

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6622 / June 11, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21961

In the Matter of

**ANSON FUNDS
MANAGEMENT, LP AND
ANSON ADVISORS, INC.**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 203(e) AND
203(k) OF THE INVESTMENT ADVISERS
ACT OF 1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND
A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Anson Funds Management, LP (“Anson Funds”) and Anson Advisors, Inc. (“Anson Advisors”) (together, the “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 the Respondents' Offers, the Commission finds¹ that:

Summary

1. These proceedings arise from the Respondents' work with activist short publishers who issue reports presenting bearish views of target securities ("short reports"). From at least 2018 through 2023 (the "Relevant Period"), the Private Placement Memorandum ("PPM") for Anson Investments Master Fund ("AIMF"), the private flagship fund that Respondents advised, described a short position investment strategy to be used for AIMF but omitted that AIMF's investment strategy involved working with activist short publishers and trading in the target securities, including around the time the reports were issued by activist short publishers, and paying a portion of AIMF's trading profits to the short publishers in exchange for the short publishers sharing their work with Respondents in advance of posting it publicly. In addition, by not disclosing this practice, Anson Funds did not implement its written policy to "clearly articulate" AIMF's short strategy or the risks associated with this strategy, in violation of the Advisers Act.

2. In addition, in September and October 2018, Anson Advisors agreed to pay "Individual A," the principal of a short activist firm (hereafter, "Short Publisher A"), a share of AIMF trading profits in connection with Short Publisher A's bearish reports and tweets on two securities. As a result of AIMF's trading, Individual A's share of AIMF's trading profits exceeded \$1.1 million, which Respondents paid through a third-party intermediary via invoices for purported research services that the third-party intermediary had not performed. Anson Funds inaccurately recorded these payments as payments to the third-party intermediary for such research services and in doing so violated the Advisers Act books and records provisions. Further, by failing to implement its written policies regarding the accuracy of records, Anson Funds violated the Advisers Act compliance rule.

3. As a result, and as detailed below, Anson Advisors violated Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, and Anson Funds violated Sections 204 and 206(4) of the Advisers Act and Rules 204-2, 206(4)-7, and 206(4)-8 promulgated thereunder.

Respondents

4. **Anson Funds Management, LP** is a limited partnership organized under the laws of Texas with a principal place of business in Dallas, Texas. Anson Funds was founded in 2003. It has been registered as an investment adviser with the Commission since 2012 and as of March 2024 reported having approximately \$2.5 billion in regulatory assets under management.

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.

5. **Anson Advisors, Inc.** is a corporation organized under the laws of Ontario, with a principal place of business in Toronto, Canada. Anson Advisors was founded in 2007. Anson Advisors is registered with the Ontario Securities Commission and has reported to the Commission as an exempt reporting adviser since 2013. Anson Advisors and Anson Funds are co-investment advisers of a number of private pooled investment vehicles, including AIMF.

Other Relevant Entities and Persons

6. **Anson Investments Master Fund LP** is the Respondents' flagship fund and a Cayman Islands limited partnership.

7. **Short Publisher A** is an activist short publisher that presents itself to the market as an independent research firm. Short Publisher A purports to expose frauds or other problematic conduct at target companies through its own website and twitter feed.

8. **Individual A** founded Short Publisher A around 2008 and has been writing and disseminating reports and tweets through that platform since its inception.

AIMF's Private Placement Memorandum

9. During the Relevant Period, the Respondents were co-investment advisers of private pooled investment vehicles, including AIMF. They received an asset-based management fee and performance-based compensation from their clients. The Respondents worked together to determine fund strategy, manage risk, communicate with investors, and to draft marketing materials. Anson Advisors was primarily responsible for making investment decisions, while Anson Funds was primarily responsible for operational and administrative tasks, such as financial and compliance functions for both firms pursuant to a shared services agreement. The shared services agreement contractually obligated the Respondents to provide each other certain support services in connection with the day to day legal, compliance, and operations of each party.

10. The Respondents' investor materials describe AIMF as a long-short fund, meaning the fund employed a strategy of taking both long and short positions in certain securities to enhance returns. The PPM for AIMF, which Respondents prepared and sent to actual and prospective investors to solicit investment in the fund, described the AIMF short position investment strategy as "scour[ing] the market using various data filters and screens to identify companies with significant short-term stock price appreciation that we believe is not justified by a corresponding improvement in underlying businesses prospects" and "monitor[ing] larger industry trends" to take short positions in companies the Respondents "expect to suffer the same decreased stock price and then hold the positions until the stock prices decreases to reflect the industry-wide decline."

The Respondents' Practice of Working with Activist Short Publishers

11. During the Relevant Period, the Respondents worked with activist short publishers who released reports presenting bearish information about target companies. These short reports were often posted on independent social media sites operated by the short publishers.

12. Respondents had formal consulting agreements with some of the short publishers, which at times provided that the short publisher would share its work with Respondents prior to public posting. In exchange, Respondents agreed to pay the short publisher, at times based on a percentage of AIMF's profits from trading in the target security for an agreed period of time around the publication of the report.

13. Anson Advisors directed trading by AIMF. Generally, AIMF would secure a short position prior to the release of the reports. The price of the target securities often decreased after the reports were published, and AIMF would often cover its short position for a profit. Anson Funds was aware of the arrangements and monitored AIMF positions and the share of AIMF profits owed to the short publisher pursuant to the agreements.

14. At other times, Respondents had informal arrangements with short publishers whereby they would exchange research and content with the short publishers, but would not enter into a formal consulting agreement with them.

Respondents' Relationship with Individual A and Short Publisher A

15. During the Relevant Period, Respondents at times worked on an informal basis with Short Publisher A, which was operated by Individual A. In late 2018, Respondents paid Individual A a portion of AIMF's trading profits regarding two securities in connection with Short Publisher A's reports and tweets regarding those securities.

16. In September 2018, Anson Advisors contacted Individual A about Short Publisher A issuing bearish reports on Namaste Technologies, Inc. ("Namaste"), a company whose securities traded on the Canadian Securities Exchange. Namaste's securities were also quoted on the OTC Link under the symbol "NXTTF." Anson Advisors and Individual A worked together to prepare two bearish reports and tweets, which Short Publisher A published in September and October 2018. In exchange, Anson Advisors agreed to pay Individual A a share of AIMF's profits from its short position in Namaste. AIMF's short positions in Namaste in September and October generated approximately \$3.8 million in profits.

17. In October 2018, Anson Advisors agreed to pay Individual A a share of AIMF's profits from trading around Short Publisher A's bearish tweet on India Globalization Capital, a company whose securities traded on the NYSE American stock exchange under the symbol "IGC." Short Publisher A published a bearish tweet regarding IGC in early October 2018, stating that the

stock was overvalued. AIMF's short positions on the day of the tweet generated approximately \$500,000 in trading profits.

18. As a result of AIMF's trading in Namaste and IGC, Individual A was owed more than \$1.1 million of AIMF's trading profits. Individual A did not pay or contribute funds to Respondents to purchase securities in either Namaste or IGC. Individual A asked Anson Advisors to send him his share of trading profits through a third-party intermediary, to which Respondents agreed. The third-party intermediary provided Anson Funds with invoices for purported research services that had not been performed by the third party intermediary and inaccurately stated that the amounts invoiced were for the benefit of the third-party intermediary, when they were for the benefit of Individual A. Anson Funds issued payment to the third-party intermediary, and Individual A collected payment from that third-party intermediary.

Respondents' Omission of Their Work with Activist Short Publishers Rendered the PPM's Description of Investment Strategies Misleading

19. The PPM for AIMF, which Respondents prepared and sent to actual and prospective investors, described a short position investment strategy for AIMF but omitted that AIMF's investment strategy involved working with activist short publishers and trading in the target securities. The PPM for AIMF did not disclose this strategy, including that Respondents entered into agreements with activist short publishers and would compensate some short publishers by paying them a share of AIMF trading profits.

20. Respondents' agreements with and payments to short publishers, including Individual A, was information that investors would have found material. The omission of this conduct from the AIMF PPM, which was not available to investors through other means, rendered its statements about its short strategy misleading.

Anson Funds Failed to Maintain Accurate Books and Records and to Follow Its Policies and Procedures

21. Anson Funds inaccurately recorded the payments for the benefit of Individual A in its journal and ledgers as payments to the third-party intermediary for research services, when in fact they were to Individual A for trading profits.

22. Anson Funds' compliance policies and procedures required the keeping of accurate books and records. Among other things, this included restrictions on using money or approving transactions when the funds would be used for purposes other than those described. Anson Funds failed to implement this policy when it approved and paid Individual A through the third-party intermediary.

**Anson Funds Failed to Implement its Compliance Policies and Procedures Regarding
Accurate Disclosure of Fund Strategies**

23. Anson Funds adopted compliance policies and procedures requiring it to “clearly articulate” in the PPMs for the pooled investment vehicles it managed, its investment strategies; these policies and procedures required the firm to provide “disclosure as to how funds are to be invested, what factors will influence investment performance and what risks are associated with the Account’s principal investment strategy.”

24. By omitting from the description of its short strategy in the PPM its practice of working with short publishers and paying them a share of AIMF trading profits, Anson Funds did not “clearly articulate” its short strategy or the risks associated with this strategy.

Violations

25. As a result of the conduct described above, Anson Advisors and Anson Funds willfully² violated Section 206(4) of the Advisers Act and Rule 206(4)-8(a)(1) and (2) thereunder, which makes it unlawful for any investment adviser to a pooled investment vehicle to (1) make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made not misleading, or (2) otherwise 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. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act or the rules thereunder. *S.E.C. v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992).

26. As a result of the conduct described above, Anson Funds willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

27. As a result of the conduct described above, Anson Funds willfully³ violated Section 204 of the Advisers Act and Rules 204-2(a)(1) and (2) thereunder. Section 204 of the Advisers Act requires investment advisers to make and keep certain records and furnish copies thereof, and to make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Rule 204-2 provides that

² “Willfully,” for purposes of imposing relief under Sections 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).

³ *Id.*

investment advisers registered or required to be registered shall make and keep true, accurate and current books and records in specified categories.

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. Anson Funds cease and desist from committing or causing any violations and any future violations of Sections 204 and 206(4) of the Advisers Act and Rules 204-2(a), 206(4)-7, and 206(4)-8 promulgated thereunder.

B. Anson Advisors 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 promulgated thereunder.

C. Respondents are censured.

D. Respondent Anson Advisors shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of \$1,000,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717.

E. Respondent Anson Funds shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of \$1,250,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717.

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 Anson Advisors and Anson Funds 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 Katharine E. Zoladz, Division of Enforcement, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.

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, they shall not argue that they are entitled to, nor shall they 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 they 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.

By the Commission.

Vanessa A. Countryman
Secretary