

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3503 / November 20, 2012**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 30278 / November 20, 2012**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15102**

**In the Matter of EVENS BARTHELEMY and BARTHELEMY GROUP LLC, Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission ("SEC" or "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), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Evens Barthelemy and Barthelemy Group LLC (each a "Respondent").

**II.**

In anticipation of the institution of these proceedings, each Respondent has submitted an Offer of Settlement (the "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 them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

**III.**

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

**Summary**

These proceedings arise out of improper SEC registration, materially false Form ADV filings, and compliance and record keeping failures by Barthelemy Group LLC ("Barthelemy Group" or "BG"), an investment adviser registered with the states of New York and New Jersey that is owned and managed by Evens Barthelemy ("Barthelemy"). Barthelemy improperly registered BG with the Commission in July 2009 under the Advisers Act multi-state adviser exemption from the prohibition against SEC registration, and thereafter improperly maintained BG's registration under the Act's \$25 million assets under management ("AUM") exemption.<sup>1</sup> At all times since initially registering with the Commission, however, BG had no more than \$5 million in AUM and was required to register in at most three states (rather than the thirty required under the multi-state exemption).

Further, in response to a request from the Commission's staff during a 2010 investment adviser exam of BG, Barthelemy misrepresented his firm's AUM as \$26.28 million instead of \$2.628 million in a spreadsheet. When questioned by the Exam staff later, Barthelemy conceded the inaccuracy, and in

June 2011 Barthelemy withdrew his firm's SEC registration. In addition, BG lacked adequate compliance policies and procedures and failed to maintain various books and records required by the Advisers Act related to codes of ethics and providing or offering the firm's Form ADV Part II to clients.

## **Respondents**

Barthelemy Group LLC (CRD No. 150907; SEC File No. 801-70414), is a New Jersey limited liability company wholly-owned by Evens Barthelemy with its primary office in New York, New York. It was registered as an investment adviser with the Commission from July 2009 until it withdrew its registration in June 2011. BG has been registered as an investment adviser with the states of New York and New Jersey since May and June 2011, respectively. During the pertinent period, BG offered non-discretionary investment advice to approximately thirty individual and institutional clients, charging quarterly fees based on a percentage of AUM.

Evens Barthelemy (CRD No. 12144231), age 45, formed and registered BG with the Commission as an investment adviser in July 2009 after having worked as a registered representative of two different broker dealers since 2000. He is BG's founder, sole owner, managing director, and Chief Compliance Officer, and he is the only person at BG who provides investment advice to clients. In New Jersey, Barthelemy is a registered Investment Adviser Representative. Barthelemy also sells insurance through BG, and has insurance licenses with New York, New Jersey and Pennsylvania. He has Series 63 and 65 securities licenses. Barthelemy also sells insurance through BG, and he has insurance licenses with New York, New Jersey and Pennsylvania.

## **Ineligibility for SEC Investment Adviser Registration**

While BG was SEC-registered, Section 203A of the Advisers Act and Rule 203A-2(e) thereunder prohibited an investment adviser regulated or required to be regulated in the state in which it had its principal office and place of business from registering with the Commission, unless it had AUM in excess of \$25 million or was required by the laws of thirty or more states to register as an investment adviser with the securities regulators of those states. In accordance with these Advisers Act provisions, a registrant was required to specify its basis for registration in Item 2 of Commission Form ADV Part 1. Form ADV also included instructions and definitions explaining these eligibility provisions.

For advisers selecting the multi-state adviser exemption as a basis for registration, a registrant was required to represent that it had concluded it was legally required to register with thirty or more states in Section 2.A(9) of Schedule D to Form ADV Part I. For advisers selecting the \$25 million AUM exemption as a basis for registration, the relevant instructions in Form ADV explained, "[i]n determining the amount of your assets under management, include the securities portfolios for which you provide continuous and regulatory supervisory or management services as of the date of filing this Form ADV." Regardless of the basis for registration, an adviser was required to quantify its AUM and total number of accounts in Item 5.F of Form ADV Part I.

BG was not eligible for SEC registration under either the multi-state or the \$25 million AUM exemption from the prohibition against SEC registration. Barthelemy filed his firm's initial Form ADV Part I with the Commission on July 9, 2009, and an amended version on November 16, 2009, that based the firm's registration on the multi-state adviser exemption under Item 2.A(9). In these filings, Barthelemy made the accompanying representations in Schedule D. However, the firm was not eligible for this multi-state exemption and Barthelemy's representations in Schedule D were false because BG was not required to be registered as an adviser by thirty or more states. In fact, BG never has been required to register with more than three states.

In March 2010, Barthelemy changed BG's basis for SEC registration in an amended Form ADV, claiming his firm met the \$25 million AUM threshold under Item 2.A(1) of Part I. Furthermore, in all of BG's Forms ADV filed as late as 2011, Barthelemy also represented that the firm managed more than \$26.5 million and between seventy and ninety accounts in Item 5.F. of Part I. BG was not eligible to register based on its AUM, however, and its AUM claims in Item 5.F were grossly overstated. For the first four months of BG's registration, neither Barthelemy nor BG was managing any client assets that would qualify as AUM. At no time thereafter did Barthelemy or his firm manage more than \$5 million in client assets.

Barthelemy knew or should have known that his representations on BG's Forms ADV were false and that his firm was not eligible for SEC registration. Barthelemy alone prepared, signed and filed on the Commission's Investment Adviser Registration Depository all of BG's Forms ADV, including Parts I and II and all schedules and amendments thereto. Having read the instructions when completing Form ADV, Barthelemy was or should have been aware of what the multi-state exemption required and how AUM was to be calculated, and that his firm was not eligible under either registration provision at any time. Contrary to Form ADV's instructions, Barthelemy sought to include in the multi-state and AUM calculus certain aspirational client portfolios, including those he had serviced at previous employers. However, aspirational clients and their assets may not be included under Form ADV's definitions.<sup>2</sup>

### **Inflated AUM Reported to SEC Exam Staff**

Barthelemy also misrepresented BG's AUM to Commission staff during a 2010 BG investment adviser exam. In response to an initial request from exam staff, Barthelemy provided an Excel spreadsheet listing all his clients and the assets he managed for each, which assets he totaled as \$26.28 million. The exam staff later learned from BG's independent custodian, however, that BG's assets totaled only \$2.6 million, and that the assets in BG's spreadsheet were inflated ten-fold. Barthelemy had downloaded client account values from the custodian's online platform, and then manually moved the decimal point for each client one place to the right. After being confronted by the exam staff, Barthelemy provided a corrected spreadsheet and later withdrew BG's SEC registration.

### **Compliance Failures**

BG did not adopt written policies and procedures required by Rule 206(4)-7 of the Advisers Act that were reasonably designed to prevent violations of the Advisers Act and the rules thereunder by the firm and its supervised persons. Barthelemy, who prepared his firm's 2010 written Compliance, Supervisory Procedures and Policies Manual, adopted it largely verbatim from a 2009 version he obtained from his prior employment at a registered broker-dealer. That firm did not engage in the business of an investment adviser, and therefore the manual Barthelemy borrowed was not reasonably designed to prevent his small advisory firm from violating the Advisers Act and the rules promulgated thereunder. For instance, while BG's manual references the Securities Act of 1933 and the Securities Exchange Act of 1934, as well as other financial statutes and various FINRA rules and filings, there was no reference to the Advisers Act. Also, the firm's manual included duties of suitability and fairness, but failed to mention the fiduciary duty advisers owe their clients. BG's manual also included provisions about commission-based compensation, broker-dealer related filings, and broker-dealer books and records provisions, none of which were applicable to the firm or its employees. In adopting the broker-dealer manual from his prior employer, Barthelemy mostly merely substituted the term "investment adviser" for "registered representative" and substituted "client" for "customer." In addition, nobody at BG, including its CCO Barthelemy, conducted the annual review of its policies and procedures required by Advisers Act Rule 206(4)-7(b).

### **Books-and-Records Failures**

Barthelemy did not cause BG to keep certain books and records required by the Advisers Act Rules and rules promulgated thereunder. BG did not have the written acknowledgements of the firm's code of ethics required by Rule 204-2(a)(12)(iii). Also, with respect to the requirement in Rule 204-3 to deliver or offer the firm's Form ADV, BG did not have a record of the dates that its ADV Part II was given or offered to clients or prospective clients as required by Rule 204-2(a)(14)(i).

### **Violations**

A. As a result of the conduct described above, Barthelemy Group and Barthelemy willfully violated Section 207 of the Advisers Act, which makes it unlawful "for any person willfully to make any untrue statements of material fact in any registration application or report filed with the Commission under Section 203 or 204, or willfully to omit to state in any such application or report any material fact which is required to be stated therein."

B. As a result of the conduct described above, Barthelemy Group willfully violated, and Barthelemy

willfully aided and abetted and caused BG's violations of, Section 203A of the Advisers Act, which while Barthelemy Group was SEC registered generally prohibited an adviser that was regulated or required to be regulated in the state in which it has its principal office and place of business from registering with the Commission, unless it had AUM in excess of \$25 million or advised a registered investment company.<sup>3</sup>

C. As a result of the conduct described above, Barthelemy Group willfully violated, and Barthelemy willfully aided and abetted and caused Barthelemy Group's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require, among other things, that a registered investment adviser: (a) implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules; and (b) review at least annually its written policies and procedures and the effectiveness of their implementation.

D. As a result of the conduct described above, Barthelemy Group willfully violated, and Barthelemy willfully aided and abetted and caused BG's violations of, Section 204 of the Advisers Act and Rule 204-2(a) thereunder, which require, among other things, that a registered investment adviser make and keep the following:

1. records of the written acknowledgments of the receipt of the adviser's code of ethics that all supervised persons are required to provide under Advisers Act Rule 204A-1(a)(5); and
2. each Form ADV Part II or other written statement that complies with Advisers Act Rule 204-1(b), and each amendment or revision thereof, given or sent to any client or prospective client of such investment adviser in accordance with the provisions of Advisers Act Rule 204-3, and a record of the dates that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

### **Civil Penalties**

Each Respondent has submitted a sworn Statement of Financial Condition dated July 19, 2012, and other evidence and has asserted an inability to pay a civil penalty.

### **Undertakings**

Respondent Barthelemy Group has undertaken to do the following:

A. within thirty (30) days following the entry of the Order, file and provide to the staff of the Commission ("the staff") an amended Form ADV for Barthelemy Group ("Amended Form ADV") that discloses all material terms of the Order;

B. after filing the Amended Form ADV and within thirty (30) days following the entry of the Order, mail a copy of the Amended Form ADV and a copy of the Order to each state regulator with which Barthelemy Group is registered as an investment adviser, or with which Barthelemy Group has a pending application for such registration, using commercially reasonable efforts to obtain an acknowledgment of receipt;

C. within thirty (30) days following the entry of the Order, mail or email a copy of the Amended Form ADV and a copy of the Order to each existing Barthelemy Group investment advisory client, together with a cover letter in a form not unacceptable to the Commission's staff, using commercially reasonable efforts to obtain an acknowledgment of receipt;

D. within thirty (30) days following the entry of the Order, post a copy of the Order on the home page, in a readily viewed area, of any and all Barthelemy Group website(s) for a period of two (2) years; and

E. certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent Barthelemy Group agrees to provide such evidence.

No later than sixty (60) days from the date of the completion of the undertakings, the certification and supporting material shall be submitted to Scott Weisman, Assistant Director, Division of Enforcement (100 F St., NE, Washington, DC 20549-5010-A), with a copy to the Office of Chief Counsel of the Division of Enforcement (100 F St., NE, Washington, DC 20549).

Respondent Barthelemy has undertaken to do the following:

- A. cause Barthelemy Group to comply with its undertakings, as described above in Section III;
- B. within thirty (30) days following the entry of this Order, mail a copy of the Amended Form ADV and a copy of the Order to each existing investment advisory client of Barthelemy, together with a cover letter in a form not unacceptable to the Commission's staff, using commercially reasonable efforts to obtain an acknowledgment of receipt;
- C. within thirty (30) days following the entry of the Order, mail or email a copy of the Amended Form ADV and a copy of the Order to each state regulator from which Barthelemy has any securities license or with which Barthelemy has a pending application for any securities license, using commercially reasonable efforts to obtain an acknowledgment of receipt; and
- D. certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent Barthelemy agrees to provide such evidence. No later than sixty (60) days from the date of the completion of the undertakings, the certification and supporting material shall be submitted to Scott Weisman, Assistant Director, the Division of Enforcement (100 F St., NE, Washington, DC 20549-6010-A), with a copy to the Office of Chief Counsel of the Division of Enforcement (100 F St., NE, Washington, DC 20549).

In determining whether to accept the Offer, the Commission has considered these undertakings.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in the Offers of Respondents Barthelemy and Barthelemy Group.

Accordingly, pursuant Sections 203(e), 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondents Barthelemy and Barthelemy Group cease and desist from committing or causing any violations and any future violations of Sections 203A, 204, 206(4) and 207 of the Advisers Act and Rules 204-2(a)(12)(iii), 204-2(a)(14)(i), and 206(4)-7 promulgated thereunder.

B. Respondent Barthelemy be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. For a period of thirty days from the entry of this Order, and solely for the purposes of performing the undertakings in Section III above and completing the wind down of Barthelemy Group's investment advisory business, Barthelemy may (a) participate in advisory activities and (b) continue to be associated with Barthelemy Group while Barthelemy Group acts as an investment adviser; and prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; with the right to apply for reentry after two (2) years to the appropriate self-regulatory organization, or if there is none, to the Commission. Any reapplication for association by Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as

the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

C. Respondent Barthelemy Group is censured.

D. Based upon each Respondent's sworn representations in its Statement of Financial Condition dated July 19, 2012 and other documents submitted to the Commission, the Commission is not imposing a penalty against either Respondent.

E. The Division may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondents provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect.

Respondents may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

F. Respondents shall comply with the undertakings enumerated above in the Undertakings paragraphs of Section III.

By the Commission.

Elizabeth M. Murphy  
Secretary

#### **Footnotes**

1 Since the time pertinent to this matter, and pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. (2nd Sess. 2011), the Commission has increased the AUM thresholds for SEC registration. See Rules Implementing Amendments to the Investment Advisers Act of 1940, 76 Fed. Reg. 42,950 (July 19, 2011).

2 At the time BG registered with the Commission, Rule 203A-2(d) under the Advisers Act provided a limited exception for newly formed investment advisers to register with the Commission based upon a "reasonable expectation" that they would have \$25 million under management prior to the end of 120 days. BG did not claim this exception, and otherwise was unable to rely on it. First, the exception required disclosure at the time of registration and BG did not disclose that its AUM were aspirational. Second, BG did not withdraw its registration 120 days after it became effective, even though it still did not meet the \$25 million threshold.

3 See supra note 1.