UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6671 / September 3, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22044

In the Matter of

COLONY CAPITAL INVESTMENT ADVISORS, 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 Colony Capital Investment Advisors, LLC ("Colony" 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 arises from registered investment adviser Colony's failures to follow certain contractually agreed procedures governing the timely disclosure of and consent to expenses that Colony allocated to eight private real estate investment funds it managed (the "Funds") for services provided by affiliates of Colony to the Funds.

2. The limited partnership agreements ("LPAs") for the Funds provided that the Funds, at the direction of Colony, may enter into transactions and agreements with Colony's affiliates, which may create conflicts of interest, and specified how such transactions were to be disclosed and approved. The LPAs required that transactions with affiliates be fully disclosed in advance to the Funds' limited partners, approved by the Funds' limited partnership advisory committees ("LPACs") or the majority-in-interest of its limited partners, as applicable, and, with respect to one Fund, that material amounts paid to affiliates be disclosed to the Fund's LPAC during the same fiscal year as the expenses are incurred. Colony caused certain of the Funds to incur and pay fees and expenses pursuant to approximately 40 agreements between these Funds and affiliates of Colony and the Funds' general partners. From at least 2017 to 2021, Colony failed to provide the required disclosures to limited partners in advance and to obtain the required approvals from the LPACs or majority-in-interest of limited partners with respect to these agreements, although Colony generally disclosed the expenses charged under these agreements after the agreements were entered into and expenses were incurred and paid each year. Moreover, in 2020, Colony failed to disclose to the LPAC of one Fund certain expenses incurred by that Fund in transactions with affiliates in the same fiscal year as the expenses were incurred.

3. Until at least 2021, Colony did not have reasonably designed policies and procedures in place to prevent violations of the Advisers Act and the rules thereunder relating to the Funds' use of affiliated service providers, the process for entering into transactions or agreements with affiliated service providers, including the determination of the arm's-length nature of transactions with affiliated service providers that was required by the Funds' governing documents, or otherwise complying with requirements in governing documents related to assessing or approving transactions with affiliates.

4. By virtue of this conduct, Colony violated Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder.

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[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.

Respondent

5. Colony is a Delaware limited liability company with its principal place of business in Boca Raton, Florida. The firm has been registered as an investment adviser with the Commission since 2015. Colony was the successor to the business of a registered investment adviser. As of May 2024, Colony had approximately $802 million in regulatory assets under management. Colony manages several private equity funds, including the Funds, either directly or through an affiliate.

Other Relevant Entities

6. Colony Distressed Credit Fund, L.P. ("CDCF") was a Delaware limited partnership that was formed in 2008 for the purpose of acquiring real estate-related investments. CDCF was dissolved in March 2021. Colony was the investment manager for CDCF, and an affiliate of Colony was the general partner of CDCF.

7. Colony Distressed Credit Fund II, L.P. ("CDCF II") is a Delaware limited partnership that was formed in 2010 for the purpose of acquiring real estate-related investments. Colony was the investment manager for CDCF II until 2021, when the assets of this fund were sold to a third party, and an affiliate of Colony was the general partner of CDCF II.

8. Colony Distressed Credit and Special Situations Fund IV, L.P. ("CDCF IV") is a Delaware limited partnership that was formed in 2015 for the purpose of acquiring, managing, and selling real estate-related investments. An affiliate of Colony was the investment manager for CDCF IV until 2021, when the assets of this fund were sold to a third party, and an affiliate of Colony was the general partner of CDCF IV.

9. CDCF V Lux, SCSp ("CDCF V") is a Luxembourg special limited partnership that was formed in 2019 to provide an investment vehicle for United States tax-exempt and non-United States investors to invest into a master fund, CDCF V Lux Holdings, SCSp, for the purpose of real-estate related investments. An affiliate of Colony was the investment manager for CDCF V until 2021, when the assets of this fund were sold to a third party, and an affiliate of Colony was the general partner of CDCF V.

10. Colony Investors V, L.P. ("Colony V") was a Delaware limited partnership that was formed in December 2001 for the purpose of acquiring real estate-related investments. The fund was dissolved in March 2021. Colony was the investment manager for Colony V, and an affiliate of Colony was the general partner of Colony V.

11. Colony Investors VII, L.P. ("Colony VII") was a Delaware limited partnership that was formed in 2005 for the purpose of acquiring real estate-related investments. The fund was dissolved in December 2023. Colony was the investment manager for Colony VII, and an affiliate of Colony was the general partner of Colony VII.

12. Colony Investors VIII, L.P. (together with its parallel funds, "Colony VIII") was a Delaware limited partnership that was formed in October 2006 for the purpose of acquiring real estate-related investments. Colony VIII was dissolved in 2023. Colony was the investment manager for Colony VIII, and an affiliate of Colony was the general partner of Colony VIII.

13. ColFin Cobalt Partnership, L.P. ("ColFin") was a Delaware limited partnership that was formed in November 2014 for the purpose of acquiring real estate-related investments. The assets of ColFin were sold to a third party in December 2019 and ColFin dissolved in approximately March 2021. Colony was the investment manager for ColFin, and an affiliate of Colony was the general partner of ColFin.

Background

14. Colony's advisory business consists primarily of advising private real estate investment funds, including CDCF, CDCF II, CDCF IV, CDCF V, Colony V, Colony VII, Colony VIII, and ColFin (defined above as the "Funds"). The Funds are pooled investment vehicles.

15. Colony routinely caused the Funds to enter into agreements with entities affiliated with both Colony and the general partners of the Funds (the "Affiliated Service Providers") for certain services. These services included, among others, fund-level administrative services (such as tax, accounting, and legal support), as well as asset-level services (such as loan servicing, property maintenance, and property-level accounting). The Funds incurred expenses and paid the Affiliated Service Providers under these agreements from at least 2017 to 2021.

Approval and Disclosure of Agreements with Affiliated Service Providers

16. The LPAs for CDCF, CDCF II, CDCF V, Colony V, Colony VII, and Colony VIII contemplated that these Funds may enter into transactions with affiliates of Colony, which may pose conflicts of interest. Accordingly, the LPAs generally required that, with respect to any transaction between any of the Funds and affiliates of the general partner, the compensation of the affiliates and the services to be provided to the Funds be (i) fully disclosed in writing with the limited partners in advance and (ii) consented to in writing or approved by the Funds' LPAC, or in the case of CDCF V, the majority-in-interest of the limited partners. The LPAs further required that the terms and conditions of the agreements with affiliates be at least as favorable as those generally available in arm's-length transactions with qualified independent third parties.

17. Colony, directly or through an affiliated relying adviser, directed CDCF, CDCF II, CDCF V, Colony V, Colony VII, and Colony VIII to enter into approximately 40 agreements with Affiliated Service Providers. Each of these agreements pertained to a specific investment by the relevant Fund. Under these agreements, the Affiliated Service Providers performed certain specified services for these Funds as to those investments, including loan servicing for debt portfolios held by these Funds, as well as certain administrative and management services. For example, one agreement required the Affiliated Service Provider to manage and service loans held by CDCF II by, among other things, collecting payments of principal and interest from borrowers

and obtaining financial information regarding the loans. From 2017 to 2021, Colony directed these six Funds to pay approximately $3.6 million to the Affiliated Service Providers.

18. Colony failed to comply with specific provisions of the LPAs by not providing advance disclosure to the limited partners of these Funds or obtaining approval of these Funds' LPACs (or majority-in-interest of the limited partners, in the case of CDCF V) for any of the agreements with the Affiliated Service Providers specified above.

19. With respect to CDCF, CDCF II, CDCF V, Colony V, Colony VII, and Colony VIII, Colony generally disclosed the existence of agreements with Affiliated Service Providers and the expenses charged under these agreements in these Funds' audited financial statements as well as in certain presentations to these Funds' LPACs, but only after the agreements were entered into and expenses incurred and paid each year.

20. With respect to CDCF IV, from 2017 through 2020, Colony made disclosures in its audited financial statements and to CDCF IV's LPAC concerning expenses charged by Affiliated Service Providers, but did not identify in these documents expenses charged by one such Affiliated Service Provider. The amount CDCF IV paid to this Affiliated Service Provider in 2020 ($179,896) was equivalent to approximately 2.3% of the Fund's reported net investment income for that year. The LPA for CDCF IV required the general partner to deliver to the LPAC at the end of each fiscal year a report summarizing all material services, fees, and transactions among affiliates of the general partner. Colony reimbursed CDCF IV for these expenses.

21. The LPA for ColFin generally required that transactions with affiliates of the general partner be disclosed in writing to the limited partners in advance and approved by a majority-in-interest of the limited partners. As an exception to this general requirement, ColFin's LPA permitted Colony to retain on behalf of the Fund, without satisfying the disclosure and approval requirements, an Affiliated Service Provider to provide "property related services" to the Fund and for the Affiliated Service Provider to receive reimbursement of "reasonable costs and expenses" in connection with providing such services.

22. From 2017 to 2019, Colony directed ColFin to pay approximately $3.8 million in property management fees to an Affiliated Service Provider. Separately, during the same time period, Colony directed ColFin to incur different charges for costs and expenses in connection with property related services provided by the same Affiliated Service Provider.

23. The property management fees charged to ColFin by the Affiliated Service Provider were not "reasonable costs and expenses" of the Affiliated Service Provider in connection with providing "property related services." Accordingly, since they were fees, not costs and expenses of the Affiliated Service Provider (which were charged separately), Colony was required to disclose these transactions to ColFin's limited partners in writing in advance and to obtain approval for these transactions from a majority-in-interest of the limited partners. Colony did not disclose these transactions in advance, and did not obtain the required consent, in contravention of the provisions of the ColFin LPA. During this time period, Colony included the property

management fees in ColFin's audited financial statements, which were provided to limited partners, but only after ColFin incurred and paid these expenses each year.

Compliance Policies and Procedures

24. Colony failed to adopt and to implement written policies and procedures reasonably designed to prevent violations of the Advisers Act or the rules thereunder in connection with the use of Affiliated Service Providers by its private funds (including the Funds), the process for review and approval of agreements between the private funds and Affiliated Service Providers, the determination of the arm's-length nature of transactions with Affiliated Service Providers that was required by the Funds' LPAs, or otherwise complying with requirements in the LPAs related to analyzing the terms and conditions of or approving transactions with affiliates. Specifically, until approximately November 2021, Colony's Code of Conduct and Regulatory Compliance Manual did not address the use of Affiliated Service Providers, the disclosure and approval requirements for Affiliated Service Providers with respect to the Funds, the determination of market or arm's-length rates regarding Affiliated Service Providers, or the review and determination of whether the terms and conditions of Affiliated Service Provider agreements complied with the LPAs.

Violations

25. As a result of the conduct described above, Colony willfully[2] violated Section 206(2) of the Advisers Act, which prohibits investment advisers from directly or indirectly engaging "in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-95) (1963)).

26. As a result of the conduct described above, Colony willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which make it unlawful for any investment adviser to a pooled investment vehicle to "make any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading to any investor or prospective investor in the pooled

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[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).

investment vehicle" or "engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle." Scienter is not required to establish a violation of Section 206(4) of the Advisers Act or the rules thereunder. *Steadman*, 967 F.2d at 647.

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

Colony's Cooperation and Remedial Efforts

28. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent, including the voluntary reimbursements described above, and cooperation afforded the Commission staff.

IV.

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

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

A. Respondent Colony cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 promulgated thereunder.

B. Respondent Colony is censured.

C. Respondent Colony shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $350,000 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 Colony 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 Nikolay Vydashenko, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, Fort Worth Regional Office, Burnett Plaza, 801 Cherry Street, Suite 1900, Unit 18, Fort Worth, TX 76102.

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