

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79126 / October 20, 2016

INVESTMENT ADVISERS ACT OF 1940
Release No. 4557 / October 20, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17638

In the Matter of

JOHN LEO VALENTINE,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
AND SECTIONS 203(f) AND 203(k) OF THE
INVESTMENT ADVISERS 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 Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against John Leo Valentine (“Valentine” 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 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 Section 15(b) of the Securities Exchange Act of 1934, and Sections 203(f) and 203(k) of the Investment Advisers 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 finds¹ that:

Summary

These proceedings arise out of John Leo Valentine's failure to provide full and fair disclosure to his clients about the reasons for an investment recommendation as well as a change in custodians, both of which resulted in a breach of the fiduciary duties he owed to those clients. First, Valentine failed to disclose that he had a conflict of interest when he recommended that his clients sell shares of a managed futures fund named Bridgeton Global Directional Fund, LP ("Bridgeton"), for which he had lost the ability to earn commissions, and buy shares of another fund that he created named Valt LP ("Valt"), for which he would be compensated. Second, Valentine misrepresented to clients the reasons why his investment adviser firm changed custodians. While the prior custodian terminated the relationship between it and Valentine's firm due in part to concerns about a prior Commission administrative proceeding against Valentine and that firm, Valentine claimed that he had terminated the relationship with the custodian after conducting a year-long independent review and concluding that the move would benefit clients. In both cases, Valentine failed to disclose important facts to his clients so they could make their own informed decisions, including about whether to sell Bridgeton, invest in Valt, or remain Valentine's clients after the prior custodian terminated its relationship with Valentine's firm.

Respondent

1. **John Leo Valentine**, age 55, is the president and owner of Valentine Capital Asset Management, Inc. ("VCAM"), formerly a Commission-registered investment adviser, and has been since the firm's inception. Up until VCAM ceased operations in May 2016, Valentine had ultimate authority over all firm investment decisions and the recommendations provided to VCAM's clients. From May 1986 to November 2011, Valentine was also a registered representative associated with several registered broker-dealers. On September 29, 2010, the Commission instituted settled administrative and cease-and-desist proceedings against Valentine in which it found that Valentine violated Section 206(2) of the Advisers Act by failing to disclose a financial conflict of interest in connection with his recommendation that clients exchange one series of a managed futures fund for another series of the same fund. *See In re Valentine Capital Asset Management, Inc.*, Investment Advisers Act Rel. No. 3090 (Sept. 29, 2010) ("2010 Order").

Other Relevant Entity

2. **Valentine Capital Asset Management, Inc.**, a California corporation located in Danville, California, was an investment adviser registered with the Commission from August 2006 until May 2016. In its last Form ADV, which was filed in April 2015, VCAM disclosed that it had

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.

approximately \$367 million in assets under management and 300 advisory clients. On May 10, 2016, VCAM withdrew its registration as an investment adviser with the SEC and, since that date, has ceased all operations. Additionally, on May 25, 2016, VCAM filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the Northern District of California. *See In re Valentine Capital Asset Management, Inc.*, Case No. 16-41446 (N.D. Cal. Bankr.). The Commission previously instituted settled administrative and cease-and-desist proceedings against VCAM on September 29, 2010, in which the Commission found that VCAM violated Section 206(2) of the Advisers Act by failing to adequately disclose a financial conflict of interest. *See* 2010 Order.

Facts

3. Valentine founded VCAM in 2006, as well as its predecessor firm Valentine Capital Retirement Planning Group, Inc. in 1993. He made all investment decisions at VCAM, and had a client base that consisted primarily of retired employees of a large Northern California oil and gas producer. Valentine recommended a set of investment strategies to clients that allocated different amounts of those clients' assets in equities, fixed income securities, alternative investments, non-correlated assets, and cash, depending on the clients' risk tolerance. Clients paid VCAM an annual fee that, according to the firm's Forms ADV Part 2A filed in 2011 and 2012, typically ranged from 0.25% to 1.50% of clients' assets under management at the firm. Those fees totaled \$1,790,616 and \$2,522,422 in 2010 and 2011, respectively. Clients also paid commissions related to investment products that they purchased based on recommendations received from Valentine.

4. Valentine was compensated for the investment advice he provided through a salary paid by VCAM and profits that he took out of the firm as its owner. Additionally, as a registered representative of various broker-dealers, Valentine received commissions earned in connection with the purchase of certain securities by his clients.

A. Valentine Failed to Disclose His Financial Conflict of Interest When Recommending that Clients Sell Shares of One Fund and Buy Shares in Another.

5. From 2007 up into the fourth quarter of 2011, Valentine recommended that clients purchase and then hold onto their shares of Bridgeton, a managed futures fund that invested in commodity futures contracts, options on commodities or commodity futures contracts, and forward contracts spanning multiple commodity sectors. During that period, Valentine received monthly trailing commissions based on the amount of VCAM client assets invested in Bridgeton. The commissions were paid by Bridgeton to several different broker-dealers with whom Valentine was associated over the years, and the broker-dealers then passed 90% of those commissions on to Valentine. Among other things, Valentine used the commissions to pay the salaries of VCAM personnel and other VCAM expenses. Between 2010 and 2011, Valentine received approximately \$1 million per year in Bridgeton trailing commissions, which made up a significant percentage of his and VCAM's annual income.

6. Bridgeton performed well in 2008. From 2009 through 2011, however, it yielded poor and inconsistent results. It was down nearly 20% in 2009, had large swings in performance in 2010, and was down 10% over the first six months of 2011. During this period, some clients raised concerns about Bridgeton's performance. Valentine, however, continued recommending that his clients buy or hold shares of Bridgeton from 2009 up into the last quarter of 2011, including by sending clients a letter signed by Bridgeton management in mid-September 2011 touting planned improvements to Bridgeton. Few VCAM clients sold their shares of Bridgeton during that period of time and some clients continued investing new money into Bridgeton. As of mid-April 2011, VCAM clients had approximately \$35 million invested in Bridgeton, which made it the second largest investment position held by VCAM clients based on dollar amount. Bridgeton continued to perform poorly during the second half of 2011, yielding losses between August and December.

7. In late 2010 and throughout 2011, Valentine began forming his own fund, Valt, to invest in commodity futures, options on commodities, and options on futures. Valentine created Valt to serve as a new investment option that clients could use to fill the non-correlated asset portion of their portfolios managed by VCAM. According to Valt's offering memorandum, Valt sought to achieve overall diversification by placing its funds with 11 commodity trading advisors who employed different trading strategies across varying commodity sectors. Valentine was the president and sole member of Valt's general partner, and, according to Valt's governing documents, had the ability to earn compensation from Valt.

8. On November 8, 2011, the broker-dealer firm with whom Valentine was associated at the time, and through which he was receiving all Bridgeton commissions, requested that Valentine resign as a representative of the firm. Valentine subsequently resigned from the broker-dealer on November 10, 2011, and as a result, lost his ability to continue receiving commissions from Bridgeton.

9. Thereafter, Valentine engaged in an effort to recommend that clients sell their shares of Bridgeton and buy shares of Valt. Although some clients did sell shares of Bridgeton before November 10, the number of full redemptions requested by VCAM clients increased significantly in the weeks right after Valentine lost his ability to earn Bridgeton commissions. The number of clients who liquidated their Bridgeton shares in the first four weeks immediately following November 10 more than quadrupled the number of redemptions requested in October, and was nearly 20 times greater than the number of redemptions requested in September. At the end of April 2011, a two-year high of 356 VCAM clients were invested in Bridgeton. Between November 10, 2011 and February 2012, nearly 70% of those clients liquidated their Bridgeton shares.

10. All told, approximately 36% of VCAM's clients who sold Bridgeton between November 10, 2011 and February 2012 bought Valt as a replacement. Others sold Bridgeton but decided not to invest in Valentine's new fund.

11. Valentine knew that he lost his ability to continue earning Bridgeton commissions after resigning as a representative of his latest broker-dealer firm on November 10, 2011. Nevertheless, when recommending that clients switch their shares of Bridgeton for shares of Valt

after that date, Valentine failed to disclose that he had a financial incentive to make the recommendation because he could earn money from Valt, but not Bridgeton.

12. After just a few months of operations, Valt ceased nearly all trading activity when its primary clearing broker and custodian declared bankruptcy in connection with a fraud conducted by the clearing broker's CEO. Valentine did not profit from Valt. He advanced money for certain Valt accounting, audit, legal, administrative and offering expenses, which, under the terms of Valt's offering and governing documents, were expenses that should have been reimbursed by Valt. The money Valentine advanced to Valt was never reimbursed, and it exceeded the amount of fees he received from Valt during its existence.

B. Valentine Misrepresented the Cause and Primary Reason for Changing Custodians.

13. From 2007 through the middle of 2011, VCAM utilized the services of a large, independent financial institution to serve as the custodian of its clients' assets. The custodian both held client assets that were under VCAM's management and also cleared trades that VCAM personnel made on behalf of clients via the custodian's trading platform.

14. After learning about the Commission order instituting administrative and cease-and-desist proceedings against Valentine and VCAM in 2010, the custodian decided to terminate its relationship with VCAM. Accordingly, in March 2011, the custodian sent Valentine a letter providing written notice that it was terminating its relationship with VCAM. Additionally, in the same month, an employee of the custodian discussed the termination decision with Valentine and identified concerns about the 2010 Order as a reason for the custodian's termination decision.

15. As a result, Valentine needed to transfer VCAM's clients' assets to another custodian. Valentine did not, however, inform clients that the prior custodian had severed ties with VCAM. Instead, in a September 2011 letter to clients, Valentine claimed that it was his and VCAM's choice to change custodians based on a purported independent review that began in 2010: "As part of our Business Planning effort conducted late 2010, we established an initiative to review our relationships with all vendors, suppliers, and custodial service providers. . . . As a result of that initiative, earlier this year we selected and established a formal relationship with three new banks and two Custodians. . . . Our decision to move away from [the prior custodian] was not made lightly or without a complete review and analysis of benefits to both clients and [VCAM]." These statements were materially misleading. By misrepresenting that he had initiated the change in custodial firms, Valentine concealed the fact that the prior custodian had actually terminated the relationship between it and VCAM, and that the custodian had specifically identified concerns about the 2010 Order as a reason for the termination decision. The fact that a large, well-established financial institution like the custodian had concerns about the 2010 Order was important information because Valentine and other VCAM personnel previously minimized the significance of the order by telling clients that everyone who followed the recommendation underlying the earlier action made money. In December 2011 and February 2012, Valentine sent two additional letters to clients continuing to falsely characterize the move from the prior custodian to a new firm

as the result of an independent decision made by VCAM after completing a business enhancement initiative.

16. In these September 2011, December 2011, and February 2012 letters to clients, Valentine failed to employ reasonable care to avoid misleading his clients about the change in custodial firms. Among other things, Valentine and VCAM received written notice from the prior custodian in March 2011 stating that the custodian was terminating its relationship with VCAM. Additionally, an employee of the custodian told Valentine that the custodian's termination decision was based in part on concerns about the 2010 Order.

Violations

17. As a result of the conduct described above, Respondent willfully² violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging "in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." A violation of Section 206(2) of the Advisers Act may rest on a finding of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.*

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 15(b) of the Exchange Act, and Sections 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent John Leo Valentine cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act.

B. Respondent John Leo Valentine be, and hereby is:

- (1) barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization with the right to apply for reentry after two (2) years to the appropriate self-regulatory organization, or if there is none, to the Commission; and

² 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)).

- (2) barred 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. Respondent Valentine has the right to apply for reentry after two (2) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by Respondent John Leo Valentine 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 Respondent Valentine, 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 John Leo Valentine shall pay civil money penalties of \$140,000.00 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 shall be made in the following installments: (i) \$60,000.00 within ten (10) days of entry of this Order; (ii) \$40,000.00 within six (6) months of entry of this Order; and (iii) the remaining \$40,000.00 within twelve (12) months 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 of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, 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 John Leo Valentine 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 Erin E. Schneider, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

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