

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6748 / October 15, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-20531

In the Matter of

**Horter Investment Management, LLC
and Drew K. Horter,**

Respondents.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS
PURSUANT TO SECTIONS 203(e), 203(f)
and 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940.**

I.

On September 8, 2021, the Securities and Exchange Commission (“Commission”) issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) and Notice of Hearing (“OIP”) alleging that Horter Investment Management, LLC and Drew K. Horter, Horter Investment’s Chief Executive Officer and President, (individually, “Horter Investment” and “Horter,” collectively, “Respondents”) failed reasonably to supervise, including, specifically, failures regarding supervision of Kimm Hannan, an investment adviser representative (“IAR”) who misappropriated funds from Horter Investment clients. The OIP alleged that Horter Investment and Horter violated Sections 203(e)(6) and 203(f) of the Advisers Act and Horter Investment violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder for their failure reasonably to supervise.

On November 3, 2022, the Commission issued, by consent, a bifurcated Order Making Findings and Imposing a Cease-And-Desist Order Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 and Ordering Continuation of Proceedings (“OIP II”) finding that Horter Investment and Horter failed reasonably to supervise within the meaning of Advisers Act Sections 203(e)(6) and 203(f) and that Horter Investment willfully violated Advisers Act Section 206(4) and Rule 206(4)-7, and ordering Horter Investment to cease and desist from committing or causing any violation and any future violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder. OIP II also ordered a hearing for the purpose of taking evidence to determine (a) what, if any, civil penalties were appropriate and in the public interest under Section 203(i) of the Advisers Act, and (b) what, if any, other remedial actions were appropriate and in the public interest under Sections 203(e) and 203(f) of the Advisers Act.

On March 20, 2023, an Administrative Law Judge issued an initial decision that incorporated OIP II’s findings, censured Horter Investment, imposed sanctions and other remedial relief. Respondents filed a petition for Commission review of the initial decision, which was granted May 1, 2023.

II.

In connection with these further proceedings, Respondents have submitted an Offer of Settlement (“Offer”) which the Commission deems it appropriate and in the public interest 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V. with respect to Horter, Respondents consent to the entry of this Order Making Findings and Imposing Remedial Sanctions Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Order”) as set forth below.

III.

For context, this Order restates the relevant findings below. As noted above, Respondents and the Commission accepted these findings and deemed them true.

SUMMARY

1. Horter Investment, a registered investment adviser, and Drew Horter, Horter Investment’s founder and CEO, failed reasonably to supervise Kimm Hannan, an Investment Adviser Representative (“IAR”) with Horter Investment.

2. From at least November 2015 through at least March 2017, Hannan misappropriated \$728,001 from Horter Investment clients purportedly for his outside business activities (“OBA”), but instead he used those funds to gamble, pay personal expenses, and repay other investors.

3. Horter Investment’s overall supervisory structure was inadequate to reasonably supervise its IARs generally and Hannan specifically. Horter Investment failed to establish supervisory policies and procedures and failed to follow those policies and procedures it had in place. Horter Investment also failed reasonably to follow up on red flags. Similarly, Horter, who had overall supervisory responsibility for Horter Investment, failed to follow specific policies and procedures, failed reasonably to supervise Hannan, made open-ended delegations of supervisory responsibility without following up, and failed reasonably to follow up on red flags.

4. As described below, Horter Investment and Horter failed to reasonably supervise Hannan within the meaning of Sections 203(e)(6) and 203(f) of the Advisers Act and Horter Investment willfully violated Section 206(4) of the Advisers Act, and Rule 206(4)-7 thereunder, by failing reasonably both to adopt policies and procedures designed to safeguard client assets against misappropriation by Hannan and also to implement policies and procedures it had adopted.

RESPONDENTS

5. **Horter Investment Management, LLC** is a Cincinnati-based investment adviser founded in 1991 and registered with the Commission since January 2007. Horter is Horter Investment’s Managing Member and is the sole member of the firm. Horter Investment has

approximately \$252 million in assets under management. On December 8, 2017, the Commission issued a settled order against Horter Investment for misstatements in its advertisements and other related issues. Horter Investment was censured and ordered to cease and desist, pay \$482,595 in disgorgement and \$46,209 in prejudgment interest, and pay a \$250,000 civil penalty. *Horter Investment Management, LLC*, Advisers Act Release. No. 4823 (Dec. 8, 2017).

6. **Drew K. Horter**, age 69, resides in Mason, Ohio. Drew Horter is Horter Investment's founder and has been Horter Investment's Chief Executive Officer and President since 1991. Drew Horter previously held Series 6, 7, 22, and 63 licenses. Drew Horter has no disciplinary history.

OTHER RELEVANT ENTITIES AND INDIVIDUALS

7. **Kimm C. Hannan**, age 73, was an IAR with Horter Investment from December 1, 2014 through March 24, 2017. Hannan was in Canton, Ohio while he was associated with Horter Investment. Prior to the conduct at issue, Hannan was a registered representative holding Series 7 and 63 licenses. Hannan is currently serving a 20-year prison term at the Lorain Correctional Institution in Grafton, Ohio following his January 2019 conviction for Ohio state securities law violations arising, in part, from his misappropriation of funds from Horter Investment clients for his OBAs. On July 11, 2019, in a follow-on proceeding based on Hannan's conviction, the Commission issued an Order Instituting Proceedings pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"). *In re Kimm Hannan*, Adviser Act Rel. 5295 (July 11, 2019). On January 15, 2020, the Division of Enforcement moved for entry of an order finding Hannan in default and seeking to bar him from associating with any investment adviser, broker, dealer, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating agency; that motion is pending.

FACTS

Horter Investment Background

8. Horter Investment is an investment adviser whose business model is premised on employing IARs operating as independent contractors from remote locations. Since 2014, 95% or more of Horter Investment's IARs have worked in remote or field offices.

9. The Commission's examination staff issued a deficiency letter to Horter Investment in December 2014, noting Horter Investment "appears to have not taken our previous deficiency letters seriously" and had "failed to conduct adequate annual compliance reviews [and] failed to implement an effective compliance program . . ." The consultant Horter Investment brought in to review its compliance program following that examination noted Horter Investment's "growth has obviously outpaced its supervisory, compliance, and operational capabilities." The consultant advised Horter Investment to "develop a more detailed procedure for supervising the activities of its remote IARs."

Horter's Supervisory Responsibility and Delegations.

10. Horter has had ultimate authority over Horter Investment's policies and procedures since the firm's inception. Horter also has overall supervisory responsibility for

Horter Investment and its IARs. Drew Horter has had final authority to hire, fire, or discipline Horter Investment's IARs since the firm's inception.

11. Although Horter allegedly delegated some of his supervisory responsibilities, his delegations were *ad hoc* with no documentation evidencing the delegations or defining their nature and scope. Most importantly, he failed to follow up on or oversee those delegations.

12. Horter delegated responsibility to a compliance officer at Horter Investment (the "Compliance Officer") for the required annual review of Horter Investment's policies and procedures in 2016 and 2017 and to a consulting firm and the Compliance Officer for the 2015 annual review. However, Horter did nothing to follow up on those delegations, nor did he confirm the delegates were following Horter Investment's policies and procedures.

Horter Investment Hires Hannan.

13. On October 22, 2014, Hannan voluntarily terminated his employment with his prior investment adviser following an internal review. The Form U5 filed on November 14, 2014 confirmed Hannan's "use of marketing materials not approved by the firm and that checks were made payable to his DBA, rather than his RIA as required."

14. On November 21, 2014, Hannan signed an IAR agreement with Horter Investment and, on December 1, 2014, he registered with Horter Investment. Horter was primarily responsible for supervising Hannan.

15. The day after Hannan registered with Horter Investment, FINRA sent Hannan a letter informing him it was initiating an inquiry regarding his conduct at his prior investment adviser, specifically "allegations regarding marketing materials and checks made payable to you [sic] DBA." A week later, Hannan forwarded the FINRA letter to the Compliance Officer.

16. After reviewing the FINRA letter, the Compliance Officer recommended to Horter that Hannan be fired for effectively failing Horter Investment's due diligence process. Horter rejected the Compliance Officer's advice and instead accepted Hannan's self-serving explanation, without any further inquiry, that clients were paying Hannan for providing consulting services. As a result, Horter Investment and Horter failed reasonably either to investigate the conduct identified by FINRA or to follow up on the FINRA inquiry.

17. Hannan continued as an IAR with Horter Investment through March 2017. Though Horter Investment designated Hannan a high-risk adviser, it subjected him to no specific restrictions, no additional requirements, and no heightened supervision.

Hannan Fraudulently Solicits and Receives \$728,001 in Horter Investment Client Funds for his Outside Business Activities.

18. Hannan Properties, LLC ("Hannan Properties"), an OBA of Hannan's, was a business entity for tax purposes only that Hannan used to solicit investors and to loan their funds to Hannan's other projects. HR Resources, LLC, another of Hannan's OBAs, was purportedly in the business of providing risk monitoring and financial education; Hannan was its managing member.

19. Horter and Horter Investment knew Hannan Properties was an OBA of Hannan through Hannan's onboarding. Through Hannan's repeated submissions of third-party distribution requests to Horter Investment from his clients to Hannan Properties, Horter Investment was on notice Hannan continued to operate Hannan Properties during his tenure at Horter Investments. In the fall of 2016, Horter Investments and Horter learned that HR Resources was another of Hannan's OBAs.

20. Between November 19, 2015 and March 8, 2017, Hannan solicited and received investments in Hannan Properties totaling \$728,001 from the accounts of several Horter Investment clients.

21. To receive those funds, Hannan submitted to Horter Investment 17 requests to distribute Horter Investment client funds to Hannan Properties, which the firm processed and executed. Each of those third-party distribution requests clearly list Hannan Properties as the recipient of the transferred client funds. As a result, Horter Investment knew, or should have known, Hannan was soliciting client funds for his OBAs.

22. After Hannan emailed Horter about HR Resources in October 2016, Hannan solicited him for investments during November and December of 2016 and into early 2017, seeking as much as \$250,000. Throughout that time, there were numerous communications about the business among Hannan, Horter, and the Compliance Officer, including exchanges regarding HR Resources' business model, business plan, and projections. Hannan also proposed Horter invest between \$125,000 and \$146,000 in return for "10% permanent equity in HR Resources[.]"

23. In mid-December 2016, Hannan emailed Horter and explained, "I believe the money issue got in the way to beginning this relationship with Horter [Investment]. I have taken it off the table and will find it elsewhere." Hannan nevertheless continued to solicit Horter to invest in HR Resources through early 2017.

24. Hannan solicited and received funds from his Horter Investment clients for HR Resources via distributions to Hannan Properties. But neither Horter Investment nor Horter ever investigated whether Hannan was soliciting Horter Investment clients to invest in HR Resources.

25. On or about March 17, 2017, Horter Investment initiated an internal investigation after staff responsible for processing third-party distributions alerted the Compliance Officer that she was having a problem processing a distribution from a Horter Investment client to one of Hannan's OBAs. The investigation concluded that Hannan violated investment related statutes, regulations, rules, or industry codes of conduct.

26. Horter Investment terminated Hannan's employment on March 24, 2017.

Hannan Commits Securities Fraud.

27. Hannan, as an IAR, owed a fiduciary duty and duty of undivided loyalty to his Horter Investment clients. As a fiduciary, Hannan had a duty to disclose material information to his clients, and to make his statements concerning proposed investment opportunities true and not misleading. Further, Hannan had a duty not to engage in activity that conflicted with his clients' interest without their informed consent.

28. Hannan made materially false and/or misleading statements and omissions to his Horter Investment clients to persuade them to transfer funds from their Horter Investment accounts to Hannan Properties, an entity under his control and one of his OBAs. These materially false and/or misleading statements and omissions included:

- (a) misrepresenting the state of the businesses (*e.g.*, a dry cleaner, doggie day care, and HR Resources) for which he was soliciting their funds, including misrepresenting those businesses were doing well;
- (b) failing to disclose those businesses had generated little or no profit, could not make payroll, and were encumbered by debt;
- (c) failing to disclose that he used funds provided by clients for a variety of expenses unrelated to the businesses, including: gambling; alimony and support payments for his ex-wife; personal credit card bills; rent on the building for his investment advisory services business; his utilities; and his car payment and insurance; and
- (d) failing to disclose their funds were used, in part, to pay prior investors rather than for the businesses themselves.

29. At the time Hannan made these materially false and misleading statements and omissions, Hannan knew, or was reckless or negligent in not knowing, that these statements were materially false and omitted to state material facts necessary to make these statements not misleading under the circumstances. Further, Hannan knew, or was reckless or negligent in not knowing, of these disclosure failures to his Horter Investment clients.

30. Hannan's materially false and/or misleading statements to investors were important in their decision whether to invest. Had Hannan disclosed those true uses of funds to his Horter Investment clients, they would not have provided funds to him.

31. Hannan used means or instrumentalities of interstate commerce, including email, mail, and interstate wire transfers, to defraud his Horter Investment clients.

Hannan is Convicted and Imprisoned.

32. On January 18, 2019, Hannan was convicted by a jury in Stark County, Ohio of violating Ohio state laws and sentenced to a 20-year term of imprisonment. The conduct at issue in Hannan's criminal trial included the same conduct—soliciting and receiving fund from clients for his outside business activities through the use of material misrepresentations and omissions—that provides the basis for the failure to supervise at issue here. Among the statutes Hannan was convicted of violating was Ohio Revised Code § 1707.44(M)(1)(a)-(b), which provides:

No investment adviser or investment adviser representative shall do any of the following: (a) Employ any device, scheme, or artifice to defraud any person; (b) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person . . .

33. To convict Hannan for violating § 1707.44(M)(1)(a)-(b), the jury found that Hannan acted knowingly.

34. Section 1707.44(M)(1)(a)-(b) provides:

It shall be unlawful for any investment adviser by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—(1) to employ any device, scheme, or artifice to defraud any client or prospective client; (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client . . .

35. Hannan’s knowing conduct that was found to have violated Ohio Revised Code § 1707.44(M)(1)(a)-(b) constitutes uncharged violations of Section 206(1) and 206(2) of the Advisers Act, 15 U.S.C. § 80b-6(1)-(2).

36. Hannan’s uncharged violations of the Advisers Act were made possible by Horter Investment’s and Horter’s failure reasonably to supervise Hannan and their failure to safeguard retail investors’ assets against misappropriation.

37. Horter Investment and Horter failed reasonably to supervise Hannan by failing reasonably to: (a) establish supervisory policies and procedures; (b) implement existing policies and procedures; (c) follow up on red flags; and (d) delegate supervisory authority.

Horter Investment and Horter Fail Reasonably to Establish Supervisory Policies and Procedures.

38. Horter Investment and Horter failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act in the areas of high-risk advisers heightened supervision, field visits and branch audits of remote IARs, and third-party distribution requests.

A. High-Risk Advisers and Heightened Supervision

39. More than half of the IARs Horter Investment has hired since November 2014 were identified as high or moderate risk.

40. In March 2015, a consultant warned Horter Investment that “higher risk IAR’s (those with previous disclosures and without IAR experience) require a program of closer supervision, particularly during their first years with Horter [Investment]. Currently, no procedures call for such a review.” In September 2016, the Compliance Officer similarly warned of the need for Horter Investment to “get our internal heightened supervision program developed.”

41. Despite those warnings, Horter Investment and Horter did not institute heightened supervision procedures for high-risk advisers like Hannan until March 20, 2017, days before Horter Investment terminated his employment. Horter Investment and Horter did not adopt a heightened supervision agreement until November 2017.

42. Horter Investment did establish procedures for identifying high-risk advisers and had concerns enough to designate Hannan a high-risk adviser, but those concerns did not translate into any restrictions on, or requirements of, Hannan and other high-risk advisers.

B. Field Visits and Branch Audits of Remote IARs

43. Horter Investment's business model is premised on IARs functioning from remote offices. During Hannan's tenure with Horter Investment, 95% or more of the firm's investment adviser representatives, including Hannan, worked from remote or field offices.

44. Examination staff in December 2014 noted in a deficiency letter to Horter Investment that it failed to conduct supervisory inspections of its IARs' branch offices and an outside consultant in March 2015 recommended that Horter Investment "develop a more detailed procedure for supervising the activities of its remote IARs."

45. Despite these warnings, Horter Investment and Horter did not adopt or implement any policies or procedures regarding field visits or branch audits of either its high-risk IARs until March 2017 or its IARs generally until November 2017 and did not begin conducting field visits or branch audits until August 2017. Horter Investment never conducted a field visit or branch audit of Hannan or his office.

C. Third-Party Distribution Requests

46. Prior to June 2016, Horter Investment had not adopted written policies and procedures regarding distributions from Horter Investment clients to third parties.

47. In 2016, Horter Investment and Horter specifically considered implementing procedures that would have increased scrutiny of third-party distributions or stopped such distributions altogether, but decided against doing so because they would "get too much backlash from advisers"

48. Following an incident in which Horter Investment mistakenly distributed more than \$300,000 from a client's account to a third-party in response to a fraudulent email that did not involve Hannan, in June 2016, Horter Investment began requiring verbal confirmation from clients for third-party distributions and logging of such distributions. However, Horter Investment and Horter required no review of the distribution log and established no further procedures and no written instructions for the "Client Distribution Request Log" at the time.

49. As discussed below, those practices were miscommunicated or misinterpreted, not consistently followed, and not monitored by Horter Investment's management, including Horter. Horter Investment did not adopt written policies and procedures for third-party distributions until October 2017, eight months after Hannan was terminated, and the Compliance Officer did not begin monitoring compliance with Horter Investment's third-party distribution log and procedures until December 2017.

50. By engaging in this conduct, Horter Investment and Horter failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and failed reasonably to supervise Hannan.

Horter Investment and Horter Fail Reasonably to Implement Policies and Procedures.

51. Horter Investment and Horter also failed to implement policies and procedures it

had adopted to prevent violations of the Advisers Act with respect to OBAs, supervisory reviews, third-party distributions, and the due diligence review of Hannan.

A. Outside Business Activities

52. During Hannan's tenure, Horter Investment's only policy regarding OBAs was in the firm's April 1, 2016 Policies and Procedures Manual. That policy required, among other things, that "any business other than an IAR's Horter investment advisory business[]" be reported and established various other requirements, including prior approval of the OBA, signoff from the CCO, written notice, and consideration of whether the OBA could be confused with Horter Investment's business. Both Horter Investment and Horter failed to follow a number of requirements established by Horter Investment's OBA policy.

53. Despite the requirement in Horter Investment's OBA policy that IARs get prior approval for outside business activities and signoff from the CCO, Horter Investment and Horter allowed Hannan to operate HR Resources as outside businesses without either.

54. Horter Investment also failed to adhere to the requirement in its OBA policy that Hannan submit written notice describing HR Resources as a proposed OBA.

55. Most significantly, neither Horter Investment nor Horter followed firm procedures in the OBA policy, which required them to consider: (a) whether HR Resources might be viewed by clients, customers, or the public as being part of Horter Investment's investment advisory business; and (b) whether such OBA should be restricted or prohibited.

56. Although clients, customers, or the public could potentially view HR Resources as being a Horter Investment product or associated with Horter Investment, neither Horter Investment nor Horter considered whether to put any restrictions on it or to disallow it as required by Horter Investments policies and procedures.

B. Supervisory Review

57. Horter Investment's policies and procedures provide for supervisory reviews and sanctions for violations of the firm's policies in order to "monitor and ensure the firm's supervision policy is observed, implemented properly and amended or updated as appropriate."

58. Nevertheless, Horter Investment had no formal supervisory review process and there are no records that Horter Investment or Horter conducted any supervisory reviews of Hannan.

C. Third-Party Distribution Request Log and Distribution Procedures

59. In June 2016, after Horter Investment learned that it processed the distribution of more than \$300,000 from a client's account to a third party based on a fraudulent email, Horter Investment began requiring that Horter Investment get verbal confirmation from clients for third-party distributions and that such distributions be logged.

60. On June 1, 2016, the Compliance Officer sent an email to two Horter Investment

executives prior to distributing it to Horter Investment IARs. In the email, the Compliance Officer explained that “[d]istributions to third parties are the highest risk transaction that our organization faces[]” and requests for third-party distributions “should never be executed unless verbally confirmed by the client. . . . There will be no exceptions to this requirement.”

61. However, on at least one occasion, Horter Investment processed a third-party distribution request without speaking to the client as required and may have done so on other occasions.

62. Horter Investment also failed to log all third-party distributions as required. From the time the log was instituted in June 2016 through Hannan’s termination in March 2017, more third-party distributions from Horter Investment clients to Hannan Properties were **not** logged (7) than were logged (6).

63. The third-party distribution log was intended to be something Horter Investment could audit each month as part of its compliance program, but no one in compliance reviewed the log from its implementation in June 2016 until March 2017.

64. Despite acknowledging Horter Investment began the third-party distribution log “to be able to better watch over third-party distributions[,]” Horter never reviewed or monitored the log, did not even know where it was kept, and did nothing to ensure the compliance department reviewed or monitored the log. Horter acknowledged that had he reviewed the log, which contained approximately 50 entries between June 2016 and March 2017, he would have seen the half dozen distributions from Horter Investment clients to Hannan Properties.

65. Further, the person responsible for processing distributions was never instructed to watch for any particular types of distributions, including distributions to an IAR from his or her clients, nor did Horter Investment have any procedures for compliance to be notified of any third-party distributions from a client to an IAR.

66. At no time did Horter Investment inquire of its clients why they were transferring funds to third parties, whether the transferee was offering them anything in return, or if the transferee made any promises to them, even if the transferee was their IAR.

D. Onboarding of Hannan

67. Horter Investment’s due diligence review of Hannan was rushed and, ultimately, ignored by Horter.

68. Although Horter Investment’s onboardings of IARs, including due diligence review, typically took 30-45 days, according to the Compliance Officer, Hannan’s onboarding only took seven days and was one of the fastest onboardings at Horter Investment.

69. After learning of FINRA’s inquiry regarding Hannan, the Compliance Officer suggested to Horter that Hannan may have tried to rush through his onboarding before any disclosures were added to his public disclosure report.

70. Based on Hannan’s updated IAPD public disclosure report, the Compliance

Officer believed Hannan failed the Horter Investment due diligence process and recommended to Horter that he terminate Hannan.

71. Rejecting this advice, Horter directed the Compliance Officer to get Hannan's self-serving explanation of his departure from his prior firm, which Horter accepted without question or any further inquiry. Horter, who is the only person at Horter Investment who could authorize hiring IARs who failed to meet the firm's due diligence standards, made the ultimate decision to retain Hannan.

72. By failing to follow its own policies and procedures reasonably designed to prevent violations of the Advisers Act, Horter Investment and Horter failed reasonably to supervise Hannan.

Horter Investment and Horter Fail Reasonably to Follow up on Red Flags.

73. Horter Investment and Horter failed reasonably to investigate a number of red flags regarding Hannan's conduct.

74. First, Horter Investment and Horter failed reasonably to follow up on FINRA's inquiry regarding Hannan, which was a red flag. As described above, the Compliance Officer specifically warned Horter that Hannan may have tried to conceal what happened and retrieved a new IAPD public disclosure report for Hannan, which according to the Compliance Officer, looked different than the one Horter Investment had reviewed as a part of its due diligence of Hannan and which only had one disclosure from 5-10 years earlier.

75. Based on the updated report, the Compliance Officer concluded that Hannan failed Horter Investment's due diligence and recommended to Horter that Hannan be terminated. Horter rejected this recommendation and instead accepted Hannan's self-serving explanation, which neither Horter nor Horter Investment verified.

76. Second, Horter Investment and Horter failed reasonably to monitor Hannan's conduct as a high-risk adviser, another red flag. Despite identifying Hannan as a high-risk adviser, neither Horter Investment nor Horter imposed any restrictions, required any heightened supervision, or did anything to ensure Hannan was monitored more closely.

77. Third, Horter Investment failed reasonably to follow up for a period of over a year and a half on the red flags raised by the 17 distribution requests, 13 of which occurred in 2015 and 2016, from Hannan's Horter Investment clients to Hannan Properties it received, processed, and executed. Horter Investment did nothing to investigate those distributions beyond confirming the distribution with the client. Moreover, neither Horter Investment nor Horter followed up even when half a dozen of those distributions were logged and subject to supervisory review.

78. Finally, Horter Investment and Horter knew Hannan was aggressively attempting to raise money for HR Resources, but did nothing to more closely supervise Hannan or investigate whether he was soliciting Horter Investment clients for funds for his OBA.

79. With each of these red flags, Horter Investment and Horter failed reasonably to investigate in order to detect and prevent violations of the federal securities laws. To the

contrary, Horter Investment and Horter ignored indications of wrongdoing or conducted minimal inquiry, thereby allowing Hannan's misconduct to continue.

Horter Unreasonably Delegated Supervisory Authority.

80. Horter had ultimate supervisory responsibility for Horter Investment's policies and procedures, as well as for Horter Investment's IARs generally and Hannan specifically.

81. Horter purported to delegate his supervisory responsibilities to others at Horter Investment, but those delegations were not reasonable. Horter's delegations of supervisory responsibility were *ad hoc* and not followed up on or monitored.

82. Nowhere was this approach more apparent than in the required annual review of Horter Investment's policies and procedures. Horter delegated responsibility to the Compliance Officer for the annual reviews in 2016 and 2017 and to an outside consultant and the Compliance Officer for the 2015 annual review, but did not remember or did not know anything he did specifically to oversee those delegations and to supervise the reviews. If the Compliance Officer did not come to him with an issue, Horter did not ask if there were any issues.

83. Horter delegated supervisory responsibility for individual policies and procedures in a similar manner. Horter did not directly confirm whether his delegatee was following Horter Investment's specific policies and procedures, such as the OBA policy and the procedures for the third-party distribution log and requests, and he was not aware of any problems or issues unless the delegatee raised them.

84. Horter did nothing to follow up and proactively determine what delegates were doing or if there were any issues. Horter could not recall anything specifically he did to oversee his delegation of supervisory responsibility to Horter Investment's compliance department to ensure it was adequately supervising Hannan and did not even recall working with compliance regarding Hannan.

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

A. Horter Investment is censured.

B. Horter Investment shall pay a civil money penalty in the amount of \$100,000 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United

States Treasury. Payment shall be made in four equal installments: \$25,000 within twenty-one (21) days of the entry of this Order; \$25,000 within ninety (90) days of entry of this Order; \$25,000 within one hundred eighty (180) days of the entry of this Order; and \$25,000 within three hundred sixty-five (365) days from entry of this Order. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. §3717. Prior to making the final payment set forth herein, Respondent Horter Investment shall contact the staff of the Commission for the amount due. If Respondent Horter Investment fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

C. Horter be, and hereby is, suspended from associating in a supervisory capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for a period of 6 months, effective the second Monday following the entry of the Order.

D. Horter shall pay a civil money penalty in the amount of \$50,000 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. §7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. Payment shall be made in four equal installments: \$12,500 within twenty-one (21) days of the entry of this Order; \$12,500 within ninety (90) days of entry of this Order; \$12,500 within one hundred eighty (180) days of the entry of this Order; and \$12,500 within three hundred sixty-five (365) days from entry of this Order. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. §3717. Prior to making the final payment set forth herein, Respondent Horter shall contact the staff of the Commission for the amount due. If Respondent Horter fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 itself or himself as 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 Charles J. Kerstetter, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Ste. 1450, Chicago, IL 60604.

E. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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 it 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 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.

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 Horter, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Horter 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 Horter 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.

Vanessa A. Countryman
Secretary