

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 92114 / June 4, 2021**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5746 / June 4, 2021**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 34294 / June 4, 2021**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20359**

**In the Matter of**

**Gurprit Chandhoke and**  
**VII Peaks Capital, LLC**

**Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 15(b) OF THE SECURITIES AND EXCHANGE ACT OF 1934, SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY 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”), Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Gurprit (aka Gurpreet) Chandhoke and VII Peaks Capital, LLC (collectively, the “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Exchange Act, Sections willfully violating Sections 206(2), 206(4) of the (e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company 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 Respondents' Offer, the Commission finds<sup>1</sup>

#### Summary

These proceedings arise out of breaches of fiduciary duty by registered investment adviser VII Peaks Capital, LLC ("VII Peaks"), and Gurprit Chandhoke, the co-owner, co-principal, and managing member of VII Peaks. VII Peaks and Chandhoke ("Respondents") served as investment advisers to VII Peaks Co-Optivist Income BDC II, Inc. (the "BDC"), a business development company. From late 2015 through 2017, Respondents breached their fiduciary duty to the BDC by engaging in transactions that were not disclosed to or approved by the Board of Directors of the BDC. First, VII Peaks collected over \$700,000 in due diligence fees for loans made by the BDC to portfolio companies. At the time, VII Peaks did not disclose it was retaining the fees, nor did it seek approval from the BDC's Board of Directors to keep these fees. These fees created an undisclosed material conflict of interest because Respondents were incentivized to cause the BDC to make loans to portfolio companies in order to generate the fees for themselves.

Second, without prior disclosure to the BDC's Board of Directors, Chandhoke entered into two transactions that benefitted him financially and where his interests conflicted with the BDC's. In one transaction, a portfolio company paid a company partially owned by Chandhoke, and for which he served as Chief Executive Officer ("CEO"), \$400,000 for technology services. Chandhoke had solicited the portfolio company to enter into the transaction. In another transaction, Chandhoke received an undisclosed \$250,000 personal loan from a company owned and controlled by a portfolio company's CEO. Both of these transactions constituted actual or potential conflicts of interest, which Chandhoke failed to timely disclose to, or seek approval from, the BDC's Board of Directors. These two transactions also violated the Investment Company Act because Chandhoke as an affiliated person, was not permitted, absent approval from the Commission, to enter into the two transactions with portfolio companies. Chandhoke never sought or obtained such approval.

Lastly, in 2018, in valuing two portfolio companies of the BDC, VII Peaks failed to implement its own valuation policies and procedures during certain quarters, which resulted in a failure to update the quarterly value of assets that later in the year the BDC wrote off as worthless.

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<sup>1</sup> The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

## Respondents

1. **VII Peaks Capital, LLC**, located in Walnut Creek, California, was founded in 2009 and has been registered with the Commission as an investment adviser since June 2010. VII Peaks is investment adviser to the BDC and private funds, and manages their assets with discretionary authority. According to its most recently filed Form ADV Annual Updating Amendment dated March 31, 2021, VII Peaks reported just under \$27.8 million in regulatory assets under management.

2. **Gurprit Chandhoke aka Gurpreet Chandhoke (“Chandhoke”)**, age 46, resides in Santa Monica, California. Chandhoke is the co-principal, managing member, co-founder, and chief investment officer of VII Peaks. He also serves as the Chairman of the Board of Directors and CEO and President of the BDC. He was formerly a registered representative of a FINRA-member firm, including during most of the relevant time period, and holds Series 7, 63, and 66 licenses and previously held a Series 65 license. As the chief investment officer of VII Peaks, he recommended and determined all investments for the BDC.

## Other Relevant Entity

3. VII Peaks Co-Optivist Income BDC II, Inc. incorporated in Maryland in 2011, is a non-diversified closed-end investment company that elected to be regulated as a business development company pursuant to Section 54(a) of the Investment Company Act. It has been registered with the Commission since 2012.

## Background

4. Prior to September 2015, Respondents invested the BDC’s assets primarily in publicly traded discounted corporate debt, senior secured loans, and equity-linked debt securities of public and private companies trading on the secondary and publicly traded loan market. Beginning in 2015 and continuing through at least 2017, Respondents changed their strategy and began placing the BDC’s investments into direct debt financing to companies in the form of secured loans (“loan agreements”). These loan agreements typically had 24-month maturities with interest rates at about 12% to 13% payable on a monthly or quarterly basis. Unlike the publicly traded debt securities, the loan agreements could generate significant income for the BDC through fees the portfolio companies paid. Such income was important to the BDC because it could be used to pay dividends to investors and cover expenses.

5. From January 1, 2015 through December 2018, Chandhoke made all investment decisions on behalf of the BDC. The advisory agreement between VII Peaks and the BDC provided that the BDC was to pay VII Peaks 2% of the net asset value of the BDC as an annual fee and, under certain circumstances, VII Peaks could be entitled to a 20% performance fee. The responsibilities of VII Peaks in return for its advisory fee included the performance of “due diligence on prospective portfolio companies.”

### Respondents’ Failure to Disclose or Seek Approval for Retaining Due Diligence Fees

6. From late 2015 through 2017, Chandhoke created and signed the loan agreements entered into by the BDC. Until mid-2017, many of the loan agreements stated that the portfolio companies would pay due diligence fees to the BDC, rather than VII Peaks. In practice, the BDC deducted the due diligence fee and other fees when making the loans, and provided the balance of the loans to the portfolio companies. The BDC then transferred the due diligence fees to VII Peaks. The BDC's Board of Directors understood that these fees were transferred to VII Peaks for the purpose of paying third-party experts who conducted the due diligence. In fact, VII Peaks did not hire third-party experts, but instead retained the fees without disclosing to the Board that it was doing so.

7. In late 2015, VII Peaks received \$25,000 in due diligence fees for a loan the BDC made to a portfolio company. The agreement between the BDC and the portfolio company stated that the portfolio company would pay a due diligence fee to the BDC. At the time, an accounting employee of VII Peaks and the BDC asked Chandhoke why the BDC was paying the money to VII Peaks. Chandhoke told the employee that when making direct loan investments, it was industry standard for an adviser to conduct the due diligence and collect a fee from the portfolio company. At the time, Respondents did not seek approval from the BDC's Board of Directors to keep the \$25,000 fee or disclose that VII Peaks was retaining the fee.

8. In 2016, VII Peaks received \$475,000 in due diligence fees for loans made by the BDC to portfolio companies. At the time the loan agreements were signed and executed, the agreements provided that the portfolio companies would pay the BDC the due diligence fees. At that time, Respondents did not disclose to, or seek approval from, the BDC's Board of Directors for VII Peaks to retain these fees.

9. On March 30, 2017, VII Peaks filed its annual Form ADV with the Commission, which for the first time disclosed that it was receiving the due diligence fees, and that those fees created a potential conflict of interest for VII Peaks. The BDC's Form 10-K for fiscal year 2016, which was approved by the Board of the BDC and filed with the Commission in June 2017, disclosed that due diligence fees received by the BDC would be remitted to VII Peaks as the collateral and administrative agent. Respondents, however, had not sought approval from the BDC's Board of Directors for VII Peaks to retain all of these fees.

10. In 2017, VII Peaks received an additional \$222,500 in due diligence fees for loans made by the BDC to portfolio companies and, again, Respondents did not seek approval of the Board of Directors for VII Peaks to retain these fees.

11. During the relevant period, VII Peaks received a total of \$722,500 in due diligence fees for loans made by the BDC to portfolio companies. VII Peaks distributed \$87,500 of the \$722,500 to Chandhoke, in addition to his share of the advisory fees paid by the BDC. According to Chandhoke, as co-principal of VII Peaks he was to be paid 50% of the due diligence fees collected by VII Peaks, of which he received \$87,500.

#### Chandhoke's Failure to Disclose Other Actual or Potential Conflicts of Interest

12. In 2016, Chandhoke entered into two transactions that financially benefited himself and that created actual or potential conflicts of interest between him and the BDC. First, Chandhoke had co-founded and was part owner of a software engineering services company. In May 2016, a portfolio company of the BDC entered into an agreement to pay that company \$400,000 for software engineering services. Chandhoke had solicited the portfolio company to enter into the transaction. Chandhoke did not inform the BDC's Board of Directors of the transaction or of his affiliation with the software engineering services company. In October 2018, more than two years after the transaction, the Board of Directors received a draft Form 10-K annual report for the BDC that described the transaction and Chandhoke's affiliation with the company. The BDC filed the annual report publicly in November 2018.

13. Separately, in May 2016, Chandhoke received a \$250,000 personal loan from a company owned and controlled by the CEO of another portfolio company, which Chandhoke used for his own benefit. Chandhoke never informed the BDC's Board of Directors of the personal loan.

14. Rule 17d-1 under the Investment Company Act prohibits any affiliate of a registered investment company from participating with the registered investment company in or effecting any joint enterprise, other joint arrangement, or profit-sharing plan unless it first obtains an order from the Commission regarding the joint enterprise. Section 57(i) of the Investment Company Act provides that the Commission's rules and regulations under Section 17(d) of the Investment Company Act apply to business development companies. Chandhoke, as a senior executive of the BDC and the BDC's adviser VII Peaks, is an affiliate of the BDC and was required to obtain Commission approval for the above transactions and failed to do so.

#### VII Peaks' Failure to Follow Its Valuation Policies With Respect to Certain BDC Assets

15. The BDC valued its portfolio assets on a quarterly basis. Pursuant to VII Peaks' valuation policies, it was required to assist the BDC "in calculating an accurate net asset value of the BDC's investment portfolio each month or quarter, in accordance with each fund's valuation policy." In addition, VII Peaks' policies and procedures required it to undertake a "multi-step" valuation process each quarter. VII Peaks did not implement its own policies and procedures as it did not conduct any valuation of one portfolio company for the first two quarters of 2018 and, for another portfolio company, it did not conduct any valuation for the first three quarters of 2018. Instead, VII Peaks relied on third-party valuations from year-end 2017 without undertaking additional steps. Later in 2018, the BDC wrote off both of these assets as worthless.

#### Violations

16. As a result of the conduct described above, Respondents willfully<sup>2</sup> violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or

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<sup>2</sup> "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act, Section 9(b) of the Investment Company Act and Sections 203(e) and 203(f) of the Advisers Act "means no more than that the person charged with the duty knows what he is doing." *Wonsover*

indirectly, to “engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.” *Scienter* is not required to establish a violation of Section 206(2). *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, 194-95 (1963))

17. As a result of the conduct described above, Respondent Chandhoke willfully violated Section 57(a) of the Investment Company Act and Rule 17d-1 thereunder. Section 57(a) of the Investment Company Act prohibits any person affiliated with a business development company from knowingly effecting any transaction where it is a joint participant with such person. *See* Section 57(i) of the Investment Company Act (providing that Rule 17d-1 applies to Section 57(a) of the Investment Company Act).

18. As a result of the conduct described above, Respondent VII Peaks willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

### **Disgorgement**

19. The disgorgement and prejudgment interest ordered in paragraph E, below, is consistent with equitable principles and does not exceed Respondents’ net profits from their violations and will be distributed to harmed investors, if feasible. The Commission will hold funds paid pursuant to paragraph E in an account at the United States Treasury pending a decision whether the Commission in its discretion will seek to distribute funds. If a distribution is determined feasible and the Commission makes a 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.

### **Undertakings**

Respondent Chandhoke has undertaken to:

Provide to the Commission, within 30 days after the end of the 12 month suspension period described above, an affidavit that he has complied fully with the sanctions described in Section IV below.

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*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[ed]” 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, in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 15(b) of the Exchange Act, Sections 203(e), 203(f) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent VII Peaks cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

B. Respondent Chandhoke cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act, and Section 57(a) of the Investment Company Act and Rule 17d-1 thereunder.

C. Chandhoke be, and hereby is:

suspended from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

suspended from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock;

for a period of 12 months, effective on the second Monday following the entry of this Order.

D. Respondent VII Peaks is censured.

E. Respondent VII Peaks shall pay, jointly and severally, disgorgement of \$722,500 and prejudgment interest of \$123,199 to the Securities and Exchange Commission. Payment shall be made in the following installments: \$150,000 within 90 days; \$150,000 within 180 days; \$150,000 within 270 days; and \$395,699, plus any additional interest due, within 360 days. Respondent Chandhoke shall pay, jointly and severally, disgorgement of \$87,500 and prejudgment interest of \$16,857 to the Securities and Exchange Commission. Payment shall be made in the following installments \$7,500 within 90 days; \$7,500 within 180 days; \$7,500 within 270 days;

and \$81,857, plus any additional interest due, within 360 days. The disgorgement amounts are joint and several for the Respondents up to the amount of Chandhoke's disgorgement of \$87,500 and prejudgment interest of \$16,857. Payments shall be applied first to post order interest, which accrues pursuant SEC Rule of Practice 600. Prior to making the final payment set forth herein, Respondents shall contact the staff of the Commission for the amount due. If Respondents fail 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. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, transfer them to the general fund of the United States Treasury, subject to Section 21F(g)(3).

F. Respondent VII Peaks shall pay a civil money penalty in the amount of \$185,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: \$35,000 within 90 days; \$35,000 within 180 days; \$35,000 within 270 days; and \$80,000, plus any additional interest due, within 360 days. Respondent Chandhoke shall pay a civil money penalty in the amount of \$90,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: \$7,500 within 90 days; \$7,500 within 180 days; \$7,500 within 270 days; and \$67,500, plus any additional interest due, within 360 days. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. 3717. Prior to making the final payment set forth herein, Respondents shall contact the staff of the Commission for the amount due. If Respondents fail 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. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury.

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 VII Peaks Capital, LLC, as a Respondent or Gurprit Chandhoke, 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 Monique Winkler, Associate Director, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

G. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents or against one of the Respondents 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 Chandhoke, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Chandhoke 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 Chandhoke 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