

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940

Release No. 6129 / September 15, 2022

ADMINISTRATIVE PROCEEDING

File No. 3-21082

In the Matter of

STARVEST MANAGEMENT, INC.,

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 StarVest Management, Inc. (“StarVest Management” 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:

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.

Summary

1. These proceedings involve violations of the Commission’s “pay-to-play” rule for investment advisers by Respondent StarVest Management, an investment adviser. Rule 206(4)-5, promulgated under Section 206(4) of the Advisers Act, is a prophylactic rule designed to address pay-to-play abuses involving campaign contributions made by certain investment advisers or their covered associates to government officials who are in a position to influence the selection of investment advisers to manage government client assets, including the assets of public pension funds and other public entities. Among other things, Rule 206(4)-5 prohibits certain investment advisers from providing investment advisory services for compensation to a government client for two years after the adviser or certain of its executives or employees (known as covered associates) makes a campaign contribution to certain elected officials or candidates who can influence the selection of certain investment advisers.

2. Between December 2020 and April 2021, two covered associates of Respondent made campaign contributions to a candidate for elected office in New York, New York, which office had influence over selecting investment advisers for two public pension systems in New York, New York. Both public pension systems had been invested in funds advised by Respondent prior to the contributions. Within two years after these contributions, Respondent provided advisory services for compensation to the public pension systems. By providing these advisory services for compensation within two years after the contributions, Respondent violated Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder.

Respondent

3. StarVest Management, Inc. (“StarVest Management”) is a corporation headquartered in New York, New York. StarVest Management is not registered with the Commission as an investment adviser. StarVest Management reports to the Commission as an “exempt reporting adviser” under Section 204(a) of the Advisers Act and Rule 204-4 thereunder, and did so during the relevant time period. As of March 3, 2022, StarVest Management reported venture capital fund assets of approximately \$114.5 million.

Background

4. In 2008, the New York City Employees’ Retirement System and the Teachers’ Retirement System of the City of New York (“NY City Pension Systems”), public pension systems in New York, New York, committed to invest, and subsequently invested, a total of approximately \$25 million and \$20 million, respectively, in StarVest Partners II, L.P., a venture capital fund advised by StarVest Management (the “Fund”). During all relevant times, the NY City Pension Systems remained invested in the Fund. The Fund was a closed-end fund and investors were generally prohibited from withdrawing their money for the life of the Fund.

5. On December 15, 2020, a covered associate² of Respondent made a \$1,000 campaign contribution to an unsuccessful candidate for Mayor of New York, New York.³ On March 11, 2021, another covered associate of Respondent made a \$400 campaign contribution to the same candidate.⁴

6. The office of Mayor of New York, New York has influence over selecting investment advisers and pooled investment vehicles for the NY City Pension Systems because the Mayor appoints at least one member of the NY City Pension Systems' boards, which have influence over the selection of investments and pooled investment vehicles for the NY City Pension Systems.

7. During the two years after the contributions, Respondent continued to provide investment advisory services for compensation to the Fund.

8. Advisers Act Rule 206(4)-5(a)(1) prohibits any investment adviser registered with the Commission, investment adviser required to be registered with the Commission, foreign private adviser, or exempt reporting adviser from providing investment advisory services for compensation to a government entity⁵ within two years after a contribution to an official⁶ of a government entity made by the investment adviser or any covered associate of the investment adviser. Advisers Act Rule 206(4)-5 does not require a showing of *quid pro quo* or actual intent to influence an elected official or candidate.

² Covered associates are defined to include: (i) any general partner, managing member or executive officer, or other individual with a similar status or function; (ii) any employee who solicits a government entity for the investment adviser and any person who supervises, directly or indirectly, such employee; and (iii) any political action committee controlled by the investment adviser or by any of its covered associates. See Rule 206(4)-5(f)(2).

³ Rule 206(4)-5 applies to a covered candidate even if the candidate does not win the election. See Rule 206(4)-5(f)(6).

⁴ Rule 206(4)-5 has a *de minimis* exception, which permits covered associates to make aggregate contributions without triggering the two-year time out of up to \$350, per election, to an elected official or candidate for whom the covered associate is entitled to vote, and up to \$150, per election, to an elected official or candidate for whom the covered associate is not entitled to vote. See Rule 206(4)-5(b)(1).

⁵ See Rule 206(4)-5(f)(5).

⁶ "Official" includes any person who, at the time of the relevant contribution, was an incumbent, candidate or successful candidate for elective office of a government entity if the office is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity or has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity. See Rule 206(4)-5(f)(6).

9. As public pension systems, the NY City Pension Systems were government entities as defined in Advisers Act Rule 206(4)-5(f)(5). The contributors were covered associates of Respondent as defined in Advisers Act Rule 206(4)-5(f)(2). The individual who received the contribution was an official as defined in Advisers Act Rule 206(4)-5(f)(6) of a government entity because the office the person sought to become associated with had authority either to influence the hiring of investment advisers by the government entity or to appoint people who could influence the hiring of investment advisers by the government entity.

10. Under Advisers Act Rule 206(4)-5, the contributions triggered a two-year “time-out” on Respondent providing advisory services for compensation to the NY City Pension Systems. During the two years after the contributions, Respondent continued to provide advisory services for compensation to the Fund and, therefore, received advisory fees attributable to the investments of the New York City Pension Systems in the Fund.

Violations

11. As a result of the conduct described above, Respondent StarVest Management willfully⁷ violated Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder, which makes it unlawful for any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under Section 203(b)(3) of the Advisers Act, or that is an exempt reporting adviser, to provide investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by the investment adviser or any covered associate of the investment adviser.

IV.

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

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

⁷ “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).

A. Respondent StarVest Management cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder.

B. Respondent StarVest Management is censured.

C. Respondent StarVest Management shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$70,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act 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 StarVest Management, Inc. as the 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 LeeAnn Ghazil Gaunt, Chief, Public Finance Abuse Unit, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 24th Floor, Boston, MA 02110.

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