UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2962 / December 14, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13714

In the Matter of **Ark Asset Management Co., Inc.,** **Respondent.**	**ORDER INSTITUTING CEASE AND DESIST PROCEEDINGS PURSUANT TO SECTION 203(k) OF THE INVESTMENT ADVISERS ACT AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Ark Asset Management Co., Inc. ("Ark" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

RESPONDENT

1. **Ark Asset Management Co., Inc.,** a New York corporation headquartered in New York, New York, was registered with the Commission as an investment adviser from August 21, 1989 through March 2, 2009, when it withdrew its registration. It was the wholly-owned, operating subsidiary of Ark Asset Holdings, Inc. ("Ark Holdings"). Ark was originally the investment management arm of Shearson Lehman Brothers Inc. Ark ceased operations on February 27, 2009 and sold substantially all of its assets. On or about March 30, 2009, Ark Holdings consented to an involuntary bankruptcy proceeding under Chapter 7 of the Bankruptcy Code.

RELEVANT ENTITIES

2. **NorthStar Funds** ("Proprietary" accounts or funds) was a set of hedge funds created by Ark in 2000, in which certain Ark employees had ownership interests.

In December 2003, the Portfolio Manager responsible for trading for both NorthStar and the Specialty Growth accounts (defined below) left Ark and created a separate entity, NorthStar Capital Funds, LLC, which took over the management of the NorthStar Funds.

3. **Specialty Growth** ("Client" accounts) was a certain set of advisory accounts created by Ark in 1986 and managed using a growth strategy. Specialty Growth clients included large institutional investors, such as retirement plans, pension funds and charitable organizations.

SUMMARY

4. These proceedings arise out of fraudulent trade allocation, disclosure and books and records violations by Ark between August 2000 and December 2003 ("Relevant Period"). During the Relevant Period, a now-deceased portfolio manager ("Portfolio Manager") of Ark engaged in fraudulent trade allocation practices – "cherry-picking" – by favoring the Proprietary accounts over the Client accounts in the allocation of securities. Ark did not disclose this scheme to its clients. As a result of this fraudulent conduct, Ark realized at least $19 million of ill-gotten gains in the form of performance fees from the Proprietary accounts. Additionally, Ark's Form ADV filings during the Relevant Period were materially misleading. Contrary to its stated goal of being "fundamentally fair" in the allocation of securities between the Proprietary and Client accounts, Ark failed to disclose to its adversely affected clients that it favored the Proprietary accounts in the allocation of securities. Ark also committed books and records violations by failing to make and keep true and accurate order memoranda.

FACTS

A. Background

5. In August 2000, Ark launched the Proprietary Funds in which numerous Ark employees, their friends and family, traders and board members invested, as well as certain outside investors. The Portfolio Manager made all investment decisions with respect to, and had sole trading authority over, both the Proprietary accounts and the Client accounts, and, along with other Ark employees, was also invested in Proprietary accounts. Both the Proprietary accounts and the Client accounts engaged in day-trading and investing in IPOs. In fact, the Proprietary funds realized most of their profits from day-trading stocks. The Portfolio Manager often traded the same securities for the Proprietary and Client accounts.

B. The Cherry-Picking Scheme

6. At or soon after the launch of the Proprietary funds, the Portfolio Manager began to execute a cherry-picking scheme that favored the Proprietary accounts in the allocation of securities. The Portfolio Manager accomplished this cherry-picking by placing orders for securities, but delaying allocation of the purchases and sales until after the order had been filled and the price of the security had been obtained. Sometimes the

Portfolio Manager did not allocate until, or made changes to allocations at, the end of the day. The Portfolio Manager allocated mostly favorable trades to the Proprietary accounts and allocated a significantly lower percentage of favorable trades to the Client accounts even though the Client accounts were legally and financially able to engage in the trades that were disproportionately allocated to the Proprietary accounts.

7. When placing trades, neither the Portfolio Manager nor the traders who worked for him documented how the trade would ultimately be allocated between the two sets of accounts. While each set of accounts had different order tickets, orders were routinely written on an order ticket for one of the two sets of accounts. The order tickets, however, did not reflect how the Portfolio Manager would ultimately decide to allocate the securities. Instead, after an order was filled, the Portfolio Manager would sometimes decide to keep the entire allocation with one set of accounts (i.e., the Proprietary or Client accounts), would sometimes move part of the allocation to the other set of accounts, or would sometimes decide to allocate the entire trade to the other set of accounts. In some instances, traders were directed to move an order from one set of accounts to the other by creating a new order ticket, transferring the security to that ticket, and discarding the old order ticket.

8. Allocations by Ark to the Proprietary accounts were much more likely to be profitable on the day of the allocation than were allocations to the Client accounts, with a difference in profitability of approximately 68% to approximately 37% respectively. Additionally, approximately 75% of Proprietary funds' long day-trades were profitable while only approximately 37% of Client accounts' long day-trades were profitable. Consequently, there was a significant overall performance differential between the Proprietary funds and the Client funds for most of the Relevant Period.

9. The cherry-picking resulted in enhanced first-day profitability (realized and unrealized gains) for the Proprietary accounts of approximately $230 million. Favorable day-trades generated approximately $81 million in profits for the Proprietary accounts during the Relevant Period.

10. The officers and directors of Ark knew about the disparity in performance between the Proprietary accounts and the Client accounts. Directors and officers were informed at board meetings throughout the Relevant Period about the performance of the Client accounts. In addition, many of Ark's officers and directors were investors in the Proprietary funds and thus knew about the performance of the Proprietary funds.

C. Disclosures and Books and Records Violations

11. Ark's Form ADV became materially inaccurate in 2000 when the Portfolio Manager began allocating better trades to the NorthStar accounts than the Specialty Growth accounts, either for profit or to minimize losses to the NorthStar accounts. Ark's Form ADV stated that its "goal is to be fundamentally fair on an overall basis with respect to all clients invested in [both NorthStar and Specialty Growth accounts]... ." Even though Ark filed amendments to its Form ADV between 2000 and

2003, it failed to correct the materially inaccurate statement by not disclosing that it favored NorthStar clients over Specialty Growth clients when allocating trades.

12. Moreover, Item 11 of Part I of Ark's Form ADV requires an adviser to disclose information about the disciplinary record of the adviser and its advisory affiliates – which include persons who are controlled by the adviser. The head trader for both the Proprietary and Client accounts was controlled by Ark and was listed as a "control person" on Ark's Form ADV. In June 2003, that head trader, who was under investigation by the New York Stock Exchange at the time Ark hired him in 2000, settled with the NYSE and consented to a censure and a fine. Ark did not amend its disclosure to reflect this disciplinary action in response to Item 11 of Part I of its Form ADV.

13. Finally, Ark failed to make and keep accurate order tickets that reflected allocation determinations contemporaneous with the order, failed to make and keep accurate memoranda showing modifications or cancellations of certain orders, discarded certain order tickets, and altered order memoranda after execution of orders.

VIOLATIONS

14. By knowingly or recklessly allocating profitable trades to the Proprietary accounts at the expense of the Client accounts and not disclosing this scheme to clients, Ark violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibits fraudulent conduct in connection with the purchase or sale of securities. In addition, through this cherry-picking scheme and by failing to disclose the scheme, Ark violated Sections 206(1) and 206(2) of the Advisers Act, which, in pertinent part, prohibit investment advisers from employing any device, scheme, or artifice to defraud any client and from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client.

15. Ark engaged in a scheme to defraud by allocating profitable trades to the Proprietary accounts at the expense of the Client accounts without disclosing this practice. As an investment adviser, and therefore a fiduciary, Ark had an affirmative duty of loyalty not to put its interests ahead of its clients and to disclose material information to its clients. However, during the relevant period, Ark failed to disclose to the adversely affected clients that Ark was favoring the hedge funds when allocating trades. Accordingly, Ark violated Sections 206(1) and (2) of the Advisers Act.

16. Ark's Form ADV became materially misleading in 2000 when the Portfolio Manager began allocating better trades to the Proprietary accounts than the Client accounts, either for profit or to minimize losses to the Proprietary accounts. Ark failed to amend the form, as required by Section 204 of the Advisers Act and Rule 204-1(a)(2) thereunder. Ark's Form ADV stated that its "goal is to be fundamentally fair on an overall basis with respect to all clients invested in [both the Proprietary and Client accounts]... ." Ark failed to correct the materially inaccurate statement by not disclosing that it favored the Proprietary funds over the Client accounts in the allocation of

securities. Accordingly, Ark violated Section 204 of the Advisers Act and Rule 204-1(a)(2) thereunder.

17. Ark also failed to file an amendment to Item 11 of Part I of Form ADV, which requires an adviser to disclose information about the disciplinary record of the adviser and its advisory affiliates – which include persons who are controlled by the adviser. The head trader for both sets of accounts was controlled by Ark and was listed as a "control person" on Ark's Form ADV. Therefore Ark was obligated to amend Item 11 to disclose that an investigation of the head trader by the New York Stock Exchange resulted in a settlement in which the head trader consented to a censure and fine in June 2003. Accordingly, Ark violated Sections 204 and 207 of the Advisers Act and Rule 204-1(a)(2) thereunder.

18. Ark violated Section 204 of the Advisers Act and Rule 204-2(a)(3) thereunder which requires registered investment advisers to make and keep true, accurate and current order memoranda for the purchase and sale of any security on behalf of a client by failing to make accurate order tickets that contained all the information required by those rules. Ark's order tickets failed to reflect and/or inaccurately reflected the "terms and conditions" of certain orders in violation of these Rules. Specifically, Ark failed to make and keep accurate memoranda showing modifications or cancellations of certain orders, discarded certain order tickets, and altered order memoranda after execution of orders. Accordingly, Ark violated Section 204 of the Advisers Act and Rule 204-2(a)(3) thereunder.

III.

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

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

2. What, if any, remedial action is appropriate in the public interest against Ark pursuant to Section 203(k) of the Advisers Act, including disgorgement.

IV.

IT IS HEREBY 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 not earlier than 30 days nor later than 60 days after service of the notice 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 the Respondent 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 the Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against it 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 the Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 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.

By the Commission.

Elizabeth M. Murphy
Secretary