



ORICAL REGULATORY UPDATE

REGULATORY UPDATE

Investment Adviser Fined \$4M for Greenwashing

10.21.2024. WisdomTree Asset Management Inc. (“WisdomTree”), an investment adviser based out of New York, [settled charges](#) levied by the SEC for misstating and failing to adhere to its investment strategy that was marketed as incorporating ESG factors. The SEC’s order alleged that WisdomTree invested in companies involved in fossil fuels and tobacco despite their prospectus’ stipulating that the funds would not invest in such companies. The order also alleged that WisdomTree had no policies and procedures to overlook the screening process to exclude such companies. WisdomTree has agreed to pay a \$4 million civil penalty to settle these charges.

No Ill-Gotten Gain Too Small to be Prosecuted by the SEC

10.15.2024. The SEC filed charges against Matthew Groom, a North Carolina resident for [insider trading](#) in Spero Therapeutics, Inc (“Spero”). Groom was an IT Consultant to Spero when he allegedly learned of a possible workforce reduction and sold all his Spero shares. When Spero’s shares did ultimately drop by 64%, Groom had effectively avoided a loss of approximately \$13,000. Groom has been directed to pay a penalty in the amount of losses avoided and a disgorgement of gains and is subject to a five-year officer-and-director bar.

The SEC [charged](#) Destiny Robotics Corp. (“Destiny”) and its founder with making false and misleading statements regarding its operations and its production of a home companion robot. The company raised approximately \$141,000 from investors by claiming to be developing the world’s first humanoid AI robot at-home assistant and companion for delivery by 2023. However, the order alleges that the robot being manufactured was far less sophisticated and it was unrealistic for them to deliver it by 2023. Additionally, the founder failed to disclose his personal relationship with the lead investor and that some investor funds were used for personal expenses. In all, the company has agreed to a \$50,000 civil penalty and disgorgement of approximately \$13,000 to settle all charges levied by the SEC.

SEC Charges 12 Firms for Failure to Comply with Recordkeeping Obligations

09.24.2024. Furthering the SEC’s focus on recordkeeping violations, [twelve firms](#) comprising of investment advisers and broker dealers, were charged for failure to maintain and preserve off-channel communications. In this series of enforcement actions, the SEC specified the content of certain text messages that it deemed to be business communications, including, messages discussing “the potential impact of macroeconomic and regulatory developments on certain client funds’ holdings and investment advice proposed to be given as a result” as well as “certain issues related to, among other things, previously executed securities trades for the account of advisory clients.”. The firms will pay a combined penalty of \$88m to settle charges.

CFTC Charged Broker for Recordkeeping and Supervision Failures

09.23.2024. The CFTC [settled charges](#) against introducing broker Piper Sandler Hedging Services LLC (“Firm”) for violation of its recordkeeping and supervision obligations. The Firm allegedly communicated over personal text, which was not archived by the Firm and in violation of its internal policies and procedures. The order further alleges that the individuals responsible for ensuring compliance with internal policies were themselves using non-archived methods of communication for business-related matters. The Firm will pay a civil penalty of \$2m.

UPCOMING COMPLIANCE DEADLINES:

Form 13G: 11/14/2024

Form 13F-Q: 11/14/2024

Form PF-Q: 11/29/24

Form PR: 11/14/2024

Form PQR: 11/29/2024

Macellum Charged for Failure to Disclose Conflicts of Interest

09.26.2024. Macellum Advisors, LP (“Macellum”), a New York-based formerly registered investment adviser was charged for the [failure to disclose](#) payments received by their affiliates and the subsequent conflicts of interest. Macellum had agreements with unaffiliated third-party investment advisers for them to invest alongside Macellum’s private funds, in exchange for a fixed percentage of performance-based fees payable to Macellum’s affiliates. The SEC found that these arrangements created a financial incentive for Macellum to favor interests of the third parties over their own clients and should have been clearly disclosed to their clients. Macellum has agreed to a civil penalty of \$75,000 and censure to settle the charges.

RIA Charged for Failing to Comply and Receive LPAC Consent

09.20.2024. [Closed Loop Partners, LLC](#), caused three funds to obtain loans that created conflicts of interest for Closed Loop. The adviser was required to disclose these conflicts of interest to the fund and obtain the fund’s consent before completing the transactions. In order to do so, each fund’s limited partnership agreement required Closed Loop to disclose the conflict of interest to either a Limited Partner Advisory Committee (“LPAC”) or to each of the fund’s limited partners and to obtain the fund’s prior consent. Closed Loop had not yet formed an LPAC for these funds by the time of the relevant transactions and because Closed Loop did not fully disclose the material facts concerning the conflicts to the funds’ limited partners, Closed Loop breached its fiduciary duty to the funds and, as a result, violated Section 206(2) of the Advisers Act. Additionally, the adviser was charged with violation of the “custody rule” for failure to deliver audited financial statements to its investors in a timely manner. Lastly, the adviser also failed to implement appropriate policies and procedures in order to prevent such violations. Closed Loop agreed to pay a \$250,000 civil penalty to settle charges.

SEC Division of Examinations Announces 2025 Priorities

The SEC released its [2025 examination priorities](#), intended to provide insight into key areas and topics the Division of Examinations (“Division”) will prioritize during examinations in the upcoming year. The Division prioritizes examinations of certain practices, products, and services that it believes present heightened risks to investors or the integrity of the U.S. capital markets. The report highlights that the SEC will continue to focus on core and perennial risk areas, while also prioritizing emerging risks, such as the use of artificial intelligence. These areas of focus include, but are not limited to:

- (i) adherence to fiduciary standards of conduct, focusing on dual registrants, advisers with affiliated broker dealers, impact of advisers’ financial conflicts of interest on providing impartial advice and best execution;
- (ii) effectiveness of advisers’ compliance programs, adopting and implementing written policies and procedures to prevent violations of the Advisers Act, namely for marketing, valuation, trading, portfolio management, disclosure and filings, and custody; and
- (iii) examination of never examined advisers, advisers not recently examined and newly registered advisers.

Furthermore, the SEC will continue to focus on private fund advisers, notably reviewing: (i) whether disclosures are consistent with actual practices and if an adviser met its fiduciary obligations in times of market volatility and whether a private fund is exposed to interest rate fluctuations; (ii) the accuracy of calculations and allocations of private fund fees and expenses; (iii) disclosure of conflicts of interests and risks, and adequacy of policies and procedures; and (iv) compliance with recently adopted SEC rules, including amendments to Form PF.

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.