

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70388 / September 13, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3669 / September 13, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30687 / September 13, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15471

In the Matter of

**SARKAUSKAS AND
ASSOCIATES, INC. and
JAMES M. SARKAUSKAS**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 15(b) 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, 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(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 Sarkauskas and Associates, Inc. (the “Adviser”) and James M. Sarkauskas (“Sarkauskas”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, the Adviser and Sarkauskas have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Exchange Act, Sections 203(e), 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, 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 Respondents’ Offers, the Commission finds¹ that:

Summary

1. The Adviser and its principal, Sarkauskas, violated Sections 206(1) and (2) of the Advisers Act when they purchased unit investment trust (“UIT”) units bearing transactional sales charges in their clients’ accounts without disclosing that identical UIT units sold at net asset value (“NAV”) with no transactional sales charges (“no-load”) were available for purchase and that the Adviser’s purchases of the units bearing transactional sales charges substantially increased the Respondents’ compensation, thereby creating a conflict of interest. Between August 2009 and August 2012 (“the relevant period”), the Adviser, through Sarkauskas, collected \$331,433.98 in such sales charges in addition to the Adviser’s asset management fees.

Respondents

2. The Adviser is an investment adviser incorporated in Wisconsin and located in Rhineland, Wisconsin. The Adviser was registered with the Commission as an investment adviser from March 19, 1995 through July 31, 2009, when it withdrew its registration because its assets under management fell below \$25 million, the statutory minimum for registration with the Commission at that time. It is currently registered with the State of Wisconsin.

¹ The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

3. As of February 2012, the Adviser managed approximately \$18 million for approximately 140 clients. During the relevant period, the Adviser charged its advisory clients an annual asset management fee of between .75% and 1.75% of assets under management.

4. Sarkauskas, age 68, is a resident of Rhineland, Wisconsin. He founded the Adviser in 1993. During the relevant period, Sarkauskas was the Adviser's president and chief compliance officer and exercised control over management and policies of the Adviser. He has been a registered representative associated with various registered broker-dealers since the 1970s.

Background

5. During the relevant period, Sarkauskas was a registered representative associated with a broker-dealer registered with the Commission ("broker-dealer"), and received transaction-based compensation from his brokerage activities. All of the Adviser's clients had accounts at this broker-dealer, where their assets were held. Sarkauskas was a registered representative of record on all of these advisory accounts.

6. The asset management fees charged to the clients were deducted from their brokerage accounts, and all advisory client trades were made through the broker-dealer. Under its agreement with Sarkauskas, the broker-dealer received 9% of the asset management fees and transaction-based compensation charged to the advisory clients' accounts, and it transmitted the remaining 91% to Sarkauskas. Sarkauskas then assigned these funds to the Adviser.

7. During the relevant period, the Adviser's primary investment strategy was to purchase UITs sponsored by a broker-dealer registered with the Commission (the "UIT sponsor"). Sarkauskas established the Adviser's practices regarding the units of UITs to be purchased for the Adviser's clients. He also purchased UITs for advisory clients.

8. A UIT is a pooled investment vehicle in which a portfolio of securities is selected by the sponsor (or its product partner) and deposited into the trust. The securities are invested according to a specific investment objective or strategy in a fixed, unmanaged portfolio which is held for a predetermined period of time. Most of the UITs that the Adviser purchased had termination dates within 12 to 15 months of when they were purchased.

9. The sales charges for the relevant UITs included the following components: 1) an initial sales charge, which is applied to the purchase amount and is paid at the time of purchase; and 2) a deferred sales charge, which is a fixed dollar amount deducted in periodic installments, typically following the end of the initial offering period. The combination of the initial and deferred sales charges was defined in the relevant UITs' prospectuses as the "transactional sales charge."

10. The UIT sponsor generally makes available units of the same UIT that are identical, except that some are sold with a transactional sales charge and others are sold at NAV with no transactional sales charge. The no-load units are designed for fee-based accounts, where the adviser or account manager is primarily compensated by a fee based on a fixed rate or a percentage

of assets in the account. The maximum transactional sales charges for the UITs purchased by Sarkauskas were generally 2.95%.

11. The Adviser and Sarkauskas could have purchased the same UITs on a no-load basis for their clients. Instead, they chose to purchase units that carried transactional sales charges, thereby substantially increasing their compensation at the expense of their clients.

12. During the relevant period, the Adviser, through Sarkauskas, collected \$331,433.98 in transactional sales charges from the sale of UITs to advisory clients, in addition to the Adviser's asset management fees. UIT transactional sales charges were a significant portion of the Adviser's revenue, comprising approximately 20% of total revenue. Moreover, in several instances, the Adviser's practice of collecting transactional sales charges along with asset management fees significantly increased the clients' overall expenses.

13. During the relevant period, the Adviser failed to disclose the facts setting forth the conflict of interest arising from its purchases of the UITs. The Adviser purchased UIT units bearing transactional sales charges in its clients' accounts without disclosing that identical no-load UIT units were available for purchase and that the Adviser received substantially more compensation when it purchased the units with loads.

14. In September 2008, examiners from the Commission's Chicago Regional Office's Branch of Investment Management Examinations conducted an examination of the Adviser. On August 7, 2009, the exam staff sent the Adviser a deficiency letter which advised that the Adviser may have violated the antifraud provisions of the Advisers Act by purchasing the UIT units that bore transactional sales charges and by failing to disclose the conflict of interest that arose when the Adviser purchased UIT units which bore transactional sales charges on behalf of its clients.

15. After receiving the deficiency letter, Sarkauskas failed to change the Adviser's practices or disclosures relating to its purchases of UITs bearing transactional sales charges, and continued to purchase the UITs bearing transactional sales charges.

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

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

Undertaking

18. The Adviser has undertaken to cease operations and wind down its business within 90 days of the entry of this Order.

19. The Adviser has undertaken to certify, in writing, compliance with the undertaking set forth above. The certification shall identify the undertaking, 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 Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Kathryn A. Pyszka, Assistant Regional Director, 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 Respondents' Offers.

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

A. The Adviser cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act.

B. Sarkauskas cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act.

C. Sarkauskas be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

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; and

barred 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.

D. Any reapplication for association by Sarkauskas will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Sarkauskas, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order;

and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

E. The Adviser and Sarkauskas, jointly and severally, shall pay disgorgement of \$331,433.98, and prejudgment interest of \$18,403.22, for a total of \$349,837.20, plus post Order interest, to the Securities and Exchange Commission. Payment shall be made in the following installments: \$150,000 of the total \$349,837.20 in disgorgement and prejudgment interest within 60 days of the date of entry of the Order, and the remainder, plus any post Order interest accrued thereon, within one year of the date of entry of the Order. Payments shall be deemed made on the date they are received by the Commission and shall be applied first to post Order interest, which accrues pursuant to SEC Rule of Practice 600 on any unpaid amounts due after 30 days of issuance of the Order. Prior to making the final payment set forth herein, Sarkauskas shall contact the staff of the Commission for the additional amount due for the final payment. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalty, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;²
- (2) Respondents 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) Respondents 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 Sarkauskas and Associates, Inc. and James M. Sarkauskas as Respondents 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 Timothy L. Warren, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL 60604.

F. Sarkauskas shall, within one year of the date of entry of this Order, pay a civil money penalty in the amount of \$100,000, plus any post Order interest accrued thereon, to the Securities and Exchange Commission. Payments shall be deemed made on the date they are received by the Commission and shall be applied first to post Order interest, which accrues

² The minimum threshold for transmission of payment electronically is \$1,000,000 as of December 31, 2012. For amounts below the threshold, Respondents must make payments pursuant to option (2) or (3) above.

pursuant to 31 U.S.C. 3717 on any unpaid amounts due after 30 days of issuance of the Order. Prior to making the final payment set forth herein, Sarkauskas shall contact the staff of the Commission for the additional amount due for the final payment. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalty, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. 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;³
- (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:

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Payments by check or money order must be accompanied by a cover letter identifying Sarkauskas and Associates, Inc. and James M. Sarkauskas as Respondents 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 Timothy L. Warren, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL 60604.

G. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, interest and civil penalty referenced in paragraphs E. and F. above. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Sarkauskas agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Sarkauskas's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Sarkauskas agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought

³ See note 2 above.

against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

H. The disgorgement, prejudgment interest and civil penalty shall be aggregated in the Fair Fund, which shall be maintained in the type of account directed by the Commission staff. The Commission will appoint a Fund Administrator who will develop a distribution plan (the “Plan”) and administer the Plan in accordance with the Commission Rules on Fair Fund and Disgorgement Plans. The Fair Fund shall be used to compensate injured clients for losses resulting from the violations determined herein and to cover the costs of administration of the Fair Fund. Any amount remaining in the Fair Fund after all distributions have been made and costs have been paid shall be transmitted to the Commission for transfer to the U.S. Treasury.

I. The Adviser shall comply with the undertakings enumerated in in Section III, Paragraphs 18 and 19 above.

By the Commission.

Elizabeth M. Murphy
Secretary