



IDAHO
DEPARTMENT OF FINANCE

DIRK KEMPTHORNE
Governor

GAVIN M. GEE
Director

June 14, 2005

[REDACTED]
Vice President and General Counsel
[REDACTED]
[REDACTED]

Re: Dual Registration Exemption

Dear Mr. [REDACTED]

This is in response to your request on behalf of [REDACTED] ([REDACTED]) for an interpretation of the "dual registration exemption" afforded in Rule 90.06 of the Idaho Uniform Securities Act (2004) (the Act).

Your request is comprised of three issues involving the interpretation of Rule 90.06. First, you have asked for our view concerning the phrase "employed by a broker-dealer" contained in this rule. Under the Idaho Securities Act, we have historically interpreted this language to refer to a broker-dealer agent that is associated, whether as an employee or an independent contractor (as is the case for [REDACTED] agents), with a broker-dealer in the capacity of an agent. Under the new Act, for the purpose of interpreting this rule, our view is the same.

Second, your letter requests information concerning the examinations required for an agent to avail themselves of this exemption. No specific examinations are required other than any examination that qualifies the associated person as an Idaho registered broker-dealer agent.

Lastly, with regard to the release entitled "Idaho Investment Adviser Representative Registration and Exemption Information", the information you inquired about is outdated. Specifically, the limitation of investment advice to that "of a money manager within the IA firm" is not reflective of the current requirements under the Act. Rule 90.06(a) provides as follows:

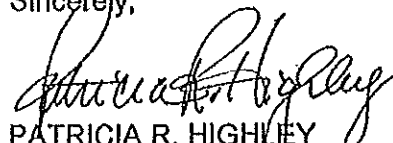
SECURITIES BUREAU

Bureau Chief - Marilyn T. Chastain
700 West State Street, 2nd Floor, Boise, ID 83702
Mail To: P.O. Box 83720, Boise ID 83720-0031
Phone: (208) 332-8004 Fax: (208) 332-8099
<http://finance.idaho.gov>

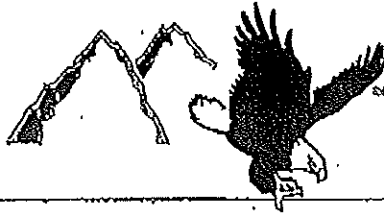
"The person's investment advisory activities are limited to recommending the investment advisory services of an investment adviser registered under Section 30-14-403, Idaho Code, or a federal covered adviser that has made a notice filing pursuant to Section 30-14-405, Idaho Code, and all such recommendations are made on behalf of the employing broker-dealer".

I hope this clarifies the questions you had concerning this exemption. Please feel free to contact the undersigned should you require further information.

Sincerely,



PATRICIA R. HIGHLEY
Senior Securities Analyst
Idaho Department of Finance



Member of NASD/SIPC

VIA FACSIMILE
(208) 332-8099

June 1, 2005

Ms. Patty Highley
Securities Bureau
Idaho Department of Finance
PO Box 83720
Boise, ID 83720-0031

Re: IDAPA 12.01.08.90.06

Dear Ms. Highley:

Pursuant to our recent conversations, I am writing this letter on behalf of [REDACTED], an Idaho-domiciled broker-dealer and registered investment adviser, to request the Department's formal interpretation of IDAPA 12.01.08.90.06 (hereinafter the "Dual Registration Exemption") as well as the Bureau's Bulletin entitled "Idaho Investment Advisor Representative Registration Exemption Information."

As I understand the text of the Dual Registration Exemption, a licensed registered representative who is "employed by" a broker-dealer may, on behalf of the broker-dealer, recommend to a client the services of a registered investment advisor without having to be registered as an investment advisor himself or herself, if (1) the representative is not compensated directly for the recommendation by the investment advisor; and (2) the representative provides written notice to the Bureau that he or she is relying upon this exemption.

Our first question related to the Dual Registration Exemption rule is whether registered representatives who are not employees of a broker-dealer may avail themselves of this exemption. The rule as drafted appears to apply only to representatives who are "employed by" a broker dealer, not independent contractor representatives who may be "associated with" a broker dealer. The Idaho Code sections on registration with the State appear to draw a distinction between employees and those who are not employees, but are instead "associated with" a broker dealer. For instance, see Idaho Code §§ 30-14-402(c) (agent registration statute) and 30-14-403(c) (investment adviser registration statute). It appears that, unlike those code sections, the Dual Registration Exemption rule was drafted exclusively to apply to employed representatives, not those independent contractor representatives who are "associated with" a broker dealer.

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The second question we have regarding the Dual Registration Exemption is what NASD licenses a representative must possess in order to avail himself or herself of the exemption. May this exemption be claimed by a person possessing Series 6 (and 63) licenses, or must the representative be Series 7 (and 63) licensed to claim the exemption?

Our third question arises from the Bulletin issued by the Bureau entitled "Idaho Investment Advisor Representative Registration Exemption Information," that bears an amendment date of 9/04. Section C of that Bulletin details the Dual Registration Exemption, and states in part as follows:

An Idaho registered representative of a broker-dealer (BD) does not have to be separately registered as an investment adviser (IA) representative nor pay a fee if:

- ...
- 2. The representative's investment advisory activities are limited to recommending the investment advisory services of *a money manager within the IA firm*, and all such recommendations are made on behalf of the employing BD....

9/04 Bulletin (emphasis added). The italicized language in the Bulletin appears to add a limitation to the original text of the rule, i.e., that the representative may only recommend the services of a "money manager" who is "within the IA firm." The text of the rule states only that the representative's advisory activities must be "limited to recommending the services of an investment adviser registered under Section 30-14-403, Idaho Code, or a federal covered adviser that has made a notice filing pursuant to Section 30-14-405, Idaho Code...." IDAPA 12.01.08.90.06.a. The rule does not appear to require that the person who is recommended be a "money manager," nor does it require that the person who is recommended be "within the IA firm" of the person making the recommendation. Our question is whether a representative may recommend the services of an investment adviser who is associated with a firm other than the one with whom the representative making the recommendation is associated. This situation appears to be acceptable under the text of the rule, but perhaps not so under the text of the Bulletin.

Thank you for your assistance in answering these questions. I look forward to learning the Bureau's interpretation of these issues.

Very truly yours,

[Redacted Signature]

Vice President and General Counsel

cc: [Redacted] Chief Compliance Officer