

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4592 / December 22, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-12837

In the Matter of an Application Filed Under
Rule 193 of the Commission's Rules of
Practice on behalf of

RICHARD SAPIO

For Consent to Associate with USA Mutuals
Advisors Inc., and to Serve in Certain
Capacities with USA Mutuals

ORDER GRANTING CONSENT TO
ASSOCIATE AND TO SERVE OR ACT IN
CERTAIN CAPACITIES

Pursuant to a consent order entered on September 26, 2007, Richard Sapio ("Sapio") is barred from association with any investment adviser and from serving in certain capacities with any investment company, with the right to reapply for association after five years from the date of the order. In the Matter of Mutuals.com, Inc., et al., Securities Exchange Act Release No. 56539 (Sept. 26, 2007) ("Order"). Pursuant to Rule 193 of the Commission's Rules of Practice, Sapio has submitted an application ("Application") for consent to associate with USA Mutuals Advisors Inc. ("MAI"), a registered investment adviser, and to serve in certain capacities with USA Mutuals ("USAM"), a registered investment company.

Sapio was the chief executive officer of Mutuals.com, Inc. ("Mutuals.com"), which was dually-registered as a broker-dealer and investment adviser; he was also the majority owner of Mutuals Capital Alliance, Inc. ("MCA"), the parent of Mutuals.com.

The Order found that the entity respondents, with the full knowledge, approval and assistance of Sapio and the other individual respondents, facilitated thousands of market-timing trades and late trades by at least eleven institutional clients, including hedge funds or their advisers. Between July 2001 and September 2003, Sapio and the other respondents met attempts by the funds to block trades by establishing multiple accounts for trades on behalf of blocked customers and by using multiple registered representative numbers and different branch identification numbers; they also formed and registered the affiliated broker-dealer respondents, and entered into agreements with two additional clearing brokers, to continue their market-timing activity. In addition, Mutuals.com and its affiliated broker-dealers, with the knowledge and approval of Sapio and the other individual respondents, failed to disclose to funds that they were receiving and acting on customer trading instructions received after the 4:00 p.m. market close, thereby allowing their customers to take advantage of post-closing news events or market changes.

The Commission found that Sapio had violated, aided and abetted, and caused violations of Section 17(a) of the Securities Act, Section 10(b) of the Securities Exchange Act and Rule 10b-5, and aided and abetted and caused violations of Section 15(c)(1) of the Securities Exchange Act and Rule 22c-1 under Section 22(c) of the Investment Company Act. In addition to being ordered to cease and desist from violations of those provisions, the Order barred Sapio from association with any broker, dealer, or investment adviser, and prohibited him 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, with a right to reapply after five years. However, the Order permits Sapio to continue to serve or act as an officer and/or director of MCA, provided that

(i) MCA does not, during the 5-year period commencing on the date of this Order, acquire any interest in, otherwise form, or operate any broker-dealer; (ii) Sapio does not receive any income, dividend, distribution or operating profits of any investment adviser owned by, or affiliated with MCA during the 5-year period commencing on the date of this Order; and (iii) Sapio shall not possess or exercise voting control with respect to his MCA shares concerning the operations of any investment adviser owned by, or affiliated with MCA during the pendency of the bar.

The Application represents that Sapio has complied with the terms of the Order, that he has been employed since imposition of the bar as the chief executive officer of MCA, and that he owns 53% of MCA, which in turn owns the registered investment adviser, MAI. The Application proposes that Sapio would become president and sole director of MAI, and that he would exercise full voting control of MAI through his majority-ownership interest in MCA. In addition, the Application proposes that Sapio would serve as president and one of the trustees of USAM, with the possibility of becoming chairman of the board of trustees.

Sapio will be subject to supervision and surveillance by William McNish, the chief compliance officer for both MAI and USAM. McNish will be required to cease activity by Sapio that violates the securities laws, and to report such incidents to the Commission. The Application further provides that John Cataldo, Esq., will be employed for a period of two years from the date consent to associate is granted, to conduct surveillance and oversight of Sapio's performance.

The Division of Enforcement, pursuant to delegated authority, has reviewed the Application. Relying upon the representations made concerning the proposed association by Sapio, MAI and USAM, the Division has concluded that the applicant has made a satisfactory showing that the proposed association is consistent with the public interest, and, hence, that the Application meets the standard for relief set forth in Rule 193(c).

Accordingly, it is ORDERED that the Application submitted on behalf of Sapio be, and hereby is, granted.

For the Commission, by the Division of Enforcement, pursuant to delegated authority.

Brent J. Fields
Secretary