



DIVISION OF
INVESTMENT MANAGEMENT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

ACT 17A
SECTION 202(a)(11)(D)
RULE _____
SECTION _____
AVAILABILITY 6/16/94

June 16, 1994

Mr. Louis Russo
4 Myers Pl.
Middlesex, NJ 08846

Dear Mr. Russo:

Your letter dated April 15, 1994 has been forwarded to this office for response. In your letter, you state that you intend to publish a weekly or bi-monthly newsletter giving recommendations regarding the buying and selling of stocks. Subscribers will pay you a fee for this publication. In addition, you are considering using a telephone line to provide recorded stock recommendations. You ask whether any of these activities require you to register as an investment adviser with the Commission.

Section 202(a)(11) of the Investment Advisers Act of 1940 (the "Advisers Act") generally defines an investment adviser as any person who, for compensation, engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities. If you publish and sell an investment newsletter or provide stock recommendations by telephone, you may fall within this definition and be subject to registration and regulation under the Advisers Act. 1/

Section 202(a)(11)(D), however, excludes from the definition of investment adviser, and thus from registration and regulation under the Advisers Act, the publishers of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation. The United States Supreme Court has interpreted this "publisher's exclusion" to include publications that offer impersonal investment advice to the general public on a regular basis. 2/ To qualify for the publisher's exclusion under Lowe, a newsletter must be:

- (1) of a general and impersonal nature, in that the advice provided is not attuned to any specific portfolio or any client's particular needs;
- (2) "bona fide" or genuine; and

1/ In providing a telephone line, I assume you are referring to a "900" telephone number and will receive compensation from this phone system.

2/ Lowe v. SEC, 472 U.S. 181 (1985).

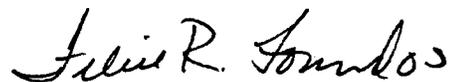
Mr. Louis Russo
June 16, 1994
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- (3) of general and regular circulation, in that it is not timed to specific market activity or to events affecting, or having the ability to affect, the securities industry.

The proprietor of a telephone service that provides recorded stock recommendations could similarly qualify for the publisher's exclusion, provided the criteria set forth in Lowe are met. 3/ However, because of the fact-specific analysis required to make this determination, the staff generally will not indicate whether a particular newsletter or telephone advisory service qualifies for the publisher's exclusion. 4/ If you do not qualify for the publisher's exclusion, or any other exclusion set forth in section 202(a)(11)(A)-(E), you may be required to register under the Advisers Act, unless you qualify for an exemption from registration. 5/

You may wish to consult an attorney for additional guidance on these matters. If you have additional questions regarding requirements for investment advisers, you may contact this office at (202) 942-0660.

Sincerely,



Felice R. Foundos
Attorney
Office of Chief Counsel

3/ See Charles L. Simpson (pub. avail. July 7, 1992).

4/ See Charles L. Simpson; Independent Drug Wholesalers Group, Inc. (pub. avail. Apr. 16, 1992); Eugene E. Castleberry (pub. avail. June 17, 1991).

5/ See, e.g., Section 203(b)(3) which exempts from registration an investment adviser that has fewer than fifteen clients and does not hold itself out to the public generally as an investment adviser or act as an investment adviser to a registered investment company.



OFFICE OF
CONSUMER AFFAIRS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

HO 131196

May 20, 1994

Mr. Louis Russo
4 Myers Place
Middlesex, NJ 08846

Dear Mr. Russo:

Thank you for your letter of April 15, 1994, requesting information on whether you would be required to register as an Investment Adviser.

We note in your correspondence that you previously telephoned the Commission's Office of Chief Counsel in the Division of Investment Management. Since you have any unlisted telephone number, we were unable to confirm whether you have already received a reply to your question. However, in an effort to assist you, we have forwarded a copy of your correspondence to the appropriate office within the Commission for its consideration and response.

If we can be of assistance in other securities-related matters, please do not hesitate to contact our office.

Sincerely,

Ruby E. Johnson Nelson
Ruby E. Johnson Nelson
Consumer Affairs Specialist

cc: Office of Chief Counsel
Division of Investment Management

APR 21 1994

SECURITIES & EXCHANGE COMMISSION
CONSUMER AFFAIRS BRANCH

Louis Russo
4 Myers Pl.
Middlesex, NJ
08846

April 15, 1994

Office of Filings, Information and Consumer Services
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.D. 20549

Dear Sir or Madam,

I need your assistance. I am starting a business in which I would publish a weekly or bi-monthly newsletter giving recommendations regarding the buying and selling of stocks. For this publication, I would receive a fee from subscribers. I would make recommendations based upon charts and technical analysis.

Also, I am considering a telephone line giving stock buy or sell recommendations from a recorded message.

My question is: Do I have to register with the Securities Exchange Commission as an Investment Advisor.

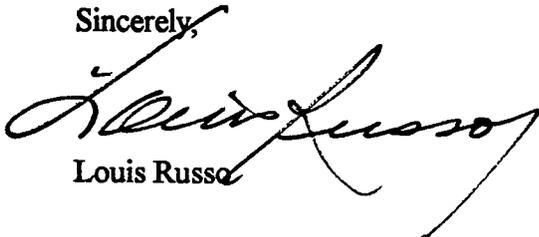
As I review the Investment Advisor Package, page #1, titled "Who is an Investment Advisor", it states "any person who for compensation and as part of a business gives advice, makes recommendations, issues reports..... through publications. Certainly by this definition I would need to register. However, "Exclusions from the Definition" states "publishers of bona fide newspapers.....or financial publication of general circulation " are excluded.

I need clarification of the law so I may proceed. Today I spoke with several people at the Exchange and I was unable to receive an answer by telephone. I was asked to call The Office of the Chief Council at 202-272-2030, which I did and left a recorded message.

I would appreciate your timely response.

Thank you.

Sincerely,



Louis Russo