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

...ISION OF
...NVESTMENT MANAGEMENT

August 8, 1995

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...ilability 8/8/95

Mark A. Bush
5443 Redwood Road
Columbus, OH 43229

Dear Mr. Bush:

I am writing in response to your letter dated June 5, 1995, in which you request a no-action position concerning your plan to set up three affiliated entities to engage in investment related businesses. One of these entities would register as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The other two entities would remain unregistered.

Your letter does not contain sufficient information or legal analysis for us to determine whether no-action relief under the federal securities laws is appropriate. Moreover, because the Commission administers the federal securities laws, we cannot address issues under laws governing commodity advisers, commodity pools, or commodity futures trading.

We note that, although the structure you describe may appear to comply with Section 203(b)(3) of the Advisers Act, the facts outlined in your letter raise an issue under Section 208(d) of the Advisers Act. Section 208(d) makes it unlawful for any person to do indirectly any act that would be unlawful for such person to do directly under the Advisers Act. When an unregistered adviser is affiliated with a registered adviser, and the two entities are not operated separately, the unregistered adviser potentially could engage in conduct outside the Commission's jurisdiction that is detrimental to the clients of the registered adviser. In light of this concern, in applying Section 208(d) and the registration requirements of the Advisers Act, the staff has taken the position that, under some circumstances, an unregistered adviser that is affiliated with a registered adviser may be integrated with the registered adviser for purposes of determining the availability of any exemption from registration. The application of the law to a specific set of facts, however, requires an analysis of all the surrounding circumstances to determine whether the businesses of the two entities are conducted in a manner that justifies separate treatment of the entities under the Act.

We are enclosing no-action responses of the staff which apply this concept to different facts and circumstances. We are also enclosing releases on the general procedures for requesting a no-action letter from the staff. Given the complexity of these matters, you may wish to obtain the advice of legal counsel familiar with the federal securities laws before proceeding.

Sincerely,

Linda A. Schneider
Attorney
Office of Chief Counsel

Enclosures

JUNE 5, 1995

MARK A. BUSH
5443 REDWOOD RD
COLUMBUS, OH 43229
614-885-3495

MS. LINDA SCHNEIDER
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DEAR MS. SCHNEIDER:

I WANTED TO UPDATE YOU ON NEW DEVELOPMENTS CONCERNING POSSIBLE REGISTRATION I WOULD LIKE A NO ACTION LETTER CONCERNING THESE ACTIVITIES. ANY CURRENT ACTIVITIES WILL BE PLACED IN A TO BE NAMED ENTITY THAT I WILL REFER TO AS ENTITY "A" FOR THE PURPOSES OF THIS LETTER. ENTITY "B" AND "C" WILL BE FORMED LATER.

ENTITY "A" WILL BE EXEMPT FROM REGISTRATION AS A COMMODITY TRADING ADVISOR AND ALSO AS AN INVESTMENT ADVISOR. THERE WILL BE LESS THAN 14 ACCOUNTS AND NO NEW BUSINESS WILL BE ACCEPTED UPON FORMATION OF ENTITY "B" AND "C" FURTHERMORE THIS ENTITY "A" WILL NOT HOLD ITSELF OUT TO THE PUBLIC AS AN ADVISOR IN ANY MANNER. ANY ACCOUNTS WILL HAVE BEEN SOLICITED BY THE CLIENT WHOM ARE ALL FRIENDS.

ENTITY "B" WILL BE REGISTERED WITH THE CFTC AS A COMMODITY POOL OPERATOR BUT WILL NOT OPERATE ANY PUBLIC POOLS OR HOLD ITSELF OUTSELF OUT TO THE PUBLIC AS AN INVESTMENT ADVISOR. ALL POOLS WILL BE PRIVATE PLACEMENT.

I WILL BE THE OWNER OF ENTITY "A" AND ENTITY "B" AND PROVIDE TRADING ADVISE TO THESE ENTITIES.

ENTITY "C" WILL BE A LIMITED PARTNERSHIP IN WHICH I WILL BE A PART OF THE GENERAL PARTNER. MY INVOLVEMENT WILL BE TO PROVIDE THE ASSET ALLOCATION MODEL TO ALLOCATE BETWEEN STOCKS, BONDS, AND CASH. ALL PORTFOLIO DECISIONS WILL BE MADE BY SOMEONE ELSE FUNCTIONING AS A PORTFOLIO MANAGER. THE LIMITED PARTNERS WILL PUT UP AT LEAST $1 MILLION WHICH WILL BE USED TO FORM A MUTUAL FUND REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940. ENTITY "C" WILL BE REGISTERED AS AN INVESTMENT ADVISOR PROVIDING ADVISE TO LARGE PENSION PLANS AND THE MUTUAL FUND. ALL MARKETING WILL

BE DONE USING THE FIRMS CAPITAL AS A FOUNDATION FOR A TRACK RECORD WHICH CAN THEN BE USED IN ADVERTISING AND DIRECT MARKETING TO LARGE CORPORATIONS. I WILL NOT BE INVOLVED IN MARKETING OR PORTFOLIO MANAGEMENT AT ALL WITH THE EXCEPTION BEING THE OVERALL ASSET ALLOCATION. THERE WILL BE THREE INVOLVED IN THE GENERAL PARTNER.

I FEEL BECAUSE ENTITY "A" AND "B" WILL HAVE LESS THAN 14 ACCOUNTS BETWEEN THE TWO AND BECAUSE NEITHER WILL HOLD ITSELF OUT TO THE PUBLIC AS AN ADVISOR (ENTITY "A" WILL BE CLOSED TO NEW BUSINESS) THEY SHOULD BE ABLE TO MAINTAIN AN EXEMPT STATUS AS AN INVESTMENT ADVISOR INSPITE OF MY LIMITED INVOLVEMENT WITH ENTITY "C". ALSO NO MARKETING BY ENTITY "C" WOULD INVOLVE MARKETING FOR "B" AND "A" AND ANY INQUIRIES WOULD BE ENTITY "C" DOES NOT FACILITATE NOR ADVISE ANYONE ON ENTITIES "A" OR "B".

UNDER THESE CIRCUMSTANCES I BELIEVE "A" AND "B" SHOULD BE ABLE TO REMAIN EXEMPT SINCE THEY ALSO AMOUNT TO DIFFERENT TYPE TRADING IN ADDITION TO THEIR PRIVATE NATURE. I FULLY UNDERSTAND THE REGISTRATION REQUIREMENTS FOR ENTITY "C" AND ANY MUTUAL FUNDS THAT ARE PUBLICLY FORMED.

IF YOU COULD PROVIDE A NO ACTION LETTER ON THIS MATTER THAT WOULD BE GREAT. ITS ALWAYS, I APPRECIATE YOUR PATIENCE AND COOPERATION. I HOPE YOU HAVE A NICE DAY AND I WILL LOOK FORWARD TO YOUR RESPONSE ON THIS MATTER.

SINCERELY

MARK A. BUSH