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November 2, 2005

Douglas Scheidt  
Associate Director and Chief Counsel  
Office of Chief Counsel  
Division of Investment Management  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Mail Stop 0506  
Washington, DC 20549

Re: Rule 202(a)(11)-1 -- Applicability to Persons Associated with an Investment Adviser  
Exercising Discretion for Their Related Accounts

Dear Mr. Scheidt:

On behalf of our clients, we would appreciate it very much if the staff of the U.S. Securities and Exchange Commission ("SEC") would advise us that a broker-dealer will not be deemed to be exercising investment discretion for purposes of Rule 202(a)(11)-1 under the Investment Advisers Act of 1940 ("Advisers Act") by virtue of the exercise of investment discretion by an associated person of such broker-dealer in an account (a "Related Account") where the associated person's discretionary authority stems from his or her serving as executor, conservator, trustee, attorney-in-fact or other agent as a result of family or personal relationship (and not from employment with the broker-dealer).<sup>1</sup>

By way of background, persons associated with a broker-dealer frequently have trading authority for accounts of persons with whom the associated persons have family or personal relationships, including:

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<sup>1</sup> So defined, the concept of Related Account would not be limited to accounts of those family members in which an associated person is deemed to have a beneficial interest under Securities Exchange Act of 1934 ("Exchange Act") Rule 16a-1(a)(2) or Advisers Act Rule 204A-1(e)(3).

- Accounts of a family member (*e.g.*, spouse) for which the associated person has trading authority;
- Custodial (UTMA/UGMA) accounts for minor children of the associated person or of family members, where the associated person acts as custodian;
- Trust accounts for family members or family friends where the associated person acts as trustee;
- Accounts for which the associated person is executor or executrix under the will of a family member or family friend; and
- Accounts for family members or family friends for whom the associated person is a guardian.

These kinds of trading authority result from the associated person's family or personal relationship, not from employment with the broker-dealer that employs the associated person, even though the accounts are maintained with the broker-dealer.

Technically, the associated person exercising these kinds of trading authority – and, possibly by imputation, the employing broker-dealer – could be deemed to be exercising investment discretion for purposes of Exchange Act Section 3(a)(35) and thereby trigger applicability of the Advisers Act. As we hope you will agree, the exercise of this kind of investment discretion by an associated person over a Related Account should not trigger applicability of the Advisers Act to the employing broker-dealer because it does not reflect in any way the conduct of an advisory business by the employing broker-dealer.

Accordingly, we request that the staff clarify that a broker-dealer will not be deemed to exercise investment discretion for purposes of Rule 202(a)(11)-1 as a result of the exercise of investment discretion by one of its associated persons over their Related Accounts. This approach would parallel the SEC's position under the custody rule, Rule 206(4)-2, to the effect that an adviser should not be deemed to have custody of client assets where such custody results from an associated person's serving as executor, conservator or trustee as a result of family or personal relationship (and not a result of employment with the adviser).<sup>2</sup>

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<sup>2</sup> See *Custody of Funds or Securities of Clients by Investment Advisers*, Advisers Act 2176 (September 25, 2003) n.15; *Staff Responses to Questions about Amended Custody Rule*, Question II.4 (Updated January 10, 2005).

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We welcome the opportunity to discuss this request with you. If you have any questions regarding this request, please call me at 202.739.5453. As always, we appreciate the staff's consideration of this request.

Yours truly,

A handwritten signature in black ink, appearing to read "Steven W. Stone". The signature is fluid and cursive, with a large initial "S" and "W".

Steven W. Stone

cc: Robert E. Plaze, Esquire  
Robert Tuleya, Esquire  
Division of Investment Management  
U.S. Securities and Exchange Commission