UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97034 / March 3, 2023

INVESTMENT ADVISERS ACT OF 1940
Release No. 6254 / March 3, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21325

In the Matter of **DANIEL J. MACKLE, SR.** **AND** **SILVER EDGE FINANCIAL LLC,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(f) 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 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Silver Edge Financial LLC ("Silver Edge") and additionally pursuant to Section 203(f) of the Investment Advisers Act of 1940 (the "Advisers Act") against Daniel J. Mackle, Sr. ("Mackle").

II.

In anticipation of the institution of these proceedings, Silver Edge and Mackle (collectively, "Respondents") have submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the

Securities Exchange Act of 1934 and Section 203(f) 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 Respondents' Offer, the Commission finds[1] that:

Summary

1. This proceeding arises out of Respondents' sale of membership interests in two pooled investment vehicles – the Silver Edge Pre-IPO Fund LLC and the Silver Edge Venture Fund LLC (the "Silver Edge Funds") – that were formed to invest in pre-IPO securities. Since January 2019, Silver Edge and its CEO, Daniel Mackle, procured interests in a portfolio of pre-IPO shares which they offered to investors as membership interests in the Silver Edge Funds. Silver Edge is the Manager of the Silver Edge Funds and Mackle was the sole member of Silver Edge.

2. During the relevant period, Silver Edge and Mackle sold over $65 million worth of interests in the Silver Edge Funds to investors with the assistance of a sales force of unregistered brokers. Respondents marketed and sold series interests in the Silver Edge Funds nationwide and were paid management fees as a percentage of the amounts sold. In so doing, Respondents operated as unregistered brokers in violation of Section 15(a) of the Exchange Act.

Respondents

3. **Daniel J. Mackle, Sr.** (CRD No. 2239531), age 53, is a resident of Pomona, New York. Mackle is the CEO and Managing Member of Silver Edge. Mackle was previously associated with several broker-dealers registered with the Commission from August 1991 through March 2019 and June 2019 through July 2020. Mackle was associated with two investment advisers from November 2012 through January 2018, December 2019 through November 2022, and January through May 2022.

4. **Silver Edge Financial LLC** was formed in Delaware on December 26, 2018 and its primary place of business is in Hackensack, New Jersey. Silver Edge is the Manager of the Silver Edge Funds. Silver Edge has never been registered with the Commission.

Other Relevant Entities

5. **Silver Edge Pre-IPO Fund LLC** was formed in Delaware on January 14, 2019, is a pooled investment vehicle managed by Mackle and operated by Silver Edge. The fund's assets include rights to pre-IPO shares which are offered to investors as series interests in the Fund.

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

6. **Silver Edge Venture Fund LLC** was formed in Delaware on January 15, 2020, is a pooled investment vehicle managed by Mackle and operated by Silver Edge. The fund's assets include rights to pre-IPO shares which are offered to investors as series interests in the Fund.

Background

7. Beginning in January 2019, Silver Edge ran two "pre-IPO" funds that provide accredited investors access to the shares of private companies, which the Manager, Mackle, antipated would have an initial public offering ("IPO") or other liquidity event within 2-5 years. The Silver Edge Funds were both set up as series LLCs, where each series held the rights to shares of a particular private company. The membership interests in the Silver Edge Funds are securities.

8. Mackle founded Silver Edge and supervised all aspects of Silver Edge's operations, including establishing the Silver Edge Funds; acquiring pre-IPO shares, hiring a team of sales representatives, providing them with information about the pre-IPO shares held by the Funds and the names of accredited investors for them to contact; and overseeing distribution of the shares to investors when a liquidity event occurred.

9. Silver Edge sold the majority of interests in the Silver Edge Funds' series through a team of unregistered sales representatives who were compensated as independent contractors. From January 2019 through the present, Silver Edge's sales team solicited investors to purchase pre-IPO shares through series interests in the Silver Edge Funds. Silver Edge raised over $65 million from accredited investors during this time, through offerings of more than 30 different series interests. Silver Edge's sales staff was paid directly by Silver Edge, and received discretionary bonuses based on their success in selling the shares.

10. Respondents used interstate commerce or the mails to effect transactions in the Silver Edge Funds' securities or to induce or attempt to induce others to purchase or sell the Silver Edge Funds' securities. Respondents provided their sales team with lists of accredited investors, which the sales representatives used to cold-call investors nationwide. Respondents provided potential investors with information regarding the companies whose pre-IPO shares Silver Edge was offering, and took steps to secure investments in the Silver Edge Funds by providing investment documentation to potential investors. When necessary, Mackle followed up with investors to answer questions about the investments or to close the investment deals. Silver Edge received a 4% management fee, in addition to a 3% administrative fee and 10% placement agent fee based on the amount of Silver Edge Funds' securities sold that was used to compensate its sales team. Mackle took the 4% management fee as his compensation for managing Silver Edge.

11. However, throughout the relevant time period, neither Mackle nor Silver Edge was registered with the Commission as a broker or dealer. Mackle, although registered with other broker-dealers for part of the relevant time period, was not acting on behalf of these

brokerage firms when offering and selling shares on behalf of Silver Edge and did so outside the scope of their supervision.

Violations

12. As a result of the conduct described above, Respondents willfully[2] violated Section 15(a) of the Exchange Act, which prohibits any broker or dealer from making use of the mails or any means or instrumentality of interstate commerce, to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security unless the broker or dealer is registered in accordance with Section 15(b) of the Exchange Act or is a natural person who is associated with a registered broker or dealer.

Disgorgement and Civil Penalties

13. The disgorgement and prejudgment interest ordered in paragraph IV.D. is consistent with equitable principles, does not exceed Respondents' net profits from its violations, and returning the money to Respondents would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative. The disgorgement and prejudgment interest ordered in paragraph IV.D. shall be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

[2] "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 9(b) of the Investment Company Act, "'means no more than that the person charged with the duty knows what he is doing.'" *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).

Undertakings

14. *Independent Distribution Consultant Requirement*. Respondents shall retain, within 60 days of the date of entry of the Order, the services of an Independent Distribution Consultant ("IDC") not unacceptable to the staff of the Commission.

a. Respondents shall compensate the IDC, and persons engaged to assist the IDC, for services rendered pursuant to the Order at their reasonable and customary rates. The IDC's compensation and expenses shall be wholly borne by Respondents or from carried interest in connection with a liquidity event, as per paragraph 16(b), below. Respondents shall establish an escrow account at a U.S. bank, or pay into a U.S. attorney trust account agreed to by the Commission, $25,000 to be held as a retainer for the IDC, which shall be used to pay any outstanding invoices of the IDC. Respondents remain responsible for all remaining compensation and expenses of the IDC following exhaustion of the $25,000 retainer.

b. Respondents shall cooperate fully with the IDC and shall provide the IDC with access to their files, books, records, and personnel as reasonably requested for the review. In the event of Respondents' material noncompliance with the IDC, the IDC shall provide written notification to the staff of the Commission within 15 days of such noncompliance.

c. Respondents shall require that the IDC develop a written plan for the distribution of the members' interests in the Silver Edge Funds (the "Distribution Plan"), including the ultimate liquidation of members' interests in the underlying Pre-IPO Shares, whether through distributions after liquidity events or sales of the Pre-IPO Shares and cash distributions to investors, in accordance with a methodology not unacceptable to the staff of the Commission.

i. The Distribution Plan shall provide for the transfer of all assets of the Silver Edge Funds to the IDC or its designee within six months of Respondents' engagement of the IDC, including without limitation the transfer of all membership interests, including those held by the Silver Edge Funds' investors, rights to underlying Pre-IPO Shares, and general assets of the Silver Edge Funds to the possession, custody or control of the IDC for distribution, provided however that no pre-existing liabilities incurred by Silver Edge, Mackle, or the Silver Edge Funds shall be transferred to the IDC, and Mackle and Silver Edge shall remain responsible for all pre-existing liabilities of the Silver Edge Funds.

ii. The Distribution Plan shall provide for investors to receive, from the monies and assets available for distribution, their proportionate share of any gains and losses, as well as the investors' interests in the portfolio of Pre-IPO Shares, whether through distributions after liquidity events or sales of the Pre-IPO Shares and distributions to investors, in accordance with the methodology set

forth in the Funds' respective Private Placement Memoranda and Operating Agreement.

iii. The Distribution Plan shall provide for completion of the distribution of all assets and conclusion of the Distribution Plan within ten years of approval of the Distribution Plan by the Commission staff. The Distribution Plan shall provide for the orderly sale and distribution of any remaining interest in Pre-IPO Shares if the Funds' interests in those shares have not experienced a liquidity event at the end of ten years from the staff's approval of the Distribution Plan.

d. Respondents shall require that the IDC, for the period of the engagement and for a period of two years from completion of the engagement, shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Respondents shall require that any firm with which the IDC is affiliated in performance of his or her duties under the Order shall not, without prior written consent of the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

e. Respondents shall not, for the period of engagement and for a period of two years from completion of the engagement, (i) retain the IDC for any other professional services outside of the services described in this Order; (ii) enter into any other professional relationship with the IDC, including any employment, consultant, attorney-client, auditing or other professional relationship; or (iii) enter, without prior written consent of the Commission staff, into any such professional relationship with any of the IDC's present or former affiliates, employers, directors, officers, employees, or agents acting in their capacity as such.

f. Respondents (i) shall not have the authority to terminate the IDC, without the prior written approval of the staff of the Commission; and (ii) shall not be in and shall not have an attorney-client relationship with the IDC and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the IDC from transmitting any information, reports, or documents to the Commission.

15. *Proof of IDC Engagement*. Respondents shall provide to the Commission staff, prior to the retention of the IDC, two proposed candidates to serve as IDC and a draft of an engagement letter detailing the IDC's responsibilities, which shall include the responsibilities and tasks set forth herein. Once the Commission staff has identified one or more candidates not unacceptable to the Staff, Silver Edge shall retain one of the IDCs and, within 15 days of retaining the IDC, provide to the Commission staff an executed copy of the engagement letter demonstrating the IDC's engagement by Silver Edge. Once appointed, the IDC shall establish a trust and/or escrow arrangement not unacceptable to the Commission staff in which to hold the

assets of the Silver Edge Funds, including the members' interests in the portfolio of Pre-IPO Shares.

16. *Distribution Plan*. Respondents shall require that the IDC submit a proposed Distribution Plan to Respondents and the staff of the Commission no more than 90 days after the date of entry of the Order. The Distribution Plan may be in any form not unacceptable to the IDC and Commission staff, including a Delaware Statutory Trust Agreement to the extent practicable.

a. The proposed Distribution Plan will include provisions for the ultimate liquidation of the portfolio of pre-IPO shares, whether through distributions after liquidity events or sales of the pre-IPO shares and distributions of the proceeds to investors.

b. The Distribution Plan shall provide that in no event will any portion of the funds or assets revert to or otherwise be distributed to or for the benefit of any Respondent, including any carried interest earned in connection with any liquidity event. In the event that carried interest is earned in connection with any liquidity event, such carried interest shall be distributed to the IDC and may be used to pay any outstanding amounts due and owed to the IDC at the time such carried interest is distributed, or coming due after the time when such carried interest is distributed. To the extent such carried interest is used to pay the IDC for amounts due or owed, it shall serve to offset any amounts owed by the Respondents for the IDC's services. In the event there are additional amounts of carried interest in excess of the reasonable fees or expenses due and owed to the IDC in connection with its services, such amounts shall be distributed to the United States Treasury as additional disgorgement at the conclusion of the IDC services.

17. *Approval of Plan.* The Distribution Plan developed by the IDC shall be binding unless, within 90 days after receipt of the proposed Distribution Plan, the staff of the Commission advises the IDC, in writing, of any determination or calculation from the Distribution Plan that it considers to be inappropriate and states in writing the reasons for considering such determination or calculation inappropriate.

18. *Objection Procedure.* With respect to any determination or calculation with which the staff of the Commission does not agree, the staff will work in good faith with the IDC to reach an agreement within 60 days of the date of the written objection. In the event that the staff of the Commission and the IDC are unable to agree on an alternative determination or calculation, the determinations and calculations of the Commission staff shall be binding.

19. *Execution of Plan*. Respondents shall require that the IDC take all necessary and appropriate steps to administer the final Distribution Plan for distribution of the portfolio of pre-IPO shares, whether through distributions after liquidity events or sales of the pre-IPO shares and distributions to investors, in accordance with the final Distribution Plan. To the extent required by the Distribution Plan, Respondents shall cooperate with the IDC by, among other things, transferring, executing and entering into any agreements transferring membership interests or

rights in the underlying pre-IPO shares, as well as any other steps reasonably required by the IDC for fulfillment of the Distribution Plan.

20. *Final Accounting.* Within 150 days after the IDC completes the distribution of amounts payable to the affected investors under the Distribution Plan, the IDC shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection III. The IDC shall then submit to the Commission staff a final accounting and certification of the disposition of the Funds' assets, including membership interests and rights to the underlying rights to pre-IPO shares. The final accounting shall be in a format to be provided by the Commission staff. The final accounting and certification shall include: (1) the number and value of any shares distributed following any liquidity events; (2) the amount paid to each affected investor, with reasonable interest and post-order interest if applicable; (3) the date of each distribution of shares of payment; (4) the check number or other identifier of money transferred to each affected investor; (5) the amount of any returned payment and the date received; (6) a description of any effort to locate an affected investor whose payment was returned or to whom payment was not made for any reason; (7) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (8) an affirmation that the IDC has made all distributions and payments to affected investors in accordance with the Distribution Plan approved by the Commission staff. The IDC shall submit the final accounting and certification, together with proof and supporting documentation of such payment in a form acceptable to Commission staff, under a cover letter that identifies Silver Edge Financial, LLC as the Respondent in these proceedings and the file number of these proceedings to Assistant Director David Becker, 100 F Street NE, Washington, DC 20549, or such other address as the Commission staff may provide. The IDC shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon request, and the IDC shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

21. *Procedural Deadlines.* The Commission staff may extend any of the procedural dates set forth in Paragraphs 14 through 20 of this Subsection III for good cause shown and solely at the discretion of the Commission staff. Deadlines for all dates shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

22. *Certification*. No later than twenty-four months after the date of entry of the Order, each Respondent shall make an interim certification to the Commission in writing that the Respondents have fully adopted and complied in all material respects with the undertakings set forth in this section that were required by that time period and with the recommendations of the IDC or, in the event of material non-adoption or non-compliance, shall describe such material non-adoption and non-compliance. At the completion of the IDC's services, each Respondent shall make a final certification to the Commission in writing that Respondents have fully adopted and complied with the undertakings set forth in this section and with the recommendations of the IDC or, in the event of material non-compliance, shall describe such non-compliance to the Commission in writing.

23. *Recordkeeping*. Respondents shall preserve for a period not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record of Respondents' compliance with the undertakings set forth in this Subection III.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and, as to Mackle only, Section 203(f) of the Advisers Act, it is hereby ORDERED that:

A. Respondents cease and desist from committing or causing any violations and any future violations Section 15(a) of the Exchange Act.

B. Respondents be, and hereby are:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission; and
>
> barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by the Respondents will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, compliance with the Commission's order and payment of any or all of the following: (a) any disgorgement or civil penalties ordered by a Court against the Respondents in any action brought by the Commission; (b) any disgorgement amounts ordered against the Respondents for which the Commission waived payment; (c) any arbitration award related to the conduct that served as the basis for the Commission order; (d) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (e) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondents shall pay disgorgement of $2,251,139.92, prejudgment interest of $268,928.33 and civil penalties of $975,000, jointly and severally, to the Securities and

Exchange Commission or transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, interest shall accrue pursuant to 31 U.S.C. § 3717 and Commission Rule of Practice 600.

Payment must be made in one of the following ways:

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

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

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

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

Payments by check or money order must be accompanied by a cover letter identifying the Respondent and 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 David Becker, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-0213.

E. 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, Respondents shall not argue that they are entitled to, nor shall they 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, Respondents agree that they 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 Respondents 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.

F. Respondents shall comply with the undertakings enumerated in Paragraph 14-23, above.

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

By the Commission.

Vanessa A. Countryman
Secretary