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UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

Sharpe Signa, LLC,
Haeres Capital, LLC and
Garen Ovsepyan,

Respondents.

CFTC Docket No. 16 -04

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that from in or about August 2012 to at least January 2015 (the "Relevant Period"), Respondents Sharpe Signa, LLC ("Sharpe") and Garen Ovsepyan ("Ovsepyan") violated Sections 2(c)(2)(C)(iii)(I)(bb), 4b(a)(2)(A) and (C), 4*o*(1)(A) and (B), and 6(c)(2) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), 6b(a)(2)(A) and (C), 6*o*(1)(A) and (B), and 9(2) (2012), and Commission Regulation ("Regulation") 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2014), and Respondent Haeres Capital, LLC ("Haeres") and Ovsepyan violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent(s) engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondents have submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions ("Order") and acknowledge service of this Order.[1]

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[1] Respondents consent to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondents do not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other

III.

The Commission finds the following:

A. SUMMARY

Ovsepyan is the sole owner and operator of two entities, Sharpe and Haeres, that provided advisory services to managed accounts in off-exchange foreign currency transactions ("Forex") during the Relevant Period. Sharpe acted as a Commodity Trading Advisor ("CTA") without the benefit of registration with the Commission as a CTA as required. Additionally, Ovsepyan, on behalf of Sharpe and Haeres, filed false or misleading notices of exemption from CTA registration and multiple affirmations of such claimed exemptions with the CFTC, knowing that Sharpe and Haeres were not entitled to such exemptions. Sharpe, acting by and through Ovsepyan, also created and distributed through means and instrumentalities of interstate commerce promotional materials to current and prospective clients that were materially misleading in at least four respects. First, Sharpe's promotional materials listed assets under management ("AUM") in amounts representing notional dollar amounts and not actual dollar amounts, as a reasonable investor would expect, and this overstatement was not disclosed by Sharpe in such promotional materials. Second, Sharpe misrepresented in promotional materials that it used an auditing firm to calculate its advertised performance numbers; however, the auditing firm, located in Italy, did not conduct any such audit of Sharpe. Third, Sharpe has touted rates of return that it is unable to substantiate. Fourth, Sharpe misrepresented in due diligence documents it provided to entities Sharpe recruited to assist in raising funds that it was an exempt CTA, when, in fact, it did not qualify for any exemption from registration with the CFTC.

B. RESPONDENTS

Sharpe Signa LLC is a Delaware limited liability company established in August 2012 with a purported business address in Beverly Hills, California. Sharpe has acted as a CTA by furnishing commodity trading advice to the general public, and by holding itself out to the general public as a CTA by offering forex advisory services in managed accounts. Sharpe promotes itself to the public in its Disclosure Document as a boutique absolute return manager specializing in systematic, technical and fundamental investment strategies in a global macro fund focused on forex. Additionally, at all relevant times, Sharpe held itself out to the public as a CTA on alternative asset manager informational websites such as activetradermag.com and hedgepedia.com, and in industry periodicals. Sharpe has never been registered with the Commission in any capacity.

Haeres Capital, LLC is a Delaware limited liability company established in January 2013 with the same business address in Beverly Hills, California as Sharpe. Haeres is the purported retail arm of Sharpe and offers forex advisory services in managed accounts. Haeres

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proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor do Respondents consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

has never been registered with the Commission in any capacity. All of Haeres's managed account clients reside outside the United States.

Garen Ovsepyan resides in the Glendale, California area and is the sole owner, principal, and managing member for both Sharpe and Haeres. Ovsepyan is responsible for all of the key facets of Sharpe's and Haeres's operations, including investment strategy, compliance, marketing and legal issues. Ovsepyan has never been registered with the Commission in any capacity.

C. FACTS

1. Notice of Exemption Filings

The National Futures Association ("NFA") is an industry self-regulatory organization that is responsible, under CFTC oversight, for certain aspects of the regulation of futures professionals. In 2014, during the course of an NFA review of a disclosure document for a commodity pool operated by a registered commodity pool operator ("CPO"), NFA noted that the CPO was using Sharpe as one of its principal CTAs to invest a portion of the pool's assets in forex. NFA determined that Sharpe was prohibited from providing trading advice to the pool because Sharpe was not registered as a CTA during the Relevant Period, and the pool did not qualify as an eligible contract participant ("ECP"), which would have obviated the need for CTA registration.

In fact, Ovsepyan had earlier filed a CTA Notice of Exemption ("NOE") with the CFTC on behalf of Sharpe through the NFA's electronic exemptions system, claiming that Sharpe was exempt from registration as a CTA pursuant to Regulation 4.14(a)(8), 17 C.F.R. § 4.14(a)(8) (2014). This notice, which Ovsepyan filed on August 28, 2012, was effective upon filing pursuant to Regulation 4.14(a)(8)(iii)(C). As required under Commission Regulation 4.14(a)(8)(iii)(D), Ovsepyan filed annual notices affirming Sharpe's NOE with the CFTC through the NFA's electronic exemption filing system on December 3, 2012, and again on January 3, 2014. By filing a NOE pursuant to Rule 4.14(a)(8), Ovsepyan represented that Sharpe was either a registered investment adviser ("RIA") under the Investment Advisers Act of 1940, or was exempt from such RIA registration. In the initial August 28, 2012 NOE filing, and in the subsequent annual affirmations, Ovsepyan indicated that Sharpe was exempt from registration as a CTA by selecting multiple qualifying reasons, namely, that Sharpe's commodity trading advice is directed solely to, and for the sole use of: (a) entities which are excluded from the definition of the term "pool" or who are "qualifying entities" under Regulation 4.5, such as investment companies, insurance companies, banks or trustees of various employee pension and welfare plans under ERISA — for which a notice of eligibility has been filed, and (b) a CPO who has claimed an exemption under Regulation 4.13, or if registered, treats each pool it operates that meets the Regulation 4.13 exemption criterion as if it were not so registered. However, as Ovsepyan knew at the time he claimed the exemption, Sharpe has never been registered as an RIA or exempt from RIA registration, and Sharpe clearly did not qualify for any of its selected exemptions. Following an inquiry from CFTC staff, Ovsepyan withdrew Sharpe's exemption on July 24, 2014.

In addition to filing an NOE on behalf of Sharpe, on April 4, 2013, Ovsepyan also filed an NOE with the CFTC on behalf of Haeres through the NFA's electronic exemptions system claiming exemption pursuant to Regulation 4.14(a)(8). As required under Commission rules, Ovsepyan filed an annual notice affirming such NOE with the CFTC through the NFA's electronic exemption filing system on January 3, 2014. Although Ovsepyan subsequently withdrew Haeres exemption also on July 24, 2014, he filed another NOE with the CFTC through the NFA's electronic exemptions system claiming exemption pursuant to Regulation 4.14(a)(8) on September 9, 2014, again using his NFA login and user identification to file the NOE. Ovsepyan subsequently withdrew the exemption on January 8, 2015. By filing a NOE pursuant to Rule 4.14(a)(8), Ovsepyan represented that Haeres was either a RIA under the Investment Advisers Act of 1940 or was exempt from such RIA registration. In its initial April 4, 2013 NOE filing, Ovsepyan indicated that Haeres was exempt from registration as a CTA by selecting the same multiple qualifying reasons as he had selected for Sharpe described above, plus that Haeres's commodity trading advice is directed solely to, and for the sole use of a commodity pool organized and operated outside of the U.S. and all participants are non-U.S. persons. However, as Ovsepyan knew at the time he claimed the exemption, Haeres has never been registered as an RIA or exempt from RIA registration, and Haeres clearly did not qualify for any of its selected supporting exemptions.

Ovsepyan knew that neither Sharpe nor Haeres was exempt from CTA registration when he filed annual notices affirming their CTA exemptions on December 3, 2012 and January 3, 2014, but filed the exemption affirmations anyway. He also knew that Sharpe was not exempt from CTA registration when he represented in an interview for the January-March 2014 issue of *FX Trader* magazine that, "We are [sic] 4.14 Exempt CTA, meaning we can only take on certain types of clients." Sharpe also falsely represented that it was an exempt CTA in due diligence documents it provided to entities Sharpe sought out to assist in raising funds.

2. Promotional Materials

Sharpe prepared promotional materials it described as "Due Diligence Questionnaires" and "Manager Performance Analyses" stating it had as much as $145 million in AUM,[2] and periodically distributed such materials to introducing brokers and prospective customers. Additionally, for an interview that was published in the February 2013 issue of *Currency Trader* magazine, Ovsepyan represented that Sharpe had $90 million in AUM, and in the April 2013 issue of *Futures* magazine, Ovsepyan represented that Sharpe had just under $100 million in AUM. Finally, in January-March 2014 issue of *FX Trader* magazine, Ovsepyan represented Sharpe had $140M in AUM.

However, those AUM numbers represented notional dollar amounts and not actual dollar amounts, which was neither explained nor clarified by Sharpe in such promotional materials and magazine articles. Ovsepyan managed less than $15 million in actual dollars.

Sharpe also represented in promotional materials that it had a relationship with DiMartino & Associati (the "auditing firm") dating back to 2007, to calculate its performance numbers and

[2] In the January 2014 Sharpe Signa "Manager Performance Analysis" Ovsepyan represented Sharpe had $145M in AUM.

that it had achieved stellar annualized rates of return (as much as 61.5%) through forex trading. However, the auditing firm never conducted an audit of Sharpe. Sharpe also made misleading forward looking statements representing in certain promotional materials that Sharpe was going to hire KPMG/Rothstein Kass ("KPMG") for the year end 2013 audit, which it did not ever do. In addition, Ovsepyan sent written communications via conventional and/or electronic mail containing misrepresentations and omissions of material facts to Sharpe's clients and prospective clients regarding Sharpe's: (a) AUM and its actual and notional funding levels, and (b) published and audited rates of return.

IV.

LEGAL DISCUSSION

A. Sharpe Failed to Register as a CTA

Section 2(c)(2)(C)(iii)(I)(bb) of the Act bars persons not registered with the CFTC from exercising discretionary trading authority over any account for or on behalf of any person that is not an ECP in connection with off-exchange Forex transactions.

Specifically, Section 2(c)(2)(C)(iii)(I)(bb) of the Act states that a person, unless registered in such capacity as the Commission by rule, regulation, or order…, shall not – (bb) exercise discretionary trading authority or obtain written authorization to exercise written trading authority over any account for or on behalf of any person that is not an ECP in connection with agreements, contracts, or transactions described in clause (i)[3] of this subparagraph entered into with or to be entered into with a person who is not described in item (aa), (bb), (dd), (ee), or (ff) of subparagraph (B)(i)(II).[4] Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2014), requires any CTA who exercises discretionary trading authority or obtains written authorization to exercise written trading authority over any account for or on behalf of any person that is not an ECP in connection with retail forex transactions, to register with the Commission.

During the Relevant Period, one of Sharpe's CTA clients (a U.S.-based commodity pool) did not qualify as an ECP under either Section 1a(18) of the Act, 7 U.S.C. § 1a(18) (2012), or Commission Regulation 1.3(m)(8), 17 C.F.R. § 1.3(m)(8) (2014). Accordingly, in connection with its CTA business, Sharpe was prohibited from providing trading advice to the commodity pool because Sharpe was not registered as a CTA.

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3 Leveraged forex transaction conducted with non-ECPs at a retail foreign exchange dealer ("RFED") or futures commission merchant ("FCM") that do not result in actual delivery within 2 days or create an enforceable obligation to deliver between a seller and buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.

4 Financial institutions, brokers and dealers registered under the Securities Exchange Act of 1934 and associated persons thereof, futures commission merchants and affiliated persons thereof, financial holding companies, and RFEDs registered with the Commission. Note that under Dodd-Frank, subparagraph (B)(i)(II) is amended, however, even as amended it does not contain exceptions relevant to Sharpe and Ovsepyan.

Sharpe violated Section 2(c)(2)(C)(iii)(I)(bb), 7 U.S.C. § 2(c)(2)(C)(iii)(I)(bb) (2012), and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2014), in that it acted as a CTA without the benefit of registration with the Commission as a CTA.

B. Ovsepyan Made a False or Misleading Statement to the Commission

Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012), in relevant part, provides that it is unlawful "...for any person to make any false or misleading statement of a material fact to the Commission, *including in any registration application* or any report filed with the Commission under this Act,...or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew or reasonably should have known, the statement to be false or misleading." (emphasis added).

During the Relevant Period, Ovsepyan filed a false or misleading NOE with the CFTC on behalf of Sharpe on August 28, 2012, in violation of Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012). Ovsepyan affirmed such false or misleading NOE with the CFTC on December 3, 2012, and again on January 3, 2014. At all relevant times, Ovsepyan knew or reasonably should have known that Sharpe did not qualify for such CTA exemption because Sharpe clearly did not meet any of the exemption criteria as represented in the NOE filing.

Additionally, during the Relevant Period, Ovsepyan filed a false or misleading NOE with the CFTC on behalf of Haeres on April 4, 2013 in violation of Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012). Ovsepyan affirmed such false or misleading NOE with the CFTC on January 3, 2014. Subsequently, Ovsepyan filed a second false or misleading NOE with the CFTC on behalf of Haeres on September 9, 2014. At all relevant times, Ovsepyan knew or reasonably should have known that Haeres did not qualify for such CTA exemption because Haeres clearly did not meet any of the exemption criteria as represented in both NOE filings. By this conduct, Ovsepyan violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012). *See generally*, *In re Sean R. Stropp*, CFTC Docket No. 14-09, 2014 WL 1117260 (CFTC March 18, 2014) (consent order finding violation of Section 6(c)(2) for falsifying a financial disclosure statement provided to the CFTC in connection with an investigation into potentially unlawful off-exchange precious metals contracts); *In re Artem Obolensky,* CFTC Docket No. 14-05 (CFTC January 2, 2014) (consent order finding violation of Section 6(c)(2) for knowingly making materially false and misleading statements to Commission staff during an interview questioning certain non-competitive and pre-arranged trades); *In re Susan Butterfield,* CFTC Docket No. 13-33 (CFTC September 16, 2013) (consent order finding Section 6(c)(2) violation for making material false statements to the CFTC during investigative testimony); *In re Cohen and Pure Reason LLC*, CFTC Docket No. 15-39 (CFTC Sept. 29, 2015) (consent order finding violation of Section 6(c)(2) for falsely testifying under oath that respondent was authorized to trade and traded an account that she never in fact traded or had any authority to trade); *In re Scott A. Beatty*, CFTC Docket No. 14-34, 2014 WL 4965119 (CFTC Sept. 30, 2014) (consent order finding violation of Section 6(c)(2) for making false statements to the CFTC in email responses to an investigative subpoena); and *CFTC v. Arista et al.*, 2013 WL 6978529 (S.D.N.Y. December 3, 2013) (consent order finding Defendants liable for violating Section 6(c)(2) because they misrepresented certain account balances, asset values, and fee calculations in a letter sent in response to requests for information from the CFTC's Division of Enforcement).

C. Ovsepyan Made Material Misrepresentations and Omissions Regarding Sharpe, in violation of Section 4b(a) of the Act

Section 4b(a)(2) of the Act, 7 U.S.C. § 4b(a)(2)(A) (2012), makes it unlawful for any person: (A) to cheat or defraud or attempt to cheat or defraud another person; or (C) willfully to deceive or attempt to deceive another person by any means whatsoever in connection with certain off-exchange commodity contracts. Ovsepyan violated Section 4b(a)(2)(A) and (C) of the Act, in connection with Forex trading, by making misrepresentations and omitting material facts in the marketing of Sharpe and solicitation of participants in connection with Sharpe's CTA business.

To establish liability for fraud based on misrepresentations and omissions under Section 4b(a) of the Act, the Commission must prove that: (a) a misrepresentation, misleading statement, or omission was made; (b) with scienter; and (c) that the misrepresentation, statement or omission was material. *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1328 (11th Cir. 2002), *cert. denied*, 543 U.S. 1034 (2004). *See also* In re *Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701, 1999 CFTC LEXIS 167, at *27 (CFTC July 19, 1999) (same).

1. Ovsepyan Made Material Misrepresentations and Failed to Disclose Material Facts

"Whether a misrepresentation has been made depends on the 'overall message' and the 'common understanding of the information conveyed.'" *R.J. Fitzgerald*, 310 F.3d at 1328 (citing *Hammond v. Smith Barney Harris Upham & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,657 & n.12 (CFTC Mar. 1, 1990)). Ovsepyan stated in promotional materials and in trade magazine interviews that Sharpe was managing as much as $145M in AUM, but later admitted that Sharpe managed approximately $15 million or less in actual funds. Additionally, Ovsepyan could not produce any documents to substantiate either Sharpe's actual or notional AUM figures. Ovsepyan further failed to clarify and distinguish between the meaning of actual and notional funding levels when representing Sharpe's current AUM in promotional materials, thus providing a false sense of security and added industry credibility by appearing to manage such a large portfolio of accounts. Further, Ovsepyan failed to disclose to Sharpe's clients and prospective clients that Sharpe did not use an auditing firm to calculate some of its published monthly and annual rates of return contained in Sharpe's promotional materials. Similar to its AUM representations, Ovsepyan also could not produce documents to substantiate Sharpe's audited rates of return. Finally, Ovsepyan represented in due diligence documents he provided to entities Sharpe sought out to assist in raising funds that Sharpe was in fact an exempt CTA, which was false.

2. Ovsepyan Acted With Scienter

Scienter is established when a person's acts are performed "with knowledge of their nature and character." *Wasnick v. Refco, Inc.*, 911 F.2d. 345, 348 (9th Cir. 1990) (internal quotation marks and citation omitted). The Commission need not prove evil motive or intent to injure a client, or that Respondents wanted to cheat or defraud their customers. *Cange v. Stotler & Co. Inc.*, 826 F.2d 581, 589 (7th Cir. 1987). Instead, the Commission must demonstrate that a

defendant committed the alleged wrongful acts "intentionally or with reckless disregard for his duties under the Act." *Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988) (finding that recklessness is sufficient to satisfy scienter requirement). *See also McCarthy v. PaineWebber, Inc.*, 618 F. Supp. 933, 940 (N.D. Ill. 1985). To prove that conduct is intentional, the Commission need only show that a defendant's actions were "intentional as opposed to accidental." *Lawrence v. CFTC*, 759 F. 2d 767, 773 (9th Cir. 1985). To prove that conduct is reckless, the Commission must show that it "departs so far from the standards of ordinary care that it is very difficult to believe the [actor] was not aware of what he was doing." *Drexel Burnham Lambert*, 850 F.2d at 748 (alteration in original) (internal quotation marks and citation omitted). See also *McCarthy*, 618 F. Supp. at 940 (holding that recklessness is sufficient to satisfy the scienter requirement).

Here, Ovsepyan made material misrepresentations or omissions of material fact with the requisite scienter in connection with Sharpe's CTA business. Among other things, Ovsepyan knew or recklessly disregarded the facts that: (a) he failed to disclose that Sharpe was, in fact, only managing approximately $15 million in actual funds, but stated in promotional materials and in trade magazine interviews that Sharpe was managing as much as $145M in AUM, (b) Ovsepyan failed to clarify and distinguish between the meaning of actual and notional funding levels when representing Sharpe's current AUM in promotional materials, thus providing a false sense of added industry credibility and security by appearing to manage such a large portfolio of accounts, (c) Ovsepyan led Sharpe's clients and prospective clients to believe that Sharpe used an auditing firm to calculate some of its published monthly and annual rates of return contained in Sharpe's promotional materials, and (d) Ovsepyan misrepresented in due diligence documents Sharpe provided to entities it sought out to assist in raising funds that it was an exempt CTA. Ovsepyan further could not produce documents sufficient to substantiate either Sharpe's AUM figures, or its audited rates of return. Thus, Ovsepyan acted with the requisite scienter.

3. Ovsepyan's Misrepresentations Were Material

A statement is material if "it is substantially likely that a reasonable person would consider the matter important in making an investment decision." *CFTC v. Noble Wealth Data Information Servs, Inc.*, 90 F. Supp. 2d 676, 686 (D. Md. 2000) (quoting *Sudol v. Shearson Loeb Rhoades, Inc.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,748 at 31,119 (CFTC Sept. 30, 1985) (citing *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)). Any fact that enables customers to assess independently the risk inherent in their investment and the likelihood of profit is a material fact. *In re Commodities Int'l Corp.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,943 at 44,563-64 (CFTC Jan. 14, 1997). Misrepresentations regarding profit potential and risk "go to the heart of a customer's investment decision and are therefore material as a matter of law." *Noble Wealth*, 90 F. Supp. 2d at 686 (citing *CFTC v. Commonwealth Fin. Group*, 874 F. Supp. 1345, 1353-54 (S.D. Fla. 1994)).

Ovsepyan's misrepresentations and omissions regarding AUM and the difference between actual and notional funding levels, Sharpe's audited rates of return, and its registration status, were all material to a reasonable investor's decision whether to trade Forex through Sharpe and violated Section 4b(a)(2)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(2)(A) and (C).

D. Sharpe Violated Sections 4*o*(1) of the Act by its Misrepresentations and Omissions

Section 4*o*(1) of the Act, 7 U.S.C. § 6*o*(1) (2012), in relevant part, makes it unlawful for CTAs, CPOs, and their associated persons ("AP"), by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, (A) to employ any device, scheme, or artifice to defraud any participant; or (B) to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any participant. Section 4*o*(1) of the Act "broadly prohibits fraudulent conduct" and applies to all CTAs, CPOs, and their APs, whether registered, required to be registered, or exempted from registration." *CFTC ex rel. Kelley v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985). *See also* Regulation 4.15, 17 C.F.R. § 4.15 (2014). Section 4*o*(1) of the Act became applicable to Forex CTAs as of October 18, 2010. The same fraudulent conduct that violates Section 4b of the Act also violates Section 4*o*(1) of the Act. *Skorupskas*, 605 F. Supp. at 932-33; *In re R&W Technical Servs. Ltd.*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,582, 1999 CFTC LEXIS 50, at *80 (CFTC Mar. 16, 1999), *aff'd in part R&W Technical Serv. Ltd. v. CFTC*, 205 F.3d 165 (5th Cir. 2000).

Sharpe used the mails or any means or instrumentality of interstate commerce while acting as a CTA to employ a device, scheme or artifice to defraud its clients, and engaged in a transaction, practice or course of business which operated as a fraud upon its clients, by, among other things: emailing or sending written communications containing fraudulent misrepresentations and omissions of material facts to Sharpe clients and prospective clients, in violation of Section 4*o*(1)(A) and (B) of the Act, 7 U.S.C. §§ 6*o*(1)(A) and (B). Because Ovsepyan's and Sharpe's fraudulent conduct violates Section 4b of the Act, by those same acts, Sharpe violated Section 4*o*(1)(A) and (B) of the Act. *In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48,315 (CFTC July 19, 1999) ("Where the record establishes that the respondents engaged in fraudulent conduct in violation of section 4b the Division has ... surpassed its burden of proof with respect to section 4*o*.").

E. Derivative Liability

1. Controlling Person Liability for Ovsepyan.

Ovsepyan controlled Sharpe and Haeres and, as a controlling person, is liable for Sharpe's and Haeres's violations of the Act pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012). Pursuant to Section 13(b) of the Act:

> Any person who, directly or indirectly, controls any person who has violated any provision of this Act or any of the rules, regulations, or orders issued pursuant to this Act may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person. In such action, the Commission has the burden of proving that the controlling person did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.

A "fundamental purpose" of the statute is "to reach behind the corporate entity to the controlling individuals of the corporation and to impose liability for violations of the Act directly

on such individuals as well as on the corporation itself." *R.J. Fitzgerald*, 310 F.3d at 1334 (quoting *JCC, Inc. v. CFTC*, 63 F.3d 1557, 1567 (11th Cir. 1995) (internal quotation marks and citation omitted)). To establish controlling person liability under Section 13(b) of the Act, the Commission must show: (1) control; and (2) lack of good faith or knowing inducement of the acts constituting the violation. *In re First Nat'l Trading Corp.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,142, at 41,787 (CFTC July 20, 1994), *aff'd without opinion sub nom. Pick v. CFTC,* 99 F.3d 1139 (6th Cir. 1996).

To establish the requisite control, the Commission must show that a defendant possessed general control over the operation of the entity principally liable. *See, e.g., R.J. Fitzgerald*, 310 F.3d at 1334 (recognizing an individual who "exercised the ultimate choice-making power within the firm regarding its business decisions" as a controlling person). Evidence that a defendant is an officer, founder, principal, or the authorized signatory on the company's bank accounts indicates the power to control a company. *In re Spiegel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,103, at 34,767 (CFTC Jan. 12, 1988); *see also Apache Trading Corp.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,251, at 38,795 (CFTC Mar. 11, 1992) (finding that an individual who "maintained control over the economic aspects of the operations" of a firm was a controlling person of it).

Ovsepyan is Sharpe's and Haeres's sole owner, managing member and sole principal. He manages all of the day-to-day operations of Sharpe and Haeres and is responsible for Sharpe's and Haeres's investment strategy, compliance, legal, banking activity, trading, promotional, and operational issues. Ovsepyan also oversees the Sharpe Risk Committee that is in charge of all supervision and accountability of risk management.

To establish "knowing inducement" of the acts constituting the violation, the Commission must show that "the controlling person had actual or constructive knowledge of the core activities that constitute the violations at issue and allowed them to continue." *JCC, Inc.*, 63 F.3d at 1568 (quoting *In re Spiegel,* [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,103, at 34,767 (CFTC Jan. 12, 1988)). Controlling persons cannot avoid liability by deliberately or recklessly avoiding knowledge about potential wrongdoing. *In re Spiegel,* ¶ 24,103, at 34,767.

Ovsepyan knew that Sharpe and Haeres were not registered as CTAs and also knew at the time that he filed the NOEs on behalf of Sharpe and Haeres, as well as with their respective affirmations, that both Sharpe and Haeres did not qualify for CTA registration exemptions because neither Sharpe, nor Haeres were RIAs and could not individually or collectively meet any of the underlying qualifying registration exemptions. Additionally, Ovsepyan knowingly emailed or sent written communications containing fraudulent misrepresentations and omissions of material facts to Sharpe's customers and prospective customers regarding Sharpe's: (a) AUM and its actual and notional funding levels, (b) purported audited rates of return, and (c) current registration status with the Commission.

Therefore, Ovsepyan did not act in good faith and knowingly induced, directly or indirectly, the acts constituting Sharpe's and Haeres's violations alleged here. Ovsepyan is therefore liable for Sharpe's violations of Sections 2(c)(2)(C)(iii)(I)(bb), 4b(a)(2)(A) and (C),

4*o*(1)(A) and (B) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), 6b(a)(2)(A) and (C), 6*o*(1)(A) and (B) (2012), and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2014), to the same extent as Sharpe and Haeres, as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

2. Sharpe's and Haeres's Agency/Principal Liability

Under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2014), strict liability is imposed upon principals for the actions of their agents acting within the scope of their employment.[5] *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986) (principals are strictly liable for the acts of their agents), *Dohmen-Ramirez v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988). Ovsepyan's actions were committed within the scope of his employment with and operation of both Sharpe and Haeres. Thus, Sharpe and Haeres are liable for Ovsepyan's individual acts constituting violations of Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012), as his principal, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2014).

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Sharpe and Ovsepyan violated Sections 2(c)(2)(C)(iii)(I)(bb), 4b(a)(2)(A) and (C), 4*o*(1)(A) and (B), and 6(c)(2) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), 6b(a)(2)(A) and (C), 6*o*(1)(A) and (B), and 9(2) (2012), and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2014), and Haeres and Ovsepyan violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012).

VI.

OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions herein:

A. Acknowledge receipt of service of this Order;

B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;

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[5] Section 2(a)(1)(B) of the Act and Regulation 1.2 provide, in relevant part, that the act, omission, or failure of any official, agent or other person acting for an individual, association, partnership, corporation or trust within the scope of his employment or office shall be deemed the act, omission or failure of such individual, association, partnership, corporation or trust, as well as of such official, agent or other person. 7 U.S.C. § 2(a)(1)(B) (2012); 17 C.F.R. § 1.2 (2014).

C. Waive:

1. The filing and service of a complaint and notice of hearing;

2. A hearing;

3. All post-hearing procedures;

4. Judicial review by any court;

5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;

6. Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2014), relating to, or arising from, this proceeding;

7. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and

8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;

D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;

E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:

1. Makes findings by the Commission that Respondents Sharpe and Ovsepyan violated Sections 2(c)(2)(C)(iii)(I)(bb), 4b(a)(2)(A) and (C), 4*o*(1)(A) and (B), and 6(c)(2) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), 6b(a)(2)(A) and (C), 6*o*(1)(A) and (B), and 9(2) (2012), and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2014), and Respondents Haeres and Ovsepyan violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012);

2. Orders Respondents Sharpe and Ovsepyan to cease and desist from violating Sections 2(c)(2)(C)(iii)(I)(bb), 4b(a)(2)(A) and (C), 4*o*(1)(A) and (B), and 6(c)(2) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), 6b(a)(2)(A) and (C), 6*o*(1)(A) and (B), and 9(2) (2012), and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2014), and orders Respondents Haeres and Ovsepyan to cease and desist from violating Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012);

3. Orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of $70,000, plus post-judgment interest;

4. Orders that Respondents be permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)), and all registered entities shall refuse them trading privileges; and

5. Orders Respondents to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. Respondents Sharpe and Ovsepyan shall cease and desist from violating Sections 2(c)(2)(C)(iii)(I)(bb), 4b(a)(2)(A) and (C), 4*o*(1)(A) and (B), and 6(c)(2) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(bb), 6b(a)(2)(A) and (C), 6*o*(1)(A) and (B), and 9(2) (2012), and Regulation 5.3(a)(3)(i), 17 C.F.R. § 5.3(a)(3)(i) (2014), and Respondents Haeres and Ovsepyan shall cease and desist from violating Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (2012).

B. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of seventy thousand dollars ($70,000) (the "CMP Obligation"), plus post-judgment interest, within ten (10) days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

Respondents shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office

(405) 954-1620 fax
nikki.gibson@faa.gov

If payment is to be made by electronic funds transfer, Respondents shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581 and the Deputy Director, Commodity Futures Trading Commission, 525 West Monroe Street, Suite 1100, Chicago, IL 60661.

C. Respondents are permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)), and all registered entities shall refuse them trading privileges.

D. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

1. Public Statements: Respondents agree that neither they nor any of their successors and assigns, agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.

2. Respondents agree that they shall never, directly or indirectly:

a. enter into any transactions involving commodity interests" (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2014)) for Respondents' own personal accounts or for any accounts in which Respondents has/have a direct or indirect interest;

b. have any commodity interests traded on Respondents' behalf;

c. control or direct the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;

d. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;

e. apply for registration or claim exemption from registration with the Commission in any capacity, and engage in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2014); and/or

f. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012) registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2014).

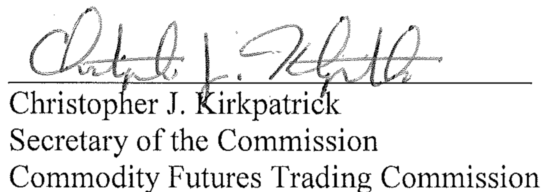
E. Cooperation with the Commission: Respondents shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.

F. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of any partial payment of Respondents' CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

G. Change of Address/Phone: Until such time as Respondents satisfy in full their CMP Obligation as set forth in this Order, Respondents shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten (10) calendar days of the change.

The provisions of this Order shall be effective as of this date.

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: December 7, 2015