

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84980 / January 9, 2019

INVESTMENT ADVISERS ACT OF 1940
Release No. 5100 / January 9, 2019

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4013 / January 9, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-18966

In the Matter of

Katz, Sapper & Miller, LLP,
and Scott C. Price, CPA,

Respondents.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, SECTION 4C OF
THE SECURITIES EXCHANGE ACT OF
1934, AND RULE 102(e) OF THE
COMMISSION'S RULES OF PRACTICE,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Katz, Sapper & Miller, LLP (“KSM”), and Scott C. Price, CPA (“Price”) (collectively “Respondents”) pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), Section 4C¹ of the

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others; (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.²

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 Respondents and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Public Administrative and Cease-And-Desist Proceedings Pursuant to Section 203(k) of the Investment Advisers Act of 1940, Section 4C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission’s Rules of Practice, 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 Respondents’ Offers, the Commission finds³ that:

Summary

This matter involves improper professional conduct by Respondents in completing audits pursuant to Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder (the “Custody Rule”). In January 2013, Mohlman Asset Management Fund, LLC (“MAMF”), a former SEC-registered investment adviser, engaged KSM to audit the financial statements of two pooled investment vehicles MAMF advised, Mohlman Asset Management Fund 2010, LLC (“Fund I”) and Mohlman Asset Management Fund II, LLC (“Fund II”) (collectively, “the Funds”). The first engagement in 2013 covered Fund I from its inception in 2010 and Fund II from its inception in 2011 to December 31, 2012, which is the Funds’ fiscal year-end.⁴ MAMF engaged KSM to audit the Funds in 2014, 2015, and 2016, covering the Funds’ fiscal years ending on December 31, 2013, 2014, and 2015. The first engagement in 2013 and the second in 2014 also included KSM drafting the Funds’ 2012 and 2013 year-end financial statements in accordance with generally accepted

² Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.

³ The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

⁴ The Funds’ fiscal year corresponds with the calendar year, January 1 to December 31.

accounting principles (“GAAP”) in the United States. The audits were supposed to be conducted in accordance with generally accepted auditing standards (“GAAS”) in the United States established by the AICPA Auditing Standards Board. MAMF engaged KSM to conduct the audits in an effort to enable MAMF to comply with an exception to the Custody Rule because MAMF had custody of client assets invested in the Funds. Audits performed pursuant to the Custody Rule exception require SEC independence.

Unbeknownst to MAMF, KSM and Price, the audit partner on all of the engagements, failed to meet the requirements of the Custody Rule in conducting their audits of the Funds. KSM was not independent because it prepared the Funds’ 2012 and 2013 year-end financial statements and then audited them. As a result, Respondents KSM and Price caused MAMF’s 2012 and 2013 violations of the Custody Rule.

KSM and Price also engaged in improper professional conduct within the meaning of Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice by failing to: (a) have relevant knowledge, training and experience; (b) issue a modified opinion with respect to Fund II’s 2013 and 2014 year-end financial statements, even though they should have been aware of a related party transaction and a loan that had not been properly disclosed in the financial statements; and (c) exercise due professional care. In addition, KSM failed to establish sufficient quality control standards.

Respondents

1. **Katz Sapper & Miller, LLP** is an Indiana limited liability partnership headquartered in Indianapolis, Indiana. KSM offers audit, accounting, tax and consulting services for a wide range of industries, and is registered with the Public Company Accounting Oversight Board. As of June 28, 2018, KSM had 264 accountants and approximately 169 additional firm personnel located in three offices in two states.

2. **Scott Price, CPA**, age 46, is a resident of Carmel, Indiana. He has been a Partner at KSM since January 1, 2012, and has led KSM’s Financial Services Practice Group since 2017. He is a certified public accountant licensed in the State of Indiana. Price served as the engagement partner for all of the audit and financial statement preparation work KSM performed for the Funds.

Other Relevant Entities

3. **Mohlman Asset Management Fund, LLC** is an Indiana limited liability company, with its principal place of business in Fort Wayne, Indiana. MAMF became a SEC-reporting investment adviser in March 2010. In September 2017, MAMF filed a Form ADV-W to withdraw its registration, and its registration was terminated, effective September 19, 2017. Although MAMF was a SEC-registered investment adviser, the same Indiana limited liability company operated as a pooled investment vehicle, i.e., Fund I. MAMF was the adviser to the Funds during the relevant

time period.⁵ Louis G. Mohlman, Jr. (“L. Mohlman”) owned and controlled MAMF until its registration terminated.

4. **MAM, LLC** is an Indiana limited liability company, with its principal place of business in Fort Wayne, Indiana. MAM, LLC became a SEC-reporting investment adviser in September 2009. On or about February 28, 2018, MAM, LLC filed a Form ADV-W to withdraw its registration, and its registration was terminated, effective March 3, 2018. L. Mohlman, who served as MAM, LLC’s President and Chief Compliance Officer (“CCO”) from approximately September 2009 until December 2017, owned and controlled MAM, LLC.

5. **Mohlman Asset Management Fund 2010, LLC** is an Indiana limited liability company that was formed in or around January 2010 and began operating as a private fund in February 2010. It meets the definition of a pooled investment vehicle under Rule 206(4)-8(b) of the Advisers Act. At all relevant times, MAMF managed Fund I.

6. **Mohlman Asset Management Fund II, LLC** is an Indiana limited liability company that was formed in or around November 2011 and operates as a private fund. It meets the definition of a pooled investment vehicle under Rule 206(4)-8(b) of the Advisers Act. At all relevant times, MAMF managed Fund II.

7. **Annya Capital Management, Inc.** is an Indiana corporation that was formed in December 2012. It is a shell company L. Mohlman created and used to facilitate various transactions with MAM, LLC’s and MAMF’s current and potential advisory clients. At all relevant times, Mohlman controlled Annya as its Principal. Annya is not registered with the SEC.

Facts

8. Between at least February 2010 and December 31, 2015, MAMF had custody of client assets invested in the Funds and was required to comply with the Custody Rule.

9. The Custody Rule requires, among other things, that registered investment advisers with custody of client assets maintain those funds and securities with a qualified custodian, who must provide account statements to the investors at least quarterly, and requires client assets to be verified through an annual surprise examination by an independent public accountant.

10. An adviser may satisfy the Custody Rule requirements if, in connection with a limited partnership, it completes and distributes annual audited financial statements prepared in accordance with GAAP to each limited partner within 120 days of the end of the partnership’s fiscal year (the “Audit Exception”). See Rule 206(4)-2(b)(4) under the Advisers Act. The

⁵ In October 2011, Mohlman amended the registration paperwork for this entity with the State of Indiana and changed the name to Mohlman Asset Management Fund, LLC. Notwithstanding this name change with the State of Indiana, Fund I’s Private Offering Memorandum, Subscription Agreements, and Operating Agreement identify the fund’s name as Mohlman Asset Management Fund 2010, LLC.

financial statements must be audited by an independent public accountant that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by the PCAOB. See Rule 206(4)-2(b)(4)(i and ii) under the Advisers Act. To be considered independent, a public accountant must meet the standards of independence described in Rule 2-01(b) and (c) of Regulation S-X. See Rule 206(4)-2(d)(3) under the Advisers Act.

**MAMF Engaged KSM to
Audit the Funds' 2012 through 2015 Year-End Financial Statements**

11. MAMF engaged KSM to perform audits of the Funds' year-end financial statements since inception through 2015. The audit engagement letters stated that the audits were to be performed in accordance with AICPA standards. KSM knew that the Funds' audits were being performed so that MAMF could comply with the Custody Rule.

12. Price was the KSM engagement partner on all of the MAMF engagements, and was thus ultimately responsible for the Funds' audit engagements and their performance, and for recommending that KSM issue its audit reports.

**KSM was not Independent because It Prepared
and Audited the Funds' 2012 and 2013 Year-End Financial Statements**

13. KSM was not independent because it prepared the Funds' 2012 and 2013 financial statements and notes to the financial statements, which it then audited.

14. Each year, MAMF provided the Funds' bank statements to KSM. To draft the Funds' 2012 and 2013 year-end financial statements, KSM used the bank statements and other records MAMF provided to create a trial balance and then the financial statements, including the notes to the financial statements. KSM subsequently performed audit procedures, whereby KSM audited its own work.

15. After the engagement team prepared the financial statements and notes, it provided L. Mohlman with drafts, so that he could approve them.

16. Under Rule 2-01(c)(4)(i) of Regulation S-X, an accountant is not independent if the accountant provides certain bookkeeping or other services, related to the accounting records or financial statements unless it is reasonable to conclude that the results of those services will not be subject to audit procedures during an audit of the audit client's financial statements.

17. The financial statements and accompanying notes that KSM prepared were subject to the audit procedures that KSM performed during its audits of the Funds. The KSM engagement team did not apply the SEC independence standards to the work it performed for the Funds' 2012 and 2013 year-end financial statements.

**KSM did not Conduct the Audits of the Funds’
2012 through 2015 Year-End Financial Statements in Accordance with
Certain Applicable Professional Standards**

18. KSM’s engagement letters for the audits of the Funds’ 2012 through 2015 year-end financial statements state that the audits would be performed in accordance with AICPA standards. However, in connection with the audits of the Funds, KSM and Price failed to adhere to certain professional auditing standards, and KSM failed to adhere to certain professional quality control standards as described in paragraphs 19 through 47 below.

Failure to Have Relevant Knowledge, Training, and Experience – Respondents KSM and Price

19. KSM and Price did not sufficiently evaluate the engagement team’s relevant knowledge of, and training and experience in, the Custody Rule and the applicable SEC independence standards, in accordance with AICPA Quality Control Standard 10, A Firm’s System of Quality Control (“QC”), at .12, .31, .33, and .34.

20. The KSM engagement team conducted the audits of the Funds’ 2012 and 2013 year-end financial statements with limited experience in conducting financial statement audits of funds required to comply with the Custody Rule. The engagement team members did not receive any training on the knowledge and competency required in conducting financial statement audits of funds required to comply with the Custody Rule.

21. The KSM engagement team also conducted the audits of the Funds’ 2012 and 2013 year-end financial statements without proper training in the SEC independence standards. The engagement team had no training concerning SEC independence standards prior to, or in conjunction with, any of the Funds’ audits. KSM’s workpapers for the Funds’ audits do not document that any member of the engagement team reviewed the SEC independence standards for the audits of the Funds’ 2012 and 2013 year-end financial statements.

22. Price did not receive any formal training on the SEC independence standards until approximately the fall of 2014. He first became aware that the SEC independence standards applied to the Funds’ audits in the fall of 2014.

23. AICPA Quality Control Standards require an auditing firm to establish policies and procedures that provide the firm with reasonable assurance that the firm and its personnel comply with professional standards and applicable legal and regulatory requirements. See QC 10.12, .31, .33, and .34. These standards also require the firm to establish policies specifically designed to address the competencies of audit partners, including a requirement that they have the appropriate competence, capabilities, and authority to perform the role. See QC 10.33. Firm policies and procedures should also provide reasonable assurance that the policies and procedures concerning the system of quality control “are relevant, adequate, and operating effectively.” QC 10.52; see also AU-C 220, Quality Control for Engagement Conducted in Accordance with Generally Accepted Auditing Standards, at .24.

Audit Procedures for Related Party Transactions – Respondents KSM and Price

24. GAAS concerning related party transactions states that an auditor’s objective, among other things, is to “obtain sufficient appropriate audit evidence about whether related party relationships and transactions have been appropriately identified, accounted for, and disclosed in the financial statements.” AU-C 550, Related Parties, at .09. To form an opinion on the financial statements, the auditor should evaluate whether “the identified related party relationships and transactions have been appropriately accounted for and disclosed” and “the effects of the related party relationships and transactions prevent the financial statements from achieving fair presentation.” AU-C 550, at .26. Disclosures of related party transactions must include (1) the nature of the relationships involved; (2) a description of the transactions and other such information deemed necessary to an understanding of the effects of the transactions on the financial statements; and (3) the terms and manner of settlement. Accounting Standard Codification Topic 850-10-50-1.

25. In February 2014, in preparation for the financial statement and audit work KSM would be performing for the Funds’ 2013 fiscal year, the KSM engagement team requested documents from L. Mohlman concerning the Funds’ investments, including but not limited to, any of the offering or like documents for investments made in 2013, as well as evidence of the investments. In response to that request, L. Mohlman provided the KSM engagement team with documents concerning Annya and a transaction that Fund II had engaged in with Person A to obtain shares of Annya. The documents included Annya’s private offering memorandum (“POM”), a Subscription Agreement between Person A and Annya, and a Share Purchase Agreement between Person A and Fund II.

26. Annya’s POM identified MAMF as its manager, and L. Mohlman as its principal. Price and at least one other KSM engagement team member were aware that Annya and MAMF were controlled by L. Mohlman. When KSM prepared Footnote One of Fund II’s 2013 year-end financial statements, it noted that the principal of Fund II was also the manager of Annya. KSM and Price therefore knew Annya was a related party.

27. The Subscription Agreement between Person A and Annya and the Share Purchase Agreement between Person A and Fund II pertained to a transaction whereby MAMF caused Fund II to purchase 100 shares of Annya from Person A in exchange for Person A becoming an advisory client of MAM, LLC (the “Person A Transaction”). MAMF, MAM, LLC, and Annya were all controlled by L. Mohlman at this time, and KSM and Price were aware of this.

28. According to the Subscription Agreement, Person A purchased 100 shares of Annya for \$1,000. The Share Purchase Agreement shows that Fund II purchased 100 shares of Annya from Person A for \$51,000, and in exchange, Person A had to maintain a portfolio value of at least \$4,000,000 with MAM, LLC, or its affiliates, for a three-year period. Person A did become a client of MAM, LLC as a result of the Share Purchase Agreement and remained as such until 2015.

29. Based on their review of the Subscription Agreement and Share Purchase Agreements, and discussions with L. Mohlman, the KSM engagement team, including Price, should have been aware that Fund II purchased Annya shares and MAM, LLC obtained Person A as a client as a result of the transaction.

30. Fund II's 2013 and 2014 year-end financial statements, however, did not adequately disclose the Person A Transaction as a related party transaction. Fund II's 2013 and 2014 year-end financial statements included the Person A Transaction on the Schedule of Investments as an investment in an early stage company and identified the company as Annya. Footnote One of Fund II's 2013 and 2014 year-end financial statements merely described the Person A Transaction as an investment in the common stock of Annya, and noted that the principal of Fund II was also the manager of Annya. The footnotes did not further describe the nature of the relationships involved, or the Person A Transaction and its terms, specifically, the portfolio management rights portion of the transaction.

31. Despite being aware of the related party and the related party transaction, KSM issued an audit report containing an unmodified opinion with respect to Fund II's 2013 and 2014 year-end financial statements, even though the related party transaction had not been properly disclosed. Price approved KSM's 2013 and 2014 reports before they were issued.

Failure to Exercise Due Professional Care – Respondents KSM and Price

32. KSM and Price, for the audits of the Funds' 2012 through 2015 year-end financial statements, failed to exercise due professional care in planning and performing the Funds' audits, in accordance with AU-C 200, Objectives of the Independent Auditor and the Conduct of an Audit in Accordance With Generally Accepted Auditing Standards.

33. KSM and Price were not independent pursuant to SEC independence standards when they performed the audits of the Funds' 2012 and 2013 year-end financial statements, and failed to have relevant knowledge, training and experience, or properly evaluate the disclosures of a related party transaction and loan.

34. The loan concerned a 2013 transaction whereby Fund II loaned money to an individual, Person B, and his wife, Person C. Fund II's 2013, 2014, and 2015 year-end financial statements identified the transaction on the Condensed Schedule of Investments as an investment with an early stage company in the form of a promissory note with Company A, as opposed to an unsecured loan and promissory note with Persons B and C. While the footnotes to the financial statements provided details concerning the terms and amount of the note, they also erroneously identified the promissory note as being with Company A, as opposed to Persons B and C.

35. Price did not adequately consider the appropriate independence standards for the audits of the Funds' 2012 and 2013 year-end financial statements. Rather than apply the SEC independence standards, the engagement team applied the AICPA independence standards. There is no documentation in the workpapers that Price reviewed the SEC independence standards in connection with the audits of the Funds' 2012 and 2013 year-end financial statements.

36. AU-C 200 requires auditors to exercise due professional care in the planning and performance of the audit and the preparation of the report. See AU-C 200 at .16, .A16, and .A19. The engagement partner should be satisfied that the engagement team has the appropriate competence and capabilities to perform the audit in the engagement in accordance with professional standards and applicable legal and regulatory requirements. See AU-C 220 at .16. The engagement partner should take responsibility for the direction, supervision, and performance of the audit engagement in compliance with professional standards, applicable legal and regulatory requirements, and the firm's policies and procedures; and the auditor's report being appropriate under the circumstances. Id. at .17(a) and (b).

Failure to Adhere to the Quality Control Standards – Respondent KSM

37. Although the relevant engagement letters stated that the Funds' audits would be performed in accordance with AICPA standards, KSM failed to establish sufficient quality control standards in accordance with AICPA Quality Control standard 10 or AU 220 at .13.

38. KSM failed to establish adequate policies with respect to its compliance with SEC independence standards for engagements performed to satisfy the Custody Rule. See QC 10 at .22 and .27. The engagement team did not have the adequate training or experience in SEC independence standards. Price did not have the relevant knowledge, training and experience required.

39. KSM's failure to establish adequate quality control policies was reflected in KSM's failure to maintain independence in performing the Funds' audits described above.

40. AICPA Quality Control standard 10 requires that a system of quality control be established and maintained. See QC 10 at .17. One of the elements of a system of quality control is personnel management. See QC 10 at .17, .31. The objective of the firm is to establish and maintain a system of quality control to provide it with reasonable assurance that the firm and its personnel comply with the professional standards. See QC 10 at .12.

Respondents' Misconduct Under Section 4C of the Exchange Act and Rule 102(e)

41. Rule 102(e)(1) of the Commission's Rules of Practice and Section 4C of the Exchange Act allow the Commission to censure a person, or deny the person, either permanently or temporarily, from appearing or practicing before the Commission if the Commission finds the person to be lacking in character or integrity or to have engaged in unethical or improper professional conduct. Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

KSM and Price's Improper Professional Conduct

42. KSM and Price engaged in improper professional conduct within the meaning of Rule 102(e)(1)(ii) of the Commission's Rules of Practice by negligently engaging in highly

unreasonable conduct that resulted in a violation of applicable professional standards in circumstances for which heightened scrutiny is warranted, or by negligently engaging in repeated instances of unreasonable conduct, each resulting in a violation of the applicable professional standards.

43. KSM and Price failed to comply with the SEC independence standards for the audits of the Funds' 2012 and 2013 year-end financial statements, for which heightened scrutiny was warranted. The KSM engagement team unreasonably concluded that AICPA independence standards applied, as opposed to SEC independence standards.

44. KSM and Price also failed to have relevant knowledge, training and experience prior to conducting the audits of the Funds' 2012 and 2013 year-end financial statements. KSM failed to establish sufficient quality control standards to determine whether independence conflicts had been appropriately reviewed and addressed.

45. In addition, KSM and Price failed to exercise due professional care in connection with the Funds' audits because: (1) for the audits of the Funds' 2012 and 2013 year-end financial statements, they violated the SEC independence standards; and (2) for the audits of Fund II's 2013, 2014, and 2015 year-end financial statements, they violated AICPA audit standards.

46. KSM and Price issued an audit report containing an unmodified opinion regarding Fund II's 2013 and 2014 year-end financial statements, even though they should have been aware of a related party transaction that had not been properly disclosed.

47. KSM and Price also issued an audit report containing an unmodified opinion regarding Fund II's 2013 through 2015 year-end financial statements, even though they should have been aware that Fund II's 2013 through 2015 year-end financial statements failed to properly disclose an unsecured loan to Person B and his wife, Person C.

KSM and Price
Caused MAMF's 2012 and 2013 Custody Rule Violations

48. KSM and Price caused MAMF's 2012 and 2013 violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder.

49. KSM knew that MAMF needed the Funds' financial statements audited to comply with the Custody Rule. Price, as the engagement partner for all audits, was ultimately responsible that the Funds' audits complied with applicable AICPA standards and the Custody Rule's requirements, including that KSM was an independent accountant.

50. As a result, Price approved KSM's issuance of the Funds' 2012 and 2013 audit reports despite the fact that KSM's independence was impaired.

Findings

51. As a result of the conduct described above, the Commission finds that KSM and Price engaged in improper professional conduct pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

52. As a result of the conduct described above, the Commission finds that KSM and Price caused MAMF's 2012 and 2013 violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder.

KSM's and Price's Remedial Efforts

In determining to accept the Offers, the Commission considered remedial acts undertaken by Respondents and cooperation afforded the Commission staff. KSM already has taken steps to improve its policies, procedures, and training, including hiring an Audit Director to provide oversight and training for KSM's Custody Rule audits; revising its quality control policies and procedures – including client acceptance – and requiring SEC-specific training, twice yearly for all Financial Services Group members. Price played a significant role in KSM's remediation efforts, including, but not limited to, standardizing workpapers and procedures for fund audits and engagements performed under the Custody Rule and drafting new policies and procedures. Price is also the person who discovered the SEC independence standards applied to the Funds' audits and caused the engagement team to apply those standards to the audits performed for the Funds in 2015 and 2016.

Undertakings

Respondent KSM has undertaken to:

53. Within 60 days after entry of this Order, KSM shall retain, at KSM's expense, an independent consultant not unacceptable to the Commission's staff (the "Independent Consultant") for a period of one year and certify, in the manner described in paragraph 61 below, that it is in compliance with the Independent Consultant's recommendations. KSM shall require the Independent Consultant to:

- a. conduct a comprehensive review of KSM's policies, procedures, controls, and training on auditor independence standards for Custody Rule audits, broker-dealer audits, public company audits, or any other assurance service arising from a Commission rule (collectively the "Policies & Practices");
- b. make recommendations for changes or improvements to the Policies & Practices and a procedure for implementing the recommended changes or improvements; and
- c. conduct a review to assess whether KSM is complying with its revised Policies & Practices and whether the revised Policies & Practices are effective in

achieving their stated purposes, and make additional recommendations for changes or improvements to the Policies & Practices, if needed.

54. KSM undertakes that, no later than ten days following the date of the Independent Consultant's engagement, it will provide to the Commission staff a copy of an engagement letter detailing the Independent Consultant's responsibilities pursuant to paragraph 53 above. KSM shall not have the authority to terminate the Independent Consultant without prior written approval of the Commission's staff.

55. KSM undertakes that it will arrange for the Independent Consultant to issue its first report within 90 days after the date of the Independent Consultant's engagement. Within ten days after the issuance of the report, KSM shall require the Independent Consultant to submit to Amy S. Cotter, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Blvd., Suite 1450, Chicago, IL 60604 a copy of the Independent Consultant's report. The Independent Consultant's report shall describe the review performed and the conclusions reached and shall include any recommendations deemed necessary to make the Policies & Practices adequate and address the deficiencies set forth in Section III of the Order.

56. Within 30 days of receipt of the Independent Consultant's report, KSM undertakes that it will adopt all recommendations contained in the report and remedy any deficiencies in its written policies, procedures, and systems; provided, however, that as to any recommendation that KSM believes is unnecessary or inappropriate, KSM may, within 15 days of receipt of the report, advise the Independent Consultant in writing of any recommendations that it considers to be unnecessary or inappropriate and propose in writing an alternative policy or procedure designed to achieve the same objective or purpose.

57. With respect to any recommendation with which KSM and the Independent Consultant do not agree, KSM undertakes that it will attempt in good faith to reach an agreement with the Independent Consultant within 30 days of receipt of the report. In the event that KSM and the Independent Consultant are unable to agree on an alternative proposal acceptable to the Commission's staff, KSM will abide by the original recommendation of the Independent Consultant.

58. Within 30 days after the date of the Independent Consultant's report, KSM undertakes that it will submit an affidavit to Amy S. Cotter, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Blvd., Suite 1450, Chicago, IL 60604 stating that it has implemented any and all recommendations of the Independent Consultant, or explaining the circumstances under which it has not implemented such recommendations.

59. KSM undertakes that it will cooperate fully with the Independent Consultant and provide the Independent Consultant with access to its files, books, records and personnel as reasonably requested for the Independent Consultant's review.

60. KSM undertakes that it will require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with KSM, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Chicago Regional Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with KSM, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

61. KSM undertakes that it will certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondents agree to provide such evidence. The certification and supporting material shall be submitted to Amy S. Cotter, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Blvd., Suite 1450, Chicago, IL 60604, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

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

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

A. Respondents KSM and Price cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 204-2 promulgated thereunder.

B. Respondent KSM shall comply with the undertakings enumerated in Section III., Paragraphs 53 through 61.

Price

C. Respondent Price is censured.

D. Respondent Price shall, within 10 days of the entry of this Order, pay a civil money penalty of \$15,000.00 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) 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 Price as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Amy S. Cotter, Assistant Regional Director, 175 West Jackson Boulevard, Suite 1450, Chicago, Illinois 60604.

KSM

E. Respondent KSM shall, within 10 days of the entry of this Order, pay disgorgement of \$32,473.06 and prejudgment interest of \$6,257.11, and pay a civil money penalty of \$63,104.31 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 of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600, and if timely payment of the civil money penalty 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) 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 KSM as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Amy S. Cotter, Assistant Regional Director, 175 West Jackson Boulevard, Suite 1450, Chicago, Illinois 60604.

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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent Price, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Price under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent Price of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary