

## SEC Enforcement Case Summary PE Fund Portfolio Company Fees and Management Fee Offset Failures

On August 15, 2025, the SEC charged private equity fund manager, TZP Management Associates, LLC (**TZP**) (a registered investment adviser with approximately \$2.5B in RAUM), for breaches of fiduciary duty related to management fee calculations and receipt of portfolio company fees. Fund limited partnership agreements (**LPAs**) authorized the adviser to receive “Transaction Fees” from portfolio companies but required the adviser to credit back a portion of such transaction fees to reduce or offset fund management fees. Transaction Fees included transaction fees, advisory fees, monitoring fees, or other similar fees received by TZP and its affiliates or any officer, director, employee, manager, member, partner, or shareholder of such entities. The SEC noted two problematic practices over a 5-year period related to such fees, resulting in more than \$500,000 in inflated fees.

According to the SEC order, management services agreements (aka monitoring fee agreements) between TZP and portfolio companies permitted Transaction Fees to be deferred either at TZP’s sole discretion or because applicable loan covenants prohibited payment. The management services agreements typically permitted TZP to charge interest on Transaction Fees during the deferral period at an annual rate of 8%. The SEC noted that on multiple occasions during the relevant period, to increase the cash flow at portfolio companies, payment of Transaction Fees was deferred, either at TZP’s discretion or because the applicable loan covenants required it. When, in certain cases, TZP later received the deferred Transaction Fees and interest payments, it included the Transaction Fees but not the interest payments in the relevant funds’ management fee offsets. The SEC order noted that because the funds were required to pay management fees to TZP during these deferral periods with no fee offset increase for the interest payments TZP later collected, this effectively resulted in interest-free loans from the funds to TZP. The SEC alleged that TZP failed to disclose to LPs either that it collected this interest and that it did not include this interest in the corresponding fee offsets. Fund LPAs contained provisions that described what types of compensation or revenue TZP may exclude from the fee offset, but interest on deferred transaction fees was not listed among the exclusions. The SEC faulted TZP for not seeking to mitigate this conflict of interest by including the interest payments it received in the relevant funds’ fee offsets.

When more than one fund invested in the same portfolio company, fund LPAs governed how Transaction Fees were to be allocated among the funds for purposes of calculating the funds’ respective fee offsets. The LPAs provided that each fund’s fee offset would be calculated based on “all” Transaction Fees “received by the [TZP], the General Partner or their respective Affiliates” from a portfolio company. The LPAs further provided that each fund’s allocation of these Transaction Fees would be reduced to account for other Funds’ and co-investors’ fully diluted equity ownership of the portfolio company. According to the SEC order, for at least one portfolio company in which multiple funds invested, TZP initially allocated to each fund a portion of the Transaction Fees received based on each fund’s pro rata share of the total amount of capital the funds had invested, instead of allocating “all” Transaction Fees received by TZP. TZP then reduced each fund’s allocation a second time based on each fund’s fully diluted equity ownership of the portfolio company. This calculation was inconsistent with the letter of the language in the LPAs, amounted to improper double counting, and had the effect of lowering each Fund’s management fee offset thereby increasing management fees collected by TZP.

TZP consented to disgorgement, prejudgment interest, and a civil penalty totaling more than \$680,000, with a fair fund distribution to impacted fund investors. The case serves as a reminder to private fund

managers to closely review their practices and documentation related to portfolio company fees and corresponding management fee offsets to ensure that calculations are consistent with fund governing documents and disclosures. Moreover, if there are deferred portfolio company fee arrangements that will impact such calculations or the amount or timing of management fee offsets, private fund managers should ensure that such practices and related conflicts of interest are fully and fairly discussed to limited partners.

**See SEC Summary - <https://www.sec.gov/enforcement-litigation/administrative-proceedings/ia-6908-s>**