

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5491 / April 30, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19777

In the Matter of

**Everest Capital LLC and Marko
Dimitrijevic,**

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 Everest Capital LLC (“Everest”) and Marko Dimitrijevic (“Dimitrijevic”) (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 it and the subject matter of these proceedings, which are admitted, 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' Offers, the Commission finds¹ that:

Summary

These proceedings arise out of Everest's and Dimitrijevic's acts inconsistent with disclosures regarding investment concentration and risk controls as they pertained to their management of the Everest Capital Global Fund, L.P. ("Global Fund" or the "Fund"). First, the Fund's confidential private offering memorandum (the "Offering Memorandum") described the Fund's investment objective and strategy as "an active and disciplined investment management style that is driven by extensive research and risk management." Everest and Dimitrijevic had previously indicated that Dimitrijevic had learned from substantial losses the Fund incurred in 1998 due to highly concentrated positions in Russian investments, and therefore would not take concentrated positions in any single geographic region. Despite these representations, from September 4, 2014 through January 15, 2015 ("Relevant Period"), Everest, a registered investment adviser, and Dimitrijevic, the Fund's portfolio manager, made highly concentrated investments in the euro to Swiss franc exchange rate ("EUR/CHF Position") such that the Fund's gross exposure in the EUR/CHF Position ranged from approximately 400% to over 900%. During the Relevant Period, Everest prepared marketing presentations ("Marketing Presentations") that were updated monthly for use with prospective investors and provided to certain Fund investors. The gross exposure reported in the Marketing Presentations was lower than the Fund's actual gross exposure. Second, as to risk controls, the Offering Memorandum, while highlighting "risk management," did not exclude currencies from the "extensive research and risk management" the firm would use to manage the Fund. Everest and Dimitrijevic represented to Fund investors that its risk management team ("Risk Management") had "the ability to reduce risk independent of the investment team," but did not disclose that Risk Management had no independent authority or ability to reduce risk with respect to currency positions the Fund may take. On January 15, 2015, the Swiss franc rose more than 30% versus the euro that day and the Fund's EUR/CHF Position sustained losses exceeding the Fund's assets.

Respondents

1. **Everest Capital LLC**, a Delaware limited liability company, was previously registered with the Commission as an investment adviser from January 7, 2010 until February 26, 2016, when it filed a Form ADV-W withdrawing from registration. Marko Dimitrijevic is the sole managing member and majority owner of Everest. During the Relevant Period, Everest provided investment management services to pooled investment vehicles, including the Global Fund, and separately managed accounts. In its most recent Form ADV filed on March 30, 2015, Everest reported regulatory assets under management of approximately \$3.7 billion, the vast majority of which were managed on a discretionary basis.

2. **Marko Dimitrijevic**, age 60, resides in Coral Gables, Florida. He is Everest's sole managing member, majority owner, Chief Investment Officer, and was the Global Fund's

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

sole portfolio manager. Dimitrijevic exercised control over all investment decisions made for the Fund.

Other Relevant Entity

3. **Everest Capital Global Fund, LP**, no longer in business, was an exempted limited partnership formed under the laws of the Cayman Islands on August 1, 1997, and was managed by Everest, its general partner. At its peak, the Fund had approximately \$830 million in assets under management. Dimitrijevic and his family were investors in the Fund. The Fund was wound down shortly after the losses incurred during the Relevant Period.

Background: The EUR/CHF Position

4. The Global Fund's investment strategy focused on investing in "developed and developing markets worldwide" and, as a result, involved "certain heightened risks." During the Relevant Period, in Marketing Presentations prepared for prospective investors and provided to certain Fund investors, Everest and Dimitrijevic represented that the Fund invested "principally in equities" but could also, among other things, invest "across other asset classes such as currencies, commodities, and debt." Disclosure documents provided that "[t]here are no restrictions on the Fund's use of leverage other than restrictions which may be imposed by lenders from time to time," that the Fund had broad and flexible investment authority, and that investors should be prepared to bear "the loss of their entire investment."

5. In Marketing Presentations provided to prospective and certain Fund investors, Everest and Dimitrijevic represented that the "aggregate exposures" taken on by the Fund are "subject to strict geographic limits to prevent excessive concentration."

6. In September 2014, Dimitrijevic, the Fund's portfolio manager, in his sole discretion decided to invest the Fund heavily in the EUR/CHF Position.² In particular, during the Relevant Period, the Global Fund's gross notional currency exposure in the EUR/CHF Position, and thereby Switzerland, ranged from approximately 400% to over 900% of the Fund's assets, bringing the Fund's total gross exposure to over 1300%. During this time, Everest continued to sell interests in the Fund.

7. On January 15, 2015, the Swiss franc rose more than 30% versus the euro when the SNB removed a 1.20 exchange cap. In short order, the Global Fund's counterparties forced Everest to liquidate its positions due to margin calls. As a result, due to the highly leveraged position, the Fund sustained losses exceeding the Fund's assets. Within days, Everest closed the Global Fund and Fund investors lost almost the entirety of their investment.

The Marketing Presentations

8. During the Relevant Period, Everest prepared three Marketing Presentations that included, among other things, the Fund's gross exposure. These presentations indicated that the Fund's gross exposure was approximately 155-185%. The Marketing Presentations, however,

² Starting in January 2011, the Swiss National Bank ("SNB") capped the exchange rate at 1.20 francs to the euro. The SNB issued periodic statements declaring its intent to maintain the cap.

omitted an explanation that the gross exposure excluded currencies and thus did not include the highly leveraged EUR/CHF Position. As a result of these omissions, the gross exposure provided was misleading in that, when including currencies, the gross exposure was approximately 400-1300%.

9. As a result of Everest's failure to accurately disclose the Fund's gross exposure in Marketing Presentations, investors were not aware of the extent of the Fund's highly concentrated currency position or that, contrary to previous statements, the Fund had taken a highly concentrated EUR/CHF Position.

Everest's Risk Management Policies

10. Everest and Dimitrijevic, in Marketing Presentations, disclosed to prospective and certain investors that Risk Management "monitors all mandated risk limits of each strategy and end-of-day reviews" and that Risk Management "enforces strict adherence to these limits, and has the ability to reduce risk independent of the investment team." In the Offering Memorandum, Everest also represented that its investment objective and strategy for the Fund included a "management style . . . driven by . . . risk management."

11. Everest's internal risk grid, a risk protocol approved by Everest's executive committee, including Dimitrijevic, did not include currencies. Accordingly, pursuant to the risk grid, any currency trades taken on by the Fund were not subject to risk monitoring, risk limits, risk review or automatic, independent risk reduction measures.

12. Everest and Dimitrijevic, however, failed to disclose to investors that Risk Management did not have any ability to independently reduce risk with respect to currencies, such as the EUR/CHF Position.

Violations

13. As a result of the conduct described above, Everest and Dimitrijevic willfully³ violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from, directly or indirectly, engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. A violation of Section 206(2) may rest on a finding of simple negligence; scienter is not required. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-95 (1963)).

14. As a result of the conduct described above, Everest and Dimitrijevic willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which make it

³ "Willfully," for purposes of imposing relief under Sections 203(e) and 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)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). 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).

unlawful for any investment adviser to a pooled investment vehicle to “[m]ake any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle.” *Steadman*, 967 F.2d at 647. A violation of Section 206(4) may rest on a finding of simple negligence; scienter is not required. *Id.*

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

A. Respondents Everest and Dimitrijevic 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 thereunder.

B. Respondents Everest and Dimitrijevic are censured.

C. Respondents Everest and Dimitrijevic shall pay disgorgement, prejudgment interest, and a civil money penalty as follows:

- (1) Respondent Everest shall pay disgorgement of \$2,000,000 and prejudgment interest of \$458,226.42 consistent with the provisions of this Subsection C.
- (2) Respondents Everest and Dimitrijevic shall pay, joint and severally, a civil money penalty of \$750,000 consistent with the provisions of this Subsection C.
- (3) 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 for distribution to Fund investors who purchased or held an interest in the Fund during the time period of September 4, 2014 through January 15, 2015 (collectively “Distribution Recipients”). 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.

- (4) Within ten (10) days of issuance of this Order, Respondents shall deposit the full amount (\$3,208,226.42) of the disgorgement, prejudgment interest, and civil monetary penalty (the “Fair Fund”) that they each have been ordered to pay into an escrow account at a financial institution not unacceptable to the Commission staff and Respondents shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or 31 U.S.C. § 3717.
- (5) Respondents shall be responsible for administering the Fair Fund and may hire a professional acceptable to the Commission staff, at its own costs, to assist them in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondents and shall not be paid out of the Fair Fund.
- (6) Respondents shall distribute from the Fair Fund to each of the Distribution Recipients pursuant to a disbursement calculation (the “Calculation”) that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. The Calculation shall be subject to a de minimis threshold. No portion of the Fair Fund shall be paid to any individual investor accounts in which any Respondent or any of Everest’s current or former officers or directors have a financial interest.
- (7) Respondents shall, within ninety (90) days of the entry of this Order, submit a proposed Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondents, along with any third-parties or professionals retained by Respondents to assist in formulating the methodology for its Calculation and/or administration of the Distribution, shall make themselves available for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondents shall also provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondents’ proposed Calculation or any of its information or supporting

documentation, Respondents shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that Respondents are notified of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

- (8) After the Calculation has been approved by the Commission staff, Respondents shall submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to the Distribution Recipients. The Payment File should identify, at a minimum: (1) the name of each Distribution Recipient, (2) the exact amount of the payment to be made from the Fair Fund to each Distribution Recipient, and (3) the amount of any de minimis threshold to be applied.
- (9) Respondents shall complete the disbursement of all amounts payable to Distribution Recipients within 90 days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in Paragraph (13) of this Subsection C.
- (10) If, after Respondent's reasonable efforts to distribute the Distribution Fund pursuant to the approved Payment File, Respondents are unable to distribute any portion of the Fair Fund for any reason, including an inability to locate a Distribution Recipient or any factors beyond Respondents' control, Respondents shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934, pursuant to the instructions set forth in Paragraph D, below, when the distribution of the funds is complete and before the final accounting provided for in Paragraph (12) of this Subsection C is submitted to Commission staff.
- (11) A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondents shall be responsible for any and all tax compliance responsibilities associated with the Fair Fund, including but not limited to tax obligations resulting from the Fair Fund's status as a QSF and the Foreign Account Tax Compliance Act ("FATCA"), and may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondents and shall not be paid out of the Fair Fund.
- (12) Within 150 days after Respondents complete the distribution of all amounts payable to Distribution Recipients, Respondents shall submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall be in a format to be provided by the Commission staff.

The final accounting and certification shall include, but not be limited to: (1) the amount paid to each Distribution Recipient, with reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of money transferred; (4) the amount of any returned payment and the date received; (5) a description of any effort to locate a prospective Distribution Recipient whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondents have made payments from the Fair Fund to affected investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Everest and Dimitrijevic as Respondents in these proceedings and the file number of these proceedings to Jessica M. Weissman, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1950, Miami, FL 33131. Respondents shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

- (13) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

D. Respondents' transfer of any undistributed funds to the Commission for transmittal to the United States Treasury 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) Respondent Everest 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 Everest Capital LLC and Marko Dimitrijevic 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 Jessica M. Weissman, Assistant Regional Director, Division of Enforcement, Miami Regional Office, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1950, Miami, FL 33131, or such other person or address as the Commission staff may provide.

V.

It is further Ordered that, 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 Dimitrijevic, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents 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 Respondents 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