

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 81405 / August 15, 2017

INVESTMENT ADVISERS ACT OF 1940

Release No. 4745 / August 15, 2017

INVESTMENT COMPANY ACT OF 1940

Release No. 32783 / August 15, 2017

ADMINISTRATIVE PROCEEDING

File No. 3-16463

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| <p>In the Matter of</p> <p style="text-align:center">DAVID I. OSUNKWO,</p> <p>Respondent.</p> | <p>ORDER MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE- AND-DESIST ORDER PURSUANT TO SECTION 15(b) 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</p> |
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I.

On March 30, 2015, the Commission instituted public administrative and cease-and-desist proceedings pursuant to Section 15(b) 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 David I. Osunkwo (“Osunkwo” or “Respondent”) and other parties. Respondent has submitted an Offer of Settlement (the “Offer”) 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 him and the subject matter of these proceedings, which are admitted, and except as

provided herein in Section V, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 15(b) 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 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

Summary

1. In 2010 and 2011, Aegis Capital, LLC (“Aegis Capital”) and Circle One Wealth Management, LLC (“Circle One”) (collectively, “Registrants”), registered investment advisers affiliated because of common control, failed to file timely and accurate reports with the Commission. Aegis Capital failed to file an annual update to its Form ADV for the 2010 fiscal year. Circle One filed an annual amendment to its Form ADV with the Commission in April 2011 that was intended to reflect a merger between the two investment advisers under common ownership and control of the same corporate parent holding company, Capital L Group LLC and control persons, namely the Chief Executive Officer (CEO), the Chief Operating Officer (COO) and the Chief Investment Officer (CIO) (together, the “Firm Management”). That filing materially overstated the assets under management (“AUM”) and total number of client accounts for Aegis Capital and Circle One. Indeed, the Form ADV filed by Circle One in April 2011 for the 2010 fiscal year overstated Aegis Capital’s and Circle One’s combined AUM by over \$119 million and combined total number of client accounts by at least 1,000 accounts. In filing that Form ADV, Osunkwo relied on estimates that the Registrants’ Chief Investment Officer provided him. But Osunkwo and Strategic Consulting Advisors, LLC (“SC Consulting”) did not take sufficient steps to ascertain the accuracy of those numbers and caused the report to falsely represent that the CIO attested to the accuracy of that information. As a result, Circle One’s Form ADV contained inaccurate information.¹

2. During the relevant time, Aegis Capital and Circle One retained SC Consulting to assist them in performing certain compliance functions as well as to provide an outsourced Chief Compliance Officer (“CCO”) to the Registrants. SC Consulting offered compliance consulting and CCO services to investment adviser firms. Respondent Osunkwo, a principal at SC Consulting, was designated as CCO to both Aegis Capital and Circle One. In this role, Osunkwo assisted Registrants and Firm Management with preparing and filing their Forms ADV. Osunkwo’s actions and inactions with respect to the Forms ADV described above led to Circle One’s inability to file accurate reports with the Commission.

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.

Respondent

3. Osunkwo, 55 and a resident of Charlotte, North Carolina, is self-employed. He provides business and compliance consulting services through affiliations with other firms, including SC Consulting. He held Series 7 and 63 licenses and has no prior disciplinary history. Osunkwo is also an attorney licensed in New York. From January 2011 to March 2012, Osunkwo was associated with a broker-dealer registered with the Commission. During 2010 and 2011, Osunkwo was a principal of SC Consulting and was designated, and served as, Aegis Capital's and Circle One's CCO.

Other Relevant Parties

4. Aegis Capital is a North Carolina limited liability company with its principal place of business in Mount Pleasant, South Carolina. Aegis Capital filed a Form ADV-W on March 27, 2012 and withdrew registration as an investment adviser with the Commission. Thereafter, from March 27, 2012 until June 24, 2015, Aegis Capital was registered as an investment adviser with the state of North Carolina. Aegis Capital is not currently registered as an investment adviser with the Commission or any State.

5. Circle One is a Florida limited liability company, formerly an investment adviser and currently listed as "Inactive" in the records of the Florida Department of State Division of Corporations. According to Circle One's December 31, 2010 annual amendment to Form ADV, filed April 4, 2011, Circle One had \$182 million in AUM and 1,289 client accounts. On March 27, 2012, Circle One withdrew its Commission registration by filing a partial withdrawal on Form ADV-W. On May 7, 2012, Circle One filed a full Form ADV-W, declaring that it was no longer in business and terminating its registration status with state regulators.

6. SC Consulting was an Illinois limited liability company with its principal place of business in Illinois. It offered compliance consulting and outsourced CCO services to variety of investment management firms. Osunkwo was one of the principals of SC Consulting, and during 2010 and 2011, Registrants' Firm Management contracted with SC Consulting to provide certain compliance and outsourced CCO services to Registrants. SC Consulting is now defunct.

Respondent's Conduct Led to Registrants' Failure to File Timely and Accurate Form ADV Amendments

7. Between March 2010 and December 2011, SC Consulting was contractually obligated to provide compliance consulting and CCO services to Aegis Capital and Circle One. During this period, Osunkwo and SC Consulting reported to Firm Management in the performance of their obligations under the contract. Under the contract, SC Consulting was obligated to make a principal of the firm available to be appointed and serve as Registrants' CCO, who would be responsible for, among other things, preparing and filing amendments to the Registrants' Forms ADV. Pursuant to this agreement, SC Consulting designated Osunkwo as the CCO for Registrants.

8. In the spring of 2011, Firm Management renewed the contract with SC Consulting (and Osunkwo) and agreed to support and work with them in carrying out their functions, including for the purposes of preparing and filing a consolidated Form ADV for Aegis Capital and Circle One for the year ended December 31, 2010. The consolidated Form ADV was intended to be in place of separate Forms ADV for Aegis Capital and Circle One.

9. No Form ADV annual update or amendment was filed on behalf of Aegis Capital until a Form ADV-W was filed on March 27, 2012, withdrawing the firm from registration with the Commission.

10. On April 4, 2011, Osunkwo filed an annual amendment to Circle One's Form ADV for the December 31, 2010 year end. Registrants and Firm Management intended this amendment to reflect the merger between the two affiliated investment advisers, Aegis Capital and Circle One, and, thus, it encompassed both Aegis Capital's and Circle One's AUM and number of advisory accounts. Circle One reported that it had a combined \$182,000,000 in AUM and 1,289 advisory accounts.

11. When preparing Circle One's annual amendment to Form ADV for the December 31, 2010 year end, Osunkwo reviewed information of Aegis Capital's and Circle One's investment management business and client account including 2009 year's ADV. For 2010 AUM and account information, Osunkwo relied on estimates provided to him by the CIO.

12. Specifically, the CIO sent Osunkwo an email that stated:

"David – . . . I believe AUM was as follows on 12/31 Funds: \$36,800,000 Schwab/Fidelity: \$96,092,701 (1,179 accounts) (not sure how many customers) Circle One: probably higher than \$50m, but hopefully [another employee] told you a number today

Total is in the \$182.89m range"

13. Osunkwo and SC Consulting adopted these estimates, without taking sufficient steps to ascertain their accuracy, when they filed Circle One's annual amendment to Form ADV for the December 31, 2010 year end was filed on April 4, 2011.

14. Given the impending deadline for filing the Form ADV, Osunkwo listed the CIO as signatory certifying the ADV without confirming with the CIO. As a result, the form that Osunkwo and SC Consulting filed misstated that the CIO had also certified the contents to be true and correct.

15. As a result of Osunkwo's conduct, the AUM and number of advisory accounts claimed by Circle One for the fiscal year ended December 31, 2010, as described above, were false. In fact, the combined AUM of Aegis Capital and Circle One as of December 31, 2010 was only \$62,862,270.28—an overstatement of AUM of \$119,137,728.72. The amendment to Circle One's Form ADV also overstated Aegis Capital's and Circle One's total client accounts

by at least 1,000 accounts as of December 31, 2010.

Violations

16. As a result of the conduct described above, Osunkwo caused Aegis Capital's violations of, Section 204 of the Advisers Act and Rule 204-1(a)(1) thereunder, which require registered investment advisers to amend their Form ADV "[a]t least annually, within 90 days of the end of [their] fiscal year ... [and] [m]ore frequently, if required by the instructions to Form ADV."

17. As a result of the conduct described above, Osunkwo willfully² violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission under Section 203, or 204, or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

IV.

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

Accordingly, pursuant to Section 15(b) 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 Osunkwo shall cease and desist from committing or causing any violations and any future violations of Sections 204 and 207 of the Advisers Act and Rule 204-1(a)(1) thereunder;

B. Respondent Osunkwo be, and hereby is:

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

suspended from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter

² 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)).

for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter for a period of twelve (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 twelve (12) months, effective on the second Monday following the entry of this Order.

C. Respondent Osunkwo shall pay a civil money penalty in the amount of \$30,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: \$5,000 payable within 10 days of issuance of the consent order; \$5,000 payable within 90 days after issuance of the consent order; \$5,000 payable within 180 days after issuance of the consent order; \$5,000 payable within 270 days after issuance of the consent order; and \$10,000 payable within 1 year of the consent order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of the civil penalty, plus any additional interest accrued pursuant to SEC Rule of Practice 600 and 31 U.S.C. 3717 shall be due and payable immediately, without further application.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) 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
- (3) 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-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 Osunkwo 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 Regional Associate Director William P. Hicks, Division of Enforcement, Securities and Exchange Commission, 950 East Paces Ferry Road, N.E., Suite 900, Atlanta, GA 30326-1382; and

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

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, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent 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 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