

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10941 / May 5, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20280 / May 5, 2021

In the Matter of

Maxwell Dre ver,

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND
A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), against Maxwell Dre ver (“Dre ver” 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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, 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 concern Maxwell Drever's failure to disclose his receipt of millions of dollars in fees charged to investors in connection with the purchase and redevelopment of a real estate investment project in Dallas, Texas. Between April 2016 and January 2017, Drever raised approximately \$53 million from investors who purchased LLC membership interests from Lightning Elm MPN LLC ("Lightning Elm"), a fund that raised money from investors to purchase and redevelop a commercial building located at 1401 Elm St. in Dallas, Texas. Although the total amount of fees and costs of the project was disclosed to Lightning Elm investors, Drever did not disclose at the time that he transferred more than \$10,000,000 to himself. He reinvested most of the money he received back in the project, but he also used the money to take an equity stake in exchange and misrepresented this reinvestment as an investment from separate personal funds in the 1401 Elm St. redevelopment project to certain Lightning Elm investors. By virtue of this conduct, Drever violated Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933.

Respondent

2. Maxwell, age 80, resides in Belvedere Tiburon, CA. He is the Chairman and owner of Drever Capital Management LLC ("DCM"), which at all relevant times provided investment management services in relation to the 1401 Elm St. redevelopment project. At all relevant times, Drever served as the manager of Lightning Elm and, according to Lightning Elm's offering documents, was entitled to receive \$1,000 a month for those services. Drever is not registered with the Commission in any capacity.

Other Relevant Entities

3. DCM is a Delaware limited liability company headquartered in Belvedere Tiburon, CA. DCM is 100% owned by Drever. Among other things, DCM provided investment management services related to the 1401 Elm St. redevelopment project. DCM is not registered with the Commission in any capacity.

4. Drever 1401 Elm LLC ("Drever 1401 Elm") is a Delaware limited liability company headquartered in Belvedere Tiburon, CA. It owned title to the 1401 Elm St. building between April 2016 and May 2019. Drever 1401 Elm is not registered with the Commission in any capacity.

5. Lightning Elm was a Delaware limited liability company headquartered in Belvedere Tiburon, CA. Lightning Elm's funds were used to purchase and redevelop the building at 1401 Elm St. Lightning Elm was not registered with the Commission in any capacity.

Background

6. In January 2016, Drever, on behalf of DCM, entered into an agreement to purchase the vacant office building located at 1401 Elm St., Dallas, Texas out of bankruptcy for approximately \$65 million. Drever planned to redevelop the building into a mixed-used property

with residential units and retail space. Drever purchased the building in April 2016 with an acquisition bridge loan and funds raised from Lightning Elm investors. According to the 2016 Private Placement Memorandum (“PPM”) reviewed and approved by Drever and provided to investors prior to their investment, funds raised through Lightning Elm would be used to acquire the building and complete pre-construction activities. Drever intended to continue raising money from investors until he secured a conventional construction loan, which he told investors he expected to happen within a year.

7. Between April 2016 and January 2017, Drever raised approximately \$53 million from 38 investors who purchased LLC membership interests in Lightning Elm.

8. According to the PPM, Drever was entitled to a fee of \$1,000 per month for his services as manager of Lightning Elm, which included providing reports to investors and managing the internal operations of the entity. The PPM did not disclose that Drever would use Lightning Elm investor funds to pay other fees to Drever or to another entity affiliated with Drever in connection with the purchase or redevelopment of the building.

Drever’s Use of Lightning Elm Investor Funds

9. Between May and August 2016, Drever caused a total of \$1.16 million from Lightning Elm investor funds to be transferred to another entity he owned. The payments were purportedly made in connection with a consulting fee agreement between the entity and Drever 1401 Elm. Drever signed the consulting fee agreement on behalf of both parties and did not disclose the fees to Lightning Elm investors.

10. Drever also told certain Lightning Elm investors prior to their investment that he was personally investing at least \$9 million in the 1401 Elm St. redevelopment project. Investors considered this information to be important when making their decision to invest because it showed investors that Drever had “skin in the game” by investing his own personal money in the 1401 Elm St. redevelopment project. However, Drever had not invested money from personal sources in the 1401 Elm St. redevelopment project.

11. In November 2016, Drever received payments totaling \$9 million from Lightning Elm investor funds. As Drever knew, these payments were characterized as a “proprietary equity credit fee” in Drever 1401 Elm’s financial statements and paid in connection with a purported proprietary equity credit fee agreement between Drever 1401 Elm and another entity owned and controlled by Drever. Drever signed the proprietary equity credit fee agreement on behalf of both parties. Within days of receipt, Drever reinvested the \$9 million into the 1401 Elm St. redevelopment. Drever did not disclose the proprietary equity credit fee to Lightning Elm investors prior to their investment; nor did he tell them that the \$9 million he invested in November 2016 to show his “skin in the game” came from the undisclosed proprietary equity credit fee.

12. Between November 2016 and February 2017, Drever caused an additional \$54,246 in Lightning Elm investor funds to be transferred to DCM, which was 100% owned by Drever.

Drever did not disclose to Lightning Elm investors that Lightning Elm funds were used to pay purported fees to DCM.

13. Drever sold membership interests to investors during the period that Drever used Lightning Elm investor funds to pay fees to himself and his affiliated entities, including the \$9 million that Drever invested in the redevelopment of 1401 Elm St. in November 2016. As a result, the statements in the 2016 PPM about how much compensation Drever and DCM would receive, as well as Drever's separate statements to certain Lightning Elm investors that he was personally investing at least \$9 million from separate personal sources in the 1401 Elm St. redevelopment project, were false or misleading. Information about these amounts was subsequently disclosed in a February 2018 Joint Proxy Statement and Private Placement Memorandum provided to Lightning Elm investors.

Current Status of the Lightning Elm Investment

14. In May 2019, Drever secured construction financing in a deal that included a third-party real estate developer receiving a preferred equity stake in the redevelopment project and replacing Drever as the developer. The financing deal did not provide sufficient funds to pay all of the money owed to Lightning Elm investors. For these investors to receive the rest of the money owed to them, the building must first generate sufficient profit to pay off lenders and the new developer's preferred equity stake. Following the May 2019 transaction, Drever controls an equity stake in the redevelopment project that is based on the undisclosed \$9 million fee that he reinvested in November 2016. This equity stake is subordinated to the return of equity and preferred returns of the Lightning Elm investors.

Violations

15. As a result of the conduct described above, Drever violated Section 17(a)(2) of the Securities Act, which makes it unlawful for any person in the offer or sale of any securities to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

16. Also as a result of the conduct described above, Drever violated Section 17(a)(3) of the Securities Act, which makes it unlawful for any person in the offer or sale of any securities to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser.

Disgorgement and Civil Penalties

17. The disgorgement and prejudgment interest referenced in Section IV paragraph C is consistent with equitable principles, does not exceed Respondent's net profits from his violations, and is awarded for the benefit of and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to Section IV paragraph C in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by

the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Undertakings

Respondent has undertaken to the following:

18. Within 14 days of the entry of the Order, Respondent shall take all necessary actions to effectuate the cancellation of Class B LLC membership interests Respondent acquired as a result of reinvesting the undisclosed \$9 million proprietary equity credit fee. Respondent, upon cancelling these interests, shall stipulate that he, and any future holder of the Class B LLC membership interests, is irrevocably relinquishing any and all rights related thereto, including the receipt of any and all future payments and distributions. Respondent further agrees to provide written confirmation of the cancellation and relinquishment to the staff of the Commission within 14 days of entry of the Order.

19. Within 14 days of the entry of the Order, publish a copy of the Order on DCM's website in a form not unacceptable to Commission staff.

In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) and Section 17(a)(3) of the Securities Act.

B. Drever shall comply with the undertaking enumerated in paragraph 19 above.

C. Respondent shall pay disgorgement of \$1,214,246, prejudgment interest of \$282,979.17, and a civil money penalty in the amount of \$75,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: (1) \$100,000 within 10 days of the entry of the Order; (2) \$245,370.86 within 180 days of the entry of the Order; (3) \$245,370.86 within 365 days of the entry of the Order; (4) \$245,370.86 within 545 days of the entry of the Order; (5) \$245,370.86 within 730 days of the entry of the Order; (6) \$245,370.86 within 910 days of the entry of the Order; and (7) \$245,370.86 within 1,095 days of the entry of the Order. Payments shall be applied first to post order interest, which accrues pursuant to SEC Rule

of Practice 600 and pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

Payment must be made in one of the following ways:

- (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 Maxwell Drever 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 Monique C. Winkler, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, San Francisco Regional Office, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest, and penalties referenced in paragraph C above. Amounts ordered to be paid as civil money penalties pursuant to the 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, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he 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 he 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.

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, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent 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 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