

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 82397 / December 22, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4834 / December 22, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18323

In the Matter of

**SOUTHWIND ASSOCIATES
OF NJ INC. (d/b/a
VILLAFRANCO WEALTH
MANAGEMENT), WILLIAM
SCOTT VILLAFRANCO, and
ANTHONY LAPERUTA,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE AND
CEASE-AND-DESIST PROCEEDINGS, PURSUANT
TO SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, AND SECTIONS 203(e),
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 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Southwind Associates of NJ Inc. (d/b/a Villafranco Wealth Management) (“Southwind”), William Scott Villafranco (“Villafranco”), and Anthony LaPeruta (“LaPeruta”) (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, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, and Sections 203(e), 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 Respondents’ Offers, the Commission finds that:

SUMMARY

1. This matter involves numerous violations of the Advisers Act and rules thereunder by registered investment adviser Southwind. First, Southwind violated Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder (“Custody Rule”) by failing (1) to have surprise examinations conducted of client funds and securities for which it had custody, and (2) to ensure that two private fund clients timely distributed audited financial statements to investors in those private funds, and had their audits performed by a qualified independent public accountant. Second, Southwind violated Section 204(a) of the Advisers Act and Rule 204-2(a)(7) thereunder by failing to make and keep certain electronic communications. Third, Southwind violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder (“Compliance Rule”) by failing (1) to adopt and implement written policies and procedures that were reasonably designed to prevent violations of the Advisers Act and rules thereunder, and (2) to conduct annual reviews of its written policies and procedures.

2. Southwind also violated Rule 30(a) of Regulation S-P, 17 C.F.R. § 248.30(a), (“Safeguards Rule”) by failing to adopt written policies and procedures reasonably designed to safeguard client records and information.

3. LaPeruta, formerly Southwind’s Chief Compliance Officer (“CCO”), willfully aided and abetted and caused Southwind’s violations. LaPeruta knew of Southwind’s deficiencies based on specific information provided to him by a compliance consulting firm (“Consultant”), which Southwind retained in May 2011, with each deficiency going unremedied for a number of consecutive years. Pursuant to Southwind’s compliance manual, LaPeruta was responsible for addressing the deficiencies. LaPeruta misrepresented to the Consultant the progress that Southwind was making on addressing the deficiencies, and he failed to provide certain information to the Commission’s Office of Compliance Inspections and Examinations (“OCIE”) exam staff regarding issues with Southwind’s books and records.

4. Villafranco, Southwind’s President and sole owner, caused Southwind’s violations. Villafranco became aware of the misconduct underlying Southwind’s violations, yet failed to take adequate steps to ensure that the misconduct was addressed.

5. Previously, violations of these Advisers Act provisions and rules either were cited as deficiencies during multiple examinations conducted by OCIE or were highlighted in recommendations for improvements to Southwind’s compliance program made by the Consultant.

RESPONDENTS

6. **Southwind**, a New Jersey corporation founded in 1995, with its principal office in New York, New York, has been registered with the Commission as an investment adviser since March 27, 2000. In its annual amendment to its registration statement on Form ADV filed on March 16, 2017, Southwind reported that it provided investment management services to individuals, charitable organizations, and small businesses and that it managed \$139 million in assets on a discretionary basis and \$133 million in assets on a non-discretionary basis.

7. **Villafranco**, age 52, is a resident of New Jersey. Villafranco is Southwind's President and sole owner. During the relevant time period, Villafranco was a registered representative associated with a registered broker-dealer. He holds Series 7 and 63 licenses.

8. **LaPeruta**, age 43, is a resident of New York. LaPeruta was Southwind's CCO from 2000 to 2014.

BACKGROUND

9. The Commission's OCIE exam staff conducted three separate examinations of Southwind—in 2003, 2006 and 2013. In each instance, the OCIE exam staff issued a deficiency letter to Southwind. Each letter states different deficiencies, but when taken together, note, among other things, issues relating to Southwind's compliance with the Custody Rule, the Compliance Rule, and the books and records requirements under the Advisers Act.

10. On May 10, 2011, Southwind hired the Consultant to review its compliance program ("Initial Review") and, based on that Initial Review, to provide written recommendations for improvements in the form of a spreadsheet of action items. On August 13, 2011, Southwind implemented a revised compliance manual ("Compliance Manual"). On August 22, 2011, the Consultant reported the results of its Initial Review. The Consultant reported 59 separate action items relating to various compliance areas, including custody, electronic communications, books and records requirements, and compliance manual and policies.

11. In February, May, and September 2012 and in January 2013, the Consultant assisted Southwind in conducting quarterly reviews, after which it provided status updates on prior action items and additional written recommendations as a result of those quarterly reviews.

12. After each review, the Consultant delivered its written recommendations to LaPeruta, who shared them with Villafranco. The Consultant's status updates on prior action items were based on information that LaPeruta provided to it during the quarterly reviews. Neither LaPeruta nor Villafranco disagreed with any of the Consultant's recommendations. In addition, there were no financial resource issues preventing Southwind from implementing the recommendations in a timely manner. Nevertheless, Southwind failed to timely implement the majority of the Consultant's recommendations, a number of which related to custody, electronic communications, books and records requirements, and compliance manual and policies. Some recommendations were never addressed during the course of the Consultant's engagement.

13. The Consultant's engagement with Southwind ended in 2014. After the issuance of an OCIE exam staff deficiency letter following the 2013 OCIE examination, Southwind retained a new compliance consulting firm in July 2014. Later, in October 2016, Southwind retained an additional compliance consulting firm to perform an on-site review of its compliance program and to provide a summary of findings and recommendations for corrective actions.

Respondents' Violative Conduct

14. The Compliance Manual included written policies and procedures regarding, among other things, "Custody," "Maintenance of Books and Records," "Privacy Policy," and "Annual Review of Written Compliance Program."

15. Pursuant to the terms of the Compliance Manual, LaPeruta, as CCO, was "responsible for administering the policies and procedures" set forth in the Compliance Manual. In addition, Exhibit A of the Compliance Manual, which provided for the "Appointment of the Compliance Officer," stated that Southwind's CCO "will be responsible for the day-to-day administration of the written compliance and policy program in accordance with the provisions thereof."

Advisers Act Custody Rule Violations

Failure to Receive Surprise Examinations

16. Rule 206(4)-2(a)(4) under the Advisers Act states that "it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the [Advisers] Act . . . for [a registered investment adviser] to have custody of client funds or securities unless" that investment adviser has an independent public accountant conduct a surprise examination of those funds and securities at least once per year and, initially, within six months of becoming subject to this surprise examination provision.

17. The Compliance Manual provided that "[t]he client funds and securities over which [Southwind] has custody must be verified by actual examination at least once during each calendar year . . . by an independent public accountant."

18. The effective date of the relevant amendments to the Custody Rule setting forth the surprise examination requirement was March 12, 2010. At that time, Southwind had custody over certain clients' funds and securities.

19. In August 2011, the Consultant made recommendations relating to custody following the Initial Review, including a specific recommendation that Southwind determine all client funds or securities of which it had custody and ensure compliance with the Custody Rule. Following the February 2012 quarterly review, the Consultant indicated in its status update to that recommendation that Southwind was still in the process of determining the extent of client funds or securities of which it had custody, but reported that for those of which Southwind did have custody, it was "in the process of engaging an independent auditor to conduct a surprise

examination of such accounts.” The Consultant provided an identical status update to that recommendation following its May 2012 quarterly review.

20. Southwind, however, did not retain an independent public accountant to conduct a surprise examination of client funds and securities of which it had custody until August 14, 2012, when LaPeruta signed an acknowledgment of the terms of Southwind’s engagement of the accountant, and this independent public accountant never actually conducted any surprise examination.

21. Southwind did not have a surprise examination conducted for the years 2010, 2011 and 2012 of client funds and securities of which it had custody, as was required by the amendments to the Custody Rule.

22. Following the commencement of the 2013 OCIE examination in October 2013, Southwind retained a new independent public accountant to conduct a surprise examination for the year 2013. The surprise examination began in December 2013 and was completed in April 2014, at which time this independent public accountant filed a certificate on Form ADV-E with the Commission. Southwind’s June 30, 2014 response to an OCIE exam staff deficiency letter following the 2013 OCIE examination, signed by Villafranco, stated that “[g]oing forward, any account of which Southwind could be deemed to have custody will be audited by a qualified independent firm.”

23. In 2014, Southwind still had custody over certain clients’ funds and securities. Nevertheless, Southwind did not have a surprise examination conducted for the year 2014.

24. LaPeruta failed to ensure that Southwind had a surprise examination conducted by an independent public accountant of client funds and securities of which Southwind had custody for the years 2010, 2011 and 2012, despite his awareness of this Custody Rule requirement and his responsibility, as CCO, to implement Southwind’s policies and procedures concerning the Custody Rule requirement.¹

25. Villafranco became aware of Southwind’s failure to have required surprise examinations conducted, but did not take adequate steps to address this failure.

Failure to Ensure the Timely Distribution of Audited Financial Statements

26. Rule 206(4)-2(b)(4) under the Advisers Act provides that, under certain circumstances, a registered investment adviser “shall be deemed to have complied with” the surprise examination provision. Specifically, with respect to accounts of certain clients organized as limited partnerships, limited liability companies, or other types of pooled investment vehicles, an investment adviser need not have a surprise examination conducted if, among other things, the

¹ While LaPeruta was CCO for part of 2014, he was phased out of the role during the course of the year and was replaced entirely by the end of 2014.

client is subject to audit “at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year” (or to investors in a fund-of-funds within 180 days)² and “[b]y an independent public accountant that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board [(“PCAOB”)] in accordance with its rules.”

27. The Compliance Manual provided that a “[p]ooled investment vehicle[] [is] not required to comply with,” among other things, the surprise examination provision, “if it annually distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year (180 days if the pooled investment vehicle qualifies as a fund-of-funds).”

28. At certain times, Southwind recommended that certain clients invest in private funds, including two particular private funds. With respect to those private funds, Villafranco wholly owned their investment managers and/or general partners. Villafranco utilized Southwind’s office space, employees, and technology systems (including its e-mail address) in providing investment advisory services to those private funds, and there were no policies and procedures designed to keep Southwind separate from the affiliated investment advisers. In addition, LaPeruta, Southwind’s CCO, undertook to obtain audited financial statements for the private funds. Southwind and the affiliated investment advisers were under common control and operationally integrated, and those two private funds were Southwind’s clients.

29. Following the Initial Review in July 2011, during which the Consultant reviewed one particular private fund, the Consultant informed Southwind that the private fund was required to distribute its audited financial statements to its investors within the required timeframe in order for Southwind to take advantage of the exception under Rule 206(4)-2(b)(4). LaPeruta responded that he would e-mail relevant entities to request that they provide information to allow the timely distribution of the private fund’s audited financial statements, though there is no evidence that LaPeruta ever contacted those relevant entities with such a request. In addition, Villafranco previously indicated his understanding of this requirement for the timely distribution of a private

² See ABA Subcommittee on Private Investment Entities, SEC No-Action Letter, 2006 WL 5440662, at *3-4 (Aug. 10, 2006) (“Aug. 10, 2006 SEC No-Action Letter”); *see also* Final Rule, Custody of Funds or Securities of Clients by Investment Advisers, Inv. Adv. Act Rel. No. 2968, at 17, n.45 (Dec. 30, 2009) (“In 2006, our staff issued a letter indicating that it would not recommend enforcement action to the Commission under section 206(4) of the Act or rule 206(4)-2 against an adviser of a fund of funds relying on the annual audit provision of rule 206(4)-2 if the audited financial statements of the fund of funds are distributed to investors in the fund of funds within 180 days of the end of its fiscal year. . . . The amendments we are adopting today do not affect the views of the staff expressed in that letter.”) (citing Aug. 10, 2006 SEC No-Action Letter).

fund's audited financial statements to investors when an adviser has custody of that private fund's funds and securities when he signed Southwind's response to an OCIE exam staff deficiency letter regarding this same issue.

30. Southwind did not ensure that its private fund clients for which it had custody distributed audited financial statements to their investors within the required time frames, at least for the years 2010, 2011 and 2012, as was required by Rule 206(4)-2(b)(4). During each of those years, with respect to the private funds, audited financial statements were distributed no earlier than 220 days and as late as 334 days after the end of their respective fiscal years.

31. Additionally, although the independent public accountant that audited the private funds in 2010, 2011 and 2012 was registered with the PCAOB, it was not subject to regular inspection by the PCAOB and, therefore, was not qualified to perform audits for purposes of Rule 206(4)-2(b)(4).

32. LaPeruta failed to ensure that the private funds for which Southwind had custody timely distributed audited financial statements to investors in those private funds for the years 2010, 2011 and 2012, despite his awareness of this requirement and his responsibility, as CCO, to implement Southwind's policies and procedures concerning the Custody Rule.

33. Villafranco became aware of Southwind's failure to ensure the timely distribution of audited financial statements by the private funds to their investors, but did not take adequate steps to address this failure.

Advisers Act Books and Records Violations

34. Section 204(a) of the Advisers Act provides that a registered investment adviser "shall make and keep for prescribed periods such records . . . , furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors." Rule 204-2(a) under the Advisers Act sets forth categories of books and records that an investment adviser "shall make and keep true, accurate and current," including, among others things, certain written communications pursuant to Rule 204-2(a)(7).

35. The Compliance Manual provided that "[a]ll registered investment advisers must make, maintain, and preserve a variety of books and records covering its own activities including investment advisory activities and those in connection with client accounts," including "[c]ommunication records" as one general category of such "required books and records."

36. Pursuant to Rule 204-2(g)(1)(ii), an investment adviser is permitted to maintain and preserve its records on "[e]lectronic storage media." Rule 204-2(g)(2), however, provides "General Requirements" if records are maintained and preserved pursuant to Rule 204-2(g), including those relating to the arrangement and indexing of such records, the prompt provision of such records to the Commission or its staff in specific manners, and the maintenance of duplicate copies of such records. In addition, Rule 204-2(g)(3) provides "Special Requirements" if records

are maintained and preserved on electronic storage media, including the establishment and maintenance of procedures “[t]o maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction” and “[t]o limit access to the records to properly authorized personnel and the Commission (including its examiners and other representatives).”

37. Prior to May 24, 2012, Southwind had not established any procedures relating to its maintenance and preservation of records on electronic storage media. On that date, the Consultant provided LaPeruta with a template “[f]or [his] review with IT [f]olks,” entitled “General E-mail Retention and Destruction Policy.” In limited instances, the template was particularized, such as indicating that LaPeruta was the CCO and that the investment adviser was Southwind, but brackets and other interim notations were included throughout this template. Therefore, Southwind did not maintain procedures that were specifically tailored to Southwind’s business and electronic storage media recordkeeping until May 2016, when new such procedures became effective.

38. Southwind also failed to preserve certain electronic communications.

39. Beginning in November 2010, Southwind retained an external company to manage its information technology needs, including the maintenance and preservation of its records on electronic storage media, eventually replacing this external information technology provider with another one in January 2012. Prior to its retention of the external information technology provider in November 2010, Southwind used an internal information technology specialist (“IT Specialist”).

40. During the time period when Southwind used the IT Specialist, the IT Specialist forwarded all of Southwind’s sent and received electronic communications, including communications with clients, to a “Gmail” e-mail account. According to an employee from the external information technology provider, in late 2011, he discovered these actions by the IT Specialist. He recounted that after he had informed Villafranco of the IT Specialist’s actions, Villafranco “was not happy about this and implied it should have never been done.”

41. Following the Initial Review, the Consultant had specifically recommended that Villafranco “should investigate if he is able to retrieve emails transmitted while [Southwind] had an internal IT person (i.e., prior to hiring an outside IT service provider).” In the status update following the February 2012 quarterly review, the Consultant stated that regarding this recommendation, LaPeruta indicated that “this was investigated” and that “he is able to retrieve such emails.”

42. Southwind, however, has been unable to access the “Gmail” e-mail account following the IT Specialist’s departure.

43. Additionally, in August 2013, Southwind undertook a search of electronic communications in an effort to locate certain of Villafranco’s communications regarding real estate services related to Southwind. Southwind, however, was unable to locate them.

44. Although LaPeruta purportedly used tape drives to back-up Southwind's electronic communications, he was unable to locate those tape drives, which would have served as duplicates of the electronic communications.

45. Following this search, Southwind determined that it may have had an issue with data loss, though it was unable to identify the cause or full extent of the data loss. In September 2013, Southwind contacted both its current and former external information technology providers regarding this data loss issue and eventually learned of three hard drives containing electronic communications. At that time, Southwind decided not to have an external information technology provider review those hard drives to determine what, if any, data was on them.

46. When the OCIE exam staff requested certain electronic communications, including communications with clients, during the 2013 OCIE examination, LaPeruta twice provided them with productions, which each contained noticeable gaps and numerous nonresponsive documents. At that time, LaPeruta failed to inform the OCIE exam staff that Southwind had determined that it may have had an issue with preservation of electronic communications, even though following each production, the OCIE exam staff raised issues with LaPeruta regarding Southwind's productions. Finally, two months after the OCIE exam staff's initial request, Southwind indicated that certain electronic communications prior to January 2013 could not be retrieved, in part, because three hard drives on which they were maintained were corrupted.

47. Southwind's external information technology provider was able to recover electronic communications from one of the hard drives, but that information was damaged or incomplete. Southwind's external information technology provider was unable to recover electronic communications from the remaining two hard drives.³

48. LaPeruta failed to ensure that Southwind maintain and preserve its electronic communications, maintain duplicate copies of such communications, promptly provide such communications to OCIE exam staff, and establish and maintain procedures regarding electronic storage media through the end of 2013, despite his awareness of these requirements and his responsibility, as CCO, to implement Southwind's policies and procedures concerning books and records.

49. Villafranco became aware of Southwind's failure to maintain and preserve its electronic communications, but did not take adequate steps to address this failure.

Safeguards Rule Violations

50. The Safeguards Rule requires that a registered investment adviser adopt policies and procedures that address administrative, technical, and physical safeguards for the protection of client records and information. An investment adviser's policies and procedures must be reasonably designed to, among other things, ensure the security and confidentiality of client

³ The remaining two hard drives were produced to the Commission staff, which was able to recover certain information from those hard drives.

records and information. The Commission adopted amendments to the Safeguards Rule in 2005, requiring that such policies and procedures be in writing.

51. The Compliance Manual provided that Southwind “maintains a separate privacy policy notice . . . that describes and governs [Southwind’s] compliance with Regulation S-P.”

52. Southwind, however, did not have policies and procedures relating to safeguarding client records and information—written or otherwise—until May 2016.

53. The security and confidentiality of client records and information were put at risk when the IT Specialist forwarded all of Southwind’s sent and received electronic communications to a “Gmail” e-mail account. Southwind has been unable to access this e-mail account.

54. LaPeruta failed to ensure that Southwind adopted written policies and procedures to ensure the security and confidentiality of client records and information prior to his departure from Southwind in 2014, despite his responsibility, as CCO, to ensure that Southwind adopt such policies and procedures and his awareness of the IT Specialist’s actions, which put the security and confidentiality of client records and information at risk.

55. Villafranco eventually became aware of the IT Specialist’s actions, but did not take adequate steps to ensure Southwind’s adoption of policies and procedures to ensure the security and confidentiality of client records and information until May 2016.

Advisers Act Compliance Rule Violations

56. Rule 206(4)-7 under the Advisers Act states that “it shall be unlawful within the meaning of section 206 of the [Advisers] Act . . . for [a registered investment adviser] to provide investment advice to clients unless,” among other things, the investment adviser: (1) adopts and implements written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and rules thereunder; and (2) reviews the adequacy of the written policies and procedures and the effectiveness of their implementation on at least an annual basis.

57. Aside from changes made following the 2003 OCIE examination, Southwind’s compliance manual was not revised until August 31, 2011, following the engagement of the Consultant, despite that the Custody Rule and other relevant rules were amended during the intervening period. The Compliance Manual was not revised again until after the 2013 OCIE examination.

58. Although Southwind adopted certain written compliance policies and procedures in the Compliance Manual, as discussed above, Southwind failed to implement those written policies and procedures, specifically those relating to the maintenance and preservation of electronic records through the end of 2013, and the custody of client funds and securities in the years 2010, 2011, 2012 and 2014.

59. Prior to its engagement of the Consultant on May 10, 2011, Southwind's review of its written policies and procedures consisted of LaPeruta, on a quarterly basis, randomly choosing a section of Southwind's compliance manual and then "mak[ing] sure [Southwind was] . . . doing what . . . the manual said [it] should be doing." There was no methodology or process to the selection of which section to review, and the results of this review were not documented anywhere. Aside from this exercise, LaPeruta did not engage in any other review of the adequacy of Southwind's written policies and procedures and effectiveness of their implementation.

60. The Compliance Manual provided that "[p]ursuant to Rule 206(4)-7(b), registered investment advisers are required to review its [sic] policies and procedures annually to determine their adequacy and effectiveness of implementation" and tasked LaPeruta with this annual review, stating that LaPeruta "shall review [Southwind's] policies and procedures with respect to [its] compliance with the Advisers Act on at least an annual basis. . . . document[ing] its findings and any deficiencies detected."

61. Following its Initial Review, the Consultant recommended that Southwind ensure an annual review of its compliance program. In the status update provided following the February 2012 quarterly review, the Consultant noted that it would "conduct quarterly reviews and tests of [Southwind's] compliance policies and procedures," while Southwind also conducted "ongoing reviews and tests."

62. LaPeruta never engaged in any annual review of Southwind's written policies and procedures. Additionally, although the Consultant did perform its quarterly reviews, Southwind was significantly delayed in its implementation of many of the Consultant's written recommendations; others, it failed to implement entirely.

63. LaPeruta failed to ensure that Southwind implemented its written compliance policies and procedures or that it addressed the adequacy of those policies and procedures and the effectiveness of their implementation, despite his responsibility, as CCO, to do so and to perform annual compliance reviews.

64. Villafranco was aware of issues regarding the adequacy of Southwind's written policies and procedures and the effectiveness of their implementation, but did not take steps to address these issues.

VIOLATIONS

65. As a result of the conduct described above, Southwind willfully⁴ violated Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, which, among other things, require registered investment advisers that have custody of client funds or securities to have independent public accountants conduct surprise examinations of those client funds or securities, or to have any

⁴ 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)).

private fund clients timely distribute annual audited financial statements to their investors and to have that audit performed by an independent public accountant subject to regular inspection by the PCAOB.

66. As a result of the conduct described above, Southwind willfully violated Section 204(a) of the Advisers Act and Rule 204-2(a)(7) thereunder, which require registered investment advisers to “make and keep true, accurate and current . . . [o]riginals of all written communications received and copies of all written communications sent by such investment adviser relating to,” client recommendations or advice, “receipt, disbursement or delivery of funds or securities,” execution of securities purchases or sales, and with certain exceptions, “performance or rate of return of any or all managed accounts or securities recommendations.”

67. As a result of the conduct described above, Southwind willfully violated Rule 30(a) of Regulation S-P, 17 C.F.R. § 248.30(a), which requires registered investment advisers to adopt written policies and procedures that are reasonably designed to safeguard client records and information.

68. As a result of the conduct described above, Southwind willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which, among other things, require registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and rules thereunder and to review, no less frequently than annually, the adequacy of those policies and procedures and the effectiveness of their implementation.

69. As a result of the conduct described above, Villafranco caused Southwind’s violations of Sections 204(a) and 206(4) of the Advisers Act and Rules 204-2(a)(7), 206(4)-2, and 206(4)-7 thereunder and Rule 30(a) of Regulation S-P, 17 C.F.R. § 248.30(a).

70. As a result of the conduct described above, LaPeruta willfully aided and abetted and caused Southwind’s violations of Sections 204(a) and 206(4) of the Advisers Act and Rules 204-2(a)(7), 206(4)-2, and 206(4)-7 thereunder and Rule 30(a) of Regulation S-P, 17 C.F.R. § 248.30(a).

UNDERTAKINGS

Respondent Southwind has undertaken to comply with the following paragraphs:

71. Retention of Independent Compliance Consultant. Within thirty (30) days of the date of this Order, Southwind shall retain an independent compliance consultant (“IC”) not unacceptable to the Commission staff. The IC’s compensation and expenses shall be borne exclusively by Southwind. Prior to the retention of the IC, Southwind shall provide to the staff of the Commission a copy of the engagement letter detailing the IC’s responsibilities, which includes the reviews to be made by the IC as described in this Order.

a. Southwind shall require that the IC:

- i. no later than 180 days after being retained by Southwind, conduct a review (“Review”) to assess the adequacy of Southwind’s policies, procedures, controls, recordkeeping, and systems, in particular those relating to Southwind’s: (1) compliance with the Custody Rule, Rule 206(4)-2 of the Advisers Act; (2) adoption and implementation of written policies and procedures required by Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder; (3) maintenance and preservation of books and records, including electronic communications, required by Section 204(a) of the Advisers Act and Rule 204-2(a)(7) thereunder; and (4) safeguards of client records and information, including written policies and procedures required by Rule 30(a) of Regulation S-P addressing those safeguards.
 - ii. within forty-five (45) days from the completion of the Review, submit a written and detailed report of its findings to Southwind and to the Commission staff (“Report”), which shall include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, and the IC’s recommendations for changes or improvements (“Recommendations”).
- b. Southwind shall adopt all Recommendations contained in the Report within sixty (60) days of the Report; provided, however, that within forty-five (45) days after the date of the Report, Southwind shall in writing advise the IC and the Commission staff of any recommendation that Southwind considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Southwind considers unduly burdensome, impractical, or inappropriate, Southwind need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose. As to any recommendation on which Southwind and the IC do not agree, Southwind shall attempt in good faith to reach an agreement with the IC within sixty (60) days after the date of the Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by Southwind and the IC, Southwind shall require that the IC inform Southwind and the Commission staff in writing of the IC’s final determination concerning any recommendation that Southwind considers to be unduly burdensome, impractical, or inappropriate. Southwind shall abide by the final determination of the IC and, within ninety (90) days after a good faith agreement between Southwind and the IC or a final determination by the IC, whichever occurs first, Southwind shall adopt and implement all of the recommendations that the IC deems appropriate.
- c. Within ninety (90) days of Southwind’s adoption of all of the Recommendations as determined pursuant to the procedures set forth

herein, Southwind shall certify in writing to the IC and the Commission staff that Southwind has adopted and implemented all of the IC's Recommendations.

- d. Southwind shall cooperate fully with the IC and shall provide the IC with access to such of its files, books, records, and personnel as are reasonably requested by the IC for review, except to the extent such files, books, or records are protected from disclosure by any applicable protection or privilege such as the attorney-client privilege or the attorney work product doctrine.
- e. To ensure the independence of the IC, Southwind: (1) shall not have the authority to terminate the IC or substitute another independent compliance consultant for the initial IC, without the prior written approval of the Commission staff; and (2) shall compensate the IC and persons engaged to assist the IC for services rendered pursuant to this Order at their reasonable and customary rates.
- f. Southwind shall require the IC to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the IC shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Southwind, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the IC will require that any firm with which the IC is affiliated or of which the IC is a member, and any person engaged to assist the IC in performance of the IC's duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Southwind, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years after the engagement.
- g. Southwind shall not be in, and shall not have an attorney-client relationship with the IC and shall not seek to invoke the attorney-client privilege or any other doctrine or privilege to prevent the IC from transmitting any information, reports, or documents to the Commission staff.

72. Recordkeeping. Southwind shall preserve for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of Southwind's compliance with the undertakings set forth in this Order.

73. Notice to Advisory Clients. Within thirty (30) days of the entry of this Order, Southwind shall send a letter in a form acceptable to the Commission staff to all existing advisory clients notifying them of the entry of this Order, and containing a summary of this Order, via mail,

e-mail, or such other method as may be acceptable to the Commission staff. If sent electronically, the letter shall contain a hyperlink to the Order. If sent by mail, the letter shall contain a URL where the Order can be viewed and provide the client the opportunity to request a copy of the Order. Within fourteen (14) days of such a request, Southwind shall deliver a copy of the Order to the client. Furthermore, for twelve (12) months after the entry of this Order, to the extent that Southwind is required to deliver a brochure to a client and/or prospective client pursuant to Rule 204-3 under the Advisers Act, the brochure shall provide notice of the entry of this Order, contain a URL where the Order can be viewed, and provide the client or prospective client the opportunity to request a copy of the Order. Within fourteen (14) days of such a request, Southwind shall deliver a copy of the Order to the client or prospective client. If Southwind establishes a website within twelve (12) months of the entry of this Order, it shall prominently post on its website a summary of this Order and a hyperlink to the entire Order in a form and location not unacceptable to the Commission staff. Southwind shall maintain the summary and hyperlink on the website for a period of twelve (12) months thereafter.

74. Deadlines. The Commission staff shall have the authority, in its discretion, to extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

75. Certification of Compliance by Southwind. Southwind shall certify, in writing, compliance with the undertakings set forth above. The certifications shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Southwind agrees to provide such evidence. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff pursuant to these undertakings shall be sent to Valerie A. Szczepanik, Assistant Regional Director, New York Regional Office, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York 10281, or such other person or address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 21C of the Exchange Act and Sections 203(e), 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondents Southwind, Villafranco, and LaPeruta cease and desist from committing or causing any violations and any future violations of Sections 204(a) and 206(4) of the Advisers Act and Rules 204-2(a)(7), 206(4)-2, and 206(4)-7 thereunder and Rule 30(a) of Regulation S-P, 17 C.F.R. § 248.30(a).

B. Respondent Southwind is censured.

C. Respondent LaPeruta shall be, and hereby is, subject to the following limitations on his activities:

Respondent LaPeruta shall not act in a supervisory or compliance capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

D. Any application to act in such a supervisory or compliance capacity will be subject to the applicable laws and regulations governing the reentry process, and permission to act in such a supervisory or compliance capacity 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 LaPeruta, 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.

E. Respondents Southwind and Villafranco jointly and severally shall pay a civil penalty of \$50,000 to the Securities and Exchange Commission. Payment shall be made in the following installments:

1. Within thirty (30) days of the entry of this Order, Respondents Southwind and Villafranco will pay \$20,000.
2. Within one hundred and twenty (120) days of the entry of this Order, Respondents Southwind and Villafranco will pay \$15,000.
3. Within two hundred and forty (240) days of the entry of this Order, Respondents Southwind and Villafranco will pay \$15,000.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of the civil penalty, 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 Southwind and Villafranco may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents Southwind and Villafranco 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 Southwind and Villafranco 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 Southwind and Villafranco 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 Lara Shalov Mehraban, New York Regional Office, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York 10281.

F. 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 Southwind and Villafranco 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 Southwind's and Villafranco's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents Southwind and Villafranco 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 Southwind and Villafranco 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.

G. Respondent Southwind shall comply with the undertakings enumerated in Paragraphs 71 through 75 above.

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