

STATE OF NEVADA



BRIAN SANDOVAL
Governor

DEPARTMENT OF BUSINESS AND INDUSTRY

BRUCE BRESLOW
Director

FINANCIAL INSTITUTIONS DIVISION

GEORGE E. BURNS
Commissioner

March 31, 2016

Patrick G. Zabatta, Esq.
Zabatta Group, LLP
91 Central Park West, Suite 1H
New York, NY 10023

RE: NRS 675.060 and NRS 604A. Advisory Opinion Request dated March 25, 2016

Dear Mr. Zabatta:

You have requested an advisory opinion, pursuant to NAC 232.040 and NRS 233B.120, concerning the applicability of Chapter 675 to convertible debenture investment transactions. The opinion has been requested on behalf of Peak One Opportunity Fund, LP ("Peak One").

Facts

The opinion request states that Peak One invests in smaller companies whose shares are publicly traded pursuant to federal securities laws and regulations. Further, Peak One invests in Nevada entities under agreements which are governed by Nevada law. The investments are made through equity and equity-backed securities, including debentures that are convertible into shares of the company's stock. Peak One's business activities are limited to investing in companies by purchasing convertible debentures.

Issue Presented

Whether the provisions of Nevada lending laws the Financial Institutions Division has the statutory and regulatory authority to license and regulate, NRS 675 and NRS 604A, apply to a convertible securities investment structure.

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Analysis

NRS 675.060 states:

1. No person may engage in the business of lending in this State without first having obtained a license from the Commissioner pursuant to this chapter for each office or other place of business at which the person engages in such business, except that if a person intends to engage in the business of lending in this State as a deferred deposit loan service, high-interest loan service or title loan service, as those terms are defined in chapter 604A of NRS, the person must obtain a license from the Commissioner pursuant to chapter 604A of NRS before the person may engage in any such business.
2. For the purpose of this section, a person engages in the business of lending in this State if he or she:
 - (a) Solicits loans in this State or makes loans to persons in this State, unless these are isolated, incidental or occasional transactions; or
 - (b) Is located in this State and solicits loans outside of this State or makes loans to persons located outside of this State, unless these are isolated, incidental or occasional transactions.

NRS 604A.400 states:

1. A person, including, without limitation, a person licensed pursuant to chapter 675 of NRS, shall not operate a check-cashing service, deferred deposit loan service, high-interest loan service or title loan service unless the person is licensed with the Commissioner pursuant to the provisions of this chapter.
2. A person must have a license regardless of the location or method that the person uses to operate such a service, including, without limitation, at a kiosk, through the Internet, through any telephone, facsimile machine or other telecommunication device or through any other machine, network, system, device or means, except that the person shall not operate such a service through any automated loan machine in violation of the provisions of subsection 3.
3. A person shall not operate a deferred deposit loan service or high-interest loan service through any automated loan machine, and the Commissioner shall not issue a license that authorizes the licensee to conduct business through any automated loan machine.
4. Any person, and any member, officer, director, agent or employee thereof, who violates or participates in the violation of any provision of this section is guilty of a misdemeanor.

Pursuant to NRS 675.060, an installment loan license is required for a person who engages in the business of lending in this State. A person engages in lending in this State if they solicit or makes loans in this State, whether consumer or commercial loans.

Pursuant to NRS 60A.400, a license is required for a person who engages in making deferred deposit, high-interest, or title loans in this State.

NRS 90.295 states:

“Security” means a note, stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in a profit-sharing agreement, a limited partnership interest, an interest in a limited-liability company, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, viatical settlement investment, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in an oil, gas or other mineral lease or in payments out of production of such a lease, right or royalty, a put, call, straddle or option on a security, certificate of deposit or group or index of securities including any interest therein or based on the value of any of the foregoing, or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or interim certificate for, receipt for, whole or partial guarantee of or warrant or right to subscribe to or purchase any of the foregoing. The term does not include:

1. An insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period; or
2. An interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974.

NRS Chapter 90 governs investments and securities in Nevada. NRS Chapter 90 is regulated by the Securities Division at the Nevada Secretary of State’s office.

Conclusion

Peak One’s business activities are limited to the investments that are made through equity and equity-backed securities, including debentures that are convertible into shares of the company’s stock.

Unless Peak One is soliciting or making loans in this State, a NRS Chapter 675 or NRS Chapter 604A license is not required with the Financial Institutions Division.

Peak One should contact the Securities Division to ensure compliance with State law.

Sincere regards,



George Burns
Commissioner
Financial Institutions Division