

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2786 / September 23, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13233

In the Matter of

MARK D. LAY,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Mark D. Lay (“Lay” 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 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, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Mark D. Lay was the Chairman, CEO, Chief Investment Strategist and 35 percent shareholder of MDL Capital Management, Inc. ("MDL Capital"), an investment adviser registered with the Commission. Lay was also a director of MDL Active Duration Fund, Ltd. (the "Fund"), an exempted, open-ended mutual fund company created by MDL Capital and Lay and incorporated under the laws of Bermuda. Lay, age 44, is a resident of Aliquippa, Pennsylvania.

2. On September 15, 2008, a final judgment was entered by consent against Lay, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. Mark D. Lay, et al., Civil Action Number 08-1269, in the United States District Court for the Western District of Pennsylvania.

3. The Commission's complaint alleged, among other things, that:

- a. Between approximately February 2004 and November 2004, MDL Capital and Lay defrauded their client, the Ohio Bureau of Workers' Compensation (the "Bureau"), in connection with the Bureau's investment in the Fund;
- b. MDL Capital and Lay breached their duty to the Bureau by consistently exceeding the 150 percent leverage guideline for the Fund set forth in the Fund's private placement memorandum;
- c. As a result of the fraud, the Bureau incurred losses of approximately \$160 million; and
- d. MDL Capital and Lay misrepresented and failed to disclose to the Bureau the excessive leverage and the true reason for the losses.

IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act, that Respondent Lay be, and hereby is, barred from association with any investment adviser.

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.

By the Commission.

Florence E. Harmon
Acting Secretary