

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4872 / March 30, 2018

Admin. Proc. File No. 3-15263r

In the Matter of

ZPR INVESTMENT MANAGEMENT, INC.

ORDER IMPOSING CIVIL MONEY PENALTY

On October 30, 2015, we issued an opinion finding that ZPR Investment Management, Inc. (“ZPRIM”), a registered investment adviser, and Max E. Zavanelli, its former president and owner, made misrepresentations in advertisements regarding compliance with the Global Investment Performance Standards (“GIPS”).¹ For these violations, we barred Zavanelli from certain associations in the securities industry, censured ZPRIM, and ordered both Zavanelli and ZPRIM to cease and desist from committing or causing further violations. We also imposed on Zavanelli one separate civil money penalty for each of his eight violations and imposed on ZPRIM a single civil money penalty of \$250,000 for all of its eleven violations.

On August 5, 2016, Respondents petitioned for review of our action in the United States Court of Appeals for the Eleventh Circuit. On June 30, 2017, the Eleventh Circuit issued an opinion affirming in part and vacating and remanding in part.² The court affirmed all of our findings of violations except for our finding that ZPRIM and Zavanelli violated the securities laws by misrepresenting ZPRIM’s compliance with GIPS in a December 2009 newsletter. The court also upheld the sanctions except that it found that “the amount of the penalties . . . must be reduced by any amounts related to the December 2009 newsletter violations.”³ Finding that we had imposed a \$75,000 penalty on Zavanelli for the December 2009 newsletter, the Eleventh Circuit vacated that penalty without remanding for further action.⁴ But recognizing that we

¹ *ZPR Inv. Mgmt., Inc.*, Advisers Act Release No. 4249, 2015 WL 6575683 (Oct. 30, 2015), *reconsideration denied*, Advisers Act Release No. 4417, 2016 WL 3194778 (June 9, 2016).

² *ZPR Inv. Mgmt., Inc. v. SEC*, 861 F.3d 1239 (11th Cir. 2017), *cert. denied*, ___ S. Ct. ___, 2018 WL 410952 (Jan. 16, 2018).

³ *Id.* at 1257.

⁴ *Id.* Zavanelli passed away on January 27, 2018.

imposed a single penalty against ZPRIM for all of its violations, the court vacated that penalty and remanded to us to “determine the amount, if any, by which that penalty should be reduced.”⁵

Because we imposed a single penalty on ZPRIM for all of the violations we found, we must consider the impact on that penalty of the Eleventh Circuit’s decision to vacate our finding of liability based on the December 2009 newsletter. The parties jointly propose that we impose a single penalty of \$218,750.⁶ We find that a penalty of \$218,750 is appropriate and in the public interest.⁷

In our October 30, 2015 opinion, we found that ZPRIM repeatedly violated the antifraud provisions with scienter, that its misconduct was especially serious because it involved attempts to promote the firm through false claims, and that its misrepresentations harmed the market. We also considered that ZPRIM’s former principal had settled a Commission enforcement proceeding involving misrepresentations. And we found that there was a need to deter ZPRIM from committing future acts or omissions because its conduct was egregious and recurrent, it ignored the advice of its GIPS verification firm, and it repeated its misconduct after ZPRIM represented to Commission staff that it would correct its noncompliance. These considerations remain applicable to our consideration of the appropriate penalty on remand.

We also considered mitigating circumstances. The Division of Enforcement requested that we impose only a single penalty on ZPRIM rather than multiple penalties for each of its violations. We concluded that a \$250,000 penalty, which was two-thirds of the relevant statutory maximum, took “into account ZPRIM’s efforts under Mark Zavanelli [its current principal] to comply with its disclosure obligations, as well as the impact that the industry bar on Max Zavanelli [its former principal] will have on ZPRIM.”

We believe that the \$218,750 penalty that the parties propose balances the gravity of ZPRIM’s misconduct and the need to deter ZPRIM and other persons from further violations, the mitigating circumstances we considered previously, and the Eleventh Circuit’s opinion setting aside one violation. We also recognize that in determining what penalty is in the public interest we “may consider” “such . . . matters as justice may require.”⁸ Although we are not bound by

⁵ *Id.*

⁶ *See ZPR Inv. Mgmt., Inc.*, Advisers Act Release No. 4814, 2017 WL 5624488, at *1 (Nov. 22, 2017) (ordering the parties to submit “briefs limited to the issue of the amount, if any, by which the penalty imposed on ZPRIM should be reduced”).

⁷ Although we impose one civil money penalty on ZPRIM in the amount that the parties propose, we do so for the reasons discussed below. The parties argue that we should reduce the penalty on ZPRIM by one-eighth since the Eleventh Circuit vacated one of the eight penalties imposed on Zavanelli for each of his eight violations. We find that methodology to be inapposite with respect to ZPRIM because we found ZPRIM liable for eleven violations.

⁸ Section 203(i)(3)(F) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-3(i)(3)(F).

the parties' proposal, we give weight to the parties' stated desire "to resolve the remaining issues in this matter" through their agreement on the amount of the penalty.⁹

Accordingly, it is ORDERED that ZPR Investment Management, Inc., pay a civil money penalty of \$218,750.

By the Commission.

Brent J. Fields
Secretary

⁹ Cf. *Joseph John VanCook*, Exchange Act Release No. 61039A, 2009 WL 4026291, at *19 (Nov. 20, 2009) (stating that "the sanctions that are imposed in settled cases are the result of a myriad 'pragmatic considerations such as the avoidance of time-and-manpower-consuming adversarial litigation' that enter into decisions to accept offers of settlement from respondents").