

MR. ROY HEYBROCK

Publicly Available April 5, 1982

SEC LETTER

Rule 206-4

March 4, 1982

**Mr. Roy Heybrock
2516 Lakeshore Drive
Greensboro, North Carolina 27408**

Dear Mr. Heybrock:

This responds to your two letters dated July 6, 1981, in which you ask (1) whether the exemption in section 203(b)(1) of the Investment Advisers Act of 1940 ('Act') applies to you and (2) what regulations you have to comply with in connection with your proposed offer to pay others to answer questions about the services you perform. The copy of the advisory agreement which you sent us indicates that your advisory services would consist in advising and aiding shareholders of open-end investment companies, including growth funds and 'conservative funds', as to the timely exchange of their interests in the search for maximum appreciation and growth. In other words you would be a market timer, i.e., a person who predicts the general movement of the securities markets. Such a person advises investment in the market when he believes it to be rising and withdrawal from the market and investment in money market instruments, for example, when he believes that that would be more profitable. Such strategy is often effected through investment in mutual funds with exchanges of interests in funds which invest in equity securities for interests in funds which invest in money market securities and vice versa.

Section 203(b)(1) of the Act exempts from the registration requirement of the Act any investment adviser all of whose clients are residents of the State within which such investment advisor maintains his or its principal office and place of business, and who does not furnish advice or issue analyses or reports with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange. In our view this exemption would not apply to you because, in furnishing an exchange timing service with respect to investment companies that generally invest in securities listed or admitted to unlisted trading privileges on a national securities exchange, you would, in effect, be advising with respect to such securities. Therefore, we are enclosing materials regarding the registration and regulation of investment advisers.

Since you are required to register under section 203 of the Act, it would be unlawful for you to pay a cash fee to any person who, directly or indirectly, solicits any client for or refers any client to you, unless you are registered under the Act and you comply with the other conditions of Rule 206(4)-3 under the Act, a copy of which is enclosed.

Sincerely,

Stanley B. Judd
Deputy Chief Counsel

INCOMING LETTER

July 6, 1981

**Securities & Exchange Commission
Division of Investment Management
500 North Capital Street
Washington DC 20549**

Dear Sir:

I am acting as an investment advisor all of whose clients are residents of the state of North Carolina which is the state in which I maintain my principal office and place of business. I also do not furnish advise or issue analyses or reports with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange.

I am aware that other investment advisory firms pay a percentage of the advisory fee to others who service clients for them. I would like to offer this also and wonder what specific requirements must be met in order to comply with the regulations of the Securities & Exchange Commission. I would like to offer 25% of my fee to others so they may take the time consuming work of dealing directly with clients questions. In no way would these agents be performing an advisory decision, only paperwork and answering questions about the service I perform.

I would assume a suitable disclosure statement in the advisory contract would be in order. Enclosed is a sample copy of my existing contract and also one with a disclosure statement that I would like to use. I have sent a copy of the contract to the Atlanta office about a year ago when I first made inquiries about being an investment advisor.

Please advise as to the use of agents on a fee basis.

Sincerely,

Roy Heybrock, CFP