Investment Management Regulatory Update

May 29, 2019

Rules and Regulations

SEC Staff Grants No-Action Relief Allowing Community Capital Management to Serve as Investment Adviser for a Period of Time Without a Majority Vote

On April 15, 2019, the Division of Investment Management of the Securities and Exchange Commission (the "**SEC**") issued a no-action letter (the "**Letter**") allowing Community Capital Management, Inc. ("**CCM**") and Camelot Portfolios, LLC ("**Camelot**", together with CCM, the "**Advisers**") to continue to serve as investment advisers to certain series (the "**Funds**") of the Quaker Investment Trust (the "**Trust**") for a limited period of time pursuant to written interim investment advisory agreements that were not approved by a majority vote of the outstanding voting securities of such series.

According to the incoming letter (the "**Incoming Letter**"), the Advisers requested that the SEC staff (the "**Staff**") not recommend enforcement action for violation of Section 15(a) of the Investment Company Act of 1940 (the "**Investment Company Act**"), which prohibits serving as an investment adviser to a registered fund without a written contract that has been approved by a majority of the fund's outstanding voting securities. The Letter states that Staff would not recommend enforcement action if the Advisers continued to serve as investment advisers to the Funds "under the circumstances described" in the Incoming Letter.

According to the Incoming Letter, the owners of a controlling interest in the prior investment adviser to the Funds decided to exit the investment advisory business, and due to the timing of this exit, "it was not practical for the termination of the [existing advisory agreements] . . . and the appointment of the Advisers to be conditioned on shareholder approval." Instead, the Board of Trustees of the Trust (the "**Board**") relied on Rule 15a-4 under the Investment Company Act, which provides a temporary exemption under certain circumstances from the requirement that a fund's shareholders approve its advisory contract, and appointed CCM and an affiliate of Camelot to advise the Funds pursuant to interim advisory agreements, in order to allow the Funds "to continue to operate normally and without interruption in portfolio management." The Board had also approved the reorganization of the Funds advised by Camelot into a separate series of a different trust.

In accordance with Rule 15a-4, the Board approved CCM and an affiliate of Camelot as interim investment advisers to the Funds pursuant to interim investment advisory agreements which, as required by the rule, were scheduled to terminate no later than 150 calendar days after the effective date of such interim advisory agreements (the "**Expiration Date**"). According to the Incoming Letter, the Board also approved definitive agreements with CCM and the Camelot affiliate, which were required to be approved by a majority of each Fund's outstanding voting securities. The Incoming Letter noted that CCM and the Camelot affiliate "made extraordinary efforts to enable the shareholder meetings to be held so that shareholders could vote on" these definitive agreements, including the extensive use of a well-respected proxy solicitor, but were unable to reach the quorum required for the shareholder meetings to take place and allow shareholders to vote on the proposals prior to the Expiration Date.

In the Incoming Letter, the Funds and the Advisers agreed to several conditions pursuant to the requested relief, including:

- The interim advisory agreements for each Fund would be amended to extend the term of each agreement "until the earliest of (i) the consummation of the [proposed reorganization] with respect to the [Camelot advised fund] or shareholder approval of the CCM advisory agreement with respect to the CCM [a]dvised [f]unds; or (ii) sixty (60) days after the Expiration Date" (the "**Additional Period**");
- During the Additional Period, the Advisers and the Funds would continue their proxy solicitation efforts to seek to reach a quorum and enable shareholders to vote, and the relevant Adviser would bear certain specified costs associated with such additional solicitation; and
- During the Additional Period, the Advisers would waive their respective investment advisory fees that would be payable by the Funds under the terms of the interim advisory agreements.
    - **See a copy of the Letter**
    - **See a copy of the Incoming Letter**

Industry Update

Chairman Jay Clayton Provides Remarks at the "SEC Speaks" Conference

On April 8, 2019, SEC Chairman Jay Clayton provided remarks at the "SEC Speaks" Conference in Washington, D.C.

Overview of the SEC's Mission

Clayton provided an overview of the SEC's mission, "(1) to protect investors, (2) to maintain fair, orderly, and efficient markets, and (3) to facilitate capital formation." Clayton next discussed the SEC's approximately 4,500 employees, which enable the SEC's to carry out its duties. He noted the SEC's ability to invest in technology; the need to divert resources to respond to major or unexpected events, changes in the regulatory landscape or congressional mandates; potential effects of the United Kingdom's exit from the E.U. and other unexpected macro events; as well as the SEC's ability to assess and improve how it handles internal and external risks.

Operations, Liquidity and Capital Resources

Clayton spoke about the SEC's budget and how it has changed over the previous five years. He noted that, while employee compensation continues to be the SEC's largest expenditure, technology expenditures have increased in total dollars and as a percentage of the total budget over the last five years. Clayton credited this change to the SEC's "commitment to maintaining and upgrading [its] information technology systems and enhancing the agency's cybersecurity and risk management." Regarding the current fiscal year, he stated that he expects employee pay and benefits to continue to account for a significant portion of the SEC's budget, emphasizing the impact of the current hiring freeze, though also noting that the resources Congress has provided to the SEC for this fiscal year will enable the agency to hire an additional 100 employees, putting the SEC's "staffing level on par with where [it was] five years ago."

Accomplishments

Next, Clayton highlighted a few of the SEC's accomplishments from fiscal year 2018.

<u>Rulemaking Agenda</u>

He noted that the near-term Regulatory Flexibility Act agenda would be streamlined to increase transparency and accountability to the public, Congress and the Staff. Clayton noted that during fiscal year 2018, the SEC advanced 23 of the 26 rules on its near-term agenda, as well as responded "to major events and changes in the broader regulatory landscape by advancing several other initiatives not in the original agenda."

Clayton provided a few examples of such advancements, including the adoption of amendments to the "smaller reporting company" definition that expanded the number of companies that can qualify for certain scaled disclosure requirements, as well as proposed amendments to financial disclosures to encourage guaranteed debt offerings to be conducted on a registered rather than private basis. He also highlighted that the Division of Investment Management is "leading a long-term project to explore modernization of the design, delivery and content of fund disclosures and other information for the benefit of investors."

Furthermore, Clayton noted that the Division of Trading and Markets led several initiatives to increase transparency about market activities, including July 2018 amendments adopted to enhance transparency requirements governing alternative trading systems, commonly known as "ATSs." He noted that "this initiative is a key part of [the SEC's] efforts to ensure fair and efficient markets, particularly those with significant Main Street investor participation."

Next, Clayton spoke about the joint work of the Divisions of Investment Management and Trading and Markets to "enhance and clarify the standards of conduct and mandated disclosures" for broker-dealers and investment advisers. Clayton emphasized his belief that such standards should reflect the reasonable expectations of retail investors, while simultaneously "preserving investor choice in: (1) the type of professional with whom [investors] want to work; (2) the nature and scope of services [investors] receive; and (3) how [investors] want to pay for [such services]."

<u>Enforcing the Federal Securities Laws</u>

Clayton next spoke about the Division of Enforcement's work to deter misconduct and punish securities law violators in order to safeguard investors and instill confidence in the market. Clayton highlighted the digital assets space in which the Division of Enforcement has brought cases that, according to Clayton, "demonstrate that there is a path to compliance with the federal securities laws going forward, even where issuers have conducted an illegal unregistered offering of digital asset securities." He added that this includes "appropriate disclosures to investors so they can make a more informed decision as to whether to seek reimbursement or continue to hold their tokens."

Additionally, Clayton noted that the SEC returned $794 million to harmed investors during fiscal year 2018, as well as discussing the approximately $125 returned to investors who were placed in share classes of mutual funds, when the same funds were available at to those investors at lower cost.

Examining SEC-Registered Entities

Clayton next noted that in December 2018, Office of Compliance Inspections and Examinations ("**OCIE**") published its 2019 Examination Priorities, which, according to Clayton, reflected a continued focus on the SEC's commitment to protecting retail investors, including seniors and those saving for retirement. Clayton stated that OCIE has focused its attention on areas that present heightened risks, including: (1) compliance and risks in critical market infrastructure, including exchanges and clearing agencies; (2) digital assets, including cryptocurrencies, coins and tokens; and (3) cybersecurity.

Outreach and Education

Clayton further spoke about the SEC's efforts to engage directly with "Main Street" investors and the Office of Investor Education and Advocacy's efforts to provide investors with a better understanding of our capital markets and the opportunities and risks associated with the array of investment choices presented to them. Clayton highlighted the April launch of "a campaign designed to empower investors to take control of their financial future by encouraging them to go to **Investor.gov** to get answers to their saving and investing questions." Moreover, Clayton discussed the first Advocate for Small Business Capital Formation, Martha Miller, who will serve small businesses, including by traveling to areas that traditionally have received less attention from investors.

Economic Analysis and Retrospective Review of SEC Rules

Finally, Clayton thanked the Division of Economic and Risk Analysis, which reviews rulemaking initiatives in their early stages, as well as on a routine basis, in order to assist with the SEC's need to "identify outdated rules that might not be functioning as intended in modern markets."

- **See a transcript of the speech**

Commissioner Peirce Speaks at SEC Speaks: SECret Garden

On April 8, 2019, Commissioner Hester M. Peirce offered remarks at the Practising Law Institute's SEC Speaks. In her speech, Commissioner Peirce discussed the complexities and "hidden gardens" of federal securities law through analogy to the novel, *A Secret Garden* by Frances Hodgson Burnett. The hidden gardens to which Peirce referred are the often non-public guidance issued by the Staff.

Peirce noted that the complexity of federal securities laws lends itself to nuanced interpretations of law and a "compliance minefield for market participants." Navigating that minefield, she noted, requires that Staff issue guidance in order to help provide clarity, certainty and workability to the regulatory framework. For example, she notes that guidance can often help firms complete a particular field in an online form, provide advice on a particular debt instrument or manage an examiner's review of a bespoke provision in an adviser's custodial arrangement. None of these situations, she explained, required full SEC action, which would leave the SEC "with no time to address any of the other work of the agency", and thus such guidance is necessary. Still, Peirce noted, she was concerned that the "necessary guidance – due to a lack of transparency and accountability – may have turned into a secret body of law . . . [which] binds market participants like law does but is immune from judicial – and even [SEC] review."

Peirce compared her concerns surrounding the guidance to the past evolution of Staff no-action letters. She discussed the time when no-action letters were generally not made available to the public, but that following a change in Staff policy, letters are generally now widely accessible. Peirce explained that publishing no-action letters has created several benefits: (i) it enhances consistency in Staff-level guidance and across similarly situated market participants; (ii) it creates a process that sheds light on sometimes ambiguous rules; (iii) it provides tailored relief that preserves the integrity of the regulatory framework; and (iv) it ensures transparency by the Staff.

In contrast, when the Staff issues non-public guidance, Peirce argued, it risks developing a "secret law," which would "bind at least some (though perhaps not all) market participants without any opportunity for review or appeal." Peirce offered some examples where she has noticed this occurring: (i) when the Staff will not accept certain applications for entire categories of products or types of businesses for reasons not found in rules; or (ii) when a particularly complex set of SEC rules is deemed to not matter much in practice because firms operate under a set of letters and directives from the Staff. Peirce noted that such practices, by affecting the scope of rights and obligations of market participants and limiting the range of permissible activities "operates no differently from duly enacted laws or regulation[,]" though without any forum for review.

Peirce then discussed the dangers of allowing such an informal framework to guide the Staff's review. In such circumstances, she added, Staff decisions – such as the prevention of a registration filing or rejection of an application to list a new product – would not be backed by a formal explanation, and not subject to political or legal scrutiny. Peirce noted that a formal process helps ensure the Staff grapples seriously with the issues presented to it. Additionally, she added that firms without access to highly skilled lawyers could be at a fatal disadvantage navigating a highly informal process. Finally, she noted that when a "patchwork of public and non-public guidance" becomes comprehensive, questions about fairness and transparency arise. Peirce concluded by adding that the Staff's regulation of financial markets is premised on transparency and fairness and that absent confidentiality concerns, all "regulatory gardens" should be open to the public.

- **See a transcript of the Speech**

How We Protect Retail Investors: Director of OCIE Speaks at NRS Spring 2019 Compliance Conference

On April 29, 2019, Peter Driscoll, Director of OCIE, addressed the NRS Spring 2019 Compliance Conference in Orlando, Florida. In his speech, Driscoll highlighted the ways in which OCIE protects retail investors, including through OCIE's examinations. He noted specific priorities and core risk areas, including: (i) fees, expenses and related disclosures; (ii) the safeguarding of client assets; (iii) undisclosed conflicts of interests; (iv) firms borrowing from clients; and (v) the protection of seniors. He concluded by discussing the adequate devotion of compliance resources and empowering chief compliance officers ("CCOs") in protecting retail investors.

Driscoll discussed the process involved in crafting the examination priorities, noting that OCIE releases its exam priorities for two reasons: (i) "OCIE believes that it should be thoughtful, deliberate, and transparent about how it is spending its time and resources in order to deliver the highest return that it can to taxpayers and the investing public"; and (ii) "its hope that regulated entities and their compliance professionals will use this information when looking internally at their own businesses to address high-risk areas to avoid potential compliance weaknesses."

Fees, Expenses and Related Disclosures

Driscoll stressed that disclosures investors receive, especially regarding fees and expenses, are critical to making informed investment decisions. Examiners, he noted, closely review firm disclosures and identify whether applicable fees and charges were disclosed and compare those disclosures to how the firm operates in practice. In addition, Driscoll stated that examiners review advisers' frequency of billing and application of the stated fee rate, rebates, breakpoints and discounts to assess whether the adviser is acting in accordance with the advisory agreement and other disclosures. He identified some instances where examiners have identified fee and expense discrepancies, such as when advisers value client assets using a methodology that differs from the advisory agreement.

Safeguarding of Client Assets

Driscoll next emphasized that keeping assets safe from theft and misuse is "key to investor protection and an evergreen area of focus for OCIE." Specifically, he stated that OCIE examines for compliance with Rule 206(4)-2 under the Investment Advisers Act of 1940, as amended (the "**Custody Rule**"), it examines for misappropriation and it examines to verify the existence of client assets.

With regard to the Custody Rule, Driscoll noted that OCIE examines whether the adviser: (i) holds "its clients' funds and securities at a qualified custodian" and in a separate account for reach client under that client's name (or in the adviser's name as agent or trustee for the clients); (ii) notifies "its clients of where their assets are being held" and promptly advises them when an account is opened in a client's name and when any changes are made; (iii) has "a reasonable basis, after due inquiry, that the qualified custodian sends account statements to clients at least quarterly"; and (iv) undergoes an annual surprise examination or uses an approved alternate approach. Driscoll noted that common deficiencies include an adviser not recognizing that it had custody of client assets and was subject to the Custody Rule or advisers not undergoing surprise examinations. Driscoll stated that compliance with the Custody Rule is one of the primary safeguards against misuse of client assets, and noted a 2017 risk alert issued by OCIE which identified typical deficiencies, including Custody Rule-related deficiencies, uncovered during examinations. For a further discussion regarding the 2017 risk alert, please see the March 29, 2017 **Investment Management Regulatory Update**.

With regard to misappropriation, Driscoll noted that the scope of examinations include reviews of a firm's "policies, procedures, and internal controls surrounding their handling or processing of investor funds and assets." Examiners, Driscoll noted, have identified instances of misappropriation and internal control weaknesses that could lead to misappropriation and "swiftly refer these cases to [the Division of] Enforcement."

In relation to asset verification, Driscoll stated that examiners are seeking to verify the existence and integrity of client assets managed or held by the SEC-registered entity to ensure business activities are legitimate and "not part of a fraudulent scheme." He stated that OCIE "does not take what registrants provide at 'face value' and exercises professional skepticism[,]" by performing analyses against a corroborating data set from the custodians. Driscoll added that examinations to verify assets may also help to identify issues of overbilling and inadequate disclosures of conflicts of interest.

Disclosure of Conflicts of Interest

Driscoll next discussed conflicts of interest and stated that all OCIE examinations review an adviser's disclosures in connection with its operations to evaluate whether the adviser has appropriately identified and disclosed conflicts. By way of example, he stated that examiners have observed advisers: (i) "recommending certain investments to their clients without disclosing their own interest in the investment"; (ii) "not providing adequate disclosure about how they would allocate investment opportunities among multiple clients with the same or similar investment strategies, or how they would allocate investment opportunities between themselves and their clients"; (iii) "recommending their clients use affiliated broker-dealers or other service providers without adequately disclosing the affiliation or the receipt of compensation for making the recommendation"; and (iv) having "an incentive to recommend certain share classes over others based on the amount of compensation they will receive when their recommendations are executed." With regard to these inappropriate share class recommendations in particular, Driscoll "urge[d] firms and investors to pay close attention to this area." He noted the extensive work of OCIE and the Division of Enforcement in focusing on this share class issue, adding that as a result, "many investment advisers that made inappropriate share class recommendations remedied their misconduct" by notifying clients, moving them into lower fee share classes and compensating clients for the amount by which they had been disadvantaged. For a further discussion regarding the "Share Class Selection Disclosure Initiative," please see the March 15, 2018 Client Memorandum, **SEC Announces Self-Reporting Initiative for Rule 12b-1 Fee Disclosures** and the March 29, 2019 **Investment Management Regulatory Update**.

Firms Borrowing from Clients

Driscoll next discussed the inherent risks that arise when firms borrow from clients. In particular, he noted that OCIE has seen several firms targeting seniors who are invested in conservative securities to lend assets to the firm without being told of the risks. He added that this is especially problematic when little or no disclosures are provided on the illiquidity of the assets or the incentives to the advisers. Driscoll noted that when examiners see these types of arrangements, “they will look at whether all material risks, expenses and compensation are adequately disclosed to clients and customers.”

Focus on Issues Relevant to Seniors

Driscoll next stated that, as the population of seniors continues to grow in the United States, OCIE remains focused on protecting senior investors. OCIE’s efforts in this area include a review of over 200 investment advisers with a significant senior client base to “gain an understanding of whether [these] advisers…had policies and procedures that addressed the protection of senior investors.” In addition, he added that the review focused on whether firms were aware of certain state and federal laws addressing senior financial abuse. Through these methods and other outreach campaigns, Driscoll stated that OCIE will seek to raise awareness for the protection of senior investors.

Compliance Resources and CCOs

Finally, Driscoll emphasized the important role that compliance programs and CCOs play in ensuring firms protect investors. He underscored the need for firms to allocate adequate resources to its compliance functions. Furthermore, Driscoll addressed the concern among some CCOs that they alone “bear the ultimate responsibility for the success or failures of any compliance program.” Driscoll stated that while OCIE has very high expectations for CCOs, they are only one component to the effectiveness of any compliance program, emphasizing the need for all personnel to actively assist with compliance programs. He noted that in order to inform and empower CCOs, OCIE will continue “to be as transparent as possible about the deficiencies it commonly sees during examinations[,]” including through the issuance of risk alerts. Driscoll concluded by noting that OCIE is also kicking off a pilot initiative to hold regional roundtables with CCOs in select cities to foster a healthy dialog with the compliance community and “search for ways to strengthen the role of the COO, improve the culture of compliance, and deliver on the shared goal of investor protection.”

- **See a transcript of the Speech**

Litigation

SEC Settles with Investment Adviser for Material Omissions in Disclosures to Private Banking Clients

On April 25, 2019, the SEC issued an order (the “**DB Order**”) instituting and settling cease-and-desist proceedings against Deutsche Bank Trust Company Americas (“**DBTCA**”), arising out of alleged material omissions in DBTCA’s disclosures to its private banking investment management clients.

Between 2009 and mid-2018, DBTCA is alleged to have provided discretionary and non-discretionary investment management services to its high net-worth private banking clients. Some of these services included portfolio allocation and asset selection for each client’s account. In exchange, DBTCA received an account-level advisory fee. Some client portfolios also included allocations to a selection of hedge funds, but DBTCA did not charge a fee on these hedge fund positions.

According to the DB Order, during this time period DBTCA disclosed to its clients in various marketing materials, requests for proposal and other related documents provided to clients, that allocations to certain “sub-asset classes” in different client portfolios were implemented through “best-in-class” mutual funds, ETFs and other alternative products, such as hedge funds, all of which were selected from a broad database of asset managers. DBTCA’s disclosures also stated that DBTCA relied on an independent, in-house research group that would perform “quantitative and qualitative due diligence” to evaluate and select its asset managers from an “extremely large universe.” The SEC alleged, however, that DBTCA materially mislead its clients by failing to disclose that the research group would only evaluate and recommended hedge funds that agreed to pay a share of their management fees to DBTCA. DBTCA disclosed to its clients that pooled investment vehicles charged management fees separate from advisory fees and that DBTCA "may" receive a portion of that fee, but allegedly did not disclose that it would only recommend hedge funds that agreed to share a portion of the fees with DBTCA.

Based on the conduct described above, the SEC alleged that DBTCA violated Section 17(a)(2) of the Securities Exchange Act of 1934. DBTCA agreed to pay a civil money penalty of $500,000 and to amend its disclosures to reflect that it will only evaluate and recommend hedge funds that agree to share their fees. DBTCA also consented to the entry of the DB Order and agreed to cease and desist from future violations.

- **See a copy of the DB Order**

D.C. Circuit: "Willful" Violations Require Evidence of Intentional Conduct

On April 30, 2019, the United States Court of Appeals for the D.C. Circuit issued a decision of first impression in that circuit, holding that a "willful" violation of Section 207 of the Investment Advisers Act of 1940, as amended (the "**Advisers Act**") requires proof of intentional conduct.

In September 2014, the SEC's Division of Enforcement initiated an administrative proceeding against The Robare Group, Ltd. ("**TRG**"), an independent investment adviser run by Mark Robare and Jack Jones, its principals. The SEC alleged that TRG failed to disclose certain "revenue sharing agreements," whereby a third party agreed to share with TRG revenues that they received when TRG clients made investments in funds offered on the third party's platform.

The SEC alleged that TRG and its principals violated Sections 206(2) and 207 of the Advisers Act by failing to adequately disclose the arrangement to its clients and in its Form ADV filings until at least April 2014. Section 206(2) of the Advisers Act makes it unlawful for any adviser "to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." Section 207 of the Advisers Act make it unlawful for "any person willfully to make any untrue statement of a material fact in any registration application or report filed with the [SEC] under section 80b–3 or 80b–4 of this title, or willfully to omit to state in any such application or report any material fact which is required to be stated therein." Under long-standing precedent, a failure to disclose a conflict of interest, even when due to simple negligence, may suffice to establish a violation of Section 206(2). By contrast, liability under Section 207 requires that defendant "willfully" make an untrue statement or omission of material fact.

On June 4, 2015, following an evidentiary hearing, an administrative law judge dismissed the charges, concluding that Mark Robare and Jack Jones did not act with scienter or any intent to defraud and that the SEC failed to show TRG and its principals acted negligently. Upon *de novo* review, the SEC determined that TRG and its principals "failed adequately to disclose material conflicts of interest" to their clients, and that "in so doing they acted negligently (but without scienter) and thus violated Section 206(2)." The SEC also determined that TRG and its principals violated Section 207 of the Advisers Act by failing to disclose these conflicts of interest to the SEC in TRG's Forms ADV.

On appeal, the D.C. Circuit upheld the SEC's determination that TRG and its principals failed to disclose known conflicts of interest created by the revenue sharing arrangement, and did so negligently, which was sufficient for a finding of liability under Section 206(2) of the Advisers Act.

The D.C. Circuit reversed the SEC's determination that TRG's negligent behavior met the standard of a "willful" misstatement or omission required for liability under Section 207. While the interpretation of "willfully" in Section 207 of the Advisers Act is an issue of first impression in the D.C. Circuit, the panel looked to precedent establishing that a "willful" violation of a law "necessarily means intentionally committing the act which constitutes the violation." Accordingly, to violate Section 207 of the Advisers Act, a defendant must intentionally misstate or omit a material fact, meaning that the defendant must subjectively intend to misstate or omit material information. As a result, proof of a negligent misstatement or omission of material fact will not suffice to demonstrate that the misstatement or omission was made "willfully," as negligence "means acting without having purpose or certainty required for intent." Because the SEC found that TRG's omissions were negligent, the SEC could not rely on these negligent omissions to establish a violation of Section 207 of the Advisers Act. The D.C. Circuit thus vacated the SEC's order with respect to the violations of Section 207, and remanded to the SEC to determine appropriate sanctions for the violation of Section 206(2).

- **See a copy of the Robare Decision**

SEC Settles with Corinthian Capital Group, LLC, its CEO and CFO for Alleged Misuse of Private Equity Fund's Assets to Benefit Corinthian and Its Principals

On May 6, 2019, the SEC issued an order (the "**Corinthian Order**") against Corinthian Capital Group, LLC (**"Corinthian"**), a New York-based investment adviser, for allegedly misusing the assets of a private equity fund it advised, Corinthian Equity Fund II, LP ("**CEF 2**"). The Corinthian Order also resolved charges against Corinthian's CEO, Peter B. Van Raalte ("**Van Raalte**"), and CFO, David G. Tahan ("**Tahan**"), based on the same alleged conduct. According to the Corinthian Order, Corinthian misused CEF 2's assets to benefit Corinthian's principals, including Van Raalte, failed to issue timely financial statements for CEF 2, and failed to design and implement written policies and procedures reasonably designed to prevent such misconduct.

According to the Corinthian Order, during the relevant time period, CEF 2 was governed by a limited partnership agreement (the "**CEF 2 LPA"**). Under the CEF 2 LPA, the limited partners in the fund were responsible for paying management fees and organizational expenses to Corinthian, though the LPA also specifically excluded placement fees from the expenses that CEF 2 would pay. The CEF 2 LPA contained clauses under which certain limited partners, namely those affiliated with Corinthian, were exempt from paying management fees. The CEF 2 LPA also contained a "deemed contribution" provision, whereby limited partners affiliated with Corinthian could satisfy capital calls from the fund by contributing only 20% of the amount called. The remaining 80% would then be funded by the remaining limited partners who either were not eligible for, or did not exercise, the deemed contribution provision. In exchange for covering the capital costs, the limited partners not participating in the deemed contribution provision would receive an offset from the amount of management fees owed.

According to the SEC, Corinthian failed to abide by these provisions when managing CEF 2. First, Corinthian allegedly applied the deemed contribution provision retroactively to relieve eligible limited partners from about $1.9 million in capital calls, but did not retroactively apply the required corresponding management fee offset. Had Corinthian applied the fee offset, CEF 2's limited partners' obligation to pay management fees would have been reduced by about $1.4 million. Second, Corinthian is alleged to have improperly charged CEF 2 for organizational expenses by misclassifying some expenses, charging the fund for expenses not yet incurred and failing to exclude placement fees as required by the CEF 2 LPA. This resulted in the limited partners of CEF 2 overpaying approximately $588,394 in organizational expenses. Third, the Corinthian Order alleges that Corinthian improperly transferred funds from CEF 2 to Corinthian for payroll expenses, operating expenses and to pay off an outstanding line of credit that Corinthian maintained. Finally, the Corinthian Order alleges that Corinthian violated the Custody Rule by failing to issue financial statements for CEF 2 within 120 days from the end of the fiscal year for the years ended December 31, 2013, 2014 and 2015.

Based on the conduct described above, the SEC alleged Corinthian willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-2, 206(4)-7 and 206(4)-8 thereunder. The Corinthian Order further found that Corinthian did not have reasonable policies and procedures in place to comply with the terms of the CEF 2 LPA, that Tahan caused Corinthian's violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, and that Van Raalte failed to reasonably supervise Tahan within the meaning of Section 203(e)(6) of the Advisers Act.

Corinthian agreed to cease and desist from any future violations of the provisions under which it was charged, to pay a civil money penalty of $100,000 and to be censured. Tahan agreed to cease and desist from any future violations of the provisions under which he was charged and to pay a civil money penalty of $15,000. Van Raalte agreed to pay a civil money penalty of $25,000. Corinthian had already repaid the fee offset and reimbursed the expenses to CEF 2 in full with interest by year-end 2015.

- **See a copy of the Corinthian Order**

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