

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10414 / September 15, 2017

SECURITIES EXCHANGE ACT OF 1934
Release No. 81636 / September 15, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4770 / September 15, 2017

INVESTMENT COMPANY ACT OF 1940
Release No. 32819 / September 15, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18183

In the Matter of

MARK A. GOMES

Respondent.

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(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(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 Mark A. Gomes (“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 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, 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:

Summary

These proceedings arise out of the conduct of independent stock analyst and investment adviser Mark A. Gomes. Gomes provided investors, including advisory clients, with investment recommendations, but failed to disclose that he was selling stock in his personal brokerage accounts in contradiction to his recommendations to investors and his clients to purchase those same securities, thereby committing the violation known as "scalping."

Respondent

1. Gomes, 46, is a resident of Miami Beach, Florida. Gomes acted as an unregistered investment adviser. Gomes regularly distributed investment recommendations and other analyses and reports concerning securities through websites operated by Company A, in which he held a fifty-percent ownership interest, and through a third-party website. Company A compensated Gomes with funds that were generated from paid subscriptions to Company A's websites, which gave clients access to Gomes and his analyses. Gomes interacted directly with subscribers through emails, video conferences, and online forums. Gomes held shares of the stocks that were the subject of his recommendations and analyses, so his recommendations and analyses were not disinterested.

Other Relevant Entity

2. Company A is a limited liability company organized under the laws of Delaware with its principal place of business in Austin, TX. Company A operated two websites that distributed investment recommendations and other analyses and reports concerning securities that were written by Gomes. Company A had no other lines of business, and it had no income other than its paid subscriptions.

Background

3. Gomes is an independent stock analyst. In 2013, he formed Company A as a vehicle for distributing his investment recommendations and stock analyses, which generally were bullish descriptions of publicly traded stocks. Company A operated two websites. One required a paid subscription and offered clients benefits such as earlier access to reports and direct contact with Gomes. The other was free and was designed as a way of attracting potential clients to buy a paid

subscription. Gomes also distributed recommendations and analyses through a third-party website. He actively participated in the comment boards that accompanied those articles, encouraging readers to become paid clients of Company A's subscription site.

4. On at least five occasions between February 2014 and July 2014, Gomes purchased shares in a stock, recommended buying that stock, and then sold shares in his personal accounts within days of his recommendation. In at least one instance, Gomes began selling shares only a few hours after posting his recommendation. Gomes never disclosed that he planned to or was selling his shares.

5. For example, in April 2014, Gomes issued a recommendation to clients on Company A's paid subscriber website that investors purchase shares of an issuer's stock. That same day and the following day, he sold shares of the stock at a profit. Gomes repeated the process later in the month, recommending the stock on Company A's free site and on a third-party website and then selling shares two days later at a profit.

6. Gomes knew that his recommendations and analyses failed to disclose the contradiction between his published investment recommendations and his personal trading.

7. By recommending investments, but failing to disclose that he would trade in the opposite direction of his recommendations, Gomes omitted material information necessary in order to make his recommendations not misleading. A reasonable investor would consider Gomes's intention to sell his shares as an important factor in assessing the objectivity and credibility of his descriptions. Gomes's conduct also constituted a device, scheme, or artifice to defraud his clients, and it operated as a fraud or deceit on his clients.

8. As a result of the conduct described above, Gomes willfully violated 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, and Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, 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 Gomes 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 206(1) and 206(2) of the Advisers Act.

B. Respondent Gomes 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 five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by the 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, within 10 days of the entry of this Order, pay disgorgement of \$130,669.90, prejudgment interest of \$11,882.48, and a civil money penalty of \$130,669.90 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 of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of a civil money penalty 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 Mark A. Gomes 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 Glenn S. Gordon, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, FL 33131.

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