

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72541 / July 3, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3872 / July 3, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 31149 / July 3, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15433

In the Matter of

CHARIOT ADVISORS, LLC
and
ELLIOTT L. SHIFMAN,

Respondents.

**ORDER MAKING FINDINGS
AND IMPOSING REMEDIAL
SANCTIONS PURSUANT TO
SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF
1934, SECTIONS 203(e), 203(f) AND
203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940 AND
SECTIONS 9(b) AND 9(f) OF THE
INVESTMENT COMPANY ACT
OF 1940**

I.

On August 21, 2013, the Commission instituted public administrative and cease-and-desist proceedings pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Chariot Advisors, LLC (“Chariot Advisors”) and Elliott L. Shifman (“Shifman”) (collectively, the “Respondents”). Respondents have submitted Offers of Settlement which the Commission has determined to accept.

II.

Solely for the purpose of settling 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 Making Findings and Imposing Remedial Sanctions, as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

SUMMARY

This proceeding relates to certain misrepresentations and omissions of material fact about a proposed investment strategy made by a registered investment adviser, Chariot Advisors, and its control person, Shifman, in connection with the process under Section 15(c) of the Investment Company Act by which Chariot Advisors obtained the approval to be the investment adviser of a registered fund, the Chariot Absolute Return Currency Portfolio (the "Chariot Fund" or "Fund").

Under Section 15(c) of the Investment Company Act, a registered fund's board of directors is required annually to evaluate and approve the fund's advisory agreement, and the fund's adviser is required initially, and thereafter annually, to provide the board with information reasonably necessary to make that evaluation (hereafter, the "15(c) process"). In December 2008 and again in May 2009, during the Chariot Fund's 15(c) process, Shifman, acting on behalf of Chariot Advisors, misrepresented Chariot Advisors's readiness to implement the investment strategy Chariot Advisors proposed for 20% of the Chariot Fund—namely, Chariot Advisors's ability to conduct algorithmic currency trading.

During 2008 and 2009, Shifman was in discussions with several third party providers of currency trading platforms about Chariot Advisors' potential use of an algorithm. At the time of Shifman's representations to the board, however, Chariot Advisors was still in the process of obtaining an algorithm or computer model capable of engaging in the currency trading that Shifman described during the 15(c) process. Shifman failed to disclose the nascent nature of his efforts to obtain an algorithm from other sources. Moreover, after the Fund launched in July 2009, a company owned by Shifman hired an individual trader who was allowed to use discretion on trade selection and execution. Respondents' misstatements also led directly to misrepresentations and omissions in the Chariot Fund's registration statement and prospectus filed with the Commission.

As a result, Chariot Advisors violated Section 15(c) of the Investment Company Act, and Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, and caused the Fund to violate Section 34(b) of the Investment Company Act. Shifman, likewise, violated Section 206(2) of the Advisers Act, caused the Fund to violate Section 34(b) of the Investment Company Act, and caused Chariot Advisors to violate Section 15(c) of that Act.

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

RESPONDENTS

1. Chariot Advisors, LLC has been registered with the Commission as an investment adviser since September 2008. Between July 2009 and August 2011, Chariot Advisors was the investment adviser to the Chariot Absolute Return Currency Portfolio, a registered open-end investment company, which was a series of the Northern Lights Variable Trust. Chariot Advisors is based in Cary, North Carolina.

2. Elliott L. Shifman was the sole owner and operator of Chariot Advisors from its founding in September 2008 until June 30, 2009. Shifman, 49 years of age, was trained as an actuary and is a resident of Raleigh, North Carolina. During the relevant period, Shifman was a registered representative associated with SummitAlliance Securities, LLC, a registered broker-dealer.

OTHER RELEVANT ENTITIES

3. Northern Lights Variable Trust (“Northern Lights”) is registered with the Commission as an open-end series management investment company. Organized as a Delaware statutory trust headquartered in Omaha, Nebraska, Northern Lights serves as an umbrella to a series of registered funds, providing to those funds turnkey services, including fund governance through the Northern Lights Board of Trustees (“Northern Lights Board” or “Board”). Between December 2008 and August 2011, the Chariot Fund was a series of Northern Lights and the Northern Lights Board served as the Chariot Fund’s Board.

4. Chariot Absolute Return Currency Portfolio was a registered investment company and a series of Northern Lights from June 30, 2009 until it was liquidated on August 31, 2011.

INVESTMENT ADVISORY CONTRACT APPROVAL PROCESS UNDER SECTION 15(c) OF THE INVESTMENT COMPANY ACT

5. Section 15(c) of the Investment Company Act requires that the terms of any contract or agreement, whereby a person undertakes regularly to serve or act as investment adviser of a registered investment company, and any renewal thereof, be approved by a vote of the majority of a fund's disinterested directors or trustees at a meeting called for the purpose of voting on such approval.

6. The Investment Company Act assigns specific responsibilities to both the directors of a registered investment company and the adviser seeking approval for purposes of the directors’ evaluation of the terms of an advisory contract. As part of the approval process, Section 15(c) imposes a duty on all directors to request and evaluate such information as may reasonably be necessary for the directors to evaluate the terms of the adviser's contract. In parallel fashion, Section 15(c) imposes a duty on the adviser to furnish such information as may reasonably be necessary for the directors to evaluate the contract.

While Section 15(c) does not define what is “reasonably necessary” to evaluate a contract's terms, the Commission requires directors considering an advisory contract to consider a number of factors, including “the nature, extent, and quality of the services to be provided by the investment adviser.” See Disclosure Regarding the Approval of Investment Advisory Contracts by Directors of Investment Companies, SEC Rel. No. IC-26486 (June 30, 2004); Form N-1A, Item 27(d)(6)(i). The process by which a board of directors evaluates and approves the renewal of an investment advisory contract is commonly referred to as the “15(c) process.”

FORMATION OF CHARIOT ADVISORS

7. In 2006, Shifman developed for Midland National Life Insurance Company two variable annuities, called the Vector I and II, which he sold to investors. Each Vector series allowed annuitants to invest their principal in various sub-accounts.

8. In September 2008, Shifman founded Chariot Advisors as a registered investment adviser. Thereafter, Chariot Advisors offered Vector annuity investors various risk-based models that allocated invested funds among the various sub-accounts. Chariot Advisors developed these models by combining trading signals that it purchased from several independent technical analysts.

9. Shortly after founding Chariot Advisors, Shifman began developing the Chariot Fund as a mutual fund that would be offered to investors in the Vector I and II variable annuities.

10. Chariot Fund’s initial investment objective was to achieve absolute positive returns in all market cycles by investing approximately 80% of the Fund’s assets under management in short-term fixed income securities and using the remaining 20% of the assets under management to engage in algorithmic currency trading.

CREATION OF THE CHARIOT FUND

11. In late 2008, Shifman approached Northern Lights with a request that it create the Chariot Fund as a series of Northern Lights, and approve Chariot Advisors as the new Fund’s adviser.

12. On November 5, 2008, Shifman submitted responses to a new fund questionnaire to Northern Lights’s counsel in which he indicated that the proposed fund would allocate 20% of its assets to currency trading, while investing the remaining 80% in fixed income securities.

13. On November 13, 2008, counsel for the Northern Lights Board requested in a letter certain information from Shifman for the Board’s consideration of Chariot’s proposed advisory contract at the Board’s upcoming meeting scheduled for December 15, 2008.

14. In connection with this request, counsel for the Board told Shifman that this information was needed pursuant to Section 15(c) of the Investment Company Act, which required that the Board request, and that Chariot Advisors provide, all information that is reasonably necessary in connection with the decision to approve the advisory agreement between Chariot Advisors and the Chariot Fund. In a contemporaneous letter, counsel for the Board also told Shifman that he “ha[d] a duty to update the Board of Trustees throughout the year if there is a material change in the information provided” by Chariot Advisors.

15. Shifman responded to the Board in writing and prepared a PowerPoint presentation, which he made to the Board at its December 15, 2008 meeting. In the written submission, Shifman described the proposed new fund as “provid[ing] a currency arbitrage overlay on top of fixed income securities. The program is algorithmic in nature and searches for arbitrage opportunities on currency’s [sic] in different markets.” The written submission also indicated that an appropriate benchmark for the new fund’s performance would be the S&P 500 Index.

16. Shifman’s December 15, 2008 PowerPoint presentation to the Board gave further details on the Chariot Fund’s proposed investment methodology. It stated that the Fund “will be a currency overlay product” and will “add[] ‘alpha’ by trading a[n] . . . algorithm” similar to one already used by an unrelated third party to trade the assets of a separate hedge fund Shifman also controlled.

17. The PowerPoint further stated that, by using this methodology, the Fund would be a “byproduct of extensive research of recent changes in FX market structure due to the adaptation of algorithmic and high frequency trading.”

18. The PowerPoint then listed bullet points describing what Shifman described as “competitive” features of the Fund based on its use of algorithmic trading. These included, among others: “(i) High Frequency Algorithmic Trading enables [Chariot Advisors] to seek out untapped sources of alpha while controlling drawdowns; (ii) Algorithmic trading models allow 24/5.5 access to the markets extending trading opportunities and minimizing emotions associated with non-systematic trading; (iii) Dynamic strategy model automatically adjust[s] trading behavior of sub-strategies to exploit current market conditions and volatility; and (iv) Intelligent execution Logic ensures best execution with minimum slippage.”

19. Shifman’s representations in person before the Board were substantially similar to what he set forth in both the December 15(c) submission and his PowerPoint presentation. Shifman told the Board that the investment objective of the Chariot Fund is to seek consistent positive absolute returns through various market cycles and that Chariot Advisors would achieve this investment objective through two complementary strategies, namely, by investing primarily in short-term high quality fixed income securities and by engaging in proprietary foreign currency arbitrage. Shifman further represented that Chariot Advisors’s currency trading strategy involves a computer model

and algorithm that permits Chariot to make split-second trades and take advantage of currency arbitrage opportunities.

20. At the time of the presentation, Shifman did not possess or have a contract in place to access an algorithmic trading platform as described in the 15(c) materials presented to the Board. Although Shifman had been discussing, prior to the December Board meeting, the possibility of Chariot Advisors using a high frequency currency trading platform developed and managed by a third party, that platform was still under development. In addition, Shifman had no finalized agreement in place to use the unproven platform for the Chariot Fund. Despite having no assurance that the platform would be ready and available for his use, Shifman did not disclose these contingencies in his 15(c) materials or presentation.

21. Following Shifman's presentation, the Board approved the Chariot Fund as a series of Northern Lights. It further concluded that Chariot Advisors's proposed management fee was acceptable in light of the quality of the services the Chariot Fund expected to receive from Chariot Advisors, and consequently approved the Fund's advisory agreement with Chariot Advisors.

22. Two weeks after the December Board meeting, the third party with whom Shifman had been discussing potential use of a high frequency currency trading platform informed Shifman that the platform was being permanently shut down. Shifman did not, however, inform the Northern Lights Board of that development or otherwise signal a material change in the nature, extent and quality of services that Chariot Advisors could provide.

TRANSFER OF CHARIOT ADVISORS

23. After the Northern Lights Board approved the Chariot Fund and its advisory agreement with Chariot Advisors but before the Fund launched, Shifman took steps to sell Chariot Advisors. On May 18, 2009, Shifman entered an agreement to transfer ownership of Chariot Advisors, effective June 30, 2009.

24. The pending change of control of Chariot Advisors prompted the Board to reconsider Chariot Advisors's advisory contract with the Fund. At the Board's request, Shifman made a second 15(c) submission on May 26, 2009.

25. The second 15(c) submission contained essentially the same claims about Chariot Advisors and the Chariot Fund that Shifman advanced in the December 15(c) submission except that in the second written submission Shifman now stated that "[t]he Fund invests in 80% diversified Treasuries or other AAA securities and currency." Shifman also proposed that Chariot Advisors charge the Fund a 1.50% advisory fee on assets under management and a 0.40% distribution fee, justifying the increase in the advisory fee by representing that the Fund's investment strategy required more work to implement than he had earlier anticipated. Additionally, the second 15(c) submission

explained that, with the change of control of Chariot Advisors, the new owner rather than Shifman would operate Chariot Advisors and manage the Fund.

26. At the time of the second 15(c) submission, using information and language provided by Shifman, the Fund's counsel drafted a prospectus for a proposed mutual fund for which Shifman was attempting to obtain the approval of the Northern Lights Board. Shifman reviewed and approved the draft prospectus. As described in the proposed prospectus, the envisioned mutual fund was to be advised by Chariot Advisors and have the same investment strategy as the Chariot Fund. The prospectus stated:

Electronic and algorithmic trading have dramatically changed many of the traditional assumptions and processes in the currency markets. The adviser believes that currency markets are rarely efficient in the short-term, and that it is possible to generate excess returns by exploiting various short-term structural inefficiencies and non-random price action in the FX market. Using high frequency market data, the adviser has created models of the FX market that it believes are able to analyze the price formation process of exchange rates in real-time.

27. In early 2009, the third party that Shifman had been primarily relying on to provide a high frequency currency trading platform shut the platform down. Prior to the May 2009 meeting with the Northern Lights Board, however, the third party had, at Shifman's request, begun work on a medium frequency currency trading platform for use by the Chariot Fund. While the platform was being developed specifically for Shifman, as of May, there was no finalized agreement in place giving Chariot Advisors use of the developmental platform.

28. As part of the second 15(c) submission, Shifman prepared and presented to the Northern Lights Board at its May 2009 meeting a modified version of the PowerPoint presentation he had used at the December 2008 meeting. Among other things, the PowerPoint contained essentially the same claims as the December 2008 submission concerning the competitive benefits of algorithmic trading. Shifman made some changes to the PowerPoint to reflect that Chariot Advisors would be doing medium frequency currency trading rather than the high frequency trading he described in the December 2008 meeting. He did not bring the differences to the Board's attention, however, and Chariot Advisors' 15(c) materials and PowerPoint were still replete with references to high frequency trading.

29. Contrary to what Shifman told the Board in both the December 2008 and May 2009 meetings, Chariot Advisors did not have an algorithm or model in place capable of conducting the currency trading that he described for the Chariot Fund. At the time of both meetings with the Northern Lights Board, Shifman was, at best, in discussions with outside sources to obtain such an algorithm or model. He had not chosen any particular model, and he did not have a contract or agreement that would have

allowed the Chariot Fund to use any of them. Yet, Shifman failed to disclose to the Board the preliminary and prospective nature of his claims with respect to Chariot Advisors' ability to conduct algorithmic currency trading.

30. The ability to conduct currency trading for the Chariot Fund was particularly significant for the Fund's performance because, in the absence of an operating history by which to judge the Fund's performance, the Board focused instead on Chariot Advisors's reliance on models in evaluating the advisory contract. The Chariot Fund's ability to conduct currency trading was also important because the Fund's performance was benchmarked to the S&P 500 Index.

31. On June 5, 2009, the Chariot Fund filed with the Commission a registration statement and prospectus on Form N-1A that stated:

The Advisor will seek profits by forecasting short-term movements in exchange rates and changes in exchange rate volatility aided by quantitative models. . . . The Advisor identifies potential foreign currency trading investment opportunities by using proprietary medium-frequency trading models that the Advisor believes will produce superior risk-adjusted returns in a variety of market conditions. The proprietary currency trading models use statistical analysis to uncover expected profitable trading opportunities. Large volumes of trading statistics are continually captured, monitored and evaluated before trading occurs. The models seek to identify pricing inefficiencies and other non-random price movements that signal potentially profitable trading opportunities. The strategy attempts to profit from short-term pricing fluctuations using medium-frequency trading rather than from longer-term price trends.

32. The registration statement and prospectus were prepared and filed based on information provided by Shifman, who reviewed the registration statement and prospectus before they were filed with the Commission. On June 30, 2009, the Chariot Fund's Registration Statement and Prospectus became effective. Also on June 30, 2009, Chariot legally changed ownership to its new owner.

33. On July 15, 2009, the Chariot Fund was launched. Chariot Advisors funded the Chariot Fund by reallocating approximately \$17 million in assets in clients' annuities to the Fund, which was a sub-account on Midland's variable annuity platform.

34. For at least the first two months after the Fund's launch, an individual recruited and employed by a company owned by Shifman conducted currency trading for the Fund using a technical analysis, rules-based approach, but the trader had, and

exercised, human discretion when trading. Shifman had interviewed the trader prior to her being hired.

35. The trader traded currencies for the Fund until September 30, 2009 when she was terminated due to poor trading performance. Subsequently, Chariot Advisors employed a third party who utilized a computer algorithm to conduct currency trading on behalf of the Chariot Fund.

VIOLATIONS

36. As a result of the conduct described above, Chariot Advisors violated Section 15(c) of the Investment Company Act, which makes it the duty of an investment adviser to a registered investment company to furnish such information as may reasonably be necessary to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser to such company.

37. As a result of the conduct described above, Shifman caused Chariot Advisors's violations of Section 15(c) of the Investment Company Act.

38. As a result of the negligent conduct described above, Chariot Advisors and Shifman caused the Chariot Fund's violations of Section 34(b) of the Investment Company Act, which makes it unlawful for any person to make any untrue statement of a material fact in any registration statement, or other document filed or transmitted pursuant to the Investment Company Act, or for any person so filing or transmitting to omit to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading.

39. As a result of the negligent conduct described above, Chariot Advisors violated Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, which states that it will constitute a fraudulent, deceptive or manipulative act within the meaning of Section 206(4) for any investment adviser to a pooled investment vehicle to make any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle.

40. As a result of the negligent conduct described above, Shifman willfully violated Section 206(2) of the Advisers Act, which prohibits any investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. A violation of Section 206(2) may rest on a finding of simple negligence; scienter is not required. See SEC v. Steadman, 967 F.2d 636, 643, n.5 (D.C. Cir. 1992).

41. As a result of the negligent conduct described above, Chariot Advisors violated Section 206(2) of the Advisers Act.

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)(6) of the Exchange Act, Sections 203(e), 203(f) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Chariot Advisors cease and desist from committing or causing any violations and any future violations of Sections 15(c) of the Investment Company Act and Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder;

B. Respondent Chariot Advisors cease and desist from committing or causing any violations and any future violations of Section 34(b) of the Investment Company Act;

C. Respondent Shifman cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act;

D. Respondent Shifman cease and desist from committing or causing any violations and any future violations of Sections 15(c) and 34(b) of the Investment Company Act;

E. Respondent Shifman be, and hereby is:

suspended from association with any broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization for a period of 12 months, effective on the second Monday following entry of this Order;

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 for a period of 12 months, effective on the second Monday following the entry of this Order; and

suspended from participating in any offering of a penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock for a period of 12 months, effective on the second Monday following the entry of this Order; and

F. Respondent Shifman shall, within 15 days of the entry of this Order, pay a civil money penalty in the amount of \$50,000 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-deliver or mail 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 Shifman 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 Pat Huddleston, Senior Trial Counsel, Division of Enforcement, 950 East Paces Ferry Road, N.E., Suite 900, Atlanta, Georgia 30326.

By the Commission.

Jill M. Peterson
Assistant Secretary