



ORICAL REGULATORY UPDATE

REGULATORY UPDATE

CFTC Orders TD and Cowen to Pay More than \$75 Million in Monetary Penalties

08.14.24. The Commodity Futures Trading Commission (“CFTC”) issued two [orders](#) filing and settling charges against The Toronto Dominion Bank (“TD Bank”) and against Cowen and Company (“Cowen”) for failing to maintain adequate books and records, required by certain recordkeeping provisions, specifically for communicating on non-archived platforms like text messages and WhatsApp. The CFTC analyzed a sample of twenty personal devices of TD Bank employees, finding that most of those employees, with positions ranging from Vice President to Managing Director, communicated with market participants on non-archived platforms. TD Bank was fined \$75 million and Cowen \$3 million, while the Securities and Exchange Commission (“SEC”) announced a parallel action and charges for recordkeeping violations.

Activist Short Seller Charged with Fraud Scheme

07.26.24. The [SEC announced charges](#) against activist short seller Andrew Left and his firm, Citron Capital LLC (“Citron”), for orchestrating a \$20 million multi-year scheme to defraud followers with flawed stock trading recommendations. The SEC contends that on at least twenty-six occasions, Left used Citron’s social media platforms to recommend taking positions in twenty-three companies while representing that advice to be consistent with his holdings. With the price of target stocks moving more than 12% on average, Left and Citron reversed their positions; Left bought stock immediately after telling readers to sell and sold stock after telling readers to buy. Subsequently, Left and Citron are accused of making false and misleading statements, including lying about the price at which they would stay long on a target stock. The Department of Justice and the U.S. Attorney’s Office in Los Angeles have announced parallel charges against Left.

Twenty-Six Firms to Pay More Than \$390 Million to Settle Charges

08.14.24. The Commission [announced](#) charges against twenty-six broker-dealers, investment advisers, and dual registrants for widespread failures to maintain and preserve electronic communications. The 26 firms will pay a combined \$392.5 million and take steps to improve compliance policies and procedures to address off-channel communications. On the back of their CFTC fines for the same failures, TD Bank and Cowen paid \$30 million and \$16.5 million, respectively. Truist Securities, Inc., Hilltop Securities, Inc. and Cetera Advisor Networks LLC self-reported their violations to the SEC and received measurably lesser fines in comparison to Ameriprise Financial Services, LLC, Raymond James & Associates, Inc., Edward D. Jones & Co., L.P. and LPL Financial LLC who were fined upwards of \$50 million, each.

RULE MAKING

Judge Tosses FTC Ban on Noncompete Agreements

08.20.24. In another watershed moment for administrative overreach, a federal judge in Texas [struck](#) the landmark regulation from the Federal Trade Commission (“FTC”) banning noncompete agreements. The Texas judge found that the FTC did not have the authority to issue regulations entirely banning a category of conduct, calling the FTC ban “arbitrary and capricious.” This decision takes effect nationwide, just weeks ahead of the September 4th compliance date for the rule.

NFA Basic

The National Future Association (“NFA”) gave their online search tool, [NFA Basic](#), an upgrade. Exempt commodity pool operators (“CPO”) and commodity trading advisors (“CTA”) can no longer use the search tool to find their exemptions and exemption history. Instead, exempt CPOs and CTAs must log in to their exemption portals for this information.

UPCOMING COMPLIANCE DEADLINES:

Form PQR: 08/29/2024

Form PF-Q: 08/29/2024

Form N-PX: 8/31/2024

Southern California Adviser Charged with Custody Rule Violations, Among Others

08.19.24. California-based investment adviser FPA Real Estate Advisers Group (“FPA”) [settled charges](#) with the SEC relating to the investment advisory services the firm provided to its pooled investment vehicles (“Clients”). From 2019 to 2022, FPA failed to have the funds of seven Clients verified by a third-party, independent auditor via surprise examination or by having these Clients audited, thus violating the Custody Rule. Moreover, FPA provided property management and construction services in connection with its real estate investments, and these property management and construction affiliates received fees ultimately borne by FPA Clients. FPA was found not to have implemented adequate policies and procedures by using affiliated service providers and ensuring that the fees charged by these affiliates were at or below market rates for similar services. FPA amassed a \$300,000 fine in connection with this noncompliance.

SPAC Accounting Consultant Charged with Insider Trading

08.09.24. The U.S. District Court of New Jersey obtained a [final judgment](#) against Robert Del Prete concerning his insider trading charges after he purchased shares of a special purpose acquisition company, HighCape Capital Acquisition Corp. (“HighCape”) ahead of the company’s announcement that it would merge with Quantum-Si Incorporated (“QSI”). Del Prete initially obtained the non-public information from attending two board meetings and his initial purchase of HighCape shares came just one hour after a board meeting to discuss the transaction. Following the public announcement of the merger, Del Prete liquidated his position, realizing a 100% profit of over \$60,000. The final judgment barred Del Prete from acting as an officer of a public company and ordered him to pay disgorgement in the amount of his illegal profits plus interest. In a parallel criminal case, *United States v. Del Prete*, Del Prete was sentenced to three months of home detention with ankle monitoring and a \$30,000 fine.

Sound Point Charged with MNPI-Related Compliance Failures

08.26.24. New York-based registered investment adviser Sound Point Capital Management LP (“Sound Point”) paid more than [\\$1.8 million](#) to resolve policy and procedure failures to prevent the misuse of material non-public information (“MNPI”) concerning its trading of collateralized loan obligations (“CLOs”). Sound Point managed and traded CLOs and participated in lender groups and creditor committees, acquiring MNPI about companies whose loans were held in the CLOs that Sound Point traded. As a result of this business, on occasion, Sound Point came into possession of MNPI about companies whose loans were held in the CLOs that Sound Point traded. Because CLOs are generally collateralized by corporate loans, the price at which a CLO tranche trades may be impacted by the price at which the underlying loans trade. However, Sound Point’s insider trading policy did not contain any prohibitions on trading a CLO tranche while in possession of MNPI about the underlying loans in that CLO. After an incident in July 2019, Sound Point began conducting pre-trade compliance reviews of the potential impact of MNPI on loans in Sound Point-managed CLOs; however, Sound Point did not adopt a written policy for these reviews until July 2022. Sound Point also did not establish, maintain, or enforce any written policies or procedures concerning the potential impact of MNPI on the loans in third-party-managed CLOs until June 2024. This settlement is a warning to fund managers with multiple strategies to consider the risks relating to MNPI management.

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.