

SEC Fines Private Fund Sponsor for Failing to Deliver Audited Financials

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On May 22, 2020, the Securities and Exchange Commission (the “**SEC**”) initiated and settled cease-and-desist proceedings against a private fund sponsor that allegedly failed to timely deliver audited financial statements to the private fund’s investors from 2014 through 2018, in violation of the custody rule. The fines imposed by the SEC highlight the importance of timely distribution of audited financial statements and the implementation of policies that are reasonably designed to prevent violations of the custody rule.

Under Section 206(4) of the Investment Advisers Act of 1940, as amended (the “**Advisers Act**”), and Rule 206(4)-2(d)(2) promulgated thereunder, an investment adviser has custody of client assets if it holds, directly or indirectly client fund or securities, or if it has the ability to obtain possession of those assets. Registered investment advisers that have custody of client assets are subject to the “custody rule,” which requires the advisers to undergo an annual surprise examination to verify the existence of assets or, where permissible, to distribute to investors, within 120 days of each fiscal year’s end, annual audited financial statements for the fund prepared in accordance with GAAP by a PCAOB-registered auditor. According to the SEC’s order, New Jersey-based registered investment adviser TSP Capital Management Group, LLC (“**TSP Capital**”) had custody of the assets of Cameroon Enterprises, LLC (the “**Cameroon Fund**”) and relied on the so-called “Audited Financials Alternative” to attempt to comply with the custody rule for fiscal years 2014 through 2018. However, TSP Capital engaged a PCAOB-registered auditor well after 120 days following the end of both of fiscal years 2014 and 2015, and the audit reports for those fiscal years were mailed to investors 686 days late and 927 days late, respectively. Additionally, TSP Capital did not engage an audit firm for fiscal years 2016 through 2018, and therefore failed to distribute audited financial statements for those fiscal years in accordance with the Audited Financials Alternative.

Rule 206(4)-7(a) requires that every registered investment adviser adopt and implement written policies that are reasonably designed to prevent violations of the custody rule. The SEC alleged that TSP Capital’s written policies, which merely referenced the custody rule, were not reasonably designed and implemented to prevent violations of the custody rule.

To settle the charged violations of Section 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7, TSP Capital agreed to be censured, to cease and desist from future violations, and to pay a civil penalty of \$60,000.

[Click here to read the SEC’s full order.](#)

Contacts:

Andrew Rosell | 817.420.8261 | arosell@winstead.com

Jarrold Azopardi | 817.420.8241 | jazopardi@winstead.com

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