

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10828 / August 27, 2020

SECURITIES EXCHANGE ACT OF 1934
Release No. 89700 / August 27, 2020

INVESTMENT COMPANY ACT OF 1940
Release No. 33997 / August 27, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19947

In the Matter of

**CHRISTOPHER
BARONE,**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
8A OF THE SECURITIES ACT OF 1933,
SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
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 Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Christopher Barone (“Respondent” or “Barone”).

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, Respondent admits the Commission’s jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 8A of the Securities Act,

Sections 15(b) and 21C of the Exchange Act, and Section 9(b) of the Investment Company Act, 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

1. Dominic Tropiano engaged in unauthorized and unsuitable trading in leveraged exchange traded funds (“ETFs”) in the accounts of customers of America Northcoast Securities, Inc. (“ANS”). Respondent, who was Tropiano’s brother-in-law at the time, was the President, Chief Compliance Officer, and a registered representative of ANS from July 1999 through August 2017.

2. From May 2015 to April 2016, Respondent and ANS did not register Tropiano as a registered representative with the Financial Industry Regulatory Authority (“FINRA”). However, Respondent enabled Tropiano to solicit and place securities trades in 66 accounts of retail customers that Tropiano had recruited from the broker-dealer where he previously worked. Tropiano engaged in unauthorized and unsuitable trading in the accounts of retail customers with Respondent’s knowledge and substantial assistance.

3. Accordingly, Respondent willfully aided and abetted and caused Tropiano’s violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and ANS’s violations of Section 15(b)(7) of the Exchange Act and Rule 15b7-1 thereunder.

The Respondent

4. Christopher R. Barone, age 54, is a resident of Pepper Pike, Ohio. He held Series 7, 24, 53, and 63 licenses. He was employed as a registered representative of various broker-dealer firms from June 1990 until May 2018. On January 3, 2020, FINRA barred Respondent from associating with any broker-dealer for conduct unrelated to issues surrounding Tropiano.

Other Relevant Entity

5. ANS was a registered broker-dealer incorporated in Nevada with its principal place of business in Cleveland, Ohio. ANS was a member of FINRA before filing a Form BD-W on August 1, 2017, which became effective on September 30, 2017. ANS is no longer in business.

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.

Background

6. Respondent was responsible for establishing and maintaining ANS's supervisory systems, policies and procedures, and was ultimately responsible for supervising associated persons for suitability, overseeing trading in customer accounts, and proper registration with FINRA.

7. In April 2015, Tropiano, who at the time was Respondent's brother-in-law, was fired from his job as a registered representative of a registered broker-dealer for violating the firm's policies regarding supervisory review of correspondence. Tropiano was subject to an agreement prohibiting him from soliciting any of his former customers for one year after his termination.

8. After his firing, Tropiano went to see Respondent's father, who was the Chairman of ANS, for advice on finding a new job. Respondent's father permitted Tropiano to bring his former customers over to ANS. Pursuant to this arrangement, Tropiano would encourage his former customers to open accounts at ANS. However, Tropiano would not become a registered representative of ANS until his one-year non-solicitation period had expired. Tropiano accepted this offer.

9. Respondent enabled Tropiano to effect trades in 66 accounts of ANS retail customers that Tropiano brought to ANS even though he knew Tropiano was not registered with FINRA as a registered representative. Respondent allowed Tropiano to open new accounts for these customers, signed the new account forms as the registered representative for those customers, and his name appeared as the customers' representative on their account statements. Respondent also gave Tropiano access to ANS' trading room and system and enabled Tropiano to effect trades in these customers' accounts.

10. During the year when Tropiano acted as a registered representative without proper registration, he placed unsuitable and unauthorized trades in leveraged ETFs in the accounts of these ANS retail customers, which led to large losses for the customers. Tropiano made numerous recommendations of leveraged ETFs to customers. Tropiano performed no due diligence regarding these securities and, as a result, had no reasonable basis to believe that these transactions were suitable for any customers. Tropiano also failed to perform any analysis of the suitability of leveraged ETFs for any particular customers. In addition, Tropiano placed several of these transactions in two customer accounts without the customers' knowledge or consent and in the absence of written or oral authorization to place such trades.

11. On September 25, 2015, Respondent learned that a customer had complained that Tropiano had engaged in unauthorized trading in leveraged ETFs in the customer's and his elderly mother's accounts.

12. Respondent also knew that ANS's compliance manual provided that leveraged ETFs were intended to be traded only on a daily basis, and required supervisory review and consultation with the registered representative. The compliance manual specifically referenced FINRA Notice 09-31, which states that leveraged ETFs "typically are unsuitable for retail investors

who plan to hold them for longer than one trading session, particularly in volatile markets.” Tropiano’s customers often held these positions for weeks or months. For example, one customer’s account held leveraged ETFs for up to 74 days, and held them for more than a week eight times; another customer’s accounts held leveraged ETFs for up to 73 days, and held them for more than a week 21 times; and another customer’s accounts held leveraged ETFs for up to 53 days, and held them for more than a week 11 times.

13. Respondent understood that leveraged ETFs were generally considered unsuitable for retail customers who intend to buy and hold investments. Respondent knew that Tropiano was purchasing leveraged ETFs in the accounts of retail customers. The new account forms showed that Tropiano’s customers were interested in long term growth, and their account statements showed that Tropiano was buying and holding leveraged ETFs in their accounts for periods ranging from days to weeks or months. Nevertheless, Respondent allowed Tropiano to continue trading leveraged ETFs in customers’ accounts.

14. In December 2015, Respondent learned that ANS had received an information request from FINRA regarding Tropiano’s activities at ANS. Respondent did not take any action to prevent Tropiano from trading.

15. Respondent helped Tropiano create a one-page document describing leveraged ETFs and their risks and stating that the customer consented to those securities that Tropiano could provide to customers, which Tropiano gave to certain customers along with a form that authorized Respondent to trade any securities in the customer’s account, and required the customer to indemnify ANS for any losses arising from such trading. In late December, Tropiano gave Respondent signed trading authorization forms from a small number of customers.

16. In March 2016, knowing Tropiano had testified in a FINRA inquiry into his activities, Respondent learned of a second complaint, involving another elderly ANS customer, about Tropiano’s trading activity. Respondent continued to enable Tropiano to place trades in ANS customer accounts.

17. In April 2016, Respondent directed that others in the firm should take the steps necessary for Tropiano to become a registered representative of the firm. Tropiano continued to engage in unsuitable trading in his customers’ accounts after being registered. Less than two months later, in early June 2016, Tropiano was terminated by ANS as a result of customer complaints.

18. As a result of his unsuitable and unauthorized trading at ANS, on May 9, 2019, FINRA barred Tropiano from associating with any FINRA member in any capacity pursuant to an Acceptance, Waiver, and Consent.

19. ANS filed a Form BD-W on August 1, 2017, which became effective on September 30, 2017. ANS is no longer in business.

20. Section 15(b)(7) of the Exchange Act and Rule 15b7-1 thereunder provide that any natural person associated with a broker-dealer who effects, or is involved in effecting, any securities transaction must be properly registered or approved by any national securities exchange or national securities association of which the broker-dealer is a member. Between May 2015 and April 2016, Tropiano effected securities transactions without being registered with FINRA as a registered representative of ANS.

21. As a result of the conduct described above, Respondent willfully aided and abetted and caused ANS to violate Section 15(b)(7) and Rule 15b7-1 thereunder.

22. Section 17(a) of the Securities Act prohibits fraud in the offer or sale of securities. Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder prohibit the same conduct if committed in connection with the purchase or sale of securities. Tropiano violated these provisions of the securities laws as outlined above.

23. As a result of the conduct described above, Respondent willfully aided and abetted and caused Tropiano's violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Sections 10(b) and 15(b)(7) of the Exchange Act and Rules 10b-5 and 15b7-1 thereunder.

B. Respondent 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; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock; and

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.

Any reapplication for association by the Respondent 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, compliance with the Commission's order and payment of any or all of the following: (a) any disgorgement or civil penalties ordered by a Court against the Respondent in any action brought by the Commission; (b) any disgorgement amounts ordered against the Respondent for which the Commission waived payment; (c) any arbitration award related to the conduct that served as the basis for the Commission order; (d) 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 (e) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

C. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$65,000 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. 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 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 Richard Barone 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 Kathryn A. Pyszka, Associate

Director, Division of Enforcement, Securities and Exchange Commission, Suite 1450, 175 West Jackson Blvd., Chicago, IL 60604.

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 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.

Vanessa A. Countryman
Secretary