

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4034 / February 25, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16165

	:	
In the Matter of	:	
	:	
David Scott Cacchione,	:	ORDER MAKING FINDINGS AND
	:	IMPOSING REMEDIAL SANCTIONS
Respondent.	:	PURSUANT TO SECTION 203(f) OF
	:	THE INVESTMENT ADVISERS ACT
	:	OF 1940
	:	

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest to enter this Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against David Scott Cacchione (“Respondent”).¹

II.

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 admits the Commission’s jurisdiction over him and the subject matter of these proceedings, and the findings contained in Sections III.5. and III.7. below, and consents to the entry of this Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 203(f) of the Investment Advisers Act (“Order”), as set forth below.

¹ On September 25, 2014, the Commission instituted public administrative proceedings pursuant to Section 203(f) of the Advisers Act against Respondent David Scott Cacchione.

III.

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

1. Cacchione, 49 years old, is a resident of Menlo Park, California. He is a Managing Member, Chief Compliance Officer, and owner of at least fifty percent interest in Montara Capital Management LLC ("Montara"). From 1989 to 2008, Cacchione was a registered representative associated with various registered broker-dealers and lastly with Merriman Curhan Ford & Co. ("Merriman").

2. Montara is a Delaware limited liability company with its principal place of business in Menlo Park, California.

3. On June 25, 2014, Montara filed an application on Form ADV with the Commission for registration as an investment adviser but withdrew its application on July 21, 2014.

4. Based on Cacchione's positions and ownership interest in Montara, and his efforts to remain associated with Montara, Cacchione is, or seeking to be, a "person associated with" an investment adviser as that term is defined in Section 202(a)(17) of the Advisers Act.

5. On March 24, 2009, the Commission filed a complaint alleging violations of the federal securities laws against Cacchione in the civil action entitled Securities and Exchange Commission v. David Scott Cacchione, Civil Action Number 3:09-CV-1259-CRB, in the United States District Court for the Northern District of California. On April 1, 2009, a final judgment was entered by consent against Cacchione, permanently enjoining him from future violations of 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Subsequently, on April 22, 2009, the Commission also issued an order barring Cacchione from association with any broker-dealer under Section 15(b) of the Exchange Act. In the Matter of David Scott Cacchione, Exch. Act Release No. 59812, Admin. Proc. File No. 3-13455 (Apr. 22, 2009). In its order, the Commission included findings based upon the complaint's allegations.

6. The complaint alleged, among other things, that from 2007 to 2008, Cacchione supplied account statements of unknowing Merriman customers to William Del Biaggio knowing that Del Biaggio would fraudulently pledge the securities in the accounts as collateral to obtain more than \$45 million in personal loans. The Commission's complaint also alleged that Cacchione engaged in a pattern of unauthorized trading in the customers' accounts.

7. On March 31, 2009, Cacchione pleaded guilty to one count of aiding and abetting securities fraud in violation of Title 18 United States Code, Sections 1348 and 2 before the United States District Court for the Northern District of California, in United States v. David Scott Cacchione, Crim. Information No. 3:09-CR-296. On October 13, 2009, a judgment in the criminal case was entered against Cacchione. He was sentenced

to a prison term of five years followed by three years of supervised release and ordered to make restitution in the amount of \$47,542,887, jointly and severally with his co-defendant William Del Biaggio. Cacchione was released from custody on June 9, 2014. The joint and several restitution requirement of his sentence has not been fully satisfied.

8. The criminal information to which Cacchione pleaded guilty alleged, among other things, that Cacchione, while he was associated with a broker-dealer, aided and abetted a scheme to defraud lenders in connection with the fraudulent pledge of securities underlying the final judgment described in Paragraph 5 above and the related Commission complaint. Cacchione admitted in his plea agreement that while he was a registered representative with Merriman, (1) he signed falsified account control agreements that falsely gave the appearance that Del Biaggio owned and controlled Merriman clients' accounts when he did not; and (2) he provided account statements belonging to Merriman clients, knowing that Del Biaggio intended to and did falsify the account statements Cacchione provided.

IV.

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

Accordingly, it is hereby ORDERED:

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

Any reapplication for association by the Respondent 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.

By the Commission.

Brent J. Fields
Secretary