

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10932 / March 15, 2021

SECURITIES EXCHANGE ACT OF 1934
Release No. 91325 / March 15, 2021

INVESTMENT ADVISERS ACT OF 1940
Release No. 5697 / March 15, 2021

INVESTMENT COMPANY ACT OF 1940
Release No. 34222 / March 15, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20243

In the Matter of

**ETTRO CAPITAL MANAGEMENT
CORP. and PETER ETTRO,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTION 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, SECTIONS 203(e) AND 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
AND SECTION 9(b) OF THE INVESTMENT
COMPANY 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 Section 8A of the Securities Act of 1933 (“Securities Act”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Ettro Capital Management Corp. (“ECM”) and Peter Ettro (“Ettro”) (collectively “Respondents”).

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, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative And Cease-And-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e) and 203(f) of the Investment Advisers Act Of 1940, and Section 9(b) of the Investment Company 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 Respondents’ Offers, the Commission finds that:

Summary

1. This matter concerns material misrepresentations and securities-offering registration violations by Ettro Capital Management (“ECM”), an investment adviser and real estate development firm, and Peter Ettro (“Ettro”), ECM’s founder and sole owner and manager. ECM and Ettro managed the ECM Opportunity Fund LLC (the “Fund”), an unregistered fund that launched in 2016 and invested primarily in limited liability companies that held real property developed by ECM. From at least November 2016 to January 2019, Respondents made material misstatements and omissions to prospective investors about (1) the past performance of the Fund; (2) capital raised and assets under management (“AUM”); and (3) ECM’s investment management and real estate development experience. Respondents also raised a total of \$4.4 million for the Fund from 13 individual investors in multiple states in an unregistered, non-exempt securities offering of membership interests in the Fund. Through their conduct, ECM and Ettro violated Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Respondents

2. **Ettro Capital Management Corp. (“ECM”)** is an Oregon corporation (incorporated in August 2013) with its principal place of business in Lake Oswego, Oregon. ECM is owned and controlled by Peter Ettro. During the relevant period, ECM was an unregistered investment adviser. ECM has never been registered with the Commission in any capacity. ECM currently has no advisory clients.

3. **Peter Ettro (“Ettro”)**, age 43, is a U.S. citizen currently residing in Lake Oswego, Oregon. Ettro is the founder of ECM and has been President, Chief Investment Officer, and sole owner since 2013. Ettro was previously a registered Investment Adviser Representative associated

with various investment adviser firms from 2004 to 2010. Ettro previously held Series 7 and 66 licenses and has no disciplinary history. Ettro formerly held a CPA license with the Oregon Board of Accountancy from 2004 to 2014.

Other Relevant Entities

4. **ECM Opportunity Fund LLC (the “Fund”)** is an Oregon limited liability company (incorporated in June 2016) with its principal place of business in Lake Oswego, Oregon. ECM established and managed the Fund, which invested primarily in real estate that is developed by ECM. In January 2021, ECM ceased acting as investment adviser to the Fund and transferred management of the Fund to an unrelated third-party.

Background

5. Respondents formed the Fund in 2016, which invested primarily in real property developed by ECM through limited liability companies that it owned and managed.

6. From September 2016 through January 2019 (the “Relevant Period”), Respondents raised approximately \$4.4 million from 13 individual investors, residing in at least three states. The investors purchased membership interests in the Fund pursuant to a Subscription Agreement that, among other things, described the investment objective and strategy, disclosed various risk factors, and allowed redemptions of the investors’ membership interests in the Fund under certain circumstances.

7. Respondents controlled and directed the investment of the Fund’s assets consistent with the terms of the Subscription Agreement. Pursuant to the Subscription Agreement, ECM earned management fees from the Fund and was entitled to a share of profits.

Respondents Made Material Misrepresentations To Prospective Investors

8. During the Relevant Period, Respondents made and disseminated material misstatements and omissions in communications with potential investors, including some who ultimately invested in the Fund, in order to induce them to invest in the Fund. These material misstatements and omissions related to several issues, including (1) the past performance of the Fund, including net return since inception, blended net return since inception, realized yield, and total return; (2) capital raised and AUM; and (3) ECM’s investment management and real estate development experience.

9. From April through October 2017, Respondents made material misstatements regarding the Fund’s past performance in promotional materials provided to prospective investors. At various points in time within that period, Respondents claimed that the Fund’s net return since inception ranged from as low as 26.4% to as high as 56%, its blended net return since inception exceeded 20%, its realized yield was 18.67%, and its total return was 43.67%.

10. At the time Respondents made and disseminated these statements, the Fund had no net returns, no blended net returns since inception, and no realized yields. In fact, the Fund did not

realize any returns until November 2017, after the statements were made. In addition, the total return (realized yield plus unrealized gains) represented – 43.67% -- was highly inflated as the Fund’s realized yield was 0% and not 18.67% as represented. Three prospective investors invested in the Fund after receiving misstatements from Respondents regarding the Fund’s returns.

11. In December 2018 and January 2019, Respondents also sent two prospective investors an inaccurate project list, which made it appear that the Fund had realized only gains when, in fact, the Fund had realized losses. For example, on January 3, 2019, in an email sent to one prospective investor, Respondents “attached our project summary for the fund” which “includes past completed projects and current unrealized fund yields for the current projects.” The chart listed two completed projects with combined realized gains of over \$900,000 and the six projects the Fund was currently working on. The chart, however, omitted a third completed project that had lost over \$1.1 million, which caused the Fund to have realized losses of over \$200,000. One prospective investor invested in the Fund after receiving the misleading project list.

12. In April and May 2017, Respondents made misstatements to six prospective investors regarding the amount of capital raised for the Fund and AUM in promotional materials for the Fund. For example, Respondents claimed the Fund had raised \$2,590,000 in capital when, in fact, the Fund had raised only \$1,545,000 at the time, inflating the amount of capital raised by 68%. The promotional materials that Respondents used to solicit investors also gave conflicting and inaccurate year-end 2016 AUM amounts. One prospective investor invested in the Fund after receiving these misstatements.

13. In May 2017, Respondents made misstatements to prospective investors regarding ECM’s investment management experience. Respondents sent an email to approximately 100 prospective investors, writing, “I wanted to send you a quick note and let you know what has been going on at Ettro Capital before you head out for Memorial weekend. Since our inception in 2014, we have successfully invested in over \$50M in real estate projects for our investors.” However, at that time, ECM had invested only approximately \$1.5 million in real estate projects for investors.

14. From at least November 2016 through May 2017, ECM’s website contained misstatements regarding ECM’s real estate development experience. A tab titled “Current and Past Projects” on ECM’s website claimed that ECM had “developed and sold” “over \$50 million” in real estate projects, including over 100 apartments, 150 homes and 40 acres. ECM, in fact, had not “developed and sold” any real estate until March 2017, and the one project completed at that time was worth approximately \$6 million, well under the \$50 million figure used on ECM’s website.

The Fund’s Unregistered Offering

15. On September 13, 2016, Respondents filed a Form D Notice of Exempt Offering of Securities with the Commission on behalf of the Fund. The Form D claimed that the Fund was relying on the safe harbor from registration provided by Rule 506(b) of Regulation D where general solicitation is prohibited.

16. Respondents, however, engaged in a general solicitation of public interest in the offering through ECM’s website, which advertised the Fund’s investments, including target returns

and investor testimonials, and which all visitors could access. Respondents did not have pre-existing, substantive relationships with at least one of the Fund's investors.

17. On June 8, 2017 and January 28, 2019, Respondents filed subsequent Forms D with the Commission, which claimed the Fund was relying on the safe harbor from registration provided by Rule 506(c) of Regulation D. Rule 506(c) permits general solicitation, but requires all sales to be made to accredited investors and the issuer to take reasonable steps to verify that all purchasers are accredited investors.

18. Until November 2017, Respondents took no steps to verify investors were accredited. At least one investor in the Fund was non-accredited.

19. Respondents did not file or cause to be filed a registration statement with the Commission for the Fund's offering of membership units.

Management Fees

20. Respondents received approximately \$230,000 in management fees from the Fund. In 2020, Respondents voluntarily transferred ownership of approximately \$230,000 of their own shares in the Fund back to the Fund and subsequently allocated the shares to the other current investors in the Fund, in amounts equal to their proportional ownership of the Fund.

21. In 2020, Respondents also relinquished their right to withdraw any and all management fees earned but not taken, through the date ECM ceased acting as investment adviser to the Fund.

Violations

22. As a result of the conduct described above, Respondents willfully violated Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

23. As a result of the conduct described above, Respondents willfully violated Section 5(a) of the Securities Act, which prohibits the sale of securities through interstate commerce or the mails, unless a registration statement is in effect, and Section 5(c) of the Securities Act, which prohibits the offer to sell any security through interstate commerce or the mails, unless a registration statement has been filed as to such security with the Commission.

Respondents' Remedial Efforts

24. In determining to accept the Offers, the Commission considered the remedial acts undertaken by Respondents.

Undertakings

25. Notice to Investors. Within 30 days of the entry of this Order, Respondents shall provide a copy of the Order to each of the Fund's investors via mail, email, or such other method not unacceptable to the Commission staff.

26. Certification of Compliance. Respondents shall certify, in writing, compliance with the undertaking set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondents agree to provide such evidence. The certification and supporting material shall be submitted to Jennifer Leete, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5012, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than 60 days from the date of the completion of the undertakings.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(e) and 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

- A. Respondents ECM and Ettro cease and desist from committing or causing any violations and any future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.
- B. Respondent Ettro be, and hereby is:
 - Barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and
 - prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.
- C. Any reapplication for association by Ettro will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, compliance with the Commission's order and payment of any or all of the following: (a) any disgorgement or civil

penalties ordered by a Court against the Respondents in any action brought by the Commission; (b) any disgorgement amounts ordered against the Respondents for which the Commission waived payment; (c) any arbitration award related to the conduct that served as the basis for the Commission order; (d) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (e) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondents shall pay, jointly and severally, within fourteen (14) days of the entry of this Order, a civil money penalty in the amount of \$60,000 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.

E. Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 Peter Ettro and Ettro Capital Management Corp. as Respondents 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 Jennifer Leete, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5012.

F. 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.

G. Respondents shall comply with the undertakings enumerated in Paragraphs 25-26 above.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary