

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4772 / September 21, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18194

In the Matter of

PLATINUM EQUITY
ADVISORS, LLC

Respondent.

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 Platinum Equity Advisors, LLC (“Platinum” 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 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 Respondent's Offer, the Commission finds¹ that:

SUMMARY

1. Respondent Platinum is a registered investment adviser that manages certain private equity funds and focuses on investments in underperforming or undermanaged companies it believes can benefit from its operational expertise. From 2004 to 2015, Platinum advised and managed three main private equity funds: Platinum Equity Capital Partners, L.P. (together with its parallel funds and alternative investment vehicles, "Fund I"); Platinum Equity Capital Partners II, L.P. (together with its parallel funds and alternative investment vehicles, "Fund II"); and Platinum Equity Capital Partners III, L.P. (together with its parallel funds and alternative investment vehicles, "Fund III") (collectively, the "Private Equity Funds"). Pursuant to the limited partnership agreements (the "LPAs"), affiliates of Platinum, the Private Equity Funds' general partner, and/or members, officers, directors, and employees of Platinum and its affiliates (the "Platinum Co-Investors") co-invested a pre-determined amount in each consummated portfolio company investment through separate co-investment vehicles. Platinum also advised and managed these co-investment vehicles.

2. From 2004 to 2015, the Private Equity Funds invested approximately \$5.3 billion in 85 companies. In addition, the Platinum Co-Investors invested approximately \$728 million in these same companies through Platinum co-investment vehicles. During this time, Platinum incurred out-of-pocket fees, costs, and expenses incurred in developing, negotiating, and structuring prospective portfolio investments that were not ultimately made ("broken deal expenses") related to the Private Equity Funds. Under the LPAs, the Private Equity Funds were responsible for all expenses of the partnership (other than general partner expenses), including broken deal expenses. Similarly, the private placement memoranda for the Private Equity Funds disclosed that each fund would "pay all expenses related to its *own operations* ('[p]artnership [e]xpenses')," including broken deal expenses. (Emphasis added.) Platinum allocated all broken deal expenses to the Private Equity Funds. The LPAs did not disclose that the Private Equity Funds would also pay the broken deal expenses for the portion of each investment that would have been allocated to the Platinum Co-Investors, who participated in and benefited from Platinum's sourcing of private equity transactions. As a result of this conduct, Platinum violated Section 206(2) of the Advisers Act.

3. Since Q2 2012, Platinum incurred and was reimbursed for a total of approximately \$42.6 million in broken deal expenses. When applying a methodology based on the co-investment percentages established each year, the Private Equity Funds were allocated

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.

\$1,811,501 since Q2 2012 for broken deal expenses without such disclosure in the LPAs.²

4. Platinum also did not adopt and implement a written compliance policy or procedure governing its fund expense allocation practices in violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

RESPONDENT

5. **Platinum Equity Advisors, LLC**, a Delaware limited liability company, is a registered investment adviser that manages private equity funds. Platinum was founded in 2003 and began managing its first private equity fund in 2004. Headquartered in Beverly Hills, California, Platinum has been a registered investment adviser with the Commission since March 2012. At all relevant times, Platinum managed the Private Equity Funds and co-investment vehicles that invested alongside them. As of March 16, 2017, Platinum had approximately \$13.14 billion in assets under management.

RELEVANT PARTIES

6. **Platinum Equity Capital Partners L.P.**, a Delaware limited partnership, was formed in 2003 and had its final closing in July 2004 with \$700 million in committed capital. Fund I actively invested in private equity transactions from 2004 to 2007, with add-on investments continuing thereafter.

7. **Platinum Equity Capital Partners II, L.P.**, a Delaware limited partnership, was formed in 2007 and had its final closing in August 2008. Fund II has \$2.75 billion in committed capital and actively invested in private equity transactions from 2007 to 2011, with add-on investments continuing thereafter.

8. **Platinum Equity Capital Partners III, L.P.**, a Delaware limited partnership, was formed in 2011 and completed its first closing in December 2011. Fund III has \$3.75 billion in committed capital and actively invested in private equity transactions from 2012 to 2016, with add-on investments continuing thereafter.

² Platinum used a separate co-investment vehicle for each co-investment. Each co-investment vehicle had its own LLC Agreement or LPA that Platinum negotiated with the Platinum Co-Investors, which were associated or affiliated with Platinum. While the co-investment LLC Agreements or LPAs, as applicable, provided that the co-investment funds would pay a *pro rata* share of expenses for the transactions in which the co-investment vehicle participated (*i.e.*, successful deals, not broken deals), the LLC Agreements or LPAs, as applicable, did not provide that the co-investment vehicle or co-investors would pay any broken deal expenses. As a result, Respondent shall compensate the Private Equity Funds as set forth in Section IV.B. below.

FACTS

Platinum's Private Equity Funds

9. Platinum provides advisory services to the Private Equity Funds. The stated investment objective of the Private Equity Funds is to generate significant capital appreciation for investors by making private investments in underperforming companies.

10. The limited partners in the Private Equity Funds include high net worth individuals and related trusts, corporate and public pension plans, pooled investment vehicles, school trusts, charitable foundations and endowments, sovereign wealth funds, insurance companies, and other institutional investors. As limited partners, these investors committed and subsequently contributed specified amounts of capital to the Private Equity Funds for their use in making qualifying investments during a commitment period of six years.

11. For its investment management services to the Private Equity Funds, Platinum charges a management fee which ranges by fund from 1.5% to 2% per year of capital contributions during the funds' investment periods. The general partners of the Private Equity Funds, affiliates of Platinum, are eligible to receive carried interest of up to 20% of the net profits realized by the limited partners in the funds.

12. Platinum originates, recommends, and structures investment opportunities for the Private Equity Funds. After portfolio investments are made, Platinum monitors and evaluates the investments, makes recommendations regarding the timing and manner in which investments are sold, and provides ongoing management and operations services to the portfolio companies. In exchange for its ongoing management and operations services, Platinum receives transaction and monitoring fees and reimbursement of out-of-pocket costs from certain portfolio investments. These fees offset and reduce Platinum's management fee.

13. Subject to the discretion of the general partner of the Private Equity Funds, the specified minimum capital commitment for limited partners was \$10 million. The general partner also committed a specified amount of capital to the funds.

Platinum Co-Investors

14. Beyond capital from the limited partners and general partner, Platinum invested money from Platinum Co-Investors for each of its consummated private equity transactions. The LPAs stated that Platinum Co-Investors "shall co-invest with the [p]artnership in each [p]ortfolio [i]nvestment on the same economic terms and conditions as the [p]artnership," and reserved a percentage of each consummated portfolio investment for Platinum Co-Investors. The specific co-investment percentages were determined at the beginning of each year by the general partner of each fund. From 2004 through 2015, the co-investment percentage was generally 50% for portfolio investments in which the total amount invested was \$10 million or less and generally ranged from 5% to 20% for investments greater than \$10 million. Other than as noted above, the

LPAs and related offering materials did not provide any information regarding the co-investment vehicles.

15. For each portfolio investment by the Private Equity Funds, co-investment occurred via a separate Platinum co-investment vehicle. Platinum did not have a standing committed capital co-investment vehicle. Rather, Platinum used a separate vehicle to co-invest in each consummated private equity transaction. While certain of the Platinum Co-Investors, who were typically officers, directors, executives, and employees of Platinum, repeatedly co-invested through these co-investment vehicles, some of the Platinum Co-Investors did not, and the make-up of the Platinum Co-Investors varied to some extent from transaction to transaction. The contracts governing these co-investment vehicles provided that these vehicles paid their pro rata share of expenses related to the investment held by such vehicle, but they did not provide for Platinum to charge these vehicles for broken deal expenses related to the transactions that were never consummated.

16. From 2004 through 2015, Platinum Co-Investors invested approximately \$158 million alongside the approximately \$518 million invested by Fund I; approximately \$469 million alongside the approximately \$2.3 billion invested by Fund II; and approximately \$101 million alongside the approximately \$1.7 billion invested by Fund III.

Broken Deal Expenses

17. Platinum incurred significant expenses to develop, negotiate, and structure potential investment opportunities for its Private Equity Funds and the Platinum Co-Investors, but consummated only a certain number of those deals each year.

18. Under the LPAs for the Private Equity Funds, broken deal expenses were defined to include “[a]ll out-of-pocket fees, costs, and expenses, if any, incurred in developing, negotiating, and structuring prospective [p]ortfolio [i]nvestments that are not ultimately made.” Broken deal expenses were initially recorded by Platinum and then billed to the relevant Private Equity Fund after Platinum determined that such deals would not occur. The Private Equity Funds then reimbursed Platinum.

19. The LPAs for the Private Equity Funds required that each fund “bear and be charged with all expenses of the [p]artnership other than [g]eneral [p]artner [e]xpenses,” including broken deal expenses. Similarly, the related private placement memoranda stated that each fund would “pay all expenses related to its *own operations* (“[p]artnership [e]xpenses”), including...[b]roken [d]eal [e]xpenses.” (Emphasis added.) The Private Equity Funds ultimately paid for all of the broken deal expenses incurred.

Allocation of All Broken Deal Expenses to the Private Equity Funds

20. From 2004 through 2015, Platinum incurred and the Private Equity Funds reimbursed it for broken deal expenses for potential deals for the Private Equity Funds that, had

the deals been successful, would have been partially allocated to co-investment vehicles. During this period, Platinum allocated all of the broken deal expenses to the Private Equity Funds. The LPAs did not disclose that the Private Equity Funds would pay the broken deal expenses for the portion of each investment that would have been allocated to the co-investors.

21. Since Q2 2012, Platinum incurred and was reimbursed for approximately \$30,000 in broken deal expenses related to Fund I, approximately \$500,000 in broken deal expenses related to Fund II, and approximately \$42 million in broken deal expenses related to Fund III.³ Applying a methodology based on the co-investment percentages established each year, Platinum allocated to the Private Equity Funds \$1,811,501 since Q2 2012 in broken deal expenses without disclosure in the LPAs.

Deficient Compliance Policies and Procedures

22. In March 2012, Platinum registered with the Commission as an investment adviser and became subject to the applicable Advisers Act provisions governing registered investment advisers, including Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules. Since becoming a registered investment adviser through 2015, Platinum did not adopt and implement a written compliance policy or procedure governing its broken deal expense allocation practices.

VIOLATIONS

23. As a result of the conduct described above, Respondent violated Section 206(2) of the Advisers Act, which prohibits an investment adviser, directly or indirectly, from engaging “in any 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) 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)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.*

24. As a result of the conduct described above, Respondent violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires a registered investment adviser to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

IV.

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

³ The applicable limitations period under 28 U.S.C. § 2462 for disgorgement in this matter runs from Q2 2012 forward.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 203(k) of the Advisers Act, Respondent 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 Rule 206(4)-7 thereunder.

B. Respondent shall pay disgorgement and prejudgment interest as follows:

- a. Platinum shall pay a total of \$1,902,132 consisting of disgorgement of \$1,708,388 and prejudgment interest of \$193,744 (collectively, the “Disgorgement Fund”) to compensate the Private Equity Funds that invested in private equity transactions from Q2 2012 to 2015 pursuant to the provisions of Subsection B. The disgorgement amount of \$1,708,388 represents: (i) \$1,811,501 in broken deal expenses allocated to the Private Equity Funds, less (ii) \$103,113, which represents the portion of broken deal expenses owed to Platinum affiliated limited partners of the Private Equity Funds;
- b. Within ten (10) days of entry of this Order, Platinum shall deposit the full amount of the Disgorgement Fund into an escrow account acceptable to the Commission staff and shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely deposit is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600;
- c. Platinum shall be responsible for administering the Disgorgement Fund. Platinum shall distribute the amount of the Disgorgement Fund to the applicable funds. The distribution to each applicable fund shall be allocated to unaffiliated limited partners pro rata according to their respective ownership percentage. Under no circumstances shall any distribution to the applicable fund be made to the general partner or any limited partner affiliated with Platinum. Within 30 days of the entry of this Order, Platinum shall submit a proposed distribution to the staff for review and approval. The proposed distribution will include the names of the applicable funds and payment amounts. The distribution of the Disgorgement Fund shall be made in the next fiscal quarter immediately following the entry of this Order but no later than within 90 days of the date of the Order. If Respondent does not distribute any portion of the Disgorgement Fund for any reason, including factors beyond Respondent’s control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury. Any such payment shall be made in accordance with Section IV.C below;

- d. Platinum agrees to be responsible for all tax compliance responsibilities associated with distribution of the Disgorgement Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondent and shall not be paid out of the Disgorgement Fund; and
 - e. Within 120 days after the date of entry of the Order, Platinum shall submit to the Commission staff a final accounting and certification of the disposition of the Disgorgement 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 paid to each fund; (ii) the date of each payment; (iii) the check number or identifier of money transferred to the fund; and (iv) any amounts not distributed to be forwarded to the Commission for transfer to the United States Treasury. Respondent shall submit the final accounting and certification, together with proof and supporting documentation of such payments in a form acceptable to the Commission staff, under a cover letter that identifies Platinum Equity Advisors, LLC as the Respondent in these proceedings and the file number of these proceedings to Sara Kalin, Assistant Regional Director, Asset Management Unit, Los Angeles Regional Office, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, California, 90071, or such other address the Commission staff may provide. Any and all supporting documentation for the accounting and certification shall be provided to the Commission staff upon request. Once the Commission approves the final accounting, Respondent shall pay any amounts that have not been distributed to the Commission for transmittal to the United States Treasury.
- C. Respondent shall, within ten (10) days of entry of this Order, pay a civil money penalty in the amount of \$1.5 million to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 Platinum Equity Advisors, LLC as the 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 C. Dabney O’Riordan, Co-Chief Asset Management Unit, Division of Enforcement, Los Angeles Regional Office, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, California 90071.

By the Commission.

Brent J. Fields
Secretary