

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 33226 / September 14, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18767

In the Matter of

Cushing Asset Management, LP,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 9(f) OF THE INVESTMENT COMPANY 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 that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Cushing Asset Management, LP (“Cushing” 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 Cease-and-Desist Proceedings Pursuant to Section 9(f) of the Investment Company 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

Cushing Asset Management, L.P. caused its client's violations of the affiliated transaction provisions of the Investment Company Act of 1940 ("Investment Company Act.") in connection with two undisclosed cross trades of approximately \$33.5 million. On December 20, 2012, Cushing, on behalf of a hedge fund it managed, sold 1,565,786 units of a publicly traded master limited partnership ("MLP") to a closed-end fund and open-end fund it also managed (the "Registered Funds"). Cushing used two brokers to execute the trades, resulting in its clients incurring \$125,000 in brokerage fees. As a result of the manner in which the transactions were conducted, the trades constituted cross trades between the affiliated hedge fund and Registered Funds, and Cushing caused the hedge fund client it advised to violate Section 17(a)(1) of the Investment Company Act.

RESPONDENT

Cushing Asset Management, LP, is a Texas Limited Partnership that has been a registered investment adviser since June 2004 and is headquartered in Dallas, Texas. Cushing has approximately \$3.5 billion in assets under management.

FACTS

1. In December 2012, Cushing decided that it wanted to sell 1,565,786 units of an MLP (the "Traded Securities") on behalf of a hedge fund client on December 20, 2012, which was the day those units would become unrestricted.
2. The Traded Securities' publicly traded units were thinly traded. In the month before December 20, 2012, the publicly traded units had an average daily trading volume of approximately 51,000 units at prices that ranged from \$22.00 to \$23.75. Thus, the 1,565,786 units Cushing wished to sell for its hedge fund client would be an almost 31-fold increase in the average daily trading volume. Restricted units owned by others unaffiliated with Cushing were also going to become unrestricted on December 20, 2012.
3. Cushing determined that the same day it planned to sell units of the Traded Securities, it would purchase the same total number of units of the Traded Securities for the Registered Funds.
4. Before executing the transaction, Cushing personnel consulted with legal counsel as to how to conduct the trades so that they would not be "cross-trades." Based on counsel's privileged advice, Cushing personnel orally provided instructions to the firm's traders regarding how to place the trades, but did not specify how to implement the instructions. The traders did not seek guidance on how to implement the instructions and did not follow the instructions in significant ways.

5. On December 20, 2012, at approximately 2:30 p.m., a Cushing trader placed a sell order for the Traded Securities on behalf of the hedge fund Cushing advised. The trader placed the order with Broker A, which took the trade on an agency basis.

6. A Cushing trader contacted Broker B that same day and stated that Cushing had a sell order that the trader characterized as a “private” trade. Broker A subsequently contacted Broker B.

7. At approximately 3:30 p.m., a Cushing trader placed a corresponding buy order with Broker B for the same number of units of the Traded Securities and instructed Broker B to allocate the units to the Registered Funds. Broker B placed the buy order as agent for Cushing. The buy order was almost instantaneously executed at \$21.36 per unit for a total purchase price of approximately \$33.5 million. Because the Traded Securities still bore a restrictive legend, the December 20, 2012 trades did not settle until over a week later when the legend was removed.

8. The Cushing clients incurred total brokerage fees of approximately \$125,000.

9. These trades made up over 40% of the trading volume for the units on December 20, 2012.

10. As a result of the conduct described above, Cushing caused the hedge fund it advised to knowingly sell securities to the Registered Funds in violation of Section 17(a)(1) of the Investment Company Act, which prohibits an affiliated person of a registered investment company from selling any security to such registered company unless the Commission has granted an order under Section 17(b) of the Investment Company Act exempting the transaction from the provisions of Section 17(a).

IV.

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

Accordingly, pursuant to Section 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(1) of the Investment Company Act.

B. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty of \$100,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). 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.

C. 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 Cushing Asset Management, L.P. 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 Dabney O'Riordan, co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.

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