

permitted to invest in or make loans to corporations, partnerships, and joint ventures that do not meet the portion of the definition of "company controlled by the parent company" in rule 3a-5(b)(3)(i) solely because they are excluded from the definition of investment company by section 3(c)(2), 3(c)(3), 3(c)(4) or 3(c)(6) of the Act, provided that any such entity excluded from the definition of investment company under section 3(c)(6) will not be engaged primarily, directly or through majority owned subsidiaries in one or more of the businesses described in section 3(c)(5) of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA-1639/803-106]

KPMG Investment Advisors; Notice of Application

June 17, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act").

APPLICANT: KPMG Investment Advisers ("KPMGIA").

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 203A(c) from section 203A(a).

SUMMARY OF APPLICATION: Applicant requests an order to permit it to continue to be registered with the SEC as an investment adviser.

FILING DATES: The application was filed on March 7, 1997, and amended on June 5, 1997. By letter dated June 17, 1997, applicant's counsel stated that an additional amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 7, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests

should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 4200 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Jennifer S. Choi, Special Counsel, at (202) 942-0725 (Division of Investment Management, Task Force on Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a general partnership owned by KPMG Peat Marwick LLP ("KPMG"). KPMG provides accounting and related services to individuals and entities in the private and public sectors throughout the United States.

2. Since December 13, 1994, applicant has been registered with the SEC as an investment adviser. Applicant's principal place of business is in Minneapolis, Minnesota, and it has approximately 32 registered advisory representatives conducting business from 19 offices located in 13 states and Puerto Rico.

3. Applicant is responsible for the investment advice component of the personal financial planning services offered by KPMG. Applicant supervises the delivery of investment advice by partners and professional employees of KPMG in connection with personal financial planning services offered by KPMG to its clients, and the scope, content and delivery of such advice is subject to quality control standards prescribed and monitored by applicant.

4. Applicant does not manage or exercise discretionary authority over clients' accounts or maintain custody of clients' funds or securities. In instances where clients seek or would benefit from specific advice on securities investments, applicant may present the client with a list of investment advisers that specialize in providing such advice from which the client may choose.

5. Applicant provides generic advice on securities of all types but does not recommend specific securities. At the request of a client, applicant would provide an analysis of the attributes of a specific security without recommendation as to whether a client should buy, sell or hold the security. With regard to mutual funds, applicant

may assist a client in identifying categories of funds that match the client's individual profile. Applicant does not select mutual funds for clients. If a client's needs dictate, applicant would, using published ranking data, assist the client in selecting several mutual funds in each investment category for further consideration. The client would then have the opportunity to compare the investment philosophy, past performance, and other features and services of the funds before making the investment decision. Applicant would discuss the use of professional money managers with clients with an investable asset base in excess of \$250,000. Applicant also provides asset allocation services and ongoing performance evaluations.

6. Applicant's fees are generally based on actual or estimated hourly charges, which vary according to the staff classification, experience and location of the individual providing the service.

Applicant's Legal Analysis

1. Under section 203A(a) of the Advisers Act, which would become effective July 8, 1997, as a consequence of the enactment on October 11, 1996 of the National Securities Markets Improvement Act of 1996,¹ an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the SEC unless the adviser (i) has assets under management of not less than \$25 million (or such higher amount as the SEC may, by rule, deem appropriate), or (ii) is an adviser to an investment company registered under the Investment Company Act of 1940, as amended. The SEC is directed by section 203(h) of the Advisers Act to cancel the registration of any adviser that no longer meets the criteria for registration.

2. Applicant states that it does not meet the statutory test of having \$25 million of assets under management. Applicant also states that it does not act as an investment adviser to any registered investment company. Applicant also states that it would not qualify for exemption from the prohibition on SEC registration as provided in rule 203A-2 under the Advisers Act. Applicant states that it would not be able to rely on the rule to relieve the burden of multi-state registration because it does not qualify

¹ The effective date of the National Securities Markets Improvement Act of 1996, originally April 9, 1997, was extended to July 8, 1997 by Pub. L. No. 105-8 (Mar. 31, 1997).

for any of the four exemptions listed in rule 203A-2. Applicant, therefore, requests exemptive relief.

3. Under section 203A(c), the SEC has the authority to permit an investment adviser to register with the SEC if the application of the prohibition would be unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of section 203A. For the reasons discussed below, applicant believes that the standards for exemptive relief under section 203A(c) are met.

4. Applicant believes that Congress in adopting section 203A intended the SEC to grant these exemptions to advisers having a "national or multistate practice" and that "[l]arger advisers, with national businesses, should be registered with the [SEC] and be subject to national rules."² Applicant notes that the Advisers Act gives the SEC primary responsibility to regulate advisers that remain registered with the SEC by preempting certain state laws with respect to those advisers.

5. Applicant notes that the SEC's release adopting the rules implementing the Coordination Act stated that Congress recognized that "some advisers that do not have \$25 million of assets under management may still have national businesses."³ As a result, the SEC was given the "authority to exempt advisers from the prohibition on [SEC] registration if the application of the prohibition would be unfair, a burden on interstate commerce or otherwise inconsistent with the purposes of section 203A."⁴

6. Applicant submits that the nature of its business consists of a national or multistate practice that Congress intended to be regulated by the SEC and not at the state level. Applicant states that it currently supervises services provided through 19 offices in 13 states by approximately 32 advisory representatives. Applicant believes that although it does not provide discretionary management services to its clients, the services provided are national in scope.

7. Applicant asserts that the purpose of the \$25 million test was to limit SEC regulation of advisers likely to be subject to multiple state registration requirements. Applicant believes that if the requested relief is not granted, it would continue to be subject to a multitude of state requirements, a result which is inconsistent with the purpose

of section 203A to preempt certain state laws insofar as they relate to advisers with a multi-state practice.

8. Applicant further submits that the national de minimis standard embodied in section 222(d) of the Advisers Act provides little or no relief from the burdens of multi-state registration. Pursuant to section 222(d), a state may not require applicant to register as an investment adviser if applicant does not have a place of business located within that state and, during the preceding 12 month period, had fewer than 6 clients who are residents of that state. Applicant states that it has had, during the past 12 months, at least 6 state-resident clients in each of the 17 states and the District of Columbia in which applicant does not currently maintain an office. As a result, applicant believes that it currently would be required to register in 30 states and the District of Columbia, including the 13 states in which applicant maintains an office. Even after giving effect to all state-adopted exemptions that are more liberal than the national de minimis standard, applicant represents that, as of July 8, 1997, it would be required to register in 30 states and the District of Columbia.

9. Finally, applicant also submits other grounds for granting an exemption under section 203A. Applicant believes that prohibiting it from registering with the SEC would be unfair or a burden on interstate commerce in that advisers with fewer clients and a much more local practice than applicant's national presence would enjoy the benefits of state law preemption, while applicant would be compelled to expend the considerable resources required to constantly monitor and enforce compliance with the state regulations to which it would be subject.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22712; 811-5210]

The Stanger Fund, L.P.; Notice of Application

June 17, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Stanger Fund, L.P.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The applicant was filed on April 14, 1997, and an amendment thereto on June 13, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 11, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicant, 1129 Broad Street, Shrewbury, N.J. 07702.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942-0584, or Elizabeth G. Osterman, Assistant Director, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end, non-diversified management investment company organized as a limited partnership under the laws of the State of Delaware. SEC records indicate that on June 17, 1987, applicant filed a notification of registration on Form N-8A pursuant to section 8(a) of the Act.

2. Applicant abandoned its intention to operate before it received any assets. Applicant never issued securities.

3. Applicant does not have securityholders, debts, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant is not engaged, nor does it propose to engage, in any business

² S. Rep. No. 293, 104th Cong. 2d Sess. 5 (1996).

³ *Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Rel. No. 1633 (May 15, 1997), 62 FR 28112 (May 22, 1997).

⁴ *Id.*