

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61278 / January 4, 2010

INVESTMENT ADVISERS ACT OF 1940
Release No. 2970 / January 4, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13559

In the Matter of

**WILLIAM KEITH
PHILLIPS,**

Respondent.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS
AND A CEASE-AND-DESIST ORDER
PURSUANT TO SECTIONS 203(f)
AND 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940 AND
SECTION 15(b)(6) OF THE
SECURITIES EXCHANGE ACT OF
1934**

I.

On July 20, 2009, the Securities and Exchange Commission (“Commission”) instituted public administrative and cease-and-desist proceedings pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) and Section 15(b)(6) of the Securities Exchange Act of 1934 (“Exchange Act”), against William Keith Phillips (“Respondent” or “Phillips”).

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 Phillips and the subject matter of these proceedings, which are admitted, Phillips consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(f)

and 203(k) of the Investment Advisers Act of 1940 and Section 15(b)(6) of the Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

A. SUMMARY

From 2000 through at least April 2006 (the “relevant time period”), Respondent worked as a financial adviser at Morgan Stanley & Co. Incorporated, which provided investment advisory services to clients through a subdivision of its Consulting Services Group called Investment Consulting Services (“ICS”). In providing investment advisory services, Morgan Stanley assisted clients in creating an investment profile and objectives and in selecting money managers on whom the firm had conducted due diligence to manage clients’ assets.

During the relevant time period, Morgan Stanley’s disclosure materials described the advisory services it provided which included assisting clients in identifying money managers to manage clients’ assets. Morgan Stanley disclosed the detailed due diligence process it followed to select and approve money managers for participation in the firm’s managed account program. According to its disclosure materials, Morgan Stanley financial advisers selected money managers from this approved list of managers to recommend to clients based on the client’s investment profile and objectives.

Contrary to Morgan Stanley’s disclosures, Respondent recommended to certain advisory clients of Morgan Stanley’s Nashville, Tennessee branch office (“Nashville Advisory Clients”) certain money managers (“Manager A”, “Manager B”, and Manager C”) (collectively, “the Managers”) who were not approved for participation in Morgan Stanley’s advisory programs and had not been subject to the firm’s due diligence review. This fact was not disclosed to the Nashville Advisory Clients. Further, Respondent had undisclosed relationships with the Managers from which Respondent and Morgan Stanley received substantial brokerage commissions and/or fees. These facts represented a conflict of interest which was not disclosed to the Nashville Advisory Clients.

As a result, Respondent aided and abetted and caused Morgan Stanley’s violations of Section 206(2) of the Advisers Act.

B. RESPONDENT

William Keith Phillips, age 50, of Nashville, Tennessee, was employed as a Senior Institutional Consultant in Morgan Stanley’s Nashville branch office from 2000 until 2006. In April 2006, Morgan Stanley permitted Respondent to resign. During the relevant time period, Respondent worked as an investment adviser representative as well as a registered

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

broker-dealer representative licensed with FINRA. In that capacity, Respondent serviced individual retail advisory clients as well as several institutional brokerage customers. Respondent was a member of Morgan Stanley's Chairman's Club, comprised of the firm's top 175 financial advisers, and ranked among the firm's top 25 financial advisers in revenue. At the time of his resignation, Respondent serviced approximately 90 advisory clients and about 2000 brokerage accounts.

C. FACTS

The Morgan Stanley Vision Programs

Vision I and Vision III were among the types of accounts Morgan Stanley offered its advisory clients. Morgan Stanley described the Vision I and Vision III programs and its due diligence process in a disclosure statement and in its Form ADV, Part II, filed with the Commission.

In the Vision I program, Morgan Stanley assisted clients in developing investment objectives and in selecting money managers from a list of money managers, approved to participate in the Vision I program, to manage clients' assets. To become an approved manager for the Vision I program, a money manager had to pass Morgan Stanley's due diligence review. As it was described in its disclosure statements, the due diligence review included, among other things, on-site interviews of the manager's personnel and an evaluation of each manager's performance as compared to standard relative indices, as well as compared to the performance of managers following similar investment styles. Managers were further evaluated by Morgan Stanley on their investment strategy and on the strength and reputation of their organizations, such as the qualifications of management, their administrative capabilities, and their compliance with regulatory requirements. Final selection of managers for the Vision I program was subject to review and approval by a Morgan Stanley senior management due diligence committee.

Morgan Stanley provided custody, execution, and performance reporting for clients and also performed ongoing due diligence and monitoring of all managers selected to participate in the Vision I program. The ongoing monitoring of approved managers, as described in disclosure materials, included periodic reevaluation of the manager by Morgan Stanley, including reviews of performance, assets under management, personnel changes and account turnover to determine whether the manager should remain eligible for participation in the Vision I program.

Morgan Stanley described the Vision I program as follows:

Each Vision account is individually managed by one or more investment managers selected by the client from a group of investment managers specifically chosen by the ICS Department to participate in the Vision program.

* * *

After receipt of appropriate information from and about the client, Morgan Stanley identifies several investment managers deemed suitable for the client from among those participating in the Vision program.

The Vision III program was designed to accommodate advisory clients who came to Morgan Stanley from another advisory firm and sought services under Morgan Stanley's Vision I program, but who had a pre-existing relationship with a money manager who was not approved for the Vision I program and consequently, had not been subject to Morgan Stanley's due diligence review. Under Vision III, clients retained their relationship with the non-approved money manager. In the Vision III program, Morgan Stanley provided some of the same services as in the Vision I program (custody, execution, performance reporting); however, Morgan Stanley provided no due diligence on or ongoing monitoring of the non-approved money managers with which the client had a pre-existing relationship.

Morgan Stanley described the Vision III program as follows:

Certain clients may wish to receive some of Registrant's services under the Vision program but utilize an investment manager that does not participate in the Vision program. For such clients, Registrant provides an alternate version of the Vision program, Morgan Stanley Vision III. Except for the investment manager review and monitoring services described above, Vision III is the same in all material respects to the Vision program. Investment managers selected by clients in Vision III have not been approved by Morgan Stanley to participate in Vision, and are not monitored and evaluated by Morgan Stanley like managers in Vision.

Respondent Aided and Abetted and Caused Morgan Stanley's Violations of Section 206(2) of the Advisers Act

Under Section 206(2) of the Advisers Act, an investment adviser may not make materially false and misleading statements and must disclose all material potential conflicts of interest. During the relevant period, Respondent made misrepresentations about the firm's money manager recommendation process to certain of his Nashville Advisory Clients and failed to ensure that the conflicts of interest inherent in those recommendations were disclosed. Morgan Stanley thereby violated and Respondent aided and abetted and caused Morgan Stanley's violations of Section 206(2) of the Advisers Act.

As reflected above, Morgan Stanley's disclosure statement, in addition to its client services agreement, stated that Morgan Stanley would identify for clients of the Vision I program suitable money managers on whom the firm had conducted due

diligence and ongoing monitoring, and who were specifically selected to participate in the Vision I program. Respondent knew or was reckless in not knowing that these were the terms of the Vision I program in which certain of his clients participated.

Contrary to the representations in the disclosure statement, during the relevant time period, Respondent on several occasions, recommended to his Vision I advisory clients Money Manager A, Money Manager B, and Money Manager C, who were not approved to participate in the Vision I program. Respondent knew or was reckless in not knowing that the Managers were not approved to participate in the Vision I program and had not been subject to Morgan Stanley's due diligence process. It was not disclosed to these clients that the money managers recommended to them by the Respondent were not approved for participation in the Vision I program.

In addition, Respondent had undisclosed relationships with Money Manager A, Money Manager B and Money Manager C from which both he and Morgan Stanley received financial benefits. First, Morgan Stanley, and consequently Respondent, received brokerage commissions from the Managers for trading on behalf of the Managers' institutional clients who were not clients of Morgan Stanley and whose assets were custodied outside of Morgan Stanley. During the relevant period, these three money managers generated at least \$3.3 million in brokerage commissions to Morgan Stanley. Respondent received a portion of those commissions. Second, Manager A and Manager C caused certain of their clients to open advisory accounts with Respondent, in some instances moving assets from another custodian. Respondent and Morgan Stanley were compensated from these advisory accounts through either an asset fee or commissions. During the relevant time period, Manager A and Manager C generated at least \$200,000 in advisory fees for Morgan Stanley. Respondent received a portion of these fees.

When Respondent recommended the three unapproved money managers to advisory clients, the clients were not informed that Respondent and Morgan Stanley had other relationships with the recommended money managers from which both Morgan Stanley and Respondent received financial benefits. These undisclosed financial benefits created an actual or potential conflict of interest which should have been disclosed so that the client could evaluate whether Respondent's recommendations were disinterested.

Based on the above, Respondent knowingly or recklessly made misrepresentations about the manager recommendation process to his advisory clients and failed to ensure that the actual or potential conflicts of interest inherent in his recommendation of the Managers were disclosed to those clients. As a consequence, Respondent willfully² aided and abetted and caused Morgan Stanley's violation of Section 206(2) of the Advisers Act.

² A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)).

IV.

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

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

- A. Respondent Phillips cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act;
- B. Respondent Phillips be, and hereby is, suspended from association with any investment adviser for a period of four (4) months from the date of this Order;
- C. Respondent Phillips be, and hereby is suspended from association with any broker or dealer for a period of four (4) months from the date of this Order; and
- D. Respondent Phillips shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$80,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies William Keith Phillips as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Laura B. Josephs, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

By the Commission.

Elizabeth M. Murphy
Secretary