

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3540 / January 29, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15194

In the Matter of

KURT S. HOVAN,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
203(f) OF THE INVESTMENT ADVISERS
ACT OF 1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Kurt S. Hovan (“Respondent” or “Hovan”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) 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, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

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

1. Hovan, age 44, is a resident of Belvedere, California. He holds Series 7, 63, and 65 securities licenses issued by FINRA. He is the husband of Lisa Hovan and the brother of Edward Hovan, Jr.

2. Since 1999, Hovan served as member, President, and Chief Investment Officer of Hovan Capital Management, LLC ("HCM"), an investment adviser registered with the Commission. Among HCM's clients, from August 2006 until March 2009, HCM served as a sub-adviser to a Commission-registered investment company that was based in Harrison, New York.

3. On June 20, 2012, a judgment in a criminal case was entered against Hovan, based on his guilty plea to one count of mail fraud, in violation of Title 18, United States Code, Section 1341, in *United States v. Kurt S. Hovan*, Case No. CR-11-0699-RS, in the United States District Court for the Northern District of California. In connection with that plea, Hovan admitted that: (1) he knowingly participated in, devised, or intended to devise a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or by the omission of material facts; (2) the statements made or facts omitted as part of the scheme were material; (3) he acted with the intent to defraud; and (4) he used, or caused to be used, the mails to carry out or to attempt to carry out an essential part of the scheme. Hovan further admitted that the scheme involved the misuse of so called "soft dollars," which were rebates on commissions received from directed brokerage business executed for accounts of clients of HCM. Hovan admitted that he directed the use of approximately \$65,000 of the soft dollars to pay for HCM's office rent, contrary to the soft dollar agreements and disclosures to HCM's clients. Hovan also admitted that in January 2010, in response to requests from the Commission's examination staff for research reports purportedly produced by Bolton Research LLC, a company associated with Hovan's brother through which the soft dollars were funneled, Hovan altered and caused to be sent ten due diligence questionnaires to the examiners to make it appear that the reports had been authored by Bolton Research, when they had not.

4. On January 14, 2013, a final judgment was entered against Hovan, permanently enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Exchange Act Rule 10b-5, Sections 204(a), 206(1), 206(2) and 207 of the Advisers Act, Advisers Act Rule 204-2(a)(7), and Section 17(e)(1) of the Investment Company Act of 1940 ("Investment Company Act") in the civil action entitled *Securities and Exchange Commission v. Kurt Hovan, et al.*, Civil Action No. CV-11-4795-RS, in the United States District Court for the Northern District of California. Hovan was also ordered to pay a \$75,000 civil penalty, and to pay \$65,000 in disgorgement, which was deemed satisfied by the order of restitution in the related criminal case.

5. The Commission's complaint alleged, among other things, that Hovan misused so-called "soft dollars" that HCM had obtained as rebates on commissions paid for securities trades executed in the accounts of HCM's clients. According to the complaint, contrary to assurances to clients and others that HCM would only use soft dollars to pay for a limited category of services that benefitted HCM's clients, Respondent directed the use of the soft dollars

for prohibited purposes, including for HCM's rent, salaries, and for office equipment for HCM. The complaint further alleged that, in January 2010, in response to requests for records from the Commission's examination staff, Hovan created and produced phony research reports to the examiners to make it appear that the soft dollars were spent for legitimate research that could benefit clients.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Hovan's Offer.

Accordingly, it is hereby ORDERED that:

Pursuant to Section 203(f) of the Advisers Act, Respondent Hovan is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

By the Commission.

Elizabeth M. Murphy
Secretary