

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3993 / January 13, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 74044 / January 13, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16334

In the Matter of

**SHELTON FINANCIAL
GROUP, INC. and
JEFFREY SHELTON,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 203(e), 203(f),
AND 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940 AND SECTION
15(b)(6) OF THE SECURITIES EXCHANGE
ACT OF 1934, 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 Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) and Section 15(b)(6) of the Securities Exchange Act of 1934 (“Exchange Act”) against Shelton Financial Group, Inc. (“SFG”) and Jeffrey Shelton (“Shelton”) (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, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 and Section 15(b)(6) of the Securities Exchange Act of 1934, 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 involves an investment adviser's failure to disclose compensation it received through an arrangement with a registered broker-dealer ("Broker") and conflicts arising from that compensation. The Broker agreed to pay SFG for all client assets that were invested in certain mutual funds. In exchange, SFG agreed to provide certain custodial support services to the Broker. The agreement created incentives for SFG to favor particular mutual funds over other investments and to favor the Broker over other brokers when giving investment advice to its clients. SFG initially did not disclose this arrangement and the resulting conflict of interest to its clients. When SFG first disclosed the arrangement, its description was inadequate. While SFG later corrected the disclosure, by failing to properly disclose the arrangement and its attendant conflict of interest, SFG and Shelton violated Sections 206(2) and 207 of the Advisers Act. In addition by not adopting policies and procedures reasonably designed to address – among other things – conflicts of interest, SFG violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder and Shelton caused these violations.

RESPONDENTS

2. SFG is an Indiana corporation with its principal place of business in Fort Wayne, Indiana. SFG registered with the Commission as an investment adviser in May 2009. As of March 31, 2014, SFG reported \$259.2 million of assets under management.

3. Shelton, age 48, is a resident of Markle, Indiana. He is the founder, sole owner, and president of SFG. He was also SFG's Chief Compliance Officer from 2004 until June 2010. He holds Series 6, 63, and 65 licenses. Since July 2009, he has been a registered representative of Comprehensive Asset Management and Servicing, Inc., a broker-dealer registered with the Commission.

FACTS

4. After working for several years as a registered representative for a broker-dealer, Shelton started SFG in 1995. SFG was initially a one-man shop and Shelton was responsible for finding and developing client relationships, preparing marketing materials, and selecting and implementing investment strategies. He was also SFG's Chief Compliance Officer. As SFG's business grew, Shelton hired new employees. This included a Chief Operating Officer in June 2007 who later became Chief Compliance Officer in June 2010 (the "CCO").

5. Shelton and later the CCO were responsible for preparing, reviewing, and updating SFG's compliance policies, regulatory filings (including, but not limited to, Form ADV, Form ADV Part II and Schedule F, and Form ADV Part 2A ("Brochure"), and client advisory

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.

agreements. During an on-site exam in 2012, Commission staff discovered that SFG had inadequate policies and procedures regarding, among other things, conflicts of interest and its compliance policies were not tailored to its business.

6. The Broker became a custodian for SFG clients in September 2008. As part of fee negotiations, the Broker proposed an addendum to the contract in which the Broker agreed to pay SFG a certain percentage of every dollar that its clients invested in No Transaction Fee (“NTF”) mutual funds other than proprietary funds advised by affiliates of the Broker. In exchange, SFG agreed to perform certain “custodial support services” such as facilitating asset transfers, updating client information for the Broker, handling client inquiries, and assisting clients with paperwork.

7. The addendum was memorialized in a “Custodial Support Services Agreement” (“CSSA”). However, due to an administrative oversight, the CSSA was not formally signed until November 2013. Despite this clerical mistake, SFG provided administrative and custodial support services on behalf of the Broker since October 2008. SFG received its first custodial support payment from the Broker in May 2009 and continues to receive such payments through the present.

8. From May 2009 through March 2010, SFG did not disclose the existence of the CSSA in its Forms ADV – a disclosure form filed with the Commission and made available to clients – or in its advisory agreements with clients. Item 13.A of former Form ADV Part II specifically requires investment advisers to disclose any arrangement where they receive direct or indirect compensation in connection with giving advice to clients. SFG’s Item 13.A disclosures during this period did not disclose the CSSA or custodial support arrangement with the Broker.

9. In March 2010, SFG revised its Form ADV Part II to disclose that it “receiv[ed] an administrative reimbursement from [the Broker] for assisting in the paperwork process of opening new accounts with [the Broker].” This same language was used in SFG’s Form ADV Part II dated June 22, 2010.

10. Item 14.A of Form ADV Part 2A, in effect for SFG as of March 2011, requires advisers to disclose compensation received from third-parties for providing investment advisory services to clients, as well as the resulting conflicts and how the adviser addresses them.² SFG prepared and distributed its first Brochure in March 2011. When drafting the Brochure, the CCO relied on language from prior Forms ADV Part 2 and Schedules F that were reviewed and signed by Shelton. SFG’s Item 14.A disclosures did not mention the CSSA and also omitted a reference to an “administrative reimbursement” that had been included in prior Forms ADV. Advisory clients were thus unaware that because of the CSSA, SFG might have a bias in favor of non-broker NTF funds over other investments that would not generate revenue for SFG, leading to potentially conflicted investment advice. Clients were also unaware of SFG’s conflict of interest in selecting the Broker as custodian over other brokers that did not offer compensation to SFG.

² Form ADV was amended in 2010, requiring most Commission-registered advisers to file and start using client disclosure brochures that met the requirements of new Part 2A early in 2011. See IA-3060 (July 28, 2010), <http://www.sec.gov/rules/final/2010/ia-3060.pdf>.

11. SFG disclosed the CSSA in a December 28, 2011 Brochure. This Brochure informs clients that SFG “entered into a [CSSA] with [the Broker] by which SFG agreed to provide ... certain back-office ... and clerical services. [I]n consideration for these services, [the Broker] has agreed to pay SFG a fee on specified assets – namely NTF mutual fund assets (other than [the Broker’s] mutual funds)” However, SFG still did not disclose a conflict of interest attendant to this arrangement or how the firm addressed such a conflict. A month after receiving a deficiency letter from the staff, SFG disclosed the conflict of interest in an October 10, 2013 Brochure.

VIOLATIONS OF LAW

12. Section 206(2) of the Advisers Act makes it unlawful for an adviser to use instruments of interstate commerce to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or prospective client. Scienter is not required to establish a violation of Section 206(2), but rather may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-95 (1963)). Section 207 of the Advisers Act, among other things, makes it unlawful for a person to “willfully to omit to state ... material fact[s]” in registration applications and reports filed with the Commission. As a result of the negligent conduct described above, SFG and Shelton willfully³ violated Sections 206(2) and 207 of the Advisers Act.

13. Section 206(4) of the Advisers Act makes it “unlawful for any investment adviser ... to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.” Rule 206(4)-7 under the Advisers Act requires registered investment advisers to, among other things, “[a]dopt and implement written policies and procedures, reasonably designed to prevent violation” of the Advisers Act and its rules. As a result of the negligent conduct described above, SFG willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder and Shelton caused these violations by SFG.

RESPONDENTS’ REMEDIAL EFFORTS

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

UNDERTAKINGS

Respondents have undertaken to:

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)).

15. Independent Compliance Consultant. With respect to the retention of an independent compliance consultant, SFG has agreed to the following undertakings:

a. SFG shall retain, within ninety (90) days of the entry of this Order, the services of an independent compliance consultant (the “Independent Consultant”) that is not unacceptable to the Commission staff. The Independent Consultant’s compensation and expenses shall be borne exclusively by SFG.

b. SFG shall provide to the Commission staff, within ninety (90) days of the entry of this Order, a copy of the engagement letter detailing the Independent Consultant’s responsibilities, which shall include comprehensive compliance reviews as described below in this Order. SFG shall require that the Independent Consultant conduct by the end of the first quarter of 2015 and again at the end of the first quarter of 2016 a comprehensive review of SFG’s supervisory, compliance, and other policies and procedures reasonably designed to detect and prevent breaches of the federal securities laws by SFG and its employees.

c. SFG shall require that, within forty-five (45) days from the end of the applicable quarterly period, the Independent Consultant shall submit a written and detailed report of its findings to SFG and to the Commission staff (the “Report”). SFG shall require that each Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Independent Consultant’s recommendations for changes in or improvements to SFG’s policies and procedures and/or disclosures to clients, and a procedure for implementing the recommended changes in or improvements to SFG’s policies and procedures and/or disclosures.

d. SFG shall adopt all recommendations contained in each Report within sixty (60) days of the applicable Report; provided, however, that within forty-five (45) days after the date of the applicable Report, SFG shall in writing advise the Independent Consultant and the Commission staff of any recommendations that SFG considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that SFG considers unduly burdensome, impractical or inappropriate, SFG need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

e. As to any recommendation with respect to SFG’s policies and procedures on which SFG and the Independent Consultant do not agree, SFG and the Independent Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the applicable Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by SFG and the Independent Consultant, SFG shall require that the Independent Consultant inform SFG and the Commission staff in writing of the Independent Consultant’s final determination concerning any recommendation that SFG considers to be unduly burdensome, impractical, or inappropriate. SFG shall abide by the determinations of the Independent Consultant and, within sixty (60) days after final agreement between SFG and the Independent Consultant or final determination by the

Independent Consultant, whichever occurs first, SFG shall adopt and implement all of the recommendations that the Independent Consultant deems appropriate.

f. Within ninety (90) days of SFG's adoption of all of the recommendations in a Report that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, SFG shall certify in writing to the Independent Consultant and the Commission staff that SFG has adopted and implemented all of the Independent Consultant's recommendations in the applicable Report. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff shall 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.

g. SFG shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of its files, books, records, and personnel as are reasonably requested by the Independent Consultant for review.

h. To ensure the independence of the Independent Consultant, SFG:

- (1) Shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant, without the prior written approval of the Commission staff; and
- (2) Shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

i. SFG shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with SFG, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which the Independent Consultant is affiliated or of which the Independent Consultant is a member, and any person engaged to assist the Independent Consultant in the performance of the Independent Consultant's duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with SFG, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years after the engagement.

16. Recordkeeping. SFG 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 SFG's compliance with the undertakings set forth in this Order.

17. Separation of Chief Compliance Officer From Other Officer Positions. For a period of five (5) years from the entry of this Order, SFG shall employ a Chief Compliance Officer whose sole responsibility will be serving in that position. During this period, the person SFG designates as Chief Compliance Officer shall not simultaneously hold any other officer or employee position at SFG while serving as Chief Compliance Officer. Shelton shall not serve or act as SFG's Chief Compliance Officer for a period of five (5) years from the entry of this Order.

18. Compliance Training. Within one year of entry of this Order, SFG shall require its Chief Compliance Officer to complete thirty (30) hours of compliance training relating to the Advisers Act.

19. Notice to Advisory Clients. Within thirty (30) days of the entry of this Order, SFG shall provide a copy of the Order to each of SFG's existing advisory clients as of the entry of this Order via mail, e-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. For a period of one (1) year, SFG shall provide a copy of the Order to all of its prospective clients.

20. 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.

21. Certifications of Compliance by Respondents. SFG 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 SFG 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, 100 F Street, NE Washington, DC 20549, 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 Respondents' Offers.

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

A. Respondents SFG and Shelton shall 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 thereunder.

B. Respondents SFG and Shelton are censured.

C. Respondents SFG and Shelton on a joint and several basis shall, within fourteen (14) days of the entry of this Order, pay total disgorgement of \$99,114.19 and prejudgment interest of \$20,952.91 to the Commission. If timely payment 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) 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 SFG and Shelton as 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 Paul Montoya, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL, 60604.

D. Respondents SFG and Shelton on a joint and several basis shall, within fourteen (14) days of the entry of this Order, pay a civil penalty in the total amount of \$70,000 to the Commission. 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) 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 SFG and Shelton as 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 Paul Montoya, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL, 60604.

E. Respondents SFG and Shelton shall comply with the undertakings enumerated in Section III, paragraphs 15 to 21 above.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent Shelton, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Shelton under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent Shelton of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary