

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 52880 / December 2, 2005**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2457 / December 2, 2005**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 27176 / December 2, 2005**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12121**

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**In the Matter of** : **ORDER INSTITUTING**  
: **ADMINISTRATIVE AND CEASE-AND-**  
: **DESIST PROCEEDINGS, MAKING**  
: **FINDINGS AND IMPOSING**  
: **REMEDIAL SANCTIONS AND A**  
: **CEASE-AND-DESIST ORDER**  
: **PURSUANT TO SECTIONS 15(b)(6)**  
**Gerson Asset Management, Inc. and** : **AND 21C OF THE SECURITIES**  
**Seth Gerson,** : **EXCHANGE ACT OF 1934, SECTION**  
: **9(b) OF THE INVESTMENT**  
: **COMPANY ACT OF 1940, AND**  
: **SECTIONS 203(e), 203(f) AND 203(k) OF**  
: **THE INVESTMENT ADVISERS ACT**  
: **OF 1940**  
**Respondents.** :  
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**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 Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Gerson Asset Management, Inc. (“GAM”), and Sections 15(b)(6) and 21C of the Exchange Act,

Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”), and Sections 203(f) and 203(k) of the Advisers Act against Seth Gerson (“Gerson”) (collectively with GAM, “Respondents”).

## II.

In anticipation of the institution of these proceedings, Respondents GAM and Gerson have 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 in 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, GAM and Gerson consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b)(6) and 21C of the Securities Exchange Act of 1934, Section 9(b) of the Investment Company Act of 1940, and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Order”), as set forth below.

## III.

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

### **OVERVIEW**

A. This matter concerns unfair trade allocation – “cherry picking” – by Seth Gerson, the sole owner, officer, and employee of GAM, a registered investment adviser. From the time GAM commenced operations in May 2000 through February 2004 (the “relevant period”), Gerson unfairly allocated profitable trades to his own accounts, and allocated unprofitable trades to the accounts of his advisory clients. He did this by purchasing securities in an omnibus account and delaying allocation of the purchases until later in the day, after he saw whether the securities appreciated in value. With respect to some clients, Gerson sold securities that had appreciated and allocated the purchase and the realized day-trading profit to his own account. With respect to a second group of clients – the “Horowitz-referred clients” – Gerson sold securities that had appreciated, allocated the day-trade and profit to his own account, and then purchased the same security at the increased price for the client’s account. As a result of his fraud, Gerson realized ill-gotten gains of over \$200,000, and injured his clients by at least \$150,000. Furthermore, because Gerson failed to create or maintain required records of client trades, GAM, aided and abetted by Gerson, also violated the books-and-records provisions of the Advisers Act.

## **RESPONDENTS**

B. GAM is a New York corporation and has been registered with the Commission as an investment adviser since May 2, 2000. As of November 30, 2003, GAM managed 348 client accounts and had \$65,900,000 under management. Currently, GAM manages accounts for approximately twenty clients, and has approximately \$5 million under management.

C. Gerson, age 44, resides in Mount Kisco, New York. Gerson is the president and sole owner and employee of GAM, which he operates out of his home. From February 2004 to September 2005, Gerson was a registered representative of Gerson, Horowitz & Green Securities Corp., Inc. (“Horowitz Securities”), a registered broker-dealer located in New York, New York. From November 2003 to February 2004, Gerson was associated with Horowitz Securities pending becoming a registered representative. From 1994 to 1999, Gerson was a registered representative of another broker-dealer; for the preceding seven years he worked as an insurance broker.

## **RESPONDENTS’ CONDUCT**

D. From May 2000 until March 2005, GAM provided investment advisory services to approximately 350 clients, including individuals, trusts, and pension and profit-sharing plans. The bulk of GAM’s business came from the Horowitz-referred clients, who represented 258 of GAM’s total 348 client accounts and approximately \$60,700,000 of its total \$65,900,000 assets under management.<sup>1</sup> Although Gerson had discretionary trading authority over the Horowitz accounts, Horowitz made all the investment decisions for those accounts, and Gerson simply placed orders as instructed by Horowitz. Among GAM’s other accounts were approximately nine accounts that – although ostensibly non-discretionary – Gerson managed on a discretionary basis and for which the agreed-upon investment strategy included short-term trading (the “short-term trading clients”).<sup>2</sup> Gerson also maintained several personal accounts, which he actively traded. Gerson’s investment strategy for his personal accounts and the short-term trading clients’ accounts included both long- and short-term trading components.

E. During the relevant period, Gerson generally used an omnibus account at a broker-dealer (the “Master 1 account”) to place orders for his own and clients’ transactions. Gerson usually purchased securities in the Master 1 account early in the trading day, and then

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<sup>1</sup> Albert Horowitz (“Horowitz”), the president, sole shareholder and a registered representative of Horowitz Securities, referred approximately 258 clients to Gerson (the “Horowitz-referred clients”).

<sup>2</sup> As used in this Order, the term “short-term trade” means a purchase and sale of the same quantity of the same security for the same account within 30 days of the purchase. The terms “day-trade” and “same day-trade” mean a purchase and sale of the same quantity of the same security for the same account on the same day.

waited until the end of the day to allocate the transactions to client or personal accounts.

F. During the relevant period, Gerson disproportionately allocated profitable trades to his personal accounts at the expense of his clients. Gerson misappropriated profitable transactions from advisory clients in two ways. First, with respect to the short-term trading clients, Gerson delayed allocating the purchase of a security until he knew whether the security had increased or decreased in price. If the security increased in price on the day of purchase, Gerson allocated the profitable day-trade to his personal accounts, and took the gain for himself. He allocated purchases of securities whose price did not rise on the day of purchase to the accounts of short-term trading clients.<sup>3</sup>

G. With respect to the Horowitz-referred clients, Gerson followed Horowitz's instructions to purchase a particular security for a specific client and, if the price of the security rose during the day, allocated the initial purchase (and subsequent sale and intra-day gain) to his own accounts. He then purchased the same security later in the day, at the higher price, for the Horowitz-referred client's account.

H. Gerson's allocation practices made his own day-trading disproportionately profitable, as compared with his trading for the short-term trading clients. For the period May 1, 2000 to February 29, 2004, approximately 97% of same-day trades in his personal account were profitable. Day-trades for the client accounts, on the other hand, were overwhelmingly unprofitable, as were purchases for those accounts of securities held after trade date (*i.e.*, non-day-trades).

I. As a result of his unfair allocations, Gerson profited by \$214,280 and caused clients monetary harm of \$150,000. Gerson has since refunded \$54,043 to his clients.

J. Gerson was able to conceal his unfair allocations in part because he failed to keep adequate records of client trades. During the relevant period, GAM, through Gerson, failed to maintain contemporaneous records reflecting the correct date, time and client for which each trade was executed, as required by Advisers Act Rule 204-2(a)(3).

K. In GAM's Forms ADV filed with the Commission, Gerson misrepresented material facts concerning GAM's trading practices. GAM's Form ADV, which was on file throughout the relevant period, indicated at Item 9 of Part II that GAM bought and sold for itself or Gerson, securities that it also recommended to clients. However, the Form ADV misrepresented that, in order to protect against conflicts of interests, written records would be created and maintained whenever a GAM employee or related person also traded in securities recommended to clients. Schedule F to Part II of GAM's Form ADV stated, in part:

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<sup>3</sup> In at least three instances, after allocating unprofitable trades to clients on trade date, Gerson reallocated the trades to himself when the trades later became profitable.

Investment Policy – None of Registrant’s representatives may effect for [themselves or related persons] any transaction in a security which is being actively purchased or sold, or is being considered for purchase or sale, on behalf of any of Registrant’s clients, unless . . . . [r]ecords of these trades, including the reasons for the exceptions, [are] maintained with Registrant’s records.

GAM did not create or maintain any such records. Accordingly, GAM’s Forms ADV for the relevant period were false when filed.

## **VIOLATIONS**

L. By knowingly or recklessly allocating profitable trades to Gerson at the expense of GAM’s clients, as described above, Gerson and GAM willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities, and Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser with respect to advisory clients or prospective clients.

M. By signing and causing to be filed on behalf of GAM a Form ADV falsely stating that GAM would create and maintain a written record whenever a GAM employee or related party traded in the same securities recommended to clients, as described above, Gerson and GAM willfully violated Section 207 of the Advisers Act, which makes it “unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein.”

N. As described above, GAM willfully violated, and Gerson willfully aided and abetted, and caused, GAM’s violations of Section 204 of the Advisers Act, and Rule 204-2(a)(3) thereunder, which require registered investment advisers to make and keep true, accurate and current order memoranda for the purchase or sale of any security on behalf of a client, by failing to maintain any such order memoranda.

## **DISGORGEMENT AND CIVIL PENALTIES**

O. Respondents Gerson and GAM have submitted sworn Statements of Financial Condition dated June 13, 2005, and June 14, 2005, respectively, and other evidence, and have asserted their inability to pay prejudgment interest or a civil penalty.

## **UNDERTAKING**

P. Upon entry of this Order, Respondent GAM undertakes to cease operations and close out all client accounts.

#### IV.

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

Accordingly, it is hereby ORDERED:

A. Pursuant to Section 21C of the Exchange Act and Section 203(k) of the Advisers Act, that GAM cease and desist from committing or causing any violation and any future violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 204, 206(1), 206(2) and 207 of the Advisers Act and Rule 204-2(a)(3) thereunder;

B. Pursuant to Section 21C of the Exchange Act and Section 203(k) of the Advisers Act, that Gerson cease and desist from committing or causing any violation and any future violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1), 206(2) and 207 of the Advisers Act, and cease and desist from committing or causing any violation and any future violations of Section 204 of the Advisers Act and Rule 204-2(a)(3) thereunder;

C. Pursuant to Section 203(e) of the Advisers Act, that GAM's registration as an investment adviser is revoked;

D. That Respondent GAM shall comply with the undertaking enumerated in paragraph P., above.

E. Pursuant to Section 15(b)(6) of the Exchange Act, Section 9(b) of the Investment Company Act, and Section 203(f) of the Advisers Act, that Respondent Gerson be, and hereby is barred from association with any broker, dealer, or investment adviser, and is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter;

Any reapplication for association by Respondent Gerson 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.

F. Pursuant to Section 21B of the Exchange Act, Section 203(j) of the Advisers Act, and Section 9(e) of the Investment Company Act, that Respondent Gerson shall, within thirty days of the entry of this Order, pay disgorgement in the amount of \$160,237 plus prejudgment interest to the United States Treasury, but that payment of prejudgment interest is waived based upon Gerson's sworn representations in his Statement of Financial Condition dated June 13, 2005 and other documents submitted to the Commission. Payment of disgorgement shall be: (A) made by 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 Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Gerson as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Assistant Regional Director Leslie Kazon, Securities and Exchange Commission, Northeast Regional Office, 3 World Financial Center, Room 4300, New York, NY 10281-10022.

G. Based upon Respondents Gerson and GAM's sworn representations in their Statements of Financial Condition dated June 13, 2005, and June 14, 2005, respectively, and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondents Gerson or GAM .

H. The Division of Enforcement may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondents GAM and Gerson provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of prejudgment interest and the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondents GAM and Gerson was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondents GAM and Gerson may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of prejudgment interest or a penalty should not be ordered; (3) contest the amount of prejudgment interest to be ordered, or the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Jonathan G. Katz  
Secretary