UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6450 / September 29, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21771

In the Matter of **FLORENCE CAPITAL ADVISORS, LLC and GREGORY A. HERSCH,** **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 Florence Capital Advisors, LLC ("FCA") and Gregory A. Hersch ("Hersch") (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, 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 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 finds[1] that:

Summary

1. These proceedings arise out of a failure by Florence Capital Advisors, LLC ("FCA"), and its principal, Gregory Hersch ("Hersch"), to adequately disclose conflicts of interest in connection with client investments in a third-party private fund (the "Fund") from which FCA was also receiving substantial advisory fees.

2. FCA received fees from the Fund pursuant to advisory agreements, while at the same time recommending investments in the Fund to FCA clients and advising FCA clients on their existing investments in the Fund. Between at least May 2017 and April 2019 (the "Relevant Period"), FCA failed to disclose to clients that it was receiving substantial fees from the Fund and the attendant conflicts of interest.

Respondents

3. **FCA** is a Delaware Limited Liability Company with its principal place of business in New York, New York. FCA has been registered with the Commission as an investment adviser since August 2015. As of its March 28, 2019 Form ADV amendment, FCA reported having approximately 40 clients with approximately $293 million in regulatory assets under management. As of its June 2, 2023 Form ADV amendment, FCA reported having 20 clients with approximately $117 million in regulatory assets under management.

4. **Hersch**, age 44, is a resident of New York, New York. Hersch is the founder, principal owner, and Chief Executive Officer of FCA. Prior to founding FCA, Hersch was employed as a registered representative at various registered broker-dealers. While operating FCA, Hersch was separately associated with certain unaffiliated registered broker-dealers, with the last such association ending in April 2023.

Facts

5. Hersch founded FCA in 2015, primarily providing advisory services to high net worth individuals. From 2015 until at least April 2019, FCA offered clients advisory services pursuant to a standardized Discretionary Wealth Management Agreement, which provided for an asset-based fee arrangement, generally of up to one percent annually, on certain assets under management specified in an exhibit to the agreement.

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[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.

FCA's Receipt of Compensation from the Fund

6. In December 2015, FCA entered into an advisory agreement with the Fund using the standardized Discretionary Wealth Management Agreement that FCA used with its other clients. The agreement provided that FCA would provide investment consulting and manager due diligence services to the Fund and an approximate one percent fee would be charged on the value of certain specified assets under management, which were private investments. Between December 2015 and April 2017, the Fund paid FCA advisory fees averaging approximately $1,500 per month.

7. The Fund was managed by a close friend of Hersch. The Fund purported to use a strategy that allocated approximately 80% to 90% of its assets for liquid trading strategies, with only 10% to 20% of its assets allocated to alternative or non-liquid private investments like those on which FCA advised the Fund.

8. Between April 2016 and April 2019, FCA recommended that certain of its high net worth individual clients invest in the Fund and also provided ongoing advice to clients on existing investments that they had in the Fund. The Fund offered FCA's clients the ability to redeem their interests in the Fund on a monthly basis. During this time period, FCA advised 13 FCA clients on a total of approximately $31 million invested in the Fund, which Hersch believed at the time constituted a significant amount—at least 25% and up to more than 40%—of the Fund's total assets. The FCA clients' investments in the Fund were part of the assets for such clients on which FCA advised and charged advisory fees.

9. In May 2017, FCA and the Fund entered into an amendment of the fee arrangement set forth in the Discretionary Wealth Management Agreement. The amendment replaced the standardized provisions for an asset based fee arrangement with a monthly flat fee of $30,000 to FCA. According to Hersch, the change in the fee arrangement was proposed by the manager of the Fund to compensate FCA for increased due diligence FCA was conducting into potential private investments for the Fund's portfolio. This was also the only client advisory agreement with such a fee arrangement.

10. In July 2018, FCA and the Fund again entered into a further amendment of the agreement, providing for an increased monthly flat fee of $43,000. According to Hersch, the change in the fee arrangement was proposed by the manager of the Fund and was to compensate FCA for further increased due diligence work FCA was performing for the Fund regarding potential private investments for the Fund's portfolio and for work on marketing materials for the Fund.

11. In total, during the Relevant Period, FCA received approximately $850,000 in fees from the Fund from the May 2017 and July 2018 amendments for the $30,000 and $43,000 monthly flat-fees. The monthly flat fees were significantly more than the amount that FCA would have received from the asset-based 1% annual fee that they replaced, and the fees from

the Fund constituted more than 25 percent of FCA's total fee revenue from all clients throughout the Relevant Period.

12. Because FCA clients' investments in the Fund represented a considerable percentage of the Fund's assets, significant redemptions by FCA clients could have impacted the Fund's continued payment of the monthly flat-fees described in paragraphs 9 to 11, above. As a result, FCA and Hersch had an economic incentive to have FCA clients invest in the Fund and stay invested.

FCA and Hersch Did not Fully and Fairly Disclose to Clients the Conflicts of Interest Associated with Investments in the Fund

13. As an investment adviser, FCA was obligated to fully and fairly disclose all material facts to advisory clients, including any conflicts of interest between itself and its advisory clients. To meet this obligation, FCA was required to provide its advisory clients with sufficient information so that they could understand potential and actual conflicts of interest that FCA had and have an informed basis to decide whether to give informed consent to such conflicts or practices.

14. As the managing member and Chief Executive Officer of FCA who made the recommendations to FCA clients to invest in the Fund and advised the clients on such investments on an ongoing basis, Hersch was responsible for ensuring that clients who were invested in the Fund or who were considering investing in the Fund received full and fair disclosure regarding compensation that FCA received in connection with conflicts of interest presented by that compensation.

15. During the Relevant Period, FCA and Hersch did not adequately disclose to clients the conflicts of interest FCA had in recommending and advising on investments in the Fund.

16. According to Hersch, he verbally communicated to FCA clients invested in the Fund that the Fund was a client of FCA for advice on alternative or non-liquid private investments and that the Fund was managed by a close friend of his. However, these types of verbal disclosures—without further details—do not adequately disclose facts setting out the nature and magnitude of the conflicts of interest resulting from the fees FCA received from the Fund and FCA's and Hersch's economic incentives. Among other things, Hersch and FCA failed to adequately inform clients that FCA received a substantial amount of fees from the Fund during the Relevant Period, that such fees exceeded FCA's typical advisory fees on assets, and that these fees constituted a substantial percentage of FCA's revenues.

FCA's Form ADV Brochures Provided to Clients Contained Inaccurate and Misleading Information about the Conflicts of Interest

17. Apart from verbal disclosures that Hersch made to clients about the Fund, beginning in May 2017 and continuing through the end of the Relevant Period in April 2019, FCA's Form ADV Part 2A Brochures ("ADV Brochures") provided inaccurate and misleading information regarding FCA's arrangements with the Fund. As the managing member and Chief Executive Officer of FCA, Hersch was responsible for reviewing and approving FCA's ADV Brochures prior to filing with the Commission and delivering or making them available to FCA's clients.

18. Prior to May 2017, FCA's ADV Brochure did not include any conflict of interest disclosures relating to private funds that it recommended to clients, such as the Fund. When the arrangement with the Fund increased to a monthly $30,000 flat fee structure, FCA consulted with its then outside counsel and updated its ADV Brochure in May 2017 with a disclosure drafted by its outside counsel.

19. However, the relevant disclosure was inaccurate and did not provide clients with any of the information they would need to properly evaluate FCA's conflicts of interest with respect to investments in the Fund. Instead, the disclosure stated: "FCA may recommend certain privately placed selective investment vehicles to its clients where another client is the manager to such vehicle (the 'Client Manager'). The Client Manager pays an advisory fee to FCA for the investment manager services FCA provides with respect to the Client Manager's personal portfolio. FCA has procedures in place whereby it seeks to ensure that all recommendations are made in its clients' best interest regardless of any potential conflict of interest." Notwithstanding the clear inaccuracy of the disclosure drafted by outside counsel, Hersch reviewed and approved the updated May 2017 ADV Brochure. This same disclosure appeared in FCA's ADV Brochures through the remainder of the Relevant Period.

20. This disclosure was inaccurate and misleading for several reasons. First, the individual who served as the manager of the Fund was, in fact, not a client of FCA, and FCA did not advise at any time on the manager's personal portfolio. Second, the advisory fee was paid by the Fund to FCA. Third, the disclosure as written indicated that any arrangement FCA had was solely with the Fund's manager for his personal portfolio.

21. As such, throughout the entire Relevant Period, FCA's ADV Brochures contained inaccurate and misleading information indicating that any arrangement FCA had was solely with the Fund's manager for his personal portfolio and it did not serve to disclose facts relevant for a full and fair understanding of the conflicts of interests that existed in relation to the compensation FCA received from the Fund.

Hersch Learned of Irregularities with the Fund in Late April 2019

22. In late April 2019, Hersch discovered that the Fund's manager had not been engaging in liquid trading strategies for the Fund as had been previously represented by the

Fund's manager to Hersch and FCA clients. Hersch and FCA subsequently assisted FCA clients with taking actions attempting to recover their investments. The Fund filed a Chapter 11 voluntary bankruptcy petition in September 2019. In April 2021, the Commission filed a civil action against the Fund's manager and the United States Attorneys' Office for the Southern District of New York filed criminal charges.[2]

Violations

23. As a result of the conduct described above, FCA and Hersch willfully[3] violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in any transaction, practice or course of business that operates as a fraud or deceit upon a client or prospective client. Scienter 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, 194-95 (1963)).

IV.

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

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

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

B. Respondents FCA and Hersch are censured.

C. Respondents shall, within 14 days of the entry of this Order, pay, jointly and severally, a civil money penalty in the amount of $200,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange

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[2] *See SEC v. Franzone et al.,* No. 21-civ-3619 (S.D.N.Y.); *United States v. Franzone*, No. 21-CR-446 (S.D.N.Y.). Both actions are currently pending.

[3] "Willfully," for purposes of imposing relief under Section 203(e) and (f) of the Advisers Act, "'means no more than 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." *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[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

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) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondents 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) Respondents 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 Florence Capital Advisors, LLC and Gregory Hersch as Respondents 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 Pollock, Associate Regional Director, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

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, Respondents agree that in any Related Investor Action, Respondents shall not argue that Respondents are entitled to, nor shall Respondents 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 agrees that Respondents 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 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 Hersch, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Hersch 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