

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6601 / May 10, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21935

In the Matter of

MICHAEL E. LEWITT,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF
THE INVESTMENT ADVISERS ACT
OF 1940, AND RULE 102(e) OF THE
COMMISSION’S RULES OF
PRACTICE, 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”) and Rule 102(e)(3)(i) of the Commission’s Rules of Practice¹ against Michael E. Lewitt (“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, and without admitting or denying the findings

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any attorney . . . who has been by name (A) [p]ermanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder; or (B) [f]ound by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party . . . to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings and the findings contained in paragraph III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Advisers Act, and Rule 102(e) of the Commission’s Rules of Practice, 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. Since 2012, Respondent has been the sole managing member and majority owner of Third Friday Management, LLC (“Third Friday”), which was an investment adviser registered with the Commission and was also a defendant in the civil action cited in Section III.2., below. Third Friday was the investment adviser to the Third Friday Total Return Fund, L.P., a Delaware limited partnership formed in 2007 with its principal place of business in Delray Beach, Florida (the “Fund”). Respondent acted as the Fund’s portfolio manager and exercised control over all investment decisions made for the Fund. Respondent, age 66, is a resident of Boca Raton, Florida and has over 30 years of securities industry and investment management experience. Although Respondent has not practiced law in decades, he remains a licensed attorney in New York State.

2. On April 10, 2024, a judgment was entered by consent against Respondent in the civil action entitled *Securities and Exchange Commission v. Third Friday Management, LLC, et al.*, Civil Action Number 9:23-cv-81332-DMM, in the United States District Court for the Southern District of Florida (the “Judgment”) permanently restraining and enjoining Respondent from future violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), Exchange Act Rule 10b-5, and Sections 206(1) and 206(2) of the Advisers Act, and from aiding and abetting any future violations of Section 206(4) of the Advisers Act and Rules 206(4)-2 (the “Custody Rule”) and 206(4)-8 thereunder.

3. The Commission’s complaint alleged that, while managing the Fund, Respondent made material misrepresentations and omissions to prospective investors and investors concerning a material change in the Fund’s stated investment trading strategy. From at least 2012, Respondent marketed the Fund’s options strategy of “invest[ing] exclusively in S&P 500 index options which have full liquidity” and further elaborated in the Fund’s Private Placement Memorandum (“PPM”) the Fund’s “strategy of selling straddles on the S&P 500 Index over a portfolio of income generating securities,” which the PPM described as securities such as “U.S. Treasury bills, municipal bonds, government and corporate bonds, and other similar instruments.” However, between January 2018 and November 2019, without notifying the Fund’s limited partners, Respondent caused the Fund to make 45 loan advances totaling more than \$19 million to a distressed company that acquired and operated struggling rural hospitals and filed for bankruptcy after receiving the majority of the Fund’s assets (the “Bankrupt Entity”). Respondent failed to disclose, among other things, his financial interest in a group of private affiliated companies which had committed to investing \$30 million to the Bankrupt Entity. In addition, Respondent misappropriated at least \$4.7 million of investor funds for personal use, including over \$900,000 to pay an IRS lien, and took advanced management fees and performance fees on Fund assets which

he had materially overvalued. Further, Respondent aided and abetted Third Friday's violation of the Custody Rule.

IV.

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

Accordingly, it is hereby ORDERED, effective immediately, that:

- A. Pursuant to Section 203(f) of the Advisers Act, Respondent 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, with the right to apply for reentry after five years to the appropriate self-regulatory organization, or if there is none, to the Commission.

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, compliance with the Commission's order and payment of any or all of the following: (a) any disgorgement or civil penalties ordered by a Court against the Respondent in any action brought by the Commission; (b) any disgorgement amounts ordered against the Respondent for which the Commission waived payment; (c) any arbitration award related to the conduct that served as the basis for the Commission order; (d) 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 (e) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

- B. Pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice, Respondent is suspended from appearing or practicing before the Commission as an attorney.

By the Commission.

Vanessa A. Countryman
Secretary