

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SECURITIES EXCHANGE ACT OF 1934
Release No. 64483/May 13, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3202/May 13, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14082

In the Matter of	:	
	:	
FREEDOMTREE MUTUAL FUNDS AND	:	ORDER MAKING FINDINGS
ASSET MANAGEMENT, LLC, d/b/a	:	AND IMPOSING SANCTIONS
FREEDOMTREE ASSET MANAGEMENT, LLC,	:	BY DEFAULT
SPENCE-LINGO & COMPANY, LTD., d/b/a	:	
FREEDOMTREE TRANSFER AGENCY, and	:	
JERMAINE EZEKIEL SPENCE	:	

SUMMARY

This Order revokes the registration of FreedomTree Mutual Funds and Asset Management, LLC, d/b/a FreedomTree Asset Management, LLC (FreedomTree), as an investment adviser and the registration of Spence-Lingo & Company, Ltd., d/b/a FreedomTree Transfer Agency (Spence-Lingo), as a transfer agent; orders each to pay a civil penalty of \$325,000; and orders each to cease and desist from violating various antifraud and recordkeeping provisions of the securities laws.

I. BACKGROUND

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP), on September 30, 2010, pursuant to Sections 15(b), 17A, and 21C of the Securities Exchange Act of 1934 (Exchange Act) and Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (Advisers Act), against FreedomTree, Spence-Lingo, and Jermaine Ezekiel Spence (Spence). The proceeding against Spence remains pending.

The OIP alleges that FreedomTree, owned by Spence, is a Commission-registered investment adviser that has applied for broker-dealer registration and Spence-Lingo, controlled by Spence, is a registered transfer agent; that FreedomTree made misrepresentations concerning itself and Spence-Lingo; and that the two entities failed to comply with Commission requests for

records and examinations. The Division of Enforcement (Division) is seeking revocation of the entities' registrations, civil penalties, and cease-and-desist orders.

FreedomTree and Spence-Lingo were served with the OIP on October 4, 2010.¹ Their Answers were due within twenty days of service of the OIP on them. See OIP at 6; 17 C.F.R. § 201.220(b). Neither filed an Answer. The Division filed a Motion for Entry of Default and to Set Sanctions on March 3, 2011. FreedomTree and Spence-Lingo were each ordered to show cause by May 12, 2011, why the sanctions requested by the Division should not be imposed. Neither responded. Accordingly, each has failed to answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding; thus, each is in default, and the undersigned finds that the allegations in the OIP are true as to FreedomTree and Spence-Lingo. See OIP at 6; 17 C.F.R. §§ 201.155(a), .220(f).

II. FINDINGS OF FACT

FreedomTree is a Georgia limited liability company formed on April 7, 2008. On November 14, 2008, FreedomTree registered with the Commission as an investment adviser under the name "FreedomTree Asset Management."² Spence-Lingo is a Georgia for-profit corporation formed on June 1, 2007. Spence-Lingo registered with the Commission as a transfer agent on August 22, 2008, under the name "FreedomTree Transfer Agency," using the same address as FreedomTree. Spence-Lingo is also a licensed insurance agency in Georgia. Spence owns and controls both FreedomTree and Spence-Lingo.

In its initial Form ADV filed on August 19, 2008, FreedomTree claimed to provide financial planning, portfolio management, and pension consulting services to individuals, high-net worth individuals, investment companies, charitable organizations, corporations, and state or municipal government entities. It claimed to have \$7 million in assets under management in three discretionary accounts. Despite having no clients and no assets under management, FreedomTree invoked Rule 203A-2(d) under the Advisers Act, a registration prohibition exemption, thereby effectively representing that it reasonably expected to have \$25 million in assets under management within 120 days. On May 12, 2009, FreedomTree filed an amended Form ADV in which the company claimed that it was eligible to remain registered with the Commission because it had exactly \$25 million in assets under management in three discretionary accounts. On November 30, 2009, FreedomTree filed a second amendment to its Form ADV, claiming to have \$235 million in assets under management in two discretionary accounts. All of these claims were false. FreedomTree had no advisory clients, revenues, or any assets under management that would qualify it for registration with the Commission as an investment adviser.

¹ FreedomTree and Spence-Lingo, both Commission-registered, were each served by USPS certified mail attempted delivery at "the most recent business address shown on [its] registration form." 17 C.F.R. § 201.141(a)(2)(iii).

² Also in November 2008, FreedomTree filed applications, which are still pending, with FINRA and the Commission to register as a broker-dealer.

On its website, which was operational at least throughout November 2009, FreedomTree sought prospective clients willing to invest a minimum of \$100,000 in the firm's "prestigious money management platform" under a "competitively priced fee-based" arrangement. The website further represented that FreedomTree had "27+ years of unparalleled leadership" (Spence's age at the time) and emphasized that, as an investment adviser, the firm was subject to the regulatory oversight of the Commission. These representations were false. FreedomTree had no advisory clients, revenues, or assets that would qualify it for registration with the Commission as an investment adviser. Additionally, FreedomTree, which represented that it was a "newly formed adviser" when it filed its initial Form ADV in August 2008, did not have a 27-year operational history.

FreedomTree's website also represented that the firm was part of a larger "financial group," which included a transfer agent "providing clearing services to corporate and government issuers." However, Spence-Lingo provided no "clearing services" as represented on the website.

In November 2009, Commission staff attempted to conduct routine investment adviser and transfer agent examinations of FreedomTree and Spence-Lingo. Spence failed to appear for a scheduled meeting with the staff on behalf of the entities, which failed to produce documents requested by the staff, failed to respond to two resulting exam deficiency letters, and failed to produce documents in response to a subsequent request for documents and information. In a brief phone interview with staff in November 2009, Spence conceded that FreedomTree had no advisory clients and no revenue.

III. CONCLUSIONS OF LAW

As a result of the conduct described above, FreedomTree willfully violated Sections 206(1) and 206(2) of the Advisers Act, which make it unlawful for an investment adviser to employ any device, scheme, or artifice to defraud clients or to engage in any transaction, practice, or course of business that defrauds clients or prospective clients. Additionally, FreedomTree willfully violated Advisers Act Section 203A, which requires an adviser to have assets under management of not less than \$25 million in order to qualify for Commission registration. Additionally, FreedomTree willfully violated Advisers Act Section 204(a), which requires every registered investment adviser to furnish to the Commission in connection with compliance examinations true, accurate, and current books and records relating to its investment advisory business. Additionally, FreedomTree willfully violated Advisers Act Section 206(4) and Rule 206(4)-1. Section 206(4) prohibits an investment adviser from engaging "in any act, practice, or course of business which is fraudulent, deceptive, or manipulative," and Rule 206(4)-1(a)(5) prohibits investment advisers from publishing, circulating, or distributing "any advertisement . . . [w]hich contains any untrue statement of a material fact, or which is otherwise false or misleading."³ Additionally, FreedomTree willfully violated Section 207 of the Advisers

³ Rule 206(4)-1(b) provides that the term "advertisement" includes:

Act, which makes it unlawful “for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission under Section 203 or 204, or willfully to omit to state in any such application or report any material fact which is required to be stated therein.”

As a result of the conduct described above, Spence-Lingo willfully violated Sections 17(b)(1) and 17A(d)(1) of the Exchange Act and Rule 17Ad-6 thereunder. Under Section 17(b)(1), all transfer agents are subject to periodic examinations by the Commission. Section 17A(d)(1) of the Exchange Act prohibits registered transfer agents from engaging in any activities that contravene certain regulations promulgated by the Commission. Rule 17Ad-6 requires registered transfer agents to maintain and keep current records of the firm’s business.

IV. SANCTIONS

The Division seeks revocation of the registrations of FreedomTree as an investment adviser and of Spence-Lingo as a transfer agent, a civil penalty of \$325,000 as to each, and cease-and-desist orders. Accordingly, FreedomTree’s and Spence-Lingo’s registrations will be revoked, each will be ordered to pay a civil penalty of \$325,000, FreedomTree will be ordered to cease and desist from violating Advisers Act Sections 206(1), 206(2), 203A, 204, 206(4), and 207 and Rule 206(4)-1 and Spence-Lingo, from violating Exchange Act Sections 17(b)(1) and 17A(d)(1) and Rule 17Ad-6. These sanctions are authorized by Sections 15(b), 17A, and 21C of the Exchange Act and Sections 203(e), 203(f), and 203(k) of the Advisers Act and will serve the public interest and the protection of investors. They accord with Commission precedent and the sanction considerations set forth in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979).

V. ORDER

IT IS ORDERED that the REGISTRATION as an investment adviser of FreedomTree Mutual Funds and Asset Management, LLC, d/b/a FreedomTree Asset Management, LLC, IS REVOKED;

IT IS FURTHER ORDERED that the REGISTRATION as a transfer agent of Spence-Lingo & Company, Ltd., d/b/a FreedomTree Transfer Agency, IS REVOKED;

any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by radio or television, which offers (1) any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (2) any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (3) any other investment advisory service with regard to securities.

IT IS FURTHER ORDERED that FreedomTree Mutual Funds and Asset Management, LLC, d/b/a FreedomTree Asset Management, LLC, PAY A CIVIL MONEY PENALTY OF \$325,000;

IT IS FURTHER ORDERED that Spence-Lingo & Company, Ltd., d/b/a FreedomTree Transfer Agency, LLC, PAY A CIVIL MONEY PENALTY OF \$325,000;

IT IS FURTHER ORDERED that FreedomTree Mutual Funds and Asset Management, LLC, d/b/a FreedomTree Asset Management, LLC, CEASE AND DESIST from committing or causing violations of and any future violations of Sections 206(1), 206(2), 203A, 204, 206(4), and 207 of the Investment Advisers Act of 1940 and Rule 206(4)-1 thereunder; and

IT IS FURTHER ORDERED that Spence-Lingo & Company, Ltd., d/b/a FreedomTree Transfer Agency, LLC, CEASE AND DESIST from committing or causing violations of and any future violations of Sections 17(b)(1) and 17A(d)(1) of the Securities Exchange Act of 1934 and Rule 17Ad-6 thereunder.

Payment of penalties shall be made no later than twenty-one days after the date of this Order. Payment shall be made by wire transfer, certified check, United States postal money order, bank cashier's check, or bank money order payable to the Securities and Exchange Commission. The payment and a cover letter identifying the Respondent and Administrative Proceeding No. 3-14082, shall be directed to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312. A copy of the cover letter and the instrument of payment shall be sent to Division counsel.

Carol Fox Foelak
Administrative Law Judge