



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

July 26, 2012

Ira Lee Sorkin
Lowenstein Sandler, PC
65 Livingston Avenue
Roseland, New Jersey 07068

RE: Denial of No-Action Request

Dear Mr. Sorkin:

In your letter dated July 19, 2012, you request assurance that the staff of the Division of Trading and Markets ("Division") will not recommend enforcement action to the Securities and Exchange Commission ("Commission") under Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act") if your client, Jeffery A. Wolfson, notwithstanding his suspension from associating with a broker-dealer, among other things detailed in your letter, maintains his nearly 70% equity interest in Sallerson-Troob, LLC ("Sallerson-Troob"), a registered broker-dealer, by placing the shares in a blind voting trust (collectively, "Proposed Activities").

According to your letter, on July 30, 2012 Mr. Wolfson will become subject to provisions in a Commission Order that will, among other things, suspend him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, for a period of twelve months ("Associational Suspension").¹ Section 3(a)(18) of the Exchange Act defines the terms "person associated with a broker or dealer" or "associated person of a broker or dealer" as any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer.²

¹ See Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 as to Jeffrey A. Wolfson, Securities Exchange Act Release No. 67451 (July 17, 2012) (The relevant provisions of the Order suspending Mr. Wolfson were issued pursuant to Section 15(b)(6)(A) of the Exchange Act).

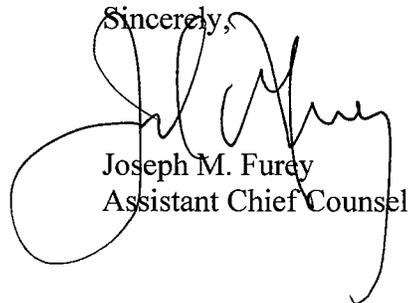
² Section 3(a)(18) of the Exchange Act provides a limited exception to the definition of "person associated with a broker or dealer" or "associated person of a broker or dealer" for any person associated with a broker or dealer whose functions are solely clerical or ministerial. This exception generally applies for purposes of Section 15(b) of the Exchange Act; however, the exception does not apply for purposes of Section 15(b)(6) of the Exchange Act.

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Whether a person is an associated person of a broker-dealer is a fact-specific question to be determined by the relevant parties, case-by-case, on the basis of a thorough understanding of the facts and circumstances of a particular situation. Generally, however, any person who holds an ownership interest in a broker or dealer would be considered an associated person. In some instances, a person may comply with an Associational Suspension by placing his or her ownership interest in an irrevocable trust over which that person has no direct or indirect control for the duration of the suspension. Whether that would be sufficient to comply with the suspension, however, would depend, among other things, on the legal provisions of the trust as well as the ability of that person to influence or control the activities of the trustee. Similarly, whether a person no longer “controls” a broker-dealer would depend on whether any control is directly or indirectly retained. If the person is in a position to influence the person(s) to whom control is ostensibly passed, the person likely would be deemed to have retained control. Again, this is a fact-specific determination, which could be informed by the relationship between the person passing control and the person to whom control was passed. Moreover, the extent to which a person continued to have contact with persons at the broker-dealer, or to spend time at the broker-dealer, would also be a relevant consideration in assessing whether a person retains control and thus remains an associated person.

Accordingly, based on the facts and representations set forth in your letter, the Division is unable to assure you that it would not recommend enforcement action to the Commission if Mr. Wolfson engages in the Proposed Activities set forth in your letter.

Sincerely,



Joseph M. Furey
Assistant Chief Counsel

July 19, 2012

VIA EMAIL
VIA FEDEX

David W. Blass, Esq.
Chief Counsel
Division of Trading and Markets
United States Securities and Exchange Commission
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Washington, DC 20549-1001
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Re: Request for No-Action Letter – In the Matter of Jeffrey A. Wolfson, et al. (File No. 3-14726)/ Association with Any Broker or Dealer

Dear Mr. Blass:

This Firm represents Jeffrey A. Wolfson ("Wolfson") in the above-referenced matter. On July 17, 2012, the Securities and Exchange Commission ("SEC" or "Commission") entered an *Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 as to Jeffrey A. Wolfson* (the "Order"). The Order provides, among other things, that Wolfson is

suspended, from *association* with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in any offering of a penny stock, including acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock, for a period of twelve (12) months, effective on the second Monday following the entry of this Order.

(Emphasis added).

By letter dated July 12, 2012 to Kevin P. McGrath, Senior Trial Counsel with the SEC's Division of Enforcement (the "Staff"), we sought guidance on behalf of Wolfson as to what activities he may and may not engage in during his period of suspension – specifically, what activities constitute prohibited "association with a broker or dealer." On July 17, 2012, the Staff replied that it is "not authorized to opine . . . as to whether certain actions or positions

maintained by [Wolfson] will comply or be consistent with the association suspension[.]” The Staff suggested that we seek a No-Action Letter from the SEC’s Division of Trading and Markets, which, accordingly, we are now doing.

The Proposed Activities

To be clear, Wolfson’s sole intention is to comply with the suspension from associating with a broker or dealer fully and completely. Nevertheless, we believe that Wolfson may engage in the following activities (the “Proposed Activities”) during his suspension consistent with the Order:

1. Wolfson intends to maintain his capital investment in registered broker-dealer Sallerson-Troob LLC (“Sallerson-Troob”), and a related broker-dealer, WSP LLC (collectively, the “Firms”).¹ For example, Wolfson owns nearly 70% of Sallerson-Troob. During the period of suspension, Wolfson will place his equity interest in the Firms in a blind voting trust (or similar legal instrument) (the “Trust”) over which he will have no control (except as detailed in number three (3) below). Profits and/or losses attributable to Wolfson’s equity ownership will be distributed to the Trust. To the extent the equity interest is more valuable upon Wolfson’s return to the broker-dealer after the suspension period, or allocations are made to equity owners and therefore to the Trust, Wolfson will recognize such increase in value or allocation only upon his return when the Trust is dissolved. To be clear, Wolfson will have no control over the operation of the Firms, whether it is managing risk, making trading decisions, making hiring or firing decisions, or reviewing the broker-dealer’s books and records, during the period of suspension. At this time, Wolfson intends to appoint his two adult children who are employees of Sallerson-Troob as trustees for the Trust. Both children are familiar with the business of Sallerson-Troob; indeed, one child has been employed at Sallerson-Troob for four (4) years, and another child for one (1) year. Neither child lives with Wolfson. Critically, both children understand that they are to remain entirely independent from Wolfson in serving as trustees, and will not consult Wolfson in any capacity while acting as trustees. Of course, appointing an individual or individuals from outside the Firms to run the businesses is highly impractical, as such individual or individuals will not have the requisite understanding of how the business operates.
2. Wolfson intends to hold periodic meetings with his personal assistant and tax advisor, both of whom are employed by Sallerson-Troob, regarding his non-broker dealer business interests. From time-to-time, these meetings may take place at Sallerson-Troob’s offices.

¹ Notably, if Wolfson were required to withdraw his capital investment from Sallerson-Troob prior to or during the suspension, it could cause the collapse of the broker-dealer, and will almost certainly result in the loss of jobs for dozens of employees and/or associated individuals who rely on Sallerson-Troob for their livelihood.

3. Wolfson may withdraw some or all of his capital in the Trust.
4. Wolfson intends to have involvement in the decision to make any physical and/or structural changes to the office space occupied by the Firms.
5. Wolfson intends to maintain his health insurance through Sallerson-Troob.
6. Wolfson intends to receive periodic updates from the Firms regarding the status of his capital investment (including any significant risks to that investment), any significant expenditures the Firms intend to undertake, and a summary of his capital account. Again, Wolfson will have no say in whether the Firm takes such risks or may make such expenditures; rather, as an equity investor, he will simply be provided notice by the Firms.

As indicated below, in our opinion, none of the Proposed Activities constitute "associat[ing] with a broker or dealer" as that phrase is defined in the Securities Exchange Act of 1934 ("Exchange Act").

Statutory Scheme

To demonstrate that engaging in the Proposed Activities will not violate the Order, we will first review the statutory scheme which grants the Commission the authority to suspend or bar an individual from associating with a broker dealer, as well as the statutory definition of "associate with a broker dealer."

Under section 15(b)(6)(A) of the Exchange Act, the Commission has the authority, with respect to any person who is associated with a broker or dealer, to, by order, "censure, place limitations on the activities or functions of such persons, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker dealer . . . if the Commission finds . . . that such censure, placing of limitations, suspension, or bar is in the public interest and that such person . . . has committed or omitted any act or is subject to an order or finding, enumerated in paragraph (A), (D), or (E) of paragraph (4) of this subsection." As such, to suspend an individual under this provision, the Commission must find that the suspension is in the public interest, *and* that such person either committed or consented to a finding that he or she committed a violation of Section 15(b)(4) (D), among other sections.

Wolfson consented to a finding that he committed a violation of Section 15(b)(4)(D). Specifically, Section 15(b)(4)(D) permits the Commission to suspend or bar an individual from associating with a broker dealer if the individual has "willfully violated any provision of . . . *this title, or the rules or regulations under any of such statutes.*" (Emphasis added). The rule cited in the Order, Regulation SHO, was adopted by the Commission under the Exchange Act. See SEC Release No. 34-50103 (2004). As such, a willful violation of Regulation SHO, as found in the Order, is a violation of Section 15(b)(4)(D) of the Exchange Act, and subjects Wolfson to a suspension under Section 15(b)(6)(A).

While the Exchange Act defines what it means to be "associated with a broker dealer," the definition does not list what specific activities are prohibited. According to Section 3(a)(18), a "person associated with a broker dealer" is "[1] any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), [2] any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or [3] any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 15(b) of this title" While this definition provides some guidance, it leaves a great deal unanswered.

SEC Enforcement Actions for Violating Bar or Suspension Order

There is limited case law or other guidance interpreting the vague statutory definition of "person associated with a broker dealer." A few courts, and at least one Administration Law Judge ("ALJ"), have addressed the issue in the context of an SEC enforcement action alleging violation of a bar or suspension from associating with a broker dealer. The cases are briefly summarized below.

- ***SEC v. Telsey***

A prime example is *SEC v. Telsey*, No. 89 Civ. 4775, 1991 WL 72854 (S.D.N.Y. March 13, 1991). In *Telsey*, the defendant, Steven Telsey ("Telsey"), was barred from associating with a broker dealer pursuant to a Consent Order. The Court found that Telsey subsequently violated the bar order by associating with four separate broker dealers. From April 1984 to May 1985, Telsey associated with the Fort Lauderdale branch office of Citiwide Securities Corporation ("Citiwide") by (i) maintaining his own telephone and desk at Citiwide, (ii) soliciting accounts, (iii) preparing order tickets, (iv) filling out new account forms, (v) trading on behalf of the firm's proprietary account, (vi) quoting bids and offers in response to requests for such quotations, (vii) trading in stocks for customers and Citiwide's account, (viii) attending the offices of Citiwide on a daily basis during business hours, (ix) maintaining a registered representative number at Citiwide to identify his customer's orders, and (x) receiving compensation for association with Citiwide through prearranged profitable trades made in a relative's account. While the Court did not address whether any of these acts, in isolation, would qualify as associating with a broker dealer, the Court did find that all of these acts collectively amounted to improper association with a broker dealer.

The Court also found that Telsey subsequently improperly associated with three additional broker dealers. The Court found that Telsey improperly associated with broker dealer Jerold Securities & Co., Inc. ("Jerold") from May to December 1985 by (i) receiving a portion of the commissions generated by business he produced for Jerold, (ii) trading for the firm's proprietary account, (iii) bringing in approximately 12 new customers, (iv) describing himself as a "principal" of the Firm, (v) attending Jerold's offices on virtually a daily basis during business hours, and (vi) receiving \$87,705 in compensation from Jerold. From January 1986 to February 1986, Telsey improperly associated with broker dealer Atlantic Arrow Securities

Corporation ("Atlantic Arrow") by (i) working in Atlantic Arrow's offices on a daily basis, (ii) maintaining his own office and desk, and (iii) stating that he wanted to purchase an interest in Atlantic Arrow in the future. Finally, the Court found that Telsey improperly associated with broker dealer Aristo Investments of America ("Aristo") from February to June 1986 by (i) soliciting accounts, (ii) filling out order tickets, and (iii) making markets and trading for the firm's proprietary account. In addition to issuing a permanent injunction barring Telsey from willfully becoming associated with a broker dealer, the Court ordered Telsey to disgorge \$560,806.90, representing the money he made from associating with a broker dealer, plus 9% interest.

Notably, the Proposed Activities do not include *any* of the activities in which Telsey engaged, even in isolation.

- ***SEC v. Kotrozo***

In *SEC v. Kotrozo, et al.*, No. 2:03-cv-05781 (C.D. Cal. 2003), the Court similarly found that defendant violated the bar order. On August 14, 2003, the SEC filed a complaint in federal court alleging that Raymond L. Kotrozo ("Kotrozo") violated the bar order by associating with Grattan Financial Securities, Inc. ("Grattan"), a registered broker-dealer, and Warner Pacific Financial Services, Inc. ("Warner Pacific"), an unregistered broker-dealer. From January 1999 through September 2001, Kotrozo allegedly violated the bar against associating with a broker dealer by (i) participating in the hiring, training and mentoring of Grattan Branch Office brokers, (ii) conducting investment seminars for the Grattan Branch Office, (iii) drafting and reviewing portfolio recommendations, and (iv) participating in meetings with and making investment recommendations concerning specific mutual funds and variable annuity investments to prospective Grattan Branch Office clients, some of whom subsequently became actual clients. As to Warner Pacific, the SEC alleged that Kotrozo improperly associated with an unregistered broker dealer by (i) hiring, training, marketing and motivating securities brokers, and (ii) exerting control over the Warner Pacific bank account, including writing checks and determining what expenses were paid from that account. The matter was tried before a jury, which returned a verdict in favor of the SEC, finding that Kotrozo had associated with a broker dealer in violation of the bar order and that Warner Pacific aided and abetted the violation. After the verdict, the Court ordered disgorgement of \$73,000 against the defendants under joint and several liability, as well as a \$5,000 penalty per defendant. See Id. at Dkt. No. 206 ("Findings of Fact, Conclusions of Law, and Verdict on Sanctions.")

Again, the Proposed Activities do not include *any* of the activities in which Kotrozo engaged, even in isolation.

- ***In the Matter of Douglas W. Powell, Charles D. Elliott, III, and Russell S. Tarbett***

We have uncovered one case, in the administrative context, in which an ALJ ruled against the Staff by finding that the respondents *had not* violated the bar against associating with a broker dealer. See *In the Matter of Douglas W. Powell, Charles D. Elliott, III, and Russell S. Tarbett*,

SEC Release No. ID-255, 2004 WL 1845545 (August 17, 2004). On May 13, 1999, Douglas W. Powell ("Powell") and Charles D. Elliott ("Elliott"), owners of broker dealer Dominion Capital Corporation ("Dominion Capital"), were suspended from association with any broker dealer in any capacity for the period May 13, 1999 to August 13, 1999. Subsequently, the SEC brought an administrative action against Powell and Elliott alleging that they willfully associated with Northstar Securities, Inc. ("Northstar"), another registered broker dealer, while the suspension was in effect, in violation of Section 15(b)(6)(B)(i) (which proscribes anyone subject to a suspension order from associating with a broker dealer without consent of the Commission).

The facts were not in dispute. In April 1998, anticipating that Dominion Capital's registration as a broker dealer may be revoked, Powell and Elliott arranged for the compliance officer of Dominion Capital, Anita Mills-Barry ("Mills-Barry"), to purchase Northstar. Powell and Elliott believed that if Mills-Barry purchased Northstar, they could rejoin Northstar *after* the suspension period. Because Mills-Barry could not finance the purchase of Northstar on her own, Powell and Elliott loaned her the money through Dominion Institutional Services Corp. ("DIS"), a nominee of Dominion Capital. Mills-Barry subsequently became the sole director of Northstar, and executed a Right of First Refusal with DIS which entitled DIS to purchase Northstar stock under certain conditions. In addition, Mills-Barry executed a Services Agreement with DIS to have DIS perform the same services for Northstar that it performed for Dominion Capital and other Dominion Companies.²

Critically, prior to the entry of the SEC's suspension order, Powell and Elliott's attorney wrote to the Staff advising it on the type of conduct that Powell and Elliott intended to engage in subsequent to entry of the suspension order, and requesting the Staff to inform defense counsel if it had any objections. The letter advised the Staff that DIS was controlled by Powell and Elliott and that it had loaned Mills-Barry money to complete the purchase of Northstar. The letter also represented that (i) Powell and Elliott intended to eventually obtain an ownership interest in Northstar and become active in its business affairs upon completion of the suspension period, (ii) Powell and Elliott were willing to place their Right of First Refusal in a blind voting trust during the period of the suspension if appropriate, and (iii) Powell and Elliott would play no role in the management, business decisions, or activities of Northstar during the suspension period.

The Staff subsequently brought an administrative action alleging that the Northstar/DIS arrangement constituted a plan by Powell and Elliott to "hide their de facto control of [Northstar]" while the suspension order was in effect through placement of nominal or

² Prior to the entry of the suspension order, Powell and Elliott were concerned that the Commission would impose a collateral bar preventing them from associating with investment advisor entities. If that occurred, the SEC staff attorney represented that Powell and Elliott "could assign their mutual fund ownership interests, pursuant to [a voting trust agreement], to a trustee to hold for the duration of the Suspension Period," and this would not violate the bar against associating with an investment advisory firm. *Id.* at *5. Similarly, Wolfson will be placing his ownership interests in the Firms into a Trust, as discussed above.

figurehead ownership of Northstar with Mills-Barry. In essence, the Staff argued, Powell and Elliott controlled Northstar and thus violated the suspension against associating with a broker dealer. The ALJ rejected the Staff's argument, in large part because the Staff was put on notice of the business arrangement prior to the entry of the suspension, and did not offer any guidance that it was improper: "Because the [Staff] failed to respond to [Powell and Elliott's attorney] or even to send the information to the Commission for consideration along with the Offer of Settlement, Powell and Elliott could, and obviously did, reasonably construe that the [Staff] had no objection to continuance of the business arrangement while the Suspension Order was in effect . . . There was also no indication from the [Staff] that continuing the business arrangement would be construed as a direct or indirect violation of the Suspension Order at the time it was entered . . . I find that the institution of this administrative proceeding predicated on the very facts disclosed to the [Staff] in 1999 raises a question of fundamental fairness." *Id.* at *10.

Thus, consistent with *Powell*, we requested guidance concerning the Proposed Activities, first from the Staff and now the Division of Trading and Markets.

The Staff also argued that Powell and Elliott associated with Northstar by (i) hiring staff for DIS who then worked for Northstar, (ii) interviewing prospective Northstar brokers, (iii) attending Northstar-related conferences, (iv) circumventing Mills-Barry's compliance demands to brokers, and (v) attempting to resolve broker-related problems. As to the first issue, the ALJ found that Powell and Elliott's hiring of Northstar's administrative staff was disclosed to the Staff in that fateful letter prior to the suspension period and, nonetheless, hiring of administrative staff did not mean that Powell and Elliott were in de facto control, or otherwise associated with, a broker dealer. As to the second issue (interviewing prospective Northstar brokers), the ALJ found that the testimony only established that Powell and Elliott referred the prospective brokers to Northstar for employment, and these "minimal contacts" were insufficient to find that Powell or Elliott were in de facto control of Northstar at any time. *Id.* at *14. As to the third issue (attending Northstar-related conferences), the ALJ found that Powell and Elliott limited their discussion at the conferences to insurance-related issues which affected the Dominion companies, and sufficiently distanced themselves from Northstar. As to the fourth and fifth issues (circumventing compliance and resolving broker-dealer related problems), the ALJ found that the evidence established that Powell and Elliott's comments to infrequent questions posed to them by brokers simply did not rise to the level of interfering with Mills-Barry's authority. *See Id.* at *18 ("[B]rief, minimal contacts with Mills-Barry or brokers will not support a finding that Powell or Elliott had to be registered with Northstar. The evidence of discussions whereby DIS would loan [brokers] money to capitalize a future Northstar and Dominion Agency office and other business needs also does not support a finding that Powell and Elliott were willfully in control of or otherwise associating with Northstar during the [s]uspension [p]eriod.")

As in *Powell*, the Proposed Activities do not amount to "association with a broker or dealer," as Wolfson will have no control of the Firms' operations.

Conclusion – No-Action Letter Should Be Granted

Given the statutory scheme and limited legal precedents on what specific activities are considered "associat[ing] with a broker or dealer," as well as the Staff's inability to opine on the issue, we believe that the Division of Trading and Markets should provide Wolfson with a No-Action Letter indicating that should he engage in the Proposed Activities, such activities do not constitute "association with a broker or dealer" and do not violate the Order. As the Order is set to take effect on July 30, 2012, we request expedited consideration of this request. Consistent with the *Powell* matter discussed above, absent further guidance from the Staff or the Division of Trading and Markets, Wolfson will rely on our legal advice that the Proposed Activities are not prohibited by the Order.

Please feel free to contact me at the number above with any questions.

Very truly yours,



Ira Lee Sorkin

cc: Joe Furey, Esq. (Division of Trading and Markets) (via e-mail)
Daniel Fisher, Esq. (Division of Trading and Markets) (via e-mail)

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