



### **III. RESPONDENTS**

2. 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 (the “SEC”) as an investment adviser. GPB Capital serves as the general partner of a series of limited partnership investment vehicles (“LPs”) that the Respondents managed, marketed, offered, and sold to investors in South Carolina and elsewhere.

3. Gentile (CRD Number 6763402) is the sole managing member of GPB Capital. Gentile is also indirectly a part owner of AAS. Gentile is a resident of Florida. Gentile is not registered with the Division in any capacity.

4. 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, the Financial Industry Regulatory Authority (“FINRA”), and 53 U.S. states and territories, including South Carolina. AAS has been registered with the Division as a broker-dealer since March 31, 2017. AAS is indirectly majority-owned by Gentile and Schneider. AAS served as GPB Capital’s managing broker-dealer beginning in 2017.

5. Ascendant is a Texas limited liability company with its principal place of business in Austin, Texas. Ascendant is wholly owned by Schneider. Between 2012 and May of 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 serving 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.

6. Schneider (CRD Number 2089051) was, until in or about May of 2020, the Chief Executive Officer ("CEO") and sole member of Ascendant. Schneider is currently a registered broker-dealer agent and indirect part owner of AAS. Schneider previously worked as a broker-dealer agent of Axiom Capital Management, LLC ("Axiom"). Schneider currently is not registered with the Division in any capacity. Schneider was at all relevant times deeply involved in the control, management, and direction of GPB Capital.

#### **IV. FINDINGS OF FACT**

##### **A. GPB Capital's Business and Structure**

7. 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.

8. In the years 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 GPB Capital and its series of LPs.

9. Schneider assisted Gentile in setting up and running GPB Capital and its series of LPs. Immediately prior to GPB Capital's creation, Schneider worked as a registered broker-dealer

agent at Axiom. At this time, Schneider approached Gentile with the idea of partnering on an income-producing private equity fund.

10. By 2012, Gentile and Schneider began building out the structure for developing, marketing, and offering LPs to retail investors.

11. Schneider formed Ascendant in 2012, and dedicated it to structuring funds, marketing the investment opportunities, and raising capital exclusively for GPB Capital.

12. Gentile formed GPB Capital in March of 2013 to serve as the general partner and managing member of the planned investment funds. In April 2014, Gentile registered GPB Capital with the SEC as a registered investment adviser.

13. This structure appeared to have established a clear division of responsibilities between GPB Capital and Ascendant. In practice, however, Gentile and Schneider comingled responsibilities between GPB Capital and Ascendant.

*i. GPB Funds*

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

15. The Respondents structured the GPB Funds as limited partnerships that acted 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”, operated in the automotive retail, waste management, technology enabled services, energy, healthcare, and real estate sectors.

16. From 2013 through mid-2018, the GPB Funds sold unregistered limited partnership interests in what are known as “private placement” transactions.

17. These limited partnership interests were marketed to “accredited investors” as defined by the SEC’s Regulation D. When a securities offering qualifies for a Regulation D exemption from registration, its regulatory burden is significantly reduced. The Respondents used the structure of Regulation D to further their scheme, as operating under Regulation D allowed the Respondents to operate under a significantly reduced regulatory burden, allowing less oversight on the GPB Funds.

18. More than 320 South Carolina investors purchased limited partnership interests in various GPB Funds, with a total investment of more than \$28 million.

*ii. Ascendant and AAS*

19. 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, Ascendant was the branch office of AAS. Schneider and Gentile jointly own 67% of AAS through a company named DJ Partners, LLC.

20. 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 the GPB Funds to independent broker-dealers and investment advisers. These independent broker-dealers and investment advisers then sold the GPB Funds to their retail investors. Ascendant was responsible for assisting GPB Capital in drafting investor updates and preparing offering documents, limited

partnership agreements, and marketing materials. Ascendant also prepared responses to due diligence questionnaires (“DDQs”) from the broker-dealers and investment advisers. These DDQ responses often contained detailed information about the performance and strategies of the GPB Funds.

21. 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 over \$13 million each for marketing the GPB Funds.

*iii. Schneider’s Active Role*

22. 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 2017, a due diligence presentation 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.

23. 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 (the “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 the 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*

24. 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 advisers 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. The 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 DDQs, and correspondence with potential investors and salespeople.

25. 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.

26. 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.”

27. On occasion, the GPB Funds paid additional special distributions on top of the regular monthly distributions, which the Respondents used as a tool to lure new investors. The 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 were only payable to those who invested by a stated deadline. The Respondents used this blast email strategy to manipulate investors into contributing capital to the GPB Funds by creating a sense of urgency to invest.

## **B. Respondents Misrepresented the Source of Monthly Distributions to Investors**

### *i. GPB Holdings, LP*

28. 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 Portfolio Companies” in the sectors of automotive retail, information technology, and healthcare. A 2014 due diligence presentation prepared to educate broker-dealers about the GPB Funds stated that the targeted monthly distributions at an annualized rate of 8% were “paid 100% [with] funds from operations;” or, in other words, the monthly distributions were paid by “cash flow from portfolio companies.” A 2015 version of the presentation repeated these representations, and added a “highlights” slide stating that the GPB Funds provided investors with “meaningful income... 100% fully covered distribution[s] – funds from operations.”

29. On May 8, 2015, Holdings released its audited financial statements for 2014, which reported \$2,498,858 in net investment income. However, the net investment income figure



Relied on fictitious earnings from portfolio companies—in particular, two auto dealerships that Lash operated.

30. In actuality, Holdings’ income for the full year of 2014 fell far short of the roughly \$2.5 million in distributions it made to investors. To cover up this shortfall, the Respondents manufactured fictitious back-dated “performance guaranties” from Lash to the two auto dealerships purporting to require Lash to pay the portfolio companies for any shortfalls in dealership net income below the stated thresholds. On March 18, 2015, GPB Capital’s Chief Operating Officer sent Lash two “deficiency notices” for the portfolio companies operating the dealerships, stating that Lash owed a combined total of \$1,136,201 pursuant to the performance guaranties. The amounts due under the performance guaranties were never collected in full.

31. A significant portion of the distributions Holdings paid out in 2014 was a simple return of the investors’ own capital.

32. In April of 2015, Holdings made a special distribution of 1.5%, or approximately \$500,000. For the second quarter of 2015, Holdings booked net investment income of only \$3,219,501, but it paid a total distribution of \$3,851,958—a quarterly coverage ratio<sup>1</sup> of 84%. Holdings’ quarterly coverage ratio had been below 100% for three of the first seven quarters in which it had paid distributions.

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

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<sup>1</sup> Internally, GPB Capital and Ascendant tracked whether distributions to investors were “fully covered by cash flow” from operations. This measurement was expressed as a percentage figure—sometimes referred to as the “coverage ratio”—that was based on a fund’s net investment income, plus any realized gains or losses, divided by the distributions paid to investors. A coverage ration below 100% meant that a fund was paying distributions in excess of operating income. If a fund had a negative operating income but continued to pay distributions, the coverage ratio would also be negative, or less than zero percent. A negative coverage ratio effectively meant that every dollar distributed to investors was coming from investors’ own capital contributions.

34. On August 10, 2015, the third-party 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 for distribution to existing investors.

35. 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 also stated, "we have no present plans to do so."

36. Subsequently, between July and September of 2016, Holdings lost more than \$1.5 million, but it paid nearly \$4 million in distributions resulting in a coverage ratio of negative 38%.

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

38. 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 more than \$15.8 million, resulting in an annual coverage ratio of 30%.

39. 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."

40. From its inception in March of 2013 to the end of 2017, the total distributions funded by investors' own capital exceeded \$20 million.

ii. *GPB Automotive Portfolio, LP*

41. 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.

42. 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.”

43. 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.

44. However, as the year went on, GPB Capital and Ascendant personnel repeatedly noted in internal emails that Automotive Portfolio’s distributions exceeded income from the portfolio companies. In July 2015, GPB Capital’s CFO reviewed the monthly management report and wrote, “we are not covering our distributions with profits from operations at June YTD.” In September of 2015, 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, GPB Capital’s Director of Fund Accounting 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. He also sought Gentile’s approval to repeat the transfer to cover the October distribution.

45. 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 [Fully Funded by Operations]) at all times. There is zero return of capital.”

46. Automotive Portfolio recorded a fourth quarter of 2015 coverage ratio of only 34%. Measured from the inception of the fund, Automotive Portfolio’s lifetime coverage ratio had fallen to 80% as of year-end 2015.

47. In April of 2016, the 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.

48. Automotive Portfolio’s final 2015 financial statements, released in May of 2016, 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.

49. The performance guaranty 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.

50. 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 million of investor capital to pay distributions.

51. 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 net investment income. Automotive Portfolio's coverage ratio for 2016 was only 35%.

52. In March of 2017, GPB Capital directed Automotive Portfolio to use more than \$500,000 of new investor capital to pay the monthly distribution to existing investors.

53. Similarly, on July 11, 2017, Automotive Portfolio received approximately \$11.5 million of new investor capital. 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 in order to make the monthly distribution to existing investors.

54. 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*

55. GPB Holdings II, LP ("Holdings II"), GPB Capital's third fund, launched in April of 2015. Like Holdings, Holdings II had a multi-sector investment strategy.

56. 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."

57. In April of 2015, a response to a DDQ 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."

58. 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 DDQ 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.”

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

60. 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 slip below 100%.

61. In February of 2017, the Respondents responded in a DDQ that “all distributions are covered by operating cash flows.” The 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 to pay distributions to existing investors.

62. In a May of 2017 due diligence presentation, GPB Capital and Ascendant claimed that distributions were “based off cash flows from portfolio companies.” From May through July of 2017, Ascendant representatives continued to state that distributions to Holdings II investors were “fully covered from funds from operations.”

63. At the end of 2017, Holdings II’s coverage ratio was 72% for the year, and 78% for the life of the fund. GPB Capital had caused Holdings II to use more than \$7.7 million of investor capital to pay distributions.

64. 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*

65. 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.

66. 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.”

67. Once again, the 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.

68. By the end of second quarter 2017, Waste Management had an inception-to-date coverage ratio of only 62%. By the end of 2017, the fund’s coverage ratio had fallen below 50%.

69. 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*

70. 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.

71. GPB Capital closed all of the GPB Funds to new investment 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.

72. In November of 2019, GPB Capital admitted to investors of the GPB Funds that prior distributions had included investor capital. However, rather than clearly disclosing the source of these distributions, the 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 (as defined in the LPA).”

### **C. GPB Capital Made Numerous Undisclosed Interfund Loans**

73. 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 GPB Fund entity borrowing funds from another GPB Fund. Those loans were used by the “borrowing” GPB Funds to make acquisitions and other investments that conferred little or no benefit to the investors of the “lending” GPB Funds. Therefore, GPB Capital used investor capital from one GPB Fund to purchase portfolio companies for a different GPB Fund and investors in the “lending” GPB Fund were never informed that their money would be used to benefit investors of another GPB Fund. The “lending” GPB Fund investors did not receive equity in the portfolio companies or any cash flow from investments made with the loan money.

74. Prior to 2016, none of the PPMs for the GPB Funds disclosed that the Respondents would cause the GPB Funds to enter into interfund loans. For example, Automotive Portfolio’s February 2014 PPM stated that the objective of Automotive Portfolio was to identify assets of auto



dealerships to acquire, profitably operate these assets, and then resell them for gains. The 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 loans to other GPB Funds to acquire companies in unrelated sectors.

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

76. In March of 2015, for example, Holdings transferred \$1,456,040 to Automotive Portfolio's investment account. There was no loan agreement related to this transaction. On April 1, 2015, Automotive Portfolio loaned \$9 million to Holdings—a loan that included the money that Holdings had previously sent to Automotive Portfolio the day before. As Holdings then duly paid interest to Automotive Portfolio on the \$9 million loan, Holdings' investors were paying interest on their own money.

77. 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."

78. On October 22, 2015, GPB Capital transferred \$25 million from Automotive Portfolio to Holdings. Subsequently, Holdings transferred \$25 million to Holdings II. These transfers were made without any loan documentation. GPB Capital caused Holdings II to invest

in three portfolio holding companies using approximately \$24.2 million of the \$25 million it had borrowed from the other GPB Funds in undocumented transactions.

79. 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.

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

**D. Gentile and Schneider Failed to Disclose They Misappropriated Money and Business Opportunities from Portfolio Companies Through a Shell Company Called LSG**

81. Gentile and Schneider failed to disclose that they had misappropriated portfolio company earnings from 2014 to 2016. Gentile and Schneider 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, controlled by Lash.

82. 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.

83. Gentile and Schneider 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.

84. 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.

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

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

86. Schneider and Gentile together received at least \$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, the Respondents did not disclose that Schneider and Gentile actually received these payments. To the contrary, when GPB Capital was directly asked in June of 2015 about separate compensation for executives, it denied it.

87. 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. In 2015 alone, Schneider, personally and through JS Board Stipend, LLC, received stipends in excess of \$540,000.

88. 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).

89. 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.

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

## **F. Respondents Failed to Disclose They Paid Themselves Unwarranted Fees and Commissions**

91. The 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, the 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, the Respondents still failed to disclose that the ultimate recipients of these fees were Gentile and Schneider.

92. Between 2013 and 2018, the GPB Funds paid acquisition fees in excess of \$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. The 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.

93. 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.

94. According to documents obtained by the Division, on March 26, 2015, GPB Capital wired \$701,583 to Axiom, which represented “. . . 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 Gentile through the Crescent GP, LLC account. Gentile then transferred those funds to yet another account controlled by Gentile and his wife.

#### **G. Respondents Failed to Disclose Gentile, Schneider, and Others Engaged in Persistent and Undisclosed Self-Dealing and Conflicted Transactions**

95. The Respondents used money from GPB Capital and the GPB Funds to enrich themselves, pay family members, and support luxurious lifestyles. For example, the 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.

96. Through its various PPMs, the Respondents represented to investors that the GPB Funds would avoid related party transactions. The GPB Funds, however, made payments to individuals and entities closely linked to Gentile, including to one of Gentile’s brothers-in-law as manager of the GPB Cold Storage, LP fund, and to a now-defunct law firm in which Gentile’s wife and another brother-in-law were the only partners (the “Family Law Firm”).

97. As of March of 2017, GPB Capital paid the Family Law Firm at least \$194,064 in consulting fees. At the time, Gentile’s wife was the sole partner at the firm. In addition, GPB Capital paid the Family Law Firm 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 Gentile's wife \$91,291 individually as a so-called "payroll expense."

98. 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 luxury purchases to the 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 expenses for Gentile's 50th birthday.

99. Gentile also used GPB Funds assets to buy himself a \$355,000 Ferrari at the expense of investors. In November of 2014, a Lash dealership that was a Holdings portfolio company purchased a new 2015 Ferrari FF for \$355,000. A few weeks later, that dealership sold the Ferrari to another Lash-operated portfolio company. 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 in Holdings bore.

#### **H. South Carolina Investors**

100. To date, the Respondents induced at least three hundred and twenty (320) South Carolina investors into contributing over twenty-eight million dollars (\$28,000,000) into the GPB Funds.

#### **V. CONCLUSIONS OF LAW**

101. Paragraphs 1 through 101 are incorporated by reference as though fully set forth herein.

102. South Carolina Code Ann. § 35-1-501 provides in pertinent part as follows: “It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly: (1) to employ a device, scheme, or artifice to defraud[.]”

103. The Respondents directly and/or indirectly employed a device, scheme, or artifice to defraud investors, in violation of S.C. Code Ann. § 35-1-501(1). For example:

- a. The Respondents misrepresented and omitted to state material facts in connection with the offer and sale of the securities;
  - b. GPB Capital, Gentile, and Schneider falsified financial statements by adding fictitious performance guarantee payments which created a false appearance to investors of illusory profits earned by certain GPB Funds auto dealerships;
  - c. Gentile and Schneider used investor funds without investor knowledge for personal benefit, which included paying for the use of private jets, and purchase of luxury automobiles;
  - d. GPB Capital made numerous undisclosed interfund loans;
  - e. Gentile and Schneider misappropriated funds and business opportunities through shell company LSG;
  - f. Gentile and Schneider received so-called stipends and fees from portfolio companies that were not adequately disclosed to investors;
  - g. AAS, Gentile, and Schneider received undisclosed and unwarranted fees and commissions;
  - h. Gentile and GPB Capital engaged in transactions that involved conflicts of interest;
- and



- i. Gentile, Schneider, and others engaged in persistent and undisclosed self-dealing and transactions that involved conflicts of interest.

104. Each device, scheme, or artifice to defraud is a violation of S.C. Code Ann. § 35-1-501(1). Each violation of S.C. Code Ann. § 35-1-501(1) by each Respondent upon each investor is a separate violation and is cause for the imposition of civil monetary penalties pursuant to S.C. Code Ann. § 35-1-604(d).

105. South Carolina Code Ann. § 35-1-501 provides in pertinent part as follows: “It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly: . . . (2) to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading[.]”

106. The Respondents made materially false and misleading statements and/or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading to investors.

107. The Respondents made materially false and misleading statements to its fund investors, by:

- a. Representing that the GPB Funds distributions would be fully funded from the operations of the portfolio of companies in which the GPB Funds were invested;
- b. Representing that the GPB Funds had no present intention of making distributions from a return of investor capital, when the GPB Funds had been making significant distributions from investor capital and had every intention of continuing to do so;

- c. Representing that the GPB Funds were not and would not be engaging in interfund transactions, where the GPB Funds were already engaging in interfund transactions and continued to do so.

108. The Respondents omitted to state material facts to GPB Fund investors. For example, the Respondents failed to disclose the following:

- a. Gentile owned a 33% interest in the broker-dealer distributing the GPB Funds, which allowed him to collect approximately \$5,000,000 in fraudulent acquisition fees;
- b. Schneider had a pivotal role in the formation, management, and marketing of GPB Capital and the GPB Funds;
- c. Schneider had a long and troubled regulatory history, including termination for involvement in a fraudulent scheme, regulatory sanctions, fines, suspensions, and numerous customer complaints alleging unauthorized trading, unsuitable investments, excessive trading, and misrepresentation;
- d. GPB Capital made numerous undisclosed interfund loans;
- e. Gentile and Schneider misappropriated funds and business opportunities through shell company LSG;
- f. Gentile and Schneider received so-called stipends and fees from portfolio companies that were not adequately disclosed to investors;
- g. AAS, Gentile, and Schneider received undisclosed and unwarranted fees and commissions;
- h. Gentile and GPB Capital engaged in transactions that involved conflicts of interest;

- i. Gentile, Schneider, and others engaged in persistent and undisclosed self-dealing and transactions that involved conflicts of interest; and
- j. The Respondents used investor funds for personal benefit, including paying for the use of private jets, and the purchase of luxury automobiles.

109. Each materially false or misleading statement and each omission of a material fact is a violation of S.C. Code Ann. § 35-1-501(2). Each violation of S.C. Code Ann. § 35-1-501(2) by the Respondents upon each GPB Fund investor is a separate violation and is cause for the imposition of a civil monetary penalty pursuant to S.C. Code Ann. § 35-1-604(d).

110. South Carolina Code Ann. § 35-1-501 provides in pertinent part as follows: “It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly: . . . (3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.”

111. The Respondents engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit on investors, including the following:

- a. The Respondents Misrepresented and omitted to state material facts in connection with the offer and sale of the securities;
- b. GPB Capital, Gentile, and Schneider falsified financial statements by adding fictitious “performance guarantee” payments which misleadingly and falsely represented illusory profits of certain GPB Funds’ auto dealerships;
- c. Gentile and Schneider used investor funds without investor knowledge for personal benefit, including paying for the use of private jets, and purchase of luxury automobiles;
- d. GPB Capital made numerous undisclosed interfund loans;

- e. Gentile and Schneider misappropriated funds and business opportunities through the shell company LSG;
- f. Gentile and Schneider received so-called stipends and fees from portfolio companies that were not adequately disclosed to investors;
- g. AAS, Gentile, and Schneider received undisclosed and unwarranted fees and commissions;
- h. Gentile and GPB Capital engaged in conflicted transactions; and
- i. Gentile, Schneider, and others engaged in persistent and undisclosed self-dealing and conflicted transactions.

112. Each violation of S.C. Code Ann. § 35-1-501(3) by the Respondents upon each investor is a separate violation and is cause for the imposition of a civil monetary penalty pursuant to S.C. Code Ann. § 35-1-604(d).

113. The Respondents' actions constitute at least 1,020 distinct violations of the Act.

114. The Respondents' violations of the Act set forth above provide the basis for this Order, pursuant to S.C. Code Ann. § 35-1-604(a)(1).

115. This Order is appropriate and in the public interest, pursuant to the Act.

## **VI. ORDER**

**NOW THEREFORE**, pursuant to S.C. Code Ann. § 35-1-604(a)(1), it is hereby **ORDERED** that:

- a. Each Respondent and every successor, affiliate, control person, agent, servant, and employee of each of the Respondents, and every entity owned, operated, or indirectly or directly controlled by or on behalf of each of the Respondents shall

**CEASE AND DESIST** from transacting business in this State in violation of the Act;

- b. The Respondents shall jointly and severally pay a civil penalty in the amount of ten million two hundred thousand dollars (\$10,200,000.00) if this Order becomes effective by operation of law, or, if a Respondent seeks a hearing and any legal authority resolves this matter, pay a civil penalty in an amount not to exceed \$10,000.00 for each violation of the Act by the Respondent(s), and the actual cost of the investigation or proceeding.
- c. Ascendant Alternative Strategies, LLC's registration with the Division as a broker-dealer is hereby **REVOKED** and Ascendant Alternative Strategies, LLC is **PERMANENTLY BARRED** from registering as a broker-dealer or investment adviser.

**IT IS FURTHER ORDERED** that, pursuant to S.C. Code Ann. § 35-1-604(a)(2) and (3), any exemption from registration with the Division that the Respondents may claim to rely upon under the Act, including but not limited to, S.C. Code Ann. §§ 35-1-201(3)(C), (7) or (8); 35-1-202; 35-1-401(b)(1)(D) or (F); or 35-1-403(b)(1)(C), has been and is **PERMANENTLY REVOKED**.

#### **VII. NOTICE OF OPPORTUNITY FOR HEARING**

Each of the Respondents is hereby notified that she/he/it has the right to a formal hearing on the matters contained herein. To schedule a hearing, a Respondent must file with the Division within thirty (30) days after the date of service of this Order, a written Answer specifically requesting a hearing. If any Respondent requests a hearing, the Division, within fifteen (15) days

after receipt of a written request, will schedule a hearing for that Respondent. The written request shall be delivered to the Office of the Attorney General, 1000 Assembly Street, Columbia, South Carolina 29201, or mailed to the Office of the Attorney General, Attention: Securities Division, P.O. Box 11549, Columbia, South Carolina, 29211-1549.


In the written Answer, a Respondent, in addition to requesting a hearing, shall admit or deny each factual allegation in this Order, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative defenses upon which the Respondent relies. If the Respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, the Respondent shall so state.

Failure by a Respondent to file a written request for a hearing in this matter within the thirty-day (30) period stated above shall be deemed a waiver by that Respondent of the right to such a hearing. Failure by a Respondent to file an Answer, including a request for a hearing, shall result in this Order's becoming final by operation of law. The regulations governing the hearing process can be found at S.C. Code of Regulations § 13-604.

This Order does not prevent the Division or any law enforcement agency from seeking additional civil or criminal remedies as are available under the Act, including remedies related to the offers and sales of securities by the Respondents set forth above.

**ENTERED**, this the 4th day of February, 2021.

ALAN WILSON  
SECURITIES COMMISSIONER

By:   
Jonathan B. Williams  
Assistant Deputy Attorney General