

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5441 / February 4, 2020**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19689**

**In the Matter of**

**CANNELL CAPITAL, LLC,**

**Respondent.**

**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 Cannell Capital, LLC (“CCL” 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 it and the subject matter of these proceedings, which are admitted, Respondent consents 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 Respondent’s Offer, the Commission finds that:

## Summary

From 2014 through October 2019, registered investment adviser CCL failed to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of its business, to prevent the misuse of material nonpublic information. Specifically, CCL failed to follow its written policies and procedures by not maintaining a list of securities that members, officers, and employees (“Covered Persons”) and their family household members were prohibited from trading after the firm came into possession of potential material nonpublic information. Additionally, CCL’s written policies and procedures related to the handling of material nonpublic information were not reasonably designed to prevent misuse of material nonpublic information because they did not address any business-specific risks and lacked any guidance regarding when trading in securities should be restricted. As a result, CCL violated Section 204A of the Advisers Act.

## Respondent

1. **Cannell Capital, LLC** is a Wyoming limited liability company with its principal place of business in Alta, Wyoming. CCL has been registered with the Commission as an investment adviser since 2011. CCL provides investment advisory services to high net worth individuals and pooled investment vehicles. As of March 29, 2019, CCL had \$491,778,964 in reported regulatory assets under management. Approximately 60 percent of CCL’s assets under management belong to CCL’s owner, founder, and managing member.

## Background

2. Since at least 2014, CCL has generally employed a strategy focused on trading the equity of small market capitalization public companies for which there may have been minimal trading and little or no sell side analyst coverage. In order to research and understand these securities, CCL, among other things, (i) frequently communicated with issuer insiders, (ii) entered into nondisclosure agreements with issuers to gain access to financial information and engage in strategic communications about the issuer, (iii) communicated with investment bankers, (iv) participated in confidentially offered deals such as secondary offerings and PIPE transactions, and (v) published its own research articles on the internet.

3. To protect against the misuse of material nonpublic information (hereinafter “MNPI”) that CCL’s Covered Persons might encounter as a result of this business model, CCL maintained a written compliance manual that contained an “Insider Trading, Material Non-Public Information and Market Manipulation Policy” (the “MNPI Policy”).

4. The MNPI Policy in effect from at least 2014 through June 2017 prohibited Covered Persons and their family household members from engaging in or helping others engage in “insider trading.” The MNPI policy provided a general definition and examples of MNPI such as changes in dividend policies, earnings estimates, significant acquisition proposals, major litigation, the status of regulatory approvals, significant new products/services/contracts, or pending brokerage recommendations. The MNPI Policy further directed Covered Persons who think they might be in possession of MNPI regarding an issuer to refrain from trading in such

issuer's securities and to contact CCL's chief compliance officer ("CCO") so the CCO could determine whether the information was MNPI.

5. According to the MNPI policy, "if the CCO determines that the information constitutes MNPI that might expose the Firm or any of its affiliates to liability for 'insider trading,' the company to which the information relates would be placed on the Restricted List." Once an issuer was added to the Restricted List, the policy prohibited CCL from trading or recommending trading in securities of the issuer until the restriction was lifted. The policy also prohibited Covered Persons and their family household members from such activity in their own accounts. To enforce this rule, CCL's code of ethics required preclearance for most securities transactions by Covered Persons.

6. CCL's MNPI Policy did not specify when, how, or what information was supposed to be added to the Restricted List, other than the name of the issuer. The policy required that "[a] printed version of the Restricted List ... be updated periodically by the CCO, generally whenever a company is added to or deleted from the Restricted List," but it was otherwise silent on where the list was located or how the list was communicated to or shared with Covered Persons.

**A. CCL Failed to Implement and Enforce the MNPI Policy by Failing to Maintain a Reasonably Designed Restricted List**

7. Contrary to the MNPI Policy, CCL did not maintain a reasonably designed Restricted List. Instead, CCL had a patchwork system that relied on some combination of restrictions within an electronic order management system, documents saved to the compliance sharedrive, emails, and/or verbal conversations to communicate restrictions on trading to its Covered Persons. None of these methods, either individually or collectively, as implemented by CCL satisfied the MNPI Policy's requirement for a "Restricted List."

8. At times, CCL used an electronic order management system to block trading in securities when CCL had MNPI about an issuer. CCL, however, did not use this feature consistently or effectively. The CCO was the only person capable of entering a security in the electronic order management system to prevent trading. When the CCO was not in the office, no one updated the electronic order management system to block trading for new restrictions. Even when a security was blocked in the electronic order management system, the recorded restricted period was unreliable because the security was often entered into the system days after the CCO determined that CCL and its Covered Persons should be restricted from trading in the issuer. As a consequence, CCL's electronic order management system provided no reliable record or list of when trading in a security was or should have been restricted.

9. Sometimes CCL used a sharedrive to store documents related to restricted securities. The sharedrive itself, however, did not serve as a Restricted List because, in many cases, documents were not added to the sharedrive until months or years after the restriction occurred. Covered Persons were not directed to the sharedrive for information related to the Restricted List.

10. The CCO also at times communicated restrictions on securities by email, phone calls, or in-person conversations with CCL's research group. These *ad hoc* communications did not satisfy the Restricted List procedure outlined in CCL's MNPI Policy. By definition, these types of communications were not a "list" and were not printed and updated as required by the MNPI Policy. Moreover, such communications would not provide notice to other Covered Persons who did not receive these communications that trading in securities was restricted.

11. CCL's failure to implement a reasonably designed Restricted List impaired its ability to identify potentially problematic trading and heightened the risk of misuse of MNPI by both CCL and Covered Persons trading in their own accounts.

12. In July 2017, in response to a deficiency letter from the Office of Compliance Inspections and Examinations, CCL updated its MNPI Policy to, among other things, require that "[a]ny time there is a change to the Restricted List or every seven (7) calendar days, whichever happens first, the CCO will circulate an updated Restricted List." To implement this new policy, CCL created and circulated a Restricted List to Covered Persons via email every Monday. Because the new Restricted List was only circulated on Mondays, rather than at the time of the change to the Restricted List, CCL failed effectively to implement and enforce the 2017 MNPI Policy update.

## **B. CCL Failed to Establish Policies and Procedures Reasonably Designed to Prevent Misuse of MNPI**

13. CCL's business model of trading in thinly-traded securities with minimal analyst coverage put its Covered Persons at heightened risk of coming into possession of MNPI. CCL's founder and managing member unilaterally controls all aspects of the firm, including all trading decisions, and his position increases the importance of reasonably designed policies regarding MNPI at the firm.

14. The firm's MNPI Policy failed to address any of CCL's business-specific risk factors or establish any specific procedures for handling common sources of MNPI at CCL such as executing non-disclosure agreements or drafting and publishing articles about issuers. Because CCL's Covered Persons had frequent and regular communications with issuers and investment bankers, CCL's MNPI Policy, which relied entirely on Covered Persons self-reporting MNPI to the CCO, was not reasonably designed to protect against the heightened risk of misuse of MNPI at the firm.

15. The MNPI Policy also failed to address the significant risks posed by CCL being owned, controlled, and managed by a single person. Instead of drafting procedures to minimize the impact of that risk, the MNPI Policy failed to include any written guidelines regarding the parameters the CCO would use to determine whether information "constitutes MNPI that might expose the Firm or any of its affiliates to liability for 'insider trading.'" This lack of structure made it possible to impose and lift trading restrictions in a manner that was potentially beneficial to CCL and its sole owner.

## **Violation**

16. As a result of the conduct described above, CCL willfully violated Section 204A of the Advisers Act, which requires registered investment advisers to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the adviser's business, to prevent the misuse by the investment adviser and its associated persons of material, nonpublic information.<sup>1</sup>

## **CCL's Remedial Efforts**

17. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent.

## **IV.**

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

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

- A. Respondent CCL cease and desist from committing or causing any violations and any future violations of Section 204A of the Advisers Act.
- B. Respondent CCL is censured.
- C. Respondent CCL shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$150,000 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.
- D. 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

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<sup>1</sup> "Willfully," for purposes of imposing relief under Section 203(e) of the Advisers 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).

- (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 CCL 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 Mary S. Brady, Assistant Director, Division of Enforcement, Denver Regional Office, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, Colorado 80294-1961.

E. 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, it shall not argue that it is entitled to, nor shall it 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 it 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.

By the Commission.

Vanessa A. Countryman  
Secretary