

DIRK KEMPTHORNE  
GOVERNOR



GAVIN M. GEE  
DIRECTOR

DEPARTMENT OF FINANCE  
700 W. STATE STREET, 2ND FLOOR  
P. O. BOX 83720  
BOISE ID 83720-0031  
Website: <http://finance.state.id.us>

July 2, 2004

[REDACTED]

Re: Request for "no-action" — [REDACTED]

Dear Mr. [REDACTED]:

We received your letter of June 14, 2004 regarding a request that our Department take a "no enforcement action" position with regard to your registration as an investment adviser.

Your letter indicates that, in the future, the business activities of [REDACTED] will consist only of business consultation and assistance to your father and accounts established and maintained by your father. The consultation and assistance provided to your father will concern his various investment and business holdings, including trust accounts he has established for your siblings.

You have also indicated that you will terminate your paid investment advisory relationship with all clients other than your father. The termination of these accounts will be evidenced to this Department by providing copies of all letters sent to clients indicating that you will no longer provide them investment advisory services for compensation. We request that the termination letters are sent, and copies provided to us, on or before August 10, 2004.

Based on your letter, this Department agrees to take a "no enforcement action" position with regard to your activities as outlined above. As such, you may continue in these activities without maintaining your registration as an investment adviser in Idaho. Should the facts in this matter change, this Department's "no-action" position may change as well.

We appreciate the professional relationship the Department has had with [REDACTED] over the years. We wish you well in future endeavors.

Sincerely,

PATRICIA R. HIGHLEY  
Senior Securities Analyst  
Idaho Department of Finance

Banks and Savings Banks  
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Securities  
Money Transmitters

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EQUAL OPPORTUNITY EMPLOYER

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JUN 15 2004  
DEPARTMENT OF FINANCE

June 14, 2004

Ms. Patricia R. Highley  
Senior Securities Analyst  
State of Idaho  
Department of Finance  
700 West State Street, 2<sup>nd</sup> Floor  
P.O. Box 83720  
Boise, ID 83720-0031

RE: [REDACTED]

Dear Ms. Highley:

Thank you for your letter dated April 23 and for taking my recent phone call concerning the no-action letter I am seeking with regard to private advisory work in the State of Idaho. In follow-up to the State's initial reply to my letter dated March 16, 2004 I have undertaken changes in my business. All of my compensated efforts put forth are for the benefit of my father's portfolio holdings and will continue as such in the future. Kindly review the following:

I. PRIVATE SERVICES PROVIDED TO MY FATHER

In 1998, my father sold a successful outdoor advertising business and as a result of his hard work, has accumulated a large net worth. I consult and assist him with his portfolio holdings, currently valued over \$400 million dollars. All of my efforts put forth have been for the benefit of my father's portfolio holdings and businesses. My father compensates me for the assistance provided for his benefit and looks to me for guidance and loyalty. Additionally, I provide oversight to my siblings trusts, established by the father. Lastly, I hold a board seat on one of my father's development companies. Should my father pass away, I am currently elected as the executor for his estate.

II. TERMINATION OF SERVICES TO OTHER PERSONS

As previously explained, [REDACTED] does not hold itself out as providing investment advisory services to the public. I had the option, previously, of invoicing friends who are clients, for consultation services, as needed and payment was voluntary. However, I had not made it a practice to receive compensation from anyone other than my father.

I plan to no longer make myself available for investment advisory services for a fee to anyone other than my father. If the State provides a no-action letter that will provide me the opportunity to withdraw my investment adviser registration due to the private nature of services provided to my father, I will promptly send letters to all other persons to notify them of my withdrawal as an adviser and as a result can no longer offer services that are investment advisory in nature for compensation. The letter will be drafted with the assistance of my compliance consultant, [REDACTED]. [REDACTED] With the State's granting of my waiver request, I would also be pleased to copy your office on the letter sent to previous clients.

III. STATE vs. SEC EXEMPTION

As noted in my previous no-action request, I understand that where assets consulted on exceed \$25 million, an Adviser cannot rely on any State exemption granted and must seek a separate SEC no-action letter or comply with SEC registration requirements.

Under the conditions set forth in this letter, I believe conditions exist for an SEC exemption from adviser registration under the Advisers Act of 1940, Section 203(b)(3) which exempts from registration, "*Any investment adviser who, during the course of the preceding twelve months has had fewer than fifteen clients and who neither holds himself generally to the public as an investment adviser nor acts as an investment adviser to any investment company...*".

IV. SUMMARY

Please be assured that I take the issue of regulatory compliance seriously and this is the reason for the no-action letter request. I have eliminated the ability to be compensated for investment advisory services to anyone other than my father. Thus, in light of service limitations, I am hopeful the situation merits a waiver of the Idaho Securities Act's registration requirements.

Ms. Highley, if you should have any questions or concerns relating to this response or to the enclosures, please do not hesitate to contact me directly or my regulatory compliance consultant, [REDACTED] at [REDACTED]. Thank you for your time and consideration.

Very truly yours,

[REDACTED]  
[REDACTED]

DIRK KEMPTHORNE  
GOVERNOR



GAVIN M. GEE  
DIRECTOR

STATE OF IDAHO  
DEPARTMENT OF FINANCE  
700 W. STATE STREET, 2ND FLOOR  
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BOISE ID 83720-0031  
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April 23, 2004

[REDACTED]

Re: [REDACTED]  
Investment Adviser Registration

Dear Ms. Dickinson:

This is in response to your letter of March 16, 2004 requesting the Department take a "no-enforcement" position with regard to [REDACTED] and the investment adviser registration requirements set forth in the Idaho Securities Act ("Act").

It is our understanding that [REDACTED], a state-licensed investment adviser, seeks a waiver from the registration requirements of the Act based on the following facts:

- [REDACTED] currently provides investment advisory services for compensation primarily to his father.
- [REDACTED] provides limited investment advisory services to friends and accepts voluntary compensation.

The Act defines an investment adviser as: "any person who, for compensation, engages in the business of advising others either directly or through publications or writings as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or, who for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities..."

We consider [REDACTED]'s investment advisory services to be governed by the Act's investment adviser definition.

Based upon your letter and the facts therein, we do not concur with your position that [REDACTED] situation merits waiver of the Act's registration requirements. Because [REDACTED]

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will receive compensation for investment advice, the Department is unwilling to take a no-action position in this matter. Hence, if [REDACTED] continues to provide investment advisory services, he will be required to maintain his investment adviser registration.

Please be aware that the position taken in this letter is based solely on the facts and circumstances presented in the March 16, 2004 letter. Should the facts change or be altered in a material way, our view may be different.

If you have any questions regarding this matter, please contact the undersigned.

Sincerely,

Ax (file)  
Nancy C. Ax  
Securities Analyst

[REDACTED]  
[REDACTED]

March 16, 2004

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MAR 23 2004  
DEPARTMENT OF FINANCE

Ms. Patricia R. Highley  
Senior Securities Analyst  
Department of Finance  
State of Idaho  
P.O. Box 83720  
Boise, ID 83720-0031

RE: [REDACTED]  
Investment Adviser Registration

Dear Ms Highley:

This office represents [REDACTED], currently a Registered Investment Adviser (sole proprietor) doing business as [REDACTED] [REDACTED] is currently only registered in the State of Idaho.

We hereby request that the Idaho Department of Finance (the "Department") take a "no enforcement action" position under Section 30-1402(6)(i) of the Idaho Securities Act (the "Idaho Act") and Section 12.01.08.125 of the Idaho Administrative Procedure Act (the "IAPA") to the effect that [REDACTED] does not need to register as an investment adviser under the Idaho Act, based upon the specific facts and representations set forth herein.

#### Background

Please be advised that [REDACTED] wishes to surrender his registration as an investment adviser since he currently only provides investment advisory services to one main client, his father. Up until this time, [REDACTED] has provided limited investment advisory services to friends and has only accepted voluntary compensation.

It is the desire of [REDACTED] to surrender his investment adviser registration and operate solely in the capacity of a "private adviser" to his father and to various friends with whom he has had long-term relationships. [REDACTED]'s father would continue to compensate him; friends will not be invoiced for services but if it were their desire to pay [REDACTED], he would like to ability to accept such voluntary payments. All client services would be conducted intrastate. Before surrendering the investment adviser registration, all exiting clients would receive a notification of [REDACTED]'s intent to surrender his registration so that the clients have the opportunity to end their relationship with [REDACTED] before the surrender becomes effective.

[REDACTED] intends to no longer hold himself out as providing investment advice to the public for compensation. In doing so, [REDACTED] would not participate in activities or conditions

March 16, 2004

broadly interpreted by SEC staff to be "holding out as an investment adviser", to include the following:

- Will not utilize or have a need to advertise any reference relating to investment advisory activities;
- Will not maintain a current listing as an adviser in a telephone book or building directory (and will cancel any current listings);
- Will prohibit, to the best of his ability, anyone from letting it be known by word of mouth or otherwise that [REDACTED] will accept new investment advisory clients;
- Will not engage a solicitor to attract new clients;
- Will not continue to use letterhead or business cards that use the term "investment adviser" or a similar term or that refer to investment advisory activities;
- Will not, using a publicly available electronic medium, such as a website, to provide information about investment advisory services; and
- Will not allow his name to be included in a database of advisers available on the Internet without complying with specified restrictions.

Before surrendering an investment adviser registration, an adviser should consider the following and [REDACTED] has taken the each under advisement:

- ❖ An adviser that has previously held itself out to the public as an investment adviser may not be entitled to rely on an exemption, because it may not be able to establish that it does not hold itself out to the public as an investment adviser. However, [REDACTED] has always had a very small number of private clients and generally has not advertised services. Therefore, [REDACTED] feels he has not established a "presence" with the general public.
- ❖ In the event that the assets continuously managed by [REDACTED], which currently consist of all of his father's assets, should rise to the level of \$25,000,000, the adviser may not rely on any State exemption granted and must seek registration with the Securities and Exchange Commission or be prepared to take the necessary steps to request an SEC no-action letter.
- ❖ Section 16 of the Securities Exchange Act of 1934, as amended (the "1934 Act"), requires that a person who beneficially owns more than ten percent of the outstanding securities of a particular class file monthly reports disclosing its transactions in those securities, and disgorge deemed profits from purchases and sales of any of those securities within six months. Shares held by a registered investment adviser for the benefit of third persons or in a customer or fiduciary account in the ordinary course of business, without the purpose or effect of influencing the control of the issuer, are excluded from the calculation of that investment adviser's beneficial ownership. An adviser that surrenders its registration would not be eligible for that exclusion, and may, therefore, be subject to the reporting requirements and liability provisions of section 16. While this occurrence is not very likely, this issue should be considered by any qualified investor who decides to surrender an investment adviser registration.

March 16, 2004

As noted in the previous section, [REDACTED] will, prior to the surrender of his registration and with a favorable no enforcement action response from the State of Idaho, promptly write a letter to each client to inform them that he is no longer a registered investment adviser.

#### Exemption From Federal Registration

Under the conditions set forth in this letter, [REDACTED] qualifies for an exemption from registration as an Investment Adviser under the Advisers Act of 1940. Section 203(b) of the Advisers Act exempts certain advisers from the definition of an investment adviser from the registration provisions of the Act.

Section 203(b)(1) of the Act of 1940 exempts from registration, "Any investment adviser all of whose clients are residents of the State within which such investment adviser maintains his or its principal office and place of business, and who does not furnish advice or issues analysis or reports with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange. While [REDACTED] does provide advisory services for his father, the only advice provided to friends who are clients relates to recommendations that certain qualified investors place investments in the initial public offerings of mutual savings and loans that are converting to stock ownership. In order for clients to purchase stock in these initial public offerings, that majority of the time, the investor needs to be a customer of the mutual thrift institution. More or less since 1994, [REDACTED] has made a hobby of personally investing in these types of investments. He has no intention of invoicing friends for information that may lead to their personal investment in such programs.

Section 203(b)(3) of the Act of 1940 exempts from registration, "Any investment advisor who, during the course of the preceding twelve months has had fewer than fifteen clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company..." Generally, under the Private Adviser Exemption, any person for whom an adviser provides services without compensation is not counted as a client.

#### Registration / Exemption Under Idaho Act

As you know, the United States Securities and Exchange Commission ("SEC") contemplates that investment advisers with less than \$25 million of assets under continuous management are subject to State regulation. Accordingly, [REDACTED] would be required to maintain registration as an investment adviser with the Department of Finance under the Idaho Act unless a specific exemption applies or the Department adopts a "no enforcement action" position in response to the request contained in this letter.

The Idaho Act differs from the SEC's Investment Advisers Act of 1940 in that it does not contain similar and specific exemptions from investment adviser registration. However, the Director of the Department is empowered, under Section 30-1402(6)(i) of the Idaho Act, to exclude from the term "investment adviser" as such "other persons not within the intent of this subsection as the Director may, by rule or order, designate." Similarly, the Director of the Department is given the discretion under Section 12.01.08.125 of the IAPA, to "...either upon request or upon his [her] own motion, waive or modify the application of any particular section to a particular salesman, broker dealer or investment advisor when, in his [her] opinion, just

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and reasonable cause exists for such action and the waiving or modifying of such rule would not be contrary to the provisions of the [Idaho] Act or to the public interest."

For the foregoing reasons, we respectfully request that the Department adopt a "no enforcement action" position to the effect that [redacted] can surrender his registration as investment adviser under since he does not need to maintain registration as an investment adviser under the Idaho Act based upon the aforementioned presentations.

We acknowledge and understand that any no-action letter would be limited to the facts and circumstances presented in this letter. Additionally, we acknowledge and understand that all investment advisers, even those exempt from federal and state registration, are subject to the anti-fraud provisions of federal and state law. Therefore, an adviser that surrenders a registration must continue to comply with federal and state laws and regulations regarding insider trading, client trading, employee security transactions, client privacy, advertising and other matters.

Thank you for your time and consideration. We look forward to your response. If you should have any questions, please do not hesitate to contact me at [redacted], or [redacted] directly at [redacted].

Very truly yours,

[redacted]  
[redacted]  
Regulatory Compliance Consultant  
[redacted]

[redacted] e