

affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants: c/o FleetBoston Financial Corporation, 100 Federal Street, Boston, MA 02210.

FOR FURTHER INFORMATION, CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942-0614, or Michael W. Mundt, Senior Special Counsel, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (tel. 202-942-8090).

Applicants' Representations

1. RS, a Delaware corporation, is a full service investment banking firm, and is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and as an investment adviser under the Investment Advisers Act of 1940. The ultimate parent company of RS is FleetBoston Financial Corporation, which is also the ultimate parent company of the Adviser Applicants, who serve as investment advisers to various registered investment companies (the "Funds"), and of the Underwriter Applicants, who serve as principal underwriters to Funds.

2. On January 10, 2003, the U.S. District Court for the District of Columbia entered a Final Judgment of Permanent Injunction and Other Relief ("Final Judgment") in a matter brought by the Commission.² The Commission alleged that RS allocated "hot" initial public offerings ("IPOs") to customers willing to pay a portion of their profits from those IPOs to RS and violated section 17(a) of the Exchange Act, and rule 17a-3 thereunder, and Conduct Rules 2110 and 2330 of the National Association of Securities Dealers, Inc. ("NASD"). The Final Judgment, among other things, enjoined RS, directly or through its officers, directors, agents and employees, from violating section

17(a) of the Exchange Act, and rule 17a-3 thereunder, and NASD Conduct Rules 2110 and 3220. Additionally, the Final Judgment ordered RS to pay disgorgement of \$23 million and pay a civil penalty of \$5 million.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under common control, with the other person. Because the applicants are all subsidiaries of the same ultimate parent company, applicants state that they are under common control, and as such are "affiliated persons" of RS within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the Final Judgment, applicants may be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the applicants, are unduly or disproportionately severe or that the applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) of the Act seeking temporary and permanent orders exempting Covered Persons from the provisions of section 9(a) of the Act.

3. Applicants state that the prohibitions of section 9(a) as applied to Covered Persons would be unduly and disproportionately severe and that the conduct of applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a). Applicants state that the matters forming the basis of the Final Judgment did not involve any registered investment companies. Applicants state that no current or former officers or

employees of any of the applicants who is or was involved in providing advisory or underwriting services to registered investment companies advised or underwritten by the applicants was involved in the conduct resulting in the Final Judgment. Applicants also state that no applicant has ever previously applied for an exemption pursuant to section 9(c) of the Act.

4. Applicants state that the inability of the Adviser Applicants to continue providing advisory services to Funds and the inability of the Underwriter Applicants to continue to serve as principal underwriter to Funds would result in potentially severe hardships for the Funds and their shareholders. Additionally, applicants assert that if they were barred from providing services to registered investment companies, the effect on their businesses and employees would be severe.

5. The Adviser Applicants and the Underwriter Applicants will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds that they serve regarding the Final Judgment and the reasons they believe relief pursuant to section 9(c) is appropriate. The Adviser Applicants and Underwriter Applicants will provide the Funds with all information concerning the Final Judgment and the exemptive application necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

1. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that applicants have made the necessary showing to justify granting of a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that the Covered

² *Securities and Exchange Commission v. Robertson Stephens, Inc.*, Final Judgment of Permanent Injunction and Other Relief Against Robertson Stephens, Inc., 03 Civ. 0027 (RL) (D.D.C., Jan. 10, 2003).