

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2642 / September 5, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12746

In the Matter of

**Yanni Partners, Inc. and
Theresa A. Scotti,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER PURSUANT TO
SECTIONS 203(e), 203(f) AND 203(k) OF THE
INVESTMENT ADVISERS ACT OF 1940 AS
TO YANNI PARTNERS, INC. AND
THERESA A. SCOTTI**

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 Yanni Partners, Inc. (“Yanni”) and pursuant to Sections 203(f) and 203(k) of the Advisers Act, against Theresa A. Scotti (“Scotti”).

II.

In anticipation of the institution of these proceedings, Yanni and Scotti have each submitted an Offer of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, Yanni and Scotti each consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, as set forth below.

III.

On the basis of this Order and Yanni's and Scotti's Offers, the Commission finds that:

Summary

1. This case involves a registered investment adviser and pension consultant, Yanni, which, from at least January 2002 through May 2005, breached its duty to its clients and prospective clients by misrepresenting and omitting to disclose material information about certain potential financial conflicts of interest. Yanni's clients included private and public pension funds which were represented by board members or other persons who themselves owed fiduciary duties to the funds and their beneficiaries. These clients came to Yanni seeking advice in developing appropriate investment strategies and in selecting money managers to invest the funds entrusted to their care. While Yanni's principal business was investment consulting, it also sold subscription services to some of the same money managers it was recommending to its clients. These sales, which generated approximately \$600,000 of gross revenues annually, created a potential conflict of interest, which Yanni should have disclosed to its clients and prospective clients. However, in violation of Section 206(2) of the Advisers Act, Yanni and its president, Scotti, provided them with marketing materials and other documents which, as a result of their negligence, contained materially misleading statements and omissions about these potential conflicts of interest.

Respondents

2. **Yanni Partners, Inc.**, a Pennsylvania corporation located in Pittsburgh, Pennsylvania, has been registered with the Commission as an investment adviser since January 13, 1989. The firm is registered under Rule 203A-2(b) of the Advisers Act because it is a pension consultant providing investment advice to employee benefit plans having an aggregate value of \$50 million or more. In this regard, Yanni has approximately 135 institutional clients who have more than \$21 billion in assets, including 85 private and public pension funds with over \$12 billion in assets.

3. **Theresa A. Scotti**, 60 years old, is a resident of Wexford, Pennsylvania. Scotti is the president, a director, a 32.5 percent owner of Yanni and, during the relevant time period, the chief compliance officer. In addition, she was in charge of the firm's marketing to advisory clients and prospective advisory clients.

Yanni's and Scotti's Relevant Conduct

4. During the relevant time period, Yanni provided comprehensive investment consulting services primarily to pension plans, profit sharing plans, endowment funds, and other large institutional clients. As an integral part of these services, it assisted clients in developing appropriate investment strategies and recommended to its clients prospective money managers whose investment styles and track-records met the clients' objectives. It also monitored and evaluated clients' existing money managers to ensure that the managers' performances and

investment styles remained consistent with the clients' investment objectives. However, it did not offer to its clients any discretionary services, did not directly manage any client funds and had no authority to terminate clients' relationships with other money managers.

5. Yanni considered itself to be an independent firm whose sole business was investment consulting. Yanni stated in its marketing and other written materials that the firm's independence and the absence of any financial conflicts of interest were critical factors that clients should weigh favorably when evaluating and retaining any investment consultant.

6. Yanni typically assigned one of its investment consultants and an analyst to work with a client. They would meet with the client to discuss Yanni's services and to identify the client's investment objectives. If the client retained Yanni to conduct a manager search, the analyst conducted a quantitative screening of the money managers (in the relevant investment style category) by using standard criteria, such as 3-year and 5-year performance returns and investment style characteristics. These searches generally produced a list of money managers whose investment performance was in the top of their peer group.

7. To conduct this screening for money managers, other than money managers to mutual funds, the analysts generally utilized two proprietary databases, which Yanni created and maintained. These databases -- GRID (Graphical Ranking of Investment Descriptors) and CASH -- contained statistical performance results, company profiles and descriptions of the investment products. GRID contained composite and/or individually managed portfolio results and fund information from approximately 1,200 investment managers representing over 5,000 investment products across various asset classes. CASH, a companion to the GRID database, was limited to managers of short-term liquid money market instruments. In order to be included in these databases and considered for recommendation, money managers had to provide Yanni with current performance results as well as company and product specific profile questionnaires. Yanni did not charge money managers for inclusion in its databases.

8. After conducting the quantitative screening for potential candidates, the analyst and the consultant conducted a qualitative screening of the money managers by refining the quantitative performance measurements, considering client directions or preferences and focusing on areas such as reputation, organization, people and processes. The end-product of the qualitative screening would typically be a slate of 3 to 5 money managers, which Yanni presented to the client for its consideration. The client then made the final selection, often without any additional guidance from Yanni.

9. While the GRID database served as a screening tool for Yanni's investment consultants, the firm also used the database as an additional source of revenue. In this regard, a separate department within Yanni sold subscriptions for periodic reports generated from the data contained in the GRID database, for an annual fee of approximately \$13,500, to some of the same money managers whom Yanni was evaluating and/or recommending to its clients. (The actual fee was \$13,500 for up to three investment products plus added fees for each additional product.) During the period at issue, approximately 30 to 40 investment management firms subscribed to this

service. From 2002 through 2004, gross annual revenues from the GRID subscriptions were approximately \$600,000.

10. In marketing the GRID subscriptions, Yanni promised the subscribing money managers several benefits. First, Yanni provided quarterly reports illustrating a money manager's investment performance on three of its products in relation to the relevant market indices and the performance of its peers (based on similar investment styles and objectives). Yanni also offered subscribers a "360° Product Due Diligence Review" or other meetings where a Yanni principal would meet with the subscriber to explain how the investment manager's product was viewed by Yanni when going through the manager selection process. Finally, Yanni informed subscribers that they would be entitled to priority sponsorship opportunities at certain of Yanni's client events, namely two annual golf outings and a symposium.

11. Investment advisers, such as Yanni, owe fiduciary duties to their clients and, therefore, must, among other things, disclose all actual or potential conflicts of interest.¹ In addition, investment professionals who advise pension funds must be aware of the important role that pension plans play in the financial security of the beneficiaries.

12. Yanni did make disclosures about the GRID subscription sales in its Form ADV Part II, which it provided to all of its actual and prospective clients. However, Yanni and Scotti also provided certain clients and prospective clients with other documents which, as a result of their negligence, contained materially misleading information regarding the potential financial conflicts of interest created by the sale of the GRID subscriptions. Clients and prospective clients, when evaluating Yanni and other investment consultants, typically sent them Requests for Proposals ("RFPs") or Requests for Information ("RFIs"). The RFPs/RFIs contained detailed questions and requested specific types of information about the investment consultants. During the relevant time period, Yanni and Scotti provided written responses to 180 RFPs/RFIs. These responses often did not disclose sufficient information about the GRID subscriptions, such as revenues generated, that could enable Yanni's clients and prospective clients to understand the potential conflicts of interest inherent in such sales. In addition, certain responses contained materially misleading statements which, among other things, created the false impression that Yanni did not have any potential conflicts of interest and that Yanni's only source of revenue was the fees paid by its clients. Such conduct constituted a breach of fiduciary duty.

¹ SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 191, 196-97(1963)("The Investment Advisers Act of 1940 thus reflects a congressional recognition of the delicate fiduciary nature of an investment advisory relationship . . . An investor seeking the advice of a registered investment adviser must, if the legislative purpose is to be served, be permitted to evaluate such overlapping motivations, through appropriate disclosure, in deciding whether the adviser is serving two masters or only one, especially if one happens to be economic self-interest."); In re O'Brien Partners, Inc., Inv. Adv. Act Rel. No. 1772 (Oct. 27, 1998)("Moreover, since even potential conflicts of interest are material and must be disclosed, [the investment adviser] was required to disclose its receipt of third-party payments, even if it had concluded that the payments did not influence the manner in which it advised its clients.").

13. As a result of the conduct described above, Yanni and Scotti willfully² violated Section 206(2) of the Advisers Act, which provides that “[i]t shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly . . . to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.”³

14. At Scotti’s direction, Yanni discontinued the sale of the GRID subscriptions at the end of 2005, which had the effect of eliminating this potential conflict of interest. In addition, Yanni has appointed a new chief compliance officer, who, among other things, has implemented new policies and procedures relating to Yanni’s preparation, review and distribution of written materials to clients and prospective clients. Such policies and procedures are designed to ensure that the disclosures in all of Yanni’s marketing materials, responses to RFPs/RFIs, and other documents provided to clients and prospective clients are accurate and complete.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Yanni’s and Scotti’s Offers.

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

- A. Yanni and Scotti are hereby censured;
- B. Yanni and Scotti shall cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act;
- C. Yanni shall, within 90 days of the entry of this Order, pay a civil money penalty in the amount of \$175,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Yanni as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Daniel M. Hawke, Esq., Securities and

² “Willfully” as used in this Order means intentionally committing the act which constitutes the violation. Cf. Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000); Tager v. SEC, 344 F.2d 5, 8(2d Cir. 1965). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.

³ Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. Capital Gains, 375 U.S. at 195.

Exchange Commission, Mellon Independence Center, 701 Market St., Suite 2000, Philadelphia, PA 19106; and

D. Scotti shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$40,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Scotti as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Daniel M. Hawke, Esq., Securities and Exchange Commission, Mellon Independence Center, 701 Market St., Suite 2000, Philadelphia, PA 19106.

By the Commission.

Nancy M. Morris
Secretary