

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 6676 / September 5, 2024**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-22075**

**In the Matter of**

**ARCIS CAPITAL  
INVESTMENT ADVISORS  
LLC,**

**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 Arcis Capital Investment Advisors LLC (“Arcis” or the “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 it 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 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 finds<sup>1</sup> that:

#### **Summary**

This matter involves violations by Arcis Capital Investment Advisors LLC ("Arcis"), an investment adviser registered with the Commission, of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, commonly referred to as the "custody rule." For the fiscal years ended December 31, 2021 and 2022, Arcis failed to timely distribute annual audited financial statements to investors in pooled investment vehicles that it advised.

Arcis also violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, commonly referred to as the "compliance rule," because it failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

#### **Respondent**

1. Arcis is a Delaware limited liability company with its principal office and place of business in New York, New York. Arcis has been registered with the Commission as an investment adviser since May 2017. On its Form ADV dated May 2, 2024, Arcis reported that it had approximately \$19.5 million in regulatory assets under management in a single pooled investment vehicle client.

#### **Other Relevant Entities**

2. Arcis Technology Growth Fund LP ("Arcis Technology") is a Delaware limited partnership formed in 2019 with its principal place of business in New York, New York. Arcis serves as the investment manager of Arcis Technology, and in consultation with the general partner, Arcis Growth Advisors LLC, is responsible for Arcis Technology's day-to-day management, investment program, and the performance of administrative and oversight functions.

3. Arcis Broadway Productions LLC ("Arcis Broadway") is a Delaware limited liability company formed in 2017 with its principal place of business in New York, New York. Until termination of its relationship with Arcis Broadway effective January 1, 2023, Arcis served as the investment manager of Arcis Broadway, and in consultation with Arcis Broadway's managing member, AMC Advisors LLC, was responsible for Arcis Broadway's day-to-day management, investment program and the performance of administrative and oversight functions.

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<sup>1</sup> 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.

4. Arcis Real Estate Secured Fund II LP (“Arcis Real Estate” and together with Arcis Technology and Arcis Broadway, the “Funds”) is a Delaware limited partnership formed in 2021 with its principal place of business in New York, New York. Until termination of its relationship with Arcis Real Estate effective January 1, 2023, Arcis served as the investment manager of Arcis Real Estate, and in consultation with Arcis Real Estate’s general partner, Arcis Capital Advisors II LLC, was responsible for Arcis Real Estate’s day-to-day management, investment program, and the performance of administrative and oversight functions.

#### **Arcis Failed to Timely Distribute Audited Financial Statements**

5. The custody rule requires that registered investment advisers who have custody of client funds or securities implement an enumerated set of requirements to prevent the loss, misuse, or misappropriation of those assets.

6. An investment adviser has custody of client assets if it holds, directly or indirectly, client funds or securities, or if it has the authority to obtain possession of those assets. *See* Advisers Act Rule 206(4)-2(d)(2). Arcis served as the investment manager of the Funds, and affiliates of Arcis – Arcis Growth Advisors LLC, Arcis Capital Advisors II LLC, and AMC Advisors LLC – served as the general partner of Arcis Technology and Arcis Real Estate, and as the managing member of Arcis Broadway, respectively. The same individual was the managing member of Arcis and also the managing member of Arcis Capital Partners LLC, which itself is the managing member of Arcis Growth Advisors LLC, Arcis Capital Advisors II LLC, and AMC Advisors LLC. A related person of Arcis served as the general partner or managing member of the Funds at all relevant times, and had the authority to make decisions for, and act on behalf of, the Funds.<sup>2</sup> Arcis is therefore deemed to have had custody of the Funds’ assets as defined in Advisers Act Rule 206(4)-2(d)(2).

7. An investment adviser with custody of client assets must, among other things: (i) ensure that a qualified custodian maintains the client assets; (ii) notify the client in writing of accounts opened by the adviser at a qualified custodian on the client’s behalf; (iii) have a reasonable basis for believing that the qualified custodian sends account statements at least quarterly to clients, except if the client is a limited partnership or limited liability company for which the adviser or a related person is a general partner or managing member, the account statements must be sent to each limited partner or member; and (iv) ensure that client funds and securities are verified by actual examination each year by an independent public accountant at a time chosen by the accountant without prior notice or announcement to the adviser. *See* Advisers Act Rule 206(4)-2(a)(1)-(5).

8. The custody rule provides an alternative to complying with the requirements of Advisers Act Rule 206(4)-2(a)(2), (3) and (4) for investment advisers to limited partnerships, limited liability companies, or other types of pooled investment vehicles. The custody rule provides that an investment adviser “shall be deemed to have complied with” the independent verification requirement and is not required to satisfy the notification and account statements

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<sup>2</sup> “Related person,” as used in the custody rule, is defined in Advisers Act Rule 206(4)-2(d)(7).

delivery requirements with respect to a fund if the fund is subject to audit at least annually and “distributes [the fund’s] audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners . . . within 120 days of the end of [the fund’s] fiscal year” (“Audited Financials Alternative”). *See* Advisers Act Rule 206(4)-2(b)(4). The accountant performing the audit must be an independent public accountant that is registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board. *See* Advisers Act Rule 206(4)-2(b)(4)(ii). An investment adviser to a limited liability company or limited partnership that fails to meet the requirements of the Audited Financials Alternative to timely distribute audited financial statements prepared in accordance with GAAP would need to satisfy all of the requirements of Rule 206(4)-2(a)(2)-(4) in order to avoid violating the custody rule.

9. Arcis purported to rely on the Audited Financials Alternative in order to comply with the custody rule for the Funds but failed to timely deliver the audited financial statements to investors in the Funds, as set forth in the table below:

<b>Fund</b>	<b>End of Fiscal Year</b>	<b>Date Distribution Required</b>	<b>Date Distributed</b>	<b>Number of Days Late</b>
Arcis Technology	12/31/2021	4/30/2022	8/26/2022	118
Arcis Broadway	12/31/2021	4/30/2022	5/5/2022	5
Arcis Real Estate	12/31/2021	4/30/2022	6/27/2022	58
Arcis Technology	12/31/2022	4/30/2023	7/1 & 7/3/2023	62 & 64
Arcis Broadway	12/31/2022	4/30/2023	10/26/2023	179
Arcis Real Estate	12/31/2022	4/30/2023	10/26/2023	179

10. Because Arcis did not satisfy the requirements of the Audited Financials Alternative, Arcis was required to comply with each of the provisions of Rules 206(4)-2(a)(2), (3) and (4), which it failed to do. Arcis did not ensure that client funds and securities were verified by actual examination each year by an independent public accountant at a time chosen by the accountant without prior notice or announcement to the adviser, in accordance with Rule 206(4)-2(a)(4).

**Arcis’s Policies and Procedures Were Deficient**

11. In addition, Arcis failed to comply with the requirement that every investment adviser registered with the Commission adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder. *See* Rule 206(4)-7(a). While Arcis’s written policies and procedures referenced the custody rule, they were not reasonably designed and implemented to prevent violations of the rule.

**Violations**

12. As a result of the conduct described above, Arcis willfully violated Section 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 thereunder.

#### IV.

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

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

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall pay a civil money penalty in the amount of \$30,000 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). Payment shall be made in the following installments: \$7,500 within 10 days of the entry of this Order; \$7,500 within 120 days of the entry of this Order; \$7,500 within 240 days of the entry of this Order; and any remaining amount outstanding within 360 days of the entry of this Order. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

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 Arcis Capital Investment Advisors LLC 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 Tejal D. Shah, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616.

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