

# BRESSLER, AMERY & ROSS

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July 23, 2014

**VIA E-MAIL (smallbusiness@sec.gov) & OVERNIGHT MAIL**

Sebastian Gomez Abero, Esq.  
Chief, Office of Small Business Policy  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

**Re: In the Matter of Dominick & Dominick LLC; File No. MNY-8853**

Dear Mr. Gomez Abero:

This letter is submitted on behalf of our client, Dominick & Dominick LLC (“D&D”), the settling respondent in the above-captioned administrative proceeding brought by the Securities and Exchange Commission (the “Commission”). D&D hereby requests, pursuant to Rule 506 of Regulation D of the Commission promulgated under the Securities Act of 1933 (the “Securities Act”), waivers of any disqualifications from relying on exemptions under Rule 506 of Regulation D that will disqualify D&D as a result of the entry of the cease-and-desist order against D&D (the “Order”).

**BACKGROUND**

The Staff of the Division of Enforcement has engaged in settlement discussions with D&D in connection with its investigation of potential violations of Section 206(2), 206(3) and Section 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) and Rule 206(4)-7 thereunder. As a result of these discussions, D&D submitted an Offer of Settlement (the “Offer”), and agreed to the Order, which was presented by the Staff to the Commission.

In the Offer, solely for the purpose of settling these proceedings, D&D agreed to consent to the issuance of the Order without admitting or denying the matters set forth therein (other than those relating to the jurisdiction of the Commission over it and the subject matter solely for purposes of that action).

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The Order, among other things, finds that D&D willfully violated Section 206(2), 206(3) and Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. Specifically, the Order alleges that from March 2008 through December 2012, D&D did not adequately consider the commissions and other charges to customers participating in D&D's Commission Only and Commission Plus Fee advisory programs as part of its obligation to ensure that customers were receiving "best execution." In addition, the Order also alleges that D&D did not conduct any best execution analysis in August 2010 when it negotiated an amendment to its clearing agreement with its clearing broker. The agreement reduced the clearance and execution costs charged by D&D's clearing broker, and increased D&D's share of the commissions charged to all of its customers (including certain of its advisory clients) without altering the allocation of responsibilities between D&D as an introducing broker and its clearing broker. The amended clearing agreement reduced the clearance and execution costs paid by D&D for equity, options and fixed income transactions. Notwithstanding this reduction in executing and clearing costs, D&D did not consider whether certain of its advisory clients continued to receive best execution.

The Order further alleges that D&D made certain disclosure violations in its Form ADV. Specifically, from January 2008 to September 2012, the Order alleges that D&D did not disclose in its Form ADV that D&D received a rebate from its clearing firm of a certain portion of the interest that certain advisory clients paid the clearing firm for margin loans. The Order also alleges that D&D's Form ADV contained misleading statements of material fact regarding D&D's negotiation of commission rates for its clients in a manner which suggested that D&D's commission rates resulted from arms-length negotiation between D&D in its investment adviser capacity and D&D in its broker capacity, when they did not. D&D also stated in its Form ADV that it would seek client consent before settling principal transactions with advisory clients when it did not do so.

The Order also alleges that from January 2008 through December 2012, D&D did not adopt and implement sufficient policies and procedures with respect to best execution in D&D's Investment Advisory Compliance Manual Policies and Procedures. Specifically, D&D's written advisory best execution policies and procedures made little mention of any actual policies or procedures. They referred only to fixed income transactions and made no mention of any other securities transactions. Moreover, D&D's policies and procedures did not consider commissions charged to advisory clients as part of its overall best execution analysis. D&D's Chief Operating Officer, Robert X. Reilly, was responsible for adopting and implementing D&D's best execution policies and procedures for advisory clients.

Finally, the Order alleges that D&D engaged in approximately 140 principal transactions without obtaining consent prior to completing such transactions.<sup>1</sup>

None of the misconduct alleged in the Order involved a scienter-based violation.

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<sup>1</sup> Rather, D&D's practice was to send a letter to the advisory client after a transaction was executed, providing details of the transaction and stating that it had engaged in the transaction as a principal.

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The Order requires D&D to cease and desist from committing or causing any violations and any future violations of Sections 206(2), 206(3), 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, requires that D&D pay disgorgement in the amount of \$136,523.00, prejudgment interest in the amount of \$11,083.60, and a civil monetary penalty of \$75,000. D&D is also ordered to comply with certain undertakings.

### DISCUSSION

D&D understands that the entry of the Order will disqualify it, affiliated entities, and other issuers from relying on certain exemptions under Rule 506 of Regulation D promulgated under the Securities Act. For example, D&D understands that the requirement in the Order that D&D hire a qualified consultant would be considered a “disqualifying event” as it places certain limitations on D&D’s “activities, functions or operations” under Rule 506(d)(1)(iv) of Regulation D. D&D is concerned that, should it or any of its affiliated entities be deemed to be an issuer, predecessor of the issuer, affiliated issuer, general partner or managing member of issuer, promoter, underwriter of securities or in any other capacity described in Securities Act Rule 506 for the purposes of Securities Act Rule 506(d)(1)(iv), D&D, its affiliated issuers, and other issuers with which it is associated in one of those listed capacities and which rely upon or may rely upon these offering exemptions when issuing securities would be prohibited from doing so. The Commission has the authority to waive the Regulation D exemption disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances. See 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506.

D&D requests that the Commission waive any disqualifying effects that the Order will have under Rule 506 of Regulation D as a result of its entry as to D&D on the following grounds:

1. D&D submits that its conduct as addressed in the Order was not intentional and did not rise to a level that would justify disqualification. Moreover, upon being advised by the Staff of certain deficiencies in its policies and procedures and certain of its disclosure obligations were insufficient, D&D quickly undertook certain remedial steps in an effort to prevent any future violations.
2. The Order would require D&D to comply with certain undertakings relating to, among other things: (a) engage for one year a qualified consultant to assist D&D in developing and implementing policies and procedures to promote compliance with D&D’s best execution, and related disclosure, obligations for advisory clients and its obligations regarding principal transactions; and (b) certify, in writing, compliance with the undertaking(s). D&D has taken steps to address the conduct alleged in the Order. Specifically, D&D has already hired a qualified consultant to revise and enhance its written policies and procedures to address the practices at issue, including considerations of the total cost of effecting advisory client transactions. D&D has further retained a

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consultant to assist it in developing and implementing policies and procedures to promote compliance with its best execution and related disclosure obligations for advisory clients. D&D believes that these revised policies and procedures, as well as the development and implementation of policies and procedures to promote compliance with same will drastically reduce the likelihood of similar future violations.

3. The disqualification of D&D and any of its affiliates from relying on the exemption under Rule 506 of Regulation D would, we believe, have an adverse impact on third parties that have retained, or may retain, D&D and its affiliates in connection with transactions that rely on these exemptions. For example, D&D has participated in approximately 21 transactions in the past two and a half years which have raised approximately \$72 million dollars. Two of these transactions are currently outstanding. These transactions have relied on Rule 506 of Regulation D. As such, the disqualification that will arise once the Order is issued would have a drastic effect on both D&D and 3<sup>rd</sup> parties that have retained D&D in connection with transactions that rely on these exemptions.
4. For a period of five years from the date of the Order, D&D will furnish (or cause to be furnished) to each purchaser in a Rule 506 offering that would otherwise be subject to the disqualification under Rule 506(d)(1) as a result of the Order, a description in writing of the Order a reasonable time prior to sale.

In light of the grounds for relief discussed above, we believe that disqualification is not necessary under the circumstances and that D&D has shown good cause that relief should be granted. Accordingly, we respectfully urge the Commission, pursuant to Rule 506 of Regulation D, to waive the disqualification provisions in Rule 506 of Regulation D that would otherwise disqualify D&D as a result of the entry of the Order.<sup>2</sup>

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<sup>2</sup> We note in support of this request that the Commission has granted relief under Rule 506 of Regulation D for similar reasons or in similar circumstances. See, e.g., Jefferies LLC, S.E.C. No-Action Letter (pub. avail. March 12, 2014); Diamond Foods, Inc., S.E.C. No-Action Letter (pub. avail. March 6, 2014); Credit Suisse Group AG, S.E.C. No-Action Letter (pub. avail. February 21, 2014); Instinet LLC, S.E.C. No-Action Letter (pub. avail. Dec. 26, 2013); RBS Securities Inc., S.E.C. No-Action Letter (pub. avail. Nov. 25, 2013); A.R. Schmeidler & Co., S.E.C. No-Action Letter (pub. avail. July 31, 2013); Oppenheimer Asset Management Inc. and Oppenheimer Alternative Investment, LLC, S.E.C. No-Action Letter (pub. avail. Mar. 11, 2013); J.P. Morgan Securities LLC, et al., S.E.C. No-Action Letter (pub. avail. Jan. 8, 2013); J.P. Turner & Company, LLC and William L. Melo, S.E.C. No-Action Letter (pub. avail. Sept. 10, 2012); Mizuho Securities USA Inc., S.E.C. No-Action Letter (pub. avail. July 26, 2012); Harbert Management Corporation, et al., S.E.C. No-Action Letter (pub. avail. July 3, 2012); H & R Block, S.E.C. No-Action Letter (pub. avail. May 2, 2012); GE Funding Capital Market Services, Inc., S.E.C. No-Action Letter (pub. avail. Jan. 23, 2012); Wachovia Bank, N.A. now known as Wells Fargo Bank, N.A., S.E.C. No-Action Letter (pub. avail. Dec. 9, 2011); J.P. Morgan Securities LLC, S.E.C. No-Action Letter (pub. avail. July 8, 2011); J.P. Morgan Securities LLC, S.E.C. No-Action Letter (pub. avail. June 29, 2011); UBS Financial Securities Inc., S.E.C. No-Action Letter (pub. avail. May 9, 2011); Charles Schwab & Co., Inc., S.E.C. No-Action Letter (pub. avail. Jan. 11, 2011); Goldman Sachs & Co., S.E.C. No-Action Letter (pub. avail. Jul. 20, 2010); In the Matter of Banc of America Investment Services, Inc. and Virginia Holiday, S.E.C. No-Action Letter (pub. avail. Oct. 23, 2009); General Electric Co., S.E.C. No-Action Letter (pub. avail. Aug. 11, 2009); Investools Inc., S.E.C. No-Action Letter (pub.

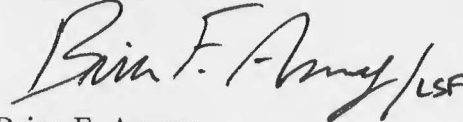
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Please do not hesitate to call me at the number listed above if you have any questions.

Very truly yours,

A handwritten signature in black ink that reads "Brian F. Amery" followed by a stylized set of initials "LSF".

Brian F. Amery