UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6688 / September 9, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22101

In the Matter of **FARNHAM FISHER COLLINS d/b/a COLLINS CAPITAL MANAGEMENT,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 203(e) 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(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Farnham Fisher Collins d/b/a Collins Capital Management ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent 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 it and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) 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 Respondent's Offer, the Commission finds that:

Summary

1. This proceeding arises out of the failure of former registered investment adviser Collins Capital Management ("CCM"), an unincorporated sole-proprietorship of Farnham Fisher Collins ("Collins"), to comply with the independent verification requirement for client funds and securities for which it had custody for the period of at least 2012 through 2023, in violation of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, commonly referred to as the "Custody Rule."

2. Respondent also failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder with regard to client accounts of which it had custody, in violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondent

3. Collins, 88, resides in Millbrook, New York. He was the sole owner, operator, and chief compliance officer of a sole proprietorship that did business as CCM. CCM had its principal office and place of business in Millbrook, New York. CCM was an investment adviser registered with the Commission from December 1984 to December 2000, when it withdrew its registration. CCM re-registered with the Commission as an investment adviser in January 2012, and remained registered until December 2023, when it again withdrew its registration. CCM has ceased operating. CCM's most recent annual amendment to its Form ADV, filed on February 2, 2023, reported 18 individual clients and approximately $98 million in regulatory assets under management.

Facts

A. Background

4. The Custody Rule is designed to protect investment advisory clients from, among other things, the misuse or misappropriation of their funds and securities. The Custody Rule provides that "it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the [Advisers] Act . . . for [a registered investment adviser] to have custody of client funds or securities unless" the adviser implements an enumerated set of requirements designed to prevent loss, misuse, or misappropriation of those client assets. *See* Rule 206(4)-2(a).

5. An investment adviser has custody of client assets if it holds, directly or indirectly, client funds or securities, or if it has authority to obtain possession of those assets. *See* Rule 206(4)-2(d)(2). Custody includes, among other things, "[a]ny capacity (such as . . . trustee of a trust) that gives you or your supervised person legal ownership of or access to client funds or securities." *Id.*

6. Under the Custody Rule, an investment adviser who has custody of client funds and securities must, among other things: (i) ensure that a qualified custodian maintains those client assets; (ii) notify the client in writing of accounts opened by the adviser at a qualified custodian on the client's behalf; (iii) have a reasonable basis for believing that the qualified custodian sends account statements at least quarterly to clients; and (iv) ensure that, pursuant to a written agreement between the adviser and an independent public accountant, client funds and securities are verified by actual examination at least once each calendar year, at a time chosen by the accountant without prior notice or announcement to the adviser (the "surprise examination" requirement). *See* Rule 206(4)-2(a)(1) - (4). The written agreement must provide for the first examination to occur within six months of becoming subject to the Custody Rule and require, among other things, that the accountant file with the Commission a certificate on Form ADV-E within 120 days of the date that the accountant chose to perform the examination. *See* Rule 206(4)-2(a)(4).

B. Respondent's Custody and Compliance Rule Violations

7. In 2023, the Commission's Division of Examinations conducted an examination of Respondent that revealed that Collins had served as a co-trustee and investment adviser of a trust ("Trust 1") since it was formed in August 1998. The examination further revealed that Collins had served as a co-trustee and investment adviser of a second trust ("Trust 2") since it was formed in December 2012.

8. The respective trust agreements for Trust 1 and Trust 2 each provided, among other things, that the trustees had absolute discretion to: (i) purchase, acquire, retain, and liquidate stocks, bonds, notes, any other securities, and any real or personal property; (ii) sell, pledge, mortgage, transfer, exchange, convert, and otherwise dispose of any property in the trust estate; and (iii) make distributions of the trust estate. In practice, Collins had access to and/or the ability to obtain possession of each trust's assets without the consent of the respective co-trustee of Trust 1 or Trust 2. As a result, from at least 2012, when CCM re-registered as an investment adviser, to 2023, Respondent had custody of Trust 1's and Trust 2's funds and securities under the Custody Rule. Accordingly, Respondent was required to obtain surprise examinations in accordance with the Rule 206(4)-2(a)(4) for Trust 1's and Trust 2's accounts during at least that time. At no time, however, did Respondent obtain the required surprise examinations for Trust 1 or Trust 2. Moreover, Respondent had previously been notified of a Custody Rule issue with respect to Trust 1 when it was presented with the findings of a prior Commission examination in 1999, when Respondent was previously registered with the Commission.

9. Additionally, Respondent failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Custody Rule. Respondent's Compliance Policy Manual noted that an investment adviser has custody if it directly or indirectly holds client assets, has any authority to obtain possession of such assets, has the ability to appropriate them, or is paid automatically from a client's account, and that Respondent was required to comply with the Custody Rule. However, Respondent failed to implement its policy because it did not comply with the Custody Rule by, among other things, obtaining surprise examinations for the accounts of Trust 1 and Trust 2 over which it had custody. Respondent's policies and procedures were also not reasonably designed because they did not adequately address scenarios that can give rise to custody, including acting as a trustee for client trust accounts.

10. Respondent was presented with the findings of the Commission's examination in August 2023. Respondent filed a Form ADV-W on December 4, 2023 to withdraw its registration with the Commission.

Violations

11. Section 206(4) of the Advisers Act prohibits an investment adviser from engaging in acts, practices or courses of business that are fraudulent, deceptive, or manipulative, as may be defined by the Commission in rules and regulations promulgated under the statute. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act and the rules thereunder. *See SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992). Among other things, Rule 206(4)-2 requires registered investment advisers with custody of client funds or securities to have independent public accountants conduct surprise examinations of those client funds or securities. Rule 206(4)-7 requires, among other things, that a registered investment adviser adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and rules thereunder.

12. As a result of the conduct described above, from at least 2019 to 2023, Respondent willfully violated Section 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 thereunder.

IV.

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

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

A. Respondent 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 is censured.

C. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $65,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). 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 may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent 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 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 Farnham Fisher Collins d/b/a Collins Capital Management 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 Thomas P. Smith, Jr., Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

D. 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, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's 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 it 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 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 Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent 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 Respondent 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.

Vanessa A. Countryman
Secretary