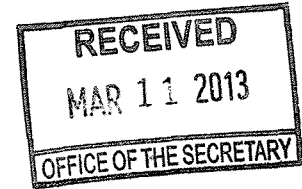


**HARD COPY**

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

**ADMINISTRATIVE PROCEEDING  
File No. 3-15215**



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:  
**In the Matter of** :  
:  
**James S. Tagliaferri,** :  
:  
**Respondent.** :  
:  
\_\_\_\_\_

**UNITED STATES DEPARTMENT  
OF JUSTICE'S APPLICATION TO INTERVENE  
AND MOTION TO STAY ADMINISTRATIVE  
PROCEEDINGS**

**INTRODUCTION**

Pursuant to 210(c)(3) of the United States Securities and Exchange Commission ("Commission") Rules of Practice, Preet Bharara, United States Attorney for the Southern District of New York (the "United States Attorney"), makes this Application to Intervene in the above-captioned proceeding and makes this motion for an Order staying the above-captioned proceeding pending the resolution of a parallel criminal action being pursued by the United States Attorney for the Southern District of New York.

As grounds for this application, the United States Attorney submits the following information:

1. The Securities and Exchange Commission instituted the subject administrative proceeding under an Order Instituting Proceedings ("OIP") on February 21, 2013. A hearing has been scheduled for March 25, 2013.
2. James Tagliaferri provided investment advisory services through a number of corporate entities, including TAG Virgin Islands, Inc.

3. In the OIP, the Securities and Exchange Commission has alleged that, from at least 2007 through at least 2010, Tagliaferri executed a fraud on his advisory clients. According to the OIP, this fraud involved a number of facets, including, among others, that Tagliaferri placed client funds in certain investments in exchange for undisclosed compensation, and that Tagliaferri orchestrated a series of transactions among client accounts in order to use client funds to pay obligations to other clients who were demanding their money.
4. On or about February 21, 2013, a multi-count Indictment returned by a federal grand jury sitting in the Southern District of New York was unsealed. The Indictment charges Tagliaferri with criminal offenses relating to the fraudulent scheme set forth above. The United States Attorney submits that the OIP and the criminal case share common allegations and questions of law and fact. Indeed, the OIP and the criminal case focus on precisely the same conduct, and the same witnesses, documents and other evidence will be germane to both proceedings.
5. Therefore, continuation and disposition of the administrative proceeding will substantially prejudice the criminal prosecution and hinder the enforcement of the securities laws at issue. *See, e.g., In the Matter of Michael J. Rothmeier, et al.*, Stay Order, Admin.Proc.File No. 3-10007 (May 25, 2000) (citing *In the Matter of A. S. Goldmen & Co.*, Order Postponing Proceedings at p.6, Admin.Proc.File No. 3-9933 (Sept. 1, 1999) (“Federal courts and the Commission have repeatedly recognized

that civil or administrative proceedings may be stayed pending resolution of parallel criminal proceedings where justice requires.”). Should a stay be denied, certain individuals will be called as witnesses in both the administrative hearing and subsequent criminal proceedings. The administrative hearing will thus give Respondent a preview of certain witnesses’ testimony to which they would otherwise not be entitled in the criminal proceeding, and will result in the creation of multiple statements for the same witnesses. Because there is such significant overlap between this administrative proceeding and the criminal case, the prejudice to the United States Attorney is manifest.

6. The Enforcement Staff of the Commission has informed the undersigned that it does not object to the entry of a stay in the administrative proceeding. The undersigned has not sought or obtained consent from Respondent Tagliaferri.

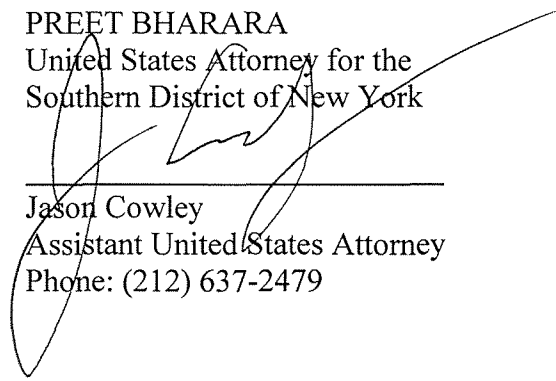
WHEREFORE, the United States Attorney seeks leave to intervene in the administrative proceeding for the limited purpose of bringing this motion for an order staying the administrative proceeding, and it further moves for an order staying the administrative proceeding.

Dated : New York, New York  
March 8, 2013

Respectfully Submitted,

PREET BHARARA  
United States Attorney for the  
Southern District of New York

By:

  
\_\_\_\_\_  
Jason Cowley  
Assistant United States Attorney  
Phone: (212) 637-2479

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



**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15215**

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<b>In the Matter of</b>	:	
	:	<b>UNITED STATES DEPARTMENT</b>
	:	<b>OF JUSTICE'S MEMORANDUM OF</b>
<b>James S. Tagliaferri,</b>	:	<b>LAW IN SUPPORT OF MOTION TO STAY</b>
	:	<b>ADMINISTRATIVE PROCEEDINGS</b>
<b>Respondent.</b>	:	
	:	

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**PRELIMINARY STATEMENT**

The United States of America submits this Memorandum of Law in support of its Application to Intervene in this Administrative Proceeding before the Securities and Exchange Commission and in support of its Application to Intervene and Motion For An Order Staying this Administrative Proceeding pursuant to 210(c)(3) of the United States Securities and Exchange Commission ("Commission") Rules of Practice. The United States respectfully requests this Court to stay this proceeding against Respondent James S. Tagliaferri pending the outcome of a parallel criminal proceeding.

The administrative proceeding should be stayed because it focuses on precisely the same conduct that is the subject of the criminal case. Both involve allegations that, from at least 2007 through at least 2010, Tagliaferri executed a fraud on his advisory clients involving a number of facets, including, among others, that Tagliaferri placed client funds in certain investments in exchange for undisclosed compensation, and that Tagliaferri orchestrated a series of transactions among client accounts in order to use client funds to pay obligations to other clients who were demanding their money. *See In the Matter of Michael J. Rothmeier, et al.*,

Admin.Proc.File No. 3-10007, May 25, 2000 (granting a stay where criminal and administrative proceedings related to same allegations); *In the Matter of Hunter Adams, et al.*, Admin.Proc.File No. 3-10624, November 27, 2001 (same).

**A STAY OF THE ADMINISTRATIVE PROCEEDING  
IS NECESSARY AND APPROPRIATE IN THE PUBLIC INTEREST**

Protection of the public through the earnest and vigorous enforcement of its criminal laws is an important public policy. To further this goal, “[f]ederal courts and the Commission have repeatedly recognized that civil or administrative proceedings may be stayed pending resolution of parallel criminal proceedings where justice requires.” *In the Matter of A.S. Goldman & Co.*, Order Postponing at p.6, Admin.Proc.File 3-9933 (September 1, 1999) (Commission overruling law judge denial of stay).

Rule 210(c)(3) of the Rules of Practice for the Securities and Exchange Commission recognizes that staying a Commission administrative proceeding until the conclusion of a parallel criminal proceeding is often in the public interest. Under Rule 210(c)(3), the Administrative Law Judge may grant leave for representatives of the United States Attorney’s Office to participate in a Commission administrative proceeding for the purpose of seeking a stay of the proceeding during the pendency of a criminal investigation or prosecution arising out of the same or similar facts at issue in the administrative proceeding. *See* Rule 210(c)(3) (“Upon a showing that [ ] a stay is in the public interest or for the protection of investors, the motion for stay shall be favored.”).

A. Prejudice to the Criminal Prosecution if a Stay Is Denied

Whether to issue a stay is a matter for the sound discretion of the court. *See SEC v. Dresser Indus., Inc.*, 628 F.2d 1368, 1375 (D.C.Cir. 1980). If permitting a civil proceeding to go forward would interfere or jeopardize a criminal investigation or prosecution, the law is clear

that the proceeding should be stayed. *See Kashi v. Gatsos*, 790 F.2d 1050 (2d Cir. 1996); *Dresser Indus., Inc.*, 628 F.2d at 1375; *Nakash v. United States Department of Justice*, 708 F. Supp. 1354, 1366 (S.D.N.Y. 1988) (if parallel proceedings not stayed, risk that disclosure may lead to perjury and manufactured evidence, revelation of identity of witnesses and possible intimidation, and unfair advantage to criminal defendants). “The Commission has made it clear that administrative proceedings should not interfere with parallel criminal proceedings,” *see In the Matter of Paul A. Flynn*, Admin.Proc.File No. 3-11390, March 4, 2004, and “Administrative Law Judges routinely grant such stays.” *In the Matter of Hunter Adams, et al.*, Admin.Proc.File No. 3-10624, November 27, 2001.

Here, a hearing in the administrative proceeding has been scheduled for March 25, 2013. Were the administrative proceeding not stayed, the Division of Enforcement would call as witnesses at that hearing many of the same individuals who are prospective trial witnesses in the criminal proceeding. Although the Division of Enforcement has already interviewed several potential witnesses, a hearing will afford Respondent an opportunity to cross-examine them, thus giving Respondent an additional preview of potential testimony in the criminal case. Moreover, there may be additional witnesses that the Division of Enforcement has not interviewed but who may be called to testify at such a hearing, thus giving Respondent an opportunity to obtain statements to which he would not otherwise be entitled in the criminal matter. The creation of potential impeachment material through taking multiple sworn statements of the same witnesses has previously been recognized as a grounds for a stay. *See In the Matter of Kolar*, Admin.Proc.File No. 3-9570 (Oct. 28, 1999) (noting United States Attorney’s concern that multiple proceedings could prejudice criminal case by creating multiple sworn testimonies of witnesses). In sum, this above-referenced testimony, particularly where the United States is not a party, may jeopardize the criminal investigation.

B. Respondent Will Not Be Prejudiced By a Stay

The Division of Enforcement does not oppose the United States' motion for a stay of the administrative proceeding, and there is no indication that a stay will prejudice the Respondent; the United States has not sought or obtained consent for the stay from Respondent Tagliaferri. *See In the Matter of A.S. Goldman & Co.*, Admin.Proc.File No. 3-9933 at p.6 (Commission ordered a stay of the administrative proceeding pending resolution of the criminal case, noting "there has been no showing that the Respondents will be prejudiced in the administrative case by a stay"). While the criminal case has only recently been charged, Rule 210(c)(3) does not anticipate or require a determination that the parallel criminal proceeding will be completed within a fixed time period. Neither the enacting release for Rule 210(c) nor the Rule itself imposes a particular time limitation on the duration of the stay. The Commission's omission of such a limitation was recognition that criminal cases cannot be expected to run on a fixed schedule.

C. Additional Reasons to Grant the Requested Stay

Given the higher standard of proof in a criminal case, the disposition of the criminal case prior to a resolution of the administrative proceeding will promote judicial economy. Should Respondent be convicted in the criminal case, it is unlikely that he will demand a hearing in the administrative proceeding. Conversely, even should Respondent lose the administrative proceeding, he is still likely to contest the criminal case. Thus, judicial, government and Respondent resources will likely be saved should the criminal matter be resolved prior to the administrative proceeding. *See In the Matter of Michael J. Rothmeier, et al.*, Admin.Proc.File No. 3-10007, May 25, 2000 (in granting a stay, noting that, because many of the factual and legal issues were the same in the administrative and criminal proceedings,



resolution of the criminal case could moot the administrative proceeding and thereby conserve adjudicative resources).

Moreover, should the administrative proceeding go forward, Respondent is likely to exercise his Fifth Amendment right against self-incrimination, resulting in an adverse inference. Neither Respondent's interests nor that of the public are served thereby.

### **CONCLUSION**

Accordingly, due to the substantial legal, practical and policy reasons outlined above, the public interest would best be served by staying this administrative proceeding pending prosecution of the parallel criminal case. Should the request for a stay be granted, the United States Attorney's Office will file periodic status reports as required. *See In the Matter of Paul A. Flynn*, Admin.Proc.File No. 3-11390, March 4, 2004; *In the Matter of Michael J. Rothmeier, et al.*, Admin.Proc.File No. 3-10007, May 25, 2000.

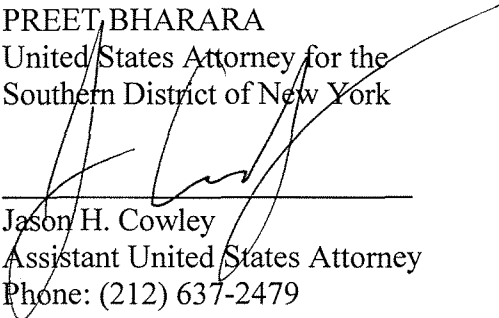
WHEREFORE, the United States seeks leave to intervene and an order staying this administrative proceeding pending the disposition of the criminal investigation being conducted by the United States Attorney for the Southern District of New York.

Dated : New York, New York  
March 8, 2013

Respectfully Submitted,

PREET BHARARA  
United States Attorney for the  
Southern District of New York

By:



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