

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11218 / August 7, 2023

INVESTMENT ADVISERS ACT OF 1940
Release No. 6367 / August 7, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21546

In the Matter of

**THEOREM FUND
SERVICES, LLC,**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933 AND SECTION 203(k) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Theorem Fund Services, LLC (“Respondent” or “TFS”).

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 Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing 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. These proceedings arise out of the role of Theorem Fund Services, LLC ("TFS") as the fund administrator for EIA All Weather Alpha Fund I, LP (the "Fund") from approximately January 2018 through March 2019 (the "Relevant Period"). As fund administrator, TFS was responsible for, among other things, calculating the Fund's monthly Net Asset Value ("NAV"), allocating gross profit to investors, and calculating performance statistics for the Fund and investors.

2. EIA All Weather Alpha Fund I Partners LLC ("EIA"), which was owned and controlled by Andrew M. Middlebrooks ("Middlebrooks"), was the investment adviser and general partner to the Fund (EIA and Middlebrooks are collectively referred to as the "Advisers"). From at least mid-2017 through May 2022, the Advisers engaged in a scheme to defraud the Fund and its investors by misappropriating and misusing investor funds. To facilitate this scheme, the Advisers, among other conduct, made repeated materially false and misleading statements to investors and prospective investors about the Fund's performance, including in monthly investor capital account statements ("Investor Statements") that were distributed by TFS through its online portal.

3. During the Relevant Period, while TFS was performing fund administration services, the Fund suffered significant losses as a result of trading by the Advisers. Instead of accounting for these losses as losses, TFS, at the Advisers' direction, recognized an expense reimbursement as a receivable "due from [EIA]" (an asset of the Fund), which offset the effect of the loss, resulting in no decrease to the Fund's NAV. TFS recorded this asset to the financial statements without evaluating whether this was appropriate and despite the existence of red flags. TFS then, using the NAV, created Investor Statements, which materially overstated the value of the investors' investments. Certain investors, seeing the overstated returns on their Investor Statements, increased their investments in the Fund.

4. As a result of the foregoing, TFS was a cause of the Advisers' violations of Section 206(4) of the Advisers Act and Rule 206(4)-8(a)(1) thereunder and Sections 17(a)(2) and 17(a)(3) of the Securities Act.

Respondent

5. TFS is a fund administrator headquartered in Boca Raton, Florida that began operations in 2016. TFS provided fund administration services for the Fund from approximately January 2018 through March 2019, when TFS terminated its relationship as the fund administrator.

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.

TFS was paid \$18,000 by EIA for its fund administration services. During the Relevant Period, TFS had approximately 12 employees and revenue of approximately \$1.6 million.

Other Relevant Parties

6. **Andrew M. Middlebrooks**, age 31, resides in Montgomery, Texas and is the sole owner, CEO, CIO and portfolio manager of EIA. Throughout the Relevant Period, Middlebrooks had control of EIA and had ultimate authority over and was responsible for the content of all documents, communications, and information provided to investors and prospective investors in the Fund. Middlebrooks has never been registered with the Commission in any capacity. On May 18, 2022, the Commission filed a civil injunctive action against Middlebrooks in the United States District Court for the Eastern District of Michigan alleging securities fraud violations relating to the Fund. *SEC v. Middlebrooks, et. al.*, No. 2:22-cv-11073 (E.D. Mich. May 18, 2022).

7. **EIA All Weather Alpha Fund Partners, LLC** is a Delaware company with its principal place of business in Novi, Michigan. EIA has never been registered with the Commission in any capacity. EIA is the investment manager and general partner of the Fund. On May 18, 2022, the Commission filed a civil injunctive action against EIA in the United States District Court for the Eastern District of Michigan alleging securities fraud violations relating to the Fund. *SEC v. Middlebrooks, et. al.*, No. 2:22-cv-11073 (E.D. Mich. May 18, 2022).

8. **EIA All Weather Alpha Fund I, LP** is a Delaware limited partnership formed on or about June 13, 2017. It is a pooled investment vehicle that sold limited partnership interests to investors and was named as a relief defendant in the civil injunctive action against EIA and Middlebrooks in the United States District Court for the Eastern District of Michigan alleging securities fraud violations relating to the Fund. *SEC v. Middlebrooks, et. al.*, No. 2:22-cv-11073 (E.D. Mich. May 18, 2022).

TFS was a Cause of the Advisers' Violations Concerning False and Misleading Investor Statements

Background

9. TFS began serving as fund administrator for the Fund, pursuant to a service agreement (the "Administration Agreement"), in January 2018, at which time the Advisers informed TFS that the Fund had one investor. During the Relevant Period, until TFS terminated its relationship with EIA in March 2019, based on TFS's records, the Fund grew from one investor to 14 investors and the Fund received over \$1.6 million of investor money.

10. Throughout the Relevant Period, the Advisers misrepresented the Fund's performance in order to lull current investors into maintaining their Fund investments and to induce the investors into investing more. The Advisers directed the creation of and approved an inflated NAV for the Fund, as well as false and misleading performance results provided to investors in Investor Statements generated by TFS. These Investor Statements represented positive returns in the investors' accounts and ever-increasing account balances based on purported Fund

gains from trading. In reality, the purported gains reflected in the Investor Statements were false because the Fund, and therefore the investors, had actually lost money during the Relevant Period. Based in part on these Investor Statements, two investors increased their investments in the Fund. As a result, the Advisers violated Section 206(4) of the Advisers Act and Rule 206(4)-8(a)(1) thereunder, and Sections 17(a)(2) and 17(a)(3) of the Securities Act.

11. TFS was a cause of the Advisers' violations concerning the false and misleading Investor Statements. TFS performed the acts described below, including agreeing to account, and accounting for, Fund losses in a manner directed by the Advisers, without evaluating whether this was appropriate and despite red flags, which ultimately contributed to the Advisers' violations.

TFS's Onboarding of the Fund and Initial Red Flags

12. The Administration Agreement between EIA and TFS required EIA to supply TFS with certain information in order for TFS to perform the services agreed upon for the Fund. Aside from the requirements in the Administration Agreement, TFS had minimal policies or procedures regarding onboarding new clients.

13. The Administration Agreement required EIA to provide TFS with access to the monthly account statements from the Fund's bank account. EIA did not provide TFS with account access to any bank accounts at any time. TFS knew that the Fund did not have its own bank account and the money invested in the Fund was sent to EIA's bank account.

14. The Administration Agreement further stated that EIA had the responsibility of appointing an independent auditor responsible for conducting an audit of the Fund's financial statements. During the onboarding process, despite the Fund representing it was operating since 2017, TFS did not confirm that EIA had fulfilled this responsibility. It was not until the end of 2018 that TFS attempted to confirm whether an auditor had been hired. At that time, TFS learned that an auditor had never been engaged by the Advisers to audit the Fund.

15. The Administration Agreement additionally required the Advisers to instruct their brokerage firms to provide TFS with monthly account statements, transaction confirmations, and account access to view such brokerage accounts in order to perform its services, which included, among other items, reconciling transactions, positions, and cash. The only trading information provided to TFS as part of the onboarding process by the Advisers concerned EIA's trading account with another adviser, Firm A. EIA had entered into an investment advisory agreement with Firm A (to which the Fund was not a party), whereby, upon EIA depositing and maintaining a certain balance in its trading account with Firm A, EIA operated as a subadvisor to Firm A's fund (hereinafter referred to as the "Third Party Platform"). EIA traded Fund money in this account, of which TFS was aware. EIA provided TFS account access and four prior month's statements of the Advisers' trading activity on the Third Party Platform. These statements, which TFS reviewed as part of its onboarding process, showed significant losses from September to December 2017, totaling over \$300,000 of the Fund's \$400,000 of assets.

TFS's Calculation of Inflated Fund NAV and Preparation of Investor Statements and Fact Sheets

16. Per the Administration Agreement, TFS was charged with calculating the monthly NAV of the Fund. TFS had minimal policies or procedures regarding accounting practices to follow when calculating a fund's NAV. TFS used the Third Party Platform trading statements to determine the Fund's gains or losses for the period and then calculated the Fund's assets minus the Fund's liabilities with the difference being the Fund's NAV. TFS then used the NAV to generate Investor Statements for investors in the Fund, allocating a portion of the Fund's NAV to each investor according to their respective percentage ownership. TFS presented its monthly NAV calculation and the Investor Statements to the Advisers for review and approval. Once the Advisers approved the NAV and Investor Statements, TFS uploaded the statements to its investor portal and alerted investors that their statements were ready to be viewed. The Investor Statements provided in bold font that TFS was an "Independent Fund Administrator" and lacked any disclaimers aside from a statement that the amounts were unaudited and not to be used for income tax purposes.

17. During February and March 2018, the Advisers continued to lose money trading on the Third Party Platform, losing an additional \$342,000. TFS received trading statements showing these losses and TFS accounted for these losses as losses of the Fund. TFS then provided the NAV and Investor Statements to the Advisers for review. Upon reviewing the NAV and the Investor Statements that evidenced the losses, the Advisers instructed TFS to change the accounting for the losses. Specifically, the Advisers instructed TFS, and it agreed, to record an expense reimbursement for all losses from the Advisers' trading as an asset, specifically, a receivable "due from the Manager (EIA)," which offset the effect of the loss, resulting in no reduction to the Fund's NAV. The Advisers further instructed, and TFS agreed, that going forward, any losses from the Advisers' trading would be treated as an increase to the receivable due from the manager (EIA). At no point was EIA actually liable to the Fund for losses.

18. TFS carried out these instructions during the remainder of its engagement with EIA and treated the Fund's trading losses, which continued to grow over time, not as losses and a reduction to the Fund's NAV, but instead as a receivable due from EIA with no related reduction to the Fund's NAV. TFS did not evaluate whether this was appropriate, determine the collectability of the receivable, or verify that any legal requirement of repayment existed. TFS accepted the Advisers' word that the Advisers were legally liable to reimburse the losses (which they in fact were not) and thus the losses were due from EIA and used this treatment to calculate each monthly NAV. As a result, TFS prepared and disseminated Investor Statements containing materially overvalued equity balances throughout the Relevant Period because the balances were never decreased or showed any losses. Upon receiving the Investor Statements, two investors invested additional money in the Fund.

19. During this time, TFS, in addition to using the NAV to create Investor Statements, also used the NAV calculation to create fact sheets for the Fund at the Advisers' request ("Fact Sheets"). Specifically, in April 2018, TFS, at the request of the Advisers, agreed to generate two versions of the Fact Sheets for the Fund – one Fact Sheet at the "investor" level and one Fact Sheet at the "account" level. The investor level Fact Sheets, like the Investor Statements, did not account for the trading losses as reductions of NAV, but rather, accounted for the losses inaccurately as a receivable, and therefore showed continual positive Fund performance. The Fact Sheets at the

account level did show the trading losses as a reduction in NAV, and thus did not recognize a receivable, and therefore showed a negative Fund performance. TFS provided both versions of the Fact Sheets to the Advisers.

20. These two sets of Fact Sheets created by TFS showed the stark discrepancy between the two treatments of the losses, and the significant impact the receivable was having on Fund performance values. For instance, the investor level Fact Sheet for July 2018 showed that the Fund performance since inception was *positive* 148.39%, while the account level Fact Sheet showed the Fund performance since inception was *negative* 63.9%. TFS, however, still did not raise questions or ask for support of the treatment of the trading losses as a receivable, and continued to provide these two sets of Fact Sheets until approximately November 2018.

21. When the Advisers informed TFS that they were closing the Third Party Platform account and moving to a traditional brokerage firm, the receivable, which had grown throughout the year to more than \$945,000, was not paid to the Fund.

TFS Questions EIA and Terminates the Relationship

22. On January 25, 2019, after learning that Advisers had moved the Fund's trading activity and Fund assets from the Third Party Platform to a traditional broker dealer without settling the balance on the receivable and that EIA had not engaged an auditor as required per the Administration Agreement, TFS suggested to the Advisers that they make certain disclosures to Fund investors. In particular, TFS suggested that the Advisers disclose to Fund investors the following: (a) that EIA was no longer trading on the Third Party Platform and had moved Fund assets to a traditional broker dealer, (b) that the Fund had recognized the trading losses as a receivable due from EIA rather than as a reduction of NAV, (c) the current amount of the Fund's total assets less the receivable, and (d) the plan for repayment of the receivable. The Advisers never made the suggested disclosures.

23. On February 27, 2019, TFS sent EIA a termination letter stating it had elected to terminate the Administration Agreement based on EIA's breach of conditions of the agreement, notably EIA's failure to communicate to investors that (a) the Fund was no longer actively trading on the Third Party Platform, (b) the Fund had absorbed the losses from trading on the Third Party Platform that were purportedly to have been paid back by EIA, and (c) the Fund's current total assets had been significantly reduced as a result of the trading losses. TFS stated that if EIA failed to cure the breach, the Administration Agreement would terminate at the end of 30 days.

24. After the termination letter was delivered, TFS continued to provide fund administration services to EIA in the same manner. TFS also continued reporting the monthly NAV and accounting for the trading losses as a receivable, rather than as a reduction in the Fund's NAV. This resulted in TFS providing Investor Statements to investors that continued to materially overstate NAV amounts through March 2019. At no time before or after the termination letter was sent to EIA did TFS revise its internal accounting in any way to reflect that the losses were actually being borne by the Fund or add any additional disclaimers to the Investor Statements.

25. The Advisers failed to cure the breaches identified by TFS and TFS terminated the Administration Agreement on March 31, 2019. TFS kept its portal accessible to Fund investors to view their Investor Statements past the termination date, through May 2019.

Violations

26. Under Section 203(k) of the Advisers Act and Section 8A of the Securities Act, the Commission may impose a cease and-desist order upon, among others, any person that is, was, or would be a cause of another's violation, due to an act or omission the person knew or should have known would contribute to such violation of any provision of the Advisers Act or the Securities Act, respectively.

27. Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder make it unlawful for any investment adviser to a pooled investment vehicle to "[m]ake any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle" or "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." A violation of Section 206(4) of the Advisers Act and the rules thereunder does not require scienter. *SEC v. Steadman*, 967 F.2d at 636, 647 (D.C. Cir. 1992).

28. Section 17(a)(2) of the Securities Act prohibits obtaining money or property by means of an untrue statement of a material fact or any omission of material facts necessary to make statements made not misleading in the offer or sale of securities.

29. Section 17(a)(3) of the Securities Act states that it is unlawful for any person in the offer or sale of a security to directly or indirectly engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser.

30. EIA and Middlebrooks violated Section 206(4) of the Advisers Act and Rule 206(4)-8(a)(1) thereunder and Sections 17(a)(2) and 17(a)(3) of the Securities Act by making repeated false and misleading statements about the Fund's performance and assets to current investors and providing them with materially misleading Investor Statements, to persuade them to invest more or remain invested in the Fund.

As a result of the conduct described above, TFS was a cause of EIA's and Middlebrooks' violations of Section 206(4) of the Advisers Act and Rule 206(4)-8(a)(1) thereunder and Sections 17(a)(2) and 17(a)(3) of the Securities Act.

Disgorgement

The disgorgement and prejudgment interest ordered in paragraph IV.B is consistent with equitable principles and does not exceed Respondent's net profits from its violations, and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid

pursuant to paragraph IV.B in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

TFS's Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent.

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 Section 203(k) of the Advisers Act and Section 8A of the Securities Act, it is hereby ORDERED that:

A. Respondent 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)-8 thereunder, and Sections 17(a)(2) and 17(a)(3) of the Securities Act;

B. Respondent shall pay disgorgement of \$18,000, prejudgment interest of \$4,271 and civil penalties of \$100,000 to the Securities and Exchange Commission. Payment of the penalty, disgorgement and prejudgment interest shall be made in the following installments: (i) \$40,000 due within 10 days of the entry of the Order; (ii) \$28,000 due within 120 days of the Order; (iii) \$28,000 due within 240 days of the entry of the Order; and (iv) any remaining amount outstanding due within 360 days of the entry of the Order. Payments shall be applied first to post order interest, which accrues pursuant to SEC Rule of Practice 600 and/or pursuant to 31 U.S.C. 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

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 Theorem Fund Services 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 Frederick, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, Colorado 80294.

C. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest and penalties referenced in Section IV.B above. 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.

D. Any payment received by the Commission in this matter may be combined with funds received in any other civil or criminal matter arising out of the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary