UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JUDGE CROTTY

SECURITIES AND EXCHANGE COMMISSION,

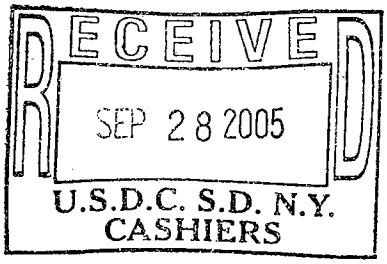
Plaintiff,

v.

JOSEPH W. DANIEL,

Defendant.

No. 05 CV 8338



COMPLAINT

Plaintiff United States Securities and Exchange Commission ("Commission") alleges as follows:

NATURE OF THE COMPLAINT

1. From March 1999 through February 2002, Defendant Joseph W. Daniel ("Daniel") was managing general partner of a hedge fund known as the Critical Infrastructure Fund (the "Fund"). As manager of the Fund, Daniel was responsible for valuing private placement investments in the Fund's portfolio. Daniel improperly inflated the value of many of the Fund's private placement investments, or failed to write down their value when the investments performed poorly. As a result, Daniel made misrepresentations to investors about the value of their investments in the Fund and the Fund's performance, and allowed certain investors to redeem their shares at inflated values to the detriment of the remaining investors. These events caused significant losses for investors. In addition, when new investors invested in the Fund in December 2001

and January 2002, Daniel made misrepresentations about the Fund's assets, performance, and the percentage of assets the Fund invested in private placements.

2. Daniel has engaged in, and, unless enjoined, will continue to engage in, transactions, acts, practices and courses of business that constitute violations of Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77q(a)(1)-(3)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b)], and Rule 10b-5 promulgated thereunder [17 C.F.R. 240.10b-5]. Daniel also has aided and abetted, and, unless enjoined, will continue to aid and abet, violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. § 80b-6(1) and (2)].

3. There is a reasonable likelihood that Daniel, if not enjoined, will continue to engage in transactions, acts, practices and courses of business, the same as, or similar to, those set forth in this Complaint.

4. The Commission brings this suit to enjoin such transactions, acts, practices and courses of business pursuant to Sections 20(b) and (d) of the Securities Act [15 U.S.C. § 77t(b) and (d)], Section 21(d) of the Exchange Act [15 U.S.C. §§ 78u(d)], and Sections 209(d) and (e) of the Advisers Act [15 U.S.C. § 80b-9(d) and (e)].

JURISDICTION

5. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Section 27 of the Exchange Act [15 U.S.C. § 78aa], Section 214 of the Advisers Act [15 U.S.C. § 80b-14] and 28 U.S.C. § 1331.

DEFENDANT

6. Defendant Joseph W. Daniel, a resident of New York, New York, was Managing General Partner for the Fund from March 1999 to February 2002. As Managing General Partner, Daniel conducted most of the day-to-day activities of the Fund, including processing investments in the Fund and redemptions out of the Fund and researching companies in which the Fund might invest. He was responsible for marketing the Fund and was the Fund's main contact for investors. Daniel was also the Fund's primary contact with the companies in which the Fund made private placement investments and was responsible for properly valuing those investments. From 1999 until August 2001, Daniel was a minority owner of Critical Investments, LLC, the Fund's general partner, and Critical Advisors, LLC, the Fund's investment manager.

OTHER ENTITIES

7. The Critical Infrastructure Fund, L.P. is a Delaware limited partnership and is an unregistered hedge fund for U.S. investors.

8. The Critical Infrastructure Fund, Ltd. is a Bermuda limited liability company and is an unregistered hedge fund for off shore investors (collectively, The Critical Infrastructure Fund, L.P. and The Critical Infrastructure Fund, Ltd. are referred to as the "Fund.").

9. Critical Investments, LLC (the "General Partner") is a Virginia limited liability company and is the general partner of the Fund.

10. Critical Advisors, LLC (the "Investment Manager") is a Virginia limited liability company and is the investment manager of the Fund.

FACTS

A. Background

11. In 1998, the Fund's founder hired Daniel as a consultant to help develop a new hedge fund that would invest primarily in telecommunications and related industries.

12. From August 1998 to March 1999, Daniel assisted in establishing the entities that would be the Fund's General Partner and the Investment Manager. Daniel owned 10% of the General Partner and 20% of the Investment Manager. Daniel was also an employee of the Investment Manager.

13. Daniel assisted in preparing the Fund's Private Placement Memorandum ("PPM") and the partnership agreement for the Fund, and in March 1999, began selling interests in the Fund to investors. Between March 1999 and December 2001, approximately 50 investors in the Fund invested approximately $8 million.

B. Private Placement Investments

14. According to the PPM, the Fund would "from time to time" invest in "non-marketable or illiquid investments ('Special Situation Investments')." Between July 1999 and January 2001, the Fund invested $2,269,847 in 13 private placements.

15. According to the PPM, "[t]he General Partner [would] determine at the time of the investment whether to classify a Fund investment as a Special Situation Investment." The PPM specified that if an investment were so classified, it would be held in a separate sub-account. Investors could not withdraw assets in sub-accounts until the occurrence of a "recognition event" such as a sale or exchange.

16. Daniel, as manager of the General Partner, was responsible for designating non-marketable or illiquid investments as Special Situation Investments. Daniel, however, did not understand that it was necessary for him to make a designation. Therefore he did not designate any of the Fund's private placements as Special Situation Investments and did not create any sub-accounts.

17. According to the PPM, the Fund's assets were to be valued at fair market value unless they were designated as Special Situation Investments. Special Situation Investments were to be valued at cost "subject to the General Partner's discretion to estimate the fair value."

18. Daniel, as manager of the general partner, was responsible for valuing the Fund's private placement investments. Daniel, however, did not attempt to determine the fair market value of the illiquid private placement investments. Instead he valued them at cost or determined a higher "fair value," even though he had not designated them as Special Situation Investments.

19. In some cases, when Daniel found that the private companies the Fund had invested in had new offerings at higher prices, Daniel would write up the fair value of the Fund's investment. By May 2001, Daniel had written up the value of the Fund's private investments by over $500,000 or over 20%.

20. As the securities markets declined in 2000 and 2001, many of the private companies in which the Fund invested encountered financial difficulties. Daniel, however, failed to write down the value of the Fund's private investments when the companies in which the Fund invested had offerings at lower prices, went into

bankruptcy, or had other financial difficulties. As a result, the Fund's private investments were overvalued beginning in December 2000. For example:

a. The Fund invested $150,000 in Visual.com in 2000. In July 2000, Daniel wrote up the value to $200,000. In December 2000, Visual.com was acquired by Fusion Technologies, a public company. Daniel, however, failed to inform the Fund's administrator of the acquisition and failed to write down the value to the lower value of Fusion stock. In April 2001, Fusion filed for bankruptcy. In May 2001, the Fund's auditor discovered the error and wrote down the value of the investment to $6,697.

b. The Fund invested $50,000 in Prepay.com in July 2000 and another $50,000 in January 2001. In February 2001, the CEO of Prepay wrote to Daniel stating that Prepay was closing its office and was remaining in operation only as a virtual company on the web while it sought additional funding. Prepay was defunct by May 2001. Nevertheless, Daniel never wrote down the value of Prepay in the Fund's portfolio and instead left the value at cost.

c. The Fund invested $200,000 in Omnipod in May 2000 at a price of $1.26 per share. In March 2001, the CEO of Omnipod informed Daniel that Omnipod was arranging a new round of financing at a price of $0.18 per share. Omnipod closed the financing in April 2001 at a price of $0.12 per share. Daniel, however, never wrote down the value of Omnipod, and instead kept it at cost.

d. In July 2000, the Fund invested $100,000 in Worldlink Technologies. In August 2001, the CEO of Worldlink wrote to Daniel informing him that Worldlink would be filing for bankruptcy. Daniel did not write down the investment. Instead, he continued to value the investment at cost in the Fund's portfolio.

e. The Fund invested $100,000 in Advance Multimedia Group ("AMG"), an internet incubator, in October 1999. In May 2000, Daniel wrote the value up to $400,000. In the spring of 2001, AMG informed its investors that the incubator model was dead, it was changing its strategy and it had written down the value of its investments by $7,000,000. Nevertheless, Daniel continued to value the Fund's AMG investment at $400,000.

21. Because the Fund's private investments were overvalued beginning in at least December 2000, all of the account statements Daniel sent to investors in the Fund during 2001 misrepresented the investors' balances and the Fund's performance.

22. The General Partner received management fees equal to 1% of the Fund's assets. Because the Fund's private investments were overvalued, the General Partner's management fees were inflated during 2001.

C. Withdrawals From The Fund

23. Between December 2000 and January 2002, Daniel processed redemption requests from 16 investors, allowing them to withdraw all of their equity in the Fund totaling over $2,000,000. In addition, during 2000 and 2001, Daniel processed redemption requests totaling over $400,000 from the General Partner. The General Partner primarily used the funds to pay Fund expenses for which it was liable.

24. Because the Fund's private investments were overvalued, most of these withdrawals resulted in overpayments to the redeeming investors. These overpayments caused significant losses for the remaining investors. Further, because the Fund used cash and liquidated marketable investments to pay redeeming investors, the redemptions left the remaining investors with a portfolio primarily made up of overvalued private placement investments. Because the redemption payments were inflated, their effect on the Fund's portfolio was exacerbated.

D. False Statements Made to New Investors

25. In August 2001, vFinance, Inc. ("vFinance"), the parent company of a broker-dealer, acquired the General Partner and hired Daniel to continue operating the Fund. In October 2001, Daniel met with vFinance brokers to pitch the Fund to the brokers' clients. In that meeting, Daniel stated that the Fund had $6-7 million in assets, was up 86% since inception, and that the Fund invested only up to 25% of its assets in private placements.

26. Daniel's statements to the prospective investors were false and misleading. In fact, the Fund's brokerage statements, as of September 30, 2001, showed only $3.4 million in assets and 85% of those assets were overvalued private placements. Furthermore, Daniel's performance numbers were grossly inflated because they were based on overvalued private placement investments. If Daniel had used realistic values for the private placements, the Fund would have been down approximately 40% since inception.

27. Daniel's misrepresentations were material because they concerned the Fund's assets, performance, and allocation, which are critical facts that a reasonable investor would want to know. Daniel made the misrepresentations knowingly or recklessly because, as managing partner responsible for the day-to-day activities of the fund, including researching and valuing investments, he knew or was reckless in not knowing the true nature of the Fund's assets and knew or was reckless in not knowing that the private placement investments were overvalued.

28. Following Daniel's misrepresentations, in December 2001 and January 2002, six vFinance clients invested a total of $650,000 in the Fund.

29. In February 2002, Daniel became ill and left vFinance. When other vFinance employees took over the operation of the Fund, they discovered that the portfolio value was far smaller than Daniel had claimed and that the private placement investments were overvalued. vFinance ceased marketing the Fund, returned the money invested by the vFinance investors, and began an effort to liquidate the private placement investments so that cash could be returned to the remaining investors.

E. Need for Injunctive Relief

30. Daniel's actions constitute numerous knowing violations of the federal securities laws that resulted in significant losses for the investors in the Fund. His violations were committed with a high degree of scienter – he ignored the setbacks in the businesses of the private placement investments and failed to write down the value of those investments. Daniel is 41 years old, and may have numerous opportunities to violate the federal securities laws in the future if he is not enjoined from doing so.

COUNT I

Violation of Sections 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]

31. Paragraphs 1 through 30 are realleged and incorporated by reference.

32. Daniel, in the offer and sale of securities, by the use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud, as more fully described in paragraphs 25 through 29 above.

33. Daniel knew or was reckless in not knowing of the facts and circumstances described in paragraphs 25 through 29 above.

34. By reason of the foregoing, Daniel violated Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT II

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and (3)]

35. Paragraphs 1 through 30 are realleged and incorporated by reference.

36. Daniel, in the offer and sale of securities, by the use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, obtained money or property by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading, as more fully described in paragraphs 25 through 29 above.

37. Daniel, in the offer and sale of securities, by the use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, engaged in transactions, practices and courses of business which operated or would have operated as a fraud and deceit upon purchasers, as more fully described in paragraphs 25 through 29 above.

38. By reason of the foregoing, Daniel violated Sections 17(a)(2), and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and (3)].

COUNT III

Violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

39. Paragraphs 1 through 30 are realleged and incorporated by reference.

40. Daniel, in connection with the purchase and sale of securities, by the use of the means and instrumentalities of interstate commerce and by the use of the mails,

directly and indirectly: used and employed devices, schemes and artifices to defraud; made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices and courses of business which operated or would have operated as a fraud and deceit upon purchasers and sellers and prospective purchasers and sellers of securities, as more fully described in paragraphs 25 through 29 above.

41. Daniel knew or was reckless in not knowing of the facts and circumstances described in paragraphs 25 through 29 above.

42. By reason of the foregoing, Daniel violated Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

COUNT IV

Aiding and Abetting Violations of Section 206 (1) and (2) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-6(1) and (2)]Aiding and Abetting

43. Paragraphs 1 through 30 are realleged and incorporated by reference.

44. Between March 1999 and February 2002, the Fund's General Partner, an investment adviser, by use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly: employed devices, schemes and artifices to defraud clients or prospective clients; and engaged in transactions, practices and courses of business which operated as a fraud or deceit upon clients or prospective clients, as more fully described in paragraphs 11 through 29 above.

45. Daniel, knowingly or recklessly, provided substantial assistance to the General Partner as described in paragraphs 11-29 above.

46. By reason of the foregoing, Daniel aided and abetted violations of Sections 206(1) and (2) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-6(1) and (2)].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

A. Find that Daniel committed the violations alleged above;

B. Grant an Order permanently restraining and enjoining Daniel, his agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of the Order by personal service or otherwise, and each of them, from violating, and aiding and abetting violations of, Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1)-(3)], Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b), and Rule 10b-5 [17 C.F.R. 240.10b-5 promulgated thereunder, and Sections 206(1) and (2) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-6(1) and (2)];

C. Grant an Order requiring Daniel to pay to the registry of this Court disgorgement of all ill-gotten gains and prejudgment interest on all such gains;

D. Grant an Order, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-9(e)], requiring Daniel to pay civil penalties;

E. Grant such other and additional relief as this Court deems just and proper.

Respectfully submitted,

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