

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4620 / January 19, 2017

INVESTMENT COMPANY ACT OF 1940
Release No. 32429 / January 19, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17803

In the Matter of

BOB BRAKEMAN
ENTERPRISES, LLC, and
ROBERT D. BRAKEMAN,

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO 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 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 Bob Brakeman Enterprises, LLC (“BBE”) and Robert D. Brakeman (“Brakeman,” and together with BBE, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have 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 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 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 finds that:

Summary

This proceeding arises out of BBE’s improper registration as an investment adviser, as well as its violation of the Custody Rule and recordkeeping provisions. From at least June 2008 through 2015, BBE was registered with the Commission as an investment adviser solely on the basis that it claimed its principal office and place of business was in Wyoming,¹ when in fact Brakeman, the sole officer of BBE, directed, coordinated, and controlled BBE’s activities from outside Wyoming—primarily from his home in Michigan. Because BBE’s principal office and place of business was not in Wyoming, BBE did not advise a registered investment company, and did not have the requisite assets under management to otherwise register with the Commission, BBE was ineligible to register with the Commission. As a result, BBE’s Form ADV filings contained false statements of material fact regarding BBE’s eligibility to register with the Commission. In addition, BBE violated the Custody Rule by exercising custody over client assets without arranging for an annual surprise verification of those assets, and BBE’s Forms ADV failed to reflect BBE’s custody. BBE also failed to maintain and make available to the Commission’s staff certain books and records required under the Advisers Act. BBE’s owner, Brakeman, was responsible for all of BBE’s filings, compliance procedures, and recordkeeping, and aided and abetted and caused its violations.

Respondents

1. **BBE** is a Nevada limited liability company formed by Brakeman in 2004. On August 7, 2007, BBE registered with the Commission as an investment adviser by filing a Form ADV. BBE remained registered with the Commission through September 23, 2015, when it withdrew its registration by filing a Form ADV-W. In all of its Form ADV filings from 2007 to

¹ Section 203A generally prohibits from registering with the Commission certain advisers that are regulated or required to be regulated as an investment adviser in the state in which the adviser maintains its principal office and place of business unless certain conditions are met (such as a threshold amount of assets under management and / or advising a registered investment company). Wyoming is currently the only state that does not regulate investment advisers. (Wyoming recently adopted a statute to regulate investment advisers that is not yet effective.) Therefore, investment advisers with a principal office and place of business located in Wyoming, therefore, are generally required to register with the Commission, even if their total assets under management is less than \$25 million, while investment advisers with a principal office and place of business in another state are prohibited from registering with the Commission unless they have assets under management of not less than \$25 million or they are advisers to a registered investment company. *See* Section 203A of the Investment Advisers Act of 1940.

2015, BBE represented that its principal office and place of business was in Wyoming. In its Form ADV-W filing, BBE represented that its principal office and place of business was in Nevada.

2. **Brakeman**, 69 years old, is a resident of Delta Township, Michigan (a suburb of Lansing). Brakeman is the owner, sole member, and chief compliance officer for BBE.

**BBE Registered with the Commission as an Investment Adviser
on the Basis that Its Principal Office and Place of Business Was in Wyoming**

3. Brakeman formed BBE in 2004 as a Nevada limited liability company. Brakeman is and always has been the sole owner and member of BBE. Brakeman also acts as the chief compliance officer for BBE, and is the only person who has ever offered investment advisory services on behalf of BBE. BBE has never had any employees other than Brakeman.

4. Brakeman was responsible for all of BBE's filings with the Commission. Brakeman caused BBE to file all of its Forms ADV, and he signed them as chief compliance officer and sole owner of BBE.

5. In August 2007, Brakeman caused BBE to register as an investment adviser with the Commission by filing an initial Form ADV, which he signed. In that filing, BBE represented that: (1) its principal office and place of business was located in Wyoming; (2) BBE's Wyoming location was its sole basis for eligibility to register with the Commission; and (3) BBE did not have custody of its clients' funds or securities. BBE repeated these representations in Forms ADV filed on August 29, 2007, September 12, 2007, October 10, 2007, February 26, 2008, June 19, 2008, March 5, 2009, October 30, 2009, March 22, 2010, March 24, 2011, March 23, 2012, March 20, 2013, October 31, 2013, November 22, 2013, March 24, 2014, and March 26, 2015.

6. In June 2008, BBE amended its Form ADV to indicate that BBE's principal office and place of business was located in Saratoga, Wyoming. At all relevant times, that address housed a printing and mailing company ("Printing Company"). BBE used Printing Company to send and receive correspondence with its clients, as well as for check processing, general recordkeeping, typing, and secretarial services. Printing Company, however, never provided any investment advice on behalf of BBE, and Brakeman himself never conducted any of BBE's activities from that location.

7. In September, 2015, after an examination by Commission staff, Brakeman caused BBE to file a Form ADV-W, withdrawing its registration with the Commission.

**BBE and Brakeman Knowingly Misrepresented the Location
of BBE's Principal Office and Place of Business**

8. From at least June 2008 through 2015, BBE's principal office and place of business was not located in Wyoming.

9. Brakeman has not physically visited BBE's purported address in Saratoga, Wyoming, since at least 2006, and has not been to Wyoming since at least 2010.

10. From at least June 2008 through 2015, Brakeman knew that as BBE's sole owner and employee, he had directed, controlled, and coordinated BBE's activities primarily from his home in Michigan. Therefore, Brakeman knew that he had caused BBE to falsely report in its Forms ADV that BBE's principal office and place of business was in Wyoming.

BBE Had No Basis for Registering with the Commission as an Investment Adviser

11. BBE was prohibited from registering with the Commission because it had a principal place of business in a state that regulated investment advisers, did not have the requisite assets under management, and did not advise a registered investment company.

12. From at least June 2008 through 2015, BBE was ineligible to register with the Commission as an investment adviser.

13. Brakeman was responsible for BBE's registration with the Commission and knew that BBE was ineligible to register with the Commission as an investment adviser.

BBE Had Custody of Client Assets, But Failed to Arrange a Surprise Verification of Client Assets by an Independent Public Accountant

14. In order to permit BBE to enter trade requests on behalf of clients, several BBE clients provided BBE with their login credentials (usernames and passwords) for online brokerage accounts. Once such a client had accepted a trade recommendation from BBE, Brakeman logged in to the client's respective brokerage accounts using the client's own login credentials to enter a trade request.

15. Because BBE possessed and used its clients' personal login credentials for their online brokerage accounts, BBE had the ability to obtain possession of client funds or securities. As a result, BBE had custody of client funds or securities within the meaning of Rule 206(4)-2 of the Advisers Act (the "Custody Rule").

16. Because BBE was registered with the Commission as an investment adviser, even though it was ineligible to be so registered, it was subject to the Custody Rule.

17. BBE never caused an examination by an independent public accountant to verify client funds and securities as required under the Custody Rule.

18. Brakeman was responsible for BBE's compliance efforts and knew that BBE failed to arrange for an annual verification of client funds and securities by an independent public accountant.

BBE and Brakeman Misrepresented Material Facts in BBE's Form ADV Filings

19. In all of its Forms ADV from June 2008 through March 2015, BBE misrepresented the location of its principal office and place of business. In all of its Forms ADV from August 2007

through March 2015, BBE also represented that it did not have custody of client funds or securities, which was false.

20. Brakeman was solely responsible for preparing, signing, and filing BBE's Forms ADV with the Commission. Brakeman knowingly caused BBE to file Forms ADV on August 29, 2007, September 12, 2007, October 10, 2007, February 26, 2008, each of which contained materially false representations regarding BBE's custody of client funds and securities, and Brakeman knowingly caused BBE to file Forms ADV on June 19, 2008, March 5, 2009, October 30, 2009, March 22, 2010, March 24, 2011, March 23, 2012, March 20, 2013, October 31, 2013, November 22, 2013, March 24, 2014, and March 26, 2015, each of which contained materially false representations regarding the location of BBE's principal office and place of business and BBE's custody of client funds and securities.

BBE Failed to Maintain Required Books and Records

21. During at least 2014 and 2015 BBE failed to maintain certain books and records, including copies of solicitation agreements as required by Rule 204-2(a)(10) under the Advisers Act.

22. Brakeman was responsible for BBE's books and records and knew that BBE failed to maintain these records.

Violations

23. As a result of the conduct described above, BBE willfully² violated Section 203A(a) of the Advisers Act by improperly registering with the Commission. Brakeman willfully aided and abetted and caused BBE's violations.

24. As a result of the conduct described above, BBE and Brakeman willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of 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."

25. As a result of the conduct described above, BBE willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-2(a)(4) promulgated thereunder, which require, among other things, that an investment adviser have client funds and securities of which the adviser has custody verified by an independent public accountant at least once a year without prior notice to the investment adviser. Brakeman willfully aided and abetted and caused BBE's violations.

26. As a result of the conduct described above, BBE willfully violated Section 204(a) of the Advisers Act and Rule 204-2(a)(10) promulgated thereunder, which require an investment

² A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

adviser to make and keep certain records, including, among other things, “[a]ll written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such,” and to furnish copies of such records to the Commission during examinations by representatives of the Commission. Brakeman willfully aided and abetted and caused BBE’s violations.

IV.

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

Accordingly, pursuant to 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 BBE and Brakeman cease and desist from committing or causing any violations and any future violations of Sections 203A(a), 204(a), 206(4) and 207 of the Advisers Act and Rules 204-2 and 206(4)-2 promulgated thereunder.

B. Respondent Brakeman 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 three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by Respondent Brakeman 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 Brakeman shall pay civil penalties of \$25,000 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). Payment shall be made in the following installments:

- (1) \$6,250 within 90 days of the entry of this Order;
- (2) \$6,250 within 180 days of the entry of this Order;
- (3) \$6,250 within 270 days of the entry of this Order; and
- (4) \$6,250 within 360 days of the entry of this Order.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Brakeman 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 Kurt L. Gottschall, Division of Enforcement, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294.

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