

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 63675 / January 7, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3133 / January 7, 2011

INVESTMENT COMPANY ACT OF 1940
Release No. 29549 / January 7, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14178

_____	:	ORDER INSTITUTING ADMINISTRATIVE
In the Matter of	:	AND CEASE-AND-DESIST PROCEEDINGS
	:	PURSUANT TO SECTION 15(b) OF THE
	:	SECURITIES EXCHANGE ACT OF 1934,
	:	SECTIONS 203(f) AND 203(k) OF THE
KIMBALL L. YOUNG,	:	INVESTMENT ADVISERS ACT OF 1940 AND
	:	SECTIONS 9(b) AND 9(f) OF THE
	:	INVESTMENT COMPANY ACT OF 1940,
	:	MAKING FINDINGS, AND IMPOSING
Respondent.	:	REMEDIAL SANCTIONS AND A CEASE-
	:	AND-DESIST ORDER AS TO KIMBALL L.
_____	:	YOUNG.

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 15(b) 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 Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Company Act”) against Kimball L. Young (“Young” 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, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order as to Kimball L. Young ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that :

Summary

1. These proceedings involve deceptive conduct and breaches of fiduciary duty by Young and Thomas S. Albright ("Albright"), while they served as co-portfolio managers of the Tax Free Fund for Utah ("TFFU" or "Fund"), a municipal bond fund operated and advised by Aquila Investment Management, LLC ("Aquila"), a registered investment adviser.

2. Between 2003 and April 2009, Young and Albright improperly charged bond issuers \$520,626 in "credit monitoring fees" on certain private placement and non-rated bond offerings in the TFFU portfolio. The fees, which ranged between 0.5 and 1% of the bond's par value, were a one-time fee purportedly to compensate Young and Albright for additional credit monitoring that they contend was required because the bonds were not rated. In fact, any credit monitoring work Young and Albright performed was part of their regular job responsibilities.

3. Young reviewed and signed documents that falsely represented to the issuers that the fee was required by and paid to the TFFU. In fact, the TFFU did not require or receive the credit monitoring fees. Instead, the fees were paid to Young's company, Kimball Young LLC d/b/a Municipal Credit Monitors ("MCM") and split equally between Young and Albright.

4. Neither Aquila nor the TFFU Board of Trustees ("TFFU Board" or "Board") authorized Young and Albright to charge credit monitoring fees, which posed a conflict of interest and were prohibited by Section 17(e)(1) of the Company Act. In fact, neither Aquila nor the TFFU Board was aware that such fees were being charged. Despite having regular contact

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in these or any other proceedings.

with Aquila's senior management and the TFFU Board, neither Young nor Albright disclosed they were charging the fees for approximately six years. Aquila management did not learn that Young and Albright were charging the fees until April 2009, at which point Aquila removed them as portfolio managers and reported their conduct to the Commission.

Respondent

5. **Kimball L. Young**, age 64, is a resident of Salt Lake City, Utah. He worked for Aquila from 1997 until his termination in June 2009. Young served as co-portfolio manager of the TFFU from August 2001 until his suspension in April 2009. Young served as Senior Vice President of TFFU from 1997 to 2009. During the time of the misconduct, Young was also a registered representative associated with Aquila Distributors, Inc., a registered broker-dealer that sold TFFU securities. He holds Series 7, 24, 53, and 63 licenses, although he is no longer associated with any broker-dealer.

Other Relevant Persons and Entities

6. **Aquila Investment Management, LLC**, is a Delaware corporation with its principal place of business in New York, New York. Established in 1984, Aquila is registered with the Commission as an investment adviser. It is a wholly-owned subsidiary of Aquila Management Corporation and serves as investment adviser to the Aquila Group of Funds.

7. **Aquila Distributors, Inc.** is a registered broker-dealer based in New York, New York. It is an affiliate of Aquila and the distributor for each of the Aquila-sponsored funds. It is responsible for advertising and promoting the sale of the funds to investors.

8. **The Tax Free Fund for Utah** is a non-diversified open-end SEC-registered investment company advised by Aquila. The TFFU was organized on December 12, 1990 as a Massachusetts business trust and commenced operations on July 24, 1992. The TFFU invests in tax-free municipal obligations issued by the State of Utah, its counties and various other local authorities and other states and entities that do not tax interest from obligations by the State of Utah.

9. **Kimball Young LLC d/b/a Municipal Credit Monitor** is a Utah company formed and operated solely by Young since at least 2000. During the relevant period, Young used this company to charge credit monitoring fees to the bond issuers in connection with the private placement offerings in which the TFFU participated.

10. **Thomas S. Albright**, age 58, is a resident of Louisville, Kentucky. He worked for Aquila from July 2000 until his termination in June 2009. Albright was the TFFU's co-portfolio manager from August 2001 until his suspension in April 2009. Albright also served as Senior Vice President of the TFFU from 2003 to 2009 and as portfolio manager of Aquila's Churchill Tax Free Fund of Kentucky ("Kentucky Fund"). Albright held Series 6, 7, 24, and 65 licenses. As an employee of Aquila, Albright was associated with Aquila Distributors, though he was not

a registered representative.

Background

11. In 1992, Aquila established the TFFU as a municipal bond mutual fund that invested in tax-exempt obligations of the State of Utah and those of other municipal entities that were not taxed by the State of Utah.

12. Young, who had been involved in public finance in Utah for many years, was instrumental in the creation of the TFFU and was the Fund's first investor. Young served as the primary marketing representative for the Fund and performed all of the outreach to broker-dealers and financial advisers. Young performed this role on an independent contractor basis until 1999, when Aquila Distributors hired him as a senior vice president. Albright was the portfolio manager of Aquila's Kentucky Fund and had experience buying and selling publicly offered and rated bonds.

13. From 1992 until August 2001, Aquila contracted with banks to perform the portfolio management function. In August 2001, the bank that was performing the portfolio management duties resigned as portfolio manager. Aquila started to manage the fund directly and hired Young and Albright to co-manage the TFFU portfolio in August 2001.

14. As co-portfolio managers, both Young and Albright reported to the TFFU Board and to Aquila's CEO who also served as a member of the TFFU Board. Young and Albright also served as officers of the TFFU. Neither Young nor Albright served as an officer of Aquila. However, they were employed and compensated directly by Aquila to manage the TFFU portfolio.

15. Young also served as senior vice president of marketing for Aquila Distributors until April 2009. For matters relating to marketing and distribution, Young reported to the president of Aquila Distributors. Albright had no role with Aquila Distributors. With respect to compliance matters, both Young and Albright reported directly to Aquila's Chief Compliance Officer.

16. As co-portfolio managers, Young and Albright were responsible for the day-to-day management of the TFFU portfolio consistent with the investment guidelines provided in the TFFU's prospectus. They were responsible for identifying investment opportunities in the municipal bond market for the TFFU portfolio and purchasing and selling of securities for the TFFU's portfolio. They were also responsible for monitoring the overall risk profile of the TFFU portfolio and informing the TFFU Board about the creditworthiness of the securities in the TFFU portfolio.

17. Young's plan for the TFFU included acquiring private placements, which the TFFU had not previously done. The TFFU Board perceived non-rated private placement offerings as risky securities and was initially reluctant to invest the Fund's assets in such securities. However, in December 2001, Young and Albright convinced the TFFU Board to

authorize them to acquire private placements provided that such private placements did not exceed 10% of the portfolio's assets and that no single private placement holding exceeded \$2.5 million. In early 2003, Young and Albright started investing the TFFU portfolio's assets in private placement offerings.

18. In December 2004, Young and Albright proposed that the TFFU Board relax the private placement limits from 10% to 20% of the portfolio's assets and increase the maximum size of any single private placement holding from \$2.5 million to \$5 million. In March 2005, the TFFU Board increased the maximum size to \$5 million which was modified to 5% of the portfolio's assets in September 2005. In December 2005, the TFFU Board also increased the portfolio holdings limit for private placements from 10% to 20%. Consequently, the TFFU's investment in non-rated private placement securities increased between 2003 and April 2009.

19. Young, who was based in Utah, focused on the acquisition of non-rated securities, including private placements. Albright, who was based in Kentucky, focused primarily on buying and selling publicly-traded, rated bonds in the secondary markets.

20. Young was dissatisfied with Aquila's compensation system, which, as a general matter, did not include performance-based compensation or bonuses. Young suggested a performance-based pay system to Aquila's CEO at the time he was hired as a full-time employee in 1999, and thereafter, he raised this issue several times. Aquila, however, did not adopt a performance-based system.

The Credit Monitoring Fees

21. In 2003, at Young's suggestion, Young and Albright began charging issuers of non-rated and private placement bonds that Young and Albright acquired for the TFFU "credit monitoring fees," purportedly to cover costs to monitor the credit risk posed by these unrated securities. The fees, which ranged between 0.5% and 1.0% of the face value of the bonds, were a one-time fee assessed at the closing and paid to Young's company, MCM. After MCM received the fees, Young sent a check for half of the fees to Albright.

22. On multiple occasions, Young, who was principally responsible for dealing with the bond issuers, reviewed and signed documents that misrepresented the true recipient of the credit monitoring fees in deal documents, including closing memoranda, certifications and the actual loan agreements. Instead of stating that the fees would be paid to MCM, or to Young and Albright, the deal documents indicated that the credit monitoring fees were required by and would be paid to the TFFU. For example, a document entitled "Certificate and Receipt of Bond Purchaser," which was signed by Young on behalf of the TFFU, included the following representation: "The Purchaser [defined to be the TFFU] will receive an upfront credit compliance monitoring fee in the amount of \$61,301.28. Such fee is for the annual credit compliance monitoring of the [bond issuer] performed by the Purchaser over the life of the Bonds." Young signed certificates with similar representations for other deals.

23. Between 2003 and April 2009, Young and Albright obtained a total of \$520,626 in credit monitoring fees, which they split equally. In 2008, the amount of credit monitoring fees received by Young and Albright jumped dramatically due to an increase in the number of non-rated bonds acquired by the TFFU. In 2007, Young and Albright received a combined total of \$35,615 in credit monitoring fees. In 2008, they received a combined total of \$256,071.

**Any Credit Monitoring Work Performed by Young and Albright
was Part of Their Regular Job Responsibilities**

24. Although Young performed some credit monitoring functions, including reviewing issuers' financial statements, conducting occasional site visits and monitoring issuers' credit profile, this work was part of his job responsibilities, most of which he performed during regular business hours.

25. Albright did very little credit monitoring for these bonds. After Young identified a bond to bid on and performed due diligence on the issuer's creditworthiness, Albright assisted in calculating the yield, maturity and call features of the private placement bonds, which he did not have to do with publicly-traded rated securities. In addition, Albright monitored the prices of all bonds in the portfolio on a daily basis. If the price of a bond changed more than a particular percentage point, Albright would attempt to ascertain whether the change was driven by the market or by the particular issuer. Albright performed that function for *all bonds* in the TFFU portfolio. Albright performed all of his purported credit monitoring work during normal business hours.

26. In addition, in 2001, at the Board's request, Aquila retained an independent consultant to perform ongoing credit analyses of all bonds in the TFFU portfolio, including non-rated bonds. The independent consultant, who was paid a monthly fee by Aquila, performed analyses of all private placement and other non-rated bonds in the TFFU's portfolio throughout the period that Young and Albright charged issuers credit monitoring fees.

**Young and Albright Failed to Disclose the Credit Monitoring Fees
to Aquila or the TFFU Board**

27. Neither Aquila nor the TFFU Board authorized Young and Albright to charge the credit monitoring fees.

28. In fact, Aquila and the TFFU Board were unaware that Young and Albright were charging the fees. Throughout the six-year period they charged and received credit monitoring fees, Young and Albright had regular contact with members of Aquila's senior management, including Aquila's CEO and Chief Compliance Officer, yet never disclosed they were receiving credit monitoring fees. Young and Albright regularly communicated with Aquila's senior management regarding portfolio management activities by email and telephone. Young and Albright also saw the CEO and CCO several times a year at TFFU board meetings. In addition,

Young and Albright met with the CEO each year to discuss their compensation. Yet from 2003 to April 2009, neither Young nor Albright ever mentioned that they were receiving credit monitoring fees to the CEO, CCO or anyone at Aquila. Young and Albright even failed to mention the fees during their annual compensation meetings with the CEO, including their meeting in 2008, a year in which the amount of credit monitoring fees they received jumped from approximately \$17,800 per person to \$128,035 per person.

29. In addition, during the six years they charged credit monitoring fees, Young and Albright failed to disclose the fees to the TFFU Board and TFFU shareholders. Between 2003 and April 2009, the TFFU Board held quarterly meetings which Young and Albright attended. During these meetings, Young and Albright made presentations to the TFFU Board about private placements and non-rated transactions in the TFFU portfolio. The Board was particularly concerned with private placements and the risks they posed and inquired about the credit risk at every meeting. Young and Albright, however, never mentioned that they were performing purported extra credit monitoring work for which they were being compensated by issuers.

30. Young and Albright's failure to disclose the fees to Aquila management or the Board is particularly striking given that they were aware that Aquila had retained and was paying an independent consultant to do credit monitoring work. Young and Albright worked closely with the independent consultant, reviewed her quarterly reports and incorporated the reports in the Board packages that they prepared. During the entire time that the independent consultant worked with Young and Albright, neither Young nor Albright ever mentioned to the independent consultant that they were performing credit monitoring work and were getting paid for it. And at every TFFU Board meeting, Young and Albright presented and discussed the independent consultant's work but never disclosed that they were purportedly also performing credit monitoring work for which they were being compensated.

Aquila's Policies and Procedures Prohibited Charging Credit Monitoring Fees

31. Aquila's compliance policies and procedures prohibited Young and Albright's conduct and obligated Young and Albright to disclose the credit monitoring fees prior to April 2009. Aquila's Code of Ethics explicitly prohibited employee conflicts of interests and required portfolio managers to observe their fiduciary duties. In particular, paragraph V(b) of the Code of Ethics prohibited employees from placing their interests above those of Aquila, taking inappropriate advantage of their positions or having actual or potential conflicts of interests or even the appearance of such conflict with advisory clients. Young and Albright signed acknowledgements that they had received, read and understood the Code of Ethics on an annual basis.

32. In addition, Aquila Distributor's Supervisory Procedures Manual expressly prohibited registered representatives, including Young, from acting as an officer, director or employee of another entity. The Manual further prohibited Young from accepting compensation from any other person as a result of any business activity without the prior written consent of

Aquila, which Young did not obtain. Young executed acknowledgements on an annual basis that he had received, read and understood the provisions of the Manual, yet never disclosed that he was the owner and president of MCM and that through MCM he was receiving credit monitoring fees.

33. Moreover, on an annual basis, Young completed a questionnaire for TFFU trustees and officers as part of Aquila's compliance controls. The questionnaire specifically asked whether Young was affiliated with any company other than the Aquila entities. Young consistently answered "no" to this question despite being the owner and an officer of MCM. The questionnaire also asked whether they were aware of any other issues that might bear adversely upon their ability to serve as officers of the Fund to which Young consistently answered "no."

Young and Albright Finally Disclosed the Fees in April 2009 and Were Terminated

34. Young and Albright did not disclose the credit monitoring fees to Aquila until April 2009. During the first quarter of 2009, Aquila Distributors implemented additional broker-dealer compliance procedures, which included a requirement that all employees of Aquila Distributors identify all sources of outside income and certify that the information is correct. Instead of completing the attestation, Young flew to New York at his own expense and asked to meet with the CEO and the chairman of Aquila. At the meeting, Young disclosed that he had several sources of outside income that he had not previously reported, including the credit monitoring fees. Subsequently, Albright confirmed to Aquila's senior management that he shared the credit monitoring fees with Young. Aquila suspended Young and Albright in April 2009 and terminated them in June 2009 after conducting an internal investigation.

Violations

35. As a result of the conduct described above, Young willfully violated Section 17(e)(1) of the Company Act, which prohibits any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, from receiving compensation from any source other than the investment company, in connection with the sale of such company's property. Young violated this provision when he received credit monitoring fees in connection with the purchase of non-rated bonds in the TFFU portfolio.

36. As a result of the conduct described above, Young willfully violated Section 206(1) of the Advisers Act, which prohibits an investment adviser from employing any device, scheme, or artifice to defraud any client or prospective client, and Section 206(2) of the Advisers Act, which prohibits an 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. Young violated these provisions when he improperly obtained credit monitoring fees from the issuers under false or misleading circumstances and failed to disclose the fees to the TFFU Board and shareholders.

Undertakings

37. Respondent Young has undertaken to provide to the Commission, within 30 days after the end of the five-year bar period described below, an affidavit that he has complied fully with the sanctions described in Section IV below.

IV.

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

Accordingly, pursuant to Section 15(b) of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Company Act, it is hereby ORDERED that:

A. Respondent Young cease and desist from committing or causing any violations and any future violations of Section 17(e)(1) of the Company Act and Sections 206(1) and 206(2) of the Advisers Act;

B. Respondent Young 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, and is 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, effective on the second Monday following the entry of this Order, with the right to reapply for association after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission;

C. 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.

D. Respondent Young shall pay disgorgement of \$260,313, prejudgment interest of \$34,476 and a civil money penalty in the amount of \$75,000. Respondent shall satisfy this obligation as follows: Respondent shall pay the \$75,000 penalty to the United States Treasury and the \$294,789 in disgorgement and prejudgment interest to the TFFU or such other appropriate party or parties as the Commission staff may identify in consultation with Respondent, confirmed in writing, prior to payment. Respondent shall pay the penalty of \$75,000 within 10 days of the entry of this Order. Such payment shall be: (A) made by wire

transfer, 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, VA 22312-0003; and (D) submitted under cover letter that identifies Kimball L. Young as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check or wire transfer confirmation shall be sent to James McGovern, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, Three World Financial Center, Suite 400, New York, NY 10281. Respondent shall pay the \$294,789 disgorgement and prejudgment interest by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order to the TFFU or such other appropriate party or parties as the Commission staff may identify in consultation with Respondent, confirmed in writing, prior to payment as follows: \$109,895 within 10 days of this entry of this Order, and 4 payments of \$46,223 each every 90 days thereafter with one final fourth payment of \$46,225 to be made on the first year anniversary of the entry of this Order. Respondent shall provide a copy of the money order or check or wire transfer confirmation of each such payment at the time it is made to James McGovern, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, Three World Financial Center, Suite 400, New York, NY 10281. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717. Furthermore, if the full amount of any payment described herein is not made by the date the payment is required by the Order, the entire amount of disgorgement, prejudgment interest and civil money penalty plus any interest accrued pursuant to 31 U.S.C. § 3717, minus payments made, if any, is due and payable immediately without further application.

E. Respondent shall comply with the undertakings enumerated in Section III, paragraph 37 above.

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 15(b) of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order as to Kimball L. Young (“Order”), on the Respondent and his legal agents.

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

Honorable Brenda P. Murray
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