



# State of Utah

DEPARTMENT OF COMMERCE  
DIVISION OF SECURITIES

Michael O. Leavitt  
Governor

Douglas C. Borba  
Executive Director

Mark J. Griffin  
Director

160 East 300 South  
P.O. Box 45808  
Salt Lake City, Utah 84145-0808  
(801) 530-6600 • FAX (801) 530-6980

July 5, 1995

Mr. Neil S. Belloff  
Rosenman & Colin  
575 Madison Avenue  
New York, New York 10022-2585

Re: Prudential Securities, Inc. Client Continuity Program File # 004-7394-34/A42022-34

Dear Mr. Belloff:

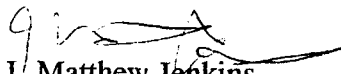
The Division of Securities, ("Division") has reviewed the request for an Interpretive Opinion and/or No-action Letter filed on April 17, 1995, pursuant to § 61-1-25(5) of the Utah Uniform Securities Act, ("Act") and Division Rule 164-25-5, on behalf of Prudential Securities Inc. The request for an Interpretive Opinion and/or No-action Letter is attached, thereby avoiding the need to recite the facts set forth in your letter.

Based upon the representations in your filing to the Division, and strict adherence thereto by Prudential Securities, Inc. each participant and each receiving Financial Advisor, and in view of the fact that Prudential Securities, Inc. is a registered broker-dealer and all personnel engaged in securities activities, including each Receiving Financial Advisor, will be subject to the securities laws of Utah and the applicable rules of the NASD, the Division will not recommend enforcement action if Prudential Securities, Inc. implements the program, as described.

Because this finding is based upon the representations made to the Division of Securities, it should be noted that any different facts or conditions of a material nature might require a different conclusion. Please note that this finding relates only to the referenced transaction and shall have no value for future similar activity.

Very truly yours,

MARK J. GRIFFIN, DIRECTOR  
UTAH DIVISION OF SECURITIES

  
J. Matthew Jenkins  
Director of Licensing



ROSENMAN & COLIN

575 MADISON AVENUE, NEW YORK, NY 10022-2585

TELEPHONE (212) 940-8800  
CABLE ROCOKAY NEWYORK  
TELECOPIER (212) 940-8776  
(212) 935-0679  
TELEX 427571 ROSCOL (ITT)  
971520 RCFLC NYK (W U.)

SAMUEL I. ROSENMAN (1896-1973)  
RALPH F. COLIN (1900-1985)

WASHINGTON OFFICE  
1300 19<sup>TH</sup> STREET, N. W.  
WASHINGTON, D. C. 20036  
TELEPHONE (202) 463-7177

April 17, 1995

WRITER'S DIRECT DIAL NUMBER

(212) 940-6644

**BY COURIER**

Utah Department of Commerce  
Division of Securities  
160 East 300 South  
Salt Lake City, UT 84111

Attention: Mr. J. Matthew Jenkins, Director of Licensing

Dear Mr. Jenkins:

On behalf of our client Prudential Securities Incorporated ("PSI"), pursuant to Section 61-1-25(5) and Rule 164-25-5 of the Utah Uniform Securities Act, we respectfully request an interpretive opinion from of the Utah Department of Commerce, Division of Securities, (the "Division") that it will not recommend any enforcement action if PSI implements its Retirement Program for Financial Advisors (the "Client Continuity Program" or the "Program") as hereinafter described without registration of such financial advisors pursuant to Section 61-1-3 of the Utah Uniform Securities Act. In connection with this request, we have enclosed a check in the amount of \$120 pursuant to the Division's fee schedule promulgated pursuant to subsection 63-38-3(2) of the Utah Uniform Securities Act.

In particular, we seek the concurrence of the Division in our view that retiring PSI Financial Advisors (the "Participants") participating in the Program and adhering to the Program requirements need not maintain their status as registered representatives or registered associated persons or agents of PSI, upon retirement. We call your attention to the Prudential Securities Incorporated, SEC No-Action Letter, available October 11, 1994 (the "Prudential Letter") in which the Staff of the Securities and Exchange Commission took a no-action position with respect to the Client Continuity Program implemented by PSI and the Shearson Lehman Brothers Inc. ("Shearson"), SEC No-Action Letter, available March 25, 1993 (the "Shearson Letter") with respect to a retirement/franchise protection program implemented by Shearson which is similar to PSI's Client Continuity Program. Two copies of the Client Continuity Program, the Prudential Letter and the Shearson Letter are attached hereto.

A Participant will qualify to participate in the Program if (i) the Participant is a registered Financial Advisor (not a branch manager) who has been with PSI at least five years and is 55 years of age or older, (ii) the Participant satisfies certain quality criteria, including (a) a low incidence of investment-related customer complaints, pending arbitration or litigation, or arbitration or litigation settled by the parties for less than \$5,000; (b) a low error rate on customer transactions; (c) an absence of investment-related arbitration or litigation decided against the Participant or settled by the parties for \$5,000 or more; and (d) the Participant not being subject to any sanctions imposed by regulatory or self-regulatory organizations or any other statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934; (iii) except at the initiation of the Program, the Participant has provided PSI with at least six months' advance notice of retirement, (iv) the Participant enters into an agreement with PSI and with one or more persons each of whom (the "Receiving FA") is a current PSI Financial Advisor or a current PSI Financial Advisor's assistant who is a registered person and who has been recommended by the Participant, setting forth the terms of the Participant's participation in the Program, and (v) the Participant enters into a non-competition agreement with PSI. Each Participant's continued participation in the Program is contingent on the Participant continuing to satisfy the above-described quality criteria during the three-year period designated below.

Pursuant to the Program, each Participant will recommend a Receiving FA who will service the Participant's client accounts following the Participant's retirement. Such recommendation will be subject to approval by the Receiving FA's branch manager, regional director and PSI's committee administering the Program. In addition, for the Receiving FA to be eligible to participate in the Program, the Receiving FA must have no history of legal or compliance problems and must have a minimum of three years' industry experience and two years' experience with PSI as a Financial Advisor or as a Financial Advisor's registered assistant.

The agreement entered into between PSI, the Participant and the Receiving FA will provide that all of the Participant's existing client accounts and subsequent additions to existing client accounts, together with other accounts carried by PSI evidencing a change by an existing account in its account category within PSI (e.g., from regular securities account to COMMAND account) but not a change in beneficial ownership (collectively, the "Eligible Accounts"), will be eligible for inclusion in the Program. During the transition period (six to twelve months except at the initiation of the Program), the

Participant will introduce the Receiving FA to his client accounts in order to effect a smooth, uninterrupted transition in the servicing of the clients' accounts upon the Participant's retirement.

Following the transition period, the Participant (or, upon his or her death, the Participant's designated beneficiary) and the Receiving FA will share all gross commissions, excluding service fees, attributable to the Eligible Accounts for a three-year period on a declining scale as follows:

<u>Year</u>	<u>Participant</u>	<u>Receiving FA</u>
1	50%	50%
2	40%	60%
3	30%	70%
<u>thereafter</u>	<u>0%</u>	<u>100%</u>

In addition, PSI's asset accumulation awards and PSI's performance and longevity awards derived from Eligible Accounts will be divided in the same proportions between the Participant and the designated Receiving FA during the three-year period;\* after the three-year period, no further asset accumulation awards or performance and longevity awards will be paid to the Participant. All payments under the Program will be made by PSI.

The Participant will receive no compensation for new account referrals after retirement, and the Participant will agree that, during the three-year period, he or she will not (a) contact former clients, directly or indirectly, for the purpose or with the effect of soliciting them to maintain securities accounts or to engage in securities transactions, (b) discuss securities accounts or securities transactions with former clients, (c) maintain any license as a registered or associated person of, or otherwise be associated with, PSI or any other broker, dealer, municipal securities dealer, government securities dealer, investment adviser, or investment company, or hold himself or herself out as being so associated, or (d) engage in the securities business in any other manner. The Participant will, nevertheless, receive a monthly report of activity in the

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\* PSI's performance and longevity awards to its Financial Advisors are calculated under a formula based on the Financial Advisor's length of service in the securities industry, length of service at PSI and gross commission production. PSI's asset accumulation awards to its Financial Advisors are calculated under a formula based on assets under management, minimum commission production levels and length of service in the securities industry.

Eligible Accounts, omitting the names of individual Eligible Accounts, for purposes of verification of amounts remitted by PSI.

If a Participant does not adhere to the restrictions above summarized as well as to the other terms of the agreement and the non-competition agreement entered into under the Program, the Participant (or the Participant's beneficiary upon death) will not be entitled to receive further payments under the Program and will be required to forfeit all payments previously received. The agreements between PSI and the Participants will so provide, with a view to assuring that each Participant has in fact retired from the securities business and does not remain engaged in the securities business to any extent or in any manner.

PSI's Committee administering the Program will monitor compliance with the requirements of the Program, including, without limitation, the Participants' and the Receiving FAs' compliance with the obligations they have undertaken under the Program. In order to reduce any risk to the public to negligible levels, these monitoring procedures will include (a) written notification to clients that their Financial Advisor is retiring (with specification of the applicable retirement date in such notification), that he or she is precluded from contacting former clients either directly or indirectly, after retirement, to discuss securities accounts or securities transactions, and that clients should contact PSI's branch manager if they have any questions in that regard or in the event of what they consider improper contact by the Participant; (b) periodic (at least annual) written confirmation by Participants, during the three-year period after retirement and as a condition of receiving payments under the Program, that they are in compliance with all requirements of the Program, including confirmation that they have not been in contact, directly or indirectly, with former clients to discuss securities accounts or securities transactions; (c) confirmation on these subjects by Receiving FAs, to the extent of their knowledge, and, where appropriate, similar confirmation by clients, (d) specific instructions to, and reports from, branch managers, (e) regular ongoing supervision of the activities of Receiving FAs, and (f) monitoring by the administering Committee, and annual reports on monitoring to the Compliance Committee of PSI's Board of Directors. PSI will, on a regular periodic basis, contact clients who were formerly clients of a Participant to verify that such clients have not been improperly contacted by the Participant.

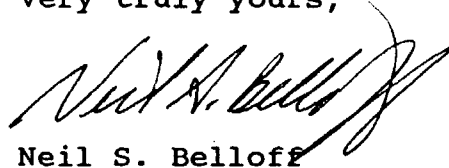
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On the basis of our review of the Program, and taking into account the Prudential Letter and the Shearson Letter (among other matters), it is our view that the receipt by Participants of payments under the Program does not require the Participants to maintain their status as registered representatives or registered associated persons of PSI. Please confirm that the Division shares this view.

If the Division does not concur with our view, we would appreciate the opportunity to confer with the Division prior to any written response to this letter. Of course, if you have any questions regarding this matter or desire additional information, please do not hesitate to call me at the number listed above.

Your prompt attention to this matter will be greatly appreciated.

Very truly yours,



Neil S. Belloff

Enclosures

cc: Donald R. Levine, Esq.  
Senior Vice President and  
Associate General Counsel  
Prudential Securities Incorporated