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PE Fund Adviser Sanctioned by SEC for Fee Calculation Errors – Ordered to Disgorge Fees and Pay Fine, Totaling Nearly \$1.2 Million

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On October 22, 2020, the SEC entered an order against a [private equity fund adviser](#) (that is also an exempt reporting adviser) for failing to accurately discount management fees as described in a managed fund's limited partnership agreement ("LPA"). The firm was ordered to **disgorge \$1,026,642.02** (\$901,760.91 before interest) of fees assessed between January 1, 2016 and October 1, 2019 ("Relevant Period"), and to **pay a fine of \$175,000** for violations of Section 206(2) and 206(4) of the Advisers Act.

According to the Order, the LPA permitted the adviser to charge the fund, each quarter, a management fee equal to one and one-half percent per annum of the total invested capital contributions. But, the LPA also required that the management fee be reduced as a result of certain triggering events, including write downs of portfolio securities.

Over the Relevant Period, a fund managed by the adviser had five positions (i.e., portfolio securities) that were subject to write downs, but the adviser failed to incorporate the effects of these write downs into management fee calculations performed with respect to 13 of the 15 quarterly management fee payment dates.

The Order indicated that the disciplinary action taken reflected leniency afforded to the adviser for having promptly undertaken remedial actions and cooperated fully with the SEC's staff.

The enforcement action is a reminder to all private fund managers, and especially investment advisers, including exempt reporting advisers, of the importance of regularly confirming that all fee assessments are done in full accordance with the operative agreements governing the assessment of fees (whether LPAs, investment management agreements, or otherwise). Disciplinary actions are not limited to large advisers; the adviser disciplined on October 22 had under \$100 million in fund assets under management. Proper calculation and assessment of fees is a perennial focus area for both the Office of Compliance Inspections and Examinations ("OCIE"), as well as for the Enforcement Division.

If you have questions about the regulation of investment advisers, require assistance in remediating a fee error or are currently subject to an examination or enforcement inquiry, please feel free to contact us,

By the *Investment Management and Broker-Dealer Team at Kilpatrick Townsend & Stockton*