

FIRST ATLANTIC INVESTMENT ADVISORY CORPORATION

'34 Exchange Act - Section 15a

February 20, 1974

Publicly Available March 22, 1974

**Ted R. Manry, III, Esquire
MacFarlane, Ferguson, Allison & Kelly
P. O. Box 1531
Tampa, Florida 33501**

Dear Mr. Manry:

I refer to your letter of January 8, 1974 in which you inquire whether the proposed activities of First Atlantic Investment Advisory Corporation (the "Corporation") would require it to register as a broker in securities pursuant to Section 15 of the Securities Exchange Act of 1934.

The Corporation currently is seeking to register as an investment adviser with the Commission. In the course of its business as a registered investment adviser, the Corporation anticipates that, from time to time, some of its clients would deposit funds with a bank or broker or some other third person and would authorize the Corporation, in its sole discretion, to use those funds for the purchase or sale of securities for the client's account. The Corporation will neither purchase nor sell securities for a client's account directly; it will transmit its order to a trustee, bank or broker for execution. The Corporation will not hold clients' funds or securities nor will it receive additional [illegible text] specifically for this activity from the client or from any bank, broker or other third person participating in the transaction.

Based on the foregoing, it appears that your characterization of the Corporation's proposed activities as those of an investment adviser is correct and, insofar as the Corporation is registered with the Commission as such, this Office would not recommend action to the Commission should the Corporation not register as a broker-dealer in securities.

Sincerely,

David J. Romanski
Assistant Chief Counsel

**INCOMING LETTER TO SEC
First Atlantic Investment Advisory Corporation
Publicly Available March 22, 1974
January 8, 1974**

**Chief Counsel
Division of Market Regulations
Securities and Exchange Commission
500 North Capitol Street
Washington, D. C. 20549**

Dear Sir:

I have been informed by Mr. Neal G. Winnig, Esquire, of the Division of Investment Management Regulation that I should address certain questions concerning activities of an investment advisory

corporation to your office since they involve an interpretation as to whether or not the activities could constitute the corporation as a securities 'broker' under the Federal Securities Act.

I will present a recently organized Florida corporation, First Atlantic Investment Advisory Corporation, who at the present time desires to register as an investment advisor under the 1940 Advisors Act. My specific question involves portions of Form ADV and specifically Item 21 which reads:

Does Applicant or Registrant, or any person connected with Applicant or Registrant, have discretionary authority to make any of the following determinations without obtaining the consent of the investment advisory client before the transaction is effected:

- (a) Where securities are to be bought or sold?
- (b) Which securities are to be bought or sold?
- (c) The total amount of securities to be bought or sold?

At the present time it is contemplated that my client would answer subpart (a) in the negative while subparts (b) and (c) of Item 21 would be answered in the affirmative. This raised questions in my mind concerning whether or not the corporation would become a 'broker' under Federal law.

As complete background information I will relate to you the following facts.

The investment advice will be rendered to the corporate form of business. This is a presently certified Florida closed corporation which is not presently actively engaged in business. The corporation has two stockholders and three officers. The stockholders will conduct the business of the corporation in [illegible text] of a Board of directors as allowed under Florida law. The corporation will be effectively organized into two 'divisions', one of which will be engaged in investment advisory services and the other will be engaged in what we term 'land management'.

The investment advisory division will be headed by Mr. Harry Baker Jordan, the 51% stockholder, who I understand is presently registered with the SEC and the State of Florida as a 'representative' having previously worked as a representative of national brokerage firms. The land management division will be headed by Mr. Harvey Snively, the 49% stockholder. The objects of the land management division are to procure management for real property, primarily citrus groves, for owners of those properties and to render other management services. This service will be provided to present owners of citrus groves and will not be involved in the type of syndication or investment in groves or other real properties which could be construed as an 'investment contract'. The 49% stockholder will have no authority to render any 'investment advice' regarding securities as the term 'investment advice' or 'securities' are defined by Federal law and the By-Laws and Articles of Incorporation provide for this limitation.

Any investment advice rendered by the corporation will be rendered by Mr. Jordan. The By-Laws and Articles of Incorporation limit the giving of 'investment advice' on behalf of the corporation to any client or other person to those employees who meet the registration requirements of State and Federal law respecting brokers or representatives.

Mary Baker Jordan, Mr. Jordan's wife, will be the Secretary of the corporation. She will have no stock interest in the corporation and her duties will be confined to the ministerial duties of a secretary under Florida law. She will render no investment advice and will not participate in the land management function of the corporation.

With respect to Item 21 of Form ADW, my client perceives a situation in which with respect to investment advice the corporation would have discretionary authority as to which securities are to be bought or sold and the total amount of securities to be bought or sold. (We can perceive a situation in which a client would deposit a large sum of money either with a bank or broker or some other third person and would give my client written or other authorization to order the purchase or sale of securities

at his discretion without the consent of the investment advisory client before each transaction is effected) It should be stressed that if an investment advisory client were to request such a procedure, for instance in the event that he would be out of the country for some length of time, my client would not himself purchase the securities or hold the securities or the funds for the investment advisory client. (My client would simply, through a proper power of attorney or other instrument, give the order for the transaction to be effected by some other third person such as a trustee, bank or securities broker. My client will receive no additional remuneration from any person, broker, bank or other entity for this service. My client's service will be covered entirely by the terms of the investment advisory contract which will be in accordance with the rules and regulations promulgated by the SEC regarding legal charges and methods of charging under investment advisory contracts. My client's sole function would be limited to giving the order to effect the transaction which order would be based upon his discretion as to the types and amounts of securities to be bought or sold.

Under the foregoing circumstances which I outlined you over the telephone your preliminary opinion which I recognize was not binding was that my client would most likely not be deemed to be a broker as a result of such discretionary transactions since he was not receiving any additional remuneration or splitting any fees with any brokers for effecting the transaction. I might point out that my client does not perceive that this type of arrangement will be utilized in a significantly large portion of the corporation's investment advisory contracts though it is difficult to predict future events.

I would appreciate your advising me in writing whether or not the types of transactions outlined in this letter would require the corporation to register as a 'broker'.

If you desire any further information please do not hesitate to call me collect at my office.

Yours very truly,

Ted R. Manry, III