

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3005 / March 17, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13821

In the Matter of

**Paul H. Heckler and Yosemite
Capital Management, LLC**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 203(e), 203(f)
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), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), against Paul H. Heckler and Yosemite Capital Management, LLC (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings pursuant to Sections 203(e), 203(f) 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 Respondents' Offers, the Commission finds¹ that

Summary

These proceedings involve the failure of a registered investment adviser Yosemite Capital Management, LLC ("Yosemite") and its managing director Paul H. Heckler ("Heckler"), to disclose to clients that their promised due diligence had encountered significant problems. Yosemite, through Heckler, placed \$3.25 million of four of its clients' funds through a "feeder fund," Ashton Investments LLC ("Ashton"), into purported bridge loans arranged by Norman Hsu ("Hsu") and Next Components, Ltd. ("Next") Instead of being placed in bridge loans, however, the moneys were part of Hsu's and Next's \$60 million Ponzi scheme.

In January 2007, prior to placing his clients' investments with Ashton and Next, Heckler promised to conduct due diligence to at least two clients prior to placing his clients into the Ashton investment. Although Heckler asked Ashton representatives several key questions, he received incomplete, contradictory, and evasive responses. He received no financials. Investors were promised a high rate of return, effectively 24% per year, and received a post-dated check shortly after investing in the amount of their principal plus interest. In response to Heckler's requests for information, he was told that Hsu was a private person and no information was available. He also received an eight-page brochure from Ashton replete with misspellings, and was told that the bridge loans were safer than stocks or bonds. Because Ashton had no offices, Heckler met the three Ashton representatives -- one of whom Heckler believed was a UPS truck driver or deliveryman -- at local restaurants to discuss the investment. Despite these red flags, Heckler placed four Yosemite clients into the Ashton investment without disclosing to clients that his due diligence process had been thwarted.

As a result of the conduct described above, Heckler and Yosemite willfully² violated Section 206(2) of the Advisers Act, which prohibits any investment adviser from engaging in any transaction, practice, or course of business, which operates as a fraud or deceit on any client or prospective client, and Heckler caused Yosemite's violations of Section 206(2) of the Advisers Act.

¹ 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.

² A willful violation of the securities laws means merely "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." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

Respondents

1. **Paul H. Heckler**, 51, resides in Capistrano Beach, California. From 2001 through the present, Heckler has been managing director and a control person of Yosemite. He co-founded Yosemite with six other partners. At all relevant times, Heckler was also an investment adviser to Yosemite's clients. Heckler holds Series 3, 7, 63, and 65 licenses.

2. **Yosemite Capital Management, LLC** is an investment adviser registered with the Commission. In 1999, Yosemite became organized as a California limited liability company with its principal place of business in Tustin, California. Yosemite provides discretionary advisory services, and in some instances, financial planning services, to individuals and high net worth individuals. In addition, Yosemite's advisory representatives, through an unaffiliated broker-dealer, sell securities in their capacity as registered representatives. Several of its representatives also offer insurance services through unaffiliated insurance agencies. As of March 30, 2009, Yosemite had \$154 million of assets under management.

Other Relevant Entities

3. **Ashton Investments LLC** was formed in California in 2006. Ashton has never registered an offering of securities under the Securities Act of 1933 ("Securities Act"), nor a class of securities under the Securities Exchange Act of 1934 ("Exchange Act"). Ashton was a "feeder fund" to Next Components, gathering investor funds and providing those funds to Next.

4. **Next Components, Ltd.** was incorporated in New York in 2005. Next Components, Ltd. was the successor to Components, Ltd, which was incorporated in New York in 1997. Next Components, Ltd. has never registered an offering of securities under the Securities Act, nor a class of securities under the Exchange Act. On October 6, 2008, the Commission filed a complaint in the U.S. District Court for the Central District of California, Southern Division, against Next for its role in the Ponzi scheme.

5. **Norman Hsu**, 57, had residences in Newport Beach, California and New York City, New York. Hsu was the founder and managing director of Next Components. On September 19, 2007, Hsu was indicted for investment fraud and wire fraud in connection with a \$60 million Ponzi scheme, and for making illegal campaign contributions. On May 7, 2009, Hsu pleaded guilty to mail and wire fraud in connection with the Ponzi scheme. On May 19, 2009, after a jury trial, Hsu was convicted on the remaining four counts related to the illegal campaign contributions. On October 6, 2008, the Commission filed a complaint in the U.S. District Court for the Central District of California, Southern Division, against Hsu for his role in the Ponzi scheme.

Background

6. Since 2001, Paul H. Heckler has been a managing director of Yosemite Capital Management. Yosemite is an investment adviser registered with the Commission. As of March 30, 2009, Yosemite had \$154 million in assets under management. At Yosemite, Heckler is

the investment adviser for over 100 clients; he manages his clients' portfolios, including selecting particular investments. One of his clients, Mr. A, in late winter 2006 or early 2007, told Heckler about a possible investment. The investment was short-term bridge loans originated by Ashton, Norman Hsu, and Next. Heckler stated that after meeting Mr. A, he conducted due diligence of Ashton, Hsu, and Next. Heckler obtained nearly all of his unverified information in January 2007 from Mr. A, who was a former advertising executive and current Ashton representative, and Ashton's two principals, Messrs. B and C. Heckler believed Mr. B was a former United Parcel Service truck driver or delivery person.

A. Heckler Failed to Recognize Red Flags

7. Heckler attempted to determine the nature of Ashton's and Next's businesses. Heckler was told by Mr. A that over three years, Ashton had made 40 short-term loans as a "feeder fund."³ Heckler understood that Ashton was a shell set up to create an opportunity for the lenders to come in to feed the money to Mr. Hsu's deals. Heckler was told that investors through Ashton lent money to Hsu who in turn lent money to others. Investors were promised a six percent return for a 90-day loan, receiving a post-dated check for the amount of their principal plus interest shortly after making the loan that could be cashed after the 90-day period ended. If within 18 days of the start of the loan period a loan did not materialize, the investor was entitled to his principal plus a two percent break-up fee. Heckler was told that Hsu personally guaranteed repayment of investor loans and that Hsu had a net worth of between \$50 million and \$100 million. In addition, Mr. A told Heckler that the short-term loans were safer than stocks and bonds. Heckler disagreed and thought that there should be a disclaimer in the loan agreement concerning the risky nature of the investment. Mr. C told Heckler that no disclaimer was necessary because the investment was not risky. Additionally, Mr. A told Heckler that the short-term loans would be insured up to \$10 million in case of default. Mr. C later contradicted Mr. A and told Heckler that there was no such insurance. Ashton had no offices, and thus Heckler had a series of meetings with Messrs. A, B, and C in local restaurants.

8. Messrs. A, B, and C told Heckler that Next was an apparel company that also made the short-term bridge loans. When Heckler inquired who else was involved with Next, he was told that Hsu has lawyers and accountants, but that Heckler could not contact them. He was told that Hsu was a very private person. Hsu's privacy was a recurrent theme when Heckler asked for information. Heckler was first told that Hsu had extensive business background in the apparel industry. Soon thereafter this information was contradicted and he was told that Hsu's apparel business was very limited. Heckler conducted an internet search on Ashton, Hsu, and Next, learning only that Next was a New York corporation and that Hsu was a fundraiser for politicians such as Hillary Clinton.

9. Heckler asked for proof of the short-term loans and Hsu's 15-year history of making the loans with only one default. Messrs. A, B, and C simply told Heckler that all of the

³ Although Mr. A used the term "feeder fund" to describe Ashton, it may be more precisely termed a "solicitor." For consistency's sake, however, the term "feeder fund" will be employed to describe Ashton.

Hsu loans had been paid off except for one. In that \$10 million loan, the borrower defaulted, and Hsu paid off the investor for the default. Besides these oral assurances of Hsu's financial wherewithal, Heckler received emails from Messrs. A, B, and C, which contained no identifying information and summarized some of the loans. Heckler also spoke with a single investor, who Messrs. A, B, and C brought with them, to one of the restaurant meetings. The investor stated that he received his principal and interest from a short-term loan with Ashton and Hsu.

10. Heckler attempted without success to obtain financial records for Hsu, Ashton, and Next. First, he asked Messrs. A, B, and C for Hsu's financial records because Mr. Hsu was the one personally guaranteeing these notes, thinking that it would be prudent to get a copy of Hsu's personal financials. They responded that Hsu was a private businessman; he was not going to give those out. Heckler was simply told, in a testament to Hsu's character and viability as a professional, when one of the short-term loans went bad, Hsu stepped up and repaid the investors with his own funds. Second, Heckler asked Messrs. A, B, and C for financial records concerning Ashton. They told Heckler that there was not anything to disclose, and that there was nothing there. Ashton was simply a shell or "feeder fund." Third, Heckler asked Messrs. A, B, and C for Next's financial records and was told that Hsu was "not going to give us any information on Hsu or Next Components."

11. Heckler only received three pieces of written information concerning Ashton and Hsu. First, he received business cards from Messrs. A, B, and C. Messrs. A and B listed their position with Ashton as "Representative [sic]." Second, Heckler received an eight-page brochure replete with misspellings and mostly general, unverified information. The brochure contained statements such as: "Ashton Investments specializes in Bridge Loans offering are [sic] clients high returns on there [sic] money in 30 to 90 days." During the summer of 2007, Heckler claims this brochure was stolen by Mr. or Mrs. A. Heckler left a message for Mr. A, asking for return of the brochure. Mr. A did not return Heckler's phone call. Third, as mentioned above, Heckler received emails, without any identifying information, that summarized a few of the loans. Heckler thought that these emails were helpful in determining whether to place his clients in the Ashton investment. These emails, Heckler believed, indicated that there were legitimate businesses behind the short-term loans. Even though there were no names, Heckler testified, it indicated when you looked at the brief description of the business that there was a true business behind it. Like the brochure, Heckler alleges that these emails were stolen in the summer of 2007 by Mr. or Mrs. A.

B. Heckler Recommends Investment in Ashton Investments

12. Despite not having obtained the information he had sought in his attempted due diligence, Heckler recommended investment in Ashton to four of his clients. From February to August 2007, the four clients invested \$3.25 million in Ashton and Hsu, realizing \$1.95 million in losses when Hsu's Ponzi scheme collapsed in September 2007. Heckler represented to at least two investors that he had conducted due diligence of Ashton. One investor stated that Heckler had told him that the investment had little risk because Next Components had been around for 15 years and because Next and Hsu have never had bad returns. The investor further stated that Heckler also had told him that Heckler had checked out Ashton, Next, and Hsu, conducting due diligence.

Another investor claimed that Heckler had assured him that Heckler had done all of the appropriate investigation necessary prior to recommending investment in Ashton and Hsu.

C. Heckler Receives Fees for Recommendations

13. For referring investors to Ashton, Heckler received a two percent commission. He received the commission at the time the bridge loan matured. Accordingly, Heckler received a total of \$26,000 in commissions from the \$1.3 million of bridge loans that matured. Heckler remitted this \$26,000 to Yosemite. He then received a portion of the \$26,000 per his compensation agreement with Yosemite. Additionally, Heckler also invested \$275,000 of his own money in Ashton, realizing a \$150,000 loss.

D. Violations

14. As a result of the conduct described above, Heckler and Yosemite willfully⁴ violated Section 206(2) of the Advisers Act which makes it unlawful for an adviser to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client.

15. As a result of the conduct described above, Heckler willfully caused Yosemite's violations of Sections 206(2) of the Advisers Act, which makes it unlawful for an adviser to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client.

Undertakings

Respondents undertake to:

16. Within thirty (30) days of the issuance of this Order, mail a copy of the Form ADV which incorporates the paragraphs contained in the Summary section of this Order to each of Yosemite's existing clients, and specify that the entire Order will be posted on Yosemite's website. Within thirty (30) days of the issuance of this Order, post a copy of this Order on Yosemite's website and maintain this copy of the Order on Yosemite's website for a period of six (6) months. Respondents shall also provide a copy of the Form ADV to any new client that engages Yosemite or Heckler within two (2) years of the date of this Order.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Heckler's and Yosemite's Offers.

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

⁴See n.2.

A. Respondents Paul H. Heckler and Yosemite Capital Management, LLC cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act;

B. Respondents Paul H. Heckler and Yosemite Capital Management, LLC are censured;

C. Respondent Paul H. Heckler shall, within 30 days of the entry of this Order, pay a civil penalty of \$26,000.00 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Paul H. Heckler as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Michele Wein Layne, Associate Regional Director, U.S. Securities and Exchange Commission, 5670 Wilshire Blvd, Suite 1100, Los Angeles, CA 90036;

D. Respondent Yosemite Capital Management, LLC shall, within 30 days of the entry of this Order, pay disgorgement of \$26,000.00, prejudgment interest of \$3,071.86 and civil penalties of \$50,000.00 (for a total amount of \$79,071.86) to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. 3717. Payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Yosemite Capital Management, LLC as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Michele Wein Layne, Associate Regional Director, U.S. Securities and Exchange Commission, 5670 Wilshire Blvd, Suite 1100, Los Angeles, CA 90036; and

E. Orders that Paul H. Heckler and Yosemite Capital Management, LLC shall comply with the undertakings enumerated in Section III, Paragraph 16 above.

By the Commission.

Elizabeth M. Murphy
Secretary