

R104

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ARIZONA CORPORATION COMMISSION

JAMES MATTHEWS
EXECUTIVE SECRETARY

SECURITIES DIVISION
(602) 542-4242
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April 7, 1992

James A. Rubright, Esq.
King & Spalding
191 Peachtree Street
Atlanta, Georgia 30303-1763

RE: Greycliff Group, Inc.
A.R.S. § 44-1845, § 44-1848, R14-4-104(7)

Dear Mr. Rubright:

On the basis of the facts set forth in your letter of March 12, 1992, 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:MGB:wjw

Attachment

KING & SPALDING

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ATLANTA, GEORGIA
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404/572-4600

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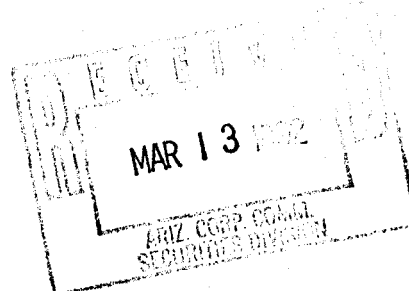
1730 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20006
TELEPHONE: 202/737-0500
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March 12, 1992

745 FIFTH AVENUE
NEW YORK, NY 10151
TELEPHONE: 212/758-8700
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VIA FEDERAL EXPRESS

Ms. Sandra J. Forbes
Arizona Corporation Commission
Division of Securities
234 North Central Avenue
Suite 425
Phoenix, Arizona 85004



Re: Greycliff Group, Inc.
Sections 44-1845 and 44-1848 of the Arizona Securities
Act (the "Act") and Section R14-4-104.7 of the
Regulations of the Arizona Corporation Commission
(the "Rules")

Dear Ms. Forbes:

On behalf of Greycliff Group, Inc. ("Greycliff") we request that the Securities Division of the Arizona Corporation Commission (the "Division") advise Greycliff that it would not recommend that the Corporation Commission take enforcement action with respect to Greycliff and its officers and employees if they do not register under Arizona law as a dealer or as salesmen, respectively, in connection with the transactions described in this letter.

The Offering. Greycliff is a corporation organized in 1991 for the purpose of establishing South Street Corporate Recovery Fund I, L.P. (the "Unleveraged Fund") and South Street Leveraged Corporate Recovery Fund, L.P. (the "Leveraged Fund") (collectively together with the ERISA Fund and the Offshore Funds described below, the "Funds"). The Funds are being organized to invest generally on a pro rata basis in securities ("Recovery Securities") of financially troubled companies which may potentially be profitably restructured. The Unleveraged Fund and the Leveraged Fund differ primarily in that the Leveraged Fund may incur borrowings to increase the size of its investments and may engage in short-selling to seek to increase its investment returns. The general partner of each of the Funds will be an affiliate of Greycliff. Interests in the Funds are being offered solely to sophisticated institutional and individual investors. The minimum subscription amount by any investor is \$3 million,

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although the general partner has the right to reduce such minimum amount. The Funds will not admit any investors unless subscriptions for at least \$150 million in capital contributions have been accepted from investors in the Funds. It is anticipated that there will be two investor closings of the Funds.

In connection with the offering of the Funds, Greycliff and its affiliates may establish up to three other funds to invest in Recovery Securities together with the other Funds generally on a pro rata basis in accordance with their capital contributions. One of such funds (the "ERISA Fund") will be organized solely for the purpose of receiving investments from private pension and profit sharing trusts exempt from income tax under Section 401 of the Internal Revenue Code. The other two funds (the "Offshore Funds") may be organized as non-U.S. entities in which only non-U.S. institutions and individuals may invest.

Although the Funds generally will invest in Recovery Securities on a pro rata basis in accordance with their capital commitments, over the life of the Funds certain factors may result in some differences in the investment portfolios of certain of the Funds. Due to the different rate of investment returns on capital that may be achieved by the Leveraged Fund (due to leverage) and the other Funds, it is likely that some investments made by the Funds will not be made on a pro rata basis with the Leveraged Fund. Also since no Fund will participate in any investments acquired prior to its formation or when it has no capital available for investment, not all investments will necessarily be made on a pro rata basis with all Funds.

Limited partnership interests of the Unleveraged Fund and the Leveraged Fund are currently being offered by Greycliff, as placement agent, pursuant to exemptions from registration under the Securities Act of 1933 and applicable state securities laws. Although it is not clear that it is required to do so, Greycliff has registered as a broker/dealer under the Securities Exchange Act of 1934 and has also registered as a dealer under the laws of certain states in which offers of limited partnership interests are being made. Greycliff is not receiving any commissions or other remuneration in connection with the offering of interests in the Funds and will not pay any sales-related compensation to its employees. Greycliff will serve as adviser to the Funds and will, subject to the supervision and control of the general partner, make and effect all investment decisions on behalf of the Funds.

It is presently contemplated that interests in the Funds, other than the Offshore Funds, may be sold to investors in Arizona and that such sales will either be made pursuant to the exemption set forth in Section 44-1844.1 or 44-1844.8 of the Act. None of the interests in any of the Offshore Funds will be offered to

investors in Arizona or in the United States, since such Funds have been structured solely for investment by non-U.S. institutions and individuals.

Applicability of Dealer and Salesman Registration Requirements. Greycliff is not registered under the Act as a dealer and none of its employees is registered as a salesman and it appears that Sections 44-1845 and 44-1848 of the Act and Section R14-4104.7 of the Rules do not require Greycliff or its employees to so register in connection with the transactions described above.

This conclusion follows from the fact that Section R14-4104.7 of the Rules requires registration as a dealer or salesman of a person effecting transactions exempt pursuant to Section 44-1844.1 of the Act, but further provides that no dealer or salesman shall be required to register unless such dealer or salesman is engaged principally and primarily in the business of making a series of private offerings. The Rule defines a "series" to mean in excess of four private offerings in any consecutive 12-month period.

Although it is our view that Greycliff is principally and primarily involved in acting as adviser to the Funds and not in engaging in securities transactions, such conclusion is not the basis for this request. Rather, the basis for this request consists of two separate premises. The first is that the cited section of the Rule does not require registration of a person unless such person is engaged in making in excess of four private offerings in any consecutive 12-month period. The offering of the Funds consists of one integrated offering pursuant to a common plan of financing and thus should be viewed as constituting one offering, rather than a series of more than four private offerings for purposes of the Rule and the Act. In addition, even to the extent it is possible to view the offering as including separate offerings on behalf of more than one Fund, two of the offerings are being made exclusively to investors outside of the State of Arizona and outside of the United States and thus would not seem to be conduct that would cause a person otherwise not subject to registration as a dealer or salesman in Arizona from being subjected to such registration.

Discussion. The offering of limited partnership interests in the Funds is being made pursuant to Regulation D under the Securities Act of 1933. Rule 502 of Regulation D, while not defining the term "offering" which is exempt from the Act, provides that all sales that are part of the same Regulation D offering must meet all of the terms and conditions of Regulation D. The Note to Rule 502(a) provides that the following factors should be considered in determining whether offers and

sales should be integrated (and thus constitute one offering) for purposes of the exemption under Regulation D:

- (a) Whether the sales are part of a single plan of financing;
- (b) Whether the sales involve issuance of the same class of securities;
- (c) Whether the sales have been made at or about the same time;
- (d) Whether the same type of consideration is being received; and
- (e) Whether the sales are made for the same general purpose.

See Release No. 33-4552 (November 6, 1962).

Applying these criteria, it would appear that the offering of the Funds would be treated as a single offering for purposes of Regulation D and thus all sales pursuant to the offering are required to meet the conditions of Regulation D. As summarized above, all of the Funds are being organized to acquire Recovery Securities of issuers generally on a pro rata basis in accordance with capital commitments and expenses of ownership and disposition of the acquired securities are to be shared by the Funds on a pro rata basis. Greycliff will be the investment adviser of all of the Funds and will have responsibility for making and effecting all investment decisions on behalf of the Funds and the general partner entities of each Fund will be an affiliate of Greycliff. In addition to thus being offered as part of a single plan of financing for the same general purposes, the sales are being made at or about the same time, since the offerings are being conducted pursuant to a common offering plan at the same time, the same type of consideration is being received (cash) and it is possible to view the sales as involving the same class of securities, since limited partnership interests in Funds organized for the purpose of making pro rata investments are the securities being issued.

The reasons why more than one Fund is being organized are, in the case of the Offshore Funds, to accommodate certain tax objectives of foreign investors and, in the case of the ERISA Fund, in order to permit pension and profit sharing plan investors to invest in a fund which will operate in compliance with the plan asset guidelines of the United States Department of Labor in order for capital commitments by pension and profit sharing plan investors to exceed 25% of the total capital commitments of the investors in any fund. We believe that these differences are

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insufficient to cause the Funds to be viewed as engaged in separate offerings for purposes of Regulation D.

The same principles would appear to be applicable for purposes of determining whether the offering of the Funds constitutes one offering or a series of offerings for purposes of the Act. Rule 14-4-126 exempts transactions pursuant to certain limited offerings and Subparagraph C thereof includes general conditions which provide that, as in the case of Regulation D, all sales that are part of the same offering must meet all of the terms and conditions of the Rule. Note 2 to such Subparagraph states that in determining whether offers and sales should be integrated for purposes of the exemption under this Rule, the issuer should consider relevant Arizona rules and court decision, federal court decisions, and Securities and Exchange Commission rules and regulations. By application of these principles, it would appear that the offering of limited partnership interests of the Funds would be treated as one limited offering for purposes of the Rules. There would not appear to be any reason in fact or in policy to distinguish between an offering for purposes of Rule 14-4-126 and Rule 14-4-104.7. Accordingly, we believe that even if interests in all five of the Funds described above are offered, and Greycliff acts as placement agent in all offers and sales, Section R14-4-104.7 of the Rules would not apply to Greycliff and would not require registration as a dealer or salesman.

In addition to the foregoing, we also believe that since the offering of the two Offshore Funds will be made solely to investors who are not located in Arizona or even in the United States, the provisions of Rule 14-4-104.7 should not require registration of Greycliff. Section 44-1801.9 of the Act defines a dealer as "a person who directly or indirectly engages full or part time in this state as agent, broker or principal in the business of offering, buying, selling or otherwise dealing or trading in securities issued by another person . . ." and Subparagraph 19 thereof defines a salesman to mean an individual, other than a dealer, employed, appointed or authorized by a dealer to sell securities in this state. Section 44-1842 relating to transactions by unregistered dealers and salesmen prohibits any dealer to sell or purchase or offer to sell or buy any securities or for any salesman to sell or offer for sale any securities within or from [Arizona] unless the dealer or salesman is registered. These provisions illustrate the focus of the Act upon activities of dealers or agents made from or within the state of Arizona and nothing in the Act or the Rules suggests an overly broad interpretation of the Act would be consistent with its purposes. Accordingly, since the offerings by the Offshore Funds will not be made from Arizona or to any investor in Arizona, or indeed to any investor located in the United States, it does not

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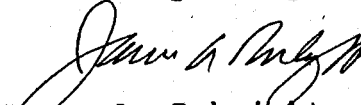
appear reasonable to deem Greycliff to be in the business of making in excess of four private offerings in any consecutive 12-month period for purposes of Section R14-4-104.7 of the Rules.

On the basis of the foregoing, we respectfully request that the Division advise Greycliff that it would not recommend enforcement action to the Corporation Commission if Greycliff were to proceed in offering limited partnership interests in the Funds as described above without registering as a dealer in Arizona and without registration as salesmen in Arizona any of Greycliff's employees engaged in effecting such transactions.

We appreciate your consideration of this request. If additional information would be helpful, please contact the undersigned directly at (404) 572-4733.

Thank you very much.

Yours very truly,



James A. Rubright

JAR/lkj

cc: Mr. Alfred C. Eckert III
Mr. Mikael Salovaara