



ORICAL REGULATORY UPDATE

REGULATORY UPDATE

SEC Charges “Investment Adviser” with Misrepresentations on Form ADV

08.30.24. Wisdom Capital Management Group Ltd. (“Wisdom”) was [charged](#) with making material misrepresentations and unsubstantiated claims in its Form ADV filing. In its December 2023 filing, Wisdom purported that it (i) managed \$10 million in private funds, (ii) advised two private funds, (iii) operated out of an office on Wall Street, (iv) claimed it was a public company and (v) had a separate registered investment adviser reporting information about the two private funds listed on Wisdom’s Form ADV. Contrary to the representations Wisdom made, the office space on Wall Street had no knowledge of Wisdom, or its alleged employees; the other registered investment adviser has not reported information about the two private funds; no other regulatory filings about these two private funds have been made with the SEC; and Wisdom has not registered as a public company. Wisdom failed to respond to any requests from the Commission thus far and the investigation is ongoing.

Firms Settling Charges for Failure to Comply with the Custody Rule

09.03.24. Galois Capital Management, LLC (“Galois”) [settled](#) charges levied by the SEC for violating the custody rule and failing to safeguard client assets. Galois primarily invested in crypto assets and held these securities on an online trading platform, FTX Trading Ltd. (“FTX”). Upon FTX’s collapse in 2022, Galois’ fund lost almost half its assets under management, \$40 million. As required under Rule 206(4)-2(d)(6) (the “Custody Rule”), assets must be held by a qualified custodian, which online platforms like FTX are not considered. In related Custody Rule failures, FlowPoint Partners, LLC (“FlowPoint”) was [found](#) to have violated the rule, representing that all FlowPoint private funds were receiving an annual audit, however, only two of four funds received were, and the auditor did not produce any reports, as is required by the Custody Rule. To settle these charges, FlowPoint paid a \$145,000 fine and Galois paid \$225,000.

Advisers Charged with Violation of Whistleblower Protection Rule

09.04.24. The SEC [settled charges](#) against Nationwide Planning Associates, Inc., NPA Asset Management, LLC and Blue Point Strategic Wealth Management, LLC (collectively, the “Firms”) for violating the whistleblower protection rule. The Firms had retail clients sign confidentiality agreements in connection with compensation paid to the clients for losses incurred due to the Firms’ alleged violation of securities laws. These agreements prohibited clients from reporting the violations to the SEC and other regulators. The SEC has been actively pursuing such violations, and these Firms will pay a combined \$240,000 to settle the charges.

SEC Charges Nine Investment Advisers with Marketing Rule Violations

09.09.24. Continuing its ongoing sweep, nine investment advisers were [charged](#) by the SEC for violations of the marketing rule. These firms disseminated advertisements that included untrue or unsubstantiated statements of material fact and testimonials, endorsements, or third-party ratings that lacked required disclosures. One adviser utilized endorsements without disclosing that the endorser was compensated; another did not disclose the date certain awards were received. Four other firms distributed advertisements claiming to provide “conflict-free” advisory services, which they could not substantiate upon the SEC’s request. All nine firms will pay a combined \$1.2 million in civil penalties.

SEC v. Jordan/Zalaznick Advisers, Inc.

09.20.24. From December 2018 until May 2022, [JZAI](#) failed to implement certain aspects of its compliance program. Specifically, the firm’s compliance policies and procedures called for JZAI to conduct compliance training, spot-checks of books and records required to be maintained, and periodic inspections of the principal places of business of its relying advisers – none of which could be demonstrated during an examination of the adviser. JZAI has agreed to engage a compliance consultant and pay a civil penalty of \$150,000.

UPCOMING COMPLIANCE DEADLINES:

Accelerated 13G Effective Date: 09/30/2024

Form 13H-Q: 10/10/2024

Form 13F: 11/14/2024

SEC Continues to Pursue Firms for Disclosure Failures

09.05.24. Raskob Kambourian Financial Advisors, Ltd. (“Raskob”), an [Arizona-based investment adviser](#) was found to have breached its fiduciary duties by failing to disclose its charging of higher fees than were previously agreed upon in its client agreements. The SEC asserted that, among other things, each fee increase should have been disclosed as a “material change” in Raskob’s Form ADV, which should have been provided to clients annually. Raskob has agreed to pay \$1.3 million plus interest, which includes restitution for overcharged fees.

[Colony Capital Investment Advisors, LLC](#) (“Colony”) was also charged for failing to properly disclose and obtain approval for related party transactions and certain fund expenses. The funds had agreements with affiliates of Colony to provide loan servicing, administrative and management services. However, contrary to their agreements, Colony failed to obtain consent from the limited partnership advisory committees (“LPACs”) of the funds for these related party transactions. Accordingly, Colony violated antifraud provisions of the Advisers Act and paid \$350,000 to settle charges.

11 Managers Charged for Failure to File Forms 13F and 13H

09.17.24. Eleven investment managers [were charged](#) for failure to file the required Forms 13F and/or 13H. Nine firms agreed to settle the charges and pay \$3.4 million in combined penalties; notably, the two firms that self-reported these failures did not receive financial penalties. Jason Burt, Director of the Denver Regional Office, underscored the importance of these regulatory filings, “[T]he integrity of the securities markets depends largely on firms providing accurate, timely information about their securities holdings and trading activity.”

RULE MAKING

FinCEN Captures Certain Investment Advisers

09.24.24. The [Financial Crimes Enforcement Network](#) (“FinCEN”) expanded the definition of “Financial Institution” under the Bank Secrecy Act to include any adviser registered or required to be registered with the SEC, or an exempt reporting adviser relying on the private fund or venture capital fund exemption (collectively, “Covered Advisers”). According to the new rule, such Covered Advisers will now be required to adopt an anti-money laundering (“AML”) and counter-terrorism financing program, that must include procedures to: (i) perform due diligence on and conduct risk assessments on their customers; (ii) monitor transactions for criminal activities; and (iii) file Suspicious Activity Reports (“SARs”), as necessary. Before the rule’s effective date of January 1, 2026, Covered Advisers should evaluate their policies and procedures to ensure compliance.

CFTC Updates “Qualified Eligible Person” Definition

09.12.24. The Commodity Futures Trading Commission (“CFTC”) [amended Regulation 4.7](#), the primary disclosure, reporting and recordkeeping exemption relied upon by commodity pool operators (“CPOs”), doubling the financial thresholds required to meet the definition of a “qualified eligible person” (QEP). The new securities threshold will be \$4 million and the margin threshold will be \$400,000. Managers of 3(c)(1) funds that rely on Rule 4.7 will need to update their documents to accommodate the new QEP financial thresholds. Managers of 3(c)(7) funds will likely remain unaffected as investors that meet the “qualified purchaser” threshold will satisfy the new QEP test. The amended Regulation goes into effect in November 2024 with a compliance date of March 2025.

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.