

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.:

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BLACK DRAGON CAPITAL, LLC,  
BLACK DRAGON CAPITAL INVESTMENT  
MANAGEMENT, LLC a/k/a BLACK DRAGON  
CAPITAL INVESTMENT MANAGEMENT, INC.,  
and LOUIS HERNANDEZ, JR.,

Defendants.

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**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

Plaintiff Securities and Exchange Commission (the “Commission”) alleges as follows:

**I. INTRODUCTION**

1. The Commission brings this action against Black Dragon Capital, LLC (“Black Dragon Capital”), a Florida limited liability company, Black Dragon Capital Investment Management, LLC a/k/a Black Dragon Capital Investment Management, Inc. (“Black Dragon CIM”), a Delaware limited liability company, and their owner Louis Hernandez, Jr. (“Hernandez”) (collectively, “Defendants”) for their violations of the Investment Advisers Act of 1940 (“Advisers Act”) and the rules thereunder.

2. Since approximately 2014, Defendants have acted as investment advisers providing continuous and regular supervisory and management services to their private fund clients. Defendants used their private fund clients’ assets to purchase securities primarily in private

companies on behalf of their clients. Defendants' clients paid a 2% management fee for those services, and Defendants were entitled to receive an additional performance fee.

3. From at least December 2021, Defendants managed private funds which, according to their calculations, held assets whose total value was at least \$188,221,654. Despite having over \$150 million in regulatory assets under management ("RAUM") as of December 2021, Black Dragon Capital and Black Dragon CIM continued to rely on the private fund adviser exemption for the next couple of years. Under that exemption, an adviser that manages private funds need not register with the Commission until it surpasses \$150 million in RAUM. Black Dragon Capital and Black Dragon CIM both improperly relied on this exemption in Forms ADV filed with the Commission in July and September 2022, respectively. Black Dragon Capital and Black Dragon CIM ultimately applied to register as investment advisers by filing an umbrella registration on Form ADV with the Commission in April 2024.

4. In addition to investment adviser registration failures, Defendants have not complied with several other provisions of the Advisers Act. Defendants failed to file a report on the Commission's Form PF, violated the Commission's marketing rule through their use of certain performance data on their website provided to actual and potential fund investors, provided a misleading performance figure on Black Dragon Capital and Black Dragon CIM's website, provided misleading performance information in Black Dragon CIM's marketing materials, failed to maintain certain books and records regarding performance data on Black Dragon Capital and Black Dragon CIM's website, failed to enforce Black Dragon Capital and Black Dragon CIM's code of ethics, and violated the Commission's compliance rule by failing to enforce Black Dragon Capital and Black Dragon CIM's compliance policies and procedures and by failing to conduct and document in writing an annual compliance review.

5. As a result of the conduct alleged in this Complaint, all of the Defendants violated Sections 203(a), 204, and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-3(a), 80b-4, and 80b-6(4)] and Rules 204(b)-1(a), 206(4)-1(a)(6), and 206(4)-8, thereunder [17 C.F.R. §§ 275.204(b)-1(a), 275.206(4)-1(a)(6), and 206(4)-8]; Black Dragon Capital and Black Dragon CIM violated Sections 204(a), 204A, and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-4(a), 80b-4a, and 80b-6(4)] and Rules 204-2(a)(16), 204A-1, and 206(4)-7, thereunder [17 C.F.R. §§ 275.204-2(a)(16), 275.204A-1, and 275.206(4)-7]; and Black Dragon CIM and Hernandez violated Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8, thereunder [17 C.F.R. § 205.206(4)-8]. Unless enjoined, Defendants are reasonably likely to continue to violate the federal securities laws.

## **II. DEFENDANTS**

6. Black Dragon Capital is a Florida for-profit company formed in March 2013 under its previous name Black Dragon Holdings, LLC, with its principal place of business in Boynton Beach, Florida. Black Dragon Capital is engaged in the business of advising others as to the value of securities or the advisability of investing in, purchasing, or selling securities. It receives compensation for these services.

7. Black Dragon CIM is a Delaware limited liability company. Its principal place of business is in Boynton Beach, Florida. Black Dragon CIM is engaged in the business of advising others as to the value of securities or the advisability of investing in, purchasing, or selling securities. It receives compensation for these services.

8. Hernandez, age 57, resides in Boca Raton, Florida. From 1994 to 2020, Hernandez held a California Certified Public Accountant license. Hernandez is the majority owner and a control person for Black Dragon Capital and Black Dragon CIM. He is also the founder, managing director, chief executive officer, and portfolio manager for Black Dragon Capital and Black

Dragon CIM. In those roles, Hernandez is responsible for making investment decisions for Black Dragon Capital's and Black Dragon CIM's private equity fund clients, including advising others as to the value of securities or the advisability of investing in, purchasing, or selling securities. Hernandez receives compensation for these services. Hernandez is also an investor that retains ownership in approximately 40% of all of the investments in Black Dragon Capital investments. Hernandez is not registered with the Commission in any capacity.

### **III. JURISDICTION AND VENUE**

9. This Court has jurisdiction over this action pursuant to Sections 209(d), 209(e), and 214 of the Advisers Act [15 U.S.C. §§ 80b-9(d), 80b-9(e), and 80b-14].

10. This Court has personal jurisdiction over Defendants and venue is proper in this District because (i) many of the acts, practices, transactions, and courses of business alleged in this Complaint constituting violations of the Advisers Act occurred in this District; (ii) Defendants are located in this District; and (iii) Defendants communicated with and received funds from investors located in this District.

11. In connection with the conduct alleged in this Complaint, Defendants directly and indirectly, made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation or communication in interstate commerce, or the mails.

### **IV. DEFENDANTS' VIOLATIONS OF THE ADVISERS ACT**

#### **A. The Black Dragon Investment Advisers**

12. In or around February 2013, Hernandez founded Black Dragon Capital as a family office to manage his personal investments. In 2014, Hernandez transitioned Black Dragon Capital into a private equity firm specializing in investments in the media, finance, and technology sectors.

13. Within this structure, between 2014 and 2019, Black Dragon Capital formed approximately 20 limited partnerships for which it purchased securities interests. For most of the limited partnerships, Black Dragon Capital filed Forms D with the Commission. Forms D are used to notify the Commission of an exempt securities offering pursuant to Rule 504 or 506 of Regulation D or Section 4(a)(5) of the Securities Act of 1933.

14. In the Forms D Black Dragon Capital filed with the Commission, it identified these limited partnerships as pooled investment funds and private equity funds. Each Black Dragon Capital private equity fund used money contributed to the fund by investors to purchase securities in a single entity.

15. In or around March 2019, Hernandez founded Black Dragon CIM. Hernandez envisioned this entity as a traditional private equity fund structure in which the fund portfolio contained investments in multiple entities.

16. In March 2019, Black Dragon CIM formed Fund I. Black Dragon CIM later added a sidecar investment called Coinvest and began investing in early-stage companies in 2022. Black Dragon CIM's former chief financial officer ("Former CFO") filed Forms D on behalf of Fund I and Coinvest, identifying the limited partnerships as pooled investment funds and private equity funds.

17. Hernandez found investment opportunities through his professional networks, which were evaluated by Black Dragon Capital's and Black Dragon CIM's directors and presented to those entities' higher-level employees. Hernandez held sole discretionary authority to acquire and dispose of securities on behalf of Black Dragon Capital's and Black Dragon CIM's private equity funds.

18. For Black Dragon Capital, once an investment opportunity was approved, the next step was to solicit investors to fund the purchase of the target investments identified. Black Dragon Capital staff proposed limited partnership opportunities to prospective investors using slide decks about the target investment and its plan for increasing the target investment's profitability, and data rooms.

19. For Black Dragon CIM, Hernandez and his employees proposed limited partnership opportunities to prospective investors using slide decks, and in the case of Fund I, a Private Placement Memorandum, and offered investors the opportunity to invest and to make capital commitments into the funds which would be drawn down via capital calls, the timing and amount of which Hernandez would decide.

20. After Black Dragon Capital and Black Dragon CIM made investments, they tracked the profitability of investments for investors by providing investors with quarterly updates, determined the appropriate time to dispose of investments, and distributed investment proceeds to investors.

21. Both Black Dragon Capital and Black Dragon CIM charged a 2% management fee to their advisory clients. Additionally, each fund paid or agreed to pay its respective general partner carried interest when Black Dragon Capital and Black Dragon CIM disposed of an investment for profit.

22. At all times relevant to this Complaint, Black Dragon Capital and Black Dragon CIM have been substantially operationally integrated and under common control. Black Dragon Capital's and Black Dragon CIM's Forms ADV identify Hernandez as their chief executive officer and control person. Further, Hernandez is responsible for all investment decisions for both Black

Dragon Capital and Black Dragon CIM. Black Dragon Capital and Black Dragon CIM share the same operational resources including an office, employees, email, and computer systems.

**B. Defendants' Unregistered Investment Adviser Activity**

23. Despite the aforementioned private equity fund activity dating back to 2014, neither Black Dragon Capital nor Black Dragon CIM filed Forms ADV with the Commission until 2022.

24. The Form ADV is used by investment advisers to register with the Commission or state securities authorities or claim various registration exemptions. The Form ADV requires advisers to accurately report information about their business, ownership, clients, employees, and affiliations, among other things.

25. In 2022, Black Dragon Capital and Black Dragon CIM each filed separate Forms ADV that included materially inaccurate RAUM calculations to invoke the Advisers Act's private fund adviser exemption from registration with the Commission.

26. For instance, on July 14, 2022, Black Dragon Capital filed a Form ADV with the Commission. On Page 6 of the Form ADV, it claimed to "qualify for the exemption from registration because [it] acted solely as an adviser to private funds and [had] assets under management, as defined in rule 203(m)-1, in the United States of less than \$150 million." Black Dragon Capital stated it managed "\$13,500,000" in private fund assets. In subsequent pages of the Form ADV, Black Dragon Capital stated it managed three private funds: "Black Dragon Capital Series 1" which had a gross asset value of "\$21,000,000," "Black Dragon Capital Series 10" which had a gross asset value of "\$9,900,000," and "Black Dragon Capital Series 10A" which had a gross asset value of "\$3,000,000."

27. On September 22, 2022, Black Dragon CIM filed a Form ADV with the Commission. On Page 6 of the Form ADV, it claimed the private fund adviser exemption as an

adviser to private funds with less than \$150 million in regulatory assets under management. Black Dragon CIM stated it managed \$110,400,000 in private fund assets. In subsequent pages of the Form ADV, Black Dragon CIM stated it managed two private funds: “Black Dragon Capital Fund I” which had a gross asset value of “\$33,400,000” and “Black Dragon Capital Fund I Coinvest I, LP” which had a gross asset value of “\$73,300,000.”

28. Black Dragon Capital and Black Dragon CIM internally calculated RAUM by aggregating three values: fair market value of equity on the actively held assets at the end of the respective period; fair market value of registered securities held at the end of respective periods; and uncalled capital at the end of the respective periods. Black Dragon Capital’s and Black Dragon CIM’s internal RAUM calculations listed 28 investments associated with Black Dragon Capital and Black Dragon CIM from December 31, 2014 to December 31, 2022. Notably, Black Dragon Capital and Black Dragon CIM’s combined RAUM totaled \$188,221,654 in 2021 and \$191,769,450 in 2022.

29. On April 1, 2024, Black Dragon CIM filed an umbrella Form ADV with the Commission, applying to register Black Dragon CIM as a large advisory firm and Black Dragon Capital as a mid-size advisory firm and a related adviser. In that form, Black Dragon CIM reported regulatory assets under management of \$452,716,973 and listed fifteen private funds, including some funds previously reported in Black Dragon Capital’s July 2022 Form ADV.

30. Although Black Dragon Capital and Black Dragon CIM initially filed separate Forms ADV, these entities shared resources and were operationally integrated. Prior to their April 2024 umbrella Form ADV registration filing, their RAUM should have been aggregated for purposes of determining the applicability of investment adviser registration requirements.



31. By failing to register with the Commission as investment advisers, Defendants violated Section 203(a) of the Advisers Act [15 U.S.C. § 80b-3(a)].

### **C. Defendants' Failure to File Forms PF**

32. The Commission requires an investment adviser to complete and file a report on Form PF if the investment adviser: (1) is registered or required to be registered under Section 203 of the Advisers Act; (2) acts as an investment adviser to one or more private funds; and (3) as of the end of its most recent completed fiscal year, has at least \$150 million in RAUM attributable to private funds. Advisers filing Form PF are required to disclose basic information about themselves and private funds they advise, including assets under management, withdrawal and redemption rights, gross asset value and net asset value, fund performance, among other details.

33. As alleged in the previous section, Black Dragon Capital and Black Dragon CIM were required to register with the Commission as investment advisers under Section 203 of the Advisers Act. Black Dragon Capital and Black Dragon CIM acted, and continue to act, as advisers to multiple private funds. And since December 2021, Black Dragon Capital and Black Dragon CIM, collectively, had, and continue to have, over \$150 million in RAUM.

34. By failing to file reports on Forms PF with the Commission in 2022, 2023, and 2024, Defendants have violated Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Advisers Act Rule 204(b)-1(a), thereunder [17 C.F.R. § 275.204(b)-1(a)].

### **D. Defendants' Marketing Rule and Books & Records Violations**

35. The Marketing Rule under the Advisers Act regulates any investment adviser registered or required to be registered with the Commission under Section 203 of the Adviser Act, such as Black Dragon Capital and Black Dragon CIM. The Commission adopted the Marketing Rule to comprehensively and efficiently regulate investment advisers' marketing communications.

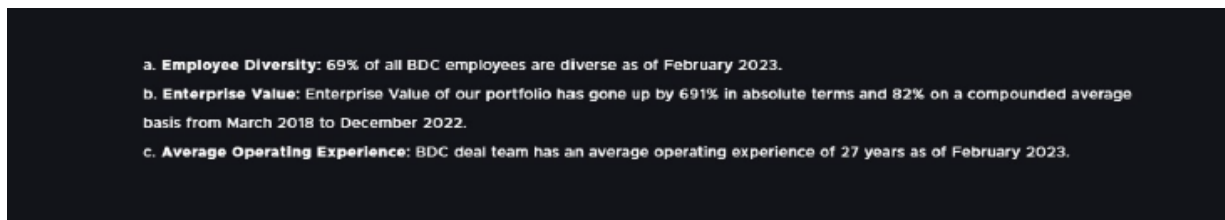
36. One of the ways Black Dragon Capital and Black Dragon CIM marketed their investment advisory services to current and prospective clients and private fund investors was on their website, including providing performance information for Black Dragon Capital.

37. As shown in *Figure 1*, from at least August 21, 2023 to November 1, 2023, Black Dragon Capital and Black Dragon CIM advertised on their website that Black Dragon Capital had “691% Enterprise Value Growth.” A footnote to the enterprise value growth figure, as shown in *Figure 2*, stated, “Enterprise Value of our portfolio has gone up by 691% in absolute terms and 82% on a compounded average basis from March 2018 to December 2022.”

***Figure 1 - Snapshot of Website Dated August 21, 2023***



***Figure 2 – Footnote to “Enterprise Value Growth”***



38. Black Dragon Capital and Black Dragon CIM, however, failed to retain documents necessary to reflect how this figure was calculated in violation of Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Rule 204-2(a)(16), thereunder [17 C.F.R. § 275.204-2(a)(16)].

39. Black Dragon Capital and Black Dragon CIM also did not disclose whether the enterprise value growth percentage was a gross or net number, nor whether the figure related to all Black Dragon Capital and Black Dragon CIM investments during that time or a specific subset of investments. Whether the enterprise value growth percentage was a gross or net number and related to all Black Dragon Capital and Black Dragon CIM investments during that time or to a specific subset of investments would have been important to a reasonable investor and, as a result, the resulting disclosure was a material misrepresentation in violation of Section 206(4) of the Advisers Act [15 U.S.C. §80b-6(4)] and Rule 206(4)-1(a)(6), thereunder [17 C.F.R. § 275.206(4)-1(a)(6)].

#### **E. Materially Misleading Statements About Performance**

40. Defendants also made a number of materially misleading statements about Black Dragon Capital's and Black Dragon CIM's performance.

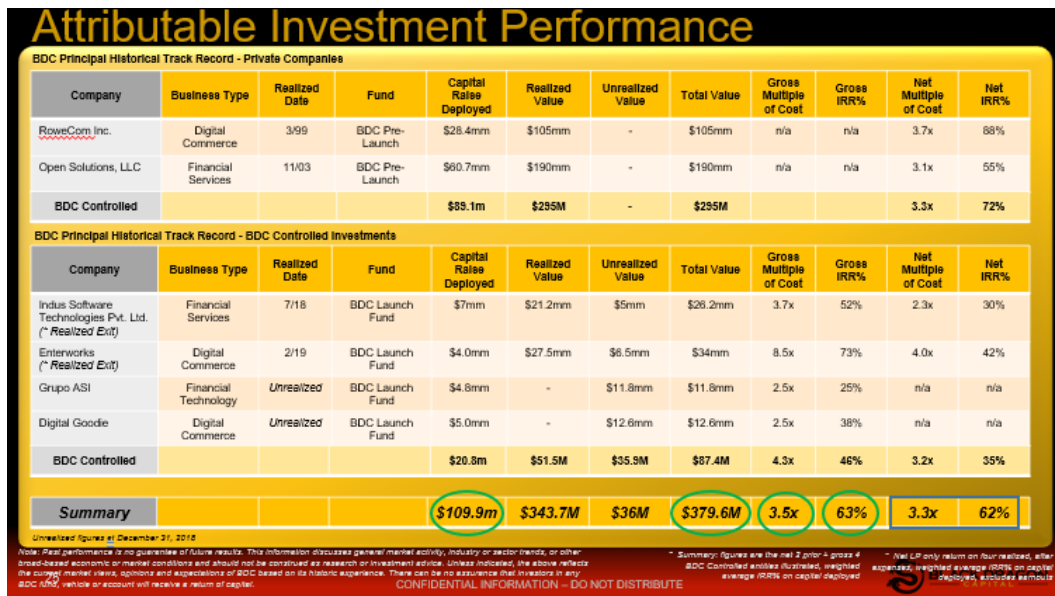
41. As alleged above, Black Dragon Capital and Black Dragon CIM claimed 691% enterprise value growth on their website. In addition to violating the Marketing Rule, this performance figure is misleading because a reasonable investor would have wanted to know that Black Dragon Capital and Black Dragon CIM had no support for this figure in violation of Section 206(4) of the Advisers Act [15 U.S.C. §80b-6(4)] and Rule 206(4)-8, thereunder [17 C.F.R. § 275.206(4)-8].

42. In addition, from approximately March 2019 through at least April 2022, Black Dragon CIM used slide decks and a private placement memorandum ("PPM") to solicit investors. Black Dragon CIM emailed these materials directly to prospective investors and Hernandez used the materials during presentations.

43. One such presentation occurred during a May 2019 Black Dragon CIM marketing event called Investor Day. As shown in *Figure 3*, the Investor Day slide deck contained a table

entitled “[Black Dragon Capital] Principal Historical Track Record — Private Companies,” which included performance data for two companies, RoweCom, Inc. (“RoweCom”) and Open Solutions, Inc. (“Open Solutions”). Hernandez was affiliated with RoweCom and Open Solutions in the late 1990s and early 2000s as a manager and board member before he founded Black Dragon CIM. In his roles at RoweCom and Open Solutions, Hernandez was not providing investment advice to a private fund, but this key distinction was not disclosed.

**Figure 3 - Snapshot of 2019 Black Dragon Fund I Slide Deck**



44. In or around July 2020, Black Dragon CIM began using an updated slide deck to market Fund I. As shown in Figure 4, one of the slides was titled “Stellar Investment Returns Attributable Investment Performance & AUM.” Among other things, the slide included a table entitled “[Black Dragon Capital] Principal Historical Track Record – Private Companies Monetized,” that featured roughly the same data for RoweCom and Open Solutions as was included in the Investor Day slide deck.

Figure 4 - Snapshot of 2020 Black Dragon Fund I Slide Deck

# STELLAR INVESTMENT RETURNS

## ATTRIBUTABLE INVESTMENT PERFORMANCE & AUM

**BDC PRINCIPAL HISTORICAL TRACK RECORD - PRIVATE COMPANIES MONETIZED**

COMPANY	INVESTMENT DATE	REALIZED DATE	FUND	CAPITAL RAISE DEPLOYED	REALIZED VALUE	UNREALIZED VALUE	TOTAL VALUE	GROSS MULTIPLE	GROSS IRR%	NET MULTIPLE	NET IRR%
ROWECOMM, INC DIGITAL COMMERCE	2/97	3/99	BDC PRE-LAUNCH	\$30M	\$105M	-	\$105M	N/A	N/A	3.7x	88%
OPEN SOLUTIONS, INC FINANCIAL SERVICES	4/01	11/03	BDC PRE-LAUNCH	\$61M	\$190M	-	\$190M	N/A	N/A	3.1x	55%
<b>SUB-TOTAL</b>				<b>\$91M</b>	<b>\$295M</b>		<b>\$295M</b>			<b>3.3x</b>	<b>72%</b>

**BDC PRINCIPAL HISTORICAL TRACK RECORD - BDC CONTROLLED INVESTMENTS MONETIZED**

COMPANY	INVESTMENT DATE	REALIZED DATE	FUND	CAPITAL RAISE DEPLOYED	REALIZED VALUE	UNREALIZED VALUE	TOTAL VALUE	GROSS MULTIPLE	GROSS IRR%	NET MULTIPLE	NET IRR%
INDUS SOFTWARE TECHNOLOGIES FINANCIAL SERVICES	3/15	7/18	BDC PLEDGE FUND	\$7M	\$21.2M	\$5.0M	\$26.2M	3.7x	46%	2.2x	35%
ENTERWORKS LLC DIGITAL COMMERCE	3/15	2/19	BDC PLEDGE FUND	\$4M	\$27.5M	\$6.5M	\$34.0M	8.5x	66%	4.7x	49%
<b>SUB-TOTAL</b>				<b>\$11.0M</b>	<b>\$48.7M</b>	<b>\$11.5M</b>	<b>\$60.2M</b>	<b>6.3x</b>	<b>63%</b>	<b>3.3x</b>	<b>40%</b>
<b>TOTAL MONETIZED (A)</b>				<b>\$102M</b>	<b>\$344M</b>	<b>\$11.5M</b>	<b>\$355M</b>			<b>3.3x</b>	<b>63%</b>

**BDC PRINCIPAL HISTORICAL TRACK RECORD - BDC CONTROLLED INVESTMENTS - ACTIVE PORTFOLIO**

COMPANY	INVESTMENT DATE	REALIZED DATE	FUND	CAPITAL RAISE DEPLOYED	REALIZED VALUE	UNREALIZED EQUITY VALUE (B)	ESTIMATED ENTERPRISE VALUE (C)	GROSS MULTIPLE	GROSS IRR%	NET MULTIPLE	NET IRR%
LADON (ASI)	11/14	UNREALIZED	BDC PLEDGE FUND	\$5.7M	-	\$19.4M	\$20.2M	3.4x	23%	N/A	N/A
NAVEDO COMMERCE DIGITAL COMMERCE (C)	11/19	UNREALIZED	BDC FUND I	\$26.8M	-	\$50.2M	\$57.7M	1.9x	37%	N/A	N/A
GRASS VALLEY MEDIA TECHNOLOGIES (D)	7/20	UNREALIZED	BDC COINVEST I	\$34.0M	-	\$45.5M	\$328.2M	1.3x	57%	N/A	N/A
<b>TOTAL ACTIVE</b>				<b>\$66M</b>		<b>\$115M</b>	<b>\$406M</b>				
<b>TOTAL BDC ATTRIBUTABLE</b>				<b>\$168M</b>			<b>\$761M</b>				

(A) Totals are in millions in a weighted average based on capital deployed by entity.  
 (B) Valuation Report as of December 31, 2023. Black Dragon Fund I (BDC) System of Companies. Fund (controlled by BDC).  
 (C) Initial acquisition date 4/20/2019, merger under Fund I Mar 2023.  
 (D) Value taken by the Co to fund initial investment in a deal preceded by BDC's acquisition of Black Dragon. Value shown in acquisition.  
 (E) Multiple enterprise value given an accurate calculation of the overall control value of a business, similar to a balance sheet, equity value offers a snapshot of the current and potential future value. This table shows represents the equity value view of the Black Dragon Capital portfolio. The calculation for equity value with enterprise value to non-operating assets and then subtract the debt net of each available.  
 BDC team responsible for realized and unrealized value of \$761M and managing approximately \$406m in AUM

45. Black Dragon CIM also included performance data on page 14 of Fund I’s PPM. In the table, entitled “Prior Investments by portfolio manager,” as shown in Figure 5, Black Dragon CIM featured roughly the same performance data for RoweCom and Open Solutions as was included in the slide decks.

**Figure 5 - Snapshot of Black Dragon Fund I PPM****Confidential****Black Dragon Capital Fund I, L.P.**

Black Dragon Capital, LLC was founded in 2014, and the following table summarizes the performance of the Portfolio Manager's prior investments and the BDC Prior Funds.

**BDC Principal Historical Track  
Record - Private Companies**

*In millions*

Prior Investments by portfolio manager	Investment Date (M/Y)	Realization Date (M/Y)	Capital Raise Deployed	Realized Value <sup>1</sup>	Unrealized Value	Total Return	Gross Multiple of Cost	Gross IRR % <sup>2</sup>	Net Multiple of Cost	Net IRR % <sup>3</sup>
RoweCom Inc.	2/97	3/99	\$28.4m	\$105m		\$105m	n/a	n/a	3.7x	88%
Open Solutions, LLC	4/01	11/03	\$60.7m	\$190m		\$190m	n/a	n/a	3.1x	55%
BDC Prior Funds <sup>4</sup>	Investment Date (M/Y)	Realization Date (M/Y)	Capital Raise Deployed	Realized Value	Unrealized Value <sup>5</sup>	Total Return	Gross Multiple of Cost	Gross IRR % <sup>2</sup>	Net Multiple of Cost	Net IRR % <sup>3</sup>
BDC Series 1 (Grupo AST) <sup>6</sup>	11/14		\$4.8m	-	\$11.8m	\$11.8m	2.5x	26%	n/s	n/a
BDC Series 4 (Enterworks)	3/15	2/19	\$4.0m	\$27.5m	\$6.5m <sup>7</sup>	\$34.0m	8.5x	64%	4.0x	42%
BDC Series 5 (Indus)	3/15	7/18	\$7.0m	\$24.0m	\$5.0m <sup>7</sup>	\$29.0m	4.1x	47%	2.3x	30%
BDC Series 10 (Goodie) <sup>6</sup>	4/16		\$5.0m	-	\$12.6m	\$12.6m	2.5x	49%	n/a	n/a

*Notes to table:*

- <sup>1</sup>) Realized values are the proceeds from the sales of assets and cash distributions.
- <sup>2</sup>) "Gross IRR" refers to the internal rate of return (compounded annually) of the investments.
- <sup>3</sup>) "Net IRR" refers to the internal rate of return (compounded annually) of the investments, after the deduction of management fees, carried interest and expenses. Excludes earnout amounts pending. Net IRR is shown for those investments where there was a realized event. For investments that did not have a realized event, Black Dragon believes that the Gross IRR and Net IRR will be substantially similar.
- <sup>4</sup>) Black Dragon Capital, LLC paid the organizational and certain administrative expenses of the BDC Prior Funds. If Black Dragon Capital, LLC had not paid the organizational and certain administrative expenses of the BDC Prior Funds, the Gross IRR and Net IRR numbers would be lower.
- <sup>5</sup>) Estimations of the "unrealized value" of remaining investments represent valuation estimates made by Black Dragon using assumptions that Black Dragon believes are reasonable under the circumstances as of the date indicated herein relating to each particular investment. Such estimates are subject to numerous variables which change over time. Information regarding realized and unrealized value are available upon request.

There can be no assurance that unrealized investments will be sold for values equal to or in excess of the total values used in calculating the returns portrayed herein. The actual realized returns of unrealized investments will depend on, among other factors, future operating results the value of the assets and market conditions at the time of disposition, any related transaction costs and the timing and manner of sale all of which may differ from the assumptions on which the valuations reported herein are based. Therefore, amounts actually realized (or may be realized in the future) will vary (in some cases materially) from the estimates used in connections with calculations referenced herein. Post-closing proceeds related to exits may be further reduced for indemnification claims.

<sup>6</sup>) Valuations are dated December 31, 2018.

<sup>7</sup>) Represent earnout amounts.

46. The performance figures were materially misleading, deceptive, and violated 206(4) of the Advisers Act [15 U.S.C. §80b-6(4)] and Rule 206(4)-8, thereunder [17 C.F.R. § 275.206(4)-8] because Hernandez failed to disclose that he did not achieve the performance results as an investment adviser providing investment advice to a private fund.

#### **F. Defendants' Compliance Rule and Code of Ethics Violations**

47. In January 2022, Black Dragon CIM adopted a compliance manual and code of ethics ("Compliance Manual") which was applicable to Black Dragon CIM and its affiliates, including Black Dragon Capital.

48. The Compliance Manual included a code of ethics in which Black Dragon CIM informed its employees that partners, officers, directors, and supervised individuals who had access to certain non-public information would be subject to the provisions of the code of ethics. The code of ethics required Black Dragon CIM to maintain a restricted list of securities and prohibited trading in securities on the restricted list. Additionally, the code of ethics required Black Dragon CIM's access persons (*i.e.*, employees involved in making securities recommendations or who had access to non-public information regarding client purchase and sale of securities) and supervised persons (*i.e.*, partners, officers, directors, and employees providing investment advice on behalf of Black Dragon CIM) to report their securities holdings through an initial holdings report, quarterly trade reports, and an annual holdings report.

49. Between January 2022 and January 31, 2023, Black Dragon CIM and Black Dragon Capital failed to: (a) maintain a restricted list and (b) apply the securities holdings disclosure requirements to Black Dragon CIM and Black Dragon Capital's analysts (who assisted with investments and had access to non-public information about the purchase and sale of securities).

50. Further, Hernandez never submitted an annual holdings report, and Black Dragon CIM and Black Dragon Capital lacked any personal trading activity documents on behalf of Hernandez as required by the Compliance Manual in violation of Section 204A of the Advisers Act [15 U.S.C. § 80b-4a] and Rule 204A-1, thereunder [17 C.F.R. § 275.204A-1].

51. In relevant part, the Compliance Manual included provisions concerning the accurate calculation of RAUM, investment adviser registration, regulatory filings, advertising and marketing materials, books and records maintenance, reporting of personal holdings and securities transactions, insider trading prevention, and annual compliance policy reviews. Although the Compliance Manual referenced various provisions of the Advisers Act and rules thereunder, the manual was not implemented to prevent the violations described above.

52. Further, Black Dragon CIM and Black Dragon Capital failed to annually review and document in writing the adequacy of their compliance policies and procedures and the effectiveness of their implementation in violation of Section 206(4) of the Advisers Act and Rule 206(4)-7(b).

## **V. CLAIMS FOR RELIEF**

### **Count I**

#### **Violations of Section 203(a) of the Advisers Act (Against All Defendants)**

53. The Commission repeats and realleges paragraphs 1 through 52 of this Complaint.

54. Between at least December 31, 2021 and March 31, 2024, Defendants acted as investment advisers within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)] and, directly or indirectly, made use of the mails or means or instrumentalities of interstate commerce in connection with their business as investment advisers without being registered with the Commission and without the applicability of Section 203(b) of the Advisers Act [15 U.S.C. § 80b-3(b)] or Section 203A of the Advisers Act [15 U.S.C. § 80b-3a].

55. By reason of the foregoing, Defendants violated, and unless enjoined, are reasonably likely to continue to violate, Section 203(a) of the Advisers Act [15 U.S.C. § 80b-3(a)].



**Count II**

**Violations of Section 204 of the Advisers Act and Rule 204(b)-1(a)**  
**(Against All Defendants)**

56. The Commission repeats and realleges paragraphs 1 through 52 of this Complaint.

57. Between at least December 31, 2021 and March 31, 2024, Defendants, by the use of the means and instrumentalities of interstate commerce and of the mails, directly or indirectly, (i) were required to be registered under Section 203(a) of the Advisers Act [15 U.S.C. § 80b-3(a)]; (ii) acted as investment advisers within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)] to one or more private funds; (iii) as of the end of its most recent fiscal year, had at least \$150 million in private fund assets under management; and (iv) failed to complete and file a report on Form PF for 2022, 2023, and 2024.

58. By reason of the foregoing, Defendants, directly and indirectly, violated and, unless enjoined, are reasonably likely to continue to violate, Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Advisers Act Rule 204(b)-1(a), thereunder [17 C.F.R. § 275.204(b)-1(a)].

**Count III**

**Violations of Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(6)**  
**(Against All Defendants)**

59. The Commission repeats and realleges paragraphs 1 through 52 of this Complaint.

60. From at least August 2023 to November 2023, Defendants, while acting as investment advisers required to be registered under Section 203(a) of the Advisers Act [15 U.S.C. § 80b-3(a)], by the use of the means and instrumentalities of interstate commerce and of the mails, published, circulated, or distributed advertisements within the meaning of Advisers Act Rule 206(4)-1(e)(1) [17 C.F.R. § 275.206(4)-1(e)(1)] that constitute a fraudulent, deceptive, or manipulative act, practice, or course of business for any investment adviser required to be

registered, directly or indirectly, with the Commission and which included or excluded performance results, or presented performance time periods, in a manner that was not fair and balanced.

61. By reason of the foregoing, Defendants violated and, unless enjoined, are reasonably likely to continue to violate, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Advisers Act Rule 206(4)-1(a)(6), thereunder [17 C.F.R. § 275.206(4)-1(a)(6)].

#### **Count IV**

#### **Violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 (Against Black Dragon CIM and Hernandez)**

62. The Commission repeats and realleges paragraphs 1 through 52 of this Complaint.

63. Fund I was at all relevant times a pooled investment vehicle for purposes of Rule 206(4)-8 of the Advisers Act [17 C.F.R. § 275.206(4)-8].

64. From at least March 2019 to April 2022, Black Dragon CIM and Hernandez were investment advisers to a pooled investment vehicle, *i.e.*, Fund I, within the meaning of Rule 206(4)-8 of the Advisers Act. Black Dragon CIM and Hernandez managed Fund I's securities portfolio and contracted to receive, and in fact received, compensation from the fund.

65. Black Dragon CIM and Hernandez, directly or indirectly, at least negligently, by the use of the mails or a means or instrumentality of interstate commerce:

a. Made untrue statements of material fact and/or omitted to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to investors and prospective investors in a pooled investment vehicle, Fund I; and

b. Otherwise engaged in acts, practices, and courses of business that were fraudulent, deceptive, or manipulative with respect to investors and prospective investors in a pooled investment vehicle, Fund I.

66. By reason of the foregoing, Black Dragon CIM and Hernandez violated and, unless enjoined, are reasonably likely to continue to violate, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Advisers Act Rule 206(4)-8, thereunder [17 C.F.R. § 275.206(4)-8].

### **Count V**

#### **Violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 (Against All Defendants)**

67. The Commission repeats and realleges paragraphs 1 through 52 of this Complaint.

68. From at least August 2023 to November 2023, Dragon Capital Series 1, Black Dragon Capital Series 10, Black Dragon Capital Series 10A, Fund I, and Coinvest (collectively, “Black Dragon Capital and Black Dragon CIM Funds”) were pooled investment vehicles for purposes of Rule 206(4)-8 of the Advisers Act [17 C.F.R. § 275.206(4)-8].

69. From at least August 2023 to November 2023, Defendants were investment advisers to multiple pooled investment vehicles, *i.e.*, Black Dragon Capital and Black Dragon CIM Funds, within the meaning of Rule 206(4)-8 of the Advisers Act. Defendants managed Black Dragon Capital and Black Dragon CIM Funds’ securities portfolios and contracted to receive, and in fact received, compensation from the funds.

70. Defendants, directly or indirectly, at least negligently, by the use of the mails or a means or instrumentality of interstate commerce:

a. Made untrue statements of material fact and/or omitted to state a material fact necessary to make the statements made, in light of the circumstances under which they were

made, not misleading, to investors and prospective investors in pooled investment vehicles, Black Dragon Capital and Black Dragon CIM Funds; and

b. Otherwise engaged in acts, practices, and courses of business that were fraudulent, deceptive, or manipulative with respect to investors and prospective investors in pooled investment vehicles, Black Dragon Capital and Black Dragon CIM Funds.

71. By reason of the foregoing, Defendants violated and, unless enjoined, are reasonably likely to continue to violate, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Advisers Act Rule 206(4)-8, thereunder [17 C.F.R. § 275.206(4)-8].

### **Count VI**

#### **Violations of Section 204(a) of the Advisers Act and Rule 204-2(a)(16) (Against Black Dragon Capital and Black Dragon CIM)**

72. The Commission repeats and realleges paragraphs 1 through 52 of this Complaint.

73. From at least August 2023 through the present, Black Dragon Capital and Black Dragon CIM, directly or indirectly, while acting as investment advisers within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)] required to be registered under Section 203(a) of the Advisers Act [15 U.S.C. § 80b-3(a)], by use of the mails or the means and instrumentalities of interstate commerce (i) failed to make and keep required books and records related to Black Dragon Capital and Black Dragon CIM's advisory business; and (ii) failed to furnish to the Commission copies of books and records that Black Dragon Capital and Black Dragon CIM were required to make, keep, and provide to representatives of the Commission upon request.

74. By reason of the foregoing, Black Dragon Capital and Black Dragon CIM violated and, unless enjoined, are reasonably likely to continue to violate, Section 204(a) of the Advisers

Act [15 U.S.C. § 80b-4(a)] and Advisers Act Rule 204-2(a)(16), thereunder [17 C.F.R. § 275.204-2(a)(16)].

**Count VII**

**Violations of Section 204A of the Advisers Act and Rule 204A-1**  
**(Against Black Dragon Capital and Black Dragon CIM)**

75. The Commission repeats and realleges paragraphs 1 through 52 of this Complaint.

76. From at least January 2022 through January 2023, Black Dragon Capital and Black Dragon CIM, while acting as investment advisers required to be registered under Section 203(a) of the Advisers Act [15 U.S.C. § 80b-3(a)], by the use of the means and instrumentalities of interstate commerce and of the mails, failed to enforce provisions of their written code of ethics reasonably designed, taking into consideration the nature of their business, to prevent the misuse of material nonpublic information by such investment adviser or any person associated with such investment adviser in violation of the Advisers Act [15 U.S.C. § 80b-1 et seq.] or the rules and regulations thereunder.

77. By reason of the foregoing, Black Dragon Capital and Black Dragon CIM violated and, unless enjoined, are reasonably likely to continue to violate, Section 204A of the Advisers Act [15 U.S.C. § 80b-4a] and Advisers Act Rule 204A-1, thereunder [17 C.F.R. § 275.204A-1].

**Count VIII**

**Violations of Section 206(4) of the Advisers Act and Rule 206(4)-7**  
**(Against Black Dragon Capital and Black Dragon CIM)**

78. The Commission repeats and realleges paragraphs 1 through 52 of this Complaint.

79. From at least January 2022 through March 31, 2024, Black Dragon Capital and Black Dragon CIM, while acting as investment advisers required to be registered under Section 203(a) of the Advisers Act [15 U.S.C. § 80b-3], by the use of the means and instrumentalities of

interstate commerce and of the mails, failed to implement provisions of written policies and procedures reasonably designed to prevent violations of the Advisers Act [15 U.S.C. § 80b-1 *et seq.*] and the rules promulgated thereunder [17 C.F.R. § 275.0-2 *et seq.*] by Black Dragon Capital and Black Dragon CIM and their supervised persons, and failed to review and document in writing, no less frequently than annually, the adequacy of those policies and procedures and the effectiveness of their implementation.

80. By reason of the foregoing, Black Dragon Capital and Black Dragon CIM violated and, unless enjoined, are reasonably likely to continue to violate, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Advisers Act Rule 206(4)-7 [17 C.F.R. §275.206(4)-7].

## **VI. RELIEF REQUESTED**

**WHEREFORE**, the Commission respectfully requests that the Court find Defendants committed the violations alleged in this Complaint and:

### **A. Permanent Injunctive Relief**

Issue Permanent Injunctions, restraining and enjoining Defendants and their agents, servants, employees, attorneys, and representatives, and all persons in active concert or participation with Defendants, and each of them, from violating Sections 203(a), 204, and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-3(a), 80b-4, and 80b-6(4)] and Rules 204(b)-1(a), 206(4)-1(a)(6), and 206(4)-8, thereunder [17 C.F.R. §§ 275.204(b)-1(a), 275.206(4)-1(a)(6), and 206(4)-8]; Black Dragon Capital and Black Dragon CIM and their agents, servants, employees, attorneys, and representatives, and all persons in active concert or participation with each of them, from violating Sections 204(a), 204A, and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-4(a), 80b-4a, and 80b-6(4)] and Rules 204-2(a)(16), 204A-1, and 206(4)-7, thereunder [17 C.F.R. §§ 275.204-2(a)(16), 275.204A-1, and 275.206(4)-7]; and Black Dragon CIM and Hernandez and their agents,

servants, employees, attorneys, and representatives, and all persons in active concert or participation each of them, from violating Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8, thereunder [17 C.F.R. § 205.206(4)-8].

**B. Civil Monetary Penalties**

Issue an Order directing Defendants to pay civil money penalties pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

**C. Further Relief**

Grant such other and further relief as the Court may deem just and proper.

**D. Retention of Jurisdiction**

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that it may enter, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

**VII. DEMAND FOR JURY TRIAL**

The Commission hereby demands a jury trial on any and all issues so triable.

Dated: September 3, 2024

Respectfully submitted,

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