

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4587 / December 14, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17722**

**In the Matter of**  
  
**New Silk Route Advisors, L.P.,**  
  
**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 New Silk Route Advisors, L.P. (“NSR” 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 contained in the Order, 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<sup>1</sup> that:

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<sup>1</sup> 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.

## Summary

1. These proceedings concern Respondent's breaches of fiduciary duty arising from its repeated failures to obtain required advisory board consents for certain co-investments made by two private equity funds NSR manages: New Silk Route PE Asia Fund, L.P. and New Silk Route PE Asia Fund-A, L.P. (collectively, the "NSR Funds"). NSR's co-founder and CEO is also a co-founder and CEO of a different Commission-registered investment adviser to other private equity funds ("Adviser A"). From approximately 2008 to 2014, the NSR Funds invested over \$250 million in four portfolio companies in which another private equity fund managed by Adviser A (the "Related Fund") also invested. These co-investments posed conflicts of interest for NSR. To address such conflicts, the NSR Funds' Limited Partnership Agreements (the "LPAs") required the consent of the NSR Funds' advisory boards for the NSR Funds to co-invest with the Related Fund. Contrary to this requirement, NSR negligently failed to obtain the required advisory board consents for the NSR Funds' co-investments with the Related Fund that were made from January 2008 through April 2014. By virtue of this conduct, NSR violated Sections 206(2) and 206(4) of the Advisers Act, and Rules 206(4)-8 and Rule 206(4)-7 thereunder.

## Respondent

2. **New Silk Route Advisors, L.P.** is a Cayman Islands exempted limited partnership with its principal place of business in New York, New York. It is an investment adviser registered with the Commission since March 2012.

## Other Relevant Entities

3. **New Silk Route PE Asia Fund, L.P. and New Silk Route PE Asia Fund-A, L.P.** ("Fund-A," and collectively, the "NSR Funds")<sup>2</sup> are Cayman Islands exempted limited partnerships that were formed in 2007, with NSR as their investment adviser. The NSR Funds invest primarily in growth stage companies located on the Indian subcontinent. Limited partners of the NSR Funds have committed approximately \$1.35 billion to the funds. The general partner of the NSR Funds is a Cayman Islands limited partnership.

## Facts

### A. Background

4. NSR was formed in 2006. It advises the NSR Funds, which are private equity funds that invest primarily in growth stage companies located on the Indian Subcontinent. The limited partners in the NSR Funds include pension funds, insurance companies, and large institutional investors. The limited partners have committed approximately \$1.35 billion to the NSR Funds.

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<sup>2</sup> Fund-A is a parallel investment vehicle for a single limited partner that invests on a side-by-side basis and on substantially the same economic and legal terms as New Silk Route PE Asia Fund, L.P.

5. Adviser A also was formed in 2006. It advises the Related Fund, among other private funds. The Related Fund is a private equity fund that invests primarily in early stage companies located in the United States. The Related Fund's limited partners, which include public pension funds and large institutional investors, have committed approximately \$106.5 million to the Related Fund.

6. NSR and Adviser A charge the funds they advise a management fee. The NSR Funds' and the Related Fund's general partners also receive a carried interest of net profits realized, if any, by the limited partners in these funds.

7. Each of the NSR Funds formed an advisory board consisting of representatives of limited partners in the NSR Funds. The limited partners that had the right to appoint representatives to the advisory boards were among the larger investors, by commitment size, in the NSR Funds. The advisory board of Fund-A had a single member. In practice, the advisory boards of both NSR Funds functioned as one board.

8. The NSR Funds' LPAs require consent of the advisory board for the NSR Funds to make any investments in portfolio companies in which persons or entities affiliated with NSR, its general partner, or NSR's principals also are investing or have invested. The Related Fund is affiliated with NSR's CEO (who is a principal of NSR) because NSR's CEO also is the CEO of Adviser A, and in that capacity, he exercises control over the Related Fund.

**B. NSR Caused the NSR Funds to Co-Invest with an Affiliate without Advisory Board Consent in Violation of the NSR Funds' LPAs**

9. Between 2008 and June 2014, the NSR Funds and the Related Fund co-invested in four portfolio companies (collectively, the "Co-investments"). The NSR Funds invested approximately \$252 million in the Co-investments, representing approximately 18 percent of the NSR Funds' committed capital. The Related Fund invested \$43.8 million in the Co-investments, representing approximately 43% of its committed capital. The Co-investments involved initial purchases of interests in portfolio companies, as well as additional "follow-on" investments. With respect to one of the portfolio companies, there were over ten rounds of such "follow-on" investments. The initial Co-investments were made on the same terms and price and at the same time. Three of the four initial Co-investments were allocated between the NSR Funds and the Related Fund pro rata based on the size of each fund's commitments (or if such fund was not finally closed, based on such fund's targeted commitment size). The fourth Co-investment was allocated between the NSR Funds and the Related Fund based on the determinations by each fund's adviser of the appropriate investment amount for each fund.

10. Under the LPAs, NSR was required to obtain the consent of the NSR Funds' advisory boards before making each of the Co-investments with the Related Fund, because, as described above, the Related Fund was affiliated with a principal of NSR. The LPAs also required NSR to disclose such Co-investments to the NSR Funds' advisory boards.

11. NSR did not seek or obtain the required consent of the NSR Funds' advisory boards for any of the Co-investments the NSR Funds made between 2008 and April 2014.

12. As a result of NSR's failure to disclose the Co-investments before they were made and to obtain the requisite consent for the Co-investments from the NSR Funds' advisory boards prior to making the Co-investments, the advisory boards did not have an opportunity to evaluate the conflicts posed by the Co-investments and to provide or withhold informed consent in view of the conflicts involved in the transactions.

13. For example, the advisory boards of the NSR Funds did not have an opportunity to evaluate conflicts that arose in relation to co-investments by the NSR Funds and the Related Fund in a portfolio company operating in the telecommunications sector in countries on the Indian subcontinent ("Company A"). The NSR Funds and the Related Fund first invested in Company A in 2008. This initial investment, which was made on the same terms and price and at the same time, was allocated among the NSR Funds and the Related Fund in a ratio that was pro rata to the NSR Funds' commitment size and the then expected commitment size of the Related Fund. Over the course of the next several years, the NSR Funds and the Related Fund made several follow-on investments in Company A, each time on the same terms and price, at the same time, and pro rata to the original investment allocation. In October 2013, NSR caused the NSR Funds, and Adviser A caused the Related Fund, to commit to make additional follow-on investments in Company A to be funded in installments when called by Company A, with the total callable amount not to exceed \$22 million. In January 2014, the Related Fund ran out of cash and therefore could not fund its full pro rata share of the amount called by Company A. As a result, from January 2014 through April 2014, the NSR Funds funded the amount of the installments that the Related Fund was obligated to fund in accordance with the original pro rata investment allocation (approximately \$1.3 million), but could not. The Related Fund's position in Company A was diluted as a result of its inability to fund its pro rata share of the amounts called by Company A.

14. Until late May 2014, NSR did not disclose to the NSR Funds' advisory boards or to the limited partners of the NSR Funds that the Related Fund was unable to fund its pro rata share of the amounts called by Company A, and that the NSR Funds were funding the Related Fund's share of such amounts. And, NSR did not seek or obtain consent from the NSR Funds' advisory boards to make the follow-on investments in Company A, including the investments in which the NSR Funds assumed part of the Related Fund's obligation to fund Company A. In June 2014, NSR sought consent of the NSR Funds' advisory boards and of the limited partners of the NSR Funds to (i) ratify all of the Co-investments made prior to June 2014; and (ii) make certain future follow-on investments in Company A without the Related Fund's participation in these investments. Although a majority-in-interest of the NSR Funds' limited partners consented to make certain future follow-on investments in Company A, they did not ratify the Co-investments made prior to June 2014.

15. Since June 2014, NSR has revised its investment allocation policy and implemented new controls concerning review and approval by the advisory board of investments with affiliates prior to the making of such investments.

**B. NSR Failed to Adopt and Implement Policies and Procedures Reasonably Designed to Prevent Violations of the Advisers Act and its Rules**

16. While registered with the Commission as an investment adviser, NSR was subject to the Advisers Act rules, including the requirement to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

17. From at least March 2012 until April 2014, while NSR was registered with the Commission as an investment adviser, NSR failed to obtain consent of the advisory boards of the NSR Funds for co-investments with NSR's affiliate, the Related Fund. These co-investments posed conflicts of interest for NSR, and the LPAs of the NSR Funds required consent of the funds' advisory boards to these transactions.

18. Despite the fact that by March 2012, co-investment transactions with the Related Fund had become an important and recurring part of NSR's business, NSR did not adopt or implement written policies or procedures reasonably designed to prevent violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder arising from making of co-investments with an affiliate without appropriate client consent.

**Violations**

19. Section 206(2) of the Advisers Act prohibits investment advisers from directly or indirectly engaging "in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." A violation of Section 206(2) of the Advisers Act may rest on a finding of simple negligence. *See SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.* As a result of the conduct described above, NSR willfully<sup>3</sup> violated Section 206(2) of the Advisers Act.

20. Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder make it unlawful for any investment adviser to a pooled investment vehicle to "[m]ake any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle" or "engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle." Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act and the rules thereunder. *Steadman*, 967 F.2d at 647. The NSR Funds are pooled investment vehicles pursuant to Rule 206(4)-8(b). As a result of the conduct described above, from January 2008 through April 2014, NSR willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

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<sup>3</sup> A willful violation of the securities laws means merely "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." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

21. Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder require 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 by the adviser and its supervised persons. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act and the rules thereunder. *Steadman*, 967 F.2d at 647. As a result of the conduct described above, NSR willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

#### **NSR's Remedial Efforts**

22. In determining to accept the Offer, the Commission considered remedial acts taken by NSR as described herein and the cooperation NSR provided to the Commission staff during its investigation.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

- A. Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder.
- B. Respondent is censured.
- C. Respondent shall, within 15 days of entry of this Order, pay a civil money penalty in the amount of \$275,000 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.

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 New Silk Route Advisors, L.P. 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 C. Dabney O’Riordan, Co-Chief, Asset Management Unit, Los Angeles Regional Office, Securities and Exchange Commission, 444 South Flower St., Los Angeles, CA 90071.

D. 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, NSR agrees that in any Related Investor Action, it 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 NSR’s payment of a civil penalty in this action (“Penalty Offset”). If the court in any Related Investor Action grants such a Penalty Offset, NSR 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 NSR 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.

Brent J. Fields  
Secretary