

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5461 / March 12, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19728

In the Matter of

**Naya Ventures, LLC,
Dayakar Puskoor, and
Prabhakar Reddy,**

Respondents.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Naya Ventures, LLC (“Naya Ventures”), Dayakar Puskoor (“Puskoor”), and Prabhakar Reddy (“Reddy”) (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in **Section V**, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondents’ Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. Naya Ventures, a Texas exempt-reporting adviser, owned and controlled by Puskoor and Reddy, neglected to disclose certain conflicts of interest and neglected to take measures required by the operating documents for Naya Ventures Fund I, L.P. (the “Fund”). By December 2014, the Fund had received \$13.5 million in capital commitments. This amount included commitments from 53 limited-partner investors—including Puskoor and Reddy—and a commitment from the Fund’s general partner, Naya Ventures Fund 1 GP, LLC (“Naya GP”). But Naya GP, Puskoor, and Reddy, as well as most of the limited-partner investors, failed to fully satisfy capital calls.

2. Pursuant to the Fund’s partnership agreement, Naya GP—a Naya Ventures wholly owned subsidiary also controlled by Puskoor and Reddy—was required to establish for the Fund an Investor Advisory Committee (“IAC”) made up of at least three independent limited partners. The partnership agreement provided for notice to be given, or otherwise consent to be obtained, concerning certain conflicts of interest or transactions involving the Fund on the one hand and Naya Ventures and its affiliates, including Puskoor and Reddy, on the other hand.

3. Through Naya GP, Naya Ventures neglected to establish the IAC until August 2018.

4. The Fund’s partnership agreement gave Naya GP discretion to seek remedies against limited partners who failed to meet a capital call by, among other things, deeming them in default. This discretion also permitted Naya GP to waive or permit the cure of any limited partner’s event of default. Naya GP chose not to enforce any remedies against any of the limited partners who had not contributed fully in response to capital calls, which was a majority of the investors and included Puskoor and Reddy.

5. The decision whether to deem Puskoor and Reddy in default required disclosure to the IAC. Such disclosure was not made.

6. Naya Ventures, through Naya GP, also did not provide required disclosure to the IAC concerning services that Puskoor and Reddy and one of their affiliated entities provided to Fund portfolio companies for compensation until August 2018 when the IAC was formed.

7. Naya Ventures neglected to take steps to ensure that the Fund’s financial statements were audited annually as required under the partnership agreement.

8. As a result of the conduct above, Naya Ventures violated Advisers Act Sections 206(2) and 206(4) and Rule 206(4)-8 thereunder. Puskoor and Reddy were a cause of such violations.

Respondents

9. Naya Ventures is a Texas limited-liability company based in Irving, Texas. It is an investment adviser that filed a report with the State of Texas as an exempt reporting adviser on

February 12, 2018. Since October 1, 2012, Naya Ventures has provided investment advice regarding securities to the Fund for a fee pursuant to a written management agreement. Puskoor and Reddy control Naya Ventures as its only owners.

10. Puskoor, 56, of Colleyville, Texas, is a co-founder, a managing member, and 60%-owner of Naya Ventures. He is also the sole director of Naya GP and the founder of Motivity Labs, Inc. (“Motivity”).

11. Reddy, 48, of Colleyville, Texas, is a co-founder, a managing member, and 40%-owner of Naya Ventures. He also served as a director of Motivity and as its CEO through December 31, 2018.

Other Relevant Entities

12. The Fund is a Delaware limited partnership based in Irving, Texas, operating as a “pooled investment vehicle” under Advisers Act Rule 206(4)-8(b). It was formed in October 2012 by Naya Ventures and raised capital by selling limited-partnership interests to investors.

13. Naya GP is a Texas limited-liability company based in Irving, Texas. It is a wholly owned subsidiary of Naya Ventures and serves as the Fund’s general partner.

14. Motivity is a private research and engineering company that is majority-owned and controlled by Puskoor and Reddy. It is also a Fund portfolio company.

Background

15. Puskoor and Reddy established the Fund as a venture-capital fund in October 2012. They sought to raise up to \$50 million by selling Fund limited-partnership interests to investors so the Fund could invest in mobile-technology and internet-technology companies. By December 2014, the Fund had received capital commitments totaling \$13.5 million, consisting of a \$1,000,000 commitment from Naya GP and \$12.5 million in commitments from 53 limited-partner investors, including Puskoor and Reddy, who invested on the same terms as all other limited partners.

16. Since the Fund’s inception, Naya Ventures has owned and controlled Naya GP, which serves as the Fund’s general partner. By investing in the Fund, investors became limited partners in the Fund and parties to a partnership agreement with Naya GP. Through their ownership and control of Naya Ventures, Puskoor and Reddy also controlled Naya GP and the Fund.

Respondents Neglected to Establish an Investor Advisory Committee

17. Under the partnership agreement, Naya GP was required to establish for the Fund an IAC made up of at least three independent limited partners. The Fund’s private-placement memorandum (“PPM”) represented that notice would be provided to the IAC of any transactions involving portfolio companies and Naya Ventures, Naya GP, or any affiliates. Contrary to the partnership agreement and the PPM, however, the Fund operated from October 1, 2012, to August 2018, without the required IAC.

18. Under the partnership agreement, a limited partner's failure to pay committed capital that had been called by Naya GP constituted an event of default for which Naya GP could deem the limited partner to be a "Defaulting Limited Partner." As a remedy for such default, the partnership agreement gave "absolute" discretion to Naya GP to protect the Fund's interests by, among other things, demanding payment of the balance due as an interest-bearing "Default Loan," forfeiting the Defaulting Limited Partner's distribution rights, and commencing legal proceedings against the Defaulting Limited Partner. Naya GP also had complete discretion to agree to waive or permit the cure of any event of default by a Limited Partner.

19. By March 2016, the Fund had called all of its \$13.5 million in committed capital, but by December 31, 2018, it had only collected approximately \$7.8 million, including approximately \$587,000 from Naya GP. Of the approximately \$5.7 million still to be collected by the Fund at the time, Puskoor and Reddy collectively owed the Fund committed capital totaling \$514,910. While acting under Naya Ventures' control, Naya GP never deemed Puskoor or Reddy—or any of the other investors who had failed to meet capital calls—to be in default.

20. The decision concerning whether to deem Puskoor and Reddy in default presented a conflict of interest that required disclosure to the Fund, whether through the IAC or otherwise. The conflict pitted the Fund's interest in receiving its committed capital against Puskoor and Reddy's interest in avoiding being deemed in default and becoming subject to remedies for their failure to pay their committed capital. Naya Ventures, through Naya GP, did not disclose this conflict of interest to the Fund, either through the IAC, which had not been formed, or otherwise.

21. Naya Ventures also neglected to disclose to an IAC services that Puskoor and Reddy and one of their affiliated entities, Motivity, provided to some of the Fund's portfolio companies for compensation. The PPM distributed to investors contained representations regarding required notice about such transactions, as follows:

The Fund may, in the sole and absolute discretion of the General Partner, assist Portfolio Companies to retain third parties for necessary services. The Manager or its Affiliates may provide some or all of such services, for which they will receive compensation at competitive market rates charged by first-class unaffiliated service providers. The General Partner will give notice to the Investor Advisory Committee of any such services for which compensation is being paid to the Manager or its Affiliates.

22. Motivity became a Fund portfolio company in 2012, when the Fund invested \$100,000 in the company. At the time, Puskoor served as Motivity's board chairman and Reddy as its CEO. Motivity paid Puskoor and Reddy monthly compensation for serving in those roles. Motivity also entered into contracts with other portfolio companies of the Fund to provide services to these companies for compensation. Naya Ventures was operating under a conflict of interest when its affiliate, Motivity, entered into contracts to provide services to the portfolio companies. Naya Ventures had an obligation to notify the IAC about these compensation arrangements. Acting under Naya Ventures' control, Naya GP did not provide such notice until August 2018 because the IAC was not previously formed.

Respondents Neglected to Provide Audited Financial Statements

23. The Fund's partnership agreement required Naya GP to provide the limited partners audited financial statements for the Fund annually. Through December 31, 2018, however, the Fund's financial statements were never audited. Naya Ventures neglected to take steps to ensure that an accounting firm was engaged to perform such audits as the partnership agreement required.

24. Section 206(2) of the Advisers Act makes it "unlawful for any investment adviser . . . directly or indirectly to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." As a result of the conduct described above, Naya Ventures violated Section 206(2). A violation of Section 206(2) does not "require proof of intent to injure [or] actual injury to the client." *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963). Such 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 *Capital Gains*, 375 U.S. at 195). Puskoor and Reddy were a cause of Naya Ventures' violations.

25. Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder make it unlawful for any investment adviser to a pooled investment vehicle to "[m]ake any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle" or to "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." As a result of the conduct described above, Naya Ventures violated Section 206(4) and Rule 206(4)-8 thereunder. Violations of Advisers Act Section 206(4) and Rule 206(4)-8 do not require proof of intent to injure or actual injury to the client. *SEC v. C.R. Richmond & Co.*, 565 F.2d 1101, 1105 (9th Cir. 1977) (citing *Capital Gains*, 375 U.S. at 195). Puskoor and Reddy were a cause of Naya Ventures' violations.

Respondents' Remedial Efforts

26. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff.

Undertakings

Respondent Naya Ventures undertakes to, within thirty (30) days of entry of this Order:

27. Provide a copy of this Order to each person who was a limited partner of the Fund on or after October 1, 2012 via mail, e-mail, or such other method as may be acceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

28. 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 Naya Ventures agrees to provide such evidence. The certification and supporting material shall be submitted to Timothy S. McCole, Assistant Regional Director, Securities and Exchange Commission, Fort Worth Regional Office, 801 Cherry Street, Suite 1900, Fort Worth, Texas 76102, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, 100 F Street, NE, Washington, DC 20549, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in the Respondents' Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 203(k) of the Advisers Act, Respondents Naya Ventures, Puskoor, and Reddy 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 Rule 206(4)-8 thereunder.

B. Respondents shall comply with the undertakings enumerated in Section III, paragraphs 27 and 28, above.

C. Respondent Naya Ventures shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$40,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934 ("Exchange Act"). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

D. Respondent Puskoor shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$20,000 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.

E. Respondent Reddy shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$20,000 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) 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 Naya Ventures, Puskoor, and Reddy as Respondents 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 Eric R. Werner, Associate Regional Director, Securities and Exchange Commission, Fort Worth Regional Office, 801 Cherry Street, Suite 1900, Fort Worth, Texas 76102.

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 each and every one of the Respondents granted such a Penalty Offset 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 one or more of the 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.

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