

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 91401 / March 24, 2021

INVESTMENT ADVISERS ACT OF 1940
Release No. 5706 / March 24, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20252

In the Matter of

SCOTT T. WOLFRUM

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
AND SECTIONS 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 Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), against Scott T. Wolfrum (“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 Section 15(b) of the Securities Exchange Act of 1934, and Sections 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 Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of investment adviser Scott Wolfrum's failure to disclose conflicts of interest when recommending that his advisory clients invest in Foundry Mezzanine Opportunity Fund ("FMOF" or the "Fund"), a private fund that provides lending to and invests in small businesses. From December 2015 to June 2018 ("Relevant Period"), Wolfrum sold more than \$20 million in interests in FMOF, almost all of which were recommended by Wolfrum and sold to his advisory clients. Wolfrum failed to disclose to his clients the conflicts of interest created by his and his family members' financial interests in two of the Fund's holdings and Wolfrum's receipt of \$140,125 in finder's fees for facilitating two different investments by the Fund.

Respondent

2. Scott T. Wolfrum, 53 years old, is a resident of Indianapolis, Indiana. During the Relevant Period, Respondent was a registered representative of Broker A and provided investment advice to clients for compensation as both an investment adviser representative of Adviser A, Broker A's affiliated registered investment adviser, and as sole owner of Wolfrum Capital Management LLC ("Wolfrum Capital"), an unregistered investment adviser. In February 2018, Wolfrum became a 50% owner of Foundry Capital Group ("FCG"), the general partner of the Fund, and in July 2018, Respondent became the 100% owner of FCG.

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 established by two individuals, who each owned 50% of the firm until February 2018. Since December 2015, FCG has provided investment advisory services to FMOF as its general partner. In February 2018, Wolfrum purchased one individual's 50% share of FCG and in July 2018, Wolfrum became the sole owner of FCG after he purchased the other individual's 50% share.

4. Foundry Mezzanine Opportunity Fund ("FMOF" or the "Fund"), is a Delaware limited partnership formed on September 25, 2015. The Fund provides mezzanine loans, and purchases equity in, small businesses. As of December 31, 2018, FMOF had net assets of approximately \$26 million.

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.

FCG's and Wolfrum's Relationship

5. In September 2015, FCG established FMOF as a private fund to “[execute] high yield private loan investments with complementary short-term liquidity plays to achieve private equity returns with much lower risk.” On December 2, 2015, Broker A’s Product Review Committee reviewed information provided by FCG about the Fund and approved offering interests to certain of its customers.

6. FCG and Wolfrum planned for Wolfrum to serve as the primary source of investors for the Fund. To memorialize that arrangement, FCG contracted with Broker A to identify investors for the Fund in exchange for 50% of FCG’s management fees and 80% of FCG’s performance fees from the Fund based on those investors’ investments in the Fund. In June 2016, Broker A entered into an agreement with Wolfrum pursuant to which Wolfrum received 100% of those fees.

7. At the time of their initial investment in FMOF, investors were provided a Private Placement Memorandum for FMOF (“PPM”), which disclosed that Wolfrum would “be involved in sourcing both investors and deals for the Fund and has a significant interest in the income” of FCG and “would benefit financially from the activities of the Fund.” The PPM further states “If you invest in the Fund at the suggestion of one of the principals of Wolfrum Capital LLC, you should be aware that they will benefit financially from the activities of the Fund.” The specific details of Wolfrum’s compensation from the Fund were not disclosed to Fund investors.

8. Between December 2015 and June 2018, Wolfrum recommended and sold more than \$20 million in Fund interests to investors, almost all of whom were his Wolfrum Capital advisory clients.

Wolfrum's Undisclosed Conflicts of Interest

9. Wolfrum’s financial interests tied to FCG and FMOF were not limited to his contractual share of FCG’s management and performance fees paid to Broker A. Wolfrum also had financial interests in certain of the Fund’s investments, which he did not disclose to his clients.

10. In June 2017, Wolfrum received a finder’s fee from Company A after it received a second loan from the Fund. The Fund loaned Company A the money to pay the \$27,500 finder’s fee to Broker A, who passed on 95% of that amount to Wolfrum.

11. In October 2017, Wolfrum received a finder’s fee from Company B, which had received more than a dozen payments from the Fund since March 2016. The Fund provided Company B the money to pay the \$120,000 finder’s fee to Broker A, who passed on 95% of that amount to Wolfrum.

12. During the time Wolfrum was selling investments in the Fund to his advisory clients, Wolfrum and his family members also had financial interests in some of the Fund’s

holdings. Wolfrum had contractual profit interests in Company B that provided Wolfrum with the potential to obtain equity interests or compensation if certain financial milestones were met by Company B. In addition, Wolfrum and his family had a 7.5% equity interest in Company A. Wolfrum did not disclose these financial interests to his clients who invested in the Fund.

13. As an investment adviser, Wolfrum was obligated to disclose all material facts to his advisory clients, including any conflicts of interest between himself and his clients, which could affect the advisory relationship and how those conflicts could affect the advice he provided to his clients. While the PPM disclosed to Fund investors that Wolfrum had an interest in the Fund's general partner and its performance, Wolfrum did not disclose to his clients that he and his family would directly benefit from client investments in the Fund through (i) the Fund's investment in companies in which he and his family members held financial interests and (ii) his receipt of finder's fees from the Fund's portfolio companies when the Fund provided them with financing.

14. In September 2016, Adviser A revised the Form ADV Part II B for Wolfrum available on its website to note that, "Mr. Wolfrum receives finders' fees and management fees from [the Fund] . . . [if] you invest in [the Fund] at the suggestion of Mr. Wolfrum, you should be aware that he will benefit financially from the activities of [the Fund]."

However, Wolfrum's advisory clients were not provided with the revised Form ADV Part II B by Adviser A or Wolfrum and the finder's fees were not otherwise disclosed to Wolfrum's clients who invested in the Fund. The revised Form ADV Part II B did not mention Wolfrum's and his family's other equity and profit interests in the portfolio companies.

Violations

15. As a result of the conduct described above, Wolfrum willfully² violated Section 206(2) of the Advisers Act, which prohibits investment advisers from engaging "in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." Proof of scienter is not required to establish a violation of Section 206(2), but rather may rest on a finding of negligence. *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, 195 (1963)).

² "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 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)). 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).

Disgorgement

16. The disgorgement and prejudgment interest ordered in Section IV(C) is consistent with equitable principles, does not exceed Respondent's net profits from his violations, and is awarded for the benefit of and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to Section IV(C) in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Wolfrum's Remedial Efforts

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

Undertakings

18. Respondent has undertaken to:

a. Notice to Advisory Clients. Within thirty (30) days of the entry of this Order, Respondent shall provide a copy of the Order to each of his clients as of the entry of this Order via mail, e-mail, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

b. Certifications of Compliance. Respondent shall certify, in writing, compliance with the undertaking set forth above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Jeffrey A. Shank, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 1450, Chicago, IL 60604, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

c. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates 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 the last day.

IV.

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

Accordingly, pursuant to Section 15(b) of the Exchange Act and Sections 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Wolfrum cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act.

B. Respondent Wolfrum is censured.

C. Respondent shall pay disgorgement of \$140,125 and prejudgment interest of \$21,354 to the Securities and Exchange Commission.

D. Respondent shall pay a civil money penalty in the amount of \$75,000 to the Securities and Exchange Commission.

Payment of the above amounts shall be made in the following installments: (1) \$86,479 shall be paid within 10 days of the entry of this Order; (2) \$50,000 shall be paid within 120 days of the entry of this Order; (3) \$50,000 shall be paid within 240 days of the entry of this Order; and (4) \$50,000 shall be paid within 360 days of the entry of this Order. Payments shall be applied first to post-order interest, which accrues pursuant to SEC Rule of Practice 600 and pursuant to 31 U.S.C. § 3717. 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 Wolfrum 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 Jeffrey Shank, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 1450, Chicago, IL 60604.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest, and penalties referenced in paragraphs IV.C-D above. 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.

F. Respondent shall comply with the undertakings enumerated in Paragraph 18 above.

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