



Dora
Department of Regulatory Agencies

Division of Securities
Fred J. Joseph
Securities Commissioner

John W. Hickenlooper
Governor

Barbara J. Kelley
Executive Director

July 8, 2011

Michael C. Williams, Esq.
Williams Law, P.C.
1660 Lincoln Street, #2330
Denver, CO 80264

**RE: Steven Imke – Licensing as an Investment Adviser or Investment Adviser
Representative
Our Files No. B-11-005**

Dear Mr. Williams:

The staff of the Division of Securities (“Staff”) is in receipt of your letter dated June 2, 2011, regarding the above-captioned matter. In your letter, you request the Staff’s opinion whether your client, Steven Imke, needs to be licensed as an investment adviser or investment adviser representative with respect to his business of publishing and selling sets of videos regarding oil and gas direct participation investments.

In § 11-51-201(9.5)(a)(1), C.R.S., an investment adviser is defined as “any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities,” Mr. Imke has prepared videos that, in part, give advice or analysis of oil and gas investments, and in particular, oil and gas direct participation investments. In the videos, these securities are compared and contrasted with other common oil and gas related investments, such as common equity investments in major integrated oil and gas companies. Even though Mr. Imke is not giving advice about specific securities, or about investing in specific oil and gas ventures, he is providing advice or analysis about a certain class of securities. The staff at the Securities and Exchange Commission (SEC) has long taken the position that to be considered advice about securities, the advice need not be in the form of buy or sell recommendations for particular securities, but can be analyses or valuations of particular securities or of the securities markets generally.¹ In addition the Investment Advisers Act

¹ See, e.g. Gabriel, Roeder, Smith and Company, SEC No-action Letter, 1989 WL 245773 (March 23, 1989); Dow Theory Forecasts, Inc., SEC No-action Letter, 1978 WL 9779 (Feb. 2, 1978).



Release No. 1092² provides that the definition of investment adviser “includes person who advise clients concerning the relative advantages and disadvantages of investing in securities in general as compared to other investments.” This analysis does not change even if the videos provide warnings or disclaimers that oil and gas investments are not for everyone, and to always consult with their tax advisers.

You state that Mr. Imke’s business plan will be to provide broker-dealers, issuers, and investment advisers access, for a fee, to his videos online. The broker-dealers will presumably have their customers and prospects visit Mr. Imke’s website to view one or more of the videos. Payments will not be related to the successful purchase or sale of any security, nor is there any performance, success, or contingent payment component involved. The videos are viewable simply in exchange for a membership or viewing fee. The term “compensation” in the investment adviser definition has been interpreted to include virtually any form of economic benefit that a person receives for providing advisory services. The staff at the SEC has construed the element of compensation to include the receipt of any economic benefit, whether in the form of an advisory fee or some other fee relating to the total service rendered, commissions, or a combination of the foregoing.³ It does not matter if the fee is not part of any commission, nor even paid by a third party. The Investment Adviser’s Act Release No. 1092 provides that “it is not necessary that an adviser’s compensation be paid directly by the person receiving investment advisory services, but only that the investment adviser receive compensation from some source for his services.” It is the Staff’s opinion that the fee paid to Mr. Imke for viewing his videos is compensation under Colorado’s definition of investment adviser.

The SEC staff has also taken an expansive view of what activities satisfy the “in the business” element. Generally speaking, this element will be satisfied if a person gives specific advice about securities other than in rare, isolated, and nonperiodic instances.

For the reasons stated above, we are unable to assure you that we would not recommend enforcement action to the Securities Commissioner if Mr. Imke engages in the activities as described in your letter without licensing under the Colorado Securities Act.

If there are any questions, please feel free to contact the undersigned.

Sincerely,

Gerald Rome
Deputy Securities Commissioner

² This release was developed jointly by the SEC and the North American Securities Administrators Association (NASAA), an organization of state securities regulators. It can be found at 1987 WL 112702.

³ See, e.g., College Resource Network, SEC No-action Letter 1993 WL 121466 (April 9, 1993).