

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4990 / August 21, 2018

INVESTMENT COMPANY ACT OF 1940
Release No. 33208 / August 21, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18656

In the Matter of

**BILTMORE WEALTH
MANAGEMENT, LLC and
CALEB R. OVERTON**

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, AND SECTION
9(b) OF THE INVESTMENT COMPANY 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”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Biltmore Wealth Management, LLC (“Biltmore”) and Caleb R. Overton (“Overton”) (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have 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 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, 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 Advisers Act and Section 9(b) of the Investment Company Act.

III.

On the basis of this Order and Respondents' Offer, the Commission finds that:

Summary

These proceedings arise out of the actions and omissions of an investment adviser, Biltmore, a California-registered investment adviser, and its sole owner, Overton. From at least June 2014 through August 2015, Biltmore and Overton raised about \$2.2 million from ten investors, eight of whom were pre-existing clients of Biltmore, to invest in Biltmore Capital, L.P. (the "Fund"), a private fund they managed. Biltmore and Overton misled the Fund and investors by claiming the Fund would invest primarily in leading growth stocks, but instead caused the Fund to make substantial trades in risky stock options and options on the SPDR S&P 500 ETF, which attempts to replicate the return of the S&P 500 ("SPY options"). Biltmore and Overton also misrepresented to investors that the Fund's risk would be mitigated by "stops" that would limit its losses to just 7-8%, but the Fund's losses often exceeded those limits. In monthly letters to Fund investors, Biltmore and Overton mischaracterized the source of the Fund's returns and losses by failing to disclose that the Fund's options trading, particularly its trading in SPY options, was the main driver of its few profits and many losses. Ultimately, the undisclosed SPY options trading caused the Fund to lose nearly all of its value in August 2015, and it was dissolved in November 2015.

Respondents

1. Biltmore is a California limited liability company based in Santa Barbara, California, which registered with the California Department of Business Oversight as an investment adviser on May 24, 2012. During the relevant period, Biltmore had individual clients as well as the Fund, its only private fund client. Biltmore provided the Fund with management services, which included the selection of its investments. Currently, Biltmore has about 190 clients and \$30 million in assets under management. Biltmore has never been registered with the Commission in any capacity.

2. Overton, age 37, is a resident of Santa Barbara, California. Overton is the sole owner, managing member and portfolio manager of Biltmore. Overton held a Series 7 license and currently holds a Series 66 license. Overton has been an investment adviser since 2003. Overton founded Biltmore in 2012 and was the portfolio manager of the Fund and controlled all investment decisions made for the Fund.

Other Relevant Entity

3. Biltmore Capital, L.P., a California limited partnership, was formed on September 10, 2014 and was managed by Biltmore, its general partner. Overton closed the Fund after the

August 2015 losses and distributed the remaining funds to investors. The existence of the Fund was officially cancelled by the State of California on November 9, 2015. The Fund represented that it was a Section 3(c)(1) private investment fund under the Investment Company Act of 1940 (“Company Act”).

Background

4. Biltmore and Overton formed the Fund in 2014 and solicited investors for the Fund, including existing advisory clients of the firm, from at least September 2014 through August 2015. Ultimately, they raised \$2.2 million from ten investors, eight of whom had pre-existing advisory relationships with Biltmore. Of the ten Fund investors, seven were 60 years or older, six invested funds from their retirement savings in the Fund, and four were unaccredited. During the relevant period Biltmore earned fees from the Fund totaling approximately \$22,580. The Fund also paid Biltmore \$463 in “profit allocations” during this period pursuant to its limited partnership agreement with Biltmore.

5. Biltmore and Overton provided prospective investors with a private placement memorandum (“PPM”) and a subscription agreement. In addition, Overton made oral presentations to prospective investors and reviewed a PowerPoint presentation he prepared with them during these face-to-face meetings, in which he emphasized the Fund’s focus on identifying and investing in superior growth stocks and did not discuss the significant role option trading would have in the Fund’s investment strategy. After they had invested, Fund investors received monthly letters from Biltmore that were written by Overton.

6. The PPM described the Fund’s investment objective as one that was designed to “achieve significant returns for investors in all market conditions and with relatively low correlation to broader market indices.” The PPM stated the Fund’s investment strategy was to invest in a “concentrated long/short portfolio of leading growth companies. We actively buy fundamentally superior stocks that are breaking out technically. We look to lock in gains in the 20-25% range and limit our losses to 7-8% through the use of stops. We are aiming to have a 3-to-1 profit loss ratio.” There was no disclosure that the use of options would be part of the Fund’s investment strategy, and options trading was only mentioned as one of many risk factors associated with the Fund.

7. The PowerPoint presentation Overton gave to investors made similar statements, stating that the Fund’s objective was a “concentrated portfolio of leading growth stocks” and that the Fund’s portfolio would be made up of “5-15 positions,” with each individual stock position representing “somewhere between 3-25% of the portfolio.” It further stated the Fund would limit losses to 7-8%, and that its portfolio construction would be “Max 150% long (individual stocks)” and “Max 100% short (short indexes and individual stocks).” The PowerPoint presentation did not reference options, let alone SPY options.

8. The monthly letters that Overton wrote and emailed to existing investors also emphasized the Fund’s stock investments, reiterated the Funds “stop loss rule of 7-8%”, and minimized its option trading.

9. Likewise, in his face-to-face meetings with prospective investors, Overton emphasized the Fund's focus on identifying and investing in superior growth stocks, and minimized or did not discuss the role that option trading ultimately would have in the Fund's investment strategy.

10. From its inception, the Fund did much more than trade primarily in leading growth stocks, as the Fund's investors were led to believe. The Fund engaged in significant option trading, especially in SPY options. Over the course of eleven months from the Fund's inception in October 2014 until it suffered catastrophic losses in August 2015, the Fund lost \$1.89 million. For four of the eleven months of its existence, the Fund's losses or profits resulted exclusively from options trading, and for the other months the percentage of the Fund's net profit or loss due to options trading ranged from more than 40% to 95% of the Fund's total losses. On a net basis, for the entire eleven-month period, the Fund's \$1.89 million loss is attributed entirely to the options trading, with the vast majority of that loss coming from trading in SPY options.

11. Not only was the Fund unprofitable from the extensive options trading during the course of its existence, the Fund's risk profile was dramatically higher than disclosed to investors. Because options can expire worthless, the entire amount of the options investments was at risk every time Biltmore made such an investment. Due to Overton's significant options trading, the Fund also violated its representation that the Fund's use of leverage would not exceed 130% of the Fund's net asset value. In fact, Biltmore's average option-adjusted long leverage position was 614% of NAV, and Biltmore exceeded the disclosed 130% limitation on 79% of the days it was in operation.

12. The high-risk nature of the Fund's options trading was not theoretical. Over four trading days in August 2015, Biltmore and Overton placed a series of trades in SPY options which generated losses that decimated the Fund. As a result of this undisclosed high-risk trading strategy, the Fund lost over 98% of its value, leaving it with approximately \$34,000 at the end of August 2015.

Violations

13. As a result of the conduct described above, Biltmore and Overton willfully violated Sections 206(1), 206(2) and 206(4) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser, and Rule 206(4)-8 thereunder, which prohibits an investment adviser to a pooled investment vehicle from making any untrue statement of material fact or omitting to state a material fact necessary to make the statements made, in light of the circumstances under which they are made, not misleading.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to Respondents' Offer.

Accordingly, pursuant to Sections 203(e), 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondents Biltmore and Overton shall cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act, and Rule 206(4)-8 thereunder .

B. Respondent Biltmore is censured.

C. Respondent Overton be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

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

with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

D. Any reapplication for association by Respondent Overton 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.

E. Respondents shall, within fourteen (14) days of the entry of this Order, pay, jointly and severally, disgorgement of \$23,043.00 and prejudgment interest of \$2,599.13 to the Securities and Exchange Commission. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, transfer them to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

F. Respondents shall, jointly and severally, pay a civil penalty of \$160,000.00 to the Securities and Exchange Commission. Payment shall be made within 12 months of the entry of this Order. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. §

7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Section 21F(g)(3) of the Exchange Act, transfer them to the general fund of the United States Treasury. If timely payment is not made on the penalty on or before the due date, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

G. Payment of disgorgement, prejudgment interest, and the civil penalty 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 Biltmore and/or Overton 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 John W. Berry, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower Street, Suite 900, Los Angeles, CA 90071.

H. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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 Overton 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 Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents 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 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