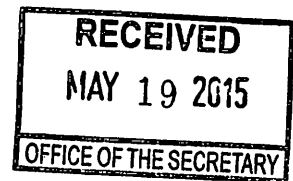


WMP:WK
F. # 2012R01558



UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16463

In the Matter of

AEGIS CAPITAL, LLC,
CIRCLE ONE WEALTH
MANAGEMENT, LLC,
DIANE W. LAMM,
STRATEGIC CONSULTING
ADVISORS, LLC, and
DAVID I. OSUNKWO,

UNITED STATES ATTORNEY'S
MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO STAY
THIS ADMINISTRATIVE
PROCEEDING

Respondents.

PRELIMINARY STATEMENT

Kelly T. Currie, Acting United States Attorney for the Eastern District of New York (the “United States Attorney”), through the undersigned Assistant United States Attorney, submits this Memorandum of Law in support of the United States Attorney’s Application to Intervene in this Administrative Proceeding Before the Securities and Exchange Commission (“Commission”) and Motion for an Order Staying This Administrative Proceeding pursuant to Rule 210(c)(3) of the Commission’s Rules of Practice. The United States Attorney respectfully requests this Court to stay this proceeding against Respondents Aegis Capital, LLC; Circle One Wealth Management, LLC; Diane W. Lamm; Strategic Consulting Advisors, LLC; and David I. Osunkwo.

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

Pursuant to Rule 210(c)(3) of the Rules of Practice for the Securities and Exchange Commission, an Administrative Law Judge may grant leave for representatives of a United States Attorney's Office to participate in a Commission administrative proceeding “for the purpose of requesting a stay during the pendency of a criminal investigation or prosecution arising out of the same or similar facts that are at issue in the pending Commission enforcement” proceeding. Indeed, the Rule expressly provides that “[u]pon a showing that such a stay is in the public interest or for the protection of investors, the motion for stay shall be favored.” Granting a stay in this case is in the public interest for at least three reasons: (1) the stay would avoid prejudicing a criminal prosecution pending in the Eastern District of New York, *United States v. Lakian & Lamm*, 15-CR-43 (FB) (“the Criminal Case”); (2) the criminal prosecution’s pendency will likely impair the effective presentation of evidence in the above-captioned administrative proceeding; and (3) there is no prejudice to the Respondents if the stay is granted.

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

Protection of the public through the earnest and vigorous enforcement of its criminal laws is an important public policy. To further this goal, “[f]ederal courts and the Commission have repeatedly recognized that civil or administrative proceedings may be stayed pending resolution of parallel criminal proceedings where justice requires.” *In the Matter of A.S. Goldman & Co., et al.*, Order Postponing Proceedings, at p. 4, Admin. Proc. File 3-9933 (September 1, 1999) (Commission overruling administrative law judge’s denial of stay). Indeed, the law is clear that an administrative proceeding should be stayed if going forward with it would interfere with a criminal investigation or prosecution. *See In the Matter of Paul A. Flynn*, Admin. Proc. File No. 3-11390 (March 4, 2004) (“The Commission has made it clear that administrative proceedings should not interfere with parallel criminal proceedings.”); *In the Matter of Hunter Adams, et al.*, Admin. Proc. File No. 3-10624 (November 27, 2001) (“Administrative Law Judges routinely grant such stays.”).

Where, as here, the criminal and administrative proceedings arise out of the same facts, a stay is warranted. *See In the Matter of Michael J. Rothmeier, et al.*, Admin. Proc. File No. 3-10007 (May 25, 2000) (granting a stay where criminal and administrative proceedings related to same allegations); *In the Matter of Hunter Adams, et al.*, Admin. Proc. File No. 3-10624 (November 27, 2001) (same). As described in more detail in the United States Attorney’s Application to Intervene and Motion to Stay Administrative Proceeding (“Application”), at pp. 1-3, the allegations that form the basis of the Order Instituting Proceedings (“OIP”) in this case overlap with allegations in Criminal Case. In the ordinary course, the hearing in this administrative proceeding will be set for a date no later than September 2015 (*see* SEC Rule of Practice 360(a)(2) (“there shall be approximately 4 months [or less] from the order instituting the

proceeding to the hearing”)); while the Criminal Case is already indicted and well underway, it is nonetheless unlikely that trial of the Criminal Case will take place in or before September 2015.

At the hearing in this administrative proceeding, the Division of Enforcement would call prospective Criminal Case trial witnesses associated with Aegis Capital, Circle One and Capital L, thereby prejudicing the criminal proceedings by generating additional statements of witnesses who will later be testifying at trial in the Criminal Case. The creation of multiple sworn statements of the same witnesses has previously been recognized as grounds for a stay. *See In the Matter of Kolar*, Admin. Proc. File No. 3-9570 (Oct. 28, 1999) (noting that the request of the United States Attorney for the Eastern District of Michigan to postpone the hearing in the case until after the conclusion of a related criminal trial was granted in part because “allowing the administrative proceeding to go first ‘could seriously prejudice the government’s case by creating multiple prior sworn testimonies on the part of many witnesses,’ which, in turn, ‘will allow the creation of impeachment material on the government’s witnesses.’”) (quoting the statements of the U.S. Attorney).

In sum, testimony taken before trial of the Criminal Case, at a hearing in this administrative proceeding, would jeopardize the prosecution of the Criminal Case.

B. Prejudice to the Administrative Proceedings If a Stay Is Denied

The administrative proceedings could be undermined in the absence of a stay. Given the OIP allegations that (a) Respondent Lamm provided Respondent Osunkwo with false information in order that he could engage in securities law violations in connection with a Form ADV for Respondent Aegis Capital, and (b) Respondent Osunkwo, under the supervision of Respondent Lamm, engaged in securities fraud by, among other things, forging the signature of Circle One’s CIO, the Division of Enforcement would ordinarily seek to call Respondent Lamm

and Respondent Osunkwo. It is also possible the at the Division of Enforcement would seek the testimony of John Lakian, as Director of Aegis Capital, and Director and Chairman of Circle One, as well as others associated with those entities. Should the hearing in the administrative proceedings precede the trial of the Criminal Case (as is likely in the absence of a stay), Respondent Lamm and witness Lakian would likely invoke their Fifth Amendment privilege not to testify, and other witnesses might well do the same. Thus, the pending Criminal Case would materially impair the ability of the parties to obtain relevant evidence in the administrative proceedings.

C. Respondents Will Not Be Prejudiced by a Stay

Counsel for Lamm do not object to the entry of a stay in this administrative proceeding and counsel for Osunkwo and Strategic Consulting Advisors, LLC, have reserved their right to object to the instant application. J. Bruce Maffeo, Counsel for John Lakian in the Criminal Case, has informed the United States Attorney's Office that he consents on John Lakian's behalf to the entry of the stay.¹ There is no indication that a stay would prejudice any of the Respondents. *See In the Matter of A.S. Goldman & Co.*, Admin. Proc. File No. 3-9933 at p. 6 (Commission ordered a stay of the administrative proceeding pending resolution of the criminal case, noting "there has been no showing that the Respondents will be prejudiced in the administrative case by a stay"). Indeed, in light of the posture of Criminal Case, outlined in the Application, at p. 3, the stay would not last indefinitely. Moreover, Rule 230 discovery has already been made available to the Respondents in this administrative proceeding, so a stay

¹ Mr. Maffeo informed the United States Attorney's Office that has not and does not intend to enter a notice of appearance on behalf of Aegis Capital and Circle One in this administrative proceeding. Accordingly, although Mr. Lakian is listed as a director of Aegis Capital and Circle One, both of these entities appear to be unrepresented by counsel.

would provide them with extra time to review the documents provided and prepare for the hearing.

CONCLUSION

For the reasons outlined above, the public interest would best be served by staying this administrative proceeding pending prosecution of the related Criminal Case. Should the request for a stay be granted, the United States Attorney's Office will file periodic status reports as required. *See, e.g., In the Matter of Paul A. Flynn*, Admin. Proc. File No. 3-11390 (March 4, 2004); *In the Matter of Michael J Rothmeier, et al.*, Admin. Proc. File No. 3-10007 (May 25, 2000).

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

Dated: Brooklyn, New York
May 18, 2015

Respectfully submitted,

KELLY T. CURRIE
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Eastern District of New York

By: /s/ Whitman G.S. Knapp
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