

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4004 / January 21, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16350

In the Matter of

DU PASQUIER & CO., INC.,

Respondent.

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

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against du Pasquier & Co., Inc. (“du Pasquier” or “Respondent”).

II.

In anticipation of the institution of these proceedings, 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

Summary

These proceedings are brought against du Pasquier, a formerly registered investment adviser that had approximately \$48 million in assets under management ("AUM"), shortly before it ceased operations in July 2014. Du Pasquier failed both to maintain adequate investment advisory compliance policies and procedures and to ensure proper and timely disclosures about its investment advisory business.

At various times from at least 2007 forward, as described more fully below, du Pasquier failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and rules thereunder, including relying on an "off-the-shelf" template for a compliance manual without modifying certain sections of the template to take into consideration the nature of du Pasquier's investment advisory business. Du Pasquier also failed to implement procedures it did adopt, for example, failing to conduct adequate "best execution" reviews and failing to adequately review the firm's marketing materials. Additionally, du Pasquier failed to annually review the adequacy of its compliance policies and procedures and the effectiveness of their implementation. Du Pasquier also conducted inadequate reviews of access persons' personal securities transactions. Finally, du Pasquier failed to amend its Form ADV to correct certain misstatements therein, and failed to deliver its Form ADV Part 2A and Part 2B to various clients.

A number of the violations described herein were recurring, continuing from at least 2007, despite the firm being alerted to the potential compliance failures through examinations conducted by the Office of Compliance Inspections and Examinations ("OCIE") in 2004 and 2007. Du Pasquier remediated some deficiencies identified in those examinations, but the firm failed to prevent the violations set forth below.

Respondent

1. **Du Pasquier & Co., Inc.**, headquartered in New York, New York, was dually registered with the Commission as an investment adviser and broker-dealer during the relevant period. Du Pasquier became registered with the Commission as an investment adviser in 2003, and its investment advisory business operated under the name, du Pasquier Asset Management. As of April 2014, du Pasquier's investment advisory business was managing approximately 118 advisory accounts with approximately \$48 million in AUM. Du Pasquier ceased to operate as of July 31, 2014, having transferred its employees, assets under management, and other customer accounts to Aegis Capital Corporation, which is also dually registered with the Commission as a broker-dealer and investment adviser. Du Pasquier's withdrawals as an investment adviser and as a broker-dealer registered with the Commission both became effective on September 29, 2014.

Background

Failure to Adopt and Implement Reasonably Designed Compliance Policies and Procedures

2. Section 206(4) of the Advisers Act and Rule 206(4)-7(a) thereunder require a registered investment adviser to adopt and implement written policies and procedures reasonably designed to prevent violations by the adviser and its supervised persons of the Advisers Act and the rules adopted thereunder.

3. From at least 2009 forward, du Pasquier relied on an off-the-shelf investment advisory compliance manual template. Du Pasquier tailored a number of sections of the template appropriately, but failed to edit certain others, leaving the firm without a customized set of established procedures. For example, on the issue of safeguarding client information, the template provided a number of different possible procedures and advised that certain security measures “should” be taken by the firm. Du Pasquier retained that language from the template unedited, without clarifying which of the measures it would use.

4. With respect to certain procedures that du Pasquier did adopt, du Pasquier failed to ensure they were implemented. For example, whereas the advisory compliance manual required that marketing materials be reviewed by the designated compliance officer, two publications were disseminated to the public without such a review. The first publication, provided to prospective clients, was a 17-page marketing brochure, entitled “The du Pasquier Edge.” It described the firm’s business. The second publication, a weekly “Market Commentary,” was written by one of du Pasquier’s senior employees and contained that employee’s assessment of the current market outlook. Du Pasquier posted these commentaries on du Pasquier’s website and provided them to du Pasquier’s advisory clients. No one at the firm aside from that employee reviewed, or even knew any of the content of these commentaries, before publication.

5. From at least 2007 forward, du Pasquier failed to conduct adequate reviews to insure its compliance with its “best execution” obligations. Specifically, du Pasquier sampled trades from across the entire firm, which was dominated by its brokerage business, and therefore, the number of trades reviewed in investment advisory accounts was insufficient. In addition, there was no way to differentiate readily between investment advisory and brokerage accounts. Therefore, when du Pasquier, as part of its best execution review, examined trades to ensure that fees and commissions had been appropriately charged to clients, that review was conducted by a du Pasquier employee who relied on her personal knowledge as to whether each account in which the given trade was conducted was fee-based, commission-based, or both.

6. Du Pasquier’s Chief Compliance Officer (“CCO”) carried out few if any compliance responsibilities from at least 2008 to 2012, but rather devoted her time to managing individual accounts of brokerage customers. From 2008 until 2011, one of du Pasquier’s two principals performed the compliance responsibilities for the firm’s investment advisory business. As the head of the investment advisory firm, he was an appropriate person to handle such responsibilities. However, he had inadequate training and knowledge about the Advisers Act. In

2011, du Pasquier hired an employee to be the designated compliance officer (a position separate from the CCO), but he also had little Advisers Act compliance experience or training. More generally, du Pasquier also failed to provide adequate training to its employees regarding the firm's investment advisory compliance policies and procedures. Employees took yearly computer-based training regarding the firm's policies and procedures, but the firm provided neither periodic targeted trainings throughout the year for current employees nor initial training for new employees.

Failure to Conduct Annual Reviews

7. Under Section 206(4) of the Advisers Act and Rule 206(4)-7(b) thereunder, an investment adviser must review, no less frequently than annually, the adequacy of its compliance policies and procedures established pursuant to Rule 206(4)-7 and the effectiveness of their implementation. However, from at least 2007 until December 2012, du Pasquier failed to conduct annual reviews of the adequacy of its investment advisory compliance program. Du Pasquier reviewed its investment advisory procedures and policies to the extent they were touched upon in reviews of the firm's broker-dealer policies and procedures, and when du Pasquier incorporated or updated policies based on compliance-related industry updates that it received regularly from a compliance consulting company. However, du Pasquier did not conduct any reviews that surveyed its investment advisory compliance program as a whole, or on an annual basis.

Code of Ethics – Failure to Adequately Review Access Persons' Transactions

8. Section 204A and Rule 204A-1 thereunder, require that a registered investment adviser establish, maintain and enforce a written code of ethics with provisions requiring that all of the adviser's access persons report, and the adviser review, personal securities transactions quarterly and securities holdings annually. In adopting Rule 204A-1, the Commission stated that an investment adviser, in addition to "compar[ing] the personal trading to any restricted lists," should, among other things, "assess whether the access person is trading for his own account in the same securities he is trading for clients, and if so whether the clients are receiving terms as favorable as the access person takes for himself." Investment Adviser Code of Ethics, Advisers Act Release No. 2256, 69 Fed. Reg. 41696, 41700-701 (July 9, 2004).

9. Du Pasquier's Code of Ethics, contained in the firm's compliance manual, simply set forth that access persons' personal transactions and holdings reports be reviewed periodically, without indicating how the review should be carried out. In implementing the procedure, du Pasquier did not assess whether a given access person had traded in his own account in the same security he was trading for clients.

Failure to Amend Form ADV

10. Section 204 of the Advisers Act and Rule 204-1 thereunder require an investment adviser to make certain amendments to its Form ADV. Under Rule 204-1(a)(1), an investment adviser must amend its Form ADV at least annually, and under Rule 204-1(a)(2), amendments must be made more frequently if required by the instructions to Form ADV. Rule 204-1(e) provides that each amendment required to be filed under the rule is a "report" within the meaning of Sections 204 and 207 of the Advisers Act.

11. Section 207 of the Advisers Act makes it “unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein.”

12. From at least 2009 to 2011, the amount of assets under management and number of accounts managed were misstated in the annual amendments to du Pasquier’s Form ADV. In each of the amendments to its Form ADV filed from March 2009 through March 2011, du Pasquier failed to update those figures at all from the previous year’s filing, even though the information had changed. Instead, the stated figures remained unchanged in the Form ADV amendments filed from March 2008 through March 2011.

13. Also, du Pasquier’s Form ADV Part 2 filed in March 2011 and March 2012 contained materially inaccurate statements regarding certain periodic reviews and reconciliations. Although the Form ADV Part 2 stated that du Pasquier reconciled its portfolio management system with monthly customer account statements issued by du Pasquier’s clearing broker, such reconciliations were not performed.

14. Further, du Pasquier’s Form ADV Part 2 filed in March 2011 and March 2012 stated that du Pasquier reviewed clients’ accounts quarterly to ensure that clients’ investment guidelines were being followed. However, such reviews were conducted for the accounts of only one of the firm’s four investment adviser representatives.

15. Additionally, du Pasquier’s March 2011 Form ADV Part 2A Appendix 1, the Wrap Fee Brochure, stated that senior management “meets frequently to review asset allocation, portfolio performance and general economic outlook.” Although this version of the Wrap Fee Brochure was still on file as current in February 2012, the referenced Senior Management meetings had ceased to be held a year earlier.

Failure to Deliver Form ADV Part 2 Brochure and Supplement

16. Section 204 of the Advisers Act and Rule 204-3(b) thereunder (as modified by paragraph (g) of the Rule), require that within 60 days after the date by which an investment adviser is first required to electronically file its Form ADV Part 2A (“brochure”) with the Commission, it must deliver to each of its existing clients its current brochure and any current brochure supplement. On December 28, 2010, the Commission extended the deadline for the compliance date for the delivery of Form ADV, Part 2B brochure supplements to new and prospective clients to July 31, 2011, and to existing clients to September 30, 2011. Amendments to Form ADV; Extension of Compliance Date, Advisers Act Release No. 3129, 76 Fed. Reg. 255, 256 (Jan. 4, 2011).

17. Du Pasquier failed to deliver its brochure to existing clients within 60 days after electronically filing that document with the Commission, and also failed to deliver a required brochure supplement to existing clients by September 30, 2011.

Recurring violations

18. A number of the violations described above involve recurring conduct that was identified by OCIE in examinations of du Pasquier in 2004 and 2007. At the time of those exams, OCIE alerted du Pasquier to its potential compliance failures. Du Pasquier remediated some deficiencies identified in those examinations, but the firm failed to prevent the violations set forth herein.

Violations

19. As a result of du Pasquier's failure to adopt and implement certain compliance policies and procedures, as described in paragraphs 3 to 6 above, and its failure to perform annual compliance reviews as described in paragraph 7 above, du Pasquier violated Section 206(4) of the Advisers Act and Rule 206(4)-7(a) and (b) thereunder.

20. As a result of du Pasquier's failure to conduct adequate reviews of its access persons' personal securities transactions as described in paragraph 9 above, du Pasquier violated Section 204A of the Advisers Act, and Rule 204A-1 thereunder.

21. As a result of du Pasquier's failure to amend its Form ADV regarding the amount of client assets under management and the number of accounts du Pasquier was managing, as described in paragraph 12 above, du Pasquier violated Section 204 of the Advisers Act and Rule 204-1(a)(1) thereunder.

22. Additionally, as a result of du Pasquier's failure to correct inaccurate statements in its Form ADV Part 2 regarding periodic reviews and reconciliations of client accounts, as described in paragraphs 13 to 15 above, du Pasquier violated Section 204 of the Advisers Act and Rule 204-1(a)(2) thereunder, and by willfully making untrue statements of material fact, violated Section 207 of the Advisers Act.

23. As a result of du Pasquier's failure to deliver its Form ADV Part 2A and Part 2B to existing clients, as described in paragraph 17 above, du Pasquier violated Section 204 and Rule 204-3(b) thereunder (as modified by paragraph (g) of the Rule).

Du Pasquier's Remedial Efforts

24. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff, including certain steps taken prior to Respondent becoming aware of the staff's investigation.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent du Pasquier's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 203(k) of the Advisers Act, Respondent du Pasquier cease and desist from committing or causing any violations and any future violations of Sections 204, 204A, 206(4) and 207 of the Advisers Act, and Rules 204-1(a)(1) and (2), 204-3(b), 204A-1, and 206(4)-7(a) and (b) promulgated thereunder.

B. Respondent du Pasquier shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$50,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying du Pasquier & Co., Inc. as the Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Amelia A. Cottrell, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Room 400, New York, NY 10281.

By the Commission.

Brent J. Fields
Secretary