

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3285 / September 22, 2011

INVESTMENT COMPANY ACT OF 1940
Release No. 29818 / September 22, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14559

In the Matter of

BARR M. ROSENBERG,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF 1940,
AND 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 Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”), and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Barr M. Rosenberg (“Rosenberg”).

II.

In anticipation of the institution of these proceedings, Rosenberg has 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 him and the subject matter of these proceedings, which are admitted, Rosenberg consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 9(b) of the Investment Company Act of 1940, and 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 Rosenberg's Offer, the Commission finds¹ that:

Overview

1. This matter concerns an institutional money manager specialized in quantitative investment strategies that concealed from investors a material error in its computer code. AXA Rosenberg Group LLC ("ARG") is the holding company of AXA Rosenberg Investment Management LLC ("ARIM"), the institutional money manager and SEC-registered investment adviser that utilized the code, and Barr Rosenberg Research Center LLC ("BRRC"), the SEC-registered investment adviser that developed the code. Rosenberg co-founded the firms now known as BRRC and ARG and developed and programmed BRRC's complex automated models and an "optimization" process (the "Model") that ARIM and affiliated offshore investment advisers ("Affiliated Advisers") used to create and manage client portfolios. During the relevant period, Rosenberg owned or controlled a 21% interest in ARG, and Rosenberg was ARG's Chairman.

2. In late June 2009, a BRRC employee discovered an error in the Model's computer code that had been introduced in 2007 and that effectively eliminated one of the key components in the Model for controlling for certain types of risk. This employee later discussed his finding in a meeting with Rosenberg, BRRC's Director, and a small group of BRRC employees who were working under Rosenberg's guidance on an enhancement to the Model. Rosenberg directed the others to keep quiet about the error and to not inform others about it, and he directed that the error not be fixed at that time. Before and after discovery of the error, ARIM's clients were expressing dissatisfaction with their portfolios' underperformance. During the several months that Rosenberg and the BRRC employees concealed the error, ARG, ARIM, and BRRC failed to disclose the error, misrepresented the Model's ability to control risk, and ascribed underperformance to market volatility and factors having nothing to do with the error. Due to Rosenberg's directive, ARG's Global CEO did not learn of the error as soon as he should have. The error was disclosed to the Global CEO in November 2009. The error impacted more than 600 client portfolios and caused approximately \$217 million in losses. ARG disclosed the error to clients on April 15, 2010.

3. By virtue of this conduct, Rosenberg willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

Respondent

4. Barr M. Rosenberg, age 68, resides in Sea Ranch, California. He is the co-founder of AXA Rosenberg Group, LLC, the owner of the Barr Rosenberg Research Center. He was the developer and original programmer of the Model. During the relevant period, Rosenberg owned or controlled a 21% interest in ARG, was ARG's Chairman, and provided investment advisory services to ARIM and the Affiliated Advisers. He also sat on a specially created governing board that acted as a "tie-breaker" if the ARG Board deadlocked on any issue.

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

Background

5. Rosenberg pioneered the use of quantitative techniques – embodied in BRRC’s Model – to implement investment strategies. The Model was comprehensive in its ability to capture and process a substantial amount of publicly available information, such as financial data for particular companies, news, and industry information, and to make investment decisions largely without human interaction. The Model consisted of three components: the Alpha Model, Risk Model, and Optimizer. The Alpha Model evaluates public companies based on their earnings and valuation. The Risk Model identifies risk on two primary bases – specific stock risk and common factor risks. Common factor risks include, among other things: (i) specific industry risks, which are risks associated with certain industries (such as oil, automobiles, or airlines); (ii) country risks, which are risks associated with particular countries; and (iii) stock fundamental risks, which capture price to earnings ratios and similar metrics. The Optimizer takes the output from the Alpha and Risk Models, balances them against each other, and recommends an optimal portfolio for the client based on a benchmark chosen by the client, such as the S&P 500.

6. Rosenberg created earlier versions of the Model that BRRC provided to ARIM and the Affiliated Advisers for their exclusive use in constructing and managing their client portfolios. He was considered the leading quantitative expert within BRRC, was widely regarded throughout BRRC as its intellectual leader, and oversaw important research projects associated with improving and enhancing the Model. Rosenberg also led an informal but undisclosed “micro group” consisting largely of a small group of long-time and trusted BRRC employees. Only Rosenberg and the micro group had full access to all components of the Model and all of its underlying code. Rosenberg exercised significant authority throughout ARG, ARIM, or BRRC by virtue of his position as ARG’s Chairman, his significant ownership stake, his “founder” status, and his mastery of the Model. Rosenberg also received sizeable distributions from ARG derived from advisory fees earned by ARIM and the Affiliated Advisers, as well as compensation for the consulting services he provided, during the relevant time period.

Discovery and Concealment of the Error

7. In April 2007, BRRC put into production a new version of the Risk Model. BRRC assigned two programmers the task of writing the computer code that would link this new Risk Model with the Optimizer. When these two programmers linked the Risk Model to the Optimizer, they made an error in the Optimizer’s computer code.

8. Starting in 2009, a BRRC employee began work as part of BRRC’s effort to implement an enhanced version of the Risk Model. Rosenberg oversaw this effort. In June 2009, this employee noticed certain unexpected results when comparing the new Risk Model to the existing one that was rolled out in April 2007. He learned that the Optimizer was not processing the Risk Model’s assessment of common factor risks correctly because a required scaling of information was not performed due to an error in the code. Some Risk Model components sent information to the Optimizer in decimals while other components reported information in percentages; therefore the Optimizer had to convert the decimal information to

percentages in order to effectively consider all the information on an equal footing. Because proper scaling did not occur, certain decimal information was not converted to percentages and the Optimizer did not give the intended weight to common factor risks.

9. In late June 2009, this BRRC employee informed Rosenberg and certain other BRRC employees of the error, and presented his findings to them in a meeting. Rosenberg, BRRC's Director, and those BRRC employees then met again soon after to further discuss the error. The BRRC employee who discovered the error advocated that the error be fixed immediately. Rosenberg, however, disagreed and stated that the error should be corrected when the new Risk Model was released. He directed BRRC employees with knowledge of the error to keep quiet about the discovery of the error and to not inform others about it. The BRRC employee who discovered the error asked Rosenberg whether ARG's Global Chief Investment Officer should be informed, and Rosenberg instructed that he should not be told. Finally, Rosenberg failed to conduct or to request any meaningful materiality analysis of the error's impact.

10. On September 24, 2009, ARG's Investment Committee authorized changes to the Model that fixed the error for U.S.-managed portfolios. Certain members of the Investment Committee, however, were not informed about the error or that the changes were in fact meant to correct the error.

11. Rosenberg's directive to conceal the error and BRRC employees' initial compliance with that directive, resulted in ARG, ARIM and BRRC making material misrepresentations and omissions concerning the error to ARIM's clients, including (i) omitting to disclose the error and its impact on client performance, (ii) attributing the Model's underperformance to market volatility rather than the error, and (iii) misrepresenting the Model's ability to control risks.

12. Rosenberg also omitted to disclose the error to ARG's Board. In mid-to-late 2009, ARG convened a series of Board meetings to discuss the Model's performance. Many of the meetings addressed client complaints about underperformance and industry overexposure. Rosenberg attended the meetings and participated in these discussions. In early October 2009, the Board had a discussion about the Model and its performance. At one point, a director asked a question relating to the Model's underperformance. Rosenberg replied that "mistakes if there were any will not be made in the future" and that he was "not aware of significant" mistakes in the Model.

13. While the error was fixed for U.S. managed portfolios in September 2009 and for other portfolios in late October and early November 2009, BRRC employees followed Rosenberg's directive not to disclose the error until September 2009, when other employees learned of it. ARG's CEO remained in ignorance of the error until November 2009, when a BRRC employee felt compelled to inform him.

14. On March 31, 2010, Commission examination staff arrived at ARIM's and BRRC's offices to begin an examination of the firms. At the end of that day, ARG informed the Commission staff of the error. On April 15, 2010, ARG informed clients of the error.

Rosenberg's Violations of Sections 206(1) and 206(2) of the Advisers Act

15. As a result of the conduct described above, Rosenberg willfully violated Sections 206(1) and 206(2) of the Advisers Act. Advisers Act Section 206(1) prohibits any investment adviser from, directly or indirectly, employing any device, scheme, or artifice to defraud any client or prospective client. Advisers Act Section 206(2) prohibits any investment adviser from engaging in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client. Pursuant to Sections 206(1) and 206(2), Rosenberg has a fiduciary duty that requires him to act in the best interests of his clients and to make full and fair disclosure of all material facts.

16. By directing others to keep quiet about the error and delaying to fix the error, Rosenberg breached his fiduciary duty to ARIM and the Affiliated Advisers. During the relevant period, clients of ARIM and the Affiliated Advisers were expressing concerns about their overexposure to certain industries and underperformance, both of which were in part attributable to the error. Although Rosenberg was aware of these concerns, he did not disclose the error and directed others not to do so. As a result, ARIM and BRRC personnel misrepresented in client presentations that the underperformance was attributable to factors other than the error and inaccurately stated that the Risk Model's common factor risks were functioning when in fact they had been disabled due to the error. In addition, Rosenberg's direction to delay fixing the error allowed it to remain uncorrected for several additional months. Because of his conduct, certain clients continued to sustain losses from an error that could have been but was not promptly corrected.

17. Rosenberg knew that that the Model was used to manage ARIM's and the Affiliated Advisers' client portfolios, and that the error could potentially have adverse effects on the performance of portfolios managed using the Model. Yet, Rosenberg did not conduct or otherwise direct any analysis to estimate the error's impact.

IV.

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

Accordingly, pursuant to Section 9(b) of the Investment Company Act and Sections 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Rosenberg cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act.

B. Respondent Rosenberg be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization; and

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

C. Any reapplication for association by Rosenberg 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 Rosenberg, 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. Rosenberg shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$2.5 million to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Rosenberg as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Bruce Karpati, Co-Chief of the Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 3 World Financial Center, Suite 400, New York, NY 10281.

By the Commission.

Elizabeth M. Murphy
Secretary