## SEC Enforcement Case Summary
## Private Fund Adviser Conflicts & Misrepresentations Related to Affiliate Loans & LP Buyouts

On September 9, 2025, the SEC charged Tomislav Vukota and two investment advisers he controls, Vukota Capital Management, LLC (***VCM***) (an unregistered investment adviser) and VCM Global Asset Management Ltd. (***VGAM***) (purportedly an exempt reporting adviser), for breaching their fiduciary duties and making material misrepresentations to private funds that they managed and fund investors. According to the SEC's complaint, over a 6-year period, the defendants engaged in three distinct types of what the SEC characterized in its litigation release as "negligent" misconduct involving material conflicts of interest that resulted in more than $6.9 million in ill-gotten proceeds. The SEC complaint specifically noted that the private funds did not have Boards of Directors or Trustees to evaluate potential conflicts related to such activities, and, because Vukota and VCM were conflicted, they could not give consent on behalf of the private funds. Rather, they were required, but failed, to disclose and obtain consent from the limited partners in the funds.

First, the complaint alleged that from at least 2017 through May 2022, Vukota and VCM caused various real estate private funds they advised to make short-term loans to VCM at below-market rates to, among other things, cover cash shortfalls at other private funds, creating undisclosed conflicts of interest. The SEC noted that over this period, VCM operated an extensive lending program routinely used as a means of short-term financing for many funds and to pay for VCM's operations. As part of such short-term loan program, VCM created a master loan agreement under which some loans were made from one private fund to VCM and then to another private fund, while other loans were made directly from one fund to another. Most of the funding for the loans in the short-term loan program came from the private funds, although VCM also solicited loans from outside investors to provide an additional source of funding. VCM did not disclose the short-term loan program in private fund offering documents. Moreover, a number of the funds' limited partnership agreements (***LPAs***) contained specific provisions prohibiting the fund from loaning money to another person or property or taking on additional debt beyond the loan used to buy the property. Fund LPAs further required that any transactions with affiliated parties "be on terms no less favorable to the [fund] than are generally afforded to unrelated parties in comparable transactions." However, the low interest rates paid by VCM to the private funds (ranging from 0% to 5% annually) were lower than the rates VCM paid for other similar loans it obtained during the same period, which generally ranged from 8% to 12% annually. The loans created a conflict between the private funds, which had an interest in receiving high interest on loans of their funds, and VCM, which had an interest in paying as little as possible to borrow money.

Second, per the complaint, during February and March 2021, Vukota and VCM sent misleading letters to the investors in four private funds in connection with Vukota's attempt to buy the investors' interests. The SEC noted that the properties held by these funds were among the best performing properties in VCM's portfolio. However, according to the complaint, the buyout letters failed to disclose Vukota's conflicts of interest, and Vukota and VCM failed to obtain investors' consent to those conflicts. In particular, the letters omitted material information or made material misstatements related to the following: (1) Vukota was the buyer, noting instead that the general partner was selling LP interests to a new investor group; (2) that VCM had arranged refinancing transactions of the underlying properties, but rather than using proceeds from such refinancing for fund purposes, such as renovations to the properties, proceeds would be distributed, enabling Vukota to use to significant portions of such distributed proceeds to pay for the buyouts; (3) certain financial metrics regarding the properties,

representing that their financial operations were impaired when in fact net operating income and growth were accelerating; and (4) third-party value indicators, assigning valuations to the properties materially below recent broker estimates of value, property appraisals, and for one property a recent unsolicited offer to purchase the property.

Finally, the SEC's complaint alleges that from at least 2017 through 2023, Vukota and VGAM made material misstatements in marketing and offering materials for one fund, representing the fund's objective as investing primarily in public market portfolios when in fact the fund's investments included loans to affiliated entities comprising 37%-63% of the portfolio. Vukota and VGAM allegedly made other misrepresentations concerning the existence of a fund auditor, the amount of assets under management, and the adviser's filing status as an exempt reporting adviser.

Defendants reportedly agreed to settle the SEC's charges, consenting to injunctions and total combined monetary relief in disgorgement, prejudgment interest, and penalties of nearly $10 million. The settlement is subject to court approval. While the material conflicts of interest and abuses identified in this case would appear to clearly violate the adviser's fiduciary duty, the case is noteworthy because it represents the SEC's first enforcement action charging a negligence-based Rule 206(4)-8 violation, which prohibits false or misleading statements to investors in a fund. Former SEC insiders have highlighted the significance of the rule's state of mind requirement and pointed to this case as evidence that when the SEC says that it will focus on fraud, it doesn't just mean "knowing" or "reckless" violations. The case further reiterates an important point for all private fund managers: when transactions or activities involve a conflict of interest between the adviser or its related persons and the funds or their investors, it is not sufficient for the general partner to simply exercise its discretion or authority. Rather the adviser must disclose all material facts and seek consent from limited partners or from a limited partner advisory board or other independent board or committee acting on their behalf.

**See SEC Summary –** https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26393