



Barry Glennon  
Director

# State of New Hampshire

## Department of State Bureau of Securities Regulation

107 North Main Street, State House Rm. 204  
Concord, NH 03301-4989  
Telephone: (603) 271-1463. Fax: (603) 271-7933

July 23, 2019

THERESE HOGAN  
DIRECTOR, BLUE SKY SERVICES  
NRS  
88 BLACK FALCON AVE STE 305  
BOSTON MA 02210

RE: Letter Requesting Interpretative Opinion Regarding Notice Filing Exemption  
Clearwater Investment Trust – Clearwater Core Equity Fund, MF15-0084922  
Clearwater Investment Trust – Clearwater Tax-Exempt Bond Fund, MF15-0084924  
Clearwater Investment Trust – Clearwater International Fund, MF15-0084925  
Clearwater Investment Trust – Clearwater Small Companies Fund, MF15-0084923

Dear Ms. Hogan,

On March 8, 2019, the Bureau of Securities Regulation (“the Bureau”) received a letter from you requesting an interpretative opinion that would allow the issuer of the above-referenced funds, Clearwater Investment Trust (hereinafter “Clearwater”), to rely on an exemption from the notice filing requirements set forth in NH RSA 421-B:3-302 and NH RSA 421-B:6-614. Subsequent to this requests, the Bureau had two discussions and exchanged several items of correspondence by email to further clarify the nature of the request and of the business conducted by Clearwater and associated entities. Based on this correspondence and the Bureau’s discussions, the facts to support your request are as follows.

### **Facts**

Clearwater is an Open End Investment Company, registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and under the Securities Act of 1933. Currently Clearwater meets the definition of a Federal Covered Security as defined in section 18(b)(2) of the Securities Act of 1933 and is subject to the notice filing requirements, pursuant to Section 421-B:3-302 of the Act. Clearwater is also a self-distributing fund. No commission or remuneration is paid to any person for the sale of these securities.

Clearwater was created exclusively for the clients of Fiduciary Counselling, Inc. (“FCI”), a Registered Investment Advisor. FCI was organized in 1973, solely for the purpose of serving one family (essentially a family office) acting as the family’s advisor and provider of integrated financial services. These services have evolved over many years and represent a comprehensive

approach to wealth management that incorporates trust administration, investments, tax and estate planning, charitable administration and accounting support services. Prospective clients may apply to FCI for their services but are only accepted if they have established a relationship with the family. The origins of the family date back to family owned business in one industry. As the family tree has become larger, the family has diversified out of the main business and into a variety of investments, including the Clearwater funds. The only individuals eligible to be clients of FCI are the blood-relatives of this one family, spouses who marry blood-relatives of this one family, and any children adopted by blood-relatives of this family. According to FCI's most recent Form ADV, Part 1A filing, it provides services to 1,487 accounts, all of which are held by family members.

One of the investments available to FCI Clients is the opportunity to purchase shares of Clearwater. The mutual fund structure was chosen (1) to provide access to a large number of family investors; (2) to streamline the administration of the investment structure; (3) to offer investors a cost effective investment structure; and (4) to provide ample opportunities for diversification. Clearwater utilizes the scale of the family's combined assets to access world-class investment strategies and managers. All trustees of the Clearwater Board of Trustees are family members. The funds are offered to family members pursuant to a written prospectus, which has been amended to clearly state on the front cover, "Offered exclusively to clients of Fiduciary Counselling, Inc. – not available for sale to the general public." Currently, the Form ADV, Part 2A for FCI states, "FCI's clients include individuals, trusts, charitable organizations, corporations and other business entities, a registered investment adviser and a registered investment company. FCI *generally* (Bureau's emphasis) performs services exclusively for descendants and family members of a single family and their related entities." FCI has submitted a written undertaking to remove the word "generally" from this disclosure to make clear that FCI provides services for descendants and family members *only* and their related entities.

A family member may (i) inherit the Clearwater funds, (ii) purchase Clearwater funds with money they have earned on their own or (iii) purchase Clearwater funds with money they have inherited. FCI has a number of investment models from which clients can choose based on individual situations. These models include investing in the Clearwater funds. There is no distributor of the funds, there is no website describing the funds and there is no public solicitation of these funds. There is no sales charge, no commission is paid and there are no 12b-1 fees. FCI and Clearwater both intend to operate on a close-to-breakeven basis.

Last year, Clearwater filed notices on Form NF, with the State of New Hampshire, Securities Division. The state issued the following registration numbers for each class offered:

Clearwater Core Equity Fund - MF15-0084922  
Clearwater Small Companies Fund - MF15-0084923  
Clearwater Tax-Exempt Bond Fund - MF15-0084924  
Clearwater International Fund - MF15-0084925

There is currently one New Hampshire household invested in the Clearwater Funds. This accredited individual has the following accounts that own the Clearwater Funds - revocable trust

as grantor and trustee, minor accounts (3) as custodian for his children, trust accounts (2) as trustee for the benefit of his nephews, a partnership account as partner for family investments in partnership with siblings, and a private Minnesota corporation as officer. All investors of Clearwater are supported by the guidance and services of FCI.

Clearwater's distribution is limited to clients of FCI and is not involved in a general solicitation of shares to the public. Most sales are eligible for the institutional investor exemption. There is no guarantee that all investors will meet the definition of an institutional investor. However, the only investors that can purchase the funds will be clients of FCI and advised by FCI.

### **Discussion**

NH RSA 421-B:6-605(d) authorizes the Secretary of State to provide interpretative opinions or issue determinations that the secretary of state will not institute an enforcement proceeding or commence an action under RSA 421-B against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with RSA 421-B. Pursuant to RSA 421-B:6-605(b), all actions undertaken by the secretary of state pursuant to RSA 421-B:6-605 shall be taken only when the secretary of state finds such action necessary or appropriate to the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of RSA 421-B.

Pursuant to NH RSA 421-B:3-302, investment companies such as Clearwater are generally required to file notice filings for mutual funds offered and sold in New Hampshire. The mutual funds are considered to be federal covered securities under the National Securities and Markets Improvement Act of 1997 (hereinafter "NSMIA").

The general purpose of the notice filing requirement in New Hampshire is to insure that New Hampshire some means of tracking the mutual funds that are being sold in New Hampshire. In addition, notice filings allow the Bureau to exercise its fraud jurisdiction over federal covered securities pursuant to NSMIA. This facilitates the protection of the general public from fraud in the offer and sale of mutual funds.

According to the facts cited above, the mutual funds offered by Clearwater are offered only to a single family, a family of significant means whose investments are overseen by a family office. In addition, only one household related to the family, headed by an accredited investor acting as a trustee, a partner for family investments and an officer of a private corporation, is currently located in New Hampshire. As a result, the Bureau's interest in public protection with regard to the Clearwater funds is mitigated.

### **Conclusion**

Therefore, pursuant to the facts offered by Clearwater as outlined above, the Bureau finds that the granting of an exemption to the mutual funds offered by Clearwater is appropriate to the public interest and consistent with the purposes fairly intended by the policy and provisions of RSA 421-B. As a result, the funds currently offered by Clearwater in New Hampshire shall be exempt from the notice filing requirements under RSA 421-B:3-302.

Please note that this interpretative opinion is offered pursuant to the facts presented by Clearwater and FCI. Any change in the facts, however minimal, may result in a different conclusion.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry J. Glenn". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Barry Glenn  
Director, Bureau of Securities Regulation