

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4744 / August 15, 2017

INVESTMENT COMPANY ACT OF 1940
Release No. 32782 / August 15, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18112 and 3-16463

In the Matter of

DIANE W. LAMM,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940

This Order incorporates both an Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order with respect to the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 (“Exchange Act”), 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”) currently pending before the Commission, Advisers Act Rel. No 4054, and an Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings and Imposing Remedial Sanctions (Part II, below).

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Diane W. Lamm (“Respondent” or “Lamm”).

In anticipation of the institution of these proceedings, and in connection with pending proceedings, Advisers Act Rel. No. 4054, previously instituted against Lamm pursuant to Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, the Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Solely for the purposes of these proceedings and any other proceedings brought by or on behalf of the Commission or to which the Commission is a party, Lamm admits the jurisdiction of the Commission over her and the subject matter of these proceedings, and the findings contained in paragraph II.2 below. Lamm consents to the entry of an Order by the Commission containing the following findings set forth below:¹

I.

Pending Proceedings

On the basis of this Combined Order, the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b)(6) of the Securities and Exchange Act of 1934, 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, and Respondent’s Offer, the Commission finds that:

1. Aegis Capital, LLC (“Aegis Capital”) and Circle One Wealth Management, LLC (“Circle One”) (collectively “Registrants”), while formerly registered with the Commission as investment advisers, failed to file timely and accurate reports with the Commission and to maintain required books and records. In Forms ADV filed with the Commission in March 2010 and March 2011, Registrants, affiliated because of common control, materially overstated their assets under management (“AUM”) and total number of client accounts. Indeed, in March 2011, Registrants overstated their AUM by over \$119 million and total number of client accounts by at least 1,000 accounts. Moreover, from 2009 to 2011, Registrants’ books and records were unsegregated and mixed together with affiliated entities at the level of the parent holding company. Registrants were unable to provide adviser-specific books and records in response to examination staff’s queries in a timely manner, if at all.

2. Registrants outsourced their compliance responsibilities to Respondent Strategic Consulting Advisors, LLC (“SC Advisors”), a firm that offered compliance consulting and Chief Compliance Officer (“CCO”) services to investment management firms. Respondent David I. Osunkwo (“Osunkwo”), an attorney and principal at SC Advisors, was designated as Registrants’ CCO. In this role, he was responsible for preparing, reviewing, and filing Registrants’ Forms ADV. Osunkwo reported to and worked closely with Respondent Lamm, Registrants’ Chief Operating Officer (“COO”), who provided information to Osunkwo to include in Aegis Capital’s Form ADV filings, signed Aegis Capital’s Form ADV, and otherwise was responsible for Registrants’ books and records. As a direct consequence of Lamm’s failures, Registrants failed to file accurate and timely reports with the Commission and failed to make and keep required books and records.

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent

3. Lamm, 55 year of age, is a resident of Highlands, North Carolina. She served as the COO for Aegis Capital, Circle One, and Capital L Group, LLC (“Capital L”), Registrants’ parent holding company, beginning in October 2009. She was designated as the firm’s COO in the last filing made on its Form ADV in April 2012.

Other Relevant Parties

4. Aegis Capital is a North Carolina limited liability company with its principal place of business in Mount Pleasant, South Carolina. Aegis Capital filed a Form ADV-W on March 27, 2012 and withdrew registration as an investment adviser with the Commission. Thereafter, from March 27, 2012 until June 24, 2015, Aegis Capital was registered as an investment adviser with the state of North Carolina. Aegis Capital is not currently registered as an investment adviser with the Commission or any State.

5. Circle One is a Florida limited liability company that was formerly registered as an investment adviser with the Commission and currently listed as “Inactive” in the records of the Florida Department of State Division of Corporations. On March 27, 2012, Circle One withdrew its registration as an investment adviser with the Commission by filing a partial withdrawal on Form ADV-W. On May 7, 2012, Circle One filed for a full withdrawal on Form ADV-W, thereby withdrawing its registration as an investment adviser with several states. Circle One is not currently registered as an investment adviser with the Commission or any State.

6. SC Advisors was an Illinois limited liability company with its principal place of business in Naperville, Illinois. SC Advisors offered consulting services to investment management firms, registered and unregistered funds, and private equity firms on a wide range of business and regulatory compliance matters, and also offered outsourced CCO services for Commission-registered entities. Osunkwo was one of the principals of SC Advisors. During 2010 and 2011, SC Advisors contracted to provide CCO services to Registrants. SC Advisors is now defunct.

7. Osunkwo, 55 and a resident of Charlotte, North Carolina, is self-employed. He provides business and compliance consulting services through affiliations with other firms, including SC Advisors. He held Series 7 and 63 licenses and has no prior disciplinary history. From January 2011 to March 2012, Osunkwo was registered with a broker-dealer registered with the Commission. Osunkwo is an attorney licensed in New York. During 2010 and 2011, Osunkwo was a principal of SC Advisors and was designated, and served as, Aegis Capital’s and Circle One’s CCO.

Registrants’ False Form ADV Filings

8. Between January 2010 and December 2011, SC Advisors was contractually obligated to provide compliance services to Registrants, including preparing, reviewing, and filing Forms ADV, and to make available a principal of its firm to be appointed and serve as

Registrants' CCO. Pursuant to this agreement, SC Advisors designated Osunkwo as CCO for Registrants.

9. Throughout the same time period, Lamm was Registrants' COO and Osunkwo's direct supervisor.

10. On March 31, 2010, Aegis Capital filed its Form ADV for the December 31, 2009 year end. In that Form ADV, Aegis Capital reported that it had \$164,994,972 in AUM and 1,540 advisory accounts.

11. Aegis Capital's Form ADV for that year was filed by Osunkwo based on information obtained from Lamm. Lamm provided inaccurate information concerning AUM and number of client accounts of Aegis Capital to Osunkwo, who included that information in the Form ADV filed with the Commission. Lamm signed Aegis Capital's Form ADV as of December 31, 2009, certifying that the information therein was "true and correct."

12. Aegis Capital did not file an annual update for the December 31, 2010 year end. On March 27, 2012, Aegis Capital filed a partial Form ADV-W to withdraw its registration as an investment adviser with the Commission.

13. As a result of Lamm's conduct, the AUM and number of advisory accounts claimed by Aegis Capital in its Form ADV for the year ended December 31, 2009 was materially overstated.

Registrants Failed to Maintain Required Books and Records

14. Between 2009 and 2011, Aegis Capital failed to keep books and records in a segregated fashion, but instead created and maintained such records in the name of Capital L. Thus, Aegis Capital's records were unsegregated and mixed together with affiliated entities at the level of the parent holding company. Specifically, Aegis Capital failed to make and keep advisory-specific trial balances, financial statements, and internal working papers; journals, including cash receipts and disbursements, and any other records of original entry forming the basis of entries into ledgers; general ledgers reflecting asset, liability reserve, capital, income and expense accounts; checkbooks, bank statements, cancelled checks and cash reconciliations; and bills or statements, paid or unpaid.

15. Between 2010 and 2011, Circle One similarly failed to keep books and records in a segregated fashion, but instead created and maintained such records in the name of Capital L. Specifically, Circle One failed to make and keep separate, advisory-specific trial balances, financial statements, and internal working papers; journals, including cash receipts and disbursements, and any other records of original entry forming the basis of entries into ledgers; general ledgers reflecting asset, liability reserve, capital, income and expense accounts; checkbooks, bank statements, cancelled checks and cash reconciliations; and bills or statement, paid or unpaid.

16. In August 2011, Commission staff requested that Registrants produce the following books and records: Registrants' balance sheet, trial balance, income statement, and

cash flow statements as of the end of its most recent fiscal year and the most current year to date; Registrants' cash receipts and disbursements journal; Registrants' general ledger and chart of accounts; and any loans from clients to the Registrants or sales of Registrants' stock to clients.

17. Registrants were not able to comply with the Commission staff's requests, and Registrants did not produce the requested books and records.

18. As COO, Lamm was responsible for Capital L's Operations Department, which included accounting and keeping and maintaining Registrants' books and records.

Violations

19. As a result of the conduct described above, Lamm willfully aided and abetted and caused violations of, Section 204(a) of the Advisers Act and Rule 204-2(a) thereunder. Section 204(a) of the Advisers Act requires an investment adviser to "make and keep ... such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors," and further provides that such records are subject to periodic examinations by the Commission. Rule 204-2(a) promulgated thereunder requires that an investment adviser "make and keep true, accurate and current" books and records relating to its advisory business including, among others: a journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger (Rule 204-2(a)(1)); general and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income, and expense accounts (Rule 204-2(a)(2)); all checkbooks, bank statements, cancelled checks, and cash reconciliations of the investment adviser (Rule 204-2(a)(4)); all bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser (Rule 204-2(a)(5)); and all trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser (Rule 204-2(a)(6)).

20. As a result of the conduct described above, Lamm willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission under Section 203, or 204, or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

II.

Proceedings Being Instituted

On the basis of this Combined Order and the Respondent's Offer, the Commission finds the following.

1. Beginning in October, 2009, Lamm was the COO for Registrants and Capital L, Registrants' holding company. Registrants were formerly registered with the Commission as investment advisers.

2. On February 5, 2016, Lamm pled guilty to two counts of securities fraud contained within a four count criminal indictment, in violation of Title 15 United States Code, Sections

78j(b) and 78ff before the United States District Court for the Eastern District of New York, in United States v. John R. Lakian, et al., Case No. 1:15-CR-0043(FB).

3. The securities fraud counts of the criminal indictment to which Lamm pled guilty alleged, inter alia, that Lamm defrauded investors by means of materially false and misleading statements and omissions, and that she misappropriated investor funds in connection with the purchase or sale of a security.

III.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Lamm's Offer of Settlement.

Accordingly, it is hereby ORDERED that:

Pursuant to Sections 203(f) and 203(k) of the Advisers Act and Section 9(b) of the Investment Company Act:

A. Respondent Lamm cease and desist from committing or causing any violations and any future violations of Sections 204 and 207 of the Advisers Act and Rule 204-2(a) thereunder; and

B. Respondent Lamm be, and hereby is, 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; and

C. Respondent Lamm be, and hereby is, barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent or nationally recognized statistical rating organization.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Brent J. Fields
Secretary