

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3712 / November 6, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15608

In the Matter of	:	
	:	
ANTHONY J. KLATCH, II	:	ORDER INSTITUTING
	:	ADMINISTRATIVE PROCEEDINGS
	:	PURSUANT TO SECTION 203(f) OF THE
Respondent.	:	INVESTMENT ADVISERS 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 proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Anthony J. Klatch, II (“Klatch” or “Respondent”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Klatch, age 29, is incarcerated at FCI Talladega Federal Correctional Facility in Talladega, Alabama. Klatch served as portfolio manager of TASK Capital Partners, LP (“TASK Fund”), a hedge fund, and made investment decisions concerning the fund’s assets, from the fund’s inception in January 2009 to its demise in March 2010. Klatch never registered with the Commission, but he acted as an unregistered investment adviser during the time in which he engaged in the conduct underlying the order of criminal conviction and order of permanent injunction described below.

2. As the TASK Fund’s sole portfolio manager, Klatch directed transactions in equities, options, equity and index options, and futures. In fact, Klatch was the only authorized trader on the fund’s brokerage accounts.

3. Klatch also provided investment advice to at least one individual. Specifically, in June 2009, Klatch presented a written analysis to a then-potential investor in which he outlined the investor's financial needs and retirement goals, and recommended that the investor liquidate about \$1.85 million worth of stock he owned and invest the after-tax proceeds in the TASK Fund. In September 2009, the investor followed the advice, liquidated his stock and invested \$1.48 million in the TASK Fund.

4. In the first couple of weeks of October 2009, the TASK Fund lost over \$1 million, with Klatch at the helm as portfolio manager directing risky trading strategies.

5. Klatch compensated himself for investment services he provided to the TASK Fund and the investor by misappropriating fund assets for personal expenses and purported performance fees. The fund's bank records show, for example, that Klatch took over \$66,955 for purported expenses, such as tickets to a professional hockey game costing \$15,400, as well as over \$44,000 for "performance" fees on returns the TASK Fund supposedly generated during the second quarter of 2009. In reality, the TASK Fund did not generate profits in any month or quarter; the rates of return for each of the three months comprising the fund's second quarter of 2009 were negative 68.80 percent, negative 96.29 percent, and 0 percent, respectively. Nothing in the investment management agreement or any other TASK fund document concerning Klatch's investment management activities entitled Klatch to performance fees where, as here, the fund did not perform.

B. RESPONDENT'S CRIMINAL CONVICTION

6. On October 28, 2011, Klatch entered a guilty plea to one count of conspiracy in violation of Title 18, United States Code, Section 371; one count of securities fraud in violation of Title 15, United States Code, Section 77q (Section 17 of the Securities Act of 1933); one count of wire fraud in violation of Title 18, United States Code, Section 1343; and one count of money laundering in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i), before the United States District Court for the Southern District of Alabama, in *United States v. Anthony J. Klatch, II*, Crim. Indictment No. 11 Cr. 202 (WS). On August 24, 2012, the District Court sentenced Klatch to five years in prison based on his guilty plea and ordered him to make restitution of the total proceeds invested in the TASK Fund, or slightly more than \$2.3 million.

7. The counts of the criminal indictment to which Klatch pleaded guilty alleged, among other things, that in or about and between January 2009 and January 2010, Klatch knowingly and willfully made materially false statements to TASK Fund investors and misappropriated a portion of the fund's assets. In connection with his plea, Klatch admitted that:

- a. In January 2009, Klatch and his partner formed the TASK Fund. Klatch served as the fund's Senior Managing Director and Chief Investment Officer.
- b. After creating the TASK Fund, Klatch and others solicited individuals to invest in the fund through various means, including prospectuses containing material misrepresentations and materially misleading omissions.
- c. From April to October 2009, seven investors invested, through interstate wire transfers, about \$2.3 million in the TASK Fund. Klatch and his partner managed the \$2.3 million invested in the fund.

- d. The TASK Fund invested only about 60% of the proceeds, which Klatch and his partner lost over a period of eight months through a series of investments.
- e. In December 2009 and January 2010, Klatch and others falsely told TASK Fund investors that a single bad trade wiped out their entire investment.
- f. Klatch and his partner used the remaining 40% of investors' proceeds for non-investment related expenditures. Of this amount, \$180,592.45 ended up in Klatch's personal bank account through a series of transactions, which Klatch knew were designed to conceal the nature, location, source, ownership, or control of the proceeds.

8. Klatch's plea agreement contains admissions showing that Klatch acted as an investment adviser for purposes of Section 203(f). Klatch admitted in his plea agreement that, while serving as the TASK Fund's Senior Managing Director and Chief Investment Officer, he: (1) committed securities fraud and other offenses while co-managing slightly more than \$2.3 million of TASK Fund assets; (2) made false and misleading statements to investors in soliciting their TASK Fund investments and in connection with the fund's trading activities; and (3) improperly obtained approximately \$180,000 from the TASK Fund, which he diverted for personal benefit.

C. ENTRY OF THE INJUNCTION

9. On March 28, 2012, the CFTC obtained a default judgment against Klatch in *CFTC v. Anthony J. Klatch II, et al.*, No. 11 Civ. 5191 (S.D.N.Y.), a civil injunctive action, relating to charges stemming from Klatch's solicitation of investors and the operation of certain commodity pools, including the TASK Fund. In addition to enjoining Klatch from violating certain provisions of the Commodity Exchange Act, the judgment entered by the United States District Court for the Southern District of New York prohibited Klatch from entering into transactions involving futures, options, commodity options, security futures products, and foreign currency. Additionally, the judgment prohibits Klatch from applying for registration or claiming exemption from registration with the CFTC in any capacity and from acting as a principal, agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the CFTC.

10. For purposes of entering the default judgment, the district court accepted the CFTC's allegations as true, including that Klatch: served as the Managing Director and Chief Investment Officer of the Commodity Pool Operator (CPO) of the TASK Fund; misappropriated TASK Fund monies; and made material misrepresentations to TASK Fund investors or pool participants about historical performance and risk controls. The district court determined that Klatch was a control person because he exercised control over the fund's bank and trading accounts, personally solicited investors, and acted as the Managing Director and Chief Investment Officer of the fund's CPO. The district court also found that Klatch knew of, and participated in, the fraud and knew he obtained fund money in excess of earned fees.

11. Finally, the district court relied on Klatch's criminal plea agreement, described above, finding that the facts to which Klatch admitted sufficed to establish violations of the Commodity Exchange Act.

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 proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers 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 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 210 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