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MATTHEW J. NEUBERT
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SECURITIES DIVISION
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ARIZONA CORPORATION COMMISSION

January 28, 2005

Paul J. Roshka, Jr., Esq.
Roshka Heyman & DeWulf, PLC
Suite 800
One Arizona Center
400 East Van Buren Street
Phoenix, Arizona 85004

Re: No-Action Request by Henry & Horne, PLC
A.R.S. § 44-3101(6)
S-256-NOAC

Dear Mr. Roshka:

The Securities Division has reviewed the no-action letter request dated December 20, 2004, submitted on behalf of the company referenced above. On the basis of the information set forth in that letter, the Securities Division declines to issue a no-action letter. We have attached photocopies of the letter containing the facts upon which this position is based.

Very truly yours,

A handwritten signature in black ink, appearing to read "m j n", followed by a horizontal line.

MATTHEW J. NEUBERT
Director of Securities

Attachment

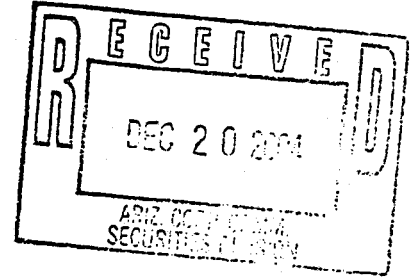
ROSHKA HEYMAN & DEWULF

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400 EAST VAN BUREN STREET
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PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

December 20, 2004

VIA HAND DELIVERY

Matthew J. Neubert, Esq.
Director
Securities Division
Arizona Corporation Commission
1300 W. Washington Street, 3rd Floor
Phoenix, AZ 85007



Dear Mr. Neubert:

We represent Henry & Horne, PLC ("H&H" or "the accounting firm") and have been authorized to write this letter on its behalf. H&H was founded in 1957 with a merger of the practices of Gail Horne, now retired, and Marvin Henry, who passed away in 1984. The firm has eleven Directors and one hundred sixteen (116) professional and administrative staff making it the largest independent CPA firm in Arizona. H&H concentrates its efforts in several significant industry areas, including cost segregation, automotive dealers, not-for-profit organizations, international services, closely held businesses including professional service organizations, and government and municipal entities.

H&H is considering creating an entity which would become a licensed investment adviser in Arizona (the "adviser entity"). Michael J. Carlin, who is currently licensed to sell securities through Royal Alliance Associates, Inc. ("Royal Alliance"), would become the initial investment adviser representative and be responsible for the management and operations of the adviser entity. All appropriate licenses would be obtained before the adviser entity began doing business. Mr. Carlin would make the investment decisions and initially be the only individual who would provide investment advisory services to the adviser entity's clients. It is anticipated that as the adviser entity's client base expands, additional licensed investment adviser representatives would be employed or otherwise affiliated. Any additional representatives will be licensed through Royal Alliance and supervised by Mr. Carlin.

H&H will own seventy percent (70%) of the adviser entity. Mr. Carlin will own thirty percent (30%). It is anticipated the adviser entity's clients will come from Mr. Carlin's existing client base and the relationships he has established over the years. H&H believes some of its clients will become clients of the adviser entity. Other individuals and entities could become clients of the adviser entity as well. Pursuant to A.R.S. §§ 44-1826 and 44-3135, we are writing to request assurance that the Securities

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Division of the Arizona Corporation Commission (the "Division") will not, for the reasons stated below, take any enforcement action against H&H, its certified public accountants and other personnel for not being licensed as investment advisory representatives.

It is anticipated that H&H's certified public accountants and other personnel will make the accounting firm's clients and other individuals aware of the adviser entity by merely informing them that the adviser entity exists and disclosing H&H's ownership interest in it. H&H's CPAs and other personnel will not give advice regarding, or recommend the services of, the adviser entity or Mr. Carlin. Accordingly, H&H's CPAs and other personnel will not be in a position to accept or receive directly or indirectly any commission, fee or other remuneration in connection with a referral or recommendation of the services of the adviser entity or Mr. Carlin within the meaning of A.C.C. R14-6-211, because they will not be referring or recommending those services. Nor will H&H's CPAs or other personnel make any investment recommendations.

It is our opinion that the above does not require H&H's CPAs and other personnel to register as investment adviser representatives. We base this analysis on the facts as noted and our review of A.R.S. § 44-3101(6). This section of the statutes defines investment adviser representative as follows:

...means any partner, officer or director of an investment adviser, any individual who occupies a status or performs functions similar to a partner, officer, or director of an investment adviser, or any other individual who is employed by or associated with an investment adviser, except clerical or ministerial personnel, who does any of the following...

The provisions of the statute referred to above make it clear that H&H's CPAs and other personnel will not be investment adviser representatives. We treat each of the provisions of the above quoted section of the statute in the order in which they are presented.

1. Investment adviser representative means any partner, officer, or director of an investment adviser.

No H&H CPA or other personnel will function as a partner, officer or director of the adviser entity, which will be the licensed investment adviser. Mr. Carlin will be in charge of the management and operations of the adviser entity.

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2. Investment adviser representative means any individual who occupies a status or performs functions similar to a partner, officer, or director of an investment adviser.

No H&H CPA or other personnel will be performing any functions for, or have any duties or responsibilities with, the adviser entity.

3. Investment adviser representative means any other individual who is employed by or associated with an investment adviser, except clerical or ministerial personnel...

No H&H CPA or other personnel will be employed by or compensated by the adviser entity, nor will they be associated with it in any capacity.

Since the introductory paragraph of A.R.S. § 44-3101(6) does not apply to H&H's CPAs or other personnel under the facts as presented, it is not necessary to consider the provisions of subsections (a) through (e) of that statute. Nonetheless, we feel it is useful to address those provisions as well:

- a) H&H's CPAs and other personnel will not make any investment recommendations or otherwise render advice regarding securities other than the traditional tax advice provided by a CPA to a client;
- b) H&H's CPAs and other personnel will not manage accounts or portfolios of the adviser entity's clients;
- c) H&H's CPAs and other personnel will not determine which recommendations regarding securities should be given to clients of the adviser entity nor will they provide any investment advice regarding securities to any committee of the adviser entity;
- d) Only Mr. Carlin and any other licensed investment adviser representatives of the adviser entity will solicit, offer or negotiate for the sale of or sell investment advisory services (as noted above, H&H's CPAs and other personnel will not give advice regarding, or recommend the services of, the adviser entity or Mr. Carlin and, thus, will not be engaging in solicitation within the meaning of A.C.C. R14-6-211); and
- e) H&H's CPAs and other personnel will not directly supervise anyone who performs any of the functions described in A.R.S. § 44-3101(6).

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While H&H's CPAs and other personnel will advise clients of the accounting firm and other individuals that the adviser entity exists, there will be no compensation paid to any H&H CPA or other personnel by the adviser entity. Revenue will flow as follows: (1) any commissions earned by Mr. Carlin for the services provided to the clients of the adviser entity will flow through Mr. Carlin's broker-dealer and be paid only to Mr. Carlin; and (2) any investment advisory fees earned by the adviser entity will flow through Mr. Carlin's broker-dealer, which will pay-out ninety-seven percent (97%) of those fees to Mr. Carlin. Mr. Carlin will retain thirty percent (30%) of the fees paid by any clients of the accounting firm who become clients of the adviser entity. The balance of the fees will remain with the adviser entity. Should there be profits at the end of the year, the accounting firm will receive seventy percent (70%) of those profits.

Based upon the foregoing analysis, it is our opinion that H&H's CPAs and other personnel are not required to become licensed as investment adviser representatives.

A no-action letter is appropriate because the issue presented appears to us to be of first impressions under the Investment Management Act, A.R.S. §§ 44-3101, et seq. The guidance the Division can provide through this no-action request will be very useful to the accounting profession and to individuals and entities providing or considering providing investment advisory services. In addition, the above legal analysis indicates that the issuance of a no-action letter in this situation is consistent with the law and the Commission's rules. A no-action position would also be consistent with H&H's desire to proceed in full compliance with the law. There would be no adverse effect on the public in granting this request.

Certification and Acknowledgment Pursuant to A.R.S. § 44-1826.

H&H certifies and acknowledges as follows:

1. The transaction described in this request is not directly or indirectly the subject of any pending or final judicial, self-regulatory organization or administrative proceeding.
2. The transaction described in this request has not been commenced.
3. This request, together with any documents or information submitted and any response from the Division, is public information and may be released for publication, except as otherwise provided by law. H&H understands that a no-action letter issued is limited to this specific matter, facts, persons and transactions described in this request and has no precedential value in any other content.

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Matthew J. Neubert, Esq.

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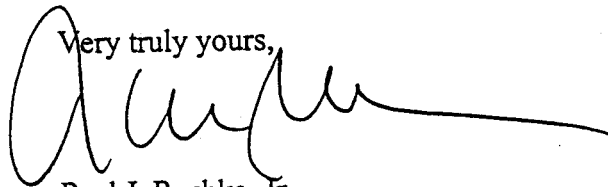
Conclusion.

For the reasons stated above, H&H's CPAs and other personnel of the accounting firm will not be functioning as investment adviser representatives when they inform clients and others of the existence of the adviser entity. The adviser entity will be subject to all the regulatory oversight available under the Investment Management Act as a licensed investment adviser. Mr. Carlin, the licensed investment adviser representative for the adviser entity and a licensed securities salesman with Royal Alliance, will likewise be regulated. Based upon these facts and circumstances, H&H requests that a no-action letter confirming our opinion be issued by the Division.

If you have any questions or require supplemental information, please do not hesitate to contact us. If the Division does not agree with our analysis, we would appreciate an opportunity to meet with the Staff to discuss this matter before a letter denying our request is issued.

We have enclosed the \$200 fee pursuant to A.R.S. §§ 44-1826(B) and 44-1861(M).

Very truly yours,



Paul J. Roshka, Jr.
For the Firm

PJR:rba

cc: Susan Baker-Toth, Esq. (via hand delivery)
Henry & Home, PLC (via e-mail)
Michael J. Carlin (via e-mail)