

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. IA-3925; September 19, 2014

In the Matter of :
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 Creative Investment Research, Inc. :
 1050 17th Street, NW, Suite 1000 :
 Washington, DC 20036 :
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 FILE NO.: 801-35969 :

ORDER DENYING A REQUEST FOR HEARING AND CANCELLING THE REGISTRATION
OF AN INVESTMENT ADVISER PURSUANT TO SECTION 203(h) OF THE INVESTMENT
ADVISERS ACT OF 1940

Creative Investment Research, Inc. (“CIR”) is registered as an investment adviser under section 203 of the Investment Advisers Act of 1940 (the “Act”). On October 24, 2011, the Division of Investment Management (“Division”), on behalf of the Commission, issued a notice of intention to cancel CIR’s registration pursuant to delegated authority (Investment Advisers Act Release No. 3306) because the Commission believed that reasonable grounds existed for a finding that CIR is no longer eligible to be registered with the Commission as an investment adviser and that its registration should be cancelled pursuant to section 203(h) of the Act.¹ The notice provided interested persons an opportunity to request a hearing and stated that an order cancelling CIR’s registration would be issued unless a hearing was ordered. On November 17, 2011, CIR submitted a hearing request (“Hearing Request”).

Rule 0-5(c) under the Act provides that the Commission will order a hearing on a matter, upon the request of an interested person or upon its own motion, if it appears that a hearing is “necessary or appropriate in the public interest or for the protection of investors.”² The Commission has assessed each of the points raised in the Hearing Request and finds that a hearing is not necessary or appropriate in the public interest or for the protection of investors. CIR neither cites a material issue of fact or law that would be relevant to the issues that the Act requires the Commission to consider to cancel an adviser’s registration, nor raises any issues that have not already been fully considered and decided by the Commission.

¹ The Commission delegated its authority to cancel an adviser’s registration pursuant to section 203(h) of the Act (15 U.S.C. 80b-3(h)) to the Division. 17 CFR 200.30-5(e)(2).

² 17 CFR 275.0-5(c).

CIR's Hearing Request Cites No Material Issue of Fact or Law Relevant to Canceling an Adviser's Registration

The Commission finds that CIR's hearing request does not cite a material issue of fact or law that would be relevant to the issues that the Act requires the Commission to consider to cancel an adviser's registration.

First, CIR generally states that it "den[ies] any and all claims by the SEC concerning this matter," and that the cancellation would violate section 203(h) of the Act. Section 203(h) permits the Commission, and the Division pursuant to its delegated authority, to cancel the registration of an adviser that is prohibited from registering with it. CIR had indicated on its most recent registration filing (Form ADV) that it is relying on rule 203A-2(a) to register with the Commission, which, at the time of the filing, provided an exemption from the prohibition on registration with the Commission as an investment adviser for a pension consultant if it provided investment advice to plans described in the rule that had an aggregate value of at least \$50,000,000 in assets.³ The Commission finds that CIR has not provided any evidence to indicate that it has any employee benefit plan clients or agreements to provide advice with respect to pension plan assets, or has assets under management that otherwise would allow CIR to register with the Commission. Commission staff have made requests to CIR for it to provide specific information regarding its eligibility for registration, but CIR has failed to provide any evidence that would support its contention that it meets the requirements of the pension consultant exemption or provide any other evidence that it is eligible for Commission registration.

Second, CIR states that cancelling its registration would violate the Due Process Clause of the Constitution, the Civil Rights Act of 1964, the Dodd-Frank Wall Street Reform and Consumer Protection Act, and the False Claims Act.⁴ CIR did not support these contentions with specific claims, facts or documentation in the Hearing Request. CIR asked the staff to review amicus curiae briefs he filed in two cases to which the Commission is a party, but those briefs do not present facts that would alter CIR's eligibility for registration.⁵

³ Section 203A of the Act generally prohibits an investment adviser from registering with the Commission unless it meets certain requirements. Rule 203A-2 provides exemptions from the prohibition on Commission registration in section 203A of the Act. Effective September 19, 2011, rule 203A-2(b) was renumbered as rule 203A-2(a), and advisers relying on the rule to remain registered with the Commission are required to advise plans with an aggregate value of at least \$200,000,000. *See Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 3221 (June 22, 2011) ("Implementing Release").

⁴ *See* Pub.L. 88-352, 78 Stat. 241; Pub. L. No. 111-203; 31 U.S.C. §§ 3729–3733.

⁵ Brief for William Michael Cunningham as Amicus Curiae Supporting the Public Interest, Marc J. Gabelli and Bruce Albert v. Securities and Exchange Commission, 133 S.Ct. 1216 (2013) (No. 11-1274); Brief for William Michael Cunningham as Amicus Curiae Supporting the Public Interest and Against Appellant and Appellee, U.S. Securities and Exchange Commission v. Citigroup Global Markets, Inc., 673 F.3d 158 (2nd Cir. Mar. 15, 2012).

CIR's Hearing Request Raises No Issues That Have Not Been Fully Considered and Decided by the Commission

The Commission also finds that CIR's hearing request does not raise any issues that have not previously been fully considered and decided by the Commission, and cancellation of CIR's registration is consistent with the prohibition against registration in section 203A and the pension consultant provision in rule 203A-2(a). Accordingly, the Commission believes a hearing to consider such issues is unnecessary.

On the basis of the foregoing, the Commission finds that CIR has not articulated any material issue of fact or law that is relevant to the Commission's decision whether to grant the requested relief or identified any issue that has not been considered previously.⁶ It therefore appears that a hearing is not necessary or appropriate in the public interest or for the protection of investors. Accordingly,

IT IS ORDERED that the request for a hearing is denied.

The matter having been considered, it is found that CIR is prohibited from registering as an investment adviser under section 203A of the Investment Advisers Act of 1940 because CIR did not, and does not currently, provide investment advice to plans that have a sufficient aggregate asset value under the rule, and has not demonstrated any other basis for eligibility to register with the Commission. Accordingly,

IT IS FURTHER ORDERED, pursuant to section 203(h) of the Investment Advisers Act of 1940, that the registration of Creative Investment Research, Inc. be, and hereby is, cancelled.

By the Commission.

Kevin M. O'Neill
Deputy Secretary

⁶ The Commission does not deem it necessary to make a formal determination with respect to the status of CIR as an "interested person" within the meaning of rule 0-5(c) under the Act inasmuch as the Commission has determined that the issues raised in the Hearing Request do not warrant a hearing.