UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 82399 / December 22, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4835 / December 22, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18324

In the Matter of

TRAIN, BABCOCK ADVISORS LLC,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934 SECTIONS 203(e) 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 21C of the Securities Exchange Act of 1934 ("Exchange Act") Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Train, Babcock Advisors LLC ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("Offer") that 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 21C of the Exchange Act and Sections 203(e) 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 Respondent's Offer, the Commission finds[1] that

Summary

1. These proceedings arise from misconduct by Train, Babcock Advisors LLC ("TBA"), an investment adviser registered with the Commission, in connection with certain client accounts for which TBA's former principals acted as trustee and over which TBA had custody. First, two former principals of TBA misappropriated more than $10 million collectively from two TBA client accounts in separate fraudulent schemes that spanned 12 years from 2004 through 2016. Second, TBA failed to comply with the requirements of Rule 206(4)-2 under the Advisers Act (the "Custody Rule") because TBA failed to obtain surprise examinations for the calendar years 2010-2012, 2015 and 2016 for certain client accounts for which it had custody. Third, from at least 2010, TBA failed to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules, particularly as to the safeguarding of client assets. Finally, TBA made false statements in its Forms ADV filed with the Commission in 2011 through 2016.

Respondent

2. TBA is an investment advisory firm based in New York, New York, managing more than $100 million in assets. TBA has been in business since January 1959 and it registered with the Commission as an investment adviser on January 27, 1975. The firm has approximately 9 employees and is owned by its current and former senior executives.

Other Relevant Individuals

3. John Rogicki ("Rogicki"), age 67, resided in Holmdel, New Jersey and in New York, New York, and currently is incarcerated. Rogicki joined TBA as Senior Portfolio Manager in 1990 and became a member of the firm in 1995. Rogicki was TBA's Managing Director and served as TBA's Chief Compliance Officer ("CCO") for portions of the period from 2004 through January 27, 2017, when he resigned from TBA. On December 14, 2017, Rogicki pled guilty in a related criminal action in connection with his misappropriating more than $9 million from a TBA client account. TBA is in the process of selling its assets and winding down any remaining business.

[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.

4. Brian Keenan ("Keenan"), age 60, resided in Old Bridge, NJ, and currently is incarcerated. Keenan joined TBA in 1997 and was TBA's Chief Executive Officer ("CEO") until he resigned in 2012. On December 7, 2015, Keenan pled guilty in a related criminal action in connection with his misappropriating more than $1.6 million from a TBA client account.

Facts

5. TBA provides investment advisory services to clients that include individuals, investment companies, pension and profit sharing plans, and business entities. TBA also provides investment advisory services to accounts of charitable organizations, trusts, and estates as part of an arrangement whereby a TBA employee serves as a trustee of these client accounts.

Rogicki Misappropriates More Than $9 million From Charitable Foundation Account

6. Prior to joining TBA in 1990, Rogicki worked at a bank where one of his clients was an elderly individual ("Client A"). In 1991, Client A established a Section 501(c)(3) non-profit charitable organization (the "Foundation") to make bequests from her sizable assets to various charities, primarily in the areas of education and healthcare.

7. Shortly after its creation, Rogicki was named President and a trustee of the Foundation. Client A also made Rogicki the executor of her estate. Because of his role as trustee and executor, respectively, Rogicki had signatory authority to effectuate account transactions for the Foundation and estate.

8. After Client A passed away in 2001, the Foundation was entrusted to Rogicki and two other trustees. The trustees hired TBA to be the investment adviser to the Foundation, and Rogicki was designated as the investment adviser representative ("IAR") on the Foundation's account.

9. As IAR to the Foundation, Rogicki made all investment decisions for the Foundation, and directed purchases and sales of securities in the Foundation advisory account at TBA. As a trustee and signatory to the Foundation account, Rogicki was able to withdraw funds via wire transfers from the Foundation account at TBA.

10. On multiple occasions between 2004 and May 2016, Rogicki liquidated securities positions in the Foundation account and effectuated wire transfers from the Foundation account to Client A's estate account, over which Rogicki also had control. Rogicki then transferred the funds from the estate account to his own personal bank accounts or to other accounts for his benefit. In total, Rogicki made more than 200 of these fraudulent transfers over twelve years, totaling more than $9 million. On October 19, 2017, Rogicki pled guilty to criminal charges relating to this misappropriation and currently is incarcerated in New York state.

Keenan Misappropriates More Than $1.6 Million from Elderly Client Account

11. From at least 2008 through 2012, Keenan misappropriated approximately $1.6 million from the trust accounts of an elderly TBA client ("Client B") for which Keenan served as an IAR and co-trustee. Through his access to Client B's accounts, Keenan transferred funds out of the trust accounts into accounts for his own benefit.

12. In 2013, Client B sued TBA, Rogicki and Keenan for having misappropriated more than $1.6 million from her trust accounts. On December 21, 2016, Keenan pled guilty to criminal charges related to this misappropriation and is currently incarcerated in New York state.

TBA Fails to Comply with the Custody Rule

13. Because certain TBA IARs served as trustees and signatories with the ability to effectuate transactions in certain client accounts, TBA had custody over those accounts as defined by the Custody Rule. Notwithstanding TBA's custody, TBA failed to obtain surprise examinations in accordance with the Custody Rule for the calendar years 2010-2012, 2015 and 2016.

14. In January 2014, TBA's then Chief Compliance Officer informed the Commission staff that TBA had failed to comply with the Custody Rule's requirement to engage an independent public accountant to conduct a surprise examination of accounts for which it had custody since that requirement became effective in 2010.

15. Commission staff then conducted an examination of TBA in mid-2014 and, among other things, highlighted the need for the firm to comply with the surprise examination requirements of the Custody Rule. TBA engaged an accountant to conduct a surprise examination for calendar years 2013 and 2014, but again failed to ensure that all accounts for which it had custody were examined in 2015 and 2016.

TBA Fails to Adopt and Implement Reasonably Designed Policies and Procedures

16. TBA failed to adopt and implement written policies and procedures reasonably designed to prevent violations by TBA of the Advisers Act and rules thereunder.

17. Since at least 2010, TBA used a compliance manual that included a section on the safeguarding of client assets. However, the compliance manual failed to address risks specifically associated with TBA's operations relating to the Custody Rule, given TBA's business of advising accounts for which its IARs served as trustees. In addition, TBA failed to implement policies and procedures around compliance with the Custody Rule, such as by ensuring that required annual surprise examinations were conducted of accounts for which the firm had custody.

18. Even after TBA discovered in 2013 that its former CEO, Keenan, had stolen $1.6 million from Client B's trust account, TBA failed to address its inadequate policies and procedures to ensure the safety of assets in client accounts.

19. Furthermore, after the Commission staff conducted an examination of TBA in 2014 and highlighted custody-related issues both during the examination and in a subsequent written deficiency letter to the firm, TBA again failed to address its inadequate policies and procedures.

20. TBA's compliance program failed to detect and prevent the long-running misappropriation of client assets by two of its principals, described above.

TBA Files False Forms ADV with the Commission

21. TBA filed a number of Forms ADV that contained false information with respect to its custodial assets under management. In its 2011 and 2012 Form ADV filings, the firm falsely represented that TBA did not have custody of any client assets despite the fact that its principals served as trustees with signatory authority over certain client accounts. In the Forms ADV filed for the years 2013-2016, TBA identified that it had custody over client assets but understated the total amount of such assets by omitting certain client accounts – including the Foundation – from its analysis. TBA also failed to disclose any facts regarding the Keenan misappropriation, a material event, until its March 2014 Form ADV filing.

TBA's Violations

22. As a result of the conduct described above, TBA willfully violated Section 10(b) of Exchange Act and Rule 10b-5 thereunder, which prohibits fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

23. As a result of the conduct described above, TBA willfully violated Section 206(1) of the Advisers Act, which prohibits an investment adviser from employing any device, scheme, or artifice to defraud any client or prospective client.

24. As a result of the conduct described above, TBA willfully violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in any transaction, practice, or course of business which operate as a fraud or deceit upon any client or prospective client.

25. As a result of the conduct described above, TBA willfully violated Section 206(4) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser and Rule 206(4)-2 promulgated thereunder, which requires that an investment adviser with custody of client assets have client funds and securities verified by an independent public accountant at least once a year without prior notice to the investment adviser.

26. As a result of the conduct described above, TBA willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules promulgated thereunder.

27. As a result of the conduct described above, TBA willfully violated Section 207 of the Advisers Act which prohibits any untrue statement of material fact in any registration application or report filed with the Commission under Section 203 or 204 of the Advisers Act.

Undertaking

28. TBA has agreed to to file a Form ADV/W, withdrawing its registration with the Commission, at the completion of its wind-down.

IV.

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

Accordingly, pursuant to Section 21 C of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent TBA cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), 206(4) and 207 of the Advisers Act and Rules and 206(4)-2 and 206(4)-7 promulgated thereunder.

B. Respondent TBA is censured.

C. Respondent TBA shall, within 10 days of the entry of this Order, pay disgorgement of $331,957, prejudgment interest of $33,768.23, and a civil money penalty in the amount of $1,335,000 to the Securities and Exchange Commission. If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to Rule 600 of the Commission Rules of Practice [17 C.F.R. § 201.600], and if timely payment of a civil money penalty 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 Train, Babcock Advisors LLC 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 Lara S. Mehraban, Assistant Regional Director, U.S. Securities and Exchange Commission, Division of Enforcement, New York Regional Office, 200 Vesey Street, Suite 400, New York, NY 10281-1022.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, prejudgment interest and penalties referenced in paragraph IV.C above. 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, it shall not argue that it is entitled to, nor shall it 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 it 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.

E. Respondent TBA shall comply with the undertaking enumerated in paragraph 28 above.

By the Commission.

Brent J. Fields
Secretary