

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95045 / June 6, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6043 / June 6, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20880

In the Matter of

Kahn Brothers Advisors, LLC
and Thomas Kahn,

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTIONS 203(e), 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 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Kahn Brothers Advisors, LLC (“KIA”) and Thomas Kahn (“Kahn”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V., Respondents consent to the entry of this Order Instituting Administrative Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, and Sections 203(e), 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 Respondents’ Offers, the Commission finds that:

Summary

1. This matter primarily concerns misstatements and omissions by registered investment adviser KIA and its principal owner and president, Kahn, to KIA advisory clients and prospective clients relating to brokerage services provided by KIA’s affiliated broker-dealer, Kahn Brothers LLC (“KBD”). Specifically, KIA and Kahn (a) failed to fully and fairly disclose to advisory clients all material facts related to the conflict that arose from KIA’s use of an affiliated broker-dealer to execute client transactions; and (b) made misleading statements to clients and prospective clients that KIA would aggregate client transactions to reduce commissions. KIA and Kahn also failed to seek best execution for advisory clients, failed to conduct a best execution review of KBD, and failed to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and its rules. According to KIA’s policies and procedures, Kahn was responsible for all aspects of KIA’s compliance program and its implementation, as well as the firm’s disclosure obligations.

Respondents

2. **Kahn Brothers Advisors, LLC** is a registered investment adviser located in New York, New York. KIA was founded in 1978, and is a wholly owned subsidiary of Kahn Brothers Group, Inc., an entity that is majority owned and controlled by Kahn. According to its Form ADV filed March 31, 2022, KIA has approximately \$689 million in assets under management, of which approximately \$676.7 million is managed on a discretionary basis. The majority of KIA’s clients execute transactions through its affiliated broker-dealer, KBD.

3. **Thomas Kahn**, age 79, resides in New York, New York. He serves as the chief investment officer, chairman, director, president, treasurer, and chief compliance officer of KIA and KBD, and he holds Series 4, 14, 16, 63 and 65 securities licenses. Through Kahn Brothers Group, Kahn majority owns and controls KIA and KBD. Kahn is the primary investment manager at KIA, and he was responsible for all investment decisions and recommendations for client accounts.

Other Relevant Entities

4. **Kahn Brothers Group, Inc.** (“KBG”), is based and incorporated in New York, New York, and it is the parent entity through which Kahn owns and controls KIA and KBD. Kahn majority owns and controls KBG, and serves as its chairman, president, chief compliance officer, director, and stockholder.

5. **Kahn Brothers LLC** is a registered broker-dealer located in New York, New York. Its predecessor entity was first registered in 1978, and it is a wholly owned subsidiary of KBG. KBD exists principally to service KIA advisory clients, although it also executes trades for a small number of broker-dealer customers that are not KIA advisory clients.

Facts

Kahn Brothers Advisors Background

6. KIA is an investment adviser primarily serving individual and family accounts, the majority of which have invested assets of less than \$1 million. KIA pursues a long-term buy and hold value investing strategy in which it targets a relatively small number of companies whose securities Kahn believes are undervalued. Based on this investment approach, KIA client accounts tend to buy and sell the same securities at the same time, and the accounts trade infrequently. KIA typically charges clients an advisory fee of 1% of assets under management, but certain of its clients pay less than 1% and/or only pay a fee on invested assets under management, *i.e.*, excluding cash and cash equivalents.

KIA Brokerage Practices

7. KIA typically utilizes its affiliated broker-dealer, KBD, to execute trades for its advisory clients, except when a client explicitly directs KIA to use a different broker. The vast majority of KBD's brokerage business comes from KIA's advisory clients. The brokerage services KBD offers its customers are limited to introducing trades to its clearing broker, which also custodies client assets.

8. KIA's advisory agreements with its clients describe clients' brokerage commission rates. Although some of KIA's clients – typically larger and more sophisticated clients – pay \$0.05 or \$0.10 per share in commission to KBD, the majority of its clients pay based on what KIA and Kahn characterize as KBD's "regular" or "prevailing" commission rate. The "regular" commission rate KBD charges advisory clients is the standard commission rate that all broker-dealers charged prior to May 1, 1975 (the "Pre-1975 rate" or "schedule").¹ Under the Pre-1975 schedule KIA clients regularly pay hundreds or even thousands of dollars per transaction in commissions to KBD, or as much as \$0.80 or \$0.90 per share or more. Because the Pre-1975 schedule leads to lower commission rates as trade sizes increase, KIA client accounts that engage in smaller sized transactions – typically its smaller sized accounts – pay a higher overall commission costs on a per-share basis, as compared to client accounts that engage in larger

¹ Prior to May 1, 1975, all brokers were required to charge a fixed-rate commission, and total commission costs could be hundred or even thousands of dollars for a single transaction. In January 1975, the Commission adopted Rule 19b-3 under the Exchange Act, which eliminated fixed commission rates as of May 1, and allowed for competition among brokers, which led to lower commission rates.

transactions. Moreover, as described below, KIA's failure to aggregate client transactions caused clients to pay more in commissions, because they could not take advantage of the Pre-1975 rate volume discounts.

Misstatements and Omissions Relating to KBD Brokerage Services

Failure to Disclose All Material Facts Regarding Conflicts

9. KIA and Kahn failed to fully and fairly disclose to advisory clients all material facts related to the conflict that arose from its use of its affiliated broker-dealer, including that KBD charged brokerage commissions that were higher than other brokers charged for similar services, *i.e.*, introducing customer trades to a clearing broker. During the relevant period, KIA provided clients with two primary disclosure documents: the advisory agreement and KIA's Form ADV Part 2A ("Brochure").

10. The Brochure stated that: "Brokerage commissions in the United States are negotiable, [... and] [i]ncoming clients are advised that if they commence a relationship with the affiliated broker-dealer, **they will, in all likelihood, not receive the absolute lowest execution charge available.**" The standard KIA advisory agreement stated only that KBD will execute client transactions at its "**prevailing**" or "**regular**" commission rates, which "**may not be the lowest available,**" and that KBD commission rates "**are not the lowest commission rates available.**" [Emphasis added throughout.]

11. These disclosures that commission rates charged by KBD "may" not be the "lowest," the "absolute lowest," or even "not the lowest" failed to fully and fairly disclose all material facts concerning the conflicts that arose from KIA's use of an affiliated broker-dealer to execute advisory client transaction. These disclosures fail to inform clients that the fees charged to clients on the Pre-1975 schedule are in fact much higher than other broker-dealers charges for similar services, and omit to tell clients that lower commission arrangements were freely available at other broker-dealers, or that KBD charged some clients a much lower flat fee of \$0.05 or \$0.10 per share. The disclosure also did not disclose to clients the conflict that, by recommending that clients use KBD and pay commissions based on the Pre-1975 schedule, Kahn would receive greater compensation than he would if the clients paid commissions to KBD based on a flat per share based commission rate of \$.05 or \$.10 per share.

Representations that KBD Commissions were "Reasonable"

12. The KIA Brochure states that "the Firm's principals believe that the combined amount of advisory fees [] and commissions [] is reasonable," and the standard KIA advisory agreements states, "In our opinion, the aggregate compensation to be earned by us in respect to your account is reasonable." Neither KIA nor Kahn conducted any systematic best execution review of the execution quality KBD provided nor compared the cost and brokerage services KBD offered KIA clients to the costs and services offered by other broker-dealers. As a result, there was no basis upon which to claim Kahn believed the brokerage fees KBD charged KIA clients were reasonable.

KIA's Trade Aggregation Practices

13. KIA and Kahn stated in its annual Brochures that, where KBD had “multiple client orders in the same security,” KBD “may aggregate these orders if it believes that doing so may effectuate a more favorable execution for the client.” KIA’s internal policies and procedures went further, stating the “aggregating or blocking of client transactions allows an adviser to execute transactions in a more timely, equitable, and efficient manner and seeks to reduce overall commission charges to clients [and our] firm’s policy is to aggregate client transactions where possible and when advantageous to clients.”

14. Aggregating client transactions would have been particularly advantageous to any KIA client that paid brokerage commissions to KBD based on the Pre-1975 schedule, because the Pre-1975 schedule reduced the per share commission charges as the number of shares per trade increases. Moreover, given KIA’s value investment style, a significant percentage of its clients regularly transacted in the same stock, on the same day, in the same direction, and were eligible for an aggregated or blocked trade.

15. Contrary to statements in its Brochure and to its own internal policies and procedures – and notwithstanding that aggregating would have benefited KIA clients that paid KBD commissions based on the Pre-1975 rate – KIA and Kahn virtually never directed KBD to aggregate eligible client transactions. Indeed, KIA as a matter of practice did not seek to aggregate client transactions.

16. By failing to aggregate client transactions, KIA caused advisory clients to pay greater commissions to KBD. As a result of the staff’s investigation, KIA re-scoped its advisory relationship with clients, including by revising its client disclosures to state that the firm does not aggregate.

KIA's Best Execution and Aggregation Policies, Procedures, and Practices

17. As chief investment officer, chairman, director, president, treasurer, and chief compliance officer for KIA, and in accordance with KIA’s written policies and procedures, Kahn was responsible for developing, enforcing, and reviewing annually KIA’s compliance policies and procedures.

18. KIA’s investment adviser policies and procedures manual in effect during the relevant period adopted the Commission’s best execution definition as the “execution of securities transactions for clients in such a manner that the clients’ total cost or proceeds in each transaction is the most favorable under the circumstances,” and stated that KIA “as a matter of policy and practice, seeks to obtain best execution [and to] periodically review[] the services provided by broker-dealers, the quality of executions, research, commission rates, and overall brokerage relationship.”

19. Despite KIA’s written policy and procedure manual, Kahn did not take any steps to seek best execution for KIA advisory clients. Kahn never performed a comparative cost analysis to

determine how KBD's commission rates fared relative to what other broker-dealers charged for similar service, and did not take any other steps to assess whether KBD provided clients with best execution, or, as stated in the advisory agreement, that KBD's commission rate was "reasonable" in relation to the total services provided.

20. As described above, KIA's investment adviser policies and procedures manual stated that the policy was to aggregate client transactions where possible and advantageous to clients. Again, contrary KIA's policies and procedures, Kahn and KIA virtually never aggregated client transactions, notwithstanding that doing so would have been particularly advantageous to clients who paid commissions based on the Pre-1975 schedule.

Violations

21. As a result of the conduct described above, Respondents willfully² violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client." Scierter is not required to establish a violation of Section 206(2) of the Advisers Act. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992).

22. As a result of the conduct described above, KIA willfully violated, and Kahn caused KIA's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Adviser Act and its rules.

Disgorgement

23. The disgorgement and prejudgment interest ordered in Section IV., paragraph C., below, is consistent with equitable principles and does not exceed Respondent's net profits from its violations, and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to Section IV., paragraph C. in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be

² "Willfully," for purposes of imposing relief under Sections 203(e) or 203(f) of the Advisers Act "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ed]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Undertakings

24. **Steps Taken to Date.** Respondents have certified that they have evaluated, updated, and reviewed for the effectiveness of their implementation, Respondents' policies and procedures so that they are reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its practices described herein.

25. **Notice to Advisory Clients.** Within 30 days of the entry of this Order, Respondents shall notify advisory clients of the settlement terms of this Order by sending a copy of this Order to each advisory client via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

26. **Disclosure Documents.** Within 45 days of the entry of this order, Respondents shall review and correct as necessary all relevant disclosure documents relating to the conflict of interest presented by its affiliated broker-dealer, KBD, including (a) full and fair disclosure of (i) how KBD calculates brokerage commissions, (ii) how the costs and services offered by KBD compare to the costs and services offered by other broker-dealers, (iii) the greater compensation Respondents receive when clients use KBD, and (iv) that clients may elect to use other broker-dealers for execution, and that doing so will not cause the client to pay more in advisory fees to KIA; and (b) full and fair disclosure that KBD does not aggregate client transactions, even when doing so could result in more favorable execution for clients.

27. **Brokerage Charges.** Within 60 days of the entry of this order, Respondents shall undertake a review of the services KBD provides to KIA clients, and (i) perform a comparative cost analysis to determine how KBD's commission rates fare relative to what other broker-dealers charged for similar service, (ii) assess whether KBD provided clients with best execution, and (iii) evaluate whether it is in the best interest of existing clients to continue to use KBD for execution, and where relevant, continue to pay brokerage commissions to KBD based on the Pre-1975 schedule.

28. **Certificate of Compliance.** Respondents shall certify, in writing, compliance with the undertakings set forth in paragraphs 25 through 27, above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondents agree to provide such evidence. The certification and supporting material shall be submitted to Adam S. Aderton, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5012, or such other person or address as the Commission staff may provide, no later than sixty (60) days from the completion of each of the undertakings.

29. **Deadlines.** The staff of the Commission may extend any of the procedural dates set forth in paragraphs 25 through 28, above, for good cause shown. The procedural dates shall

be counted in calendar days, except that if the last day falls on a weekend or federal holiday the next business day shall be considered to be the last day.

IV.

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

Accordingly, pursuant to Section 15(b) of the Exchange Act, and Sections 203(e), 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondents KIA and Kahn cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act, and Rule 206(4)-7 promulgated thereunder.

B. Respondents KIA and Kahn are censured.

C Respondents shall within ten (10) days of the issuance of this Order pay disgorgement of \$701,799 and prejudgment interest of \$146,100, on a joint and several basis, to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

D. Respondents shall within ten (10) days of the issuance of this Order pay a civil penalty in the amount of \$250,000, on a joint and several basis, to the Securities and Exchange Commission. 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) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 KIA and Kahn as Respondents 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 Adam S. Aderton, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5012, or such other person or address as the Commission staff may provide.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest described above. 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of their payment of a civil penalty in this action (“Penalty Offset”). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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.

F. Respondents shall comply with the undertakings enumerated in Section III, paragraphs 25 through 28, above.

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 Kahn, 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