

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5670 / January 14, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20204

In the Matter of

**ADVANCED PRACTICE
ADVISORS, LLC**

AND

PAUL C. SPITZER,

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 203(e), 203(f)
AND 203(k) OF THE INVESTMENT
ADVISERS 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 Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), against Advanced Practice Advisors, LLC and Paul C. Spitzer (collectively, the “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have 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, 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 Sections 203(e), 203(f) and 203(k) of the Investment Advisers 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’ Offer, the Commission finds¹ that:

Summary

These proceedings arise out of violations of the Investment Advisers Act of 1940 by Advanced Practice Advisors, LLC (“APA”), an investment adviser formerly registered with the Commission, and its founder and CEO, Paul C. Spitzer (“Spitzer”). APA and Spitzer failed to make certain disclosures which allowed advisory clients to be deceived by, and also failed reasonably to supervise, an investment adviser representative who was associated with APA (“Adviser Representative”). Specifically, the Adviser Representative deceived advisory clients by allowing his father to advise APA clients even though his father was not formally associated with APA. APA and Spitzer knew that the Adviser Representative had no real experience, no clients of his own, and that his father, who had previously worked as an investment adviser representative at another firm, wanted to continue advising his clients and shared an office with his son. Spitzer, and therefore APA, knew or should have known that the Adviser Representative’s father was advising APA clients under the guise of his inexperienced son’s association with APA. APA and Spitzer failed to disclose to advisory clients that the Adviser Representative’s father was not formally associated with APA. Additionally, APA failed to implement certain compliance policies and procedures, including those designed to prevent clients from being misled.

Respondents

1. **Advanced Practice Advisors, LLC**, owned by Spitzer and his wife, is a California limited liability company with its principal place of business in La Quinta, California. APA was registered as an investment adviser with the Commission from June 3, 2010 to October 11, 2018. On October 5, 2018, APA registered as an investment adviser with the state of California after its assets under management decreased. On December 15, 2020, APA filed a request to terminate its California registration as an investment adviser.

2. **Paul C. Spitzer**, 71, of La Quinta, California, founded APA in 2010, and is its CEO. Since July 2020, Spitzer has also been associated with a different California-registered investment adviser. Spitzer previously held series 7, 9, 10, 24 and 63 licenses. Spitzer supervised investment adviser representatives who were associated with APA during the relevant time period.

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

Background

3. In June 2010, Spitzer formed APA to service his own advisory clients and to provide other individual investment advisers and the clients they advised with a platform of compliance and back office services. APA collected advisory fees from those clients advised by the investment adviser representatives associated with APA based on the assets under management. In exchange for the compliance services APA provided, APA retained 10% of the clients' investment advisory fees collected and APA then paid the remaining 90% of the fees to the investment adviser representatives who were advising those clients. APA also charged a separate flat fee for technology services, including e-mail service. Spitzer required all advisory clients, including the other investment advisers' clients, to sign an agreement in which they agreed to "appoint" APA as their investment adviser. The agreement also stated that an investment adviser representative ("IAR") associated with APA would provide the clients with investment management services.

Failure to Disclose and Failure Reasonably to Supervise

4. In November 2015, the Adviser Representative, who had only recently passed series 7 and 65 exams and become licensed, became associated with APA as an IAR. During the relevant time period, Spitzer supervised the Adviser Representative and was therefore responsible for overseeing his investment advice, trading and client communications.

5. The Adviser Representative's father had previously worked as an investment adviser representative at another firm, and had a number of clients willing to move with him; consequently, he sought to associate with APA. Spitzer and APA determined that APA was not willing to associate with the father because he was the subject of an ongoing FINRA investigation and because APA's clearing broker had barred the father from its platform during the pendency of the investigation. Spitzer told the Adviser Representative's father that he was to have "no formal affiliation" with APA but that his son could associate with APA.

6. Thus, the son became associated with APA, but his father was never formally associated with APA. Nevertheless, the father continued to provide investment advice to the clients who had followed him from his prior firm to APA and who were supposed to be advised by his son, the Adviser Representative. These APA clients were thus misled into believing that the Adviser Representative's father was formally associated with APA, even though he was not.

7. APA and Spitzer failed to disclose to APA clients that the Adviser Representative's father was not formally associated with APA. Spitzer knew or should have known that the father was continuing to advise APA clients even though the father was not formally associated with APA. For example, Spitzer knew that the father and son shared office space and telephone lines, that all of the APA clients the son worked with had come from his father, and that the son lacked any significant experience and was just learning the business. In addition, Spitzer would often correspond directly with the father, rather than with the Adviser Representative, about things such as advisory fees.

8. Six months after Adviser Representative joined APA, Spitzer retained a new Chief Compliance Officer, who expressed concern that the Adviser Representative's father was not formally associated with APA but worked in the same office with his son and could therefore access APA client information and advise APA clients. The new Chief Compliance Officer was also concerned that APA clients might not know that the Adviser Representative's father was not formally associated with APA, was not permitted access to APA information and systems, and could not advise clients under APA's aegis. Nevertheless, Spitzer did not require that Adviser Representative maintain separate office space from his father or take other precautionary measures, such as implementing an ethical screen to prevent the Adviser Representative from sharing confidential client information with his father.

9. In May 2016, APA's clearing broker informed Spitzer that the Adviser Representative's father had called APA's clearing broker and impersonated his son on at least 38 occasions. In recorded calls, the Adviser Representative's father identified himself by his son's name and as a representative of APA, and discussed block trading, warrants trade allocation, and rebalancing APA client accounts. He also asked APA's clearing broker how to execute a trade for a client and repeatedly provided the clearing broker with the master account number for APA.

10. After learning that the Adviser Representative allowed his father to impersonate him on calls with APA's clearing broker, the Chief Compliance Officer at APA recommended that Spitzer terminate APA's association with the Adviser Representative. Spitzer, however, decided not to do so. Instead, Spitzer required the Adviser Representative to enter into an enhanced supervision agreement with APA, and, although the father of Adviser Representative was not formally associated with APA, Spitzer directed the father to sign the agreement as well. APA and Spitzer, however, failed to enforce several of the requirements set forth in that agreement.

Compliance Failures

11. As a registered investment adviser, APA was required to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder by itself and its supervised persons.

12. APA had policies to prohibit the misconduct in which the Adviser Representative engaged, but APA failed to implement these policies. APA's policies stated that supervised persons have a fiduciary duty to clients that prohibits them from misleading clients and requires "full and fair disclosure of all material facts." APA's policies also required supervised persons to "safeguard material non-public information about client transactions" and "maintain the confidentiality of information concerning the identity of security holdings and financial circumstances of clients." The Adviser Representative's ongoing arrangement with his father, including his father's access to APA clients' financial information, demonstrates APA's failure to implement these policies.

13. Despite these policies, Spitzer and APA ignored the warning signs regarding Adviser Representative's arrangement with his father and did not require that APA put an ethical screen in place to prevent the Adviser Representative from sharing confidential client information with his father. Spitzer and APA also did not require the Adviser Representative to provide a

written explanation to APA clients that his father was not formally associated with APA and could not provide investment advice to them on behalf of APA.

Violations

14. As a result of the conduct described above, Respondents willfully² violated Section 206(2) of the Advisers Act, which 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. A violation of Section 206(2) may rest on a finding of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.*

15. As a result of the conduct described above, APA willfully violated, and Spitzer willfully aided and abetted and caused APA's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require, among other things, that a registered investment adviser adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules. Negligence is sufficient to establish a violation of Section 206(4) and Rule 206(4)-7. *Steadman*, 967 F.2d at 647.

16. As a result of the conduct described above, APA and Spitzer failed reasonably to supervise the Adviser Representative within the meaning of Section 203(e)(6) of the Advisers Act, which authorizes the Commission to institute an administrative proceeding against a supervisor who has failed to supervise, with a view to preventing violations of the federal securities laws, another person who commits such a violation, if such person is subject to the supervisor's supervision.

Undertakings

17. Respondents APA and Spitzer agree to cooperate fully with the Commission in any and all investigations, litigations, or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, APA and Spitzer shall: (i) produce, without service of a notice or subpoena, any and all non-privileged documents and other information reasonably requested by the Staff; (ii) use their best efforts to cause APA's officers, employees, and directors (including Spitzer) to be interviewed by the Staff at such time as the Staff may reasonably direct; (iii) provide any certification or authentication of business records of the company as may be reasonably requested by the Staff; and (iv) use their best efforts to cause

² "Willfully," for purposes of imposing relief under Section 203(e) or (f) 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)). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

APA's officers, employees, and directors (including Spitzer) to appear and testify without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Staff.

18. Respondent Spitzer has agreed to:
 - a. within three months of the entry of this Order, complete thirty (30) hours of compliance training related to the Advisers Act; and
 - b. certify, in writing, compliance with this undertaking.
 - i. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondents agree to provide such evidence.
 - ii. The certification and supporting material shall be submitted to Victoria A. Levin, Assistant Regional Director, 444 S. Flower Street, Suite 900, Los Angeles, CA 90071 with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

19. In determining whether to accept the Offer, the Commission has considered the undertakings set forth in paragraph 17 above.

IV.

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

Accordingly, pursuant to Sections 203(e), 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondents APA and Spitzer cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Respondent APA is censured.

C. Respondent Spitzer shall be, and hereby is, subject to the following limitations on his activities:

Respondent Spitzer shall not act in a supervisory capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Any application to act in such a supervisory capacity will be subject to the applicable laws and regulations governing the reentry process, and permission to act in such a supervisory capacity 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. Respondent Spitzer shall comply with the undertakings enumerated in Section III, paragraph 18 above.

E. Respondent Spitzer shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of \$20,000 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). 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 Spitzer may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent Spitzer 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 Spitzer 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 Paul Spitzer 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 Alka Patel, Associate Regional Director, Securities and Exchange Commission, 444 S. Flower Street, Suite 900, Los Angeles, CA 90071

with a copy to Victoria A. Levin, Assistant Regional Director, 444 S. Flower Street, Suite 900, Los Angeles, CA 90071.

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