

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11284 / May 7, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21930

In the Matter of

**Eastone Equities, LLC,
and Kevin Yu,**

Respondents.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), against Eastone Equities, LLC (“Eastone”) and Kevin Yu (“Yu”) (collectively, the “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 Respondents 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 Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offers, the Commission finds that:

Summary

1. This matter arises from an unregistered securities offering by Eastone, an unregistered entity that Yu owns and controls. Respondents raised approximately \$1.4 million

from investors, purportedly to fund the operations of an Eastone affiliate, without disclosing that the vast majority of the investment proceeds would be used to repay debts owed to Eastone and its affiliated entities. In addition to failing to disclose this conflict, in violation of Sections 17(a)(2) and (3) of the Securities Act, Respondents also conducted the offering through a general solicitation, without verifying investors' accredited investor status, in violation of Securities Act Sections 5(a) and (c).

Respondents

2. Eastone is a New York limited liability company, headquartered in New York City. Eastone is a commercial real estate company that, together with its affiliated entities, is in the business of funding and developing real estate projects.

3. Yu is the sole owner of Eastone Equities LLC.

Facts

4. As part of its real estate business, Eastone routinely obtains financing from individuals, generally through loans or notes.

5. In or about September 2017, an Eastone affiliate was operating as the developer of a project to construct a hotel in Long Island City, New York ("the LIC Hotel Project"). Another affiliate, St. John's Real Estate Consultants, Inc. ("SJREC"), was responsible for construction and ultimate operation of the hotel.

6. In order to raise money from investors to help fund the LIC Hotel Project, Eastone formed another affiliated entity, Fundways 38 65 11th Street, LLC ("Fundways"). Fundways was formed for the purpose of conducting a note offering and then lending the proceeds of that offering to SJREC for use in construction of the hotel.

7. However, Eastone did not go forward with the note offering in 2017. Instead, beginning in May 2018, Eastone and various Eastone affiliates owned and controlled by Yu lent SJREC a total of \$1,250,000 through payments to vendors that provided services to SJREC in connection with the development of the hotel. Prior to ultimate completion and success of the LIC Hotel Project, the only means SJREC would have to repay those loans from Eastone affiliates would be through additional financing or unrelated business activities of SJREC.

8. In January 2019, Eastone began offering the Fundways notes to investors. At this time, Eastone and Eastone's affiliates were still owed \$1,250,000. SJREC planned to use proceeds from the note offering to repay the debts that SJREC owed to its affiliated entities. Investors were not told that SJREC had borrowed monies from Eastone and Eastone's affiliates or that proceeds from the note offering would be paid directly to Eastone and Eastone affiliates in satisfaction of these loans.

9. On January 25, 2019, Fundways filed with the Commission a Form D, signed by Yu, providing notice of an offering of promissory notes (the “Notes”) being made under Rule 506(c) of Regulation D. According to the private placement memorandum (“PPM”) provided to prospective investors in the Notes, the anticipated proceeds from the Note offering “...will be loaned to the Project Company [SJREC] to develop the LIC Hotel Project at 38-65 11th Street in Long Island City, New York.” Yu reviewed the PPM and served as Project Manager for the LIC Hotel Project.

10. The PPM included a construction budget reflecting \$24 million in “hard” and “soft” costs needed to complete construction of the LIC Hotel Project, explaining that funding for the costs would come from a separate construction loan together with proceeds from the loan being funded by the Notes.

11. Respondents raised approximately \$1,431,000 from 27 investors. As money came in from investors, it was primarily used to repay the loans previously made by Eastone and Eastone’s affiliates. Ultimately, approximately \$1,225,472 – a full 85% of the offering proceeds – were used to repay the loans received by SJREC from Eastone and Eastone’s affiliates. None of the Note proceeds were transferred to SJREC, they were instead directed by Respondents to Eastone, its affiliates, and other parties.

12. While the PPM did disclose potential conflicts of interest arising from Fundways, SJREC, and their affiliates having “total control over the operation of the Project and the potential repayment of the Loan,” the conflict disclosure omitted the materially relevant fact that Respondents planned to use a significant portion of the Note proceeds to enable SJREC to repay monies owed to affiliated entities, and not to further “develop the LIC Hotel Project.”

13. Similarly, while the PPM also stated that SJREC “may obtain Bridge Financing through equity or debt funding from a third party in order to commence the active development of the [LIC Hotel Project] and repay any Bridge Financing in full with the proceeds of the Loan from [Fundways],” investors were not told that financing had already been provided by affiliates (not “third parties”), and their money would be used to repay those affiliates.

14. While Yu relied on others to handle aspects of the offering process, including outside legal counsel, he failed to take reasonable steps to ensure the accuracy of the representations in the PPM (described in paragraphs 12 and 13 above) concerning the use of proceeds from the Notes offering.

15. The Form D filed with the Commission indicated that the offering was conducted in reliance on Rule 506(c) of Regulation D, but there was general solicitation by, among other things, posting the offering on a website and hosting two conferences for prospective investors. Only accredited investors were eligible to invest in the Notes, but reasonable steps to verify accredited investor status were not taken. The Accredited Investor Questionnaire in the subscription agreement did not require investors to provide the specific information needed to determine whether they were accredited. Instead, it merely required the investor to check a series of boxes to represent that

the investor had sufficient assets and/or income. The appropriate documentation verifying the accredited status of the investors was not obtained.

16. Eastone did not have any written policies or procedures in effect to determine whether money raised from individual lenders had been obtained through the issuance of securities, and, if so, whether it had taken steps sufficient to comply with any exemption from Securities Act registration requirements. Eastone also did not have written policies or procedures governing the accuracy and completeness of disclosures in offering materials, documentation of agreements, or use of investor proceeds.

17. Prior to the initiation of this proceeding, the Respondents returned the Note investor funds and paid each Note investor the promised rate of return.

Violations

18. As a result of the conduct described above, Respondent Eastone violated Securities Act Sections 17(a)(2) and 17(a)(3), which prohibit any person, in the offer or sale of securities, from obtaining money or property by means of any untrue statement of material fact or by any omission of a material fact necessary in order to make statements made not misleading, and from engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. Negligence is sufficient to establish violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act. *Aaron v. SEC*, 446 U.S. 680, 696-97 (1980).

19. As a result of the conduct described above, Respondent Yu caused violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act by Respondent Eastone.

20. As a result of the conduct described above, Respondents violated Sections 5(a) and 5(c) of the Securities Act, which prohibit the unregistered offer or sale, directly or indirectly, of securities in interstate commerce, unless an exemption from registration applies.

Undertakings

Respondent Eastone has undertaken to the following:

21. Engage, at Eastone's own expense, an Independent Compliance Consultant (the "Consultant"), not unacceptable to the Commission's staff, within forty-five (45) days of the issuance of this Order, and for a period of two years from the date of the Consultant's engagement. Eastone shall supply a copy of this Order to the Consultant. No later than twenty (20) days following the date of the Consultant's engagement, Eastone shall provide the Enforcement Division ("Division") staff with a copy of the engagement letter detailing the Consultant's responsibilities, which shall include the reviews and reports to be made by the Consultant as set forth in this Order.

- a. Through the engagement, Eastone shall require the Consultant to:
 - i. Within 30 days after engagement, evaluate Eastone's policies and procedures and recommend any new or revised policies or procedures aimed at ensuring compliance with securities laws in the offering of securities, including policies or procedures addressing such matters as evaluation of whether securities are being issued; compliance with federal securities law registration exemptions; material accuracy and completeness of disclosures in offering materials; documentation of all agreements; and use of investor proceeds consistent with offering documents, including the specific purpose for which monies were invested.
 - ii. Within 45 days after engagement, provide the Division with a copy of the recommended new or revised policies or procedures.
 - iii. For every 90 days throughout the two-year engagement period, the Consultant shall review whether the policies and procedures governing securities offerings are being complied with and whether any securities have been offered in violation of the policies and procedures. Within 15 days after each 90-day period, the Consultant shall inform Eastone and the Division of any non-compliance with policies and procedures, and any potential noncompliance with federal securities laws. Eastone shall promptly address any such incidences of noncompliance.
 - iv. Submit an annual report to Eastone and the Division that describes the work done by the Consultant, including, but not limited to, the steps taken by Eastone to ensure that any offerings of securities are in compliance with the federal securities laws.
- b. Eastone shall cooperate fully with the Consultant and shall provide the Consultant with access to such of Eastone's files, books, records, and personnel, except as protected by privilege and/or as attorney work product, as are reasonably requested by the Consultant for review. Within 60 days after engagement, Eastone shall implement any recommendations made by the Consultant.
- c. Eastone shall not have the authority to terminate the Consultant or substitute another Independent Compliance Consultant for the initial Consultant, without the prior written approval of the Commission staff. Eastone shall compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to this Order at their reasonable and customary rates.
- d. The reports by the Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the

Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.

Respondents Eastone and Yu have undertaken to:

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

23. Certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Eastone and Yu agree to provide such evidence. The certification and supporting material shall be submitted to Associate Director Thomas P. Smith, Jr., (100 Pearl Street, Suite 20-100, New York, N.Y. 10004), with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

24. Upon request of Respondents, Respondents agree that the Commission staff may extend any of the dates set forth above at its discretion.

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, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondents cease and desist from committing or causing any violations and any future violations of Securities Act Sections 5(a), 5(c), 17(a)(2), and 17(a)(3).

B. Respondent Eastone shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$125,000 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.

C. Respondent Yu shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$125,000 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
- (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 Respondents' Eastone Equities LLC and Yu as Respondents 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 Thomas P. Smith, Jr., Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, New York, 10004.

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, Respondents agree that in any Related Investor Action, Respondents shall not argue that Respondents are entitled to, nor shall Respondents benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agrees that Respondents 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.

E. Respondent Eastone shall comply with the undertakings in paragraphs 21-23.

F. Respondent Yu shall comply with the undertaking in paragraph 22-23

V.

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

Respondent Yu, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Yu 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 Respondent Yu 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