



**U.S. Securities and  
Exchange Commission**

Administrative Proceedings /

# **Judy M. Rupay and Dixon R. Holman**

## **SECURITIES ACT OF 1933 RELEASE NO. 8199 / March 4, 2003**

INVESTMENT ADVISERS ACT OF 1940  
RELEASE NO. 2113 / March 4, 2003

INVESTMENT COMPANY ACT OF 1940  
RELEASE NO. 25960 / March 4, 2003

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11049



<hr/> <p><b>Judy M. Rupay and Dixon R. Holman,</b>  Respondents.</p> <hr/>	:	<p><b>ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND- DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND- DESIST ORDER PURSUANT TO SECTION 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940 AND SECTION 8A OF</b></p>
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		<b>THE SECURITIES ACT OF 1933</b>
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**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 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") and Section 8A of the Securities Act of 1933 ("Securities Act") against Judy M. Rupay ("Rupay") and Dixon R. Holman ("Holman") (collectively, "Respondents").

**II.**

In anticipation of the institution of these proceedings, the Respondents have submitted an Offer of Settlement ("Offer") that 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, the Respondents, by their Offer, admit the jurisdiction of the Commission over them and over the subject matter of these proceedings, and consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 203(k) of the Investment Advisers Act of 1940, Sections 9(b) and 9(f) of the Investment Company Act of 1940 and Section 8A of the Securities Act of 1933 ("Order"), without admitting or denying the Commission's findings contained in this Order.

### III.

On the basis of this Order and Respondents' Offer, the Commission makes the following findings:

#### **RESPONDENTS**

A. Rupay, age 51, was, at all relevant times, an indirect shareholder and a director of Rupay-Barrington Capital Management, Inc. ("RB Management") and the president and chief

executive officer of Rupay-Barrington Financial Group, Inc. ("Group").

**B. Holman**, age 41, was, at all relevant times, a director and president of RB Management, the vice president and chief operations officer of Group and the vice president of Rupay-Barrington Funds, Inc. ("the Fund").

### **RELATED ENTITIES**

**C. The Fund**, a Maryland corporation headquartered in Arlington, Texas, has been registered with the Commission as a diversified, open-end investment company since March 28, 1995. The Fund was organized as a series company with three portfolios: Total Return (inception date March 28, 1995), Value Equity (inception date August 14, 1998) and Equity Growth (inception date August 14, 1998). RB Management managed the Fund and made all Commission filings on its behalf.

**D. RB Management**, a Nevada corporation headquartered in Arlington, Texas, has been registered as an investment adviser with the Commission since December 6, 1993.

RBManagement provided investment advisory services to individuals, pension accounts and to the Fund.

E. The Group, a Nevada corporation based in Arlington, Texas, is the holding company for a family of three financial services firms operating under the "Rupay-Barrington" name, including RBManagement. In 1998, Group entered into a contract with the Fund whereby Group agreed to pay the Fund expenses that exceeded a certain percentage of the Fund's net assets (the "expense cap"). The Fund disclosed the expense cap in its Commission filings between August 1998 through December 1999. Each portfolio within the Fund paid all of its own expenses directly and recorded a receivable from Group (the "Group receivable") for amounts above the expense cap. At the time of the agreement, Group was insolvent.

### **PROBLEMS ARISING FROM A DOUBTFUL RECEIVABLE**

F. From at least January 1999 through June 2000, the Group receivable was included as an

asset in the Fund's calculation of its net asset value. The Group receivable grew steadily over time, reaching a peak of approximately \$250,000 by June 2000. Since Group was insolvent during this time period, it was not reasonable to assume that the Group receivable would be collected. Nonetheless, the Fund, through RBManagement, recorded the Group receivable on its books at full value. By doing so, the Group receivable inflated the net asset value of the Fund's three portfolios, causing the Fund to sell and redeem shares at artificially high prices. As a result, the Total Return portfolio, which held the largest portion of the Group receivable, experienced liquidity problems and ultimately improperly suspended redemptions.

**G.** From January 1999 to June 2000, RBManagement did not advise the Fund's shareholders about the doubtful collectability of the Group receivable. Moreover, RBManagement did not disclose the doubtful collectability of the Group receivable to its private advisory clients who were invested in the Fund.

H. The Fund also sold shares during most of this period using an outdated prospectus. Under Section 10(a)(3) of the Securities Act, any prospectus used more than nine months after the effective date of the registration statement must contain information as of a date not more than sixteen months prior to such use. The Fund's last prospectus was a post-effective amendment filed May 5, 1998 (effective date July 19, 1998), covering all of the Fund's portfolios. The amended registration statement included audited financial statements for the year ended December 31, 1997. Thus, financial statements were sixteen months old on April 30, 1999 and all sales of the Fund shares thereafter were made pursuant to stale financial statements and information. After May 1, 1999, the Fund sold nearly 170,000 shares for more than \$2 million using a stale prospectus.

I. From January 1999 through June 2000, the Fund failed to file fiscal year end annual reports. Additionally, the Fund failed to provide to its shareholders a semi-annual report for the year ended December 31, 1999.





Holman shall cease and desist from committing or causing any violation and any future violation of Section 206(2) of the Advisers Act, Sections 21(b), 22(e), 30(a), 30(e) and 34(b) of the Investment Company Act and Rules 22c-1, 30a-1 and 30d-1 thereunder, and Section 5(b) of the Securities Act;

**2.** Pursuant to Section 9(b) of the Investment Company Act, Rupay and Holman are 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 for a period of six months, effective on the second Monday following the entry of this Order; and

**3.** Pursuant to Section 9(d) of the Investment Company Act, Rupay and Holman each shall pay a civil penalty in the amount of \$10,000 to the United States Treasury; Rupay and Holman shall each pay \$1,000 within ten days of the entry of this Order and they shall each pay the remaining

\$9,000 within ninety days of the entry of this Order. Such payments shall be:

(A) made by 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 Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and

(D) submitted under cover letter that identifies Rupay and Holman as Respondents in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Spencer C. Barasch, Associate District Administrator, Securities and Exchange Commission, Burnett Plaza, 801 Cherry Street, Suite 1900, Fort Worth, Texas 76102.

By the Commission.

Jonathan G. Katz  
Secretary

## Footnotes

<sup>1</sup> *SEC v. Rupay-Barrington Capital Management, Inc., et al.*, Civ. No. 3:00-CV-1482-D (N.D. Tex.) (SEC Lit. Release No. 17345 (January 29, 2002)).

<sup>2</sup> During the liquidation of the Fund, Group fully paid the Group receivable.

<sup>3</sup> "Willfully" as used in this Order means intentionally committing the act which constitutes the violation, see *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.

<sup>4</sup> See footnote 3.