

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5997 / April 15, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20822

In the Matter of

ELLIOT SMERLING,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Elliot Smerling (“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 the findings contained in paragraph III.2 below, and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

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

1. From approximately February 2013 through December 2013, Smerling solicited prospective investors to invest in JES Global Capital, L.P. (the "JES Fund") in his position as the managing principal of its managing partner JES Global Capital GP LLC (the "JES Adviser"). The JES Adviser, which was not registered with the Commission in any capacity, was tasked with, among other things, making all investment decisions on behalf of the JES Fund in exchange for a management fee, pursuant to the JES Fund's offering materials. During the relevant time period, Smerling was an associated person of the JES Adviser. Smerling, 53 years old, is a Florida resident.

2. On February 8, 2022, Smerling pled guilty to one count of securities fraud in violation of Title 15, United States Code, Sections 78j(b) and 78ff and Title 17, Code of Federal Regulations, Section 240.10b-5, and one count of bank fraud in violation of Title 18, United States Code, Section 1344, before the United States District Court for the Southern District of New York, in United States v. Elliot Smerling, 1:21-CR-317. The Court accepted the plea on the same day.

3. The superseding information to which Smerling pled guilty alleges, *inter alia*, that Smerling solicited investors in the JES Fund through materially false and misleading statements concerning the JES Fund's audited financial statements, limited partners, capital commitments, and holdings, and that, subsequently, with respect to additional entities, Smerling sought and obtained approximately \$140 million in collateralized loans on the basis of false and/or forged documents provided in connection with loan application materials.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act, that Respondent Smerling 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.

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.

By the Commission.

Vanessa A. Countryman
Secretary