UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5510 / May 26, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19812

In the Matter of **ARES MANAGEMENT LLC** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 203(e) 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) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Ares Management LLC ("Ares" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-And-Desist Proceedings, Pursuant to Sections 203(e) 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 Respondent's Offer, the Commission finds that:

Summary

1. These proceedings arise out of Ares' failure, during 2016, to implement and enforce certain of its written policies and procedures reasonably designed, taking into consideration the nature of its business, to prevent the misuse of potentially material nonpublic information ("MNPI") that it had obtained: (i) as an insider, by virtue of its representation on the board of directors of a listed issuer in its investment portfolio ("Portfolio Company") and (ii) pursuant to confidentiality provisions in a loan agreement between Ares and the Portfolio Company.

2. In 2016, Ares invested several hundred million dollars in client funds in the Portfolio Company in the form of debt and equity. Confidentiality provisions in the loan agreement remained in effect between Ares and the Portfolio Company on a going forward basis. Moreover, the equity investment allowed Ares to appoint two directors to the Portfolio Company's board.

3. As one of its two representatives on the board, Ares appointed a senior member of the Ares "deal team" involved in the debt and equity investment ("Ares Representative"). From time to time following Ares' investment, the Ares Representative, along with other members of the deal team, received information from the Portfolio Company that posed a risk that it could be MNPI. This information was sometimes then shared more widely within Ares, as contemplated by the aforementioned confidentiality provisions. The information concerned, among other things, potential changes in senior management, adjustments to the Portfolio Company's hedging strategy, efforts to sell an interest in an asset, the Portfolio Company's desire to sell equity and use proceeds to retire certain debt, and the Portfolio Company's election, as allowed under the terms of the loan agreement, to pay interest "in kind" and not in cash.

4. While the Ares Representative sat on the Portfolio Company's board, Ares began to purchase the Portfolio Company's publicly-traded stock. An Ares investment committee had approved the purchases, as well as a recommended purchase limit price and then several subsequent increases in the recommended limit price. During 2016, Ares purchased more than 1 million shares of the Portfolio Company's stock on the public market. The stock purchase orders had been approved by Ares' compliance department and occurred during open "trading windows" at the Portfolio Company.

5. Ares maintained certain written policies and procedures relating to the treatment of MNPI. The procedures set forth, among other things, circumstances under which securities should be subject to trading restrictions and tracked on a "restricted list." Where Ares had an employee-representative sitting on the board-of-directors of a publicly-listed company in its investment portfolio, Ares' written procedures required that that company's stock be placed on Ares' restricted list and that any trades in the stock be preapproved by Ares' compliance staff. In

such circumstances, Ares' compliance staff were required to confirm with the subject company that any restrictive trading window applicable to directors was open, and to "check with Ares director for MNPI." Ares' written procedures also provided for the discretionary establishment of information walls, irrespective of whether a company's stock was on the restricted list. However, Ares did not routinely establish information walls with respect to publicly-listed companies in its investment portfolio on whose boards it had an employee-representative, and it did not do so here.

6. Notwithstanding that Ares placed the Portfolio Company's stock on its restricted list, Ares did not sufficiently take into account the special circumstances presented by the Ares Representative's dual role as both a member of the Portfolio Company's board and an Ares employee who continued to participate in Ares' trading decisions concerning the company. Although Ares' compliance staff confirmed with the Portfolio Company that the relevant trading windows were open, Ares' policies and procedures did not provide specific requirements for compliance staff concerning the identification of relevant parties with whom to inquire regarding possession of potential MNPI and the manner and degree to which the staff should explore MNPI issues with these parties. Moreover, Ares' compliance staff failed, in numerous instances, to document sufficiently that they had inquired with the Ares Representative and the members of the deal team as to whether any of them had received potential MNPI from the Portfolio Company, or to apply a consistent practice to the inquiries made, resulting in ambiguity whether, or if, inquiries were made in certain instances.

Respondent

7. Ares is a Delaware limited liability company headquartered in Los Angeles, California. Ares is a subsidiary of Ares Management Corporation, a Delaware corporation whose Class A common stock shares are traded on the New York Stock Exchange. Ares is a global alternative asset manager whose clients consist of various pooled investment vehicles, including public and private investment funds, as well as separately managed accounts and institutional clients. Ares manages assets across credit, private equity, and real estate groups. Ares has been registered with the Commission as an investment adviser since 2005 and, as of December 31, 2019, had total assets under management in excess of $149 billion.

Other Relevant Entity

8. Portfolio Company was a U.S. corporation whose common stock was publicly traded on a national stock exchange.

Background

Ares' Compliance Policies and Procedures Related to MNPI

9. During the relevant time period, Ares had certain written policies and procedures in place relevant to the treatment of MNPI, including portions of the Ares Global Ethics and Compliance Manual ("Ethics Manual") as well as the Ares Compliance Department Confidential Information and Trading Procedures ("Trading Procedures").

10. Ares' Ethics Manual defined "material" information as, generally, information "that a reasonable investor would consider… important in deciding whether to buy or sell the securities in question" or that, "if disclosed, could be viewed by a reasonable investor as having significantly altered the 'total mix' of information available." It also provided common examples of potential MNPI, including "changes in previously disclosed financial information," "proposed issuances of new securities," "significant changes in management or operations," and "purchase or sale of substantial assets." The Ethics Manual further stated that information is "non-public" until made available through, *e.g.*, SEC filings or press releases, and investors have had time to react.

11. Ares' Trading Procedures provided, among other things, for the establishment of a restricted list for potential trading in securities that the firm had determined should be tracked and subject to trading restrictions firmwide. Under the Trading Procedures, any company for which an Ares-managed fund had a control position or personnel serving as a member of the company's board of directors was placed on Ares' restricted list.

12. Any potential trades in securities on the restricted list were subject to a "hard stop," which required that the trade first be reviewed and approved by compliance staff. Ares' procedures required its compliance staff to provide "a reason for the approval in the 'Compliance Comment' dialog box" of Ares' electronic order management system. Before making such a determination, compliance staff were instructed to "follow up with the relevant parties to gather additional information" and also to consider relevant factors, including but not limited to possession of MNPI by Ares, whether or not an information wall was in place, and the circumstances of any pertinent confidentiality agreement. If Ares had a board seat on a publicly-listed portfolio company, compliance staff were further required to confirm with the portfolio company that its trading window was open and to "check with Ares director for MNPI."

13. However, the specific manner in which these policies were to be implemented was left to the discretion of Ares' compliance staff. The identification of relevant parties, the manner in which compliance staff followed up with them regarding possession of potential MNPI, and the thoroughness with which MNPI issues were explored with the relevant parties were all largely subject to compliance staff's initiative, discretion, and interpretation. For example, Ares' procedures directed compliance staff to check with the Ares director for potential MNPI but did not expressly require an assessment of whether the director shared information with others or confirmation of the full spectrum of Ares employees who could have acquired the potential MNPI.

During the relevant time period, the Ares Representative regularly shared information he learned while serving as a Portfolio Company director with members of the deal team, as contemplated by the confidentiality provisions in place between Ares and the Portfolio Company. However, while Ares' compliance staff inquired with the Ares Representative, the Ares' policies and procedures did not address this situation. Moreover, Ares failed to enhance its policies and procedures despite being aware that the Portfolio Company regularly treated Ares deal team members as generally bound by the same confidentiality obligations as the Ares Representative.

14. As a result, Ares' compliance staff failed to document properly whether they had assessed the extent to which Ares deal team members had any information that had the risk of being MNPI. Moreover, to the extent that compliance staff merely asked the Ares Representative or deal team members if they had potential MNPI, this called for these employees to self-evaluate whether particular information could be "material" within the context of Ares' policies and for purposes of the federal securities laws.

15. Additionally, where Ares had employee-representatives on boards of publicly-listed companies in its investment portfolio, it failed to properly assess the special circumstances presented by the Ares director's dual role as a director of the portfolio company and as an Ares employee, particularly where the Ares director remained involved in Ares' trading decisions regarding the portfolio company's stock. Ares' policies did not specifically address this issue, and the issue was less familiar to Ares personnel because the firm had not commonly held director seats on the boards of publicly-listed companies.

Ares' Access to Potential MNPI

16. The Portfolio Company's Insider Trading Policy provided that the Portfolio Company's trading window would typically be closed from the sixteenth day of each quarter/year until three full trading days after the filing of its financial results for that quarter. The policy also stated that even during an open window period any person aware of MNPI concerning the Portfolio Company should not trade in its securities until the information has been public for at least three trading days. Each quarter during the relevant time period herein, the Portfolio Company's CEO opened the trading window on a companywide basis, by circulating a memorandum addressed to all employees and directors.

17. In 2016, Ares invested several hundred million dollars in the Portfolio Company in the form of debt and equity. Ares' investment gave it the right to appoint two of the Portfolio Company's directors. Pursuant to the loan agreement between Ares and the Portfolio Company, confidentiality provisions remained in effect between Ares and the Portfolio Company on a going forward basis.

18. Ares appointed the Ares Representative, who was a senior member of the deal team for Ares' Portfolio Company investment, to the Portfolio Company's board. On multiple occasions during 2016, the Ares Representative, and/or members of the Portfolio Company deal team at Ares who worked under him, received information from the company, by virtue of the

Ares Representative's status as an incoming and, later, sitting director, that was at risk of being MNPI. In at least one instance, Ares also received loan-related potential MNPI pursuant to the confidentiality provisions of its loan agreement with the Portfolio Company. Summarized, the potential MNPI at issue included information related to the Portfolio Company's: (i) potential changes to senior management; (ii) mid-quarter hedging adjustments; (iii) efforts to sell its passive interest in a specific asset; (iv) interest in selling equity and using the proceeds to retire certain debt that had been a source of market concern; and (v) decision to pay quarterly loan interest to Ares "in kind" versus in cash. All of this information was nonpublic and was later disclosed by the Portfolio Company, to varying extents, in Commission filings and/or press releases during 2016.

19. During this same time period, Ares made a series of "follow-on" purchases of the Portfolio Company's publicly-traded common stock. The general parameters of the purchases were submitted as a recommendation, by the Portfolio Company deal team, for approval by an Ares investment committee. The investment committee approved the plan at the beginning of the period, including a recommended purchase limit price for shares of the Portfolio Company's common stock. The committee then approved several subsequent increases in the deal team's recommended limit price over the course of the time period at issue.

20. In all, Ares purchased over 1 million shares of the Portfolio Company's common stock on the public market during the relevant period – making up approximately 17% of available or "public float" shares. All of these purchases occurred during open trading windows at the Portfolio Company, as confirmed with the Portfolio Company by Ares' compliance personnel.

Ares' Failure to Implement and Enforce Its Compliance Policies and Procedures

21. Although Ares placed the Portfolio Company on the firm's restricted list, Ares' compliance staff failed to comply with policies and procedures designed to prevent misuse of information arising from circumstances where Ares personnel obtained board seats for a public company. In numerous instances, Ares failed to comply with its written procedures regarding trades in restricted list securities by failing to provide entries in the order management system sufficiently documenting whether, prior to approving potential trades, compliance staff had inquired with the Ares Representative and members of the Portfolio Company deal team as to whether any one or more of them had received potential MNPI:

- from the Portfolio Company, or any other source, of the type defined as MNPI, or provided as an example thereof, in Ares' Ethics Manual, summarized in Paragraph 10 above;

- from the Portfolio Company pursuant to the aforementioned confidentiality provisions between Ares and the Portfolio Company; and/or

- from the Portfolio Company by virtue of the Ares Representative's position as a director on the Portfolio Company's board.

Ares' compliance staff did, however, confirm with the Portfolio Company that the relevant trading windows were open.

22. Ares' compliance staff's order management system entries, to the extent that such entries were made, lacked consistency and detail. Ares' policies and procedures, as applied, did not require compliance staff to inquire sufficiently into whether the Ares Representative and members of the deal team were in possession of potential MNPI relating to the Portfolio Company. In some instances, there was insufficient documentation that Ares' compliance staff inquired at all. As a result, Ares did not properly assess the heightened risks presented by trading in the public markets in the securities of the Portfolio Company, whose shareholders were owed fiduciary duties by the Ares Representative in his role as a director of the Portfolio Company.

23. Accordingly, with respect to the Portfolio Company and the heightened risks presented by the Ares Representative's dual role as a director of the Portfolio Company and as an Ares employee who participated in Ares' trading decisions concerning the Portfolio Company's publicly-traded stock, Ares failed to properly implement and enforce its policies and procedures relating to the treatment of MNPI, taking into consideration that it regularly received potential MNPI both by virtue of having confidentiality provisions in place with the Portfolio Company and by virtue of the Ares Representative's seat on the board.

24. In 2019, after the Commission's investigation had begun, Ares voluntarily retained an outside consultant to review and evaluate the design and implementation of its compliance policies and procedures with respect to the acquisition and treatment of potential MNPI obtained in the context of public portfolio companies. In addition, Ares has expanded the size and authority of its compliance teams, expanded and standardized compliance procedures for determining whether the firm has access to MNPI, and has enhanced training programs on MNPI issues, including enhancements specifically concerning situations where Ares employees serve as directors of publicly-traded companies. Moreover, the Commission has considered the cooperation Ares afforded the Commission staff.

Violations

25. As a result of the conduct described above, Respondent willfully violated Section 204A of the Advisers Act. Section 204A requires investment advisers subject to Section 204 of the Advisers Act to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such investment adviser's business, to prevent the misuse of material, nonpublic information by such investment adviser or any person associated with such investment adviser in violation of the Advisers Act or the Exchange Act or the rules or regulations thereunder.[1]

[1] There is no requirement under Section 204A that an underlying violation be found to establish the basis for a violation predicated on Ares' policies and procedures. "Willfully," for purposes

26. As a result of the conduct above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

27. Taking into consideration that Respondent predictably received potential MNPI by virtue of having confidentiality provisions in place with portfolio company issuers and appointing employees to the boards of directors of such issuers, including the Portfolio Company, Respondent did not sufficiently implement and enforce its written policies and procedures for preventing the misuse of MNPI, in violation of the Advisers Act, the Exchange Act, and the rules and regulations under each Act.

IV.

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

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

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 204A and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $1,000,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

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of imposing relief under Section 203(e) 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[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent 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 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 Ares as a Respondent 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 Jeffrey P. Weiss, Assistant Director, Enforcement Division, Securities and Exchange Commission, 100 F St., N.E, Washington, DC 20549.

D. 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, Ares agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it 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 Respondent 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.

By the Commission.

Vanessa A. Countryman
Secretary