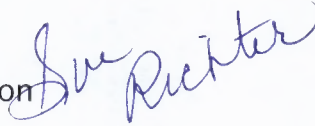


MEMORANDUM

TO: Commissioners Wefald, Cramer, and Clark
Darrell Nitschke
Illona A. Jeffcoat-Sacco
Pat Fahn

FR: Sue Richter, Licensing Division



DT: October 7, 2008

RE: Request for Alternative Bond Filing

Questions

Should the Commission accept a cash bond in lieu of a surety bond? Is a cash bond a secure instrument in the event of a bankruptcy?

Background

Staff has been working with China-Dakota Trading, Inc. (China-Dakota) to become licensed as a roving grain buyer. China-Dakota Trading, Inc. has registered as a North Dakota business corporation with the ND Secretary of State. It is active and in good standing.

China-Dakota is a wholly owned subsidiary of a company from China. Bain Insurance Agency has been working to obtain a surety bond for China-Dakota. They have indicated that they have been unsuccessful in obtaining a bond because of indemnification from a company outside the United States. China-Dakota asked the Commission to accept a cash bond in lieu of a surety bond. Attached is a copy of the letter from China-Dakota along with letters of support from Bain Insurance Agency and the Bismarck-Mandan Development Association.

Historically, the Commission has not accepted alternative bond filings except for one instance in the 1980's when ordered by the court. The most request to accept an alternative bond filing was in October 2005. At that time a concern was raised about whether a cash bond would be secure if the company became bankrupt. The Commission denied the request indicating that they wanted to continue with the policy of requiring surety bonds, citing the uncertainty and risk associated with alternative bond filings.

When China-Dakota's request was received, staff asked the Legal Division to research to determine how a cash bond would fare in the event a licensee files for bankruptcy. (See attached memorandum.) The Legal Division has spent considerable time researching this issue and has determined that there is no legal reason why a cash

bond cannot protect the producers as well as a surety bond does (See attached e-mail). The Legal Division has advised staff that:

- (1) The Commission has the statutory authority to accept cash bonds.
- (2) If the cash bond escrow agreement between the licensee, the Commission and the bank (the escrow agent) is sufficient, a cash bond will be as safe as a surety bond in a bankruptcy situation.
- (3) There are other agencies that accept cash bonds in lieu of surety bonds and cash bonds are accepted in the Reclamation and Public Utilities Divisions.

An advantage to a cash bond is in the event of insolvency, the Commission does not have to ask the Court to order the bond company to turn over the bond proceeds to the Commission.

Staff recommends the Commission accept a cash bond in lieu of a surety bond. Staff is drafting an escrow agreement. The Legal Division has recommended that once the document is completed, it be forwarded to the Attorney General's office for review before being formally executed.

This item has been added to the October 8 Admin. Agenda for discussion. Please let me know if you have any questions.

Thank you.

Attachments (3)