



State of Utah

DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES

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Salt Lake City, Utah 84145-0808
(801) 530-6600 • FAX (801) 530-6980

October 19, 1995

Ms. Leslie A. Klein
Smith Barney, Inc.
388 Greenwich Street
20th Floor, New York, NY 10013

Re: *Smith Barney* Registered Representative Retirement Program _____ File # 005-0715-34/A49048-34

Dear Ms. Klein:

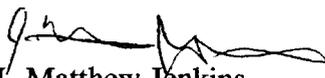
The Division of Securities ("Division") has reviewed your request for a No-Action Letter pursuant to § 61-1-25(5) of the Utah Uniform Securities Act ("Act") and Division Rule R164-25-5, on behalf of Smith Barney, Inc. So as to avoid unnecessary restatement or summarization of the facts set forth in your letter, the Division's response is attached to a photocopy of your letter.

Based upon your factual representations, the Division will not recommend any enforcement action under § 61-1-3 of the Act, if the Smith Barney Registered Representative Retirement Program is effected as described in your letter.

Because this No-Action Letter is based upon the representations made to the Division, it should be noted that any different facts or conditions of a material nature might require a different conclusion. Please note that this No-Action Letter relates only to the referenced retirement program and shall have no value for future similar factual circumstances.

Very truly yours,

DIVISION OF SECURITIES
UTAH DEPARTMENT OF COMMERCE


J. Matthew Jenkins
Director of Licensing



Leslie A. Klein
Senior Vice President
Deputy General Counsel

212-816-8190

SMITH BARNEY

A Member of TravelersGroup

September 11, ~~1993~~

Mr. Mark J. Griffin
Director, Securities Division
State of Utah
Department of Commerce
Division of Securities
160 East 300 South
Salt Lake City, Utah 84111

Re: Smith Barney Registered Representative Retirement Program

Dear Mr. Griffin:

I am writing to outline Smith Barney's ("SB") Franchise Protection Program ("Program"). SB would like to implement the Program in Utah. SB's implementation of this Program has been informally approved by the Staffs of the Securities and Exchange Commission, the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. Staffs of each of the foregoing have advised us of their view that retiring Financial Consultants (retired Registered Representatives) participating in the Program need not continue their registrations if their sole involvement in the securities business is to receive compensation pursuant to the Program. Copies of the No-Action Letters received from the Securities and Exchange Commission and the NASD are attached as Exhibit 1.

The following will outline the Program itself in an effort to provide you with as much information as possible in order for SB to obtain the State's approval to implement the Program. A copy of the Program Brochure is attached as Exhibit 2.¹

¹ Any references to Shearson Lehman Brothers should now read Smith Barney.

The Program seeks to provide clients of Retiring Financial Consultants ("FC") with continuity of service by allowing them to work, over a set period of time, with both their retiring FC and the newly designated FC. This permits clients to become familiar with their new FC before their existing FC retires. The Program thereby strives to increase client retention for SB while recognizing the service, loyalty and quality performance of the Firm's FCs.

Under the Program, SB will enter into agreements with certain eligible Financial Consultants who are close to retirement. Financial Consultants are eligible for participation in the Program if they are at least 55 years old, have been employed by SB for at least ten years, and have achieved production levels in the first or second quintiles of SB's Financial Consultants rankings in each of the five years preceding their intended retirement date. In addition, Financial Consultants must meet certain quality criteria (set forth below) that are set by a SB Quality Review Board, which consists principally of SB senior management and compliance and legal department personnel.

Alternatively, Financial Consultants may qualify for participation in the Program if they meet the quality criteria and if they have been employed by SB for at least 15 years and their participation is approved by their Branch Manager, Divisional Director, and Group President; or they may qualify if they have been employed by SB for at least 5 years, they have achieved production levels in the first or second quintiles of SB's Financial Consultants rankings in each of the five years preceding their intended retirement date, and their participation is approved by their Branch Manager, Divisional Director, and Group President.

As indicated, an important component that FCs must meet in order to be eligible for participation in the Program is the quality criteria which are set by the Firm's Quality Review Board. The Quality Review Board consists of members from various parts of the Firm's organization. The membership includes:

Managing Partner/SB
Vice Chairman/Director of Branch Control
Director of Human Resources/Quality
General Counsel/Additional Senior Members of the General
Counsel's Office & Compliance

The quality criteria which the Board will review includes:

- sales practice complaints which are reportable pursuant to NYSE Rule 351(d) (i.e. misrepresentation, unauthorized trading, unsuitability, churning, etc.)

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- arbitrations or civil litigations
- regulatory investigations or proceedings initiated by any Self-Regulatory Organization, State or the Securities and Exchange Commission.

If an FC has had one complaint (as defined above), arbitration, civil litigation, regulatory investigation, that FC will be reviewed by the Quality Review Board. While the Board applies an objective standard for review, its actual review is subjective.

Among the factors the Board will consider in determining whether an FC should be disqualified from the Program are:

- The nature and severity of the facts underlying the complaint, arbitration, civil litigation or regulatory investigation (impact on the client and the Firm)
- The dollar value of any settlements
- Whether an arbitration or civil litigation was tried to conclusion and the basis of any award or judgment
- The nature of any regulatory investigation and any sanctions imposed
- The basis and results of any internal reviews of the FC

Pursuant to each agreement (a copy of the Franchise Protection Program and the Covenant Not to Compete are attached as Exhibit 3), the retiring Financial Consultant, along with SB, will designate some or all of the then active client accounts of the retiring Financial Consultant for servicing by a named continuing Financial Consultant, who will also be a party to the agreement. The accounts which are so designated will be the Core Book clients and will be the only accounts eligible for continued commission payments. Any new accounts referred to the Receiving FC by a Core Book Client will be ineligible for participation in the Program with the exception of an additional Core Book account opened by a member of the immediate family of a Core Book client residing in the same household as the Core Book client and a new account created by a rollover of funds from a Core Book account.

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The agreements further provide that during a transition period, a minimum of six months, the retiring Financial Consultant will introduce his clients to the continuing Financial Consultant, and both will exert their best efforts to ensure that the clients of the retiring Financial Consultant enjoy uninterrupted customer service throughout the transition period and after the retirement of the retiring Financial Consultant.

The agreements further provide that for up to five years following the transition period, the retiring and continuing Financial Consultants will share any sales commissions generated by activity in the designated core client accounts. The share of the commissions allotted to the retiring Financial Consultant will decrease each year until it reaches zero at the end of the period set forth in the agreement.

There is one important set of conditions to the receipt of any commissions by the retiring Financial Consultant. During the term of the agreement, the retiring Financial Consultant must not contact his former clients for the purpose of soliciting them to engage in securities transactions, nor may he even discuss such transactions with them. Upon retirement, the former Financial Consultant must sever his association with SB, not maintain licensing as a principal, registered representative, investment advisor or investment advisor agent and he may not be associated in any capacity with any other broker, dealer, or investment adviser (nor hold himself out as being so associated) during the term of the agreement.

If a retired Financial Consultant fails to adhere to these conditions, he will not be eligible to receive any payments otherwise receivable under the Franchise Protection Plan, and he will be required to forfeit all payments previously received under the Franchise Protection Plan. In other words, it is an absolute condition of the receipt of any funds under the Franchise Protection Plan that a retiring Financial Consultant be, in fact, retired and not engaged in the securities business in any fashion.

SB will adopt measures designed to reinforce the message that any retired Financial Consultant who violates the terms of his contract will be detected. These measures would reduce any risk to the investing public to negligible levels. The measures will include notifying the customer of the retirement of the Financial Consultant, that the Financial Consultant is precluded by contract from contacting them to discuss investments, and that they should contact SB in the event of such improper contact (a copy of this notification is attached as Exhibit 4); requiring annual certification from retired Financial Consultants, as a condition of receiving payments under the Franchise Protection Program, that they have not been in contact with their former customers (a copy of the certification is attached as Exhibit 5); contacting clients of retired Financial

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Consultants on a regular basis to verify that they have not been contacted by their former Financial Consultants (a copy of the client letter is attached as Exhibit 6); and of course ongoing supervision of active Financial Consultants as part of SB's regular compliance supervision and oversight.

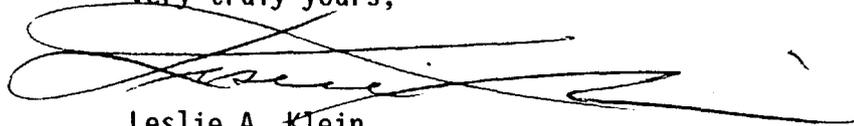
In the event of a Receiving FC(s) separation from the Firm for any reason including, but not limited to, death, disability, voluntary termination or inability to satisfy quality standards, the Branch Manager may select a replacement to fulfill the remaining term of the agreement.

It is SB's view that receipt of payments calculated as a percentage of the commissions otherwise payable to active Financial Consultants does not require retired Financial Consultants to maintain their status as registered associated persons with SB. Since the retired Financial Consultants will not be transacting business, we do not believe that the Program is in violation of §61-1-3 of the Utah Blue Sky Law. We believe this Program requires a No Action Opinion because of Regulation 164-6-1g(D)(5) of the Utah Blue Sky Regulations. There currently are no legal actions, whether judicial or administrative, relating to the facts set forth herein. Finally, SB has not instituted this Program in Utah.

As mentioned above, SB has received informal assurances from the Staffs of the SEC, the NASD, and the NYSE that they share this view. We have also received no-action relief from the States of Alabama, Alaska, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Maryland, Michigan, Minnesota, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, Washington and Wisconsin, as well as the District of Columbia (copies of those No-Action Letters are attached as Exhibit 7).

Enclosed please find Smith Barney's check for \$120.00, payable to the Utah Securities Division, representing the required fee for a no action opinion. Once again, we would appreciate receiving the State's approval to implement the Franchise Protection Program as soon as possible. Should you require any additional information about the Program, please feel free to communicate with me.

Very truly yours,



Leslie A. Klein

LAK:bjc
attachments