

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3548 / February 6, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15203

In the Matter of

HOWARD B. BERGER,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Howard B. Berger (“Berger” 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, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Berger was a co-founder and a co-manager of Professional Traders Management, LLC ("PTM") and Professional Offshore Traders Management, LLC ("POTM"), investment advisers not registered with the Commission that managed two hedge funds, Professional Traders Fund, LLC ("PTF") and Professional Offshore Opportunity Fund, Ltd. ("POOF"), respectively. Berger, 40 years old, is a resident of Syosset, New York.

2. On January 15, 2013, a judgment was entered by consent against Berger, permanently enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, in the civil action entitled Securities and Exchange Commission v. Howard B. Berger, et al., Civil Action Number 2012 CV 4728, in the United States District Court for the Eastern District of New York.

3. The Commission's complaint alleged that Berger, in his capacity as a manager of PTM and POTM, controlled the trading activity in PTF and POOF and engaged in a fraudulent "cherry picking" scheme where he oftentimes allocated profitable trades for his benefit at the expense of the hedge funds he managed. The complaint alleged that for more than a year, Berger profited from fraudulently allocating profitable trades to an account in his wife's name while oftentimes allocating his unprofitable trades to PTF and POOF accounts.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act, that Respondent Berger be, and hereby is barred from association with any broker, dealer, investment adviser, municipal securities dealer or transfer agent.

Any reapplication for association by the Respondent 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 the Respondent, 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.

By the Commission.

Elizabeth M. Murphy
Secretary