



DIVISION OF
CORPORATION FINANCE

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

March 4, 2015

Steve Korotash, Esq.
K&L Gates LLP
1717 Main Street, Suite 2800
Dallas, Texas 75201

**Re: In the Matter of H.D. Vest Investment Securities, Inc.
Waiver of Disqualification under Rule 506(d)(2)(ii) of Regulation D
Securities Exchange Act Release No. 34-74429, March 4, 2015
Administrative Proceeding File No. 3-16419**

Dear Mr. Korotash:

This responds to your letter dated March 4, 2015 ("Waiver Letter"), written on behalf of H.D. Vest Investment Securities, Inc. ("H.D. Vest") and constituting an application for a waiver of disqualification under Rule 506(d)(2)(ii) of Regulation D under the Securities Act of 1933. In the Waiver Letter, you requested relief from any disqualification that may arise as to H.D. Vest under Rule 506 of Regulation D by virtue of the Commission's order entered today in In the Matter of H.D. Vest Investment Securities, Inc., Release No. 34-74429, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (the "Order").

Based on the facts and representations in the Waiver Letter, and assuming H.D. Vest complies with the Order, the Division of Corporation Finance, pursuant to delegated authority, has determined that H.D. Vest has made a showing of good cause under Rule 506(d)(2)(ii) of Regulation D that it is not necessary under the circumstances to deny reliance on Rule 506 of Regulation D by reason of the entry of the Order. Accordingly, the relief requested in the Waiver Letter regarding any disqualification that may arise as to H.D. Vest under Rule 506 of Regulation D by reason of the entry of the Order is granted. Any different facts from those represented would be grounds for revocation. In addition, this waiver is expressly conditioned on compliance with the Order.

Very truly yours,

Sebastian Gomez Abero
Chief, Office of Small Business Policy
Division of Corporation Finance

March 4, 2015

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VIA E-mail and Federal Express

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U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: In the Matter of H.D. Vest Investment Securities, Inc. (FW-03770)

Dear Mr. Gomez Abero:

This letter is submitted on behalf of our client, H.D. Vest Investment Securities, Inc., d/b/a H.D. Vest Investment Services (“H.D. Vest”), the settling respondent in the above-captioned administrative proceeding brought by the Securities and Exchange Commission (the “Commission”). H.D. Vest hereby requests, pursuant to Rule 506(d)(2)(ii) 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 apply as a result of the entry of an order against H.D. Vest (the “Order”) on March 4, 2015, which is described below.

BACKGROUND

The staff of the Division of Enforcement engaged in settlement discussions with H.D. Vest in connection with the above-captioned administrative proceeding. The staff alleged that H.D. Vest: 1) failed reasonably to supervise Lewis J. Hunter (“Hunter”), a former H.D. Vest representative, for purposes of Section 15(b)(4)(E) of the Securities Exchange Act of 1934 (“Exchange Act”) because H.D. Vest failed to implement reasonable policies and procedures concerning the review of third-party disbursements to registered representatives from customer brokerage accounts; 2) did not perform required reserve formula calculations or maintain cash and/or qualified securities in a reserve bank account under Section 15(c)(3) of the Exchange Act and Rule 15c3-3 thereunder for amounts H.D. Vest determined it owed to customers subsequent to the above-referenced

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misappropriations; and 3) failed to maintain all required business-related e-mails in violation of certain books and records provisions.

As a result of these discussions, H.D. Vest submitted an Offer of Settlement (the "Offer") that was presented to the Commission and which the Commission has determined to accept. In the Offer, H.D. Vest agreed to consent to the issuance of the Order making certain findings and to consent to the jurisdiction of the Commission over it and the subject matter solely for purposes of that action.

The Order, which was issued in March 2014 pursuant to Exchange Act Sections 15(b) and 21C, found that H.D. Vest failed reasonably to supervise Hunter with a view to preventing and detecting his violations of the federal securities laws. As part of a fraudulent scheme from late 2010 through October 2011, Hunter conducted unauthorized and deceptive wire transfers from customer brokerage accounts to bank accounts and other brokerage accounts in the name of an unrelated company with which he was affiliated. At the time of Hunter's actions, H.D. Vest did not identify the unauthorized and deceptive wire transfers and did not discover Hunter's misappropriation of customer funds. The Order finds that H.D. Vest's policies and procedures were not reasonably designed to prevent or detect Hunter's misconduct.

The Order also finds that when H.D. Vest determined that it owed money to customers due to its representatives' actions, the firm was required by the provisions of Exchange Act Section 15(c)(3) and Rule 15c3-3 thereunder to make a reserve formula calculation and any requisite reserve bank account deposit.

The Order also makes findings regarding H.D. Vest's e-mail policy which allowed registered representatives to communicate with customers on investment-related matters using non-H.D. Vest e-mail accounts, as long as registered representatives copied or forwarded those customer communications to H.D. Vest. According to the Order, H.D. Vest learned that certain registered representatives failed to forward investment-related customer e-mails to the firm. Because H.D. Vest did not obtain and preserve those customer communications, H.D. Vest failed to maintain all required business-related e-mails under Rule 17a-4(b)(4).

The Order directed H.D. Vest to cease and desist from committing or causing any violations and any future violations of Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-3 and 17a-4(b)(4) promulgated thereunder. The Order also censured H.D. Vest and required it to pay a civil money penalty of \$225,000. H.D. Vest was also ordered to comply with the undertakings enumerated in the Order, including the undertaking to retain an Independent Compliance Consultant within 60 days of the issuance of the Order.

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DISCUSSION

H.D. Vest 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. H.D. Vest is concerned that, should it be deemed to be an issuer, predecessor of the issuer, affiliated issuer, general partner or managing member of an issuer, solicitor, or 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), H.D. Vest and other entities with which H.D. Vest is associated in one of those listed capacities and which rely upon or may rely upon this offering exemption 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* 230.506(d)(2)(ii).

H.D. Vest requests that the Commission waive any disqualifying effects that the Order would have under Rule 506 of Regulation D as a result of its entry of the Order as to H.D. Vest, on the following grounds:

1. The disqualification of H.D. Vest from the exemptions under Rule 506 of Regulation D would be unduly severe given the nature of the conduct addressed in the Order. The firm's conduct addressed in the Order did not involve securities offerings generally, or the suitability of investments more specifically, nor did it result in a scienter-based violation. Rather, the conduct in the Order relates to H.D. Vest's alleged failure to implement policies and procedures that would reasonably be expected to prevent and detect Hunter's disbursements from customer brokerage accounts; to perform a reserve formula calculation; and maintain certain e-mail records.
2. Hunter, whose misconduct was the direct cause of any harm to investors resulting from this matter, was terminated by H.D. Vest in October 2011, and the firm promptly reported the information it had to Commission enforcement staff.
3. H.D. Vest has taken meaningful steps to address the conduct described in the Order, many of which were made soon after Hunter's inappropriate conduct was discovered. Prior to the issuance of the Order, H.D. Vest made numerous improvements in its supervisory system. In fact, years ago, at the very outset of the investigation, the firm voluntarily retained a consultant with expertise in the handling of customer funds. Based upon the recommendations of this consultant, and H.D. Vest's own review of its procedures, H.D. Vest

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implemented a number of new procedures concerning third-party distributions, which have proved effective in detecting and halting suspected threats to customer funds. Enhancements were made soon after discovering the inappropriate conduct by Hunter and others that was carried out from at least December 2007. Some of these changes include:

- a. calling customers to verify all third party distributions over certain thresholds;
 - b. requiring that every wire transfer of funds from a customer account be reviewed by supervisory personnel;
 - c. verifying signatures on all wire transfer requests against the customer's signature on the account application or previously submitted account document;
 - d. reviewing for recent address changes prior to a third-party disbursement;
 - e. determining whether the recipient is associated with the representative on the account or any of the representative's disclosed outside business activities;
 - f. enhancing surveillance reporting (e.g., wire activity report, address comparison reports, brokerage payee report) to detect suspicious instances or patterns of disbursement activity;
 - g. performing other customer identification measures (e.g., requiring a voided check for ACH transactions); and
 - h. adding numerous other review and audit steps for disbursements and address changes.
4. Moreover, throughout its history, H.D. Vest has taken every instance of misappropriation seriously, investigated the circumstances of each and voluntarily furnished the developed facts to regulatory, and often, criminal authorities. Indeed, H.D. Vest's investigation in response to red flags led to the Commission's own action against Hunter personally. In instances in which the Commission staff has pursued an investigation, including the Hunter matter, H.D. Vest has cooperated fully with the staff in the conduct of its investigation. In addition, H.D. Vest has agreed to settlement terms requiring that, among other things: (a) the firm retain another compliance consultant ("Consultant") to conduct a review of the firm's maintenance and review of electronic communications with customers and the handling of H.D. Vest customer funds by registered representatives; (b) the firm direct the

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Consultant to submit an Initial Report to H.D. Vest and to the Commission staff describing the review performed, the conclusions reached, and any recommendations deemed necessary to make the policies and procedures adequate; (c) the firm direct the Consultant to complete its review and submit a written final report to Commission staff describing the review conducted, the conclusions reached and the recommendations made by the Consultant, and how H.D. Vest is implementing the Consultant's final recommendations; (d) the firm take all necessary and appropriate steps to adopt and implement all recommendations contained in the Consultant's Final Report; and (e) the firm certify in writing its compliance with the undertakings.

5. Should this waiver be granted, until such time as H.D. Vest provides to the Commission the certification described in Section III(18)(g) of the Order, H.D. Vest agrees to provide written disclosure to investors describing the nature of the Order in any offering claiming an exemption under Rule 506 of Regulation D.
6. The disqualification of H.D. Vest 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 in the future, H.D. Vest or any of its affiliates as a placement agent in transactions that rely on this exemption. In the past, issuers have relied on H.D. Vest to participate as a placement agent in offerings of securities conducted in reliance on the exemption provided by Rule 506 of Regulation D. For example, from January through July 2014, H.D. Vest facilitated more than 30 transactions (totaling over \$1.5 million) in a single offering by the issuer AEI National Income Property Fund VIII. The disqualification of H.D. Vest and any of its affiliates from relying on the exemption under Rule 506 of Regulation D would negatively impact H.D. Vest's ability to serve as a placement agent to issuers and may ultimately impair the ability of H.D. Vest's clients to raise investment capital. Should this waiver be granted, H.D. Vest intends to rely in the future, in servicing AEI National and any other clients that may rely on H.D. Vest as a placement agent, on the exemption under Rule 506 of Regulation D.

In light of the grounds for relief discussed above, we believe that disqualification is not necessary under the circumstances and that H.D. Vest has shown good cause that relief should be granted. Accordingly, we respectfully urge the Commission, pursuant to Rule 506(d)(2)(ii) of Regulation D, to waive the disqualification provisions in Rule 506 of

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Regulation D to the extent they would apply as a result of the entry of the Order as to H.D. Vest.¹

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

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Korotash". The signature is fluid and cursive, with the first name "Steve" written in a larger, more prominent script than the last name "Korotash".

Stephen J. Korotash

SJK/jd

¹ 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).