



Dora
Department of Regulatory Agencies

Division of Securities
Fred J. Joseph
Securities Commissioner

Bill Ritter, Jr.
Governor

D. Rico Munn
Executive
Director

January 26, 2009

W. Alan Gay
1522 West Pinehill Road
Spokane, WA 99218

**RE: Interpretative Opinion regarding the Order of Permanent Injunction
entered against William Alan Gay on October 24, 2007
Our File No. B 009-003**

Dear Mr. Gay:

The staff of the Division of Securities ("Staff") received on December 29, 2008, your letter dated December 20, 2008. In your letter, you request from the Staff an opinion as to whether certain activities as described in your correspondence would constitute "associating with" as that term is used in the Order of Permanent Injunction that was entered against you on October 24, 2007 in Denver District Court in Case No. 06 CV 11066. The entry of the Order of Permanent Injunction was the result of an agreement by you to settle various charges, including a claim of securities fraud, brought by the Securities Commissioner against you in relation to an investment fund you controlled called Secured Real Estate Lending Fund. Secured Real Estate Lending Fund is currently operating in receivership, pursuant to the court's Order Appointing Receiver dated October 19, 2006.

In the Order for Permanent Injunction, you are permanently restrained and enjoined from associating in any capacity with any broker-dealer, sales representative, promoter, issuer, financial planner, investment adviser, or investment adviser representative engaged in business in Colorado, or any individual or entity engaged in the offer, purchase, or sale of securities in Colorado. The term "associate" is defined in the Order of Permanent Injunction as follows:

For purposes of this Order, "associating in any capacity" shall mean acting as a broker-dealer, sales representative, promoter, issuer, financial planner, investment adviser, investment adviser representative (or occupying a similar status or performing similar functions), or directly or indirectly controlling, acting as agent for, or exercising common control of a broker-dealer; sales representative, promoter, issuer, financial planner, or

investment adviser, or any employee of a broker-dealer, sales representative, promoter, issuer, financial planner, or investment adviser.

In your letter, you question whether your prohibition from associating with members of the securities industry would apply to those who are currently registered with the Financial Industry Regulatory Authority. Clearly, the prohibition applies to any broker-dealer, investment adviser, or securities sales representative, regardless of whether they are licensed, or with whom they are licensed. As to family relationships, the bar or prohibition applies in the context of your business relationships. So, you are prohibited from associating in any manner in the securities business of any person, regardless of their relationship to you. Advising members of the public as part of a business as to the value of securities or as to the advisability of investing in, purchasing or selling securities, and doing so for compensation qualifies you as an investment adviser under the Act. As the terms of the injunction prohibit you from acting as an investment adviser, engaging in this type of activity is also prohibited.

Finally, you question whether the injunction prohibits you from engaging in training for financial planners, insurance agents, or activities related to annuity transactions. Engaging in these activities may bring you within the prohibitions of the injunction depending upon a number of factors. In order to provide you a more definitive response, you would need to provide additional factual detail in how the training is conducted. For instance, the Staff would need for you to answer the following types of questions: 1) how you are compensated; 2) who compensates you; 3) will you receive an "override" from an insurance company on business written by any trainee; 4) is an element of the training to advise investors to sell securities holdings and buy annuities; 5) are there any legal relationships created between you and the trainees; 6) are you promoting annuity sales from particular insurance companies; 7) who originates your marketing materials; and 8) are the marketing materials misleading. These questions are not inclusive, and how you answer these questions may require additional information.

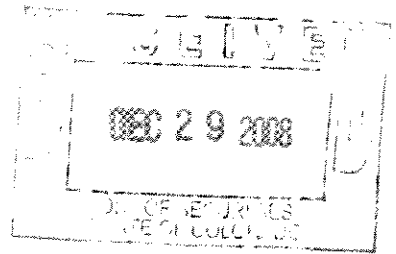
The Staff is willing to consider any further information or discussion which you feel would reflect on the positions assumed in this letter. It should be noted that this letter expresses the position of the Staff with regard to the applicability of the Act to the description of the proposed business as presented in your letter, and should not be construed as expressing any opinion or conclusion as to the questions presented. Further, the position expressed in this letter is based on the facts as presented, and that any change in the facts or circumstances may require a different response.

If there are any questions, please contact the undersigned at (303) 894-2320.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald Rome", written over a horizontal line.

Gerald Rome
Deputy Securities Commissioner



Jerry Rome
Colorado Division of Securities.

12/20/08

My name is William Alan Gay. My social security number is [REDACTED]. As you know, I have signed an agreement with the Colorado Division of Securities which says that, "I will not associate with those in the securities business." In fact this was the basis for the recent court sanction against me.

I would first like to give you my interpretation of this. If it is not correct please opine and give your interpretation of what the word associate means.

The rule states that I will not associate with those in the securities business. My interpretation is as follows: "Since the NASD no longer exist, I would be able to now associate with those who are members of FINRA, since this organization was not addressed. Also, since Registered Investment Advisors (RIAs) simply give investment advice and do not actually conduct securities transactions, they would not be subject to my agreement unless I received commission from securities transactions from either FINRA members or RIAs."

If I do not hear from you, then I will assume that this definition of association is correct. Also, this is the definition from my attorney.

If you do not agree, please address all of the following in your new definition of association.

1. If I am married to a FINRA or RIA, would it be necessary to get a divorce as to not associate with my spouse?
2. If my children or grandchildren are FINRA or RIAs, would I need to become estranged from them to comply with the agreement and not associate with them?
3. Is it acceptable to teach members of the public how to trade an account they own, which has securities in it? The plan is to do this and charge a consulting fee to do this.
4. Is it acceptable to teach members of the public, how to become a financial planner, or insurance salesman? If you say it is not, keep in mind that this will be an explicit violation of my right to free speech and this fact will be reported to the media.

5. Is it acceptable to teach insurance producers how to produce more annuities and life insurance? This would include how to give seminars, how to transfer securities into annuities and how to run their practice.

6. Since I am going to be conducting training for new insurance and annuity salesmen, please address any possible violation of this agreement.

I have enclosed the fee for your service. Please respond within 30 days of this letter. The fee is \$100 and it is in cash.

Thanks for your attention to this matter.

W. Alan Gay

W. ALAN GAY