

[Pub. Avail.: April 18, 1990]

Our Ref No. 90-199

Value Line, Inc.

File No. 801-

RESPONSE OF THE OFFICE OF CHIEF COUNSEL  
DIVISION OF INVESTMENT MANAGEMENT

By letter dated April 3, 1990, you request the staff's assurance that we would not recommend any enforcement action to the Commission under the Investment Advisers Act of 1940 ("Advisers Act") if Value Line, Inc. ("VLI") transfers to a wholly-owned subsidiary, Value Line Publications, Inc. ("VLP"), the unfulfilled portions of subscriptions to its investment related periodicals and the obligation to fulfill those subscriptions. You state that the transfer of subscriptions from VLI to VLP will not constitute an assignment of investment advisory contracts within the meaning of Section 205(a)(2) and 202(a)(1) of the Advisers Act.

On a number of occasions prior to the adoption of Rule 202(a)(1)-1, the staff has been asked to express opinions as to whether particular transactions would constitute assignments under either the Advisers Act or the Investment Company Act of 1940. See, e.g., Templeton Investment Counsel Ltd. (pub. avail. Jan. 22, 1986); Spears, Benzak, Salomon & Farrell, Inc. (pub. avail. Jan. 21, 1986); Scudder, Stevens & Clark (pub. avail. Mar. 18, 1985). With the adoption of Rule 202(a)(1)-1 under the Advisers Act, rules are now in place under both Acts codifying the standards applied by the staff in addressing these issues. Having stated our views, we no longer respond to no-action requests in this area unless they present novel or unusual issues. See Working Assets Limited Partnership (pub. avail. Dec. 19, 1989); Nikko International Capital Management Co., Ltd. (pub. avail. June 1, 1987). We do not believe that your request raises any particularly novel issue and, thus, we will not respond to the merits of your request.

*Bibb L. Strench*

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Staff Attorney

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April 3, 1990

WRITER'S DIRECT DIAL NO.:

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Thomas S. Harmon, Esquire  
Chief Counsel  
Division of Investment Management  
Securities and Exchange Commission  
Washington, D.C. 20549

Dear Mr. Harmon:

On behalf of our client Value Line, Inc. ("VLI"), we are writing to request the Division to confirm that it will not recommend that the Securities and Exchange Commission ("Commission") take any action under the Investment Advisers Act of 1940, as amended, (the "Act") with respect to the transaction described below. Specifically, with respect to the proposed transfer from VLI to a wholly owned subsidiary, of the unfulfilled portions of subscriptions to publications, we are of the view that the proposed transfer does not constitute an assignment of investment advisory contracts within the meaning of the Act and request confirmation that the Staff will not recommend that the Commission assert a contrary position. As detailed below, the proposed transfer does not involve any change of control or management.

## INTRODUCTION

VLI is a New York corporation engaged in two basic businesses, the publication of investment related periodicals sold to the general public on a subscription basis and the management of securities portfolios. At January 31, 1990 there was a total of approximately 95,000 subscribers to the publications. The publications contain disinterested articles analyzing securities, and articles on investment related topics of general interest. They do not contain personalized investment advice. Subscribers are entitled to receive only the publications (in print or electronic form). The contents of publications are not and cannot be tailored to the individual requirements of subscribers.

Thomas S. Harmon, Esquire  
April 3, 1990  
Page 2

VLI also manages securities portfolios for institutions, such as investment companies and retirement funds, and for individuals. At January 31, 1990, it had a total of approximately \$3.2 billion under management. For portfolio management clients, VLI personnel select securities on the basis of each client's individualized objectives and needs. This requires continuous contact with clients to ascertain specific needs and changes in a client's circumstances and to make recommendations. In the case of discretionary accounts, clients must be regularly advised of specific investment decisions and updated regarding the performance of accounts. This is a very different business from the publication of VLI periodicals that review a preselected universe of securities on a continuing basis without reference to the specific needs and objectives of a particular portfolio. While both publication and money management activities require securities research and analysis, the publication business emphasizes writing and editorial skills while portfolio management requires analyses of portfolios, trading expertise and skills in client relations.

VLI currently conducts both publication and portfolio management under one corporate umbrella. VLI is a New York corporation registered with the Commission as an investment adviser. VLI's common stock is 80% owned by Arnold Bernhard & Co., Inc. ("AB&Co."), a privately held New York corporation in which its chairman and CEO owns more than 50% of the outstanding voting stock. 20% of VLI's shares are publicly held.

VLI now proposes to reorganize its corporate structure with a view towards better managing and monitoring the results of its different businesses. To this end, it proposes to create a wholly owned subsidiary known as Value Line Publications, Inc. ("VLP") and to transfer to VLP all of the assets and related liabilities and personnel currently employed in preparation and distribution of the publications. In this connection, it proposes to transfer to VLP the unfulfilled portions of current subscriptions to the publications and the obligation to fulfill those subscriptions. All portfolio management and other investment advisory functions will continue to be performed by VLI, and VLI will continue to be registered with the Commission as an investment adviser. For the reasons set forth below, we are of the opinion that transfer of the subscriptions from VLI to VLP will not constitute an assignment of investment advisory contracts within the meaning of Section 205 (a)(2) or Section 202 (a)(1) of the Investment Adviser's Act of 1940. We respectfully request the Staff's confirmation that upon consummation of the reorganization described herein the Staff would not recommend enforcement action.

Thomas S. Harmon, Esquire  
April 3, 1990  
Page 3

### THE REORGANIZATION

As stated above, VLI is a New York corporation registered with the Commission as an Investment Adviser. It is 80% owned by AB&Co., a closely held New York corporation. The remaining 20% of VLI common stock is publicly held and traded in the over-the-counter market on the NASDAQ National Market System. A majority of the voting stock of AB&Co. is owned by Jean Bernhard Buttner, Chairman, President and Chief Executive Officer of both AB&Co. and VLI.

VLP is a New York corporation wholly owned by VLI. There is no plan to transfer any interest in VLP to any person. VLP therefore is and will continue to be controlled by VLI and ultimately by AB&Co. and Mrs. Buttner. It is also presently intended that Mrs. Buttner will be President and CEO of VLP. Initially the board of directors and officers of VLI and VLP will also be identical.

In implementing the reorganization, VLI will transfer to VLP all assets used in researching, writing, editing, publishing and distributing the publications. VLI employees who work solely on the publications will be transferred to VLP. Those employees who work on portfolio management will continue to be employed by VLI. Where a VLI employee also performs services for VLP, VLP will be charged for those services.

The liabilities of VLI related to the publications, including the obligations to existing subscribers to fulfill current subscriptions will be transferred to VLP. VLP will fulfill those subscriptions and satisfy the other liabilities.

All subscriptions to Value Line publications purchased after the date of the reorganization will be purchased from VLP whether those subscriptions be renewals of current subscriptions or entirely new. VLI will also pay VLP an amount, equal to the amount estimated to be necessary to fulfill subscriptions existing on the date of reorganization.

The proposed reorganization will allow VLI to better segregate the costs associated with each of its main businesses and to monitor results of each business more precisely. It will also permit a better definition of each corporation's legal and regulatory responsibilities. By creating a corporate organization which lends itself to better management and cost control, VLI hopes to maximize the use of resources allocated to each business and to improve future planning.

Thomas S. Harmon, Esquire  
April 3, 1990  
Page 4

#### DISCUSSION

Since VLP will limit its business to the issuance of disinterested publications sold to the general public, it need not register with the commission as an investment adviser. Lowe v. SEC, 472 U.S. 181 (1985). We are aware that the Staff has consistently refused to address the factual question of whether a specific publisher is bona fide and therefore not subject to the registration requirements of the Act. See, e.g., Northwest Computerworkers, Inc., (July 10, 1987); Hamilton Information Systems (June 20, 1989). Accordingly, while we have advised VLI that the proposed business of VLP does not require registration, we are not asking for the Staff's concurrence in this regard.

The question presented relates solely to the transfer of existing subscriptions to VLP and whether such a transfer constitutes an assignment of an investment advisory contract within the meaning of the Act. We believe it does not. A person may conduct a publication business without registration. It follows that subscriptions to the publication are not investment advisory contracts within the meaning of the Act. Accordingly transfer of subscriptions is not subject to the limitation on assignments contained in Section 205(a) of the Act. A contract is not an investment advisory contract merely because one of the contracting parties happens to be registered under the Act.

Even if subscriptions to impersonal publications offered to the general public were considered investment advisory contracts subject to Section 205, we are of the opinion that the transfer of subscriptions from VLI to VLP will not be an assignment within the meaning of the Act. Rule 202(a)(1)-1 provides:

A transaction which does not result in a change of actual control or management is not an assignment for purposes of Section 205(2) of the Act.

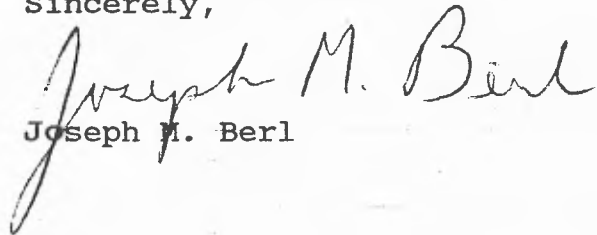
In the proposed reorganization, no change of control of the adviser will take place. VLP will be a wholly-owned subsidiary of VLI. VLP's officers and directors will be identical to VLI's. Control of VLP and VLI will not change, it will reside in AB&Co. and its majority shareholder. Actual fulfillment of current subscriptions will be done by the same staff using the same facilities and resources to research, write, edit, print and distribute the publications. To subscribers, there will be no perceptible difference. The transfer will merely be an internal corporate matter.

Thomas S. Harmon, Esquire  
April 3, 1990  
Page 5

CONCLUSION

For all of the above reasons, we respectfully ask the Division to confirm that it will not recommend that the Commission take any action with respect to the above described transaction.

Sincerely,

A handwritten signature in cursive script that reads "Joseph M. Berl". The signature is written in dark ink and is positioned above the typed name.

Joseph M. Berl

JMB:pcp