

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10952 / June 29, 2021

SECURITIES EXCHANGE ACT OF 1934
Release No. 92286 / June 29, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20376

In the Matter of

HOWARD DAVNER,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING 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”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Howard Davner (“Davner” 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 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise from Davner's role as the CEO of the General Partner of a Private Fund from March 2016 to January 2018 (the "Relevant Period"). During the Relevant Period, Davner solicited and sold investments in Private Fund and its offshore feeder fund through materially false and misleading statements, raising over \$11 million from 12 investors.

2. The misconduct stems from three categories of false and misleading disclosures made to investors and prospective investors regarding (1) the management team of General Partner, (2) General Partner's and its parent company's abilities to monitor Private Fund's investments in real time, and (3) the selection and due diligence of Private Fund's investments.

3. As a result of the conduct described herein, Davner violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Respondent

4. **Davner**, 51 years old, resides in West Orange, New Jersey. Davner served as General Partner's CEO from March 2016 to January 2018. Davner received approximately \$200,000 per year in compensation during his tenure as CEO of General Partner. Davner previously held series 7 and 63 licenses and worked as a specialist on the floor of the New York Stock Exchange. Davner no longer holds any securities licenses.

Other Relevant Entities and Individuals

5. **General Partner** is a Delaware limited liability company with its principal place of business in Princeton, New Jersey. During the Relevant Period, General Partner was the general partner of Private Fund, the investment manager of Private Fund's feeder fund, and was not registered with the Commission as an investment adviser. The majority owner of General Partner is a consumer credit reporting company that specializes in subprime consumer data ("Parent Company"). On March 9, 2018, General Partner filed a voluntary petition for Chapter 11 bankruptcy protection, and a trustee was appointed in November 2018. A Chapter 11 Plan was confirmed on March 31, 2020, pursuant to which General Partner returned under the control of Parent Company, and an advisory committee composed of investors was formed to assist in the liquidation of Private Fund's assets. The bankruptcy case was closed on May 11, 2021.

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

6. **Private Fund** is a Delaware limited partnership with its principal place of business in Princeton, New Jersey. General Partner was the general partner of Private Fund. Private Fund had 10 limited partners, including the offshore feeder fund. Private Fund raised at least \$73 million from 14 investors, including shareholders of the offshore feeder fund, approximately \$11 million of which was raised during Davner's tenure as CEO of General Partner. Private Fund filed a voluntary petition for Chapter 11 bankruptcy protection on March 9, 2018, and a trustee was appointed in November 2018. A Chapter 11 plan was confirmed on March 31, 2020, and the case was closed on August 24, 2020.

7. **Parent Company** is a Delaware corporation with its principal place of business in Princeton, New Jersey. During the Relevant Period, Parent Company's largest shareholder was Individual 1, who owned or controlled approximately 48% of its shares.

8. **Individual 1** owns or controls approximately 48% of the shares of Parent Company and previously served as its CEO until he stepped down during a criminal investigation into him. In October 2008, Individual 1 pleaded guilty to charges of income tax evasion and failure to pay payroll taxes to the IRS and was sentenced to eight months in prison and two months of home confinement. During the Relevant Period, Individual 1 exerted significant control over General Partner and its management of Private Fund.

Background

9. Parent Company is a consumer credit reporting company specializing in subprime consumer data. It sells a variety of products meant to mitigate risk for companies that provide high-risk loans or leases to subprime consumers. Starting in 2013, prior to Davner's tenure as CEO of General Partner, Parent Company's customers had difficulty getting access to capital. This diminished access to capital resulted in a reduced demand for Parent Company's products and services. Individual 1 came up with the idea that Parent Company start a private fund to provide that capital to Parent Company's customers. Individual 1 proposed that the private fund issue lines of credit to consumer finance companies at annual interest rates of approximately 20-24% (with the consumer finance companies then lending out the funds to subprime consumers at interest rates ranging from 69% to 700%). Those consumer finance companies would be required to use Parent Company's data products in underwriting the loans and to allow the private fund to monitor its investments.

10. In 2014, Parent Company formed General Partner to serve as the general partner and manager of Private Fund. Individual 1 fired the first management team of General Partner in January 2016 and, in March 2016, selected the next management team, including Davner as the CEO of General Partner. Although Davner was previously a specialist on the floor of the New York Stock Exchange, he had no experience with short-term, sub-prime consumer lending. As a result, Davner and the new management team heavily relied on Individual 1 and Parent Company's experience and expertise.

11. While soliciting prospective investors for investments in Private Fund, Davner made numerous false and misleading disclosures regarding the management team of General

Partner, General Partner's and Parent Company's abilities to monitor Private Fund's investment in real time, and the selection and due diligence of Private Fund's investments.

Davner's Misrepresentations Concerning the Management of General Partner

12. During the Relevant Period, Davner misrepresented who managed General Partner to investors and prospective investors through numerous false statements in oral conversations and in documents including marketing materials, monthly tear sheets, and private placement memoranda (the "Relevant Documents"). In sections describing the management and advisory team, the Relevant Documents represented the nominal management team as the entire management team, including Davner, as well as others who played a role in General Partner and Private Fund's operation. The Relevant Documents listed the CEO of Parent Company and two Parent Company employees who had minimal or clerical roles with General Partner. The Relevant Documents contained no mention of Individual 1, even though Individual 1's involvement with General Partner or Private Fund was significant. Davner relied upon Individual 1's expertise in the subprime consumer lending industry. Davner also knew of Individual 1's influence over the operations of General Partner, the role Individual 1 played in hiring and firing the nominal managers (twice firing CEOs of General Partner, including Davner), and how Individual 1 helped to evaluate and select Private Fund's credit lines and negotiated terms of those credit lines. Davner reviewed and approved the statements contained in the Relevant Documents. At all times, Davner knew of Individual 1's prior criminal history and conviction for income tax evasion and failure to pay payroll taxes. Despite knowing Individual 1's significant involvement in General Partner and his criminal history, Davner did not include Individual 1's name in the Relevant Documents or tell prospective investors about Individual 1's involvement when asked about the key individuals involved in managing General Partner and Private Fund.

Davner's Misrepresentations Concerning Real-Time Monitoring Capabilities

13. One of the benefits Davner touted to Private Fund investors and prospective investors compared with other, similar investment opportunities was General Partner's exclusive and strategic partnership with Parent Company. During the Relevant Period, Davner misrepresented the capabilities of Parent Company and General Partner to monitor Private Fund's investments in real time. For instance, in an August 2016 telephone during call with a future investor, Davner stated that Parent Company allowed General Partner to monitor the portfolio in near real time. In a September 2016 telephone call with that same investor, Davner represented that General Partner had access to the consumer finance companies' loan management systems and could look at the underlying portfolios on a daily basis.

14. Contrary to what was represented to current and prospective investors, Davner knew that General Partner and Parent Company did not have consistent, real-time access to the consumer finance companies' loan management systems, and often relied only on monthly reporting received directly from the consumer finance companies. For instance, General Partner and Parent Company did not have access to Private Fund's largest credit line's loan management system for several months in the latter half of 2016, and the live feed for another credit line worked only once. Davner never disclosed to investors that the real-time monitoring system he described

was not working properly for approximately half of the assets General Partner managed. As a result of this lack of real-time monitoring, General Partner and Parent Company missed potential fraud by the largest credit line that resulted in substantial losses to Private Fund and its investors.

Davner's Misrepresentations Concerning General Partner's Due Diligence Process and the Selection of Credit Lines

15. During the Relevant Period, Davner misrepresented the process used to select potential credit lines for Private Fund. Davner edited and disseminated an investor presentation for General Partner to investors and potential investors that he knew falsely described the selection process to include “[w]orld-class analytics and unmatched lender due-diligence” and “[h]istorical rankings of best operators in the alternative lending sector.” On a telephone call with a future investor in September 2016, Davner stated that Parent Company had 4,000 lenders, Parent Company picked about 450 to be the top operators in the space, and Parent Company referred lenders to General Partner who conducted due diligence on those referrals. In support of this presentation, during an in-person meeting with a future investor led by Davner and another employee of General Partner, General Partner represented that its largest credit line was one of its best operators.

16. These statements were false or misleading. During the Relevant Period, Davner knew that there was no ranking of best operators in the alternative lending sector used by General Partner. As CEO of General Partner, Davner participated in evaluating and selecting Private Fund's credit lines and did not use any ranking as part of this process. In October 2016, when Private Fund's largest credit line was described to at least one investor as one of the fund's “best,” Davner had no basis to believe this was true. Contrary to this representation, at the time this statement was made, General Partner and Parent Company did not have access to the largest credit line's loan management system and could not see the performance of the underlying loans. Additionally, the credit line's principal payments dropped significantly starting in August 2016.

Violations

17. As a result of the conduct described above, Davner violated Section 17(a)(1) and (3) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Davner cease and desist from committing or causing any violations and any future

violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent shall pay civil penalties of \$60,000.00 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). Payment shall be made in the following installments: \$20,000 within 10 days of the date of this Order, \$10,000 within 90 days of the date of this Order, \$10,000 within 180 days of the date of this Order, \$10,000 within 270 days of the date of this Order, and the remainder within 360 days of the date of this Order. Payments shall be applied first to post order interest, which accrues 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 Howard Davner 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 Adam Aderton, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

C. 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, 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