

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5573 / September 4, 2020

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4166 / September 4, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19964

In the Matter of

**SQN CAPITAL MANAGEMENT,
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 SQN Capital Management, LLC (“SQN Capital” or the “Respondent”).

II.

In anticipation of the institution of these proceedings, the Respondent has submitted an Offer of Settlement (“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, the 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 the Respondent's Offer, the Commission finds that:

Summary

1. SQN Capital, a registered investment adviser, failed to timely distribute annual audited financial statements prepared in accordance with Generally Accepted Accounting Principles ("GAAP") to the investors in one private fund that it advised for each fiscal year from 2012 through 2019, and another private fund that it advised for each fiscal year from 2014 through 2019, 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. SQN Capital also failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder, a violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondent

3. SQN Capital is a Delaware limited liability company with its principal office and place of business in New York, New York. SQN Capital has been registered with the Commission as an investment adviser since February 2012. During the relevant period, SQN Capital was the managing member of and served as investment adviser to the two private funds at issue here, and provided investment advisory services to several other pooled investment vehicles.

Facts

4. SQN Capital's two private funds at issue – SQN Special Opportunity Fund, LLC ("SO Fund") and SQN Portfolio Acquisition Company, LLC ("PA Fund") – accounted for approximately \$21.2 million of the approximately \$918 million in regulatory assets under management that SQN Capital reported in its Form ADV filed on May 16, 2020. The stated investment strategy for both the SO Fund and the PA Fund focuses on industrial equipment leases and other asset finance investment opportunities worldwide.
5. 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.
6. An investment adviser has custody of client assets if it holds, directly or indirectly, client funds or securities, or if it has the ability to obtain possession of those assets. *See* Rule 206(4)-2(d)(2).
7. SQN Capital had custody of the assets of the SO Fund and the PA Fund as defined in Rule 206(4)-2. An investment adviser who has custody of client assets must, among

other things: (i) ensure that a qualified custodian maintains the 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 liability company for which the adviser or a related person is a managing member, the account statements must be sent to each 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).

8. 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 or other types of pooled investment vehicles, such as the SO Fund and the PA Fund. 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 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 . . . 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 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) in order to avoid violating the custody rule.

9. With respect to both the SO Fund and the PA Fund, SQN Capital relied on the Audited Financials Alternative to attempt to comply with the custody rule during the relevant period but failed to do so. Although SQN Capital engaged a PCAOB-registered firm to conduct annual audits of the financial statements of both funds, the audit firm did not complete the audits and issue audit reports until well after 120 days following the end of each relevant fiscal year or, in some cases, the audits have not been completed.

10. SQN Capital failed to distribute audited annual financial statements to the members of the two funds within the required timeframes for those years that audits were completed as follows:

Fund	Fiscal Year	Number of Days Late
SO Fund	2012	881
SO Fund	2013	516
SO Fund / PA Fund	2014	151 / 224
SO Fund / PA Fund	2015	397 / 397
SO Fund / PA Fund	2016	578 / 386
SO Fund / PA Fund	2017	214 / 151

PA Fund	2018	178
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The audits for the SO Fund’s 2018 and 2019 fiscal years and for the PA Fund’s 2019 fiscal year have not been completed at all, and audited annual financial statements for those fiscal years therefore were not distributed to investors by SQN Capital within 120 days of the fiscal year’s end. Accordingly, SQN Capital did not satisfy the requirements of the Audited Financials Alternative in Rule 206(4)-2(b)(4) for the SO Fund for fiscal years 2012 through 2019, and for the PA Fund for fiscal years 2014 through 2019. SQN Capital was therefore obligated to comply with Rule 206(4)-2(a)(2), (3) and (4), which it also failed to do.

11. SQN Capital also 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 SQN Capital’s written policies and procedures referenced the custody rule, they were not reasonably designed and implemented to prevent violations of the rule.

Violations

12. 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. 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). 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 to have private fund clients timely distribute to their 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.

13. As a result of the conduct described above, SQN Capital willfully violated Section 206(4) of the Advisers Act and Rules 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 Respondent’s Offer.

Accordingly, pursuant 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 thereunder.

B. SQN Capital is censured.

C. Orders that Respondent shall, pay a civil monetary penalty in the amount of \$75,000 to the Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3), in the following installments: \$25,000 to be paid within 21 days of the entry of the Order; \$25,000 to be paid within 45 days of the entry of the Order; and \$25,000 to be paid within 60 days of the entry of the Order. Payments shall be applied first to post-Order interest, which accrues pursuant to 31 U.S.C. 3717. Prior to making the final payment set forth above, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-Order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

D. 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 SQN Capital Management, 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 Sanjay Wadhwa, Senior Associate Director, Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, Suite 400, New York, NY 10281.

E. 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, Respondent 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