

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95189 / June 30, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6061 / June 30, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20920

In the Matter of

**Hamilton Investment Counsel,
LLC and Jeffrey Kirkpatrick**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 15(b)(6) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTIONS 203(e), 203(f) AND 203(k)
OF THE INVESTMENT ADVISERS 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 15(b)(6) of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Hamilton Investment Counsel, LLC (“HIC”) and Jeffrey Kirkpatrick (“Kirkpatrick”) (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, 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 Section 15(b)(6) of the Securities Exchange Act of 1934 and Sections 203(e), 203(f), and 203(k) of

the Investment Advisers 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:

Respondents

1. Respondent Kirkpatrick was the Chief Compliance Officer and principal of Hamilton Investment Counsel, LLC (“HIC”), an investment adviser registered with the Commission. From October 2016 through October 2021, Respondent was also a registered representative associated with the broker-dealer used by HIC in its advisory business (“Broker-Dealer”), which was also registered with the Commission. Respondent, 53 years old, is a resident of Suwanee, Georgia.

2. Respondent HIC, organized in Georgia in 2016, was an investment adviser registered with the Commission since March 9, 2018. HIC’s principal place of business was in Dacula, Georgia. HIC provided investment advisory services to clients, and according to its Form ADV filed on November 9, 2021, managed assets totaling approximately \$196 million. On April 26, 2022, HIC filed its Form ADV-W withdrawing its registration from the Commission.

Background

3. From October 2016 through September 2021, Respondent Kirkpatrick served as the Chief Compliance Officer of HIC. In his role as Chief Compliance Officer, Kirkpatrick was responsible for administering HIC’s compliance program and, as provided in HIC’s compliance manual, for implementing the firm’s compliance policies and procedures. Pursuant to HIC’s compliance program, investment advisory representatives were required to disclose outside business activities (“OBAs”) to the firm and were required to comply with the Broker-Dealer’s compliance policies.

4. From at least December 2019, Kirkpatrick knew or should have known that HIC’s compliance program was inadequately implemented. Despite this, he did not make sufficient changes to the design and implementation of HIC’s compliance program.

5. From at least February 2020, Kirkpatrick received communications from a HIC investment adviser representative (“IAR”) regarding an OBA being conducted by the IAR but did

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.

not require the IAR to complete and submit the formal reporting form required for OBAs by HIC's compliance manual, although Kirkpatrick instructed the IAR to do so, and did not conduct sufficient review to determine whether the OBA presented any conflicts of interest, as he was required to under the compliance manual. Furthermore, Kirkpatrick did not take sufficient steps to verify that HIC or the IAR had adequately disclosed to clients the IAR's relationship to the OBA or any associated conflicts of interest.

6. In June 2020, Kirkpatrick received further communications related to the OBA that indicated the IAR had failed to meet the requirements of HIC's compliance program. Despite this notice, Kirkpatrick did not sufficiently ensure the OBA was being adequately and accurately reported pursuant to HIC's compliance program.

7. In August 2020, Kirkpatrick received notice that certain transactions conducted by the IAR involving transfers of HIC client assets to the IAR's OBA had been flagged by the Broker-Dealer for review, but Kirkpatrick did not conduct sufficient review to determine the legitimacy of the transactions.

8. In September 2020, Kirkpatrick received information that the same IAR took steps to avoid the Broker-Dealer's compliance program. Despite receiving the information, Kirkpatrick did not take sufficient steps to monitor the IAR's compliance with the Broker-Dealer's policies as required by HIC's compliance manual.

9. In November 2020, Kirkpatrick became aware that the same IAR had been using HIC's office address for another OBA. Despite his awareness and concerns, he did not take sufficient steps to ensure that the OBA was being adequately and accurately reported pursuant to HIC's compliance program.

10. In January 2021, Kirkpatrick received additional communications concerning the OBA and did not take sufficient steps to ensure that the OBA was being adequately and accurately reported pursuant to HIC's compliance program.

11. In June 2021, Kirkpatrick received additional information regarding the extent of the investment advisory representative's involvement with the OBA and, thereafter, reported the OBA to the Broker-Dealer. Kirkpatrick's reporting of the OBA ultimately resulted in the broker-dealer terminating its relationship with HIC.

Violations

12. As a result of the conduct described above, HIC willfully² violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require that investment advisers

² "Willfully," for purposes of imposing relief under Sections 203(e) or (f) of the Advisers 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)). There is no requirement that the actor "also be

registered with the Commission, among other things, adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules promulgated thereunder.

13. As a result of the conduct described above, Kirkpatrick willfully aided and abetted and caused HIC to violate Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require that investment advisers registered with the Commission, among other things, adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules promulgated thereunder.

IV.

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

Accordingly, pursuant to Section 15(b)(6) of the Exchange Act and Sections 203(e), 203(f), and 203(k) of the Advisers Act, it is hereby ORDERED that:

- A. HIC and Kirkpatrick 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. Kirkpatrick be, and hereby is, subject to the following limitations on his activities:
 - (1) Kirkpatrick shall not act in a supervisory or compliance capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or national recognized statistical rating organization; and
 - (2) Kirkpatrick may apply to act in such a supervisory or compliance capacity after five years to the appropriate self-regulatory organization, or if there is none, to the Commission.

Any application to act in such a supervisory or compliance capacity will be subject to the applicable laws and regulations governing the reentry process, and permission to act in such a supervisory or compliance capacity may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

aware that he is violating one of the Rules or Acts.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

C. HIC is censured.

D. Kirkpatrick shall, within 15 days of the entry of this Order, pay a civil money penalty in the amount of \$15,000 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. Any funds collected in this proceeding may be combined with funds from any proceeding arising out of the same facts that are the basis for this Order.

E. HIC shall, within 15 days of the entry of this Order, pay a civil money penalty in the amount of \$150,000 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. Any funds collected in this proceeding may be combined with funds from any proceeding arising out of the same facts that are the basis for this Order.

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 Respondent's name 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 Justin C. Jeffries, Associate Director, Atlanta Regional Office, Securities and Exchange Commission, 950 E. Paces Ferry Road NE, Atlanta, GA 30326.

F. 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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, 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 Kirkpatrick, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Kirkpatrick 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 Kirkpatrick 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