UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
RELEASE NO. 1584 / September 27, 1996

ADMINISTRATIVE PROCEEDING
FILE NO. 3-9107

In the Matter of PATRICIA OWEN-MICHEL Respondent

ORDER INSTITUTING PUBLIC PROCEEDINGS PURSUANT TO SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission deems it appropriate and in the public interest that administrative and cease-and- desist proceedings be instituted against Patricia Owen-Michel ("Respondent"), pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act").

In anticipation of the institution of these proceedings, 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 proceeding brought by or on behalf of the Commission or in which the Commission is a party, and without admitting or denying any of the findings contained herein, except as to the jurisdiction of the Commission over her and over the subject matter of these proceedings, and as to the findings contained in Section II paragraphs 1 and 2, which are admitted, Respondent consents to the entry by the Commission of this Order Instituting Public Proceedings Pursuant to Sections 203(f) and 203(k) Advisers Act, Making Findings and Imposing Remedial Sanctions and Cease and Desist Order ("Order").

Accordingly, IT IS HEREBY ORDERED that proceedings against Respondent be and hereby are instituted.

II.

On the basis of this Order and the Offer, the Commission finds that:

1. From at least June 1978 to May 1995, Respondent was President and Chief Executive Officer of Securities Research & Management, Inc. ("SRM").

2. SRM was registered with the Commission as an investment adviser from June 1978 until it voluntarily withdrew its registration in May 1995.-[1]-

3. From at least July 1994 to May 1995, SRM was a quantitative money management firm that used a computer based statistical model to select stocks and mutual funds, and to generate trading signals. SRM had approximately 450 clients and managed approximately $45 million.

4. From at least July 1994 to May 1995, SRM advertised its services by use of a promotional package containing, among other things, (i) a copy of a newspaper article containing quotes of an SRM client describing his investment experience; (ii) a copy of certain newspaper articles repeating statements made by principals of SRM regarding SRM's investment performance; and (iii) various charts and graphs depicting hypothetical performance of an investment model applied retroactively

(collectively, the "promotional package"). SRM routinely provided the promotional package to prospective retail clients. Respondent reviewed and approved the use of the promotional package.

Testimonial

5. SRM's promotional package included a copy of a newspaper article quoting an SRM client describing his investment experience with SRM. The article quotes the client as stating that "he has averaged a 20 percent annual return on investment since joining SRM."

Self-Laudatory Statements

6. SRM's promotional package also included a copy of two newspaper articles quoting or paraphrasing self-laudatory statements about SRM's investment performance. One article, published in 1993, repeats a claim Respondent made to the author in which she stated that many people had become her clients ten years previously and had since seen their capital increase ten-fold. Another article, published in 1988, repeats a similar claim made by Respondent's father, who was SRM's Chairman of the Board. These statements are misleading in that, among other things, they tend to suggest that investment experience was typical of SRM's clients for that period, when, in reality, SRM's clients experienced, on average, materially lower investment results. In fact, the average performance of SRM clients during these two ten year periods was approximately 50% and 25% lower, respectively.

Advertising for SRM's Statistical Techniques for Asset Reallocation Program

7. Beginning in July 1994, SRM offered its clients an opportunity to participate in its Statistical Techniques for Asset Reallocation ("STAR") investment program. The STAR program was advertised as an asset allocation program that would permit SRM quickly to switch assets invested in one or more types of funds (e.g., United States equities and precious metals) to one or more different types of funds (e.g., bonds and international equities). SRM's STAR program was divided into three portfolios in which clients could participate, denominated as "Conservative," "Moderate," and "Aggressive," and it adapted its statistical model to those portfolio strategies.

8. SRM included materials advertising its STAR program in its promotional package.

9. SRM's promotional package included a graph captioned "Asset Class Return" graph and a bar chart captioned "Average Yearly Allocation Percentages." The "Asset Class Return" graph covers the period from January 1986 through approximately March 1994 and purports to illustrate the superior performance of the STAR program relative to an investment in only one type of asset, e.g., bonds or metals. The "Average Yearly Allocation Percentages" bar chart purports to show the "pro-forma percentage of holdings of each asset class from 1986-1993" as selected by the STAR model, i.e., how a STAR program client's hypothetical portfolio would have been allocated among various asset types. An accompanying explanation further states that the asset allocation shown in the bar chart "produced a pro-forma average annual return of 18.8%."

10. The "Asset Class Return" graph and the "Average Yearly Allocation Percentages" bar chart fail to disclose, among other things:

> (a) that SRM only began offering its STAR program after the performance period depicted by the "Asset Class Return" graph and the "Average Yearly Allocation Percentages" bar chart, i.e., the advertised performance results do not represent the results of actual trading using client assets, but were achieved by means of the retroactive application of a model designed with the benefit of hindsight;
>
> (b) all material economic and market factors that might have had an impact on SRM's decision-making when using the STAR model to actually manage clients' money;

(c) whether the advertised performance reflects the deduction of advisory fees, brokerage or other commissions, mutual fund exchange fees, and any other expenses that a client would have paid; and

(d) the potential for loss as well as for profit.

11. SRM's promotional package also included three separate one page charts individually labeled "Conservative Portfolio," "Moderate Portfolio," and "Aggressive Portfolio" (collectively, the "Portfolio Charts"). Each of the Portfolio Charts presents performance results from a "pro-forma study of asset allocation" from December 31, 1985 through March 30, 1994. Each of the Portfolio Charts further purports to show quarterly and annual returns and the respective dollar earnings, assuming an initial investment of $100,000. The Portfolio Charts state that the average annual net returns from the use of these strategies are 16.16%, 17.25% and 18.08%, respectively.

12. The Portfolio Charts fail to disclose, among other things:

(a) that SRM only began offering its STAR program after the performance period covered by the Portfolio Charts, i.e., the advertised performance results do not represent the results of actual trading using client assets, but were achieved by means of the retroactive application of a model designed with the benefit of hindsight;-[2]-

(b) all material economic and market factors that might have had an impact on SRM's decision-making when using the STAR model to actually manage clients' money;

(c) whether the advertised performance reflects the deduction of advisory fees, brokerage or other commissions, mutual fund exchange fees, and any other expenses that a client would have paid; and

(d) the potential for loss as well as for profit.

13. Finally, SRM's promotional package included a one page chart captioned "Benefit of Fund Selection." This chart represents "a pro-forma study of asset allocation," and shows the hypothetical performance of assets allocated among certain mutual funds and treasury bills from April 8, 1983 through July 2, 1992.

The chart concludes that "[i]nvesting $100,000 with SRM would have grown to $506,000", whereas the same investment, "using the S&P . . . would only have grown to $368,000."

14. The "Benefit of Fund Selection" chart fails to disclose, among other things:

(a) that SRM only began offering its STAR program after the performance period covered by the "Benefit of Fund Selection" chart, i.e., the advertised performance results do not represent the results of actual trading using client assets, but were achieved by means of the retroactive application of a model designed with the benefit of hindsight;-[3]-

(b) all material economic and market factors that might have had an impact on SRM's decision-making when using the STAR model to actually manage clients' money;

(c) whether the advertised performance reflects the deduction of advisory fees, brokerage or other commissions, mutual fund exchange fees, and any other expenses that a client would have paid;

(d) the potential for loss as well as for profit;

(e) that SRM had not actually utilized the funds listed in the "Benefit of Fund Selection" chart; and

(f) all other material facts relevant to the comparison between the STAR program and the S&P.

Legal Findings

15. From at least July 1994 to May 1995, Respondent willfully aided and abetted and caused violations of Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(1) promulgated thereunder, in that she, as President and Chief Executive Officer of SRM, aided and abetted and caused SRM, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to engage in any act, practice, or course of business which was fraudulent, deceptive, or manipulative by, directly or indirectly, publishing, circulating or distributing advertisements which referred, directly or indirectly, to any testimonial of any kind concerning SRM or concerning any advice, analysis, report or other service rendered by SRM. As part of the aforesaid conduct, Respondent aided and abetted and caused SRM to engage in acts and practices described above in Sections II.4.(i) and II.5.

16. From at least July 1994 to May 1995, Respondent willfully aided and abetted and caused violations of Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) promulgated thereunder, in that she, as President and Chief Executive Officer of SRM, aided and abetted and caused SRM, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly to engage in any act, practice, or course of business which was fraudulent, deceptive, or manipulative by, directly or indirectly, publishing, circulating or distributing any advertisement which contained any untrue statement of a material fact, or which was otherwise false and misleading. As part of the aforesaid conduct, Respondent aided and abetted and caused SRM to engage in acts and practices described above in Sections II.4.(ii), II.4.(iii) and II.6 - II.14.

III.

On the basis of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions and cease-and-desist order specified in the Offer submitted by Respondent.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. Pursuant to Section 203(k) of the Advisers Act, Respondent shall cease and desist from committing or causing any violation or future violation of Section 206(4) of the Advisers Act and Rules 206(4)-1(a)(1) and 206(4)-1(a)(5) promulgated thereunder;

2. Pursuant to Section 203(f) of the Advisers Act, Respondent is hereby censured; and

3. Respondent, within fifteen (15) days from the entry of the Order, pursuant to Section 203(i) of the Advisers Act, shall pay an administrative penalty in the amount of twenty-five thousand dollars ($25,000.00) 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) transmitted to the Comptroller, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 2-5, Washington, D.C. 20549; and (4) submitted under cover letter that specifies the respondent in this proceeding, and the Commission's case number, a copy of which cover letter and money order or check shall be sent to Glenn S. Gordon, Securities and Exchange Commission, Southeast Regional Office, 1401 Brickell Avenue, Suite 200, Miami, Florida 33131.

By the Commission.

Jonathan G. Katz

Secretary

FOOTNOTES

-[1]- SRM was dissolved on August 25, 1995 by the State of Florida.

-[2]- Each of the Portfolio Charts states, in small type, that "[b]ecause markets are influenced by a variety of changing conditions, future performance based upon prior results, or pro-forma analysis, cannot be guaranteed." This disclosure is insufficient to dispel the misleading suggestion of the advertisement that the advertised performance results represented the results of actual trading. Cf. Jesse Rosenblum, Investment Advisers Release No. 913 (May 17, 1984) (investment adviser's advertisement containing materially misleading statements "not cured by the disclaimers buried in the [smaller print] text" of the advertisement).

-[3]- The "Benefit of Fund Selection" chart contains the same disclosure language described in footnote 2. For the reason therein described, the disclosure language is insufficient to dispel the misleading suggestion of the advertisement that the advertised performance results represented the results of actual trading.