



DIVISION OF  
MARKET REGULATION

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



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NO ACT  
P.E 8-13-02  
132-02399

August 14, 2002

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FINANCIAL

Act	34	Act
Section	15 (b)	
Rule		
Public Availability	August 14, 2002	

Mr. David S. Mitchell  
Cadwalader, Wickersham & Taft  
100 Maiden Lane  
New York, NY 10038

Re: No-Action Request of Headway Corporate Staff Administration

Dear Mr. Mitchell:

In your letter dated August 13, 2002, on behalf of Headway Corporate Staff Administration ("Headway"), you request assurances that the Division of Market Regulation ("Division") will not recommend enforcement action to the Commission under Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") if Headway engages in the proposed activities described in your letter without Headway registering as a broker-dealer in accordance with Section 15(b) of the Exchange Act. Based on your letter, we understand the facts to be as follows:

Headway presently provides employee leasing services for businesses other than broker-dealers, and now proposes to offer these services to registered broker-dealers and their employees. In providing these services, Headway will place on its payroll the existing employees of its broker-dealer clients. While the employees placed on Headway's payroll are employees of Headway for purposes of applicable employment laws, they are employees of its broker-dealer clients for purposes of the securities laws and these broker-dealer clients will maintain direction and control over them. The services Headway will offer its broker-dealer clients consist of human resources consulting and employee benefits services. Headway is not a broker-dealer or an associated person of a broker-dealer.

In general, Headway will provide its broker-dealer clients and their joint employees with advice regarding compliance with applicable employment laws, employee benefits including traditional insurance products such as medical and life insurance plans, accidental death and disability insurance, and 401(k) retirement plans, risk management services including workers' compensation insurance, services relating to unemployment compensation benefits, and payroll processing. This activity will be performed under the control and supervision of the broker-dealer client receiving these services. All books and records relating thereto will be deemed property of the broker-dealer client and will be made available for inspection by the Commission and any self-regulatory organization of which the broker-dealer is a member.

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Headway's situation differs from the one where a registered representative proposes to establish a corporation or other entity that, among other things, is to receive the representative's commission from the registered broker-dealer. Such an entity would be considered an "Employee Owned Corporation." The staff of the Division of Market Regulation has repeatedly declined to give no-action assurances under Section 15(a) in situations involving Employee Owned Corporations.<sup>1</sup>

With any one of its broker-dealer clients, Headway will receive payment from the broker-dealer for salaries, wages and commissions, which Headway will then pay to personnel of the broker-dealers. Headway will impose a fee for its services by adding an administrative fee (which includes its profit) to its costs based on gross payroll. This fee will not be based on brokerage commissions earned by either the employees of the broker-dealer or the broker-dealer itself. Moreover, Headway will not have discretion to determine the amount or frequency of the payments that will be distributed to personnel of the broker-dealer.

In addition, Headway will provide all health, life, disability, and other insurance coverage to the broker-dealer's employees. The insurance products that would be provided by Headway are traditional insurance products and would not be "securities" as defined under the federal securities laws.

The broker-dealer will maintain all supervisory control over its employees. In this regard, the broker-dealer will be wholly responsible for the proper registration, training and supervision of its employees. The broker-dealer will retain the traditional rights of an employer, including the right to hire, set compensation for, terminate, discipline, and reassign personnel of the broker-dealer. Headway will have no authority to hire or fire broker-dealer personnel. Furthermore Headway, will not engage in any securities-related activities (other than with respect to its own Headway securities).

All promotional activities, including any promotional material that Headway distributes, will relate solely to employee leasing services and will not in any way relate to brokerage activities. In addition, Headway will not identify or promote any broker-dealer in its promotional activities or materials.

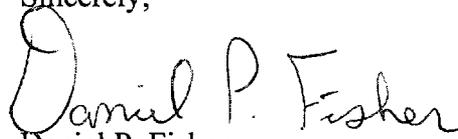
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<sup>1</sup> See, e.g., letter from Barbara A. Stettner, Special Counsel, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, to Matthew D. Wayne, Vanasco, Wayne & Genelly, on behalf of a specialist member firm on the Chicago Stock Exchange (Feb. 17, 1999) (noting that absent an exemption, an entity that is to receive commissions or other transaction-related compensation in connection with securities-based activities generally must register as a broker-dealer); letter from David Shillman, Special Counsel, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, to Richard T. Angelillo, First Financial of Citrus County, Inc. (Sept. 22, 1998) (noting that there is no exemption from registration for corporate entities formed by registered representatives of broker-dealers that receive securities commissions); letter from Terry R. Young, Attorney, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, to Michael E. Dunn, Dunn & Swan, on behalf of Century Investment Group Incorporated (Jan. 29, 1996).

Mr. David S. Mitchell  
August 14, 2002  
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Based on the facts and representations set forth in your letter, and without necessarily concurring in your analysis, the staff of the Division of Market Regulation will not recommend enforcement action to the Commission under Section 15(a) of the Exchange Act if Headway engages in the activities described above without registering as a broker-dealer under Section 15(b) of the Exchange Act. In particular, we note that Headway will only engage in these activities on behalf of, and under the control of, registered broker-dealers. The response of the Division of Market Regulation represents a staff position regarding enforcement action only, and does not purport to express any legal conclusions with respect to the applicability of the statutory or regulatory provisions of the federal securities laws. Moreover, this response is based upon the representations you have made, and any different facts or conditions might require a different response.

Sincerely,

A handwritten signature in cursive script that reads "Daniel P. Fisher". The signature is written in dark ink and is positioned above the printed name.

Daniel P. Fisher  
Special Counsel  
Office of Chief Counsel

# CADWALADER

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## Securities Exchange Act § 15(a)

August 13, 2002

Catherine McGuire, Esq.  
Chief Counsel  
Division of Market Regulation  
Securities and Exchange Commission  
Mail Stop 10-1  
450 5th Street, N.W.  
Washington, D.C. 20549

SECURITIES AND EXCHANGE COMMISSION  
RECEIVED

AUG 15 2002

DIVISION OF MARKET REGULATION

Re: Headway Corporate Staff Administration

Dear Ms. McGuire:

On behalf of Headway Corporate Staff Administration, a Delaware corporation ("HCSA"), we respectfully request that the Division of Market Regulation (the "Division") confirm that it will not recommend to the Securities and Exchange Commission (the "Commission") that the Commission take any enforcement action under Section 15(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") in circumstances where HCSA offers certain employee leasing services as described below to securities broker-dealer firms that are registered with the Commission pursuant to the Exchange Act.

We believe that the Exchange Act and relevant staff no-action letters permit HCSA to provide employee leasing services to broker-dealers without HCSA registering as a broker-dealer under Section 15 of the Exchange Act. Such precedent includes Staff Management, Inc., SEC No-Action Letter, Fed. Sec. L. Rep. (CCH) 2000 SEC No-Act Lexis 608, 77,851 at 76,893 (April 27, 2000), and EPIX Holdings Corporation, SEC No-Action Letter, 2001 SEC No-Act. LEXIS 466 (April 2, 2001). As was the case in the correspondence to your office from counsel for Staff Management, Inc. and EPIX Holdings Corporation, HCSA does not furnish temporary staffing services or facilities management. HCSA also does not have a core of employees whom it sends to various companies, as do firms that provide temporary help or contract staffing. HCSA is not a broker-dealer or an associated person of a broker-dealer.

Rather, HCSA offers certain administrative employer services to the existing worksite employees of its clients. HCSA places its clients' employees onto HCSA's payroll, providing them with HCSA's benefits and furnishing the client and the employee with human resource functions. These functions include human resources consulting services pertaining to advice regarding compliance with applicable employment laws, the provision of benefit services (e.g., health, dental, life, and accidental death and disability insurance policies, and 401(k) plans), the provision of workers' compensation benefits (including risk management services), the provision of unemployment compensation benefits, and the provision of payroll processing services. The insurance products to be provided by HCSA are traditional insurance products and would not be "securities" as defined under the federal securities laws.

HCSA does not manage the business of its clients. The employees placed on HCSA's payroll are at all times subject to the client's supervision. HCSA has no control over the worksite at which, or from which, clients' employees perform their services. The client retains the right and the obligation to direct its worksite employees as is necessary for the operation of such client's business, including the discharge of any fiduciary duty or compliance with any applicable registration, licensing, regulatory or statutory requirements. As such, the client is subject to oversight and discipline by the Commission, other relevant governmental regulatory authorities and applicable self-regulatory organizations (each, an "SRO") for any inappropriate actions engaged in by the client or the client's employees at its worksite. In sum, while the employees placed on HCSA's payroll are employees of HCSA for purposes of applicable employment laws, they are employees of the client for purposes of the securities laws, rules and regulations in all respects.

The agreement between HCSA and the broker-dealers will provide, among other things, the following:

- Broker-dealer clients will be obligated to comply with all applicable federal, state, and local regulations and registration and licensing requirements.
- Broker-dealer clients will have sole and exclusive control over the day-to-day activities of all of their employees.
- Broker-dealer clients will be responsible for recruitment, proper registration, licensing, training, and supervision of all of their employees with respect to a broker-dealer client's obligations under all applicable securities laws, rules, and regulations.
- Broker-dealer clients will retain the right to discipline and terminate all of their employees.
- All books and records in the possession of HCSA relating to the services provided to a broker-dealer client will be made available for inspection by the Commission, any SRO, or any other regulatory authority with jurisdiction over the broker-dealer's business.
- All employees of a broker-dealer client who are, or are required to be, registered or licensed by the Commission, any SRO or any other regulatory authority with jurisdiction over the broker-dealer's business will be deemed to be employees of the broker-dealer client for such registration, licensing, or regulatory purposes.
- Broker-dealer clients will not assert that the existence of an employee leasing arrangement with HCSA in any way affects the ability of the Commission, any SRO, or any other relevant regulatory authority to regulate or discipline any broker-dealer client or employee of such broker-dealer client.

- HCSA will not engage in any securities-related activities that would require registration as a broker-dealer such as brokerage services.

Control of the day-to-day operations of the broker-dealer will remain with the broker-dealer. In this regard, the broker-dealer will continue to maintain and handle all books and records that the Commission, any applicable SRO, or any other relevant regulatory authority may require of a broker-dealer, and will continue to make such books and records available for inspection by the Commission, any other relevant regulatory authority and any SRO of which the broker-dealer is a member.

Similarly, the broker-dealer will continue to maintain and handle all funds and securities of the broker-dealer's customers. HCSA will receive payment from the broker-dealer for compensation that HCSA will then pay to broker-dealer personnel who have been placed on HCSA's payroll. In this regard, HCSA will impose an administrative fee for its services by adding a profit margin to its costs based on gross payroll. Such charges will not be based upon brokerage commissions earned by either the employees of the broker-dealer or the broker-dealer itself. HCSA will have no discretion concerning the amount or frequency of the salary, wage, commission, or bonus payments to employees of the broker-dealer who have been placed on HCSA's payroll. The broker-dealer will be responsible for informing HCSA of the payments that are to be made to such personnel. Such books and records relating thereto will be deemed property of the broker-dealer and will be available for inspection by the Commission and any SRO of which the broker-dealer is a member.

In addition, the broker-dealer will retain the traditional rights of an employer, including the right to hire, set compensation for, terminate, discipline, and reassign personnel of the broker-dealer who have been placed on HCSA's payroll. The broker-dealer will retain the responsibility for supervision and control with regard to the employees' performance of their securities duties, and the same individuals will continue in their capacity as registered representatives of the broker-dealer after the contract between HCSA and the broker-dealer client is executed. Similarly, the broker-dealer will be responsible for registration and training of the employees with regard to any regulated function. Each employee of the broker-dealer will continue to be held out to the public as the broker-dealer's registered representative and agent in effecting securities transactions. The broker-dealer will be liable for the acts or omissions of each employee after the agreement between HCSA and the broker-dealer is entered into, to the same extent that it had been liable prior to execution of such agreement. In this regard, each employee of the broker-dealer, as well as the broker-dealer, will be subject to the same administrative jurisdiction of the Commission and of other relevant regulatory authorities and SROs both before as well as after entering into such agreement.

In any promotional material that HCSA distributes, HCSA will not in any way distribute promotional advertisements related to brokerage activities. In any promotional activities, HCSA will mention that it offers employee leasing services, but will in no way mention that it is in any way engaged in any brokerage services. In addition, HCSA will not identify or endorse any broker-dealer in its promotional materials.

An employee leasing company such as HCSA possesses neither the expertise nor the desire to manage a client's business. Thus, HCSA will not presume to tell a brokerage firm how

to transact its business or attempt to exercise any influence or control with respect to the broker-dealer's conduct of its business.

Section 3(a)(4) of the Exchange Act defines the term "broker," in relevant part, as "any person engaged in the business of effecting transactions in securities for the account of others." Section 3(a)(5) of the Exchange Act defines the term "dealer," in relevant part, as "any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise."

Based upon the facts set forth above, we are of the view that HCSA does not become a broker-dealer by entering into a contract with a broker-dealer to provide the employee leasing services described herein. As noted above, the staff has adopted this position in a number of recent no-action letters.

Consistent with the foregoing, we respectfully request that the Division advise HCSA that it will not recommend to the Commission that it take any enforcement action under Section 15(a) of the Exchange Act if HCSA carries out the employee leasing activities described above without registering with the Commission as a broker-dealer.

If you believe that the staff of the Division cannot issue a letter in accordance with this request based upon the facts specified above, we respectfully request that you contact the undersigned at (212) 504-6285 or, in my absence, Marissa L. Morelle of this Firm at (212) 504-6150, so that we may discuss your concerns.

Enclosed please find seven additional copies of this letter for your use.

Please stamp the enclosed copy of this letter to acknowledge receipt of this submission and return the same in the self-addressed stamped envelope provided for that purpose.

Sincerely,



David S. Mitchell

Enclosures

cc: Marissa L. Morelle, Esq.