UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5707 / March 24, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20253

In the Matter of **TYLER C. SADEK** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO 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 Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Tyler C. Sadek ("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 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 finds[1] that:

Summary

1. From 2016 to 2017, Tyler Sadek, a principal of Foundry Capital Group, LLC ("FCG"), an Indiana investment adviser to the Foundry Mezzanine Opportunity Fund ("FMOF" or "Fund"), reviewed, edited, and approved newsletters issued to the Fund's investors and prospective investors that contained misleading statements and omissions. Specifically, the newsletters contained misleading statements and omissions about the financial and operational condition of Fund holdings and expected annual interest from Fund holdings.

Respondent

2. Tyler Sadek, 39 years old, is a resident of Indianapolis, Indiana. Sadek was 50% owner of FCG until July 2018 when he sold his interest. During the relevant period, Sadek's primary employment was as a partner at a private equity firm and as Chief Financial Officer for one of the firm's portfolio companies, both of which were unrelated to FCG and FMOF.

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 Sadek and a partner who acted as the Fund's portfolio manager ("Portfolio Manager"). Sadek and the Portfolio Manager each owned 50% of the firm until the Portfolio Manager sold his interest in February 2018 and Sadek sold his interest in July 2018. Since December 2015, FCG has provided investment advisory services to FMOF as its general partner. Sadek no longer has any role with or owns any interest in FCG.

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 private 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

[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.

cash flows. The PPM also noted that the Fund may "invest in securities and private claims and obligations of entities that are experiencing significant financial or business difficulties."

6. During 2016 and 2017, the Portfolio Manager received a salary to manage the day-to-day operations of FCG and act as the portfolio manager for the Fund responsible for, among other things, performing due diligence on investment opportunities, valuing Fund holdings, and drafting the Fund PPM, promotional materials, and quarterly communications to investors. During this time, FCG entered into an agreement with a broker-dealer and its registered representative who sold interests to, and also communicated with, investors in the Fund.

7. During 2016 and 2017, Sadek maintained a full-time job unrelated to FCG. However, he assisted the Portfolio Manager in making investment decisions concerning the Fund and was entitled to share in FCG's profits as part-owner of the firm. Sadek also reviewed, edited, and approved Fund materials and communications.

FMOF's Struggling Investments

8. FCG caused FMOF to make investments in several businesses that had negative cash flows and failed to make required interest payments on loans from the Fund.

9. At the end of 2016, FCG caused the Fund to loan $2.4 million to a firm which used the proceeds to purchase a furniture liquidation company ("Holding A"). In early 2017, shortly after the Fund made the loan, Holding A saw a significant reduction in revenue and began missing interest payments to the Fund. During 2017, Sadek was generally aware of Holding A's financial condition and had concerns about the company's viability.

10. In March and April 2016, FCG caused the Fund to make loans totaling $1.2 million to a legal software services company ("Holding B"), and its affiliate. Some of the Fund's investors were also directly personally invested in Holding B. Holding B had not been profitable and had cash flow issues at the time the Fund made the loans. In September 2016, Holding B missed its first required interest payment to the Fund and continued to miss its monthly payments until Sadek and the Portfolio Manager restructured the loans in March 2017.

11. In November 2016, the founder and CEO of Holding B unexpectedly died. Shortly thereafter, FCG learned 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.

12. Throughout 2017, Holding B regularly requested additional funding from the Fund in order to pay expenses, which the Fund continued to provide despite Holding B's failure to make interest payments on previous loans since September 2016. By the end of 2017, the Fund had loaned almost $5 million to Holding B and its affiliate. During 2017, Sadek was aware of Holding B's financial condition and had concerns about continuing to send Holding B money.

Misleading Investor Newsletters

13. FCG provided FMOF investors with quarterly newsletters that updated them on the Fund's investments and performance. The Portfolio Manager was primarily responsible for drafting and sending the newsletters to investors. Sadek, who had more experience managing private assets, reviewed, edited, and approved the newsletters before they were sent to investors.

14. 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. There were generic disclosures at the end of the newsletters stating that they were not complete and should be read in conjunction with the PPM. However, the PPM did not have specific information about the holdings referenced in the newsletters. Based on what Sadek knew about the status of those portfolio companies, it was unreasonable for him to approve those newsletters.

February 2017 Newsletter

15. FCG's February 2017 newsletter sent to investors 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," and encouraged investors to reach out to the Portfolio Manager with any questions about Holding B. The February 2017 newsletter went on to state that FCG was involved in putting together a "go forward plan," and emphasized the new CEO as 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."

16. This description of Holding B's status was misleading because at the time the February 2017 newsletter was released, Holding B was struggling financially, had missed interest payments, and the Fund had issued a default notice to the company. Shortly before the February 2017 newsletter was sent to investors, Sadek expressed to the Portfolio Manager his concerns about the company's future and questioned whether the Fund should commit additional money to Holding B.

17. 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 stated that "[b]ased on the expected yearly accrued interest, 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 be able to pay the projected interest of $145,000 in 2017.

May 2017 Newsletter

18. FCG's May 2017 newsletter to investors 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."

19. The newsletter was misleading because it omitted material negative information about the company's status. Shortly before the newsletter was distributed to investors, Sadek had expressed strong concerns to the Portfolio Manager about Holding B's financial situation and about continuing to send money to Holding B.

20. The May 2017 newsletter also contained a chart that reflected the annual interest generated by each holding, including $524,000 from Holding A and Holding B and its affiliate. While the newsletter noted that the portfolio holdings listed in the chart "do not reflect cash or interest earned," it stated that "[b]ased on the expected yearly accrued interest, the fund should yield 8%, gross of all fees." The newsletter did not disclose that the missed payments or deteriorating financial conditions of Holding A and Holding B and its affiliate, 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.

November 2017 Newsletter

21. FCG's November 2017 newsletter to investors 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."

22. This newsletter was misleading because, at the time the newsletter was distributed to investors, the Fund had made approximately 20 additional loans and capital contributions to Holding B so that it could pay expenses, and Holding B had year to date revenue of $256,000 and net income of -$2.87 million. Sadek had expressed his strong concerns to the Portfolio Manager about Holding B's financial and operational condition and his reluctance to continue making loans or capital contributions to Holding B.

23. 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."

24. At the time Sadek reviewed and approved the November 2017 newsletter, Holding A had missed interest payments, lacked financial controls, and its outside accountant had resigned. Sadek had expressed to the Portfolio Manager his belief that Holding A's management was ineffective and the company would not succeed.

25. 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.

26. Ultimately, in 2017, the Fund only received interest of approximately $542,000, or 37% of the interest depicted in the November 2017 newsletter. Of that amount, none came from Holding A or Holding B and approximately $75,000 came from Holding B's affiliate.

Violations

27. As a result of the conduct described above, Sadek willfully[2] violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

IV.

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

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

A. Respondent Sadek cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

B. Respondent Sadek is censured.

C. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $30,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

[2] "Willfully," for purposes of imposing relief under 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).

(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 Tyler C. Sadek 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, Securities and Exchange Commission, Chicago Regional Office, 175 W. Jackson Blvd., Suite 1450, Chicago, IL 60604.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the civil penalties referenced in paragraph IV.C 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.

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