

**MARATTA ADVISORY, INC.**

**Investment Advisers Act of 1940 -- Section 202(a)(11)**

**July 16, 1981**

**TOTAL NUMBER OF LETTERS: 2**

**SEC-REPLY-1:  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
June 16, 1981**

**RESPONSE OF THE OFFICE OF CHIEF COUNSEL  
DIVISION OF INVESTMENT MANAGEMENT**

**Our Ref. No. 81-100-CC  
The Maratta Advisory, Inc.  
File No. 801-13039**

John S. R. Shad, the Chairman of the Commission, has asked us to reply to your letter of May 14, 1981. You ask whether you may withdraw your registration as an investment adviser under the Investment Advisers Act of 1940 ("Act") because your subscription newsletter provides technical market timing information but does not identify or recommend individual securities.

Section 202(a)(11) of the Act defines "investment adviser" to mean

*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 a part of a regular business, issues or promulgates analyses or reports concerning securities.*

It appears, therefore, that one who is engaged in the business of advising others as to the advisability, from time to time, of investing in, purchasing or selling securities, is literally within the definition of an investment adviser although he offers no advice regarding specific securities. Furthermore, because a market timer may be influential enough to affect the market in general, market timing advice can involve the type of conflict of interest and opportunity for scalping that the Act was intended to deal with. See Securities and Exchange Commission v. Capital Gains Research Bureau, Inc., et al., 375 U.S. 180 (1963). Therefore, we are unable to advise you that you should withdraw your registration because your activities are not subject to the Act.

Stanley B. Judd  
Deputy Chief Counsel

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**INQUIRY-1:**

**The Maratta Advisory, Inc.  
1220 Post Road  
Fairfield, Conn. 06430  
Tel. (203) 255-5585  
May 11, 1981**

**Hon. Harold M. Williams, Chairman  
Securities and Exchange Commission  
Washington, D.C. 20549**

Dear Mr. Chairman:

Kindly see to it that this request is placed before the proper Commissioner.

We have been duly registered as Investment Advisors ever since we started in business. We now respectfully request that from now on we be excused from such registration on the following grounds:

We are not now and never have been investment advisors as defined by SEC rules and regulations. We do not trade in securities, nor do we recommend the purchase or sale of securities, nor do we mention individual securities in our publications.

We are strictly a technical market timing service. It is true that we use terms such as stocks, options, tops, bottoms, and so on, but these are not items which investors can purchase or sell. Before any security can be purchased or sold it has to be identified by its proper name, something we never do. In other words, there is no way that a subscriber to our service can make money, or lose money, because profits or losses can only be incurred by trading in actual securities.

We find nothing in SEC Rules and Regulations pertaining to market timing. Everything is related to when to buy or sell, or what to buy or sell - securities. Therefore, we are greatly handicapped in the conduct of our business, having to conform to rules and regulations which were never written or intended for a strictly market timing service.

Respectfully yours,

JAMES MARATTA  
President