

**VINCENT J. COSENTINO**

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**Advisers Act Sec. 202(a)(11)(D)**

**January 14, 1986.**

**Vincent J. Cosentino  
3880 Wynn Road # 321  
Las Vegas, Nevada 89103**

Dear Mr. Cosentino:

This is in reply to your letter to Chairman Shad of December 26, 1985, raising several questions about your status as a registered investment adviser in light of *Lowe v. Securities and Exchange Commission*, 472 U.S. 181, 105 S.Ct. 2557 (1985). In *Lowe*, the Supreme Court held that certain newsletter publishers are not "investment advisers" required to register under the Investment Advisers Act of 1940 ("Advisers Act").

In our view, the Court concluded that bona fide publishers who offer only impersonal advice in a publication of general and regular circulation are not required to register under the Advisers Act. Thus, if a publisher's activities come within *Lowe*, it is not required to register, although it nevertheless may voluntarily register under the Advisers Act, or, in your case, voluntarily maintain a registration. If a publisher is voluntarily registered, it will be treated in the same manner as other registered publishers.

Regarding your specific questions:

—A publisher who is registered under the Advisers Act and who is actively engaged in that business (and no other advisory business) should nevertheless answer "yes" to the question on page 1 of Form ADV "Is Applicant now active in business as an Investment Adviser?" because the purpose of this question is to keep us informed as to whether the registrant is an active or a passive entity. Of course, a publisher's affirmative response to this question would not prejudice that publisher if it subsequently determines to de-register in reliance on *Lowe*;

—If you determine to de-register in reliance on *Lowe*, your initial filing fee will not be refunded; and

—If you de-register and subsequently re-register, you will have to pay a new registration fee and to re-file all necessary forms.

I trust this is responsive to your inquiry. If you have further questions, please feel free to call Gerald T. Lins of my Office at (202) 272-2030.

Very truly yours,

Thomas P. Lemke  
Chief Counsel

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**INCOMING LETTER**

**December 26, 1985**

**Mr. John S.R. Shad, Chairman  
Securities & Exchange Commission  
Washington, D.C. 20549**

Dear Mr. Shad:

I have recently received a new Form ADV from the Chief of the Office of Disclosure and Adviser Regulation of the S.E.C.

As a registrant (801-22487) and an independent newsletter writer, and in the light of the U.S. Supreme Court's ruling concerning newsletter rendered over six months ago, I am requesting some guidance from your Commission before I can determine how to proceed with Form ADV.

For example, since the High Court has decided that I as a newsletter writer never was, or currently am, an investment adviser, do I have the option of maintaining my investment adviser's registration by filing the new Form ADV?

My motivation for wanting to do this would be to preclude the duplication of expenses and delays associated with the registration process should I ever want to take advantage of any possible future opportunities—such as a brokerage affiliation or the investment of clients' funds, or any other activities which would require registration as an investment adviser.

If I do not have the option of maintaining the registration, how do I answer all the questions on Form ADV which do not relate to my current activities? One such question is the first one on Page 1, Part 1 which asks "Is the Applicant now active in business as an Investment Adviser?" Was I an active investment adviser before the High Court's ruling? And have I now become inactive as a result of the ruling even though I was and am solely a newsletter writer during all of the time mentioned?

If I do not have the option of maintaining the investment adviser's registration, will the S.E.C. be granting some type of "grandfather's privilege" should I ever have the need in the future to seek this registration? Or will I be reimbursed for the "non-refundable" filing fee of \$150.00, which was compelled by the S.E.C., unlawfully, illegally and in violation of the First Amendment? Surely, in case of a future need to re-register, your Commission cannot expect me to pay an additional \$150.00 and again endure the time delay of the registration process?

If you or your Staff could provide me with the answers to these questions and any other policy information and guidelines on a timely basis so as to enable me to determine which course to pursue in this most confusing situation prior to any filing deadline, I would be most grateful.

Yours very truly,

VINCENT J. COSENTINO