



COMMISSIONER OF SECURITIES
STATE OF GEORGIA

In the Matter of :
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GPB Capital Holdings, LLC; Ascendant :
Alternative Strategies, LLC; Ascendant Capital, : **Case Number: ENSC-200879**
LLC; David Gentile; and Jeffry Schneider :
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Respondents. :
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NOTICE OF OPPORTUNITY FOR HEARING

TO: GPB Capital Holdings, LLC et. al.
ATTN: Corporation Service Company
Department of State Process
80 State Street
Albany, New York, 12207-2543

Pursuant to O.C.G.A. §10-5-73(b), Respondents are hereby notified that within thirty (30) days after receipt of a request for a hearing in a record from Respondents, this matter will be scheduled for a hearing unless another date and time is otherwise agreed to by the parties. If Respondents do not request a hearing and none is ordered by the Commissioner within thirty (30) days after the date of service of this Order, this Order will become final as to the Respondents by operation of law. If a hearing is requested or ordered, the Commissioner, after notice of and opportunity for hearing to Respondents, may modify or vacate this Order, or extend it until final determination.

1. GROUNDS: The grounds for the issuance of the Order are that Respondents have

engaged in conduct in violation of O.C.G.A. §§ 10-5-20, 10-5-50, and 10-5-1, *et seq.*

2. REQUEST FOR HEARING: A request for a hearing may be delivered to the attention of, Noula Zaharis, Director, Office of the Secretary of State, Securities and Charities Division, 2 Martin Luther King Jr. Dr. S.E., Suite 317 West Tower, Atlanta, Georgia 30334 or by electronic mail at nzaharis@sos.ga.gov.

3. PROCEDURE FOR REQUESTING A HEARING: If Respondents request a hearing, the request for hearing must be in writing and contain the following information:

- A title which indicates the nature of the proceedings;
- The complete name and address of the person or persons on whose behalf the request is filed;
- The name and address of all other persons known to have a legal interest in the proceedings;
- If the person or persons on whose behalf the request is filed are represented by counsel, the name and address of counsel;
- A clear and concise statement of the facts upon which the contested case arises;
- A prayer setting forth the relief sought; and
- A statement of the grounds upon which the person contends he is entitled to the relief sought.

4. SCHEDULING OF HEARING: If requested, a hearing will be scheduled and Respondents will be notified of the date, time and location of the hearing.

5. ISSUES TO BE ADDRESSED: If a hearing is requested, the issues to be addressed are set forth in the attached Order that is incorporated herein by reference and made a part of this Notice of Opportunity for Hearing.

6. CONTESTED CASES: This is a contested case proceeding and pursuant to the Rules it shall be conducted as expeditiously as possible, with regard to the rights of the parties, and in a manner to enable the parties to obtain relevant information needed for preparation of the case to

the extent that such disclosure is authorized or required by law.

7. LEGAL AUTHORITY AND JURISDICTION: This Notice of Opportunity for Hearing is issued pursuant to O.C.G.A. § 10-5-73, Rule 590-4-6-.01, *et seq.*, and O.C.G.A. § 50-13-1, *et seq.* (The Georgia Administrative Procedure Act).

8. INFORMAL CONFERENCE: Respondents may request an informal prehearing conference with the Division Director pursuant to the Commissioner's Rule 590-4-6-.12 adopted under the Act. The receipt of a request for a prehearing conference will toll, until the date scheduled for the prehearing conference, the running of the time for requesting a hearing. A request for hearing that does not contain the required information as outlined above will be treated as a request for an informal conference. Further information regarding an informal conference may be obtained by contacting Noula Zaharis at nzaharis@sos.ga.gov.

9. RIGHTS OF PARTIES: The parties to this matter shall have all of the rights provided for in the Act and the Rules, including but not limited to the following:

- to subpoena witnesses and documentary evidence;
- to be represented by legal counsel; and
- to respond to and present evidence on all issues involved.

SO ORDERED this 3rd day of February, 2021.

By: 
Ryan Germany
Assistant Commissioner of Securities



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In the Matter of :

GPB Capital Holdings, LLC; Ascendant :

Alternative Strategies, LLC; Ascendant Capital, : Case Number: ENSC-200879

LLC; David Gentile; and Jeffrey Schneider :

Respondents. :

PROPOSED ORDER TO CEASE AND DESIST

This matter comes before the Commissioner of Securities for the State of Georgia (“Commissioner”) pursuant to the authority granted in O.C.G.A. § 10-5-70, *et seq.* of the Georgia Uniform Securities Act of 2008, as amended (“Act”) and the Rules of the Georgia Commissioner of Securities promulgated thereunder (“Rules”). Whereas, the Commissioner undertook an investigation into the acts and practices of **GPB Capital Holdings, LLC (“GPB Capital”), Ascendant Alternative Strategies, LLC (“AAS”); Ascendant Capital, LLC (“Ascendant”); David Gentile (“Gentile”); and Jeffrey Schneider (“Schneider”** and collectively “Respondents”).

On the basis of the investigation, the Commissioner has found grounds to conclude that Respondents have engaged in acts or practices constituting violations of the Act. The Commissioner has determined it is in the public interest to issue this Order.

The Commissioner finds as follows:

I. FINDINGS OF FACT

A. The Parties

1. Respondent GPB Capital (Central Registration Depository (“CRD”) Number 169825) is a Delaware limited liability corporation with its principal place of business at 535 West 24th Street, New York, New York. GPB Capital is registered with the Securities and Exchange Commission (“SEC”) as an investment adviser. GPB Capital serves as the general partner of a series of limited partnership investment vehicles (the “GPB Funds”) that Respondents managed, marketed, offered, and sold to investors in Georgia and elsewhere.

2. Respondent Gentile is the sole managing member of GPB Capital. Gentile is also indirectly a part-owner of AAS, as defined below. Gentile is a resident of Florida. Gentile is not registered with the Division in any capacity.

3. Respondent AAS (CRD Number 283881) is a Delaware limited liability corporation with its principal place of business in White Plains, New York. AAS is a broker-dealer registered with the SEC, FINRA, and 53 U.S. states and territories, including Georgia. AAS has been registered with the Division as a broker-dealer since March 1, 2017. AAS is indirectly majority-owned by Gentile and Schneider. AAS served as GPB Capital’s managing broker-dealer beginning in 2017.

4. Respondent Ascendant was a Texas limited liability company with its principal place of business in Austin, Texas. Ascendant was wholly owned by Schneider. Between 2012 and May 2020, Ascendant operated as a wholesaler and placement agent, a non-registered entity providing a wide range of marketing services and back-office operations, and served as a third-party liaison to AAS, issuers, retail broker-dealers, and investment advisers. Ascendant has never been registered with the Division in any capacity. In May of 2020, Ascendant forfeited its Texas corporate status for failure to pay taxes and therefore ceased operations under the Ascendant name; however, Schneider shifted Ascendant’s activities to a new entity called Kensington Analytics, LLC, which shares Ascendant’s address, as well as many key personnel and business assets.

5. Respondent Schneider (CRD Number 2089051) was, until in or about May 2020, the Chief Executive Officer and sole member of Ascendant. He is currently a registered broker-dealer

agent of and indirect part-owner of AAS. Schneider previously worked as a broker-dealer agent of Axiom Capital Management, LLC (“Axiom”). Schneider was at all relevant times deeply involved in the control, management, and direction of GPB Capital.

B. Origins of GPB Capital

6. Prior to founding GPB Capital, Gentile worked as a partner at the New York-based accounting firm, Gentile, Pismeny & Brengel LLC (“GP&B”), which was co-founded by Gentile’s father. It was through his work at GP&B that Gentile met Schneider and Jeffrey Lash (“Lash”), who were clients of the firm. In the years just before Gentile founded GPB Capital, Gentile had invested in various companies with a pool of other investors, including Lash. Among the companies Gentile invested in were certain automobile dealerships that were managed by Lash and which eventually became some of the first portfolio company acquisitions for GPB Capital. When certain of Gentile’s co-investors decided to divest their holdings, Gentile teamed up with Schneider and Lash to form the GPB Fund structure.

7. Schneider was the driving force behind the creation of GPB Capital. Immediately prior to GPB Capital’s creation, Schneider worked as a registered broker-dealer agent of Axiom. At this time, Schneider approached Gentile with the idea of partnering on an income-producing private equity fund.

8. By 2012, Gentile and Schneider began building out a structure for developing and marketing limited partnership investments to retail investors. Schneider formed Ascendant in 2012 dedicated to structuring funds and raising capital exclusively for GPB Capital. Gentile formed GPB Capital in March 2013 to serve as the general partner and manager for the planned funds. In April 2014, Gentile registered GPB Capital with the SEC as a registered investment adviser.

C. GPB Capital’s Business and Structure

9. Gentile and Schneider established the following structure for the sale of investment funds: GPB Capital (owned by Gentile) served as the general partner and fund manager for the investment funds, while Ascendant (owned by Schneider) handled the all the marketing and distribution. This structure would establish a clear division of responsibilities between GPB

Capital and Ascendant. In practice, however, Gentile and Schneider comingled responsibilities between GPB Capital and Ascendant, blurring the lines between the companies as separate entities. Schneider, for example, took a particularly active role in the management of the GPB Funds.

i. GPB Funds

10. GPB Capital serves as the general partner or manager of the various GPB Funds. These funds include GPB Automotive Portfolio, LP; GPB Cold Storage LP; GPB Holdings, LP; GPB Holdings Qualified LP; PGB Holdings II, LP; GPB Holdings III, LP; GPB NYC Development, LP; and GPB Waste Management, LP (collectively, the “GPB Funds”). GPB Capital actively promotes its “hands-on managerial and operational assistance” to the portfolio companies owned by the funds.

11. Respondents structured the GPB Funds as limited partnerships that act as holding companies acquiring controlling majority interests in income-producing, middle-market private companies in North America. The companies acquired by the GPB Funds, often referred to as “portfolio companies”, occupied the automotive retail, waste management, technology enabled services, energy, healthcare, and real estate sectors.

12. From 2013 through approximately October 2018, the GPB Funds sold their unregistered limited partnership interests in what are known as “private placement” transactions. Respondents offered two different limited partnership units, priced at \$50,000 or \$100,000 per unit respectively. These Limited Partnership units were offered only to “accredited investors”.

13. Respondents focused on accredited investors in order to comply with the SEC’s Regulation D, which provides an exemption from registration with unlimited sales of the securities to accredited investors, and up to 35 non-accredited investors under Rule 506(b) of Regulation D. Respondents used the structure of Regulation D to further their scheme, as operating under Regulation D allowed Respondents to operate under a significantly reduced regulatory burden, allowing less oversight on the GPB Funds.

14. Approximately 960 Georgia investors purchased limited partnerships in various GPB Funds, with a total investment of more than \$78 million.

ii. Ascendant, Axiom, and AAS

15. Ascendant served as the exclusive marketer and wholesaler for the GPB funds from their inception until they closed to new investments in 2018. Ascendant did not typically sell GPB Funds directly to investors. Instead, Ascendant focused on marketing GPB Funds to independent broker-dealers and investment advisers. These independent broker-dealers and investment advisers then sold GPB Funds to their retail investors. Ascendant also drafted investor updates and helped prepare offering documents and limited partnership agreements.

16. Ascendant, based in Texas, was a branch office of two different New York broker-dealers. Initially, Ascendant served as a branch office of Axiom, which employed Schneider as a registered broker-dealer agent. Beginning in 2017 and thereafter, Ascendant was the branch office of AAS. Schneider and Gentile jointly own 67% of AAS through a company named DJ Partners, LLC.

17. Respondents maintain that Ascendant is a separate corporate entity from the Axiom and AAS branch offices that also did business under the name of Ascendant Capital Management. In practice, however, they operated as a single entity, sharing office space, signage, and employees.

18. From 2013 through 2018, GPB Capital and the GPB Funds paid Axiom and AAS more than \$77 million in fees and commissions, with approximately \$37 million paid to Axiom and over \$40 million paid to AAS. As indirect owners of 33.3% interests in AAS, Gentile and Schneider individually obtained at least \$13 million each for marketing the GPB Funds.

iii. Schneider's Active Role

19. As described above, while Schneider and Gentile set up GPB Capital and Ascendant as two separate companies, they comingled the duties and responsibilities of the entities to the point of being unable to distinguish them. In fact, one due diligence presentation from 2017 described GPB Capital and Ascendant as “essentially one organization”. Schneider particularly exerted an outsized influence over the management of the GPB Funds. His role extended well beyond that of a wholesaling distributor of the product.

20. Schneider, along with Gentile, handled the details of running the GPB Funds and their portfolio companies. Schneider reviewed and approved the language used in the funds' private placement memoranda ("PPMs"). Schneider took an active role in acquisition discussions, analysis of fund and portfolio company performance, negotiation of payments that would flow from the portfolio companies to the GPB Funds, meetings with portfolio company operators, and establishing the structure of the funds. In fact, Schneider exerted so much control over the management of GPB Fund that GPB Capital employees treated his approval as necessary for major operational decisions in spite of the fact that he had no formal role at GPB Capital.

iv. Sales Pitch

21. The central marketing concept for the GPB Funds was that they were unique products without any real competitors in the alternative investment space. GPB Capital and Ascendant consistently told investors, broker-dealers, and investment advisors that the GPB Funds would pay investors regular monthly distributions at an 8% annualized rate that were "fully earned" or "fully covered" by cash flow from the portfolio companies. Respondents also told investors that the funds might pay special additional distributions where GPB Capital determined it was appropriate, based on the GPB Funds' ability to pay them. Variations on these fundamental representations appeared in the PPMs, offering documents, responses to due diligence questionnaires ("DDQs"), and correspondence with potential investors and salespeople.

22. This 8% annual distribution from operating profits acted as a powerful marketing tool for GPB Capital, as it stood in stark contrast to the general low interest rate environment that prevailed during the time the GPB Funds were offered. Consequently, GPB Capital raised nearly \$2 billion from investors in a five-year period.

23. For example, an August 2014 GPB Capital response to a DDQ touted a fund as "[u]nlike any other private equity investment program" because "it pays a substantial current dividend that is fully covered with funds from operations". Another GPB Capital DDQ response from December 2014 described a GPB Fund as a "unique offering with virtually no competition in the marketplace". GPB Capital differentiated its investment program from other investments

by describing its program as “the only income producing private equity offering in the space” paying distributions “fully covered with funds from operations”.

24. At Schneider’s urging, the GPB Funds paid additional special distributions on top of the regular monthly distributions, which Respondents used as a tool to lure new investors. Respondents advertised these special distributions via “blast emails”, which routinely represented that these special distributions were also fully covered with funds from operations. The special distributions were announced in advance and only payable to those who invested by a stated deadline. Respondents used this blast email strategy to manipulate investors into contributing capital to the GPB Funds by creating a sentiment of urgency to invest.

C. Respondents Misrepresented the Source of Monthly Distributions to Investors

i. GPB Holdings, LP

25. GPB Holdings, LP (“Holdings”), the first of the GPB Funds, launched its initial offering in March of 2013. The initial offering was in the amount of \$150 million, and the PPM described the purpose of the fund as investing in “early-stage and middle-market private companies” in the sectors of automotive retail, information technology, and healthcare. Marketing material in 2013 included explicit assurances that the targeted monthly distributions at an annualized rate of 8% would be funded solely by funds from operations, such as the cash flow from portfolio companies. Similarly, a 2014 due diligence presentation prepared to educate broker-dealers about the GPB Funds stated that distributions to investors would come entirely from operations.

26. On May 8, 2015, Holdings released its audited financial statements for 2014. The statements reported that net investment income was \$2,498,858, which was just short of Holdings’ distributions to LPs of \$2,565,579. However, a footnote disclosed, “approximately \$1,100,000,” or more than 40% of that \$2.5 million net investment income figure, purportedly came from payments by Lash to two of Holdings’ portfolio companies under so-called performance guarantees.

27. In actuality, Holdings’ true net investment income for the fully year of 2014 was over one million dollars less than the roughly \$2.5 million in distributions it made to investors. To cover

up this shortfall, Respondents manufactured fictitious back-dated “performance guarantees” from Lash to two of Holdings’ portfolio companies purporting to require Lash to pay the portfolio companies for any shortfalls in dealership revenue below the stated thresholds.

28. Approximately 40% of the distributions Holdings paid out in 2014 was a simple return of the investors’ own capital.

29. In April of 2015, Holdings made a special distribution of 1.5%, approximately totaling \$500,000. For the second quarter of 2015, Holdings booked net investment income of only \$3,219,501 but paid total distributions of \$3,851,958 – a quarterly coverage ratio of 84%. Holdings’ quarterly coverage ratio had been below 100% for three of the first seven quarters in which it had paid distributions.

30. In May and June of 2015, GPB Capital and Ascendant continued to state that Holdings’ distributions were fully covered by operating income.

31. On August 10, 2015, Phoenix American Financial Services, Inc. (“Phoenix”), GPB Capital’s fund administrator, transferred \$8.7 million of new investor capital into Holdings’ investment account. In September of 2015, GPB Capital caused Holdings to transfer approximately \$700,000 of the new investor capital from Holdings’ investment account to its distribution account and then back to Phoenix for distribution to existing investors.

32. In May of 2016, Holdings issued a second amended PPM stating for the first time that “we could include LPs’ invested capital in amounts we distribute to LPs,” but then added, “we have no present plans to do so.”

33. Subsequently, between July and September of 2016, Holdings lost more than \$1.2 million but paid nearly \$4 million in distributions resulting in a coverage ratio of negative 38%.

34. For the fourth quarter of 2016, Holdings recorded net income of \$1.4 million while making monthly distributions totaling more than \$3.9 million resulting in a coverage ratio of negative 57%.

35. For the full-year of 2016, Holdings booked net investment income of \$8.4 million, realized a loss of \$3.6 million, and paid distributions of nearly \$15.8 million, resulting in an annual coverage ratio of 30%.

36. In December of 2016, Holdings issued a third amended PPM, which repeated the statement that “while we have no present plans to do so, we could include LPs’ invested capital in amounts we distribute to LPs.”

37. By the end of 2017, the cumulative amount of distributions funded by investors’ own capital exceeded \$20 million.

ii. GPB Automotive Portfolio, LP

38. GPB Automotive Portfolio, LP (“Automotive Portfolio”), GPB Capital’s second fund, launched in May of 2013, two months after Holdings. Automotive Portfolio was focused on the acquisition, operation, and resale of retail car dealerships.

39. In February of 2014, GPB Capital issued an amended PPM for Automotive Portfolio that stated: “At the core of the GPB strategy is the provision that all distributions paid to limited partners will be fully covered by funds from the portfolio company’s operations.”

40. In early 2015, GPB Capital and Ascendant continued to represent in marketing and due diligence materials that Automotive Portfolio distributions were fully covered with funds from operations.

41. But as the year went on, GPB Capital and Ascendant personnel repeatedly wrote internally that Automotive Portfolio’s distributions were starting to exceed income from the portfolio companies. In July 2015, Bill Jacoby, GPB Capital’s then-CFO, reviewed the monthly management report and wrote, “we are not covering our distributions with profits from operations at June YTD.” In September, Steve Frangioni (“Frangioni”), GPB Capital’s Director of Fund Accounting, confirmed that Automotive Portfolio was “not able to cover its monthly distributions from the assets/investments it currently holds.” Furthermore, Frangioni emailed Gentile directly, making clear that Automotive Portfolio had used more than \$500,000 from its investment account to pay investor distributions for the preceding two months. Frangioni also sought Gentile’s approval to repeat the transfer to cover the October distribution.

42. Nonetheless, in January of 2016, an Ascendant sales representative represented to an investment adviser that Automotive Portfolio’s distributions were solely from operating profits

stating, “It is important to note, the distributions received by investors are fully covered (100% derived from FFO) at all times. There is zero return of capital.”

43. Automotive Portfolio recorded a fourth quarter of 2015 coverage ratio of only 34%, and an annual coverage ratio of 71%. Measured from the inception of the fund, Automotive Portfolio’s lifetime coverage ratio had fallen to 80%.

44. In April of 2016, Respondents manufactured a second performance guarantee from Lash falsely purporting to have been executed on January 1, 2015 but actually signed in early May of 2016.

45. Automotive Portfolio’s 2015 financial statements stated:

In some cases, the Partnership has agreements in place with the operating partners to guarantee a certain amount of income at the dealership level for a specified amount of time. For the year ended December 31, 2015, \$1,050,000 was earned by the Partnership and is included in income receivable from investments on the balance sheet. The \$1,050,000 was collected in April 2016.

46. The performance guarantee was not in place during 2015 and it was never paid in full. Even had the performance guarantee been paid in full, Automotive Portfolio’s coverage ratio would have been no better than 71% for full-year 2015, and only 80% inception-to-date.

47. Automotive Portfolio amended its PPM in June of 2016 stating for the first time that it reserved the “right to return Capital Contributions to LPs as part of our distributions,” but it had “no present plans to do so.” At the time the PPM was issued, Automotive Portfolio had used over \$2.5 million of investor capital to pay distributions over the preceding three quarters.

48. In December of 2016, Automotive Portfolio issued another amended PPM repeating the representation that the fund had “no present plans” to use investor capital to fund investor distributions. Automotive Portfolio’s 2016 financial reports show that in 2016 the fund made \$14.3 million in distributions to investors while recording only \$5.4 million of income from operations. Automotive Portfolio’s coverage ratio for 2016 was only 35%.

49. In March of 2017, GPB Capital directed Automotive Portfolio to take more than \$500,000 of new investor capital and return it to Phoenix where it was used to pay that month’s regular distribution to existing investors.

50. Similarly, on July 11, Automotive Portfolio received approximately \$11.5 million of new investor capital from Phoenix. Within two days, GPB Capital caused Automotive Portfolio to transfer more than \$2.3 million of that new investor capital from its investment account to its distribution account, and then back to Phoenix, in order to make the monthly distribution to existing investors.

51. In April of 2018, Automotive Portfolio issued its fourth amended PPM stating that “we do not presently have plans” to return investor capital as part of fund distributions.

iii. GPB Holdings II, LP

52. GPB Holdings II, LP (“Holdings II”), GPB Capital’s third fund, launched in April of 2015 sharing the name of its predecessor fund, Holdings, and its multi-sector strategy.

53. The April 2015 PPM for Holdings II stated:

We will make cash distributions when determined by GPB in its discretion...GPB intends for us to make distributions of cash, if any, to the LPs...at annual return rates targeted to be 8% of LPs’ gross Capital Contributions (though distributions could be more, less or none at all, depending on our cash flow...We reserve the right to return Capital Contributions to LPs as part of our distributions, though we do not presently have plans to do so.”

54. In April of 2015, a response to a due diligence questionnaire asserted that Holdings II would seek to pay 8% annualized monthly distributions, plus special distributions, and that “[a]ll distributions will be fully covered with funds from operations.”

55. In May of 2015, a due diligence response for Holdings II stated, “[s]trategies managed by GPB pay a substantial current dividend that is fully covered with funds from operations.” Furthermore, in July of 2015, a due diligence questionnaire response for Holdings II claimed that “[t]he prior Fund with the same strategy...paid a 10.5% distribution in 2014, fully covered with funds from operations.”

56. Holdings II issued an amended PPM in April of 2016 repeating the representation that Holdings II “did not presently have plans” to use investor capital to pay distributions. Moreover, an April 2016 Ascendant email to a broker-dealer firm described Holdings II’s distributions as “8%, fully earned.”

57. An April 2016 special distribution of 1.5% caused Holdings II's second quarter 2016 coverage ratio to fall below 50%, and the fund's inception-to-date coverage to dip below 100%.

58. In February of 2017, Respondents responded in a due diligence questionnaire that "all distributions are covered by operating cash flows." Respondents even claimed that special distributions were paid from "excess cash flow from operations." However, in April of 2017, GPB Capital directed Holdings II to take more than \$1.6 million in new investor capital and return it to Phoenix for distribution to existing investors.

59. At the end of 2017, Holdings II's coverage ratio had fallen to 72% for the year, and 78% from inception. GPB Capital had caused Holdings II to use more than \$7.7 million of investor capital to pay distributions.

60. Holdings II issued a fourth amended PPM in July of 2018, acknowledging to all investors that "amounts that we distribute to LPs have been and may in future include LPs' invested capital, and have been and may in the future not be entirely comprised of income generated by the Portfolio Companies."

iv. GPB Waste Management, LP

61. GPB Waste Management, LP ("Waste Management"), GPB Capital's fifth fund, launched in August of 2016 focused on acquiring and operating private carting companies and recycling and waste processing plants.

62. Waste Management's PPM represented that the fund 'reserve[d] the right to return Capital Contributions to LPs as part of our distributions, though we do not presently have plans to do so."

63. Once again, Respondents advertised monthly distributions of 8% "based off cash flow from portfolio companies," and scheduled a 1.5% special distribution for those who invested early.

64. By the end of second quarter 2017, Waste Management had a quarterly coverage ratio of only 62%. By the end of 2017, its annual coverage ratio was less than 50%.

65. Waste Management issued an amended PPM in April of 2018 stating that it 'd[id] not presently have plans" to include investor funds in its distributions.

v. *GPB Funds Close to New Investment*

66. By the end of 2017, all of the GPB Funds were well below full coverage, and the amount of investor capital used to pay distributions exceeded \$70 million.

67. GPB Capital closed all of the GPB Funds to new investors by July of 2018, having raised approximately \$1.7 billion in total. GPB Capital later directed the GPB Funds in December of 2018 to cease payment of the monthly distributions.

68. In November of 2019, GPB Capital admitted to investors of the GPB Funds that prior distributions had included investor capital. Rather than clearly disclosing the source of these distributions, however, Respondents sent letters to investors in each of the GPB Funds, which included a footnote in small print that read, “Distributions have been paid out of Company working capital and available assets, including, but not limited to, limited partner Net Capital Contributions.”

D. GPB Capital Made Numerous Undisclosed Interfund Loans

69. From 2013 through mid-2016, GPB Capital moved money between the GPB Funds through a series of undisclosed (and at times wholly undocumented) interfund loans that exaggerated the strength of the “borrowing” funds. Therefore, GPB Capital used investor capital from one Fund to purchase portfolio companies for a different Fund and investors in the “lending” fund were never informed that their money would be used to benefit investors of another Fund. The lending fund investors did not receive equity in the portfolio companies or any cash flow from investments made with the loan money.

70. Prior to 2016, none of the PPMS for the GPB Funds disclosed that Respondents would cause the GPB Funds to enter into interfund loans. For example, Automotive Portfolio’s February 2014 PPM stated that the objective of the fund was to identify assets of auto dealerships to acquire, profitably operate these assets, and then resell them for gains. Respondents also told investors that any distributions paid to investors would come from the cash flow received from these auto dealerships. Nothing in the PPM disclosed to investors that their money would be used to make interest-free loans to other GPB Funds to acquire companies in unrelated sectors.

71. Further, several PPMs affirmatively stated that the funds would not engage in related-party transactions without the approval of an independent advisory committee. This statement, however, was false. Between September 2013 and May 2015, Respondents caused the GPB Funds to make at least 20 interfund loans in amounts ranging from \$12,000 to \$25 million. The independent advisory committee did not formally approve any of these transactions.

72. GPB Capital's use of undisclosed loans harmed investors as illustrated by an April 1, 2015 loan of \$9 million from Automotive Portfolio to Holdings. On March 30, 2015, Automotive Portfolio had only \$7,927,605.59 in its investment account. To cover the shortfall between the then-current Automotive Portfolio balance and the \$9 million to be loaned to Holdings the next day, Holdings deposited \$1,456,040 from its own investment account to Automotive Portfolio on March 31, 2015. There was no loan agreement related to this transaction, and GPB Capital did not even list this loan on a schedule of loans that it produced to the SEC. Subsequently, Holdings paid interest to Automotive Portfolio on that loan, a portion of which was interest that accrued on Holdings' own \$1,456,040 contribution to the loan. In essence, Holdings' investors paid Automotive Portfolio interest on the fund's own money.

73. On June 1, 2015, GPB Capital's Chief Operating Officer sent a letter to a broker-dealer who raised concerns about interfund loans, stating: "This letter serves as notice that GPB Capital Holdings, LLC will not make any intra-fund [sic] loans between affiliated entities as of the date of this memo."

74. On October 22, 2015, GPB Capital transferred \$25 million from Automotive Portfolio to Holdings. Subsequently, Holdings transferred \$25 million to Holdings II. GPB Capital caused Holdings II to invest in three portfolio holding companies using approximately \$24.2 million of the commingled funds from Automotive Portfolio and Holdings.

75. The undocumented interfund loan was outstanding for seven months, carried no interest, and provided no benefit to the Automotive Portfolio and Holdings investors whose capital contributions were used to make the loan to Holdings II.

76. Between 2013 and early 2016, GPB Capital moved over \$65 million around the various GPB Funds without disclosing the practice to investors, and, at times, without any written agreements documenting the transfers.

77. Respondents did not begin to disclose its extensive practice of interfund loans until March 2016. That month Holdings II issued an amended PPM that finally disclosed the existence of interfund loans. Automotive Portfolio disclosed the practice in an amended PPM issued June of 2016. GPB Capital, however, did not disclose the use of interfund loans to Holdings' investors until December 2016.

E. Gentile and Schneider Failed to Disclose They Misappropriated Money and Business Opportunities from Portfolio Companies Through Shell Company LSG

78. Schneider and Gentile misappropriated portfolio company earnings from 2014 to 2016. Schneider and Gentile conducted this misappropriation through the use of a shell company called LSG Auto Wholesale, LLC ("LSG"). LSG was formed on April 9, 2014 as a Delaware limited liability holding company. LSG had only three corporate members: (1) Jachirijo, LLC ("Jachirijo"), controlled by Gentile; (2) GPB Lender, LLC ("Lender"), also controlled by Gentile, and (3) EMDYKYCOL, Inc. ("EMDYKYCOL"), a now-dissolved Florida corporation.

79. Retail automobile dealerships make money not only from the sale of automobiles, but also from the sale of extended warranties, service contracts, credit insurance and guaranteed asset protection insurance – collectively known as financial and insurance products ("F&I"). In a due diligence presentation in March of 2017, GPB Capital stated that F&I sales represented 27% of the gross profits of the automotive assets of the GPB Funds in the third quarter of 2016. Furthermore, GPB Capital and its valuation experts classified F&I income as an asset when valuing the dealerships within the GPB Funds.

80. Respondents funneled F&I profits from certain automobile dealerships owned by the GPB Funds to LSG. From LSG, the diverted monies were then transferred to Lash, Schneider, and Gentile, either directly or through companies that the individual Respondents controlled or in which they had interests.

81. These diversions were not disclosed to investors. There are no records that LSG provided genuine goods or services to the dealerships. The monies were simply misappropriated from the GPB Funds' investors.

82. Through LSG, Gentile and Schneider siphoned over \$525,000 and \$360,000 from the GPB Funds, respectively.

**F. Respondents Failed to Disclose that Gentile and Schneider Paid Themselves
“Stipends” and Fees from Portfolio Companies**

83. Schneider and Gentile together received roughly \$1.7 million of payments from portfolio companies between 2013 and 2017. Many of these payments were in the form of “stipends” and “finance management fees”. While the PPMs contained some boilerplate language about possible related party compensation, Respondents did not disclose that Schneider and Gentile actually received these payments. In fact, when GPB Capital was directly asked in June of 2015 about separate compensation for executives, it denied it.

84. From 2013 through 2016, portfolio companies within the Automotive Portfolio and Holdings funds collectively paid more than \$930,000 in “board stipends” to Gentile through Jachirijo. During the same time period, Gentile also received nearly \$185,000 in additional “stipends” through Jachirijo Realty Holdings, another limited liability company wholly owned by Gentile. Schneider also received board stipends, including through an entity he owned, JS Board Stipend, LLC. Schneider received stipends in excess of \$540,000 in 2015 alone.

85. Gentile and Schneider also received more than \$715,000 over several years in “finance management fees” from D1 Holdings, LLC, a company within the Holdings corporate structure. Gentile and Schneider shared these fees evenly – split between two corporate entities: Jachirijo (owned by Gentile) and JS Board Stipend Account LLC (owned by Schneider).

86. Investors were not told that Gentile and Schneider received these payments. The PPMs of the GPB Funds did not inform investors that Gentile and Schneider received these stipends and management fees and while the PPMs contained boilerplate language that addressed the possibility that related parties may receive fees or other compensation in connection with serving as a portfolio company officer or director, the PPMs did not disclose that Gentile and Schneider actually received board stipends and other fees.

87. In fact, when questioned about the practice as part of the broker-dealer due diligence process, GPB Capital flatly denied the existence of such board stipends and fees. Specifically, in

June 2015, FactRight, a third-party due diligence firm, asked whether management and executives were collecting fees and other stipends. GPB responded by falsely stating that management was not receiving any such fees.

G. Respondents Failed to Disclose They Paid Themselves Unwarranted Fees and Commissions

88. Respondents received undisclosed fees and commissions by directing the GPB Funds to pay acquisition fees to Axiom, AAS, and Ascendant that ultimately funneled to Gentile and Schneider. The PPMs provided no notice that the acquisition fees, which could total up to 2.75% of the cost of acquisition, were actually being paid to Gentile and Schneider. Initially, the PPMs told investors only that the acquisition fees would be paid to “qualified third parties or affiliates” and did not disclose that Axiom or Ascendant received those fees. In later years, Respondents modified the disclosure language to inform investors that acquisition fees would be paid to Axiom and Ascendant (as of 2016), and eventually AAS (as of 2018). Even with these disclosures, however, Respondents still failed to disclose that the ultimate recipients of these fees were Gentile and Schneider.

89. Between 2013 and 2018, the GPB Funds paid acquisition fees of roughly \$26 million. Axiom received more than \$10 million in acquisition fees between 2013 and 2017. Beginning in 2017, broker-dealer activity and related cash flows transferred from Axiom to AAS, in which Gentile and Schneider each held a 33.3% stake. In 2017 and 2018 alone, the GPB Funds paid AAS acquisition fees of more than \$16.3 million, and Gentile and Schneider each received roughly \$5.4 million through acquisition fees. Respondents never disclosed to investors that they compensated Gentile an additional \$5.4 million in his capacity as an owner of AAS to perform the same tasks for which he was already compensated as the sole member of GPB Capital.

90. Bank records show that Gentile indirectly received acquisition fees even before AAS was formed. Specifically, in a series of transfers beginning in February 2015, Schneider sent portions of acquisition fees he received through Axiom to a Chase bank account controlled by Gentile under a different corporate name. On March 11, 2015, Schneider transferred another \$375,000 to a Crescent GP, LLC Chase bank account controlled by Gentile.

91. On March 26, 2015, GPB Capital wired \$701,583 to Axiom “representing a project fee that needs to be paid to Jeff.” On April 14, 2015, Axiom tendered a check payable to Schneider for \$500,000. Six days later, Schneider transferred \$250,000, half of the project fee to the Crescent GP, LLC account controlled by Gentile. Gentile then transferred those funds to yet another account controlled by Gentile and his wife.

H. Respondents Failed to Disclose Gentile, Schneider, and Others Engaged in Persistent and Undisclosed Self-Dealing

92. Respondents used money from GPB Capital and the GPB Funds to enrich themselves, pay family members, and support luxurious lifestyles. For example, Respondents used money from GPB Capital to purchase a Ferrari for Gentile’s personal use. GPB Capital also made numerous payments to Gentile’s wife, individually as well as through her law firm.

93. GPB Capital represented to investors that its funds would avoid related party transactions. The GPB Funds, however, made payments to individuals and entities closely linked to Gentile, including Gentile’s brother-in-law as manager of GPB Cold Storage fund and to his wife’s now-defunct law firm, Cardali & Cardali. Gentile’s Wife, Joanne, and brother-in-law, Robert Cardali, owned Cardali & Cardali.

94. As of March 2017, GPB paid Cardali & Cardali at least \$194,064 in consulting fees. At the time, Gentile’s wife was the 100% owner of the firm. In addition, GPB Capital paid Cardali & Cardali over \$12,129 in monthly fees during the course of several months in both 2016 and 2017. On top of the above stated payments, GPB Capital also paid Joanne Gentile \$91,291 individually as a so-called “payroll expense”.

95. GPB Capital failed to disclose to investors that Cardali & Cardali, a related party, would perform work for GPB Capital. GPB Capital also failed to disclose to investors that it paid Gentile’s wife substantial consulting fees and a salary.

96. GPB Capital and its principals also incurred expenses for years without a clear business purpose and for their own personal enrichment. In particular, both Gentile and Schneider expensed significant luxury purchases to GPB Funds or their portfolio companies to the detriment of investors. These expenses included: approximately \$47,000 on private jets;

\$2,500 for Gentile's wife's travel expenses; approximately \$58,000 in travel experiences for Jachirijo, a company 100% owned by Gentile; \$12,040 in charges for ATV rentals in Florida; and \$29,837 for an American Express bill that included Gentile's 50th birthday.

97. Gentile also used GPB Funds assets to buy himself a \$355,000 Ferrari at the expense of the investors. Gentile has stated under oath that this Ferrari was his car for his own personal use. In 2017, GPB Capital sold the Ferrari to someone else for \$172,000, incurring a \$183,000 loss that the investors bore.

I. Georgia Investors

98. To date, Respondents induced at least nine-hundred (900) Georgia investors into contributing over seventy-eight million dollars (\$78,000,000) into the GPB Funds.

II. CONCLUSIONS OF LAW

99. Paragraphs 1 through 52 are incorporated by reference as though fully set forth herein. The Commissioner has jurisdiction over this matter pursuant to the Act.

100. Pursuant to O.C.G.A. § 10-5-70, *et seq.*, the Commissioner is authorized to institute this investigation and issue this Order.

101. Pursuant to O.C.G.A. § 10-5-73, the Commissioner may issue an order directing a person to cease and desist from engaging in the act, practice, or course of business if the Commissioner determines that the person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of the Act or Rule adopted thereunder.

102. Pursuant to O.C.G.A. § 10-5-73(d), the Commissioner may impose a civil penalty up to \$50,000.00 for a single violation or up to \$500,000.00 for more than one violation.

103. Pursuant to O.C.G.A. § 10-5-41(d)(2) a person may be disciplined if that person "[w]illfully violated or willfully failed to comply with the [Act] or the predecessor Act or a rule adopted or order issued under the [Act] or the predecessor Act within the previous ten years."

104. Pursuant to O.C.G.A. § 10-5-41(c), the Commissioner may issue an order imposing a bar on a person if the Commissioner finds that it is in the public interest and the Commissioner's action is authorized by O.C.G.A § 10-5-41(d).

105. Pursuant to O.C.G.A. § 10-5-50, “[i]t is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly: (1) [t]o employ a device, scheme, or artifice to defraud; (2) [t]o make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or (3) [t]o engage in an act, practice, or course of business that operates or would operate as fraud or deceit upon another person.

106. Respondents, in the offer and sale of securities in the GPB Funds falsely misrepresented that the GPB Funds’ 8% annual distributions would be funded solely from operations. These statements were false because annual distributions were in fact largely subsidized by Ponzi-type payments from investor capital. Further, Respondents actively lied about the sources of these distributions until 2019.

107. roughly \$2.5 million in distributions it made to investors. To cover up this shortfall, Respondents falsified fictitious back-dated performance guarantees to create a false appearance to investors of profits earned by certain GPB Funds.

108. Respondents implemented a device by which they used shell company LSG to covertly misappropriate portfolio company earnings for the personal benefit of Schneider and Gentile. From 2014 through 2016, Respondents secretly diverted over \$885,000 from investors to Gentile and Schneider.

109. Respondents utilized undisclosed stipends and fees to divert over \$1 million in investor funds from the GPB Funds to Gentile and Schneider. Respondents did not disclose these stipends and fees to Georgia Investors and denied their existence when questioned.

110. Respondents represented to Georgia Investors that the GPB Funds would avoid related party transactions. These statements, however were lies, as Respondents used the GPB Funds to make payments to several individuals and entities closely linked to Gentile, included Gentile’s brother-in-law and Gentile’s wife’s law firm. As of March 2017, Respondents paid nearly \$300,000 to related parties.

111. Respondents fraudulently misappropriated funds from the GPB Funds for the personal benefit of Gentile and Schneider. These misappropriations include using funds to finance the use

of private jets for personal use, vacations, and even to purchase a Ferrari for Gentile's personal and private use. Respondents failed to disclose the use of GBP Funds to subsidize the personal enrichment of Gentile and Schneider.

112. Respondents failed to disclose that that acquisition fees for the GPB Funds, which could total up to %2.75 of the cost of the acquisition, were actually paid to Gentile and Schneider. Even after modifying disclosure language to inform investors that acquisition fees could be paid to Axiom, Ascendant, and AAS, Respondents still failed to disclose that the ultimate recipients of these fees were Gentile and Schneider, even though Gentile and Schneider received nearly \$11 million combined through these acquisition fees in 2017 and 2018 alone.

113. The activities described in paragraphs 106 through 112 are violations of O.C.G.A. § 10-5-50. These violations are actionable events pursuant to O.C.G.A. § 10-5-73; therefore, Respondents are subject to discipline.

114. Pursuant to O.C.G.A. § 10-5-51, "[i]t is unlawful for a person that advises others for compensation, either directly or indirectly, or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities: (1) [t]o employ a device, scheme, or artifice to defraud another person; or (2) [t]o engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person."

115. Respondents intentionally misrepresented the source of monthly distributions to Georgia Investors of the GPB Funds by manufacturing fictitious back-dated performance guarantees and by falsifying financial statements for certain GPB Funds, misrepresenting the performance of these funds and misleading Georgia Investors as to the value of their investments.

116. Respondents intentionally misrepresented the strength of the GPB Funds by implementing a scheme by which Respondents used a series of interfund loans to move money between the GPB Funds. Respondents did not disclose these interfund loans and affirmatively lied about their existence when questioned.

117. The violations described in paragraphs 115 through 116 are an actionable event

pursuant to O.C.G.A. § 10-5-73; therefore, Respondents are subject to discipline.

III. ORDER

WHEREFORE, by the authority vested in me as the Commissioner of Securities for the State of Georgia, **IT IS HEREBY ORDERED**:

1. That **GPB Capital Holdings, LLC cease and desist** from any and all violations of the Georgia Uniform Securities Act of 2008 as amended and the rules and regulations adopted thereunder.

2. That **Ascendant Alternative Strategies, LLC cease and desist** from any and all violations of the Georgia Uniform Securities Act of 2008 as amended and the rules and regulations adopted thereunder.

3. That **Ascendant Capital, LLC cease and desist** from any and all violations of the Georgia Uniform Securities Act of 2008 as amended and the rules and regulations adopted thereunder.

4. That **David Gentile cease and desist** from any and all violations of the Georgia Uniform Securities Act of 2008 as amended and the rules and regulations adopted thereunder.

5. That **Jeffry Schneider cease and desist** from any and all violations of the Georgia Uniform Securities Act of 2008 as amended and the rules and regulations adopted thereunder.

6. That **David Gentile is BARRED** from association with any broker, dealer, or investment adviser in the State of Georgia.

7. That **Jeffry Schneider is BARRED** from association with any broker, dealer, or investment adviser in the State of Georgia.

8. That **GPB Capital Holdings, LLC; Ascendant Alternative Strategies, LLC; Ascendant Capital, LLC; David Gentile; and Jeffry Schneider** jointly and severally **pay a civil penalty** in the amount of five hundred thousand dollars (\$500,000), as well as a penalty for the cost of the Commissioner's investigation of twenty thousand dollars (\$20,000), for a total of five hundred twenty thousand dollars (\$520,000). This civil penalty is payable to the Commissioner within thirty (30) days of the finalization date of this Order.

The entry of this Order is deemed to be in the public interest, and shall not be deemed to constitute findings or conclusions relating to other persons unrelated to Respondents and shall not be deemed to be a waiver or estoppel on the part of the Commissioner from proceeding in individual actions against any person who may have violated the Act or any transactions not specifically referred to herein or not known to the Commissioner at the time this Order was issued.

SO ORDERED this 3rd day of February, 2021.

By: 
C. Ryan Germany
Assistant Commissioner of Securities