

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2525 / June 22, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12341

In the Matter of	:	
	:	
	:	
WEISS RESEARCH, INC.,	:	ORDER INSTITUTING PUBLIC ADMINISTRATIVE
MARTIN WEISS, AND	:	AND CEASE-AND-DESIST PROCEEDINGS,
LAWRENCE EDELSON	:	MAKING FINDINGS, AND IMPOSING REMEDIAL
	:	SANCTIONS AND A CEASE-AND-DESIST ORDER
	:	PURSUANT TO SECTIONS 203(e), 203(f), AND 203(k)
	:	OF THE INVESTMENT ADVISERS ACT OF 1940
Respondents.	:	
	:	

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 Weiss Research, Inc., and pursuant to Sections 203(f) and 203(k) of the Advisers Act against Martin Weiss and Lawrence Edelson (“Edelson”) (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted individual Offers of Settlement (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, Respondents consent to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds that:

A. Respondents

1. Weiss Research, Inc. is a privately-held Florida corporation headquartered in Jupiter, Florida. Weiss Research publishes a number of newsletters that provide general commentary about the securities markets. Weiss Research also publishes "premium services" newsletters that, in addition to providing market commentary, recommend specific securities transactions. Weiss Research is not registered as an investment adviser with either the Commission or any state securities regulator. Weiss Research was registered with the Commission as an investment adviser pursuant to Section 203(a) of the Advisers Act until it withdrew its registration in 1997 according to publicly available records.

2. Martin Weiss, age 58, is a resident of Palm Beach Gardens, Florida. He owns and controls Weiss Research through a corporate entity. Martin Weiss drafted or reviewed many of Weiss Research's advertisements for its publications.

3. Lawrence Edelson ("Edelson"), age 50, is a resident of Palm Beach Gardens, Florida. He was employed by Weiss Research from 1996 to January 31, 2003, when he became an independent contractor for Weiss Research. Edelson continues to provide copywriting and editorial services to Weiss Research.

B. Facts

Weiss Research's Activities

4. Weiss Research is a newsletter publisher that, since approximately the mid-1990s, has published a number of "premium services" newsletters that provide subscribers with specific advice on the purchase or sale of securities. Subscribers to these newsletters receive, in addition to periodic analyses of economic trends and business developments, frequent facsimiles or e-mails recommending the purchase or sale of specific investments. These facsimiles and e-mails, which Weiss Research characterizes as "simple, plain-English, – sell-this-buy-that – signals," often only identify the investment and provide verbatim trading language for the subscribers to recite to their brokers. Weiss Research sends trading instructions to its premium services subscribers only when it purports to see an investment opportunity arise. Weiss Research charges its subscribers between \$1,000 and \$5,000 for annual subscriptions to its premium services. From 2000 to 2004, Weiss Research had a total of approximately 10,000 subscribers to its premium services newsletters.

5. Weiss Research offers several different premium services publications, each of which reflects a different investment strategy. Some focus on stock investments, while others focus on options trading. Currently, Weiss Research offers approximately ten different premium services, including Stock Options Alert, Larry's Gold Trader, Gold Trader Hotline, Index Options Hotline, and Stock Market Dogs and Darlings.

6. Between at least September 2001 and December 31, 2004 (the "relevant time period"), Weiss Research helped potential subscribers choose the premium service that was best

for them. For example, during a portion of the relevant period, Weiss Research provided a questionnaire on its website which inquired about topics such as the subscriber's age, income, cash holdings, assets, tax status, investment experience, and objectives. After potential subscribers completed the questionnaire, Weiss Research's website responded with an automated evaluation of the subscriber's risk profile along with a recommendation of whether Weiss Research's premium services would be appropriate for that subscriber. Weiss Research also had customer service representatives available to answer questions regarding premium services. In addition to this tool, during the relevant time period, Weiss Research's advertisements claimed that subscribers would not only receive trading recommendations, but also private telephone numbers and e-mail addresses for contacting Martin Weiss and Edelson directly.

7. Starting in approximately September 2001 and through March 31, 2005, Weiss Research enabled its premium services subscribers to engage in "auto-trading." Auto-trading was an arrangement in which premium services subscribers requested that Weiss Research send trading instructions directly to their broker-dealers for automatic execution. Weiss Research provided its premium services subscribers with a list of brokerage firms that were willing to enter into auto-trading agreements. Weiss Research received no commissions or fees from the auto-trading broker-dealers or additional fees from auto-trading subscribers. Weiss Research estimates that 25% of its premium services subscribers utilized auto-trading.

8. Subscribers who wished to participate in auto-trading generally opened accounts at and executed auto-trading agreements with one of the broker-dealers from the Weiss Research list. Under the auto-trading agreements, premium services subscribers directed their broker-dealers to execute automatically all transactions recommended in the Weiss Research premium service newsletters without the need for any further instruction or pre-approval from the subscribers.

9. During the relevant time period, Weiss Research advised its premium services subscribers to execute every recommended trade and to avoid altering the trading instructions in order to receive the greatest benefit from Weiss Research's strategies. According to Weiss Research, auto-trading "eliminate[d] the need for subscribers to manually review and communicate orders to their broker."

10. Weiss Research worked with certain of the auto-trading broker-dealers for purposes of record keeping and customer service. For example, Weiss Research requested and received from some of the auto-trading broker-dealers copies of trade confirmations with customers' names and account numbers redacted to verify the prices at which its subscribers' orders were filled. Further, Weiss Research requested and occasionally received from the broker-dealers the names of their auto-trading customers to verify that only paying subscribers were receiving its trading recommendations.

11. Almost all of Weiss Research's auto-trading subscribers opened accounts with broker-dealers from the list Weiss Research provided and used those broker-dealers primarily for Weiss Research-recommended trades. As of at least December 31, 2003, Weiss Research's auto-trading subscribers had more than \$30,000,000 in assets in their auto-trading brokerage accounts. Weiss Research stopped facilitating auto-trading for new subscribers on December 31, 2004, and for all subscribers on April 1, 2005.

Weiss Research's Selective Statements About Profitability

12. During the relevant time period, Weiss Research disseminated advertisements prepared by Martin Weiss, Edelson, and others that gave examples of the profits those subscribers who followed the recommendations in Weiss Research's premium services newsletters could earn. These solicitations were designed to attract new subscribers to Weiss Research's premium services and persuade existing subscribers to subscribe to additional premium services. These advertisements, however, selectively highlighted profitable trades, omitted specific references to unprofitable trades, and presented an unrealistic picture of Weiss Research's investment success.

13. Weiss Research, in promotional materials prepared by Martin Weiss, Edelson, and others, sometimes used selective, outdated, and/or hypothetical examples of specific returns that subscribers might have realized on individual trades had they followed Weiss Research's recommendations, without advising that the overall return was or might not be profitable. For example, Weiss Research, in promotional materials disseminated until July 2003, claimed that subscribers "who followed our recommendations scooped up 400% profits," and also "bagged profits like 400% ... 39% ... 217% ... 100% ... 374% ... 66% ... 171% ... 222%." In other advertisements, Edelson told potential subscribers, "I cannot guarantee profits. This is a speculative service for your speculative money. But as you can see from the penny gold shares I'm eyeing right now, it's not an understatement when I say you could make back the cost of the subscription fee 30...40...even 50 times over." Because this publication carried a maximum subscription rate of \$5,000 per year, this claim indicated that subscribers could profit by as much as \$250,000 by following Weiss Research's recommendations.

14. The overall performance of Weiss Research's premium services did not support these profit claims. In fact, during the relevant time period, many subscribers who followed each Weiss Research trading recommendation – as Weiss Research encouraged its subscribers to do – experienced overall returns that were substantially lower than Weiss Research's profit examples and most actually lost money. Although Weiss Research disclosed to subscribers that losses are possible, it did not include information on specific losing trades or disclose that, for the most part, its premium services newsletters had not been profitable for subscribers.

15. Weiss Research maintained internal performance records which noted every trade Weiss Research recommended and the hypothetical profit or loss an investor would have experienced if he or she had followed Weiss Research's recommendations. Weiss Research did not make these performance records available to subscribers or potential subscribers. These performance records demonstrate that, during the relevant time period, subscribers to most of Weiss Research's premium services, who followed Weiss Research's recommendations without deviation, would have lost money. Subscribers to the few profitable services would have realized overall gains that were well below the profits from individual trades represented in Weiss Research's advertisements.

16. For one of its premium services, Weiss Research also made claims in 2004 about its overall trading strategy that were inconsistent with actual results. In its "Operating Manual" provided to new subscribers, Weiss Research claimed that its "proprietary SIX-STEP option selection process has a proven track record of finding the best profit opportunities in up AND down markets." In reality, this particular premium service had generated an overall loss for subscribers since its inception.

17. Weiss Research's selective use of profitable trades and omission of information about losing trades in its advertisements created an impression that subscribers to its premium services would consistently realize large profits overall if they followed Weiss Research's recommendations.

Weiss Research's Claims About Edelson's Involvement

18. Weiss Research, in advertisements and other materials prepared or reviewed by Martin Weiss and Edelson, represented to existing and potential premium services subscribers that they would receive expert trading advice from Edelson and advertised his decades of experience and "uncanny" ability to pick profitable trades. In reality, Edelson was not actually involved in selecting the specific recommendations during a portion of the relevant time period. The recommended trades were selected without Edelson's knowledge by other Weiss Research employees with little or no specific experience in the particular markets at issue.

19. Weiss Research's claims about the profitability and performance history of its premium services publications, and Edelson's involvement in the trading recommendations of certain publications, were significant factors in subscribers' decisions to purchase Weiss Research's premium service publications.

C. Legal Discussion

Weiss Research Operated as an "Investment Adviser"

20. Section 202(a)(11) of the Advisers Act defines "investment adviser" as any person who, for compensation, engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities. However, under Section 202(a)(11)(D) of the Advisers Act, "the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation" is not considered an investment adviser. Under *Lowe v. SEC*, 472 U.S. 181, 209 (1985), the publications of any person relying on the publishers' exclusion may not be "personal communications masquerading in the clothing of newspapers, news magazines, or financial publications." The exclusion applies so long as the communications between the newsletter and its subscribers remain "entirely impersonal and do not develop into the kind of fiduciary, person-to-person relationships that ... are characteristic of investment advisers-client relationships." *Id.* at 210. Factors that may be relevant to whether a newsletter may rely on the publishers' exclusion include the existence of authority over the funds of subscribers; decision-making authority to handle subscribers' portfolios or accounts; or individualized, investment-related interactions with subscribers. *Id.* at 210 n.57.

21. From at least September 2001 to April 1, 2005, for a fee of up to \$5,000 per year, Weiss Research was engaged in the business of advising others as to the buying and selling of securities in response to market activity. Accordingly, Weiss Research met the definition of an investment adviser under Section 202(a)(11) of the Advisers Act.

22. Weiss Research's auto-trading program did not qualify for the publishers' exclusion set forth in Section 202(a)(11)(D) of the Advisers Act. Unlike a typical newsletter, Weiss Research engaged in personalized communications with its subscribers regarding investment advice and effectively had investment discretion to purchase and sell securities on behalf of its

auto-trading subscribers. These factors preclude Weiss Research from relying on the publishers' exclusion found in Section 202(a)(11)(D) of the Advisers Act. See Lowe, 472 U.S. at 210 n.57.

D. Violations

Weiss Research Failed to Register with the Commission as an Investment Adviser

23. Section 203(a) of the Advisers Act makes it unlawful for an investment adviser, absent certain exemptions and prohibitions for small investment advisers, "to make use of the mails or any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser" unless registered with the Commission. All investment advisers with \$30,000,000 or more in assets under management must be registered with the Commission pursuant to Section 203A of the Advisers Act and Rule 203A-1(a) thereunder. A violation of Section 203(a) does not require a showing of scienter. SEC v. Wall Street Transcript Corp., 422 F.2d 1371, 1376 (2d Cir.), cert. denied, 398 U.S. 958 (1970).

24. As discussed above, Weiss Research met the definition of an "investment adviser" and could not avail itself of the publishers' exclusion with respect to those premium service subscribers who utilized auto-trading. Moreover, Weiss Research effectively had investment discretion over the auto-traded accounts, which held at least \$30,000,000 as of December 31, 2003. As such, Weiss Research was required to be registered with the Commission as an investment adviser. By failing to register, Weiss Research willfully¹ violated Section 203(a) of the Advisers Act. Martin Weiss, as the owner and president of Weiss Research, willfully aided and abetted, and caused, that violation.

Violations of Sections 206(2), 206(4) of the Advisers Act and Rules 206(4)-1(a)(2) and (5) Thereunder

25. Section 206 of the Advisers Act requires investment advisers to exercise the utmost good faith in dealings with clients or prospective clients, to disclose all material facts, and to employ reasonable care to avoid misleading clients or prospective clients. SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963). Violations of Sections 206(2) and 206(4) of the Advisers Act do not require a showing of scienter. SEC v. Steadman, 967 F.2d 636 (D.C. Cir. 1992). Weiss Research, in advertisements and other materials drafted by Martin Weiss and Edelson, (a) made claims about the profitability and past performance of its premium service publications that were inconsistent with the premium services' overall performance; and (b) made false statements that mischaracterized Edelson's involvement in selecting the recommended investments. Accordingly, Weiss Research willfully violated, and Martin Weiss and Edelson willfully aided and abetted and caused Weiss Research's violations of, Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder.

26. Further, Weiss Research referred to past specific recommendations in its advertisements without providing a complete list of all recommendations it made within the previous one-year period. Weiss Research therefore willfully violated, and Martin Weiss and Edelson willfully aided and abetted and caused Weiss Research's violations of, Rule 206(4)-1(a)(2) under the Advisers Act, which makes it unlawful for an advertisement by an investment

¹ "Willfully" as used in this Order means intentionally committing the act which constitutes the violation. See Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965).

adviser to refer to any past specific recommendations without providing a complete list of all recommendations made within one year. Rule 206(4)-1 applies to “any investment adviser registered or required to be registered under section 203” of the Advisers Act. See Advisers Act Rule 206(4)-1(a). See also Rules Implementing Amendments to the Investment Advisers Act of 1940, Advisers Act Release No. 1633 at 80 (May 15, 1997).

Weiss Research’s Remedial Efforts

27. Weiss Research has taken the following voluntary remedial actions:

- A. Ceased facilitating auto-trading for all subscribers and undertakes not to resume facilitating auto-trading unless it registers as an investment adviser with the Commission, or, if appropriate, a state securities regulator; and
- B. Made available to current and potential subscribers the performance histories for each premium service; and
- C. Established an internal compliance department to review marketing materials and procedures; and
- D. Established internal procedures for monitoring the accuracy and performance of trading recommendations.

28. In determining whether to accept the Offers, the Commission has considered the remedial acts undertaken by Weiss Research, including those set forth in Paragraph 27, above, and the cooperation the Respondents afforded the Commission staff.

Undertakings

29. Weiss Research undertakes to continue and maintain the remedial efforts described in Paragraph 27, above.

30. In determining whether to accept the Offers, the Commission has considered the undertakings in Paragraph 29, above.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions specified in Weiss Research, Martin Weiss, and Edelson’s Offers.

Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 203(k) of the Advisers Act, Respondent Weiss Research cease and desist from committing or causing any violations and any future violations of Sections 203(a), 206(2), and 206(4) of the Advisers Act, and Rules 206(4)-1(a)(2) and (5) thereunder;
- B. Pursuant to Section 203(k) of the Advisers Act, Respondent Martin Weiss cease and desist from committing or causing any violations and any future violations of

Sections 203(a), 206(2) and 206(4) of the Advisers Act, and Rules 206(4)-1(a)(2) and (5) thereunder;

C. Pursuant to Section 203(k) of the Advisers Act, Respondent Edelson 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 Rules 206(4)-1(a)(2) and (5) thereunder;

D. Respondent Weiss Research shall comply with the undertakings specified in Paragraph 27 above.

E. Respondent Weiss Research shall, within twenty (20) days of the entry of this Order, pay disgorgement and prejudgment interest in the total amount of \$1,641,141.00 and a civil money penalty in the amount of \$350,000.00 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Weiss Research as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Glenn Gordon, Division of Enforcement, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, Florida 33131;

F. Respondent Martin Weiss shall, within twenty (20) days of the entry of this Order, pay disgorgement in the amount of \$1.00 and a civil money penalty in the amount of \$100,000.00 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Martin Weiss as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Glenn Gordon, Division of Enforcement, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, Florida 33131;

G. Respondent Edelson shall, within twenty (20) days of the entry of this Order, pay disgorgement in the amount of \$1.00 and a civil money penalty in the amount of \$75,000.00 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Edelson as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Glenn Gordon, Division of Enforcement, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, Florida 33131;

H. Such civil money penalties contained in Paragraphs E, F, and G, above, may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 ("Fair Fund

distribution”). Regardless of whether any such Fair Fund distribution is made, 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 they shall not, after offset or reduction in any Related Investor Action based on Respondents’ payment of disgorgement in this action, argue that they are entitled to, nor shall they further benefit by offset or reduction 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 United States Treasury or to a Fair Fund, as the Commission directs. 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.

By the Commission.

Nancy M. Morris
Secretary