

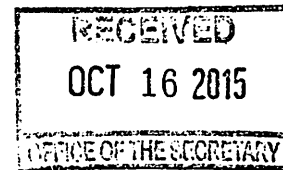
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October 15, 2015

VIA FACSIMILE AND FEDERAL EXPRESS



Mr. Brent J. Fields
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *In the Matter of Michael S. Steinberg, File No. 3-15925*

Dear Mr. Fields:

We represent Respondent Michael S. Steinberg in the above-referenced administrative proceeding, which was commenced following Mr. Steinberg's conviction for insider trading. We write to update the Commission about the final disposition of the *Newman* appeal and to request further postponement of the briefing schedule of Mr. Steinberg's petition for review pending resolution of his criminal appeal. The Division, by Assistant Regional Director Daniel R. Marcus, consents to this request.

As explained in our letters of December 19, 2014 and January 7, 2015, the criminal case against Mr. Steinberg overlapped substantially with an earlier prosecution of Todd Newman and Anthony Chiasson.¹ On December 10, 2014, the Second Circuit, in a unanimous decision, found that, "in order to sustain a conviction for insider trading, the Government must prove beyond a reasonable doubt that the tippee knew that an insider disclosed confidential information *and* that he did so in exchange for a personal benefit." *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014). The Court therefore reversed the judgments of conviction of Messrs. Newman and Chiasson and ordered the dismissal of their indictment on the grounds that (1) the District Court's jury instruction to the contrary was erroneous, (2) the evidence was insufficient to show "that the corporate insiders received any personal benefit in exchange for their tips," and that without that underlying tipper liability there could be no derivative tippee liability, and (3) there was no evidence that the defendants knew that they were trading on information obtained from insiders who had provided that information in exchange for a benefit.

¹ A copy of Mr. Steinberg's December 19, 2014 letter without exhibits is attached to this letter as Exhibit A. A copy of Mr. Steinberg's January 7, 2015 letter without exhibits is attached to this letter as Exhibit B.

KRAMER LEVIN NAFTALIS & FRANKEL LLP

Mr. Brent J. Fields

October 15, 2015

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On January 7, 2015, with the consent of the Division of Enforcement, Mr. Steinberg requested that the Commission stay its briefing schedule pending resolution of any government petitions for rehearing, rehearing *en banc* and/or certiorari in the *Newman* case. In support of this request, Mr. Steinberg explained that Judge Richard Sullivan presided over both the trial of Messrs. Newman and Chiasson and the subsequent trial of Mr. Steinberg. The jury instruction the Second Circuit reversed in *Newman* was also given by Judge Sullivan in Mr. Steinberg's trial. Additionally, because both cases involved the same "tipping chain" of analysts, the relevant facts concerning tipper benefit, which the Second Circuit found insufficient in *Newman*, are necessarily identical in both cases. A stay was warranted because, absent vacatur or modification of the holding in *Newman*, Mr. Steinberg, like Messrs. Newman and Chiasson, would also be entitled to reversal of his conviction – relief that would negate the only basis for sanctions in the Order Instituting Administrative Proceedings. The Commission granted Mr. Steinberg's request for a stay on January 27, 2015.

On April 3, 2015, the Second Circuit denied the government's January 23, 2015 petition for rehearing and rehearing *en banc* of *Newman*. On April 15, 2015, the Second Circuit granted Mr. Steinberg's request that his appeal be held in abeyance pending any government decision to petition for certiorari in *Newman* and final resolution of any such petition. On October 5, 2015, the United States Supreme Court denied the government's July 30, 2015 petition for certiorari in *Newman*. Thereafter, on October 8, 2015, the Second Circuit lifted the stay of Mr. Steinberg's criminal appeal. Mr. Steinberg's brief to the Second Circuit is now due on or before October 26, 2015.²

Given the denial of certiorari in *Newman*, given that Mr. Steinberg is entitled to the same relief as Messrs. Newman and Chiasson on appeal from his criminal conviction, and given that such relief will vitiate the sole basis for Section 203(f) sanctions alleged against him in the Order Instituting Administrative Proceedings, Mr. Steinberg respectfully requests that the Commission continue to stay briefing of Mr. Steinberg's petition for review until final resolution of his criminal appeal. The parties will provide written updates to the Commission regarding the disposition of Mr. Steinberg's criminal case.

Thank you for your consideration.

Respectfully submitted,



Barry H. Berke

cc: Daniel R. Marcus, Esq. (by e-mail)

² As noted in our January 7, 2015 letter, the Commission's civil enforcement case against Mr. Steinberg in the Southern District of New York will remain stayed "until the end" of Mr. Steinberg's appeal.

EXHIBIT A

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December 19, 2014

VIA FACSIMILE AND FEDERAL EXPRESS

Mr. Brent J. Fields
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *In the Matter of Michael S. Steinberg*, File No. 3-15925

Dear Mr. Fields:

We represent Respondent Michael S. Steinberg in the above-referenced administrative proceeding. On November 26, 2014, the Commission granted Mr. Steinberg's petition for review of an administrative law judge's initial decision barring him from the securities industry. Mr. Steinberg's brief in support of the petition for review is due to be filed by next Friday, December 26, 2014. The Division of Enforcement's brief in opposition is due in late-January, and Mr. Steinberg's reply is due two weeks thereafter. For the reasons set forth below, we write to request that the Commission stay that briefing schedule in light of the recent decision by the Second Circuit Court of Appeals in the related cases *United States v. Newman*, Nos. 13-1837-cr(L) (2d Cir.) and *United States v. Newman (Chiasson)*, No. 13-1917-cr(con) (2d Cir.) (collectively, "*Newman/Chiasson*"). The Division, by Senior Counsel Daniel R. Marcus, consents to this request.

Pursuant to the Investment Advisers Act of 1940, the Commission commenced the instant administrative proceeding shortly after Mr. Steinberg was convicted of insider trading. Significantly, the criminal case against Mr. Steinberg overlapped substantially with an earlier-prosecuted case against Todd Newman and Anthony Chiasson. Both cases were tried before United States District Judge Richard J. Sullivan, and both involved the same "tipping chain" of analysts who obtained information from other individuals who, in turn, obtained that information from corporate insiders at Dell, Inc. and Nvidia Corp. Most significant to this unopposed application, both cases squarely presented the legal issue of whether, to sustain a conviction in an insider trading case, the government must prove that a remote tippee defendant

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Mr. Brent J. Fields
December 19, 2014
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knew that a company insider disclosed confidential information in exchange for a personal benefit. At both trials, Judge Sullivan answered that question in the negative and refused to give the defendants' proposed jury instructions concerning tippee knowledge. That refusal was at the heart of the *Newman/Chiasson* appeal, which was argued earlier this year.¹

Last week, in a unanimous opinion issued on December 10, 2014, the Second Circuit sided with the defendants on the common legal issue of a tippee's required knowledge. Specifically, the Court held that "in order to sustain a conviction for insider trading, the Government must prove beyond a reasonable doubt that the tippee knew that an insider disclosed confidential information *and* that he did so in exchange for a personal benefit."² Finding that the District Court's jury instruction to the contrary was erroneous, the Court ruled that the judgments of conviction of Messrs. Newman and Chiasson must be reversed. The Court further ordered that the indictments against Messrs. Newman and Chiasson be dismissed with prejudice because (1) the evidence was insufficient to show "that the corporate insiders received any personal benefit in exchange for their tips," and without that underlying tipper liability there could be no derivative tippee liability and (2) there was no evidence that the defendants knew that they were trading on information obtained from insiders who had provided that information in exchange for a benefit.

Because Judge Sullivan gave the same instructions regarding tippee knowledge to the *Steinberg* and *Newman/Chiasson* juries, and because the relevant facts concerning tipper benefit were necessarily identical in both cases, Mr. Steinberg will be entitled to the same relief as Messrs. Newman and Chiasson unless the panel's decision is vacated or modified in the event the government seeks and is granted upon further review.³ Given that reversal of Mr. Steinberg's conviction will vitiate the sole basis for Section 203(f) sanctions alleged in the Order Instituting Administrative Proceedings, the parties believe that this proceeding should be stayed at this time.⁴

¹ The Second Circuit held Mr. Steinberg's separate appeal in abeyance pending a decision in *Newman/Chiasson*.

² A copy of the Second Circuit's opinion is attached to this letter as Exhibit A.

³ On December 12, 2014, the U.S. Attorney's Office moved to extend to January 23, 2015 its time to petition for rehearing and/or rehearing *en banc* so that it could consult with the Solicitor General's office. That motion remains *sub judice*.

⁴ Mr. Steinberg and the Division intend to ask the Honorable Shira Scheindlin to continue to stay the parallel civil injunctive case pending in the Southern District of New York. Additionally, Mr. Steinberg, without opposition from the U.S. Attorney's Office, moved the Second Circuit earlier today to again hold his appeal in abeyance. A copy of Mr. Steinberg's motion is attached to this letter as Exhibit B.

KRAMER LEVIN NAFTALIS & FRANKEL LLP

Mr. Brent J. Fields
December 19, 2014
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For these reasons, and with the Division's explicit consent, Mr. Steinberg respectfully requests that the Commission stay the current briefing schedule until (1) the U.S. Attorney's Office decides whether to petition for rehearing, rehearing *en banc* and/or *certiorari* in *Newman/Chiasson* and (2) any such petitions are finally decided. The parties will provide the Commission with written updates upon the disposition of these matters.

The parties are available telephonically should your Office or the Commission have any questions or require additional information.

Thank you for your consideration.

Respectfully submitted,



Barry H. Berke

cc: Daniel R. Marcus, Esq. (by facsimile and e-mail)
Justin P. Smith, Esq. (by facsimile and e-mail)

EXHIBIT B

KRAMER LEVIN NAFTALIS & FRANKEL LLP

BARRY H. BERKE
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January 7, 2015

VIA FACSIMILE AND FEDERAL EXPRESS

Mr. Brent J. Fields
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *In the Matter of Michael S. Steinberg*, File No. 3-15925

Dear Mr. Fields:

As you are aware, Respondent Michael S. Steinberg asked the Commission on December 19, 2014, to stay the briefing schedule in the above-referenced proceeding.¹ On December 22, 2014, the Commission, citing the circumstances described in Mr. Steinberg's letter, determined that a 21-day extension of time was appropriate. Mr. Steinberg's opening brief is now due to be filed next Friday, January 16, 2015. We write now to briefly inform the Commission of certain developments that occurred subsequent to the issuance of the Commission's extension order and to request, again with the Division of Enforcement's consent, that, pursuant to Rule 161(c)(1) of its Rules of Practice, the Commission extend the briefing schedule until (1) the U.S. Attorney's Office decides whether to petition for rehearing, rehearing *en banc* and/or certiorari in *United States v. Newman*, Nos. 13-1837-cr(L) (2d Cir.), and *United States v. Newman (Chiasson)*, No. 13-1917-cr(con) (2d Cir.) (collectively, "*Newman/Chiasson*"); and (2) any such petitions are finally decided.

In light of the Second Circuit's recent decision in *Newman/Chiasson*, two courts have stayed separate proceedings against Mr. Steinberg. On December 22, 2014, the Honorable Shira A. Scheindlin ordered that the Commission's civil enforcement against Mr. Steinberg in the Southern District of New York remain stayed "until the end" of Mr. Steinberg's criminal

¹ A copy of Mr. Steinberg's December 19, 2014 letter request for an extension is attached to this letter as Exhibit A.

KRAMER LEVIN NAFTALIS & FRANKEL LLP

Mr. Brent J. Fields
January 7, 2015
Page 2

appeal.² The following week, on December 31, 2014, the Second Circuit granted Mr. Steinberg's unopposed motion to hold his appeal in abeyance pending final resolution of any petition for rehearing or certiorari that the government may file in *Newman/Chiasson*.³ With both the civil and criminal actions stayed in recognition that Mr. Steinberg will be entitled to have his conviction reversed unless the *Newman/Chiasson* decision is vacated or modified, only the Commission's administrative proceeding is moving forward at this time.

As we explained in our December 19 letter, reversal of Mr. Steinberg's conviction will vitiate the sole basis for Section 203(f) sanctions alleged in the Order Instituting Administrative Proceedings. Given the impact of the *Newman/Chiasson* decision on Mr. Steinberg's conviction, we believe that proceeding at this time would "substantially prejudice the[] case" within the meaning of Rule 161. We also respectfully submit that it would be inefficient for the Commission to require full briefing on Mr. Steinberg's petition for review while the government considers and potentially pursues further appellate review. Accordingly, with the Division's consent, Mr. Steinberg respectfully requests that the Commission stay the current briefing schedule until (1) the U.S. Attorney's Office decides whether to petition for rehearing, rehearing *en banc* and/or certiorari in *Newman/Chiasson*; and (2) any such petitions are finally decided. The parties will provide the Commission with written updates upon the disposition of these matters.⁴

The parties are available telephonically should your Office or the Commission have any questions or require additional information.

Thank you for your consideration.

Respectfully submitted,



Barry H. Berke

cc: Daniel R. Marcus, Esq. (by facsimile and e-mail)
Justin P. Smith, Esq. (by facsimile and e-mail)

² A copy of Judge Scheindlin's order is attached to this letter as Exhibit B.

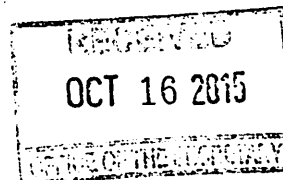
³ A copy of Mr. Steinberg's unopposed motion to hold his appeal in abeyance (without exhibits) is attached to this letter as Exhibit C. The Second Circuit's order granting the motion is attached as Exhibit D.

⁴ In the event the Commission chooses to grant another 21-day extension, we will respectfully seek additional 21-day extensions as necessary until such time as the status of the *Newman/Chiasson* decision is resolved.

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

ADMINISTRATIVE PROCEEDING
File No. 3-15925



X
:
In the Matter of
:
MICHAEL S. STEINBERG,
:
Respondent.
:

X

CERTIFICATE OF SERVICE

I, Robin Wilcox, hereby certify that, on this 15th day of October 2015, pursuant to Rule 150 of the U.S. Securities and Exchange Commission's Rules of Practice, I caused a true and correct copy of the enclosed letter request for postponement with accompanying exhibits to be served upon the following persons according to the method specified for each:

BY FEDERAL EXPRESS OVERNIGHT DELIVERY AND FACSIMILE

(original and three copies)

Brent J. Fields, Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
(202) 772-9324

BY ELECTRONIC MAIL (by agreement)

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Robin Wilcox

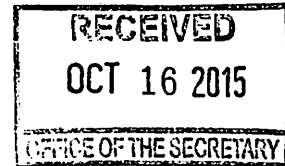
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October 15, 2015

VIA FEDERAL EXPRESS AND FACSIMILE



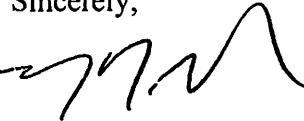
Mr. Brent J. Fields
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: In the Matter of Michael S. Steinberg, File No. 3-15925

Dear Mr. Fields:

Our firm represents respondent Michael S. Steinberg in the above-referenced matter. In accordance with Rule 151 of the Commission's Rules of Practice, I hereby enclose an original and three copies of respondent's letter request for postponement with exhibits and an original certificate of service.

A copy of this letter, respondent's letter request for postponement with exhibits, and a certificate of service were faxed to your attention today at (202) 772-9324.

Sincerely,


Barry H. Berke

Enclosures

cc: Daniel R. Marcus, Esq. (by electronic mail)

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