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

DIVISION OF
INVESTMENT MANAGEMENT

August 7, 1995

Act IAA-40
Section 202(a)(11)(D)
Rule
Public
Availability 8/7/95

Mr. Alfred A. Zurl
221-41 90 Avenue
Queens Village, NY 11428

Dear Mr. Zurl:

This is in response to your letter to Jack W. Murphy dated July 8, 1995 asking whether you would need to register as an investment adviser if you give investment advice in a newsletter or by telephone using a 900 number.

The Commission regulates investment advisers primarily under the Investment Advisers Act of 1940 ("Advisers Act"). Section (202)(a)(11) of the Advisers Act generally defines an investment adviser as any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities, or as to the advisability of investing in, purchasing, or selling securities. Section 203(a) of the Advisers Act generally requires an investment adviser to register with the Commission. A person who provides advice about securities by telephone or by newsletter may fall within this definition and may be required to register under the Advisers Act.

Section 202(a)(11)(D) of the Advisers Act, however, excepts from the definition of investment adviser, and thus from registration and regulation under the Act, the publisher of any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation. The United States Supreme Court has interpreted this "publisher's exclusion" to include publications that offer <u>impersonal</u> investment advice to the general public on a regular basis. 1/ To qualify for the section 202(a)(11)(D) exclusion, under Lowe, the publication must be:

1) of a general and impersonal nature, in that the advice provided is not adapted to any specific portfolio or any client's particular needs;

1/ Lowe v. SEC, 472 U.S. 181 (1985).

2) "bona fide" or genuine, in that it contains disinterested commentary and analysis as opposed to promotional material; and

3) of general and regular circulation, in that it is not timed to specific market activity or to events affecting, or having the ability to affect, the securities industry.

A person who provides advice about securities using a 900 number could similarly qualify for the Section 202(a)(11)(D) exclusion, provided the three criteria listed above are met. The staff generally declines to express an opinion whether a person qualifies for the exclusion because this is a factual and not a legal determination. If you are an "investment adviser" under the Advisers Act and do not qualify for the publisher's exclusion, or for any other exclusion from the definition of investment adviser, or for an exemption from registration under Section 203(b), you must register with the Commission as an investment adviser. 2/

I have enclosed a copy of the Commission's Investment Adviser Registration Package, which contains a copy of the Advisers Act and other explanatory materials. I have also included a copy of the rules under the Advisers Act and a memorandum that discusses the regulation of investment advisers. I hope that this information is helpful. Please contact this office at (202) 942-0660 if we can be of further assistance.

Sincerely,

Veena K. Jain

Veena K. Jain
Attorney
Office of Chief Counsel

enclosures

2/ The exclusions from the definition of an investment adviser are set forth in Section 202(a)(11) of the Advisers Act.

221-41 90 Avenue
Queens Village, N.Y. 11428
July 8, 1995

Mr. Jack W. Murphy
Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549

Dear Mr. Murphy,

I obtained your name and address from one of your New York colleagues, who encouraged me to write to you about an SEC-related question.

I am an experienced individual investor in the stock market, with no affiliation to the SEC or NASD. I am considering the possibility of a new project possibly sometime in 1996. This would be providing some stock market investment advice to the general public, either via investment-newsletter, or 900-phone-line, etc.

This would not involve giving individual advice or managing individual accounts. It would consist of recommending certain individual stocks, but to the public in general, not specific individuals.

My understanding is that, in light of the above, it would not be necessary to register as an Investment Advisor with the SEC, and that legally, the SEC should have no objection to this.

If you agree with the above, there is no need to reply. Otherwise, a brief letter would be welcome and desired.

Thank you very much for taking the time to read this, and for your cooperation.

Sincerely,

Alfred A. Zurl

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