

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6451 / September 29, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21774

In the Matter of

APPOMATTOX ADVISORY INC.
AND OSCAR GUSTAVO GIL
VOLLMER,

Respondents.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT
TO SECTIONS 203(e), 203(f) 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), 203(f) and 203(k) of the Investment Advisers Act of 1940 (the “Advisers Act”) against Oscar Gustavo Gil Vollmer (“Vollmer”) and Appomattox Advisory, Inc. (“Appomattox,” and with Vollmer, “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, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e), 203(f) 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' Offers, the Commission finds¹ that:

Summary

1. These proceedings arise out of breaches of fiduciary duty by registered investment adviser Appomattox and Vollmer, the co-owner and former Chief Executive Officer, Chief Compliance Officer and an investment committee member of Appomattox. Between July 2021 and November 2021 (the "Relevant Period"), Vollmer and Appomattox's other co-owner ("Partner A") managed a pooled investment vehicle and a foreign feeder fund (collectively, "Fund A") for the purpose of investing fund assets in a private equity fund ("Fund B"). Appomattox served as investment adviser to Fund A. Fund A's investors committed to investing approximately \$12.7 million in Fund A in response to capital calls by Fund B.

2. During the Relevant Period, Vollmer and Appomattox breached their fiduciary duty to Fund A and investors who were also advisory clients of Appomattox by engaging in transactions in which Fund A's assets were used to benefit Vollmer and Appomattox but which were not disclosed to or approved by the Fund or its investors. Specifically, Vollmer made three undisclosed withdrawals totaling \$480,000 from Fund A's bank account to meet Appomattox's operating expenses and payroll. Each time Vollmer withdrew funds from Fund A's bank account, Respondents subsequently repaid Fund A within less than 30 days. These withdrawals of Fund A's assets and their use to cover Appomattox's expenses, including compensation payments to Vollmer, created an undisclosed material conflict of interest because Respondents put Fund A's investor funds at risk in order to meet the financial obligations of Appomattox.

3. As a result of this conduct, Respondents willfully² violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

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

² "Willfully," for purposes of imposing relief under Sections 203(e) and (f) 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)). 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).

Respondents

4. **Appomattox** is a Delaware corporation with its primary place of business in New York, New York. Appomattox was founded by Vollmer and his business partner (“Partner A”) in 2005. It has been registered with the Commission as an investment adviser since 2010. As of its Form ADV dated March 30, 2023, Appomattox has approximately 33 clients with approximately \$1.2 billion in assets under management. It has no disciplinary history with the Commission. During the Relevant Period, Partner A owned 51%, and Vollmer owned 49% of Appomattox.

5. **Vollmer**, age 47, is a resident of New York, New York. During the Relevant Period, Vollmer served as the CEO and CCO of Appomattox and was a member of its investment committee. He was placed on indefinite leave and removed from these positions by Appomattox in November 2021. Vollmer has no disciplinary history and is not registered with the Commission in any capacity.

Background

6. As co-owners of Appomattox and members of its investment committee, Vollmer and Partner A were responsible for the management of Appomattox’s advisory business and investments made on behalf of advisory clients, including Fund A. As CEO of Appomattox, Vollmer was responsible for the operations of the adviser, including ensuring that Appomattox met its financial obligations. Additionally, Vollmer exercised control over Appomattox’s bank accounts, payroll, and expenses. Partner A has served as Appomattox’s President and Chief Investment Officer since its inception and owned 51% of Appomattox during the Relevant Period.

7. In late March 2021, Vollmer and Partner A established Fund A as a feeder fund to Fund B.

8. Vollmer and Partner A were the sole owners and members of Fund A’s General Partner, and Appomattox served as Fund A’s investment adviser, earning a fee for providing investment advice pursuant to Fund A’s limited partnership agreement.

9. In Vollmer’s role as CEO of Appomattox, he managed Fund A’s investment capital and ensured that limited partners’ funds were available for capital calls from Fund B. As a result, Vollmer obtained investment funds from Fund A’s investors and had access to and control over Fund A’s bank account. Between April 2021 and July 2021, eighteen Fund A investors committed to investing approximately \$12.7 million in Fund A in response to capital calls by Fund B. As of July 2021, pursuant to capital calls by Fund B, Fund A’s investors had deposited approximately \$2.5 million in Fund A.

10. Due to Fund A’s requirements to meet future fund obligations and the uncertainty of exactly how much investor money would be required in Fund B’s capital call, the sums contributed by Fund A’s limited partners and deposited in Fund A’s bank account exceeded Fund

B's capital call in July 2021. As a result, as of late July 2021, Fund A had a surplus of money in its bank account.

Respondents' Undisclosed Withdrawals from Fund A and Subsequent Repayment

11. In late July, August, and September 2021, Appomattox did not have enough money in its bank account to meet its expenses and payroll obligations, approximately half of which consisted of compensation payable to Vollmer and Partner A. In response, Vollmer, without Partner A's knowledge, withdrew a combined total of approximately \$480,000 from Fund A's bank account and deposited these funds into Appomattox's account to meet these obligations. Both accounts were located at the same financial institution.

12. First, on July 29, 2021, Vollmer transferred \$140,000 from Fund A's bank account to Appomattox's bank account. Respondents then used these funds to pay Appomattox's payroll and expenses. Approximately two weeks later, on August 11, 2021, Vollmer repaid Fund A by transferring \$140,000 from Appomattox's bank account to Fund A's bank account.

13. Second, on August 30, 2021, Vollmer made another transfer from Fund A's bank account to Appomattox's bank account in the amount of \$220,000. Respondents then used these funds to pay Appomattox's payroll and expenses. Approximately one week later, on September 7, 2021, Vollmer repaid Fund A by transferring \$220,000 from Appomattox's bank account to Fund A's bank account.

14. Finally, on September 29, 2021, Vollmer made a third transfer from Fund A's bank account to Appomattox's bank account in the amount of \$120,000. Respondents then used these funds to pay Appomattox's payroll and expenses. Approximately three weeks later, on October 21, 2021, Vollmer transferred \$120,000 from Appomattox's bank account to Fund A's bank account.

15. In or around September 2021, when questioned by Appomattox's bookkeeper about certain of the above transfers, Vollmer responded that they consisted of short-term loans from Fund A that he subsequently repaid to Fund A. However, Vollmer failed to draft any loan agreements or other documentation evidencing that the funds withdrawn from Fund A constituted loans, nor did the funds that Vollmer caused Appomattox to repay to Fund A include at the time any additional amounts representing interest payable on loans.

16. On October 24, 2021, after learning of the Division of Examinations' planned routine examination, Vollmer informed Partner A that Appomattox, through his actions, had taken short term loans from Fund A. Shortly thereafter, Appomattox and Partner A promptly informed both the Division of Examinations and the Division of Enforcement of Vollmer's conduct. In November 2021, Appomattox made interest payments in the amount of \$550.69 to Fund A for the money Vollmer withdrew from Fund A.

17. During the Relevant Period, the Respondents did not disclose to the Fund or its investors who were also clients of Appomattox the above withdrawals or their use to fund Appomattox's expenses, nor did Fund A have an advisory committee comprised of limited partners to evaluate, and potentially consent to, these transactions between Fund A and affiliated parties. This created an undisclosed material conflict of interest because Respondents put Fund A's assets at risk for their own benefit.

Violations

18. Section 206(2) of the Advisers Act prohibits investment advisers from directly or indirectly engaging "in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." Proof of scienter 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. As a result of the conduct described above, Respondents willfully violated Section 206(2) of the Advisers Act.

19. Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder make it unlawful for an 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 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." Scienter is not required to establish a violation of Section 206(4) or the rules thereunder. As a result of the conduct described above, Respondents willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

Appomattox's Remedial Measures

20. In determining to accept Appomattox's Offer, the Commission considered remedial acts promptly undertaken by Appomattox and cooperation afforded the Commission staff.

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

A. Respondents 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 thereunder.

B. Respondent Appomattox is censured.

C. Respondent Vollmer be, and hereby is suspended from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for a period of twelve (12) months, effective immediately upon the entry of this Order.

D. Respondent Appomattox shall pay a civil money penalty in the amount of \$150,000 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). Payments shall be made in the following installments:

- \$50,000 within 10 days of the entry of this Order;
- \$10,000 within 30 days of the entry of this Order;
- \$10,000 within 60 days of the entry of this Order;
- \$10,000 within 90 days of the entry of this Order;
- \$10,000 within 120 days of the entry of this Order;
- \$10,000 within 150 days of the entry of this Order;
- \$10,000 within 180 days of the entry of this Order;
- \$10,000 within 210 days of the entry of this Order;
- \$10,000 within 240 days of the entry of this Order;
- \$10,000 within 270 days of the entry of this Order; and
- \$10,000 within 300 days of the entry of this Order.

Payments shall be applied first to post-order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent Appomattox shall contact the staff of the Commission for the amount due. If Respondent Appomattox fails to make any payment by the date agreed and/or in the amount agreed according 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.

E. Respondent Vollmer shall pay a civil money penalty in the amount of \$125,000 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). Payments shall be made in the following installments:

- \$41,670 within 10 days of the entry of this Order;
- \$8,333 within 30 days of the entry of this Order;
- \$8,333 within 60 days of the entry of this Order;
- \$8,333 within 90 days of the entry of this Order;
- \$8,333 within 120 days of the entry of this Order;
- \$8,333 within 150 days of the entry of this Order;
- \$8,333 within 180 days of the entry of this Order;
- \$8,333 within 210 days of the entry of this Order;

- \$8,333 within 240 days of the entry of this Order;
- \$8,333 within 270 days of the entry of this Order; and
- \$8,333 within 300 days of the entry of this Order.

Payments shall be applied first to post-order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent Vollmer shall contact the staff of the Commission for the amount due. If Respondent Vollmer fails to make any payment by the date agreed and/or in the amount agreed according 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.

F. Payment 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 Appomattox or Vollmer 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 Tejal Shah, Associate Regional Director, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

G. 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, Respondents agree that in any Related Investor Action, Respondents shall not argue that Respondents are entitled to, nor shall Respondents 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, Respondents agree that Respondents 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.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent Vollmer, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Vollmer under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent Vollmer of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary