UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 64469 / May 11, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3201 / May 11, 2011

INVESTMENT COMPANY ACT OF 1940
Release No. 29668 / May 11, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-12574

In the Matter of

MELHADO, FLYNN & ASSOCIATES, INC., GEORGE M. MOTZ AND JEANNE MCCARTHY

Respondents.

ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940 AS TO GEORGE M. MOTZ

I.

On February 26, 2007, the Securities and Exchange Commission ("Commission") instituted public administrative and cease-and-desist proceedings pursuant to Sections 15(b) and 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 respondents, including George M. Motz ("Motz" or "Respondent").

II.

Respondent has submitted an Offer of Settlement ("Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-And-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(f) and

203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 as to George M. Motz ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. These proceedings arise out of fraudulent trade allocation – or "cherry-picking" – at Melhado, Flynn & Associates, Inc. ("MFA"). From at least January 2001 through April 2005 (the "relevant period") Motz, the President and CEO of MFA, engaged in cherry-picking at MFA. MFA was a registered broker-dealer and investment adviser at the time. During the initial period of the scheme – January 2001 until approximately September 2003 – Motz unfairly allocated trades that had appreciated in value during the course of the day to MFA's proprietary trading account and allocated purchases that had depreciated in value during the day to the accounts of his advisory clients. Beginning in the summer of 2003, Motz engaged in cherry-picking to favor one of the firm's advisory clients, a hedge fund affiliated with MFA, over his other advisory clients. Motz accomplished this cherry-picking by purchasing securities toward the beginning of the trading day but waiting until later in the day – after he saw whether the securities appreciated in value – to allocate the securities. Motz was able to generate approximately $1.4 million in profits through this scheme. In the fall of 2003, Motz with the assistance of another MFA employee, altered order tickets in an attempt to cover-up these fraudulent trade allocations. In addition, MFA and Motz earned commissions and fees from advisory clients who were disadvantaged, and therefore harmed, by the cherry-picking scheme. Neither MFA nor Motz disclosed to clients that the firm was engaged in cherry-picking and that the firm would favor itself in the allocation of appreciated securities. Nor did they disclose that the firm engaged in cherry-picking to favor an advisory client hedge fund over other advisory clients. MFA also violated and Motz and another MFA employee aided, abetted and caused violations of the books and records provisions of both the Advisers Act and the Exchange Act.

Respondent

2. George M. Motz, age 68, began working at MFA on June 4, 1979. During the relevant period, Motz was President, CEO, Director, and Chief Compliance Officer of MFA. In addition, he was a 9.3% equity owner of MFA. During the relevant period, Motz managed approximately 183 discretionary accounts and six non-discretionary accounts, which had assets at MFA of approximately $58.9 million and $19.6 million respectively. Motz earned over $300,000 annually from MFA during the relevant period. During the relevant period, Motz held Series 1, 24 and 40 licenses with the NASD. When called for testimony by the Division of Enforcement, Motz invoked his Fifth Amendment privilege and refused to answer questions. In October 2009, Motz

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

pled guilty to one count of securities fraud relating to the cherry-picking alleged in these proceedings. Motz was later sentenced to eight years in prison and ordered to pay restitution of approximately $865,000. Motz is currently incarcerated at the Federal Correctional Institution in Otisville, New York.

Other Relevant Entities

3. Melhado, Flynn & Associates, Inc., a New York corporation, is a registered broker-dealer (since December 29, 1976) and investment adviser (since February 18, 1977). Until it stopped doing business, its main office was located in New York, New York. As of the end of the relevant period, MFA had approximately $318.2 million in assets under management and 749 advisory client accounts; the firm had discretionary control over 734 of those accounts whose assets totaled $249.2 million. MFA's clients included, among others, individuals, trusts and pension plans.

4. Third Millennium Fund, L.P. ("Third Millennium"), a Delaware limited partnership, was formed in March 2002. The fund's shares are exempted from registration with the Commission under Regulation D of the Securities Act. Third Millennium GP, LLC, serves as a general partner of Third Millennium. MFA and Motz, among others, were members of the general partner. During the relevant period, Motz was responsible for investing a portion of the Third Millennium assets. During the relevant period, investors in the fund included high net worth individuals, some of whom were also advisory clients of MFA. Another advisory client opened an account with MFA pursuant to an agreement that the trading in its account would emulate the trading of Third Millennium (the "companion account").

Background

5. From 2001 through approximately September 2003, Motz engaged in a cherry-picking scheme that generated virtually risk-free profits for the firm's trading account at the expense of the firm's advisory clients. Motz, the only MFA employee who executed trades in the firm's proprietary account, engaged in day-trading in that account. Motz was able to generate approximately $1.4 million in profits through this scheme. Then, beginning in the summer of 2003 and until at least May 2005, Motz engaged in cherry-picking to boost the returns of the Third Millennium, an advisory client hedge fund affiliated with MFA. During this period, Motz had trading responsibility for a portion of Third Millennium's assets.

6. To effectuate the cherry-picking scheme, Motz typically submitted equity buy orders to the MFA trading desk in the morning without indicating the accounts to which those purchases should be allocated. Motz did not provide the trading desk with allocation instructions concerning those purchases until much later in the day – often shortly before the close of the market. Thus, Motz purchased securities in the morning and then decided later in the day whether to sell the position and book the profit in MFA's proprietary account or to allocate the securities, often those which had depreciated in value during the day, to advisory client accounts.

7. Neither Motz nor MFA disclosed to clients that the firm was engaged in cherry-picking and that the firm would favor itself in the allocation of appreciated securities. Nor did MFA or Motz disclose to clients that the firm engaged in cherry-picking to favor Third Millennium over other advisory clients. In fact, the firm's ADV disclosures during the relevant period indicated that clients would not be disadvantaged by the firm's proprietary trading.

8. Trading records for MFA's proprietary account for January 2001 through September 2003 show that nearly every trade that Motz allocated to MFA's proprietary account during this period had appreciated in value from the time it was purchased earlier in the day. Through this cherry-picking scheme, Motz executed day-trades in MFA's proprietary account that were more than 98% profitable and yielded a net gain of close to $1.4 million.

9. Performance data for the proprietary account was used by MFA employees to solicit investments in Third Millennium.

10. Motz was advised by others in the firm that he should allocate his trades at the time he submitted the order but through at least April 2005, Motz did not change his allocation practices.

11. In June 2003, Motz began to engage in cherry-picking to boost the returns of Third Millennium. During the period from December 18, 2003 through May 9, 2005, Third Millennium had a number of trades that were opened and closed out on the same or the next trading day. The profitability of such trades conducted in the Third Millennium account during this period was 100%. Motz also favored the companion account in the allocation of securities during this period. The profitability of the trades that were opened and closed out on the same or the next trading day in the companion account was over 98%. Consequently, Motz continued to harm certain MFA advisory clients by consistently allocating profitable trades to Third Millennium and the companion account during this period.

12. As a result of the unfair allocations during the relevant period, MFA earned approximately $1.4 million in profit. In addition, MFA and Motz received significant management fees and commissions from their advisory clients who were disadvantaged, and therefore harmed, by the cherry-picking scheme.

13. During an SEC examination of MFA in the fall of 2003, Motz, with the assistance of another MFA employee, altered certain order tickets relating to the cherry-picked trades in order to try to conceal his fraudulent practices from regulators. Specifically, Motz, with the assistance of another MFA employee, gathered relevant order tickets from their designated locations and altered some of the tickets by adding markings or changing existing markings to make it appear that allocations had been made at the time of the initial purchases rather than later in the day.

14. MFA failed to make and keep true, accurate and current order memoranda for the purchase and sale of any security on behalf of a client. When submitting his initial trades, Motz

failed to indicate the account for which the trades were entered, sometimes leaving the customer name field blank on order tickets. In addition, Motz and another MFA employee were involved in the alteration of order tickets which rendered the memoranda inaccurate.

15. Motz signed and caused to be filed with the Commission on behalf of MFA materially misleading Forms ADV. Specifically, in response to Item 9 of Part II of MFA's Forms ADV filed during the relevant period, the firm acknowledged that it "buys and sells for itself securities that it also recommends to clients." An investment adviser that answers "yes" to that question is then required to disclose on Schedule F "what restrictions or internal procedures, or disclosures are used for conflicts of interest in" transactions in which it buys or sells for itself the same securities that it recommends to clients. Rather than disclosing its internal procedures, MFA disclosed only that "[t]he Investment Advisor might be purchasing or selling the same security for his/her own account as that of the client's in which case the Investment Advisor account never receives a lower price in cases of a purchase or a higher price in cases of a sale." Accordingly, as MFA and Motz willfully made material misstatements in the Forms ADV for the relevant period, these Forms ADV were misleading.

16. From October 5, 2004 through at least April 2005, MFA was an investment adviser registered with the Commission that failed to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act by the adviser or any of its supervised persons. This failure permitted Motz to continue his allocation practices and cherry-pick trades to favor Third Millennium.

17. On October 13, 2009, Motz pled guilty to one count of securities fraud in violation of Title 18 United States Code, Sections 1348(1), (2) and 3551, et seq. before the United States District Court for the Eastern District of New York, in United States v. Motz, 08-CR-598 (ADS) (the "Criminal Case"). On April 28, 2010, a judgment in the Criminal Case was entered against Motz, sentencing him to a prison term of 96 months followed by three years of supervised release. On August 5, 2010, the court ordered Motz to make restitution in the amount of $864,806.00. Motz is appealing the judgment and restitution order in the Criminal Case and the appeal is currently pending in the U.S. Court of Appeals for the Second Circuit.

Violations

18. As a result of the conduct described above, Motz 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. In addition, through this cherry-picking scheme and by failing to disclose the scheme, Motz willfully aided and abetted and caused MFA's violations of Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser with respect to advisory clients or prospective clients.

19. As a result of the conduct described above, Motz willfully aided and abetted and caused MFA's violations of Section 204 of the Advisers Act and Rule 204-2(a)(3) thereunder, and Section 17(a)(1) of the Exchange Act and Rule 17a-3(a)(6)(i) thereunder which require

registered investment advisers and broker-dealers to make and keep true, accurate and current order memoranda for the purchase and sale of any security on behalf of a client by failing to make accurate order tickets that contained all the information required by those rules. In addition, Motz willfully aided and abetted and caused MFA's violations of Section 204 of the Advisers Act and Rule 204-2(a)(3) thereunder, and Section 17(a)(1) of the Exchange Act and Rule 17a-4(b)(1) thereunder, by subsequently altering order tickets. Motz also willfully aided and abetted and caused MFA's violations of Section 204 of the Advisers Act and Rule 204-2(a)(2) thereunder, and Section 17(a)(1) of the Exchange Act and Rules 17a-3(a)(2) and 17a-4(a) thereunder, by failing to create and maintain a general ledger for substantial portions of the relevant period. And Motz willfully aided and abetted and caused MFA's violations of Section 204 of the Advisers Act and Rule 204-2(a)(6) thereunder, and Section 17(a)(1) of the Exchange Act and Rule 17a-4(b)(5) thereunder, by failing to maintain a record of a trial balance during much of the relevant period. Motz also willfully violated Section 207 of the Advisers Act, by signing and causing to be filed on MFA's behalf misleading Forms ADV that willfully made material misstatements – *i.e.*, falsely asserting that when MFA buys or sells for itself the same securities that it recommends to clients, it "never receives a lower price in cases of a purchase or a higher price in cases of a sale." Finally, Motz willfully aided and abetted and caused MFA's violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, by failing to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act by the adviser or any of its supervised persons.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that**:**

A. Respondent Motz shall cease and desist from committing or causing any violations and any future violations of Sections 10(b) and 17(a)(1) of the Exchange Act and Rules 10b-5, 17a-3(a)(6)(i), 17a-3(a)(2), 17a-4(a), 17a-4(b)(1), and 17a-4(b)(5) thereunder, and Sections 204, 206(1), 206(2) and 207 of the Advisers Act and Rules 204-2(a)(2), 204-2(a)(3), 204-2(a)(6), and 206(4)-7 thereunder;

B. Respondent Motz be, and hereby is barred from association with any broker, dealer, or investment adviser, and is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter;

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned

upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent shall pay disgorgement and prejudgment interest totaling $864,806.00. That obligation is deemed satisfied by the restitution ordered in the Criminal Case.

E. Based upon the prison sentence imposed on Respondent in the Criminal Case, the Commission is not imposing a penalty against Respondent.

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 Making Findings and Imposing Remedial Sanctions and a Cease-And-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 as to George M. Motz ("Order"), on the Respondent and his legal agent.

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

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