UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
TRADING AND MARKETS

November 17, 2025

Clifford Kirsch
Eversheds Sutherland (US) LLP
1114 Avenue of the Americas
40th Floor
New York, NY 10036-7703

Re: Personal Services Entities

Dear Mr. Kirsch:

In your letter dated November 17th, 2025,[1] on behalf of your client, the Financial Services Institute, you requested assurances that the staff of the Division of Trading and Markets ("Staff") would not recommend enforcement action if a registered representative-owned personal services entity ("PSE") received transaction-based compensation without registering as a broker-dealer pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"). This letter responds to your request. Each defined term in this letter has the same meaning as defined in your letter, unless we note otherwise.

You state in your letter that these arrangements would be structured so that supervision of the registered representatives' brokerage activities, and over the broker-dealer's brokerage business, remains with the broker-dealer. You also represent that the registered broker-dealer will retain the ability to effectively supervise its registered representatives, including by determining and directing the compensation to be paid to each of its registered representatives, and that the SEC, and any applicable self-regulatory organizations, will have access to books, records and other information they may require to exercise their regulatory oversight over the broker-dealer, its registered representatives, and its business operations. You also represent that the PSE would not be engaged in soliciting, executing, or negotiating securities transactions, or engaged in any other activities that would reasonably cause the PSE to meet the definition of "broker" or "dealer" under Section 3(a)(4)(A) or Section 3(a)(5)(A), respectively, of the Exchange Act.

[1] A copy of your letter is attached.

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Based on the facts and representations set forth herein and in your letter, and without necessarily concurring with your conclusions and analysis, the Staff will not recommend enforcement action to the Commission against a PSE solely for receiving transaction-based compensation under the terms and conditions described in your letter without registering as a broker-dealer pursuant to Section 15(b) of the Exchange Act.

The position of the Staff is based strictly on the facts and circumstances discussed in your request. Any different facts or circumstances from those set forth in your request might require a different response. Furthermore, this response expresses the Staff's position on enforcement action only and does not purport to express any legal conclusions on the questions presented. The Staff expresses no view with respect to any other questions that the proposed activities may raise, including the applicability of any other federal or state laws or rules, or any self-regulatory organization rules. This position is subject to modification or revocation by the Staff at any time. To the extent the position taken in this letter is inconsistent with prior no-action letters or other Staff statements, or portions thereof, those letters and Staff statements, or portions thereof, are superseded by this letter.

In addition, persons relying on this no-action position are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, including Sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with persons relying on this no-action position.

Sincerely,

Emily Westerberg Russell

Emily Westerberg Russell
Chief Counsel
Division of Trading and Markets

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November 17, 2025

Via E-Mail

Emily Westerberg Russell
Chief Counsel
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Request for No-Action Relief Regarding Channeling of Compensation to Registered Representative-Owned Business Entities

Dear Ms. Russell:

We are writing on behalf of the Financial Services Institute ("FSI")[1] to request that the Division of Trading and Markets ("Division") provide assurance that it would not recommend enforcement action to the U.S. Securities and Exchange Commission ("SEC") under section 15 (a) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), against a registered representative-owned personal services entity ("PSE") that receives transaction based compensation ("TBC") under the circumstances described below. The PSE would not be engaged in soliciting, executing, or negotiating securities transactions, or engaged in any other activities that would reasonably cause the PSE to meet the definition of "broker" or "dealer" under section 3(a)(4)(A) or section 3(a)(5)(a), respectively, of the Exchange Act. Further, borrowing from prior instances in which the SEC staff granted no-action relief to unregistered entities receiving TBC, the payment would be subject to a number of conditions designed to ensure that supervision of registered representatives' brokerage activities, and over the broker-dealer's brokerage business, remains with the registered broker-dealer. Those conditions are also designed to ensure that the registered broker-dealer retains the ability to effectively supervise its registered representatives, including by determining and directing the compensation to be paid to each of its registered representatives, and that the SEC, and any applicable self-regulatory organizations ("SROs"), have access to books, records and other information they may require to exercise their regulatory oversight over the broker-dealer, its registered representatives and its business operations.

Background

FSI's member firms are independent financial services firms and independent financial advisers and includes many broker-dealers ("BDs") who provide back-office and compliance support to independent registered representatives, including supervising registered representatives' brokerage activities. For more than forty years, FSI members have provided Main Street investors, particularly those residing in hard-to-reach rural areas, with comprehensive and affordable financial solutions. The central characteristic of the independent financial services firm model is the classification of registered representatives as independent contractors, rather than employees, of the BD. Similar to independent contractors in other industries, many registered representatives establish PSEs for succession and tax planning purposes and may use the PSEs to engage in other

[1] The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent registered representatives and independent financial services firms.

non-brokerage-related business endeavors. For some registered representatives, those other business endeavors may include financial endeavors, subject to regulatory oversight by other regulators, such as state insurance regulators. Critically, it is our view that PSEs acting in accordance with this letter, do not engage in activities that should require them to register as broker-dealers with the SEC due to the limited scope of their activities.

Despite their classification as independent contractors, for purposes of the Exchange Act and its implementing regulations, independent registered representatives are considered employees of the BD for supervision purposes. In 1982, the SEC's Division of Market Regulation issued a letter to FINRA (then called the National Association of Securities Dealers ("NASD")) articulating this framework. The letter required BDs to assume "the supervisory responsibilities attendant to a relationship with an associated person," when forming a relationship with an independent contractor.[2] In 1986, FINRA supplemented these statements in Notice to Members 86-65. FINRA stated that "irrespective of an individual's location or compensation arrangements, all associated persons are considered to be employees of the firm with which they are registered for purposes of compliance with NASD rules governing the conduct of registered persons and the supervisory responsibilities of the member."[3] In accordance with these stated policies, BDs are required to supervise all aspects of the securities businesses of their independent registered representatives, including the timing and amount of TBC paid to those representatives and the requirement that any PSE be established and operated in accordance with applicable FINRA requirements including FINRA Rule 3270 ("Outside Business Activities of Registered Persons."). Nothing in this letter should be construed to change that dynamic.

Discussion and Analysis

It is critical that the SEC staff take a fresh look at this issue. In a number of SEC staff responses to requests for no-action relief and SEC enforcement actions, the receipt of TBC has been deemed dispositive of one's need to register as a broker-dealer with the SEC.[4] However, courts have noted that there is a host of interpretive guidance that diverges from that position and, instead, carves out a number of exceptions where receipt of TBC, alone, would not trigger a registration requirement.[5] That inherent inconsistency has led to the contradictory interpretive guidance, discussed below, and left individuals and entities to work through a maze of interpretive letters in hopes of correctly determining whether receipt of TBC is, in fact, dispositive of broker-dealer activity; or whether their specific circumstances fit into one, of a number, of fact intensive, *ad hoc* interpretive exceptions created by the SEC over the preceding few decades.

Many independent contractors, across America, form a limited liability company or some other business entity that receives compensation for services rendered by the independent contractor to third parties. Thus, this structure is not unique to the brokerage industry. Forming a business entity to receive compensation, in lieu of receiving it in the independent contractor's individual

[2] *See* Letter from Douglas Scarff, Director, Division of Market Regulation, SEC to Gordon S. Macklin, President, NASD, at 3 (June 18, 1982).

[3] *See* NASD Notice to Members 86-65, Compliance with the NASD Rules of Fair Practice in the Employment and Supervision of Off-Site Personnel (Sept. 12, 1986).

[4] *See, e.g.*, *Wolff Juall Investments, LLC* (avail. May 17, 2005); *Vanasco, Wayne & Genelly, SEC Interpretive Letter* (avail. Feb. 17, 1999); *Birchtree Financial Services, Inc.* (avail. Sept. 22, 1998); *SEC v. FTC Capital Mkts., Inc.*, No. 09-cv-4755, 2010 U.S. Dist. LEXIS 65417 (S.D.N.Y. May 20, 2009); *SEC v. UBS AG*, 100:09-CV-00316, 2009 U.S. Dist. LEXIS 123034 (D.D.C. Feb. 18, 2009).

[5] *Sec. & Exch. Comm'n v. Kramer,* 778 F. Supp. 2d 1320, at 1341 (M.D. Fla. 2011); *see also Maiden Lane Partners, LLC v. Perseus Realty Partners, G.P. II,* LLC, 2011 WL 2342734 (Mass. Super. May 31, 2011) (relying on *Kramer*).

capacity, can result in tax savings for these working business owners and the subcontractors they may hire. The PSEs also ease burdens related to succession and estate planning. The requested relief would permit working business owners in the financial services sector to take advantage of these same benefits.

There is a line of no-action letters that would support the notion that broker-dealer registration is not required by a PSE's mere receipt of TBC. In those letters, the SEC staff did not object to a broker-dealer's transmission of securities commissions through non-registered persons with whom the broker-dealer's registered representatives were also associated for purposes of income tax withholding and payroll deductions. For example, in *National Pension Administrators, Inc.* (avail. Oct. 19, 1979), the staff did not object to the proposal that a broker-dealer's registered representatives assign their commissions to the insurance agency with which they were also associated for disbursement of commissions after the deduction of income taxes required to be withheld. In *Moran & Associates, Inc.* (avail. Jul. 29, 1988), the staff did not object to a broker-dealer's assignment of commissions due its registered representatives to an investment adviser with whom they were also associated for disbursement after deductions for income tax withholding. Also, in *Time Insurance Company* (avail. Oct. 17, 1989), the staff did not object to the channeling through an insurance company of TBC due to the insurer's managers, who were also associated with a broker-dealer, in order for all compensation payable by the insurer and the broker-dealer to be paid in one check to the manager. These letters advance a functional analysis to determining broker-dealer status. The mere receipt of TBC did not cause the entity to be deemed a broker-dealer.

However, other letters decline to take a similar position. These letters include *Wolff Juall Investments* (avail. May 17, 2005); *Vanasco, Wayne & Genelly, SEC Interpretive Letter* (avail. Feb. 17, 1999); *Birchtree Financial Services, Inc.* (avail. Sept. 22, 1998); *Lombard Securities Corporation* (avail. July 12, 1994); *American Capital Equities, Inc.* (avail. May 15, 1987); and *Mutual Benefit Financial Services Company* (avail. Jan. 21, 1983). These letters appear to rest primarily on the notion that the receipt of commissions, or other TBC, is the determinative factor in whether a person is acting as a broker-dealer.

Courts have disagreed with the SEC identifying receipt of TBC as the single factor in determining the need for broker-dealer registration and have urged the SEC to remember that the fundamental question is whether the person or entity receiving TBC is "engaged in the business of effecting transaction in securities for the accounts of others."[6] We agree with the courts and do not believe that the PSE should be required to register with the SEC solely because of its receipt of TBC, so long as transactions in securities that are initiated by the registered representative would be effected by the BD, and the PSE is not engaged in soliciting, executing or negotiating securities transactions, or any other activities tht would reasonably cause the PSE to meet the definition of "broker" or "dealer" under the Exchange Act.

We note that with respect to the requirement to register as an investment adviser, the mere receipt of advisory compensation has never been seen as determinative in and of itself. On the contrary, the staff has consistently taken the position that Section 202(a)(11) of the Investment Advisers Act of 1940, as amended, defines an investment adviser as: i) any person or firm that for compensation; ii) is engaged in the business of; iii) providing advice to others or issuing reports or analysis regarding securities. Further, the staff has said that a person must satisfy all three elements to fall within the definition.[7] It is logical for the staff to align its position regarding the receipt of brokerage compensation with its longstanding position regarding the receipt of advisory compensation.

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[6] *See Kramer*, 778 F. Supp. 2d at 1341; *Maiden Lane Partners, LLC*, 2011 WL 2342734 at *3-4.
[7] *See e.g.*, Investment Advisers Act Release No. 1092 (Oct. 8, 1987).

Conditions

Borrowing from prior circumstances in which the SEC has granted no-action relief in relation to receipt of TBC by an unregistered business entity, we propose a set of conditions designed to provide the staff with assurances that, while the PSE would receive TBC, it would not be engaged in soliciting, executing or negotiating securities transactions, or any other activities that would reasonably cause the PSE to meet the definition of "broker" or "dealer" under the Exchange Act. Further these conditions are designed to ensure that the registered broker-dealer retains the ability to effectively supervise its associated persons and that the SEC and any applicable SROs are not hindered in their ability to effectively exercise their regulatory oversight over the broker-dealer, its registered representatives and its business operations.[8] Those conditions are as follows:

- The BD will maintain a bank account for paying TBC to its independent contractor registered representatives who are also employees or an independent contractors of the PSE and associated with the BD (the "RRs").[9]
- The BD will instruct (or otherwise approve) the PSE regarding the size and timing of TBC to be paid to the RRs; Such instruction (or approval) will be specific to the payment to be made to each RR.[10] In this regard, registered principals who are also employees or independent contractors of the PSE may make recommendations to the BD regarding the size and timing of TBC to be paid to the RRs; however, the BD will have final discretion regarding the size and timing of the payment to each of the RRs.[11]
- Upon receiving instructions or approval from the BD, the PSE will, promptly, distribute TBC to the RRs, provided that the PSE may retain a portion of such payments for its use in paying for its overhead and administrative expenses.[12]
- As required by Rules 17a-3 and 17a-4 of the Exchange Act, the BD will maintain records regarding all compensation payments it makes to the PSE and which will provide required details as to payments made to each RR.
- Each of the RRs and Registered principals of the PSE will be registered with the same BD.
- Each owner of the PSE will be a registered person of the BD.
- The PSE's location will either be designated as a branch office or as an Office of Supervisory Jurisdiction of the BD.

The BD will maintain policies and procedures designed to ensure that the conditions set forth in this letter are satisfied. Furthermore, for the avoidance of any doubt regarding delineation of the parties' obligations, responsibilities and limitations, the BD and PSE would enter into a written independent contractor servicing agreement, which would provide:[13]

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[8] *Headway Corporate Staff Administration* (avail. Aug. 14, 2002).

[9] *See Investacorp Group, Inc. and Investacorp, Inc.* (avail. Sept. 26, 2003)

[10] *Id*.

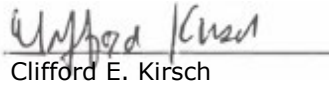
[11] *Id*.

[12] *Id*.

[13] *See Headway Corporate Staff Administration* (avail. Aug. 14, 2002) (in which incoming letter spells out a number of provisions to be provided for in an agreement between Headway and broker-dealers which serve collectively to ensure, among other things, that the broker-dealer's control of the activities of its representatives and the SEC's authority over securities-related activities of the registered representatives are in no way interfered with by the arrangement).

- The BD will be obligated to comply with all applicable federal, state, and local regulations and registration and licensing requirements;
- The BD will have sole and exclusive control over the day-to-day securities related activities of all of its associated persons;
- The BD will be solely responsible for hiring, proper registration, licensing, training, and supervision of all of its registered representatives with respect to the BD's obligations under all applicable securities laws, rules, and regulations;
- The BD will retain the exclusive right to discipline and terminate its associated persons;
- All books and records in the possession of the PSE that are maintained on behalf of the BD will be made available for inspection by the SEC, any SRO, or any other regulatory authority with jurisdiction over the BD's business;
- The BD will not assert that the existence of any agreement with the PSE in any way affects the ability of the SEC, any SRO, or any other relevant regulatory authority to regulate, examine or discipline the BD or any of its associated persons for violations of applicable securities laws;
- The PSE will not itself engage in any securities-related activities that would require it to register as a broker-dealer;
- The PSE will not hold itself out as a broker-dealer;
- To the extent the PSE employs any person who is not registered, such personnel will not be permitted to engage in any securities-related activities that would require them to become registered representatives of a broker-dealer and will only have clerical or ministerial involvement in securities transactions; and
- The PSE will not pay any bonuses to unregistered personnel which are tied to TBC paid by the BD to the PSE.

Sincerely,



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