

**PUBLIC**

APR - 5 1996

RESPONSE OF THE OFFICE OF CHIEF COUNSEL  
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 96-9-CC  
Ramius Capital  
Management  
File No. 132-3

We would not recommend that the Commission take any enforcement action against Ramius Capital Management, LLC ("Ramius") or Thomas W. Strauss ("Strauss"), a senior executive officer and 50% owner of Ramius, if Ramius or Strauss receives cash payments for soliciting clients for registered investment advisers in accordance with Rule 206(4)-3 under the Investment Advisers Act of 1940 1/, despite a Commission order against Strauss imposing remedial sanctions pursuant to section 15(b)(6) of the Securities Exchange Act of 1934 for failing to reasonably supervise another person ("Order"). 2/

Our position is based on the facts and representations in your letter, particularly your representation that Ramius and Strauss will disclose the Order in writing to all persons solicited during the ten-year period from the date of entry of the Order. 3/ This position applies only to the disqualification under Rule 206(4)-3 arising from the Order, and not to any other bases for disqualification under Rule 206(4)-3 that may exist or arise with respect to Ramius or Strauss.

*Veena K. Jain*

Veena K. Jain  
Attorney

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- 1/ Rule 206(4)-3(a)(1)(ii) prohibits an investment adviser from paying a cash fee, directly or indirectly, to any solicitor who, among other things, has been found by the Commission to have failed to reasonably supervise, with a view to preventing violations of the securities laws, another person who committed such violations.
  - 2/ In the Matter of John H. Gutfreund, Thomas W. Strauss, and John W. Meriwether, Securities Exchange Act Rel. No. 31554 (Dec. 3, 1992). Under the Order, Strauss was suspended for six months from associating with any broker, dealer, municipal securities dealer, investment company or investment adviser and was ordered to pay a civil penalty.
  - 3/ While your request for relief is limited to soliciting on behalf of advisers who are controlled by, or under common control, with Ramius, we note that our position would be the same even if Ramius or Strauss proposed to solicit on behalf of unaffiliated advisers.

**WILLKIE FARR & GALLAGHER**

Daniel Schloendorn

New York  
Washington, DC  
London  
Paris

**BY FEDERAL EXPRESS**

January 11, 1996

ACT IA  
SECTION 502  
RULE 206(4)-3  
PUBLISHED  
AVAILABILITY 4/5/96

Jack Murphy, Esq.  
Chief Counsel  
Division of Investment Management  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Dear Mr. Murphy:

On behalf of Thomas W. Strauss ("Strauss") and Ramius Capital Management LLC ("Ramius"), we hereby request the concurrence of the staff of the Division of Investment Management (the "Staff") that neither Strauss nor Ramius should be prohibited by Rule 206(4)-3 (the "Rule") under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), from receiving cash payments for the solicitation of advisory clients for registered investment advisers, by virtue of an administrative order of the Securities and Exchange Commission (the "Commission") that imposed sanctions on Strauss.

Relevant Facts

Ramius is an investment adviser that currently is not registered under the Advisers Act in reliance upon the exemption afforded by Section 203(b)(3), although it may in the future elect or be required to register. Strauss is a senior executive officer of Ramius and a 50% equity owner. Ramius or Strauss from time to time may enter into written solicitor agreements with registered investment advisers that are controlled by, or under common control with, Ramius. Under these agreements, Ramius or Strauss, as the case may be, will market the investment supervisory services of the affiliated investment adviser which will agree to pay Ramius or Strauss a cash fee based on a percentage of the management fees received by it from clients who have retained it as a result of the solicitation activities of Ramius or Strauss. In accordance with the Rule, the status of Strauss as an employee of Ramius, and the affiliation between Ramius and the investment adviser on whose behalf solicitation

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activities are undertaken, would be disclosed to the client at the time of the solicitation.

On December 3, 1992, pursuant to an offer of settlement submitted by Strauss, the Commission entered an order (the "Order") imposing remedial sanctions pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 against Strauss for failure to reasonably supervise another individual with a view to preventing violations of the federal securities laws. Securities Exchange Act of 1934 Rel. No. 34-31554. The Order imposed the following remedial sanctions on Strauss:

1. he was suspended from associating with any broker, dealer, municipal securities dealer, investment company or investment adviser for a period of six months; and
2. he was ordered to pay a civil penalty of \$75,000.

#### Potential Disqualification

Because Strauss was found in the Order to have engaged in a failure to supervise, he would appear to be disqualified under the Rule from receiving cash payments from an investment adviser for solicitation activities.

Furthermore, since Strauss is a principal of Ramius, Strauss might be deemed to be a solicitor in respect of solicitation activities of Ramius pursuant to Rule 206(4)-3(d)(1), and cash payments made directly to Ramius for its solicitation activities might be deemed to be cash payments indirectly to Strauss for such activities.

The Rule provides, in part:

- (a) It shall be unlawful for any investment adviser required to be registered pursuant to Section 203 of the Act to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

- (1) . . . (ii) the solicitor is not a person . . . who has been found by the Commission to have engaged . . . in any of the conduct specified in paragraphs (1), (4) or (5) of Section 203(e) of the Act. . . .

Paragraph (5) of subsection (e) of Section 203 refers to an investment adviser or a person associated with an investment adviser that "has failed reasonably to supervise, with a view to preventing violations of the

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provisions of [the federal securities laws] another person who commits such a violation, if such other person is subject to his supervision."

### Discussion

The proposing and adopting releases relating to paragraph (a) of the Rule indicate that the Commission intended to prevent an investment adviser from hiring as a solicitor a person who could not be hired as an employee, thus doing indirectly what it could not do directly. Investment Advisers Act Releases Nos. 615 (February 2, 1979) and 688 (July 12, 1979). The Order, however, does not bar, suspend or limit Strauss from acting as an investment adviser or from associating with a registered investment adviser after June 3, 1993.

The Commission has indicated it would entertain, and be prepared to grant in appropriate circumstances, requests for permission to engage as a solicitor by a person subject to a statutory bar. Investment Advisers Act Release No. 688.

The Staff has previously granted requests for relief from the disqualifying provisions of Rule 206(4)-3(a)(1)(ii). In Hickory Capital Management, Inc., pub. avail. February 11, 1993, the Division of Investment Management stated it would not take enforcement action under the Rule against an individual or a registered investment adviser of which the individual was the sole shareholder, if the investment adviser received cash payments for soliciting clients for other investment advisers in accordance with the Rule, notwithstanding a Commission order imposing sanctions on the individual. Other instances in which the staff granted no action relief under the Rule to persons subject to disqualification under the Rule include Salomon Brothers Inc., pub. avail. January 26, 1994 (which involved the same set of circumstances underlying the Order); Kidder, Peabody & Co., Inc., pub. avail. October 11, 1990; First City Capital Corporation, pub. avail. February 9, 1990; RNC Capital Management Company, pub. avail. February 7, 1989; and Stein Roe and Farnham, Inc., pub. avail. August 25, 1988.

We believe that the terms and circumstances of the Order and the relief previously granted by the Division in similar cases make it appropriate and in the public interest to grant the relief requested herein.

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### Undertaking

In connection with this request, Strauss and Ramius undertake:

1. to conduct any solicitation arrangement on behalf of an affiliated investment adviser in compliance with all applicable provisions of the Rule;
2. to disclose the Order in Part II of Ramius' Form ADV if and when it becomes registered as an investment adviser as long as it is required to be disclosed under the Advisers Act; and
3. to use their best efforts to insure that any affiliated adviser with which either has a solicitation agreement describes such arrangement to the extent required in response to Item 13 of such adviser's Part II of Form ADV.

Please note that at the present time Ramius and Strauss are not seeking relief in order to permit solicitation activities on behalf of unaffiliated investment advisers, and accordingly no separate written disclosure document of the type described in paragraph (b) of the Rule is required. However, Strauss and Ramius also undertake to disclose the Order in writing to persons solicited during the ten-year period from the date of entry of the Order.

### Conclusion

Accordingly, we respectfully ask the Division to advise us that it will not recommend enforcement action to the Commission if Strauss or Ramius receives cash payments for solicitation of advisory clients for an investment adviser, notwithstanding the Order.

Very truly yours,



Daniel Schloendorn

DS:kb

cc: Barry Mendelsohn, Esq.  
Mr. Thomas W. Strauss  
Robert L. Chender, Esq.