

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10655 / July 1, 2019

SECURITIES EXCHANGE ACT OF 1934
Release No. 86251 / July 1, 2019

INVESTMENT ADVISERS ACT OF 1940
Release No. 5263 / July 1, 2019

INVESTMENT COMPANY ACT OF 1940
Release No. 33538 / July 1, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19227

In the Matter of

**FIELDSTONE FINANCIAL
MANAGEMENT GROUP,
LLC and KRISTOFOR R.
BEHN**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTION 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, 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 Section 8A of the Securities Act of 1933 (“Securities Act”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), 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 Fieldstone Financial Management Group, LLC and Kristofor R. Behn (“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 Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, 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

These proceedings involve a failure to disclose material conflicts of interest to advisory clients by Kristofor R. Behn (“Behn”), and his registered investment adviser, Fieldstone Financial Management Group, LLC (“Fieldstone”). Behn and Fieldstone also solicited an advisory client to invest \$1 million in Fieldstone without disclosing that Behn planned to use much of the money to cover his personal expenses.

From 2014 to early 2016, on Behn’s recommendation, approximately 40 of Behn’s advisory clients invested more than \$7 million in securities issued by Aequitas Commercial Finance, LLC (“ACF”), one of numerous entities affiliated with the Aequitas enterprise, the ultimate parent of which is Aequitas Management, LLC (collectively referred to herein as “Aequitas”). Behn and Fieldstone did not disclose to the clients that Aequitas had provided Fieldstone with a \$1.5 million loan and access to a \$2 million line of credit under terms that created an incentive for Behn and Fieldstone to recommend the Aequitas investments.

In early 2017, Behn, through Fieldstone, advised a Fieldstone client to purchase an interest in Fieldstone for \$1 million. Behn represented that the client’s investment would be used to support and expand Fieldstone’s business. Contrary to his representation, Behn used approximately half the client’s money to pay his personal taxes and make other payments to himself or for his personal benefit.

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.

Respondents

1. Fieldstone Financial Management Group, LLC is a Delaware limited liability company with its principal place of business in Foxboro, Massachusetts. Fieldstone was formerly registered with the Commission as an investment adviser during two periods: May 23, 2001 to September 3, 2015, and March 25, 2016 to March 28, 2019. Before the entry of this Order, Fieldstone entered into an Asset Purchase Agreement for the purpose of selling certain of its assets to another registered investment adviser.

2. Kristofor R. Behn, age 46, resides in Foxboro, Massachusetts. Behn founded Fieldstone and was its managing member and chief compliance officer during the relevant period. He was its sole owner until April 2017 and its 89 percent owner thereafter. At all relevant times, Behn controlled Fieldstone. From March 24, 2015 to May 4, 2016, Behn was an investment adviser representative of a registered investment adviser separate from Fieldstone. During this period, he advised many of the same clients he advised while he was associated with Fieldstone.

Facts

Aequitas Provided Respondents with \$1.5 Million in Cash and a \$2 Million Line of Credit

3. In April 2014, Behn negotiated and directed Fieldstone to enter into two financial arrangements with Aequitas that provided money for Behn to use to pay his personal expenses and a line of credit for Fieldstone.

4. In the first arrangement, an Aequitas entity loaned Fieldstone \$1.5 million for the purpose of providing a distribution to Behn to use to pay down his personal debt. The loan was secured by Fieldstone's assets, Behn's ownership interest in Fieldstone, and a personal guaranty executed by Behn and his spouse. The loan terms provided that, among other conditions, if \$25 million of Fieldstone's advisory clients' assets was invested in Aequitas securities, Fieldstone could elect to repay the loan not in cash, but by converting the debt into an equity interest in Fieldstone held by the Aequitas entity. As contemplated, Behn used the loan proceeds to decrease his personal debt.

5. In the second arrangement, an Aequitas entity provided Fieldstone with access to a line of credit not to exceed \$2 million for the stated purpose of financing Fieldstone's acquisition of other registered investment advisers. The line of credit was secured by Fieldstone's assets, Behn's ownership interest in Fieldstone, and a personal guaranty executed by Behn and his spouse. The line of credit terms were structured so that (i) the greater the amount of Fieldstone's advisory clients' assets invested in Aequitas securities, the greater the amount that Fieldstone could draw on the line of credit; and (ii) a decrease in the amount of client assets invested in Aequitas securities could trigger a requirement that Fieldstone pay down all or part of the outstanding balance on the line of credit. (Fieldstone did not draw on the line of credit and it was terminated in March 2015.)

Respondents Recommended Aequitas Investments and Failed to Disclose their Conflicts of Interest Involving Aequitas

6. As Behn was arranging the Aequitas loan and line of credit, he held Aequitas out as an attractive investment opportunity to Fieldstone advisory clients. After the loan and line of credit were in place, Behn's advisory clients acting on his recommendation began investing in ACF, an Aequitas entity, and such client investments eventually exceeded \$7 million. Those recommendations involved conflicts of interest that Behn and Fieldstone did not disclose.

7. As investment advisers, Fieldstone and Behn were obligated to fully disclose all material facts to advisory clients, including any conflicts of interest. To meet this obligation, Respondents were required to provide advisory clients with sufficient information so that they could understand any conflicts of interest and decide whether to give informed consent to such conflicts.

8. The \$1.5 million loan and \$2 million line of credit created conflicts of interest for Respondents. They gave Respondents a material financial interest in steering advisory clients to invest in Aequitas securities so that Fieldstone could potentially obtain favorable repayment terms on the loan and increase its borrowing power under the line of credit. The conflicts were heightened by the fact that Behn pledged his personal assets to secure repayment of borrowed funds he used to pay his personal debts.

9. Acting on Behn's recommendation, approximately 40 of his advisory clients invested \$7.8 million in promissory notes issued by ACF from July 2014 through February 2016. Behn and Fieldstone did not disclose their conflicts of interest to these clients, and instead mischaracterized the Aequitas loan and line of credit in communications with clients.

10. In March 2014, Behn drafted and sent an email to all Fieldstone clients announcing a new "strategic affiliation" with Aequitas and describing Aequitas as an attractive investment opportunity for clients to consider. Behn omitted from his email that he was then negotiating the loan and line of credit.

11. In June 2014, after Respondents entered into the loan and line of credit, Behn drafted and signed a letter mailed to all Fieldstone clients again referencing the "strategic affiliation" with Aequitas and the attractiveness of an Aequitas investment. While this letter stated that Aequitas had provided funding Fieldstone could use to acquire other investment adviser practices, it omitted that Fieldstone had in fact borrowed \$1.5 million from Aequitas so that Behn could pay down his personal debt. The letter also omitted that the funding from Aequitas came with terms that created an incentive for Respondents to recommend Aequitas investments to clients.

12. In September 2015, a client emailed Behn seeking information about Fieldstone's relationship with Aequitas. Behn replied, "Aequitas is simply a private fund and Fieldstone has no relationship with them beyond making their notes available to clients."

Respondents Failed to Disclose their Conflicts of Interest in Fieldstone's Form ADV Brochures

13. As Fieldstone and Behn were recommending the ACF investment, Fieldstone's Form ADV failed to disclose the conflicts of interest. As required by the federal securities laws, Fieldstone filed Form ADV and periodic updates to the form with the Commission. Behn signed the updates on behalf of Fieldstone and directed their filing. Behn knew that under Fieldstone's written policies and procedures, he was responsible for ensuring that the brochure portion of the form ("ADV Brochure") disclosed conflicts of interest to clients. Yet updates to Fieldstone's ADV Brochure filed with the Commission in 2014 and 2015 did not mention the \$1.5 million loan, the \$2 million line of credit, or Respondents' conflict of interest in recommending that Fieldstone clients invest in Aequitas securities.

14. A later Form ADV filing mischaracterized Fieldstone's relationship with Aequitas. In March 2016, Fieldstone filed a Form ADV update signed by Behn with an ADV Brochure stating that Fieldstone had entered into a loan agreement with an Aequitas company in April 2014. The ADV Brochure further stated that the purpose of the loan agreement was "to recapitalize [Fieldstone] and in furtherance of [Fieldstone's] practice acquisition initiatives." Behn, however, had used the proceeds of the \$1.5 million loan from Aequitas to pay his personal debts. The ADV Brochure also stated that "[t]he loan and its repayment terms are in no way contingent upon the investment of [Fieldstone] client's assets in private investment funds." In truth, the repayment terms on both the loan and line of credit were potentially contingent on investments by Fieldstone clients in Aequitas securities.

15. One week before the March 2016 Form ADV filing, the Commission commenced an action charging ACF and several other Aequitas companies and officers with fraudulent sales of more than \$300 million in securities.² In April 2016, the court appointed a receiver over ACF and other Aequitas companies.

16. Clients of Respondents paid advisory fees calculated as a percentage of the amount of the client's assets under management. Respondents received a total of approximately \$84,778 in advisory fees based on the amounts of client investments in ACF promissory notes.

Respondents Wrongfully Obtained \$1 Million from an Advisory Client

17. In April 2017, Respondents fraudulently obtained a \$1 million investment in Fieldstone from a Fieldstone advisory client without disclosing to the client that Behn planned to use much of the money for his personal expenses.

18. Behn and Fieldstone solicited and advised the client—who already was one of the Fieldstone clients who had invested in Aequitas securities upon Behn's recommendation—to purchase a ten percent ownership interest in Fieldstone using \$1 million that was under Fieldstone's management. Behn discouraged the client from seeking an independent valuation of Fieldstone before investing \$1 million in the firm. Behn also represented to the client that Fieldstone would

² See *SEC v. Aequitas Management, LLC, et al.*, No. 3:16-cv-00438-PK (D. Or. filed March 10, 2016).

use the \$1 million to support and expand its business under Behn's leadership, and that the client would share in Fieldstone's profits.

19. Behn and Fieldstone's statements were materially misleading because Behn knew at the time, and did not disclose, that he planned to use the client's money for his personal expenses. Behn began using the client's funds for such purposes on the same day that Fieldstone received them in its bank account, and within ten days, he used approximately \$500,000 of the funds for purposes that included paying more than \$300,000 in personal taxes, paying his other personal debt, and taking cash withdrawals for himself.³

Violations

20. As a result of the conduct described above, Respondents willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

21. As a result of the conduct described above, Respondents willfully violated Section 17(a)(2) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

22. As a result of the conduct described above, Respondents 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."

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 Section 8A of the Securities Act, Section 21C of the Exchange Act, 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. Respondents cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2), and 207 of the Advisers Act, Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Behn be, and hereby is:

³ Since May 2017, Fieldstone has paid the client returns on the \$1 million investment totaling \$100,000.

- (i) barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and
- (ii) 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;
- (iii) except that during the period from the entry of this Order through August 9, 2019, Behn may perform for the asset purchaser under the Asset Purchase Agreement referenced in paragraph 1 of Section III of this Order services that are limited to assisting in the orderly transition of Fieldstone's assets and advisory clients to the asset purchaser. In performing such services, Behn may not provide any investment advice or other advice to any investment advisory client or prospective investment advisory client; may not communicate with any investment advisory client or prospective investment advisory client without the advance approval of the asset purchaser; may not perform or have responsibility for any compliance or supervisory duties; and may not exercise any control over the assets of any investment advisory client.

C. Fieldstone is censured.

D. Any reapplication for association by Behn 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 Behn, 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. Respondents shall pay, jointly and severally, disgorgement of \$984,778, prejudgment interest of \$63,193, and a civil money penalty of \$275,000 to the Securities and Exchange Commission.

F. Payment of the above disgorgement, prejudgment interest, and civil money penalty amounts shall be made in the following installments: (1) \$700,000 shall be paid within 10 days of the entry of this Order; and (2) \$622,971 shall be paid within 360 days of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalty, plus any additional interest

accrued pursuant to SEC Rule of Practice 600 and/or pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application.

Payment of the above disgorgement, prejudgment interest, and civil money penalty amounts 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 Fieldstone and Behn 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 Steven D. Buchholz, Assistant Regional Director, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California, 94104.

G. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest and penalty referenced in paragraph IV.E above. 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, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' 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 they 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 one or both Respondents 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 Behn, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Behn 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 Behn 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.

Vanessa Countryman
Secretary