UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11228 / September 5, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21602

In the Matter of **PRIME GROUP HOLDINGS, LLC,** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") against Prime Group Holdings, LLC ("Prime Group" 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 Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing 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 matter involves certain inadequate disclosures and materially misleading statements made by Prime Group – a private equity real estate firm focused on alternative real estate asset classes – in the offering of Prime Storage Fund II, LP ("Fund II"), relating to millions of dollars of earned real estate brokerage fees (hereinafter referred to as brokerage fees) paid between 2017 and 2021 to an affiliated real estate brokerage firm ("Affiliate"), which is wholly owned by Respondent's CEO.

2. Respondent managed and oversaw the operations of numerous self storage real estate properties, some of which are owned by Fund II, with others managed on behalf of other investors, including Respondent's CEO.

3. Respondent retained employees and independent contractors to source real estate acquisition transactions ("Deal Teams"). The brokerage fees paid to Affiliate in connection with property acquisitions were used, in part, to compensate the Deal Teams that sourced transactions on behalf of Fund II, as well as to pay for operational expenses of Respondent's operations.

4. Fund II's offering materials, including its limited partnership agreement, private placement memorandum, and due diligence questionnaires, included statements regarding certain contemplated fees to be paid by Fund II for services, including brokerage fees. These offering materials, however, did not adequately disclose that certain brokerage fees would be paid to an affiliate or that such payments could create a conflict of interest, or that fees received by Affiliate paid for, in part, operational expenses of Respondent. These failures to disclose material information rendered statements made by Respondent to investors in Fund II misleading.

5. As a result of the conduct described above and set forth below, Respondent violated Section 17(a)(2) of the Securities Act.

RESPONDENT

6. **Prime Group**, headquartered in Saratoga Springs, New York, is the property manager for self storage real estate properties, including those owned by Fund II, and is the

[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.

sponsor of Fund II. Prime Group is not registered with the Commission in any capacity. Its owner serves as its CEO.

OTHER RELEVANT ENTITIES

7. **Fund II**, a Delaware limited partnership, is an investment fund formed in January 2017 to purchase self storage facilities across North America. Respondent's CEO owns and controls the limited liability company which serves as general partner for Fund II.

8. **Affiliate** is a real estate brokerage firm licensed in New York State wholly owned by Respondent's CEO. Respondent is not a licensed real estate brokerage firm, and thus, Affiliate received brokerage fees for property acquisitions sourced by the Deal Teams on behalf of Fund II.

FACTS

Background

9. In seeking acquisition opportunities for investment, Fund II generally did not pursue self storage properties that were being offered through the auction process utilized by national brokers. Rather, it relied on the Deal Teams cold calling "mom and pop" owners of targeted properties to inquire of their interest in selling their properties, or alternatively to cultivate relationships with the owners with the hope that they would ultimately sell to Fund II.

10. The Deal Teams were comprised of Respondent's employees and independent contractors located nationwide to find properties to acquire on an "off-market" basis. The costs and compensation of the Deal Teams were paid, in part, through a 3% brokerage fee received by Affiliate on acquisitions sourced by the Deal Teams. The fees paid by Fund II to Affiliate for transactions sourced by the Deal Teams, which are sent to Respondent's and other related parties' accounts following property acquisitions, are an integral component of Respondent's business model.

Fund II Marketing

11. In 2016, Respondent began preparing to launch Fund II. Respondent retained a new placement agent ("Placement Agent") to find investors to raise over $500 million for this new fund through an offering of limited partnership interests. Placement Agent assisted Respondent in drafting marketing materials and offering documents for Fund II, including its private placement memorandum ("PPM") for limited partnership interests and a due diligence questionnaire ("Generic DDQ") to provide to investors based on information provided by Respondent. Respondent also provided Placement Agent with copies of due diligence materials created for use with a prior fund and other marketing and legal materials, including a limited partnership agreement ("LPA").

12. In meetings with investors and in its marketing materials, Respondent, *inter alia*, emphasized the low fee structure of the Fund, which, in turn, would contribute to higher returns. For example, Respondent touted that investors would have direct access to investment returns with "zero dilution" and "elimination of multiple layers of promote," while its competitors' "[t]hird party property management pushes costs on properties in lieu of absorbing such costs within its management fee." (emphasis in original).

13. In 2017, Respondent and Placement Agent began marketing Fund II. Throughout 2017 and early 2018, Respondent and/or Placement Agent provided prospective investors via email and in-person with the Fund's offering and marketing materials, including the LPA, PPM, and Generic DDQ. These materials were also made available to prospective investors via the data room maintained by Placement Agent.

14. During this time, executives of Respondent attended meetings and calls with investors and potential investors, where Respondent's method for sourcing real estate acquisitions was described.

Fund II Offering and Marketing Materials

15. Fund II's offering and marketing materials contained misleading statements and omissions concerning fees and conflicts of interest. This information was material to investors and prospective investors as reasonable investors would have wanted to know about fees paid by Fund II to Respondent's affiliates, including potential conflicts created by such payments.

LPA

16. The LPA addresses, in a section titled "Engagement of Other Persons," the engagement of persons including brokers to render services on behalf of Fund II:

> The General Partner may, from time to time, engage any person to render services to the Fund on such terms and for such compensation as the General Partner may determine, including attorneys, investment consultants, brokers, independent auditors and printers. Person so engaged may be Affiliates of the General Partner or employees of Related Persons.

17. Although this section refers to "Affiliates of the General Partner" merely being engaged "from time to time," the use of Affiliate, however, was an important component of Respondent's business model, and Affiliate received fees on the majority of Fund II's transactions.

PPM

18. The PPM provided an "Overview of Key Terms of the Fund," which in turn disclosed "Other Fees" paid by Fund II. In this sub-section of the PPM, Respondent disclosed a 1% acquisition fee charged on all transactions and 5% property management fee paid to an affiliate, but failed to disclose the 3% brokerage fee charged by Affiliate on most transactions. The PPM's "Other Fees" section contained in the "Summary of Principal Terms" also listed the acquisition fee and property management fee paid to an affiliate, but did not disclose Affiliate's fee.

19. The PPM's description of "Fund Expenses," in the "Summary of Principal Terms" provided: "[Fund II] will pay all expenses related to its operations including "certain costs and expenses directly related to the purchase or sale of a Property Investment by the Fund (including third party brokerage fees and commissions, and transfer taxes)…." As discussed, however, Fund II routinely paid 3% brokerage fees to an affiliate, not just to unaffiliated third party brokers.

20. The PPM also contained a section on potential conflicts. In this section, the PPM disclosed other business activities of the general partner which would result in potential conflicts of interest for Respondent but failed to disclose any information on Affiliate.

Due Diligence Questionnaires

21. Fund II's Generic DDQ was presented in a "question-and-answer" format. In response to the question "Do you use the service of a broker to source deals," the Generic DDQ stated: "Prime has not and does not use a broker; all sourcing is done internally." Although Respondent, on behalf of Fund II, did not generally retain brokers outside the Deal Teams, Respondent routinely used Affiliate as a broker on transactions sourced by the Deal Teams which charged Fund II fees on these transactions.

22. In response to a question seeking to identify brokerage fees paid in connection with its previous fund, Prime Storage Fund I, LLC ("Fund I"), Respondent stated: "at the property level, a buyer's brokerage commission (paid to individual broker[s], not to an affiliate of Prime or the fund manager) equal to 1% to 3% of net purchase price[.]" This was misleading. Affiliate also routinely charged brokerage fees to Fund I.

23. In a section on actual or potential conflicts, the Generic DDQ stated "There are no significant conflicts of interest," without disclosing the brokerage fees paid to Affiliate.

24. During the offering of Fund II, certain prospective investors also provided their own customized due diligence questionnaires to Placement Agent and Respondent. These customized DDQs sought information about, *inter alia*, Fund II's fees and conflicts of interest. In its responses, Respondent failed to include information about Affiliate and the fees paid on transactions sourced by the Deal Teams.

25. For example, one investor requested that Respondent "describe all fee income generated from investments, including but not limited to property management, asset management, development, transaction, monitoring, advisory and loan servicing fees." The response only listed the asset management, acquisition, and property management fees and failed to disclose the brokerage fees received by Affiliate. The response to a question about actual or potential conflicts of interest stated that there were no significant conflicts of interest. The investor's DDQ also included a spreadsheet for Respondent to "detail all fees received by the firm and its affiliates from all portfolio investments since inception." The response included the acquisition, asset management, and property management fees, but not the brokerage fees charged by Affiliate.

26. A separate investor provided Respondent with a spreadsheet requesting detailed information on any fees charged by Respondent or its affiliates. The DDQ requested "any fees, including consulting fees, paid to any affiliated group or person." The response provided to this question was "NA."

27. A response to a request for information about "Any other fees" in a DDQ by a third investor stated: "Individual deal team members, unaffiliated with Prime Group Holdings or the fund manager, receive a brokerage fee of 1% to 3% of net purchase price."

28. Between 2017 and 2021, Affiliate received nearly $18 million in brokerage fees at the closing of Fund II property acquisitions. The brokerage fees were used to fund Respondent's cost-intensive sourcing operations and to compensate the members of the Deal Teams.

29. As a result of the conduct described above, Respondent violated Section 17(a)(2) of the Securities Act which prohibits "any person in the offer or sale of any securities … directly or indirectly … to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading."[2]

DISGORGEMENT

The disgorgement and prejudgment interest ordered in paragraph IV.B is consistent with equitable principles and does not exceed Respondent's net profits from its violations and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to paragraph IV.B in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

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[2] Negligence is sufficient to establish a violation of Section 17(a)(2) of the Securities Act. *See Aaron v. SEC*, 446 U.S. 680, 696-97 (1980).

REMEDIAL EFFORTS

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Prime Group's Offer.

Accordingly, it is hereby ORDERED that**:**

A. Pursuant to Section 8A of the Securities Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Respondent shall, within 10 days of the entry of this Order, pay disgorgement of $11,510,625 and prejudgment interest of $2,561,197 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

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 Prime Group Holdings, 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 Osman Nawaz, Division of Enforcement, Securities and Exchange Commission, 100 Pearl St., Suite 20-100, New York, NY 10004.

C. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $6,500,000 to the Securities and Exchange Commission. 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:

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Payments by check or money order must be accompanied by a cover letter identifying Prime Group Holdings, 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 Osman Nawaz, Division of Enforcement, Securities and Exchange Commission, 100 Pearl St., Suite 20-100, New York, NY 10004.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest and penalties referenced in paragraphs IV.B and C. above. 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