

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4176 / August 17, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16759

<p>In the Matter of</p> <p style="text-align:center">Tamara S. Kraus,</p> <p>Respondent.</p>

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Tamara S. Kraus (“Kraus” 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 her 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 Cease-and-Desist Proceedings Pursuant to Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing 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

This proceeding arises out of significant overstatements of assets under management ("AUM") and improper SEC registration by Ariston Wealth Management, L.P. ("Ariston"), an investment adviser formerly registered with the Commission. Ariston misstated in filings with the Commission that it had \$32 million in AUM in November 2011 when it had less than \$20 million in AUM and misstated in March 2012 that it had \$190 million in AUM when it had less than \$80 million in AUM. Ariston's November 2011 misstatement of its AUM also resulted in Ariston improperly remaining registered with the Commission while the rules in effect restricted such registration to advisers with more AUM. Kraus served as Ariston's Chief Compliance Officer during this time period and was a cause of these violations.

Respondent

1. **Kraus**, age 50, is a resident of Lake Mary, Florida and served as Chief Compliance Officer of Ariston from July 2011 until July 2013. Since July 2011, Kraus has also been employed in the compliance department of registered broker-dealer Meyers Associates L.P., ("Meyers") and has held general securities principal, operations professional and general securities representative FINRA registrations with Meyers. Kraus worked from an office location in Longwood, Florida. Kraus filed a Chapter 7 bankruptcy petition in the Middle District of Florida on January 11, 2013, case no. 13-00408 (Bankr. MD Fl. 2013).

Other Relevant Individuals and Entities

2. **Ariston** is a New York limited partnership formed in 2011. Ariston filed a Form ADV registration statement with the Commission on June 24, 2011 under Advisers Act Rule 203A-2(d)² as a newly-formed adviser, which registration became effective on July 13, 2011. Ariston withdrew from registration with the Commission on July 7, 2013 and registered in certain states as an investment adviser. Ariston's state registrations have all been withdrawn as of December 31, 2014 based on its representations that it has ceased conducting an advisory business.

3. **Bradford D. Szczecinski** ("**Szczecinski**"), age 47, is a resident of Chicago, Illinois and served as President and an investment adviser representative of Ariston from November 30, 2011 through August 30, 2013. During that time period, Szczecinski was also dually registered with Meyers as a general securities representative.

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.

² Post Commission rules implementing provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, this provision is now in Rule 203A-2(c).

4. **Theodore R. Augustyniak (“Augustyniak”)**, age 32, is a resident of Chicago, Illinois and served as a Vice President and an investment adviser representative of Ariston from November 30, 2011 through August 30, 2013. During that time period, Augustyniak was also dually registered with Meyers as a general securities representative.

Facts

5. On June 24, 2011, Ariston filed a Form ADV initial registration statement with the Commission as a “newly formed adviser” relying on Advisers Act Rule 203A-2(d), which permits an otherwise ineligible adviser to register with the Commission if it has a reasonable expectation that it would be eligible to register with the Commission within 120 days after the date the registration becomes effective and files to withdraw from registration if, on the 120th day, the adviser does not meet the eligibility requirements for registration. Form ADV requires an adviser to specify in Part 1A, Item 5F, among other things, the total amount of AUM for which the adviser provides continuous and regular supervisory or management services to securities portfolios. As a newly formed adviser, Ariston reported \$0 in AUM in Part 1A, Item 5F.

6. Ariston’s registration with the Commission was declared effective on July 13, 2011, resulting in its 120-day period ending on November 10, 2011.

7. On July 20, 2011, Kraus signed and filed on behalf of Ariston a Form ADV amendment that added her to the schedule of executive officers as Ariston’s designated Chief Compliance Officer and removed the individual previously listed as Chief Compliance Officer.

8. Records reflect that on November 10, 2011, the 120th day after Ariston’s registration became effective, Ariston had AUM of less than \$20 million, below the threshold of \$25 million in AUM necessary for Ariston to avoid the requirement that it withdraw from registration with the Commission under Rule 203A-2(d) on that date.

9. Kraus received an automated email addressed to Ariston from the Commission on November 10, 2011, stating:

Your investment adviser registration request with the U.S. Securities and Exchange Commission pursuant to Investment Advisers Act of 1940 rule 203A-2(c)... was granted on 7/13/2011, more than 120 days ago. According to your filing history in the Investment Adviser Registration Depository (IARD), you have neither filed Form ADV-W to withdraw your Commission registration nor amended Item 2 of Form ADV Part 1A to indicate that you have another basis of eligibility to remain registered with the Commission. Investment advisers that are granted registration with the Commission pursuant to 203A-2(c) are required to take one of these actions within 120 days after the Commission declares their registration effective. (See Instructions 2.g, Form ADV: Instructions for Part 1A).... Please be advised that your failure to

submit the required filing or amendment can result in the Commission canceling your registration as well as instituting an enforcement proceeding....

10. Although records reflect that Ariston had less than \$20 million in AUM at that time, after receiving the above-referenced email, Kraus prepared, signed and filed on behalf of Ariston a Form ADV amendment (the "November 2011 ADV") misstating that Ariston had \$32 million AUM in Part 1A, Item 5F, an overstatement of more than 50%. Kraus failed to take reasonable steps to ascertain an accurate AUM figure to include in the November 2011 ADV and knew or should have known that such failure would contribute to Ariston's filing with the Commission materially false information in such report and Ariston's failure to file a Form ADV-W to withdraw from Commission registration as was required. A letter dated November 15, 2012 from Ariston to staff of the Commission's Office of Compliance Inspections and Examinations ("OCIE") responding to examination requests provided the explanation that Ariston's November 2011 ADV filing that listed \$32 million in AUM "was in anticipation for more advisors to join."

11. On November 30, 2011, Szczecinski joined Ariston as its President, operating out of an office in Chicago, Illinois. Augustyniak, who provided assistance to Szczecinski with various tasks, joined Ariston as a Vice President on the same date also in Chicago. On December 6, 2011, Kraus signed and filed on behalf of Ariston a Form ADV amendment that added Szczecinski to the schedule of executive officers as Ariston's President and a control person.

12. Ariston was required under relevant Commission regulations to file a Form ADV amendment by March 30, 2012, updating its information and providing, among other things, the firm's total amount of AUM and the total number of accounts it advised in Part 1A, Item 5F calculated as of a date within 90 days of the filing. Records reflect that during the 90-day period prior to March 30, 2012, Ariston had less than \$80 million in AUM.

13. However, on March 30, 2012, Kraus signed and filed a Form ADV amendment on behalf of Ariston that misstated that Ariston had \$190 million in AUM (the "March 2012 ADV"), more than double Ariston's actual AUM. Kraus signed the March 2012 ADV, certifying that she was signing the filing "on behalf of, and with the authority, of the investment adviser" and that "the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct."

14. Ariston's March 2012 ADV reported that Ariston had 11 employees who performed investment advisory functions. During the time period relevant to the March 2012 ADV filing, most of the accounts for which Ariston provided advisory services were custodied at two large clearing brokers ("Clearing Broker A" and "Clearing Broker B") and a small number of accounts managed by Szczecinski or Augustyniak were custodied elsewhere. Kraus did not herself have credentialed view access to the custodial platforms for Ariston's managed accounts. However, another employee working in the same office with her had such access for Clearing Broker A and Augustyniak and Szczecinski had such access with respect to the other custodians.

15. Rather than obtaining a list of advised accounts and pertinent information regarding those accounts, Kraus instead based Ariston's representation that it had \$190 million in AUM in the March 2012 ADV on a short email exchange she had with Augustyniak. On March 7, 2012, Augustyniak initially emailed Kraus:

I was flipping through the new ADV and noticed we have 32 mm under assets. Where is that number coming from?

We still think the number is closer to 190mm. By that we should be a large advisory firm.

16. Kraus replied to the email later that day, stating: "I don't know where I got the number, but [you] tell me what it should be and I'll change it." The following day, Augustyniak replied to Kraus, copying Szczecinski on the chain of emails: "We are thinking it is closer to 190mm."

17. On March 28, 2012, Kraus emailed Augustyniak: "Attached is the current form ADV. I have to file the annual amendment by Friday. I made notes on page 12 of the \$190MM under management and verified with [a Meyers employee] we currently have 94 managed accounts at [Clearing Broker A]. Let me know how many we have at [Clearing Broker B] so I can update that number also. Please review in detail. Any changes that need to be made, just make notes on the page and then scan/email back those pages only." The figure "\$190,000,000" was handwritten under the entry for AUM in Part 1A, Item 5F of page 12 of the attached draft, a line drawn through the listed number of accounts, and a question mark next to the section. On another page containing Part 1A, Item 2A, which requires selecting one or more boxes that represents the basis for the firm's eligibility to register (or remain registered) with the Commission, the box for "mid-sized advisory firm" with AUM of \$25 million or more but less than \$100 million was checked.

18. That same day, Augustyniak emailed back to Kraus a scanned in set of marked-up pages, including the page containing Part 1A, Item 5F. Augustyniak did not change the \$190 million AUM figure. On that page, Augustyniak handwrote the number of accounts as 79 at Clearing Broker B and a total of 3 at the two other custodians. Together with the 94 accounts referenced at Clearing Broker A in Kraus' email, the number of accounts Augustyniak listed resulted in a total of 176 accounts. The scanned set of pages also included the page containing Part 1A, Item 2A, on which Augustyniak handwrote that the box for "large advisory firm" with AUM of \$100 million or more should be checked and the "mid-sized advisory firm" box should be unchecked.

19. The March 2012 ADV represented in Part 1A, Item 2A that Ariston was a "large advisory firm" and represented in Part 1A, Item 5F that Ariston had \$190 million in AUM and 176 total accounts. By representing that Ariston had AUM of \$190 million in the March 2012 ADV when it had less than \$80 million in AUM, Ariston materially misstated its AUM. As the designated Chief Compliance Officer of Ariston and the signatory on Ariston's March 2012 ADV, Kraus knew or should have known that the manner in which she obtained the information for

inclusion in the March 2012 ADV would contribute to Ariston's filing materially false information in such report with the Commission.

20. On October 1, 2012, OCIE staff notified Ariston that it would be commencing an examination of Ariston. Following inquiries from OCIE staff, Ariston filed a Form ADV amendment on November 28, 2012 reflecting then-current AUM of \$46,357,368.

Violations

21. As a result of the conduct described above, Ariston violated Section 203A of the Advisers Act by failing to file a Form ADV-W to withdraw from registration on November 10, 2011 and improperly remaining registered with the Commission, and Kraus was a cause of Ariston's violations.

22. As a result of the conduct described above, Ariston violated Section 207 of the Advisers Act by willfully³ making material misstatements of its AUM in required Forms ADV filed with the Commission and Kraus was a cause of Ariston's violations.

Undertakings

Respondent has undertaken to:

23. **Compliance Training**. No later than six (6) months after the entry of this Order, Respondent shall complete thirty (30) hours of compliance training related to the Advisers Act.

24. **Certification of Compliance**. Respondent shall certify, in writing, compliance with the undertaking set forth above in paragraph 27. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Wendy Tepperman, Assistant Regional Director, New York Regional Office, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York, 10281, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, 100 F Street, NE Washington, DC 20549, no later than sixty (60) days from the date of the completion of the undertakings.

25. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar

³ 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)).

days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

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(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Kraus shall cease and desist from committing or causing any violations and any future violations of Sections 203A and 207 of the Advisers Act.

B. Respondent Kraus shall pay a civil money penalty in the amount of \$10,000. The civil money penalty is ordered, but is not payable until 14 days after the stay in her Chapter 7 case in the Middle District of Florida, case no. 13-00408 (Bankr. MD Fl. 2013) (filed Jan. 11, 2013) is terminated. Payment shall be made in four installments which shall begin 14 days after the entry of this Order or 14 days after the stay in Kraus' Chapter 7 case is terminated, whichever occurs later: (i) \$2,500 within 14 days; (ii) \$2,500 within 120 days; (iii) \$2,500 within 240 days; and (iv) \$2,500 within 360 days of entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, at the discretion of the Commission staff, without further application. 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 Tamara S. Kraus 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 Wendy Tepperman, Assistant

Regional Director, New York Regional Office, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York, 10281.

C. Respondent shall comply with the undertakings enumerated in Section III, paragraphs 23 and 24 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 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