

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 8640 / December 1, 2005

SECURITIES EXCHANGE ACT OF 1934

Release No. 52873 / December 1, 2005

INVESTMENT ADVISERS ACT OF 1940

Release No. 2455 / December 1, 2005

ADMINISTRATIVE PROCEEDING

File No. 3-12119

In the Matter of

**MAXWELL
INVESTMENTS, LLC,
GARY J. MAXWELL, AND
BART D. COON**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-
DESIST ORDER PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933, SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
AND SECTIONS 203(e), 203(f), AND 203(k)
OF THE INVESTMENT ADVISERS ACT
OF 1940**

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 8A of the Securities Act of 1933 (“Securities Act”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Maxwell Investments, LLC (“Maxwell Investments”), Gary J. Maxwell, and Bart D. Coon (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers 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, Respondents 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 Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, and Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds that:

Respondents

1. Maxwell Investments, a Utah Limited Liability Company headquartered in Provo, Utah and formed on July 20, 2000, is an investment adviser that has been registered with the Commission since June 18, 2003. During 2002 to 2003, Maxwell Investments acted as the General Partner of approximately eight limited partnerships operated as hedge funds. The firm had a total of \$34,004,000 assets under management in June 2003 and had approximately seventy-four individual investors.

2. Gary J. Maxwell (“Gary Maxwell”), age 33 and a resident of Cedar Hills, Utah, organized Maxwell Investments and was originally the sole owner. At all relevant times, he was a 50% equity owner, a Managing Member, and President of Maxwell Investments.

3. Bart D. Coon (“Coon”), age 36 and a resident of Provo, Utah, joined Maxwell Investments in June 2002. At all relevant times, he was a 50% equity owner, a Managing Member and Vice President of Maxwell Investments.

Background

4. During 2002 and 2003 (the “relevant period”), Maxwell Investments organized approximately eight private investment companies, or hedge funds (“Funds”). The Funds were organized as limited partnerships with Maxwell Investments acting as the general partner. Maxwell Investments, through Gary Maxwell and Coon, offered subscriptions in the limited partnerships to accredited investors through private placement memoranda (PPMs). During the relevant period, the disclosure in the PPMs for the various Funds was essentially identical in all material respects.

5. Maxwell Investments, through Gary Maxwell and Coon, attempted to generate positive returns by investing primarily in naked options strategies. The firm earned income for the Funds by writing put and call options and earning premiums from their sale. Maxwell Investments, through Gary Maxwell and Coon, marketed itself as a 100% performance-based investment adviser, claiming that it would charge nothing for its services unless it made money for its investors.

6. During the relevant period, the PPMs used to solicit clients stated Maxwell Investments would not receive management fees from any Fund until the end of the first year of the Fund's existence. Contrary to these representations, Maxwell Investments, through Gary Maxwell, regularly withdrew management fees from the brokerage accounts of four of the Funds during the first year of each Fund's existence. These fees were invested in certificates of deposit in the names of the respective Funds. Maxwell Investments, through Gary Maxwell, then took out loans, pledging the certificates of deposit as collateral, and used the proceeds to pay operating expenses of Maxwell Investments and compensation to Gary Maxwell and Coon. After the particular Funds had been in existence for a year, Maxwell Investments, through Gary Maxwell, paid off the loans by liquidating the certificates of deposit. Coon was aware of and approved of this practice. A statute of the State of Utah requires investment advisers to wait one year before taking performance-based management fees.

7. Maxwell Investments, Gary Maxwell, and Coon also misrepresented the firm's method of calculating management fees. Rather than basing its fees on the percentage increase in each Fund's "average market value" as stated in the PPMs, Maxwell Investments calculated its fees based on each Fund's cash flow as projected for a twelve-month period. Gary Maxwell primarily performed these calculations on behalf of Maxwell Investments, and Coon was aware of and participated in performing the calculations.

8. Maxwell Investments' failure, through Gary Maxwell and Coon, to conform its calculation of management fees to representations in the PPMs caused the firm to overpay itself by at least \$839,798 in 2003. In order to correct the overpayment of fees to itself, Maxwell Investments deposited a total of \$931,670 into the Funds on December 31, 2003. Of the total, \$831,670 was contributed by Gary Maxwell and \$100,000 was contributed by Coon. The firm, Gary Maxwell, and Coon did not disclose to investors the overpayment of fees for 2003 and the subsequent repayment to the Funds until approximately March 2004.

9. At the beginning of 2004, Maxwell Investments, through Gary Maxwell and Coon, undertook a year-end accounting reconciliation ("2003 Reconciliation") to determine the exact amount of overpayment of fees to itself and to correct all discrepancies in the firm's accounting records. The 2003 Reconciliation was also meant to determine the correct profits, losses, and returns for each individual investor in the various Funds. In approximately March 2004, Maxwell Investments completed its 2003 Reconciliation for all accounts and determined the total amount overpaid was \$839,798. Maxwell Investments, through Gary Maxwell and Coon, informed investors that the firm had overpaid management fees to itself in certain Funds during 2003, but that it already reimbursed the Funds in an amount that was more than adequate to account for all overpayments.

10. Between June 20, 2003 and October 20, 2003, Maxwell Investments, through Coon, commingled partnership assets on several occasions. The firm, through Coon, routinely transferred assets from some Funds to cover maintenance requirements in the trading accounts of other Funds. The short-term transfers were ultimately repaid. Gary Maxwell was aware of these transfers. Such transfers created a material conflict of interest because Maxwell Investments, as an investment adviser to multiple funds, may have been acting (or had an

incentive to act) in its own best interest at the expense of its clients. Maxwell Investments, Gary Maxwell, and Coon did not disclose these transfers to investors and did not disclose the material conflict of interest created by the availability of such inter-fund transfers.

11. On June 16, 2003, Maxwell Investments, through Gary Maxwell, misappropriated \$60,000 from one of its Funds, by borrowing \$30,000 to purchase an automobile and by mistakenly authorizing an additional \$30,000 withdrawal on the same day. Gary Maxwell repaid the personal loan ten days later.

12. During the relevant period, Maxwell Investments, through Gary Maxwell and Coon, failed to maintain adequate Capital Accounts for its investors as represented in the PPMs. According to representations, “a single, separate Capital Account” was to be maintained for each investor, which was to reflect assets contributed to the Fund and the investor’s share of Fund liabilities, profits, and losses. Maxwell Investments, through Gary Maxwell and Coon, failed to set up adequate accounts and did not keep adequate ongoing record of such information.

13. Maxwell Investments, through Gary Maxwell and Coon, had custody of client funds and securities, but failed to annually have clients’ assets verified by actual examination by an independent public accountant.

14. During the relevant period, Maxwell Investments, through Gary Maxwell and Coon, failed to maintain adequate financial books and records. The firm had no formal accounting/bookkeeping system in place and did not make or maintain financial statements. The journal register relied on by the firm was not current or accurate at the end of 2003. Some accounts had not been updated since at least June 2003. Maxwell Investments, through Gary Maxwell and Coon, failed to adequately maintain bank statements, cancelled checks, cash reconciliations, balance sheets, margin maintenance records, e-mail correspondence, and contracts related to the firm’s business.

15. In Form ADV filed December 4, 2003 and Form ADV Part II dated September 11, 2003, Maxwell Investments, through Gary Maxwell and Coon, willfully failed to make disclosures to prevent statements made from being materially inaccurate. Specifically, in Item 8.A, Part I, the firm stated it (or a related person) did not buy or sell for itself securities that it also recommends to advisory clients when Gary Maxwell did, in fact, engage in active trading in options traded by the Funds; in Item 7.A., Part I, the firm stated it did not have a related person that was a broker-dealer, when in fact, the firm employed owners of a broker-dealer as fund managers; and in Item 4.C., Part II, the firm failed to explain the investment strategies used to implement investment advice given to clients and the high degree of risk involved, as required.

16. As a result of the conduct described above, Maxwell Investments, Gary Maxwell, and Coon willfully violated Section 17(a) of the Securities Act which prohibits fraudulent conduct in the offer or sale of securities.

17. As a result of the conduct described above, Maxwell Investments, Gary Maxwell, and Coon willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

18. As a result of the conduct described above, Maxwell Investments willfully violated, and Gary Maxwell and Coon willfully aided and abetted and caused Maxwell Investments' violations of (a) Sections 206(1), 206(2) and 206(4) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser; (b) Rule 206(4)-2(a)(3), promulgated thereunder, which requires that an investment adviser maintain each client's funds in bank accounts containing only those client funds, notify its clients about the place and manner in which their funds are maintained, and have client funds and securities verified by an independent public accountant at least once a year without prior notice to the investment adviser; and (c) Rule 206(4)-4(a)(1), promulgated thereunder, which requires that an investment adviser disclose all material facts with respect to the financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients.

19. As a result of the conduct described above, Maxwell Investments willfully violated, and Gary Maxwell and Coon willfully aided and abetted and caused Maxwell Investments' violations of Section 204 of the Advisers Act, and Rules 204-2(a)(1), 204-2(a)(2), 204-2(a)(4), 204-2(a)(6), and 204-2(a)(10) promulgated thereunder, which require that investment advisers registered with the Commission maintain and preserve certain books and records. Rule 204-2(a)(1) requires that registered investment advisers "make and keep true, accurate and current . . . a journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger." Rule 204-2(a)(2) requires that registered investment advisers "make and keep true, accurate and current . . . general and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts." Rule 204-2(a)(4) requires that registered investment advisers "make and keep true, accurate and current . . . all check books, bank statements, cancelled checks and cash reconciliations of the investment adviser." Rule 204-2(a)(6) requires that registered investment advisers "make and keep true, accurate and current . . . all trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser." Rule 204-2(a)(10) requires that registered investment advisers "make and keep true, accurate and current . . . [a]ll written agreements (or copies thereof) entered into by the investment adviser . . . relating to the business of such investment adviser."

20. As a result of the conduct described above, Maxwell Investments willfully violated, and Gary Maxwell and Coon willfully aided and abetted and caused Maxwell Investments' violations of Section 207 of the Advisers Act, which prohibits any person from willfully making "any untrue statement of a material fact in any registration application or report filed with the Commission under section 203 or 204, or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

Respondents' Remedial Efforts

In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by the Respondents and cooperation afforded the Commission staff.

Undertakings

Respondent Maxwell Investments shall provide a copy of this Order to all existing investors in its Funds within thirty (30) days of the entry of this Order.

Respondent Maxwell Investments shall provide a copy of this Order to all new and potential investors in its Funds, prior to their investing in the Funds, for a period of one year from the date of the entry of this Order.

Respondent Gary Maxwell shall provide to the Commission, within thirty (30) days after the end of the twelve-month suspension period described below, an affidavit that he has complied fully with the sanctions described in Section IV below.

Respondent Bart Coon shall provide to the Commission, within thirty (30) days after the end of the twelve-month suspension period described below, an affidavit that he has complied fully with the sanctions described in Section IV below.

IV.

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

Accordingly, it is hereby ORDERED:

A. Pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, that Respondent Maxwell Investments cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 204, 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 204-2(a)(1), 204-2(a)(2), 204-2(a)(4), 204-2(a)(6), 204-2(a)(10), 206(4)-2(a)(3), and 206(4)-4(a)(1) promulgated thereunder;

B. Pursuant to Section 203(e) of the Advisers Act, Respondent Maxwell Investments be, and hereby is, censured.

C. Pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Section 203(k) of the Advisers Act, Respondents Gary Maxwell and Coon cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, and cease and desist from committing or causing any violations and any future violations of Sections 204, 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 204-2(a)(1), 204-2(a)(2), 204-2(a)(4), 204-2(a)(6), 204-2(a)(10), 206(4)-2(a)(3), and 206(4)-4(a)(1) promulgated thereunder.

D. Pursuant to Section 203(f) of the Advisers Act, Respondent Coon be, and hereby is, suspended from association with any investment adviser for a period of twelve (12) months, effective on the second Monday following the entry of this Order.

E. Pursuant to Section 203(f) of the Advisers Act, Respondent Gary Maxwell be, and hereby is, suspended from association with any investment adviser for a period of twelve (12) months, effective thirty (30) days following the end of the twelve-month period of suspension of Bart D. Coon.

F. It is further ordered that Respondents Gary Maxwell and Coon shall each pay a civil money penalty in the amount of \$120,000 to the United States Treasury, with \$30,000 to be paid within ten (10) days of the entry of this Order, and the remaining \$90,000 to be paid in twelve equal payments of \$7,500.00 with the first payment to be made within thirty (30) days of the entry of this Order and subsequent payments to be made by the same date each month thereafter until paid in full. Such payments 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 Gary J. Maxwell or Bart D. Coon, respectively, 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 Kenneth D. Israel, District Administrator, Securities and Exchange Commission, 15 West South Temple Street, Suite 1800, Salt Lake City, UT 84101.

Respondents agree that if the full amount of any payment described above is not made within ten (10) days following the date the payment is required by this Order, the entire amount of \$120,000 minus payments made, if any, is due and payable immediately without further application.

G. Respondents Maxwell Investments, Gary Maxwell, and Coon shall comply with their undertakings as enumerated in Section III above.

By the Commission.

Jonathan G. Katz
Secretary