

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3441 / August 3, 2012**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14973**

**In the Matter of**

**Consultiva Internacional, Inc.,**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS  
PURSUANT TO SECTIONS 203(e) AND  
203(k) OF THE INVESTMENT ADVISERS  
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 Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Consultiva Internacional, Inc. (“Consultiva” 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 it 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 Sections 203(e) and 203(k) of the Investment Advisers 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<sup>1</sup> that:

#### Summary

From June 2005 through December 2010, Consultiva, a registered investment adviser, failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules, as required by Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. In September 2005, the Commission's exam staff alerted Consultiva to numerous deficiencies regarding its compliance program including the design of the firm's compliance manual, the competency of its Chief Compliance Officer ("CCO"), and inaccuracies and inconsistencies with its Form ADV. In December 2010, when the Commission exam staff returned to Consultiva to conduct another examination, it found that Consultiva had not taken all of the necessary remedial steps to satisfy its compliance obligations. Similarly, from at least June 2005 through December 2010, Consultiva failed to properly enforce its written code of ethics, as required under Section 204A of the Advisers Act and Rule 204A-1 thereunder because it did not collect and retain the required periodic securities reports from Consultiva's access persons.

#### Respondent

1. **Consultiva**, headquartered in Guaynabo, Puerto Rico, was founded in 1999 and registered with the Commission as an investment adviser in February 2000. In its most recent Form ADV filed on June 22, 2011, Consultiva states that it has 86 clients, and nearly \$695 million in assets under management. The firm has sixteen employees, all of whom it deems to be access persons under Rule 204A-1 of the Advisers Act.

#### Background

2. Effective October 5, 2004, Rule 206(4)-7, promulgated under Section 206(4) of the Advisers Act, requires that a registered investment adviser: (1) adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and its rules; (2) review the adequacy of the written policies and procedures and the effectiveness of their implementation on at least an annual basis; and (3) designate a CCO.

3. Effective January 7, 2005, Rule 204A-1, promulgated under Section 204A of the Advisers Act, requires that a registered investment adviser establish, maintain and enforce a written code of ethics that includes, at a minimum: (1) a standard of business conduct reflecting the adviser's and its supervised persons' fiduciary obligations; (2) the requirement that all staff comply with the federal securities laws; (3) the requirement that access persons submit for review a securities transaction report on a quarterly basis and a securities holdings report upon hiring and then at least annually thereafter, and submit for pre-approval any purchase of

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

securities in an initial public offering or limited offering; (4) the requirement that supervised persons report any code violations to the CCO; and (5) the requirement that the code and any amendments are provided to supervised persons and the supervised persons provide a written acknowledgement of their receipt.

4. The Commission's exam staff conducted an examination of Consultiva in June 2005 and issued a deficiency letter in September 2005 noting several issues. These issues included Consultiva's failure to maintain a compliance manual adequately tailored to its business. The exam staff noted to Consultiva that its compliance manual appeared tailored to broker-dealer compliance rather than Consultiva's investment advisory business. The exam staff also questioned the CCO's ability to adequately oversee Consultiva's compliance operations due to his lack of familiarity with the Advisers Act and failure to obtain the proper training.

5. The exam staff also noted in its deficiency letter to Consultiva several inaccuracies and inconsistencies in the firm's Form ADV as compared to its investment advisory business.

6. In December 2010, the Commission's exam staff began another examination of Consultiva. That exam revealed that, while Consultiva had undertaken certain corrective steps in response to the 2005 exam findings, it did not rectify the above compliance deficiencies.

7. The staff's December 2010 examination also revealed additional problems with Consultiva's compliance program. First, from 2008 through 2010, Consultiva did not adequately conduct, or did not sufficiently document, annual reviews of its compliance program.

8. Second, from at least June 2005 through December 2010, Consultiva did not follow all of the policies and procedures established in its code of ethics. Consultiva did not document whether it had obtained from each of its access persons annual reports of their securities holdings. Consultiva also did not timely collect and properly review, for at least one quarter, quarterly reports of personal securities transactions by its access persons. Moreover, on at least one occasion, Consultiva's CCO reviewed and signed off on his own quarterly report of personal securities transactions.

9. In January 2011, in response to the Commission exam staff's deficiency letter, Consultiva began taking steps to rectify the unresolved issues from the 2005 and 2010 exams.

### **Violations**

10. As a result of the conduct described above, Consultiva willfully<sup>2</sup> violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires, among other

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<sup>2</sup> 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.

things, that a registered investment adviser: (1) implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules; and (2) review at least annually its written policies and procedures and the effectiveness of their implementation.

11. As a result of the conduct described above, Consultiva willfully violated Section 204A of the Advisers Act and Rule 204A-1 thereunder, which requires that a registered investment adviser maintain and enforce a written code of ethics that at a minimum includes, among other things, provisions requiring that: (1) all staff comply with the federal securities laws; and (2) access persons submit for review a securities transaction report on a quarterly basis and a securities holdings report upon hiring and then at least annually thereafter.

### **Consultiva's Remedial Efforts**

12. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Consultiva and cooperation afforded the Commission staff. Specifically, during the Commission staff's investigation, Consultiva hired a compliance consultant to evaluate Consultiva's compliance practices and procedures and Consultiva is implementing the compliance consultant's recommendations.

### **Undertakings**

Respondent Consultiva has undertaken the following:

13. **Independent Consultant.** With respect to the retention of an independent consultant, Respondent has agreed to the following undertakings:

a. Consultiva shall retain, within (30) days of the entry of this Order, the services of an independent compliance consultant (the "Independent Consultant") that is not unacceptable to the Commission staff. The Independent Consultant's compensation and expenses shall be borne exclusively by Consultiva.

b. Consultiva shall provide to the Commission staff, within thirty (30) days of the entry of this Order, a copy of the engagement letter detailing the Independent Consultant's responsibilities, which shall include comprehensive compliance reviews as described below in this Order.

c. Consultiva shall require that the Independent Consultant conduct by the end of the fourth quarter of 2012 and the end of the fourth quarter of 2013 comprehensive reviews of Consultiva's supervisory, compliance, and other policies and procedures reasonably designed to detect and prevent breaches of the federal securities laws by Consultiva and its employees (the "Reviews"), including the adequacy of: (1) Consultiva's policies and procedures required by Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder; and (2)

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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)).

Consultiva's written code of ethics and compliance with the requirements of Section 204A of the Advisers Act and Rule 204A-1 thereunder.

d. Consultiva shall require that, within forty-five (45) days from the end of the applicable quarterly period, the Independent Consultant shall submit a written and detailed report of its findings to Consultiva and to the Commission staff (the "Report"). Consultiva shall require that each Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Independent Consultant's recommendations for changes in or improvements to Consultiva's policies and procedures and/or disclosures to clients, and a procedure for implementing the recommended changes in or improvements to Consultiva's policies and procedures and/or disclosures.

e. Consultiva shall adopt all recommendations contained in each Report within sixty (60) days of the applicable Report; provided, however, that within forty-five (45) days after the date of the applicable Report, Consultiva shall in writing advise the Independent Consultant and the Commission staff of any recommendations that Consultiva considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Consultiva considers unduly burdensome, impractical or inappropriate, Consultiva need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

f. As to any recommendation with respect to Consultiva's policies and procedures on which Consultiva and the Independent Consultant do not agree, Consultiva and the Independent Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the applicable Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by Consultiva and the Independent Consultant, Consultiva shall require that the Independent Consultant inform Consultiva and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Consultiva considers to be unduly burdensome, impractical, or inappropriate. Consultiva shall abide by the determinations of the Independent Consultant and, within sixty (60) days after final agreement between Consultiva and the Independent Consultant or final determination by the Independent Consultant, whichever occurs first, Consultiva shall adopt and implement all of the recommendations that the Independent Consultant deems appropriate.

g. Within ninety (90) days of Consultiva's adoption of all of the recommendations in a Report that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, Consultiva shall certify in writing to the Independent Consultant and the Commission staff that Consultiva has adopted and implemented all of the Independent Consultant's recommendations in the applicable Report. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff shall be sent to Chad Alan Earnst, Assistant Regional Director, Asset Management Unit, Miami Regional Office, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, FL, 33131, or such other address as the Commission staff may provide.

h. Consultiva shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of its files, books, records, and personnel as are reasonably requested by the Independent Consultant for review.

i. To ensure the independence of the Independent Consultant, Consultiva: (1) shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant, without the prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

j. Consultiva shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Consultiva, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which the Independent Consultant is affiliated or of which the Independent Consultant is a member, and any person engaged to assist the Independent Consultant in the performance of the Independent Consultant's duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Consultiva, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years after the engagement.

14. Recordkeeping. Consultiva shall preserve for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of Consultiva's compliance with the undertakings set forth in this Order.

15. Notice to Advisory Clients. Within ten (10) days of the entry of this Order, Consultiva shall post prominently on its principal Web site a summary of this Order in a form and location acceptable to the Commission staff, with a hyperlink to the entire Order. Consultiva shall maintain the posting and hyperlink on Consultiva's Web site for a period of twelve (12) months from the entry of this Order. Within thirty (30) days of the entry of this Order, Consultiva shall provide a copy of the Order to each of Consultiva's existing advisory clients as of the entry of this Order via mail, e-mail, or such other method as may be acceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

16. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

17. Certifications of Compliance by Respondent. Consultiva shall certify, in writing, compliance with its undertakings set forth above. The certification shall identify the

undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Consultiva agrees to provide such evidence. The certification and supporting material shall be submitted to Chad Alan Earnst, Assistant Regional Director, Asset Management Unit, Miami Regional Office, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, FL, 33131, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

#### IV.

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

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Consultiva cease and desist from committing or causing any violations and any future violations of Sections 204A and 206(4) of the Advisers Act and Rules 204A-1 and 206(4)-7 promulgated thereunder.

B. Respondent Consultiva is censured.

C. Respondent Consultiva shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$35,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg, Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Consultiva as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Chad Alan Earnst, Assistant Regional

Director, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, FL 33131.

D. Respondent Consultiva shall comply with the undertakings enumerated in Section III, paragraphs 13 to 17 above.

By the Commission.

Elizabeth M. Murphy  
Secretary