UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4225 / October 13, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16892

In the Matter of

JAMES T. BUDDEN and ALEXANDER W. BUDDEN,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against James T. Budden ("J. Budden") and Alexander W. Budden ("A. Budden") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents each have 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

SUMMARY

Respondents failed reasonably to supervise Douglas E. Cowgill ("Cowgill"), the former Chief Compliance Officer ("CCO") of Professional Investment Management, Inc. ("PIM"), an investment adviser registered with the Commission, within the meaning of Sections 203(e)(6) and 203(f) of the Advisers Act, with a view to preventing and detecting Cowgill's violations of the federal securities laws. Cowgill violated several antifraud provisions of the federal securities laws by misappropriating more than $840,000 in client assets. Respondents also caused[2] PIM to violate Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder (the "Compliance Rule"). J. Budden further caused PIM to violate Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder (the "Custody Rule").

RESPONDENTS

1. **James T. Budden**, age 73, is a former 50.2% shareholder of PIM. J. Budden was the President and a Director of PIM from approximately 1973 through approximately July 22, 2013, the date he sold all of his interest in PIM to Cowgill. While associated with PIM, J. Budden supervised several employees, including Cowgill. J. Budden resides in Columbus, Ohio.

2. **Alexander W. Budden**, age 68, is a former 48.7% shareholder of PIM. A. Budden was the Vice President and Secretary and a Director of PIM from approximately April 1981 through approximately July 22, 2013, the date he sold all of his interest in PIM to Cowgill. While associated with PIM, A. Budden supervised several employees, including Cowgill. A. Budden resides in Cleveland, Ohio.

OTHER RELEVANT PARTIES

3. **Professional Investment Management, Inc.** is an Ohio corporation with its principal place of business in Columbus, Ohio. At all times relevant to this proceeding, PIM was owned by J. Budden (50.2%), A. Budden (48.7%), and Cowgill (1.1%). PIM was registered with the Commission as an investment adviser from 1978 through September 30, 2013. PIM re-registered with the Commission on June 24, 2014. PIM provides third-party administration services and investment advisory services to approximately fifteen retirement plan clients (which consist of approximately 325 participants who, in turn, own approximately 425 individual retirement accounts that PIM advises), and also provides investment advisory services to

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

[2] "Negligence is sufficient to establish 'causing' liability . . ., at least in cases in which a person is alleged to 'cause' a primarily violation that does not require scienter." *KPMG Peat Marwick, LLP*, Rel. No. 43862, 2001 WL 47245, *19 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002).

approximately twenty-five individual clients for their own (non-retirement plan) accounts. PIM has approximately $120 million of regulatory assets under management, and has custody of client assets through three omnibus accounts. PIM has been operating under the control of a court-appointed receiver since on or about May 15, 2014.

4. **Douglas E. Cowgill**, age 60, began working for PIM in July 1981. Cowgill became the sole owner and President of PIM on or about July 22, 2013, when he purchased all of Respondents' interest in PIM. Cowgill remained the President of PIM until on or about May 15, 2014, when a court-appointed receiver took control of PIM. Cowgill resides in Columbus, Ohio.

5. The Commission filed suit against Cowgill and PIM in the United States District Court for the Southern District of Ohio on April 29, 2014 in *Securities and Exchange Commission v. Douglas E. Cowgill, et al.*, Case No. 2:14-CV-396, alleging that Cowgill and PIM violated the antifraud provisions of the U.S. securities laws by hiding a shortfall of more than $700,000 in client assets by sending false account statements to clients, and that PIM violated, and Cowgill aided and abetted and caused PIM's violations of, the registration provisions of the Advisers Act, and the Custody Rule. The Commission filed an Amended Complaint on August 7, 2014 that included additional counts against Cowgill and PIM. On August 21, 2014, the Court entered a Judgment by Consent against Cowgill as to all counts asserted in the Amended Complaint and permanently restrained and enjoined Cowgill from violating and/or aiding and abetting violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, Sections 203(a), 204(a), 206(1), (2), and (4), and 207 of the Advisers Act, and Rules 204-2, 206(4)-2, and 206(4)-7 thereunder.

6. On September 8, 2014, the Commission entered an order barring Cowgill from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

7. On July 2, 2015, a Grand Jury sitting in the United States District Court for the Southern District of Ohio indicted Cowgill in *United States v. Cowgill*, Case No. 2:15-CR-160, on thirteen counts of wire fraud, five counts of engaging in monetary transactions in property derived from specified unlawful activity, two counts of theft or embezzlement from an employee benefit plan counts, and one count of perjury. Each of these counts stemmed from the conduct alleged in the Commission's civil lawsuit against Cowgill. Cowgill's criminal matter is ongoing.

FACTS

Failure to Supervise Cowgill

8. At all times from July 1981 through approximately July 22, 2013, Cowgill reported to Respondents and Respondents were Cowgill's supervisors. For instance, Respondents promoted Cowgill from Accounting Clerk to Vice President and Treasurer in 1983, and designated Cowgill as PIM's CCO on or about September 28, 2004.

9. As explained above, the United States District Court for the Southern District of Ohio entered an order on August 21, 2014 in *Securities and Exchange Commission v. Douglas E. Cowgill, et al.* that permanently restrained and enjoined Cowgill from violating and/or aiding and abetting violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Sections 203(a), 204(a), 206(1), (2), and (4), and 207 of the Advisers Act, and Rules 204-2, 206(4)-2, and 206(4)-7 thereunder.

10. Respondents failed to adopt or implement any policies or procedures regarding their supervision of Cowgill. In fact, Respondents merely assumed, without ever confirming, that Cowgill performed his responsibilities in compliance with the federal securities laws.[3]

Violations of the Compliance Rule

11. After Respondents designated Cowgill as PIM's CCO, they never provided any funding, training, or resources to support Cowgill in the CCO role.

12. Respondents, as the majority owners of PIM and as required by the Compliance Rule, participated in annual compliance reviews with Cowgill in 2004, 2006, and 2007.[4] Respondents knew or should have known that Cowgill stopped performing compliance reviews after 2007, but took no steps to ensure that Cowgill or anyone else at PIM resumed conducting compliance reviews at least annually after 2007.

13. Respondents took no steps to ensure that PIM was complying with the federal securities laws after 2007, and did nothing after 2007 to ensure that Cowgill carried out his responsibilities as PIM's CCO.

14. Respondents did not ensure that PIM established policies or procedures to prevent client assets from being misappropriated via checks or wire transfers or to ensure that client statements were reviewed for accuracy. No such policies or procedures were ever established at PIM. During the period 2008 through 2013, Cowgill secretly wrote numerous checks and initiated numerous wire transfers from PIM's client asset-holding bank account and sent false account statements to PIM's clients to hide his misappropriation of client assets.

Violations of the Custody Rule

15. At all relevant times, PIM maintained client funds in an omnibus checking account held on an agency basis at Custodian 1, and client securities in two omnibus accounts held on an agency basis at Custodian 2 and Custodian 3. All client funds were initially deposited into the omnibus checking account held at Custodian 1. PIM then transferred these client funds for investment to various firms, including Custodians 2 and 3. PIM had custody of all of the client

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[3] "Liability for failure to supervise may be imposed when a supervisor fails 'to learn of improprieties when diligent application of supervisory procedures would have uncovered them.'" *In the Matter of Stephen Jay Mermelstein*, Advisers Act Rel. No. 2961 (Dec. 14, 2009).

[4] PIM did not conduct an annual compliance review in 2005.

assets held at Custodian 1, 2, and 3 because it had the authority to obtain possession of these assets.

16. Each year from 1999 to 2009, J. Budden had, as required by the Custody Rule, engaged an independent accountant on behalf of PIM to conduct annual surprise examinations to verify all client assets of which PIM had custody and required the accountant to file Form ADV-E with the Commission within a prescribed amount of time. J. Budden delegated that responsibility to Cowgill during the summer of 2009 after J. Budden had engaged the accountant in May 2009 to perform the 2009 annual surprise examination. J. Budden continued to supervise Cowgill during this time period, but did not follow up with Cowgill to ensure that Cowgill had fulfilled this responsibility.

17. J. Budden knew from past experience that, in order to comply with the Custody Rule, PIM was obligated to, among other things, require the accountant to file Form ADV-E with the Commission. Cowgill failed to require PIM's accountant to file Form ADV-E with the Commission in connection with the 2009 surprise examination, and J. Budden did nothing to ensure that that Cowgill had done so. J. Budden did nothing to confirm that Form ADV-E had been filed with the Commission or that PIM had complied with the Custody Rule in 2009. PIM violated the Custody Rule in 2009 by failing to ensure that the accounting firm filed with the Commission Form ADV-E.

18. Cowgill engaged these same accountants in 2010 and again in 2011 to perform annual surprise examinations in accordance with the Custody Rule. Cowgill did not cooperate with the accounting firm, and, ultimately, the accounting firm did not complete either of these annual surprise examinations. J. Budden did nothing to confirm that these annual surprise examinations had been completed, that Form ADV-E had been filed with the Commission in connection with either of these annual surprise examinations, or that PIM had complied with the Custody Rule in 2010 and 2011. PIM violated the Custody Rule in 2010 and 2011 by failing to have annual surprise examinations completed in each of those years.

19. Cowgill did not engage any accountants in 2012 to perform an annual surprise examination in accordance with the Custody Rule. J. Budden did nothing to confirm that Cowgill had engaged an accountant to complete the annual surprise examination in 2012, that the annual surprise examination had been completed, that Form ADV-E had been filed with the Commission in connection with the annual surprise examination, or that PIM had complied with the Custody Rule in 2012. PIM violated the Custody Rule in 2012 by failing to have an annual surprise examination completed that year.

20. In 2013, J. Budden realized that he had not seen any accountants at PIM for "some time," and sought to learn the status of PIM's compliance with the Custody Rule. Respondents spoke with the principal of the accounting firm that historically had completed annual surprise examinations for PIM. Respondents learned that the accounting firm was terminating its relationship with PIM because, among other reasons, Cowgill had not sufficiently cooperated with the accounting firm in 2010 and 2011 to enable it to complete the annual surprise exams during those two years as required by the Custody Rule. Respondents further learned that Cowgill had not engaged the accounting firm to perform any work on behalf of PIM since 2011.

21. In July 2013, Respondents spoke with an attorney to determine how to address PIM's delinquent ADV-E filings.

22. However, neither Respondent took any disciplinary action against Cowgill.

23. Instead, on July 22, 2013, each Respondent executed a stock purchase agreement in which they each agreed to sell all of their interest in PIM to Cowgill.

24. Respondents both knew at the time of the sale that PIM was not in compliance with the federal securities laws, including specifically, the Compliance Rule and the Custody Rule.

25. As a result of the conduct described above, Respondents failed reasonably to supervise Cowgill within the meaning of Section 203(e)(6) of the Advisers Act, with a view to preventing and detecting Cowgill's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 203(a), 204(a), 206(1), (2), and (4), and 207 of the Advisers Act and Rules 204-2, 206(4)-2, and 206(4)-7 thereunder.

26. As a result of the conduct described above, Respondents caused PIM's violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require, among other things, that a registered investment adviser adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and the rules thereunder by the adviser and its supervised persons, and review, no less frequently than annually, the adequacy of such policies and procedures.

27. As a result of the conduct described above, J. Budden caused PIM's violation of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, which require, among other things, that a registered investment adviser have client assets over which it has custody verified by an independent public accountant at least once a year without prior notice to the investment adviser and that the investment adviser require the accountant to file Form ADV-E with the Commission within a prescribed amount of time.

IV.

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

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

Respondent J. Budden

A. Respondent J. Budden cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 thereunder.

B. Respondent J. Budden be, and hereby is:

> barred from association in a supervisory or compliance capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization
>
> with the right to apply for reentry after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by Respondent J. Budden 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 Respondent J. Budden, 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.

D. Respondent J. Budden shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $125,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

> (1) Respondent J. Budden may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent J. Budden 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 J. Budden 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 Respondent J. Budden 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 Paul Montoya, Assistant Director, Division of Enforcement, Securities and Exchange Commission, Chicago Regional Office, 175 West Jackson Boulevard, Suite 900, Chicago, IL 60604-2908.

Respondent A. Budden

E. Respondent A. Budden cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

F. Respondent A. Budden be, and hereby is:

barred from association in a supervisory or compliance capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization

with the right to apply for reentry after two (2) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

G. Any reapplication for association by Respondent A. Budden 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 Respondent A. Budden, 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.

H. Respondent A. Budden shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $75,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondent A. Budden may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent A. Budden 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 A. Budden 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 Respondent A. Budden 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 Paul Montoya, Assistant Director, Division of Enforcement, Securities and Exchange Commission, Chicago Regional Office, 175 West Jackson Boulevard, Suite 900, Chicago, IL 60604-2908.

I. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties referenced in paragraphs IV.D and IV.H, 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, Respondent agrees 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 any 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 Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents 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 Respondents 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