

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70083 / July 31, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3638 / July 31, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15400

In the Matter of

**GOELZER INVESTMENT
MANAGEMENT, INC. AND
GREGORY W. GOELZER**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTIONS 203(e), 203(f), AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF
1940, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Goelzer Investment Management, Inc. (“GIM” or “the firm”) and Gregory W. Goelzer (“Goelzer”).

II.

In anticipation of the institution of these proceedings, Respondents GIM and Goelzer have submitted Offers of Settlement (the “Offers”) which the Commission has determined 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, Respondents GIM and Goelzer consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e), 203(f), and 203(k) of the Investment

Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds that:

Summary

1. This action involves disclosure and compliance failures related to an investment adviser’s use of itself as broker to execute client trades. Since at least 2000, GIM, a dually registered investment adviser and broker-dealer based in Indianapolis, inappropriately directed advisory client trades through itself as broker-dealer without considering other options for executing the trades, such as utilizing unaffiliated broker-dealers. GIM had inadequate compliance policies and procedures in effect to ensure that it sought best execution for its clients consistent with its statements in its Form ADV Part II and Part 2A. From 2000 to 2013, GIM misrepresented in its Form ADV Part II¹ and Part 2A that it considered a list of factors and conducted comparative brokerage firm commission rate analysis before recommending itself as broker for its advisory clients, when in fact GIM failed to perform any such analysis. From 2000 to 2011, GIM also misrepresented in its Form ADV Part II that clients who used GIM as their broker stood to benefit from lower commission costs as a result of GIM’s aggregation of their trades, when no such benefit was provided. Finally, from 2000 to 2011, GIM failed to disclose in its Form ADV Part II that its advisory fees were negotiable, as required by the Form.

2. Goelzer, GIM’s Chief Executive Officer (CEO) and Chief Compliance Officer (CCO), was responsible for completing and filing GIM’s Form ADV Part II and Part 2A, for establishing policies and procedures for the firm, and for conducting best execution reviews. Goelzer was therefore responsible for the misstatements in GIM’s Form ADV Part II and Part 2A and for the failure to adopt and implement best execution compliance policies and procedures that were consistent with GIM’s representations about its recommendation of brokers described in GIM’s Form ADV Part II and Part 2A.

Respondents

3. **Goelzer Investment Management, Inc.** is an Indiana corporation founded in 1969 and based in Indianapolis, Indiana. GIM has been dually registered with the Commission as a broker-dealer and investment adviser since 1998.

4. **Gregory W. Goelzer**, age 54, is a resident of Indianapolis, Indiana. Goelzer has been GIM’s CEO since 2006 and was GIM’s CCO from 1989 to 2012. Through his employment at GIM, Goelzer has been and continues to be associated with a broker-dealer and investment adviser registered with the Commission.

¹ Commission Form ADV Part II was replaced by Form ADV Part 2A effective October 12, 2010. During most of the period relevant to this Order, GIM utilized a Form ADV Part II. In March 2011, GIM timely filed its first Form ADV Part 2A with the Commission.

Background

5. GIM's principal business is serving as investment adviser to individuals and families. The firm has approximately twenty employees, and has approximately \$700 million in assets under management. GIM also maintains a broker-dealer business primarily to support its investment advisory business. While GIM has some retail brokerage customers, most of its brokerage business comes from GIM advisory clients.

6. Since 2005, GIM has managed its advisory client accounts through a team approach. GIM's portfolio managers work in teams to manage five investment strategies: core growth; core value; rising dividend; fixed income; and alternative investments. For each strategy, the portfolio managers maintain a model portfolio of securities. The portfolio managers then allocate client assets among the five model portfolios. As a result, GIM holds similar securities across its client accounts, and when a security is added or subtracted from one of the strategy's model portfolios, GIM buys or sells that security in all client portfolios invested in that strategy. GIM often makes large trades in a security across many client accounts on the same day because of its model portfolio advisory strategy.

7. During his tenure as GIM's CCO, Goelzer was responsible for developing, enforcing, and reviewing annually GIM's investment adviser and broker-dealer compliance policies and procedures. He was also responsible for maintaining and updating GIM's Form ADV. GIM has historically provided new clients with the Form ADV Part II (and Form ADV Part 2A beginning March 2011) before entering into an advisory agreement and has offered in writing the ADV Part II annually to its existing clients. A third-party consultant assisted Goelzer with creating GIM's policies and procedures and with preparing GIM's Form ADV, but Goelzer retained responsibility for ensuring that GIM's compliance policies and procedures were effective and that its Form ADV was complete and accurate.

GIM's Brokerage Business

8. GIM provides basic brokerage services for its advisory clients and clears its trades through an unaffiliated clearing firm. As a standard practice, GIM utilizes its broker-dealer to execute trades for nearly all of its advisory clients, except when a client directs GIM to use a different broker-dealer.

9. Most GIM clients have historically paid brokerage commissions pursuant to GIM's standard commission schedule, which charges commissions depending on the number of shares traded, subject to a minimum commission charge. From 2005 to present, GIM's standard commission schedule has provided for commissions ranging from \$0.03 to \$0.10 per share, subject to a minimum charge of \$20 to \$25.² GIM clients pay a lower per share commission rate on larger trades than they do on smaller trades.

² GIM's commission schedule changed during the relevant period, with rates declining over time, but it has always included a per share charge dependent on the number of shares traded, subject to a minimum commission charge.

GIM's Inaccurate Form ADV Disclosures Relating to Its Brokerage Services

10. Since at least 2000, GIM's Form ADV Part II and Part 2A has included disclosures about GIM's brokerage business and its use of GIM as broker for its advisory clients. These disclosures contained false and misleading statements regarding GIM's decision to use itself as broker and regarding the benefits of clients using GIM as their broker.

11. From 2000 to March 2011, GIM's Form ADV Part II disclosed that transactions for GIM's advisory clients would generally be effected through GIM as broker, "consistent with its obligation to obtain best price and execution." This disclosure was misleading, as GIM did not take steps to ensure that it was seeking best price and execution for its advisory clients. GIM therefore had no basis for stating that execution through GIM was consistent with GIM's best execution obligation.

12. From 2000 through March 2013, GIM's Form ADV Part II and Form ADV Part 2A also misrepresented that GIM's recommendation that clients use GIM as their broker was based on GIM's consideration of several factors, including: the products offered; the level of service; the quality of trade execution; the record keeping and reporting capabilities; the trading platforms offered; and the ability to meet client needs. In fact, GIM failed to evaluate brokerage options for its clients in a manner that was consistent with this disclosure. GIM's Form ADV Part II and Form ADV Part 2A also misrepresented that GIM compared various brokerage firm rates in assessing the reasonableness of commissions, when in fact GIM never compared its commission rates to its competitors.

13. From 2000 to March 2011, GIM's Form ADV Part II included a statement that clients had the option of using a broker other than GIM upon request and that clients might be able to obtain better execution elsewhere. However, the disclosure warned that "clients who do choose another broker/dealer may not always obtain best price and execution when trades are effected at a broker/dealer other than [GIM]. In particular, clients would not be able to participate in and receive the benefits of lower commission costs as a result of [GIM's] use of volume transactions ('block trades')." This statement was misleading, as GIM clients never benefited from lower commissions when GIM aggregated client trades for average pricing purposes. Had GIM treated these aggregated trades as a block for purposes of assessing its commission charge, GIM clients would have saved \$309,994 in commission costs from January 2005 through March 2011.

GIM's Failure to Adopt and Implement Policies and Procedures and Seek Best Execution

14. GIM failed to adopt and implement compliance policies and procedures reasonably designed to prevent and detect misrepresentations by GIM such as the representations about the firm's broker selection policy described in GIM's Form ADV Part II and Part 2A. Prior to revisions made in 2013, the only procedures established by GIM relating to selection of brokers and best execution included: (1) review of a best execution report provided by GIM's clearing firm that showed the clearing firm's performance compared to the industry; (2) ensuring that GIM's Form ADV Part II contained disclosures to clients regarding the firm's potential conflict of interest as both adviser and broker-dealer; and (3) a statement that the firm would attempt to utilize batch or block trades to help ensure that clients are receiving best price and execution. GIM did

not adopt or implement other advisory compliance policies and procedures relating to its best execution obligations or its disclosures that it would evaluate brokers on a multitude of factors and compare brokerage rates.

15. GIM also failed to seek best execution for its advisory clients, as it represented that it would in its Form ADV Part II and Part 2A. GIM did not assess itself as broker for its clients and did not compare what it offered clients to the services and costs available at other brokerage firms -- as it claimed it did in its Form ADV Part II and Part 2A -- despite discussions among GIM senior management regarding the availability of more cost-effective options at non-affiliated broker-dealers. Nor did GIM conduct any analysis of its brokerage services that gave it a basis for using itself as broker. Instead, GIM used itself as broker for its advisory clients by default rather than as a result of a best execution analysis.

16. As CCO, Goelzer was responsible for developing and enforcing policies and procedures for GIM that were reasonably designed to detect and prevent violations of the Advisers Act. Goelzer failed to develop or enforce compliance policies and procedures for GIM that addressed how GIM sought best execution for its clients in a manner that was consistent with the representations in its Form ADV Part II and Part 2A.

GIM's Failure to Disclose Negotiability of Advisory Fees

17. From 2000 to March 2011, GIM's Form ADV Part II disclosed that GIM offered advisory services under two fee structures: fee-based and wrap-fee based. GIM disclosed an annual fee schedule for each structure. Historically, more than 95% of its advisory clients have been under the fee-based structure. GIM's disclosed fee-based schedule did not reflect what many GIM advisory clients were actually paying, and for the last several years all new advisory clients have been offered a lower fee schedule than GIM's disclosed fee-based schedule. According to a 2010 study of GIM's fee structures, only approximately 25% of GIM's clients paid fees according to GIM's disclosed fee-based schedule, with the remainder paying according to modified schedules, most of which were substantially discounted from the disclosed fee-based schedule. According to the 2010 study, GIM had 65 different fee arrangements among its 288 clients.

18. Item 1.D. of Form ADV Part II required investment advisers to disclose whether their fees are negotiable. Prior to March 2011, GIM never disclosed in its Form ADV Part II that its fees were negotiable, despite the fact that approximately 75% of its clients were on reduced fee schedules compared to the standard schedule GIM disclosed in its Form ADV Part II.

Violations

19. As a result of the conduct described above, GIM willfully violated Sections 206(2) and 206(4) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser, and Rule 206(4)-7 promulgated thereunder, which, among other things, requires that an investment adviser adopt and implement written policies and procedures reasonably designed to prevent violations, by the investment adviser or its supervised persons, of the Advisers Act and the rules adopted thereunder.

20. As a result of the conduct described above, Goelzer caused GIM's violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

21. As a result of the conduct described above, GIM and Goelzer willfully violated Section 207 of the Advisers Act, which makes it unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed under the Advisers Act or willfully to omit to state in any such application or report any material fact which is required to be stated therein.

GIM's Remedial Efforts

22. In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by Respondent GIM.

Undertakings

23. Respondent GIM has undertaken to:

24. **Compliance Consultant.** During the Commission's investigation, GIM hired a compliance consultant (the "Consultant") to conduct a comprehensive review of GIM's compliance program. The Consultant completed its work in March 2013 and submitted a report detailing its work, findings, and recommendations to GIM in March 2013, which GIM shared with the Commission staff. GIM has implemented all of the Consultant's recommendations. GIM will retain the Consultant going forward to assist GIM in implementing its new compliance program. The Consultant's work includes, but is not limited to:

a. The Consultant conducted an on-site review of GIM's business and GIM's implementation of the firm's policies and procedures.

b. The Consultant drafted new policies and procedures and a code of ethics for GIM's broker-dealer and investment advisory business, and assisted GIM in their implementation. GIM's new policies and procedures and code of ethics included extensive changes to GIM's best execution policy.

c. The Consultant assisted in the development and implementation of a new supervisory framework and internal controls.

d. The Consultant conducted an annual review to assess the adequacy and effectiveness of GIM's new policies and procedures. This review included examination of GIM's Form ADV and best execution practices, and updating of GIM's Form ADV.

e. The Consultant will conduct annual compliance reviews of GIM for the years ended December 31, 2013 and December 31, 2014.

In determining whether to accept the Offers, the Commission has considered these undertakings.

25. Separation of Chief Compliance Officer From Other Officer Positions.

For a period of five (5) years from the entry of this Order, GIM shall employ a Chief Compliance Officer whose sole responsibility will be serving in that position. During this period, the person GIM designates as Chief Compliance Officer shall not simultaneously hold any other officer or employee position at GIM while serving as Chief Compliance Officer.

26. Recordkeeping.

GIM shall preserve for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of GIM's compliance with the undertakings set forth in this Order.

27. Notice to Advisory Clients.

Within ten (10) days of the entry of this Order, GIM shall post prominently on its principal website a summary of this Order in a form and location acceptable to the Commission staff, with a hyperlink to the entire Order. GIM shall maintain the posting and hyperlink on GIM's website for a period of twelve (12) months from the entry of this Order. Within thirty (30) days of the entry of this Order, GIM shall provide a copy of the Order to each of GIM's existing advisory clients as of the entry of this Order via mail, email, or such other method as may be acceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff. Furthermore, for a period of twelve (12) months from the entry of this Order, to the extent that GIM is required to deliver a brochure to a client and/or prospective client pursuant to Rule 204-3 of the Advisers Act, GIM shall also provide a copy of this Order to such client and/or prospective client at the same time that GIM delivers the brochure.

28. Deadlines.

For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

29. Certifications of Compliance by Respondent.

GIM shall certify, in writing, compliance with its undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and GIM agrees to provide such evidence. The certification and supporting material shall be submitted to Paul Montoya, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL, 60604, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent GIM's and Respondent Goelzer's Offers.

Accordingly, pursuant to Section 15(b) of the Exchange Act and Sections 203(e), 203(f), and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondents GIM and Goelzer cease and desist from committing or causing any violations and any future violations of Sections 206(2), 206(4), and 207 of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Respondents GIM and Goelzer are censured.

C. Respondent GIM shall pay disgorgement and prejudgment interest as follows:

(1) GIM shall pay disgorgement of \$309,994, consistent with the provisions of this Subsection C. Within ten (10) days of the entry of this Order, GIM shall deposit the full amount of the disgorgement (the "Disgorgement Fund") into an escrow account acceptable to the Commission staff and GIM shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. In addition, within ten (10) days of the entry of this Order, GIM shall pay prejudgment interest of \$53,799 to the Commission for transmittal to the United States Treasury, in the manner provided in Subsection D below. If timely deposit of the Disgorgement Fund or timely payment of the prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

(2) GIM shall be responsible for administering the Disgorgement Fund. GIM shall pay applicable portions of the Disgorgement Fund to affected current and former advisory clients who did not receive reduced commissions for trades that GIM aggregated with other client trades, pursuant to a disbursement schedule (the "Disbursement Schedule") that has been reviewed and approved by the Commission staff, in accordance with this Subsection C. No portion of the Disgorgement Fund shall be paid to any client account in which Respondent GIM or Respondent Goelzer has a financial interest. Any such funds shall be transferred to the Commission for transfer to the United States Treasury in accordance with Subsection D below. For any current and former advisory client that is due an amount totaling less than ten dollars (\$10.00), where such amount cannot be credited to a current client account at GIM, GIM shall instead pay such amount to the Commission for transfer to the United States Treasury in the manner provided in Subsection D below.

(3) GIM shall complete the transmission of all amounts otherwise payable to affected advisory clients pursuant to the Disbursement Schedule within sixty (60) days of the entry of this Order, unless such time period is extended as provided for in Subsection C.8 below.

(4) If GIM does not distribute or return any portion of the Disgorgement Fund for any reason, including an inability to locate an affected advisory client or any factors beyond GIM's control, or if GIM has not transferred any portion of the Disgorgement Fund to a client because that client is due less than \$10.00, GIM shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury after the final accounting provided for in this Subsection C is approved by the Commission. Any such payment shall be made in accordance with Subsection D below.

(5) GIM shall be responsible for any and all tax compliance responsibilities associated with the Disgorgement Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by GIM and shall not be paid out of the Disgorgement Fund.

(6) Within one hundred and eighty (180) days after the date of entry of this Order, GIM shall submit for Commission approval a final accounting of the disposition of the Disgorgement Fund. The final accounting shall be on a standardized accounting form to be provided by the Commission staff and shall include, but not be limited to: (i) the amount paid to each payee; (ii) the date of each payment; (iii) the check number or other identifier of money transferred; (iv) the date and amount of any returned payment; and (v) any amounts to be forwarded to the Commission for transfer to the United States Treasury. In addition, GIM shall provide to Commission staff a cover letter representing that all of the requirements of this Subsection C have been completed and that the information requested has been accurately reported to the Commission (“the certification”). Also included in the certification should be a description of any efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason.

(7) GIM shall submit proof and supporting documentation of such payment (whether in the form of fee credits, cancelled checks, or otherwise) in a form acceptable to the Commission staff and under a cover letter that identifies GIM as a Respondent in these proceedings and the file number of these proceedings to Paul Montoya, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL, 60604, or such other address the Commission staff may provide. GIM shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(8) After GIM has submitted the final accounting to the Commission staff, the staff shall submit the final accounting to the Commission for approval and shall request Commission approval to send any remaining amount to the United States Treasury.

(9) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Disgorgement Fund shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday the next business day shall be considered to be the last day.

D. Respondent GIM shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

(1) Respondent 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

(2) Respondent 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 GIM as a 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 Paul Montoya, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL, 60604, or such other address as the Commission staff may provide.

E. Respondent Goelzer shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$35,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in accordance with Subsection D above, with the cover letter identifying Goelzer as a Respondent in these proceedings.

F. Respondent GIM shall comply with the undertakings enumerated in Section III, paragraphs 24 through 29 above.

By the Commission.

Elizabeth M. Murphy
Secretary