

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 77648 / April 19, 2016

INVESTMENT ADVISERS ACT OF 1940
Release No. 4371 / April 19, 2016

INVESTMENT COMPANY ACT OF 1940
Release No. 32075/ April 19, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17216

In the Matter of

BRUCE A. HARTSHORN,

Respondent.

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 Bruce A. Hartshorn (“Respondent”).

II.

In anticipation of the institution of these proceedings, Hartshorn 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 herein, except as to the Commission’s jurisdiction over him and the subject matter of this proceeding, which is admitted, and except as provided herein in Section V, Hartshorn consents 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 Respondent’s Offer, the Commission finds that:

SUMMARY

1. From approximately January 2010 through March 2011 (the “Relevant Period”), Hartshorn, via his investment advisory firm, Hartshorn & Co., Inc. (the “Firm” or “Hartshorn & Co.”), engaged in fraudulent trade allocation – “cherry-picking.” Hartshorn disproportionately allocated profitable trades to proprietary accounts and unprofitable trades to client accounts. Hartshorn purchased securities for both proprietary and client accounts through an omnibus trading account, but delayed allocation until later in the day after he had determined whether the securities had appreciated. Hartshorn then allocated profitable trades to proprietary accounts and unprofitable trades to client accounts. As a result of the scheme, Hartshorn realized \$109,516 in ill-gotten gains.

2. By virtue of his conduct, Hartshorn willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Advisers Act.

RESPONDENT

3. **Bruce A. Hartshorn**, age 46, resides in Vista, California. Hartshorn was registered as an investment adviser representative from 2002 until September 2015 and was associated with Hartshorn & Co. from June 2005 through March 2011. Hartshorn was a registered representative associated with various broker-dealers from July 2002 through December 2004 and from March 2011 through September 2015.

OTHER RELEVANT ENTITIES

4. **Hartshorn & Co., Inc.**, was, during the Relevant Period, a California corporation with its principal place of business in Vista, California and was registered as an investment adviser with the State of California. It withdrew its registration in March 2011 and was dissolved as of March 21, 2011. Bruce A. Hartshorn was the founder, president, chief executive officer, and sole employee of the Firm. During the Relevant Period, the Firm had discretionary authority over 40 client accounts and had approximately \$3 million in assets under management.

FACTS

5. Hartshorn was an investment adviser and had discretionary authority over client accounts. Hartshorn generally traded the same securities for proprietary and client accounts. During the Relevant Period, Hartshorn purchased blocks of securities in the Firm's omnibus account at a brokerage firm that had custody of Hartshorn & Co.'s proprietary and client accounts. Hartshorn typically did not allocate securities purchased until after he had an opportunity to observe the securities' intra-day performance. All of the Firm's allocations were made manually by Hartshorn; the Firm never utilized trading platforms offered by the Firm's broker-dealer that allowed for the pre-allocation of block trades.

6. When allocating, Hartshorn allocated a greater proportion of profitable trades, i.e., trades which had a positive first-day return, to proprietary accounts and a greater proportion of unprofitable trades, i.e., trades which had a negative first-day return, to client accounts. Hartshorn sometimes allocated all the securities purchased in the omnibus account to himself or all the securities to clients. Eighty-five percent of the block trades Hartshorn allocated solely to proprietary accounts were profitable trades. Conversely, 100% of the block trades he allocated solely to the Firm's clients were unprofitable trades.

7. In other instances, Hartshorn allocated securities purchased in a single block trade to both proprietary and client accounts. In these circumstances, Hartshorn allocated more profitable trades to proprietary accounts. Specifically, when block-purchased securities had positive first-day returns, Hartshorn allocated 68% of those securities to proprietary accounts. Conversely, when block-purchased securities had negative first-day returns, Hartshorn allocated 81% of those securities to client accounts.

8. The difference between the allocations of profitable trades to proprietary accounts as compared to profitable trades allocated to the client accounts is statistically significant; the probability of observing such an uneven allocation of profitable trades by chance is less than one-in-one-million.

9. During the Relevant Period, Hartshorn's proprietary accounts averaged a first-day gain of 0.26% while client accounts averaged a first-day loss of 1.02%.

10. The Firm's trade allocation practices were contrary to disclosures in its Form ADV. The Firm's 2010 Form ADV, Part II, states that when the Firm aggregates client orders, "the objective will be to allocate the executions in a manner which is deemed equitable to the accounts involved." The Firm's investment management agreement likewise states that the Firm may give advice or take action with respect to the Firm's own accounts "so long as it is [the Firm's] policy, to the extent practicable, to allocate investment opportunities to the [client accounts] over time on a fair and equitable basis relative to other accounts" Hartshorn signed both the Firm's Form ADV and the Firm's investment management agreement, and was the person with ultimate authority over the content of the statements in these documents. The preferential allocations were contrary to these statements.

11. As a result of the cherry-picking strategy, Hartshorn obtained ill-gotten gains of \$109,516.

VIOLATIONS

12. As a result of the conduct above, Hartshorn willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities, by knowingly or recklessly allocating profitable trades to proprietary accounts at the expense of advisory clients.

13. As a result of the conduct above, Hartshorn willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit investment advisers from defrauding their advisory clients. 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 Hartshorn's Offer.

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. Hartshorn 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 thereunder and Sections 206(1) and 206(2) of the Advisers Act.

B. Hartshorn be, and hereby is:

barred from association with any investment adviser, broker, dealer, 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 Hartshorn 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. Hartshorn shall pay disgorgement of \$109,516, prejudgment interest of \$5,036.23, and a civil penalty of \$75,000, to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in these proceedings 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 transfer them to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act. Hartshorn shall, within 10 days of the entry of this Order, pay an amount of \$20,000. Payment of the remaining amount required by this Order, *i.e.*, \$169,552.23, shall be made in the following installments:

Dec. 31, 2016:	\$30,000
Mar. 31, 2017:	\$10,000
June 30, 2017:	\$10,000
Sept. 30, 2017:	\$10,000
Dec. 31, 2017:	\$10,000
Mar. 31, 2018:	\$25,000
June 30, 2018:	\$25,000
Sept. 30, 2018:	\$25,000
Dec. 31, 2018:	\$24,552.23

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. § 3717, shall be due and payable immediately at the discretion of the staff of the Commission, without further application.

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 will be credited upon receipt by the Commission and must be accompanied by a cover letter identifying Bruce A. Hartshorn as the Respondent in this proceeding, and the file number of this proceeding; a copy of the cover letter and check or money order must be sent to Marshall S. Sprung, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.

E. 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, Hartshorn 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 Hartshorn's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Hartshorn 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 Hartshorn 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, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent 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 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