

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
Release No. 55177 / January 25, 2007

**INVESTMENT ADVISERS ACT OF 1940**  
Release No. 2586 / January 25, 2007

**ADMINISTRATIVE PROCEEDING**  
File No. 3-12550

**In the Matter of**

**VERTICAL CAPITAL  
PARTNERS, INC. (now  
known as ARJENT LTD.)  
and FRANCESCA  
WOLFSOHN,**

**Respondents.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS, MAKING  
FINDINGS, AND IMPOSING A CEASE-  
AND-DESIST ORDER PURSUANT TO  
SECTION 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934 AND SECTION  
203(k) OF THE INVESTMENT ADVISERS  
ACT OF 1940.**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Vertical Capital Partners, Inc. (now known as Arjent Ltd.) (“Vertical”), and Francesca Wolfsohn (collectively, “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (“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 Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the

Securities Exchange Act of 1934 and Section 203(k) of the Investment Advisers Act of 1940 (“Order”), as set forth below.

### III.

On the basis of this Order and Respondents’ Offers, the Commission finds<sup>1</sup> that:

#### A. Summary

1. From 1999 and at least through the end of 2005, Vertical, a registered broker-dealer, sponsored a wrap fee program consisting of managed accounts traded by Wolfsohn, a registered representative at Vertical.<sup>2</sup> Account agreements for the managed accounts provided that Vertical would not charge loads or sales commissions on mutual fund purchases. Contrary to these provisions, and without disclosure to clients, between August 2002 and August 2004, Vertical charged managed account clients approximately \$530,000 in loads on mutual fund purchases. The overcharge was apparently the result of an error in Vertical’s trade entry process. Both Wolfsohn and her direct supervisor, a senior Vertical executive, received, but failed to adequately review or investigate, monthly reports on Wolfsohn’s compensation that should have alerted Respondents to the improper charges. Thus, they failed to detect the overcharge, and as a result, Vertical violated Section 206(2) of the Advisers Act and Rule 10b-10 under the Exchange Act, and Wolfsohn caused Vertical’s violations of these provisions.

#### B. Respondents

2. Vertical,<sup>3</sup> formerly known as Security Capital Trading, Inc., and now known as Arjent Ltd., is a Delaware corporation with a primary place of business in New York, New York. Vertical has been registered with the Commission as a broker-dealer since 1995; it is not registered with the Commission as an investment adviser. In 2002-2004, Vertical had approximately 22 registered representatives. Most of them were located in the New York office of the firm; approximately five were in the smaller branch office located in Coral Springs, Florida.

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<sup>1</sup> The findings herein are made pursuant to Respondents’ Offers and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> Vertical has represented to the Commission that it has decided to terminate the wrap fee program and that the balances in all of the managed accounts have been transferred to non-discretionary, commission-based accounts at the firm. Vertical has represented that Wolfsohn will continue to act as the registered representative for these accounts.

<sup>3</sup> As used herein, the name “Vertical” refers to Vertical Capital Partners, Inc. and all its predecessor and successor entities, including Security Capital Trading, Inc. and Arjent Ltd.

3. Wolfsohn has been a registered representative at Vertical since 1999. From the time she joined Vertical, Wolfsohn was the only Vertical registered representative handling the managed account program at issue in this proceeding.

**C. Facts**

4. From 1999, when Wolfsohn joined Vertical, and at least through the end of 2005, Vertical sponsored a wrap fee program consisting of managed accounts traded by Wolfsohn. Pursuant to their agreements with Vertical, clients in the managed account program paid Vertical quarterly management fees, calculated as a percentage of the managed assets, in exchange for Vertical's trade execution and portfolio management services. The managed account portfolios consisted primarily of mutual fund shares. Wolfsohn, in consultation with an outside adviser hired by Vertical, would develop an allocation of assets to fit the clients' investment needs and objectives, select the mutual funds to be purchased for the clients' accounts, and monitor and periodically adjust the portfolio holdings. The account agreements gave both Vertical and Wolfsohn investment discretion over the managed accounts. The agreements also provided that "LOAD Mutual funds purchased for the account[s] [would] not be charged a LOAD or sales commission and [would be] purchased at NET ASSET VALUE (NAV)." After payment of the outside adviser's fees, Wolfsohn received 60% of all fees generated by the managed accounts, and Vertical received the remaining 40%.

5. Until some time in 2002, Wolfsohn placed mutual fund trades for the managed accounts by giving a list of the trades to a Vertical clerk, who, in turn, faxed the list to the mutual fund department of Vertical's clearing firm. Some time in 2002, the clearing firm provided Vertical with direct access to a computerized mutual fund order entry system. The Vertical clerk who entered trades through that system, however, did not know that, for the managed accounts, she had to select the "NAV" price option from a dropdown menu of the trade entry screen. Instead, she entered trades at the default price appearing on the screen, which incorporated loads. As a result, between August 2002 and August 2004, Vertical charged the managed account clients \$530,048.49 in loads on mutual fund purchases. These charges directly contradicted the provisions of the clients' agreements with Vertical and were not disclosed to the clients either in the trade confirmations or otherwise.

6. Vertical charged loads on mutual fund purchases by managed account clients in contravention of explicit terms in its managed account agreements. Both Respondents received periodic information - "cover sheets," "commission runs," and Wolfsohn's monthly salary fluctuations - indicating that the managed accounts were paying sales loads. Thus, Respondents knew or should have known that the managed account holders were paying sales loads despite contrary terms in the account agreements. The conduct with respect to the managed account holders who were Vertical's investment advisory clients violated Section 206(2) of the Advisers Act. As a result, Vertical violated and Wolfsohn caused Vertical's violations of Section 206(2) of the Advisers Act.

7. Both Wolfsohn and her direct supervisor, a senior Vertical executive, regularly received but claim to have failed to adequately review or investigate certain reports that should have alerted both Respondents to the improper charges. During the relevant time, Wolfsohn had two

registered representative (“RR”) numbers at Vertical, one solely for the trading in the managed accounts and one for the remaining Wolfsohn customer accounts. Every month, Vertical’s clearing firm generated and sent to Vertical a separate “commission run” for each Wolfsohn RR number. These reports contained a listing of all trades placed with each RR number during the month as well as certain summary information. Among other things, the commission runs showed the sales charges, such as commissions or mutual fund loads, for each trade and the total sales charges for the month on trades in each security type, including on trades in mutual fund shares. Each month, Wolfsohn received a copy of these reports, and the Vertical clerk responsible for payroll processing received another copy. Until August 2002, the commission runs for the Wolfsohn managed account RR number showed zero sales charges on each mutual fund trade and also stated that the total sales charges on mutual fund trades for the month were zero. By contrast, beginning in August 2002, the commission runs for the managed account RR number showed non-zero sales charges on mutual fund trades, both for individual transactions and in total. Wolfsohn stated that she did not review the commission runs. Her supervisor stated that he did not receive them.

8. Additionally, Wolfsohn’s direct supervisor, a senior Vertical executive, regularly received and reviewed so-called “cover sheets” - monthly one-page reports, prepared by the Vertical payroll clerk, summarizing the gross and net fees Wolfsohn earned during the month. On the cover sheets, the gross fees generated by each Wolfsohn RR number appeared as separate line items. Prior to August 2002, the cover sheets included an entry for the managed account RR number every third month, reflecting the quarterly management fees. By contrast, beginning in August 2002, the cover sheets showed gross fees from the managed account RR number virtually every month. Wolfsohn’s supervisor, however, did nothing to investigate this change, nor did he do anything to ensure that the gross fees appearing on the cover sheets were correct. Instead, he merely checked the arithmetical accuracy of the calculations included on the cover sheets and then approved the payout.

9. The improperly charged loads constituted approximately 31%, 64% and 54% of Wolfsohn’s gross earnings from Vertical in 2002, 2003 and 2004, respectively, and between 1.6% and 16.6% of Vertical’s quarterly gross revenues during the time period at issue.

10. The staff of the Commission’s Northeast Regional Office discovered the improper load charges in the managed accounts during its examination of Vertical in the summer of 2004. Vertical subsequently hired an outside accounting firm to audit the managed accounts to determine the extent of the overcharge and the reimbursement due to the clients. In January 2005, Vertical voluntarily sent letters to the affected clients, informing them that the firm had discovered “an error in [its] computerized order system which resulted in an overcharge on certain transactions involving loads” and offering each client a refund in the form of either a cash payment or a credit to the client’s managed account. Vertical ultimately voluntarily refunded \$490,432.84 to the affected managed account clients. Additionally, \$39,712.03 or 60% of the refund due to the accounts owned by Wolfsohn and her immediate family members was waived by the account owners. Vertical did not pay clients interest on the reimbursed amounts. Wolfsohn contributed \$302,869.27 toward the reimbursement, representing approximately the loads that she received.

#### **D. Violations**

11. As a result of the conduct described above, Vertical violated and Wolfsohn caused Vertical's violations of Section 206(2) of the Advisers Act, which makes it "unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, ... to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." A violation of Section 206(2) of the Advisers Act does not require a finding of scienter and may be established by a showing of negligence. SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 195 (1963); SEC v. Steadman, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992).

12. Additionally, as a result of the conduct described above, Vertical violated and Wolfsohn caused Vertical's violations of Rule 10b-10 under the Exchange Act, which makes it unlawful for a broker-dealer to effect any transactions for a customer's account unless the broker-dealer, at or before the completion of the transaction, provides the customer with written notification disclosing, among other things, "[the] amount of any remuneration received or to be received by the broker from such customer in connection with the transaction." 17 C.F.R. § 240.10b-10(a)(2)(i)(B).

#### **E. Respondents' Remedial Efforts**

13. In determining to accept the Offers, the Commission has considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff.

#### **F. Undertakings**

14. Respondents undertake to take the following actions.<sup>4</sup>

##### Ongoing Cooperation

15. In determining to accept the Offers, the Commission has considered the following undertaking by Respondents. Respondents shall cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Respondents have undertaken:

- (a) To produce, without service of a notice or subpoena, any and all documents and other information requested by the Commission's staff;
- (b) That Vertical will use its best efforts to cause Vertical employees to be interviewed by the Commission's staff at such times as the staff reasonably may direct;

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<sup>4</sup> The undertakings and sanctions set forth herein shall be binding upon all successors to Vertical, including Arjent Ltd.

- (c) That Vertical will use its best efforts to cause Vertical employees to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and
- (d) That in connection with any testimony of Respondents to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Respondents:
  - (i) Agree that any such notice or subpoena for Respondents' appearance and testimony may be served by regular mail on their attorney, and
  - (ii) Agree that any such notice or subpoena for Respondents' appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

#### Independent Compliance Consultant

16. Vertical shall retain, within 30 days of the date of entry of the Order, the services of an Independent Compliance Consultant ("Consultant") not unacceptable to the staff of the Commission. The Consultant's compensation and expenses shall be borne exclusively by Vertical. Vertical shall require the Consultant to conduct a comprehensive review of Vertical's supervisory, compliance, and other policies and procedures designed to prevent and detect conflicts of interest, breaches of fiduciary duty, and federal securities law violations by Vertical and its employees. This review shall include, but shall not be limited to, a review of Vertical's policies and procedures in the areas of trade processing, compensation of registered representatives, and the training of registered and unregistered staff. Vertical shall cooperate fully with the Consultant and shall provide the Consultant with access to its files, books, records, and personnel as reasonably requested for the review.

17. Vertical shall require that, at the conclusion of the review by the Consultant, which in no event shall be more than 90 days after the date of entry of the Order, the Consultant submit a Report to Vertical and the staff of the Commission. Vertical shall require that the Consultant's Report address the issues described in paragraph 16 of this Order. Vertical shall also require that the Report include a description of the review performed, the conclusions reached, the Consultant's recommendations for changes in or improvements to Vertical's policies and procedures, and a procedure for implementing the recommended changes in or improvements to Vertical's policies and procedures.

18. Vertical shall adopt all recommendations contained in the Consultant's Report; provided, however, that within 120 days after the date of entry of the Order, Vertical shall in writing advise the Consultant and the staff of the Commission of any recommendations that Vertical considers to be unnecessary or inappropriate. With respect to any recommendation that Vertical considers unnecessary or inappropriate, Vertical need not adopt that recommendation

at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

19. As to any recommendation with respect to Vertical's policies and procedures on which Vertical and the Consultant do not agree, Vertical and the Consultant shall attempt in good faith to reach an agreement within 150 days of the date of entry of the Order. In the event Vertical and the Consultant are unable to agree on an alternative proposal, Vertical shall abide by the Consultant's determinations.

20. Vertical: (i) shall not have the authority to terminate the Consultant, without the prior written approval of the staff of the Commission; (ii) shall compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to the Order at their reasonable and customary rates; and (iii) shall not be in and shall not have an attorney-client relationship with the Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Consultant from transmitting any information, reports, or documents to the Commission or its staff.

21. Vertical shall require the Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Vertical, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Consultant in performance of his/her duties under the Order shall not, without prior written consent of the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Vertical, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

#### Disgorgement and Prejudgment Interest

22. Vertical's prior voluntary repayment of \$490,432.84 to managed account clients shall be deemed to satisfy its disgorgement obligations. Vertical shall distribute to managed account clients the sums ordered as prejudgment interest in paragraph D of part IV of the Order. Vertical shall distribute these sums in a manner designed to repay to each managed account client, with interest, the amount of loads improperly charged to that client's account(s). Within 60 days of the entry of this Order, Vertical shall certify to the staff of the Commission that it has made such payments and shall provide to the staff records of the payments, including the identities of the recipients, their addresses, the amounts they received, all records of Vertical's calculation of amounts due to each managed account client, and all records of communications between Vertical and the managed account clients concerning the payments. If Vertical is unable to pay any managed account client due to factors beyond its control, any portion of the sums ordered in paragraph D of part IV of the Order that is not paid to such client shall be paid to the United States Treasury within 120 days of the date on which Vertical

initially sends payment to such client. Such 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, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies Vertical 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 Doria Bachenheimer, Assistant Regional Director, Securities and Exchange Commission, Division of Enforcement, Northeast Regional Office, 3 World Financial Center, Room 4300, New York, NY 10281-1022.

#### Certification

23. No later than twelve months after the date of entry of the Order, the chief executive officer of Vertical shall certify to the Commission in writing that Vertical has fully adopted and complied in all material respects with the requirements set forth in paragraphs 16-22 and 24 of the Order and with the recommendations of the Consultant or, in the event of material non-adoption or non-compliance, shall describe such material non-adoption and non-compliance.

#### Recordkeeping

24. Vertical shall preserve any and all records required to be created pursuant to paragraphs 16 through 22 of this Order in accordance with Rule 17a-4 under the Exchange Act. For all records of compliance with the undertakings set forth in paragraphs 16 through 22 above not otherwise required to be preserved pursuant to Rule 17a-4, Vertical shall preserve such records in accordance with Rule 17a-4(a) (i.e. for a period not less than six years, the first two years in an easily accessible place).

#### Deadlines

25. For good cause shown, the Commission's staff may extend any of the procedural dates set forth above.

### **IV.**

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

Accordingly, it is hereby ORDERED that:

A. Vertical shall cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act and Rule 10b-10 under the Exchange Act.



B. Wolfsohn shall cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act and from causing any violations and any future violations of Rule 10b-10 under the Exchange Act.

C. Vertical shall comply with the undertakings enumerated in paragraphs 16 through 24 above.

D. Vertical shall pay \$490,432.84, plus pre-judgment interest to managed account clients. Vertical's prior voluntary repayment of \$490,432.84 shall be deemed to satisfy its disgorgement obligations. Vertical shall pay to managed account clients, within 60 days of the date of entry of the Order, prejudgment interest in the total amount of \$38,076.61, consistent with the provisions of paragraph 22 above.

E. Nothing in this Order shall relieve Respondents of any other applicable legal obligation or requirement, including any rule adopted by the Commission subsequent to this Order.

By the Commission.

Nancy M. Morris  
Secretary