

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 87732 / December 12, 2019

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4107 / December 12, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19616

In the Matter of

**STONEMOR PARTNERS
L.P. and STONEMOR GP
LLC,**

Respondents.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against StoneMor Partners L.P. and StoneMor GP LLC.

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

Summary

1. These proceedings involve violations of the reporting, books and records, internal accounting controls and related provisions of the federal securities laws by StoneMor Partners L.P. ("StoneMor"), a publicly traded master limited partnership ("MLP") and owner and operator of cemeteries and funeral homes throughout the United States, and its general partner, StoneMor GP LLC (the "General Partner").

2. Beginning in the fourth quarter of 2015, and continuing through at least the second quarter of 2016, the General Partner internally identified material issues concerning StoneMor's two primary sources of cash flow—customer sales and short-term borrowings—which jeopardized the General Partner's ability to operate and grow StoneMor's business. Despite these issues, the Management's Discussion & Analysis ("MD&A") sections of StoneMor's 2015 annual report on Form 10-K, and its quarterly reports for first and second quarter of 2016 on Forms 10-Q, did not include a discussion of material unfavorable trends and uncertainties concerning these two areas, as contemplated by Item 303 of Regulation S-K. As a result, investors and others were unable to fully assess StoneMor's liquidity.

3. Additionally, between March 2014 and November 2016, StoneMor filed annual and quarterly reports on Forms 10-K and Forms 10-Q, respectively, that contained financial statements that did not materially comply with U.S. generally accepted accounting principles ("GAAP"). When StoneMor publicly announced its decision to restate its inaccurate financial statements, it disclosed that the GAAP reporting errors were the result of material weaknesses in its internal control over financial reporting (ICFR). These material weaknesses persisted for several years and caused StoneMor to be delinquent in filing nine consecutive quarterly and annual reports beginning with its 2016 annual report on Form 10-K and continuing through its 2018 annual report on Form 10-K. These delinquent filings likewise deprived investors and others of timely and material information concerning StoneMor's results of operations and financial condition.

Respondents

4. **StoneMor Partners L.P.**, a Delaware master limited partnership headquartered in Trevose, Pennsylvania, is an owner and operator of cemeteries and funeral homes. StoneMor's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is quoted under the symbol "STON" on the New York Stock Exchange. On September 28, 2018, StoneMor announced its intention to transition from an MLP to a Delaware corporation. To date, that transition is not complete.

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.

5. **StoneMor GP LLC**, a privately-held Delaware limited liability company, is StoneMor’s general partner. StoneMor GP LLC is a wholly owned subsidiary of StoneMor GP Holdings LLC, which is, in turn, owned or controlled by certain current and former members of StoneMor GP LLC senior management. At all relevant times, StoneMor GP LLC was responsible for the timely and accurate filing of periodic reports with the Commission.

Facts

Item 303 of Regulation S-K

6. Item 303 of Regulation S-K sets forth the types of information an issuer must disclose in the MD&A section of its quarterly and annual filings. As the Commission has previously emphasized, the MD&A is an important disclosure tool that is designed to provide investors with a perspective on a company’s business “as seen through the eyes of those who manage that business” because “management has a unique perspective on its business that only it can present.”²

7. Item 303(a) of Regulation S-K requires an issuer’s annual filings to include discussion and analysis of “material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition.” See 17 C.F.R. § 229.303(a), Instruction 3. This includes the requirement to identify “any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant’s liquidity increasing or decreasing in a material way.”³ “If a material deficiency is identified,” an issuer must “indicate the course of action that [it] has taken or proposes to take to remedy the deficiency.” See 17 C.F.R. § 229.303(a)(1). As used in Item 303 of Regulation S-K, liquidity refers to “the ability of an enterprise to generate adequate amounts of cash to meet [its] needs for cash” and “shall be discussed in the context of the registrant’s own business.” See 17 C.F.R. § 229.303(a), Instruction 5. See 17 C.F.R. § 229.303(a)(1). Item 303(b) of Regulation S-K imposes related requirements on an issuer’s quarterly filings—namely, that an issuer report in an MD&A section any material changes to its financial condition or results of operations. See 17 C.F.R. § 229.303(b).

Relevant StoneMor Background

8. At all relevant times, and pursuant to StoneMor’s limited partnership agreement (“LPA”), the General Partner retained full power, authority, and responsibility to conduct StoneMor’s business, which included, but was not limited to, owning and operating cemeteries throughout the United States. For the year ended December 31, 2015, StoneMor’s cemetery segment accounted for more than 80 percent of its total revenues. This segment of the business

² *Commission Guidance Regarding Management’s Discussion and Analysis of Financial Condition and Results from Operations*, Securities Act Release No. 33-8350 (December 29, 2003).

³ The Commission has explained that the “reasonably likely” standard for disclosures mandated by Item 303 of Regulation S-K is lower than “more likely than not.” *Commission Statement About Management’s Discussion and Analysis of Financial Condition and Results of Operations*, Release No. 33-8056 (Jan. 25, 2002).

involved the sale of cemetery products and services both at time of death (“at-need”) and prior to time of death (“pre-need”). Pre-need sales, which typically accounted for more than half of StoneMor’s cemetery sales, were generated through, among other things, telemarketing, direct mail campaigns, cold calling, and other marketing efforts conducted by StoneMor’s salesforce. Pre-need sales – which provided for the performance of services and delivery of products largely at an unspecified date in the future – typically did not meet GAAP requirements for full revenue recognition in the period in which the sales were made. Nevertheless, the General Partner monitored pre-need sales along with at-need sales as part of its evaluation of StoneMor’s current period operating performance.

9. At all relevant times, as an MLP and in accordance with its LPA, StoneMor was required to distribute nearly all of its available cash to its unitholders on a quarterly basis. As a result, the predictability of, and growth in, StoneMor’s cash distributions was material information to the income-oriented investors who held StoneMor units.

10. StoneMor disclosed in periodic filings that its primary sources of liquidity were cash generated from operations and amounts available for borrowing under its revolving credit facility. StoneMor also disclosed that it expected to fund cash distributions from operating cash flow. Since cash collected from pre-need sales accounted for a significant portion of the cash StoneMor generated from its operations, StoneMor’s ability to maintain a qualified and productive salesforce – which included a need to consistently increase pre-need sales – was critical to its ability to generate operating cash flow sufficient to pay cash distributions.

11. The General Partner’s senior management internally monitored StoneMor’s sales through various operational metrics (“Sales Metrics”). The Sales Metrics included, but were not limited to, weekly statistics regarding: customer contacts; customer presentations; salespeople who recorded at least one sale; and the value and number of pre-need contracts written during the week. Senior management also analyzed monthly sales performance relative to internal budgets.

12. At all relevant times, StoneMor had access to a revolving credit facility. StoneMor used it to finance, among other things, acquisitions, capital expenditures and other critical cash outlays which, in turn, allowed StoneMor to pay cash distributions primarily from operating cash flow.

StoneMor’s Sales Decline and Liquidity Concerns Emerge

13. On or around October 1, 2015, StoneMor implemented significant structural changes to its salesforce in an effort to provide more transparent incentive compensation guidelines, promote salesforce accountability, and reduce costly turnover. However, immediately after the salesforce restructuring took effect, StoneMor’s Sales Metrics showed a significant decline relative to past performance.

14. Beginning in October 2015 and continuing through February 2016, StoneMor’s weekly internal Sales Metrics reports, as compared to third quarter of 2015 historical averages, revealed significant declines. For example, between October 2015 and February 2016, the Sales Metrics had average monthly declines of between 17 percent and 23 percent. As a result, StoneMor’s sales revenue over the same five month period, driven in large part by the decline in

pre-need business, missed the internal budget established by the General Partner's management by a total of \$8.3 million, or 11 percent. These sales-related declines had a material and adverse impact on StoneMor's liquidity and its ability to continue to pay distributions.

15. StoneMor faced liquidity problems as its Sales Metrics declined. By late November 2015, StoneMor had available only \$21 million to borrow—less than 12 percent of its revolving credit facility. The General Partner's management knew that StoneMor's limited ability to draw on its line of credit jeopardized its power to pursue strategic acquisitions and to finance critical corporate expenditures which, in turn, reduced the amount of operating cash flow available for its cash distributions.

16. In February 2016, nearly four weeks prior to StoneMor's filing of its 2015 annual report on Form 10-K, the General Partner finalized StoneMor's full year 2016 internal operating budget. To ensure StoneMor had adequate liquidity to meet its full year 2016 budgeted cash needs, the General Partner estimated that StoneMor needed to raise more than \$110 million through the public issuance of debt and equity securities. Without access to these funds, as reflected in the budget, StoneMor would be unable to operate and complete budgeted acquisitions.

Sales Continue to Falter and Liquidity Issues Persist Through July 2016

17. In the first half of 2016, StoneMor's Sales Metrics continued to decline and its liquidity further deteriorated. In March 2016, and continuing through July 2016, StoneMor's weekly internal Sales Metrics reports, as compared to third quarter of 2015 historical averages, revealed similar declines in salesforce performance. For example, between March 2016 and July 2016, the Sales Metrics experienced average monthly declines of between 10 percent and 22 percent. As a result, over this five month period, StoneMor's sales fell short of internal budgets by approximately \$17.5 million, or 15 percent, which, when coupled with budget misses between November 2015 and February 2016, continued to have a material and adverse impact on StoneMor's liquidity.

18. As was the case during the October 2015 through February 2016 timeframe discussed above, StoneMor's liquidity issues jeopardized its ability to finance acquisitions, operate and grow its business, and pay cash distributions. Moreover, in March 2016, the General Partner was notified that a planned bond offering could potentially result in a credit rating downgrade. In June 2016, less than three months later, the General Partner instituted mandatory employee furloughs to address the material and negative impact the decline in Sales Metrics had on StoneMor's liquidity.

19. In July 2016, nearly three weeks before StoneMor filed its second quarter 2016 Form 10-Q, internal financial results indicated that StoneMor's pre-need sales for the second quarter of 2016 missed budget by \$6.3 million—nearly 13 percent. In response, the General Partner suspended all acquisitions and capital raising activities and, in an attempt to improve StoneMor's liquidity, immediately instituted employee layoffs and imposed other cost controlling measures.

The General Partner Reduces StoneMor's Distribution by Half

20. On October 27, 2016, StoneMor issued a press release to announce that its General Partner had elected to reduce StoneMor's quarterly cash distribution by 50 percent. StoneMor and the General Partner stated that "previous efforts to accomplish our salesforce goals have meaningfully lagged our expectations, resulting in a negative impact on our revenue" and that StoneMor's reduced distribution level, "along with previously announced cost savings measures totaling \$7 million annually, will enhance StoneMor's liquidity by approximately \$12 million in quarterly cash savings." The next day, StoneMor's units declined in value by nearly 45 percent from the previous day's closing price.

StoneMor's MD&A Disclosures

21. StoneMor filed its 2015 annual report on Form 10-K on February 29, 2016. The MD&A section contained generic disclosure of various sources and uses of cash, but did not include any discussion and analysis of certain material trends, events and uncertainties known to management. Specifically, StoneMor did not discuss the known trend that its pre-need sales had declined due to structural changes to its salesforce and, as a result, StoneMor's liquidity and its ability to: (1) continue to pay distributions at historical levels; (2) borrow under its revolving credit facility; and (3) issue debt and equity was decreasing in a material way.

22. StoneMor filed its quarterly reports for the first and second quarters of 2016 on Forms 10-Q on May 9, 2016 and August 5, 2016, respectively. The MD&A sections of these two quarterly reports contained largely the same discussion and analysis that StoneMor included in its 2015 annual report on Form 10-K. In addition to the known trends, events and uncertainties discussed above, StoneMor also did not disclose in the Form 10-Q for the second quarter that its General Partner, in response to these issues, had immediately instituted employee layoffs and suspended all acquisitions and all capital raising activity, which materially and negatively impacted StoneMor's ability to operate and grow its business.

Misstated Financial Statements and Filing Delays

23. On September 2, 2016, StoneMor disclosed that its 2013, 2014, and 2015 Forms 10-K and its Forms 10-Q for the first and second quarters of 2016 needed to be restated due to errors in the allocation of GAAP net loss between the General Partner and StoneMor's limited partners in its consolidated balance sheets. In total, StoneMor overstated limited partners' capital by more than \$10 million, equal to five percent of June 30, 2016 total partners' capital. These misstated financial statements were also included in various earnings releases filed on Forms 8-K.

24. On February 27, 2017, StoneMor disclosed that its 2015 Form 10-K and Forms 10-Q for the first, second, and third quarters of 2016 needed to be restated, due to, among other things, errors in StoneMor's cemetery revenue recognition. Specifically, StoneMor cumulatively overstated its GAAP deferred cemetery revenue liability in its consolidated balance sheets, and understated GAAP revenue in its consolidated statements of operations, by approximately \$30

million, equal to 13 percent of September 30, 2016 year-to-date total revenues. These misstated financial statements were also included in various earnings releases filed on Forms 8-K.

25. StoneMor attributed the GAAP reporting errors discussed above to material weaknesses in StoneMor's ICFR that failed to prevent or detect the material accounting errors. In connection with its September 2, 2016 and February 27, 2017 restatement announcements, StoneMor disclosed five distinct material weaknesses. The accounting issues identified above also led to StoneMor repeatedly missing periodic filing deadlines beginning with its 2016 Form 10-K and continuing through its Form 10-Q for the third quarter of 2018. These delinquent filings deprived investors and others of timely and material information concerning StoneMor's results of operations and financial condition.

Violations

26. Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, and 13a-13 thereunder require that every issuer of a security registered pursuant to Exchange Act Section 12 file with the Commission, among other things, accurate annual, current, and quarterly reports as the Commission may require. Additionally, Item 303 of Regulation S-K requires an issuer to disclose in its MD&A sections of required periodic filings, among other things, "material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition." Failure to comply with Regulation S-K constitutes a violation under Section 13(a) of the Exchange Act. As a result of the conduct described above, StoneMor violated, and the General Partner caused StoneMor's violations of, Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, and 13a-13 thereunder.

27. Rule 12b-20 of the Exchange Act requires that, in addition to the information expressly required to be included in a statement or report filed with the Commission, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading. As a result of the conduct described above, StoneMor violated, and the General Partner caused StoneMor's violations of, Rule 12b-20 of the Exchange Act.

28. Section 13(b)(2)(A) of the Exchange Act requires companies with securities registered pursuant to Exchange Act Section 12 to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect transactions and dispositions of their assets. As a result of the conduct described above, StoneMor violated, and the General Partner caused StoneMor's violations of, Section 13(b)(2)(A) of the Exchange Act.

29. Section 13(b)(2)(B) of the Exchange Act requires all companies with securities registered pursuant to Exchange Act Section 12 to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets. As a result of the conduct described above, StoneMor violated, and the General Partner caused StoneMor's violations of, Section 13(b)(2)(B) of the Exchange Act.

StoneMor's Remedial Efforts

30. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent StoneMor Partners L.P. cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

B. Pursuant to Section 21C of the Exchange Act, Respondent StoneMor GP, LLC cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

C. Respondent StoneMor GP LLC shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$250,000 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 StoneMor GP 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 Kelly L. Gibson, Associate Regional Director, Philadelphia Regional Office, 1617 John F. Kennedy Blvd, Suite 520, Philadelphia, PA 19103.

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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they 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, Respondents agree that they 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 Respondents 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.

Vanessa A. Countryman
Secretary