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8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 vs.

15 MARC J. FRANKEL,

16 Defendant.
17

Case No.

COMPLAINT

18
19 Plaintiff Securities and Exchange Commission (“SEC”) alleges:

20 **JURISDICTION AND VENUE**

21 1. The Court has jurisdiction over this action pursuant to Sections 209(d),
22 209(e)(1) and 214 of the Investment Advisers Act of 1940 (“Advisers Act”), 15
23 U.S.C. §§ 80b-9(d), 80b-9(e)(1) & 90b-14.

24 2. Defendant has, directly or indirectly, made use of the means or
25 instrumentalities of interstate commerce, of the mails, or of the facilities of a national
26 securities exchange in connection with the transactions, acts, practices and courses of
27 business alleged in this complaint.

28 3. Venue is proper in this district pursuant to Section 214(a) of the

1 Advisers Act, 15 U.S.C. § 80b-14, because certain of the transactions, acts, practices
2 and courses of conduct constituting violations of the federal securities laws occurred
3 within this district. In addition, venue is proper in this district because defendant
4 Marc J. Frankel (“Frankel”) resides in this district.

5 **SUMMARY**

6 4. This action concerns Frankel’s scheme to defraud his investment
7 advisory clients by stealing and misappropriating their assets to pay his personal
8 expenses and for other unauthorized purposes. In doing so, Frankel breached the
9 fiduciary duty of care and duty of loyalty that he owed his advisory clients and
10 violated the antifraud provisions of the federal securities laws.

11 5. Frankel’s advisory clients included Major League Baseball (MLB)
12 players. As their investment adviser, Frankel had access to his clients’ financial
13 information, including their brokerage account and associated checking account
14 numbers. In or about December 2017, Frankel starting using this information to steal
15 and misappropriate money belonging to one of his MLB advisory clients, Advisory
16 Client #1.

17 6. Specifically, Frankel targeted an account Advisory Client #1 had created
18 in the name of his sole proprietorship and, using the account and routing numbers,
19 started transferring money out of the account to make payments on an American
20 Express (“AMEX”) credit card in the name of Frankel’s deceased mother. Although
21 Frankel’s mother passed away in 2015, Frankel had continued to use her AMEX
22 account for his personal benefit, including paying for Lakers tickets, his children’s
23 college tuition, jewelry, electronics and travel.

24 7. Between approximately December 2017 and June 2020, Frankel
25 transferred money from Advisory Client #1’s account to AMEX in order to pay off
26 these and other credit card charges. In total, Frankel made, or caused others to make,
27 241 unauthorized transfers totaling approximately \$739,052 from Advisory Client
28 #1’s account to AMEX.

1 8. Frankel attempted to conceal and obscure the fact that he was stealing
2 and misappropriating money from Advisory Client #1's account by breaking up the
3 unauthorized transfers to AMEX into multiple smaller payments that would appear
4 consistent, in dollar amount, with legitimate payments coming out of the account,
5 which was often used to pay Advisory Client #1's personal assistant and related
6 expenses.

7 9. Moreover, in May 2020, when others began scrutinizing Advisory Client
8 #1's finances and this checking account, Frankel took additional steps to conceal the
9 unauthorized transfers to AMEX. Frankel falsely claimed to personnel at Advisory
10 Client #1's sports agency that he had already reviewed the account and had found no
11 improprieties. Frankel then stopped using Advisory Client #1's account for the
12 unauthorized transfers and instead targeted one of his other advisory clients, Advisory
13 Client #2, for the scheme. Like Advisory Client #1, Frankel used the financial
14 information he had for Advisory Client #2 as her investment adviser to make two
15 unauthorized payments to his mother's AMEX credit card totaling approximately
16 \$4,765.58. Finally, when questioned by Advisory Client #1's agent about the
17 unauthorized transfers, Frankel lied and attempted to place the blame for the AMEX
18 charges on Advisory Client #1's personal assistant.

19 10. By engaging in this conduct, Frankel violated Sections 206(1) and
20 206(2) of the Advisers Act. Accordingly, the SEC seeks findings that Frankel
21 committed these violations, permanent injunctions against him, disgorgement with
22 prejudgment interest, and a civil penalty.

23 **THE DEFENDANT**

24 11. Defendant Marc J. Frankel, age 61 and resident of Tarzana, California, is
25 the owner of MJF Advisors, LLC, a financial advisory firm that had an office located
26 in Encino, California. Frankel previously held Series 7 (registered representative), 63
27 (state) and 66 (investment adviser) licenses.

THE ALLEGATIONS

A. Frankel’s Association with a Registered Investment Adviser

12. Frankel worked as an investment adviser representative for an investment advisory firm registered with the SEC, whose principal place of business was Santa Barbara, California (the “Firm”).

13. On or about August 31, 2010, Frankel and the Firm entered into an Affiliate Agreement, which included the following terms:

(a) The Firm appointed Frankel as an independent contractor and representative to solicit, offer, provide and sell mutually agreed products and services to individuals that Frankel brought to the Firm as clients.

(b) Frankel was required to comply with all applicable laws in rendering his services to clients and comply with the Firm’s policies and procedures, including those relating to compliance, professionalism and competence.

(c) The affiliation agreement between the Firm and Frankel was exclusive in that Frankel was required to provide all of his investment adviser services to clients through the Firm, and that Frankel was not neither separately registered nor acting in a registered capacity or offering services for any other registered investment adviser.

(d) Frankel could not offer services to a client until he had received a new account or advisory contract, as well as other documents, approved by the Firm and signed by the client.

(e) Frankel could not make, to any third party, any untrue or misleading statements about or relating to the Firm or the products or services he provided to clients on its behalf.

14. Frankel was associated with the Firm as an investment adviser representative from September 2010 to June 2020.

B. Frankel Owed His Firm Clients Fiduciary Duties

15. Since 2010 and throughout the relevant period, the Firm was a registered

1 investment adviser with the SEC.

2 16. During this same time period, Frankel was an IAR and an investment
3 adviser under Section 202(a)(11) of the Advisers Act, 15 U.S.C. § 80b-2(a)(11). That
4 is, he was engaged in the business of providing investment advice as to the value of
5 securities and as to the advisability of investing in, purchasing, and selling securities
6 to his Firm clients. Specifically, Frankel managed his Firm clients' assets on a
7 discretionary basis and made investment decisions on their behalf in exchange for
8 compensation, namely, a percentage of the management fees collected by the Firm.

9 17. As an investment adviser, Frankel was a fiduciary for his advisory
10 clients. He accordingly owed his clients a duty of loyalty, which includes an
11 affirmative duty of utmost good faith, to provide full and fair disclosure of all
12 material facts and to employ reasonable care to avoid misleading his advisory clients.
13 That duty to disclose all material facts included a duty to tell clients about any actual
14 or potential conflicts of interest that might incline Frankel to give investment advice
15 that was not disinterested. Frankel also owed his clients a separate duty of care. That
16 duty of care included a duty to provide investment advice in the best interest of his
17 clients based on their objectives, a duty to seek best execution when placing client
18 trades with a broker-dealer, and a duty to provide advice and monitoring over the
19 course of the advisory relationship.

20 18. For example, in its 2017 through 2020 Compliance Manuals ("Firm
21 compliance manual"), the Firm explained that the anti-fraud provisions of the
22 Investment Advisers Act of 1940 and most state laws imposed a duty on investment
23 advisers to act as fiduciaries in dealings with their clients, meaning the adviser must
24 hold the client's interest above his own in all matters.

25 19. The Firm's compliance manual further emphasized that investment
26 advisers should avoid conflicts of interest, including any activity that acts as a fraud
27 or deceit on clients, charging unreasonable fees or borrowing money from clients.

28 20. The Firm's 2017 and 2019 Code of Ethics ("Firm code of ethics")

1 required that Frankel abide by honest and ethical business practices in all conduct,
2 treating his clients fairly and doing what is right, including placing the interest of the
3 client first at all times, including not borrowing money or securities from a client.

4 21. The Firm's compliance manual and code of ethics in effect during the
5 relevant period applied to Frankel as one of its IARs.

6 22. Frankel attested in writing, on or about August 24, 2018, February 25,
7 2019, August 5, 2019 and February 25, 2020, that he had received, read, and
8 complied with the Firm's compliance manual and code of ethics.

9 **C. Frankel's Misappropriation of Advisory Client Funds**

10 23. Advisory Client #1 told Frankel that he needed to focus all his attention
11 on his baseball career and was relying on Frankel to manage his assets. Accordingly,
12 Frankel was the only person who made investment decisions on behalf of Advisory
13 Client #1.

14 24. Frankel made investment decisions for Advisory Client #1 in the
15 brokerage accounts he maintained through the Firm, including buying and selling
16 securities and deciding when to hold those securities, all on a discretionary basis.

17 25. In addition, Frankel had authority to manage all of the assets in Advisory
18 Client #1's various accounts with the Firm, including transferring funds between
19 those accounts to accomplish Advisory Client #1's investment objectives.

20 26. On or about November 13, 2012, Advisory Client #1 opened an account
21 ending in x4084 ("the x4084 account") through the Firm under the name of his sole
22 proprietorship and single member limited liability company.

23 27. While Advisory Client #1 maintained other brokerage accounts at the
24 Firm during the relevant period, the x4084 account had checking capabilities via an
25 attached bank account.

26 28. Advisory Client #1 primarily used the x4808 account to pay his personal
27 assistant and other related expenses.

28 29. Under the terms of the investment adviser agreement that Advisory

1 Client #1 signed with the Firm, Frankel had the discretion, as his investment adviser,
2 to manage the x4084 account in a manner he deemed prudent in accomplishing his
3 financial objectives.

4 30. Frankel did not use the x4084 account for buying or selling securities,
5 but would transfer funds from Advisory Client #1's brokerage accounts that he did
6 use for trading to the x4084 account. As the investment adviser, Frankel had access
7 to the x4084 account information, such as the account number, the name on the
8 account and the routing number of the attached checking account.

9 31. Advisory Client #1 also authorized the Firm to deduct advisory fees,
10 which was single rate fee arrangement, from the x4084 account.

11 32. Beginning on or about December 26, 2017 and continuing through on or
12 about May 15, 2020, Frankel began misappropriating funds and violating the
13 fiduciary duties he owed to Advisory Client #1 by transferring money out of the
14 x4084 account for Frankel's personal benefit.

15 33. Frankel carried out this fraudulent scheme by initiating automated
16 clearing house ("ACH") payments on AMEX's website under his deceased mother's
17 AMEX account. Specifically, Frankel entered the checking account number, the
18 name on the account and the routing number for the x4084 account into the AMEX
19 website to initiate the ACH payments.

20 34. The AMEX credit card charges that Frankel paid through these
21 unauthorized transfers from the x4084 account were primarily personal expenses and
22 for Frankel's benefit. For example, although the AMEX account was under his
23 deceased mother's name, Frankel had a credit card in his name under this same
24 account and would use it or the AMEX credit card under his deceased mother's name
25 to pay for Lakers tickets, his children's college tuition, jewelry, electronics and travel.

26 35. In total, Frankel made, or caused others to make, approximately 241
27 separate unauthorized transfers from the x4084 account totaling approximately
28 \$739,052.

1 36. Frankel's fraud was material because any reasonable advisory client
2 would want to know that their investment adviser had stolen more than \$700,000 of
3 their funds.

4 **D. Frankel's Misstatements and Attempts to Conceal His Fraudulent Scheme**

5 37. Although the first unauthorized transfer Frankel initiated on or about
6 December 26, 2017 was for about \$11,689.16, he typically transferred between
7 \$2,000 and \$4,000 at a time out of the x4084 account. Frankel did this to make the
8 unauthorized transfers more in-line with the legitimate expenses paid out of the
9 x4084 account, in an effort to avoid detection of his fraud.

10 38. In or about May 2020, Advisory Client #1's sports agency noticed
11 suspicious transactions in one of Advisory Client #1's other accounts at the Firm and
12 began scrutinizing all of Advisory Client #1's accounts, including the x4084 account.
13 When Frankel learned of this, he falsely stated to Advisory Client #1's sports agency
14 that he had already reviewed the transactions in the x4084 account and found nothing
15 improper. Frankel made this false statement with the goal of concealing the
16 unauthorized transfers to his deceased mother's AMEX account.

17 39. A month later, in or about June 2020, Advisory Client #1's sports
18 agency discovered unauthorized ACH transfers in the x4084 account. The sports
19 agency flagged them as potentially fraudulent, and Advisory Client #1's sports agent
20 questioned Frankel about the transfers. Frankel falsely stated that Advisory Client
21 #1's personal assistant had an AMEX credit card and blamed Advisory Client #1's
22 personal assistant for the unauthorized charges.

23 40. In or about June 2020, Frankel stopped making unauthorized transfers
24 from the x4084 account because Advisory Client #1's sports agency was scrutinizing
25 all of Advisory Client #1's accounts to identify other suspicious activity.

26 41. In spite of this scrutiny, Frankel did not stop misappropriating advisory
27 client assets. Instead, Frankel defrauded another one of his advisory clients,
28 Advisory Client #2, who also had an account at the Firm that she used primarily for

1 banking. He began transferring money out of Advisory Client #2's account to pay for
2 the personal expenses he had incurred on his deceased mother's AMEX credit card.

3 42. In total, Frankel initiated two unauthorized transfers from Advisory
4 Client #2's accounting totaling \$4,765.58. Like Advisory Client #1, for each of these
5 unauthorized transfers, Frankel entered the checking account number, the name on
6 the account and the routing number into the AMEX website to initiate the ACH
7 payments.

8 **E. Frankel's Scierter and Unreasonable Conduct**

9 43. During all relevant periods, Frankel acted with scierter and with
10 negligence.

11 44. When misappropriating Advisory Client #1 and Advisory Client #2's
12 funds, Frankel acted intentionally. He knowingly took funds for his own benefit out
13 of client financial accounts that he controlled: to initiate the fraudulent ACH
14 payments, Frankel had to enter his advisory clients' account information when paying
15 his own personal expenses on AMEX's website.

16 45. Frankel's fraudulent intent is further demonstrated by his later efforts to
17 conceal his misconduct. First, to avoid detection of his fraud, Frankel made
18 structured transfers in smaller amounts when misappropriating Advisory Client #1's
19 funds, so that those unauthorized transfers would be consistent in size with legitimate
20 payments being made out of the account.

21 46. Second, when Advisory Client #1's sports agency began to scrutinize
22 activity in all of Advisory Client #1's accounts, Frankel falsely claimed to have
23 already reviewed the transactions in the x4084 account and had found nothing amiss.

24 47. And third, when Advisory Client's sports agency later flagged the
25 unauthorized ACH transfers in the x4084 as potentially fraudulent, Frankel falsely
26 claimed that a personal assistant of Advisory Client #1 was responsible for the
27 fraudulent AMEX charges.

28 48. Frankel therefore acted with scierter when engaging in a scheme to

1 defraud by misappropriating advisory client funds, in violation of his fiduciary duty.

2 49. Frankel also failed to exercise reasonable care. The standard of care of
3 an investment adviser is that of a fiduciary. Frankel owed his advisory clients both a
4 duty of loyalty and a duty of care. Frankel violated his fiduciary duty when
5 misappropriating funds from Advisory Client #1 and Advisory Client #2, and he
6 therefore acted negligently.

7 **FIRST CLAIM FOR RELIEF**

8 **Fraud by an Investment Adviser**

9 **Violations of Section 206(1) of the Advisers Act**

10 50. The SEC realleges and incorporates by reference paragraphs 1 through
11 49 above.

12 51. Frankel is an “investment adviser” within the meaning of Section
13 202(a)(11) of the Advisers Act, 15 U.S.C. § 80b-2(a)(11). In the relevant period,
14 Frankel was in the business of providing investment advice concerning securities for
15 compensation.

16 52. In the relevant period, Frankel, knowingly or recklessly, employed a
17 device, scheme, or artifice to defraud his advisory clients.

18 53. Specifically, Frankel stole and misappropriated funds from two of his
19 advisory clients to pay his personal expenses and for other unauthorized purposes.
20 Frankel further attempted to conceal his fraud. He structured his unauthorized
21 transfers in a manner designed to avoid detection of his fraud. He falsely stated to
22 Advisory Client #1’s sports agency that he had reviewed the relevant account activity
23 and found nothing improper. And later, he falsely stated to Advisory Client #1’s
24 sports agency that any fraudulent transfers in that account were the responsibility of
25 Advisory Client #1’s personal assistant.

26 54. By engaging in the conduct described above, Frankel, directly or
27 indirectly, by use of the mails or means and instrumentalities of interstate commerce,
28 employed a device, scheme, or artifice to defraud his advisory clients.

1 55. By engaging in the conduct described above, Defendant Frankel
2 violated, and unless restrained and enjoined, is reasonably likely to continue to
3 violate, Section 206(1) of the Advisers Act, 15 U.S.C. § 80b-6(1).

4 **SECOND CLAIM FOR RELIEF**

5 **Fraud by an Investment Adviser**

6 **Violations of Section 206(2) of the Advisers Act**

7 56. The SEC realleges and incorporates by reference paragraphs 1 through
8 49 above.

9 57. Frankel is an “investment adviser” within the meaning of Section
10 202(a)(11) of the Advisers Act, 15 U.S.C. § 80b-2(a)(11). In the relevant period,
11 Frankel was in the business of providing investment advice concerning securities for
12 compensation.

13 58. In the relevant period, Frankel, negligently and in violation of applicable
14 standards of care including his fiduciary duty as an investment adviser, engaged in
15 transactions, practices, or courses of business that operated as a fraud or deceit upon
16 his advisory clients.

17 59. Specifically, Frankel stole and misappropriated funds from two of his
18 advisory clients to pay his personal expenses and for other unauthorized purposes.
19 Frankel further attempted to conceal his fraud. He structured his unauthorized
20 transfers in a manner designed to avoid detection of his fraud. He falsely stated to
21 Advisory Client #1’s sports agency that he had reviewed the relevant account activity
22 and found nothing improper. And later, he falsely stated to Advisory Client #1’s
23 sports agency that any fraudulent transfers in that account were the responsibility of
24 Advisory Client #1’s personal assistant.

25 60. By engaging in the conduct described above, Frankel, directly or
26 indirectly, by use of the mails or means and instrumentalities of interstate commerce,
27 engaged in transactions, practices, or courses of business, which operated as a fraud
28 or deceit upon his advisory clients.

1 **VI.**

2 Grant such other and further relief as this Court may determine to be just and
3 necessary.

4 Dated: September 12, 2022

5 */s/ Douglas M. Miller*

6 DOUGLAS M. MILLER

7 Attorney for Plaintiff

8 Securities and Exchange Commission

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