

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**

**Release No. 3858 / June 20, 2014**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-15939**

**In the Matter of**

**PENN MEZZANINE PARTNERS  
MANAGEMENT, 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”) 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 Penn Mezzanine Partners Management, L.P. (“Penn Mezzanine” 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<sup>1</sup> that:

#### A. SUMMARY

1. These proceedings involve violations of the Advisers Act's registration requirement by Penn Mezzanine. Section 203(a) of the Advisers Act prohibits an investment adviser from using the mails or any means or instrumentality of interstate commerce in connection with its business as an investment adviser unless it is registered with the Commission or exempt from registration. Section 208(d) of the Advisers Act makes it unlawful for any person indirectly, or through or by any other person, to do any act or thing which would be unlawful for such person to do directly under the provisions of the Act or rule or regulation thereunder.

2. Effective March 30, 2012, Penn Mezzanine and TL Ventures Inc. ("TL Ventures"), a related investment adviser, each claimed to be exempt from the Advisers Act's registration requirements. However, the facts and circumstances surrounding their relationship indicate that the two advisers were under common control, were not operationally independent of each other and thus should have been integrated as a single investment adviser for purposes of the applicable registration requirement and the applicability of any exemption. Once integrated, Penn Mezzanine and TL Ventures would not have qualified for any exemption from registration and therefore should have been registered effective March 30, 2012.

3. By using the mails or any means or instrumentality of interstate commerce in connection with its business as an investment adviser and not being registered with the Commission, Penn Mezzanine, acting through or by TL Ventures, violated Sections 203(a) and 208(d) of the Advisers Act.

#### B. RESPONDENT

4. Penn Mezzanine is a Delaware limited partnership located in Wayne, Pennsylvania. Penn Mezzanine is not registered with the Commission as an investment adviser. Prior to March 30, 2012, Penn Mezzanine was exempt from Commission registration in reliance on Section 203(b)(3) of the Advisers Act and Rule 203-1(e) under the Advisers Act.<sup>2</sup> From March 29, 2012, Penn Mezzanine claimed to be an investment adviser solely to private funds with less than \$150 million in regulatory assets under management and thus to be exempt under Rule 203(m)-1 under

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<sup>1</sup> 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.

<sup>2</sup> The exemption from registration formerly contained in Section 203(b)(3) was repealed effective July 21, 2011 by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), and Rule 203-1(e) in effect extended that exemption until March 30, 2012. See Rules Implementing Amendments to the Investment Advisers Act of 1940, Advisers Act Release No. 3221 (June 22, 2011), 2011 SEC LEXIS 2149.

the Advisers Act from registration as an investment adviser. It has reported to the Commission as an “exempt reporting adviser” under Section 204(a) of the Advisers Act and Rule 204-4 thereunder.<sup>3</sup> In its exempt reporting adviser report on Form ADV dated March 31, 2014, Penn Mezzanine reported regulatory assets under management of approximately \$51 million in private capital funds.

## C. BACKGROUND

### **Penn Mezzanine and TL Ventures Should Have Been Registered**

#### The Advisers Claimed to Be Exempt From Registration

5. The Dodd-Frank Act repealed a prior exemption from registration under Section 203(b)(3) of the Advisers Act but mandated other exemptions. In connection with implementing the new exemptions, investment advisers that were previously exempt from registration under Section 203(b)(3) of the Advisers Act were required to be registered or file as exempt reporting advisers by March 30, 2012. On March 29, 2012, Penn Mezzanine and TL Ventures filed separate exempt reporting adviser reports on Form ADV with the Commission each claiming to be an exempt reporting adviser, and neither Penn Mezzanine nor TL Ventures registered with the Commission as an investment adviser under Section 203 of the Advisers Act. Penn Mezzanine claimed that it qualified for an exemption from registration with the Commission based on Rule 203(m)-1 under the Advisers Act because it acted solely as an adviser to private funds and had regulatory assets under management in the U.S. of less than \$150 million. TL Ventures claimed that it qualified for an exemption from registration with the Commission based on Section 203(l) of the Advisers Act because it was an adviser solely to one or more venture capital funds.

#### The Advisers were Operationally Integrated

6. On their exempt reporting adviser reports filed with the Commission, both Penn Mezzanine and TL Ventures report that they are under common control with each other. In addition, various employees and associated persons of TL Ventures held ownership stakes in TL Ventures and in the general partner and management company entities of Penn Mezzanine; among those, two managing directors of TL Ventures held in the aggregate a majority ownership interest in TL Ventures and indirectly held in the aggregate more than a 25%, but less than a majority, ownership interest in Penn Mezzanine.

7. Penn Mezzanine and TL Ventures had several overlapping employees and associated persons, including individuals who provided investment advice on behalf of both Penn

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<sup>3</sup> The Dodd-Frank Act created a category of advisers known as exempt reporting advisers (which generally were formerly advisers relying on the private adviser exemption contained in Section 203(b)(3), which has been repealed). Although exempt from Commission registration, exempt reporting advisers are required by Rule 204-4 under the Advisers Act to file reports with the Commission electronically on Form ADV through the IARD using the same process used by registered investment advisers.

Mezzanine and TL Ventures. For example, two of the three members of Penn Mezzanine's investment committee, which had sole and exclusive authority to approve any investment by Penn Mezzanine's fund, also served as managing directors at TL Ventures and were significantly involved in providing investment advice on behalf of TL Ventures.

8. Penn Mezzanine and TL Ventures had significantly overlapping operations without any policies and procedures designed to keep the entities separate. Marketing materials for Penn Mezzanine made reference to TL Ventures and Penn Mezzanine as being a "partnership" and referenced Penn Mezzanine's ability to leverage and benefit from this relationship, including outsourcing its back office functions to TL Ventures. In addition, Managing Directors of TL Ventures, who served on Penn Mezzanine's investment committee, solicited potential investors for Penn Mezzanine's funds, including soliciting past investors in TL Ventures' funds. Moreover, neither adviser had adequate information security policies and procedures in place to protect investment advisory information from disclosure to the other. Also, employees and associated persons of Penn Mezzanine routinely used their TL Ventures email addresses to conduct business and communicate with outside parties about and on behalf of Penn Mezzanine.

#### The Advisers Did Not Qualify for Exemption From Registration

9. The Commission has stated that it will treat as a single adviser two or more affiliated advisers that are separate legal entities but are operationally integrated, which could result in a requirement for one or both advisers to register.<sup>4</sup> Based upon the facts and circumstances, Penn Mezzanine and TL Ventures were operationally integrated and, therefore, were not eligible to rely on the claimed exemptions from registration.

10. When integrated with TL Ventures, Penn Mezzanine did not qualify for an exemption from registration with the Commission under Rule 203(m)-1 under the Advisers Act because the combined operations of Penn Mezzanine and TL Ventures exceeded \$150 million in regulatory assets under management in the U.S. Accordingly, as of March 30, 2012, Penn Mezzanine should have registered with the Commission as an investment adviser under the Advisers Act.

#### D. VIOLATIONS

11. Section 203(a) of the Advisers Act makes it unlawful for any investment adviser, unless registered or exempt from registration, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as an investment adviser. Section 208(d) of the Advisers Act makes it unlawful for any person indirectly, or through or by any other person, to do any act or thing which would be unlawful for such person to do directly

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<sup>4</sup> See Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than \$150 Million in Assets Under Management, and Foreign Private Advisers, Investment Advisers Act Release No. 3222 at 125 (June 22, 2011) [76 FR 39645, 39680 (July 6, 2011)].

under the provisions of the Advisers Act.<sup>5</sup> As described above, Penn Mezzanine acted through or by TL Ventures to engage in the business of providing investment advice without registering as an investment adviser and, as a result, Penn Mezzanine willfully<sup>6</sup> violated Sections 203(a) and 208(d) of the Advisers Act.

#### REMEDIAL EFFORTS

In determining to accept the Offer, the Commission considered remedial acts that the Respondent is undertaking, including steps to reorganize operations and separate its advisory functions from TL Ventures, as well as the adoption of policies and procedures reasonably designed to ensure compliance with the applicable rules.

#### IV.

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

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

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 203(a) of the Advisers Act, including committing or causing any such violations indirectly, or through or by any other person, as prohibited by Section 208(d) of the Advisers Act.

B. Respondent is censured.

By the Commission.

Jill M. Peterson  
Assistant Secretary

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<sup>5</sup> Advisers Act Sections 203(a) and 208(d) do not require a showing of scienter.

<sup>6</sup> A willful violation of the securities laws means merely “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.” Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)).