UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6662 / August 19, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22019

In the Matter of OBRA CAPITAL MANAGEMENT, LLC, Respondent.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 203(e) 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) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Obra Capital Management, LLC ("Obra Capital" 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 Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) 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 Respondent's Offer, the Commission finds[1] that:

Summary

1. These proceedings involve violations of the Commission's "pay-to-play" rule for investment advisers by Respondent Obra Capital Management, LLC, an investment adviser registered with the Commission. Rule 206(4)-5, promulgated under Section 206(4) of the Advisers Act, is a prophylactic rule designed to address pay-to-play abuses involving campaign contributions made by certain investment advisers or their covered associates to government officials who are in a position to influence the hiring of investment advisers to manage government client assets, including the assets of public pension funds and other public entities. Among other things, Rule 206(4)-5 prohibits certain investment advisers from providing investment advisory services for compensation to a government entity for two years after the investment adviser or any "covered associates" of the investment adviser—defined to include certain of the investment adviser's executives and any employee who solicits a government entity for the investment adviser—makes a campaign contribution to certain elected officials or candidates who can influence the hiring of certain investment advisers.

2. In December 2019, an individual made a campaign contribution to an incumbent for elected office in the State of Michigan, which office had influence over hiring investment advisers for a state public pension fund in Michigan. Over six months after that contribution, the individual was hired into a position in which the individual was a covered associate of Obra Capital and subsequently solicited investment advisory services from government entities for Obra Capital. Within two years after this contribution and after the individual became a covered associate of the Respondent, Respondent provided investment advisory services for compensation to the state public pension fund. By doing so, Respondent violated Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder.

Respondent

3. Obra Capital Management, LLC ("Obra Capital") is a limited liability company headquartered in Austin, Texas. Obra Capital has been registered with the Commission as an investment adviser since November 4, 2010 and reported regulatory assets under management of approximately $2.7 billion in its most recent Form ADV filing on March 29, 2024. Prior to December 2022, Obra Capital was known as Vida Capital Management, LLC.

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[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.

Background

4. In 2017, the Michigan Department of Treasury, on behalf of the Michigan Public Employees' Retirement Fund, committed to invest, and subsequently invested, approximately $100 million in a private fund advised by Obra Capital (the "Fund"). The Fund was a covered investment pool under Rule 206(4)-5 of the Advisers Act.[2] The Fund was a closed-end fund and investors were generally prohibited from withdrawing their money for the life of the fund.

5. On December 30, 2019, an individual made a $7,150 campaign contribution[3] to a government official in Michigan. On July 1, 2020, Obra Capital hired the individual into a position in which the individual was a covered associate of Obra Capital.[4] After the individual was hired by Obra Capital, the individual sought and obtained the return of the contribution.[5] Between September 2020 and May 2021, the individual solicited government entities for Obra Capital by attending and participating in meetings and presentations with government entities who were invested or solicited to invest in funds advised by Obra Capital. The individual's contribution triggered the "look back" provision of Rule 206(4)-5. Specifically, under Rule 206(4)-5(a)(1) and (b)(2), contributions made within the two years (or six months if the covered associate does

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[2] Under Rule 206(4)-5(c), an investment adviser to a covered investment pool in which a government entity invests is considered to be providing investment advisory services directly to the government entity. See Rule 206(4)-5(c) ("For purposes of this section, an investment adviser to a covered investment pool in which a government entity invests or is solicited to invest shall be treated as though that investment adviser were providing or seeking to provide investment advisory services directly to the government entity."). A "covered investment pool" is defined as (i) an investment company registered under the Investment Company Act of 1940 ("Investment Company Act") that is an investment option of a plan or program of a government entity; or (ii) any company that would be an investment company under Section 3(a) of the Investment Company Act, but for the exclusion provided from that definition by either Section 3(c)(1), Section 3(c)(7), or Section 3(c)(11) of that Act. See Rule 206(4)-5(f)(3).

[3] Rule 206(4)-5 has a *de minimis* exception, which permits covered associates to make aggregate contributions without triggering the two-year "time out" of up to $350, per election, to an elected official or candidate for whom the covered associate is entitled to vote, and up to $150, per election, to an elected official or candidate for whom the covered associate is not entitled to vote. See Rule 206(4)-5(b)(1).

[4] Covered associates are defined to include: (i) any general partner, managing member or executive officer, or other individual with a similar status or function; (ii) any employee who solicits a government entity for the investment adviser and any person who supervises, directly or indirectly, such employee; and (iii) any political action committee controlled by the investment adviser or by any of its covered associates. See Rule 206(4)-5(f)(2).

[5] Rule 206(4)-5 has an exception for certain returned contributions. In order to qualify for this exception, the contribution must not exceed $350, the adviser must have discovered the contribution within four months of the date of the contribution and, within 60 days after learning of the contribution, the contributor must obtain a return of the contribution. See Rule 206(4)-5(b)(3). The covered associate's contribution did not qualify for an exception under Rule 206(4)-5(b)(3) because it did not meet all of the requirements for an exception. Specifically, the contribution exceeded the $350 limit in the exception and it was not returned within 60 days after Respondent learned of the contribution.

not solicit government entities on behalf of the investment adviser) before a person becomes a covered associate are subject to the prohibition set forth under Rule 206(4)-5(a)(1).

6. During the relevant period, the office of the government official had the ability to influence the hiring of investment advisers for the Michigan Public Employees' Retirement Fund. Specifically, the office of the government official appointed the five members of the Michigan Investment Board, including the Michigan State Treasurer, who had influence over selecting investments by the Michigan Public Employees' Retirement Fund. As of the date of the contribution in 2019, the Michigan Public Employees' Retirement Fund had already invested in the Fund and was not able to increase or withdraw its investment from the Fund.

7. Obra Capital continued to provide investment advisory services for compensation to the Fund, and therefore, to the Michigan Public Employees' Retirement Fund, after the individual became a covered associate and before the two-year prohibition on receiving compensation for the provision of investment advisory services expired.

8. Advisers Act Rule 206(4)-5(a)(1) prohibits any investment adviser registered with the Commission, investment adviser required to be registered with the Commission, foreign private adviser, or exempt reporting adviser from providing investment advisory services for compensation to a government entity[6] within two years after a contribution to an official[7] of the government entity made by the investment adviser or any covered associate of the investment adviser, including a person who becomes a covered associate within two years after the contribution is made, subject to the exception in Advisers Act Rule 206(4)-5(b)(2). Advisers Act Rule 206(4)-5 does not require a showing of *quid pro quo* or actual intent to influence an elected official or candidate.

9. As a state public pension fund, the Michigan Public Employees' Retirement Fund was a government entity as defined in Advisers Act Rule 206(4)-5(f)(5). The contributor was a covered associate of Respondent as defined in Advisers Act Rule 206(4)-5(f)(2). The individual who received the contribution was an official of a government entity as defined in Advisers Act Rule 206(4)-5(f)(6) because the individual was an incumbent, candidate or successful candidate for an elective office that had authority either to influence the hiring of investment advisers by the government entity or to appoint people who could influence the hiring of investment advisers by the government entity.

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[6] See Rule 206(4)-5(f)(5).

[7] "Official" includes any person who, at the time of the relevant contribution, was an incumbent, candidate or successful candidate for elective office of a government entity if the office is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity or has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity. See Rule 206(4)-5(f)(6).

10. Under Advisers Act Rule 206(4)-5, the contribution triggered a "time out" on Respondent providing investment advisory services for compensation to the Michigan Public Employees' Retirement Fund beginning after the individual who made the contribution became a covered associate and continuing until two years had elapsed from the date of the contribution. During this period, Respondent continued to provide investment advisory services for compensation to the Fund and received investment advisory fees attributable to the investment of the Michigan Public Employees' Retirement Fund in the Fund.

Violations

11. As a result of the conduct described above, Respondent Obra Capital willfully[8] violated Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder, which makes it unlawful for any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under Section 203(b)(3) of the Advisers Act, or that is an exempt reporting adviser, to provide investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by the investment adviser or any covered associate of the investment adviser (including a person who becomes a covered associate within two years after the contribution is made).

IV.

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

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

A. Respondent Obra Capital 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)-5 thereunder.

B. Respondent Obra Capital is censured.

[8] "Willfully," for purposes of imposing relief under Section 203(e) 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).

C. Respondent Obra Capital shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $95,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange 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) 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 Obra Capital Management, LLC as the 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 LeeAnn Ghazil Gaunt, Chief, Public Finance Abuse Unit, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 24th Floor, Boston, MA 02110.

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, 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.

By the Commission.

Vanessa A. Countryman
Secretary