

COMMONWEALTH OF KENTUCKY
OFFICE OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES

IN THE MATTER OF:)

APPLICATION OF:)

PHOTIZO GROUP, LLC)
112 N. MAIN STREET, SUITE F)
VERSAILLES, KENTUCKY 40383)

**ORDER OF REGISTRATION
EXEMPTION PURSUANT TO KRS
292.330(1) and 292.330(14)**

PRELIMINARY BACKGROUND AND FINDINGS

The Division of Securities is in receipt of the letter dated February 27, 2007, from Ed Crowley, CEO of Photizo Group, LLC, 112 N. Main Street, Suite F, Versailles, KY 40383 (“Photizo”), on behalf of the entity, to Division Director, Colleen Keefe, requesting that the Division clarify the scope of the definition of “investment adviser” under the Securities Act of Kentucky (“Act”) in light of certain facts and circumstances he represents to exist in that letter.

An “investment adviser,” as that term is used in the Act, is essentially one who advises others on whether they should buy or sell securities and gives that advice for compensation. That would include advice to hold a security. Both the advice and the compensation are necessary to bring the activity within the purview of the Act. The investment adviser is typically the entity. The individuals who actually interact with the customers or clients are the investment adviser representatives. The Act provides for the registration (licensing) and regulation of this activity and those who engage in this activity. This is a simplification. There are many exceptions and there is more to the concept than this statement. However, this is the essence of the subject area.

Photizo represented to the Office of Financial Institutions that it is a small marketing research company located in Versailles, Kentucky. It further represented that it does custom research for various companies including research for entities located on Wall Street in New York. According to Photizo, some of these firms ask it to do research on companies from a competitive standpoint, channel standpoint, strength of product line, and/or marketing prowess standpoint. It states that after it completes its research it submits the results back to those companies for compensation based on their research.

Photizo represents that it does not manage money for clients and does not sell any securities. Photizo has stated in connection with this matter that it is not aware of the stock portfolios that its customers have, nor is it interested in their portfolios, and that it offers no portfolio guidance whatsoever. Photizo states that it works with hedge fund companies and selected institutional investors (such as mutual funds) and that it does not advise any individual clients.

Photizo represented that one customer has asked it to put a rating on the company reports it researches for this customer. The ratings range from, “Very positive—strong buy to Very Negative—strong sell.

Based on representations by Photizo, it would be fair to conclude that this entity does not offer investment advice to the general public. Rather, any advice it would offer on the advisability of buying or selling securities, being direct advice to buy or sell or indirect advice that would strongly imply that one buy or sell but fall just short of stating that the recipient should buy or sell, would be limited to customers or clients who could be described as institutional investors. Photizo does intend to convey that conclusion and does represent that that is in fact the case with its operations.

The Office of Financial Institutions and its executive director are charged with administration and enforcement of the Act. The purpose of the Act and this agency has always been understood or interpreted to be for the protection of the public. Hence, agency actions are only instituted when such action is in the public interest. However, the Act does allow for private causes of action and the agency never wants to restrict the right of any aggrieved person to seek redress through rights established under the Act. The two, agency action and private action, exist side by side under the Act and independent of each other. The action or inaction of this agency is never to be interpreted to control the outcome of a private action. The private action is always independent of agency action and stands or falls on its own.

In light of the fact that Photizo does not offer investment advice to the general public, it would not be necessary or in the public interest to require that Photizo register as an investment adviser under KRS 292.330 nor would it be necessary or in the public interest to have employees or agents of Photizo register as investment adviser representatives under KRS 292.330 as they too will not be offering investment advice to the general public. Should this change, or be incorrect, and should either Photizo or its employees or agents offer investment advice to the general public, it would be necessary and in the public interest to require both to register as an investment adviser and investment adviser representatives, respectively.

The definition of “investment adviser” in KRS 292.310(10) [Uniform Act §401(f)] has been taken almost verbatim from the definition in §202(a)(11) of the Investment Advisers Act of 1940.

KRS 292.310(10)(j) allows the executive director to by rule or order exclude from the definition of “investment adviser” such other persons not within the intent of the definition of “investment adviser.”

Section 203(b)(3) of the 1940 Act exempts from the federal registration requirements of Section 203(a) of the 1940 Act any person who nonetheless qualifies as an investment adviser under the 1940 Act who:

during the course of the preceding 12 months has had fewer than 15 clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under Title I of this Act, or a company which has elected to be a business development company pursuant to Section 54 of Title I of this Act and has not withdrawn its election.

(hereinafter, a “203(b)(3) Adviser”).

It has clearly been the intent of the Federal Act and by analogy the Act to exempt those persons falling within the purview of Section 203(b)(3) of the 1940 Act and by analogy from KRS 292.330.

Coupled with KRS 292.310(10)(j), pursuant to KRS 292.330(14), any broker-dealer, agent, investment adviser or investment adviser representative, or transaction or class of transactions by such persons, for which the executive director expressly by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors shall be exempt from registration in the Commonwealth of Kentucky.

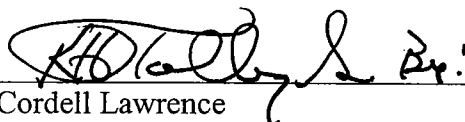
WHEREAS, in light of the representations of Photizo, and conditioned upon those representations being and remaining true, Photizo should be exempted from the requirements that it register as an investment adviser and its employees should be

exempted from the requirements that they register as investment adviser representatives pursuant to KRS 292.330.

NOW, THEREFORE IT IS HEREBY ORDERED that Photizo is hereby exempted from the requirements that it register as an investment adviser and its employees are exempted from the investment adviser representative registration requirements pursuant to KRS 292.330.

IT IS FURTHER ORDERED that Photizo shall be exempt from the investment adviser registration requirements and its employees shall be exempt from the investment adviser representative registration requirements of KRS 292.330 conditioned upon the representations herein and continuing so long as such representations remain true and the facts and circumstances herein continue to exist. This Order shall continue in effect until withdrawn or until facts and circumstances change to where the exemption is no longer in the public interest. The Office reserves the right to revoke this exemption at any time should any representations not be true or should facts and circumstances change. Furthermore, subsequent legislative and/or regulatory enactments may result in the modification, abrogation or vacation of this Order.

This Order entered and signed this 8th day of March, 2007.



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