UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4970 / July 17, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18599

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 herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

1. NSR, a registered investment adviser, advises two private equity funds: New Silk Route PE Asia Fund, L.P. and New Silk Route PE Asia Fund-A, L.P.[1] (collectively, the "NSR Funds"). Since NSR registered with the Commission in 2012, it has failed to timely distribute annual audited financial statements to the investors in the NSR Funds in violation of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, commonly referred to as the "custody rule."

2. NSR also failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondent

3. **NSR** is a Cayman Islands exempted limited partnership with its principal place of business in New York, New York. NSR was formed in 2006 and has been registered with the Commission since March 28, 2012. NSR advises the NSR Funds, which are Cayman Islands exempted limited partnerships that were formed in 2007 with NSR as their investment adviser.

Background

4. The NSR Funds are private equity funds that invest primarily in growth stage companies located on the Indian Subcontinent. The fiscal year end for each of the NSR Funds is March 31 of the corresponding year. The limited partners in the NSR Funds include pension funds, insurance companies, and large institutional investors. The limited partners have committed approximately $1.3 billion to the NSR Funds.

5. The custody rule is designed to protect advisory clients from the misuse or misappropriation of their funds and securities. It requires that advisers who have custody of client assets implement an enumerated set of requirements to prevent loss, misuse, or misappropriation of those assets.

6. An adviser has custody of client assets if it holds, directly or indirectly, client funds or securities, or if it has the ability to obtain possession of those assets. Rule 206(4)-2(d)(2).

[1] New Silk Route PE Asia Fund-A, L.P. 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.

7. An adviser who has custody must, among other things: (i) ensure that a qualified custodian maintains the client assets; (ii) notify the client in writing of accounts opened by the adviser at a qualified custodian on the client's behalf and, if applicable, include in account statements sent by the adviser a statement urging the client to compare the account statements with those sent by the qualified custodian; (iii) have a reasonable basis for believing that the qualified custodian sends account statements at least quarterly to clients; and (iv) ensure that client funds and securities are verified by actual examination each year by an independent public accountant at a time chosen by the accountant without prior notice or announcement to the adviser. *See* Rule 206(4)-2(a)(1), (2) (3), (4).

8. The custody rule provides an alternative to complying with the annual asset verification requirement, notification requirement, and account statement delivery requirement, for advisers to limited partnerships or other types of pooled investment vehicles. In relevant part, the rule prescribes that an adviser "shall be deemed to have complied with" the independent verification requirement if the adviser "distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year." Rule 206(4)-2(b)(4)(i). The accountant performing the audit must be an independent public accountant that is registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board ("PCAOB"). Rule 206(4)-2(b)(4)(ii). An adviser that takes this approach is also not required to satisfy the notification and account statements delivery requirements under Rule 206(4)-2(a)(2) and (3) as described above. *See* Rule 206(4)-2(b)(4). Conversely, an adviser that fails to meet the alternative requirement to distribute audited financial statements in accordance with Rule 206(4)-2(b)(4) would be deemed to be in violation of the notification and account statements delivery requirements under Rule 206(4)-2(a)(2) and (3).

9. The NSR Funds were subject to an annual audit, and NSR attempted to rely on the "audit provision" under Rule 206(4)-2(b)(4). NSR was not subject to an annual surprise examination for the fiscal years 2012 through 2017.

10. NSR arranged for a PCAOB-registered firm to conduct the audits of the combined and consolidated financial statements for the NSR Funds for the fiscal years ended March 31, 2012, March 31, 2013, March 31, 2014, March 31, 2015, March 31, 2016, and March 31, 2017, and received unqualified audit opinions for each fiscal year. However, NSR failed to distribute those annual audited financial statements to the limited partners in the NSR Funds within the required timeframes, as reflected in the table below:

NSR Funds Audited Financial Statements	Number of Days Late
Fiscal Year 2012	42
Fiscal Year 2013	22
Fiscal Year 2014	18
Fiscal Year 2015	37
Fiscal Year 2016	245
Fiscal Year 2017	6

11. Despite missing the audited financial statement distribution deadline each year since it registered as an investment adviser, NSR did not make material changes to its processes related to the audits for FY 2013 through FY 2017.

12. The Division of Investment Management has issued guidance stating, in relevant part, "[t]he Division would not recommend enforcement action for a violation of rule 206(4)-2 against an adviser that is relying on rule 206(4)-2(b)(4) and that reasonably believed that the pool's audited financial statements would be distributed within the 120-day deadline, but failed to have them distributed in time under certain unforeseeable circumstances."[2] Under these circumstances, where NSR did not make material changes to its processes related to the audits for FY 2013 through FY 2017 despite missing the audited financial statement distribution deadline each year, the delays in the distribution of the audited financial statements for the NSR Funds were not due to "unforeseeable circumstances," and attempts to rely on the Custody Rule FAQ by NSR would have been unreasonable.

13. NSR also failed to comply with the requirement in Rule 206(4)-7 under the Advisers Act that every Commission-registered investment adviser adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and the rules thereunder.

14. NSR did not adopt written policies or procedures reasonably designed to prevent violations Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder.

Violations

15. Section 206(4) prohibits an investment adviser from engaging in acts, practices or courses of business that are fraudulent, deceptive, or manipulative, as defined by the Commission in rules and regulations promulgated under the statute. Among other things, Rule 206(4)-2 requires registered advisers with custody of client assets to have independent public accountants conduct surprise examinations of those client funds or securities, or to have any private fund clients timely distribute annual audited financial statements to their investors. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act and the rules thereunder. *See SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992). As a result of the conduct described above, NSR willfully[3] violated Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder.

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[2] *See Staff Responses to Questions About the Custody Rule*, Question VI.9, *available at* https://www.sec.gov/divisions/investment/custody_faq_030510.htm (last updated Mar. 5, 2010) (the "Custody Rule FAQ").

[3] 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

16. 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

17. In determining to accept the Offer, the Commission considered remedial acts taken by NSR, including NSR's revision of its written Compliance Policies and Procedures, with the assistance of counsel, to prevent violations of the custody rule, 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 NSR's Offer.

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

A. Respondent cease and desist from committing or causing any violations and any future violations 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall, within 15 days of the entry of this Order, pay a civil money penalty in the amount of $75,000 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;

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)).

(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., as 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 Sanjay Wadhwa, Senior Associate Director, Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, Suite 400, New York, NY 10281.

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, Respondent agrees that in any Related Investor Action, NSR shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against 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