UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4952 / June 29, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18565

In the Matter of **THL MANAGERS V, LLC,** **and** **THL MANAGERS VI, 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 THL Managers V, LLC and THL Managers VI, LLC (collectively, "THL" or "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement ("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 Respondents 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 finds[1] that:

SUMMARY

1. This matter arises from inadequate disclosures by private equity fund adviser THL regarding THL's potential future receipt of lump sum fees from the portfolio companies of two THL-managed private equity funds launched in 2000 and 2006.

2. THL typically entered into agreements with portfolio companies, pursuant to which THL received periodic fees in exchange for performing consulting and advisory services for the portfolio companies. Upon the initial public offering ("IPO") or sale of the portfolio companies, certain of THL's agreements with the portfolio companies terminated automatically, and THL received an accelerated, lump sum payment of the fees that would have been payable to THL for providing services for the remaining term of the agreement. Between 2013 and 2015, THL received accelerated fees upon the early termination of portfolio company agreements in five instances, one upon the sale of a portfolio company and four upon initial public offerings of portfolio companies.

3. THL disclosed in the funds' governing documents that it may enter into consulting agreements with portfolio companies and receive consulting fees from portfolio companies, a majority percentage of which would be shared with the funds' limited partners in the form of management fee credits, while THL kept the remainder of the fees. Additionally, as to one fund, THL entered into binding side letter agreements that contained a provision stating "[f]or the avoidance of doubt" that THL may receive fees upon the sale or IPO of portfolio companies, which THL also credited against management fees. THL provided notice of the side letter provision to more than three quarters, but not all, of the fund's limited partners. THL also disclosed, in semi-annual financial reports provided to all limited partners, the amount of periodic and accelerated fees and the shared and retained portions, and portfolio companies disclosed the accelerated fees in Commission filings in connection with their IPOs or, in the case of one company, sale. Nevertheless, THL did not adequately disclose to the funds, their advisory committees, or all the funds' limited partners, prior to their commitment of capital, that THL may receive accelerated fees upon the early termination of portfolio company agreements.

4. Because its receipt of accelerated fees from portfolio companies posed at least a potential conflict of interest as between it and the funds, THL could not effectively consent to this practice on behalf of the funds. As a result, THL negligently breached its fiduciary duty to the funds in violation of Section 206(2) of the Advisers Act. By engaging in a practice of negotiating and receiving accelerated fees from portfolio companies without adequately disclosing this practice to all of the funds' limited partners prior to their commitment of capital, certain statements by THL to the funds' limited partners were made misleading, and thus THL negligently violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. THL also

[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.

negligently violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder by failing to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act arising from its undisclosed receipt of accelerated fees from portfolio companies.

RESPONDENTS AND OTHER RELEVANT ENTITIES

Respondents

5. THL Managers V, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. THL Managers V was registered with the Commission as an investment adviser, based on its affiliation with a registered investment adviser, between August 2001 and March 2003. Between March 2012 and December 2016, THL Managers V was a relying adviser of THL Managers VI. THL Managers V managed Thomas H. Lee Equity Fund V, L.P., a private equity fund, and associated investment vehicles.

6. THL Managers VI, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. THL Managers VI has been registered with the Commission as an investment adviser since March 30, 2012. THL Managers VI manages Thomas H. Lee Equity Fund VI, L.P., a private equity fund, and associated investment vehicles. As of March 31, 2017, THL Managers VI reported assets under management of approximately $5.6 billion.

Other Relevant Entities

7. Thomas H. Lee Equity Fund V, L.P. ("Fund V") is a Delaware limited partnership. Fund V was an unregistered fund formed in 2000 to make private equity investments. THL Managers V managed Fund V and its associated investment vehicles. THL raised nearly $6 billion in capital commitments for Fund V and its associated investment vehicles. As of June 2014, Fund V had liquidated most of its investments, and THL was no longer charging a management fee to Fund V limited partners.

8. Thomas H. Lee Equity Fund VI, L.P. ("Fund VI") is a Delaware limited partnership. Fund VI is an unregistered fund formed in 2006 to make private equity investments. THL Managers VI manages Fund VI and its associated investment vehicles. THL raised nearly $8 billion in capital commitments for Fund VI and its associated investment vehicles.

FACTS

Background

9. THL and its predecessors and affiliates have been in the business of managing private equity funds since 1974.

10. THL or its affiliates have advised multiple private equity funds, including Fund V and Fund VI (each a "Fund" and collectively, the "Funds"). A THL affiliate serves as the

general partner of each Fund. Each Fund is governed by a limited partnership agreement ("LPA"), which sets forth the terms of the partnership and the rights and obligations of the Fund's manager, general partner, and limited partners. Per the terms of each Fund's LPA, the general partner receives a profit interest or carried interest of 20% of each Fund's realized net profits, after the limited partners receive a minimum preferred return. Each Fund also enters into a management agreement with THL, which provides for the payment of a management fee to THL by the limited partners.

11. Each Fund's LPA establishes an advisory committee consisting of a certain number of the limited partners of each Fund ("LPAC"). Under the terms of the LPA, the functions of the LPAC include the review and approval or disapproval of any potential conflicts of interest of THL, including without limitation conflicts related to material financial transactions with portfolio companies, other than those transactions contemplated in the LPA.

<u>THL's Pre-Commitment Disclosures of Portfolio Company Fees</u>

12. The Funds make investments, and thus have an ownership interest, in multiple portfolio companies.

13. Each Fund's LPA provides that THL "may enter into management or consulting agreements with Portfolio Companies consistent with [the LPA's consulting fee provision]."

14. The consulting fee provision of each Fund's LPA in turn states as follows: "<u>Consulting Fees</u>. [THL] shall be entitled to receive and retain management, consulting or directors fees (including any options, warrants or other securities which are paid in lieu of cash) from each Portfolio Company (collectively, 'Consulting Fees')."

15. A separate provision of each Fund's LPA states as follows: "<u>Transaction Fees</u>. [THL] shall be entitled to receive and retain from each Portfolio Company a customary transaction fee ('Transaction Fee') with respect to the making of the investments in Portfolio Companies."

16. As to Fund VI, THL entered into binding side letters that included the following provision ("Side Letter Provision"): "For the avoidance of doubt, the General Partner confirms that: (a) Transaction Fees include divestment fees, termination fees and other similar fees earned on or relating to an investment in or disposition of a Portfolio Company; and (b) Consulting Fees include monitoring fees and other similar fees earned on or relating to the management of a Portfolio Company." Approximately 78% of the Fund VI limited partners, by committed capital and prior to their commitment of capital, either entered into a side letter containing this provision or knew that this provision was included in the side letters of other limited partners. The Side Letter Provision was enacted at the request of certain limited partners to confirm that THL would share Accelerated Fees with the limited partners in the same ratio as consulting fees and transaction fees, as provided in the LPA.

17. The Funds' LPAs further provide that THL will credit a percentage of the transaction and consulting fees THL receives from portfolio companies against future

management fees due from the Funds' limited partners to THL. The percentage of portfolio company fees that THL offset against management fees was 60% for Fund V and 65% for Fund VI. Thus, THL applied a credit of 60% or 65% of the transaction and consulting fees it received from portfolio companies, depending on the Fund, toward the future management fees payable to THL by the limited partners.

18. Each Fund's LPA also provides that, if there are no management fees due for the remainder of the term of the LPA against which THL can credit fees from portfolio companies, then the limited partners receive their pro rata share of the applicable percentage of such fees, if the limited partners elect to receive such excess or "special" fees. Limited partners may elect special fees, or change their special fee election, at any time, but only prospectively.

Fund V and Fund VI Portfolio Company Agreements

19. THL typically entered into agreements with Fund V and Fund VI portfolio companies, pursuant to which THL received a periodic fee from the portfolio company in exchange for providing consulting and advisory services to the portfolio company ("Monitoring Agreements"). The Funds' limited partners were not parties to the Monitoring Agreements and had no role in negotiating them. THL's Monitoring Agreements commonly had ten-year terms and some contained so-called "evergreen" provisions that automatically extended the term year-by-year beyond the original ten-year term.

20. THL's Monitoring Agreements also provided for the payment of fees to THL upon triggering events. In particular, upon either the IPO or sale of a portfolio company, the Monitoring Agreements typically terminated automatically, and THL received fees calculated based on the net present value of the periodic fees that would have been payable to THL for the remaining term of the agreement ("Accelerated Fees").

21. In all but one instance where THL received Accelerated Fees, the Funds maintained an ownership stake in portfolio companies, and THL continued to provide consulting and advisory services to the portfolio companies until the Funds' complete exit from these investments.

Fund V and Fund VI Portfolio Company Accelerated Fees

22. THL received Accelerated Fees from Fund V and Fund VI portfolio companies. THL treated Accelerated Fees in the same manner as transaction or consulting fees and credited 60% or 65% of the Accelerated Fees it received, depending on the Fund, toward future management fees payable to THL by the limited partners, if any. As a result of this sharing practice and the substantial Accelerated Fees THL received, the limited partners in Fund V and Fund VI received significant management fee offsets and did not pay any management fees for several years.

23. With regard to Fund V, in one instance in 2014, THL sold a Fund V portfolio company and received an Accelerated Fee, although Fund V completely exited the portfolio company investment and THL would no longer be providing services to the portfolio company.

Moreover, by the time of the sale of the portfolio company and termination of the Monitoring Agreement, Fund V was winding down, and the Fund V limited partners were no longer paying management fees to THL against which THL could offset the Accelerated Fee it received. In this situation, the Accelerated Fee was treated as a "special fee" per the terms of the LPA and distributed to electing limited partners. Approximately 15% of Fund V limited partners elected to receive special fees. Per the terms of the LPA, electing limited partners received their pro rata share of the applicable percentage of the Accelerated Fee, THL kept the balance, and non-electing limited partners did not receive any of the Accelerated Fees.

24. With regard to Fund VI, in four instances between 2013 and 2015, THL received Accelerated Fees from Fund VI portfolio companies upon IPOs. In all such instances, THL credited the relevant percentage of the Accelerated Fees toward future management fees payable from the limited partners to THL. In all four instances, Fund VI did not sell any shares in the IPO, Fund VI maintained an ownership stake in the portfolio companies after the IPO, and THL continued to provide post-IPO services to the portfolio companies.

25. As noted above, THL disclosed in the LPAs for Fund V and Fund VI that it may enter into Monitoring Agreements with portfolio companies and receive consulting fees from portfolio companies and transaction fees with respect to the making of investments in portfolio companies. As to Fund VI, THL also disclosed that it may receive fees upon the sale or IPO of portfolio companies to the 78% of Fund VI limited partners who had notice of the Side Letter Provision, prior to their commitment of capital. However, THL did not make adequate pre-commitment disclosures as to the 22% of Fund VI limited partners who did not receive notice of the Side Letter Provision. As to Fund V, THL did not disclose to the Fund, the LPAC, or the limited partners, prior to their commitment of capital, its practice of negotiating and receiving Accelerated Fees upon the early termination of Monitoring Agreements resulting from portfolio company IPOs or sales. Also as to Fund V, THL did not disclose to the Fund, the LPAC, or the limited partners that special fees potentially could include fees THL received upon the disposition of, or early termination of Monitoring Agreements with, portfolio companies.

26. As to both Funds, THL disclosed the amount of the Accelerated Fees it received in semi-annual financial reports to limited partners. Portfolio companies also disclosed these fees in Commission filings. Beginning in 2014, THL disclosed in its Form ADV filed with the Commission that it may receive Accelerated Fees in certain circumstances. By the time of these disclosures, all of the Fund V limited partners and 22% of Fund VI limited partners, by committed capital, had already committed capital without receiving adequate disclosures about Accelerated Fees, and portfolio companies had already paid Accelerated Fees to THL.

27. THL's receipt of Accelerated Fees from portfolio companies posed at least a potential conflict of interest as between THL and the Funds. THL thus could not effectively consent on behalf of the Funds to its practice of negotiating and accepting such fees. Under each Fund's LPA, the LPAC had the authority to approve or disapprove potential conflicts of interest, and the LPAC's determination was binding upon THL. However, THL did not consult the LPAC about its practice of receiving Accelerated Fees or seek the review and approval of the Funds' LPACs before receiving Accelerated Fees.

Compliance Policies and Procedures

28. As a registered investment adviser, THL is subject to the Advisers Act rules, including the requirement to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

29. Despite its practice of receiving Accelerated Fees, THL did not adopt or implement written policies and procedures reasonably designed to prevent violations of the Advisers Act or its rules arising from THL's receipt of Accelerated Fees.

VIOLATIONS

30. As a result of the negligent conduct described above, THL violated Section 206(2) of the Advisers Act.

31. As a result of the negligent conduct described above, THL violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

32. As a result of the negligent conduct described above, THL violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

THL'S COOPERATION

33. In determining to accept THL's offer, the Commission considered the cooperation afforded the Commission staff. Throughout the staff's investigation, THL voluntarily and promptly provided documents and information to the staff. THL met with the staff on multiple occasions and provided detailed factual summaries of relevant information. THL was extremely prompt and responsive in addressing staff inquiries.

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 shall 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, jointly and severally, pay disgorgement and prejudgment interest as follows:

1. Respondents shall, jointly and severally, pay disgorgement of $4,806,016, consisting of $3,806,016 in disgorgement as to Fund V and $1,000,000 in

disgorgement to Fund VI, plus $200,000 in prejudgment interest, for a total payment of $5,006,016 under the provisions of this Subsection B.

2. Within ten (10) days of the entry of this Order, Respondents shall deposit the full amount of the disgorgement and prejudgment interest, as described in paragraph 1 of this Subsection B (the "Distribution Fund") into an escrow account not unacceptable to the Commission staff and shall provide the Commission staff with evidence of such deposit in a form not unacceptable to the Commission staff. If timely deposit is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 (17 C.F.R. § 201.600).

3. Respondents shall be responsible for administering the Distribution Fund. The costs and expenses of administering the Distribution Fund shall be borne by Respondents and shall not be paid out of the Distribution Fund. Respondents shall distribute the Distribution Fund to the limited partners of Fund V and Fund VI (other than the Respondents and the other entities described in paragraph 4(i)-(iv) of this subsection B) ("Eligible Limited Partners") based on each Fund's share of the Accelerated Fees referenced in this Order, and, in turn, each Eligible Limited Partner's pro rata interest in the Funds from July 1, 2013 to June 30, 2015 (the "Relevant Period"), pursuant to a disbursement calculation (the "Calculation") to be submitted for review and approval by the Commission staff in accordance with this paragraph 3 of this Subsection B. Within sixty (60) days of the entry of this Order, Respondents shall submit a proposed Calculation to the staff for review and approval. The proposed Calculation will include a description of the calculation methodology, the names of the Eligible Limited Partners of Fund V and Fund VI, the exact payment amount to be made from the Distribution Fund to each Eligible Limited Partner, and the amount of any *de minimis* threshold to be applied. Respondents also shall provide to the Commission staff such additional information and supporting documentation as the Commission staff reasonably may request for its review, and, as necessary, make those with knowledge of the Calculation available for a call to discuss with the staff. In the event of any objections by the Commission staff to the proposed Calculation or any of its information or supporting documentation, Respondents shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that Respondents are notified of the objection, which revised Calculation shall be subject to all of the provisions of Subsection B. The Calculation approved by the Commission staff is referenced herein as the "Final Calculation."

4. Respondents shall distribute the Distribution Fund to all Eligible Limited Partners pursuant to the Final Calculation within sixty (60) days of the date on which the Commission staff approves the Calculation, unless such time period is extended by the Commission staff as provided in paragraph 9 of this Subsection B. Such distribution shall be based on the methodology set forth

in the Calculation as reviewed and approved by the staff. Payments to Eligible Limited Partners receiving more than one payment from the Distribution Fund may be aggregated for the purposes of payment, but should be reflected individually in the Calculation. No portion of the Distribution Fund shall be distributed to: (i) the Respondents; (ii) the general partner of Fund V or Fund VI; (iii) any principals, officers, or affiliates of the foregoing; or (iv) any account in which any of the foregoing has or had any direct or indirect interest.

5. Respondents shall make reasonable efforts to locate prospective payees and payees whose payment is returned, and shall maintain a record of such efforts. If Respondents do not distribute any portion of the Distribution Fund for any reason, including factors beyond their control, Respondents shall transfer any such undistributed funds to the Commission for transfer to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934 after the final accounting provided for in Paragraph 7 of this Subsection B is submitted to the Commission staff. Any such payment shall be made in one of the following ways: (1) electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or (3) 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 Respondents 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 Robert B. Baker, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 24th Floor, Boston, MA 02110.

6. The Distribution Fund is a Qualified Settlement Fund under Section 468B(g) of the Internal Revenue Code (26 U.S.C.§§1.468B.1-1.468B.5). Respondents shall bear the costs of and be responsible for all tax compliance responsibilities associated with the Distribution Fund, including the Foreign Account Tax Compliance Act (FACTA), and shall retain any professional services necessary. The costs and expenses of any such professional services shall be borne by the Respondents and shall not be paid out of the Distribution Fund.

7. Within sixty (60) days after Respondents complete the distribution of all amounts payable to Eligible Limited Partners, Respondents shall submit to the Commission staff a final accounting and certification of the disposition of the Distribution Fund not unacceptable to the staff, which shall be in a format to be provided by the Commission staff. The final accounting and certification shall include: (i) the amount distributed to each Eligible Limited Partner (further specifying the amount attributable to each Fund, as to those who are limited partners of both Funds); (ii) the date of each distribution; (iii) the check number or other identifier of money distributed to the limited partner; (iv) any amounts not distributed (including any returned, unnegotiated, or unpaid payment and a description of the efforts made to locate and distribute to such Eligible Limited Partners) to be transferred to the Commission for transfer to the United States Treasury; and (v) an affirmation that Respondents made payments from the Distribution Fund to Eligible Limited Partners in accordance with the Final Calculation. Respondents shall submit the final accounting and certification, together with proof and supporting documentation of such payments in a form not unacceptable to Commission staff, under a cover letter that identifies the Respondents in these proceedings and the file number of these proceedings, to Robert B. Baker, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 24th Floor, Boston, MA 02110, or such other address the Commission staff may provide. Respondents shall provide reasonable supporting documentation for the accounting and certification to the Commission staff upon request.

8. After Respondents submit the final accounting and certification to the Commission staff, the staff shall submit the final accounting to the Commission for approval and shall request Commission authorization to transfer any remaining amount to the United States Treasury and to terminate the Distribution Fund; and

9. The Commission staff may extend any of the procedural dates set forth in this Subsection B for good cause shown. Deadlines for dates related 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. Respondents shall, jointly and severally, within ten (10) business days of the entry of this Order, pay a civil money penalty in the amount of $1,500,000 to the 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 payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment under this Subsection C 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

Payments by check or money order must be accompanied by a cover letter identifying Respondents 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 Robert B. Baker, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 24th Floor, Boston, MA 02110.

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, Respondents agree that in any Related Investor Action, Respondents shall not argue that Respondents are entitled to, nor shall Respondents benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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