



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
INVESTMENT MANAGEMENT

October 19, 1995

David Parkinson, Ph.D.  
5424 - 176 Street  
Edmonton, Alberta  
T6M 1C6  
Canada

Dear Dr. Parkinson:

Your letter of August 17, 1995, has been referred to the Office of Chief Counsel for response. In your letter, you state that you plan to offer bond market timing advice on a subscription basis to registered investment advisers in the United States. You ask whether you must register as an investment adviser if you limit the availability of the advice to registered investment advisers, and do not distribute it to the general public.

Section 203(a) of the Investment Advisers Act of 1940 (the "Advisers Act") requires a person or entity that meets the definition of "investment adviser," and that makes use of the U.S. mails or any means or instrumentality of interstate commerce in connection with its business as an investment adviser, to register under the Advisers Act, unless an exemption from registration is available. Section 202(a)(11) defines "investment adviser" to include, among others, any person who, for compensation, engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who issues or promulgates analyses or reports concerning securities.

We believe that one who offers market timing advice for compensation would fall within this definition.<sup>1</sup> The fact that you propose to limit your advice to registered investment advisers does not change this analysis, because the definition of investment adviser is not limited to persons who offer advice to the general public.

We note, however, that Section 202(a)(11)(D) excludes from the definition of investment adviser any publisher of a bona fide newspaper, news magazine, or business or financial publication of

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<sup>1</sup> See, e.g., Donald F. Pooley (pub. avail. Feb. 6, 1985); The Maratta Advisory Inc. (pub. avail. Jul. 16, 1981).

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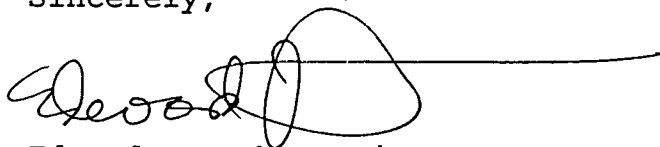
general and regular circulation. To qualify for this exclusion, the publication must:

- (1) offer only impersonalized advice, i.e., advice not tailored to the individual needs of a specific client or group of clients;
- (2) be bona fide; and
- (3) be of general and regular circulation, i.e., not timed to specific market activity or to events affecting or having the ability to affect the securities industry.<sup>2</sup>

Because of the fact-specific nature of the analysis required to determine the availability of the publisher's exclusion, we are unable to determine whether the service you describe meets the requirements of the exclusion. You may wish to consult counsel familiar with the U.S. federal securities laws.

I have enclosed for your information an investment adviser registration package, which contains information on the regulation of registered investment advisers.<sup>3</sup> If we can be of further assistance, do not hesitate to contact this office at (202) 942-0659.

Sincerely,



Edward J. Rubenstein  
Senior Counsel

enclosure

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<sup>2</sup> See SEC v. Lowe, 472 U.S. 181 (1985).

<sup>3</sup> Many states impose their own requirements on investment advisers that do business within the state, including registration. You may obtain the names and addresses of state regulators from the North American Securities Administrators Association, Inc., One Massachusetts Ave., N.W., Washington, D.C. 20001, (202) 737-0900.

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ACT IAA  
SECTION 202(a)(11); 203(b)(3)  
RULE \_\_\_\_\_  
PUBLIC AVAILABILITY 10-19-95

August 17, 1995

Division of Investment Management  
Securities and Exchange Commission  
500 North Capitol Street  
Washington, D.C.  
20549

Dear Sirs,

For several years I have been running on my own behalf a bond market timing system. I am now interested in offering my market timing advice to others.

I plan to offer the advice on a subscription basis to Registered Investment Advisors in the United States. Is it necessary for me to register as an investment advisor in order to do this?

Specifically, if I limit the availability of the advice to Registered Investment Advisors, and do not distribute it to the general public, is it possible that I don't need to register?

I look forward to your early response.

Sincerely,

  
David Parkinson