UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6814 / January 13, 2025

ADMINISTRATIVE PROCEEDING
File No. 3-22401

In the Matter of **Kohlberg Kravis Roberts & Co. L.P.,** **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 Kohlberg Kravis Roberts & Co. L.P. ("KKR" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("Offer") that the Commission has determined to accept. Respondent admits the facts set forth in Section III below, acknowledges that its conduct violated the federal securities laws, admits the Commission's jurisdiction over it and the subject matter of these proceedings, and 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

[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.

Summary

1. The federal securities laws impose recordkeeping requirements on registered investment advisers to ensure that they responsibly discharge their crucial role in our markets. The Commission has long said that compliance with these requirements is essential to investor protection and the Commission's efforts to further its mandate of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

2. These proceedings arise out of the failure of Respondent's personnel, including at senior levels, to adhere to certain of these essential requirements and the Respondent's policies and procedures. Using their electronic devices, these personnel communicated both internally and externally by text messages and/or other unapproved written communications platforms ("off-channel communications").

3. From at least December 2019 (the "Relevant Period"), personnel at KKR sent and received off-channel communications that, among other things, related to recommendations made or proposed to be made and advice given or proposed to be given in its advisory business. KKR did not maintain or preserve these off-channel communications. These recordkeeping failures were firm-wide and involved personnel at various levels of authority. As a result, KKR violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

4. KKR's failure to implement procedures reasonably expected to prevent off-channel communications led to KKR's failure to reasonably supervise its personnel within the meaning of Section 203(e)(6) of the Advisers Act.

5. During the Relevant Period, KKR received and responded to Commission records requests in Commission investigations. The recordkeeping failures of KKR and its investment adviser affiliates may have impacted the Commission's ability to carry out its regulatory functions and investigate violations of the federal securities laws.

6. The Commission staff found KKR's recordkeeping failures after commencing a risk-based initiative to investigate the use of off-channel and unpreserved communications at registered investment advisers. KKR has initiated a review of its recordkeeping failures and begun a program of remediation.

Respondent

7. KKR is a Delaware limited partnership, with its principal office in New York, New York, that has been registered with the Commission as an investment adviser since 2008. KKR & Co. Inc., a Delaware corporation, with its principal office in New York, New York, is the parent of KKR.

Recordkeeping Requirements Under the Advisers Act

8. Section 204 of the Advisers Act authorizes the Commission to issue rules requiring investment advisers to make and keep for prescribed periods, and furnish copies of, such records as necessary or appropriate in the public interest or for the protection of investors.

9. The Commission adopted Rule 204-2 pursuant to this authority. This rule specifies the manner and length of time that the records made in accordance with Commission rules, and certain other records made by investment advisers, must be maintained and produced promptly to Commission representatives.

10. The rules adopted under Section 204 of the Advisers Act, including Advisers Act Rule 204-2(a)(7), require that investment advisers preserve for at least five years in an easily accessible place, the first two years in an appropriate office of the investment adviser, originals of all communications received and copies of all written communications sent relating to, among other things: (a) any recommendation made or proposed to be made and any advice given or proposed to be given; (b) any receipt, disbursement or delivery of funds or securities; (c) the placing or execution of any order to purchase or sell any security; or (d) predecessor performance and the performance or rate of return of any or all managed accounts, portfolios, or securities recommendations.

Respondent's Policies and Procedures

11. KKR and its affiliated advisers adopted compliance policies and procedures, including policies and procedures designed to ensure the retention of business-related records, including electronic communications, in compliance with the relevant recordkeeping provisions.

12. Personnel of KKR were advised that the use of unapproved electronic communications methods, including on their personal devices, was not permitted, and that they should not use unapproved personal email, chats or text messaging applications for business purposes.

13. Messages sent through firm-approved communications methods were monitored, subject to review, and archived. Messages sent through unapproved communications methods, such as unapproved applications on personal devices, were not monitored, subject to review or archived.

14. KKR's personnel received training, which was designed to address the firm's education and supervision of its personnel and adherence to KKR's books and recordkeeping requirements. The policies and related trainings notified personnel that electronic communications on approved platforms were subject to surveillance by KKR. KKR had procedures for all personnel requiring annual self-attestations of compliance.

15. KKR failed to implement a system reasonably expected to determine whether personnel were following the firm's policies and procedures regarding electronic communications. While permitting personnel to use approved communications methods, including on personal

and/or firm-issued devices, for business communications, KKR failed to implement sufficient monitoring to ensure that its recordkeeping and communications policies were being followed.

Respondent's Recordkeeping Failures

16. In October 2022, the Commission staff commenced a risk-based initiative to investigate whether investment advisers were properly maintaining communications that they were required to preserve as records under the Advisers Act. KKR cooperated with the investigation by proactively gathering and reviewing communications from the electronic devices of certain of its personnel and responding to the staff's requests for additional information. KKR also produced, at the request of the Commission staff, off-channel communications of a subset of these personnel relating to KKR's investment advisory business. These personnel included senior personnel, such as managing directors and partners.

17. The Commission staff's investigation found off-channel communications by KKR personnel, including at senior levels. All of the personnel whose communications were produced in the course of the investigation had sent or received multiple off-channel communications that were records required to be preserved by KKR under the Advisers Act. These off-channel communications were sent among colleagues at KKR, as well as to external market participants.

18. During the Relevant Period, personnel at KKR sent and received off-channel text messages subject to the recordkeeping requirements of Advisers Act Rule 204-2.

19. These off-channel communications included records required to be preserved under the Advisers Act because they related to recommendations made or proposed to be made or advice given or proposed to be given. For example, two KKR partners exchanged messages on an unapproved platform concerning the specific pricing, within the range previously approved by the investment committee responsible for a client's investments, at which KKR should bid for the client to participate in a transaction.

20. As another example, the two KKR partners exchanged messages on an unapproved platform concerning whether KKR should offer to have one or more of its private fund clients buy into the junior tranche of a transaction.

21. In 2020, KKR's compliance monitoring tool identified two references to the use of WhatsApp by a KKR partner ("Partner A"), including communications between Partner A and another senior employee. These communications made clear that Partner A had been using WhatsApp to communicate with the senior executive of a third-party entity about a potential transaction.

22. After KKR's monitoring tool detected these references to the use of WhatsApp, a senior member of Respondent's compliance department (the "Compliance Officer") met with Partner A. The agenda for the meeting included updates on numerous aspects of KKR's compliance program, including its prohibition on the use of off-channel communications platforms. Unlike other KKR employees whose use of off-channel platforms was identified by the surveillance software, Partner A did not receive a written reminder of the policies as a result of their violation. The compliance department did not collect the referenced WhatsApp messages from Partner A.

23. In the six months following the 2020 meeting with the Compliance Officer which included off-channel communication platforms as an agenda item, Partner A sent and received a significant number of business-related messages on unapproved platforms. In particular, Partner A exchanged messages with at least five other KKR partners concerning KKR business.

24. Among these off-channel communications was a series of messages with two other partners of Respondent ("Partner B" and "Partner C"). In this exchange, Partner B suggested that all three partners should set their mobile devices to delete messages after 30 days—an action that would have violated KKR's policies and procedures concerning the retention of business-related records.

25. At the time of that series of messages, Partner B had recently changed the settings on their mobile device to delete messages after 30 days; Partner C did so in response to the suggestion.[2] Partner A responded to the messages that they intended to change their settings, although Partner A did not, in fact, do so. None of the partners consulted with the legal or compliance personnel of KKR about changing these settings.

Respondent's Failure to Preserve Required Records Potentially Compromised and Delayed Commission Matters

26. During the Relevant Period, KKR received and responded to Commission records requests in Commission investigations. By failing to maintain and preserve required records relating to its investment advisory businesses, KKR may have deprived the Commission of these off-channel communications in investigations.

Respondent's Violations and Failure to Supervise

27. As a result of the conduct described above, KKR willfully[3] violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

28. As a result of the conduct described above, KKR failed reasonably to supervise its personnel, with a view to preventing or detecting certain of its supervised persons' aiding and abetting violations of Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder, within the meaning of Section 203(e)(6) of the Advisers Act.

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[2] The number of messages deleted as a result of the setting changes was mitigated because Partner C had another personal device on which at least some of the relevant off-channel communications were stored and not deleted.

[3] "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.'" *See 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)).

Respondent's Efforts to Comply

29. In determining to accept the Offer, the Commission considered steps undertaken by KKR prior to and after being approached by the Commission staff, as well as cooperation afforded the Commission staff. Prior to this action, certain policies and procedures to which Respondent's personnel were subject to concerning the use of approved communications methods, including on personal devices, were enhanced. In early 2020, the firm implemented enhanced surveillance software and approved internal messaging platforms. In late 2021, the firm began making available to its employees certain options for preserved messaging with third parties.

Undertakings

The Respondent has undertaken to:

30. Internal Audit. Within one hundred eighty (180) days of the entry of this Order, KKR shall require that its Internal Audit function initiate a separate audit(s), to be completed within three hundred and sixty-five (365) days of the entry of this Order, consisting of the following:

a. A comprehensive review of KKR's supervisory, compliance, and other policies and procedures designed to ensure that KKR's electronic communications, including those found on personal electronic devices, including without limitation, cellular phones ("Personal Devices"), are preserved in accordance with the requirements of the federal securities laws. This review should include, but not be limited to, a review of KKR's policies and procedures to ascertain if they provide for any significant technology and/or behavioral restrictions that help prevent the risk of the use of unapproved communications methods on Personal Devices in work conditions (e.g., traveling, site visits).

b. A comprehensive review of training conducted by KKR designed to ensure personnel are complying with the requirements regarding the preservation of electronic communications, including those found on Personal Devices, in accordance with the requirements of the federal securities laws, as well as a review of KKR's requirement that its personnel certify in writing on a periodic basis that they are complying with preservation requirements.

c. An assessment of the surveillance program measures implemented by KKR designed to ensure compliance, on an ongoing basis, with the requirements found in the federal securities laws to preserve electronic communications, including those found on Personal Devices.

d. An assessment of the technological solutions that KKR has begun implementing to meet the record retention requirements of the federal securities laws, including an assessment of the likelihood that KKR personnel will use the

technological solutions going forward and a review of the measures employed by KKR to track personnel usage of new technological solutions.

e. A comprehensive review of the framework adopted by KKR to address instances of non-compliance by KKR personnel with KKR's policies and procedures concerning the use of Personal Devices to communicate about KKR business. This review shall include a survey of how KKR determined which personnel failed to comply with KKR policies and procedures, the corrective action carried out, an evaluation of who violated the policies and procedures and why, what penalties were imposed, and whether penalties were handed out consistently across business lines and seniority levels.

31. Recordkeeping. KKR shall preserve any record of compliance with these undertakings, including any materials supporting the certification made pursuant to Paragraph 32, in an easily accessible place for a period of not less than five (5) years from the end of the fiscal year during which the last entry was made on such record, the first two (2) years in an appropriate office of KKR.

32. Certification. KKR shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings and provide written evidence of compliance in the form of a narrative. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification shall be submitted to Thomas P. Smith, Jr., Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004, or such other person as the Commission staff may request, 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.

In determining whether to accept the Offer, the Commission has considered these 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 cease and desist from committing or causing any violations and any future violations of Section 204 of the Advisers Act and Rule 204-2 thereunder.

B. Respondent is censured.

C. Respondent shall, within fourteen (14) days of the entry of this Order, pay a civil money penalty in the amount of $11,000,000.00 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 Kohlberg Kravis Roberts & Co. L.P. as the 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 Thomas P. Smith, Jr., Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004.

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, 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 thirty (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