

SEC Continues to Focus on MNPI-Related Deficiencies

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Notwithstanding recent media reports asserting that the number of insider trading actions brought by the Securities and Exchange Commission has dropped,¹ the SEC continues to pursue actions against investment advisers for failures to maintain robust policies and procedures on the handling of material non-public information.

For example, on Aug. 6, 2020, the SEC filed a civil complaint² against the owner and principal of a registered investment adviser, alleging that he caused his advisory firm to fail to maintain and enforce policies and procedures designed to prevent and detect the misuse of material non-public information (the SEC also alleges that he personally traded on the basis of material non-public information). This case follows on the heels of two other recent settlements with investment advisers³ charging violations of Section 204A of the Investment Advisers Act, which requires advisers — whether registered or not — to adopt policies and procedures reasonably designed to prevent the misuse of material non-public information.

In each of these matters, the SEC staff identified areas where they believed an adviser faced a heightened risk of exposure to material non-public information (e.g., firm employees holding board of directors seats, client trading in thinly-traded securities with little analyst coverage and supervised persons' contact with corporate insiders), and asserted that the firm's policies with respect to these risks were not sufficiently tailored or were not followed. This sustained enforcement focus should serve as a reminder to all private fund managers to assess whether their policies adequately address the risks associated with their business practices.

This article appeared in the August 2020 edition of SRZ's Private Funds Regulatory Update. To read the full Update, [click here](#).

¹ See, e.g., "Under Trump, SEC Enforcement of Insider Trading Dropped to Lowest Point in Decades," NPR, (Aug. 14, 2020), [available here](#).

² See Complaint, *Securities and Exchange Commission v. Jack Brewer*, Case No. 1:20-cv-06175 (S.D.N.Y. Aug. 6, 2020), [available here](#).

³ See *In the Matter of Cannell Capital, LLC*, Release No. IA-5441 (Feb. 4, 2020), [available here](#) and *In the Matter of Ares Management LLC*, Release No. IA-5510 (May 26, 2017), [available here](#).