

SEC Charges TZP Management Associates With Breaching Fiduciary Duty by Overcharging Management Fees to Private Funds

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Last week, TZP Management Associates, LLC (TZP), a New York-based private equity investment adviser, agreed to pay more than \$680,000 in monetary relief to settle [charges](#) brought by the Securities and Exchange Commission (SEC) for breaches of fiduciary duty related to the calculation of management fees for TZP's private fund clients. This enforcement action highlights the importance of adhering to fund partnership agreements and providing adequate disclosure of fee calculation and management practices to mitigate potential conflicts of interest.

Below is a summary of the SEC's findings and practical takeaways for fund managers, investors, and compliance professionals.

TZP advises several private funds that invest in lower-middle market companies across technology, business services, and consumer sectors. Each fund is governed by a limited partnership agreement (LPA), which sets forth how management fees and transaction fees are to be calculated and offset. According to the SEC, between October 2018 and November 2023, TZP engaged in two fee calculation practices that the SEC found to be inconsistent with the funds' LPAs and inadequately disclosed to investors:

1. Failure to Offset Interest on Deferred Transaction Fees

- TZP entered into management services agreements with portfolio companies, which allowed for the deferral of transaction fee payments — either at TZP's discretion or due to loan covenants at the portfolio company level.
- During the deferral period, TZP charged the portfolio companies 8% annual interest on the deferred transaction fees.
- When TZP eventually collected both the deferred transaction fees and the interest, it credited only the transaction fees (not the interest) back to the funds as offsets against management fees.
- TZP did not disclose to investors that it was collecting interest on the deferred fees or that this interest amount was excluded from the fee offsets.
- This practice resulted in the funds paying higher management fees than the SEC said that they should have paid. The SEC characterized this conduct as effectively providing TZP with interest-free loans from the funds.

2. Improper Duplication of Transaction Fee Reductions

- For at least one portfolio company in which multiple TZP funds invested, TZP allocated transaction fees among the funds based on their pro rata share of invested capital, then reduced each fund's allocation a second time based on fully diluted equity ownership.
- This double reduction was inconsistent with the LPAs and resulted in lower fee offsets and higher management fees for TZP.

- TZP did not disclose this calculation method to investors.

The SEC said the failure to offset interest on deferred transaction fees and the duplication of transaction fee reductions created a conflict of interest between TZP and investors that was not disclosed. The SEC said TZP breached its fiduciary duty to the funds by engaging in this conduct.

Impact and Settlement

As a result of these practices, TZP overcharged its funds by more than \$500,000 in excess management fees. The SEC found that these actions violated Section 206(2) of the Investment Advisers Act of 1940, which prohibits fraudulent, deceptive, or manipulative practices by investment advisers.

To settle the charges, without admitting or denying the SEC's allegations, TZP agreed to a cease-and-desist order and censure, and paid \$502,041 in disgorgement, \$6,836 in prejudgment interest, and a \$175,000 civil penalty.

Key Takeaways and Lessons Learned

The TZP enforcement action serves as a reminder that fee transparency, conflict management, and strict adherence to fund documents are essential for private fund advisers. Firms should proactively review their practices, update disclosures, and ensure robust compliance programs to avoid similar pitfalls. Specifically, investment advisers should be mindful of the following:

- 1. Strict Adherence to Fund Governing Documents:** Fund managers must ensure that all fee calculations and offsets strictly follow the terms set forth in LPAs and other governing documents. Any deviation, even if inadvertent, can result in regulatory scrutiny and enforcement action, or private breach of contract claims.
- 2. Comprehensive Disclosure of Fee Practices:** All sources of compensation, including interest on deferred fees or other ancillary payments, must be fully disclosed to investors. Failure to do so can create undisclosed conflicts of interest and violate fiduciary duties.
- 3. Conflict of Interest Management:** Practices that benefit the adviser at the expense of the fund — such as discretionary deferral of fees or exclusion of interest from offsets — must be clearly disclosed and, where possible, mitigated. Transparency is critical to maintaining investor trust and regulatory compliance.
- 4. Robust Internal Controls and Compliance Oversight:** Investment advisers should regularly review their fee calculation methodologies and disclosures to ensure consistency with fund documents and regulatory requirements. Periodic audits and compliance training can help identify and address potential issues before they escalate.
- 5. Investor Communication and Remediation:** In the event of a fee miscalculation or other error, prompt communication with investors and remediation — including repayment and improved disclosures — can help mitigate regulatory and reputational risk.

If you have questions about fee calculations, fund governance, or SEC compliance, please contact Troutman Pepper Locke's Securities team for guidance.

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