

Investment Advisors Act of 1940 - § 205(2)

Mar 24, 1971

Hedberg & Gordon, Inc.

TOTAL NUMBER OF LETTERS: 2

SEC-REPLY-1:

FEB 23, 1971

**Robert D. Williams, Esquire
Dechert Price & Rhoads
1600 Three Penn Center
Philadelphia, Pennsylvania 19102**

Dear Mr. Williams:

In your letter dated February 11, 1971, you describe a proposed sale of the stock of your client, Hedberg & Gordon, Inc. ("H&G"), to Philadelphia Life Insurance Company. You state that H&G is a registered investment adviser and I understand that the proposed sale will result in an "assignment" of its investment advisory contracts as that term is defined in Section 202(a) (1) of the Investment Advisors Act of 1940. You request our office to review your proposed letter to H&G's clients with respect to the proposed sale.

As we informed you by telephone, on February 22, 1971, this office is not authorized to review such materials; however, in general, the effect of Section 205(2) of the Act is to require that clients of the investment adviser be notified of the assignment and their right to terminate the relationship with the investment adviser on that occasion. Their consent to the assignment must be obtained. Consent cannot be predicated upon mere inaction on the part of the subscriber; however, we would raise no objection if clients were informed that the services for which they contracted would be continued for a reasonable specified period of time and that if, at the end of such period, the adviser had not received any word to the contrary, it would assume that the client wished to continue the relationship.

As we mentioned in our telephone conversation, several phrases in the letter appear to involve violations of the general anti-fraud provisions of the Investment Advisors Act, inasmuch as they tend to characterize positively the prospects of the arrangement between H&G and Philadelphia Life and their effect is to unfairly induce H&G's clients to consent to the assignment.

You should be aware that our comments with respect to your draft letter are not to be considered exhaustive or to indicate that the Commission has in any way approved the contents thereof.

Sincerely,

Michael Saperstein
Assistant Chief Counsel

INQUIRY-1:

**LAW OFFICES OF
DECHERT PRICE & RHOADS
1600 THREE PENN CENTER
PHILADELPHIA, PA. 19102**

(215) LOCUST 8-1600

**CABLE BARDEP
TELEX 84 5324**

February 11, 1971

**Ezra Weiss, Esquire
Chief Counsel
Division of Trading and Markets
Securities and Exchange Commission
Washington, DC 20549**

Re: Hedberg & Gordon, Inc.

Dear Mr. Weiss:

You may recall that I discussed briefly with you on the phone last week a plan pursuant to which the shareholders of the above corporation, which is a registered investment adviser, will sell all of its stock to Philadelphia Life Insurance Company. The present Hedberg & Gordon ("H&G") personnel will stay with the corporation after it becomes a Philadelphia Life subsidiary, and its business will be carried on largely as before insofar as it relates to providing investment advice to individuals, pension trusts and the like.

Hedberg & Gordon is also, through its subsidiary Investment Counsel International, Inc. ("ICI"), adviser to two registered mutual funds, and we are working with Beryl Ellis' branch to secure clearance for the proxy material which will go to the shareholders of those funds. After the acquisition of the H&G stock, the adviser to the funds will be an existing subsidiary of Philadelphia Life and not ICI.

When I talked with you I asked if I might send to you a draft of a proposed letter from Sheldon Gordon, president of H&G, to its various advisees. The contract with each advisee provides that it is cancellable at any time at the option of the advisee, and the enclosed form of letter makes reference to this fact (see the top of page 2) coupled with an expression of hope that each advisee will decide to continue on in that capacity notwithstanding the proposed stock transfer.

I wonder if you or someone on your staff would be good enough to call me to give me whatever comments you may have with respect to the proposed letter. If I should be unavailable, please ask for Bill Humenuk who is also familiar with this matter.

Your help is appreciated.

Sincerely yours,

ROBERT D. WILLIAMS