UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6737 / September 30, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22219

In the Matter of MARATHON ASSET MANAGEMENT, L.P., 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 Marathon Asset Management, L.P. ("Marathon").

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 Finding, 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[1] that:

Summary

1. These proceedings arise out of the failure of Marathon, a registered investment adviser, to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of its business, to prevent the misuse of material, nonpublic information ("MNPI") relating to its participation on ad hoc creditors' committees. Despite regularly participating on such committees, Marathon's policies and procedures did not sufficiently take into account the special circumstances presented by such participation regarding potential MNPI, which included the retention of and consultation with, among others, financial advisers who had access to MNPI, such as during its participation on an ad hoc creditors' committee of a certain foreign-based issuer from August through November 2020. Therefore, Marathon failed to establish, maintain, and enforce policies and procedures that addressed specific risks with respect to receiving and identifying potential MNPI which arose from participation on ad hoc creditors' committees. As a result, Marathon violated Sections 204A and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondent

2. **Marathon Asset Management, L.P.** is a Delaware limited partnership headquartered in New York, NY. It has been a registered investment adviser with the Commission since at least 2003 and as of June 18, 2024, had over $25 billion in regulatory assets under management. Marathon is a global alternative asset manager whose clients consist of various pooled investment vehicles. Marathon manages assets across several strategies, including private credit, leveraged loans, and real estate, and it has significant holdings in distressed debtors and similar special situations.

Other Relevant Entities

3. **Issuer 1** is a foreign-based company whose common stock, during the relevant time period, was publicly traded on a foreign exchange.

4. **Adviser A** is a leading foreign-based global restructuring adviser that is affiliated with a broker-dealer registered with the Commission.

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[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.

Background

Marathon's Focus on Distressed Debt

5. One of Marathon's core strategies has been investing in distressed corporate bonds and other similar debt in the United States, Europe, and Asia. As part of this strategy, Marathon has served as an investment manager for several pooled private investment funds focused on distressed debt. Investments in distressed debt also make up a portion of the holdings of Marathon's other pooled investment funds with a broader remit.

6. Because of the nature of this business and its holdings, Marathon regularly engages with investors and/or financial advisers seeking to form ad hoc committees of creditors for issuers in distress. The purpose of these committees is to group large creditors with similar interests together in order to explore potential favorable debt restructuring opportunities with the issuer prior to the issuer filing for bankruptcy, reorganizing the company, or otherwise initiating formal restructuring proceedings. Marathon participates in several of these committees each year. In some instances, Marathon has also joined steering or coordinating groups of committee members to more actively direct the ad hoc committee's activities.

Marathon's Participation on an Ad Hoc Creditors' Committee for Issuer 1

7. In July 2020, Issuer 1 publicly announced that it was exploring restructuring options due to impacts of the COVID-19 crisis. In or around August 2020, certain analysts employed by Marathon ("Analysts") began discussions with Adviser A about possibly participating in an ad hoc committee composed of unsecured creditors of Issuer 1 ("Committee"). The Analysts believed that Issuer 1 was experiencing financial distress that could potentially impact its ability to stay current on debt payments, including bonds owned by Marathon, in light of the negative impact that COVID-19 was having on Issuer 1's industry. As a result, the Analysts decided to participate in the Committee for the purpose of exploring and discussing potential debt or company restructuring with respect to Issuer 1.

8. The Analysts participated in discussions with other creditors of Issuer 1 about joining the Committee. About 10 other creditors joined the Committee. Marathon and the three other largest bondholders served as the coordinating group on behalf of the Committee ("Coordinating Committee").

9. Once formed, the Committee retained Adviser A to serve as its financial adviser and as a liaison between the Committee and Issuer 1 for discussions about any potential restructuring of Issuer 1 or its debt. In October 2020, Adviser A executed a non-disclosure agreement with Issuer 1, which allowed it to receive MNPI from Issuer 1. The information that Adviser A subsequently received from Issuer 1 included non-public information, which was not otherwise available to Marathon until Marathon itself had executed a non-disclosure agreement with Issuer 1.

10. Adviser A provided guidance to the Committee verbally and in written format throughout the fall of 2020. As part of the Committee, the Analysts participated in numerous calls and had many e-mail communications with Adviser A and with other Committee members. The Analysts received reports, analyses, updates, and other information from Adviser A throughout the duration of the Committee. The Analysts also had communications with a Marathon trader ("Trader") where they discussed what Marathon's strategy should be, and Trader executed the investment strategy with respect to Issuer 1.

11. Throughout the Committee-related discussions, Marathon informed Adviser A and the other members of the Committee that it did not wish to restrict trading until it entered into a non-disclosure agreement ("NDA") with Issuer 1. During a call on October 29, 2020, a foreign court-appointed mediator who was tasked with assisting Issuer 1 in negotiating with its creditors urged members of the Coordinating Committee to enter into NDAs with Issuer 1 so they could negotiate a restructuring deal. On November 5, 2020, Marathon executed an NDA with Issuer 1 and later that same day restricted all trading in securities related to Issuer 1. In the time period before Marathon entered into the NDA with Issuer 1, written materials from Adviser A included notations indicating that the information therein was prepared "on the basis of information publicly available, disclosed by the relevant company(ies) or by third parties, none of which has been independently verified nor audited by [Adviser A]," as well as based on "Company information, [and Adviser A's] assumptions." After it executed the NDA, Marathon received materials from Adviser A that had previously been provided to members of the Committee who had signed NDAs with Issuer 1, but not to Marathon, with notations indicating "Private Information included in this presentation," or "Restricted Information included in the document[.]"

12. While Marathon understood that Adviser A entered into an NDA with Issuer 1, neither the Committee nor Marathon received any written representations regarding Adviser A's handling of any MNPI received from Issuer 1 in connection with the retention of Adviser A. In addition, there is no evidence that Marathon performed any due diligence around Adviser A's handling of any MNPI.

13. In March 2020, Marathon began building a position in Issuer 1 bonds. From March 2020 through August 2020, when it began efforts to participate in the Committee, Marathon accumulated Issuer 1 bonds worth about €35 million (notional). After joining the Committee, from September 2020 through November 5, 2020, when it restricted trading with respect to Issuer 1, Marathon continued to build its position and accumulated an additional €94 million in Issuer 1 bonds and, beginning in October 2020, sold over €22 million of credit default swaps ("CDS") referencing Issuer 1.

Marathon's Deficient Policies and Procedures

14. During the relevant time period, Marathon had certain written policies and procedures in place relevant to the treatment of MNPI, including its "Policies and Procedures to Prevent Insider Trading and Information Barrier Procedures" dated December 2018 ("Trading Procedures") and its "Key Marathon MNPI Procedures" dated November 2020 ("MNPI Procedures"), which provided general guidance for evaluating and handling potential MNPI.

However, Marathon's MNPI policies and procedures were not reasonably designed to address the risks specifically related to the potential for receipt and misuse of MNPI resulting from participation on ad hoc creditors' committees.

15. For instance, the MNPI Procedures listed several "examples of situations where Marathon may become deemed to be in possession of non-public Information and will require the relevant Marathon employee(s) to consider including the relevant company on the Watch List or the Restricted List[.]" The examples included where a "Marathon employee [is] serving on a creditors' committee of a restructuring." However, Marathon did not establish, maintain, or enforce policies and procedures for monitoring or supervision specifically addressing the risk of receiving or misusing MNPI during participation in an ad hoc creditors' committee.

16. Marathon failed to establish and adopt policies and procedures reasonably designed to address the risk related to the potential for inadvertent receipt of MNPI resulting from participation on ad hoc creditors' committees, including interactions with financial advisers or other consultants for ad hoc creditors' committees. Specifically, there were no policies or procedures for Marathon employees to conduct due diligence concerning advisers' evaluation or handling of any potential MNPI or for obtaining a representation from advisers concerning their policies and procedures for handling of any MNPI. Given Marathon's regular participation on ad hoc creditors' committees and the nature of such committees, where participants may receive MNPI or engage advisers who are specifically tasked with analyzing debtors' MNPI, Marathon failed to establish, maintain, and enforce policies and procedures that were reasonably designed to address the specific risks associated with receiving and identifying MNPI as a result of its participation on ad hoc creditor committees.

Violations

17. As a result of the conduct described above, Marathon willfully violated Section 204A of the Advisers Act, which requires investment advisers to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the adviser's business, to prevent the misuse of material, nonpublic information by the investment adviser or its associated persons in violation of the Advisers Act or the Exchange Act, or the rules or regulations thereunder.

18. As a result of the conduct described above, Marathon willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder, and to review, at least annually, the adequacy of those policies and procedures.[2] A violation of Section 206(4) and the rules thereunder does not require scienter. *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992).

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[2] There is no requirement under Section 204A or Section 206(4) that an underlying violation be found to establish the basis for a violation predicated on Marathon's policies and procedures. "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.'" *Wonsover v. SEC*,

Remedial Efforts

19. In determining to accept the Offer, the Commission considered remedial acts undertaken by Marathon. Marathon's remedial acts included revising its MNPI policies, procedures, and training concerning the deficiencies identified in this Order.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Marathon'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 Sections 204A and 206(4) of the Advisers Act and Rule 206(4)-7 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 $1,500,000 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

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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).

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 Marathon 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 Osman Nawaz, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, New York, NY 10004, or such other address the Commission staff may provide.

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