

## MEMORANDUM

TO: Legal Division  
FR: Sue Richter <sup>SL</sup> and Patrick Fahn <sup>PF</sup>  
DT: August 15, 2008  
RE: Alternatives to a Surety Bond:  
Case No. GE-08-686; China-Dakota Trading, Inc.

Under NDCC § 60-02.1-08 the commission may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in its judgment, such cash, negotiable instrument, or personal surety bond properly will protect the holders of outstanding receipts.

### Questions

It is the Licensing Division's belief that in the event of a bankruptcy, a company's surety bond under NDCC § 60-02.1-08 is not available to the bankruptcy court. Would a "cash bond" be available to the bankruptcy court?

What are the pros and cons of a "cash bond" compared to a surety bond? (one advantage to accepting a CD or LOC is that there would be no fight with the bond company for proceeds.)

Are the alternatives to the surety bond more risky? (perhaps a question also for Mike Diller)

### Background

China-Dakota Trading, Inc. (China-Dakota) wishes to obtain a roving grain buyer license. China-Dakota has requested that the Commission accept a cash bond of \$50,000 in lieu of a surety bond. (attached).

The Licensing Division has limited paperwork on this issue.

- Bill Binek's October 4, 2005 message on the bankruptcy issue (attached) concluded that the problems associated with cash bonds and letters of credit are reasons why the Commission has rejected allowing these alternative forms of bond protection. We have not been able to identify those "problems." He suggested that the Commission go slow and give very careful consideration to approving an alternative to a surety bond because "once the Commission opens the door it will be difficult to turn back."
- Notes from the Commission's October 5, 2005 administrative meeting (attached) indicates the Commission may have a "policy" of not accepting alternatives to a surety bond. Sue's October 5, 2005 letter is the Commission's response to Robert McDonald's request (attached).

- The only instance that Sue remembers when the Commission accepted an alternative to a surety bond was in the mid to late 1980's when ordered by the Court regarding Elliot Grain Company, Inc.

We would like to have this on the September 10 administrative agenda for discussion and a response from legal perhaps by September 2.

cc: Tim Erdmann  
Rick Fillbrandt  
Shelly Bauske