

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5748 / June 7, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20361

In the Matter of

Verus Capital Partners, 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 Verus Capital Partners, LLC (“Verus” 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 Respondent 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 finds¹ that:

Summary

1. This matter involves the failure of Verus, a registered investment adviser, to disclose the conflicts of interest arising from its investment adviser representatives ("IARs") receiving forgivable loans from a broker-dealer ("Broker-Dealer A"), its affiliated registered investment adviser ("Investment Adviser A"), and their parent company (collectively the "Firm A"). Verus's IARs are registered representatives of Broker-Dealer A and Investment Adviser A provides back-office and administrative services to Verus. The forgivable loans were dischargeable over a period of five-years or less. Firm A tied forgiveness of the loans either to annual revenue targets, which included both brokerage commission and advisory fees, or to the IAR remaining registered with Broker-Dealer A for a certain number of years. Verus did not disclose the forgivable loans, either in its filings or otherwise to clients. By failing to disclose its conflicts of interest completely and accurately, Verus violated Section 206(2) of the Advisers Act.

Respondent

2. **Verus Capital Partners, LLC** ("Verus" or "Respondent") is an Arizona limited liability company with its principal place of business in Scottsdale, Arizona. Verus has been registered with the Commission as an investment adviser since January 2, 2014. As of July 5, 2020, Verus had approximately \$640 million in assets under management.

Facts

Background

3. In August 2010, Verus entered into an arrangement with Firm A in which Investment Adviser A provided back office and administrative support services to Verus in exchange for a portion of Verus's advisory fees and in which Verus IARs could offer clients investment management programs and products offered by Investment Adviser A to Verus advisory clients. In addition, Verus IARs, including Verus's owner, became registered representatives of Broker-Dealer A, and, in this capacity, received commissions from Broker-Dealer A when they sold Broker-Dealer A brokerage products.

Forgivable Loans

4. Between 2010 and 2020, Firm A provided forgivable loans totaling approximately \$1 million to approximately nineteen Verus IARs, including Verus's owner. Firm A typically made

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.

the loans when an individual became associated with Verus as an IAR as well as a registered representative of Broker-Dealer A. The agreements provided that the loans were designed to defray the expenses associated with the IARs transitioning to a new firm. Though the form of the loan agreements changed over time, each agreement stated that the funds were to be used for “business and commercial purposes.” Firm A issued many of the forgivable loans in the form of bonus agreements and promissory notes. Through the bonus agreements, Firm A forgave the principal and interest due annually under the corresponding promissory notes, so long as the Verus IAR generated revenue for Firm A that equaled or exceeded an annual revenue target. The IAR could meet the annual revenue target through brokerage commissions earned as a registered representative of Broker-Dealer A and/or advisory fees (which advisory fees were paid in exchange for back office support provided by Investment Adviser A without regard to whether the underlying securities were associated in any way with Investment Adviser A). Firm A issued the remainder of the forgivable loans through promissory notes alone, which provided that the principal and interest due would be forgiven annually, so long as the IAR remained a registered representative of Broker-Dealer A. Thus, if the IARs did not meet their revenue targets or duration of association targets, the IARs would not receive their expected bonus, and would have to repay Firm A all or a portion of the money due under the promissory notes. Of the nineteen Verus IARs who received forgivable loans from Firm A, ten received loans that were forgivable based solely on the IAR maintaining registration with Broker-Dealer A for an agreed period of time.

5. Between 2016 and 2020, the nineteen Verus IARs who received forgivable loans stood to earn over \$480,000 in principal and interest forgiveness. Pursuant to the terms of the agreements between the Verus IARs and Firm A, the following amounts were due annually, and would be forgiven by Firm A so long as the Verus IARs satisfied the terms of their agreements, either by meeting revenue targets, or maintaining registration with Broker-Dealer A:

Year	Total Principal and Interest Forgiveness Available
2016	\$93,868
2017	\$63,056
2018	\$130,688
2019	\$108,982
2020	\$89,598

Failure to Disclose the Forgivable Loan and Related Conflicts of Interest

6. Verus was required to file and did file Form ADV annual amendments with the Commission.

7. During the relevant period, Verus disclosed in its Form ADV, Part 2A brochure certain aspects of its relationship with Firm A. Specifically, it disclosed that Verus’s “IARs are registered representatives of [Broker-Dealer A],” and that they “may earn sales commissions” from Broker-Dealer A. Verus also disclosed that it “has a relationship with [Investment Adviser A . . .] who will provide back office and administrative support services to Verus” and that “[Investment

Adviser A] will receive a portion of the management fee or an administrative fee for the services provided.”

8. Verus, however, did not disclose the existence of the forgivable loans its IARs received from Firm A to its clients, either in its Forms ADV filed with the Commission or elsewhere. Nor did Verus disclose the conflicts of interest created by the compensation its IARs received from Firm A in the form of loan forgiveness. In particular, the forgivable loans provided Verus and its IARs with an incentive to remain registered with Broker-Dealer A, sell Broker-Dealer A’s brokerage products, and continue to use Investment Adviser A’s services. The incentives were particularly strong because, unlike an ordinary bonus which would simply not be paid if targets were not reached, these agreements required the IARs to pay money to Firm A.

9. On or around June 26, 2020, after Verus became aware of the Division of Enforcement’s investigation, Verus filed an amendment to its Form ADV Part 2A in which it disclosed the forgivable loans its IARs received from Firm A and disclosed that the forgivable loans created certain conflicts of interest for the IARs.

Violations

10. As a result of the conduct described above, Verus willfully² violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. Scierter is not required to establish a violation of Section 206(2), but rather such 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, 195 (1963)).

Undertakings

11. Respondent undertakes to:

A. **Retention of Independent Compliance Consultant:** Respondent Verus shall retain, within 30 days of the issuance of this Order, the services of an Independent Compliance Consultant (“Independent Consultant”) not unacceptable to the staff of the Commission and provide a copy of this Order to the Independent Consultant. No later than ten (10) days following

² “Willfully,” for purposes of imposing relief under Sections 203(e) and 203(k) 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).

the date of the Independent Consultant's engagement, Respondent shall provide the Commission staff with a copy of the engagement letter detailing the Independent Consultant's responsibilities, which shall include the reviews and reports to be made by the Independent Consultant as set forth in this Order. The Independent Consultant's compensation and expenses shall be borne exclusively by Respondent.

B. Independent Consultant's Reviews. Respondent Verus shall require the Independent Consultant to:

- 1) conduct a comprehensive review of Verus's current disclosures, policies, procedures, systems, and internal controls with respect to third-party compensation received by Verus's IARs;
- 2) at the end of the review, which in no event shall be more than 90 days after the entry of this Order, submit a written and dated report to Verus and the Commission staff that shall include a description of the review performed, the names of the individuals who performed the review, the Consultant's findings and recommendations for changes or improvements to the disclosures, policies, procedures, systems, and internal controls, and a procedure for implementing the recommended changes and improvements;
- 3) commence one annual review 365 days from the date of the issuance of the Independent Consultant's initial report, to assess whether Verus is complying with its then-current disclosures, policies, procedures, systems, and internal controls and whether the then-current disclosures, policies, procedures, systems, and internal controls are effective in achieving their stated purposes; and
- 4) at the end of the annual review, which in no event shall be more than 90 days from the date that the annual review commenced, submit a written annual report to Verus and the Commission staff that shall include a description of its findings and recommendations, if any, for additional changes or improvements to the disclosures, policies, procedures, systems, and internal controls, and a procedure for implementing the recommended changes and improvements.

C. Respondent shall, within forty-five (45) days of receipt of each of the Independent Consultant's reports, adopt all recommendations contained in the reports, provided, however, that within thirty (30) days after the date of the applicable report, Respondent shall in writing advise the Independent Consultant and the Commission staff of any recommendations that it considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate, Respondent need not adopt that recommendation at that time but shall instead propose in writing an alternative policy or procedure designed to achieve the same objective or purpose as that recommended by the Independent Consultant. Respondent shall engage in good

faith negotiations with the Independent Consultant in an effort to reach agreement on any recommendations objected to by Respondent. In the event that Respondent and the Independent Consultant are unable to agree on an alternative proposal within thirty (30) days of Respondent's objection to any recommendation, Respondent shall abide by the determinations of the Independent Consultant.

D. Within thirty (30) days of Respondent's adoption and implementation of all of the recommendations in the Independent Consultant's reports that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, Respondent shall certify in writing to the Independent Consultant and the Commission staff that Respondent has adopted and implemented all recommendations in the applicable report. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence.

E. Respondent shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of its files, books, records and personnel as reasonably requested for the Independent Consultant's review, including access by on-site inspection.

F. To ensure the independence of the Independent Consultant, Respondent (1) shall not have the authority to terminate the Independent Consultant or substitute another independent consultant for the initial Independent Consultant without prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

G. Respondent shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Verus, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement shall also provide that the Independent 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 Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Verus, 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.

H. Respondent shall not be in, and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or any other doctrine of privilege to prevent the Independent Consultant from transmitting any information, reports, or documents to the Commission staff.

I. Certificate of Compliance. Verus shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance no later than sixty (60) days from the completion of each of the undertakings. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Spencer Bendell, Assistant Regional Director, Los Angeles Regional Office, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA 90071, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549.

12. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

IV.

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

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

1. Verus cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act.
2. Verus is censured.
3. Verus shall, within fourteen (14) days of the entry of this Order, pay a civil money penalty in the amount of \$45,000.00 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:

- (A) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (B) 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

- (C) 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 Verus 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 Spencer Bendell, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower Street, Suite 900, Los Angeles, CA 90071.

4. 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.

5. Respondent shall comply with the undertakings enumerated in Section III. above.

By the Commission.

Vanessa A. Countryman
Secretary