

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5229 / May 6, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19159

In the Matter of

**Corinthian Capital Group,
LLC, Peter B. Van Raalte,
and David G. Tahan**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 203(e), 203(f) 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), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Corinthian Capital Group, LLC (“Corinthian”), Peter B. Van Raalte (“Van Raalte”), and David G. Tahan (“Tahan”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”), 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, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f) 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 Respondents' Offers, the Commission finds¹ that:

Summary

From at least April 2014 to February 2015, Corinthian misused the assets in a private equity fund, Corinthian Equity Fund II, LP ("CEF 2") that it advised to the advantage of Corinthian and three of its principals. First, Corinthian failed to apply a \$1.2 million fee offset due to CEF 2. Second, Corinthian improperly used CEF 2 assets to fund its advisory operations. Third, Corinthian caused CEF 2 to overpay approximately \$600,000 in organizational expenses. In his role as CFO, Tahan transferred these funds, documented the transfers, accounted for fees and expenses, and participated in the analysis and discussion that resulted in the transactions. Van Raalte failed to adequately supervise Tahan. As a result of this conduct, Corinthian violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder and Tahan caused Corinthian's violations of these laws. In 2015, Corinthian's former auditor discovered its failure to apply the fee offset and the excess expenses it charged CEF 2. By year-end 2015, Corinthian repaid the fee offset and reimbursed the expenses to CEF 2 in full with interest.

In addition, Corinthian failed to issue audited financial statements for CEF 2 until more than 120 days after the fiscal years ended December 31, 2013, 2014 and 2015 and otherwise failed to comply with Section 206(4) of the Advisers Act and Rule 206(4)-2 (the "Custody Rule") thereunder. Finally, Corinthian failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act. As a result of this conduct, Corinthian violated Sections 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondents

1. **Corinthian Capital Group, LLC**, is a Delaware limited liability company with its principal place of business in New York, New York. Corinthian has been registered with the Commission as an investment adviser since 2012. Corinthian advises two private equity funds, Corinthian Equity Fund, LP and CEF 2. As of December 31, 2017, Corinthian managed \$270 million on a discretionary basis.

2. **Peter B. Van Raalte**, age 60, resides in Briarcliff, New York. In 2005, Van Raalte, along with others, founded Corinthian. In 2012, he became CEO of the firm and remains in that position. He also acts as the entity's managing member and sits on its investment committee. Van Raalte currently holds a 45% ownership stake in the firm.

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.

3. **David G. Tahan**, age 60, resides in Morristown, New Jersey. Tahan joined Corinthian as CFO on March 10, 2014, and resigned from his day-to-day duties on March 11, 2016 but remained on Corinthian's payroll and available on an as-needed basis until July 31, 2016. In addition to being the firm's CFO, Tahan became CCO sometime after April 2014 and held the position until December 2015. He was not a Corinthian principal and never had an ownership interest in Corinthian. He is licensed as a CPA in New Jersey.

Other Relevant Entity

4. **Corinthian Equity Fund II, LP**, is a Delaware limited partnership formed in 2013, to make investments in small and middle market companies with enterprise values between \$50 and \$250 million as a pooled investment vehicle. Investors committed approximately \$130 million in capital to the fund. During all times relevant to the findings herein, Corinthian served as manager of the fund.

Background

5. CEF 2 is governed by an LPA that sets forth the rights and obligations of its limited partners, including their obligations to pay advisory and other fees and expenses to Corinthian. Among these fees and expenses, the LPA obligates the fund to pay a management fee that reflects a fixed percentage of the limited partners' total capital commitments. However, not all participants in the fund bear this expense. The LPA exempts certain limited partners, such as affiliates of Corinthian, from paying the management fee. In addition, the LPA obligates the fund to pay certain organizational expenses, specifically excluding placement fees.

6. The CEF 2 LPA also contains a "deemed contribution" provision. This provision permits certain limited partners affiliated with Corinthian to satisfy up to 80% of their capital call obligations for an acquisition without contributing money. For example, if an eligible partner elected this provision for a \$1 million capital call, the partner is obligated to pay \$200,000 and the remaining amount due is treated as a deemed contribution. In this example, the limited partners who do not participate in the deemed contribution provision must contribute additional proceeds to make up for the \$800,000 difference. However, these limited partners who contribute the additional proceeds to cover the deemed contribution receive an offset against the management fee for funding the deemed contribution. Using the example above, the limited partners who do not participate in the deemed contribution would be entitled to an \$800,000 offset to management fees. If management fees are less than the offset, the offset is carried forward and applied to future management fees.

Failure to Apply Offsets Related to the Deemed Contribution

7. Corinthian decided to delay the implementation of the deemed contribution provision during the capital call associated with CEF 2's first acquisition. With respect to the second capital call associated with a second potential acquisition, the Corinthian principals decided to implement the deemed contribution provision for the second capital call and retroactively implement it for the first capital call. As implemented, the deemed contribution provision was

available only to Corinthian's principals. The capital call notices issued to the Corinthian principals for the second acquisition on September 24, 2014, reflected a net credit that included their resulting cash overpayment for the first capital call. These credits totaled approximately \$1.9 million and were payable to Van Raalte and the other two principals.

8. The LPA does not say whether the deemed contribution provision can be applied retroactively. When Corinthian retroactively applied the deemed contribution provision, it failed to retroactively apply a corresponding management fee offset to previously collected management fees. Had Corinthian retroactively applied the management fee offset at the time the deemed contribution was retroactively applied (and properly addressed another issue related to a general partner's default), CEF 2's obligation to pay management fees and fund the deemed contribution would have been reduced by about \$1.4 million. In addition, these adjustments would have reduced the impact to the CEF 2 limited partners of any obligation to pay the deemed contribution credit due to Van Raalte and the other two principals from approximately \$1.9 million to about \$500,000. The investment committee and other Corinthian employees, including Tahan were responsible for reviewing and interpreting the LPA.

Improper Loans from CEF 2

9. Corinthian maintained a line of credit from a bank. In October 2014, the total amount outstanding on the line of credit was \$2.8 million. The loan agreement required Corinthian to repay the balance on the line of credit every twelve months. Known as a "clean-up" provision, the loan agreement permitted Corinthian to draw on the line of credit 15 days after the loan was paid in full.

10. On October 21, 2014, Corinthian did not have sufficient funds available to satisfy the clean-up provision. To make the clean-up provision payment on that date, Corinthian directed CEF 2 to withhold the deemed contribution credits owed to Corinthian's principals that were held by CEF 2 and transferred \$1 million of that amount from CEF 2 to its bank account. However, had the deemed contribution management fee offset and general partner default been properly applied as discussed in Paragraph 8, only about \$500,000 would have been available to Corinthian. Therefore, Corinthian overdraw approximately \$500,000 from CEF 2. Moreover, there was no provision in the CEF 2 LPA or elsewhere authorizing Corinthian to use CEF 2 assets as loans to Corinthian, regardless of whether such funds were owed or believed to be owed to Corinthian or its principals. Prior to October 2014, Corinthian did not have a practice to effect such transactions between CEF 2 and itself. Tahan transferred the money between the relevant accounts.

11. From October 31, 2014, through February 9, 2015, Corinthian made two additional transfers from the CEF 2 bank account to the Corinthian account. On October 31, \$78,614 was transferred for payroll expenses and repaid, without interest, on December 8, 2014. Four days later, \$100,000 was transferred for operating expenses. By February 3, 2015, Corinthian transferred approximately \$1.9 million from CEF 2 to the Corinthian principals. However, on that date, Corinthian still maintained \$600,000 of CEF 2 assets that were not repaid to the fund until February 9. As a result, for a period of six days, Corinthian overdraw an additional \$600,000 from CEF 2. Tahan transferred the money in these transactions.

Improper Charges for Expenses

12. CEF 2 was responsible for paying up to \$1.5 million in organizational expenses Corinthian incurred. The term “organizational expenses” is defined in the LPA and specifically excluded placement fees. From March 2014 to March 2016, Tahan was responsible for tracking organizational expenses and reporting it to Van Raalte and the investment committee. The committee used such information to decide the amount to charge the limited partners.

13. Prior to Tahan joining Corinthian, the firm’s practice had been to call capital from investors based on estimated and actual organizational expenses. Contrary to the CEF 2 LPA, however, Corinthian transferred a portion of those funds from CEF 2 to Corinthian based on estimates before the expenses were actually incurred. Shortly after Tahan began working at Corinthian, he transferred funds from CEF 2 to Corinthian based on amounts incurred in the prior year’s audited financial statements and estimated future charges. This was improper because some of the expenses had not actually been incurred. Van Raalte was aware of Corinthian’s prior practice and that Tahan had continued it.

14. In addition, Corinthian misclassified some expenses as organizational expenses and wrongfully charged them to the limited partners. For example, Corinthian charged the limited partners for placement fees despite the fact that the LPA specifically excluded them from organizational expenses. Most of these expenses were misclassified before Tahan joined Corinthian. Tahan relied on this inaccurate information to determine the organizational expenses CEF 2 incurred. As a result of these practices, Corinthian overcharged CEF 2 limited partners for organizational expenses that were not actually incurred during the year. In 2014, limited partners overpaid \$588,394 in organizational expenses due to these errors. Van Raalte—who was aware that placement fees were not generally considered organizational expenses—failed to provide Tahan with adequate guidance and failed to review the expense classifications.

Violations of the Custody Rule

15. Corinthian’s longstanding auditor was engaged to audit CEF 2’s financial statements for the year ended December 31, 2014. Beginning in April 2015, the auditor identified the transfers between CEF 2 and Corinthian and the misclassification of organizational expenses. These issues and others led the auditor to withdraw from the engagement on September 29, 2015. In addition, the auditor withdrew its unqualified opinion on the CEF 2 2013 audited financial statements as a result of the misclassification of the expenses detailed in Paragraph 14.

16. Corinthian retained another auditor and, after certain remedial steps were taken, CEF 2 issued audited financial statements on April 7, 2016 for the years ended December 31, 2013 and 2014 and on June 16, 2016 for the year ended December 31, 2015.

17. CEF 2’s financial statements for the years ended December 31, 2013, 2014 and 2015 were issued after 120 days from the end of each fiscal year, and Corinthian did not comply with the Custody Rule in any other manner. As a result, Corinthian violated the Custody Rule for the years ended December 31, 2013, 2014, and 2015.

Supervision over Tahan and Corinthian's Policies and Procedures

18. Van Raalte was Tahan's supervisor. Van Raalte supervised Tahan's activities related to the execution of transactions in the CEF 2 and Corinthian accounts as well as his activities related to accounting for expenses and credits.

19. Van Raalte, along with other Corinthian professionals, was involved in discussions about interpreting the CEF 2 LPA in order to retroactively apply its deemed contribution provision which led to Corinthian's failure to apply the management fee offset as discussed in Paragraph 8. In addition, Van Raalte did not adequately supervise Tahan with respect to the transfers between CEF 2 and Corinthian bank accounts and relied on existing classifications for organizational expenses. Van Raalte failed to obtain more detail to understand the specific nature of the transactions Tahan executed to determine whether they were appropriate.

20. Corinthian did not have reasonable policies and procedures in place to review transactions between Corinthian and CEF 2 so that the transactions complied with the terms of the LPA. Instead, Tahan managed Corinthian and CEF 2 accounts without sufficient oversight or guidance, and Van Raalte relied upon him. In addition, although other individuals at Corinthian, including Van Raalte, had access to bank statements, no one besides Tahan substantively reviewed the bank statements and the related bank account reconciliations.

21. Corinthian also lacked policies and procedures with respect to charging CEF 2 for organizational expenses. Informal practices, dating from a former CFO, were put in place that gave great discretion to estimate and classify organizational expenses. While the CFO tracked and the investment committee determined the amount charged to CEF 2 for organizational expenses as referenced in Paragraph 12, no process was implemented to determine the accuracy of such estimates or whether expenses were properly classified.

Violations

22. 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 conduct described above, Corinthian willfully² violated, and Tahan caused Corinthian to violate Section 206(2) of the Advisers Act.

² A willful violation of the securities laws means merely "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." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

23. 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 “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.” Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act or the rules thereunder. *Steadman*, 967 F.2d at 647. As a result of the conduct described above, Corinthian willfully violated, and Tahan caused Corinthian to violate, Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

24. Section 206(4) prohibits an investment adviser from engaging in acts, practices or courses of business that are fraudulent, deceptive, or manipulative, as defined by the Commission in rules and regulations promulgated under the statute. Among other things, Rule 206(4)-2 requires registered advisers with custody of client assets to have independent public accountants conduct surprise examinations of those client funds or securities, or to have any private fund clients timely distribute annual audited financial statements to their investors. As a result of the conduct described above, Corinthian willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder.

25. Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder require a registered investment adviser to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and rules thereunder by the adviser and its supervised persons. As a result of the conduct described above, Respondent Corinthian willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

26. As a result of the conduct described above, Van Raalte failed reasonably to supervise Tahan within the meaning of Section 203(e)(6) of the Advisers Act.

Respondents’ Cooperation and Remedial Efforts

In determining to accept Respondents’ Offers, the Commission considered remedial acts taken by Respondent Corinthian and cooperation afforded the Commission staff during its investigation.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents’ Offers.

Accordingly, pursuant to Sections 203(e), 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Corinthian 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)-2, 206(4)-7, and 206(4)-8 thereunder.

B. Respondent Tahan 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)-8 thereunder.

C. Respondent Corinthian is censured.

D. Respondent Corinthian shall pay a civil money penalty in the amount of \$100,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. Payment shall be made in the following installments:

1. \$40,000 within ten (10) days of date of this Order (“Order Date”).
2. \$30,000 within six (6) months of the Order Date.
3. \$30,000 within twelve (12) months of the Order Date.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of \$100,000, plus any additional interest accrued pursuant to 31 U.S.C. 3717 shall be due and payable immediately, without further application.

E. Respondent Van Raalte shall pay a civil money penalty in the amount of \$25,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. Payment shall be made in the following installments:

1. \$10,000 within ten (10) days of the Order Date.
2. \$7,500 within six (6) months of the Order Date.
3. \$7,500 within twelve (12) months of the Order Date.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of \$25,000, plus any additional interest accrued pursuant to 31 U.S.C. 3717 shall be due and payable immediately, without further application.

F. Respondent Tahan shall pay a civil money penalty in the amount of \$15,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. Payment shall be made in the following installments:

1. \$6,000 within ten (10) days of the Order Date.
2. \$4,500 within six (6) months of the Order Date.
3. \$4,500 within twelve (12) months of the Order Date.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of \$15,000, plus any additional interest accrued pursuant to 31 U.S.C. 3717 shall be due and payable immediately, without further application.

G. Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 the applicable 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 Panayiota K. Bougiamas, Assistant Regional Director, Asset Management Unit, New York Regional Office, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York, 10281.

H. 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, the affected 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 any 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.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other

amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Acting Secretary