

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5226 / April 23, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19152

In the Matter of

**CHARTER CAPITAL
MANAGEMENT, LLC,**

and

STEVEN MORRIS BRUCE,

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO 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 Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Charter Capital Management, LLC (“CCM”) and Steven Morris Bruce (“Bruce”) (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have 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 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 and Cease-and-Desist Proceedings,

Pursuant to 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’ Offer, the Commission finds¹ that:

SUMMARY

1. This matter involves formerly SEC-registered investment adviser CCM and its principal’s investment of \$4 million on behalf of two funds they managed. In mid-August 2016, CCM and its founder and chief executive officer Bruce made a \$4 million loan on behalf of the two funds to a Norwegian individual and his company, who purported to use the proceeds to engage in trading international notes for huge profits. The Norwegian individual and his entity promised the funds would receive payment of \$40 million in 90 days. The Norwegian company made an initial payment of \$1.5 million, but never paid the remaining \$38.5 million it promised – leaving the funds with a loss of \$2.5 million.

2. CCM and Bruce performed limited due diligence on the investment, and then in early August 2016 Bruce made a \$115,000 loan of his own personal money to the Norwegian individual and his company. CCM and Bruce failed to disclose a conflict of interest arising out of Bruce’s status, through his personal loan, as a creditor of the Norwegian individual and the Norwegian individual’s company. Also, after making the \$4 million investment on behalf of the two funds, CCM and Bruce made misleading statements to fund investors regarding the amount of due diligence performed and the “buy-in” of CCM’s outside professionals.

3. As a result, CCM and Bruce negligently breached their fiduciary duties to the funds in violation of Section 206(2) of the Advisers Act by failing to disclose that Bruce was a creditor of the Norwegian individual and his company and the resulting conflict of interest, *i.e.*, that Bruce had an incentive for the funds to invest so that it would provide money that could be used to repay Bruce personally. CCM and Bruce also negligently violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder through misleading statements to fund investors about the level of due diligence performed on the investment and the “buy-in” of CCM’s outside professionals.

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

RESPONDENTS AND OTHER RELEVANT ENTITIES

Respondents

4. CCM is a Florida limited liability company, with its principal place of business in Freeport, Florida. CCM is an investment adviser that was registered with the Commission (File No. 801-62634) from January 2004 to November 2017. CCM serves as the investment manager to two private funds, Charter Capital Fund I L.P. (“Fund I”) and Charter Capital Fund II L.P. (“Fund II”) (collectively, the “Funds”). CCM filed a Form ADV-W to withdraw its registration on November 2, 2017. CCM’s registration was terminated on November 2, 2017. CCM has been registered as an investment adviser with the Florida Office of Financial Regulation since October 17, 2017.

5. Bruce, age 60, resides in Freeport, Florida. He is the founder, sole owner/managing member, chief executive officer, and chief compliance officer of CCM.

Other Relevant Entities

6. Charter Capital GP, LLC (“CCGP”), a Florida limited liability company, serves as the general partner of certain affiliated, unregistered investment companies. CCGP serves as the Funds’ general partner.

7. Fund I, is a private fund formed in 2009 and exempt from registration pursuant to Section 3(c)(1) under the Investment Company Act of 1940 (“Investment Company Act”).

8. Fund II, is a private fund formed in 2009 and exempt from registration pursuant to Section 3(c)(1) under the Investment Company Act.

FACTS

Background

9. CCM and Bruce are investment advisers to two private funds—Fund I and Fund II. CCGP serves as the Funds’ general partner. Fund I is open to taxable investments (*i.e.*, non-qualified) and Fund II is only open to qualified (*i.e.*, IRA and Roth IRA) investments. The private placement memoranda (“PPM”) for the Funds permits CCM to “pursue any objectives, employ any investment techniques or purchase any type of security that it considers appropriate and in the best interests of the Fund[s].”

The Funds’ Investment

10. Bruce was introduced to the Norwegian individual by a mutual associate. During approximately late July 2016 and early August 2016, Bruce participated in approximately 30 telephone calls (totaling approximately four to five hours) with the Norwegian individual to

discuss the Norwegian individual's investment strategy before investing the Funds' \$4 million. Bruce also performed some Google searches on the Norwegian individual online and learned that the Norwegian individual supposedly owned an oil and gas trading operation in Atlanta, Georgia under a company name that the Norwegian individual had referenced in an email to Bruce.

11. On August 18, 2016, the Funds and Bruce, as Manager of CCGP on behalf of the Funds, entered into a "loan agreement" providing that that the Funds would loan the Norwegian individual and his company \$4 million – \$2,258,575 from Fund I and \$1,741,425 from Fund II. CCM, as the investment manager to the Funds, and Bruce, as the sole owner and control person of CCM, caused the Funds to enter into the loan agreement with the Norwegian individual and his company. According to the loan agreement, the \$4 million was to be utilized:

to pay for costs related to completing the trading contract signed between [the Norwegian individual] and a trading platform being paid back profits for aiding in setting up a trade for a minimum of one [standby letter of credit] for 700 million Euros to be monetized and traded.

12. Bruce understood from the telephone conversations with the Norwegian individual, whom Bruce had never met in person, that the Norwegian individual had traders he worked with who would use the \$4 million to trade international notes and make huge profits. The loan documents provided that the funds would receive a \$40 million payment of interest on the \$4 million loan in 90 days.

Bruce's Personal Investment

13. Bruce invested personally first, before investing the Funds' monies. On August 1, 2016, Bruce entered into a loan agreement to personally loan \$100,000 (later amended to \$115,000) to the Norwegian individual and his company similar to the loan agreement that the Funds later entered into. Under Bruce's personal loan agreement, the Norwegian individual and his company promised to repay Bruce \$1,115,000 in 25 days. When the payment came due on August 26, Bruce agreed to the Norwegian individual's suggestion to roll the purported proceeds from that investment forward into another transaction with the Norwegian individual and his company. CCM and Bruce never disclosed to the Funds or the Funds' investors the fact that Bruce had made a personal loan to the Norwegian individual and his company.

14. Between December 2016 and April 2017, Bruce was repaid a total of \$233,000 on his personal investment, for a profit of \$118,000 on his initial \$115,000 investment. In November 2017, Bruce paid \$184,540 of his own money to the Funds to partly cover the Funds' loss of \$2.5 million resulting from the investment. This payment represented the profit that Bruce recovered on his personal investment and an additional \$66,540.

Misleading Statements After the Loan

15. CCM and Bruce made materially misleading statements about the Norwegian loan agreement to the Funds' investors after investing their monies.

Due Diligence

16. First, in a newsletter emailed to Fund investors on September 8, 2016, Bruce inaccurately stated that he had “spent a great deal of time doing my diligence on the investment strategy and [the Norwegian individual’s] credentials.” Bruce’s due diligence consisted solely of the telephone calls with the Norwegian individual, a few Google searches, and calls to CCM’s attorneys, accounting firm (“CPA firm”), and the Funds’ administrator (who cautioned Bruce about the investment as set forth below). Accordingly, CCM and Bruce’s statements about due diligence were misleading.

“Buy-in” of Outside Professionals

17. Second, in an investor letter dated September 13, 2016, Bruce inaccurately told investors that CCM and Bruce had the “buy-in” of CCM’s attorneys, its CPA firm, and the administrator for the Funds prior to making the \$4 million investment. More specifically, Bruce stated that he and the Norwegian individual had been working with those outside professionals for the last two months to bring them up to speed on the investment strategy and that he had “obtained the buy-in [of the law firm, CPA firm, and fund administrator] in early August.” Yet, none of CCM’s outside professionals had endorsed the Norwegian investment or affirmed its legitimacy. In fact, the outside professionals raised concerns with Bruce about the investment. CCM and Bruce did not provide the attorney with a copy of the loan agreement nor did they tell the attorney about the investment’s promised rate of return in advance of CCM and Bruce making the Funds’ \$4 million investment. CCM and Bruce provided the engagement partner at CCM’s CPA firm with a copy of the loan agreement two days prior to making the investment. In response, the engagement partner had a call with Bruce and questioned the investment. Two days prior to CCM and Bruce making the \$4 million investment, a Senior Vice President (“SVP”) from the Funds’ administrator participated in a call with Bruce and the Norwegian individual to learn more about the proposed investment. After the call, the SVP immediately called Bruce back and told Bruce that he thought Bruce should conduct additional due diligence on the investment and should talk to others in Bruce’s field to get their take on the investment. Accordingly, CCM and Bruce’s statements about “buy-in” of their outside professionals were misleading.

VIOLATIONS

18. As a result of the conduct described above, Respondents willfully² violated Section 206(2) of the Advisers Act.

19. As a result of the conduct described above, Respondents willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder.

² A willful violation of the securities laws means merely “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)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

REMEDIAL EFFORTS

20. In determining to accept Respondents' Offer, the Commission considered that Bruce voluntarily disgorged \$184,540 of his own money to the Funds in November 2017, to partly cover the Funds' loss, which represents \$66,540 in excess of the \$118,000 profit that Bruce made on his own personal investment with the Norwegian individual and his company.

UNDERTAKING

21. Respondents CCM and Bruce have undertaken to:

22. Notice to Advisory Clients. Within thirty (30) days of the entry of this Order, Respondents shall provide a copy of the Order to each of CCM's existing advisory clients as of the entry of this Order via mail, e-mail, or such other method as may be acceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff. For a period of one (1) year, Respondents shall provide a copy of the Order to all of its prospective clients.

23. Certifications of Compliance. Respondents shall certify, in writing, compliance with the undertaking set forth above. The certification shall identify the undertaking, 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 Elisha L. Frank, Assistant Regional Director, 801 Brickell Avenue, Suite 1800, Miami, Florida, 33131, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertaking.

IV.

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

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

A. Respondents 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)-8 promulgated thereunder.

B. Respondents are censured.

C. Respondents shall, jointly and severally, pay a civil money penalty of \$40,000.00 plus post-order interest pursuant to 31 U.S.C. § 3717, to the Securities and Exchange Commission. Payment shall be made in the following installments:

1) \$15,000 within 14 days of the entry of the Order;

- 2) \$5,000 within 56 days of the entry of the Order;
- 3) \$5,000 within 84 days of the entry of the Order;
- 4) \$5,000 within 112 days of the entry of the Order;
- 5) \$5,000 within 140 days of the entry of the Order;
- 6) \$5,000 within 168 days of the entry of the Order.

Prior to making the final payment set forth herein, Respondents CCM and Bruce shall contact the staff of the Commission for the amount due for the final payment. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application.

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 CCM and Bruce 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 Glenn S. Gordon, Associate Regional Director, Division of Enforcement, U.S. Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, Florida, 33131.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties referenced in paragraph IV.C 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 they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' 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 one or both 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.

E. Respondents shall comply with the undertaking enumerated in paragraphs 21-23 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 Bruce, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Bruce 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 Bruce 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
Acting Secretary