

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6692 / September 11, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22105

In the Matter of

RANDOLPH ABRAHAMS

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Randolph Abrahams (“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 Cease-and-Desist Proceedings Pursuant to Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing 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:

Summary

1. ExWorks Capital, LLC (“ExWorks Capital”), an investment adviser that was registered with the Commission between 2018 and 2022, managed four private funds (“Funds”) that made loans to small and middle market companies. By late 2018 and continuing through 2019,

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.

the Funds' loan portfolio experienced challenges due to liquidity constraints and problems facing certain large loans in the portfolio. During 2018 and 2019, ExWorks Capital's then-President, Randolph Abrahams, reviewed, edited, and approved quarterly newsletters sent to limited partners, or investors, in the Funds that made misleading statements concerning the Funds' sale of warrants of a large borrower in the Funds' portfolio.

Respondent

2. Randolph Abrahams, 63 years old, is a resident of Winnetka, Illinois. Abrahams was the founder and President of ExWorks Capital and its Executive Chairman until he resigned in August 2020.

Other Relevant Entities

3. ExWorks Capital, LLC, incorporated in Delaware in 2013, was an investment adviser registered with the Commission between 2018 and 2022. ExWorks Capital was founded by Abrahams and several business partners to manage several private funds, each of which were pooled investment vehicles. By November 2019, the gross asset value of the Funds was approximately \$417 million. ExWorks Capital's limited partners consisted of institutional and high net worth investors. Following Abrahams's resignation in August 2020, the Funds were placed into receivership in December 2021 and ExWorks Capital declared bankruptcy in March 2022.

Background

4. ExWorks Capital was founded in 2013 by Abrahams, with start-up capital from Abrahams and other principal members, to establish and manage private funds "focus[ed] on providing senior secured financing to small and middle-market companies that are in need of working capital and term facilities to finance exports from the United States across the world."

5. Abrahams, along with the company's Chief Credit Officer, was one of two members of ExWorks Capital's Credit Committee, which reviewed and approved transactions for the Funds. Abrahams also served on the ExWorks Capital Board of Directors ("Board") and on the Funds' Limited Partner Advisory Committee ("LPAC").

6. In 2017, to better reflect the Funds' portfolio as they had developed, ExWorks Capital revised the offering materials to describe the Funds' purposes as "to make loans and hold loan assets and make and refinance private corporate loans to exporters/importers and other businesses in the United States and abroad, including providing the following types of export/import and collateralized business related loans that may be credit enhanced at the Management Company's discretion: (a) trade financing transactions which includes lending on a secured basis and or purchasing assets that may be sold in the U.S. or abroad; and (b) working capital loans and term loans."

7. By the end of the third quarter of 2018, the Funds had roughly 80

institutional and high net worth investors and a gross asset value of approximately \$342.9 million consisting of loans to 83 active borrowers. At this time, several of the larger positions in the Funds' portfolio faced financial and performance challenges, and as a result by the beginning of 2019, the Funds faced limited liquidity.

8. Most notably, at the end of the third quarter of 2018, the Funds' portfolio included a total loan balance of \$20.5 million, including committed limited partner capital of approximately \$11.6 million, for a borrower company that sold a data management product and services ("Company A"). ExWorks Capital first caused the Funds to make a \$3 million loan to Company A in July 2015, and by the third quarter of 2018, the loan to Company A was the oldest in ExWorks Capital's portfolio and had been amended and extended ten times. In August 2018, ExWorks Capital stopped accruing interest on Company A's loan because of Company A's strained liquidity situation.

ExWorks Capital's Sale of Company A Warrants

9. In Spring 2018, ExWorks Capital contacted another borrower in the portfolio ("Company B") about buying Company A. In September 2018, after negotiations that included Abrahams and other employees of ExWorks Capital, Company B agreed to purchase warrants that the Funds held in Company A equating to ownership of 22% of Company A in exchange for \$7.0 million ("Warrant Sale").

10. Per the terms of the sale, Company B agreed to pay \$3.0 million up front to the Funds, with the \$4.0 million balance due in the first quarter 2019 contingent on an independent valuation to establish the value of Company A. If the independent valuation of Company A determined that the 22% warrant was worth less than \$7.0 million, the Funds were obligated to provide Company B with additional warrants sufficient to make up the difference. As part of the transaction, ExWorks Capital agreed that the Funds would release a lien they had on Company B's intellectual property as security for the Funds' loan.²

11. ExWorks Capital recognized \$7.0 million in income for the Funds from the Warrant Sale in the third quarter of 2018.

ExWorks Capital's Misleading Disclosures to Investors

Third Quarter 2018 Newsletter

12. ExWorks Capital's recognition of \$7.0 million in Warrant Sale income for the Funds allowed ExWorks Capital to offset the Funds' otherwise lower returns for the third quarter of 2018 compared to the preceding two quarters. Excluding the Warrant Sale,

² As part of ExWorks' funding agreement with Company B, ExWorks received security, including liens on intellectual property, that would have given ExWorks the ability to take over any operating entities of Company B to repay Company B's obligations to ExWorks in the event of default.

the Funds had \$12.1 million in gross investment income for the quarter, compared to \$18.4 million and \$17.9 million in the preceding two quarters due to less fee income and recognition of higher reserves on existing loans. With the Warrant Sale, the Funds reported \$19.1 million gross investment income for the quarter.

13. On October 25, 2018, ExWorks Capital sent its third quarter 2018 newsletter (“Q3 2018 Newsletter”) to limited partners in the Funds. Abrahams was part of a team responsible for reviewing, editing, and approving the Q3 2018 Newsletter, and Abrahams’s name was ultimately affixed to the newsletter before it was circulated to the limited partners.

14. The Q3 2018 Newsletter disclosed the Warrant Sale, noting that, “The warrant income gave us an additional 2.16% of additional gross income on the entire portfolio and represented 36.7% of total yield composition for the quarter.”

15. Later the Q3 2018 Newsletter described the Warrant Sale:

In the third quarter, we realized the sale of a portion of a warrant position we hold in a U.S. enterprise software company to whom we currently have a loan balance of \$20.5 million, including advances of \$11.7 million and capitalized/deferred fees and PIK interest of \$8.8 million. ExWorks had been working on an introduction of this U.S. borrower to another one of our borrowers that also operates in the software, encryption and data security industry. We thought the products and needs of these two entities were such that an introduction could be beneficial to both of them. The result of our introduction was a new joint venture between these two borrowers that further commercializes the U.S.-based borrower’s products through the other borrower’s infrastructure. This introduction led to a deal where the other borrower acquired a minority interest in the U.S.-based borrower through the partial purchase of ExWorks warrant. This partial warrant sale, which represented approximately 43% of our total warrant position, or 22% of the equity in the U.S.-based borrower, yielded \$7.0 million of additional income for the quarter and marked the equity value of our U.S. based borrower at approximately \$32.0 million, which exceeds our loan balance of \$20.5 million.

16. This description of the Warrant Sale did not disclose the independent valuation contingency that could have required the Funds to deliver additional warrants for the \$7.0 million consideration it received, which in turn would have also reduced the equity value of Company A, potentially to an amount below Company A’s loan balance with the Funds. The valuation contingency became a hurdle given Company A’s financial condition and Company B’s repeated insistence on the valuation. The Q3 2018 Newsletter also failed to note that Company B received an intellectual property lien release from the Funds in

exchange for the \$7 million purchase price, which should have reduced the income the Funds recognized and should have discounted the equity value of Company A. Finally, the Q3 2018 Newsletter did not disclose that during the third quarter of 2018, ExWorks Capital had stopped accruing interest on Company A's loan due to its financial condition.

Fourth Quarter 2018 Newsletter

17. On January 29, 2019, ExWorks Capital sent limited partners its fourth quarter 2018 newsletter ("Q4 2018 Newsletter"). As with the Q3 2018 Newsletter, Abrahams was part of the team that reviewed, edited, and approved the newsletters, and Abrahams's name was affixed to the newsletter before it was circulated to limited partners. The Q4 2018 Newsletter reported gross investment income of \$14.3 million, a 25% decline from the previous quarter and more than 20% lower than the first and second quarter of 2018.

18. The Q4 2018 Newsletter was the first time ExWorks Capital disclosed to investors that it had decided to "pause accruing income for distribution purposes" for Company A, which it had been doing since August 2018. However, the Q4 2018 Newsletter counterbalanced this disclosure by reiterating that the \$7 million Warrant Sale "reduced and mitigated our capital exposure," that ExWorks Capital "currently remain[ed] confident that [Company A] will pay off," and represented that the principal balance of the Company A loan had remained the same since the previous quarter. The Q4 2018 newsletter failed to disclose additional material negative developments related to the Warrant Sale and Company A. Company A was struggling financially and had deferred payroll resulting in resignations, and Company B continued to insist on the independent valuation for the Warrant Sale while noting that Company A was "not delivering expected results." In addition, while the Company A loan principal balance had remained the same, ExWorks Capital caused the Funds to loan \$850,000 to an affiliated person with a material investment in Company A to support Company A's operations.

First Quarter 2019 Newsletter

19. On April 29, 2019, ExWorks Capital sent limited partners its first quarter 2019 newsletter ("Q1 2019 Newsletter"). Abrahams was part of the team responsible for reviewing, editing, and approving the Q1 2019 Newsletter, and Abrahams's name was affixed to the newsletter before it was circulated to the limited partners. The Q1 2019 Newsletter reported \$14.6 million gross investment income for the quarter. The Q1 2019 Newsletter also omitted material information concerning the status of the Warrant Sale and the Funds's loan to Company A, which at this point constituted 7.2% of the portfolio.

20. The Q1 2019 Newsletter reported that:

On the second credit [Company A], as reported in the fourth quarter letter, we decided to pause accruing income in the third quarter of 2018. The loan balance of this borrower as of Mar-19 is \$22.0

million, including advances of \$11.7 million and capitalized/deferred fees and PIK interest of \$10.3 million. We don't consider the loan impaired based on the validation of the value of our collateral and income from partial sale of the warrant in the company during the third quarter, as the total value exceeds our loan balance and we currently expect a positive exit of this position some time in 2019.

21. The Q1 2019 Newsletter failed to disclose that Company B never obtained an independent valuation of Company A and on February 12, 2019, Company B sent ExWorks Capital a notice seeking to rescind the Warrant Sale because Company A had a "terrible financial situation" in the opinion of Company B. After further negotiations, ExWorks Capital and Abrahams agreed the Funds would loan an affiliate of Company B an additional \$4 million once Company B paid ExWorks Capital the \$4 million balance on the Warrant Sale, which occurred on April 8, 2019.

22. ExWorks Capital relied upon the implied value of Company A based on the Warrant Sale price of \$7 million to validate the collateral for the loan and as justification not to consider the Company A loan impaired, but the additional loan Company B received from the Funds – plus the intellectual property release – should have reduced the equity value of Company A previously reported in the Q3 2018 Newsletter. Company B's termination notice and assessment of Company A was also material to understanding the status of the joint venture between Company A and Company B previously disclosed in the Q3 2018 Newsletter and the likelihood of a positive exit from Company A's loan in 2019.

23. The Q1 2019 Newsletter also reported that the Funds' total advances to Company A had not increased from the \$11.7 million reported in the Q3 2018 Newsletter. However, ExWorks Capital omitted material information that since the end of Q3 2018, the Funds had loaned more than \$2 million to an individual affiliated with Company A ultimately for use in funding Company A's operations.

Second Quarter 2019 Newsletter

24. On July 30, 2019, ExWorks Capital circulated to limited partners the Q2 2019 newsletter ("Q2 2019 Newsletter"). Abrahams was part of the team responsible for reviewing, editing, and approving the Q2 2019 Newsletter, and Abrahams's name was affixed to the newsletter before it was circulated to the limited partners.

25. The Q2 2019 Newsletter noted that although Company A had been on "non-accrual status since the fourth quarter of 2018, during this quarter we reduced the loan balance by \$4.5 million. In addition, in the third quarter of 2018 we sold a portion of our warrant, as we have previously disclosed, generating \$7.0 million of cash return. At June 2019, the loan had a principal balance of \$17.8 million. In addition to the foregoing, we have remaining a 29% warrant position in the borrower. We expect to exit the position by the end of 2019 with payment in full of principal, fees and interest."

26. The disclosed principal balance of Company A in the Q2 2019 Newsletter omitted material information that the Funds had loaned approximately \$2.2 million to the individual affiliated with Company A for use in funding Company A's operations. The Q2 2019 Newsletter also omitted material information that in June 2019, Company A refused to convert the warrants purchased by Company B, leading Company B to request that the Warrant Sale be rescinded. This information was material to understanding the status of the joint venture between Company A and Company B previously disclosed in the Q3 2018 Newsletter and the likelihood of a positive exit from Company A's loan in 2019.

Violations

27. As a result of the conduct described above, Abrahams caused ExWorks Capital's violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which together make it unlawful for any investment adviser to a pooled investment vehicle to (1) make any untrue statement of material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle; or (2) otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle. Scierer is not required to establish a violation of Section 206(4) of the Advisers Act and the rules thereunder. *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992).

IV.

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

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

A. Respondent Abrahams 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 promulgated thereunder.

B. Respondent Abrahams shall pay a civil penalty of \$125,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. Payment shall be made in the following installments: \$30,000 within 14 days of the entry of the Order, \$25,000 within 90 days of the entry of the Order, \$25,000 within 180 days of the entry of the Order, \$25,000 within 270 days of the entry of the Order, and \$20,000 within 360 days of the entry of the Order. 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, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails 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.

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 Randolph Abrahams 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, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604.

C. 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