

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5930 / December 20, 2021**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20683**

**In the Matter of**

**Global Infrastructure  
Management, LLC,**

**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 Global Infrastructure Management, LLC (“Global” 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 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 that:

#### **Summary**

1. This matter concerns a failure to properly offset management fees by registered investment adviser Global to private equity funds it managed, false and misleading statements to investors and potential investors in those funds concerning management fee offsets, and failure to adequately implement policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder. First, the offering and governing documents for Global Infrastructure Partners Fund I and its affiliated vehicles (collectively, "Fund I") and Global Infrastructure Partners Fund III and its affiliated vehicles (collectively, "Fund III") provided that certain portfolio company fees paid to Global and its affiliates were subject to an offset against fund-level management fees. But Global failed to offset eligible portfolio fees paid to it by a Fund I portfolio company investment, and failed to reimburse the full amount it owed Fund III limited partners in connection with eligible portfolio fees it collected from a Fund III portfolio company investment. Second, the offering and governing documents for Fund I and Global Infrastructure Partners Fund II and its affiliated vehicles (collectively, "Fund II") included inconsistent provisions concerning the management fee calculation methodology. Specifically, the Private Placement Memoranda ("PPM") for Funds I and II stated that a partial disposition of a fund portfolio company investment would reduce management fees. Conversely, the Fund I and Fund II Amended and Restated Limited Partnership Agreements ("LPA"), respectively, each stated that a partial disposition would not reduce management fees. Global's failure to fully apply required management fee offsets, and dissemination of inconsistent offering and governing documents was caused by deficiencies in its compliance program.

#### **Respondent**

2. Global is a Delaware limited liability company with its principal place of business in New York, New York. Global was founded in 2006, and has been registered with the Commission as an investment adviser since 2012. Global provides investment advisory services to pooled investment vehicles,<sup>1</sup> single investor private funds, and separately managed accounts, with a focus on infrastructure and infrastructure-related assets, and currently has assets under management of approximately \$77 billion. Global has no prior disciplinary history with the Commission.

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<sup>1</sup> The Global funds meet the definition of a "pooled investment vehicle" as defined in Rule 206(4)-8(b) of the Advisers Act because they each would be an investment company under Section 3(a) of the Investment Company Act, but for the exclusion provided by Section 3(c)(1).

## Facts

### **Global's Disclosures Concerning Portfolio Company Fee Offsets**

3. Global's Fund I and Fund III offering and governing documents state that Global would offset fund-level management fees against portfolio-company fees paid to Global, but it failed to fully apply the required offsets.

#### ***Management Fee Offset Against Portfolio Company Advisory Fees***

4. Global's Fund I PPM and LPA stated that advisory fees paid by portfolio companies to Global would be offset against fund-level management fees. Specifically, the Fund I LPA and PPM each stated that any advisory, directors, transaction, topping, break-up or other fees received by Global or its affiliates in the immediately preceding management fee period would be credited 80% against management fees owed by limited partners for the current management fee period.

5. In the period December 2009 through March 2019, a portfolio company investment held by Fund I and other co-investors paid Global approximately \$12.4 million in advisory fees for services provided to the portfolio company by Global employees and a consultant. Fund I owned approximately 41.9% of the portfolio company. At the time, Global did not apply the 80% offset against management fees in respect of Fund I's portion of the advisory fee based on the Fund's percentage ownership of the portfolio company, as required under the relevant LPA and PPM provisions. Global has reviewed the advisory fees it collected from the Fund I portfolio company since inception, and voluntarily remediated Fund I limited partners its pro-rata portion of the advisory fee in the amount of \$4,164,153, plus interest.

#### ***Management Fee Offset Against Portfolio Company Director Fees***

6. Global's Fund III PPM and LPA state that, among other specified fees, director fees paid by portfolio company investments to Global and its affiliates in the immediately preceding management fee period would be credited 100% against management fees owed by limited partners for the current management fee period.

7. In the period November 2016 through March 2019, a portfolio company investment held by Fund III paid Global \$1.26 million in director fees. Pursuant to the relevant provisions of the Fund III LPA and PPM, these director fees should have been credited 100% against fund-level management fees, but Global miscalculated the offset and only credited Fund III limited partners a portion of these director fees. Global has reviewed the director fees it collected from the portfolio company investment, recalculated the correct management fee offset and amount, and voluntarily remediated Fund III limited partners in the amount of \$674,362, plus interest.

***Global Failed to Adopt or Implement Reasonable Policies and Procedures Regarding Portfolio Company Fee Offsets***

8. Pursuant to the Fund I and III LPAs, Global was responsible for accurately calculating the management fees it charged limited partners, including accurately applying the management fee offsets. Despite these obligations, Global failed to have written policies and procedures in place to confirm the calculations were being made in a manner consistent with the LPAs, including in this instance the provisions on management fee offsets against portfolio company advisory fees and director fees.

**Global Failed to Adopt or Implement Reasonable Policies and Procedures to Identify and Address Inconsistencies in Fund Documents and Communications with Investors**

9. Global failed to have reasonable written policies and procedures in place to confirm that the LPA and PPM were consistent on key points, including in this instance regarding how management fees were calculated following a partial disposition of fund portfolio investments, and failed to have reasonable written policies and procedures addressing whether Global personnel were communicating accurate, consistent information to investors.

10. Global's PPMs for Fund I and Fund II stated that following a partial disposition of fund portfolio company investments (*e.g.*, where the fund sold or otherwise liquidated a portion of its interest in the company), the management fee that Global charged limited partners would be calculated based on the fund's remaining interest in the portfolio company. The PPM for Funds I and II each stated that following the termination of their respective commitment periods, the annual fund-level management fee would be based on the "capital contributions relating to the *retained portion* of all Portfolio Investments with respect to which there has not been a complete disposition." [Emphasis added.]

11. Contrary to these PPM provisions, the Fund I and Fund II LPAs each stated that the management fee would be calculated based on each limited partner's capital contribution that was used to acquire a fund portfolio investment, and thus a subsequent partial disposition of the portfolio company would not reduce management fees. The discrepancies in these documents led Global to provide investors and potential investors inconsistent information on the key point of how management fees would be calculated following a partial disposition of a fund portfolio investment.

12. In 2011 a limited partner investor specifically asked Global whether a partial disposition would reduce management fees, and – as a consequence of the inconsistencies between these key documents – a Global employee responded in writing that partial dispositions *would* reduce management fees. Conversely, Global responded to several other limited partner inquiries that management fees would not be reduced by partial dispositions.

13. Ultimately, consistent with the LPA but contrary to the PPM disclosures, Global fund finance employees consistently did not reduce Global's fund-level management fee calculation for Fund I and II to incorporate partial dispositions.

14. During the course of the staff's investigation, Global reviewed the management fee of the investor described in paragraph 12, recalculated the management fee amount by incorporating partial realizations of portfolio company investments into the fee calculation, and it voluntarily remediated the investor in the amount of \$563,792, plus interest.

### **Global's Remedial Efforts**

15. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Global, including voluntary remediation of the relevant advisory fees (as described above), enhanced fund disclosures, and improved procedures and controls around the calculation of fee offsets.

### **Violations**

16. As a result of the conduct described above, Global willfully<sup>2</sup> 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) of the Advisers Act. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992).

17. As a result of the conduct described above, Global willfully 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.” 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.

18. As a result of the conduct described above, Global willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Adviser Act and its rules.

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<sup>2</sup> “Willfully,” for purposes of imposing relief under Section 203(e) of the Advisers Act “means no more than 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.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully omit[ed]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

#### IV.

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

Accordingly, pursuant to Sections 203(e) and 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 Rules 206(4)-7 and 206(4)-8 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall within ten (10) days of the entry of this Order, pay a civil money penalty of \$4,500,000 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 any payment is not made by the date the payment is required by this Order, the entire outstanding balance, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application.

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 Global 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 Adam S. Aderton, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5012, or such other person or 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