

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

**SECURITIES ACT OF 1933**  
**Release No. 10937 / March 24, 2021**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 91400 / March 24, 2021**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5705 / March 24, 2021**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 34235 / March 24, 2021**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20251**

**In the Matter of**

**TROY E. MARCHAND**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, 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 to Section 8A of the Securities Act of 1933 (“Securities Act”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), 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 Troy E. Marchand (“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, Respondent consents to the entry of this Order Instituting Administrative And Cease-And-Desist Proceedings, Pursuant To Section 8A of the Securities Act of 1933 (“Securities Act”), Section 21C of the Securities Exchange Act of 1934, 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<sup>1</sup> that:

#### **Summary**

1. From 2016 to 2017, Troy Marchand, principal of investment adviser Foundry Capital Group, LLC (“FCG”), and portfolio manager of the Foundry Mezzanine Opportunity Fund (“FMOF” or “Fund”), engaged in deceptive conduct that defrauded both the Fund and its investors. Specifically, Marchand made material misrepresentations and omissions about (1) FCG’s purported use of independent valuations for the Fund’s holdings, (2) the due diligence and investment process that FCG would use to evaluate investment opportunities, and (3) the financial and operational condition of Fund holdings, and the expected annual interest from those holdings.

#### **Respondent**

2. Troy Marchand, 35 years old, is a resident of Fishers, Indiana. Marchand was 50% owner of FCG and portfolio manager of FMOF until he sold his interest in FCG in February 2018. Marchand received an annual salary for operating FCG and the Fund.

#### **Other Relevant Entities**

3. FCG, incorporated in Delaware in 2015, is an investment adviser registered with the state of Indiana and based in Indianapolis, Indiana. FCG was founded by Marchand and a business partner, each of whom owned 50% of the firm until Marchand sold his interest in February 2018. Since December 2015, FCG has provided investment advisory services to FMOF as its general partner. Marchand no longer has any role with or owns any interest in FCG.

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<sup>1</sup> 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. FMOF is a Delaware limited partnership formed on September 25, 2015. FMOF, a private fund, provides mezzanine loans, and purchases equity in, small businesses. FMOF raised more than \$20 million from accredited investors and qualified clients between 2015 and 2018.

### **Background**

5. In September 2015, FCG established FMOF as a fund to “[execute] high yield private loan investments with complementary short-term liquidity plays to achieve private equity returns with much lower risk.” FMOF’s primary source of income was interest earned on loans made to portfolio companies. According to the Fund’s marketing materials, FMOF purported to invest primarily in well-collateralized debt investments that would generate consistent cash flows. However, the PPM noted that the Fund may “invest in securities and private claims and obligations of entities that are experiencing significant financial or business difficulties.”

6. Marchand received a salary to manage the day-to-day operations of FCG and act as the portfolio manager for the Fund. Marchand’s business partner (“Partner A”) maintained other unrelated full-time positions, but assisted Marchand in making investment decisions concerning the Fund, and also reviewed, edited, and approved Fund materials and communications.

7. As portfolio manager for the Fund, Marchand was responsible for, among other things, performing due diligence of investment opportunities, valuing Fund holdings, and drafting and circulating the Fund PPM, promotional materials, and quarterly communications to investors.

### **Marchand’s Misrepresentations Concerning FMOF’s Valuation Process**

8. FMOF’s Limited Partnership Agreement gave FCG discretion for valuing the Fund’s assets, but required it do so in a “fair and reasonable” manner and the Fund’s PPM more specifically stated that the Fund’s net asset value would be “based on independent appraisals of the Fund’s portfolio positions.” At no point was the Fund’s net asset value based on independent appraisals. To the contrary, throughout the relevant period Marchand determined to keep the value of the holdings at cost.

9. More specifically, FCG and Marchand repeatedly told investors and prospective investors that the portfolio would be independently valued by Valuation Firm A:

- a. An “Executive Summary,” prepared in August 2016 by Marchand as a promotional piece that was provided to prospective investors, represented that “[Valuation Firm A] will value the Fund’s equity positions on a quarterly and yearly ongoing basis as an independent party.”
- b. Quarterly newsletters drafted by Marchand and sent to investors in November 2016 and February 2017, represented that “[i]t is our intention to have an independent business valuation firm provide FMOF valuations for our positions annually. During the year, they will provide basic updates quarterly, with more in-depth updates near year-end.” The February 2017 letter added, “We have engaged [Valuation Firm A] to undertake these valuations.”

10. At the beginning of 2017, Valuation Firm A verbally told Marchand that based on its preliminary analysis, the Fund would likely have to write down the value of some of its holdings. Marchand told Partner A in August 2017, that Valuation Firm A could not value one holding because it had no revenue and, “We were going to have to take a mark down on everything according to their methods.” Marchand chose not to continue the engagement with Valuation Firm A or use its preliminary valuations, or otherwise get independent appraisals as represented in the PPM and other investor communications, and instead decided to maintain the values of the holdings at cost.

11. When Marchand reported the Fund’s NAV to investors in quarterly newsletters, he failed to disclose that the Fund’s holdings were not independently valued.

12. Marchand also ignored valuation criteria suggested by the Fund’s auditor and repeatedly failed to give weight or consider the impact on valuations of certain negative financial and operational information he learned about some of the Fund’s holdings, such as operational problems, the inability to pay expenses, and their failure to pay interest. Marchand instead kept the values of the holdings at cost without conducting any analysis to support that decision.

#### **Marchand’s Misrepresentations Concerning Due Diligence**

13. The Executive Summary Marchand prepared and provided to prospective investors represented that FCG “employs a rigorous investment selection process and rigorous due diligence approach.”

14. The PPM elaborated on FCG’s “Investment Process,” stating that:

Once investment candidates are identified, the General Partner will investigate the underlying business model with a particular emphasis on the residual free cash flow available to management to repay the interest and principal of the loan. An in-depth review of the financial history of the company (income statement, balance sheet and cash flow statement) across economic cycles is undertaken to see what the patterns have been for free cash flow generation and to gauge what they are likely to be in the future. Management’s track record regarding return on capital trends and ability to pay off loans will be scrutinized. The General Partner seeks to identify management teams who remain disciplined in devoting capital to the best return opportunities, whether they are capital investments, or acquisitions. Alternatively, the General Partner looks for opportunities to back receivables, a line of credit or extend other mezzanine type debt to private companies for some sort of coupon and equity incentive.

15. Marchand was also advised on multiple occasions by Partner A about factors relevant to evaluating investment opportunities, such as evaluation of the market for a company’s product or services and its management team.

16. During 2016 and 2017, Marchand failed on multiple occasions to perform due diligence that was consistent with the “Investment Process” described in the PPM. For example, at the end of 2016, FCG caused the Fund to loan \$2.4 million to Holding A, which intended to use the proceeds to purchase a furniture liquidation company. A partner at Holding A was tasked with overseeing the operations of the furniture company and the loan was personally guaranteed by Holding A’s principal.

17. Contrary to the statements in the PPM, Marchand did not perform any independent due diligence on Holding A, Holding A’s principal, the furniture liquidation company, or their management teams, and instead relied solely upon a limited amount of information from Holding A about the furniture liquidation company in determining to make the loan.

18. In March and April 2016, FCG caused the Fund to make initial loans totaling \$1.2 million to Holding B, a legal software services company, and its affiliate. Marchand had received financial information showing Holding B had not been profitable, had cash flow issues, and he noted it was “spending money like crazy.” The information should have cast doubt on whether Holding B’s management was effectively using capital and whether the company had the ability to pay interest and principal on a loan. Marchand failed to scrutinize Holding B in a manner consistent with FCG’s purported “Investment Process.” In particular, Marchand did not take steps to investigate and evaluate the services and track record of Holding B and its management and accepted Holding B’s financial projections without further analysis or verification of information that would substantiate those projections.

19. In September 2016, Holding B missed its first required interest payment to the Fund and continued to miss its monthly payments until the loans were restructured in March 2017. In November 2016, the founder and CEO of Holding B unexpectedly died. Shortly thereafter, Marchand learned that there were accounting irregularities at Holding B, that Holding B had misrepresented its profitability, was out of cash, and an accounting firm determined Holding B had no marketable value and may not be able to continue as a going concern. In December 2016, the Fund issued a default notice to Holding B.

20. Beginning in January 2017, Marchand caused the Fund to provide additional funding to Holding B without performing due diligence on the new management at Holding B or re-evaluating whether it met the “Investment Process” criteria enumerated in the PPM. Despite notice of accounting irregularities and overstated revenues, Marchand also failed to obtain support to validate projections and representations about customers and accounts receivable. Although Holding B had missed interest payments and required more cash to pay expenses, Marchand did not analyze whether it would be able to pay principal and interest before making the loan. By the end of 2017, Marchand had caused the Fund to send a total of almost \$5 million to Holding B and its affiliate.

21. In July 2017, FCG caused the Fund to enter into a transaction in which the Fund accepted a promissory note worth approximately \$2.5 million from a shell company. The note was personally guaranteed by the shell company’s owner and secured by his 25% ownership interest in a concrete company (“Holding C”). The note had never paid interest since its inception in 2013,

and the shell company's owner was a convicted felon who had approximately \$1.5 million in outstanding legal liabilities. Marchand obtained some information about the value of the ownership interest in the concrete company, but failed to perform any due diligence on the shell company's owner or the shell company, or to analyze whether the owner's legal liabilities impacted the Fund's claim to the collateral and the ability of the shell company to pay principal and interest to the Fund.

### **Misleading Investor Newsletters**

22. FCG provided FMOF investors with quarterly newsletters that updated them on the Fund's investments and performance. Marchand was primarily responsible for drafting and sending the newsletters to investors. The quarterly newsletters sent to investors between February 2017 and November 2017 contained misleading statements and omissions regarding the performance of certain of the Fund's portfolio companies. Both new and existing investors made investments after receiving the newsletters.

#### *February 2017 Newsletter*

23. Marchand drafted and sent FCG's February 2017 newsletter to investors that discussed the recent death of Holding B's founder and CEO, noting that the fallout therefrom "has been quite the process and [like] nothing we have ever handled before." The February 2017 newsletter went on to state that FCG was involved in putting together a "go forward plan," and emphasized that the new CEO was a "very well connected visionary who understands the litigation market better than anyone we have met" who "has a big vision to take the Company above and beyond the current state of the software." The newsletter added that Holding B had signed up a new "large client," that existing customers were happy with the software, and concluded that, "we...look forward to taking the company to new heights."

24. This description of Holding B was misleading because at the time the February 2017 newsletter was released, Marchand was aware that Holding B was struggling financially, had missed interest payments, and that the Fund had issued a default notice to the company. Marchand also knew that an outside accountant found accounting irregularities at Holding B and had issued an opinion that the company had no marketable value and that there was a risk it could not continue as a going concern. Marchand was also aware that Holding B's new management had concluded that it needed "extensive additional investment capital to have any chance of survival," and that Holding B required additional money from the Fund to pay expenses.

25. The February 2017 newsletter also contained a chart that reflected the annual interest generated by each holding, including Holding B and its affiliate. The newsletter predicted based on this chart that the Fund "should yield 8% gross of all fees." However, the annual interest included in this chart did not take into account the likelihood of missed interest payments, despite Holding B's precarious financial position and failure to make its interest payments. Due to its financial condition, Holding B had not made any interest payments in 2016 and the affiliate had only paid interest of approximately \$61,000. The newsletter failed to disclose that the impaired

financial condition of Holding B made it unlikely that Holding B and its affiliate would pay the projected interest of \$145,000 in 2017.

#### *May 2017 Newsletter*

26. In May 2017, Marchand drafted and sent a quarterly newsletter to investors that noted that Holding B had “continued to grind forward and implement a massive turnaround...Quite a bit of work has gone into righting the ship both from Foundry and management, allowing [the new CEO] to focus on building a new management team with the capability to scale the business rapidly.” The newsletter emphasized interest from large law firms in Holding B’s services, and noted that Holding B had signed up several new clients, had other “big fish on the hook,” and had built a “superior management team full of all-stars.”

27. The newsletter was misleading because it omitted material negative information about the company’s status. Marchand knew that a second outside accountant concluded Holding B had lost almost \$1 million in 2016 and might be unable to continue as a going concern, Holding B’s expenses were too high, and implementation of its software at a large client had been delayed. Partner A had also expressed strong concerns to Marchand about Holding B’s financial situation and about continuing to send money to Holding B. A week before sending the newsletter, Marchand characterized the Fund as the “piggy bank” for Holding B, and told Partner A, “They are screwed. No one else stepping up.”

28. The May 2017 newsletter also contained a chart that reflected the annual interest generated by each holding, including \$524,000 would come from Holding A and Holding B and its affiliate. This newsletter again predicted based on this chart that the Fund “should yield 8% gross of all fees.” However, the newsletter did not disclose missed payments or deteriorating financial conditions of Holding A and Holding B and its affiliate, which made it unlikely that they would be able to pay the full amount of projected interest in the chart. For example, by the time of the newsletter, Holding A and Holding B had failed to make any of their scheduled interest payments for 2017 and Holding B’s affiliate had paid only \$21,900 in the first quarter of 2017.

#### *November 2017 Newsletter*

29. In November 2017, Marchand drafted and sent FCG’s quarterly newsletter to investors, which noted that Holding B had obtained several letters of intent from outside investors, had “booked” \$651,546 in accounts receivable in 2017, and added more than 5,000 cases to its platform. The newsletter also represented that, “As of September 30, 2017, [Holding B] had sufficient liquidity, was in compliance with its debt covenants and has no significant debt maturities.”

30. The November 2017 newsletter was misleading because at the time the newsletter was distributed to investors, Marchand knew that Holding B’s management had determined that the company’s lack of capital was a constraint on the business and threatened its ability to continue as a going concern and Holding B’s management was considering filing for bankruptcy. Marchand also knew Holding B had also failed to meet its interest payment obligations, the Fund

had made approximately 20 additional loans and capital contributions in order to pay for expenses, and that the company had year-to-date revenue of \$256,000 and net income of -\$2.87 million. Partner A had expressed his concerns to Marchand about Holding B's financial and operational condition and his reluctance to continue making loans or capital contributions to Holding B.

31. The November 2017 newsletter also informed investors that Holding A had a 50% decrease in revenue over the prior year, but represented that Holding A's sales "have ramped over the previous six months after a tough start to the year." The newsletter also noted that Holding A was "completing a recapitalization of the business, with Foundry leading the way and acquiring 85% of the business for a very small amount of capital, which will provide the runway needed to execute on the sales plan."

32. Marchand also knew at this time that Holding A had not made any quarterly interest payments, that the partner from Borrower A who was overseeing the investment was terminated, that Holding A lacked financial controls and that its outside accountant had resigned, and that the manager of Holding A did not feel the recapitalization was adequate. Partner A expressed his belief to Marchand that Holding A's management was ineffective and the company would not succeed.

33. The November 2017 newsletter also showed a schedule of annual interest from its holdings of \$1,468,647. Approximately 40% of the interest on the schedule was attributable to Holding A and Holding B and its affiliate. Holding A and Holding B and its affiliate had failed to make all expected payments in 2017.

34. Ultimately, in 2017 the Fund only received interest of approximately \$542,000, or 37% of the interest depicted in the November 2017 newsletter.

### **Violations**

35. As a result of the conduct described above, Marchand willfully violated Sections 17(a)(1) and 17(a)(3) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

### **Civil Penalties**

36. Respondent has submitted a sworn Statement of Financial Condition dated October 30, 2020, and other evidence and has asserted his inability to pay a civil penalty.

## **IV.**

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



Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, 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 Marchand cease and desist from committing or causing any violations and any future violations Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

B. Respondent Marchand be, and hereby is:

barred from association with any broker, dealer, investment adviser, 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 five (5) years 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, compliance with the Commission's order and payment of any or all of the following: (a) any disgorgement or civil penalties ordered by a Court against the Respondent in any action brought by the Commission; (b) any disgorgement amounts ordered against the Respondent for which the Commission waived payment; (c) any arbitration award related to the conduct that served as the basis for the Commission order; (d) 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 (e) 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. Based on Respondent's sworn representations in his Statement of Financial Condition dated November 9, 2020 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent.

E. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement, pre-judgment interest, and the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent,

misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement, interest, and civil penalty should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; (4) contest the imposition of the maximum penalty allowable under the law; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Vanessa A. Countryman  
Secretary