

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4733 / July 25, 2017

INVESTMENT COMPANY ACT OF 1940
Release No. 32741 / July 25, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18073

In the Matter of

**BRIAN KIMBALL CASE,
BRADWAY FINANCIAL, LLC, and
BRADWAY CAPITAL
MANAGEMENT, 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 (“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 Brian Kimball Case (“Case”), Bradway Financial, LLC (“Bradway Financial”), and Bradway Capital Management, LLC (“Bradway Capital”) (collectively, “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 Respondents 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 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 Respondents' Offers, the Commission finds¹ that:

Summary

1. This matter involves violations of the Advisers Act by Bradway Financial, a Commission-registered investment adviser, Bradway Capital, an investment adviser that claimed to be exempt from registration, and Case, the managing member, sole owner, and Chief Compliance Officer ("CCO") of both Bradway Financial and Bradway Capital. First, Bradway Capital was not entitled to rely on the private fund adviser exemption from registration in Rule 203(m)-1 under the Advisers Act and did not otherwise qualify for an exemption from Commission registration. Second, Bradway Capital provided statements to investors that reflected inflated values for investments held in two private funds that it advised. These inflated values were also included in Forms ADV filed with the Commission by Bradway Capital and Bradway Financial and signed by Case. Neither Case nor Bradway Capital nor Bradway Financial received any fees based on the inflated valuations. Third, Bradway Capital and Bradway Financial failed to comply with the Advisers Act's custody and compliance rules. Fourth, the Respondents improperly used fund assets to pay legal fees that the Respondents incurred in connection with the Commission's investigation. Fifth, Bradway Financial contracted to earn a performance fee for managing a fund, without determining whether the fund's investors were qualified clients. The Respondents have since repaid the fund in full. Finally, Case aided and abetted and caused Bradway Capital's and Bradway Financial's violations, and Bradway Financial aided and abetted and caused Bradway Capital's violations, of various provisions of the Advisers Act and the rules thereunder.

Respondents

2. **Bradway Financial, LLC** (SEC File No. 801-68635) is an investment adviser registered with the Commission since January 2008 and is based in Longmeadow, Massachusetts. Bradway Financial provides investment advice to individuals with taxable and retirement plan savings accounts. According to Bradway Financial's March 31, 2017 Form ADV, more than 75% of Bradway Financial's clients are individuals other than high net worth individuals. As of March 31, 2017, Bradway Financial reported \$132,370,284 in regulatory assets under management, including \$123,608,265 in discretionary assets under management.

3. **Bradway Capital Management, LLC** (SEC File No. 802-78746) is a Delaware limited liability company that reported its principal place of business as Case's home in Somers, Connecticut but actually conducted business from Bradway Financial's home office in Longmeadow, Massachusetts. Bradway Capital has never been registered with the Commission in any capacity and has never relied on Bradway Financial's registration. From October 23,

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

2013 until June 20, 2016, Bradway Capital claimed to be an investment adviser solely to private funds with regulatory assets under management of less than \$150 million, and therefore exempt from registration as an investment adviser pursuant to Section 203(m) of and Rule 203(m)-1 under the Advisers Act.² Claiming to be an exempt reporting adviser, Bradway Capital has filed reports with the Commission on Form ADV in accordance with Section 204(a) of and Rule 204-4 under the Advisers Act. Bradway Capital serves as an investment adviser to two private funds: the Bradway Capital Insight Fund LLC and the Bradway Capital Fund II LLC.

4. **Brian Kimball Case**, age 48, is a resident of Somers, Connecticut. Case is the managing director and sole owner of Bradway Financial and Bradway Capital. During all relevant times, Case was also the CCO of Bradway Financial and Bradway Capital.

Related Parties

5. **Bradway Capital Insight Fund LLC (“Insight Fund”)**, a private fund, was formed in Connecticut in 2006. In its Form ADV filed on March 30, 2016, Bradway Capital reported that the Insight Fund had 66 beneficial owners and a gross asset value of \$9,684,930. Most of the beneficial owners of the Insight Fund were also clients of Bradway Financial.

6. **Bradway Capital Fund II LLC (“Capital Fund”)**, a private fund, was formed in Delaware in 2014. In its Form ADV filed on March 30, 2016, Bradway Capital reported that the Capital Fund’s gross asset value was \$1,300,000.

Facts

Bradway Capital Did Not Qualify for an Exemption from Registration as an Investment Adviser

7. From 2006 until 2013, Bradway Financial was the investment adviser to the Insight Fund. In 2013, after consulting with a compliance consultant, Case formed Bradway Capital because he understood that Bradway Financial would not have to comply with certain Advisers Act rules in advising a private fund, such as Rule 206(4)-2 (the “Custody Rule”), if the Insight Fund was advised by an exempt reporting adviser (Bradway Capital) instead of an adviser registered with the Commission (Bradway Financial). Case hoped to save on expenses by not having to obtain an annual audit for the Insight Fund or a surprise examination to comply with the Custody Rule.

8. Effective October 23, 2013, Bradway Capital claimed to be exempt from the Advisers Act’s registration requirements because it was an adviser to private funds with assets under management of less than \$150 million. While Bradway Capital advised two private funds with combined gross asset values of approximately \$11 million (which included the inflated valuations described below), it was not entitled to rely on this exemption because Bradway Financial and Bradway Capital were under common control and operationally integrated. For example, Bradway Financial and Bradway Capital: were both owned by Case, shared the same

² An investment adviser relying on this exemption is considered an exempt reporting adviser.

employees, operated in the same office, shared the same technology systems, and failed to maintain policies and procedures addressing registration or exemption from registration as an investment adviser. Therefore, Bradway Capital was not acting solely as an adviser to private funds and thus was not exempt from registration under Section 203(m) of the Advisers Act.³

9. Because it was under common control and shared its principal office and place of business with Bradway Financial, a registered investment adviser, Bradway Capital was required under Rule 203A-2 to be registered with the Commission. Therefore, in providing investment advisory services to the Insight Fund and the Capital Fund, Bradway Capital was required to comply with the rules under the Advisers Act applicable to investment advisers registered or required to be registered with the Commission under section 203(a) of the Advisers Act, including the Custody Rule and Rule 206(4)-7 (the “Compliance Rule”).

The Insight Fund’s Inflated Asset Valuations

10. According to the Insight Fund’s Amended and Restated Operating Agreement (“Operating Agreement”), Bradway Capital and Case were entitled to a performance fee if the fund was profitable at the time it was wound down and investors received a return of their principal investment and profits.⁴ Case and Bradway Capital did not charge the Insight Fund a management fee for providing investment advice to the fund.

11. The Operating Agreement required Case and Bradway Capital to meet investor redemptions based on the “fair market value” of the redeeming investor’s investment in the Insight Fund.

12. Most of the Insight Fund’s assets were invested in the equity and/or debt of private companies, but the Insight Fund also invested in shares of a private equity fund. All of the Insight Fund’s investments were illiquid, and most of the Insight Fund’s investments would have required some judgment to arrive at a fair market valuation of the investment.

13. Unlike the Insight Fund’s other investments, Case and Bradway Capital received fair market valuation information from the adviser to the private equity fund held by the Insight Fund. For instance, in August 2015, the private equity fund’s adviser sent Bradway Capital a partner summary as of June 30, 2015 showing that the private equity fund had paid total

³ Cf. Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than \$150 Million in Assets Under Management, and Foreign Private Advisers, Investment Advisers Act Release No. 3222 at 125 (June 22, 2011) [76 FR 39645, 39680 (July 6, 2011)]. In adopting several exemptions from the registration provisions of the Advisers Act, the Commission noted that certain commenters supported, for purposes of determining an adviser’s eligibility for an exemption from registration, treating each advisory entity separately without regard to the activities of, or relationships with its affiliates. The Commission declined to adopt this view, referring to Section 208(d) of the Advisers Act, which prohibits any person from doing indirectly or through or by any other person any act or thing which would be unlawful for such person to do directly.

⁴ As described below in paragraph 23, Bradway Capital and Case did not determine that the investors in the Insight Fund were qualified clients as defined in Rule 205-3(d) as promulgated under Section 205(e) of the Advisers Act.

distributions of \$867,992 to the Insight Fund and that the Insight Fund's capital balance was \$724,103. Other financial statements that the private equity fund provided to Bradway Capital as of June 30, 2015 showed that this capital balance was based on Bradway Capital's portion of the fair value of the private equity fund's investments. Nonetheless, as described below, Bradway Capital sent statements to the Insight Fund's investors stating that the June 30, 2015 fair market value of the Insight Fund's investment in the private equity fund was \$2,194,475.72.

14. Case and Bradway Capital provided periodic valuation statements to investors in the Insight Fund that stated that they "fair market value estimates" of the fund's investments. While they occasionally employed the services of third-party valuation providers to arrive at valuations, Case – despite not having any valuation experience or training – often assigned his own estimated valuations to Insight Fund investments.

15. Bradway Capital sent June 30, 2015 statements to the Insight Fund's investors that showed inflated fair market value estimates for several fund investments:

- a. As described above, in Bradway Capital's June 30, 2015 periodic valuation statement to the Insight Fund's investors, Bradway Capital reported a fair market valuation for the Insight Fund's private equity fund investment that was approximately three times higher than the fair valuation of the investment provided to Bradway Capital by the private equity fund. Case arrived at the fair market value without conducting any valuation analysis, including no analysis of how the private equity fund's distribution of approximately \$868,000 to the Insight Fund should affect Bradway Capital's current valuation of the investment. Case did not understand that the partner summary he received from the private equity fund showing Bradway Capital's capital account balance was a reflection of the fair value of Bradway Capital's investment in the private equity fund.
- b. Bradway Capital's June 30, 2015 fair market value estimate for a \$50,000 investment in a portfolio company showed that the investment was still valued at its original cost, but the Insight Fund's annual tax reporting statement for 2014 reflected that the investment was written off as bad debt.
- c. Many of the fair market value estimates for the Insight Fund's other investments were based on stale information. For example, the Insight Fund's largest holding by fair market value estimate as of June 30, 2015 was an approximately one percent holding of an insurance company. In September 2014, a third party valued the Insight Fund's investment in the insurance company at approximately \$2.5-\$3.0 million based on the insurance company's December 31, 2013 financial information. Case was aware of these estimates; however, as of June 30, 2015, Case had increased

the valuation of the insurance company to \$3,519,000 without documenting any additional valuation analysis.

16. Neither Case nor Bradway Capital nor Bradway Financial received any fees based on the inflated valuations discussed above.

Untrue Statements in Bradway Financial's and Bradway Capital's Form ADV Filings Signed by Case

17. Bradway Capital reported the gross asset value of the Insight Fund as \$9,684,930 in both its March 24, 2015 and March 30, 2016 Forms ADV. On June 20, 2016, Bradway Financial filed an updated Form ADV to note that it was an adviser to a private fund and also reported the gross asset value of the Insight Fund as \$9,684,930. Bradway Financial's March 31, 2017 Form ADV continued to report the gross asset value of the Insight Fund as \$9,684,930. Case signed each of these Forms ADV.

18. The gross asset values for the Insight Fund reported in Bradway Capital's March 24, 2015 and March 30, 2016 Forms ADV, and Bradway Financial's June 20, 2016 and March 31, 2017 Forms ADV, were based on the inflated valuations of certain Insight Fund investments as described above. Therefore, the Insight Fund's reported gross asset values in each of these Forms ADV were materially overstated. In addition, Bradway Financial's Form ADV filed on June 20, 2016 and March 31, 2017 reported the same \$9,684,930 gross asset value for the Insight Fund as Bradway Capital's Form ADV filed on March 30, 2016 and March 31, 2017. It was therefore misleading for both Bradway Financial and Bradway Capital to report the same assets under management for the Insight Fund.

19. In its Forms ADV filed on October 23, 2013, February 13, 2014, March 24, 2015, March 30, 2016, and March 31, 2017, Bradway Capital listed its place of business as Case's home address in Somers, Connecticut and claimed that it did not share the same physical location with Bradway Financial. Case signed each of these Forms ADV. In fact, Bradway Capital and Bradway Financial operated out of the same location in Longmeadow, Massachusetts. As described above, Bradway Financial and Bradway Capital were operationally integrated in critical aspects, including their employees, physical location of operations, and technology systems.

Bradway Financial's and Bradway Capital's Custody Failures

20. From 2013 to 2015, Bradway Capital had custody of Insight Fund and Capital Fund assets but did not subject the funds to an annual audit or obtain a surprise examination to verify the assets held by Bradway Capital. In fact, Case created Bradway Capital and changed the investment adviser of the Insight Fund from Bradway Financial to Bradway Capital in order to avoid this requirement of the Custody Rule. In 2016, a third-party auditing firm began auditing the Insight Fund and Capital Fund for the 2015 and 2016 time periods. The completed audited financial statements will be delivered to investors in the Insight Fund and Capital Fund upon completion.

21. In addition, Bradway Financial had custody of certain other clients' assets, and some of those assets were not maintained by a qualified custodian. For example, Bradway Financial accepted client stock certificates and blank signed authorization forms from certain clients. Bradway Financial also had access to certain clients' log-in and password information related to client accounts, including accounts with cash transfer options, which provided the firm with the ability to make withdrawals or transfer assets in those accounts. Despite having custody of these other client assets, Bradway Financial did not obtain surprise examinations during the time period 2011-2015.

Bradway Financial's and Bradway Capital's Compliance Failures

22. As investment advisers registered or required to be registered with the Commission, Bradway Financial and Bradway Capital were required to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules. Bradway Capital failed to adopt or implement any such policies and procedures. For example, although the Insight Fund's Operating Agreement required Bradway Capital to fair value fund assets, Bradway Capital did not adopt or implement any compliance policies and procedures addressing the valuation of fund assets. Although Bradway Financial worked with a compliance consultant, Bradway Financial adopted an off-the-shelf compliance manual that was not tailored to the type of business it conducted, and its compliance policies and procedures did not address registration or exemption from registration as an investment adviser. In addition, Bradway Financial failed to conduct annual reviews of the adequacy and effectiveness of all its compliance policies and procedures.

Bradway Financial, in Contracting to Earn a Performance Fee for Managing the Insight Fund, Did Not Determine That the Insight Fund's Investors Were Qualified Clients.

23. Upon drafting the Insight Fund's Operating Agreement, which contained the performance fee provision, Case reviewed prospective investor information to determine whether each prospective investor was an accredited investor. However, not all investors in the Insight Fund were qualified clients as defined by Rule 205-3(d) promulgated under Section 205(e) of the Advisers Act. When he conducted his accredited investor review, Case did not conduct any review to determine if each investor in the Insight Fund also satisfied the definition of a qualified client. To date, Bradway Financial, Bradway Capital and Case have not charged the Insight Fund any performance fee for investors who may have received a return or partial return of their principal investment and profits.

Improper Use of Fund Assets to Pay Respondents' Legal Fees

24. In 2016, Case, Bradway Financial, and Bradway Capital incurred legal costs related to the Commission Enforcement staff's investigation. The Insight Fund's Operating Agreement provided that the Insight Fund would pay costs and expenses relating to the fund's activities, investments and business. Case negligently relied on an indemnification provision within the Operating Agreement as the basis for using Insight Fund assets to pay the legal fees. However, with respect to legal costs and expenses, the Operating Agreement provided that the Insight Fund would pay such costs "directly relating to the ongoing activities" of the fund. Approximately \$65,000 in legal fees that were paid with Insight Fund assets did not directly

relate to the fund's ongoing activities because the fees were for legal services provided to the investment advisers (and not the fund), and the governing document did not otherwise authorize Case, Bradway Financial, or Bradway Capital to charge the fund for their own legal costs. The Respondents have repaid the fund for all of the legal fees paid by the Insight Fund in connection with the Commission's investigation.

Violations

25. Section 203(a) of the Advisers Act prohibits an investment adviser from using the mails or any means or instrumentality of interstate commerce in connection with its business as an investment adviser unless it is registered with the Commission or exempt from registration. Bradway Capital provided investment advice to the Insight Fund and the Capital Fund without registering under the Advisers Act or relying on the registration of Bradway Financial, and, as a result, Bradway Capital willfully⁵ violated Sections 203(a) of the Advisers Act, and Bradway Financial and Case willfully aided and abetted and caused those violations.

26. As a result of the conduct described above, Bradway Financial, Bradway Capital, and Case willfully violated Section 206(2) of the Advisers Act, which prohibits 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."

27. As a result of the conduct described above, Bradway Financial, Bradway Capital, and Case 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."

28. As a result of the conduct described above, Bradway Capital willfully violated, and Case willfully aided and abetted and caused Bradway Capital's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, which make it unlawful for any investment adviser to a pooled investment vehicle to "[m]ake any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle" or "engage in any act, practice, or course of business

⁵ 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)). The primary violations of the Advisers Act and rules thereunder that are cited in this Order may rest on a finding of simple negligence.

that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.”⁶

29. As a result of the conduct described above, Bradway Capital willfully violated, and Bradway Financial and Case willfully aided and abetted and caused Bradway Capital’s violations of, Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder, which, among other things, prohibit an investment adviser registered or required to be registered under Section 203 of the Advisers Act from having custody of client assets unless the client assets are verified by actual examination at least once during each calendar year by an independent public accountant without prior notice or announcement to the adviser, or, if the client is a pooled investment vehicle, such client is subject to an annual audit.

30. As a result of the conduct described above, Bradway Financial willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder, and Case willfully aided and abetted and caused those violations.

31. As a result of the conduct described above, Bradway Financial willfully violated and Case willfully aided and abetted and caused Bradway Financial’s violation of Section 205(a)(1) of the Advisers Act, which prohibits investment advisers registered with the Commission or required to be registered from entering into, extending, or renewing any investment advisory contract if such contract provides for compensation to the investment adviser on the basis of a share of capital gains or capital appreciation of the fund or any portion of the funds of the client.

32. As a result of the conduct described above, Bradway Financial and Bradway Capital willfully violated, and Case willfully aided and abetted and caused Bradway Financial’s and Bradway Capital’s violations of, Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which require investment advisers registered or required to be registered to, among other things, adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules, and to review at least annually the adequacy of the policies and procedures and the effectiveness of their implementation.

Undertakings

Respondents have undertaken to:

33. **Performance Fees.** Bradway Capital and Case shall not charge or accept compensation related to the Insight Fund on the basis of a share of capital gains upon or capital appreciation of the funds of the clients, including but not limited to any performance fees.

34. **Compliance Training.** Within one year of the entry of this Order, Case shall complete thirty (30) hours of compliance training related to the Advisers Act.

⁶ “Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act.” *In the Matter of Wunderlich Securities, Inc.*, Investment Advisers Act Rel. No. 3211, 2011 WL 2098195, at *8 (May 27, 2011) (citing *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992)).

35. Order Notification. Within thirty days of the issuance of this Order, Bradway Financial, Bradway Capital, and Case undertake to send to each of Bradway Financial's clients and each of the current and former investors in the Insight Fund or the Capital Fund a copy of this Order.

36. Independent Compliance Consultant

- a. Bradway Financial and Bradway Capital shall retain, within 120 days of the date of the issuance of this Order, the services of an Independent Compliance Consultant not unacceptable to the staff of the Commission. The Independent Compliance Consultant's compensation and expenses shall be borne exclusively by Bradway Financial and Bradway Capital. Bradway Financial and Bradway Capital shall require the Independent Compliance Consultant to conduct one review of the Bradway Financial and Bradway Capital compliance policies and procedures that the Independent Compliance Consultant deems relevant with respect to: the calculation of regulatory assets under management; registration or exemption from registration as an investment adviser; the reporting of private fund gross asset values; the valuation of assets; compliance with the Custody Rule; compliance with the Compliance Rule; and the filing of Forms ADV with accurate statements;
- b. At the end of the review, which in no event shall be more than six months after the date of the issuance of this Order, Bradway Financial and Bradway Capital shall require the Independent Compliance Consultant to submit an Initial Report to Bradway Financial, Bradway Capital and to the Commission staff. The Initial Report shall describe the review performed, the conclusions reached, and shall include any recommendations deemed necessary to make the policies and procedures adequate. Bradway Financial and Bradway Capital may suggest an alternative procedure designed to achieve the same objective or purpose as that of the recommendation of the Independent Compliance Consultant. The Independent Compliance Consultant shall evaluate any alternative procedure proposed by Bradway Financial and Bradway Capital. However, Bradway Financial and Bradway Capital shall abide by the Independent Compliance Consultant's final recommendation;
- c. Within nine months after the date of issuance of this Order, Bradway Financial and Bradway Capital shall, in writing, advise the Independent Compliance Consultant and the Commission staff of the recommendations it is adopting;
- d. Within one year after the date of issuance of this Order, Bradway Financial and Bradway Capital shall require the Independent

Compliance Consultant to complete its review and submit a written final report to Commission staff. The Final Report shall describe the review; set forth the conclusions reached and the recommendations made by the Independent Compliance Consultant, as well as any proposals made by Bradway Financial and Bradway Capital; and describe how Bradway Financial and Bradway Capital is/are implementing the Independent Compliance Consultant's final recommendations;

- e. Bradway Financial and Bradway Capital shall take all necessary and appropriate steps to adopt and implement all recommendations contained in the Independent Compliance Consultant's Final Report;
- f. For good cause shown and upon timely application by the Independent Compliance Consultant or Bradway Financial or Bradway Capital, the Commission's staff may extend any of the deadlines set forth in these undertakings;
- g. Bradway Financial and Bradway Capital shall require the Independent Compliance Consultant to enter into an agreement providing that for the period of the 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 Bradway Financial, Bradway Capital, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Compliance Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Compliance Consultant in the performance of his or her 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 Bradway Financial, Bradway Capital, or any of their 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.

37. Bradway Financial, Bradway Capital, and Case shall certify, in writing, compliance with the undertakings set forth above. 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's staff may make reasonable requests for further evidence of compliance, and Bradway Financial, Bradway Capital, and Case agree to provide such evidence. The certification and supporting material shall be submitted to Robert B. Baker, Assistant Director, Asset Management Unit, Boston Regional

Office, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA 02110, no later than sixty days from the date of completion of the undertakings.

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 and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Case shall cease and desist from committing or causing any violations and any future violations of Sections 203(a), 205(a)(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 206(4)-2, 206(4)-7, and 206(4)-8 thereunder.

B. Respondent Bradway Capital shall cease and desist from committing or causing any violations and any future violations of Sections 203(a), 206(2), 206(4), and 207 of the Advisers Act and Rules 206(4)-2, 206(4)-7, and 206(4)-8 thereunder.

C. Respondent Bradway Financial shall cease and desist from committing or causing any violations and any future violations of Sections 203(a), 205(a)(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 206(4)-2 and 206(4)-7 thereunder.

D. Respondents Bradway Capital and Bradway Financial are censured.

E. Respondent Case shall be, and hereby is, subject to the following limitations on his activities:

- a. Respondent Case shall not act in a chief compliance officer capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and
- b. Respondent Case may apply to act in such a chief compliance officer capacity after three years to the appropriate self-regulatory organization, or if there is none, to the Commission.

F. Any application to act in such a chief compliance officer capacity will be subject to the applicable laws and regulations governing the reentry process, and permission to act in such a chief compliance officer 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.

G. Respondents Bradway Financial, Bradway Capital, and Case, jointly and severally, shall pay a civil money penalty in the amount of \$150,000 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: (1) \$30,000.00 within 10 days of the entry of the Order; (2) \$30,000 within 90 days of the entry of this Order; (3) \$30,000 within 180 days of the entry of this Order; (4) \$30,000 within 270 days of the entry of this Order; and (5) \$30,000 within 360 days of the entry of this Order. If any is not made by the date payment is required by this Order, the entire outstanding balance of the civil penalty, 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) 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 Respondents Bradway Financial, Bradway Capital, and Case as the 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 Robert B. Baker, Assistant Director, Asset Management Unit, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA 02110.

H. 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, Respondents agree that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it 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, Respondents agree that it 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.

I. Respondent, Case shall comply with the undertakings enumerated in Section III, paragraphs 33, 34, 35 and 37 above. Respondents, Bradway Financial shall comply with the undertakings enumerated in Section III, paragraphs 35, 36 and 37 above, and Bradway Capital, shall comply with the undertakings enumerated in Section III, paragraphs 33, 35, 36 and 37 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 Respondent Case, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Case 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 Case 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