

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940

Release No. 4610 / January 17, 2017

ADMINISTRATIVE PROCEEDING

File No. 3-17781

In the Matter of

FFL PARTNERS, 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 FFL Partners, LLC (“FFL” 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:

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.

A. SUMMARY

1. These proceedings involve violations of the Commission's "pay-to-play" rule for investment advisers by Respondent FFL, an investment adviser to private equity funds that primarily invest in U.S. middle market companies. Rule 206(4)-5, promulgated under Section 206(4) of the Advisers Act, is a prophylactic rule designed to address pay-to-play abuses involving campaign contributions made by certain investment advisers or their covered associates to government officials who are in a position to influence the selection of investment advisers to manage government client assets, including public pension fund assets. Among other things, Rule 206(4)-5 prohibits certain investment advisers from providing investment advisory services for compensation to a government client (or to an investment vehicle in which a government entity invests) for two years after the adviser or certain of its executives or employees (known as covered associates) makes a campaign contribution to certain elected officials or candidates who can influence the selection of certain investment advisers.

2. In 2012, a covered associate of Respondent made a campaign contribution to a candidate for elected office in the state of Wisconsin, which office had the authority to appoint persons who had influence over selecting investment advisers for the Wisconsin state public pension funds. Within two years of this contribution, Respondent provided advisory services for compensation to one of these public pension funds. By providing those advisory services for compensation, Respondent violated Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder.

B. RESPONDENT

3. FFL Partners, LLC is a Delaware limited liability company located in San Francisco, California. In July 2016, FFL changed its name from "Friedman Fleischer & Lowe, LLC." FFL has been registered with the Commission as an investment adviser since March 2012. In its Form ADV filed with the Commission on July 29, 2016, FFL reported regulatory assets under management of approximately \$3.982 billion.

C. BACKGROUND

4. In 2008, a Wisconsin state public pension plan, the Core Retirement Investment Trust (the "Wisconsin pension plan"), committed to invest approximately \$50 million in Friedman Fleischer & Lowe Capital Partners III, L.P. (the "Fund"), a private equity fund advised by Respondent. Upon making its commitment as a limited partner, the Wisconsin pension plan was contractually committed to invest approximately \$50 million in the Fund, and the Wisconsin pension plan subsequently made this investment over time. During the relevant times, the Wisconsin pension plan remained invested in the Fund. The Fund was a closed-end fund and investors were generally prohibited from withdrawing their money for the life of the fund.

5. In March 2012, a covered associate² of Respondent (the “Covered Associate”) made a campaign contribution totaling \$10,000 to a candidate for the office of the Governor of Wisconsin.³

6. The office of the Governor of Wisconsin had the ability to influence the selection of investment advisers for the Wisconsin pension plan. Specifically, the Governor of Wisconsin appoints several members of the board of trustees of the investment board managing the Wisconsin pension plan. The trustees have influence over investments by the pension plan and the selection of investment advisers and pooled investment vehicles for the pension plan.

7. During the two years after the contribution, Respondent continued to provide investment advisory services for compensation to the Fund.

8. Advisers Act Rule 206(4)-5(a)(1) prohibits any investment adviser registered with the Commission, investment adviser required to be registered with the Commission, foreign private adviser, or exempt reporting adviser from providing investment advisory services for compensation to a government entity⁴ within two years after a contribution to an official⁵ of a government entity made by the investment adviser or any covered associate of the investment adviser. Advisers Act Rule 206(4)-5 also applies to investment advisers, including exempt reporting advisers, to a covered investment pool in which a government entity invests or is solicited to invest as though the adviser were providing or seeking to provide investment

² Covered associates are defined to include: (i) any general partner, managing member or executive officer, or other individual with a similar status or function; (ii) any employee who solicits a government entity for the investment adviser and any person who supervises, directly or indirectly, such employee; and (iii) any political action committee controlled by the investment adviser or by any of its covered associates. See Rule 206(4)-5(f)(2).

³ Rule 206(4)-5 has a *de minimis* exception, which permits covered associates to make aggregate contributions without triggering the two-year time out of up to \$350, per election, to an elected official or candidate for whom the covered associate is entitled to vote, and up to \$150, per election, to an elected official or candidate for whom the covered associate is not entitled to vote. See Rule 206(4)-5(b)(1).

⁴ See Rule 206(4)-5(f)(5).

⁵ “Official” includes any person who, at the time of the relevant contribution, was an incumbent, candidate or successful candidate for elective office of a government entity if the office is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity or has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity. See Rule 206(4)-5(f)(6).

advisory services directly to the government entity.⁶ Advisers Act Rule 206(4)-5 does not require a showing of *quid pro quo* or actual intent to influence an elected official or candidate.

9. As a public pension plan, the Wisconsin pension plan was a government entity as defined in Advisers Act Rule 206(4)-5(f)(5). The contributor was a covered associate of Respondent as defined in Advisers Act Rule 206(4)-5(f)(2). The candidate who received the contribution was an official as defined in Advisers Act Rule 206(4)-5(f)(6) of a government entity because the office that the candidate was seeking to become associated with had authority to influence the hiring of investment advisers by the government entity. The Fund was a covered investment pool as defined in Advisers Act Rule 206(4)-5(f)(3) because it would be an investment company under Section 3(a) of the Investment Company Act but for the exclusion from the definition of investment company provided by Section 3(c)(7) of the Investment Company Act.

10. Under Advisers Act Rule 206(4)-5, the contribution triggered a two-year “time-out” on Respondent providing advisory services to the Wisconsin pension plan for compensation. During the two years after the contribution, Respondent continued to provide advisory services for compensation to the Fund and, therefore, received advisory fees attributable to the investments of the Wisconsin pension plan in the Fund.

D. VIOLATIONS

11. As a result of the conduct described above, Respondent FFL willfully⁷ violated Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder, which makes it unlawful for any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under Section 203(b)(3) of the Advisers Act, or that is an exempt reporting adviser, to provide investment advisory services for compensation

⁶ See Rule 206(4)-5(c). A “covered investment pool” is defined as (i) an investment company registered under the Investment Company Act of 1940 (“Investment Company Act”) that is an investment option of a plan or program of a government entity; or (ii) any company that would be an investment company under Section 3(a) of the Investment Company Act, but for the exclusion provided from that definition by either Section 3(c)(1), Section 3(c)(7) or Section 3(c)(11) of that Act. See Rule 206(4)-5(f)(3). Rule 206(4)-5 applies to investment advisers even if the government entity was already invested in the covered investment pool at the time of the contribution.

⁷ 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)).

to a government entity within two years after a contribution to an official of the government entity is made by the investment adviser or any covered associate of the investment adviser.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent FFL's Offer.

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

A. Respondent FFL Partners, LLC shall 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)-5 thereunder.

B. Respondent FFL Partners, LLC is censured.

C. Respondent FFL Partners, LLC shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$75,000 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

Payments by check or money order must be accompanied by a cover letter identifying FFL Partners, LLC as the Respondent in these proceedings, the file number of these proceedings; a copy of which cover letter and check or money order must be sent to LeeAnn Ghazil Gaunt, Chief, Public Finance Abuse Unit, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 23rd Floor, Boston, MA 02110.

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.

By the Commission.

Brent J. Fields
Secretary