

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4063 / April 16, 2015**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 31554 / April 16, 2015**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16130**

**In the Matter of**

**SEAN C. COOPER,**

**Respondent.**

**ORDER MAKING FINDINGS AND  
IMPOSING REMEDIAL SANCTIONS  
AND A CEASE-AND-DESIST ORDER  
PURSUANT TO SECTIONS 203(f) AND  
203(k) OF THE INVESTMENT  
ADVISERS ACT OF 1940, AND  
SECTION 9(b) OF THE INVESTMENT  
COMPANY ACT OF 1940**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest to enter this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) as to Sean C. Cooper (“Respondent” or “Cooper”).<sup>1</sup>

**II.**

Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Respondent admits the facts set forth in Annex A attached hereto and acknowledges that his conduct as set forth in Annex A violated the federal securities laws, admits the Commission’s jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(f)

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<sup>1</sup> On September 17, 2014, the Commission instituted public administrative and cease-and-desist proceedings pursuant to Sections 203(f) and 203(k) of the Advisers Act and Section 9(b) of the Investment Company Act against Cooper.

and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, as set forth below.

### III.

On the basis of this Order and Cooper's Offer, the Commission finds<sup>2</sup> that:

#### Summary

1. This proceeding involves fraud, breaches of fiduciary duty, and compliance failures by Sean C. Cooper from 2010 to 2012. During that period, Cooper was a managing member of WestEnd Capital Management, LLC ("WestEnd"), a San Francisco-based registered investment adviser, and also the portfolio manager for WestEnd Partners L.P. ("Fund"), a hedge fund advised by WestEnd.

2. The Fund's governing documents provided that WestEnd was entitled to annual management fees of 1.5% payable quarterly in advance at the beginning of each fiscal quarter. However, beginning in March 2010 and continuing through February 2012, Cooper began indiscriminately withdrawing money from the Fund. Cooper routed the money first through WestEnd, and then to his personal bank accounts. Although Cooper characterized the withdrawals in WestEnd's books and records as management fees, the withdrawals bore no relation to the fees WestEnd actually had earned. In reality, Cooper was using the Fund to line his own pockets. By April 1, 2012, Cooper had misappropriated \$211,579 from the Fund.

3. Cooper was primarily responsible for WestEnd's compliance program, which was deficient with regards to, among other things, monitoring, reviewing, and approving his withdrawals from the Fund. Cooper also signed a false Form ADV filed with the Commission by WestEnd in 2011.

#### Respondent

4. **Sean Cooper**, age 48, of New Orleans, Louisiana, served as one of WestEnd's managing members since its inception in 2002 through his expulsion from the firm in August 2012. Cooper was the primary portfolio manager and made almost all the investment decisions for the Fund. He also served as WestEnd's chief compliance employee until 2007, when he nominally delegated that function to another employee. In 2003, he formed the Fund to invest primarily in securities traded on domestic exchanges. Cooper controlled the Fund's operations and paid himself 100% of the management fee WestEnd collected from the Fund.

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<sup>2</sup> The findings herein are made pursuant to Cooper's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

### **Other Relevant Entities**

5. **WestEnd Capital Management, LLC** (“WestEnd”) is a California limited liability corporation based in San Francisco, CA and has been registered with the Commission as an investment adviser since May 2002. WestEnd provides investment advice to individuals and is also the investment adviser to WestEnd Partners, L.P., a hedge fund. As of December 31, 2013, WestEnd’s total assets under management were \$105 million.

6. **WestEnd Partners, L.P.** (the “Fund”) is a California limited partnership formed in 2003, with WestEnd as its General Partner and adviser. During the relevant period WestEnd Partners invested primarily in securities traded on domestic and foreign exchanges and had approximately 20 investors.

### **Background**

7. Formed in 2002, WestEnd is an investment advisory firm registered with the Commission that provides advisory and financial planning services to high net-worth individuals through separately managed accounts and the Fund.

8. Sean Cooper and two other members (the “Other Members”) owned and operated WestEnd. Cooper was responsible for WestEnd’s back office financial operations and compliance matters, as well as managing the Fund’s investment portfolio. The Other Members were responsible for managing WestEnd’s other client portfolios as well as client relations and marketing, and performed their roles remotely. As a result, the Other Members oversaw very little of WestEnd’s day-to-day operations during the relevant time period. Cooper hired most of WestEnd’s employees, ran WestEnd’s day-to-day operations, purported to supervise WestEnd’s compliance policies and procedures, served as the primary portfolio manager for the Fund, made almost all of the investment decisions for the Fund, and coordinated the preparation of the Fund’s financial statements. He also had sole control over the Fund’s bank accounts and operations and collected the fees WestEnd earned from the Fund. Cooper operated the Fund and managed WestEnd’s back office operations with little to no supervision from WestEnd’s Other Members.

### **Cooper Misappropriated Fund Assets**

9. The Fund’s offering circular stated that WestEnd was entitled to annual management fees of 1.5% of each investors’ capital account balance, payable quarterly in advance at the beginning of each fiscal quarter. The Fund’s limited partnership agreement similarly stated that WestEnd was entitled to a management fee of 0.375 % of the balance of each limited partner’s capital account on the first day of each fiscal quarter.

10. WestEnd operated its fiscal calendar on a calendar year basis, such that WestEnd could withdraw quarterly management fees starting on January 1, April 1, July 1, and September 1 of each year. WestEnd provided each prospective investor in the Fund

with a copy of the Fund's confidential offering circular and limited partnership agreement. Cooper knew investors received copies of these documents.

11. In March 2010, however, Cooper began indiscriminately withdrawing money from the Fund. Whereas the Fund's confidential offering circular and limited partnership agreement stated that there would be 4 quarterly management fee payments, Cooper withdrew fees 11 times in various amounts during 2010 that in total exceeded the 1.5% level, causing WestEnd's financial statements to state that it owed investors in the Fund \$128,950 by the end of that year. Cooper continued to collect excess fees from the Fund in 2011 and 2012 and by March 2012, WestEnd's financial statements reflected that it owed the Fund \$320,779. When the Commission's examination staff began an onsite examination in April 2012 the amount WestEnd owed to the Fund had been reduced by \$109,200 to \$211,579 due to the April 1, 2012 accrual of management fees. Cooper characterized the withdrawals in the Fund's books and records as management fees – but the withdrawals bore no relation to the fees WestEnd actually had earned. In reality, Cooper simply was using the Fund as his own private bank.

12. Cooper had sole authority to transfer money out of the Fund and there were no controls in place to prevent him from improperly withdrawing funds. Cooper routed the money first through WestEnd, and then to his personal bank account where he spent the money on his lavish lifestyle, including remodeling his multi-million dollar Marin County home and purchasing a \$187,000 Porsche. In June 2012, the Fund's independent auditors determined that WestEnd's lack of internal control over monitoring and approval of Cooper's withdrawals in excess of the amounts permitted by the Fund's governing documents was a significant deficiency in internal controls.

13. Cooper did not disclose WestEnd's excess fee withdrawals to Fund investors. Although Cooper reviewed and approved the quarterly account statements WestEnd sent to Fund investors, these statements, which reflected quarterly and year-to-date performance of the Fund, did not disclose the fact that Cooper caused WestEnd to take more in management fees than WestEnd was entitled to take under the terms of the Fund's offering and governing documents. Cooper also reviewed and approved the Fund's 2010 financial statements, which WestEnd sent to investors in July 2011, well after Cooper had misappropriated most of the funds. These financial statements described Cooper's withdrawals as "Prepaid management fees." This was false and misleading because Cooper's withdrawals bore no relation to the fees he and WestEnd actually earned.

#### **False Statement in Form ADV**

14. On April 1, 2011, Cooper signed and filed on behalf of WestEnd Part 2A of WestEnd's Form ADV. Item 5 of Part 2A stated that WestEnd charged a quarterly management fee, payable on the first day of each quarter, equal to 0.375% of the capital balance of each limited partner for its services to the Fund. As discussed above, this statement was false, because Cooper indiscriminately withdrew purported management fees in excess of the annual 1.5% in 2010, 2011, and 2012.

## **Cooper Aided and Abetted and Caused WestEnd's Compliance Violations**

15. The Advisers Act requires that registered investment advisers adopt and implement written policies and procedures reasonably designed to prevent violations of the statute. WestEnd failed to adopt, implement or comply with written policies and procedures designed to prevent violations of the Advisers Act. Cooper, while acting as WestEnd's chief compliance employee, failed to adopt, implement, or direct WestEnd's employees to adopt, implement, or comply with written policies and procedures designed to prevent violations of the Advisers Act.

16. As noted above, WestEnd – at Cooper's direction as principal of WestEnd and chief compliance officer ("Compliance Officer") – did not adopt policies or procedures that placed restrictions on Cooper's ability to withdraw money from the Fund. Additionally, WestEnd's policies and procedures that were adopted required that employees on an annual basis review and certify that they had received, read, and complied with the policies and procedures. WestEnd did not, however, provide its employees with the policies and procedures on an annual basis. Moreover, none of WestEnd's managing members, including Cooper, reviewed and certified that they had complied with WestEnd's policies and procedures for a more than five-year period between 2006 and 2012.

17. The Advisers Act also requires that registered investment advisers review, no less frequently than annually, the adequacy of their compliance policies and the effectiveness of their implementation. Similarly, WestEnd's policies and procedures required Cooper to conduct an annual review of the adequacy and effectiveness of the firm's policies and procedures, including considering any compliance matters that arose during the previous year, any changes in WestEnd's activities and any changes in the Advisers Act or other applicable regulations. From 2006 through 2012, WestEnd and Cooper failed to conduct an annual review of the policies and procedures as required under the Advisers Act.

### **Violations**

18. As a result of the conduct described above, Cooper willfully violated Sections 206(1) and 206(2) of the Advisers Act by employing devices, schemes or artifices to defraud clients or engaging in transactions, practices or courses of business that defrauded clients or prospective clients.

19. As a result of the conduct described above, Cooper willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which prohibit any fraudulent, deceptive, or manipulative act, practice, or course of business by an investment adviser to a pooled investment vehicle.

20. As a result of the conduct described above, Cooper willfully aided and abetted and caused WestEnd's violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require, among other things, that a registered investment adviser: (a) adopt and implement written policies and procedures reasonably designed to

prevent violations of the Advisers Act and its rules; and (b) review at least annually its written policies and procedures and the effectiveness of their implementation.

21. As a result of the conduct described above, Cooper willfully violated Section 207 of the Advisers Act which makes it “unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein.”

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Cooper’s Offer.

Accordingly, pursuant to 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. Respondent cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2), 206(4) and 207 of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder.

B. Respondent Cooper 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

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

C. Any reapplication for association by the Respondent 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, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) 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 (d) 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, within 60 days of the entry of this Order, pay disgorgement, which represents profits gained as a result of the conduct described herein of

\$211,579; a civil money penalty in the amount of \$175,000; and prejudgment interest of \$15,746.58, for a total of \$402,325.58 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 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 Sean C. Cooper 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 Erin E. Schneider, Associate Regional Director, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

## V.

It is further Ordered that, 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.

Brent J. Fields  
Secretary

## **ANNEX A**

Respondent Sean C. Cooper admits the facts set forth below (the “Admissions”) and acknowledges that his conduct violated the federal securities laws:

### **WestEnd Capital Management**

1. WestEnd Capital Management, LLC (“WestEnd”) is a California limited liability corporation based in San Francisco, CA and has been registered with the Commission as an investment adviser since May 2002. WestEnd provides investment advice to individuals and is also the investment adviser to WestEnd Partners, L.P., a hedge fund. Cooper was a managing member of WestEnd from inception until August 2012.

### **WestEnd Partners**

2. WestEnd Partners, L.P. (the “Fund”) is a California limited partnership formed in 2003, with WestEnd as its General Partner and adviser. Cooper was the portfolio manager of the Fund. From January 2010 through February 2012 (the “Relevant Period”) WestEnd Partners invested primarily in securities traded on domestic and foreign exchanges and had approximately 20 investors and net assets ranging from \$24 to \$85 million during the Relevant Period.

### **Background**

3. Sean Cooper and two other members (the “Other Members”) owned and operated WestEnd. Cooper was responsible for WestEnd’s back office financial operations and compliance matters, as well as managing the Fund’s investment portfolio. The Other Members were responsible for managing WestEnd’s other client portfolios as well as client relations and marketing, and performed their roles remotely. Cooper hired most of WestEnd’s employees, ran WestEnd’s day-to-day operations, supervised WestEnd’s compliance policies and procedures, served as the primary portfolio manager for the Fund, made almost all of the investment decisions for the Fund, and coordinated the preparation of the Fund’s financial statements. He also had sole control over the Fund’s bank accounts and operations and collected the fees WestEnd earned from the Fund.

### **Calculation and Disclosure of Management Fees Paid by the Fund**

4. The Fund’s offering circular stated that WestEnd was entitled to annual management fees of 1.5% of each investor’s capital account balance, payable quarterly in advance at the beginning of each fiscal quarter. The Fund’s limited partnership agreement similarly stated that WestEnd was entitled to a management fee of 0.375 % of the balance of each limited partner’s capital account on the first day of each fiscal quarter.

5. According to the terms of the Fund’s confidential offering circular and limited partnership agreement, WestEnd operated its fiscal calendar on a calendar year basis, such that WestEnd could withdraw quarterly management fees starting on January 1,

April 1, July 1, and September 1 of each year. WestEnd provided each prospective investor in the Fund with a copy of the Fund's confidential offering circular and limited partnership agreement before they invested in the fund. Cooper knew investors received copies of these documents.

**Cooper's Improper Collection of Management Fees**

6. Contrary to the terms of the Fund's confidential offering circular and limited partnership agreement, Cooper withdrew purported fees in 2010, 2011, and 2012 in various amounts that in total exceeded the 1.5% level.

7. Cooper withdrew purported fees 11 times from the Fund in the following amounts in 2010:

- a. \$100,000 on January 4, 2010;
- b. \$75,000 on March 9, 2010;
- c. \$15,000 on March 18, 2010;
- d. \$60,000 on May 12, 2010;
- e. \$13,500 on May 13, 2010;
- f. \$10,000 on June 21, 2010;
- g. \$45,000 on August 4, 2010;
- h. \$45,000 on September 1, 2010;
- i. \$30,000 on September 27, 2010;
- j. \$140,000 on October 21, 2010;
- k. \$20,000 on December 10, 2010.

8. By December 31, 2010, due to these withdrawals, Cooper owed the Fund \$128,950.

9. Cooper withdrew purported fees 6 times from the Fund in the following amounts in 2011:

- a. \$200,000 on February 1, 2011;
- b. \$160,000 on February 10, 2011;

- c. \$150,000 on March 8, 2011;
- d. \$80,000 on April 14, 2011;
- e. \$100,000 on April 28, 2011;
- f. \$50,000 on May 18, 2011.

10. By December 31, 2011, due to these additional withdrawals, Cooper owed the Fund \$281,749.

11. On February 23, 2012, Cooper withdrew an additional \$100,000 in purported fees, raising the total amount Cooper owed the Fund to \$320,779. During the Relevant Period, Cooper was reckless in taking out fees in a manner contrary to what was described in the materials provided to the investors. Additionally, Cooper did not disclose this to investors.

#### **False Statements in WestEnd's Form ADV**

12. On April 1, 2011, WestEnd filed with the Commission, Part 2A of WestEnd's Form ADV. Item 5 of Part 2A stated that WestEnd charged a quarterly management fee, payable on the first day of each quarter, equal to 0.375% of the capital balance of each limited partner for its services to the Fund. This was false because Cooper took purported fees in a manner contrary to the statement. Cooper signed and filed Part 2A of WestEnd's Form ADV on behalf of WestEnd.

#### **Inadequate Compliance Policies and Procedures**

13. Section 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") and Rule 206(4)-7 promulgated thereunder require that registered investment advisers adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules. WestEnd's Form ADV from 2009 through 2011, which Cooper signed, identified him as WestEnd's Chief Compliance Officer. Cooper was aware as Chief Compliance Officer that he was in charge of adopting and implementing WestEnd's compliance policies and procedures. Cooper, while acting as WestEnd's Chief Compliance Officer, failed to adopt, implement, or direct WestEnd's employees to adopt, implement, or comply with written policies and procedures designed to prevent violations of the Advisers Act and its rules. For example, WestEnd – at Cooper's direction as principal of WestEnd and Chief Compliance Officer – did not adopt policies or procedures that placed restrictions on Cooper's ability to withdraw money from the Fund. The Fund's auditor concluded at the end of its 2011 audit that WestEnd's lack of control over monitoring and approval of Cooper's withdrawals in excess of the amounts permitted by the Fund's governing documents was a significant deficiency in internal controls.

14. WestEnd's policies and procedures – adopted while Cooper was WestEnd's Chief Compliance Officer – required that employees on an annual basis review and certify that they had received, read, and complied with the policies and procedures. Cooper did not, however, provide or cause others to provide WestEnd employees with the policies and procedures on an annual basis. Moreover, Cooper, a managing member of WestEnd, did not review and certify that he had complied with WestEnd's policies and procedures for a more than five-year period between 2006 and 2012.

15. The Advisers Act also requires that registered investment advisers review, no less frequently than annually, the adequacy of their compliance policies and the effectiveness of their implementation. Similarly, WestEnd's policies and procedures required Cooper to conduct an annual review of the adequacy and effectiveness of the firm's policies and procedures, including considering any compliance matters that arose during the previous year, any changes in WestEnd's activities and any changes in the Advisers Act or other applicable regulations. From 2006 through 2012, Cooper was reckless in disregarding the Advisers Act requirements that he conduct or cause others to conduct an annual review of the policies and procedures as required under the Act, as well as under the terms of WestEnd's compliance manual.

### **Ill-Gotten Gains**

16. As of February 23, 2012, WestEnd had taken \$320,779 more than it was entitled to from the Fund. WestEnd transferred nearly all of this excessive amount to Cooper. On April 1, 2012, WestEnd reduced the amount owed to the Fund to \$211,579 by not taking the \$109,200 in management fees that had accrued for the current quarter.

### **Conclusion**

17. The above-described conduct by Cooper was undertaken while he was serving as a managing member of a SEC-registered investment adviser.

18. In connection with the violations described in the foregoing Admissions, Cooper's actions were, at a minimum, reckless.