UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11227 / August 28, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21586 / August 28, 2023

In the Matter of **LEGACY HOSPITALITY II, LLC, LEGENDARY CAPITAL REIT III, LLC, AND COREY R. MAPLE,** **Respondents.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, MAKING FINDINGS AND IMPOSING A CEASE-AND-DESIST-ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") against Legacy Hospitality II, LLC, Legendary Capital REIT III, LLC, and Corey R. Maple (collectively, "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 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 8A of the Securities Act of 1933, Making Findings and Imposing a Cease-and-Desist Order ("Order").

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

[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.

SUMMARY

1. This matter concerns improper expense allocation practices involving two non-traded real estate investment trusts ("REITs"). Legendary Capital, headquartered in Fargo, North Dakota, manages hospitality REITs that purchase and manage hotels nationwide. Two such hospitality REITs affiliated with Legendary Capital are at issue in this matter — Lodging Opportunity Fund Real Estate Investment Trust ("Fund 2") and Lodging Fund REIT III, Inc. ("Fund 3") (collectively, "the REIT Funds"). Legendary Capital managed Fund 2 and Fund 3 through two external managers, known respectively as Legacy Hospitality II, LLC ("Fund 2 Advisor" or "Legacy"), and Legendary Capital REIT III, LLC ("Fund 3 Advisor" or "Legendary") (collectively, "the Fund Advisors").

2. Beginning in 2014, the Fund 2 Advisor directed that Fund 2 reimburse it for its overhead expenses. In addition, for a period of several months in 2018, the Fund 3 Advisor did the same with respect to Fund 3. The reimbursement of overhead expenses by the REIT Funds was inconsistent with disclosures made to investors, which provided that the Fund Advisors would be responsible for such expenses. During the relevant period, the expenses, which consisted primarily of payroll and office rent, totaled approximately $5 million with respect to both REIT Funds.

3. Corey Maple, one of the original founders and a principal owner of Legendary Capital, exercised the ultimate decision-making authority over how expenses incurred by the Fund Advisors would be allocated as between the Fund Advisors and the REIT Funds. Maple further reviewed and approved the relevant disclosures made to investors and related governing documents.

4. As a result of the foregoing, and as described more fully below, the Fund 2 Advisor, the Fund 3 Advisor, and Maple violated Sections 17(a)(2) and 17(a)(3) of the Securities Act.

RESPONDENTS

5. Legacy Hospitality II, LLC **(**"Fund 2 Advisor" or "Legacy") is a North Dakota limited liability company, with its principal place of business in Fargo, North Dakota. The Fund 2 Advisor serves as the external manager of Fund 2. Maple was a co-founder and co-owner of the Fund 2 Advisor. Pursuant to an advisory agreement between Fund 2 and the Fund 2 Advisor, the Fund 2 Advisor provides investment advice, primarily relating to the buying and selling of real estate. The Fund 2 Advisor is not registered with the Commission in any capacity.

6. Legendary Capital REIT III, LLC ("Fund 3 Advisor" or "Legendary") is a Delaware limited liability company, with its principal place of business in Fargo, North Dakota. The Fund 3 Advisor serves as the external manager of Fund 3. Maple was a co-founder and co-owner of the Fund 3 Advisor. Pursuant to an advisory agreement between Fund 3 and the Fund 3 Advisor, the Fund 3 Advisor provides investment advice primarily relating to the buying and selling of real estate. The Fund 3 Advisor is not registered with the Commission in any capacity.

7. Corey R. Maple, age 56, is a resident of Fargo, North Dakota. Maple is a co-owner of Legendary Capital, Legacy, and Legendary. Maple served as Board Chairman of Fund 2 and Fund 3, CEO of Fund 3 and the Chief Executive Officer of the Fund Advisors. As of May 2023, Maple no longer serves as the Chief Executive Officer of the Fund Advisors. Further, he no longer has involvement in the day-to-day finance functions of the Fund Advisors, including the development of expense allocation methodologies or allocation approvals of the Fund Advisors. As of May 2023, Maple no longer serves as an officer of the REIT Funds. He received periodic distributions from the Fund 2 and Fund 3 Advisors, which received reimbursements pursuant to the expense allocation practices at issue here.

OTHER RELEVANT ENTITIES

8. Lodging Opportunity Fund Real Estate Investment Trust ("Fund 2"**)** is a REIT created in 2013. Fund 2, which offered securities through private placements relying on Regulation D of the Securities Act, raised approximately $125 million between 2014 and 2018. Fund 2 continued to offer its securities to existing investors until May 2019 through a dividend reinvestment program. Fund 2, which has approximately 1,920 investors, is not currently offering securities. Fund 2 owns 15 hotels.

9. Lodging Fund REIT III, Inc. ("Fund 3"**)** is a REIT created in 2018. Fund 3, which offered securities to the public through private placements relying on Regulation D of the Securities Act, has raised approximately $90 million since 2018, and continues to offer securities, both to existing investors through a dividend reinvestment program as well as to new investors. In August 2019, Fund 3 registered its common stock under Section 12(g) of the Exchange Act and became an SEC reporting company. Fund 3 has approximately 1,500 investors and owns 19 hotels.

FACTS

The Fund 2 and Fund 3 Offerings and Disclosures Made to Investors

10. Fund 2 and Fund 3, which have no employees, were externally managed by the Fund Advisors. The Fund Advisors, in turn, hired employees to conduct their business and the business of the REIT Funds, and incurred overhead expenses such as payroll and office rent in connection with the services provided to the REIT Funds. The Fund Advisors maintained office space in Fargo, North Dakota.

11. Fund 2 began soliciting investments in 2014, and Fund 3 began soliciting investments in 2018. Fund 2 and Fund 3 provided Private Offering Memoranda ("POMs") to prospective investors, which included disclosures about the fees and expenses that would be charged in connection with the purchase and ownership of hotel properties. The POMs for Fund 2 and Fund 3 were, as it relates to fees and expenses, similar in material respects. For instance, the POMs detailed that the REIT Funds would be externally managed by the Fund Advisors, which in turn would charge the REIT Funds certain fees, including an asset management fee, an acquisition fee, and a performance fee. In addition, as set forth in the POMs, the Fund Advisors would be entitled to seek reimbursement of certain categories of expenses incurred by them while providing

services to the REIT Funds, and that such expenses would be reimbursed directly from the REIT Funds. The categories of reimbursable expenses included property acquisition costs.

12. The POMs for both funds also refer to separate advisory agreements entered into between the REIT Funds and the Fund Advisors. The Fund 2 Advisory Agreement stated: "The Advisor, at its expense, shall provide suitable office facilities for the [Fund], and shall provide sufficient staff and other personnel necessary to conduct the day-to-day operations of the [Fund]." Relatedly, the Fund 3 Advisory Agreement stated: "The Advisor, at its expense, shall provide suitable office facilities for the [Fund], and shall provide sufficient staff and other personnel necessary to conduct the day-to-day operations of the [Fund]." The Fund 3 Advisory Agreement further stated, in a section entitled "Expenses," that "the Advisor shall be responsible for all of its overhead expenses associated with its operations and ordinary expenses incidental to managing the Company [Fund 3] including of any ordinarily recurring nature such as rent … employee benefits (including … payroll and other taxes) and compensation of all personnel."

13. Maple reviewed and approved the Funds' POMs. Maple further signed the Fund 2 Advisory Agreement and the Fund 3 Advisory Agreement. Maple thus knew or should have known the terms of the POMs and the Advisory Agreements. As an officer of the Fund 2 Advisor, the CEO of the Fund 3 Advisor, and the Chairman of the Board of both REIT Funds, Maple exercised ultimate authority over the allocation of overhead expenses to the REIT Funds.

The REIT Funds were Charged Approximately $5 Million For the Fund Advisors' Payroll and Rent

14. The Fund 2 Advisor allocated overhead expenses in the form of payroll and rent to Fund 2 and sought reimbursement of those amounts. From Fund 2's inception in 2013 through 2021, Fund 2 was billed approximately $4.5 million in overhead expenses by the Fund 2 Advisor for overhead expenses incurred on behalf of Fund 2.

15. Similarly, from the inception of Fund 3 in July 2018 through December 31, 2018, Fund 3 was billed $460,000 in overhead expenses incurred by the Fund 3 Advisor on behalf of Fund 3.

Maple Informed of Expense Reimbursement Practices

16. In the spring of 2018, a Legendary Capital employee with finance-related responsibilities raised concerns internally, including to Maple and Legendary Capital's Chief Operating Officer, regarding the Fund 2 Advisor's practice of seeking reimbursement from Fund 2 for overhead expenses. The employee was informed that the allocation of overhead expenses to the fund had been previously decided, and during the same time period, Maple provided the employee with a copy of the accounting policy that memorialized the reimbursement practice.

17. In June 2018, Fund 3 began soliciting investors and disseminated its POM. Over the ensuing months of 2018, certain Legendary Capital employees raised concerns internally, including to Maple and the Chief Operating Officer, as to the reimbursement practices of the Fund Advisors for their overhead expenses. Maple stated that he believed it was appropriate for the

REIT Funds to reimburse the Fund Advisors for their overhead expenses. In October 2018, Maple met with certain Legendary Capital employees who renewed their concerns about the REIT Funds reimbursing the Fund Advisors for their overhead expenses incurred on the REIT Funds' behalf. In response to these additional concerns, Maple directed the Chief Operating Officer obtain legal guidance regarding the reimbursement practices of Fund 3.

Fund 3 Advisory Agreement and POM Amended

18. In late 2018, after the October meeting, Fund 3 amended its POM and advisory agreement to authorize the Fund 3 Advisor to seek reimbursement of overhead expenses from Fund 3. Around this time, several other changes were made to the Fund 3 POM and advisory agreement. Fund 3 issued a cover letter and summary of changes to the POM and advisory agreement for shareholders entitled Supplement No. 2. The supplement was reviewed and edited by Maple. Maple signed the cover letter to the supplement and also signed the amended advisory agreement on behalf of the Fund 3 Advisor and Fund 3. The foregoing amendments were further approved by the Fund 3 Board. By the time the supplement had been distributed, Fund 3 had raised approximately $10 million in investor funds.

19. The supplement's cover letter included bullet points on the front page of the supplement that highlighted "Advisor Fee Reduction." The amendment to the Fund 3 advisory agreement relating to the reimbursement of overhead expenses of the advisor was included in the category "Amendment to the Advisory Agreement." The relevant portion of the sentence provided that the Fund 3 advisory agreement was amended to "(ii) reflect that [Fund 3] is responsible for all expense related to the office facilities, office equipment and supplies, staff and personnel provided by the Advisor for the benefit of [Fund 3]…." Neither the supplement nor the cover letter disclosed that the amendments had the effect of materially increasing expenses.

20. In June 2019, the Fund 3 Advisor created and disseminated to current investors a Fund 3 2018 shareholder report. The first page of the report included a letter from Maple in which he stated that amending the advisory agreement reduced the Fund 3 Advisor's compensation by $24,000 because "it was the right thing to do to Take Care of the Capital." But neither the letter nor the shareholder report explained that the amendment shifted expenses from the Fund 3 Advisor to Fund 3. At the time of the report, Maple was aware that overhead expenses of the advisor had materially increased.

Maple Informed of Additional Concerns Regarding Fund 2 Expense Reimbursements

21. In early 2020, a due diligence firm hired by Legendary Capital raised concerns regarding Fund 2's overhead expense reimbursement practices. Following the due diligence firm's comments, certain Legendary Capital employees reiterated their concerns as to whether the reimbursement practice was appropriate in light of the applicable disclosures.

22. On June 24, 2020, Maple received an email from the Legendary Capital Chief Operating Officer that stated: "I read [the Fund 2 advisory agreement] again, Section 2(b) states the advisor will pay for rent and staff."

23. In June of 2020 the Fund 2 Board created a Special Committee of its Board of Directors to consider the issue. In March 2021, the Special Committee determined that the Fund 2 Advisor had billed approximately $2.1 million in overhead expenses for which it was not entitled to reimbursement. Shortly thereafter, the Fund 2 Advisor reimbursed Fund 2 in this amount. However, the remaining balance of reimbursed expenses, approximately $2.3 million, was not reimbursed to Fund 2.

Violations

24. Section 17(a)(2) proscribes obtaining, in the offer or sale of securities, "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." Section 17(a)(3) proscribes, in the offer or sale of securities, engaging "in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." A violation of these provisions does not require scienter and may rest on a finding of negligence. *See Aaron v. SEC*, 446 U.S. 680, 685, 701-02 (1980). Maple, Legacy, and Legendary violated the foregoing provisions through the REIT Funds' improper reimbursement of the Fund Advisors' overhead expenses during the time periods described herein, while they were offering and selling securities.

Disgorgement and Civil Penalties

25. The disgorgement and prejudgment interest amounts ordered in Section IV are consistent with equitable principles and do 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 Section IV in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, 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, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Undertakings

Respondents Fund 2 Advisor and Fund 3 Advisor have undertaken to:

26. Retain, within sixty (60) days of the date of entry of the Order, at their own expense, a qualified independent consultant (the "Consultant") not unacceptable to the Commission staff, to review the Fund Advisors' policies, procedures, and controls regarding the proper allocation of expenses as between the Fund Advisors and any REITs they manage. The Consultant's review and evaluation shall include an assessment of the sufficiency of the Fund Advisors' policies, procedures and controls relating to the reimbursement of fees and expenses by any REITs they manage. The review shall include, but not be limited to, an assessment of (i) whether decision-making regarding expense allocation is independent and made by persons without a financial or other pecuniary interest in a particular allocation; (ii) whether management decisions regarding expense allocation are subject to appropriate independent oversight; (iii) whether expenses charged by the Fund Advisors to any REITS they manage are reasonable in

light of the REIT revenues and more generally industry practice; and (iv) whether a periodic review of the appropriateness of total expense allocation and reimbursements is appropriate under the circumstances, and if so, on what frequency.

27. Provide, within seventy-five (75) days of the issuance of this Order, a copy of the engagement letter detailing the Consultant's responsibilities to Mark Cave, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

28. Require the Consultant, at the conclusion of the review, which in no event shall be more than 120 days after the entry of the Order, to submit a report of the Consultant to the Respondents and the Commission staff. The report shall address the Consultant's findings and shall include a description of the review performed, the conclusions reached, and the Consultant's recommendations for changes or improvements.

29. Require the Consultant to report to the Commission staff on its activities as the staff may request.

30. Adopt, implement, and maintain all policies, procedures and practices recommended in the report of the Consultant within 120 days of receiving the report from the Consultant. As to any of the Consultant's recommendations about which the Respondents and the Consultant do not agree, such parties shall attempt in good faith to reach agreement within 180 days of the date of the entry of the Order. In the event that the Respondents and the Consultant are unable to agree on an alternative proposal, the Respondents will abide by the determination of the Consultant and adopt those recommendations deemed appropriate by the Consultant.

31. Cooperate fully with the Consultant in its review, including making such information and documents available as the Consultant may reasonably request, and by permitting and requiring the Respondents' employees and agents to supply such information and documents as the Consultant may reasonably request, subject to any applicable privilege.

32. To ensure the independence of the Consultant, the Respondents (i) shall not have received legal, auditing, or other services from, or have had any affiliations with, the Consultant during the two years prior to the issuance of this Order; (ii) shall not have the authority to terminate the Consultant without prior written approval of the Commission staff; and (iii) shall compensate the Consultant for services rendered pursuant to the Order at their reasonable and customary rates.

33. For the period of engagement and for a period of two years from completion of the engagement, Respondents shall not (i) retain the independent consultant for any other professional services outside of the services described in this Order; (ii) enter into any other professional relationship with the independent consultant, including any employment, consultant, attorney-client, auditing or other professional relationship; or (iii) enter, without prior written consent of the Commission staff, into any such professional relationship with any of the independent consultant's present or former affiliates, employers, directors, officers, employees, or agents acting in their capacity as such.

34. The reports by the Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.

35. Respondents agrees that the Commission staff may extend any of the dates set forth above at its discretion.

36. Respondents have undertaken to, within thirty (30) days of the entry of this Order provide each previous and current investor in Fund 2 and Fund 3 a copy of this Order.

37. Certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), 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 Respondents agree to provide such evidence. The certification and supporting material shall be submitted to Mark Cave, Associate Director, Division of Enforcement, with a copy to the Office of Chief Counsel of the Enforcement Division, 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 Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act, it is hereby ORDERED that:

A. Respondents Fund 2 Advisor, Fund 3 Advisor, and Maple cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act.

B. Respondents Fund 2 Advisor and Fund 3 Advisor shall comply with the undertakings enumerated in Paragraphs 26-37 above.

C. Respondent Fund 2 Advisor shall pay disgorgement of $2,283,000, prejudgment interest of $459,012.67, and a civil money penalty of $1,150,000 to the Securities and Exchange Commission, for a total of $3,892,012.67. Payment shall be made in the following installments:

(1) $1,000,000 within 10 days of the entry of this Order;
(2) $723,003.17 within 90 days of the entry of this Order;
(3) $723,003.17 within 180 days of the entry of this Order;
(4) $723,003.17 within 270 days of the entry of this Order; and

(5) $723,003.16 within 360 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 and 31 U.S.C. 3717. 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.

D. Respondent Fund 3 Advisor shall pay disgorgement of $463,900, prejudgment interest of $85,431.50, and a civil money penalty in the amount of $225,000 to the Securities and Exchange Commission, for a total of $774,331.50. Payment shall be made in the following installments:

(1) $275,000 within 10 days of the entry of this Order;
(2) $124,832.88 within 90 days of the entry of this Order;
(3) $124,832.88 within 180 days of the entry of this Order;
(4) $124,832.88 within 270 days of the entry of this Order; and
(5) $124,832.86 within 360 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 and 31 U.S.C. 3717. 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.

E. Respondent Maple shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $100,000 to the Securities and Exchange Commission. 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) 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 Fund 2 Advisor, Fund 3 Advisor, or Maple as the 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 Mark Cave, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street N.E., Washington, DC 20549-6561A.

F. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest, and penalties referenced in paragraphs C, D and E above. 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, they 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 they 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 a 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.

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