

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4455 / July 18, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17348

In the Matter of

**ADVANTAGE INVESTMENT
MANAGEMENT, LLC**

Respondent.

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

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 Advantage Investment Management, LLC (“AIM” or “Respondent”).

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, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

SUMMARY

1. This matter involves the failure of registered investment adviser Advantage Investment Management, LLC to disclose a loan of approximately \$3 million, forgivable over a five-year period, from a dually registered broker-dealer and investment adviser ("Broker-Dealer A") that it had engaged to provide clearing and custody and other services for AIM's clients. AIM did not disclose the forgivable loan, either in its filings or otherwise to clients. The adviser thus failed to disclose a loan from a broker-dealer whom the adviser had engaged to provide services to its clients. By failing to disclose its conflicts of interest completely and accurately, the adviser violated Section 206(2) of the Advisers Act. The adviser also violated Section 207 of the Advisers Act by virtue of omissions of material facts from its Commission filings concerning its relationship with the broker-dealer.

RESPONDENT

2. **Advantage Investment Management, LLC** ("AIM" or "Respondent") is an Iowa limited liability company with its principal place of business in Cedar Rapids, Iowa. Since September 5, 2008, AIM has been registered with the Commission as an investment adviser (File No. 801-69551). AIM is a subsidiary of Advantage Financial Group, Inc., an Iowa corporation ("AFG"). As of December 31, 2015, AIM had regulatory assets under management of approximately \$564 million.

FACTS

Firm Background

3. AIM provides financial planning, consulting and investment management services to a wide variety of clients, including individuals, trusts, estates, charitable organizations, corporations, other business entities, and pension and profit sharing plans. Its investment advisory services are offered to clients in three general categories: asset management programs, third party asset managers, and consulting services.

4. In August 2012, AIM entered into an agreement with Broker-Dealer A, a third party broker-dealer, for Broker-Dealer A to provide clearing and custody services for AIM's clients. Pursuant to its agreement with Broker-Dealer A, certain of AIM's investment adviser representatives ("IARs") also became IARs of Broker-Dealer A and certain AFG employees who had been registered representatives of AIM's previous primary broker-dealer became registered representatives of Broker-Dealer A (the "RRs"). Under AIM's agreement with Broker-Dealer A, Broker-Dealer A provided execution of

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

trades, custody of assets, and reporting services for AIM's clients. In addition, AIM offered several advisory programs sponsored by Broker-Dealer A. For example, AIM offered its clients an advisory account opened by and at Broker-Dealer A, in which AIM would manage client assets and Broker-Dealer A would provide research on asset allocation, model portfolios, fund selection, and equity recommendations. Broker-Dealer A received advisory fees from the client for assets managed in such accounts, a portion of which were paid to AIM.

5. Currently approximately 90% of AIM's assets under management are held in trading accounts at Broker-Dealer A.

Forgivable Loan

6. In connection with its agreement to become AIM's primary broker-dealer, Broker- Dealer A issued a forgivable loan (the "Forgivable Loan") in the amount of \$3,039,548.16 on August 9, 2012. AIM's IARs and the RRs each received a portion of the proceeds of the Forgivable Loan based on their respective assets under management and equity ownership in AFG, pursuant to a formula approved by AFG's board of directors. AIM's IARs and the RRs in part used the proceeds of the Forgivable Loan to cover costs and fees incurred by AIM and AFG, and by AIM's clients, associated with transitioning client accounts from AIM and AFG's prior broker-dealer to Broker-Dealer A.

7. Under its terms, the Forgivable Loan was to be forgiven over a five-year period on a straight-line basis, in the amount of \$607,909.63 (plus interest) per year on the anniversary date of the Forgivable Loan so long as AIM's relationship with Broker-Dealer A continued. Accordingly, to date, Broker-Dealer A has forgiven \$1,823,728.89 plus interest of its forgivable loan.

Failure to Disclose the Forgivable Loan and Related Conflicts of Interest

8. AIM was required to file and did file Form ADV annual amendments with the Commission.

9. In August 2012, in its Form ADV Part 2A brochure, AIM began to disclose certain aspects of its relationship with Broker-Dealer A and the services Broker-Dealer A may provide to AIM's clients, including that Broker-Dealer A provided execution of trades and custody of assets for AIM's customers, and that certain executive officers and IARs of AIM are also IARs and registered representatives of Broker-Dealer A.

10. AIM did not, however, disclose the Forgivable Loan to its clients, either in its Forms ADV filed with the Commission or otherwise. AIM also did not disclose the conflicts of interest inherent in the fact that its IARs received compensation from Broker-Dealer A in the form of forgiveness of the Forgivable Loan, while at the same time using Broker-Dealer A for execution, custody and reporting services, recommending that clients open brokerage accounts with Broker-Dealer A, and obtaining investment research from Broker-Dealer A. The Forgivable Loan provided AIM with a financial

incentive to use Broker-Dealer A for such services. Such disclosure should have been included in Part 2A of AIM's Form ADV.

11. In its Form ADV Part 2A brochure filed on December 1, 2015, AIM added a disclosure regarding the possibility that certain of AIM's IARs may have received a forgivable loan from Broker-Dealer A if he or she had recently become associated with AIM. In relevant part, Item 14, "Client Referrals and Other Compensation," stated:

If an IAR has recently become associated with AIM, he or she may have received payments from [Broker-Dealer A] in connection with the transition from another broker-dealer or investment advisor firm. These payments, which may be significant, are intended to assist an IAR with the costs associated with the transition, such as moving expenses, leasing space, furniture, staff and termination fees associated with moving accounts; however, AIM does not confirm the use of these payments for such transition costs. These payments may be in the form of loans to the IAR, which may be repayable to [Broker-Dealer A] or may be forgiven by [Broker-Dealer A] based on years of service with [Broker-Dealer A] (e.g., if the IAR remains with [Broker-Dealer A] for 5 years) and/or the scope of business engaged in with [Broker-Dealer A], including the amount of advisory account assets with [Broker-Dealer A]. This presents a potential conflict of interest in that an IAR has a financial incentive to recommend that a client engage with the IAR and AIM for advisory services in order for the loan to be forgiven. However, an IAR may only recommend a program or service that he or she believes is suitable for you. AIM has systems in place to review IAR-managed accounts for suitability over the course of the advisory relationship.

12. While this disclosure in 2015 acknowledged the possibility that an AIM IAR who had recently become associated with AIM "may" receive payments from Broker-Dealer A pursuant to forgivable loan arrangements, it did not address the Forgivable Loan received in August 2012, which was paid to all of AIM's IARs. AIM continued to omit material information, including that the Forgivable Loan from Broker-Dealer A had in fact been received in 2012 (and that Broker-Dealer A continued annually to forgive the Forgivable Loan according to its terms), and the nature and magnitude of the Forgivable Loan. Nor did AIM explain the resulting conflicts of interest with AIM's continued use and recommendation of Broker-Dealer A for execution of client trades, custody of client assets, and reporting and research services, or how AIM addressed such conflicts.

VIOLATIONS

13. Based on the conduct described above, AIM willfully² 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 upon any client or prospective client. A violation of Section 206(2) of the Advisers Act may rest on a finding of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.*

14. Based on the conduct described above, Respondent willfully violated Section 207 of the Advisers Act, which makes it unlawful for any person to make any untrue statement of a material fact or omit any material fact in any report filed with the Commission.

IV.

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

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

- A. Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 207 of the Advisers Act.
- B. Respondent shall be and hereby is censured.
- C. Respondent shall, within fourteen (14) days of the entry of this Order, pay a civil money penalty in the amount of \$60,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:
 - (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

² A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Respondent by name as the Respondent in these proceedings, and the file number of these proceedings; and a copy of the cover letter and check or money order must be sent to Jeffrey Finnell, Assistant Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-5010.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary