

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3655 / August 27, 2013**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 30675 / August 27, 2013**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15440**

**In the Matter of**

**CARL D. JOHNS**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTIONS 9(b) AND 9(f) 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 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Carl D. Johns (“Johns” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Johns 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, which are admitted, Johns consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company 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 Johns' Offer, the Commission finds that:

#### **Respondent**

1. Respondent Carl D. Johns, 49 years old, is a resident of Louisville, Colorado. From January 1999 to January 2011, Johns was employed in various capacities by Boulder Investment Advisers, LLC ("BIA"), including assistant portfolio manager. Johns, on behalf of BIA and an affiliated adviser, Rocky Mountain Advisers, LLC ("RMA," together with BIA, the "Advisers"), assisted in the management of the portfolios for, and served as an officer of, several registered investment companies. On January 9, 2011, Johns was placed on administrative leave and, on January 12, 2011, he resigned from his positions with the Advisers and the Boulder Funds (as defined below).

#### **Other Relevant Entities**

2. BIA and RMA maintain their principal places of business in Boulder, Colorado. The Advisers are each registered with the Commission. The Advisers provided investment advisory services to four affiliated, closed-ended management investment companies registered with the Commission (collectively, the "Boulder Funds"). As of December 31, 2010, the Boulder Funds had approximately \$900 million in combined net assets.

#### **Background**

3. While employed by the Advisers, Johns engaged in active personal trading in securities, including securities of companies held or to be acquired by the Boulder Funds. From 2006 through 2010, Johns executed approximately 850 personal securities transactions. In many instances, Johns held the securities for only a few days.

4. Rule 17j-1(d) under the Investment Company Act required Johns to submit quarterly reports of his personal securities transactions and annual reports of his securities holdings. In addition, the Advisers' and the Boulder Funds' joint Code of Ethics ("Code of Ethics"), applicable to Johns, contained further restrictions on when and how Johns could trade in securities. The Code of Ethics (i) required that all securities transactions be pre-cleared by the chief compliance officer, subject to certain limited exceptions, (ii) restricted trading in securities that the Boulder Funds were buying or selling, and (iii) required annual certification of compliance with the Code of Ethics. During the relevant period, Johns certified annually that he received, read, and understood the Code of Ethics.

5. From 2006 through 2010, Johns failed to comply with the Commission's reporting requirements and the Code of Ethics. Johns did not pre-clear or report approximately 640 of his trades, including at least 91 trades in securities held or to be acquired by the fund, as that term is defined in Rule 17(j)-1(a)(10), and 14 trades that did not comply with the Code of Ethics' restrictions on trading in securities that the Boulder Funds were buying or selling.

6. To conceal his personal securities trading, Johns submitted false quarterly and annual reports and falsely certified his annual compliance with the Code of Ethics. Johns' efforts to conceal his trading from the Advisers also included physically altering brokerage statements, trade confirmations, and pre-clearance approvals that were then submitted to the Advisers. For example:

- Johns created several documents that purported to be pre-clearance requests approved by the Advisers' and the Boulder Funds' chief compliance officer ("CCO"), but that were not actually reviewed or approved by the CCO. Johns created these false pre-clearance approvals to cover-up instances in which his year-end annual report contained securities transactions that were not pre-cleared.
- Johns altered trade confirmations submitted to the Advisers by backdating the dates of the securities transactions. Johns backdated the trade confirmations to make it falsely appear as though pre-clearances were granted in advance of the transactions.
- Johns manually deleted securities holdings listed on his brokerage statements before submitting them to the Advisers. Johns did this to avoid disclosing securities purchases that were not pre-cleared.

7. In late 2010, the CCO identified certain irregularities in the documents Johns submitted to the Advisers detailing his personal securities transactions. Based on those irregularities, the CCO made certain inquiries of Johns to ascertain his full compliance with the Code of Ethics.

8. In response, Johns misled the CCO. Johns falsely told the CCO that certain of his brokerage accounts were closed, when in fact they remained open and reflected trades that were not pre-cleared as required by the Code of Ethics. Johns also accessed the hard copy file of his previously submitted brokerage statements and physically altered them to create the false impression that Johns' trading was in compliance with the Code of Ethics.

## **Violations**

9. Section 17(j) of the Investment Company Act prohibits persons affiliated with a registered investment company (a "fund") from engaging in any acts, practices, or courses of business in connection with the purchase or sale of a security held or to be acquired by the fund that violate the Commission's rules adopted to prevent fraud. Rule 17j-1(b) prohibits persons affiliated with a fund from, in connection with the purchase or sale, directly or indirectly, of a security held or to be acquired by the fund, employing devices, schemes, or artifices to defraud a fund, making untrue statements of a material fact to the fund or omitting to state material facts necessary in order to make the statements made to the fund, in light of the circumstances under which they were or are made, not misleading, engaging in acts, practices or courses of business which operate or would operate as a fraud or deceit on the fund, or engaging in manipulative practices with respect to the fund. Rule 17j-1(d) further requires that Access Persons, which includes persons employed by an investment adviser who have access to a fund's portfolio, must

timely submit reports regarding personal securities trading in covered securities, as that term is defined in Rule 17j-1(a)(4).

10. As a result of the conduct described above, Johns willfully violated Section 17(j) of the Investment Company Act and Rules 17j-1(b) and 17j-1(d) thereunder. Johns (i) failed to pre-clear or report hundreds of his transactions, including transactions in securities held or to be acquired by the Boulder Funds and covered securities that did not comply with the Code of Ethics' restrictions on trading in securities that the Boulder Funds were buying or selling, (ii) submitted false quarterly and annual reports, (iii) certified falsely his annual compliance with the Code of Ethics, and (iv) concealed his improper trading by physically altering documents submitted to the Advisers.

11. Rule 38a-1(c) under the Investment Company Act prohibits an officer, director, or employee of a fund, or its investment adviser, from, directly or indirectly, taking any action to coerce, manipulate, mislead, or fraudulently influence the fund's chief compliance officer in the performance of his or her duties under the Investment Company Act.

12. As a result of the conduct described above, Johns willfully violated Rule 38a-1(c) under the Investment Company Act. Johns misled the Advisers' and Boulder Funds' CCO in the performance of her duties by misrepresenting the status of certain of his brokerage accounts and tampering with the Boulder Funds' compliance files.

#### IV.

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

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

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(j) of the Investment Company Act and Rules 17j-1 and 38a-1 promulgated thereunder.

B. Respondent 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; and 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, with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. 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.

D. Respondent shall, within 20 days of the entry of this Order, pay disgorgement of \$231,169 prejudgment interest of \$23,889, and a civil money penalty in the amount of \$100,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or 31 U.S.C. 3717. Payment must be made in one of the following ways: (1) 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 (2) 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 Carl D. Johns 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 Ian S. Karpel, Assistant Regional Director, Division of Enforcement, Denver Regional Office, Securities and Exchange Commission, 1801 California Street, Denver, CO 80202.

By the Commission.

Elizabeth M. Murphy  
Secretary