

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86446 / July 24, 2019

INVESTMENT ADVISERS ACT OF 1940
Release No. 5306 / July 24, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19266

In the Matter of

**Foundations Asset Management,
LLC, Michael W. Shamburger,
and Rob E. Wedel**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934 AND SECTIONS 203(e) 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 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Foundations Asset Management, LLC (“FAM”), and that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Exchange Act and Section 203(k) of the Advisers Act against Michael W. Shamburger (“Shamburger”) and Rob E. Wedel (“Wedel”) (FAM, Shamburger, and Wedel are referred to collectively herein as “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 15(b) and 21C of the Securities Exchange Act of 1934 and Sections 203(e) 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 finds¹ that:

Summary

These proceedings concern conflicts of interest that were not properly disclosed and broker-dealer registration violations by registered investment adviser FAM and its two principals, Shamburger and Wedel. From May 2013 through June 2016 (“the relevant period”), FAM improperly received approximately \$254,000 in compensation from private real estate fund Alaska Financial Company III LLC (“AFC III”) and AFC III’s manager McKinley Mortgage Co. LLC (“McKinley”), while acting as an unregistered broker. FAM, through Shamburger and Wedel, solicited clients and recommended that they invest approximately \$12 million in AFC III promissory notes. This compensation, which was not properly disclosed to FAM clients, included approximately \$126,000 in up-front compensation calculated as a percentage of an initial investment and approximately \$128,000 in trailing fees based on FAM client investments that remained with AFC III each quarter. FAM, through Shamburger, also made false and misleading statements in five Form ADV Part 2A filings (“ADV Brochures”) filed with the Commission between March 2014 and March 2015, regarding the compensation it received for selling AFC III securities and advising FAM clients.

As a result of Respondents’ conduct, FAM violated Sections 206(2) and 207 of the Advisers Act and Section 15(a) of the Exchange Act; Shamburger and Wedel caused FAM’s violations of Section 206(2) of the Advisers Act and Section 15(a) of the Exchange Act; and Shamburger caused FAM’s violations of Section 207 of the Advisers Act.

Respondents

1. **Foundations Asset Management, LLC (“FAM”)** is an Alaska limited liability company formed in 2007, with its principal place of business in Anchorage, Alaska. FAM has been registered with the Commission as an investment adviser since 2008. During the relevant period, FAM served as investment adviser to approximately 400 individual retail clients and had approximately \$175 million in assets under management. FAM earns the vast majority of its revenues from advisory fees for managing the portfolios of FAM’s individual retail clients, and FAM charged clients an average annual management fee of 1% during the relevant period.

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

2. **Michael W. Shamburger**, age 55, is a resident of Anchorage, Alaska. Shamburger is the founder of FAM and, since its inception, has served as one of FAM’s managing principals. Between 2011 and September 2017, Shamburger owned 25.1% of FAM. Since September 2017, Shamburger has owned 50% of FAM. Shamburger served as the portfolio manager for approximately half of FAM’s clients during the relevant period and received an annual salary from FAM and a share of the firm’s annual profits. Shamburger was formerly associated with registered broker-dealers between 1988 and December 2013. Shamburger currently holds a Series 65 license and previously held Series 7, 24, and 63 licenses.

3. **Rob E. Wedel**, age 49, is a resident of Anchorage, Alaska. Wedel began working at FAM in 2009. Since 2011, Wedel has been a managing principal of FAM. Between 2011 and September 2017, Wedel owned 25.1% of FAM. Since September 2017, Wedel has owned 50% of FAM. Wedel served as the portfolio manager for approximately half of FAM’s clients during the relevant period and received an annual salary and a share of the firm’s annual profits. Wedel was formerly associated with registered broker-dealers between 1999 and December 2013. Wedel currently holds a Series 65 license and previously held Series 6, 7, 24, and 63 licenses.

Other Relevant Entities

4. **Alaska Financial Company III LLC** (“AFC III”) is a limited liability company organized in Alaska in 2008 with its principal place of business in Anchorage, Alaska. AFC III is a private investment fund that issued promissory notes to investors offering fixed annual returns of between 6% and 8.25%. According to AFC III’s offering materials, money raised through the sale of notes was to be invested in loans secured by deeds of trust on real property.

5. **McKinley Mortgage Co. LLC** (“McKinley”) is a limited liability company organized in Florida in 2005 with its principal place of business in Redding, California. McKinley is the manager of AFC III. McKinley’s duties included the selection of investments for AFC III’s portfolio.²

Facts

FAM’s Receipt of Compensation Related to AFC III Investments

6. FAM has been registered as an investment adviser with the Commission since March 2008. FAM has never been registered as a broker-dealer. Shamburger and Wedel were associated with a registered broker-dealer until December 2013, but have not been associated with a registered broker-dealer since then.

² The Commission filed an action on March 22, 2018 against McKinley, its principals, and another individual and entity alleging violations of the antifraud and registration provisions of the federal securities laws related to the offering of AFC III’s promissory notes. *See SEC v. McKinley Mortgage Co. LLC, et al.*, No. 2:18-cv-00616-MCE-CMK (E.D. Cal. March 22, 2018).

7. From May 2013 through June 2016, FAM received a total of approximately \$254,000 in compensation that was not properly disclosed for soliciting and recommending to its retail advisory clients investments in AFC III. During the relevant period, FAM, through Shamburger and Wedel, solicited 62 FAM clients in seven states and recommended them to invest approximately \$12 million in AFC III. The money invested by FAM clients constituted approximately 20% of AFC III investments raised during the relevant period.

8. During the relevant period, FAM had two different compensation arrangements with McKinley regarding its clients' AFC III investments—one that was in effect in 2013 and one that was in effect from January 2014 through June 2016. In 2013, FAM and McKinley agreed that FAM would receive quarterly compensation amounting to 1.25% of the total AFC III investments held by FAM clients by the end of the year. From May through December 2013, FAM received \$40,000 in compensation from McKinley and/or AFC III pursuant to this arrangement. FAM, Shamburger, and Wedel did not disclose their receipt of this compensation to FAM clients.

9. In December 2013, Shamburger and Wedel ended their association with the registered broker-dealer with which they had been associated and subsequently negotiated for FAM to receive up-front compensation from McKinley and/or AFC III for soliciting and recommending new AFC III investments by FAM clients. Under this arrangement, FAM received two kinds of compensation: (1) a one-time, 1.25% “up-front” payment that was paid based on a FAM client’s initial investment in AFC III; and (2) a 1.25% annual “trailing fee” based on the total FAM client investments that remained in AFC III, paid on a quarterly basis beginning the quarter after the AFC III investment was made.

10. Although FAM did not charge clients an advisory fee on AFC III investments, the compensation received by FAM was higher than the typical 1% assets-under-management annual advisory fee that FAM received based on recommending other investments. During the first year of any AFC III investment by a client, FAM could receive compensation totaling 2.1875% of that investment from McKinley and/or AFC III, which consisted of the 1.25% up-front payment and three quarterly trailing fee payments of 0.3125%. This gave FAM an incentive to recommend AFC III promissory notes over other investment products.

11. The ongoing trailing fees received by FAM were one-quarter of a point higher than FAM’s typical advisory fee (1.25% versus 1.0%), which also gave FAM an incentive to recommend that clients remain invested in AFC III after the one-year lock-in period generally required under the terms of the AFC III promissory notes. FAM received trailing fees on many AFC III investments for two years or more during the relevant period. However, FAM did not properly disclose to clients that the up-front compensation and trailing fees received by FAM related to AFC III investments were higher than advisory fees FAM would have received if clients made other investments.

12. FAM’s total income from the up-front compensation and trailing fees on AFC III investments constituted approximately 12% of FAM’s revenue in 2014 and 16% in 2015.

FAM Did Not Adequately Disclose to Clients the Conflicts of Interest Associated with AFC III Investments

13. As an investment adviser, FAM was obligated to fully disclose all material facts to advisory clients, including any conflicts of interest between itself and its advisory clients. To meet this obligation, FAM was required to provide its advisory clients with sufficient information so that they could understand conflicts of interest that FAM had and decide whether to give informed consent to such conflicts or practices, or choose different investment products. FAM did not adequately disclose to clients the conflicts of interest FAM had in recommending AFC III investments, which allowed FAM to receive compensation higher than the typical 1% advisory fee charged to clients on other investments.

14. Shamburger and Wedel provided many – but not all – clients who invested in AFC III after 2013 with a written disclosure acknowledgement form stating that FAM “receives revenue from Alaska Financial Company for the clients it recommends for investment to Alaska Financial Company.” The disclosure acknowledgement form did not adequately address the conflicts of interest that FAM had with respect to recommending AFC III investments. Shamburger and Wedel made similar verbal disclosures to some FAM clients who invested in AFC III, without adequately addressing the conflicts of interest FAM had in recommending AFC III investments. Some clients did not receive any written or oral disclosures from FAM regarding its AFC III investment-related compensation.

15. FAM failed to satisfy its fiduciary duties owed to clients by failing to provide adequate written and verbal disclosures about the conflicts of interest FAM had regarding AFC III investments. Specifically, FAM failed to inform clients that 1) FAM received more than double its typical advisory fee for the first year of a client’s investment in AFC III; 2) FAM received ongoing trailing fees that were higher on an annual basis than its typical advisory fee; and 3) FAM received a material amount of compensation related to the sale of AFC III securities.

16. FAM did not adequately disclose the conflicts of interest until June 2016, after receiving a deficiency letter from SEC Examination staff relating to FAM’s AFC III compensation agreements. FAM’s new written disclosure form, which was sent to FAM clients invested in AFC III, disclosed the compensation FAM received related to AFC III investments and the conflicts of interest associated with AFC III investments.

17. As the managing principals who controlled FAM and made the recommendations to invest in, and personally received the money paid by, AFC III, Shamburger and Wedel were responsible for ensuring that clients who invested in AFC III received accurate and complete disclosures regarding compensation that FAM received from AFC III and the conflicts of interest presented by that compensation. Until June 2016, FAM, through Shamburger and Wedel, failed to exercise reasonable care in ensuring that clients who purchased and renewed AFC III promissory notes received adequate disclosures at the time of investment or renewal. Instead, Shamburger and Wedel unreasonably assumed that clients would understand the nature and magnitude of FAM’s conflicts of interest that existed regarding AFC III investments by

generally telling them that FAM received compensation from AFC III, without any further details.

18. From May 2013 through June 2016, FAM, therefore, did not adequately disclose facts setting out the nature and magnitude of the conflict it had regarding the compensation it received for recommending AFC III investments to FAM clients, which ultimately totaled approximately \$254,000.

False Statements and Material Omissions in ADV Brochures Filed with the Commission

19. As an investment adviser registered with the Commission, FAM is required to file with the Commission a Form ADV, which includes Parts 1 and 2 (Part 2A is the “ADV Brochure”). Shamburger was the sole individual at FAM responsible for drafting, reviewing, editing, and approving FAM’s Forms ADV Parts 1 and 2, including the ADV Brochures, that were filed with the Commission during the relevant period. FAM also delivered ADV Brochures to FAM’s clients.

20. During the relevant period, Item 5 of the ADV Brochure required FAM to disclose how it was compensated for its advisory services, including whether FAM or any of its supervised persons accepted compensation for the sale of securities or other investment products and, if so, to provide an explanation that this practice constitutes a conflict of interest. Similarly, Item 14.A of the ADV Brochure required FAM to provide information about any economic benefit provided by someone who is not a client for providing investment advice, and generally to describe the arrangement, along with the resulting conflicts of interest and how the investment adviser will address those conflicts of interest.

21. Between March 2014 and March 2015, FAM, through Shamburger, filed five ADV Brochures that falsely stated the following:

- Response to Item 5.E: “Neither FAM nor its supervised persons accept any compensation for the sale of securities or other investment products”
- Response to Item 14.A: “FAM does not receive any economic benefit, directly or indirectly from any third party for advice rendered to FAM clients.”

22. FAM’s responses to Items 5.E and 14.A in its ADV Brochures filed between March 2014 and March 2015 were false because FAM, since January 2014, had been receiving both up-front compensation for each investment in AFC III referred by FAM and ongoing, quarterly trailing fees for all AFC III investments that continued to be held by FAM clients. FAM received the compensation based on Shamburger’s and Wedel’s advice to FAM clients that they invest in and continue holding AFC III promissory notes. Moreover, the ADV Brochures failed to disclose the conflicts of interest that FAM had with respect to AFC III investments, namely that FAM received more than double its typical advisory fee during the first year of an AFC III investment and ongoing trailing fees that were higher than FAM’s typical advisory fee.

23. In September 2015, FAM conducted a review of its ADV Brochures and amended its responses to Items 5.E and 14.A, but FAM continued to fail to disclose the nature and magnitude of the conflicts of interest associated with compensation that FAM received related to AFC III investments.

FAM, Through Shamburger and Wedel, Acted as an Unregistered Broker in Connection with AFC III Investment Offerings

24. Shamburger and Wedel, acting on behalf of FAM, solicited over \$12 million in AFC III investments by 62 FAM clients during the relevant period. Shamburger and Wedel met in person and communicated with FAM clients via telephone and in emails about AFC III investments. Shamburger and Wedel specifically recommended AFC III investments to clients as a means of obtaining a consistent income stream through the fixed interest rates promised by AFC III.

25. Once a FAM client agreed to invest in AFC III, FAM, through Shamburger and Wedel, assisted the clients with finalizing their investments, including the preparation of necessary paperwork such as investor forms, questionnaires, and subscription agreements.

26. In exchange for Respondents soliciting and recommending investors to purchase AFC III promissory notes, McKinley and/or AFC III compensated FAM directly on transactions in securities, in the form of an up-front payment of 1.25% of each investment in AFC III. However, FAM was not registered as a broker-dealer.

Violations

27. As a result of the conduct described above, FAM willfully violated, and Shamburger and Wedel caused FAM's violations of, Section 206(2) of the Advisers Act. Proof of scienter is not required to establish a violation of Section 206(2). *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)).

28. As a result of the conduct described above, FAM willfully violated, and Shamburger caused FAM's violations of, 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 . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

29. As a result of the conduct described above, FAM willfully violated, and Shamburger and Wedel caused FAM's violations of, Section 15(a) of the Exchange Act, which prohibits any broker or dealer from making use of the mails or any means or instrumentality of interstate commerce to effectuate any transactions in, or to induce or attempt to induce the purchase or sale of, any security unless such broker or dealer is registered in accordance with Section 15(b) of the Exchange Act.

Undertakings

Respondent FAM has undertaken to:

30. Relinquishment of Right to Receive “Trailing Fees” for AFC III Investments. Upon entry of this Order, as stated in FAM’s Offer, FAM relinquishes all rights to receive the 1.25% annual trailing fees from McKinley Mortgage, AFC III, and any of their affiliates, including FAM’s claim for \$114,000 in trailing fees accrued after the filing of *SEC v. McKinley Mortgage Co. LLC, et al.*

31. Notice to Investors. Within ten (10) days of the entry of this Order, FAM shall post prominently on the homepage of FAM’s website (<http://www.afcmportfolios.com>) a summary of this Order in a form and location acceptable to the Commission staff, with a hyperlink to the entire Order, for a period of twelve (12) months. Within thirty (30) days of the entry of this Order, FAM shall provide a copy of the Order to each FAM client who held AFC III promissory notes during the relevant period 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. Furthermore, for a period of twenty-four (24) months from the entry of this Order, to the extent that FAM is required to deliver a brochure to a client and/or prospective client pursuant to Rule 204-3 of the Advisers Act, FAM shall also provide a copy of the Order to such client and/or prospective client.

32. 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.

33. Certification of Compliance by Respondent FAM. FAM 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 FAM agrees to provide such evidence. The certification and supporting material shall be submitted to Steven D. Buchholz, Assistant Regional Director, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104-4802, with a copy to the Office of Chief Counsel of the Enforcement Division, 100 F Street, NE Washington, DC 20549-6553, no later than thirty (30) days from the date of the completion of the undertakings.

34. In determining whether to accept the Offers, the Commission has considered FAM’s undertaking in Paragraph 30, above.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents’ Offers.

Accordingly, pursuant to Sections 15(b)(6) and 21C of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondents FAM and Shamburger cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act and Sections 206(2) and 207 of the Advisers Act.

B. Respondent Wedel cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act and Section 206(2) of the Advisers Act.

C. Respondent FAM is censured.

D. Respondent FAM shall pay disgorgement of \$253,784, prejudgment interest of \$25,163, and a civil penalty of \$85,000 to the Securities and Exchange Commission, for a total of \$363,947. Pursuant to the undertaking contained in Paragraph 30, \$114,000 of FAM's disgorgement shall be deemed satisfied. Payment of the remaining \$249,947 shall be made in the following installments: \$25,000 within 14 days of the entry of this Order; \$40,000 within 90 days of the entry of this Order; \$40,000 within 180 days of the entry of this Order; \$40,000 within 270 days of the entry of this Order; and \$104,947 within 360 days of the entry of this Order. Payments shall be applied first to post-order interest, which accrues pursuant to SEC Rule of Practice 600 and pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

E. Respondent Shamburger shall, within 14 days of the entry of this Order, pay a civil penalty in the amount of \$50,000 to the Securities and Exchange Commission. If timely payment is not made, interest shall accrue pursuant to 31 U.S.C. § 3717.

F. Respondent Wedel shall, within 14 days of the entry of this Order, pay a civil penalty in the amount of \$25,000 to the Securities and Exchange Commission. If timely payment is not made, 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 Foundations Asset Management, LLC, Michael Shamburger, or Rob Wedel 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 Steven D. Buchholz, Assistant Regional Director, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104-4802.

G. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, prejudgment interest and penalties referenced in paragraphs D, E, and F above. 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, Respondents shall not argue that Respondents are entitled to, nor shall benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agrees that Respondents 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 Respondents 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.

H. Respondent FAM shall comply with the undertakings enumerated in Paragraphs 31-33, 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 Shamburger and Wedel, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents Shamburger and Wedel 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 Shamburger and Wedel 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.

Vanessa A. Countryman
Secretary