

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61444 / January 29, 2010

INVESTMENT ADVISERS ACT OF 1940
Release No. 2979 / January 29, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13769

In the Matter of

ETHAN KASS,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
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 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Ethan Kass (“Kass” or “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 herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 and III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment

Advisers Act of 1940, 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. Kass, age 28, resides in New York, New York. During the time period relevant to the complaint described in Section III.B.3 below, Kass worked as an order processing clerk at Tobias Bros. Inc. (“Tobias Bros.”), a New York-based investment adviser registered with the Commission since 2004. The firm also was a registered broker-dealer until February 2, 2008. Tobias Bros. terminated Kass’s employment in June 2005.

2. On January 4, 2010, a final judgment was entered on consent against Kass, permanently enjoining him from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and from aiding and abetting violations of Sections 206(2) and 204 of the Advisers Act and Rule 204-2 thereunder, in the civil action entitled Securities and Exchange Commission v. Ethan Kass, Civil Action Number 09 CIV 8764 (WHP), in the United States District Court for the Southern District of New York. Kass was also ordered to pay a \$50,000 civil penalty.

3. The Commission’s complaint alleged that between February and May 2005 while employed by Tobias Bros., Kass executed and concealed at least 24 unauthorized trades in investment advisory funds which resulted in losses totaling at least \$8.4 million. The Commission’s complaint further alleges that Kass did not have any authority or discretion to independently make any trades on behalf of Tobias Bros. or any funds or accounts it advised. Rather, as alleged by the complaint, Kass was responsible for providing back office support, including order entry, internal and external trade reporting, and trade reconciliation, under the general supervision of portfolio managers who were associated with Tobias Bros. As alleged in the complaint, on at least 24 occasions, Kass traded without any authorization or direction from his supervisors. The complaint also alleges that Kass routinely concealed his unauthorized trading from his supervisors by intentionally omitting such trades from Tobias Bros.’s internal records, including its handwritten trade blotter, and by deleting, altering or manipulating information in Tobias Bros.’s portfolio management system so that his unauthorized trades would not appear on that system’s daily profit and loss statements.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act, that Respondent Kass be, and hereby is barred from association with any broker, dealer, or investment adviser.

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, 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.

By the Commission.

Elizabeth M. Murphy
Secretary