



ORICAL REGULATORY UPDATE

REGULATORY UPDATE

SEC Charges Advisory Firm HG Vora for Disclosure Failures Ahead of Ryder Acquisition Bid

03.01.24. The SEC [settled charges](#) against investment adviser HG Vora Capital Management LLC (“HG Vora”) for its failure to make timely ownership disclosures, in the lead-up to its May 2022 acquisition bid for trucking fleet company, Ryder System Inc. (“Ryder”). Under the federal securities laws, a company that owns more than 5% of a public company’s stock must report its position and whether it has an intention to influence or control the company. On Feb. 14, 2022, HG Vora disclosed that it owned 5.6% of Ryder’s common stock, and certified that it did not have a control purpose. HG Vora then built up its position to 9.9% of Ryder’s stock and, according to the SEC, formed a control purpose no later than April 26, 2022. However, HG Vora did not file an initial 13D within 10 days, as required at the time, instead waiting 17 days. HG Vora agreed to pay a \$950,000 civil penalty to settle the SEC’s charges. Note, in October 2023, the SEC adopted rules shortening the deadline for filing an initial Schedule 13D from 10 to 5 business days.

SEC Obtains Default Judgment Against Friend of Former Coinbase Manager for Insider Trading in Crypto Asset Securities

03.01.24. [On March 1, 2024](#), a final judgment was entered against Sameer Ramani, who was charged with the first cryptocurrency insider trading case. The SEC’s complaint alleged that Ramani received tips from his friend, Ishan Wahi, who was then a product manager at Coinbase and helped to coordinate the platform’s public listing announcements. These announcements included what crypto assets would be made available for trading. The judgement ordered Ramani to pay \$817,602 and a civil penalty of \$1,635,204, marking the conclusion of this landmark insider trading case.

SEC v. Hemant Agrawal

03.04.24. Heman Agrawal, former Vice President and Head of Data Policy Research at Viatris, Inc. (“Viатris”) was [charged with](#) insider trading in Oyster Point Phrama Inc. (“Oyster”) based on information that he learned during his employment. Agrawal learned in July 2022 that Viатris would be acquiring Oyster for \$11 a share in November 2022. In August 2022, Agrawal began purchasing shares of Oyster across his and his wife’s personal accounts, accumulating over 4,000 shares and selling them the day the agreement was announced, resulting in almost \$30,000 in gains. Agrawal was charged with violations of Section 10(b)-5 of the Exchange Act, which prohibits fraudulent conduct with the purchase or sale of securities. Agrawal was ordered to pay back the nearly \$30,000, as well as a civil penalty in the same amount, and is barred for five (5) years from acting as an officer or director of any issuer with a class of registered securities.

SEC v. 3D/L Capital Management, LLC

03.06.24. 3D/L Capital Management, LLC (“3D/L”) is a registered investment adviser, found to have not fully nor fairly [disclosed material facts](#) and conflicts of interest relating to agreements with another investment manager (the “ETF Manager”) regarding certain exchange traded funds (“ETFs”). 3D/L offers to its clients the opportunity to invest in proprietary model portfolios comprised of investments in ETFs and other securities. The ETF Manager paid 3D/L an “onboarding fee” in October 2020 in exchange for 3D/L including the ETF Manager’s ETFs in 3D/L’s proprietary model portfolios; the ETF Manager was the only manager charged an “onboarding fee” by 3D/L. In November 2020, 3D/L and the ETF Manager entered into a sub-advisory agreement where 3D/L was a sub-adviser to a fund managed by the ETF Manager, and the ETF Manager agreed to pay 3D/L a sub-advisory fee that was based on net revenues earned from the fund. The SEC found that both agreements created conflicts of interest because they created an incentive for 3D/L to use funds managed by the ETF Manager in 3D/L’s model portfolios. Resultingly, 3D/L paid almost \$300,000 for failure to timely disclose such conflicts to clients.

UPCOMING COMPLIANCE DEADLINES:

Form ADV: 3/30/2024

Form PF Annual: 04/29/2024

Form 13H-Q: 4/10/2024

Form 13F: 5/15/2024

Form PF Quarterly: 5/30/2024

Form PQR: 5/30/2024

SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence

03.18.2024. The Commission [announced](#) it settled charges with two investment advisers, totaling \$400,000 in fines, involving false and misleading statements relating to their use of artificial intelligence (“AI”) in making investment decisions as reported to advisory clients. Delphia (USA) Inc. and Global Predictions Inc. were charged with Rule 206(4)-1 of the Adviser’s Act (the “Marketing Rule”) violations which prohibit a registered investment adviser from disseminating any advertisement that includes any untrue statement of material fact. Specifically, the advisers were found to have reported false statements on their public websites, including that AI was built into the investment process for one adviser, and that the other was the first “regulated AI financial adviser.” The Director of Enforcement warned advisers as the popularity of AI in the investment process continues, “if you claim to use AI in your investment processes, you need to ensure that your representations are not false or misleading.”

REGULATORY UPDATE

CFTC Orders U.S. Bank and Oppenheimer to Pay Millions for Recordkeeping and Supervision Failures for Firm-Wide Use of Unapproved Communication Methods

The [Commodity Futures Trading Commission](#) has settled with U.S. Bank and Oppenheimer over their employees’ use of personal text and messaging apps that violated record-keeping rules. This follows their settlement with the SEC in which U.S. Bank and Oppenheimer were fined \$8 million and \$12 million, respectively, as part of a more than [\\$81 million settlement](#) with a number of brokerage firms over similar conduct. As part of the CFTC action, U.S. Bank will pay a \$6 million civil penalty over the violations and Oppenheimer will pay \$1 million.

SEC v. Contrarian Capital Management, L.L.C.

02.21.24. The SEC settled [charges](#) against Greenwich, Connecticut advisory firm Contrarian Capital Management, L.L.C. (“Contrarian”) for violating Rule 105 of Regulation M under the Securities Exchange of 1934. In 2020, Contrarian purchased shares of stock for its clients in two offerings of securities by public companies after effecting short sales in the same stocks during the Rule 105 restricted period. The Rule 105 restricted period is the shorter of the period: (1) beginning five business days before the pricing of the offered securities and ending with such pricing; or (2) beginning with the initial filing of a registration statement or notification on Exchange Act Form 1-A or 1-E and ending with the pricing. Contrarian’s violations of Rule 105 resulted in gains to its advisory clients in the amount of \$351,726.86. Contrarian was ordered to disgorge such gains and pay prejudgment interest, as well as a civil money penalty of \$140,000.

Are You Ready for Your Next Regulatory Exam? Orical has extensive experience assisting clients on marketing rule sweeps, routine regulatory exams and facilitating SEC or CFTC exam readiness assessments or mock audits.

Do You Have New Investors? See if You Need to Make a Form D (federal) filing, or a Blue Sky (state) Filing, which must be filed by a fund relying on Regulation D within 15 days following the fund’s first sale. Contact us to file yours.