UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6514 / December 26, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21819

In the Matter of **OEP CAPITAL ADVISORS, L.P.** **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" or "SEC") 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 OEP Capital Advisors, L.P. ("OEP" 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 that:

Summary

1. These proceedings arise out of OEP's failure, from at least 2019 through 2022 ("Relevant Period"), to maintain and enforce written policies and procedures reasonably designed to prevent the misuse of potentially material, nonpublic information ("MNPI") and to implement written policies and procedures reasonably designed to prevent potentially misleading communications to current and prospective investors in the privately-offered, private-equity funds that OEP advises ("OEP Funds"), as required by Sections 204A and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. Specifically, on numerous occasions, OEP senior personnel did not comply with OEP's policies and procedures in disclosing merger-related MNPI to current investors, potential investors, and industry contacts, and also made performance-related claims to such persons in a manner that violated OEP's own written policies.

2. As described in subscription documents prepared by OEP, including private placement memoranda, the OEP Funds, since 2015, have engaged in "middle market" mergers-and-acquisitions ("M&A") activity as a fundamental component of their investment strategy. OEP's strategy focuses on purchasing domestic and foreign mid-sized companies for its Funds' portfolios and arranging mergers for these companies ("Portfolio Companies"), with the stated goal of increasing efficiencies and financial performance and achieving higher value for the combined companies. Although most of the OEP Funds' Portfolio Companies are privately held, some are public companies listed on U.S. or foreign stock exchanges.

3. During the Relevant Period, OEP's policies prohibited disclosure of MNPI and OEP Funds' confidential information "except as may be necessary for legitimate business purposes." However, OEP senior personnel repeatedly violated these policies by, among other things, sending emails to current investors, potential investors, and industry contacts which, in certain cases, unnecessarily disclosed M&A-related MNPI concerning U.S. and foreign-listed public companies, typically in a marketing context. This MNPI and related, strategic information also constituted the OEP Funds' confidential information.

4. Also during the Relevant Period, OEP's policies prohibited use of Fund asset and securities holdings valuations, other than those approved by OEP's valuation committee, in communications with current or potential investors and in valuation-based performance statements. However, OEP senior personnel repeatedly violated these policies by, among other things, sending certain emails to current investors, potential investors, and industry contacts, soliciting investment capital for OEP Funds and often asserting that a particular OEP Fund already had generated a substantial "embedded gain" by virtue of the Fund's portfolio activity to date and from which new investors, or current investors who invested additional money, could benefit. These embedded-gain and similar claims were predicated on OEP senior personnel's estimated, current valuations of the Funds' portfolio holdings and had not been approved by OEP's valuation committee, which met, and approved valuations, on a quarterly basis.

Respondent

5. OEP is a Delaware limited partnership headquartered in New York, NY. OEP provides investment advisory services to the OEP Funds. It has been registered with the Commission as an investment adviser since 2014 and, as of December 31, 2022, had total assets under management of approximately $10.7 billion.

Background

OEP's Compliance Policies and Procedures Related to MNPI

6. Throughout the Relevant Period, OEP's firmwide compliance policies and procedures were set forth in its compliance manual, the stated purpose of which was to "advance compliance with and prevent violations of the Advisers Act, the U.S. federal securities laws and other applicable law." These policies and procedures included written policies relevant to the treatment of MNPI by OEP supervised persons, including OEP senior personnel.

7. OEP's compliance manual defined "material" information as information "that a reasonable investor would consider … important in deciding to buy or sell a security," and stated that "inside information" includes "knowledge of pending … corporate finance activity, mergers or acquisitions, and other such non-public information." It further stated that information is "non-public" until it has been "effectively communicated to the marketplace," *e.g.*, through SEC filings or "publications of general circulation." The manual also mandated that "[i]nside information … with respect to any Fund, any potential or actual portfolio company of any Fund or any other company … must be kept strictly confidential. Supervised Persons should not act upon or disclose to any person material non-public or inside information except as may be necessary for legitimate business purposes."

8. During the Relevant Period, OEP often chose to use non-disclosure agreements ("NDAs") to protect MNPI and confidential information. However, OEP personnel used NDAs in the course of providing MNPI without always following the firm's existing policies and procedures governing the disclosure of MNPI, which required a determination that disclosure was "necessary for legitimate business purposes" and which remained applicable whether or not an NDA was used. Current investors in the OEP Funds were subject to provisions in OEP Fund subscription documents which required such investors to "keep confidential and not disclose," without OEP's prior written consent, "any [non-public] information" regarding any OEP Fund or Portfolio Company. Potential investors in the OEP Funds were sometimes required to sign NDAs prior to receiving MNPI or other confidential information from OEP, *e.g.*, prior to accessing online, due-diligence "data rooms." Furthermore, OEP sometimes required industry contacts, potential employees, and other associates to sign NDAs prior to receiving MNPI or other confidential information from OEP in various contexts, *e.g.*, prior to attending, as a guest, OEP's internal, weekly investment-update meetings. However, in the above situations, OEP personnel did not always make an appropriate determination, when disclosing MNPI or OEP Funds' confidential

information, that such disclosure was "necessary for legitimate business purposes," as required by OEP's policies and procedures.

OEP's Disclosures of MNPI

9. On numerous occasions during the Relevant Period, OEP senior personnel disclosed M&A-related MNPI and other non-public, confidential information, concerning multiple U.S. and foreign-listed public companies, where a determination had not been made that such disclosure was "necessary for legitimate business purposes." Many of these disclosures were made in unofficial update emails sent by OEP senior personnel to specific large, current investors, sometimes in the context of soliciting additional investment. Other such disclosures were made in emails to potential new investors and industry contacts.

10. For example, OEP senior personnel disclosed the following MNPI: "Going to [location] to talk to our mgmt. team at [Public Company 1] to tell them we are sellers of our [dollar amount] stake;" "In OEP [Fund], we own 13 cos…. 4 of the 13 [including Public Companies 2 and 3] are in sale or combination processes;" and "[Private Company 1 will realize] as much as [dollar amount] of prospective synergies from [Public Company 4] merger yet to be announced for about 33 pc of equity."[1]

11. Disclosure of M&A-related MNPI and other non-public, confidential information, in violation of OEP's policies, also sometimes occurred during OEP's internal, weekly investment-update meetings when certain guests, who had signed NDAs, attended without an appropriate determination having been made that their doing so was "necessary for legitimate business purposes." In addition to sitting in on the meetings, these guests were also sometimes sent meeting-discussion materials that contained MNPI and non-public confidential information belonging to the OEP Funds.

Other Relevant Compliance Policies and Procedures

12. Throughout the Relevant Period, OEP's compliance manual provided that any written communication "addressed to more than one person" was subject to prior approval by OEP compliance personnel as an "Advertisement." Moreover, in any such Advertisement, "[p]erformance data [was required to] be presented fairly and in a non-misleading manner" and be "accompanied by an appropriate explanatory footnote" supplied by OEP compliance personnel.

13. Additionally, OEP's written policies prohibited OEP personnel from using "any valuation of any security or other asset held by a Fund, or any performance presentation based on such valuations, in any … communication with current or potential Fund investors other than a valuation approved by the Valuation Committee." OEP's valuation committee met on a quarterly basis. Under OEP's valuation policy, all new investments were held for an initial two quarters at valuations based on the OEP Funds' purchase or "entry" metrics for the investments, as adjusted

[1] The quoted emails disclosed actual company names and dollar amounts.

for updates to earnings and/or revenues, before the investments would be subsequently valued using market-based metrics.

OEP Senior Personnel's Unreviewed Advertisements and Claims Based on Unapproved Valuations

14. In multiple instances during the Relevant Period, OEP senior personnel sent emails to more than one person – which included identical passages of performance-related content – without prior approval by OEP compliance personnel and without the "appropriate" explanatory footnote specified in OEP's above-mentioned policy regarding Advertisements.

15. On numerous occasions, OEP senior personnel made quantified performance or embedded-gains claims, often during the first year of new OEP Funds' existence, based on estimated, current value calculations of the Funds' Portfolio Companies, which had not been approved by OEP's valuation committee. Such claims were made in the context of emails soliciting capital commitments from current and potential investors, who were told that the new Funds already had embedded, prospective, or "built in" portfolio gains or discounts that new investors could benefit from by investing, or that current investors could benefit from by adding to their initial investment. Some of the claims were made in email content sent to more than one person, which did not contain the required explanatory footnote.

16. For example, OEP senior personnel made the following performance and/or valuation-based statements: "We generally make 2-2.5x [return on investment] and 25-35 pc irr depending on the time it takes-OEP [Fund] will be high because it happened fast, but still in the 2-2.2x range…. If we assume we can complete all the combinations in process [for OEP Fund], realize our usual synergies, and value the cos at a reasonable 8.25x [projected earnings], … an investor in OEP [Fund] could be looking at a [dollar amount] plus imbedded gain in the context of a [dollar amount] [F]und that is 40 pc plus invested;" "[OEP] Fund will be oversubscribed at [dollar amount] but will be 50 pc invested when we close on March…. [T]he [dollar amount] we've invested is fairly worth 1.7x so there's a [dollar amount] built in gain before you close on the [dollar amount] [F]und."

OEP's Failure to Implement and Enforce Its Compliance Policies and Procedures

17. OEP failed to maintain and enforce its policies and procedures designed to prevent misuse of MNPI and of other confidential, nonpublic information belonging to the OEP Funds and/or the Funds' Portfolio Companies. Although OEP chose to use NDAs as a routine part of its business operations, OEP personnel did not always make an appropriate determination that the prospective disclosure of MNPI, under the circumstances presented, was "necessary for legitimate business purposes," as required by OEP's existing written policies and procedures,.

18. OEP also failed to implement its written policies and procedures designed to prevent potentially misleading valuation-based performance claims in investor communications as well as other potentially misleading performance claims in email content sent to more than one person. Throughout the Relevant Period, OEP senior personnel violated OEP's policies by making

embedded-gain or similar claims based on estimated, current valuations of the OEP Funds' portfolio holdings, which had not been approved by OEP's valuation committee. OEP senior personnel sent emails to multiple investors which contained identical, performance-related content without submitting these emails for prior review and without including a footnote to clarify aspects of the claims as required by OEP's written policies and procedures.

Violations

19. As a result of the conduct described above, Respondent willfully violated Section 204A of the Advisers Act. Section 204A requires investment advisers subject to Section 204 of the Advisers Act to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such investment adviser's 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 or the Exchange Act or the rules or regulations thereunder.[2]

20. As a result of the conduct above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

OEP's Remedial Efforts

In determining to accept the Offer, the Commission has considered remedial acts promptly undertaken by Respondent, including the standardization and enhancement of Respondent's compliance policies and procedures regarding MNPI as well as the enhancement of OEP's firmwide compliance training related to investor communications. In determining to accept the Offer, the Commission has also considered the cooperation that OEP afforded the Commission staff.

[2] "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 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).

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent'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 204A and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $4,000,000 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. 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 OEP 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 Jeffrey P. Weiss, Assistant Director, Enforcement Division, Securities and Exchange Commission, 100 F St., N.E, Washington, DC 20549.

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, OEP 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