

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5350 / September 17, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19462

<p>In the Matter of</p> <p>MICHAEL A. DEJAGER,</p> <p>Respondent.</p>
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ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 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 that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Michael A. DeJager (“DeJager” 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 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 Cease-and-Desist Proceedings, Pursuant to Section 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 arises out of fraudulent conduct by TitleCard Capital Group, LLC ("TCCG"), an exempt reporting investment adviser with the Commission, and its only managing member (the "Principal") concerning TCCG's materially false valuations and reports related to the acquisition of a portfolio company for a fund it managed, TitleCard Capital 1Fund, L.P. ("1Fund"). On December 31, 2015, 1Fund purchased portfolio company Cobalt Sports Capital, LLC ("Cobalt") from another fund that the Principal managed for approximately \$16.7 million, which represented a 75.86% equity interest in Cobalt. However, DeJager, TCCG's chief financial officer and a member of TCCG's valuation committee, caused TCCG to include information in 1Fund's next two quarterly reports sent to investors and in its private placement memorandum supplement disseminated to prospective investors showing that 1Fund's investment in Cobalt was valued at only a few million dollars. These materially false valuations and reports effectively concealed the amount of 1Fund's actual investment in Cobalt and, in turn, that TCCG had breached certain concentration limits by its purchase of Cobalt.

Respondent

2. **DeJager**, age 42, is a resident of Highlands Ranch, Colorado. From approximately July 2015 to the present, he has been the chief financial officer ("CFO"), chief compliance officer, and valuation committee member of TCCG.

Other Relevant Entities

3. **1Fund**, a Delaware limited partnership, is a private fund formed in 2015 by the Principal. Between 2015 and 2016, 1Fund raised approximately \$16 million from investors and invested that capital in various private companies. 1Fund is a pooled investment vehicle as defined by Rule 206(4)-8(b) under the Advisers Act. TitleCard Capital Management, LLC ("TCCM") is 1Fund's general partner with the sole and exclusive right under 1Fund's limited partnership agreement ("LPA") to manage the fund's assets. TCCM is controlled by TCCG, its only managing member. TCCG is registered with the Commission as an exempt reporting investment adviser, and was formed by the Principal, its only managing member. Pursuant to the 1Fund LPA, TCCM delegated its authority to manage 1Fund, including the valuation of 1Fund's investments, to TCCG. Between 2015 and 2016, TCCG received compensation from 1Fund for, among other services, managing the securities investments in the fund, and acted as an investment adviser under the Advisers Act.

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.

4. **Impact Opportunities Fund (“IOF”)**, a Delaware limited partnership, is a private fund formed in 2011 by the Principal. Between 2011 and 2012, IOF raised approximately \$30 million from investors and invested that capital in several startup portfolio companies, including an equity investment in Cobalt.

5. **Cobalt** is a Colorado limited liability company formed in 2011 to make loans to athletes, sports agencies, and related entities. Since October 2016, Cobalt has been in receivership.

Facts

6. Toward the end of 2015, the Principal who formed IOF and 1Fund orchestrated a related-party transaction whereby 1Fund agreed to purchase IOF’s controlling equity interest in Cobalt.

7. IOF’s sale of Cobalt to 1Fund occurred on December 31, 2015. Specifically, 1Fund invested approximately \$16.7 million to acquire a 75.86% equity interest in Cobalt from IOF. This investment in Cobalt resulted in a breach of certain concentration limits set forth in the 1Fund LPA because 1Fund’s investment exceeded the fund’s total capital contributions and required 1Fund to issue a note to purchase Cobalt.

8. Pursuant to the 1Fund LPA, TCCG was responsible for valuing all fund investments that did not have a public market at the investments’ “fair market value.” DeJager was a member of TCCG’s valuation committee, which was responsible for determining periodic fair valuations of 1Fund’s portfolio company investments. According to TCCG’s valuation policy and as stated in 1Fund’s quarterly reports to its limited partners, “[d]uring the 12 months after [1Fund] makes an initial investment in a portfolio company, the best representation of fair market value is the cost basis in those securities.”

9. 1Fund’s quarterly report for the period ended December 31, 2015 misrepresented its actual valued investment in Cobalt, effectively concealing the breach of the 1Fund LPA concentration limits. Specifically, in that report, the 1Fund limited partners were not provided with a valuation showing 1Fund’s investment of approximately \$16.7 million for a 75.86% equity interest in Cobalt. Instead, TCCG represented that the fund’s equity investment and ownership interest was valued at \$2,095,000 and 9.5%, respectively. TCCG included that lower valuation in the fund’s January 21, 2016 private placement memorandum supplement (“PPM Supplement”), which was emailed to prospective investors. In 1Fund’s next quarterly report for the period ended March 31, 2016, TCCG continued to materially misrepresent the value of the fund’s investment in Cobalt by showing a valuation of \$3,362,000 for a 14.1% stake in Cobalt.

10. DeJager helped draft the quarterly reports and PPM Supplement, which included the materially false valuations and representations regarding the size of 1Fund’s investment in Cobalt noted above. As TCCG’s CFO and as a member of its valuation committee, which was responsible for adhering to the valuation policies of the fund and TCCG, DeJager knew or should have known that his conduct would cause TCCG to issue fund documents that included materially false valuations and representations concerning 1Fund’s investment in Cobalt. For example, as

TCCG's CFO, he knew that 1Fund reported its 75.86% interest in Cobalt as an asset valued at approximately \$16.7 million on 1Funds' December 31, 2015 balance sheet.

Violations

11. As a result of the conduct described above, DeJager caused TCCG's violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. Section 206(4) makes it unlawful for investment advisers to engage in any act, practice or course of business which is fraudulent, deceptive, or manipulative. Rule 206(4)-8 states that it shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of Section 206(4) for any investment adviser to: (1) make 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 (2) otherwise 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.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in the Respondent's Offer.

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

A. Respondent DeJager 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 thereunder.

B. Respondent DeJager shall, within 360 days of the entry of this Order, pay a civil money penalty in the amount of \$15,000, plus post-judgment interest, to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. § 3717 thirty days from the Order date until the penalty and post-order interest are paid in full. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

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 Michael A. DeJager as a Respondent in these proceedings and identifying the file number of these proceedings. A copy of the cover letter and check or money order must be sent to: Ian S. Karpel, Esq., Assistant Regional Director, U.S. Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 80294.

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