

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4258 / November 5, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16945

In the Matter of

**Cherokee Investment Partners, LLC and
Cherokee Advisers, LLC,**

Respondents.

**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 Cherokee Investment Partners, LLC (“CIP”) and Cherokee Advisers, LLC (“CA”) (collectively referred to as “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have 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 them and the subject matter of these proceedings, which are admitted, Respondents consent 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 Respondents' Offer, the Commission finds¹ that:

SUMMARY

1. This matter arises from the improper allocation by two affiliated private equity fund advisers to client funds of certain consulting, legal, and compliance-related expenses incurred based on their standing as registered and/or relying investment advisers, as well as other related compliance failures. Cherokee Investment Partners, LLC is a private equity fund adviser that has at all relevant times acted as the manager of two private equity real estate funds with investments in environmentally contaminated property: Cherokee Investment Partners II, L.P. ("Fund II") and Cherokee Investment Partners III, L.P. and Cherokee Investment Partners III Parallel Fund, L.P. (collectively, "Fund III"). Cherokee Advisers, LLC is a private equity fund adviser that has at all relevant times acted as the manager of Cherokee Investment Partners IV, L.P. ("Fund IV") (hereafter, Fund II, Fund III, and Fund IV are collectively referred to as "the Funds").

2. Between July 2011 and March 2015, CIP and CA incurred consulting, legal and compliance-related expenses in the course of either preparing for registration as an investment adviser under the Advisers Act, complying with legal obligations arising from registration (including preparing for examination by the staff of the Commission's Office of Compliance Inspections and Examinations ("Commission Exam staff")), or responding to an investigation of Respondents' conduct by the staff of the Commission's Division of Enforcement ("Commission Enforcement staff"). Respondents allocated to the Funds, and caused the Funds to pay for, \$455,698 of these expenses. Although the Funds' limited partnership agreements disclosed that the Funds would be charged for expenses that in the good faith judgment of the general partner arose out of the operation and activities of the Funds, including the legal and consulting expenses of the Funds, there was no disclosure that the Funds would be charged for the advisers' legal and compliance expenses. As a result, CIP and CA breached their fiduciary duties to the Funds in violation of Section 206(2) of the Advisers Act and also violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

3. Respondents failed to adopt written policies or procedures reasonably designed to prevent violations of the Advisers Act arising from the allocation of expenses to the Funds. Additionally, Respondents failed to adequately review, no less frequently than annually, the adequacy of their policies and procedures to prevent violations of the Advisers Act and the rules thereunder, and the effectiveness of their implementation. Accordingly, Respondents also violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

¹ The findings herein are made pursuant to Respondents' Offer and are not binding on any other person or entity in this or any other proceeding.

RESPONDENTS AND RELATED ENTITIES

4. **CIP** is a Delaware limited liability company formed in 1993, with its principal place of business in Raleigh, North Carolina. CIP is a private fund adviser that has been registered with the Commission since March 2012 and has at all times acted as the manager of Fund II and Fund III.

5. **CA** is a Delaware limited liability company formed in 2005, with its principal place of business in Raleigh, North Carolina. CA is a private fund adviser and has at all times acted as the manager of Fund IV. CA is not independently registered with the Commission as an investment adviser; rather, it elected to file as a “relying adviser” on CIP’s Form ADV. CA has no employees, is owned by the same persons who own CIP, and carries out its management duties by using CIP’s personnel and facilities.

6. **Fund II** is a Delaware limited partnership and private equity fund formed in 1998 to purchase and remediate environmentally contaminated properties with approximately \$250 million in capital commitments from twenty-one investors, including institutional investors. Fund II is in wind down status and currently has no actively managed investments.

7. **Fund III** are Delaware limited partnerships and private equity funds formed in 2002 to purchase and remediate environmentally contaminated properties with approximately \$620 million in capital commitments from fourteen investors, including institutional investors. Fund III is in wind down status and has two remaining actively managed investments.

8. **Fund IV** is a Delaware limited partnership and private equity fund formed in 2005 to purchase and remediate environmentally contaminated properties with approximately \$625 million in capital commitments from fifteen investors, including institutional investors. Fund IV has seven actively managed investments.

FACTS

9. In May 2011, Respondents began preparations for registering with the Commission as an investment adviser under the Advisers Act in accordance with the then-forthcoming requirements of the Dodd-Frank Act. Respondents retained a third party compliance consultant (hereafter, the “Compliance Consultant”) and a law firm to provide consulting and legal services concerning its planned registration as an investment adviser.

10. Respondents allocated to the Funds, and caused the Funds to pay for, certain compliance-related expenses, totaling \$171,232, incurred in the course of either preparing for registration as an investment adviser under the Advisers Act or complying with legal obligations arising from registration. This included the fees charged by the Compliance Consultant to Respondents, as well as other consulting, registration-related legal fees, and compliance-related expenses.

11. In 2013, the Commission Exam staff conducted an examination of Respondents to review Respondents' compliance as a newly-registered adviser and relying adviser with certain provisions of the federal securities laws.

12. Respondents incurred certain expenses, including consulting and legal services, in connection with responding to the Commission Exam staff's review. Respondents allocated to the Funds, and caused the Funds to pay for, certain of these expenses totaling \$239,362.

13. In April 2014, Respondents received notice that the Commission Enforcement staff was conducting an investigation of, among other things, Respondents' allocation of expenses to the Funds. Respondents incurred certain expenses, including paying for legal services in connection with responding to the Commission Enforcement staff's investigation. Respondents allocated to the Funds, and caused the Funds to pay for, certain of these expenses, totaling \$45,104.

14. As detailed in paragraphs 9 through 13, above, between July 2011 and March 2015, Respondents allocated to the Funds, and caused the Funds to pay for, a total of \$455,698 in expenses incurred in the course of preparing for registration as an investment adviser under the Advisers Act, complying with legal obligations arising from registration, and responding to the Commission Exam staff and the Commission Enforcement staff. In connection with this allocation, Respondents sought and received the advice of their counsel and other advisers.

15. In March 2015, Respondents ceased allocating to the Funds all such expenses and, in April 2015, reimbursed the Funds for the full amount of the expenses previously misallocated to them.

16. Although the limited partnership agreements disclosed that the Funds would be charged for expenses that in the good faith judgment of the general partners arose out of the operation and activities of the Funds, the limited partnership agreements did not disclose that the Funds would be charged for a portion of the advisers' own legal and compliance expenses.

17. Separately, Respondents failed to adopt written policies or procedures reasonably designed to prevent violations of the Advisers Act arising from the allocation of expenses to the Funds. Respondents also failed to adequately review, no less frequently than annually, the adequacy of its policies and procedures to prevent violations of the Advisers Act and the rules thereunder, and the effectiveness of their implementation.

VIOLATIONS

18. 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." A violation of Section 206(2) of the Advisers Act may rest on a finding of simple 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, 195 (1963)). Proof of

scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.* As a result of the conduct described above, Respondents violated Section 206(2) of the Advisers Act.

19. 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 statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle” or “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 scienter is not required to establish a violation of Section 206(4) of the Advisers Act. *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir 1992). As a result of the conduct described above, Respondents violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

20. Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules, and to review, no less frequently than annually, the adequacy of policies and procedures and the effectiveness of their implementation. As a result of the conduct described above, Respondents violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

RESPONDENTS’ COOPERATION AND REMEDIAL EFFORTS

In determining to accept Respondents’ Offer, the Commission considered remedial acts taken by Respondents and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents’ Offer.

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

- A. Respondents 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 thereunder.
- B. Respondents shall pay jointly and severally within ten (10) business days of the entry of this Order, a civil monetary penalty in the amount of \$100,000 to the Securities and Exchange Commission for transfer to the general fund of United States Treasury in accordance with 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) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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

Payment by check or money order must be accompanied by a cover letter identifying CIP and CA as Respondents 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 Stephen E. Donahue, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 950 E. Paces Ferry Rd., NE, Suite 900, Atlanta, GA 30326-1382.

By the Commission.

Brent J. Fields
Secretary