UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6663 / August 19, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22021

In the Matter of

FPA Real Estate Advisers Group, 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 FPA Real Estate Advisers Group, LLC ("FPA Real Estate Advisers 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 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. This matter involves violations of the Advisers Act by FPA Real Estate Advisers Group, an SEC-registered investment adviser, from October 2019 to November 2022, in connection with FPA Real Estate Advisers Group's custody practices and compliance policies and procedures. FPA Real Estate Advisers Group had custody of the assets of its pooled investment vehicle clients. The advisory firm, however, failed to have the funds and securities of seven of those pooled investment vehicles verified by actual examination, or, in the alternative, have audits performed of those pooled investment vehicles and then timely distribute, to investors in the pooled investment vehicles, audited financial statements prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). Accordingly, FPA Real Estate Advisers Group violated Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, commonly referred to as the "custody rule." Second, FPA Real Estate Advisers Group failed to implement its policies and procedures related to the custody rule, including the delivery of audited financial statements for pooled investment vehicle clients to investors. FPA Real Estate Advisers Group further failed to implement its policies and procedures regarding the use of service providers affiliated with FPA Real Estate Advisers Group. Accordingly, FPA Real Estate Advisers Group also violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, commonly referred to as the "compliance rule."

Respondent

2. FPA Real Estate Advisers Group is a Delaware limited liability company with its principal place of business in Irvine, California. FPA Real Estate Advisers Group has been registered with the Commission as an investment adviser since 2017. FPA Real Estate Advisers Group advises pooled investment vehicles concerning real estate investments. On its Form ADV dated March 27, 2024, FPA Real Estate Advisers Group reported that it had approximately $5.66 billion in regulatory assets under management.

Background

3. From October 2019 to November 2022 (the "relevant period"), FPA Real Estate Advisers Group provided investment advisory services exclusively to privately offered pooled investment vehicles. FPA Real Estate Advisers Group's twenty-nine pooled investment vehicle clients were organized into seven master-feeder arrangements, and investor funds were ultimately used to purchase real property ("real estate assets"). Each master-feeder arrangement included two primary feeder funds – one for taxable investors ("taxable feeder fund") and one for tax-exempt

[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.

investors ("tax-exempt feeder fund"). The assets of the taxable and tax-exempt feeder funds, directly or indirectly, were solely invested into the master fund. The master fund invested substantially all of its assets, through limited liability companies, in the real estate assets. Finally, each master-feeder arrangement also included an additional pooled investment vehicle (each, a "HoldCo Fund"). Each HoldCo Fund acted as a second-level feeder fund to the taxable feeder fund, and was composed of investments from FPA Real Estate Advisers Group managers and employees, as well as certain other individuals who were not qualified to invest directly into the taxable feeder fund.[2] All HoldCo Fund assets were invested in the taxable feeder fund, which, in turn, invested in the master fund. The managing member of each of the HoldCo Funds was a related person of FPA Real Estate Advisers Group.

4. During the relevant period, FPA Real Estate Advisers Group advised the seven HoldCo Funds. At various times during the relevant period, FPA Real Estate Advisers Group disclosed in Form ADV Part 1A that each of the seven HoldCo Funds was subject to an annual audit and the audited financial statements for the most recently completed fiscal year were distributed to each fund's investors. Yet during the relevant period, FPA failed to obtain audits of the HoldCo Funds and timely distribute the audited financial statements to investors or otherwise comply with the requirements set forth in Rule 206(4)-2(a)(2)-(5).

5. During the relevant period, FPA Real Estate Advisers Group had two affiliates – Trinity Property Consultants, LLC ("Trinity") and Redwood Construction, Inc. ("Redwood") – that received fees borne by FPA Real Estate Advisers Group's fund clients for property management and construction services provided to the real estate assets. FPA Real Estate Advisers Group disclosed to investors in offering documents the exclusive use of Trinity and Redwood for their respective services, that fees paid to the affiliates would be at market rates, and the rates FPA Real Estate Advisers Group used to calculate fees paid to Trinity and Redwood. FPA Real Estate Advisers Group also stated in its Form ADV Part 2A that the fees paid to affiliates were "lower or comparable to those that would be charged in arms' length transactions with third parties" and that it had "adopted written policies and procedures designed to monitor the comparability of its fees with those of unaffiliated third parties."

6. During the relevant period, FPA Real Estate Advisers Group had adopted written policies and procedures to review, no less than annually, the fees charged by affiliates for property management and construction to ensure that they remained at or below market rates for similar services. FPA Real Estate Advisers Group's policies and procedures included collecting fee information for similar property management and construction services provided by unaffiliated third parties, documenting the review, preparing a summary of findings from the data collected, and presenting the summary to the investment committee of the applicable fund to determine if any rate adjustments were necessary. During the relevant period, FPA Real Estate Advisers Group did not implement these policies and procedures as written.

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[2] One of the seven master-feeder arrangements contained another feeder fund – in addition to the HoldCo Fund – that invested its assets solely in the taxable feeder fund.

Failure to Comply with the Custody Rule

7. Advisers Act Rule 206(4)-2, referred to as the "custody rule," requires that registered investment advisers who have custody of client funds or securities comply with an enumerated set of requirements to prevent loss, theft, misuse, or misappropriation of those assets and to safeguard client funds or securities from the financial reverses, including insolvency, of an investment adviser.

8. 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. *See* Rule 206(4)-2(d)(2). An adviser also has custody if its "related person" has possession of client funds or securities or has authority to obtain possession of them in connection with advisory services provided to clients. *Id.* A related person of FPA Real Estate Advisers Group served as the managing member of each of the HoldCo Funds at all relevant times, and had the authority to obtain possession of the HoldCo Funds' funds and securities. FPA Real Estate Advisers Group therefore had custody of the HoldCo Funds' assets as defined in Rule 206(4)-2.

9. A registered investment adviser with custody of client funds or securities must, among other things: (i) ensure that a qualified custodian maintains these types of 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* Rule 206(4)-2(a)(1)-(5).

10. The custody rule provides an alternative to complying with the requirements of Rule 206(4)-2(a)(2), (3), and (4) for advisers to limited partnerships, limited liability companies, 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 accounts statement delivery requirements with respect to a fund if the fund is subject to annual audit at least annually and "distributes [the fund's] audited financial statements prepared in accordance with generally accepted accounting principles to all . . . members . . . within 120 days of the end of [the fund's] fiscal year" ("Audited Financials Alternative"). *See* Rule 206(4)-2(b)(4). 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) to avoid violating the custody rule.

11. From at least October 2019 to November 2022, FPA Real Estate Advisers Group failed to comply with the requirements of the custody rule set forth in Rule 206(4)-2(a)(2)-(4) or with the Audited Financials Alternative. FPA Real Estate Advisers Group purported to rely on the

Audited Financials Alternative to comply with the custody rule, but FPA Real Estate Advisers Group failed to have the required audits of the HoldCo Funds performed, and, thus, the audited financial statements for fiscal year 2017 through 2021 were not timely distributed to investors in each HoldCo Fund. Accordingly, FPA Real Estate Advisers Group did not satisfy the requirements of the Audited Financials Alternative in Rule 206(4)-2(b)(4) for each of the HoldCo Funds. It was therefore obligated to comply with Rule 206(4)-2(a)(2), (3), and (4), which FPA Real Estate Advisers Group also failed to do. FPA Real Estate Advisers Group has since engaged an auditor to perform audits of each of the HoldCo Funds and distributed audited financial statements for each of the HoldCo Funds for fiscal year 2017, or the inception of the HoldCo Fund, whichever is later, through 2023.

Compliance Deficiencies

12. Advisers Act Rule 206(4)-7, referred to as the "compliance rule," requires registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules. During the relevant period, FPA Real Estate Advisers Group failed to implement written policies and procedures that it had adopted to prevent violations of the custody rule. Separately, FPA Real Estate Advisers Group failed to implement policies and procedures it had adopted regarding the use of FPA Real Estate Advisers Group affiliates as service providers. Specifically, its policies and procedures required FPA Real Estate Advisers Group to review, on an annual basis, the fees charged by affiliates for property management and construction services to ensure that the fees charged were at or below market rates for similar services. FPA Real Estate Advisers Group failed to perform these reviews as specified in the policies and procedures during the relevant period.

13. Prior to the institution of this proceeding, FPA Real Estate Advisers Group engaged a third party to conduct a market study to assess the fees charged by affiliated service providers. Further, FPA Real Estate Advisers Group revised its compliance policies and procedures relating to the assessment of affiliated service provider fees.

Violations

14. As a result of the conduct described above, FPA Real Estate Advisers Group willfully[3] violated Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated

[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 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, 479-80 (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).

thereunder, which, among other things, require registered investment advisers with custody of pooled investment vehicle client funds or securities to have independent public accountants conduct surprise examinations of those client funds or securities or comply with the requirements of Rule 206(4)-2(b)(4). 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).

15. As a result of the conduct described above, FPA Real Estate Advisers Group willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which, among other things, require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent FPA Real Estate Advisers Group'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 Section 206(4) of the Advisers Act and Rules 206(4)-2 and 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 $300,000.00 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 FPA Real Estate Advisers Group, 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 Spencer Bendell, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower Street, Suite 900, Los Angeles, CA 90071.

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