

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2800A / October 15, 2008**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13274**

**In the Matter of**

**BATTERY WEALTH  
MANAGEMENT, INC. AND  
WAYNE CASSADAY,**

**Respondents.**

**CORRECTED ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-DESIST  
PROCEEDINGS, MAKING FINDINGS, AND  
IMPOSING REMEDIAL SANCTIONS AND A  
CEASE-AND-DESIST ORDER PURSUANT TO  
SECTIONS 203(e) AND 203(k) OF THE  
INVESTMENT ADVISERS ACT OF 1940 AS TO  
BATTERY WEALTH MANAGEMENT, INC. AND  
PURSUANT TO SECTIONS 203(f) AND 203(k) OF  
THE INVESTMENT ADVISERS ACT OF 1940 AS  
TO WAYNE CASSADAY**

**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 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Battery Wealth Management, Inc. (“Battery”) and instituted pursuant to Sections 203(f) and 203(k) of the Advisers Act against Wayne Cassaday (“Cassaday”) (collectively, “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 as to Battery Wealth Management, Inc. and Pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 as to Wayne Cassaday, (“Order”), as set forth below.

### **III.**

On the basis of this Order and Respondent's Offer, the Commission finds that

#### **RESPONDENTS**

1. Battery Wealth Management, Inc., a South Carolina corporation, registered with the Commission as an investment adviser on April 21, 2006. Battery ceased doing business in August 2007. Battery's registration with the Commission terminated on December 31, 2007.

2. Wayne Cassaday, 48, is president and chief compliance officer of Battery. Cassaday resides in Mt. Pleasant, South Carolina.

#### **OTHER RELEVANT PARTIES**

3. Albert E. Parish, Jr. ("Parish") was a vice-president, co-founder and co-owner of Battery. Parish controlled a South Carolina LLC ("the LLC"), formed in 1996, which purported to be "an investment pool, business forecast and economic litigation firm." The LLC was located in Summerville, South Carolina, a suburb of Charleston and was not registered with the Commission as an investment adviser.

#### **BACKGROUND**

4. The predecessor to Battery was formed in 1999 by Cassaday, Parish and three accountants. In 2003, the three accountants resigned from the company and the company, owned two-thirds by Cassaday and one-third by Parish, was renamed Battery.

5. During 2003, 2004 and 2005, Battery's business grew rapidly and by 2005 Battery's assets under management exceeded \$30 million.

#### **THE FRAUDULENT SCHEME**

6. Beginning in 1986, long before his association with Battery, Parish offered investments in what he called his Futures Pool, which purportedly invested in futures contracts. Later, around 1996, Parish began four other pools which he described to investors as "informal pools of money" that were invested in bonds (the Hedged Income Pool), stocks (the Stock Pool), hard assets such as jewelry and fine art (the Hard Asset Pool) and a Loan Pool which consisted of his personal promissory notes which he sold to investors. Investors purchased an undivided interest in the assets of a given pool. The investment pools purportedly held and traded the assets under Parish's name. The LLC maintained a public website that in 2007 falsely described the investment pools as holding over \$134 million in assets and provided unrestricted access to the funds' subscription agreements. The LLC acted as an investment adviser to the investment pools.

7. Beginning in 2002, Battery recommended to its clients that they participate in Parish's investment pools. Battery, through Cassaday and Parish, ultimately sold \$6.5 million of these investments to 25 of Battery's clients.

8. The LLC provided quarterly statements to investors that showed positive performance and ever increasing asset values. Before recommending that Battery's clients invest in the pools, Cassaday reviewed the quarterly account statements provided by Parish's LLC and discussed the investment pools with Parish. Cassaday also viewed Parish's website, which was provided as a direct link from Battery's website.

9. Cassaday ignored certain facts that strongly suggested that Parish was likely deceiving advisory clients. Cassaday had reviewed Parish's personal financial statements, which showed that Parish's sources of reported income were disproportionately low in comparison to the high level of personal expenses reflected by his lavish and flamboyant lifestyle. Cassaday knew that Parish's Loan Pool consisted of Parish's personal notes, and that Parish had issued his notes to (and was thus borrowing money from) the IRA accounts of many of Battery's clients. In the fall of 2006, Cassaday was told that Parish was experiencing personal cash flow problems. Cassaday subsequently learned that a property Parish owned might face foreclosure. Cassaday also discovered that one of Parish's investment pools had been unable to comply with a redemption request from a Battery client within the requisite 5-day period and instead required six weeks to return the investor's money. Parish admitted to Cassaday that he had deliberately delayed the investor's redemption in hopes of finding a replacement investor funds to avoid the liquidation of specific bonds. Nevertheless, Cassaday never took any steps to follow up on these red flags or to inquire whether the pooled funds in which Battery advised its clients to invest were, in fact, investing consistent with the representations made to investors.

10. In February 2007, staff of the Commission's Office of Compliance Inspections and Examinations began an examination of Battery. As a part of that examination, the staff requested that Battery produce brokerage statements supporting the claimed account valuations in the various the pools.

11. In March 2007, in response to the staff's request, Parish produced brokerage account statements reflecting account valuations of \$11 million in the Stock Pool and \$18 million in the Hedged Income Pool as of December 31, 2006. The Commission's staff contacted the broker-dealers that purportedly issued the account statements and determined that the statements were forged. The accounts actually held securities and cash with a value of less than \$100,000. Parish also provided the Commission's staff with a commodities account statement purporting to hold approximately \$50 million in the Futures Pool. That statement was also fictitious. The account held only \$130,000. Contrary to representations to investors, Parish had misappropriated or lost assets invested in the pools. Approximately \$90 million of investor funds were unaccounted for or lost.

12. Subsequently, in April 2007, the scheme ended when the Commission filed an emergency civil injunctive action against Parish, the LLC and a related entity. On May 4, 2007, a federal district court enjoined Parish, the LLC and a related entity from violating Section 17(a) of

the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and from violating or aiding and abetting violations of Sections 206(1) and (2) of the Advisers Act. SEC v. Albert E. Parish, Jr., Parish Economics LLC and Summerville Hard Assets LLC, Lit. Rel. No. 10107 (May 9, 2007). The Commission subsequently barred Parish from association with any investment adviser. In re Albert E. Parish Jr., IA Rel No. 2607 (May 25, 2007).

13. Between 2002, when Cassaday first recommended that clients invest with Parish, and 2007, when the scheme was discovered, Battery received approximately \$97,363 in fees based upon the client assets invested in the pools. Cassaday received approximately \$5,864 of that amount.

14. Sections 206(1) and 206(2) of the Advisers Act prohibit an investment adviser from employing any device, scheme, or artifice to defraud clients or engage in any transaction, practice, or course of business that defrauds clients. Section 206 establishes federal fiduciary standards to govern the conduct of investment advisers. Transamerica Mortgage Advisers, Inc. v. Lewis, 444 U.S. 11, 17 (1979). The fiduciary duties of investment advisers to their clients include the duty to act for the benefit of their clients, the duty to exercise the utmost good faith in dealing with clients, the duty to disclose all material facts, and the duty to employ reasonable care to avoid misleading clients. SEC v. Capital Gains Research Bureau, Inc. et al., 375 U.S. 180, 194, (1983). Scierer is required to establish a violation of Section 206(1) but is not a required element of Section 206(2). SEC v. Steadman, 967 F.2d 636, 643 fn.5 (D.C. Cir. 1992) (Section 206(2) violation only requires proof of negligence, not scierer).

15. Battery willfully violated Sections 206(1) and 206(2) by advising its clients, through Parish and Cassaday, to invest in the investment pools although Parish knew the pools did not have the claimed assets and that the purported returns were fictitious and Cassaday took no steps to verify the pools' assets or returns. By directing its clients to invest in funds that were being looted by Parish, an officer and part-owner of Battery, Battery defrauded its clients.

16. To establish aiding and abetting liability, the Commission must show that: (1) a primary violation occurred; (2) the aider and abettor provided substantial assistance; and (3) the aider and abettor rendered such assistance knowingly or with extreme recklessness. See Howard v. SEC, 376 F.3d 1136, 1143 (D.C. Cir. 2004). The knowledge and awareness requirement may be established by recklessness when the aider and abettor is a fiduciary. Ross v. Bolton, 904 F.2d 819, 824 (2d Cir. 1990).

17. Cassaday provided substantial assistance to the fraudulent scheme by recommending that Battery's clients invest in the pools despite knowing certain facts that strongly suggested that Parish was likely deceiving advisory clients. Cassaday thus willfully aided and abetted and caused Battery's violations of Sections 206(1) and 206(2).

## **BATTERY'S COMPLIANCE POLICIES**

18. Section 206(4) of the Advisers Act and Rule 206(4)-7, promulgated thereunder, require investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and the rules promulgated thereunder and to evaluate annually the effectiveness of those policies and their implementation.

19. Battery's Compliance Manual, which was a generic compliance manual purchased for \$179, did not address the particular risks of Battery's business, particularly the conflicts of interest resulting from Parish's operation of a side business that offered and managed pooled funds that Parish and Cassaday recommended to Battery's advisory clients. In addition, the manual did not address conflicts of interest arising from borrowing by insiders from advisory clients. Cassaday, as Battery's president and chief compliance officer, was responsible for the manual and its deficiencies.

20. As a result of the conduct described above, Battery willfully violated and Cassaday willfully aided and abetted and caused violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

## **DISGORGEMENT AND CIVIL PENALTIES**

24. Respondent Battery has submitted a sworn Statement of Financial Condition dated October 16, 2007, as amended by letter dated August 8, 2008, and other evidence and has asserted its inability to pay disgorgement plus prejudgment interest or to pay a civil penalty.

## **IV.**

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in Respondents Battery's and Cassaday's Offers.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act as to Battery and Sections 203(f) and 203(k) as to Cassaday, it is hereby ORDERED that:

- A. Respondent Battery cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder
- B. Respondent Cassaday cease and desist from committing or causing any violations or future violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.
- C. Respondent Battery is hereby censured.

D. Respondent Cassaday be, and hereby is barred from association with any investment adviser, with the right to reapply for association after one (1) year to the appropriate self-regulatory organization, or if there is none, to the Commission;

E. Any reapplication for association by the Respondent Cassaday will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

F. Respondent Battery shall pay disgorgement of \$97,363 plus prejudgment interest in the amount of \$12,744 but payment of such amount is waived and no civil penalty imposed based upon Respondent's sworn representations in its Statement of Financial Condition dated October 16, 2007, as amended by letter dated August 8, 2008, and other documents submitted to the Commission.

G. Respondent Cassaday shall, pay disgorgement of \$5,864 and prejudgment interest of \$867 for a total of \$6,731, and shall pay a civil penalty of \$40,000. Cassaday shall pay this \$6,731 as follows: (1) \$6,731 within 20 days of entry of this Order. Thereafter, Cassaday shall pay the balance owed plus post-judgment interest thereon within 365 days of entry of this Order. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Each such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; and to be sent to the SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312 Stop 0-3; and (D) submitted under cover letter that identifies Cassaday as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to William P. Hicks, Regional Trial Counsel, Securities and Exchange Commission, 3475 Lenox Rd., N.E., Suite 500, Atlanta GA 30326-1232.

H. Respondent Cassaday agrees that if the full amount of any payment described above is not made by the date the payment is required by this Order, the entire amount of disgorgement, prejudgment interest, and civil penalties plus any interest accrued pursuant to SEC Rule of Practice 600 as to disgorgement and any interest accrued pursuant to 31 U.S.C. § 3717 for civil penalties minus payments made, if any, is due and payable immediately without further application;

I. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent Battery provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement and pre-judgment interest. No other issue shall be considered in connection with this petition other than whether the financial

information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Florence E. Harmon  
Acting Secretary