

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NEAL R. GREENBERG,

Defendant.

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”), for its complaint,
alleges:

I. SUMMARY

1. This enforcement action arises out of extensive losses suffered by affiliated hedge funds managed and recommended by Defendant, Neal R. Greenberg (“Defendant” or “Greenberg”), including the Agile Safety Fund (“Safety Fund”), the Agile Safety Fund International (“International Fund”), and the Agile Safety Variable Fund (“Variable Fund”) (collectively “Agile hedge funds”). The Agile hedge funds were marketed and managed by affiliated investment advisers Agile Group, LLC (“Agile Group”) and Tactical Allocation Services, LLC (“TAS”), registered investment advisers controlled by Defendant. Defendant negligently misrepresented the safety, suitability, and diversification of the Agile hedge funds to TAS clients, in many cases conservative investors in or near retirement.

II. DEFENDANT

2. Defendant was at all relevant times the Chief Executive Officer (“CEO”) and majority owner of TAS and the head portfolio manager for Agile Group. At all relevant times, Defendant held Series 1, 4, 7, 24, 63, and 65 securities licenses. He was the principal of an affiliated registered broker-dealer, Agile Securities, Inc., starting in 1996 until that firm withdrew its registration with the Commission in November 2008. Defendant ended his association with Agile Group and TAS when they withdrew their registrations with the Commission in October 2009. Defendant, 55 years old, is a resident of Boulder, Colorado.

III. OTHER RELEVANT ENTITIES

3. TAS, located in Boulder, Colorado, registered with the Commission as an investment adviser on June 3, 1996. Greenberg was the CEO and majority owner of TAS, which provided investment advice to individual clients. TAS withdrew its registration as an investment adviser with the Commission on October 5, 2009.

4. Agile Group, located in Boulder, Colorado, registered with the Commission as an investment adviser on December 15, 2001. Agile Group is wholly-owned by TAS and served as the general partner and investment adviser to at least eight affiliated Agile hedge funds. Agile Group withdrew its registration as an investment adviser with the Commission on October 5, 2009.

IV. JURISDICTION AND VENUE

5. The Commission brings this action pursuant to the authority conferred upon it by Section 209(d) and (e) of the Investment Advisors Act of 1940 [15 U.S.C. § 80b-9].

6. This Court has jurisdiction over this action pursuant to Investment Advisor's Act Section 214 [15 U.S.C. § 80(b)-14].

7. In connection with the transactions, acts, practices, and courses of business described in this Complaint, the Defendant, directly and indirectly, has made use of the means or instrumentalities of interstate commerce, of the mails, and/or of the means and instruments of transportation or communication in interstate commerce.

8. Certain of the transactions, acts, practices, and courses of business constituting the violations of law alleged herein occurred within this district.

V. STATEMENT OF FACTS

Background

9. While many TAS clients were accredited investors, many were conservative, near or in retirement, and were seeking investments offering significant capital protection. Many TAS clients also needed money from their investment portfolio to fund their annual living expenses.

10. In mid-September 2008, the Safety Fund, Variable Fund, and International Fund limited redemptions because the funds anticipated that they would not have sufficient liquidity to meet redemption requests as of September 30, 2008. In late September 2008, the Safety Fund, Variable Fund, and International Fund suspended redemptions because the funds had suffered substantial losses due to investments the funds had made, either directly or indirectly, with the Lancelot Investors Fund, L.P. and Lancelot Investors Fund II, L.P. (collectively "Lancelot"), and the Palm Beach Finance Partners, L.P. and Palm Beach Finance Partners II, L.P. (collectively "Palm Beach"). Lancelot and Palm Beach suffered very significant losses due to investments those funds made in a fraudulent scheme by Tom Petters ("Petters"). As of September 2008,

approximately \$174 million of investor capital was invested in the Safety Fund, the Variable Fund, and the International Fund.

11. In December 2008, the Safety Fund, Variable Fund, and International Fund suffered additional losses due to investments made, either directly or indirectly, in the Rye Select Broad Market Fund, L.P. and Rye Select Broad Market Prime Fund, L.P. (collectively “Rye Select”) which suffered very significant losses due to investments those funds made in a fraudulent scheme by Bernard Madoff (“Madoff”).

12. In 2009, Greenberg voluntarily resigned from all management or other supervisory positions at TAS and Agile Group, and appointed two of the Agile fund investors to manage TAS and Agile Group. TAS and Agile Group then withdrew their registrations as investment advisers.

13. To date, no redemptions have been allowed by the Safety Fund, Variable Fund, and International Fund, and TAS clients likely have lost most, and possibly all, of their investments in these funds. Some TAS clients have lost all of their retirement savings.

Negligent misrepresentations, omissions, and unsuitable investment recommendations

14. TAS marketed itself as an investment adviser dedicated to preserving wealth for conservative investors. Clients were told in marketing materials that TAS formulated investment advice with a “risk minimization first, return second” mindset designed to deliver the “peace of mind you need to sleep well at night.” TAS clients were also told in those materials that TAS created “an individualized portfolio tailored to [their] needs and objectives.” As a result of positioning itself in this manner, TAS attracted many investors who were in retirement or near retirement, and who generally had relatively

conservative investment objectives and low risk tolerances. Greenberg was aware of the general profile of the average TAS client.

15. Between at least 2006 and 2008, Greenberg advised clients and investors in TAS to purchase and hold the Agile hedge funds. As part of that recommendation, investors were told that the Safety Fund, International Fund, and Variable Fund were “immensely” diversified, that those funds had a portfolio comprised of a high number of managers and funds, that the funds held a high number and variety of different underlying investments, and that the funds in which the Agile hedge funds invested employed a high number of non-correlated strategies. Investors were also told that the immense diversification of the funds would insulate the funds from significant losses if one or two investments made by the funds lost most or all their value. Investors were encouraged to invest most or all of their investment monies in Agile hedge funds, in part because of the tremendous diversification in the funds. Thus, investors reasonably believed that the funds would not be concentrating a large amount of investor capital in only a few funds.

16. Even though the Safety Fund, International Fund, and Variable Fund generally invested in thirty to fifty other funds, the representations that the Safety Fund, International Fund, and Variable Fund were immensely diversified were misleading because a large percentage of these funds’ investor capital was concentrated in a few funds. Therefore, the Safety Fund, International Fund, and Variable Fund were not, in fact, insulated from losses in funds in which they were heavily invested. For example, the Agile hedge funds held concentrated positions in the Lancelot, Palm Beach and Rye Select funds. Beyond the Lancelot, Palm Beach, and Rye Select investments, the Safety Fund, International Fund, and Variable Fund also made concentrated investments in several other

funds and had a high concentration in certain strategies including asset-based lending strategies. Defendant should have known that these concentrations were inconsistent with representations that the Agile hedge funds would disperse assets among a multitude of underlying hedge fund managers, investments, and strategies and increased the undisclosed risks created by the funds' lack of diversification.

17. The Safety Fund, International Fund, and Variable Fund were unsuitable as the primary investment for numerous TAS clients. In some instances, it was unsuitable for a client to have invested any of his assets into Agile hedge funds given his investment objectives, age, liquidity needs, financial sophistication, and/or risk tolerance. In other instances, it may have been suitable for a portion of a client's portfolio to have been invested in Agile hedge funds, but it was unsuitable to have invested such a high percentage of the client's portfolio in Agile hedge funds. At the end of 2006, 83% of the assets under management by TAS were invested in Agile hedge funds. As of June 2008, at least 75 clients over age 60 had more than 80% of their assets under management by TAS invested in Agile hedge funds, and of those 75 clients, at least 40 were over age 70. Greenberg should have known that the Agile hedge funds were not suitable investments for many TAS clients given the risks involved and his specific knowledge of the hedge fund portfolios.

Inadequate disclosure concerning adviser fees to be charged on investments in an affiliated fund

18. The Safety Fund, International Fund, and Variable Fund made investments in the affiliated Agile Performance Fund using a combination of investor capital and leverage. From inception, the Private Placement Memorandums ("PPMs") for the Safety Fund, International Fund, and Variable Fund generally provided that no additional fees

would be charged if capital was allocated to an affiliated fund. Consistent with that disclosure, Agile Group did not charge such additional management and performance fees on investors' original capital. Agile Group did, however, under Defendant's supervision, charge additional management and performance fees on the leveraged portion of the Safety Fund, the International Fund, and the Variable Fund's investment in the Agile Performance Fund. The PPMs failed to adequately disclose the additional management and performance fees that would be charged on leveraged amounts, that significant layering of fees could occur, and the conflicts of interest that might occur from having these funds invest in the Agile Performance Fund. Although Agile Group increased its disclosure in December 2006 after a compliance examination conducted by SEC examiners in 2006, the firm earned additional revenue from the insufficiently disclosed fee arrangement, and Defendant (as majority owner of Agile Group) indirectly benefitted from those fees.

Inadequate compliance policies and procedures, failure to supervise, and noncompliance with the custody rule

19. TAS and Agile Group failed to adopt and implement adequate compliance policies and procedures, including failing to adopt and implement adequate policies and procedures relating to suitability. As the majority owner of TAS, Greenberg failed to ensure that adequate policies and procedures were developed and/or implemented for determining when it would be suitable for clients to invest in complex hedge fund products and he failed to ensure that adequate supervisory procedures were developed and/or implemented relating to those determinations.

20. Between 2005 and 2009, Agile Group had custody of client funds, and aided and abetted and caused by Greenberg, it repeatedly failed to comply with the custody rule [17 C.F.R. § 206(4)-2] because account statements were not provided by a qualified

custodian to investors on a quarterly basis for the various Agile hedge funds nor were audited financial statements distributed to investors within 180 days after the end of the hedge fund's fiscal years.

Other fee and expense issues

21. Agile Group improperly caused the Safety Fund to pay approximately one-third of the rent for Defendant's personal New York apartment despite objections by some Agile Group employees. Defendant knew of and benefitted from these payments. These charges were refunded to the Safety Fund in 2007.

22. Agile Group failed to properly refund a performance fee overcharge to their present and former clients. Agile Group discovered that it had overcharged certain affiliated hedge funds by \$233,000 in 2005 resulting from mistakes made in calculating the performance fee. About 40 investors who had withdrawn their investments from the funds received no reimbursement of the overcharges to their accounts, and Agile Group wrongfully retained those funds. For current investors in the funds, Agile, with knowledge of the Defendant, decided to refund the overcharges by a means of a credit against future fees over a 24-month period instead of refunding the overcharge immediately. Agile Group has since provided refunds to all present and former investors.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

**Violation of Investment Advisors Act Section 206(2)
[15 U.S.C. § 80b-6(2)]**

23. The SEC realleges paragraphs 1 through 22 above.

24. As a result of the conduct described above, Defendant violated Section 206(2) of the Investment Advisers Act and unless restrained and enjoined will in the future violate that section of the Investment Advisers Act.

SECOND CLAIM FOR RELIEF

**Violation of Investment Advisors Act Section 206(4) and Rule 206(4)-8
[15 U.S.C. § 80b-6(4) and 17 C.F.R. § 206(4)-8]**

25. The SEC realleges paragraphs 1 through 22 above.

26. As a result of the conduct described above, Defendant violated Section 206(4) of the Investment Advisors Act and Rule 206(4)-8 promulgated thereunder and, unless restrained and enjoined will in the future violate that section and that rule of the Investment Advisors Act.

THIRD CLAIM FOR RELIEF

**Violation of Investment Advisors Act Section 206(4) and Rules 206(4)-2 and 206(4)-7
[15 U.S.C. § 80b-6(4) and 17 C.F.R. §§ 206(4)-2 and 206(4)-7]**

27. The SEC realleges paragraphs 1 through 22 above.

28. As a result of the conduct described above, Defendant aided and abetted Agile Group's violations of Section 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 promulgated thereunder and unless restrained and enjoined will in the future aid and abet violations of that section and those rules of the Investment Advisors Act.

PRAYER FOR RELIEF

The SEC respectfully requests that this Court:

1. Find that Defendant committed the violations alleged;
2. Enter injunctions, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant from violating, directly or indirectly, or aiding and abetting violations of the law and rules alleged in this Complaint;
3. Order Defendant to disgorge all ill-gotten gains in the form of any benefits of any kind derived from the illegal conduct alleged in this Complaint, plus pre-judgment interest;

4. Order Defendant to pay civil penalties, including post-judgment interest, pursuant to Investment Adviser Act Section 209(e) [15 U.S.C. § 80b-9(e)], in an amount to be determined by the Court; and

5. Order such other relief as is necessary and appropriate.

Respectfully submitted, February 7, 2011.

/s/ Stephen C. McKenna

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