

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5001 / September 7, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18729**

**In the Matter of**

**VSS FUND MANAGEMENT LLC**

**and**

**JEFFREY T. STEVENSON,**

**Respondents.**

**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 VSS Fund Management LLC (“VSS”) and Jeffrey T. Stevenson (“Stevenson”) (collectively, “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”), 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 them and the subject matter of these proceedings, which are admitted, Respondents consent 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 Respondents' Offers, the Commission finds<sup>1</sup> that:

#### Summary

1. These proceedings concern registered investment adviser VSS's failure to provide the limited partners of a private equity fund it advised, VS&A Communication Partners III, L.P. ("Fund III"), with material information related to a change in value of the Fund III assets in connection with an offer by Stevenson, the owner and managing partner of VSS, to purchase the limited partnership interests. In late April 2015, Fund III was in its seventeenth year with two remaining portfolio companies, and several limited partners expressed a desire for a liquidity option that would allow them to exit the Fund. In accordance with the limited partnership agreement, the VSS investment committee decided to dissolve Fund III through a distribution in-kind. VSS simultaneously presented the Fund III limited partners with an option to sell their interests to Stevenson for cash at a price based on 100% of Fund III's December 2014 audited net asset value ("NAV"). In mid-May 2015, VSS, acting, in part, in response to questions from some limited partners, decided not to close Fund III in order to give limited partners that wanted to remain in Fund III the option to do so. At the same time, VSS revised the offer presented to the limited partners to provide that Stevenson would purchase their limited partnership interests, rather than their in-kind interests, at the same price offered in April. However, on May 1, 2015, VSS and Stevenson received preliminary information indicating the Fund III NAV had potentially increased significantly during the first quarter of 2015 from the 2014 NAV, which VSS and Stevenson neglected to disclose to the limited partners. The omission of this information regarding the potential increase in the value of Fund III's portfolio companies resulted in certain statements in VSS's May letter being misleading. In addition, after the offer was made, VSS did not provide the remaining Fund III limited partners with the first quarter 2015 financial information, which, according to VSS's calculations, still showed an increase in Fund III's NAV. As a result of the conduct described above, VSS violated, and Stevenson caused VSS's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

#### Respondents

2. **VSS Fund Management LLC**, a Delaware limited liability company based in New York, has been registered with the Commission as an investment adviser since March 29, 2012. VSS is owned by Veronis Suhler Stevenson Holdings, LLC, which is wholly owned by Stevenson and an entity controlled by him. VSS provides investment management services to private equity funds, including Fund III. In its Form ADV filed on March 30, 2018, VSS reported regulatory assets under management as of December 31, 2017 of approximately \$767 million, all of which are managed on a discretionary basis.

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<sup>1</sup> The findings herein are made pursuant to Respondents' Offers and are not binding on any other person or entity in this or any other proceeding.

3. **Jeffrey T. Stevenson**, 58, resides in New York, New York. Stevenson joined VSS in 1982, shortly after its formation, and is the current owner and managing partner of VSS.

#### **Other Relevant Entities**

4. **VS&A Communications Partners III, LP**, is a Delaware limited partnership and private equity investment fund that was formed in 1998 with approximately \$900 million in invested capital, which subsequently distributed approximately \$1.36 billion in capital. Pursuant to the distribution dynamics of Fund III's limited partnership agreement (the "Fund III LPA"), by 2015, the Fund III General Partner was entitled to 80% of the value of Fund III's remaining assets, while the limited partners' interest was 20% of the value of the remaining assets. Fund III's LPA provided that VS&A Equities III, LLC (the "Fund III General Partner"), was responsible for the management, control, and operation of Fund III. The Fund III General Partner delegated its powers to VSS at Fund III's inception, at which time VSS became Fund III's investment adviser. In 2015, Stevenson, as the managing principal, controlled the Fund III General Partner.

#### **Background**

5. VSS's investment committee ("Investment Committee") oversaw the activities of each of VSS's private funds, including Fund III. In 2015, the Investment Committee was comprised of Stevenson, five VSS managing directors, and VSS's Chief Financial Officer ("CFO") / Chief Compliance Officer ("CCO").

6. The Investment Committee had numerous responsibilities, including making investment decisions related to Fund III. The Investment Committee also had to approve the Fund III quarterly valuations (which are not audited) in order for the valuations to be considered final. After the Investment Committee's approval of the quarterly valuations, VSS would send the limited partners the Fund III quarterly financial information. The Fund III LPA required the quarterly financial information to be sent to the limited partners within sixty days of the close of each quarter.

#### **The April 2015 Cash Offer**

7. As of 2015, Fund III was in its seventeenth year and had two remaining portfolio companies – a yellow page directory business and a business-to-business magazine publisher and conference operator. Several limited partners expressed a desire for a liquidity option that would allow them to exit Fund III.

8. In early 2015, in accordance with the Fund III LPA, the Investment Committee decided to dissolve Fund III through a distribution in-kind. In connection with this distribution in-kind, VSS used a value of \$33.9 million, which represented the audited Fund III NAV as of December 31, 2014 (the "2014 NAV"). The Investor Advisory Committee for Fund III, which consisted of limited partners representing a large interest in the Fund, did not object to the 2014 NAV. At that time, the Fund III limited partner capital accounts totaled approximately \$6.8 million in value

(after approximately \$1.36 billion had been distributed), with the remainder belonging to the Fund III General Partner.

9. Stevenson proposed that he would make a simultaneous offer to purchase the limited partners' interests, at their election, for cash at 100% of the 2014 NAV (the "April 2015 Cash Offer"). The Investment Committee approved the April 2015 Cash Offer.

10. On April 28, 2015, VSS sent a letter informing the Fund III limited partners of the planned in-kind distribution and the April 2015 Cash Offer. The letter stated that each of Fund III's two remaining portfolio companies' 2014 EBITDA had declined from their 2013 EBITDA, as well as that VSS had "various discussions with potential buyers" to sell one portfolio company, "none of which have come to fruition due to the challenges of the yellow page industry" and that VSS had "not pursued a recent sale of [the other portfolio company] due to the recent down performance of the business." The letter also stated that "[g]iven their current prospects, in our view, it is unlikely that these businesses will be sold in the near future." The letter informed the limited partners of VSS's intent to close the Fund and conduct a distribution in-kind based on the 2014 NAV.

11. The April 28, 2015 letter further informed the Fund III limited partners of an option to receive cash by selling their assets to Stevenson. The April 28, 2015 letter disclosed Stevenson's involvement in the transaction, stating that "an entity funded and controlled by Jeffrey Stevenson, VSS's Managing Partner, has agreed to purchase the [limited partnership interests] otherwise distributable to an electing [limited partner] for a purchase price equal to 100% [of the 2014 NAV]." In order to accept the April 2015 Cash Offer, limited partners were asked to return a one page form to VSS indicating their election of the cash option and acknowledging Stevenson's involvement in the transaction.

12. The majority of Fund III limited partners promptly accepted the April 2015 Cash Offer. At least a few limited partners, however, expressed a preference to either remain in Fund III or for VSS to sell the assets to a third-party, rather than Stevenson.

#### **VSS Receives Material Information after the April 2015 Cash Offer**

13. In early May 2015, the Investment Committee received financial information from the two remaining Fund III portfolio companies for the first quarter of 2015 ending on March 31, 2015 ("Q1 2015"). On May 5, 2015, the VSS finance department sent the Investment Committee preliminary Fund III valuations, which had been updated to include the portfolio companies' March 2015 numbers. The preliminary documents showed a material increase in Fund III's Q1 2015 NAV from the 2014 NAV, representing a potential aggregate increase of approximately \$1.74 million in the limited partners' interest in the Fund. The May 5, 2015 information also showed an increase in both companies' EBITDA in Q1 2015 over their fourth quarter ("Q4") 2014 EBITDA, while at the same time showing a decline in revenue from Q4 2014 to Q1 2015.

14. VSS and Stevenson questioned whether the preliminary Fund III Q1 2015 valuations in the May 5, 2015 email were correct. Stevenson and the CFO/CCO had discussions both internally and with the portfolio companies in an effort to determine the correct Q1 2015 Fund III valuations, but

questions about the Fund III valuations remained throughout May 2015 (it was later determined that the increase was material).

### **The May 2015 Offer**

15. By mid-May 2015, Fund III limited partners representing approximately 90% of the limited partnership interests had expressed their desire to accept the April 2015 Cash Offer. VSS decided, however, to revise its offer and leave Fund III open in lieu of a distribution of assets in-kind.

16. In a May 15, 2015 letter, VSS notified the Fund III limited partners that it no longer planned to do a distribution in-kind and would keep the Fund open for those wishing to remain invested. For those wanting liquidity, the May 15, 2015 letter also included an offer from Stevenson (which the Investment Committee approved) to purchase their Fund III limited partnership interests at the same price offered in the April 2015 Cash Offer - 100% of the 2014 NAV (the "May 2015 Offer"). The letter explained that "[a]s an accommodation to those [limited partners] who desire to cash out on an expedited basis, Jeffrey Stevenson, VSS's Managing Partner, has agreed that an entity funded and controlled by him would be willing to purchase, on a secondary basis, the limited partner interest of any [limited partner] who so desires to sell. The purchase price would be equal to the same amount [a limited partner] would have received in cash in connection with a final liquidation of [Fund III] as outlined in our original April 28, 2015 letter."

17. The May 15, 2015 letter did not inform the limited partners of the preliminary valuation information indicating the potentially significant increase in Fund III's value from the 2014 NAV and VSS and Stevenson neglected to disclose this to any of the limited partners at any point.

18. VSS's and Stevenson's failure to include this information in connection with the May 2015 Offer represented a material omission that caused statements in the May 15, 2015 letter to be misleading. In particular, in light of VSS's statements in the April 28, 2015 letter about the portfolio companies' declining EBITDA and "the recent down performance" of one of the portfolio companies, it appeared from the May letter that there had been no change since the year-end 2014 circumstances identified in the April 28, 2015 letter. Additionally, by presenting the May 2015 Offer "as an accommodation" with a purchase price of 100% of the 2014 NAV, it appeared that the May 2015 Offer provided limited partners full value for their Fund III interests; yet VSS and Stevenson had preliminary information indicating the value of Fund III potentially increased significantly from the 2014 NAV.

### **May 15, 2015 through June 2015**

19. Between May 15, 2015, and May 31, 2015, more than 80% of the Fund III limited partners accepted the May 2015 Offer to sell their limited partnership interests to Stevenson for cash at 100% of the 2014 NAV. During this time, Stevenson discussed the May 2015 Offer with several limited partners. Further, Stevenson and the CFO/CCO continued to have discussions regarding the correct Q1 2015 valuation for the remaining portfolio companies in Fund III. Throughout this time, VSS's internal valuations continued to show a potentially significant increase in the Q1 valuation for Fund III over the 2014 NAV. This information was not disclosed to the limited partners.

20. The Fund III LPA required that VSS provide the Fund III Q1 2015 financials to the limited partners within sixty days of the end of the quarter, or by May 31, 2015. Neither the financials nor an explanation for their delay was provided to the fifteen limited partners who remained in Fund III as of May 31, 2015. In particular, because Stevenson and the CFO/CCO were still discussing the correct Q1 2015 valuations for Fund III, the Investment Committee never met to discuss and, therefore, never finalized the Q1 2015 valuations of the Fund III portfolio companies. As a result, VSS never sent the Q1 2015 financials to any Fund III limited partners.

21. As a result of the conduct described above, VSS willfully<sup>2</sup> violated, and Stevenson caused VSS's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, which makes it unlawful for any investment adviser to a pooled investment vehicle to "[m]ake any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the 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 fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle." A showing of negligence is sufficient to establish a violation of Section 206(4) of the Advisers Act or Rule 206(4)-8 thereunder. SEC v. Steadman, 967 F.2d 636, 647 (D.C. Cir. 1992).

#### IV.

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

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

A. VSS and Stevenson 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)-8 promulgated thereunder.

B. VSS is censured.

C. VSS and Stevenson shall, within 10 days of the entry of this Order, jointly and severally pay a civil money penalty in the amount of \$200,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section

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<sup>2</sup> 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)).

21F(g)(3) of the Securities Exchange Act of 1934. 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) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 VSS and Stevenson as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent Jason J. Burt, Assistant Regional Director, Asset Management Unit, Denver Regional Office, Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, Colorado, 80294.

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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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 Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents 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 Respondents 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