

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5593 / September 24, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20068

In the Matter of

**FINSER INTERNATIONAL
CORPORATION AND
ANDREW H. JACOBUS,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST
PROCEEDINGS, PURSUANT TO
SECTIONS 203(e), 203(f), 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), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Finser International Corporation (“Finser”) and Andrew H. Jacobus (“Jacobus”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (“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, and except as provided herein in Section V as to Jacobus, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f), 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 finds¹ that

Summary

This proceeding involves Finser, a registered investment adviser, and its sole principal and owner, Jacobus. From January 2015 through September 2017 (the "Relevant Period"), Finser and Jacobus managed the Corfiser SIMI Fund B.V. ("Corfiser SIMI Fund" or the "Fund"), a private fund with approximately \$8 million in assets. During the Relevant Period, contrary to representations made in the Fund's private placement memorandum ("PPM"), Finser and Jacobus charged the Fund approximately \$51,000 in performance fees. Finser and Jacobus also failed to take the necessary steps to comply with Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder (the "Custody Rule") by commingling Fund assets with non-Fund assets and not implementing certain procedures to adequately safeguard and account for Fund assets. They also made misrepresentations in the PPM regarding custody and safekeeping of Fund assets. As a result of this conduct, Finser and Jacobus violated Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-8 thereunder. In addition, Finser and Jacobus violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder by failing to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

Respondents

1. **Finser**, a Florida corporation located in Coral Gables, Florida, has been registered with the Commission as an investment adviser since June 2010. Andrew Jacobus is the sole managing member and owner of Finser. Finser offers discretionary and nondiscretionary management and portfolio recommendation services. During the Relevant Period, Finser's advisory business was comprised of portfolio management, hedge fund management, and venture capital advisory services. In its most recent Form ADV filed on June 26, 2020, Finser reported regulatory assets under management of approximately \$79 million, of which \$53 million are discretionary and \$26 million are non-discretionary. Finser is currently seeking registration with the state of Florida and plans to withdraw its registration with the Commission thereafter.

2. **Andrew Jacobus**, age 58, resides in Coconut Grove, Florida. He is Finser's sole owner, president, and chief compliance officer. Jacobus has been in the global asset management business for over 30 years, holds a Series 65 license, and exercised control over all investment decisions made for the Corfiser SIMI Fund.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity on this or any other proceeding.

Other Relevant Entities

3. **Corfiser SIMI Fund B.V.** was organized as a limited liability company under the laws of, and was domiciled in, Curaçao on May 27, 2011. It was a feeder fund to the Corfiser Master Fund SPC from 2014 until the Corfiser SIMI Fund was dissolved in September 2017. Finser was the general partner, administrator, and adviser to the Corfiser SIMI Fund and Corfiser Master Fund SPC. As of September 30, 2016, the Fund had approximately \$8 million in assets.

Facts

4. Between February 2013 and September 2017, Finser managed the Corfiser SIMI Fund, and its master fund, the Corfiser Master Fund SPC (collectively, the “Funds”). Pursuant to the investment management agreement to which the Funds were parties, Finser would, among other things, “have the authority to exercise exclusive discretion in the management and control over the [A]ssets [of the Funds].” During the Relevant Period, the Corfiser SIMI Fund had seven investors. At Jacobus’s direction, the Corfiser SIMI Fund’s portfolio was invested in equities, fixed income, and alternative investments.

5. During the Relevant Period, Finser and Jacobus charged approximately \$51,000 in performance fees to the Corfiser SIMI Fund in contravention to representations made in the Fund’s PPM. Specifically, Finser and Jacobus charged the Fund performance fees subject to a high-water mark which precludes the collection of performance fees until the Fund’s assets reach their previous high net asset value. If the high-water mark was met, the PPM represented that Finser would charge the Fund a twenty percent annual performance fee. During the Relevant Period, Finser charged the Fund performance fees even though the Fund did not meet the high-water mark.

6. The Custody Rule is designed to protect investment advisory clients from the misuse or misappropriation of their funds and securities. It requires registered investment advisers that maintain custody of client funds or securities adequately to safeguard and account for client assets by implementing certain procedures. Specifically, Rule 206(4)-2 requires investment advisers that maintain custody of client funds or securities to, among other things, have independent public accountants conduct surprise examinations annually to verify the client funds and securities of which the adviser has custody, or to have any private fund clients timely distribute audited financial statements to their investors and to have those financial statements audited by an independent public accountant subject to regular inspection by the Public Company Accounting Oversight Board (“PCAOB”).

7. Finser and Jacobus failed to comply with the requirements of the Custody Rule, and failed to operate the Fund consistently with disclosures in the PPM regarding the custody and safeguarding of Fund assets.

8. The Corfiser SIMI Fund PPM states that Fund assets will be held in a separate account at a certain brokerage firm. Contrary to representations made to investors in the Fund, Finser, through Jacobus, placed the Corfiser SIMI Fund assets in Finser's own brokerage account at that firm (the "Account") instead of in a separate account in the name of the client, the Fund, or in Finser's name as agent or trustee for the Fund. Between January 2014 and November 2016, Finser and Jacobus commingled the Corfiser SIMI Fund assets in the Account, which also held non-Fund assets.

9. According to the Corfiser SIMI Fund PPM, "the year-end financial statements of the Fund will be audited by" a certain audit firm. However, for each fiscal year from 2014 to 2016, Finser and Jacobus, as required by the Custody Rule, failed to (i) retain an independent public accountant subject to regular inspection by the PCAOB or (ii) retain an independent public accountant to conduct an annual surprise examination to verify the Fund's assets. As a result, Finser and Jacobus never distributed audited financials to Fund investors.

10. As a registered investment adviser, Finser was required to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules. During the Relevant Period, Finser failed to adopt and implement written policies and procedures concerning the assessment and calculation of performance fees. Finser also failed to implement its written policies and procedures concerning custody of client assets. In addition, during the Relevant Period, Finser failed to conduct annual reviews of its policies and procedures as required by Rule 206(4)-7(b) under the Advisers Act. Jacobus, as Finser's president, sole owner, and CCO, was responsible for Finser's compliance program.

Violations

11. As a result of the conduct described above, Finser and Jacobus willfully² violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from, directly or indirectly, engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. A violation of Section 206(2) may rest on a finding of simple negligence; scienter is not required. SEC v. Steadman, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194-95 (1963)).

² "Willfully," for purposes of imposing relief under Section 203(e) and 203(f) 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)). 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).

12. As a result of the conduct described above, Finser and Jacobus willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which makes it unlawful for any investment adviser to a pooled investment vehicle to “[m]ake untrue statements of a material fact or to omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle” or to “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 violation of Section 206(4) and Rule 206(4)-8 thereunder may rest on a finding of simple negligence; scienter is not required. Steadman, 967 F.2d at 647.

13. As a result of the conduct described above, Finser willfully violated, and Jacobus caused, Finser’s violations of, Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, which, among other things, require registered investment advisers with custody of client assets to maintain each client’s funds in accounts containing only those client funds and to have independent public accountants conduct surprise examinations of those client funds or securities, or to have private fund clients timely distribute audited financial statements to their investors and to have that audit performed by an independent public accountant subject to regular inspection by the PCAOB.

14. As a result of the conduct described above, Finser willfully violated, and Jacobus caused, Finser’s violations of, Section 206(4) of the Advisers Act and Rule 206(4)-7, which require that an investment adviser registered with the Commission adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

Respondents’ Remedial Efforts

15. In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by Finser and Jacobus, including retaining a compliance consultant to conduct a comprehensive review of Finser’s written compliance policies and procedures.

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), 203(f), and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondents Finser and Jacobus 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 Rules 206(4)-2, 206(4)-7, and 206(4)-8 thereunder.

B. Respondents Finser and Jacobus are censured.

C. Respondent Finser shall pay disgorgement and prejudgment interest to affected investors totaling \$61,808.34 as follows:

(i) Respondent Finser shall pay disgorgement of \$50,894.73 and prejudgment interest of \$10,913.61 consistent with the provisions of this Subsection C.

(ii) Within 10 days of the entry of this Order, Finser shall deposit \$61,808.34 (the "Distribution Fund") into a segregated account for the benefit of the Corfiser SIMI Fund B.V. not unacceptable to the Commission staff and Finser shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely payment into the account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600].

(iii) Finser shall be responsible for administering the Distribution Fund and may hire a professional to assist it in the administration of the distribution. The costs and expenses of administering the Distribution Fund, including any such professional services, shall be borne by Finser and shall not be paid out of the Distribution Fund.

(iv) Finser shall pay from the Distribution Fund an amount representing the amount of performance fees incurred by the Corfiser SIMI Fund as a result of the conduct described above to the harmed investors in the Corfiser SIMI Fund together with reasonable interest thereon, pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. No portion of the Distribution Fund shall be paid to any affected investor account in which Finser, or any of its current or former officers or directors, has a financial interest.

(v) Finser shall, within 90 days from the date of this Order, submit a proposed Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Finser, along with any third-parties or professionals retained by Finser to assist in formulating the methodology for its Calculation and/or administration of the Distribution, shall make themselves available for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Finser also shall provide the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Finser's proposed Calculation or any of its information or supporting documentation, Finser shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within 10 days of the date that the Commission staff notifies Finser of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(vi) After the Calculation has been approved by the Commission staff, Finser shall submit a payment file (the “Payment File”) for review and acceptance by the Commission staff demonstrating the application of the methodology to each harmed investor. The Payment File should identify, at minimum, (1) the name of each affected harmed investor; and (2) the exact amount of the payment to be made.

(vii) Finser shall complete the disbursement of all amounts payable to affected investor accounts within 90 days of the date that the Commission staff accepts the Payment File, unless such time period is extended in Paragraph xi of this Subsection C.

(viii) If Finser is unable to distribute or return any portion of the Distribution Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor or any factors beyond Finser’s control, Finser shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934 when the distribution of funds is complete and before the final accounting provided for in Paragraph x of this Subsection C is submitted to the Commission staff. Payment must be made in one of the following ways:

1. Finser may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
2. Finser 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. Finser 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 Finser International Corporation 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 Jessica M. Weissman, Assistant Regional Director, Miami Regional Office, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1950, Miami, FL 33131, or such other address as the Commission staff may provide.

(ix) A Distribution Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code (“IRC”), 26 U.S.C. §§ 1.468B.1 – 1.468B.5. Finser shall be responsible for any and all tax compliance responsibilities associated with the Distribution Fund, including, but not limited to tax obligations resulting from the Distribution Fund’s status as a QSF and the Foreign Account Tax Compliance Act (“FACTA”), and may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Finser and shall not be paid out of the Distribution Fund.

(x) Within 90 days after Finser complete the disbursement of all amounts payable to affected investors, Finser shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. Within 10 days thereafter, Finser shall then submit to the Commission staff a final accounting and certification of the disposition of the Distribution Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Finser has made payments from the Distribution Fund to affected investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Finser and the file number of these proceedings to Jessica M. Weissman, Assistant Regional Director, Miami Regional Office, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1950, Miami, FL 33131, or such other address as the Commission staff may provide. Finser shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(xi) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Distribution Fund shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

D. Respondents Finser and Jacobus shall pay, on a joint and several basis, a civil money penalty in the amount of \$70,000 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). Payment shall be due and payable within 10 days of the entry of this Order.

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 Finser International Corporation and Andrew H. Jacobus 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 to Jessica M. Weissman, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, Miami Regional Office, 801 Brickell Avenue, Suite 1950, Miami, FL 33131.

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, 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 Respondent Jacobus, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Jacobus 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 Jacobus 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