

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5047 / September 25, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18837**

**In the Matter of**

**HUDSON HOUSING  
CAPITAL LLC,**

**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 Hudson Housing Capital LLC (“HHC” 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. HHC, which registered with the Commission as an investment adviser in 2012, has failed to timely distribute annual audited financial statements to the investors in numerous private investment funds that it advised in each fiscal year from 2012 through 2017, in violation of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, commonly referred to as the "custody rule."

2. HHC also failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder, and failed to review at least annually these policies and procedures, in violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

#### Respondent

3. HHC is a Delaware limited liability company with its principal place of business in New York, New York. HHC was formed in 1998 and has been registered with the Commission since March 29, 2012. From its registration in 2012 to the present, HHC's advisory clients have consisted of at least 87 private investment funds (the "Funds"). HHC advises the Funds, which are Delaware limited partnerships that were formed during the years 1998 to the present, with HHC as their investment adviser and a related person of HHC serving as general partner.

#### Background

4. The Funds are private investment funds that invest in interests of partnerships that develop new or rehabilitated low-income housing properties eligible for the federal low-income housing tax credits under Section 42 of the Internal Revenue Code. These tax credits are subject to regulations of the Internal Revenue Service as well as state and local governments. The fiscal year end for all but one of the Funds is December 31 of the corresponding year; the fiscal year end for one of the Funds is October 31 of the corresponding year. The limited partners in the Funds include large banks and insurance companies and have committed approximately \$3.2 billion to the Funds.

5. The custody rule is designed to protect advisory clients from the misuse or misappropriation of their funds and securities. It requires that registered advisers who have custody of client funds or securities 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).

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; (iii) have a reasonable basis for believing that the qualified custodian sends account statements at least quarterly to clients, except if the client is a limited partnership for which the adviser or a related person is a general partner, the account statements must be sent to each limited partner; 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) - (5).

8. The custody rule provides an alternative to complying with the requirements of Rule 206(4)-2(a)(2), (3) and (4) 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 and is not required to satisfy the notification and accounts statements delivery requirements with respect to a fund if the fund is subject to audit at least annually and the adviser “distributes [the fund’s] audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners . . . within 120 days of the end of [the fund’s] fiscal year” (the “Audited Financials Alternative”). Rule 206(4)-2(b)(4). 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). Conversely, an adviser to a limited partnership that fails to meet the requirements of the Audited Financials Alternative to timely distribute audited financial statements would need to satisfy all of the requirements of Rule 206(4)-2(a) in order to avoid violating the custody rule.

9. The Funds were each subject to an annual audit, and HHC relied exclusively on the Audited Financials Alternative. HHC arranged for a PCAOB-registered firm to conduct an annual audit of each Fund’s financial statements for the fiscal years 2012 through 2017, and, for completed audits, received unqualified audit opinions for each fiscal year. However, HHC failed to obtain and distribute those annual audited financial statements to the limited partners in certain of the Funds within the required timeframes, as summarized in the table below:

<b>Fiscal Year</b>	<b>Number of Funds Advised</b>	<b>Number of Funds with Late Audits</b>	<b>Range of Days Late</b>
2012	68	40	8 – 591
2013	69	27	6 – 616
2014	73	31	8 – 1050

2015	76	30	11 – 766+ <sup>1</sup>
2016	75	33	9 – 415+
2017	79	17	31 – 35+

10. For 32 of the Funds, HHC failed to timely distribute audited financial statements at least three times for the 2012 through 2017 fiscal years; HHC never distributed timely audited financial statements for six of the Funds for those years. Despite missing the deadline for distribution for multiple Funds under the Audited Financials Alternative during each year since it registered as an investment adviser, HHC did not make material changes to its processes related to subsequent audits through fiscal year 2017.

11. HHC also failed to comply with the requirement 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, and to review at least annually the adequacy and effectiveness of the adviser’s policies and procedures. Rule 206(4)-7(a) and (b).

12. HHC adopted a written investment adviser compliance manual when it registered on March 29, 2012. Among other things, the policies or procedures in HHC’s compliance manual were not reasonably designed to prevent violations of the custody rule. In addition, from the time HHC registered with the Commission through 2017, HHC failed to conduct at least annually a review of the adequacy of its written policies and procedures established, as it was required to do.

13. In 2018, HHC performed a review of its written compliance policies and procedures, with the assistance of counsel and a compliance consultant, and adopted revisions addressing its business model and the custody rule. HHC also entered into arrangements to effect future compliance under the requirements of Rule 206(4)-2(a)(2)-(4) for certain Funds that had not timely distributed audited financials.

### **Violations**

14. Section 206(4) of the Advisers Act 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 investment 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. Rule 206(4)-7 requires, among other things, that an investment adviser registered with the Commission adopt and implement written policies and procedures reasonably designed to

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<sup>1</sup> The “+” reflects that no audit has been completed to date for at least one Fund for that fiscal year.

prevent violation of the Advisers Act and rules thereunder by the adviser and its supervised persons, and to review, no less frequently than annually, the adequacy of such policies and procedures and the effectiveness of their implementation. 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, HHC willfully<sup>2</sup> violated Section 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 thereunder.

#### **HHC's Remedial Efforts**

15. In determining to accept the Offer, the Commission considered certain remedial acts undertaken taken by HHC and HHC's cooperation 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 HHC'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 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 \$65,000 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;

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<sup>2</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)).

- (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 Hudson Housing Capital LLC, 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, Respondent 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 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.

By the Commission.

Brent J. Fields  
Secretary