UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 67773 / August 31, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3455 / August 31, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30192 / August 31, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15004

In the Matter of **JASON A. D'AMATO,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 21C 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, 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 Sections 15(b) and 21C 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 Jason A. D'Amato ("Respondent" or "D'Amato").

II.

After an investigation, the Division of Enforcement alleges that:

A. <u>RESPONDENT</u>

1. D'Amato is 38 years old and lives in Katy, Texas. From May 2003 through February 2009, D'Amato served in various roles for Stanford Group Company ("SGC") and Stanford Capital Management, L.L.C. ("SCM"), including: (i) President of SCM (Sep. 2008 – Feb. 2009); (ii) Senior Investment Officer of SCM (Dec. 2007 – Sep. 2008); (iii) Director of the Investment Advisory Group at SCM (Sep. 2006 – Dec. 2007) and at SGC (Nov. 2005 – Sep. 2006); and (iv) Assistant Analyst in SGC's Investment Advisory Group (May 2003 – Nov. 2005). From November 2005 through at least September 2008, D'Amato managed a proprietary mutual fund wrap program called Stanford Allocation Strategies ("SAS") for SCM and SGC. During this time, D'Amato made all investment decisions for each of the program's strategies (income, balanced income, balanced, balanced growth, and growth). Currently, D'Amato works as: (i) the Chief Investment Officer of a Houston, Texas-based investment adviser registered with the State of Texas; (ii) a registered representative of a Houston, Texas-based broker-dealer registered with the Commission; and (iii) an affiliated person of a Houston, Texas-based investment adviser registered with the Commission.

B. <u>OTHER RELEVANT ENTITIES</u>

2. Stanford Capital Management, L.L.C., a Delaware limited liability company, was an investment adviser registered with the Commission from September 2006 through September 2009. On February 17, 2009, U.S. District Judge Reed O'Connor appointed a receiver to take control of and manage SCM. As of its last pre-receivership filing with the Commission, SCM had nearly $1.7 billion in assets under management. SCM executed a sub-advisory agreement with SGC, pursuant to which it provided investment advice for the investment products offered and sold by SGC, including SAS.

3. Stanford Group Company, a Texas corporation headquartered in Houston, Texas, has been dually-registered with the Commission as a broker-dealer and investment adviser since October 1995. As of February 1, 2012, SGC was still registered with the Commission, as the Receiver continues to wind down its business. SGC's principal business consisted primarily of sales of Stanford International Bank-issued securities (self-styled as certificates of deposit) and the SAS mutual fund wrap program managed by SCM. SAS clients contracted directly with SGC.

C. <u>HISTORY OF SAS PROGRAM</u>

4. In 2000, SGC began offering a mutual fund allocation program known as Mutual Fund Partners ("MFP") through its Investment Advisory Group ("IAG"). MFP offered several different strategies depending on an investor's risk threshold and investment objectives, which were determined based on an investor's responses to a

questionnaire. Throughout the history of the program, there were as many as 10 and as few as five different strategies/allocations, including income, balanced income, balanced, balanced growth, and growth.

5. In May 2003, SGC hired D'Amato as an assistant analyst in IAG to, among other things, track and calculate the performance of each MFP strategy and create personalized proposals ("Pitchbooks") for SGC financial advisers ("FAs") to use in one-on-one presentations to prospective clients. The substance and length of the Pitchbooks evolved over time, but nearly every version contained several charts showing the performance of each strategy dating back to 2000. The charts were variously labeled "Hypothetical Performance," "Hypothetical Historical Performance," or "Model Performance." Regardless of the label, the actual data in the Pitchbooks remained consistent.

6. In or around September 2004, D'Amato calculated the performance returns for each MFP strategy by backtesting existing allocations against historical data for the previous five years (i.e., if a client held the September 2004 allocation back in 2000, this is how it would have performed). IAG presented these model returns in Pitchbook charts and compared them to the S&P 500 returns for the same time period. As shown below for the period of 2000 to 2005, the backtested models consistently outperformed the S&P 500 by an overwhelming percentage:

Calendar Year Return

	2005	**2004**	**2003**	**2002**	**2001**	**2000**
SAS Growth	12.09%	16.15%	32.84%	-3.33%	4.32%	18.04%
S&P 500	4.91%	10.88%	28.68%	-22.10%	-11.88%	-9.11%

7. In November 2005, D'Amato became the Director of IAG and MFP's portfolio manager. In March 2006, IAG changed the name of the program from MFP to Stanford Allocation Strategies. In September 2006, IAG separated from SGC and formed Stanford Capital Management. D'Amato continued to manage the SAS program and make investment decisions for each of the program's portfolios.

8. In or around October 2006, several SGC FAs expressed "serious concerns" to SCM's senior management about the performance returns presented in SAS Pitchbooks. The FAs complained that *none* of their clients had achieved the returns that SCM touted. As a result, SCM hired a performance reporting consultant to identify the disconnect between the returns presented in the Pitchbooks and the returns achieved in actual SAS accounts. For at least 2005 and 2006, the consultant concluded that: (i) actual returns earned by SAS clients were, in most cases, hundreds of basis points lower than the returns advertised in the Pitchbooks, and (ii) D'Amato and his team of analysts did not keep records to show contemporaneous changes in each of SAS's strategies prior to 2005, so the consultant could not verify the pre-2005 numbers.

9. Despite the consultant's findings, some SCM senior managers and SGC FAs wanted to continue using previously published performance data for 2000

through 2004 so they could show a seven-year track record for the SAS program. While performance data for 2000 through 2004 could not be verified, SCM management chose to continue using those figures in the Pitchbooks. At a meeting in March 2007, SGC's Executive Director and several SGC FAs learned from SCM senior management that SAS Pitchbooks would include unverified performance data for 2000 through 2004 directly alongside audited, composite performance data for 2005 and later years. By the end of May 2007, SGC began distributing Pitchbooks, prepared by SCM, to prospective SAS clients that contained these divergent sets of performance data and that included the following end-of-Pitchbook disclosure (the "SAS Model Performance Disclosures"):

> The SAS Composite for the Income, Balanced Income, Balanced, Balanced Growth, Growth, and Equity/Alternative strategies have been audited and verified by [consultant's entity] from first quarter 2005. Previous performance figures have not been audited and SCM does not represent that this information is accurate, current, or complete and it should not be relied upon as such.

10. Notwithstanding the disclosure, the revised Pitchbooks were deficient in several significant respects.

i. SGC could not locate any records to support the advertised performance data for 2000 through 2004. SCM did not disclose this fact in the Pitchbooks.

ii. The label used to describe the data was changed from "Hypothetical" to "Historical" performance. This label was inaccurate and misleading because the term "historical" performance suggested actual performance by SAS clients and gave the impression that the performance data represented actual performance. In fact, the 2000 to 2004 performance data was based upon backtesting, while the 2005 to 2008 data represented audited, composite data that accurately reflected returns earned by actual SAS clients.

iii. The unaudited/unverified performance data from 2000 to 2004 was blended with actual performance data from 2005 to 2008 to create five-year, seven-year, and since inception annualized returns. This misleading performance data was reported alongside actual year-to-date, 1-year, 3-year, 5-year, 7-year, and since inception performance information – without any explanation that the data included in the 5-year, 7-year, and since inception periods actually represented a blend of hypothetical performance data with actual data. These 5-year, 7-year, and since inception annualized returns were inflated because the data for 2000 to 2004 materially skewed the overall performance. For example, in a 2008 Pitchbook, SCM presented SAS results in the following manner:

Annualized Returns
(not annualized if less than one year)

	YTD	1 year	3 years	5 years	7 years	Since inception
SAS Growth	-7.44%	0.80%	9.36%	15.31%	11.03%	12.30%
S&P 500	-9.44%	-5.08%	5.85%	11.32%	3.70%	2.45%

11. D'Amato knew that:

i. the 2000 to 2004 performance data for the SAS program was calculated differently than the 2005 to 2008 data;

ii. labeling the blended data as "historical performance" was misleading;

iii. SAS performance history was material to an FA's clients; and

iv. the advertised 2000 to 2004 returns were not realistic because of how they were tracked.

12. D'Amato frequently participated in presentations to clients and prospective clients (as well as to FAs that were being recruited to join SGC). After May 2007, D'Amato created and used Pitchbooks (and Recruit Packets for the FA recruits) that contained "Historical Performance" figures for the SAS program that merged and blended audited, composite returns for 2005 and subsequent years with hypothetical, backtested returns for 2000 through 2004. The Pitchbooks also contained the incomplete and misleading SAS Model Performance Disclosures.

13. D'Amato, as a representative of registered investment advisers (SGC and SCM) who recommended advisory products – like SAS – to clients for a fee, owed a duty to exercise the utmost good faith in dealing with clients, a duty to disclose all material facts, a duty to employ reasonable care to avoid misleading clients, and a duty to disclose all conflicts of interest.

14. D'Amato did not disclose to clients, prospective clients, and SGC FAs that the performance data presented in the Pitchbooks was: (i) a combination of hypothetical, backtested data and audited, composite numbers; and (ii) not accurately labeled as "historical performance." Further, D'Amato omitted to disclose that SCM could not locate records to support the advertised SAS performance numbers for 2000 through 2004.

D. D’AMATO MISREPRESENTED HIS CREDENTIALS

15. At least as early as February 2005, D’Amato began misrepresenting himself to co-workers, clients, prospective clients, SGC FAs, and prospective FAs as a Chartered Financial Analyst (“CFA”).[1]

16. D’Amato was not, and has never been, a CFA charterholder. Nonetheless, D’Amato used the CFA designation in his e-mail signature block on thousands of e-mails and on his business cards. To perpetuate this lie, D’Amato fabricated an e-mail that he purportedly received from the CFA Institute that congratulated him on passing the Level III CFA exam and achieving charterholder status. In fact, D’Amato failed the CFA Level I exam the first and only time he took it.

17. D’Amato passed along his fabricated e-mail to SGC’s Human Resources department, who in turn passed it along to SGC’s compliance department. SGC and SCM – the entities that employed D’Amato before and after September 2006 respectively – failed to verify D’Amato’s credentials by, for example, contacting the CFA Institute or checking the public membership directory on the CFA Institute website. Instead, based solely on D’Amato’s misrepresentations and his fabricated e-mail, SGC and SCM actively promoted and marketed D’Amato as a CFA to prospective and existing clients and FAs, as follows:

i. listing D’Amato as a CFA charterholder in his bio on their websites;

ii. furnishing copies of D’Amato’s bio to SGC FAs to provide to prospective and existing clients to introduce them to D’Amato and to tout his qualifications;

iii. routinely including a copy of D’Amato’s bio in formal responses to Requests for Proposal (“RFPs”) from larger investors like institutions, endowments, and foundations;

iv. representing D’Amato as a CFA charterholder on Schedule H of various iterations of SCM’s Form ADV Part IIs from December 28, 2007 to August 28, 2008; and

v. presenting D’Amato as a CFA charterholder in the various presentations and pitches to prospective clients and FAs in which he was involved.

18. In a span of five years, D’Amato ascended from the role of assistant analyst to President of SCM. In announcing D’Amato’s promotion to SCM President, SGC’s President credited D’Amato with: (i) increasing assets under management (“AUM”)

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[1] The CFA charter is conferred upon a candidate by the CFA Institute after the candidate passes three exams: Level I, Level II, and Level III. A CFA candidate cannot take the Level III exam without first passing the Levels I and II exams.

in SAS from less than $10 million in 2004 to $1.2 *billion* by the end of 2008, and (ii) generating $25 million in SAS management fees in 2007 and 2008 alone.

19. D'Amato's compensation structure was tied to: (i) AUM in the advisory programs that he managed, including SAS, and (ii) the amount of management fees that SGC and SCM derived therefrom. As the AUM in SAS increased exponentially from 2004 to 2008, the percentage of D'Amato's overall compensation attributable to bonuses rose accordingly. D'Amato derived more than 50 percent of his total compensation from bonuses in 2007 and 2008, and his total compensation nearly quadrupled from 2005 to 2008.

D'Amato Compensation

	2004	**2005**	**2006**	**2007**	**2008**
Gross Pay	$88,789	$113,930	$219,055	$344,913	$425,000
Salary (% of Gross Pay)	$63,750 (72%)	$78,333 (69%)	$120,000 (55%)	$141,250 (41%)	$187,500 (44%)
Bonus (% of Gross Pay)	$25,039 (28%)	$35,596 (31%)	$99,056 (45%)	$203,664 (59%)	$237,500 (56%)

E. <u>VIOLATIONS</u>

20. As a result of the conduct described above, D'Amato willfully violated and willfully aided and abetted and caused SGC's violation of 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.

21. As a result of the conduct described above, D'Amato willfully aided and abetted and caused SGC's violations of Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

22. As a result of the conduct described above, D'Amato willfully aided and abetted and caused SCM's violations of Section 207 of the Advisers Act, which requires that filings by advisers be accurate when filed with the Commission and prohibits any untrue statement of a material fact in any registration application or report.

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 are true and, in connection therewith, to afford D'Amato an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against D'Amato pursuant to Section 15(b) and 21C of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

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

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

E. Whether, pursuant to 21C of the Exchange Act and Section 203(k) of the Advisers Act of the Investment Company Act, D'Amato should be ordered to cease and desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 207 of the Advisers Act, and whether D'Amato should be ordered to pay disgorgement pursuant to Section 21C(e) of the Exchange 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 Respondent 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 Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him 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 Respondent 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