



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

April 23, 2004

Re: Investment Adviser Registration

IARD #

Dear M

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

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

- Mr. _____ currently provides investment advisory services for compensation primarily to his father.
- Mr. _____ 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 Mr. _____ 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 Mr. _____ situation merits waiver of the Act's registration requirements. Because Mr. _____

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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 Mr. 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

March 16, 2004

RECEIVED

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: Investment Adviser Registration IARD#

Dear Ms Highley:

This office represents , currently a Registered Investment Adviser (sole proprietor) doing business as (IARD#). 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 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 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, has provided limited investment advisory services to friends and has only accepted voluntary compensation.

It is the desire of 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. father would continue to compensate him; friends will not be invoiced for services but if it were their desire to pay 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 intent to surrender his registration so that the clients have the opportunity to end their relationship with before the surrender becomes effective.

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

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 _____ 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 _____ 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, _____ has always had a very small number of private clients and generally has not advertised services. Therefore, _____ feels he has not established a "presence" with the general public.
- ❖ In the event that the assets continuously managed by _____, 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.

As noted in the previous section, _____ 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, _____ 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 _____ 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, _____ 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, _____ 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

March 16, 2004

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 _____ 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 _____ or _____ directly at _____.

Very truly yours,

Cc: