

DILLON, READ & CO., INC.

Aug 6, 1975

TOTAL NUMBER OF LETTERS: 3

**SEC-REPLY-1:
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

July 25, 1975

**Cahill Gordon & Reindel
Eighty Pine Street
New York, N.Y. 10005**

Attention: Stephen A. Greene, Esq.

Re: Dillon, Read & Co., Inc.

Gentlemen:

In connection with a recent review of requirements under the Investment Advisors Act of 1940, we have had occasion to re-read your letter of August 14, 1973 regarding Dillon, Read & Co. Inc., and our response of October 16, 1973 to that letter.

In this regard, we discovered that the response contains an incorrect statement as a result of a phrase having been omitted in the final transcription of the response. The first part of the second sentence of the first paragraph of that response reads as follows:

"The Commission has interpreted Section 206(3) to require full written consent prior to the completion of each transaction...."

As you know, the section contains no requirement that the consent be in writing, only that written disclosure be made to the client prior to the completion of the transaction. The consent, which also must precede the completion of the transaction, need not be in writing. However, for evidentiary purposes, an adviser might prefer to have written consents in his file to avoid controversy if a question is later raised as to whether consent actually was given in a particular situation. In any event, the first clause of the quoted sentence should read as follows:

"The Commission has published an interpretation of Section 206(3) to the effect that it requires full written disclosure be given and that the client's consent be obtained prior to the completion of each transaction...."

Since our earlier correspondence has been made publicly available I intend to make this letter similarly available immediately.

Sincerely,

Alan Rosenblat
Chief Counsel

**INQUIRY-1:
CAHILL GORDON & REINDEL
EIGHTY PINE STREET
NEW YORK, N.Y. 10005
TELEPHONE 212-944-7400**

August 14, 1973

Re: Dillon, Read & Co. Inc.

Dear Mr. Rosenblat:

We are counsel to Dillon, Read & Co. Inc., an investment banking and brokerage New York Stock Exchange member firm, (hereinafter referred to as "DR"). DR has recently filed its application on Form ADV for registration as an investment adviser under the Investment Advisors Act of 1940 (the "Act"), as a result of its proposed marketing of an industry analysis system, Prodromatics, concerning equity securities.

In addition to its Prodromatics system, DR has developed a new computerized information retrieval system ("CUSPAK") [for institutional investors] which, as reflected in the enclosed proposed brochure ("Brochure"), will enable subscribers to obtain a list of bonds having particular characteristics selected by the subscribers. The 25 characteristics are set forth on page 5 of the Brochure.

For example, if a subscriber desires to invest in a bond with a coupon at 8%, rated AAA by Moody, selling at a price less than 106, maturing in 1997, CUSPAK will print out a list of currently available bonds having those characteristics.

In addition, CUSPAK is programmed to analyze a subscriber's portfolio of bonds by dividing it into 25 categories set forth on page 5 of the Brochure, e.g., industry type, coupon, price, maturity, rating.

The CUSPAK system makes no subjective value judgments with respect to any bonds, but, rather, is a tool for subscribers to analyze the availability of bonds having specific characteristics selected by the subscribers as well as analyze the subscribers' own portfolios. All the data is available to the public; CUSPAK merely compiles the data and distributes it without editorial comment.

DR has proposed that an unaffiliated third party not yet designated ("Operator") will operate and market the CUSPAK system to subscribers for a cash fee dependent upon usage (\$1,000 per month minimum). Pursuant to an agreement with Operator, DR will be responsible for maintenance of the computer programs and data base (i.e., a list of all corporate bonds outstanding) for CUSPAK and will receive 70% of the fees received by Operator from its subscribers. DR will advise its institutional clients of the availability of the CUSPAK system and of DR's interest in CUSPAK, but will not actively solicit subscribers for Operator.

The question arises as to whether DR's connection with the CUSPAK program would deem it an investment adviser within the meaning of Section 206(3) of the Act with respect to bond transactions with its customers, where DR as a broker-dealer may, as is typical in bond transactions, as principal, or as broker for a third party, sell a bond to or buy a bond from one of its customers who may also subscribe to Operator's CUSPAK system.

It is our view that irrespective of whether or not DR's connection with the CUSPAK system is sufficient to deem DR an investment adviser within the meaning of Section 202(a) (11) of the Act (DR is in any event registering as an investment adviser because of another program), the prohibitions of Section 206(3) should not be applicable to DR's customary dealer transactions in bonds with institutions who may also be subscribers in the CUSPAK system since DR would not be "acting as an investment adviser in relation to" any particular bond transaction. As is noted above, the CUSPAK system makes no

recommendations with respect to the purchase or sale of any bonds so that any decision to buy or sell any particular bond is initiated by the institution. DR's institutional clients are aware that DR acts as principal in bond transactions; institutional transactions in bonds are, of course, ordinarily made on a principal basis. Furthermore, such clients would have been notified in advance of DR's interest in the CUSPAK system. Consequently, there would appear to be no conflict of interest between DR and its customers in executing a buy or sell bond order, nor would there appear to be any risk of potential harm to DR's sophisticated bond clientele by permitting DR to engage in such transactions without prior written consent. The Operator would market the CUSPAK system to institutional investors regardless of whether or not such investors are clients of DR.

We would appreciate your confirming our view that with respect to bond transactions with its institutional clients in which DR acts as principal or as broker for a third party DR would not, within the meaning of Section 206(3), be acting as an investment adviser with respect to such transactions. In the event that you do not concur in such view we would greatly appreciate an opportunity to meet with you to discuss the possibility of obtaining an exemption under Section 206A of the Act solely with respect to exempting DR from the prior written consent requirement of Section 206(3) insofar as it relates to DR's bond transactions, since such requirement appears unnecessary in this context to protect DR's sophisticated clients and would be so mechanically burdensome as to cause DR to abandon its participation in the CUSPAK system.

We would appreciate your attention to this matter at your earliest convenience. If you have any questions, please call Stephen A. Greene or Immanuel Kohn of this office, collect.

In accordance with Securities Act Release 33-5127, three additional copies of this letter are enclosed.

Very truly yours,

Cahill Gordon & Reindel

SEC-REPLY-2:

Based on the foregoing, we would not recommend that the Commission take any action against DR under Section 206(3) of the Advisers Act, if DR goes ahead as proposed; provided, however, that (1) before the plan goes into operation, written consent is obtained from each of DR's clients who may use the CUSPAK program through DR, (2) DR obtains written consent from its clients on a quarterly basis, and (3) no transactions are executed by DR for any of its clients until it has received advance written consent. The Commission has interpreted Section 206(3) to require full written consent prior to the completion of each transaction; accordingly, our no-action position on the quarterly consent arrangement specified above is applicable only to the clients described in your letter. See, Investment Advisers Act Rel. No. 40 (Feb. 5, 1945).

Regarding the eventual Operator for the CUSPAK plan, from the description you have provided it would appear that the Operator is also an investment adviser and it will be required to register as an investment adviser under Section 203(c) of the Advisers Act. Moreover, the fee arrangement between DR and the Operator raises serious questions under Section 206(4) of the Advisers Act. See, Argus Securities Management Corporation, [1971-1972 Transfer Binder] CCH Fed. Sec. L. Rep. P 78,366 (available June 1, 1971). However, in view of the fact that the Operator in this case would be providing a substantial service, we would not raise any objection to this fee arrangement if there is complete disclosure to all CUSPAK subscribers of the 70%/30% fee splitting arrangement between DR and the Operator.

Alan Rosenblat, Chief Counsel
Division of Investment Management Regulation

October 16 1973