

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4288 / December 8, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16988

In the Matter of

John Michael Babiarz,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against John Michael Babiarz (“Respondent” or “Babiarz”).

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 the findings contained in Section III.2., below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that¹

1. From at least September, 2011 through June, 2013, Babiarz—an individual who resided in Massachusetts—acted as an unregistered investment adviser. Prior to that, Babiarz had worked as a registered representative of several different broker-dealer firms from 2004 to September 1, 2011.

2. On August 21, 2014, before the United States District Court for the District of Massachusetts, in *United States of America v. John Michael Babiarz*, 13-cr-10334-FDS-1, Babiarz pled guilty to one count of wire fraud, in violation of 18 U.S.C. § 1343, and one count of aggravated identity theft, in violation of 18 U.S.C. § 1028A. On September 12, 2014, the U.S. District Court entered judgement, sentencing Babiarz to 48 months imprisonment and two years of supervised release and ordering Babiarz to pay restitution of \$645,340.41 and a special assessment fee of \$200.

3. In connection with his guilty plea, Babiarz admitted that, between September 2011 and June 2013, he obtained over \$650,000 from various investors by holding himself out as an investment adviser and falsely representing that he would invest such monies on behalf of those investors. Following his termination in September 2011 from a retail brokerage firm headquartered in New York, Babiarz falsely told certain former clients that he had taken a job at a major Massachusetts-based asset management firm and told certain other former clients that he was working as an independent financial advisor. In fact, Babiarz did not work at the major Massachusetts-based asset management firm, and has never been employed by that firm. Babiarz told his clients that he could continue to manage their money if they opened brokerage accounts at a particular broker-dealer. Babiarz assisted the individuals in opening such accounts online, and in so doing, set up the user names and passwords for those accounts. Unbeknownst to his clients, Babiarz then caused their funds – or money he borrowed in their names on margin – to be diverted to accounts that he controlled at several banks and brokerage firms. Babiarz used the money to buy a new home and to pay other personal expenses.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act, that Respondent Babiarz 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;

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

Any reapplication for association by the Respondent 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.

By the Commission.

Brent J. Fields
Secretary