



**New Mexico Regulation and Licensing Department
SECURITIES DIVISION**

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May 4, 2016

VIA ELECTRONIC MAIL ONLY

Candice L. Owens
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RE: No-Action / Opinion Letter Request for Cinnafilm, Inc.

Dear Ms. Owens:

The New Mexico Securities Division (the "Division") is in receipt of your request and all supplemental documentation, made on behalf of Cinnafilm, Inc., (the "Company"), which requests that the Division take no action against the Company for potential violations of laws and rules enumerated under the New Mexico Uniform Securities Act (the "Act") and its predecessor, the New Mexico Securities Act of 1986 (the "Old Act") (repealed) referenced below. Specifically, you request the Division take no action against the Company for failing to comply with the certain described filing requirements for the exemptions relied upon by the Company for offerings it has made since 2007, where applicable. In addition, you are requesting the Division provide an opinion that the Company did comply with the Act, and the Old Act, with respect to certain transactions as described herein.

According to your letter and other documents provided in support of your letter, the Company underwent reorganization in 2007, pursuant to which it authorized 3,000,000 shares of common stock. At the time of the reorganization, there was an offering of a portion of those shares. Since its reorganization, there have been several additional offerings ("Events"), all of which utilize a different combination of exemptions, and all of which were for common stock of the Company. We will address the reorganization and each of these events individually. The Company has not amended its Certificate of Incorporation since 2007.

I. Reorganization

For this offering, the Company identified 35 securities holders who obtained the common stock issued as a result of reorganization, 30 of whom were residents of New Mexico at the time of the offering. You claim that this transaction is exempt from registration under the controlling, now-repealed Old Act, under

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section 58-13B-27Q (“27Q”). Given the facts and circumstances as you’ve laid them out in your correspondence with the Division, it has been determined that this transaction is, in fact, exempt from registration. Under the Old Act, however, notice of the transaction was required to be provided to the Division at least ten days prior to consummation of the transaction. The Company never provided timely notice to the Division, and it is the late filing for which you’re asking the Division take no action. You have also provided the Division with a letter to satisfy the notice filing requirements for this offering under subsection 27Q. Given the facts and circumstances surrounding the offering for the reorganization, no action will be taken against the Company for failing to file a timely notice.

II. Event A

Event A took place on or around June 1, 2007. The offering was made to a total of seven investors, five of which were new investors, and two of which were existing shareholders. Under Section 58-13B-27N (“27N”) of the Old Act, a self-executing exemption is available to any offering made to existing shareholders as long as certain other requirements are met. The transaction from Event A involving the two existing shareholders satisfies all requirements under section 27N and no paperwork or filing was required to be provided to the Division.

With respect to the five new investors in Event A, Section 58-13B-27U (“27U”) of the Old Act provides for an exemption if an offering is made to less than ten investors in a 12 month period. This exemption can appropriately be applied to the five new investors in Event A. Rule 12.11.12.16, NMAC (repealed), applicable to the 27U exemption, however, required the Company to file certain paperwork with the Division no less than five business days before the first sale of securities in New Mexico. As of this writing, the Company completed and filed Form 27U and the Division has accepted such filing. Although the filing did not occur timely, given all facts and circumstances surrounding the offering from Event A, no action will be taken against the Company for its late filing of the Form 27U.

III. Event B

Event B took place between November 2008 and March 2009. That offering was made to a total of five investors, all but one of which was a new investor. The exemption found in section 27N exempts the transaction for the single, existing shareholder involved in Event B.

All five investors from Event B were either employees or contractors (which the Division finds to be employees) of the Company who received the right to purchase shares of the Company’s stock in lieu of compensation. Section 58-13B-26K (“26K”) of the Old Act exempts securities from registration if they are offered, “in connection with an employees’ stock purchase, savings, option profit-sharing, pension or similar employees’ benefit plan,” among other requirements. Since the 26K exemption utilized by the Company in Event B does not require a filing, no paperwork or filing was needed to be provided to the Division. Although the Division is of the opinion that the entire offering qualified for an exemption under Section 26K, the Company tendered a Form 27U to the Division, in the alternative, for the transactions involving the four new investors in the offering from Event B. Given the efforts taken by the Company and the circumstances surrounding Event B, the Division finds no violation to have occurred in Event B, and therefore no action will be taken against the Company.

IV. Event B2

Event B2 took place on March 2, 2009. Event B2 was an offering made to a total of four investors, only one of which was a new investor. Since the offering was made to less than a total of ten investors (only one investor in this case), section 27U would apply to the offering made to that single new investor. Given that the other four investors from this offering were existing shareholders, the transaction is exempt from registration under section 27N. Furthermore, the securities offered in Event B2 could alternatively be exempt from registration pursuant to section 26K, since each investor was a current employee or board member (which the Division considers to be employees) of the Company, receiving the stock in lieu of compensation. No paperwork is required to be filed when an offering consists of securities exempt under Section 26K. Notwithstanding that fact, the Company provided a Form 27U for the single new investor in Event B2 who was not an existing shareholder. Given these facts and considering all circumstances, the Division does not find any violation to have occurred in Event B2 and no action will be taken against the Company.

V. Event C

Event C took place roughly between October 2009 and mid-2013. Event C was an offering made to a total of seven investors, only one of which was a new investor. Only one transaction under Event C was affected in 2009. That transaction involved an investor who was an existing shareholder, making that transaction exempt from registration under section 27N. The remaining six purchases were all made after 2010. Of those six investors, five of them were existing shareholders and one was a new investor.

Section 58-13C-202O (“202O”) of the Act carves out a self-executing exemption from registration for the issuance of securities made to existing shareholders. The sales made to the five existing shareholders would squarely align this portion of the offering with the requirements of 202O. Since any exemption granted under 202O is self-executing, the Company would not have been required to provide the Division with any notice or paperwork for that portion of the offering.

Section 58-13C-202N (“202N”) of the Act allows for securities offered to fewer than ten investors located in New Mexico in a 12 month period to be exempt from registration. Given the nature of the offering, the remaining single investor from the offering in Event C would permit the Company to utilize the 202N exemption for this portion of the offering. 202N, however, requires that a filing be made with the Division at least five days prior to the first sale of the offering. The Company never tendered such a filing, as required, and it is this infraction for which you are requesting no action be taken. The Company has since filed the required form, as required. No action will be taken against the Company with specific regard to the late filing of the 202N paperwork, as required for that portion of the offering from Event C, described above.

VI. Event D

Event D took place from 2010 to 2014 and included six total investors. All investors were employees of the Company who received stock in lieu of compensation. Five of those six investors were existing shareholders. For the five investors who were existing shareholders, the offering would be considered exempt under the self-executing exemption provided in section

2020 of the Act. The entire offering, however, is exempt from the registration requirements by section 202U: Each of the investors from the offering in Event D were employees who were receiving the Company's/issuer's securities in connection with the employees' stock purchase, savings, option, profit-sharing, pension or similar employees' benefit plan, including any securities, plan interests and guarantees issued pursuant to a compensatory benefit plan or compensation contract, contained in a record established by the issuer.

VII. June 2015

An additional offering was made by the Company, which is still outstanding and may not qualify as an "Event," in the same respect as the Events described above. This offering relates to the Equity Incentive Plan adopted by the Company for the benefit of employees. Given the structure of this offering, it appears to be wholly within the confines of the exemption carved out in section 202U of the Act, which is self-executing.

In summary, the Company made three offerings that required filings to be provided to the Division: The first was the 2007 offering, which was part of the Company's reorganization. A letter to satisfy the requirements under 27Q should have accompanied that filing. The second was the offering in Event A involving the five new investors. Form 27U should have been filed with the Division at the time of the sale of the securities in Event A to the five new investors. Finally, the third offering occurred in 2010 under Event C. The transactions described in Event C should have been accompanied by filing a form 202N for the single new investor.

The modern analog of the 27Q exemption, section 58-13C-202R, is self-executing, which indicates the intent to have these types of offerings occur without the Division's involvement at their inception. For that, and considering the fact that the Company has provided the Division with the requisite paperwork, and the generally innocuous circumstances surrounding that offering, the Division will not take action against the Company for failing to provide notice to the Division for its offering tied to its reorganization. The exemption available under Section 27U is similar to the current 202N exemption. The Company relied upon Section 27U for the transactions described in Event A and provided Form 27U to the Division. The 2010 offering utilizing the 202N exemption involved only a single investor, and the Company has now provided the Division with all necessary paperwork for that offering. Considering that the Company has provided the Division with the requisite notices and filings for the offerings described above, and in consideration of all other facts and circumstances, the Division will not take any action against the Company infractions involving late filings. As stated above, the other offerings described in this letter were either self-executing or otherwise did not require any filings with the Division for the respective offerings.

Therefore, pursuant to NMSA 1978, Section 58-13C-605D, of the Act, the Division will take no enforcement action against the Company for issuing securities in the limited context described herein without proper registration or notice. This decision is made only in consideration of the information contained or referenced in this letter and the adoption of the facts and analysis contained in the referenced documents. This decision does not reflect a legal conclusion regarding the outlined conduct of the Company. Moreover, this decision should not be construed as setting forth any position the Division would take regarding the anti-fraud provisions of the Act, as they would apply to the transactions discussed above. Different facts

and circumstances may cause the Division to reach a different conclusion. The relief in this letter applies only to the parties identified and the circumstances described in this letter.

Sincerely,



Alexis Lotero, Deputy Director
New Mexico Securities Division

AL/bt