

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 6719 / September 23, 2024**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-22155**

**In the Matter of**

**ATOM INVESTORS 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 Atom Investors LP (“Atom” 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 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 the Respondent's Offer, the Commission finds that:

#### Summary

1. The federal securities laws impose recordkeeping requirements on registered investment advisers to ensure that they responsibly discharge their crucial roles 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 longstanding failure of Respondent's personnel, including at senior levels, to adhere to certain of these essential requirements and Respondent's own policies and procedures. Using their personal devices, these employees communicated about Atom business internally and externally by personal text messages ("off-channel communications") in violation of the firm's written policies and procedures. From at least May 2018 through October 2021 (the "Relevant Period"), Atom personnel, including at senior levels, sent and received off-channel communications related to recommendations made or proposed to be made and advice given or proposed to be given in their advisory business, as well as related to the placing and execution of orders to purchase and sell securities for investment advisory clients. These off-channel communications were identified when responding to the Commission staff's subpoena related to another entity. Atom failed to retain a portion of these communications, including communications that it was required by law to keep under the Advisers Act. As a result, Atom violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

3. The Commission is not imposing a penalty because Atom self-reported the above conduct, took prompt steps to remediate the violations and cooperated with the Commission staff with respect to its investigation of another entity.

#### Respondent

4. **Atom Investors LP** is a limited partnership organized under the laws of Texas with a principal place of business in Austin, Texas. Atom has been registered as an investment adviser with the Commission since 2018 and has approximately \$1.7 billion in regulatory assets under management as of March 2024. In order to implement its fund's investment strategy, Atom allocates capital to independent external managers utilizing managed accounts that are operated pursuant to sub-advisory agreements and Atom's investment guidelines.

#### Recordkeeping Requirements Under the Advisers Act

5. 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, certain records as necessary or appropriate in the public interest, for the protection of investors. The Commission adopted Rule 204-2 under the Advisers Act 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 created by investment advisers, must be maintained and produced promptly to Commission representatives.

6. The rules adopted under Advisers Act Section 204, including Rule 204-2(a)(7), require that investment advisers preserve for at least five years in an easily accessible place, the first two years in an appropriate office of the investment adviser, originals of all communications received and copies of all written communications sent relating to, among other things: (a) any recommendations 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.

### **Atom's Recordkeeping Failures**

7. In 2021, the Commission staff issued a subpoena to Atom for documents in connection with an unrelated investigation into a third party. In responding to the subpoena, Atom discovered that, during the Relevant Period, it had improperly failed to preserve records subject to the recordkeeping requirements of the federal securities laws, including records that were responsive to the staff's subpoena. Some of these records related to recommendations and advice to purchase or sell securities. Atom promptly reported the off-channel communications to the Commission staff. Atom's failure to preserve the required documents limited the Commission staff's ability to fully investigate the unrelated matter.

8. During the Relevant Period, Atom personnel, including at senior levels, regularly used their personal mobile devices to receive and send numerous off-channel communications with other Atom employees or known contacts at another entity. Some of these off-channel communications related to recommendations and advice from other entities and the execution of orders to purchase or sell securities.

### **Violations**

9. As a result of the conduct above, Atom willfully<sup>1</sup> violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder, which require investment advisers that are registered or required to be registered to preserve in an easily accessible place originals of all written communications received and copies of all written communications sent relating to, among other things, any recommendations made or proposed to be made and any advice given or proposed to be

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<sup>1</sup> "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)).

given; any receipt, disbursement, or delivery of funds or securities; and the placing or execution of any order to purchase or sell any security.

### **Atom's Self-Reporting, Remedial Efforts, and Cooperation**

10. In determining to accept Atom's Offer, the Commission considered Atom's self-reporting to the Commission staff. Atom self-reported its recordkeeping violations during the staff's investigation of another entity. The Commission also considered remedial acts promptly undertaken by Atom. After discovering the off-channel communications, Atom voluntarily conducted an internal review to identify the scope of the use of these communications and to collect and retain communications. Atom took remedial actions by making changes to its compliance program in an effort to prevent future non-compliance with its recordkeeping obligations, including providing firm-wide in person training by outside counsel.

11. The Commission also considered cooperation afforded the Commission staff. Atom cooperated in the Commission staff's investigation of another entity. For example, Atom undertook efforts to retrieve, analyze, and organize trading data to match orders directed by the other entity to execution data. Atom's cooperation helped conserve resources, enabling Commission staff to focus on other areas of the investigation.

## **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. Atom 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 acknowledges that the Commission is not imposing a civil penalty based upon its self-report, remedial efforts, and cooperation in a Commission investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may contest by way of defense in any resulting administrative

proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Vanessa A. Countryman  
Secretary