

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 11037 / March 2, 2022

INVESTMENT ADVISERS ACT OF 1940

Release No. 5972 / March 2, 2022

INVESTMENT COMPANY ACT OF 1940

Release No. 34521 / March 2, 2022

ADMINISTRATIVE PROCEEDING

File No. 3-20787

In the Matter of

**SIVENDRAN
VETTIVETPILLAI,**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST
PROCEEDINGS, PURSUANT TO SECTION
8A OF THE SECURITIES ACT OF 1933,
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”), 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 Sivendran Vettivetpillai (“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, 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

1. These proceedings arise out of the misappropriation of fund assets from one private equity fund client of the Abraaj Group (“Abraaj”) and an offering fraud against investors in another Abraaj fund, including actual and potential U.S.-based investors in the fund. From at least 2017 to 2018, Respondent took actions that assisted Abraaj Investment Management Limited (“AIML”), the adviser to these funds, in the misappropriation of assets from Abraaj Global Markets Health Fund (the “Health Fund”), one of the funds it advised. AIML falsely told U.S.-based investors in the Health Fund that their money would be invested in the securities of healthcare-related portfolio companies in emerging markets, while in fact AIML misappropriated the money to cover cash shortfalls and remediate insolvency at AIML and its parent company, Abraaj Holdings. Respondent also assisted AIML in misleading the investors and potential investors in Abraaj Private Equity Fund VI (“APEF VI”), a new fund offered by Abraaj beginning in 2017, about the dire financial condition of AIML and its parent company, its misappropriation of the assets of the Health Fund and other AIML-managed funds to address the liquidity crisis, and AIML’s performance track record. Respondent thereby aided and abetted and caused violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. In a related criminal action, Respondent pled guilty in July 2021 to violating the antifraud provisions of the Securities Exchange Act of 1934 in connection with this conduct.

Respondent

2. Sivendran Vettivetpillai, 50 years old, is a citizen of the United Kingdom and Sri Lanka. Since 2012, Respondent was a managing partner of Abraaj, and a shareholder in and director on the board of Abraaj Holdings. Respondent was a permanent member of its Global Investment Committee, the Chairman of its Health Impact Investing sub-committee, a principal executive of the Health Fund, and a “key man” under its Limited Partnership Agreement and Private Placement Memorandum.

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.

Other Relevant Entities

3. The Abraaj Group was the name for a group of related entities including general partners of and investment advisers to a family of private funds. Abraaj included Abraaj Holdings, AIML, and Abraaj Capital Limited (“ACLD”), Abraaj’s Dubai-registered advisory entity, among other entities. As of 2018, Abraaj reportedly managed more than \$13 billion in numerous private funds that were typically structured as limited partnerships.

4. Abraaj Holdings is a UAE-based, Cayman Islands-incorporated limited liability company founded in 2002. Abraaj Holdings served as Abraaj’s top-level holding company and owned numerous entities, including entities that advised and managed Abraaj private equity funds, and certain private funds’ general partners. Abraaj Holdings also held limited partnership interests in Abraaj-managed funds, and interests in some of its funds’ portfolio company investments. Abraaj Holdings voluntarily declared bankruptcy and entered liquidation proceedings in or around June 2018 in the Grand Court of the Cayman Islands.

5. AIML, which filed reports with the Commission as an exempt reporting investment adviser during the relevant period, is a UAE-based and Cayman Islands-incorporated limited liability company, and wholly owned subsidiary of Abraaj Holdings. During the relevant period, AIML—both directly and through its wholly-owned subsidiary ACLD—was the investment adviser and manager to, among other Abraaj private equity funds, APEF IV and APEF VI. AIML voluntarily declared bankruptcy and entered liquidation proceedings in or around June 2018 in the Grand Court of the Cayman Islands.

6. The Health Fund, a private limited partnership, is a \$1 billion pooled investment vehicle launched in July 2015. AIML owned and controlled the fund’s general partner and served as the fund’s investment adviser during the relevant period. The Health Fund’s largest equity investor is a U.S.-based charitable organization (“U.S. Charitable Foundation”), among other U.S.-based investors. A U.S. Governmental entity is a \$150 million debt investor in the Health Fund. After AIML filed for liquidation in June 2018, it was replaced as the fund’s manager.

7. APEF VI is a private pooled investment vehicle for which Abraaj solicited investments between 2017 and 2018. Abraaj marketed APEF VI to numerous U.S.-based and other investors as a global emerging markets fund, and by late fall 2017 claimed it had secured more than \$3 billion in investor commitments. APEF VI was aborted in approximately March 2018 and Abraaj released committed limited partners from their investment obligations.

Offering Fraud and Misappropriation at Abraaj

8. The Abraaj Health Fund was a private fund formed to primarily make investments in the securities of health care-related businesses such as hospitals and treatment centers in emerging markets.

9. In 2017 and 2018, AIML misappropriated millions of dollars in assets of the Health Fund to cover ongoing cash shortfalls and forestall insolvency at AIML and its parent, Abraaj

Holdings. AIML transferred cash drawn down from Health Fund investors from Health Fund accounts to the accounts of AIML and Abraaj Holdings to be commingled with those entities' cash and cash from other AIML-managed funds. AIML then used this commingled pool of cash as a central treasury, frequently to pay the expenses of AIML and Abraaj Holdings to keep those entities from collapsing.

10. Respondent was aware of and assisted AIML in this misconduct. As he admitted in his guilty plea allocution in July 2021, he did so to enable AIML and Abraaj to continue to raise funds from investors, while knowing investors and potential investors would be misled.

11. First, believing Abraaj was desperate for cash, Respondent agreed to delay using cash drawn down from Health Fund investors for Health Fund investments on at least two occasions, so that AIML and Abraaj Holdings could use the cash for their own benefit. Respondent knew that Health Fund investors were not informed of, and did not consent to, this use of their investment.

12. Respondent also helped AIML fraudulently to conceal from the Health Fund and its investors the misappropriation and misuse of the Health Fund's assets, as well as the desperate financial condition of Abraaj Holdings and AIML. As he admitted in his guilty plea allocution quoted below, Respondent did not promptly or sufficiently advise either the board of Abraaj Holdings or existing or prospective Health Fund investors, including U.S. investors, of his concerns about misappropriation from the Health Fund and other AIML-managed funds, or of AIML and Abraaj Holdings' increasingly desperate financial condition. Respondent's actions included efforts in the fourth quarter of 2017 fraudulently to assuage increasingly concerned Health Fund investors and members of the Health Fund's Limited Partners Advisory Committee ("LPAC") about the Health Fund's cash and financial statements. During that time, the Health Fund's largest investor, the U.S. Charitable Organization, led repeated demands by the LPAC and other Health Fund investors for proof that hundreds of millions of dollars in uninvested cash AIML reported on the Health Fund's balance sheet—an unusually large sum—was in fact being held in the fund's bank accounts. Respondent's misrepresentations in response to these inquiries included emails in December 2017 to a group of Health Fund investors and to its LPAC, in which he gave various innocuous explanations that AIML retained large cash balances for months because of delays caused by external factors. But in these emails and other communications with Health Fund investors, Respondent omitted the truth: that Abraaj withdrew cash from the Health Fund's accounts, commingled it with Abraaj's cash, and used it to avoid insolvency.

13. As he admitted in his guilty plea allocution quoted below, Respondent also helped AIML mislead investors and prospective investors, including U.S.-based investors and prospective investors that were offered an investment in APEF VI, about the dire financial condition of AIML and Abraaj Holdings, and the misappropriation and misuse of the assets of the Health Fund and of other AIML-managed funds. In 2017, Abraaj announced its plans to raise a new \$6 billion global emerging markets fund, APEF VI. By fall 2017, following marketing efforts that included fundraising from U.S.-based investors, Abraaj had secured over \$3 billion in investor commitments. Further, in at least 2018 Respondent helped AIML mislead investors and

prospective investors, including U.S.-based investors and prospective investors, about AIML's performance track record. Respondent was aware at least as early as late 2017 that significant write-downs to the valuation of certain portfolio companies included in AIML's track record were unavoidable, and that such write-downs would have adversely affected AIML's track record while Abraaj was soliciting investments for APEF VI. Yet Respondent advocated for AIML to delay the write-downs to avoid the negative impact the lower performance numbers would have on APEF VI fundraising and, in turn, on AIML and Abraaj's cash flows.

Respondent's Criminal Plea

14. On July 26, 2021, in the related criminal proceeding, *United States v. Arif Naqvi, et al.*, Case No. 1:19-cr-00233-LAK in the U.S. District Court for the Southern District of New York, Respondent pled guilty to violating the securities laws of the United States with respect to his conduct while at the Abraaj Group, including Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, among other charges. During his guilty plea allocution to the Court, Respondent made the following statements:

From April 2017, one of my Dubai-based partners began to confide in me that Abraaj's financial condition was not as strong as Arif [Naqvi, Abraaj's founder] had led me to believe. For example, the partner told me that Abraaj was experiencing serious liquidity issues, specifically to finance its commitments to the funds, and it was facing regular shortfalls on its balance sheet. The partner confiding in me about Abraaj's troubled financial position had direct access to those records, which I did not. I believed that what the partner was telling me about Abraaj's troubled financial position was true.

In a one-on-one meeting with Arif on April 21, 2017, I demanded greater visibility into Abraaj's financial condition and immediate changes in the firm's governance to provide transparency. When Arif refused, I told him that I was resigning from the firm and would find other employment before year end, and gave my formal written notice on December 4, 2017. For the reasons I will explain now, your Honor, my greatest regret is that I did not leave Abraaj that day.

In the days that followed, I continued to hear from the partner that Abraaj was engaged in wrongful conduct. Specifically, I was told that Abraaj as an enterprise was engaged in activities to disguise financial improprieties with the intent to mislead both existing and prospective investors. I understood that Abraaj members routinely communicated with investors, both existing and prospective, and likely misled them through these means. I should have raised these concerns with other members of Abraaj, including the board, to take immediate action to investigate. I also believed, based on my interactions with other members of Abraaj, that Abraaj's financial improprieties implicated certain of the public funds that Abraaj accepted.

While I took no affirmative steps to manipulate Abraaj's books and records or otherwise conceal the misconduct, I did not promptly advise either the board or all investors – again, existing or prospective – of my concerns. I recognize that my silence added to the misperception that other Abraaj members were advancing about the state of Abraaj's financial well being. My silence to many investors, as a senior member of Abraaj, delayed serious external inquiry into these issues.

When it became clearer to me in February 2018 that misappropriation of investor funds had in fact occurred, I advised the board and all investors to whom I had access. I appreciate now that I should have raised my concerns earlier.

Although my efforts to confirm whether what I was hearing from the Abraaj partner was true was met with resistance by Arif and others, in hindsight, I admit that I could and should have done more to keep pushing for the truth and to alert all investors to what I was hearing. I owed all Abraaj's investors a duty of candor and disclosure, and I breached that duty by not doing more to ensure that they had the same information I had about financial instability and potential misconduct at Abraaj between May 17, 2017, and February 5, 2018.

I compromised the integrity of my judgment, and for that I am disappointed with myself and very sorry. I do accept full responsibility for my role in what happened, and I will regret it for the rest of my life.

Violations

15. As a result of the conduct described above, Respondent willfully aided and abetted and caused AIML's violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act, which prohibits fraudulent conduct in the offer or sale of securities.

16. As a result of the conduct described above, Respondent willfully aided and abetted and caused AIML's violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser, and Rule 206(4)-8 promulgated thereunder, which prohibits fraud by an investment adviser to a pooled investment vehicle against any investor or potential investor in the pooled investment vehicle.

Undertakings

17. Respondent has undertaken to 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. 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.

18. In determining whether to accept the Offer, the Commission has considered the undertaking enumerated in Paragraph 16 above.

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, 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 Sections 206(1), 206(2), and 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.

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; (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 acknowledges that the Commission is not imposing a civil penalty based upon his agreement to cooperate as set out in Paragraph 16 above. If at any time following the entry of the Order, the Division obtains information indicating that Respondent is not cooperating as agreed, or knowingly provided materially false or misleading information or materials to the Commission, the Division may, at its sole discretion and with prior notice to the 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 the 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