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PUBLIC AVAILABILITY DATE: 11-16-87

ACT SECTION RULE
1940A 206 ---

August 26, 1987

Ms. Mary Podesta
Chief Council, Office of Investment Management
United States Securities and Exchange Commission
450 Fifth Street, NW
Washington, D.C. 20549

RE: Request for No Action and/or Interpretive Letter

Dear Ms. Podesta:

I am writing to you to request a No Action and/or Interpretive Letter with respect to the following situation.

My firm, Leonetti & Associates, is a fee-for-service financial planning and investment advisory firm and is registered as an investment advisor with the Securities and Exchange Commission. Recently, we were approached by one of our clients, Dr. Leo Baranowski, and asked to review a limited partnership which was proposed to him by a commission planner, Mr. Kenneth Strom. We were able to review such project and render an opinion to our client, and in the course of doing so, charged our normal hourly fee, which the client was aware of prior to coming to us with this project. Although our client is not hesitant to pay our fee, he did bring up a request, which I thought interesting. Our client asked us if it was possible for our fee or a portion thereof to be billed to the commission advisor, since this advisor would be receiving a commission on the investment. Obviously, our clients objective was to try and avoid paying a commission and a fee at the same time. I told him I was not sure if this was possible, I would need to check not only with the commission broker, but also with the regulations governing such potential transactions.

I contacted Mr. Strom and he was more than willing to agree to such arrangement so long as we were not in violation of any rules or regulations. I am writing you to try and determine whether this type of arrangement would be allowed.

Ms. Mary Podesto
August 26, 1987

As additional background information, I feel you should know that our firm is in no way interested in participating in any type of split commission on any work done for our client. We feel that this would be a major conflict of interest as this would create an incentive for us to put clients into projects at potentially larger dollar amounts because our compensation would be higher.

In the above situation, and in any other situations which would arise, our only interest would be to charge our normal fee and bill this out, whether the client pays for all of it directly, a portion of it directly or a portion coming from the other commission advisor, would be up to the advisor and the client. We would in no way search for any additional compensation.

I find the above arrangement to be a very interesting one. Clients today feel that they need objective advice regarding such matters and they are very leery as to whether that objective advice is actually received from the same person who is going to receive a commission from the sale of a product. For this reason, clients are coming to firms like ours to review such products and give them advice while acting as an objective advisor. One barrier for many clients in doing this are the costs that are involved. In addition to paying a fee to the advisor to review a program, they may also have to pay a commission to the broker involved who solicited the transaction. The above situation might make objective advice more available to those individuals who need such advice by reducing the overall cost of this process. Obviously all three parties to this transaction must be in agreement to the transaction and at the same time, we as investment advisors, must not compromise the fiduciary responsibility that we have to our client.

We feel the above transaction would be beneficial to all concerned. The commission broker would have the opportunity to not be involved in such transactions should he not wish to give up any of the commission dollars. However, should he wish to do so, he would still be able to be compensated for his time. We as investment advisors would still receive the same fee that we normally bill out, whether the broker was involved or not. The only effect is where these dollars come from, i.e., whether the client writes a check to us directly, or he writes a check for possibly a portion with the remainder coming from the commissioned advisor.

Finally, our client benefits from a reduced cost, and achieves the ability to be able to afford receiving objective financial advice regarding these matters.

Ms. Mary Podesto
August 26, 1987

000022

Page 3

Again, we feel this arrangement could be beneficial to all concerned, especially our client, yet we will not enter into such a transaction until we are sure that this transaction is viable according to rules and regulations.

I eagerly await your reply.

Sincerely,

LEONETTI & ASSOCIATES


Michael E. Leonetti

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RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 87-498-CC
Leonetti & Associates
File No. 801-17124

We would not recommend any enforcement action to the Commission under the Investment Advisers Act of 1940 ("Advisers Act") if Leonetti & Associates provides investment advice to a client seeking a second opinion about an investment in a limited partnership recommended by a commission broker and charges and bills advisory fees as described in your letter of August 26, 1987. This position is based on the facts and representations made in your letter and on our understanding that the terms of each adviser's compensation arrangement are fully disclosed to the client prior to the time the client enters into the respective advisory arrangement. Further, this response only expresses our position on enforcement action and does not express any legal conclusions on the questions presented.

Joseph R. Fleming

Joseph R. Fleming
Attorney