

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92945 / September 13, 2021

INVESTMENT ADVISERS ACT OF 1940
Release No. 5859 / September 13, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20539

In the Matter of

**JW Korth & Company L.P.,
James W. Korth, and
Holly MacDonald-Korth,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 203(e) AND
203(k) OF THE INVESTMENT ADVISERS
ACT OF 1940 AND SECTION 15(b)(4) 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) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against JW Korth & Company L.P. (“Korth”), James W. Korth (“James Korth”), and Holly MacDonald-Korth (“MacDonald-Korth”) (collectively, “Respondents”), and Section 15(b)(4) of the Securities Exchange Act of 1934 (“Exchange Act”) against Korth.

II.

In anticipation of the institution of these proceedings, the Respondents have submitted Offers of Settlement (“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., the Respondents each consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 and Section 15(b)(4) 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' Offer, the Commission finds that:

Summary

From March 2015 to October 2018, dually-registered investment adviser and broker-dealer Korth effected 201 riskless principal transactions with its advisory clients' accounts without disclosing to such clients in writing before the completion of each such transaction the capacity in which it was acting and obtaining transaction-by-transaction client consent in violation of Section 206(3) of the Advisers Act. Further, Korth violated Advisers Act Section 206(4) and Rule 206-4(7) thereunder by failing to implement written policies and procedures reasonably designed to prevent violations of Section 206(3) of the Advisers Act. Korth's managing partner James Korth and managing director MacDonald-Korth each caused Korth's violations. Korth generated \$46,857 in net profits from these transactions.

Respondents

1. Respondent Korth, a dually-registered investment adviser and broker-dealer, is organized in Michigan and based in Lansing, Michigan (its broker-dealer operations) and Miami, Florida (its investment adviser operations). Korth registered with the Commission as a broker-dealer effective July 1990 and registered as an investment adviser effective March 2015.

2. Respondent James Korth has been Korth's managing partner since March 1990, a Korth investment adviser representative since March 2015, and a Korth registered representative since 1986. From May 1, 2012 to March 31, 2017, James Korth also served as chief compliance officer of Korth's investment adviser. James Korth holds Series 4, 7, 24, 53, 63 and 66 licenses. James Korth owns more than 75% of Korth. Respondent James Korth, 70 years old, is a resident of Miami, Florida.

3. Respondent MacDonald-Korth has been associated with Korth since October 2006. From June 2012 to February 2014, she was Korth's director of operations and from February 2014 to present, was Korth's managing director and chief financial officer overseeing all of Korth's operations. From March 31, 2017 to present, MacDonald-Korth also served as chief compliance officer of Korth's investment adviser. She has been an investment adviser representative at Korth since 2013 and a registered representative at Korth since 2012. MacDonald-Korth holds Series 7, 24, 27, and 66 licenses. Respondent MacDonald-Korth, 45 years old, is a resident of Miami, Florida.

Background

4. Between March 26, 2015 and October 2018, Korth engaged in 201 fixed-income transactions on a riskless principal basis with nine advisory clients without providing prior written disclosure to, or obtaining transaction-by-transaction consent from clients as required by Section 206(3) of the Advisers Act. Korth profited from these trades because Korth received remuneration reflecting the spread between the cost of the traded securities to Korth and the cost of the traded securities to the advisory clients, less the compensation it paid to its investment adviser

representatives or trading desk for these transactions. For each of these trades, Korth disclosed in monthly statements that it sent to the advisory clients the amounts that it was receiving in gross revenues per trade.

5. By initiating these riskless principal transactions while aware that Korth did not disclose to such clients in writing before the completion of each such transaction the capacity in which it was acting and obtain the consent of the client on a transaction-by-transaction basis, James Korth and MacDonald-Korth each caused Korth's violations of Advisers Act Section 206(3).

6. Korth violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder by failing to adopt and implement written policies and procedures reasonably designed to prevent violations of Section 206(3) of the Advisers Act. Korth did not have policies and procedures concerning riskless principal transactions until March 2018. The policies and procedures Korth adopted in March 2018 were not reasonably designed to prevent the Section 206(3) violations at issue here because they did not require that Korth provide the required Section 206(3) disclosures and receive client consent for each riskless principal transaction, but rather they only mandated that Korth provide the required disclosures and receive client consent for principal transactions that were not riskless.

7. James Korth and MacDonald-Korth each caused Korth's violations because as Korth's managing partner and managing director, respectively, each was responsible for Korth's failure to adopt and implement appropriate policies and procedures, including those concerning Section 206(3) of the Advisers Act, and for Korth's failure to comply with the Advisers Act when conducting principal transactions.

8. As a result of the conduct described above, Korth willfully¹ violated, and James Korth and MacDonald-Korth caused Korth violations of, Sections 206(3) and 206(4) of the Advisers Act and Rule 206(4)-7.

Disgorgement and Civil Penalties

9. The disgorgement and prejudgment interest ordered in paragraph IV.C. is consistent with equitable principles, does not exceed Respondent Korth's net profits from its violations, and is awarded for the benefit of and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to paragraph IV.C. in an account at the U.S. Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

¹ "Willfully," for purposes of imposing relief under Sections 203(e) and 203(k) of the Advisers Act, "means no more than 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)).

IV.

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

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act as to Korth, James Korth, and MacDonald-Korth, and Section 15(b)(4) of the Exchange Act as to Korth, it is hereby ORDERED that:

A. Respondents shall cease and desist from committing or causing any violations and any future violations of Sections 206(3), and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Respondent Korth is censured.

C. Respondent Korth shall, within 21 days of the entry of this Order, pay disgorgement of \$46,857, prejudgment interest of \$4,676, and a civil penalty of \$125,000, to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and/or 31 U.S.C. §3717.

D. Respondent James Korth shall, within 21 days of the entry of this Order, pay a civil penalty of \$50,000, to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

E. Respondent MacDonald-Korth shall, within 21 days of the entry of this Order, pay a civil penalty of \$25,000. 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) 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 Respondent Korth, Respondent James Korth, or Respondent MacDonald-Korth 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 Glenn S. Gordon, Associate Regional Director, Miami Regional Office, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1950, Miami, FL 33131.

F. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest and penalties referenced in paragraphs IV.C., IV.D., and IV.E. above. 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 each agree that in any Related Investor Action, they shall not argue that any Respondent is entitled to, nor shall any Respondent 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 each agree that each Respondent 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 any 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 Respondents James Korth and MacDonald-Korth, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents James Korth and MacDonald-Korth 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 Respondents James Korth and MacDonald-Korth 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.

Vanessa A. Countryman
Secretary