

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5201 / March 15, 2019

INVESTMENT COMPANY ACT OF 1940
Release No. 33400 / March 15, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19107

In the Matter of

**GRANT GARDNER
ROGERS,**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
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,
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 (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 Grant Gardner Rogers (“Rogers” 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 part, 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 herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, 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, 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:

Summary

These proceedings arise out of the actions of registered investment adviser Talimco, LLC ("Talimco") in connection with the sale of a mortgage loan participation by one of its clients, a collateralized debt obligation, to another one of its clients, a commercial real estate investment fund (the "Fund"). Specifically, Talimco, which owed a fiduciary duty to both the seller and buyer, breached its duty to the seller in violation of Section 206(2) of the Advisers Act by failing to seek out willing bidders for the asset. As part of the sale process, Rogers, Talimco's chief operating officer, convinced two unwilling parties to agree to bid on the asset by assuring each of them that it would not win the auction. As a result of these actions, the collateralized debt obligation was deprived of the opportunity to obtain multiple bona fide bids for the asset. The Fund, which won the auction, later sold the asset at a profit, resulting in Talimco receiving management and performance fees.

Respondent

1. Rogers was the chief operating officer of Talimco and a member of the firm's investment committee from 2012 until his separation from the firm in 2017. Rogers also served as the firm's chief compliance officer from 2012 to 2015.

Background

2. From at least 2012 through 2015, Talimco was the collateral manager and investment adviser to several collateralized debt obligations (collectively, the "CDOs"). As their collateral manager and investment adviser, Talimco was responsible for monitoring and managing the CDOs' investments, including making determinations with respect to the disposition of assets.

3. In or about July 2014, Talimco created the Fund and became its investment adviser.

4. Both the CDOs and the Fund invested in commercial real estate assets. Among the assets held by the CDOs were participations in a \$57.2 million first mortgage on a Chicago, Illinois hotel (the "Mortgage Loan Participations"). The Mortgage Loan Participations entitled the holder to a pro rata share of the principal and interest payments on the mortgage, based on the face value of the Mortgage Loan Participation. By January 2014, the mortgage loan was in default and went into special servicing status.

5. In or about September 2014, Talimco began to explore the possibility of the Fund acquiring certain of the Mortgage Loan Participations constituting a majority interest in the loan to

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.

hold for investment. Between November and December 2014, the Fund acquired all but one of the Mortgage Loan Participations from the CDOs.

6. In April 2015, pursuant to Talimco's advice, the Fund sought to obtain the final approximately \$10 million Mortgage Loan Participation, representing 17.5 percent of the loan payments, from one of the CDOs. In its role as collateral manager to the CDO, Talimco directed the sale of the Mortgage Loan Participation. Talimco's fiduciary duty to the CDO obligated it to use its best efforts to maximize the price for the Mortgage Loan Participation. In addition, in order to ensure the CDOs received a competitive price for assets they sold, the CDO's governing documents provided that the Mortgage Loan Participation could be sold only through an auction in which bids were solicited from at least three independent market makers. If three bids were not available on the first solicitation, then Talimco was required to attempt to obtain three bids again twenty days later before the auction could proceed with fewer than three bids.

7. Talimco, through the same personnel selling the asset on behalf of the CDO, including Rogers, also acted as the investment adviser to the Fund, which was seeking to acquire the asset. As the investment adviser to both the seller and buyer of the asset, Talimco had a conflict of interest.

8. Acting in its capacity as the Fund's adviser, Talimco recommended that the Fund bid on the Mortgage Loan Participation at 50 percent of face value, the same price it had paid for the rest of the loan. Talimco estimated that a potential five-year restructuring of the mortgage loan, which was then being negotiated, would result in the Fund realizing a 15 percent internal rate of return on the asset, assuming the restructured loan performed.

9. Acting in its capacity as the collateral manager for the CDO, Talimco contacted four unaffiliated potential market makers—Market Maker A, Market Maker B, Market Maker C, and Market Maker D—to bid on the asset in order to satisfy the contractual provision relating to the asset sale. Talimco informed these market makers of the Fund's bid at 50 percent of face value and of the potential restructuring.

10. Market Maker A informed Talimco that it was not interested in bidding on the Mortgage Loan Participation.

11. Market Maker B informed Talimco in writing that it was not interested in buying the Mortgage Loan Participation because the size was too small. After Market Maker A and Market Maker B elected not to bid, rather than seek out other willing bidders, Rogers called Market Maker B in order to convince Market Maker B to agree to bid on the asset. Rogers told Market Maker B:

Here's what we need. I'm not sure if he explained it to you. We own this in a CDO. And it's not yet liquidating, but it will be at one point. You know [pause] we want to get it out of there. It's attractive for us to buy in another vehicle. I get it, for you guys and other people that we've talked to it's like, you know it's not that attractive. It's small, it's a non-controlling participation. But, you know, in order to, for us to purchase this, we need like, we need a bid

from three different market makers And look, I won't hit you on this, but I need a bid for it.

12. In response, Market Maker B stated, "Ok. Ah ... you got to promise me the latter [that Talimco would not hit Market Maker B's bid]." The COO responded in the affirmative: "Yeah, yeah." Market Maker B then proposed sending an email with a range of bids that was lower than the Fund's bid, and Rogers responded, "Yeah, that'd be perfect."

13. Like Market Makers A and B, Market Maker C initially expressed a lack of interest in placing a bid. As in the case of Market Maker B, Market Maker C agreed to place a bid only after Rogers assured Market Maker C that it would not win the auction. Market Maker C thereafter provided a bid to Talimco, but did not confirm its bid when later contacted by the CDO trustee.

14. Market Maker D also expressed a lack of interest in buying the asset, but obliged Talimco's request for a bid and provided a bid at 25 percent of face value.

15. The Mortgage Loan Participation ultimately was sold to the Fund based on its bid of 50 percent of face value.

16. As the investment adviser for the selling CDO, Talimco and Rogers owed the CDO a fiduciary duty. This duty included an obligation to take steps to use its best efforts to maximize the price obtained for the Mortgage Loan Participation by identifying willing bidders for the asset. Instead, Talimco, through Rogers, acquired bids from bidders that lacked interest in buying the asset and, in the case of Market Maker B and Market Maker C, who agreed to bid only after receiving assurances that they would not win the auction.

17. In or about November 2015, after the contemplated restructuring failed to close, the Fund bundled and auctioned all the Mortgage Loan Participations, each of which it had acquired for half of face value, or approximately \$28.6 million. Talimco retained an independent agent to solicit bids from a much larger number of bidders for the mortgage loan than Talimco had solicited when it was selling the loan participation on behalf of the CDO client. Indicative bids obtained by Talimco's agent exceeded the price the Fund had paid, suggesting the Fund was likely to obtain a significant profit on the sale.

18. Before the auction was concluded, Rogers invested in the Fund, committing \$1 million in capital.

19. At around the same time, Talimco and Rogers solicited additional investment in the Fund, citing the expected profit from the sale of the Mortgage Loan Participations. Talimco offered prospective investors the opportunity to buy into the fund at cost and be guaranteed to receive a share of the profits on the transaction.

20. In or about December 2015, Talimco caused the Fund to sell the Mortgage Loan Participations for \$43.5 million to the highest bidder in the auction, realizing a profit of approximately \$14.9 million. Rogers personally realized profits of approximately \$14,000 on the sale of the approximately \$10 million Mortgage Loan Participation through his investment in the Fund.

21. Talimco received approximately \$74,000 in management and performance fees attributable to the purchase of the approximately \$10 million Mortgage Loan Participation from the CDO by the Fund.

22. The CDO from which the Fund purchased the last Mortgage Loan Participation was unable to repay all of its debts, including approximately \$410,000 in principal owed to CDO noteholders.

Violations

23. Section 206(2) of the Advisers Act prohibits investment advisers from directly or indirectly engaging in “any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.” A violation of Section 206(2) of the Advisers Act may rest on a finding of simple negligence. *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)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.* As a result of the conduct described above, which was at least negligent, Rogers willfully² violated Section 206(2) of the Advisers Act.

IV.

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

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

A. Rogers shall cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act.

B. Rogers be, and hereby is, suspended from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization or 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 for a period of twelve months, effective upon the entry of this Order.

C. Rogers shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$65,000.00 to the Securities and Exchange Commission. 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

² A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

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 Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. 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 Rogers 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 Daniel Michael, Chief, Complex Financial Instruments Unit, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

D. 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 agrees that in any Related Investor Action, he shall not argue that it is entitled to, nor shall it 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.

Vanessa A. Countryman
Acting Secretary