

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 1872 / May 31, 2000**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-10008**

**In the Matter of SCHIELD MANAGEMENT COMPANY, MARSHALL L. SCHIELD, and TROY M. SCHIELD, Respondents.**

**ORDER MAKING FINDINGS, IMPOSING CEASE-AND-DESIST ORDER, AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTIONS 203(f), AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AS TO TROY M. SCHIELD**

**I.**

In these proceedings ordered pursuant to Sections 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act")<sup>1</sup>, Respondent Troy M. Schield has submitted an Offer of Settlement which the Securities and Exchange 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, the Respondent consents to the entry of this Order of the Commission Making Findings, Imposing a Cease-and-Desist Order and Imposing Remedial Sanctions Pursuant to Sections 203(f), and 203(k) of the Investment Advisers Act of 1940, without admitting or denying the findings of this Order, except that he admits the jurisdiction of the Commission over him and over the subject matter of the proceedings instituted against him by the Commission.

**II.**

On the basis of the Respondent's Offer of Settlement, the Commission makes the following findings:

- A. Schield Management Company, located in Denver, Colorado, was formed as a corporation in 1972 and changed to a limited partnership in 1993. It has been registered with the Commission as an investment adviser (No. 801-45074 and No. 801-08855) since 1972. SMC provides account management services using asset allocation and risk management strategies. It obtains virtually all of its clients through brokers.
- B. Marshall L. Schield, age 53 and a resident of Colorado, is the President of SMC. At all times relevant to these proceedings, he was responsible for assuring that SMC's advertisements were in compliance with the Advisers Act.
- C. Troy M. Schield, age 30 and a resident of Colorado, is an employee of SMC. At all times relevant to these proceedings, he was responsible for calculating the performance data which was included in SMC's advertisements.
- D. From March 1994 to November 1997, SMC directly or indirectly published and distributed a series of materially false and misleading advertisements in brochures, newsletters, written performance updates, oral presentations, Internet postings, and information submitted to the Money Manager Review ratings publication. The false and misleading information was contained in SMC's Internet postings through December 1998. Among the investment programs SMC advertised were its Sector Allocation Investment Plan ("SAIP"), Fund Allocation Investment Plan ("FAIP"), and Equity strategy.
- E. As a part of, and in furtherance of the conduct described in subparagraph II. D., SMC engaged in the following acts:
1. SMC published and distributed advertisements that included performance figures for up to five years predating SMC's implementation of the SAIP, FAIP, and Equity investment programs. These figures were derived from the retroactive application of a model developed with the benefit of hindsight -- a fact that SMC either failed to disclose or inadequately disclosed in its advertisements. The advertisements frequently displayed tables and graphs that combined the pre-implementation data with the performance data from periods following SMC's implementation of the relevant trading strategies.

SMC occasionally disclosed that the graphs showed "hypothetical" performance. However, SMC's disclosure failed to convey fully the inherent limitations of the data derived from the retroactive application of a model developed with the benefit of hindsight. For example, combining both types of data in one graph did not disclose that the SAIP strategy, after SMC implemented it, in fact underperformed the S&P 500 index even though the graph showed that the SAIP strategy consistently outperformed the S&P 500 index each year. SMC also failed to disclose that it applied materially different trading rules in calculating SAIP's pre-implementation data than it used to calculate the performance following SAIP's implementation.

2. SMC published and distributed advertisements which were false because they materially overstated the performance of both the SAIP and the FAIP. For each program, SMC recklessly deducted only one twelfth to one half of its management fee from the performance reported for each year advertised. This error had a significant effect on SMC's advertised performance. For example, the error caused SMC to overstate the cumulative performance for part of its SAIP strategy by more than 13 percent. SMC also materially overstated the retroactive data and cumulative performance for the SAIP as a result of an error in calculating the retroactive data.

3. SMC reported false performance data for its SAIP program to Money Manager Review. In addition to the errors described above in subparagraph II. E. 2., SMC failed to deduct applicable sales loads in the performance it reported to Money Manager Review. Because of these errors, SMC reported data to Money Manager Review which resulted in Money Manager Review's overstatement of SMC's cumulative performance by more than 20 percent.

4. SMC reported false information to Money Manager Review about SMC's method of calculating performance for the SAIP program. Among other things, SMC presented information to Money Manager Review which suggested that SMC followed the Performance Presentation Standards of the Association for Investment Management and Research ("AIMR"). Money Manager Review stated that SMC was using AIMR when Money Manager Review reported SMC's performance and, following periodic publications of that information, SMC failed to correct the information. In fact, SMC was not AIMR-compliant because SMC calculated its performance based on a model portfolio.

5. SMC published and distributed several advertisements which reported performance assuming the reinvestment of dividends. Many of these advertisements were misleading because they did not disclose that the performance reported assumed the reinvestment of dividends.

F. SMC knew, should have known, or was reckless in not knowing that the advertisements it published and distributed were false or materially misleading.

G. As president of SMC, Marshall Schield was responsible for assuring SMC's compliance with the Advisers Act and reviewed each advertisement before it was published. He failed to take the necessary steps to assure that SMC's advertised performance was correct and disclosed all material information.

H. Troy Schield failed to deduct a portion of SMC's management fee from the performance SMC advertised for the SAIP and FAIP investment programs. He also prepared updates for Money Manager Review stating SMC's performance for the most recent quarter. Although each update form listed the performance SMC had previously submitted to Money Manager Review, Troy Schield failed to correct previously reported performance which did not deduct sales loads applicable to the SAIP strategy. Troy Schield thereby caused and knowingly and willfully<sup>2</sup> aided and abetted SMC's publication of advertisements which included false and misleading representations about SMC's performance.

I. Section 206(2) of the Advisers Act prohibits an investment adviser engaging in any transaction, practice or 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" and directs the Commission to define such conduct by rule. Rule 206(4)-1(a)(5) states that, "[i]t 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." By virtue of the conduct described above, Troy Schield caused and willfully aided and abetted SMC's violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder.

### **III.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions specified in the Offer of Settlement.

Accordingly, IT IS HEREBY ORDERED that:

A. Troy Schield is censured pursuant to Section 203(f) of the Advisers Act;

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

C. Within thirty (30) days of the entry of this Order, Troy Schield shall pay a civil money penalty in the amount of \$5,000 to the United States Treasury, pursuant to Section 203(i)(2) of the Advisers Act. 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 Troy Schield as a Respondent in this proceeding, the file number of this proceeding, 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.

By the Commission.

Jonathan G. Katz  
Secretary

#### **FOOTNOTES**

1 An Order Instituting Public Administrative Proceedings Pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 against Schield Management Company, Marshall Schield and Troy Schield was issued by the Commission on September 9, 1999.

2 In applying the term "willful" in Commission administrative proceedings instituted pursuant to Section 203 of the Investment Advisers Act, the Commission evaluates on a case-by-case basis whether the respondents knew or reasonably should have known under the particular facts and circumstances that his conduct was improper. In this case, as in all Commission administrative proceedings charging a willful violation under this statutory provision, the Commission applies this standard to persons -- specifically, securities industry professionals -- who are directly subject to Commission jurisdiction and who have a responsibility to understand their duties to the investing public and to comply with the applicable rules and regulations which govern their behavior.