



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

DIVISION OF  
CORPORATION FINANCE

October 26, 2015

George Brunelle, Esq.  
Brunelle & Hadjickow, P.C.  
One Whitehall Street, Suite 1825  
New York, NY 10004

**Re: In the Matter of National Asset Management, Inc.  
Waiver of Disqualification under Rule 506(d)(2)(ii) of Regulation D  
Exchange Act Release No. 34-76264, October 26, 2015  
Administrative Proceeding File No. 3-16925**

Dear Mr. Brunelle:

This letter responds to your letter dated October 23, 2015 ("Waiver Letter"), written on behalf of National Asset Management, Inc. ("NAM") and constituting an application for a waiver of disqualification under Rule 506(d)(2)(ii) of Regulation D under the Securities Act of 1933. In the Waiver Letter, you requested relief from any disqualification that will arise as to NAM under Rule 506 of Regulation D by virtue of the Commission's order entered October 26, 2015 in the Matter of National Asset Management, Inc., Release No. 34-76264, pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (the "Order").

Based on the facts and representations in the Waiver Letter and assuming NAM complies with the Order, the Division of Corporation Finance, acting for the Commission pursuant to delegated authority, has determined that NAM has made a showing of good cause under Rule 506(d)(2)(ii) of Regulation D that it is not necessary under the circumstances to deny reliance on Rule 506 of Regulation D by reason of the entry of the Order. Accordingly, the relief requested in the Waiver Letter regarding any disqualification that may arise as to NAM under Rule 506 of Regulation D by reason of the entry of the Order is granted on the condition that NAM fully complies with the terms of the Order. Any different facts from those represented or failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Very truly yours,

Elizabeth M. Murphy  
Associate Director  
Division of Corporation Finance

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October 23, 2015

**VIA E-MAIL**

**SmallBusiness@sec.gov**

Sebastian Gomez-Abero, Esq.  
Chief, Office of Small Business Policy  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-3628

Re: Matter of National Asset Management, Inc. (SF-3940)

Dear Mr. Gomez-Abero:

National Asset Management, Inc. ("NAM") anticipates becoming subject to an Order of the Commission in the above-captioned administrative proceeding (the "Order"), and it respectfully requests waivers, pursuant to Rule 506 of Regulation D ("Rule 506"), of any disqualifications from relying on exemptions under Rule 506 that may arise with respect to NAM or any of its affiliates during the duration of the undertaking in the Order requiring NAM to engage a qualified compliance consultant to review certain of its policies and procedures.<sup>1</sup>

**BACKGROUND**

NAM is a Registered Investment Adviser, registered with the SEC pursuant to Section 202(a)(1) of the Advisers Act. Its affiliates include its parent corporation, National Holdings Corporation (NHLD), a listed public company (NASDAQ: NHLD), and two broker-dealers, National Securities Corporation ("NSC") and vFinance Investments, Inc. ("vFin").

The Staff of the Division of Enforcement has engaged in settlement discussions with NAM in connection with its investigation of potential violations of the Advisers Act and various SEC Rules thereunder. NAM submitted an Offer of Settlement (the "Offer"), and agreed to the Order, which was presented by the Staff to the Commission. In the Offer, NAM agreed to consent to the issuance of the Order without admitting or denying the matters set forth therein

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<sup>1</sup> NAM is not requesting waivers of the disqualifications from relying on Regulation A and Rule 505 of Regulation D at this time because it does not now use or participate in transactions under such offering exemptions. NAM understands that it may request such waivers in a separate request if circumstances change.

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(other than those relating to the jurisdiction of the Commission over it and the subject matter solely for purposes of that action). The Order finds, among other things, that NAM willfully violated Sections 204, 204A, 206(3), 206(4) and 207 of the Advisers Act and SEC Rules 204-1, 204-3, 204A-1 and 206(4)-7 thereunder [¶ IV(A)].<sup>2</sup>

As described in the “Summary” section of the Order, “These proceedings arise out of several disclosure and compliance-related violations during 2008 through 2012 by Commission-registered investment adviser National Asset Management, Inc. First, NAM failed to disclose to its advisory clients in writing or obtain their consent to over 21,000 securities trades executed in a principal capacity by NAM’s affiliated broker-dealers. Second, NAM failed to report in its Commission filings and timely disclose to its clients the disciplinary histories of several of its associated persons. Third, NAM did not enforce its code of ethics when its CEO, several directors, and many of its employees failed to submit hundreds of required reports on their personal securities trading to NAM. Finally, NAM failed to adopt and implement compliance policies and procedures reasonably designed to prevent violations of certain provisions of the Advisers Act and the rules thereunder, and failed to conduct a required annual review of its compliance policies and procedures. NAM committed these failures while aware of the potential conflicts of interest its affiliated broker-dealers presented and its compliance responsibilities under the Advisers Act. Nevertheless, it failed to take reasonable steps to address these risks and responsibilities.”

More specifically, between 2008 and 2012, NAM failed to disclose to its advisory clients in writing or obtain their consent to securities trades executed in a principal capacity by NAM’s affiliated broker-dealers [Order ¶¶ 3-8]. During 2008 through 2012, NAM failed to, (i) adopt and implement written policies and procedures reasonably designed to prevent violations, by the adviser and its supervised persons [Order ¶¶ 9-10, 20]. During 2008 through 2012, NAM filed Part 1A amendments which omitted 19 disciplinary actions that were required to be reported. [Order ¶ 12]. NAM belatedly filed a “brochure supplement” under Rule 204-3 that had a filing deadline of February 2012 and was not filed until January 2013, 11 months late [Order ¶ 13]. During 2008 through 2012, NAM’s Code of Ethics required its access persons to submit reports each quarter identifying their personal securities transactions, or stating they had no transactions that quarter, and during that the same period, NAM failed to enforce its code of ethics because many of its access persons, including its CEO and several directors, failed to submit over 500 required quarterly reports. [Order ¶ 14]. For 2012, NAM failed to conduct the review required by Section 206(4) of the Advisers Act and Rule 206(4)-7(b) thereunder of the adequacy and effectiveness of their compliance policies and procedures at least annually. [Order ¶ 15].

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<sup>2</sup> Paragraph citations in parentheses refer to paragraphs of the Order.

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A copy of the Order is attached hereto, and its contents are incorporated into this letter by reference.

None of the conduct described in the Order involved a scienter-based violation. In addition, the conduct described in the Order did not give rise to a criminal conviction.

The Order requires NAM to cease and desist from committing or causing any violations and any future violations of Sections 204, 204A, 206(3), 206(4) and 207 of the Advisers Act and SEC Rules 204-1, 204-3, 204A-1 and 206(4)-7 thereunder [¶ IV(A)]. The Order imposes a censure on NAM [¶ IV (B)] and a civil monetary fine of \$200,000 (¶ IV(C)), and requires certain undertakings, including the appointment of an independent compliance consultant to review and make recommendations about NAM's supervisory and compliance procedures [¶ 22].

### DISCUSSION

NAM understands that the entry of the Order would disqualify it from relying on the exemption under Rule 506 until the undertakings in the Order requiring NAM to engage a qualified compliance consultant to review certain of its policies and procedures and related tasks are completed. NAM is concerned that, should it be deemed to be an issuer, predecessor of the issuer, affiliated issuer, general partner or managing member of the issuer, beneficial owner of 20 percent or more of an issuer's outstanding voting equity securities, promoter, investment manager of a pooled investment fund, underwriter of securities or acting in any other capacity described in Rule 506 for the purposes of Rule 506(d)(1)(iv), NAM as well as the issuers with which NAM is associated in one of the above-listed capacities and which rely upon or may rely upon this offering exemption when issuing securities would be prohibited from doing so.

We further understand that the Commission, and certain of its Staff pursuant to delegated authority, have the authority to waive the Rule 506 exemption disqualifications upon a showing of good cause that it is not necessary under the circumstances that the exemptions be denied. *See* 17 C.F.R. § 230.506(d)(2)(ii). For the reasons discussed below, NAM respectfully requests that the Commission or its delegated staff waive any disqualifying effects that the Order may have under Rule 506 during the duration of the undertaking in the Order requiring NAM to engage a qualified compliance consultant to review certain of its policies and procedures, on the following grounds:

1. The misconduct cited in the Order does not relate to the offer or sale of a security through any securities offerings, under Regulation D or otherwise. Rather, the cited conduct relates to NAM's failure to disclose to its advisory clients in writing or obtain their consent to securities trades executed in a principal capacity by NAM's affiliated broker-dealers; NAM's failure to report in its Commission filings and timely disclose to its clients the disciplinary histories of several of its associated persons; its failure to enforce its code of ethics when its CEO, several directors, and many of its employees failed to submit required reports of their

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personal securities trading to NAM; its failure to adopt and implement compliance policies and procedures reasonably designed to prevent violations of certain provisions of the Advisers Act and the rules thereunder; and its failure to conduct a required annual review of its compliance policies and procedures.

2. The conduct at issue did not involve a violation of the *scienter*-based provisions of the Federal securities laws, including those itemized in SEC Rule 506(d)(v)(A) and does not involve a criminal conviction.

3. For approximately two years after the events described in the Order, NAM has been under new management. The company has a new Chief Executive Officer, a new Chief Compliance Officer, a new Executive Vice-President in charge of Operations, and a substantially expanded supervisory and compliance staff.

4. The Order would require NAM to comply with certain undertakings relating to, among other things: (1) engaging an independent compliance consultant to review NAM's policies and procedures relating to the violations found by the Order and to submit a report describing its review and any recommendations; (2) requiring NAM to adopt the qualified compliance consultant's recommendations subject to a process allowing NAM to propose alternatives to unnecessary, inappropriate, or unduly burdensome recommendations; and (3) certifying, in writing, compliance with the undertakings.

5. NAM has taken remedial steps to address the conduct described in the Order. Specifically, NAM promptly refunded to its clients the inappropriately assessed markups and markdowns on orders that had been misdirected to NAM's affiliated broker-dealers [Order ¶ 11]; promptly took remedial action [¶ 21]; and fully cooperated with the SEC's investigation [¶ 21]. In addition, since the events in question NAM has taken the following additional steps:

(a) Appointed new members of its Board of Directors:

- 1) An independent member of the Board with extensive regulatory background with the SEC, with the American Stock Exchange and in private practice.
- 2) A Chairman of the Board with extensive regulatory background as a member of the Board of Directors and of the disciplinary Appeals Committee of the New York Stock Exchange, and as former head of the largest specialist firm on the New York Stock Exchange.
- 3) A CEO and Director – formerly a senior executive for trading at ING Barings, Schroeders & Co., Lazard Frères and Bear Stearns.

(b) Appointed new compliance and operational personnel and increased the size of its staffing in those areas:

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- 1) A new Chief Compliance Officer (“CCO”) of NAM – a Certified Regulatory Compliance Official who has graduated from the regulatory training program run jointly by FINRA and the Wharton School.
- 2) A new Chief Supervisory Officer of NAM.
- 3) A new Senior Compliance Officer of NAM reporting to the CCO.
- 4) New Legal Counsel in the Compliance Department, reporting to the CCO.
- 5) A new Head of Operations, also reporting to the CCO.
- 6) Administrative staff members hired for the Compliance Department.

(c) Adopted new automated compliance systems:

- 1) Reprogrammed existing systems to address the compliance issues cited in the Order.
- 2) Began transitioning in the Envestnet System, which monitors for asset concentrations and fees, and targets risk levels and suitability issues.
- 3) Began transitioning in the DST System of compliance reporting, and trade and account supervision.

(d) Adopted new systems and procedures specifically designed to address the 206(3) violations cited in the Order:

- 1) All client trades of NAM are now routed to NAM’s clearing firm for rerouting independently of NAM or its broker-dealer affiliates.
- 2) NAM’s *Policies and Procedures* manual has been amended to give special attention to this problem.
- 3) NAM has educated its supervisors about the issue.
- 4) NAM has arranged for trading data on NAM’s client transactions to be generated by its clearing firm and routed to designated individuals within NAM for special review and the ability to correct trades before they are completed in the event of a potential violation of Section 206(3).

(e) Developed new systems and procedures to address the omitted or late disclosure of disciplinary events involving Investment Advisory Representatives (“IARs”) of NAM:

- 1) All disciplinary events involving IARS are now being coordinated by three designated individuals within the Compliance Department.
- 2) Compliance now generates a monthly report of all disciplinary events that may require disclosure on ADV Forms or elsewhere.

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- 3) Compliance now conducts a quarterly review of all disclosure filings to verify their completeness.
  - 4) All new IARs of NAM now receive a more thorough background check than previously and when appropriate they are “flagged” for disclosure updates.
- (f) NAM corrected the 2012 omission of the required annual review of the adequacy and effectiveness of its compliance policies and procedures. This review has been conducted for 2013, 2014 and will be conducted on a timely basis for 2015.
- (g) NAM has developed new procedures to prevent lapses in the filing by NAM personnel of their reports of personal trading, as required by NAM’s Code of Ethics.
- 1) IARs are now required to sign the Code of Ethics that contains this reporting requirement.
  - 2) IARs are required to file an Initial Holdings Report upon joining NAM.
  - 3) Every quarter, NAM’s IARs are required to file copies of the trade confirmations with the Compliance Department.
  - 4) Trade disclosure reports are now required to be submitted to designated supervisors for whom NAM has established an “accountability chain.”
- (h) NAM agreed in the Order [¶ 22] to hire at its own expense an Independent Compliance Consultant (“ICC”), to review NAM’s policies and supervisory procedures in the areas implicated by the Order, and to adopt the ICC’s recommendations (or alternative procedures proposed by NAM and approved by the SEC staff).

NAM believes these corrective measures will prevent such problems from occurring again.

As discussed in the Order, NAM will take further remedial action designed to ensure compliance with the regulatory requirements that are the subject of the Order. Specifically, NAM will engage an independent compliance consultant to review NAM’s written compliance policies and procedures relating to the violations found in the Order and will submit a report describing its review, the conclusions reached, and any recommendations for changes in or improvements to NAM’s policies and procedures. NAM will (i) adopt the independent compliance consultant’s recommendations subject to a process allowing NAM to propose alternatives to unnecessary, unduly burdensome, impractical or inappropriate recommendations, and (ii) certify in writing that it has adopted and implemented the recommendations.

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6. NAM has agreed to post notice of the SEC's enforcement action on its website, with a hyperlink to the SEC's *Order Instituting Proceedings*. Disclosures will also take the form of a separate letter to NAM's clients and a notification by way of NAM's Form ADV filings.

7. For the period of time during which NAM is subject to the Order's requirement to retain a qualified compliance consultant to review certain of its policies and procedures, NAM will furnish (or cause to be furnished) to each purchaser in a Rule 506 offer that would otherwise be subject to the disqualification under Rule 506(d)(1) as a result of the Order, a description in writing of the Order a reasonable time prior to sale.

8. A disqualification of NAM from using (or participating in transactions using) the exemption under Rule 506 would, we believe, have an adverse impact on NAM, NSC and others, as discussed below. The disqualification of NAM or any of its affiliates from the exemptions under Rule 506 of Regulation D would be unduly and disproportionately severe, especially given the fact that the Order addresses the wrongful activity through specific remedies and recognizes that NAM has already taken remedial action [Order ¶ 21].

Among the "covered persons" to whom a disqualification extends under Rule 506(d)(1) are "any investment manager of an issuer that is a pooled investment fund," and "any promoter connected with the issuer in any capacity at the time of such sale." In the course of its business, NAM acts as an advisor to hedge funds created through NAM and its affiliated entities. NAM generally holds a majority ownership interest in the hedge fund managers and assumes all roles of the manager relating to investment of the fund assets. The funds themselves are affiliated issuers for purposes of Rule 506(d)(1). The interests in these funds are offered through NAM's affiliate, NSC.

Without a 506(d)(1) waiver, both NAM (as advisor) and NSC (as placement agent) would be obliged to forego such ventures, including the two that are currently underway, Fund D and Fund E. In the event of NAM's disqualification, NSC could not, as a practical matter, overlay a third-party advisory fee onto the Funds' existing fee structure. NSC would therefore be compelled to terminate Fund D and refund escrowed funds to potential investors, and to discontinue the formation of Fund E. NAM and NSC would be obliged to forego, not only these business ventures, but any similar future ventures.

The funds and the amounts currently or imminently expected to be under management are identified in the following table. The name of each of the funds is being provided in a separate letter (the "Supplemental Letter"):

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Code Name for Fund (Actual Name in Supplemental Letter)	Amounts Currently or Imminently Expected to Be under Management
Fund A	\$13,700,251
Fund B	\$10,000,000
Fund C	\$6,552,000
Fund D	\$25,000,000 (offering funds currently in escrow)
Fund E	Up to \$100,000,000 (offering in preparatory stages)

Funds A, B and C are Funds for which NAM currently acts as advisor, and for which NSC has successfully raised capital. Although they are now closed and do not currently rely on Rule 506, all three relied on Rule 506 during their formative stages. All pending and planned future offerings involving NSC or NAM would also rely upon Rule 506. The two pending offerings, those of Fund D and Fund E, would have to be terminated.

Fund D is designed to invest in shares which NSC has a contract to purchase. This Fund is the subject of an ongoing securities offering that is expected to close within the next few weeks. If NAM were not to receive a 506(d)(1) waiver, approximately \$25 million in funds raised to date, which are currently being held in escrow, would have to be returned to investors. In addition, NAM and its affiliate, NSC, would both lose fees that they would otherwise expect to receive with respect to Fund D. Upon closing, NAM is entitled to a "carried interest" (*i.e.*, a share of the Fund's profits) payable to the fund manager of 12% of the profits distributed from the Fund (after all other investors have received aggregate distributions equal to 100% of their invested capital). NAM would not be paid these fees. As the placement agent for the pending securities offering, NSC would be entitled to an 8% placement agent fee on the aggregate amount invested in the offering. Consequently, NSC would lose approximately \$2 million (8% of \$25 million) in placement fees, in addition to fees from subsequently sold interests.

Fund E is an impending offering for which documents are in the process of being drafted. NSC anticipates that the offering will commence within the immediate future. Fund E is intended to be a collective investment vehicle for the purpose of making and managing investments in privately held companies that NAM, as the advisor, believes to possess innovative or disruptive technologies, and to present opportunities for an initial public offering. If NAM's waiver request were not granted, NAM and its affiliate, NSC, would lose compensation to which they would otherwise be entitled with respect to Fund E. Specifically, NAM has an ownership interest in Fund E's manager, which would be entitled to "carried interest" of 10% of the profits distributed from Fund E (after all other investors have received aggregate distributions equal to 100% of

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their invested capital). NAM would lose its share of these fees. As the placement agent for the offering, NSC is also entitled to a 10% placement agent fee of the investment raised. If the maximum offering amount of \$100 million is reached, NSC would lose a placement agent fee of \$10 million (10% of \$100 million raised).

Prospective investors in Funds D and E would also suffer unwarranted injury if NAM's waiver request were not granted. As noted above, NSC cannot overlay a third-party advisory fee onto the fee structure of its Funds, NAM's disqualification as an advisor to the Funds would compel NSC to terminate Fund D and to discontinue the formation of Fund E. With respect to Fund D, the investors' capital, now in escrow, would have to be returned. Prospective investors in this Fund would be foreclosed from what they had considered to be a favorable investment opportunity, and they would lose the time-value of their investment capital from the time when they remitted funds into escrow through the date of Fund D's unplanned termination.

Through the loss of fees to NAM and NSC, as described above, NAM's disqualification would render both NAM and NSC less competitive and less profitable. As a regular part of its business activities, NAM anticipates acting as advisor for future funds for which capital will be raised by its affiliate, NSC. Loss of that ability would inflict substantial financial harm upon NAM, NSC and their respective shareholders.

### CONCLUSION

In light of the grounds for relief discussed above, we believe that disqualification is not necessary under the circumstances and that NAM has shown good cause that relief should be granted. Accordingly, we respectfully urge the Commission or its delegated staff, pursuant to Rule 506(d)(2)(ii) of Regulation D, to waive the disqualification provisions in Rule 506 to the extent they are applicable as a result of the entry of the Order as to NAM.<sup>3</sup>

If you have any questions about any of the foregoing, please do not hesitate to call me.

Thank you for your consideration.

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<sup>3</sup> We note in support of this request that the Commission has granted relief under Rule 506 for similar reasons or in similar circumstances. *See, e.g., In the Matter of BlackRock Advisors, LLC*, SEC No-Action Letter (pub. avail. April 20, 2015); *In the Matter of Barclays Capital Inc.*, Securities Act Rel. No. 9651 (Sept 23, 2014); *In the Matter of Wells Fargo Advisors, LLC*, Securities Act Rel. No. 9649 (Sept, 22, 2014); *In the Matter of Dominick & Dominick LLC*, Securities Act Rel. No. 9619 (July 28, 2014); *Jefferies LLC*, SEC No-Action Letter (pub. avail. March 12, 2014); *Credit Suisse Group AG*, SEC No-Action Letter (pub. avail. February 21, 2014); and *Instinet LLC*, SEC No-Action Letter (pub. avail. Dec. 26, 2013).  
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Very truly yours,

BRUNELLE & HADJIKOW, P.C.

By:   
George Brunelle

cc: Thomas Eme, Esq. (Division of Enforcement)