

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4269 / November 17, 2015**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 31903 / November 17, 2015**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16964**

**In the Matter of**

**THOMAS A. KOLBE**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO 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 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 Thomas A. Kolbe (“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 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 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 finds<sup>1</sup> that:

#### SUMMARY

1. These proceedings arise out of Respondent's violation of a Commission order entered on August 30, 2004 in *In the Matter of Thomas A. Kolbe*, Advisers Act Release No. 2288 (the "Commission Order"), which, among other things, barred Respondent from association with any investment adviser with a right to reapply for association after one (1) year from the date of the Commission Order. Respondent violated the Commission Order by associating, without reapplying to the Commission for association, with three different investment advisers at various time between 2006 and 2013.

#### RESPONDENT

2. **Thomas A. Kolbe**, age 66, is a resident of Centennial, Colorado. From approximately January 5, 2006 through November 15, 2006, Respondent was a registered representative of a broker dealer and an investment adviser ("Advisory Firm A").<sup>2</sup> Similarly, from approximately October 25, 2008 through March 19, 2010, Respondent was a registered representative of a broker dealer and an investment adviser, FCG Advisors, LLC ("Advisory Firm B").<sup>3</sup> Finally, from approximately July 1, 2012 through February 22, 2013, Respondent was an employee of an investment adviser ("Advisory Firm C").<sup>4</sup> Respondent received compensation from Advisory Firm A, Advisory Firm B, and Advisory Firm C.

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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.

<sup>2</sup> Advisory Firm A ceased doing business in the securities industry in 2009. It filed Form ADV-W with the Commission on December 8, 2008, and Form BD-W with the Commission on December 18, 2009.

<sup>3</sup> Advisory Firm B 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.

<sup>4</sup> Advisory Firm C has ceased operations, is no longer in good standing in either the State of Delaware, where it was organized, or the State of New York, where it was registered as a foreign limited liability company, withdrew its registration from the Commission on March 31, 2014, and has not done business in the securities industry since March 31, 2014.

## BACKGROUND

3. From October 2001 through June 2003, Respondent 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 Respondent for his role in assisting IFG in negotiating and approving certain market timing agreements with select investors (“Market Timers”).<sup>5</sup> The Commission found that Respondent 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, Respondent 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 Respondent from associating with any investment adviser with a right to reapply for association after one (1) year; (ii) prohibited 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).<sup>6</sup>

## FACTS

7. On or about January 5, 2006, Respondent began working as a registered representative of Advisory Firm A.

8. Effective November 15, 2006, Advisory Firm A and Respondent terminated their relationship.

9. On or about October 25, 2008, Respondent began working as a registered representative of Advisory Firm B.

10. Effective March 19, 2010, Advisory Firm B and Respondent terminated their relationship.

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<sup>5</sup> 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.”

<sup>6</sup> Respondent paid the civil penalty and disgorgement in full.

11. On or about July 1, 2012, Respondent began working for Advisory Firm C as its Senior Vice President and Director of Sales. On or about November 16, 2012, Respondent changed positions at Advisory Firm C, and became its Director of Retirement Plan Sales.

12. Effective February 22, 2013, Advisory Firm C and Respondent terminated their relationship.

13. Respondent was a “person associated with an investment adviser,” as that term is defined in Section 202(a)(17) of the Advisers Act,<sup>7</sup> with respect to Advisory Firm A, Advisory Firm B, and Advisory Firm C based upon his relationship with each of these investment advisers.

14. Respondent disclosed the Commission Order to Advisory Firm A, Advisory Firm B, and Advisory Firm C prior to joining each of these firms.

15. In contravention of the Commission Order, Respondent did not reapply with the Commission to associate with Advisory Firm A, Advisory Firm B, or Advisory Firm C pursuant to Rule 193 of the Commission’s Rules of Practice (“Rule 193”),<sup>8</sup> nor did he otherwise obtain the consent of the Commission to associate with Advisory Firm A, Advisory Firm B, or Advisory Firm C.

## VIOLATION

16. As a result of the above-described conduct, Respondent willfully<sup>9</sup> violated Section 203(f) of the Advisers Act, which prohibits anyone who has been barred from being associated with an investment adviser willfully to become associated with an investment adviser without the consent of the Commission.

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<sup>7</sup> 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.”

<sup>8</sup> The Commission Order directed Respondent 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.

<sup>9</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)).

#### IV.

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

Accordingly, pursuant to 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 Kolbe cease and desist from committing or causing any violations and any future violations of Section 203(f) of the Advisers Act.

B. Respondent Kolbe 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;

with the right to apply for reentry after one (1) year to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by Respondent Kolbe 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 the 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.

D. Respondent Kolbe shall pay disgorgement of \$25,000 and civil penalties of \$25,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: (i) \$12,500 within fifteen (15) days of the entry of this Order; (ii) \$12,500 within one-hundred-eighty (180) days of the entry of this Order; (iii) \$12,500 within two-hundred-seventy (270) days of the entry of this Order; and (iv) \$12,500 within three-hundred-sixty-five (365) days of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement and civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. § 3717 and SEC Rule of Practice 600, shall be due and payable immediately, 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 Respondent Kolbe 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 Montoya, Assistant Director, Division of Enforcement, Securities and Exchange Commission, Chicago Regional Office, 175 West Jackson Boulevard, Suite 900, Chicago, IL 60604-2908.

E. 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.

## 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