

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3919 / September 17, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16129

In the Matter of

**WESTEND CAPITAL
MANAGEMENT, 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 WestEnd Capital Management, LLC (“Respondent” or “WestEnd”).

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 Respondent 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 finds¹ that

Summary

From March 2010 through February 2012, Sean Cooper ("Cooper"), a managing member of WestEnd, directed WestEnd to collect fees from the fund it managed, WestEnd Partners, L.P. (the "Fund"), that exceeded what it earned during the period. By February 2012, Cooper had misappropriated approximately \$320,000 from the Fund for his own personal use. Although the other WestEnd members were unaware of Cooper's fraud, several deficiencies at WestEnd enabled Cooper to perpetrate his fraud.² First, WestEnd failed reasonably to supervise Cooper. Second, WestEnd failed to maintain several required books and records, including many related to the firm's financials. Third, WestEnd failed to adopt and implement policies and procedures reasonably designed to prevent violations of the federal securities laws and failed to annually review those policies and procedures. Finally, the Form ADV Cooper filed on WestEnd's behalf falsely described the way in which WestEnd withdrew fees from the Fund. As a result, WestEnd violated Sections 204, 206(4) and 207 of the Advisers Act and Rules 204-2 and 206(4)-7 thereunder and also failed reasonably to supervise within the meaning of Section 203(e)(6) of the Advisers Act.

Respondent

1. **WestEnd Capital Management, LLC** is a California limited liability company based in San Francisco, CA and has been registered with the Commission as an investment adviser since May 2002. WestEnd provides investment advice to individuals and is also the investment adviser to WestEnd Partners, L.P., a hedge fund. As of December 31, 2013, WestEnd's total assets under management were \$105 million.

Other Relevant Entity and Individual

2. **WestEnd Partners, L.P.** is a California limited partnership formed in 2003, with WestEnd as its General Partner and adviser. During the relevant period WestEnd Partners invested primarily in securities traded on domestic and foreign exchanges and had approximately 20 investors and net assets of approximately \$38 million.

3. **Sean Cooper**, age 48, of New Orleans, Louisiana, served as one of WestEnd's managing members since its inception in 2002 through his expulsion from the firm in 2012. Cooper was the primary portfolio manager and made almost all the investment decisions for the Fund. He also served as WestEnd's chief compliance employee from 2002 until 2007, when he delegated 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.

² Cooper is contesting the Commission's allegations against him in a separate proceeding.

function to another WestEnd employee. In 2003, he formed the Fund to invest primarily in securities traded on domestic exchanges. Cooper controlled the Fund's operations and, although the Fund's operating agreement stated that WestEnd members were to share the management fees, Cooper kept 100% of the management fees WestEnd collected from the Fund.

Background

4. Formed in 2002, WestEnd is an investment advisory firm registered with the Commission that provides advisory and financial planning services to high net-worth individuals through separately managed accounts and the Fund.

5. Sean Cooper and two other members (the "Other Members") owned and operated WestEnd. Cooper was responsible for WestEnd's back office financial operations and compliance matters, as well as managing the Fund's investment portfolio. The Other Members were responsible for managing WestEnd's other client portfolios as well as client relations and marketing, and performed their roles remotely. As a result, the Other Members oversaw very little of WestEnd's day-to-day operations during the relevant time period. Cooper hired most of WestEnd's employees, ran WestEnd's day-to-day operations, purported to supervise WestEnd's compliance policies and procedures, served as the primary portfolio manager for the Fund, made almost all of the investment decisions for the Fund, and coordinated the preparation of the Fund's financial statements. He also had sole control over the Fund's bank accounts and operations and collected the fees WestEnd earned from the Fund. Cooper operated the Fund and managed WestEnd's back office operations with little to no supervision from WestEnd's Other Members.

Misappropriation of Fund Assets by Cooper

6. The Fund's offering circular stated that WestEnd was entitled to annual management fees of 1.5% of each investor's capital account balance, payable quarterly in advance at the beginning of each fiscal quarter. The Fund's limited partnership agreement similarly stated that WestEnd was entitled to a management fee of 0.375 % of the balance of each limited partner's capital account on the first day of each fiscal quarter. WestEnd operated its fiscal calendar on a calendar year basis, such that WestEnd could withdraw management fees starting on January 1, April 1, July 1, and September 1 of each year. WestEnd provided each prospective investor in the Fund with a copy of the Fund's confidential offering circular and limited partnership agreement.

7. In March 2010, however, Cooper began indiscriminately withdrawing money from the Fund on dates of his choosing. Whereas the Fund's confidential offering circular and limited partnership agreement stated that there would be 4 quarterly management fee payments, Cooper withdrew fees 11 times in various amounts during 2010 that in total exceeded the 1.5% level, causing WestEnd to owe the Fund \$128,950 by the end of that year. Cooper continued to misappropriate money from the Fund in 2011 and by February 2012, WestEnd owed the Fund \$320,779. Cooper did not stop misappropriating the Fund's assets until April 2012, by which time the Commission's staff had begun an on-site examination. Cooper characterized the withdrawals in the Fund's books and records as management fees – but the withdrawals bore no relation to the

fees WestEnd actually had earned. In reality, Cooper simply used the Fund to line his own pockets.

8. Cooper had sole authority to transfer money out of the Fund and there were no controls in place to prevent him from improperly withdrawing funds. Cooper routed the money first through WestEnd, and then to his personal bank accounts. Although WestEnd's Other Members were unaware that Cooper was misappropriating Fund assets, WestEnd failed to take any steps to monitor, review, or approve Cooper's withdrawals. In June 2012, the Fund's independent auditors determined that WestEnd's lack of monitoring and approval of Cooper's withdrawals in excess of the amounts permitted by the Fund's governing documents was a significant deficiency in internal controls.

9. In Summer 2012, after they had confirmed Cooper's misappropriation, WestEnd's Other Members expelled Cooper from WestEnd. WestEnd then elected to forgo any future management fees from the Fund until it had reimbursed the Fund, plus interest, for the money Cooper had misappropriated.

WestEnd's Deficient Compliance Program

10. The Advisers Act requires that registered investment advisers adopt and implement written policies and procedures reasonably designed to prevent violations of the statute. While WestEnd did adopt some written compliance policies and procedures, they were insufficient to prevent Cooper's fraud. Moreover, WestEnd and its employees did not implement nor comply with the policies and procedures that WestEnd did adopt.

11. For example, WestEnd's policies and procedures required that employees on an annual basis review and certify that they had received, read, and complied with the policies and procedures. WestEnd did not, however, provide its employees with the policies and procedures on an annual basis. Moreover, none of WestEnd's managing members, including Cooper, reviewed and certified that they had complied with WestEnd's policies and procedures for a more than five-year period between 2006 and 2013. Finally, WestEnd did not adopt any policies or procedures that imposed any controls around Cooper's ability to withdraw money from the Fund. Rather, Cooper had sole discretion to calculate and wire out money he claimed the Fund owed him.

12. WestEnd's policies and procedures also required that employees use the firm's email and instant messaging systems for all firm business in part so that required emails and instant messages could be preserved. However, one of WestEnd's Other Members used a personal email account for business correspondence, and none of the managing members' emails had properly been preserved.

13. The Advisers Act also requires that registered investment advisers review, no less frequently than annually, the adequacy of their compliance policies and the effectiveness of their implementation. Similarly, WestEnd's policies and procedures required Cooper and WestEnd's Other Members to conduct an annual review of the adequacy and effectiveness of the firm's policies and procedures, including considering any compliance matters that arose during the

previous year, any changes in WestEnd’s activities and any changes in the Advisers Act or other applicable regulations. Neither Cooper nor the Other Members conducted the required annual review.

14. In December 2011, WestEnd hired a third-party consultant to evaluate its compliance policies and procedures. Since that time, the consultant has made several recommendations to improve WestEnd’s compliance program, all of which WestEnd has adopted and implemented.

WestEnd Failed to Maintain Required Books and Records

15. The Advisers Act requires registered investment advisers to make and keep certain books and records relating to its advisory business. WestEnd failed to maintain several types of required records, including journals, general and auxiliary ledgers, financial statements, supporting documents for WestEnd’s withdrawals of purported management fees from the Fund, and accurate records of client’s wire transactions.

False Statement in WestEnd’s Form ADV

16. On April 1, 2011, Cooper signed and filed WestEnd’s Form ADV. Item 5 of Part 2A stated that WestEnd charged a quarterly management fee, payable on the first day of each quarter, equal to 0.375% of the capital balance of each limited partner for its services to the Fund. As discussed above, this statement was false, because Cooper indiscriminately withdrew purported management fees in excess of the annual 1.5% in 2010, 2011, and 2012.

Violations

17. As a result of the conduct described above, WestEnd failed reasonably to supervise Cooper, with a view to preventing violations of the federal securities laws, while Cooper was subject to WestEnd’s supervision, within the meaning of Section 203(e)(6) of the Advisers Act.

18. As a result of the conduct described above, WestEnd willfully³ violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require, among other things, that a registered investment adviser: (a) adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules; and (b) review at least annually its written policies and procedures and the effectiveness of their implementation.

³ A willful violation of the securities laws means merely “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.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

19. As a result of the conduct described above, WestEnd willfully violated Section 204 of the Advisers Act, and Rules 204-2(a)(1), (2), (6), and (7)(ii), promulgated thereunder. Section 204 of the Advisers Act requires investment advisers to 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 under the Advisers Act requires investment advisers registered or required to be registered to make and keep true, accurate and current various books and records relating to their investment advisory business, including:

- A journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in a ledger;
- General and auxiliary ledgers (or other comparable records) reflecting assets, liability, reserve, capital, income and expense accounts;
- All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser; and
- All written communications sent or received relating to, among other things, any receipt, disbursement or delivery of funds or securities.

WestEnd failed to make and keep these records for its advisory business.

20. As a result of the conduct described above, WestEnd 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.”

Remedial Efforts

21. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by WestEnd and cooperation afforded the Commission Staff. Specifically, WestEnd engaged an independent compliance consultant to evaluate and give guidance on WestEnd’s compliance practices and procedures.

Undertakings

Respondent WestEnd has undertaken to:

22. Compliance Consultant. In December 2011, before the Commission’s examination staff began an examination, WestEnd hired a compliance consultant (the “Consultant”) to conduct a comprehensive review of WestEnd’s compliance program. The Consultant completed its work in January 2012 and submitted reports detailing its work, findings, and recommendations to WestEnd in February 2012 and April 2012, which WestEnd has shared with the Commission staff. WestEnd has implemented all of the Consultant’s recommendations. WestEnd will retain the Consultant going forward to assist WestEnd in implementing its new compliance program through 2015. The Consultant’s work includes, but is not limited to:

- a. The Consultant conducted an on-site review of WestEnd's business and WestEnd's implementation of the firm's policies and procedures.
- b. The Consultant drafted a new compliance manual and code of ethics and established a protocol for undertaking various compliance-related tasks on a periodic basis.
- c. The Consultant will conduct annual compliance reviews of WestEnd, at WestEnd's expense, for the years ended December 31, 2014 and December 31, 2015. WestEnd shall adopt and implement all recommendations that result from the Consultant's annual compliance reviews.

In determining whether to accept this Offer, the Commission has considered the undertakings described in Paragraph 22.

23. Recordkeeping. Respondent shall preserve for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of Respondent's compliance with the undertakings set forth in this Order.

24. Notice to Advisory Clients. Within thirty (30) days of the entry of this Order, Respondent shall provide a copy of the Order to each of the limited partners in the Fund as of the date of the Order via mail, email, or such other method as may be acceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff. Furthermore, for a period of twelve (12) months from the entry of this Order, to the extent that Respondent is required to deliver a brochure to a client and/or prospective client pursuant to Rule 204-3 of the Advisers Act, Respondent shall also provide a copy of this Order to such client and/or prospective client at the same time that Respondent delivers the brochure.

25. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

26. Certifications of Compliance by Respondent. Respondent shall certify, in writing, compliance with its undertakings 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 Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Erin E. Schneider, Assistant Regional Director, Asset Management Unit, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA, 94104, 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 sixty (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 Respondent's Offer.

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

A. Respondent WestEnd cease and desist from committing or causing any violations and any future violations of Sections 204, 206(4) and 207 of the Advisers Act and Rules 204-2 and 206(4)-7 promulgated thereunder.

B. Respondent WestEnd is censured.

C. Respondent shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of \$150,000 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) 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 WestEnd Capital Management 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 Erin E. Schneider, Assistant Regional Director, Asset Management Unit, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

D. WestEnd shall comply with the undertakings enumerated in Section III, paragraphs 23 through 26 above.

By the Commission.

Jill M. Peterson
Assistant Secretary