

For Six Month Period Ending 12/31/2010
(Insert date)

I - REGISTRANT

1. (a) Name of Registrant (b) Registration No.
Reid Collins & Tsai LLP (f/k/a Reid Davis LLP) 5993

(c) Business Address(es) of Registrant
4301 Westbank Drive
Building B, Suite 230
Austin, TX 78746

2011 FEB 15 PM 4:01
NSD/CIS/REGISTRATION
UNIT

2. Has there been a change in the information previously furnished in connection with the following:

- (a) If an individual:
 - (1) Residence address(es) Yes No
 - (2) Citizenship Yes No
 - (3) Occupation Yes No
- (b) If an organization:
 - (1) Name Yes No
 - (2) Ownership or control Yes No
 - (3) Branch offices Yes No

(c) Explain fully all changes, if any, indicated in items (a) and (b) above.

Name of law firm was changed on September 10, 2010 from Reid Davis LLP to Reid Collins & Tsai LLP due to a change in ownership partners.

IF THE REGISTRANT IS AN INDIVIDUAL, OMIT RESPONSE TO ITEMS 3, 4 AND 5(a).

3. If you have previously filed Exhibit C¹, state whether any changes therein have occurred during this 6 month reporting period.

Yes No

If yes, have you filed an amendment to the Exhibit C? Yes No

If no, please attach the required amendment.

1 The Exhibit C, for which no printed form is provided, consists of a true copy of the charter, articles of incorporation, association, and by laws of a registrant that is an organization. (A waiver of the requirement to file an Exhibit C may be obtained for good cause upon written application to the Assistant Attorney General, National Security Division, U.S. Department of Justice, Washington, DC 20530.)

4. (a) Have any persons ceased acting as partners, officers, directors or similar officials of the registrant during this 6 month reporting period? Yes No

If yes, furnish the following information:

Name	Position	Date connection ended
Jason M. Davis	Partner	September 10, 2010

(b) Have any persons become partners, officers, directors or similar officials during this 6 month reporting period? Yes No

If yes, furnish the following information:

Name	Residence address	Citizenship	Position	Date assumed
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5. (a) Has any person named in item 4(b) rendered services directly in furtherance of the interests of any foreign principal? Yes No

If yes, identify each such person and describe his service.

N/A

(b) Have any employees or individuals, who have filed a short form registration statement, terminated their employment or connection with the registrant during this 6 month reporting period? Yes No

If yes, furnish the following information:

Name	Position or connection	Date terminated
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(c) During this 6 month reporting period, has the registrant hired as employees or in any other capacity, any persons who rendered or will render services to the registrant directly in furtherance of the interests of any foreign principal(s) in other than a clerical or secretarial, or in a related or similar capacity? Yes No

If yes, furnish the following information:

Name	Residence address	Citizenship	Position	Date assumed
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6. Have short form registration statements been filed by all of the persons named in Items 5(a) and 5(c) of the supplemental statement? Yes No

If no, list names of persons who have not filed the required statement.

N/A

II - FOREIGN PRINCIPAL

7. Has your connection with any foreign principal ended during this 6 month reporting period?

Yes No

If yes, furnish the following information:

Name of foreign principal

Date of termination

8. Have you acquired any new foreign principal² during this 6 month reporting period?

Yes No

If yes, furnish the following information:

Name and address of foreign principal

Date acquired

The United Mexican States ("Mexico")

October 28, 2010

9. In addition to those named in Items 7 and 8, if any, list foreign principals² whom you continued to represent during the 6 month reporting period.

The Republic of Colombia

Federacion Nacional de Departamentos

10. **EXHIBITS A AND B**

(a) Have you filed for each of the newly acquired foreign principals in Item 8 the following:

Exhibit A³ Yes No
Exhibit B⁴ Yes No

If no, please attach the required exhibit.

(b) Have there been any changes in the Exhibits A and B previously filed for any foreign principal whom you represented during the 6 month period? Yes No

If yes, have you filed an amendment to these exhibits? Yes No

If no, please attach the required amendment.

² The term "foreign principal" includes, in addition to those defined in Section 1(b) of the Act, an individual organization any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign government, foreign political party, foreign organization or foreign individual. (See Rule 100(a) (9).) A registrant who represents more than one foreign principal is required to list in the statements he files under the Act only those principals for whom he is not entitled to claim exemption under Section 3 of the Act. (See Rule 208.)

³ The Exhibit A, which is filed on Form NSD-3 (Formerly CRM-157), sets forth the information required to be disclosed concerning each foreign principal.

⁴ The Exhibit B, which is filed on Form NSD-4 (Formerly CRM-155), sets forth the information concerning the agreement or understanding between the registrant and the foreign principal.

III - ACTIVITIES

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11. During this 6 month reporting period, have you engaged in any activities for or rendered any services to any foreign principal named in Items 7, 8, and 9 of this statement? Yes No

If yes, identify each such foreign principal and describe in full detail your activities and services:

COLOMBIAN CLIENTS:

- * No activity has taken place with respect to the State Department.
- * Other than prosecuting the litigation and costs related thereto, no other costs have been expended on Colombia's behalf with respect to the waiver of the Revenue Rule.
- * Also, no materials have been disseminated that have not been provided to the FARA desk in connection with prior communications/registrations.

MEXICO CLIENT:

No activity other than preliminary legal analysis has been performed for Mexico.

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12. During this 6 month reporting period, have you on behalf of any foreign principal engaged in political activity⁵ as defined below? Yes No

If yes, identify each such foreign principal and describe in full detail all such political activity, indicating, among other things, the relations, interests and policies sought to be influenced and the means employed to achieve this purpose. If the registrant arranged, sponsored or delivered speeches, lectures or radio and TV broadcasts, give details as to dates and places of delivery, names of speakers and subject matter.

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13. In addition to the above described activities, if any, have you engaged in activity on your own behalf which benefits any or all of your foreign principals? Yes No

If yes, describe fully.

⁵ The term "political activities" means any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

IV - FINANCIAL INFORMATION

14. (a) RECEIPTS - MONIES

During this 6 month reporting period, have you received from any foreign principal named in Items 7, 8, or 9 of this statement, or from any other source, for or in the interests of any such foreign principal, any contributions, income or money either as compensation or otherwise? Yes [] No [x]

If no, explain why.

Reid Collins & Tsai LLP represents the Colombian Plaintiffs on a contingent basis. The firm will only be entitled to compensation if there is a recovery in the litigation.

Reid Collins & Tsai LLP represents Mexico Client on a contingent basis. The firm will only be entitled to compensation if there is a recovery in the matter.

If yes, set forth below in the required detail and separately for each foreign principal an account of such monies⁶.

Date From whom Purpose Amount

Total

(b) RECEIPTS - FUND RAISING CAMPAIGN

During this 6 month reporting period, have you received, as part of a fund raising campaign⁷, any money on behalf of any foreign principal named in items 7, 8, or 9 of this statement? Yes [] No [x]

If yes, have you filed an Exhibit D⁸ to your registration? Yes [] No []

If yes, indicate the date the Exhibit D was filed. Date _____

(c) RECEIPTS - THINGS OF VALUE

During this 6 month reporting period, have you received any thing of value⁹ other than money from any foreign principal named in Items 7, 8, or 9 of this statement, or from any other source, for or in the interests of any such foreign principal? Yes [] No [x]

If yes, furnish the following information:

Name of foreign principal Date received Description of thing of value Purpose

6, 7 A registrant is required to file an Exhibit D if he collects or receives contributions, loans, money, or other things of value for a foreign principal, as part of a fund raising campaign. (See Rule 201(e).)

8 An Exhibit D, for which no printed form is provided, sets forth an account of money collected or received as a result of a fund raising campaign and transmitted for a foreign principal.

9 Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks," and the like.

15. (a) **DISBURSEMENTS - MONIES**

During this 6 month reporting period, have you

(1) disbursed or expended monies in connection with activity on behalf of any foreign principal named in Items 7, 8, or 9 of this statement? Yes No

(2) transmitted monies to any such foreign principal? Yes No

If no, explain in full detail why there were no disbursements made on behalf of any foreign principal.

See response to Item No. 11 of this Supplement.

If yes, set forth below in the required detail and separately for each foreign principal an account of such monies, including monies transmitted, if any, to each foreign principal.

Date	To whom	Purpose	Amount
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Total

(b) DISBURSEMENTS – THINGS OF VALUE

During this 6 month reporting period, have you disposed of anything of value¹⁰ other than money in furtherance of or in connection with activities on behalf of any foreign principal named in Items 7, 8, or 9 of this statement?

Yes No

If yes, furnish the following information:

Date disposed	Name of person to whom given	On behalf of what foreign principal	Description of thing of value	Purpose
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(c) DISBURSEMENTS – POLITICAL CONTRIBUTIONS

During this 6 month reporting period, have you from your own funds and on your own behalf either directly or through any other person, made any contributions of money or other things of value¹¹ in connection with an election to any political office, or in connection with any primary election, convention, or caucus held to select candidates for political office?

Yes No

If yes, furnish the following information:

Date	Amount or thing of value	Name of political organization	Name of candidate
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^{10, 11} Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks" and the like.

V - INFORMATIONAL MATERIALS

16. During this 6 month reporting period, did you prepare, disseminate or cause to be disseminated any informational materials¹²?
Yes No

IF YES, RESPOND TO THE REMAINING ITEMS IN SECTION V.

17. Identify each such foreign principal.

The Republic of Colombia

Federacion Nacional de Departamentos

The United Mexican States ("Mexico")

18. During this 6 month reporting period, has any foreign principal established a budget or allocated a specified sum of money to finance your activities in preparing or disseminating informational materials? Yes No

If yes, identify each such foreign principal, specify amount, and indicate for what period of time.

19. During this 6 month reporting period, did your activities in preparing, disseminating or causing the dissemination of informational materials include the use of any of the following:

- Radio or TV broadcasts
- Magazine or newspaper articles
- Motion picture films
- Letters or telegrams
- Advertising campaigns
- Press releases
- Pamphlets or other publications
- Lectures or speeches
- Internet
- Other (specify) See response to Item No. 11 of this Supplement

20. During this 6 month reporting period, did you disseminate or cause to be disseminated informational materials among any of the following groups:

- Public officials
- Newspapers
- Libraries
- Legislators
- Editors
- Educational institutions
- Government agencies
- Civic groups or associations
- Nationality groups
- Other (specify) _____

21. What language was used in the informational materials:

- English
- Other (specify) _____

22. Did you file with the Registration Unit, U.S. Department of Justice a copy of each item of such informational materials disseminated or caused to be disseminated during this 6 month reporting period? Yes No

23. Did you label each item of such informational materials with the statement required by Section 4(b) of the Act? Yes No

¹² The term informational materials includes any oral, visual, graphic, written, or pictorial information or matter of any kind, including that published by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or any means or instrumentality of interstate or foreign commerce or otherwise. Informational materials disseminated by an agent of a foreign principal as part of an activity in itself exempt from registration, or an activity which by itself would not require registration, need not be filed pursuant to Section 4(b) of the Act.

VI - EXECUTION

In accordance with 28 U.S.C. § 1746, the undersigned swear(s) or affirm(s) under penalty of perjury that he/she has (they have) read the information set forth in this registration statement and the attached exhibits and that he/she is (they are) familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his/her (their) knowledge and belief, except that the undersigned make(s) no representation as to the truth or accuracy of the information contained in the attached Short Form Registration Statement(s), if any, insofar as such information is not within his/her (their) personal knowledge.

(Date of signature)

(Type or print name under each signature ¹³)



2/8/11

William T. Reid, IV
Partner

¹³ This statement shall be signed by the individual agent, if the registrant is an individual, or by a majority of those partners, officers, directors or persons performing similar functions, if the registrant is an organization, except that the organization can, by power of attorney, authorize one or more individuals to execute this statement on its behalf.

UNITED STATES DEPARTMENT OF JUSTICE
FARA REGISTRATION UNIT
NATIONAL SECURITY DIVISION
WASHINGTON, D.C. 20530

NOTICE

Please answer the following questions and return this sheet in triplicate with your Supplemental Statement:

1. Is your answer to Item 16 of Section V (Informational Materials — page 8 of Form NSD-2, formerly Form CRM-154 Supplemental Statement):

YES _____ X _____ or NO _____

(If your answer to question 1 is "yes" do not answer question 2 of this form.)

2. Do you disseminate any material in connection with your registration:

YES _____ X _____ or NO _____

(If your answer to question 2 is "yes" please forward for our review copies of all material including: films, film catalogs, posters, brochures, press releases, etc. which you have disseminated during the past six months.)



Signature

2/8/11

Date

William T. Reid, IV
Partner

NSD/CES/REGISTRATION
UNIT

2011 FEB 15 PM 4:02



U.S. Department of Justice

National Security Division

Washington, DC 20530

THIS FORM IS TO BE AN OFFICIAL ATTACHMENT TO YOUR CURRENT SUPPLEMENTAL
STATEMENT - PLEASE EXECUTE IN TRIPLICATE

SHORT-FORM REGISTRATION INFORMATION SHEET

SECTION A

The Department records list active short-form registration statements for the following persons of your organization filed on the date indicated by each name. If a person is not still functioning in the same capacity directly on behalf of the foreign principal, please show the date of termination.

Short Form List for Registrant: Reid Davis, LLP

<u>Last Name</u>	<u>First Name and Other Names</u>	<u>Registration Date</u>	<u>Termination Date</u>	<u>Role</u>
Reid IV	William T.	06/24/2010		

NSD/CES/REGISTRATION
UNIT
2011 FEB 15 PM 4:03

MEMORANDUM

Confidential

To: U.S. Department of State
From: Reid Davis, LLP; Ben Barnes Group
Date: June 24, 2010
Re: *Colombia Liquor Litigation & The Revenue Rule*

I. EXECUTIVE SUMMARY

In 2004, the Republic of Colombia and twenty-three of its political subdivisions (collectively, "Colombia") brought a lawsuit against two multi-national liquor producers, Pernod Ricard and Diageo, in the United States District Court for the Eastern District of New York seeking to recover damages caused by their participation in a conspiracy to launder drug proceeds through bulk liquor sales to drug cartels and black-market importers (the "Colombia Liquor Case").¹ Pernod Ricard and Diageo responded to the Colombia Liquor Case with Herculean efforts to dismiss the case on a wide range of procedural and technical grounds. It was mid-2007 before United States District Judge Garaufis finally ruled on all of the motions, which he did in a 77-page opinion that found in favor of Colombia and permitted the lawsuit to go forward.²

Despite the fact that the Court sustained Colombia's complaint against the broad range of defendants' procedural attacks, Judge Garaufis did believe himself constrained to dismiss certain of Colombia's claims for damages based on a creature of English common-law referred to as the "revenue rule." The revenue rule – which was originally created to protect English trade from competition by French traders – permits U.S. courts to refuse jurisdiction over claims for foreign tax revenues that would result in extraterritorial judicial enforcement of foreign tax laws. On the basis of the revenue rule, the Court permitted Colombia's case to go forward to seek recovery of damages suffered by Colombia as a commercial actor, but dismissed damages claims seeking recovery of unpaid taxes.

By limiting the available damages in the Colombia Liquor Case, the revenue rule actually operates as an incentive to multi-national companies, like Pernod Ricard and Diageo, to continue

¹ *Colombia v. Diageo North Am., Inc.*, Case No. 04-CV-4372 (NGG)(VVP).

² *Colombia v. Diageo North Am., Inc.*, 531 F. Supp. 2d 365 (E.D.N.Y. 2007).

selling their products in exchange for drug proceeds, and directing and engaging in conspiracies to create and maintain illegal distribution channels for their products that conceal their money-laundering activities from law enforcement agencies. Moreover, the revenue rule, as applied in the Colombia Liquor Case, is contrary to the will of the United States Government, as expressed by its ratification of certain United Nations Conventions, to assist Colombia and others in their efforts to halt drug trafficking and money laundering. Merely subjecting these multi-national companies to civil liability in United States courts for unpaid taxes will, we respectfully submit, create a powerful and effective means of finally curbing, if not entirely deterring, this long-standing and profoundly damaging partnership between legitimate business and drug traffickers.

Lost tax revenue is one of the largest quantifiable categories of damages suffered by countries struggling to rid themselves of powerful drug cartels and the terrorist organizations they support. The revenue rule allows U.S. courts to decline jurisdiction over claims that would require the direct or indirect enforcement of any foreign tax law and, as a result, most claims brought by countries with otherwise actionable claims against multi-national corporations that are engaged in money laundering are dismissed. Multi-national corporations know this and rely upon the fact that the revenue rule puts them beyond the reach of effective claims for civil liability. Nonetheless, because these public companies want to avoid publicity concerning their partnership with drug smugglers and their active participation in massive money-laundering operations, they have still sometimes paid multi-million dollar settlements, even after claims against them have been dismissed. The fact of these settlement payments stands both as silent testament to the merit of the claims against such companies and as a clear indication that the insulation from civil liability provided by the revenue rule has created the wrong set of incentives.

Waiving the revenue rule in the Colombia Liquor Case could serve as a useful tool to: (i) provide an avenue by which the international community can attack and shut down vital components of the illicit black-market currency exchanges through which vast amounts of drug money is laundered; and (ii) generate revenue that supplements, or even replaces, U.S. aid in the international war against drugs (e.g., the U.S. has provided over \$4 billion in aid to Colombia since 2006). Therefore, Colombia respectfully requests that the State Department waive the revenue rule in the Colombia Liquor Case by submitting a "Statement of Interest" directly to the United States District Court for the Eastern District of New York. As explained within, this case presents a somewhat novel and entirely appropriate set of facts upon which the State Department can act.

To assist the State Department in its consideration of the issues, this memorandum provides: (i) a brief overview of Colombia's lawsuit; (ii) a summary of the impact of the so-called "revenue rule" on Colombia's ability to damages; and (iii) a description of the specific policies of the United States – as expressed through international treaties – that support the abrogation of the

revenue rule by the Executive Branch of the United States Government in the Colombia Liquor Case.

II. OVERVIEW OF TRADE-BASED MONEY LAUNDERING

Drug cartels do not, and cannot, operate alone. They act through, and with the assistance of, major multi-national companies that are willing to “deal with the devil” to expand their chains of distribution, increase their penetration in foreign markets, and multiply their revenues. After selling drugs in the United States, a drug cartel needs a mechanism to repatriate that wealth to their home country and local currency. One of the most popular means of doing so is to use the dollars to purchase hard goods that can be sold in Colombia for pesos (*i.e.*, trade-based money laundering); however, doing so requires an active and knowing partner. As alleged in the Colombia Liquor Case, Pernod Ricard and Diageo have been such active and knowing partners for at least a decade.

The Colombian Black Market Peso Exchange (BMPE) has been described as “perhaps the most dangerous and damaging form of money laundering” ever encountered³ and “the single most efficient and extensive money laundering ‘system’ in the Western Hemisphere.”⁴ The BMPE is responsible for moving an estimated \$5 billion worth of drug proceeds per year from the United States to Colombia and fueling the operations of Colombian drug cartels and terrorist organizations.⁵ Aruba, which has been a smuggler’s paradise since Colonial times, is one of the key locations through which the BMPE operates.

It is beyond the scope of this memorandum to provide an exhaustive description of all mechanisms through which the BMPE operates. For purposes of this memorandum, a relatively simple example of the type of conspiracy alleged in the Colombia Liquor Case will suffice. The process begins with drug cartels exporting drugs to the United States and selling those drugs for U.S. dollars. The dollars are then deposited into banks in the United States, in small amounts that avoid currency reporting laws, by people called “smurfs.” The drug cartels, again acting through smurfs, then sell their U.S. dollars to money brokers in exchange for Colombian pesos. (Although the BMPE can involve a series of transactions among unrelated persons or entities, many drug

³ Johnson, James E., Under Sec. of Enforcement, U.S. Dep’t of Treasury, testimony before the Senate Caucus on International Narcotics Control, June 21, 1999.

⁴ FinCEN Advisory Issue 9, *Colombian Black Market Peso Exchange*, November 1997, available at http://www.fincen.gov/news_room/tp/advisory/pdf/advisu9.pdf (last visited April 7, 2010).

⁵ Tandy, Karen P., Administrator, Drug Enforcement Administration, testimony before the Senate Caucus on International Narcotics Control, March 4, 2004.

cartels act as their own money broker and/or import business, a fact that is well-known by multi-national corporations engaged in the BMPE.⁶) The money brokers take the dollars purchased from the drug cartel to intermediary businesses that use the money to purchase products from multi-national corporations. The multi-national corporations know the source of proceeds, as reflected in the manner in which they control the cost of their product at every level of the resulting distribution chain. Moreover, the conspirator multi-national companies organize sophisticated supply chains through which their goods can be smuggled into Colombia through a complex series of intermediaries in Aruba and Panama, and thereafter sold on the black market without detection by law enforcement agencies.

Through this money-laundering scheme, the cartels obtain the domestic currency they desire, importers obtain goods that are smuggled into Colombia tax and duty free, and multi-national corporations, like Diageo and Pernod Ricard, profit from increased bulk sales due to the fact that black market retail prices are far less than those of the legitimate market. As should be obvious, the BMPE and other trade-based money-laundering schemes wreak havoc on Colombian businesses, financial institutions, and the Colombian economy. For example, Colombian authorities estimate that the black markets supported by the BMPE comprise as much as 80 percent of all liquor and tobacco sales in Colombia. Likewise, the Colombian government, with substantial assistance from the U.S. and the international community, spends billions of pesos each year fighting the cartels and terrorist organizations while, at the same time, suffering staggering losses in tax revenue.

Even prior to obtaining discovery from defendants in the Colombia Liquor Case, Colombia has already obtained compelling evidence of defendants' wrongdoing. Defendants' own records, which have been obtained by our investigators, reveal that defendants sold massive amounts of liquor to their Aruban and Panamanian distributors, organized and directed a sophisticated supply chain by which those products were smuggled into Colombia, and knowingly accepted drug-related proceeds as payment. For example, United Distillers & Vintners (UDV) – owned by Diageo Plc., the largest multi-national beer, wine, and spirits company in the world – commissioned the British business-intelligence firm, Hakluyt & Co., to study the business and legal risks associated with their sales to these distributors. The resulting report (the "Hakluyt Report") definitively identified a number of UDV's distributors and clients – including the Mansur family (Aruba),⁷ Motta International (Panama), and Samuel Santander Lopesierra – as

⁶ Financial Action Task Force, *Trade-Based Money Laundering* at 8 (2006), available at <http://www.fatf-gafi.org/dataoecd/60/25/37038272.pdf> (last visited April 7, 2010).

⁷ In 1996, President Clinton publicly identified Aruba "as a major drug-transit country" and noted that "a substantial portion of the free-zone's businesses in Aruba are owned and operated by members of the Mansur family, who have been indicted in the United States on charges of conspiracy to launder trafficking proceeds."

well-known money launderers who used “narco-dollars” to purchase liquor and then smuggle those products into Colombia.⁸ In commenting on the Hakluyt Report, William Bullard, UDV’s External Affairs Director, first asked why anyone had concluded it was a good idea to put such information in writing, and then acidly observed that “[t]he report doesn’t say much we don’t already think or know.” It should, perhaps, go without saying that Diageo did not cease its knowing participation and partnership with drug dealers and money launderers as a result of the Hakluyt Report.

Yet, most money-laundering investigations and prosecutions focus on cartel members, smugglers, and peso brokers to the exclusion of other conspirators, like the multi-national companies (manufacturers, banks, and shipping companies) that knowingly engage in and reap substantial profits from these money-laundering schemes. Beginning in 2000, the Colombian government brought a series of lawsuits in the United States designed to undercut this oft-neglected, but vital leg of the BMPE. The first of these lawsuits, which asserted civil RICO claims against multi-national tobacco companies that knowingly participated in laundering of billions of dollars in drug proceeds through bulk cigarette sales to smugglers (the “Colombia Tobacco Case”), settled recently for \$200 million.

The Colombia Liquor Case seeks not only to recover money damages for the government of Colombia, but to create a genuine deterrent that will effectively serve notice to the multi-national companies that are knowing and willing conspirators in these money-laundering schemes that the risk/reward ratio no longer tips in favor of continued criminal activity.

III. THE REVENUE RULE

Despite abundant and compelling evidence of their participation in money-laundering conspiracies, litigation against multi-national corporations who partner with drug cartels is stifled by the revenue rule. In the Colombia Liquor Case, for example, the United States District Court for the Eastern District of New York concluded it was constrained by the revenue rule to curtail the scope of the damages that could be recovered by Colombia by dismissing all claims for lost tax revenues, which represented a large percentage of Colombia’s damage claims. *See Colombia v. Diageo North Am. Inc.*, 531 F. Supp. 2d 365, 390-95 (E.D.N.Y. 2007). Indeed, the only reason Colombia still has a surviving claim for damages is because of the somewhat novel fact that, in Colombia, the sovereign has a monopoly on the manufacture and distribution of liquor. Thus, while Colombia has been injured in its role as a sovereign by the unpaid tax revenue, and those damages have been held barred by the revenue rule, it has also been injured in its role as a

⁸ The Hakluyt Report is attached as Exhibit A.

commercial actor that is entitled to be free from illegal competition, and those damages are not barred by the revenue rule.⁹ Still, notwithstanding that defendants are exposed to civil liability for some damages in the Colombia Liquor Case, they will essentially escape a financial judgment that reflects the true measure of the damage they have caused unless the revenue rule is waived. Truly, absent a waiver of the revenue rule, the Colombia Liquor Case presents a situation where, at the end of the day, defendants would be able to say that although they lost the battle, they won the war.

The revenue rule is a longstanding common-law doctrine that allows U.S. courts to refuse jurisdiction over claims for foreign tax revenues or actions that would result in the extraterritorial judicial enforcement of foreign tax laws. *Canada v. R.J. Reynolds Tobacco Holdings, Inc.*, 268 F.3d 103, 109 (2d Cir. 2001). Thus, when presented with a claim that potentially implicates the revenue rule, courts examine whether “the substance of the claim is, either directly or indirectly, one for tax revenues.” *Id.* at 130. And, “when . . . the whole object of the suit is to collect tax revenues for a foreign [state] . . . a court is entitled to reject the claim by refusing jurisdiction.” *Id.* at 131.

Despite the wealth of academic literature criticizing the rule as obsolete,¹⁰ analytically unsound,¹¹ and a moral hazard,¹² courts have upheld the rule based on two rationales. First, U.S. courts have recognized that foreign tax laws – which often embody “the political and social judgments of the sovereign and its people” – may conflict with domestic public policies.

⁹ As the Court found, “[i]n contrast to Plaintiffs’ claims for lost revenues and profits resulting from the enterprise’s smuggling and tax evasion, the revenue rule does not bar Plaintiffs’ claims for lost revenues and profits resulting from the enterprise’s money laundering.” 531 F. Supp. 2d at 395. *See also* 531 F. Supp. 2d at 399.

¹⁰ *See, e.g.*, Restatement (Third) of the Law of Foreign Relations § 483, Reporter’s Note 2 (1987) (stating that “[i]n an age when . . . instantaneous transfer of assets can be easily arranged, the rationale for not recognizing or enforcing tax judgments is largely obsolete.”)

¹¹ *See, e.g.*, Thomas B. Stoel, Jr., *The Enforcement of Foreign Non-criminal Penal & Revenue Judgments in England & the United States*, 16 *Int’l & Comp. L.Q.* 663, 668-69 (1967) (noting that “it is not clear why difficulties in proving or interpreting foreign law would be any greater [with revenue laws] than in other civil suits involving foreign law”).

¹² *See, e.g.*, Joseph Story, *Commentaries on the Conflict of Laws* 338-39 (Melville M. Bigelow ed., 8th ed. 1883) (the revenue rule is “inconsistent with good faith and moral duties of nations”); J. Kent, *Commentaries on American Law* 265 (O.W. Holmes, Jr., ed., 12th ed., John M. Gould ed., 14th ed., 1896) (criticizing the broad application of the revenue rule as “laying down an exceedingly lax morality”); *see generally* American Law Institute, *International Aspects of United States Income Taxation II: United States Income Tax Treaties* 122-25 (1992). (criticizing the revenue rule and recommending that United States tax treaties allow the enforcement of foreign tax judgments in United States courts).

European Community v. RJR Nabisco, Inc., 355 F.3d 123, 131 (2d Cir. 2004). Accordingly, U.S. courts are hesitant to adjudicate claims brought by foreign sovereigns that invoke their tax statutes because doing so may “embroil the courts in an evaluation of the foreign nation's social policies, an inquiry that can be embarrassing to that nation and damaging to the forum state.” *Id.*; *Canada*, 268 F.3d at 112; *see also Banco Nacional de Cuba v. Sabbatino*, 347 U.S. 398, 437 (1964) (recognizing that our courts customarily refuse to enforce the revenue and penal laws of a foreign state based on the “desire to avoid embarrassing another state by scrutinizing its penal and revenue laws”).

Second, courts have upheld the rule based on separation of powers concerns. *European Community*, 355 F.3d at 131; *Colombia*, 531 F. Supp. 2d at 383. That is, as the Second Circuit recently explained, “judicial examination and enforcement of foreign tax laws at the behest of foreign nations may conflict with the other branches’ policy choices with respect to cooperation in tax enforcement, and create the risk that the judiciary will be drawn into issues and disputes of ‘foreign relations policy that are assigned to – and better handled by – the political branches of government.’” *European Community*, 355 F.3d at 131 (citing *Canada*, 268 F.3d at 114-16, 123).

Nevertheless, courts are not insensitive to the power of the arguments against the revenue rule and have indicated their willingness to exercise jurisdiction over claims that implicate the rule when these particular concerns are mitigated through evidence that doing so would be consonant with the policies of the other branches of government. *Canada*, 268 F.3d at 113, 123 n.25. As a result, the revenue rule may be overcome through the approval of the legislative and/or executive branches of the U.S. government.

Legislative approval requires that Congress enact legislation that directly and clearly reflects an intent to grant U.S. courts jurisdiction over claims otherwise barred by the revenue rule. *See, e.g., Canada v. R.J. Reynolds Tobacco Holdings, Inc.*, 268 F.3d 103, 127 (2d Cir. 2001). Executive approval, on the other hand, requires an expression of consent to adjudication involving a foreign state’s tax laws. For example, executive approval may be granted through affirmatively prosecuting a criminal claim, executing a broad, reciprocal tax-enforcement treaty, or submitting a “statement of consent” to a court in which a civil claim is pending. *See, e.g., Pasquantino v. United States*, 544 U.S. 349 (2007); *Canada*, 268 F.3d at 115-22.

Based on a review of revenue-rule jurisprudence, it appears that the following executive-branch departments can express the requisite consent:

- The U.S. Attorney’s Office (by prosecuting criminal actions on behalf of the United States);

- The State Department, including the State Department's Legal Advisor (through the submission of a "statement of interest" approving claims brought by foreign states); and
- The Department of Justice (through the submission of *amicus* briefs at the direction of the State Department).

Given the potential impact of the U.N. Conventions discussed below, the State Department is particularly well-situated to waive the revenue rule because it is charged with, *inter alia*, advising governmental agencies on all aspects of treaty law, procedure, and interpretation. *See, e.g., Sanchez-Llamas v. Oregon*, 548 U.S. 331, 355 (2006) (noting that "while courts interpret treaties for themselves, the meaning given by them by the departments of government particularly charged with their negotiation and enforcement is given great weight").

IV. UNITED NATIONS CONVENTIONS

In recent years, international efforts to curb money laundering have culminated in several U.N. Conventions, including the: (i) Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; (ii) Convention for the Suppression of the Financing of Terrorism; (iii) Convention against Transnational Organized Crime; and (iv) Convention Against Corruption. According to the United Nations Office on Drugs and Crime, these Conventions are a reflection of a strategy aimed at, on the one hand, attacking the economic power of criminal and terrorist organizations, and on the other, forestalling the nefarious effects of the criminal economy on the legal economy.

Early U.N. Conventions largely focused on criminalizing the laundering of illicit proceeds through coordinated legal regimes.¹³ More recently, U.N. Conventions have expanded the attack on money laundering to include the imposition of civil liability.¹⁴ Arguably, these U.N. Conventions abrogate the revenue rule outright, but even if they do not, they provide a strong policy rationale for an express waiver of the revenue rule.

¹³ U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (ratified on February 20, 1999) (attached as Exhibit B); U.N. Convention for the Suppression of the Financing of Terrorism (1999) (ratified on June 26, 2002) (attached as Exhibit C).

¹⁴ U.N. Convention Against Transnational Organized Crime, Art. 10 (2000) (ratified on November 3, 2005) (attached as Exhibit D); U.N. Convention Against Corruption, Art. 26 (2004) (ratified on October 30, 2006) (attached as Exhibit E).

The U.N. Conventions mentioned above uniformly criminalize money laundering and require that the signatories thereto (“State Parties”) provide the broadest measure of mutual legal assistance in related investigations, prosecutions, and judicial proceedings. More importantly, these Conventions also require that State Parties provide mutual legal assistance even if “the [underlying] offence is also considered to involve fiscal matters” – *i.e.*, matters pertaining to the public treasury or revenues/taxes.¹⁵ Thus, by ratifying these Conventions, the U.S. Government has publicly committed to assist foreign states in combating money laundering, even where such assistance implicates that foreign state’s tax laws.

Given this express commitment, the basis already exists upon which the U.S. Government could grant a State Party access to its courts for the State Party to pursue civil money-laundering claims, even where such claims involve “fiscal matters.” This use of U.S. courts, and this reason for waiving the revenue rule in a specific case, is entirely distinguishable from a case where, for all intents and purposes, a foreign sovereign might seek to use a U.S. court as little more than a tax collector. The fundamental international interests that would be served by permitting Colombia to proceed on all of its damages claims in the Colombia Liquor Case simply would not apply in a routine tax-collection matter, whereas here, they are the principal motivating concern.

The U.N. Convention against Corruption further underscores the point. In the context of providing mutual legal assistance, the Convention against Corruption mandates that State Parties (like the United States) take such measures as may be necessary to permit: (i) another State Party (like Colombia) to initiate civil action in its courts to establish title to or ownership of property acquired through money laundering; and (ii) its courts to order those who have engaged in money laundering to “*pay compensation or damages to another State Party that has been harmed by such offences.*” The Convention against Corruption, therefore, clearly contemplates an additional form of “mutual legal assistance”; namely, the right to pursue civil actions for the recovery of money damages against money launderers in the courts of State Parties. And often times, as the Convention recognizes, money-laundering operations harm foreign states in ways that indirectly implicate “fiscal matters.”¹⁶

At least as applied in this case by United States District Court Judge Garaufis, the revenue rule completely bars State Parties from recovering damages caused by money laundering merely because such claims indirectly involve a foreign state’s tax laws. *Colombia*, 531 F. Supp. 2d at

¹⁵ U.N. Convention Against Transnational Organized Crime at Art. 18, Para. 22.

¹⁶ Furthermore, as Judge Garaufis observed, “Congress’s enactment of a private RICO cause of action predicated on international money laundering evinces a determination that federal courts should hear such claims, which will almost universally involve evidence located abroad.” 531 F. Supp. 2d at 411. The Colombia Liquor Case asserts civil RICO claims predicated on money laundering.

390-95. Thus, the revenue rule, at least as applied in this case, is entirely at odds with the U.S. Government's commitment under the Convention Against Corruption to provide foreign states with mutual legal assistance (including access to a civil forum to recover damages) even where such claims involve "fiscal matters."

Arguably, the foregoing U.N. Conventions should, in and of themselves, be sufficient to abrogate the revenue rule in lawsuits like the Colombia Liquor Case. At a minimum, though, in a proper case, as here, they provide a compelling basis upon which to grant a case-specific waiver of the revenue rule.

V. CONCLUSION

The BMPE and other trade-based money laundering schemes have a devastating impact on both the United States and Colombia. We believe that using U.S. law to extract damages from the multi-national companies, like Diageo and Pernod Ricard, that orchestrate and profit from these schemes is a necessary step to closing down existing schemes and deterring future ones. Absent the ability to extract full damages from Diageo and Pernod Ricard, the financial incentives for the companies to continue to engage in this conduct are simply too strong. We respectfully submit that permitting Colombia access to US Courts to seek a full recovery of all of its damages is consistent with applicable UN Conventions and, furthermore, that such litigation would serve as a useful revenue generation tool to supplement U.S. aid to Colombia.

Colombia does not seek to use the U.S. Courts in the ministerial role of tax collector. To the contrary, in coming to the United States Department of State with this request for a waiver of the revenue rule in the Colombia Liquor Case, Colombia respectfully asks the United States to permit full access to its courts as a means of promoting shared international goals, the success of which will have tangible benefits far beyond Colombia and the United States.

September 15, 2010

→ VIA FEDEX

Honorable David Kris
Assistant Attorney General for National Security
United States Department of Justice
10th & Constitution Avenue, NW
Washington, DC 20530

Re: Reid Collins & Tsai LLP (f/k/a Reid Davis LLP) / FARA Registration: Request for Guidance
➤ *The Republic of Colombia, et al., v. Diageo North America Inc., et al.*
Civil Action No. 04-cv-4372 (NGG/VVP)
United States District Court, Eastern District of New York

NSD/CES/REGISTRATION
UNIT
2011 FEB 15 11:14 AM '10

Dear Mr. Kris:

Reid Collins & Tsai LLP, formerly known as Reid Davis LLP (“our Firm”), files this request for guidance pursuant to 28 C.F.R. § 5.2 (the “Request for Guidance”) to seek guidance in connection with our Firm’s registration under the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. § 611 et seq.) (“FARA”). On or about June 22, 2010, our Firm filed with the United States Department of Justice (the “Justice Department”), National Security Division, FARA Unit, a Registration Statement Pursuant to Section 2 of FARA [Form NSD-1] (a “FARA Registration Statement”).

This Request for Guidance seeks to determine the Justice Department’s positions with respect to certain proposed arrangements and certain activities undertaken to date in connection with our Firm’s representation of foreign principals.

Background

Our Firm is lead counsel to The Republic of Colombia (“Colombia”), a number of the Departments of Colombia, and Bogotá, Capital District (collectively, the “Colombian Plaintiffs”), in the case of *The Republic of Colombia, et al., v. Diageo North America Inc., et al.*,

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No. 04-cv-4372 (NGG/VVP), currently pending in the United States District Court for the Eastern District of New York (the "**Lawsuit**").

The Lawsuit is primarily a civil money-laundering case under the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1961 et seq.) ("**RICO**"). The Colombian Plaintiffs have a constitutional monopoly on the manufacture and sale of liquor and seek to hold Diageo North America Inc., United Distillers Manufacturing, Inc., Diageo plc, Pernod-Ricard USA LLC, Pernod-Ricard S.A., and Seagram Export Sales Company, Inc. ("**Defendants**") responsible for Defendants' sale of liquor into the black market in Colombia, where those sales are estimated to comprise more than 80 percent of the total liquor market.

Enclosed as **Exhibit 1** is a copy of the Court's Order of June 19, 2007 (the "**Dismissal Order**"), denying in part and granting in part the Defendants' motions to dismiss the Lawsuit. As the Dismissal Order indicates, the Court refused to dismiss the Colombian Plaintiffs' allegations of competitive harm, in that the Colombian Plaintiffs are forced to compete in a marketplace where the contraband liquor products are sold much more cheaply than the Colombian Plaintiffs' products. In the Dismissal Order, the Court notes that there are two reasons for the reduced price in the black market: (1) the tax-evasion discount; and (2) the money-laundering discount. However, the Court concluded that the common-law doctrine known as the Revenue Rule, which bars a foreign sovereign from seeking lost taxes absent the permission of the United States government, bars the Colombian Plaintiffs from recovering damages caused by the tax-evasion discount or lost taxes. Carefully distinguishing among the different categories of damages sought by the Colombian Plaintiffs, the Court held that the Colombian Plaintiffs are permitted to proceed on their claims for commercial damages caused by the money-laundering discount.

The Revenue Rule is a discretionary rule that can be waived by the executive branch of the United States government. Normally, a waiver may be obtained by submitting a request for a waiver to the United States Department of State (the "**State Department**"). Our understanding is that the State Department can communicate its response to a request for a waiver of the Revenue Rule directly to the United States District Court before which a lawsuit is pending.

Thus, our Firm, in the role of lead counsel to the Colombian Plaintiffs, plans to formally meet with the State Department and request that the State Department consider a waiver of the Revenue Rule in the specific context of the Lawsuit. In this regard, our Firm intends to offer arguments to the State Department explaining why a waiver of the Revenue Rule would be appropriate in this case. We also expect to file a motion asking the Court to send its own letter of inquiry to the State Department, seeking direction on the question of whether the Court should

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apply the Revenue Rule in this case. We do not intend to ask the State Department for any other waiver or action of any kind, other than the waiver of the Revenue Rule in the specific context of the Lawsuit.

Terms of Representation of Colombian Plaintiffs

Attached as Exhibit B to our Firm's FARA Registration Statement of June 22, 2010, is a copy of our contract of engagement with the government of Colombia (along with an English translation). Under that contract, our Firm's fee is contingent on the recovery of damages in the Lawsuit. Specifically, the entire legal team is entitled to 15% of any gross recoveries made through settlement or judgment.

The State Department's waiver of the Revenue Rule in connection with the Lawsuit would result in an expansion of the available categories of damages, and the potential range of damages, that the Colombian Plaintiffs could pursue in the Lawsuit. However, to be clear, such a waiver would not diminish the legal and factual hurdles that must be cleared in order to establish the Colombian Plaintiffs' entitlement to damages in the Lawsuit. In other words, the Colombian Plaintiffs will still need to prevail in the Lawsuit, with or without a waiver of the Revenue Rule, in order to obtain any recovery that would generate a contingent fee payable to our Firm.

Relationship With Washington, DC Counsel

Effective March 15, 2010, our Firm entered into an arrangement with the Washington, DC law firm of Sharp & Barnes LP ("**Sharp & Barnes**"), in which Sharp & Barnes agreed to assist our Firm in efforts to obtain a waiver of the Revenue Rule. Attached as **Exhibit 2** is a copy of the letter of agreement dated March 5, 2010, between Sharp & Barnes and our Firm. As indicated in **Exhibit 2**, our Firm agreed that, in the event we are successful on behalf of the Colombian Plaintiffs in obtaining a waiver of the Revenue Rule, Sharp & Barnes will be entitled to 20 percent of the amount of the fee received by our Firm under the contingency arrangement with the Colombian Plaintiffs described above. On or about August 27, 2010, Sharp & Barnes filed its own FARA Registration Statement.

Activity to Date

As of this date, our Firm has itself not made any contact with any United States governmental official on behalf of the Colombian Plaintiffs. We did, however, prepare a draft memorandum, on our Firm's letterhead, setting out the case for a waiver of the Revenue Rule (the

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“**Revenue Rule Memorandum**”), and we provided the Revenue Rule Memorandum to Sharp & Barnes for review. It is our understanding that, at some point, Ben Barnes, a principal of Sharp & Barnes, communicated with a government official regarding the Lawsuit and the Revenue Rule in anticipation of making a formal request to the State Department to set up a meeting to discuss a possible waiver of the Revenue Rule. We further understand that, in the course of Mr. Barnes’s informal contact with the government official, a copy of the Revenue Rule Memorandum was delivered to such official on or about May 21, 2010, but that no action was requested and no further contact has been made. Our Firm filed a copy of the Revenue Rule Memorandum with the Justice Department, National Security Division, FARA Unit, on June 30, 2010.

Just recently, the Colombian Ambassador sent a diplomatic note to the State Department expressing a desire to meet formally on Revenue Rule issues.

Questions Presented

Our Firm seeks to determine the position of the Justice Department with respect to the following issues:

- (1) If no further contact or communication is made on behalf of the Colombian Plaintiffs with the State Department or any other governmental official or agency, by either our Firm or Sharp & Barnes, beyond the contact described above, will either our Firm or Sharp & Barnes have engaged in “political activities for or in the interest of such foreign principal” or have represented “the interests of such foreign principal before any agency or official of the government of the United States” within the meaning of section 1(c)(1) of FARA (22 U.S.C. § 611(c)(1)(i),(iv)), thereby requiring registration under FARA?
- (2) Would the arrangements for our Firm’s compensation for services rendered in connection with the Lawsuit, as described above, violate section 8(h) of FARA (22 U.S.C. § 618(h)) if:
 - (a) a waiver of the Revenue Rule is granted by the State Department following a formal request for such a waiver by our Firm and/or Sharp & Barnes; and
 - (b) the total damage amount to which the contingency arrangement is applied includes that portion of the damages attributable to the waiver of the Revenue Rule?

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- (3) Would the arrangements for our Firm's compensation for services rendered in connection with the Lawsuit, as described above, violate section 8(h) of FARA (22 U.S.C. § 618(h)) if:
 - (a) a waiver of the Revenue Rule is granted by the State Department following a formal request for such a waiver by our Firm and/or Sharp & Barnes; and
 - (b) the total damage amount to which the contingency arrangement is applied does *not* include that portion of the damages attributable to the waiver of the Revenue Rule?

- (4) Would the arrangements for our Firm's compensation for services rendered in connection with the Lawsuit, as described above, violate section 8(h) of FARA (22 U.S.C. § 618(h)) if:
 - (a) a waiver of the Revenue Rule is granted by the State Department following a formal request for such a waiver by our Firm and/or Sharp & Barnes; and
 - (b) there is a subsequent settlement (the most likely favorable outcome) and the total recovery to which the contingency arrangement is applied is not broken out as to the amount that is in fact attributable to the waiver of the Revenue Rule?

- (5) Would the arrangements for our Firm's compensation for services rendered in connection with the Lawsuit, as described above, violate section 8(h) of FARA (22 U.S.C. § 618(h)) if *no* formal request of the State Department for a waiver of the Revenue Rule is made on behalf of the Colombian Plaintiffs by our Firm or Sharp & Barnes, but such a waiver results instead from a request for a statement of position directed by the Court to the State Department?

- (6) Would the arrangements for our Firm's compensation for services rendered in connection with the Lawsuit, as described above, violate section 8(h) of FARA (22 U.S.C. § 618(h)) if *no* formal request of the State Department for a waiver of the Revenue Rule is made on behalf of the Colombian Plaintiffs by our Firm or Sharp & Barnes, but such a waiver results instead from a request by the Colombian Ambassador and the Ambassador's diplomatic team?

- (7) Would the arrangements for compensation of Sharp & Barnes by our Firm, as described above, for Sharp & Barnes's assistance in obtaining a waiver of the Revenue Rule, violate section 8(h) of FARA (22 U.S.C. § 618(h)) if:

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- (a) a waiver of the Revenue Rule is granted by the State Department following further communications to the State Department on behalf of the Colombian Plaintiffs; and
- (b) Sharp & Barnes is compensated for its services to our Firm through an hourly or fixed fee that is not contingent on obtaining a waiver of the Revenue Rule or the outcome of the Lawsuit?

We look forward to the Justice Department's response to this Request for Guidance. If the Justice Department has any questions or requires further information, please do not hesitate to contact me.

Certification

Pursuant to 28 C.F.R. § 5.2(f), I, William T. Reid IV, hereby certify that: (i) I am a partner of Reid Collins & Tsai LLP, formerly known as Reid Davis LLP, and am authorized to submit this Request for Guidance; and (ii) this Request for Guidance contains a true, correct, and complete disclosure with respect to the proposed conduct.

Respectfully submitted,



William T. Reid IV, Partner
REID COLLINS & TSAI LLP

Enclosures