Investment Management Alert

Akin Gump
STRAUSS HAUER & FELD LLP

A Grab-Bag of SEC Enforcement Actions: Six Lessons for Private Fund Managers

July 16, 2021

In the last three weeks, the Division of Enforcement of the U.S. Securities and Exchange Commission has filed several complaints and resolved a number of open enforcement actions involving investment advisers. At first glance, these actions, standing by themselves, may not seem especially relevant to well-established advisers to private funds; however, there are a number of lessons in this group of actions that should be considered by legal and compliance officers of private fund managers.

Recent Enforcement Actions

The SEC has recently instituted formal enforcement actions against a number of investment advisers. These actions include the following:

- Filing a complaint[1] against an investment adviser and its principal alleging that they earned over $600,000 "in ill-gotten gains" by allocating profitable trades to a proprietary account and allocating unprofitable trades to client accounts (i.e., "cherry picking").
- Charging[2] a trader at a Canadian asset management firm for allegedly front-running large trades he placed for his employer's advisory clients.
- Charging[3] two investment advisers and several individuals with fraud, alleging that they caused private funds under their control "to engage in conflicted transactions that resulted in significant financial benefits to themselves without adequate disclosure or consent" and "made false and misleading statements to investors" about the existence and review of certain material conflicts.
- Charging[4] two Israeli residents with defrauding U.S. retail investors through online, allegedly fraudulent offers and sales of binary options.

The SEC also won a judgment[5] against a Swedish national who purportedly raised millions of dollars from "over 2,000 retail investors located in nearly every state in the United States, as well as in over 45 countries around the world" through a website claiming (falsely) that the investment was run by award-winning economists and had no risk of loss.

Contact Information

If you need assistance or have questions regarding this alert, please contact your Akin Gump relationship attorney or one of the authors:

Peter I. Altman
Partner
paltman@akingump.com
Los Angeles
+1 310.728.3085

Michael A. Asaro
Partner
masaro@akingump.com
New York
+1 212.872.8100

Brian T. Daly
Partner
bdaly@akingump.com
New York
+1 212.872.8170

Jason M. Daniel
Partner
jdaniel@akingump.com
Dallas
+1 214.969.4209

Barbara Niederkofler
Partner
bniederkofler@akingump.com
New York
+1 212.872.8149

Elizabeth C. Rosen
Counsel
erosen@akingump.com
New York
+1 212.872.8079

Six Lessons for Private Fund Managers

Each of these actions allege activity that, if proven, would constitute violations of the federal securities laws. In that sense, these actions may appear be of limited utility to a manager that operates within the law. However, this collection of actions – along with other actions by the SEC over the past two years – provides, directionally, several lessons that are of particular importance for private fund managers:

First: SEC Enforcement is ready, willing and able to litigate claims against investment advisers. This collection of actions (which includes one judgment) shows that the SEC will take contested matters to trial and can secure favorable verdicts.

Second: SEC Enforcement uses a range of investigative techniques to provide the factual support for enforcement actions. Quantitative, statistical and economic analysis of market data and trading records, for example, is frequently employed by specialized units such as the Market Abuse Unit's Analysis and Detection Center and the Division of Economic and Risk Analysis.

Third: The SEC is prepared to assert claims against non-U.S. defendants and for non-U.S. activity that affects the United States. These cases show that the SEC Enforcement staff will bring these actions in coordination with international regulators, but also can unilaterally pursue them.

Fourth: These cases show that the SEC regularly cooperates with other regulators and enforcement authorities (both U.S. and international), continuing a trend in coordinating enforcement actions across regulatory regimes.

Fifth: Individual liability remains a key part of the SEC Enforcement playbook. These actions demonstrate that SEC Enforcement will recommend charges against individuals alongside legal entities and, where the individuals are not directly charged, to describe or name those individuals contributing to the deficiency or violation.

Sixth: In these actions, the SEC did not (or, perhaps did not have any need to) pursue novel theories of liability. The actions charged in these matters involve traditional misrepresentations, abuses of advisers' fiduciary positions and violations of law.

Next Steps

While these cases do not imply a single course of action, they do collectively suggest that compliance officers should scope their 2021 annual compliance review in light of the full range of recent enforcement actions involving investment advisers.

[1] S.E.C. v. Paris, et al., No. 1:21-cv-03450 (N.D. Ill. June 28, 2021)

[2] S.E.C. v. Wygovsky, No. 1:21-cv-05730 (S.D.N.Y. July 2, 2021)

[3] S.E.C. Release No. 25128; S.E.C. v. Skihawk Capital Partners, LLC, et al., No. 1:21-cv-01776 (D. Colo. June 29, 2021)

[4] S.E.C. v. Mimun, et al., No. 2:21-cv-01314 (D. Nev. July 12, 2021)

[5] S.E.C. Release No. 25133; S.E.C. v. Nils-Jonas Karlsson, No. 2:20-cv-04615-ST (E.D.N.Y. June 30, 2021)