

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 82816 / March 6, 2018

INVESTMENT ADVISERS ACT OF 1940
Release No. 4864 / March 6, 2018

INVESTMENT COMPANY ACT OF 1940
Release No. 33039 / March 6, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18387

In the Matter of

**VALOR CAPITAL ASSET
MANAGEMENT, LLC, and
ROBERT MARK MAGEE,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 21C 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, 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 Section 21C 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 Valor Capital Asset Management, LLC (“Valor”) and Robert Mark Magee (“Magee”).

II.

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer of Settlement (collectively, 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 Section 21C 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, 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 proceeding arises out of a fraudulent “cherry-picking” scheme carried out by Valor Capital Asset Management, LLC (“Valor”) and its principal, Robert Mark Magee (“Magee”) (collectively, “Respondents”). From July 2012 to May 2015, Magee disproportionately allocated profitable or less unprofitable trades from Valor’s omnibus trading account to his personal accounts, while disproportionately allocating unprofitable or less profitable trades to Valor client accounts.

Respondents

2. Valor Capital Management, LLC (CRD# 114997) is a Texas limited liability company with its principal place of business in The Hills, Texas. Valor registered as an investment adviser with the State of Louisiana in 1999 and with the State of Texas upon its inception in 1998. Valor’s registration in both states was terminated in December 2017. During the period at issue, Valor had between approximately \$7.5 million and \$9 million in assets under management. Valor’s fees were calculated as a percentage of each client’s assets under management. On August 8, 2016, Valor was reprimanded and fined \$48,000 by the Texas State Securities Board for Magee’s failure to enforce Valor’s written supervisory procedures concerning trade allocation. Specifically, the Texas State Securities Board found that Valor did not always pre-allocate block trades and never retained a record of how any block trades in which Magee participated were pre-allocated.

3. Robert Mark Magee (CRD# 1637775), 55 years old, resides in Austin, Texas. He is the founder, principal, sole owner, and sole employee of Valor. Magee was associated with Valor as an investment adviser since its inception in 1998 to December 2017, when Magee terminated his investment adviser association with Valor. Magee was associated with other investment advisers and broker-dealers between 1989 and 2002. Magee held series 3, 7, 8, 63, and 65 licenses, but he no longer holds these licenses.

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.

Facts

4. From July 2012 to May 2015, Magee and his firm, Valor, engaged in an undisclosed cherry-picking scheme in which Magee allocated a disproportionate number of the largest unprofitable trades to various Valor client accounts, while disproportionately allocating either profitable or not as unprofitable trades to his personal account.

5. Valor had discretionary authority over the Valor client accounts that were impacted by the cherry-picking scheme. Magee, as Valor's principal, sole owner and only employee, was solely responsible for Valor's trades and allocations. Magee executed both his personal trades and trades for Valor's clients in Valor's omnibus account.

6. Magee predominantly allocated the most unprofitable trades to Valor's clients to their detriment while allocating profitable or less unprofitable trades to his personal account. Typically, after purchasing a block of securities through Valor's omnibus account, Magee delayed allocating the purchase until after the relevant security's intraday price changed. If the relevant security's price went up, Magee typically sold the position and allocated both trades (*i.e.*, the purchase and sale) to his personal account thereby realizing a gain. Conversely, when the security's price went down over the course of the day, Magee would typically either: (a) sell the security the same day and allocate both the purchase and sale to Valor clients, leaving them with a loss; or (b) hold the security and allocate the purchase to Valor clients, effectively leaving those clients with unrealized first-day losses.

7. Magee's trading and allocation of El Pollo Loco Holdings, Inc. ("LOCO") shares is representative of this type of transaction. On five consecutive trading days in 2014, Magee executed day trades in LOCO through Valor's omnibus account. Each of these trades was profitable, and Magee allocated them to his personal account.

8. On the sixth trading day, Magee purchased shares of LOCO again. However, the price dropped throughout the day and, rather than sell the shares and realize a loss, Magee allocated the purchase to six Valor client accounts at the end of the day *pro rata* according to the size of the accounts. The trades and allocations can be summarized as follows:

Trade Date	Shares	Profit	Allocation
Monday, July 28, 2014	9,000	\$8,073.90	Magee
Tuesday, July 29, 2014	6,000	\$1,453.20	Magee
Wednesday, July 30, 2014	3,000	\$2,511.60	Magee
Thursday, July 31, 2014	3,000	\$2,774.10	Magee
Friday, August 1, 2014	4,000	\$3,325.20	Magee
Monday, August 4, 2014	3,000	-\$5,076.00 (unrealized)	Clients

9. In sum, from July 2012 to May 2015, Magee allocated a disproportionate number of profitable trades and less unprofitable trades (*i.e.*, trades that had a small negative first-day return) to his personal accounts, and a disproportionate number of the most unprofitable trades (*i.e.*, trades that had a large negative first-day return) to Valor client accounts.

10. From July 2012 to January 2015, Magee's personal accounts posted first-day profits (realized and unrealized) of \$349,643 (0.876% return rate), while other Valor client accounts posted first-day losses (realized and unrealized) of \$544,987 (-2.309% return rate). Thus, Magee's personal accounts made a first-day profit on the trading, while Valor's other client accounts incurred sizable first-day losses. Following Valor's change to a new trading platform in February 2015, the trading was no different. From February 2015 to May 2015, Magee's personal accounts posted first-day profits (realized and unrealized) of \$26,448 (0.862% return rate), while other Valor client accounts posted first-day losses (realized and unrealized) of \$42,466 (-1.024% return rate).

11. The difference between Magee's first-day returns and those of his clients is highly statistically significant. The probability that the disproportionate allocation of favorable trades to Magee's personal accounts was due to chance is less than one in a trillion during the period of July 2012 to January 2015, and less than one in 100,000 during the period of February 2015 to May 2015.

12. Magee's success rate on first-day returns was also significantly better than that of his clients. From July 2012 to January 2015, Magee's personal account was allocated 459 trades, of which 81.9%, or 376, were profitable based on the end of day price. By contrast, Valor client accounts were allocated 1,365 trades, of which only 16%, or 219, were profitable based on the end of day price (or closing transaction price for day-trades). From February to May 2015, Magee's personal account was allocated 47 trades, of which 89.4%, or 42, were profitable based on the end of day price. By contrast, Valor client accounts were allocated 250 trades, of which only 40.4%, or 101, were profitable based on the end of day price (or closing transaction price for day-trades).

13. In January 2015, the brokerage firm through which Valor executed its trades terminated its relationship with Valor because it suspected that Magee was cherry-picking profitable trades for his own accounts to his clients' detriment. The brokerage firm did not, however, provide Magee any details on the cause of termination. After moving to a second brokerage firm, in May 2015, the second brokerage firm also terminated its relationship with Valor because it suspected that Magee was allocating day trades to his personal account based upon intra-day performance. This firm also did not provide Magee any details on the cause of termination. After Valor's termination from the second brokerage firm, Magee switched to a third brokerage firm, where he did not use an omnibus account to execute trades for Valor clients. As a result, Valor no longer had the opportunity to cherry-pick trades because it traded directly in client accounts.

14. Recently, Magee transferred all of Valor's client accounts to two separate, non-affiliated registered investment advisers that conduct their clients' trades at a national brokerage firm. Neither Valor nor Magee acts as an investment adviser for any accounts and as of December 2017, Magee terminated Valor's investment adviser registration with Texas and Louisiana.

15. For the period from July 2012 to May 2015, Respondents' ill-gotten gains from cherry-picking, including losses avoided, were \$505,663. This amount represents the absolute difference between the first-day profits on the trades Magee allocated to his personal accounts (\$349,643) and the first-day profits Magee would have received had he earned the average first-day return for all of the discretionary accounts Magee managed, including his own (-\$122,764), for the trading period of July 2012 to January 2015, plus the absolute difference between the first-day

profits on the trades Magee allocated to his personal accounts (\$26,448) and the first-day profits Magee would have received had he earned the average first-day return for all of the discretionary accounts Magee managed, including his own (-\$6,808), for the trading period of February 2015 to May 2015.

Violations

16. As a result of the conduct described above, Respondents willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities, by knowingly or recklessly allocating profitable trades to Magee's personal accounts at the expense of Valor clients.

17. As a result of the conduct described above, Respondents willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser. Specifically, Section 206(1) of the Advisers Act prohibits any investment adviser from employing any device, scheme, or artifice to defraud any client or prospective client, and Section 206(2) of the Advisers Act 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.

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 21C 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. Respondents Magee and Valor cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) thereunder, and Sections 206(1) and 206(2) of the Advisers Act;

B. Respondent Magee 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; and

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.

C. Any reapplication for association by Respondent Magee 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.

D. Respondents shall, within 14 days of the entry of this Order, pay, jointly and severally, disgorgement of \$505,663 and prejudgment interest of \$50,208.57 to the Securities and Exchange Commission. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, transfer them to the general fund of the United States Treasury, subject to Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

E. Respondents shall, within 14 days of the entry of this Order, pay, jointly and severally, a civil money penalty in the amount of \$160,000.00 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of 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) 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 Valor Capital Asset Management, LLC and Robert Mark Magee 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 John W. Berry, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, California 90071.

F. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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 Magee, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Magee 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 Magee 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