

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10461 / February 26, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 82773 / February 26, 2018

INVESTMENT ADVISERS ACT OF 1940
Release No. 4859 / February 26, 2018

INVESTMENT COMPANY ACT OF 1940
Release No. 33034 / February 26, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-17157

In the Matter of

**STEVEN ZOERNACK and
EQUITYSTAR CAPITAL
MANAGEMENT, LLC,**

Respondents.

**ORDER MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER PURSUANT
TO SECTION 8A OF THE SECURITIES ACT
OF 1933, SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
SECTIONS 203(e), 203(f) AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF
1940, AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF 1940**

I.

The Securities and Exchange Commission (“Commission”) instituted public administrative and cease-and-desist proceedings on March 8, 2016, pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e), 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 Steven Zoernack and EquityStar Capital Management, LLC (“EquityStar”) (collectively, “Respondents”). The Commission now deems it appropriate and in the public interest to enter this Order Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 (“Order”).

II.

Respondents have submitted an Offer of Settlement (“Offer”) that 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, Respondents admit the Commission’s jurisdiction over them and the subject matter of these proceedings, and consent to the entry of this Order, as set forth below.

III.

On the basis of this Order and Respondents’ Offer, the Commission finds that:

Summary

1. These proceedings involve violations of the anti-fraud provisions of the federal securities laws by Steven Zoernack and his company EquityStar, an unregistered investment adviser, in connection with the offer and sale of interests in Global Partners Fund, LLC (“Global Partners”) and Momentum Growth Fund, LLC (“Momentum”), two unregistered investment funds Zoernack created and then managed through EquityStar. From at least May 2010 through at least March 2014, EquityStar and Zoernack—EquityStar’s managing member and sole employee—made material misrepresentations and omissions and engaged in a fraudulent scheme involving this and other deceptive conduct including:

- taking extensive measures to hide Zoernack’s identity as fund manager—while simultaneously advertising that the funds boasted a seasoned and reputable manager—and otherwise failing to disclose to investors and others, material facts about Zoernack’s background, including two felony fraud convictions, a bankruptcy filing, and other money judgments and liens against Zoernack;
- providing false and misleading data about Momentum to Morningstar, Inc. (a company that provides independent investment research to individuals, financial advisers and institutions) in order to obtain for Momentum the title of “Morningstar Five Star Rated Fund,” which Zoernack then used to market the fund. For example, Zoernack misrepresented to Morningstar that the Momentum fund had been in existence for years longer than it actually had, and that its assets were more than 40 times higher than they actually were;
- creating and distributing false and misleading investment marketing materials, which failed to adequately indicate that results were hypothetical and not based on actual fund performance;
- hiring a firm to manipulate Internet search results for Zoernack and populating the Internet with false and misleading information about him, including that he was a successful fund manager, investor, and philanthropist. This had the effect of making it harder for potential investors and others to discover information about Zoernack’s criminal convictions and other negative information about him; and

- secretly withdrawing more than \$1 million from about February 2012 to at least May 2014, without authorization, and without disclosing his withdrawals to investors, and falsely characterizing the withdrawals as assets of the funds.

2. Through this deceptive conduct, Zoernack and EquityStar fraudulently offered and sold at least \$5.6 million of interests in Momentum and Global Partners to more than 40 investors in about 20 states and two foreign countries. Respondents' conduct violated the anti-fraud provisions of the federal securities laws.

Respondents

3. **Steven Zoernack**, age 55, is a resident of Sarasota, Florida. He is, and was at all relevant times, an investment adviser, and the managing member, sole owner, and sole employee of EquityStar Capital Management, LLC. Zoernack was also, during all relevant times, the managing member for both the Momentum and Global Partners funds. On March 31, 2017, in *United States v. Zoernack*, Crim. No. 17-cr-13-T-24TBM (M.D. Fla.), Zoernack pleaded guilty to conspiracy to commit wire fraud for conduct relating to the findings in this Order.

4. **EquityStar Capital Management, LLC** is a Delaware limited liability company formed on May 20, 2010. Zoernack is the managing member and sole employee of EquityStar. During all relevant periods, EquityStar's principal offices were located in Newport Beach, California. EquityStar is an unregistered investment adviser for Global Partners and Momentum.

Related Entities

5. **Momentum Growth Fund, LLC** is a Delaware limited liability company formed on July 10, 2012. Zoernack is its managing member. During all relevant periods, its principal offices were located in Newport Beach, California. Momentum is an unregistered investment fund.

6. **Global Partners Fund, LLC** is a Delaware limited liability company formed on May 20, 2010. Zoernack is its managing member. During all relevant periods, its principal offices were located in Newport Beach, California. Global Partners is an unregistered investment fund.

EquityStar's Investment Offerings

7. Between approximately March 2011 and at least March 2014, Zoernack and EquityStar offered and sold interests in the two investment funds, Momentum and Global Partners. From about March 2011 to about mid-2012, Zoernack and EquityStar offered and sold interests in Global Partners, raising at least \$2.6 million from more than 20 investors in approximately 13 states and Singapore. Between August 2012 and at least March 2014, Zoernack and EquityStar offered and sold interests in Momentum, raising approximately \$3 million in interests from about 20 investors in approximately 11 states and Canada.

8. Zoernack handled all activities of EquityStar, Global Partners, and Momentum. He drafted all marketing and offering materials, responded to all substantive information requests, and made all investment decisions. In order to create the appearance that EquityStar was more than a one-man operation – and to otherwise conceal his identity as fund manager in furtherance of his fraudulent scheme – Zoernack used at least three other false identities in communications with investors, prospective investors and others. One of the false identities was a non-existent woman named Amanda Sutton, to whom Zoernack gave the title of Investor Relations Professional.

9. Global Partners and Momentum maintained brokerage accounts at two broker-dealer firms during the relevant period. Both funds invested primarily in large cap stocks. Zoernack used several independent fund administrators to calculate earnings (using the broker-dealer monthly account statements) and send monthly statements to investors during the course of his scheme. Zoernack employed another company to prepare annual tax statements for investors.

Respondents Misrepresented and Omitted Material Facts about Zoernack’s Background

10. In the offer and sale of interests in the funds, the solicitation and marketing materials Zoernack drafted and distributed stressed the funds’ reliance on the manager and claimed that the unnamed manager had “an impeccable and unblemished past record with the SEC.” The unnamed manager was Zoernack, who had two criminal fraud convictions, had previously filed for bankruptcy, and had numerous money judgments and liens against him. Neither he nor EquityStar disclosed to prospective investors these facts about his background, which would have been important to a reasonable investor’s investment decision.

11. Zoernack also took extensive steps to conceal his criminal history and troubling financial record. Zoernack paid an Internet-based search engine manipulator (“Internet company”), \$10,000 to make negative information about him appear less prominently in search engine results. The Internet company did this by acquiring multiple website domain names and populating them with positive information about Zoernack—provided and approved by Zoernack—then “hitting” the positive websites numerous times, thereby causing the positive information about Zoernack to appear in search engine results before negative information. However, much of the positive information that results from an Internet search of Zoernack’s name is false or misleading.

12. In early 2012, EquityStar’s first fund administrator warned Zoernack numerous times about his poor fund management decisions and actions. In one email, the CEO of the fund administrator stated that, if Zoernack did not understand why one of the actions he had taken was inappropriate, “then I strongly recommend you hand back all of the investors[’] money ASAP before you end up in prison. And that’s the best advice I have ever given you.” Ultimately, after only a few months, the first fund administrator, auditor, and lawyers resigned because of Zoernack’s mismanagement of the Global Partners fund. In hiring EquityStar’s second fund administrator, Zoernack attempted to hide his involvement by having his wife sign the contract falsely identifying her as the managing director of the Global Partners fund and not indicating that he had any role in managing it.

Zoernack Used False and Misleading Information to Gain a Five-Star Morningstar Listing for the Momentum Fund

13. Morningstar is an independent investment research firm. Its website provides investors with a quantitative assessment of a fund's past performance compared with other similar funds. A five-star rating, Morningstar's highest, is given to only 10% of the funds rated by Morningstar. Morningstar's rating is based on a fund's performance data, which is provided by the fund's management. Morningstar does not independently confirm the information supplied to it by fund managers and includes a disclaimer to that effect on each Morningstar report. Zoernack supplied false and misleading information to Morningstar in order to secure a Five-Star rating for the Momentum fund.

14. Momentum's listing on Morningstar—which was based entirely on information Zoernack provided to Morningstar through its web portal—indicated that Momentum had a performance history that began in 2009 with returns in the top 20% of all funds, and that it had more than \$120 million in funds under management. This statement was false and misleading for multiple reasons. First, Momentum did not exist prior to 2012. This was a significant misrepresentation because, according to Morningstar's requirements, without at least three years' worth of performance results a fund was not eligible to be listed on Morningstar's website. Second, most of Momentum's returns listed in the Morningstar report were hypothetical or the results of "back-testing," not actual performance results. Nowhere in the information Zoernack provided for the Morningstar listing—which then appeared on Morningstar's website—did Zoernack disclose the purportedly hypothetical or "back-tested" nature of Momentum's performance. Third, Momentum had nowhere near \$120 million in total assets under management; in reality, the fund never had more than \$3 million in assets. Finally, the Morningstar report contained a biography of Zoernack—which he provided—that failed to disclose his criminal convictions, bankruptcy, other money judgments or liens against him.

15. Zoernack, acting on behalf of EquityStar and himself, provided all the information about Momentum on Morningstar's website. He knew that the false and misleading information appeared in the funds' Morningstar listings.

16. As a result of the false information Zoernack provided, Momentum appeared on the Morningstar website as a five-star rated fund when Zoernack and EquityStar offered and sold interests in the fund; and EquityStar and Zoernack, advertised Momentum as a "Morningstar Five-Star Rated fund." Moreover, Zoernack routinely touted EquityStar as an award winning fund and even incorporated the claim that it was "Awarded Morningstar 5 Star Fund" into his standard email signature block, sending many emails to investors and others which contained this misleading information.

Respondents Made Misleading Statements about the Funds' Investing Performance

17. Zoernack and EquityStar included false and misleading statements about investment returns for Global Partners and Momentum in marketing materials and emails. These returns were not the actual returns of the funds, but were based on what Zoernack asserted was a "back-testing" algorithm. However, in many of these marketing materials, Zoernack and

EquityStar did not disclose that the purported results were not actual results but were based on Zoernack's putative "pro-forma back-testing." In other materials, Zoernack included a misleading and confusing footnote about the back-tested nature of the returns.

18. One of the methods Zoernack used to seek new investors was to send out materially misleading solicitation emails to addresses he obtained through purchased leads. He sent one such email to dozens of individuals in the business community on October 30, 2012, soliciting them to invest in the Momentum Growth Fund. The email was materially misleading in various ways. First, it was purportedly sent by the non-existent Ms. Sutton, when it was really sent by Zoernack. Second, it touted EquityStar as an "award winning alternative investment fund manager" which "Morningstar gives . . . 5 stars out of 5" despite the fact that Zoernack procured the rating for the Momentum fund by providing wholly false and misleading data to Morningstar. Third, the email asserted that "EquityStar's reputation and credibility is [sic] further enhanced by the use of outside auditors and an independent fund administrator." Zoernack and EquityStar did not inform investors that the prior fund administrator, auditors, and lawyers had all resigned.

Zoernack Misused Investors' Funds

19. According to the offering memoranda for Global Partners and Momentum, EquityStar would receive a management fee of 3% annually (or .25% monthly) for each fund. The offering documents for each fund also stated that EquityStar would receive a 25% incentive allocation on net profits.

20. From approximately February 2012 to at least May 2014, Zoernack made tens of thousands of dollars a month in unauthorized withdrawals from both the Global Partners and Momentum trading accounts. These withdrawals were in addition to the fees and expenses authorized by the funds' offering memoranda.

21. In all, Zoernack withdrew more than \$1 million from fund assets that he was not authorized to take. Zoernack transferred the money from the funds' trading accounts to the EquityStar account. From there, Zoernack transferred some of the funds to his personal bank account or other bank accounts under his control (including a family trust account). In other cases, Zoernack paid personal expenses directly from the EquityStar account, using checks, wires, and a debit card.

22. The original offering memorandum for each fund did not allow fund assets to be used to pay day-to-day expenses, such as rent, salaries, administration, legal, audit, and tax and accounting. Instead, the documents stated that the fund manager was responsible for those expenses. Although Zoernack later changed the offering memorandum for the Momentum fund (but not the Global Partners fund), most investors did not receive *any* offering memorandum, let alone one containing language that would permit Zoernack to borrow money or use fund assets (to pay either himself or even legitimate management company liabilities). In fact, despite that Zoernack began to alter the offering memoranda for the funds, few if any of the investors ever received any document putatively authorizing Zoernack's large withdrawals.

23. Zoernack repeatedly represented to the second fund administrator that his withdrawals from the funds were loans he would repay and thus should be accounted for as receivables due from Zoernack to Global Partners and Momentum. For instance, as early as September 26, 2012, Zoernack sent a letter to the managing director of the second fund administrator in which he asserted that he would “reimburse the [Global Partners] fund for the[] higher than usual expenses” the fund had purportedly incurred to that point. He added, “Our plan is to have these higher than usual expenses reimbursed in full with 7% interest on or before December 31, 2012.” But neither Zoernack nor EquityStar reimbursed the funds “in full” or paid any interest whatsoever. Instead, Zoernack continued his withdrawals, largely unabated, more than tripling what he had agreed to pay the funds by early 2014.

24. Due to a combination of Zoernack’s substantial unauthorized withdrawals and trading losses, the value of the Global Partners fund fell precipitously. In or about September 2012, Zoernack closed the fund to new investors. Around that time he started the Momentum fund and urged investors—who were then unaware that almost 21% of the value of the Global Partners fund was listed as a fund asset based on Zoernack’s unauthorized cash withdrawals—to transfer their balances from Global Partners to Momentum. Some of them followed his recommendation. This resulted in significant further losses for all those who did.

25. At no time before March 2014 did Zoernack or EquityStar disclose to investors the existence of the withdrawals or balance of the alleged receivables Zoernack promised the second fund administrator he would repay. As a result, investors were misled with respect to a material fact, *i.e.*, the value of their EquityStar fund portfolios. That is because Zoernack continued to have the fund administrator identify his withdrawals in the funds’ financial statements as assets, rather than expenses, of Global Partners and Momentum. As assets, they were included in the monthly account values sent by the fund administrator to Global Partners and Momentum investors, causing the investors’ account balances and net returns to be materially inflated. The monthly statements to investors, however, did not identify the existence or amounts of the withdrawals by Zoernack or that there was an ever-increasing receivable balance.¹

26. The withdrawals were unauthorized and undisclosed. The offering materials for Global Partners and Momentum did not authorize the withdrawals Zoernack made, and investors were not aware that their account values in monthly statements included withdrawals made by Zoernack.

27. The withdrawals were also material, totaling more than \$1 million. By May 2014, after large trading losses and after some investors redeemed their interests in the funds, the withdrawals accounted for nearly 75% of Global Partners’ NAV and almost 50% of Momentum’s NAV reported to investors.

¹ The Commission ordered the fund administrator to 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 thereunder, to pay disgorgement and prejudgment interest of \$96,836, to pay a civil penalty of \$75,000, and to comply with certain undertakings. *See, In the Matter of Apex Fund Services (US), Inc.* (Admin. Proc. File No. 3-17300, June 16, 2016).

Violations

28. As a result of the conduct described above, Zoernack and EquityStar willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

29. As a result of the conduct described above, Respondents Zoernack and EquityStar also willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent and deceptive conduct by an investment adviser with respect to any client or prospective client, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which prohibit making an untrue statement of a material fact or omitting any material fact to any investor or prospective investor in a pooled investment vehicle and engaging in any act, practice, or course of business that is fraudulent or deceptive with respect to any investor or prospective investor in a pooled investment vehicle.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(e), 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

- A. Respondents cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.
- B. Respondent Zoernack is hereby barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.
- C. Respondents Zoernack and EquityStar are hereby 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.
- D. Any reapplication for association by the Respondents 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: (a) any disgorgement ordered against the Respondents, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

- E. Respondents shall pay, jointly and severally, disgorgement of \$2,890,518.54, which shall be deemed satisfied by the Forfeiture Money Judgment entered against Respondent Zoernack in *United States v. Zoernack*, Crim. No. 17-cr-13-T-24TBM (M.D. Fla).
- F. The Commission has determined to forego a civil penalty and prejudgment interest against Respondents in light of Respondent Zoernack's 60 month prison sentence, which commenced on November 15, 2017, in *United States v. Zoernack*, Crim. No. 17-cr-13-T-24TBM (M.D. Fla.).

V.

It is further Ordered that, 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 Zoernack, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Zoernack 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 Zoernack 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.

Brent J. Fields
Secretary