

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3671/ September 18, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30689/ September 18, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15500

In the Matter of

SHADRON L. STASTNEY,

Respondent.

**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 Shadron L. Stastney (“Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement which the Commission has determined to accept. Soley 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, 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. Respondent Shadron Stastney, a principal of Vicis Capital LLC ("Vicis Capital"), a registered investment adviser, breached his fiduciary duty to the Vicis Capital Master Fund (the "Fund"), an advisory client, by failing to disclose a material conflict of interest to the Trustee of the Fund and engaging in an undisclosed principal transaction with the Fund. Stastney was the Chief Operating Officer and Head of Research at Vicis Capital, where he also was responsible for directing and managing illiquid investments for the Fund. In the fall of 2007, Stastney invited a friend and outside business partner to join Vicis Capital to help him manage illiquid investments. In January 2008, Stastney then arranged for Vicis Capital to purchase for the Fund a basket of illiquid securities for approximately \$7.5 million from his friend. Unbeknownst to the Fund, however, Stastney received over \$2.7 million of the sales proceeds without ever disclosing at the time to the Trustee of the Fund that he had a material financial interest in the transaction. Accordingly, Stastney unilaterally set the terms of the transaction and authorized it even though he had an undisclosed conflict of interest. By virtue of this conduct, Respondent willfully² violated Sections 206(2) and 206(3) of the Advisers Act.

RESPONDENT

2. **Shadron L. Stastney**, age 44, is a resident of Marlboro, New Jersey. Stastney is one of the founders and managing members of Vicis Capital, where he has served as its Chief Operating Officer and Head of Research since its inception in 2004. Stastney also has been responsible for directing, overseeing and managing illiquid investments for the Fund.

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.

² A willful violation of the securities laws means merely "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." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

RELEVANT ENTITIES

3. **Vicis Capital LLC**, a Delaware limited liability company, is an investment adviser registered with the Commission since 2006. Together with two partners, Stastney jointly founded Vicis Capital in 2004. Vicis Capital is a multi-strategy advisory firm based in New York, New York, whose largest client was the Fund. Vicis Capital currently is winding down its operations.

4. **Vicis Capital Master Fund**, a Cayman Islands unit trust, is Vicis Capital's flagship fund. The Fund is held by two feeder funds, the Vicis Capital Fund for non-tax exempt U.S. investors and the Vicis Capital Fund (International) for non-U.S. investors and tax-exempt U.S. investors. The Fund and the two feeder funds each represent separate classes of the Vicis Capital Master Series Trust, a Cayman Islands unit trust. Caledonian Bank & Trust Limited (the "Trustee"), a company incorporated under the laws of the Cayman Islands, serves as the Trustee of the Fund. The Fund currently is winding down its operations.

FACTS

Background On Vicis Capital And The Fund

5. The Fund was a multi-strategy hedge fund that primarily focused on equity volatility arbitrage and convertible bond arbitrage strategies. At its peak in October 2008, Vicis Capital managed over \$5 billion in net assets for the Fund. In November 2009, Vicis Capital decided to wind down the Fund after suffering substantial redemptions.

6. Partner 1 and Partner 2, Stastney's partners in Vicis Capital, were respectively responsible for directing, overseeing and managing the Fund's equity volatility and convertible bond strategies.

7. Beyond its core investment strategies, the Fund also invested in privately negotiated convertible debt, preferred equity, stock warrants and/or stock rights in microcap and private issuers, including through private investments in public equity or "PIPEs" transactions. Stastney was responsible for directing, managing and otherwise overseeing those illiquid investments for the Fund since its inception.

Stastney's Relationship With Person A

8. In the fall of 2007, Stastney decided to hire Person A to help him manage the illiquid investments. At the time, Person A was a partner in Broker-Dealer A, a Florida broker-dealer, which had served as the placement agent for many of the Fund's illiquid investments.

9. Stastney and Person A had known each other since 2001 when they both worked on behalf of a wealthy entrepreneur. They became friends and partners in a business venture called

Partnership LLC that they initially formed to invest in Florida real estate in 2003. Over the next several years, Stastney and Person A also worked together on investments that Broker-Dealer A underwrote for the Fund.

10. In February 2008, at Stastney's invitation, Person A joined Vicis Capital as a Managing Director.

The Conflict Transaction

11. Before joining Vicis Capital, Stastney required Person A to divest his personal securities holdings that overlapped with securities or issuers in which the Fund also was invested. Person A had acquired these "conflict" securities through his affiliation with Broker-Dealer A.

12. In late December 2007 through early January 2008, Stastney arranged with Person A to sell the conflict securities to the Fund for \$7,475,000 in the "conflict transaction." Person A informed Stastney at the time that Stastney had a financial interest in some of the conflict securities and that Stastney would receive a portion of the sales proceeds.

13. In January 2008, shortly before the conflict transaction, Stastney informed Partner 1 and Partner 2 of the contemplated transaction, but never disclosed to either of them that he had a personal financial interest in the transaction or the securities. Nor did Stastney disclose at the time to Person B, the Chief Financial Officer and Chief Compliance Officer at Vicis Capital, that he had a personal financial interest in the transaction or the securities. Stastney also never disclosed to anyone at Vicis Capital at the time that he was a partner in Partnership LLC.

14. On January 16, 2008, the Fund purchased some of the conflict securities. The Fund then purchased the remainder of the conflict securities on February 4, 2008.

15. On January 22, 2008, Stastney personally received \$2,732,095 from the conflict transaction. Person A wired the funds to Stastney's personal savings bank account that Stastney jointly held with his wife.

Stastney Breached His Fiduciary Duty To The Fund

16. As an investment adviser, Stastney owed a fiduciary duty to the Fund. Stastney breached his fiduciary duty to the Fund by failing to disclose that he had a material conflict of interest with respect to the conflict transaction.

17. More specifically, Stastney failed to disclose to the Trustee of the Fund that he personally would derive a material financial benefit from the conflict transaction by receiving a

share of the sales proceeds. Nor did Stastney disclose that information at the time to anyone at Vicis Capital, including Partner 1, Partner 2 or Person B.

18. Stastney also failed to disclose at the time to the Trustee of the Fund or anyone at Vicis Capital, including Partner 1, Partner 2 or Person B, that he owned an interest in Partnership LLC.

19. As a result of the foregoing conduct, Stastney deprived the Trustee of the Fund of the opportunity to determine whether the Fund should pursue the conflict transaction. Had the Trustee objected to the conflict transaction, Person A would have had to sell or otherwise transfer the conflict securities to an independent third party.

Stastney Engaged In An Undisclosed Principal Transaction

20. Based on the foregoing conduct, Stastney also engaged in a principal transaction (i) without disclosing in writing to the Trustee of the Fund before the completion of the transaction that he would be participating as a principal in the conflict transaction because he held a beneficial ownership interest in some of the conflict securities at the time of the conflict transaction and (ii) without obtaining consent from the Trustee of the Fund to engage in the conflict transaction.

VIOLATIONS

21. As a result of the conduct described above, Respondent Stastney willfully violated Section 206(2) of the Advisers Act which provides that it is unlawful for an investment adviser “to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client.”

22. As a result of the conduct described above, Respondent Stastney willfully violated Section 206(3) of the Advisers Act which provides that it is unlawful for an investment adviser, “acting as principal for his own account, knowingly to sell any security to or purchase any security from a client . . . without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction.”

UNDERTAKINGS

Respondent Stastney has undertaken the following:

23. Independent Monitor.

- a. Within thirty (30) days of the date of this Order, Respondent Stastney shall cause Vicis Capital to engage, at his own expense, an independent Monitor which is not unacceptable to the Commission staff, to:
 - i. oversee Respondent's activities relating to the wind down of the Fund;
 - ii. submit to the Commission staff a quarterly report describing the status of the wind down, all the assets of the Fund and the operations of Vicis Capital; and
 - iii. report any potential irregularities at Vicis Capital or misconduct by Respondent to the Commission staff on an ongoing basis;
- b. Respondent Stastney shall provide the Monitor with five (5) days advance notice of contemplated transactions in connection with the wind down of the Fund;
- c. Respondent Stastney shall fully cooperate with the Monitor and shall cause Vicis Capital to provide the Monitor with access to any and all documentation, files and other materials that the Monitor requests for review in the course of its duties as set forth in Paragraph 23(a)(i)-(iii), including, but not limited to a quarterly status report on the wind down of the Fund, monthly trial balance reports, monthly balance sheets, monthly cash flow statements and monthly portfolio holdings reports; and
- d. Respondent Stastney shall cause Vicis Capital to retain the Monitor until such time as Respondent resigns as a managing member of Vicis Capital and divests his ownership interest in Vicis Capital immediately following the wind down of the Fund.

24. Compensation. Respondent Stastney shall not receive any compensation, including any salary, bonus or fees, from Vicis Capital.

25. Annual Audit. Respondent Stastney shall cause Vicis Capital to have prepared annual audited financial statements for the Fund.

26. Annual Appraisal. Respondent Stastney shall cause Vicis Capital to obtain an independent annual appraisal of the assets of the Fund.

27. Notice to Advisory Clients. Within thirty (30) days of the entry of this Order, Respondent shall cause Vicis Capital to provide a copy of the Order to the Fund and each of the investors in the Fund as of the entry of this Order by mail, e-mail or such other method as may be acceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

28. Certifications of Compliance by Respondent. Respondent Stastney shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Julie M. Riewe, Co-Chief of the Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549, with a copy to the Office of Chief Counsel of the Division of Enforcement, no later than sixty (60) days from the date of the completion of the undertakings.

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 Stastney shall cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(3) of the Advisers Act.
- B. Respondent Stastney be, and hereby is (i) barred from association with any investment adviser, broker, dealer, municipal securities dealer, or transfer agent, and (ii) 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, with the right to apply for reentry after eighteen (18) months to the appropriate self-regulatory organization, or if there is none, to the Commission; provided, however, that Respondent may continue to remain associated with Vicis Capital as a managing member solely for the purpose of engaging in activities and taking actions that are reasonably necessary to wind down the Fund, subject to the oversight of an independent Monitor, pursuant to the terms and

conditions set forth in Section III above, until such time as the completion of the wind down of the Fund, and at which time, Respondent immediately shall resign as a managing member of Vicis Capital and divest his ownership interest in Vicis Capital. In the event Respondent fails to comply with any of the undertakings set forth in Section III above, including the payment of the Monitor, Respondent shall no longer be permitted to remain associated with the Vicis Capital and be required immediately to resign as a managing member of Vicis Capital and divest his ownership interest in Vicis Capital, and the Commission staff may further seek to obtain an order from the Commission re-imposing the eighteen (18) month bar from the date of entry of that order and seek other remedies as may be appropriate.

- C. Any reapplication for association by the Respondent Stastney will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (i) any disgorgement ordered against Respondent Stastney, whether or not the Commission has fully or partially waived payment of such disgorgement; (ii) any arbitration award related to the conduct that served as the basis for the Commission order; (iii) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (iv) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.
- D. Respondent Stastney shall, within ten (10) days of the entry of this Order, pay disgorgement of \$2,033,710.46, and prejudgment interest of \$501,385.06 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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 Shadron L. Stastney 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 Julie M. Riewe, Co-Chief of the Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549.

- E. Respondent Stastney shall, within ten (10) days of the entry of this Order, pay a civil monetary penalty in the amount of \$375,000 to the United States Treasury. 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:

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- F. Respondent Stastney shall comply with the undertakings enumerated in paragraphs 23 to 28 in Section III above.

By the Commission.

Elizabeth M. Murphy
Secretary