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Asset Management ADVocate

Apollo Global Management Settles with the SEC

Four affiliates of Apollo Global Management settled with the SEC by paying $52.7 million (disgorgement of $37.5 million, prejudgment interest of $2.7 million, and a civil money penalty of $12.5 million) and were issued a cease-and-desist order. There were several bases of alleged misconduct.

- Apollo had 10-year monitoring agreements with its portfolio companies. If the monitoring company had a liquidity event, Apollo accelerated the monitoring fee payable into a lump sum payment. While Apollo had disclosed the existence of the monitoring fee, it did not adequately disclose its intent to accelerate. It is notable that the SEC order does not say that Apollo offset the monitoring fees against its investment advisory fees.
- Apollo borrowed $19 million from certain of the funds, an amount that was equal to the carried interest then due to Apollo, which had the effect of deferring income taxes on the carried interest until the debt was paid. The accrued interest owed on the loan was credited solely to the capital account of Apollo, which was not adequately disclosed to the other partners.
- A senior partner at Apollo improperly charged personal items and services to the funds and the portfolio companies for three years. When the activity came to light, he was required to reimburse the funds and portfolio companies and received a verbal reprimand; he engaged in the same activity a second time, and the same responses occurred. After the second occurrence, an internal review was conducted, Apollo self-reported the events to the SEC staff, and his employment ceased six months after everything came to light.

Apollo was accused of violating Sections 206(2) and 206(4) of the Investment Advisers Act, and Rules 206(4)-7 and 206(4)-8 thereunder. The non-civil money penalty portions of the payments are to be made into a disgorgement fund. Apollo will self-administer distribution of the disgorgement fund, which seems to be the SEC's currently preferred approach rather than requiring an independent distribution consultant. The civil money penalty was expressly capped at $12.5 million in acknowledgement of the cooperation that the SEC staff received. Among the unusual things not noted in the settlement are that:

1. Apollo did not voluntarily disgorge the money on its own but elected instead to oppose the SEC investigation,
2. The matter was handled as an administrative proceeding instead of seeking an injunction, thereby avoiding any additional collateral damage to its business, and
3. The SEC did not impose a compliance consultant to review and report on Apollo's compliance policies and procedures.

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