

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5373 / September 27, 2019**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19535**

**In the Matter of**

**ECP MANAGER LP,**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 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 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 ECP Manager LP (“ECP” 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 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 that:

**Summary**

1. This matter concerns excessive management fees charged by ECP Manager LP, a private equity fund adviser, following the write-off of a private equity fund investment. ECP provides investment advisory services to ECP Africa Fund II PCC (the “Fund”) and other private funds. The Shareholders Agreement for the Fund provides that, during the relevant time period, ECP may charge the Fund, on a semiannual basis, a management fee equal to two percent (2%) per annum of the total invested capital contributions, with the exception that the amount should be

reduced as a result of certain triggering events, including write-offs of specific portfolio investments. In June 2010, the Fund received warrants on the common stock of an African mining company. The Fund's financial statements valued the warrants at zero beginning with the period ended March 31, 2014, and, in mid-June 2014, the warrants expired as worthless. Nevertheless, ECP included approximately \$3.41 million of invested capital contributions attributable to the warrants in the base amount used to calculate management fees that were charged to the Fund on July 1, 2014, January 1, 2015, and July 1, 2015, causing the Fund and, ultimately, its shareholders to pay \$102,304 more in management fees than they should have paid. As a result, ECP violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

### **Respondent**

2. Respondent ECP Manager LP, a Delaware limited partnership based in Washington, DC, has been registered with the Commission as an investment adviser since 2010. ECP provides investment advisory services to pooled investment vehicles, and conducts business under the name Emerging Capital Partners. On its Form ADV filed March 28, 2019, ECP reported regulatory assets under management of approximately \$1.85 billion.

### **Other Relevant Entity**

3. ECP Africa Fund II PCC, formerly known as EMP Africa Fund II PCC, is a private equity fund organized as a protected cell company under the laws of Mauritius. During all times relevant to the findings herein, ECP advised and served as manager of the Fund.

### **Facts**

4. ECP Africa Fund II PCC was formed in 2006. The shareholders of the Fund, which include large institutional investors, as well as U.S. persons and a charitable organization, contributed capital to the Fund for its use to make qualifying investments. The Fund is governed by a Shareholders Agreement, which sets forth the rights and obligations of the shareholders, including their obligations to pay advisory and other fees and expenses to ECP. The Shareholders Agreement also sets forth the responsibilities of ECP, which include investigating, structuring, and negotiating potential investments, managing the Fund's portfolio of investments, and advising the Fund with respect to opportunities to dispose of investments.

5. The Shareholders Agreement contains the operative language for calculating the management fee that ECP was permitted to charge the Fund. It provides that, during the relevant time period, ECP may charge the Fund, on a semiannual basis, a management fee equal to two percent (2%) per annum of the total invested capital contributions, with the exception that the amount should be reduced as a result of certain triggering events, including write-offs of specific portfolio investments.

6. In June 2010, the Fund received warrants on the common stock of an African mining company. Approximately \$3.41 million of the Fund's invested capital contributions was attributable to these warrants.

7. The Fund's financial statements valued the warrants at zero beginning with the period ended March 31, 2014, and, in mid-June 2014, the warrants expired as worthless. Thus, by June 30, 2014, the Fund had written off a specific portfolio investment. Nevertheless, ECP included the approximately \$3.41 million of invested capital contributions attributable to the warrants in the base amount used to calculate management fees that were charged to the Fund on July 1, 2014, January 1, 2015, and July 1, 2015. ECP's repeated failure to take into account the write-off of the warrants in accordance with the Shareholders Agreement caused the Fund and its shareholders to overpay a total of \$102,304 in management fees.

### Violations

8. As a result of the conduct described above, Respondent violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client." Scierer is not required to establish a violation of Section 206(2), but rather 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)).

9. As a result of the conduct described above, Respondent violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which make it unlawful for any investment adviser to a pooled investment vehicle 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." Proof of scierer is not required to establish a violation of Section 206(4) of the Advisers Act or the rules thereunder. *Steadman*, 967 F.2d at 647.

### 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 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 Rule 206(4)-8 promulgated thereunder.

B. Respondent shall pay disgorgement and prejudgment interest to affected shareholders totaling \$122,656 as follows:

(i) Respondent shall pay disgorgement of \$102,304 and prejudgment interest of \$20,352, consistent with the provisions of this Subsection B.

(ii) Within 10 days of the issuance of this Order, Respondent shall deposit \$122,656 (the "Distribution Fund") into a segregated account for the benefit of ECP Africa Fund II PCC not unacceptable to the Commission staff and Respondent shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely payment into

the account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600].

(iii) Respondent shall be responsible for administering the Distribution Fund and may hire a professional to assist it in the administration of the distribution. The costs and expenses of administering the Distribution Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Distribution Fund.

(iv) Respondent shall pay from the Distribution Fund an amount representing the amount of excessive management fees incurred by ECP Africa Fund II PCC as a result of the conduct described above to the harmed shareholders of ECP Africa Fund II PCC together with reasonable interest thereon, pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection B. No portion of the Distribution Fund shall be paid to any affected shareholder account in which Respondent, or any of its current or former officers or directors, has a financial interest.

(v) Respondent shall, within 90 days from the date of this Order, submit a proposed Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent, along with any third-parties or professionals retained by Respondent 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. Respondent also shall provide the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event one or more objections by the Commission staff to Respondent's proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation with 10 days of the date that the Commission staff notifies Respondent of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection B.

(vi) After the Calculation has been approved by the Commission staff, Respondent shall submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each harmed shareholder. The Payment File should identify, at a minimum, (1) the name of each affected harmed shareholder; and (2) the exact amount of the payment to be made.

(vii) Respondents shall complete the disbursement of all amounts payable to affected shareholder accounts within 90 days of the date that the Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph xi of this Subsection B.

(viii) If Respondent is unable to distribute or return any portion of the Distribution Fund for any reason, including an inability to locate an affected shareholder or a beneficial owner of an affected shareholder or any factors beyond Respondent's control, Respondent 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 when the distribution of funds is complete and before the final accounting provided for in Paragraph x of this Subsection B is submitted to the Commission staff. 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
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 ECP Manager LP 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 Brendan P. McGlynn, Assistant Regional Director, Asset Management Unit, Philadelphia Regional Office, Securities and Exchange Commission, 1617 JFK Blvd., Suite 520, Philadelphia, PA 19103, or such other address as the Commission staff may provide.

(ix) A Distribution 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 Distribution Fund, including but not limited to tax obligations resulting from the Distribution 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 Distribution Fund.

(x) Within 90 days after Respondent completes the disbursement of all amounts payable to affected shareholders, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection B. Within 10 days thereafter, Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Distribution Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred; (4) the amount of any returned payment and the date received;

(5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Distribution Fund to affected shareholders in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Respondent and the file number of these proceedings to Brendan P. McGlynn, Assistant Regional Director, Asset Management Unit, Philadelphia Regional Office, Securities and Exchange Commission, 1617 JFK Blvd., Suite 520, Philadelphia, PA 19103, or such other address as the Commission staff may provide. Respondent 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.

(xi) 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 Distribution 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. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$75,000 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
- (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 ECP Manager LP 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 Brendan P. McGlynn, Assistant Regional Director, Asset Management Unit, Philadelphia Regional Office, Securities and Exchange

Commission, 1617 JFK Blvd., Suite 520, Philadelphia, PA 19103, or such other address as the Commission staff may provide.

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.

Vanessa A. Countryman  
Secretary