

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68543 / December 27, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15158

In the Matter of

STEWART A. MERKIN, Esq.,

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS AND
IMPOSING TEMPORARY SUSPENSION
PURSUANT TO RULE 102(e)(3)(i)(B) OF
THE COMMISSION'S RULES OF
PRACTICE**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Stewart A. Merkin, Esq. ("Respondent" or "Merkin") pursuant to Rule 102(e)(3)(i)(B)¹ of the Commission's Rules of Practice [17 C.F.R. 200.102(e)(3)(i)(B)].

II.

The Commission finds that:

1. Stewart A. Merkin was, at all relevant times, an attorney licensed in Florida, who acted as outside counsel for StratoComm Corporation ("StratoComm") during the Commission's investigation of that company for possible federal securities violations. In that capacity, Merkin communicated with Commission staff, requested and received a copy of the Commission's Formal Order of Investigation, accepted service of subpoenas, forwarded documents to the Commission, and represented StratoComm during six days of investigative testimony. Merkin

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney . . . who has been by name: (B) [f]ound by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party . . . to have violated (unless the violation was found not to have been willful) . . . any provision of the Federal securities laws or of the rules and regulations thereunder.

also represented StratoComm's CEO, and a number of its employees, in connection with the investigation.

2. During the time that the Commission's investigation of StratoComm was ongoing, Merkin prepared and signed four "Attorney Letters" that were submitted to Pink OTC Markets, Inc. (now known as OTC Markets Group Inc.). Those Attorney Letters falsely stated that StratoComm was not under investigation for possible violations of securities laws.

3. On October 3, 2011, the Commission filed a complaint against Merkin in the United States District Court for the Southern District of Florida (the "Court") charging that Merkin had violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, by making false public statements in connection with the purchase or sale of the stock of StratoComm. SEC v. Stewart A. Merkin, Case No. 11-23585-CIV-Graham/Goodman (S.D. Fla.). Specifically, the complaint alleged that on April 8, 2008, June 17, 2010, September 15, 2010, and December 17, 2010, Merkin made false statements in Attorney Letters addressed to Pink OTC Markets, Inc. that appeared on the Pink OTC Markets, Inc. website, to the effect that StratoComm was not under investigation for violations of securities laws, when in fact, as Merkin knew when he prepared and signed those letters, StratoComm was under investigation by the Commission.

4. On October 3, 2012, the Court found that Merkin violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. On that date, the Court issued an order that granted the Commission's motion for summary judgment on the issue of whether Merkin had violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and that contained factual findings establishing that Merkin intentionally violated those provisions.

III.

Based upon the foregoing, the Commission finds that a court of competent jurisdiction has found that Merkin, an attorney, violated the Federal securities laws within the meaning of Rule 102(e)(3)(i)(B) of the Commission's Rules of Practice. In view of this finding, the Commission deems it appropriate and in the public interest that Merkin be temporarily suspended from appearing or practicing before the Commission.

IT IS HEREBY ORDERED that Merkin be, and hereby is, temporarily suspended from appearing or practicing before the Commission. This Order will be effective upon service on the Respondent.

IT IS FURTHER ORDERED that Merkin may, within thirty days after service of this Order, file a petition with the Commission to lift the temporary suspension. If the Commission receives no petition within thirty days after service of the Order, the suspension will become permanent pursuant to Rule 102(e)(3)(ii).

If a petition is received within thirty days after service of this Order, the Commission

will, within thirty days after the filing of the petition, either lift the temporary suspension, or set the matter down for hearing at a time and place to be designated by the Commission, or both. If a hearing is ordered, following the hearing, the Commission may lift the suspension, censure the petitioner, or disqualify the petitioner from appearing or practicing before the Commission for a period of time, or permanently, pursuant to Rule 102(e)(3)(iii).

This Order shall be served upon Merkin personally or by certified mail at his last known address.

By the Commission.

Elizabeth M. Murphy
Secretary