

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6819 / January 14, 2025

ADMINISTRATIVE PROCEEDING
File No. 3-22409

In the Matter of

VCP FINANCIAL 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 VCP Financial LLC (“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. Between at least March 2021 and October 2024 (the “Relevant Period”), VCP Financial, a registered investment adviser, failed to manage a conflict of interest in a manner consistent with its representations in its firm brochures. In particular, VCP Financial disclosed that it had a financial conflict of interest when recommending investments offered by private funds managed by an affiliated entity under common ownership and control with VCP Financial (the “Affiliated Manager”). VCP Financial disclosed that it would manage the conflict of interest by, among other things, reasonably ensuring all clients’ accounts were invested in accordance with client approved investment policy statements and adopting policies and procedures to reasonably ensure that investments and recommendations were in the best interest of clients. Rather than follow these described procedures, however, VCP Financial required its clients who invested in the funds managed by the Affiliated Manager to acknowledge that VCP Financial was disclaiming its role in their investment decision and that VCP Financial was not acting as their investment adviser in connection with their investment in those funds. These statements contradicted VCP Financial’s firm brochure and further could lead a client to believe incorrectly that the client had waived a non-waivable cause of action against VCP Financial that was provided by state or federal law. As a result, VCP Financial violated Section 206(2) of the Advisers Act.

Respondent

2. **VCP Financial** is a New York limited liability company formed in 2013 with its principal place of business in Staten Island, New York. VCP Financial is registered as an investment adviser with the Commission. It reported approximately \$114.5 million in regulatory assets under management as of October 2024. Until January 2022, VCP Financial was known as LPS Financial LLC.

Background

3. VCP Financial’s principals operate the Affiliated Manager, which offers investments in certain private funds (the “Funds”). Investors in the Funds are identified in two ways: (1) calling potential investors identified on lists purchased from specialized companies; and (2) existing advisory clients of VCP Financial.

4. Investors can purchase interests in a Fund either through the Fund directly, or through a specific broker-dealer (“Brokerage Firm”) that makes interests in the Funds available on its alternative investment custody platform. To purchase an interest in a Fund through the Brokerage Firm, an investor had to either (1) have at least \$250,000 in certain investments in their account or (2) have their registered investment adviser sign an “Alternative Investment Letter of Authorization.”

5. If an existing VCP Financial advisory client decided to invest in a Fund through the Brokerage Firm, a representative at VCP Financial signed the Alternative Investment Letter of Authorization as the investor’s investment adviser.

6. If an investor who was not an existing VCP Financial client decided to invest in a Fund through the Brokerage Firm, VCP Financial first onboarded the investor as an advisory client, including by executing an investment advisory contract and providing them with a copy of VCP Financial's firm brochure. Thereafter, a representative at VCP Financial, as the investor's investment adviser, signed the Alternative Investment Letter of Authorization.

7. During the Relevant Period, VCP Financial's firm brochure disclosed the conflict of interest arising from the common ownership and control between VCP Financial and the Affiliated Manager. The brochure further outlined several ways in which VCP Financial would manage that conflict of interest, including by "reasonably ensuring all clients' accounts are invested in accordance with client approved investment policy statements" and "adopting policies and procedures to reasonably ensure that investments and recommendations are in the best interest of clients."

8. VCP Financial's policies and procedures in turn set forth that VCP Financial is a fiduciary to its advisory clients and outlined ways to ensure that VCP Financial and its representatives fulfilled their fiduciary duty, including by obtaining substantial background information about each client's financial circumstances, investment objectives, and risk tolerance at the time of client onboarding and annually, and conducting periodic client relationship and/or portfolio reviews. These reviews were required to be documented in the client files and/or VCP Financial's customer relationship management system.

9. Notwithstanding the foregoing statements in its firm brochure, during the Relevant Period, VCP Financial sought to manage the conflict in a different manner. Specifically, when an existing VCP Financial advisory client invested in a Fund or when a prospective investor became a VCP Financial client to be able to invest in a Fund VCP Financial issued a letter ("Letter") to its clients that included the following statements, which the investor was required to acknowledge:

Based on what we know about the Fund, the [pre-IPO company whose interests are held by the Fund], your own financial condition and objectives, as well as your expressed interest in 'pre-IPO' investments, we believe the Fund is a suitable investment for you to consider. ...

The principals of [VCP Financial] are also principals of the Manager of the Fund and will profit as a result of your investment in the Fund in the manner and amounts disclosed in the Fund's offering documents. Because of this conflict of interest, [VCP Financial] expressly disclaims any role in your investment decision beyond making you aware of the Fund. Therefore, before considering an investment in the Fund, please acknowledge that **[VCP FINANCIAL] IS NOT ACTING AS YOUR INVESTMENT ADVISOR IN CONNECTION WITH ANY INVESTMENT IN THE FUND**

You have had and will have the opportunity to explore alternative sources of equivalent investments in the [pre-IPO company whose interests are held by the Fund]. [VCP Financial] disclaims any obligation to make, and you had and have no expectation that [VCP Financial] would or will make, any such alternative opportunities known to you, regardless of whether [VCP Financial] is aware of any.

10. The Letter was included in the subscription materials and offering documents for the Fund. The language in the Letter contradicted VCP Financial's representations in the Alternative Investment Letter of Authorization that it was signing the form as the investor's investment adviser and its requirement that an investor wishing to invest in a Fund through the Brokerage Firm become a VCP Financial advisory client. VCP Financial's use of the Letter contradicted the representations in the firm brochure regarding the ways in which VCP Financial would manage the conflict of interest arising from the common ownership between VCP Financial and the Affiliated Manager. VCP Financial was negligent in using the Letter without considering that it contradicted the Alternative Investment Letter of Authorization and the firm's brochure.

11. VCP Financial's use of this Letter was also improper because it required its clients, all of whom are retail clients, to agree to a waiver of VCP Financial's fiduciary duty. The Advisers Act establishes a federal fiduciary duty for investment advisers that may not be waived, though its application may be shaped by agreement. On June 5, 2019, the Commission published the Commission Interpretation Regarding Standard of Conduct for Investment Advisers, IA Rel. No. 5248 (June 5, 2019) ("Commission Statement"), which stated that a contract provision purporting to waive the adviser's federal fiduciary duty generally would be inconsistent with the Advisers Act, regardless of the sophistication of the client.

12. In the context of advisory agreements, language purporting to limit an adviser's liability is called a "hedge clause." The Commission Statement provided in relevant part that "there are few (if any) circumstances in which a hedge clause in an agreement with a retail client would be consistent with [] antifraud provisions, where the hedge clause purports to relieve the adviser from liability for conduct as to which the client has a non-waivable cause of action against the adviser provided by state or federal law. Such a hedge clause generally is likely to mislead those retail clients into not exercising their legal rights, in violation of the antifraud provisions" *Id.* at p. 11, fn. 31.

13. VCP Financial's Letter purported to broadly limit VCP Financial's liability by requiring a client to acknowledge that VCP Financial was not its adviser in connection with its investment in the Funds, and therefore, by extension, did not owe the client a fiduciary duty at the same time that VCP Financial was representing to the Brokerage Firm that it was the client's advisor and requiring that the person be an advisory client to invest in the Funds. The language of the Letter is inconsistent with an adviser's fiduciary duty because it may mislead VCP Financial's client into not exercising its non-waivable legal rights.

14. Prior to the institution of this proceeding, VCP Financial ceased issuing the Letter to its advisory clients who purchase interests in the Funds offered by the Affiliated Manager.

Violations

15. As a result of the conduct described above, VCP Financial willfully violated Section 206(2) of the Advisers Act, which prohibits an investment adviser, directly or indirectly, from engaging "in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." Scierter is not required to establish a violation of Section

206(2), which may rest on a finding of simple 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)).

IV.

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

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

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

B. VCP Financial is censured.

C. VCP Financial shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 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 VCP Financial 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 Sheldon L. Pollock, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616.

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