

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61896 / April 13, 2010

INVESTMENT ADVISERS ACT OF 1940
Release No. 3014 / April 13, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13859

In the Matter of

**HABERMAN MANAGEMENT
CORP.
HABERMAN VALUE FUND, L.P.
ROSS L. HABERMAN**

Respondents.

ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND 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 Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), against Ross L. Haberman (“Haberman”), Haberman Management Corp. (“HMC”) and Haberman Value Fund, L.P. (“HVF”) (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted 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, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, and 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' Offers, the Commission finds¹ that:

Summary

1. Haberman owns and controls HMC and is the general partner of HVF. From at least January 2004 to March 2009, Haberman misrepresented the true beneficial owner of certain accounts in connection with several conversions of bank ownership. In order to participate in financial institutions' conversions from being mutually owned to a stock form of ownership, Haberman maintained bank accounts and certificates of deposits at more than two hundred institutions around the country. He opened and maintained several dozen of these accounts in his own name but deposited HVF's assets in those accounts. When several of those financial institutions converted from mutual to stock ownership, Haberman falsely represented to those institutions that he would be the beneficial owner of the stock when in fact HVF was to be the beneficial owner, or he misrepresented his residency. These misrepresentations deprived other possible participants in the stock offerings of the opportunity to obtain the shares distributed to Haberman. Haberman also misappropriated HVF assets in connection with certain of these offerings and made related false entries on HVF's books and records.

Respondents

2. **Haberman Management Corp.**, a Delaware corporation with offices in New York, N.Y., is wholly owned by Haberman. It was registered with the Commission as an investment adviser from January 2006 until March 2010. From its inception in 1992, it provided investment advice to, and made investment decisions for, HVF. HMC received fees from HVF for providing investment advice to HVF.

3. **Haberman Value Fund, L.P.**, a Delaware limited partnership, was founded in March 1992 by Haberman, its only general partner. As of December 31, 2008, HVF had 63 limited partners and total assets of approximately \$30 million.

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

4. **Ross L. Haberman**, age 50, resides in New York. Haberman is the President and sole owner of HMC and the only general partner of HVF.

Background

5. HVF's investment strategy included participation in the public offerings of mutually-owned financial institutions such as savings and loan associations and savings banks. When these institutions convert from being mutually owned, typically by depositors, to a stock form of ownership, depositors are generally given priority in the allocation of the opportunities to purchase shares in the institution's initial public offering. These priority subscription rights allow depositors to purchase up to a set amount of shares in the initial offering, and potentially to realize a significant profit when shares become available to the public.

6. To effectuate this investment strategy, from at least January 2004 through at least March 2009, Haberman deposited HVF funds in hundreds of certificates of deposit and savings accounts at mutually-owned financial institutions throughout the country. On at least 70 occasions, he made those deposits into accounts he had opened in his own name rather than in HVF's name, most often when the financial institution refused to open an account in the name of the fund. Although these accounts were maintained in Haberman's name, their assets were included on HVF's balance sheet and in inventories of fund assets. As of June 30, 2008 and June 30, 2009, \$729,000 and \$714,000 of HVF funds, respectively, were deposited in accounts held in Haberman's name.

Misrepresentations in Connection with Bank Conversions

7. When the financial institutions converted from mutual to stock ownership, Haberman completed and signed stock subscription forms, either on his own behalf, in the name of HVF, or both. On a number of occasions, Haberman requested the maximum number of shares available per subscriber. In making some of these requests, Haberman certified to the financial institutions that he would be the beneficial owner of the stock issued by the financial institutions, when, in fact, HVF was to be the beneficial owner. Once he was allocated shares in the conversion, Haberman used the HVF funds held in his name to purchase bank shares in his name. He usually then transferred ownership of the shares (or proceeds from their sale) to HVF. HVF realized \$191,943 in profits from this scheme. By misrepresenting who the beneficial owner of the stock would be, HMC, HVF and Haberman deprived other potential participants in the financial institutions' conversions of opportunities to purchase stock in those conversions. Accordingly, HMC, HVF and Haberman 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.

8. On at least four occasions, Haberman, through his control of HMC, misappropriated HVF assets by using HVF funds to purchase shares of banks converting from mutual to stock ownership and then retaining some or all of the proceeds from the sale of those shares. Haberman realized profits of \$72,869 from these activities. In 2009, he reimbursed HVF for this amount plus interest, for a total of \$87,453. When he misappropriated HVF assets, Haberman and HMC willfully violated Section 10(b) of the Exchange Act and Rule 10b-5

thereunder. Haberman and HMC also willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

9. Haberman sometimes also maintained accounts using his own money at the same financial institutions where HVF accounts were held. Usually he opened and maintained these accounts in his or his wife's name. On at least eleven occasions, however, he enlisted the assistance of acquaintances or family members to open accounts at financial institutions where he did not meet residency requirements. In those situations he would provide the individual with money to open up a joint account or CD in both his and the individual's name using the individual's home address. When the financial institutions converted to stock ownership, he sent in the completed stock subscription agreement in his name using the address of the other individual on the account. Haberman realized \$91,317 in profits from this scheme. By engaging in these activities, Haberman deprived other potential participants in the financial institutions' conversions of opportunities to purchase stock in those conversions. Accordingly, he willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Misrepresentation of Performance Returns

10. Haberman and HMC misrepresented HVF's performance in documents disseminated to limited partners disclosing HVF's performance for the second quarter of 2008. Haberman and HMC reported HVF's "Average 12 Month Rolling Return" was 11.86% when, in fact, it was negative 0.17%. The 11.86% figure was HVF's average 16 year annual return, not its "Average 12 Month Rolling Return." Accordingly, HMC and Haberman willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which, in pertinent part, prohibit an investment adviser to a pooled vehicle from making any false or misleading material statements of facts to any investor or prospective investor in the pooled vehicle.

Violations of Custody and Books and Records Rules

11. From at least January 2006, Haberman and HMC represented in a private placement memorandum disseminated to limited partners and potential limited partners of HVF that HMC would maintain HVF's funds and securities using "qualified custodians" as required by Rule 206(4)-2 under the Advisers Act. As discussed above, contrary to the provisions of Rule 206(4)-2, HMC and Haberman maintained custody of HVF certificates of deposit that were deposited under Haberman's name but not as agent or trustee for HVF. They also failed to maintain custody of certain certificated securities with a qualified custodian. Therefore, HMC willfully violated and Haberman willfully aided, abetted and caused HMC's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder, which require that an investment adviser with custody of client funds or securities to maintain those funds and securities with a qualified custodian in accounts for clients in the clients' names or in the adviser's name as agent or trustee for the clients.

12. Haberman made several false entries on HVF's books to reflect the transactions in which he misappropriated fund assets. For example, in one instance, Haberman incorrectly labeled his repayment of money owed to HVF as a "refund" when it should have been recorded

as a loan. Haberman also listed on HVF's books the payment to HVF as "interest" when in fact it was a partial payment of proceeds from the sale of shares which belonged to HVF. In another instance Haberman listed a payment on HVF's books under the name of the wrong bank. He also made misrepresentations on stock subscription agreements as described above, failed to maintain memoranda of orders for the purchase and sale of securities, powers of attorney and other evidences of the granting of discretionary authority to him, and failed to maintain documents necessary to form the basis of or demonstrate the calculation of HVF's performance. Therefore, from at least January 2006, HMC willfully violated, and Haberman willfully aided, abetted and caused HMC's violations of, Section 204 of the Advisers Act, and Rules 204-2(a)(1), 204-2(a)(3), 204-2(a)(9), and 204-2(a)(16) promulgated thereunder, which require that investment advisers registered with the Commission maintain and preserve certain books and records. Rule 204-2(a)(1) requires that registered investment advisers "make and keep true, accurate and current . . . a journal or journals . . . and any other records of original entry, forming the basis of entries in any ledger." Rule 204-2(a)(3) requires that registered investment advisers "make and keep true, accurate and current . . . a memorandum of each order given by the investment adviser for the purchase or sale of any security" Rule 204-2(a)(9) requires that registered investment advisers "make and keep true, accurate and current . . . powers of attorney and other evidences of the granting of any discretionary authority by the client to the investment adviser" Rule 204-2(a)(16) requires that registered investment advisers "make and keep true, accurate and current . . . all accounts, books . . . and other records or documents that are necessary to form the basis for . . . the performance or rate of return of any or all managed accounts"

IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act, and Sections 203(e), 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent HMC 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 promulgated thereunder, and Sections 204, 206(1), 206(2), and 206(4) of the Advisers Act and Rules 204-2, 206(4)-2 and 206(4)-8 promulgated thereunder;

B. Respondent Haberman 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 promulgated thereunder, and Sections 204, 206(1), 206(2) and 206(4) of the Advisers Act, and Rules 204-2, 206(4)-2, and 206(4)-8 promulgated thereunder;

C. Respondent HMC is censured;

D. Respondent Haberman be, and hereby is, barred from association with any investment adviser with the right to reapply for association after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission. Any reapplication for association by Respondent Haberman 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 Respondent Haberman, 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;

E. Respondent HVF shall, within thirty days of the entry of this Order, pay disgorgement of \$191,943 and prejudgment interest of \$71,500 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover of a letter that identifies Haberman Value Fund, L.P. 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 Laura B. Josephs, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549-5010A;

F. Respondent Haberman shall, within thirty days of the entry of this Order, pay disgorgement of \$91,317 and prejudgment interest of \$27,950 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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, Stop 0-3, Alexandria, VA 22312, and (D) submitted under cover of a letter that identifies Ross L. Haberman 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 Laura B. Josephs, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549-5010A; and

G. Respondent Haberman shall, within thirty days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. 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, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Ross L. Haberman 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 Laura B. Josephs, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549-5010A.

By the Commission.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and 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"), on the Respondents and their legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Laura B. Josephs, Esq.
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