

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4932 / June 4, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18526

In the Matter of

**LYXOR ASSET
MANAGEMENT, INC.,**

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 Lyxor Asset Management, Inc. (“Lyxor” 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 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 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

SUMMARY

1. This matter concerns a failure to disclose conflicts of interest by Lyxor Asset Management, Inc. ("Lyxor"), an investment adviser, to certain of its clients arising from an agreement (the "Side Letter") between Lyxor and two affiliated outside asset managers (the "Third Party Advisers"). The Side Letter called for the Third Party Advisers to make payments to Lyxor based on the total amount of Lyxor client assets placed or maintained in certain funds advised by the Third Party Advisers (the "Funds"). Lyxor initially sought to negotiate an economic benefit for its clients in early drafts of the Side Letter, but the Third Party Advisers would not agree, and Lyxor agreed to a final version of the Side Letter that called for payments to be made directly to Lyxor. Pursuant to the Side Letter, Lyxor received approximately \$648,000 in fees from July 2012 through September 2014. This arrangement was not disclosed, and was in contravention of investment management agreements of two clients ("Client A" and "Client B") with Lyxor. By virtue of this conduct, Lyxor violated Section 206(2) of the Advisers Act. Additionally, Lyxor failed to implement policies and procedures reasonably designed to detect and prevent conflicts of interest and failed to maintain accurate books and records reflecting the receipt of fees from the Third Party Advisers, violating Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder and Section 204(a) of the Advisers Act and Rule 204-2(a)(2) thereunder, respectively.

RESPONDENT

2. Lyxor is a Delaware corporation and an investment adviser registered with the Commission. Its principle business is providing investment management services for institutional advisory clients. As of March 30, 2017, Lyxor had approximately \$11 billion of regulatory assets under management.

OTHER RELEVANT ENTITIES

3. Lyxor Asset Management S.A.S ("Lyxor S.A.S.") is a French corporation and is the parent company of Lyxor, and provides, among other things, certain operational support to Lyxor. It is not registered with the Commission.

4. Third Party Advisers are affiliated registered investment advisers with headquarters in New York and previously Singapore that provide investment advisory services to the Funds. The Third Party Advisers and their other affiliates have approximately \$85 billion of regulatory assets under management.

5. The Funds are two hedge funds advised by the Third Party Advisers in which Lyxor invested client assets.

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

FACTS

A. Background

6. On August 22, 2010, Lyxor entered into an investment management agreement with Client A whereby Lyxor would, at its discretion, invest Client A's assets with different outside investment managers. The agreement provided that Lyxor "account to [Client A] for all advantages and benefits received from third parties resulting from managing [Client A's assets], including fees, commissions or other benefits received by [Lyxor] . . . from sponsors, managers, advisers, operators or distributors of underlying funds" It further provided that "[t]here should be no commission payable to [Lyxor] by the underlying fund. Any rebates on fees that [Lyxor] can obtain should be disclosed to [Client A] and credited back to [Client A]."

7. On August 1, 2011, Lyxor entered into a similar but non-discretionary investment management agreement with Client B. It provided that "[Lyxor] shall not directly or indirectly receive any benefit from recommendations made to [Client B] and shall disclose to [Client B] any personal investment."

B. The Execution of the Side Letter

8. In early 2012, Lyxor and the Third Party Advisers began negotiating an extension of an existing agreement between the parties. The agreement covered several areas including fund capacity rights and most-favored nation rights as to asset management fees. On July 16, 2012, Lyxor and the Third Party Advisers executed the Side Letter. On the same date as the Side Letter, Lyxor S.A.S. and the Third Party Advisers executed a separate agreement that did not concern Lyxor's clients (the "Paris Side Letter").

9. Significantly, the Side Letter provided Lyxor with the right to quarterly payments from the Third Party Advisers based on a percentage of client assets that Lyxor placed or maintained in the two Funds. Lyxor initially sought to negotiate an economic benefit for its clients in early drafts of the Side Letter, but the Third Party Advisers would not agree, and Lyxor agreed to a final version of the Side Letter that called for payments to be made directly to Lyxor.

10. Lyxor did not seek pre-approval from Client A or Client B, both of whom had investments with the Third Party Advisers prior to entering into the Side Letter; nor did Lyxor disclose to Client A or Client B the execution of the Side Letter or the language in the Side Letter that entitled Lyxor to distribution of a fee based on the total amount of client assets placed or maintained by Lyxor in the Funds.

11. Upon execution of the Side Letter, Lyxor also failed to create a receivable on its books and records for amounts due under the Side Letter and failed to accrue the receivable going forward.

C. Lyxor Receives Payment Pursuant to the Side Letter

12. In October 2013, the Third Party Advisers notified Lyxor by email that they intended to pay Lyxor \$647,738.93 in fees owed to it pursuant to the Side Letter. In the same

email, the Third Party Advisers also notified Lyxor that they intended to pay \$111,036.67 pursuant to the Paris Side Letter. The transmittal from the Third Party Advisers attached both the Side Letter and the Paris Side Letter and two charts which identified how the separate payment amounts were calculated. Staff at Lyxor engaged in several email exchanges with personnel at Lyxor S.A.S. and the Third Party Advisers about these payments without identifying that one of the two payments was made pursuant to the Side Letter, the receipt of which was in contravention of its clients' investment management agreements.

13. Upon receipt of this notification, Lyxor directed the Third Party Advisers to make both payments to Lyxor S.A.S. Accordingly, Lyxor did not account for the receipt of \$647,738.93 dollars it was owed from the Third Party Advisers or the payment of that money to Lyxor S.A.S. on its books and records.

14. Lyxor did not disclose the Side Letter or the payment that was made by the Third Party Advisers under the Side Letter to the relevant clients at this time.

D. SEC Exam and Remediation

15. Beginning in December 2014, the staff of the Commission's Office of Compliance Inspections and Examinations ("OCIE") conducted an examination of Lyxor. During the course of this examination and in response to document requests, Lyxor produced the Side Letter, following which OCIE staff requested information from Lyxor concerning any payments it may have received pursuant to the Side Letter. At that time, Lyxor informed OCIE staff that the Third Party Advisers had made no payments pursuant to the Side Letter.

16. After further discussions with OCIE staff, Lyxor undertook a review of the matter, found the October 2013 payment advice, and informed OCIE staff that Lyxor had directed the Third Party Advisers to pay Lyxor S.A.S. \$647,738.93 pursuant to the Side Letter. In consultation with an outside accounting firm, Lyxor determined that it was owed \$910,469 from the Third Party Advisers pursuant to the Side Letter, including the \$647,738.93 it had directed the Third Party Advisers to pay Lyxor S.A.S. Lyxor notified its clients, and rebated them monies related to the Side Letter, plus interest. Lyxor also undertook a review of its agreements with other outside managers to ensure no similar agreements existed and took steps to enhance its policies and procedures, including adopting additional policies to detect and prevent conflicts of interest between Lyxor and its clients and policies and controls to prevent the receipt of monies from sub-advisers.

VIOLATIONS

17. As a result of the conduct described above, Lyxor willfully² violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in any

² A willful violation of the securities laws mean merely "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

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)).

18. As a result of the conduct described above, Lyxor willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder by failing to implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules. Lyxor failed to adopt and implement reasonably designed policies and procedures related to preventing conflicts of interest.

19. As a result of the conduct described above, Lyxor willfully violated Section 204(a) of the Advisers Act, and Rule 204-2(a)(2) promulgated thereunder, which requires that investment advisers registered with the Commission maintain and preserve certain books and records. Rule 204-2(a)(2) requires that registered investment advisers keep “[g]eneral and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.”

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 with respect to Lyxor, it is hereby ORDERED that:

A. Lyxor cease and desist from committing or causing any violations and any future violations of Sections 204(a), 206(2) and 206(4) of the Advisers Act and Rules 204-2(a)(2) and 206(4)-7 thereunder.

B. Lyxor is censured.

C. Lyxor shall, within fourteen (14) days of the entry of this Order, pay a civil money penalty in the amount of \$500,000.00 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 deposit of the civil penalty is not made by the required payment date, additional interest shall accrue pursuant to 31 U.S.C. 3717.

Payment shall 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](https://www.pay.gov) through the SEC website at www.sec.gov/about/offices/ofm.htm; or

“also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

- (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 Lyxor Management Corporation as 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 Lara S. Mehraban, Division of Enforcement, Securities and Exchange Commission, 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