

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5478 / April 17, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19750

In the Matter of

Old Ironsides Energy, 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 Old Ironsides Energy, LLC (“Old Ironsides” 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 purposes 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 Advisers Act, 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 finds¹ that:

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.

SUMMARY

1. From 2014 through the first half of 2015, investment adviser Old Ironsides Energy, LLC (“Old Ironsides”) distributed marketing materials for a private fund, Old Ironsides Energy Fund II LP (“OIE Fund II”) that omitted certain information regarding the character of a legacy oil and natural gas investment and thereby rendered the marketing materials misleading. In particular, Respondent’s marketing materials identified a large, legacy investment with strong, positive returns as an early stage direct drilling investment (“DDIs,” as defined below) over which Respondent had direct management in partnership with project operators, when it was actually an investment in a private fund advised by a third party. Old Ironsides’ principals had made the legacy investment when they were managing a portfolio of oil and gas investments for a previous employer (“Legacy Portfolio”). The OIE Fund II’s marketing materials’ omission was significant for several reasons, including that the returns on the private fund investment improved the performance for Legacy Portfolio DDIs, and the marketing materials provided that OIE Fund II would invest in DDIs and stand-alone private equity investments, but not in other private funds. In addition, Old Ironsides failed to implement its policies and procedures prohibiting all marketing materials from omitting information necessary to avoid materially misleading information, when it created marketing materials that categorized the private fund investment as an early stage DDI. As a result of this conduct, Old Ironsides willfully violated Section 206(4) of the Advisers Act and Rules 206(4)-1 and 206(4)-7 thereunder.

RESPONDENT

2. Old Ironsides Energy, LLC (“Old Ironsides”), a Delaware limited liability company, is an investment adviser registered with the Commission with approximately \$1.75 billion in assets under management. Old Ironsides has been registered with the Commission as an investment adviser since 2013. Old Ironsides provides investment advisory services to, among other clients, OIE Fund II. Old Ironsides’ principal place of business is Boston, Massachusetts.

OTHER RELEVANT ENTITY

3. OIE Fund II is a private equity fund that Old Ironsides marketed to investors between March 2014 and April 2015. OIE Fund II received commitments of approximately \$1.327 billion and has made oil and natural gas related investments. As of March 31, 2019, OIE Fund II had invested \$982 million of investor capital.

FACTS

Background

4. Before founding Old Ironsides, the firm’s principals managed, for more than twelve years, a Legacy Portfolio of approximately 420 oil and natural gas investments for their previous employer. The Legacy Portfolio included three types of investments: DDIs, private equity investments, and private fund investments. The vast majority of investments in the Legacy Portfolio consisted of DDIs, both in the number and size of the investments.

5. When marketing OIE Fund II from the spring of 2014 through the spring of 2015, Old Ironsides emphasized the principals' past management of oil and gas investments in the Legacy Portfolio. According to Old Ironsides' marketing materials for OIE Fund II, the Legacy Portfolio's DDIs were "[d]irect investments in oil and gas leases and wells ('Direct Drilling Investments'), partnering with experienced operators to develop projects under a Participation Agreement." The DDI relationship with the third-party operator was typically formalized in a participation agreement that Old Ironsides' principals negotiated.

6. Old Ironsides' marketing materials stated that OIE Fund II would only invest in DDIs, private equity investments, and midstream assets such as pipelines, either directly or through a private equity investment. With respect to DDIs, the marketing materials provided that OIE Fund II's focus would be on early stage and development stage DDIs. Significantly, the marketing materials also stated that investments in other private funds would not be part of the investment strategy for OIE Fund II.

Old Ironsides' Advertisements for OIE Fund II Omitted Information

7. In marketing materials distributed to over 120 potential OIE Fund II investors, Old Ironsides provided a "Track Record" regarding the Legacy Portfolio. The Track Record purported to reflect the investment performance of, among other things, early stage DDIs in the Legacy Portfolio. In an online data room accessible to potential investors, Old Ironsides also provided a Track Record that showed the investment performance of early stage DDIs in the Legacy Portfolio.

8. When calculating the Track Record, however, Old Ironsides categorized a private fund investment made in 2002 that had strong, positive performance as a DDI, and more specifically as an early stage DDI. While the marketing materials defined DDIs as direct investments in oil and gas drilling, the private fund investment was made pursuant to a limited partnership agreement and thus did not meet the marketing materials' definition of a DDI. In particular, under the private fund investment's limited partnership agreement, the fund was managed by a third-party, whose investment decisions on the fund's acquisitions, dispositions, and annual budgets were subject to voting rights held by Old Ironsides (e.g., Old Ironsides could veto certain investment decisions for the first three years of the fund) and other limited partners. As a result, the private fund investment differed from the types of investments that Old Ironsides had stated OIE Fund II would invest in. The marketing materials, however, omitted information regarding how the investment's fund structure and the role of the third-party adviser differed from other early stage DDIs in the Track Record.

9. The inclusion of the private fund's performance as an early stage DDI investment improved the Track Record for DDIs and early stage DDIs, in particular. At the time of the creation of the marketing materials, the private fund had a return on investment of 10.9x. The other early stage DDIs in the Legacy Portfolio had a much lower return on investment.

**Old Ironsides Failed to Implement its Policies and Procedures Concerning Statements
about Investment Performance in its Marketing Materials**

10. When Old Ironsides drafted its marketing materials for OIE Fund II, the firm had in place a Regulatory Compliance Manual and Code of Ethics (“Compliance Manual”). The Compliance Manual included policies and procedures that prohibited Old Ironsides and its employees from publishing, circulating or distributing any advertisement which contained any untrue statement or omission of a material fact or which was otherwise false or misleading. The Compliance Manual also included policies and procedures governing the use of investment performance results in marketing materials. These policies and procedures prohibited the use of performance results in Old Ironsides’ marketing materials that were false or misleading, including any misleading depictions of investment performance in both form and content leading to direct or indirect implications or inferences arising out of the context of the marketing materials.

11. Old Ironsides failed to implement its policies and procedures in its Compliance Manual concerning the use of investment performance results in marketing materials. As a result of this failure, Old Ironsides’ marketing materials for OIE Fund II were rendered misleading, when a private fund investment was categorized as an early stage DDI in the Track Record and Old Ironsides omitted information concerning the role of the private fund’s third-party adviser and why the private fund investment’s structure differed from other DDIs in the Track Record.

VIOLATIONS

12. As a result of the conduct described above, Old Ironsides willfully² violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to, among other things, “[a]dopt and implement written policies and procedures reasonably designed to prevent violation” of the Advisers Act and its rules. Negligence is sufficient to establish a violation of Section 206(4) and Rule 206(4)-7. *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992). By failing to implement its policies and procedures that prohibited misleading statements in marketing materials, Old Ironsides failed to implement policies and procedures that were reasonably designed to prevent Advisers Act violations.

13. As a result of the conduct described above, Old Ironsides willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder, which make it a fraudulent, deceptive or manipulative act, practice or course of business within the meaning of Section 206(4) of the Advisers Act to, among other things, directly or indirectly publish, circulate, or distribute an advertisement which contains any untrue statement of material fact, or

² “Willfully,” for purposes of imposing relief under Section 203(e) of the Advisers Act, “means no more than 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.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully omit[ted]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

which is otherwise false or misleading. A violation of Section 206(4) and the rules thereunder does not require scienter. *Steadman*, 967 F.2d at 647.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest 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 Section 206(4) of the Advisers Act and Rules 206(4)-1 and 206(4)-7 thereunder.

B. Respondent is censured.

C. Respondent shall, within ten (10) days of the entry of this Order, pay a civil monetary penalty in the amount of \$1,000,000 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 of a civil money penalty 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 Old Ironsides as Respondent in this proceeding, and the file number of this proceeding; a copy of the cover letter and check or money order must be sent to C. Dabney O'Riordan, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower Street, Suite 900, 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, Respondent 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 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.

Vanessa A. Countryman
Secretary