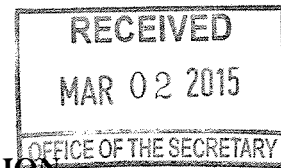


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15790

In the Matter of
MICHAEL A. HOROWITZ

and

MOSHE MARC COHEN,

Respondent.

DIVISION OF ENFORCEMENT'S
PETITION FOR REVIEW AND MOTION
TO SUBMIT ADDITIONAL EVIDENCE

Pursuant to Commission Rule of Practice 410(b), the Division of Enforcement (“Division”) hereby petitions the Commission for review of the Initial Decision issued by Chief Administrative Law Judge Brenda P. Murray on January 7, 2015 (“Initial Decision”). The Division filed a Motion to Correct Manifest Error of Fact in the Initial Decision on January 13, 2015 (“Motion to Correct Error”), which was denied on February 9, 2015. The Division now seeks review, under Rule of Practice 411(b)(2)(ii)(B), of the Court’s determination that the civil money penalty and the associational bar sought by the Division were barred by the statute of limitations. The Division also moves, pursuant to Rule of Practice 452, to submit additional evidence related to the tolling agreements executed by Respondent Moshe Mark Cohen (“Cohen”).

BACKGROUND

The proceedings instituted against Cohen arose out of a complex fraudulent scheme to profit from the imminent deaths of terminally-ill hospice and nursing home patients in the sale of

variable annuities. At the time of the scheme, Cohen was a registered representative with Woodbury Financial Services, Inc. (“Woodbury”). Cohen was recruited by co-Respondent Michael Horowitz (“Horowitz”) to serve as the selling representative on annuities to be purchased by nominees after Horowitz was no longer able to sell the annuities himself.

Both Horowitz and Cohen believed they could exploit “loopholes” in the insurance companies’ underwriting procedures. But while the insurance companies may not have asked about the health of the annuitant below a certain dollar threshold, both Horowitz’s and Cohen’s broker-dealer firms had review processes in place to ensure customers purchasing variable annuities had long-term investment time horizons and to ensure that the annuities were being used for their intended purpose. In order to properly carry out that review process, these firms relied on their representatives to provide them with complete, pertinent and accurate information. With the promise of incredibly lucrative upfront sales commissions to be paid out by the insurance companies who unwittingly issued “stranger-owned” annuities, Cohen abandoned his role as a securities industry gatekeeper and his obligations to provide Woodbury with complete, accurate information concerning his securities sales. In at least twenty-eight separate instances, Cohen falsified the Woodbury annuity point of sale forms that he was required to complete and submit to Woodbury’s home office for suitability review.

After a three-day hearing, Judge Murray ordered that Cohen cease and desist from committing or causing violations of Section 17(a) of the Securities Act of 1933, Sections 10(b) and 17(a) of the Securities Exchange Act of 1934, and Exchange Act Rules 10b-5 and 17a-3(a). In making this finding, Judge Murray concluded that Cohen acted with a high degree of scienter:

The *Steadman* factors weigh heavily in favor of a cease-and-desist order. Cohen’s misconduct involved repeated fraudulent misrepresentations on forms that he submitted to his broker-dealer about securities, the twenty-eight variable annuities that Cohen sold to investors. On each of the

twenty-eight forms he submitted, Cohen affirmed that the information he provided was accurate and the product sold was suitable for the investor, when he knew he was supplying inaccurate information. Relying on Cohen's untruthful responses, Woodbury approved sales it would not have allowed if it had known the truth about the annuitants and the investors.

Initial Decision at 31. Although Judge Murray ordered Cohen to pay \$766,958 in disgorgement, along with prejudgment interest, she did not order Cohen to pay a civil money penalty. This remedy was not ordered because Judge Murray erroneously held that since "there is no evidence of violations by Cohen within the five-year period prior to the issuance of the OIP, civil money penalties are time-barred." *Id.* at 30. Likewise, Judge Murray did not impose an associational bar for the same reason. *Id.*

ARGUMENT

A. Petition For Review Of Initial Decision Denying The Division's Request For A Civil Money Penalty And An Associational Bar.

The Division seeks review of the law judge's denial of the Division's request for a civil money penalty and an associational bar. Judge Murray wrote, "Cohen's conduct occurred in January and February 2008, more than five years before the OIP was issued on March 13, 2014. *The statute of limitations is therefore an issue.*" Initial Decision at 30 (emphasis added). For the following reasons, the Division respectfully requests that the Commission find that the statute of limitations did not prohibit the ordering of a civil money penalty or the imposition of an associational bar (and further asks that the Commission impose both remedies).

1. Judge Murray's Pre-Hearing Ruling Mooted The Statute of Limitations Issue.

The statute of limitations was a moot issue at the Hearing because Judge Murray had previously denied all of Cohen's affirmative defenses at the second Pre-Hearing Conference on July 7, 2014:

19 In addition to the filings, I have 29
20 affirmative defenses that Mr. Cohen has put in his answer
21 on pages 15 through 20. As far as those affirmative
22 defenses go, they're denied. The definition of an

Pre-Hearing Conference Tr. 24: Cohen's Fourth Defense, which improperly asserted that the Division's claims and requested relief were time-barred, was included in Judge Murray's wholesale denial of Cohen's affirmative defenses:

FOURTH DEFENSE

The Division of Enforcement's claim and requested relief are barred by the statute of limitations and the doctrine of laches because the Commission delayed unreasonably and inexcusably in commencing this action and Respondent Cohen suffered prejudice as a result. Respondent Cohen's ability to summon witnesses and produce testimony is significantly and adversely affected. Given the age of events in this matter, it is "inherently unfair" and in violation of due process to proceed against Respondent Cohen.

Respondent Moshe Marc Cohen's Answer And Defenses To The Order Instituting Public Administrative And Cease-And-Desist Proceedings, 16, Apr. 10, 2014. Therefore, the Initial Decision's determination that the statute of limitations was at issue was an error that the Commission should correct.

2. An Associational Bar Is Appropriate And Necessary.

Judge Murray's reliance on *Johnson v. SEC*, 87 F.3d 484, 488-92 (D.C. Cir. 1996) for the proposition that 28 U.S.C. § 2462 prohibits the imposition of an associational bar (for conduct more than five-years old) is misplaced. Initial Decision at 30. Following *Johnson*, the Commission has repeatedly found that associational bars are not be subject to § 2462 if they are remedial. *See, e.g., Joseph Contorinis*, Admin. Proc. Rulings Release No. 3824, 2014 WL 1665995, at *3 (Apr. 25, 2014) ("[T]he five-year statute of limitations of § 2462 does not apply in this case because a follow-on proceeding seeking an industry-wide bar is not 'for the enforcement of any civil fine,

penalty, or forfeiture, pecuniary or otherwise' within the meaning of § 2462."); *Vladislav Steven Zubkis*, Admin. Proc. Rulings Release No. 52876, 2005 WL 3299148, at *4 (Dec. 2, 2005) (associational bar was remedial and not subject to § 2462); *Gregory Bartko*, Admin. Proc. Rulings Release No. 71666, 2014 WL 896758, at *9 (Mar 7, 2014) ("[T]he remedies analysis is not driven by the need to punish respondents; rather the analysis is prospective and focuses on [the respondent's] 'current competence' and the 'degree of risk' he poses to public investors and the securities markets in each of the areas covered by the remedies.") (internal citation omitted); *Herbert Moskowitz*, Admin. Proc. Rulings Release No. 45609, 2002 WL 434524, at n.66 (Mar. 21, 2002) (stating, in dicta, "Indeed, [*SEC v. Johnson*] itself recognized that even a suspension or bar would be remedial, if that sanction was not 'sufficiently punitive' to be deemed a penalty").¹

Nor have courts in the District of Columbia read *Johnson* to categorically prohibit bars for conduct more than five-years old. *See SEC v. Brown*, 740 F. Supp. 2d 148, 157 (D.D.C. 2010) (officer-and-director is remedial if the Commission can show a "future risk of harm"); *McCurdy v. SEC*, 396 F.3d 1258, 1265 (D.C. Cir. 2005) ("The purpose of the [102(e) suspension] was not to punish McCurdy, but rather to protect the public from his demonstrated capacity for recklessness in the present, and presumably to encourage his more rigorous compliance with GAAS in the future."). *See also Meadows v. SEC*, 119 F.3d 1219, 1228, n. 20 (5th Cir. 1997) ("*Johnson* emphasized that the imposition of a six-month suspension is less penal in nature where the reason

¹ Several Commission opinions post-*Johnson* suggest that associational bars are categorically subject to § 2462. *See, e.g., Gregory O. Trautman*, Admin. Proc. Rulings Release No. 9088A, 2009 WL 6761741, at *20 (Dec. 15, 2009) ("Section 2462 precludes our consideration of Trautman's conduct occurring [more than five years earlier] in determining whether to impose a bar or civil penalty."); *Warwick Capital Management*, Admin. Proc. Rulings Release No. 2694, 2008 WL 149127, at *10 (Jan 16, 2008) ("Section 2462 precludes consideration of Respondents' conduct occurring before July 6, 2001, in determining whether to impose an investment advisory bar or civil penalties"); *John A. Carley*, Admin. Proc. Rulings Release No. 8888, 2008 WL 268598, at *21 (Jan 31, 2008) (looking only to conduct within five year statute of limitation in deciding appropriateness of associational bar). In each of these cases, however, there was violative conduct within the limitations period that, standing alone, justified the bar or suspension. Accordingly, in each of these decisions, the Commission did not need to address whether associational bars were penal or remedial given the particular facts of the case.

for the sanction is the degree of risk petitioner poses to the public and is based upon findings demonstrating petitioner's unfitness to serve the investing public."); *SEC v. Quinlan*, 2008 WL 4852904, at *11 (E.D. Mich. Nov. 7, 2008) ("If, however, the equitable relief is aimed primarily at preventing future harm to the public rather than at punishing Quinlan, the Court should deem it a remedial measure, even though it does not restore the *status quo ante*. See *Johnson*, 87 F.3d at 488–89.").

Here, after evaluating the evidence presented at the Hearing, Judge Murray concluded that "Cohen acted with a high degree of scienter" and that his "misconduct involved repeated fraudulent misrepresentations on forms that he submitted to his broker-dealer about securities. . . ." Initial Decision at 23; 31. In light of Cohen's serious misconduct and his steadfast refusal to acknowledge the deceitfulness of his actions, there is no doubt that he poses a danger of future harm to the investing public. As such, the associational bar sought by the Division is remedial (rather than penal in nature) and not subject to a five-year statute of limitations.

3. Cohen Failed To Prove His Statute Of Limitations Affirmative Defense.

Finally, because Cohen's statute of limitations affirmative defense was previously denied and not raised by Cohen at the Hearing, the Division was not provided with an opportunity to demonstrate that any applicable statute of limitations had, as Cohen well knew, been tolled as to liability and remedies. In federal court, the defense that a statute of limitations has expired is an affirmative defense that a defendant has the burden to prove. See, e.g., *Lutz v. Chesapeake Appalachia, L.L.C.*, 717 F.3d 459, 464 (6th Cir. 2013) ("Because the statute of limitations is an affirmative defense, the burden is on the defendant to show that the statute of limitations has run, and if the defendant meets this requirement then the burden shifts to the plaintiff to establish an

exception to the statute of limitations:”) (internal citations and quotations omitted). The Commission should look to federal court guidance and conclude that the statute of limitations is also an affirmative defense in administrative proceedings that a respondent has the burden to prove. *See, e.g., S.W. Hatfield, CPA*, Admin. Proc. Release No. 3602, 2014 WL 6850921, at *12, n. 11 (Dec. 5, 2014) (“Although [the Commission] is not governed by the Federal Rules of Civil Procedure, those rules sometimes provide helpful guidance.”) (internal citation omitted).

Here, because Cohen’s affirmative defense was raised and denied by Judge Murray before the start of the Hearing, the burden should have never shifted to the Division to present its incontrovertible evidence that the statute of limitations had not expired. *See Lutz*, 717 F.3d at 464. As detailed in the attached declaration of Division attorney James Lee Buck, II (which was also attached to the Motion to Correct Error), Cohen voluntarily entered into a series of tolling agreements that extended the statute of limitations on the Division’s case against Cohen by approximately fifteen months or until May 2014—a full two months after the Order Instituting Proceedings was actually filed. *See Decl. Of James Lee Buck, II*, Jan. 12, 2015.

The Division did not introduce these tolling agreements at the Hearing because it saw no need to rebut an affirmative defense that Cohen never raised at the Hearing—let alone one that Judge Murray categorically rejected before the Hearing even opened. The Division, however, raised the existence of these tolling agreements in its Motion to Correct Error but Judge Murray wrote (in her denial of that motion) that “there is no mention of any tolling agreement in the record. As noted by the Commission, ‘once the initial decision is issued, our rules largely divest the law judge of authority over the proceedings (including the authority to set aside the default).’” Order Denying Motion to Correct Error at 3. Nonetheless, as a result of the pre-hearing denial of Cohen’s affirmative defense, as well as Cohen’s failure to introduce any evidence

at the Hearing concerning it, the Division respectfully submits that Judge Murray had no evidentiary basis to conclude that Cohen made out his statute of limitations defense or that the Division failed to establish an exception to it.

B. Motion To Submit Additional Evidence.

The Division, pursuant to Rule of Practice 452, moves the Commission for leave to submit additional evidence related to the tolling agreements. *See* the attached Declaration of James Lee Buck, II, January 12, 2015. Rule of Practice 452 allows a party to submit additional evidence prior to the issuance of a decision by the Commission if the evidence is material and there were reasonable grounds for not adducing such evidence previously. *See, e.g., Calais Resources, Inc.*, Admin. Release No. 34-67312, at *7, n. 19 (June 29, 2012) (“Rule 452 allows [the Commission] to accept additional evidence if it is material and there were reasonable grounds for failure to adduce such evidence previously.”).

Here, the tolling agreements are plainly material because they unequivocally demonstrate that the Division filed its Order Instituting Proceedings within the time proscribed by 28 U.S.C. § 2462. Furthermore, the sole reason offered by Judge Murray for neither ordering a civil money penalty nor imposing an associational bar was that she (incorrectly) believed the statute of limitations had expired. Initial Decision at 30. As argued above, moreover, there were reasonable grounds for the Division not to introduce evidence at the Hearing regarding the statute of limitations. First, Judge Murray had denied Cohen’s statute of limitations affirmative defense prior to the commencement of the Hearing thereby mooting the issue. Second, Cohen never raised the issue during the Hearing and therefore, the Division’s obligation to introduce rebuttal evidence that the statute of limitations had not expired was never triggered. *See supra* at 7. Accordingly, the

Division has satisfied its burden under Rule of Practice 452 and the evidence concerning the tolling agreements should be considered by the Commission.

CONCLUSION

For these reasons, the Division respectfully requests that the Commission (1) find that the statute of limitations defense was neither an issue at the Hearing nor established by the evidence presented therein; and (2) impose on Cohen the civil money penalty and associational bar requested by the Division in its post-hearing briefs.

Dated: March 2, 2015

Respectfully submitted,



Dean M. Conway
Britt Biles
Division of Enforcement
Securities and Exchange Commission
Mail Stop 5971
100 F Street, N.E.
Washington, D.C. 20549
Tel: [REDACTED] (Conway)
Fax: [REDACTED] (Conway)
[REDACTED]

DECLARATION OF JAMES LEE BUCK, II

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15790

| |
|---|
| <p>In the Matter of</p> <p>Michael A. Horowitz and</p> <p>Moshe Marc Cohen,</p> <p>Respondents.</p> |
|---|

DECLARATION OF JAMES LEE BUCK, II IN SUPPORT OF
THE DIVISION OF ENFORCEMENT'S MOTION TO CORRECT A MANIFEST
ERROR OF FACT

James Lee Buck, II, pursuant to 28 U.S.C. § 1746, declares:

1. I am an Assistant Director with the Division of Enforcement ("Division") of the Securities and Exchange Commission ("Commission"). I submit this Declaration in support of the Division's Motion to Correct A Manifest Error of Fact in the Initial Decision.
2. As part of my job duties as an Assistant Director, I and other members of the Division staff investigated the conduct that led to the charges in this administrative proceeding.
3. On July 10, 2012, I signed a Tolling Agreement that was sent to then-counsel for Respondent Moshe Marc Cohen ("Mr. Cohen"). Mr. Cohen's counsel executed the Tolling Agreement on August 24, 2012 and returned it to the Division. A true and correct copy of the executed Tolling Agreement is attached to this declaration as Exhibit 1.

4. Paragraph 1 of the Tolling Agreement provides:

the running of any statute of limitations applicable to any action or proceeding against Cohen authorized, instituted, or brought by or on behalf of the Commission or to which the Commission is a party arising out of the investigation (“any related proceeding”), ***including any sanctions or relief that may be imposed therein***, is ***tolled and suspended*** for the period beginning on June 14, 2012 through September 14, 2012 (the “tolling period”).

(emphasis added.)

5. Paragraph 2 of the Tolling Agreement provides:

Cohen and any of his agents or attorneys shall not include the tolling period in the calculation of the running of any statute of limitations or for any other time-related defense applicable to any related proceeding, ***including any sanctions or relief that may be imposed therein***, in asserting or relying upon any such time-related defense.

(emphasis added.)

6. Under the original terms of the Tolling Agreement the statute of limitations was tolled and suspended for a period of three (3) months: June 14, 2012 through September 14, 2012.

7. The Tolling Agreement was amended twice: first in September 2012 and again in March 2013. The September 2012 amendment tolled and suspended the statute of limitations through March 14, 2013. Attached as Exhibit 2 to this Declaration is a true and correct copy of the first amendment to the Tolling Agreement which was executed by Mr. Cohen’s counsel.

8. Thus, under the terms of the original Tolling Agreement and its first amendment the statute of limitations was tolled and suspended for a period of nine (9) months: June 24, 2012 through March 14, 2013.

9. In March 2013, the Tolling Agreement was amended for a second time, and the statute of limitations was tolled and suspended through September 14, 2013. Attached as Exhibit 3 to this Declaration is a true and correct copy of the second amendment to the Tolling Agreement which was executed by Mr. Cohen's counsel.

10. Thus, under the terms of the original Tolling Agreement, its first amendment, and its second amendment, the statute of limitations was tolled and suspended for a period of approximately fifteen (15) months: June 24, 2012 through September 14, 2013.

11. Accordingly, the Division had fifteen (15) months after any statute of limitations would have otherwise expired to bring its action against Mr. Cohen and to seek any sanctions or relief subject to the statute of limitations.

12. The statute of limitations on Mr. Cohen's February 2008 conduct would have expired in February 2013 but for the Tolling Agreement and its two amendments. The fifteen (15) months added by the Tolling Agreement and its two amendments extended the statute of limitations to May 2014.

13. Because the Order Instituting Proceedings was instituted on March 13, 2014, the claims and relief requested therein were not barred by the five-year limitations period set forth in 28 U.S.C. § 2462. Under the terms of the Tolling Agreement, its first amendment, and second amendment, Mr. Cohen's conduct in January and February 2008 falls within the statute of limitations.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 12th, 2015.

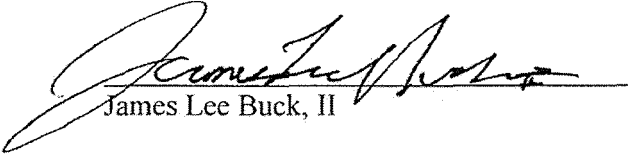

James Lee Buck, II

EXHIBIT 1
To Declaration of James Lee
Buck, II

SINGER DEUTSCH LLP

MICHAEL C. DEUTSCH
MEMBER OF NEW YORK AND NEW JERSEY BARS
555 FIFTH AVENUE, 17TH FLOOR
NEW YORK, NY 10017
TEL: (212) 682-3939
FAX: (212) 682-2006
MCD@SINGERDEUTSCH.COM
WWW.SINGERDEUTSCH.COM

VIA EMAIL AND FEDERAL EXPRESS [REDACTED]

August 24, 2012


Peter J. Haggerty, Esq.
U.S. Securities & Exchange Commission |
Enforcement
100 F. Street, N.E.
Washington, DC 20549-5030-B

Re: In the Matter of Certain Variable Annuities - HO-10840

Dear Pete:

Enclosed please find an executed Tolling Agreement for the above referenced matter.

Very truly yours,


Michael C. Deutsch

MCD/mw

enc.

TOLLING AGREEMENT

WHEREAS, the Division of Enforcement ("Division") of the United States Securities and Exchange Commission ("Commission") has notified Moshe Marc Cohen ("Cohen"), through his counsel, that the Division is conducting an investigation entitled In the Matter of Certain Variable Annuities, File No. HO-10840 ("the investigation") to determine whether there have been violations of certain provisions of the federal securities laws;

WHEREAS, Mr. Cohen has, through counsel, requested time to meet with the staff and/or consider exploring resolution of the investigation;

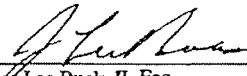
ACCORDINGLY, IT IS HEREBY AGREED by and between the parties that:

1. the running of any statute of limitations applicable to any action or proceeding against Cohen authorized, instituted, or brought by or on behalf of the Commission or to which the Commission is a party arising out of the investigation ("any related proceeding"), including any sanctions or relief that may be imposed therein, is tolled and suspended for the period beginning on June 14, 2012 through September 14, 2012 (the "tolling period");
2. Cohen and any of his agents or attorneys shall not include the tolling period in the calculation of the running of any statute of limitations or for any other time-related defense applicable to any related proceeding, including any sanctions or relief that may be imposed therein, in asserting or relying upon any such time-related defense;
3. nothing in this agreement shall affect any applicable statute of limitations defense or any other time-related defense that may be available to Cohen before the commencement of the tolling period or be construed to revive any proceeding that may be barred by any applicable statute of limitations or any other time-related defense before the commencement of the tolling period;
4. the running of any statute of limitations applicable to any related proceeding shall commence again after the end of the tolling period, unless there is an extension of the tolling period executed in writing by and on behalf of the parties hereto;
5. nothing in this agreement shall be construed as an admission by the Commission or Division relating to the applicability of any statute of limitations to any proceeding, including any sanctions or relief that may be imposed therein, or to the length of any limitations period that may apply, or to the applicability of any other time-related defense; and
6. the Commission and Cohen intend this agreement solely for the benefit of the Commission and Cohen and agree that there are no third-party beneficiaries of this tolling agreement.

Tolling Agreement
July 10, 2012
Page 2

This instrument contains the entire agreement of the parties and may not be changed orally,
but only by an agreement in writing.

SECURITIES AND EXCHANGE COMMISSION
DIVISION OF ENFORCEMENT

By:  Date: 7/10/2012
James Lee Buck, II, Esq.
Assistant Director

Mosh Marc Cohen

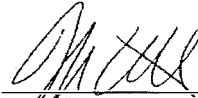
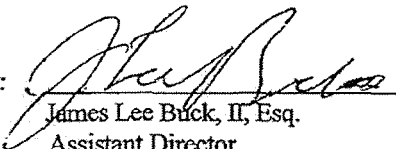
By:  Date: 8/24/12
Michael C. Deutsch, Esq.
Singer Deutsch LLP
Counsel for Moshe Marc Cohen

EXHIBIT 2
To Declaration of James Lee
Buck, II

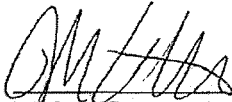
AMENDMENT TO TOLLING AGREEMENT

IT IS HEREBY AGREED by and between the parties that the Attached Tolling Agreement is amended as follows: the clause "through September 14, 2012" is modified to read: "through March 14, 2013".

SECURITIES AND EXCHANGE COMMISSION
DIVISION OF ENFORCEMENT

By:  Date: 9/24/12
James Lee Buck, II, Esq.
Assistant Director

MOSHE MARC COHEN

By:  Date: 9/14/12
Michael C. Deutsch, Esq.
Singer Deutsch LLP
Counsel for Moshe Marc Cohen

TOLLING AGREEMENT

WHEREAS, the Division of Enforcement ("Division") of the United States Securities and Exchange Commission ("Commission") has notified Marc Cohen ("Cohen"), through his counsel, that the Division is conducting an investigation entitled in the Matter of Certain Variable Annuities, File No. HO-10840 ("the investigation") to determine whether there have been violations of certain provisions of the federal securities laws;

WHEREAS, Mr. Cohen has, through counsel, requested time to meet with the staff and/or consider exploring resolution of the investigation;

ACCORDINGLY, IT IS HEREBY AGREED by and between the parties that:

1. the running of any statute of limitations applicable to any action or proceeding against Cohen authorized, instituted, or brought by or on behalf of the Commission or to which the Commission is a party arising out of the investigation ("any related proceeding"), including any sanctions or relief that may be imposed therein, is tolled and suspended for the period beginning on June 14, 2012 through September 14, 2012 (the "tolling period");
2. Cohen and any of his agents or attorneys shall not include the tolling period in the calculation of the running of any statute of limitations or for any other time-related defense applicable to any related proceeding, including any sanctions or relief that may be imposed therein, in asserting or relying upon any such time-related defense;
3. nothing in this agreement shall affect any applicable statute of limitations defense or any other time-related defense that may be available to Cohen before the commencement of the tolling period or be construed to revive any proceeding that may be barred by any applicable statute of limitations or any other time-related defense before the commencement of the tolling period;
4. the running of any statute of limitations applicable to any related proceeding shall commence again after the end of the tolling period, unless there is an extension of the tolling period created in writing by and on behalf of the parties hereto;
5. nothing in this agreement shall be construed as an admission by the Commission or Division relating to the applicability of any statute of limitations to any proceeding, including any sanctions or relief that may be imposed therein, or to the length of any limitations period that may apply, or to the applicability of any other time-related defense; and
6. the Commission and Cohen intend this agreement solely for the benefit of the Commission and Cohen and agree that there are no third-party beneficiaries of this tolling agreement.

Tolling Agreement
July 18, 2012
Page 2

This instrument contains the entire agreement of the parties and may not be changed orally,
but only by an agreement in writing.

SECURITIES AND EXCHANGE COMMISSION
DIVISION OF ENFORCEMENT

By:  Date: 7/10/2012
James Leo Buck, II, Esq.
Assistant Director

Mosh Marc Cohen


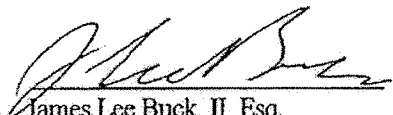
By:  Date: 8/24/12
Michael C. Deutsch, Esq.
Singer Deutsch LLP
Counsel for Mosh Marc Cohen

EXHIBIT 3
To Declaration of James Lee
Buck, II

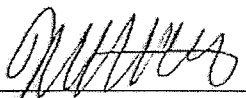
SECOND AMENDMENT TO TOLLING AGREEMENT

IT IS HEREBY AGREED by and between the parties that the attached Tolling Agreement, as amended, is further amended as follows: the clause "through March 14, 2013" is modified to read: "through September 14, 2013".

SECURITIES AND EXCHANGE COMMISSION
DIVISION OF ENFORCEMENT

By:  Date: 3/11/2013
James Lee Buck, II, Esq.
Assistant Director

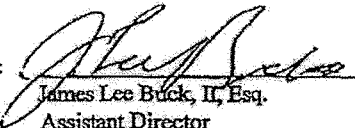
MOSHE MARC COHEN

By:  Date: 3/1/13
Michael C. Deutsch, Esq.
Singer Deutsch LLP
Counsel for Moshe Marc Cohen


AMENDMENT TO TOLLING AGREEMENT

IT IS HEREBY AGREED by and between the parties that the Attached Tolling Agreement is amended as follows: the clause "through September 14, 2012" is modified to read: "through March 14, 2013".

SECURITIES AND EXCHANGE COMMISSION
DIVISION OF ENFORCEMENT

By:  Date: 9/24/12
James Lee Buck, II, Esq.
Assistant Director

MOSHE MARC COHEN

By:  Date: 9/14/12
Michael C. Deutsch, Esq.
Singer Deutsch LLP
Counsel for Moshe Marc Cohen

TOLLING AGREEMENT

WHEREAS, the Division of Enforcement ("Division") of the United States Securities and Exchange Commission ("Commission") has notified Moshe Marc Cohen ("Cohen"), through his counsel, that the Division is conducting an investigation entitled In the Matter of Certain Variable Annuities, File No. HO-10840 ("the investigation") to determine whether there have been violations of certain provisions of the federal securities laws;

WHEREAS, Mr. Cohen has, through counsel, requested time to meet with the staff and/or consider exploring resolution of the investigation;

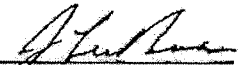
ACCORDINGLY, IT IS HEREBY AGREED by and between the parties that:

1. the running of any statute of limitations applicable to any action or proceeding against Cohen authorized, instituted, or brought by or on behalf of the Commission or to which the Commission is a party arising out of the investigation ("any related proceeding"), including any sanctions or relief that may be imposed therein, is tolled and suspended for the period beginning on June 14, 2012 through September 14, 2012 (the "tolling period");
2. Cohen and any of his agents or attorneys shall not include the tolling period in the calculation of the running of any statute of limitations or for any other time-related defense applicable to any related proceeding, including any sanctions or relief that may be imposed therein, in asserting or relying upon any such time-related defense;
3. nothing in this agreement shall affect any applicable statute of limitations defense or any other time-related defense that may be available to Cohen before the commencement of the tolling period or be construed to revive any proceeding that may be barred by any applicable statute of limitations or any other time-related defense before the commencement of the tolling period;
4. the running of any statute of limitations applicable to any related proceeding shall commence again after the end of the tolling period, unless there is an extension of the tolling period executed in writing by and on behalf of the parties hereto;
5. nothing in this agreement shall be construed as an admission by the Commission or Division relating to the applicability of any statute of limitations to any proceeding, including any sanctions or relief that may be imposed therein, or to the length of any limitations period that may apply, or to the applicability of any other time-related defense; and
6. the Commission and Cohen intend this agreement solely for the benefit of the Commission and Cohen and agree that there are no third-party beneficiaries of this tolling agreement.

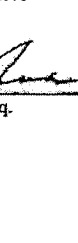
Tolling Agreement
July 10, 2012
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This instrument contains the entire agreement of the parties and may not be changed orally,
but only by an agreement in writing.

SECURITIES AND EXCHANGE COMMISSION
DIVISION OF ENFORCEMENT

By:  Date: 7/10/2012
James Lee Buck, II, Esq.
Assistant Director

Mosh Marc Cohen

By:  Date: 8/24/12
Michael C. Deutsch, Esq.
Singer Deutsch LLP
Counsel for Moshe Marc Cohen

