UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6315 / May 24, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21445

In the Matter of **SCIENS INVESTMENT MANAGEMENT, LLC and SCIENS DIVERSIFIED MANAGERS, LLC,** **Respondents.**	**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 Sciens Investment Management, LLC ("SIM") and Sciens Diversified Managers, LLC ("SDM") (collectively, "Sciens" or "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, Respondents consent 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 Respondents' Offer, the Commission finds[1] that:

Summary

1. This matter involves the failure of a registered investment adviser to adopt and implement reasonably designed written policies and procedures for valuation of private fund portfolio investments. Valuation of client assets is a critically important area for investment advisers. Failure to properly value assets can impact key areas of fund operations and also potentially lead to over or under payment of withdrawal proceeds, incorrect calculation of fees and inaccurate performance reporting, among other things. Accordingly, pursuant to Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder (the "Compliance Rule"), registered investment advisers are required to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the federal securities laws. The Commission has stated that, at a minimum, those policies and procedures should include processes to value client holdings and assess fees based on those valuations.[2]

2. Since at least 2016 (the "Relevant Period"), Sciens violated the Compliance Rule by failing to adopt and implement reasonably designed written compliance policies and procedures relating to valuation. Sciens advises a number of private funds that primarily invest in equity and debt of private companies or assets for which there is frequently no readily available market pricing information and for which no significant observable inputs are available (described herein as "Level 3 Investments"). Sciens charges management fees to its private funds quarterly based on the net asset value ("NAV") of the applicable share class. During the Relevant Period, Sciens' written policies and procedures were not reasonably designed to prevent violations of the Advisers Act in light of Sciens' operations, including the nature of the investment mandates of the funds managed by Sciens, giving only minimal guidance regarding how to value Level 3 Investments in accordance with Generally Accepted Account Principles ("GAAP") and other standards set forth in the funds' offering documents.

Respondents

3. SIM was a Delaware limited liability company with its principal place of business in New York, New York. SIM was registered with the Commission as an investment adviser from approximately January 2010 through June 25, 2021. SIM succeeded the business of a predecessor entity which had been registered with the Commission as an investment adviser since 2006, and other predecessor entities which have been managing alternative assets since 1994. While registered, SIM was the filing adviser with multiple relying advisers, including SDM, until a restructuring in 2021, after which SDM transitioned to be the filing adviser. SIM, SDM, and other

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[1] The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

[2] *Compliance Programs of Investment Companies and Investment Advisers*, Advisers Act Rel. No. 2204, 68 F.R. 74714, 74715 (Dec. 24, 2003).

relying advisers are majority-owned indirectly by the individual who serves as the Chief Executive Officer ("CEO") for each of them.

4. SDM is a Delaware limited liability company with its principal place of business in New York, New York. SDM commenced operations as an investment adviser in January 2019 and registered with the Commission as a relying adviser of SIM. Following a restructuring, SDM transitioned from its status as a relying adviser to the filing adviser for the umbrella registration with multiple relying advisers as of June 17, 2021. SDM reported approximately $235 million in regulatory assets under management as of its annual updating amendment to Form ADV for 2021.

Other Relevant Entity

5. Sciens Special Situations Master Fund Ltd. ("SSSMF") is a Cayman Islands exempted company with limited liability, incorporated on August 9, 2006. According to its offering document, SSSMF's investment objective is the generation of current income and the preservation and consistent appreciation of capital through a diverse portfolio of assets consisting of: private notes and bank loans; equities; investment-grade and distressed securities in public and private entities; high yield debt; bank debt; capital structure arbitrage; special situations and classical distressed investing; rescue finance; direct lending and investing; specialty finance and other special co-investment opportunities presented by affiliates and strategic partners of SSSMF. Throughout the Relevant Period, the investment adviser to SSSMF was an affiliated relying adviser of SIM or SDM and was subject to Sciens' compliance policies and procedures. The CEO of Sciens serves as the portfolio manager of SSSMF and is one of two directors of SSSMF.

Background

6. During the Relevant Period, the largest component of Sciens' US-based investment advisory business, inclusive of the activities of its relying advisers, consisted of providing discretionary investment management services to private investment partnerships, offshore funds and other investor vehicles which primarily make investments in private companies (the "PE Funds"). During most of the Relevant Period, SSSMF was the largest PE Fund that Sciens managed, and certain other PE Funds managed by Sciens also had investments in SSSMF. As a result, more than half of Sciens' total assets under management were directly or indirectly in SSSMF.

7. SSSMF's offering documents provide that Sciens will charge specified percentage management fees quarterly based on the net asset value ("NAV") of the applicable share class of SSSMF, which equaled 2% per annum for share classes offered to outside investors. Consequently, the determination of SSSMF's NAV by Sciens directly impacts the amount of management fees that Sciens charges to SSSMF.

8. The offering documents for SSSMF provide that NAV will equal, for each class of shares, the total value of the assets of the fund attributable to that class minus an amount equal to all accrued debts, liabilities and obligations attributable to such class and any contingencies for which reserves or accruals should be made for such class. The offering documents further provide

that SSSMF's investment adviser will value the assets in a manner believed to reflect the current fair market value. Throughout the Relevant Period, virtually all of SSSMF's portfolio investments were assets for which market prices were not readily available and were classified as Level 3 Investments in SSSMF's financial statements that purported to be prepared in accordance with GAAP.

9. GAAP sets forth a definition of "fair value" and a framework for measuring fair value in Accounting Standards Codification 820 Fair Value Measurement ("ASC 820"). ASC 820-10-20 defines "fair value" as "[t]he price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." ASC 820-10-05-1B recognizes that "[f]air value is a market-based measurement…. For some assets and liabilities, observable market transactions or market information might be available. For other assets and liabilities, observable market transactions and market information might not be available. However, the objective of a fair value measurement in both cases is the same—to estimate the price at which an orderly transaction to sell the asset or to transfer the liability would take place between market participants at the measurement date under current market conditions (that is, an exit price at the measurement date from the perspective of a market participant that holds the asset or owes the liability)."

10. ASC 820-10-35-36 provides that the methods used to measure fair value "shall maximize the use of relevant observable inputs and minimize the use of unobservable inputs." ASC 820 establishes a fair value framework that categorizes into three levels the inputs to valuation techniques used to measure fair value: Level 1 inputs are "quoted prices (unadjusted) in active markets for identical assets or liabilities that the reporting entity can access at the measurement date"; Level 2 inputs are "inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly"; and Level 3 inputs are "unobservable inputs for the asset or liability." *See* ASC 820-10-35-40 through ASC 820-10-35-54A.

11. With respect to Level 3 inputs, ASC 820-10-35-53 instructs that "[u]nobservable inputs shall be used to measure fair value to the extent that relevant observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at the measurement date. However, the fair value measurement objective remains the same, that is, an exit price at the measurement date from the perspective of a market participant that holds the asset or owes the liability. Therefore, unobservable inputs shall reflect the assumptions that market participants would use when pricing the asset or liability, including assumptions about risk." ASC 820-10-35-54A instructs "A reporting entity shall develop unobservable inputs using the best information available in the circumstances, which might include the reporting entity's own data. In developing unobservable inputs, a reporting entity may begin with its own data, but it shall adjust those data if reasonably available information indicates that other market participants would use different data or there is something particular to the reporting entity that is not available to other market participants (for example, an entity-specific synergy). A reporting entity need not undertake exhaustive efforts to obtain information about market participant assumptions. However, a reporting entity shall take into account all information about market participant assumptions that is reasonably available. Unobservable inputs developed in the

manner described above are considered market participant assumptions and meet the objective of a fair value measurement."

A. Respondents' Written Policies and Procedures Regarding Valuation Were Not Reasonably Designed For Its Business Practices

12. During the Relevant Period, Sciens' written policies and procedures regarding valuation were contained in Sciens' Compliance Manual, which also referenced the offering documents of the PE Funds. The valuation policies contained in versions of Sciens' Compliance Manual in effect throughout the Relevant Period generally provided that Sciens would value all securities that are not immediately marketable at fair value, which it defined in a manner that was consistent with GAAP's ASC 820 definition of fair value. However, Sciens' relevant written policies and procedures regarding valuation did not sufficiently provide guidance or parameters as to how to value Level 3 Investments, even though virtually all of SSSMF's investments and a substantial percentage of its other PE Funds' investments were Level 3 Investments.

13. For example, the only substantive guidance contained in the Compliance Manual relevant to Level 3 Investments was that the fair value is to be "based on available information and several non-exclusive factors which provide the best available estimate of a current market price that [Sciens] will take into consideration" and that Sciens would monitor developments affecting such assets to determine the continuing validity of the fair value using information sources "including news stories, financial wires, broker-dealer and other market contacts and market indices." However, Sciens' Compliance Manual did not mention any valuation techniques or methodologies applicable to Level 3 Investments, and further lacked procedures designed to promote consistency in the valuation process and to reduce the potential conflicts of interest arising from the role of Sciens in valuing investments it acquired and managed for the PE Funds. Sciens' policies also lacked procedures and guidance regarding how it would, in the context of the specific funds that Sciens manages in which there are substantial amounts of Level 3 Investments held by the PE Funds to fair value, develop and utilize unobservable inputs to ensure a fair and consistent process for measurements sufficient to comport with the requirements of ASC 820. Moreover, Sciens' valuation policies and procedures failed to sufficiently address how to analyze or whether to adjust its own data to the data of other market participants with respect to Level 3 Investments, as was required by the calibration requirement in ASC 820.[3]

14. Notably, the Compliance Manual also makes reference to the offering documents for the PE Funds and directs that valuation be performed in a manner consistent with the guidelines and requirements set forth in the offering documents of each fund, but such offering documents generally did not provide any further guidance for Level 3 Investments. For example, in the case of SSSMF, the offering documents do not provide any further guidance as to how to

[3] ASC 820-10-35-24C provides that, "[c]alibration ensures that the valuation technique reflects current market conditions, and it helps a reporting entity to determine whether an adjustment to the valuation technique is necessary (for example, there might be a characteristic of the asset or liability that is not captured by the valuation technique). After initial recognition, when measuring fair value using a valuation technique or techniques that use unobservable inputs, a reporting entity shall ensure that those valuation techniques reflect observable market data (for example, the price for a similar asset or liability) at the measurement date."

value Level 3 Investments other than that the Board of Directors and Sciens would establish valuation policies and procedures. However, no such written policies or procedures were established beyond those contained in the Compliance Manual.

15. Moreover, Sciens had notice that its valuation procedures with respect to a material Level 3 portfolio investment of SSSMF may have been insufficient during the Relevant Period. Specifically, both prior to and during the Relevant Period, SSSMF's auditors provided qualified opinions on SSSMF's financial statements because the auditors were unable to obtain sufficient appropriate audit evidence supporting the fair value of a material Level 3 portfolio investment. In fact, the auditor for SSSMF's original 2016 financial statements, which had provided a qualified opinion, later withdrew its audit opinion. SSSMF's 2016 financial statements were thereafter restated by Sciens to write-down that Level 3 portfolio investment by a net amount of approximately $32.9 million, resulting in a decline of the same amount to SSSMF's NAV. SSSMF's new auditor subsequently issued an unqualified opinion on SSSMF's restated 2016 financial statements.

16. In connection with the write-down of the relevant SSSMF Level 3 portfolio investment by Sciens, Sciens made retroactive adjustments in 2020 to the management fees charged or accrued as to SSSMF share classes for the years between 2016 and 2019 to account for the reduction to SSSMF's NAV.

Violations

17. As a result of the conduct described above, Respondents willfully[4] violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires registered investment advisers to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and Rules thereunder. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Undertakings

18. Respondent SDM has undertaken to:

a. Retention of Independent Compliance Consultant. Within sixty (60) days after the date of this Order, SDM shall engage an independent compliance consultant not unacceptable to the Commission staff (the "Independent Consultant"), and provide a copy of this Order to the Independent Consultant. No later than ten (10) days following the date of the Independent Consultant's engagement, Respondents shall provide the Commission staff with a

[4] "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).

copy of the engagement letter detailing the Independent Consultant's responsibilities, which shall include the reviews and reports to be made by the Independent Consultant as set forth in this Order. The Independent Consultant's compensation and expenses shall be borne exclusively by SDM.

b. Independent Consultant's Review. SDM shall require the Independent Consultant to:

i. conduct a comprehensive review of:

(1) SDM's current policies, procedures, systems, and internal controls with respect to valuation of private fund client assets;
(2) SDM's current policies, procedures, systems, and internal controls with respect to the charging or accrual of Sciens' management fees to private fund clients; and
(3) the calculation of Sciens' management fees charged or accrued, and the implementation of retroactive adjustments, as a result of the restated valuation of the Level 3 portfolio investment of SSSMF described in Paragraphs 15 and 16 of this Order;

ii. at the end of the review, which in no event shall be more than 180 days after the engagement of the Independent Consultant, submit a written and dated report to SDM and the Commission staff that shall include a description of the review performed, the names of the individual(s) who performed the review, its findings and recommendations for changes or improvements to the policies, procedures, systems, and internal controls, and a procedure for implementing the recommended changes and improvements;

iii. conduct one annual review 365 days from the date of issuance of the Independent Consultant's initial report, to assess whether SDM is complying with its then-current policies, procedures, systems, and internal controls and whether the then-current policies, procedures, systems, and internal controls are effective in achieving their stated purposes with respect to valuation and charging or accrual of management fees with respect to private fund clients; and

iv. at the end of the annual review, which in no event shall be more than 180 days from the date that the annual review commenced, submit a written and dated report to SDM and the Commission staff that shall include a description of the review performed, the names of the individual(s) who performed the review, its findings and recommendations, if any, for additional changes or improvements to the policies, procedures, systems, and internal controls, and a procedure for implementing the recommended changes and improvements.

c. SDM shall, within forty-five (45) days of receipt of each of the Independent Consultant's reports, adopt all recommendations contained in the reports, provided, however, that within thirty (30) days after the date of the applicable report, SDM shall in writing advise the Independent Consultant and the Commission staff of any recommendations that it

considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that SDM considers to be unduly burdensome, impractical, or inappropriate, SDM need not adopt that recommendation at that time but shall instead propose in writing an alternative policy or procedure designed to achieve the same objective or purpose as that recommended by the Independent Consultant. SDM shall engage in good faith negotiations with the Independent Consultant in an effort to reach agreement on any recommendations objected to by SDM. In the event that SDM and the Independent Consultant are unable to agree on an alternative proposal within sixty (60) days, SDM shall abide by the determinations of the Independent Consultant.

d. Within thirty (30) days of SDM's adoption and implementation of all of the recommendations in the Independent Consultant's reports that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, SDM shall certify in writing to the Independent Consultant and the Commission staff that SDM has adopted and implemented all recommendations in the applicable report. The Commission staff may make reasonable requests for further evidence of compliance, and SDM agrees to provide such evidence. Unless otherwise directed by the Commission staff, all Reports, certifications, and supporting material shall be sent to Wendy Tepperman, Assistant Regional Director, Division of Enforcement, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616.

e. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

f. SDM shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of its files, books, records and personnel as reasonably requested for the Independent Consultant's review, including access by on-site inspection.

g. To ensure the independence of the Independent Consultant, SDM (1) shall not have the authority to terminate the Independent Consultant or substitute another independent consultant for the initial Independent Consultant without prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

h. For the period of engagement and for a period of two years from completion of the engagement, SDM shall not (i) retain the Independent Consultant for any other professional services outside of the services described in this Order; (ii) enter into any other professional relationship with the Independent Consultant, including any employment, consultant, attorney-client, auditing or other professional relationship; or (iii) enter, without prior written consent of the Commission staff, into any such professional relationship with any of the

Independent Consultant's present or former affiliates, employers, directors, officers, employees, or agents acting in their capacity as such.

i. The reports by the Independent Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.

j. SDM shall also provide a final certification, in writing, of compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and SDM agrees to provide such evidence. The final certification and supporting material shall be submitted to Wendy Tepperman, Assistant Regional Director, Division of Enforcement, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

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

A. Respondents shall 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)-7 promulgated thereunder.

B. Respondents are censured.

C. Respondents SIM and SDM shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $275,000, jointly and severally, 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 by Respondents 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;

(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 SIM and SDM 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 Tejal D. Shah, Associate Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, New York 10004.

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, each 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 Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, each 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 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.

E. Respondent SDM shall comply with the undertakings enumerated in paragraph 18 above.

By the Commission.

Vanessa A. Countryman
Secretary