

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6714 / September 20, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22150

In the Matter of

**ACP Venture Capital
Management Fund LLC**

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 ACP Venture Capital Management Fund LLC (“ACPVC” 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 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:

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. This matter concerns a failure by ACPVC to register with the Commission as an investment adviser, and to comply with the Advisers Act's Custody Rule. Between November 2018 and January 2023 (the "Relevant Period"), ACPVC was required to be registered with the Commission and to comply with Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder (the "Custody Rule"). However, it failed to register with the Commission and failed to comply with the Custody Rule.

2. During the Relevant Period, ACPVC took the position that it qualified for an exemption from registration available to investment advisers that manage only private funds with assets under management of less than \$150 million (the "Private Fund Adviser Exemption"). In fact, ACPVC did not qualify for this exemption because, during the Relevant Period, there was operational and ownership overlap between ACPVC and Partners Capital Services Inc. ("Partners"), an affiliate of ACPVC that is registered with the Commission as an investment adviser. Because ACPVC did not qualify for the Private Fund Adviser Exemption or any other exemption, it was required to be registered with the Commission as an investment adviser throughout the Relevant Period. Its failure to do so violated Section 203(a) of the Advisers Act.

3. In addition, because ACPVC was required to register as an adviser during the Relevant Period, it also was subject to the Custody Rule during that time. ACPVC failed to either undergo independent verifications ("surprise examinations") or annual audits during the Relevant Period, and therefore failed to comply with the Custody Rule.

Factual Background

4. ACPVC is a Delaware limited liability company headquartered in Hauppauge, New York. ACPVC began operations in or around 2017. In November 2018, ACPVC took the position that it qualified for the Private Fund Adviser Exemption set out in Section 203(m)(1) of the Advisers Act and Rule 203(m)-1 thereunder. At that time, ACPVC began filing Forms ADV with the Commission as an exempt reporting adviser in accordance with Section 204(a) of, and Rule 204-4 under, the Advisers Act.

5. As of November 2018, ACPVC had total regulatory assets under management of \$39,631,000. By January 2023, ACPVC advised twelve private funds ("Funds") with total regulatory assets under management of \$137,405,417. (It had previously advised one additional Fund, which distributed its assets and closed as expected during the Relevant Period.) Each Fund was organized as a Delaware limited liability company ("LLC"); the managing members of the Fund LLCs were themselves also organized as Delaware LLCs. Each Fund, as advised by ACPVC, invested in shares of specific private companies that had the potential for a public offering ("Pre-IPO Shares"), and held equity in such companies, the right to acquire equity in such companies under certain circumstances through forward purchase contracts, or held interests in other private funds that held such equity.

6. Partners is a New York corporation headquartered in Hauppauge, New York. Partners first registered with the Commission as an investment adviser in April 2014. As of

January 2023, Partners had 298 advisory clients with \$114,003,524 in regulatory assets under management. Almost all of these clients were individuals or trusts. These advisory accounts were invested (directly and indirectly) in public securities.

7. ACPVC and Partners had overlapping owners and executives during the Relevant Period. Three individuals (Individual A, Individual B, and Individual C) co-owned Partners during the Relevant Period. Individual A, who owned 20% of Partners, also owned 50% of ACPVC, served as Chief Compliance Officer of both ACPVC and Partners, and co-managed one of ACPVC's Funds. Individual B, who owned 40% of Partners, co-managed 12 of ACPVC's Funds. Individual C, who owned the remaining 40% of Partners, co-managed one of ACPVC's Funds, while serving as President of Partners. A fourth individual (Individual D) owned 50% of ACPVC and co-managed 12 of ACPVC's Funds while also serving as an accounting consultant to Partners.

8. In addition, ACPVC and Partners had significant personnel overlap during the Relevant Period, including personnel who provided investment advice. At different times, two individuals each served as co-managers of separate Funds while also being registered as Investment Advisory Representatives ("IARs") with Partners. Moreover, approximately 25 advisory clients of Partners also became investors in Funds managed by ACPVC during the Relevant Period. Certain IARs of Partners recommended the ACPVC Fund investments to these clients. These IARs were also dually registered representatives of an affiliate of ACPVC that serves as placement agent for the Funds.

9. Finally, ACPVC and Partners had operational overlap during the Relevant Period. ACPVC and Partners operated out of the same offices in Hauppauge, New York, with no physical separation. They also shared the same email domain and phone number with an affiliate and each other and did not have distinct IT systems. In addition, ACPVC and Partners had no policies or related procedures to keep themselves separate from one another or protect investment advisory information from one entity from disclosure to the other.

10. In or around January 2023, ACPVC and Partners began taking steps to disaggregate their operations from one another. Among other things, ACPVC and Partners began using separate email domains and phone numbers, arranged for physical separation of their office spaces, and instituted operational separation policies and related procedures. In addition, ACPVC and Partners have also taken steps to eliminate the overlap in advisory personnel between them.

ACPVC Did Not Qualify For The Private Fund Adviser Exemption During the Relevant Period

11. Pursuant to Section 203(a) of the Advisers Act, it is unlawful for any investment adviser to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as an investment adviser unless it is registered with the Commission, prohibited from so registering pursuant to Section 203A, or otherwise exempt from registration. Section 208(d) of the Advisers Act makes it unlawful for any person indirectly, or through or by any other person, to do any act or thing which would be unlawful for such person to do directly under the provisions of the Act or any rule or regulation thereunder. Interpreting Section 208(d), the Commission has stated that it will treat as a single adviser two or more affiliated advisers that

are separate legal entities but are operationally integrated, which could result in a requirement for one or both advisers to register.² Operational integration depends on the facts and circumstances.

12. Here, ACPVC was operationally integrated with Partners, and therefore should have registered as an adviser, because (as set forth above), the two advisers had overlapping owners, overlapping managers, overlapping advisory personnel, and overlapping operations including shared office space, without any policies or procedures to ensure separation of the two advisers.

13. Based on its operational integration with Partners, ACPVC would not have qualified for an exemption during the Relevant Period. To qualify for the Private Fund Adviser Exemption, an adviser must “solely” advise private funds (*see* Section 203(m) of the Advisers Act and Rule 203(m)-1 thereunder); but here, the operationally integrated enterprise also advised other kinds of clients, including individuals. In addition, throughout the Relevant Period, the operationally integrated enterprise had combined regulatory assets under management that exceeded the threshold for Commission registration.

14. Because ACPVC did not qualify for the Private Fund Adviser Exemption based on its operational integration with Partners, or for any other exemption from registration, it was required to be registered as an investment adviser with the Commission under Section 203(a) of the Advisers Act during the Relevant Period.

ACPVC Did Not Comply With The Custody Rule During the Relevant Period

15. Investment advisers who are “registered or required to be registered” with the Commission must comply with the Custody Rule (Rule 206(4)-2 of the Advisers Act). Among other things, the Custody Rule provides that an adviser who has custody of client funds or securities must verify, at least once during each calendar year, such funds or securities through a surprise examination by an independent public accountant. Rule 206(4)-2(a)(4). Advisers that manage pooled investment vehicles can choose instead to have those vehicles audited at least annually and the audited financials distributed to investors. Rule 206(4)-2(b)(4).

16. An adviser has “custody,” under the Custody Rule, when the adviser holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of such assets. Rule 206(4)-2(d)(2). An adviser also has “custody” when a related person holds such funds or securities or has the authority to obtain possession of such assets in connection with advisory services provided to clients. *Id.* Custody includes, among other things, “[a]ny capacity (such as ... managing member of a limited liability company or a comparable position for another type of pooled investment vehicle...)” that gives the adviser or one of its supervised persons legal ownership of or access to client funds or securities. *Id.* A “related person” is any person, directly or indirectly, controlling or controlled by the adviser, and any person that is under common control with the adviser. Rule 206(4)-2(d)(7). “Control” is “the power, directly or indirectly, to direct the

² *See Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than \$150 Million in Assets Under Management, and Foreign Private Advisers*, Investment Advisers Act Release No. 3222 at 125 (June 22, 2011) [76 FR 39645, 39680 (July 6, 2011)].

management or policies of a person, whether through ownership of securities, by contract, or otherwise.” Rule 206(4)-2(d)(1).

17. ACPVC had custody of the assets of the Funds at issue because it served as the investment manager of each of the Funds and a related person of ACPVC served as the manager of each of the Funds throughout the Relevant Period.

18. ACPVC did not obtain annual audits or surprise examinations to verify its custody of these securities during the Relevant Period.

Violations

19. As a result of the conduct described above, ACPVC violated Section 203(a) of the Advisers Act.

20. As a result of the conduct described above, ACPVC violated Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder.

ACPVC’s Remedial Efforts

21. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent, including steps to reorganize its operations and separate its advisory functions from Partners, as well as the adoption of policies and procedures in an effort to ensure compliance with the applicable rules.

Undertakings

22. ACPVC has undertaken to obtain a verifying examination of the funds and securities held by the Funds for which it serves as adviser by an independent public accountant. The examination will conform to the requirements of Rule 206(4)-2(a)(4), excluding the requirements regarding prior notice and of subsections (i) through (iii).

23. Within 90 days after the date of this Order, ACPVC shall engage an independent public accountant to perform the verifying examination. No later than 10 days following the independent public accountant’s engagement, ACPVC shall provide the Commission staff with a copy of the engagement letter detailing the independent public accountant’s responsibilities. ACPVC shall require that the independent public accountant notify the Commission via email to Steven G. Rawlings (rawlingss@sec.gov) (1) within one business day upon its finding of any material discrepancies during the course of the examination or (2) within four business days upon its resignation or dismissal from, or other termination of, the engagement. The independent public accountant’s compensation and expenses shall be borne exclusively by ACPVC.

24. ACPVC shall require that, within 180 days after the date of this Order, the independent public accountant shall complete its verifying examination.

25. Within 10 days after the completion of such verifying examination, ACPVC shall certify, in writing, that it has complied with the undertakings set forth above. The certification

shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The exhibits shall include a report documenting the work of the independent public accountant. The Commission staff may make reasonable requests for further evidence of compliance, and ACPVC agrees to provide such evidence. The certification and supporting material shall be submitted to Steven G. Rawlings, Assistant Regional Director, Division of Enforcement, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616, with a copy to the Office of Chief Counsel of the Enforcement Division.

26. ACPVC's certification of compliance, and the exhibits thereto, including the report of the independent public accountant, will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of such materials could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the certification, the exhibits thereto, and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.

27. For good cause shown the Commission staff may extend any of the procedural dates relating to this undertaking. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 203(k) of the Advisers Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 203(a) and Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil monetary penalty in the amount of \$45,000 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. 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 ACP Capital Management Fund LLC 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 Steven G. Rawlings, Assistant Regional Director, Division of Enforcement, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616.

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, 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.

D. Respondent shall comply with the undertakings enumerated in paragraphs 22-27 above.

By the Commission.

Vanessa A. Countryman
Secretary