

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6736 / September 30, 2024

INVESTMENT COMPANY ACT OF 1940
Release No. 35345 / September 30, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22218

In the Matter of

**Gemini Capital Partners LLC
and Kabir Gangahar**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 203(e), 203(f),
AND 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, AND SECTION
9(b) OF THE INVESTMENT COMPANY
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), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Gemini Capital Partners LLC (“Gemini”) and Kabir Gangahar (“Gangahar”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V with respect to Gangahar, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company 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 Respondents' Offer, the Commission finds that:

Summary

From January 2020 through December 2022 (the "Relevant Period"), Gemini, a state-registered investment adviser, and Gangahar, the majority owner and control person of Gemini, disproportionately allocated certain profitable trades to themselves in a way that disadvantaged their advisory clients. While the clients achieved cumulative gains on relevant trades allocated to their accounts, and Gemini and Gangahar did not disproportionately allocate losing trades to their clients, disproportionate allocations of certain profitable trades breached Gemini's and Gangahar's fiduciary duties and failed to comply with Gemini's disclosed policy of allocating trades to participating advisory clients on a pro rata basis. As a result, Gemini and Gangahar violated Section 206(2) of the Advisers Act.

Respondents

1. **Gemini Capital Partners LLC** is a Nebraska limited liability company with its principal place of business in Omaha, Nebraska. Gemini has been registered as an investment adviser with the State of Nebraska since October 2019. Gemini reported approximately \$2.4 million in regulatory assets under management and eight managed accounts for individual investors on its March 25, 2024 Form ADV filing.

2. **Kabir Gangahar**, age 49, is a resident of Omaha, Nebraska. Since Gemini's founding in October 2019, Gangahar has been its majority owner and control person. He has also been the sole person who exercised Gemini's discretionary trading authority and allocated securities trades to advisory client accounts. Prior to October 2019, Gangahar was associated with various broker-dealers and investment advisers.

Background

3. During the Relevant Period, Gangahar, Gemini, and Gemini's advisory clients had individual investment accounts in custody at a Commission-registered broker-dealer, and Gemini had discretionary trading authority to place trades for each of the accounts. Rather than trading directly in individual accounts, however, Gangahar often executed trades through a block trading master account (the "Master Account") at the broker-dealer. This account allowed for the execution of securities transactions on behalf of multiple accounts simultaneously without identifying in advance the specific individual accounts for which a trade was intended. After executing trades through the Master Account, Gangahar would typically allocate these trades to advisory clients, himself, and Gemini at or near the end of the trading day.

Disproportionate Allocation of Certain Block Trades

4. Gangahar allocated roughly equivalent percentages of day trades of options on securities (“options day trades”) that achieved gains among the Gangahar, Gemini, and participating advisory client accounts. All participating advisory clients achieved cumulative gains on options day trades allocated to their individual accounts during the Relevant Period. Additionally, Gangahar did not disproportionately allocate losses to advisory client accounts.

5. However, Gangahar allocated options day trades that achieved significant gains more frequently to his own and to Gemini’s individual accounts than he did to client accounts. Gangahar’s disproportionate allocations of options day trades with significant gains allowed the Gangahar and Gemini accounts to achieve a 15.2 percent return on certain of their options day trades during the Relevant Period. Participating Gemini advisory clients achieved only a 7.3 percent return on comparable options day trades during the Relevant Period, demonstrating that they were disadvantaged by the disproportionate allocations. Gangahar’s disproportionate allocations of options day trades with significant gains resulted in the allocation of excess gains to Gangahar and Gemini of \$130,322.00 and \$122,602.00, respectively.

6. Throughout the Relevant Period, Gemini disclosed to its clients in its Form ADV, Part 2A Brochures (“Brochures”) that it allocated trades from the Master Account on a “pro rata” basis, which meant “an allocation of the trade at issue among applicable advisory clients in amounts that are proportional to the participating advisory client’s intended investable assets.” Gemini’s internal policies and procedures required Gangahar to create and maintain records documenting how he calculated each advisory client’s portion of allocated trades. Furthermore, Gemini’s Brochures disclosed to advisory clients the “express policy . . . that all persons associated in any manner with our firm must place clients’ interests ahead of their own when implementing personal investments.”

7. However, Gangahar did not allocate all options day trades from the Master Account to individual accounts on a pro rata basis. Gangahar also failed to create and maintain records documenting how he calculated each advisory client’s portion of allocated trades. These practices were not consistent with Gemini’s disclosures and internal policies and procedures concerning trade allocation.

8. As a result of their disproportionate trade allocations during the Relevant Period and failure to follow Gemini’s related policies and procedures, Gangahar and Gemini breached their fiduciary duties to clients.

Violation

9. As a result of the conduct described above, Respondents willfully¹ violated Section 206(2) of the Advisers Act, which prohibits any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

Disgorgement

10. The disgorgement and prejudgment interest ordered in paragraphs IV.D and IV.E is consistent with equitable principles and does not exceed Respondents' net profits from their violations, and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to paragraphs IV.D and IV.E in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

11. Respondents have submitted sworn Statements of Financial Condition dated August 6, 2024 and other evidence and have asserted their inability to pay civil penalties.

IV.

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

Accordingly, pursuant to Sections 203(e), 203(f), and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondents cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act.

¹ “Willfully,” for purposes of imposing relief under Sections 203(e) and 203(f) of the Advisers Act and Section 9(b) of the Investment Company 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).

B. Respondent Gangahar be, and hereby is:

suspended from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter,

for a period of twelve (12) months, effective on the second Monday following the entry of this Order.

C. Respondent Gemini is censured.

D. Respondent Gangahar shall pay disgorgement of \$130,322.00 and prejudgment interest of \$22,803.30 to the Securities and Exchange Commission. Payment shall be made in the following installments:

- \$10,000.00 within 10 days of the entry of this Order;
- \$11,927.10 within 90 days of the entry of this Order;
- \$11,927.10 within 180 days of the entry of this Order;
- \$11,927.10 within 270 days of the entry of this Order;
- \$11,927.10 within 360 days of the entry of this Order;
- \$11,927.10 within 450 days of the entry of this Order;
- \$11,927.10 within 540 days of the entry of this Order;
- \$11,927.10 within 630 days of the entry of this Order;
- \$11,927.10 within 720 days of the entry of this Order;
- \$11,927.10 within 810 days of the entry of this Order;
- \$11,927.10 within 900 days of the entry of this Order;
- \$11,927.10 within 990 days of the entry of this Order; and
- \$11,927.20 within 1,080 days of the entry of this Order.

Payments shall be applied first to post order interest, which accrues pursuant to SEC Rule of Practice 600. Prior to making the final payment set forth herein, Respondent Gangahar shall contact the staff of the Commission for the amount due. If Respondent Gangahar fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

E. Respondent Gemini shall, within ten (10) days of the entry of this Order, pay disgorgement of \$122,602.00 and prejudgment interest of \$19,536.58 to the Securities and

Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

F. Based upon Respondents' sworn representations in their Statements of Financial Condition dated August 6, 2024 and other documents submitted to the Commission, the Commission is not imposing penalties against Respondents.

G. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondents provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondents was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondents may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

H. Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 Gemini Capital Partners LLC or Kabir Gangahar 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 Nicholas Heinke, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, Colorado 80294.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Gangahar, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Gangahar under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Gangahar of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary