



Oregon

John A. Kitzhaber, M.D., Governor

Department of Transportation

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January 23, 2013

Mr. Tim Adams, CEO
IRP, Inc.
240 Hensley Road
Eminence, KY 40019

Dear Mr. Adams:

In order to further the discussions regarding Oregon's participation in IRP, I would like to take this opportunity to clarify Oregon's concerns and the legal constraints within which state moneys must be held and invested under Oregon law.

It appears that the existing documentation with respect to Oregon's participation in the IRP places the state in the position of an unsecured creditor of IRP, Inc. Attorneys from the Oregon Department of Justice reviewed the documentation provided by IRP with respect to the JP Morgan Chase investments and the plan agreement. Under the existing documents, the ownership of the states' funds after they are transferred to IRP is unclear. The plan agreement provides that once a state has sent its moneys to IRP, the state's payment obligation is satisfied. However, there is no clear declaration that IRP holds the moneys it receives in trust for the states. It appears that in exchange for payment to IRP, a participating state receives a contractual promise from IRP to pay the money that IRP calculates as being owed to each participating state.

IRP invests the money paid to it by the states with JP Morgan Chase. The agreement between IRP and JP Morgan contains no language that would indicate the moneys deposited with JP Morgan are not solely the proprietary funds of IRP. The agreement is only in the name of International Registration Plan, Inc. As a consequence, it appears that Oregon is placed in the position of an unsecured creditor with respect to the promise of payment from IRP once moneys are deposited from Oregon and the other states with IRP. A creditor of IRP could, therefore, attach the moneys held by IRP to secure a debt owed by IRP. In addition, if the moneys on deposit with JP Morgan are lost for whatever reason, Oregon's only recourse for payment is as an unsecured creditor of IRP.

As the holder of public moneys, the State of Oregon is placed in the position of a fiduciary with respect to such funds. In addition to the normal duties of care owed by a fiduciary, there are certain constitutional and statutory provisions that govern how State of Oregon moneys may be held and invested. The Oregon Attorney General has advised that State of Oregon moneys may not be invested in mutual funds (even a fund comprised solely of United States debt obligations) without violating Article XI, Section 6 of the Oregon Constitution, which prohibits the state from holding any interest in common stock. In addition, any financial institution holding moneys that are "in the custody of, or under the control of," a state official must meet certain statutory requirements, if moneys

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that exceed the federally insured amounts are placed in a demand deposit account. The financial institution must be a "qualified depository" that has a branch or head office in Oregon and has entered into a security agreement with the Office of the State Treasurer.

Oregon may continue to participate in the IRP program if the deposit and investment of the funds held by IRP can be structured to meet the requirements of Oregon law. For instance, the documents evidencing the relationship between Oregon, IRP and the other states should clearly evidence a trust arrangement. The trust document would clearly establish the interests of the respective parties while moneys are held by IRP, would impose certain fiduciary duties on IRP, would require that the states' moneys are segregated from other IRP assets and may not be reached by any creditor of IRP, and provide that the moneys may be invested only in certain types of investments. In turn, any agreements entered into by IRP and investment providers would clearly indicate that the moneys are held in trust by IRP, so that IRP could not, for instance (as appears to be the case with the current JP Morgan agreement), borrow money and pledge the funds held with the investment provider as collateral for any moneys owed by IRP to the investment provider. Finally, any moneys held overnight in demand deposit accounts that exceed federally insured amounts would be fully collateralized.

Also, while it may be the case that IRP staff act with reasonable prudence and employ adequate safeguards regarding accounting and control of money, the published policies and procedures of IRP Inc. do not make that clear. Oregon cannot rely upon anecdotal information in this regard and desires to see written policies and procedures. Please let me know if you have further questions regarding the parameters within which the State of Oregon must operate when depositing and investing state funds.

Respectfully,



Matthew L. Garrett,
Director

Cc: Gregg Dal Ponte
Anita Wasko, Chair IRP Board of Directors