

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4819 / December 5, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18295

In the Matter of

BRAHMAN CAPITAL CORP.,

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 Brahman Capital Corp. (“Brahman” 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 matter concerns supervisory and compliance failures by hedge fund adviser Brahman. Paritosh Gupta ("Gupta"), a former senior Brahman research analyst, transmitted Brahman's confidential information to Nehal Chopra ("Chopra"), whom Gupta first met in 2006 and subsequently married in November of 2011. Chopra is a principal of and portfolio manager at Ratan Capital Management, LP ("Ratan"), an unaffiliated hedge fund adviser. Gupta also performed certain roles in the operations of Ratan, including providing investment recommendations, advice, and support to Chopra and Ratan. This conduct, which occurred without Brahman's consent and contrary to representations Gupta made to Brahman, took place from approximately April 2009 to June 2013 (the "Relevant Period"), while Gupta was employed by Brahman.

2. During the Relevant Period, Brahman became aware of certain aspects of Gupta's conduct, but nevertheless failed to take reasonable steps to supervise Gupta and prevent its recurrence. Brahman thus failed reasonably to supervise Gupta within the meaning of Section 203(e)(6) of the Advisers Act. It also failed to implement policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

RESPONDENT

3. **Brahman Capital Corp.**, a Delaware corporation with its principal place of business in New York, New York, is an investment adviser to seven private funds. It commenced operations in 1989 and most recently registered with the Commission in March 2012 (SEC 801-73436). As of January 2017, Brahman reported regulatory assets under management of approximately \$4.5 billion.

OTHER RELEVANT INDIVIDUALS AND ENTITY

4. **Paritosh Gupta**, age 37, and a resident of New York, New York, worked as a research analyst at Brahman from March 2005 until March 2013, and continued to serve as a research analyst for Brahman through June 2013. Gupta is currently a principal and portfolio manager of Adi Capital Management LLC ("Adi"), a New York based investment adviser to private funds. Adi is registered with the Commission as an investment adviser and as of March 2017 reported regulatory assets under management of approximately \$368 million. He is married to Nehal Chopra.

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.

5. **Nehal Chopra**, age 37, and a resident of New York, New York, is a principal and portfolio manager of Ratan. She is married to Paritosh Gupta.

6. **Ratan Capital Management, LP**, a Delaware limited partnership with its principal place of business in New York, New York, is an investment adviser to four private funds. It commenced operations in approximately March 2009, became an exempt reporting adviser with the Commission in 2012, and registered with the Commission as an investment adviser in July 2013. As of March 2017, Ratan reported regulatory assets under management of approximately \$375 million.

FACTS

A. Background

7. Brahman advises and manages private funds that employ event-driven long/short strategies focused on management change, and has generally followed the same investment strategy since its inception over 25 years ago. Gupta became an analyst at Brahman in approximately March 2005, and rose to become a senior research analyst.

8. In 2006, a Brahman principal introduced Gupta to Chopra. Gupta and Chopra began dating thereafter and married in November 2011.

9. In 2008, Chopra began to set up Ratan. Chopra launched the Ratan funds in May 2009, employing event-driven long/short strategies.

B. Brahman Failed Reasonably to Supervise Gupta

i. Gupta Advised Chopra on Ratan's Operations and Investment Strategy in Violation of Brahman's Policies

10. As described in the paragraphs below, Gupta provided advice and support to Chopra as she launched Ratan, including advice on investing and building her network in the investment community, without Brahman's knowledge and in violation of Brahman's policies. As early as August 2008, Gupta helped Chopra draft a presentation to obtain seed capital that delineated the proposed Ratan fund's investment philosophy, investment strategy, and investment process. In March 2009, Gupta emailed Chopra an offering memorandum of one of the Brahman's funds that described its investment strategy. The private placement memorandum for Ratan's first fund, dated April 2009, described a strategy virtually identical to the strategy of Brahman's funds.

11. After Ratan launched, Gupta helped draft and edit certain of Ratan's communications to investors or prospective investors, including quarterly investor letters, individualized emails, marketing presentations, "one pager" informational sheets, and due diligence questionnaires. These communications solicited investments in Ratan and described, among other things, Ratan's investment strategy, key personnel, portfolio composition, performance statistics, and investment ideas. Gupta also drafted and edited certain of Ratan's

communications seeking allocations of initial public offerings on behalf of Ratan, including an offering for which Brahman was also seeking an allocation.

12. Gupta also played a significant role helping Chopra staff Ratan. Gupta, without Brahman's knowledge, drafted or edited job descriptions for Ratan, reviewed resumes, identified candidates to interview, interviewed candidates, and conducted reference checks. In some instances, he also provided Chopra guidance and feedback on certain Ratan employees' compensation and other personnel matters.

ii. Gupta Shared Brahman's Confidential Information With Chopra

13. While employed by Brahman, Gupta emailed Chopra confidential Brahman information, such as investment theses, models, notes, recommendations, and analyses, in violation of Brahman's policies. This confidential information was developed by Gupta and his Brahman colleagues for Brahman fund clients. Gupta at times emailed Chopra Brahman's internal trading recommendations, strategies, and analyses.

14. Although Gupta had no authority to make trades on behalf of Brahman, unbeknownst to Brahman, he at times advised Chopra to have Ratan trade in the same securities that Brahman held. This advice, delivered at times in emails or Bloomberg chat messages from his Brahman account, related to both the timing and size of trades. Chopra at times traded in accordance with Gupta's advice, including on occasions where Brahman traded on the same day. For example, in March 2010, Gupta messaged Chopra asking her how big a position Ratan had in a particular security. When Chopra responded that it constituted 2.3% of Ratan's portfolio, Gupta told her it should be bigger and she should call him. That day, Ratan purchased additional shares of the security. Brahman had a position in the same security at that time, and also purchased more shares that day. Similarly, in November 2011, Gupta emailed Chopra from his personal email account, telling her that she should start selling a particular security. That day, Chopra began selling Ratan's position in the security. Brahman traded in the same security and derivatives of that security on the same day, reducing its long position in the security. In addition, on at least one occasion, Gupta monitored Ratan's entire portfolio for Chopra while Chopra was out of the country.

15. Gupta also provided Chopra with direct access to certain of Brahman's web-based third-party research providers, which provided her access to market intelligence, data and analytics, without Brahman's knowledge. Likewise, Gupta forwarded to Chopra emails and electronic messages that contained fund-paid third-party research, including investment analyses, models, and news on issuers, such as those issuers' recent stock sales.

iii. Brahman Discovered That Gupta Was Sharing Information with Chopra

16. By December 2010, Brahman became aware that Gupta had disclosed confidential information to Chopra, and determined to monitor Gupta's email for additional inappropriate communications with Chopra. In early 2011, Brahman's CCO reminded Gupta not to discuss Brahman confidential information with Chopra.

17. In mid-April 2011, Brahman learned that Gupta had helped prepare parts of Ratan's most recent quarterly investor letter, which used language similar to the internal draft of a Brahman investor letter to describe core positions held by both Ratan and Brahman. Gupta acknowledged editing and proofreading Ratan's letter and, after a meeting with one of Brahman's principals, signed a document stating that Gupta "may have or may be viewed as having disclosed confidential information" to Chopra, that "he must refrain from engaging in any conduct that may even appear to be a violation" of Brahman's confidentiality policy, and that he "was asked on prior occasions to make sure to not communicate with [Chopra] in a fashion that would appear to be in violation of Brahman's confidentiality policy." The document again directed Gupta not to disclose Brahman's confidential information. Brahman also continued its review of Gupta's email, including communications with Chopra.

18. Despite the fact that Brahman was aware that Gupta communicated confidential Brahman information to Chopra after he was previously directed not to do so, Brahman did not take supervisory, remedial and/or disciplinary steps sufficient to prevent further violations by Gupta.

19. After April 2011, Gupta continued emailing the same type of Brahman confidential information from his Brahman email account to his personal email account and, from there to Chopra, unbeknownst to Brahman. While monitoring Gupta's email, including after Brahman registered as an investment adviser in March 2012, Brahman did not discover that Gupta emailed confidential information to his personal email account in violation of its personal email policy.

iv. Brahman Learned That Ratan's Portfolio Overlapped Significantly with Its Portfolio

20. In November 2011, Gupta and Chopra married. Brahman had in place a personal trading policy that, among other things, prohibited most personal trading, including in individual securities, by its employees and their spouses. In January 2012, Gupta requested, and Brahman granted, an exemption from that prohibition for trading by Chopra conducted as portfolio manager of Ratan, so long as Chopra agreed to allow a law firm to review Ratan's portfolio and Brahman's portfolio on a monthly basis, including a comparison of holdings and the trading in those holdings. As an additional condition of that exemption, Gupta represented in writing that, among other things, he had no control over Ratan, no financial interest in Ratan, and no responsibility for the investment decisions made by Ratan. Brahman also required Gupta to sign, in January 2012, an additional agreement not to disclose Brahman's confidential information to Chopra.

21. In January 2012, as part of its review process, the law firm reported to Brahman a list of positions shared by Brahman and Ratan, which reflected a substantial overlap of the names in Brahman's and Ratan's portfolios. The size of this overlap remained relatively consistent through April 2013, and the law firm continued to report this finding monthly to Brahman through May 2013. Brahman did not take further action against Gupta until March 2013.

22. In February 2013, Ratan publicly filed its first Form 13F with the Commission, which also showed that certain of its positions overlapped substantially with Brahman's positions.

23. In March 2013, at Brahman's initiation, Brahman and Gupta separated. The separation agreement between Brahman and Gupta provided that he would remain employed by Brahman until December 31, 2013 (at the latest), during which time Gupta was responsible for continuing to track fund portfolio positions and research new investment ideas, but would no longer have access to Brahman's offices, email account, or internal systems. From March 2013 through June 2013, Gupta remained employed by Brahman and at times discussed Brahman investments with Brahman employees.

24. During this same time period, from March 2013 to June 2013, Gupta also provided services to Ratan as a consultant with the duties of an investment analyst, which included making investment recommendations. Gupta provided analysis and investment recommendations to Ratan and Brahman on the same securities during this time period. Brahman was not aware that Gupta was providing these consulting services to Ratan during this time period.

C. Brahman Did Not Implement Reasonably Designed Policies and Procedures Concerning Confidential Information or Use of Personal Email

i. Policies and Procedures Regarding Confidential Information

25. From 2009 to 2013, Brahman had general written policies concerning confidential information, and provided copies of these policies to its employees, but failed to implement reasonably designed policies and procedures to safeguard confidential information developed for its clients.

26. Brahman's code of ethics provided that "[e]mployees are generally prohibited from revealing any information relating to the investment intentions, activities, or portfolios of clients, or securities that are being considered for purchase or sale, or any other confidential information relating to Brahman or its clients to any other person other than employees of Brahman, non-affiliated third party financial institutions, attorneys or other third parties who are obligated to keep such information confidential and who 'need to know' that information in order to carry out their duties or provide services to Brahman or its clients."

27. Brahman's compliance manual provided that "Brahman generates, maintains, and possesses information that it views as proprietary and such information must be held strictly confidential by its employees. This information includes, but is not limited to, limited partnership and limited liability company agreements, investor lists and information about its investors generally, investment positions, research analyses and trading strategies, Fund performance, internal communications, legal advice, and computer access codes. . . employees may not disclose proprietary information to anyone outside of Brahman, except in connection with Brahman's business . . . and in a manner consistent with Brahman's interests."

28. The Brahman employee manual provided that "all information (whether oral, written, electronic, or otherwise) regarding Brahman or its clients, business practices and other similar information is the property of Brahman, and . . . all such information, including, but not

limited to, research and investment information, roster of existing and prospective clients, positions Brahman takes in the market on behalf of itself or its clients, information concerning the holdings of clients, computer and manual systems, methods of conducting business, strategic plans, investment strategies, and internal documents, manuals, and memoranda, is to be held in confidence. . . .Such information may not be discussed with others unless it is within the scope of an employee's duties and responsibilities to Brahman or authorized by the General Counsel.”

29. As set forth above, however, Brahman failed adequately to implement policies and procedures to safeguard confidential information and to enforce its code of ethics.

ii. Procedures Regarding Use of Personal Email

30. Brahman's compliance policies required employees to conduct business and send business communications only on Brahman-approved systems. The compliance manual stated that employees are “strictly prohibited from using public e-mail services (such as Hotmail or Gmail) for any business purpose.” Brahman provided employees with copies of these policies.

31. Notwithstanding adopting this policy, Brahman did not implement reasonably designed policies and procedures to effect compliance with it. For example, when Brahman determined to monitor more closely Gupta's email upon learning that he was sharing confidential information with Chopra, including after Brahman registered as an investment adviser in March 2012, Brahman did not have in place procedures for how to conduct such monitoring, and the monitoring it performed did not detect that Gupta emailed confidential information to his personal email account.

VIOLATIONS

32. As a result of the conduct described above, Brahman failed reasonably to supervise Gupta within the meaning of Section 203(e)(6) of the Advisers Act, which provides for the imposition of a sanction against an investment adviser who has failed reasonably to supervise, with a view to preventing violations of the securities laws, another person who commits such a violation, if such other person is subject to its supervision.

33. As a result of the conduct described above, Brahman willfully² violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder by failing to implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

² A willful violation of the securities laws means “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)).

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(e) and 203(k) of the Advisers Act with respect to Brahman, it is hereby ORDERED that:

A. Respondent Brahman 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)-7 thereunder.

B. Respondent Brahman is censured.

C. Respondent Brahman shall, within thirty (30) calendar 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

Payments by check or money order must be accompanied by a cover letter identifying the entity as a Respondent in these proceedings (Brahman), and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Melissa A. Robertson, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5010.

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 the 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