

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4374 / April 20, 2016**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 32089 / April 20, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17220**

**In the Matter of**

**DANIEL N. GINSPARG,**

**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 Daniel N. Ginsparg (“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, 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 that:

#### **Respondent**

1. Respondent, age 53, resides in Chesterfield, Missouri. Respondent was the owner, Chief Investment Officer, and sole employee of Explorer Asset Management LLC ("Explorer"), a Missouri-registered investment adviser based in St. Louis, Missouri. Between 2002 and 2012, Explorer was the investment adviser to three private funds (the "Explorer Funds").

#### **Background**

2. Registered Investment Adviser A ("RIA") was an investment adviser registered with the Commission until December 2014. RIA recommended that its advisory clients invest in the Explorer Funds. RIA placed six of its clients in the Explorer Funds. In addition, Respondent placed additional investors in the Explorer Funds.

3. Respondent provided RIA with passwords to a website where he posted information about the Explorer Funds. The information included the value of the funds, the value of each client account, and the funds' overall performance. Respondent updated the website on a monthly basis. RIA incorporated the information from the website into account statements provided to RIA's clients.

4. In 2010, RIA's senior advisors expressed concerns about the performance of the Explorer Funds. RIA noticed a significant disparity between the funds' performance and the benchmarks for evaluating the funds' performance. In approximately March 2011, RIA's senior advisors met with Respondent to discuss what needed to be done to improve performance of the Explorer Funds.

#### **The Violative Conduct**

5. Between May 2011 and November 2011, Respondent reported monthly account balances for the RIA client accounts which exceeded the funds' values, as shown on custodial statements. RIA and its clients believed that the account values were relatively stable when, in fact, they were significantly decreasing. In fact, the Explorer Funds suffered substantial losses during the seven-month period, and were liquidated in January 2012.

6. Respondent earned \$11,331 in management fees during the seven-month period.

7. Respondent, as investment adviser to the Explorer Funds, misstated account balances and communicated the misstated balances to account holders through their agents at RIA. Accurate account values were material; a reasonable investor would consider such information in determining whether or not to keep his or her account open.

8. Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder make it unlawful for any investment adviser to a pooled investment vehicle to “[m]ake any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle” or “engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.” A showing of negligence is sufficient to establish a violation of Section 206(4) of the Advisers Act or Rule 206(4)-8 thereunder. SEC v. Steadman, 967 F.2d 636, 647 (D.C. Cir 1992). As a result of the conduct described above, Respondent willfully<sup>1</sup> violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

#### **Civil Penalty**

9. Respondent has submitted a sworn Statement of Financial Condition dated July 3, 2015 and other evidence and has asserted his inability to pay the maximum civil penalty permissible.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondent Ginsparg’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 Ginsparg cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder.

B. Respondent Ginsparg 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.

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<sup>1</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)).

C. Any reapplication for association by Respondent 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 shall pay disgorgement of \$11,331, prejudgment interest of \$1,300, and a civil penalty of \$11,331 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:

Within 14 days of entry of Order:	\$3,423.15
6 months from entry of Order:	\$3,423.15
12 months from entry of Order:	\$3,423.15
18 months from entry of Order:	\$3,423.15
24 months from entry of Order:	\$3,423.15
30 months from entry of Order:	\$3,423.15
36 months from entry of Order:	\$3,423.15

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalty, plus any additional interest accrued pursuant to SEC Rule of Practice 600 *and/or* 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 Daniel N. Ginsparg 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 Timothy Warren, Associate Director, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 900, Chicago, Illinois 60604.

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.

F. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$11,331 based upon Respondent's sworn representations in his Statement of Financial Condition dated July 3, 2015 and other documents submitted to the Commission. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

**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