

**United States of America
Before the
Securities and Exchange Commission**

**Investment Advisers Act of 1940
Release No. 2023 / March 22, 2002**

**Administrative Proceeding
File No. 3-10736**

In the Matter of STAN D. KIEFER & ASSOCIATES AND STANLEY D. KIEFER, Respondents.

**ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDING,
MAKING FINDINGS AND IMPOSING SANCTIONS AND CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate in the public interest that a public administrative and cease-and-desist proceeding be instituted pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Stan D. Kiefer & Associates ("SKA") and Stanley D. Kiefer ("Kiefer").

II.

In anticipation of the institution of this proceeding, SKA and Kiefer have 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 in which the Commission is a party, and without admitting or denying any findings contained herein, except that SKA and Kiefer admit to the jurisdiction of the Commission over them and over the subject matter of this proceeding, SKA and Kiefer consent to the issuance of this Order Instituting Public Administrative and Cease-And-Desist Proceeding, Making Findings and Imposing Sanctions and Cease-And-Desist Order ("Order").

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

III.

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

Respondents

SKA is a California corporation located in Manhattan Beach, California, that was registered with the Commission as an investment adviser (File No. 801-57138) from January 7, 2000, until it withdrew its registration on June 30, 2000. Previously, SKA was registered with the Commission as an investment adviser (File No. 801-50968) from February 9, 1996, to July 8, 1997. SKA was not required to be registered with the Commission from July 9, 1997, to January 6, 2000, because it did not have the requisite amount of assets under management. SKA was licensed as an investment adviser with the State of California from February 1996 to May 2000. On November 30, 2001, SKA became re-licensed with the State of California as an investment adviser and currently has a small number of advisory clients.

Kiefer, age 43, resides in Manhattan Beach, California. From February 1996 to June 2000, he was president, sole portfolio manager, and sole shareholder of SKA. Kiefer was previously registered with the Commission as a sole proprietor investment adviser (File No. 801-44419) from August 18, 1993, to April 5, 1996. Currently, Kiefer manages a small number of advisory clients through SKA.

Background

Kiefer asserted complete control over SKA and its operations. He was SKA's president, sole portfolio manager, and sole shareholder. He prepared and filed the Forms ADV; he signed the investment advisory and solicitation agreements; he made all investment decisions; he supervised the firm's marketing activities; he created, approved, and disseminated, or directed the dissemination of, marketing materials; and he filled out questionnaires and updates that were provided to Nelson's Investment Manager Database ("Nelson"), a third party reporting and rating service.

Kiefer began managing assets in approximately 1993. By July 1997, Kiefer had fewer than 25 clients with only about \$2 million under management, \$1 million of which consisted of three family-related accounts. In July 1997, SKA, through Kiefer, began distributing the false advertising discussed below. From July 1997 to December 1999, SKA's business grew dramatically. By December 1999, SKA had over 500 discretionary clients with approximately \$50 million in assets under management.

SKA, through Kiefer, disseminated the false advertisements discussed below to clients, prospective clients, solicitors who referred clients, and Nelson. Solicitors, in turn, distributed this advertising to prospective clients. From July 1997 to December 1999, solicitors referred over 400 clients to SKA. One solicitor referred approximately 180 clients with over \$15 million in assets during this time period.

Prior to soliciting clients for SKA, however, the solicitors had several meetings with Kiefer during which he misrepresented that SKA had an excellent performance history and significant assets under management. Kiefer also provided the solicitors with the false advertising discussed below. Further, Kiefer had a relative contact a representative of the solicitors and misrepresent to him that she worked for an auditor who determined that SKA's performance returns were audited and compliant with the Association for Investment Management & Research's Performance Presentation Standards ("AIMR-PPS").

Antifraud Violations

Section 206(1) of the Advisers Act prohibits an investment adviser from employing any device, scheme, or artifice to defraud any client or prospective client. Section 206(2) of the Advisers Act prohibits an investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. The antifraud provisions of the Advisers Act require that the fraudulent conduct concern material facts. Further, scienter is required to establish a violation of Section 206(1) of the Advisers Act but is not a required element of Section 206(2) of the Advisers Act.

From July 1997 to January 2000, SKA and Kiefer represented in numerous advertisements that SKA had outstanding performance returns and significantly outperformed various stock indices, including the S&P 500 and the Russell 2000. SKA and Kiefer disseminated, or caused others to disseminate, these documents to clients, prospective clients, solicitors who referred clients, and Nelson. The advertised performance returns for 1983 through 1996, however, were materially false. The advertisements falsely implied that SKA's performance history reflected actual trading in client accounts and that it had been in business since 1983. SKA and Kiefer did not manage any client assets from 1983 to 1993, and, therefore, did not achieve any performance returns during those years. Further, SKA's advertised performance for 1983 to 1996 did not reflect its actual performance. In fact, Kiefer copied those performance returns from a book written by another money manager. Thus, SKA willfully violated, and Kiefer willfully aided and abetted and caused violations of, Sections 206(1) and 206(2) of the Advisers Act.

From July 1997 to January 2000, SKA and Kiefer materially overstated SKA's number of clients and

assets under management in numerous advertisements. SKA and Kiefer disseminated, or caused others to disseminate, these documents to clients, prospective clients, solicitors who referred clients, and Nelson. In 1997, for example, SKA and Kiefer represented in a non-filed Form ADV that on November 7, 1995, SKA had 371 discretionary accounts with \$111 million in assets under management. In November 1995, however, SKA and Kiefer managed only three family-related accounts with approximately \$1 million under management. In mid-1998, SKA and Kiefer represented in a marketing brochure that SKA had \$250 million in assets under management. SKA, however, had only \$17 million in assets under management on June 30, 1998. In fact, the largest amount of assets ever managed by SKA was \$50 million in December 1999. Thus, SKA willfully violated, and Kiefer willfully aided and abetted and caused violations of, Sections 206(1) and 206(2) of the Advisers Act.

From July 1997 to January 2000, SKA and Kiefer also disseminated various advertisements representing that SKA's performance returns were audited and compliant with the AIMR-PPS. SKA and Kiefer also represented to recipients of these advertisements that a CPA firm had audited the performance returns. These representations, however, were materially false as SKA's performance returns had never been audited and were not AIMR-PPS compliant. Thus, SKA willfully violated, and Kiefer willfully aided and abetted and caused violations of, Sections 206(1) and 206(2) of the Advisers Act.

From July 1997 to January 2000, SKA and Kiefer represented in various marketing materials that SKA was founded in 1983 and registered with the Commission in 1984. Further, from July 1997 to December 1999, SKA and Kiefer represented in solicitation agreements and investment advisory agreements that SKA was registered with the Commission as an investment adviser. In fact, Kiefer registered with the Commission as an investment adviser as a sole proprietorship from August 18, 1993 to April 5, 1996, and under SKA from February 9, 1996 to July 8, 1997, and from January 7, 2000 to June 30, 2000. Therefore, the representations were materially false because SKA and/or Kiefer were not registered with the Commission from 1984 to August 1993 or from July 9, 1997 to January 6, 2000. Thus, SKA willfully violated, and Kiefer willfully aided and abetted and caused violations of, Sections 206(1) and 206(2) of the Advisers Act.

IV.

In view of the foregoing, the Commission deems it appropriate in the public interest to accept the Offer submitted by SKA and Kiefer and impose the sanctions and cease-and-desist order specified therein.

Accordingly, IT IS ORDERED that:

Pursuant to Sections 203(e) and 203(f), respectively, of the Advisers Act, SKA and Kiefer are censured;

Pursuant to Section 203(k) of the Advisers Act, SKA and Kiefer shall cease and desist from committing or causing any violation and any future violation of Sections 206(1) and 206(2) of the Advisers Act;

Pursuant to Section 203(i) of the Advisers Act, SKA and Kiefer shall jointly and severally pay a civil money penalty in the amount of \$10,000.00 to be paid to the United States Treasury within 30 days of the entry of the Order. 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 United States Securities and Exchange Commission; (3) hand-delivered or mailed to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312; and (4) submitted under a cover letter that identifies SKA and Kiefer as Respondents in these proceedings, and the Commission's file number of these proceedings, a copy of which cover letter and money order or check shall be simultaneously sent to Adam D. Schneir,

Attorney, Pacific Regional Office, Securities and Exchange Commission, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036; and

SKA and Kiefer shall comply with the following undertakings:

SKA and Kiefer shall be prohibited from, directly or indirectly, soliciting, marketing, or advertising for any new investment advisory clients or accounts for one year commencing from the effective date of the Order. In addition, SKA and Kiefer shall be prohibited from, directly or indirectly, contracting with, obtaining, or accepting any new investment advisory clients or accounts for one year commencing from the effective date of the Order. Within four months, seven months, ten months, and 13 months, respectively, from the effective date of the Order, Respondents shall execute and deliver to the staff of the Commission's Pacific Regional Office ("PRO") an affidavit that they have complied with the prohibitions set forth above in accordance with the terms of the Order.

Within 30 days of the entry of the Order, and continuing for two years thereafter, Respondents shall retain, at their own expense, the services of an independent consultant, who is not unacceptable to the Commission staff. Respondents shall not terminate the independent consultant without the prior written approval of the Commission staff. Such independent consultant shall be retained to conduct a review of Respondents' policies, practices, and procedures to determine whether they have complied with the Order and the undertakings agreed to herein. The independent consultant shall also conduct a review of Respondents' methods of collecting, recording, and reporting information regarding performance figures, assets under management, and number of clients and to make any recommendations concerning Respondents' compliance policies and procedures that he/she deems appropriate to ensure that all such reported information is truthful and accurate.

No later than ten days following the date of the independent consultant's engagement, Respondents shall provide to the staff of the Commission's PRO a copy of the engagement letter detailing the independent consultant's responsibilities pursuant to paragraph IV.D.2. above.

Respondents shall arrange for the independent consultant to issue a written report within 90 days of the date of the engagement setting forth in detail the nature and scope of the review conducted, the independent consultant's conclusions, and any recommendations concerning Respondents' practices, policies, and procedures. Respondents shall arrange for the independent consultant to provide the staff of the Commission's PRO a copy of this report, within 10 days from its issuance.

Respondents shall take all necessary and appropriate steps to adopt and implement all recommendations of the independent consultant.

Respondents shall compile a compliance manual containing the policies and procedures adopted and implemented pursuant to the recommendations made by the independent consultant. Respondents shall make available copies of the compliance manual to their employees and familiarize them with the policies and procedures set forth therein. In addition, Respondents shall maintain and make available at their offices for inspection by the Commission or other appropriate regulatory organization, a copy of the compliance manual.

Respondents shall arrange for the independent consultant to conduct a follow-up review within 90 days after the issuance of the report required in paragraph IV.D.4. above to determine whether all recommendations have been implemented. Respondents shall arrange for the independent consultant to provide the staff of the Commission's PRO, within 30 days from the date of such follow-up review, a written report stating that the follow-up review has been completed and whether the recommendations have been implemented.

Respondents shall also arrange for the independent consultant to conduct follow-up reviews in accordance with the standards of paragraph IV.D.2. above, within one year of the effective date of the Order, within 18 months of the effective date of the Order, and within two years of the effective

date of the Order, respectively. Within 30 days after the completion of each such review, the independent consultant shall issue a written report regarding his/her findings and recommendations (if any). Respondents shall arrange for the independent consultant to provide a copy of each such report to the staff of the Commission's PRO, within 30 days from the completion of each such review.

After the expiration of the one-year prohibition set forth above in paragraph IV.D.1., and for a period of one year thereafter, the independent consultant shall review all advertisements, marketing materials, and other communications pertaining to Respondents' performance or investment advisory services, and any underlying books and records that support any representations made therein. Respondents shall not use any such advertisements, marketing materials, or other communications pertaining to their performance or investment advisory services unless the independent consultant has approved them.

For the period of the engagement and for a period of two years from the completion of the engagement, the independent consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with SKA, Kiefer, or any of SKA's present or former affiliates, directors, officers, employees or agents acting in their capacity. Any firm with which the independent consultant is affiliated or of which he/she is a member, and any person engaged to assist the independent consultant in performance of his/her duties under this Order shall not, without prior written consent of the staff of the Commission's PRO, enter into any employment, consultant, attorney-client, auditing or other professional relationship with SKA, Kiefer, or any of SKA's present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

Respondents shall mail a copy of the Order, together with a cover letter, in a form not unacceptable to the staff of the Commission, to each of their existing clients by certified mail, return receipt requested, within 30 days of the effective date of the Order. After the expiration of the one-year prohibition set forth above in paragraph IV.D.1., and for a period of one year thereafter, Respondents shall provide a copy of the Order to all prospective investment advisory clients not less than 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 five business days after entering into the contract). Also, within 30 days from the effective date of the Order, Respondents shall execute and deliver to the staff of the Commission's PRO an affidavit that they have provided the Order to their existing clients in accordance with the Order's terms. Finally, within 25 months from the effective date of the Order, Respondents shall execute and deliver to the staff of the Commission's PRO an affidavit that they have provided the Order to their prospective clients in accordance with the terms of the Order.

By the Commission.

Jonathan G. Katz
Secretary