UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2160 / August 19, 2003

ADMINISTRATIVE PROCEEDING File No. 3-11226

In the Matter of DEUTSCHE ASSET MANAGEMENT, INC., Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CENSURE, A CEASE-AND-DESIST ORDER AND PENALTIES PURSUANT TO SECTIONS 203(e) 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 public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and (k) of the Investment Advisers Act of 1940 ("Advisers Act") against Deutsche Asset Management, Inc. ("DeAM" or the "Company") to determine whether DeAM violated Section 206(2) of the Advisers Act.

II.

In anticipation of the institution of these proceedings, Respondent 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 herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of the Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing a Censure, a Cease-and-Desist Order and Penalties Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, as set forth below.

III.

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

A. Nature of Proceeding

This proceeding concerns the failure of DeAM, a registered investment adviser, to disclose a material conflict of interest prior to voting client proxies in a hotly contested merger. On March 19, 2002, DeAM, along with the other entities that comprise the investment advisory operations of Deutsche Bank AG ("Deutsche Bank"), voted proxies on behalf of advisory clients on approximately 17 million shares of Hewlett-Packard Company ("HP") stock in favor of a merger between HP and Compaq Computer Corporation ("Compaq").

At the time of this vote, DeAM had a material conflict of interest. Specifically, Deutsche Bank, through its investment banking division, had been retained to advise HP on the proposed merger and senior Deutsche Bank investment bankers had intervened in DeAM's voting process by requesting that HP have an opportunity to present its strategy to the DeAM Proxy Working Group. By failing to inform its advisory clients of the existence of this material conflict of interest, DeAM willfully1 violated Section 206(2) of the Advisers Act.

B. Respondent

DeAM is an investment adviser registered with the Commission that provides investment advisory services to advisory clients, including its own mutual funds and to mutual funds marketed by other entities. DeAM is one of the entities that comprise the asset management division of Deutsche Bank.

C. Related Entities

Deutsche Bank is a multinational diversified financial institution organized under the laws of Germany whose stock is registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 and traded on the New York Stock Exchange.

Deutsche Bank Securities, Inc. ("DB Securities") is a broker-dealer registered with the Commission since 1973. Prior to April 2002, it was known as Deutsche Banc Alex. Brown.

D. Facts

1. In January 2002, HP Retained DB Securities to Advise HP on the Merger

In September 2001, HP management announced a proposed merger between HP and Compaq. A shareholder vote on the merger was set for March 19, 2002.

In January 2002, HP retained DB Securities to advise HP in connection with the proposed merger. HP agreed to pay DB Securities $1 million guaranteed, and another $1 million contingent upon the approval and completion of the merger. DB Securities' assignment was to assess shareholder sentiment concerning the vote, and provide market reconnaissance to HP.

In accordance with the confidentiality provision of the engagement letter, DB Securities did not disclose the merger consulting assignment publicly. Thus, DeAM's advisory clients (along with the rest of the public) were unaware that DB Securities was working for HP to secure approval of the proposed merger.

2. In February 2002, DeAM Learned of the Merger Consulting Assignment

In mid-February 2002, a DB Securities investment banker contacted DeAM's then-Chief Operating Officer ("COO") and told her about the merger consulting assignment for HP. DeAM's COO then sent an email to the DeAM representative who was serving as the chairman of the Proxy Working Group, the DeAM committee that would cast the proxy votes on the merger. The email revealed the existence of the investment bankers' assignment for HP. The COO's email was subsequently forwarded to another member of the Proxy Working Group. Thus, in February two members of the Proxy Working Group knew that DB Securities was representing HP in connection with the proposed merger.

3. DeAM Initially Voted All Proxies Against the Merger

On March 11, 2002, the Proxy Working Group met to discuss how to vote proxies on approximately 17 million shares of HP stock held on behalf of DeAM clients in the proposed HP-Compaq merger. However, the Proxy Working Group decided to defer its vote until Friday, March 15, 2002, to allow further time to study the issues.

On March 15, the Proxy Working Group met again to vote its clients' HP proxies. After extensive discussion, the Proxy Working Group voted 3 to 1 to cast all DeAM-controlled HP proxies against the merger. Later that day, DeAM faxed its proxy cards to be processed.

4. Following Further Contact between DB Securities and DeAM Personnel, DeAM Reconvened the Proxy Working Group

On the afternoon of March 18, HP senior managers learned that DeAM (and the other entities in Deutsche Bank's asset management division) had voted their clients' approximately 17 million proxies against the merger. Three senior HP officials called their contacts at DB Securities about the situation. In particular, HP's Chief Financial Officer requested that HP be given the opportunity to make a presentation to the Proxy Working Group.

Later that day, two senior DB Securities investment bankers called DeAM's then-CIO ("Chief Investment Officer") and requested an opportunity for HP management to speak with the Proxy Working Group. The CIO already knew that DB Securities was an adviser to HP on the merger. During the call, the CIO

questioned whether the bankers were trying to pressure him, which they denied. The bankers stated that the HP relationship was important to the bank and that from a client relationship perspective it would be important to give HP the opportunity to talk to the Proxy Working Group about the deal. The CIO agreed to arrange the meeting, on the condition that a dissident HP shareholder who was leading opposition to the merger also be given a chance to make a presentation to the Proxy Working Group.

On the evening of March 18, the CIO notified the Proxy Working Group by email of what he referred to as an "urgent proxy meeting" the next day.

5. The Proxy Working Group Reversed Its Prior Decision and Voted in Favor of the Merger

The Proxy Working Group met again on the morning of March 19, 2002, and heard first from the dissident HP shareholder. Following this presentation and after the shareholder had left the call, DeAM's CIO informed the members of the Proxy Working Group that "we have an enormous banking relationship with Hewlett Packard. And there has been some miscommunication that occurred that caused us not to meet with either the Hewlett-Packard management or...with Walter Hewlett and Spencer Fleischer, who represent the opposing view." After acknowledging that the Proxy Working Group had already voted, the CIO told them:

I have some very grave concerns that-and this is why this is taking place-that, we need to have very strong documentation in place as it relates to this vote.

And I'm going to ask everyone to reconsider their vote based on the information they hear today. That does not mean they have to change their vote. It just means I want people to make sure that they have heard all the evidence and all the facts, and then with their-with that in mind, make a new vote.

The CIO stated that the committee still had time to change their vote and submit new proxies before the HP shareholders meeting.

Several minutes later, a DB Securities investment banker, who was identified by name only and not by title or affiliation, joined the call from San Francisco, followed by HP management. HP management presented its views on the proposed merger. The DB Securities investment banker did not participate in the discussion. Upon the completion of the HP management presentation, HP's CEO closed by saying that the success of the merger was "of great importance to our ongoing relationship." Then both HP management and the DB Securities investment banker left the call.

During the Proxy Working Group's subsequent discussion, the CIO informed the members that he believed that Deutsche Bank was one of HP's advisers on the proposed merger with Compaq. Following a discussion, the Proxy Working Group voted 4 to 1 to revoke their previous proxies and cast them instead in favor of the merger. On the afternoon of March 19, shortly before voting closed, DeAM personnel recast all 17 million of its clients' votes in favor of the merger.

At the time of the March 19 vote, the fact that HP had retained DB Securities to advise HP on its proposed merger with Compaq was not publicly known. Nor was it publicly known that senior DB Securities investment bankers had intervened in DeAM's voting process by requesting that HP be given an opportunity to make a presentation to the DeAM Proxy Working Group.

E. Legal Discussion

Section 206(2) of the Advisers Act makes it unlawful for an investment adviser "to engage in any transaction, practice or course of business, which operates as a fraud or deceit upon any client or prospective client." An adviser violates Section 206(2) by failing to disclose to its clients any material fact about a potential or actual conflict of interest that may affect its unbiased service to its clients. SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 195-97, 84 S.Ct. 275, 11 L.Ed.2d 237 (1963). Materiality is judged according to a reasonable investor standard. TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1979). Negligence is sufficient to prove a violation of Section 206(2). SEC v. Steadman, 967 F.2d 636, 643 (D.C. Cir. 1992).

Whether a client was actually harmed by an adviser's failure to disclose a potential conflict of interest is irrelevant. See Capital Gains, 375 U.S. at 195; SEC v. Blavin, 760 F.2d 706, 711 (6th Cir. 1985) (no showing of actual harm required to establish violation of antifraud provisions of Advisers Act).

DeAM violated Section 206(2) by voting client proxies in connection with the HP-Compaq merger without first disclosing the circumstances of its investment banking affiliate's work for HP on the proposed merger and its intervention in DeAM's voting process. A reasonable advisory client would want to know that its fiduciary, which was called upon to vote client proxies on a merger, had been contacted by officials of its affiliated investment bank in connection with an engagement directly related to the subject of the proxy vote.

Based on the foregoing, DeAM willfully violated Section 206(2) of the Advisers Act.2

IV.

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

ACCORDINGLY, IT IS HEREBY ORDERED:

Pursuant to Section 203(e) of the Advisers Act, that Respondent DeAM is censured.

Pursuant to Section 203(k) of the Advisers Act, that Respondent DeAM shall cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act; and

That DeAM shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of seven hundred fifty thousand dollars ($750,000) 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 Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312; and (D) submitted under a cover letter that identifies DeAM as a respondent in these proceedings, and sets forth the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Helane L. Morrison, San Francisco District Office, Securities and Exchange Commission, 44 Montgomery Street, 11th Floor, San Francisco, California 94104.

By the Commission.
Jonathan G. Katz
Secretary

Footnotes

1 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.

2 In March 2002, a dissident HP shareholder brought suit in Delaware Chancery Court to block the merger based, in part, on the claim that HP improperly influenced the outcome of DeAM's March 19, 2002 proxy re-vote. The Chancery Court rejected this claim, stating that DeAM's Proxy Working Group acted in what the committee believed to be the best interests of its advisory clients. Hewlett v. Hewlett-Packard Co., C.A. No. 19513-NC, slip op. at 41 (Del. Ch. Apr. 30, 2002). Ultimately, DeAM's vote did not determine the outcome of the HP merger contest. For purposes of this Order, the Commission expresses no opinion as to whether DeAM's Proxy Working Group acted in what it believed were the best interests of its advisory clients. The Commission need not reach that issue in light of relevant law. As the Supreme Court explained in Capital Gains, 375 U.S. at 195, Section 206(2) does not "require proof of intent to injure and actual injury to the client" of an adviser. An adviser must disclose material potential or actual conflicts of interest so that the client can decide whether it wants the adviser to continue to act on the client's behalf, or whether the client wishes to take other steps to protect its interests. Id. at 196.