UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6332 / June 20, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21499

In the Matter of **INSIGHT VENTURE 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 Insight Venture Management, LLC ("Insight" 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[1] that:

Summary

1. These proceedings arise from investment adviser Insight's charging of excess management fees due to its inaccurate application of its permanent impairment policy and failure to disclose a conflict of interest to investors concerning that policy. Insight advises a number of private equity funds that focus on growth-stage software, software-enabled services, and internet businesses, including the funds at issue here.

2. From August 2017 through April 2021 (the "Relevant Period"), the limited partnership agreements ("LPAs") of certain of the funds Insight advised provided that Insight would charge management fees during the funds' post-commitment periods based on each investor's pro rata share of the funds' invested capital, which equaled the acquisition cost of the portfolio investments held by the funds.

3. The LPAs for these funds stated that should Insight determine that a portfolio investment had suffered a "permanent impairment" in value, Insight would remove an amount equal to the difference between the acquisition cost and the impaired value of the portfolio investment from the fund's invested capital, which would subsequently reduce the basis used to calculate the management fees paid by the respective fund to Insight. The LPAs also gave Insight the discretion to reverse its permanent impairment determination if the value of the portfolio investment subsequently increased due to changed circumstances.

4. Insight developed and applied criteria in order to assess whether an investment was permanently impaired. In applying these criteria, however, Insight analyzed permanent impairment at the "portfolio company" level rather than at the "portfolio investment" level, as required by the funds' LPAs. As a result, Insight did not correctly apply the funds' LPAs in making a permanent impairment determination and, consequently, failed to accurately calculate the management fees it charged.

5. Further, Insight failed to disclose to investors—the limited partners ("LPs")—the existence of a conflict of interest in connection with its permanent impairment criteria. Because Insight did not disclose its permanent impairment criteria, the LPs were unaware that the criteria Insight chose were narrow and subjective, making them difficult to satisfy and, consequently, affording Insight significant latitude to determine whether an asset would be considered permanently impaired so as to reduce the basis used to calculate Insight's management fees.

6. Insight also did not adopt or implement written policies or procedures reasonably designed to prevent violations of the Advisers Act relating to the above practices.

[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.

7. As a result, and as detailed below, Insight violated Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder.

Respondent

8. Insight, a Delaware limited liability company with its primary place of business in Manhattan, New York, has been registered with the Commission as an investment adviser since 2007. Insight provides investment advisory services to pooled investment vehicles, and conducts business under the name Insight Partners. On its Form ADV filed in March 2023, Insight reported regulatory assets under management of approximately $79 billion as of December 31, 2022.

Other Relevant Entities

9. Insight Venture Partners VII, L.P.; Insight Venture Partners (Cayman) VII, L.P.; Insight Venture Partners (Delaware) VII, L.P; Insight Venture Partners VII (Co-Investors), L.P.; Insight Venture Partners Coinvestment Fund II, L.P.; Insight Venture Partners VIII, L.P.; Insight Venture Partners (Cayman) VIII, L.P.; Insight Venture Partners (Delaware) VIII, L.P.; Insight Venture Partners VIII (Co-Investors), L.P.; Insight Venture Partners IX, L.P.; Insight Venture Partners (Cayman) IX, L.P.; Insight Venture Partners (Delaware) IX, L.P., Insight Venture Partners IX (Co-Investors), L.P.; Insight Venture Partners Growth-Buyout Coinvestment Fund, L.P.; Insight Venture Partners Growth-Buyout Coinvestment Fund (Cayman), L.P.; Insight Venture Partners Growth-Buyout Coinvestment Fund (Delaware), L.P; Insight Venture Partners Growth-Buyout Coinvestment Fund (B), L.P.; Insight Venture Partners X, L.P.; Insight Venture Partners (Cayman) X, L.P.; and Insight Venture Partners (Delaware) X, L.P. are each limited partnerships and private investment funds formed to make investments in a variety of assets (collectively, the "Funds"). None of the Funds is registered with the Commission in any capacity. Insight provides investment advisory services to all of the Funds.

Facts

A. Background

10. The investors, or LPs, of the Funds contribute capital to the Funds for their use to make certain investments. The Funds are governed by their respective LPAs, which are agreements between Insight and the LPs that set forth the rights and obligations of the LPs.

11. The Funds' LPAs contain the operative language for calculating, among other things, the management fees that Insight can charge the Funds. According to the LPAs, management fees are calculated for two distinct periods: (a) the commitment period, or the period when the Funds can make investments; and (b) the post-commitment period, or the period when the fund manager generally manages and looks to exit the fund's investments. During the commitment period, the LPAs specify that Insight will use the LPs' committed capital, or capital intended for an investment objective, as the basis for calculating management fees. During the post-commitment period, the LPAs specify that Insight will use the LPs' invested capital, or the

acquisition cost of portfolio investments held by the Funds, as the basis for calculating management fees, except in instances in which an asset is deemed to have suffered a "permanent impairment" in value.

12. The Funds' LPAs also contain two separate and distinct definitions for the terms "portfolio company" and "portfolio investment." Specifically, the LPAs define a "portfolio company" as "an entity in which a [p]ortfolio [i]nvestment is made by the Partnership directly or through one or more intermediate entities of the Partnership," whereas a "portfolio investment" is defined as "any debt or equity (or debt with equity) investment . . . made by the Partnership." In other words, there could be multiple portfolio investments in a particular portfolio company. The LPAs further state that "if less than all of a [p]ortfolio [i]nvestment is disposed of, the portion disposed of and the portion retained shall . . . be deemed to be separate [p]ortfolio [i]nvestments."

B. Insight's Permanent Impairment Criteria

13. During the Relevant Period, the Funds' LPAs provided that, if Insight determined that a portfolio investment suffered a "permanent impairment" in value, Insight would remove from the basis for the Fund's post-commitment period management fee an amount equal to the difference between the acquisition cost and the impaired value of the portfolio investment. Because a permanent impairment reduced the basis from which Insight calculated its management fees, a permanent impairment also reduced the management fee Insight ultimately charged. At a high level and without detail, the LPAs gave Insight the discretion to reverse its permanent impairment determination if the value of the investment subsequently increased due to changed circumstances.

14. The Funds' LPAs did not disclose the criteria that Insight would use to evaluate whether a portfolio investment suffered a permanent impairment.

15. In practice, however, Insight used a four-pronged test, which allowed it to consider whether: (a) the valuation of the Fund's aggregated investments in a portfolio company was currently written down in excess of 50% of the aggregate acquisition cost of the investments; (b) the valuation of the Fund's aggregated investments in a portfolio company had been written down below its aggregate acquisition cost for six consecutive quarters; (c) the write-down was primarily due to the portfolio company's weakening operating results, as opposed to market conditions, comparable transactions, or valuations of comparable public companies; and (d) the portfolio company would likely need to raise additional capital within the next twelve months. Insight looked for all four of these criteria to be met in order to consider a portfolio investment permanently impaired, although Insight ultimately retained and exercised full discretion in making this determination.

16. In developing and implementing this criteria, Insight failed to adhere to the requirement in the LPAs that required Insight to analyze whether each of the Funds' investments in a portfolio company had been permanently impaired. In practice, Insight assessed permanent impairment at the aggregated portfolio company level as opposed to the portfolio investment level. This conduct resulted in Insight charging the Funds excess management fees of $773,754.41 during the Relevant Period because there were instances in which certain individual portfolio investments

in a portfolio company were impaired while other portfolio investments in that same portfolio company were not. By looking at all portfolio investments in a portfolio company, Insight aggregated the valuations of portfolio investments that were not impaired with the valuations of other portfolio investments that were impaired.

17. Insight also failed to disclose to the LPs the existence of a conflict of interest in connection with its permanent impairment criteria. Specifically, because Insight did not disclose its permanent impairment criteria, the LPs were unaware that these were narrow and took into account certain subjective components—for example, whether a company would likely need to raise additional capital within the next twelve months. Accordingly, Insight's permanent impairment criteria were difficult to satisfy and granted Insight significant latitude to determine whether an asset would be considered permanently impaired so as to reduce the basis used to calculate Insight's management fees. This latitude presented a conflict of interest that was not disclosed in the sections of the Fund governing documents that explicitly discussed conflicts of interest or in the sections that discussed permanent impairment.

18. Finally, Insight did not adopt or implement written policies or procedures reasonably designed to prevent violations of the Advisers Act relating to its calculation of management fees and the conflict of interest created by Insight's subjective and narrow permanent impairment criteria.

19. During an examination by the SEC's Division of Examinations ("Examinations"), and prior to the investigation by the Division of Enforcement ("Enforcement"), Insight adopted and disclosed new and more objective permanent impairment criteria to determine whether an investment was impaired. Insight also waived its ability going forward to reverse a permanent impairment due to changed circumstances. Insight then applied this revised permanent impairment criteria to four portfolio companies that had been identified by Examinations staff and reimbursed the Funds for management fees and interest relating to those portfolio companies in the amount of $3,821,032.32.

20. In addition, in connection with the Enforcement staff's investigation, Insight applied its prior permanent impairment criteria at the portfolio investment level across all Funds and reimbursed an additional $864,958.17 to the Funds in May 2023—$773,754.41 in excess management fees and $91,203.76 in interest.

Violations

21. As a result of the conduct described above, Respondent willfully[2] violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or

[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

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)).

22. 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 makes it unlawful for any investment adviser to a pooled investment vehicle to make a materially false or misleading statement to, or otherwise 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.

23. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

Disgorgement

24. The disgorgement and prejudgment interest ordered in paragraph IV.C. is consistent with equitable principles and does not exceed Respondent's net profits from its violations and will be deemed satisfied by the payments Insight previously made in May 2023 to the Funds.

Insight's Remedial Efforts

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 to impose the sanctions agreed to in Insight's Offer.

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

A. Insight cease and desist from committing or causing any violations and any future violations of Section 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 promulgated thereunder.

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establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

B. Insight is censured.

C. Insight shall pay disgorgement of $773,754.41 and prejudgment interest of $91,203.76 for a total of $864,958.17, with such payment being deemed satisfied by the payments Insight previously made in May 2023 to the Funds.

D. Insight shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $1,500,000.00 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 Insight Venture 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 Lee A. Greenwood, Assistant Regional Director, Asset Management Unit, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616.

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