UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3747 / December 24, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15661

In the Matter of **JIM POE AND ASSOCIATES, INC. AND JAMES EMORY POE** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 15(b)(6) 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)(6) 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 Jim Poe and Associates, Inc. ("JPA") and James Emory Poe ("Poe"), (collectively "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the "Offer") 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 consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b)(6) 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 Respondent's Offer, the Commission finds that:

Summary

1. These proceedings arise as a result of performance fees being improperly charged by JPA, a registered investment adviser based in Fort Worth, Texas. Between 2009 and 2011, JPA, at the direction of its founder and principal James Emory Poe, improperly charged three private funds that it manages a performance fee for clients who did not satisfy the requirements of a "qualified client" under the Advisers Act.

Respondents

2. Jim Poe and Associates, Inc. is a Texas corporation based in Fort Worth, Texas. JPA has been registered with the Commission as an investment adviser since September 15, 2010 and as an adviser with the Texas State Securities Board from August 31, 2006 through September 27, 2010.

3. James Emory Poe, age 67, resides in Benbrook Texas. Poe is the sole officer and majority owner of JPA. Poe was registered representative with Commission registered broker-dealer from 2008 to 2012. Poe has completed the series 62, 63, and 65 examinations.

Background

4. Generally, Section 205(a)(1) of the Advisers Act prohibits investment advisers that are registered or required to be registered with the Commission from entering into advisory contracts or providing advisory services pursuant to contracts that provide for compensation based on a share of capital gains upon or capital appreciation of the assets or any portion of the assets of a client ("performance fee"). Rule 205-3 provides that the provisions of Section 205(a)(1) shall not apply if the client with whom the adviser is entering into such contract is a "qualified client" as defined in Rule 205-3(d)(1).

5. In 2009, Poe formed a fund that was designed to invest in closed-end bond and REIT funds. As of October 31, 2010, this fund had $16.5 million in assets and 97 investors, 23 of which were non-accredited based on information in their subscription agreements. In June 2010, Poe formed a second fund to provide income and capital gains utilizing an income and rotation strategy. As of October 31, 2010, this fund had $4.3 million in assets and 23 investors, five of which were non-accredited based on information in their subscription agreements. In December 2010, Poe formed a third fund to invest in ETFs and periodic indexed options to hedge the portfolio. As of February 2011, this fund had $3.6 million in assets and 19 investors, one of which was non-accredited based on information in his subscription agreement.

6. Investors in any of the funds managed by JPA received a Private Placement Memorandum ("PPM"). Each PPM is identical, except as to fund objective, and contains standard

disclosures, an investor questionnaire, a subscription agreement, and a limited partnership agreement. The limited partnership agreement served as the advisory agreement between JPA and the respective fund, as well as the advisory contract between the investor, the fund, and JPA. Pursuant to the partnership agreement, JPA as fund manager would receive a fixed asset-based fee, plus a performance fee based on the capital appreciation of the fund. The partnership agreement was executed by the investor, and by Poe on behalf of JPA.

7. The subscription agreement includes an accreditation questionnaire and a qualified client questionnaire for each investor to review and complete. The former tracks the accreditation requirements under Regulation D of the Securities Act, and the latter tracts the language of Rule 205-3 of the Advisers Act. Nearly all of the subscription agreements submitted by investors in the JPA funds did not have the qualified client section completed.

8. JPA and Poe failed to determine at the time that the advisory contract was entered into, whether any investors satisfied the requirements of Advisers Act Rule 205-3. That is, whether any investors were "qualified clients." As a result, JPA charged all investors in its funds, including those who were non-qualified clients, a performance fee. Between 2009 and 2012, JPA received $637,843 in performance fees from investors who were not qualified clients.

9. However, during this time period, the language and application of the performance fee proscriptions in the Advisers Act changed due to enactment of the Dodd Frank Act and to amendments of certain Advisers Act rules. When enacted on July 22, 2010, the Dodd Frank Act amended Section 205 of the Advisers Act so that Section 205(a)(1) applied only to investment advisers registered or required to be registered with the Commission. Because JPA did not register with the Commission until September 15, 2010, Section 205(a)(1) did not apply to it from July 22 to September 14, 2010.

10. In addition, the Commission proposed and then adopted changes to Advisers Act Rule 205-3, which became effective on May 22, 2012. The changes included a "grandfathering" provision that stated, in pertinent part, that Section 205(a)(1) "will not apply to…an account of an equity owner of a private investment company advised by the adviser if the account was established when the adviser was not required to register and was not registered." As a result, performance fees earned by JPA from accounts established by non-qualified clients between July 22 (the effective date of the Dodd Frank Act amendments to Section 205(a)) and September 15, 2010 (the date JPA registered with the Commission), were not earned in violation of Advisers Act Section 205(a)(1) between May 10, 2011 until the relevant conduct ceased in 2012.

11. Taking into consideration the enactment of the Dodd Frank Act and the adoption of changes to Advisers Act Rule 205-3, JPA received $610,762 in performance fees in violation of Section 205(a)(1) of the Advisers Act.

12. As a result of the conduct described above, JPA willfully[1] violated, and Poe willfully aided and abetted and caused JPA's violations of, Section 205(a) of the Advisers Act, which prohibits an investment adviser from entering into an advisory contract that provides for performance-based compensation.

13. As of the date of this Order, JPA has reimbursed all non-qualified clients the amount each improperly paid in performance fees.

Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by the Respondents and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest to impose the sanctions agreed to in Respondents' Offer.

Accordingly, pursuant to Section 15(b)(6) of the Exchange Act and Sections 203(e), 203(f), 203(k), and 203(i) of the Advisers Act, it is hereby ORDERED that**:**

A. Respondents JPA and Poe cease and desist from committing or causing any violations and any future violations of Section 205(a) of the Advisers Act.

B. Respondents JPA and Poe are censured.

C. Respondents JPA and Poe shall, within ten days of the entry of this Order, pay jointly and severally civil money penalties 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 one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) 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

(3) 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:

[1] A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

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 JPA and Poe as a Respondents 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 David Peavler, Associate Regional Director, Division of Enforcement, Fort Worth Regional Office, Securities and Exchange Commission, Burnett Plaza, Suite 1900, 801 Cherry Street, Unit #18, Fort Worth, Texas 76102-6882.

By the Commission.

Elizabeth M. Murphy
Secretary