UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9630 / August 13, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 72836 / August 13, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3895 / August 13, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31210 / August 13, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16014

In the Matter of

KEITH MACDONALD SUMMERS

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY 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 8A of the Securities Act of 1933 ("Securities Act"), Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Keith MacDonald Summers ("Summers" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has 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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company 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. Respondent Keith M. Summers, a fund manager, who resides in Canada, breached his fiduciary duty and defrauded Tricoastal Capital Partners, LLC ("TCP Fund"), his advisory fund client, and its investors between July 2009 and July 2013. Summers raised $4,690,000 for TCP Fund, a Delaware LLC, primarily from U.S. investors during the relevant period. As the managing member of TCP Fund, Summers presented himself as a successful fund manager with a model driven investment strategy involving exchange traded funds or ETFs. However, Summers solicited investors by lying to them about TCP Fund's assets under management or AUM, the intended use of its assets and its historic performance. Summers also defrauded TCP investors by concealing trading losses from them. Moreover, Summers fraudulently withdrew and misappropriated $918,885 of investor funds from TCP Fund to pay for personal living expenses and unreimbursed business expenses throughout the relevant period. In July 2013, Summers reported his misconduct to Canadian authorities. On June 4, 2014, Summers pleaded guilty to criminal fraud charges in a parallel Canadian criminal proceeding in R v. Summers, Information No. 12000143, before the Ontario Court of Justice (Toronto Region). By virtue of the conduct described in this Order, Summers willfully violated Section 17(a) of the Securities Act, 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)-8 thereunder.

RESPONDENT

2. Keith M. Summers, age 49, is a Canadian citizen who resides in Burlington, Ontario, Canada. Summers was the managing member of TCP Fund, an unregistered investment fund, and the sole principal and director of Tricoastal Capital Management Ltd., an unregistered investment advisory firm. Summers directed TCP Fund and managed its investments at all times since its inception. Summers maintained a nominal office presence in Buffalo, New York, but operated TCP Fund from his home office at the time in Burlington, Ontario.

OTHER RELEVANT ENTITIES

3. Tricoastal Capital Partners, LLC, a Delaware limited liability company, is an investment fund excluded from the definition of "investment company" under Section 3(c)(1) of the Investment Company Act. Summers formed TCP Fund in 2004. As its sole officer and director, Summers managed and controlled TCP Fund at all times.

4. Tricoastal Capital Management Ltd. ("TCM"), a Canadian corporation organized under the laws of the province of Ontario, Canada, is an unregistered investment advisory firm. Summers formed TCM in 2007. Summers managed and controlled TCM at all times as its sole principal and director, and its controlling shareholder. TCM has ceased its operations.

FACTS

5. Between July 2009 and April 2012, Summers raised $4,690,000 for TCP Fund primarily from eight U.S. investors. Summers presented himself to investors as a successful fund manager who used a quantitative model-driven investment strategy involving exchange traded funds ("ETFs") to generate consistent long-term returns. Summers used a model to select a basket of index ETFs in which he invested TCP Fund every month. At the beginning of every month, Summers would invest TCP Fund equally among the ETFs and hold the ETFs until the end of the month at which time he would sell them. Summers then repeated the process the following month by investing in a different basket of ETFs.

6. During the relevant period, Summers intentionally and knowingly solicited potential investors by means of material misrepresentations and omissions. From the very outset, Summers misrepresented, orally and in certain written communications, the size of TCP Fund or its assets under management or AUM to attract investors. In July 2009, Summers told potential investors that he had $2 million in AUM when in fact he had no assets under management. By November 2009, Summers had raised approximately $1 million from investors based on those misrepresentations. From 2010 to 2012, Summers continued to overstate TCP Fund's AUM, typically misrepresenting to prospective investors that he managed $10 million to $15 million when in fact he had far fewer assets under management at the time.

7. Summers also misrepresented to potential investors the historic performance of TCP Fund in certain marketing materials and then concealed trading losses from them after they invested in TCP Fund. From July 2009 to August 2011, Summers sometimes "smoothed" TCP Fund's reported monthly performance by over-reporting or under-reporting returns to investors. Summers marketed TCP Fund to potential investors based on these smoothed returns instead of the fund's actual returns. While his ETF trading strategy performed relatively well in 2009 and 2010, Summers started to experience significant trading losses in 2011. By August 2011, Summers began to underreport significant losses in certain months to investors on their monthly account statements.

8. In May 2012, Summers experienced at least a 10.46% loss. By then, Summers had lost faith in his ETF trading strategy and abandoned it for a far riskier strategy involving

derivatives, including futures and options on market volatility indices, in an attempt to recover previous losses.

9. TCP Fund suffered over $1,202,000 in additional trading losses as a result of Summers' riskier investment strategy. Beginning in July 2012, Summers began to conceal his trading losses by preparing and delivering false monthly account statements that reported positive returns in almost every month to investors based on what the performance of TCP Fund would have been if he had maintained the original ETF strategy.

10. In March 2013, the largest fund investor asked Summers for a copy of TCP Fund's audited financial statements. In April 2013, Summers prepared and delivered to the investor forged audited financial statements from a fake audit firm for fiscal year 2012 for TCP Fund which reflected an inflated AUM and false returns for the fund.

11. Meanwhile, from July 2009 until July 2013, Summers also intentionally and knowingly made unauthorized withdrawals and misappropriated $918,885 from TCP Fund. During the period, unbeknownst to investors, Summers withdrew money from the fund in excess of the management fees and reimbursements to which he was entitled under the terms of the Offering Memorandum or Operating Agreement for TCP Fund. Summers used the money to pay for personal living expenses and unreimbursed business expenses.

12. On July 12, 2013, Summers reported his misconduct to the Ontario Securities Commission when he realized the largest fund investor was on the verge of discovering that he had forged TCP Fund's purported audited financial statements. At the time, there remained approximately $1,396,000 in assets in the brokerage account that Summers maintained on behalf of TCP Fund at a financial institution in New York, New York. Summers raised $4,117,685.15 from TCP Fund investors after taking into account approximately $572,000 in redemptions during the relevant period.

13. On June 4, 2014, Summers pleaded guilty to criminal fraud charges in R v. Summers, Information No. 12000143, a parallel criminal proceeding before the Ontario Court of Justice (Toronto Region), based upon the misconduct described above.

VIOLATIONS

14. As a result of the conduct described above, Summers willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

15. As a result of the conduct described above, Respondents willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent and deceptive conduct by an investment adviser with respect to any client or prospective client, and Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, which prohibit making an untrue statement of a material fact or omitting to state any material fact to any investor or prospective

investor in a pooled investment vehicle and engaging in any act, practice, or course of business that is fraudulent, deceptive or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Summers cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, 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)-8 promulgated thereunder;

B. Respondent Summers be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

C. Any reapplication for association by the Respondent Summers will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent Summers shall pay disgorgement of $4,117,658.15 to the Securities and Exchange Commission. This disgorgement obligation shall be satisfied in the following manner:

(1) Within 10 days after entry of this Order, Respondent shall instruct UBS Financial Services, Inc. ("UBS"), the financial institution at which

TriCoastal Capital Partners, LLC maintains its brokerage account and a related commodity futures account, to transfer the entire combined outstanding balance (currently approximately $1,396,254) in Brokerage Account Number Y1 04593 SH and Commodity Futures Account Number P OF JG83036 (collectively, the "UBS Brokerage Account") to the Securities and Exchange Commission for distribution to the injured investors;

(2) Within 10 days after entry of this Order, Respondent shall instruct Bank of America, N.A., the financial institution at which Tricoastal Capital Partners, LLC maintains its corporate bank account, to transfer the outstanding balance (currently approximately $1,396) in Bank Account Number 0037 6656 4955 (the "BOA Bank Account") to the Securities and Exchange Commission for distribution to the injured investors; and

(3) All of the remaining disgorgement ordered, except for the amounts sent to the Commission formerly held in the UBS Brokerage Account and the BOA Bank Account, referenced immediately above, shall be deemed satisfied by the restitution orders in R v. Summers, Information No. 12000143, provided that Respondent does not withdraw his guilty plea in R v. Summers.

If timely payment of the funds in the UBS Brokerage Account or the BOA Bank Account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

(1) Payment may be transmitted electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Payment may be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Payment may be made 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 Summers 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 Marshall Sprung, Co-Chief Asset Management Unit, Division of Enforcement, Los Angeles Regional Office, Securities and Exchange Commission, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, CA 90036-3648.

In the event Respondent withdraws his guilty plea in R v. Summers, he shall be liable for the full amount of disgorgement of $4,117,658.15, less the amounts sent to the Commission from the UBS Brokerage Account and the BOA Bank Account, plus any accrued interest pursuant to SEC Rule of Practice 600.

By the Commission.

Jill M. Peterson
Assistant Secretary