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November 7, 1975

IN REPLY REFER TO:

Jeremy P. Ross
2910 First Financial Tower.

REC'D - S.E.C.

NOV 12 1975

Securities and Exchange Commission
Division of Corporate Finance
500 North Capital Street
Washington, D.C. 20549

Request for Interpretation of:
1933 Act/3(a)(11)
1933 Act/4(2)

Re: Mid-Florida Mining Company

Gentlemen:

Our firm has recently been engaged to act as special counsel to Mid-Florida Mining Company (the "Company") to render advice in connection with its prospective efforts to raise additional capital through equity financings which will not be registered under the Securities Act of 1933 (the "Act"). In reviewing the Company's prior efforts to raise capital through equity financings, we have been advised of the existence of a transaction which, if viewed as part of a prospective offering of securities to be otherwise made in reliance on the exemptions afforded either by Section 3(a)(11) of the Act, and its accompanying Rule 147, or Section 4(2) of the Act, in its accompanying Rule 146, would tant such prospective offering and render the aforementioned exemptions unavailable to the Company. The purpose of this letter is to request interpretative advice regarding the availability of the exemptions from the registration provisions of the Act afforded by §§3(a)(11) or 4(2) for an offering of the Company's securities under the circumstances described below.

Business Background.

The Company was organized under the laws of the State of Florida in December, 1964, for the purpose of mining Fuller's Earth and processing it into commercial products. Fuller's Earth is a sorptive clay located in small deposits in various areas of the world, and it is sought for its high absorbent, deodorizing and filtration properties. Once processed, the clay is principally used, commercially, as an oil and grease absorbent, pet litter, pesticide or insecticide carrier, drilling mud, fertilizer, or in connection with filtering, clarifying or decolorizing various products.

The Company's initial efforts were aimed at gaining access to the pesticide market within the State of Florida, but in 1970, it began producing and packaging Fuller's Earth as a superior pet litter designed to replace such competitive materials as shredded newspaper, light weight absorbent perlite or vermiculite, and pelletized hay with binder and chlorophyl agent. Meeting with success in the Florida market, it introduced its pet litter product in the New York market area in July 1972, and since then has expanded into the Canadian and European market areas.

Between 1965 and 1974, the Company's exclusive operating facility was located at Lowell, Florida, some 10 miles distant from its source of clay. In 1974, the Company's two principal stockholders (Messrs. Edgar and Smith, more fully identified below) acquired a second facility located at Oran, Missouri, some three miles distant from its source of clay, and leased the facility to the Company under a long-term arrangement. The Company's reason for establishing itself at this site was to gain access, on as economically competitive a basis as possible, to the mid-western market area. Although the Company expects its Oran division to contribute substantially to the Company's consolidated sales and revenues, it presently represents only a minor part of the Company's invested capital and does not generate substantial revenues. Employees at the Lowell plant currently total some 65-70, while at the Oran division only some 8-10.

Capital Structure.

The bulk of the initial facilities with which the Company began business were contributed by its founder, Allen C. Edgar, who has served since the Company's incorporation as its President and chief executive officer. As organized, the Company was capitalized with 250,000 shares of common stock, par value $1.00 per share, and Mr. Edgar acquired 90,003 shares of such authorized stock in exchange for his initial contribution to the Company. Working capital was provided through a successful public offering of 120,000 of its remaining authorized shares, made to residents of the State of Florida by way of an offering registered with the Florida Securities Commission and exempted from the provisions of the Act under §3(a)(11) thereof. An additional 31,500 shares were issued in escrow for the benefit of Omar K. Colwell in exchange for his activities in connection with the public sale of the Company's registered shares and pursuant to an arrangement agreed to by the Florida Securities Commission, which shares were subsequently released from escrow to Mr. Cowell following the payment by the Company of a cash dividend to the holders of its registered stock.

Since this initial equity financing activity, and before 1975, the Company relied almost exclusively on debt financing to provide it with its various cash flow requirements. Only some 7,200 shares of its authorized capital stock were issued subsequent to 1965 and before 1975, and all were issued in isolated, private sales before 1971. On January 15, 1974, however, the Company amended its capital structure by increasing its authorized shares to 500,000, and shortly thereafter reserved an aggregate of 130,000 of such newly authorized shares for future issuance pursuant to options (1) which were coincidentally granted to its principal officers (Mr. Edgar and George C. Smith, Vice President) aggregating 80,000 shares, and (2) which might be granted in the future, pursuant to Board action, to other employees of the Company rendering extraordinary services.

Thereafter, in late 1974, the Company's directors proposed to offer an additional 120,000 shares of its authorized but unissued stock, at a per share price of $2.50, to those existing stockholders of the Company who were then residents of the State of Florida. It was determined, however, that such an offering, restricted to a special class of stockholders, would violate the Company's Articles of Incorporation which granted to each stockholder a preemptive right to acquire a prorata portion of any new issue of the Company's securities of the same class as held by them. Consequently, an amendment to the Company's charter eliminating such preemptive rights was proposed at a special meeting of the Company's board held November 26, which action was ratified at a stockholders meeting held December 20.

At that same stockholder meeting, the Company was authorized to proceed with its plan to offer up to 120,000 shares of its authorized but unissued capital stock to stockholders of the Company holding shares registered with the Florida Securities Commission who were then residents of the State of Florida. No formal action to impliment such plan was taken by the Board of Directors, and in lieu thereof, on March 19, 1975, the Directors adopted a resolution withdrawing the offer and directing the appointment of a committee to seek legal counsel to insure correct procedures would be followed in effecting any offering to be made of the Company's securities.

In the interval between stockholder ratification of the offering and its termination, and because the Company was in immediate need of short-term financing, 40,195 shares of its authorized but unissued stock were sold to five individuals, all residents of the State of Florida and holders of shares registered with the Florida Securities Commission (the principals being Mr. Edgar and Mr. Smith, each of whom acquired 16,000 shares).

Particular Transaction.

The Company is now proposing, subject to appropriate action by its directors and stockholders, to offer for sale additional shares of its authorized capital stock either to

residents of the State of Florida pursuant to the exemption authorized under §3(a)(11) of the Act or to certain selected offerees pursuant to the exemption afforded by Act §4(2). For the Company to properly rely upon the availability of either of the exemptions cited, however, it is necessary, in our judgment, for a determination to be made that the transaction hereafter described will not be deemed integrated with such future offering as the Company may make:

1. In 1971, the Company initiated a business relationship with the food brokerage company of Andorn, Bergida & Danks, Inc., a corporation organized under the laws of a state other than Florida and having its principal place of business in New York ("ABD"). The relationship has been strictly that of manufacturer and commission agent, pursuant to which ABD solicits orders for products manufactured by the Company, and once received, forwards such orders to the Company for acceptance and completion. Product sales solicited by ABD are sent directly by the Company to the food chain placing the order, and upon receipt of the purchase price a preset commission is forwarded to the broker. Such relationship has enabled the Company to expand its marketing area to New York and more recently to Canada, largely by reason of ABD's contacts with retail food chains operating within those areas.

2. The business arrangement between the Company and ABD proved beneficial to both parties, and by reason thereof, Arthur Bergida, a principal in the brokerage firm, indicated at some point in calendar year 1974 that his company would be interested in acquiring stock in the Company, possibly in lieu of a portion of the brokerage commissions which otherwise would be paid to it. This offer was not acted upon when made. Late in 1974, Mr. Bergida requested an opportunity to attend a meeting of the Company's directors for the purpose of solidifying his company's relationship with the Company and to indicate its desire to continue serving the Company. In turn, the Company determined that ABD's services to it were extraordinary

and merited special recognition. Thereupon, Mr. Bergida was invited to attend the director meeting held in November 1974 (at which the directors took action to delete the preemptive rights section of the Company's Articles of Incorporation) and was entertained at a dinner sponsored by the Company at which his company was honored for its services.

3. Discussions were renewed at this time by Mr. Bergida regarding his firm's participation in the Company's affairs on a long-term basis by way of the purchase of Company stock, and it was determined that ABD would be given the opportunity to acquire up to 5,600 shares of the Company's capital stock, at a per share price of $2.50, from such time as a stock option agreement could be drawn by counsel for the Company through June 30, 1975, and further that if ABD exercised its option to acquire the entire 5,600 shares it would be given a further option to acquire an additional 2,800 shares at any time that ABD might choose to exercise that right. On January 15, 1975, Mr. Edgar forwarded a "stock option agreement" containing the provisions set forth above (a true and complete copy of which, together with Mr. Edgar's cover letter, dated January 15, 1975, is attached hereto as composite Exhibit A and made a part hereof) to Mr. Bergida, requesting that the agreement be executed and a copy returned to the Company so as to indicate ABD's acceptance of the option offer.

4. Thereafter, on April 16, Mr. Edgar inquired of Mr. Bergida's intentions regarding his company's acceptance of the option offer, noting that the executed agreement had not been received by the Company. Mr. Bergida responded to this inquiry by advising that his company was "a committed party to your growing corporation", but failed to return an executed stock option agreement. On May 30, 1975, Mr. Edgar wrote Mr. Bergida advising of the Company's receipt of an ABD check in the amount $1,500, representing the purchase price of 600 shares of the Company's capital stock, but advising

again of the Company's inability to issue shares until the executed contract was returned to it. As of June 30, 1975, the date on which the option expired, no further correspondence had been received from Mr. Bergida or any other representative of ABD, but on July 23 a short message was received by the Company, written by Mr. Bergida, inquiring as to the whereabouts of the stock certificates representing the 600 shares previously acquired. True and complete copies of all correspondence referred to above in this paragraph are attached hereto as composite Exhibit B and made a part hereof.

5. Subsequent to the receipt of that last inquiry, Mr. Edgard orally advised Mr. Bergida of the Company's legal inability to proceed with sales under the stock option agreement, by reason of the same not being executed and returned to the Company prior to its expiration date, and also indicated that the Company was not desirous of renewing the offer since it appeared that such action might taint any future offering by the Company of its capital stock otherwise made in reliance upon the exemptions afforded by §3(a)(11) or 4(2) of the Act.

Opinion of Counsel.

Inasmuch as ABD was not, at the time the Company's offer was made, a resident of the State of Florida, the exemption from the registration provisions of the Act afforded by §3(a)(11) was unavailable to the Company. Likewise, since it appears that ABD did not have access during the course of the offer to the same kinds of information specified in Schedule A of the Act, nor was furnished the type and quantity of information concerning the Company and its affairs required under the provisions of Rule 146, we are of the opinion that the exemption from the registration provisions of the Act expressly afforded by Rule 146 would not be available to the Company in connection with the above described transaction and we are not willing to render to the Company a legal opinion regarding the availability of the §4(2) exemption where the terms of Rule 146 have not been met.

By reason of this situation, we are of the opinion that if the Company's transaction with ABD is viewed as part of the same offering as the Company intends to make in the near future, such integration will have the effect of rendering unavailable to the Company the exemptions otherwise afforded by §§3(a)(11) or 4(2) of the Act. We are of the further opinion, however, that integration of the ABD transaction with the Company's proposed intra-state or private offering is unwarranted.

In setting forth the basis of our opinion in this matter, we wish the Commission staff to understand that the only issue with respect to which we request guidance and advice is whether the Company's transaction with ABD will be viewed by the staff as intergrated with the offering which the Company proposes to make in the future. It is the Company's intention to proceed with no unregistered offering which will violate the provisions of Rule 147, if the intra-state exemption is to be relied upon, or the provisions of Rule 146, if the private offering exemption is to be relied upon. In that connection, we understand that there are affirmative requirements set forth under Rules 146 and 146 which must be met, and we allege that the Company presently meets and will at the time of any proposed exempted offering meet such other requirements as long as the ABD transaction is not integrated with the proposed offering (e.g. with respect to Rule 147 requirements, the Company presently meets each of the requirements of §(c) in that it is incorporated within the State in which all of the offers under the proposed offering will be made; its principal office is located within such state; and it meets the gross revenue, asset and net proceed tests set forth therein).

As indicated in Release nos. 33-4434 and 33-4552, and as reenunciated in the Preliminary Notes to Rules 147 and 146, the determination of whether a particular offering will be viewed as part of that same issue under which another and subsequent offering is made is dependent upon the facts and circumstances involved in each case. The five criteria set forth in those releases, however, bear application to the

facts set forth above in this letter. Unquestionably, both the ABD offering and the one proposed to be made by the Company in the near future involve the same class of securities. It might also be said that both involve the same type of consideration to be received in exchange for the shares issued; however, it should be noted that ABD initially sought to pay for shares which the Company might issue to it with a corresponding reduction in the amount of commissions earned by way of the services performed on behalf of the Company, a vehicle certainly not available to most of the parties who may agree to buy shares under the Company's proposed offering.

With respect to the remaining three criteria, virtually the same argumentaion is applicable to each in suggesting the segregated nature of the Company's transaction with ABD. The ABD transaction was requested and initiated by ABD, not the Company. Although it was born at essentially the same time as the Company began to look for ways to raise additional equity capital, it had its genesis in the mutually beneficial relationship which had been established by the parties and which led ABD to seek a more lasting participation in the Company's affairs. Although the Company by its actions may be seen as viewing ABD as a potential source of equity financing, it did not solicit that entity's participation, nor seek to raise a substantial portion of its equity needs from that source, nor go even to normal lengths to accept the money which ABD proferred. Finally, if viewed from the perspective of the completed offering which the Company intends to make in the near future, which cannot possibly be consummated before January 1976 even if the interpretation herein requested is approved, there will have passed no fewer than seven months between the legal expiration of the offer which the Company made to ABD and the initiation of a subsequent offer to others in compliance with Rule 147 or 146, which would seem to elicit the conclusion that the offerings herein considered are not being made at or about the same time.

For the reasons stated, it is our opinion that while the subject offerings definitely involve issuance of the

same class of securities, and call for receipt of the same type of consideration; they do not constitute part of a single plan of financing; are not made at or about the same time; and are not made for the same general purpose; and that consequently the offering made by the Company to ABD will not be viewed as part of the same issue under which the Company may make an offering in or after January 1976, and the Company may avail itself, with respect to such proposed offering, of the exemptions afforded by §3(a)(11) or 4(2) of the Act as long as it otherwise meets the requirements of Rule 147 or 146. We would appreciate receiving your guidance and advice in this matter at your early convenience.

Yours truly,

Jeremy P. Ross

JPR/gr

Encs.

CC: Mr. Allen C. Edgar