

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 67460 / July 18, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3435 / July 18, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30142 / July 18, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14955

In the Matter of

**Noonan Capital
Management, LLC and
Timothy George Noonan,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 21C OF
THE SECURITIES EXCHANGE ACT
OF 1934, SECTIONS 203(e), 203(f) AND
203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, AND
SECTION 9(b) OF THE INVESTMENT
COMPANY ACT OF 1940 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 pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e), 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 Noonan Capital Management, LLC (“Noonan Capital”) and Timothy George Noonan (“Noonan”) (collectively “Respondents”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Noonan Capital, LLC is a Commission-registered and Georgia-based investment adviser. Noonan Capital has been operating since in or about February 2009 and has been registered with the Commission since March 2009. While Noonan Capital represented in its initial Form ADV (filed on February 27, 2009) and in its most recently amended Form ADV (filed on July 13, 2009) that it was a Georgia limited liability company, it did not and has not taken the necessary legal steps required to become such an entity. In its July 13, 2009 amended Form ADV, Noonan Capital also represented that it provided advisory services to twenty-three accounts with \$39.4 million in assets under management (“AUM”). Noonan Capital’s client accounts were custodied at Charles Schwab and Co. (“Schwab”) from the time Noonan Capital first began operations to in or about early 2011.

2. Timothy George Noonan, age 53, has been, for all relevant times, the sole owner, chief compliance officer, manager and employee of Noonan Capital. Although now expired, Noonan formerly held the securities licenses Series 7 and Series 66. From January 2002 until February 2009, Noonan was a registered representative with Merrill Lynch, Pierce, Fenner & Smith, Inc. (“Merrill Lynch”). Prior to working at Merrill Lynch, Noonan was in sales and business development, primarily in the technology staffing sector. Noonan has no prior regulatory disciplinary history.

B. NOONAN CAPITAL MISAPPROPRIATED CLIENT ASSETS BY CHARGING EXCESSIVE “ADVISORY FEES”

1. In Noonan Capital’s Form ADV, Part 2, Fee Schedule filed with the Commission on March 9, 2009 and, then again, on March 12, 2009 (“Fee Schedule”), Noonan Capital represented that its advisory fees from its clients’ accounts were to be payable quarterly and in advance based on the value of the accounts’ portfolio on the last business day of the prior quarter. Those advisory fees were to be calculated as a percentage of the AUM in the clients’ accounts as follows:

First \$250,000:	1.5% per year
Next \$250,000:	1.25% per year
Next \$500,000:	1% per year

2. Although Noonan Capital and Noonan did not provide Part 2 of the Forms ADV to clients, Noonan Capital and Noonan represented to clients that they would be charged advisory fees at the rates set forth in those filings. Additionally, Noonan Capital and Noonan represented to and agreed with one of Noonan Capital’s largest clients – who had accounts containing approximately \$1 million in AUM – that Noonan Capital would not charge **any** advisory fees until that client’s accounts grew by approximately 50%, an event that never occurred.

3. Based on the Fee Schedule and/or Noonan’s oral representations to clients, Noonan Capital should have charged the twenty-two clients a total of \$92,212

between April 2009 and January 2011. Instead, Noonan Capital and Noonan charged these clients advisory fees totaling \$183,908, resulting in total overcharges of approximately \$91,696 in advisory fees.

4. In at least some client accounts, Noonan Capital and Noonan's improper fee requests resulted in the sale of money market funds to satisfy their requests.

5. As a result of these misappropriations, on an annualized basis, some clients paid "fees" of up to 7%, which was far in excess of the 1.0 to 1.5% they should have been charged.

C. NOONAN CAPITAL AND NOONAN MISREPRESENTED NOONAN CAPITAL'S ASSETS UNDER MANAGEMENT AND FAILED TO WITHDRAW ITS REGISTRATION FROM THE COMMISSION

1. Noonan Capital and Noonan repeatedly misrepresented Noonan Capital's AUM in the Forms ADV filed with the Commission. In its initial Form ADV filed with the Commission on February 27, 2009, Noonan Capital 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. On March 12, 2009, Noonan Capital filed an amended Form ADV again representing that the firm expected to have \$25 million in assets under management. And, on July 13, 2009, Noonan Capital filed an amended Form ADV in which the firm claimed that it was eligible to remain registered with the Commission because it had \$39.4 million in assets under management, comprised of \$9.4 million in twenty-two discretionary accounts and \$30 million in one non-discretionary account.

2. In fact, Noonan Capital never had more than approximately \$9 million in AUM. Noonan Capital's and Noonan's representations concerning its AUM in its July 2009 Form ADV were false at the time it was submitted.

3. At no time did Noonan Capital file any amendment to its Form ADV reflecting a corrected AUM of under \$25 million or seek to withdraw from registration. Noonan Capital further failed to file its required annual amendments to its Form ADV for the fiscal years ending December 31, 2009, 2010, and 2011.

D. NOONAN CAPITAL FAILED TO CREATE OR MAINTAIN PROPER BOOKS AND RECORDS AND FAILED TO PROVIDE A BROCHURE OR PART 2 OF ITS FORM ADV TO ITS CLIENTS

1. Noonan Capital did not create or maintain required balance sheets, income statements, and supporting documents as required under certain rules of the Advisers Act.

2. Neither Noonan Capital nor Noonan ever provided to any client Part 2 of Form ADV or any brochure containing the information required by Part 2.

E. VIOLATIONS

1. As a result of the conduct described above, Noonan Capital and Noonan willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder, which prohibits fraudulent conduct in connection with the purchase or sale of securities.

2. As a result of the conduct described above, Noonan Capital and Noonan willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

3. As a result of the conduct described above, Noonan Capital willfully violated, and Noonan willfully aided and abetted and caused Noonan Capital's violation of Section 203A, which, during the relevant time, generally prohibited an adviser regulated or required to be regulated in the state in which it had its principal office and place of business from registering with the Commission, unless it had assets under management in excess of \$25 million or advised a registered investment company.

4. As a result of the conduct described above, Noonan Capital and Noonan willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

5. As a result of the conduct described above, Noonan Capital willfully violated, and Noonan willfully aided and abetted and caused Noonan Capital's violation of Section 204 of the Advisers Act and Rules 204-1(a), 204-2(a)(6), 204-3(a), and 204-3(b)(1) and (2) 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 204-1(a) promulgated thereunder requires registered investment advisers to amend their Form ADV "at least annually, within 90 days of the end of [its] fiscal year . . . [or] more frequently, if required by the instructions to Form ADV." Rule 204-2(a)(6) promulgated thereunder requires registered investment advisers to make and keep true, accurate, and current certain books and records relating to its investment advisory business, including, trial balances, financial statements, and internal audit working papers relating to the business of the investment adviser. Rules 204-3(a), and 204-3(b)(1) and (2) promulgated thereunder requires registered investment advisers to deliver a brochure to each client or prospective client that contains all information required by Part 2 of Form ADV.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate 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 Noonan Capital pursuant to Section 203(e) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

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

D. What, if any, remedial action is appropriate in the public interest against Noonan Capital and Noonan pursuant to Section 9(b) of the Investment Company Act including, but not limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act; and

E. Whether, pursuant to Section 21C of the Exchange Act and Section 203(k) of the Advisers Act, Noonan Capital and Noonan should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 203A, 204, 206(1), 206(2), and 207 of the Advisers Act and Rules 204-1, 204-2, 204-3(a), 204-3(b)(1) and (2) thereunder, whether Noonan Capital and Noonan should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, Section 203(i) of the Advisers Act, and Section 9(d) of the Investment Company Act; and whether Noonan Capital and Noonan should be ordered to pay disgorgement pursuant to Section 21C(e) of the Exchange Act, Section 203 of the Advisers Act, and Section 9 of the Investment Company Act.

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