

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72515 / July 2, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3868 / July 2, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15955

In the Matter of

**SIGNALPOINT ASSET
MANAGEMENT, LLC, JOHN W.
HANDY, JR., JONATHAN C. TIMSON,
DENNIS R. WALKER AND MICHAEL
J. ORZEL,**

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 SignalPoint Asset Management, LLC, John W. Handy, Jr., Jonathan C. Timson, Dennis R. Walker and Michael J. Orzel (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents 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 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 finds¹ that:

Summary

1. This matter concerns the failure to disclose certain individuals’ control of a registered investment adviser, SignalPoint Asset Management, LLC (“SAM”), and their conflicts of interest in recommending that their clients invest with that firm. John W. Handy, Jr. (“Handy”), Jonathan C. Timson (“Timson”) and Dennis R. Walker (“Walker”) provided brokerage and advisory services as both registered representatives and investment adviser representatives of a dually-registered broker-dealer and investment adviser (the “Dual Registrant”). During 2007 and early 2008, Handy, Timson and Walker (collectively, the “Principals”) sought permission from the Dual Registrant to form and own a separate investment advisory firm. After the Dual Registrant denied their ownership request, in August 2008, the Principals formed and registered SAM by selecting three nominee owners to act as SAM’s majority members. The Principals provided all initial capital for SAM and engaged in other financial dealings with SAM and its members that evidenced their control over the firm. From the formation of SAM in August 2008 through at least 2013 (the “relevant period”), the Principals also controlled SAM by actively participating in its operations and directing its management and policies. However, in advising some of their advisory clients to invest with SAM, the Principals failed to disclose their control of SAM and conflicts of interest associated with their capitalization of and potential receipt of profits from SAM.

2. Similarly, SAM failed to disclose to its clients that the Principals controlled the firm. Specifically, SAM’s Forms ADV during the relevant period failed to disclose the Principals as control persons and failed to accurately describe the extent of the Principals’ participation in its day-to-day operations. Michael J. Orzel, who was SAM’s chief compliance officer (“CCO”) from November 2008 forward, was responsible for drafting and filing most of SAM’s Forms ADV.

Respondents

3. SignalPoint Asset Management, LLC (“SAM”), a Missouri limited liability company headquartered in Springfield, Missouri, has been registered as an investment adviser

¹ The findings herein are made pursuant to Respondents’ Offers and are not binding on any other person or entity in this or any other proceeding.

with the Commission since August 2008. According to its most recently filed Form ADV, SAM serves as an investment adviser to over 1,800 separately managed accounts with combined assets under management of approximately \$526 million.

4. John W. Handy, Jr. (“Handy”), age 51 and a resident of Madison, Wisconsin, is a co-founder and managing partner of Walnut Capital Management, LLC (“WCM”), which describes itself as a wealth management firm. Between 2007 and 2013, Handy was associated with the Dual Registrant as a registered representative and investment adviser representative (“IAR”). Since August 2013, Handy has been associated with SAM as an IAR.

5. Jonathan C. Timson (“Timson”), age 49 and a resident of Springfield, Missouri, is a co-founder and managing partner of WCM. Between 2007 and 2013, Timson was associated with the Dual Registrant as a registered representative and IAR. Since August 2013, Timson has been associated with SAM as an IAR.

6. Dennis R. Walker (“Walker”), age 56 and a resident of Verona, Missouri, is a co-founder and managing partner of WCM. Between 2007 and 2013, Walker was associated with the Dual Registrant as a registered representative and IAR. Since August 2013, Walker has been associated with SAM as an IAR.

7. Michael J. Orzel (“Orzel”), age 51 and a resident of Springfield, Missouri, is the chief executive officer, CCO and a member and owner of SAM. Since September 2008, Orzel has been associated with SAM as an IAR.

Facts

The Principals’ Formation of WCM and Their Association with the Dual Registrant

8. WCM was formed by the Principals in March of 2007. In forming WCM, the Principals sought, among other things, to market to retail and institutional clients an algorithmic trading model that is now known as the “SignalPoint Process.” Therefore, when establishing WCM and selecting a dually-registered broker-dealer and investment adviser with which to associate, the Principals sought to create what is commonly referred to as a hybrid model -- a money management firm that enabled them to process both commission-based business as registered representatives and fee-based business as IARs through the formation of a registered investment adviser (“RIA”).

9. In the latter part of 2006, the Principals began negotiating with various broker-dealers and investment advisers, including the Dual Registrant, regarding their contemplated hybrid model. Even though the Dual Registrant informed the Principals that they could not register WCM as an RIA because the Dual Registrant did not support that type of business, the Principals chose to associate themselves with the Dual Registrant as registered representatives and IARs, and established WCM as a branch office of the Dual Registrant.

The Dual Registrant Denied the Principals' Request to Own a Separate Adviser

10. Within approximately six months after WCM's formation, several institutional entities expressed interest in investing through the SignalPoint Process. Accordingly, the Principals requested the Dual Registrant's approval to register WCM as an investment adviser to service these potential clients. However, the Dual Registrant again refused the Principals' request.

11. The Principals then sought the Dual Registrant's approval to form a separate RIA that would be owned and capitalized by the Principals, but staffed by unaffiliated investment advisory personnel. While the Dual Registrant did not object to the creation of a separate RIA, it prohibited the Principals from assuming an ownership interest in the adviser.

The Principals' Formation of SAM

12. Following the Dual Registrant's denial of their requested ownership of an RIA, the Principals formed and registered SAM in August 2008 by selecting three nominee owners (the "Nominees") to act as the majority members of SAM. Each of the Nominees assumed a 26.67% ownership interest in SAM. The Principals had oral understandings with their respective Nominees that should the Dual Registrant allow the Principals to eventually own SAM, the Nominees would transfer their ownership interests to the Principals. The Nominees did not provide any capital in exchange for their ownership interests and never participated in SAM's management or day-to-day operations.

13. Orzel was also designated as one of SAM's members and became the firm's CCO in November 2008, at which point he became responsible for drafting and filing SAM's Forms ADV.

14. Upon its formation, SAM became the owner of the SignalPoint Process and leased office space from WCM, the owner of the building where both entities conducted their businesses.

15. Throughout the relevant period, the Principals made several requests of the Dual Registrant to assume an ownership interest in SAM. However, each time, the Dual Registrant denied the Principals' request.

The Principals Exerted Control over SAM

The Principals' Financial Dealings with SAM and Its Members Evidenced Their Control

16. The Principals capitalized the original formation of SAM and its operations over the first year-and-a-half by each loaning SAM approximately \$170,000. Without these funds, SAM would not have been able to conduct its day-to-day operations or pay the salaries of SAM's employees.

17. Following the initial capitalization of SAM and for the benefit of the Principals, the Nominees voluntarily participated in two transactions with the Principals' spouses to enable SAM to pay down a portion of its debt to the Principals. Specifically, in the third quarter of 2009, each Nominee, for no consideration, voluntarily transferred 1.67% of his interest in SAM to one of the Principals' spouses. Immediately thereafter, the Principals' spouses sold their collective 5.00% interest to a third party in exchange for \$225,000.

18. In the first quarter of 2010, the Nominees and the Principals' spouses participated in a similar transaction with a different third party for the benefit of the Principals. Again, for no consideration, the Nominees voluntarily transferred a collective 4.00% of their interest in SAM to the Principals' spouses, who then immediately sold that interest to a third party in exchange for \$180,000. As a result of these two transactions, each Principal obtained repayment of \$135,000 on the balance of approximately \$170,000 each Principal had loaned to SAM.

19. WCM and SAM also executed a written license agreement (the "License Agreement") under which SAM agreed to license the SignalPoint Process to WCM for the Principals' use with their clients. Although the License Agreement required WCM to pay SAM a 5% royalty on any income generated by the Principals through their use of the SignalPoint Process, SAM never required payment from WCM of any such royalties, again for the benefit of the Principals.

20. Furthermore, the Principals effectively influenced certain terms of the lease agreement between SAM and WCM and the promissory note that evidenced SAM's outstanding debt to the Principals.

The Principals' Active Participation in SAM's Operations and Decision-Making Further Evidenced Their Control

21. Throughout the relevant period, the Principals played a significant role in the day-to-day operations of SAM such that they effectively had the power to direct the management and policies of SAM. For example, throughout the relevant period:

- a. The Principals actively participated in SAM's annual and quarterly board meetings during which all points of operation were discussed, including SAM's portfolio management, trading procedures, budget and financial projections, and sales and marketing strategies. In one instance, the Principals drafted the proposed agenda for the meeting.
- b. The Principals actively participated in decisions related to SAM's personnel, including decisions affecting employee compensation, performance reviews, and job responsibilities. Similarly, the Principals assumed an active role in hiring and terminating SAM's employees.
- c. One of the Principals participated as a member of SAM's investment committee, which met periodically to discuss portfolio construction and rebalancing and overall investment strategies.

- d. The Principals actively participated in the sales and marketing decisions of SAM, including the creation of, and the participation on, a specific committee to assist SAM with its sales efforts. The Principals were also actively involved in negotiating a contract with one of SAM's distributors.
- e. The Principals played an instrumental role in SAM's decision to form another registered investment adviser to manage a registered investment company.

The Principals Breached Their Fiduciary Duty to Their Clients Who Invested with SAM

22. As IARs of the Dual Registrant, the Principals were able to introduce their advisory clients to certain pre-approved third-party money managers. Through their agreements with the Dual Registrant, the Principals earned advisory fees on client assets invested with those third-party money managers. After the Dual Registrant approved SAM as a third-party money manager in October 2009, the Principals advised certain advisory clients to invest with SAM. Although the clients paid advisory fees to both the Dual Registrant and SAM, the Principals adjusted the fees such that their clients were not disadvantaged by their investments with SAM.

23. As IARs of the Dual Registrant, the Principals advised clients to invest with SAM in exchange for compensation that they received through their agreements with the Dual Registrant. Therefore, each of the Principals was acting as an "investment adviser" as that term is defined by Section 202(a)(11) of the Advisers Act.

24. Section 206 of the Advisers Act imposes on investment advisers a fiduciary duty to exercise the utmost good faith in dealing with their clients, to disclose to their clients all material facts and to employ reasonable care to avoid misleading their clients. SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963). This includes a duty to disclose existing and potential conflicts of interest, both of which are material. Id. at 191-92; In the Matter of Russell W. Stein, et al., Advisers Act Release No. 2114 (March 14, 2003); Vernazza v. SEC, 327 F.3d 851, 859 (9th Cir. 2003).

25. When advising their advisory clients to invest with SAM, the Principals breached their fiduciary duty by failing to disclose all material facts concerning the extent of their ability to direct SAM's management and policies. The Principals also breached their fiduciary duty by failing to disclose their existing and potential conflicts of interest when advising clients to invest with SAM. In particular, they failed to disclose to clients that they had loaned substantial amounts of money to SAM and therefore stood to indirectly benefit from clients' payment of advisory fees to SAM. The Principals also failed to disclose that they were continuing to seek approval from the Dual Registrant to obtain ownership interests in SAM, which, if obtained, would entitle them to share in any profits that were derived from clients' payments of advisory fees to SAM.

SAM Made False and Misleading Disclosures in Its Forms ADV Regarding Its Relationship with the Principals and Breached Its Fiduciary Duty

26. During the relevant period, SAM filed several Forms ADV with the Commission. Orzel was the individual responsible for drafting and filing most of the Forms, each of which he signed certifying that the information and statements in them were true and correct. Orzel was fully aware of the Principals' financial dealings with SAM and the extent of their control over SAM's operations as described in paragraphs 16-21, above.

27. Item 10 of Form ADV, Part 1A requires that an adviser identify every person² that "controls" the adviser. Form ADV defines the term "control" to mean "the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise." And according to Form ADV, "[a] person is presumed to control a limited liability company ('LLC') if the person...has contributed 25 percent or more of the capital of the LLC...."

28. Based on the Principals' financial dealings with SAM and their participation in SAM's operations and decision-making as described in paragraphs 16-21, above, the Principals had the power to direct the management and policies of SAM, such that they "controlled" the entity as defined by Form ADV. Furthermore, the Principals controlled SAM by virtue of their loans to SAM as described in paragraph 16, above, each of which accounted for more than a 25 percent contribution of the capital of SAM. However, during the relevant period, SAM failed to appropriately identify the Principals on its Forms ADV as persons who controlled its management and policies.

29. Beginning in March 2011 and subsequently throughout the relevant period, SAM filed with the Commission and delivered to clients and potential clients its Form ADV, Part 2A (i.e., its "firm brochure"). Orzel was the individual responsible for drafting and filing SAM's firm brochures.

30. Item 10 of Form ADV, Part 2A requires that an adviser describe any relationship that is material to the adviser's business or to its clients that the adviser has with any "related person" that is a broker-dealer or other investment adviser. Form ADV defines "related person" to include any "advisory affiliate," and further defines "advisory affiliate" to include "all persons directly or indirectly controlling" an investment adviser.

31. In each of its firm brochures filed with the Commission during the relevant period, SAM's response to item 10 disclosed that "SignalPoint receives periodic non-investment related business consulting from the principals of Walnut Capital Management, LLC." However, this disclosure was false and misleading because it: (a) did not accurately disclose the extent of the Principals' ability to direct SAM's management and policies; and (b) misrepresented that the Principals provided non-investment related consulting when, in fact, one

² Form ADV defines "person" as a natural person or a company.

of the Principals provided investment-related advice through his participation on SAM's investment committee.

32. By failing to inform its clients and potential clients of the information described in paragraphs 28 and 31, above, all of which was material, SAM breached its fiduciary duty.

Violations

33. As a result of the conduct described above, SAM, Handy, Timson and Walker willfully³ violated Section 206(2) of the Advisers Act.

34. As a result of the conduct described above, SAM and Orzel willfully violated Section 207 of the Advisers Act.

Undertakings

35. The Principals have undertaken to:

a. Within thirty (30) days of the entry of the Order, the Principals shall provide a copy of this Order to each of their advisory clients who invested with SAM any time between October 2009 and the date of this Order via mail, electronic mail, 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; and

b. Certify, in writing, compliance with the undertaking set forth above. The certification shall identify the undertaking, 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 the Principals agree to provide such evidence. The certification and supporting material shall be submitted to Kurt L. Gottschall, Assistant Regional Director, Asset Management Unit, Denver Regional Office, U.S. Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 80294, 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 undertaking.

36. SAM has undertaken to:

a. Within thirty (30) days of the entry of this Order, SAM shall provide a copy of the Order to each of SAM's existing advisory clients as of the entry of this Order via mail, electronic mail, 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; and

³ 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)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)).

b. Certify, in writing, compliance with the undertaking set forth above. The certification shall identify the undertaking, 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 SAM agrees to provide such evidence. The certification and supporting material shall be submitted to Kurt L. Gottschall, Assistant Regional Director, Asset Management Unit, Denver Regional Office, U.S. Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 80294, 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 undertaking.

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

38. In determining whether to accept the Offers of the Principals and SAM, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' 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 SAM, Handy, Timson and Walker cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act;
- B. Respondents SAM and Orzel cease and desist from committing or causing any violations and any future violations of Section 207 of the Advisers Act;
- C. Respondents are hereby censured; and
- D. Respondents Handy, Timson and Walker shall, within 10 days of the entry of this Order, each pay a civil money penalty in the amount of \$60,000 to the United States Treasury. Respondent Orzel shall pay a civil money penalty in the amount of \$35,000 to the United States Treasury in the following manner: (i) \$20,000 shall be paid within 10 days of the entry of this Order; and (ii) the remaining \$15,000 shall be paid within 180 days of the entry of this Order. If timely payment is not made by any Respondent, additional interest shall accrue on his penalty amount pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 the relevant individual 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 Kurt L. Gottschall, Assistant Regional Director, Asset Management Unit, Denver Regional Office, U.S. Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 80294.

By the Commission.

Jill M. Peterson
Assistant Secretary