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September 28, 2015

VIA EMAIL

Douglas J. Scheidt, Esq.
Associate Director and Chief Counsel
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0506

Re: *S.E.C. v. Agora, Inc., Pirate Investor, LLC and Frank Porter Stansberry, Civil Action No. MJG 03 CV 1042 (D. Md. Oct. 2, 2007)*

Dear Mr. Scheidt:

We are writing on behalf of F. Porter Stansberry ("Mr. Stansberry") and Stansberry & Associates Investment Research LLC (formerly known as Pirate Investor LLC) ("Stansberry Research") in connection with an injunction ("Injunction")¹ entered in the above-captioned civil proceeding regarding activities occurring in 2002.

Mr. Stansberry and Stansberry Research seek assurance that the staff of the Division of Investment Management (the "Staff") will not recommend enforcement action to the Securities and Exchange Commission (the "Commission") under Section 206(4) of the Investment Advisers Act of 1940, as amended (the "Advisers Act") or Rule 206(4)-3 thereunder, if, subject to the undertakings set forth below, any investment adviser registered or required to be registered pursuant to Section 203 of the Advisers Act (an "RIA"), pays to Mr. Stansberry or Stansberry Research a cash solicitation fee, directly or indirectly, for the solicitation of advisory clients, notwithstanding Rule 206(4)-3's preclusion of such payment as a result of the Injunction entered against Mr. Stansberry and Stansberry Research. While the Injunction does not operate to prohibit or suspend Mr. Stansberry or Stansberry Research from being associated with or (except indirectly as provided in Section 9(a) of the Investment Company Act of 1940, as amended) acting as an investment adviser, and does not relate to solicitation activities on behalf of Mr. Stansberry or Stansberry Research, the Injunction may affect the ability of an RIA to make, and Mr. Stansberry or Stansberry Research to receive, such payments.² The Staff in many other instances has granted no-action relief under Rule 206(4)-3 in similar circumstances.³

BACKGROUND

Mr. Stansberry is an employee and the founder of Stansberry Research, a wholly owned subsidiary of Agora, Inc., which is a subscription-based publisher of financial information.

On April 10, 2003, the Commission filed a complaint against Mr. Stansberry, Stansberry Research (the "Defendants") and others, and on November 14, 2003, filed an amended complaint (the "Complaint").⁴

The Commission alleged that the Defendants violated the antifraud provisions of the federal securities laws. Specifically, the Commission alleged that the Defendants offered to sell information obtained from a senior executive of an unnamed company listed on the New York Stock Exchange. The complaint also alleged that the information was false. The Commission alleged that by engaging in such conduct the Defendants violated Section 10(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Rule 10b-5 thereunder.⁵

As part of the Complaint, the Commission sought disgorgement and civil money penalties from the Defendants and the entry of a permanent injunction by the United States District Court for the District of Maryland (the "Court") against the Defendants. On October 2, 2007, the Court entered a permanent injunction against the Defendants permanently enjoining and restraining the Defendants from violating directly or indirectly Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, required the Defendants to disgorge \$1.3 million in profits and imposed a fine of \$120,000 against each Defendant.⁶

The Defendants have paid all amounts owed and complied with, and continue to comply with, the Injunction. No similar or other regulatory claims have been brought against Mr. Stansberry or Stansberry Research before those at issue or in the thirteen years since.

Mr. Stansberry and Stansberry Research have not received, and are not currently receiving, cash solicitation payments from any RIA.

DISCUSSION

Under Rule 206(4)-3, an investment adviser that is required to be registered under the Advisers Act may not pay cash fees to any solicitor that (among other disqualifying events) has been temporarily or permanently enjoined by an order, judgment or decree of a court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.⁷ The issuance of the Injunction in 2007, for activities occurring in 2002, causes Mr. Stansberry and Stansberry Research to be disqualified under Rule 206(4)-3. Accordingly, absent no-action relief, an RIA would be unable to make cash payments to Mr. Stansberry or Stansberry Research, and Mr. Stansberry and Stansberry Research would be unable to receive cash payments from any RIA for the solicitation of advisory clients.

In the release adopting Rule 206(4)-3, the Commission stated that it "would entertain, and be prepared to grant in appropriate circumstances, requests for permission to engage as a solicitor a person subject to a statutory bar."⁸ We respectfully submit that the circumstances present in this instance are precisely the sort that warrant a grant of no-action relief.

Rule 206(4)-3's proposing and adopting releases explain the Commission's purpose in including the disqualification provisions in Rule 206(4)-3. The purpose was to prevent an investment adviser from hiring as a solicitor a person whom the adviser was not permitted to hire as an employee, thus doing indirectly what the adviser could not do directly. In the proposing release, the Commission stated that:

[b]ecause it would be inappropriate for an investment adviser to be permitted to employ indirectly, as a solicitor, someone whom it might not be able to hire as an employee, the Rule prohibits payment of a referral fee to someone who . . . has engaged in any of the conduct set forth in Section 203(e) of the [Advisers]

Act . . . and therefore could be the subject of a Commission order barring or suspending the right of such person to be associated with an investment adviser.⁹

The Injunction does not bar, suspend, or limit Mr. Stansberry or Stansberry Research from acting in any capacity under the federal securities laws (except indirectly as provided in Section 9(a) of the Investment Company Act).¹⁰ Mr. Stansberry and Stansberry Research have not been sanctioned for conduct in connection with the solicitation of advisory clients for investment advisers. Neither Mr. Stansberry nor Stansberry Research has been the subject of any regulatory action before or since the initiation of the complaint discussed above. The Injunction does not pertain to advisory activities. Accordingly, consistent with the Commission's reasoning, there does not appear to be any reason to prohibit an RIA from paying Mr. Stansberry or Stansberry Research for engaging in solicitation activities under Rule 206(4)-3.

The Staff previously has granted numerous requests for no-action relief from the disqualification provisions of Rule 206(4)-3 to individuals and entities found by the Commission to have violated a wide range of federal securities laws and rules thereunder or permanently enjoined by courts of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.¹¹

UNDERTAKINGS

In connection with this request, Mr. Stansberry and Stansberry Research undertake as follows:

1. to conduct any cash solicitation arrangement entered into with an RIA in compliance with the terms of Rule 206(4)-3, except for the RIA's payment of cash solicitation fees, directly or indirectly, to Mr. Stansberry or Stansberry Research, who are subject to the Injunction;
2. that Mr. Stansberry and Stansberry Research have complied with the terms of the Injunction, including paying all amounts owed, and will continue to do so;
3. that, until October 2, 2017 (ten (10) years from the date of the entry of the Injunction), the separate written document required to be provided by Mr. Stansberry and Stansberry Research pursuant to Rule 206(4)-3(b) will include, in addition to the information specified in Rule 206(4)-3(b), disclosure concerning the Injunction;
4. that Mr. Stansberry and Stansberry Research will not solicit investors on behalf of an RIA the current and prospective clients of which consist solely of investment companies registered under the Investment Company Act; and
5. that, in connection with solicitation activities contemplated under this request, Mr. Stansberry and Stansberry Research will not receive transaction-based compensation from an RIA with respect to the sale of shares of an investment company registered under the Investment Company Act.

CONCLUSION

We respectfully request the Staff to advise us that it will not recommend enforcement action to the Commission if any RIA pays to Mr. Stansberry or Stansberry Research a cash solicitation fee, directly or indirectly, for the solicitation of advisory clients, notwithstanding the Injunction that otherwise would have precluded an RIA from paying such a fee to Mr. Stansberry or Stansberry Research. Should you have any further questions, please contact the undersigned.

Very truly yours,



David A. Vaughan
Dechert LLP

cc: Mark Arnold, Esq.
Director of Business Development
Stansberry & Associates Investment Research LLC

¹ S.E.C. v. Agora, Inc., Pirate Investor, LLC and Frank Porter Stansberry, Civil Action No. MJG 03 CV 1042 (D. Md. Oct. 2, 2007).

² Under Section 9(a) of the Investment Company Act of 1940, as amended (“Investment Company Act”), an RIA affiliated with Mr. Stansberry or Stansberry Research or of whom Mr. Stansberry is an employee, officer or director, is, as a result of the Injunction, prohibited from serving or acting as, among other things, an investment adviser or depositor of any registered investment company or principal underwriter for any registered open-end investment company or registered unit investment trust.

³ See, e.g., Emanuel J. Friedman, EJP Capital LLC, SEC No-Action Letter (Jan. 16, 2007) and James DeYoung, SEC No-Action Letter (Oct. 24, 2003); see also Citigroup Global Markets Inc., SEC No-Action Letter (Aug. 6, 2014); Credit Suisse, SEC No-Action Letter (May 20, 2014); RBS Securities, Inc., SEC No-Action Letter (Nov. 26, 2013); Goldman, Sachs & Company, SEC No-Action Letter (Oct. 31, 2003); Wells Fargo Bank, N.A., SEC No-Action Letter (July 15, 2013); J.P. Morgan Securities LLC, SEC No-Action Letter (Jan. 9, 2013); GE Funding Capital Market Services, Inc., SEC No-Action Letter (Jan. 25, 2012); J.P. Morgan Securities LLC, SEC No-Action Letter (pub. avail. July 11, 2011); J.P. Morgan Securities LLC, SEC No-Action Letter (pub. avail. June 29, 2011); UBS Financial Services Inc., SEC No-Action Letter (pub. avail. May 9, 2011); Citigroup Inc., SEC No-Action Letter (pub. avail. Oct. 22, 2010); Banc of America Investment Services, Inc., SEC No-Action Letter (pub. avail. June 10, 2009); Barclays Bank PLC, SEC No-Action Letter (pub. avail. June 6, 2007); Morgan Stanley & Co. Incorporated, SEC No-Action Letter (pub. avail. May 15, 2006); American International Group, Inc., SEC No-Action Letter (pub. avail. Feb 21, 2006); Goldman, Sachs & Co., SEC No-Action Letter (pub. avail. Feb. 23, 2005); Morgan Stanley & Co. Incorporated, SEC No-Action Letter (pub. avail. Feb. 4, 2005); Prime Advisors, Inc.; SEC No-Action Letter (pub. avail. Nov. 8, 2001); Legg Mason Wood Walker, Inc., SEC No-Action Letter (pub. avail. June 11, 2001); Dreyfus Corp., SEC No-Action Letter (pub. avail. March 9, 2001); UBS Securities Inc., SEC No-Action Letter (pub. avail. Feb. 7, 2001); Tucker Anthony Inc., SEC No-Action Letter (pub. avail. Dec. 21, 2000); J.B. Hanauer & Co., SEC No-Action Letter (pub. avail. Dec. 12, 2000); Founders Asset Management LLC, SEC No-Action Letter (pub. avail. Nov. 8, 2000); Credit Suisse First Boston Corp., SEC No-Action Letter (pub. avail. Aug. 24, 2000); Janney Montgomery Scott LLC, SEC No-Action Letter (pub. avail. July 18, 2000); Aeltus Investment Management, Inc., SEC No-Action Letter (pub. avail. July 17, 2000); William R. Hough & Co., SEC No-Action Letter (pub. avail. Apr. 13, 2000); In the Matter of Certain Municipal Bond Refundings, SEC No-Action Letter (pub. avail. Apr. 13, 2000); In the Matter of Certain Market Making Activities on Nasdaq, SEC No-Action Letter (pub. avail. Jan. 11, 1999); Paine Webber, Inc., SEC No-Action Letter (pub. avail. Dec. 22, 1998); NationsBanc Investments, Inc., SEC No-Action Letter (pub. avail. May 6, 1998); Morgan Keegan & Co., Inc., SEC No-Action Letter (pub. avail. Jan. 9, 1998); Merrill Lynch, Pierce, Fenner & Smith, Inc., SEC No-Action Letter (pub. avail. Aug. 7, 1997); Gruntal & Co., SEC No-Action Letter (pub. avail. July 17, 1996); Salomon Brothers Inc.; SEC No-Action Letter (pub. avail. Jan. 26, 1994); BT Securities Corporation, SEC No-Action Letter (pub. avail. Mar. 30, 1992); Kidder Peabody & Co. Inc., SEC No-Action Letter (Oct. 11, 1990); First City Capital Corp., SEC No-Action Letter (pub. avail. Feb. 9, 1990); RNC Capital Management Co., SEC No-Action Letter (pub. avail. Feb. 7, 1989); and Stein Roe & Farnham Inc., SEC No-Action Letter (pub. avail. Aug. 25, 1988).

⁴ S.E.C. v. Agora, Inc., Pirate Investor, LLC and Frank Porter Stansberry, Civil Action No. MJG 03 CV 1042 (D. Md. Nov. 14, 2003).

⁵ *Id.*

⁶ See Injunction, Endnote 1, *supra*.

⁷ 17 C.F.R. § 275.206(4)-3(a)(1)(ii)(D) (prohibiting any investment adviser that is required to be registered under the Advisers Act from paying a cash fee, directly or indirectly, to any solicitor with respect to solicitation activities if, among other things, the solicitor is subject to an order, judgment or decree described in Section 203(e)(4) of the Advisers Act).

⁸ See Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act Rel. No. 688 (July 12, 1979).

⁹ See Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act Rel. No. 615 (Feb. 2, 1978).

¹⁰ See Endnote 2, *supra*.

¹¹ See Endnote 3, *supra*.