

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6146 / September 23, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21144

In the Matter of

**WAVE EQUITY PARTNERS
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 Wave Equity Partners LLC (“Wave Equity” 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 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.

1. This matter concerns a failure properly to offset management fees by Respondent, a Commission-registered investment adviser, to a private equity fund it managed, and failing adequately to disclose to investors and potential investors in that fund information concerning management fee offsets. From May 2018 through October 2020, Respondent borrowed money from a private equity fund that it managed, the Wave Equity Fund, LP II (“Fund II”), to pay placement agent fees to a third-party vendor. The offering and governing documents for Fund II and its affiliated vehicles required prompt repayment of the loan through an offset of the quarterly management fees Respondent charged and collected for its management of Fund II. Respondent failed timely to repay Fund II or reimburse Fund II through offsets. In addition, Respondent failed adequately to disclose to investors and potential investors its failure to repay the amounts owed in the manner required by Fund II’s governing documents.

Respondent

2. Respondent is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. Respondent was founded in 2008 and registered as an investment adviser with the Commission in April 2020. Respondent provides investment advisory services to 12 pooled investment vehicles and reported a total of approximately \$381 million in assets under management on its Form ADV filed on March 29, 2022. Respondent focuses on investing in early growth equity for clean energy, food, waste and water companies.

Facts

3. From May 2018 through October 2020, Respondent caused Fund II to pay certain organizational expenses specified in Fund II’s governing documents, including placement agent fees to a third-party vendor. The placement agent fees that Respondent borrowed from Fund II over this period of time totaled \$1,096,443.

4. Pursuant to the terms of Fund II’s partnership agreement and private placement memorandum, this borrowed money was required to be paid back to Fund II promptly through an offset of the quarterly management fees charged and collected by Respondent for its management of Fund II.

5. Respondent did not offset any of the money borrowed from Fund II against the receipt of management fees for 11 consecutive quarters, beginning with the second quarter of 2018 (the quarter ended June 30, 2018) and continuing through the fourth quarter of 2020 (the quarter ended December 31, 2020). Instead of paying back Fund II during this time period, Respondent used the management fees it charged and collected for its own operating expenses.

6. From July 2018 to October 2021, Respondent never informed investors and potential investors in Fund II that it had failed to repay Fund II timely and was thereby in violation of Fund II’s governing documents.

7. From January 2021 to October 2021, Respondent paid back the money borrowed from Fund II in full, with 12.5% annualized interest, for repayment totaling \$1,410,185.49.

Respondent's Remedial Efforts

8. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent. Respondent's remedial efforts included fully repaying the loan with interest, hiring a new Chief Compliance Officer, engaging an outside compliance consultant, and convening a Management Committee that is charged with providing more stringent and timely oversight of the compliance program by senior management.

Violations

9. As a result of the conduct described above, Wave Equity willfully² violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client." Scierter is not required to establish a violation of Section 206(2) of the Advisers Act, but rather a violation may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992).

10. As a result of the conduct described above, Wave Equity willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which make it unlawful for any investment adviser to a pooled investment vehicle to "engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle." Scierter is not required to establish a violation of Section 206(4) of the Advisers Act or the rules thereunder. *Steadman*, 967 F.2d at 647.

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

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).

A. Respondent Wave Equity cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act, and Rule 206(4)-8 promulgated thereunder.

B. Respondent Wave Equity is censured.

C. Respondent Wave Equity shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$325,000 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 Wave Equity Partners LLC 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 John Dugan, Associate Director, Division of Enforcement, Securities and Exchange Commission, 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 entered by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary