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July 1, 2002

Mr. Rodney Johnson, President
HS Dent Investment Management, L.L.C.
7557 Rambler Road, Suite 700
Dallas, Texas 75231

RE: Investment Adviser Registration of
H.S. Dent Investment Management, L.L.C.

Dear Mr. Johnson:

This is in response to your letter dated January 11, 2002 and received by this Agency on January 22, 2002, as supplemented by your facsimile received March 21, 2002.

Your letters describe a proposed plan of business whereby H.S. Dent Investment Management, L.L.C. ("HS Dent"), of Dallas, Texas, would offer investment advice only to registered investment advisory firms, with over \$10 million in assets, that are not located in Texas. You explained that HS Dent will contract with registered investment advisers to provide them with sub-advice on wrap programs that they sponsor. HS Dent will not have individual clients, such as natural persons, corporations, partnerships, trusts, or any other entity, and will not have discretion to affect transactions. The advice from HS Dent will not be specific to individual retail clients because HS Dent will have no knowledge of the end client. Instead, the advice takes the form of several model portfolios based on different tiers of risk in terms of standard deviation, based on HS Dent's economic views and forecasts. The firms receiving the advice are free to implement or not implement the advice and HS Dent does not have the ability to affect change in any of their clients' portfolios.

You stated that it is your understanding that under these circumstances, HS Dent will be exempt from investment adviser registration or notice filing in Texas.

Section §109.3(e) of the Rules and Regulations of the State Securities Board ("Rules") provides an exemption from investment adviser registration for a person engaging in the rendering of investment advisory services to a financial institution or other institutional investor listed in Section 5.H of the

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Texas Securities Act (“Act”) or §109.3(c). Section 5.H includes a “registered dealer actually engaged in buying and selling securities” but does not include registered investment advisers. Similarly, registered investment advisers are not included within the term “accredited investor” as that term is used in §109.3(c)(1). The term “qualified institutional buyer,” used in §109.3(c)(2) includes any investment adviser registered under the Investment Advisers Act of 1940 only if it is “acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the [investment adviser].” See 17 C.F.R. §230.144A(1)(i)(I). The final category, §109.3(c)(3), encompasses institutional investors that include “a corporation, partnership, trust, estate, or other entity (excluding individuals) having net worth of not less than \$5 million, or a wholly-owned subsidiary of such entity, as long as the entity was not formed for the purpose of acquiring the specific securities.”

It is possible that the registered investment advisory firms that you described as potential clients, depending upon their organizational structure and the reasons for their formation, may fall within the categories specified in §109.3(c)(2) and/or (3) of the Rules. Section 109.3(e) of the Rules provides an exemption from investment adviser registration for a person *engaging in the rendering of investment advisory services to a financial institution or other institutional investor listed in Section 5.H of the Act or §109.3(c)*. In order to satisfy this exemption from investment adviser registration, §109.3(e) further provides that the financial institution or other institutional investor must be acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the specific securities or the investment advisory services for which the investment adviser is claiming an exemption under §109.3(c).

Based on the foregoing understanding, and if each registered investment advisory firm clients meets all of the criteria of the rule and is acting for its own account or as bona fide trustee of a trust organized and existing other than for the purpose of acquiring the specific securities, the exemption provided by §109.3(e) of the Rules would be available and registration of or notice filing by HS Dent as an investment adviser would not be required.

Please note that this Agency has not made an independent investigation of the facts, but has relied solely on the information you have provided. If this information is incorrect or changes substantially, the staff would reconsider the matter and the opinion stated above would be void.

Further, this Agency does not grant nor confer an exemption. Its availability depends entirely on full compliance with the language of the exemption. If a dispute arises about availability of an exemption, the burden of proof falls on the party claiming the exemption.

Finally, the opinions expressed by this Agency are not binding on civil litigants in future proceedings.

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I trust this letter answers your inquiry. Please feel free to write us if you need further information.

Very truly yours,

DENISE VOIGT CRAWFORD
Securities Commissioner

David Weaver
General Counsel

DW/ms