

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4875 / April 5, 2018**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 33067 / April 5, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18423**

**In the Matter of**

**CLAYBORNE GROUP, LLC,**  
**and DEAN A. HEINEMANN,**

**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 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Clayborne Group, LLC (“Clayborne”) and Dean A. Heinemann (“Heinemann,” and together with Clayborne, “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 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 Respondent’s Offers, the Commission finds that:

#### **Summary**

These proceedings arise out of Clayborne’s improper registration with the Commission as an investment adviser, as well as its violation of a Commission rule concerning the custody of advisory client assets (known as the “Custody Rule”) and recordkeeping rules that apply to investment advisers. Clayborne also made misrepresentations in the form that is used by investment advisers to register with the Commission and that provides to the Commission and to the public information about an investment adviser and its business operations (known as the Form ADV). From 2005 through 2016, Clayborne was registered with the Commission as an investment adviser solely on the basis that it had the requisite amount of regulatory assets under management (“AUM”) to make it eligible for SEC registration. From 2012 to 2016, Clayborne claimed more than \$100 million in regulatory AUM, but approximately \$100 million of the AUM was no longer continuously and regularly supervised or managed. Because Clayborne did not have the requisite AUM, Clayborne was ineligible to register as an investment adviser with the Commission. In addition, Clayborne violated the Custody Rule by exercising custody over client assets without providing quarterly statements to clients and without arranging for an annual surprise verification of those assets by an independent public accountant. As a result, Clayborne’s Form ADV filings contained false statements of material fact regarding Clayborne’s eligibility to register with the Commission and failed to reflect Clayborne’s custody of client assets. Clayborne also failed to make, keep, and make available to the Commission’s staff certain books and records required under the Advisers Act. Clayborne’s owner, Heinemann, was responsible for all of Clayborne’s filings, compliance procedures, and recordkeeping, and he aided and abetted and caused Clayborne’s violations.

#### **Respondents**

1. Clayborne is a Delaware limited liability company formed by Heinemann in 2005. Clayborne’s headquarters are in Danbury, Connecticut. On January 25, 2005, Clayborne registered with the Commission as an investment adviser by filing a Form ADV. Clayborne remained registered with the Commission through March 10, 2017, when it withdrew its registration by filing a Form ADV-W. In all of its Form ADV filings from 2005 through 2016, Clayborne represented that its regulatory AUM satisfied the requisite minimum amounts to register with the Commission.

2. Heinemann, 47 years old, is a resident of Hopewell Junction, New York. Heinemann is the sole owner, managing member, and chief compliance officer of Clayborne.

### **Other Relevant Entities**

3. CG Income Fund, LLC (“CGIF”), is a Delaware limited liability company formed as an investment fund or hedge fund by Heinemann on April 5, 2010. Clayborne managed, and provided investment advisory services to, CGIF. On August 2, 2010, CGIF conducted a private placement (a sale of securities or investments to a limited number of investors), stating that the proceeds would be used to acquire accounts receivable and similar payment obligations from other companies with the intent of selling them at a profit, and for working capital. The fund’s stated objective was to achieve a return on the portfolios, before expenses and redemptions, of at least 12%, which would be passed on to investors.

### **Clayborne Registered with the Commission as an Investment Adviser on the Basis that It Had the Requisite Regulatory Assets Under Management**

4. Heinemann formed Clayborne in 2005. Heinemann is and always has been the sole owner and managing member of Clayborne. Heinemann also acts as the chief compliance officer for Clayborne, and he is the only person who has ever offered investment advisory services on behalf of Clayborne. Clayborne has never had any members other than Heinemann.

5. Heinemann was responsible for all of Clayborne’s filings with the Commission. Heinemann caused Clayborne to file all of its Forms ADV, and he signed them as chief compliance officer and managing member of Clayborne.

6. On January 25, 2005, Heinemann caused Clayborne to register as an investment adviser with the Commission by filing an initial Form ADV, which he signed. In that filing, Clayborne represented that it expected to be eligible for SEC registration within 120 days. On May 27, 2005, Heinemann caused Clayborne to file a supplemental Form ADV, which he signed. In that filing, Clayborne represented that it had AUM of \$25 million or more. Clayborne repeated that representation in Forms ADV filed from 2006 through 2011. On May 24, 2012, Heinemann caused Clayborne to file a supplemental Form ADV, which he signed. In that filing, Clayborne represented that it had AUM of more than \$100 million.<sup>1</sup> Clayborne repeatedly represented in Forms ADV filed on March 28, 2013, March 24, 2014, March 10, 2015, April 1, 2016, November 1, 2016, and November 4, 2016, that it had AUM of more than \$100 million.

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<sup>1</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act and SEC rules increased the threshold above which all investment advisers must register with the SEC. Prior to July 2011, an investment adviser was prohibited from registering with the SEC unless the adviser had at least \$25 million of AUM. After July 21, 2012, the threshold for SEC registration was increased to \$100 million.

7. On March 10, 2017, Heinemann caused Clayborne to file a Form ADV-W, withdrawing its registration with the Commission.

**Clayborne Had No Basis for Registering with the Commission as an Investment Adviser**

8. From at least 2012 through 2016, Clayborne was ineligible to register with the Commission as an investment adviser because it did not have the requisite AUM, as defined in Form ADV.

9. Heinemann was responsible for Clayborne's registration with the Commission and knew or should have known that Clayborne was ineligible to register with the Commission as an investment adviser.

**Clayborne Had Custody of Client Assets, But Failed to Provide Quarterly Statements to Clients and Failed to Arrange a Surprise Verification of Client Assets by an Independent Public Accountant**

10. Between August 2010 and September 2011, CGIF raised \$630,000 from seven investors, six of whom were also clients of Clayborne. Clayborne, as manager of CGIF, maintained and had access to CGIF assets in connection with the private placement offering and after it invested CGIF funds .

11. Because Clayborne maintained and had access to CGIF client funds, Clayborne had custody of client funds within the meaning of Rule 206(4)-2 under the Advisers Act (the "Custody Rule").

12. Because Clayborne was registered with the Commission as an investment adviser, even though it was ineligible to be so registered, it was subject to the Custody Rule.

13. Clayborne never caused account statements to be provided at least quarterly to its clients for which it maintained funds or securities, as required under the Custody Rule.

14. Clayborne never caused an examination by an independent public accountant to verify client funds and securities as required under the Custody Rule.

15. Heinemann was responsible for Clayborne's compliance efforts and knew or should have known that Clayborne failed to provide account statements or to arrange for an annual verification of client funds and securities by an independent public accountant.

**Clayborne and Heinemann Misrepresented Material Facts in Clayborne's Form ADV Filings**

16. In all of its Forms ADV filed with the Commission from 2012 through 2016, Clayborne misrepresented its AUM, because during said period, approximately \$100 million of its stated AUM was not continuously and regularly supervised or managed. In all of its Forms ADV from 2011 through 2016, Clayborne misrepresented that it did not have custody of client funds or securities. None of the subsequent Forms ADV updated the prior misrepresentations regarding regulatory AUM or custody of client funds or securities.

17. Heinemann was solely responsible for preparing, signing, and filing Clayborne's Forms ADV with the Commission. Heinemann knowingly caused Clayborne to file Forms ADV on March 31, 2011, May 24, 2012, March 28, 2013, March 24, 2014, March 10, 2015, April 1, 2016, November 1, 2016, and November 4, 2016, each of which contained materially false representations regarding Clayborne's custody of client funds, and Heinemann knowingly caused Clayborne to file Forms ADV on May 24, 2012, March 28, 2013, March 24, 2014, March 10, 2015, April 1, 2016, November 1, 2016, and November 4, 2016, each of which contained materially false representations regarding the amounts of regulatory AUM. Heinemann also knowingly caused Clayborne to fail to amend the Forms ADV containing materially false representations.

#### **Clayborne Failed to Make and Keep Required Books and Records**

18. Clayborne failed to make and keep certain books and records required by Commission rules relating to its investment advisory business, including (i) written communications relating to recommendations made or proposed to be made and advice given or proposed to be given as required by Rule 204-2(a)(7) under the Advisers Act and (ii) written agreements entered into with any client as required by Rule 204-2(a)(10) under the Advisers Act.

19. Heinemann was responsible for Clayborne's books and records and knew or should have known that Clayborne failed to make and keep these records.

#### **Violations**

20. As a result of the conduct described above, Clayborne willfully<sup>2</sup> violated Section 203A of the Advisers Act by improperly registering with the Commission. Heinemann willfully aided and abetted and caused Clayborne's violations.

21. As a result of the conduct described above, Clayborne and Heinemann willfully violated Section 207 of the Advisers Act which makes it "unlawful for any person willfully to

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<sup>2</sup> A willful violation of the securities laws means merely "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 aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein.”

22. As a result of the conduct described above, Clayborne willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-2(a)(3) and (a)(4) promulgated thereunder, which require, among other things, that an investment adviser send an account statement, at least quarterly, to each client for which it maintains funds or securities, and have client funds and securities of which the adviser has custody verified by an independent public accountant at least once a year without prior notice to the investment adviser. Heinemann willfully aided and abetted and caused Clayborne’s violations.<sup>3</sup>

23. As a result of the conduct described above, Clayborne willfully violated Section 204(a) of the Advisers Act and Rules 204-2(a)(7) and 204-2(a)(10) promulgated thereunder, which require an investment adviser to make and keep certain records, including, among other things, “all written communications received and copies of all written communications sent by such investment adviser relating to: . . . [a]ny recommendation made or proposed to be made and any advice given or proposed to be given,” and “[a]ll written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such,” and to furnish copies of such records to the Commission during examinations by representatives of the Commission. Heinemann willfully aided and abetted and caused Clayborne’s violations.

#### IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest to impose the sanctions agreed to in Respondents Clayborne and Heinemann’s 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. Respondents Clayborne and Heinemann shall cease and desist from committing or causing any violations and any future violations of Sections 203A, 204, 206(4) and 207 of the Advisers Act and Rules 204-2 and 206(4)-2 promulgated thereunder.

B. Respondent Heinemann be, and hereby is:

i. suspended from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for a period of twelve months effective on the second

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<sup>3</sup> Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder; a showing of negligence is adequate. *See SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992).

Monday following the entry of this Order; and

ii. 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 for a period of twelve months, effective on the second Monday following the entry of this Order.

C. Respondent Heinemann shall provide to the Commission, within 30 days after the end of the twelve month suspension and prohibition period described above, an affidavit that he has complied fully with the suspension and prohibition.

D. Respondent Heinemann shall pay a civil penalty of \$20,000 to the Securities and Exchange Commission. Payment shall be made in the following installments:

- (1) \$1,674 within 30 days of the entry of this Order;
- (2) \$1,666 within 60 days of the entry of this Order;
- (3) \$1,666 within 90 days of the entry of this Order;
- (4) \$1,666 within 120 days of the entry of this Order;
- (5) \$1,666 within 150 days of the entry of this Order;
- (6) \$1,666 within 180 days of the entry of this Order;
- (7) \$1,666 within 210 days of the entry of this Order;
- (8) \$1,666 within 240 days of the entry of this Order;
- (9) \$1,666 within 270 days of the entry of this Order;
- (10) \$1,666 within 300 days of the entry of this Order;
- (11) \$1,666 within 330 days of the entry of this Order; and
- (12) \$1,666 within 360 days of the entry of this Order.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. §3717, shall be due and payable immediately, without further application.

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 Dean A. Heinemann 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 John Dugan, Associate Director, Division of Enforcement, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 24th Floor, Boston, MA 02110-1424.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties referenced in paragraph C above. Regardless of whether any such Fair Fund distribution is made, 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 these proceedings. 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 these proceedings.

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 Heinemann, 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.

Brent J. Fields  
Secretary