

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6860 / March 7, 2025

ADMINISTRATIVE PROCEEDING
File No. 3-22460

In the Matter of

**MOMENTUM ADVISORS,
LLC AND ALLAN J.
BOOMER,**

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 Momentum Advisors, LLC (“Momentum Advisors”) and Allan J. Boomer (“Boomer”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer 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 below, 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

These proceedings arise out of two distinct breaches of fiduciary duty by associated persons of Momentum Advisors in connection with a private fund that Momentum Advisors advises, as well as custody rule violations by Momentum Advisors.

Momentum Advisors, a registered investment adviser, provides investment advisory services to a private fund, Franklin Morgan Fund 1 LLC (the "Fund"), which was formed to purchase and develop franchise businesses, including dry cleaner businesses. Boomer is a partner of Momentum Advisors and a member of the general partner of the Fund. Boomer also held other roles at Momentum Advisors prior to March 2024, including managing partner and chief compliance officer. Boomer was the direct supervisor of Tiffany Hawkins ("Hawkins"), who was Momentum Advisors' chief operating officer and also a member of the general partner of the Fund.

First, from at least August 2021 through February 2024, Hawkins misappropriated approximately \$223,000 from portfolio companies in which the Fund had invested. Specifically, Hawkins misused the portfolio company debit cards in more than 100 transactions to pay for personal purchases, clothing, and vacations for herself and caused herself to be paid compensation in excess of her authorized salary. Momentum Advisors failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act arising from Hawkins' misappropriation. Boomer failed reasonably to supervise Hawkins, with a view of preventing violations of the federal securities laws within the meaning of Section 203(e)(6) of the Advisers Act.

Second, in 2020, in connection with the Fund's purchase of two franchise businesses jointly owned by a third party and by a limited liability company controlled by Boomer and Hawkins, Boomer caused the Fund to pay a business debt that should have been paid by the entity controlled by Boomer and Hawkins. Specifically, in connection with buying the third party's ownership interest in the businesses, Boomer caused the Fund to satisfy the entire outstanding obligation on two loans provided to the businesses. Because the entity controlled by Boomer and Hawkins owned 45% of the businesses, it should have contributed on a pro rata basis to satisfy the outstanding loans, but it did not, resulting in an unearned benefit of \$346,904.

Finally, Momentum Advisors violated Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, commonly referred to as the "custody rule," by failing to obtain and timely distribute annual audited financial statements prepared in accordance with Generally Accepted Accounting Principles ("GAAP") to investors in the Fund, which it advised.

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 proceedings.

Respondents

1. **Momentum Advisors** is a New York limited liability company with its principal place of business in New York, New York. Momentum Advisors is registered with the Commission as an investment adviser. Momentum Advisors has approximately \$353 million in regulatory assets under management in about 300 accounts as of March 29, 2024.

2. **Boomer**, age 48, is a resident of New Jersey. Boomer is a partner of Momentum Advisors and a member of Franklin Morgan Partners, LLC, the manager of the Fund. Until March 2024, Boomer was the managing partner and chief compliance officer of Momentum Advisors.

Other Relevant Entities and Individuals

3. **Hawkins, also known as Tiffany Taylor-Watson**, age 42, is a resident of Washington, D.C. Until March 2024, Hawkins was the chief operating officer of Momentum Advisors. Hawkins is a member of Franklin Morgan Partners, LLC.

4. **The Fund** is a private fund formed as a Delaware limited liability company. At all relevant times, an affiliate under common control with Momentum Advisors was the managing member of the Fund. Momentum Advisors has been the investment adviser to the Fund since at least 2020.

5. **Franklin Morgan Partners, LLC (“Franklin Morgan Partners”)** is the general partner of the Fund. Franklin Morgan Partners is a New Jersey limited liability company. Boomer and Hawkins are managing members of Franklin Morgan Partners.

6. **Ledgerity LLC (“Ledgerity”)** is a New Jersey limited liability company that owns an interest in two of the portfolio companies in which the Fund invested. Boomer and Hawkins are managing members of Ledgerity.

Facts

Formation of the Fund and Operation of the Portfolio Companies

7. In November 2020, Boomer and Hawkins formed the Fund for the purpose of raising money from investors to purchase and develop franchise businesses, such as dry cleaners. The Fund raised approximately \$5 million from advisory clients of Momentum Advisors. Momentum Advisors provides investment advisory services to the Fund. Franklin Morgan Partners serves as the general partner of the Fund.

8. Boomer and Hawkins represented in the Fund’s offering materials that they would operate the Fund in such a manner as to generate distributable cash from the operations of the Portfolio Companies, which would then be distributed to Fund investors. In total, the Fund invested in nine dry cleaners and the Fund distributed returns to Fund investors based on the Portfolio Companies’ profitability and cash on hand.

9. Until March 2024, the Portfolio Companies were managed on a day-to-day basis by employees of the Portfolio Companies and Hawkins. Hawkins, along with Boomer, opened business checking accounts for several of the Portfolio Companies and Hawkins held a debit card linked to those business accounts to use for the Portfolio Companies' business expenses.

The Fund Buys Out the Former Business Partner

10. Prior to the Fund's investments in the Portfolio Companies, Ledgerity, which was controlled by Boomer and Hawkins, owned 45% of two of the Portfolio Companies, and a third party (the "Former Business Partner") owned the remaining 55% of the two Portfolio Companies.

11. In or about December 2020, in a transaction negotiated by Boomer, the Fund agreed to purchase the Former Business Partner's interest in two of the Portfolio Companies. Specifically, the Fund agreed to acquire the Former Business Partner's 55% share of the two Portfolio Companies for a purchase price of \$1,450,000, plus the satisfaction of two outstanding loans totaling approximately \$1,145,000 that a trust associated with the Former Business Partner had made to the two Portfolio Companies. Given that Ledgerity owned 45% of the two Portfolio Companies, it should have contributed on a pro rata basis to satisfy the outstanding balance of the loans. Boomer, however, failed to consider Ledgerity's share of the loan obligations and caused the Fund to satisfy the entire amount of the outstanding loans. After accounting for partially offsetting payments made by the two Portfolio Companies in connection with the transaction, Ledgerity received an unearned benefit of \$346,904 through the Fund's satisfaction of the outstanding loans.

12. After the completion of the Commission staff's examination, and just after their investigation had begun, Momentum Advisors and Boomer initiated an investigation that discovered this issue, and they subsequently disclosed the Fund's overpayments to Commission staff. Boomer promptly signed a promissory note on behalf of Ledgerity, pursuant to which the Fund has been reimbursed for the unearned benefit, plus interest.

Hawkins Misappropriated Portfolio Company Funds

13. From at least August 2021 through February 2024, Hawkins misappropriated a total of approximately \$223,000 from the Portfolio Companies. Hawkins used Portfolio Company debit cards in more than 100 transactions to pay for personal vacations, clothing, and other personal expenses. From November 2022 through February 2024, Hawkins also caused one of the Portfolio Companies to pay her compensation totaling more than \$24,000 above her authorized salary.

14. Hawkins concealed this misappropriation from Boomer, Momentum Advisors, the Portfolio Companies' bookkeeper, and Commission staff. In documents produced to Commission staff by Momentum Advisors, Hawkins falsely represented that tens of thousands of dollars of expenses paid for by the Portfolio Companies relating to her personal vacations were legitimate business travel expenses. Hawkins also falsely represented that certain of the Portfolio Companies' purchases of designer clothing were legitimate business expenses in which the

Portfolio Companies had replaced customer garments that had been damaged by the dry cleaners. In fact, these purchases were made by Hawkins for her own personal use.

15. In August 2023, Hawkins informed Boomer that several Portfolio Company transactions that she had previously represented were legitimate business travel expenses were personal expenses for which she had mistakenly used the Portfolio Company debit cards, and Hawkins reimbursed approximately \$18,000 to the Portfolio Companies. This amount, however, was not the full scope of her misappropriation. Neither Boomer nor Momentum Advisors took any steps to impose additional controls or policies, limit Hawkins' access to Portfolio Company funds, or investigate Hawkins' use of Portfolio Company funds until after November 2023, when they learned that the misappropriation was more extensive.

16. In approximately March 2024, Hawkins resigned from Momentum Advisors and Hawkins and Momentum Advisors have since reimbursed the Portfolio Companies for Hawkins' misappropriation, plus interest.

Momentum Advisors' Compliance Failures and Boomer's Supervision Failures

17. Registered investment advisers are required to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules adopted by the Commission under the Act.

18. Momentum Advisors' written compliance policies and procedures did not address the operation of the Fund or Portfolio Companies. Therefore, there were no policies in place, for example, regarding travel and other business expenses or the review of expenses charged to the Portfolio Companies. As a result of Momentum Advisors' failure to adopt policies and procedures concerning the operation of the Fund and Portfolio Companies and its failure to implement existing relevant policies and procedures, Hawkins was able to misuse Portfolio Company debit cards without any review or approval process and pay herself in excess of her authorized salary.

19. Boomer was Hawkins' direct supervisor throughout the period of August 2021 through October 2023 and was responsible for overseeing Hawkins. Momentum Advisors' compliance manual provided that "[e]very person in a supervisory role is also responsible for those individuals under his/her supervision" and that Boomer, as chief compliance officer, had "overall responsibility for monitoring and testing compliance with the Firm's policies and procedures." At Franklin Morgan Partners, Hawkins and Boomer were partners, but Hawkins was responsible for the day-to-day operations of the Portfolio Companies, which Boomer oversaw.

20. Boomer was aware of facts that should have constituted red flags of potential misappropriation by Hawkins, but he failed to reasonably supervise Hawkins. For example: (i) beginning in 2022, Boomer noticed significantly increased expenses purportedly relating to replacements of customers' garments by Hawkins in the Portfolio Companies' monthly profit and loss reports; (ii) by mid-2022, Boomer knew that Hawkins had failed to pay personal income

taxes and that she was concerned that tax authorities might place a lien on her personal checking account; (iii) in November 2022, Boomer urged Hawkins to limit travel expenses because the excessive expenses were impacting investment returns, but Boomer failed to investigate why the travel expenses had increased and failed to take any further steps to ensure that Hawkins reduced the travel expenses; and (iv) Boomer implemented no additional controls or oversight after Hawkins stated in August 2023 that she had mistakenly used the Portfolio Company debit cards to pay for approximately \$18,000 in personal vacations, allowing Hawkins to continue to misappropriate funds for an additional two months.

Momentum Advisors Violated the Custody Rule

21. The custody rule requires that registered investment advisers who have custody of client funds or securities implement an enumerated set of requirements to prevent the loss, misuse, or misappropriation of those assets.

22. A registered investment adviser has custody of client assets if it holds, directly or indirectly, client funds or securities, or if it has the authority to obtain possession of them. *See* Advisers Act Rule 206(4)-2(d)(2). Custody includes, among other things, “[a]ny capacity (such as . . . trustee of a trust) that gives you or your supervised person legal ownership of or access to client funds or securities.” *Id.*

23. A related person of Momentum Advisors served as the managing member or general partner of the Fund at all relevant times, and had the authority to make decisions for, and act on behalf of, the Fund. Momentum Advisors was therefore deemed to have custody of the Fund’s assets as defined in Advisers Act Rule 206(4)-2.

24. Momentum Advisors also had custody of client assets because, contrary to the compliance policies of Momentum Advisors, employees of Momentum Advisors possessed several clients’ bank account log-in credentials, which could have allowed Momentum Advisors personnel to withdraw or transfer client funds from those bank accounts.

25. An investment adviser with custody of client assets must, among other things: (i) ensure that a qualified custodian maintains the client assets; (ii) notify the client in writing of accounts opened by the adviser at a qualified custodian on the client’s behalf; (iii) have a reasonable basis for believing that the qualified custodian sends account statements at least quarterly to clients for which it maintains funds or securities, except if the client is a limited partnership or is a limited liability company for which the adviser or a related person is a general partner or managing member, the account statements must be sent to each limited partner (or member or other beneficial owner); and (iv) ensure that client funds and securities are verified by actual examination at least once each year by an independent public accountant at a time chosen by the accountant without prior notice or announcement to the adviser. *See* Advisers Act Rule 206(4)-2(a)(1)-(5).

26. The custody rule provides an alternative to complying with the requirements of Advisers Act Rule 206(4)-2(a)(2), (3) and (4) for investment advisers to limited partnerships,

limited liability companies, or other types of pooled investment vehicles. The custody rule provides that such an investment adviser “shall be deemed to have complied with” the independent verification requirement and is not required to satisfy the notification and account statements delivery requirements with respect to a fund if the fund is subject to audit (as defined in Rule 1-02(d) of Regulation S-X (17 CFR 210.1-02(d)) at least annually and “distributes [the fund’s] audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners . . . within 120 days of the end of [the fund’s] fiscal year” (“Audited Financials Alternative”). *See* Advisers Act Rule 206(4)-2(b)(4). The accountant performing the audit must be an independent public accountant that is registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board. *See* Advisers Act Rule 206(4)-2(b)(4)(ii). An investment adviser to a limited partnership, limited liability company or other pooled investment vehicle that fails to meet the requirements of the Audited Financials Alternative to timely distribute audited financial statements prepared in accordance with Generally Accepted Accounting Principles would need to satisfy all of the requirements of Rule 206(4)-2(a)(2)-(4) in order to avoid violating the custody rule.

27. With respect to its custody of the Fund’s assets, Momentum Advisors purported to rely on the Audited Financials Alternative in order to comply with the custody rule and did retain independent public accountants, but the audits were never completed and Momentum Advisors failed to timely deliver the audited financial statements to investors in the Fund, as set forth in the table below:

End of Fiscal Year	Date Distribution Required	Date Distributed	Number of Days Late
12/31/2020	4/30/2021	10/3/2024	1,253
12/31/2021	4/30/2022	10/3/2024	888
12/31/2022	4/30/2023	10/3/2024	523
12/31/2023	4/30/2024	In progress	

28. Because Momentum Advisors did not satisfy the requirements of the Audited Financials Alternative with respect to its custody of the Fund’s assets, Momentum Advisors was required to comply with each of the provisions of Rule 206(4)-2(a)(2), (3), and (4), which it failed to do. Momentum Advisors also did not comply with each of the provisions of Rule 206(4)-2(a)(2), (3), and (4) with respect to the client accounts for which its personnel had the ability to access funds through their possession of bank log-in credentials. For example, Momentum Advisors did not ensure that client funds and securities were verified by actual examination each year by an independent public accountant at a time chosen by the accountant without prior notice or announcement to the adviser, in accordance with Rule 206(4)-2(a)(4).

Violations

29. As a result of the conduct described above, Momentum Advisors willfully² violated Section 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-2 thereunder.

30. As a result of the conduct described above, Boomer willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, and Boomer failed reasonably to supervise within the meaning of Section 203(e)(6) of the Advisers Act.

Remedial Efforts and Cooperation by Momentum Advisors and Boomer

31. In determining to accept the Offers, the Commission considered remedial acts undertaken by Respondents and cooperation afforded the Commission staff. Following the commencement of the staff's investigation, Momentum Advisors initiated a review of Portfolio Company transactions and voluntarily reported Hawkins' misappropriation to Commission staff and Boomer disclosed the Fund's overpayment in satisfying the two Portfolio Companies' loans. Momentum Advisors and Boomer then promptly took steps to make Fund investors whole for Hawkins' misappropriation and the Fund's overpayment in connection with the loan. Momentum Advisors has replaced Boomer as managing partner and chief compliance officer, retained a new chief financial officer, and hired a compliance consultant, and the Fund has implemented improved policies regarding business expenses.

Undertaking

32. Boomer has undertaken to provide to the Commission, within 30 days after the end of the twelve-month limitation period described in paragraph IV.E below, an affidavit that he has fully complied with the sanctions described in IV.E below. The certification shall be submitted to Steven G. Rawlings, with a copy to the Office of Chief Counsel of the Enforcement Division.

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).

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:

Momentum Advisors

A. Momentum Advisors cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-2 promulgated thereunder.

B. Momentum Advisors is censured.

C. Momentum Advisors shall pay a civil monetary penalty in the amount of \$235,000 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). Payment shall be made in the following installments:

- \$25,000 within 30 days of the entry of this Order;
- \$62,500 within 120 days of the entry of this Order;
- \$62,500 within 240 days of the entry of this Order; and
- \$85,000 within 360 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 shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to 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.

Boomer

D. Boomer 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.

E. Pursuant to Section 203(f) of the Advisers Act, Boomer shall be, and hereby is, subject to the following limitations on his activities for a period of twelve months from the entry of this Order:

Boomer shall not act in a supervisory capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for the time period specified above.

F. Boomer shall pay a civil monetary penalty of \$80,000 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). Payment shall be made in the following installments:

- \$20,000 within 30 days of the entry of this Order;
- \$20,000 within 120 days of the entry of this Order;
- \$20,000 within 240 days of the entry of this Order; and
- \$20,000 within 360 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 shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to 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.

G. Boomer shall comply with the undertaking enumerated in Section III, paragraph 32, above.

Payment

I. 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 Momentum Advisors or Boomer 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 Thomas P.

Smith, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, New York, 10004-2616.

J. 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 one or both of the Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in this Order entered by the Commission in these proceedings.

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