STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF CORPORATIONS

Pete Wilson
Governor

Gary S. Mendoza
Commissioner of Corporations

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AGENTS OPERATING UNDER A "LOCAL AREA NAME" OR AS AN "INDEPENDENT CONTRACTOR"

This release comments on the practice of broker-dealer branch offices operating under a "local area name" and on the status of so-called "independent contractors." "Local area name" is the term commonly used in the broker-dealer industry to refer to the practice of an agent operating out of a branch office of a broker-dealer, but using a name different from that used by the broker-dealer. Frequently, the name used by an agent is an "umbrella" name under which an agent conducts securities transactions under the supervision of a broker-dealer in addition to conducting other businesses, such as investment advisory activities unaffiliated with the broker-dealer.

Under the Corporate Securities Law of 1968 (the "Law"), Corporations Code Section 25003 defines "agent" to mean any individual (i.e., a natural person), other than a broker-dealer or a partner of the licensed broker-dealer, who represents a broker-dealer or who for compensation represents an issuer in effecting or attempting to effect purchases or sales of securities in this state.

Corporations Code Section 25004 defines "broker-dealer" to mean any person engaged in the business of effecting transactions in securities in this state for the account of others or for his own account. "Broker-dealer" does not include an agent, when an agent is an employee of a broker-dealer or issuer. In this context, the Commissioner of Corporations has interpreted the word "employee" narrowly. See, Section 25210 of the Corporations Code. As a consequence of the absence of agent licensing, strict supervisory

responsibilities are imposed on broker-dealers with respect to agents employed by them. In this regard, see Commissioner's Rule 260.210 (10 C.C.R. Sec. 260.210).

Thus, persons effecting transactions in securities in this state must either: (1) be a broker-dealer; or (2) be an individual acting as an agent by a broker-dealer or issuer. Moreover, under the Law, an agent may effect transactions in securities only under the name of the broker-dealer, not under another business name.

Neither a broker-dealer nor an issuer may authorize an agent to operate independently of the broker-dealer or issuer when performing the activities of an agent under the Law. Accordingly, a person engaging in the business of effecting transactions in securities other than as an agent employed by a licensed broker-dealer or issuer must obtain a broker-dealer certificate. The Commissioner acknowledges that other regulatory agencies may have different classifications for agents representing broker-dealers or issuers and may for the purpose of their regulatory oversight characterize that relationship as an independent contractor.

The Commissioner is primarily concerned with the supervision provided by a broker-dealer over persons representing the broker-dealer in effecting transactions in securities. Every broker-dealer shall exercise diligent supervision over all of its agents to ensure proper adherence to the requirements of the Law. A broker-dealer may not seek to disavow or limit its supervisory responsibilities under the Law by encouraging or permitting an agent to represent himself as an "independent contractor."

Over the past few years, the Department of Corporations has noticed an increasing number of agents creating the impression that they are separate from or independent of a broker-dealer; for example, by using a name different from that of the broker-dealer the agent represents. This impression of separateness or independence has been noticed on letterhead designations, business cards, advertisements, directories, and other written communications. In other instances, this impression is created by means of omissions such as an agent failing to disclose to a client the identity of the employing broker-dealer or in which capacity the agent is acting when providing services to a client (i.e., as an agent of a broker-dealer, or as an associated person of an investment adviser, or as an investment adviser).

The Commissioner is concerned that the public not be misled about the person with whom they are dealing, the extent of the services provided, and who is responsible for supervision of that person.

There should be no confusion in a client's mind about an agent's employment status and the capacity in which an agent is providing services to a client. There should be no confusion about the products offered or services provided by a broker-dealer, as well. Accordingly, all communications used by, or on behalf of, a broker-dealer and the persons representing the broker-dealer should clearly, prominently and distinctly disclose the services being offered by the broker-dealer, the identity of the broker-dealer, and the relationship between the broker-dealer, the agents and other entities, such as an investment adviser.

GARY S. MENDOZA
Commissioner of Corporations

WILLIAM KENEFICK
Assistant Commissioner
(916) 322-3553