UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98272 / September 1, 2023

INVESTMENT ADVISERS ACT OF 1940
Release No. 6393 / September 1, 2023

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4453 / September 1, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21600

In the Matter of **SQN CAPITAL MANAGEMENT, LLC and JEREMIAH SILKOWSKI,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND 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 Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against SQN Capital Management, LLC ("SQN Capital") and Jeremiah Silkowski ("Silkowski") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, the Respondents have submitted Offers of Settlement ("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, the Respondents

consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and 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 the Respondents' Offers, the Commission finds[1] that:

Summary

1. SQN Capital is a registered investment adviser, and Silkowski is its President, Chief Executive Officer ("CEO") and Chief Compliance Officer ("CCO"). SQN Capital failed to timely distribute annual audited financial statements prepared in accordance with Generally Accepted Accounting Principles ("GAAP") to the investors in two private funds that it advised for each fiscal year from 2020 through 2022 and in two public funds that it advised for each fiscal year from 2019 through 2022, resulting in violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, commonly referred to as the "custody rule." SQN Capital also failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder, a violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, commonly referred to as the "compliance rule." Silkowski willfully aided and abetted and caused SQN Capital's custody rule and compliance rule violations. In September 2020, the Commission charged SQN Capital for violating the custody rule and compliance rule with respect to the same two private funds from 2012 through 2019.

2. In addition, the two public funds at issue here had reporting obligations pursuant to Sections 15(d) and 13(a) of the Exchange Act and failed to file with the Commission annual and quarterly periodic reports during the period from 2019 through the present. SQN Capital and Silkowski willfully aided and abetted and caused the public funds' violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

Respondents

3. SQN Capital is a Delaware limited liability company with its principal office and place of business in New York, New York. SQN Capital has been registered with the Commission as an investment adviser since February 2012. According to SQN Capital's Form ADV filed in March 2023, it has a total of $414.7 million in regulatory assets under management ("RAUM") and manages a total of eight pooled investment vehicles with RAUM of $288.6 million; the four funds at issue here have a total RAUM of $93.6 million. On September 4, 2020, the Commission instituted settled public administrative and cease-and-desist proceedings against SQN Capital. *In the Matter of SQN Capital Management LLC*, Advisers Act Rel. No. 5573 (Sept. 4, 2020)

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

("September 2020 Order"). The Commission found that SQN Capital willfully violated Section 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 thereunder. Without admitting or denying the Commission's findings, SQN Capital consented to the issuance of a cease-and-desist order and censure, and paid a civil monetary penalty of $75,000.

4. Silkowski has been SQN Capital's President, CEO, CCO and majority owner since 2012. Silkowski is 48 years old and resides in Dobbs Ferry, New York. He does not hold any securities licenses and has no known disciplinary history.

Facts

5. During the relevant period, SQN Capital was the managing member of and served as investment adviser to the two private funds at issue, SQN Special Opportunity Fund, LLC ("SO Fund") and SQN Portfolio Acquisition Company, LLC ("PA Fund"). SQN Capital also served as investment manager to the two public funds at issue, SQN Alternative Investment Fund III L.P. ("AIF III Fund") and SQN AIF IV, L.P. ("AIF IV Fund"). The general partners of the AIF III Fund and the AIF IV Fund are both wholly owned subsidiaries of SQN Capital. The securities issued by the AIF III Fund and the AIF IV Fund are limited partnership units as to which the funds filed registration statements on Form S-1 under the Securities Act of 1933. The AIF III Fund and AIF IV Fund therefore have reporting obligations pursuant to Sections 15(d) and 13(a) of the Exchange Act. The stated investment strategy for all four funds at issue focuses on investments in industrial equipment leases, including through participation agreements, and other asset finance investment opportunities.

6. The custody rule is designed to protect investment advisory clients from the misuse or misappropriation of their funds and securities. It requires that registered advisers who have custody of client funds or securities implement an enumerated set of requirements to prevent loss, misuse, or misappropriation of those assets.

7. An investment adviser has custody of client assets if it holds, directly or indirectly, client funds or securities, or if it has any authority to obtain possession of those assets, including, among other things, by acting as a managing member of a limited liability company or a general partner of a limited partnership. *See* Rule 206(4)-2(d)(2) of the Advisers Act. SQN Capital was the managing member of the SO Fund and PA Fund, and a related person of SQN Capital served as the general partner of the AIF III Fund and AIF IV Fund. SQN Capital therefore had custody of the assets of the four funds at issue as defined in Rule 206(4)-2.

8. An investment adviser who has 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 liability company or a limited partnership for which the adviser or a related person is a managing member or general partner, the account statements must be sent to each member or limited partner; 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* Rules 206(4)-2(a)(1) - (5).

9. The custody rule provides an alternative to complying with the requirements of Rules 206(4)-2(a)(2), (3) and (4) for investment advisers to limited partnerships or limited liability companies, such as the four SQN funds at issue. The custody rule provides that an investment adviser "shall be deemed to have complied with" the independent verification requirement and is not required to satisfy the notification and accounts 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 (or members . . .) within 120 days of the end of [the fund's] fiscal year" ("Audited Financials Alternative"). *See* 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* Rule 206(4)-2(b)(4)(ii). An investment adviser to a pooled investment vehicle that fails to meet the requirements of the Audited Financials Alternative to timely distribute audited financial statements prepared in accordance with GAAP would need to satisfy all of the requirements of Rule 206(4)-2(a)(2)-(4) in order to avoid violating the custody rule.

10. While SQN Capital stated in its relevant Forms ADV that it was relying on the Audited Financials Alternative to comply with the custody rule, SQN Capital did not satisfy the requirements of the Audited Financials Alternative with respect to any of the four funds. SQN Capital failed to engage an accounting firm to conduct an annual audit of the financial statements of the SO Fund and the PA Fund for each year from 2020 through 2022. SQN Capital also failed to engage an accounting firm to conduct an annual audit of the financial statements of the AIF III Fund and the AIF IV Fund for each year from 2019 through 2022. As a result, annual audits were never conducted, and audited financial statements were never distributed to investors in the four funds, for any of the foregoing fiscal years. SQN Capital was therefore obligated to comply with Rules 206(4)-2(a)(2), (3) and (4), which it also failed to do.

11. In addition, SQN Capital failed to comply with the requirement that every investment adviser registered with the Commission adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder. *See* Rule 206(4)-7(a). While SQN Capital's written policies and procedures referenced the custody rule, they were not reasonably designed and implemented to prevent violations of the rule.

12. Silkowski was aware of the foregoing circumstances and did not take corrective action to ensure that SQN Capital complied with the custody rule and compliance rule. As SQN Capital's CEO, Silkowski exercised control and authority over all the firm's advisory functions and decision-making and was responsible for ensuring the firm's compliance with the custody and compliance rules. He failed to take necessary steps to do so despite being on notice of the rule's requirements and was aware of the ongoing failures in obtaining audited financial statements for the relevant funds or otherwise complying with the custody rule. Similarly, Silkowski was responsible for ensuring that SQN Capital adopted and implemented policies and procedures

reasonably designed to prevent violations of the Advisers Act, including the custody rule. Silkowski was aware that the firm's policies and procedures were deficient with respect to the custody rule and failed to take corrective action even after the entry of the September 2020 Order.

13. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act, such as the AIF III Fund and the AIF IV Fund, to file with the Commission periodic reports, including annual reports on Form 10-K and quarterly reports on Form 10-Q.

14. The AIF III Fund has not filed an annual report on Form 10-K since April 15, 2019, and has not filed a quarterly report on Form 10-Q since November 14, 2019. The AIF IV Fund has not filed an annual report on Form 10-K since April 1, 2019, and has not filed a quarterly report on Form 10-Q since November 14, 2019.

15. As the sole owner of the funds' respective general partners, SQN Capital was responsible for ensuring that the AIF III Fund and AIF IV Fund filed periodic reports in compliance with the foregoing provisions, and SQN Capital failed to do so. In turn, Silkowski, as SQN Capital's CEO, was responsible for ensuring that SQN Capital properly discharged its responsibilities with respect to those two funds' periodic reporting obligations, and he failed to take necessary steps to ensure that the funds complied with those obligations.

Violations

16. Section 206(4) of the Advisers Act prohibits an investment adviser from engaging in acts, practices or courses of business that are fraudulent, deceptive, or manipulative, as defined by the Commission in rules and regulations promulgated under the statute. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act and the rules thereunder. *See SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992). Rule 206(4)-2 provides that it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of Section 206(4) for a registered investment adviser to have custody of client assets unless the adviser complies with the custody rule. Among other things, Rule 206(4)-2 requires registered investment advisers with custody of client funds or securities to have independent public accountants conduct surprise examinations of those client funds or securities, or to have private fund clients timely distribute to their investors annual audited financial statements prepared in accordance with GAAP. Rule 206(4)-7 requires, among other things, that an investment adviser registered with the Commission adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and rules thereunder.

17. As a result of the conduct described above, SQN Capital willfully[2] violated Section 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 thereunder, and Silkowski willfully aided and abetted and caused those violations.

[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

18. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers of securities registered under Section 12 of the Exchange Act to file annual and quarterly reports with the Commission. No showing of scienter is necessary to establish a violation of Section 13(a) or the rules thereunder. *SEC v. McNulty*, 137 F.3d 732, 740-41 (2d Cir. 1998); *Gateway Int'l Holdings, Inc.*, Exch. Act Rel. No. 53907, at 10 n.28 (May 31, 2006). As a result of the conduct described above, SQN Capital and Silkowski willfully aided and abetted and caused the AIF III Fund and the AIF IV Fund's violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

Undertakings

19. Respondents have undertaken to:

a. Retain, within thirty (30) days of the issuance of this Order, the services of an Independent Compliance Consultant ("Independent Consultant") not unacceptable to the staff of the Commission and provide a copy of this Order to the Independent Consultant. No later than ten (10) days following the date of the Independent Consultant's engagement, Respondents shall provide the Commission staff with a copy of the engagement letter detailing the Independent Consultant's responsibilities, which shall include the review and report to be made by the Independent Consultant as set forth in this Order. The Independent Consultant's compensation and expenses shall be borne exclusively by Respondents.

b. Require the Independent Consultant to conduct a review, to be completed within six (6) months of the Independent Consultant being retained, of SQN Capital's adoption and implementation of compliance policies and procedures that the Independent Consultant deems relevant with respect to adherence to the Advisers Act's custody rule and the compliance rule.

c. Require the Independent Consultant to produce a written report within thirty (30) days of the conclusion of the review, which report shall: describe the review; set forth the conclusions reached and the recommendations made by the Independent Consultant, as well as any proposals made by Respondents; and describe how Respondents will implement the Independent Consultant's recommendations.

d. Within sixty (60) days of receipt of the Independent Consultant's report, take all necessary and appropriate steps to adopt and implement all recommendations contained in the Independent Consultant's report.

(D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). 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).

e. Within thirty (30) days of the adoption and implementation of all recommendations in the Independent Consultant's report, certify in writing to the Independent Consultant and the Commission staff that Respondents have adopted and implemented all recommendations in the report. The Commission staff may make reasonable requests for further evidence of compliance, and Respondents agree to provide such evidence.

f. Cooperate fully with the Independent Consultant and provide the Independent Consultant with access to such files, books, records, and personnel as reasonably requested for the Independent Consultant's review, including access by on-site inspection.

g. Agree that for the period of engagement and for a period of two years from completion of the engagement, Respondents shall not (i) retain the Independent Consultant for any other professional services outside of the services described in this Order; (ii) enter into any other professional relationship with the independent consultant, including any employment, consultant, attorney-client, auditing or other professional relationship; or (iii) enter, without prior written consent of the Commission staff, into any such professional relationship with any of the independent consultant's present or former affiliates, employers, directors, officers, employees, or agents acting in their capacity as such.

h. Agree that Respondents shall not be in, and shall not have, an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or any other doctrine of privilege to prevent the Independent Consultant from transmitting any information, reports, or documents to the Commission staff.

i. Agree that the report by the Independent Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the report could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the report and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) as is otherwise required by law.

j. Certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondents agree to provide such evidence. The certification and supporting material shall be submitted to: George Stepaniuk, Assistant Regional Director, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings. For good

cause shown, the Commission staff may extend any of the deadlines set forth with respect to these undertakings.

IV.

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

Accordingly, pursuant to Sections 203(e), 203(f) and 203(k) of the Advisers Act and Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondents shall cease and desist from committing or causing any violations and any future violations of (i) Section 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 thereunder; and (ii) Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

B. Respondents are censured.

C. Respondent SQN Capital shall pay a civil monetary penalty in the amount of $200,000 to the Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: $60,000 to be paid within 21 days of the entry of the Order; $70,000 to be paid within 90 days of the entry of the Order; and $70,000 to be paid within 180 days of the entry of the Order. Payments shall be applied first to post-order interest, which accrues pursuant to 31 U.S.C. 3717. Prior to making the final payment set forth above, SQN Capital shall contact the staff of the Commission for the amount due. If SQN Capital fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

D. Respondent Silkowski shall pay a civil monetary penalty in the amount of $100,000 to the Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: $30,000 to be paid within 21 days of the entry of the Order; $35,000 to be paid within 90 days of the entry of the Order; and $35,000 to be paid within 180 days of the entry of the Order. Payments shall be applied first to post-order interest, which accrues pursuant to 31 U.S.C. 3717. Prior to making the final payment set forth above, Silkowski shall contact the staff of the Commission for the amount due. If Silkowski fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

E. 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 the Respondents and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to George Stepaniuk, Assistant Regional Director, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004.

F. 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, Respondents 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.

G. Respondents shall comply with the undertakings enumerated in Section III, paragraphs 19.a-19.j, above.

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 Respondent Silkowski, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Silkowski 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 Respondent Silkowski 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