

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5522 / June 16, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19827

In the Matter of

RICHARD T. DIVER,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Richard T. Diver (“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, Respondent admits the Commission’s jurisdiction over him and the subject matter of these proceedings, and the findings contained in paragraph III.2 below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

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

1. Richard Diver, age 63, is a resident of Jersey City, New Jersey. He was the chief compliance officer ("COO") of M&R Capital Management, Inc. ("M&R"), an investment adviser registered with the Commission, until he was terminated in December 2018. He co-founded M&R in 1993. Prior to December 12, 2018, Diver owned nine percent of M&R.

2. On February 12, 2020, Diver pled guilty to one count of investment adviser fraud in violation of Title 15 United States Code, Section 80b-6 before the United States District Court for the Southern District of New York, in *United States v. Richard Diver*, Criminal Indictment No. 19-cr-533.

3. In connection with that plea, Respondent admitted, among other things, that: between 1997 and December 2018, he worked as the chief operating officer at M&R, an investment adviser registered with the Securities and Exchange Commission; from 2017 to December 2018, he defrauded clients by electronically debiting invoice client accounts more than what they owed to M&R and redirected the excess to his personal bank account; and from 2011 to December 2018, he instructed M&R's payroll vendor to pay him a higher salary than the salary and bonus authorized by M&R, with the excess funds routed electronically to his personal bank account.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act, that Respondent Diver 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.

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.

For the Commission, by its Secretary, pursuant to delegated authority.

Vanessa A. Countryman
Secretary