INITIAL DECISION RELEASE NO. 327
ADMINISTRATIVE PROCEEDING
FILE NO. 3-12357

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of	:	
	:	
WARWICK CAPITAL MANAGEMENT, INC., and	:	INITIAL DECISION
CARL LAWRENCE	:	February 15, 2007

APPEARANCES: Howard S. Kim and Jack Kaufman for the Division of Enforcement, Securities and Exchange Commission

Respondent Carl Lawrence pro se and for Respondent Warwick Capital Management, Inc.

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision orders Respondents Warwick Capital Management, Inc. (Warwick), and Carl Lawrence (Lawrence) to cease and desist from violations of the antifraud and other provisions of the securities laws and bars Lawrence from association with any investment adviser.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) initiated this proceeding by an Order Instituting Proceedings (OIP) on July 6, 2006, pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (Advisers Act).

The undersigned held a three-day hearing on October 16-18, 2006, in New York City. An additional hearing session was held on November 1, 2006. Sixteen witnesses, including Lawrence, testified, and numerous exhibits were admitted into evidence.[1]

[1] Citations to the transcript will be noted as "Tr. __." The Division of Enforcement's exhibits will be noted as "Ex. __." Respondents did not offer any exhibits.

The findings and conclusions in this Initial Decision are based on the record. Preponderance of the evidence was applied as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 97-104 (1981). Pursuant to the Administrative Procedure Act, 5 U.S.C. § 557(c), the following posthearing pleadings were considered: (1) the Division of Enforcement's (Division) December 18, 2006, Proposed Findings of Fact and Conclusions of Law and Post-Hearing Brief; (2) Respondents' January 8, 2007, Findings of Fact in a Post-Hearing Brief; (3) the Division's January 22, 2007, Reply; and (4) Respondents' February 1, 2007, Surreply. All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision were considered and rejected.

B. Allegations and Arguments of the Parties

The OIP alleges that Warwick violated various provisions of the Advisers Act and Commission rules authorized under the Advisers Act: Sections 206(1), 206(2), and 206(4) and Rule 206(4)-1(a)(5) through materially misleading advertising; Section 203A through registering with the Commission as an investment adviser when it was ineligible to do so; Section 207 through willfully making untrue statements of material facts in its registration applications and reports filed with the Commission; and Section 204 and Rules 204-2(a)(11) and 204-2(a)(16) through failing to maintain required books and records while it was registered with the Commission. The OIP alleges that Lawrence, as Warwick's owner, violated or aided and abetted and caused Warwick's violations of these provisions. The Division requests cease-and-desist orders against Warwick and Lawrence, civil penalties of $50,000 each against Warwick and Lawrence, and an investment adviser bar against Lawrence.

Respondents argue that they have always been law-abiding and urge that the proceeding be dismissed. Additionally, they urge that Commission staff be sanctioned for the manner in which they prosecuted the charges against them[2] and that Respondents be adequately compensated for their losses.[3]

[2] Specifically, Respondents complain that witnesses called by the Division testified in a manner that was favorable to the Division's case and that the Division has questioned Lawrence's credibility in its pleadings. As the undersigned explained during the hearing, the proceeding concerns alleged actions by Respondents as alleged in the OIP. Tr. 526-31, 561-63. The undersigned is not authorized to amend the OIP, or to impose sanctions, in the manner that Respondents request. 17 C.F.R. §§ 201.111, .200(d)(2).

[3] In some instances a respondent can request an award of legal fees, costs, and expenses wrongfully incurred. Such a request can only be made under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504, and Sections 201.31-.59 of the Commission's Rules, 17 C.F.R. §§ 201.31-.59. The EAJA and the cited Commission Rules specify the circumstances under which an award of fees and expenses will be made to a party.

C. Statute of Limitations

The proceeding and the relief authorized in the OIP are affected, in part, by 28 U.S.C. § 2462, a statute of general applicability that provides a five-year statute of limitations for "an action, suit, or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise." See Johnson v. SEC, 87 F.3d 484 (D.C. Cir. 1996).[4] Some of the conduct alleged in the OIP occurred before July 6, 2001 – five years before the July 6, 2006, institution of this proceeding. The OIP authorizes "remedial action . . . including . . . an investment advisory bar pursuant to Section 203(f) of the Advisers Act and civil penalties pursuant to Section 203(i) of the Advisers Act." OIP at 8. Such "remedial action" and civil penalties are subject to the five-year statute of limitations in 28 U.S.C. § 2462.[5] However, acts outside the statute of limitations may be considered to establish a respondent's motive, intent, or knowledge in committing violations that are within the statute of limitations. Sharon M. Graham, 53 S.E.C. 1072, 1089 n.47 (1998) (citing Fed. R. Evid. 404(b) and Local Lodge No. 1424 v. NLRB, 362 U.S. 411 (1960)), aff'd, 222 F.3d 994 (D.C. Cir. 2000); Terry T. Steen, 53 S.E.C. 618, 623-24 (1998) (citing H.P. Lambert Co. v. Sec'y of the Treasury, 354 F.2d 819, 822 (1st Cir. 1965)). Further, such acts may be considered in determining the appropriate sanction if violations are proven. Steen, 53 S.E.C. at 623-25.

The OIP also authorizes cease-and-desist orders pursuant to Section 203(k) of the Advisers Act. Cease-and-desist orders are not subject to 28 U.S.C. § 2462. Herbert Moskowitz, 55 S.E.C. 658, 683-84 (2002).

II. FINDINGS OF FACT

A. Respondents

Lawrence founded Warwick, an investment adviser, in 1991, and owns it together with his wife. Tr. 361. He makes all the investment decisions, while she performs administrative work; they are the only employees. Tr. 362-63. Warwick's fees are 1% of assets managed.[6]

[4] In Johnson, the court ruled that a Commission "proceeding resulting in a censure and a six-month disciplinary suspension of a securities industry supervisor was a proceeding 'for the enforcement of any civil fine, penalty or forfeiture, pecuniary or otherwise,' within the meaning of § 2462." 87 F.3d at 485.

[5] The censure and suspension in Johnson were described as "remedial action." Johnson, 87 F.3d at 486; Patricia A. Johnson, 52 S.E.C. 253, 260 (1995).

[6] Complaining that the staff investigation had ruined his business, Lawrence testified that his profits were $300,000 or $400,000 a year for about three years between 2000 and 2004, while prior to that time his profits were about $100,000. Tr. 473-75. As found infra, Warwick had between $4 and $10.5 million in assets under management between 2000 and 2003. Accordingly, Lawrence's claim of $300,000 or $400,000 in profits during those years is wildly inaccurate and will not be credited.

Exs. 3 at WAR 19, 5 at WAR 53-61, 80 at 23, 81 at 20, 83 at 21. Prior to founding Warwick, Lawrence had been in the money management business for about thirty years. Tr. 365. He has operated the business from his home in Yonkers, New York, for the past five years.[7] Tr. 363-64. Presently, he has two clients. Tr. 465. In the past he had more, and he ascribes the loss of clients to the effect of the Commission's investigation of him. Tr. 422-23, 429, 473. However, being an investment adviser is his life; he loves serving clients and managing money and hopes to be able to continue to do so. Tr. 466, 564.

Warwick was an investment adviser registered with the Commission as of March 15, 1996. Ex. 79. Warwick's organizational predecessor, Carl Lawrence dba Warwick Capital Management, was registered with the Commission from 1991 until March 15, 1996. Tr. 364; Ex. 79. On consideration of the conflicting evidence in the record, it is found that the date as of which Warwick was no longer registered with the Commission was August 31, 2000. Lawrence testified that he had filed for withdrawal in 2000 and believed that Warwick was no longer registered with the Commission as of June 2000, or, perhaps, a few months later. Tr. 364-65, 557. Lawrence told Commission staff on June 6, 2000, that he wished to withdraw Warwick's registration. Ex. 103 at WAR 2119. The record does not show that Warwick made any annual Form ADV filings after March 23, 2000, for the year 1999. Ex. 88. On the other hand, there is evidence supporting a later date: Lawrence did not provide any evidence of a Form ADV-W as of 2000 or any other date, in the form of a copy from his records or Commission records. Further, an Order Cancelling Registration Pursuant to Section 203(h) of the Advisers Act (Cancellation Order) was issued pursuant to delegated authority on January 31, 2002. Ex. 78. The basis, quoted in full, for the Cancellation Order was: "The Commission having found that the registrant is no longer in existence or is not engaged in business as an investment adviser." Ex. 78. There is no indication in the record to explain the timing of the Cancellation Order or why it came to be issued. In fact, the record shows that Warwick was in existence and engaged in business as an investment adviser as of January 31, 2002. Despite the absence of a Form ADV-W in the record, in light of the defects in the Cancellation Order and in light of the Division's burden of proof, it is found that Warwick was no longer registered with the Commission as of August 31, 2000.[8]

As discussed below, Respondents inflated Warwick's assets under management in reports to the Commission on Forms ADV between 1997 and 2000 and in data supplied during 2004 and earlier years to three database services that published it to subscribers. Additionally, Respondents supplied inflated performance data to the database services. Also, Respondents blamed a series of dubious calamities for their inability to produce records that would support the inflated numbers and created after-the-fact documents concerning the inflated numbers.

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[7] The postal address of Lawrence's Yonkers home is Bronxville. Tr. 361, 364, 523.

[8] In June 2000, 17 C.F.R. § 275.203-2(b) provided in pertinent part: "a notice to withdraw from registration filed by an investment adviser . . . shall become effective on the 60th day after the filing thereof with the Commission."

B. Warwick's Forms ADV

Effective July 8, 1997, pursuant to Section 203A of the Advisers Act, an investment adviser, such as Warwick, that was subject to state authorities was not permitted to be registered with the Commission unless it had assets under management of not less than $25 million.[9] As discussed below, from July 1997 onward, Warwick's Forms ADV overstated the value of assets that it had under management, and the number of accounts, as well.

Warwick's Form ADV dated March 29, 1996, reported that as of the end of 1995 it had nine accounts and $5 million in assets under management on a discretionary basis. Ex. 80 at 7. The same numbers were repeated in a Form ADV amendment dated November 1, 1996. Ex. 81 at 8. Eight months later, Warwick's Form ADV-T, dated July 3, 1997, stated that after July 8, 1997, it would have assets under management of $25 million or more and had $26.55 million under management. Ex. 82 at 3, 5. Its Form ADV dated March 25, 1998, reported that as of the end of 1997 it had fourteen portfolios and $28.9 million in assets under management. Ex. 83 at 7. The same numbers were repeated in its Forms ADV-Y2K filed on November 17, 1998, and January 28, 1999, while its Form ADV-Y2K filed on June 3, 1999, reported $29.4 million under management. Exs. 84, 85, 86. Its Form ADV dated March 18, 1999, reported that as of the end of 1998 it had fifteen portfolios with $29.4 million under management. Ex. 87 at 7. Its Form ADV dated March 23, 2000, reported that as of the end of 1999 it had sixteen portfolios with $37.2 million under management. Ex. 88 at 7. All the Forms ADV reported that Warwick did not have any portfolios managed on a non-discretionary basis. Exs. 80 at 7, 81 at 8, 82 at 5, 83 at 7, 87 at 7, 88 at 7. All were signed by Lawrence. Exs. 80 at 2, 81 at 2, 82 at 5, 83 at 2, 84 at 3, 85 at 4, 86 at 3, 87 at 2, 88 at 2.

C. Information Warwick Provided to Database Services

During 2004 and earlier, Respondents provided information about Warwick's assets under management and performance to three database services: Thompson Financial's "Nelson" database (Nelson's); "Mobius," which was owned by Checkfree Corporation; and "Plan Sponsor Network, Inc. (PSN)," owned by Informa Investment Solutions.[10] Tr. 30-55, 95-106, 148-55, 176-205; Exs. 9, 10, 13-17, 19-21, 24-26, 29-33, 37A-37F, 40C-40K, 41B-41D. The three database services obtained data about assets, performance, and other information from investment managers, packaged it, and sold it to subscribers for a fee. Tr. 32-36, 98-102, 178-183. The database services relied on the investment managers for the accuracy of the data they

[9] Section 203A(a)(2) provides, "assets under management means the securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services."

[10] By 2003 the database services had switched to receiving data online, but Lawrence did not submit Warwick's data by that means. Tr. 32-33, 39-40, 103, 152, 180, 195-96. He submitted Warwick's data to Nelson's in written form, to Mobius in written form and in phone calls, and to PSN in phone calls. Tr. 42-53; Exs. 13-17, 19-21, 24-34 (Nelson's); Tr. 203-10; Ex. 41D (Mobius); Tr. 103, 125-7, 152-53, 156-58, 161-62; Ex. 37F (PSN).

submitted. Tr. 33-35, 98-100, 182. Quality assurance was limited to checking for missing information, internal consistency, consistency with peer groups, and the like. Tr. 35, 99-100, 181. The subscribers – consultant firms, pension plan sponsors, brokerage firms, banks, investors, and investment managers – used the information to select money managers and to gauge the competition. Tr. 36-37, 100-02, 183. There is no evidence in the record that suggests that Lawrence used the database services' publications in presentations to clients or prospective clients or distributed the publications in any way.

Respondents represented to Nelson's, and Nelson's published to its customers, that Warwick had the following assets under management, as of year end: 2000 - $35.2 million; 2001 - $26.9 million; 2002 - $54.5 million; 2003 - $95.2 million. Tr. 47-54; Ex. 20 at WAR 180, 184, Ex. 24 at WAR 191, Ex. 25 at WAR 198, Ex. 27 at WAR 206, Ex. 40B.

Respondents represented to Mobius, and Mobius published to its customers, that Warwick had the following assets under management, as of year end: 1995 - $40.5 million, 1996 - $25 million,[11] 1997 - $31.6 million, 1998 - $35.8 million, 1999 - $47.2 million, 2000 - $35.5 million, 2001 - $26.86 million, 2002 - $64.5 million, 2003 - $95.2 million. Tr. 205-11, 223-226, 230-31; Ex. 41C at WAR 282, Ex. 42C at WAR 398, Ex. 41D at WAR 304, 320, 333, 335, 350, 352, 356, 357, 359.

Respondents represented to PSN, and PSN published to its customers, that Warwick had the following assets under management, as of year end: 1999 - $47.2 million, 2000 - $35 million, 2001 - $28 million, and 2002 (3rd quarter) - $58.2 million. Tr. 116-20; Ex. 37 at WAR 225, Ex. 37C at WAR 241.

Additionally, Respondents reported to another database, Money Manager Review, which published to its customers, that Warwick had, as of year end 2000, assets under management of $36 million. Tr. 277-93; Ex. 48 at WAR 470.

D. Warwick's Actual Assets Under Management

Warwick underwent an examination at its premises in Lawrence's home by Commission staff on June 7, 2000. Tr. 394-97, 591-608; Ex. 103. Lawrence provided records for three clients, with eleven accounts, with aggregate assets under management of approximately $3 million. Tr. 595; Ex. 103 at WAR 2119. He stated that nine clients with assets under management of approximately $37.5 million terminated their accounts with Warwick between October 21, 1999, and February 15, 2000. Tr. 595; Ex. 103 at WAR 2120. He stated that records of the terminated clients were unavailable due to a fire at the premises of a person who was going to "microfiche" them.[12] Tr. 394-97, 595; Ex. 103 at WAR 2120. Lawrence has not

[11] The values for 1995 and 1996 are inconsistent with the $5 million Warwick reported on its Forms ADV during those years.

[12] In his Post-Hearing Brief, Lawrence states that the records were removed to the site where they were purportedly destroyed by fire due to a break-in at his home. There is no evidence in the record concerning such a break-in.

been forthcoming about the whereabouts or identity of that person. Tr. 394-97, 595; Ex. 103 at WAR 2120. Additionally, he stated that some of the records were maintained on a computer but were destroyed by a virus. Tr. 595-96; Ex. 103 at WAR 2120.

In May 2004 Commission staff sent Warwick a letter requesting documents concerning clients, assets under management, performance, and other matters. Ex. 2. Lawrence's response included a May 17, 2004, cover letter that stated, "Unfortunately, due to a fire that destroyed all of my records prior to June 2002, I will be unable to supply those documents." Ex. 3 at WAR 8. On June 24, 2004, Lawrence gave investigative testimony to Commission staff. Tr. 371; Ex. 99B. He described, in detail, a fire in the basement of his home, calling the Yonkers Fire Department, and making an insurance claim.[13] Tr. 371-89; Ex. 99B at 39-49. At the hearing, Lawrence testified that the records had been destroyed in June 2002 not by fire, but by a flood in his basement, and testified in detail about the flood. Tr. 367-73. He testified that he had been confused in his earlier testimony, that shortly before the flood he had a smoking condition in his chimney flue, that he called the Fire Department but then extinguished the smoking condition and told the Fire Department not to come. Tr. 376-78, 382, 384. He also testified that he filed a claim with the Liberty Mutual Insurance Company for damages resulting from the smoking condition. Tr. 390-92. At the hearing, a representative of the Yonkers, New York, Fire Department testified that, contrary to Lawrence's earlier testimony, the Fire Department's records showed that it had never received a call for service from Lawrence's address from 1997 through at least July 19, 2004. Tr. 521-24; Ex. 72. A representative of Liberty Mutual testified that the company had received three homeowner's claims for Lawrence's address, but none was for a fire or smoking condition. Tr. 534-38. Lawrence maintains that the claim for the smoking condition was attached to a claim for water damage and thus must have been overlooked. Tr. 559-60.

At one point during the hearing Lawrence testified that the values he reported on the Forms ADV and to the database services actually understated the value of assets under his management, to protect the privacy of clients. Tr. 422-65. Lawrence stated that he managed $300 million in assets of the Mellon family of Pittsburgh and displayed a document which purported to be a letter from "James R. Mellon" thanking him for the "splendid results" he obtained. Tr. 458-65.

The enhanced values also include accounts that Lawrence claimed he "indirectly" controlled or for which he made "recommendations." Tr. 422, 426-48. The values reported in Warwick's Forms ADV, however, were for discretionary accounts only; all reported that Warwick supervised or managed no assets on a non-discretionary basis. Exs. 80 at 7, 82 at 5, 87 at 7, 88 at 7. Additionally, the record is devoid of any evidence that such "indirect" or

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[13] At the hearing, Lawrence disavowed at least part of the transcript of the investigative testimony, saying he never said what the transcript attributed to him. Tr. 421-22, 448, 455-56, 558. He opined that the transcript had been altered in order to deflect evidence of wrongdoing by Commission staff. Tr. 558.

"recommendation" accounts existed.[14] Lawrence stated that he had such arrangements with New York University (NYU), Merrill Lynch, and Morgan Stanley.[15] Tr. 429. He could not recall a contact at Morgan Stanley. Tr. 432-34, 442. The individuals with whom he claimed to have had the arrangements at NYU and Merrill Lynch did not support his claim. He stated that he provided services to Maurice Maertens at NYU and that Maertens recommended him to the trustees as a manager of their endowment fund. Tr. 430-32. Maertens, the chief investment officer for NYU, designs and implements investment programs for the endowment fund, using outside investment managers; he makes no investment decisions himself. Tr. 505-06. He recommends investment managers to a committee of NYU trustees for their approval; all proposed investment managers are thoroughly vetted; and NYU enters into a formal written agreement with them. Tr. 506-08. Lawrence spoke with him numerous times by telephone or in person in approximately 1999 through 2002, in the hope of obtaining business. Tr. 509-11. Maertens never recommended Lawrence to the trustees as an investment manager, and to his knowledge, Lawrence never performed any investment services for NYU or received payment from NYU. Tr. 511-13. Lawrence's contact at Merrill Lynch was John Toomey, now at Smith Barney. Tr. 437-38, 618. He stated that he had given Toomey recommendations over a period of time and in return received compensatory business; Toomey brought him a client for investment management. Tr. 439-42. Lawrence stated that his relationship with Toomey lasted about two years, ending in 2005. Tr. 439. Toomey, however, testified that the client had suggested Warwick to manage a portion of his assets, for which Lawrence received a fee. Tr. 620. Toomey never paid Lawrence for recommendations or referred clients to Lawrence and is unaware of any relationship by which Lawrence would make stock recommendations to Merrill Lynch in return for a fee or client referrals. Tr. 623.

Lawrence's explanations for his inability to produce documents at the June 7, 2000, examination and in response to the May 2004 staff letter are not credible. Rather, they show that when confronted with a request that might expose a violation, he claims that the requested records once existed but were destroyed by a calamity. This conclusion is bolstered by his vagueness about the identity of the person at whose premises a fire allegedly destroyed the records requested at the 2000 examination. It is also bolstered by his switching from a detailed story about a fire to a detailed story about a flood that destroyed records requested in 2004, in the face of evidence that the Fire Department had never been called to his home and that he had never submitted an insurance claim for fire damage, as he had originally asserted. Likewise, his claim that he managed hundreds of millions of dollars more than reported on the Forms ADV for

[14] Also, Lawrence's testimony concerning his arrangements with these "recommendation" or "indirect" clients was inconsistent with his investigative testimony. Tr. 432-37, 442-44.

[15] Additionally, in their Post-Hearing Brief, Respondents stated that they managed $150-300 million at "First Deposit" during 1998-2000. However, the only mention of "First Deposit" in the record of evidence is in Ex. 107, a transcript of a voice-mail left by Lawrence for Commission staff on June 25, 2004. In the voice-mail Lawrence explains that he claimed $37 million in assets on a Form ADV (dated March 23, 2000, for year-end 1999) in the belief that he was going to acquire a new client called First Deposit with $30 million in assets but that First Deposit never became a client. Ex. 107.

shadowy clients is unsupported and not credible, and the document signed "James R. Mellon" does not support this claim.

It is found that Respondents' assets under management and clients, as of year end, did not exceed the following: 2003 - $10.5 million, eight clients; 2002 - $6 million, five clients; 2001 - $6 million, three to five clients; 2000 - $4 million, four clients; 1999 - $2 million, two clients; 1998 - $15 million, ten clients. Lawrence supplied these values in June 24, 2004, investigative testimony before Commission staff. Ex. 99A at 8-10. Due to the absence of records to support the values, they cannot be verified. However, they are not inconsistent with the values, supported by records, established by Commission staff during the June 2000 examination and with the values Respondents reported in a November 1996 Form ADV. Further, since Lawrence himself supplied the values, there is no unfairness to him in finding them to be the assets under management and clients as of the dates indicated. Accordingly, it is found that Warwick's assets under management and numbers of clients were as Lawrence described in his June 24, 2004, testimony, or lower.

There were also discrepancies in the numbers of clients Respondents reported to Nelson's.[16] For example, as described above, on June 7, 2000, Commission staff found three clients, yet Respondents reported to Nelson's that Warwick had eleven clients on June 30, 2000. Ex. 9 at WAR 156. Lawrence's May 17, 2004, reply to a staff request stated that he had eight clients with fifteen accounts, yet he reported to Nelson's that he had twenty-six clients in the first quarter of 2004. Ex. 3 at WAR 9, Ex. 13. Lawrence's investigative testimony, that he had four, five, and eight clients in 2000, 2002, and 2003, respectively, was at variance with the numbers he reported to Nelson's – eleven in 2000, twenty in 2002, and twenty-six in 2003. Exs. 15, 20 at WAR 180, 183, 25 at WAR 201, 99A at 9-10.

[16] The Forms ADV that Warwick filed asked for numbers of "accounts" or "portfolios" and cannot be compared with its claimed number of clients because a client could have more than one account. Similarly, the questionnaires of Mobius asked for numbers of portfolios. The record contains Forms ADV for the years 1998 and 1999 and reports to Mobius for those years; Warwick reported similar numbers on its Forms ADV and to Mobius for numbers of portfolios: 15 and 17, respectively for 1998, and 16 and 15 for 1999. Exs. 41D at WAR 335, 87 at 7, 88 at 7. Similarly, PSN asked for numbers of accounts and Warwick reported 17 and 15, respectively for 1998 and 1999.

E. Performance

Warwick's 2003 total performance return was not more than 25.6%, as claimed in its marketing brochure.[17] Ex. 3 at WAR 20, Ex. 99A at 3. However, as discussed below, Lawrence reported performance of 56% or more to the database services.

1. Nelson's

In early 2004 Lawrence reported to Nelson's that Warwick's 2003 total performance return was "gross – 57.3%" and "net – 56.3%." Tr. 50-54, 401-09; Exs. 15, 16, 32. Nelson's published these performance numbers to its customers and also ranked Warwick among the top money managers in its publication World's Best Money Managers. Tr. 55-56, 62-72; Exs. 40B at WAR 254, 69E at WAR 529, 69F at WAR 533, 69G at WAR 536, 70D, 70E, 70F.

As late as 2006, the inflated numbers had not been corrected. Ex. 69G at WAR 536. On June 25, 2004, the day after his investigative testimony, at which he was asked about his February 19, 2004, letter to Nelson's reporting performance of 57.3%, Lawrence mailed a document to Commission staff that purported to be a February 26, 2004, letter to Nelson's correcting performance returns downward to 25.6%.[18] Tr. 305-11; Exs. 34, 77A, 77C, 99A at 17, 107. Nelson's never received this letter. Tr. 80-82. Further, Lawrence did not provide the letter in his response to the staff letter of May 6, 2004, which asked for "3. All documents, including but not limited to questionnaires, provided to Nelson's [, other database services, consultants, or publishers] concerning Warwick's performance . . . ." Ex. 2. Instead, Lawrence's May 17, 2004, response was, "I have not submitted any documents to any of the parties mentioned in item #3." Ex. 3 at WAR 8. Although documents such as the purported corrective letter, as well as his letters reporting performance of 57.3%, are clearly covered by the plain language of item 3, Lawrence claims that he did not realize that the staff was asking for this type of material. Tr. 409-15. A more likely explanation is that he did not send the staff the

[17] Its actual total performance return was 18.65%, and actual equity-only performance return was 21.68%. Tr. 328-59; Exs. 3, 7, 97, 98A, 110A-C, 112A-C, 113A-B, 116A, 118A-C. The difference between 18.65% and 25.6% was due to an inadvertent error. Tr. 347-59. Respondents' Post-Hearing Reply maintains that the actual performance return was 22%, reflecting a $105,000 withdrawal from the Buoni account that was an illegally charged commission of a type currently being challenged by the New York State Attorney General. The record, however, does not contain any evidence concerning such a commission.

[18] During the investigative testimony, when Lawrence was shown Exhibit 15, his February 19, 2004, letter reporting 57.3%; he attempted to disavow it, stating "I don't recognize it. This is impossible." Ex. 99A at 17. He rebounded by blaming his wife and Nelson's and stating that he sent Nelson's a letter correcting the error. Ex. 99B at 169-75. At the hearing, when confronted with his investigative testimony that he had learned of the error from a prospect in Germany, Lawrence testified that he never gave such testimony and that the transcript was false. Tr. 417-22.

corrective letter and other documents he had provided to database services because they contained inflated performance values and he hoped to conceal them from the staff. It is found that Lawrence never attempted to correct the inflated performance published by Nelson's and that he prepared the purported corrective letter in June 2004 and never sent it to Nelson's. Further, the letter is part of a pattern of dubious mishaps and newly discovered exculpatory evidence that indicates a lack of truthfulness.

2. Mobius

In April 2004 Lawrence reported to Mobius that Warwick's 2003 total performance return was 57.6% and its equity only return was 77.065%; he had, as well, reported quarterly returns that resulted in these 2003 total returns. Tr. 199, 205-11, 214-20, 236-40, 398, 415-17; Ex. 41D at WAR 313, 323, 324. Mobius provided the performance numbers that Lawrence supplied to Money Management Executive, an industry publication, which accordingly included Warwick in its published ranking of "Top Ten Performing" money managers. Tr. 186-91; Ex. 43. Mobius also published Lawrence's numbers to its customers. Tr. 225-26; Ex. 41C at WAR 297.

On June 10, 2004, Lawrence telephoned Mobius to say he would be restating 2003 and to ask if the Commission was asking Mobius for data. Tr. 333-35; Ex. 41B at WAR 272. Lawrence telephoned again, on June 25, 2004, to restate Warwick's 2003 performance, reducing its return from 57.68% to 26.54%. Tr. 227-35; Exs. 41B at WAR 273, 41D at WAR 324, 42C at WAR 421. Mobius subsequently published the corrected 2003 return. Exs. 41C at 299, 42C at WAR 421.

3. PSN

Lawrence reported monthly 2003 performance returns to PSN that resulted in a 2003 performance return of 60.37% on its database. Tr. 120-23, 152-55, Ex. 37 at WAR 231, 37C at WAR 242. In reliance on Lawrence's numbers, PSN included Warwick in its top-ranked managers in its "Top Gun" rankings and published the numbers to its customers. Tr. 120-24, 130-35, 154-55; Exs. 37C at WAR 242, 45A. Lawrence telephoned PSN on June 28, 2004, to revise Warwick's performance downward. Tr. 124-27, 156-61; Ex. 37F. As a result, PSN published Warwick's 2003 performance as 26.28%. Tr. 124-27; Ex. 37E.

Lawrence maintains that the erroneously high performance numbers he submitted to the database services were the result of an inadvertent error in a single month, for which he reported a negative value as a positive value; for May 2003 he reported performance of 9.77% when, according to Lawrence the performance was negative (9.77%). The erroneous figure was reported to all three database services. Tr. 102-05, 120-27; Exs. 37 at WAR 231, 233, 234, 37C at WAR 242, 37E, 37 F (PSN); Tr. 215-40; Exs. 41B at WAR 271, 41C at WAR 297, 299, 41D at WAR 311, 313, 324, 327, 330 (Mobius); Tr. 74-75, 80-82; Ex. 40B at WAR 254 (Nelson's).

A mistake resulting in a change in one month's performance from negative (9.77%) to positive 9.77% is extremely large and it is scarcely credible that Lawrence would not realize the positive figure was an error when he supplied it to the database services in separate telephone calls and written submissions. Likewise, it is scarcely credible that Lawrence would not notice

the disparity between the 2003 performance of 25.6% in his marketing brochure and his repeated representations to the database services of performance of 57% or more. While Lawrence claims to have notified Nelson's of the correct figure in a letter of February 26, 2004, he does not even claim to have tried to notify the other database services in a timely fashion, yet the exaggerated performance figures for all three were similar. Lawrence testified that he hoped that information about Warwick that the database services published would bring additional clients. Tr. 399-400. His claim, made in his Post-Hearing Brief, that he did not know what they were publishing is not entirely credible in light of this.

F. Warwick's Compliance History

Warwick underwent a staff examination on July 17 – 29, 1996. Ex. 104. As a result, the staff sent Warwick a deficiency letter on September 12, 1996, that asked for a response within thirty days describing the steps taken or to be taken with respect to the matters raised in the letter.[19] Ex. 105. The matters raised in the deficiency letter included several deficiencies in compliance with books and records provisions, including failure to maintain journals, ledgers, trial balances, and financial statements. Ex. 105. The letter also referenced Warwick's failure to maintain back-up for returns it had been presenting in its marketing material in one-on-one presentations to clients and prospective clients. Ex. 104. Lawrence addressed this issue in his October 1, 1996, reply, stating that Warwick would "cease presenting its performance from 1976 to 1990 and the Wall Street Transcript, dated April 22, 1996, to clients and prospective clients."[20] Ex. 103 at WAR 2123.

[19] The staff sends a deficiency letter when deficiencies revealed during an examination are not so serious as to warrant an enforcement referral. Tr. 270.

[20] Lawrence testified that he never received the deficiency letter and never replied. Tr. 555. He points to the Division's failure to produce his reply or a copy of the signed original of the deficiency letter. These items were destroyed with the destruction of the Commission's offices in 7 World Trade Center on September 11, 2001. Tr. 262. However, in accord with usual practice, a read-only copy of the deficiency letter had been saved on a computer drive and sent to the Commission's Washington, D.C., headquarters, and was retrieved from the headquarters database. Tr. 262-63. Additionally, had Lawrence failed to reply as requested in the deficiency letter, the staff would have contacted him to ask for the reply. Tr. 269. Also, Lawrence's reply is quoted in the staff's report of its 2000 examination of Warwick. Ex. 103 at WAR 2123. The staff's reports of the 2000 and 1996 examinations were saved and retrieved in the same manner as the deficiency letter. Tr. 257-60, 264-67; Exs. 103, 104.

Lawrence analogizes the loss of the 1996 and 2000 materials in the collapse of 7 World Trade Center with his claimed loss of various records due to a flood at his home. This analogy is inapposite. The staff did not invent the destruction of its on-site files; 7 World Trade Center did collapse during the afternoon of September 11, 2001, a fact of which the undersigned takes official notice pursuant to 17 C.F.R. § 201.323. In contrast, the fact that there was no flood or fire at Lawrence's home strongly supports a finding that the records he claimed were destroyed never existed.

Warwick underwent a second staff examination on June 7, 2000. Tr. 249-71, 590-602, 606-09; Ex. 103. After that examination the staff believed that Warwick had failed to fully address the staff's concerns concerning Warwick's deficiency in compliance with books and records provisions and other matters as reflected in the 1996 deficiency letter and had additional concerns. Since the staff considered the problems it saw as more serious than in 1996, a deficiency letter was not sent in accordance with usual practice; instead the staff referred the matter to the enforcement staff. Tr. 256-57, 270-71, 606-09; Ex. 103.

III. CONCLUSIONS OF LAW

The OIP charges that Warwick violated, and Lawrence aided and abetted and caused Warwick's violation of, Advisers Act Section 203A and that both violated, or in the alternative Lawrence aided and abetted and caused Warwick's violations of Section 207, through improper registration and filings with the Commission. Further, the OIP charges antifraud violations: that both violated Advisers Act Sections 206(1) and 206(2) and that Warwick violated, and Lawrence aided and abetted and caused Warwick's violations of those provisions and of Advisers Act Section 206(4) and Rule 206(4)-1(a)(5). Finally, the OIP charges books and records violations: that Warwick violated, and Lawrence aided and abetted and caused Warwick's violations of Advisers Act Section 204 and Rules 204-2(a)(11) and 204-2(a)(16).

As discussed below, it is concluded that Warwick willfully violated, and Lawrence willfully aided and abetted and caused Warwick's violation of, Advisers Act Section 203A and that Warwick and Lawrence willfully violated Section 207. Further, Warwick and Lawrence willfully violated Advisers Act Sections 206(1) and 206(2) and Warwick willfully violated, and Lawrence willfully aided and abetted and caused Warwick's violations of, Section 206(4).

A. Legal Standards

1. Aiding and Abetting; Causing

For "aiding and abetting" liability under the federal securities laws, three elements must be established: (1) a primary or independent securities law violation committed by another party; (2) awareness or knowledge by the aider and abettor that his or her role was part of an overall activity that was improper; also conceptualized as scienter in aiding and abetting antifraud violations; and (3) that the aider and abettor knowingly and substantially assisted the conduct that constitutes the violation. See Graham v. SEC, 222 F.3d 994, 1000 (D.C. Cir. 2000); Woods v. Barnett Bank of Ft. Lauderdale, 765 F.2d 1004, 1009 (11th Cir. 1985); Investors Research Corp. v. SEC, 628 F.2d 168, 178 (D.C. Cir. 1980); IIT v. Cornfeld, 619 F.2d 909, 922 (2d Cir. 1980); Woodward v. Metro Bank of Dallas, 522 F.2d 84, 94-97 (5th Cir. 1975); SEC v. Coffey, 493 F.2d 1304, 1316-17 (6th Cir. 1974); Russo Sec. Inc., 53 S.E.C. 271, 278 & n.16 (1997); Donald T. Sheldon, 51 S.E.C. 59, 66 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995); William R. Carter, 47 S.E.C. 471, 502-03 (1981). A person cannot escape aiding and abetting liability by claiming ignorance of the securities laws. See Sharon M. Graham, 53 S.E.C. 1072, 1084 n.33 (1998), aff'd, 222 F.3d 994 (D.C. Cir. 2000). The knowledge or awareness requirement can be satisfied by recklessness when the alleged aider and abettor is a fiduciary or active participant. See

Ross v. Bolton, 904 F.2d 819, 824 (2d Cir. 1990); Cornfeld, 619 F.2d at 923, 925; Rolf v. Blyth, Eastman Dillon & Co., 570 F.2d 38, 47-48 (2d Cir. 1978); Woodward, 522 F.2d at 97.

For "causing" liability, three elements must be established: (1) a primary violation; (2) an act or omission by the respondent that was a cause of the violation; and (3) the respondent knew, or should have known, that his or her conduct would contribute to the violation. Robert M. Fuller, 80 SEC Docket 3539, 3545 (Aug. 25, 2003), pet. denied, 95 Fed. Appx. 361 (D.C. Cir. 2004). A respondent who aids and abets a violation also is a cause of the violation under the federal securities laws. See Graham, 53 S.E.C. at 1085 n.35. Negligence is sufficient to establish liability for causing a primary violation that does not require scienter. See KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1175 (2001), recon. denied, 55 S.E.C. 1 (2001), pet. denied, 289 F.3d 109 (D.C. Cir. 2002). It is assumed that scienter is required to establish secondary liability for causing a primary violation that requires scienter. Id.

An associated person may be charged as a primary violator, where, as here, the investment adviser is an alter ego of the associated person. John J. Kenny, 80 SEC Docket 564, 591-92 n.54 (May 14, 2003). Accordingly, as discussed below, the undersigned has concluded that Lawrence violated Sections 207, 206(1) and 206(2) of the Advisers Act. Thus, it is unnecessary to address his secondary liability for violating those provisions.

2. Willfulness

The Division requests sanctions pursuant to Sections 203(f), (i), and (k) of the Advisers Act. The Commission must find willful violations to impose sanctions under Sections 203(f) and (i) of the Advisers Act. A finding of willfulness does not require an intent to violate, but merely an intent to do the act which constitutes a violation. See Wonsover v. SEC, 205 F.3d 408, 413-15 (D.C. Cir. 2000); Steadman v. SEC, 603 F.2d 1126, 1135 (5th Cir. 1979); Arthur Lipper Corp. v. SEC, 547 F.2d 171, 180 (2d Cir. 1976); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965).

3. Materiality

Advisers Act Section 207 proscribes material misstatements. The standard of materiality, applicable to Advisers Act Section 206 as well, is whether or not a reasonable investor or prospective investor would have considered the information important in deciding whether or not to invest. See SEC v. Steadman, 967 F.2d at 643; see also Basic Inc. v. Levinson, 485 U.S. 224, 231-32, 240 (1988); TSC Indus. v. Northway, Inc., 426 U.S. 438, 449 (1976). Investment advisers are fiduciaries and have an affirmative duty of utmost good faith and full and fair disclosure of all material facts. See SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 191-92, 194, 201 (1963).

4. Scienter

Scienter is required to establish violations of Section 206(1) of the Advisers Act. SEC v. Steadman, 967 F.2d 636, 641 & n.3 (D.C. Cir. 1992). It is "a mental state embracing intent to deceive, manipulate, or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976); see also Aaron v. SEC, 446 U.S. 680, 686 n.5, 695-97 (1980); SEC v. Steadman, 967 F.2d at

641. Recklessness can satisfy the scienter requirement. See David Disner, 52 S.E.C. 1217, 1222 & n.20 (1997); see also SEC v. Steadman, 967 F.2d at 641-42; Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1568-69 (9th Cir. 1990). Reckless conduct is conduct which is "'highly unreasonable' and . . . represents 'an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it.'" Rolf, 570 F.2d at 47 (quoting Sanders v. John Nuveen & Co., 554 F.2d 790, 793 (7th Cir. 1977)).

Scienter is not required to establish a violation of Section 206(2) or 206(4) of the Advisers Act; a showing of negligence is adequate. See Capital Gains Research Bureau, Inc., 375 U.S. at 195; SEC v. Steadman, 967 F.2d at 643 & n.5; Steadman v. SEC, 603 F.2d 1126, 1132-34 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981).

Warwick is accountable for the actions of its responsible officer, Lawrence. See C.E. Carlson, Inc. v. SEC, 859 F.2d 1429, 1435 (10th Cir. 1988) (citing A.J. White & Co. v. SEC, 556 F.2d 619, 624 (1st Cir. 1977)). A company's scienter is imputed from that of the individuals controlling it. See SEC v. Blinder, Robinson & Co., 542 F. Supp. 468, 476 n.3 (D. Colo. 1982) (citing SEC v. Manor Nursing Ctrs., Inc., 458 F.2d 1082, 1096-97 nn.16-18 (2d Cir. 1972)). As an associated person of Warwick, Lawrence's conduct and scienter are also attributed to the firm. See Section 203(e) of the Advisers Act.

B. Advisers Act Sections 203A and 207

Section 203A(a)(1) of the Advisers Act provides, "[n]o investment adviser that is regulated or required to be regulated as an investment adviser in the State in which it maintains its principal office and place of business shall register under Section 203, unless [it] has assets under management of not less than $25,000,000." Section 203A(a)(2) defines "assets under management" as "the securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services." Section 203A came into force on July 8, 1997.[21] 111 Stat. 15 (1997). Likewise, Commission Rules implementing Section 230A became effective on that date. Rules Implementing Amendments to the Investment Advisers Act of 1940, 62 Fed. Reg. 28112 (May 22, 1997). Section 202(a)(13) defines "investment supervisory services" as "the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client."

Section 207 of the Advisers Act makes it unlawful for "any person willfully to make" material misstatements and omissions in applications and reports filed with the Commission under the Advisers Act.

[21] Congress was concerned that the Commission's resources were inadequate to supervise the growing number of Commission-registered investment advisers and concluded that if the regulatory responsibilities of the Commission and the states were divided by making the states primarily responsible for smaller advisory firms and the Commission responsible for larger firms, the regulatory resources of the Commission and the states could be used more efficiently. S. Rep. No. 293, 104th Cong., 2d Sess. 3-4.

The record shows that Warwick had $5 million in assets under management in November 1996 and $3 million, in June 2000. Yet, between July 1997 and March 2000 Warwick filed seven reports with the Commission that stated that it had between $26.55 million and $37.2 million in assets under management. When questioned in June 2000 about the discrepancy between his claimed assets under management and assets whose existence was proved by his records, Lawrence claimed that additional records were destroyed in a fire at the premises of a person about whose identity he was not forthcoming and by a computer virus. On its own this excuse is not entirely credible, and is made less so by being one of a series of similar excuses. Thus, it is concluded that Warwick violated Section 203A of the Advisers Act, because it maintained its Commission registration while having less than $25 million in assets under management from at least July 8, 1997, through the effective withdrawal of its registration in 2000. Lawrence, Warwick's sole decision-maker, who signed its reports, aided and abetted and caused Warwick's violation. Additionally, it is concluded that Warwick and Lawrence violated Section 207 of the Advisers Act in the seven reports by willfully making an untrue statement of a material fact in them. Overstating assets under management to be over $25 million was untrue and clearly material. The misstatement was intended to qualify Warwick for Commission registration when it did not so qualify. The violations of Sections 203A and 207 were clearly willful.

C. Advisers Act Sections 206(1), 206(2), and 206(4)

Warwick and Lawrence are charged with willfully violating Sections 206(1) and 206(2) of the Advisers Act, and Warwick, of Section 206(4). Lawrence is also charged with willfully aiding and abetting and causing Warwick's violations. Sections 206(1), 206(2), and 206(4) of the Advisers Act make it unlawful for any investment adviser, by jurisdictional means, directly or indirectly:

> (1) to employ any device, scheme, or artifice to defraud any client or prospective client;
>
> (2) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any client or prospective client; [or]
>
> (4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.

Respondents made numerous material misrepresentations concerning Warwick's performance and assets under management to the database services, which published the misrepresentations to subscribers in the securities industry. Since the misrepresentations vastly exaggerated assets under management and more than doubled performance, they were clearly material.

The record shows Lawrence's scienter, which is attributed to Warwick. The conduct was at least reckless – highly unreasonable and an extreme departure from ordinary care. While he characterizes his conduct as a mistake relating to one month, in fact he repeatedly advised the database services of performance supposedly arising out of that month's mistake as well as of

values for assets under management that cannot be confirmed. While in itself questionable, his claim that he did not know what the database services were publishing is another indication of reckless conduct. His attempts to cover up the misrepresentations, including preparing a purported corrective letter to Nelson's and telephoning Mobius and PSN to correct the performance numbers after Commission staff began to question them indicate an even higher degree of scienter.

It is concluded that Warwick and Lawrence violated Sections 206(1), 206(2), and 206(4) of the Advisers Act by the material misrepresentations of Warwick's performance and assets under management to the database services. The acts that constituted their violations were clearly intentional. Thus, their violations were willful.

D. Advisers Act Rule 206(4)-1(a)(5)

The OIP also charges violation of Advisers Act Rule 206(4)-1(a)(5), which provides, "(a) It shall constitute a fraudulent, deceptive or manipulative act, practice, or course of business within the meaning of section 206(4) of the Act . . . for an investment adviser registered . . . under section 203 of the Act . . . directly or indirectly, to publish, circulate, or distribute any advertisement: . . . (5) Which contains an untrue statement of a material fact, or which is otherwise false or misleading."

The record does not show a violation of Advisers Act Rule 206(4)-1(a)(5) because Respondents did not "directly or indirectly . . . publish, circulate, or distribute any advertisement" within the meaning of that rule when they provided false values to the database services. The cases that the Division cites, SEC v. C.R. Richmond & Co., 565 F.2d 1101, 1105 (9th Cir. 1977), and F.X.C. Investors Corp., 79 SEC Docket 472 (A.L.J. Dec. 9, 2002), in support of the argument that the rule was violated are not on point. In Richmond an investment adviser himself published a book and newsletter that contained material misrepresentations and led clients and prospective clients to believe that using his services would lead to sizable profits with minimum risks. In F.X.C. an investment adviser distributed to clients and prospective clients reprints of a newsletter to which it had provided false performance information.[22] Respondents neither published the false values nor distributed reprints or print-outs of the database services' publications containing the false values.

E. Advisers Act Books and Records Provisions

Section 204 of the Advisers Act requires Commission-registered advisers to maintain various records prescribed by the Commission in rules. Advisers Act Rule 204-2(e) requires that the records be maintained for five years from the end of the fiscal year during which the last entry was made on such record. Pursuant to Rule 204-2(f), this requirement survives discontinuance of business subject to registration under Section 203 of the Advisers Act.

[22] "Even though the rankings in [the newsletter] were produced by an unrelated third party and published as news, I find that the rankings became advertisements once FXC reprinted them and distributed them to clients and/or prospective clients." F.X.C., 79 SEC Docket at 478-79.

Warwick is charged with violating, and Lawrence with aiding and abetting and causing Warwick's violations of, Advisers Act Section 204 and Rules 204-2(a)(11) and 204-2(a)(16). Rule 204-2(a)(11) requires the adviser to keep "[a] copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons." Rule 204-2(a)(16) requires the adviser to keep "[a]ll accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts . . . in any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons." It is concluded that these rules were not violated for the same reason that there was no violation of Advisers Act Rule 206(4)-1(a)(5). Respondents' providing false values to the database services did not constitute a distribution of an advertisement or other communication.

IV. SANCTIONS

The Division requests an investment adviser bar against Lawrence, cease-and-desist orders against Warwick and Lawrence, and second-tier civil penalties of $50,000 each against Warwick and Lawrence. For the reasons discussed below, Lawrence will be barred from association with any investment adviser, and Respondents will be ordered to cease and desist from their violations of Advisers Act Sections 203A, 206(1), 206(2), 206(4), and 207.

A. Sanction Considerations

The Commission determines sanctions pursuant to a public interest standard. See Section 203(f) of the Advisers Act. The Commission considers factors including:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting SEC v. Blatt, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. Marshall E. Melton, 80 SEC Docket 2812, 2814 (July 25, 2003). Additionally, the Commission considers the extent to which the sanction will have a deterrent effect. Schield Mgmt. Co., 87 SEC Docket 848, 862 & n.46 (Jan. 31, 2006). As the Commission has often emphasized, the public interest determination extends to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. See Christopher A. Lowry, 55 S.E.C. 1133, 1145 (2002), aff'd, 340 F.3d 501 (8th Cir. 2003); Arthur Lipper Corp., 46 S.E.C. 78, 100 (1975). The amount of a sanction depends on the facts of each case and the value of the sanction in preventing a recurrence. See Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963); see also Leo Glassman, 46 S.E.C. 209, 211-12 (1975).

The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business. Richard C. Spangler, Inc., 46 S.E.C. 238, 252 (1976).

The Commission has authority to bar persons from association with registered or unregistered investment advisers or otherwise sanction them under Section 203 of the Advisers Act. Teicher v. SEC, 177 F.3d 1016, 1017-18 (D.C. Cir. 1999).

B. Sanctions

1. Bar

Lawrence's conduct was egregious, recurrent and involved at least a reckless degree of scienter that was increased by his method of proceeding when various lapses were questioned, which included citing calamities and producing newly discovered evidence of dubious credibility. While only his violations of Sections 206(1), 206(2), and 206(4) are within the five-year statue of limitations, there is a common thread of misrepresentations that ran for at least seven years between 1997 and 2004.

Lawrence has not acknowledged the wrongful nature of his conduct. Rather, he demonstrated a pattern of avoiding acknowledging the wrongful nature of his conduct by blaming calamities or producing newly discovered materials of dubious credibility. While Lawrence has not made specific assurances against future violations, he has manifested a sincere desire to continue serving clients as an investment adviser. His occupation – a life-long career in the securities industry that he desires to continue – presents opportunities for future violations. Lawrence's violations are recent, ending in 2004. There is no indication of any harm to Warwick's clients.

Absent an investment adviser bar, Lawrence's occupation will provide opportunities for future violations. He has significant securities experience, and, absent a bar, could return to association with an investment adviser. See Thomas J. Donovan, 86 SEC Docket 2652, 2663 (Dec. 5, 2005).

2. Cease and Desist

Section 203(k) of the Advisers Act authorizes the Commission to issue a cease-and-desist order against a person who "is violating, has violated, or is about to violate" any provision of the Act or rules thereunder. Whether there is a reasonable likelihood of such violations in the future must be considered. KPMG Peat Marwick LLP, 54 S.E.C. at 1185. In determining whether a cease-and-desist order is appropriate, the Commission considers the Steadman factors quoted above, as well as the recency of the violation, the degree of harm to investors, and the combination of sanctions against the respondent. See KPMG, 54 S.E.C. at 1192.

As noted above, Lawrence's conduct, and that of his alter ego, Warwick, was egregious and recurrent, with a common thread of misrepresentation that ran for seven years. The violations involved at least a reckless degree of scienter. An acknowledgement of the wrongful

nature of the conduct and an assurance against future violations are lacking. The violations are recent. Additionally, the record shows that Lawrence, and therefore Warwick, either believed that his conduct was justified or was ready to fabricate evidence to justify or conceal violative conduct. This increases the likelihood of all violations – of Sections 203A, 207, 206(1), 206(2), and 206(4) – in the future. Finally, a cease-and-desist order is appropriate in light of the combination of sanctions ordered, which include a bar but exclude civil penalties.

3. Civil Money Penalty

Section 203(i) of the Advisers Act authorizes the Commission to impose civil money penalties for willful violations of the Advisers Act and rules thereunder. In considering whether a penalty is in the public interest, the Commission may consider six factors: (a) fraud or deliberate or reckless disregard of a regulatory requirement; (b) harm to others; (c) unjust enrichment; (d) previous violations; (e) deterrence; and (f) such other matters as justice may require. See Section 203(i)(3) of the Advisers Act; see also New Allied Dev. Corp., 52 S.E.C. 1119, 1130 n.33 (1996); First Sec. Transfer Sys., Inc., 52 S.E.C. 392, 395-96 (1995); Jay Houston Meadows, 52 S.E.C. 778, 787-88 (1996); Consolidated Inv. Servs., Inc., 52 S.E.C. 582, 590-91 (1996).

As the Division argues, a second-tier penalty of $50,000 each against Warwick and Lawrence can be justified. However, the requested penalties will not be ordered as the combination of sanctions ordered is sufficient in the public interest in view of the particular circumstances of these Respondents. There was no evidence indicating any customer lost money as a result of the fraud. Nor was the fraud effective in increasing Respondents' business, which was never large. At present there are only two clients. Lawrence's boasts of having hundreds of millions of dollars of assets of shadowy clients under management are without substance. Finally, without Lawrence as an associated person, Warwick will have to cease operations.

V. RECORD CERTIFICATION

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), it is certified that the record includes the items set forth in the record index issued by the Secretary of the Commission on January 17, 2007.

VI. ORDER

Based on the findings and conclusions set forth above:

IT IS ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, CARL LAWRENCE IS BARRED from associating with any investment adviser.

IT IS FURTHER ORDERED that, pursuant to Section 203(k) of the Investment Advisers Act of 1940, CARL LAWRENCE CEASE AND DESIST from committing or causing any violations or future violations of Sections 203A, 207, 206(1), 206(2), or 206(4) of the Investment Advisers Act of 1940; and

IT IS FURTHER ORDERED that, pursuant to Section 203(k) of the Investment Advisers Act of 1940,WARWICK CAPITAL MANAGEMENT, INC., CEASE AND DESIST from committing or causing any violations or future violations of Sections 203A, 207, 206(1), 206(2), or 206(4) of the Investment Advisers Act of 1940.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

_____

Carol Fox Foelak
Administrative Law Judge