

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5079/ December 17, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18935**

**In the Matter of**

**NB ALTERNATIVES  
ADVISERS LLC,**

**Respondent.**

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

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against NB Alternatives Advisers LLC (“NBAA” 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 Cease-and-Desist Proceedings Pursuant to Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-And-Desist Order (“Order”), as set forth below.

**III.**

On the basis of this Order and Respondent’s Offer, the Commission finds that:

**SUMMARY**

1. This matter concerns the manner in which NBAA allocated compensation-related expenses to certain private equity funds NBAA advised.

2. From 2011 through 2016, NBAA and its affiliates (“Neuberger”) sponsored and managed three private equity funds, known as the “Dyal Funds.” The investment objective of each Dyal Fund was to acquire minority stakes in alternative investment management companies, sometimes referred to as “Partner Managers.”

3. Neuberger created a group of employees, referred to as the “Business Services Platform” or “BSP,” to provide client development, talent management, operational advisory and other services, support and advice to Partner Managers. Under the Dyal Funds’ organizational documents, the funds were responsible for paying the expenses relating to the utilization of the BSP up to a cap per fund of 50 basis points of committed capital. Neuberger was responsible for all “compensation costs of [their] investment professionals” other than those related to the BSP.

4. Despite the fact that some BSP employees spent a percentage of their time on tasks not related to the BSP, NBAA, acting negligently, did not adjust the amount of compensation-related expense for those employees that was charged to the Dyal Funds from 2012 through 2016. By doing so, NBAA breached its fiduciary duty to the funds.

5. In addition, NBAA failed to adopt and implement written compliance policies and procedures reasonably designed to prevent the misallocation of expenses.

6. By virtue of this conduct, NBAA negligently violated sections 206(2) and 206(4) of the Advisers Act, and Rules 206(4)-7 and 206(4)-8 thereunder.

### **RESPONDENT**

7. **NB Alternatives Advisers LLC (“NBAA”)** is a Delaware limited liability company that was formed, and registered with the Commission as an investment adviser, in 2009. NBAA advises certain private equity funds sponsored by Neuberger, is headquartered in Dallas, TX and manages assets of approximately \$49 billion.

### **RELEVANT ENTITIES**

8. Dyal Capital Partners (A) LP, Dyal Capital Partners (B) LP, Dyal Capital Partners II (A) LP, Dyal Capital Partners II (B) LP, Dyal Capital Partners III (A) LP, Dyal Capital Partners III (B) LP, and their respective feeder funds (collectively, the “**Dyal Funds**”) are a collection of pooled investment vehicles sponsored by NBAA for the purpose of acquiring minority stakes in alternative investment management companies.

### **FACTS**

#### **A. Background**

9. The primary investment objective of each of the Dyal Funds is to acquire minority stakes in alternative investment management companies, such as the advisers to hedge funds and private equity funds. In exchange for its investment of capital in a given investment management company, or Partner Manager, the fund is entitled to a portion of any management fees and incentive compensation earned by that Partner Manager.

10. Each of the Dyal Funds is organized as a limited partnership and has its own advisory committee composed of certain limited partners in the applicable Dyal Fund. An affiliate of NBAA serves as the general partner of each of the Dyal Funds and has authority to make all decisions for, and act on behalf of, the Dyal Funds. NBAA or an affiliate also serves as the investment adviser to each of the Dyal Funds.

11. The terms of each of the Dyal Funds' operations, including provisions concerning expenses, are set forth in each fund's governing documents, including a limited partnership agreement ("LPA"). The terms of the investment advisory services that NBAA or its affiliate provides to each of the Dyal Funds, and the management fee that NBAA or its affiliate receives from each of the Dyal Funds for such services, are set forth in the LPA for each of the Dyal Funds as well as in an investment management agreement ("IMA") that NBAA or its affiliate enters into with each of the Dyal Funds.

12. The LPA for each of the Dyal Funds provides that each of NBAA and the fund's general partner "shall pay the compensation costs of its investment professionals, rent and other overhead expenses of" the investment adviser and general partner.

13. The IMA for each of the Dyal Funds provides that NBAA or an affiliate will advise the fund and will "bear and be responsible for the payment of all costs and expenses associated with the performance of its services hereunder except expenses of" the funds.

14. In 2011, Neuberger established an unincorporated business unit referred to as Dyal Capital Partners ("DCP"). Consistent with the LPAs, day-to-day management of each of the Dyal Funds was delegated by the fund's general partner to DCP.

15. Certain employees of DCP handled investing activities on behalf of the Dyal Funds, including identifying potential investments by, and investors in, the Dyal Funds. This group of employees was referred to as the "Investment Team."

16. Consistent with the terms of the LPA and IMA, which specified that NBAA and/or the general partner would pay the compensation expenses of their professionals and other expenses of providing their services, Neuberger paid the compensation-related expenses of each Investment Team member.

17. A second group of DCP employees, the BSP, was established to provide advice and support, including client development, talent management, operational advisory services, and sourcing potential new investors, to the Partner Managers in which the Dyal Funds invested. The BSP was intended to increase the return on the Dyal Funds' investments by helping Partner Managers attract new capital, launch new products and optimize their operations. A substantial number of investors in the Dyal Funds also invested directly in the Partner Managers.

18. The LPA for each of the Dyal Funds disclosed that the fund would bear "the incurred fees and expenses (either actual or allocated from Neuberger Berman, or any of its Affiliates) payable relating to the utilization of the Business Services Platform in an amount not to exceed 50 basis points per annum of aggregate Commitments..." (the "BSP Expense Allocation"). The private placement memorandum ("PPM") for each of the Dyal Funds contained similar disclosures.

19. A letter agreement between each of the Dyal Funds and NBAA provided that the BSP Expense Allocation would be invoiced quarterly by NBAA to the funds.

**B. Misallocation of BSP Expenses to the Dyal Funds**

20. From 2012 through 2016, certain BSP employees did not work exclusively on providing services, advice and support to Partner Managers. Certain of those BSP employees spent a percentage of their time on tasks that assisted the investment team, such as raising capital for the Dyal Funds, as well as identifying and meeting with alternative asset management companies in which the Dyal Funds might seek to invest. While some of those tasks may have incrementally benefited the Partner Managers, they did not involve providing services, support or advice to Partner Managers in which the Dyal Funds already had invested.

21. To the extent that BSP employees spent time on tasks that did not involve providing services, support or advice to existing Partner Managers, their compensation for that time was not an “expense[...]payable relating to the utilization of the [BSP].” Instead, their compensation for that time was a general compensation expense of the Dyal Funds’ advisers, for which the advisers were responsible under the LPAs and IMAs.

22. Each year from 2012 through 2016, NBAA allocated all current compensation expenses of the BSP employees to the Dyal Funds as part of the BSP Expense Allocation.<sup>1</sup>

23. Consistent with the disclosures in the Dyal Funds’ offering documents, the BSP and its employees provided advice and support, including client development, talent management, operational advisory services, and sourcing potential new investors, to the Partner Managers in which the Dyal Funds invested. In addition, however, certain BSP employees spent a percentage of their time on tasks not related to the BSP. NBAA did not adjust the compensation expense allocated to the Dyal Funds to exclude the percentage of employees’ time that was not spent providing advice or support to existing Partner Managers.

24. By virtue of the above, of the \$28.7 million in expense paid by the Dyal Funds to BSP employees from 2012 through 2016, approximately \$2 million, or 7%, was paid for time spent on tasks not related to the utilization of the BSP.<sup>2</sup> The allocation of this amount to the Dyal Funds was inconsistent with the disclosures in the LPAs and the IMAs, which specified that the Dyal Funds would be responsible only for expenses relating to the utilization of the BSP, and not for any other expenses of NBAA or its affiliates.

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<sup>1</sup> Current compensation expense, for purposes of this Order, refers to salary, bonus, and 401(k) contributions, each of which was expensed in the year earned by the BSP employees. In 2016, a special bonus was paid to certain members of the BSP. That special bonus was not allocated to the Dyal Funds, but rather was paid by Neuberger. While the BSP employees also earn each year a percentage of Neuberger’s carried interest (“carry points”), no carried interest has yet been paid, and the ultimate value of the BSP employees’ carry points is unknown.

<sup>2</sup> For certain employees and years, the percentage was lower or zero; for others, it was considerably higher.

25. NBAA did not disclose to the Dyal Funds' advisory committees or investors that, for periods in which the full compensation expense had been allocated to the funds, certain BSP employees were spending a percentage of their time on tasks not related to the BSP.

26. By allocating the full cost of these BSP employees' compensation to the Dyal Funds as part of the BSP Expense Allocation, despite the fact that those employees did not spend all of their time on BSP-related tasks, NBAA misallocated expenses to the Dyal Funds.<sup>3</sup>

### **C. Compliance Policies and Procedures**

27. As a registered investment adviser, NBAA was required to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

28. Pursuant to the organizational documents of the Dyal Funds and their definition of the BSP Expense Allocation, the funds were responsible for expenses relating to the utilization of the BSP, while NBAA and its affiliates were responsible for all other compensation expenses.

29. Despite this expense allocation policy, NBAA did not adopt or implement any written policies or procedures reasonably designed to prevent the misallocation of compensation-related expenses.

### **VIOLATIONS**

30. Section 206(2) of the Advisers Act prohibits investment advisers from directly or indirectly engaging "in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." Scierter is not required to establish a violation of Section 206(2), which may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n. 5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-95 (1963)). As a result of the negligent conduct described above, Respondent violated Section 206(2) of the Advisers Act.

31. Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder make it unlawful for any investment adviser to a pooled investment vehicle to "[m]ake any untrue statement of a material fact or omit to state a material fact necessary to make the statement made, in light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle" or to "engage in any act, practice or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle." A violation of Section 206(4) and the rules thereunder does not require scierter. *Steadman*, 967 F.2d at 647. As a result of the negligent conduct described above, Respondent violated Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder.

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<sup>3</sup> Although the BSP Expense Allocation was inconsistent with the disclosure that the Dyal Funds would be allocated only those expenses "relating to the utilization" of the BSP, in only one year did it hit the 50 basis point cap set forth in the LPAs. For some Dyal funds and some years, it was significantly lower, even with the misallocation.

32. Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require, among other things, a registered investment adviser to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules. As a result of the negligent conduct described above, Respondent violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

### **REMEDIAL EFFORTS AND COOPERATION**

33. In determining to accept the Offer, the Commission considered the remedial efforts undertaken by the Respondent and the cooperation the Respondent provided to the Commission staff during its investigation.

34. In 2017, after the staff requested information from NBAA concerning its practices for allocating the BSP fee to the Dyal Funds, NBAA voluntarily took steps to ensure that BSP employees worked exclusively on tasks relating to the BSP. As a result, the improper allocation of BSP expenses ceased in 2017.

35. Throughout the staff's investigation, NBAA voluntarily and promptly provided documents and information to the staff. NBAA met with the staff on multiple occasions and provided detailed factual summaries of relevant information. NBAA was extremely prompt and responsive in addressing staff inquiries.

### **IV.**

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

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

A. Respondent NBAA cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 promulgated thereunder.

B. Respondent NBAA shall pay disgorgement and prejudgment interest as follows:

- (1) Respondent NBAA shall pay disgorgement of \$2,073,988 and prejudgment interest of \$284,620, consistent with the provisions of this Subsection B.
- (2) Within ten (10) days of the entry of this Order, NBAA shall deposit the full amount of the disgorgement and prejudgment interest, as described in paragraph (1) of this Subsection B (the "Disgorgement Fund") into an escrow account at a financial institution not unacceptable to the Commission staff and shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely deposit of the Disgorgement Fund is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

- (3) NBAA shall be responsible for administering the Disgorgement Fund and may hire a professional to assist it in the administration of the distribution. The costs and expenses of administering the Disgorgement Fund, including the costs of any such professional services, shall be borne by NBAA and shall not be paid out of the Disgorgement Fund.
- (4) NBAA shall distribute the Disgorgement Fund to the limited partners in the Dyal Funds based on the percentage of the BSP Fee paid by each fund that was improperly allocated to the fund for each year during the Relevant Period, and, in turn, on each limited partner's pro rata interest in the applicable fund, pursuant to a disbursement calculation (the "Calculation") that will be submitted to, and reviewed and approved by, the Commission staff in accordance with this Subsection B. No portion of the Disgorgement Fund shall be paid to any affected investor account in which Respondent, any of its affiliates, or any of their current or former officers or directors have a financial interest.
- (5) NBAA shall, within thirty (30) days from the entry of this Order, submit a proposed Calculation to the Commission staff for its review and approval. The proposed Calculation will include the names of the limited partners, a description of the methodology used, and the payment amounts for each limited partner. At or around the time of submission of the proposed Calculation to the staff, Respondents, along with any third-parties or professionals retained by Respondents to assist in formulating the methodology for its Calculation and/or administration of the Distribution, shall make themselves available for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. NBAA shall also provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to NBAA's proposed Calculation and/or any of its information or supporting documentation, NBAA shall submit a revised Calculation for the review and approval of the Commission staff and/or additional information or supporting documentation within ten (10) days of the date that NBAA is notified of the objection, which revised Calculation shall be subject to all of the provisions of this Subsection B.
- (6) Within ten (10) days after the Calculation has been approved by the Commission staff, NBAA shall submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected limited partner. The Payment File should identify, at a minimum: (1) the name of each limited partner ("Payee"), (2) the exact amount of the payment to be made from the Disgorgement Fund to each affected limited partner, and (3) the amount of any de minimis threshold to be applied.

- (7) NBAA shall distribute the Disgorgement Fund pursuant to the approved Calculation within sixty (60) days of the date on which the Commission staff accepts the Payment File, unless such time period is extended as provided for in Paragraph (12) of this Subsection B. Such distribution is to be based on the methodology set forth in the Calculation and as reviewed and not objected to by the staff.
- (8) If NBAA does not distribute or return any portion of the Disgorgement Fund for any reason, including an inability to locate a Payee or any factors beyond NBAA's control, NBAA shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury, in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934, pursuant to the instructions set forth in Subsection D, below, when the distribution of funds is complete and before the final accounting provided for in Paragraph (10) of this Subsection B is submitted to the Commission staff.
- (9) The Disgorgement Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondent shall be responsible for any and all tax compliance responsibilities associated with the Disgorgement Fund, including but not limited to tax obligations resulting from the Disgorgement Fund's status as a QSF and the Foreign Account Tax Compliance Act ("FATCA"), and may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondent and shall not be paid out of the Disgorgement Fund.
- (10) Within one hundred and twenty (120) days after NBAA completes the distribution of all amounts payable to affected investors, NBAA shall return all undistributed funds to the Commission pursuant to the instructions set forth in paragraph (8) of this Subsection B. NBAA shall then submit to the Commission staff a final accounting and certification of the disposition of the Disgorgement Fund for Commission approval. The final accounting shall be on a standardized accounting form to be provided by the Commission staff and shall include, but not be limited to: (i) the amount paid to each Payee, with reasonable interest amount, if any, reported separately; (ii) the date of each payment; (iii) the check number or other identifier of money transferred; (iv) the date and amount of any returned payment; (v) a description of any effort to locate any prospective payee whose payment was returned or to whom payment was not made for any reason; (vi) the total amount, if any, that was forwarded to the Commission for transfer to the United States Treasury; and (vii) an affirmation that NBAA has made payments from the Disgorgement Fund to affected investors in accordance with the Calculation approved by Commission staff. In addition, NBAA shall provide to Commission staff a cover letter representing that all of the requirements of this Subsection B



have been completed and that the information requested has been accurately reported to the Commission (“the certification”).

- (11) NBAA shall submit proof and supporting documentation of such payment (whether in the form of cancelled checks, wire receipts, or otherwise) in a form acceptable to the Commission staff and under a cover letter that identifies NBAA as the Respondent in this proceeding and the file number of this proceeding to Panayiota K. Bougiamas, Assistant Regional Director, Asset Management Unit, New York Regional Office, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, New York, NY 10281, or such other address the Commission staff may provide. NBAA shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.
- (12) The Commission staff may extend any of the procedural dates set forth in this Subsection B for good cause shown. Deadlines for dates relating to the Disgorgement Fund shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday the next business day shall be considered to be the last day.

C. Respondents shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$375,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. 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> <http://www.sec.gov/about/offices/ofm.htm>; or
- (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 NBAA as a 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 Panayiota K. Bougiamas, Assistant Regional Director, Asset Management Unit, New York Regional Office, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York, 10281.

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