

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 707/June 15, 2012

ADMINISTRATIVE PROCEEDING  
File No. 3-14355

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In the Matter of	:	
	:	
DONALD L. KOCH and	:	ORDER
KOCH ASSET MANAGEMENT LLC	:	

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Under consideration are the parties' motions, pursuant to 17 C.F.R. § 201.111(h) (Rule 111(h)), timely filed on June 4, 2012, to correct manifest errors of fact in the May 24, 2012, Initial Decision (ID) in this proceeding.<sup>1</sup>

**BACKGROUND**

The Securities and Exchange Commission's (Commission) April 25, 2011, Order Instituting Proceedings alleged that Respondents violated the federal securities laws in their dealings with investment advisory clients. The ID concluded that Respondents violated the antifraud provisions and ordered various sanctions, including a civil money penalty of \$75,000. Donald L. Koch, Initial Decision No. 458 (A.L.J. May 24, 2012).

**MOTIONS TO CORRECT**

The parties' requests for corrections have been considered in light of the limited purpose of Rule 111(h) – to correct “a patent misstatement of fact.” The Commission has stated, “[M]otions to correct manifest error are properly filed under this Rule only if they contest a patent misstatement of fact in the initial decision. Motions purporting to contest the substantive merits of the initial decision will be treated as a petition for review [by the Commission, pursuant to 17 C.F.R. § 201.410].” 70 Fed. Reg. 72566, 72567 (Dec. 5, 2005).

1. Respondents Donald L. Koch (Koch) and Koch Asset Management LLC (collectively, Respondents) propose that the seventh sentence in the first full paragraph on page 3 (“The client must approach investing with him as a long-term investment with a ten-year horizon. Tr. 796-97.”) be corrected to replace “ten-year” with “five- to seven-year.” The change will not be

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<sup>1</sup> The Division of Enforcement filed an opposition on June 12, 2012. Respondents did not file an opposition.

made. Koch's testimony at Tr. 796-97 concerning the stress he placed on investing for the long term referenced "a ten-year time horizon."

2. Respondents propose that the last sentence in footnote 19 on page 8 ("While there is no explanation in the record as to why there were no records of calls before December 31, there is no evidence, engineering or otherwise, to show that the individual recordings of December 31 were altered or edited.") be corrected and expanded to include a statement that there is no evidence that the recordings in evidence represent all calls between Koch and Christanell on December 31 and that a time stamp on one recording appears wrong. The change will not be made. The sentence does not contain any errors.

3. Respondents propose that footnote 22 ("Resp. Ex. 39 erroneously shows both fills at \$9.05. Tr. 1101-02.") be changed to explain that the \$9.05 figure for both fills was due to rounding. The change will not be made. The sentence does not contain any errors.

4. Respondents propose that the second sentence ("The parties agree that this excess amounts to \$4,169.78.") of the first full paragraph (titled, "6. Excess Quarterly Fees") on page 10 be changed to "The Division submits . . . ." The change will not be made. The sentence is consistent with representations in Respondents' February 29, 2012, Proposed Findings of Fact and Conclusions of Law at Appendix A at § III and the Division of Enforcement's (Division) Post-Hearing Reply Brief at 38.

5. As Respondents point out, several citations to Respondent Exhibit 39 on page 9 reference erroneous pages of the exhibit, and, as the Division points out, reference to the \$75,000 civil penalty on page 15 contains an erroneous digit. The undersigned concludes that these are manifest errors of fact within the meaning of Rule 111(h), and, accordingly, the ID should be corrected as follows:

a. The first full paragraph on page 9 is corrected as follows:

The bid-ask quote for HCBC was \$14.05 - \$16.80, when Christanell executed the first trade of the day in that stock. Resp. Ex. 39 at ~~64~~58. He bought a total of 3,200 shares in several transactions, the last of which, within two minutes of the close, was for \$19.50 and set the closing price. Div. Ex. 278 at 1; Resp. Ex. 39 at ~~64~~58. The previous transaction, by another buyer one minute earlier, was at \$17.50. Div. Ex. 278 at 1; Resp. Ex. 39 at ~~64~~58.

b. The third full paragraph on page 9 is corrected as follows:

Within two minutes of the close of trading, Christanell routed an order for 200 shares of CARV to the street and obtained 100 shares at \$9.045 and another 100 shares at \$9.05.<sup>22</sup> Div. Ex. 278 at 3; Resp. Ex. 39 at ~~63~~36. CARV closed at \$9.05. Resp. Ex. 39 at 36. When asked why he tried to acquire such a small block of CARV, in which he was losing confidence, Koch replied with a convoluted explanation that in fact makes no sense. Tr. 904-06, 923-25.

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<sup>22</sup> Resp. Ex. 39 erroneously shows both fills at \$9.05. Tr. 1101-02.

c. The first paragraph of the Sanctions section on page 15 is corrected as follows:

The Division requests a cease-and-desist order, disgorgement of ill-gotten gains plus prejudgment interest, a third-tier civil money penalty, and that KAM be censured and Koch barred from the securities industry. As discussed below, Respondents will be ordered to cease and desist from violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, to disgorge \$4,169.78 plus prejudgment interest, and to pay a second-tier civil penalty of \$~~6~~75,000, KAM will be censured, and an investment adviser bar will be imposed on Koch.

IT IS SO ORDERED.

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Carol Fox Foelak  
Administrative Law Judge