

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 6107 / September 8, 2022**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 4332 / September 8, 2022**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21042**

**In the Matter of**

**CHARLES PRATT & COMPANY,  
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 Charles Pratt & Company, LLC (“Respondent”).

**II.**

In anticipation of the institution of these proceedings, 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, 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 that:

#### **Summary**

1. Respondent, a registered investment adviser, failed to obtain an independent verification of assets of a private fund client, or, alternatively, 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 2010 through 2018. For fiscal years 2019 and 2020, the annual audited financial statements for the fund were distributed to investors 481 days late and 222 days late, respectively. Respondent also failed to obtain the requisite independent verification of client assets from an independent public accountant for 465 discretionary client accounts that it advised for each year from 2010 through 2020. As a result of the foregoing, Respondent violated Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, commonly referred to as the "custody rule."

2. Respondent 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. Respondent is a New York limited liability company with its principal office and place of business in New York, New York. Respondent has been registered with the Commission as an investment adviser since February 1984. During the relevant period, Respondent was the general partner of and served as investment adviser to the private fund at issue here, CP International Partners, LP ("CPIP"), and provided investment advisory services to 465 discretionary client accounts.

#### **Facts**

4. CPIP accounted for approximately \$29.1 million of the approximately \$895 million in regulatory assets under management that Respondent reported in its Form ADV filed on March 28, 2022. The stated investment strategy for CPIP is capital appreciation through investments in securities outside the United States. Together with CPIP, the 465 discretionary client accounts managed by Respondent accounted for \$778 million of the regulatory assets under management reported in its Form ADV filed on March 28, 2022. The stated investment strategy for these discretionary accounts is long-term growth and income preservation.

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. Respondent had custody of the assets of CPIP and the 465 discretionary accounts as defined in Rule 206(4)-2. An investment adviser who has custody of client assets must, among other things: (i) maintain clients' assets with a qualified custodian; (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 partnership for which the adviser or a related person is a general partner, the account statements must be sent to each member; and (iv) obtain verification of client funds and securities 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 partnerships or other types of pooled investment vehicles, such as CPIP. 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 . . . limited partners. . . 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 partnership 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. Respondent did not meet the requirements of the Audited Financials Alternative or otherwise comply with the custody rule for CPIP during the relevant period. For fiscal years 2010 through 2018, CPIP's annual financial statements did not undergo an audit at all, as Respondent did not engage an independent public accountant to conduct the requisite audit. Although Respondent engaged a PCAOB-registered firm to audit CPIP's annual financial statements for fiscal years 2019 and 2020, the firm was not engaged, and did not complete the audits and issue audit reports, until well after 120 days following the end of those fiscal years. The audited financial statements were distributed to CPIC investors 481 days late for 2019 and 222 days late for 2020. Accordingly, Respondent did not satisfy the requirements of the Audited Financials Alternative in Rule 206(4)-2(b)(4) for CPIC for fiscal years 2010 through 2020. Respondent was therefore obligated to comply with Rule 206(4)-2(a)(2), (3) and (4) with respect to CPIC, which it also failed to do.

10. With respect to the 465 discretionary accounts it managed, Respondent similarly failed to obtain verification of client funds by an actual examination by an independent public accountant for each year from 2010 through 2020, as required by Rule 206(4)-2(a) for those accounts (commonly referred to as the “surprise” examination requirement). For the years 2010 through 2017, Respondent failed to engage an independent public accountant to perform a surprise examination for the discretionary accounts. Although Respondent engaged an independent public accountant to perform a surprise examination in 2018, that examination did not include a review of client funds or securities and therefore failed to satisfy the surprise examination requirement. No surprise examination at all was conducted in 2019, and while an independent accountant was again engaged to perform a surprise examination in 2020, the 2020 examination also failed to include the requisite review of client funds or securities.

11. Respondent 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 Respondent’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, Respondent 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 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall, within 21 days of the entry of this Order, pay a civil monetary penalty in the amount of \$100,000 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.

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 Charles Pratt & Company, 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 Sheldon Pollock, Associate Director, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004.

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