

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5582 / September 17, 2020

INVESTMENT COMPANY ACT OF 1940
Release No. 34014 / September 17, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20014

In the Matter of

**GILDER GAGNON HOWE
& CO. LLC, and BONNIE M.
HAUPT,**

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 (the “Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (the “Investment Company Act”) against Gilder Gagnon Howe & Co. LLC (“GGHC”) and Bonnie M. Haupt (“Haupt”) (individually, a “Respondent” and collectively, the “Respondents”).

II.

In anticipation of the institution of these proceedings, the 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 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 (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds¹ that:

Summary

From 2017 through early 2018, the dually-registered investment adviser and broker-dealer Gilder Gagnon Howe & Co. LLC (“GGHC”), failed to conduct reviews of its accounts for excessive commissions and trading, as required by its policies and procedures. GGHC and its chief compliance officer, Bonnie M. Haupt (“Haupt”) did not conduct these reviews despite the fact that the reviews were designed to monitor the firm’s trading strategy, which involves frequent trading. These reviews were especially important because GGHC charges commissions, instead of assessing an asset-based percentage management fee, for its over 4,500 nonretirement advisory accounts.

After conducting an examination of GGHC in late 2016, the Financial Industry Regulatory Authority (“FINRA”) informed GGHC of certain deficiencies in its compliance program. Specifically, FINRA found that GGHC failed to establish and enforce an adequate supervisory system as it related to the supervision of trading activity and failed to evidence that it was actively monitoring turnover rate, cost-to-equity ratio, and in-and-out trading. Cost-to-equity ratios measure the commissions charged to a client’s account on an annual basis reflected as a percentage of the account’s value, whereas turnover rates measure the percentage of a client’s account value traded on an annual basis. In response to FINRA’s findings, GGHC implemented policies and procedures requiring it, through its chief compliance officer, to conduct monthly reviews of the cost-to-equity ratio and turnover rate in client accounts and to document this review. These policies and procedures also required GGHC, again through its chief compliance officer, to escalate accounts with a cost-to-equity ratio over 6% to the Managing Members of the firm for additional review.

GGHC, however, did not conduct these reviews. In fact, throughout 2017, GGHC’s compliance department, including Haupt, who was required to conduct the reviews pursuant to GGHC’s policies, did not review any reports reflecting cost-to-equity ratios for its clients. Furthermore, despite the fact that numerous accounts had cost-to-equity ratios above 6%, none of them were escalated to a Managing Member of the firm by Haupt, who was responsible for doing so. When the Commission’s examination staff (the “Exam Staff”) asked for cost-to-equity and turnover reviews for the period from January through November 2017, as part of its onsite examination that began in December 2017, Haupt provided monthly reports that she had altered to

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.

give the misleading appearance that she had contemporaneously reviewed them. GGHC, through Haupt, also produced these altered documents in response to a document request made by the staff of the Division of Enforcement (the “Enforcement Staff”).

As a result of this conduct, GGHC willfully² violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder and Haupt aided and abetted GGHC’s violations.

Respondents

1. GGHC, a limited liability company, founded in 1968 and headquartered in New York, New York, is a dually-registered broker-dealer and investment adviser. GGHC has been registered with the Commission as a broker-dealer since 1983 and as an investment adviser since 2006. GGHC has 26 portfolio managers who have trading discretion over their respective client accounts.

2. Haupt, 59 years old, is a resident of Lighthouse Point, Florida. From December 2010 through late 2018, Haupt served as GGHC’s chief compliance officer and was a minority owner of the firm.

Background **GGHC’s Active Trading Strategy**

3. GGHC manages retail client accounts on a fully discretionary basis with nonretirement accounts paying a commission per trade and retirement accounts paying an annualized fee of up to 3% of assets held in each account. GGHC charged commissions according to a sliding scale that charged a maximum of 2% of the principal value of each equity trade, until January 2020 when GGHC began charging a flat commission rate of 1.5% of the principal value of every equity trade, subject to discounts on certain types of transactions.

4. As of December 31, 2017, approximately 80% of GGHC’s \$9.75 billion in assets under management pay commissions on a per-trade basis. The vast majority of its commission-paying accounts were levered by virtue of trading on margin.

² “Willfully,” for purposes of imposing relief under Sections 203(e) and (f) of the Advisers Act and 9(b) of the Investment Company Act, “means no more than 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)). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully omit[ted]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

5. As disclosed in its new account documents, GGHC “uses an aggressive growth style of investing . . . [which] results in significant fluctuations and at times will result in significant losses in the short term.” GGHC also discloses that this type of investment style may involve active portfolio changes and therefore a high turnover, and as a result, the effective annual fee GGHC charges its advisory clients is often higher than the fees charged by comparable advisers. GGHC discloses commissions charged on each of its trades in trading confirmations provided to its clients, either as a separate line item or embedded in the price of the relevant security. GGHC did not disclose aggregate commissions to clients on account statements or other periodic account documentation provided to them until May 2020, when it began to do so at the top of monthly account statements.

6. Because GGHC engages in an active trading strategy with a commission-based compensation model, surveillance of cost-to-equity ratio and turnover rate in client accounts is a vital part of GGHC’s overall compliance program.

7. From at least December 2010 until late 2018, shortly before she retired, Haupt was GGHC’s chief compliance officer. In that role, Haupt oversaw all aspects of GGHC’s compliance department, including its written supervisory policies and procedures, and was the primary intermediary between the firm and its regulators.

FINRA Warns GGHC to Correct Its Compliance Failures

8. In late 2016, FINRA conducted an examination of GGHC and found, among other things, that from January 1, 2014 through December 31, 2014, the firm failed to evidence that it was actively monitoring cost-to-equity ratios and turnover rates in its clients’ accounts. GGHC’s written supervisory procedures dated March 14, 2016 also did not establish any requirements for the creation, or review, of these two key metrics.

9. In early 2017, in response to FINRA’s examination findings, GGHC amended its written supervisory procedures to include Section 5.11.4 entitled “Review of Customer Transactions.” This section required GGHC’s chief compliance officer or her designee to:

- a. Review monthly cost-to-equity ratios and turnover rates for all client accounts by utilizing a turnover report (the “Turnover Report”);
- b. Document these monthly reviews; and
- c. Escalate all client accounts with a cost-to-equity ratio above 6% to the Managing Members of the firm.

10. The cost-to-equity ratio measures commissions charged to a client account on an annual basis as a percentage of account value. For example, a client account with a cost-to-equity ratio of 6% is charged \$6,000 in costs, for every \$100,000 in average assets under management in a given year. Therefore, for the account to break even for the same year, it would need to generate a 6% annual return.

11. The turnover rate measures the percentage of a client's account value that is traded on an annual basis. For example, if a client account has a turnover rate of 50%, half of the assets held in the account were reinvested in a given year.

12. From January 2017 through at least April 2018, Haupt, as GGHC's chief compliance officer, was solely responsible for conducting the reviews of cost-to-equity ratio and turnover rate, documenting these reviews, and escalating reviews to Managing Members at GGHC, as detailed in Section 5.11.4 of GGHC's policies and procedures.

GGHC and Haupt Fail to Conduct the Required Compliance Reviews Throughout 2017

13. Despite FINRA's warnings and the subsequent enhancements to GGHC's supervisory procedures, GGHC and Haupt did not conduct any monthly reviews of cost-to-equity ratios across GGHC's client accounts in 2017. In fact, the Turnover Reports that GGHC generated on a monthly basis, purportedly to comply with section 5.11.4 of its supervisory procedures, did not contain this important metric.

14. Because GGHC was not reviewing cost-to-equity ratios in 2017, Haupt also did not escalate any client accounts with a cost-to-equity ratio above 6% to the Managing Members of GGHC in 2017, despite the fact that numerous accounts at the firm had a cost-to-equity ratio above this threshold.

15. In addition, GGHC and Haupt did not conduct monthly reviews of turnover rates across GGHC's client accounts for eleven of the twelve months in 2017—well after the Exam Staff began its onsite examination discussed below. For the one month for which there is a Turnover Report reflecting a review that may have been conducted before December 2017, the report shows that Haupt conducted the review over two months later than it should have been performed.

16. Although Haupt conducted certain reviews of GGHC's trading in 2017, she conducted no reviews for excessive trading or the impact of GGHC's trading strategies or commission charges on client accounts, as required by GGHC's policies and procedures.

Haupt Altered Turnover Reports to Mislead the Exam and Enforcement Staff

17. On November 2, 2017, the Exam Staff began its examination of GGHC. On December 12, 2017, the Exam Staff issued a written request to GGHC, addressed to Haupt, which requested, among other things, Turnover Reports from June through November 2017. On January 11, 2018, the Exam Staff issued another written request to GGHC, addressed to Haupt, seeking, among other things, a written explanation of the firm's "processes or procedures performed" to review client accounts, particularly as it related to "performance, commissions and fees, etc." The Exam Staff also sought "both the frequency and parameters of any such reviews" and

“documentation supporting any recent reviews or testing” performed as part of GGHC’s “compliance testing process” under Advisers Act Rule 206(4)-7.

18. In response to both of these requests, GGHC, through Haupt, produced monthly Turnover Reports for January to November 2017, almost all of which Haupt altered to give the misleading appearance that she had reviewed them shortly after the end of the month covered by each of the respective reports. Specifically, Haupt printed these reports in December 2017, after the Exam Staff had begun its examination of GGHC. She then manually whited out the printed “as of” date at the bottom of each of these Turnover Reports, covering up that they had been printed in December 2017. Haupt also made handwritten notations on the reports to give the misleading appearance that she had reviewed them earlier in the year.

19. On May 11, 2018, the Exam Staff issued a deficiency letter to GGHC detailing certain deficiencies related to GGHC’s review of excessive trading in, and commissions charged to, client accounts. GGHC, through Haupt, again produced the same Turnover Reports that she had altered in response to this deficiency letter.

20. During the Enforcement Staff’s investigation, it issued a document request to GGHC, seeking cost-to-equity and turnover reviews from January through December 2017, along with other documents. GGHC again produced the same Turnover Reports that Haupt altered in response to this request.

21. Also, included in GGHC’s production to the Enforcement Staff was a Turnover Report for December 2017, with a printed “as of” date altered by Haupt with white out to give the misleading appearance that she reviewed the report shortly after December 2017.

22. During its investigation, the Enforcement Staff found that GGHC’s Turnover Reports for 2017 did not contain a date reflecting when they were printed, as was the case with other reports produced by GGHC. In sworn testimony before the Enforcement Staff, Haupt admitted that she later altered these Turnover Reports when she whited out the date on which they were printed.

Violations

23. As a result of the conduct described above, GGHC willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder and Haupt willfully aided and abetted GGHC’s violations. Section 206(4) and Rule 206(4)-7 thereunder require a registered investment adviser to, among other things, “[a]dopt and implement written policies and procedures reasonably designed to prevent violation” of the Advisers Act and its rules.

GGHC's Remedial Measures

24. In determining whether to accept GGHC's Offer of Settlement, the Commission considered the firm's remedial measures, including that in May 2020, GGHC began to disclose monthly and year-to-date commissions that it charged each client in the Account Overview section of its client account statements and informed its clients that it would continue to do so going forward.

IV.

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

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. GGHC and Haupt cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. GGHC and Haupt are censured.

C. Respondent Haupt be, and hereby is:

- a. Barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and
- b. 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.

D. Any reapplication for association by Haupt 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's 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's 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's order.

E. GGHC and Haupt shall each pay a civil penalty as follows:

- (1) GGHC shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$1,700,000 to the Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.
- (2) Haupt shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$45,000 to the Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). 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:

- i. Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- ii. 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
- iii. 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 Gilder Gagnon Howe & Co. LLC and Bonnie M. Haupt as Respondents 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 Sandeep Satwalekar, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, New York, NY 10281.

F. 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, each Respondent agrees that in any Related Investor Action, it 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 it shall, within thirty (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 Haupt, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Haupt 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 Haupt 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