

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3215 / June 15, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14425

In the Matter of

**PEGASUS INVESTMENT
MANAGEMENT, LLC,
PETER BENJAMIN
BORTEL, AND DOUGLAS
WAYNE SAKSA,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 203(e), 203(f),
AND 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND CEASE-AND-DESIST
ORDERS**

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 Pegasus Investment Management, LLC (“PIM”) and Sections 203(f) and 203(k) of the Advisers Act against Peter Benjamin Bortel (“Bortel”) and Douglas Wayne Saksa (“Saksa”) or (“Respondents” collectively).

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, Pursuant to Sections 203(e), 203(f), and 203(k)

of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds that:

Summary

Bainbridge Island, Washington hedge fund manager Pegasus Investment Management, LLC (“PIM”) received undisclosed cash payments for enabling a proprietary trading firm to combine PIM’s futures trades with its own for all futures trades placed through a common broker. By combining PIM’s trading volume with its own, the trading firm was able to obtain reduced commission rates for itself from the broker – a concession which the firm rewarded through undisclosed cash payments to PIM. Under the arrangement, and over the course of about ten months, PIM received a total of \$90,000. The payments stopped once the Commission’s Investment Adviser/Investment Company examination staff began asking questions about the payments.

PIM Vice President and co-owner Peter Bortel, under the supervision of President and co-owner Douglas Saksa, did not disclose the arrangement to fund investors, and retained the money for PIM rather than passing it along to the investors. PIM improperly treated the undisclosed payments as its own asset rather than an asset of the funds it managed. Accordingly, PIM and Bortel’s conduct operated as a fraud or deceit upon the funds, in violation of Section 206(2) of the Investment Advisers Act. Moreover, Saksa failed to reasonably supervise Bortel within the meaning of Section 203(e)(6).

Respondents

1. Respondent PIM is a Washington limited liability company and an investment adviser located in Bainbridge Island, Washington. PIM is the general partner of two private funds, Pegasus Investment Partners, L.P. and Pegasus Market Neutral Fund, L.P. (together, the “Funds”). As of February 2009, PIM had approximately \$26 million in assets under management. At the time of the conduct at issue, PIM was registered with the Commission as an investment adviser.
2. Respondent Bortel, age 41, resides in Gig Harbor, Washington. He was PIM’s Vice President and 30% owner at the time of the conduct and was subject to Saksa’s supervision. Bortel left PIM in April 2010 to start another investment advisory firm.
3. Respondent Saksa, age 65, resides in Bainbridge Island, Washington. He is PIM’s President and Chief Compliance Officer. Saksa owned 70% of PIM at the time of the conduct and had supervisory responsibility over Bortel.

Facts

4. In the spring of 2008, a proprietary trading firm that was developing a software trading platform (the “Firm”) became interested in adding commodities futures strategies to its business. The Firm believed it would need a commissions rate of approximately \$0.10 per trade to make its futures business profitable. The Firm approached an introducing futures broker (the “Broker”) to see whether it could obtain such a rate, or a lower rate, to make its nascent futures business cost-effective. But because the Firm had no existing futures business, the Broker advised that its best rate for the Firm would be approximately \$1.10 per trade, well above the Firm’s target commission rate of \$0.10 per trade.

5. Subsequently, the Firm considered other ways to obtain the rate of \$0.10 per futures trade. A principal of the Firm had dealt with PIM previously, finding investors for PIM’s Funds. He knew that PIM actively traded futures for its Funds through the Broker, and he convinced the Broker to take both the Firm’s and PIM’s trade volume into account when determining a commission rate for the Firm.

6. Under the Firm’s arrangement with the Broker, the Firm received the discounted commission rate that it would not have been eligible for without the Funds’ volume, and, in exchange, the Firm made monthly cash payments to PIM. PIM also agreed to assist the Firm in developing its software platform for trading and to share market research.

7. The amount of the monthly cash payments to PIM changed, but the payments were tied to the volume of trades by PIM’s Funds through the Broker. The Firm paid \$0.50 per trade for each trade that PIM’s Funds placed with the Broker. The Firm also provided Bortel with monthly reconciliation statements with entries for total revenue generated – a line item that equated to \$0.50 per trade.

8. Between 2008 and 2009, the Firm paid \$90,000 in cash to PIM under this unwritten agreement. PIM treated the \$90,000 as its own asset (not a Fund asset), and PIM did not disclose the arrangement to its investors in the Funds’ offering documents or partnership agreements, or in PIM’s Form ADV, a disclosure document used by investment advisers to register with the Commission. The payments stopped once the Commission’s Investment Adviser/Investment Company examination staff began an examination of PIM.

Legal Analysis

9. Bortel reported to, and was supervised by, Saksa. As President and Chief Compliance Officer of PIM, Saksa also oversaw the legal, compliance, and operational functions of the adviser. Despite this, there were no policies requiring that fund assets be used for the benefit of the Funds or requiring that cash compensation received by PIM in connection with the Funds’ activities be disclosed to investors or remitted to the Funds. PIM operated informally, and Saksa failed to supervise Bortel in this area. As a result, PIM received undisclosed cash payments from the Firm for nearly a year.

10. As a result of the conduct described above, PIM and Bortel willfully violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. As such, investment advisers must act in “utmost good faith,” use reasonable care to avoid misleading clients, and fully and fairly disclose conflicts of interest, such as payments from third parties to give investment advice and arrangements that limit an adviser’s loyal and disinterested advice. SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194, 201. This includes the obligation to seek “best execution” of clients’ transactions under the circumstances of the particular transaction. 1986 Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934, Exchange Act Rel. No. 23170 (April 23, 1986). *See also Delaware Management Co.*, 43 SEC 392, 396 (1967). The fundamental obligation of the adviser to act in the best interest of his client also generally precludes the adviser from using client assets for the adviser’s own benefit or the benefit of other clients, at least without client consent. Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934, Exchange Act Rel. No. 54165 (July 18, 2006); RESTATEMENT (SECOND) OF TRUSTS § 170 cmt. a, § 216 (1959).

11. As a result of the conduct described above, PIM and Saksa failed to reasonably supervise Bortel within the meaning of Section 203(e)(6) of the Advisers Act with a view to preventing and detecting Bortel’s violations of Section 206(2).

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents’ Offers.

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

- A. Respondents PIM, Bortel, and Saksa are censured.
- B. Respondents PIM and Bortel cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act;
- C. Respondent PIM, within 30 days of the entry of this Order, pay disgorgement of \$90,000 and prejudgment interest of \$5,469.66 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier’s check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Pegasus Investment Management, LLC as a Respondent in these proceedings and the file number of these proceedings. A copy of which cover letter and money order or check shall be sent to Michael S. Dicke, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104.

D. Respondent Bortel, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$50,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Peter Benjamin Bortel as a Respondent in these proceedings and the file number of these proceedings. A copy of which cover letter and money order or check shall be sent to Michael S. Dicke, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104.

E. Respondent Saksa, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Douglas Wayne Saksa as a Respondent in these proceedings and the file number of these proceedings. A copy of which cover letter and money order or check shall be sent to Michael S. Dicke, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104.

By the Commission.

Elizabeth M. Murphy
Secretary