

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6652 / August 14 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21999

In the Matter of

**P. SCHOENFELD ASSET
MANAGEMENT LP,**

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 P. Schoenfeld Asset Management LP (“PSAM” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Respondent admits the facts set forth in Section III below, acknowledges that its conduct violated the federal securities laws, admits the Commission’s jurisdiction over it and the subject matter of these proceedings, and 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 finds¹ that

Summary

1. The federal securities laws impose recordkeeping requirements on registered investment advisers to ensure that they responsibly discharge their crucial role in our markets. The Commission has long said that compliance with these requirements is essential to investor protection and the Commission's efforts to further its mandate of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

2. These proceedings arise out of the widespread and longstanding failure of PSAM personnel throughout the firm, including at senior levels, to adhere to certain of these essential requirements and the firm's own policies. Using their personal devices, these personnel communicated both internally and externally by text messages and/or other unapproved written communications platforms ("off-channel communications").

3. From at least October 18, 2018 to December 31, 2021 (the "Relevant Period"), PSAM personnel sent and received off-channel communications that were records required to be maintained under Advisers Act Rule 204-2(a)(7). Respondent did not maintain or preserve the substantial majority of these written communications. Respondent's failures were firm-wide and involved personnel at various levels of authority throughout the organization. As a result PSAM violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

4. PSAM's widespread failure to implement a system of monitoring reasonably expected to determine whether personnel were following its policies and procedures that prohibit off-channel communications led to its failure to reasonably supervise its personnel within the meaning of Section 203(e)(6) of the Advisers Act.

5. During the Relevant Period, PSAM received and responded to Commission requests for documents in an examination and an investigation. As a result, PSAM's recordkeeping failures likely impacted the Commission's ability to carry out its regulatory functions and investigate violations of the federal securities laws.

6. Commission staff found PSAM's misconduct after an examination revealed the use of off-channel and unpreserved communications. PSAM initiated a review of its recordkeeping failures and implemented a program of remediation.

Respondent

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.

7. **P. Schoenfeld Asset Management LP** is a Delaware limited partnership with its principal place of business in New York, New York. Since March 2009, it has been registered with the Commission as an investment adviser.

Recordkeeping Requirements under the Advisers Act

8. Section 204 of the Advisers Act authorizes the Commission to issue rules requiring investment advisers to make and keep for prescribed periods, and furnish copies of, such records as necessary or appropriate in the public interest, for the protection of investors.

9. The Commission adopted Rule 204-2 pursuant to this authority. This rule specifies the manner and length of time that the records created in accordance with Commission rules, and certain other records produced by investment advisers, must be maintained and produced promptly to Commission representatives.

10. The rules adopted under Advisers Act Section 204, including Advisers Act Rule 204-2(a)(7), require that investment advisers preserve in an easily accessible place originals of all communications received and copies of all written communications sent relating to, among other things: (a) any recommendation made or proposed to be made and any advice given or proposed to be given; (b) any receipt, disbursement, or delivery of funds or securities; (c) the placing or execution of any order to purchase or sell any security; or (d) predecessor performance and the performance or rate of return of any or all managed accounts, portfolios, or securities recommendations.

PSAM's Policies and Procedures

11. PSAM maintained certain policies and procedures designed to ensure the retention of business-related records, including electronic communications, in compliance with the relevant recordkeeping provisions.

12. PSAM's personnel were advised that the use of unapproved electronic communications methods, including on their personal devices, was not permitted, and they should not use personal email or unapproved chat or text messaging applications for business purposes. PSAM's compliance manual provided that employees were "prohibited from conducting PSAM business using any other electronic communication services . . . or accounts not provided by PSAM".

13. Messages sent through PSAM's approved communications methods were monitored, subject to review, and, when appropriate, archived. Messages sent through unapproved communications methods, such as unapproved applications on personal devices, were not monitored, subject to review, or archived.

14. PSAM's employees acknowledged during the Relevant Period in writing that they read, understood, and abided by PSAM's compliance manual, which provided that the use of unapproved electronic communication methods, including on their personal devices, was not permitted, and that they should not use personal email or any form of non-work authorized text messaging to transmit work-related messages.

15. PSAM, however, failed to implement a system of monitoring reasonably expected to determine whether personnel were following its policies. While permitting its personnel to use approved communications methods, including on personal phones, for business communications, PSAM failed to implement sufficient monitoring to ensure that its recordkeeping and communications policies were being followed.

PSAM's Recordkeeping Failures

16. During the course of an examination, Commission staff discovered that PSAM had not maintained books and records as required under the Advisers Act. During the following investigation, PSAM cooperated by gathering and imaging communications from the personal devices of its employees.

17. The Commission staff's investigation found pervasive off-channel communications by PSAM personnel. Most PSAM personnel whose communications were reviewed in the course of the investigation had sent or received off-channel communications that were records required to be preserved by PSAM under the Advisers Act. These off-channel communications were sent among PSAM colleagues as well as to and from PSAM clients, counterparties, and other financial industry participants.

18. Off-channel communications included records required to be preserved under the Advisers Act because they related to an advisory recommendation made or proposed to be made or advice given or proposed to be given. For example, a PSAM employee exchanged text messages on an unapproved platform with a client concerning investment strategy.

19. Other off-channel communications were records required to be preserved under the Advisers Act because they related to the placing or execution of orders to purchase or sell securities.

PSAM's Failure to Preserve Required Records Potentially Compromised and Delayed Commission Matters

20. During the Relevant Period, PSAM received and responded to various Commission requests for documents. By failing to maintain and preserve required records relating to its business, PSAM likely deprived the Commission of off-channel communications.

PSAM's Violations and Failure to Supervise

21. As a result of the conduct during the Relevant Period described above, PSAM willfully² violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

22. As a result of the conduct described above, PSAM failed reasonably to supervise its personnel, with a view to preventing or detecting certain of its supervised persons' aiding and abetting violations of Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder, within the meaning of Section 203(e)(6) of the Advisers Act.

PSAM's Remedial Efforts

23. In determining to accept the Offer, the Commission considered steps undertaken by PSAM prior to and during the course of the staff's investigation, as well as cooperation afforded the Commission staff. Prior to the commencement of the staff's investigation, PSAM had already begun implementing technological improvements to enhance the firm's capability to preserve its employees' electronic communications, and PSAM had retained, and has continued to use, a compliance consultant tasked with remediating its recordkeeping deficiencies, and conducting ongoing monitoring for potential non-compliance with firm policies.

IV.

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

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

- A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 204 of the Advisers Act and Rule 204-2 thereunder.
- B. Respondent is censured.
- C. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$1,250,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange

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." *See 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)).

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 PSAM as the 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 Thomas P. Smith, Jr., Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 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, 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.

Vanessa A. Countryman
Secretary