

Recent SEC Enforcement Activity

May 2020

Monsoon Capital. In a recent SEC enforcement action,¹ an adviser and its principal allegedly overcharged a client fund for approximately \$44,000 in travel expenses and the principal borrowed \$1 million from the fund, for five days, for personal use. Both the adviser and its principal were charged with fraud and breach of fiduciary duty under Sections 206(1), 206(2) and 206(4) of the Advisers Act, and under Rule 206(4)-8. The adviser and the principal accepted cease and desist orders, the adviser was censured, and the principal accepted an industry bar. In addition, the adviser and the principal paid a \$100,000 penalty.

The *Monsoon Capital* settlement is noteworthy because the — arguably — *de minimis* amount of the expense overcharge and the lack of actual harm to the fund from the loan (which was paid in full in five days) did not dissuade the SEC from imposing severe sanctions on the adviser and its principal. Legal and compliance officers should review this settlement and consider sharing it with business unit leaders as an instructive lesson on the SEC's low or zero tolerance approach to fiduciary violations and client-directed fraud.

Monomoy Capital. In another recent action, the SEC demonstrated yet again that it will not hesitate to institute enforcement actions against managers that it feels are seeking reimbursement for expenses that were not expressly agreed to by clients. In *Monomoy Capital Management, L.P.*,² the SEC alleged that a private equity fund manager charged its portfolio companies for the services of an in-house "Operations Group" without fully disclosing that practice or the associated conflicts of interest. The SEC brought an action for a violation of the anti-fraud provisions of Section 206(2) of the Investment Advisers Act.

Legal and compliance personnel should review the *Monomoy Capital* settlement, as it is instructive on how the SEC can deem subsequent disclosures, standing alone, to be ineffective or insufficient proxies for client consent; interestingly, the order also highlighted the fact that the firm's Form ADV (filed some time after the private equity fund's closing) did not include the expenses disclosure changes in the summary of material changes. Finally, while the settlement order expressly notes the firm's cooperation in the investigation, the sanctions still included a cease and desist order and imposed nearly \$2 million in disgorgement, interest and fines.

¹ *In the Matter of Monsoon Capital, LLC and Gautam Prakash*, Release No. IA-5490 (April 30, 2020), available [here](#).

² *In the Matter of Monomoy Capital Management, L.P.*, Release No. IA-5485 (April 22, 2020), available [here](#).

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