UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6400 / September 5, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21609

In the Matter of **Disruptive Technology Advisers 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 Disruptive Technology Advisers LLC ("Disruptive" 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. Disruptive, a registered investment adviser, is an investment adviser to private funds. This matter concerns Disruptive's violations of the federal securities laws in connection with the private funds that Disruptive advised. Disruptive failed to maintain securities of certain private equity funds that it advised with a qualified custodian. Moreover, in some instances, Disruptive failed to conduct or timely distribute annual audited financial statements prepared in accordance with Generally Accepted Accounting Principles ("GAAP") to investors in certain private funds that it advised. In addition, Disruptive did not update certain responses in its Form ADV as required by the Form ADV instructions. These failures resulted in violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, commonly referred to as the "custody rule," and Section 204(a) and Rule 204-1(a) thereunder, which required Disruptive to update certain information about Disruptive's private fund audits in its Forms ADV.

Respondent

2. Disruptive Technology Advisers LLC ("Disruptive") is a Delaware limited liability company with its principal place of business in Austin, Texas. Disruptive has been registered with the Commission as an investment adviser since July 9, 2019. On its Form ADV dated March 31, 2023, Disruptive reported that it had approximately $1,056,611,206 in regulatory assets under management, and that the entirety of that amount is managed in pooled investment vehicles.

Other Relevant Entities

3. Disruptive Technology Solutions Biotechnology, LLC ("DTS Biotechnology I") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS Biotechnology I since September 2016.

4. Disruptive Technology Solutions Biotechnology II, LLC (DTS Biotechnology II") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS Biotechnology II since December 2018.

5. Disruptive Technology Solutions, LLC ("DTS 1") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS I since June 2013.

[1] The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

6. Disruptive Technology Solutions III, LLC ("DTS III") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS III since December 2015.

7. Disruptive Technology Solutions VIII, LLC ("DTS VIII ") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS VIII since April 2018.

8. Disruptive Technology Solutions IX, LLC ("DTS IX") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS IX since June 2018.

9. Disruptive Technology Solutions, X, LLC ("DTS X") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS X since September 2018.

10. Disruptive Technology Solutions XI, LLC ("DTS XI") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XI since February 2019.

11. Disruptive Technology Solutions XII, LLC ("DTS XII") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XII since February 2019.

12. Disruptive Technology Solutions XIV, LLC ("DTS XIV") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XIV since February 2019.

13. Disruptive Technology Solutions XV, LLC ("DTS XV Fund") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XV since April 2019.

14. Disruptive Technology Solutions XVI, LLC ("DTS XVI") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XVI since July 2019.

15. Disruptive Technology Solutions XVII, LLC ("DTS XVII") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XVII since June 2019.

16. Disruptive Technology Solutions 18, LLC ("DTS 18") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS 18 since June 2016.

17. Disruptive Technology Solutions XIX, LLC ("DTS XIX") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XIX since August 2019.

18. Disruptive Technology Solutions XX, LLC ("DTS XX") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XX since August 2019.

19. Disruptive Technology Solutions XXI, LLC ("DTS XXI Fund") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XXI since August 2019.

20. Disruptive Technology Solutions XXII, LLC ("DTS XXII") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XXII since November 2019.

21. Disruptive Technology Solutions XXIII, LLC ("DTS XXIII") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XXIII since April 2020.

22. Disruptive Technology Solutions XXIV, LLC ("DTS XXIV") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XXIV since June 2020.

23. Disruptive Technology Solutions XXV, LLC ("DTS XXV") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XXV since February 2020.

24. Disruptive Technology Solutions XXVI, LLC ("DTS XXVI") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XXVI since June 2020.

25. Disruptive Technology Solutions XXVII, LLC ("DTS XXVII") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XXVII since July 2020.

26. Disruptive Technology Solutions XXVIII, LLC ("DTS XXVIII") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XXVIII since October 2020.

27. Disruptive Technology Solutions XXIX, LLC ("DTS XXIX") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XXIX since October 2020.

28. Disruptive Technology Solutions XXX, LLC ("DTS XXX") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XXX since October 2020.

29. Disruptive Technology Solutions XXXI, LLC ("DTS XXXI") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XXXI since November 2020.

30. Disruptive Technology Solutions XXXII, LLC ("DTS XXXII") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to XXXII since January 2021.

31. Disruptive Technology Solutions XXXIII, LLC ("DTS XXXIII") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XXXIII since June 2021.

32. Disruptive Technology Solutions XXXIV, LLC ("DTS XXXIV") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XXXIV since March 2021.

33. Disruptive Technology Solutions XXXV, LLC ("DTS XXXV") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XXXV since April 6, 2021.

34. Disruptive Technology Solutions XXXVI, LLC ("DTS XXXVI") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XXXVI since May 2021.

35. Disruptive Technology Solutions XXXVII, LLC ("DTS XXXVII") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to XXXVII since June 2021.

36. Disruptive Technology Solutions XXXVIII, LLC ("DTS XXXVIII") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XXXVIII since August 2021.

37. Disruptive Technology Solutions XXXIX, LLC ("DTS XXXIX") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XXXIX since November 2021.

38. Disruptive Technology Solutions XL, LLC ("DTS XL") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS XL since November 2021.

39. Disruptive Technology Solutions Z, LLC ("DTS Z I") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS Z I since April 2015.

40. Disruptive Technology Solutions Z II, LLC ("DTS Z II Fund") is a private fund formed as a limited liability company. Disruptive has been the investment adviser to DTS Z II since July 2015.

41. The funds listed in paragraphs 3-40 herein are collectively referred to as the "Funds."

Disruptive Failed to Maintain Client Securities with a Qualified Custodian

42. The custody rule requires that registered investment advisers who have custody of client funds or securities implement an enumerated set of requirements to prevent the loss, misuse, or misappropriation of those assets.

43. An investment adviser has custody of client assets if it holds, directly or indirectly, client funds or securities, or if it has the authority to obtain possession of those assets. *See* Advisers Act Rule 206(4)-2(d)(2). A related person of Disruptive has served as the managing member or general partner of the Funds at all relevant times, and has had the authority to make decisions for, and act on behalf of, the Funds. Disruptive is therefore deemed to have custody of each Fund's assets as defined in Advisers Act Rule 206(4)-2.

44. An investment adviser with custody of client assets must, among other things: (i) ensure that a qualified custodian maintains the 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).

45. In 2019, with respect to 19 funds, DTS Biotechnology I, DTS Biotechnology II, DTS 1, DTS III, DTS VIII, DTS IX, DTS X, DTS XI, DTS XII, DTS XIV, DTS XV, DTS XVI, DTS XVII, DTS 18, DTS XIX, DTS XX, DTS XXI, DTS Z I, and DTS Z II, Disruptive did not maintain client funds and securities with a qualified custodian as required by Advisers Act Rule 206(4)-2(a)(1).

46. With respect to the securities of these funds, Disruptive purported to rely on the exception to the qualified custodian requirement that is available for certain privately offered securities. That exception, contained in paragraph (b)(2) of the custody rule ("Privately Offered Securities Exception"), only extends to pooled investment vehicles, including these funds, when such pooled investment vehicles are audited and audited financial statements are distributed as described under Advisers Act Rule 206(4)-2(b)(4). Disruptive failed to obtain an audit of each of the 19 funds and distribute audited financials of the funds as required by the Privately Offered Securities Exception. Accordingly, Disruptive did not satisfy the requirements of the exception

and was obligated to comply with Advisers Act Rule 206(4)-2(a)(1), which Disruptive failed to do. Furthermore, Disruptive failed to comply with the requirements set forth in Rule 206(4)-2(a)(2), (3), and (5).[2]

47. In 2020, with respect to 25 funds, DTS Biotechnology I, DTS Biotechnology II, DTS I, DTS III, DTS VIII, DTS IX, DTS X, DTS XI, DTS XII, DTS XIV, DTS XV, DTS XVI, DTS XVII, DTS 18, DTS XIX, DTS XX, DTS XXI, DTS XXII, DTS XXIII, DTS XXIV, DTS XXV, DTS XXVI, DTS XXVII, DTS Z I, and DTS Z II, Disruptive did not maintain client funds and securities with a qualified custodian as required by Advisers Act Rule 206(4)-2(a)(1).

48. With respect to the securities of these funds, Disruptive purported to rely on the Privately Offered Securities Exception to the qualified custodian requirement, but failed to obtain an audit of each of the 25 funds and distribute audited financials of the funds as required by the Privately Offered Securities Exception. Accordingly, Disruptive did not satisfy the requirements of the exception and was obligated to comply with Advisers Act Rule 206(4)-2(a)(1), which Disruptive failed to do. Furthermore, Disruptive failed to comply with the requirements set forth in Rule 206(4)-2(a)(2), (3), and (5).

49. In 2021, with respect to 29 funds, DTS Biotechnology I, DTS Biotechnology II, DTS VIII, DTS X, DTS XI, DTS XIV, DTS XV, DTS XVI, DTS XVII, DTS XIX, DTS XX, DTS XXI, DTS XXIV, DTS XXVII, DTX XXVIII, DTSXXIX, DTS XXX, DTS XXXI, DTSXXXII, DTS XXXIII, DTS XXXIV, DTS XXXV, DTS XXXVI, DTS XXXVII, DTS XXXVIII, DTS XXXIX, DTS XL, DTS Z I, and DTS Z II, Disruptive did not maintain client funds and securities with a qualified custodian as required by Advisers Act Rule 206(4)-2(a)(1). Disruptive purported to rely on the Privately Offered Securities Exception to the qualified custodian requirement. While it obtained an audit of each of the 29 funds, it failed to timely distribute audited financials to investors in these funds as required by the Privately Offered Securities Exception. Accordingly, Disruptive did not satisfy the requirements of the exception and was obligated to comply with Advisers Act Rule 206(4)-2(a)(1), which Disruptive failed to do. Furthermore, Disruptive failed to comply with the requirements set forth in Rule 206(4)-2(a)(2), (3), and (5).

[2] The custody rule provides an alternative to complying with the requirements of Advisers Act Rule 206(4)-2(a)(2), (3) and (4) for investment advisers to limited partnerships 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 account statements delivery requirements with respect to a fund if the fund is subject to 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 Advisers Act Rule 206(4)-2(b)(4). The accountant performing the audit must be an independent public accountant that is registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board. See Advisers Act Rule 206(4)- 2(b)(4)(ii). An investment adviser to a limited partnership or limited liability company 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) in order to avoid violating the custody rule.

Disruptive Failed to Promptly Amend Information
In Its Forms ADV Concerning Private Fund Audits

50. Item 7.B of Form ADV, Part 1A requires an investment adviser to state whether it is an adviser to any private fund. In that case, the adviser must also complete Section 7.B.(1) of Form ADV, Part 1A, Schedule D.

51. Section 7.B.23.(a) requires an investment adviser to disclose the following information for each private fund managed by the adviser: (i) whether the private fund's financial statements are subject to an annual audit (Section 7.B.23.(a)(1)); (ii) whether those financial statements, if annually audited, are prepared in accordance with GAAP (Section 7.B.23.(a)(2)); (iii) an identification of the auditing firm and whether the firm is an independent public accountant registered with the PCAOB that is subject to the PCAOB's regular inspection (Section 7.B.23.(a), (b), (d), (e), and (f)); and (iv) whether the private fund's audited financial statements for the most recently completed fiscal year have been distributed to fund investors (Section 7.B.23.(g)).

52. Section 7.B.23.(h) requires an investment adviser to state whether all of the audit reports prepared by the auditing firm for each of its advised funds, since the adviser's last annual updating amendment, contained unqualified audit opinions. In Section 7.B.23.(h), the private fund investment adviser must state "Yes," "No," or "Report Not Yet Received."

53. Section 204(a) of the Advisers Act and Rule 204-1(a) thereunder require a registered investment adviser to amend its Form ADV at least annually, and more frequently as required by the instructions to Form ADV. In addition, the instructions to Form ADV, Part 1A, Schedule D, Section 7.B.23.(h) state that *"If you check 'Report Not Yet Received,' you must promptly file an amendment to your Form ADV to update your response when the report is available."*

54. In its Form ADV filing dated March 31, 2022, Part 1A, Schedule D, Section 7.B., paragraph 23(h), with respect to four private funds, DTS I, DTS III, DTS XI, and DTS XV, Disruptive stated "Report Not Yet Received" in response to the question, "Do all of the reports prepared by the auditing firm for the private fund since your last updating amendment contain unqualified opinions?" Disruptive received the audit opinions for DTS I and DTS III in April 2022 and for DTS XI and DTS XV in July 2022, but did not update or revise its Form ADV until January 4, 2023, which was, with respect to DTS I and DTS III, approximately eight months after Disruptive received the reports from the auditor, and with respect to DTS XI and DTS XV, approximately five months after Disruptive received the reports from the auditor.

Violations

55. As a result of the conduct described above, Disruptive willfully[3] violated Sections 204(a) and 206(4) of the Advisers Act and Rules 204-1(a) and 206(4)-2 thereunder.

[3] "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

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Disruptive'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 of Sections 204(a) and 206(4) of the Advisers Act and Rules 204-1(a) and 206(4)-2 thereunder.

B. Respondent is censured.

C. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $225,000 to the Commission for transfer to the general fund of the United States Treasury, subject to the Securities Exchange Act of 1934 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
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 Disruptive Technology Advisers LLC as a Respondent in these proceedings, and the file number of

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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).

these proceedings; a copy of the cover letter and check or money order must be sent to Nikolay Vydashenko, Assistant Regional Director, Fort Worth Regional Office, Securities and Exchange Commission, 1801 Cherry Street, Suite 1900, Unit 18, Fort Worth, Texas 76102.

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