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Dated: December 8, 2003.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 03-30744 Filed 12-8-03; 3:43 pm]

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POSTAL RATE COMMISSION

Sunshine Act Meetings

AGENCY: Postal Rate Commission.

TIME AND DATE: Monday, December 8, 2003 through December 11, as needed, during Commission business hours (8 a.m. to 4:30 p.m.).

PLACE: Commission conference room, 1333 H Street, NW., suite 300, Washington, DC 20268-0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Personnel and compensation matters.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268-0001, (202) 789-6820.

Dated: December 8, 2003.

Steven W. Williams,

Secretary.

[FR Doc. 03-30730 Filed 12-8-03; 2:41 pm]

BILLING CODE 7710-FW-M

POSTAL RATE COMMISSION

[Order No. 1387; Docket No. A2003-1]

Dismissal of Appeal of Post Office Closing in Birmingham Green, AL

AGENCY: Postal Rate Commission.

ACTION: Order.

SUMMARY: The Commission is dismissing an appeal (brought by George Prince *et al.*, petitioners) of the closing of a Birmingham Green, Alabama 35237 postal facility. The reason for dismissal is lack of jurisdiction. This facility is a classified postal station, rather than a post office. Controlling precedent holds that the Commission does not have jurisdiction over a closing or consolidation of a postal station.

ADDRESSES: Submit correspondence concerning this matter via the Commission's Filing Online system at <http://www.prc.gov>.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel, 202-789-6818.

SUPPLEMENTARY INFORMATION:

Regulatory History

68 FR 56350 (September 30, 2003).

Introduction and Summary

On September 17, 2003, three individuals petitioned the Commission to review the Postal Service's actions regarding the Birmingham Green, Alabama Post Office.¹ The Commission gave notice and accepted the appeal in order no. 1384, issued on September 23, 2003.² The Postal Service subsequently moved to dismiss this proceeding, arguing that the Commission lacks jurisdiction to consider an appeal under 39 U.S.C. 404(b).³ After considering the circumstances of this appeal in light of applicable law and precedent in earlier dockets, the Commission has concluded that this proceeding should be dismissed for lack of jurisdiction.

Petitioners' Request for Review

Petitioners George Prince, Terry Finch, and James E. Roberts contest a Postal Service action—which they characterize as a “closing or consolidation”—affecting the Birmingham Green post office, located at 317 North 20th Street in Birmingham, Alabama 35237. Joint Petition at 1. Petitioners document the Postal Service action in two attachments to their pleading.

The first attachment is a letter dated August 27, 2003 and signed by Paul T. Barrett, postmaster of Birmingham. In the letter, Mr. Barrett advises postal customers that “the Birmingham Green Post Office will be officially closed September 12, 2003.” In light of this development, he states that customers will be required to change their post office boxes, and that mail will be forwarded in accordance with postal regulations. He further states that “[r]etail services from the Main Post Office will ensure effective and regular services to the Downtown Birmingham community.”

The second attachment is a document entitled “Proposal to Consolidate the Birmingham Green Station and Establish a Contract Postal Unit,” dated June 20, 2003. According to the document's cover page, the matter was assigned docket number 35237.

The document states at the outset that the Postal Service “is proposing to consolidate the Birmingham Green Station and provide retail services by establishing a contract postal unit (CPU)

¹ Joint Petition for Review and Application for Suspension, September 17, 2003.

² Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5), September 23, 2003.

³ United States Postal Service Motion to Dismiss Proceeding, October 3, 2003.

under the administrative responsibility of the Main Post Office, located 4 blocks away.” Proposal to Consolidate at 1. The remainder of the document consists of assessments of the proposal's anticipated effects, under headings entitled “Responsiveness to Community Postal Needs,” “Effect on Community,” “Effect on Employees,” “Economic Savings,” and “Other Factors.” These areas of inquiry correspond to the criteria the Postal Service is directed to consider in making a statutory determination to close or consolidate a post office, pursuant to 39 U.S.C. 404(b)(2).

Petitioners assert that the Postal Service's determination to close the Birmingham Green facility, announced in a notice of final determination on August 27, 2003 violates the requirement in 39 CFR 241.3(a)(2)(iii) that such determinations be available in writing at least 60 days before discontinuance takes effect. On this basis, petitioners argue that the process was “without observance of procedure required by law,” in contravention of 39 U.S.C. 404(b)(5)(B). Joint Petition at 1.

Petitioners also challenge the merits of the Service's decision. They allege that it will have adverse effects on the community served by the Birmingham Green facility and will degrade the degree of service provided; that the Service failed to take into account all the disadvantages of closing the facility; that the Service provided no statement of the facility's income or revenue in its proposal; and that it did not adequately respond to the concerns raised by community members in both questionnaire responses and in a public hearing. *Id.* at 1-2.

Postal Service Motion To Dismiss

Order no. 1384 established October 3, 2003 as the date for the Postal Service's filing of its administrative record in this appeal. On that date, rather than filing an administrative record, the Service submitted a motion to dismiss this proceeding.⁴

In its motion, the Postal Service submits that the petition does not fall within the Commission's jurisdiction under § 404(b)(5). The Service cites two bases for this conclusion. First, it asserts that the Birmingham Green facility is a classified postal station—one of at least four USPS-operated facilities in downtown Birmingham—and thus is not a post office. Second, the Service represents that operations at the Birmingham Green facility “are currently suspended rather than

⁴ *Id.*

formally closed[,]"⁵ and that it has been working with Birmingham customers on providing them services, with the expectation that a contract station will be established in the vicinity of the Birmingham Green station.

The Postal Service musters an extensive review of legislative history and case law to support its position "that the procedures mandated by § 404(b) apply only to the closing or consolidation of an independent post office, which is a facility occupied and immediately supervised by a postmaster, and not the closing or consolidation of a station, branch, contract unit, or other subordinate facility under the administrative supervision of a post office."⁶ The Service argues at length that Congress, in enacting § 404(b), intended to limit the term "post office" to a definition predating the Reorganization Act that distinguishes between independent post offices and their subordinate retail facilities such as stations and branches.⁷ The Service also cites judicial authority in support of the restrictive interpretation of "post office" it urges.⁸ Most notably, it invokes the decision in *Shepard Community Association v. United States Postal Service*,⁹ in which a United States District Court found convincing indications of Congressional intent to distinguish post offices from branches and stations for purposes of applying § 404(b), and accordingly ruled that § 404(b) did not apply to the contested closing of the Shepard station in Columbus, Ohio.

Analysis of Jurisdictional Applicability

The available documentary evidence concerning the Birmingham Green facility, and the nature of the Postal Service's actions affecting it, are somewhat opaque. The Service asks the Commission to infer that operations at the facility have been "suspended," based on the absence of a formal announcement of its closure in the Postal Bulletin.¹⁰ However, Postmaster Barrett's letter of August 27, 2003, publicly discloses an official intention to close the facility, with post office boxes and other services to be provided at the Main Post Office.

At the same time, his apparently contemporaneous administrative responsibility for the Birmingham Green

facility implies that its closure would not constitute a statutory "consolidation," which has been found to have "the characteristic of subordinating the day to day overall management of one office having a postmaster to the administrative personnel of another office."¹¹ If Postmaster Barrett already had administrative responsibility for the Birmingham Green facility, closing it would not appear to constitute a "consolidation" subject to review under § 404(b). Yet, apparently two months earlier, the Postal Service at some administrative level had prepared an analysis on the "Proposal to Consolidate the Birmingham Green Station and Establish a Contract Postal Unit," which petitioners have provided as an attachment to their appeal.

Notwithstanding these unclear circumstances, the Commission finds that the available facts support a conclusion that the Postal Service's actions regarding the Birmingham Green facility—whether considered as a "closing" or a "suspension"—affect a "station or branch" within the service area administered by the Birmingham post office, and thus do not fall within the ambit of the review process provided in 39 U.S.C. 404(b).

The Commission's action in an earlier proceeding, docket no. A82-10, provides useful guidance in this controversy. In that docket, petitioners contested the Postal Service's plan to close the Oceana Station in Virginia Beach, Virginia. In its dispositive order,¹² the Commission considered legal arguments on what it regarded as a threshold issue: whether § 404(b) procedures for closing or consolidating post offices were applicable to the Service's plan to close the Oceana Station.

In deliberating on this issue, the Commission held that the Postal Service decision to close the facility "must be considered within the context of the Postal Service's other actions in the area."¹³ After examining the facts presented, the Commission found the proposed closing of the Oceana Station to be one component of a plan to reconfigure the network of postal facilities providing services to various communities in the Virginia Beach area. Employing a "rule of reason," the Commission held that "the requirements of section 404(b) do not pertain to the specific building housing

the post office; but rather are concerned with the provision of a facility within the community."¹⁴ In light of the Service's description of its actions in the Virginia Beach area, the Commission concluded "that the Postal Service is merely rearranging the retail facilities in the community[,]"¹⁵ and that the formal requirements of § 404(b) were not intended to apply to such changes. More broadly, the Commission stated that "the Postal Service is not required to follow the formal § 404(b) procedure when it is merely rearranging its retail facilities in a community, as it is doing in Virginia Beach."¹⁶

Here, as in docket no. A82-10, the Postal Service's action affects one classified station of several in a metropolitan area: in this instance, Birmingham, Alabama.¹⁷ The Postal Service represents that equal or superior service is available at the Birmingham Main post office, less than one-half mile away, but that it is also working to establish a contract station in the vicinity of the Birmingham Green station.¹⁸ These activities indicate that the Service's action with regard to the Birmingham Green station is part of a rearrangement of the retail network serving the Birmingham community, as with the Virginia Beach area in docket no. A82-10. For this reason, the Commission concludes that the procedural requirements of § 404(b) do not apply, and that the appeal of the Postal Service's action regarding the Birmingham Green station does not fall within the Commission's jurisdiction under that section.¹⁹ Therefore, the Postal Service's motion to dismiss this proceeding shall be granted.

The joint petition for review was accompanied by an application for suspension of the Postal Service's action regarding the Birmingham Green station. Inasmuch as the Commission has found § 404(b) inapplicable to the Service's action, the motion for suspension must also be denied.

Ordering Paragraphs The Commission orders:

(a) The United States Postal Service Motion to Dismiss Proceeding, filed October 3, 2003, is granted.

(b) Petitioners' Application for Suspension, filed September 17, 2003, is denied.

⁵ Id. at 1. (Footnote omitted.)

⁶ Id. at 2.

⁷ Id. at 3-9.

⁸ Id. at 9-14.

⁹ *Shepard Community Association v. United States Postal Service*, Civ. No. C2-82-425 (S.D. Ohio 1985).

¹⁰ Postal Service Motion to Dismiss, supra, at 1, n. 4.

¹¹ *Knapp v. United States Postal Service*, 449 F. Supp. 158, 162 (C.D. Cal. 1978).

¹² Order No. 436, Order Dismissing Docket No. A82-10, June 25, 1982.

¹³ Id. at 7.

¹⁴ Id. at 6-7.

¹⁵ Id. at 8.

¹⁶ Id. at 1.

¹⁷ Id., Attachment No.1, p. 3-7.

¹⁸ Postal Service Motion to Dismiss, supra, at 1-2.

¹⁹ The Commission views this outcome as compatible with, if not in every respect identical to, the court's analysis in the *Shepard* decision, supra.

(c) The Secretary of the Postal Rate Commission shall publish this order in the **Federal Register**.

By the Commission.

Issued December 3, 2003.

Dated: December 4, 2003.

Steven W. Williams,

Secretary.

[FR Doc. 03-30612 Filed 12-9-03; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26284; 812-12898]

AIP Alternative Strategies Funds, et al.; Notice of Application

December 4, 2003.

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

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend sub-advisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: AIP Alternative Strategies Funds ("AIS") and Alternative Investment Partners LLC ("Manager").

FILING DATES: The application was filed on October 22, 2002, and amended on November 14, 2003, and December 4, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a 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 December 29, 2003, and should be accompanied by proof of service on the 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o Thomas R. Westle, Esq.,

Blank Rome LLP, 405 Lexington Avenue, 24th Floor, New York, NY 10174.

FOR FURTHER INFORMATION CONTACT: Marc R. Ponchione, Senior Counsel, at (202) 942-7927, or Annette Capretta, Branch Chief, 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 at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. 202-942-8090).

Applicants' Representations

1. AIS is a Delaware business trust registered under the Act as an open-end management investment company. AIS is organized as a series investment company and has one series, Alpha Strategies I ("Alpha Strategies").¹ The Manager is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and serves as investment adviser to Alpha Strategies pursuant to an investment advisory agreement ("Investment Advisory Agreement"). The Investment Advisory Agreement has been approved by AIS' board of trustees (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of AIS ("Independent Trustees"), as well as by Alpha Strategies' shareholders.

2. Under the terms of the Investment Advisory Agreement, the Manager provides investment advisory services to Alpha Strategies, supervises the investment program for Alpha Strategies, and has the authority, subject to Board approval, to enter into separate investment sub-advisory agreements ("Sub-Advisory Agreements") with one or more sub-advisers ("Sub-Advisers"). The Manager monitors and evaluates the Sub-Advisers and recommends to the Board their hiring, retention or termination.² Sub-Advisers

¹ The Applicants request that any relief granted pursuant to the application also apply to any future series of AIS and any other registered open-end management investment companies and their series that (a) are advised by the Manager or any entity controlling, controlled by, or under common control with the Manager; (b) use the manager/sub-adviser structure described in the application; and (c) comply with the terms and conditions in the application (each, a "Series," and together with Alpha Strategies, the "Series"). AIS is the only existing registered investment company that currently intends to rely on the order. If the name of any Series contains the name of a Sub-Adviser (as defined below), the name of the Manager will appear before the name of the Sub-Adviser.

² The Manager's recommendations are based, in part, on research provided by Trust Advisors, LLC

recommended to the Board by the Manager are selected and approved by the Board, including a majority of the Independent Trustees. Each Sub-Adviser would have discretionary authority to invest the portion of a Series' assets assigned to it. The Manager compensates each Sub-Adviser out of the fees paid to the Manager under the Investment Advisory Agreement.

3. Applicants request an order to permit the Manager, subject to Board approval, to enter into and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to the Research Consultant or to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of AIS or the Manager, other than by reason of serving as a Sub-Adviser to one or more of the Series ("Affiliated Sub-Adviser").

4. Applicants also request an exemption from the various disclosure provisions described below that may require a Series to disclose fees paid by the Manager to each Sub-Adviser. An exemption is requested to permit each Series to disclose (as both a dollar amount and as a percentage of each Series' net assets): (a) the aggregate fees paid to the Manager and Affiliated Sub-Advisers; and (b) aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers ("Aggregate Fee Disclosure"). For any Series that employs an Affiliated Sub-Adviser, the Series will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser. Each Series also will provide separate disclosure of any fees paid to the Research Consultant.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

(the "Research Consultant"), an investment adviser registered under the Advisers Act and an affiliated person of the Manager. Pursuant to an agreement entered into between the Research Consultant, the Manager, and AIS, on behalf of Alpha Strategies ("Research Consultant Agreement"), the Research Consultant provides the Manager with research and information on Sub-Advisers, and receives a fee from the Manager out of the fees paid by the Series to the Manager.