

November 23, 1998

Tom Prince

JACK, LYON & JONES, P.A.

3400 TCBY Tower

425 West Capitol Avenue

Little Rock, AR 72201-3472

Re: Millennium Capital Advisors, Inc.

No Action No. 98-014

Dear Mr. Prince:

This Department is in receipt of your letter dated October 27, 1998, and attachments requesting this Department's position as regards the propriety of payment by Millennium Capital Advisors, Inc. ("Millennium"), a registered investment adviser to individuals not registered as investment adviser representatives under the Arkansas Securities Act, codified as Arkansas Code Annotated § 23-42-101, *et seq.* (the "Act"), for the solicitation of customers. The facts as I understand them are essentially as follows:

Millennium seeks to enter into written agreements with individuals, under the terms of which the individuals will solicit customers for Millennium's investment advisory services and be paid cash payments for such services. The cash payments contemplated will be based upon a percentage of the investment advisory fee paid to Millennium by such customers, however, the fee paid by such customers will not exceed the fee paid by other, non-solicited customers of Millennium for the same services. These "solicitors" will not be registered as representatives of Millennium, or of any other investment adviser, and will not have available to them any of the statutory exclusions set forth in Ark. Code Ann. § 23-42-102(8).

All solicitations and payments will be made in strict accordance with the provisions set forth in 17 CFR 275.206(4)-3 governing the position of the Securities and Exchange Commission regarding payment of solicitor's fees by investment advisers. Specifically, each customer who is solicited will be furnished a copy of the disclosure statement required by paragraph (b) of such rule describing the payment of fees by Millennium to the solicitor and a copy of Millennium's Form ADV Part II or such other disclosure document containing the same information as Form ADV Part II that Millennium may adopt. Each solicited customer will be required to sign a statement that he has received a copy of such documents.

Based upon your representations as set forth above, and more particularly in your letter and attachments, the staff of the Department will not recommend enforcement action to the Commissioner if the cash payments are made in the manner outlined. However, please be advised that the Department's position is subject to change in the event that it appears that payments to solicitors by investment advisers begin to result in customer complaints or misunderstandings.

Please note that the position of the Department is based upon the representations that you have made in your letter referenced above. Different facts and circumstances might well result in a different position being taken. Additionally, the position expressed deals only with anticipated or possible

enforcement action, and does not purport to be a legal opinion or to affect any civil liability that may exist

Yours truly,

John E. Moore, Jr.
Staff Attorney