

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4126 / June 23, 2015**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 31688 / June 23, 2015**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16646**

**In the Matter of**

**Pekin Singer Strauss Asset  
Management Inc., Ronald L.  
Strauss, William A. Pekin, and  
Joshua D. Strauss,**

**Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTIONS 203(e), 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 Sections 203(e), 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 Pekin Singer Strauss Asset Management Inc. (“Pekin Singer”), Ronald L. Strauss (“R. Strauss”), William A. Pekin (“W. Pekin”), and Joshua D. Strauss (“J. Strauss”) (collectively referred to herein as “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e), 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 Respondents’ Offers, the Commission finds that:

#### Summary

1. These proceedings arise from compliance failures at Pekin Singer, a registered investment adviser. Pekin Singer failed to conduct timely annual compliance program reviews in 2009 and 2010 and failed to implement and enforce provisions of its policies and procedures and code of ethics during this same period. R. Strauss, Pekin Singer’s President at the time, dedicated insufficient resources to compliance, which contributed substantially to Pekin Singer’s compliance failures.

2. In addition, from 2011 to early 2014, Pekin Singer, W. Pekin, and J. Strauss kept or placed a substantial number of their clients in the investor share class of Appleseed Fund (“Appleseed”), a mutual fund managed by Pekin Singer, when those clients were eligible for the less expensive institutional share class. Pekin Singer clients paid an additional 25 basis points in fees on their Appleseed shares beyond what the clients would have paid had they been invested in the less expensive share class. Pekin Singer received the additional 25 basis points in Appleseed fees generated by having Pekin Singer clients in the more expensive share class. By selecting the less economical share class for its clients, Pekin Singer failed to seek best execution for its clients and failed to adequately disclose its conflict of interest in selecting a share class for clients that would generate more fees for the firm.

#### Respondents

3. **Pekin Singer Strauss Asset Management Inc.** is a Delaware corporation with its principal place of business in Chicago, Illinois. Pekin Singer has been registered with the Commission as an investment adviser since December 1989. It has approximately \$1.07 billion in assets under management. The majority of Pekin Singer’s clients are high net worth individuals. Pekin Singer also serves as investment adviser to Appleseed, a registered open-end investment company with net assets of approximately \$280 million. At the beginning of 2009, the firm had approximately \$479 million in assets under management and Appleseed had approximately \$9 million of net assets.

4. **Ronald Lee Strauss**, age 75, resides in Wilmette, Illinois. From 2004 until June 30, 2014, he served as President of Pekin Singer. On June 30, 2014, R. Strauss retired as President. He now serves as a senior advisor at Pekin Singer and is a member of Pekin Singer’s Board of Directors.

5. **William Andrew Pekin**, age 43, resides in Chicago, Illinois. W. Pekin is a portfolio manager for Appleseed and high net worth clients. Effective July 1, 2014, W. Pekin became Chairman of Pekin Singer.

6. **Joshua Daniel Strauss**, age 42, resides in Evanston, Illinois. J. Strauss is a portfolio manager for Appleseed and high net worth clients. Effective July 1, 2014, J. Strauss became co-CEO of Pekin Singer.

### **Other Relevant Entities and Individual**

7. **Appleseed Fund** is an open-end world allocation value mutual fund formed in December 2006 by Pekin Singer. Appleseed is a series of Unified Series Trust, an Ohio business trust registered as an open-end investment company. Appleseed's net assets grew from approximately \$9 million as of January 2009 to approximately \$280 million in 2014.

8. The "**Chief Compliance Officer**" joined Pekin Singer in November 2006 and was named Pekin Singer's chief compliance officer ("CCO") in 2007. The Chief Compliance Officer also became Chief Financial Officer ("CFO") of Pekin Singer in 2009. The Chief Compliance Officer ceased his compliance role in April 2014 and remains at the firm as CFO.

9. **Unified Series Trust** ("UST") is a registered open-end investment company established under Ohio law. UST is an administrator-sponsored fund complex that provides back office support, fund accounting, compliance support, a board of trustees, and other services to mutual funds managed by unaffiliated registered investment advisers. There are twelve funds in the UST complex, including Appleseed.

### **Pekin Singer's Compliance Program Failures**

#### *Background*

10. Pekin Singer has been a registered investment adviser since 1989. Pekin Singer's client base primarily consists of high net worth individuals, or separately managed accounts ("SMAs"). In December 2006, Pekin Singer launched Appleseed, an open-end mutual fund that is a series of the UST fund complex. Pekin Singer serves as investment adviser to Appleseed.

11. From 2004 through June 30, 2014, R. Strauss, as Pekin Singer's President, managed the day-to-day operations of the firm and supervised all of Pekin Singer's employees, including the Chief Compliance Officer.

12. From 2005 to June 2007, Pekin Singer employed a chief compliance officer who also served as Pekin Singer's chief financial officer. By 2007, that individual had become a part-time employee and decided to phase out of those positions in anticipation of retirement.

13. In November 2006, R. Strauss hired the Chief Compliance Officer to fill a variety of roles. Initially, the Chief Compliance Officer's roles included backup trader, backup trade reconciliation, research analyst, and portfolio manager for a handful of accounts, prior to him becoming the Chief Compliance Officer.

14. In June 2007, R. Strauss promoted the Chief Compliance Officer to serve as Pekin Singer's new CCO. However, R. Strauss knew the Chief Compliance Officer had limited prior experience and training in compliance prior to becoming CCO. The Chief Compliance Officer retained his other responsibilities in addition to his new CCO role.

15. R. Strauss did not provide the Chief Compliance Officer with sufficient guidance regarding his duties and responsibilities as the new CCO and instead left it to the Chief Compliance Officer and the prior CCO to manage the transition. R. Strauss did not provide the Chief Compliance Officer with staff to assist him with compliance, other than the prior CCO, who was then part-time and was serving in an advisory capacity. The Chief Compliance Officer was required to seek R. Strauss's approval for compliance expenditures, consistent with Pekin Singer's approval process for business expenditures.

*Pekin Singer's Failure to Conduct Annual Compliance Program Reviews*

16. Gradually, as the Chief Compliance Officer learned certain aspects of the CCO role from the former CCO and from attending a compliance conference in 2008, he noticed weaknesses in Pekin Singer's compliance program and began making some improvements. For example, in 2007 and 2008, he implemented new testing in the area of trade allocation and execution and also drafted and implemented a new personal trading policy requiring preclearance of trades.

17. Notwithstanding these changes, the Chief Compliance Officer recognized that Pekin Singer's compliance program and testing needed further improvement. Indeed, Pekin Singer's 2008 annual compliance program review was limited to year-end testing of trade allocation and execution. However, the Chief Compliance Officer lacked experience, resources, and knowledge as to how to adopt and implement an effective compliance program or how to conduct a comprehensive and effective annual compliance program review.

18. In 2009 and 2010, R. Strauss did not make the compliance program a priority for the firm. He directed the Chief Compliance Officer to prioritize his investment research responsibilities over compliance. R. Strauss also gave the Chief Compliance Officer other responsibilities at the firm that impacted his ability to focus on compliance, including naming him CFO in 2009. Between his research and other responsibilities, the Chief Compliance Officer was only able to devote between 10% and 20% of his time on compliance matters.

19. As a result, the Chief Compliance Officer was unable to complete timely annual compliance program reviews for 2009 or 2010. In fact, nearly three years passed between Pekin Singer's completion of its limited annual compliance program review in early 2009 and the completion of the next annual review in late 2011. Throughout 2009 and 2010, Pekin Singer did not adequately evaluate the effectiveness of its compliance policies and procedures and code of ethics or test the firm's implementation.

20. In 2009 and 2010, the Chief Compliance Officer told R. Strauss on multiple occasions that he needed help to fulfill his compliance responsibilities, including the annual compliance program review. However, when the Chief Compliance Officer expressed concern

about not completing compliance testing and warned that Pekin Singer would not be ready for an SEC examination, R. Strauss told him that the firm's primary responsibility was serving clients, and that they could address any problems that came up in an examination at that time.

21. Beginning in late 2009, after consultation with R. Strauss, the Chief Compliance Officer began exploring the possibility of retaining a compliance consultant to assist him. In the first half of 2010, the Chief Compliance Officer obtained proposals from two compliance consultants to assist Pekin Singer with its compliance program and its annual compliance program review. Although the Chief Compliance Officer viewed the proposals favorably, R. Strauss passed on the first proposal because he viewed it as too expensive and remained undecided on the second proposal through the remainder of 2010. By mid-2010, the Chief Compliance Officer had communicated to R. Strauss a heightened sense of urgency regarding the need to complete an annual compliance review, yet R. Strauss did not engage one of the consultants to assist him and the annual compliance review remained uncompleted for a second year.

22. In January 2011, Pekin Singer engaged a compliance consultant to assist the Chief Compliance Officer. The decision to hire the compliance consultant at that time was primarily driven by: (1) the fact that during the annual management agreement renewal process for Appleseed in January 2011, Pekin Singer reported to UST's Board of Trustees that the firm had failed to conduct an annual compliance program review for two consecutive years, and (2) the realization that a compliance consultant was likely needed in order for Pekin Singer to complete the pending annual reviews. R. Strauss recognized at that time that addressing the compliance issues was important for maintaining Pekin Singer's relationship with UST. Nevertheless, R. Strauss narrowed the scope of the engagement – and thus the amount of assistance for the Chief Compliance Officer – from a more comprehensive compliance review to limited trade testing for a six-month period in 2010, in part to reduce the cost of the engagement.

23. The compliance consultant issued a report in June 2011 enumerating several compliance deficiencies at Pekin Singer. Beginning in May 2011, the Commission's Chicago Regional Office Branch of Investment Management Examinations (the "SEC exam staff") conducted an examination of Pekin Singer and cited the firm for several compliance deficiencies, most notably the failure to conduct annual compliance program reviews for two years and code of ethics violations by a Pekin Singer analyst relating to personal trading.

24. It took the firm an additional six months after receiving the compliance consultant's report to complete its compliance program review covering 2009 and 2010. The lack of assistance and support for the Chief Compliance Officer contributed substantially to the delay in completing the annual reviews.

25. Pekin Singer completed an annual compliance program review covering 2009 and 2010 on December 15, 2011, partially in response to a firm deadline from UST's Board that the reviews be completed by that date. Since 2011, Pekin Singer has completed all annual reviews on a timely basis.

### *Pekin Singer's Undetected Compliance Violations*

26. There were several violations of Pekin Singer's policies and procedures and code of ethics between 2009 and 2011 that were not detected until the compliance consultant and the SEC exam staff examined Pekin Singer's compliance program. These violations included, among other things:

- A Pekin Singer research analyst failed to pre-clear and report certain of his securities transactions and holdings, some of which were also owned by Pekin Singer clients and Appleseed, and Pekin Singer lacked documentation supporting preclearance of trades for other Pekin Singer employees;
- Pekin Singer did not receive all required documentation of all employee trading and employee personal account statements;
- Pekin Singer failed to maintain documentation of the firm's best execution reviews;
- Pekin Singer failed to obtain annual securities holdings reports and annual Code of Ethics compliance certifications from certain of its employees as required by the firm's Code of Ethics; and
- Pekin Singer failed to conduct regular reviews of the firm's Code of Ethics and failed to conduct annual compliance meetings for firm personnel, as required by Pekin Singer's policies and procedures manual.

### *Pekin Singer's Misleading Disclosures in its Form ADV*

27. Pekin Singer's Forms ADV Part 2A that were in effect during 2011 and 2012 contained a disclosure describing the firm's Code of Ethics. The disclosure described, among other things, that certain of its employees were required to submit initial and annual securities holdings reports, and that such employees were prohibited from trading securities prior to transactions for advisory accounts. The disclosure also stated that the firm required delivery to and acknowledgement of the Code of Ethics by each supervised person at the firm. This disclosure appeared in Pekin Singer's Form ADV Part 2A filed with the Commission on March 28, 2011, December 14, 2011, January 27, 2012, and March 27, 2012. R. Strauss signed Pekin Singer's Form ADV filings during this period.

28. As described above, however, certain requirements and prohibitions in the Code of Ethics were not being enforced by Pekin Singer during this period. For example, certain Pekin Singer employees failed to comply with personal trading restrictions in the Code of Ethics, including the requirement to pre-clear trades, and, in the case of one employee, the prohibition on trading prior to advisory clients. Moreover, Pekin Singer had not collected from employees required securities holdings reports from 2009 until June 2011, and had not collected from employees Code of Ethics acknowledgements from 2009 until 2012.

29. The Code of Ethics disclosure in the aforementioned Forms ADV Part 2A filed in 2011 and 2012 made no mention of Pekin Singer's failure to enforce certain provisions in its Code of Ethics, or that several of the requirements and prohibitions explicitly described in the Form ADV Part 2A were not being followed.

### **Pekin Singer's Failure to Convert Clients to Appleseed's Institutional Share Class**

#### *Appleseed Share Class Background*

30. During the Commission's investigation into Pekin Singer's compliance program failures, the firm self-reported to the Commission staff an issue relating to Pekin Singer's investment of SMA clients in the investor share class of Appleseed, despite their eligibility for conversion or placement in Appleseed's institutional share class at a lower cost to the client.

31. When Pekin Singer launched Appleseed in December 2006, Appleseed had only one share class with a 0.90% expense ratio. At the outset, Pekin Singer earned a 1.00% management fee for serving as investment adviser to Appleseed, but pursuant to an agreement with Appleseed, Pekin Singer waived part of its management fee to ensure that the total fund expense ratio for the investor (excluding certain expenses) would be capped at 0.90%. Upon the expense cap agreement's expiration in February 2009, UST's board of trustees approved a new expense cap agreement with Pekin Singer at a higher ratio of 1.24%, which increased Pekin Singer's gross revenues from managing Appleseed. Pekin Singer justified the increase as necessary to compensate Pekin Singer for new fees it was incurring on behalf of Appleseed to make Appleseed available on broker-dealers' no-transaction-fee ("NTF") fund platforms.<sup>1</sup>

32. Pekin Singer has invested its SMA clients in Appleseed since the fund's launch in 2006. Since Appleseed's inception, Pekin Singer has excluded client assets invested in Appleseed from total client assets under management for calculating its investment advisory fee so as not to double-charge clients on those assets. Pekin Singer's management team determined that the Appleseed management fee alone was sufficient compensation for the services Pekin Singer provided to its clients on these assets. Under this arrangement, if Pekin Singer managed \$1 million in assets for a client, and invested \$100,000 of the client's assets in Appleseed, Pekin Singer would only charge the client an advisory fee on \$900,000 in assets, and would receive the fund management fee on the \$100,000 invested in Appleseed.

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<sup>1</sup> Many broker-dealers that offer access to mutual funds for their customers charge platform fees to the mutual fund based on the value of the fund holdings invested through the broker-dealer. It is common that broker-dealers will offer mutual funds on either an NTF basis, meaning customers do not pay transaction charges when they purchase and redeem shares, or on a transaction-fee basis ("TF"), where customers pay a transaction fee for each purchase and redemption in the fund. If a mutual fund is offered on an NTF basis, the broker-dealer will typically charge a higher platform fee to account for the lost commission revenue. Pekin Singer paid these platform fees on behalf of Appleseed.

33. In January 2011, J. Strauss, W. Pekin, and Pekin Singer developed and launched a new institutional share class for Appleseed (“APPIX”), while retaining the original share class as the investor share class (“APPLX”). As shown below, Appleseed’s two share classes had different expense ratios and minimum investments:

	<b>Investor Class (APPLX)</b>	<b>Institutional Class (APPIX)</b>
Expense Ratio	1.24%	0.99%
Investment Minimum	\$2,500	\$100,000

34. The expense ratio differential between the two share classes was comprised of a 25 basis point administrative services fee. Appleseed paid to Pekin Singer an administrative services fee to compensate for Pekin Singer’s payment of platform fees to broker-dealers that provide administrative services to APPLX shareholders. As a general matter, APPLX was offered through broker-dealers’ NTF platforms, while APPIX was typically offered on TF platforms. As a result, in many cases Pekin Singer paid higher platform fees for APPLX than APPIX, and the administrative services fee was designed to compensate for some of those additional costs.<sup>2</sup>

35. Pekin Singer wanted to expand APPIX’s reach to both large institutional investors and investment advisers with SMA clients. From the outset of the launch of APPIX, Pekin Singer’s management team decided to allow investment advisers to aggregate their clients’ investments to qualify for purchase of APPIX. Thus, as long as an adviser had a total of \$100,000 of client assets invested in Appleseed, all investments by the adviser’s clients, regardless of size, were eligible for APPIX.

*Pekin Singer Failed to Convert Its SMA Clients to APPIX*

36. The ability to aggregate by adviser also meant that Pekin Singer’s SMA clients were eligible for the institutional share class when it became available through Pekin Singer’s primary broker-dealer in April 2011. Prior to April 2011, APPLX was the only share class available to Pekin Singer’s SMA clients. In aggregate, Pekin Singer’s SMA clients had approximately \$29 million invested in Appleseed at the time APPIX was launched, which exceeded the required \$100,000 minimum for APPIX.

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<sup>2</sup> As an example, one broker-dealer charged a platform fee of 40 basis points for APPLX shares offered through its NTF mutual fund platform, and charged 10 basis points for APPIX shares offered through its TF platform. The 25 basis point administrative services fee helped offset the additional 30 basis point cost to Pekin Singer associated with the APPLX shares.



37. Since APPIX was launched, nearly all of Pekin Singer's SMA clients traded through Broker-Dealer A. APPLX and APPIX were available to Pekin Singer's SMA clients through Broker-Dealer A on the following terms:

	<b>APPLX</b>	<b>APPIX</b>
Expense Ratio Paid by Client	1.24%	0.99%
Transaction Fees Paid by Client	\$12.50/trade	\$12.50/trade
Platform Fee Charged to Pekin Singer	\$16 annual fee per account	\$16 annual fee per account

38. Effective April 2011, Pekin Singer's SMA clients were eligible to convert their APPLX shares to APPIX through Broker-Dealer A. If they converted, these clients would receive the identical investment with the same transaction costs, at a 0.25% lower expense ratio.

39. While converting to APPIX would save money for its clients, Pekin Singer stood to lose revenue in an amount equal to its clients' savings, as the 0.25% expense ratio differential between the two classes consisted of the administrative service fee payable to Pekin Singer. Because Pekin Singer paid a \$16 fee to Broker-Dealer A per account regardless of the share class, there was no additional cost to Pekin Singer for investing its clients in APPLX instead of APPIX. In other words, by keeping its clients in APPLX, Pekin Singer could collect the administrative services fee without incurring any additional platform costs.

40. In early 2011, Pekin Singer, W. Pekin, and J. Strauss decided to not convert its SMA clients at Broker-Dealer A to APPIX. They made that decision because converting would have resulted in a reduction in fee revenue for Pekin Singer, and they viewed the fees collected from their clients through Appleseed as comparable to a negotiable investment advisory fee. They did not believe they were required to convert their clients' Appleseed holdings into the lower fee share class. However, the additional administrative services fee earned by keeping clients in APPLX was designed to compensate Pekin Singer for fees it paid to platforms for administrative services provided to Appleseed investors, not to serve as a higher advisory fee.

41. Pekin Singer also had a smaller number of clients that traded through Broker-Dealer B. Broker-Dealer B charged Pekin Singer 40 basis points for APPLX shares offered on its NTF platform, and 10 basis points for APPIX shares offered on its TF platform. In this case, while converting to APPIX reduced Pekin Singer's revenue by 25 basis points, it reduced the platform fees paid by Pekin Singer by 30 basis points, for a net gain of 5 basis points. Pekin Singer converted most of its clients that used Broker-Dealer B to APPIX when APPIX became available at Broker-Dealer B in March 2011.

42. From April 2011 until February 2014, Pekin Singer, W. Pekin, and J. Strauss placed their clients' new Appleseed investments through Broker-Dealer A in APPLX instead of APPIX, even though clients were eligible to own lower-cost APPIX. By doing so, they failed to seek best execution for their clients on these transactions.

43. From 2011 through June 2014, Pekin Singer clients paid – and Pekin Singer profited by – an additional \$307,241.54, as a result of being invested in APPLX instead of APPIX.

*Pekin Singer's Consultation With Counsel Regarding the Need to Convert Clients to APPIX*

44. In or about January 2012, a portfolio manager at Pekin Singer questioned whether Pekin Singer needed to convert its clients to APPIX. In response, Pekin Singer's management team determined that they should consult counsel regarding the firm's decision not to convert all of its clients trading through Broker-Dealer A to APPIX. In early 2012, Pekin Singer consulted with an attorney with Investment Company Act experience who was assisting the firm with other unrelated matters. However, due to a miscommunication between Pekin Singer's management team and Investment Company Act counsel, the advice given did not appropriately address the share class issue.

*Pekin Singer's Failure to Adequately Disclose Conflicts of Interest and Failure to Seek Best Execution*

45. Pekin Singer, W. Pekin, and J. Strauss did not adequately disclose to their clients at Broker-Dealer A that they were eligible to invest in APPIX. Pekin Singer converted the shares of clients who requested APPIX, but did not make similar recommendations to the clients that did not proactively ask about APPIX.

46. Pekin Singer, W. Pekin, and J. Strauss did not adequately disclose to their clients that they were not seeking best execution with respect to new investments in Appleseed, or that they had a conflict of interest in selecting the investor share class for their clients. Likewise, Pekin Singer's Form ADV did not address that Pekin Singer kept or placed its clients in a more expensive share class when a less expensive share class was available. Specifically, Pekin Singer's Forms ADV Part 2A filed with the Commission on December 14, 2011, January 27, 2012, March 27, 2012, December 14, 2012, March 28, 2013, March 28, 2014, and April 29, 2014 discussed Pekin Singer's duty to seek best execution, but failed to adequately disclose Pekin Singer's failure to seek best execution in the case of selecting Appleseed share classes.

**Subsequent Developments at Pekin Singer**

47. Since 2011, Pekin Singer has made several changes to improve its compliance policies and procedures, and has conducted more extensive compliance testing. In 2012, the firm hired a full-time compliance employee to assist the Chief Compliance Officer, and the firm expanded its relationship with a compliance consultant as an outside resource. The firm also has outside counsel which it regularly consults with on issues requiring regulatory input. Over time, the Chief Compliance Officer's other responsibilities were pared back so that he could focus exclusively on his responsibilities as CCO and CFO. In April 2014, the Chief Compliance Officer stepped down as CCO and remains at the firm as CFO. Pekin Singer hired a new CCO with compliance and operations experience.

48. In June 2014, R. Strauss retired as the firm's President and portfolio manager. He remains at the firm as a senior adviser and board member.

## Violations

49. As a result of the conduct described above in paragraphs 12 to 31, Pekin Singer willfully violated Section 204A of the Advisers Act and Rule 204A-1 thereunder, which require registered investment advisers to “establish, maintain, and enforce a written code of ethics.”<sup>3</sup>

50. As a result of the conduct described above in paragraphs 12 to 31, Pekin Singer willfully violated 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which, among other things, requires that an investment adviser: (1) adopt and implement written policies and procedures reasonably designed to prevent violations, by the investment adviser or its supervised persons, of the Advisers Act and the rules adopted thereunder; and (2) review, no less frequently than annually, the adequacy of its policies and procedures and the effectiveness of their implementation. A violation of Section 206(4) and the rules thereunder do not require scienter. *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992).

51. As a result of the conduct described above in paragraphs 12 to 31 and 32 to 46, Pekin Singer willfully violated Section 207 of the Advisers Act, which makes it “unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein.”

52. As a result of the conduct described above in paragraphs 12 to 31, R. Strauss willfully violated Section 207 of the Advisers Act and caused Pekin Singer’s violations of Sections 204A and 206(4) of the Advisers Act and Rules 204A-1 and 206(4)-7 thereunder.

53. As a result of the conduct described above in paragraphs 32 to 46, Pekin Singer willfully violated Section 206(2) of the Advisers Act, which makes it unlawful for an adviser to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client. Proof of scienter is not required for a violation of Section 206(2) of the Advisers Act. “[A] violation of Section 206(2) of the Advisers Act may rest on a finding of simple negligence.” *Steadman*, 967 F.2d at 643 n.5 (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191 (1963)).

54. As a result of the conduct described above in paragraphs 32 to 46, W. Pekin and J. Strauss caused Pekin Singer’s violations of Sections 206(2) and 207 of the Advisers Act, and willfully caused to be omitted in reports required to be filed with the Commission under the Advisers Act material facts required to be stated therein.

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<sup>3</sup> A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

### **Pekin Singer's Remedial Efforts**

55. In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by Pekin Singer and cooperation afforded to the Commission staff:

- In 2011, Pekin Singer retained an Investment Company Act securities counsel to advise the firm on certain regulatory matters.
- In 2012, Pekin Singer expanded its relationship with its outside compliance consultant and hired an additional full-time Compliance Director to support the firm's CCO. Pekin Singer has continued to retain a compliance consultant as an additional compliance resource.
- In 2014, Pekin Singer hired a new CCO who has been tasked with continuing to expand and improve the firm's compliance program.
- In 2014, Pekin Singer continued its relationship with its outside compliance consultant to ensure that the consultant will monitor and advise on Pekin Singer's annual compliance program reviews for the year ended 2014. Pekin Singer will retain a consultant for monitoring and advising through at least 2015.

56. The Commission also considered that Pekin Singer detected the Appleseed Fund share class issue and voluntarily self-reported it to Commission staff during the Commission's investigation into the other compliance issues at Pekin Singer. Pekin Singer voluntarily took remedial actions, including retaining separate outside legal counsel to conduct an investigation of the facts surrounding the Appleseed Fund share class issue and share the findings of its investigation with Commission staff. At the conclusion of the investigation, Pekin Singer voluntarily reimbursed all affected client accounts for the excess fees and costs incurred by client accounts holding investor class shares, as well as the implied return these monies would have earned in the institutional share class over the applicable time period. The reimbursement totaled \$360,680.75, which included \$307,241.54 of additional fees paid by clients in APPLX and \$53,439.21 of foregone investment return resulting from the higher fees.

### **Undertakings**

57. Respondent R. Strauss has undertaken to provide to the Commission, within sixty (60) days after the end of the twelve-month suspension period described in Section IV, an affidavit that he has complied fully with the sanctions described in Section IV below.

### **IV.**

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

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

A. Pekin Singer cease and desist from committing or causing any violations and any future violations of Sections 204A, 206(2), 206(4) and 207 of the Advisers Act and Rules 204A-1 and 206(4)-7 promulgated thereunder.

B. R. Strauss cease and desist from committing or causing any violations and any future violations of Sections 204A, 206(4), and 207 of the Advisers Act and Rules 204A-1 and 206(4)-7 promulgated thereunder.

C. W. Pekin and J. Strauss cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 207 of the Advisers Act.

D. R. Strauss be, and hereby is, suspended for 12 months, effective on the second Monday following the entry of this Order, from association in a compliance capacity and a supervisory capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and is suspended from association in a compliance capacity and a supervisory capacity with any registered investment company, or with any investment adviser or depositor of, or principal underwriter for, a registered investment company.

E. Pekin Singer, W. Pekin, and J. Strauss are censured.

F. Pekin Singer shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$150,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in the manner provided in Subsection J below.

G. R. Strauss shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$45,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in the manner provided in Subsection J below.

H. W. Pekin shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$45,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in the manner provided in Subsection J below.

I. J. Strauss shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$45,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3).

If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in the manner provided in Subsection J below.

J. Payment of any amount herein must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 the respective Respondent making the payment (either Pekin Singer, R. Strauss, W. Pekin and/or J. Strauss) 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 Paul A. Montoya, Assistant Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Boulevard, Chicago, Illinois, 60604, or such other address the Commission staff may provide.

K. Respondent R. Strauss shall comply with the undertakings enumerated in Section III.57. above.

**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 Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents 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 Respondents 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