In the Matter of CLARIDEN ASSET MANAGEMENT (NEW YORK) INC., and MAI N. POGUE, Respondents

Admin. Proc. File No. 3-8747

SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISORS ACT OF 1940, Release No. 1504

July 10, 1995

TEXT:

ORDER INSTITUTING PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (the "Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be instituted, pursuant to Sections 203(e) and (k) of the Investment Advisers Act of 1940 ("Advisers Act"), against Clariden Asset Management (New York) Inc. ("Clariden"), and a cease-and-desist proceeding be instituted, pursuant to Section 203(k) of the Advisers Act, against Mai N. Pogue ("Pogue") (Clariden and Pogue sometimes are collectively referred to as "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement ("Offers") which the Commission has determined to accept. Solely for the purpose of this proceeding, and any other proceedings brought by or on behalf of the Commission or in which the Commission is a party, prior to a hearing pursuant to the Commission's Rules of Practice, 17 C.F.R. § 201.1 et. seq., and without admitting or denying the findings set forth below, except as to jurisdiction, which is admitted, Respondents consent to the issuance of this Order Instituting Proceedings, Making Findings, and Imposing Remedial Sanctions ("Order").

Accordingly, IT IS ORDERED that proceedings, pursuant to Sections 203(e) and (k) of the Advisers Act, be, and hereby are, instituted against Respondents.

III.

On the basis of this Order and the Offers, the Commission finds the following:

Respondents

A. Clariden is, and at all relevant times was, an investment adviser registered with the Commission pursuant to Section 203(c) of the Advisers Act. Clariden is wholly owned by Clariden Bank, which is indirectly owned by CS Holding, an international financial services holding company. As of September 30, 1993, Clariden managed, on a discretionary basis, approximately $ 196 million in assets for thirty-nine clients, including individuals, pension and profit-sharing plans, and other entities.

B. Pogue is, and at all relevant times was, the President and Chief Investment Officer of Clariden. In those capacities, Pogue determined investment strategies for Clariden's advisory clients, and directly and indirectly effected transactions for those advisory clients.

The Violations of Section 206(3) of the Advisers Act

C. From June 1991 through October 1993, Clariden effected 1,463 purchases and sales of securities on behalf of its investment advisory clients through a broker-dealer registered with the Commission, the majority interest in which is indirectly owned by CS Holding (the "Affiliated Broker-Dealer"), which executed the transactions on a principal basis.

D. Although Clariden generally obtained written, blanket consents by its clients to the execution of securities transactions through affiliates which made markets in such securities, Clariden did not advise its clients in writing of the capacity in which the Affiliated Broker-Dealer acted in each pertinent transaction before the completion of the transaction, nor did Clariden seek or obtain its clients' consent to the use of the Affiliated Broker-Dealer in each such transaction. Blanket consents do not satisfy the requirements of Section 206(3) of the Advisers Act.

E. In effecting the principal transactions between its advisory clients and the Affiliated Broker-Dealer, Clariden failed to comply with the policy and procedure set forth in Clariden's compliance manual in effect at the time, which expressly prohibited Clariden from effecting transactions for its advisory clients through the Affiliated Broker-Dealer on a principal basis.

F. Pogue, directly or indirectly, placed the orders for the 1,463 purchases and sales of securities on behalf of Clariden's advisory clients, as described in paragraph C. above, with the Affiliated Broker-Dealer.

G. Pogue knew that the orders referred to in paragraph F. above would be executed by the Affiliated Broker-Dealer on a principal basis. Pogue further knew or should have known that specific client consents to the capacity in which the Affiliated Broker-Dealer effected each such transaction had not been obtained before the completion of each transaction.

H. Pogue engaged in the conduct described in paragraph F. above, although she knew or should have known that such conduct failed to comply with the policy and procedure set forth in Clariden's compliance manual, as described in paragraph E. above.

I. Section 208(d) of the Advisers Act provides that it is unlawful for any person indirectly, or through or by any other person, to do any act or thing which it would be unlawful for such person to do directly under the provisions of the Advisers Act.

J. For the purposes of Section 206(3) of the Advisers Act, Clariden indirectly acted as the principal in the transactions described in paragraph C. above, because Clariden is affiliated, through common ownership, with the Affiliated Broker-Dealer, as described in paragraphs A. and C. above.

K. As a result of the foregoing, Clariden willfully violated Section 206(3) of the Advisers Act. n1

n1 "Willfully," as used in this Order, means intentionally committing the act which constitutes the violation. There is no requirement that the actor also be aware that he is violating the federal securities laws. See Steadman v. SEC, 603 F.2d 1126 (2d Cir.), rev'd on other grounds, 450 U.S. 91 (1981); Arthur Lipper Corp. v. SEC, 547 F.2d 171, 180 (2d Cir. 1976), cert. denied, 434 U.S. 1009 (1978); Tager v. SEC, 344 F.2d 5 (2d Cir. 1965).

L. As a result of the foregoing, Pogue caused Clariden to violate Section 206(3) of the Advisers Act.

IV.

Clariden represents that it has reviewed and revised its compliance policies and procedures and has adopted and implemented revised compliance policies and procedures reasonably designed to prevent and detect violations of Section 206(3) of the Advisers Act, which are set forth at pages 2-4 and 24-28 of Clariden's current compliance manual, a copy of which has been provided to the Commission's staff.

V.

Based on the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions specified in Respondents' Offers, as set forth below.

Accordingly, IT IS HEREBY ORDERED that:

A. Clariden, effective immediately, cease and desist from committing or causing any violation, and from committing or causing any future violation, of Section 206(3) of the Advisers Act;

B. Pogue, effective immediately, cease and desist from causing any violation, and from causing any future violation, of Section 206(3) of the Advisers Act;

C. Clariden, within ten days of the issuance of this Order, pay a civil money penalty in the amount of $ 50,000 to the United States Treasury. Such payment shall be: (1) made by United States postal money order, certified check, bank cashier's check, or bank money order; (2) made payable to the Securities and Exchange Commission; (3) hand-delivered to the Comptroller, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549; and (4) submitted under cover letter which identifies Clariden as a Respondent in this proceeding, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Wayne M. Carlin, Assistant Regional Director, Northeast Regional Office, U.S. Securities and Exchange Commission, 7 World Trade Center, 13th Floor, New York, NY 10048; and

D. Clariden maintain the revised Section 206(3) procedures referred to at Paragraph IV. above or substantially similar procedures reasonably designed to prevent and detect violations of Section 206(3) of the Advisers Act.

BY THE COMMISSION