

CFS SECURITIES CORP.

Investment Advisors Act of 1940 -- Section 202(a)(11)(C)

Feb 27, 1987

TOTAL NUMBER OF LETTERS: 2

**SEC-REPLY-1:
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
JAN 28 1987
RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT**

**Our Ref. No. 87-15-CC
CFS Securities Corp.
File No. 132-3**

In your letter of January 6, 1987, you request us to advise you as to whether we would recommend any enforcement action to the Commission if registered representatives and employees of CFS Securities Corp. ("CFS"), a registered broker-dealer, provide financial planning seminars to prospective investors without registering as investment advisers under the Investment Advisors Act of 1940 ("Advisers Act").

Section 202(a)(11) of the Advisers Act broadly defines an "investment adviser" as any person who, for compensation, is in the business of advising others about investing in securities. Based on this definition, a registered representative of a broker-dealer generally would be an investment adviser under the Advisers Act, unless the representative can rely on the broker-dealer exception set forth in Section 202(a)(11)(C) of the Advisers Act. This provision excepts from the investment adviser definition any broker-dealer whose performance of advisory services is solely incidental to the conduct of its business as a broker-dealer and who does not receive special compensation for providing investment advice.

In our view, this exception is available to both a broker-dealer and any registered representative or employee whose investment advisory activities are subject to control by a broker-dealer within the meaning of Section 3(a)(18) of the Securities Exchange Act of 1934. n1 However, the exception is available only if a registered representative or employee is providing investment advice in that person's capacity as a registered representative or employee, and not if the person is providing investment advice outside of that capacity.

In your situation, even assuming the financial planning seminar would be deemed solely incidental to CFS's business as a broker-dealer, the question arises as to whether CFS is receiving special compensation in connection with the provision of these financial planning services. The fact that CFS may receive commissions as a result of these financial planning services would not, in itself, constitute the receipt of "special compensation" for purposes of Section 202(a)(11)(C). n2 However, in our opinion, the fee charged for the financial planning services, even if designed to defray materials costs, would constitute "special compensation" for purposes of Section 202(a)(11)(C). n3 For this reason, we cannot conclude that CFS is entitled to rely on the broker-dealer exception set forth in Section 202(a)(11)(C) of the Advisers Act. Accordingly, we cannot assure you that we would not recommend any enforcement action to the Commission if the registered representatives or employees of CFS offer financial planning services without registering under the Advisers Act, as described in your letter.

Footnotes

n1 See Robert S. Strevell (pub. avail. Apr. 29, 1985); Brent A. Neiser, CFP (pub. avail. Jan. 21, 1986).

n2 See id.; Investment Advisers Act Rel. No. 626 (Apr. 27, 1978).

n3 The Division has taken the position that the receipt of any economic benefit constitutes the receipt of compensation under Section 202(a)(11) of the Advisers Act. See Investment Advisers Act Rel. No. 770 (Aug. 13, 1981). This is so, even if payments for services cover only the cost of the services. See, e.g., Southwest Corporate Federal Credit Union (pub. avail. May 31, 1983); The Corporate Income Fund (pub. avail. June 14, 1982). In our opinion, because the payments CFS or its registered representatives will receive are not of the type received by a broker-dealer in the ordinary course of its brokerage business (i.e., commissions), they would constitute "special compensation" for purposes of Section 202(a)(11)(C). See Robert S. Strevell (pub. avail. Apr. 29, 1985).

INQUIRY-1:
CFS SECURITIES CORP
1180 SPRING CENTRE SOUTH BLVD.
ALTAMONTE SPRINGS, FL 32714-1941
(305) 869-9800
January 6, 1987

Mary Podesta, Esquire
Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

RE: Request for Interpretive Advice

Dear Ms. Podesta:

We request that you advise us, based on the following facts and commentary, whether the Division would recommend any action to the Commission if registered representatives and employees of the firm were to provide "educational" financial planning seminars to prospective investors. The only charge will be to cover the cost of the seminar materials and the persons conducting the seminars are not registered as investment advisors.

The seminar would be educational in nature, but would include general information about the appropriateness of investing in certain securities as defined broadly by the Commission. Other topics would include, but not be limited to, risk management, education planning, tax planning, retirement planning and estate planning.

FACTS

1. CFS Securities Corp is a Florida based broker/dealer with registered representatives in Altamonte Springs, Florida; McLean, Virginia; and Irvine, California.
2. The seminar is a "packaged" seminar entitled "Successful Money Management Seminars" offered by Successful Money Management Seminars, Inc., 10300 S.W. Greenburg Road, Suite 270, Portland, Oregon 97223.
3. The fee charged for the 3-part seminar would be used only to defray costs of materials.

4. Materials would include a seminar notebook to be made available to each attendee at a current cost of \$ 39.00.
5. The seminars would be conducted only in the State of Florida.
6. Attendees would be entitled to a 100% refund of fees upon request after completion of the 10 1/2 hour, 3-part program, if they are not completely satisfied upon written request and when program materials are returned.

COMMENTARY

It is our understanding that it has been the view of the Commission that any individual who provides advice, or issues or promulgates reports or analyses which concern securities, but which do not relate to specific securities, would generally be considered an "investment adviser" under the Investment Advisors Act of 1940 (the "Act"), assuming such services are performed as part of a business and for compensation.

It must be recognized that the sale of securities may occur as a result of the seminar activities and that usual and customary commissions, not exceeding the industry's standards, could be paid to the seminar sponsors as a result of those sales.

Based on the information provided, we respectfully request that you advise us whether the Division would recommend any enforcement action to the Commission if the seminars were conducted by non-registered individuals where a fee was involved only to cover costs of the seminar.

Sincerely,

Delton L. Haynes
President