

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 9263 / September 27, 2011

SECURITIES EXCHANGE ACT OF 1934

Release No. 65411 / September 27, 2011

INVESTMENT ADVISERS ACT OF 1940

Release No. 3291 / September 27, 2011

INVESTMENT COMPANY ACT OF 1940

Release No. 29822 / September 27, 2011

ADMINISTRATIVE PROCEEDING

File No. 3-14566

In the Matter of

AMNON COHEN,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, and SECTION 9(b) OF THE INVESTMENT COMPANY 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 Section 8A of the Securities Act of 1933 (“Securities Act”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Amnon Cohen (“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 him 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 Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company 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

1. Between 2005 and 2008, Wextrust Capital LLC (“Wextrust Capital”) and its affiliates (together, “Wextrust”), raised approximately \$270 million from over 1,400 investors in at least 70 fraudulent private placement securities offerings for real estate, African diamond mining, commodities, and other ventures. On August 11, 2008, the Commission filed an emergency civil enforcement action against Wextrust and its principals in Federal District Court in the Southern District of New York in a case titled *SEC v. Byers, et al.*, No. 08-cv-7104 (S.D.N.Y.). Wextrust and its assets are now being administered by an equity receiver (the “Receiver”) appointed in the case.

2. Amnon Cohen (“Cohen”) joined Wextrust in 2000 when Wextrust’s predecessor purchased Aspen Capital, LLC (“Aspen Capital”), a real estate brokerage firm in which Cohen was a 50 percent owner. Aspen Capital became the real estate brokerage arm for Wextrust’s predecessor and later for Wextrust.

3. In addition to overseeing the real estate brokerage arm for Wextrust, Cohen also oversaw all loan originations for Wextrust’s three “hard money” high yield real estate debt funds. The high yield debt funds were formed to provide high yield project loans secured by first or second mortgages. Cohen was identified in the three high yield debt funds’ private placement memoranda as the manager of all loan originations. Between 2004 and 2008, the high yield debt funds raised approximately \$43 million from investors including reinvestments.

4. Cohen was also an officer and 20 percent owner of Wextrust Capital, the managing member or sole member of the manager for each of the high yield debt funds. Wextrust Capital

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.

also formed Wextrust Commodity Managers, LLC (“WCM”) for the sole purpose of serving as adviser to Wextrust’s four commodity funds, each of which invested substantial assets in equity securities. Wextrust Capital owned 100 percent of WCM and exercised exclusive managerial authority over it, including authority for all investment decisions made for the commodity funds, and was compensated for doing so.

5. By late 2005 or early 2006, Cohen became aware that Joseph Shereshevsky (“Shereshevsky”), Wextrust Capital’s Chief Operating Officer, and Steven Byers (“Byers”), Wextrust Capital’s President and Chief Executive Officer, had misappropriated millions of dollars raised from the purchasers of preferred membership interests in GSA Investors, LLC, another Wextrust fund, by representing that the monies would be used to purchase and operate seven commercial properties that were leased to the United States General Services Administration (“GSA”). Cohen learned that, in reality, the GSA Investors, LLC offering was a sham and that Shereshevsky and Byers intended to use much of the proceeds of the offering for unrelated projects. In fact, none of the GSA properties were ever purchased. Instead, substantially all of the monies raised from investors to purchase the properties were diverted by Byers and Shereshevsky to unrelated projects and purposes including payments to other investors.

6. By July 2007, Cohen also learned that Shereshevsky and Byers had diverted monies from the high yield funds, used the monies to pay expenses of other Wextrust funds, and were commingling monies among various Wextrust entities.

7. Despite his knowledge that the GSA Investors, LLC offering was a sham and that Byers and Shereshevsky had diverted monies from the high yield funds, Cohen continued to manage investments for the high yield funds and to participate in the promotion of the high yield funds to investors.

RESPONDENT

8. **Cohen**, age 44, is a resident of Las Vegas, Nevada and owned twenty percent of Wextrust Capital. He was a principal of Wextrust and managed all loan origination efforts for high yield debt offerings. He joined Wextrust’s predecessor in 2000 and previously was a partner of Aspen Capital, which Wextrust’s predecessor bought in 2000, and a real estate lending officer for First Bank of The Americas. Cohen oversaw all of the loan originations for the high yield debt funds and originated the majority of their loans.²

OTHER RELEVANT PERSONS AND ENTITIES

9. **Wextrust Capital** was an Illinois limited liability company formed by Steven Byers in 2003. Wextrust Capital solicited investments through private placement offerings into a

² Although Cohen is listed as a member of Wextrust Capital management in virtually all of the Wextrust private placement memoranda except for those involving diamond mining ventures in Africa, his primary responsibility was originating and managing the loans made by the high yield debt funds.

variety of investment vehicles through its affiliated broker-dealer, Wextrust Securities, LLC, and managed those investments through other affiliates. Wextrust Capital was headquartered in Chicago, Illinois and maintained offices all over the United States, including in New York, New York, as well as Israel and South Africa. From 2005, acting through Wextrust Securities, LLC and affiliated entities, Wextrust Capital and its principals raised approximately \$270 million from approximately 1,400 investors throughout the United States and abroad. Altogether, since the formation of Wextrust Securities, LLC in 2005, Wextrust Capital and its principals conducted approximately 70 private placement offerings and created approximately 150 entities in the form of limited liability companies or similar vehicles for the offerings. Wextrust Capital was the adviser to the high yield funds and it also formed and exercised exclusive managerial authority over the adviser to Wextrust's four commodity funds, which invested substantial assets in equity securities.

10. **Steven Byers**, age 48, was a resident of Oakbrook, Illinois until his arrest in August 2008. He was the Chairman of Wextrust Capital and President and Chief Executive Officer of Wextrust Equity Partners LLC, the arm of Wextrust focusing on income-producing properties, and also was an owner and controlling person of Wextrust Securities LLC. Together with Shereshevsky, he controlled Wextrust. On April 13, 2010, Byers pleaded guilty to one count of conspiracy to commit securities, mail and wire fraud, and one count of securities fraud in connection with the GSA Investors, LLC offering. On April 11, 2011, Byers was sentenced to 160 months imprisonment and ordered to pay \$7.878 million in restitution jointly and severally with Shereshevsky and to forfeit \$9.2 million. On February 7, 2011, the Commission entered an order on consent barring Byers from association with a broker or dealer.

11. **Joseph Shereshevsky**, age 53, resided in Norfolk, Virginia until his arrest in August 2008. Shereshevsky was Wextrust Capital's Chief Operating Officer, and had been a key person in building the private equity group, greatly increased Wextrust's access to capital and was instrumental in founding Wextrust Securities, LLC and in Wextrust's expansion into diamond mining investments in Africa. In March 1993, Shereshevsky was arrested for, among other things, bank fraud. In June 2003, he pleaded guilty to one felony count of conspiracy to commit bank fraud. On February 3, 2011, Shereshevsky pleaded guilty to one count of conspiracy to commit securities, mail, and wire fraud, one count of securities fraud, and one count of mail fraud in connection with the GSA Investors, LLC offering. On July 18, 2011, Shereshevsky was sentenced to 262 months imprisonment and ordered to pay \$7.878 million in restitution jointly and severally with Byers and to forfeit \$9.2 million. On June 20, 2011, the Commission entered an order on consent imposing collateral bars and a penny stock bar on Shereshevsky.

BACKGROUND

12. Byers formed Wextrust Capital in 2003. Prior to that time, Byers had been in the real estate financing business, and in 2002 he began to engage in private placement securities offerings as a way to refinance his real estate deals. Shereshevsky, who had worked as a property manager for one of Byers' real estate deals, joined Byers at Wextrust Capital at around the time of its inception. Together, Byers and Shereshevsky controlled Wextrust.

13. In 2000, Wextrust's predecessor purchased Aspen Capital, which was 50 percent owned by Cohen. Cohen's expertise was in distressed real estate financings. Cohen became the

primary loan originator for the company's real estate investments. He eventually became a 20 percent owner of Wextrust Capital. Although he had an ownership interest in Wextrust, he never received partnership distributions and during the relevant period he had no control over Wextrust's bank accounts, as a signatory or otherwise.

FACTS

Wexford High Yield Debt Fund I, Ltd.

14. On January 1, 2004, Wextrust issued the private placement memorandum ("PPM") for the Wexford High Yield Debt Fund I, LLC ("High Yield Debt Fund I"). Wextrust Capital was the managing member of the High Yield Debt Fund I, and Cohen was identified in the PPM as the Director of Loan Originations and a "key manager" for the fund. The investment strategy for the High Yield Debt Fund I was to fund high yield debt with short maturities secured by first or second mortgages on its own and in loan participations with unaffiliated third parties. The High Yield Debt Fund I also sold loans to the Wexford High Yield Debt Fund III, LLC., discussed below.

15. Between January 2004 and August 2006, the High Yield Debt Fund I raised approximately \$24.3 million, including reinvestments, from approximately 141 investors.

Cohen Learns that the GSA Investors, LLC Offering is a Fraud.

16. On or about November 22, 2005, Wextrust issued a PPM for the purchase and sale of "preferred membership interests" in GSA Investors, LLC (the "GSA PPM"). According to the GSA PPM, GSA Investors, LLC was a company formed to purchase and operate seven commercial properties that were leased to the GSA (together, the "GSA Properties"). The GSA PPM specified that \$9.2 million raised from investors, together with a mortgage of approximately \$21 million, would be used to purchase the GSA Properties and cover related acquisition expenses. The operating agreement attached to the GSA PPM prohibited the commingling of GSA Investors, LLC monies with any other investments or entities and the loaning of GSA Investors, LLC monies to any person or entity.

17. By late 2005 or early 2006, Cohen learned that Shereshevsky and Byers intended to use much of the proceeds of the offering for unrelated projects. Shereshevsky and Byers told Cohen that GSA Investors, LLC was "a cheap way to raise" money for Wextrust that did not have to be paid back for ten years.

18. In fact, none of the GSA Properties were ever purchased. Instead, substantially all of the \$9,394,874 raised from investors from December 2005 through August 2008 was diverted by Byers and Shereshevsky to unrelated projects and purposes including payments to other investors.

19. Despite knowing that the GSA Investors, LLC offering was a sham, Cohen continued to manage investments for the High Yield Debt Fund I and to participate in the promotion of the fund to investors.

Wexford High Yield Debt Fund III, LLC

20. On June 30, 2006, after Cohen learned that the GSA Investors, LLC offering was a sham, Wextrust issued a new PPM for the Wexford High Yield Debt Fund III, LLC (“High Yield Debt Fund III”). Wextrust Capital was the sole member of the manager of the High Yield Debt Fund III. Similar to the High Yield Debt Fund I, the investment strategy for the High Yield Debt Fund III was to provide high yield debt secured by senior and junior mortgages on real estate assets on its own and in loan participations with others. The High Yield Debt Fund III PPM provided that the fund would purchase loan assets from the High Yield Debt Fund I, it permitted loans to be sold to unaffiliated third parties, and it provided management discretion to use funds “for other similar purposes not presently contemplated.” Cohen was identified in the High Yield Debt Fund III PPM as the Director of Merchant Banking and the manager of all loan originations for the fund.

21. Between June 2006 and August 2008, the High Yield Debt Fund III raised approximately \$17 million, including reinvestments, from approximately 133 investors.

Cohen Learns that Shereshevsky and Byers are Commingling Monies and Diverting Monies From the High Yield Debt Funds

22. Beginning in at least July 2007, Cohen became aware that monies invested in the High Yield Debt Fund I and High Yield Debt Fund III were being diverted by Shereshevsky and Byers. Specifically, Cohen learned that monies that should have remained available for real estate loans to be made by these funds were not available for such purposes and that, instead, Shereshevsky and Byers had diverted those monies to other Wextrust entities.

23. During the same time period in July 2007, Cohen also learned that distributions of \$192,000 in profits to investors in the High Yield Debt Fund I in 2006 had come from Wextrust affiliated entities and not from the High Yield Debt Fund I, which had not made any profits in 2006. The PPM for the High Yield Debt Fund I provided that the fund’s profits would be distributed to investors. Nothing in the High Yield Debt Fund I advised potential investors that profits would be paid from any other source.

24. In November 2007, Cohen confronted Shereshevsky directly and accused him of commingling monies among Wextrust entities and using monies for purposes other than those specified in the various Wextrust offering documents.

Cohen Helps to Launch the Wexford High Yield Debt Offshore Fund, Ltd.

25. In late 2007, and notwithstanding his knowledge that the GSA Investors, LLC offering was a sham and that Shereshevsky and Byers had diverted and commingled investor funds raised in various Wextrust offerings including offerings for High Yield Debt Fund I and High Yield Debt Fund III, Cohen was instrumental in creating yet another fund – the Wexford High Yield Debt Offshore Fund, Ltd. (“High Yield Debt Offshore Fund”). Wextrust Capital was the investment manager for the High Yield Debt Offshore Fund and Cohen was identified in the PPM for the High Yield Debt Offshore Fund, dated December 18, 2007, as one of the “principal members, managers and controlling persons of the Investment Manager” for the fund and as Director and manager of all loan originations.

26. The High Yield Debt Offshore Fund PPM provided that the fund would make loans similar to those made by the other high yield debt funds, either on its own or in participation with others. The High Yield Debt Offshore Fund's PPM provided that the loans it originated or purchased could be sold to third parties, and that management had discretionary authority to invest the assets of the fund. In fact, the High Yield Debt Offshore Fund did not originate any loans. Instead, it purchased all of its loans and loan participations from the High Yield Debt Fund III.

27. Cohen personally attended numerous meetings with salespeople who were promoting the fund; helped to create a PowerPoint presentation targeted at "sophisticated investors" for the fund; and signed the agreement retaining an offshore administrator for the fund.

28. On December 27, 2007, representatives of a hedge fund met with Wextrust employees including Cohen in Wextrust's office in New York City as part of their due diligence before making any investment decisions. At the meeting, Cohen was introduced as the person who "makes all chief investment decisions" for the fund and as being "responsible for the portfolio." At the meeting, Cohen assured the hedge fund representatives of the soundness of the fund's investments that he was responsible for and the security of the loan portfolios that he would manage. In a follow-up due diligence telephone call after the December 27 meeting, Cohen again reassured a hedge fund representative of the security of the loan portfolio that he was responsible for. When Cohen affirmatively represented the soundness of the loan portfolios to the hedge fund representatives, he failed to disclose the facts that that the GSA Investors, LLC offering was a sham and that Shereshevsky and Byers diverted monies from, and commingled monies among, other Wextrust funds. Subsequent to the telephone call, the hedge fund invested \$500,000 in shares of the High Yield Debt Offshore Fund.

29. Between January 2008 and August 2008, the High Yield Debt Offshore Fund raised approximately \$2,250,000 from 9 investors including the transfer of investments and investors from the High Yield Debt Fund III. None of the investors received any distributions prior to August 11, 2008, when the Wextrust fraud was halted and the Receiver appointed.

Cohen Promotes Wextrust on Israeli Television

30. On or about January 13, 2008, Cohen was interviewed on Israeli "Biz TV." Cohen appeared in the interview as a representative of Wextrust and promoted Wextrust during the interview.

31. In July 2007, Cohen also reviewed and approved a television commercial promoting Wextrust's real estate investments that was shown on Israeli television.

Cohen's Compensation in 2008

32. In 2008, after Cohen was aware that the GSA Investors, LLC offering was a sham and that Byers and Shereshevsky diverted monies from, and commingled monies among, other Wextrust funds, Cohen was paid approximately \$437,000 in salary.

Cohen's Cooperation

33. In mid-2008, Cohen began cooperating with United States Attorneys' Office for the Southern District of New York ("USAO") and the ongoing examination of Wextrust Securities, LLC by the Commission's staff. Cohen cooperated without attempting to impose any conditions on his cooperation. Cohen's cooperation provided substantial assistance to the USAO in obtaining criminal convictions of Shereshevsky and Byers as well as helping the Commission develop evidence in this matter.

VIOLATIONS

Cohen Violated the Anti-Fraud Provisions of the Federal Securities Laws

34. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit any person, in connection with the purchase or sale of any security, from, directly or indirectly: (1) employing any device, scheme or artifice to defraud; (2) making an untrue statement of material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (3) engaging in any act, practice, or course of business that operates as a fraud or deceit upon any person, in connection with the purchase or sale of a security. Section 17(a) of the Securities Act contains similar prohibitions in the offer or sale of any security. A fact is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. Basic Inc. v. Levinson, 485 U.S. 224, 231 (1988).

35. Here, Cohen represented to a prospective investor in High Yield Debt Offshore Fund the soundness of the fund's investments he was responsible for while omitting to disclose the material facts that the GSA Investors, LLC offering was a sham and that Shereshevsky and Byers diverted monies from, and commingled monies among, other Wextrust funds.

36. Accordingly, Cohen willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

DISGORGEMENT AND CIVIL PENALTIES

37. Respondent has submitted a sworn Statement of Financial Condition dated April 25, 2011 and other evidence and has asserted his inability to pay disgorgement plus prejudgment interest or a civil penalty.

COHEN'S REMEDIAL EFFORTS

In determining to accept the Offer, the Commission considered remedial acts 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 Respondent Cohen's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Cohen cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Cohen be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent shall pay disgorgement of \$437,000 and prejudgment interest of \$53,375, but payment of such amount is waived based upon Respondent's sworn representations in his Statement of Financial Condition dated April 25, 2011 and other documents submitted to the Commission. Based upon Respondent's sworn representations in his Statement of Financial Condition dated April 25, 2011 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent.

E. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or

incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Elizabeth M. Murphy
Secretary