UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
MARKET REGULATION

Act Exchange Act of 1934
Section 15(a); 15(b)
Rule n/a
Public Availability May 7, 2001

May 7, 2001

Thomas D. Giachetti
Stark & Stark
P.O. Box 5315
Princeton, New Jersey 08543-5315

Re: Partial Denial of No-Action Request of 1st Global, Inc.

Dear Mr. Giachetti:

In letters dated April 7, July 20 and August 17, 2000, on behalf of 1st Global, Inc., you have asked for assurances that the Division of Market Regulation ("Division") will not recommend enforcement action to the Commission under Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") if a registered broker-dealer subsidiary of 1st Global, Inc. enters into arrangements with certified public accountants and CPA firms to pay securities-based commissions in various manners described in your letter, without those CPA firms or certain of their partners registering as broker-dealers in accordance with Section 15(b) of the Exchange Act.

We understand the facts to be as follows:

1st Global Capital Corp., which is a subsidiary of 1st Global, Inc., is a registered broker-dealer.[1] 1st Global Capital Corp. engages CPAs as registered representatives to sell financial instruments to clients, and pays commissions for securities activities to those registered representatives. Many CPAs who wish to use the services of 1st Global Capital Corp. are partners, shareholders or members of CPA firms. (Consistent with your letters, this letter will use the terms "partner" or "partnership" to refer to refer to all of those various arrangements.) Many of those CPAs have entered into agreements requiring them to account to their CPA firm for all revenues generated from firm clients. Generally, those agreements provide that the aggregate of the revenues generated by the partners be used to pay the CPA firm's overhead, staff salaries and other expenses, and that the remaining profits be allocated among the partners according to an established allocation formula. You expect that at least one partner in many of those CPA firms will not be a registered representative. You discussed the revenue and profit arrangements of the CPA firms, and you noted that a particular CPA may receive income greater or less than the revenues that the CPA has generated, and that a particular CPA's share of firm profits may be based in part on whether that CPA originated a particular client.

[1] This letter will focus on the activities of 1st Global Capital Corp., the registered broker-dealer subsidiary of 1st Global, Inc. Unregistered affiliates of that company, including 1st Global, Inc., are not eligible to participate in securities activities.

You stated that many CPAs who wish to become registered representatives of 1st Global Capital Corp., or the firms of those CPAs, have raised concerns about compensation arrangements. You also stated that current registered representatives of 1st Global Capital Corp. have "expressed interest in the arrangements due to changing rules of their respective CPA state regulatory authorities which now allow CPAs to accept securities-related compensation."

You raised four specific compensation scenarios under which 1st Global Capital Corp. proposes to pay securities commissions to CPA registered representatives:

(1) 1st Global Capital Corp. would pay commissions to a CPA registered representative without the presence of a partnership agreement mandating the CPA to account to the CPA firm for the commissions earned;

(2) 1st Global Capital Corp. would pay commissions to a CPA registered representative without the presence of a partnership agreement mandating the CPA to account to the CPA firm for the commissions earned, but the CPA registered representative would then "voluntarily" turn the commissions over to the CPA firm;

(3) 1st Global Capital Corp. would pay commissions to a CPA registered representative subject to an agreement, formal or otherwise, mandating that the CPA account to the CPA firm for the commissions earned; and

(4) 1st Global Capital Corp. would pay commissions to another broker-dealer, with which the CPA registered representative is dually registered, when the CPA firm or its partners own the other broker-dealer.

Response of the Division of Market Regulation:

Based on the facts and representations set forth in your letter, the Division would not recommend enforcement action to the Commission under Section 15(a) of the Exchange Act if 1st Global Capital Corp. enters into the arrangements described in your first scenario, covering the situation where 1st Global Capital Corp. would pay securities commissions to a CPA registered representative who is not subject to a formal or informal agreement requiring him to turn securities commissions over to an unregistered CPA firm, and no unregistered person would be eligible to receive commissions directly or indirectly. The Division is unable to assure you that it would not recommend enforcement action to the Commission under Section 15(a) of the Exchange Act if 1st Global Capital Corp. enters into the other arrangements described in your letter.

Receipt of transaction-based compensation related to securities transactions is a key factor that may require an entity to register as a broker-dealer. As we noted in the Birchtree line of responses to requests for no-action relief, the Division "has taken the position that the receipt of securities commissions or other transaction related compensation is a key factor in determining whether a person or an entity is acting as a broker-dealer. Absent an exemption, an entity that receives commissions or other transaction-related compensation in connection with securities-based activities that fall within the definition of 'broker' or 'dealer' . . . generally is required to register as a broker-dealer."[2] Persons who receive transaction-based compensation generally have to register as broker-dealers under the Exchange Act because, among other

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2 See, e.g., Letter re: Birchtree Financial Services, Inc. (Sept. 22, 1998).

reasons, registration helps to ensure that persons with a "salesman's stake" in a securities transaction operate in a manner consistent with customer protection standards governing broker-dealers and their associated persons, such as sales practice rules. That not only mandates registration of the individual who directly takes a customer's order for a securities transaction, but also requires registration of any other person who acts as a broker with respect to that order, such as the employer of the registered representative or any other person in a position to direct or influence the registered representative's securities activities.

a. Payment of commissions to a CPA registered representative without the presence of a partnership agreement mandating that the CPA to account to the CPA firm for the commissions earned

The Division will not recommend enforcement action to the Commission under Section 15(a) if 1st Global Capital Corp. pays commissions directly to a CPA registered representative, so long as the CPA registered representative is not subject to any formal or informal agreement or arrangement directing him to turn over securities commissions, or other income received as a result of securities activities, to an unregistered CPA firm or other unregistered entity.

This position is consistent with the Division's position in the Letter re: Freytag, LaForce, Teofan and Falik (January 4, 1988), in which the Division stated it would not recommend enforcement action if a broker-dealer paid securities commissions directly to a CPA registered representative that "is not subject to any agreement, formal or otherwise directing that income, received as a result of securities services performed for CPA Firm clients or others, such as securities commissions, must be returned to the partnership for distribution to the partnership."

As we stated in Freytag, however, this no-action position "is conditioned on the fact that no CPA, other than one who is a registered representative who is not subject to an agreement of the sort described above, will be eligible to receive commissions, even indirectly, through partnership distributions." The Division must emphasize that this condition means that a registered person cannot forward securities commissions to a CPA firm or other unregistered person under any other title or label. For example, any payments from a CPA registered representative to a CPA firm or another unregistered person for "services" or "support" related to the CPA's securities activities would fall outside of the scope of this letter if those payments are linked to the revenues that the CPA generates from securities activities, are disproportionate to the market rental cost of those services, or otherwise denote a form of compensation arising from securities transactions.

b. Payment of securities commissions to a CPA registered representative who then "voluntarily" turns those commissions over to a CPA firm

The Division cannot assure you that it would not recommend enforcement action to the Commission under Section 15(a) if 1st Global Capital Corp. pays securities commissions to a CPA registered representative, should the registered representative then "voluntarily" turn those commissions over to an unregistered CPA firm. Even if the registered representative is not explicitly required by a formal agreement to account to the CPA firm for those commissions, those circumstances indicate that the registered representative would make the payments as part of an informal agreement or arrangement that furthers the interests of a broader business relationship. Accordingly, as is discussed in more detail below, the Division cannot grant this portion of the requested no-action relief.

c. Payment of securities commissions to a CPA registered representative subject to an agreement requiring the registered representative to forward those commissions to a CPA firm

The Division cannot assure you that it would not recommend enforcement action to the Commission under Section 15(a) if 1st Global Capital Corp. pays commissions to a CPA registered representative, should an agreement require the registered representative to turn those commissions over to an unregistered CPA firm. This conclusion is consistent with the Division's conclusion in the Freytag letter.

Under the arrangement described in your letter, an unregistered CPA firm would indirectly receive securities commissions earned by a CPA registered representative, thereby giving it a financial stake in the revenues generated by the registered representative's securities transactions, at the same time that the CPA firm is in a position to influence the registered representative's actions and to direct customers to the registered representative. As discussed above, in the Birchtree line of letters we noted that the receipt of transaction related compensation is a key factor in determining whether a person or an entity is acting as a broker-dealer, and that, absent an exemption, a person or entity that receives transaction-related compensation in connection with securities activities generally is required to register as a broker-dealer.[3] The Division is not persuaded that your attempts to factually distinguish the circumstances that underlie the Birchtree letters assuage the core regulatory concerns raised by the receipt of transaction-based compensation.

In support of your request for relief, you also attempt to draw analogies to several Division no-action letters related to networking arrangements involving financial institutions or insurance companies. The networking letters related to financial institutions arose in the context of arrangements between registered broker-dealers and entities that are already subject to a comprehensive financial regulatory scheme, including capital requirements, that would make broker-dealer registration exceedingly difficult.[4] The networking letters related to insurance companies are limited in scope to insurance securities, and were designed to respond to the unique nature of insurance securities and the difficulties posed by dual state and federal laws applicable to sales of those products.[5] Those lines of letters were tailored to their underlying special facts and circumstances. In contrast, the Division does not believe that accounting firms face regulatory requirements that prevent them from registering as broker-dealers.

d. Payment of securities commissions to a registered broker-dealer owned by a CPA firm or its partners

Finally, the Division cannot assure you that, under any circumstances, it would not recommend enforcement action to the Commission under Section 15(a) should 1st Global pay securities commissions to a registered broker-dealer, with which a 1st Global registered representative is dually registered, when that other broker-dealer is owned by an unregistered CPA firm or its partners. This is due to the highly fact-specific nature of any such relationship.

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3 See, e.g., Letter re: Birchtree Financial Services, Inc. (Sept. 22, 1998).

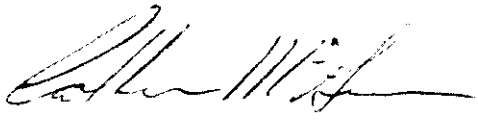
4 See generally Letter re: Chubb Securities Corp. (Nov. 24, 1993).

5 See generally Letter re: First of America Brokerage Service, Inc. (Sept. 28, 1995).

Clearly, a registered broker-dealer may receive commissions arising from securities transactions. Under some circumstances, however, the unregistered CPA firm or its partners may exercise such a degree of control over the activities of the broker-dealer or its registered representatives that they themselves engage in broker-dealer activity. In that case, the CPA firm or its partners would have to register as broker-dealers pursuant to Section 15(b), or else, in the case of natural persons, register as associated persons of a broker-dealer. Although you suggest that the unregistered CPA firm or its partners would passively own the registered entity, the question of whether the actions of the CPA firm or its partners constitute broker-dealer activity must turn upon the facts and circumstances of each particular situation.

The positions expressed above are based solely on the facts presented and the representations made to the Division in your letter, and any different facts or conditions may require a different response. Furthermore, this response only expresses the Division's position on enforcement action and does not purport to express any legal conclusions on the questions presented.

Sincerely,



Catherine McGuire
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July 20, 2000

*VIA FEDERAL EXPRESS*

Securities and Exchange Commission
Office of Chief Counsel - Division of Market Regulation
Attention: Barbara Stettner
450 Fifth Street, N.W.
Washington D.C. 20549



RE: No Action Letter of 1st Global, Inc.

Dear Ms. Stettner,

I am writing to you on behalf of 1st Global, Inc. I look forward to speaking to you further about the subject matter of our request. As we initially discussed, the landscape of financial services and public accounting has been changing dramatically in recent years. Accordingly, our client would appreciate the chance to get involved in the Staff's clarification of the boundaries. I also wanted to address a few issues that you preliminarily raised during our conversation on June 19, 2000.

First, I reviewed the Birchtree line of no-action letters as you suggested and I can see why you felt that they might be appropriate to our request for no-action relief. I do not, however, feel the same response is appropriate in this situation. First, in the Birchtree cases the personal service corporations asked for no-action relief where the transaction commissions were to be paid directly to the unregistered corporation. 1st Global has not proposed such a scenario. Rather, in each of the scenarios presented in our request, the commissions will be paid to either a registered representative of 1st Global (the registered representative will also be a CPA of the Accounting Firm that will later make an accounting of the profits to the Accounting Firm) or a broker-dealer to be registered by the representatives and/or the CPA Firm and its shareholders. The broker-dealer may be owned by registered representatives of 1st Global that are also CPAs at the Accounting Firm or the Accounting Firm itself, which has shareholders that are not registered representatives.

In addition, the Birchtree corporations also specified that the commissions may be paid to the registered representatives that would then turn the commissions over to the corporations, which is more in line with what 1st Global proposes. The sole purpose of those personal service corporations in the Birchtree cases, however, was to channel the brokerage commissions into a corporate entity. The purpose of the corporation and its employees was to earn brokerage commissions through the individual shareholders' capacity as registered representatives. In contrast, with 1st Global's request, the registered representative CPA's are required, by contract, to make an accounting of the income they earn from clients of the CPA Firm. This contractual obligation does not distinguish between brokerage transactions and any other type of income. In addition, profits earned by the CPA Firm through the recapture of income earned by its CPAs brokerage activities, is not the sole purpose of the CPA Firm. In fact, we have made the argument that the required accounting of profits is solely incidental to the CPA Firm in its capacity of providing accounting activities.

Finally, without registration as a broker-dealer, the Birchtree personal service corporations would exist without overview of any type of regulatory authority and corresponding rules. The CPA Firms that would indirectly receive commissions in the 1st Global proposal are all subject to the Accounting Commissions of their corresponding state. All are considered fiduciaries of their clients, which imposes a higher burden on them then that imposed on broker-dealers. This is why we made the comparison with the fact that banks have been allowed to establish networking arrangements with broker dealers. While state and federally chartered banks

are exempt from registration under the Securities Exchange Act of 1934, any other type of bank does not enjoy such exemption. The Commission has provided no-action relief to such non-state/federal chartered banks under certain conditions. See Chubb Securities Corp., SEC No-Action Letter (Publicly Available Nov. 24, 1993) (further citation found in initial April 7, 2000, letter). While these banks may be subject to the regulation of the Office of Thrift Supervision, state banking commissions, or other federal or state agencies, this regulation is certainly no more stringent than that of the various state Accounting Commissions that the accounting firms are subject to.

Should you require any additional information or clarification do not hesitate to call me directly at (609) 219-7416. I look forward to the opportunity to further discuss this matter with you prior to the completion of the Commissions response. On behalf of our client, 1st Global, Inc., thank you for your prompt response and consideration of this matter.

Sincerely,

STARK & STARK, PC

By: _____
Daniel Bernstein

cc: Tony Batman
Thomas Giachetti

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August 17, 2000

**Via Federal Express**

Securities and Exchange Commission
Office of Chief Counsel– Division of Market Regulation
Attention: Barbara Stettner
450 Fifth Street, N.W.
Washington D.C. 20549

**Re: No Action Letter of 1st Global, Inc.**

Dear Ms. Stettner:

I am writing to you on behalf of 1st Global, Inc. Please accept this letter as a supplement to the original no-action letter filed with your office on April 7, 2000. 1st Global wishes to further clarify and supplement its no-action request as set forth below. I look forward to speaking to you further about this matter.

First, all securities activities will be engaged in by an SEC Registered, NASD Member, broker-dealer (i.e. 1st Global Capital Corp.). Furthermore, all personnel engaged in securities activities will be licensed as registered representatives and correspondingly fully subject to the securities laws and applicable rules of self-regulatory organizations. Finally, the registered broker-dealer (i.e. 1st Global Capital Corp.) will control, properly supervise, and be responsible for all registered representatives participating in the brokerage services networking arrangement.

Without the no-action relief requested, the CPA Firms may have to form broker-dealers that would serve no purpose other than to receive brokerage commission from another broker-dealer. We respectfully submit that requiring the formation of such a broker-dealer does not appear to comport with the intent of the applicable securities laws. Even a limited use broker-dealer has substantial initial formation costs and net-capital requirements and ongoing administrative and operational costs. We propose that in the alternative to granting no-action relief to the CPA Firm without SEC or NASD regulation, that a safe-harbor be created. The proposed safe-harbor can be created for professional organizations, such as CPA Firms, which are already, per their own canons of ethics, fiduciaries to their clients. Even with the safe harbor, CPA Firms would voluntarily subject themselves to regular SEC and NASD review. The safe harbor would provide the Staff with the assurance that all parties either directly or indirectly receiving commissions would be subject to securities laws and self regulatory rules, but also allow the CPA Firms to avoid forming and registering these otherwise unnecessary broker-dealers.

Finally, we would like to reinforce our belief that the proposed no-action request is directly comparable to the long line of no-action letters that have allowed networking arrangements between broker-dealers and banks and/or insurance companies. Banks that are not of the type defined in Section 3(a)(6) of the Securities Exchange Act of 1934, are not exempt from registration as a broker or dealer. Some of these non 3(a)(6) banks may not be federally

regulated. Furthermore, insurance companies are exempt from registration as brokers or dealers, and are not federally regulated. Yet, despite the fact that these entities are not exempt from registration, and not federally regulated, they have been extended no-action relief for receiving commissions from the brokerage activities of their employees that are also registered representatives of registered broker-dealers. See Chubb Securities Corp., SEC No-Action Letter (Publicly Available 11/24/93); Mutual Benefit Life Insurance Co., SEC No-Action Letter (Publicly Available 1/21/85).

In conclusion, we respectively submit that the scenario proposed by 1st Global should be afforded no-action relief by the Staff. The focus should be on the fact that all securities activities will be engaged in by a registered broker-dealer, and its registered representatives, all of whom will be supervised by that broker-dealer. The CPA Firm that will be indirectly receiving the brokerage commissions is a professional firm, subject to Board of Accountancy ethics rules, and is an existing fiduciary to all CPA Firm clients for which it will be receiving indirect commission compensation. We respectfully submit that there is no material difference between the proposed relationship and those involving broker-dealers and banks, insurance companies, and other types of non-exempt entities, granted no-action relief. Furthermore, as proposed above, the CPA Firms could voluntarily subject themselves to SEC and NASD inspection and pay any fees associated therewith.

Should you require any additional information or clarification do not hesitate to call me directly at (609) 895-7255. I look forward to the opportunity to further discuss this matter with you prior to the completion of the Commissions response. On behalf of our client, 1st Global, Inc., thank you for your prompt response and consideration of this matter.

Sincerely,

STARK & STARK
A Professional Corporation

BY: _____
THOMAS D. GIACHETTI

cc: 1st Global, Inc. - Tony Batman and Nancy Johnson
Daniel A. Bernstein, Esq.

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April 7, 2000

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

Office of Chief Counsel
MAY 08 2000
Division of Market Regulation

**RE: 1st Global, Inc.**
**Securities Exchange Act of 1934 Section 15**

Dear Sir or Madam:

We represent 1st Global, Inc. ("1st Global"), which, through its various subsidiaries (as discussed below), includes a Securities and Exchange Commission ("Commission") registered broker-dealer and investment adviser as well as a master general insurance agency. Many CPAs, and/or the CPA Firms of which they are members, that desire to become registered representatives with 1st Global have expressed concern regarding compensation arrangements they may enter into with 1st Global and whether or not the arrangements are consistent with, or will require registration or disclosure under, the Securities Exchange Act of 1934 (the "Exchange Act"). Current 1st Global registered representatives have also expressed interest in the arrangements due to changing rules of their respective CPA state regulatory authorities which now allow CPAs to accept securities-related compensation. We respectfully request the assurance of the Staff that it will not recommend enforcement action to the Commission pursuant to section 15 of the Securities Exchange Act of 1934, as amended (the "Exchange Act") if, as described in detail below, 1st Global enters into arrangements with certified public accountants ("CPAs") and CPA Firms, to pay securities based commissions in various manners.

## FACTS

1st Global Capital Corp. is a broker-dealer registered with the Commission and various states, and a member of the National Association of Securities Dealers, Inc. ("NASD"). 1st Global Advisors, Inc. is a Commission registered investment adviser and notice filer with various states. 1st Global Insurance Services, Inc. is a master general insurance agency that has appointments with various insurance companies (all three entities collectively hereinafter "1st Global").

1st Global engages CPAs as registered representatives to sell financial investments to their clients. These CPA registered representatives may receive commissions from 1st Global. The commission-based compensation arrangement is common to the broker-dealer/registered representative relationship. 1st Global pays commissions only to its duly licensed registered representatives. 1st Global pays the registered representative a portion of the commissions generated by that representative. The portion of the commissions received by 1st Global that are not paid to the registered representatives is retained by 1st Global.

Many of the CPAs that desire to utilize the services of 1st Global are partners (or shareholders or members, depending upon the type of entity, i.e. corporation, limited liability

company, etc.) of CPA Firms. Many of these CPAs have entered into partnership agreements (or shareholder or operating agreements depending on the type of entity) with the other members of their CPA Firms and the CPAs are contractually bound by the terms of the partnership agreements. The partnership agreements typically provide that each CPA must devote substantially all of his or her working hours to the CPA Firm and must account to the CPA Firm for all revenues, including any fees or other compensation relating to accounting, auditing, tax consulting, financial planning and brokerage services, that are generated from the CPA Firm's clients. In the usual case, the partnership agreement provides that the aggregate of these revenues generated by each member of the CPA Firm are used to pay the overhead, staff salaries and other expenses of the CPA Firm, and that any remaining profit after payment of these expenses will be allocated among the partners according to an established allocation formula. It is expected that at least one partner in many of the CPA Firms will not be a registered representative.

It is expected that the partnership agreements of some CPA Firms might provide that the allocation of profits to a particular CPA is directly related to the revenues generated by that CPA. This may result in a particular CPA receiving annual income either greater than or less than the actual amount of revenues that the CPA generated during the year. Furthermore, it is expected that the partnership agreements of some CPA Firms might provide that a particular CPA's share of revenues and profits of the CPA Firm is based, in part, on whether the CPA was responsible for the origination of the revenues. The partnership agreement may provide that a partner is entitled to receive a special allocation of a percentage of the revenues generated by another partner with respect to clients originated by the first partner.

Each CPA registered representative shall be required to comply with all applicable federal, state, and self-regulatory organization rules and regulations, especially as such rules and regulations relate to disclosure of fee and compensation arrangements with their clients. 1st Global provides each of its registered representatives with relevant legal and regulatory information. 1st Global also supervises the practices of its registered representatives for the purpose of maintaining compliance with applicable rules and regulations.

## COMPENSATION SCENARIOS AND ANALYSIS

Section 15(a) of the Exchange Act provides that "it shall be unlawful for any broker or dealer to effect any transactions in, or induce or attempt to induce ... the purchase or sale of, any security ... unless such broker or dealer is registered in accordance with Section 15(b) of the Act." Sections 15(a) and 15(b) of the Exchange Act may be applicable to the alternative compensation arrangements between CPAs and CPA Firms. The Staff considered CPA compensation scenarios similar to those presented in this letter in Fretag, Perry, LaForce, Rubinstein and Teofan, SEC No-Action Letter (Publicly Available Jan. 4, 1988), 1988 WL 233625 (hereinafter "Fretag"). In the last twelve years, however, the landscapes of the financial services industry and CPA profession have drastically changed. Since Fretag, CPAs have been afforded much greater freedom in the type of services and compensation they can provide and

receive from their clients. As a result, since Fretag, the CPA, CPA Firm and/or its affiliate, as a registered representative, broker-dealer, investment adviser representative, and/or investment adviser, is no longer the exception. Rather, CPAs and CPA Firms have entered and/or are considering entering the financial services industry at a feverish pace, which can be expected to continue.

In the case of all of the scenarios presented below, it can be assumed that all parties will make the proper client disclosure required by federal, state, and self regulatory organization rules and regulations. This letter also assumes that the CPAs and CPA Firms are properly licensed and in compliance with their various state CPA regulatory authorities.

I. Payment of commissions by 1st Global directly to a CPA registered representative without presence of a partnership agreement that mandates the CPA make an accounting to the CPA Firm of commissions earned.

Each individual receiving commission would be a CPA registered representative of 1st Global that is not subject to any agreement, formal or otherwise, directing that income received as a result of securities services performed for the CPA Firm clients or others must be returned to the partnership. Under this scenario, no CPA, other than a registered representative will be eligible to receive commissions, directly or indirectly. This is the same method that the Staff offered no-action relief to in Fretag. For the same reasons given in Fretag, we respectfully submit that no-action relief should be extended in this situation.

II. Payment of commissions by 1st Global directly to a CPA registered representative who then voluntarily turns the commission over to the CPA Firm without presence of a partnership agreement that mandates CPA make an accounting to the CPA Firm of commissions earned.

This scenario was not addressed in Fretag. Each individual receiving commission compensation from 1st Global would be a CPA registered representative of 1st Global that is not subject to any agreement, formal or otherwise, directing that income received as a result of securities services performed for the CPA Firm clients or others must be returned to the partnership for distribution to the partnership. The Fretag letter denied relief where there existed an agreement, formal or otherwise, directing that income from securities services must be returned to the CPA Firm for distribution to the partners.

We respectfully submit that this contribution should be permissible. Such a contribution would represent a capital contribution to a partnership, which we respectfully submit should be viewed no differently than a registered representative using commissions for personal use ranging from purchase of consumer goods to personal investment decisions. In essence, this is the same as the situation afforded no-action relief in Fretag. For the same reasons given in Fretag, we respectfully submit that 1st Global should be afforded no-action relief in this situation.

III. Payment of commissions by 1st Global to a CPA registered representative subject to an agreement, formal or otherwise, with a CPA Firm that mandates an accounting of the commissions earned, and the subsequent use of the funds by the CPA Firm to pay the expenses of the CPA Firm.

The Staff declined to grant no-action relief for this scenario in Fretag. In Fretag, the NASD indicated that if a CPA received commissions directly, his/her subsequent turnover of those payments to the CPA Firm would not violate any NASD Rule. See Fretag, Attached Letter from John Flood, Assistant General Counsel, NASD, Inc. As previously discussed, since the Fretag letter, the landscapes of the financial services industry and CPA profession have drastically changed. The Commission has previously recognized the unique relationship between CPAs, CPA Firms, and their clients within the confines of the Investment Advisers Act of 1940 (the "Advisers Act"). We respectfully request that the Staff's decision to deny no-action relief in the Fretag letter should be revisited at this time for the following reasons.

A. Similarities between the proposed commission relationships and those allowed by the Advisers Act.

1. Exception from registration for services solely incidental to the practice of the profession.

The Advisers Act, at Section 202(a)(11), defines an "Investment Adviser" as "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities...." This definition would probably ensnare almost every CPA into the need to register as an investment adviser. For this reason the definition does not include "any ... accountant ... whose performance of such services is solely incidental to the practice of his profession." Virtually every state provides similar exceptions for CPAs from the definition of "investment adviser."

The Staff has generally looked to three factors as particularly relevant when defining "solely incidental." The Staff discussed these factors in Jones & Kolb, SEC No-Action Letter, 1984 WL 45308 (publicly available May 7 1984). The factors addressed in Jones & Kolb are as follows:

(1) Whether the professional holds himself out publicly as an investment adviser or financial planner (by means such as general advertising, mailings, letterhead or business cards, etc.);
(2) Whether the investment advice given is in connection with and reasonably related to the professional services rendered; and
(3) Whether the professional's fee structure for investment advisory services is different from the professional services.

In general the first factor of holding oneself out publicly as an investment adviser or financial planner, is given the most weight by the staff. See Investment Advisers Act Release

Number 1092 (Oct. 8, 1987). Neither the CPA Firm nor any of its non-registered representative members will hold themselves out publicly as providing any brokerage services. Also, the 1st Global CPA registered representatives may hold themselves out publicly as providing brokerage services, but only in their capacity as 1st Global registered representatives, not as members of the CPA Firm.

Next, neither the second or third criteria of Jones & Kolb are particularly relevant to the 1st Global relationship. Any commissions earned through the 1st Global/CPA relationship, will be earned by the individual CPA registered representative who may provide investment advice and/or make investment transactions. Therefore, the "professional services rendered" under the second criterion, and the "professional's fee structure" under the third criterion, are really references to the CPA registered representatives actions as a 1st Global registered representative, not as a member of the CPA Firm. Ergo, the receipt of the indirect commissions, turned over to the CPA Firm by its CPA members, is solely incidental to the CPA Firm's practice, where the industry regularly requires CPAs to make such an accounting to their firms.

2. Allowance of the payment of solicitor's fees to non-investment adviser CPAs and CPA Firms.

Also, we respectfully submit that the indirect receipt of commissions by non-registered CPAs should be viewed as analogous to the receipt of solicitor's fees by CPAs and/or CPA Firms not registered with the Commission as an investment adviser. Rule 206(4)-3 of the Advisers Act allows an investment adviser to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation where certain conditions are met. Those conditions include the requirement that there must be a written agreement between the solicitor and the investment adviser, and that the adviser must receive written acknowledgment from the client of receipt of both the solicitor's and the adviser's disclosure documents. Rule 206(4)-3 permits CPAs and/or CPA Firms to receive solicitation fees for the investment advisory services purchased by its clients without corresponding registration as an investment adviser, nor classification as an investment adviser representative. We have found no regulation that would prohibit an individual CPA, when acting as a solicitor for an adviser, from turning over to his/her CPA Firm, voluntarily or pursuant to the terms of a partnership agreement, the referral fee received from an adviser in accordance with the parameters of Rule 206(4)-3 of the Advisers Act.

In sum, under the proposed 1st Global scenarios, the CPAs and CPA Firms will disclose all relationships to their prospective clients. Only registered representative CPAs will engage in any brokerage activities such as accepting or placing orders for the purchase or sale of securities, or the solicitation of such orders. Furthermore, the CPA Firm will not be holding itself out to the public as providing brokerage services, and we respectfully submit that its indirect receipt of commissions is in connection with, and reasonably related to, the professional services rendered pursuant to the terms and conditions of the partnership agreement. While there is no corresponding provision in the Exchange Act, we respectfully submit that the existence of partnership agreements mandating an accounting of commissions earned by CPA registered

representatives is sufficiently similar to the Rule 206(4)-3 solicitation arrangements and the Section 202(a)(11) "solely incidental" allowance, to warrant the provision of no-action relief.

B. Similarities between the proposed commission relationships and those between broker-dealers and banks.

In general, banks are excluded from the definitions of broker and dealer as defined by sections 3(a)(4) and 3(a)(5) of the Exchange Act and therefore do not have to register under section 15(a) of the Exchange Act. Many banks, such as Savings and Loan Institutions, are not, however, part of that exemption, and are therefore technically subject to registration. Also, Rule 3b-9 was enacted in order to require registration of all banks that were engaged in brokerage activities.

Rule 3b-9 withdrew from the definition of "bank", as defined and exempted in section 3(a)(4) and 3(a)(5) (and thus subjecting the bank to registration under section 15(a)), a bank that publicly solicited brokerage business for which it received transaction-related compensation. Rule 3b-9 did, however, carve out an exemption from registration where the bank entered into a contractual arrangement "with a broker-dealer registered under the Act pursuant to which the broker-dealer will offer brokerage services on or off the premises of the bank, provided that:"

(i) Such broker-dealer is clearly identified as the entity performing the brokerage services;
(ii) Bank employees perform only clerical and ministerial functions in connection with brokerage transactions unless such employees are qualified as registered representatives;
(iii) Bank employees do not receive, directly or indirectly, compensation for any brokerage activities unless such employees are qualified as registered representatives; and
(iv) Such services are provided by the broker-dealer on a basis in which all customers are fully disclosed.

Rule 3b-9 was held invalid in American Bankers Association v. SEC, 804 F.2d 739 (D.C. Cir. 1986) for being inconsistent with congressional intent to exempt banks from registration. Still, many banks have sought, and received, no-action relief in order to engage in brokerage activities. Some of those no-action requests have been from organizations that do not qualify for the bank exemption, such as federal savings associations, while others have come from federal and state chartered banks, exempt under the Exchange Act. While Rule 3b-9 was held invalid, its procedures are still being used as the basis of the no-action requests. See Chubb Securities Corp., SEC No-Action Letter (Publicly Available 11/24/93); Somerset Group, Inc., SEC No-Action Letter (Publicly Available 12/20/96). Mid-Hudson Savings Bank FSB, (Publicly Available 5/28/93); Interactive Financial Solutions, Inc., (Publicly Available 12/15/92); Wayne Hummer & Co., (Publicly Available 2/22/86).

Therefore, the Commission has afforded no-action relief to entities (i.e. banks) that receive brokerage commissions without registering under the Exchange Act. We respectfully submit that there is no section or rule of the Exchange Act that allows many of the banks that receive transaction-related commission from a broker-dealer to do so, yet this is done on a regular basis. Networking arrangements between banks and broker-dealers that have been afforded no-action relief specifically call for compensation paid directly to the bank, "based on all securities transactions which occur at, or are attributable to, the activities conducted on [the bank's] premises". Somerset Group. See also Chubb. Other letters have allowed the networking arrangement to base the compensation to the bank on a percentage of a mutual fund service charge, sales load, or gross commissions earned from the transactions of bank customers, whether or not on the bank premises. See Wayne Hummer.

We respectfully submit that the broker-dealer/bank relationships afforded no-action relief are substantially similar to the proposed relationship between 1st Global and the CPA Firms. The arrangement will be with a broker-dealer registered under the Exchange Act (1st Global). 1st Global will be clearly identified as the entity providing brokerage services. The CPA Firm's employees will not perform any brokerage activities unless they are registered representatives of 1st Global. Therefore, we respectfully request the assurance of the Staff that, similarly to the relief afforded in the aforementioned no-action letters, it will not recommend enforcement action to the Commission if 1st Global pays commissions to CPAs subject to partnership agreements that mandate an accounting of the commissions earned to their CPA Firms that subsequently use those funds.

C. Changes in State Regulations governing CPAs and the existence of Rules implemented and enforced by those state agencies that safeguard investors.

CPAs possess a high degree of financial-related education. A CPA must meet advanced formal educational requirements, as well as pass a rigorous multi-part, multi-day exam. Moreover, CPAs have a fiduciary responsibility to their clients, and are subject to a multitude of state ethical rules that govern their profession. We respectfully submit that these educational requirements, fiduciary status, and ethical responsibilities meet and/or exceed those imposed upon registered representatives and investment advisers. We respectfully submit that these factors were recognized by the Commission (as well as virtually every state) by exempting CPAs from the definition of "investment adviser" under the Advisers Act Section 202(a)(11), and that exception should be extended to the current relationship under the Exchange Act.

Initially, states did not allow CPAs to receive commissions. Recently, however, state boards of accountancy have increasingly recognized that the public good will be enhanced by allowing CPAs to expand their services above traditional CPA tasks (i.e. auditing, financial reviews, etc.). As of the date of this letter, there are close to forty states that provide CPAs with an option of collecting commissions. States that have adopted the allowance of the receipt of commissions have also implemented rules to govern the practice.

First, in general, commissions are prohibited if the CPA performs an audit, review, compilation or examination of financial information for the client. Also, in general, states have implemented written disclosure requirements. For example, on November 16, 1998 the New Jersey State Board of Accountancy became the thirty-second state to adopt a rule allowing commissions. See N.J.A.C. 13:29-3.8 and 3.12. In general, a CPA that is paid, or expects to be paid, a commission is required to fully disclose, in writing, that fact to each client to whom the CPA recommends or refers a product or service, to which the commission relates. In addition, regulations generally require CPA and/or CPA Firm referral arrangements with financial institutions to be memorialized in writing.

Also, the various state authorities that monitor CPAs and the societies to which CPAs belong, have stringent ethical rules. For example, the American Institute of Certified Public Accountants ("AICPA") has detailed Rules of Ethics. The AICPA model rules have been used as the guidelines for a majority of state rules. Rule 505 requires a member of the AICPA to follow AICPA rules of conduct in accounting and any other business in which the CPA engages, including financial planning. Rule 201A decrees that the CPA should only undertake work for which he is competent to perform. The CPA must act with integrity when performing any services. This includes objectivity, honesty, and independence when making judgments. Engagement in two professions may be a conflict of interest under Rule 504 without proper disclosure to the client. While this alone is not enough for the Staff to provide no-action relief for these indirect payments, when taken in context with the CPA profession, the Commission's concerns should be quelled.

In sum, the indirect receipt of commissions by CPA Firms due to mandatory accountings by its CPAs, is solely incidental to the practice of the profession. Also, the profession has a multitude of ethical rules and regulations that will adequately protect investors. 1st Global will pay commissions only to properly registered representatives, in compliance with section 15(d) of the Exchange Act. The fact that the commissions are turned over to the CPA Firm as part of a partnership agreement should not require the CPA Firm and all of its partners to register under section 15 of the Exchange Act. We submit that the ethical and educational standards of the accounting profession, including the fiduciary duties placed upon CPAs, as well as the similarities with the Advisers Act allowances and broker-dealer/bank relationships, and the aforementioned disclosure requirements pertaining to commission compensation, should adequately address any concerns the Staff may have with the CPA Firm receiving commissions indirectly. Therefore, we respectfully request the assurance of the Staff that it will not recommend enforcement action to the Commission if 1st Global pays commissions to CPAs subject to partnership agreements mandating an accounting of the commissions to the CPA Firm.

IV. Payment of commissions by 1st Global to a broker-dealer that CPA is dually registered with where the CPA Partners or the CPA Firm owns the broker-dealer.

A. CPA Firm owns a separate entity registered as a broker-dealer pursuant to Section 15(b) of the Exchange Act.

It appears that Fretag allows this type of scenario. "The staff would not recommend that the Commission initiate enforcement action ... if the CPA Firm ... registers as a broker-dealer pursuant to Section 15(b) of the Act." The only difference between the Fretag conclusion and the proposed 1st Global scenario is that in the 1st Global situation the CPA Firm would be the owner of a separate entity that is registered as a broker-dealer.

. The CPA Firm will be owned by both registered and non-registered individuals. The non-registered owners will not, however, engage in any brokerage activities such as accepting or placing orders for the purchase or sale of securities, or the solicitation of such orders. The non-registered partners will be passive owners of the broker-dealer. They will receive profits relative to their ownership in the broker-dealer, but will not receive commissions directly. We respectfully submit that this proposed form of ownership is no different then the permitted passive ownership of a non-registered individual in a broker-dealer.

We respectfully submit that the individual partners of the CPA Firm should not be required to register as broker-dealers, or registered representatives thereof, under Section 15 of the Exchange Act. A simple ownership stake in a broker-dealer does not trigger NASD membership either. The non-registered representatives will not be involved in brokerage activities. The non-registered representatives do not fit the NASD definition of principal either, since they will not be "actively engaged in the management of the member's investment banking or securities business." NASD Rule 1021(b).

The Fretag letter specifically limited the no-action assurance to the facts presented in that letter. Any other facts, including the situation where any partner of a CPA Firm engages in brokerage activities subject to a partnership agreement requiring revenues received directly be refunded to the partnership, were not afforded no-action assurance. The Fretag letter specifically excluded partners of registered broker-dealer CPA Firms from this limitation. The CPA Firms in proposed arrangements would set up separate entities registered as broker-dealers and all personnel would comply with any applicable Commission and/or NASD rules and regulations relative to such passive ownership positions.

Therefore, we respectfully request the assurance of the Staff that it will not recommend enforcement action to the Commission if 1st Global pays commissions to broker-dealers owned by CPA Firms. The ownership of these broker-dealers shall be comprised of both dually registered 1st Global representatives and passive owners/partners of the CPA Firms.

B. Partners of the CPA Firm are owners of a separate entity registered as a broker-dealer pursuant to Section 15(b) of the Exchange Act.

We respectfully submit that there is no tangible difference between this proposed ownership and the no-action request in part (IV)(A) above. If the individual partners of the CPA Firm are passive owners of the broker-dealer, instead of the CPA Firm itself, we submit that the partners still need not be registered representatives. If the broker-dealer is in compliance with the Commissions rules and regulations as to whom is registered, then it should not matter that the

underlying owners are partners in a CPA Firm, especially when considering the corresponding aforementioned fiduciary, ethical, and disclosure obligations placed upon CPAs by their respective state regulatory authorities. Once again, as discussed above, all owners of the broker-dealers, both CPA partners and any other owners, will comply with any applicable Commission and/or NASD rules and regulations relative to such passive ownership positions.

Therefore, for the same reasons presented in section (IV)(A) above, we respectfully request the assurance of the Staff that it will not recommend enforcement action to the Commission if 1st Global pays commissions to broker-dealers owned by Partners of CPA Firms.

## CONCLUSION

In each of the scenarios presented above, all securities activities will be engaged in by a registered broker-dealer or registered representative of a broker-dealer, all personnel engaged in such securities activities would be fully subject to the securities laws and applicable rules of self-regulatory organizations, and a registered broker-dealer would control, properly supervise, and be responsible for all registered representatives participating in the brokerage services. Accordingly, based on strict adherence to the foregoing representations concerning the commission payments, partnership agreements and broker-dealer ownership by all parties involved, it is our view that the scenarios presented do not violate Section 15 of the Exchange Act.

Please stamp and return the enclosed copy of this letter in the postage paid envelope provided to confirm your receipt of this request. As required by Release No. 33-6269, we have enclosed seven copies of this letter, together with the original.

If you should require additional information or clarification do not hesitate to call the undersigned at (609) 895-7255.

Thank you for your prompt consideration of this no-action request.

Sincerely,
STARK & STARK, PC

By: _____
Thomas D. Giachetti