

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4268 / November 17, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16963

In the Matter of

FCG ADVISORS, LLC,

Respondent.

**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 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 FCG Advisors, LLC (“FCG Advisors” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“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 it and the subject matter of these proceedings, which are admitted, 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:

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.

SUMMARY

1. These proceedings arise out of Respondent's act of permitting, without the consent of the Commission, Thomas A. Kolbe ("Kolbe") to associate with it from October 2008 through March 2010. At the time of such association, Kolbe was subject to an order entered by the Commission on August 30, 2004 in *In the Matter of Thomas A. Kolbe*, Advisers Act Release No. 2288 (the "Commission Order"), that barred him from, among other things, association with any investment adviser with a right to reapply for association after one (1) year from the date of the Commission Order.

RESPONDENT

2. **FCG Advisors, LLC**, is a limited liability company organized under the laws of the State of New Jersey that is currently registered with the Commission solely as a broker dealer.² During the relevant time period of October 25, 2008 through March 19, 2010, FCG Advisors was registered with the Commission as both a broker dealer and an investment adviser, and held out Kolbe as a registered representative of the firm.

BACKGROUND

3. From October 2001 through June 2003, Kolbe served as a Senior Vice President and the National Sales Manager for Invesco Funds Group, Inc. ("IFG"), a registered investment adviser to the Invesco mutual fund complex ("Funds").

4. On August 30, 2004, the Commission entered the Commission Order against Kolbe for his role in assisting IFG in negotiating and approving certain market timing agreements with select investors ("Market Timers").³ The Commission found that Kolbe permitted the head of IFG's "market timing desk" to negotiate market timing agreements, which required Market Timers to keep their assets within the Funds in exchange for IFG allowing the Market Timers to engage in frequent trading.

5. The Commission found that, through his actions, Kolbe willfully aided and abetted and caused IFG's violations of Sections 206(1) and 206(2) of the Investment Advisers Act.

6. The Commission Order, among other things, (i) barred Kolbe from associating with any investment adviser with a right to reapply for association after one (1) year; (ii) prohibited

² Respondent established a stand-alone registered investment adviser on or about March 28, 2013. That affiliated entity continues to be registered with the Commission as an investment adviser today.

³ As explained in the Commission Order, "Market timing includes (a) frequent buying and selling of shares of the same mutual fund or (b) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Market timing, while not illegal *per se*, can harm other mutual fund shareholders because it can dilute the value of their shares, if the market timer is exploiting pricing inefficiencies, or disrupt the management of the mutual fund's investment portfolio and can cause the targeted mutual fund to incur costs borne by other shareholders to accommodate frequent buying and selling of shares by the market timer."

Respondent from serving as a chairman, director, or officer of any investment adviser or as an officer or director of any registered investment company for two (2) years; (iii) imposed a \$150,000 civil penalty against Respondent; and (iv) ordered Respondent to pay disgorgement of one dollar (\$1).⁴

7. Section 203(f) of the Advisers Act states that “it shall be unlawful for any investment adviser to permit [any person as to whom such an order suspending or barring him from being associated with an investment adviser is in effect] to become, or remain, a person associated with [such investment adviser] without the consent of the Commission, if such investment adviser knew, or in the exercise of reasonable care, should have known, of such order.”

FACTS

8. In October 2008, Kolbe applied to join Respondent as a registered representative. In connection therewith, Respondent executed a “Confidentiality and Non-Competition Agreement” on October 10, 2008 which was “effective as of the date of employment.” Respondent also completed a “pre-hire” disclosure and release on October 17, 2008, and agreed on October 25, 2008 to comply with FCG Advisors’ compliance policies and procedures.⁵

9. On or about October 25, 2008, Kolbe began working for Respondent as a registered representative of the firm.

10. Kolbe disclosed the Commission Order to Respondent prior to joining the firm.

11. Effective March 19, 2010, Respondent and Kolbe terminated their relationship.

12. Based on Kolbe’s relationship with Respondent, an investment adviser, Kolbe was a “person associated with an investment adviser,” as that term is defined in Section 202(a)(17) of the Advisers Act.⁶

13. Kolbe did not reapply with the Commission to associate with Respondent pursuant to Rule 193 of the Commission’s Rules of Practice (“Rule 193”),⁷ nor did Respondent obtain the consent of the Commission to permit Kolbe to associate with it.

⁴ Kolbe paid the civil penalty and disgorgement in full.

⁵ Many of the documents that Kolbe signed in October 2008 were addressed from Respondent to its “Registered Representatives and Associated Persons.”

⁶ Section 202(a)(17) of the Advisers Act defines the term “person associated with an investment adviser” to mean “any partner, officer, or director of such investment adviser (or any person performing similar functions), or any person directly or indirectly controlling or controlled by such investment adviser, including any employee of such investment adviser, except that for the purposes of section 203 of this title (other than subsection (f) thereof), persons associated with an investment adviser whose functions are clerical or ministerial shall not be included in the meaning of such term.”

VIOLATION

14. As a result of the above-described conduct, Respondent violated Section 203(f) of the Advisers Act, which prohibits any investment adviser from permitting any person as to whom an order suspending or barring him or her from being associated with an investment adviser is in effect to become, or remain, a person associated with it without the consent of the Commission, if such investment adviser knew, or in the exercise of reasonable care, should have known, of such order.

IV.

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

Accordingly, it is hereby ORDERED that pursuant to Section 203(k) of the Advisers Act, Respondent FCG Advisors cease and desist from committing or causing any violations and any future violations of Section 203(f) of the Advisers Act.

By the Commission.

Brent J. Fields
Secretary

⁷ The Commission Order directed Kolbe to reapply for association "to the appropriate self-regulatory organization, or if there is none, to the Commission." Because there was and is no self-regulatory organization responsible for processing applications to associate with investment advisers, such applications must be made directly to the Commission pursuant to Rule 193, which governs applications for Commission consent to associate with, among other entities, an investment adviser, where a Commission order bars an individual from such association and contains a proviso that application may be made to the Commission after a specified period of time.