

KEVIN J. HUGHES - TBA FINANCIAL CORPORATION

Publicly Available December 7, 1983

SEC LETTER

Advisers Act Sec. 203(e)(5)

November 7, 1983

**Kevin J. Hughes, Assistant Counsel
TBA Financial Corporation
222 Front Street
San Francisco, CA 94111**

**Our Ref. No. 83-280-CC
TBA Financial Corporation
File No. 801-18708**

Dear Mr. Hughes

In your letter of September 2, 1983, you expressed an interest in whether TBA Financial Corporation ("TBA"), a registered broker-dealer and investment adviser, is responsible, in its capacity as an investment adviser, for its registered representatives. You specifically asked whether TBA's registered representatives "come under" its investment adviser's registration.

A registered representative rendering advisory services as an employee of a registered investment adviser, whether listed on his investment adviser's Form ADV or not, need not be registered individually as an investment adviser. You might note that registered investment advisers have a continuing responsibility to comply with the provisions of the Investment Advisers Act ("Act"), a duty which includes the "supervision of and responsibility for anyone acting in their behalf." Justin Federman Stone, 41 S.E.C. 717, 721-722 (1963). The duty to supervise, found in section 203(e)(5) of the Act, extends to any "person subject to his [the adviser's] supervision" (and thus includes an adviser's employees), and is comparable to the duty to supervise imposed upon broker-dealers in section 15(b)(4)(E) of the Securities Exchange Act. S.Rep. No. 184, 91st Cong., 1st Sess. 47 (1969).

If a registered representative acts as an investment adviser on his own behalf, he would be required to be registered separately under the Act. In these circumstances, care should be taken that any indicia of the person's employment by you as a registered representative does not mislead clients as to the capacity in which he is providing investment advisory services. In addition, if your firm acts as broker or dealer for one of your registered representative's clients, when the registered representative is acting as an independent investment adviser, the client should be advised of his adviser's interest in the transaction. Finally, the investment adviser, in such circumstances, is required to act in his client's interests in selecting any broker in connection with a transaction.

I understand that you have already received a copy of the Act and the regulations thereunder from the Commission.

Sincerely,

Stanley B. Judd
Deputy Chief Counsel

INCOMING LETTER

September 2, 1983

**Mr. John K. Evans
Office of Investment Adviser Regulation
Division of Investment Management
SECURITIES & EXCHANGE COMMISSION
Washington, D.C. 20549**

Dear Mr. Evans:

I represent TBA Financial Corporation, a registered broker-dealer, which just recently became an investment adviser. As a newly certified investment adviser, I want to be sure that this company is in full compliance with all of the applicable federal and state regulations. I realize that your office cannot help concerning state regulations, but I was hoping that you might send the latest information regarding the applicable federal regulations for investment advisers. In particular, I am interested in our responsibility over our registered representatives and whether they come under our investment adviser certificate.

I would appreciate if you could send this information to me at the above address, or if you could at least point me in the right direction and tell me where to look. Thank you for your time and assistance.

Sincerely,

Kevin J. Hughes