

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6128 / September 15, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21081

In the Matter of

HIGHLAND CAPITAL PARTNERS
LLC,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 203(e) 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) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Highland Capital Partners LLC (“Highland Capital” or “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 it 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 Sections 203(e) 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:

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.

Summary

1. These proceedings involve violations of the Commission’s “pay-to-play” rule for investment advisers by Respondent Highland Capital, an investment adviser. Rule 206(4)-5, promulgated under Section 206(4) of the Advisers Act, is a prophylactic rule designed to address pay-to-play abuses involving campaign contributions made by certain investment advisers or their covered associates to government officials who are in a position to influence the selection of investment advisers to manage government client assets, including the assets of public pension funds and other public entities. Among other things, Rule 206(4)-5 prohibits certain investment advisers from providing investment advisory services for compensation to a government client for two years after the adviser or certain of its executives or employees (known as covered associates) makes a campaign contribution to certain elected officials or candidates who can influence the selection of certain investment advisers.

2. In May 2021, a covered associate of Respondent made a campaign contribution to a candidate for elected office in Massachusetts, which office had influence over selecting investment advisers for a public pension plan in Massachusetts. The public pension plan had already invested in funds advised by Respondent prior to the contribution. Within two years after this contribution, Respondent provided advisory services for compensation to the public pension plan. By providing these advisory services for compensation within two years after the contribution, Respondent violated Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder.

Respondent

3. Highland Capital Partners LLC (“Highland Capital”) is a limited liability company headquartered in Cambridge, Massachusetts. Highland Capital is not registered with the Commission as an investment adviser. Highland Capital reports to the Commission as an “exempt reporting adviser” under Section 204(a) of the Advisers Act and Rule 204-4 thereunder, and did so during the relevant time period. As of March 23, 2022, Highland Capital reported venture capital fund assets of approximately \$2.09 billion.

Background

4. Between 2001 and 2009, the Massachusetts Pension Reserves Investment Management Board (“PRIM”), a public pension plan in Massachusetts, committed to invest, and subsequently invested, approximately \$80 million in venture capital funds advised by Highland Capital. Specifically, in 2001, PRIM committed to invest, and subsequently invested, \$25 million in Highland Capital Partners VI, L.P., a venture capital fund advised by Highland Capital. In 2005, PRIM committed to invest, and subsequently invested, \$25 million in Highland Capital Partners VII, L.P., another venture capital fund advised by Highland Capital. In 2009, PRIM committed to invest, and subsequently invested, \$30 million in Highland Capital Partners VIII, L.P., another venture capital fund advised by Highland Capital. During all relevant times, PRIM remained

invested in these funds (the “Funds”). The Funds were closed-end funds and investors were generally prohibited from withdrawing their money for the life of the Funds.

5. On May 24, 2021, a covered associate² of Respondent made a \$1,000 campaign contribution³ to an unsuccessful candidate for Governor of Massachusetts.⁴ After the contribution was made, the covered associate sought and obtained the return of the contribution.⁵

6. The office of Governor of Massachusetts had the ability to influence the selection of investment advisers for PRIM. Specifically, the Governor of Massachusetts is on the board of PRIM and appoints two members of the board of PRIM. The PRIM board has influence over investments by PRIM and the selection of investment advisers and pooled investment vehicles for the pension plan. As of the date of the contribution in 2021, PRIM had already invested in the Funds.

7. During the two years after the contribution, Respondent continued to provide investment advisory services for compensation to the Funds.

8. Advisers Act Rule 206(4)-5(a)(1) prohibits any investment adviser registered with the Commission, investment adviser required to be registered with the Commission, foreign private adviser, or exempt reporting adviser from providing investment advisory services for compensation to a government entity⁶ within two years after a contribution to an official⁷ of a

² Covered associates are defined to include: (i) any general partner, managing member or executive officer, or other individual with a similar status or function; (ii) any employee who solicits a government entity for the investment adviser and any person who supervises, directly or indirectly, such employee; and (iii) any political action committee controlled by the investment adviser or by any of its covered associates. See Rule 206(4)-5(f)(2).

³ Rule 206(4)-5 has a *de minimis* exception, which permits covered associates to make aggregate contributions without triggering the two-year time out of up to \$350, per election, to an elected official or candidate for whom the covered associate is entitled to vote, and up to \$150, per election, to an elected official or candidate for whom the covered associate is not entitled to vote. See Rule 206(4)-5(b)(1).

⁴ Rule 206(4)-5 applies to a covered candidate even if the candidate does not win the election. See Rule 206(4)-5(f)(6).

⁵ Rule 206(4)-5 has an exception for certain returned contributions. In order to qualify for this exception, the contribution must not exceed \$350, the adviser must have discovered the contribution within four months of the date of the contribution and, within 60 days after learning of the contribution, the contributor must obtain a return of the contribution. See Rule 206(4)-5(b)(3). The covered associate’s contribution did not qualify for an exception under Rule 206(4)-5(b)(3) because it did not meet all of the requirements for an exception. Specifically, the contribution exceeded the \$350 limit in the exception and it was not returned within 60 days after learning of the contributions.

⁶ See Rule 206(4)-5(f)(5).

government entity made by the investment adviser or any covered associate of the investment adviser. Advisers Act Rule 206(4)-5 does not require a showing of *quid pro quo* or actual intent to influence an elected official or candidate.

9. As a public pension plan, PRIM was a government entity as defined in Advisers Act Rule 206(4)-5(f)(5). The contributor was a covered associate of Respondent as defined in Advisers Act Rule 206(4)-5(f)(2). The individual who received the contribution was an official as defined in Advisers Act Rule 206(4)-5(f)(6) of a government entity because the office the person sought to become associated with had authority either to influence the hiring of investment advisers by the government entity or to appoint people who could influence the hiring of investment advisers by the government entity.

10. Under Advisers Act Rule 206(4)-5, the contribution triggered a two-year “time-out” on Respondent providing advisory services for compensation to PRIM. During the two years after the contribution, Respondent continued to provide advisory services for compensation to the Funds and, therefore, received advisory fees attributable to the investments of PRIM in the Funds.

Violations

11. As a result of the conduct described above, Respondent Highland Capital willfully⁸ violated Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder, which makes it unlawful for any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under Section 203(b)(3) of the Advisers Act, or that is an exempt reporting adviser, to provide investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by the investment adviser or any covered associate of the investment adviser.

⁷ “Official” includes any person who, at the time of the relevant contribution, was an incumbent, candidate or successful candidate for elective office of a government entity if the office is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity or has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity. See Rule 206(4)-5(f)(6).

⁸ “Willfully,” for purposes of imposing relief under Section 203(e) 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). 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).

IV.

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

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

A. Respondent Highland Capital 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)-5 thereunder.

B. Respondent Highland Capital is censured.

C. Respondent Highland Capital shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$95,000 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). 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:

- (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 Highland Capital LLC as the 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 LeeAnn Ghazil Gaunt, Chief, Public Finance Abuse Unit, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 24th Floor, Boston, MA 02110.

D. 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, it shall not argue that it is entitled to, nor shall it 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 it 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.

By the Commission.

Vanessa A. Countryman
Secretary