

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6616 / May 29, 2024

INVESTMENT COMPANY ACT OF 1940
Release No. 35207 / May 29, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21950

<p>In the Matter of</p> <p style="text-align:center">Winston Mubai Feng</p> <p>Respondent.</p>

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 203(f) AND 203(k) OF THE
INVESTMENT ADVISERS ACT OF 1940,
AND SECTION 9(b) OF THE
INVESTMENT COMPANY 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(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Winston Mubai Feng (“Feng” 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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V., Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company 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. This matter concerns violations of the Advisers Act by Mass Ave Global Inc. ("MassAve" or "the firm"), formerly a registered investment adviser, and Feng, MassAve's co-founder, chief executive officer, majority owner, portfolio manager, and chief investment officer, for making materially false and misleading statements to investors about the exposures of three private funds—Mass Ave Global Partners Master Fund, LP, and feeder funds Mass Ave Global Partners (Cayman), Ltd, and Mass Ave Global Partners, L.P. (collectively, the "Fund")—from at least February 2020 through August 2022, and for not disclosing a conflict of interest from at least September 2022 through February 2023.

2. MassAve made materially false and misleading statements about the Fund's holdings and exposures as disseminated in the following investor communications: monthly tear sheets ("Tear Sheets"), summary portfolio snapshots ("Snapshots"), and communications regarding the top ten biggest positions that contributed to, and detracted from, the Fund's performance ("Top Ten Contributors and Detractors") (collectively, "Investor Communications").

3. Certain of these misleading statements were the result of modifications made by Feng to holdings and exposures data that was provided to him and used by other MassAve employees for purposes of inclusion in the Investor Communications. This information was not further reviewed by compliance employees ("Compliance") before their dissemination to investors.

4. In addition, MassAve did not disclose a conflict of interest arising from the operation of a separate hedge fund in China by MassAve's other co-founder ("Co-Founder 2"), about which Feng, and by extension, MassAve, had knowledge.

5. MassAve's dissemination of materially false and misleading statements in the Investor Communications resulted from its failure to adopt and implement policies and procedures reasonably designed to prevent inaccurate information in investor communications.

6. As a result, Feng's conduct 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 Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondent

7. Feng, 34 years old, lives in New York, New York. At all relevant times, he was the co-founder, chief executive officer, majority owner, portfolio manager, and chief investment officer of MassAve.

Related Party

8. MassAve is headquartered in New York, New York. MassAve began operations in December 2019 as an exempt reporting adviser. In May 2021, it registered with the Commission as an investment adviser to sixteen private funds—including its flagship opportunity, the Fund—which, according to its Form ADV filed in March 2023, had over \$1.1 billion in regulatory assets under management (“RAUM”). On March 2, 2023, MassAve announced the decision to wind down and terminate all sixteen of its advised private funds. MassAve filed a Form ADV-W withdrawing its registration with the Commission on May 12, 2023. MassAve continues to manage the wind down of the sixteen private funds, which collectively continue to hold approximately \$93 million RAUM as of May 6, 2024.

Background

9. MassAve marketed its funds as providing low-net exposure and specializing in Asia-focused investments, trading equities, options, and security-based swaps and holding other illiquid assets. About one third of the Fund’s investments were in companies located in China, and the remaining two thirds were split between the rest of Asia and the world. MassAve’s investments outside China were made in contemplation of how the market in China would impact those companies.

10. From MassAve’s inception in December 2019, through the beginning of the wind down in March 2023, Feng was responsible for making all investment decisions and was deeply involved in investor communications and raising money for the Fund.

11. In late June 2022, a MassAve officer (“Officer 1”) initiated an internal review of portfolio data, during which it surfaced that some investors received material holdings and exposures information about the Fund from MassAve without Compliance’s review and approval. It also surfaced that in certain instances, Feng modified Compliance-reviewed and -approved information before its dissemination to investors.

12. Soon thereafter, MassAve launched an independent internal investigation.

13. On or about January 19, 2023, after the independent internal investigation concluded, MassAve disclosed to investors, in three investor letters (“Investor Letters”), that the Fund’s holdings and exposures data contained in the Investor Communications “was inaccurate and did not contain appropriate disclosure.”

14. In the Investor Letters, MassAve also acknowledged that enhancements to its then-existing policies and procedures were necessary “to establish various additional independent checks (including receiving verified data solely from the administrator) on all portfolio and performance information relating to the Fund prior to dissemination to investors or prospective investors.” Additionally, MassAve indicated that it would make enhancements to procedures relating to the preparation of Snapshots.

MassAve and Feng Made Materially False and Misleading Statements to Investors

15. The Investor Communications contained materially false and misleading statements regarding the Fund’s holdings and exposures.

16. The Investor Communications were a collaborative effort that involved contributions from several MassAve employees, including Feng. Certain of the materially false and misleading statements in the Investor Communications derived from Feng’s modification of underlying portfolio data that was provided to him and used by other MassAve employees for purposes of inclusion in the Investor Communications. The Investor Communications were then distributed to investors without further Compliance review or independent verification of their accuracy.

17. From November 2020 through August 2022, MassAve sent twenty-two Tear Sheets to at least eighty-eight investors that purportedly reported “Average Gross” and “Average Net” portfolio exposures. Instead of reporting exposure figures that represented the dollar-for-dollar value of the Fund’s positions, however, the Tear Sheets reported the net exposure figures while adjusting for beta. In addition, certain positions that were reported in certain Tear Sheets were not actual holdings of the Fund during the period represented in the relevant Tear Sheet. As such, the Tear Sheets were materially false and misleading because the reported portfolio exposures misrepresented the Fund’s actual holdings, which resulted in a misstatement of the Fund’s actual exposure.

18. At various times MassAve sent Snapshots dated February 3, 2020, September 3, 2020, and April 2, 2021 to at least seventeen investors that included misleading position data. Specifically, the Snapshots presented holdings data in the following misleading manners: (1) they included both positions not actually held in the portfolio, as well as position amounts that did not reflect the actual holdings at the specific point in time referenced; and (2) they consolidated certain positions that provided exposure to the same issuer. As such, the position data reported in the Snapshots were materially false and misleading because the Snapshots appeared to reflect the Fund’s holdings as of a particular date, but instead provided incorrect and/or modified position data that did not reflect the actual holdings in the portfolio on that day.

19. In at least one instance, MassAve sent to at least twenty-one investors Top Ten Contributors and Detractors that presented a misleading view of what positions most significantly contributed to, or detracted from, the Fund’s portfolio performance over a given period. Specifically, there was a failure to uniformly aggregate instruments held in particular

issuers, and the manual calculation of positions resulted in errors. As such, at least one of the Top Ten Contributors and Detractors was materially false and misleading because it did not contain accurate portrayals of what represented the most significant contributors or detractors for the respective periods being represented, when considering the full extent of exposures to certain issuers.

MassAve and Feng Failed to Disclose a Conflict of Interest

20. Since at least September 2022, Co-Founder 2 was trading external capital through his own, undisclosed fund in China (the “Undisclosed Fund”).

21. The Undisclosed Fund was wholly owned and controlled by Co-Founder 2, and because Co-Founder 2 served as head of research for MassAve, his trading activity in the Undisclosed Fund necessarily diverted his time and attention from the Fund. In addition, the trading in the Undisclosed Fund was done in markets that overlapped with the Fund. MassAve failed to disclose the existence of the Undisclosed Fund and the resulting conflict of interest to all investors.

22. Feng learned about the possibility of the Undisclosed Fund as early as June 6, 2022, when an officer of MassAve’s Hong Kong affiliate discussed and reviewed with him the setup fees charged for the Undisclosed Fund. Subsequent communications, as well as the fact that he entered into a waiver agreement with Co-Founder 2 and others to allow MassAve seed investors to invest in the Undisclosed Fund, demonstrate that Feng and MassAve likely knew, or should have known, about the Undisclosed Fund and that it traded away from MassAve in China.

23. For example, on September 1, 2022, Feng communicated about a MassAve seed investor redeeming a portion of his investment in the Fund to invest in the Undisclosed Fund.

24. On or about November 12, 2022, Feng received a periodic summary, which included, among other things, references to the Undisclosed Fund that held securities not traded by MassAve.

25. On or about December 16, 2022, Feng entered into a waiver agreement on behalf of an entity, other than MassAve, with Co-Founder 2 and MassAve seed investors that allowed the MassAve seed investors to invest in the Undisclosed Fund.

26. On or about January 10, 2023, Feng received a communication, which contained, among other things, research for potential trade opportunities, information for setting up pay-to-hold arrangements and calculations of profit potentials for the Undisclosed Fund.

Substantial Redemptions and Wind Down

27. After MassAve sent the Investor Letters and after the resignation of Co-Founder 2 and termination of Officer 1, a substantial number of redemption requests were made, resulting in more than half of MassAve's hedge fund assets on order for redemption by February 28, 2023.

28. At this time, MassAve announced that it would suspend all withdrawals.

29. On or about March 3, 2023, MassAve announced that it would wind down all sixteen of its advised funds.

Violations

30. As a result of the conduct described above, Feng 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.” Scienter is not required to establish a violation of Section 206(2), but rather may rest on a finding of negligence. *See SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-95 (1963)).

31. As a result of the conduct described above, Feng willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which makes it unlawful for any investment adviser to a pooled investment vehicle to make 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.

2 “Willfully,” for purposes of imposing relief under Section 203(f) of the Advisers Act and 9(b) of the Investment Company 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).

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(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent 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 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; and

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter,

for a period of twelve (12) months, effective on the second Monday following the entry of this Order, **provided, however**, that Respondent may, until thirty (30) days from the date of institution of this Order, continue to hold and exercise control over MassAve through his ownership interests in Mass Ave Global Partners, L.P. solely to perform tasks or functions relating to MassAve, Mass Ave Global GP, LLC, Mass Ave Global Partners, L.P., any MassAve-advised fund, or assets held by any MassAve-advised fund, including, but not limited to, the Fund, to the extent necessary to effectuate a transaction for the sale of MassAve-advised funds' assets to third parties. For the avoidance of doubt, the proviso to the preceding sentence beginning with the words "provided, however," shall cease to be legally operative and controlling as of the earlier of (i) thirty (30) days from the date of institution of this Order, (ii) the date that Respondent effectuates a transaction for the sale of all MassAve-advised funds' assets to third parties or (iii) at such time as Respondent terminates his association with MassAve.

C. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$250,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Securities and Exchange Act of 1934 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 Winston Mubai Feng 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 Osman E. Nawaz, Chief, Complex Financial Instruments Unit, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616.

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, he shall not argue that he is entitled to, nor shall he 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 he shall, within thirty (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.

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, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent 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 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