

ACT Investment Adviser Act

SECTION _____

RULE 204-3

PUBLIC AVAILABILITY 9/15/94

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549



DIVISION OF
INVESTMENT MANAGEMENT

September 15, 1994

Michael D. Udoff, Esq.
Vice President
Pershing Division of Donaldson, Lufkin & Jenrette
Securities Corp.
One Pershing Plaza
Jersey City, NJ 07399

Dear Mr. Udoff:

Your letter of August 12, 1994 requests assurance that the Division of Investment Management would not recommend enforcement action to the Commission if the Pershing Division of Donaldson, Lufkin & Jenrette Securities Corporation ("Pershing/DLJ") includes in the disclosure document required to be provided to clients and prospective clients of the wrap fee program that it sponsors (the "wrap fee brochure") information about another advisory program sponsored by Pershing/DLJ, and provides the wrap fee brochure to clients of both the wrap fee program and the other program in lieu of Part II of DLJ's Form ADV.

According to your letter, Pershing/DLJ is the sponsor of, and acts as clearing broker for, two programs called PEAK I and PEAK II that are available to customers of introducing broker/dealers. You state that PEAK I is a "wrap fee program" as defined in rule 204-3(g)(4) under the Investment Advisers Act of 1940¹ under which clients primarily are referred to independent portfolio managers. You state that Peak II is a mutual fund asset allocation program (i.e., a program under which the allocation of client assets among investment companies is recommended), and is therefore not a wrap fee program under rule 204-3(g)(4). Pershing/DLJ proposes to include the required disclosure about the PEAK I and PEAK II programs in a single brochure that would be provided to clients and prospective clients of both programs.

Rule 204-3, as recently amended, requires that the sponsor of a wrap fee program deliver the wrap fee brochure to prospective clients of the program, and annually offer to deliver the wrap fee brochure to existing program clients.² The wrap fee brochure must be separate from the brochure the adviser is required to provide to other advisory clients, and any

¹ See also Instruction 9 of Form ADV.

² Paragraph (f)(1) of rule 204-3.

information that is included in the wrap fee brochure in addition to that which is specifically required must be limited to information concerning the wrap fee program.³ As a result, extensive disclosure about an adviser's services other than its wrap fee programs generally cannot be included in the wrap fee brochure.

Mutual fund asset allocation programs were not included within the definition of a wrap fee program in the recent amendments.⁴ Accordingly, disclosure about these programs may be provided to clients and prospective clients through Part II of the sponsor's Form ADV or a document containing at least the information required by Part II.⁵ Mutual fund asset allocation programs, however, are similar in certain respects to wrap fee programs covered by the amendments and may be marketed to the same types of investors. It therefore may be helpful to investors to include disclosure about a sponsor's mutual fund asset allocation programs in the same document as disclosure about the sponsor's wrap fee programs.

Accordingly, based on the facts and representations in your letter and without necessarily agreeing with your analysis, we would not recommend enforcement action to the Commission if Pershing/DLJ includes the disclosure required by Part II of Form ADV about the PEAK II program in the wrap fee brochure required under paragraph (f) of rule 204-3, and provides that wrap fee brochure to clients and prospective clients of both the PEAK I and PEAK II programs in lieu of Part II of Form ADV and as required by rule 204-3. You should note that any different facts or representations might lead to a different conclusion.

Sincerely,



Robert E. Plaze
Assistant Director

³ Id.

⁴ Certain mutual fund asset allocation programs were proposed to be included in the wrap fee disclosure requirements. See Investment Adviser Act Rel. No. 1401 (Jan. 13, 1994) [59 FR 3033 (Jan. 20, 1994)]. As adopted, however, the amendments do not apply to mutual fund asset allocation programs. See Investment Advisers Act Rel. No. 1411 (Apr. 19, 1994) [59 FR 21657 (Apr. 26, 1994)].

⁵ Paragraph (a) of rule 204-3.

Pershing

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August 12, 1994

VIA AIRBORNE

Mr. Robert E. Plaze
Assistant Director
Office of Disclosure and Investment Adviser Regulation
Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549

Re: Wrap Brochure requirements
pursuant to Release No. IA-1411
(File No. S7-2-94)

Dear Mr. Plaze:

I am writing in furtherance of our conversation regarding Pershing/DLJ sponsorship of certain wrap account and mutual fund asset allocation programs, principally in the context of fully-disclosed clearing relationships with introducing broker/dealers.

The principal programs sponsored by Pershing which are available to customers of introducing broker/dealers are PEAK I and PEAK II. PEAK I is a standard wrap account program utilizing primarily independent professional portfolio managers. PEAK II is a mutual fund asset allocation program. At present, customers interested in PEAK programs receive a kit which contains descriptive information on both programs, including DLJ's ADV, Part II. The ADV, Part II itself, also includes required information with respect to both programs. Additionally, the introducing broker/dealer will include its own ADV, Part II in the kit as well as that of any PEAK I portfolio manager selected.

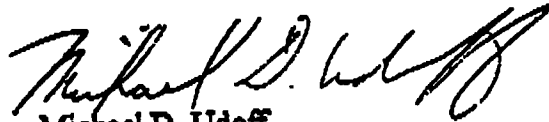
As required by Release No. IA-1411, effective October 1, 1994, Pershing will utilize a separate brochure to provide required disclosures to customers regarding the PEAK I program. Although PEAK II, as a mutual fund asset allocation program, appears to be exempt from the separate brochure requirement, we would propose to also include comparable PEAK II disclosures in the same brochure, in lieu of providing PEAK II customers with DLJ's ADV, Part II. Such customers would, of course, continue to receive the introducing broker/dealer's ADV, Part II which includes disclosures with respect to both PEAK I and PEAK II.

We believe that the above approach, in general, and particularly in the context of a clearing relationship, will avoid customer confusion, without necessitating the bifurcation of information regarding the program alternatives available to them. Furthermore, we believe this approach is consistent with Section 204-3 of the Investment Advisers Act which permits a separate written document containing at least as much information as required

by Form ADV, Part II to be utilized in lieu of Part II. We believe that between the separate Pershing/DLJ brochure and the introducing broker/dealers ADV, Part II the customer will receive as much, or more information, than is required under Section 204-3.

Based on all the foregoing, we respectfully request your early response as to whether our proposed approach is consistent with the regulations which become effective on October 1st. Thank you for your courtesy in this matter.

Sincerely,



Michael D. Udoff