

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5399 / October 2, 2019

Admin. Proc. File No. 3-14393

In the Matter of

DANIEL SHOLOM FRISHBERG

ORDER REQUESTING ADDITIONAL WRITTEN SUBMISSION

On May 16, 2011, the Commission instituted an administrative proceeding pursuant to Section 203(f) of the Investment Advisers Act of 1940 against Daniel Sholom Frishberg.¹ Frishberg was a principal of Daniel Frishberg Financial Services, Inc., d/b/a DFFS Capital Management, Inc. (“DFFS”), a former Commission-registered investment adviser. The administrative proceeding was based on a permanent injunction entered by a federal district court.² The same day that the Commission instituted the proceeding, the Commission accepted Frishberg’s offer of settlement and entered an order barring him from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent.³

On August 9, 2019, Frishberg filed an application with the Commission requesting that he “be allowed to be reinstated as a registered investment advisor.” It is unclear whether Frishberg is seeking to modify or vacate his associational bar,⁴ or whether he is seeking consent to associate with a registered entity not regulated by a self-regulatory organization, such as an

¹ *Daniel Sholom Frishberg*, Advisers Act Release No. 3206, 2011 WL 1847063 (May 16, 2011).

² *See SEC v. Frishberg*, Civ. A. No. 4:11-cv-01097 (S.D. Tex. Mar. 29, 2011). The Commission’s complaint alleged that, in connection with two separate promissory note offerings to DFFS clients, Frishberg violated Advisers Act Section 206(2) by approving unsuitable recommendations to his advisory clients, and that he aided and abetted violations of Advisers Act Sections 206(1) and 206(2) committed by another individual and DFFS. Without admitting or denying those allegations, Frishberg consented to the entry of a permanent injunction, payment of a \$65,000 civil money penalty, and institution of administrative proceedings.

³ *Frishberg*, 2011 WL 1847063, at *2.

⁴ *See, e.g., Ciro Cozzolino*, Exchange Act Release No. 49001, 2003 WL 23094746 (Dec. 29, 2003); *see also Gregory Osborn*, Exchange Act Release No. 86001, 2019 WL 2324337 (May 31, 2019) (most recent order addressing request to modify or vacate an administrative bar order).

investment adviser, pursuant to Commission Rule of Practice 193.⁵ Because of this lack of clarity, further briefing would be helpful to the Commission. Frishberg is thus directed to file an additional written submission clarifying the relief sought in this matter.⁶

Accordingly, IT IS ORDERED that by October 16, 2019, Daniel Sholom Frishberg shall file a statement clarifying the relief sought in his application. Pursuant to Rule of Practice 180(c), a party's failure to file a brief or to comply with this order may result in the Commission's determination of the matter at issue against that party, a finding of waiver, dismissal of the proceeding, or such other sanction as the Commission finds appropriate.⁷ In issuing this order, we express no views as to the substance of Frishberg's application.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

⁵ 17 C.F.R. § 201.193 (providing a process by which individuals can seek to reenter the securities industry despite previously being barred by the Commission); *see also Brett Thomas Graham*, Exchange Act Release No. 84526, 2018 WL 5734348 (Nov. 2, 2018), *petition for review pending*, No. 18-3778 (2d Cir.) (most recent order addressing such a request).

⁶ In his application, Frishberg also "request[s] permission from the Commission to apply for reinstatement of my license to practice in Florida and Texas." But the Commission lacks authority over state securities authorities and cannot grant such relief. *See Political Contributions by Certain Investment Advisers*, Advisers Act Release No. 3043, 2010 WL 2641618, at *53 (July 1, 2010) ("[W]e do not have regulatory authority to oversee the activities of State-registered advisers through examination and our recordkeeping rules. Nor do we have authority over the states to oversee their enforcement of their rules, as we do with FINRA."); *see generally* Advisers Act Section 203A, 15 U.S.C. § 80b-3a (giving states primary, although not exclusive, responsibility to regulate most advisers qualifying as small entities).

⁷ 17 C.F.R. § 201.180(c).