Form 26

Opinion in Lieu of Representation Letter

[Month] \_\_, 20\_

[Auditors]

[Address]

Ladies and Gentlemen:

[Consider alternatives: We are acting as counsel for [Placement Agent] (the “Placement Agent”) in connection with the private placement of \_\_\_\_\_\_\_\_\_ shares of common stock, par value $[par value] per share, and \_\_\_\_\_\_\_\_\_ [securities] (together, the “Securities”) of [Company], a [Delaware] corporation (the “Company”), pursuant to [the placement agency agreement, dated [Month] \_\_\_, 20\_ between the Company and the Agent] and purchase agreements dated on or about the date hereof (the “Purchase Agreements”) between the Company and the purchasers named therein (the “Transaction”). We have examined the Company’s private placement memorandum in respect of the Transaction, as amended to date, and an executed copy of [the Agreement and] the Purchase Agreements.]

[Alternative for at the market offering: We are acting as counsel for the Agents (each an “Agent” and, collectively, the “Agents”) under the Equity Distribution Agreement, dated [Month]\_\_\_, 20\_\_ (the “Equity Distribution Agreement”), relating to [Company]’s (the “Company”) proposed offerings of shares of the Company’s common stock, par value $[0.01] per share (the “Shares”). The offering of the Shares is registered under a registration statement on Form S-3 (File No. 333-\_\_\_\_\_\_) (the “Registration Statement”), filed by the Company under the Securities Act of 1933, as amended (the “Act”). You have requested this letter from us in connection with the Agents’ request for comfort letters pursuant to the Equity Distribution Agreement.]

Based upon and subject to the foregoing, in our opinion, in the event an action were to be brought against the Placement Agent under Section 11 of the Act, in respect of sales of the Securities as described in the Transaction, the Placement Agent would have, among other defenses, the “due diligence” defense made available under Section 11(b)(3)(A) of the Act, i.e., the Placement Agent had, after reasonable investigation, reasonable grounds to believe, and did believe, that the disclosure standards of Section 11 of the Act had been satisfied as to the private placement memorandum relating to the Transaction. In rendering the foregoing opinion, we express no view as to whether any such defense would prevail.

[Alternative for at the market offering: In our opinion, in the event an action were to be brought against one or more of the Agents under Section 11 of the Act in respect of sales of Shares pursuant to the Equity Distribution Agreement, such Agent would have, among other defenses, the “due diligence” defense made available under Section 11(b)(3)(A) of the Act, i.e., such Agent had, after reasonable investigation, reasonable grounds to believe and did believe that the disclosure standard of Section 11 had been satisfied as to the Registration Statement. In rendering the foregoing opinion, we express no view as to whether any such defense would prevail.]

In rendering the foregoing opinion, we also express no opinion as to matters governed by the laws of any jurisdiction other than the laws of the United States of America to the extent referred to specifically herein as in effect on the date hereof.

This letter is furnished by us to you solely for your benefit in connection with the delivery of a “comfort letter” pursuant to the [Agreement]. Neither this letter or any opinion expressed herein may be relied upon by, nor may copies be delivered or disclosed to any other person or entity without our prior written consent.

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| --- | --- |
|  | Very truly yours, |
|  | [Counsel] |