



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

DIVISION OF
CORPORATION FINANCE

September 30, 2016

Matt Kitzi
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3405 West Truman Blvd.
Suite 210
Jefferson City, MO 65109

**Re: In the Matter of Moloney Securities Co., Inc., et al.
Waivers of Disqualification under Rule 506(d)(2)(ii) of Regulation D
and Rule 262(b)(2) of Regulation A
Securities Exchange Act of 1934 Release No. 79003, September 30, 2016
Administrative Proceeding File No. 3-17604**

Dear Mr. Kitzi:

This letter responds to your letter dated September 21, 2016 ("Waiver Letter"), written on behalf of Moloney Securities Co., Inc., ("Moloney") and constituting an application for waivers of disqualification under Rule 506(d)(2)(ii) of Regulation D and Rule 262(b)(2) of Regulation A under the Securities Act of 1933. In the Waiver Letter, you requested relief from any disqualification that will arise as to Moloney under Rule 506 of Regulation D and Rule 262 of Regulation A under the Securities Act by virtue of the Commission's order entered September 30, 2016 in the Matter of Moloney Securities Co., Inc., et al., pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") and Section 15(b) and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Release No. 79003 (the "Order").

Based on the facts and representations in the Waiver Letter and assuming Moloney complies with the Order, the Division of Corporation Finance, acting for the Commission pursuant to delegated authority, has determined that Moloney has made a showing of good cause under Rule 506(d)(2)(ii) of Regulation D and Rule 262(b)(2) of Regulation A that it is not necessary under the circumstances to deny reliance on Rule 506 of Regulation D or Regulation A by reason of the entry of the Order. Accordingly, the relief requested in the Waiver Letter regarding any disqualification that may arise as to Moloney under Rule 506 of Regulation D or Regulation A by reason of the entry of the Order is granted on the condition that it 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,

A handwritten signature in black ink that reads "Sebastian Gomez Abero".

Sebastian Gomez Abero
Chief, Office of Small Business Policy
Division of Corporation Finance

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MISSOURI KANSAS COLORADO NEVADA ILLINOIS SHANGHAI

September 21, 2016

VIA E-MAIL (smallbusiness@sec.gov) & OVERNIGHT MAIL
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

Re: *In the Matter of Moloney Securities Co., Inc., et al. – Waiver of Disqualification*

Dear Mr. Gomez Abero:

This letter is submitted on behalf of our client, Moloney Securities Co., Inc. ("Moloney," also sometimes referred to herein as the "Respondent"), a respondent agreeing to settle the subject administrative proceeding brought by the Securities and Exchange Commission (the "Commission").

The Respondent hereby requests, pursuant to Rule 262 of Regulation A and Rule 506 of Regulation D of the Commission promulgated under the Securities Act of 1933 (the "Securities Act"), waivers of any disqualifications from relying on exemptions under Regulation A and/or Rule 506 of Regulation D that will disqualify the Respondent or otherwise be applicable as a result of the entry of an order in the subject administrative proceeding against the Respondent (the "Order").

BACKGROUND

The Staff has engaged in settlement discussions with Respondent in connection with its investigation of violations of Section 206(2), 206(3) and Section 207 of the Investment Advisers Act of 1940 ("Advisers Act"), as well as Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. As a result of these discussions, Moloney submitted an Offer of Settlement (the "Offer"), and agreed to the Order, which was presented by the staff of the Division of Enforcement of the Commission (the "Staff") to the Commission.

In the Offer, the Respondent agreed to consent to the issuance of the Order without admitting or denying the matters set forth therein (other than those relating to the jurisdiction of the Commission over it and the subject matter solely for purposes of that action).

The Order, among other things, states that Moloney willfully violated Section 206(2), Section 206(3), Section 207 and Section 206(4) of the Advisers Act, and Rule 206(4)-7 thereunder. Specifically, the Order states that Moloney repeatedly violated the Advisers Act following the issuance of multiple deficiency letters concerning the deficiencies identified by the staff of the Commission's Office of Compliance Inspections and Examination (hereinafter, "exam staff"). According to the Order, the exam staff conducted three examinations of Moloney and issued deficiency letters following each and giving Moloney notice that its compliance program contained certain deficiencies. In the 2006 deficiency letter the exam staff noted, among other things, that the firm did not have written compliance policies and procedures for its investment advisory business. The deficiencies noted by the exam staff in the 2009 letter included, but were not limited to, that while Moloney had developed compliance policies and procedures for its advisory business, it had not adequately implemented those policies and further had not properly conducted principal transactions. Following these exams, Moloney represented to the exam staff that it would correct certain noted deficiencies, including but not limited to its method of documenting principal transactions and its best execution practices.

The Order also states that Moloney received another deficiency letter in 2012 which identified that the deficiencies regarding principal transactions and implementation of the firm's compliance policies and procedures were ongoing. The 2012 deficiency letter noted that Moloney continued to fail to: (i) properly conduct principal transactions; (ii) accurately disclose its practices regarding principal transactions; and (iii) implement the firm's compliance policies and procedures regarding principal transactions and best execution.

It should be noted that none of the conduct in the Order involved a scienter-based violation, and that the conduct described in the Order did not give rise to any criminal charges or conviction.

The Order requires Respondent to cease and desist from committing any violations and any future violations of Sections 206(2), 206(3), 207 and 206(4) of the Advisers Act (and Rule 206(4)-7 thereunder) and requires that Moloney pay a civil monetary penalty of \$34,000. Moloney is also ordered to comply with certain undertakings, including retaining an independent compliance consultant. Finally, the Order censured Moloney.

DISCUSSION

Moloney understands that the entry of the Order will disqualify it, affiliated entities, and other issuers from relying on certain exemptions under Regulation A and/or under Rule 506 of Regulation D promulgated under the Securities Act. Moloney is concerned that, should it or any of its affiliated entities be deemed to be an issuer, predecessor of the issuer, affiliated issuer, general partner or managing member of issuer, promoter, underwriter of securities or in any other capacity described in Securities Act Rule 262 and/or Rule 506 for the purposes of Securities Act Rule 262(b)(3) and Rule 506(d)(1)(iv), Moloney, its affiliated issuers, and other issuers with which it is associated in one of those listed capacities and which rely upon or may rely upon these offering exemptions when issuing securities would be prohibited from doing so. The Commission has the authority to waive the Regulation A and Regulation D exemption disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances. See 17 C.F.R. §§ 230.262 and 230.506(d)(2)(iii).

Moloney requests that the Commission waive any disqualifying effects that the Order will have under Regulation A and Rule 506 of Regulation D as a result of its entry as to Moloney on the following grounds:

1. *Nature of Conduct.* The Respondents' conduct addressed in the Order pertains to failure to properly conduct principal transactions. The conduct in the Order relates to certain failures to disclose practices and implement policies in the firm's investment advisory line of business concerning principal trades and/or best execution. Further, and as noted above, the conduct did not involve scienter, and the Order does not require or order any disgorgement or restitution to any customer.
2. *Duration of and Responsibility for Conduct.*
 - a. *Duration.* Though the Order cites the "relevant period" as September 2009 to September 2011, the actual conduct at issue began with the first exam staff examination in 2006, well before the current president of Moloney's investment advisory business, Ron Medley, was in a position of leadership, and included as a material event the second exam staff examination which occurred in early 2009, just months after Mr. Medley assumed his role with the Moloney investment advisory business. Mr. Medley continued in his role as president of the advisory business throughout the "relevant period" and as covered in the Order.
 - b. *Responsibility.* The majority of the Order focuses on principal trades, and in 2008 the firm separated, by virtue of voluntary resignations, from the two representatives who were responsible for effecting a large majority of the actual principal trade transactions that were identified in the exam staff's exams and deficiency letters. Similarly, while Mr. Medley continued in his role as president of the advisory business throughout the relevant period of the order, it should be noted that the firm has undergone significant leadership changes in the past several years. In 2011 and likely earlier, the firm's founder and chief executive, John Moloney, Sr., began battling a long and progressively worse illness that increasingly took him away from his leadership and oversight duties until he eventually passed away in July 2014. In late 2013, when Mr. Moloney's illness became so severe that he could no longer spend any appreciable time at the office, he determined to transfer leadership of the company to a successor. In December 2013, at the firm's annual compliance meeting, Mr. Moloney announced the appointment of a new Chief Executive Officer of the firm, Don Hancock. Additionally, in July 2015 the firm appointed a new Chief Compliance Officer, Carrie Wrisberg. Finally and as a result of the changes described here and the corporate restructuring described in section 3, below, concerning remedial efforts, Mr. Medley currently has no leadership or executive title related to the firm's advisory activities. The firm's leadership has now changed significantly from those who led it during the "relevant period."
3. *Extensive Remedial Efforts - Prior to and As Part of the Order.* The combination of steps taken by Moloney prior to issuance of the Order, and the Order's required undertakings, demonstrate that Moloney has taken material steps to address the conduct in the Order and to prevent similar such conduct from occurring in the future. As noted directly in the Order, Moloney reimbursed clients for certain principal transactions before the Order was issued and, in fact, several years before the Staff's investigation began. Moloney also took steps to remediate issues identified in the exam staff's exams, including the segregation of the firm's brokerage accounts from its advisory's accounts. In addition in April 2014, more than a year before the Order was issued and before the Staff's concerns were first communicated to Moloney, the firm hired an independent compliance consultant to review the firm's written supervisory policies and procedures as well as its overall compliance structure. As a result of this review and consulting, Moloney

adopted a revised and enhanced compliance manual, and its new Written Supervisory Policies and Procedures Manual was released in April 2015. The consultant's work also led the firm to more closely inspect its supervision of outside investment advisers and their ADVs, trading activities and documentation, and to implement features by which those advisers would be more accountable to the firm through more frequent reports, reviews and audits. These outside advisers now are required to engage third-party consultants who will facilitate supervision over their advisory activity.

The firm has also enhanced certain control mechanisms within the firm using improved technology, specifically including improvements in the area of electronic communication, communication review and communication storage. These efforts include a transition to a superior e-mail surveillance and recording system, and will ensure better and more timely reviews and communications. The firm now uses Global Relay, a message archiving vendor featured in FINRA's Compliance Resource Provider Program to assist the firm in satisfying FINRA and Commission rules. The firm has also worked to upgrade its overall surveillance program, both in terms of technology and close adherence to related processes. The firm is using Protegent™ Surveillance (ProSurv), an application for compliance and surveillance that organizes trades, applies filters to support supervisory review responsibilities, and captures/records supervisor's actions regarding review and resolution. The technology enhancements should help the firm better track principal trades and confirm proper documentation, and will improve processes for identifying gaps in processes and repairing the same. These improvements will also add efficiencies to communications and supervision regarding best execution, including through improved reports and greater and better recorded access to and communication with the firm's clearing service.

More recently, the firm unilaterally and without direction from the Commission determined to hire another consultant to focus more narrowly on its advisory business. This independent consultant completed a full review of the advisory business in September 2015 that included, without limitation, analysis of principal transaction and best execution issues. The consultant preliminary findings indicated no compliance concerns specific to principal transactions and best execution. As a result of preliminary findings and expected additional recommendations, Moloney is in the process of revising its advisory's compliance manuals and ADV. Moloney also determined to alter its registration so that it is no longer a dual-registered firm – Moloney Securities Co., Inc., is now in the process of becoming solely a registered broker-dealer, and a successor investment adviser firm, Moloney Securities Asset Management, LLC, and an affiliated but non-successor investment adviser firm, Moloney Investment Advisory LLC, have both become registered with the Commission. Further, the firm has also hired a full-time senior level advisory business specialist to add depth to its advisory management structure.

Finally, as noted above, the personnel involved with the actual principal trade transactions which were a material component of the Order separated from the firm several years ago, and new leadership was recently installed and immediately revised and enhanced the firm's compliance program.

In addition to the remedial measures and work engaged by Moloney on a unilateral and voluntary basis, the Order requires Moloney to comply with certain undertakings including, among other things: (a) engaging for one year an independent compliance consultant to assist Moloney in developing and implementing policies and procedures to promote the firm's compliance with its principal transactions, best execution, and/or disclosure requirements to advisory clients under the Advisers Act; and (b) certifying, in writing, compliance with the undertaking(s). The work with the consultant required by the Order will be in addition

to that completed with the consultants hired in 2014 and 2015, and the consultant hired pursuant to the Order will be different than those engaged for the previous work.

4. *Material Negative Impact of Disqualification.* The disqualification of Moloney and any of its affiliates from relying on the exemptions under Regulation A and/or Rule 506 of Regulation D would, we believe, have a significant adverse impact on third parties that have recently retained, and may retain in the future, Moloney and its affiliates in connection with transactions that rely on these exemptions. Moloney is quite active in this space and, given its recent activity, pending offerings, recent additions to the Moloney Securities broker ranks, and the final promulgation of Regulation A enhancements in mid-June 2015, Regulation A and Regulation D activity in this year and/or next could rise to represent as much as 5%-10% of the firm's overall revenue, or possibly even more.

For example, in 2014 Moloney participated in one of the nation's few Regulation A transactions as a placement agent, assisting with a successful five million dollar offering (Moloney continues to work with the issuer in that matter on items related to the offering). Moloney is currently involved with four offers under the revised Regulation A exemption in the 2012 Jumpstart Our Business Startups Act (the "JOBS Act"); those four offerings have a projected combined value of more than \$120 million. Further, Moloney has recently sought to organize and lead conferences and events geared toward increased awareness and use of the revised Regulation A exemption, and has been active in commenting upon the same in conjunction with regulatory rule-makings. The disqualifying impact of the Order would undermine these past and current efforts to expand Moloney's role in the growing Regulation A community.

As to Regulation D, Rule 506 offerings, Moloney has participated in multiple transactions that relied on that exemption in past years, including four recent Regulation D offerings with a combined value of approximately \$8 million - \$12 million. Moloney is also working with issuers on six pending Regulation D matters that could raise in excess of \$60 million. In late 2015, Moloney also finalized an affiliation with a large independent broker located on the West Coast which is extremely active in the Regulation D space and which seeks to serve as the primary placement agent or a managing broker-dealer for multiple large Rule 506 offerings. This new affiliation will greatly expand Moloney's Regulation D, Rule 506 activity in the coming months (and has already led to the firm serving as the managing broker for two of the Regulation D offers), but would also be materially impacted, in a negative manner, were the Order's disqualifying effect to apply. Given this level of recent and current Regulation A and Regulation D activity, the disqualification that would arise once the Order is issued would have a drastic effect on both Moloney and third parties that have retained or may retain Moloney in connection with transactions that rely on these exemptions.

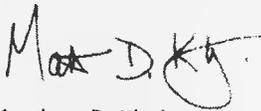
5. *Disclosure.* Moloney will furnish (or cause to be furnished), over the one-year period during which it engages the independent compliance consultant as required by the Order, to each purchaser in a Regulation A or Rule 506 offering that would otherwise be subject to disqualification under Rule 262(b)(3) or Rule 506(d)(1) as a result of the Order, a description in writing of the Order a reasonable time prior to sale.

6. *Prior Relief in Similar Circumstances.* The Commission saw fit to waive the disqualifying impact of an order in a matter with quite similar findings and violations less than two years ago.¹ In addition to that recent analogous case, the Commission has granted relief under Rule 262 of Regulation A and Rule 506 of Regulation D for similar reasons or in similar circumstances to that at issue in this application.² It should also be noted that this is the first and only application for waiver of exemption disqualifications ever made by Moloney.

In light of the grounds for relief discussed above, we believe that disqualification is not necessary under the circumstances and that Moloney has shown good cause that relief should be granted. Accordingly, we respectfully urge the Commission, pursuant to Rule 262 of Regulation A and Rule 506(d)(2)(ii) of Regulation D, to waive the disqualification provisions in Regulation A and Rule 506 of Regulation D to the extent they may be applicable as a result of the entry of the Order as to Moloney.

Please do not hesitate to call me at the number listed above if you have any questions.

Sincerely,



Matthew D. Kitzi

MDK/slh

¹ See *Dominick & Dominick LLC*, S.E.C. No-Action Letter (pub. avail. July 23, 2014). In the *Dominick & Dominick* matter, the respondent was found to have violated Sections 206(2), 206(3), 206(4) (and Rule 206(4)-7 thereunder) and 207 of the Advisers Act, just as Moloney was charged. In the *Dominick & Dominick* matter, however, the respondent was ordered to pay a civil monetary penalty that was more than double that required of Moloney (*Dominick & Dominick* paid a \$75,000 penalty, while Moloney has only been ordered to pay \$34,000). Further, *Dominick & Dominick* was required to pay nearly \$150,000 in disgorgement and interest to clients, while Moloney was not required to pay any disgorgement whatsoever. The Commission granted the waiver in *Dominick & Dominick*.

² See, e.g., *Royal Alliance Associates, Inc.*, *SagePoint Financial, Inc.* and *FSC Securities Corporation*, S.E.C. No-Action Letter (pub. avail. Mar. 14, 2016); *Merrill, Lynch, Pierce, Fenner and Smith Incorporated*, S.E.C. No-Action Letter (pub. avail. June 1, 2015); *BlackRock Advisors, LLC*, S.E.C. No-Action Letter (pub. avail. April 20, 2015); *H.D. Vest Investment Securities, Inc.*, S.E.C. No-Action Letter (pub. avail. March 4, 2015); *Jefferies LLC*, S.E.C. No-Action Letter (pub. avail. March 12, 2014); *Credit Suisse Group AG*, S.E.C. No-Action Letter (pub. avail. February 21, 2014); *Instinet LLC*, S.E.C. No-Action Letter (pub. avail. Dec. 26, 2013); *RBS Securities Inc.*, S.E.C. No-Action Letter (pub. avail. Nov. 25, 2013); *A.R. Schmeidler & Co.*, S.E.C. No-Action Letter (pub. avail. July 31, 2013); *J.P. Morgan Securities LLC*, et al., S.E.C. No-Action Letter (pub. avail. Jan. 8, 2013); and *J.P. Turner & Company, LLC* and *William L. Melo*, S.E.C. No-Action Letter (pub. avail. Sept. 10, 2012).