UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6731 / September 26, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22209

In the Matter of **Macellum Advisors, LP,** **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 Macellum Advisors, LP ("Macellum" 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 that:

Summary

1. This matter involves the failure of a formerly registered investment adviser, Macellum, to adequately disclose payments a Macellum affiliate received from third party investment advisers and the resulting conflicts of interest.

2. Between September 2020 through approximately March 2024 (the "Relevant Period"), Macellum had agreements with unaffiliated investment advisers pursuant to which the advisers invested their clients alongside Macellum's private funds in an activist investment strategy and paid a Macellum affiliate a performance-based fee, which was equal to a fixed percent of any profits earned by these advisers in relation to the joint investment campaign. These agreements posed a financial conflict of interest because they created an incentive for Macellum to potentially favor the interests of these outside entities over those of its clients, and Macellum failed to fully and fairly disclose the payments it received and the resulting conflicts of interest.

3. During the Relevant Period, Macellum's written policies and procedures also were not reasonably designed to prevent violations of the Advisers Act because they failed to address the conflicts of interest related to the receipt of payments from outside unaffiliated investment advisers that invested alongside Macellum clients and to ensure that such arrangements were appropriately documented.

4. As a result of the conduct described above, Macellum willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondent

5. Macellum is a Delaware limited partnership with its principal place of business in New York, New York. Macellum was founded in 2011 and was an investment adviser registered with the Commission from September 2020 through March 26, 2024, when it withdrew its registration. Macellum provides investment advisory services to a series of single-security pooled investment vehicles ("Funds" or "Macellum Funds"). Macellum pursues an activist strategy where its Funds build large equity positions in public companies that Macellum perceives to be undervalued, and Macellum seeks to drive price appreciation by actively engaging with boards and managements. During the Relevant Period, Macellum had regulatory assets under management ranging from approximately $100 million to $405 million. As of August 27, 2024, Macellum had approximately $125,000 in assets under management.

Facts

Macellum's Activist Strategy

6. Macellum employs an activist investment strategy on behalf of its Funds that involves identifying perceived undervalued public companies that Macellum believes have the potential to appreciate with improved management and board oversight. Macellum typically focuses on public companies in the consumer sector, and its process of identifying and evaluating potential targets, and organizing an activist campaign, can take a year or more.

7. As part of its activist strategy, after a suitable investment is identified, Macellum seeks to acquire a sufficient number of shares of the company stock to negotiate changes with current management, or, if necessary, launch a proxy contest to achieve the desired outcome. Macellum forms a single-security focused Fund – that is, a fund that invests only in the equity securities of a single target company – and then raises capital for the Fund so that it can acquire a significant position in the target company's equity securities. Macellum solely owns and controls the relevant Fund's general partner.

8. Between February 2019 and December 2021, Macellum launched five Funds ranging in size from approximately $7 million to over $320 million. Through these Funds, Macellum managed activist campaigns targeting four different consumer sector public companies.

Macellum's Arrangements with Outside Investment Parties

9. In addition to deploying the capital of the relevant Macellum Fund, in each of its activist campaigns Macellum also entered into arrangements with one or more outside investors – typically unaffiliated investment advisers that are larger and better capitalized than the relevant Macellum Fund (each an "Outside Entity") – to also invest in the Macellum campaign. The Outside Entity typically invested its clients' assets in the target company's securities directly rather than through a Macellum Fund.

10. The purpose of Macellum's arrangements with the Outside Entities was to amass a larger combined position in the target company because the more votes Macellum and the Outside Entity jointly controlled, the more likely the campaign would be successful in either persuading the target company's board and management to effect the desired change or mounting a proxy contest if necessary. In most cases, the Outside Entities contributed more capital to the joint activist campaign than the relevant Macellum Fund contributed.

11. For each activist campaign, Macellum and the relevant Outside Entity or Entities entered into what Macellum termed a "Consulting Agreement" through which the Outside Entity agreed to pay one or more Macellum affiliates a performance-based fee to compensate Macellum for its idea generation, leadership of the activist strategy, and expenditure of time, capital and resources in service of the campaign. The terms of the Consulting Agreements varied from deal to deal, but the agreements typically required the Outside Entity to coordinate with Macellum, through a jointly engaged broker, on the purchase of the target company stock to ensure it was done on a pro-rata basis with the relevant Fund, and further required the parties to coordinate in

connection with the exit from their respective positions. According to Macellum, these provisions were specifically included to mitigate the conflicts of interests created by the Consulting Agreements, and to ensure the parties acted in a coordinated way with respect to their investments such that neither party could sell without notice to or consent of the other party. However, in some cases, Macellum and the Outside Entity either did not formally execute the Consulting Agreement or did not memorialize the Consulting Agreement in writing.

12. Through the Consulting Agreements, an Outside Entity typically agreed to pay the Macellum affiliate a performance fee equal to approximately 10% of the Outside Entity's profits earned in relation to a successful campaign, but in some instances the Outside Entity agreed to pay the Macellum affiliate as much as 55% of the Outside Entity's profits. In total, during the Relevant Period the Macellum affiliates were paid $8,641,802 in fees pursuant to the Consulting Agreements.

Macellum Did Not Adequately Disclose the Consulting Agreements or the Conflicts of Interest They Created

13. The Consulting Agreements and the related performance-based compensation paid to Macellum affiliates by Outside Entities posed conflicts of interest. The compensation paid to the Macellum affiliate created an incentive for Macellum to potentially favor the Outside Entities' interests – and thus Macellum's own financial interests – over those of its Fund clients.

14. Macellum failed to adequately disclose its arrangements with the Outside Entities and corresponding receipt of performance-based compensation to its Fund clients.

15. Macellum stated in various Fund formation and disclosure documents that it "may" or "could" engage in outside activities and other conflicted transactions, when Macellum affiliates repeatedly entered into Consulting Agreements with and received compensation from Outside Entities in connection with the activist campaigns. Macellum's generalized disclosures did not fully and fairly disclose the arrangements and resulting conflicts of interest.

Macellum's Compliance Deficiencies

16. Pursuant to Rule 206(4)-7 of the Advisers Act, registered investment advisers are required to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of Advisers Act and the rules thereunder.

17. Macellum lacked written compliance policies and procedures to adequately address the risks posed by its advisory business, of which the Consulting Agreements were a regular aspect and key to the execution of its investment strategies for the Funds. Among other things, Macellum's policies and procedures failed to address potential conflicts related to the Consulting Agreements between Macellum, its affiliates, and the Outside Entities, or how Macellum or its employees should address any risk, conflicts, or potential conflicts that arose from the relationships. Indeed, despite that the Consulting Agreements were a regular aspect of Macellum's business and key to its investment strategies, and even included provisions designed to mitigate the conflicts of interest that resulted from the arrangement, certain of the agreements

were never executed by the parties and others were not memorialized in writing at all. As a consequence, Macellum's policies and procedures were not reasonably designed to prevent violations of the Advisers Act and rules thereunder, as required by Rule 206(4)-7.

Cooperation and Remediation

18. Macellum cooperated with the Enforcement staff's investigation by voluntarily providing narrative responses to the questions posed by the staff, and voluntarily implemented written policies and procedures, including new safeguards for Consulting Agreements. Specifically, Macellum's new policies require a review of all new Consulting Agreements to evaluate any potential conflicts of interest prior to execution and periodic back-testing of all existing Consulting Agreements including a review of all related electronic communications. Macellum also made remedial disclosures to Fund investors about the Consulting Agreements.

Violations

19. As a result of the conduct described above, Respondent willfully[1] violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, 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." Scienter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of 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)).

20. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

Macellum's Remedial Efforts

21. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Macellum and cooperation afforded the Commission staff.

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[1] "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).

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:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall within ten (10) days of the entry of this Order, pay a civil money penalty of $75,000 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 Macellum as a 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 Lee A. Greenwood, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004 or such other person or address as the Commission staff may provide.

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