

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6665 / August 23, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22031

In the Matter of

CEDAR LEGACY 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 Cedar Legacy LLC (“Cedar Legacy” 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. Cedar Legacy was formerly a registered investment adviser that committed multiple violations of the Advisers Act with respect to three private funds as to which it had custody of the funds' assets. First, Cedar Legacy failed to timely distribute annual audited financial statements prepared in accordance with generally accepted accounting principles ("GAAP") to the investors in Jobi Capital Investment Fund LP and Jobi Capital Investment Fund II LP private funds for fiscal years 2020 and 2021, resulting in violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, commonly referred to as the "custody rule."

2. Second, Cedar Legacy failed to promptly update its Form ADV after receiving the fiscal year 2021 audit opinion for a third private fund, Kai Capital Management, LP, in violation of Section 204(a) of the Advisers Act and Rule 204-1(a) thereunder.

3. Third, Cedar Legacy failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder resulting in a violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, commonly referred to as the "compliance rule."

Respondent

4. Cedar Legacy is a Delaware limited liability company with its principal office and place of business in New York, New York. Cedar Legacy was registered with the the Commission as an investment adviser from November 2019 through March 2023. As of March 31, 2023, Cedar Legacy reported having approximately \$81.9 million in regulatory assets under management.

Other Relevant Entities

5. Jobi Capital Investment Fund LP ("Jobi Fund 1") is a private fund formed as a limited partnership. At all relevant times, the managing member and majority owner of Cedar Legacy was a controlling person of the general partner of Jobi Fund 1 and a related person of the investment manager to Jobi Fund 1, which was a relying adviser for which Cedar Legacy, as filing adviser, filed an umbrella registration.

6. Jobi Capital Investment Fund II LP ("Jobi Fund 2" and, collectively with Jobi Fund 1, the "Jobi Funds") is a private fund formed as a limited partnership. At all relevant times, the managing member and majority owner of Cedar Legacy was a controlling person of the general partner of Jobi Fund 2 and a related person of the investment manager to Jobi Fund 2, which was a relying adviser for which Cedar Legacy, as filing adviser, filed an umbrella registration.

7. Kai Capital Management, LP ("Kai Fund") is a private fund formed as a limited partnership. At all relevant times, the managing member and majority owner of Cedar Legacy was a controlling person of the general partner of the Kai Fund and a related person of the investment manager to the Kai Fund, which was a relying adviser for which Cedar Legacy, as filing adviser,

filed an umbrella registration. Accordingly, Cedar Legacy was responsible for filing and updating Form ADV.

Facts

Custody Rule Failures

8. 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.

9. An investment adviser has custody of client assets if it or a related person holds, directly or indirectly, client funds or securities, or if it has the ability to obtain possession of, or has access to, those assets, including, among other things, by acting as a managing member of a limited liability company, a general partner of a limited partnership or a comparable position for another type of pooled investment vehicle. *See* Rule 206(4)-2(d)(2). Because the managing member and majority owner of Cedar Legacy was a controlling person of each general partner of the Jobi Funds, Cedar Legacy had custody of the assets of the two funds as defined in Rule 206(4)-2.

10. A registered investment adviser who has custody of client assets must, among other things: (1) ensure that a qualified custodian maintains the client assets; (2) notify the client in writing of accounts opened by the adviser at a qualified custodian on the client's behalf; (3) 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, general partner, or comparable position for another type of pooled investment vehicle, the account statements must be sent to each member or limited partner; and (4) 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).

11. The custody rule provides an alternative to complying with the requirements of Rule 206(4)-2(a)(2), (3), and (4) for investment advisers to limited liability companies, limited partnerships or other types of pooled investment vehicles, such as the Jobi Funds. 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 (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 ("PCAOB"). *See* Rule 206(4)-2(b)(4)(ii). An investment adviser to a limited liability company or limited partnership 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 Rules 206(4)-2(a)(2), (3), and (4) in order to avoid violating the custody rule.

12. While Cedar Legacy stated in its relevant Forms ADV that it was relying on the Audited Financials Alternative to comply with the custody rule, Cedar Legacy did not satisfy the requirements of the Audited Financials Alternative with respect to either of the Jobi Funds. Cedar Legacy engaged an independent, PCAOB-registered accounting firm to conduct an annual audit of the financial statements of the Jobi Funds for fiscal years 2020 and 2021, but the audit firm did not complete the audits and issue audit reports until well after 120 days following the end of both years. Accordingly, audited financial statements were not distributed by Cedar Legacy to the investors in the Jobi Funds until long after 120 days of the end of the respective fiscal years, as set forth in the table below:

Fund	End of Fiscal Year	Date Distribution Required	Date Distributed	Days Late
Jobi Fund 1	December 31, 2020	April 30, 2021	April 30, 2023	730 days
Jobi Fund 2	December 31, 2020	April 30, 2021	April 30, 2023	730 days
Jobi Fund 1	December 31, 2021	April 30, 2022	April 30, 2023	365 days
Jobi Fund 2	December 31, 2021	April 30, 2022	April 30, 2023	365 days

13. Because Cedar Legacy did not satisfy the requirements of the Audited Financials Alternative, Cedar Legacy was required to comply with each of the provisions of Rules 206(4)-2(a)(2), (3), and (4), which it failed to do. For example, Cedar Legacy did not ensure that client funds and securities were 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, in accordance with Rule 206(4)-2(a)(4).

Failure to Promptly Amend Form ADV

14. 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.

15. Form ADV 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 (Form ADV Section 7.B.23.(a)(1)); (ii) whether those financial statements, if annually audited, are prepared in accordance with GAAP (Form ADV 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 (Form ADV 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 (Form ADV Section 7.B.23.(g)).

16. Last, Form ADV 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 private funds, since the adviser's last annual updating amendment, contained unqualified audit opinions. In Form ADV Section 7.B.23.(h), the investment adviser must state "Yes," "No," or "Report Not Yet Received."

17. 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."

18. In its Form ADV filing dated March 31, 2022, Part 1A, Schedule D, Section 7.B., paragraph 23(h), concerning the Kai Fund, Cedar Legacy 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?" Cedar Legacy received the audit opinion for the Kai Fund on April 28, 2022. However, Cedar Legacy did not file an updated Form ADV amendment indicating the results of the audit until September 15, 2022.

Compliance Rule Failures

19. In addition, Cedar Legacy 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 Cedar Legacy's written policies and procedures referenced timely distribution of annual audited financial statements to private fund investors, those policies and procedures were not reasonably designed and implemented to prevent violations of the custody rule. Similarly, although the firm's compliance manual contained generic language regarding the need to promptly update its Form ADV if there is additional information required for the filing, Cedar Legacy lacked written policies and procedures reasonably designed and implemented to prevent a failure to timely file updated Form ADV amendments.

Violations

20. 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.

21. 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. 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, if complying with the Audited Financials Alternative, to timely distribute to the private fund 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. Scienter is not required to prove violations of Section 206(4) of the Advisers Act or the rules thereunder; a finding of negligence is sufficient. *SEC v. Steadman*, 967 F.2d 636, 647, 648 n.5 (D.C. Cir. 1992); *see also Steadman v. SEC*, 603 F.2d 1126, 1134 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)).

22. As a result of the conduct described above, Cedar Legacy willfully violated Sections 204(a) and 206(4) of the Advisers Act and Rules 204-1(a), 206(4)-2, and 206(4)-7 thereunder.

IV.

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

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

A. Respondent Cedar Legacy 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), 206(4)-2, and 206(4)-7 thereunder.

B. Respondent Cedar Legacy is censured.

C. Respondent Cedar Legacy shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$75,000. 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 Cedar Legacy 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 Thomas P. Smith, Jr., Division of Enforcement, Securities and Exchange Commission, 100 Pearl St., Suite 20-100, New York, NY 10004-2616.

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