Proskauer

SEC v. TZP Management Associates, LLC: Insights Into Private Fund Enforcement Priorities Under Chair Atkins

The Capital Commitment on **August 22, 2025**

On August 15, 2025, the Securities and Exchange Commission ("SEC") issued an order settling proceedings against TZP Management Associates, LLC ("TZP") for allegedly miscalculating management fee offsets between 2018 and 2023. The SEC's action, based solely on a non-scienter claim, underscores the SEC's ongoing focus on management fee calculation practices, despite talk of deregulation and a shift toward cases involving fraud and manipulation. Bread-and-butter issues such as fee miscalculations remain an enforcement priority.[1]

Background

TZP is a registered investment adviser to private equity funds with approximately $2.4 billion in regulatory assets under management. Each fund's limited partnership agreement ("LPA") included a management fee offset provision, which provided for 100% of any portfolio company "Transaction Fees," which was defined to include all transaction fees, advisory fees and monitoring fees (among other fees), to be credited back to the relevant fund as a management fee offset.

Between 2018 and 2023, according to the Commission, TZP engaged in two fee offset practices that were inconsistent with the LPAs and inadequately disclosed:

1. **Interest on Deferred Transaction Fees.** Many of TZP's management services agreements obligated the portfolio company to pay Transaction Fees. However, the fees could be deferred (either in TZP's sole discretion or when loan covenants prohibited payment), and TZP could charge interest on the deferred fees at an annual rate of 8%. When the deferred fees and interest were ultimately paid, TZP offset only the principal amount against fund-level management fees, retaining the interest for itself, despite the LPAs not explicitly excluding interest from the fee offset provision. The absence of clear authority for the manager to retain the

interest was viewed as a potential conflict of interest and a disclosure failure.

2. **Improper Allocation of Transaction Fees Among Affiliated Funds.** The LPAs specified that when more than one TZP fund invested in the same portfolio company, each fund's management fee offset should be calculated based on all Transaction Fees received by TZP from that company, with a single reduction to reflect each fund's fully diluted equity ownership. However, TZP deviated from this approach. First, it allocated only a portion of the total Transaction Fees to each fund based on the amount of capital each fund had invested in the portfolio company. Then, TZP applied a *second* reduction to each fund's share based on its fully diluted ownership percentage. This resulted in a double reduction—first by invested capital, then by ownership percentage—which was inconsistent with the LPAs and led to lower fee offsets for the funds and higher management fees retained by TZP. This practice was not disclosed to the funds or their limited partners and created an undisclosed conflict of interest.

These practices yielded more than $500,000 in excess management fees: approximately $423,000 from the retained interest, and about $79,000 from the double-counted allocation formula. As a result, the SEC charged TZP with violating Section 206(2) of the Advisers Act and ordered disgorgement of the excess fees and a $175,000 penalty.

Key Takeaways for Private Fund Advisers

1. **Following Established Precedent**. The TZP order is instructive for what it *doesn't* represent: a novel theory of liability or an expansion of regulatory reach. Instead, it continues a well-established theme tracing back to the 2014 "*Spreading Sunshine*" speech, namely, that private-equity advisers must honor fee and expense provisions to the letter and fully disclose conflicts arising from portfolio-company charges. It appears to signal that bread-and-butter fiduciary cases and conduct that clearly violates fund contracts and has quantifiable harm may continue under Chair Atkins. Advisers expecting wholesale regulatory rollback should recalibrate; while rulemaking agendas may shift, fiduciary enforcement remains alive and well.
2. **Good Intentions are Not Enough.** The SEC does not allege that TZP's motive for deferring the receipt of transaction fees was improper. In fact, the order notes that TZP was motivated by a desire to increase cashflow at the applicable portfolio company or to comply with loan covenants—outcomes that fund investors presumably would have supported. But even though TZP appeared to lack any intent to harm investors, the SEC still alleged TZP's discretion to choose whether to defer a payment and instead collect interest was a conflict of interest, and charged TZP with a violation of Section 206(2), which requires only negligence,

not scienter. Even though certain limited partners had copies of the management services agreements, this disclosure was not viewed as sufficient to override the clear language of the LPA.

3. **Allocation Methodology Must Track the LPA Exactly.** When calculating economic outcomes under a fund LPA, even small deviations may result in an SEC action. The "double counting" alleged by the SEC resulted in only approximately $80,000 of investor harm over five years, a relatively small amount for an adviser managing several billion dollars. While it remains unclear whether the SEC would have brought an action if this were the sole violation, it underscores the need to meticulously verify that worksheet formulas and calculations align with the operative legal documents. Many fund agreements have complicated mechanics to determine the offset when multiple funds are invested, particularly where there are third-party investors or co-investors who are not eligible for an offset, and determining the appropriate amount available for offset can be challenging and ripe for challenge by the SEC.
4. **Lack of 206(4)-7 Charge is Notable.** Though the order signals, in some ways, a continuation of the same priorities that the SEC has long held, it is also notable in what it lacks: the SEC did not charge TZP with a violation of Rule 206(4)-7, which requires advisers to adopt and implement written policies and procedures reasonably designed to prevent violation by the adviser and its supervised persons of the Advisers Act. In previous eras, nearly any settlement with an investment adviser included a charge that the adviser had violated Rule 206(4)-7. The theory, in essence, was that the existence of a violation was evidence that the adviser's policies and procedures were insufficient. Though it is too early to determine whether this is a trend, the fact that the SEC did not bring a charge may indicate that it will no longer do so as a matter of course.

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[1] The enforcement process was likely well underway before the change in administrations. It is possible that recent priority shifts under Chair Atkins (as well as the SEC's loss of more than 10% of its staff) could impact the SEC's future willingness and ability to bring similar cases.

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