UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4830 / December 21, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18317

In the Matter of **TPG Capital 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 TPG Capital Advisors, LLC ("TPG" 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 finds[1] that:

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

SUMMARY

1. These proceedings arise from inadequate disclosures that involved a breach of fiduciary duty by private equity fund adviser TPG. From at least April 2013 through April 2015 ("Relevant Period"), upon either the private sale or an initial public offering ("IPO") of a portfolio company, TPG terminated certain portfolio company monitoring agreements and accelerated the payment of future monitoring fees pursuant to the agreements. Although TPG disclosed that it may receive monitoring fees from portfolio companies held by the funds it advised, and disclosed the amount of monitoring fees that had been accelerated following the acceleration, TPG failed to disclose to its funds, and to the funds' limited partners prior to their commitment of capital, that it may accelerate future monitoring fees upon termination of the monitoring agreements. Because its receipt of accelerated monitoring fees from four portfolio companies was a conflict of interest for TPG, it could not effectively consent to this practice on behalf of the funds it advised. As a result, TPG breached its fiduciary duty to the funds in violation of Section 206(2) of the Advisers Act, and also violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

2. TPG separately 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 the conflicts of interest associated with its undisclosed receipt of fees.

RESPONDENT

3. **TPG Capital Advisors, LLC** is a Delaware limited liability company with its principal place of business in Fort Worth, Texas. TPG is a private equity fund adviser that has been registered with the Commission as an investment adviser since January 6, 2012. TPG manages TPG Partners V, L.P.; TPG Partners VI, L.P; and TPG Biotechnology Partners III, L.P.

OTHER RELEVANT ENTITIES

4. **TPG Partners V, L.P. ("TPG Partners V")** is a Delaware limited partnership and private investment fund formed in 2006 to make private equity investments.

5. **TPG Partners VI, L.P. ("TPG Partners VI")** is a Delaware limited partnership and private investment fund formed in 2008 to make private equity investments.

6. **TPG Biotechnology Partners III, L.P. ("TPG Biotech III")** is a Delaware limited partnership and private investment fund formed in 2008 to make venture capital investments in companies in the biotechnology and related life sciences industries.

FACTS

A. Background

7. TPG is a Fort Worth-based private equity fund adviser. TPG's private equity platform has approximately $52 billion in regulatory assets under management as of January 1, 2017.

8. TPG has advised multiple private equity funds, including TPG Partners V, TPG Partners VI, and TPG Biotech III (collectively, the "Funds"), each of which was or is governed by a limited partnership agreement ("LPA") setting forth the rights and obligations of its limited partners, including their obligations to pay advisory and other fees and expenses to TPG pursuant to a separate management agreement between each Fund and TPG. As is typical in the industry, among other fees and expenses, TPG generally charges the limited partners in its Funds an annual advisory or "management fee" equivalent to between 1% and 2% of their capital under management. In addition, as a general partner in the Funds, TPG generally receives a profit interest or carried interest of 20% of the net profits realized by the limited partners in the Funds.

9. Each Fund's LPA established a Limited Partnership Advisory Committee ("LPAC") consisting of a number of limited partners. The functions of the LPAC include, among other things, the review and ability to object to any potential conflicts of interest between TPG and the Fund (including those relating to the receipt of certain fees, such as portfolio company monitoring fees).

B. Acceleration of Monitoring Fees

10. Each TPG-advised Fund owns or partially owns multiple portfolio companies (each, a "Portfolio Company"). TPG typically enters into monitoring agreements with each Portfolio Company. Pursuant to the terms of the monitoring agreements, TPG charges each Portfolio Company an annual fee in exchange for rendering a broad range of consulting and advisory services to the Portfolio Company concerning its financial and business affairs. The monitoring fees paid by each Portfolio Company to TPG are in addition to the annual management fee paid by the Funds' limited partners to TPG. However, a certain percentage of the monitoring fees the Portfolio Companies pay to TPG are used to offset a portion of the annual management fees that the Funds' limited partners would otherwise pay to TPG. The offset percentage, which was between 65 percent and 75 percent, depending on the Fund at issue, is negotiated by TPG and the limited partners for each Fund, and is set forth in each Fund's management agreement.

11. TPG's practice of entering into monitoring agreements with Portfolio Companies and collecting monitoring fees is disclosed and authorized in various pre-commitment fund documents, including private placement memoranda ("PPMs"), LPAs and management agreements. For example, the PPMs state that "[t]he General Partner and its affiliates also may receive customary break-up and topping fees, commitment fees, monitoring and directors' fees and

transaction, financing, divestment and other similar fees from Portfolio Companies as compensation for financial advisory and similar services."

12. TPG monitoring agreements commonly provided for up to ten years of monitoring services and fees. Certain TPG monitoring agreements previously contained so-called "evergreen" provisions that automatically extended the life of the agreement for an additional term. Some monitoring agreements between TPG and the Portfolio Companies also provided for acceleration of monitoring fees to be triggered by certain events. For example, upon either the private sale or IPO of a Portfolio Company, such monitoring agreements allowed TPG to terminate the monitoring agreement and accelerate the remaining years of monitoring fees, and receive present value lump sum "termination payments." TPG offset a portion of the accelerated monitoring fees as transaction fees against the management fees otherwise payable by the limited partners, rather than treat them as gains subject to the carry provisions.

13. There are four accelerated monitoring fees at issue. In one instance, TPG terminated the monitoring agreement and accelerated monitoring fee payments even though the relevant TPG-advised Fund was exiting the Portfolio Company, meaning that TPG would no longer be providing monitoring services to the Portfolio Company. In the other three instances, TPG terminated the monitoring agreement upon partial sale or IPO of a Portfolio Company and accelerated monitoring fee payments while maintaining some ownership stake in the company. In connection with these transactions, TPG has continued to provide consultancy and advisory services to the Portfolio Companies pending the Funds' exit from their investments. The exact timing of the exits following the IPOs and the partial sale generally is not known because the Funds continue to own, and have owned for several years, an interest in these companies.

14. While TPG disclosed its ability to collect monitoring fees to the Funds and to the Funds' limited partners prior to their commitment of capital, it did not disclose to the Funds, the Funds' LPAC, or the Funds' limited partners its receipt of accelerated monitoring fees in the PPMs and LPAs. The disclosures were made in LPAC reports, portfolio company Form S-1 filings, and TPG's Form ADV filed April 1, 2013. By the time these disclosures were made, the limited partners had already committed capital to the Funds. The LPAC of each Fund could have, pursuant to the provisions of the LPAs, objected to the accelerated monitoring fees after they had been taken, but never did. Because of its conflict of interest as the recipient of the accelerated monitoring fees, TPG could not effectively consent to the practice on behalf of the Funds.

C. TPG Failed to Adopt and Implement Policies and Procedures Reasonably Designed to Prevent Violations of the Advisers Act and its Rules

15. As a registered investment adviser, TPG 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.

16. From at least January 2012 through April 2015, while TPG was registered with the Commission as an investment adviser, it failed adequately to disclose or obtain the consent of the Funds to its receipt of accelerated monitoring fees.

17. Despite the practice of receiving accelerated monitoring fees, TPG did not adopt or implement any written policies or procedures reasonably designed to prevent violations of the Advisers Act or its rules arising from the conflicts of interest associated with the undisclosed receipt of fees.

VIOLATIONS

18. Section 206(2) of the Advisers Act prohibits investment advisers from directly or indirectly 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) 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)). Proof of *scienter* is not required to establish a violation of Section 206(2) of the Advisers Act. *Id*. As a result of the negligent conduct described above, TPG violated Section 206(2) of the Advisers Act.

19. Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder make it unlawful for any investment adviser to a pooled investment vehicle to "[m]ake any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle" or "engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle." As a result of the negligent conduct described above, TPG violated Section 206(4) of the Advisers Act, and Rule 206(4)-8 thereunder.

20. Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules. As a result of the negligent conduct described above, TPG violated Section 206(4) of the Advisers Act, and Rule 206(4)-7 thereunder.

TPG'S COOPERATION

21. In determining to accept TPG's offer, the Commission considered the cooperation afforded the Commission staff after TPG was contacted. Throughout the staff's investigation, TPG voluntarily and promptly provided documents and information to the staff. TPG met with the staff on multiple occasions and provided detailed factual summaries of relevant information. TPG 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 Respondent's Offer.

Accordingly, pursuant to Section 203(k) of the Advisers Act, it is hereby ORDERED that**:**

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

1. Respondent shall pay $9,849,128.79 consisting of disgorgement of $9,487,620.80 and prejudgment interest of $361,507.99 pursuant to the provisions of this Subsection B.

2. Within ten (10) days of the entry of this Order, Respondent shall deposit the full amount of the disgorgement and prejudgment interest, as described in paragraph (1) of this Subsection B (collectively the "Disgorgement Fund") into an escrow account at a financial institution not unacceptable 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 payment of the Disgorgement Fund into the escrow account is not made by the required payment date, additional interest shall accrue pursuant to SEC Rule of Practice 600.

3. Respondent shall be responsible for administering the Disgorgement Fund. Respondent shall distribute the Disgorgement Fund to the limited partners based on each Fund's share of the accelerated monitoring fee payments described in this Order for the time period of April 15, 2013 through April 30, 2015, and, in turn, each limited partner's pro rata interest in the Funds during the Relevant Period, pursuant to a disbursement calculation (the "Calculation") that has been submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection B. Under no circumstances shall any distribution be made to TPG, any limited partner affiliated with TPG, or to anyone directly or indirectly in the name of or otherwise for the benefit of TPG.

4. Within thirty (30) days of the entry of this Order, Respondent shall submit a proposed Calculation to the staff for review and approval. The proposed Calculation will include the names of the limited partners, a description of the methodology used, and the payment amounts. Respondent also shall provide to the Commission staff such additional information and supporting

documentation as the Commission staff may request for its review. In the event of one or more objections by the Commission staff to the proposed Calculation or any of its information or supporting documentation, Respondent 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 Respondent is notified of the objection, which revised calculation shall be subject to all of the provisions of Subsection B. After the Calculation has been approved by the Commission staff, Respondent shall submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected limited partner. The Payment File should identify, at a minimum, (i) the name of each affected limited partner; (ii) the exact amount of the payment to be made; and (iii) the amount of any de minimis threshold to be applied.

5. Respondent shall distribute the Disgorgement Fund within the next fiscal quarter immediately following the entry of this Order but no later than within ninety (90) days of the date of the Order, unless such time period is extended by the Commission staff as provided in Paragraph 9 of this Subsection B. Such distribution is to be based on the methodology set forth in the Calculation and as reviewed and not objected to by the staff.

6. If Respondent does not distribute any portion of the Disgorgement Fund for any reason, including factors beyond its control, Respondent shall transfer any such undistributed funds to the Commission for transmittal 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 8 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 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 TPG Capital Advisors, LLC 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 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.

7. Respondent shall be responsible for administering the Disgorgement Fund and may hire a professional to assist it in the administration of the distribution. The costs and expenses of administering the Disgorgement Fund, including any such professional services, shall be borne by the Respondent and shall *not* be paid out of the Disgorgement Fund.

8. Within 270 days after Respondent completes the disbursement of all amounts payable to affected limited partners, Respondent shall return all undisbursed funds to the Commission. The Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Disgorgement Fund for Commission approval. The final accounting and certification shall include, but not be limited to: (i) the identification of each limited partner payee and the amount paid or credited to each limited partner (designated by Fund); (ii) the date of each payment or credit; (iii) the check number or other identifier of money transferred or credited to the limited partner; (iv) the amount of any returned payment and the date received; (v) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (vi) the total amount, if any, of any amounts not distributed to be forwarded to the Commission for transfer to the United States Treasury; and (vii) an affirmation that Respondent has made payments from the Disgorgement Fund to the affected limited partners in accordance with the Calculation approved by the Commission staff. Respondent shall submit the final accounting and certification, together with proof and supporting documentation of such payments and credits (whether in the form of electronic payments or cancelled checks) in a form acceptable to Commission staff under a cover letter that identifies Respondent in these proceedings and the file number of these proceedings, 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, or such other address the Commission staff may provide. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

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 Disgorgement 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 considered to be the last day.

C. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty of $3,000,000 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. The payment shall be made in accordance with Section IV.B.6. of this Order.

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