**UNITED STATES OF AMERICA**
**Before the**
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**
**Release No. 4615 / January 17, 2017**

**ADMINISTRATIVE PROCEEDING**
**File No. 3-17778**

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| **In the Matter of**<br><br>**COMMONWEALTH VENTURE MANAGEMENT CORP.,**<br><br>**Respondent.** | **ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER** |

## I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Commonwealth Venture Management Corp. ("Commonwealth Venture" or "Respondent").

## II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

## III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

## A. SUMMARY

1. These proceedings involve violations of the Commission's "pay-to-play" rule for investment advisers by Respondent Commonwealth Venture, an investment adviser to venture capital funds which invest in early-stage technology companies. Rule 206(4)-5, promulgated under Section 206(4) of the Advisers Act, is a prophylactic rule designed to address pay-to-play abuses involving campaign contributions made by certain investment advisers or their covered associates to government officials who are in a position to influence the selection of investment advisers to manage government client assets, including public pension fund assets. Among other things, Rule 206(4)-5 prohibits certain investment advisers from providing investment advisory services for compensation to a government client (or to an investment vehicle in which a government entity invests) for two years after the adviser or certain of its executives or employees (known as covered associates) makes a campaign contribution to certain elected officials or candidates who can influence the selection of investment advisers. In addition, Rule 206(4)-5 prohibits certain investment advisers and covered associates from soliciting campaign contributions for certain elected officials or candidates under certain circumstances.

2. Between October 2013 and June 2014, two covered associates of Respondent made campaign contributions to a candidate for elected office in Massachusetts, which office had influence over selecting investment advisers for a public pension fund in Massachusetts. Within two years of these contributions, Respondent provided advisory services for compensation to the public pension fund. In addition, in June 2014, one of the covered associates solicited campaign contributions for the candidate at a time when Respondent was engaged in investment advisory business with the pension fund. By providing those advisory services for compensation and soliciting campaign contributions through the covered associate, Respondent violated Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder.

## B. RESPONDENT

3. Commonwealth Venture Management Corp. is a corporation located in Woburn, Massachusetts. Commonwealth Venture is not registered with the Commission as an investment adviser. Commonwealth Venture reports to the Commission as an "exempt reporting adviser" under Section 204(a) of the Advisers Act and Rule 204-4 thereunder. In its exempt reporting adviser report on Form ADV dated March 11, 2016, Commonwealth Venture reported private fund assets of approximately $378 million.

## C. BACKGROUND

4. In 1998, the Massachusetts Pension Reserves Investment Management Board ("PRIM"), a public pension plan in Massachusetts, invested $50 million in Commonwealth Capital Ventures II, L.P. (the "Fund"), a venture capital fund advised by Respondent. During all

relevant times, PRIM remained invested in the Fund. The Fund was a closed-end fund and investors were generally prohibited from withdrawing their money for the life of the fund.

5. In December 2013, a covered associate[2] of Respondent (the "First Covered Associate") made a $500 campaign contribution to a candidate for Governor of Massachusetts ("Candidate for Governor"). In June 2014, the First Covered Associate made an additional $500 campaign contribution to the Candidate for Governor. After the contributions were made, the First Covered Associate sought and obtained full refunds of the contributions. On October 15, 2013, another covered associate (the "Second Covered Associate") made a $500 campaign contribution to the Candidate for Governor.[3] In June 2014, the Second Covered Associate solicited campaign contributions by co-hosting a fundraising event at which attendees contributed a certain amount of money to the Candidate for Governor's campaign.

6. The office of Governor of Massachusetts had the ability to influence the selection of investment advisers for PRIM. Specifically, the Governor of Massachusetts is on the board of PRIM and appoints two members of the board of PRIM. The PRIM board has influence over investments by PRIM and the selection of investment advisers and pooled investment vehicles for the pension fund.

7. During the two years after the contributions, Respondent continued to provide investment advisory services for compensation to the Fund in the form of carried interest.[4]

8. Advisers Act Rule 206(4)-5(a)(1) prohibits any investment adviser registered with the Commission, investment adviser required to be registered with the Commission, foreign private adviser, or exempt reporting adviser from providing investment advisory services for compensation to a government entity[5] within two years after a contribution to an official[6] of a

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[2] Covered associates are defined to include: (i) any general partner, managing member or executive officer, or other individual with a similar status or function; (ii) any employee who solicits a government entity for the investment adviser and any person who supervises, directly or indirectly, such employee; and (iii) any political action committee controlled by the investment adviser or by any of its covered associates. See Rule 206(4)-5(f)(2).

[3] Rule 206(4)-5 has a *de minimis* exception, which permits covered associates to make aggregate contributions without triggering the two-year time out of up to $350, per election, to an elected official or candidate for whom the covered associate is entitled to vote, and up to $150, per election, to an elected official or candidate for whom the covered associate is not entitled to vote. See Rule 206(4)-5(b)(1).

[4] Carried interest is a share of the profits of an investment paid to the investment manager in excess of any amount that the manager contributes to the partnership.

[5] See Rule 206(4)-5(f)(5).

[6] "Official" includes any person who, at the time of the relevant contribution, was an incumbent, candidate or successful candidate for elective office of a government entity if the office is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a

government entity made by the investment adviser or any covered associate of the investment adviser. Advisers Act Rule 206(4)-5(a)(2)(ii)(A) prohibits investment advisers and their covered associates from coordinating or soliciting campaign contributions to an official of a government entity to which the adviser is providing or seeking to provide investment advisory services. Advisers Act Rule 206(4)-5 also applies to investment advisers, including exempt reporting advisers, to a covered investment pool in which a government entity invests or is solicited to invest as though the adviser were providing or seeking to provide investment advisory services directly to the government entity.[7] Advisers Act Rule 206(4)-5 does not require a showing of *quid pro quo* or actual intent to influence an elected official or candidate.

9. As a public pension plan, PRIM was a government entity as defined in Advisers Act Rule 206(4)-5(f)(5). The contributors were covered associates of Respondent as defined in Advisers Act Rule 206(4)-5(f)(2). The individual who received the contributions was an official as defined in Advisers Act Rule 206(4)-5(f)(6) of government entities because the office that the person was seeking to become associated with had authority to influence the hiring of investment advisers by the government entity and to appoint people who could influence the hiring of investment advisers by the government entity. The Fund was a covered investment pool as defined in Advisers Act Rule 206(4)-5(f)(3) because it would be an investment company under Section 3(a) of the Investment Company Act but for the exclusion from the definition of investment company provided by Section 3(c)(1) of the Investment Company Act.

10. Under Advisers Act Rule 206(4)-5, the contributions triggered a two-year "time-out" on Respondent providing advisory services to PRIM for compensation. During the two years after the contributions, Respondent continued to provide advisory services for compensation to the Fund in the form of distributions of carried interest attributable, in part, to the investment of PRIM in the Fund. In addition, Respondent and Respondent's covered associates were prohibited from coordinating or soliciting campaign contributions for the Candidate for Governor because of the Candidate's association or possible future association with a government entity to which Respondent was providing or seeing to provide advisory services. Despite this, the Second Covered Associate solicited campaign contributions by co-hosting a fundraiser for the Candidate for Governor.

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government entity or has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity. See Rule 206(4)-5(f)(6).

[7] See Rule 206(4)-5(c). A "covered investment pool" is defined as (i) an investment company registered under the Investment Company Act of 1940 ("Investment Company Act") that is an investment option of a plan or program of a government entity; or (ii) any company that would be an investment company under Section 3(a) of the Investment Company Act, but for the exclusion provided from that definition by either Section 3(c)(1), Section 3(c)(7) or Section 3(c)(11) of that Act. See Rule 206(4)-5(f)(3). Rule 206(4)-5 applies to investment advisers even if the government entity was already invested in the covered investment pool at the time of the contribution.

D. VIOLATIONS

11. As a result of the conduct described above, Respondent willfully[8] violated Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder, which makes it unlawful for any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under Section 203(b)(3) of the Advisers Act, or that is an exempt reporting adviser, to provide investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by the investment adviser or any covered associate of the investment adviser.

12. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder, which makes it unlawful for any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under Section 203(b)(3) of the Advisers Act, or that is an exempt reporting adviser, to coordinate, or to solicit any person or political action committee to make, any contribution to an official of a government entity to which the investment adviser is providing or seeking to provide investment advisory services.

**IV.**

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

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

A. Respondent Commonwealth Venture cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-5 promulgated thereunder.

B. Respondent Commonwealth Venture is censured.

C. Respondent Commonwealth Venture shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $75,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

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[8] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)).

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

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Commonwealth Venture Management Corp. as the Respondent in these proceedings, the file number of these proceedings; a copy of which cover letter and check or money order must be sent to LeeAnn Ghazil Gaunt, Chief, Public Finance Abuse Unit, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 24rd Floor, Boston, MA 02110.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary