

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 77253 / February 29, 2016**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4346 / February 29, 2016**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 32012 / February 29, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17139**

**In the Matter of**

**MAXIMILLIAN SANTOS,**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS  
PURSUANT TO SECTIONS 15(b) AND 21C  
OF THE SECURITIES EXCHANGE ACT OF  
1934, SECTION 203(f) 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 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Maximillian Santos (“Respondent” or “Santos”).

**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, 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 15(b) and 21C of the Securities Exchange Act of 1934, Section 203(f) 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 that:

#### **Summary**

From at least January 2005 through January 2012, Santos, who was employed as a registered representative at a dually registered broker-dealer and investment adviser (the “Broker-Dealer”) during the relevant time period, shared confidential information pertaining to at least 14 of his customers’ accounts with an outside third party without his customers’ knowledge or consent. The outside third party had previously been a registered representative at the Broker-Dealer; when the outside third party left the firm in 2005 after an adverse National Association of Securities Dealers disciplinary proceeding, Santos inherited many of his accounts and maintained a personal and professional relationship with him. Santos shared this information—which consisted of account holdings in particular stocks, cash balances, and certain trade activity, among other items—primarily through his personal email account. In addition, throughout 2012 and 2013, Santos used his personal email address to conduct official business and to service a customer’s account, including sending wire instructions, stock research reports and stock positions to the customer.

#### **Respondent**

Santos was employed as a registered representative by the Broker-Dealer during the relevant period and held Series 7, 9, 10 and 24 licenses. The Broker-Dealer terminated him on or about June 25, 2014 for sharing confidential customer information with an outside third party while utilizing a personal email address. Santos, 38 years old, is a resident of Queens, New York.

#### **Background**

1. From at least 2005 through January 2012, Santos shared confidential information pertaining to at least 14 of his customers’ accounts with an outside third party. Using a personal email address instead of the email address provided by the Broker-Dealer, Santos sent certain customers’ account holdings, cash balances and reports of trade activity, among other nonpublic personal information, to the nonaffiliated third party without the customers’ knowledge or consent, and without those customers having been given notice of and an opportunity to opt out of the disclosures pursuant to Regulation S-P.

2. The outside third party with whom Santos shared his customers’ confidential information had previously worked as a registered representative at the Broker-Dealer, and had left the firm in 2005 after an NASD arbitrator found that he had engaged in unauthorized trading in a

customer's account. At that time, Santos took over most of the outside third party's accounts. After his departure from the Broker-Dealer, the outside third party pursued interests in private equity and, during the relevant period, requested periodically from Santos information about his former customers' accounts.

3. Santos deliberately used a personal email account when communicating with the outside third party, including communicating confidential customer information, to avoid using the outside third party's name in emails sent using the Broker-Dealer's email system. Knowing that the Broker-Dealer blocked access via firm computers to personal email accounts, Santos accessed his personal email account from a personal mobile phone while in the office.

4. Throughout this time period, Santos would also periodically email information about his customers' accounts from his work email account to his personal email account, such as stock positions and, on at least one occasion, copies of a customer's passport, taking no precautions to safeguard the security of the data that he was emailing to himself.

5. In addition, on several occasions in 2012 and 2013, Santos used his personal email account to conduct official business and to service a customer's account. Among other things, Santos used a personal email address to send wire instructions to the customer; send the customer a stock research report; confirm the customer's position in a certain security; and field a question from the customer regarding specific trades and the scope of Santos's authorization to place those trades.

6. Regulation S-P Rules 7(a)(1) and 10(a)(1), 17 C.F.R. §§ 248.7(a)(1) and 10(a)(1), generally prohibit a broker-dealer from disclosing nonpublic personal information about a customer to a nonaffiliated third party unless the broker-dealer has provided the customer a clear, conspicuous, and accurate opt out notice and a reasonable opportunity to opt out of the disclosure before disclosing the information. As a result of the conduct described above, the Broker-Dealer violated, and Santos willfully aided and abetted and caused the Broker-Dealer's violations of, Regulation S-P Rules 7(a)(1) and 10(a)(1) when Santos disclosed nonpublic personal information about his customers to a nonaffiliated third party while failing to provide a clear and conspicuous notice to those customers that accurately explained the right to opt out under Regulation S-P Rule 10.

7. Exchange Act Section 17(a)(1) and Rule 17a-4(b) require that broker-dealers registered with the Commission maintain and preserve certain books and records. Rule 17a-4(b)(4) requires broker-dealers to preserve for a period of at least three years "[o]riginals of all communications received and copies of all communications sent ... relating to its business as such . . ." As a result of the conduct described above, the Broker-Dealer violated, and Santos willfully aided and abetted and caused the Broker-Dealer's violations of, Section 17(a)(1) and Rule 17a-4(b)(4) by failing to preserve communications sent by Santos through his personal email account in which he conducted official business, including his servicing of a customer account.

#### IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, Section 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Santos cease and desist from committing or causing any violations and any future violations of Rules 7(a)(1) and 10(a)(1) of Regulation S-P and Exchange Act Section 17(a)(1) and Rule 17a-4(b)(4) thereunder.

B. Respondent Santos be, and hereby is:

1. suspended from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for a period of six (6) months, effective on the second Monday following entry of this Order;
2. 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 for a period of six (6) months, effective on the second Monday following entry of this Order; and
3. suspended from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock, for a period of six (6) months, effective on the second Monday following entry of this Order.

C. Respondent Santos shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$75,000.00 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). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. 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 Santos 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 Scott W. Friestad, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5010.

D. 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