



DIVISION OF
CORPORATION FINANCE

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

September 8, 2016

Elizabeth A. Marino, Esq.
Sidley Austin LLP
60 State Street
36th Floor
Boston, MA 02109

Re: In the Matter of Raymond James & Associates, Inc.
Raymond James Financial, Inc. – Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act

Dear Ms. Marino:

This is in response to your letter dated August 22, 2016, written on behalf of Raymond James Financial, Inc. (“Company”) and constituting an application for relief from the Company being considered an “ineligible issuer” under clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act of 1933 (“Securities Act”). The Company requests relief from being considered an “ineligible issuer” under Rule 405, due to the entry on September 8, 2016, of a Commission Order (“Order”) pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Raymond James & Associates, Inc. (“RJA”). The Order requires that, among other things, RJA cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Based on the facts and representations in your letter, and assuming RJA complies with the Order, the Commission, pursuant to delegated authority, has determined that the Company has made a showing of good cause under clause (2) of the definition of ineligible issuer in Rule 405 and that the Company will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. 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.

Sincerely,

/s/

Tim Henseler
Chief, Office of Enforcement Liaison
Division of Corporation Finance



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August 22, 2016

By Email and Overnight Courier

Tim Henseler, Esq.
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: In the Matter of Raymond James & Associates, Inc.

We are writing on behalf of Raymond James Financial, Inc. (“Raymond James”) in connection with the anticipated settlement of the above-captioned administrative proceeding (“Proceeding”) brought against Raymond James’s wholly-owned direct subsidiary, Raymond James & Associates, Inc. (“RJA”), by the U.S. Securities and Exchange Commission (“Commission” or “SEC”). The Proceeding would arise out of RJA’s failure to adopt and implement policies and procedures reasonably designed to prevent violations of the Investment Advisers Act of 1940 (“Advisers Act”) relating to advisory client commissions.

Raymond James is a publicly-traded company listed on the New York Stock Exchange (“NYSE”) and is a reporting company under the Securities Exchange Act of 1934 (“Exchange Act”). Raymond James qualifies as a “well-known seasoned issuer” (“WKSI”) as defined in Rule 405 under the Securities Act of 1933 (“Securities Act”).

Raymond James respectfully requests a waiver from the Commission or the Division of Corporation Finance (“Division”), acting pursuant to its delegated authority, determining that Raymond James would not be an “ineligible issuer,” as defined in Rule 405 under the Securities Act, as a result of the Commission order arising from the Proceeding (the “Order”), which is described below. Consistent with the framework outlined in the Division’s *Revised Statement on Well-Known Seasoned Issuer Waivers* (April 24, 2014) (“Revised Statement”), we respectfully submit that there is good cause for the Division to grant the requested waiver, as discussed below. Raymond James requests that this determination be made effective upon the entry of the Order.

I. BACKGROUND

As a result of settlement discussions, RJA and the Division of Enforcement (“Staff”) have reached an agreement in principle to settle the matter as described below. Accordingly, RJA and the Staff are in the process of formalizing the settlement that will include an offer of settlement in which, solely for the purpose of proceedings brought by or on behalf of the Commission or to which the Commission is a party, RJA will consent to the entry of an Order without admitting or denying the matter set forth in the Order, except the jurisdiction of the Commission and the subject matter of the proceeding.

RJA established an advisory program known as the Raymond James Consulting Services (“RJCS”) program to provide clients with access to sub-advisers through separately managed accounts. RJA charged RJCS clients participating in the program a negotiable wrap fee. Under RJCS, RJA’s advisory clients selected a participating sub-adviser to develop a portfolio in the client’s separately managed account and a sub-adviser could direct its trading to unaffiliated firms. The wrap fee did not cover the commission costs for transactions executed by broker-dealers other than RJA and the client bore these expenses in addition to the wrap fee (“Step-out Trades”). In 2015, RJCS moved to a primarily model delivery basis, which significantly limits Step-out Trades. In 2015, RJCS generated approximately \$189 million in revenue, which constitutes approximately 3.5% of Raymond James’s total revenues, and after paying out approximately \$46 million in sub-adviser fees, totals approximately 2.69% of Raymond James’s total revenues.

The Order will make findings that, among other things: RJA failed to adopt and implement policies and procedures reasonably designed to collect, track and disclose information regarding commissions associated with trading away, which impaired RJA’s ability to determine whether RJCS was suitable for its prospective and existing advisory clients and affected the ability of clients to assess fully the associated costs of equity trades. The absence of such information impaired clients’ ability to negotiate meaningfully the wrap fee with RJA, to assess the total costs of RJCS and determine which RJCS sub-advisers to select.

The Order will state that RJA violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder in connection with the violations discussed above. Without admitting or denying the findings in the Order, except as to the Commission’s jurisdiction and the subject matter of the proceedings, RJA will agree to consent to (a) cease and desist from committing or causing any violations and any future violations of these provisions, and (b) pay a civil monetary penalty of \$600,000. RJA has also agreed to certain undertakings related to commission disclosure, annual commission reports, certain policies and procedures and certain financial advisor trainings.

II. DISCUSSION

A WKSI is eligible to utilize many important reforms in the securities offering and communication processes that the Commission adopted in 2005. Among other things, a WKSI can register securities for offer and sale under an automatic shelf registration statement, which becomes effective upon filing and is also eligible for the other benefits of the streamlined registration process, such as the ability to file automatically effective post-effective amendments to register additional securities and pay registration filing fees on a “pay as you go” basis. Furthermore, a WKSI is also able to communicate more freely than a non-WKSI during the offering process, including through the use of free writing prospectuses.

The Commission also created another category of issuer under Rule 405 – the “ineligible issuer.” A company cannot qualify as a WKSI if it is an “ineligible issuer.” Accordingly, a company that becomes an ineligible issuer loses all of the benefits bestowed on a WKSI, including, and most importantly, the ability to utilize an automatic shelf registration statement and to use free writing prospectuses (except in very limited circumstances). An issuer is an ineligible issuer if “[w]ithin the past three years ... the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that: (A) prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws; (B) requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws; or (C) determines that the person violated the anti-fraud provisions of the federal securities laws.”¹

The entry of the Order against RJA would render Raymond James, as RJA’s parent company, an ineligible issuer under Rule 405. As a result, absent a waiver from the disqualification, Raymond James would lose its current status as a WKSI.

The Commission retains the authority under Rule 405 to determine “upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.”² The Commission has delegated the authority to the Division to make such a

¹ 17 C.F.R. 230.405(1)(vi).

² 17 C.F.R. 230.405(2).

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determination.³ In the Revised Statement, the Division stated that it will consider the following factors in determining whether to grant a waiver:

- the nature of the violation and whether it involved disclosure for which the issuer or any of its subsidiaries was responsible or calls into question the ability of the issuer to produce reliable disclosure currently and in the future;
- whether the alleged misconduct involved a criminal conviction or scienter-based violation;
- who was responsible for the misconduct and the duration of the misconduct;
- what remedial steps the issuer took; and
- the impact if the waiver request is denied.

For the reasons set forth below, we respectfully submit that there is good cause for the Division to determine that granting the waiver would be consistent with the public interest and the protection of investors.

A. Nature of Violation and Whether the Violation Casts Doubt on the Ability of the Issuer to Produce Reliable Disclosures to Investors

As discussed above, the conduct described in the Order involves a failure to adopt and implement adequate policies and procedures designed to collect, track and disclose certain commissions that clients incurred in one of its advisory programs. The conduct involved only one of RJA's advisory programs and occurred as a result of decisions by sub-advisers to step out trades from Raymond James's trading platform, as was allowed under the sub-advisory agreement. Furthermore, RJA, as noted in the Order and discussed in detail below, has taken substantial remedial measures to strengthen its compliance function, including updating its policies and procedures in the applicable areas. The violations described in the Order do not pertain to activities undertaken by Raymond James in connection with Raymond James's role as an issuer of securities (or any disclosure related thereto) or otherwise involve fraud in connection with Raymond James's offerings of its own securities. Furthermore, the violations in the Order do not involve misstatements or omissions in Raymond James's disclosure and do not call into question the reliability of Raymond James's disclosure or its ability to produce reliable disclosure in the future. Rather, the misconduct described in the Order occurred at the subsidiary level, without the

³ 17 C.F.R. § 200.30-1(a)(10).

involvement of Raymond James. None of these charges implicate in any way the ability of Raymond James, RJA's parent, to issue reliable disclosure.

B. The Order Is Not Criminal in Nature or Involve Scier-er-Based Fraud

The Revised Statement indicates that the Division "will review whether the conduct involved a criminal conviction or scier-er-based violation as opposed to a civil or administrative non-scier-er based violation." The Order does not involve a criminal conviction and does not state that RJA acted with scier-er or intent to defraud. None of the violations described in the Order are scier-er-based. In particular, the Order only involves an administrative non-scier-er based violation of the federal securities laws by RJA, namely violations of Section 206(4) of the Advisers Act and Rule 206(4)-7, which are violations that can be established by a showing of negligence.

C. The Persons Responsible for the Misconduct and the Duration of the Misconduct

As noted above, the core conduct giving rise to the charges against RJA is the failure to adopt and implement adequate policies and procedures designed to collect, track and disclose certain commissions that clients incurred in one of its advisory programs. The conduct at issue in the Order neither involves Raymond James – the issuer – nor any allegations related to public disclosures of Raymond James. No individuals at Raymond James or RJA were named in the Order, and the Commission does not allege that any of the directors or senior management of RJA or Raymond James engaged in any deliberate misconduct or were aware of violative conduct or ignored any warning signs or "red flags" regarding the conduct. Furthermore, the Order will not make any findings that suggest the conduct described in the Order involved the senior management of RJA or Raymond James. Asset Management Services, a division of RJA, is responsible for the policies and procedures related to the RJCS program.

RJA has permitted step-out trades since the inception of the advisory program in 1987 and, as discussed in more detail below, began developing the following remedial steps in or around July 2015: (i) adopted policies and procedures to receive trading away costs from the sub-advisers such that RJA could make initial and ongoing suitability determinations for RJA's clients, (ii) adopted and implemented written policies and procedures to make the cost information available to its advisory clients, and (iii) adopted and implemented written policies and procedures concerning the collection of commissions and other information, such as the sub-advisers' trading procedures, to determine whether the sub-advisers were trading away because they were seeking to obtain best execution.

D. Remedial Steps

As noted in the Order, RJA is taking significant steps, on its own initiative, to strengthen its compliance function and prevent recurrence of the conduct described in the Order. RJA's remedial steps include the following:

- Modifying its agreements with sub-advisers to obtain commission information and information regarding the security type and frequency of trading away.
- Adding disclosures to its applicable client agreements and other materials provided to RJA financial advisors regarding sub-advisers' practices of trading away from RJA.⁴

In connection with the Order, RJA has also agreed to the following undertakings:

- Create a publicly available website that discloses trading away practices of sub-advisers participating in RJCS with information identifying the impact trading away has on the sub-adviser's performance. The website will be implemented by January 6, 2017.
- Identify for RJCS clients on their periodic statements any transaction that was traded away and disclose (i) that a commission may have been charged by the executing broker-dealer, and (ii) direct the advisory client to the website described above.
- Ensure that RJA financial advisors receive adequate information concerning trade away practices and commission costs, and conduct related training regarding the use and consideration of the information for determining whether a particular sub-adviser would be or continues to be suitable for a particular advisory client.
- Periodically review on at least an annual basis, and, as necessary, update its policies and procedures regarding the above referenced undertakings.

⁴ RJA also enhanced its Form ADV disclosures on December 15, 2015 to include disclosures related to step out trades.

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- By no later than June 2, 2017, create a report, which will be included with RJCS client statements on at least an annual basis, for each RJCS client and financial advisor that shows the aggregate amount of commissions embedded in trades executed away from RJA placed by the client's sub-adviser(s).
- Certify, in writing, compliance with the undertakings outlined above.

E. Previous Actions

The Commission has previously granted Raymond James two waivers from being considered an ineligible issuer. *In the Matter of Raymond James Financial, Inc.* (June 18, 2015) related to the failure by Raymond James Financial, Inc. ("RJFI") to conduct adequate due diligence on certain municipal securities offerings in connection with the Municipalities Continuing Disclosure Cooperation Initiative. This matter was self-reported to the Commission and the settlement involved 36 underwriters. *In the Matter of Raymond James & Associates, Inc. and Raymond James Financial Services, Inc. (FL-3397)* (July 1, 2011) related to auction rate securities sales practices.

The conduct that was the subject of the previous waivers was wholly different than the conduct described in the Order. The conduct that was the subject of the above-referenced waiver requests and the conduct in this matter do not relate to Raymond James's conduct as an issuer of securities and do not call into question Raymond James's ability to make accurate and reliable disclosures. Lastly, Raymond James and its affiliates have taken remedial steps related to the conduct described in the Order to help prevent such conduct from recurring.

F. Impact on Issuer if Request is Denied

The Division's Revised Statement indicates that it will "assess whether the loss of WKSI status would be a disproportionate hardship in light of the nature of the issuer's conduct." Given that the conduct described in the Order involved the issuer's subsidiary's failure to adopt and implement adequate policies and procedures designed to collect, track and disclose certain commissions that clients incurred in one of its advisory programs, and taking into account the monetary fines imposed on RJA and the remedial measures described above, we respectfully submit that the impact of being designated an ineligible issuer would be unduly severe.

The Order is the result of substantial negotiations between RJA and the Commission's Division of Enforcement. The Order directs RJA to pay a civil penalty, cease and desist from violating Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder and comply with certain undertakings. The loss of Raymond James's status as an eligible issuer could, as described in more detail below, have an impact on Raymond James's ability to raise capital and conduct its

operations. This would be an unduly severe consequence, particularly in light of the fact that the conduct at issue in the Order involves one of Raymond James's subsidiaries and not Raymond James itself and the fact that RJA has undertaken substantial remedial efforts to prevent recurrence of the conduct at issue.

As an ineligible issuer, Raymond James would, among other things, lose the ability to:

- file automatic shelf registration statements to register an indeterminate amount of securities;
- offer additional securities of the classes covered by a registration statement without filing a new registration statement;
- allow Raymond James to include certain information omitted from the registration statement at the time of effectiveness through the filing of prospectus supplements or incorporated Exchange Act reports;
- take advantage of the "pay as you go" filing fee payment process;
- qualify a new indenture under the Trust Indenture Act of 1939, if needed, without filing or having the Commission declare effective a new registration statement; and
- use free writing prospectuses other than one that contains only a description of the terms of the offered securities or the offering itself.

Raymond James maintains an automatic shelf registration statement in order to facilitate timely issuance of securities responsive to market conditions. Raymond James last issued securities under its automatic shelf registration statement in March 2012 when it issued \$250 million institutional debt, \$350 million retail debt and \$350 equity securities, each of which were directly related to and substantially funded Raymond James's acquisition of Morgan Keegan. In April 2011, Raymond James used its automatic shelf registration statement to buy auction rate securities back from clients (at par) when it issued \$250 million institutional debt. Over the last five years, Raymond James has utilized its automatic shelf registration statement for all of its issuances of securities. Although Raymond James has not utilized its automatic shelf registration statement since 2012, it anticipates needing to use its automatic shelf registration statement for multiple purposes in the near future related to certain debt maturities and Raymond James's acquisition of Alex Brown.

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The automatic shelf registration process provides Raymond James with a critical means of access to the capital markets in a timely and efficient manner. Raymond James, like other institutions, faces changing regulatory and market conditions and uncertainties. Without the ability to utilize an automatic shelf registration statement, Raymond James may be unable to react quickly to such changing requirements and conditions, which could lead to investor harm. Furthermore, if Raymond James was unable to avail itself of the automatic shelf registration and the other benefits available to a WKSI, it would put Raymond James at a disadvantage compared to other issuers.

Raymond James respectfully submits that disqualification from being eligible for well-known seasoned issuer status would be an unduly severe consequence in light of the conduct described in the Order. Denial of this request would hinder necessary access to the capital markets by significantly increasing the time, labor, and cost of such access, a result that Raymond James believes would be inequitable to its shareholders and its clients.

III. CONCLUSION

We believe that the granting of the request is merited because the Order does not find any misconduct relating to Raymond James's financial statements, to any disclosure by Raymond James, or to any statements in any of Raymond James's filings with the Commission. Finally, Raymond James and RJA have fully cooperated with the Division of Enforcement in connection with its investigations. In light of these considerations, we believe that subjecting Raymond James to ineligible issuer status is not necessary to serve the public interest or for the protection of investors. Accordingly, we respectfully request that the Commission or the Division, on behalf of the Commission, make the determination that there is good cause for Raymond James not to be considered an ineligible issuer as a result of the Order.

If you have any questions regarding any of the foregoing, please do not hesitate to contact me at 617.223.0362.

Very truly yours,



Elizabeth A. Marino