DEPARTMENT OF CORPORATIONS
SACRAMENTO, CALIFORNIA

IN REPLY REFER TO:
FILE NO: OP 6647

COMMISSIONER'S OPINION 98/1C

THIS LETTER IS NOT AN INTERPRETIVE OPINION
FOR THE REASONS STATED BELOW

Joseph R. Nida, Esq.
Nida & Maloney
Attorneys At Law
800 Anacapa Street
Santa Barbara, CA 93101

Re: Westmont Venture Forum

Dear Mr. Nida:

This is in response to your letter dated April 23, 1997, requesting an interpretive opinion, supplemented by letters dated May 5, 1997, June 16, 1997, August 15, 1997, and February 13, 1998. The question you raise is whether the Westmont Venture Forum ("Forum") would be "offering" or "selling" securities under the Corporate Securities Law of 1968 ("CSL") pursuant to the circumstances described by you.

We note that you have not requested a SEC "No Action" letter, but have indicated that you will rely on the Michigan Growth Capital Symposium "No Action" letter of May 4, 1995.

Facts

You represent that a 1997 Forum has been held on May 28, 1997. As we mentioned to you in our July 22, 1997 letter, any interpretive opinion or guidance offered to you will be provided for a prospective Forum only. You indicate that another Forum will be held sometime in 1998.

You further represent in your letters that it is your belief that the Forum, affiliated with Westmont College ("Westmont"), is an "event" where, on a specified date, selected companies from the central coast of California present their business and products to invited institutional, venture capital, and "similar" investors through oral presentation or one-page written summaries.

You state that the Forum will be divided into three parts. First, venture capital investors will make presentations explaining their primary considerations in making investment decisions. The second part consists of a luncheon where a guest speaker, either an investor or entrepreneur, will make a speech. Lastly, selected companies will make short, oral presentations regarding their business and products. Companies who are not selected to make oral presentations will have the opportunity to participate by having a summary of its business included in a book, which is to be given to the participants of the Forum.

You further represent that the Forum will be administered by a committee of uncompensated volunteers ("Committee"), two of whom are from Westmont. The other members of the Committee are individuals who are either investors or entrepreneurs who have had some experience obtaining financing through venture capital opportunities.

Discussion

1. Broker-dealer

Corporations Code Section 25210 imposes a certification requirement on broker-dealers who effect transactions in, or induce or attempt to induce, the purchase or sale of any security in this state.

Corporations Code Section 25004 defines broker-dealer as "...any person engaged in the business of effecting transactions in securities in this state for the account of others or for his [sic] own account."

a. Engaged in the Business

The CSL does not define what is meant by the term "engage in the business" nor are there any cases which interpret the phrase "engage in the business" in the context of the CSL.

However, in a broad sense, business means an occupation or trade engaged in for the purpose for obtaining a livelihood or profit or gain. Mansfield v. Hyde, 112 Cal. App. 2d 133, 137 (1952). "Engaged in the business" generally implies a "...business activity of a frequent or continuous nature," (Advance Transformer Co. v. Superior Court, 44 Cal. App. 3d 127, 134 (1974), contrasted with a single or occasional disconnected act. (Id.)

The Forum will charge a $100 fee to entrepreneur participants. Invited investors will not pay any fees. Any person not invited will be required to pay a $200 fee at the door. Moreover, you also state that during the Forum which took place in 1997, "Founding Sponsors" paid $5,000 each, and "Supporting Sponsors" paid $1,000 each to advertise their services at the Forum. (You represent that the "Founding" and "Supporting" sponsors are mostly non-brokerage businesses such as law firms, accountants, financial printers, etc. Some sponsors, who are in the brokerage or investment advising businesses, are licensed as such.) The fees are intended to pay for Forum expenses such as

printing, reproduction costs, and meal and Forum site costs only. You state that charging such fees is preferable to assessing large application and attendance fees.

Only Westmont will be authorized to withdraw funds. Westmont will not receive any compensation for its role as education sponsor of the Forum. You also represent that the Committee members will not receive any compensation for matching or introducing venture capitalists with capital-seeking businesses. You further state that there will be no finder's or similar fee arrangements between the Forum and venture capitalists or other businesses. However, individual Committee members will not be prevented from investing in a company, if he or she chooses to do so at a later time.

Assuming that the: (1) Forum will charge $100 per participant and reasonable "sponsor" fees solely to pay the administrative costs (which would primarily be the hotel rental costs), (2) the Forum does not otherwise profit or gain from the activity (as in charging a finder's fee), and (3) the Forum is an "event", it appears that the Forum is not "engaged in the business of a broker-dealer" within the meaning of Section 25004 of the Corporations Code and is not subject to the certification requirement pursuant to Section 25210. We offer no opinion as to whether or not individual Committee members or whether "Founding Sponsors" or "Supporting Sponsors" would be considered broker-dealers requiring certification under the CSL, since additional facts are needed.

b. Effecting Transactions in Securities - Negotiations

Generally, negotiating a sale may actuate a licensing requirement. (Zappas v. King Williams Press, Inc., 10 C.A. 3d, 768, 773 (1970). Negotiations have been found to have taken place where advice was given to buyers as to how to proceed if their offer was rejected. (Pawlak v. Cox 148 C.A. 2d 294, 298 (1957)). However, negotiations have not been found when information, such as those contained in loan applications was merely exchanged. (Tyrone v. Kelley, 9 Cal. 3d 1 (1973)).

In this connection, you represent that although the Forum will create a medium where investors and entrepreneurs will be "matched", the Forum's activities will exclude any and all responsibility for negotiations of terms, conditions, or provisions of any agreement. If negotiations are to take place, you represent that such negotiations will occur away from the Forum location, and will be held privately, if at all. You also represent that the Forum will critique business plans, suggest improvements, instruct entrepreneurs as to how to obtain venture capital financing, and screen business participants. The Committee will also give instruction to the participants as to the necessity of complying with the federal and state securities laws.

We note that in Commissioner's Opinion No. 73/67C, an individual who introduced sellers of companies or products to venture capital investors was deemed not to be a broker-dealer as long as the individual did not participate in negotiations between the parties. The individual was deemed not to be a broker-dealer since he would not "...suggest or recommend any manner or means of consummating the transaction, including...the means of investing venture capital, the method of financing, or manner of acquiring the product or company." Moreover, the individual was not a broker-dealer because he did not provide information on which the party could rely, and also did not

give any guidance regarding the type of offerings in which the parties would be interested. Also, he was not a broker-dealer because he did not screen opportunities.

Given the thrust of the above-mentioned opinion, one could argue that some of the advice given by the Forum Committee to the participants could be construed to be part of the negotiating process. Therefore, under additional facts, the Forum could be found to be "engaged in the business" of a broker-dealer, and certification as a broker-dealer would be required.

2. Investment Adviser

Corporations Code Section 25230 imposes a certification requirement on investment advisers conducting business in this state. Corporations Code Section 25009 defines "investment adviser" to mean "...any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, publishes analyses or reports concerning securities." Under the National Securities Markets Improvement Act of 1996, enacted into law late in 1996, investment advisers that give investment advice for compensation must obtain a license from the Commissioner of Corporations or register with the Securities and Exchange Commission, depending on the amount of investment funds they have under management. (See, e.g. Commissioner's Release No. 109-C (December 18, 1997).)

In Commissioner's Opinion No. 70/10C, a consulting business which introduced technology companies to professional venture capital groups was not deemed to be an investment adviser since the determination as to the advisability of buying or selling securities would be made by the venture capital clients using their own judgment.

You have not furnished us with specific information as to the type of advice which the Forum will give to the investor, if any, except that you have stated that the Forum will provide the opportunity to entrepreneurs to make oral presentations and will provide the Forum book to potential investors. Assuming that no advice will be given as to the value of securities or as to the advisability of investing in securities, it is our opinion that the services rendered by the Forum would not be such as to characterize it as an investment adviser within the meaning of Section 25009. Moreover, it would appear that the Forum is not "engaged in the business" of an investment adviser since it is not obtaining a gain or profit. (See discussion above.)

Nevertheless, if the Forum renders advice to investors looking toward the purchase or sale of securities, as part of a plan for corporate development and business planning or in connection with acquisitions or mergers, and it profits or obtains a gain from these activities, it may be construed to be an investment adviser. We offer no opinion as to whether "Founding Sponsors" or "Supporting Sponsors" not already licensed would be investment advisers requiring certification since additional facts are needed.

3. Offer

Corporations Code Section 25017 defines "offer" or "offer to sell" to include "...every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value."

You represent that the Forum will not be making "offers" or will not "offer to sell" securities. You also represent that the company presentations will be developed in consultation with Forum volunteers and will be limited to oral presentations of the company's business, existing products and products in development. Any discussion of specific financing proposals, financing structures, or specific financing transactions will be prohibited.

Visual aids will be permitted, but representation of specific financing proposals will be prohibited, as will discussions of proposed or potential financing structures. Specifically, you state that although private placement memoranda are prohibited from being distributed at the Forum, such materials may be delivered to specific potential investors as a result of individual discussions away from the Forum. Moreover, product advertising materials, technical writings, and other business documents may be provided to persons at presenter tables or private rooms also away from the Forum. Presenters will be instructed not to distribute the material to persons who do not have an official Forum attendance badge.

Furthermore, you represent that summaries of the companies and their products will be collected and distributed in a "Forum Book." Information regarding specific financial transactions will not be included in the summaries.

Notwithstanding these representations, the Department is concerned that some of these written materials, including a company's business plan, may contain information which would cause the material to rise to the level of an offering circular, private placement memorandum, or a prospectus of securities offering. A typical business plan indicates that the amount of money being sought, the form (e.g., equity, debt, or both) of security, and the purpose financing is requested. Indeed, the desired financing through a proposed company offering is explained in business plans or other similar materials. Although you have provided us with the Forum book, you have not furnished examples of other materials which may be distributed at the Forum. Therefore, we decline to render an opinion as to whether any of the written materials might involve an "offering" of securities, or may be an "advertisement" subject to the Corporate Securities Law of 1968.

However, it appears that the Forum is a medium in which presenters will be discussing their companies and products. Therefore, although the Forum may not be "offering" securities itself, presenters themselves may be "offering" securities at the Forum. Of course, it goes without saying that presenters who make an "offer" of securities at the Forum will be required to follow the qualification procedures under the CSL, or find an exemption from qualification.

Indeed, if presenting companies were in fact making "offers" of securities, such offers would be required to be qualified or be exempt. To address this circumstance, you represent that each

participating company will be advised that a subsequent purchase of any security by an investor participant of the Forum will not relieve the company from evaluating whether each such participant is an accredited investor or excluded purchaser. You also state that the Forum will remind the companies that they continue to be required to comply with the state and federal securities laws when offering securities.

4. Investor Participant

Although we have determined that the Forum, in and of itself, is not "offering" securities, we offer the following comments regarding investor participants:

You represent that the primary participants invited to the Forum are institutional and venture capital investors, such as "excluded purchasers" within the meaning of Corporations Code Section 25102(f) and 10 C.C.R. 260.102.13, and "accredited investors" within the meaning of Rule 501(a) of the Regulation D under the federal Securities Act of 1933, as amended. You state that unsophisticated individual investors are not the intended audience for the Forum, although a limited number may be contacted, based on knowledge of such person's financial and business expertise and income and net worth qualifications. In this regard, see Corporations Code Section 25102(f)(2) and 10 C.C.R. 260.102.12(g) regarding the requirements of a "professional advisor" of a prospective investor.

Also, you represent that the general public will not be invited, although some persons affiliated with the Forum, local politicians, and Westmont representatives, students, and reporters will attend. However, you represent that invitations will be made to 250 to 500 entities in targeted mailings, and that any person not invited will be required to pay $200 entry fee at the door.

Although not germane to our analysis, we note that invitations to 250 to 500 entities may be construed to involve the general public. Moreover, we note that presentations made to accredited investors or excluded purchasers do not affect whether the Forum may be construed to be a broker-dealer or investment adviser if such facts warrant.

5. Advertisements

Corporations Code Section 25300 requires that advertisements concerning any security sold or offered for sale be filed with the Commissioner of Corporations, unless exempt. "Advertisement" is defined as any communication published "in connection" with the offer or sale of a security. (Corporations Code Section 25002.) Depending on the circumstances, if a presenting company were found to be offering securities at the Forum, such advertisements would be required to be filed with the Commissioner. Any such conclusion, of course, will depend on specific facts.

Moreover, we decline to render an opinion on whether the previous advertisement inviting companies to be Forum participants is exempt from Section 25300 of the Corporations Code since the advertisement has already been published.

6. Internet

You have stated that the Forum may place information on the Internet. Facts have not been provided in order to make a determination whether such posting would be permissible under the provisions of the CSL. Therefore, the Department declines to render an opinion regarding such Internet postings, but refers you to Commissioner's Opinion No. 96/2C and Commissioner's Release Nos. 100-C (November 5, 1996) and 107-C (August 19, 1997).

Dated: December 15, 1998
Sacramento, California

DALE E. BONNER
Commissioner of Corporations

WILLIAM KENEFICK
Assistant Commissioner
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Attention: William Kenefick, Esq.
Assistant Commissioner

Re: Westmont Venture Forum

Ladies and Gentlemen:

Pursuant to our prior correspondence with Dorene B. Wolf, Esq. of the Department of Corporations, on behalf of the Westmont Venture Forum (the "Forum"), pursuant to Section 25618 of the Corporate Securities Law of 1968, as amended (the "CSL"), Rule 250.12 of the California Code of Regulations (the "Regulations") and Commissioner of Corporations' Release 61-C, this letter constitutes a request for an interpretive opinion of the Department of Corporations (the "Department") relating to the conduct of the Forum in the manner outlined in this letter.

The Forum is a one-day event where selected companies from the California Central Coast will be provided the opportunity to present their businesses and products to an audience of invited institutional venture capital and similar investors either through 10- to 20-minute oral presentations or through a one-page business summary to be included in a single volume to be given to the investor attendees.

Background

The Forum is an "event" scheduled for May 28, 1997 and not an "entity" that is offering or proposing to offer or sell securities. The Forum is administered by a committee of volunteers from varied backgrounds, none of whom is or will be compensated for their services to the Forum. The Forum is affiliated with Westmont College ("Westmont") and viewed by Westmont and the other Forum volunteers as educational and a community service. The Forum is intended as a vehicle where companies located in the California Central Coast are able to present their businesses and business plans to institutional venture capitalists and other institutional accredited investors. The design of the Forum is to provide opportunity

for local companies to either present their businesses in informal speeches (approximately 10-20 minutes) or present their businesses through a one-page summary to be collected in a single volume (the "Forum Book") which would be provided to the attendees.

As described in the Forum's Operating Principles Statement, a draft of which is attached hereto as Attachment 1, a primary purpose of the Forum is to raise the profile of all companies, and commercial enterprise in general, in the California Central Coast among the venture community. It is not a specifically intended result of the Forum that any particular enterprise will receive venture or other funding. What the volunteers in the Forum hope to accomplish through the Forum event is to work with and educate companies in the Central Coast on how to present their companies to interested financiers and to provide an enclosed and controlled medium (the Forum event) through which to gain initial company exposure and contacts.

The Forum will be divided into three parts. In the morning, invited venture capitalists will be asked to present to small companies venture capitalists' primary considerations in making their investment decisions. This part of the Forum is intended to be educational for the participating companies. There will also be a luncheon with a guest speaker who is experienced in either the investor- or company-side of financing. Again, this is intended to be primarily educational to all invited persons. Following the morning presentation and continuing after lunch, the presenting companies will have an opportunity to showcase their companies, without presenting any specific financing program (see the Operating Principles Statement).

In preparation for this opportunity, the Forum's volunteers will have worked with the presenting companies to critique their business plans and presentations and to provide education in relevant areas, such as the parameters of the federal and state securities laws. This process will have taken place before any presenting company is known to venture capitalists to be presenting at the Forum and well before any presentation.

Selection and Preparation of Participant Companies. Participant companies are being identified and screened by selected members of the Forum steering committee with business and investing backgrounds. In addition, the Forum has run an ad in the local newspaper directed to local companies to solicit business plans for review. This ad was not directed to and did not solicit venture capitalist response. A copy of the ad is attached hereto as Attachment 2.

After identifying potential presenting companies, Forum volunteers review in detail the business plans submitted and interview the presenting candidates. This review and interview process will include education on the structure, purpose and operating principles of the Forum, and trial presentations and critical evaluation. As stated in the Forum's Operating Principles Statement, the Forum will exclude public companies and companies in registration. Forum volunteers came to the consensus that those companies whose securities are publicly traded already have knowledge of and access to the capital markets and do not have as great a need for the benefits the Forum is intended to help provide. In addition, it is the stated position of the Securities and Exchange Commission that a company that has filed a registration statement has commenced its "public offering." The Forum volunteers believe that the involvement of a company

in registration would not be appropriate because of such public offering status and because participation may also constitute a violation of such company's quiet period.

Selection and Qualification of Investor Attendees. As stated in the Forum's Operating Principles Statement, it is the intent of the Forum to raise the profile of the California Central Coast in the eyes of the venture capital community. More particularly, the Forum's focus is the institutional venture capital community within and outside California consisting of excluded purchasers within the meaning of Section 25102(f) of the CSL and accredited investors within the meaning of Rule 501(a) of Regulation D under the Securities Act of 1933, as amended (the "Securities Act"). It is anticipated that all or substantially all venture capital invitees will be representatives of recognized institutional investors of national standing, such as registered investment companies, banks, trust companies, insurance companies and their investment subsidiaries. One purpose of inviting persons of varied experience to serve on the Forum's volunteer committee was to ensure that there was sufficient "institutional knowledge" to identify and contact such recognized institutional investors. Sophisticated individual investors are not the intended audience for the Forum, although a limited number may be contacted, based only on a knowledge of each such person's financial and business expertise and income and net worth qualifications (such as from a recent history of exempt transaction investing on the basis of accreditation). While the general public will not be given notice of the event or invited to attend, there will be persons who attend who may not be accredited investors, including persons affiliated with the Forum, local politicians and Westmont representatives and students, reporters and others selected by the Forum. Consistent with the Forum's Operating Principles Statement, any such persons must represent to the Forum that their purpose in attending the Forum is not actual or intended investment. The Forum's investor invitations will not involve broadcast e-mail or advertising in the Internet. However, the Forum intends to make available general information about the Forum on a World Wide Web site.

It will be the responsibility of the Forum volunteers to collect and review the invitee contacts and responses. The committee has delegated this duty to its investment banker/venture capitalist participants, who are in charge of developing venture capitalist invitation lists for Forum approval, and the securities lawyers on the Forum committee (or their affiliates), who will be responsible for reviewing the invitation list for invitee classification (such as investment company, bank, trust company or accredited individual) and thereafter for review of the questionnaires and registration lists. Personnel at the Forum's registration desk will be responsible for confirming identities, distributing badges and admitting invitees to the event. Any person not invited will have to pay a $200 fee at the door, excluding persons affiliated with the Forum, local politicians and Westmont representatives and students, reporters and others selected by the Forum. The Forum will inform each participating company that the subsequent purchase of any security by an attendee of the Forum would not relieve a participating company from, nor would the Forum be a substitute for, the required independent evaluation of an investor's accreditation, and that such investor's attendance at the Forum alone should not be a sufficient basis to form a reasonable belief that such investor is accredited and qualified.

Materials to be Presented. Company presentations to be developed in consultation with Forum volunteers will be limited to oral presentations of the company's business, existing products and products in development. Visual aids will also be permitted, but presentation of specific financing proposals will be prohibited, as will discussions of proposed or potential financing structures.

After presenting and participating companies are identified and their company materials have been reviewed, one-page business summaries will be prepared for inclusion in the Forum Book. These will consist of summaries of the companies and their products, and will not include information related to capitalization or specific securities. The Forum Book will also include appropriate legends stating that no securities are being offered and that securities can only be offered or sold pursuant to a prospectus or other offering document issued pursuant to registration/qualification under the Securities Act and the CSL or an exemption therefrom. A similar statement will be made to persons present at the Forum.

An integral part of the education process of the Forum will be instruction to the participant companies (presenting and nonpresenting) that if, as and when one or more potential investors decide to discuss a potential investment with such company, such participating company will have the legal obligation to take appropriate steps to comply with the Securities Act, the CSL and the Regulations of the Department. These obligations will include the necessary due diligence investigation by such company to determine the accredited nature of their potential investors.

The Forum Steering Committee. Accompanying this letter as Attachment 3 is a list of the Forum steering committee members and their professions or business affiliations. Although for organizational purposes the committee has a chair and specific persons are delegated tasks, the committee works as a committee of the whole. The members were selected for their diversity and their ability to help other companies in the Central Coast work through the learning process of the Forum, help such companies develop their presentations and help administer the Forum itself.

Westmont College's Involvement in the Forum. Westmont's interest in being a sponsor of the Forum is to participate in the educational aspects of the Forum, for its students and professors, and increase its involvement in the community. It will not receive any stock, funds or other compensation for its role. The initial model for the Forum came from the Michigan Growth Capital Symposium[1] and various California forums hosted by educational institutions. In the Central Coast, there are limited options for educational institution sponsors. The initial thoughts were to affiliate with either the University of California at Santa Barbara or Westmont College. It was believed that Westmont's relatively small size and agility were compatible with the entrepreneurial spirit of the Forum, and so Westmont was approached, and it offered to participate as the educational sponsor.

Forum Fees, Expenses and Related Issues. The $100 participant fees collected by the Forum are intended for and will be distributed solely to pay expenses of the Forum. Those funds are deposited by Westmont and only Westmont is authorized to withdraw the funds so deposited. The Forum's expenses include printing and reproduction costs, interim facilities rental and the cost of the facilities and meal at the site of the Forum, the Biltmore Hotel in Santa Barbara (which is the largest single cost). All agreements for reproduction, printing and facilities necessary to implement the Forum will be negotiated

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[1] Attached for your information as Attachment 4 is a copy of the "no action" letter issued by the Securities and Exchange Commission with respect to the University of Michigan's Michigan Growth Capital Symposium (the "Michigan No-Action Letter"). The structure of that symposium as expressed in that "no action" letter serves as the framework under which the Forum has sought to operate.

on an arms' length basis with unaffiliated third parties. Any funds not used will be retained for use in presenting the succeeding year's Forum. No member of the Forum committee will be paid from the fees or otherwise compensated.

Because substantially all of the expenses of the Forum are tied to facilities, reproduction and printing, the $100 fee will be the same for both the companies chosen to given an oral presentation, and the companies who will only present a summary page in the Forum Book. These costs are to be borne equally by all companies receiving the training, critique, education and presentation opportunities, whether or not such companies have an oral presentation at this year's Forum. Neither the $100 fee for administrative costs nor any other fee will be contingent upon the completion of any securities transaction.

The Forum will not receive, directly or indirectly, compensation for matching or introducing venture capitalists and businesses. There are no finder's or similar fee arrangements between the Forum and venture capitalists or other businesses. Similarly, the Forum and the Forum volunteers will not participate in any stock purchase from the issuing companies. However, if after the Forum is closed, a Forum volunteer wishes to invest, that would be between that individual or his or her institution and the issuing company, but there is no pre-planned arrangement.

Neither the Forum nor any of its volunteers will be giving advice with respect to the advisability of investing in the participating companies. The threshold inquiry in the invitation and screening process is to determine that the venture capital investors who attend the Forum will possess the requisite skills to undertake their own decisions.

The Forum will not be a mechanism for negotiating particular investments. Discussion of specific "transactions" is prohibited at the Forum. Because of this, the Forum will not handle any funds or securities involved in completing any particular transactions that a presenting company may later enter into with any invitee or any other party. There will also be no paid referrals involving the Forum.

Securities Law Issues

The volunteers of the Forum believe, and we are of the concurring opinion, that the Forum has not offered and will not offer any securities. In preparing the structure of the Forum, its organizers were concerned about the uncertainties in this area. Without concluding that an offer of a security will occur at the Forum (and taking specific measures to avoid that result), the Forum instituted detailed procedures to maximize the conformity of the Forum's structure to existing legislative exemptions from qualification, principally Sections 25102(a) and 25102(f) of the CSL and Rule 506 of Regulation D and Department Release 102-C. Regardless of these efforts by the Forum, we believe that if the Department determines that the presentation of a summary of a business plan or the presentation of a business plan in the Forum context is the offering of a security, then the Department should issue appropriate regulations or interpretive advice to accommodate the needs of the business, investor and legal communities in this area, not only for forums but for the entire investment industry and all applicable issuers.

We believe that the structure of the Forum and its safeguards further the multiple purposes of the securities laws, including principally investor protection and accommodating fair and reasonable business practices, and that interpretation that the activities at the Forum do not constitute offers of securities or are properly exempt is proper. It has been the Forum's approach to emphasize in its process securities law education and compliance and to preclude presentation of securities terms or conditions. We would like to suggest approving this model as the most practical interim solution, and we believe it would prevent the chilling effect on all venture capital forums and the limit on the ability to attract equity for California companies that a "deemed-offer" conclusion would produce.

The Forum has undertaken to include, as part of its grooming of the presenting companies, education on the necessity in the offer and sale of securities to comply with all applicable Department rules and regulations, as well as applicable federal securities laws. Each presenting company will further be educated on what these requirements are. The Forum also intends to make each presenting company sign an undertaking that they will not offer to sell securities without the advice of counsel or without complying with the Department's rules and applicable federal securities laws. Further, the Forum will constrain the presentations at the Forum to business plan related information, and presenting companies will be required to agree, in writing, not to discuss investment activities until they have complied with applicable law. The Forum intends to also announce similar caveats to those present at the Forum.

These procedures, however, will best serve the purpose of the securities laws if the Department accepts the position that no offer of securities will occur at the Forum as its structure has been detailed. The Forum requests the Department's interpretive opinion that no offer of securities will occur at the Forum as it has been detailed.

Alternatively, these procedures will also work, we believe less optimally, on the basis of the exemptions from qualification under Sections 25102(a), 25102(f) and 25102(n) of the CSL and Section 18 of the Securities Act, Rule 506 of Regulation D promulgated under the Securities Act and Department Release 102-C.

The Forum has placed an advertisement in a local newspaper relating to the Forum and directed to potential presenting companies only. This correspondence resulted only in limited presenting company responses. We are of the opinion that this communication did not constitute an "advertisement" within the meaning of Section 25002 of the CSL. At the time of the communication, no potential presenting company had been identified, neither was there any identified or identifiable security for the communication to be "in connection with."[2] The Forum requests the Department's interpretive opinion that such an advertisement or a subsequent and substantially identical notice targeted only to presenting companies will not constitute an "advertisement" restricted under Section 25002 of the CSL and Rule 260.102.12(j).

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[2] Similarly, under Rule 260.102.12(j), with no security to offer, there can be no offer or sale, and with no offer or sale, there can be no advertising promotion.

There has not been and will not be any advertising or general solicitation of investors to attend the Forum. As discussed above and below, investors to be contacted will be limited to persons who are both accredited investors within the meaning of Rule 501(a) under the Securities Act of 1933, as amended (the "Securities Act") and excluded purchasers under Section 25102(f) of the CSL. Thus, invited venture capitalists who attend the Forum will be accredited investors and excluded purchasers.[3] To the extent any invitation could constitute an offer, which we do not believe is appropriate, such offer would be made privately and without general solicitation.[4] There are also likely to be some persons, such as Westmont students and others, who will not be accredited investors or excluded persons, but the Forum will not invite the general public. The Forum requests the Department's interpretive opinion that no general solicitation or publication of an advertisement in connection with the offer of a security will be effected at the Forum as it has been detailed.

No "Offer." We are of the opinion that presenting companies at the Forum will not be making offers within the meaning of Section 25017 of the Securities Law. That section defines an offer as an "attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value." Each presenting company will present their business at the Forum but will be restricted from presenting any specific financing proposal. Companies that do not present but have a one-page summary of their business and its products (but not its capitalization, capital needs or the like) will have made available only limited information. As part of the education process as described above, the participants (presenting and nonpresenting) will be instructed that if, as and when one or more potential investor decides to discuss a potential investment with such company, it will be the legal obligation of such presenting company to take appropriate steps to comply with the Securities Act, the CSL and the Regulations of the Department, including conducting sufficient inquiry into the accredited status of all investors.

We are of the further opinion that if such offers were determined to occur at the Forum, because of the structure and safeguards of the Forum, they would be effected in compliance with the CSL and the Regulations of the Department thereunder.

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[3] We note Section 18(b)(4)(D) of the Securities Act and Department Release 102-C. In light of such recent enactments and to reduce complexity in administering the review of venture capitalist attendees, the Forum may limit screening to accredited investors only. Although the Forum will only invite accredited investors and excluded purchasers, there are likely to be persons who listen to the presentation of the business plans who may not be accredited investors or excluded purchasers, such as the other companies and Westmont students. However, we believe these persons are not reasonably viewed as potential investors.

[4] As described above, all investor attendees will be solicited on a one-to-one basis. Therefore, the Forum will not constitute "a seminar or meeting whose attendees have been invited by any general solicitation or general advertising" within the meaning of Rule 260.102.12(j). Venture capitalists will be invited through personal contacts based on preexisting relationships. Utilizing such preexisting personal or business relationships is not intended to qualify such relationships under the first clause of Section 25102(f)(2), but, rather, to reinforce the non-public mechanism being used to assure that invitees have the business and financial experience consistent with the alternate second clause of Section 25102(f)(2).

Exemption of Offer. Based on our review of Section 18 of the Securities Act, Section 25012(a), Section 25102(f) and Section 25102(n) of the CSL, we are of the opinion that, to the extent an offer by a presenting company is deemed to occur at the Forum, under the structure of the Forum, such offer and, subject to compliance by an issuing company with the requirements thereof, any ensuing sale would be subject to proper exemption from qualification under both Securities Act Section 18 and CSL Sections 25102(a) and 25102(f). We further believe that public policy is being served in this regard by the Forum's policy of requiring all presenting companies to be educated through the selection process on the legal requirements of the Securities Act and the CSL. A specific intended result of the Forum process is to timely permit applications or exemptive filings in connection with specific transactions that may at a future date develop.

The following briefly describes why we believe that offers that may be deemed to occur at the Forum (which, as stated above, we do not believe is an appropriate conclusion) would nonetheless be eligible for exemption under Securities Act Section 18 (and Department Release 102-C) and Sections 25102(a) and 25102(f) of the CSL:

1. Because of the detailed screening process to be implemented by the Forum for investors, there would be offers to zero persons as calculated under Section 25102(f) and Rule 506 of Regulation D promulgated under the Securities Act. If a presenting company subsequently effects sales of securities to more than 35 persons in the same offering, then that company will be outside of the safe harbors established by Regulation D and Section 25102(f). Because the Forum is structured to avoid presentations of specific financing programs, and therefore no offers of securities, we believe that there is little possibility of this occurring. However, such possibility is a significant reason for the securities "education" that the Forum will be providing to presenting companies as part of the selection process.[5]

2. Through the invitation process to be implemented for venture capitalist and other qualified invitees, all such attendees will, by reason of their business or financial experience, be reasonably assumed to have the capacity to protect their own interests in connection with any securities transaction, as required under Section 25102(f)(2). The accredited nature of the investor invitees will also be consistent with the requirements of Rule 506 of Regulation D and Section 4(2) of the Securities Act as discussed in the Michigan No-Action Letter. Nonetheless, all participating companies will be instructed to conduct an independent investigation with respect to any future investor, whether or not such investor attended the Forum.

3. Each attendee will be required to represent to the Forum as a condition of attendance that such attendee is aware of the legal requirement that if such attendee purchases securities of any presenting company at the Forum that have not been registered/qualified, such investor will only purchase securities for their own account and not with a view to or for sale in

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[5] Such offers would also qualify as non-public offers under Section 25102(a) and Rule 260.102.1. The Forum will be including reference to this section and its requirements in its presenter education.

connection with any distribution, in compliance with Section 25102(f)(3) and Rule 506 of Regulation D.

4. As discussed above, there will be no general solicitation of investor attendees and no advertisement within the meaning of Section 25002 of the Securities Law has occurred or will occur, as required by Section 25102(f)(4), Rule 260.102.12(j) and Rule 502(c) of Regulation D.

5. In addition to appropriate legends and statements at the Forum that no offers of securities are to be made and that such offers can only be made pursuant to a prospectus or other appropriate disclosure document pursuant to registration/qualification or an exemption therefrom, presentation materials, including the Forum Book, will contain a legend substantially in the form set forth in Section 25102(a) of the CSL.

Based on the foregoing, on behalf of the Forum we request the interpretive opinion of the Department that the Forum may be conducted in the manner described herein without such activities constituting an offer of securities that would be required to be registered under the CSL. In requesting such interpretive opinion, we acknowledge that any such opinion would necessarily not address the activities of any presenting company outside the Forum or any activities of such presenting company that are inconsistent with the structure and guidelines of the Forum as set forth in this letter and the Forum's Operating Principles Statement.

If you have any questions, or if you require any additional information, please contact the undersigned at (805) 568-1151 (phone) or (805) 568-1955 (fax).

Very truly yours,

NIDA & MALONEY

By:
Theodore R. Maloney

TRM:clf
Enclosures

cc: C. Paul Davis
(by fax #568-1462)

6647

NIDA & MALONEY
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

801 GARDEN STREET, SUITE 201
SANTA BARBARA, CALIFORNIA 93101

JOSEPH E. NIDA

RECEIVED
DEPT OF CORPORATIONS
OFFICE OF POLICY
97 MAY -7 PM 3:18

TELEPHONE: (805) 568-1151
FACSIMILE: (805) 568-1955
INTERNET: nandm@rain.org

May 5, 1997

BY FEDERAL EXPRESS AND
BY FAX #916-322-5875

California Department of Corporations
Office of Policy
980 9th Street, Suite 500
Sacramento, California 95814

Attention: William Kenefick, Esq.
Assistant Commissioner

Re: Westmont Venture Forum (the "Forum") - Your File No. OP 6647

Ladies and Gentlemen:

This is in response to your letter of April 29,1997 addressed to Theodore R. Maloney, my partner, regarding your initial review of the interpretive opinion request dated April 23, 1997. We will respond to your questions in the order presented.

1. At present, the Forum does not expect to obtain a "No Action" letter. The Forum believes that it is substantially within the scope of the University of Michigan Growth Capital Symposium "No Action" letter (the "Michigan Letter") and does not intend to secure its own "No Action" letter at this time.

2. The Michigan Letter provides as follows:

1 - the Symposium, co-sponsored by the University of Michigan and the Office for the Study of Private Equity Finance of its School of Business, is a vehicle to provide Michigan firms with efficient access to the national private equity finance markets.

Forum Operating Principles Statement ("Forum OPS"): It is the belief of the persons involved in establishing the Forum that none of the efforts undertaken to date by government or private parties have adequately addressed the unique need of the California Central Coast and the emerging growth companies within the Central Coast to raise their profile in the established California and United States venture capital communities.

2 - presenter companies are selected by the Director of the Office for the study of Private Equity Finance and are limited to private firms; companies currently "in registration" are barred from participation, although public companies seeking additional funds in the future might be eligible to participate.

Forum OPS: Prospective presenters will be requested to submit a business plan to the Forum for review in the Forum screening process. On the basis of the experience of the individuals who have volunteered their time to the Forum, the screening committee will select seven to 12 of the nominated firms for Forum presentation. Firms not selected will be given explanations and recommendations for change or improvement and will, as appropriate, be invited to re-apply for the next year's program.

* * *

Only private firms will be considered for the Forum. Companies "in registration" will not be considered for the Forum, neither will public companies seeking additional financing.

*3 - while the Director may provide consulting service to some of the presenter companies, such services are limited to advising about the weaknesses of corporate structure, improving business plans and informing about available venture capital sources; such consultations [*2] have involved less than 5 percent of the presenters over the years.*

Forum OPS: Besides providing assistance in preparing the presentation, the Forum and its committee will offer no other service, and receive no compensation from presenters or attendees except for fees associated with the conduct of the Forum. No conditional fees or brokerage-type commissions will be charged to any participant.

* * *

All participating companies will be asked to pay a fee of $100 which will be used to cover the costs of their participation in the Forum. These funds will be paid to Westmont College and deposited in the Forum account, from which expenses of the Forum will be paid.

4 - the Symposium is publicized through targeted mailings to known accredited investors, limited generic advertising in the Venture Journal and by word of mouth from prior attendees.

> Forum OPS: All invitees will be sent a letter and a brochure announcing the date and place of the Forum, the schedule of events and the identity of speakers who will appear. Such contacts will be made by means of targeted mailings to known accredited investors. It is anticipated that mailings will be sent to approximately 250 to 500 entities. Attendees may also be solicited by similarly targeted telephone calls which will be based on preexisting business relationships with Forum committee members and will in all cases of interest be followed up with the full written invitation package.

5 - the Symposium arranges no prior contacts between presenter firms and attendees; no specific financing details are a part of the presentations made at the Symposium and no private placement materials are distributed there.

> Forum OPS: Private placement memoranda will not be permitted to be presented to any attendees at the meeting. If requested by any venture capitalist attendee, such materials will only be delivered to specific potential investors as the result of individual discussions away from the Forum in a mutually agreed manner. By contrast, it is anticipated that product advertising materials, technical writings and similar business documents may be provided to interested persons at the Forum. These documents will not be generally distributed, but may be made available in private rooms or table areas designated for presenters. Presenters will be instructed not to distribute this material to any attendee who does not have an official attendance badge that confirms that such attendee has been qualified as an accredited investor, etc. Neither the Forum nor its sponsors will provide an investor matching or similar service.

6 - besides providing assistance in preparing the presentation, the Symposium and its Director offer no other service, and receive no compensation from presenters or attendees except for fees associated with the conduct of the Symposium; no conditional fees or brokerage-type commissions are charged to any participant.

> Forum OPS: Besides providing assistance in preparing the presentation, the Forum and its committee will offer no other service, and receive no compensation from presenters or attendees except for fees associated with

the conduct of the Forum. No conditional fees or brokerage-type commissions will be charged to any participant.

The Forum did not establish a website this year, but may establish a website in the future consistent with Interpretive Opinion 96/2C.

3. Westmont College is a small college located in Santa Barbara, California, and we have attached a brief summary of the College which we received from the College. In addition, you state that a member of the Forum's Steering Committee/Working Group (the "Group") would be an investor. I do not know how you got that impression, but that is not the case. The reference that you may have indicated was to Roy J. Millender, Jr. who is an adjunct professor at Westmont College in the Economics Department, as well as an attorney in private practice and a private investor, who is an accredited investor. A number of members of the Group are investors and venture capitalists, but under no circumstances would Westmont College be an investor. However, Group members may subsequently become investors in participating companies if they meet the "accredited investor" definition.

4. The Forum Book will include a summary of each participating company, as well as summaries of companies who applied to present but which were not selected, together with materials from the sponsors of the Forum. I spoke to the counsel who participated in the Michigan Letter and he advised me that they have written materials describing the participants. We note that other similar programs in California and elsewhere present similar kinds of written information.

5. The draft Forum Operating Principles Statement is a draft pending the resolution of any matters with the Department of Corporations (the "Department"). If the Department finds the draft acceptable, then please consider it the final version.

6. The advertising for the Santa Barbara News-Press included a reference to see Paul Davis and not Westmont College. Paul Davis is a member of the Group who had the primary responsibility of qualifying possible presenting companies and, since the Forum has no facility or permanent office, Paul Davis's office was listed for interested companies to apply. The reference to a "Forum Bank" is a typographical error and should have been to "Forum Book." Please understand that the purpose of the advertisement was to secure business plans, and it was not for the purpose of securing possible investors. In the Michigan Letter, advertising was used to solicit investors. The Forum is much more conservative than in the Michigan Letter. There was and will not be advertising to secure any possible investors, and investors will be admitted by invitation, but there was and will not be general solicitation of investors as was the case in the Michigan Letter.

7. Technology Marketing is C. Paul Davis's business name, and he is neither an investment advisor or an investment banking firm or a broker-dealer. As described in paragraph 6. above, Paul Davis is an active member of the Group, but he has no other relationship to Westmont College. Mr. Davis, as

well as other Forum members, have been active in reviewing the business plans for the presenting companies. The Forum members who are participating in the reviewing process are, in general, sophisticated and experienced businessmen and women.

If you have any questions, or if you require any additional information, please contact the undersigned at (805) 568-1151 (phone) or (805) 568-1955 (fax).

Very truly yours,

NIDA & MALONEY

By: /s/ Joseph E. Nida

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Encl.

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All about Westmont

Founded:	May 22, 1940
Motto:	*Christus Primatum Tenens:* Holding Christ Preeminent
Enrollment:	1,200 students from 38 states, 10 countries, and 33 denominations
Personnel:	76 full-time faculty and 213 staff; The student/faculty ratio is 14 to 1
Alumni:	11,920 living alumni of record
Campus:	133 acres with 24 major buildings
Library:	Over 150,000 books and bound periodicals
Accreditation:	Western Association of Schools and Colleges; California State Board of Education
Tuition/Fees:	$17,150 (1996-97)
Room/Board:	$5,748 (1996-97)
Budget:	$30.7 million (1996-97)
Endowment	$11.26 million

Mission

The mission of Westmont College is to provide a high quality undergraduate liberal arts program in a residential campus community that assists college men and women toward a balance of rigorous intellectual competence, healthy personal development, and strong Christian commitments.

National Ranking

The Carnegie Classification of Higher Education, which includes all 3,600 accredited colleges and universities in the United States, ranks Westmont among the leading liberal arts colleges in the nation. The "highly selective" institutions in this group include only 10 other California colleges and universities. Several national publications, including *Barron's Best Buys in College Education, The Best Buys in College Education* edited by Edward Fiske, and *U.S. News and World Report,* have recognized Westmont for its excellence. *Parents of Teenagers* magazine named Westmont one of the best Christian colleges in the United States.

Academic Program

Westmont offers bachelor of arts and bachelor of science degrees in 25 liberal arts majors, nine preprofessional programs, a fifth-year credential program, and up to 18 units for internships and practica. Majors include: art, biology, chemistry, communication studies, economics and business, engineering/physics, English, English-modern languages, French, history, international studies, kinesiology, liberal studies, mathematics, music, natural science, philosophy, physics, political science, psychology, religious studies, social science, sociology and anthropology, Spanish, and theatre arts.

Off-Campus Programs

Students may attend semester-long programs in San Francisco, Washington, D.C., Europe, England, Costa Rica, Africa, and Israel, or visit one of the 12 other colleges in the Christian College Consortium for a semester. Professors also lead summer programs overseas, including a business institute in European capitals.

Beyond the Classroom

Student musicians perform with vocal and instrumental ensembles. The Westmont Classical Repertory Theatre presents two productions each year. Art majors exhibit their work in campus galleries. Students may choose to participate in the Westmont Leadership Development Program. Five national academic honor societies recognize outstanding students.

Community Service

Students are actively involved in the life of the local community as volunteers, employees, and interns for a wide variety of businesses and organizations. They serve in more than 30 student-run ministries on and off campus, and several hundred travel to Mexico each spring for an annual outreach to needy people in villages outside of Ensenada.

Athletics

Many students compete in the extensive intramural program and 11 intercollegiate sports: basketball, baseball, soccer, tennis, cross-country, and track for men; and soccer, tennis, volleyball, cross-country, and track for women. Westmont has won three National Association of Intercollegiate Athletics national championships and numerous district titles.

Financial Aid

A comprehensive financial aid program includes all state and federal grant and loan programs, scholarships, funds for Westmont loans, grants, and scholarships, and part-time work on and off campus. About 84 percent of students receive financial aid.

History of Westmont

Ruth Kerr and others founded Westmont in 1940 as a liberal arts college committed to the historic Christian faith. Dr. Wallace Emerson, the first president, envisioned an institution that rivaled the best colleges nationwide, and he set the standard for academic rigor and excellence that still applies.

By 1945, Westmont outgrew its facilities in Los Angeles and moved to the former Dwight Murphy estate in Santa Barbara with its 125 acres and beautiful Mediterranean house. Acquiring another property and the former Deane School for Boys completed the 133-acre campus that features the pathways, stone bridges, and gardens of the former estates.

Achieving accreditation in 1958, Westmont began building its campus in the 1960s, adding nine major buildings. Enrollment rose to 840, and in 1976, the college received approval for 1,200 students.

During the 1980s, Westmont earned increasing national recognition for its academic program, leadership training, and unique emphasis on intellectual, spiritual, and personal growth. Under the 20-year tenure of President David K. Winter, the college has attracted a highly qualified faculty, created a vital Christian community, and is building a strong financial base for the 21st century.

Gift Support

Thanks to the generosity of alumni, parents, friends, foundations, and businesses, the College Advancement Office raises money each year for *The Westmont Fund*, which supports annual operating expenses such as student scholarships, operations, facilities, and special programs.

Donors who give $1,000 or more to Westmont on a yearly basis become members of the *President's Associates*. For more information about this program, please call Carolee Peterson at (805) 565-7356.

Individuals who remember the college in their will or estate qualify for the *Wallace Emerson Society*. Learn more about this group from Iva Schatz at (805) 565-6034.

Westmont relies on gifts to close the gap between what it actually costs to educate each student and what the college charges in tuition and fees. Historically, this gap has totaled about $2,000 per student each year, requiring Westmont to provide more than $2 million in additional income.

For more information about giving opportunities, contact Stephen C. Baker, vice president for development, at (805) 565-7156.

Welcome to Westmont

We warmly welcome you to Westmont and invite you to enjoy our many resources and facilities. Whether your interests include the arts, sports, astronomy, or the life of the mind, we have something to offer. If you need an intern, part-time employee, or babysitter, you'll find Westmont students among the best! I hope you will visit campus often.

—President David K. Winter

Creative and Performing Arts Events

Reynolds Gallery in the Westmont Art Center hosts exhibits by prominent artists. 565-6162.

Student musical ensembles and faculty musicians perform a variety of concerts. 565-6040.

The *Westmont College Repertory Theatre* presents productions in November and March. 565-6040.

Chapel/Convocation and Lectures

Visit Chapel/Convocation during the school year (Monday, Wednesday, and Friday from 9:15 to 10:00 a.m. in Murchison Gym). 565-6170.

The *Erasmus Society Lectures* bring leading scholars to campus. 565-6055.

Sports Events

Watch the *Westmont Warriors* compete in exciting NAIA contests in 11 sports. 565-6010.

Athletic Programs and Facilities

Families and individuals can join Westmont's *summer swim and tennis club*. 565-6010.

Children in grades three through eight can attend *Westmont Warrior Summer Sports Camps*. 565-6010.

Local residents are welcome to run on the track at any time and use the pool, tennis courts, and racquetball courts for a modest fee. 565-6010.

Student Employees

Westmont students hold a variety of part-time jobs and serve as interns and volunteers. 565-6031.

Carroll Observatory

The observatory is open the third Friday of every month at sunset (weather permitting). 565-6055.

Westmont Post Office

Westmont has a fully functioning post office, including United Parcel Service. 565-6077.

NIDA & MALONEY
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

801 GARDEN STREET, SUITE 201
SANTA BARBARA, CALIFORNIA 93101

TELEPHONE: (805) 568-1151
FACSIMILE: (805) 568-1955
INTERNET: nandm@rain.org

JOSEPH E. NIDA

June 16, 1997

BY FAX #916-322-5875
California Department of Corporations
Office of Policy
980 9th Street, Suite 500
Sacramento, California 95814

Attention: William Kenefick, Esq.
Assistant Commissioner

Re: Westmont Venture Forum (the "Forum") - Your File No. OP 6647

Dear Mr. Kenefick:

We concluded the Forum on May 28, 1997 and we believe that it was a successful event. It was operated along the lines as described in our prior correspondence with you. I know that you have been busy, but we would like to have some closure on the issues raised in our letter to you of May 5, 1997 since we expect to plan for the 1998 Forum starting in early Fall.

Your attention to this request is very much appreciated.

Very truly yours,

NIDA & MALONEY

By
Joseph E. Nida

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6647

NIDA & MALONEY

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

801 GARDEN STREET, SUITE 201
SANTA BARBARA, CALIFORNIA 93101

JOSEPH E. NIDA

TELEPHONE: (805) 568-1151
FACSIMILE: (805) 568-1955
INTERNET: nandm@rain.org

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August 15, 1997

BY US MAIL AND
BY FACSIMILE #916-322-5875
California Department of Corporations
Office of Policy
980 Ninth Street, Suite 500
Sacramento, California 95814-2725

Attention: William Kenefick, Esq.
Assistant Commissioner

Re: Westmont Venture Forum (the "Forum") - Your File No. OP 6647

Ladies and Gentlemen:

This is in response to your letter of July 22, 1997 regarding your review of the interpretive opinion request dated April 23, 1997 and our subsequent letters dated May 5, 1997 and June 16, 1997. We will respond to your questions in the order presented.

1. Both the Forum and the Michigan Symposium (as do other symposia) have two distinct communications with third parties. These communications are (i) communications to potential participant companies and (ii) communications to potential investors/invitees.

In order to determine whether there was participant company interest, the Forum communicated with potential participant companies through an advertisement in a local newspaper. At the time of the advertisement, there had been no solicitation of investors, investors were not targeted or invited in the advertisement and no investors responded to the advertisement. At the time of the communication, no potential presenting company had been identified, and there was no identified or identifiable security for the communication to be "in connection with."[1] In the case of the Michigan Symposium where there was a history of holding the Symposium and an established base of participating investors (and where an investor could be deemed to be "offering to purchase" or "soliciting an offer to sell" a security through the Michigan Symposium's advertising directed at companies), in the Forum's case, at the time of the advertisement, there was no base of investors from

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[1] Similarly, under Rule 260.102.12(j), with no security to offer, there can be no offer or sale, and with no offer or sale, there can be no advertising promotion.

whom any deemed offer to purchase or solicitation could come. We are of the opinion that the Forum's communication did not constitute an "advertisement" within the meaning of Section 25002 of the California Corporate Securities Law ("CSL") or an offer within the meaning of Section 25017(b) of the CSL. The Forum further believes that the activities of the Forum in initially contacting participant companies was even more removed from an "offer" under Section 2(3) of the Securities Act of 1933, as amended, or Section 25017(b) of the CSL than the activities of the Michigan Symposium, and that no-action relief on this point is not necessary or appropriate. The primary issue in the Michigan Symposium no-action letter was whether a general solicitation had occurred, not whether an offer had occurred in the Symposium's activities. As described above, the Forum's activities with respect to companies could not constitute a solicitation. Therefore, the relief sought by the Michigan Symposium is not necessary in this instance.

With respect to solicitation of investors, while the Michigan Symposium used an open solicitation in a periodical of national circulation, the Forum employed "closed" contacts with individual investors and venture capital institutions. Again, we are of the opinion that such "closed" contacts are well within the activities of the Michigan Symposium and that no-action relief on this point is not necessary or appropriate.

2. Accompanying this letter are samples of materials for a presenting company and a non-presenting company's materials to be included in the Forum book. We have not been able to secure the University of Michigan's materials but we attached one from the Utah Venture Capital Conference and the Cal Lutheran University Enterprise Development Center Forum.

3. Technology Marketing is C. Paul Davis' fictitious business name as a sole proprietor. He is neither an investment advisor or an investment banking firm or a broker-dealer. Mr. Davis has been an investor in businesses in the past and has provided business and financial advice to small companies on a project or per-hour basis.

Prior to our May 5, 1997 letter to you, but unknown to us at the time of our May 5 and June 16 letters, Westmont College established an office at its Business and Economics Department for all Forum communications. This office will be the sole communications medium for the Forum in the future.

If you have any questions, or if you require any additional information, please contact the undersigned at (805) 568-1151 (phone) or (805) 568-1955 (fax).

Very truly yours,

NIDA & MALONEY, P.C.

By
Joseph E. Nida

JEN:bmb
Enclosures

C:\a_wpfils\WestmontForum\DeptofCorp7.ltr.wpd

F. LESENTER

Catalytic Solutions, Inc.
126 Powers Avenue
Santa Barbara, California 93103
(805) 962-2084, FAX (805) 962-0704

Business Description: Catalytic Solutions, Inc. ("CSI") is entering its second year of operation developing low-cost catalyst products utilizing advanced materials technology. Proprietary, patentable, materials technology and processes were refined during 1996 as part of a research, development and licensing arrangement between CSI and NGK CERAMICS USA, Inc., a subsidiary of NGK Insulators, Ltd. of Nagoya, Japan. The company is currently conducting product testing with a large utility engine producer and is preparing to launch comprehensive validation tests under the direction of major U.S. automotive manufacturers. CSI plans to sell catalytic converter products world-wide to small engine, aftermarket, and new automobile manufacturers.

Technology Description: CSI's catalysts offer improved performance characteristics compared to industry-standard products utilizing costly platinum-group metals ("PGM's"), while allowing volume price points that are a fraction of PGM-based converters. In addition, our technology provides for design flexibility which allows customized products for a variety of market applications. Simple, predictable and reliable materials and processes will assure rapid production start up using proven equipment and controls

Proprietary Description: CSI applied for it first patent in April 1996 and has filed for international protection in April 1997. Additional invention disclosures are being processed.

Regulatory Issues: New catalyst technology must meet standards set by the Environmental Protection Agency (EPA), California Air Resources Board (CARB), as well as various international agencies. CSI will independently perform the aftermarket converter testing at an "approved" independent laboratory. CSI will work under the direction of engine and automobile manufacturers to meet specific regulations.

Market Size: Total combined world-wide catalyst business is about $6 billion annually. Approximately 35 million automotive catalytic converters were sold world-wide in 1995 accounting for $1.1 billion in revenue (a majority of these converters hold two catalyst containing substrates). The U.S. emission control catalyst segment is currently $600 million and growing at 6% annually. US auto catalyst sales are growing at 1 million units per year while EPA and CARB regulations for "utility engines" will spur strong growth.

Customers: Utility engine manufacturers, aftermarket catalytic converter suppliers, automobile manufacturers.

Funding Amount Requested: $3 million to be invested by June 1997.

History: $450,000 by NGK Ceramics USA, Inc., during May 1996 through April 1997. $300,000 in a private placement closing May 30, 1997.

Next Major Milestones and Timing: Discuss successful utility engine test data with identified manufacturers, May 1997. Perform EPA and CARB aftermarket catalytic converter qualification testing, June 1997. Perform vehicle testing and present data to identified individuals at the "Big-Three" automobile manufactureres, May-July 1997.

Personnel:
Stephen J. Golden Ph.D. - 10 years in the advanced materials field and has performed ground breaking research in the fields of superconductors, advanced batteries, and oxide catalysts.
Eric M. Elg - 8 years industry experience in productizing advanced technologies.
William R. Anderson - 30 years industrial experience, ex-CEO Applied Magnetics Corporation.
Robert J. Sinclair - 35 years automotive industry experience, ex-Chairman and CEO of Saab Cars USA, Inc.
Anthony K. Cheetham Ph.D. - Professor of Materials Science UCSB, Director - Materials Research Laboratory.

PARTICIPATING COMPANY

AMERICAN WIRELESS NETWORKS
327 E. Plaza, Suite 7. Santa Maria. Calif.93454
Tel: (805) 928-3366 ** Fax: (805) 928-4333 ** Email: awninc@impulse.com

Business Description: Company is a California corporation, registered in 1996. We build *broadband* wireless radio and satellite networking products; and design, install, commission and maintain telecommunications networks around the world. This has been the work of the founding partners for over 15 years.

Technology Description: We are designing a core set of hardware and software modules, called ACPC®, which allows us to assemble a wide variety of broadband wireless radio and satellite products. The discriminators for the ACPC® products are (i) equipment cost, (ii) improved management of scarce network capacity (recurring cost), and (iii) ease of use and maintenance. Our first product will be released in Q'2 1998: VillagePhone®. A rural telephony satellite product.

Proprietary Description: The architecture of ACPC® allows us to build low cost hardware (including proprietary silicon chips), together with *embedded* software and *application* software that meet our aggressive cost targets and achieve plug'n play operation.

Regulatory Issues: Although our products are designed to be independent of satellite type or radio frequency, other regulatory issues will impact the market size at large: (i) degree of national and regional antenna ownership deregulation; (ii) cross-border open-skies liberalization; and (iii) homologation or type-certification in parts of the world.

Market Size: In 1996 the satellite market was estimated to be US$11B; the wireless radio market to be at US$6.8B. By 2000 these markets are estimated to be at US$20B and $25B respectively. Because our ACPC® products represent a paradigm shift in cost and ease-of-use, we believe we will bring wireless and satellite networking to a wider user base than is viable today. Our business plan forecasts revenues exceeding US$40M by FYE2000, and US$60M by FYE2003.

Customers: We will sell our products directly to service providers, systems integrators and end users. Also to deregulated Telcos bypassing each other's wired facilities. We are also establishing regional joint venture systems engineering houses to maintain local market presence, provide engineering services and act as a distribution channel for our proprietary products. We are organizing the company into Business Units that focus on industry sectors: e.g. the natural resources industry (mining, petroleum, forestry), global corporate intranets, domestic/regional carriers, Internet Service Providers (ISPs), the US government/military, foreign governments/military, multimedia entertainment etc..

Funding Amount Requested: US$5M to implement our business plan. US$2.3M to complete the major modules of ACPC® and release the first product, VillagePhone®. With "seed" financing we would seek 2nd round funding in Q'4 1998 or Q'1 1999.

Next Major Milestone & Timing: Detailed design of 2 of the 4 "chips" which are members of our ACPC® core technologies is due to start in June in order to meet first product releases in 1998. We also expect to be negotiating a major engineering services contract (est.$3.8M) before August 1997. Our 1997 revenues (all from engineering services; no product sales) is forecast to be above $2M.

Personnel: Currently: Four(4). Dr.S.S. Kamal is CEO and President. Alan DeMars is Treasurer and Head of Core Technologies. Sean O'Brien and Jim Davis are senior design engineers. Our business plan defines a staff level of ~22 people by Q'1 1998 and ~45 people by FYE 1998.

WAYNE BROWN INSTITUTE
INVESTORS CHOICE

The Twelfth Annual Utah Venture Capital Conference

Thermodyne, Inc.

Fred Jaeger, President & CEO
Voice (801) 583-2000, Fax (801) 583-6345
University of Utah Research Park - 391-B Chipeta Way - Salt Lake City, UT 84108

Business Description: THERMODYNE is a development stage R&D company involved with energy conversion technology. The Company intends to manufacture components and market development contracts together with a strategic partner. THERMODYNE components can be used in any product that converts one form of energy to another, including air conditioners, refrigerators, portable power generators and car engines.

Technology Description: THERMODYNE's solid-state devices are designed to efficiently and directly convert electricity to cooling, or alternatively, heat to electricity. The proprietary technology has no moving parts, creates no noise, and uses no harmful chemicals. Advantages include more efficient and economical use of energy and lower environmental emissions.

Proprietary Description: THERMODYNE has filed a patent application on its technology with the U.S. Patent Office. International patent protection will follow. A comprehensive patent search of related inventions was commissioned to strengthen THERMODYNE's position on patentability and technological superiority. THERMODYNE has received a trademark Notice of Allowance.

Regulatory Issues: Legislative mandates for cleaner air and improved energy efficiency will help drive market acceptance for the Company's technology. THERMODYNE's customers, who are end-use product manufacturers, will perform UL and other product testing.

Market Size: Market roll-out plans in the U.S. include Stage-1 thermoelectric market at $50 million, Stage-2 air conditioning & refrigeration at $2 billion, Stage-3 waste heat recovery and power generation at $5 billion, and Stage-4 hybrid electric car engines at $10 billion.

Customer: The Company will sell brand name components and development contracts to consumer product companies, who will distribute end-use products through existing market channels. THERMODYNE's marketing model is similar to the "Intel Inside" concept.

Funding: Two-part, $2 million, milestone funding is sought; $0.5 million for proof-of-concept tests and initial prototypes, and $1.5 million for early marketing efforts to attain a self-funded cash flow in 2-3 years. In 3-4 years, second stage financing will fund expanded manufacturing and marketing activities.

Next Major Milestone: Complete proof-of-concept tests.

Current Personnel: Frederick Jaeger, President and Chairman; Dr. Yan Kucherov, Vice President - Research and Development; and Paul Evans, Vice President & General Counsel.

CALIFORNIA LUTHERAN UNIVERSITY

ENTERPRISE DEVELOPMENT CENTER FORUM
COMPANY FACT SHEET

Company Name: Genesis Technologies, LLC.
Company Address: 523 South Poplar Avenue
Brea, California 92821-6652

Phone: (714) 990-6700 **Fax:** (714) 990-4001

Business Description: Genesis Technologies, LLC, currently a California Limited Liability Company, is working to develop and market a patented disposable medical device.

Technology Description: The device replaces two current use intrauterine monitoring devices with a single device. An invasive fetal procedure is eliminated.

Proprietary Description: Genesis owns the U.S. patent that protects the device.

Regulatory Issues: Company anticipates: Class II device consideration, FDA approval based on 510(k) clearance as a device substantially equivalent to predicate devices.

Market Size: U.S. perinatal/neonatal market revenues exceed $500 million annually, with 7% annual growth

Customers: Hospitals and Birthing Centers

Funding:

Amount Requested:	$3.2 million
Stages:	Terms of funding are negotiable.
History:	Internal funding only to date.
Revenue:	N/A

Next Major Milestones to be Accomplished and Timing:

Funding to be completed 6/97, software algorithms to be completed 12/97, prototypes to be completed 2/98, and regulatory submittals to be completed 6/98.

Personnel:

Chairman/CEO:	N/A, Member managed LLC.
President/Founder:	Randall I. Paul
Marketing:	John J. Kasper
Finance:	Richard H. Paul, Jr./James R. Trial
Research and Development:	Jay W. Heefner/Donald E. Lewis
Operations/Manufacturing:	N/A

NIDA & MALONEY

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February 13, 1998

By Federal Express

Department of Corporations
980 9th Street, Suite 500
Sacramento, CA 95814-3610

Attention: Ms. Gayle T. Oshima,
Corporations Counsel

Re: Westmont Venture Forum (the "Forum") - Your Letter of January 27, 1998

Dear Gayle:

The following is my response to each of the four points in your letter of January 27, 1998, a copy of which is attached.

1. During the telephone conversation you represented that "Founding Sponsors" paid $5,000 each, and "Supporting Sponsors" paid $1,000 each to advertise their services at the Westmont Venture Forum ("Forum"). This arrangement deviates substantially with the structure of the University of Michigan's SEC "No Action" Letter of May 4, 1995 as it appears that the "sponsors" are promoting their services. Please reconcile these differences. We note that you have not requested an SEC "No Action" letter, but have indicated that you will rely on the May 4, 1995 SEC "No Action" letter.

Response: You will note that in the Michigan "No Action" letter, Michigan requires that the participating companies pay a fee of $850 and the attendees pay a fee of $325 to attend the program. These fees are material in amount and were properly addressed in the Michigan "No Action" letter in the context of the possible offering of securities at the Michigan Symposium. Fees charged to third parties to be named as sponsors was not relevant to the SEC's inquiry of whether an offering of securities by the presenting companies was occurring at the Michigan Symposium through a general solicitation of investors. Similarly, we do not believe these fees are relevant to the securities issues presented in the present situation and, rather, that such fees reduce the risk that a presenting company would feel the need to "effect an offering of securities"

to get such presenter's moneys without the Forum. In this regard, the Forum has adopted the prevailing structure that California symposia have adopted, and that many other similar programs have adopted, in which sponsors provide the financial resources to put on the program, instead of assessing a substantial application fee and attendance fee. This was of particular importance in that the Forum's first year was a year in which they had no track record or credibility to encourage participation.

We have delivered to you the "advertisements" of sponsors that were placed in the Forum book, which were institutional in nature. The sponsors also had a table on which their marketing materials could be placed. We do not see that this deviates in any materially significant way from the Michigan "No Action" letter.

2. *Corporations Code Section 25210 imposes a certification requirement on broker-dealers who effect transactions in, or induce or attempts to induce, the purchase or sale of any security in this state. Corporations Code Section 25004 defines broker-dealer as "...any person engaged in the business of effecting transactions in securities in this state for the account of others or for his [sic] own account."*

The California Securities Law of 1968 ("CSL") does not define what is meant by the term "engage in the business" nor are there any cases which interpret the phrase "engage in the business" in the context of the CSL.

However, in a broad sense, business means an occupation or trade engaged in for the purpose of obtaining a livelihood or profit or gain. Mansfield v. Hyde, 112 Cal. App. 2d 133, 137 (1952). "Engaged in the business" generally implies a "...business activity of a frequent or continuous nature," (Advance Transformer Co. v. Superior Court, 44 Cal. App. 3d 127, 134 (1974)), contrasted with a single or occasional disconnected act. (Id.)

You represent that Committee members will not receive any compensation for matching or introducing venture capitalists with capital-seeking businesses. However, one could argue that the benefits from the advertisements which the sponsors have paid for is a "gain" and therefore, some of the Committee members may be engaged in the business of a broker-dealer. Accordingly, certification as a broker-dealer would be required. Indeed, similar arguments could be made regarding investment advisers (See e.g. Corporations Code Section 25230).

Response: Neither the Forum nor Westmont charged any fees or commissions relating to the solicitation or consummation of a securities transaction. Although commercial sponsors are "engaged in (their respective) businesses," and Westmont is "engaged in the business" of providing education, no such entities are engaged in the securities business as contemplated by Section 25210. The sponsors' activities at the

Forum, if viewed in isolation, is a "single or occasional disconnected act" and not "engaged in [any] business." Such activity, if viewed with advertising by sponsors in other contexts, is being engaged in each sponsor's own non-brokerage business. To determine otherwise would require that any enterprise, law firm, accountant, financial printer, stock exchange, publisher, etc., associated with or who may "gain" from a securities transaction that occurs, must register as a broker-dealer. Please also note that the advertisements were basically institutional in nature.

3. *Furthermore, you now state that Westmont College's role in the Forum is minimal and that the College merely "lends its name to the Forum" and provides office facilities. However, you earlier represented that Westmont College would be the educational sponsor of the Forum, along the lines of the University of Michigan in the SEC's May 9, 1995 "No Action" letter. It appears that there are significant differences with respect to the University of Michigan's involvement with their symposium and Westmont's involvement with the Forum. These differences also need to be reconciled.*

Response: You are correct that Westmont College's role in the Forum is minimal, other than providing the use of facilities and staff. We believe that this "minimal" involvement is entirely consistent with the Michigan Symposium. The only natural distinction between Westmont's involvement and the University of Michigan is that a professor at the University of Michigan is the principal force behind the beginning of the Michigan Symposium, while the Westmont Forum is propelled by a committee of persons, which committee includes Westmont representation. Both Ed Birch, the Executive Vice President of Westmont College, and Professor Roy J. Millender, were extremely active in the formation of this activity. Undergraduate business school students also provided support services for the Forum. However, as a relatively small college, with limited resources, Westmont did not provide any financial support for this transaction, and that is what we meant by sponsorship status.

4. *We see that representatives from Westmont College did not sign the letter in the Forum book welcoming participants to the Forum. Please explain.*

Response: At the time that the book was published, the senior officers of Westmont College were on a trip outside of the country, and there was no one available to sign the book. As you will note, the cover letter was from the Forum Committee, not from Westmont College.

I trust this responds to your letter. If you have any questions, please call me.

Very truly yours,

NIDA & MALONEY

By
Joseph E. Nida

JEN:clf
Encl.

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