

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4017 / February 4, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16371

In the Matter of

**New Line Capital, LLC and
David A. Nagler,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 203(e), 203(f)
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), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), against New Line Capital, LLC (“New Line”) and David Nagler (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 Sections 203(e), 203(f) 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 Respondents’ Offers, the Commission finds that:

Summary

This proceeding arises out of improper registration and material misstatements made in Forms ADV by New Line, an investment adviser registered with the Commission. Since 2012, New Line falsely represented that its principal office and place of business was in Wyoming, a state that does not regulate investment advisers, to maintain the firm's Commission registration after rules went into effect restricting such registration to advisers with more assets under management. New Line also overstated its assets under management in filings with the Commission. In addition, although New Line had registered as an investment adviser with the Commission, it failed to maintain and make available to the Commission's staff, books and records required under the Advisers Act. Nagler, New Line's owner, was responsible for all of New Line's filings and recordkeeping, and aided and abetted and caused all of its violations.

Respondents

1. New Line, is a Wyoming limited liability company and conducts business from offices in New Mexico. New Line filed an initial Form ADV with the Commission in April 2007. New Line's principal office and place of business is in Santa Fe, New Mexico.
2. Nagler, age 52, is a resident of Santa Fe, New Mexico and is the owner, managing member, portfolio manager, and chief compliance officer of New Line.

Background

3. Nagler organized New Line as a New Mexico company in 2007. On April 9, 2007, New Line filed its initial registration with the Commission on Form ADV, basing eligibility to file with the Commission on the fact that it had assets under management of \$25 million or more.
4. In July 2011, the Advisers Act was amended to increase the threshold for an investment adviser's assets under management required for registration with the Commission from \$25 million to \$100 million.¹ Registration with the Commission was still required, however, for advisers not regulated by the states where they maintained their principal offices and places of business. Currently, Wyoming is the only state that does not regulate investment advisers. So any investment adviser with a principal office and place of business in Wyoming, regardless of its assets under management, is required to register with the Commission.
5. Rule 222-1(b) under the Advisers Act states that the principal office and place of business of an investment adviser means the executive office of the investment adviser from which

¹ Previously, Section 203A of the Advisers Act prohibited investment advisers from registering with the Commission unless they managed at least \$25 million in assets or met a designated exemption. Effective July 21, 2011, Section 203A increased the minimum amount of assets under management for most advisers to qualify for SEC registration from \$25 million to \$100 million. *See* Advisers Act Section 203A(a)(2) amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010); *Final Rule; Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 3221 (June 22, 2011).

the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

6. On March 28, 2012, Nagler reorganized his company as a Wyoming entity. On March 29, 2012, New Line filed an amended Form ADV. In Part 1A, Items 1F and 2A of the Form ADV, New Line claimed its principal office and place of business was in Wyoming and that it was eligible to register with the Commission as an investment adviser based on its Wyoming location. New Line made the same representations about its principal place of business and basis for registration in its Forms ADV filed on April 1, 2013, February 4, 2014, and March 25, 2014.

7. Nagler did not direct, control, or coordinate the activities of New Line from Wyoming. During all relevant times, Nagler resided in New Mexico and used his residence there as a base of operations. Nagler never met clients in Wyoming and rarely used the small office space that New Line rented in Wyoming. Nagler has not maintained New Line's books and records in Wyoming since August 2013. Because New Line did not have a principal office or place of business in Wyoming and had no other basis for Commission registration, it was prohibited from registering with the Commission as an investment adviser.

8. New Line also misrepresented its assets under management ("AUM") in Part 1A, Item 5F and Part 2A, Item 4 of the Form ADV in all of its filings since March 29, 2012. New Line filed a Form ADV Part 2A Brochure on March 29, 2012, April 1, 2013, and February 4, 2014. Nagler included in his calculation of New Line's AUM disclosed in the firm's Forms ADV, assets that were not securities portfolios, such as the value of real estate and operating enterprises. Nagler also included in his calculation of New Line's AUM, securities portfolios that he did not provide continuous and regular supervisory or management services, such as retirement accounts. New Line has no discretion over these accounts and is not responsible for "arranging or effecting" purchases or sales in the accounts. Although New Line did not charge advisory fees on these assets, by including these assets, New Line materially misrepresented its AUM.

9. New Line failed to make and keep true, accurate, and current financial and trading records relating to its advisory business, including financial records of the adviser such as cash receipts and disbursements journals, balance sheets, income statements, cash reconciliations or bills relating to the business of the investment adviser, trial balances, and financial statements; and trading records for accounts in which New Line had custody or possession of securities or funds of its clients. By virtue of its ability to deduct fees from its clients' brokerage accounts, New Line had custody of client funds.

10. Nagler was solely responsible for preparing, signing, and filing all of New Line's Forms ADV. Nagler was aware of the location of the firm's principal office or place of business. Accordingly, Nagler knew that representations in New Line's Forms ADV in Item 1F and 2A3 of New Line's Forms ADV were false when filed and that New Line was not eligible for SEC registration. Nagler was solely responsible for calculating New Line's reported assets under management. Nagler was also solely responsible for New Line's book and records and knew that New Line failed to maintain required records.

Violations

11. As a result of the conduct described above, New Line willfully violated, and Nagler willfully aided and abetted and caused New Line's violations of, Section 203A of the Advisers Act, by improperly registering with the Commission.

12. As a result of the conduct described above, Respondents willfully violated Section 207 of the Advisers Act which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein." New Line and Nagler misstated New Line's principal office and place of business and overstated New Line's AUM.

13. As a result of the conduct described above, New Line willfully violated, and Nagler willfully aided and abetted and caused New Line's violations of Section 204(a) of the Advisers Act and Rules 204-2(a) and 204-2(b) thereunder. Section 204(a) of the Advisers Act requires, among other things, that investment advisers "make and keep" certain records as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Rule 204-2(a)(1) requires registered advisers to "make and keep true, accurate and current . . . journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger." Rule 204-2(a)(2) requires an investment adviser to "make and keep true, accurate and current . . . general and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income, and expense accounts." Rule 204-2(a)(4) requires registered advisers to "make and keep true, accurate and current . . . all check books, bank statements, cancelled checks and cash reconciliations of the investment adviser." Rule 204-2(a)(5) requires that investment advisers "make and keep, true, accurate and current . . . all bills or statements (or copies thereof), paid or unpaid, relating other business of the investment adviser as such." Rule 204-2(a)(6) requires an investment adviser to "make and keep true, accurate and current . . . all trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser." Rule 204-2(b) requires advisers to make and keep "(1) a journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts; (2) a separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits; (3) copies of confirmations of all transactions effected by or for the account any such client; and (4) a record for each security in which any such client has a position, which record shall show the name of each such client having any interest in each security, the amount or interest of each such client, and the location of each such security."

IV.

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

Accordingly, pursuant to Sections 203(e), 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondents cease and desist from committing or causing any violations and any future violations of Sections 203A, 204(a) and 207 of the Advisers Act and Rules 204-2(a) and 204-2(b) thereunder.

B. Respondents are censured.

C. Respondents shall, within 10 days of the entry of this Order, pay a civil money penalty, jointly and severally, in the amount of \$25,000 to the Securities and Exchange Commission. 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) 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 New Line and Nagler 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 Thomas J. Krysa, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294-1961.

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 Respondent 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.

Brent J. Fields
Secretary