

the Securities Exchange Act of 1934. Prior to November 28, 1997, Salomon Brothers was wholly owned by Salomon Inc and Smith Barney was wholly owned by Travelers Group Inc. ("Travelers Group"), which were unaffiliated holding companies. On that date, pursuant to an agreement and plan of merger, a newly formed, wholly-owned subsidiary of Travelers Group merged with and into Salomon Inc (which owned 100% of Salomon Brothers) which became a wholly-owned subsidiary of Travelers Group and was renamed Salomon Smith Barney Holdings Inc. ("SSB Holdings"). Immediately thereafter, Smith Barney Holdings Inc., another wholly-owned subsidiary of Travelers Group and the 100% owner of Smith Barney, was merged into SSB Holdings. As a result, Salomon Brothers and Smith Barney became both wholly-owned subsidiaries of Travelers Group. Following that merger, SSB Holdings conducted the underwriting of DECS Trusts and similar trusts through Smith Barney rather than through Salomon Brothers.<sup>3</sup>

2. On September 1, 1998, Salomon Brothers was merged into Smith Barney, creating Salomon Smith Barney to conduct the combined operations of the previously separate entities. Salomon Smith Barney is the legal successor by merger to Salomon Brothers.

3. On October 21, 1997, the Commission issued the Prior Order, which is limited by its terms to Salomon Brothers and any Salomon-Sponsored Trusts. The Prior Order exempts (a) all Salomon-Sponsored Trusts from section 12(d)(1) of the Act to the extent necessary to permit other registered investment companies to own more than 3% of the total outstanding voting stock of any Salomon-Sponsored Trust and other investment companies having the same investment adviser, and companies controlled by such investment companies, to own more than 10% of the securities of any Salomon-Sponsored Trust, (b) all Salomon-Sponsored Trusts from section 14(a) of the Act to the extent necessary to permit the Trusts to be organized without \$100,000 in net worth, and (c) all Salomon-Sponsored Trusts and Salomon Brothers from section 17(a) of the Act to the extent necessary to permit Salomon-Sponsored Trusts to purchase U.S. Government securities from Salomon Brothers at the time of a Salomon-Sponsored Trust's initial issuance of securities.

4. The request order would extend the relief granted in the Prior Order to Salomon Smith Barney and any Smith

Barney-Sponsored Trusts and SSB-Sponsored Trusts.

#### **Applicant's Condition**

Salomon Smith Barney will be bound by all of the conditions of the Prior Order and Smith Barney-Sponsored Trusts and SSB-Sponsored Trusts seeking to rely on the amended order will be substantially as described in the Prior Order and will comply with all conditions therein.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. IC-23682; 812-11498]

#### **Stephens Group, Inc. et al.; Temporary Order and Notice of Application**

February 5, 1999.

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

**ACTION:** Temporary order and notice of application for permanent order under section 9(c) of the Investment Company Act of 1940 (the "Act").

**SUMMARY:** Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to a securities-related injunction entered in 1978, until the Commission takes final action on the application for a permanent order or, if earlier, April 5, 1999. Applicants also have requested a permanent order.

**APPLICANTS:** Stephens Group, Inc. ("Stephens"), Stephens Inc. ("SI"), and Jackson T. Stephens ("Mr. Stephens").

**FILING DATE:** The application was filed on February 5, 1999.

**HEARING OR NOTIFICATION OF HEARING:** Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 1, 1999 and should be accompanied by proof of service on applicants 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary. An order granting the application will

be issued unless the Commission orders a hearing or extends the temporary exemption.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549; Applicants, 111 Center Street, Little Rock, AR 72201.

**FOR FURTHER INFORMATION CONTACT:** Kathleen L. Knisely, Staff Attorney, at (202) 942-0517, or Mary Kay Frech, Branch Chief, at (202) 942-0564, Division of Investment Management, Office of Investment Company Regulation.

**SUPPLEMENTARY INFORMATION:** The following is a temporary order and a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

#### **Applicants' Representations**

1. Stephens is a Arkansas corporation formed in 1933. Stephens, directly and through its subsidiaries, engages in a broad-based merchant and investment banking business. Stephens Holding Company ("Stephens Holding"), a wholly owned subsidiary of Stephens, owns SI, a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act") and an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act").

2. Mr. Stephens served as Stephens' chief executive officer and chairman of the board of directors from 1956 until 1986. Mr. Stephens currently serves as chairman of the board of directors of Stephens and Stephens Holding. Mr. Stephens is not an officer or director of SI.<sup>1</sup>

3. SI has served as principal underwriter and administrator for registered investment companies ("funds") since 1988. SI currently serves in those capacities for three sets of bank proprietary funds: Stagecoach Funds advised by Wells Fargo Bank, Masterworks Funds advised by Barclays Global Investors, and Nations Funds advised by NationsBanc Advisors, Inc., a wholly-owned subsidiary of Bank of America (collectively, "Bank Funds"). The Bank Funds include 119 individual funds with total assets in excess of \$71 billion.

4. It is anticipated that, in connection with a recent merger between Wells Fargo & Company and Norwest Corporation, certain Stagecoach Funds

<sup>1</sup> Mr. Stephens is a registered representative with SI and would be considered an employee and associated person of SI.

<sup>3</sup> See note 2, *supra*.

may be merged with certain funds advised by subsidiaries of Norwest Corporation. In addition, in connection with merger of BankAmerica and NationsBank, Pacific Horizon Funds, the proprietary funds of BankAmerica, may be merged with Nations Funds. The two mergers are collectively referred to in this notice as the "Banks Funds Merger." SI has been proposed to serve as a principal underwriter and administrator to the merged funds.

5. In 1997, Stephens Capital Management, a division of SI, also began serving as a subadviser to Stephens Intermediate Bond Fund, a fund advised by Diversified Investment Advisors, Inc. ("Subadvised Fund"). The Subadvised Fund has approximately \$21 million in assets.

6. On March 18, 1978, Stephens consented to judgment of permanent injunction issued by the U.S. District Court for the District of Columbia in a matter brought by the Commission ("1978 Injunction").<sup>2</sup> The Commission alleged that Stephens and Mr. Stephens acted as part of a group of persons, within the meaning of section 13(d) of the Exchange Act, for the purpose of acquiring, holding or disposing of the common stock of Financial General Bankshares Inc., a bank holding company, and did not make the filings required by section 13(d) of the Exchange Act. In consenting to the 1978 Injunction, Stephens undertook, among other things, to implement and maintain certain procedures designed to prevent future violations of section 13(d) of the Exchange Act. SI disclosed the 1978 Injunction on both its Form ADV filed under the Advisers Act and Form BD filed under the Exchange Act.<sup>3</sup>

7. Applicants state that they did not seek an order under section 9(c) around the time of the 1978 Injunction because SI did not begin to engage in any fund-related activities until 1988. Applicants also state that they did not become aware of the section 9(a) violation until late November 1998, when the violation was discovered by counsel in preparation for the Bank Funds Merger.

8. Since the 1978 Injunction, Stephens has been involved in a number of securities related administrative proceedings with the Commission, state securities regulators and self-regulatory organizations. Three of these

proceedings involved SI's investment advisory and fund-related activities. In 1997, SI consented to the imposition of a cease-and-desist order by the Commission that found, among other things, that SI violated the Advisers Act by failing to provide its clients with adequate disclosure concerning principle transactions in securities.<sup>4</sup> In 1996, SI entered into a consent order with the National Association of Securities Dealers, Inc. ("NASD") accepting, among other things, a finding by the NASD that SI failed to exercise reasonable supervision over its representatives in connection with wholesale marketing of two closed-end funds.<sup>5</sup> In 1995, SI entered into an administrative settlement order with the Securities Division of the Massachusetts Secretary of State in connection with SI's failure not to sell shares of an open-end fund to 23 purchasers in Massachusetts prior to registration in Massachusetts.<sup>6</sup> Applicants state that none of the other administrative proceedings, all of which are listed in an exhibit to the application, involved Stephens' investment advisory or fund-related activities.

#### Applicants' Legal Analysis

1. Section 9(a) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as a principal underwriter or investment adviser for a registered investment company. Applicants state that, as a result of the 1978 Injunction, Stephens and Mr. Stephens may be prohibited by section 9(a) from serving as a principal underwriter or investment adviser to funds.

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the applicant, are unduly or disproportionately severe or that the conduct of applicant has been such as not to make it against the public interest or the protection of investors to grant the application.

3. Applicants seek temporary and permanent orders under section 9(c) with respect to the 1978 Injunction to permit SI to continue to serve as principal underwriter and investment adviser to funds, including the Bank

Funds and the Subadvised Fund. As noted above, applicants state that they did not seek an order under section 9(c) around the time of the 1978 Injunction because SI did not begin to engage in any fund-related activities until 1988. Applicants also state that they did not become aware of the section 9(a) violation until late November 1998, when the violation was discovered by counsel in preparation for the Bank Funds Merger.

4. SI has undertaken to develop procedures designed to prevent violations of section 9(a) by SI and its affiliated persons. Applicants also have agreed that, before any permanent relief may be granted pursuant to the application, SI's general counsel must attest that he has reviewed SI's compliance policies and procedures relating to compliance with section 9(a); that he reasonably believes that the policies and procedures have been fully implemented; and that the policies and procedures are designed reasonably to prevent violations of section 9(a) by SI and its affiliated persons.

5. Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe. Applicants assert that SI's inability to act as a principal underwriter to the Bank Funds and as a subadviser to the Subadvised Fund would result in the Funds and their shareholders facing potentially severe hardships. Applicants state that the Bank Funds would incur significant time, effort and expense to replicate the extensive selling network established by SI, and the disruption may have a significant effect on the management and expense ratios of the Bank Funds. Applicants also state that the Subadvised Fund would face similar consequences if required to change the subadviser. Applicants assert that representatives of the Bank Funds and the Subadvised Funds have expressed satisfaction with the services provided by SI and a desire that SI continue to provide the services.

6. Applicants state that the boards of directors, including the disinterested directors, of the Bank Funds and the Subadvised Funds ("Boards") have been apprised of Stephens' section 9(a) violation. Applicants represent that before any permanent relief is granted, the Boards will consider whether retaining SI as a principal underwriter (in the case of Bank Funds) or as a subadviser (in the case of the Subadvised Fund) is in the best interests of the Funds and their shareholders. Applicants further represent that the boards of directors of the funds with which certain of the Bank Funds are

<sup>2</sup> *SEC v. BCCI, et al.* (U.S.D.Ct., D.C. March 18, 1978) (Final Judgment of Permanent Injunction and Other Equitable Relief).

<sup>3</sup> In 1980, Stephens and Mr. Stephens also sought and received relief from the Commission removing a bar arising from the 1978 Injunction on their ability to rely on Regulation A under the Securities Act of 1933. Letter from George A. Fitzsimmons, Secretary, SEC to Larry W. Burks (Nov. 17, 1980).

<sup>4</sup> Advisers Act Release No. 1666 (Sept. 16, 1997).

<sup>5</sup> Letter of Acceptance, Waiver and Consent No. C059600 (Oct. 14, 1996).

<sup>6</sup> In the Matter of Stephens, Inc., No. E-94-108 (Feb. 16, 1995) (settlement order).

expected to merge will consider the 1978 Injunction in determining whether to approve the proposed mergers.

7. Applicants assert that if SI were prohibited from providing services to the Bank Funds and the Subadvised Fund, the effect on SI's business and employees would be severe. Applicants state that SI has committed substantial resources over the past 10 years to establishing expertise in servicing funds, has developed extensive selling networks, and has over 80 employees dedicated to providing fund distribution and subadvisory services.

8. Applicants also assert that their conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a). Applicants note that over 20 years have passed since the 1978 Injunction. Applicants also note that the 1978 Injunction did not in any way involve fund-related activities. Applicants further state that since the 1978 Injunction, neither SI nor any affiliated person of SI has engaged in conduct that would result in disqualification under section 9(a) of the Act. Applicants assert that SI has implemented policies and procedures designed to improve its securities law compliance.

9. Applicants state that Mr. Stephens has at no time in the past been involved in SI's fund-related activities and will not be involved in that business in the future. Applicants also note that one of the conditions to the requested relief provides that Mr. Stephens will not be involved in SI's business of providing services to funds, and requires applicants to develop appropriate procedures.

#### Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order granting the requested relief:

1. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

2. Before any permanent relief is granted pursuant to the application, SI's General Counsel will attest that he has reviewed SI's compliance policies and procedures relating to compliance with

section 9(a) of the Act; that he reasonably believes that the policies and procedures have been fully implemented; and that the policies and procedures are designed reasonably to prevent violations of section 9(a) by SI and its affiliated persons.

3. Mr. Stephens will not be involved in SI's business of providing services to registered investment companies. Applicants will develop procedures designed reasonably to assure compliance with this condition.

#### Temporary Order

The Division has considered the matter and, without necessarily agreeing with all of the facts represented or all of the arguments asserted by applicants, finds, in accordance with 17 CFR 200.30-5(a)(7), that it appears that (i) the prohibitions of section 9(a), as applied to applicants, may be unduly or disproportionately severe, (ii) applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the temporary exemption, and (ii) granting the temporary exemption would protect the interests of the investment companies served by applicants by allowing time for the orderly consideration of the application for permanent relief.

Accordingly, *it is hereby ordered*, under section 9(c), that applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the 1978 Injunction, subject to the conditions in the application, until the Commission takes final action on the application for a permanent order or, if earlier, April 5, 1999.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

##### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Washington Real Estate Investment Trust, Shares of Beneficial Interest, \$0.01 Par Value) File No. 1-6622

February 5, 1999.

Washington Real Estate Investment Trust ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the

Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security of the Company has been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8-A which became effective on December 4, 1998, on the New York Stock Exchange, Inc. ("NYSE"). Trading of the Company's Security on the NYSE commenced at the opening of business on January 4, 1999, and concurrently therewith the shares were suspended from trading on the Amex.

The Company has complied with Rule 18 of the Amex by filing with the Exchange a certified copy of preambles and resolutions adopted by the Company's Board of Trustees authorizing the withdrawal of its Security from listing on the Amex and by setting forth in detail to the Exchange the reasons for the proposed withdrawal, and the facts in support thereof. In making the decision to withdraw its Security from listing on the Amex, the Company considered the potential of increasing its shareholder base and increasing the liquidity of its shares by listing its shares on the NYSE. The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Security from listing on the Amex.

The Company's application relates solely to the withdrawal from listing of the Company's Security from the Amex and shall have no effect upon the continued listing of the Security on the NYSE. By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person, may on or before, February 26, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the