UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5584 / September 18, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20029

In the Matter of

KEYPORT VENTURE ADVISORS LLC,

JOHN M. LOPINTO,

and

ROBERT R. WILKOS,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 203(e), 203(f), 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), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Keyport Venture Advisors LLC ("Keyport Advisors"), John M. LoPinto ("LoPinto"), and Robert R. Wilkos ("Wilkos") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers"), 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f), 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 Respondents' Offers, the Commission finds[1] that

Summary

1. These proceedings concern disclosure violations by unregistered investment adviser Keyport Advisors and its two principals, LoPinto and Wilkos, while selling interests to individual retail investors in Keyport Venture Partners LLC Fund ("Keyport Fund"), a pooled investment vehicle that sought to invest in shares and interests of pre-IPO companies. From October 2019 through July 2020 (the "relevant time period"), Respondents raised over $1.5 million from individual investors and successfully made investments in pre-IPO companies for various series in the Keyport Fund. A few months after the fund's inception, LoPinto and Wilkos misrepresented to potential investors that one particular new series of the fund already held shares of its intended investment, a pre-IPO online rental marketplace ("Company A"). In reality, Respondents knew they were having difficulty locating shares of Company A for the new series, and they were not able to secure an offer until July 2020, several months after investors had invested $198,000 in the new series. As a result of the conduct described above, Respondents violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

Respondents

2. **Keyport Venture Advisors LLC**, a Delaware limited liability company based in New Jersey, is not registered with the Commission in any capacity. LoPinto and Wilkos each own 50 percent of Keyport Advisors, which is entirely controlled by them. Keyport Advisors provides investment management services to the Keyport Fund and is compensated by a due diligence fee of one-to-five percent of the investors' capital contributions, as well as a management fee and expense fee totaling three percent of the capital contributions.

3. **John M. LoPinto**, 42, resides in Staten Island, New York. LoPinto is a co-founder and current partner of Keyport Advisors.

4. **Robert R. Wilkos**, 52, resides in Holmdel, New Jersey. Wilkos is a co-founder and current partner of Keyport Advisors.

Other Relevant Entities

5. **Keyport Venture Partners LLC**, is a Delaware limited liability corporation and private equity investment fund that was formed in 2019 and has over $1 million in invested capital. The Keyport Fund's operating agreement provides that Keyport Advisors is responsible for the management, control, operation, and investment decisions of the Keyport Fund.

---

[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Background

6. Beginning in October 2019, LoPinto and Wilkos founded the Keyport Fund to invest in the shares of pre-IPO companies. They also established, as equal 50 percent owners, Keyport Advisors to manage the fund and to identify, secure, and direct pre-IPO investments in the Keyport Fund. Keyport Advisors solicited investors under its own name as well as the name "Pre-IPO Depot." The fund's operating agreement empowered Keyport Advisors to establish distinct series focused on specific pre-IPO companies. For those services, Keyport Advisors was entitled under the operating agreement to a due diligence fee of one-to-five percent of the investors' capital contributions, as well as a management fee and expense fee totaling three percent of the capital contributions.

7. In accordance with the fund's operating agreement, between October 2019 and December 2019, LoPinto and Wilkos obtained investments from individual retail investors for two series dedicated to a pre-IPO technology company and a pre-IPO food company, respectively. LoPinto and Wilkos sent those investors a private placement memorandum that explained the structure of the Keyport Fund and the various fees, as well as an addendum identifying the particular pre-IPO company that was the focus of the series. Around the same time or shortly thereafter, they also successfully secured shares and interests in those two pre-IPO companies through certain online trading platforms.

8. In December 2019, LoPinto and Wilkos established a third series of the Keyport Fund dedicated to Company A. LoPinto tried to obtain Company A shares from the same online trading platform that he had used before, but he was unable to find shares for sale at that time. Nevertheless, LoPinto and Wilkos misrepresented to potential investors that the Company A series of the fund already held shares of Company A. Based on those misrepresentations, three individual investors contributed capital totaling $198,000 to the Company A series.

9. In reality, Respondents knew they were having difficulty locating shares of Company A for the new series, and they were not able to secure an offer until July 2020, about seven months later. During those months, they did not correct the previous misstatements to investors that the Keyport Fund already owned Company A shares.

10. Ultimately, those investors' capital contributions were tied up in the empty Company A series of the Keyport Fund for several months. In addition, in March 2020, Respondents took all fees, including the due diligence fee, management fee, and expense fee, associated with the series.

Violations

11. As a result of the conduct described above, Respondents willfully[2] violated Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, which makes it unlawful

[2] "Willfully," for purposes of imposing relief under Sections 203(e) and 203(f) 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

for any investment adviser to a pooled investment vehicle to "[m]ake any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle" or "engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle." A showing of negligence is sufficient to establish a violation of Section 206(4) of the Advisers Act or Rule 206(4)-8 thereunder. *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992).

Respondents' Remedial Efforts

In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff. Among other things, Respondents have returned all funds, including all fees paid to Keyport Advisors, to investors in the Company A series.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest to impose the sanctions agreed to in Respondents' Offers.

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

A. Keyport Advisors, LoPinto, and Wilkos 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)-8 promulgated thereunder.

B. Keyport Advisors, LoPinto, and Wilkos are censured.

C. LoPinto shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $40,000 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.

D. Wilkos shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $40,000 to the Securities and Exchange Commission for transfer to the general fund

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).

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) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondents 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) Respondents 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 Keyport Advisors, LoPinto, and Wilkos as Respondents 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 Monique C. Winkler, Associate Director, Division of Enforcement, Securities and Exchange Commission, San Francisco Regional Office, 44 Montgomery Street, Suite 2800, San Francisco, California 94104.

E. 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by LoPinto and Wilkos, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by LoPinto and Wilkos under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by LoPinto and Wilkos of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary