

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9752 / April 17, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 74754 / April 17, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4064 / April 17, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31556 / April 17, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16499

In the Matter of

JOSEPH JOHN LABADIA

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 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 8A of the Securities Act of 1933 (“Securities Act”), Section 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”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Joseph John Labadia (“Respondent” or “Labadia”).

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, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 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 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

Summary

From January 2007 through 2012, Labadia made material misrepresentations and failed to disclose material facts to investors in connection with unregistered offers and sales of at least \$1,973,000 of the securities of Raintree Racing, LLC (“Raintree Racing”), and at least \$362,000 of the securities of Raintree Thoroughbred Farm, Inc. (“Raintree Farm”) to at least sixteen investors in at least six states. At least \$1,137,000 of the \$1,973,000 invested in Raintree Racing securities consisted of Labadia’s unauthorized investment of funds of Atlanta Rehab Capital, LLC (“Atlanta Rehab”) a real estate company in which he was the managing principal. Five of the approximately nine Atlanta Rehab investors were also advisory clients of Labadia. Labadia breached his fiduciary duty to these clients by charging them advisory fees based on inflated portfolio values that overstated the value of investments in Raintree Racing and by making misrepresentations.

¹ 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.

Respondent

1. Respondent, 45 years old, is a resident of Neptune Beach, Florida, and is currently self-employed. Respondent filed for bankruptcy in May 2011. Respondent was a one-third owner, and a Member of the Management Committee of Raintree Racing, and was the President and control person of Atlanta Rehab. Respondent was at relevant times an unregistered investment adviser to persons who invested in Raintree Racing, Raintree Farm and Atlanta Rehab. Respondent holds the Chartered Financial Analyst (CFA) designation, as well as Series 7, 63 and 65 securities licenses. In July 2003, Respondent voluntarily terminated his association with a broker-dealer and thereafter did not register with another broker-dealer.

Other Relevant Entities

2. Raintree Racing was created in 2007 as a Maryland limited liability company whose principal place of business was Towson, Maryland. Raintree Racing was engaged in the purchase and sale of thoroughbred horses. Raintree Racing has never registered with the Commission and has never registered an offering of securities under the Securities Act. Raintree Racing has had essentially no business activity since early 2012.

3. Raintree Farm is a Delaware corporation which since 2002 has been engaged in the purchase, sale, and racing of thoroughbred horses. Raintree Farm has never registered with the Commission. In 2007 and 2010, Raintree Farm made filings pursuant to Securities Act Regulation D and Rule 506 thereunder for the offer and sale of its securities in private offerings. The common stock of Raintree Farm has never been publicly traded. Raintree Farm has had essentially no business activity since early 2012.

4. Atlanta Rehab was a Georgia limited liability company with its principal place of business in Atlanta, Georgia. The company is no longer in business but was principally engaged in the business of real estate lending during its existence.

Facts

Misrepresentations In Connection with Raintree Racing

5. From 2007 to at least 2010, Labadia solicited at least \$1,973,000 from investors in Raintree Racing (*see* Table I)². Labadia told the investors, verbally and in writing,

² In order to maintain investor confidentiality, the actual names of investors are not listed. Amounts invested and investor balances were based on information in stock ledgers and bank statements. The payments on this table include repayments in 2008 of \$100,000 to investor 1, \$25,000 to investor 3, and

they were making short-term principal protected investments in Raintree Racing that he characterized as “loans.” In one June 14, 2008 e-mail, Labadia told an investor “The horse farm is doing remarkably well. As a result, we have a lot more cash reserves and are raising capital to expand. Current rate of return is 20% per year. This is extremely low risk.” In a separate June 2008 email, and one from April 2009, Labadia informed investors that Raintree Racing’s purchase and sale of thoroughbred horses was conducted simultaneously, and thus there is only a “tiny” bit of risk in Raintree Racing’s operations. Investors in Raintree Racing were to be provided “bonus” shares of Raintree Farm as “collateral.”

TABLE I

Raintree Racing

Investments – 2007 to 2010

Investor	2007	2008	2009	2010	Total
1	\$100,000	\$0	\$0	\$0	\$100,000
2	300,000	365,000	340,000	132,247	1,137,247
3	25,000	0	0	0	25,000
4	0	0	0	15,000	15,000
5	25,000	0	0	1,000	26,000
6	25,000	25,000	0	1,000	51,000
7	0	0	30,000	1,500	31,500
8	0	100,000	32,000	3,000	135,000
9	0	0	30,000	0	30,000
10	0	0	130,000	0	130,000
11	0	0	0	75,000	75,000
12	0	0	128,000	0	128,000
13	0	2,000	0	0	2,000
14	25,000	25,000	0	0	50,000
15	0	25,000	0	0	25,000
16	10,000	0	0	3,000	13,000
Total	\$510,000	\$542,000	\$690,000	\$231,747	\$1,973,747

6. In addition, Raintree Racing investors identified in Table I were provided written agreements stating that (i) funds were to be invested for a fixed period not to exceed one year, (ii) invested principal would be returned at the maturity date, and (iii) investors would receive an annualized return of 20% on their investment.

\$45,000 to investor 8. The payments include principal repayments in 2009 of \$80,000 to investor 2 and \$25,000 to investor 6.

7. While Labadia may have initially believed in the safety of funds invested in Raintree Racing, ultimately he knew, or was reckless in not knowing, that investment in Raintree Racing involved significant risk because Raintree Racing did not have cash flow or other resources to pay Raintree Racing investors the promised 20% interest and return their principal. Labadia revealed his understanding of Raintree Racing's cash flow issues in several emails to the Raintree Racing control person. In an e-mail dated March 10, 2009, Labadia stated he did not know where the funds would come from to cover full interest payments then due Raintree Racing investors. In an e-mail dated June 9, 2010, Labadia said: "I am still upset about how much I've raised since November and we still need cash." Further, in March 2010, when Raintree Racing lacked adequate cash flow, Labadia offered some prospective investors 40% interest for "emergency capital." In May 2010, Labadia offered a return of \$6,750 on an investment of \$75,000 returnable in six weeks, but with an understanding the investor would get paid in four weeks. Labadia knew or was reckless in not knowing that Raintree Racing had significant cash flow problems, and was dependent on infusion of funds from investors in order to continue operations that were finally suspended effective December 31, 2012.

8. Moreover, Labadia knew that at certain times Raintree Racing funds were being diverted to fund operations of Raintree Farm. Labadia received an April 3, 2008 email from the Raintree Racing control person that stated, "Things are quite critical at the moment and I need to take some of my funds from Raintree Racing and move to the farm [Raintree Farm]." In a June 10, 2010 email to the Raintree Racing control person, Labadia wrote, "It was my understanding all along that the money raised for Raintree Racing would be used solely for the purpose of conducting deals, not covering everyday expenses. Has the farm reimbursed RR for these expenses thus far? If not, when? The farm should be operating as a separate entity in my mind." Labadia did not disclose to Raintree Racing investors that Raintree Racing's funds were being used to fund Raintree Farm operations.

9. The misstatements and omissions described above relating to how invested funds were used, the risks associated with the investment and the financial condition of Raintree Racing were material to investors.

Misrepresentations in Connection with Atlanta Rehab

10. Labadia led Atlanta Rehab investors to believe that their funds were invested in Atlanta, GA real estate. In fact, following the collapse of the Atlanta real estate market, Labadia made an investment of at least \$1,137,000 of Atlanta Rehab investor funds into Raintree Racing without authorization, and without disclosing the investment.

11. Moreover, Labadia prepared and provided to Atlanta Rehab investors account statements, until at least August 2011, that valued Atlanta Rehab's investment in Raintree Racing at the original principal amount invested despite the fact that a substantial portion of Atlanta Rehab funds were invested in Raintree Racing. Raintree Racing had net losses from operations in fiscal years 2009 through 2011 and minimal net income in earlier years. Raintree Racing finally suspended operations as of December 31, 2012.

Breach of Fiduciary Duty As An Investment Adviser

12. Labadia was, during relevant times, an unregistered investment adviser who breached his fiduciary duty to his clients. As described above, Labadia made material misrepresentations to investors in Raintree Racing and Atlanta Rehab. Five of those investors were also advisory clients of Labadia.

13. Labadia charged these clients advisory fees which were calculated at amounts ranging from .75% to 1% of net asset value per annum, resulting in client advisory fee payments from 2007 to 2010 of at least \$48,337. Labadia provided account statements to advisory clients that billed clients for advisory services based upon assets under management, and which Labadia knew, or was reckless in not knowing, materially overstated the value of investments in Raintree Racing.

Unregistered Offers and Sales – Raintree Racing

14. From 2007 to 2010, Labadia via interstate commerce or the mails, engaged in the offer and sale of at least \$1,973,000 of securities of Raintree Racing to at least sixteen investors in at least six states without a filed or effective registration statement for the offer and sale of these securities (see Table I, above).

15. Offers and sales of securities made via interstate commerce or the mails require registration unless they qualify for an exemption. Raintree Racing did not register any offering with the Commission, nor did it file any notices with the Commission claiming to rely on any exemption. In any event, the offers and sales of Raintree Racing securities described hereinabove did not qualify for exemption from registration.

16. In particular, the Raintree Racing offering did not comply with the exemption under Section 4(a)(2) of the Securities Act. Labadia sold Raintree Racing securities to investors who did not have the knowledge and experience in financial and business matters, including experience in thoroughbred horse operations, to make them capable of evaluating the merits and risks of investments in Raintree Racing securities, and these unsophisticated investors did not have access to the type of information that would have been available in a registered offering. Moreover, the investors did not have the income or assets necessary to qualify them as accredited investors pursuant to Securities Act, Regulation D and Rule 501.

17. The Raintree Racing offering also did not comply with any of the safe harbors in Rules 504, 505 and 506 of Regulation D under the Securities Act. First, Rule 504 was not available because the offering amount exceeded \$1 million. Second, Rules 505 and 506 were not available because some Raintree Racing investors did not have the income or assets necessary to qualify as accredited investors as defined in Rule 501(a) of Regulation D, and these unaccredited investors were not provided with the non-financial and financial information specified in Rule 502(b) of Regulation D, including an audited balance sheet. Rule 506 was also not available because some of the unaccredited investors were not sophisticated, as required by Rule 506(b) of Regulation D.

Unregistered Offers and Sales – Raintree Farm

18. Labadia offered and sold at least \$362,000 in the stock of Raintree Farm to at least three investors during the period 2007 through 2011. The Raintree Farm stock was neither registered, nor did it qualify for an exemption, although it was offered via interstate commerce or the mails.

19. In 2007 and 2010, Raintree Farm filed Notices of Sales of Securities with the Commission pursuant to Rule 506 of Regulation D, each of which related to an offering of \$2.5 million of Raintree Farm stock. In the Notices, Raintree Farm purported to rely on an exemption pursuant to Rule 506 of Regulation D under the Securities Act, and represented that sales would be made only to accredited investors. While the notices were filed in 2007 and 2010, the offerings went beyond that period.

20. Labadia also engaged in the offer and sale of Raintree Farm shares to persons who did not qualify as accredited investors. The Raintree Farm offering did not comply with the exemption under Section 4(a)(2) of the Securities Act. Labadia sold Raintree Farm securities to investors who did not have the knowledge and experience in financial and business matters to make them capable of evaluating the merits and risks of investments in Raintree Farm securities, and these unsophisticated investors did not have access to the type of information that would have been available in a registered offering.

21. And because the Raintree Farm Notices of Sales of Securities filed with the Commission pursuant to Regulation D and Securities Act Rule 506 each offered \$2.5 million of Raintree Farm stock, but inconsistently was not sold only to accredited investors, the offering failed to comply with any of the safe harbors in Rules 504, 505 and 506 of Regulation D under the Securities Act. First, Rule 504 was not available, because the offering amount exceeded \$1 million. Second, Rules 505 and 506 were not available, because (i) some Raintree Farm investors did not have the income or assets necessary to qualify as accredited investors as defined in Rule 501(a) of Regulation D, and Labadia knew these investors were not accredited.

Violations

22. As a result of the conduct described above, Labadia willfully violated Sections 5(a) and 5(c) of the Securities Act, which prohibit the offer and sale of securities by any person directly or indirectly through the use of any means of interstate commerce without a registration statement having been filed and being in effect as to those securities.

23. As a result of the conduct described above, Labadia willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraud in the offer and sale of securities, and in connection with the purchase or sale of securities.

24. As a result of the conduct described above, Labadia willfully violated Sections 206(1) and 206(2) of the Advisers Act which prohibits investment advisers from defrauding any client or prospective client.

Disgorgement and Civil Penalties

25. Respondent has submitted a sworn Statement of Financial Condition dated January 20, 2014, a sworn Verification dated June 23, 2014, and other evidence, and has asserted his inability to pay disgorgement plus prejudgment interest.

26. Respondent has submitted a sworn Statement of Financial Condition dated January 20, 2014, a sworn Verification dated June 23, 2014, and other evidence, and has asserted his inability to pay a civil penalty.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Labadia cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act;

B. Respondent Labadia be, and hereby is:

Barred from association with any broker dealer, municipal securities dealer, municipal adviser, investment adviser, securities dealer, 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

Prohibited from serving or acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the change Act.

Respondent shall pay disgorgement of \$48,337 plus prejudgment interest of \$4,797.77 but that payment of such amount is waived based upon Respondent's sworn representations in his Statement of Financial Condition dated January 20, 2014, his Verification dated June 23, 2014, and other evidence, submitted to the Commission.

Based upon Respondent's sworn representations in his Statement of Financial Condition dated January 20, 2014, his Verification dated June 23, 2014, and other evidence, submitted to the Commission, the Commission is not imposing a penalty against Respondent.

The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement, prejudgment interest and a civil penalty. No other issue shall be considered with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not by way of defense to any such petition: (1) contest the findings in this Order, (2) assert that payment of disgorgement, prejudgment interest and a civil penalty should not be ordered; (3) contest the amount of disgorgement, prejudgment interest and civil penalty to be ordered; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Brent J. Fields
Secretary