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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDING
File No. 3-17184

In the Matter of

CHRISTOPHER M. GIBSON,

Respondent

RESPONDENT CHRISTOPHER M. GIBSON'S PETITION FOR REVIEW OF INITIAL DECISION

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Dated: February 14, 2017

INTRODUCTION

Pursuant to Rule 410(b), Christopher M. Gibson ("Respondent") petitions the Commission for review of an Initial Decision ("Decision") rendered by an Administrative Law Judge ("ALJ") on January 25, 2017. Respondent seeks review under Rule 411(b)(2)(ii) of findings, conclusions and orders, including (i) that he violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; that he violated Sections 206(1), (2) and (4) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-6(1), (2), and (4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8]; and (iii) that he is subject to a bar, civil penalties, disgorgement, interest, and a cease-and-desist order.

This proceeding concerns a private fund that was offered to a limited number of potential investors, each of whom was provided with an offering memorandum which stated that the fund may be deemed to be a highly speculative investment and was suitable only for those who could bear the economic risk of the loss of their investment. The allegations against Respondent involve securities transactions that had been addressed in the fund's operating agreement, and by signing the operating agreement investors provided their consent to such securities transactions.

Respondent takes exception to the Decision's (i) failure to apply applicable law to the record in this matter and conclude that material conflicts were disclosed and consented to; (ii) conclusions that Respondent engaged in front running and favored a fund investor over the fund; and (iii) conclusions that Respondent acted as an investment adviser to the fund. Other conclusions in the Decision are contrary to governing law, conflict with the record or are not supported by the record. The ALJ also failed to address appropriately affirmative defenses, including the Respondent's inability to pay civil penalties, disgorgement or interest. Further, the ALJ made erroneous evidentiary and other rulings, including the admission of a tape recording of a conversation and a transcription of the recording.

THE ALJ FAILED TO APPLY APPLICABLE LAW

The Decision fails to address Supreme Court precedent that an investment adviser may disclose material conflicts of interest and clients may consent to material conflicts,[1] and Section 211(g) of the Advisers Act [15 U.S.C. § 80b-11(g)] which explicitly provides that an investment adviser may disclose and clients may consent to material conflicts of interest. [2] Further, the Decision fails to address the disclosure of, and consent to, material conflicts of interest regarding the securities transactions that the Decision labels as front running[3] and as favoring a fund investor over the fund.[4]

CONCLUSIONS REGARDING VIOLATIONS ARE ERRONEOUS

With respect to the front running allegations, the Decision sets forth elements of front running, including whether information is material or non-public.[5] However, its conclusions regarding the materiality and non-public nature of information regarding the fund's possible sale of securities are contrary to governing law and are not supported by the record.[6] Specifically, information regarding a possible sale of securities held by the fund could not be found to be material in the absence of information regarding the number of shares to be sold, the price at which the securities would be sold or the timing of a sale of shares by the fund.[7] Similarly, information relating to the possibility that the fund might sell securities could not be found to be non-public at

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[1] *Securities and Exchange Commission v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963).

[2] In relevant part, Section 211(g) provides as follows: In accordance with such rules, any material conflicts of interest shall be disclosed and may be consented to by the customer.

[3] With respect to securities transactions that the Decision labels as front running, the Operating Agreement of Geier International Strategies Fund, LLC provided as follows: "Nothing herein contained shall prevent the Managing Member [Geier Capital, LLC] (or any of its affiliates or employees) or any other Member from conducting any other business, including any business within the securities industry, whether or not such business is in competition with the Company." Further, the Operating Agreement provided that "It is recognized that in effecting transactions, it may not always be possible or consistent with the investment objectives of the various persons or entities described above and of the Company to take or liquidate the same investment positions at the same time or at the same prices."

[4] With respect to the transaction between an investor and the Fund that the Decision finds favored the investor over the Fund, the Operating Agreement provided that the Managing Member shall have the power "To enter into, make and perform any other contracts, agreements or other undertakings it may deem advisable in conducting the business of the Company, including but not limited to contracts, agreements or other undertakings with persons, firms or corporations with which the Managing Member or any other Member is affiliated."

[5] The Decision states as follows: "This decision considers a fiduciary's non-disclosed use of material, non-public information about a client to conduct transactions ahead of a client's transaction to secure a personal advantage for himself or a close friend or relative, to be front running." Decision at 28.

[6] The Decision merely makes findings regarding the Respondent's credibility and findings regarding Respondent's beliefs concerning a sale of the fund's securities and concludes that information regarding the fund's sale of securities was material and non-public.

[7] See, *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988).

the time Respondent engaged in personal securities transactions as Respondent had solicited offers from two different firms which shared the information with various potential buyers. Further, Respondent's purchases of put contracts occurred well after the fund's initial sale of 3.7 million shares and before the fund's final sale of securities and, thus, at the time of the put transactions Respondent could not have used material or non-public information.

The conclusion that Respondent favored an investor in the fund over the fund is not supported by the record. The fund's operating agreement, which is binding upon the fund and fund members, granted the managing member the power to enter into any contract, agreement or other undertakings it may deem advisable in conducting the business of the fund.[8] Thus, the fund and its members consented to the transaction between the fund and the investor.[9]

RESPONDENT DID NOT ACT AS AN INVESTMENT ADVISER TO THE FUND

The Decision contains a conclusion that Respondent acted as an investment adviser to the fund within the meaning of Section 202(a)(11) of the Advisers Act. [15 U.S.C. § 80b-2(a)(11)]. The ALJ's conclusion, which is based upon findings that Respondent engaged in activities commonly performed by persons associated with an investment adviser and received compensation from an entity other than the fund, is not supported by applicable law or the record in this matter.

CONCLUSION

For the reasons stated above, Respondent requests that the Commission grant his petition for review.

Respectfully submitted,

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[8] The Decision's conclusion is based upon a provision in the fund's offering memorandum that sets forth guidelines for transactions between the fund and persons to whom members of the managing member were providing advice, which was merely a guideline and not a requirement.

[9] As the Decision's conclusions regarding violations of the Sections 206(1) and (2) of the Advisers Act and Section 10(b) of the Exchange Act and Rule 10b-5 as well as other findings and conclusions are not supported by the law or the record in this matter, violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 are not supported by the law or the record.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February, 2017:

(i) the foregoing Petition for Review of Initial Decision was transmitted to the Office of Secretary of the Securities and Exchange Commission by facsimile and an original and three copies of the foregoing Petition for Review of Initial Decision were delivered by courier to the following address:

Office of the Secretary
Securities and Exchange Commission
100 F Street, NE,
Washington, DC 20549-9303

(ii) a copy was sent via email to H. Michael Semler, Assistant Chief Litigation Counsel at SemlerH@SEC.gov;

(iii) a copy was delivered by hand to H. Michael Semler, Division of Enforcement, Securities and Exchange Commission, Room 5932, 100 F Street, N.E., Washington, D.C. 20549; and

(iv) a copy was sent via email to Brenda P. Murray, Chief Administrative Law Judge, at ALJ@sec.gov.

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