

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5617 / October 22, 2020**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20133**

**In the Matter of**

**EDG MANAGEMENT  
COMPANY, 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 EDG Management Company, LLC (“EDG” 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. This matter concerns management fees charged by EDG Management Company, LLC, a private equity fund adviser, following the write downs of private equity fund investments. EDG provides investment advisory services to EDG Partners Fund II, L.P. (the “Fund”). The Limited Partnership Agreement (“LPA”) for the Fund provides that, during the relevant time period,

EDG may charge the Fund, on a quarterly basis, a management fee equal to one and one-half percent (1.5%) per annum of the total invested capital contributions, with the exception that the amount of invested capital on which the 1.5% fee is charged should be reduced as a result of certain triggering events, including, but not limited to, write downs of portfolio securities. At times during the period from January 1, 2016 through October 1, 2019, certain portfolio securities were subject to write downs under the terms of the LPA. However, EDG did not make adjustments to quarterly management fee calculations to account for these write downs, causing the Fund and, ultimately, its limited partners to pay \$901,760.91 more in management fees than they should have paid. As a result, EDG violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

### **Respondent**

2. Respondent EDG Management Company, LLC, a Delaware limited liability company based in Alexandria, Virginia, was registered with the Commission as an investment adviser from at least 2012 through March 18, 2020, and currently is an exempt reporting adviser. EDG provides investment advisory services to a pooled investment vehicle, and conducts business under the name EDG Partners. On its Form ADV filed March 19, 2020, EDG reported private fund assets under management of approximately \$83.9 million.

### **Other Relevant Entity**

3. EDG Partners Fund II, L.P., is a private equity fund organized as a Delaware limited partnership. During all times relevant to the findings herein, EDG advised and served as manager of the Fund.

### **Facts**

4. EDG Partners Fund II, L.P. was formed in 2010. The limited partners of the Fund contributed capital to the Fund for its use to make certain investments. The Fund is governed by the LPA, which sets forth the rights and obligations of the limited partners, including their obligations to pay advisory and other fees and expenses to EDG. The LPA also sets forth the responsibilities of EDG, which include investigating, structuring, and negotiating potential investments, managing the Fund's portfolio of investments, and advising the Fund with respect to opportunities to dispose of investments.

5. The LPA contains the operative language for calculating the management fee that EDG was permitted to charge the Fund. It provides that, during the relevant time period, EDG may charge the Fund, on a quarterly basis, a management fee equal to one and one-half percent (1.5%) per annum of the total invested capital contributions, with the exception that the amount should be reduced as a result of certain triggering events, including, but not limited to, write downs of portfolio securities.

6. At times during the period from January 1, 2016 through October 1, 2019, five different portfolio securities held by the Fund were subject to write downs under the terms of the LPA. However, EDG did not incorporate the effects of these write downs into management fee calculations performed with respect to thirteen quarterly management fee payment dates during that period.

7. EDG’s failure to take into account the write downs of the portfolio securities in accordance with the LPA caused the Fund and its limited partners to overpay a total of \$901,760.91 in management fees.

### **Violations**

8. As a result of the conduct described above, Respondent willfully<sup>1</sup> violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to “engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.” Scienter is not required to establish a violation of Section 206(2), but rather may rest on a finding of negligence. *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. 180,194-95 (1963)).

9. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which make it unlawful for any investment adviser to a pooled investment vehicle to “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 or the rules thereunder. *Steadman*, 967 F.2d at 647.

### **EDG’s Remedial Efforts**

10. 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 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:

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<sup>1</sup> “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).

A. EDG 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 Rule 206(4)-8 promulgated thereunder.

B. EDG is censured.

C. EDG shall pay disgorgement and prejudgment interest to affected limited partners totaling \$1,026,642.02 as follows:

(i) Respondent shall pay disgorgement of \$901,760.91 and prejudgment interest of \$124,881.11, consistent with the provisions of this Subsection C.

(ii) Respondent shall deposit \$1,026,642.02 (the "Distribution Fund") into a segregated account for the benefit of EDG Partners Fund II, L.P. not unacceptable to the Commission staff and Respondent shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. Respondent's payment into the account for the Distribution Fund shall be made in the following installments: 1) \$425,821.01 within ten (10) days of the entry of this Order; and 2) \$600,821.01 within 180 days of the entry of this Order. If timely payment into the account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600]. Payments shall be applied first to post order interest, which accrues pursuant to SEC Rule of Practice 600. Prior to making the final installment set forth herein, Respondent shall contact the Commission staff for the amount due. If Respondent fails to make any payment by the date and/or in the amount according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable to the Commission immediately at the discretion of the Commission staff without further application to the Commission.

(iii) Respondent shall be responsible for administering the Distribution Fund and may hire a professional to assist it in the administration of the distribution. The costs and expenses of administering the Distribution Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Distribution Fund.

(iv) Respondent shall pay from the Distribution Fund an amount representing the portion of excessive management fees incurred by EDG Partners Fund II, L.P. as a result of the conduct described above to each of the harmed limited partners of EDG Partners Fund II, L.P. together with reasonable interest thereon, pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. No portion of the Distribution Fund shall be paid to any affected account in which Respondent, or any of its current or former officers or directors, has a financial interest.

(v) Respondent shall, within thirty (30) days from the entry of this Order, submit a proposed Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent shall make itself available, and shall require any third-parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the Distribution to be available, for a

conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondent shall also provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent's proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that Respondent is notified of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(vi) Respondent shall, within thirty (30) days of the written approval of the Calculation, submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each harmed limited partner. The Payment File should identify, at a minimum, (1) the name of each harmed limited partner; (2) the exact amount of the payment to be made from the Distribution Fund to each harmed limited partner; and (3) the amount of reasonable interest to be paid.

(vii) Respondent shall disburse all amounts payable to harmed limited partner accounts within one hundred fifty (150) days of the date that the Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph xi of this Subsection C. Respondent shall notify the Commission staff of the date and the amount paid in the initial distribution.

(viii) If Respondent is unable to distribute or return any portion of the Distribution Fund for any reason, including an inability to locate a harmed limited partner or a beneficial owner of a harmed limited partner or any factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934, when the distribution of funds is complete and before the final accounting provided for in Paragraph x of this Subsection C is submitted to the Commission staff. 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 EDG Management Company, LLC as the 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 Brendan P. McGlynn, Assistant Regional Director, Asset Management Unit, Philadelphia Regional Office, Securities and Exchange Commission, 1617 JFK Blvd., Suite 520, Philadelphia, PA 19103, or such other address as the Commission staff may provide.

(ix) A Distribution Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code (“IRC”), 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondent shall be responsible for any and all tax compliance responsibilities associated with the Distribution Fund, including but not limited to tax obligations resulting from the Distribution Fund’s status as a QSF and the Foreign Account Tax Compliance Act (“FATCA”), and may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services shall be borne by Respondent and shall not be paid out of the Distribution Fund.

(x) Within one hundred fifty (150) days after Respondent completes the disbursement of all amounts payable to harmed limited partners, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Distribution Fund for Commission approval. The final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of money transferred or credited to each harmed limited partner; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Distribution Fund to harmed limited partners in accordance with the Payment File approved by the Commission staff. Respondent shall submit the final accounting and certification, together with proof and supporting documentation of such payment in a form acceptable to the Commission staff, under a cover letter that identifies EDG Management Company, LLC as the Respondent in these proceedings and the file number of these proceedings to Brendan P. McGlynn, Assistant Regional Director, Asset Management Unit, Philadelphia Regional Office, Securities and Exchange Commission, 1617 JFK Blvd., Suite 520, Philadelphia, PA 19103, or such other address as the Commission staff may provide. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request, and Respondent shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(xi) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Distribution Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

D. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$175,000 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 EDG Management Company, LLC as a 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 Brendan P. McGlynn, Assistant Regional Director, Asset Management Unit, Philadelphia Regional Office, Securities and Exchange Commission, 1617 JFK Blvd., Suite 520, Philadelphia, PA 19103, or such other address as the Commission staff may provide.

E. 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