

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4647 / February 8, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17833

In the Matter of

**JEFFREY SLOCUM &
ASSOCIATES, INC. AND
JEFFREY C. SLOCUM,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 203(e) 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 Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Jeffrey Slocum & Associates, Inc. (“JSA”) and pursuant to Section 203(k) of the Advisers Act against Jeffrey C. Slocum (“Slocum”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer 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 Cease-and-Desist Proceedings Pursuant to Sections 203(e) 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 finds¹ that:

Summary

1. This matter involves an investment adviser that disseminated marketing materials to clients and prospective clients containing (i) misleading performance data; (ii) misstatements regarding the firm's acceptance of items of value from investment managers; and (iii) misstatements about the firm's enforcement of its Code of Ethics.

2. Between at least 2011 and October 2014, JSA disseminated marketing materials containing representations that JSA had "never, not once, taken even so much as a nickel from an investment manager," even though JSA's gift policy permitted the acceptance of gifts from investment managers under certain circumstances. In addition, certain JSA employees accepted tickets to the Masters Golf Tournament in 2012 and 2013. The 2013 Masters trip was in violation of JSA's gift policy. During the same time frame, JSA's marketing materials claimed that JSA strictly enforced its Code of Ethics, yet neither JSA nor Slocum enforced the policy after learning of the 2013 Master's trip. As a result, JSA violated Section 206(2) of the Advisers Act, and Slocum caused this violation.

3. In addition, between June 2013 and August 2014, JSA disseminated marketing materials containing misleading performance data. JSA developed a chart that purported to show the value added by JSA's investment manager recommendations. The chart was misleading because the performance figures used in the chart did not in fact represent the performance of JSA's historical investment manager recommendations, and instead were both hypothetical and backtested. JSA also did not make and keep adequate books and records to substantiate the performance data in the chart. As a result, JSA violated Sections 204(a), 206(2), and 206(4) of the Advisers Act and Rules 204-2(a)(16) and 206(4)-1(a)(5) thereunder.

4. Between 2011 and 2014, JSA failed to adopt and implement compliance policies and procedures with respect to the review of marketing materials and the use of performance data in marketing materials, and it failed to implement its gift policy. Accordingly, JSA violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, and Slocum caused this violation.

Respondents

5. JSA (SEC File No. 801-39426), is a Minnesota corporation headquartered in Minneapolis, Minnesota that was founded in 1986 and has been registered with the Commission as an investment adviser since 1991. As of April 26, 2016, JSA had approximately 130 clients and \$123 billion in assets under management, approximately \$1.1 billion of which was managed on a discretionary basis. After an asset purchase transaction, JSA no longer has any clients and has withdrawn its registration as an investment adviser.

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.

6. Jeffrey C. Slocum, age 64, resides in Minnetonka, Minnesota. Slocum is the majority owner and President of JSA.

Background

7. JSA provided investment consulting services to institutional clients, including nonprofit healthcare institutions, endowment and foundation institutions, corporate retirement plans, and insurance company reserves. JSA's services included recommending investment managers to its clients. In most cases, JSA recommended managers selected from a list of managers that had been evaluated by and received a top rating from JSA's research department (the "Approved List"), the composition of which changed over time.

JSA Disseminated Marketing Materials Containing Statements that Were Misleading

8. From at least June 2011 to October 2014, JSA disseminated marketing materials to at least 14 current or prospective clients explaining its strict practice of not accepting anything of value from investment managers. For example, some materials stated "Our firm has never, not once, taken even so much as a nickel from an investment manager, under any guise." From at least January 2012 to August 2014, JSA's marketing materials also contained statements regarding the enforcement of its Code of Ethics, such as "Our firm actively guards against any actual or potential conflicts of interest by enforcing a strict Code of Ethics to which all employees must adhere in order to remain on our staff." Marketing materials containing this or similar statements were disseminated to at least 16 current or prospective clients from May 2013 to August 2014.

9. JSA's compliance manuals in effect between 2011 and 2013 included a Code of Ethics that prohibited the acceptance of anything of value worth more than \$100 from any person providing or seeking to provide services to a client and/or JSA. Between 2011 and 2014, JSA employees accepted gifts worth less than \$100 from investment managers, including food and tickets to baseball games. The Code of Ethics also incorporated, by reference, an employee handbook. The handbook contained a gift policy that allowed certain gifts above \$100, including gifts of "[a]n occasional business meal, sporting event or other entertainment event at the expense of the giver, provided that the expense is reasonable and both the giver and the employee are present." The gift policy was interpreted and understood to require employees to obtain pre-approval from the Chief Compliance Officer ("CCO") or General Counsel before accepting any gift worth more than \$100.

10. In 2012, two employees accepted tickets to the Masters Golf Tournament (the "Masters") from an investment manager after consulting with and obtaining pre-approval from the CCO and General Counsel. In 2013, in violation of JSA's gift policy, four JSA employees each accepted tickets to the Masters valued over \$100 from the same investment manager without consulting with and obtaining pre-approval from the CCO or General Counsel. JSA's CCO discovered the violation just before the tournament began. JSA's General Counsel and CCO proposed a response that would have required the employees to reimburse the investment manager for the full value of the tickets.

11. At Slocum's direction, the response was softened, and the employees were permitted to accept the gift of the tickets. The employees were not formally disciplined for their violation of the gift policy.

12. The statements described above were misleading because JSA's gift policy permitted employees to accept gifts from investment managers under certain circumstances and because JSA employees had in fact accepted tickets to the Masters Golf Tournament from an investment manager in 2012 and 2013. Further, JSA and Slocum failed to impose any formal discipline on the employees who violated the gift policy by accepting tickets to the 2013 Masters Golf Tournament without pre-approval.

JSA Disseminated Misleading Performance Advertising

13. In June 2013, JSA employees developed a chart that purported to show the value added by JSA's investment manager recommendations (the "Value Added Chart"). The Value Added Chart showed absolute and risk-adjusted return measurements for at least 20 asset classes over the previous three, five, and ten years. The performance figures were both hypothetical and backtested. They were not based on the historical performance of the holdings of any JSA client account, nor on JSA's past manager recommendations to clients. Instead, they were calculated as an equally weighted composite of the past performance of investment managers that were on the Approved List as of the date of the chart.

14. At the end of each subsequent quarter until May 2014, JSA employees updated the Value Added Chart by compiling historical performance data for the managers that were on the Approved List as of the last day of the preceding quarter. The Value Added Chart was then distributed to JSA consultants, who incorporated it into marketing materials, such as responses to requests for proposals ("RFPs") and pitch books, that they disseminated to clients or prospective clients.

15. JSA employees knew that the performance data in the Value Added Chart was hypothetical and backtested. Some JSA employees involved in the creation of the Value Added Chart discussed the possibility of changing the methodology to reflect the performance of all current and historical approved managers during the periods when those managers were on the Approved List. This methodology was not implemented because, at the time, JSA did not maintain reliable data on the past composition of the Approved List. JSA initiated a project to gather this data for use in a future version of the Value Added Chart. In the meantime, JSA employees continued to prepare the chart using backtested data.

16. In September 2013, a JSA employee involved in the preparation of the Value Added Chart added a footnote disclosing the methodology by which the chart was prepared. Later in 2013, other JSA employees added a footnote to some marketing materials disclosing that the performance data in the chart was hypothetical. However, the vast majority of marketing materials incorporating the Value Added Chart were not updated to include these new footnotes, and thus they neither described the methodology by which the chart was prepared nor disclosed that the performance data was hypothetical.

17. From June 2013 to August 2014, the Value Added Chart was incorporated into at least 40 marketing documents disseminated to at least 33 different clients or prospective clients. At least 22 clients or prospective clients received marketing materials incorporating the Value Added Chart without any disclosure that the chart reflected backtested and hypothetical performance data. An additional 9 clients or prospective clients received marketing materials incorporating the Value Added Chart with only partial disclosures.

JSA Failed to Adopt and Implement Compliance Procedures

18. The dissemination of misleading marketing materials and the failure to make and keep adequate books and records was caused in part by JSA's failure to adopt and implement an adequate compliance program. Before September 2015, although JSA had adopted a written compliance manual, the manual did not contain policies and procedures reasonably designed to prevent JSA's violations of the Advisors Act. JSA had no written policies and procedures regarding the review of marketing materials or the use of performance data in marketing materials. Additionally, even though JSA had adopted a written policy regarding the acceptance of gifts, this policy, as written and as implemented, conflicted with representations contained in JSA's marketing materials as described above.

19. JSA had an informal and unwritten practice whereby the General Counsel reviewed RFPs before they were disseminated to current or prospective clients. In the Winter of 2013, JSA's General Counsel reviewed a draft RFP that included the Value Added Chart accompanied by a footnote explaining the methodology by which the chart was prepared. Based on his review, he directed the consultants to add an additional footnote disclosing that the performance data was hypothetical. This language was incorporated into the final version of the RFP the General Counsel reviewed, but it was not added to the master template of the Value Added Chart used by other consultants.

20. Under JSA's informal practice of reviewing certain marketing materials, not all marketing materials were reviewed before they were disseminated to clients or prospective clients. Because of this lapse, JSA neglected to identify that most of the marketing materials containing the Value Added Chart did not incorporate appropriate disclosures and neglected to identify and remove misleading representations about the acceptance of items of value from investment managers and the enforcement of the Code of Ethics.

21. As the majority owner and President of JSA, Slocum was responsible for ultimately ensuring that JSA had adopted and implemented an adequate compliance program. Additionally, Slocum directed JSA's lenient response to the violation of the gift policy in connection with the 2013 Masters trip, leading to JSA's failure to implement its written policy regarding employees' acceptance of gifts from investment managers.

JSA Failed to Maintain Adequate Books and Records

22. JSA was required to make and keep true, accurate, and current records or documents necessary to form the basis for or demonstrate the calculation of the performance or rate of return that it circulated or distributed to ten or more persons. During the time the Value

Added Chart was disseminated to clients or prospective clients, JSA did not maintain data on the composition of the Approved List in previous quarters, which was necessary to form the basis for and demonstrate the calculation of the performance data contained in previous quarters' versions of the Value Added Chart. Additionally, in calculating the performance data for certain asset classes, JSA relied on data drawn from a continuously updated third party database. JSA did not make or keep records of the underlying data that formed the basis of the composite performance reported in the Value Added Chart for those asset classes.

Violations

23. As a result of the conduct described above, JSA willfully² violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in “any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.” A violation of Section 206(2) of the Advisers Act does not require proof of scienter but, rather, “may rest on a finding of simple negligence.” *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)).

24. As a result of the conduct described above, JSA willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) promulgated thereunder. Section 206(4) of the Advisers Act prohibits any investment adviser from engaging in “any act, practice, or course of business which is fraudulent, deceptive, or manipulative,” and authorizes the Commission to prescribe rules designed to prevent such conduct. Rule 206(4)-1(a)(5) under the Advisers Act makes it 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 publish, circulate, or distribute any advertisement which contains any untrue statement of a material fact, or which is otherwise false or misleading. A showing of negligence is also sufficient to establish a violation of Section 206(4) of the Advisers Act and the rules thereunder. *Steadman*, 967 F.2d at 647.

25. As a result of the conduct described above, JSA willfully violated Section 204(a) of the Advisers Act and Rule 204-2(a)(16) promulgated thereunder. Section 204(a) of the Advisers Act requires investment advisers to make and keep certain records as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Rule 204-2 under the Advisers Act requires investment advisers registered or required to be registered to make and keep true, accurate, and current books and records related to their investment advisory business, including all accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons.

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)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

26. As a result of the conduct described above, JSA willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require that registered advisers adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules that the Commission has adopted under the Act. Violations of Section 206(4) and the rules thereunder do not require scienter. *Steadman*, 967 F.2d at 647.

27. As a result of the conduct described above, Slocum caused³ JSA's violations of Section 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondents' Remedial Efforts

28. In determining to accept the Offers, the Commission considered the significant remedial acts promptly undertaken by Respondents and the substantial cooperation afforded the Commission staff.

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 Sections 203(e), 203(i), and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent JSA cease and desist from committing or causing any violations and any future violations of Sections 204(a), 206(2), and 206(4) of the Advisers Act and Rules 204-2, 206(4)-1, and 206(4)-7 promulgated thereunder.

B. Respondent Slocum cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

C. Respondent JSA is censured.

D. Respondents JSA and Slocum shall each pay a civil money penalty as follows:

a. Respondent JSA shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$300,000.00 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).

b. Respondent Slocum shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000.00 to the Securities and Exchange

³ Negligence is sufficient to establish liability for causing a primary violation that does not require scienter. See *KPMG Peat Marwick LLP*, 54 S.E.C. 1135, 1175 (2001), *recon. denied*, 55 S.E.C. 1 (2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002).

Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3).

- c. If timely payment 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) 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 Jeffrey Slocum & Associates, Inc. or Jeffrey C. Slocum 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 Amy S. Cotter, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Ste. 900, Chicago, IL 60604.

E. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, 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 Slocum, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Slocum 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 Slocum 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