

ATTORNEY GENERAL OF THE STATE OF NEW YORK
INVESTOR PROTECTION BUREAU

In the Matter of

Assurance No. 20-075

**Investigation by LETITIA JAMES,
Attorney General of the State of New York, of**

SOLIUM FINANCIAL SERVICES LLC

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (the “OAG”) participated in an investigation of unregistered broker activity of Solium Financial Services LLC (“Respondent” or “SFS”) conducted by a multistate task force, coordinated among members of the North American Securities Administrators Association, with Alabama serving as the “Lead State” (collectively, the “State Regulators”). This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s inquiry and the relief agreed to by the OAG and Respondent (collectively, the “Parties”).

OAG’S FINDINGS

1. SFS is a broker with a principal place of business at 50 Tice Boulevard, Suite A-18 Woodcliff Lake, New Jersey 07677. SFS, CRD No. 147933, is a subsidiary of Solium Holdings USA LLC.

2. On May 1, 2019, Morgan Stanley, a Delaware corporation with its principal place of business in New York, NY, acquired Solium Capital Inc., which included its subsidiaries

Solium Holdings USA LLC and SFS (hereinafter collectively with SFS and its affiliates, “Solium”).

3. Solium provides equity plan administration software to employers. Employee-participants of employer-sponsored equity plans that utilize Solium’s software can view and track the options and shares issued to them by their employers.

4. If an employee-participant residing in the State of New York requests an exercise or liquidation through Solium’s software, SFS transmits an order in the relevant account at a clearing broker registered in the State of New York and then routes the proceeds to the employee-participant’s account. SFS receives a share of the commissions earned on these transactions.

5. SFS represented that it does not provide advice to employee-participants or solicit transactions in any manner.

6. SFS registered as a broker with the OAG on February 1, 2016.

7. From at least January 1, 2009 to February 1, 2016, SFS transmitted orders for employee-participants residing in the State of New York without being registered as a broker with the OAG.

8. After the acquisition by Morgan Stanley, SFS self-reported to state securities regulators that it had transmitted certain securities orders in certain jurisdictions at a time when SFS was not registered as a broker-dealer in those jurisdictions.

9. During the period from at least January 1, 2009 to February 1, 2016, SFS acted as a “broker” in the State of New York as the term “broker” is defined by the General Business Law (“GBL”) § 359-e.

10. GBL § 359-e (3) states that it is unlawful for a person to transact business in the State of New York as a broker, dealer, or salesperson unless such person is registered with the OAG.

11. By engaging in the conduct set forth above, SFS acted as an unregistered broker in the State of New York in violation of Article 23-A of the GBL (the “Martin Act”), including GBL § 359-e and 13 NYCRR 10, and Executive Law § 63(12).

12. SFS has provided substantial and timely cooperation during the referenced investigation.

13. SFS, without admitting or denying the OAG’s Findings contained herein, voluntarily consents to the entry of this Assurance.

14. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of the Martin Act, including GBL § 359-e and 13 NYCRR 10.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

15. General Injunction: Respondent shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to GBL § 359-e and 13 NYCRR 10, and expressly agrees and acknowledges that any such conduct is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 14, *supra*, in addition to any other appropriate investigation, action, or proceeding.

16. Monetary Relief Amount: SFS shall pay to the State of New York Twenty-One Thousand and Fifty Dollars (\$21,050.00) within ten (10) business days of the execution of this Assurance. The payment shall be made by wire transfer payable to the “State of New York” pursuant to wire instructions provided by OAG and shall reference Assurance No. 20-075.

MISCELLANEOUS

Subsequent Proceedings:

17. Respondent expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 27, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. the OAG may use statements, documents or other materials produced or provided by the Respondent prior to or after the effective date of this Assurance;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue;
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

18. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to the OAG the reasonable cost, if any, of obtaining

such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance:

19. This Assurance is not intended for use by any third party in any other proceeding.
20. This Assurance is not intended, and should not be construed, as an admission of liability by the Respondent.
21. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondent. Respondent shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No Party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.
22. Nothing contained herein shall be construed as to deprive any person of any private right under the law.
23. This Assurance is not intended to form the basis for any disqualification from registration as a broker-dealer, investment adviser, or issuer under the laws, rules, and regulations of the State of New York and waives any disqualification from relying upon the securities registration exemptions or safe harbor provisions to which SFS or any of its affiliates may be subject under the laws, rules and regulations of the State of New York.
24. Nothing in this Assurance is intended to form the basis for any disqualification under the laws of the State of New York, any other state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands; under the rules or regulations of any securities or commodities

regulator or self-regulatory organizations (SROs); or under the federal securities laws, including but not limited to, Section 3(a)(39) of the Securities Exchange Act of 1934, Regulation A, Rules 504 and 506 of Regulation D under the Securities Act of 1933, and Rule 503 of Regulation CF. Further, nothing in this Assurance is intended to form the basis for disqualification under the FINRA rules prohibiting continuance in membership or disqualification under other SRO rules prohibiting continuance in membership.

25. Any failure by the OAG to insist upon the strict performance by the Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.

Communications:

26. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 20-075, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to:

S. Anthony Taggart
Managing Director & Counsel
Morgan Stanley
1633 Broadway, 30th Floor
New York, NY 10019

or in his/her absence, to the person holding the title of Head of WM Regulatory Enforcement.

If to the OAG, to:

Tanya Trakht
Assistant Attorney General
Investor Protection Bureau
28 Liberty St., 21st Floor
New York, NY 10005

or in her absence, to the person holding the title of Chief, Investor Protection Bureau.

Representations and Warranties:

27. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the Respondent and their counsel and the OAG's Findings as set forth in paragraphs (1)-(14) above. The Respondent represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by the Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

28. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondent in agreeing to this Assurance.

29. The Respondent represents and warrants, through the signature below, that the terms and conditions of this Assurance are duly approved. Respondent further represents and warrants that Respondent, by Michael Hennessy, as the signatory to this AOD, is a duly authorized officer acting at the direction of Respondent.

General Principles:

30. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondent's obligations under this Assurance are enduring. Nothing in this Assurance shall

relieve the Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

31. The Respondent agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis.

32. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its effective date.

33. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties.

34. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

35. The Respondent acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

36. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

37. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

38. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one

agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

39. The effective date of this Assurance shall be November 12, 2020.

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By: Tanya Trakht
Tanya Trakht
Assistant Attorney General
Investor Protection Bureau

SOLIUM FINANCIAL SERVICES LLC

By: Michael Hennessy
Michael Hennessy
Managing Director

STATE OF New York) ss.:
COUNTY OF New York)

On the 10th day of November in the year 2020 before me personally came Michael Hennessy to me known, who, being by me duly sworn, did depose and say that he resides in New York, NY; that he is a managing director of the Solium Financial Services LLC, the company described in and which executed the above instrument; and that he is authorized by and is acting at the direction of the company.

Sworn to before me this
10th day of November 2020

Pallavi Moorthy
NOTARY PUBLIC

