

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 79848 / January 19, 2017**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4619 / January 19, 2017**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 32428 / January 19, 2017**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17802**

**In the Matter of**

**SUSAN M. DIAMOND,**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTION 15(b) OF THE  
SECURITIES EXCHANGE ACT OF 1934,  
SECTIONS 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 (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 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 Susan M. Diamond (“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 her and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to

Section 15(b) of the Securities Exchange Act of 1934, Sections 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 Respondent’s Offer, the Commission finds<sup>1</sup> that

#### Summary

These proceedings arise because Susan Diamond, the Chief Compliance Officer of Saddle River Advisors, LLP (“SRA”), made untrue statements in multiple Forms ADV that she prepared, signed, and filed on behalf of SRA, an exempt reporting adviser, which the Commission sued in March 2016 for, among other things, allegedly perpetrating a multi-million dollar fraud and misappropriating investor funds. In Forms ADV filed on behalf of SRA in 2014 and 2015, Diamond represented, among other things, that three funds advised by SRA had annual audits, the audit reports were prepared in accordance with GAAP, and audited financial statements would be distributed to investors. None of these statements were true. In making these untrue statements on SRA’s Forms ADV in 2014 and 2015, Diamond violated Section 207 of the Advisers Act.

#### Respondent

1. Susan M. Diamond is 68 years old and resides in Lake Worth, Florida. During 2014 and 2015, Diamond was the Chief Compliance Officer of SRA. From 2009 to 2014, Diamond was a registered representative of Felix Investments, LLC (“Felix”), a registered broker-dealer. Diamond also served as the President and CCO of Felix at various times during those years. In June 2014, the Financial Industry Regulatory Authority, Inc. (“FINRA”) found that Diamond failed to supervise one of Felix’s representatives. FINRA fined Diamond \$10,000, suspended her for four months in a principal capacity, and required her to complete 40 hours of continuing education. In August 2014, FINRA expelled Felix for failing to pay fines and costs imposed in connection with the June 2014 disciplinary proceeding. Diamond has passed multiple exams for securities licenses, including Series 7 (General Securities Representative Examination), Series 24 (General Securities Principal Examination), and Series 27 (Financial and Operations Principal Examination). Until recently, Diamond was a registered representative with another registered broker dealer and was employed as the Chief Compliance Officer of another investment advisory firm.

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<sup>1</sup> 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.

### **Other Relevant Entities**

2. Saddle River Advisors, LLC, fka Felix Advisors, LLC, is a Delaware limited liability company with offices in Upper Saddle River, New Jersey and New York City. It has been an exempt reporting adviser since June 27, 2013. SRA serves as the investment adviser to SRA I, LLC, SRA II, LLC, and SRA III, LLC, among other funds. According to its April 2016 Form ADV, SRA has over \$84.8 million in assets under management, the majority of which are in investments in private Silicon Valley start-up companies. In March 2016, the Commission sued SRA and its principal, John Bivona, in federal district court alleging, among other things, that they had perpetrated a multi-million dollar Ponzi-like fraud on investors.

3. SRA I, LLC; SRA II, LLC; and SRA III, LLC (the “SRA Funds”) were formed in late 2013 to mid-2014 as Delaware series limited liability companies. They operated as unregistered private funds that invest in employee-owned shares, or economic interests in shares, of private Silicon Valley start-up companies. The SRA Funds were managed and advised by SRA. From October 2013 to November 2015, the SRA Funds raised over \$53 million from investors.

### **Diamond Made Untrue Statements in SRA’s Forms ADV**

4. During 2014 and 2015, Diamond was responsible for preparing and filing the Forms ADV for SRA and responding to regulatory requests. Diamond was in a position to answer questions on the Forms ADV related to SRA’s financial statements, given that she had signatory authority over the SRA Funds’ bank accounts, and, since September 2014, had responsibility for making accounting entries into the general ledger of the QuickBooks for SRA and the SRA Funds in order to record their financial transactions.

5. From March 2014, shortly after the SRA Funds were launched, to March 2015, Diamond, on behalf of SRA, prepared, signed, and filed multiple annual and amended Forms ADV that contained untrue statements. These untrue statements were in response to questions related to the financial statements of SRA I, SRA II, and SRA III, in Section 7.B.(1)(B) under the heading, “Service Providers” and the subheading “Auditors.” The questions and her responses, which were not true are:

<b>Question</b>	<b>Diamond’s Response</b>
Are the private fund’s financial statements subject to an annual audit?	Yes
Are the financial statements prepared in accordance with U.S. GAAP?	Yes
Name of Auditing Firm	SRA Funds’ Tax Preparer
Are the private fund’s audited financial statements distributed to the private fund’s investors?	Yes

6. None of these responses were true. SRA’s financial statements were not audited, prepared in accordance with U.S. GAAP, or distributed to investors. The firm Diamond identified

as SRA's "auditing firm" had prepared only tax returns and Forms K-1 for the SRA Funds and their investors and was never engaged by SRA to perform an audit. The Forms ADV further asked whether the auditing firm identified was independent, whether it was registered with the Public Company Accounting Oversight Board ("PCAOB"), and whether it was subject to regular inspections by the PCAOB. Diamond answered yes to all of these questions, even though there was no auditing firm. Moreover, on the Forms ADV, in response to the question, "Does the [financial] report prepared by the auditing firm contain an unqualified opinion?" Diamond responded "Report Not Yet Received" on multiple Forms ADV over more than a year despite knowing that SRA had not previously received an audit report, and had not engaged any firm to audit the SRA Funds. These statements were all material.

7. Diamond certified that she was signing the filings "on behalf of, and with the authority, of the investment adviser" and that "the information and statements made in this ADV, including exhibits and other information submitted, are true and correct." Altogether, Diamond made the above-described misstatements for each of the three SRA Funds on five Forms ADV. All of these statements were untrue.

### **Violations**

8. As a result of the conduct described above, Diamond willfully violated Section 207 of the Advisers Act, which 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."<sup>2</sup>

### **IV.**

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

Accordingly, pursuant to Section 15(b) of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

- A. Respondent Diamond cease and desist from committing or causing any violations and any future violations of Section 207 of the Advisers Act.
- B. Respondent Diamond is suspended from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally

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<sup>2</sup> 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)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

recognized statistical rating organization for a period of nine (9) months, effective on the second Monday following the entry of this Order.

C. Respondent Diamond is 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 for a period of nine (9) months, effective on the second Monday following the entry of this Order.

D. Respondent Diamond is suspended 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 for a period of nine (9) months, effective on the second Monday following the entry of this Order.

E. After the period of suspension has ended, Respondent Diamond shall be subject to the following conditions and limitations on her activities:

Diamond shall not act as a partner, officer, branch manager, or director (or any person performing similar functions) of, directly or indirectly control, or act in a compliance capacity with the following entities: any (i) broker; (ii) dealer; (iii) investment adviser; (iv) municipal securities dealer; (v) municipal advisor; (vi) transfer agent; (vii) nationally recognized statistical rating organization; (viii) advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company; or (ix) affiliated person of such investment adviser, depositor, or principal underwriter. Provided, however, this limitation shall not prevent Respondent Diamond from acting as an employee who is not a partner, officer, branch manager, or director (or any person performing similar functions) of, who does not directly or indirectly control, or who does not act in a compliance capacity with, any of the foregoing entities.

Any application to act in any of the above-described capacities will be subject to the applicable laws and regulations governing the reentry process, and permission to act in such a capacity 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.

F. Respondent Diamond shall, within 365 days of the entry of this Order, pay a civil money penalty in the amount of \$15,000 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). Payment shall be made in the following installments: \$5,000 within ten (10) days of the date of this Order, \$5,000 within six (6) months of the date of this Order; and the remaining \$5,000 within

twelve (12) months of the date of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application.

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 Susan M. Diamond 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 Erin E. Schneider, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

G. 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, she shall not argue that she is entitled to, nor shall she 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 she 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