

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 1747 / August 19, 1998

ADMINISTRATIVE PROCEEDING File No. 3-9679

In the Matter of WILLIAM J. FERRY Respondent.

ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST FERRY PROCEEDING PURSUANT TO SECTIONS 203(f) and 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that a public administrative and cease-and-desist proceeding pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), be, and hereby is, instituted against William J. Ferry ("Ferry" or "Respondent").

II.

In anticipation of the institution of this proceeding, the Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Solely for the purpose of this proceeding and any other proceeding brought by or on behalf of the Commission or to which the Commission is a party, and prior to a hearing pursuant to the Commission's Rules of Practice, 17 C.F.R. § 201.100 et seq., and without admitting or denying any findings contained herein, except as to the jurisdiction of the Commission over him and over the subject matter of this proceeding, the Respondent consents to the issuance of this Order Instituting Public Administrative and Cease-and-Desist Proceeding Pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Order") containing the findings set forth in Section III. below and imposing sanctions as set forth in Section IV. below.

III.

FINDINGS

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

RESPONDENT

A. Ferry, age 55, during all relevant times was associated with an investment adviser registered with the Commission (the "Adviser") as its president, 92% shareholder, and only employee who performed investment advisory functions.

BACKGROUND

B. Since the late 1960s, Ferry has developed systems designed to provide mutual fund investors with market timing signals, i.e., signals indicating the best time to switch assets from a money market fund to an equity or bond fund, or vice versa. Ferry's systems are computer-based mathematical formulas which calculate various data in an attempt to predict positive and negative market events. Ferry develops and modifies his systems using "backtesting," a process whereby he tests the value of a system change by applying historical data and determining if such change

produces more or less favorable hypothetical results.[1] Ferry has not calculated aggregate actual client performance results since 1988.

C. From the Adviser's inception through September 1997, the Adviser provided market timing services for its clients based on Ferry's timing systems. In or about early 1997, in connection with an office move and computer systems changes, most client books and records previously maintained by the Adviser were destroyed. Due to the Adviser's failure to maintain these books and records, there is no record of how many clients the Adviser actually had during any period prior to 1997.

D. At the beginning of 1997, the Adviser had only one client, an investment adviser (the "principal adviser") for which the Adviser acted as a sub-adviser. Under the sub-advisory contract, which was in effect from 1990 through September 1997, the Adviser would provide timing signals to the principal adviser, and the principal adviser would use the signals in determining whether to switch its clients' assets between funds.

E. Under the sub-advisory contract, the principal adviser agreed to pay the Adviser \$5,000 per month for assets managed by the principal adviser under the timing program of up to \$60 million. The highest amount of assets under management by the principal adviser under the timing program was approximately \$23.96 million, in October 1993. In September 1997, the amount under management was approximately \$6.83 million.

THE FALSE FORM ADV FILINGS

F. Ferry prepared and filed the Adviser's Form ADV filings at all relevant times. On July 7, 1997, the Adviser filed a Form ADV-T.[2] This filing inaccurately stated that the Adviser had \$160 million under management and was adviser to a registered investment company. In fact, the Adviser had less than \$7 million under management and was not an adviser to a registered investment company.

G. On December 11, 1995, the Adviser filed an amended Form ADV which inaccurately represented, among other things, that as of December 31, 1994, the Adviser had 40 clients and \$60 million under management. In fact, the Adviser had substantially fewer clients and assets under management. Also in this Form ADV, the question asking whether an officer, director, or person owning 10% or more of applicant's securities had filed for bankruptcy was answered "no." In fact, Ferry had filed for personal bankruptcy on March 30, 1994.

H. The misstated and omitted facts referenced in Paragraphs F. and G. above were material because there is a substantial likelihood that a reasonable investor would consider the information important to an investment decision. Thus, Ferry willfully violated Section 207 of the Advisers Act.

MISLEADING PERFORMANCE ADVERTISING

I. From September 1997 through December 1997, the Adviser maintained an Internet Web site. The site advertised for subscribers to market timing services based on Ferry's timing systems. A subscription entitled a subscriber to receive by e-mail the Adviser's timing signals.

J. The Web site promoted the market timing services by presenting hypothetical, backtested performance results of three of Ferry's timing systems: two bond systems and an equity system. The performance results were presented in various graphs and tables which showed that an investment which followed the respective timing systems would have significantly outperformed major market indices. For example, one table showed that a hypothetical investment from 1971 to date using Ferry's equity timing signals would have resulted in a cumulative return of 67,545%, while the same initial investment which merely tracked the NYSE composite index would have resulted in a return of only 891%. This data was also presented in graph form. There were 15 different graphs presented on the Web site. While some Web site pages stated that performance

results were hypothetical, none of the graphs disclosed that the performance results were hypothetical rather than based on actual performance.

K. The Web site also failed to state or describe: that Ferry's timing systems changed materially during the time period portrayed; the inherent limitations of the process which produced such results (e.g., that the results may not reflect the impact that material economic and market factors might have had on the adviser's decision-making if the adviser were actually managing client money); or that for part of the period portrayed, the Adviser's clients had actual investment results materially lower than the results portrayed in the Web site employing a similar investment strategy.[3]

L. By failing to disclose the facts described in Paragraphs J. and K. above, Ferry, who was solely responsible for preparing and publishing the advertising, knew, or was at least reckless in not knowing, that the advertising was misleading. Thus, Ferry willfully aided and abetted and caused the Adviser's violations of Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder.

BOOKS AND RECORDS

M. As of October 1997, the Adviser could not produce the following records for periods prior to January 1, 1996: general ledgers; memoranda of orders given and received for the purchase or sale of securities; written communications sent and received relating to the Adviser's business; and written agreements entered into with clients. Thus, Ferry, who controlled the Adviser during all relevant times, willfully aided and abetted and caused the Adviser's violations of Section 204 of the Advisers Act and Rules 204-2(a)(2), 204-2(a)(3), 204-2(a)(7), and 204-2(a)(10) thereunder.

IV.

Based on the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions set forth in the Offer submitted by Respondent.

Accordingly, IT IS HEREBY ORDERED that:

A. Ferry shall be censured.

B. Ferry shall cease and desist from committing or causing any violation and any future violation of Sections 204, 206(4) and 207 of the Advisers Act and Rules 204-2(a)(2), 204-2(a)(3), 204-2(a)(7), 204-2(a)(10), and 206(4)-1(a)(5) thereunder.

C. Ferry shall pay, within 30 days of the entry of this Order, a civil money penalty in the amount of \$5,000 to the United States Treasury. 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 Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under a cover letter that identifies William J. Ferry as a Respondent in these proceedings, and the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Ronald E. Wood, Assistant Regional Director, Pacific Regional Office, Securities and Exchange Commission, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California, 90036.

D. Ferry shall comply with the following undertakings:

1. Retain an Independent Consultant. If, within five (5) years from the date of the Order, Ferry seeks to become associated (as a control person, owner of more than 10 percent of a class of equity shares, officer, director, or partner) with an investment adviser registered with the Commission, or which should be registered with the Commission ("such adviser"), Ferry undertakes that he will not become so associated unless he first retains, at his

expense, an Independent Consultant ("Consultant") familiar with the Advisers Act and not unacceptable to the Commission's staff, to conduct a review of all Form ADV filings, all advertisements, and all books and records made and maintained or required to be made and maintained under the Advisers Act by such adviser. Ferry shall, for a period of two (2) years from the date, if any, he becomes associated with such adviser, require that the Consultant:

- a. Monitor such adviser's compliance with the filing, advertising, and books and records provisions of the Advisers Act and make recommendations designed to correct any non-compliance;
- b. Report to the Commission's staff, in writing, within sixty (60) days of first becoming associated with such adviser, such adviser's compliance with the filing, advertising, and books and records provisions of the Advisers Act, and the Consultant's recommendations, if any, for corrective action;
- c. Make written reports of such adviser's compliance and corrective action taken to effect compliance in any previously deficient area, every 180 days from the date Ferry first becomes associated with such adviser; and

2. Provide a copy of the Order to current and prospective clients. If, within a period of five (5) years from the date of the Order, Ferry becomes associated with any investment adviser registered with the Commission, or which should be registered with the Commission, he shall mail a copy of the Order, together with a cover letter in a form not unacceptable to the staff of the Commission, to all current and prospective clients of such adviser for a period of five (5) years from the date of the Order, with delivery as required by Rule 206(4)-4 of the Advisers Act.

By the Commission.

Jonathan G. Katz
Secretary

FOOTNOTES

[1]: "Backtested" hypothetical performance results derive from applying a particular methodology to past market data. Backtesting presents merely a hindsight representation.

[2]: Form ADV-T is the form for declaring eligibility for Commission registration after the July 8, 1997 effective date of the Investment Advisers Supervision Coordination Act, under Title III of the National Securities Markets Improvement Act of 1996 ("Improvement Act"). Generally, the Improvement Act permits an adviser to maintain Commission registration only if the adviser manages at least \$25 million or is an adviser to a registered investment company.

[3]: A comparison of the Adviser's actual client performance from 1978 through 1988 and its advertised hypothetical performance for the same period shows that hypothetical performance totaled 329%, but actual performance totaled only 234%.