UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101200 / September 26, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6730 / September 26, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22208

In the Matter of **GQG PARTNERS LLC** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(e) 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 Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act") against GQG Partners LLC ("GQG" 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 Respondent 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 Section 21C of the Securities Exchange Act of 1934 and Section 203(e) 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 that:

Summary

1. This matter relates to GQG's violations of the whistleblower protections afforded under Exchange Act Rule 21F-17(a).

2. From November 2020 through September 2023 (the "Relevant Period"), GQG asked certain potential employees ("Candidates") to sign a non-disclosure agreement ("NDA") that raised impediments to a Candidate's voluntarily reporting potential violations of the federal securities laws to the Commission. A total of 12 Candidates signed an NDA with GQG. The NDA prohibited them from disclosing, including to government agencies specifically, that they had confidential information about GQG. While the NDA permitted them to respond to requests for information from the Commission, it required notification to GQG of any such request and prohibited them from responding to requests arising from a Candidate's voluntary act of disclosure. These provisions of the NDA violated Rule 21F-17(a).

3. GQG also entered into a Release and Settlement Agreement (the "Settlement Agreement") with a former employee ("Former Employee"), whose counsel had told GQG that he or she intended to report what he or she alleged were potential securities law violations to the Commission. While the Settlement Agreement carved out from its confidentiality provisions the reporting of possible securities law violations to government agencies, including the Commission, it also required representations by the Former Employee that he or she (i) had not sought to initiate any investigation by any governmental agency, (ii) was aware of no facts that would form the basis of such an investigation, and (iii) would withdraw any statements already made that would form the basis of an investigation. These provisions of the Settlement Agreement violated Rule 21F-17(a).

Respondent

4. **GQG** is a Delaware limited liability company with its principal office in Fort Lauderdale, Florida, and is registered with the Commission as an investment adviser. In its Form ADV dated March 28, 2024, GQG reported that it had approximately $120.6 billion in regulatory assets under management and 189 employees.

Facts

Statutory and Regulatory Framework Protecting Whistleblowers

5. The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), enacted on July 21, 2010, amended the Exchange Act by adding Section 21F-17, "Whistleblower Incentives and Protection." The purpose of these provisions was to encourage whistleblowers to report possible securities law violations by providing, among other things, financial incentives and confidentiality protections.

6. To fulfill this Congressional purpose, the Commission adopted Rule 21F-17, which provides in relevant part:

> (a) No person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement . . . with respect to such communications.

Rule 21F-17 became effective on August 12, 2011.

7. In April 2015, the Commission brought the first enforcement action for a violation of Rule 21F-17 based on a company's use of a restrictive confidentiality agreement.[1]

8. The Commission has since instituted over twenty additional enforcement actions charging violations of Rule 21F-17. These enforcement actions were widely reported in the media.

GQG's Non-Disclosure Agreements

9. During the Relevant Period, GQG required that the Candidates sign an NDA prior to their formal employment. GQG typically required the Candidates to sign the NDA at the beginning of the process of exploring potential employment or during the onboarding process. The NDAs typically included terms providing for termination three years from the later of (i) the last date that confidential information was received, or (ii) the date on which all service agreements between the Candidate and GQG terminated.

10. The NDA required the Candidate to keep all confidential information confidential and specifically prohibited disclosure "to any person (including any governmental agency, authority or official or any third party) the fact that Confidential Information has been made available" to the Candidate. "Confidential Information" included all documents and information received by the Candidate relating to GQG. Therefore, the Candidate was obligated not to disclose that he or she was in possession of Confidential Information about GQG, nor the substance of such information.

11. In the event that a Candidate received a request for documents, subpoena, deposition, or other similar process of law, the NDA allowed disclosure of the fact that the Candidate possessed Confidential Information, but required the Candidate to promptly notify GQG of any such request, unless prohibited by law; consult with GQG about taking steps to resist or narrow the request; and assist GQG in seeking a protective order. The NDA further stated that, if the Candidate had not received a request or subpoena or similar process of law, then disclosure would only be allowed (i) if it was required under the federal securities laws or stock exchange rules; (ii) did not arise from a volitional action of the Candidate; (iii) the Candidate had provided written notice to GQG, unless prohibited by law; and (iv) the Candidate cooperated with GQG to limit any disclosure.

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[1] *See In the Matter of KBR, Inc.*, Exchange Act Release No. 74619 (April 1, 2015).

12. Several of the NDAs also required the Candidate to provide certifications of his or her compliance with the terms of the NDA, if requested by GQG. The NDAs also provided that the losing party of any action brought relating to the NDAs would have to pay the legal fees and expenses of the prevailing party.

13. If GQG made a Candidate an offer of employment that was accepted, the Candidate subsequently signed a separate confidentiality agreement ("Employee Confidentiality Agreement," or "ECA") that specifically carves out from its confidentiality provisions the reporting of possible securities law violations to the Commission. In addition, in March 2021, GQG added a Whistleblower Policy to its compliance manual. The Whistleblower Policy, which mainly addressed the requirement that employees report issues internally to GQG, also contained a carveout stating that employees "have the right to report directly to GQG's primary regulator, the U.S. Securities and Exchange Commission, pursuant to section 21F of the Securities Exchange Act of 1934, as amended and may do so anonymously without fear of retaliation by GQG." The nondisclosure provisions in the NDA conflicted with the ECA and the Whistleblower Policy, creating confusion that raised an impediment to whistleblowing.

14. However, all of the NDAs executed during the Relevant Period also contained a provision limiting the application of this separate carveout. Certain of the NDAs contained a termination provision that indicated that the obligations thereunder would terminate upon the Candidate's execution of a written agreement containing comparable confidentiality obligations, "provided that appropriate provisions of this [NDA] Agreement shall survive any such termination as reasonably necessary to effectuate the purposes of this Agreement." The remaining NDAs contained a provision stating that the parties agreed that "notwithstanding the confidentiality provisions of any other agreement in effect between the parties, the terms of this [NDA] Agreement shall govern the provision of Confidential Information thereunder, except to the extent that specific confidentiality terms in such other agreement are more stringent than those set forth herein."

15. While the Commission is unaware of any instances in which GQG took action to enforce an NDA or otherwise affirmatively prevent a Candidate from communicating with the Commission, a Candidate could reasonably have interpreted the NDA's confidentiality provisions as more stringent than or not comparable to those of the ECA and concluded that the carve-out in the ECA would not be applicable to the terms of the NDA. The conflicting provisions also introduced confusion that created an impediment to whistleblowing.

16. The NDAs therefore raised impediments to an employee's voluntarily sharing confidential corporate information regarding possible securities law violations with the Commission. Such restrictions undermine the purpose of Section 21F and Rule 21F-17(a), which is to "encourag[e] individuals to report to the Commission," [Adopting Release at p. 201], and violate Rule 21F-17(a) by impeding individuals from communicating directly with the Commission staff about possible securities law violations.

GQG's Settlement Agreement

17. During the Relevant Period, GQG terminated the Former Employee and later the parties entered into mediation regarding the individual's termination and severance from the firm. After the Former Employee was terminated, and during the negotiation of his or her severance, but prior to the mediation, counsel for the Former Employee informed GQG that he or she intended to make a submission to the Commission alleging potential violations of the securities laws by GQG. The Former Employee provided GQG with a document detailing the information he or she planned to submit to the Commission.

18. In response to the allegations raised by the Former Employee, GQG, with the assistance of outside experts, investigated the Former Employee's principal claims and determined those claims to be without merit.

19. At the mediation, GQG described to the Former Employee and his or her counsel the basis for its findings that the Former Employee's claims were unfounded.

20. At the conclusion of mediation, the parties entered into a Settlement Agreement. The Settlement Agreement contains the following carve-out for communications with or reporting possible securities law violations to the Commission and for participation in the Commission's Whistleblower program and receipt of a Whistleblower award:

> "For the avoidance of doubt, nothing in this Agreement restricts or prohibits [Former Employee] or GQG from initiating communications directly with, responding to any inquiries from, providing testimony before, providing confidential information to, reporting possible violations of law or regulation to, or from filing a claim or assisting with an investigation directly with a self-regulatory authority or government agency or entity, including the U.S. Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, the Department of Justice, the Securities and Exchange Commission, the Congress, any agency Inspector General, and/or any other similar federal or state administrative agencies (collectively, the "Regulators"), or from making other disclosures that are protected under the whistleblower provisions of state or federal law or regulation. [Former Employee] does not need the prior authorization of GQG to engage in conduct protected by this Section, and [Former Employee] does not need to notify GQG that [Former Employee] has engaged in such conduct."
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> "This Agreement does not limit [Former Employee's] right to receive an award from any Regulator that provides awards for providing information relating to a potential violation of law. [Former Employee] does not need the prior authorization of GQG to engage in conduct protected by this Section, and [Former Employee] does not need to notify GQG that [Former Employee] has engaged in such conduct."

21. However, the Settlement Agreement also contains the following representations:

> "[Former Employee] represents and warrants that [Former Employee] has not initiated or sought to initiate any charge, claim, investigation or enforcement action by any governmental entity relating to GQG, or [Former Employee]'s employment with GQG and that [Former Employee] is aware of no acts or omissions by [Former Employee] or any other employee . . . that would provide the basis for initiating such charge, claim, investigation or enforcement action. [Former Employee] withdraws any statements [] made to the extent inconsistent with the foregoing."

This provision does not appear in other separation and release agreements used by GQG during the Relevant Period, only that of the Former Employee, who had raised allegations of potential securities law violations.

22. While the Commission is unaware of any efforts by GQG to enforce the representations described herein, and notwithstanding the veracity or falsity of the Former Employee's claims and the carve-out language, the above representations raised an impediment to the Former Employee's voluntarily reporting to the Commission staff in violation of Rule 21F-17(a), which is intended to "encourag[e] individuals to report to the Commission." *Securities Whistleblower Incentives and Protections Adopting Release*, Release No. 34-63434 (June 13, 2011).

Violations

23. As a result of the conduct described above, GQG willfully[2] violated Exchange Act Rule 21F-17(a), which prohibits any person from taking any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation.

Respondent's Cooperation and Remedial Actions

24. In determining to accept the Offer, the Commission considered Respondent's cooperation and remedial acts promptly undertaken.

25. From the outset of the Commission staff's investigation, GQG voluntarily provided the staff with the analysis and conclusions of its outside expert, along with the underlying data and compilations of key documents, including in relation to the claims the Former Employee made regarding alleged violations of the federal securities laws. GQG's cooperation and voluntary

[2] "Willfully," for purposes of imposing relief under Section 203(e) of the Advisers Act, "'means no more than 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." *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).

provision of these documents and data allowed the staff to conduct its investigation more efficiently.

26. GQG stopped using the violative NDA template in September 2023. In March 2024, GQG revised the template to include a carve-out regarding potential Candidates' rights to provide information and/or documents to, and/or communicate with, Commission staff, without notice to or approval from GQG.

27. In August 2024, GQG sent notices of immediate termination of the NDAs to the Candidates and also notified them that the NDAs do not prohibit them from providing information and/or documents to, and/or communicating with, Commission staff, without notice to or approval from GQG.

28. In August 2024, GQG also sent a letter to the Former Employee, notifying him or her that the Settlement Agreement does not prohibit providing information and/or documents to, and/or communicating with, Commission staff, without notice to or approval from GQG.

IV.

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

Accordingly, pursuant to Sections 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

A. GQG cease and desist from committing or causing any violations and any future violations of Exchange Act Rule 21F-17(a).

B. GQG is censured.

C. GQG shall, within twenty-one (21) days of the entry of this Order, pay a civil money penalty in the amount of $500,000 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:

(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

(2) 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 GQG 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 Virginia Rosado Desilets, Assistant Director, Securities and Exchange Commission, Division of Enforcement, 100 F Street, N.E., Washington, DC 20549-5010A.

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, GQG 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 GQG's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, GQG 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 GQG 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.

Vanessa A. Countryman
Secretary