UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4983 / August 10, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18636

In the Matter of

HAMLIN CAPITAL MANAGEMENT, LLC

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, 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) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Hamlin Capital Management, LLC ("Hamlin" or "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 purposes 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 Sections 203(e) and 203(k) of the Advisers Act, 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 Hamlin's arrangement of cross trades of certain non-rated, thinly-traded, fixed income securities, the pricing of which resulted in undisclosed favorable treatment of certain of its advisory clients over others. From at least November 2011 through March 2016, Hamlin, a registered investment adviser, routinely engaged in cross trade transactions between two or more Hamlin client accounts. Hamlin's pricing method for the cross trades resulted in it favoring certain of its clients over others in two ways.

2. First, when arranging cross trades, Hamlin generally arranged for the buy-side of the transaction to be executed at the security's bid-side indicative quotation (the "Bid Price") obtained for month-end valuation purposes from various pricing brokers, who were typically the underwriters of the same bond, and arranged for the sell-side of the transaction at a small discount from that Bid Price. Hamlin failed to disclose that, by cross trading securities at the Bid Price, rather than obtaining and using an average or midpoint between the Bid Price and an ask-side evaluation quotation, Hamlin's use of the Bid Price had the effect of favoring the purchasing clients in the transactions over the selling clients, even though Hamlin owed both the same fiduciary obligations. As a result, Hamlin violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8(a)(2) thereunder.

3. Second, with respect to certain fixed income securities, Hamlin challenged the pricing broker's bid-side evaluation quotations and requested prices higher than recent trades in the secondary market, without adequate documentation of the basis provided to the pricing broker for the challenge. Hamlin then arranged for the execution of cross trades at these higher levels, without undertaking any assessment as to whether the securities were available on similar or better terms for its buying clients in the secondary market. As a result, Hamlin's buy-side advisory clients paid more than they would have paid had securities been available for purchase in the secondary market at terms similar to prior trades, in violation of Hamlin's obligation under Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8(a)(2) thereunder to seek to achieve the best price and execution for clients' transactions.

4. Hamlin also failed to adopt and implement reasonably designed policies and procedures concerning the valuation of its clients' assets and its cross trading practices as required by Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. Additionally, in violation of Section 207 of the Adviser Act, Hamlin's Forms ADV misrepresented to investors the price at which cross trades would be executed and did not explain that cross trades would be executed at the Bid Price.

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[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.

Respondent

5. **Hamlin** is a limited liability company organized under the laws of Delaware with its principal place of business in New York, New York. Hamlin is an investment adviser registered with the Commission and had between approximately $1.5 to $4.5 billion in assets under management from 2011 through 2016.

Background

6. From November 2011 through March 2016 (the "Relevant Period"), Hamlin offered certain of its clients fixed income investment advice through numerous separately managed accounts and two pooled investment vehicles. Hamlin invested its fixed income portfolios principally in non-rated, tax-exempt and thinly-traded municipal bonds, generally issued to finance construction of senior living facilities, charter schools, and prisons. Hamlin often held a controlling, institutional position in the municipal bonds it held across its client accounts.

7. Hamlin frequently arranged for authorized cross trading in these securities between client separately managed accounts and/or its pooled investment vehicles in order to facilitate portfolio management and provide liquidity for terminating clients. By arranging trades between Hamlin's clients, as opposed to obtaining or selling client positions in the secondary market, Hamlin provided its selling clients liquidity in an otherwise illiquid market, and also retained Hamlin's controlling position in the securities it held.

8. For these reasons, among others, when a client sought to liquidate certain positions in its portfolio, Hamlin would generally sell the securities to another Hamlin client rather than sell it in the secondary market. In 2014, for example, over 97% of Hamlin's clients' fixed income sales were made to other Hamlin clients. During the Relevant Period, Hamlin caused the execution of more than 15,000 cross trades.

9. At the end of each month, Hamlin priced the holdings in each client's portfolio by obtaining bid-side evaluation quotes from the various broker-dealers who underwrote each of the bonds in Hamlin's portfolios and marking the securities at that price. At times, and as described further below, Hamlin "challenged" the prices the broker-dealers quoted to Hamlin, and, in certain instances, this resulted in the broker-dealer revising its quote upward or downward to Hamlin's proposed, alternative price.

10. Hamlin used two third party broker-dealers to execute cross trades: "Broker-Dealer A" and "Broker-Dealer B." Hamlin selected these two dealers because they were willing to execute cross trades at favorable, pre-determined, spreads that were narrower than the average bid/ask spread of trades in the same or similar securities executed in the secondary market during the Relevant Period. It was Broker-Dealer B's policy and practice to execute cross trades only with respect to bonds that Broker-Dealer B had itself underwritten. Hamlin routed cross trades in all other bonds to Broker-Dealer A.

Cross Trades at the Bid Price

11. To effectuate a cross trade, Hamlin's head trader would send an allocation ticket to the executing broker. These allocation tickets would detail the client accounts that were parties to the cross trade, the bonds to be crossed, and the proposed price at which to execute the transaction.

12. The price on the allocation tickets for the buy-side of the cross (e.g. the price the buyer paid, or, Bid Price) was the price at which Hamlin valued the security. The prices Hamlin's client buyers generally paid in cross transactions were based upon monthly, bid-side evaluations provided to Hamlin typically by the bonds' underwriters. Thus, Hamlin's buy-side clients in cross trades generally purchased the securities at an evaluative bid level, the Bid Price, and its sellers sold at a price slightly below that evaluative bid-level.

13. By arranging internal cross transactions through brokers at the Bid Price, Hamlin's buy-side clients avoided paying the full bid/ask spread they would have paid in an arms-length, independent market transaction. Based on the average bid/ask spread of secondary market trades in the same or similar securities during the Relevant Period, avoiding exposing these transactions to the market saved Hamlin's buy-side clients a total of approximately $829,344.00 over that time.

14. As a result of pricing cross trades at the Bid Price, Hamlin deprived its affected selling clients—at times clients who were terminating their relationship with Hamlin altogether—of their share of these market savings, an amount totaling approximately $414,672.00. Hamlin, which charges an advisory fee for assets under management and thus did not benefit from these cross trades, has voluntarily paid this amount to its affected clients, plus interest in the amount of $36,603.81.

15. Hamlin's standard practice of seeking to execute cross trades at its underwriter-provided Bid Price was inconsistent with its Regulatory Compliance Manual. Throughout the Relevant Period, Hamlin's written internal cross trading policy acknowledged that a significant risk posed by cross trading was that "[c]ross trades [might] advantage one client over another." Until October 2014, to mitigate this risk Hamlin's policy required it to cross bonds only at the bond's "current market price – the last reported price –average of the bid and ask prices." From October 2014 through March 2016, Hamlin's policies required that it cross bonds at the "current market price provided by the executing broker." These policies did not state that Hamlin could cross bonds at the Bid Price. Moreover, the price used in these cross trades was based on the Bid Prices generally provided by the bonds' underwriters and not prices provided by the executing brokers.

16. Hamlin's practice was also inconsistent with its disclosures in its Form ADV. From March 2012 through October 2014, Hamlin stated in its Forms ADV that it "maintain[ed] procedures which require that all cross transactions are made at an independent current market price." However, during that period, the written procedures Hamlin maintained did not state that Hamlin could cross bonds at the Bid Price, which Hamlin consistently did throughout the period.

17. And although Hamlin revised its cross trading disclosures in October 2014 to state it would execute its cross trades at the "current market price provided by the executing broker," this disclosure was still materially misleading because, during that period, Hamlin proposed, and the executing brokers agreed, to execute its cross trades at the Bid Prices previously provided to Hamlin by the pricing brokers.

Cross Trades at Prices Hamlin Influenced

18. Hamlin also disadvantaged certain of its buying clients in cross trades when it arranged for the trades' executions at prices based on broker quotations that Hamlin had challenged upward. As noted, to value its clients' securities, Hamlin solicited and received evaluative, bid-side prices for bonds held by its clients on a monthly basis from pricing brokers, who generally were the bonds' underwriters. On occasion, as permitted under Hamlin's internal policies, Hamlin challenged the price provided by the underwriter and persuaded the underwriter to revise it up or down.

19. On at least eight occasions during the period from November 2011 through October 2013, Hamlin challenged an underwriter-provided bid-side price, which caused the underwriter to adjust its valuation to a level substantially higher than recent secondary market trades in the bond. Although Hamlin had substantial knowledge of the credit, Hamlin did not document the basis provided to the pricing broker for the challenge. Cross transactions subsequently executed at these higher levels disadvantaged Hamlin's buying clients, who ended up paying more than they would have had the bonds been available for purchase in the secondary market at terms similar to prior trades.

20. For example, in or around February 2012, a Hamlin-owned bond ("Bond A") defaulted. In addition, the bond's trustee reported that the project backing the bond was economically imperiled. When Hamlin sought a quoted, bid-side price for Bond A from the bond's underwriter for month-end February 2012, the underwriter informed Hamlin that it was marking down the price of Bond A from $90 per bond (its price the previous month) to $32 per bond. The lower price that the underwriter provided Hamlin was consistent with the most recent, interdealer market trade in the security. Hamlin, however, challenged the price back up to $60 per bond, but did not document any basis it provided to the underwriter for that valuation. Hamlin subsequently effected a cross transaction executed in that bond at $60 per bond, notwithstanding that prior independent trades occurred at prices substantially lower than that price.

21. Similarly, in early November 2011, Hamlin received an October 2011 month-end valuation from Broker-Dealer B of $60 per bond for a bond underwritten by Broker-Dealer B that Hamlin held ("Bond B"). The bond had been recently downgraded by a credit rating agency, and, on or about November 15, 2011, an independent, interdealer market trade with a face value of $25,000 was executed at $30. On November 15, 2011—the same day as this independent, market trade—Hamlin asked Broker-Dealer B to execute a cross trade with a face value of $25,000 in the same security at $60 per bond, using the October month-end price Hamlin had received from Broker-Dealer B two weeks prior. Broker-Dealer B informed Hamlin that it could not execute the cross trade at that price level. Rather than request a revised or refreshed price from Broker-Dealer

B—the broker that underwrote the bond and priced it for Hamlin—Hamlin cancelled the trade. Shortly thereafter, Hamlin effected its execution at $60 per bond through Broker-Dealer A.

22. On about December 3, 2011, Broker-Dealer B told Hamlin it was pricing Bond B at $30 per bond, consistent with the most recent independent market trades in the security (though not Hamlin's cross trade price). Hamlin, however, challenged the price and persuaded Broker-Dealer B to raise its valuation to $60 per bond, without documenting the rationale provided to Broker-Dealer B for the adjustment. Between December 2011 and May 2012, Hamlin obtained the execution of five cross trades in Bond B between client accounts at $60 per bond, even though that price was higher than prices in prior independent, market trades in Bond B.

23. Hamlin engaged in similar conduct with respect to the prices of at least six other bonds during the period from November 2011 through October 2013, resulting in the execution of at least twenty-one cross trades at inflated levels under Hamlin's influence. With respect to these cross trades, Hamlin disadvantaged the buying clients—who paid more to buy these bonds from other Hamlin clients than they would have had they bought the bonds in the secondary market at terms similar to prior market trades—and failed to discharge adequately its best price and best execution obligations.

24. As a result of this conduct, Hamlin clients buying in these trades overpaid for the securities by approximately $194,500.00. Hamlin has voluntarily paid this amount to its affected clients, plus interest in the amount of $33,199.53.

25. Hamlin's failure to adopt and implement reasonably designed policies and procedures surrounding its valuation practices enabled it to cause the execution of these cross trades at higher prices. For some of the Relevant Period, Hamlin did not seek or use any other quotes or additional sources to evaluate the accuracy of the quotes it received. Moreover, for most of the relevant period, Hamlin's policies authorized its portfolio manager—who had a potential conflict of interest with respect to Hamlin's portfolio valuation—unilateral and unsupervised discretion to challenge the prices Hamlin received from the underwriters of its bonds. Until mid 2014, Hamlin did not have a valuation committee or any other oversight control to assess the propriety of or basis for Hamlin's price challenges. Further, Hamlin's policies required that Hamlin maintain documents sufficient to support its valuations, including notes or records of conversations with representatives of pricing brokers. Yet notes and records of broker communications were not maintained for some of the Relevant Period, rendering oversight of Hamlin's pricing determinations ineffective for that period.

26. On March 31, 2016, Hamlin changed its valuation policy to use bid prices supplied by an independent pricing service.

Violations

27. As a result of the conduct described above, Hamlin willfully[2] violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in any transaction, practice or course of business which operates as a fraud or deceit upon a client or prospective client, and Section 206(4) of the Advisers Act and Rule 206(4)-8(a)(2) thereunder, which prohibits an investment adviser from engaging in any act, practice or course of business that is fraudulent, deceptive or manipulative with respect to any investor or prospective investor in a pooled investment vehicle.[3]

28. As a result of the conduct described above, Hamlin willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires, among other things, that registered investment advisers adopt and implement written policies reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and rules.[4]

29. As a result of the conduct described above, Hamlin willfully violated Section 207 of the Advisers Act which makes it "unlawful for any person willfully to 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."[5]

Hamlin's Remedial Efforts

30. In determining to accept the Offer, the Commission considered the cooperation Respondent afforded the Commission staff, and remedial acts it promptly undertook, including enhancements Hamlin made to its policies, procedures, controls and disclosures regarding cross trading and security valuation, as well its voluntary payment to affected clients.

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[2] A willful violation of the securities laws means merely "'that 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)).

[3] A violation of Section 206(2), 206(4) of the Advisers Act and Rule 206-4(8)(a)(2) thereunder does not require scienter, but may, as here, rest on a finding of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643, 647 (D.C. Cir. 1992).

[4] A violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 may rest, as here, on a finding of negligence. *Id.*

[5] A violation of Section 207 of the Advisers Act does not require scienter, but may, as here, rest on a finding of simple negligence. *See Vernazza v. SEC*, 327 F.3d 851, 860 (9th Cir. 2003).

IV.

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

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

A. Respondent Hamlin cease and desist from committing or causing any violations and any future violations of Sections 206(2), 206(4) and 207 of the Advisers Act and Rules 206(4)-7 and 206(4)-8(a)(2) promulgated thereunder.

B. Respondent Hamlin is censured.

C. Respondent Hamlin shall, within 60 days of the entry of this Order, pay a civil money penalty in the amount of $900,000 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). If timely payment 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 Hamlin 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 Shalov Mehraban, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

D. 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.

By the Commission.

Brent J. Fields
Secretary