of securities. Section 44-1801.18 defines a "sale" as "a sale or other disposition of a security or interest in a security for value, [including] a contract to make such sale or disposition." Implicit in this definition is the concept that no "sale" takes place where a stockholder is not required to make a decision to place additional value at risk in order to obtain ownership of a security.

In this case, where the Distribution will be effected by means of a pro rata dividend to all stockholders of Collagen, without the receipt of additional consideration, I believe that the Distribution would not constitute a "sale" of securities under Section 44-1801.18, and as such would not require registration under Section 44-1841. Furthermore, the Distribution, if treated as a "sale", would appear to come within the policy rationales for certain exemptions provided in Section 44-1844 of the Securities

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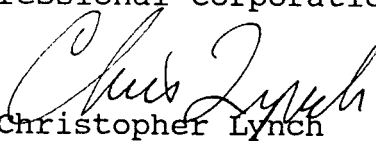
Act. While not technically a "reorganization", as specified in Section 44-1844.6, the Distribution will be effected by a dividend which will result in a partial liquidation of Collagen due to the divestiture of its Celtrix subsidiary; the dividend will be declared in accordance with the corporate laws of the state of Delaware. The dividend would also qualify for the exemption contained in Section 44-1844.5, except that the book value of the assets to be distributed will exceed the "retained earnings" of Collagen, and will be declared out of additional paid-in-capital as well as retained earnings. Accordingly, I request your concurrence that the Distribution will not constitute a "sale", or your advice that the Division will not recommend enforcement action if the Distribution is effected in Arizona without registration under Section 44-1841.

The record date for the Distribution will be February 8, 1991, with the distribution of stock certificates to occur shortly thereafter. In view of the short amount of time we would have to seek qualification of the Distribution, in the event that you cannot concur in our opinion that the Distribution will not constitute a "sale", I would greatly appreciate a reply at your earliest convenience.

I have enclosed a check in the amount of \$200.00 payable to the Secretary of State in payment of the filing fee under Section 44-1861.L of the Securities Act. If you have any questions regarding this matter, or if I may be of any further assistance, do not hesitate to contact me.

Very truly yours,

WILSON, SONSINI, GOODRICH & ROSATI
Professional Corporation


J. Christopher Lynch

JCL:ah

Enclosure

cc: Mark A. Medearis, Esq.
Sabrina Stanley, Esq.
Ms. Paula Weaver