

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5245 / June 4, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19190

In the Matter of

**DEER PARK ROAD MANAGEMENT
COMPANY, LP, and SCOTT E. BURG,**

Respondents.

**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 Deer Park Road Management Company, LP (“Deer Park”) and Scott E. Burg (“Burg”) (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 as to Respondent Burg 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) 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 finds¹ that:

Summary

1. Valuation of client assets is a critically important area for investment advisers. Failure to properly value assets can impact key areas of fund operations and also potentially lead to over or under payment of withdrawal proceeds, incorrect calculation of fees and inaccurate performance reporting, among other things. Accordingly, pursuant to Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder (the "Compliance Rule"), registered investment advisers are required to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the federal securities laws stemming from inaccurate valuations.

2. This matter arises from violations of the Compliance Rule by Deer Park for failing to adopt and implement reasonably designed compliance policies and procedures relating to valuation of fund assets. Deer Park is a prominent private fund manager in the mortgage-backed securities space that manages over \$2.5 billion in assets.

3. From at least October 2012 through December 2015 (the "Relevant Period"), Deer Park's policies failed to address sufficiently how to conform the firm's valuations with Generally Accepted Accounting Principles ("GAAP"). Further, Deer Park's policies were not reasonably designed for its business practices, given its use of valuation models and pricing vendors, and the potential conflict of interest arising from traders' ability to determine the fair value assessment of a portion of the positions they manage.

4. Moreover, Deer Park failed to implement its existing policy. In accordance with GAAP, Deer Park's valuation policy included a requirement to maximize the use of relevant observable inputs. During the Relevant Period, however, Deer Park, at times failed to ensure that certain residential mortgage-backed securities ("RMBS") were valued in accordance with GAAP. Specifically, Deer Park may have undervalued certain client assets by failing to maximize relevant observable inputs, such as trade prices. For example, contemporaneous explanations for certain valuations include references to market activity at a higher price than the valuation and "sell[ing] for a profit when needed." Burg was a cause of the firm's failure to implement the valuation policy that required maximizing observable inputs.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondents

5. Deer Park Road Management Company, LP is a Delaware limited partnership with its principal place of business in Steamboat Springs, Colorado. Deer Park is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940 (SEC File No. 801-74577). Founded in 2003, Deer Park has provided investment advisory services to private funds since at least January 2012, and as of December 31, 2017 the firm manages over \$2.5 billion in assets.

6. Scott E. Burg, age 40, is a resident of Steamboat Springs, Colorado. During the Relevant Period, Burg was a portfolio manager and the primary trader for the STS Partners Fund LP, and in 2015 became Deer Park's Chief Investment Officer, co-Portfolio Manager and a minority Partner. Prior to joining Deer Park, Burg founded a third party pricing vendor ("Pricing Vendor A").

Other Relevant Entity

7. STS Partners Fund LP ("STS" or the "Fund") is a Delaware limited partnership and the flagship fund managed by Deer Park. During the Relevant Period, the STS portfolio primarily consisted of non-agency legacy mortgage bonds (i.e., RMBS that were originated prior to the 2008 financial crisis and not guaranteed by a government-sponsored agency). The founder and CEO of the firm ("Portfolio Manager A") and Burg acted as the portfolio managers of STS.

Background

8. Deer Park primarily focuses on investments in distressed securities. According to its disclosed investment strategy, Deer Park sought to buy deeply discounted high-yielding RMBS for the flagship STS fund.

9. From 2009 through 2014, STS' returns exceeded 20% each year, and from 2009, STS did not have a losing month for over 80 consecutive months, until around October 2015. Consequently, Deer Park during this period was ranked as one of the top and "most consistent performing" hedge funds in the country.

10. During the Relevant Period, Deer Park drew many new investments into STS, and the Fund's assets under management during this period grew from several hundred million dollars to more than \$1.5 billion as the Fund accumulated over 1,800 unique bonds into the STS portfolio.

A. Deer Park's Policies and Procedures Regarding Compliance with GAAP Were Not Reasonably Designed

11. The valuation policy applicable to the STS portfolio had two components.

First, it provided that assets in the STS portfolio must be valued in accordance with GAAP. Second, it contained a pricing source protocol that prescribed pricing sources to be used to value the securities in the portfolio (“Pricing Source Protocol”).

12. As to the first component, the valuation policy stated that Deer Park would value securities at “fair value” in accordance with Statement of Financial Accounting Standards No. 157 and subsequently in accordance with the GAAP pronouncement that superseded it, Accounting Standards Codification 820 (“ASC 820”). ASC 820 defines “fair value” as “the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date” (“Fair Value”). ASC 820-10-35-36 provides that the methods used to measure Fair Value “shall maximize the use of relevant observable inputs and minimize the use of unobservable inputs.” ASC 820-10-35-24C provides that, when market participants use models to assist in determining Fair Value those models must be calibrated to relevant observable market data, including transaction prices, to ensure they reflect current market conditions.

13. The policy lacked procedures on valuation regarding how, in the context of the specific markets relevant to the STS Fund and the specific types of inputs available to Deer Park, it should ensure consistency with the requirements of ASC 820 for the positions they valued. For example, although Deer Park relied heavily on valuation models to value the securities in the STS portfolio, Deer Park’s valuation policy did not mention the calibration requirement in ASC 820,² and Deer Park gave no guidance or training concerning calibration. The policy also did not mention any valuation techniques or methodologies, and further lacked procedures designed to promote consistency in valuation and to reduce the potential conflict of interest arising from the role of traders valuing securities they managed.

14. Deer Park had a Risk Management Committee (“RMC”) that checked whether the Fund was in compliance with the firm’s Pricing Source Protocol, which for reasons explained below was deficient. For most of the Relevant Period, the RMC consisted of Deer Park’s Chief Compliance Officer, who was a former geochemist and brother-in-law of Portfolio Manager A with no relevant experience in bond valuation, its Chief Financial Officer, who is a former bookkeeper and tax accountant at a small accounting firm with no prior experience in bond valuation, and another relative of Portfolio Manager A, an attorney without expertise in bond valuation. The RMC did not have the expertise to determine whether bonds were valued in accordance with GAAP.

² ASC 820-10-35-24C provides that, “[c]alibration ensures that the valuation technique reflects current market conditions, and it helps a reporting entity to determine whether an adjustment to the valuation technique is necessary (for example, there might be a characteristic of the asset or liability that is not captured by the valuation technique). After initial recognition, when measuring fair value using a valuation technique or techniques that use unobservable inputs, a reporting entity shall ensure that those valuation techniques reflect observable market data (for example, the price for a similar asset or liability) at the measurement date.”

B. Deer Park Traders' Approach to Observable Inputs

15. Notwithstanding the design deficiencies, Deer Park's policies stated that, when valuing bonds, Deer Park traders must prioritize observable inputs such as relevant market transactions and market information over unobservable inputs such as assumptions about inputs. As stated in a Deer Park newsletter to investors discussing Deer Park's valuation practices: "Once we buy a bond at price X, X is the market price. We can't say, 'okay we bought at X but the price should really be X+20%, so it should be marked there.'"

16. Deer Park's founder and chief executive officer provided guidance to Burg and the other Deer Park traders that emphasized the importance of the requirement in the valuation policy that traders maximize observable inputs such as trade information. In June 2014, a trader and associate portfolio manager ("Trader A") suggested to mark a bond at \$32.75, which had recently traded with a cover price at \$37.25, because at a price of \$33 "it starts to get to below 10% yield." The founder and chief executive directed the traders that "[w]ith this type of paper trail need to mark up to at least the cover. Can't be making judgments that the market is wrong. At least not in pricing."

17. For the securities in the STS portfolio not valued using a third party pricing vendor's price, which was limited to no more than 10% of STS's net asset value, every month the Deer Park traders submitted preliminary valuations, along with explanations, to Burg, who would review and adjust any marks with which he did not agree. These valuations, as adjusted by Burg, would be the final valuations used by Deer Park.

18. Throughout the Relevant Period, Deer Park had substantial access to market data and information, including trade prices or approximate "areas" in which a trade occurred, two-way bid-ask markets, bids, cover prices (the second to highest bid on a bond that traded), and offers for bonds held in the STS portfolio.³

19. Notwithstanding the valuation policy and guidance received, the traders developed an approach to valuation that, in certain instances, failed to ensure that observable inputs were maximized. The Deer Park traders received training from Burg on the monthly valuation process and on how to value securities.

20. For example, another trader and associate portfolio manager ("Trader B") discussed this approach in an email exchange with Pricing Vendor A, which was one of two third party pricing vendors used by Deer Park. In explaining why he did not increase

³ RMBS do not trade on an exchange, but rather through individually negotiated transactions between an investor (such as STS) and a broker-dealer. In addition, during the Relevant Period, RMBS trades were not publicly reported and, therefore, information concerning prices at which RMBS traded was not publicly available.

his valuations in line with recent trades Deer Park executed, Trader B wrote that “we are fundamental oriented, and price them based on future cash flow Mkt seems to be willing to buy at lower yield,⁴ which is only a technical issue, but we may sell our bonds at mkt price, only to take realized profits then rather than mark them up to book unrealized profits.”

21. Similarly, Trader A made the following comments to a market participant regarding a CDO held by Deer Park. After the market participant questioned Deer Park’s valuation in part due to a trade of the same CDO a year and a half earlier between the parties at a higher price, Trader A explained, “don’t you know me at all / I don’t mark stuff up / stay as conservative as possible.” In response, the market participant observed, “well can’t mark it lm [low-to-mid] 20s for nav / [i.e., the STS Fund’s net asset value] Itll [sic] trade in the 50s.”

22. Utilizing this approach created a risk that Deer Park would fail to maximize observable inputs such as trade prices. For example, after Trader B observed that Trader A had valued four bonds below recent Deer Park trade prices, he advised Trader A, “I think if I did this, I will mark up gradually every month at least to show we are marking towards fair value. But since they are too much undervalued, and difficult to mark up too much. So I think I will review the STS bonds to find off the mkt prices, and I will try to justify with more harsh [sic] scenario, in case auditors challenge.”

23. The explanations in valuation spreadsheets submitted to Burg contained indications that on certain occasions the traders may not have maximized observable inputs. For example, Deer Park traders explained in valuation spreadsheets, “[w]e mark it low. it can trade much higher . . .” and “undervalued, can trade low60s. . . . can sell it for profit if needed.” In addition, the Deer Park traders’ assumptions concerning the expected yield of a bond, on multiple occasions, was given priority over trading activity. Again, Burg received explanations in valuation spreadsheets, which included: “can see it trade much higher, mark up gradually for higher yield on book” and “traded lm[low-to-mid],60s [in F]eb[ruary]. but too low yield there. mark up slowly.”

C. Policies Regarding Pricing Source Protocol Were Not Reasonably Designed

24. To help ensure they are marking to Fair Value in accordance with GAAP, the valuation policy for the STS Fund included the Pricing Source Protocol that prescribed when and how Deer Park was to use prices provided by third party pricing vendors.

25. During the Relevant Period, the Pricing Source Protocol required that, at

⁴ There is an inverse relationship between a bond’s yield and its price.

least 90% of the portfolio be marked either at or within a defined range of prices from an external pricing source. Pursuant to the Pricing Source Protocol, for bonds that were over 25 basis points of the Fund's net asset value or NAV, Deer Park's traders priced the bonds internally and subsequently obtained a price from an external pricing source. Deer Park then calculated a band ("Price Band") around the external price plus or minus the lesser of 10% or 4 points, and compared it to the internal price determined by the Deer Park traders. If the internal price fell within the Price Band, the internal price was used. If the internal price fell outside the Price Band, then the limit of the Price Band was used. For example, if Pricing Vendor A priced a bond at \$30 and the Deer Park traders internally valued it at \$26, the final value for the bond would be \$27, i.e., within \$3 or 10% of the third party vendor's price. Beginning in January 2016, the valuation policy was revised so that bonds that had been subject to the Price Band were as of that month valued using Pricing Vendor A's prices.

26. If Deer Park disagreed with Pricing Vendor A's marks on particular bonds, Pricing Vendor A's valuation process provided Deer Park with an opportunity to challenge Pricing Vendor A's prices and request that it change its price to or near Deer Park's valuation. Burg was responsible for determining whether Deer Park would challenge a price from Pricing Vendor A.

27. Throughout the Relevant Period, the STS valuation policy allowed for smaller bonds, which were those valued at less than 25 basis points of STS's NAV, to be priced either at a valuation derived by the Deer Park Traders or an external price provided by a third party pricing vendor (not necessarily Pricing Vendor A). For these bonds, the Deer Park traders could choose whether to use their self-priced internal mark or a third party vendor's price, with a limitation that no more than 10% of STS's NAV could be self-priced by the traders. Burg was responsible for approving these selections.

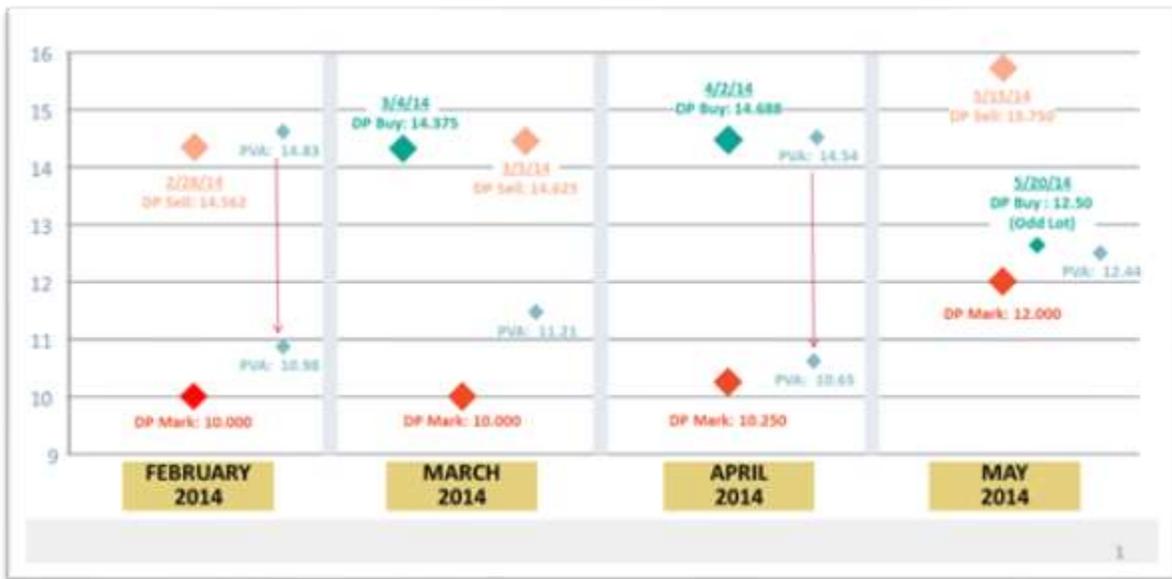
28. The Pricing Source Protocol gave significant discretion to Deer Park's traders as to when to use external prices, selection of pricing sources, and when and how to challenge prices, without adequate controls to address the potential conflict of interest arising from their ability to determine the fair value assessment of a portion of the positions they manage. Further, oversight of the valuation process was inadequate to ensure consistency and that valuations conformed with GAAP.

D. Deer Park's Policies and Procedures for Bonds That Were 25 Basis Points of NAV or Greater Were Not Reasonably Designed

29. As to the Price Band used through December 2015, though it placed some constraints on where Deer Park could value a bond, it did not sufficiently address the risk that the traders might value a position without maximizing observable inputs or that the traders may fail to calibrate Deer Park's model-derived valuations to trade or other market information.

30. For example, in March 2015, Deer Park sold a part of its position in the RMBS bond SASC 2006-WF1 M6 to a dealer for \$56. Several days later, that dealer sought to buy more of the SASC bond from Deer Park and bid \$57.50 and on March 25 increased its bid to \$59, yet Deer Park declined to sell even at that higher price. For March’s month-end valuation, Pricing Vendor A raised its price for this bond to \$54.94 while the Deer Park traders valued the bond at \$50. This resulted in a final March valuation, after being adjusted upward to the lower edge of the Price Band, of \$50.94.

31. Deer Park’s valuation policies and procedures offered insufficient guidance and lacked controls concerning challenges of prices from Pricing Vendor A to ensure that the challenges and prices resulting from them would maximize observable inputs. To illustrate, the following chart demonstrates Deer Park’s trading and valuation of SVHE 2006-OPT5 M1:



32. As shown in this chart, Pricing Vendor A’s (reflected in the chart as “PVA”) initial price in February 2014 was close to Deer Park’s (reflected in the chart as “DP”) sale price at the end of the month; however, Trader B successfully challenged Pricing Vendor A’s price downward, which resulted in a final price of \$10.98, and a market value which was \$2.5 million lower than its value using Pricing Vendor A’s initial price. Deer Park’s valuation was just under 10% below that price, which placed it within the Price Band notwithstanding that it was 31% less than the price at which Deer Park traded that same bond at the end of the same month. Trader B again successfully challenged Pricing Vendor A’s price in April 2014 when it again moved its price close to Deer Park’s executed trade price. On May 15, 2014, Deer Park sold \$12.5 million of this bond at \$15.75, then on

May 20, 2014, bought a \$350,000 piece of the bond – which is considered an odd lot – at \$12.50.⁵ After Deer Park provided Pricing Vendor A only with the trade price for the May 20 odd lot trade and not the May 15 round lot trade price of \$15.75, Pricing Vendor A adjusted its price to \$12.44. For May, Deer Park marked its remaining round lot position of \$42.49 million at \$12, which was within the Pricing Band but 24% less than its round lot trade price and also less than its odd lot trade price.

33. Deer Park provided Pricing Vendor A with information on bonds to value, including information on Deer Park purchases and sales. Due to Deer Park’s lack of policies and procedures concerning communications with third party pricing vendors, the Deer Park traders, on certain occasions, conveyed inaccurate information concerning the price at which Deer Park bought or sold a bond.

34. For example, in July 2014, Deer Park bought an additional piece of the bond MSAC 2007-HE7 M2 at \$29.25, yet listed a price of \$21 in a column with the heading “add-on” in a spreadsheet provided to Pricing Vendor A.⁶ In another example, Traders A and B conferred about what information to convey to Pricing Vendor A on another bond, and one stated that Burg “said he wants to mark it at \$20, we can let [Pricing Vendor A] know we think 20 is fair.” Shortly after, Deer Park submitted a price of \$20 to the vendor under the heading “add-on,” even though Deer Park had bought an additional piece of the bond at \$27.50. Pricing Vendor A provided a final price of \$20.87 for this bond.

35. As discussed above, in January 2016, Deer Park eliminated the Price Band such that, for bonds greater than 25 basis points of the Fund’s NAV, there could no longer be any deviation from Pricing Vendor A’s price. At that point, the updated policies and procedures, however, did not address the Deer Park traders’ communications with its third party pricing vendors with regard to challenges. As of March 2017, Deer Park has provided a system-generated report of all trades, including trade prices, to Pricing Vendor A each day.

E. Deer Park’s Policies and Procedures for Bonds Less Than 25 Basis Points of NAV Were Not Reasonably Designed

36. For smaller bonds, the Pricing Source Protocol afforded the Deer Park traders discretion to choose, on a monthly basis, whether to use a third party vendor’s price or its own internal valuations for securities that were individually less than 25 basis points of the STS’s NAV and in the aggregate up to 10% of the NAV of the portfolio. Consequently, the traders’ approach in certain instances influenced the decision as to

⁵ During the Relevant Period, odd lot positions (i.e., small-sized pieces) of non-agency RMBS typically traded at a discount to related round lot positions.

⁶ An add-on is a bond purchased by a market participant who already has an existing position in the same bond.

whether to use an internal valuation or a third party vendor's price.

37. For example, Deer Park bought RAMP 2006-RS1 M1 for the STS portfolio in February 2014 and valued it using a third party vendor ("Pricing Vendor B") price from February 2014 until March 2015, at which point Pricing Vendor B's price for the bond was \$11.99. On April 27, 2015, Trader B received a message from a broker stating that the bond traded in the low \$30s. At the end of April 2015, Pricing Vendor B raised its price on the bond to \$33.50. Deer Park, however, switched the bond to internal pricing and valued it at \$20. In an internal valuation spreadsheet submitted to Burg, Trader B's rationale for switching the pricing source was that the price from Pricing Vendor B was "too aggressive . . . move it to internal." And again, Deer Park traders' assumptions concerning yield at times influenced the decision as to whether to value using a third party pricing source or a Deer Park trader valuation. For example, for a different bond, Burg received a justification in a valuation spreadsheet stating, "too low yield at new price, move to internal."

38. As to valuations determined by the Deer Park traders without reference to a third party vendor price, there was no meaningful check on the trading desk's valuations of the securities they traded. This led to instances in which the traders failed to maximize observable inputs or properly calibrate their model-derived price. For example, between 2013 and 2015, the traders failed to maximize observable inputs in pricing the RMBS position CMLTI 2005- OPT3 M5. Deer Park in June 2013 received a message from a broker that the cover price for this bond at an auction was \$35.13, but valued the bond using an internal valuation of \$12.09. In February 2014, Deer Park bid \$28 to buy the bond, received market information that the bond may trade in the low to mid \$40s, yet Deer Park valued the bond using an internal valuation of \$11.21. In June 2014, Burg received a message from a broker that the bond was offered at \$44.50, and that it traded at the offer price, but Deer Park valued the bond using an internal valuation of \$20.18. Throughout this time, Burg received justifications in valuation spreadsheets for these values that included the following: "[U]ndervalued settlement bond. We can sell it for profit when needed" and "undervalued. Mark up gradually." Ultimately, in February 2015, while last marked at \$31, Deer Park sold this bond for \$70 realizing a gain of roughly \$1.4 million.

F. Burg Was a Cause of Deer Park's Failure to Implement the Requirement to Maximize the Use of Observable Inputs

39. While not formalized in the valuation policy, Deer Park's valuation process tasked Deer Park traders with valuing each internally priced position monthly and Burg with reviewing the valuation of each security and approving or adjusting the valuations as needed.

40. In carrying out that role, Burg approved valuations submitted to him by the Deer Park traders that, as described above, at times demonstrated a failure to implement the firm's valuation policy. Specifically, the traders submitted valuations to Burg along with

explanations that demonstrated in certain instances the traders were not maximizing observable inputs as required by the valuation policy.

41. In addition, for up to 10% of the portfolio that Deer Park had discretion to price either by a third party pricing vendor or the Deer Park traders, Burg was responsible for selecting which source to utilize. Burg also reviewed and accepted the traders' justifications for switching pricing sources, which at times reflected an approach that did not seek to maximize observable inputs.

42. Consequently, Burg was a cause of Deer Park's failure to implement policies and procedures reasonably designed to prevent violations of the Advisers Act.

Violations

43. As a result of the conduct described above, Deer Park willfully⁷ violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and Rules thereunder. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. Burg was a cause of Deer Park's violations.

Remedial Efforts

44. In determining to accept Deer Park's Offer of Settlement, the Commission considered remedial measures undertaken by Deer Park. Prior to the entry of this Order, Deer Park hired a new Chief Compliance Officer ("CCO") with relevant expertise in compliance and valuation. Under the new CCO, Deer Park revised aspects of its valuation policy and revised its procedures so that, for example, trade information is automatically reported to its third party pricing vendors. Deer Park also created and implemented new valuation and pricing surveillance reports that include, among other things, information and analyses on challenges to third party pricing vendor prices, changes of pricing sources, and internal valuations. In addition to the RMC, the CCO reviews these reports.

Undertakings

Respondent Deer Park has undertaken to:

45. Conclude its work with an Independent Compliance Consultant

⁷ 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)).

(“Consultant”), whom Deer Park hired during the Commission’s investigation to conduct a comprehensive review of Deer Park’s policies and procedures for valuing assets in its private funds and processes for complying with GAAP in such valuations. The schedule for completion of the Consultant’s work includes:

- a. Within 60 days after the date of entry of this Order, Deer Park shall require the Consultant to submit a final report to Deer Park and Commission staff (“Report”). The Report shall include a description of the review performed, the conclusions reached, the Consultant’s recommendations for changes in or improvements to Deer Park’s policies and procedures, and a procedure for implementing the recommended changes in or improvements to those policies and procedures.
- b. Within 90 days of receipt of the Report, Deer Park shall adopt all recommendations contained in the Report; provided, however, that within 30 days of Deer Park’s receipt of the Report, Deer Park shall, in writing, advise the Consultant and the Commission staff of any recommendations that it considers unnecessary, unduly burdensome, impractical, or inappropriate. With respect to any such recommendation, Deer Park need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose. As to any recommendation on which Deer Park and the Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 30 days after Deer Park provides the written notice described above. In the event that Deer Park and the Consultant are unable to agree on an alternative proposal, Deer Park and the Consultant shall jointly confer with the Commission staff to resolve the matter. In the event that, after conferring with the Commission staff, Deer Park and the Consultant are unable to agree on an alternative proposal, Deer Park will abide by the recommendations of the Consultant.
- c. Within 30 days of Deer Park’s adoption of all of the recommendations in the Report, Deer Park shall certify in writing to the Consultant and the Commission staff that it has adopted and implemented all of the Consultant’s recommendations in the Report. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff shall be sent to Daniel Michael, Chief, Complex Financial Instruments Unit, and Osman Nawaz, Assistant Director, Complex Financial Instruments Unit, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281, or such other address as the Commission’s staff may provide.

46. As part of its work with the Consultant, Deer Park shall cooperate fully and provide the Consultant with access to files, books, records, and personnel as are reasonably requested by the Consultant for review. The Consultant’s compensation and expenses shall

be borne by Deer Park. Deer Park shall also require the Consultant to enter into an agreement providing that for the period of the engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Deer Park, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Consultant will require that any firm with which she/he is affiliated or of which she/he is a member, and any person engaged to assist the Consultant in the performance of her/his duties under this Order shall not, without prior written consent of the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Deer Park, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

47. For good cause shown, the Commission staff may extend any of the procedural dates relating to 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.

48. Deer Park shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance with the undertakings 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 Deer Park agrees to provide such evidence. The certification and supporting material shall be submitted to Daniel Michael, Chief, Complex Financial Instruments Unit, and Osman Nawaz, Assistant Director, Complex Financial Instruments Unit, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281, 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 Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Deer Park and Burg 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)-7 thereunder.

B. Deer Park is censured.

- C. Deer Park and Burg shall each pay a civil money penalty as follows:
- 1) Deer Park shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of \$5,000,000 to the 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.
 - 2) Burg shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of \$250,000 to the 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.
 - 3) 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 the Respondent and the file number of this proceeding; a copy of the cover letter and check or money order must be sent to Daniel Michael, Chief, Complex Financial Instruments Unit, and Osman Nawaz, Assistant Director, Complex Financial Instruments Unit, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

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, each 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 Respondents' payments of civil penalties 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.

E. Respondent Deer Park shall comply with the undertakings enumerated in paragraphs 45-48 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 Respondent Burg, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Burg 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 Respondent Burg 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
Acting Secretary