

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 91337 / March 16, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-17595

In the Matter of

JOEL M. FRANK

Respondent.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL
SANCTIONS PURSUANT TO
SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF
1934**

I.

On September 29, 2016, the Securities and Exchange Commission (“Commission”) instituted cease-and-desist proceedings against Joel M. Frank (“Frank” or “Respondent”), pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”). The Order instituting the cease-and-desist proceedings made findings and imposed remedial sanctions and a cease-and-desist order against the Respondent. Remaining is the issue of the civil penalty, which this Order resolves.

II.

After institution of these proceedings, Respondent 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, 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 Making Findings and Imposing Sanctions Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

On the basis of this Order and Frank’s Offer, the Commission finds¹ that:

Summary

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.

1. Beginning in 2007 and continuing through 2011, Och-Ziff Capital Management Group LLC (“Och-Ziff”) entered into a series of relationships and investments in which bribes were paid through intermediaries and business partners to high ranking government officials in several nations on the African continent in order to win or retain business for Och-Ziff. Joel Frank, the Chief Financial Officer of Och-Ziff, failed to fulfill his responsibilities regarding Och-Ziff’s internal accounting controls and its books and records. As a result, Och-Ziff inaccurately and unfairly reflected the dispositions of its assets in its books and records and failed to devise and maintain a sufficient system of internal accounting controls. Frank’s acts and omissions were a cause of Och-Ziff’s violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

Respondent

2. **Joel M. Frank**, age 65, resides in New York, New York. During the relevant time period, Joel Frank was the Chief Financial Officer for Och-Ziff Capital Management Group, LLC and its wholly-owned subsidiary, Och-Ziff Management LP.

Other Relevant Entities

3. **Och-Ziff Capital Management Group LLC** (“Och-Ziff”) was incorporated in Delaware with its principal place of business in New York, New York. Och-Ziff’s common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was listed on the New York Stock Exchange (ticker: OZM). Och-Ziff was an institutional alternative asset manager or hedge fund manager. The company provided asset management services to its investment funds.

4. **OZ Management** (“OZM”) was a registered investment adviser and a wholly-owned subsidiary of Och-Ziff. Since 1999, OZM had been registered with the Commission as an investment adviser. OZM provided asset management services to Och-Ziff’s investment funds. OZM controlled Och-Ziff’s investment funds and wholly-owned affiliates, including its overseas affiliates. The financial results of Och-Ziff’s wholly-owned subsidiaries and affiliates were ultimately consolidated into the financial statements of Och-Ziff.

Background

5. Beginning in 2007 and continuing through 2011, Och-Ziff entered into seven identified relationships and investments in which bribes were paid through intermediaries and business partners to high ranking foreign government officials in several nations on the African continent in order to win or retain business for Och-Ziff. In each case, Och-Ziff and OZM used investor funds—entrusted to them by their clients for investment purposes only—to make the corrupt payments. Frank was not aware of the payment of the bribes.

6. For each transaction in which corrupt payments were made to foreign government officials, senior executives at Och-Ziff had to approve the expenditure of those funds. First, the transaction had to be promoted and supported by Och-Ziff’s deal team in London, which was run by the head of Och-Ziff’s European office. Then each transaction had to be approved by Och-

Ziff's legal and compliance team. Next, each transaction and expenditure of funds had to be approved by Frank, to whom the legal and compliance team reported. Finally, each transaction under investigation was approved by the Chief Executive Officer of Och-Ziff. For certain transactions in which bribes were paid, Frank (and others) expressed objections to the CEO. In those cases, the CEO decided to move forward with the transactions despite Frank's objections.

7. During that time, Och-Ziff recorded these improper payments as investments, loans, "deal fees," "subscription amounts," payments to business partners, payments to agents, or "professional services fees." The manner in which these improper payments were recorded on Och-Ziff's books and records did not accurately describe the disposition of these assets.

8. Och-Ziff did not establish or maintain a system of internal accounting controls sufficient to provide reasonable assurances that these transactions were properly recorded. Och-Ziff also did not properly record these transactions in its books and records.

9. Frank had final signing authority for every expense paid by Och-Ziff. He also had final approval and funding authority for every private side investment transaction that took place using OZM investor funds. For each improperly recorded transaction, Frank authorized and approved the payment being made.

10. Frank also had primary responsibilities for Och-Ziff's and OZM's books and records.

11. Additionally, for each of the deals that ultimately led to the payment of bribes, Och-Ziff's anti-corruption procedures required several control measures be taken. In each of the transactions indicated above, Och-Ziff either failed to follow its internal accounting controls or avoided conducting additional due diligence on these high risk transactions and business partners.

12. Frank failed to ensure that required information regarding transactions was documented, that appropriate business partner information was obtained, and that ongoing due diligence and audits were performed properly. In doing so, he caused Och-Ziff to fail to devise and maintain a sufficient system of internal accounting controls.

Commission Consideration of Respondent's Cooperation

13. The Commission's acceptance of Frank's Offer reflects consideration of his cooperation during the course of the investigation.

Violations

14. As a result of the conduct described above, Frank:
- a. Caused Och-Ziff's violations of Section 13(b)(2)(A) of the Exchange Act, which requires an issuer to make and keep books and records that accurately and fairly reflect the dispositions of its assets; and

- b. Caused Och-Ziff's violations of Section 13(b)(2)(B) of the Exchange Act, which requires an issuer to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that its transactions were recorded to permit the preparation of financial statements in accordance with Generally Accepted Accounting Principles.

IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

Respondent shall, within 15 days of the entry of this Order, pay a civil money penalty in the amount of \$35,000 to the Securities and Exchange 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:

- (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 Joel M. Frank 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 Paul Block, Division of Enforcement, Securities and Exchange Commission, 33 Arch Street, Boston MA 02110.

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, that 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