

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11336 / December 9, 2024

SECURITIES EXCHANGE ACT OF 1934
Release No. 101854 / December 9, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22343

In the Matter of

David C. Underwood

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933 AND SECTIONS
15(b) AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, 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”) and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against David C. Underwood (“Underwood” 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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934, 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 finds¹ that:

Summary

1. This proceeding arises from an oil and gas offering fraud in which, between at least October 2018 and December 2021, The Heartland Group Ventures, LLC ("Heartland Group Ventures"), Heartland Production and Recovery LLC ("Heartland Production"), six other Heartland-affiliated entities, and four Heartland-affiliated individuals (collectively, "Heartland"), raised approximately \$122 million from more than 700 investors nationwide through five fraudulent and unregistered securities offerings for which there was no applicable registration exemption ("Heartland Offerings").

2. Between February 2020 and December 2021 (the "relevant time period"), Underwood acted as an unregistered broker-dealer on behalf of Heartland in connection with two of its unregistered securities offerings. Underwood raised approximately \$4,315,000 for the Heartland Offerings through the offer and sale of unregistered securities to 20 individual investors, including Underwood's wife, both directly and indirectly through a "feeder fund," a company that Underwood wholly owned and controlled. Underwood, among other things, solicited investors directly and indirectly to invest in certain Heartland Offerings, provided advice to investors relating to the Heartland Offerings, assisted investors in completing investment documents, assisted investors in transferring their funds to Heartland, and received transaction-based compensation from Heartland for those sales. Underwood was not registered as a broker-dealer with the Commission or associated with a registered broker-dealer during the relevant time period.

Respondent

3. **David C. Underwood**, age 68, resides in Tujunga, California. At all relevant times, Underwood has been licensed as an insurance agent in the state of California. Between April 2017 and December 2021, Underwood owned and controlled Underwood & Associates, Inc. ("Underwood & Associates"), a "feeder fund" he utilized to solicit investments in Heartland securities. Underwood has never been registered or associated with a Commission registrant in any capacity.

Other Relevant Entities

4. **Heartland Production and Recovery LLC** and **The Heartland Group Ventures, LLC** are Delaware and Texas limited liability companies, respectively. Heartland Production was formed on October 2, 2018, and its principal place of business was in Mansfield, Texas. Heartland Group Ventures was formed on August 26, 2019, and its principal place of business was in Fort Worth, Texas. On December 1, 2021, the Commission filed a civil action in federal court against

¹ 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.

Heartland Group Ventures, Heartland Production, six Heartland-affiliated entities, four Heartland-affiliated individuals, and various oil and gas operators, alleging that they violated Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. *See SEC v. The Heartland Group Ventures, LLC, et al.*, No. 4:21-cv-01310 (N.D. Tex.).

5. **Heartland Production and Recovery Fund LLC** (“Debt Fund I”) and **Heartland Production and Recovery Fund II LLC** (“Debt Fund II”) are Delaware limited liability companies and **The Heartland Group Fund III, LLC** (“Debt Fund III”) is a Texas limited liability company. Debt Fund I was formed on October 31, 2018, and Debt Fund II was formed on January 8, 2019, with their principal place of business in Mansfield, Texas. Debt Fund III was formed on September 12, 2019, and its principal place of business was in Fort Worth, Texas. Debt Fund I, Debt Fund II, and Debt Fund III issued certain of the securities described herein. None of these entities has ever been registered with the Commission in any capacity.

6. **Heartland Drilling Fund I, LP** (“Equity Fund I”) and **Carson Oil Field Development Fund II, LP** (“Equity Fund II”) are Delaware and Texas limited partnerships, respectively, with their principal place of business in Fort Worth, Texas. Equity Fund I was formed on April 15, 2019, and Equity Fund II was formed on July 1, 2020. Equity Fund I and Equity Fund II issued certain of the securities described herein. None of these entities has ever been registered with the Commission in any capacity.

7. **Underwood & Associates, Inc.** is a California corporation formed in April 2017 with its principal place of business in Toluca Lake, California. Underwood wholly owned and controlled Underwood & Associates and used it as a “feeder fund” to raise funds exclusively for investments in the Heartland Offerings. Underwood & Associates has never been registered with the Commission in any capacity.

BACKGROUND

8. Between at least October 2018 and October 2021, Heartland Group Ventures, Heartland Production, and their principals fraudulently raised approximately \$122 million from more than 700 investors nationwide, purportedly for working over existing wells or drilling new wells in Texas, through five unregistered Heartland Offerings—involving investments in three debt funds and two equity funds—for which there was no applicable registration exemption. Over the course of the five Heartland Offerings—Debt Fund I, Debt Fund II, Debt Fund III, Equity Fund I, and Equity Fund II—Heartland spent only about half of the investor funds raised on oil and gas projects, which collectively generated less than \$500,000 in revenue.

9. Between October 2018 and early 2019, Heartland relied on a network of sales agents, primarily insurance agents and financial advisors whom Heartland called “finders,” to solicit prospective investors to invest in one or more of the five unregistered Heartland Offerings. Beginning in early 2019, Heartland shifted to raising funds through a “feeder fund” model, in which a “feeder fund manager,” typically the same insurance agents and financial advisors who acted as

Heartland sales agents, solicited prospective investors through a new company formed for the primary purpose of soliciting investments in Heartland. Under the “feeder fund” model, investors did not invest directly in any of the five unregistered Heartland Offerings. Instead, investors acquired an interest in a “feeder fund” company and entered into subscription agreements and transmitted their funds to a “feeder fund” that was owned and managed by a sales agent. After receiving investor funds, the sales agents caused their “feeder funds” to enter into mirror transactions with Heartland and to send the investors’ funds to Heartland, minus the sales agents’ commission. Many investors did not know they were investing through a “feeder fund” and instead believed they were directly investing in the Heartland Offerings.

10. Heartland and its principals made material misrepresentations and omissions to investors regarding the oil and gas projects in offering documents for the five unregistered Heartland Offerings. For example, among other things, they falsely told investors that certain oil wells were producing hundreds of barrels of oil a day, including wells that had yet to produce a single barrel of oil. Heartland and its principals also made material misrepresentations and omissions to investors regarding the oil and gas projects in marketing materials for the five unregistered Heartland Offerings, falsely representing production and reserves, among other things.

11. Beginning in at least 2019, Heartland and its principals used investor funds to make more than \$26 million in Ponzi payments to debt fund investors.

Underwood Offered and Sold Heartland Securities in Unregistered Transactions as an Unregistered Broker-Dealer

12. Between February 2020 and December 2021, Underwood, directly and through his “feeder fund,” Underwood & Associates, solicited investors for the Equity Fund I and Equity Fund II securities offerings. During the relevant time period, Underwood raised approximately \$4,315,000 for Heartland by offering and selling securities to 20 individual investors, some of whom invested in more than one fund, through unregistered transactions.

13. Underwood, directly and through his “feeder fund” Underwood & Associates, had agreements with Heartland to offer and sell Heartland securities in exchange for commissions and transaction-based fees. During the relevant time period, Underwood received transaction-based compensation from Heartland for his sales of Heartland securities. At all relevant times, Underwood was not registered as a broker-dealer and was not associated with a registered broker-dealer in accordance with Section 15(b) of the Exchange Act.

14. Heartland and its principals provided Underwood with offering and marketing documents to use with prospective investors. Heartland also prepared offering documents for the Underwood & Associates “feeder fund” and gave them to Underwood to use with prospective investors. These offering and marketing documents mirrored Heartland’s offering and marketing documents.

15. Using this information and the offering materials provided by Heartland, Underwood repeated Heartland's representations about how investor funds would be used and the safety of their investments to prospective investors. Underwood presented the Heartland Offerings to his insurance clients and other investors in person, telephonically, and by email. When investors had questions Underwood could not answer, he sought answers from Heartland and its principals. Underwood also advised his insurance clients and other investors to invest in the Heartland Offerings.

16. When he acted as a sales agent, Underwood solicited investors to invest in Heartland securities, provided advice to them relating to the Heartland Offerings, assisted them in completing Heartland investment documents, and then forwarded those documents to Heartland. Underwood also helped investors transfer their funds to Heartland and received between 5% to 8% of the investors' investments as transaction-based compensation pursuant to his agreement with Heartland.

17. Similarly, when he acted as a "feeder fund manager," Underwood assisted investors in completing the necessary investment documents for the "feeder fund" and transferring their funds to Underwood & Associates, in order to use the investors' funds to make investments in Heartland securities. Underwood then caused the "feeder fund" to invest in Equity Fund I or Equity Fund II and sent the investors' contributions to Heartland in exchange for Heartland securities. Underwood's "feeder fund" withheld between 5% to 8% of the investors' contributions as his transaction-based compensation pursuant to the "feeder fund's" agreement with Heartland. Many investors did not know they were investing through a "feeder fund" and instead believed they were directly investing in Heartland securities. Underwood later advised investors as to whether they should re-invest in the "feeder fund" or request the return of their contributions.

18. Between February 2020 and July 2020, Underwood solicited investors, many of whom were his insurance clients, to directly invest in Equity Fund I. Between February 2020 and July 2020, Underwood sold \$2,175,000 of Heartland Equity Fund I securities to three individual investors.

19. Between August 2020 and September 2021, Underwood solicited investors, many of whom were his insurance clients, to invest in Equity Fund II. Between August 2020 and October 2020, Underwood sold \$100,000 of Equity Fund II securities to one investor. Between October 2020 and September 2021, Underwood received, through Underwood & Associates, \$2,040,000 from 18 individual investors to invest in Equity Fund II securities. In March 2022, Underwood entered into a monetary settlement with a Heartland investor whom he had solicited to invest in Equity Fund II.

VIOLATIONS

20. As a result of his conduct, Underwood willfully² violated Section 5(a) of the Securities Act, which prohibits, absent an exemption, the sale of securities through interstate commerce or the mails unless a registration statement is in effect.

21. As a result of his conduct, Underwood willfully violated Section 5(c) of the Securities Act, which prohibits, absent an exemption, any offer to sell or offer to buy any security through interstate commerce or the mails unless a registration statement has been filed as to such security with the Commission.

22. As a result of his conduct, Underwood willfully violated Section 15(a)(1) of the Exchange Act, which prohibits any broker or dealer from effecting any transaction in, or inducing or attempting to induce the purchase or sale of, any security unless the broker or dealer is registered in accordance with Section 15(b) of the Exchange Act or is a natural person who is associated with a registered broker or dealer.

DISGORGEMENT AND PREJUDGMENT INTEREST

23. The disgorgement and prejudgment interest ordered in paragraph IV.D is consistent with equitable principles and does not exceed Respondent's net profits from his 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 and may combine the funds with funds paid by other respondents or defendants, including without limitation defendants in *SEC v. The Heartland Group Ventures, LLC, et al.*, No. 4:21-cv-01310 (N.D. Tex.). 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.

UNDERTAKING

24. Respondent has undertaken not to seek or obtain, on behalf of himself or his spouse, any distribution from the Receiver appointed by the United States District Court for the District of Texas in *SEC v. The Heartland Group Ventures, LLC, et al.*, No. 4:21-cv-01310 (N.D.

² "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act, "means no more than 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." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

Tex.). In determining whether to accept the Offer, the Commission has considered this undertaking.

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 to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act and Section 15(a)(1) of the Exchange Act.

B. Respondent be, and hereby is:

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

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock;

with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any application for reentry by the Respondent will be made to the appropriate self-regulatory organization, or if there is none, to the Commission by contacting the Division of Enforcement's Office of Chief Counsel at ENF-Reentry@sec.gov, and will be subject to the applicable laws and regulations governing the reentry process. 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 Respondent in any action brought by the Commission; (b) any disgorgement amounts ordered against the Respondent 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. Respondent shall pay disgorgement of \$145,972.00, prejudgment interest of \$25,716.00, and civil penalties of \$50,000.00 to the Securities and Exchange Commission. Payment shall be made in the following installments:

- \$20,000 within fourteen (14) days of the entry of this Order;
- \$16,807.33 within ninety (90) days of the entry of this Order;
- \$16,807.33 within one hundred and eighty (180) days of the entry of this Order;
- \$16,807.33 within two hundred and seventy (270) days of the entry of this Order;
- \$16,807.33 within three hundred and sixty (360) days of entry of this Order;
- \$16,807.33 within four hundred and fifty (450) days of the entry of this Order;
- \$16,807.33 within five hundred and forty (540) days of the entry of this Order;
- \$16,807.33 within six hundred and thirty (630) days of the entry of this Order;
- \$16,807.33 within seven hundred and twenty (720) days of entry of this Order;
- \$16,807.33 within eight hundred and ten (810) days of the entry of this Order;
- \$16,807.33 within nine hundred (900) days of the entry of this Order;
- \$16,807.33 within nine hundred and ninety (990) days of the entry of this Order;
- and
- \$16,807.37 within one thousand and eighty (1,080) days of entry of this Order.

Payments shall be applied first to post order interest, which accrues pursuant to SEC Rule of Practice 600 and/or pursuant to 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.

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 Underwood 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 Anne C. McKinley, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604.

E. 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 paragraph IV.D above. This Fair Fund may receive the funds from and/or be combined with funds paid by other respondents or defendants, including without limitation defendants in *SEC v. The Heartland Group Ventures, LLC, et al.*, No. 4:21-cv-01310 (N.D. Tex.), for conduct arising in relation to the violative conduct at issue in this In the Matter of David C. Underwood proceeding. 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, he shall not argue that he is entitled to, nor shall he 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 he 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.

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