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May 12, 2009
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Broad Financial LLC
21 Robert Pitt Drive
Suite 202
Monsey, New York 10952

Re: Legal Opinion Confirming the Legality of Broad Financial's Ultimate IRA®

Gentlemen:

You have requested us to review the structure of your firm's proprietary self-directed IRA, known as the Ultimate IRA® and confirm its legal standing. The concept behind the Ultimate IRA® is for an individual retirement account ("IRA") as described under Section 408(a) of the Internal Revenue Code of 1986, as amended (the "Code") to invest in a newly formed special purpose limited liability company ("LLC") and to be its initial and sole-member, with the IRA account holder acting as the non-compensated manager. Our findings are that the Ultimate IRA® is a legally acceptable structure as it should not be deemed a prohibited transaction within the meaning of Section 4975(c)(1)(A), (D) or (E) of the Code, as described below.

For purposes of rendering this opinion, we are relying upon certain statements and information provided by you. We have, consequently, assumed and relied on your representation that the statements and information provided by you, accurately and completely describes all material facts relevant to this opinion. We have assumed that such statements and information are true without regard to any qualification as to knowledge or belief. Our opinion is conditioned on the continuing accuracy and completeness of such statements and information. Any material change or inaccuracy in the facts referred to, set forth, or assumed herein may affect our conclusions set forth herein.

In rendering our opinion, we have considered and relied upon the Code, the regulations promulgated thereunder ("Regulations"), administrative rulings and other interpretations of the Code and the Regulations by the courts and the Internal Revenue Service ("IRS"), and certain other government pronouncements, all as they exist at the date hereof. In should be noted that the Code, Regulations, judicial decisions, administrative interpretations, and pronouncements are subject to change at any time. A material change that is made after the date hereof in any of the foregoing bases for our opinion could affect our conclusions set forth herein. In this regard, an opinion of counsel with respect to an issue represents counsel's best judgment as to the outcome on the merits with respect to such issue, and is not binding on the IRS or the courts.

Section 4975(c)(1) of the Code prohibits certain transactions between "plans" and "disqualified persons." Among these prohibited transactions are the direct or indirect "sale or exchange, or leasing, of any property between a plan and a disqualified person." *Code § 4975(c)(1)(A)*. In addition, any "transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan" is prohibited. *Code § 4975(c)(1)(D)*. Also prohibited is any "act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account." *Code § 4975(c)(1)(E)*. A "plan" includes an individual retirement account described in Section 408(a) of the Code. *Code Section 4975(e)(1)(B)*. A "disqualified person" includes, among other things, a fiduciary, and any "corporation, partnership, or trust, or estate of which (or in which) 50 percent or more of – (i) the combined voting power of all classes of stock entitled to vote or the total value of shares or all classes of stock of such corporation, (ii) the capital interest or profits interest of such partnership, or (iii) the beneficial interest of such trust or estate, is owned directly or indirectly" by the fiduciary. *Code §§ 4975(e)(2)(A), (G)*. A "fiduciary" is defined as any person who "exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, . . . [or] has any discretionary authority or discretionary responsibility in the administration of such plan." *Code § 4975(e)(3)*. Finally, the prohibitions set forth under Section 4975(c)(1) of the Code do not apply to the "receipt by a disqualified person of any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries." *Code § 4975(d)(9)*.

The United States Tax Court in *Swanson v. Commissioner*, 106 T.C. 76 (1996), examined whether transactions similar to your situation were prohibited by Sections 4975(c)(1)(A) and (E) of the Code. In *Swanson*, a taxpayer, James Swanson, arranged for the organization of Swanson Worldwide, a domestic international sales corporation, and the formation of an IRA. Swanson was the IRA's account holder and retained the power to direct the investment of the IRA. Swanson served as the initial director of Worldwide and, later, as its President. At the direction of Swanson, the custodian of his IRA caused the IRA to subscribe to 2,500 shares of Worldwide's original issue stock. Those shares of original issue stock were issued to Swanson's IRA, which became Worldwide's sole shareholder. Worldwide received commissions from another company owned by Swanson. At the direction of Swanson, Worldwide paid dividends to its sole member IRA.

The Tax Court in *Swanson* first discussed whether the acquisition of Worldwide's stock by Swanson's IRA was prohibited by Section 4975(c)(1)(A) of the Code. As noted above, Section 4975(c)(1)(A) of the Code prohibits the sale, exchange or leasing of any property between an IRA and an entity or individual that is a "disqualified person" with regard to the IRA. Thus, if Worldwide was a disqualified person with regard to Swanson's IRA, the acquisition of Worldwide's stock by Swanson's IRA would be a prohibited transaction. The Tax Court noted, however, that at the time of the acquisition, Worldwide had no shares or shareholders and, therefore, could not be a disqualified person with regard to Swanson's IRA. Accordingly, the acquisition of Worldwide's stock by Swanson's IRA was not a prohibited transaction within the meaning of Section 4975(c)(1)(A) of the Code. *106 T.C. at 88-89. See also Ellis v. Commissioner, T.C. Memo 2013-245* (relying on *Swanson*, the Tax Court found that an LLC that elects to be treated as a corporation and does not yet have members or membership interests is "sufficiently analogous to a corporation without shares or shareholders" and, therefore, where an IRA makes an initial acquisition of interests in such LLC, no prohibited transaction occurred because the LLC was not a disqualified person at the time of the acquisition); *Hellweg v. Commissioner, T.C. Memo 2011-58.*

The Tax Court next discussed whether the payment of dividends by Worldwide to Swanson's IRA, at the direction of Swanson, constituted a prohibited transaction under Section 4975(c)(1)(E) of the Code. As indicated above, Section 4975(c)(1)(E) prohibits any act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account. The Tax Court stated that "Section 4975(c)(1)(E) addresses itself only to acts of disqualified persons who, as fiduciaries, deal directly or indirectly with the *income or assets of a plan* for their own benefit or account. Here, there was no such direct or indirect dealing with the income or assets of a plan, as the dividends paid by Worldwide did not become *income of IRA #1* [Swanson's IRA] until unqualifiedly made subject to the demand of IRA #1 [Swanson's IRA]." *106 T.C. at 89.* Further, the Tax Court said that "the only direct or indirect benefit that petitioner [Swanson] realized from the payments of dividends by Worldwide related solely to his status as a participant of IRA #1 [Swanson's IRA]. In this regard, petitioner [Swanson] benefited only insofar as IRA #1 [Swanson's IRA] accumulated assets for future distribution." *106 T.C. at 89-90.* Accordingly, based on Section 4975(d)(9) of the Code, the Tax Court concluded that there was no support for the contention that the payment of dividends by Worldwide to Swanson's IRA constituted an act prohibited by Section 4975(c)(1)(E) of the Code. *106 T.C. at 90. See also Hellweg, T.C. Memo 2011-58.*

The Internal Revenue Service ("IRS") in Field Service Advice Memorandum 200128011 (the "FSA") also examined whether transactions similar to your situation were prohibited by Sections 4975(c)(1)(A), (D) and (E) of the Code. The facts of the FSA were that a father and each of his three children owned separate IRAs and each IRA acquired a 25 percent interest in a newly-created foreign service corporation. The foreign service corporation then entered into a commission arrangement with a U.S. corporation the majority of which was owned by the father (and minority interests of which were owned by the children). The foreign service corporation would make cash distributions to its IRA shareholders out of earnings and profits generated through its arrangement with the U.S. corporation. The IRS concluded, in light of *Swanson*, that the original issuance of the stock of the foreign service corporation to the IRAs was not a prohibited transaction under Section 4975(c)(1)(A) of the Code, and the payment of dividends by the foreign service corporation to the IRAs was not a prohibited transaction under Section 4975(c)(1)(D) and (E) of the Code. *See also Hellweg, T.C. Memo 2011-58.*

In the present situation, Broad Financial will be coordinating and facilitating the creation of the LLCs. In each case, the initial and sole member of the LLC will be an IRA. As the LLC will not have any members or membership interests at the time the IRA becomes its initial and sole member, the LLC should not be a "disqualified person" with respect to the IRA at the time the IRA becomes its initial and sole member. Thus, based on the foregoing, we are of the opinion that the formation of the LLC with the IRA as its initial and sole member should not be a prohibited transaction within the meaning of Section 4975(c)(1)(A) of the Code.

Also in the present situation, any earnings generated by the LLC's investments will be distributed to the IRA as the sole member of the LLC. Such distributions will be directed by the IRA account holder as the non-compensated manager of the LLC. Pursuant to *Swanson* and the FSA, the payment of dividends to an IRA by a corporation owned by the IRA is not prohibited because the dividends do not become IRA assets until they are paid to the IRA. In addition, the only direct or indirect benefit that the IRA account holder realizes from the payment of dividends to the IRA relate solely to his or her status as the IRA account holder. By analogy, *Swanson* and the FSA should apply to the facts of the present situation. Thus, based on the foregoing, we are of the opinion that distributions made to the IRA by the LLC at the direction of the IRA account holder as the non-compensated manager of the LLC, should not be a prohibited transaction within the meaning of Section 4975(c)(1)(D) and (E).

Our opinion is based on the correctness of the following assumptions: (i) the LLC is duly organized and validly existing under state law and is qualified to do business in all states in which such qualification is necessary, (ii) the LLC operating agreement does not contain any provision that would cause a prohibited transaction under Section 4975 of the Code, (iii) no facts or circumstances exist that could cause the IRA account holder to benefit from any of the transactions other than in his or her capacity as IRA account holder, and (iv) no facts or circumstances exist that could affect the IRA account holder's best judgment as a fiduciary of the IRA.

These opinions are subject to subsequent changes in judicial, administrative and statutory law. Conclusions rendered herein are based on an examination of issues as to which there exists no directly controlling precedent or authority. While we believe that the conclusions expressed herein are correct, no assurance can be given that administrative opinions and interpretations or judicial decisions may not be forthcoming from governmental authorities which would cause us to modify our conclusions.

Very truly yours,

DAVIS & GILBERT LLP

By: ______________________
Mark E. Bokert, Esq.

IRS Circular 230 Disclosure:
To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained herein is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.