

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4406 / May 31, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17265

In the Matter of

STEVEN R. MARKUSEN
and JAY C. COPE,

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
203(f) OF THE INVESTMENT ADVISERS
ACT OF 1940**
AND NOTICE OF HEARING

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Steven R. Markusen (“Markusen”) and Jay C. Cope (“Cope”) (collectively “Respondents”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Markusen, age 62, resides in Minneapolis, Minnesota. In 2002, he formed Archer Advisors LLC (“Archer”), a Delaware limited liability company with its principal place of business in Wayzata, Minnesota, for the purpose of managing two private funds, the Archer Equity Fund and Archer Focus Fund (“the Funds”), both of which closed in October 2013. At all relevant times, Archer was not registered with the Commission. Since Archer’s inception, Markusen was its sole owner and CEO. Markusen held the following FINRA licenses and was registered with prior employers from approximately 1985 to 2000: General Securities Representative (Series 7) and

Uniform Securities Agent State Law (Series 63). He has over 29 years of experience in the investment industry, and is not currently registered with the Commission.

2. Cope, age 56, resides in Shorewood, Minnesota. From 2003 through 2013, he worked at Archer in marketing, client services and trading. Cope has held the following FINRA licenses and was registered with prior employers from approximately 1983 to 1996: General Securities Representative (Series 7) and Uniform Securities Agent State Law (Series 63). He has over 20 years of investment experience, and is not currently registered with the Commission.

B. ENTRY OF THE INJUNCTION

1. On November 10, 2015, the U.S. District Court for the District of Minnesota granted the SEC's motion for default judgment against Markusen and Archer and, on April 27, 2016, granted the Commission's Motion for Summary Judgment against Cope, and entered a final judgment against Cope, Markusen and Archer in the civil action entitled Securities and Exchange Commission v. Steven R. Markusen, et al., Civil File Number 14-3395 (D. Minn.). The final judgment against Markusen permanently enjoined him from violating Sections 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act. The Court further ordered Markusen to pay, jointly and severally with Archer, disgorgement of \$630,830.31, plus prejudgment interest, and a civil penalty of \$100,000. The final judgment against Cope permanently enjoined him from violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and from aiding and abetting any violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Advisers Act. The Court further ordered Cope to pay disgorgement of \$549,284.97, prejudgment interest of \$81,037.26 and a civil penalty of \$100,000.

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2. The Commission's complaint alleged and the District Court found in its Memorandum of Law and Order that from 2008 to 2013, Markusen and Cope engaged in a scheme to defraud the Funds of illegitimately claimed research expenses by misrepresenting Cope as an independent research consultant so that Cope could be paid with investor money. The Court further found that Markusen used Archer to misappropriate improper research expenses from the Funds and failed to disclose the conflict of interest created by Cope, as an Archer insider, receiving soft dollars and research fees from the Funds. The Court also found that Markusen and Cope engaged in a separate scheme to mark the close and artificially inflate the price of one of the Funds' largest stock holdings by placing buy orders within the last 30 minutes of the last trading day of at least 28 months. This manipulation allowed Markusen and Cope to inflate the monthly returns reported to existing and prospective investors and to collect additional management fees for Archer. Finally, the Court found that Archer was an investment adviser because it was paid by the Funds to manage their investment portfolios and that Markusen qualified as an investment adviser through his control and ownership of Archer.

COPE

3. The Commission's complaint alleged and the District Court found that from 2008 to 2013, Cope and Markusen engaged in a scheme to defraud the Funds and the Funds' investors of illegitimately claimed research expenses. Specifically, the Court found that Cope and Markusen misrepresented Cope as an independent research consultant so Cope could be paid with investor money rather than by Archer. In furtherance of the scheme, Cope created false invoices to obtain payments from the Funds' soft-dollar balance and then kicked back certain of the soft-dollar payments to Markusen. According to the Court, when the soft-dollar balance fell too low to pay Cope's fake research invoices, Cope personally churned the stocks in the Funds' accounts for the sole purpose of generating soft dollars. This excessive trading led to a 600% increase in trade commissions charged to the Funds and caused further losses for Fund investors. In addition, the Court found that Cope and Markusen engaged in a separate scheme to mark the close and artificially inflate the price of one of the Funds' largest stock holdings by placing buy orders within the last 30 minutes of the last trading day of at least 28 months. This manipulation allowed Cope and Markusen to inflate the monthly returns reported to existing and prospective investors and to collect additional management fees for Archer, which the Court found to be an investment adviser because it was paid by the Funds to manage their investment portfolios.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, Respondents may be deemed in default and the proceedings may be determined against

them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Brent J. Fields
Secretary