



C.L. "BUTCH" OTTER  
Governor

GAVIN M. GEE  
Director

March 3, 2010

Re: Opinion Request- Rule 96 IUSA & Rule 206(4)-2 Investment Advisers Act of 1940

Dear M

This is in response to your February 2, 2010 request for an opinion pertaining to Rule 206(4)-2, the custody rule under the Investment Advisers Act of 1940 ("40 Act"). has referenced Rule 206-(4)-2, 17 CFR Parts 275 and 279, Endnote 15 in its request.

You have asked if we would require your firm to have an annual outside audit from a CPA firm due to the fact that one of your advisors is an appointed trustee and advisor on a family account.

Background

Your letter indicates that is a financial advisor for is the trustee of his Aunt's irrevocable trust, , whom is deceased. The trust was set up to hold assets from her estate and will pass to her husband,

You have stated in your letter that has been requested by the family to be the appointed trustee and financial advisor solely because of his family relationship and not as a result of his relationship with

Rule 96 pursuant to the IUSA

Rule 96 pursuant to the IUSA states that if an Idaho registered investment adviser maintains custody of client funds, it shall be done in accordance with 17 CFR 275-206(4)-2 of the '40 Act.

Rule 206(4)-2 of the '40 Act defines custody to mean:

1. Holding, directly or indirectly, client funds or securities, of having any authority to obtain possession of them. Custody includes:

SECURITIES BUREAU

Bureau Chief - Marilyn T. Chastain  
800 Park Blvd, Suite 200, Boise, ID 83712  
Mail To: P.O. Box 83720, Boise ID 83720-0031  
Phone: (208) 332-8004 Fax: (208) 332-8099  
<http://finance.idaho.gov>

- a) Possession of client funds or securities, (but not of checks drawn by clients and made payable to third parties,) unless you receive them inadvertently and you return them to the sender promptly but in any case within three business days of receiving them;
- b) Any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw client funds or securities maintained with a custodian upon your instruction to the custodian; and
- c) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that give you or your supervised person legal ownership of or access to client funds or securities.

In general, a trustee of a trust that has access to client funds or securities would be deemed to have custody under the definition. However, on November 5, 2003, the Securities and Exchange Commission (SEC) adopted a final rule pertaining to the custody rule under the '40 Act (Release No. IA-2176). Endnote 15 within the Release creates a carve-out from the custody requirements for family accounts of the investment advisor's registered representatives.

In the SEC Release No. IA-2968, which shall be effective March 12, 2010, the SEC reiterates the endnote release statement made in 2003.

Based on the SEC interpretive releases, and the representations set forth in your letter, we will not require your firm to have an annual outside audit from a CPA firm due to the fact that one of your supervised person's is an appointed trustee and advisor on a family account.

Summary

Please be advised that this "opinion" position is based solely on the information you provided and your representation of the facts, and any different facts or circumstances might require a differing conclusion.

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

Sincerely,

  
Nancy C. Ax  
Securities Analyst

RECEIVED

2010 FEB -8 AM 11:19

STATE OF IDAHO  
DEPT OF FINANCE

February 2, 2010

Idaho Department of Finance  
Attention: Nancy C. Ax  
800 Park Blvd., Suite 200  
Boise, ID 83720-0031

RE: Requesting an opinion under Rule 3 regarding Rule 206(4)-2.

To the Idaho Department of Finance:

is requesting an opinion regarding Rule 206(4)-2. We need to know if we would be required to have an annual outside audit from a CPA firm due to the fact that one of our advisors is an appointed trustee and advisor on a family account.

is a financial advisor for and CPA for  
is the trustee of his Aunt's irrevocable trust,  
whom is deceased. The trust was set up to hold assets  
from her estate. After , spouse and Uncle, is deceased the  
assets of the trust will then go to and children, who are  
cousins.

has been requested by the family to be the appointed trustee and financial advisor solely because of his family relationship and not as a result of his relationship with  
Would family relationship exclude our firm from the  
audit rules?

We have referenced Rule 206(4)-2, 17 CFR Parts 275 and 279, Endnote 15.

Sincerely,

Enclosed: \$50 fee for no-action position/opinion