

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4734 / July 28, 2017

ADMINISTRATIVE PROCEEDING
File No. 3 - 18084

In the Matter of

**Columbia River Advisors, LLC,
Benjamin J. Addink and
Donald A. Foy,**

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, 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”) against Columbia River Advisors, LLC (“Columbia River”), Benjamin J. Addink (“Addink”) and Donald A. Foy (“Foy”) (together “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to 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

These proceedings concern the failure to disclose certain conflicts of interest by Columbia River Advisors, LLC, a registered investment adviser, and two of its principals, Benjamin Addink and Donald Foy, as they attempted to grow Columbia River's investment advisory business. Addink and Foy organized and managed their first investment fund whose primary investment strategy was to trade in foreign currencies. They later created a second investment fund to loan money to Columbia River, the general partner and investment adviser to the fund, which used the money to acquire other advisory firms' books of business. Beginning in June 2012, Respondents caused the foreign currency-focused fund to make sizable investments into the fund that loaned money to Columbia River. Respondents failed, however, until long after making the investments, to inform the investors in the foreign currency-focused fund that some of the fund's assets were used to increase the size of Columbia River's investment advisory business (and, in turn, its potential profits). In addition, the auditor Columbia River hired to audit the funds' financial statements was not qualified under the Advisers Act custody rule, and Columbia River did not timely distribute audited financial statements to the funds' investors for the 2012 and 2014 fiscal years as required under the rule. As a result, Respondents violated Section 206(2) of the Advisers Act and Columbia River violated, and Foy caused Columbia River's violation of, Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder.

Respondents

1. Columbia River Advisors, LLC is a Delaware limited liability company with its principal place of business in Tacoma, Washington. Columbia River has been registered with the Commission as an investment adviser since November 24, 2010. As of December 31, 2016, Columbia River reported \$372,743,984 in assets under management and approximately 1,300 advisory clients. During the time period described below, it advised two investment funds, Blue Water Strategic Currency Fund I, L.P. and Blue Water Investment Fund II, L.P.

2. Benjamin J. Addink, age 38, is a resident of Ephrata, Washington. Addink is a co-founder and member of Columbia River and, during the relevant period, owned 33% of Columbia River through a limited liability company. He currently serves as Managing Director for New Business Development and Chief Financial Officer of Columbia River, and has focused on those areas of Columbia River's business since its founding. During the relevant period, Addink served as a portfolio manager for the two investment funds Columbia River managed and received compensation from Columbia River in the form of member draws.

3. Donald A. Foy, age 45, is a resident of Burien, Washington. Foy is a co-founder and member of Columbia River and, during the relevant period, owned 33% of Columbia River through a limited liability company. He currently serves as Columbia River's Chief Executive Officer. During the relevant period, Foy was in charge of compliance and operations and, from

2010 to March 2015, served as Columbia River's Chief Compliance Officer. During the relevant period, Foy served as a portfolio manager for the two investment funds Columbia River managed, advised a number of Columbia River clients directly and received compensation from Columbia River in the form of member draws.

Other Relevant Entities

4. Blue Water Strategic Currency Fund I, L.P. ("Fund I") was formed in January 2012 under Washington law. Its name was changed to Blue Water Total Return Fund I, L.P. in March 2014, and it was later dissolved in November 2014. Addink and Foy started the fund as an alternative investment vehicle for Columbia River's clients to invest in assets that were not correlated to the stock and bond markets. According to Fund I's offering circular, the fund's objective was to achieve returns by principally engaging in trading foreign currencies using a proprietary technical analysis strategy. Additionally, Fund I could also invest in other asset classes, including securities. Columbia River served as Fund I's general partner and investment adviser and Addink and Foy were the fund's portfolio managers and made its investment decisions. All but one of Fund I's limited partners were Columbia River advisory clients. Columbia River charged Fund I a management fee based on a percentage of Fund I's assets. At the end of 2012, Fund I had net assets of about \$5.5 million.

5. Blue Water Investment Fund II, L.P. ("Fund II") is a Washington limited partnership that Addink and Foy formed in April 2012. Fund II's offering circular stated that it planned to raise money from investors and then lend it to Columbia River to buy investment advisory books of business from other advisory firms. The loans from Fund II to Columbia River were evidenced by promissory notes that paid annual interest of 8.25% for terms ranging from 4½ to 5½ years. Since Fund II was formed, Columbia River has served as its general partner and investment adviser, and Addink and Foy have been its portfolio managers. All of Fund II's limited partners are Columbia River advisory clients and two of the limited partners were also invested in Fund I. Columbia River did not charge Fund II a management fee because Columbia River was paying Fund II interest on the loans from the fund and Fund II required less management on Columbia River's part than Fund I because its only business was to lend money to Columbia River. At the end of 2012, Fund II had net assets of about \$3.6 million.

Failure to Disclose Conflict of Interest

6. Initially, Respondents invested Fund I's assets in foreign currency trading and the purchase of residential real estate properties. As a result of the difficulty in fully executing the foreign currency trading strategy, significant assets in Fund I were not invested in foreign currency. Accordingly, Addink and Foy sought out other investments. Beginning in June 2012, they caused Fund I to invest a portion of its capital in Fund II, which earned an 8.25% annual rate of return (less expenses). By the end of 2012, Fund I had about \$3.1 million invested in Fund II, which was approximately 55% of Fund I's total assets. Accordingly, the majority of Fund I's assets were not invested in foreign currency trading, but were instead invested in Fund II, which Columbia River used to finance and grow its investment advisory business. Respondents failed, however, to inform the Fund I investors before making the investments or

disclose the conflict of interest, namely that the investment from Fund I into Fund II would help to grow Columbia River's investment advisory business and potentially increase its profits. Because Columbia River acted as general partner for both Fund I and Fund II and Respondents stood to benefit from Fund I's investment in Fund II, they could not consent to the investment on Fund I's behalf. Addink and Foy were aware that a conflict of interest existed, but did not take reasonable steps before the investment was made to ensure that it was disclosed to the Fund I investors. Investors were not presented with the opportunity to choose to withdraw from the fund if they did not consent. As investment advisers, Respondents had an obligation to disclose conflicts of interest to advisory clients who invested in Fund I.

7. While Foy told some Fund I investors that Fund I had invested in Fund II after the investments were made, Respondents did not disclose the investment, or the conflicts that it posed, to all of Fund I's investors until February 2014, more than a year and a half after Fund I made the investment. At that time, Columbia River distributed Fund I's audited financial statements for the fiscal year ended December 31, 2012 to the Fund I investors, which was the first time Columbia River disclosed Fund I's investment in Fund II to investors in writing. Those financial statements for fiscal year 2012 disclosed Fund I had \$3,071,108 (approximately 55% of its total assets of \$5,623,467) invested in Fund II, a related party, whose assets consisted primarily of notes receivable from Columbia River, the general partner of both funds.

8. Between June 2012, when Fund I made its first investment in Fund II, and February 2014, when the investment was disclosed to Fund I investors, Fund I investors paid Columbia River a management fee on the portion of Fund I's assets that was invested in Fund II. Had the Fund I investors invested directly in Fund II, they would not have been subject to a management fee on the Fund II investment. Prior to the institution of these proceedings, Columbia River refunded these management fees to the affected Fund I investors.

Custody Rule Violations

9. As general partner of Fund I and Fund II, Columbia River had custody of Fund I's and Fund II's assets under the Advisers Act custody rule, Rule 206(4)-2. The custody rule, among other things, requires registered investment advisers who have custody of client funds or securities to either obtain an annual surprise examination by an independent public accountant or distribute financial statements audited by an independent public accountant registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board ("PCAOB") to fund limited partners within 120 days of the end of the fund's fiscal year.

10. Columbia River elected to distribute audited financial statements to Fund I's and Fund II's limited partners. Both funds' fiscal years ended December 31; therefore, Columbia River was required to distribute audited financial statements to the funds' limited partners by April 30 of the following year.

11. For fiscal year 2012, Columbia River hired an auditor that was recommended by its outside counsel based in part on the auditor's description of its experience auditing other investment funds. Despite Columbia River's belief that the auditor was qualified to audit the

funds' financial statements, during an examination of Columbia River by the Commission's staff, the staff discovered in March 2014 that the auditor was registered with the PCAOB, but was not subject to PCAOB inspection, and therefore was not qualified to perform the audits under the custody rule.

12. Although the audited financial statements for fiscal year 2012 were required to be distributed to investors no later than April 30, 2013, by that date, the auditor had not yet completed its field work or audit procedures and testing. Although the auditor delivered the audited financial statements to Columbia River on November 11, 2013, Columbia River did not distribute them to the funds' limited partners until February 7, 2014, over nine months after they were required to be distributed under the custody rule. The audited financial statements for fiscal year 2013 were timely distributed to investors, but were not audited by an auditor qualified under the custody rule.

13. Columbia River hired a PCAOB-registered and inspected auditor to audit the funds' fiscal year 2014 financial statements and to re-audit the 2013 financial statements. The new auditor, however, did not complete the 2014 audit until October 2015, despite the April 30, 2015 deadline. Upon receipt, Columbia River distributed the 2014 audited financial statements to the funds' limited partners on October 21, 2015, over five months after they were due under the custody rule. Foy was Columbia River's primary contact for the auditors, and the custody rule deadline was outlined in Columbia River's compliance manual, which he had read. He did not, however, take adequate steps to ensure that the audited financial statements were distributed to the funds' investors by the custody rule's deadline.

Violations of Law

14. As a result of the conduct described above, Columbia River, Addink and Foy willfully¹ violated Section 206(2) of the Advisers Act, which makes it "unlawful for any investment adviser . . . directly or indirectly to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client."

15. As a result of the conduct described above, Columbia River willfully violated, and Foy caused Columbia River's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, which require an investment adviser with custody of client funds or securities to adequately safeguard those assets by implementing specific procedures.

¹ 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)).

Respondents' Remedial Efforts

16. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff.

Undertakings

Columbia River has undertaken to:

17. Independent Compliance Consultant. With respect to the retention of an independent compliance consultant, Columbia River has agreed to the following undertakings:

a. Columbia River shall retain, within ninety (90) days of the entry of this Order, the services of an independent compliance consultant (the "Independent Consultant") that is not unacceptable to the Commission staff. The Independent Consultant's compensation and expenses shall be borne exclusively by Columbia River.

b. Columbia River shall provide to the Commission staff, within ninety (90) days of the entry of this Order, a copy of the engagement letter detailing the Independent Consultant's responsibilities, which shall include a comprehensive compliance review as described below in this Order. Columbia River shall require that, by the end of the first quarter of 2018, the Independent Consultant conduct a comprehensive review of Columbia River's supervisory, compliance, and other policies and procedures reasonably designed to prevent violations of the federal securities laws by Columbia River and its employees.

c. Columbia River shall require that, within forty-five (45) days from the end of the first quarter of 2018, the Independent Consultant shall submit a written and detailed report of its findings to Columbia River and to the Commission staff (the "Report"). Columbia River shall require that the Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Independent Consultant's recommendations for changes in or improvements to Columbia River's policies and procedures and/or disclosures to clients, and a procedure for implementing the recommended changes in or improvements to Columbia River's policies and procedures and/or disclosures.

d. Columbia River shall adopt all recommendations contained in the Report within sixty (60) days of the date of the Report; provided, however, that within forty-five (45) days after the date of Report, Columbia River shall in writing advise the Independent Consultant and the Commission staff of any recommendations that Columbia River considers to be unduly burdensome, impractical or inappropriate. With respect to any recommendation that Columbia River considers unduly burdensome, impractical or inappropriate, Columbia River 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.

e. As to any recommendation with respect to Columbia River's policies and procedures on which Columbia River and the Independent Consultant do not agree, Columbia

River and the Independent Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by Columbia River and the Independent Consultant, Columbia River shall require that the Independent Consultant inform Columbia River and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Columbia River considers to be unduly burdensome, impractical or inappropriate. Columbia River shall abide by the determinations of the Independent Consultant and, within sixty (60) days after final agreement between Columbia River and the Independent Consultant or final determination by the Independent Consultant, whichever occurs first, Columbia River shall adopt and implement all of the recommendations that the Independent Consultant deems appropriate.

f. Within ninety (90) days of Columbia River's adoption of all of the recommendations in the Report that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, Columbia River shall certify in writing to the Independent Consultant and the Commission staff that Columbia River has adopted and implemented all of the Independent Consultant's recommendations in the Report. Unless otherwise directed by the Commission staff, the Report, certifications, and other documents required to be provided to the Commission staff shall be sent to Jeremy E. Pendrey, Assistant Regional Director, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104-4802, or such other address as the Commission staff may provide.

g. Columbia River shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of its files, books, records, and personnel as are reasonably requested by the Independent Consultant for review.

h. To ensure the independence of the Independent Consultant, Columbia River:

(1) Shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant, without the prior written approval of the Commission staff; and

(2) Shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

i. Columbia River shall require the Independent Consultant 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 Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Columbia River, 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 Independent Consultant will require that any firm with which the Independent Consultant is affiliated or of which the Independent Consultant is a member, and any person engaged to assist the Independent Consultant in the

performance of the Independent Consultant'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 Columbia River, 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.

18. Recordkeeping. Columbia River 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 Columbia River's compliance with the undertakings set forth in this Order.

19. Notice to Investors. Within thirty (30) days of the entry of this Order, Columbia River shall provide a copy of the Order to each person who was a limited partner of Fund I on or after June 1, 2012 via mail, e-mail, or such other method as may be acceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

20. Deadlines. For good cause shown, the Commission staff may 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.

21. Certifications of Compliance by Respondent. Columbia River shall certify, in writing, compliance with its undertakings set forth above. The certification 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 Columbia River agrees to provide such evidence. The certification and supporting material shall be submitted to Jeremy E. Pendrey, Assistant Regional Director, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104-4802, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, 100 F Street, NE Washington, DC 20549-6553, 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, in the public interest to impose the sanctions agreed to in Respondents' Offers.

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

A. Respondent Columbia River 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)-2 thereunder.

B. Respondent Addink cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act.

C. Respondent Foy 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)-2 thereunder.

D. Respondents Columbia River, Addink and Foy are censured.

E. Respondent Columbia River shall pay a civil money penalty in the amount of \$80,000 to the Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934 (“Exchange Act”). Payment shall be made in the following installments: \$20,000 within 90 days; \$20,000 within 180 days; \$20,000 within 270 days; and \$20,000 within 360 days. 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.

F. Respondent Addink shall pay a civil money penalty in the amount of \$25,000 to the Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act. Payment shall be made in the following installments: \$6,250 within 90 days; \$6,250 within 180 days; \$6,250 within 270 days; and \$6,250 within 360 days. 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.

G. Respondent Foy shall pay a civil money penalty in the amount of \$30,000 to the Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act. Payment shall be made in the following installments: \$7,500 within 90 days; \$7,500 within 180 days; \$7,500 within 270 days; and \$7,500 within 360 days. 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.

H. Payment must be made in one of the following ways:

(1) Respondents may transmit payments electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondents may make direct payments 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 Columbia River, Addink or Foy 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 Jeremy E. Pendrey, Assistant Regional Director, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104-4802.

I. 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 Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, 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 Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

J. Respondent Columbia River shall comply with the undertakings enumerated in Section III, paragraphs 17 to 21 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 Respondents Addink and Foy, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents Addink or Foy 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 Respondents Addink and Foy 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