

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4962 / July 10, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18587

In the Matter of

Brian S. Eyster,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 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 cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Brian S. Eyster (“Eyster” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has 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 him and the subject matter of these proceedings, which are admitted, and except as provided in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 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 Respondent’s Offer, the Commission finds¹ that:

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.

Summary

1. These proceedings arise out of Eyster's causing violations of the testimonial rule under the Advisers Act, which states that it shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business for any investment adviser registered with the Commission to publish, circulate or distribute any advertisement which refers to, among other things, any testimonial of any kind concerning the investment adviser. Eyster caused ON Investment Management Co. ("ONIMCO") to violate the testimonial rule under the Advisers Act by publishing on the internet advertisements containing testimonials concerning Eyster and the investment advice and services he renders as an investment adviser representative of ONIMCO. The testimonials were available to the public on, among other places, YouTube.com and a website Eyster maintained for his business. By publishing statements containing client testimonials, Eyster caused ONIMCO's violations of Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(1) thereunder.

Respondent

2. Brian S. Eyster is an investment adviser representative and registered representative based in Farmington Hills, Michigan, offering both investment advisory and brokerage services to individual investors. Eyster has been an investment adviser representative of ONIMCO since May 2015, and a registered representative of O.N. Equity Sales Co. ("ONESCO") since January 2015. ONIMCO has been registered with the Commission as an investment adviser since 1971. ONESCO has been registered with the Commission as a broker-dealer since 1968. Both ONIMCO and ONESCO are headquartered in Blue Ash, Ohio and are affiliated with Ohio National Financial Services, Inc. From May 2015 until November 2016, Eyster also was an investment adviser representative of FAI Advisors, Inc., an investment adviser registered with the state of Michigan.

Facts

3. Since approximately 1998, Eyster has provided insurance, investment advisory and brokerage services to individual investors. Since approximately May 2015, Eyster has offered these services through ONIMCO.

4. From 2009 until at least October 2015, Eyster maintained a public website that advertised financial planning and investment advisory services tailored to physicians. The website had a "Testimonials" section displaying statements by five physicians describing investment advisory services Eyster provided. Among other things, certain of the physicians stated that Eyster was trustworthy, knowledgeable, and had reduced risk in the physician's portfolio.

5. Eyster's website was publicly available until at least October 2015, when Eyster asked his web-hosting company to deactivate the site.

6. On September 21, 2015, Eyster hired a marketing consultant named Dr. Leonard Schwartz ("Schwartz") and his company, Create Your Fate, LLC ("Create Your Fate"), both based

in Richboro, Pennsylvania. Schwartz and Create Your Fate offer a service called Squeaky Clean Reputation through which they solicit testimonials on the adviser's behalf, and then post the testimonials on a variety of websites. Eyster understood that Squeaky Clean Reputation would contact Eyster's clients by email and request that the clients submit testimonials on Eyster's behalf. Eyster agreed to pay Schwartz and Create Your Fate a monthly fee for this service.

7. In October 2015, Schwartz and Create Your Fate sent emails to more than eighty clients Eyster identified. Eyster reviewed and approved the emails. In response to the emails, four of Eyster's clients submitted testimonials describing their experiences working with Eyster.

8. One of the testimonials was posted to Yelp.com. Yelp.com is a public website that publishes information, including testimonials and advertisements, about businesses. Yelp.com describes its purpose as helping people find great local businesses. The testimonial was available on Yelp from October 2015 until at least January 2017.

9. With Eyster's approval, Schwartz and Create Your Fate also arranged for the creation of three videos containing testimonials. Each of the testimonials was captioned as a "Five Star Review," and contained, among other things, Eyster's name and contact information. The testimonials described certain of the investment advisory services Eyster had provided to his clients. Among other things, certain of the testimonials stated that Eyster was knowledgeable and the client expected to generate investment returns as a result of Eyster's services.

10. Schwartz and Create Your Fate arranged for the videos to be published on YouTube.com and Google.com, where they were publicly available from January 2016 until at least January 2017.

11. During all relevant times, ONIMCO had policies and procedures that prohibited the use of recommendations, testimonials, and endorsements.

12. Eyster was, at all relevant times, aware of ONIMCO's policy prohibiting its investment adviser representatives from receiving recommendations or endorsements. On June 15, 2015, Eyster signed a document acknowledging his receipt of ONIMCO's advertising policy.

Violations

13. As a result of the conduct described above, ONIMCO violated and Eyster caused ONIMCO's violations of Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(1) thereunder, which states that it shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business for any investment adviser registered or required to be registered under the Advisers Act, directly or indirectly, to publish, circulate, or distribute any advertisement which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advice, analysis, report or other service rendered by such investment adviser.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Eyster's Offer.

Accordingly, pursuant to Section 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Eyster cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(1) thereunder.

B. Respondent Eyster shall, within 14 days of the entry of this Order, pay a civil penalty in the amount of \$10,000 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). 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) 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 Brian S. Eyster 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 Anne C. McKinley, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604.

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