

November 25, 2013

Paul R. Eckert

BY FEDERAL EXPRESS AND EMAIL

+1 202 663 6537 (t)
+1 202 663 6363 (f)
paul.eckert@wilmerhale.com

Douglas J. Scheidt, Esq.
Associate Director and Chief Counsel
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0506

Re: Securities and Exchange Commission v. RBS Securities Inc.,
Civ. Action No. 3:13-cv-01643-WWE (D. Conn. Nov. 25, 2013)

Dear Mr. Scheidt:

We submit this letter on behalf of our client, RBS Securities Inc. (“RBS Securities”), a defendant in the above-captioned civil proceeding, which was filed on November 25, 2013.

RBS Securities seeks the assurance of the staff of the Division of Investment Management (the “Staff”) that it would not recommend any enforcement action to the U.S. Securities and Exchange Commission (the “Commission”) under Section 206(4) of the Investment Advisers Act of 1940 (the “Advisers Act”) and Rule 206(4)-3 thereunder (the “Rule”), if any investment adviser that is required to be registered pursuant to Section 203 of the Advisers Act pays RBS Securities, or any of its associated persons as defined in Section 202(a)(17) of the Advisers Act, a cash solicitation fee, directly or indirectly, for the solicitation of advisory clients in accordance with the Rule, notwithstanding the existence of a judgment (the “Judgment”)¹ (as described below) that otherwise would preclude such an investment adviser from paying such a fee, directly or indirectly, to RBS Securities or certain related persons. While the Judgment does not operate to prohibit or suspend RBS Securities or any of its associated persons from being associated with or (except as provided in Section 9(a) of the Investment Company Act of 1940, from which Section relief has been separately requested as described in footnote 2) acting as an investment adviser and does not relate to solicitation activities on behalf of any investment adviser, it may affect the ability of RBS Securities and its associated persons to receive such payments.² The Staff in many other instances has granted no-

¹ Securities and Exchange Commission v. RBS Securities Inc., Case No. 3:13-cv-01643-WWE (D. Conn. Nov. 25, 2013).

² Under Section 9(a) of the Investment Company Act of 1940 (“Investment Company Act”), RBS Securities, the settling defendant and its affiliated persons will, as a result of the Judgment, be prohibited from serving or acting as, among other things, an investment adviser or depositor of any registered investment company or principal underwriter for any registered open-end investment company or registered unit investment trust. RBS Securities and its affiliated persons who act in the capacities set

Douglas J. Scheidt, Esq.
November 25, 2013
Page 2

action relief under the Rule in similar circumstances. The staff of the Division of Enforcement has informed us that it does not object to the grant of the requested no-action relief.

BACKGROUND

The staff of the Division of Enforcement engaged in settlement discussions with RBS Securities in connection with the above-captioned civil proceeding, which was brought alleging violations of Sections 17(a)(2) and (3) of the Securities Act of 1933 [15 U.S.C. § 77q(a)(2), (3)] (the "Securities Act"). As a result of these discussions, RBS Securities submitted an executed Consent to Defendant RBS Securities, Inc. (the "Consent") that was presented by the staff of the Commission to the United States District Court for the District of Connecticut when the Commission filed its complaint against RBS Securities in the civil action (the "Complaint"). In the Consent, the Defendants agreed to consent to the entry of a final judgment as described below, without admitting or denying allegations made in the above-captioned proceeding (other than those relating to jurisdiction of the district court over them and the subject matter solely for purposes of that action).

The Complaint alleged that RBS Securities violated Sections 17(a)(2) and (3) of the Securities Act arising out of a single offering of residential mortgage-backed securities in 2007. The Judgment, among other things, restrains and enjoins RBS Securities and its agents, servants, employees, attorneys and all persons in active concert or participation with them who receive actual notice of the Judgment by personal service or otherwise from violating, directly or indirectly, Sections 17(a)(2) and (3) of the Securities Act. Additionally, pursuant to the Judgment, RBS Securities will pay disgorgement in the amount of \$80,352,639, prejudgment interest in the amount of \$25,190,552, and a civil monetary penalty of \$48,211,583.

forth in Section 9(a) of the Investment Company Act filed an application under Section 9(c) of the Investment Company Act requesting the Commission to issue both temporary and permanent orders exempting them, and RBS Securities and its future affiliated persons should any of them serve or act in any of the capacities set forth in Section 9(a) in the future, from the restrictions of Section 9(a). The applicants believe that they meet the standards for exemptive relief under Section 9(c), and they expect that the Commission will issue a temporary order prior to or simultaneous with the Judgment, and a permanent order in due course thereafter. In no event will RBS Securities or any of its affiliated persons act in any capacity enumerated in Section 9(a) unless and until the Commission issues an order pursuant to Section 9(c) of the Investment Company Act exempting them from the prohibitions of Section 9(a) of the Investment Company Act resulting from the Judgment. On November 25, 2013, the Commission issued a temporary order (SEC Release No. IC-30808) effective as of the date of the Judgment, and the applicants expect the Commission will issue a permanent order in due course thereafter.

Douglas J. Scheidt, Esq.
November 25, 2013
Page 3

DISCUSSION

The Rule prohibits an investment adviser that is required to be registered under the Advisers Act from paying a cash fee to any solicitor that has been temporarily or permanently enjoined by an order, judgment or decree of a court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. Entry of the Judgment would cause RBS Securities to be disqualified under the Rule and, accordingly, absent no-action relief, RBS Securities would be unable to receive cash payments from advisers required to be registered for the solicitation of advisory clients.

In the release adopting the Rule, the Commission stated that it “would entertain, and be prepared to grant in appropriate circumstances, requests for permission to engage as a solicitor a person subject to a statutory bar.”³ We respectfully submit that the circumstances present in this case are precisely the sort that warrant a grant of no-action relief.

The Rule’s proposing and adopting releases explain the Commission’s purpose in including the disqualification provisions in the Rule. The purpose was to prevent an investment adviser from hiring as a solicitor a person whom the adviser was not permitted to hire as an employee, thus doing indirectly what the adviser could not do directly. In the proposing release, the Commission stated that:

[b]ecause it would be inappropriate for an investment adviser to be permitted to employ indirectly, as a solicitor, someone whom it might not be able to hire as an employee, the Rule prohibits payment of a referral fee to someone who ... has engaged in any of the conduct set forth in Section 203(e) of the [Advisers] Act ... and therefore could be the subject of a Commission order barring or suspending the right of such person to be associated with an investment adviser.⁴

The Judgment does not bar, suspend, or limit RBS Securities or any person currently associated with RBS Securities from acting in any capacity under the federal securities laws (except as provided in Section 9(a) of the Investment Company Act).⁵ RBS Securities has not

³ See Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act Rel. No. 688 (July 12, 1979), 17 S.E.C. Docket (CCH) 1293, 1295.

⁴ See Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act Rel. No. 615 (Feb. 2, 1978), 14 S.E.C. Docket (CCH) 89, 91.

⁵ See footnote 2.

Douglas J. Scheidt, Esq.
November 25, 2013
Page 4

been sanctioned for conduct in connection with the solicitation of advisory clients for investment advisers. The Judgment does not pertain to advisory activities. Accordingly, consistent with the Commission's reasoning, there does not appear to be any reason to prohibit any investment adviser from paying RBS Securities or its associated persons for engaging in solicitation activities under the Rule.

The Staff previously has granted numerous requests for no-action relief from the disqualification provisions of the Rule to individuals and entities found by the Commission to have violated a wide range of federal securities laws and rules thereunder or permanently enjoined by courts of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.⁶

⁶ See, e.g., Wells Fargo Bank, N.A., SEC No-Action Letter (pub. avail. July 15, 2013); J.P. Morgan Securities LLC, SEC No-Action Letter (pub. avail. Jan. 9, 2013); Wells Fargo Bank, N.A., SEC No-Action Letter (pub. avail. September 21, 2012); J.P. Turner & Company, L.L.C., et al, SEC No-Action Letter (pub. avail. Sept. 10, 2012); GE Funding Capital Market Services, Inc., SEC No-Action Letter (pub. avail. Jan. 25, 2012); Wells Fargo Bank, N.A., SEC No-Action Letter (pub. avail. Sept. 21, 2012); J.P. Turner and Company, L.L.C. et al., SEC No-Action Letter (pub. avail. Sept. 10, 2012); GE Funding Capital Market Services, Inc., SEC No-Action Letter (pub. avail. Jan. 25, 2012); J.P. Morgan Securities LLC, SEC No-Action Letter (pub. avail. July 11, 2011); J.P. Morgan Securities LLC, SEC No-Action Letter (pub. avail. June 29, 2011); UBS Financial Services Inc., SEC No-Action Letter (pub. avail. May 9, 2011); Citigroup Inc., SEC No-Action Letter (pub. avail. Oct. 22, 2010); Banc of America Investment Services, Inc., SEC No-Action Letter (pub. avail. June 10, 2009); Barclays Bank PLC, SEC No-Action Letter (pub. avail. June 6, 2007); Morgan Stanley & Co. Incorporated, SEC No-Action Letter (pub. avail. May 15, 2006); American International Group, Inc., SEC No-Action Letter (pub. avail. Feb 21, 2006); Goldman, Sachs & Co., SEC No-Action Letter (pub. avail. Feb. 23, 2005); Morgan Stanley & Co. Incorporated, SEC No-Action Letter (pub. avail. Feb. 4, 2005); Prime Advisors, Inc., SEC No-Action Letter (pub. avail. Nov. 8, 2001); Legg Mason Wood Walker, Inc., SEC No-Action Letter (pub. avail. June 11, 2001); Dreyfus Corp., SEC No-Action Letter (pub. avail. March 9, 2001); Prudential Securities Inc., SEC No-Action Letter (pub. avail. Feb. 7, 2001); Tucker Anthony Inc., SEC No-Action Letter (pub. avail. Dec. 21, 2000); J.B. Hanauer & Co., SEC No-Action Letter (pub. avail. Dec. 12, 2000); Founders Asset Management LLC, SEC No-Action Letter (pub. avail. Nov. 8, 2000); Credit Suisse First Boston Corp., SEC No-Action Letter (pub. avail. Aug. 24, 2000); Janney Montgomery Scott LLC, SEC No-Action Letter (pub. avail. July 18, 2000); Aeltus Investment Management, Inc., SEC No-Action Letter (pub. avail. July 17, 2000); William R. Hough & Co., SEC No-Action Letter (pub. avail. Apr. 13, 2000); In the Matter of Certain Municipal Bond Refundings, SEC No-Action Letter (pub. avail. Apr. 13, 2000); In the Matter of Certain Market Making Activities on Nasdaq, SEC No-Action Letter (pub. avail. Jan. 11, 1999); PaineWebber Inc., SEC No-Action Letter (pub. avail. Dec. 22, 1998); Nations Bank Investments, Inc., SEC No-Action Letter (pub. avail. May 6, 1998); Morgan Keegan & Co., Inc., SEC No-Action Letter (pub. avail. Jan. 9, 1998); Merrill Lynch, Pierce, Fenner & Smith, Inc., SEC No-Action Letter (pub. avail. Aug. 7, 1997); Gruntal & Co., SEC No-Action Letter (pub. avail. July 17, 1996); Salomon Brothers Inc., SEC No-Action Letter (pub. avail. Jan. 26, 1994); BT Securities Corporation, SEC No-Action Letter (pub. avail. Mar. 30, 1992); Kidder Peabody & Co. Inc., SEC No-Action Letter (Oct. 11, 1990); First City

Douglas J. Scheidt, Esq.
November 25, 2013
Page 5

UNDERTAKINGS

In connection with this request, RBS Securities undertakes:

1. to conduct any cash solicitation arrangement entered into with any investment adviser registered or required to be registered under Section 203 of the Advisers Act in compliance with the terms of Rule 206(4)-3 except for the investment adviser's payment of cash solicitation fees, directly or indirectly, to RBS Securities, which is subject to the Judgment;
2. to comply with the terms of the Judgment, including, but not limited to, payment of disgorgement and the civil penalty; and
3. that, for ten (10) years from the date of the entry of the Judgment, RBS Securities or any investment adviser with which they have a solicitation arrangement subject to Rule 206(4)-3 will disclose the Judgment in a written document that is delivered to each person whom RBS Securities solicit (a) not less than 48 hours before the person enters into a written or oral investment advisory contract with the investment adviser or (b) at the time the person enters into such a contract, if the person has the right to terminate such contract without penalty within five (5) business days after entering into the contract.

* * *

Douglas J. Scheidt, Esq.
November 25, 2013
Page 6

CONCLUSION

We respectfully request the Staff to advise us that it will not recommend enforcement action to the Commission if an investment adviser that is required to be registered with the Commission pays RBS Securities a cash payment for the solicitation of advisory clients, notwithstanding the Judgment.

Sincerely,



Paul R. Eckert