

ADMINISTRATIVE PROCEEDING

File No. 3-17491

Private Equity Fund Adviser Settles with SEC for Failing to Disclose Its Fee Allocation Practices

August 24, 2016 – The Securities and Exchange Commission today announced that New York-based private equity fund adviser WL Ross & Co. LLC (WL Ross) has agreed to settle charges that it failed to disclose its fee allocation practices to certain funds it advised (the WLR Funds) and their investors, which resulted in the WLR Funds paying WL Ross approximately \$10.4 million in additional management fees between 2001 and 2011.

An SEC investigation found that WL Ross advises the WLR Funds and other private equity funds, as well as separately managed accounts and co-investment vehicles. WL Ross also provides advisory and other services to certain portfolio companies in which its clients invest. The limited partnership agreements (LPAs) governing the WLR Funds contemplate that WL Ross may receive transaction fees directly from the portfolio companies for providing these services and that WL Ross will reduce the management fee that the WLR Funds pay to WL Ross by a specified percentage of any transaction fees paid to WL Ross. The LPAs and other governing documents, however, were ambiguous concerning how the transaction fees would be allocated when multiple WLR Funds and other co-investors invested in the same portfolio company.

According to the SEC's order instituting a settled administrative proceeding, between 2001 and 2011, WL Ross adopted an allocation methodology that resulted in WLR retaining a significant amount of those transaction fees for itself rather than allocating them to the WLR Funds to offset management fees. Specifically, WL Ross allocated transaction fees to the WLR Funds based upon their relative ownership percentages of the portfolio company – rather than on a pro-rata basis – without disclosing this practice. As a result, WL Ross retained for itself that portion of the transaction fees that was based upon co-investors' relative ownership of the portfolio company, without subjecting such fees to any management fee offsets. By doing so, WL Ross received approximately \$10.4 million more in management fees during this period.

Also according to the SEC's order, WL Ross revisited its allocation methodology in connection with an examination by the SEC's Office of Compliance Inspections and Examinations in 2014, and brought its allocation practices to the attention of Commission staff. WL Ross also voluntarily adopted a new methodology allocating transaction fees pro-rata across the WLR Funds, retroactively applied this methodology to recalculate all historical management fees and offsets dating back to the inception of the funds, and voluntarily reimbursed approximately \$11.8 million in management fees and interest to the WLR Funds.

Without admitting or denying the findings, WL Ross consented to the entry of the order finding that it violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, and agreed to pay a civil penalty of \$2.3 million.

The SEC's investigation was conducted by Luke Fitzgerald and Gregory Maccordy of the Asset Management Unit, with the assistance of Lisa Knoop in the New York Regional Office. The case was supervised by Panayiota K. Bougiamas of the Asset Management Unit. The SEC

examination that led to the investigation was conducted by Igor Rozenblit and Majid Mahmood of the Private Funds Unit, in conjunction with Anthony Fiduccia and Arjuman Sultana of the National Examination Program located in the New York Regional Office.

See also: [Order](#)