

ADMINISTRATIVE PROCEEDING File No. 3-9796

SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISORS ACT OF 1940

Release No. 1779

December 28, 1998

In the Matter of Meridian Investment Management Corporation, Michael J. Hart, and Craig T. Callahan, Respondents

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

TEXT:

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be instituted pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Respondents Meridian Investment Management Corporation ("Meridian"), Michael J. Hart ("Hart"), and Craig T. Callahan ("Callahan") (collectively "Respondents").

II.

In anticipation of the institution of these administrative proceedings, Respondents have submitted Offers of Settlement ("Offers") that 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 in which the Commission is a party, and without admitting or denying the findings contained herein, except those findings pertaining to the jurisdiction of the Commission over them and the subject matter of these proceedings, Respondents consent to the entry of the findings and the imposition of the remedial sanctions and cease-and-desist order as set forth herein.

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

III.

On the basis of this Order Instituting Proceedings, and the Offers submitted by the Respondents, the Commission finds that:

A. Meridian (File No. 801-38868), a Colorado corporation with its principal office located in Englewood, Colorado, has been registered with the Commission as an investment adviser since May 1991 pursuant to Section 203(c) of the Advisers Act.

B. From at least May 1991 to April 1998, Hart was President and a director of Meridian and a 50% shareholder of Meridian's parent corporation.

C. From at least May 1991 to present, Callahan has been Chief Investment Officer and a director of Meridian and a 50% shareholder of Meridian's parent corporation. Beginning in April 1998, Callahan became President of Meridian and its parent corporation.

D. Meridian provides private account management services using value-based, sector rotation techniques. Meridian markets its services to registered investment advisers and broker/dealers. From 1993 to 1996, Meridian distributed advertisements that materially misstated its investment performance. These advertisements consisted of performance sheets, Internet postings, newsletters provided to clients and questionnaires submitted to rating services. From 1993 to 1996, Meridian distributed a Financial Representative Marketing Kit that contained, among other things, quarterly and annual performance sheets which summarized Meridian's investment performance over various periods

of time. These performance returns were also included in certain other marketing and advertising materials including newsletters to clients, were submitted to database services and were available via the Internet. Some of the performance sheets falsely stated that performance results were calculated on a post fee basis. Meridian's misstatements of its performance resulted from Meridian's failure to deduct the payment to third parties of an origination commission and/or mutual fund sales load payable by many of Meridian's advisory clients. Meridian's performance advertising materials did in many instances include a disclosure of the payment of an origination commission, but the third party fee was not deducted from the calculated performance returns.

E. Beginning in November 1996, Meridian's clients were no longer charged an origination commission. In January 1997, Meridian ceased investing in mutual funds that charged a sales load.

F. From 1993 to 1996, Meridian's advertisements also failed to disclose 1) that the performance for the years 1986 through 1988 was based on model portfolio backtesting; 2) that in some instances, performance for the years 1989 through 1993 was based on a contemporaneous model portfolio rather than actual trading in client accounts; 3) whether and to what extent the results portrayed included the reinvestment of dividends and other earnings; and 4) relevant information regarding the indices with which Meridian compared its performance, including the differences in volatility between Meridian's strategies and indices such as the S&P 500 Index.

G. Hart was responsible for ensuring the accuracy of the content of Meridian's performance advertising.

H. As Chief Investment Officer, Callahan was responsible for the calculation of Meridian's performance returns for the years 1986 through 1993 and for overseeing the calculation of performance returns by Meridian's custodian for years 1994 and 1995.

I. By virtue of the conduct described above, Meridian willfully violated and Hart caused and willfully aided and abetted violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder. Sections 206(1) and 206(2) of the Advisers Act prohibit an investment adviser from employing any device, scheme or artifice to defraud, or to engage in any course of business, that operates as a fraud on clients or prospective clients. Section 206(4) of the Advisers Act prohibits an investment adviser from engaging "in any act, practice, or course of business which is fraudulent, deceptive or manipulative." Pursuant thereto, the Commission adopted Rule 206(4)-1(a)(5) which states that, "it shall constitute a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of Section 206(4) of the [Advisers] Act, for any investment adviser, directly or indirectly, to publish, circulate or distribute any advertisement ... which contains any untrue statement of material fact, or which is otherwise false or misleading."

J. By virtue of the conduct described above, Callahan was a cause of Meridian's violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder.

K. From 1993 to 1996, Meridian failed to keep all records necessary to form the basis for its 1986 through 1988 performance advertising, in willful violation of Section 204 of the Advisers Act and Rule 204-2(a)(16) thereunder, and Callahan was a cause of Meridian's violations. Section 204 of the Advisers Act requires that every investment adviser shall make and keep such records as the Commission by rule may prescribe. Rule 204-2(a)(16) thereunder requires that an investment adviser maintain records to document the basis for the advertised performance.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to accept the Offers submitted by the Respondents and to impose the sanctions specified therein.

Accordingly, IT IS HEREBY ORDERED that:

A. Pursuant to Sections 203(e) and 203(f) of the Advisers Act, Meridian and Hart be censured;

B. Pursuant to Section 203(k) of the Advisers Act, Meridian cease and desist from committing or causing any violation or future violation of Sections 204, 206(1), 206(2), and 206(4) of the Advisers Act and Rules 204-2(a)(16) and 206(4)-1(a)(5) thereunder;

C. Pursuant to Section 203(k) of the Advisers Act, Hart cease and desist from committing or causing any violation or future violation of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder;

D. Pursuant to Section 203(k) of the Advisers Act, Callahan cease and desist from committing or causing any violation or future violation of Sections 204, 206(2), and 206(4) of the Advisers Act and Rules 204-2(a)(16) and 206(4)-1(a)(5) thereunder;

E. Within thirty (30) days of the entry of this Order, Meridian shall pay a civil money penalty in the amount of \$ 70,000 and Hart shall pay a civil money penalty in the amount of \$ 15,000 to the United States Treasury. Such payments 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 or mailed to the Office of the Comptroller, U.S. Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (4) submitted under cover letter which identifies Meridian and Hart as the Respondents in this proceeding, the file number of the proceedings, a copy of which cover letter and money order or check shall be sent to Donald M. Hoerl, Associate Regional Administrator, Securities and Exchange Commission, Denver Regional Office, 1801 California Street, Suite 4800, Denver, Colorado 80202; and

F. Meridian will mail a copy of this Order, together with a cover letter in a form acceptable to the staff of the Commission, to each of its existing clients by certified mail, return receipt required, within thirty (30) days from the date of this Order. From the effective date of this Order until the expiration of twelve (12) months, Meridian shall provide a copy of this Order to all prospective investment advisory clients not less than forty-eight (48) hours prior to entering into any written or oral investment advisory contract (or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within 5 business days after entering into the contract). Also, within thirty (30) days from the date of this Order, Meridian shall execute and deliver to Donald M. Hoerl at the Commission's Central Regional Office an affidavit that it has provided this Order to its existing clients in accordance with the terms of this Order. Finally, within thirteen (13) months from the date of this Order, Meridian shall execute and deliver to Donald M. Hoerl of the Commission's Central Regional Office an affidavit that it has provided this Order to prospective clients in accordance with the terms of this Order.

By the Commission.