UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6720 / September 24, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22164

In the Matter of **GLAZER CAPITAL, 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 Glazer Capital, LLC ("Glazer" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("Offer") that the Commission has determined to accept. Respondent admits the facts set forth in Section III below, acknowledges that its conduct violated the federal securities laws, admits the Commission's jurisdiction over it and the subject matter of these proceedings, and 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:

[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.

Summary

1. The federal securities laws impose recordkeeping requirements on registered investment advisers to ensure that they responsibly discharge their crucial role in our markets. The Commission has long said that compliance with these requirements is essential to investor protection and the Commission's efforts to further its mandate of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

2. These proceedings arise out of the widespread and longstanding failure of Glazer personnel throughout the firm, including at senior levels, to adhere to certain of these essential requirements and the firm's own policies and procedures. Using their personal devices, these personnel communicated both internally and externally by text messages, WhatsApp, and/or other unapproved written communications platforms ("off-channel communications").

3. From at least 2018 (the "Relevant Period"), Glazer personnel sent and received off-channel communications for business purposes. A subset of these business communications were records required to be maintained pursuant to Rule 204-2(a)(7) under the Advisers Act. At the time, Glazer did not maintain or preserve the substantial majority of these written communications. Glazer's failures were firm-wide and involved personnel at various levels of authority throughout the organization, including senior management. As a result, Glazer violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

4. Glazer's supervisors, who were responsible for supervising junior personnel, communicated off-channel using their personal devices. In fact, senior personnel responsible for supervising junior personnel themselves failed to comply with Glazer's policies and procedures by communicating, through non-approved methods, on their personal devices about Glazer's investment adviser business.

5. Glazer's widespread failure to implement its policies and procedures that prohibit such communications led to Glazer's failure to reasonably supervise its personnel within the meaning of Section 203(e)(6) of the Advisers Act.

6. During the Relevant Period, Glazer received and responded to Commission requests for documents in an unrelated investigation commencing in February 2022 (the "Unrelated Investigation") that revealed the use of off-channel and unpreserved communications. As a result, Glazer's recordkeeping failures likely impacted the Commission's ability to carry out its regulatory functions and investigate violations of the federal securities laws.

7. Glazer initiated a review of its compliance with its recordkeeping policies and promptly implemented a program of remediation.

Respondent

8. **Glazer Capital, LLC** is a Delaware limited liability company with its principal place of business in New York, New York. Since September 2006, it has been registered with the Commission as an investment adviser.

Recordkeeping Requirements Under the Advisers Act

9. Section 204 of the Advisers Act authorizes the Commission to issue rules requiring investment advisers to make and keep for prescribed periods, and furnish copies of, such records as necessary or appropriate in the public interest, for the protection of investors.

10. The Commission adopted Rule 204-2 pursuant to this authority. This rule specifies the manner and length of time that the records made in accordance with Commission rules, and certain other records made by investment advisers, must be maintained and produced promptly to Commission representatives.

11. The rules adopted under Advisers Act Section 204, including Rule 204-2(a)(7), require that investment advisers preserve for at least five years in an easily accessible place, the first two years in an appropriate office of the investment adviser, originals of all communications received and copies of all written communications sent relating to, among other things: (a) any recommendation made or proposed to be made and any advice given or proposed to be given; (b) any receipt, disbursement, or delivery of funds or securities; (c) the placing or execution of any order to purchase or sell any security; or (d) predecessor performance and the performance or rate of return of any or all managed accounts, portfolios, or securities recommendations.

Glazer's Policies and Procedures

12. Glazer maintained certain policies and procedures designed to ensure the retention of business-related records, including electronic communications, in compliance with the relevant recordkeeping provisions.

13. Glazer prohibited its personnel from using unapproved electronic communications methods for business communications. Glazer's compliance manual provided that, "[a]lternative electronic communication by employees . . . is not permitted, i.e. employee personal email, text messaging, WhatsApp, or any other third party electronic applications."

14. Messages sent through Glazer's approved communications methods were monitored, subject to review, and archived. Messages sent through unapproved communications methods, such as unapproved applications on personal devices, were not monitored, subject to review, or archived.

15. Glazer conducted trainings for its employees, which were designed to address the firm's supervision of its personnel and adherence to Glazer's books and recordkeeping requirements. Glazer's policies and procedures and related trainings notified personnel that electronic communications on approved platforms were subject to surveillance by Glazer.

16. Glazer's personnel, including supervisors, also acknowledged during the Relevant Period in writing that they read, understood, and abided by Glazer's electronic messaging policy, which provided that they will communicate about firm business only via Glazer email or Bloomberg messaging, and will report any communication outside of such pre-approved methods to the Chief Compliance Officer ("CCO") for record retention purposes.

17. Glazer, however, failed to implement a system reasonably expected to determine whether all personnel, including supervisors, were following its electronic communications policies and procedures. While permitting its personnel to use approved communications methods for business communications, Glazer failed to implement sufficient monitoring to ensure that its recordkeeping and communications policies were being followed.

Glazer's Recordkeeping Failures

18. During the course of the Unrelated Investigation, Commission staff requested that Glazer search for and produce any documents, including off-channel communications, responsive to its request for documents. Glazer represented that its electronic communications policy prohibited off-channel communications. Commission staff subsequently discovered that certain current Glazer personnel impermissibly used off-channel communications for business-related purposes and some of those communications had been deleted. Commission staff also discovered that certain former Glazer personnel had impermissibly used off-channel communications for business-related purposes; some of those communications were likely responsive to the Commission's document request. As a result of this discovery, Glazer undertook to gather and image communications from the personal devices of its personnel.

19. Commission staff's investigation found pervasive off-channel communications by Glazer personnel, including senior management. Glazer personnel whose communications were reviewed had sent or received off-channel communications that, whether or not responsive to the investigation document request, were records required to be preserved under the Advisers Act. These communications were sent largely amongst Glazer colleagues and occasionally to and from other financial industry participants.

20. Off-channel communications included records required to be preserved under the Advisers Act because they related to an advisory recommendation made or proposed to be made or advice given or proposed to be given. For example, Glazer personnel exchanged text messages on an unapproved electronic platform discussing and operationalizing Glazer's investment strategy with respect to certain securities and trades.

21. Other off-channel communications were records required to be preserved under the Advisers Act because they related to the placing or execution of orders to purchase or sell securities. For example, Glazer personnel texted about the buying and selling of securities, as well as the making of offers and bids for securities.

Glazer's Failure to Preserve Required Records Potentially Compromised and Delayed Commission Matters

22. During the Relevant Period, Glazer received and responded to a Commission document request. By failing to maintain and preserve required records relating to its business, Glazer likely deprived the Commission of responsive off-channel communications.

Glazer's Violations and Failure to Supervise

23. As a result of the conduct described above, Glazer willfully[2] violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

24. As a result of the conduct described above, Glazer failed reasonably to supervise its personnel, with a view to preventing or detecting certain of its supervised persons' aiding and abetting violations of Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder, within the meaning of Section 203(e)(6) of the Advisers Act.

Glazer's Efforts to Comply

25. In determining to accept the Offer, the Commission considered remedial steps promptly undertaken by Glazer prior to and after being approached by Commission staff and cooperation afforded Commission staff. Glazer added a third-party compliance consultant to supplement the internal team and hired additional, internal resources with experience with registered investment advisers. Glazer also approved a new on-channel chat application for its personnel on their personal devices and enhanced the firm's attestation processes, and Glazer's third-party compliance consultant made enhancements to the ongoing monitoring Glazer conducts for potential non-compliance with its policies and procedures.

IV.

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

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

[2] "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.'" *See 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).

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 204 of the Advisers Act and Rule 204-2 thereunder.

B. Respondent is censured.

C. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $2,000,000 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 Glazer 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 Samantha Martin, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 801 Cherry St., 19th Floor, Fort Worth, Texas 76102.

D. Amounts ordered to be paid as a civil money penalty pursuant to this Order shall be treated as a penalty paid to the government for all purposes, including 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