

STATES
SECURITIES COMMISSION

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DIVISION OF
MARKET REGULATION

September 17, 1987

PUBLIC AVAILABILITY DATE: 10-17-87
ACT SECTION RULE
1934 15(b) 15b3-1

Alex J. Sabo
Corporate Counsel
RJ Financial Corporation
The Raymond James Center
1400 66th Street North
P.O. Box 12749
St. Petersburg, Florida 33733-2749

Dear Mr. Sabo:

This is in response to your letter dated June 11, 1987, in which you request, on behalf of Raymond James & Associates, Inc. ("Raymond James") and Robert Thomas Securities, Inc. ("Robert Thomas"), that the staff not recommend enforcement action to the Commission if Raymond James and Robert Thomas do not amend their Forms BD to include notice of a recent injunctive proceeding. On the basis of your letter, and the copy of the Agreed Final Judgment and Permanent Injunction that you furnished to me, I understand the facts to be as follows.

Raymond James and Robert Thomas are registered broker-dealers and members of the National Association of Securities Dealers, Inc. During March 1987, an action was filed against Robert Thomas, Raymond James and others in Harris County, Texas. The Complaint sought injunctive relief based on allegations of improper employee solicitation and recruiting and improper acquisition of confidential data concerning clients. The Plaintiff was Marcus, Stowell & Beye Government Securities which filed the action after two of its former employees became registered representatives of Robert Thomas.

The Complaint specifically alleged acts of corporate raiding and conspiracy by the named defendants, pursuant to employee recruiting and solicitation practices purportedly endorsed by Raymond James. The litigation was resolved when the parties agreed to the imposition of an injunction prohibiting Robert Thomas and Raymond James from using any customer data acquired from the Plaintiff and restricting Robert Thomas from hiring current employees of Marcus, Stowell & Beye Government Securities in the area of Houston, Texas, for a specified period. This lawsuit essentially was an employment dispute between several firms that are engaged in the securities brokerage business. The Complaint did not allege a violation of securities law. Nor did the Agreed Final Judgment and Permanent Injunction recite any findings of fact or conclusions of law relating to a violation of securities law. The terms of the permanent injunction concern the return and use of data and computer

Mr. Alex J. Sabo

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programs; employment and solicitation of personnel from Marcus, Stowell & Beye Government Securities, Inc.; and the requirement that the parties not make disparaging or critical remarks about one another to third parties.

On the basis of the facts and representations set forth above, the staff would not recommend enforcement action to the Commission if Raymond James and Robert Thomas do not amend their Forms BD to include notice of the injunctive proceeding. You should note that the foregoing is a staff position regarding enforcement action only and should not be understood to express any legal conclusions with regard to the applicability of statutory or regulatory provisions under the federal securities laws. This position is based solely on the representations you have made in your letter dated June 11, 1987; any different facts or conditions of a material nature might require a different response.

Sincerely,

Caroline Dixon Bartman

Caroline Dixon Bartman
Attorney
Office of Chief Counsel



SECURITIES & EXCHANGE COMMISSION

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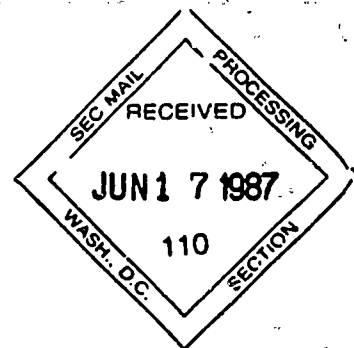
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DIVISION OF MARKET REGULATION

June 11, 1987

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Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549



Re: Form BD

Gentlemen:

This letter is written on behalf of Raymond James & Associates, Inc. ("Raymond James") and Robert Thomas Securities, Inc. ("Robert Thomas"), and relates to the statutory requirement to update the information reflected in Form BD. Raymond James and Robert Thomas request that the Division of Market Regulation take a no-action position if Raymond James and Robert Thomas do not include a recent injunction proceeding in their amendments to Form BD.

I. Facts

Raymond James and Robert Thomas are registered brokers and dealers, and wholly-owned subsidiaries of Raymond James Financial, Inc., which is not a registered broker-dealer. On a fully-disclosed basis, Raymond James carries accounts which have been introduced by Robert Thomas. Raymond James is a member firm of the New York Stock Exchange, Inc. Both Raymond James and Robert Thomas are members of the National Association of Securities Dealers, Inc.

During March 1987, an action was filed against Robert Thomas, Raymond James and others in Harris County, Texas. The Complaint sought injunctive relief based on allegations of improper employee solicitation and recruiting and improper acquisition of confidential data relating to clients. The Plaintiff was Marcus, Stowell & Beye Government Securities which filed the action after two of its former employees became registered representatives of Robert Thomas.

The Complaint specifically alleged acts of corporate raiding and conspiracy by the named defendants, pursuant to employee recruiting and solicitation practices purportedly endorsed by Raymond James. The litigation was resolved when the parties agreed to the imposition of an injunction prohibiting Robert Thomas and Raymond James from using any customer data acquired from the Plaintiff and restricting Robert Thomas from hiring current employees of Marcus, Stowell & Beye Government Securities in the area of Houston, Texas, for a specified period.

RF FINANCIAL CORPORATION

The Raymond James Center 1400 66th Street North
P.O. Box 12749 St. Petersburg, Florida 33733-2749 (813) 344-8200

Division of Market Regulation
Securities and Exchange Commission

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This lawsuit essentially was an employment dispute between several businesses which happened to be securities brokerage firms. The Complaint did not allege a violation of any securities fraud statute. The Agreed Final Judgment and Permanent Injunction did not recite any findings of fact or conclusions of law relating to a violation of any securities fraud statute. Section X of the order, which set forth the permanent injunction, dealt with the return and use of data and computer programs; the development and marketing of data and computer programs; employment and solicitation of personnel from Marcus, Stowell & Beye Government Securities, Inc.; and, the making of disparaging or critical remarks about one party by the other party.

II. Legal Analysis

Section 15 of the Securities Exchange Act of 1934 ("Exchange Act") requires registration of brokers and dealers who use the means and instrumentalities of interstate commerce to effect transactions in securities. Exchange Act Rule 15b1-1 requires that such applications be made on Form BD. Exchange Act Rule 15b3-1 requires the filing of amendments to Form BD whenever the information set forth in the form becomes inaccurate.

Section 7B of Form BD requires a brokerage firm to advise the Commission whenever an injunction relating to investment activity has been issued against the firm or a control affiliate. "Investment activity" is defined as pertaining to securities, commodities banking, insurance or real estate (including acting as or being associated with a broker-dealer). A "control affiliate" is any person or entity which is controlled by, controls, or is under common control with the brokerage firm which has submitted the Form BD.

In two cases which relate to this issue, the Commission revoked the registration of two brokerage firms for failing to amend their respective Forms BD to reflect the issuance of injunctions against the brokerage firms. In both cases the injunctions were issued to enjoin fraudulent practices directly related to the sale of securities. In Roberts Securities Corporation, 38 S.E.C. 63 (1957), an injunction was issued prohibiting the dissemination of a false and misleading prospectus in connection with the sale of stock. In Marks d/b/a Monroe Marks Company, 9 S.E.C. 669 (1941), a broker-dealer was enjoined from continued fraudulent conduct relating to stock transfers.

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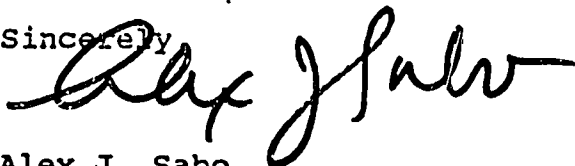
The litigation between Marcus, Stowell & Beye Government Securities and Robert Thomas, Raymond James, and others involved an injunction which was issued to enjoin certain employee solicitation practices. The litigation between the parties was a dispute arising from alleged employment practices of Robert Thomas and Raymond James. In response to the action, certain recruiting and solicitation practices of Raymond James and Robert Thomas, committed by individually-named brokers, were enjoined. The injunction specifically addressed the employment-related issues of hiring practices, demographic data relating to customers of Marcus, Stowell & Beye Government Securities, and certain methods of employee solicitation purportedly used by Robert Thomas.

These issues could be raised in any employment dispute and are not unique to securities brokers or investment activity. Because the injunction in question has restricted employee solicitation practices and does not delve into the investment functions of either party as a broker-dealer, the injunction does not fall within the definition of "investment related" activity which is set forth in Form BD. Accordingly, injunctions which do not relate to investment activity should not be included on Form BD.

III. Conclusion

In view of the foregoing facts and analysis, Raymond James and Robert Thomas do not have to report this injunction on their respective Forms BD because the action does not relate to investment activity. On behalf of these firms, I request that the Division of Market Regulation not recommend any action to the Commission if Raymond James and Robert Thomas do not include this injunction on their respective Forms BD.

Sincerely,



Alex J. Sabo
Corporate Counsel

Attachments

AJS/mr

cc: J. Stephen Putnam
Virginia King
