

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6743 / October 7, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22227

In the Matter of

LDP PARTNERS LLC and
HIMALAYA RAO-
POTLAPALLY

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 (“Advisers Act”) against LDP Partners LLC (“LDP Partners”) and Himalaya Rao-Potlapally (“Rao-Potlapally,” and together with LDP Partners, “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 Respondents 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 and misleading statements by LDP Partners, an unregistered investment adviser, and Rao-Potlapally, LDP Partners's sole Member and Manager. Since July 2022, LDP Partners has managed one client, a private venture capital fund, The BFM Fund I LLC (the "BFM Fund"). The BFM Fund, as of August 2024, has sold approximately \$4.6 million worth of its securities to fifty-three (53) investors in various states.

2. From February 2023 through November 2023, LDP Partners and Rao-Potlapally breached their fiduciary duties to the BFM Fund and misled investors in the BFM Fund in three separate ways:

a. First, in March 2023, LDP Partners and Rao-Potlapally, without notifying all investors in the BFM Fund, transferred \$600,000 of cash out of the BFM Fund's bank account to three different bank accounts that were not held or controlled by the BFM Fund, including a personal checking account Rao-Potlapally shared with her spouse. LDP Partners and Rao-Potlapally initiated these transfers after communicating with the BFM Fund's advisory committee about concerns that the BFM Fund's bank account would not be fully protected by Federal Deposit Insurance Corporation ("FDIC") insurance in the event of the bank's collapse. That committee was comprised of five volunteers which, per the BFM Fund's governing documents, provides *ad hoc* advice to LDP Partners and Rao-Potlapally, but which does not have authority to make any decisions with respect to the management of the BFM Fund or to provide consent to conflicts of interest on behalf of the BFM Fund's investors. Despite learning a few weeks later, in April 2023, from a representative of the BFM Fund's bank that the \$600,000 could be returned to the BFM Fund's bank account and be fully protected by FDIC insurance, LDP Partners and Rao-Potlapally did not return the money until August and September 2023.

b. Second, in July 2023 and while the \$600,000 of cash had been transferred out of the BFM Fund's bank account and control, LDP Partners and Rao-Potlapally provided a financial statement to the BFM Fund's investors that misleadingly represented that the \$600,000 of cash was still in the BFM Fund's control, when, in fact, it had been transferred to three other bank accounts that were not held or controlled by the BFM Fund. This financial statement was not corrected until November 27, 2023, when LDP Partners and Rao-Potlapally distributed to the BFM Fund's investors a financial statement which disclosed the March 10, 2023 transfers and acknowledged that the previously-distributed financial statement had overstated the BFM Fund's cash position by \$600,000.

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

c. Third, in February 2023 and September 2023, LDP Partners took a total of approximately \$55,000 in improper advance management fees from the BFM Fund. While LDP Partners, through Rao-Potlapally, sought and received approval from members of the BFM Fund’s advisory committee to take these fees in advance rather than as earned on a monthly basis, these transactions were improper because the BFM Fund’s controlling documents did not allow LDP Partners to take advance management fees, and the advisory committee was not authorized to allow the advancement.

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.

Respondents

4. **LDP Partners** is a limited liability company organized in May 2021 under the laws of the State of Oregon, with its principal place of business in Hampton, Virginia. Since approximately July 2022, LDP Partners has managed the BFM Fund and has had one Member and Manager: Rao-Potlapally. LDP Partners does not have any employees, is not registered with the Commission, and has no disciplinary history with the Commission.

5. **Rao-Potlapally**, age 35, is a resident of Hampton, Virginia, and, since approximately July 2022, has been the sole Member and Manager of LDP Partners. Rao-Potlapally is not associated with any entity registered with the Commission and has no disciplinary history with the Commission.

Other Relevant Entity

6. **BFM Fund** is a limited liability company organized in September 2020 under the laws of the State of Oregon with its principal place of business in Portland, Oregon. The BFM Fund, which was known as Black Founders Matter Fund I, LLC from September 2020 until approximately October 2022, is a private venture capital fund focused on seed-stage entrepreneurs that, as of August 2024, has sold approximately \$4.6 million worth of its securities to fifty-three

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

(53) investors in various states. The BFM Fund does not have any employees, is not registered with the Commission, and has no disciplinary history with the Commission.

Facts

7. LDP Partners is the investment adviser to the BFM Fund. According to the BFM Fund's governing documents, the BFM Fund pays LDP Partners a management fee at the end of each month equal to 2.0% per annum of the total capital received by, or committed to be provided to, the BFM Fund. Rao-Potlapally, as LDP Partners's sole Member and Manager, is responsible for the management and operation of both LDP Partners and the BFM Fund. Rao-Potlapally, through LDP Partners, makes all investment decisions for the BFM Fund, alone controls LDP Partners's and the BFM Fund's bank accounts, and is ultimately responsible for the BFM Fund's financial reporting and its disclosures. Consistent with the BFM Fund's governing documents, Rao-Potlapally periodically distributes cash from LDP Partners to herself in exchange for her management and operation of LDP Partners.

Respondents' Undisclosed Transfers of Cash from a BFM Fund Bank Account and the Subsequent Return of Such Cash

8. On March 10, 2023, when the BFM Fund held approximately \$850,000 in cash in a single account at a regional bank, a member of BFM Fund's advisory committee alerted Rao-Potlapally to the fact that the California Department of Financial Protection and Innovation had appointed the FDIC as receiver of a different regional bank and expressed concern that FDIC insurance would only protect \$250,000 of this \$850,000 if the BFM Fund's bank also collapsed. Sharing these concerns, Rao-Potlapally contacted the BFM Fund's advisory committee. That same afternoon, after speaking with and obtaining the consent from members of the BFM Fund's advisory committee, LDP Partners and Rao-Potlapally transferred \$600,000 out of the BFM Fund's bank account to three different bank accounts that were not held or controlled by the BFM Fund. Rao-Potlapally controlled each of these three accounts and, through these transfers, commingled the BFM Fund's assets both with other entities' assets held in two separate bank accounts and with her own assets held in a personal checking account that Rao-Potlapally shared with her spouse.

9. Despite learning in early April 2023 from a representative of the BFM Fund's bank that it was possible to return the \$600,000 to the BFM Fund's bank account and for the entire amount to be fully protected by FDIC insurance, LDP Partners and Rao-Potlapally failed to return the \$600,000 for several months. LDP Partners and Rao-Potlapally returned approximately \$200,000 in August 2023 and returned another approximately \$310,000 by September 27, 2023 after Commission staff had contacted Rao-Potlapally in connection with its investigation. LDP Partners and Rao-Potlapally did not return approximately \$90,000 based on that amount being due and owed for management fees and expenses.

10. Transferring the money out of the BFM Fund's bank account subjected the BFM Fund and its investors to undisclosed risks and conflicts of interest because the \$600,000 was placed into three different accounts which Rao-Potlapally controlled, including commingling the

BFM Fund's assets with her own in a personal checking account that Rao-Potlapally shared with her spouse, creating the risk that she and/or her spouse could have used these funds, inadvertently or not, for their own benefit. Further, LDP Partners and Rao-Potlapally exacerbated these risks and conflicts of interest by waiting more than six months – until September 27, 2023, after being contacted by the staff of the Commission – to return the entire amount owed (outside of the approximately \$90,000 due and owed for management fees and expenses) to the BFM Fund's bank account.

Respondents Distribute a Misleading Financial Statement

11. On July 12, 2023, LDP Partners and Rao-Potlapally distributed to the BFM Fund's investors a financial statement which reflected that, as of March 31, 2023, the BFM Fund held \$820,831 in cash and cash equivalents. However, as a result of the \$600,000 having been transferred out of the BFM Fund's bank account on March 10, 2023, the BFM Fund actually held only \$220,831 in cash and no cash equivalents in its accounts as of March 31, 2023.

12. This statement was not corrected and investors – other than those on the BFM Fund's advisory committee – were not informed of the transfers until November 27, 2023, when LDP Partners and Rao-Potlapally distributed to the BFM Fund's investors a financial statement which disclosed the March 10, 2023 transfers and acknowledged that the previously-distributed financial statement had overstated the BFM Fund's cash position by \$600,000.

LDP Partners Takes Improper Advance Management Fees

13. In February 2023 and September 2023, LDP Partners took a total of approximately \$55,000 in improper advance management fees from the BFM Fund. Specifically, LDP Partners took \$23,550 in advance management fees on February 17, 2023 for the period ending June 2023, and took approximately \$31,500 in advance management fees on September 25, 2023 for the period ending December 2023, despite disclosures in the BFM Fund's governing documents which stated that the BFM Fund would pay LDP Partners a management fee “at the end of each month.”

14. LDP Partners, through Rao-Potlapally, sought and obtained approval from members of the BFM Fund's advisory committee for these advance management fee requests. However, these requests for – and the ensuing payment of – advance management fees were improper because the BFM Fund's controlling documents did not allow LDP Partners to take advance management fees, and, as noted above in Paragraph 2.a., also did not empower the advisory committee to make any decisions with respect to the management of the BFM Fund or to provide consent to conflicts of interest on behalf of the BFM Fund's investors.

15. Neither LDP Partners nor Rao-Potlapally informed the BFM Fund's investors – other than those on the BFM Fund's advisory committee – that LDP Partners had taken advance management fees.

Violations

16. 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.

17. 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.

LDP Partners’s Remedial Efforts

18. In determining to accept the Offer, the Commission considered steps undertaken by LDP Partners during the course of the staff’s investigation. After the start of the Commission’s investigation, LDP Partners voluntarily retained a compliance consultant (the “Consultant”) to conduct a comprehensive review related to LDP Partners’s current policies, procedures, systems, and internal controls with respect to: (i) the implementation of, and adherence to, LDP Partners’s and the BFM Fund’s governing documents; (ii) disclosures; (iii) the custody, safekeeping, and transfer of client assets; and (iv) the calculation and payment of fees, expenses, and reimbursements.

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 promulgated thereunder.
- B. Respondents are censured.
- C. Respondent Rao-Potlapally shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$10,000 to the Securities and Exchange Commission

for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. 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 Respondent Rao-Potlapally 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 L. Frederick, Assistant Regional Director, Denver Regional Office, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294 or such other address as the Commission staff may provide.

E. 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 Rao-Potlapally agrees that in any Related Investor Action, she shall not argue that she is entitled to, nor shall she benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent Rao-Potlapally'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 Rao-Potlapally agrees that she 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.

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