UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6804 / December 20, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22380

In the Matter of

DRIFTWOOD 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 Driftwood Advisors, LLC ("Driftwood Advisors" 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 Respondent's Offer, the Commission finds[1] that

Summary

1. This proceeding arises out of violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, commonly referred to as the "custody rule," by Driftwood Advisors, an SEC-registered investment adviser. Driftwood Advisors had custody of the assets of its pooled investment vehicle clients. However, for its fiscal years ended December 31, 2021 and 2022, Driftwood Advisors failed timely to distribute audited financial statements prepared in accordance with Generally Accepted Accounting Principles ("GAAP") to investors in pooled investment vehicles that it advised. These failures resulted in violations of the custody rule.

Respondent

2. Driftwood Advisors is a Delaware limited liability company with its principal place of business in Coral Gables, Florida. Driftwood Advisors has been registered with the Commission as an investment adviser since May 29, 2020, and advises three pooled investment vehicles. On its Form ADV dated August 1, 2024, Driftwood Advisors reported that it had approximately $821 million in regulatory assets under management.

Other Relevant Entities

3. Driftwood Acquisitions Partners, LP ("Driftwood Acquisitions") is a Delaware limited partnership with its principal place of business in Coral Gables, Florida. Driftwood Advisors serves as the investment adviser of Driftwood Acquisitions. An affiliate under common control with Driftwood Advisors serves as the general partner of Driftwood Acquisitions.

4. Driftwood Development Partners, LP ("Driftwood Development") is a Delaware limited partnership with its principal place of business in Coral Gables, Florida. Driftwood Advisors serves as the investment adviser of Driftwood Development. An affiliate under common control with Driftwood Advisors serves as the general partner of Driftwood Development.

5. Driftwood Lending Partners, LP ("Driftwood Lending" and together with Driftwood Development and Driftwood Lending, the "Funds") is a Delaware limited partnership with its principal place of business in Coral Gables, Florida. Driftwood Advisors serves as the investment adviser of Driftwood Lending. An affiliate under common control with Driftwood Advisors serves as the general partner of Driftwood Lending.

[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.

Driftwood Advisors Failed to Timely Distribute Audited Financial Statements

6. The custody rule requires that registered investment advisers who have custody of client funds or securities comply with an enumerated set of requirements to prevent loss, theft, misuse, or misappropriation of those assets and to safeguard client funds or securities from the financial reverses, including insolvency, of an investment adviser.

7. An investment adviser has custody of client assets if it holds, directly or indirectly, client funds or securities, or if it has any authority to obtain possession of those assets. *See* Advisers Act Rule 206(4)-2(d)(2). An adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has authority to obtain possession of them in connection with advisory services provided to clients. *Id*. A related person is any person directly or indirectly controlling, controlled by, or under common control with, an investment adviser. *See* Rule 206(4)-2(d)(7). A related person of Driftwood Advisors served as the general partner or managing member of the Funds at all relevant times and had the authority to obtain possession of the Funds' funds and securities and make decisions for, and act on behalf of, the Funds. Driftwood Advisors therefore had custody of the Funds' assets as defined in Advisers Act Rule 206(4)-2.

8. An investment adviser with custody of client funds or securities must, among other things: (i) ensure that a qualified custodian maintains these types of 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).

9. The custody rule provides an alternative to complying with the requirements of Advisers Act Rule 206(4)-2(a)(2), (3), and (4) for 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 accounts statement delivery requirements with respect to a fund if the fund is subject to annual 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* Rule 206(4)-2(b)(4). An investment adviser to a pooled investment vehicle 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) to avoid violating the custody rule.

10. For fiscal years 2021 and 2022, with respect to the Funds, Driftwood Advisors purported to rely on the Audited Financials Alternative in order to comply with the custody rule, but Driftwood Advisors failed to timely deliver the audited financials to the investors in the Funds.

11. Accordingly, Driftwood Advisors did not satisfy the requirements of the Audited Financials Alternative in Rule 206(4)-2(b)(4) for the Funds. Driftwood Advisors was therefore obligated to comply with Rule 206(4)-2(a)(2), (3), and (4), which it also failed to do.

Violations

12. As a result of the conduct described above, Driftwood Advisors willfully[2] violated Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder, which, among other things, require registered investment advisers with custody of pooled investment vehicle client funds or securities to have independent public accountants conduct surprise examinations of those client funds and securities or comply with the requirements of Rule 206(4)-2(b)(4).

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Driftwood Advisors' 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 Rule 206(4)-2 promulgated 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 $115,000.00 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:

[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.'" *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)). 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, 479-80 (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).

(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 Driftwood 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 Glenn Gordon, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1950, Miami, FL 33131.

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