

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6015 / May 6, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20843

In the Matter of

PERINI CAPITAL, LLC
and MICHAEL D. PERINI,

Respondents.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTIONS 203(e), 203(f), 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 Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Perini Capital, LLC and Michael D. Perini (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”), 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e), 203(f), 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 Respondents' Offers, the Commission finds that:

Summary

1. These proceedings concern undisclosed principal trades with advisory clients by investment adviser Perini Capital, LLC ("Perini Capital") and its founder, sole owner, president, and chief executive officer Michael D. Perini ("Perini"). From at least December 5, 2016 through December 22, 2020 (the "Relevant Period"), Perini Capital and Perini directed thirty-three principal trades between several advisory client accounts and accounts held by Perini without first providing written disclosure of the principal trades and obtaining consent from the clients for such trades. As a result, Perini Capital and Perini willfully violated Section 206(3) of the Advisers Act.

Respondents

2. **Perini Capital, LLC**, a New Mexico company headquartered in Scottsdale, Arizona, has been registered with the Commission as an investment adviser since April 2021. Between August 2011 and March 2021, Perini Capital was an investment adviser registered with four states. Throughout the Relevant Period, Perini Capital provided portfolio management services to retail and institutional clients and a hedge fund (collectively, "Clients") on a discretionary basis. On its Form ADV Part 2A, filed on March 31, 2022, Perini Capital reported approximately \$158.9 million in regulatory assets under management.

3. **Michael D. Perini**, age 44, is a resident of Scottsdale, Arizona. Perini is Perini Capital's founder, sole owner, control person, chief executive officer, and president and is associated with the firm as an investment adviser representative. Throughout the Relevant Period, Perini acted as an investment adviser under the Advisers Act.

Facts

4. During the Relevant Period, Perini Capital provided investment advisory services on a discretionary basis to its Clients by employing primarily a fixed income investment strategy that focused on trading in non-investment grade, non-agency mortgage-backed securities and other mortgage industry related securities. On behalf of the firm, Perini served as the investment manager for all Client accounts and was responsible for all investment decisions and trades made on behalf of such accounts.

5. During the Relevant Period and on behalf of Perini Capital, Perini directed thirty-three principal trades between accounts held by Perini and fourteen different Client accounts. Perini directed these trades for a variety of reasons, including to provide liquidity in instances where Perini Capital's Clients requested sales of securities in their accounts. However, neither Perini Capital nor Perini provided written disclosure to, or obtained consent from, the affected

Clients concerning the principal nature of the resulting trades prior to the completion of such transactions.

Violations

6. As a result of the conduct described above, Perini Capital and Perini willfully¹ violated Section 206(3) of the Advisers Act, which prohibits an investment adviser, while acting as a principal for his own account, from knowingly selling any security to or purchasing any security from any client, without disclosing to such client in writing before completion of such transaction the capacity in which he is acting and obtaining the consent of the client to the transaction.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 203(e), 203(f), and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondents Perini Capital and Perini cease and desist from committing or causing any violations and any future violations of Section 206(3) of the Advisers Act.

B. Respondents Perini Capital and Perini are censured.

C. Respondents Perini Capital and Perini shall, within thirty days of the entry of this Order, pay civil money penalties in the amounts of \$115,000 and \$35,000, respectively, to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

¹ “Willfully,” for purposes of imposing relief under Sections 203(e) and 203(f) 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 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) Respondents 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) Respondents 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 Perini Capital, LLC and Michael D. Perini as Respondents 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 Jason J. Burt, Associate Regional Director, Denver Regional Office, Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, Colorado 80294.

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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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 Perini, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Perini 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 Perini 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