



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

May 17, 2010

G. Nelson Mackey, Jr.  
Brumberg, Mackey & Wall, P.L.C.  
800 Professional Arts Building  
30 W. Franklin Road  
Post Office Box 2470  
Roanoke, VA 24010

**Re: Denial of No-Action Request**

Dear Mr. Mackey:

In your letter dated December 4, 2008, you request assurance that the staff of the Division of Trading and Markets (“Staff”) would not recommend enforcement action to the Commission under Section 15(a) of the Securities Exchange Act of 1934 (“Exchange Act”) if Brumberg, Mackey & Wall, P.L.C. (“BMW”) provides to Electronic Magnetic Power Solutions, Inc. (“EMPS”) the services described in your letter in exchange for transaction-based compensation without registering with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act.

Section 3(a)(4)(A) of the Exchange Act generally defines the term “broker” as any person engaged in the business of effecting transactions in securities for the account of others.<sup>1</sup> Section 15(a)(1) of the Exchange Act generally provides that any broker effecting transactions in securities, or inducing or attempting to induce the purchase or sale of securities, must be registered with the Commission pursuant to Section 15(b) of the Exchange Act.<sup>2</sup> A person’s receipt of transaction-based compensation in connection with these activities is a hallmark of broker-dealer activity.<sup>3</sup> Accordingly, any person

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<sup>1</sup> 15 U.S.C. 78c(a)(4)(A). See Strengthening the Commission’s Requirements Regarding Auditor Independence, Securities Exchange Act Release No. 47265, n.82 (Jan. 28, 2003) (“A person may ‘effect transactions,’ among other ways, by assisting an issuer to structure prospective securities transactions, by helping an issuer to identify potential purchasers of securities, or by soliciting securities transactions. A person may be ‘engaged in the business,’ among other ways, by receiving transaction-related compensation or by holding itself out as a broker-dealer.”).

<sup>2</sup> 15 U.S.C. 78o(a)(1).

<sup>3</sup> See Order Exempting the Federal Reserve Bank of New York, Maiden Lane LLC and the Maiden Lane Commercial Mortgage Backed Securities Trust 2008-1 from Broker-Dealer Registration, Securities Exchange Act Release No. 61884 (April 9, 2010) (“Indeed, the receipt of transaction-based compensation often indicates that such a person is engaged in the business of effecting transactions in securities.” (internal citation omitted)). See also Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, to Thomas D. Giachetti, Stark & Stark, regarding 1st Global, Inc. (May 7, 2001) (reiterating the

Mr. G. Nelson Mackey, Jr.

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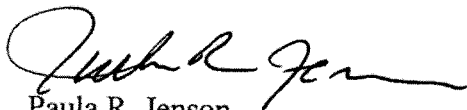
receiving transaction-based compensation in connection with another person's purchase or sale of securities typically must register as a broker-dealer or be an associated person of a registered broker-dealer.

In your letter, you state that BMW would enter into an agreement with EMPS to help EMPS raise funds to finance its operations and development. Specifically, BMW would introduce to EMPS individuals and entities who "may have an interest" in providing financing to EMPS through investments in equity or debt instruments of EMPS. In return, EMPS would pay BMW an amount equal to a percentage of the gross amount EMPS raised as a result of BMW's introductions.

The Staff believes that the introduction to EMPS of only those persons with a potential interest in investing in EMPS's securities implies that BMW anticipates both "pre-screening" potential investors to determine their eligibility to purchase the securities, and "pre-selling" EMPS's securities to gauge the investors' interest. Moreover, the Staff believes that the receipt of compensation directly tied to successful investments in EMPS's securities by investors introduced to EMPS by BMW (i.e., transaction-based compensation) would give BMW a "salesman's stake" in the proposed transactions and would create heightened incentive for BMW to engage in sales efforts. Accordingly, the Staff believes that your proposed activities would require broker-dealer registration.

Thus, based on the facts and representations set forth in your letter, the Staff is unable to assure you that it would not recommend enforcement action to the Commission if BMW engages in the activities set forth in your letter without registering as a broker-dealer pursuant to Section 15(b) of the Exchange Act.

Sincerely,



Paula R. Jenson  
Deputy Chief Counsel

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staff's position that "the receipt of securities commissions or other transaction related [*sic*] compensation is a key factor in determining whether a person or an entity is acting as a broker-dealer. Absent an exemption, an entity that receives commissions or other transaction-related compensation in connection with securities-based activities that fall within the definition of 'broker' or 'dealer'... generally is required to register as a broker-dealer." (internal citations omitted)).

*Law Offices*  
**Brumberg, Mackey & Wall, P.L.C.**

Offices in Roanoke and The New River Valley  
800 Professional Arts Building  
30 W. Franklin Road  
Post Office Box 2470  
Roanoke, Virginia 24010

G. Nelson Mackey, Jr.  
(540) 342-8150 direct dial  
(800) 366-9790 Ext. 131  
(540) 597-3054 cell  
[nmackey@bmwlaw.com](mailto:nmackey@bmwlaw.com)

Telephone  
(540) 343-2956  
Fax  
(540) 343-2987

December 4, 2008

Securities Exchange Act of 1934  
Section 15

Office of Chief Counsel  
Division of Corporate Finance  
United States Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, D.C. 20549

Re: Brumberg, Mackey & Wall, P.L.C.

RECEIVED  
SECURITIES AND EXCHANGE COMMISSION  
DIVISION OF CORPORATE FINANCE  
DEC 11 19 08

Dear Sir or Madam:

This letter requests that the staff of the Securities and Exchange Commission (the "Staff") advise Brumberg, Mackey & Wall, P.L.C. ("BMW"), that the Staff will not recommend any enforcement action under Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") against BMW, if BMW engages in the activities described below and BMW does not register as a broker-dealer under Section 15(a) of the Exchange Act.

BMW is a law firm with an office located in Roanoke, Virginia. BMW is engaged principally in the general practice of law. BMW does not engage in the practice of securities law, and nor is it engaged in any activities involving securities. BMW is not as a broker-dealer or investment advisor, and nor does it conduct its activities through a registered broker-dealer.

Electronic Magnetic Power Solutions, Inc, a Tennessee corporation ("EMPS"), is a power electronics technology company whose mission is to develop and deliver inverter and converter products for photovoltaic and other renewable energy sources providing the highest total energy harvesting, lowest lifetime system cost, and value-added energy management features.

EMPS would engage BMW to assist them in the acquisition of funding for financing to fund the operations and development of EMPS. BMW would be compensated upon

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the closing of the financing based upon a percentage of the amounts raised as provided in a Referral Fee Agreement between BMW and EMPS. A copy of the proposed Referral Fee Agreement ("Agreement") between BMW and EMPS is attached.

Section 3(a)(4)(A) of the Exchange Act defines a "broker" as a person "engaging in the business of effecting transactions in securities for the account of others" Section 15(a) of the Exchange Act generally requires broker-dealers to register with the Commission.

The Staff has stated in a number of no-action letters that transaction-based compensation (commissions) represents one of the hallmarks of being a broker-dealer. The underlying concern has been that transaction-based compensation represents a potential incentive for abusive sales practice that registration is intended to regulate and prevent.

BMW's proposed role would be limited to the introduction of EMPS to a limited number of its contacts who may have an interest in providing funds for financing the operations and development of EMPS. BMW: (1) will not engage in any negotiations whatsoever on behalf of EMPS and any such contact ; (2) will not provide any such contact with any information about EMPS which may be used as the basis for any negotiations for funding to be provided to EMPS; (3) will not have any responsibility for, nor make any recommendations concerning the terms, conditions, or provisions of any agreement between EMPS and any such contact providing funding for EMPS; (4) will not provide any assistance to any such contact or EMPS with respect to any transactions involving the financing of funds for EMPS.

Accordingly, in this instance it is respectfully submitted that the proposed payment of compensation to BMW in the context of the attached Agreement lacks traditional concerns. As stated, BMW's role is very limited and the potential for abusive sales practices is de minimis. BMW is looking for guidance from the Staff that the payment of a referral fee to BMW by EMPS would not place it in violation of Section 15(a) of the Exchange Act.

**Brumberg, Mackey & Wall, P.L.C.**

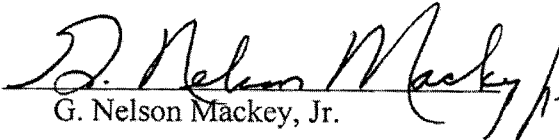
Roanoke and The New River Valley

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Should you have any comments or questions relating to this matter, or wish to discuss this matter further, please contact the undersigned at (540) 343-2956 or (540) 597-3054.

Sincerely yours,

BRUMBERG, MACKEY & WALL, P.L.C.

By:   
G. Nelson Mackey, Jr.

Enclosures:

Original and seven (7) copies

cc: Electronic Magnetic Power Solutions, Inc.

## REFERRAL FEE AGREEMENT

*THIS REFERRAL FEE AGREEMENT* (this "Agreement") is made and entered into as of this 4th day of December, 2008, by and between Electronic Magnetic Power Solutions, Inc., a Tennessee corporation ("EMPS") and Brumberg, Mackey & Wall, P.L.C., a Virginia professional limited liability company ("BMW").

### *RECITALS*

1. EMPS and BMW have entered into a certain Confidential Information Disclosure Agreement dated December 26, 2007 (the "Confidentiality Agreement"), governing the confidentiality and protection of the EMPS's confidential corporate and financial information.

2. EMPS, pursuant to a resolution by its Director dated October 18, 2007 (the "Resolution"), is authorized to raise \$7,000,000, and pay compensation as described therein.

3. EMPS desires BMW to act as an intermediary to identify contacts interested in providing Financing for the operations and development of Company; and,

4. EMPS and BMW desire to enter into this Agreement with respect to the Referral Fee EMPS will pay BMW for its Intermediary Services if any Contact introduced to Company by BMW provides Financing for the Company, and with respect to the Intermediary Services to be provided by BMW.

**NOW THEREFORE**, the parties hereto, in consideration of the foregoing and of the mutual promises made herein, agree as follows:

1. Company. "Company" shall mean EMPS, its subsidiaries, or the projects of EMPS or that of its subsidiaries.

2. Contact. "Contact" shall mean those persons or entities which BMW introduces to Company that provides Financing for its operations and development.

3. Financing. "Financing" shall mean all amounts furnished to or for use of Company by any Contact directed or introduced by, or through the efforts of, BMW after the date of this Agreement, whether by investment in equity or debt instruments of Company, loans, loan commitments, guarantees of indebtedness, leasing, sale and leaseback, joint venture or licensing.

4. Follow-On Financing. "Follow-On Financing" shall mean any Financing by any Contact which is made after any initial Financing by that Contact.

5. Intermediary Services. "Intermediary Services" shall mean and relate solely to BMW's introduction of EMPS to persons or entities with an interest in providing Financing or Follow-On Financing to Company, subject, however, to the following restrictions:

a. There are no additional services that BMW is required to perform to be entitled to a Referral Fee if a Contact provides Financing or Follow-On Financing to Company;

b. BMW will not engage in any negotiations whatsoever on behalf of Company or any Contact;

c. BMW will not provide any Contact with any information which may be used as a basis for negotiations between Company and any Contact for Financing or Follow-On Financing to Company by any Contact;

d. BMW will have no responsibility for, and nor will BMW make any recommendations concerning, the terms, conditions or provisions of any agreement between Company and any Contact, including the manner or means of consummating the transaction.

e. BMW will not provide any assistance to a Contact or Company with respect to any transaction involving the Financing or Follow-On Financing to Company.

6. Referral Fee. "Referral Fee" shall mean the aggregate of the Cash Referral Fee payable to BMW by Company for its Intermediary Services

7. Cash Referral Fee. If Financing or Follow-On Financing is consummated by Company and any Contact, "Cash Referral Fee" shall mean a sum equal to:

a. Five Percent (5%) of the first \$4,000,000, or any portion thereof, of Financing or Follow-On Financing;

b. Four Percent (4%) of the fifth \$1,000,000, or any portion thereof, of Financing or Follow-On Financing;

c. Three Percent (3%) of the sixth \$1,000,000, or any portion thereof, of Financing or Follow-On Financing;

d. Two Percent (2%) of the seventh \$1,000,000, or any portion thereof, of Financing or Follow-On Financing; and,

e. One Percent (1%) of any amount in excess of \$7,000,000, or any portion thereof, of Financing or Follow-On Financing.

8. Appointment and Authorization. Company hereby authorizes BMW, on a nonexclusive basis, to identify Contact(s) interested in providing Financing for the Company on terms acceptable to the Company.

9. Referral Fee Payable to BMW. If by virtue of BMW's Intermediary Services, any Contact provides Financing and/or Follow-On Financing to Company, Company shall pay BMW a Referral Fee in accordance with the terms and provisions of this Agreement. The Referral Fee shall be based on the gross amount of Financing and/or Follow-On Financing to Company, without deductions, expenses or offsets of any kind. The Referral Fee shall be paid by Company upon the closing of Financing and/or Follow-On Financing by any Contact to

Company, payable to BMW by cashier's check or wire transfer. In the event that a portion of the Financing and/or Follow-On Financing is completed in delayed increments, the Referral Fee shall be pro-rata as each increment is advanced.

10. Causation Requirement. Company covenants and agrees that BMW shall be entitled to the payment of a Referral Fee upon the consummation of any Financing and/or Follow-On Financing to Company by any Contact which flowed, either directly or indirectly, from BMW's Intermediary Services. Any provision herein for payment of a Referral Fee with respect to any Follow-On Investment a Contact, shall expire at the end of three years from the date such Contact first provided Financing to Company.

11. Scope of BMW's Services. Company covenants and agrees that BMW's services under this Agreement relate solely to that of providing Intermediary Services to Company.

12. Survival/Lapse of Time. Company and BMW covenant and agree that the representations, warranties, covenants and agreements under this Agreement and the consummation of the transactions contemplated hereby and the same shall be effective for a period of four years from the date of this Agreement, except that its terms and conditions as relates to the introduction of any to Company within the aforementioned four years, or Follow-On Financing, as the case may, shall survive until the ultimate consummation of any Financing and/or Follow-On Financing by any Contact to Company, the aforesaid four years, notwithstanding. Company and BMW further covenant and agree that any Referral Fee to which BMW shall be entitled under this Agreement shall not be affected by any lapse of time between BMW's introduction of a Contact to Company and Company and Contact's ultimate negotiations and consummation of an Financing and/or Follow-On Financing to Company by the Contact.

13. Non-Exclusive Agreement. BMW covenants and agrees that this Agreement is non-exclusive, and shall not prohibit Company from entering into any other agreement with any other party that does not involve BMW's Intermediary Services.

14. Acceptant/Rejection by Company. Company retains the exclusive right, in its sole discretion, to accept or reject any Financing and/or Follow-On Financing to Company by a Contact.

15. BMW Not Broker/Dealer and No Registration. BMW is not "broker" or "dealer" within the meaning of Section 3(a)(4) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or within the meaning of Section 13.1-501 of the Virginia Securities Act, as amended (the "Virginia Securities Act") and is not required, nor by entering into this Agreement or performing hereunder shall be required, to register as broker or dealer under Section 15 of the Exchange Act or Section 13.1-504 of the Virginia Securities Act. BMW shall have no authority to enter into any commitments on Company's behalf, or to negotiate the terms of any Financing or Follow-On Financing to Company, or to hold any funds or securities in connection with any Financing or Follow-On Financing to Company, or to perform any act which would require BMW to become licensed as a securities dealer. This Agreement shall be effective upon the issuance of a No-Action Letter to BMW by the U.S. Securities and Exchange Commission to the effect that BMW is not required to register as a broker or dealer under Section 15 of the Exchange Act

16. No Agency. It is understood and agreed that BMW is not an agent of Company

17. Governing Law/Jurisdiction/Venue/Attorneys' Fees and Costs. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Company and BMW covenant and agree to submit to the personal

and subject matter jurisdiction and venue of the Circuit Court for the City of Roanoke Virginia with regard to any disputes arising under this Agreement. To the extent any dispute arises between the parties hereto regarding this Agreement, the prevailing party in any action or proceeding brought in connection with this Agreement will be entitled to reasonable attorneys' fees and court costs from the losing party.

18. Termination. This Agreement may be terminated at any time by either party by written notice to the other party in accordance with notice provisions in Section 18, but such termination shall not affect the obligation of Company to pay the Referral Fee as to the Financing or Follow-On Financing consummated after such termination with any Contact directed or introduced by BMW to Company or through the efforts of BMW prior to such termination.

19. Contacts/Notices. William G. Haynes, or such other person designated by Company in writing, shall serve as the primary contact for Company. G. Nelson Mackey, Jr., or such other person designated by BMW in writing shall serve as the primary contact for BMW. All notices, requests, consents and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered personally, mailed first-class, postage prepaid, registered or certified mail, return receipt requested, or electronically by facsimile or e-mail to the parties as follows:

Company:

EMPS  
11459 Bancroft Lane  
Knoxville, TN 37934

BMW:

Brumberg, Mackey & Wall, P.L.C.  
30 W. Franklin Road, Suite 800  
Roanoke, VA 24011

Any party to this Agreement may change the address to which such communications are to be directed by giving notice thereof to the other parties in the manner provided in this Section.

20. Amendment. Any amendments to this Agreement must be in writing and signed by all of the parties.

21. Indemnification. Company covenants and agrees to indemnify and hold harmless BMW, its members and employees from any loss, damage or liability resulting from Company's violation of this Agreement or any agreement between Company and any Contact regarding any Financing and/or Follow-On Financing to Company by any Contact. If BMW becomes entitled to a Referral Fee under this Agreement, it agrees to indemnify Company and hold it harmless from and against any claim by any other person or finder seeking referral fees or similar compensation for services rendered with respect to a transaction with any Contact, where such person or entity acted in concert with BMW. Such indemnification provisions shall survive the consummation, cancellation, or abandonment of any Financing and/or Follow-On Financing to Company by any Contact.

22. Entire Agreement. This Agreement sets forth the entire agreement and understanding of the parties in respect of the transactions contemplated hereby and supersedes all

prior agreements, arrangements and understandings related to the subject matter hereof or thereof.

23. Further Assurances. Company and BMW covenant and agree that they will execute such further documents or instruments and take such further actions or obtain such approval of this Agreement as may reasonably be requested by one of them to effect the purpose of this Agreement.

24. Section Headings. The Section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

25. Enforceable Provisions. If any provision of this Agreement or any portion of any such provision shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect, and the provision or portion thereof affected by such holding shall be modified, if possible, so that it is enforceable to the maximum extent permissible.

26. Binding Effect, Successors and Assignment. All the terms, representations and warranties of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective subsidiaries, successors, assigns, heirs at law, legatees, distributes, executors, administrators and other legal representatives, but this Agreement and the rights and obligations hereunder shall not be assignable by any party hereto to any other person or entity without the express written agreement of all of the parties hereto


27. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but all of which, when taken together shall constitute but one instrument.

*IN WITNESS WHEREOF*, the parties hereto have caused this Agreement to be duly executed on and as of the day and year first above written.

ELECTRONIC MAGNETIC POWER SOLUTIONS, INC.

By   
William G. Haynes, Vice President

BRUMBERG, MACKEY & WALL, P.L.C.

By   
G. Nelson Mackey, Jr., Member