

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6116 / September 9, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21053

In the Matter of

QVR, LLC

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO 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 Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against QVR, LLC (“QVR” or “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 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. QVR, a registered investment adviser, is an investment adviser to private funds. QVR did not promptly update its Forms ADV as new events regarding the financial statement audits of private funds that QVR advised occurred. These failures resulted in violations of Section 204(a) and Rule 204-1(a) thereunder, which required QVR to update certain information about QVR's private fund audits in its Forms ADV.

Respondent

2. QVR, LLC ("QVR") is a Delaware limited liability company with its principal place of business in San Francisco, California. QVR has been registered with the Commission as an investment adviser since August 2017. On its Form ADV dated March 29, 2022, QVR reported that it had approximately \$672 million in regulatory assets under management, with all of it managed in pooled investment vehicles.

Other Relevant Entities

3. QVR Convexity Fund LP ("Convexity Fund") is a private fund formed as a Delaware limited partnership. At all relevant times, QVR was the general partner of the Convexity Fund. QVR has been the investment adviser to the Convexity Fund since February 2020.

4. QVR Absolute Return Fund LP ("Absolute Return Fund", collectively, with the Convexity Fund, the "Funds") is a private fund formed as a Delaware limited partnership. At all relevant times, an affiliate under common control with QVR was the general partner of the Absolute Return Fund. QVR has been the investment adviser to the Absolute Return Fund since October 2020.

QVR Failed to Promptly Amend Information In Its Forms ADV Concerning the Private Fund Audits

5. Item 7.B of Form ADV, Part 1A requires an investment adviser to state whether it is an adviser to any private fund. In that case, the adviser must also complete Section 7.B.(1) of Form ADV, Part 1A, Schedule D.

6. Section 7.B.23.(a) requires an investment adviser to disclose the following information for each private fund managed by the adviser: (i) whether the private fund's financial

¹ The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

statements are subject to an annual audit (Section 7.B.23.(a)(1)); (ii) whether those financial statements, if annually audited, are prepared in accordance with GAAP (Section 7.B.23.(a)(2)); (iii) an identification of the auditing firm and whether the firm is an independent public accountant registered with the PCAOB that is subject to the PCAOB's regular inspection (Section 7.B.23.(a), (b), (d), (e), and (f)); and (iv) whether the private fund's audited financial statements for the most recently completed fiscal year have been distributed to fund investors (Section 7.B.23.(g)).

7. Last, Section 7.B.23.(h) requires an investment adviser to state whether all of the audit reports prepared by the auditing firm for each of its advised funds, since the adviser's last annual updating amendment, contained unqualified audit opinions. In Section 7.B.23.(h), the private fund investment adviser must state "Yes," "No," or "Report Not Yet Received."

8. Section 204(a) of the Advisers Act and Rule 204-1(a) thereunder require a registered investment adviser to amend its Form ADV at least annually, and more frequently as required by the instructions to Form ADV. In addition, the instructions to Form ADV, Part 1A, Schedule D, Section 7.B.23.(h) state that "*If you check 'Report Not Yet Received,' you must promptly file an amendment to your Form ADV to update your response when the report is available.*"

9. In its Form ADV filing dated March 30, 2021, Part 1A, Schedule D, Section 7.B., paragraph 23(h), concerning the Convexity Fund and Absolute Return Fund, QVR stated "Report Not Yet Received" to the question, "Do all of the reports prepared by the auditing firm for the private fund since your last updating amendment contain unqualified opinions?" QVR received audit opinions for the Funds on March 31, 2021. However, QVR did not update or revise its Form ADV until its next annual updating amendment (approximately 12 months after receiving the audit opinions).

Violations

10. As a result of the conduct described above, QVR willfully² violated Section 204(a) of the Advisers Act and Rule 204-1(a) 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 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 QVR's Offer.

Accordingly, pursuant to 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 Section 204(a) of the Advisers Act and Rule 204-1(a) thereunder.
- B. Respondent is censured.
- C. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$50,000 to the Commission for transfer to the general fund of the United States Treasury, subject to the Securities Exchange Act of 1934 Section 21F(g)(3). 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) 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 QVR 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 Kimberly L. Frederick, Assistant Regional Director, Denver Regional Office, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 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, 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.

By the Commission.

Vanessa A. Countryman
Secretary