UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5338 / September 4, 2019

INVESTMENT COMPANY ACT OF 1940
Release No. 33615 / September 4, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19413

In the Matter of

MITCHELL J. FRIEDMAN,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY 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 Sections 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 Mitchell J. Friedman ("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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company 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 finds[1] that:

Summary

These proceedings concern Mitchell Friedman's failure to disclose to Sharpe 4 Partners, L.P., a private fund he advised, his material conflicts of interest arising from an arrangement with a separate private foreclosure fund (the "Foreclosure Fund") pursuant to which he received fees based on the amount of assets invested therein by Sharpe 4 Partners. Friedman also misled two investors who unknowingly purchased Friedman's own investment in the Foreclosure Fund. By virtue of his conduct, Friedman willfully violated Sections 206(2) and 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-8 thereunder.

Respondent

1. Mitchell J. Friedman ("Friedman"), age 60, resides in Mill Valley, California. Friedman founded Sharpe 4 Capital, LLC, an investment adviser, served as its 50% co-owner and manager from 2001 through 2017, and currently is the 99% owner.

Other Relevant Entities

2. Sharpe 4 Capital, LLC ("Sharpe 4 Capital"), is a California limited liability company with its principal office in Corte Madera, California. Sharpe 4 Capital was an investment adviser registered with the Commission from May 24, 2010 until February 27, 2017. Sharpe 4 Capital is the sole general partner of and adviser to Sharpe 4 Partners, L.P., a fund-of-funds. Sharpe 4 Capital reported regulatory assets under management of $39.63 million as of February 9, 2016. Sharpe 4 Capital's assets under management consisted of investments in third-party private funds.

3. Sharpe 4 Partners, L.P. (the "Sharpe Fund"), is a California limited partnership based in Corte Madera, California. The Sharpe Fund operated as a fund-of-funds that invested in third-party private funds. The Sharpe Fund is a "pooled investment vehicle" as defined in Rule 206(4)-8(b) under the Advisers Act. In December 2017, its sole general partner, Sharpe 4 Capital, announced the liquidation of the Sharpe Fund, which is ongoing.

[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.

Facts

Background

4. Friedman formed Sharpe 4 Capital and the Sharpe Fund primarily to pool the capital of investors so that they could participate in third-party private funds that had high minimum requirements for investment. Friedman ran the day-to-day operations of Sharpe 4 Capital and the Sharpe Fund, exercised control over, and made decisions on behalf of the entities. The previous co-owner of Sharpe 4 Capital ("Co-owner") had limited duties and was not involved in the misconduct described herein. Friedman and Co-owner earned management fees in return for their services. Specifically, the Sharpe Fund paid a quarterly management fee equal to 0.25% of its net assets to Sharpe 4 Capital. Friedman and Co-owner split the management fee with 50% to Co-owner if he introduced the investor and 100% to Friedman if he introduced the investor. Sharpe 4 Capital and the Sharpe Fund had no other employees.

5. By late 2011, approximately 50 limited partners were invested in the Sharpe Fund and approximately 20 additional retirement accounts were invested in the Sharpe Fund through a separate foreign entity. At that time, the Sharpe Fund invested its assets, which totaled approximately $40 million, across four third-party private funds. Beginning in 2011, Friedman also arranged for some investors in the Sharpe Fund to be able to allocate a portion of their investment to the Foreclosure Fund, a series of private funds that invested in foreclosed properties, rather than across the Sharpe Fund's holdings ("Foreclosure Fund Allocations").

Friedman's Undisclosed Fee Agreement with the Foreclosure Fund and the Sharpe Fund's Investments

6. On or around September 29, 2011, Friedman personally entered into a fee agreement with the Foreclosure Fund (the "Agreement"). Pursuant to the Agreement, Friedman was entitled to fees as a direct result of the additional investments he introduced to the Foreclosure Fund. The Agreement provided that if Friedman brought over $5 million of investments, he would earn 22.5% of the net annual profits that the general partner of the Foreclosure Fund received as a direct result of those investments that Friedman introduced, on an ongoing basis.

7. Throughout 2011, Friedman advocated for the Sharpe Fund to make an investment in the Foreclosure Fund, as part of its general holdings. In February 2012, Sharpe 4 Capital announced a 14.12% investment allocation of the Sharpe Fund's assets into the Foreclosure Fund, but Friedman had not disclosed to Co-owner or to the Sharpe Fund investors the existence of the Agreement. The Sharpe Fund's asset allocation in the Foreclosure Fund increased to 25.86% the following year. Compared to the Sharpe Fund's other holdings, the Foreclosure Fund had a substantially shorter track record of performance, had significantly less assets under management, and had a much smaller management organization. The Sharpe Fund was the Foreclosure Fund's largest investor.

8. By the end of 2013, about 24 limited partners in the Sharpe Fund had over $7.5 million invested in Foreclosure Fund Allocations, excluding Friedman and Co-owners' personal investments. No investors in the Sharpe Fund had such an allocation arrangement with respect to any of the Sharpe Fund's other holdings.

9. From February 2013 to February 2014, Friedman received payments totaling $54,565 pursuant to the Agreement. These payments added approximately 10% to the annual management fee Friedman earned from Sharpe 4 Capital.

Friedman Misled Two Investors With Respect to Their Purchase of Foreclosure Fund Allocations

10. Beginning in late 2013, Friedman misled two Sharpe Fund investors, who held Foreclosure Fund Allocations, with respect to their purchase of additional interests. In a November 27, 2013 e-mail to the investors, Friedman stated that there was "a young investor who is pulling out about $250k at year-end to buy a home." Friedman characterized the investment opportunity as attractive because it allowed them to buy into an existing series which they could not do otherwise because it "would have diluted the return to the current investors." On January 24, 2014, the two investors sent a total of $300,000 to the Sharpe Fund, to be invested as a Foreclosure Fund Allocation, with the understanding that they were taking over the interest of the existing investor described by Friedman.

11. Instead, at Friedman's direction, the corresponding withdrawal to the $300,000 investment was taken out of Friedman's personal Foreclosure Fund Allocation. Friedman never corrected his earlier representations about the withdrawing investor. The two investors relied on Friedman's representations and would have considered the fact that Friedman was liquidating a part of his personal investment in the Foreclosure Fund important to their investment decision.

Foreclosure Fund Losses and Liquidation of the Sharpe Fund

12. In September 2014, the Foreclosure Fund announced that it would wind down the limited partnership in which the Sharpe Fund was invested, due to low returns resulting from poor performance and a corresponding rise in redemption requests.

13. In 2015, Co-owner learned of the fees paid under the Agreement in a conversation with Friedman and advised Friedman to pay or allocate the fees to the Sharpe Fund's investors. On July 11, 2016, Friedman paid $47,642 to the Sharpe Fund and credited the money to investors who remained in the Sharpe Fund. Following an examination of Sharpe 4 Capital by the SEC's Office of Compliance Inspections and Examinations ("OCIE"), Friedman in early 2018 paid an additional $1,974 to the withdrawn investors.

14. During the course of the Commission's enforcement investigation, Friedman paid the remaining $4,949 of the fees he received pursuant to the Agreement to the Sharpe Fund with directions to have the money distributed to both the remaining and withdrawn investors. However, Friedman never disclosed to the Sharpe Fund or its investors the existence of the Agreement, the

fact that he had a material conflict of interest with respect to the Foreclosure Fund, or why he made the payments to investors in the Sharpe Fund. The two investors that Friedman misled have so far received $80,688 back from their $300,000 investment in the Foreclosure Fund, as well as an additional $150,000 from Friedman personally.

15. On December 11, 2017, Sharpe 4 Capital announced the liquidation of the Sharpe Fund and the liquidation is ongoing.

Violations

1. Section 206(2) of the Advisers Act makes it unlawful "to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." As a result of the conduct described above, Friedman willfully[2] violated Section 206(2) of the Advisers Act.

2. Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder make it unlawful for any investment adviser to a pooled investment vehicle to "[m]ake any untrue statement of a material fact or 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." As a result of the conduct described above, Friedman willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

Disgorgement and Civil Penalties

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.

[2] "Willfully," for purposes of imposing relief under Sections 203(f) and 203(k) of the Advisers Act and Section 9(b) of the Investment Company Act "'means no more than 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." Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965). The decision in The Robare Group, Ltd. v. SEC, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

Accordingly, pursuant to Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent 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 promulgated thereunder.

B. Respondent be, and hereby is:

> barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and
>
> 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,

with the right to apply for reentry after (1) year to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by the Respondent 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 Respondent, 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.

D. Respondent shall, within thirty (30) days of the entry of this Order, pay disgorgement of $69,312 and prejudgment interest of $17,023.64 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to the Securities Exchange Act of 1934 ("Exchange Act") Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

E. Respondent shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of $94,713 to the Commission for transfer 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 Mitchell J. Friedman 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 Erin E. Schneider, Regional Director, Securities and Exchange Commission, San Francisco Regional Office, 44 Montgomery Street, Suite 2800, San Francisco, California, 94104.

F. 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.

Vanessa A. Countryman
Secretary