

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5485 / April 22, 2020**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19764**

**In the Matter of**

**MONOMOY CAPITAL  
MANAGEMENT, L.P.**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTIONS 203(e) and 203(k)  
OF THE INVESTMENT ADVISERS 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 and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), against Monomoy Capital Management, L.P. (“Monomoy” 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 Administrative Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers 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<sup>1</sup> that:

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<sup>1</sup>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.

## SUMMARY

1. From April 2012 through December 2016, Monomoy, a private equity fund adviser, charged the portfolio companies of a private fund it managed for the services of Monomoy's in-house Operations Group without fully disclosing this practice and the related conflicts in Fund II's operating documents or otherwise. In particular, when raising investments for its second private equity fund, Monomoy emphasized the value added and role played by its Operations Group in generating investment returns, but failed to provide full and fair disclosure that it would separately charge the fund's portfolio companies for those services or that it would have associated conflicts of interests. As a result, Monomoy violated Section 206(2) of the Advisers Act.

## RESPONDENT

2. **Monomoy** is a Delaware limited partnership with its principal place of business in New York, New York. Monomoy has been registered with the Commission as an investment adviser since 2012. Monomoy manages Monomoy Capital Partners, L.P., Monomoy Executive Co-Investment Fund, L.P., MCP Supplemental Fund, L.P., Monomoy Capital Partners II, L.P., MCP Supplemental Fund II, L.P., and Monomoy Capital Partners AIV II, L.P.

## OTHER RELEVANT ENTITIES

3. **Monomoy Capital Partners II, L.P., MCP Supplemental Fund II, L.P., and Monomoy Capital Partners AIV II, L.P.** ("Fund II"), are Delaware limited partnerships formed to make private equity investments.

## FACTS

4. Monomoy is a New York-based registered investment adviser that advises Fund II and certain other private equity funds. The limited partners of Fund II include pension funds, public employee retirement systems, charitable organizations, large institutional investors and high net worth individuals.

5. Fund II is governed by a limited partnership agreement ("LPA") and private placement memorandum ("PPM") setting forth how Monomoy is to manage Fund II and the rights and obligations of the limited partners. Under the LPA, Monomoy charges Fund II, on a semi-annual basis, a management fee equal to 2% of the limited partners' committed capital for the initial five years of Fund II and 2% of the limited partner's invested capital thereafter.

6. Since 2007, Monomoy has provided fund portfolio companies with the services of its in-house "Operations Group." These primarily included operationally-focused services related to making business improvements for portfolio companies' operations. Monomoy sometimes referred to the members of the Operations Group as "Operating Partners." Monomoy described the benefits of its Operations Group to potential Fund II investors and generally referenced the Operations Group in Fund II's PPM. In addition, Monomoy disclosed, in a due diligence questionnaire provided to all investors, that it had "built an extensive in-house operational and financial restructuring team that drives business improvement throughout the Monomoy portfolio." The document stated further that: "The operations team is led by two operating

partners.... The operating partners currently supervise a team of five portfolio company employees and 12 contractors who lead business improvement and lean manufacturing programs throughout the Monomoy portfolio.” Monomoy claimed that the team helps it “add value to portfolio companies.”

7. By the time Monomoy began marketing Fund II, it had an established practice of billing fund portfolio companies for Monomoy’s costs of providing the Operations Group services rather than covering the costs out of its management fee. In particular, Monomoy charged the portfolio companies an hourly rate designed for Monomoy to recoup most (but not all) of its costs of maintaining its Operations Group. Consistent with that practice, from April 2012 through December 2016 (the “Relevant Period”), Monomoy was reimbursed by Fund II portfolio companies for Operations Group services. These reimbursements represented approximately 13.3% of all revenue Monomoy received with respect to Fund II during the Relevant Period.

8. Monomoy, however, did not fully and fairly disclose that it would separately charge Fund II’s portfolio companies for the Operations Group costs or that it would have associated conflicts of interest, and it did not obtain informed consent with respect thereto. No independent representative of Fund II approved such conflicts, and Monomoy could not effectively consent on behalf of Fund II. Yet Monomoy did not provide full and fair disclosure to all of Fund II’s limited partners that was sufficiently specific that they could understand the conflicts of interest and have a basis on which they could consent to or reject this practice.

9. Prior to 2014, disclosures that were made available to Fund II’s investors and prospective Monomoy investors did not include any disclosures about the Operations Group providing billable services to the Funds’ portfolio companies, or about any reimbursement that Monomoy would receive, or had received, from portfolio companies to cover the cost of such services. While the LPA for Fund II disclosed that portfolio companies were responsible for paying Monomoy certain fees, including “closing fees, investment banking fees, placement fees, monitoring fees, consulting fees, directors fees and other similar fees,” which would be partially offset against management fees unless they were for services provided to portfolio companies in the “ordinary course of business,” it did not mention the Operations Group or disclose that Monomoy would receive compensation-related fees for its Operations Group from portfolio companies. In March 2014, Monomoy filed a Form ADV that disclosed that “under specific circumstances, certain Monomoy operating professionals may provide services to portfolio companies that typically would otherwise be performed by third parties,” and that “Monomoy may be reimbursed” for costs related to such services. These disclosures did not fully and fairly disclose the fact that Monomoy did, in fact, routinely provide such services, that it did, in fact, receive reimbursements from portfolio companies for such services and that the reimbursement rates were designed to recoup most (but not all) of Monomoy’s costs of maintaining its Operations Group. Moreover, Monomoy’s Form ADV did not mention these facts in the Summary of Material Changes.

## **VIOLATIONS**

10. 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. As a result of the negligent conduct described above, Monomoy willfully<sup>2</sup> violated Section 206(2) of the Advisers Act.

### **MONOMOY’S COOPERATION**

11. In determining to accept Monomoy’s offer, the Commission considered the cooperation afforded the Commission staff after Monomoy was contacted. Throughout the staff’s investigation, Monomoy voluntarily and promptly provided documents and information to the staff. Monomoy met with the staff on multiple occasions and provided detailed factual summaries of relevant information. Monomoy was 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 Sections 203(e) and 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 Section 206(2) of the Advisers Act.
- B. Respondent is censured.
- C. Respondent shall pay disgorgement, prejudgment interest and civil monetary penalties totaling \$1,926,579 as follows:
  - (1) Respondent shall pay disgorgement of \$1,521,972, prejudgment interest of \$204,606, and a civil monetary penalty of \$200,000, consistent with the provisions of this Subsection C.
  - (2) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund for distribution to current and/or former limited partners who held an interest in Fund II at any time during the Relevant Period (each, an “affected investor”) is created for the \$1,926,579 in disgorgement,

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<sup>2</sup> “Willfully,” for purposes of imposing relief under Section 203(e) of the Advisers Act, “means no more than that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully omit[ted]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

prejudgment interest, and penalties paid by Respondent as described above (the “Fair Fund”).

- (3) Within ten (10) days of the entry of this Order, Respondent shall deposit the Fair 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 into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717.
- (4) Respondent shall be responsible for administering the Fair Fund and may hire a professional to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including the costs of any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.
- (5) Respondent shall pay each affected limited partner a *pro rata* share of the Fair Fund, based on the partner’s committed capital amount during the Relevant Period, pursuant to a disbursement calculation (“Calculation”) that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. No portion of the Fair Fund shall be paid to any affected investor account in which Respondent, any of its affiliates, or any of their current or former officers, principals, owners, employees, operating partners or directors have a financial interest.
- (6) Respondent shall, within thirty (30) days from the entry of this Order, submit a proposed Calculation to the Commission staff for its review and approval. The proposed Calculation will include the names of the limited partners, a description of the methodology used, and the payment amounts for each limited partner. At or around the time of submission of the proposed Calculation to the staff, Respondent shall make themselves, and shall require any third-parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the Distribution to make themselves, available for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondent shall also provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent’s proposed Calculation and/or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff and/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 this Subsection C.

- (7) Within sixty (60) days 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 investor. The Payment File should identify, at a minimum: (i) the name of each affected investor or, if the affected investor is deceased or otherwise no longer exists, the beneficial owner of the account, (ii) the exact amount of the payment to be made from the Fair Fund to each affected investor, and (iii) the amount of any *de minimis* threshold to be applied.
- (8) Respondent shall complete the disbursement of all amounts payable to affected investor accounts within ninety (90) days of the date on which the Commission staff accepts the Payment File, unless such time period is extended as provided for in Paragraph (13) of this Subsection C.
- (9) If Respondent does not distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected investor (or beneficial owner) or to any factors beyond Respondent’s 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, pursuant to the instructions set forth in Subsection D, below, when the distribution of the funds is complete and before the final accounting provided for in Paragraph (11) of this Subsection C is submitted to the Commission staff.
- (10) A Fair Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code (“IRC”), 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondent shall be responsible for any and all tax compliance responsibilities associated with the Fair Fund, including but not limited to tax obligations resulting from the Fair Fund’s status as a QSF and the Foreign Account Tax Compliance Act (“FATCA”), and may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.
- (11) Within one hundred and twenty (120) days after Respondent completes the distribution of all amounts payable to affected investors or their beneficial owners, Respondent shall return all undistributed funds to the Commission pursuant to the instructions set forth in paragraph (9) of this Subsection C. Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall be in a format to be provided by the Commission staff. The final accounting and certification shall include, but not be limited to: (i) the amount paid to each payee, with reasonable interest and penalty amounts, if any, reported separately; (ii) the date of each payment; (iii) the check number or other identifier of money transferred; (iv) the date and amount of any returned payment; (v) a

description of any effort to locate any prospective payee whose payment was returned or to whom payment was not made for any reason; (vi) the total amount, if any, that was forwarded to the Commission for transfer to the United States Treasury; and (vii) an affirmation in a cover letter that Respondent has made payments from the Fair Fund to affected investors in accordance with the Calculation approved by Commission staff and in compliance with the Order (the “certification”).

- (12) Respondent shall submit the final accounting and certification, under a cover letter that identifies Monomoy as the Respondent in this proceeding and the file number of this proceeding, to Karen E. Willenken, New York Regional Office, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, New York, NY 10281, or such other address as 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.
- (13) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Fair 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.

D. Payments ordered pursuant to Subsections C.(9) and/or C.(11) 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 Monomoy 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 Karen E. Willenken, New York Regional

Office, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, New York, NY 10281.

- E. 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.

Vanessa A. Countryman  
Secretary