UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6701 / September 17, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22141

In the Matter of **Nebari Partners, LLC,** **Respondent.**	**CORRECTED 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 Nebari Partners, LLC ("Respondent" or "Nebari").

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[1] that:

Summary

1. This matter concerns violations of the federal securities laws by Nebari, a registered investment adviser, in connection with the financial statement audits of pooled investment vehicles managed by related persons of Nebari. Specifically, in 2021 and 2022, Nebari failed to conduct an audit of and timely distribute annual audited financial statements to the investors in 14 pooled investment vehicles (the "Special Purpose Vehicles") for which Nebari-related persons served as managing member or general partner. These failures resulted in violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, commonly referred to as the "custody rule."

Respondent

2. Nebari Partners, LLC ("Nebari") is a Delaware limited liability company with its principal place of business in New York, New York. Nebari has been registered with the Commission as an investment adviser since November 2021. On Nebari's March 31, 2023, Form ADV, Nebari reported that it managed approximately $271 million in regulatory assets under management.

3. Nebari serves as an adviser to three private funds focused on the natural resources sector (the "Nebari Funds"), which totaled approximately $237 million in regulatory assets under management as reported on Nebari's March 31, 2023, Form ADV. In 2021 and 2022, related persons of Nebari also served as managing member or general partner of Special Purpose Vehicles, which totaled approximately $34 million in regulatory assets under management as reported on Nebari's March 31, 2023, Form ADV.

Nebari Violated the Custody Rule

4. The custody rule requires that registered investment advisers who have custody of client funds or securities implement an enumerated set of requirements to prevent the loss, misuse, or misappropriation of those assets.

5. A registered investment adviser has custody of client assets if it holds, directly or indirectly, client funds or securities, or if it has the authority to obtain possession of those assets. *See* Advisers Act Rule 206(4)-2(d)(2). A related person of Nebari served as the managing member or general partner of each of the Special Purpose Vehicles at all relevant times, and had the authority to make decisions for, and act on behalf of, the respective fund. Nebari was therefore deemed to have custody of the Special Purpose Vehicles' assets as defined in Advisers

[1] The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

Act Rule 206(4)-2.

6. An investment adviser with custody of client assets 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 or is a limited liability company for which the adviser or a related person is a general partner or managing member, the account statements must be sent to each limited partner (or member or other beneficial owner); and (iv) ensure that client funds and securities are verified by actual examination once each year by an independent public accountant at a time chosen by the accountant without prior notice or announcement to the adviser. *See* Advisers Act Rules 206(4)-2(a)(1)-(5).

7. The custody rule provides an alternative to complying with the requirements of Advisers Act Rules 206(4)-2(a)(2), (3) and (4) for investment advisers to limited partnerships, limited liability companies, or other types of pooled investment vehicles. The custody rule provides that such an investment adviser "shall be deemed to have complied with" the independent verification requirement and is not required to satisfy the notification and account statements delivery requirements with respect to a fund if the fund is subject to audit (as defined in Rule 1-02(d) of Regulation S-X (17 CFR 210.1-02(d)) at least annually and "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" ("Audited Financials Alternative"). *See* Advisers Act 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. *See* Advisers Act Rule 206(4)-2(b)(4)(ii). An investment adviser to a limited partnership, limited liability company or other pooled investment vehicle that fails to meet the requirements of the Audited Financials Alternative to timely distribute audited financial statements prepared in accordance with Generally Accepted Accounting Principles would need to satisfy all of the requirements of Rules 206(4)-2(a)(2)-(4) in order to avoid violating the custody rule.

8. Nebari purported to rely on the Audited Financials Alternative in order to comply with the custody rule, and did in fact have audits performed of the Nebari Funds for the years ending December 31, 2021 and 2022, with the audited financial statements delivered to the Nebari Funds' limited partners. However, Nebari failed to have the required audits performed with respect to the Special Purpose Vehicles, and thus the audited financial statements for the years ending December 31, 2021 and/or 2022 were not delivered to the Special Purpose Vehicles' beneficial owners. Accordingly, while Nebari afforded investors in the Special Purpose Vehicles visibility into their investments through other means, such as periodic capital statements and financial statements prepared by the managers of the underlying investments, Nebari did not satisfy the requirements of the Audited Financials Alternative in Rule 206(4)-2(b)(4) for the years ending December 31, 2021 and 2022. It was therefore obligated to comply with Advisers Act Rules 206(4)-2(a), (3) and (4) with respect to the Special Purpose Vehicles, which Nebari also failed to do.

Violations

9. As a result of the conduct described above, Nebari willfully[2] violated Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder.

Nebari's Remedial Efforts

10. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent.

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 cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder.

B. Respondent is censured.

C. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $80,000 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

[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).

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 Nebari 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 Sheldon L. Pollock, Associate Regional Director, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, New York 10004-2616.

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