

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 63019 / September 30, 2010**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3095 / September 30, 2010**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14082**

**In the Matter of**

**FreedomTree Mutual Funds and  
Asset Management, LLC, d/b/a  
FreedomTree Asset  
Management, LLC; Spence-  
Lingo & Company, Ltd. d/b/a  
FreedomTree Transfer Agency;  
and Jermaine Ezekiel Spence**

**Respondents.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-  
AND-DESIST PROCEEDINGS  
PURSUANT TO SECTIONS 15(b),  
17A, AND 21C OF THE  
SECURITIES EXCHANGE ACT  
OF 1934, AND SECTIONS 203(e),  
203(f) AND 203(k) OF THE  
INVESTMENT ADVISERS ACT  
OF 1940**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b)(6), 17A and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”).

## II.

After an investigation, the Division of Enforcement alleges that:

### A. RESPONDENTS

1. Jermaine Ezekiel Spence (“Spence”), age 29, is a resident of Atlanta, Georgia. Spence owns and controls both FreedomTree Mutual Funds and Asset Management, LLC, and Spence-Lingo & Company, Ltd.
2. FreedomTree Mutual Funds and Asset Management, LLC, d/b/a FreedomTree Asset Management, LLC (“FreedomTree”) is a Georgia limited liability company formed on April 7, 2008. FreedomTree is solely owned and controlled by Spence, its chief executive officer and chief compliance officer. On November 14, 2008, FreedomTree registered with the Commission as an investment adviser under the name “FreedomTree Asset Management.” In November 2008, FreedomTree filed applications with FINRA and the Commission to register as a broker-dealer. The applications are still pending.
3. Spence-Lingo & Company, Ltd., d/b/a FreedomTree Transfer Agency (“Spence-Lingo”) is a Georgia for-profit corporation formed on June 1, 2007. Spence-Lingo is indirectly owned and controlled by Spence, its chief executive officer and majority shareholder. Spence-Lingo voluntarily registered its common stock with the Commission pursuant to Section 12(g) of the Exchange Act in June 2008, and separately registered with the Commission as a transfer agent on August 22, 2008, under the name “FreedomTree Transfer Agency.” Spence-Lingo is purportedly operated from the same address as FreedomTree. Spence-Lingo is also a licensed insurance agency in Georgia.

### B. FALSE DISCLOSURES CONTAINED IN FREEDOMTREE’S FORMS ADV

4. FreedomTree registered with the Commission as an investment adviser on August 19, 2008. Despite having no clients and no assets under management, FreedomTree invoked Rule 203A-2(d) under the Advisers Act, a registration prohibition exemption, thereby effectively representing that it reasonably expected to have \$25 million in assets under management within 120 days.
5. In its initial Form ADV filed on August 19, 2008, FreedomTree claimed to provide financial planning, portfolio management, and pension consulting services to individuals, high-net worth individuals, investment companies, charitable organizations, corporations and state or municipal government entities. The firm further claimed to have \$7 million in assets under management in three discretionary accounts.

6. On May 12, 2009, FreedomTree filed an amended Form ADV in which the company claimed that it was eligible to remain registered with the Commission because it had exactly \$25 million in assets under management in three discretionary accounts.

7. On November 30, 2009, FreedomTree filed a second amendment to its Form ADV, claiming to have \$235 million in assets under management in two discretionary accounts.

8. The disclosures described in paragraphs 4 to 7 were false. FreedomTree had no advisory clients, revenues, or any assets under management that would qualify FreedomTree for registration with the Commission as an investment adviser.

C. MISREPRESENTATIONS ON FREEDOMTREE'S WEBSITE

9. On its website, which was operational at least throughout November 2009, FreedomTree sought prospective clients willing to invest a minimum of \$100,000 in the firm's "prestigious money management platform" under a "competitively priced fee-based" arrangement.

10. FreedomTree's website further represented that FreedomTree had "27+ years of unparalleled leadership" (Spence's age at the time) and emphasized that, as an investment adviser, the firm was subject to the regulatory oversight of the Commission. These representations were false. FreedomTree had no advisory clients, revenues, or assets that would qualify FreedomTree for registration with the Commission as an investment adviser. Additionally, FreedomTree, which checked off that it was a "newly formed adviser" when it filed its initial Form ADV in August 2008, did not have a 27-year operational history.

D. SPENCE-LINGO'S REGISTRATION AS A TRANSFER AGENT

11. FreedomTree's website also represented that the firm was part of a larger "financial group," which included a transfer agent "providing clearing services to corporate and government issuers." Spence-Lingo registered as a transfer agent with the Commission on August 22, 2008. According to its Commission filings as a transfer agent, Spence-Lingo operated from the same address as FreedomTree. Spence served as the company's chief executive officer. However, Spence-Lingo provided no "clearing services" as represented on FreedomTree's website. Spence-Lingo remains registered with the Commission as a transfer agent.

E. FREEDOMTREE'S APPLICATIONS FOR REGISTRATION AS A BROKER-DEALER

12. In November 2008, FreedomTree filed applications with FINRA and the Commission to register as a broker-dealer. The applications are still pending.

F. FREEDOMTREE AND SPENCE-LINGO FAILED TO RESPOND TO REQUESTS FOR RECORDS AND EXAMINATIONS

13. In November 2009, Commission staff from the Office of Compliance, Inspections, and Examinations (“OCIE”) attempted to conduct routine investment adviser and transfer agent examinations of FreedomTree and Spence-Lingo respectively. Spence failed to appear for a scheduled meeting with the staff, failed to produce documents requested by the staff, failed to respond to two resulting exam deficiency letters, and failed to produce documents in response to a related request for documents and information from staff from the Enforcement Division. In a brief phone interview with OCIE staff in November 2009, Spence conceded that FreedomTree had no advisory clients and no revenue.

G. VIOLATIONS

14. As a result of the conduct described above, FreedomTree and Spence willfully violated Sections 206(1) and 206(2) of the Advisers Act, which make it unlawful for an investment adviser to employ any device, scheme or artifice to defraud clients or to engage in any transaction, practice or course of business that defrauds clients or prospective clients.

15. As a result of the conduct described above, FreedomTree willfully violated, and Spence willfully aided and abetted, and/or caused violations of Section 203A of the Advisers Act, which generally prohibits an adviser that is regulated or required to be regulated in the state in which it has its principal office and place of business from registering with the Commission, unless it has assets under management in excess of \$25 million or advises a registered investment company.

16. As a result of the conduct described above, FreedomTree willfully violated, and Spence willfully aided and abetted, and/or caused violations of Section 204(a) of the Advisers Act. Section 204(a) of the Advisers Act requires every registered investment adviser to furnish to the Commission in connection with compliance examinations true, accurate, and current books and records relating to its investment advisory business.

17. As a result of the conduct described above, FreedomTree willfully violated, and Spence willfully aided and abetted and/or caused violations of Section 206(4) and Rule 206(4)-1. Section 206(4) of the Advisers Act prohibits an investment adviser from engaging “in any act, practice, or course of business which is fraudulent, deceptive or manipulative.” Section 206(4) also authorizes the Commission to define, by rule, what acts, practices, or courses of business constitute fraudulent conduct. Rule 206(4)-1(a)(5) prohibits investment advisers from publishing, circulating, or distributing “any advertisement ... which contains any untrue statement of a material fact, or which is otherwise false or misleading.” Further, Rule 206(4)-1 provides that “the term ‘advertisement’ shall include any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by radio or television, which offers (1) any analysis, report, or publication concerning

securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (2) any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (3) any other investment advisory service with regard to securities.”

18. As a result of the conduct described above, FreedomTree and Spence willfully violated Section 207 of the Advisers Act, which makes it unlawful “for any person willfully to make any untrue statements of material fact in any registration application or report filed with the Commission under Section 203 or 204, or willfully to omit to state in any such application or report any material fact which is required to be stated therein.”

19. As a result of the conduct described above, Spence-Lingo willfully violated, and Spence willfully aided and abetted and/or caused violations of Sections 17(b)(1) and 17A(d)(1) of the Exchange Act and Rule 17Ad-6 thereunder. Under Section 17(b)(1), all transfer agents are subject to periodic examinations by the Commission. Section 17A(d)(1) of the Exchange Act prohibits registered transfer agents from engaging in any activities that contravene certain regulations promulgated by the Commission. Rule 17Ad-6 requires registered transfer agents to maintain and keep current records of the firm’s business.

### III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Spence pursuant to Sections 15(b) and 17A of the Exchange Act and Section 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act and 203(i) of the Advisers Act;

C. What, if any, remedial action is appropriate in the public interest against Spence-Lingo pursuant to Section 17A of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

D. What, if any, remedial action is appropriate in the public interest against FreedomTree pursuant to Section 203(e) of the Advisers Act including, but not limited to, civil penalties pursuant to Section 203(i) of the Advisers Act;

E. Whether, pursuant to Section 203(k) of the Advisers Act, FreedomTree should be ordered to cease and desist from committing or causing violations of and any

future violations of Sections 203A, 204(a), 206(1), 206(2), 206(4) and 207 of the Advisers Act and Rule 206(4)-1 thereunder, and whether FreedomTree should be ordered to pay disgorgement pursuant to Section 203(k)(5) of the Advisers Act;

F. Whether, pursuant to Section 203(k) of the Advisers Act, Spence should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 203A, 204(a), 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rule 206(4)-1 thereunder, and whether Spence should be ordered to pay disgorgement pursuant to Section 203(k)(5) of the Advisers Act;

G. Whether pursuant to Section 21C of the Exchange Act, Spence should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 17(b)(1) and 17A(d)(1) of the Exchange Act and Rule 17Ad-6 thereunder, and whether Spence should be ordered to pay disgorgement pursuant to Section 21C(e) of the Exchange Act; and

H. Whether, pursuant to Section 21C of the Exchange Act, Spence-Lingo should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 17(b)(1) and 17A(d)(1) of the Exchange Act and Rule 17Ad-6 thereunder, and whether Spence-Lingo should be ordered to pay disgorgement pursuant to Section 21C(e) of the Exchange Act.

#### IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy  
Secretary