

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4870 / March 29, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18417

In the Matter of

HOWARD B. PRESENT,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
AND NOTICE OF HEARING

I.

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 Howard B. Present (“Respondent” or “Present”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From April 2008 until his departure in November of 2014, Howard Present was the Chief Executive Officer of F-Squared Investments, Inc. (“F-Squared”), an investment adviser registered with the Commission. Present, 57 years old, is a resident of Wellesley, Massachusetts.

B. ENTRY OF THE INJUNCTION

2. On December 22, 2014, the Commission filed a complaint in the U.S. District Court for the District of Massachusetts alleging that from August 2008 to September 2013, Present made materially false and misleading statements about the AlphaSector strategy, the flagship product of F-Squared, and its advertised performance. Present falsely claimed that

AlphaSector's advertised performance was based on the actual performance of real clients' investments when in fact, the performance had been back-tested; further the advertised performance was substantially overstated due to a calculation error.

3. The Commission's case against Present resulted in a trial before a jury beginning in September 2017. In October 2017, after hearing fifteen days of evidence, the jury found that Present intentionally or recklessly violated Sections 206(1), 206(2), 206(4) and 207 of the Advisers Act and Rule 206(4)-8, and knowingly or recklessly aided and abetted F-Squared's violation of Section 206(4) and Rule 206(4)-1.

4. On March 22, 2018, final judgment was entered against Respondent in the civil action entitled *Securities and Exchange Commission v. Howard B. Present*, Civil Action No. 14-cv-14692, in the United States District Court for the District of Massachusetts. The judgment permanently enjoins Present from future violations of Sections 206(1), 206(2), 206(4) and 207 of the Advisers Act and Rule 206(4)-8, and from aiding and abetting violations of Section 206(4) and Rule 206(4)-1. The District Court also imposed a \$1,575,000 penalty and ordered Present to pay disgorgement of \$10,849,604 together with prejudgment interest thereon in the amount of \$1,377,003 (for a total of \$12,226,607).

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against her upon consideration of this Order, the allegations of which may be deemed to be true as provided

by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Present as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(a)(2), the Administrative Law Judge shall issue an initial decision no later than 75 days from the occurrence of one of the following events: (A) The completion of post-hearing briefing in a proceeding where the hearing has been completed; (B) Where the hearing officer has determined that no hearing is necessary, upon completion of briefing on a motion pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250; or (C) The determination by the hearing officer that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155 and no hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority

Brent J. Fields
Secretary