UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79755 / January 9, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4601 / January 9, 2017

INVESTMENT COMPANY ACT OF 1940
Release No. 32416 / January 9, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17760

In the Matter of **JOHN W. RAFAL,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, SECTIONS 4C AND 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, 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(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), Sections 4C[1] and 15(b) of the Securities Exchange

[1] Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper

Act of 1934 ("Exchange Act"), Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act"), and Rule 102(e)(1)(iii) of the Commission's Rules of Practice [2] against John W. Rafal ("Respondent" or "Rafal").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("Offer") that the Commission has determined to accept. Respondent admits the facts set forth in Section III below, acknowledges that his conduct violated the federal securities laws, admits the Commission's jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, Sections 4C and 15(b) of the Securities Exchange Act of 1934, Section 9(b) of the Investment Company Act of 1940, and Rule 102(e) of the Commission's Rules of Practice, 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 Respondent's Offer, the Commission finds[3] that:

A. SUMMARY

John Rafal is the former President and CEO of Essex Financial Services, Inc. ("Essex"), a dually-registered investment adviser and broker-dealer based in Essex, Connecticut. From early 2011 to at least April 2013, Rafal and Peter Hershman, a Connecticut attorney he knew, fraudulently schemed to circumvent the SEC's rule regarding payments by investment advisers to third parties for client solicitations. Rafal agreed to pay Hershman for the referral of Hershman's wealthy client. The solicitation arrangement, and the resulting conflict of interest, was not disclosed to this client—an elderly widow with accounts valued in excess of $100 million. The two associated solicitation payments were disguised as the payment of fake legal invoices from

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professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

[2] Rule 102(e)(1)(iii) provides, in pertinent part, that:

> The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found…to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

[3] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Hershman for legal services supposedly provided to joint clients of Essex and Hershman.

Starting in May 2013, Rafal became concerned that his clients and others had heard rumors about him, including that Rafal was under investigation for engaging in a securities law violation. From that time through March 2014, in an effort to retain clients and protect his reputation, Rafal sent numerous emails to clients and others falsely stating, among other things, that the Commission had fully investigated the allegations, had found no securities law violations, and had issued a "no-action letter" completely exonerating Rafal and Essex of any misconduct. These client communications were fraudulent misrepresentations to Rafal's clients and prospective clients.

As a result, Rafal has willfully[4] violated Sections 206(1) and 206(2) of the Advisers Act and aided and abetted and caused violations of 206(4) of the Advisers Act and Rule 206(4)-3 thereunder.

B. RESPONDENT

1. **John W. Rafal**, age 66, is a resident of Old Lyme, Connecticut. He founded Essex, and served as its President from April 2003 until July 2013, when he assumed the role of Vice Chair. From April 2003 until October 2012, Rafal owned 40% of Essex. In October 2012, Rafal sold half of his ownership interest in Essex, becoming a 20% owner until July 2013, when he sold his remaining interest. He was discharged from Essex in November 2015.

C. OTHER RELEVANT PARTIES

2. **Essex Financial Services, Inc.** ("Essex") is a Connecticut corporation founded in 2003. Essex is dually registered with the Commission as investment adviser and broker- dealer with its principal place of business in Essex, Connecticut. Essex is required to be registered with the Securities and Exchange Commission pursuant to Section 203(a) of the Advisers Act and Section 15(b) of the Exchange Act. Essex has been a wholly-owned subsidiary of Essex Savings Bank ("ESB") since July 2013. During the relevant time period, Essex was majority owned by ESB and partially owned by Rafal.

3. **Peter D. Hershman**, age 69, is a resident of Branford, Connecticut. Hershman is licensed to practice law in the State of Connecticut and has been an active member of the Connecticut bar since 1972, engaged in business and estate planning and tax law. Since 2010, he has practiced law at a New Haven, Connecticut law firm. Hershman has known John Rafal for approximately twenty-five years. Hershman has referred clients of his law firm to Rafal for investment advisory services at Essex and Rafal has referred investment advisory clients to Hershman for legal advice. Hershman has never been registered with the Commission in any capacity and does not hold any securities licenses.

[4] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)).

D. FACTS

Rafal Made an Undisclosed Referral Fee Arrangement with Hershman

4. In 2010, Essex, Rafal, and Hershman began to discuss the referral of one of Hershman's legal clients, an elderly widow with total combined assets in her accounts in excess of $100 million, to Essex to become an Essex advisory client. As part of this solicitation process, Rafal selected himself and two other Essex Financial Advisors[5] jointly to manage and supervise that client's accounts (the "Referred Accounts").

5. In the early Spring of 2011, before that client had moved any money to be managed by Essex, Hershman and Rafal discussed Hershman receiving part of the asset management fee Essex expected to receive for managing the client's accounts. Rafal and Hershman subsequently agreed that Hershman would receive an annual fee of $50,000, paid quarterly, from the advisory fees paid to Essex by that client on the Referred Accounts.[6] As part of that arrangement, Hershman agreed to become registered as an investment adviser agent.[7]

6. The client decided to retain Essex to manage some of her money and to supervise money that was to remain in an account she owned at another adviser. The client executed an Essex Investment Management Agreement on May 4, 2011. The first of the Referred Accounts held at Essex was opened in May 2011 and additional Referred Accounts were opened at Essex in June 2011, August 2012, and November 2012. No disclosure concerning the solicitation fee was made to the client at those times or at any time while that client's assets were managed by Essex.

7. Although Essex made initial arrangements for Hershman to take the necessary test to become registered as an investment adviser representative, Hershman never took the exam and never became registered as an investment adviser representative. Rafal knew that Hershman had not taken the test or been registered as an investment adviser representative.

8. Hershman did, however, remain in frequent contact with Rafal throughout 2012 regarding their mutual client. For instance, in June 2012, Hershman informed Rafal of his efforts to have a new $4 million trust account, which was being established by the client, become an Essex-managed advisory account.

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[5] Essex's term for its investment adviser representatives is "Financial Advisor."

[6] The annual amount for future years was subject to change based on the value of assets in the Referred Accounts.

[7] Section 36b-6(c)(3) of the Connecticut Uniform Securities Act prohibits an investment adviser from paying a referral fee to a person who is not registered as an investment adviser agent under the Connecticut Uniform Securities Act. Essex's internal policies also prohibit Essex from paying a referral fee to an individual if the individual is not registered as an investment adviser agent.

9. Shortly thereafter, in July 2012, Hershman telephoned Rafal requesting his first payment pursuant to the referral arrangement. Rafal knew that Hershman was not a registered investment adviser representative and that the referral arrangement had not been disclosed to their mutual client. Nevertheless, Rafal agreed that Essex would make the first payment. As Rafal knew that under the circumstances it would be improper for Essex to pay a referral fee to Hershman, Rafal and Hershman agreed that Hershman would send Essex an invoice in the form of a false bill for legal services.

10. In late July 2012, Hershman emailed Essex a $25,000 invoice that purported to be for "legal services," when in fact it was not an invoice for legal services but instead represented the first two quarterly payments of 2012 pursuant to the referral arrangement. Rafal asked Hershman to break the bill into two separate $12,500 invoices, and to send quarterly invoices going forward, explaining that the large amount would look bad on Essex's cash flow. Hershman sent a revised invoice to Essex in the amount of $12,500.

11. Rafal forwarded the revised invoice to Essex's bookkeeper, directing her to pay it. On August 20, 2012, Essex sent Hershman a check in the amount of $12,500.

12. In or around November 2012, Rafal asked Hershman to send a more detailed invoice for the first quarter of 2012 stating that Essex "needed something to put in the file for [the] auditors." Hershman complied, sending Rafal a detailed, itemized bill for the first quarter of 2012 that purported to reflect time spent working on legal matters for various Essex clients, when in fact it was not for payment of legal fees but was instead payment for the referral fee.

13. Hershman also sent Essex an itemized bill in the amount of $12,690 for the second quarter of 2012, purporting to reflect time spent doing legal work for Essex related to various clients, when in fact it was not for payment of legal fees but was instead payment for the referral fee. Rafal forwarded the second quarterly bill to Essex's bookkeeper, directing her to pay it. Essex paid the invoice for the second quarter of 2012 on November 26, 2012.

14. On March 21, 2013, Hershman sent an invoice to Rafal in the amount of $24,570, representing the last two quarters of 2012, once again purporting to reflect legal work for Essex, itemized by client, when in fact it was not for payment of legal fees but was instead payment for the referral fee.

15. On April 1, 2013, Hershman emailed Rafal requesting the status of his invoice for the last two quarters of 2012. Rafal directed Essex's bookkeeper to mail the check to Hershman and replied to Hershman that the check had been cut and would be sent out later that week.

16. Based on internal complaints at Essex concerning the undisclosed solicitation payments, Essex directed Rafal not to pay Hershman's invoice for the last two quarters of 2012, and required Rafal to arrange for the return of the previous payments from Hershman.

17. On April 5, 2013, after being directed not to pay Hershman's invoice for the last two quarters of 2012, Rafal used an account owned by an entity that he controlled to pay Hershman $24,570 – the balance due to Hershman on the invoice Hershman submitted to Essex for the last two quarters of 2012. Rafal concealed the $24,570 payment from Essex.

18. On or about April 17, 2013, at the direction of Essex, Rafal asked Hershman to return the previous payments made to Essex for the first two quarters of 2012 — totaling $25,190. Hershman complied. Unbeknownst to Essex, Rafal subsequently paid Hershman $25,190 from an account owned by an entity that Rafal controlled.

19. On or about April 19, 2013, Hershman received a letter from Essex stating that the referral fee payments previously paid were prohibited by law and asking him to return all of the referral fees which he had received to Essex as soon as possible. The letter acknowledged that Hershman had already returned $25,190.

20. Neither Rafal nor Essex ever informed the owner of the Referred Accounts that the referral fee payments had occurred, or that there had been an agreement to pay Hershman a fee for the referral of the client's accounts to Essex.

21. During the existence of the fee arrangement between Rafal and Hershman, Hershman also referred several other clients to Essex. Rafal did not notify these prospective clients of the fee arrangement. There do not appear to have been referral fee agreements regarding these accounts.

22. The solicitation arrangement that Hershman had with Essex and Rafal, and the payments made pursuant to that solicitation arrangement, created a conflict of interest between Essex and Rafal and their advisory client. Essex, Rafal, and Hershman were aware of the conflict but did not disclose it to their mutual client.

Rafal Sends False and Misleading Emails to Essex Clients

23. Beginning in 2013, Rafal believed that damaging rumors were circulating about him. These rumors were both personal and professional, including rumors that Rafal had committed a securities law violation.

24. From May 2013 through March 2014, Rafal sent numerous emails to Essex clients and others who may have heard these rumors, falsely stating, among other things, that the SEC had "fully investigated all matters" and "issued a 'no action' letter completely exonerating [Essex] and [Rafal] from the so called 'securities violation.'"

25. When Rafal's emails were discovered by senior officials at Essex, they instructed Rafal to retract the emails immediately. Between March 24, 2014 and March 31, 2014, Rafal sent retractions to recipients of his misleading emails.

Rafal Misleads the Commission Staff During Its Investigation

26. In May 2015, Rafal testified in an investigation being conducted by the Commission staff to determine whether Essex, its officers, directors, employees, partners, subsidiaries and/or affiliates and/or other persons or entities had engaged in violations of the federal securities laws. In May 2015, May 2016, and June 2016, Rafal produced documents to the Commission staff pursuant to subpoenas issued in the staff's investigation.

27. During Rafal's May 2015 testimony, in response to direct questions concerning the Referral Fee Arrangement, Rafal stated, "We asked for the money back, which he sent back," among other statements by which Rafal intentionally misled the Commission staff to believe that Hershman was no longer in possession of any money or compensation for Hershman's referral of the Referred Accounts to Essex. In testifying about the Referral Fee Arrangement, Rafal concealed from the staff that he had in fact personally arranged to make two payments to Hershman in April 2013 totaling $49,760 in satisfaction of the Referral Fee Arrangement from accounts owned by entities Rafal controlled.

E. VIOLATIONS

28. As a result of the conduct described above, Rafal willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit investment advisers from directly or indirectly employing any device, scheme, or artifice to defraud any client or prospective client, or engaging in any transaction, practice, or course of business which operates as a fraud or deceit on any client or prospective client.

29. As a result of the conduct described above, Rafal willfully aided and abetted and caused Essex's violations of Section 206(4) of the Advisers Act and Rule 206(4)-3, thereunder, which makes unlawful the payment, directly or indirectly, of a cash fee by an investment adviser required to be registered pursuant to Section 203 of the Advisers Act to a solicitor with respect to solicitation activities unless the disclosure and other requirements of the Rule are met.

IV.

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

Accordingly, pursuant to Sections 4C and 15(b) of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, Section 9(b) of the Investment Company Act, and Rule 102(e)(1)(iii) of the Commission's Rules of Practice, it is hereby ORDERED that:

A. Respondent Rafal cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-3 promulgated thereunder.

B. Respondent Rafal is denied the privilege of appearing or practicing before the Commission as an attorney;

C. Respondent Rafal 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;

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; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock,

D. Any reapplication for association by the 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.

E. Respondent Rafal shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $275,000.00, disgorgement in the amount of $275,000.00 and prejudgment interest of $27.297.72 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600, and if timely payment of a civil money penalty 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 John W. Rafal as a 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 John T. Dugan, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Boston Regional Office, 33 Arch St., 24th Floor, Boston, MA 02110.

F. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

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 Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent 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 Respondent 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