

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 67140 / June 6, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3416 / June 6, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30098 / June 6, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14908

In the Matter of

DAVID MARK BUNZEL

Respondent.

**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 SECTION 9(b) OF THE INVESTMENT
COMPANY 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 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 Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against David Mark Bunzel (“Bunzel” 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 Section 9(b) of the Investment Company 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 Respondent’s Offer, the Commission finds that:

SUMMARY

These proceedings arise out of violations of the Advisers Act by an unregistered investment adviser, Irvine Capital Management, LLC (“Irvine Management”), and its principal, Respondent Bunzel. Through Irvine Management, Bunzel manages two hedge funds, Irvine Capital Partners, LP (“Irvine I”) and Irvine Capital Partners III, LP (“Irvine III”) (collectively referred to as the “Irvine Funds”). Bunzel knew or should have known that he provided the limited partners in the Irvine Funds with false and misleading information regarding asset valuation, management fees, and fund audits. First, Bunzel knew or should have known that the valuation of the Irvine Funds’ primary asset, a private placement of common stock of a privately-held company (the “Issuer”), as of December 31, 2008, was unreasonable. Second, Bunzel knew or should have known that he charged the limited partners a 2% management fee, which was in excess of the 1.5% disclosed management fee. Third, Bunzel knew or should have known that he failed to cause timely annual fund audits to be performed.

RESPONDENT

1. David Mark Bunzel (“Bunzel”) resides in Suffolk, New York. Bunzel is the sole owner, sole employee and managing member of Irvine Management, an unregistered investment adviser that is the general partner for the Irvine Funds. Bunzel holds series 7 and 63 securities licenses. During the violative conduct, Bunzel was a registered representative associated with a registered broker-dealer.

BACKGROUND

2. Bunzel formed Irvine I in 1994 and Irvine III in 2000. Irvine Management is the general partner for the Irvine Funds, and Bunzel is Irvine Management’s only member. Bunzel, through Irvine Management, has significant ownership interests in the Irvine Funds (20% in Irvine I and 70% in Irvine III). As compensation for operating the Irvine Funds, Irvine Management receives 20% of Irvine Funds’ trading profits each year above a modified high water mark and a 1.5% annual management fee. The Irvine Funds’ largest holding is the Issuer, a privately-held registered investment adviser, which had approximately \$7 billion in assets under management (“AUM”) as of December 31, 2009.

Overvaluation of the Issuer's Shares

3. Irvine Capital was required under the Private Placement Memorandum (“PPM”) for the Irvine Funds to value the investment in the Issuer’s shares as the “General Partner may reasonably determine in good faith.” Bunzel, as Irvine Capital’s sole member and owner, made all decisions about determining the value of the Issuer’s shares. In 1997, Irvine I initially acquired 104 shares in the Issuer at approximately \$1,000 per share. Over the next decade, Bunzel raised the value of the Issuer’s shares based upon the price that the Issuer purchased and sold its shares in private transactions. For example, in December 2006, Bunzel increased the value of the Issuer’s shares to approximately \$50,000 per share after the Issuer sold 10% of its shares in a private transaction at that price. Again, in December 2007, Bunzel raised the value of the Issuer’s shares to \$60,000 per share based upon the Issuer’s purchase of its shares at that price from a shareholder. During this same period, the Irvine Funds acquired or received additional shares in the Issuer. As of January 1, 2008, Irvine I and Irvine III held 112.1 and 31.5 shares in the Issuer, respectively.

4. In August 2008, Bunzel raised the valuation of the Issuer’s shares from \$60,000 per share to \$112,800 per share, an increase of 88%. As a result, the assigned value of the Issuer’s shares held by Irvine I and Irvine III increased dramatically from \$6.7 million to \$12.6 million and from \$1.9 million to \$3.6 million, respectively. Consequently, as of December 31, 2008, the Irvine Funds held \$21.2 million in total AUM, with the Issuer’s shares representing \$16.2 million of their AUM, or 76%, as depicted in the following chart.

Date	AUM for the Irvine Funds (combined)	Value of the Issuer’s Shares	2008 Increase in the Value of the Issuer’s Shares	Value of the Issuer’s Shares as a % of AUM
June 30, 2008	\$28 million	\$8.6 million	NA	30%
December 31, 2008	\$21.2 million	\$16.2 million	88%	76%

5. The increased valuation of the Issuer’s shares was reflected within the 2008 Schedule K-1 tax form provided to the limited partners.

6. In August 2008, Bunzel based his increase in the valuation of the Issuer’s shares on the following factors: (1) in approximately July 2008, the Issuer’s management began discussions about repurchasing 10% of its shares outstanding from an unrelated shareholder at approximately \$120,000 per share, (2) the Issuer’s AUM had increased substantially during 2008, (3) the Issuer’s revenues were increasing substantially, and (4) Bunzel attempted to value the Issuer by comparing it to established large publicly-traded “money managers” in arriving at his new valuation.

7. However, there was no reasonable basis to support Bunzel’s valuation as of December 31, 2008. Specifically, after Bunzel increased his valuation of the Issuer’s shares by 88% in August 2008, the economy weakened considerably and the financial markets became

extremely volatile – especially financial sector stocks, such as the Issuer.¹ In addition, the Issuer's discussions to repurchase 10% of its shares had ceased by October 2008. Moreover, in just three months between September and December 2008, the Issuer's AUM had decreased by 33%, which also caused a substantial decrease in revenues. In effect, the four reasons that supported Bunzel's valuation in August 2008 no longer existed as of December 31, 2008.

8. Events that occurred after 2008 further demonstrate the unreasonableness of the valuation of the Issuer's shares as of December 31, 2008. Specifically, during 2010, Bunzel hired two valuation firms to value the Issuer's shares as of December 31, 2008. One of the firms hired by Bunzel was the valuation group within Irvine Funds' auditor. The valuation group never completed the engagement. However, the associate responsible for the valuation did complete a preliminary valuation, which valued the Issuer's shares at approximately \$50,000 per share as of December 31, 2008. The second valuation firm concluded that the Issuer's shares were worth \$60,000 per share as of December 31, 2008. In 2010, Bunzel finally restated the valuation of the Issuer's shares to \$60,000 per share as of December 31, 2008.

Undisclosed Increase in Annual Management Fee

9. In the Limited Partnership Agreements and PPMs, the Irvine Funds disclosed that Irvine Management would charge an annual 1.5% management fee based upon the AUM. Bunzel distributed these documents to investors, including to investors that purchased the Irvine Funds in 2007 and 2008. Bunzel considered the information contained in these documents to be important. However, in January 2007, Bunzel unilaterally increased the management fee by .5% (from 1.5% to 2%) for the Irvine Funds without notifying all the limited partners or receiving their consent. The limited partners were not given any written disclosure that he had raised the management fee. As a result of the increase, between September 10, 2007 and March 31, 2009, the limited partners accrued an additional \$87,000 in total management fees in excess of the disclosed and agreed upon 1.5% management fee.²

10. Shortly after the Enforcement Staff's investigation began, Bunzel undertook remedial actions by reversing the accruals related to the unapproved management fees increase and crediting back to the limited partners' accounts the \$87,000 and disclosed the accrual and its reversal to the limited partners in July 2009.

¹ For example, on September 15, 2008, Lehman Brothers, a large financial services company, filed for bankruptcy, the largest bankruptcy filing in U.S. history.

² The \$87,000 in management fees only reflects those management fees charged to the capital accounts of the limited partners and not Irvine Management, which has a substantial ownership interest in the Irvine Funds.

Failure to Conduct Timely Audits

11. Pursuant to the Limited Partnership Agreements and PPMs, the Irvine Funds were required to undergo an annual audit. However, between 2007 and 2009, the audits were not conducted and/or completed in a timely manner as indicated in the table below.

Fund	Year	Fiscal Year End	Audit Completed	Time Between Fiscal Year End and the Audit Completion Date
Irvine I	2007	December 31, 2007	October 12, 2010	33 months
Irvine III	2007	December 31, 2007	September 12, 2010	32 months
Irvine I	2008	December 31, 2008	Not Started	NA
Irvine III	2008	December 31, 2008	Not Started	NA
Irvine I	2009	December 31, 2009	Not Started	NA
Irvine III	2009	December 31, 2009	Not Started	NA

If the audits had been conducted, the overstatement of the Issuer's shares at \$112,800 per share may never have occurred because the auditor would have reviewed portfolio valuations for reasonableness, and may have required an independent reasonableness opinion as it had done for prior increases in the valuation of the Issuer's shares. It is important that audits occur in a timely manner because it provides assurance that an independent party has evaluated financial controls and verified the holdings and performance of a fund.

12. As a result of the conduct described above in paragraphs 1 through 11, Bunzel willfully violated and committed and caused violations³ of Section 206(4) of the Advisers Act and Rule 206(4)-8, which prohibit fraudulent, deceptive or manipulative conduct and make it a fraudulent, deceptive, or manipulative act, practice, or course of business for any investment adviser to a pooled investment vehicle to make an untrue statement of material fact or to omit a material fact to investors or prospective investors in a pooled investment vehicle.⁴

³ A willful violation of the securities laws means merely ““that the person charged with the duty knows what he is doing.”” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor ““also be aware that he is violating one of the Rules or Acts.”” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

⁴ A violation of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder may rest on a finding of simple negligence. *Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles*, IA Rel. No. 2628, at 12-13, n38 (September 10, 2007) (citing *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992)).

IV.

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

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

A. Respondent Bunzel shall cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder;

B. Respondent Bunzel be, and hereby is, suspended from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent for a period of twelve months;

C. Respondent Bunzel be, and hereby 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 for a period of twelve months;

D. Respondent Bunzel be, and hereby is, suspended from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock; or inducing or attempting to induce the purchase or sale of any penny stock for a period of twelve months; and

E. Respondent Bunzel shall, within 10 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 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, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Bunzel 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 John McCoy, Associate Director, Division of Enforcement, Securities and Exchange Commission, 5670 Wilshire Blvd., Ste. 1100, Los Angeles, CA 90036.

By the Commission.

Elizabeth M. Murphy
Secretary