IDAHO
DEPARTMENT OF FINANCE

DIRK KEMPTHORNE
Governor

GAVIN M. GEE
Director

September 20, 2005

[redacted]

Re: Request for No-Action - [redacted] (the Corporation)

Dear [redacted]

This is in response to your September 8, 2005 request for a no-action position from this Department with regard to the proposed issuance and distribution of common stock pursuant to a judicially approved class action settlement. You have also asked that the Department confirm that the Corporation and its officers and directors are exempt from the broker dealer and agent registration requirements of the Idaho Uniform Securities Act (2004) (IUSA).

BACKGROUND

Your letter indicates the Corporation's common stock is traded on the over-the counter market and is subject to the reporting requirements of the Securities Exchange Act of 1934 and the settlement transaction is exempt from federal securities registration requirements pursuant to Section 3(a)(10) of the Securities Act of 1933.

Your letter indicates the Corporation, certain of its current and former officers and directors and the accounting firm of PricewaterhouseCoopers LLP are named as defendants in the action. In settlement of the class action lawsuit, the Corporation proposes to issue up to 5,656,000 shares of its common stock plus an additional indeterminate number of shares of the Corporation's Common Stock pursuant to the anti-dilution provisions in the "Stipulation". Also, the Corporation's former President and Chief Executive Officer proposes to contribute 2,000,000 additional shares.

You have provided a copy of the October 5, 2004 Stipulation of Settlement and a copy of the March 11, 2005 Final Order in which the United States District Court of the Northern District of California determined that the terms of settlement (which provide for the issuance and distribution of the Settlement Stock) are fair, reasonable and adequate within the meaning of FRCP 23(e)(1)(C) and, to the extent the shares of Settlement Stock are unregistered, fair under Section 3(a)(10) of the Securities Act of 1933.

SECURITIES BUREAU
Bureau Chief – Marilyn T. Chastain
700 West State Street, 2nd Floor, Boise, ID 83702
Mail To: P.O. Box 83720, Boise ID 83720-0031
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The Settlement Class is defined in the Stipulation to include all persons who purchased or otherwise acquired the Corporation's securities during the period July, 2001 through July 18, 2002, including 1,102 class members, eligible to participate in the Settlement Fund. You have indicated of those participants, nine reside in Idaho and are entitled to receive a total of 2,826 shares of the Settlement Stock, which represents approximately .007% of the Corporation's outstanding shares after the issuance of all the Settlement Stock.

The Settlement Fund, as described in the Stipulation, would consist of $17,000,000 in cash and the issuance of Settlement Stock.

You have stated in your letter that the Notice of Pendency and Settlement of Class Action and Settlement Hearing was distributed to all interested parties over two months in advance of the final hearing on the fairness of the settlement and provided all such interested parties the opportunity to be heard at the hearing. The issuance and distribution of the Settlement Stock have been judicially approved as part of a fairness hearing the Settlement Stock will be issued in exchange for the claims of Authorized Claimants (as defined in the Stipulation).

EXEMPTIONS

The IUSA § 30-14-202(22)(b) provides an exemption from the securities registration requirements for any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interest, or partly in such exchange and partly for cash. As you indicate, the Company believes that although the issuance and distribution of the settlement stock is not specifically a "reorganization," it would be reasonable to base the no-action position on § 30-14-202(22)(b) since (i) there is an exchange of outstanding securities for outstanding claims, (ii) all interested parties were notified of the fairness hearing, and (iii) the issuance and distribution of the Settlement Stock was judicially approved as part of the fairness hearing.

Additionally, it is your position that the registration of the Settlement Stock is not necessary in the public interest for the protection of the eligible claimants as (i) the eligible claimants are protected by the judicial approval of the settlement, (ii) the "offering" is limited to the eligible claimants who are owners of the Corporation's stock, (iii) the eligible claimants will be exchanging claims for stock and will not be paying any additional consideration, and (iv) there has not been a general solicitation except for the required class notification.

With consideration to the above circumstances that you have represented to us, we concur that the Corporation reorganization involving the Settlement Stock should be exempt from registration requirements.

You have also asked that the Department confirm your assessment that the Corporation and its officers and directors are exempt from registration requirements under § 30-14-402(b)(3). You have indicated that certain officers and directors of the Corporation may be performing only ministerial functions with respect to the issuance distribution of the Settlement Stock and will not be receiving any additional compensation for these functions. We agree with the Corporation's assessment that an individual who represents an issuer with respect to the offer and sale of the issuer's own securities and who is not compensated in connection with the individual's

participation by the payment of commission or other remuneration based, directly or indirectly, on transactions in those securities, is exempt from registration requirements.

SUMMARY

In light of the foregoing, we will recommend to the Director that no enforcement action be taken to assert any violations of § 30-14-202(22)(b) and that the subsequent qualification of the agents in connection with this offering may be met under § 30-14-402(b)(3) of the IUSA, if the transactions are offered under the circumstances set forth in your letter.

Please be advised that this "no action" position is based solely on the information you provided and your representation of the facts, and that different facts may require a different conclusion.

If you have questions or comments regarding any of the matters discussed above, please contact the undersigned.

Sincerely,

Walt Bitner
Securities Analyst

[redacted]

RECEIVED
SEP 09 2005
DEPT. OF FINANCE
STATE OF IDAHO

September 8, 2005

[redacted]

Via Federal Express and E-Mail
Tel. No. (208) 332-8004

Idaho Department of Finance,
Securities Bureau
700 West State Street, 2nd Floor
Boise, Idaho 83720

Attention: Walt Bitner

Re: Request for No-Action Letter - [redacted] - Proposed Distribution of Common Stock in Settlement of a Class Action

Ladies and Gentlemen:

The letter will supercede our letter to you of August 31, 2005. As indicated in that letter, we are counsel for [redacted], a Delaware corporation (the "Corporation"), in connection with the issuance by the Corporation of shares of its Common Stock pursuant to a judicially approved class action settlement. On behalf of the Corporation, we respectfully request the issuance by your department of a no-action letter to the effect that the Department will not recommend any enforcement against the Corporation with respect the transaction described below. We also request that you confirm that the Corporation and its officers and directors are exempt from the broker dealer and agent registration requirements of the Idaho Uniform Securities Act of 2004 (the "Act") with respect to that transaction. As indicated below, the transaction is exempt from federal securities registration requirements pursuant to Section 3(a)(10) of the Securities Act of 1933.

The Corporation is a provider of yield optimization solutions for the semiconductor and flat panel display industries. The Corporation is subject to the reporting requirements of the Securities Act of 1934 and its Common Stock is traded on the over-the-counter market or pink sheets. In settlement of a class action lawsuit filed with respect to the Corporation, certain of its current and former officers and directors and PricewaterhouseCoopers LLP ("PwC"), as defendants, (i) the Corporation proposes to issue up to 5,656,000 shares of its Common Stock plus an additional indeterminate number of shares of the Corporation's Common Stock pursuant to the anti-dilution provisions in the "Stipulation" (defined below) (the "Corporation's Settlement Stock"), and (ii) the Corporation's former President and Chief Executive Officer proposes to contribute 2,000,000 additional shares of the Corporation's

[redacted]

Common Stock owned by him (the "Former President's Stock") to the Settlement Fund, as defined below. The Corporation's Settlement Stock and the Former President's Stock are referred to jointly in this letter as the "Settlement Stock." The class action, captioned *In re* *Securities Litigation*, Master File No. (the "Class Action"), is a consolidation of fourteen class action lawsuits filed against the defendants in 2002. The United States District Court, Northern District of California by Order, dated September 29, 2003, consolidated those fourteen lawsuits.

On October 5, 2004, a Stipulation of Settlement was entered into among the Lead Plaintiff on behalf of itself and each of the other Settlement Class Members, the Corporation and certain of its current and former directors and officers (the "Stipulation"). A copy of the Stipulation is attached hereto as Exhibit A for your reference.

On February 24, 2005, after appropriate notice to all class members, a final hearing (the "Settlement Hearing") was held with respect to the settlement described in the Stipulation. At the Settlement Hearing the United States District Court for the Northern District of California determined that the terms of the settlement (which provides for the issuance and distribution of the Settlement Stock), are fair, reasonable and adequate within the meaning of FRCP 23(e)(1)(C) and, to the extent that the shares of Settlement Stock are unregistered, fair under Section 3(a)(10) of the Securities Act of 1933 (see the last paragraph of Section II on page 7 of the final order). A copy of the final order, dated March 11, 2005 (the "Final Order"), granting approval of the proposed settlement, is attached hereto as Exhibit B for your reference.

Section I of the Stipulation describes the litigation. The Settlement Class is defined in the Stipulation to include all persons who purchased or otherwise acquired the Corporation's securities during the period July 31, 2001 through July 18, 2002, inclusive, excluding the defendants, members of the immediate families of the defendants and other appropriate persons and entities. The Settlement Fund, as described in the Stipulation, would consist of $17,000,000 in cash, $5,000,000 from the Corporation's insurance carriers and $12,000,000 from PWC, and the issuance of the Settlement Stock. The Settlement Stock represents approximately 18.58% of the Corporation's 41,207,277 outstanding shares of Common Stock. The Stipulation contemplates that the Settlement Stock will be distributed to all eligible class members that prove their claims to the claims administrator approved by the court. Under the plan of allocation of the settlement proceeds approved by the court, the settlement class excludes those persons that sold their shares of the Corporation's common stock prior to July 19, 2002, in view of issues related generally to fairness and equity to the other class members.

According to the claims administrator there are a total of 1,102 class members, residing in 45 states and various foreign jurisdictions, eligible to participate in the Settlement Fund. Of those participants, nine reside in Idaho and are entitled to receive a total of 2,826

shares (.043%) of the Settlement Stock, which represents approximately .007% of the Corporation's outstanding shares after the issuance of all the Settlement Stock. The current per share market price of the Corporation's common stock is approximately forty cents.

The Notice of Pendency and Settlement of Class Action and Settlement Hearing was distributed to all interested parties over two months in advance of the final hearing on the fairness of the settlement and provided all such interested parties the opportunity to be heard at the hearing. The issuance and distribution of the Settlement Stock have been judicially approved as part of a fairness hearing and the Settlement Stock will be issued in exchange for the claims of the Authorized Claimants (as defined in the Stipulation).

The issuance of the Settlement Stock is exempt from registration under Section 3(a)(10) of the Securities Act of 1933 and based on various explicit exemptions and interpretations of applicable blue sky or state securities laws, several of which are being confirmed by similar "no action" requests, the Corporation does not expect to be required to qualify or register the issuance of the Settlement Stock in any of the states in which the class members reside.

Section 30-14-202 (22) (b) of the Act provides an exemption from the securities registration requirements of the Act for any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash. Although the issuance and distribution of the settlement stock is not specifically a "reorganization," we believe that it would be reasonable to base the no-action position on Section 30-14-202(22)(b) since (i) there is an exchange of outstanding securities for outstanding claims, (ii) all interested parties were notified of the fairness hearing, and (iii) the issuance and distribution of the Settlement Stock was judicially approved as part of the fairness hearing.

We also believe that the registration of the settlement stock is not necessary in the public interest or for the protection of the eligible claimants for the following reasons: (i) the eligible claimants are protected by the judicial approval of the settlement, (ii) the "offering" is limited to the eligible claimants who were all previous or present owners of the Corporation's stock, (iii) the eligible claimants will be exchanging claims for stock and will not be paying any additional consideration, and (iv) there has not been, and will not be, any general solicitation except for the required class notification.

We respectfully request that the Department issue a no-action letter to the effect that the Department will not recommend any enforcement against the Corporation with respect to the issuance and distribution of the Settlement Stock.

Section 30-14-402(b)(3) of the Act exempts from the agent registration requirements of the Act, an individual who represents an issuer with respect to the offer and sale of the issuer's own securities and who is not compensated in connection with the individual's participation by the payment of commission or other remuneration based, directly or indirectly, on transactions in those securities. Section 30-14-102(4) of the Act excludes an issuer from the definition of "broker-dealer." Certain officers and directors of the Corporation may be performing only ministerial functions with respect to the issuance and distribution of the Settlement Stock and will not be receiving any additional compensation for those functions. We respectfully request that you confirm that the Corporation and its officers and directors are exempt from the broker-dealer and agent registration requirements of the Act.

With our letter of August 31, 2005, we submitted our firm's check in the amount of $50 payable to the Department of Finance, State of Idaho in payment of the fee.

Thank you very much for your assistance. Should you have any questions or require any additional information, please do not hesitate to contact me at [redacted] or [redacted] Your prompt attention to this request for a no-action letter would be greatly appreciated.

Very truly yours,

[redacted]

[redacted]
Legal Specialist

Enclosures

cc: [redacted]

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