

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10973 / August 31, 2021

SECURITIES EXCHANGE ACT OF 1934
Release No. 92826 / August 31, 2021

INVESTMENT ADVISERS ACT OF 1940
Release No. 5842 / August 31, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20508

In the Matter of

**MCDONALD PARTNERS,
LLC**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTION
15(b)(4) OF THE SECURITIES EXCHANGE
ACT OF 1934, AND 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 Section 8A of the Securities Act of 1933 (“Securities Act”), Section 15(b)(4) of the Securities Exchange Act of 1934 (“Exchange Act”), and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against McDonald Partners, LLC (“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 Section 8A of the Securities Act of 1933, Section 15(b)(4) of the Securities Exchange Act of 1934, and 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 finds¹ that:

Summary

1. These proceedings arise out of Respondent’s role as placement agent for private securities offerings conducted by two pooled investment vehicles that Respondent advised (the “PIVs”). Those PIVs offered and sold securities to raise bridge funding for the construction of a resort in Montenegro. Investor monies raised through these offerings were to be used to purchase debt in a Montenegrin entity that was to construct the resort. Between September 2013 and continuing through January 2017, Respondent offered and sold more than \$14 million in securities issued by the PIVs to investors located in the United States, including both its brokerage customers and its advisory clients. In October 2016, Respondent became aware of allegations that its point-person at the Montenegrin entity had misappropriated \$488,331 of investor funds² by misusing a debit card belonging to that entity to pay for certain personal expenses. According to Respondent, after being confronted with the allegations that this individual had misappropriated funds from the Montenegrin entity, he conceded that he was not entitled to certain of the funds alleged to have been misappropriated. Accordingly, after negotiation, the individual agreed to repay approximately \$335,000 that he had allocated to personal expenses.

2. Respondent did not disclose the misappropriation to existing investors in October 2016. Respondent then raised approximately \$1.5 million in additional funds from existing security holders and new investors, including brokerage customers and advisory clients, in early 2017 without disclosing the misappropriation to those investors. In addition, for the period December 31, 2014 through December 31, 2018, Respondent failed either to provide investors in the PIVs with audited financial statements or to retain an independent public accountant to conduct surprise examinations of the books of those entities. By this conduct, Respondent violated Sections 17(a)(2) and (3) of the Securities Act and Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-8 thereunder.

Respondent

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.

² Upon obtaining certain bank records in 2019, Respondent learned that its point-person at the Montenegrin entity had in fact misappropriated substantially more than the amount he was alleged to have misappropriated.

3. Respondent is a registered broker-dealer and investment adviser headquartered in Cleveland, Ohio. In addition to providing investment advisory and brokerage services to institutional and individual clients, Respondent served as the investment adviser to the PIVs through a wholly owned subsidiary.

Other Relevant Entities

4. PIV1 is an Ohio limited liability company organized on May 15, 2013. Respondent's wholly-owned subsidiary is the managing member of PIV1.

5. PIV2 is an Ohio limited liability company organized on January 7, 2016. Respondent's wholly-owned subsidiary is the managing member of ERM Resort.

6. Respondent's wholly-owned subsidiary (the "Manager") is a single-member Ohio limited liability company organized on May 15, 2013. Manager is wholly owned and controlled by Respondent, which is its sole member.

Background

7. From September 2013 through January 2017, Respondent served as placement agent for unregistered private offerings conducted by the PIVs. In that capacity, Respondent offered and sold approximately \$14 million in securities issued by the PIVs to investors, including certain of its advisory clients and certain of its brokerage customers. The securities took the form of membership interests in both of the PIVs as well as debt issued by both of the PIVs.

8. Pursuant to its agreements with the PIVs as placement agent, Respondent earned a 5% commission on the sale of securities issued by those entities, including on purchases of those securities made by Respondent's advisory clients.

9. Respondent told investors and potential investors that the PIVs would use investor funds to purchase debt from the Montenegrin entity. The Montenegrin entity was to use investor funds as bridge financing – to purchase land in Montenegro on which it would construct a five-star resort and to provide operating capital for additional fundraising activities to finance the construction of the resort on that land. Private placement memoranda ("PPM") issued by the PIVs explained the resort project in greater detail.

10. PIV1's PPM states that investor proceeds would be used to purchase debt from the Montenegrin entity as well as a minority equity interest in the Montenegrin entity and a seat on its board of directors. The Montenegrin entity was to use investor proceeds as bridge financing – both to fund land purchases and to provide operating capital. PIV1's debt in The Montenegrin entity is secured by mortgages on the real property purchased by the Montenegrin entity for construction of the resort.

11. Investors in PIV2 were told that the proceeds of their investments would be used to purchase a bridge loan from the Montenegrin entity that was to earn interest at 10% per annum.

Investors were to be repaid with interest upon completion of a second round of fundraising to be conducted by a separate fundraiser. PIV2's debt in the Montenegrin entity was to be secured by a mortgage – second in priority to PIV1 – on the real property purchased by the Montenegrin entity for construction of the resort.

12. The PIVs did, in fact, provide investor funds to the Montenegrin entity for the purpose of purchasing property for, and constructing, the resort.

13. In October 2016, Respondent became aware of allegations that the Montenegrin entity's executive director, 50% shareholder, and Respondent's primary point of contact at the Montenegrin entity, had misappropriated \$488,331 of investor funds from the Montenegrin entity by misusing a debit card that belonged to the Montenegrin entity to pay for certain personal expenses. According to Respondent, after being confronted with the allegations that he had misappropriated funds from the Montenegrin entity, the executive director conceded that he was not entitled to certain of the funds alleged to have been misappropriated. Accordingly, after negotiation, he agreed to repay approximately \$335,000 that he had used for personal expenses.

14. Respondent did not advise investors in the PIVs, including those investors who were advisory clients, about the executive director's misappropriation upon becoming aware of it.

15. In January 2017, Respondent offered and sold additional securities issued by PIV2 to investors without disclosing the executive director's misappropriation to those investors. Respondent earned commissions of \$37,031.25 on the sale of the securities issued to investors after it became aware of the executive director's misappropriation of funds from the Montenegrin entity.

16. Between early and mid-2017, the working relationship between Respondent and the executive director deteriorated. By mid-2017, communications between the executive director and Respondent had broken down completely over a series of disagreements, including the executive director's failure to repay the misappropriated funds as he had agreed to do.

17. In February 2019, working with counsel in Montenegro, Respondent initiated multiple legal proceedings in Montenegro aimed, among other things, at removing the executive director from operational involvement in the Montenegrin entity and the resort project.

18. Respondent did not advise investors about the executive director's misappropriation of funds from the Montenegrin entity until after Commission staff initiated its investigation into this matter.

19. As a result of the conduct described above, Respondent willfully³ violated: (1) Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit fraudulent conduct in the offer

³ "Willfully," for purposes of imposing relief under Sections 15(b)(4) of the Exchange Act and 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

or sale of securities; and (2) Sections 206(2) and 206(4) of the Advisers Act, and Rule 206(4)-8 thereunder, which prohibit fraudulent or deceptive conduct with respect to clients and investors.

20. At all times relevant to this Order, Respondent had custody of the PIVs' funds or securities. From 2014 to 2018, Respondent failed to: (1) obtain annual audits of the financial statements of the PIVs; or (2) obtain a surprise annual examination of the assets of the PIVs.

21. As a result, Respondent willfully violated Section 206(4) of the Advisers Act, and Rule 206(4)-2 thereunder, which require that an investment adviser either provide for annual audits of the assets of a pooled investment vehicle or have its funds and securities verified by an independent public accountant at least once a year without prior notice to the investment adviser.

22. The disgorgement and prejudgment interest ordered in paragraph IV.D is consistent with equitable principles, does not exceed Respondent's net profits from its violations, and returning the money to Respondent would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative. The disgorgement and prejudgment interest ordered in paragraph IV.D shall be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

Undertakings

Respondent has undertaken to:

- A. Cooperate fully with the Commission with respect to this administrative action and any judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party relating to the matters in this Order or other matters related to the business of or securities issued by PIV1, PIV2, or the Montenegrin entity. Respondent's cooperation shall include, but shall not be limited to:
 1. Production of Information: At the Commission's request on reasonable notice and without a subpoena, Respondent shall truthfully and completely disclose information and documents requested by Commission staff in connection with the Commission's related investigation, litigation, or other proceedings.

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).

2. Production of Cooperative Personnel: At the Commission's request on reasonable notice and without a subpoena, Respondent shall use reasonable efforts to secure the attendance and truthful statements or testimony of any current partner, officer, agent, or employee of Respondent, at any meeting, interview, testimony, deposition, trial, or other legal proceeding.
- B. Retain a Compliance Consultant, for an engagement of not less than two (2) years, to provide advice and direction with respect to the drafting and performance of policies and procedures to ensure compliance with Rule 206(4)-2 (the "Custody Rule");

Require the Compliance Consultant to provide quarterly reports on its efforts to the Commission;

Require the Compliance Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Compliance Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with McDonald Partners, LLC, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Compliance Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Compliance Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division of Enforcement, enter into any employment, consultant, attorney-client, auditing or other professional relationship with McDonald Partners, LLC, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement;

The reports by the Compliance Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law;

Certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Charles J. Kerstetter, Assistant Regional Director of the Division of Enforcement, with a copy to the Office of Chief Counsel of the Enforcement

Division, no later than sixty (60) days from the date of the completion of the undertakings.

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

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 Section 8A of the Securities Act, Section 15(b) of the Exchange Act, and 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 17(a)(2) and (3) of the Securities Act, Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-8 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall pay disgorgement of \$37,031.25, prejudgment interest of \$7,651.86 and civil penalties of \$150,000.00, 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: \$80,000.00 within ten (10) days of the date of this Order; \$60,000 on January 31, 2022, and a final payment of \$54,683.11 plus remaining interest owed on July 15, 2022. 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 McDonald Partners, LLC 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 Paul Montoya, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604.

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, Respondent 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.

E. Respondent shall comply with undertaking B set forth above under the heading "Undertakings."

By the Commission.

Vanessa A. Countryman
Secretary