

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

**SECURITIES ACT OF 1933**  
**Release No. 9145 / September 23, 2010**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 62984 / September 23, 2010**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3087 / September 23, 2010**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 29439 / September 23, 2010**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14067**

**In the Matter of**

**SIERRA FINANCIAL  
ADVISORS, LLC, MICHAEL  
E. EARL, and MICHAEL L.  
BREAKEY,**

**Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTION 8A OF THE  
SECURITIES ACT OF 1933, 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,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A CEASE-  
AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), 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 (“Investment Company Act”) against Sierra Financial Advisors, LLC (“SFA”), Michael E. Earl (“Earl”) and Michael L. Breakey (“Breakey”) (collectively, “Respondents”).

## II.

In anticipation of the institution of these proceedings, each of the Respondents has submitted an Offer of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(e), 203(f) and 203(k) of the Advisers Act, and Section 9(b) Investment Company Act, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

## III.

On the basis of this Order and Respondents’ Offers, the Commission finds<sup>1</sup> that:

### Summary

From 2004 through 2007, SFA, a registered investment adviser, and its principals, Michael E. Earl and Michael L. Breakey, used their discretionary authority to invest client funds in entities Earl and Breakey owned without disclosing their conflicts of interest and in contravention of statements in SFA’s Forms ADV. Earl then used the funds invested in these entities for undisclosed purposes, including the financing of other entities in which Earl and Breakey had interests. SFA failed to maintain required records documenting its clients’ investments and failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and rules thereunder. As a result of this conduct, SFA, Earl and Breakey violated the antifraud provisions of the Securities Act, the Exchange Act, and the Advisers Act, and violated or aided and abetted violations of other provisions of the Advisers Act.

### Respondents

1. Sierra Financial Advisors, LLC, a Kansas limited liability company based in Overland Park, Kansas, was formed by Earl in November 1997. SFA registered with the Commission as an investment adviser on October 11, 2002. According to its Form ADV Part I

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<sup>1</sup> The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

filing, as of May 4, 2009, SFA managed \$25.8 million for 137 clients. Throughout the relevant period, Earl and Breakey controlled SFA and were the only persons responsible for managing SFA client accounts.

2. Michael E. Earl, age 61, is a resident of Lee's Summit, Missouri. Earl has been a fifty percent owner and principal of SFA since it was formed.

3. Michael L. Breakey, age 64, is a resident of Olathe, Kansas. Breakey has been a fifty percent owner and principal of SFA since it was formed. Breakey acted as SFA's compliance officer since at least 2004 and signed SFA's Forms ADV.

### **Other Relevant Entities**

4. PPR Trust, LLC ("PPR Trust"), was a Kansas limited liability company formed by Earl in October 2001 which has been dissolved. Earl controlled PPR Trust, and both Earl and Breakey held membership interests in PPR Trust.

5. Southwinds Development MS, LLC ("Southwinds"), was a Mississippi limited liability company formed by Earl in February 2006 which has been dissolved. Earl controlled Southwinds and was its sole member.

### **Background**

6. According to SFA's Form ADV Part I filings, SFA managed \$25.8 million to \$93.4 million for 116 to 904 accounts from 2004 through 2009. Under the terms of SFA's investment management agreements, SFA, Earl, and Breakey typically had full discretion to direct transactions in client accounts. SFA was paid a fee based on a percentage of assets under management, and Earl and Breakey received compensation from SFA. SFA, Earl, and Breakey all acted as investment advisers for SFA's clients throughout the relevant period.

### **Investments in PPR Trust**

7. Earl formed PPR Trust in 2001 to make real estate investments and to provide funding and cash flow for other real estate ventures that he and Breakey owned and managed. Earl and Breakey funded PPR Trust by raising approximately \$2.2 million from sales of limited liability membership interests to 24 investors, nearly all of whom were SFA clients, between January 2004 and October 2007. Earl and Breakey used SFA's discretionary authority to invest client funds in PPR Trust.

8. Earl transferred a net of approximately \$1.74 million of the funds invested in PPR Trust to various other businesses that he and Breakey owned. For years, Earl directed these affiliated companies to pay other obligations but not to repay the purported loans from PPR Trust. Earl loaned the bulk of the remaining PPR Trust investor funds to companies run by friends or acquaintances. These loans also were not repaid. Earl also received \$5,000 from PPR Trust and directed transfers totaling \$7,500 from PPR Trust to SFA.

9. Earl and Breakey did not disclose to each SFA client whose funds they invested in PPR Trust that they had personal interests in this venture. Earl did not disclose to investors in PPR Trust his use of their funds to finance businesses in which he and Breakey held interests.

10. PPR Trust has been insolvent since approximately February 2008 and has been dissolved. Only three of the PPR Trust investors have received any return of their principal.

### **Investments in Southwinds**

11. Earl formed Southwinds in February 2006 to invest in residential and commercial real estate ventures in the Mississippi gulf region. Beginning in May 2006, Earl funded Southwinds with investments by SFA clients in notes that would purportedly pay 10% to 15% annually in interest, with terms of one or two years. Earl used SFA's discretionary authority to direct the investment of at least \$825,000 in Southwinds from at least eight SFA clients.

12. When managing Southwinds, Earl frequently transferred SFA client funds from Southwinds into his personal bank account and to other businesses. In total, Earl received approximately \$119,000 in direct payments from Southwinds. He also made net transfers of approximately \$439,000 from Southwinds to other businesses and properties in which he had an interest, including \$5,000 of net transfers to SFA. Earl used the bulk of the remaining funds to pay Southwinds' business expenses.

13. Earl did not disclose his ownership of Southwinds to each SFA client that he caused to invest in Southwinds notes. Earl also did not disclose to Southwinds investors his use of Southwinds' investor proceeds to fund his unrelated businesses and to pay his compensation.

14. Southwinds does not have any funds or operations and has been dissolved. It has not made a single payment pursuant to any of the notes it issued to SFA clients, and nearly all of the Southwinds notes are in default.

### **SFA's Compliance Environment**

15. Breakey became SFA's chief compliance officer in approximately 2004. His primary activity as SFA's chief compliance officer was to prepare, sign, and file SFA's Form ADV filings through a third party consultant.

16. From 2004 to 2009, SFA repeatedly misrepresented in its responses to Item 8 of its Form ADV Part I filings with the Commission that it and its related persons did not recommend securities to advisory clients in which SFA or a related person had a proprietary interest and did not recommend securities to advisory clients for which SFA or a related person served as a manager. Breakey was responsible for the content of, and signed, SFA's Form ADV Part I filings over the relevant period. Statements in SFA's Form ADV Part II, which SFA provided to its clients, also failed to disclose Earl and Breakey's practices in placing client funds with related entities.

17. SFA did not have policies and procedures in place reasonably designed to prevent violations of the Advisers Act and rule thereunder. SFA's compliance manual recited general legal requirements applicable to investment advisers but did not contain procedures designed to specifically address SFA's business operations and investment practices. For example, it did not address the particular risks created by SFA's investing client assets in affiliated entities that, in turn, invested in businesses in which Earl and Breakey had an interest. SFA and Breakey also failed to effectively implement the policies that are contained in SFA's compliance manual. Breakey did not perform the required annual reviews of SFA's policies and procedures to assess their adequacy or the effectiveness of their implementation.

18. Although SFA's client accounts were maintained by qualified custodians, SFA retained custody of client funds and securities because it had discretionary authority to withdraw and obtain possession of assets held in these accounts. SFA was therefore required to keep various books and records relating to securities held by its clients pursuant to Advisers Act Rule 204-2(b), including records reflecting the ownership of and transactions in PPR Trust and Southwinds securities. However, SFA did not maintain adequate records showing the purchases, sales, receipts, and deliveries of PPR Trust and Southwinds securities; separate ledger accounts for each client showing comparable information and the date and price of each purchase and sale of PPR Trust and Southwinds securities; or records for each PPR Trust and Southwinds security showing the names of clients with interests, the amounts SFA invested on their behalf in PPR Trust and Southwinds, and the location of each security. Earl and Breakey were responsible for maintaining records for the investments in PPR Trust and Southwinds that they directed.

19. Breakey participated in or was aware of SFA clients' investments in PPR Trust and Southwinds. Although Breakey was responsible for overseeing SFA's compliance function, he did not assess SFA's compliance with record keeping requirements, or conduct any other diligence, relating to investments by SFA clients in PPR Trust and Southwinds.

### **Respondents' Violations**

20. As a result of the conduct described above, SFA, Earl and Breakey willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase, offer, or sale of securities.

21. SFA, Earl and Breakey were each investment advisers because they, in return for compensation, engaged in the business of advising others as to the advisability of investing in, purchasing, or selling securities. As a result of the conduct described above, SFA, Earl and Breakey willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

22. As a result of the conduct described above, SFA willfully violated, and Breakey willfully aided and abetted and caused, SFA's violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and rules

promulgated thereunder, and to review no less frequently than annually the adequacy of such policies and procedures and the effectiveness of their implementation.

23. As a result of the conduct described above, SFA willfully violated, and Earl and Breakey willfully aided and abetted and caused, SFA's violations of Section 204 of the Advisers Act and Rules 204-2(b)(1), 204-2(b)(2) and 204-2(b)(4) thereunder, which require investment advisers to make and keep certain books and records relating to clients' securities transactions.

24. As a result of the conduct described above, SFA and Breakey willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

### **Disgorgement and Civil Penalties**

25. SFA has submitted a sworn Statement of Financial Condition dated January 30, 2010 and other evidence and has asserted its inability to pay disgorgement plus prejudgment interest or a civil penalty.

26. Earl has submitted a sworn Statement of Financial Condition dated January 30, 2010 and other evidence and has asserted his inability to pay disgorgement plus prejudgment interest or a civil penalty.

27. Breakey has submitted a sworn Statement of Financial Condition dated March 1, 2010 and other evidence and has asserted his inability to pay a civil penalty.

## **IV.**

In view of the foregoing, the Commission deems it appropriate, in the public interest and for the protection of investors to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(e), 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 SFA cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 204, 206(1), 206(2), 206(4) and 207 of the Advisers Act and Rules 204-2(b)(1), 204-2(b)(2), 204-2(b)(4) and 206(4)-7 promulgated thereunder.

B. Respondent Earl cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Sections 204, 206(1) and 206(2) of the Advisers Act and Rule 204-2(b)(1), 204-2(b)(2) and 204-2(b)(4) promulgated thereunder.

C. Respondent Breakey cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Sections 204, 206(1), 206(2), 206(4) and 207 of the Advisers Act and Rule 204-2(b)(1), 204-2(b)(2), 204-2(b)(4) and 206(4)-7 promulgated thereunder.

D. Respondent SFA's registration as an investment adviser be, and hereby is, revoked.

E. Respondent Earl be, and hereby is, barred from association with any 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.

F. Respondent Breakey be, and hereby is, barred from association with any 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.

G. Any reapplication for association by Respondents 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 Respondents, 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.

H. Respondent SFA shall pay disgorgement of \$12,500 and prejudgment interest of \$2,099.29, but that payment of such amount is waived and the Commission is not imposing a civil penalty against SFA based upon SFA's sworn representations in its Statement of Financial Condition dated January 30, 2010 and other documents submitted to the Commission.

I. Respondent Earl shall pay disgorgement of \$124,000 and prejudgment interest of \$20,756.35, but that payment of such amount is waived and the Commission is not imposing a civil penalty against Earl based upon his sworn representations in his Statement of Financial Condition dated January 30, 2010 and other documents submitted to the Commission.

J. Based upon Respondent Breakey's sworn representations in his Statement of Financial Condition dated March 1, 2010 and other documents submitted to the Commission, the Commission is not imposing a penalty against Breakey.

K. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondents SFA or Earl provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement, pre-judgment interest and the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondents SFA or Earl was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondents SFA and Earl may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement, interest and payment of a penalty should not be ordered; (3) contest the amount of disgorgement and interest to be ordered or the imposition of the maximum civil penalty available under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

L. The Division may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent Breakey provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent Breakey was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent Breakey may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

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, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisors 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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