

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 65409 / September 27, 2011**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3290 / September 27, 2011**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3323 / September 27, 2011**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14565**

**In the Matter of**

**LPB Capital d/b/a Family Office  
Group, LLC and Gary J. Pappas**

**Respondents.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND  
CEASE-AND-DESIST  
PROCEEDINGS PURSUANT  
TO SECTIONS 203(e), 203(f)  
AND 203(k) OF THE  
INVESTMENT ADVISERS ACT  
OF 1940 AND RULE 102(e) OF  
THE COMMISSION'S RULES  
OF PRACTICE AND NOTICE  
OF HEARING**

**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 against LPB Capital d/b/a Family Office Group, LLC (“Family Office”) pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and against Gary J. Pappas (“Pappas”) pursuant to Sections 203(f) and 203(k) of the Advisers Act and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice.<sup>1</sup>

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<sup>1</sup> Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

## II.

After an investigation, the Division of Enforcement alleges that:

### A. RESPONDENTS

1. LPB Capital d/b/a Family Office Group, LLC is a Delaware limited liability company and registered investment adviser headquartered in Pinehurst, North Carolina. As of September 30, 2009, Family Office was providing discretionary advisory services to 104 accounts belonging mostly to individuals. Beginning in 2008, Family Office was required to be regulated as an investment adviser in North Carolina. Family Office was not an adviser to a registered investment company.

2. Gary J. Pappas (“Pappas”), age 49, is Family Office’s founder, majority owner, and Chief Executive Officer. At all relevant times, Pappas served as Family Office’s Chief Compliance Officer. Pappas never held any securities licenses. He was licensed as a Certified Public Accountant in the state of New Jersey from April 6, 1990 to December 31, 2008, but that license is currently expired.

### B. FAMILY OFFICE AND PAPPAS MISREPRESENTED FAMILY OFFICE’S ASSETS UNDER MANAGEMENT

3. Between June 2008 and May 2010, Family Office misrepresented its assets under management in various Forms ADV filed with the Commission and signed by Pappas.

4. Family Office registered with the Commission as an investment adviser on June 11, 2008. At that time, Family Office invoked Rule 203A-2(d), a registration prohibition exemption, thereby effectively representing that the firm expected to have \$25 million in assets under management within 120 days.

5. On November 3, November 4, November 19, and December 26, 2008, Family Office filed amended Forms ADV in which the company claimed that it was eligible to remain registered with the Commission because it had \$30 million in assets under management in 80 advisory accounts.

6. On March 27, August 6, and August 24, 2009, Family Office filed amended Forms ADV in which the company claimed that it had \$72 million in assets under management in 689 advisory accounts.

7. On March 30 and May 11, 2010, Family Office filed amended Forms ADV in which the company claimed to have \$128.6 million of assets under management in 1,564 advisory accounts.

8. In October 2009, Commission staff conducted an examination of Family Office. On October 16, 2009, at the commencement of the examination, Pappas signed and sent a letter to the Commission staff representing that Family Office had \$98 million in assets under management as of September 30, 2009. In support of the letter, on behalf of Family Office, Pappas provided the examination staff with a spreadsheet that falsely identified as assets under management various client accounts and underlying assets that were not, in fact, managed by the firm. The spreadsheet was a document that Family Office was required to maintain pursuant to Rule 204-2(a)(8).

9. The disclosures described in Paragraphs 3 to 8 herein were false. In an October 1, 2010 letter to the Commission staff, Family Office acknowledged that it “fails to satisfy the \$25 million threshold set forth in Section 203A of the Advisers Act.” In that same letter, Family Office provided certain revised calculations of the firm’s assets under management as follows:

<b>Date</b>	<b>Number of Advisory Accounts</b>	<b>Assets Under Management</b>
September 30, 2009	103	\$6,124,645
December 31, 2009	169	\$11,513,859
March 31, 2010	189	\$13,230,722

10. Pappas knowingly inflated Family Office’s assets under management by, among other things, including estimated values of prospective clients’ assets in various calculations of Family Office’s assets under management, which were included in Family Office’s Form ADV filings described above in Paragraphs 4 through 7 and the October 16, 2009 letter and supporting spreadsheet described above in Paragraph 8.

11. Between June 2008 and May 2010, Pappas was responsible for all compliance functions at Family Office, including the calculation and reporting of assets under management to be included in Family Office’s Forms ADV.

**C. FAMILY OFFICE FAILED TO DISCLOSE INFORMATION ABOUT ITS POOR FINANCIAL CONDITION**

12. As of August 31, 2009, around the time of the cause examination, Family Office had only approximately \$3,000 in cash and cash equivalents. For its fiscal year 2009 (ended December 31, 2009), with total revenues of just \$147,384, Family Office realized a net loss of \$436,277. During 2010, several employees left the firm because it could not afford to pay their salaries and consultant fees. However, Family Office did not disclose its precarious financial condition to its clients.

#### D. VIOLATIONS

13. As a result of the conduct described above, Family Office willfully violated, and Pappas willfully aided and abetted, and/or caused violations of Section 203A of the Advisers Act, which generally prohibits an adviser that is regulated or required to be regulated in the state in which it has its principal office and place of business from registering with the Commission, unless it has assets under management in excess of \$25 million or advises a registered investment company.

14. As a result of the conduct described above, Family Office willfully violated, and Pappas willfully aided and abetted, and/or caused violations of Section 204 of the Advisers Act and Rule 204-2(a)(8) thereunder. Section 204 of the Advisers Act requires every registered investment adviser to make and keep “such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.” Such records are subject to periodic examinations by the Commission. Rule 204-2 promulgated thereunder requires that an investment adviser “make and keep, true, accurate and current” books and records relating to its advisory business. Rule 204-2(a)(8) specifically requires an investment adviser to keep a “list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.”

15. As a result of the conduct described above, Family Office willfully violated, and Pappas willfully aided and abetted and/or caused violations of Section 206(4) and Rule 206(4)-4(a)(1).<sup>2</sup> Section 206(4) of the Advisers Act prohibits an investment adviser from engaging “in any act, practice, or course of business which is fraudulent, deceptive or manipulative.” Section 206(4) also authorizes the Commission to define, by rule, what acts, practices, or courses of business constitute fraudulent conduct. During the relevant period, Rule 206(4)-4(a)(1) provided that a registered investment adviser with discretionary authority over client funds or securities violates Section 206(4) if it fails to disclose to clients or prospective clients all material facts regarding the financial condition of the adviser that are reasonably likely to impair the adviser’s ability to meet its contractual commitments to clients.

16. As a result of the conduct described above, Family Office and Pappas willfully violated Section 207 of the Advisers Act, which makes it unlawful “for any person willfully to make any untrue statements of material fact in any registration application or report filed with the Commission under Section 203 or 204, or willfully to omit to state in any such application or report any material fact which is required to be stated therein.”

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<sup>2</sup> Rule 206(4)-4(a)(1) under the Advisers Act was repealed in Advisers Act Release No. 3060 (Sept. 13, 2010) (effective Oct. 12, 2010). Comparable requirements are now in Form ADV, Part 2A, Items 9 and 18.

17. As a result of the conduct described above, Pappas willfully violated and willfully aided and abetted Family Office's violations of the Federal securities laws and the rules and regulations thereunder pursuant to Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

### **III.**

In view of the allegations made by the Division of Enforcement, the Commission deems it in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Pappas pursuant to Section 203(f) of the Advisers Act including, but not limited to, civil penalties pursuant to Section 203(i) of the Advisers Act;

C. What, if any, remedial action is appropriate in the public interest against Family Office pursuant to Section 203(e) of the Advisers Act including, but not limited to, civil penalties pursuant to Section 203(i) of the Advisers Act;

D. Whether, pursuant to Section 203(k) of the Advisers Act, Family Office should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 203A, 204, 206(4) and 207 of the Advisers Act and Rules 204-2(a)(8) and 206(4)-4(a)(1) thereunder; and

E. Whether, pursuant to Section 203(k) of the Advisers Act, Pappas should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 203A, 204, 206(4), and 207 of the Advisers Act and Rules 204-2(a)(8) and 206(4)-4(a)(1) thereunder.

F. Whether, pursuant to Rule 102(e)(1)(iii), Pappas should be denied the privilege of appearing or practicing before the Commission as an accountant.

### **IV.**

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy  
Secretary