

THE KNIGHT GROUP

Publicly Available November 13, 1991

SEC LETTER

Exchange Act Sec. 15(b)

November 13, 1991

Our Ref. No. 91-325-CC
The Knight Group
File No. 132-3

Your letter of July 9, 1991 requests assurance that the staff would not recommend enforcement action to the Commission under the Investment Advisers Act of 1940 ("Advisers Act") if The Knight Group ("TKG") engages in the activities described in your letter without registering as an investment adviser.

TKG is a financial advisory firm which assists states and municipalities in structuring, timing and providing the terms of a new issue of bonds by providing the following services: assists the issuer in organizing and coordinating the professional members of the working group for the successful sale of securities; structures the issue; assists the issuer and counsel with document preparation; analyzes current markets; reviews credits and, if necessary, prepares requests for proposals for letter of credit providers, insurance providers, underwriters, investment service providers and attorneys; assists in the selection of other professionals by sitting on selection committees or recommending other professionals to accommodate the issuer; assists in preparing preliminary and final official statements; prepares and distributes rating agency materials, and conducts rating agency presentations; if a competitive issue, publishes the Notice of Sale, receives bids, analyzes bids and awards securities; if a negotiated issue, negotiates on behalf of the issuer the pricing and term of the securities with the selected underwriter(s); and provides after-sale comparison market information and, if requested by the issuer, makes recommendations about investment of temporarily idle proceeds of an issuer pending their project use. /1 You state that other than these recommendations, TKG does not advise others as to the value of securities or the advisability of investing in, purchasing, or selling securities.

On the basis of the facts and representations in your letter, we would not recommend any enforcement action to the Commission if, without registering as an investment adviser, TKG carries out the activities described in your letter. See Bruce H. Gemmel (pub. avail. July 14, 196); Dominion Resources (pub. avail. August 22, 1985).

The Division of Market Regulation has advised us that it would not recommend enforcement action to the Commission under Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act"), if TKG offers its services to certain municipal issuers without registering with the Commission as a broker or dealer pursuant to Section 15(b) of the Exchange Act. In particular, this no-action response is conditioned upon the representation that TKG, either in its own capacity or as agent, would not purchase, sell, or solicit purchases of the issuer's securities, other than in connection with its dealings with underwriters. In addition, TKG will not receive commissions or other transaction based compensation for its services either directly or indirectly. /2

This position is based on the facts and representations in your letter; any different facts or representations might require a different conclusion. Further, this letter expresses the Divisions' position on enforcement action only and does not purport to express any legal conclusion on the issues presented.

Linda A. Schneider
Attorney

Footnotes

1 In a telephone conversation with the undersigned on July 18, 1991, Ms. Eneida Rosa, counsel for TKG,

stated that TKG will make such recommendations only at the request of the issuer and will not be compensated for these recommendations.

2 Telephone conversation between Dirk Peterson and Eneida Rosa on October 23, 1991.

INCOMING LETTER

July 9, 1991

**Linda A. Schneider, Esq.
Office of Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549
Stop 5-2**

Re: The Knight Group

Dear Ms. Schneider:

The purpose of this letter is to respectfully request that the staff of the Division of Investment Management grant an exemption, or alternatively take a no-action position from the provisions of Section 202(a)(11) under the Investment Advisers Act of 1940 ("Advisers Act") and not recommend enforcement action against The Knight Group ("TKG") if TKG engages in the activities summarized herein without registering as an investment adviser.

TKG is a financial advisory firm which markets its services primarily to municipal issuers such as cities, states, counties and school districts. The firm is a sole proprietorship based in San Francisco, California.

TKG markets to clients primarily through the "Request for Proposal" process which is initiated by issuers. Through this process, TKG negotiates a fee based on the size and complexity of the proposed offering and is available, as requested by the issuer, to provide the following financial advisory services:

- 1) Assist the issuer in organizing and coordinating the professional members of the working group for the successful sale of the securities.
- 2) Structure the issue.
- 3) Assist the issuer and counsel with document preparation.
- 4) Analyze current markets.
- 5) Review credits and, if necessary, prepare request for proposals for Letter of Credit providers, insurance providers, underwriters, investment service providers and attorneys.
- 6) Assist in the selection of other professionals by sitting on selection committees or recommending other professionals to accommodate the issuer.
- 7) Assist in preparing preliminary and final official statements.
- 8) Prepare and distribute rating agency materials, and conduct rating agency presentations.
- 9) If a competitive issue, publish the Notice of Sale, receive bids, analyze bids and award securities.

10) If a negotiated issue, TKG will negotiate on behalf of the issuer the pricing and term of the securities with the selected underwriter(s).

11) Provide after-sale comparison market information and, if requested by the issuer, make recommendations about investment of temporarily idle proceeds of an issuer pending their project use.

The definition of the term investment adviser set forth in Section 202(a)(11) of the Investment Advisers Act provides, in pertinent part, that an

“[I]nvestment adviser means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities ...”.

As noted above, TKG's activities are limited to those of a financial adviser and does not include the business of advising others as to the value of securities or advisability of investing in, purchasing, or selling securities, nor does TKG issue analyses or reports concerning securities. In the role of financial adviser, TKG primarily assists states and municipalities in structuring, timing and providing the terms of a new issue of bonds. TKG does not and will not bid on any issues of securities nor will it underwrite, trade or hold funds or securities of the issuer. In addition, as a financial advisory firm, TKG will not receive any commissions or other transaction-based compensation in connection with the above-referenced activities. Because the definition of the team investment adviser provided under the Advisers Act clearly is not applicable to the activities of TKG, we are of the opinion that TKG does not function as an investment adviser and therefore is not required to register as an investment adviser under the Advisers Act.

Our opinion is consistent with the no-action position taken in a letter dated August 24, 1985 to Evans B. Brasfield, Esq., Hunton & Williams, from Kerry F. Hemond, Attorney, Office of Chief Counsel, SEC, in which the staff concluded on facts similar to those described above that Dominion Resources, a “financial consultant” was not required to register as an investment adviser under the Advisers Act.

For all the foregoing reasons TKG respectfully requests that the Commission staff confirm that it will not recommend enforcement action against TKG if it conducts the activities described above without registering as an investment adviser under the Advisers Act. In addition, because in the very near future, TKG expects to be asked to provide financial advisory services to a state issuer that seeks its participation in an offering, TKG respectfully requests expedited review of its no-action request.

Very truly yours,
Eneida Rosa
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