

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10384 / June 30, 2017

SECURITIES EXCHANGE ACT OF 1934
Release No. 81071 / June 30, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4724 / June 30, 2017

INVESTMENT COMPANY ACT OF 1940
Release No. 32721 / June 30, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18056

In the Matter of

Bantry Bay Capital, LLC and
Timothy F. Sexton, Jr.,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e), 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 Section 8A of the Securities Act of 1933 (“Securities Act”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e), 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 Bantry Bay Capital, LLC (“Bantry Bay”) and Timothy F. Sexton, Jr. (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 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 Respondents’ Offers, the Commission finds¹ that

Summary

Beginning in late 2013 and continuing through 2015, Bantry Bay, an SEC registered investment adviser during the relevant period, and its CEO, Timothy F. Sexton, Jr., charged their two clients more than \$200,000 in excessive advisory fees. In addition, during 2014 and 2015, Sexton convinced these clients to wire approximately \$250,000 to an account at Bantry Bay for an alleged investment in a purported money market fund. Sexton, however, never invested the clients’ money in any money market fund, and instead he misappropriated the clients’ money for his own personal expenses.

In addition to the fraudulent activity described above, Sexton improperly registered Bantry Bay with the Commission as an investment adviser based on false representations made on Forms ADV. Bantry Bay and Sexton claimed in the “Assets Under Management” section of Forms ADV filed with the Commission during 2011 through 2015 that Bantry Bay had \$200 million or more in assets under management and numerous clients. In reality, during all relevant times, Bantry Bay had only two advisory clients and had less than \$4 million in assets under management. Sexton and Bantry Bay also violated client custody rules and failed to make, keep, and preserve required books and records, or make them available to SEC examiners for the period 2011 through 2015.

Respondents

1. Bantry Bay Capital, LLC, is a New York limited liability company established on March 22, 2011 using the name “Bantry Bay, LLC,” which was changed to its current name on April 17, 2013. On July 7, 2011, Bantry Bay was registered as an investment adviser on Form

¹ The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

ADV. On December 22, 2015, Bantry Bay filed a Form ADV-W to fully withdraw its registration as an investment adviser.

2. Timothy F. Sexton, Jr. age 56, resides in Dix Hills, New York. He is the founder, sole owner, and an investment adviser representative associated with Bantry Bay. Prior to starting Bantry Bay, Sexton worked at various securities firms from 1988 until late 2010, specializing in fixed income investing.

Background

3. Prior to starting Bantry Bay, Sexton had worked in the securities industry as a registered representative and an investment adviser representative since 1988. In March 2011, Sexton formed Bantry Bay as a New York limited liability company. On or about April 26, 2011, Sexton and Bantry Bay entered into an agreement with two former clients from his prior employer (the “Bantry Bay Clients”), granting Sexton and Bantry Bay authority to make investments for the Bantry Bay Clients’ account at a third party trust company. The agreement also allowed the trust company to pay Sexton and Bantry Bay investment advisory fees out of the Bantry Bay Clients’ account based upon invoices sent to the trust company by Sexton. The Bantry Bay Clients agreed to pay Sexton an annual fee of $\frac{3}{4}$ of one percent of their assets under management (or .0075).

Excessive Fees

4. Beginning in November 2013 and continuing through December 2015, Sexton sent invoices to the trust company for advisory fees substantially in excess of the amount agreed upon with the Bantry Bay Clients. During that time, Bantry Bay’s overstated fees resulted in the Bantry Bay Clients paying an annual rate of 4.9% of their assets under management – more than six times what they had agreed to pay. From November 2013 through December 2015, Bantry Bay and Sexton collected \$225,971 of excessive advisory fees from the Bantry Bay Clients.

Misappropriation of Client Funds

5. During 2014 and 2015, Sexton told the Bantry Bay Clients he wanted to invest some of their money in a money market fund that was purportedly managed by a well-known insurance company (the “Money Market Fund”) in order to have more flexibility if certain investment opportunities arose. In response, the Bantry Bay Clients wired a total of \$249,739.72 in three separate payments to Bantry Bay’s bank account for investment in the Money Market Fund. Sexton, however, never invested any of the Bantry Bay Clients’ money in the Money Market Fund, or any other fund. In fact, the Money Market Fund described by Sexton did not exist. Instead, Sexton misappropriated the Bantry Bay Clients’ money for his own personal expenses, including a vehicle, mortgage payments, credit card bills, and his children’s education expenses.

6. In January 2016, when confronted about the excessive fees and the Money Market Fund investment by the Bantry Bay Clients, Sexton claimed the overcharged fees were a mistake and that he would return their Money Market Fund investment when it matured in March 2016. Both of these statements were false when they were made.

7. On or about March 15, 2016, Sexton sent an email to the Bantry Bay Clients with an attached brokerage statement that purported to list their Money Market Fund investment valued at \$256,124.40. This was a false document that Sexton used to reassure the Bantry Bay Clients that their money was invested safely and consistently with his previous representations.

8. On or about March 17, 2016, using money he borrowed from others, Sexton sent two wires to the Bantry Bay Clients, one for \$271,601.92 and one for \$15,087.94, representing the repayment of the excessive advisory fees.

9. On or about March 30, 2016, using money he borrowed from others, Sexton wired \$256,389.40 to the Bantry Bay Clients, representing the money Sexton claimed to have invested in the Money Market Fund, including \$6,649.68 in interest.

Registration, Custody, and Books and Records

10. Sexton also improperly registered Bantry Bay with the Commission as an investment adviser based on false representations. Sexton was solely responsible for preparing, signing, and filing Bantry Bay's Forms ADV with the Commission. On Bantry Bay's Forms ADV filed on July 11, 2011, April 12, 2012, April 23, 2013, May 14, 2013, October 31, 2013, April 1, 2014, and June 19, 2015, Sexton indicated in the Forms ADV "SEC Registration" sections that Bantry Bay had \$25 million or more or \$100 million or more in assets under management as the basis for registration. Sexton knew that each of these statements was false because he knew that Bantry Bay's assets under management never exceeded \$4 million.

11. Sexton made other false representations on Bantry Bay's Forms ADV filed with the Commission, including multiple misrepresentations about Bantry Bay's assets under management, the number of accounts managed, the number of Bantry Bay employees, Bantry Bay's custody of client assets, and the location of Bantry Bay's books and records.

12. Sexton was responsible for Bantry Bay's compliance with Rule 206(4)-2 of the Advisers Act (the "Custody Rule"). Bantry Bay had custody of client funds or securities and failed to have those funds or securities maintained by a qualified custodian for the benefit of the Bantry Bay Clients. Bantry Bay also failed to provide clients with account statements, and failed to have client funds or securities verified by an independent public accountant as required under the Custody Rule.

13. Bantry Bay failed to make, keep, and preserve required books and records, or make them available to examiners, including cash receipts and disbursements journals, balance sheets, income statements, check books and cash reconciliations, trial balances, and written agreements. Bantry Bay also failed to make, keep, and preserve required books and records as a custodian of client funds, including trading records, ledgers for each account, and confirmations of transactions. Sexton was responsible for Bantry Bay's books and records and knew that Bantry Bay failed to maintain these records.

Violations

14. As a result of the conduct described above, Bantry Bay and Sexton willfully violated, and Sexton willfully aided and abetted and caused Bantry Bay's violations of, Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

15. As a result of the conduct described above, Bantry Bay willfully violated, and Sexton willfully aided and abetted and caused Bantry Bay's violations of, Section 203A of the Advisers Act by improperly registering with the Commission.

16. As a result of the conduct above, Bantry Bay willfully violated, and Sexton willfully aided and abetted and caused Bantry Bay's violations of, Section 204 of the Advisers Act, and Rules 204-2(a), 204-2(b), 204-2(c)(1), 204-2(e)(1), and 204-2(f), which require that investment advisers registered with the Commission maintain and preserve certain books and records, and make available such books and records as the Commission or its representatives may reasonably request.

17. As a result of the conduct described above, Bantry Bay and Sexton willfully violated, and Sexton willfully aided and abetted and caused Bantry Bay's violations of, Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

18. As a result of the conduct described above, Bantry Bay willfully violated, and Sexton willfully aided and abetted and caused Bantry Bay's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-2(a) thereunder, which require, among other things, that an investment adviser: use a qualified custodian to maintain funds and securities in a separate account for each client under that client's name; notify its clients about the place and manner in which their funds are maintained; and have client funds and securities verified by an independent public accountant at least once a year without prior notice to the investment adviser.

19. As a result of the conduct described above, Bantry Bay and Sexton willfully violated, and Sexton willfully aided and abetted and caused Bantry Bay's violations of, Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

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 Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(e), 203(f), and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondents cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 203A, 204, 206(1), 206(2), 206(4) and 207 of the Advisers Act and Rules 204-2(a), 204-2(b), 204-2(c)(1), 204-2(e)(1), 204-2(f), and 206(4)-2 promulgated thereunder.

B. Respondent Bantry Bay is censured.

C. Respondent Bantry Bay be, and hereby is:

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.

D. Respondent Sexton 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.

E. Any reapplication for association by Respondents 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 Respondents, 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.

F. Respondents shall pay, jointly and severally, a civil penalty of \$100,000, 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). 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:

1. \$5,000 within 10 days of entry of this Order;

2. \$45,000 within 180 days of entry of this Order; and
3. \$50,000 within 360 days 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. Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
2. Respondents 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. Respondents 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 Bantry Bay Capital, LLC and Timothy F. Sexton, Jr. as respondents 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 Mary S. Brady, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294-1961.

G. 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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 Sexton, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Sexton 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 Sexton 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