

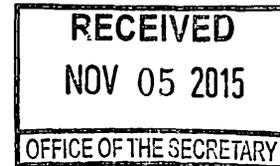
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November 4, 2015

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. In light of the dismissal of all criminal charges against Mr. Steinberg, we write to request that the Commission convert Mr. Steinberg's petition for review into a motion to dismiss, reverse the Initial Decision, and dismiss the administrative proceeding. The Division of Enforcement, by Assistant Regional Director Daniel R. Marcus, consents to this request.

On March 29, 2013, the U.S. Attorney's Office unsealed a superseding indictment charging Mr. Steinberg with unlawfully trading securities of Dell Inc. ("Dell") and Nvidia Corporation ("Nvidia") based on material non-public information obtained from corporate insiders. On December 18, 2013, following trial, a jury found Mr. Steinberg guilty of all charges. The Honorable Richard J. Sullivan of the Southern District of New York sentenced Mr. Steinberg on May 16, 2014 and entered judgment three days later.

On June 11, 2014, the Commission commenced the instant administrative proceeding. The sole basis for the Section 203(f) sanctions sought was Mr. Steinberg's criminal conviction. With leave, the Division moved for summary disposition on July 24, 2014. Following briefing, the ALJ issued an Initial Decision on October 14, 2014, barring Mr. Steinberg from the securities industry. Mr. Steinberg submitted a petition for review on November 4, 2014, which the Commission granted on November 26, 2014.

Since November 2014, briefing on Mr. Steinberg's petition for review has been postponed in light of developments in the criminal appeal of Todd Newman and Anthony

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Mr. Brent J. Fields

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Chiasson, which substantially overlapped with Mr. Steinberg's appeal. In December 2012, Messrs. Newman and Chiasson were convicted on charges that they traded in securities of Dell and Nvidia while in possession of material nonpublic information. The case against Messrs. Newman and Chiasson and the subsequent prosecution of Mr. Steinberg involved the same corporate insiders and same "tipping chain of analysts." Furthermore, the defendants in both cases challenged the same jury instruction given by Judge Sullivan regarding remote tippee knowledge.¹

In *United States v. Newman*, 773 F.3d 438 (2d Cir. Dec. 10, 2014), the Second Circuit reversed the judgments of conviction against Messrs. Newman and Chiasson and ordered the dismissal of their indictment. On December 19, 2014, Mr. Steinberg submitted to the Second Circuit an unopposed motion to hold his own appeal in abeyance, citing the overlap in factual and legal issues between his case and *Newman* and noting that Mr. Steinberg would be entitled to the same relief as Messrs. Newman and Chiasson. The Second Circuit granted the motion on December 31, 2014.

On April 3, 2015, the Second Circuit denied the government's 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 further 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 petition for certiorari in connection with the *Newman* decision.

In the wake of the denial of certiorari in *Newman*, the criminal case against Mr. Steinberg has now been dismissed. On October 8, 2015, the Second Circuit lifted the stay of Mr. Steinberg's appeal. On October 22, 2015, the United States Attorney's Office moved the Second Circuit to remand Mr. Steinberg's appeal so that it could seek dismissal of its prosecution and submit a proposed order of *nolle prosequi* to the district court. On October 23, 2015, after the Second Circuit had granted the motion for remand, the United States Attorney's Office submitted its proposed *nolle prosequi* to Judge Sullivan. On October 30, 2015, Judge Sullivan signed the *nolle prosequi*, thereby vacating Mr. Steinberg's conviction and dismissing the indictment against him.²

¹ Further explanation of overlap between Mr. Steinberg's case and that of Messrs. Newman and Chiasson and a procedural history of the extensions of briefing schedule granted by the Commission may be found in Mr. Steinberg's letter of October 15, 2015. A copy of Mr. Steinberg's October 15, 2015 letter without exhibits is attached to this letter as Exhibit A.

² The *nolle prosequi* entered as to Mr. Steinberg is attached to this letter as Exhibit B.

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In light of the foregoing, the Initial Decision should be reversed and the administrative proceeding against Mr. Steinberg should be dismissed. The Order Instituting Proceeding against Mr. Steinberg relied solely on Mr. Steinberg's criminal conviction as the basis for Section 203(f) sanctions. As Mr. Steinberg's conviction has now been vacated and all criminal charges against Mr. Steinberg have been dismissed, the administrative proceeding should also be dismissed.

The Commission has previously converted petitions to review into motions to dismiss – and granted those motions to dismiss – where the judgments underlying the initial decisions were vacated while the petition for review was pending. For instance, earlier this year, Anthony Chiasson requested that the Commission convert his petition for review into a motion to dismiss, reverse the initial decision, and dismiss the administrative proceeding against him after the judgments underlying that proceeding were vacated. Following Mr. Chiasson's request, on May 15, 2015, the Commission dismissed the administrative proceeding.³ We respectfully request that the Commission similarly convert Mr. Steinberg's petition into a motion to dismiss, reverse the Initial Decision, and dismiss the administrative proceeding against him.

Thank you for your consideration.

Respectfully submitted,



Barry H. Berke
Robin Wilcox

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

³ See *In the Matter of Anthony Chiasson*, Exchange Act Release No. 4085, 2015 WL 2328706, at *1 (May 15, 2015) (administrative proceeding against Anthony Chiasson dismissed following Second Circuit ordering vacatur of conviction and dismissal of indictment and vacatur of a civil injunction). See also *In the Matter of Richard L. Goble*, Exchange Act Release No. 68651, 2013 WL 150557, at *1 (Jan. 14, 2013) (administrative proceeding dismissed after petition for review converted to motion to dismiss following vacatur of injunction underlying proceeding and initial decision).

EXHIBIT A

KRAMER LEVIN NAFTALIS & FRANKEL LLP

BARRY H. BERKE
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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
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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,

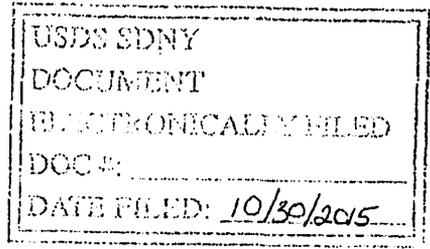

Barry H. Berke

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 B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- x
UNITED STATES OF AMERICA :

-v.- :

MICHAEL STEINBERG, :

Defendant. :

NOLLE PROSEQUI

S4 12 Cr. 121 (RJS)

----- x
1. The filing of this *nolle prosequi* will dispose of this case with respect to the defendant Michael Steinberg.

2. On March 28, 2013, superseding Indictment S4 12 Cr. 121 was filed, charging defendant Michael Steinberg with one count of conspiracy to commit securities fraud in violation of Title 18, United States Code, Section 371; and four counts of securities fraud in violation of Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2. On December 18, 2013, the defendant was convicted on all counts after a jury trial. On May 16, 2014, this Court sentenced the defendant to 42 months' imprisonment and three years' supervised release, and ordered a \$2 million fine and \$365,142 in forfeiture. The defendant appealed, but his appeal was stayed pending the outcome of appellate litigation concerning related defendants Todd Newman and Anthony Chiasson. Steinberg has remained on bail pending resolution of his appeal.

3. Based on legal developments subsequent to the defendant's conviction, the Government has concluded that further prosecution of Michael Steinberg would not be in the interests of justice. On October 23, 2015, the Court of Appeals remanded this case to the District

Court so that this Court could consider this proposed order of *nolle prosequi*.

4. In light of the foregoing, we recommend that an order of *nolle prosequi* be filed as to defendant Michael Steinberg with respect to Indictment S4 12 Cr. 121 (RJS).

/s/ Harry A. Chernoff

HARRY A. CHERNOFF
SARAH EDDY McCALLUM
Assistant United States Attorneys
(212) 637-2481/1033

Dated: New York, New York
October 23, 2015

Upon the foregoing recommendation, I hereby direct, with leave of the Court, that an order of *nolle prosequi* be filed as to defendant Michael Steinberg with respect to Indictment S4 12 Cr. 121 (RJS).

/s/ Preet Bharara

PREET BHARARA
United States Attorney
Southern District of New York

Dated: New York, New York
October 23, 2015

SO ORDERED:



HON. RICHARD J. SULLIVAN
United States District Judge
Southern District of New York

Dated: New York, New York
October 30, 2015