

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 70034 / July 24, 2013**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15158**

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<b>In the Matter of</b>	:	<b>ORDER MAKING FINDINGS AND</b>
	:	<b>IMPOSING A REMEDIAL SANCTION</b>
<b>Stewart A. Merkin, Esq.,</b>	:	<b>PURSUANT TO RULE 102(e) OF THE</b>
	:	<b>COMMISSION'S RULES OF</b>
	:	<b>PRACTICE</b>
<b>Respondent.</b>	:	
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**I.**

On December 27, 2012, the Securities and Exchange Commission (“Commission”) instituted public administrative proceedings pursuant to Rule 102(e) of the Commission’s Rules of Practice against Stewart A. Merkin, Esq. (“Merkin” or “Respondent”). Respondent has submitted an Offer of Settlement that the Commission has determined to accept.

**II.**

Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.4 below, which are admitted, Merkin consents to the entry of this Order Making Findings and Imposing a Remedial Sanction Pursuant to Rule 102(e) of the Commission’s Rules of Practice (“Order”), as set forth below.

**III.**

On the basis of this Order and Merkin's Offer, the Commission finds that:

1. Merkin was, at all relevant times, an attorney licensed in Florida, who acted as outside counsel for StratoComm Corporation ("StratoComm") during the Commission's investigation of that company for possible federal securities violations. In that capacity, Merkin communicated with Commission staff, requested and received a copy of the Commission's Formal Order of Investigation, accepted service of subpoenas, forwarded documents to the Commission, and represented StratoComm during six days of investigative testimony. Merkin also represented StratoComm's CEO, and a number of its employees, in connection with the investigation.

2. During the time that the Commission's investigation of StratoComm was ongoing, Merkin prepared and signed four "Attorney Letters" that were submitted to Pink OTC Markets, Inc. (now known as OTC Markets Group Inc.). Those Attorney Letters falsely stated that StratoComm was not under investigation for possible violations of securities laws.

3. On October 3, 2011, the Commission filed a complaint against Merkin in the United States District Court for the Southern District of Florida (the "Court") charging that Merkin had violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, by making false public statements in connection with the purchase or sale of the stock of StratoComm. SEC v. Stewart A. Merkin, Case No. 11-23585-CIV-Graham/Goodman (S.D. Fla.). Specifically, the complaint alleged that on April 8, 2008, June 17, 2010, September 15, 2010, and December 17, 2010, Merkin made false statements in Attorney Letters addressed to Pink OTC Markets, Inc. that appeared on the Pink OTC Markets, Inc. website, to the effect that StratoComm was not under investigation for violations of securities laws, when in fact, as Merkin knew when he prepared and signed those letters, StratoComm was under investigation by the Commission.

4. On October 3, 2012, the Court found that Merkin violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. On that date, the Court issued an order that granted the Commission's motion for summary judgment on the issue of whether Merkin had violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and that contained factual findings establishing that Merkin intentionally violated those provisions.

5. On December 27, 2012, the Commission instituted administrative proceedings and imposed a temporary suspension pursuant to Rule 102(e)(3)(i)(B) of the Commission's Rules of Practice against Merkin based upon the Court's finding that Merkin violated Section 10(b) and Rule 10b-5.

6. On February 25, 2013, the Commission denied Merkin's petition to lift the temporary suspension and set the matter down for a public hearing.

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Merkin's Offer.

Accordingly, it is hereby ORDERED pursuant to Rule 102(e) of the Commission's Rules of Practice, effective immediately, that:

Merkin is suspended from appearing or practicing before the Commission as an attorney.

By the Commission.

Elizabeth M. Murphy  
Secretary