

MEDIA GENERAL FINANCIAL SERVICES, INC.

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

July 20, 1992

TOTAL NUMBER OF LETTERS: 2

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

July 20, 1992

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

**Our Ref. No. 91-534-CC
Media General Financial Services, Inc.
File No. 801-7711**

Your letter of November 1, 1991, requests our assurance that we would not recommend enforcement action to the Commission if Media General Financial Services, Inc. ("Media General") withdraws its registration as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act").

Media General compiles statistical data on publicly-held companies, investment companies, and bonds n1 from wire services (securities price and trading volume) and from public filings by companies. Media General makes the information in its data base available on a subscription or per-item basis.

Media General's customers are individuals, publications, banks, investment companies, pension plans, corporations, trusts, colleges and universities. The information from Media General's database is available in the form of time share agreements, stock tables (sent to newspapers over the Associated Press wire), magnetic tape and diskettes, and customer-selected tables and reports. You state that Media General does not attach to its data any value judgment and does not offer any predictive data, opinions, projections, or quality valuations.

Media General may organize its tables and reports alphabetically by company name or ticker symbol, alphabetically within an industry group, or by a ranking (e.g., the 50 companies with highest sales in a given year). n2 In a telephone conversation with the undersigned on June 1, 1992, James F. Powers stated that the data in the tables may also relate to publicly-traded securities and may be ranked according to certain performance criteria (such as stock price performance over a fixed period, dividend information, earnings per share, or price-earnings ratios). Mr. Powers stated that the customers determine the ranking criteria for each search request. The customers also direct Media General to conduct the search, compile the ranking, and forward the product to the customer. You state that Media General's presentation of information culled from its database does not suggest the purchase, sale, or holding of securities.

Media General provides the tables and reports on a regular basis and upon request, and their availability is not timed to any specific market activity.

Section 202(a)(11) of the Advisers Act defines an investment adviser as 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. The staff of the Division has taken the position that the presentation of securities data or information to subscribers does not constitute an analysis or report within the meaning of Section 202(a)(11) if (1) the information is readily available in its raw state, (2) the categories of information presented are not highly selective, and (3) the information is not organized or presented in a manner which suggests the purchase, holding, or sale of any security or securities. n3 In particular,

we do not believe that information is organized or presented in a manner suggesting the purchase, holding, or sale of securities, where the customer or subscriber, not the information provider, selects the search criteria or requests that the service provide certain select information. n4

On the basis of the facts and representations made in your letter and in the phone conversation referred to above, we would not recommend enforcement action to the Commission if Media General withdraws its registration as an investment adviser. Because our position is based on the facts and representations in your letter, you should note that different facts or circumstances may require a different conclusion. Further this response expresses the Division's position on enforcement action only and does not purport to express any legal conclusion on the issues presented.

Barbara Chretien-Dar
Attorney

Footnotes

n1 In a telephone conversation with the undersigned on April 29, 1992, James F. Powers of your firm stated that the bond data is limited to publicly-traded corporate bonds.

n2 Because customers can limit the amount and type of information available by conducting specific searches, the presentation of information on a customer's computer screen may vary from Media General's presentation.

n3 See Charles Street Securities, Inc. (pub. avail. Feb. 27, 1987); Butcher & Singer, Inc (pub. avail. Jan. 2, 1987); Wallace E. Lin (pub. avail April 15, 1985).

n4 See Investex Investment Exchange Inc. (pub. avail. April 9, 1990); Petroleum Information Corp. (pub. avail. Nov. 28, 1989)

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November 1, 1991

**The Office of the Chief Counsel of Division of Investment Management
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
STOP-10-6
Washington, DC 20549**

**Attention: Thomas S. Harman
Chief Counsel**

Re: Request for a No-Action Letter on behalf of Media General Financial Services, Inc.

Dear Sirs:

We are counsel to Media General Financial Services, Inc. ("Media"), a Virginia corporation which

compiles statistical factual data regarding securities to serve as informational background to users of its services, and distributes this data through computer services and published tables and reports. We are writing to request confirmation that the staff will not recommend enforcement action by the Commission if Media withdraws its registration as an "investment adviser" under the Investment Advisers Act of 1940 (the "Advisers Act").

I. Media's Business

Media collects and compiles raw statistical data on securities from wire services, publicly available company prepared information (such as that filed with the SEC), investment industry sources and government sources. It distributes this data to individuals, banks, investment companies, pensions, corporations, trusts, colleges and universities. The information compiled by Media consists of raw data pertaining to publicly held companies, mutual funds or bonds collected through publicly available sources, and directly available to the public from those sources, or standard mathematical calculations based solely upon such data. The mathematical calculations are those typically undertaken by users of such information, e.g., calculation of a percentage change over a given time.

Statistical data are made available to the public through the following vehicles:

1. Time share agreements. Media enters into time share agreements with companies which provide portions of Media's data base to certain users. Media will typically receive a fee based on an hourly, monthly or annual basis, or may receive a fee based on the number of data items requested. Media currently has time share agreements with the following companies: Dow Jones & Company (offered on the Dow Jones News Electronic Retrieval System), Dialog Information Services, Lotus Development Corporation (Lotus "One Source" CD-ROM), TeleScan, Inc., Warner Computer Systems and Thomson Financial Networks-Coris.

2. Associated Press tables. Associated Press member newspapers can receive over AP wires on a weekly basis tables on stocks of interest in their circulation area. The price varies depending on the material received and circulation of the newspaper. AP bills customers for this service monthly and remits payments to Media.

3. Magnetic tape and diskette sales. Media sells machine readable magnetic tapes and diskettes of portions of its data base.

4. Published tables and reports. Media sells tables and reports of certain portions of its data base. Customers can choose from the universe of data available on the data base to receive the tables and reports described on Exhibit A attached.

All of such reports and tables are either periodic or on a request basis. They are not timed to any specific market activity nor do they have the ability to affect the securities market generally. The reports and tables (consisting of publicly available information and standard mathematical calculations) are purely statistical abstracts of data from Media's database and contain no textual material aside from standard interpretations of the column headings.

II. Analysis

The Advisers Act defines "investment adviser" as follows:

. . . 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 who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities . . .

Media believes that none of its activities falls within this definition.

The definition of investment adviser includes two types of business activity: (1) Advising others as to the value of securities or as to the advisability of investing in securities and (2) issuing analyses or reports concerning securities. As stated, Media's business consists solely of collecting raw data from various

public sources and making it available by computer or published tables. Media does not give advice with respect to the value of any security or the advisability of any investment opportunity. Media disseminates objective data without attaching or implying any value judgment and does not offer any predictive data, opinions, projections, or quality valuations, and therefore, in our view, is not an investment adviser as described in the first part of the definition of the term.

Media's business does not fall within the second part of the definition of investment adviser as interpreted by previous SEC opinions. The SEC has generally taken the position that information related to securities does not constitute analyses or reports if:

1. The information provided is readily available to the public in its raw state;
2. The categories of information are not highly selective; and
3. The information is not organized or presented in a manner that suggests the purchase, holding or sale of any securities. See, e.g., Investex Investment Exchange, Inc., SEC No-Action Letter, [1990-1991 Transfer Binder] Fed. Sec. L. Rep. (CCH) P 79,649, at 77,952 (April 9, 1990).

All sources of Media's raw data are available to the public. Media has two primary types of raw data. The first is trading data (price and volume) which are obtained from the Associated Press. These are the same data which appear in 95% of the daily newspaper stock tables, and are readily available to the public. The second type of raw data is from company annual reports and/or quarterly reports. Media obtains the reports directly from the company or from the SEC public access room in Washington, DC. We therefore believe all data distributed by Media is readily available to the public in its raw state.

Media makes available to its customers a broad range of statistical data pertaining to publicly held companies, mutual funds and bonds. The common stock data base, for example, includes eleven years of historical and current information on more than 6,300 publicly held companies. Although Media sells magnetic tapes of its entire data base, most customers desire access to a defined subpart. The amount of information is narrowed either by the customer, for instance in the selection of certain stocks to be listed on the published tables, or by Media in its product design, for instance offering a data base which includes only mutual funds. We therefore believe that the categories of information sold by Media are not "selective" as contemplated by part two of the three-part test for "reports and analyses."

Neither the data bases nor the printed tables are organized in a manner that recommends or suggests the purchase, holding or sale of any securities. The printed tables and reports are generally organized alphabetically by company name or ticker symbol, alphabetically within an industry group, or by a "ranking" (for example, the fifty companies with highest sales in a given year would have the highest sales companies at the top). Companies listed in the data base are assigned a number, with the next sequential number going to a company as it is placed on a stock exchange. The organization of the information on a computer screen depends on the search conducted by the user. The user can conduct "word searches," such as that done on the Lexis system, which would display, for instance, all companies with a given word in the name. The user could ask for a "ranking" such as that described above or could conduct any standard computer search limited only by the data in the accessed data base and the sophistication of the software. Neither the organization of the data bases nor the printed tables and reports suggests the purchase, sale or holding of any securities as contemplated by part three of the test for "reports and analyses".

Media's computer services are similar to the computer services found not to require registration in Investex Investment Exchange Inc., *supra* (limited partnership computer listing service) and Petroleum Information Corporation, 1989 SEC No-Act. LEXIS 1236 (oil and gas on-line computer listing service). These computer services, like Media's, make available a wide range of objective data collected or calculated from public sources and allow the customer to access that portion of interest to it. No transaction is negotiated or consummated by the service, and no part of the fee is related to consummation of a transaction. In contrast, a computer software program which lists securities and analyzes the desirability of buying or selling particular securities requires registration under the Adviser's Act. See Alphadex Corporation, SEC No-Action Letter, [1971-1972 Transfer Binder] Fed. Sec. L. Rep. (CCH) P 78,624, at 81,329 (Jan. 21, 1972).

In Charles Street Securities, Inc., SEC No-Action Letter, [1987 Transfer Binder] Fed. Sec. L. Rep. (CCH)

P 78,424, at 77,377 (Jan. 28, 1987), a newsletter containing data on publicly traded insurance companies was found under the three-part "reports and analyses" test not to be an analysis or report requiring registration. Media's published tables are similar to the Charles Street newsletter, but contain data on a wider range of securities, and so are more general and less selective than that published by Charles Street.

We are aware of a No-Action Letter issued by the SEC in 1981 which found the publisher of a computerized stock chart was an investment adviser. Marvin T. Jordan, [1981-1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) P 77,085, at 77, 739 (September 23, 1981). While Jordan's published charts were similar to Media's, Jordan's advertising offered formulas or suggestions for analyzing the chart data. Neither Media's advertising nor its publications includes any such formula or suggestion. Media's advertising is strictly limited to descriptions of the data available with, perhaps, a generic statement to the effect that certain types of business can benefit from the information. Media does not make the Jordan type of analyses which would bring it within the definition of investment adviser.

With the Advisor's Act, Congress sought primarily to regulate the business of rendering personalized investment advice. *Lowe v. SEC*, 472 U.S. 181, 204 (1985). Media has no personal or fiduciary relationship with its customers and, we believe, does not come within the spirit or letter of the Act.

Media was previously denied a no-action request concerning its investment adviser registration. The Media General Financial Daily, SEC No-Action Letter, [1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) P 78,961, at 82,067 (July 16, 1971). This no-action position substantially predated the *Lowe* decision and, in addition, Media's product-line has changed significantly since that letter was issued.

III. Request

On the basis of the foregoing, we respectfully request confirmation from the Staff that it will not recommend enforcement action by the Commission if Media continues to operate as described above without registration as an investment adviser under the Advisers Act.

Please call me or Lisa Davis of this office at (804) 644-7851 with any questions you may have with respect to this request. We respectfully request a staff conference in the event the staff is inclined to issue a negative response to this request.

Very truly yours,

James F. Powers