



IDAHO
DEPARTMENT OF FINANCE

C.L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

June 5, 2009

Re: Client Transition Program request for "no-enforcement" opinion

Dear

This is in response to your submission on April 17, 2009 requesting this Department take a "no-enforcement" position with regard to the registration provisions of the Idaho Uniform Securities (2004)("Act") as it pertains to eligible, retiring representatives of ("Firm") who participate in the Firm's revised Client Transition Program (the "CTP").

It is our understanding that the Firm's CTP program permits eligible, retiring representatives of the Firm to share in commissions generated by their former clients' accounts. According to your letter, the Firm will operate the CTP to conform in all respects to the requirements the Securities and Exchange Commission approved in its November 20, 2008 letter to the Securities Industry and Financial Markets Association in its request for no-action relief relating to NYSE Rule 353(b) and NASD IM-2420-2. Moreover, the Firm has established requirements for determining whether a retiring representative will be eligible for enrollment in the CTP and requires the Firm's ethics standards be applied to CTP participants.

Based on documents filed with the Department and the Firm's representations, the Department agrees to take a no enforcement action position with regard to the registration requirements for the Firm's retiring representatives who participate in the Firm's CTP. Please be advised that this letter only expresses the Bureau's position on the enforcement action and does not purport to express any legal conclusion regarding the applicability of the statutory or regulatory provisions of the Act. In addition, this position is based solely on the representations that you have made, and any different facts or circumstances might require a different conclusion.

If you have questions or comments regarding this matter, please contact Nancy C. Ax or me at 208-332-8004.

Sincerely,


Marilyn T. Chastain
Securities Bureau Chief

SECURITIES BUREAU

Bureau Chief – Marilyn T. Chastain
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2009 APR 20 AM 11:29

STATE OF IDAHO
DEPT. OF FINANCE

April 17, 2009

Nancy C. Ax
Securities Analyst
Idaho Department of Finance
Securities Bureau
PO Box 83720
Boise, ID 83720-0031

**Re: Client Transition Program - Pending No Action
Request**

Dear Ms. Ax:

Thank you for your time on the phone last week. During our conversation, you said that it would be helpful to receive a fresh copy of our 2007 request for a no-action letter for the Client Transition Program, (the "CTP") as well as information about intervening regulatory developments on this subject and more specifics about the definition of the "good compliance standing" that requires for participation in the CTP. I have enclosed a copy of our 2007 letter as **Exhibit A** and can also add the following information.

- We have received no-action letters or similar relief for the CTP, based on requesting letters substantially identical to the one we sent you, from more than forty states, as well as Puerto Rico, the US Virgin Islands, and Washington DC.
- Last fall, the SEC issued a no action letter to the Securities Industry and Financial Markets Association (SIFMA) on broker retirement programs. This letter, attached with SIFMA's request as **Exhibit B**, expresses the SEC's view that broker retirement programs in compliance with NASD Rule IM 2420-2, and meeting the requirements outlined in the SIFMA letter, will not be the subject of federal enforcement action. As the letter explains, this recent SEC no-action position is a more generic version of similar letters from the 1990s, issued to other firms, and referenced in our 2007 request (the older letters continue in effect as well). will operate the CTP to conform in all respects to the requirements the SEC approved in its letter.

- In light of the SEC no-action letter and conversations with other regulators, has adopted the following framework for determining whether a retiring financial advisor (“FA”)¹ will be considered for enrollment in the CTP.
 - First, the FA may not have been subject to statutory disqualification by reason of a regulatory action within the previous three years.
 - Next, the FA may not have had any customer complaints, arbitrations, or lawsuits during the previous years, that settled or were decided for at least \$25,000, and that involved a determination by the Firm that the FA was responsible, or that the FA should be disciplined or placed under heightened supervision.
 - Finally, if the FA has any other complaints or arbitrations pending at the time of enrollment or within the previous three years (that do not fall within the category described in the previous paragraph) the matter is referred to the Firm’s General Counsel’s Office. FAs with more than three pending or recent complaints or arbitrations are not to be admitted to the CTP unless the General Counsel’s Office determines that an exception is warranted based on the specifics of the situation -- such as the possibility that an FA has had four complaints, but all consisting of groundless allegations by the same client, or that an FA has received complaints about an issue not involving any failures by the FA. FAs with three or fewer recent complaints and arbitrations (other than those discussed in the previous paragraph) generally will be admitted to the CTP, unless the General Counsel’s Office believes that the specifics of the relevant matters ought to disqualify the FA.
 - FAs with no record of complaints, arbitrations, or disciplinary matters may be admitted to the CTP as a matter of course, provided that they meet all of the other requirements outlined in our original letter and the attached documents.
- In reference to a discussion we had some months ago, I can confirm that the CTP program description has been revised and now states more explicitly that all ethics standards apply to CTP participants. A copy of the revised description and contract are attached as **Exhibit C**.

¹ As I believe we have discussed, FAs act both as broker-dealer agents and as investment adviser representatives. Our request for a no-action letter seeks relief from both forms of registration.

Nancy C. Ax
April 17, 2009
Page 3

If you have any additional questions, or if I can help you resolve any hesitations about the CTP, please do not hesitate to call, email, or write.

Sincerely yours,



IDAHO
DEPARTMENT OF FINANCE

C.L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

April 3, 2009

Re: Client Transition Program- Pending No-action Request

Dear

This is in reference to the pending no-action position request submitted on behalf of the Client Transition Program. The request was pended pursuant to a telephone conversation with Nancy C. Ax, Securities Analyst, on January 24, 2008. To date, we have not received any additional information relating to the Program's specifics such as addition information regarding the Program's ethics requirement, specifics on the individuals allowed to participate in the Program, and clarification of references such as "good compliance standard @ .". Since no additional information has been provided, we intend to consider this an abandoned filing. If you have any questions or concerns, please contact the undersigned below.

Sincerely,

Ax (file)

Nancy C. Ax
Securities Analyst
Idaho Department of Finance

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RECEIVED
2008 JAN 31 AM 9:50
STATE OF IDAHO
DEPT OF FINANCE

January 23, 2008

By First Class Mail and Facsimile (208) 332-8099

Nancy C. Ax
Securities Analyst
Securities Bureau
Idaho Department of Finance
800 Park Blvd., Suite 200
Boise, ID 82720-0031

Re: Client Transition Program

Dear Ms. Ax:

Thank you for your letter dated January 14, 2008. We appreciate your attention to our previous correspondence. We apologize for what seems to have been a degree of miscommunication between us.

The Client Transition Program ("CTP") does contain the safeguards that you reference in your letter. (In the paragraphs that follow, I have attempted to respond to your concerns point by point.) We also are confident that the CTP has all of the safeguards present in similar plans your office has authorized. We believe that these safeguards are evidenced in the six-page Client Transition Program Guide, ("the CTP Guide"), which we enclosed in our August letter to you and have included herein, for easy reference.

1) Your letter states that "it is unclear whether the proposal intends to require participants to adhere to ethics policy or some other unknown standard." As we noted in our initial correspondence, the CTP will require its participants to adhere to the Firm's ethics policy, a copy of which we have sent to you in response to a previous request. As stated on page 4 of the CTP Guide, "All compliance and ethics policies remain binding on participants to the extent applicable. Violation of these policies results in a termination of benefits."

2) Your letter states that the CTP "does not appear" to prevent enrollment by individuals subject to "sanctions imposed by regulatory agencies or . . . statutory disqualification." As we explained in our initial correspondence, the CTP contains the same safeguards as the plan in these respects. Individuals subject to regulatory sanctions or statutory disqualification may not enroll in the CTP. As page 4 of the CTP Guide states, "becoming ineligible to be an associated person results in immediate termination of the benefits of [the CTP]." And as our August letter explained, "program payments will terminate if a participant, by reason of criminal conviction or otherwise, engages in activity that would make the participant statutorily ineligible for registration or affiliation with ." In addition, a person subject to regulatory sanction would not be

Nancy C. Ax
January 23, 2008
Page 2

eligible for participation in the CTP, because such persons are not in "good compliance standing with _____," as required by page 2 of the CTP Guide.

3) Your letter suggests that the CTP does not contain safeguards to limit enrollment to personnel with "a low incidence of investment-related customer complaints, arbitrations, or litigation." However, as stated on page 2 of the CTP Guide, in order to be eligible for the CTP, an individual "Must be in good compliance standing with _____ on his/her departure date and have a low incidence of complaints and arbitrations."¹ And, as explained in our August letter, "Only financial advisors with a low incidence of complaints and arbitrations are eligible for the program."

4) Your letter faults the CTP for not requiring "a low error rate on customer transactions." We apologize for a possible lack of clarity on this point. Any advisor with a problematic "error rate on customer transactions" would not be in good standing at _____ and therefore would not be eligible for the CTP.

5) Your letter notes that, under the _____ plan, "continued participation and compensation was contingent on the participants['] continued satisfaction of the eligibility criteria at the commencement [of] as well as throughout the plan period." The CTP contains these same safeguards, as the quotations above illustrate. As further stated on page 6 of the CTP Guide, "*If, in the sole discretion of management, it is determined at any time that a participant in this Program violated the terms of this Program or policies, any future payments will cease and Departing FA/PWA will be required to return any payments already received.*" (Emphasis in original).

The final paragraph of your letter invites _____ to "revise its program to address the concerns raised herein." I hope that this letter, and the enclosed CTP Guide, will demonstrate that your concerns have been addressed and that no revisions are necessary. With that expectation in mind, I renew our request that the Department recommend a no-enforcement position regarding the CTP, in accordance with its previous policy statements regarding similar programs. However, if you have additional questions about the CTP, or if the explanations herein do not fully satisfy you, please do not hesitate to contact _____ or me. We will be happy to respond to any additional concerns and to work with the Department to ensure that they are resolved.

Sincerely yours,

cc

¹ This requirement also applies to "litigation," as a type of complaint (though non-arbitrable litigation related to investments has become virtually non-existent in the industry).



IDAHO
DEPARTMENT OF FINANCE

C.L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

January 14, 2008

Re: Client Transition Program

Dear

We have reviewed and discussed the additional clarification provided to our office in connection with the pending no-action request submitted on behalf of Client Transition Program. We have several concerns regarding the proposed program that we wish to call to your attention.

While the Department has taken a no-action position addressing a similar type program (, we note that the facts upon which that no-action position was based differ from those presented by . In , a participant was required to demonstrate that he had conducted himself in a manner exhibiting appropriate standards of professional and ethical conduct, as determined by the Plan Committee, including (1) a low incidence of investment-related customer complaints, arbitrations or litigations, (2) a low error rate on customer transactions, and (3) that he is not subject to any sanctions imposed by regulatory or self-regulatory agencies or to any statutory disqualification. The continued participation and compensation was contingent on the participants continued satisfaction of the eligibility criteria at the commencement of as well as throughout the Plan period.

proposal does not appear to impose similar eligibility requirements particularly those involving sanctions imposed by regulatory agencies or on participants subject to statutory disqualification. In addition, while proposal does allude to program participants maintaining the same high ethical standards required of all personnel, this reference to high ethical standards is vague. It is unclear whether the proposal intends to require participants to adhere to ethics policy or some other unknown standard.

If wishes to revise its program to address the concerns raised herein, please submit the revised material to my attention. In its current form, the Department will not recommend to the Director that a no enforcement position be taken in this matter.

Sincerely,

Ax (file)

Nancy C. Ax
Securities Analyst

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NOV 13 2007

DEPT. OF FINANCE
STATE OF IDAHO

November 9, 2007

By First Class Mail

Nancy C. Ax
Securities Analyst
Idaho Department of Finance
PO Box 83720
Boise, ID 83720-0031

Re: Client Transition Program

Dear Ms. Ax:

I am writing in reply to your letter dated September 25, 2007. Thank you for allowing me a few extra weeks to reply to your inquiry. I hope that this letter finds you well, and safely returned from your time out of the office.

You asked that we provide further information in four areas. In the paragraphs below, I have repeated your requests and responded.

1) "Please provide additional documentation relating to the high ethical standards required of all personnel."

I have attached ethics policies.

2) "[P]lease provide definition of a 'low' incidence of complaints and arbitrations."

As you may know, the SEC and FINRA have been circulating draft versions of a rule that will provide greater clarification as to the eligibility of retiring brokers for retirement programs like the Client Transition Program ("the CTP"). anticipates using standards at least as strict as those FINRA or the SEC adopt. Until there is greater regulatory guidance, will continue to employ a case-by-case analysis of advisors who apply for participation in the CTP. To this point, has not allowed anyone with any significant pending or previous arbitrations or complaints to participate in the CTP.

Nancy C. Ax
November 9, 2007
Page 2

3) "[P]lease clarify if the participant will be required to annually certify, in writing, that he has met with the program's requirements"

All participants will be required to certify annually their compliance with all program requirements. Such certification will occur through an online system that _____ uses to conduct and record all similar certifications.

4) "[P]lease provide a copy of the [CTP] agreement.

As noted in our previous letter, _____ is operating the CTP currently, under conditions that require registration of participants and activities sufficient to avoid any appearance of "parking" registrations. The current CTP agreement, a form copy of which is attached, conforms to those requirements. Please understand that, once _____ receives clearance from the States to implement the CTP in the manner we have described in our previous communications, a different agreement will be crafted.

Should you need any additional information, or if you would like to discuss the CTP, please feel free to contact _____ or me at any time.

Sincerely yours,



IDAHO
DEPARTMENT OF FINANCE

C.L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

September 25, 2007

Re: Client Transition Program

Dear

In connection with the pending no-action request submitted on behalf of Client Transition Program, we request additional clarification relating to the following items.

It is our understanding that the proposed program offers several important protections modeled on the NYSE and NASD guidance that include:

- Program participants must maintain the same high ethical standards required of all personnel.
- Only financial advisors with a low incidence of complaints and arbitrations are eligible for the program.
- Managers from a participant's former office meet annually with the participant to confirm that the participant has met with the program's requirements.

Please provide additional documentation relating to the high ethical standards required of all personnel. In addition, please provide definition of a "low" incidence of complaints and arbitrations as referenced in the no-action request. Also, please clarify if the participant will be required to annually certify, in writing, that he has met with the program's requirements. Finally, please provide a copy of the Client Transition Program agreement.

If you have any questions, please call . Please provide your written response no later than October 12, 2007.

Sincerely,

Ax (Sile)

Nancy C. Ax
Securities Analyst

SECURITIES BUREAU

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RECEIVED
AUG 16 2007
DEPT. OF FINANCE
STATE OF IDAHO

August 7, 2007

Marilyn T. Chastain, Bureau Chief
Idaho Department of Finance
PO Box 83720
700 West State Street 2nd Floor
Boise, ID 83720-0031

Re: Client Transition Program

Dear Chief Chastain:

On behalf of our client _____, we write to request that your agency agree to take a no-action position regarding agents in the company's program for eligible departing financial advisors – the Client Transition Program ("the CTP" or "the program"). According to our research, the Idaho Department of Finance has granted a series of no-action positions to broker-dealers for similar programs. Most recently, on December 2, 1998, your agency granted a no-action position to _____. Based on a review of no-action letters maintained by CCH and Westlaw, we believe that approximately 30 state securities administrators (and the SEC*) have allowed retired brokers to share in the commissions generated by former clients' accounts, without requiring registration or other filings. Since most of these no-action letters date back to the 1990s, _____ is seeking no-action positions for its current program.

_____ program is available only to financial advisors in good standing who are at least age 35, who have been at the firm for at least 5 years, and whose combined age and length of service is at least 65. Under the program, participating financial advisors' accounts are transferred to eligible "receiving" financial advisors in accordance with the Firm's Account Redistribution Policy, or to a pre-existing partner of an advisor (the partner receiving the transferred accounts also must be in good standing). After the transfer, the former advisor is eligible to receive a declining percentage of compensation related to his or her former clients – 50% for the first two years after departure, 40% for

* The SEC has issued three no-action letters regarding programs similar to the CTP. See SEC No-Action Letter to _____ LLC, Oct. 14, 1998, 1998 WL 1032627; SEC No-Action Letter to _____ Inc., Oct. 11, 1994, 1994 WL 591748; SEC No-Action Letter to _____, Mar. 25, 1993, 1993 WL 97706.

the third, and 35% for the fourth. The program also provides a death benefit in certain circumstances.

designed the program to comply with NASD Rule IM-2420-2, which allows "payment of compensation to registered representatives after they cease to be employed by a member of the [NASD]," or to their heirs, and to oral guidance from the NYSE. The program offers several important protections modeled on the NYSE and NASD guidance:

- Former financial advisors in the program cannot solicit or conduct any securities-related business.
- Former financial advisors in the program will forfeit all plan benefits if they resume engagement in the securities business, with _____ or another firm.
- _____ notifies program participants' clients of the change in financial advisor.
- Program participants must maintain the same high ethical standards required of all _____ personnel.
- While participants will not generally be required to maintain securities registrations, program payments will terminate if a participant, by reason of criminal conviction or otherwise, engages in activity that would make the participant statutorily ineligible for registration or affiliation with _____.
- Only financial advisors with a low incidence of complaints and arbitrations are eligible for the program.
- Managers from a participant's former office meet annually with the participant to confirm that the participant has comported with the program's requirements.

We have attached a more detailed description of the CTP that _____ plans to distribute to financial advisors considering enrollment in the program, if _____ obtains no-action relief from most or all states.

To this date, _____ has maintained state and SRO registrations for program participants. To avoid the appearance of "parking" registrations, the firm currently requires the departed financial advisors receiving program payments to remain available to consult on the needs of their former clients (but not on their business with _____), to complete required continuing education credits and company compliance training, and to meet with local office management on a yearly or quarterly basis (depending on the former advisor's home state).

August 7, 2007
Page 3

Unfortunately, our client has found that other broker-dealers have not adopted this same approach, and that some financial advisors nearing retirement age have left to join other members of the industry that promise continued payment upon retirement without the restrictions and continued obligations that _____ requires.

Because continuing registration of program participants – with all of the accompanying obligations for our departing financial advisors – puts our client at a competitive disadvantage, _____ would like to modify the program to eliminate the requirement that CTP participants continue their registrations and the activities necessary to avoid parking those registrations.

_____ sees the program as a sensible way to ensure continuity of client service when a financial advisor leaves the workforce, while also allowing the financial advisor a reasonable level of financial security. Most importantly, the CTP allows clients stability and easy transition when their financial advisor retires – not only do their accounts remain at the same brokerage, they also have the benefit of a carefully-supervised transfer period, during which their longtime financial advisor ensures that the new financial advisor understands their goals and can serve them well. Second, the CTP allows a supervised period of transition for the departing advisor, ensuring that participants understand the new restrictions that come with departure from the industry. Third, we see a parallel with retirement policies in other professional groups. For instance, under ABA Model Rule 5.4, law firms ordinarily cannot split fees with non lawyers, but that rule is relaxed for relationships between a law firm and its retirees or their heirs.

In short, we believe that your State's citizens are well-served by the CTP and other similar programs, and that formalized registration for CTP participants is not necessary to provide their former clients with meaningful protection. We respectfully request that you grant _____ a no-action position, allowing participation in the CTP program without requiring agent registration.

Either my colleague _____ or I will contact you soon to follow up on this letter and to respond to any questions you may have. I greatly appreciate your time and attention and look forward to your response.

Sincerely yours,

Enclosures