

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4683 / April 11, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17924

In the Matter of

CLAYTON A. COHN,

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 Clayton A. Cohn (“Respondent”).

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 paragraph 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 that:

1. From March 2011 through April 2014, Cohn was the Managing Member of Marketaction Advisors, LLC, an investment adviser registered with the Commission that operated

a hedge fund named Marketaction Capital Management, LLC (“the Fund”). Cohn, 29 years old, is a resident of Winnetka, Illinois.

2. On March 29, 2017, a final judgment was entered by consent against Cohn and Marketaction Advisors, permanently enjoining each from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, in the civil action entitled Securities and Exchange Commission v. Clayton A. Cohn and Marketaction Advisors, LLC, Civil Action Number 1:13-cv-05586, in the United States District Court for the Northern District of Illinois.

3. The Commission’s complaint alleged that Cohn, through Marketaction Advisors, raised nearly \$1.8 million from investors who purchased Limited Liability Company interests in the Fund. The Commission alleged, inter alia, that Cohn made several false and misleading statements to investors when soliciting investments, misappropriated investor proceeds, and covered up trading losses by providing investors with false account statements, and otherwise engaged in a variety of conduct which operated as a fraud and deceit on investors. The complaint also alleged that Cohn sold unregistered securities.

4. On July 5, 2016, Cohn pled guilty to one count of wire fraud in violation of Title 18, United States Code, Section 1343 before the United States District Court for the Northern District of Illinois, in United States v. Clayton Andrew Cohn, Case No. 1:16-cr-00325. On January 25, 2017, a judgment in the criminal case was entered against Cohn. He was sentenced to a prison term of 52 months followed by two years of supervised release and ordered to make restitution in the amount of \$1,556,488.11.

5. The criminal information to which Cohn pled guilty alleged, inter alia, that Cohn devised, intended to devise, and participated in a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and by concealment of material facts, that he caused to be prepared and filed with the Commission reports about the Fund that he knew contained false and misleading information, and that he knowingly caused to be transmitted in interstate commerce by means of wire communications, certain writings, signs, signals, specifically, an interstate wire transfer.

IV.

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

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

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