

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

**Investment Advisers Act of 1940  
Release No. 2129 / May 15, 2003**

**Administrative Proceeding  
File No. 3-11126**

**In the Matter of JAMISON, EATON & WOOD, INC. Respondent.**

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

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that administrative proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Jamison, Eaton & Wood, Inc. ("Jamison" or "Respondent").

**II.**

In anticipation of the institution of these public administrative proceedings, Jamison has submitted an Offer of Settlement ("Offer") which 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 to which the Commission is a party, and without admitting or denying the findings, except that Jamison admits the jurisdiction of the Commission over it and over the subject matter of these proceedings, Jamison consents to the entry of this Order Instituting Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings and Imposing Remedial Sanctions and a Cease-And-Desist Order ("Order").

**III.**

**FACTS**

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

**A. Respondent**

Jamison is a New Jersey corporation located in Chatham, New Jersey, and is registered as an investment adviser with the Commission. Jamison was organized in 1972 as successor to another investment adviser that was first registered with the Commission in 1968. Currently, Jamison has about 180 individual clients with \$635 million in assets under management. Jamison also has non-discretionary accounts worth approximately \$17 billion.

**B. Summary**

This matter concerns disclosure and best execution violations by Jamison. During the relevant time, Jamison failed to make proper disclosures to certain clients whose accounts were held by full service broker-dealers, and these clients paid higher commissions than the firm's other clients. Some of these clients were referred to Jamison by registered representatives ("RRs") of these full service broker-dealers. The Commission's examination staff found that, during the period January 1, 1999 to June 30,

2000, these clients paid commissions of about \$0.35 per share, while Jamison's other clients paid a "free" commission rate of \$0.08 per share through a lower-cost bank clearing service.

Jamison did not disclose to its referred clients that Jamison faced a potential conflict of interest in receiving referrals from RRs of full service broker-dealers, nor did Jamison disclose to all of its referred clients other available brokerage options. In addition, Jamison did not review the direction and placement of its client brokerage in light of its duty to seek to obtain best execution and the evolving market for custody and execution services. By failing to disclose its potential conflict of interest and other brokerage options, and by failing to seek to obtain best execution, Jamison violated Sections 206(2) and 207 of the Advisers Act.

### **C. Jamison Client Brokerage and RR Referrals**

Approximately 45 of Jamison's 180 individual clients use full service broker-dealers. (This does not include clients with asset-based or "wrap fee" account arrangements.) Some of these 45 clients were referred by RRs of those full service broker-dealers to Jamison; the others fall into three categories: (i) existing clients of RRs who were referred to Jamison by a third party, such as an accountant; (ii) clients referred by Jamison to an RR; and (iii) long-standing Jamison clients who chose an RR for custody and execution prior to Jamison having entered into a relationship with the lower cost bank clearing service.

Over a period of 25 years, Jamison developed informal business relationships with RRs who referred clients. These RRs worked at several nationally known full service broker-dealers. These relationships developed in the normal course of business. None of these RRs ever worked at Jamison and no one from Jamison ever worked with the RRs or their firms. Jamison had no formal contracts or arrangements with the RRs.

During the relevant time, when a client was referred to Jamison, the client's brokerage typically remained with the referring RR's firm (or in the case of a third party referral, it remained with the firm of the client's existing RR). After an RR recommended Jamison to a client, the RR and the client usually met with a member of Jamison's professional staff before the client formally engaged Jamison as an investment adviser. On occasion, the referred client met the Jamison representative alone. The RR provided Jamison with a copy of the client's most recent account statement and/or signed clearing agreement, which Jamison considered to be evidence that the client wished to remain with the RR. During the meetings, Jamison discussed the services that it would provide to the client in conjunction with the RR, and Jamison provided the client with a copy of its Form ADV, a brochure and a sample contract. Jamison generally advised referred clients that the existing RR would continue to provide custody and execution services to the client.<sup>1</sup>

Jamison did not disclose to referred clients that it faced a potential conflict of interest in receiving referrals from RRs at full service broker-dealers. Jamison generally did not ask all of its referred clients to make a decision about custody of their account and placement of their brokerage. Instead, Jamison assumed that referred clients wanted to remain with their current broker-dealers because the clients and the referring RRs had a pre-existing relationship. Jamison did not generally disclose its arrangement with the bank clearing service, or explain to referred clients that they could place trades with another firm at a lower commission rate or decline to use their existing broker-dealer. While some referred clients knew that discount brokerage was available, most did not understand that they could have chosen a different broker to execute their trades.<sup>2</sup> A small number of Jamison's referred clients asked about alternative brokerage arrangements or otherwise expressed dissatisfaction with commission rates, but did not obtain alternative brokerage arrangements. Once a referred client was signed up, Jamison did not re-visit with the client the issue of brokerage placement or commission rates. Jamison met regularly with clients to review portfolios and objectives, but Jamison did not periodically and systematically review its brokerage arrangements for purposes of analyzing best execution.<sup>3</sup>

### **D. Jamison's Client Agreements and Form ADV Did Not Disclose the Potential Conflict of Interest**

Until August 1999, Jamison used a one-page client agreement that gave Jamison full discretion to select the client's broker-dealer. The contract did not make reference to any actual or potential conflict of interest facing Jamison when referrals were made by RRs.

From August 1999 to February 2001, Jamison used a four-page client agreement, which also failed to disclose the existence of any conflict of interest facing Jamison. As to the placement of trades, the agreement stated: "The CLIENT may direct ADVISER in writing to use a particular Broker-Dealer to execute some or all transactions for CLIENT'S Account." However, Jamison never asked clients to execute any separate writing, despite the language inserted into the contract.

In February 2001, Jamison revised its client contract to state: "The CLIENT clearly directs ADVISER to effect all such securities transactions for the Account through \_\_\_\_\_." If an RR referred a client to Jamison, Jamison typed the name of the referring broker-dealer into the contract prior to review and execution by the client. This contract did not disclose the potential conflict of interest arising from maintaining the brokerage relationship with the referring RR.

Only in January 2002 did Jamison amend its advisory agreement to state: "The CLIENT may direct ADVISER to use a particular Broker-Dealer to execute some or all transactions for CLIENT'S Account . . . In the event that the transactions for the Account are effected through a Broker-Dealer that refers investment management clients to the ADVISER, the potential for conflict of interest may arise."

Likewise, nothing in Jamison's Form ADV made any reference to a potential conflict of interest until 2002. Prior to that time, Jamison's response to Item 12 of Part II of Form ADV (which requires an investment adviser to describe "the factors considered in selecting brokers and determining the reasonableness of their commissions") was, in part: "[b]roker selection is governed by the objective of obtaining best execution" unless a broker "has provided research services to the adviser." The Form ADV did not discuss the brokerage arrangements of referred clients. In January 2002, Jamison amended its Form ADV by adding: "In the event that transactions for client accounts are effected through a broker-dealer that refers investment management clients to the Registrant, the potential for conflict of interest may arise."

#### **IV.**

### **LEGAL ANALYSIS**

#### **A. Jamison Violated Section 206(2) of the Advisers Act**

Section 206(2) of the Advisers Act makes it unlawful for an adviser to engage in any transaction, practice or course of business that operates as a fraud or deceit upon any client or prospective client. An adviser violates Section 206(2) if it makes material misstatements or omissions to clients. *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 200 (1963). If the misstatement or omission of a material fact is negligent, then Section 206(2) is violated; if the misstatement or omission is made with scienter, then Section 206(1) is violated. *Steadman v. SEC*, 603 F.2d 1126, 1134-1135 (5th Cir. 1979). A fact is considered material if there is a substantial likelihood that a reasonable investor would consider the information to be important in making an investment decision. *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); *Basic, Inc. v. Levinson*, 485 U.S. 224, 233 (1988).

The existence of a conflict of interest is a material fact that an investment adviser must disclose to its clients because it "might incline an investment adviser -- consciously or unconsciously -- to render advice that was not disinterested." *Capital Gains Research Bureau, Inc.*, 375 U.S. at 191-192. The Commission has found that investment advisers face a conflict of interest in various situations when trading securities for clients -- for example, when an adviser sells his own shares to clients as principal, see, e.g., *In re Arleen W. Hughes*, 27 S.E.C. Docket 629 (1948), or when an adviser receives "soft dollar" services for trading commissions, see, e.g., *In re Marvin & Palmer Associates, Inc. et al.*, 70 S.E.C. Docket 1643 (September 30, 1999).

In settled cases, respondents have consented to orders that found an adviser has a conflict of interest when it directs client brokerage to RRs who refer new clients to the adviser. See, e.g., *In re Mark Bailey & Co.*, 40 S.E.C. Docket 432 (Feb. 24, 1988). In *Bailey*, about 75 percent of an adviser's clients were referrals from the RRs of one broker-dealer, and *Bailey's* investment contract gave the firm discretion to place trades. Many clients orally directed *Bailey* to continue using the referring RRs' firm, and many of those clients were aware that the firm was not a discount brokerage. *Bailey* consented to an order that found this practice violated Section 206(2) of the Advisers Act in this situation because it failed to disclose to clients, inter alia, that (i) *Bailey* had a potential conflict between the clients' interest in obtaining best execution and *Bailey's* interest in receiving future referrals, (ii) that *Bailey* was not seeking to obtain best execution because it did not negotiate commission discounts, and (iii) that clients might pay lower commissions if they had not directed their brokerage to the referring RRs' broker-dealer.

Other settled cases have been consistent with *Bailey*. For example, *In re Sheer Asset Management and Arthur Sheer*, 58 S.E.C. Docket 1492 (Jan. 3, 1995), involved the purchaser of an investment advisory firm who agreed to direct client brokerage to a broker-dealer owned by the seller of the advisory firm. The respondent consented to an order which found that *Sheer's* failure to disclose this agreement on Form ADV violated Section 207 of the Advisers Act. A more recent case, *In re Duff & Phelps Investment Management Co.*, 75 S.E.C. Docket 2362 (September 28, 2001), involved the undisclosed direction of commissions in exchange for a broker-dealer's referral of a profitable union pension fund client. The order in *Duff & Phelps* stated:

. . . Information regarding an investment adviser's directed brokerage arrangements is material and must be disclosed to clients.

Moreover, disclosure of certain arrangements with brokers is specifically required by Form ADV filed with the Commission. Form ADV embodies mandatory disclosure requirements to ensure that material information regarding brokerage placement practices and policies is disclosed to investors. Any arrangement to direct brokerage in exchange for benefits to the adviser is material and must be disclosed on Form ADV. (citations omitted.)

The respondent consented to an order which found that this arrangement violated Sections 206(1), 206(2) and 207 of the Advisers Act.

Here, *Jamison* received a number of clients through referrals. The brokerage of those clients remained with the referring firms, without disclosure by *Jamison* of a potential conflict of interest or of other brokerage options, and these *Jamison* clients paid higher trading commissions. *Jamison* generally did not ask all of its referred clients to make a decision about brokerage. Although some *Jamison* clients would likely have stayed with their referring RR's firm, this does not excuse *Jamison's* failure to make proper disclosures. Even clients who were personally related to a referring RR were entitled to an explanation of the situation and the available brokerage options. By failing to disclose the potential conflict of interest it faced in receiving referrals from RRs who stood to benefit from providing custody and execution services, and by failing to disclose other available brokerage options, *Jamison* willfully violated Section 206(2) of the Advisers Act.<sup>4</sup>

*Jamison's* failure to make the proper disclosures potentially harmed clients when they bought or sold securities. One of an investment advisers "basic duties" is to seek to obtain best execution -- "[T]o execute securities transactions for clients in such a manner that the client's total cost or proceeds in each transaction is the most favorable under the circumstances." *In re Kidder, Peabody & Co., Inc.*, 43 S.E.C. Docket 911 (October 16, 1968). A number of factors go into an analysis of best execution, including trading prices, commissions, speed of execution and certainty of execution. As part of the duty, an adviser is required to review periodically and systematically the quality of execution services received. The scope of the duty evolves as changes occur in the market that give rise to improved execution, including opportunities to trade at more reasonable prices. See, e.g., *Newton v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 135 F.3d 266, 270-271 (3d Cir. 1998); *In re Portfolio Advisory Services, LLC*, Advisers Act Rel. No. 2038 (June 30, 2002); *Order Execution Obligations*, Exch. Act Rel. No. 34-37619A, 62 S.E.C. Docket 2210, 2243 (September 12, 1996).

Taking into consideration the higher commissions paid by some of Jamison's clients, and the lack of any apparent corresponding benefit such as better trading prices, Jamison failed to seek to obtain best execution for these clients. For clients of full service broker-dealers referred by RRs and by third parties, and for clients referred by Jamison to RRs, the failure was immediate. Those clients began paying unnecessarily high commissions for their trades, while a lower cost alternative was available. For long-standing clients who selected their own RRs and broker-dealers prior to the time that Jamison entered into a bank clearing arrangement, Jamison did not periodically and systematically review its brokerage arrangements. Eventually, as new business practices evolved, Jamison failed to disclose that other brokerage arrangements (which may have provided better execution) were available, and Jamison thereby failed to seek to obtain best execution for these clients. By failing to seek to obtain best execution, Jamison willfully violated Section 206(2) of the Advisers Act (see fn. 4).

## **B. Jamison Violated Section 207 of the Advisers Act**

Under Section 207 of the Advisers Act, it is unlawful for any person willfully to make any untrue statement of a material fact or omit to state any material fact required to be stated in a report filed with the Commission. A violation of Section 207 of the Advisers Act does not require a finding of scienter. In re Kenneth Von Kohorn, 58 S.E.C. Docket 2279 n. 2, Release No. IA-1471 (February 22, 1995). An investment adviser violates Section 207 of the Advisers Act if it makes an untrue statement of material facts or omits to disclose material information in its Form ADV and amendments thereto filed with the Commission. SEC v. American Institute Counselors, Inc., et al., Fed. Sec. L. Rep. ¶195,388 (D.D.C.) (Dec. 30, 1975). Item 12 of Part II of Form ADV requires an investment adviser to disclose, inter alia, "the factors considered in selecting brokers and determining the reasonableness of their commissions."

Jamison's Form ADV filings from at least December 1998 until January 2002 failed to disclose the potential conflict of interest inherent in the receipt of referrals from RRs of full service broker-dealers who also provide custody and execution services. In addition, the filings falsely disclosed that Jamison would seek to obtain best execution in conducting trading activities. Accordingly, Jamison willfully violated Section 207 of the Advisers Act.

## **V.**

In view of the foregoing, the Commission deems it appropriate to accept the Offer of Settlement submitted by Jamison and to impose the relief specified in that offer.

## **VI.**

Accordingly:

A. IT IS ORDERED that Jamison cease and desist from committing or causing any violation, and any future violation of Sections 206(2) and 207 of the Advisers Act.

B. IT IS FURTHER ORDERED that Jamison shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 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 U.S. Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Jamison as the 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 Scott W. Friestad, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549-0708.

C. IT IS FURTHER ORDERED that Jamison shall continue to maintain and comply with the following undertakings, implemented by Jamison prior to the date of this Order, and contained in its Offer of Settlement:

(1) Jamison shall continue to maintain a director of compliance who shall have access to all members of Jamison's board of directors and who shall meet with legal counsel annually to review compliance procedures.

(2) Jamison shall continue to maintain a Form ADV that discloses all material terms of arrangements involving broker-dealers that refer clients to Jamison and that provide custody and execution services, including the effect of such arrangements on commission charges, and the effect of such arrangements on Jamison's ability to seek to obtain best execution in some transactions. The Form ADV also discloses that in the case of a referring broker-dealer, a conflict of interest may exist between the client's interest in obtaining best execution and Jamison's interest in receiving future referrals from that broker-dealer. In addition, the Form ADV discloses that if the client chooses to direct its brokerage to a specified broker-dealer, then the client has various brokerage options, including utilizing the services of: 1) the referring broker, if any, 2) any other broker that the client desires or 3) any firm retained generally by Jamison to provide custody and execution services for clients.

(3) Jamison shall continue to maintain a standard investment contract, that has a separate paragraph, designated as "Placement of Brokerage," which contains all of the disclosures set forth in paragraph VI.C.(2), above, and which permits the client to direct its brokerage to a particular broker, in writing, if the client so chooses.

(4) Jamison shall continue to maintain a revised procedures manual which includes a section setting forth policies and procedures to ensure adequate disclosures to clients relating to broker-dealer referrals and conflicts of interest.

D. IT IS FURTHER ORDERED that Jamison shall comply with the following additional remedial undertakings contained in its Offer of Settlement:

(1) Jamison shall mail its Form ADV and investment contract to all Jamison clients who utilize full service broker-dealers and that are not in an asset-based fee program, along with an explanatory cover letter in a form acceptable to the staff of the Commission.

(2) Jamison shall conduct periodic and systematic evaluations of its brokerage arrangements and the alternatives available, for purposes of analyzing best execution.

By the Commission.

Jonathan G. Katz  
Secretary

### **Footnotes**

1 When a client was referred, Jamison (or in some cases, the client) negotiated a discount off the broker-dealer's standard retail commission rate. This discount was typically 33 to 50 percent, and if a better rate was subsequently obtained on behalf of a new client, the new rate was applied to existing Jamison clients of that firm. The commission rate was never as low as the bank "free" rate, however, and most referred clients were not informed that lower rates were available. During the period January 1, 1999 to June 30, 2000, these Jamison clients traded 1,246,674 shares and paid total commissions of \$437,729, an average of \$0.35 per share. During this time, the free rate paid by other clients was \$0.08 per share. Clients with accounts at full service broker-dealers did not receive faster or more certain execution, nor did they receive better trading prices.

2 In some cases, referred clients probably would not have opted for a different or low cost broker-dealer, even if Jamison had disclosed a potential conflict of interest or alternative brokerage arrangements. Many referred clients had significant personal relationships with the referring RR. For example, one client was a sibling of the RR; other clients were friends or in-laws of the referring RRs.

Several referred clients were securities industry professionals who were knowledgeable about discount brokerage.

3 Likewise, as to its long-standing clients who entered into brokerage arrangements before Jamison entered into its arrangement with the bank to provide custody and clearing services, Jamison did not periodically review the brokerage arrangements of these clients for purposes of analyzing best execution.

4 "Willfully" as used in this Order means intentionally committing the act which constitutes the violation. See, *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.