

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 10960 / August 4, 2021

SECURITIES EXCHANGE ACT OF 1934

Release No. 92564 / August 4, 2021

INVESTMENT ADVISERS ACT OF 1940

Release No. 5817 / August 4, 2021

INVESTMENT COMPANY ACT OF 1940

Release No. 34349 / August 4, 2021

ADMINISTRATIVE PROCEEDING

File No. 3-20452

In the Matter of

**WENDAN BAO, SHUO GU,
LENDINGCAR CORP., AND
H7 CREDIT LLC,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTION 21C
OF THE SECURITIES EXCHANGE ACT
OF 1934, SECTIONS 203(f) AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF
1940, AND SECTION 9(b) OF THE
INVESTMENT COMPANY 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 Section 8A of the Securities Act of 1933 (“Securities Act”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Sections 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Wendan Bao, Shuo Gu, LendingCar Corporation, and H7 Credit LLC (collectively, the “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 Respondents 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 Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company 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 Respondents’ Offers, the Commission finds¹ that:

Summary

1. This matter involves the misappropriation of assets by Wendan Bao and Shuo Gu, Chinese nationals resident in the United States, in connection with a private securities offering. Starting in May 2018, Bao and Gu, who were domestic partners at that time and later married, sought to raise investor monies through the DeYao Fund, LP (“DeYao Fund” or the “Fund”), a pooled investment vehicle set up to fund dealer floor plan loans to automobile dealerships in order to finance the purchase of used car inventory. Bao and Gu, who primarily solicited investors of Asian and Asian-American origin, made misrepresentations to investors regarding the manner in which their money would be used and the safeguards in place to prevent misuse.

2. From November 2018 through February 2019, the DeYao Fund raised capital contributions of at least \$450,000 from investors. Based on representations made to investors, the capital should have been transferred from the DeYao Fund to H7 Credit LLC, an entity controlled by Bao and Gu, for the purpose of originating loans to automobile dealerships. However, upon H7 Credit LLC’s receipt of the DeYao Fund’s assets, Bao and Gu diverted the money to unauthorized uses. Among other things, Bao and Gu used the money to pay off their unrelated business debts.

3. As a result of such conduct, Bao and Gu, acting directly and through entities under their control, violated the antifraud provisions of the federal securities laws.

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

Respondents

4. **Wendan Bao** (a/k/a Loui Gu), age 40, was a resident of California during the relevant period and currently resides in Oklahoma. He is a citizen of China. Bao is a co-founder of the DeYaoFund. He is also the founder, owner and CEO of H7 Credit LLC and LendingCar Corporation. Bao has never been registered with the Commission in any capacity.

5. **Shuo Gu** (a/k/a Blair Gu), age 29, was a resident of California during the relevant period and currently resides in Oklahoma. She is a citizen of China. Gu is a co-founder of the DeYaoFund. She is also a managing member of H7 Credit LLC and LendingCar Corporation. Gu has never been registered with the Commission in any capacity.

6. **LendingCar Corporation** (“LendingCar”) is a California corporation, with its principal place of business in San Mateo, California. LendingCar, which was controlled by Bao and Gu, was the general partner of the DeYao Fund and acted as its investment adviser. Neither LendingCar nor its securities have ever been registered with the Commission in any capacity.

7. **H7 Credit LLC** (“H7 Credit”) is a California limited liability company, with its principal place of business in San Mateo, California. H7 Credit, which was controlled by Bao and Gu, was intended to serve as the originator for dealer floor plan loans using money invested in the DeYao Fund. Neither H7 Credit nor its securities have ever been registered with the Commission in any capacity.

Other Relevant Entities

8. **De Yao Fund, LP** is a Delaware limited partnership, with its principal place of business in San Mateo, California. Bao and Gu controlled the DeYao Fund through its general partner, LendingCar. The DeYao Fund filed a Form D with the Commission on May 29, 2018, in connection with a planned private offering of limited partnership interests.

9. **Consultant A** was a privately-held California business that was responsible for providing risk management and related services to the DeYao Fund. The Fund entered into a service contract with Consultant A in June 2018.

Facts

Formation of the DeYao Fund and Solicitation of Investors

10. Bao and Gu organized the DeYao Fund for the purpose of raising money from investors to finance dealer floor plan loans. A dealer floor plan loan is used by automobile dealerships to finance the purchase of car inventory. Typically, a lender will loan an amount to a dealership, which will use the loan to purchase inventory; the dealer in turn will repay the loan with the proceeds from the sale of the inventory. Prior to forming the DeYao Fund, Bao and Gu had made dealer floor plan loans to several used car dealerships in California, through other

businesses under their control. Bao and Gu organized the DeYaoFund in early 2018, and in May 2018, Gu filed a Form D on behalf of the DeYao Fund, seeking to conduct a private offering pursuant to Rule 506(b) of the Securities Act, which provides an exemption from registration.

11. To assist them with the private offering, in June 2018 Bao and Gu, acting on behalf of the DeYao Fund, entered into an agreement with Consultant A. Bao and Gu informed Consultant A that they intended to use the DeYao Fund as a vehicle to raise monies from investors to finance dealer floor plan loans to used car automobile dealerships. Based on information provided by Bao and Gu, Consultant A assisted in finalizing the structure of the Fund, and preparing a private placement memorandum (“PPM”), a limited partnership agreement, and a slide deck to be used for soliciting prospective investors.

12. The offering materials contained representations regarding the intended use of capital invested in the DeYao Fund. For instance, the PPM stated that the objective of the DeYao Fund was to generate income and potential capital appreciation “by carefully selecting a portfolio of used car dealership floor plan loans” and that the DeYao Fund was “to only generate loans that were in the best interest” of the DeYao Fund’s limited partners (*i.e.*, investors). The PPM further represented that the DeYao Fund’s general partner, LendingCar, an entity controlled by Bao and Gu, would seek consent of the investors to “take any action outside the scope of the purposes” of the DeYaoFund.

13. The offering materials disclosed that LendingCar, the DeYao Fund’s general partner, had exclusive management and control over the business of the Fund, including all decisions to invest in securities. The offering materials stated that LendingCar was responsible for formulating and implementing the Fund’s investment strategy and making all investment decisions. As compensation for its advisory and management services, LendingCar was to receive a 1% annual management fee.

14. The offering materials further described the manner in which dealer floor plan loans were to be originated. In particular, the DeYao Fund, at the direction of its general partner, LendingCar, was to transmit monies to H7 Credit, a loan origination entity controlled by Bao and Gu. In connection with such transfers, a note was to be executed between the DeYao Fund and H7 Credit to secure the monies. H7 Credit, in turn, was responsible for selecting the automobile dealerships and executing the dealer floor plan loan agreements. H7 Credit was also responsible for conducting the appropriate due diligence, including conducting an analysis of each dealership and its credit application, and maintaining documentation supporting the loans. To mitigate risk of investor losses on the loans, the DeYao Fund would be granted a security interest in any vehicle financed by a dealer floor plan loan, and H7 Credit was to conservatively value vehicles and abide by loan to value limits of 70% of the value of the vehicles.

15. Between November 2018 and February 2019, the DeYao Fund raised at least \$450,000 from investors, in exchange for limited partnership interests in the Fund. Each of the investors received the PPM, the limited partnership agreement, and promotional slides and wired their respective investments directly to a bank account held in the name of the DeYao Fund that was controlled by Bao and Gu.

Bao and Gu Misappropriate DeYao Fund Assets

16. Shortly after the first investment in the Fund in November 2018 and continuing through early 2019, Bao and Gu diverted DeYao Fund assets from their intended use. As contemplated by the offering materials, the DeYao Fund transferred \$450,000 in DeYao Fund assets to a bank account in the name of H7 Credit that was controlled by Bao and Gu. However, instead of using the Fund's assets to originate dealer floor plan loans by H7 Credit as investors had been led to believe, Bao and Gu misappropriated the monies.

17. Among other things, Bao and Gu used the Fund's assets to pay off preexisting debts owed by LendingCar and H7 Credit and to cover rent payments owed by H7 Credit. Bao and Gu also used the Fund's assets to purchase pre-existing loans originated by individuals to dealers; these individuals were creditors of H7 Credit. None of these uses were consistent with representations made to investors in the offering materials.

18. Contrary to representations funds in the PPM, Bao and Gu, acting through H7 Credit, failed to maintain documentation evidencing that any dealer floor plan loan had been made with the Fund's assets; that any due diligence had been conducted in connection with any dealer floor plan loan; or that any security interest in a vehicle was held by the DeYao Fund. Such documentation was also required to be maintained by the limited partnership agreement.

Bao and Gu Attempt to Conceal the Misappropriation

19. The PPM stated that Consultant A would analyze the DeYao Fund's portfolio and provide risk management services to the Fund. As part of those services, Consultant A was responsible for conducting a periodic review of the DeYao Fund's portfolio performance. In early 2019, as part of its first scheduled review, Consultant A requested the DeYao Fund provide copies of loan documentation associated with dealer floor plan loans originated by H7 Credit since the first investments had been received in November 2018.

20. In response to Consultant A's request, Bao and Gu refused to provide any loan documentation, claiming that to do so would violate privacy laws. Instead, Bao and Gu provided spreadsheets purporting to summarize the loans that had been originated, and their associated loan terms, as well as identifying information for the vehicles that had been purchased with investor monies from the DeYao Fund. There were multiple irregularities in these documents, including what appeared to be duplicated vehicle identification numbers (VINs) and inflation of the value of many of the cars identified.

21. In response to requests for clarification from Consultant A, Bao and Gu claimed that any irregularities in the summary documents were the result of poor record-keeping.

22. Consultant A eventually terminated its relationship with the DeYao Fund, after which investors sought the return of their respective investments. To date, Bao and Gu have repaid approximately \$140,000 to investors.

Violations

23. Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c) thereunder, make it “unlawful for any person, directly or indirectly” “(a) [t]o employ any device, scheme, or artifice to defraud” or “(c) [t]o engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.” Rule 10b-5(b) makes it unlawful for any person “[t]o make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading,” in connection with the purchase or sale of any security.

24. Sections 17(a)(1) and (a)(3) of the Securities Act make it “unlawful for any person in the offer or sale of any securities” “to employ any device, scheme, or artifice to defraud” or “to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.” Section 17(a)(2) of the Securities Act makes it “unlawful for any person in the offer or sale of securities” “to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.”

25. Sections 206(1), 206(2) and 206(4) of the Advisers Act make it unlawful for an investment adviser to, respectively, employ any device, scheme, or artifice to defraud, or to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or prospective client. Rule 206(4)-8(a) thereunder prohibits making false or misleading statements or otherwise engaging in an act, practice, or course of business that is fraudulent, deceptive or manipulative with respect to any investor in a pooled investment vehicle.

26. As a result of the conduct described above, Bao, Gu and LendingCar willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 17(a) of the Securities Act and Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8(a) thereunder.

27. As a result of the conduct described above, H7 Credit willfully aided and abetted Bao, Shuo and LendingCar’s violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 17(a) of the Securities Act and Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8(a) thereunder.

Disgorgement and Civil Penalties

28. The disgorgement and prejudgment interest ordered in paragraph IV.D is consistent with equitable principles and does not exceed Respondents’ net profits from their violations, and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to paragraph IV.D in an account at the United States Treasury pending distribution. After the final distribution of funds and payment of all taxes and administrative expenses, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, shall be transferred to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the

Exchange Act.

29. Respondents have submitted sworn Statements of Financial Condition dated December 31, 2020, and other evidence and have asserted their inability to pay disgorgement, prejudgment interest, and a civil monetary penalty.

Undertakings

30. Respondents have undertaken to refrain from, directly or indirectly, including but not limited to through any entity owned or controlled by Respondents, participating in the issuance, purchase, offer, or sale of any security, provided, however, that such undertaking shall not prevent Respondents from purchasing or selling securities for their own personal accounts. In determining whether to accept the Offers, the Commission has considered this undertaking.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondents cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8(a) thereunder.

B. Respondents Bao and Gu be and hereby are:

barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

prohibited from serving or acting as employees, officers, directors, members of an advisory board, investment adviser or depositor of, or principal underwriters for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

C. Any reapplication for association by Respondents Bao or Gu will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, compliance with the Commission's order and payment of any or all of the following: (a) any disgorgement or civil penalties ordered by a Court against the Respondents in any action brought by the Commission; (b) any disgorgement

amounts ordered against the Respondents for which the Commission waived payment; (c) any arbitration award related to the conduct that served as the basis for the Commission order; (d) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (e) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondents shall pay, jointly and severally, disgorgement of \$310,000 and prejudgment interest of \$29,012.40, but payment of such amounts except for \$103,000 in disgorgement is waived, and no penalty is being imposed, based upon Respondents' sworn representations in their Statements of Financial Condition dated December 31, 2020, and other documents submitted to the Commission. If timely payment on disgorgement is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be made in the following installments:

1. \$15,450.00 within 10 days of the entry of this Order;
2. \$10,943.75 within 90 days of the entry of this Order;
3. \$10,943.75 within 180 days of the entry of this Order;
4. \$10,943.75 within 270 days of the entry of this Order;
5. \$10,943.75 within 360 days of the entry of this Order;
6. \$10,943.75 within 450 days of the entry of this Order;
7. \$10,943.75 within 540 days of the entry of this Order;
8. \$10,943.75 within 630 days of the entry of this Order;
9. \$10,943.75 within 720 days of the entry of this Order.

Payments shall be applied first to post order interest, which accrues pursuant to SEC Rule of Practice 600. Prior to making the final payment set forth herein, 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.

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 the 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 Anita B. Bandy, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

If Respondents fail 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.

E. The Division of Enforcement (“Division”) may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondents provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement, prejudgment interest and directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondents was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondents may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

F. Respondents shall comply with the undertakings enumerated in paragraph 30 above.

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