ROBERT D. BROWN INVESTMENT COUNSEL, INC.

Investment Advisers Act of 1940 -- Section 206

Jul 19, 1984

TOTAL NUMBER OF LETTERS: 5

SEC-REPLY-1:
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 83-235-CC
Robert D. Brown Investment Counsel, Inc.
File No. 801-5680

Robert D. Brown Investment Counsel, Inc. ("RDBIC") is a registered investment advisor. RDBIC states in its Form ADV that it "furnishes "investment supervisory services' as defined by the giving of continuous advise to clients as to the investment of funds on the basis of the individual needs of each client." RDBIC's Form ADV also states that "the investment service agreement shall remain in force for a period of one year from the date thereof and thereafter from year to year, provided that either party may terminate the agreement as of any anniversary date by prior written notice to the other party."

Subsequent to an examination by the Fort Worth Regional Office, RDBIC was informed by that office that its contract provision permitting clients to terminate only once a year had to be amended so as to not penalize clients wishing to terminate prior to that date. In further correspondence between RDBIC and the Regional Office, the Regional Office stated that in its opinion the terms of the contract were "not consistent with the fiduciary obligations of an adviser to deal fairly with its clients and to act in their best interests. In our opinion, the restrictions placed on clients with regard to cancelling the advisory contract prior to the annual anniversary date, thus obligating clients to accept and pay for advisory services whether such services are satisfactory or not, raises serious questions under the antifraud provision of section 206 of the Advisers Act." After receiving this response from Fort Worth, you wrote us for a no-action position. We agree with the position taken by the Fort Worth Office that a contract for investment supervisory services purporting to bind a client for a period of one year without a right to terminate except annually would violate section 206 of the Investment Advisors Act of 1940 ("Act").

In SEC v. Capital Gains Research Bureau, 375 U.S. 180 (1963), the Supreme Court made clear that an investment adviser is a fiduciary. While that label may only begin the analysis of the specific duties an adviser owes its clients, as a fiduciary, an adviser is held to the highest standards of conduct. n1 This is, of course, particularly true of advisers who are offering investment supervisory services to individual clients. Section 202(a)(13) of the Act defines "investment supervisory services" as "the giving of continuous advice as to the investment of funds on the basis of the individual need of each client." For an adviser to provide investment supervisory services, there must be effective communication between a client and the adviser; the client informing the adviser of his needs, and the adviser providing the client with advice based on those needs. If the client does not continue to have confidence in the adviser and is unable to communicate effectively with him or rely on the adviser's advise, the basis of their relationship has effectively ended. We believe that generally the continued performance of an adviser's services is dependent upon the client's having trust and confidence in the adviser and a willingness to continue the advisory relationship. Where the basis for the relationship is ended, and the adviser, accordingly, is unable to continue to perform services under the contract, in our view the adviser's fiduciary duties preclude its receipt of compensation for services it is not able to perform.

Section 206(2) of the Act makes it unlawful for an investment adviser "to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." The inclusion in a contract for investment supervisory services of terms, such as those in RDBIC's contracts, denying a client's right to terminate the contract would be fraudulent and deceptive because the contract might lead the client to believe that he is not entitled to terminate the contract when

fiduciary principles indicate that he has that right. n2

In conclusion, it is our opinion that RDBIC would breach its fiduciary duty and violate section 206(2) of the Act by entering into a contract for the provision of investment supervisory services which purports to bar a client from terminating the relationship except annually. Thus, we are unable to assure you that we would not recommend any enforcement action to the Commission if RDBIC uses such advisory contracts. Of course, our position is not intended to suggest that an adviser is not entitled to receive fair compensation for services rendered. In that regard, it is our view that a provision in a contract for investment supervisory services calling for fees to be paid in advance and stating that such payments are non-refundable is questionable as to its legality with respect to that part of the fee which may be fairly apportioned to the terminated portion of the contract.

Stephanie M. Monaco
Attorney

Footnotes

n1 See Meinhard v. Salmon, 249 NY 458, 164 NE 545 (1928), where Justice Cardozo said,

> *Many forms of conduct permissible in a workday world for those acting at arm's length, are forbidden to those bound by fiduciary times. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctiolio of an honor the most sensitive, it then the standard of behavior as to this there has developed a tradition that is unbending and inveterate.* Id. 164 NE at 546.

n2 The use of "hedge claims," which attempt by contract to deny liability for the information given, and thus, "to create in the mind of the investor a belief that he has given up legal rights and is foreclosed from a remedy which he might otherwise have either at common law or under the SEC statutes" violates the anti-fraud provisions in the securities statutes, including section 206 of the Act. Investment Advisors Act of 1940 Release No. 58 (April 10, 1951).

INQUIRY-1:
VINSON & ELKINS
ATTORNEYS AT LAW
FIRST CITY TOWER
HOUSTON, TEXAS 77002
TELEPHONE 713 651-2222
July 27, 1983

Mr. Sidney Cimmet, Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549

Re: Robert D. Brown, Investment Counsel, Inc.
File No.: 01-5680
Investment Advisors Act of 1940,
Section 206 (17 U.S.C. § 80b-6)

Dear Mr. Cimmet:

This letter is to request a no action statement regarding a provision contained in the investment advisory contract used by our client, Robert D. Brown Investment Counsel, Inc. ("RDBIC").

Facts. RDBIC's contract provides:

This agreement shall remain in force for a period of one year from the date hereof and thereafter from year to year, provided that either party may terminate this agreement as of any anniversary date by prior written notice to the other party.

RDBIC's fee schedule is predicated in substantial part on the assumption of a client relationship extending from year to year pursuant to this provision. RDBIC's fees are paid quarterly after services have been performed, and its contract does not provide that it is entitled to charge unearned fees or fees for services not actually rendered. BIC does not provide investment advice to any "investment company" within the meaning of the Investment Companies Act of 1940. RDBIC's contract does not contain any "penalty" or forfeiture provision in the event of a breach by a client.

Position of Forth Worth Regional Office. The SEC's Regional Office in Forth Worth recently examined the books and records of RDBIC and requested by letter dated May 25, 1983 that RDBIC (a) institute procedures designed to obtain reports reflecting securities transactions of all officers and directors; and (b) "replace or amend your contract so that its terms will not penalize clients who want to terminate prior to the anniversary date." RDBIC will comply with actions of officers and directors. However, RDBIC took issue with the Regional Office's request regarding RDBIC's contract and detailed its position in this regard by correspondence dated June 14, 1983. The Regional Office replied by letter dated July 11, 1983 and again insisted that RDBIC's contract be amended. In substance, the Regional Office has taken the position that an investment advisory contract must be terminable at will and may not provide for a term during which the contract is in effect. The Regional Office's basis for this conclusion as stated in its letter of May 25 is that "clients should not be required to accept and pay for advisory services which they do not want." The Regional Office's basis for this conclusion as stated in its letter of May 25 is that "clients should not be required to accept and pay for advisory services which they do not want." The Regional Office's letter of July 11 expanded this statement to allege that RDBIC's contract is "not consistent with the fiduciary obligations of an advisor" and "raises serious questions under the antifraud provisions" of the Investment Advisors Act of 1940 ("Advisors Act"). The Regional Office provided no detailed explanation as to its reasoning in reaching these conclusions.

Position of RDBIC. We are aware of the view that the position taken by the Regional Office with regard to RDBIC's contract is without substantial justification for the following reasons.

(1) Both the Advisors Act and the SEC's regulations impliedly permit investment advisory contracts not terminable at will. Section 205 of the Advisors Act prohibits advisory contracts that fail to provide that no assignment of the contract shall be mde by the advisor without the consent of the client. This provision is inconsistent with the Regional Office's position as it is not possible to reconcile the language of Section 205 with the view that advisory contracts must be terminable at will. Why would Congress require that the contract give the client the right to veto an assignment of the contract if the client possesses the right to terminate the contract at any time? Section 205 also includes provisions expressly authorizing compensation to an investment advisor based on the averaged value of a fund "over a definite period, or as of definite dates. . . ." We read these provisions as being inconsistent with the sweeping proposition that investment advisory contracts must be terminable at the discretion of the client. The Advisors Act and the Investment Companies Act were enacted as Titles I and II, respectively, of the Act of August 22, 1940. Section 15(a)(3) of the Investment Companies Act prohibits contracts between advisors and investment companies not terminable on 60 days' notice to the advisor. Thus, Congress considered the question of the term of advisory contracts, and enacted a restriction as to the termination of contracts with investment companies but it did not see fit to include similar restrictions in the provisions governing other advisory contracts. And, even with respect to investment companies, Congress expressly permitted contracts permitting termination on not more than 60 days' notice. In this regard, it is to be noted that the Regional Office has not objected to the length of the term contained in RDBIC's contract, but has taken the position that the contract must be terminable at will.

The SEC's regulations with respect to investment advisors provide that an advisor must deliver a disclosure statement prior to entering a contract or "at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract." 17 C.F.R. § 275.204-3(b)(1)(ii). At a minimum, this rule contemplates advisory contracts not terminable "without penalty" after five days after the contract is entered. If all advisory contracts must be terminable at will "without penalty," this section is superfluous and misleading. Finally, as RDBIC noted in its letter of June 14, the instructions appearing on page 2 of Form ADV, Part II, require the applicant to "set forth procedures and conditions, if any, pursuant to which the . . . client may terminate an investment advisory contract prior to the termination date set forth in the contract." This instruction makes no sense if an advisory contract must be terminable at will. We believe that more extended review of the securities statutes, the applicable authorities, and practices in the securities industry would produce additional examples demonstrating that the Advisors Act does not require that contracts be terminable at will.

(2) The provision contained in RDBIC's contract does not constitute a fraudulent, deceitful, deceptive, or manipulative act or practice. We appreciate that the provisions of Section 206 of the Advisors Act are to be construed in a flexible and non-technical sense. Nonetheless, the reliance of the Regional Office on Section 206 of the Advisors Act is misplaced. "Fraud" within the meaning of the securities statutes and otherwise is essentially a false statement knowingly made to induce reliance. As a matter of law and by definition an advisory contract providing for a year to year term does not constitute fraud. Likewise, the mere inclusion of a provision for a year to year term in an advisory contract does not constitute a deceitful, deceptive, or manipulative act or practice. The clause itself is plain and straightforward. While one may assume that hypothetical acts or practices committed in relation to the clause might constitute illegal conduct, no such collateral acts or practices are made the basis of the Regional Office's opinion. The issue is whether or not an advisory contract running from year to year is illegal per se under Section 206. In our judgment the clear answer to this question is in the negative.

(3) RDBIC's contract does not violate its fiduciary relationship with its clients. We do not know what reasoning lies behind the Regional Office's summary statement that the terms of RDBIC's contract "are not consistent with the fiduciary obligations of an advisor to deal fairly with its clients and to act in their best interests." As a general proposition, a fiduciary owes a duty to disclose facts may owe a high standard of care in the performance of its obligations. No issue of disclosure is presented by RDBIC's contract as the instrument itself discloses the clause in question. Whatever the nature of the duty owed by an advisor to its client with respect to investment advice, in our opinion that duty does not imply the obligation to a contract terminable at will. Indeed, as a matter of routine practice many fiduciary relationships exist pursuant to agreements defining the term of the relationship or effectively imposing penalties for premature termination of the relationship. Attorney-client and trustor-trustee relationships are two examples. Again, one may assume that hypothetical circumstances exist in the context of which

acts or practices in conjunction with a contractual clause providing for a term might constitute the breach of a fiduciary relationship, but this assumption is not authority for the proposition that an advisory contract not terminable at will is unlawful per se.

(4) The clause contained in RDBIC's contract is reasonable and serves legitimate business interests. As RDBIC's correspondence of June 14 explained to the Regional Office, RDBIC's fee schedule is premised in significant part on the assumption that its relationship with a client will run from year to year. In effect, the Regional Office has attempted to make the business decision for RDBIC's clients that they would be better off paying higher fees or using a different investment advisor than having a contract not terminable at their will. RDBIC's June 14 letter also explains the clause in question serves the legitimate business interests of RDBIC:

We do not wish briefly to render investment advice on a "one shot" basis as this directly contradicts our investment philosophy and purpose. Given the assumptions made in formulating our annual advisory fees, it would be unfair for a client at the beginning of a year to obtain the benefit of our time in conference, in reviewing and evaluating their portfolio and in other respects, to reap the benefits of our advice and terminate the relationship. We encourage perspective clients who wish brief summary advice to go elsewhere. . . . As a general proposition, it is an undesirable business practice for us to accept advisory fees on a short term basis and a terminated relationship.

We do not understand either the Advisors Act or the SEC's regulations pursuant to the Act as authorizing the SEC to substitute its business judgment for that of an advisor and its clients in instances where the business decision is not in violation of law.

The Regional Office's letter of May 25 causes us to suspect that its view is premised not on the notion that RDBIC's contract violates the antifraud provisions of Section 206, but on its evaluation of the reasonableness and fairness of a contract not terminable at will. If so, we believe that the Regional Office's position raises significant questions as to the limits of the SEC's regulatory power pursuant to the Advisors Act and, what is equally important, as to the SEC's authority to enforce its view of what is "reasonable" in the absence of fact findings supporting its position. If we are correct in concluding that RDBIC's contract does not constitute a per se violation of Section 206 and assuming that the SEC is authorized to prohibit contractual terms that are otherwise "unreasonable," then at a minimum we believe that the conclusion that a contractual provision is unreasonable must be premised on fact findings supporting that conclusion. Hypothetically, if the Regional Office's position were premised on fact findings as to fees charged industry-wide for advisory services comparable to those provided by RDBIC and on the termination provisions of other advisory contracts, then those findings might constitute a basis for the Regional Office's position. But, as best we can determine from the conclusory statements made by the Regional Office, no such findings have been made. And, in the absence of such findings, we believe it clear that not only is the clause not unreasonable per se but also that the clause is reasonable on its face.

Interim Action by RDBIC. As indicated by this letter, our definite opinion is that the Regional Office has erroneously reached the conclusion that advisory contracts not terminable at will are illegal. However, RDBIC regards the assertion of opinion contained in the Regional Office's letter of July 11 as a serious matter. Accordingly, pending resolution of the dispute between RDBIC and the Regional Office, RDBIC has made the unilateral decision to implement the following procedures. First, within the next 30 days and until further notice to the Regional Office, advisory contracts entered between RDBIC and new clients will provide:

This agreement shall remain in force for a period of one year from the date hereof and thereafter from quarter to quarter, provided that either party may terminate this agreement as of the first yearly anniversary date by prior written notice to the other party and thereafter may terminate this agreement as of the ending date of any quarter by prior written notice to the other party.

Second, should any of RDBIC's existing clients inquire as to termination of their contracts, RDBIC will advise them that they may terminate their contract at their discretion and without penalty. RDBIC will continue its present practice of billing its fees quarterly after services have been performed.

We appreciate that these procedures will not eliminate the Regional Office's complaint and we have no

expectation that RDBIC's implementation of these interim measures will resolve the existing dispute. However, we believe that the implementation of these measures will materially reduce whatever hypothetical risk exists that RDBIC's clients might be subjected to some species of improper conduct by RDBIC.

Conclusion. Although RDBIC is in disagreement with the position taken by the Regional Office with respect to RDBIC's contract, RDBIC does wish to comment that in the recent examination Ms. Kathleen Stewart was both courteous, conscientious, and professional. RDBIC regrets the existence of the dispute prompting this letter, but is of the view that the position taken by the Regional Office raises an issue on which RDBIC should not capitulate.

Very truly yours,
VINSON & ELKINS
By: David H. Brown
Attorneys for Robert D. Brown
Investment Counsel, Inc.

SEC-REPLY-2:
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
REGIONAL OFFICES
411 WEST SEVENTH STREET
FORT WORTH, TEXAS 76102
(817) 334-3821
July 11, 1983

Mr. Robert D. Brown, President
Robert D. Brown Investment Counsel, Inc.
2777 Allen Parkway, Suite 977
Houston, Texas 77019

Re: Robert D. Brown Investment Counsel, Inc.
File No. 801-5680

Dear Mr. Brown:

Thank you for your letter of June 14, 1983. With regard to your questions concerning the securities transaction reporting requirements as they apply to Mr. Hines Baker, Rule 204-2(a)(12) of the Investment Advisors Act of 1940 (Advisers Act) requires that a record be made and maintained of transactions in securities entered into by the investment adviser or any advisory representative. The term "advisory representative" is defined by the rule as being "any partner, officer or director of the investment adviser; . . ." The definition does not exclude persons holding these positions based on their lack of involvement in or knowledge of the business of the advisory firm. It is, therefore, your responsibility to obtain reports of Mr. Baker's securities transactions should he remain in his position as an officer of the Robert D. Brown Investment Counsel, Inc. ("RDBIC").

Careful consideration has been given to your remarks concerning our comments relating to RDBIC's advisory contract. It is, however, the opinion of this office that the terms of your contract are not consistent with the fiduciary obligations of an adviser to deal fairly with its clients and to act in their best interests. In our opinion, the restriction placed on clients with regard to cancelling the advisory contract prior to the annual anniversary date, thus obligating clients to accept and pay for advisory services whether such services are satisfactory or not, raises serious questions under the antifraud provisions of Section 206 of the Advisers Act.

Please advise this office of the action you plan to take with regard to the contract revisions requested by our letter of May 25, 1983. Also, should Mr. Baker resign as an officer of RDBIC, please file an amendment to your application for registration pursuant to the requirements of Rule 204-1 of the Advisers Act.

Sincerely,
MARY L. FELSMAN
ASS'T ADMINSTRATOR - REGULATION
By: Kathleen N. Stewart
Compliance Examiner

INQUIRY-2:
ROBERT D. BROWN INVESTMENT COUNSEL INC.
2777 ALLEN PARKWAY
HOUSTON, TEXAS 77019
(713) 524-3018
14 June 1983

United States Securities and Exchange Commission
Attn.: Ms. Kathleen N. Stewart
411 West Seventh Street
Fort Worth, Texas 76102

Dear Ms. Stewart:

In response to your letter of 25 May, please be advised that we have prepared an office record file for securities transactions of directors and officers. However, as was related of practical substance, there have been no transactions to be reported. Louise Brown Conway, a director, has never in her lifetime purchased or sold a security; and, aside, from an IRA account of less than $30,000 market value, I have neither purchased nor sold a security for my personal account during the last fifteen years. David H. Brown, a director, is a practicing attorney with Vinson & Elkins and advises that he has had three securities transactions during the last ten years involving sums of less than $5,000. Mr. Hines Baker, Jr., who is a practicing attorney, secured our corporate charter fifteen years ago and, as is a usual business practice in legal counsel, has been and is corporate Secretary with no knowledge or participation in our investment business. Is it the position of the S.E.C. that Mr. Baker is obliged to disclose his personal business transactions to us in this capacity? If it is, Mr. Baker will tender his resignation as corporate Secretary, and what purpose will have been served?

With regard to the Advisory Contract, we have serious reservations with your analysis of our contract and the reading of the Division's opinion letter to Churchill Management Corporation. Your 25 May letter states that the Division's opinion letter "deals primarily with the issue of refunding prepaid fees. . . .".

As we understand the opinion letter, it deals solely with that issue. Clearly, the Churchill contract was unfair as it allowed Churchill to terminate its contract and simultaneously to retain unearned prepaid annual fees. Our contract does nothing of the sort: it provides that it shall remain in force for one year and, thereafter, that either party may terminate the contract as of any yearly anniversary date. Our fees are paid quarterly after services have been performed. Our contract does not provide or imply that we are entitled to charge unearned fees or fees for services not actually performed. Whether or not a client elects to terminate our discretionary power to buy and sell, we remain obligated to advise the client and the client remains obligated to pay fees for that advice.

We appreciate that the Division's opinion letter states that clients dissatisfied with Churchill's services might be inhibited from terminating the relationship because of the prospect of losing the benefits of prepaid fees. From this conclusion, you extrapolate that "clients should not be required to accept and pay for advisory services which they do not want." We understand the point of the Division's comment to be that the forfeiture provision contained in the Churchill contract placed it in an unfair position vis-a-vis dissatisfied clients where Churchill was contractually entitled to retain unearned prepaid fees.

A contract that nullifies its anniversary date is a contradiction in terms. The issue is whether or not an investment advisor and its client may agree that services are to be rendered for a minimum period of one year and that the relationship, thereafter, may be terminated on the contract's anniversary date. You propose that the answer to this question is the negative but cite no authority for that position other than the Churchill opinion letter, which is not in point. We are advised there is no statute, rule, regulation, or case authority supporting your position. The instructions for Form ADV, Part II, page 2, call for the applicant to "set forth procedures and conditions, if any, (emphasis added) pursuant to which the applicant or any client may terminate an investment advisory contract prior to the termination date set forth in the contract." The instruction implies that provisions for early termination are not required. Our contract is reasonable and fair: no client pays fees for unearned services or is obligated to do so;

during the term of the contract we are obligated to provide services and, thereafter, the client is obligated to pay for services that have been rendered.

Our contract provides for a term on one year in order that we may have assurance that the client enters the relationship with seriousness of purpose. Thirty-five years of experience, investment judgment and expertise are our "stock in trade". Our annual fee schedule is premised on the assumption of a long term relationship, certainly one of not less than one year. We do not wish briefly to render investment advice on a "one shot" basis as this directly contradicts our investment philosophy and purpose. Given the assumptions made in formulating our annual advisory fees, it would be unfair for a client at the beginning of a year to obtain the benefit of our time in conference, in reviewing and evaluating their portfolio, and in other respects to reap the benefits of our advise and then to terminate the relationship. We encourage prospective clients who wish brief summary advice to go elsewhere. We do not want their business. As a general proposition, it is an undesirable business practice for us to accept advisory fees on a short term basis and a terminated relationship.

As we begin our fifteenth year of investment advisory service with the same Advisory Contract, through several prior S.E.C. inspections, we are not aware of previously ever having received a criticism or complaint relative to our contract or fees from either a client or the S.E.C. We do not wish to accept an advisory responsibility, unless at the inception of the relationship, the client agrees to remain a client for one year and, thereafter, from year to year. We do not wish to advise clients of five, ten years or longer standing that a contract both parties have accepted and have relied on is now not appropriate unless, in fact, there is substantiated statute, rule, regulation, or case authority. We are of the opinion that our contract is fair, equitable and serves the best interests of our clients and our interests.

Based on the foregoing, we request that you reconsider the demand that we alter our Advisory Contract, and that you advise us whether, under the circumstances set forth above, it is necessary for our corporate Secretary, who acts only as a legal counsel, to disclose his personal securities transactions.

Cordially yours,
Robert D. Brown

SEC-REPLY-3:
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
REGIONAL OFFICE
411 WEST SEVENTH STREET
FORT WORTH, TEXAS 76102
(817) 334-3821
May 25, 1983

Mr. Robert D. Brown, President
Robert D. Brown Investment Counsel, Inc.
2777 Allen Parkway, Suite 977
Houston, Texas 77019

Re: Robert D. Brown Investment Counsel, Inc.
File No. 801-5680

Dear Mr. Brown:

Our examination of your books and records, conducted pursuant to Section 204 of the Investment Advisors Act of 1940 (Advisers Act), revealed certain deficiencies in your operation as an investment adviser. Set forth below are areas in which corrective action should be taken, to the extent it has not already been taken, since the time of the examination. Unless otherwise stated, all Sections and Rules cited will refer to the provisions of the Advisers Act.

Books and Records

Rule 204-2(a)(12) requires that an investment adviser maintain a record of securities transactions of all officers and directs and for certain employees. Please review the rule and institute procedures designed to obtain reports reflecting the required information for all such transactions.

Contracts

Your advisory contract provides that the discretionary powers of Robert D. Brown Investment Counsel, Inc. (RDBIC) with regard to an account may be cancelled at any time. However, the contract, itself, may be terminated only on the anniversary date of entering into the agreement. Under these circumstances, an individual wishing to completely discontinue receiving the services of RDBIC prir to the contract anniversary date would be contractually obligated to pay fees for the entire year.

Enclosed is a letter from the Division of Investment Management (Division) in response to an inquiry from Churchill Management corp., CCH Fed. Sec. Law Rep. (1973-74 Transfer Binder) P79,815. This letter deals primarily with the issue of refunding prepaid fees upon contract cancellation, however, the position of the Division is, in essence, that clients should not be required to accept and pay for advisory services which they do not want. As suggested by the letter, the interests of advisory clients are best served by a policy which does not inhibit a client's decision to terminate a contract.

You are requested to either replace or amend your contract so that its terms will not penalize clients who want to terminate prior to the anniversary date. Current clients should be advised by letter of this change and, within three months of the date of this letter, provided with a new contract or a amendment to their present agreement. Please furnish this office with copies of your letter to clients and the proposed revision to RDBIC's contract.

Closing Comments

While certain possible violations of law have been outlined herein, this letter is not to be taken as indicating that no other violations have occurred on the part of your firm.

In connection with our regulatory responsibilities, we request that you inform this office what steps have been taken to correct the above deficiencies. Before you respond to communications from this office, please refer to the Privacy Act Notice which was delivered to you at the beginning of our examination. This letter is being sent without regard to any action the Commission or its staff may take regarding these or other matters.

Please furnish copies of any correspondence concerning this letter to the Securities and Exchange Commission, Division of Investment Management, Attention: Gene A. Gohlke, Chief, Office of Financial Analysis and Inspections, 450 5th Street, N.W., Washington, D.C. 20549.

Sincerely,
MARY LOU FELSMAN
ASS'T ADMINISTRATOR - REGULATION
By: Kathleen Stewart
Compliance Specialist