

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4959 / July 10, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18584**

**In the Matter of**  
**ENCAP INVESTMENTS L.P.,**  
**Respondent.**

**ORDER INSTITUTING**  
**ADMINISTRATIVE AND CEASE-AND-**  
**DESIST PROCEEDINGS PURSUANT TO**  
**SECTIONS 203(e) AND 203(k) OF THE**  
**INVESTMENT ADVISERS ACT OF 1940,**  
**MAKING FINDINGS, AND IMPOSING**  
**REMEDIAL SANCTIONS AND A CEASE-**  
**AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against EnCap Investments L.P. (“EnCap” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

**III.**

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>1</sup> that:

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<sup>1</sup> The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

## Summary

These proceedings involve violations of the Commission’s “pay-to-play” rule for investment advisers by Respondent EnCap, an investment adviser. Rule 206(4)-5, promulgated under Section 206(4) of the Advisers Act, is a prophylactic rule designed to address pay-to-play abuses involving campaign contributions made by certain investment advisers or their covered associates to government officials who are in a position to influence the selection of investment advisers to manage government client assets, including public pension fund assets. Among other things, Rule 206(4)-5 prohibits certain investment advisers from providing investment advisory services for compensation to a government client (or to an investment vehicle in which a government entity invests) for two years after the adviser or certain of its executives or employees (known as covered associates) makes a campaign contribution to certain elected officials or candidates who can influence the selection of certain investment advisers.

Between September 2013 and May 2014, covered associates<sup>2</sup> of Respondent made campaign contributions to candidates for elected office in Texas, which offices had influence over selecting investment advisers for public entities in Texas. In September 2015, a covered associate of Respondent made a contribution to the federal election campaign of an elected state official in Wisconsin and that state office had influence over selecting investment advisers for a public pension plan in Wisconsin. In October 2012, a covered associate of Respondent made a contribution to the federal election campaign of an elected state official in Indiana and that state office had influence over selecting investment advisers for a public pension plan in Indiana. All of the public pension plans had been invested in funds advised by Respondent prior to the contributions. Within two years after these contributions, Respondent provided advisory services for compensation to the public pension plans. By providing those advisory services for compensation within two years after the contributions, Respondent violated Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder.

## Respondent

1. EnCap Investments L.P. (“EnCap”) is a limited partnership headquartered in Houston, Texas. EnCap reports to the Commission as an “exempt reporting adviser” under Section 204(a) of the Advisers Act and Rule 204-4 thereunder. EnCap reported venture capital fund assets of approximately \$30 billion as of March 29, 2018.

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<sup>2</sup> Covered associates are defined to include: (i) any general partner, managing member or executive officer, or other individual with a similar status or function; (ii) any employee who solicits a government entity for the investment adviser and any person who supervises, directly or indirectly, such employee; and (iii) any political action committee controlled by the investment adviser or by any of its covered associates. See Rule 206(4)-5(f)(2).

## Background

2. Between August 2004 and April 2015, the Teachers Retirement System of Texas (“TRST”), the Texas Tech University System (“TTUS”), the University of Texas System (“UTS”), the Texas County and District Retirement System (“TCDRS”), University of Houston System (“UHS”), and Texas School Land Board (“TSLB”), (collectively, the “Texas Systems”) committed to invest, and subsequently invested, a total of \$2.27 billion in investment funds advised by EnCap. Between February 2011 and April 2015, the State of Wisconsin Investment Board (“SWIB”) committed to invest, and subsequently invested, \$212.5 million in six funds advised by EnCap. Between May 2009 and April 2015, the Indiana Public Retirement System (“IPRS”), committed to invest, and subsequently invested, \$363 million in twelve funds advised by EnCap. During all relevant times, TRST, TTUS, UTS, TCDRS, UHS, TSLB, IPRS, and SWIB remained invested in their respective funds (the “Funds”). The Funds were closed-end funds and investors were generally prohibited from withdrawing their money for the life of the funds.

3. On September 4, 2013, a covered associate of Respondent made a \$25,000 campaign contribution to a candidate for Governor of Texas.<sup>3</sup> On three occasions between September 2013 and May 2014, a covered associate of Respondent made a total of \$60,000 in campaign contributions to a candidate for Texas Attorney General. On October 9, 2012, a covered associate of Respondent made a \$2,500 campaign contribution to the State Treasurer of Indiana. On September 10, 2015, a covered associate of Respondent made a \$2,700 campaign contribution to the Governor of Wisconsin.<sup>4</sup> TRST, TTUS, UTS, TCDRS, UHS, TSLB, IPRS, and SWIB had all been invested in funds advised by Respondent prior to the contributions.

4. The office of Governor of Texas has the authority to appoint or nominate at least one member of the boards of each of the Texas Systems, subject to approval by the Texas Senate. The Attorney General of Texas has the authority to nominate one member of the TSLB board, subject to approval by the Texas Senate. The boards of the Texas Systems are directly or indirectly responsible for, or can influence the outcome of, the hiring of investment advisers for the Texas Systems. The office of Treasurer of Indiana serves as a member of the IPRS board of trustees and can influence the hiring of investment advisers for IPRS. The office of Governor of Wisconsin has the authority to appoint several members of the board of trustees of SWIB, which has influence over the hiring of investment advisers for SWIB.

5. During the two years after the contributions, Respondent continued to provide investment advisory services for compensation to the Funds.

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<sup>3</sup> Rule 206(4)-5 has a *de minimis* exception, which permits covered associates to make aggregate contributions without triggering the two-year time out of up to \$350, per election, to an elected official or candidate for whom the covered associate is entitled to vote, and up to \$150, per election, to an elected official or candidate for whom the covered associate is not entitled to vote. See Rule 206(4)-5(b)(1).

<sup>4</sup> Rule 206(4)-5 applies to contributions to a covered candidate even if the candidate does not win the election. See Rule 206(4)-5(f)(6).

6. Advisers Act Rule 206(4)-5(a)(1) prohibits any investment adviser registered with the Commission, investment adviser required to be registered with the Commission, foreign private adviser, or exempt reporting adviser from providing investment advisory services for compensation to a government entity<sup>5</sup> within two years after a contribution to an official<sup>6</sup> of a government entity made by the investment adviser or any covered associate of the investment adviser. Advisers Act Rule 206(4)-5 also applies to investment advisers, including exempt reporting advisers, to a covered investment pool in which a government entity invests or is solicited to invest as though the adviser were providing or seeking to provide investment advisory services directly to the government entity.<sup>7</sup> Advisers Act Rule 206(4)-5 does not require a showing of *quid pro quo* or actual intent to influence an elected official or candidate.

7. As public pension plans or funds, TRST, TTUS, UTS, TCDRS, UHS, TSLB, IPRS, and SWIB were government entities as defined in Advisers Act Rule 206(4)-5(f)(5). The contributors were covered associates of Respondent as defined in Advisers Act Rule 206(4)-5(f)(2). The individuals who received the contributions were officials of government entities as defined in Advisers Act Rule 206(4)-5(f)(6) because the offices they were associated with or sought to become associated with had authority either to influence the hiring of investment advisers by the government entity or to appoint people who could influence the hiring of investment advisers by the government entity. The Funds were covered investment pools as defined in Advisers Act Rule 206(4)-5(f)(3) because they would be an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exclusion from the definition of investment company provided by Section 3(c)(7) of the Investment Company Act.

8. Under Advisers Act Rule 206(4)-5, the contributions triggered a two-year “time-out” on Respondent providing advisory services for compensation to TRST, TTUS, UTS, TCDRS, UHS, TSLB, IPRS, and SWIB. During the two years after the contributions, Respondent continued to provide advisory services for compensation to the Funds and received advisory fees attributable to the investments of TRST, TTUS, UTS, TCDRS, UHS, TSLB, IPRS, and SWIB in their respective Funds.

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<sup>5</sup> See Rule 206(4)-5(f)(5).

<sup>6</sup> “Official” includes any person who, at the time of the relevant contribution, was an incumbent, candidate or successful candidate for elective office of a government entity if the office is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity or has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity. See Rule 206(4)-5(f)(6).

<sup>7</sup> See Rule 206(4)-5(c). A “covered investment pool” is defined as (i) an investment company registered under the Investment Company Act of 1940 (“Investment Company Act”) that is an investment option of a plan or program of a government entity; or (ii) any company that would be an investment company under Section 3(a) of the Investment Company Act, but for the exclusion provided from that definition by either Section 3(c)(1), Section 3(c)(7) or Section 3(c)(11) of that Act. See Rule 206(4)-5(f)(3). Rule 206(4)-5 applies to investment advisers even if the government entity was already invested in the covered investment pool at the time of the contribution.

9. As a result of the conduct described above, Respondent EnCap willfully<sup>8</sup> violated Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder, which makes it unlawful for any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under Section 203(b)(3) of the Advisers Act, or that is an exempt reporting adviser, to provide investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by the investment adviser or any covered associate of the investment adviser.

#### **EnCap's Remedial Efforts**

10. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent EnCap's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent EnCap cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder.

B. Respondent EnCap is censured.

C. Respondent EnCap shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$500,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

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<sup>8</sup> A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)).

- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying EnCap Investments L.P. as the Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to LeeAnn Ghazil Gaunt, Chief, Public Finance Abuse Unit, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 24th Floor, Boston, MA 02110.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields  
Secretary