

## Hedge Fund Adviser Sanctioned for Misrepresenting Fund Performance, Not Updating Form ADV

On September 21, 2005, the Securities and Exchange Commission ("SEC") issued an Order (the "Order") imposing sanctions against a California-based hedge fund manager, Springer Investment Management, Inc. ("SIM"), an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"), and its president, Keith W. Springer ("Springer"), for misrepresenting the performance of a hedge fund that they managed, and also for not properly updating the management company's disciplinary history in its Form ADV.<sup>1</sup>

The Order found that from 2000 to 2002, SIM (with Springer at the helm) misrepresented the performance of Apollo Fund, L.P. (the "Fund"), by overvaluing a struggling Internet company in which the Fund had invested. The remainder of the Fund's publicly-traded investments decreased in value during the dramatic declines of Internet stocks in the early 2000s, but SIM buttressed the Fund's overall performance figures by exaggerating the value of a struggling, privately-held "dot-com" company called Citi411.com.

According to the Order, SIM valued shares of Citi411.com at several times the price that the Fund had paid. SIM did not disclose to investors that it was adjusting the value of Citi411.com shares upward by more than 500%, or the reasons for such a change. This overvaluation permitted SIM and Springer to

disseminate misleading assurances to investors about the Fund's performance. Statements reporting the value of investor's shares in the Fund distorted the Fund's performance and misrepresented the success of the Citi411.com investment. Thus, the Order found that SIM and Springer failed to value the Fund's securities in good faith.

The Order also found that SIM failed to properly update disclosures in its Form ADV concerning Springer's disciplinary history. In 1999, a New York Stock Exchange ("NYSE") panel found that Springer, while employed as a registered representative with a broker-dealer, had effected improper post-execution allocation of trades, and allocated trades with better executions to his personal account, to the detriment of his customers.

The NYSE censured Springer, and barred him from employment or association in any capacity with any member or member organization. SIM reported the NYSE ruling in its Form ADV, but explained that the ruling was being appealed. SIM neglected to promptly amend the disclosure to report that the appeal had been denied. The Order found that Springer and SIM willfully violated section 206(2) of the Advisers Act, and that SIM willfully violated (aided and abetted by Springer) Section 204 of the Advisers Act and Rule 204-1(a)(2) thereunder.

Without admitting or denying guilt, SIM and Springer submitted an offer of settlement which the SEC accepted. As part of the settlement, SIM agreed to an undertaking which includes hiring an Independent Consultant approved by the SEC staff to review pricing for non-public

<sup>1</sup> In the Matter of Springer Investment Management, Inc. and Keith W. Springer, Rel. No IA-2434, Sept. 21, 2005.

equity securities. The Independent Consultant will issue a report containing recommendations regarding SIM's policies, procedures, and practices for pricing of those securities, and review SIM's Forms ADV to ensure the timeliness and adequacy of SIM's disclosures.

The Independent Consultant will submit the report and recommendations to the San Francisco SEC office, and SIM agreed to be bound by such recommendations, although it is entitled to make alternate suggestions. SIM will submit all future pricing changes regarding non-public equity securities to the Independent Consultant in advance for one year, and will refrain from making any valuation changes of non-public equity investments until after the new investments or valuation changes have been approved by the Independent Consultant for a period of one year. SIM will submit all necessary future changes to Form ADV to the

Independent Consultant in advance for a period of one year.

The SEC also censured SIM pursuant to Sections 203(e) and 203(f) of the Advisers Act. Pursuant to Section 203(k) of the Advisers Act, the SEC ordered SIM and Springer to cease and desist from committing or causing any violations and any future violations of Sections 204 and 206(2) of the Advisers Act and Rule 204-1(a)(2) thereunder. Finally, the SEC fined SIM and Springer \$50,000 jointly.

■ ■ ■

This update was authored by John V. O'Hanlon (+1 617 728 7111; john.ohanlon@dechert.com) and Alan Rosenblat (+1 202 261 3332; alan.rosenblat@dechert.com), with research assistance by Joshua A. Weinberg (+1 617 728 7155; joshua.weinberg@dechert.com).

---

## Additional practice group contacts

For further information, contact the authors, one of the attorneys listed, or any Dechert LLP attorney with whom you are in regular contact. Visit us at [www.dechert.com/financialservices](http://www.dechert.com/financialservices).

**Sander M. Bieber**  
Washington  
+1 202 261 3308  
sander.bieber@dechert.com

**Brendan C. Fox**  
Washington  
+1 202 261 3381  
brendan.fox@dechert.com

**George J. Mazin**  
New York  
+1 212 698 3570  
george.mazin@dechert.com

**Douglas P. Dick**  
Newport Beach  
+1 949 442 6060  
douglas.dick@dechert.com

**David J. Harris**  
Washington  
+1 202 261 3385  
david.harris@dechert.com

**Jack W. Murphy**  
Washington  
+1 202 261 3303  
jack.murphy@dechert.com

**Ruth S. Epstein**  
Washington  
+1 202 261 3322  
ruth.epstein@dechert.com

**Robert W. Helm**  
Washington  
+1 202 261 3356  
robert.helm@dechert.com

**John V. O'Hanlon**  
Boston  
+1 617 728 7111  
john.ohanlon@dechert.com

**Susan C. Ervin**  
Washington  
+1 202 261 3325  
susan.ervin@dechert.com

**Jane A. Kanter**  
Washington  
+1 202 261 3302  
jane.kanter@dechert.com

**Jeffrey S. Poretz**  
Washington  
+1 202 261 3358  
jeffrey.poretz@dechert.com

**Joseph R. Fleming**  
Boston  
+1 617 728 7161  
joseph.fleming@dechert.com

**Stuart J. Kaswell**  
Washington  
+1 202 261 3314  
stuart.kaswell@dechert.com

**Jon S. Rand**  
New York  
+1 212 698 3634  
jon.rand@dechert.com

**Keith T. Robinson**

Washington  
+1 202 261 3386  
keith.robinson@dechert.com

**Frederick H. Sherley**

Charlotte  
+1 704 339 3100  
frederick.sherley@dechert.com

**Brian S. Vargo**

Philadelphia  
+1 215 994 2880  
brian.vargo@dechert.com

**Alan Rosenblat**

Washington  
+1 202 261 3332  
alan.rosenblat@dechert.com

**Patrick W .D. Turley**

Washington  
+1 202 261 3364  
patrick.turley@dechert.com

**David A. Vaughan**

Washington  
+1 202 261 3355  
david.vaughan@dechert.com

---

Dechert  
LLP

[www.dechert.com](http://www.dechert.com)

**U.S.**

Boston  
Charlotte  
Harrisburg  
Hartford  
New York  
Newport Beach

Palo Alto  
Philadelphia  
Princeton  
San Francisco  
Washington, D.C.

**U.K./Europe**

Brussels  
Frankfurt  
London  
Luxembourg  
Munich  
Paris

---

© 2005 Dechert LLP. All rights reserved. Materials have been abridged from laws, court decisions, and administrative rulings and should not be considered as legal opinions on specific facts or as a substitute for legal counsel.