

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4910 / May 8, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18474**

**In the Matter of**  
  
**Steven Ku,**  
  
**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
PROCEEDINGS, PURSUANT TO SECTION  
203(f) OF THE INVESTMENT ADVISERS  
ACT OF 1940, MAKING FINDINGS, AND  
IMPOSING REMEDIAL SANCTIONS**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Steven Ku (“Ku” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings, Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions, as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### SUMMARY

1. This matter involves the failure by Ku, Chief Financial Officer ("CFO") of registered investment adviser Visium Asset Management, LP ("Visium"), reasonably to supervise Visium portfolio managers Christopher Plaford ("Plaford") and Stefan Lumiere ("Lumiere") with respect to the valuation of securities owned by the Credit Fund (defined in paragraph 6 below) for which Visium acted as investment adviser.<sup>2</sup>

2. From at least July 2011 to December 2012, Plaford and Lumiere engaged in a mismarking scheme to inflate falsely the value of certain securities held by the Credit Fund. Plaford and Lumiere accomplished their fraud by, among other things, using sham broker quotes to override prices from established pricing sources that Visium and the Credit Fund's independent administrator otherwise should have used to value the securities being mismarked. As a result of the mismarking scheme, the Credit Fund reported falsely inflated returns, overstated its net asset value ("NAV"), misclassified certain distressed assets, and paid approximately \$3.15 million in fraudulently charged performance and management fees to Visium.

3. Ku supervised Plaford and Lumiere with respect to procedures for determining the valuation of the securities owned by the Credit Fund. As set forth below, he failed to respond appropriately to red flags that should have caused a reasonable supervisor to question whether Plaford and Lumiere were engaged in unlawful conduct. These red flags included the frequency with which these portfolio managers used price overrides and the fact that the overrides almost always resulted in higher valuations for the Credit Fund.

4. Based on the foregoing conduct, Ku failed reasonably to supervise Plaford and Lumiere within the meaning of Section 203(e)(6) of the Advisers Act with a view to preventing their violations of Section 10(b) of the Securities Exchange Act of 1934 ("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.

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<sup>1</sup> 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.

<sup>2</sup> The Commission has filed civil actions against Plaford, *SEC v. Plaford*, 16-CV-4511 (S.D.N.Y.) (KPF); and Lumiere. *SEC v. Lumiere*, 16-CV-4513 (S.D.N.Y.) (KPF). In addition, both Plaford and Lumiere were convicted in the United States District Court for the Southern District of New York of violations of federal criminal law arising from their scheme to mismark the Credit Fund. *United States v. Plaford*, 16-CR-00400 (S.D.N.Y.) (RA); *United States v. Lumiere*, 16-CR-00483 (S.D.N.Y.) (JSR).

## RESPONDENT

5. **Ku**, age 48, resides in Princeton Junction, New Jersey. From 2003 until October 2014, Ku served as CFO at Visium; from October 2014 until 2017, he served as Visium's Chief Operating Officer. Since 1995, Ku has been licensed and registered with New York State as a certified public accountant.

## RELEVANT ENTITIES

6. **Visium** is a Delaware limited partnership, with its principal place of business in New York, New York, and investment adviser to the Credit Fund. Visium has been an investment adviser since 2005, and a Commission-registered investment adviser since April 2011.

7. **Visium Credit Master Fund, Ltd.**, is an unregistered Cayman Islands-based fund, organized in a master-feeder structure with an offshore unregistered feeder fund, incorporated in the Cayman Islands, called **Visium Credit Opportunities Offshore Fund, Ltd.**, and a domestic unregistered feeder fund, organized under Delaware law, called **Visium Credit Opportunities Fund, LP**. These unregistered funds are known collectively as the "Credit Fund." The Credit Fund is a "pooled investment vehicle" as defined by Rule 206(4)-8(b) under the Advisers Act.

## FACTS

8. In May 2009, Visium launched the Credit Fund for the purpose of investing primarily in higher risk and, at times, thinly traded debt instruments issued by healthcare companies. These types of corporate bonds and loans were not listed on any exchange but were traded "over the counter" by market makers who provided price quotes at which they would buy or sell for their own account. Over its life, the Credit Fund raised roughly \$600 million in investor capital. From May 2009 to June 2013, the fund reported positive returns in 44 of 50 months; at its peak, in March 2012, it had \$471.5 million in net assets. In 2013, after experiencing a string of redemption requests Visium closed the fund and began liquidating its assets. Plaford was portfolio manager for the Credit Fund. Lumiere was portfolio manager for a distressed assets portion of the Credit Fund.

9. With respect to valuation issues, both Plaford and Lumiere reported to Ku, who supervised the valuation of all Visium-advised funds, as well as Visium's accounting and operation staffs, and was a member of Visium's valuation committee. For example, Ku had the authority to direct Plaford and Lumiere to obtain broker quotes to support their price overrides; to decide how many quotes were required to support an override; and to reject quotes or overrides altogether. On investment related matters, Plaford reported to Visium's managing partner, and Lumiere reported to Plaford and the managing partner.

10. From at least July 2011 to December 2012, Plaford and Lumiere repeatedly obtained sham broker quotes to inflate falsely the value of certain securities held by the Credit Fund, the fund's reported NAV, and its performance. The sham quotes were used to override available prices from established pricing sources that, under Visium's disclosed valuation policies and procedures, Visium and the Credit Fund's independent administrator otherwise should have used, when striking the fund's month-end NAV, to price securities held by the fund. The sham

quotes were used also to price securities at month-end, at times, when the independent administrator did not provide Visium with available prices from established pricing sources. The sham quotes did not always reflect prevailing market values. Plaford and Lumiere procured the sham quotes from one or more of three “friendly” outside brokers at three different registered brokerage firms. To make the sham quotes appear to be legitimate quotes from independent outside brokers, Plaford and Lumiere asked the friendly brokers for the specific prices they wanted with the direction to email or instant message the prices back to them as the brokers’ own quotes (“U-turn” the quotes), which the brokers did. Plaford and Lumiere never informed Visium’s accounting department that the U-turned quotes did not come from dealers willing to transact at the prices quoted.

11. During the relevant period, the Credit Fund held, on average, 72 bond or loan positions at month-end, and Plaford and Lumiere obtained sham quotes, U-turned through the friendly brokers, to price anywhere from six to 28 of the positions. On at least 308 occasions, Plaford and Lumiere substituted their own price, based on sham quotes, for prices available from established pricing sources that Visium and the Credit Fund’s independent administrator otherwise should have used to strike the fund’s month-end NAV. Of the 308 price overrides, 282, or 91.56%, resulted in higher valuations for long positions or lower valuations for short positions held by the Credit Fund.

12. Ku had exposure to several red flags that should have raised questions as to whether Plaford and Lumiere may have been fraudulently mismarking the Credit Fund. First, in his role in the valuation process, he had visibility into the frequency with which Plaford and Lumiere used price overrides to value securities held by the Credit Fund and the frequency with which the overrides resulted in higher valuations for the affected positions. Ku received a monthly report that listed: (a) all of the Credit Fund’s positions; (b) the month-end value assigned to each position by the fund’s independent administrator; (c) the positions for which Plaford and/or Lumiere decided to override the independent administrator’s price; and, (d) the override prices used by Plaford and/or Lumiere. This information showed that Plaford and Lumiere used overrides to price, on average, a quarter of the positions held by the Credit Fund, and that more than 91% of the overrides resulted in higher valuations compared to the price Visium and the fund’s independent administrator should have used for the same securities. Moreover, Ku’s accounting staff sent him analyses showing that Plaford’s and Lumiere’s overrides, compared to prices available from established pricing sources, increased the fund’s NAV by about \$36.5 million, or 8%, for May 2012, and by about \$14 million, or 3%, for June 2012.

13. Additionally, on at least three occasions, Ku received reports indicating that Visium’s valuations for certain securities in the Credit Fund, based on U-turned quotes from Plaford and Lumiere, were significantly higher than contemporaneous valuations for the same securities held in a separately managed account (“SMA”) that tracked the Credit Fund’s strategy. Visium managed the SMA for a client that used a different independent administrator to value its holdings than Visium used for the Credit Fund. Visium could not override the valuations from the SMA’s independent administrator.

14. Despite these red flags, Ku failed to take appropriate action to determine whether an employee under his supervision was engaged in unlawful conduct and failed to take reasonable

steps to prevent violations of the federal securities laws. On several occasions, Ku asked Plaford about the valuations, but each time Ku simply accepted as true Plaford's false representations that the override quotations were reliable because they were obtained from broker-dealers who made markets in the particular distressed securities. Ku failed to take appropriate steps to verify the reliability or independence of the brokers or quotes Plaford and Lumiere used to support Visium's price overrides for the securities at issue. Generally, Ku also failed to take other steps outlined in Visium's valuation policies, made available to investors and prospective investors, including preferably obtaining at least three dealer marks for each override, and having the valuation committee, of which he was a member, review the overrides and document its findings.

15. The mismarking scheme caused the Credit Fund to overstate its month-end NAV routinely, during the relevant period, by 2.4% to 7.2%, and the fund's audited and reported NAV for year-end 2011 and 2012, by 5.1% and 7.0%, respectively. As a result, some investors bought into the fund at an inflated NAV. Some investors redeemed out of the fund at an inflated NAV, thereby diluting remaining investors' interests.

16. Visium charged Credit Fund "Series A" investors a 1.5% management fee and 15% performance fee, and Credit Fund "Series B" investors a 2% management fee and 20% performance fee, based on a high-water mark and calculated using the fund's NAV. As a result of the scheme, for 2011 and 2012, Visium received from the Credit Fund a total of \$2,622,709 in ill-gotten performance fees and \$533,700 in ill-gotten management fees, for a total of \$3,156,409.

17. Furthermore, monthly reports to Credit Fund investors disclosed the percentage of fund assets in each of three "fair value" classifications. Financial Accounting Standards Board Accounting Standards Codification Topic 820 ("ASC Topic 820") defines fair value as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date."

18. ASC Topic 820's framework for measuring fair value establishes a three-level fair value hierarchy based on the quality of inputs used to value an asset or liability: Level 1, the highest classification, is for assets or liabilities valued based on unadjusted quoted prices in active markets for identical assets or liabilities on the measurement date; Level 2 is for assets or liabilities that do not have quoted prices in active markets on the measurement date, but fair value can be calculated, directly or indirectly, based on observable market inputs; and Level 3 is for assets or liabilities that lack observable market inputs and, therefore, are valued based on management estimates or pricing models.

19. Plaford's and Lumiere's use of sham broker quotes to mismark certain distressed assets held by the Credit Fund both falsely inflated their value and made it appear as if there were observable market inputs for them. Plaford used sham override quotes to keep distressed assets at Level 2, instead of Level 3, because investors often view Level 2 assets as more liquid than Level 3 assets, and liquidity is an important metric to investors. Based on the sham quotes, Visium classified these securities as assets using Level 2 inputs, and the Credit Fund's independent administrator reported them as such to Credit Fund investors, instead of as assets using Level 3 inputs. Visium did not classify any Credit Fund assets as using Level 3 inputs until December 2012, when the reported amount jumped from 0% to 8.97% of the fund's NAV.

20. During the relevant period, the mismarking scheme rendered numerous statements made to Credit Fund investors and prospective investors false and misleading, including statements concerning Visium's valuation policies and procedures; the Credit Fund's performance and net assets; and limited partners' total capital, net investment income, and monthly and year-to-date returns.

### **VIOLATIONS**

21. As a result of the conduct described above, Respondent failed reasonably to supervise Plaford and Lumiere within the meaning of Section 203(e)(6) of the Advisers Act with a view to preventing their violations of Section 10(b) of the Exchange and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act, and Rule 206(4)-8 thereunder.

### **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 Ku's Offer.

Accordingly, pursuant to Section 203(f) of the Advisers Act, it is hereby ORDERED that:

A. Respondent be, and hereby is, suspended from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for a period of twelve months, effective on the second Monday following the entry of this Order.

B. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 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 Ku 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 Sanjay Wadhwa, Senior Associate Director, Division of Enforcement, New York Regional Office, Securities and Exchange Commission, 200 Vesey Street, New York, New York 10281, or such other person or address as the Commission staff may provide.

C. 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, he shall not argue that he is entitled to, nor shall he 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 he 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.

## V.

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