

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4277 / November 23, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16969

In the Matter of

**CRANSHIRE CAPITAL
ADVISORS, LLC,**

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 Cranshire Capital Advisors, LLC (“CCA” 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 it 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(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 Respondent's Offer, the Commission finds¹ that:

Summary

1. This proceeding involves an investment adviser that negligently: (i) charged expenses to its fund clients and (ii) failed to adopt and implement certain compliance policies and procedures. From 2012 through 2014, CCA advised five clients, including a private fund with a master/feeder structure (the "Fund"). During that period, CCA used Fund assets to pay for certain compliance, legal and operating expenses of CCA in a manner not disclosed in the Fund's offering memoranda and certain organizational documents. As a result, CCA breached its fiduciary duty to the Fund in violation of Section 206(2) of the Advisers Act and also violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. In addition, CCA failed to adopt policies and procedures with respect to allocation of Fund expenses and failed to implement other aspects of its compliance program. Accordingly, CCA also violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondent and Other Entities

2. CCA is a Delaware limited liability company with its principal place of business in Northbrook, Illinois. CCA was registered with the Commission as an investment adviser from March 30, 2012, until March 28, 2015, when CCA withdrew its registration. Since at least May 22, 2015, CCA has operated as an exempt reporting adviser and on that date reported approximately \$94.4 million in assets under management ("AUM"). CCA still acts as adviser to the Fund, and both are being wound down.

3. Cranshire Capital Master Fund, Ltd., the Fund, was formed on March 21, 2011, as a Cayman Island exempted company and was organized for the purpose of investing assets received from a U.S. feeder fund, Cranshire Capital, L.P., and an offshore feeder fund, Cranshire Capital Offshore, Ltd. The Fund commenced operations on October 1, 2011, when Cranshire Capital, L.P. contributed \$176 million of assets and liabilities in return for shares in the Fund. The Fund is being wound down.

Background

4. In March 2012, CCA first registered with the Commission as an investment adviser and reported approximately \$204 million in AUM for five clients. CCA's clients included the Fund and two separately managed accounts. Investors in the Fund were individuals and entity limited partners ("the LPs"). CCA generally invested client assets in equities and warrants through

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.

registered direct or private investment in public equity offerings and participation purchase agreements.

5. CCA and the Fund are both in the process of winding down. CCA has represented that within ninety (90) days of the entry of this Order, and subject to completion of the undertakings listed in paragraphs 18-20, CCA will sell all of the Fund's assets and the net proceeds from such sale will be distributed by the Fund to its shareholders, who are CCA's only other existing advisory clients (i.e., Cranshire Capital, L.P. and Cranshire Capital Offshore, Ltd.) (less a reserve for liquidation and dissolution costs and expenses), and each of such other advisory clients will in turn distribute the amounts received from the Fund to their respective limited partners and shareholders (less a reserve for liquidation and dissolution costs and expenses). CCA also has represented that as soon as practicable after such net proceeds are distributed and CCA has completed the process of transferring the assets so sold, it will close operations.

CCA Negligently Allocated Expenses to the Fund

6. Investments in the Fund are primarily governed by a private placement memorandum ("PPM") and the Fund's limited partnership agreement ("LPA") and an Omnibus Management Agreement ("Management Agreement").

7. From 2012 through 2014, CCA used the Fund's assets to pay for certain CCA legal, compliance and operating expenses in a manner that was not disclosed in the Fund's organizational documents.

8. CCA's PPM and the Fund's LPAs both disclosed that CCA would "provide the [Fund] with office space and utilities. The [Fund] will pay all its other expenses, including . . . legal and accounting fees." Similarly, the Management Agreement effective March 1, 2012 provided that CCA would render its services to the Fund "at its own expense, including, without limitation, operating expenses (such as rent for office space and telephone lines) . . . unless such expenses are otherwise expenses to be borne by the Funds as described above . . ." Regarding legal and compliance expenses, the Management Agreement stated only that "each Fund shall bear its own expenses, including . . . external legal expenses."

9. None of these provisions authorized CCA to charge the Fund for its own compliance consulting fees. From 2012 through 2014, CCA employed an outside attorney to serve as a compliance consultant to advise it on registration and compliance matters. The services provided by the consultant related to the creation and operation of CCA's compliance program rather than any investments or operations of the Fund. During this period, CCA improperly used \$158,650 in Fund assets to pay the consultant's fees.

10. Despite the clear disclosures regarding operating expenses, from 2011 to 2014 CCA also improperly used \$118,378 in Fund assets to pay costs associated with its office supplies, computers, and utilities.

CCA Failed to Adopt and Implement Compliance Procedures

11. The improper allocation of expenses to the Fund was caused in part by CCA's failure to adopt and implement an adequate compliance program. CCA's compliance manual, adopted as a result of registering with the Commission, did not include a policy or procedure for determining when a particular item was properly chargeable to the Fund. CCA also failed to implement additional compliance procedures as described below.

12. CCA's compliance manual provided that "[t]he Funds' accounts are also reviewed on a regular basis by a third party administrator to price the portfolio based on independent third party pricing sources or methodologies approved by [CCA]. . . . The third party administrator also ensures that [CCA's] records are in agreement with those of its custodian." In reality, only CCA and not the third party administrator was pricing the portfolio and reconciling CCA's accounts.

13. CCA's compliance manual also provided that all CCA employees would report their personal securities holdings and that these holdings and transaction reports would be reviewed to monitor for any conflicts that could arise from personal trading. In reality, the person conducting these reviews did not review trades placed for the Fund, and his review of personal securities holdings was limited to brokerage account statements and securities separately reported to him. Because of this lapse, on one occasion where a private securities holding was not reported, CCA neglected to identify a potential conflict arising from the fact that the Fund invested in stock that a CCA officer already owned but did not hold in a brokerage account.

Violations

14. 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." As a result of the conduct described above, Respondent willfully² violated Section 206(2) of the Advisers Act. A violation of Section 206(2) does not require a showing of scienter but "may rest on a finding of simple negligence." 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, 191 (1963)).

15. Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder make it unlawful for any investment adviser to a pooled investment vehicle to "[m]ake any untrue statement of a material fact or omit to state a material fact necessary to make the statement 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

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)).

fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.” As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. A showing of negligence is also sufficient to establish a violation of Section 206(4) of the Advisers Act or Rule 206(4)-8 thereunder. Steadman, 967 F.2d at 647.

16. Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require a registered investment adviser to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules, and to review, no less frequently than annually, the adequacy of the policies and procedures and the effectiveness of their implementation. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Remedial Efforts

17. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff. With respect to CCA’s compliance program specifically, CCA, through its counsel, engaged a new compliance consultant in the Fall of 2014 to evaluate and give guidance to CCA on its compliance practices and procedures. With the assistance of the new consultant, CCA has implemented a variety of changes to its compliance program, including but not limited to revising its expense allocation policy to include the involvement of CCA’s CCO. In addition, at various stages CCA reimbursed the Fund for expenses identified in this Order.

Undertakings

18. Compliance Consultant. CCA shall retain at all times from the entry of this Order through the date at which it no longer has assets under management the services of the new consultant hired in the Fall of 2014 (the “Consultant”). The Consultant’s compensation and expenses shall be borne exclusively by CCA. The Consultant shall report solely to the CCO.

19. Notice of Order. Within thirty (30) days of the entry of this Order, CCA shall provide a copy of the Order to each of the limited partners and shareholders of Cranshire Capital, L.P. and Cranshire Capital Offshore, Ltd., respectively, as of the entry of this Order via 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.

20. Certification of Compliance. CCA will 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 Amy Cotter, Assistant Regional Director, with a copy

to the Office of Chief Counsel of the Enforcement Division, 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, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent shall 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 Rules 206(4)-8 and 206(4)-7 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall, within fourteen (14) days of the entry of this Order, pay a civil money penalty in the amount of \$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.

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

Payment by check or money order must be accompanied by a cover letter identifying CCA as 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 Amy Cotter, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, Chicago Regional Office, 175 West

Jackson Boulevard, Suite 900, Chicago, IL 60604, or such other address the Commission staff may provide.

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, it shall not argue that it is entitled to, nor shall it 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 it 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.

E. Respondent shall comply with the undertakings enumerated in Section III, Paragraphs 18-20 above.

By the Commission.

Brent J. Fields
Secretary