



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

December 16, 2009

Ellen R. Patterson, Esq.
Simpson Thacher & Bartlett LP
425 Lexington Avenue
New York, NY 10017-3954

**Re: SEC v. Investools Inc. et al.,
Civil Action No. 09-2343 (D.D.C.)
Waiver Request under Regulation A and Rule 505 of Regulation D**

Dear Ms. Patterson:

This responds to your letter dated today, written on behalf of Investools Inc., and constituting an application for relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D under the Securities Act of 1933. You requested relief from disqualifications from exemptions available under Regulation A and Rule 505 that arose by reason of the Judgment as to Investools signed December 15, 2009 and entered on December 16, 2009 by the United States District Court for the District of Columbia in SEC v. Investools Inc. et al., Civil Action No. 09-2343 (the "Judgment"). The Judgment permanently restrains and enjoins Investools from violating Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 under that law, and imposes a civil penalty.

For purposes of this letter, we have assumed as facts the representations set forth in your letter and the findings supporting entry of the Judgment. We also have assumed that Investools will comply with the Judgment.

On the basis of your letter, I have determined that you have made showings of good cause under Rule 262 and Rule 505 that it is not necessary under the circumstances to deny the exemptions available under Regulation A and Rule 505 by reason of entry of the Judgment as to Investools. Accordingly, exercising delegated authority, I hereby grant relief from any disqualifications from exemptions otherwise available under Regulation A and Rule 505 that may have arisen by reason of entry of the Judgment against Investools.

Very truly yours,

Gerald J. Laporte
Chief, Office of Small Business Policy

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CONFIDENTIAL TREATMENT REQUESTED BY
INVESTTOOLS, INC.
PURSUANT TO 17 C.F.R. § 200.83

BY E-MAIL AND FEDERAL EXPRESS

December 16, 2009

Gerald J. Laporte, Esq.
Chief, Office of Small Business Policy
Division of Corporate Finance
U.S. Securities and Exchange Commission
100 F Street, N.E., 3rd Floor
Washington, D.C. 20549-3628

Re: SEC v. Investools Inc., Michael J. Drew and Eben D. Miller, Civil Action
No. 09 2343 (D.D.C. 2009); In the Matter of
Investools Inc., Michael J. Drew and Eben D. Miller, File No. 1:09-cv-02343

Dear Mr. Laporte:

This letter is submitted on behalf of our client Investools Inc. ("Investools"), a settling defendant in the above-cited civil action arising out of the above-captioned investigation. Investools hereby requests, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D, both promulgated under the Securities Act of 1933, as amended (the "Securities Act"), waivers of any disqualifications from relying on the exemptions under Regulation A and Rule 505 of Regulation D that may be applicable to Investools and any of the third-party issuers described below as a result of the entry of the final judgment on December 16, 2009 in that civil action filed by the Securities and Exchange Commission (the "Commission") in federal district court (the "Final Judgment"), which is described below. It is our understanding that the Enforcement Staff of the Commission does not object to the grant of the requested waivers.

BACKGROUND

Investools became a subsidiary of TD AMERITRADE Holding Corporation ("TD Ameritrade") in June 2009 upon the acquisition of Investools' parent, thinkorswim Group,

Inc. by TD Ameritrade. The Enforcement Staff of the Commission engaged in settlement discussions with Investools in connection with the above-captioned investigation.

On December 10, 2009, the Commission filed a complaint (the "Complaint") against Investools in the United States District Court for the District of Columbia (the "District Court") in the above-captioned civil action. The Complaint alleges that Defendants Michael J. Drew ("Drew") and Eben D. Miller ("Miller"), who were employees of Investools in the investor seminar industry, committed fraud during sales presentations at workshops that Investools held throughout the United States from 2004 to 2007. The Complaint alleges that Investools failed to adequately police its sales personnel. The Complaint alleges that Investools' compliance policies required that speakers have actual reasonable proof of the validity of any success claim. The Complaint alleges that, beginning no later than 2004, Investools management learned that Drew, Miller, and other speakers were claiming that their securities trading was tremendously profitable. The Complaint alleges that Investools never required Miller, Drew, or Investools' other speakers, to provide it with documentation substantiating their success claims, such as brokerage account statements or tax forms. The Complaint alleges that Investools is liable as a controlling person under Section 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") for violations by its speakers, including Drew and Miller, of the Exchange Act Section 10(b) and Rule 10b-5 thereunder.

On November 10, 2009, Investools executed a consent of Defendant Investools (the "Consent") in which Investools neither admits nor denies any of the allegations in the Complaint, except as to personal and subject matter jurisdiction (which are admitted), but consents to the entry of a final judgment (the "Final Judgment") and agrees to certain other undertakings. On December 16, 2009, the District Court entered the Final Judgment against Investools that restrained and enjoined Investools and Investools' agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice by personal service or otherwise of the Final Judgment, from violating, directly or indirectly, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder (15 U.S.C. §78j(b); 17 C.F.R. §240.10b-5). In addition, the Final Judgment required Investools to pay a civil money penalty of \$3 million.

DISCUSSION

Investools understands that the entry of the Final Judgment may disqualify it, affiliated entities, and other third-party issuers of which Investools is a 10% beneficial owner or for which it serves as a promoter or underwriter from participating in certain offerings otherwise exempt under Regulation A and Rule 505 of Regulation D promulgated under the Securities Act. The Commission has the authority to waive the Regulations A and D exemption disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances. See Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D.

Investools requests that the Commission waive any disqualifying effects that the Final Judgment may have under Regulation A and Rule 505 of Regulation D with respect to

Investools, its affiliated entities or any other third-party issuer as described above on the following grounds:

1. Investools' conduct alleged in the Commission's Complaint and addressed by the Final Judgment does not pertain to Regulation A or D.

2. The disqualification of Investools, its affiliated entities and other third-party issuers as described above from relying upon the exemptions under Regulation A and Rule 505 of Regulation D would be unduly and disproportionately severe given the nature of the violations addressed by the Final Judgment and the extent to which disqualification may affect the business operations of Investools, its affiliated entities and other third-party issuers as described above by impairing their ability to issue securities pursuant to these exemptions to raise new capital or for other purposes.

3. The disqualification of Investools, its affiliated entities and other third-party issuers as described above from relying on the exemptions under Regulation A and Rule 505 of Regulation D also would be unduly and disproportionately severe, given that: (a) the Complaint and the Final Judgment relate to activity that was addressed in the civil action; (b) the Commission Staff has negotiated a settlement with Investools and has reached a satisfactory conclusion to this matter that enjoined Investools from violating the provisions listed above and ordered Investools to, among other things, pay a civil penalty in the amount of \$3 million; and (c) that Investools terminated the employees of Investools whose alleged conduct resulted in the Commission's allegations and civil action against Investools.

4. The disqualification of Investools, its affiliated entities and other third-party issuers as described above from relying upon the exemptions under Regulation A and Rule 505 of Regulation D would be unduly and disproportionately severe given that the alleged conduct giving rise to the Final Judgment occurred before the acquisition of thinkorswim Group Inc., the parent of Investools, by TD Ameritrade, at a time when TD Ameritrade and its then-existing affiliates were not affiliates of Investools.

In light of the grounds for relief discussed above, we believe that disqualification from being able to rely on the exemptions is not necessary to serve the public interest or for the protection of investors, and that Investools has shown good cause that relief should be granted. Accordingly, we respectfully urge the Commission to waive the disqualification provisions in Regulation A and Rule 505 of Regulation D to the extent they may be applicable to Investools, its affiliated entities and other third-party issuers as described above.¹

¹

We note in support of this request that the Commission has in other instances granted relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D. See, e.g., Automated Trading Desk Specialists, LLC, SEC Letter (pub. avail. March 11, 2009); Gabelli Funds, LLC, SEC Letter (pub. avail. Apr. 24, 2008); Bank of America Securities LLC, SEC Letter (pub. avail. May 31, 2006); Citigroup Global Markets, Inc., SEC Letter (pub. avail. May 31, 2006).

Gerald J. Laporte, Esq.

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December 16, 2009

If you have any questions regarding this request, please contact me at (212) 455-2499.

Very truly yours,



Ellen Patterson

Copy to: Gerald Hodgkins, Esq.
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Washington, D.C. 20549