UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3371 / February 15, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14759

In the Matter of **ROBERT PINKAS,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AND NOTICE OF HEARING**

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(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Robert Pinkas ("Respondent" or "Pinkas").

II.

After an investigation, the Division of Enforcement alleges that:

A. SUMMARY

1. This case involves the misappropriation of assets, material misrepresentations, and the violation of a Commission bar order by Pinkas. Pinkas misappropriated $173,000 from a fund client to pay the costs of defending himself in an unrelated Commission investigation. Pinkas subsequently made material misrepresentations to the fund's investors about the misappropriation, telling them that multiple law firms had reviewed the fund's indemnification provisions and concluded that his use of fund assets to cover his attorney's fees in the other matter was appropriate. Pinkas then misappropriated $632,000 from the same client to cover the disgorgement he agreed to pay as part of a settlement in the other matter with the Commission. After misappropriating these funds, Pinkas violated an investment adviser bar imposed in the other matter by continuing to associate with an investment adviser.

B. RESPONDENT

2. Pinkas, 58 years old, is a resident of Shaker Heights, Ohio. During the relevant period, Pinkas was an investment adviser to several pooled investment vehicles. Pinkas was a

defendant in *SEC v. Brantley Capital Management, LLC, et al.*, an action involving, among other things, the overvaluation of portfolio investments and misrepresentations and omissions to an advisory client. Pinkas agreed to a settlement with the Commission in September 2010, pursuant to which he was enjoined from violating various provisions of the federal securities laws, ordered to pay a $325,000 civil penalty and $632,729 in disgorgement and prejudgment interest, barred from serving as an officer or director of a publicly-traded company for five years, and barred from associating with any investment adviser with a right to reapply after one year.

C. OTHER RELEVANT ENTITIES

3. Brantley Partners IV, L.P. ("Brantley IV") is a private equity fund and Delaware limited partnership. Pinkas provided investment advisory services to Brantley IV through a now-defunct entity called Brantley Management Company, Inc. ("BMC"). Pinkas owned 100 percent of BMC, and had the final say on all investment decisions for Brantley IV and all governance issues related to BMC.

4. Brantley Equity Partners, L.P. ("BEP") is a private equity fund and Delaware limited partnership. Pinkas continued to advise BEP after he had been barred from doing so by the Commission. BEP's sole investor and limited partner is VCFA Holdings, IV, LLC. BEP's general partner and investment adviser is Brantley Management V, LLC.

5. Brantley Management V, LLC ("BMV") is an investment adviser and Delaware limited liability company. Pinkas associated with this investment adviser in violation of his bar. BMV is the investment adviser to BEP. BMV is managed by Pinkas Holdings, LLC.

6. Pinkas Holdings, LLC is a Pinkas-owned Delaware limited liability company that manages BEP. Pinkas Holdings employs BEP's functional CFO, prepares BEP's financial statements, assists in the preparation of portfolio valuations, assists the fund's independent auditors during their audit, and maintains the fund's books and records.

7. VCFA Holdings, IV, LLC ("VCFA") is a Delaware limited liability company and the sole limited partner and investor in BEP. VCFA is controlled by Venture Capital Fund of America III, Inc., a Delaware corporation.

D. ALLEGATIONS

The Brantley Capital Investigation

8. On August 13, 2009, the Commission filed a civil action against Pinkas for his conduct relating to Brantley Capital Corp. ("BCC"), a business development company.[1] Pinkas was the CEO of both BCC and the investment advisory firm that managed BCC's investments. The complaint alleged, among other things, that between 2002 and 2005, Pinkas, as BCC's CEO, materially overstated in periodic reports the value of equity and debt investments in two private companies that represented more than half of BCC's portfolio. The complaint also alleged that Pinkas, as BCC's investment adviser, misrepresented the value of the equity and debt

[1] *SEC v. Brantley Capital Management, LLC, et al.*, 1:09-cv-1906 (N.D. Ohio).

investments to BCC's board of directors. The complaint charged violations of the antifraud provisions of the Exchange and Advisers Acts, and the Exchange Act's reporting, books and records, internal controls, and lying to auditors provisions.

9. On September 28, 2010, U.S. District Court Judge James Gwin entered a final judgment, by consent, against Pinkas. Judge Gwin permanently enjoined Pinkas from violating all of the statutes and rules charged in the complaint, ordered him to pay a $325,000 civil penalty and $632,729 in disgorgement and prejudgment interest, and barred him from serving as an officer or director of a public-traded company for five years. On October 5, 2010, the Commission barred Pinkas, also by consent, from associating with any investment adviser with a right to reapply after one year.[2]

Pinkas's Misappropriation of Assets To Pay Legal Fees and Related Misrepresentations

10. During the BCC investigation and litigation described above, Pinkas was also acting as investment adviser to several private equity funds, one of which was Brantley IV.[3] Brantley IV and BCC were both invested in Flight Options, LLC, one of the two private companies whose valuations the Commission staff was investigating in the BCC matter.

11. Brantley IV's Limited Partnership Agreement ("LPA") allowed Pinkas to be indemnified for expenses incurred in connection with actions that "arise out of or in any way relate" to Brantley IV. Pinkas, however, used Brantley IV assets to pay for a portion of his legal fees throughout the BCC investigation and litigation even after he understood that the Commission's BCC investigation did not relate to Brantley IV. In March 2009, Commission staff told Pinkas's counsel that the charges it intended to pursue related to Pinkas's conduct as BCC's CEO and investment adviser. Consistent with this notice, Pinkas's March 2009 submission to the Commission arguing that he should not be charged did not discuss Brantley IV; it focuses exclusively on Pinkas's conduct with respect to BCC.

12. Although the Brantley IV LPA required Pinkas to disclose to the fund that he was using its assets to cover his SEC-related legal costs, Pinkas did not provide this disclosure until the Commission had filed an enforcement action against him in August 2009. The Brantley IV LPA states that the fund "shall pay the expenses incurred by the persons indemnified hereunder in defending a civil or criminal action, suit or proceeding, upon receipt of a written undertaking by these persons to repay the Partnership if the persons shall be determined not to be entitled to indemnification therefor as provided herein . . . ." Pinkas never provided this undertaking with respect to the fund assets he used to cover his SEC-related legal costs.

13. Pinkas only disclosed his use of fund assets for SEC-related legal costs after various Brantley IV investors questioned his calculation of the fund's management fee and the magnitude of expenses that he charged to the fund. On August 27, 2009, Pinkas told a Brantley

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[2] In the Matter of Robert P. Pinkas, Investment Advisers Act Rel. No. 3097 (October 5, 2010).

[3] Pinkas provided these advisory services through an entity he owned and controlled called Brantley Management Company, Inc. ("BMC").

IV investor that he had been using Brantley IV assets to help cover his legal fees in the SEC investigation relating to BCC. The investor objected, telling Pinkas that such use violated the Brantley IV LPA and that no fund assets should be used to pay legal costs associated with the SEC investigation and litigation. Between January 2009, when he became aware that the BCC investigation did not relate to Brantley IV, and his August 2009 disclosure, Pinkas used $173,128 of Brantley IV assets to fund his SEC defense.

Pinkas's Material Misrepresentations Regarding His Misappropriation

14. Following Pinkas's August 27 disclosure, the investor and other Brantley IV limited partners continued to object to Pinkas's use of fund assets to pay for SEC-related defense costs. In an apparent effort to quell their objections, on September 25, 2009, Pinkas told the investor that multiple law firms had advised that the indemnification language of Brantley IV's LPA allowed Pinkas to use Brantley IV assets to pay for the legal costs associated with the SEC investigation and litigation. Pinkas repeated this assertion during an October 19, 2009 meeting with the same, as well as another, Brantley IV investor. Pinkas knew or was extremely reckless in not knowing that these statements were false. Through his counsel, Pinkas has acknowledged that he never asked any lawyer whether he could use Brantley IV assets to pay for SEC-related defense costs, and no lawyer ever told him that he could.

Pinkas Misappropriates Additional Brantley IV Assets to Pay Disgorgement

15. In addition to his misappropriation of fund assets to pay his legal fees, Pinkas misappropriated Brantley IV assets to pay for his disgorgement and prejudgment interest in the BCC matter. On August 10, 2010, Pinkas directed the transfer of $632,000 from Brantley IV's checking account to an account he controlled. Eight days later, he executed a consent in the BCC matter, agreeing to the entry of a final judgment that, among other things, ordered him to pay disgorgement and prejudgment interest of $632,729. Pinkas has admitted that he used the $632,000 to pay the disgorgement and prejudgment interest ordered pursuant to his settlement of the BCC matter.

16. The Brantley IV LPA did not permit Pinkas to use fund assets to pay for his disgorgement. Pinkas's disgorgement payment—which represented his ill-gotten gains from his fraudulent conduct at BCC—did not "arise out of or in any way relate" to Brantley IV. Moreover, the Brantley IV LPA provides that any indemnification for settlements must be approved by the fund's Advisory Committee. Pinkas did not disclose the "indemnification" of the disgorgement amount to Brantley IV or its Advisory Committee, much less receive approval for the indemnification. Pinkas also did not provide a written undertaking to repay the fund should he not be entitled to the indemnification, as the Brantley IV LPA required.

Pinkas's Violation of the Commission's Bar Order

17. As noted above, on October 5, 2010, the Commission barred Pinkas from associating with an investment adviser with a right to reapply after one year. Pinkas has violated his bar since its imposition by associating with BMV, an unregistered investment adviser. BMV is the investment adviser to BEP, a private equity fund whose sole investor is VCFA.

18. Pinkas managed and remained the BMV point of contact for BEP's portfolio investments after October 5. On behalf of BMV, Pinkas continued to report to VCFA on the BEP portfolio companies' financial condition and liquidity prospects in calls, emails, and quarterly investment reports that he drafted.

19. Pinkas also continued to manage BEP's investments by representing the fund on the boards of four of its portfolio companies.

20. In addition, in November and December 2010, Pinkas, acting for BMV, advised VCFA about new investment opportunities involving two portfolio companies.

21. Following the imposition of the bar, Pinkas also retained sole authority to direct BEP's finances on behalf of BMV, including having final say on all expenses charged to BEP and sole control of cash receipts and disbursements.

22. In addition, during BEP's 2010 audit, Pinkas, again performing the function of a BMV partner, responded in February 2011 on behalf of BEP "management" to audit inquiries regarding management's integrity and financial controls.

23. Finally, in February 2011, Pinkas, acting for BMV, personally negotiated a one-year extension of the BEP fund with BMV as investment adviser. Pinkas continued to advise BEP and manage its investments until May 2011.

24. In addition to managing BEP's investment portfolio, Pinkas violated his bar order by controlling BMV, thus associating with an investment adviser. Pinkas controlled this investment adviser through his ownership and control of Pinkas Holdings. Pinkas Holdings receives the $250,000 per year management fee that VCFA pays quarterly for BMV's advisory services and to cover BMV's operating expenses.

25. The BEP management fee does not cover the costs of running Pinkas Holdings and without Pinkas personally funding Pinkas Holdings, BMV would not be able to serve as investment adviser to BEP.

26. Additionally, Pinkas Holdings employs BMV's CFO, who is essential to BMV's ability to advise BEP: among other tasks, he prepares BEP's financial statements, assists in the preparation of prtfolio valuations, assists the fund's independent auditors during their audit, and maintains its books and records.

27. Pinkas also controls BMV through his power, as "founder member" under BMV's LLC Agreement, to remove BMV's general partner and nominal investment adviser to BEP.

28. As compensation for its advisory services to BEP, BMV has a 20 percent "carried interest" in the fund, which provides that BMV would receive 20 percent of the proceeds from the sales of BEP's portfolio companies. Pinkas personally owns about 5 percent of BMV. Additionally, Pinkas pays himself a salary of $420,000 through Pinkas Holdings. Because

Pinkas Holdings also engages in business unrelated to BMV, Pinkas also obtained a personal benefit from BMV's $250,000 management fee. Pinkas benefited by using services the management fee paid for (at least in part), including office space, an office manager, secretary, health insurance, phones, computers, and copiers.

E. VIOLATIONS

29. As a result of the conduct described above, Pinkas willfully violated Advisers Act Section 203(f), which prohibits anyone who has been barred from being associated with an investment adviser willfully to become associated with an investment adviser without the consent of the Commission.

30. Pinkas also willfully violated, or in the alternative, willfully aided and abetted and caused violations of Advisers Act Sections 206(1), 206(2), and 206(4), which prohibit investment advisers from using the mails or any means or instrumentality of interstate commerce, directly or indirectly to, with respect to Section 206(1), employ any device, scheme, or artifice to defraud any client or prospective client; with respect to Section 206(2), engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; and with respect to Section 206(4), engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. Finally, Pinkas willfully violated, or in the alternative, willfully aided and abetted and caused violations of Rule 206(4)-8, which prohibits investment advisers to pooled investment vehicles from making any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pool investment vehicle; or otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

C. Whether, pursuant to Section 203(k) of the Advisers Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Advisers Act Sections 203(f), 206(1), 206(2), and 206(4) and Rule 206(4)-8, whether Respondent should be ordered to pay a civil penalty pursuant to Section 203(i) of the Advisers Act, and whether Respondent should be ordered to pay disgorgement pursuant to Section 203(j) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission’s Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary