

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 64337 / April 25, 2011**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3190 / April 25, 2011**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 29659 / April 25, 2011**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14355**

**In the Matter of**

**DONALD L. KOCH and**  
**KOCH ASSET**  
**MANAGEMENT LLC,**

**Respondents.**

**ORDER INSTITUTING**  
**ADMINISTRATIVE AND CEASE-AND-**  
**DESIST PROCEEDINGS PURSUANT TO**  
**SECTION 21C OF THE SECURITIES**  
**EXCHANGE ACT OF 1934, SECTIONS**  
**203(e), 203(f), AND 203(k) OF THE**  
**INVESTMENT ADVISERS ACT OF 1940,**  
**AND SECTION 9(b) OF THE**  
**INVESTMENT COMPANY ACT OF 1940**  
**AND NOTICE OF HEARING**

**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 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Company Act”) against Donald L. Koch and Koch Asset Management LLC (collectively, “Respondents”).

**II.**

After an investigation, the Division of Enforcement alleges that:

**Respondents**

1. Respondent Donald L. Koch (“Koch”), age 64, resides in St. Louis, Missouri. Koch is the President, Chief Compliance Officer, and founder of SEC-registered investment adviser Koch Asset Management LLC in St. Louis, Missouri.

2. Respondent Koch Asset Management LLC (“KAM”) is a Missouri limited liability company and investment adviser that has been registered with the Commission since 1992. It provides investment advisory services to approximately 40 discretionary advisory accounts containing approximately \$40 million in assets.

### **Other Entities**

3. Huntleigh Securities Corporation, a Missouri corporation with its primary place of business in St. Louis, Missouri, is a broker-dealer registered with the Commission and FINRA since 1977.

### **Factual Background**

#### **A. Marking-the-Close Transactions**

4. From September 2009 through December 2009, KAM and Koch engaged in a scheme to mark-the-close of certain thinly traded securities held in KAM’s clients’ investment accounts.

5. KAM, through Koch, instructed a trader at Huntleigh Securities Corporation (“Trader A”) to execute trades in order to inflate the prices of certain thinly-traded securities held by KAM’s advisory clients by placing buy orders at prices well above the most recent previous trade shortly before the markets closed. This trading strategy, known as “marking the close,” involves the placing of orders at or near the close of market trading to artificially affect the reported closing price of a security.

6. Koch instructed Trader A to execute marking-the-close transactions to improve the portfolio performance reported to KAM’s advisory clients on their monthly account statements. KAM manages separate accounts for approximately 40 advisory clients. Koch employs the same investment strategy in all KAM accounts, which hold many similar securities. Monthly portfolio performance was reported based on the change in the value of portfolio securities as of the last trading day of each month. KAM, by marking-the-close in a security held by many of its advisory accounts, was able to artificially improve the reported monthly performance for each account holding that security.

7. On September 30, 2009, Koch instructed Trader A to buy shares of the common stock of issuer High Country Bancorp, Inc. (“HCBC”), which are quoted on OTC Link (previously, “Pink Sheets”) operated by OTC Markets Group, Inc. (“OTC Link”), to artificially increase the closing price. In an email, Koch told Trader A to buy HCBC shares just before the market close at a price “as near to \$25 [per share] as possible without appearing manipulative.” At 3:56 p.m. Eastern time, Trader A routed for execution an order to purchase 2,000 shares of HCBC at up to \$24.50 per share. The order was partially filled as Trader A bought 1,400 HCBC shares for KAM at prices up to \$23.99 per share.

8. KAM's purchases were the only trading in HCBC on September 30. HCBC closed at \$23.50 per share, up \$5.50 per share or 30.5% from the closing price on September 29. KAM's September 30, 2009 purchases of HCBC for its advisory accounts increased the market capitalization of HCBC by more than \$4.9 million, from \$16.1 million to \$21.0 million.

9. Many of KAM's clients' separately managed accounts held HCBC shares, but Koch allocated all the HCBC shares solely to the account of one client, a 92-year old retired homemaker. The allocated shares increased the account's holdings of HCBC by approximately 35%. The shares allocated to this account had a weighted average cost of \$20.38 per share, up more than 13% from the previous closing price. Koch's instruction to mark-the-close in HCBC on September 30, 2009 caused this account to overpay for shares of HCBC.

10. Trader A testified that on October 30, 2009, Koch again instructed Trader A to buy HCBC shares to artificially increase the closing price. At 3:46 p.m. Eastern time, Trader A routed for execution a market order to buy 600 shares of HCBC. The order was completely filled at prices up to \$19.75 per share.

11. KAM's October 30, 2009 trades rapidly moved HCBC's price from \$14.00 per share to its close at \$19.75 per share, up \$6.49 per share or 48.9% from the prior closing price on October 29. KAM's trades constituted 42.9% of the market volume in HCBC on October 30, 2009. KAM's October 30, 2009 purchases for its advisory accounts increased the market capitalization of HCBC by more than \$5.8 million, from \$11.8 million to \$17.6 million.

12. On October 30, 2009, Koch again allocated the HCBC shares only to KAM's 92-year old retired homemaker client. The allocated shares increased the account's holdings of HCBC by another 10%. The shares obtained on October 30, 2009 had a weighted average cost of \$17.25 per share, up more than 23% from the previous closing price. Koch's instruction to mark-the-close in HCBC on October 30, 2009 again caused this account to overpay for shares of HCBC.

13. Trader A testified that on November 30, 2009, Koch again instructed Trader A to buy HCBC shares to artificially increase the closing price. At 3:57 p.m. Eastern time, Trader A routed for execution an order to buy 1,000 shares of HCBC at up to \$21.00 per share. The entire order was filled at \$17.00 per share. At 3:58 p.m. Eastern time, seeking, per Koch's instruction, to get a higher closing price, Trader A routed for execution a second order to buy 1,000 shares of HCBC at up to \$21.00 per share. The second order was entirely filled at \$17.49 per share.

14. On November 30, 2009, HCBC closed at \$17.49 per share, up \$2.49 per share or 16.6% from the prior closing price on November 27 (the previous trading day). KAM's trading was 100% of the market volume in HCBC on November 30, 2009 and moved the market price from \$15.00 per share to \$17.49 per share. KAM's purchases for its advisory accounts increased the market capitalization of HCBC by more than \$2.2 million, from \$13.4 million to \$15.6 million.

15. On November 30, 2009, Koch allocated the HCBC shares KAM purchased to an account beneficially owned by the same 92-year old retired homemaker client. The shares

obtained on November 30, 2009 had a weighted average cost of \$17.25 per share, up 15% from the previous closing price.

16. On December 31, 2009, Koch again instructed Trader A to buy HCBC shares to artificially increase the closing price. In a December 23, 2009 email, Koch informed Trader A that he “want[ed] to move up HCBC the last day of the year.” In a December 28, 2009 email, Koch told Trader A to “[p]lease put on your calendar to buy HCBC 30 minutes to an hour before the close of market for the year. I would like to get a closing price in the 20-25 range, but certainly above 20.” In a recorded telephone conversation on December 31, 2009, Koch told Trader A that he needed to get HCBC above \$20.00 per share and that he would be “happy” at \$20.00 to \$25.00 per share. At 3:55 p.m. Eastern time on December 31, 2009, Trader A routed for execution an order to buy 3,000 shares of HCBC at up to \$25.00 per share. The entire order was filled at prices ranging from \$16.80 to \$19.50 per share. At 3:59 p.m. Eastern time, seeking, per Koch’s instructions, a higher closing price, Trader A routed for execution a second order to buy 2,000 shares of HCBC at up to \$25.00 per share. The second order was partially filled, and Trader A bought KAM 200 shares of HCBC at \$19.50 per share.

17. On December 31, 2009, HCBC closed at \$19.50 per share, up \$4.50 per share or 30.0% from the prior closing price on December 30. KAM’s trades on December 31 moved the market price from \$16.80 per share to \$19.50 per share during intraday trading. KAM’s trades constituted 88.9% of the market volume in HCBC on December 31, 2009. KAM’s December 31, 2009 purchases for its advisory accounts increased the market capitalization of HCBC by more than \$2.4 million, from \$15.0 million to \$17.4 million.

18. Koch also instructed Trader A to trade in order to artificially increase the closing price of two other securities on December 31, 2009. In a recorded telephone conversation, Koch instructed Trader A to purchase common shares of Cheviot Financial Corp. (“CHEV”), which trades on the NASDAQ stock exchange, in order to get a closing price between \$8.00 and \$8.25 per share. At the time of the instruction, Koch knew that CHEV was trading between \$7.20 and \$7.48 per share. At 3:40 p.m. Eastern time, per Koch’s instruction, Trader A routed for execution an order to purchase 2,000 shares of CHEV at up to \$8.25 per share. The entire order was filled at prices up to \$8.00 per share, with the final execution at \$7.50 per share. At 3:58 p.m. Eastern time, seeking a higher closing price per Koch’s instruction, Trader A routed for execution a second order to purchase 2,000 shares of CHEV at up to \$8.25 per share. The entire order was filled at prices up to \$8.00 per share, with the final execution at \$7.49 per share. At 3:59:20 p.m. Eastern time, still seeking a higher closing price, Trader A routed for execution a third order, this time to purchase 1,000 shares of CHEV at up to \$8.25 per share. The entire order was filled at prices up to \$7.98 per share, with the last trade at \$7.49 per share. At 3:59:53 p.m. Eastern time, still seeking a higher closing price, Trader A routed for execution a fourth order, this time to purchase 1,000 shares of CHEV at up to \$8.25 per share. The entire order was filled at prices up to \$7.99 per share, with the last execution at \$7.99 per share. On December 31, 2009, CHEV closed at \$7.39 per share, down \$0.07 per share or 0.9% from the closing price on December 30. KAM’s trades constituted 70.7% of the market volume in CHEV on December 31, 2009. In the case of CHEV, KAM and Koch attempted to manipulate the closing price, but the trades were ultimately unsuccessful in increasing CHEV’s closing price.

19. On December 31, 2009, Koch also instructed Trader A to trade in order to artificially increase the closing price of Carver Bancorp., Inc. (“CARV”), which trades on the NASDAQ stock exchange. In a recorded telephone conversation, Koch told Trader A to “pop” the price of CARV “at the end of the day.” Koch cautioned Trader A to “make sure you get a print,” i.e., to ensure that the order was executed at an artificially high price and was reported to the market. At 3:58 p.m. Eastern time, per Koch’s instruction, Trader A routed for execution an order to purchase 200 shares of CARV at up to \$9.05 per share. The entire order was filled at prices up to \$9.05 per share, with a final execution at \$9.05 per share. CARV closed at \$9.05 per share, up \$0.03 or 0.3% from the prior closing price on December 30. KAM’s trades constituted 100% of the market volume in CARV on December 31, 2009.

20. All the HCBC, CHEV, and CARV shares KAM purchased on December 31, 2009 were allocated to a single KAM advisory client account.

B. Failure to Seek Best Execution

21. KAM and Koch, by placing orders to purchase securities for their advisory clients at artificially inflated prices, breached their fiduciary duty to seek best execution for their clients.

C. Failure to Maintain Required Books & Records

22. KAM did not maintain communications related to the placing and execution of orders to purchase securities, including electronic communications related to such orders. In particular, Koch caused KAM to delete electronic communications related to the placing and execution of orders to purchase shares of HCBC in December 2009.

23. Koch, as KAM’s President and Chief Compliance Officer, had responsibility for KAM’s maintenance of required books and records.

D. Failure to Implement Policies and Procedures to Prevent Violation of the Advisers Act

24. KAM failed to implement policies and procedures reasonably designed to prevent violations of the Advisers Act. KAM’s Policies and Procedures Manual explicitly prohibits “transactions intended to raise, lower, or maintain the price of any [s]ecurity....” KAM, however, implemented no procedures designed to prevent or detect such transactions, relying entirely on the integrity of Koch, its principal, not to engage in prohibited transactions.

25. Koch, as KAM’s President and Chief Compliance Officer, had responsibility for KAM’s policies and procedures.

**Violations**

26. As a result of the conduct described above, KAM and Koch 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.

27. As a result of the conduct described above, KAM and Koch willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.<sup>1</sup>

28. As a result of the conduct described above, KAM willfully violated, and Koch willfully aided and abetted and caused violations of, Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires investment advisers to implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and the rules that the Commission has adopted thereunder.

29. As a result of the conduct described above, KAM willfully violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder, which require the maintenance of certain books and records. Koch willfully aided and abetted and caused KAM's violations of Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

### III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true, and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Sections 203(e) and 203(f) of the Advisers Act, including, but not limited to, disgorgement under Section 203(j) of the Advisers Act and civil penalties pursuant to Section 203(i) of the Advisers Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent Koch pursuant to Section 9(b) of the Investment Company Act;

D. Whether, pursuant to Section 21C of the Exchange Act and Section 203(k) of the Advisers Act, Respondent KAM should be ordered to cease and desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 204, 206(1), 206(2), and 206(4) of the Advisers Act and Rules 204-2(a)(7) and 206(4)-7 thereunder;

E. Whether, pursuant to Section 21C of the Exchange Act and Section 203(k) of the Advisers Act, Respondent Koch should be ordered to cease and desist from committing or

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<sup>1</sup> KAM, a registered investment adviser, and Koch, who controls KAM and acts as an investment adviser, directly violated Sections 206(1) and 206(2) of the Advisers Act. KAM's advisory accounts paid an asset management fee to KAM. Koch may be charged directly under Section 206 because his activities and complete control and ownership of KAM satisfy the broad definition of "investment adviser." See In the Matter of John J. Kenny and Nicholson/Kenny Capital Management, Inc., Advisers Act Release No. 2128 (May 14, 2003) (associated person who was the adviser's chairman and chief executive and, with his wife, owner of the adviser's holding company primarily liable).

causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Advisers Act, and from aiding and abetting or causing any violations of Sections 204 and 206(4) of the Advisers Act and Rules 204-2(a)(7) and 206(4)-7 thereunder.

#### IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 210.220.

If a Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him or it upon consideration of this Order, the allegations of which may be deemed as true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of the matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" with the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy  
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 ("Order") on the Respondents and their legal agents.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
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