

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 11036 / March 2, 2022

SECURITIES EXCHANGE ACT OF 1934

Release No. 94341 / March 2, 2022

INVESTMENT ADVISERS ACT OF 1940

Release No. 5971 / March 2, 2022

INVESTMENT COMPANY ACT OF 1940

Release No. 34520 / March 2, 2022

ADMINISTRATIVE PROCEEDING

File No. 3-20786

In the Matter of

MARK ALAN BOURGEOIS,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY 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) of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Mark Alan Bourgeois (“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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and 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) of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company 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

These proceedings arise out of an offering fraud against actual and potential investors in Abraaj Private Equity Fund VI ("APEF VI"), a private equity fund client of investment adviser Abraaj Investment Management Limited ("AIML"). In 2017 and 2018, Respondent took actions that misled investors and potential investors in APEF VI about the performance track record of AIML and the Abraaj Group ("Abraaj"). Respondent thereby aided and abetted and caused violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder and violated Section 17(a)(2) of the Securities Act.

Respondent

1. Mark Alan Bourgeois, 58 years old, is an American citizen residing in Nashville, Tennessee. Until he left in July 2018, Respondent was a managing partner of the Abraaj Group ("Abraaj"), a Dubai-based group of related entities including investment advisers to and general partners of a family of private funds. Respondent was responsible globally for fundraising and investor relations, CEO of Abraaj's U.S. subsidiary, and a member of Abraaj's Management Executive Committee. While fundraising at Abraaj, Respondent was registered as an associated person of a broker-dealer located in the United States, and also was an associated person of Abraaj Investment Management Limited ("AIML"), an exempt reporting investment adviser during the relevant period.

AIML's Offering Fraud

2. In 2017, Respondent began leading AIML's fundraising for a new \$6 billion global emerging markets private pooled investment vehicle, Abraaj Private Equity Fund VI ("APEF VI"). Respondent directed AIML's U.S. and global investor relations staff in soliciting investors, and by fall 2017, AIML had secured approximately \$3 billion in investor

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.

commitments. Respondent's bonus compensation was directly tied to success in raising funds for APEF VI, and Abraaj paid him a nearly \$2 million bonus in January 2018 for his efforts. Respondent continued to lead AIML's fundraising for APEF VI through late 2017 and the first quarter of 2018, with the goal of securing an additional \$3 billion in commitments.

3. In offering investments in APEF VI, potential investors were provided with an inflated performance track record for AIML's existing investments in prior funds. From 2017 through the beginning of 2018, AIML investment personnel responsible for valuations stated internally that certain write-downs were needed for a number of portfolio companies held by private equity funds managed by AIML. AIML did not make these write-downs, thus leaving its performance inflated.

4. While Respondent was not part of Abraaj's accounting function and was not ultimately responsible for whether the write-downs were applied, he was aware of these advised write-downs on at least two separate occasions. Nonetheless, Respondent recommended that AIML not apply the write-downs (or delay doing so) to avoid the negative impact on APEF VI fundraising he anticipated would result if AIML's lower track record was shared with potential investors. AIML in fact did delay applying the write-downs, with the result that investors and potential investors in APEF VI received an inflated performance track record while AIML and Respondent actively solicited investments.

5. In February and March 2018, following publicized allegations of fraud and mismanagement against Abraaj, one of Abraaj's largest U.S. investors asked Bourgeois that Abraaj release previously committed APEF VI investors from their commitments before their capital was called. Bourgeois urged that Arif Naqvi (Abraaj's founder, largest owner, and control person) acquiesce, and by early March Abraaj released the APEF VI investors from their commitments.

Violations

6. As a result of the conduct described above, Respondent willfully² violated Section 17(a)(2) of the Securities Act and willfully aided and abetted and caused AIML's violations of Sections 17(a)(1) and (3) of the Securities Act, which provisions prohibit fraudulent conduct in the offer or sale of securities.

7. As a result of the conduct described above, Respondent willfully aided and abetted and caused AIML's violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder,

² "Willfully," for purposes 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

which prohibit investment advisers from engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative, and from making any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in light of the circumstances under which they are made, not misleading to investors or prospective investors in a pooled investment vehicle.

Bourgeois' Cooperation

8. In determining to accept Respondent Bourgeois' Offer, the Commission considered Respondent's cooperation with the Commission's investigation.

Undertakings

Respondent has undertaken to:

9. Cooperate fully with the Commission in any and all investigations, litigations, administrative or other proceedings relating to or arising from the matters described in this Order, including but not limited to the Commission's U.S. District Court action *SEC vs. Abraaj Investment Management Limited and Arif Naqvi*, No. 19-cv-3244-AJN. In connection with such investigations, litigations, administrative or other proceedings, Respondent agrees to the following: (i) to produce, without service of a notice or subpoena, any and all documents and other materials or information as requested; (ii) to appear and testify without service of a notice or subpoena in such investigations, interviews, depositions, hearings and trials, at such times and places as reasonably requested; and (iii) to respond promptly to all inquiries.

10. Forfeit to another U.S. government agency \$1,993,880 he received in 2018 as a bonus from Abraaj for his success in raising funds for APEF VI.

11. Certify, in writing, compliance with the undertaking set forth above in Paragraphs 9-10. 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 David Becker, Asset Management Unit, Securities and Exchange Commission, 100 F Street, Washington, DC 20549, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Division of Enforcement, 100 F Street, NE, Washington, DC 20549, no later than sixty (60) days from the date of the completion of the undertaking.

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

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).

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, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, and Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder.

B. Respondent be, and hereby is:

barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter;

with the right to reapply for reentry after three [3] years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, compliance with the Commission's order and payment of any or all of the following: (a) any disgorgement or civil penalties ordered by a Court against the Respondent in any action brought by the Commission; (b) any disgorgement amounts ordered against the Respondent for which the Commission waived payment or deemed such amounts to be satisfied; (c) any arbitration award related to the conduct that served as the basis for the Commission order; (d) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (e) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent shall be liable to the Commission for disgorgement of \$1,993,880 and prejudgment interest of \$106,682, which shall be deemed satisfied by Respondent's payment within 24 (twenty four) months of the \$1,993,880 described in Paragraph 10 of this Order. Respondent shall provide proof of payment to David A. Becker, Asset Management Unit, Securities and Exchange Commission, 100 F Street, Washington, DC 20549, or such other address

as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Division of Enforcement, 100 F Street, NE, Washington, DC 20549, no later than ten (10) days from the date of payment. If at the end of 24 months Respondent has not paid the \$1,993,880 described in Paragraph 10 of this Order, then Respondent's obligation of \$1,993,880 in disgorgement, \$106,682.80 in pre-judgment interest, and additional interest calculated from the date of this Order pursuant to SEC Rule of Practice 600, minus any payments already made by Respondent and associated pre-judgment interest, shall be due and payable to the Commission.

E. The disgorgement and prejudgment interest ordered in Paragraph IV.D. is consistent with equitable principles, does not exceed Respondent's net profits from his violations, and—if and when it becomes due and payable as provided in Paragraph IV.D.—will be distributed to harmed investors, if feasible. The Commission will hold any funds paid pursuant to Paragraph IV.D. in an account at the United States Treasury pending a decision whether the Commission in its discretion will seek to distribute funds. If a distribution is determined feasible and the Commission makes a 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.

F. Respondent acknowledges that the Commission is not imposing a civil penalty based upon his cooperation during its investigation and agreement to cooperate as set forth in Paragraph 9 above. If at any time following the entry of the Order, the Division obtains information indicating that Respondent is not cooperating as set forth in Paragraph 9 above, or that Respondent has knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether he knowingly provided materially false or misleading information, but may not: (1) contest the findings in this Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Vanessa A. Countryman
Secretary