

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 73206 / September 24, 2014**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3933 / September 24, 2014**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 31260 / September 24, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16163**

**In the Matter of**

**YALE I. ASBELL**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 4C AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, AND RULE 102(e)(1)(iii) OF THE COMMISSION'S RULES OF PRACTICE, 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 4C and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act"), and Rule 102(e)(1)(iii) of the Commission's Rules of Practice against Yale I. Asbell ("Asbell" 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, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, Section 9(b) of the Investment Company Act of 1940, and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice, 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

These proceedings arise from fraudulent transactions entered into by Asbell, a New Jersey attorney who was operating as an unregistered investment adviser through his professional corporation, Yale Asbell P.C. (“PC”). Asbell, who, as of June 30, 2013, managed at least \$139 million, engaged in fraudulent transactions with the apparent purpose of shifting trading profits to or trading losses from accounts belonging to Asbell, members of his family, and/or certain clients. Based on these transactions and on his failure to register PC with the Commission as an investment adviser, Asbell violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; Sections 206(1), (2), and (3) of the Advisers Act; and aided and abetted and caused PC’s violation of Section 203(a) of the Advisers Act

### Respondent

1. **Yale I. Asbell**, JD, age 57, resides in Cherry Hill, New Jersey, and is the founder and sole principal of PC, an entity through which he conducted his investment adviser activities. Asbell is also an attorney licensed to practice in New Jersey and Pennsylvania.

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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.

### **Other Relevant Entities**

2. **Yale Asbell P.C.**, a Pennsylvania professional corporation formed on December 23, 1994, was the entity through which Asbell conducted his investment adviser activities. PC, which maintains its principal place of business in Cherry Hill, New Jersey, has never been registered with the Commission in any capacity.

3. **Custodian** is the trust department of a bank headquartered in Pennsylvania that, from 2010 through 2014, served as the custodian for the majority of Asbell's/PC's investment advisory clients.

### **Background**

4. From at least 2010, Asbell, through PC, for compensation, engaged in the business of advising others as to the advisability of investing in, purchasing, or selling securities and, according to the records of Custodian, as of June 30, 2013, managed at least \$139 million. These activities were not solely incidental to Asbell's practice of law as an attorney.

5. On Monday, August 20, 2012, Asbell knew (a) of the Friday, August 17, 2012, public announcement that Western Liberty Bancorp ("WLBC") and Western Alliance Bancorporation ("WAL") had entered into a definitive merger agreement pursuant to which WLBC would be absorbed into WAL, (b) of the approximately 34% increase in WLBC's share price following this news, and (c) that Custodian's computer system only updated securities pricing data on Fridays.

6. On this same date, Monday, August 20, 2012, Asbell instructed employees of Custodian to process a private sale of 30,000 WLBC shares from Asbell Advisory Client R's account to (a) another Asbell advisory client's account (25,000 shares) and (b) the account of a member of Asbell's family (5,000 shares). These transactions were processed via interaccount journal entries and dated as of Friday, August 17, 2012.

7. Through this backdated transaction, Advisory Client R's unrealized profit on her WLBC shares was transferred to another Asbell advisory client and to Asbell's family member.

8. Before entering into these WLBC transactions, Asbell did not disclose to Advisory Client R his conflict of interest concerning the transfer of Client R's profitable WLBC shares to Asbell's family member, Asbell's use of stale price information, or Asbell's use of a backdated trade date.

9. Asbell was also the sole trustee of a trust (the "Trust") established for the benefit of the grandchildren of a deceased former advisory client. Between May 2010 and March 2011, Asbell caused the Trust to purchase the shares of four different companies from Asbell, members of his family, and/or other advisory clients via interaccount journal entry transactions. Asbell failed to provide the Trust with the written disclosures concerning principal transactions

between Asbell [or his accounts] and the Trust that are required under Section 206(3) of the Advisers Act.

10. The purchases by the Trust of the shares of three of the four subject companies were processed at prices significantly higher than the then applicable market prices. This overpayment by the Trust for shares then being sold by Asbell, members of his family, and/or other advisory clients was caused by Asbell's use of the stale pricing information resident on Custodian's computer system.

11. Within days or weeks of causing the purchases of the subject shares by the Trust, Asbell then had the Trust begin selling those shares via market (*i.e.*, brokerage) transactions and to realize substantial losses on these short-term investments.

### **Violations**

12. As a result of the conduct described above, Asbell willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

13. As a result of the conduct described above, Asbell willfully violated Sections 206(1), (2), and (3) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

14. As a result of the conduct described above, Asbell willfully aided and abetted and caused PC's violations of Section 203(a) of the Advisers Act, which specifies that it shall be unlawful for any investment adviser, unless registered, to make use of the mails or any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser.

### **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 Sections 4C and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, Section 9(b) of the Investment Company Act, and Rule 102(e)(1)(iii) of the Commission's Rules of Practice, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 203(a), 206(1), (2), and (3) of the Advisers Act.

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.

Any reapplication for association by 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 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.

C. Respondent be, and hereby is denied the privilege of appearing or practicing before the Commission as an attorney for five years from the date of the Order.

D. After five years from the date of the Order, Respondent may request that the Commission consider his application to resume appearing and practicing before the Commission as an attorney. The application should be sent to the attention of the Office of the General Counsel.

E. In support of such an application, Respondent must provide a certificate of good standing from each state bar where Respondent is a member.

F. In support of such an application, Respondent must also submit an affidavit truthfully stating, under penalty of perjury:

1. that Respondent has complied with the Order;
2. that Respondent:
  - a. is not currently suspended or disbarred as an attorney by a court of the United States (or any agency of the United States) or the bar or court of any state, territory, district, commonwealth, or possession; and
  - b. since the entry of the Order, has not been suspended as an attorney for an offense involving moral turpitude by a court of the United States (or any agency of the United States) or the bar or court of any

state, territory, district, commonwealth, or possession, except for any suspension concerning the conduct that was the basis for the Order;

3. that Respondent, since the entry of the Order, has not been convicted of a felony or misdemeanor involving moral turpitude as set forth in Rule 102(e)(2) of the Commission's Rules of Practice; and
4. that Respondent, since the entry of the Order:
  - a. has not been found by the Commission or a court of the United States to have committed a violation of the federal securities laws, except for any finding concerning the conduct that was the basis for the Order;
  - b. has not been charged by the Commission or the United States with a violation of the federal securities laws, except for any charge concerning the conduct that was the basis for the Order;
  - c. has not been found by a court of the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof, to have committed an offense involving moral turpitude, except for any finding concerning the conduct that was the basis for the Order; and
  - d. has not been charged by the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof, with having committed an offense involving moral turpitude, except for any charge concerning the conduct that was the basis for the Order.

G. If Respondent provides the documentation required in Paragraphs E and F, and the Commission determines that he truthfully attested to each of the items required in his affidavit, he shall by Commission order be permitted to resume appearing and practicing before the Commission as an attorney.

H. If Respondent is not able to truthfully attest to the statements required in Subparagraphs F(2)(b) or F(4), Respondent shall provide an explanation as to the facts and circumstances pertaining to the matter and the Commission may hold a hearing to determine whether there is good cause to permit him to resume appearing and practicing before the Commission as an attorney.

I. Respondent shall, within 14 days of the entry of this Order, pay disgorgement, which represents profits gained and/or losses avoided as a result of the conduct described herein, of \$60,622.90 and prejudgment interest of \$5,772.65 to the Securities and Exchange Commission. If

timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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 Asbell as the respondent in these proceedings and include the file number of these proceedings. A copy of the cover letter and check or money order must be sent to: James A. Davidson, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL 60604.

J. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$150,000.00 to the Securities and Exchange Commission. 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:

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K. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, interest, and penalties referenced in paragraphs I and J 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, Respondent 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 Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent 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 Securities and Exchange Commission. 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 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.

L. After receipt of the disgorgement, interest, and penalties referenced in paragraphs I and J above, the Commission shall, within 90 days, make payments to Client R and the Trust as set forth in Exhibit 1 hereto. The amount of each of these payments represents the dollar amount of each entity's net loss plus reasonable prejudgment interest thereon. Commission staff shall seek the appointment of a tax administrator in regard to the payments to Client R and the Trust as they constitute payments from a qualified settlement fund ("QSF") under section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. Taxes, if any, and related administrative expenses shall be paid from the funds remaining after payments have been made to Client R and the Trust. After the Commission makes the foregoing payments, any remaining funds consisting of Respondent's disgorgement, prejudgment interest, and/or penalties paid, shall be remitted to the United States Treasury.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty, or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields  
Secretary

# **Exhibit 1**

**Affected Advisory Clients of Yale Asbell P.C.**

<b>Entity</b>	<b>Payment Amount</b>
Client R	\$44,886.18
The Trust	\$68,959.30