UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5851 / September 7, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20528

In the Matter of **DAVID WAGNER,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against David Wagner ("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, Respondent admits the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in paragraphs III.2 and III.4 below and consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Wagner, age 66, founded and controlled Downing Partners, LLC ("Downing"), incorporated in Rhode Island with offices in Rhode Island and Massachusetts, Downing Investment Partners ("DIP"), incorporated in Delaware with an office in Massachusetts, Downing Digital Healthcare Group ("DDHG"), incorporated in Delaware with an office in

Massachusetts, Downing Health Technologies ("DHT"), incorporated in Delaware with an office in Massachusetts, and Cliniflow Technologies, LLC ("Cliniflow"), incorporated in Delaware with an office in New York.

2. On August 20, 2021, a final judgment was entered by consent against Wagner, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933; Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 thereunder; and Sections 206(1), (2), and (4) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. David Wagner, et al., 19-CV-5570 (S.D.N.Y.), in the United States District Court for the Southern District of New York.

3. The Commission's Complaint alleged that Wagner orchestrated a multiyear scheme to defraud more than thirty investors out of millions of dollars by peddling investment opportunities in the healthcare services and technology industry. Wagner and Downing solicited investments in DIP, DDHG, DHT and Cliniflow (collectively, the "Funds") and misappropriated investor funds by charging them undisclosed fees. Additionally, Wagner lied to investors about the cash reserves and revenues of the investment opportunities. From approximately May 2014 through January 2017, Wagner and the Funds raised over $8 million from over thirty investors, many of whom were also hired as purported employees of DIP, DDHG, DHT and Cliniflow. The Commission's Complaint further alleged that within a seven-month period from June 2014 through December 2014, Wagner defrauded investors in DDHG by misusing at least $540,000 of the $1.5 million invested in DDHG to pay himself management fees. The fraudulent management fees were paid pursuant to an undisclosed agreement that Wagner had previously and secretly negotiated as principal of Downing and DDHG. These payments were contrary to representations to investors in the DDHG Private Placement Memorandum, which specifically stated that no such compensation was due any member of management. As a result of Wagner's fraudulent conduct the Funds have been drained of liquidity and have ceased operations, resulting in millions of dollars in losses to investors.

4. Wagner has pleaded guilty to two counts of securities fraud in violation of 15 U.S.C. § 78j(b) and one count of wire fraud in violation of 18 U.S.C. § 1343, before the United States District Court for the Southern District of New York, in U.S. v. Wagner, 19-cr.-00437 (S.D.N.Y.) (AKH) (the "Criminal Case"). On February 9, 2021, a judgment in the criminal case was entered against Wagner. He was sentenced to a prison term of 72 months followed by three years of supervised release and ordered to make restitution in the amount of $7.8 million.

5. The counts of the criminal indictment to which Wagner pleaded guilty alleged, *inter alia*, that Wagner defrauded the Funds' investors and obtained money and property by (a) employing devices, schemes, or artifices to defraud, (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) engaged in acts, practices and courses of business which operated and which would operate as a fraud and deceit upon persons. Wagner further pleaded guilty to a count which alleged that he solicited investments from prospective investors through materially false and misleading statements and omissions.

IV.

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

Accordingly, it is hereby ORDERED pursuant to Section 203(f) of the Advisers Act, that Respondent Wagner 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

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.

By the Commission.

Vanessa A. Countryman
Secretary