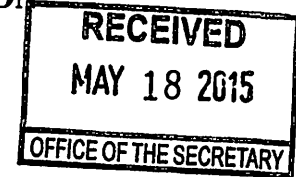


**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16344**



In the Matter of  
  
EDGAR LEE GIOVANNETTI,  
  
Respondent.

PRE-TRIAL BRIEF  
OF  
EDGAR LEE GIOVANNETTI

Comes now Respondent, Edgar Lee Giovannetti (“Respondent” or “Giovannetti”), and submits this Pre-Trial Brief with respect to the Order Instituting Administrative and Cease-and-Desist Proceedings (the “OIP”) Pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), Section 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”).

**Introduction**

Giovannetti admits his failure to disclose to the Compliance Department at Consulting Services Group, LLC (“CSG”) a \$50,000 loan he had received pending a redemption of a personal investment being managed by one of the investment managers (the “New York Investment Manager”) that CSG had recommended to several of its clients. He further admits that when he discovered the loan had not been repaid out of the redemption proceeds, he failed to inform the CSG Compliance Department of that fact. His defense to this action is not that his actions were excusable then or now; it is that the sanctions being sought by the Commission are unduly harsh under the circumstances. No losses to CSG or any investor are alleged to have

resulted from the failure of disclosure. Giovannetti's case is a straight forward explanation of the circumstances giving rise to and resulting from the disclosure violation.

### **Relevant Parties**

#### **Consulting Services Group, LLC**

CSG was registered with the Commission as an investment adviser pursuant to Section 203(a) of the Advisers Act from July 6, 1990 until October 4, 2013. CSG provided investment consulting services to foundations, endowments, corporate and public investment funds, trust companies, hospitals, and high net-worth individuals and families. In 2008, CSG had over 120 client relationships with assets under consulting arrangements of more than \$36.6 billion. By the fall of 2013, CSG withdrew its registration with the Commission and ceased all investment advisory and consulting services. The failure of CSG after 2008 was obviously not only impacted by investor retrenchment in the economic downturn of the times, but also by the added weight of negative publicity surrounding legal proceedings developing in New York.

#### **Edgar Lee Giovannetti**

Giovannetti was born [REDACTED]. The University of Tennessee awarded Giovannetti a bachelor of science degree in 1978. Upon graduation in 1978, Giovannetti worked for Merrill Lynch and later for E.F. Hutton & Company in that firm's consulting division. Giovannetti left E.F. Hutton Company and co-founded CSG's predecessor company in 1988. From 1988 until his resignation in December 2011, Giovannetti held several management positions at CSG, including serving as its Chief Executive Officer until the formation of CSG's parent company, CSG Holdings, LLC ("CSG Holdings"), in December 2008.

Giovannetti resigned from his position as Chief Executive Officer of CSG Holdings and from all management positions of its registered operating subsidiaries, including CSG, in

December 2011. Following his resignation, Giovannetti continued to own approximately [REDACTED] of CSG Holdings. Today, Giovannetti is not associated with any entity formerly owned by CSG Holdings and is currently unemployed.

The tumultuous events beginning in early 2009 that hit CSG and Giovannetti may shed light on, but certainly do not excuse, his lack of focus on and attention to the details regarding disclosure of the loan at issue here. Giovannetti's time and energy were redirected towards dealing with a developing scandal in New York politics and, particularly in the early days, trying to uncover the basis for allegations that CSG may have involvement there, engaging a legal team to defend the allegations, and shoring up client confidence in the face of horrible publicity. At the same time the markets in the United States were facing a nearly unprecedented free-fall and CSG Holdings had curtailed distributions to its members.

#### **The New York Common Retirement Fund Investigation**

Sometime in 2007 or 2008, the Attorney General for the State of New York (Andrew Cuomo, later elected Governor of New York) and the Securities Exchange Commission began investigations of Henry Morris ("Morris"), a registered representative associated with Searle & Co. ("Searle"), a Connecticut-based broker dealer and investment adviser, and David J. Loglisci ("Loglisci"), a New York attorney and Deputy Comptroller of the State of New York, overseeing investments in private equity funds. On March 19, 2009, the SEC filed a 34-page Complaint in the United States District Court for the Southern District of New York describing a fraudulent scheme by Morris, Loglisci, and other named parties to extract kickbacks from investment management firms. Four of the eighty paragraphs mentioned CSG, by name, as having agreed to pay Searle a percentage fee for assisting CSG with negotiations to help explain and recommend to the New York Common Retirement Fund the benefits of a new investment product.

Although no charges were ever filed against CSG, the wide-spread print and television publicity following the Complaint implying that CSG was being identified by the SEC as a back-room participant in a fraudulent scheme was devastating. The Division of Enforcement issued a Wells Notice to CSG on May 28, 2009 advising that the Division was considering recommending that the Commission authorize the filing of a civil action against CSG and one of its employees for violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and violations of Section 17(a) of the Securities Act and Sections 206(1) and 206(2) of the Advisers Act with respect to the New York Common Retirement Fund. CSG filed its Wells Submission on June 30, 2009 urging the Division and the Commission not to initiate an action against CSG, and demonstrating that CSG had fully disclosed its contractual relationship with Searle. In its Wells Submission, CSG pleaded for a quick resolution so as not to have its business and reputation destroyed in the marketplace. Over two and a half years later, by letter dated February 28, 2012, the Division of Enforcement notified CSG of its intent not to recommend enforcement action and the matter ended, but the “no action letter” arrived too late for CSG to salvage its business.

### **Summary**

Pursuant to CSG’s Offer of Settlement in Administrative Proceeding No. 3-16745, CSG was found to have violated Sections 206(2) and 207 of the Advisers Act for its initial failure to disclose the loan and for its inadequate description of the loan when it was disclosed in CSG’s Form ADV Part 2A. CSG was ordered to cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 207 of the Advisers Act and to pay \$150,000 civil money penalty. Although CSG has settled with the Commission, the Division of Enforcement has brought this action against Giovannetti seeking a determination of what, if any,

remedial action in the public interest is appropriate against Giovannetti and whether Giovannetti should be ordered to: (i) cease and desist from committing or causing violations of and any violations of Section 206(1), 206(2) and 207 of the Adviser's Act, (ii) pay a civil penalty, and (iii) pay disgorgement.

For the reasons stated herein, Giovannetti submits that remedial action in the public interest is not appropriate in this matter. Giovannetti further submits that disgorgement is not appropriate as neither CSG nor Giovannetti is alleged to have been unjustly enriched by CSG's failure to disclose the loan that Giovannetti received from the New York Investment Manager. In addition, no client of CSG is alleged to have lost any money or suffered any other loss relating to any investment with the New York Investment Manager. Giovannetti recognizes that he should have taken affirmative steps to disclose the loan to CSG's compliance department and to CSG's clients, that his failure to take such action was inexcusable, and that his admission will, in and of itself, cause considerable damage to his professional reputation.

### **Facts**

In or about 2002, Giovannetti personally invested in an investment fund offered by the New York Investment Manager.<sup>1</sup> Giovannetti added to his investment with the New York Investment Manager in 2005 and made partial redemptions from his investment in late-2006 and mid-2007. Giovannetti was pleased with the performance of his investment and recommended the New York Investment Manager to several clients of CSG. By 2009, seven of CSG's clients had investments with the New York Investment Manager.

Giovannetti was experiencing significant personal financial challenges in the spring of 2009 when the Commission filed the New York Common Retirement Fund Complaint.

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<sup>1</sup> To Giovannetti's knowledge there is no connection between the New York Investment Manager and the New York Common Retirement Fund.

Giovannetti was caught between dealing with his personal financial challenges and preserving CSG's business before it suffered irreparable damage from the publicity generated by the allegations in the New York Common Retirement Fund Complaint and the subsequent Wells Notice. Necessarily, Giovannetti's personal financial challenges took a back seat to the challenges facing CSG in combating the allegations contained in the New York Common Retirement Fund Complaint.

As Giovannetti and CSG were in the initial stages of trying to extricate CSG from the allegations in the New York Common Retirement Fund Complaint, Giovannetti needed \$50,000 to meet his personal obligations. In April 2009, Giovannetti requested a partial redemption of \$50,000 from the fund managed by the New York Investment Manager, but was informed the fund could not do a mid-month redemption. The New York Investment Manager offered to loan \$50,000 to Giovannetti that he could pay back by July 1, 2009 either directly or through a redemption. Giovannetti accepted the New York Investment Manager's offer and said that he would pay the loan without redeeming unless he had no other options. The New York Investment Manager forwarded a promissory note evidencing the \$50,000 loan and confirmed Giovannetti could pay back the loan directly or through a partial redemption. On April 21, 2009, Giovannetti executed the note and the \$50,000 was wired by the New York Investment Manager to Giovannetti's personal bank account.

After receiving the loan, Giovannetti's personal financial situation worsened as CSG Holdings ceased making any significant distributions to its members. On June 3, 2009, Giovannetti advised the New York Investment Manager to liquidate his entire investment in the fund. The New York Investment Manager informed Giovannetti that he could expect to receive

a distribution of his redemption proceeds around July 13, 2009 to July 15, 2009. Giovannetti assumed that the loan would be netted against his redemption proceeds.

On July 27, 2009, the New York Investment Manager advised Giovannetti by email that “our CFO will be sending you the note for repayment after your recent redemption.” On that same date, the CFO emailed Giovannetti’s assistant and attached an invoice for repayment of the note. Giovannetti’s assistant forwarded the CFO’s email to Giovannetti and printed a copy of the attached invoice for Giovannetti.

On July 30, 2009, the New York Investment Manager’s CFO emailed Giovannetti’s assistant inquiring about payment on the loan. Giovannetti’s assistant responded that Giovannetti had been traveling but was back, that she needed to get in front of him, and that she would get back to the CFO asap.

Giovannetti vaguely recalls that his assistant informed him that the CFO said the New York Investment Manager had not received payment yet and he told her that the payment of the note was to be netted against his redemption proceeds.

On August 5, 2009, Giovannetti was advised by CSG’s Chief Compliance Officer that, through routine review of office e-mails, CSG had seen the e-mail traffic about the loan and that the loan, while not a violation of policy, created a potential conflict of interest that should be disclosed. The Chief Compliance Officer requested Giovannetti to provide an update on the status of the loan. On August 8, 2009, Giovannetti sent an email to CSG’s Chief Compliance Officer confirming that he had submitted a redemption request, that the request was beyond the window to redeem, and that the New York Investment Manager had agreed to make him a loan until the window to redeem was open. Giovannetti further stated he redeemed July 1<sup>st</sup> and paid the loan off.

The statement that the loan was paid off was not accurate. Giovannetti incorrectly had assumed that the loan was netted against redemption proceeds; but, in fact, the loan had not been netted against proceeds. On September 1, 2009, the New York Investment Manager CFO emailed Giovannetti's assistant stating that the New York Investment Manager had not yet received payment of the loan. Giovannetti's assistant forwarded the email to Giovannetti. Giovannetti determined that, in fact, the New York Investment Manager had not netted the loan against his redemption proceeds. Giovannetti instructed his assistant to inform the New York Investment Manager's CFO that he was aware that he had not yet made payment on the loan and that he was working on arrangements to repay the loan.

By that time, Giovannetti had used the redemption proceeds to pay personal obligations and did not have available cash to repay the loan. Giovannetti informed the New York Investment Manager of his financial difficulties and requested additional time to pay back the loan. Giovannetti subsequently acknowledged on numerous occasions that the loan remained outstanding including in emails with the New York Investment Manager and audit confirmations sent to the New York Investment Manager's accountants. However, Giovannetti failed to inform CSG's Chief Compliance Officer that his email of August 8, 2009 was not accurate because the loan had not been paid off from his redemption proceeds as he had assumed.

In August 2011, during an interview conducted by the staff from the Commission's National Examination Program, Giovannetti was asked about the loan from the New York Investment Manager and when he had paid the loan back. Giovannetti truthfully responded to the staff that the loan had not been paid back and remained outstanding. CSG's compliance officers were present during this interview and shortly thereafter CSG amended its Form ADV



Part 2A to disclose that Giovannetti had received a \$50,000 loan from the New York Investment Manager in 2009 and that repayment had not been made.

On July 20, 2012, Giovannetti repaid the loan with interest (totaling \$63,044) from a withdrawal of funds from his account in CSG's 401(k) Plan.

### Analysis

**1. Giovannetti did not commit willful violations of Sections 206(1) and 206(2) of the Advisers Act.**

Advisers Act Section 206 violations require that an investment adviser knowingly, recklessly, or negligently engage in fraudulent conduct toward a client or prospective client. An investment adviser is "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities. . . ." 15 U.S.C. §80b-2(a)(11) (2011).

CSG was a wholly-owned subsidiary of CSG Holdings. Giovannetti owned approximately 20% of CSG Holdings, and was a member of the Executive Management Committee of CSG Holdings. Giovannetti was associated with CSG as a consultant specializing in manager evaluations and research and development of new investment strategies for CSG's institutional and private clients. CSG was not the alter ego of Giovannetti.

CSG was an investment adviser and Giovannetti was a person associated with CSG. A person associated with an investment adviser is defined in Advisers Act Section 202(a)(17), as "any partner, officer, or director of such investment adviser (or any person performing similar functions), or any person directly or indirectly controlling or controlled by such investment adviser, including any employee of such investment adviser. . . ." 15 U.S.C. §80b-2(a)(17) (2011).

Because Giovannetti was not an investment adviser, he cannot be found to have willfully violated Sections 206(1) and 206(2) of the Advisers Act as alleged in Paragraph 24 of the OIP.

**2. Giovannetti did not commit willful violations of Section 207 of the Advisers Act.**

Giovannetti was not responsible for, and did not, prepare or file Form ADV Part 2A on behalf of CSG during the relevant time periods. For the reasons stated above, Giovannetti cannot be found to have willfully violated Section 207 of the Advisers Act as alleged in Paragraph 25 of the OIP.

**3. Giovannetti did not cause CSG's violation of Section 207 of the Advisers Act after December 30, 2011.**

By letter dated December 30, 2011, Giovannetti resigned from his position as Chief Executive Officer of CSG Holdings and from all management positions of its registered operating subsidiaries including CSG. In view of Mr. Giovannetti's resignation, Giovannetti's conduct after December 30, 2011 as described in the OIP could not have caused CSG's violation of Section 207 of the Advisers Act.

**4. The Court should not consider Giovannetti's Pre-January 16, 2010 conduct in assessing civil penalties and whether to impose industry bars.**

28 U.S.C. §2462 provides that the statute of limitations is five (5) years for the enforcement of any civil fine, penalty or forfeiture. Giovannetti's failure to disclose the loan was not part of a continuous scheme to defraud investors. Accordingly, the Court should not consider Giovannetti's pre-January 16, 2010 conduct in assessing civil penalties and whether to impose industry bars.

**5. Allegations that Giovannetti willfully aided and abetted and caused CSG's violation of Section 207 of the Advisers Act and appropriate remedial action pursuant to Section 15(b) of the Exchange Act, Section 9(b) of the Investment Company Act and Section 203(f) of the Advisers Act and disgorgement, civil penalties and cease and desist pursuant to Section 203 of the Advisers Act and Section 9 of the Investment Company Act.**

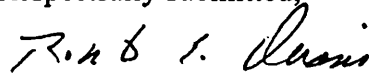
Giovannetti has acknowledged that his actions were unacceptable and that he should have taken affirmative steps initially to correctly nail down the facts and, thereafter, to disclose the loan to CSG's compliance department and to CSG's clients. Giovannetti recognizes that his failure to correct his inaccurate statement that the loan was paid off caused CSG's violation of Section 207 of the Advisers Act. Although his actions were unacceptable, Giovannetti did not act with a desire to defraud or deceive any of CSG's clients. Rather, Giovannetti failed to appreciate that the clients of CSG should be informed that he had an unpaid loan from an investment manager that he was recommending to CSG's clients even though CSG's Chief Compliance Officer had recently apprised him that such a disclosure was required. Giovannetti offers his personal financial challenges and the demands on him by the devastating effects that the New York Common Retirement Fund Complaint and subsequent Wells Notice had on CSG's business not as an excuse, but as an explanation, for his actions. The pressure on Giovannetti from these combined situations was almost unbearable and clouded his judgment. Giovannetti regrets his actions and will offer assurances to the Court that he will comply with federal securities laws in the future.

Giovannetti realizes his conduct does merit some sanction. In determining the appropriate sanction to impose against Giovannetti, the Court should consider that no client of CSG lost money by investing with the New York Investment Manager and neither CSG nor Giovannetti was unjustly enriched by the failure to disclose the loan. Giovannetti admits that his

actions were unacceptable and that he must pay the closest attention to compliance policies and procedures in the future. However, Giovannetti is not such a threat to the investing public that a bar is warranted. It is not in the public's interest to impose a sanction that is unduly harsh and would prevent Giovannetti from again becoming a respected member of the investment advisory industry.

Dated: May 15, 2015.

Respectfully submitted,



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Attorneys for Respondent Edgar Lee Giovannetti

**CERTIFICATE OF SERVICE**

Undersigned Counsel for the Respondent hereby certifies that, on the date set forth below, he served Edgar Lee Giovannetti's Witness List as follows:

Pat Huddleston II  
Paul T. Kim  
Senior Trial Counsel  
Securities and Exchange Commission  
950 East Paces Ferry Road, NE, Suite 900  
Atlanta, GA 30319

Secretary Brent J. Fields  
Securities and Exchange Commission  
100 F Street N.E.  
Washington, DC 20549-1090

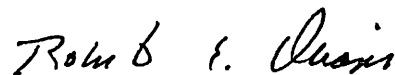
**VIA EMAIL AND FEDEX**

**VIA EMAIL AND FEDEX**

Hon. Brenda P. Murray  
Chief Administrative Law Judge  
Securities and Exchange Commission  
100 F Street N.E.  
Washington, DC 20549-1090

**VIA EMAIL AND FEDEX**

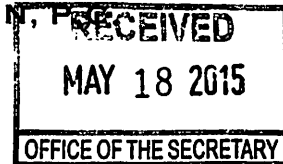
This 15<sup>th</sup> day of May, 2015.



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Robert E. Orians  
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**VIA EMAIL AND FEDEX**

Re: In the Matter of Edgar Lee Giovannetti, Respondent  
Administrative Proceeding File No. 3-16344

Dear Pat and Paul:

Enclosed please find the Pre-Trial Brief of Edgar Lee Giovannetti with respect to the referenced Administrative Proceeding.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Rob Orians".

Robert E. Orians

REO/kc

Enclosure

cc: Hon. Brenda P. Murray (w/enclosure via E-Mail and FEDEX)  
Secretary Brent J. Fields (w/enclosure via E-Mail FEDEX)