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STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

August 18, 2008

Subject: BROKER DEALER INVESTMENT ADVISOR EXCEPTION

Attention Interested Parties of the Professional Fiduciaries Bureau:

This Advisory relates to "professional fiduciaries" in California acting as BROKER-DEALER AGENTS and INVESTMENT ADVISOR REPRESENTATIVES subject to licensing under the Professional Fiduciaries Act (Act) pursuant to Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code.

Generally, a "professional fiduciary" is a person who acts as a:

CONSERVATOR OR GUARDIAN for two or more individuals at the same time who are not related to the professional fiduciary or to each other by blood, adoption, marriage, or registered domestic partnership, or

A TRUSTEE or AGENT under durable power of attorney for health care or for finances for more than three people or more than three families, or a combination of people and families that totals more than three, at the same time, who are not related to the professional fiduciary by blood, adoption, marriage, or registered domestic partnership.

"Trustee" includes an individual who is acting as a trustee or an individual acting on behalf of an entity to perform the functions of a trustee, for a trust that includes at least one individual beneficiary, and, they are acting on behalf of more than three trustors whom are not related to them.

BROKER-DEALER AGENTS OR INVESTMENT ADVISOR REPRESENTATIVES acting as professional fiduciaries MUST be licensed under the Act unless they qualify for the exception of Section 6501(f)(5) of the Business and Professions Code:

Section 6501(f)(5) of the Business and Professions Code provides:

"Any person whose **sole activity** as a professional fiduciary is as a broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative registered and regulated under the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code), the Investment Advisers Act of 1940 (15 U.S.C. Sec. 80b-1 et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.), or involves serving as a trustee to a company regulated by the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).?"

Pursuant to this provision, the following categories (A, B, and C) are not subject to licensure **but only if** their activities are limited, consistent with specific state and federal laws described below. Acting as a professional fiduciary outside the scope of these activities is disqualification for claiming this exception.

A. REGISTERED BROKER-DEALERS AND BROKER DEALER AGENTS authorized by both of the following laws to offer or sell securities:

1. The Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code), and
2. The Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.)

B. INVESTMENT ADVISORS AND INVESTMENT ADVISOR REPRESENTATIVES authorized by either of the following laws to render investment advice for compensation:

1. The Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code), or
2. The Investment Advisers Act of 1940 (15 U.S.C. Sec. 80b-1 et seq.)

C. Any person serving as a trustee to an investment company that is registered with and regulated by the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

Any practice as a professional fiduciary under the Act as broker-dealer, broker-dealer representative, an investment advisor, investment advisor representative, or as a trustee for a mutual fund, beyond the specific authority enumerated in Section 6501(f)(5) of the Business and Professions Code, falls outside the definition of **sole activity** and would require licensing.

Thanks
Mellonie Yang, Chief
Professional Fiduciaries Bureau