

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4087 / May 18, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16542

In the Matter of

**TRUST & INVESTMENT
ADVISORS, INC., LARRY K.
PITTS, AND GEORGE M.
PRUGH**

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, 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 public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Trust & Investment Advisors, Inc. and Sections 203(f) and 203(k) of the Advisers Act against Larry K. Pitts and George M. Prugh (Trust & Investment Advisors, Inc., Larry K. Pitts and George M. Prugh referred to collectively as “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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, and except as provided herein in Section V, 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, 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 Respondents' Offers, the Commission finds¹ that:

Summary

These proceedings arise out of the failure of Trust & Investment Advisors, Inc. ("TIA"), a registered investment adviser based in Indiana, its principal, Larry K. Pitts ("Pitts"), and its Senior Vice President/CFO, George M. Prugh ("Prugh"), to correct ongoing securities violations at the advisory firm. During on-site examinations in 2005 and 2007, the Office of Compliance Inspections and Examinations ("OCIE") cited numerous deficiencies, including TIA's failure to complete an annual compliance review or develop a compliance manual and TIA's continued use of misleading statements in its marketing materials. Despite OCIE's warnings of deficiencies resulting in possible securities law violations, and assurances from TIA that its errors would be corrected after the 2005 and 2007 exams, OCIE identified the same deficiencies in its 2011 exam. In addition, Enforcement staff uncovered additional misleading statements in TIA's marketing materials during its investigation. Based on the foregoing, TIA willfully violated, and Pitts and Prugh willfully aided, abetted, and caused TIA's violations of, Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-1(a)(5) and 206(4)-7 thereunder.

Respondents

1. Trust & Investment Advisors, Inc. ("TIA") is an Indianapolis-based registered investment adviser that has been registered with the Commission since 1987. TIA provides discretionary portfolio management services to approximately 270 clients with assets under management of approximately \$150 million.
2. Larry Keith Pitts, age 76 and a resident of Indianapolis, is the CEO, sole owner, and Portfolio Manager of TIA. Pitts is a Chartered Financial Analyst and has no disciplinary history.
3. George Michael Prugh, age 64 and a resident of Indianapolis, is Senior Vice President, CFO, and Chairman of the Investment Committee for TIA. Prugh is a Certified Public Accountant and also holds Series 7 and Series 63 licenses. Prugh has no disciplinary history.

Facts

4. OCIE conducted three on-site examinations of TIA's advisory business between 2005 and 2011 (first in 2005, second in 2007, and third in 2011). These examinations revealed repeated deficiencies by TIA in the areas of performance advertising and compliance.
5. During the 2005 exam, OCIE discovered and alerted TIA that it had failed to develop compliance policies required by Rule 206(4)-7. Following the 2005 exam, TIA reported that it had "made progress with our written policies and procedures designed to prevent violation

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

of the Advisers Act and rules. We will forward you a copy with the typed version of this response.” Notwithstanding TIA’s promise to remedy its compliance deficiency, OCIE found during its 2007 exam that: (i) TIA still had not yet completed its compliance manual; (ii) TIA had not conducted an annual compliance review; and (iii) TIA’s designated Chief Compliance Officer (“CCO A”) did not have appropriate knowledge of the Advisers Act (*e.g.*, CCO A was not aware of the requirement to conduct an annual review of TIA’s compliance program). OCIE alerted TIA that it was concerned that TIA employed a “cavalier approach to compliance” that called into question TIA’s commitment to operate its business in accordance with the federal securities laws. In response to this exam, TIA again assured OCIE that it would remedy its compliance shortcomings. TIA said it would engage a compliance consulting firm (“Firm A”) to assist TIA’s development of a compliance manual, and that it would provide compliance education to CCO A and other advisory personnel at TIA. However, when OCIE staff returned for the 2011 exam, they discovered TIA had made no progress on its compliance deficiency. At that time, Prugh told OCIE staff that TIA’s compliance committee had become inactive, and TIA had not had time since the last exam three years ago to work with Firm A to develop a compliance manual and implement a compliance program. Prugh also told OCIE staff that he was acting as the *de facto* Chief Compliance Officer of TIA because CCO A was unable to complete the requirements of the Series 65 exam.

6. In its 2005 and 2007 exams, OCIE identified several instances where TIA provided misleading performance information to clients in its marketing materials. For example, in its 2007 exam, OCIE found that TIA’s one-on-one performance presentations to clients were misleading. The presentations included gross of fee performance returns over an extended period of time; yet, the same presentations did not explain the impact that advisory fees could have on the value of a client’s portfolio. Following the 2007 exam, TIA indicated it had corrected this issue. However, when staff returned for the 2011 exam, they discovered that TIA continued to distribute marketing pieces showing bar charts with cumulative returns that did not explain the impact that advisory fees could have on the value of a client’s portfolio.

7. OCIE identified additional misleading advertisements in its 2011 exam. In particular, Pitts appeared on a local public access television show (called “Investing Today”) and used PowerPoint presentations with charts comparing TIA’s cumulative returns over a ten-year period to the S&P 500 returns over that same period. These comparisons were misleading because they neglected to deduct applicable advisory fees from TIA’s cumulative returns. Moreover, the charts did not include a disclosure stating that TIA’s cumulative returns did not reflect the deduction of advisory fees, and that such fees would reduce client returns. These TV show appearances led to client referrals for TIA.

8. Not only did TIA have the deficiencies OCIE discovered during its exams, but TIA also distributed misleading performance information in weekly summary marketing emails from at least 2009 through 2012. In particular, TIA distributed a table on a weekly basis to some of its current clients and to its solicitors (who are responsible for soliciting new investment advisory business for TIA) that compared percentage increases in the S&P 500 index to percentage increases in TIA’s portfolios. The table materially overstated the performance of the TIA portfolios vis-à-vis the S&P 500 index because the TIA performance included the reinvestment of dividends, while the S&P 500 index number did not. At least one of the recipients of one of these

summary emails found the table misleading, emailing Prugh that: “[the] performance table is a bit misleading, though. It really should reflect the total return of the S&P 500 (including the dividends) for a more apples-to-apples comparison vs. the TIA strategies, which include the reinvestment of dividends . . .” Notwithstanding this critique, TIA continued to send out the same misleading performance information in its weekly marketing emails.

9. Pitts and Prugh were the ultimate decision-makers at TIA. Pitts was and is CEO and Portfolio Manager of TIA. In that position, Pitts managed and supervised TIA’s staff (including Prugh) and took primary responsibility for meetings with clients and prospective clients as well as TIA’s TV show “Investing Today.” Prugh was and is Senior Vice President, CFO, and Chairman of the Investment Committee for TIA. In that position, Prugh assisted in picking the stocks that made up TIA’s portfolios and was responsible for TIA’s accounting function and tax returns. Both Pitts and Prugh were heavily involved in OCIE’s examinations and both failed to prioritize compliance with the Advisers Act.

10. After receiving deficiency letters from OCIE, Pitts and Prugh repeatedly failed to ensure that TIA was in compliance with Advisers Act rules. Neither Pitts nor Prugh took an active role in ensuring compliance with the Advisers Act rules or making sure TIA did not repeat violations identified by OCIE.

11. After OCIE’s 2011 examination, TIA began taking steps to rectify the unresolved issues from OCIE’s prior examinations. In particular, after that examination, TIA hired a Chief Compliance Officer (“CCO B”) who has experience with the Advisers Act, completed its compliance manual, and engaged a compliance consulting firm (“Firm B”) to perform annual compliance reviews. Firm B performed compliance reviews in 2012 and 2013. In addition, CCO B reviews all marketing pieces, including the slide deck presentations for “Investing Today,” before they are distributed to clients or otherwise used.

Violations

12. As a result of the conduct described above, TIA willfully violated Section 206(2) of the Advisers Act, which prohibits registered investment advisers from, directly or indirectly, engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

13. As a result of the conduct described above, TIA willfully violated Section 206(4) of the Advisers Act, which prohibits registered investment advisers from, directly or indirectly, engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.

14. As a result of the conduct described above, TIA willfully violated Rule 206(4)-1(a)(5), which prohibits registered investment advisers from, directly or indirectly, publishing, circulating, or distributing any advertisement which contains any untrue statement of a material fact, or which is otherwise false or misleading.

15. As a result of the conduct described above, TIA willfully violated Rule 206(4)-7, which requires that a registered investment adviser: (1) adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules; (2) review

at least annually the adequacy of such written policies and procedures and the effectiveness of their implementation; and (3) designate a Chief Compliance Officer.

16. As a result of the conduct described above, Pitts and Prugh willfully aided, abetted, and caused TIA's violation of Section 206(2) of the Advisers Act.

17. As a result of the conduct described above, Pitts and Prugh willfully aided, abetted, and caused TIA's violation of Section 206(4) of the Advisers Act.

18. As a result of the conduct described above, Pitts and Prugh willfully aided, abetted, and caused TIA's violation of Rule 206(4)-1(a)(5).

19. As a result of the conduct described above, Pitts and Prugh willfully aided, abetted, and caused TIA's violation of Rule 206(4)-7.

Remedial Efforts

20. In deciding to accept the offers of settlement of TIA, Pitts, and Prugh, the Commission considered the remedial acts promptly undertaken by TIA, Pitts, and Prugh and the cooperation afforded the Commission staff.

Undertakings

TIA, Pitts, and Prugh have undertaken to:

21. **Compliance Training.** By December 31, 2015, Pitts and Prugh shall each complete thirty (30) hours of compliance training related to the Advisers Act.

22. **Compliance Consultant.** TIA shall engage, at its expense, an independent compliance consultant, not unacceptable to the Commission staff, to render compliance services for a period of at least three (3) years from the entry of this Order. The scope of the engagement of the independent compliance consultant must include comprehensive annual compliance reviews. To the extent the independent compliance consultant makes recommendations for changes in or improvements to TIA's policies and procedures and/or disclosures to clients, TIA shall adopt and implement all such recommendations. The independent compliance consultant engaged by TIA shall enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the independent compliance consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with TIA, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the independent compliance consultant will require that any firm with which it is affiliated or of which it is a member, and any person engaged to assist the independent compliance consultant in performance of its duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with TIA, or any of its 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.

23. Recordkeeping. TIA shall preserve for a period of no less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of TIA's compliance with the undertakings set forth in this Order.

24. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

25. Certification of Compliance. TIA, Pitts and Prugh shall certify, in writing, compliance with the undertakings set forth above in paragraphs 21-22. The certification shall identify the undertakings, 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 TIA, Pitts, and Prugh agree to provide such evidence. The certification and supporting material shall be submitted to Brian Fagel, Assistant Regional Director, Securities and Exchange Commission, 175 West Jackson Blvd., Suite 900, Chicago, Illinois 60604, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of each of the undertakings in paragraphs 21-22.

IV.

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

Accordingly, pursuant to Sections 203(e), 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondents cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-1(a)(5) and 206(4)-7 promulgated thereunder.

B. Respondents are censured.

C. TIA and Pitts, jointly and severally, 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 for transfer to the general fund of U.S. Treasury in accordance with Exchange Act section 21F(g)(3). Prugh shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$10,000 to the Securities and Exchange Commission for transfer to the general fund of U.S. Treasury in accordance with Exchange Act section 21F(g)(3).

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) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

- (2) Respondents 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) Respondents 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 TIA, Pitts and Prugh as Respondents 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 Brian Fagel, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, Illinois 60604.

D. Respondents shall comply with the undertakings enumerated in Section III., paragraphs 21-25 above.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Pitts and Prugh, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Pitts and Prugh under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Pitts and Prugh of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Brent J. Fields
Secretary