UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5307 / July 24, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19267

In the Matter of **N. GARY PRICE** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 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 Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against N. Gary Price ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") 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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 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 Respondent's Offer, the Commission finds[1] that:

Summary

This case involves a failure by N. Gary Price ("Price"), a principal of registered investment adviser firm Genesis Capital LLC ("Genesis"), to disclose his conflicts of interest to advisory clients. From 2013 through 2015, Genesis's three mutual fund advisory clients made investments in promissory notes issued by Aequitas Commercial Finance, LLC ("ACF"), one of numerous entities affiliated with the Aequitas enterprise, the ultimate parent of which is Aequitas Management, LLC (collectively referred to herein as "Aequitas"). Price served on the Genesis investment committee that approved these investments.

As Genesis made the ACF investments, Price benefited from financial ties to Aequitas. Price held ownership stakes with Aequitas in two other businesses in the Aequitas enterprise that together received a $10 million line of credit and $3.6 million in loans from ACF—the entity from which the mutual fund clients purchased the promissory notes. Additionally, during the same time period when Genesis's mutual fund clients were investing their money in ACF, ACF was paying management fees to another Aequitas entity, which in turn paid $8 million in fees to another firm part-owned by Price in exchange for referring investors (separate from the Genesis clients) to ACF and other Aequitas issuers. These ties created a conflict between Price's interests and those of the mutual funds.

Genesis's written policies and procedures required it to disclose such conflicts of interest to its clients in the firm's Form ADV Brochure. During 2014 and 2015, Price received several drafts of the Genesis ADV Brochure to review. The drafts did not adequately disclose Price's Aequitas-related conflicts of interest, and Price did not correct this deficiency.

By the end of 2015, two of the Genesis-advised mutual funds each had more than 15 percent of its net assets invested in the ACF promissory notes. In March 2016, the Commission charged ACF and several other Aequitas companies and officers with concealing the true financial condition of Aequitas while defrauding the purchasers of more than $300 million in ACF promissory notes and other Aequitas securities.[2] In May 2016, the two mutual funds were liquidated following ACF's default on promissory notes held by the two funds.

Respondent

1. Price, age 50, resides in Gig Harbor, Washington. Since 2004, he has been a 50 percent owner and a managing member of Genesis, which was registered with the Commission as

[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.

[2] *See SEC v. Aequitas Management, LLC, et al.*, No. 3:16-cv-00438-PK (D. Or. filed March 10, 2016).

an investment adviser from December 2003 to December 2016. Since 2004, Price has also been a 50 percent owner and a managing member of RP Capital, LLC ("RP Capital"), which was registered with the Commission as a broker-dealer from March 2005 to December 2016. In September 2014, the Commission issued an order in settled proceedings, on a no-admit no-deny basis, charging Price, as CEO and chief compliance officer of registered investment adviser Strategic Capital Group, LLC ("SCG"), with causing SCG's violations of Sections 206(4) and 207 of the Advisers Act and Rule 206(4)-7 thereunder; ordering him to cease and desist from committing or causing any violations and any future violations of the same provisions; and imposing a $50,000 penalty against him. *In the Matter of Strategic Capital Group, LLC and N. Gary Price*, Admin. Proc. File No. 3-16138 (Sept. 18, 2014).

Genesis Clients Invested in Aequitas Securities While Price Had Financial Ties to Aequitas

2. Genesis invested a material portion of its mutual fund clients' assets in Aequitas securities while Price had material financial ties to Aequitas.

3. From 2013 to May 2016, Genesis's only active advisory clients consisted of three registered investment companies (all of which were mutual funds). The mutual funds had their own boards of trustees, officers, and compliance staff separate from Genesis. But a Genesis investment committee comprised of Price and other Genesis staff recommended and approved all investments made by the mutual funds.

4. From 2013 through 2015, the Genesis investment committee approved multiple investments and reinvestments by the mutual funds in ACF promissory notes. Price concurred in these investment decisions.

5. By March 2014, two of the mutual funds ("the Funds") had approximately 7 and 10 percent of their respective net assets invested in ACF promissory notes. At the same time, Price had material financial ties to Aequitas. Starting in July 2013, Price and an Aequitas entity both held ownership stakes in Aspen Grove Equity Solutions, LLC ("Aspen Grove"), a holding company established to invest in registered investment adviser firms. Starting in August 2013, Price and Aequitas Capital Management, Inc. ("ACM") held ownership stakes in another registered investment adviser with which Price was associated, Strategic Capital Alternatives, LLC ("SCA"). In January 2014, ACF granted Aspen Grove a $10 million line of credit.

6. In addition, Price's broker-dealer firm, RP Capital, was benefiting from an agreement with ACM, an Aequitas entity that collected management fees from ACF. Under the agreement, ACM paid RP Capital fees for referring certain investors (not including Genesis's mutual fund clients) to invest in ACF and other Aequitas entities.

7. As of March 2014, therefore: (a) Genesis and Price had recommended the Funds invest their money in ACF; (b) ACF was paying management fees to ACM; and (c) ACM and ACF were paying fees and providing credit to firms part-owned by Price. Moreover, Price's financial interests were aligned with those of Aequitas through their common ownership stakes in Aspen Grove and SCA. These circumstances gave Price a material financial interest in

supporting ACF and Aequitas by having the Funds invest in ACF. Price therefore had conflicts of interest related to Genesis clients' investments in ACF promissory notes.

The Failure to Disclose Price's Aequitas-Related Conflicts of Interest

8. As an investment adviser, Price was obligated to fully disclose all material facts to advisory clients, including any conflicts of interest with advisory clients. Price did not provide advisory clients with sufficient information about his financial ties to Aequitas so that they could understand any conflicts of interest and decide whether to give informed consent to such conflicts.

9. As Price knew, Genesis's compliance manual contained policies and procedures requiring Genesis to disclose conflicts of interest to advisory clients (the Funds) in the brochure portion of the firm's Form ADV. As required by the federal securities laws, Genesis periodically updated its Form ADV. In March 2014, Genesis's chief compliance officer ("CCO") emailed Price a draft of an updated version of the Genesis ADV Brochure to review. It described Price and Genesis's affiliations with RP Capital, SCA, and Aspen Grove, but it provided no information about the relationships between those entities and ACF, ACM, and Aequitas. Price did not make or request any revisions to this draft ADV Brochure to disclose his Aequitas financial ties to the mutual fund clients. The final version of the updated ADV Brochure, dated March 31, 2014, likewise did not mention ACF, ACM, or Aequitas.

10. In September 2014, SCG and Price settled, on a no-admit no-deny basis, the above-referenced Commission proceeding relating to, among other things, SCG Forms ADV which inaccurately stated that SCG did not engage in principal transactions with its advisory clients.

11. In mid-October 2014, the Genesis CCO emailed Price a newly updated draft of the Genesis ADV Brochure to review. As Price knew when he received the email, his ties to Aequitas had increased since the March draft. Aspen Grove had borrowed about $2 million from ACF under its $10 million line of credit and used the money to acquire the assets of SCG, which Price part-owned. In addition, Price and an Aequitas entity had both acquired ownership stakes in SCA Holdings, LLC ("SCA Holdings"), which in turn had acquired SCA and borrowed approximately $1.6 million from ACF. And the referral fees had continued to flow to RP Capital.

12. As before, this draft of the ADV Brochure identified Price and Genesis's affiliations with RP Capital, SCA, and Aspen Grove, but it provided no information about the relationships between those entities and ACF, ACM, and Aequitas. Price did not make or request any revisions to this draft ADV Brochure to disclose his Aequitas-related conflicts of interest. The final version of the updated ADV Brochure, dated October 17, 2014, failed to disclose the relationships between Price and ACF, ACM, and Aequitas.

13. By mid-March 2015, both Funds had approximately 13 percent of their net assets invested in ACF promissory notes. At that time, the Genesis CCO was working on updating the Genesis ADV Brochure and emailed Price the October 2014 version to review. Price did not make or request any revisions to the ADV Brochure to disclose his Aequitas financial ties.

14. In late March 2015, the CCO emailed Price an updated draft of the Genesis ADV Brochure to review. This version stated that ACF and another Aequitas entity were "affiliates" of Genesis, but did not explain the affiliation. It named Aspen Grove and SCA Holdings, but identified Aequitas as a part-owner of only SCA Holdings. It identified RP Capital, but did not mention the referral fees it received from ACM. Price did not make or request any revisions to this draft ADV Brochure to disclose his Aequitas-related conflicts of interest to the mutual fund clients. The final version of the updated ADV Brochure, dated March 31, 2015, disclosed no additional information about the relationships between Price and ACF, ACM, and Aequitas.

15. The Funds' compliance staff conducted annual due diligence visits at the Genesis office. In connection with such visits in July 2014 and July 2015, the compliance staff obtained copies of the Genesis ADV Brochures dated March 31, 2014 and March 31, 2015. At no time did Price or Genesis disclose to the Funds the full nature, magnitude, or extent of the relationships between Price and ACF, ACM, and Aequitas so that the Funds could make an informed decision about their investments in ACF.

16. By the end of 2015, the Funds' investments in ACF promissory notes totaled $8.8 million, or approximately 17 percent of each Fund's net assets. Also, RP Capital had received approximately $8.1 million in referral fees from ACM since January 2013. In March 2016, the Commission filed its Aequitas action, alleging that certain Aequitas entities and officers had defrauded investors into thinking they were investing in a portfolio of trade receivables when in reality the vast majority of investor funds were used to repay prior investors and cover Aequitas operating expenses. In May 2016, the Funds were liquidated after ACF defaulted on promissory notes held by the Funds.

17. Genesis collected advisory fees from the mutual funds based on the value of the ACF promissory notes. During the relevant period, Price received personal income derived from those fees totaling approximately $57,945.

Violations

18. As a result of the conduct described above, Price willfully violated Section 206(2) of the Advisers Act, which prohibits fraudulent conduct by an investment adviser. Proof of scienter is not required to establish a violation of Section 206(2). *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)).

IV.

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

Accordingly, pursuant to Sections 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act.

B. Respondent be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

with the right to apply for reentry after one (1) year to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry 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.

D. Respondent shall pay disgorgement of $57,945 and prejudgment interest of $9,088 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Securities Exchange Act of 1934 ("Exchange Act") Section 21F(g)(3).

Respondent shall pay a civil money penalty in the amount of $75,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3).

Payment of the above amounts shall be made in the following installments: (1) $30,000 shall be paid within 10 days of the entry of this Order; (2) $75,000 shall be paid within 180 days of the entry of this Order; and (3) $37,033 shall be paid 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 disgorgement, prejudgment interest, and civil penalty, plus any additional interest accrued pursuant to SEC Rule of Practice 600 and/or 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 N. Gary Price 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 Steven D. Buchholz, Assistant Regional Director, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA, 94104.

E. 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, he shall not argue that he is entitled to, nor shall he 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 he 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.

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, 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.

Vanessa A. Countryman
Secretary