

New York 10103; PFS Distributors, 3120 Breckinridge Boulevard, Building 200, Duluth, Georgia 30099-0001; SSBP and SSBPIF, 338 Greenwich Street, New York, New York 10013; Smith Barney and TIMCO, 399 Park Avenue, 4th Floor, New York, New York 10022; TAMIC, 242 Trumbull Street—6TS, Hartford, Connecticut, 06115-0449; and Winter, 153 East 53rd Street, 3rd Floor, New York, New York 10043.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: The following is a temporary order and 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 (telephone 202-942-8090).

Applicants' Representations

1. SSB, a New York corporation, is a full service investment banking firm engaged in securities underwriting, sales and trading, investment banking, financial advisory services, and investment research services. Certain Applicants serve as investment adviser or sub-adviser for one or more registered investment companies ("Funds"). Certain Applicants act as the depositor or principal underwriter for Funds.²

2. On October 31, 2003, the U.S. District Court for the Southern District of New York entered the Federal Injunction against SSB in a matter brought by the Commission.³ The Commission alleged in the complaint ("Complaint") that SSB violated certain Conduct Rules of the National Association of Securities Dealers ("NASD") and Rules of the New York Stock Exchange ("NYSE") (the NASD Conduct Rules and NYSE Rules together, the "Exchange Rules"). The Complaint alleged that SSB's research department ("Research Department") and investment banking department ("Investment Banking Department") issued research reports that were fraudulent, violated SRO rules regulating their members' communications with the public, and allocated hot IPO shares to executives of

current or potential investment banking clients and provided special treatment for these executives. The Federal Injunction enjoined SSB directly or through its officers, directors, agents and employees, from violating the specific rules cited in the Complaint. Without admitting or denying the allegations in the Complaint, SSB consented to the entry of the Federal Injunction as well as the payment of disgorgement and penalties and other equitable relief. Applicants state that SSB has entered, and expects to enter into settlement agreements relating to the activities referred to in the Complaint with certain state and territorial agencies which may result in an injunction by a court of competent jurisdiction that is based on the same conduct and the same facts as the Complaint (each, a "State Injunction," and, together with the Federal Injunction, the "Injunctions"). Applicants request that this application cover any disqualifications of the Applicants under section 9(a) resulting from the Injunctions.

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 UIT 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. Applicants state that SSB is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that the entry of the Injunctions would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to 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) seeking a temporary and permanent order exempting the Applicants and the other Covered Persons from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them 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).

4. Applicants state that the conduct giving rise to the Injunctions did not involve any of the Applicants acting in the capacity of investment adviser, sub-adviser, depositor, or principal underwriter for a Fund. Applicants state that the Complaint did not expressly reference the conduct of any current or former officer or employee of any of the Applicants who is or was involved in providing advisory, sub-advisory or underwriting services to the Funds advised or underwritten by Applicants.⁴ While the Applicants' portfolio managers had access to research reports issued by the Research Department, there is no indication that the portfolio managers relied on these research reports more than any other data that would have been considered by the investment adviser or sub-adviser in making investment decisions for the Funds, except as noted in the application.⁵ Although some of the Funds held securities in their portfolios at the time that SSB issued research reports concerning the issuers of such securities, none of the Applicants are aware that any of their investment personnel, including employees, officers, or portfolio managers, had any knowledge of any non-public information relating to, or had any involvement in, the conduct underlying the Injunctions. In addition, each of the Applicants that is an investment adviser or sub-adviser to Funds has adopted policies regarding information barriers (the "Policies") designed to protect the

⁴ The Complaint also refers to general practices regarding the relationship between SSB's Investment Banking and Research Departments. It is possible that one or more current or former officers or employees of the Applicants who is or was involved in providing advisory, sub-advisory or underwriting services to the Funds was at some time an officer or employee of the Investment Banking or Research Departments of SSB.

⁵ Applicants state that they act as principal underwriter or depositor to certain UITs whose portfolio selection process placed special emphasis on equity research issued by the Research Department.

² Any registered unit investment trust ("UIT") or registered face amount certificate company for which Applicants may serve as principal underwriter or depositor are also included in the defined term Funds.

³ *Securities and Exchange Commission v. Citigroup Global Markets Inc., f/k/a Salomon Smith Barney Inc.*, 03 Civ. 2945 (WHP) (S.D. N.Y., filed April 28, 2003) (the "Action").