

MEMO# 35485

October 17, 2023

SEC Charges Adviser for Mutual Fund Anti-Money Laundering Violations

[35485]

October 13, 2023

TO: ICI Members

AML Compliance Working Group

Chief Compliance Officer Committee

Operations Committee

Transfer Agent Advisory Committee SUBJECTS: Anti-Money Laundering

Compliance RE: SEC Charges Adviser for Mutual Fund Anti-Money Laundering Violations

On September 25, 2023, the SEC's Division of Enforcement announced charges against a registered investment adviser ("Adviser") for causing mutual funds it advises ("Mutual Funds") to fail to develop and implement a reasonably designed anti-money laundering ("AML") program.[\[1\]](#) The Adviser, without admitting or denying the SEC's findings, agreed to pay a civil money penalty of \$6 million.[\[2\]](#) The SEC's findings against the Adviser and the sanctions imposed are summarized below.

The SEC's Findings

Failure to Develop and Implement a Tailored AML Compliance Program

The Order provides relevant legal background, stating that applicable Financial Crimes Enforcement Network (FinCEN) rules require mutual funds to develop AML compliance programs and allow funds to develop their programs based upon their own business structure. The Order states, "each mutual fund complex should identify its vulnerabilities, understand applicable [Bank Secrecy Act] requirements, identify the risk factors relating to those requirements, design the procedures and controls that will be required to reasonably assure compliance with these requirements, and periodically assess the effectiveness of the procedures and controls."[\[3\]](#) The Order further states that "[a]n AML program designed for a different type of financial institution would generally not satisfy these requirements."[\[4\]](#)

The SEC found that, during the relevant period, the Mutual Funds' board had annually reviewed and approved an AML compliance program designed by the Adviser's affiliate to apply to all of the entity's U.S. operations. The SEC found that this umbrella AML program did not address compliance requirements specific to the mutual fund business. As a result, the SEC found that the Adviser caused the Mutual Funds to fail to "develop and implement an AML program appropriately tailored to the risks or vulnerabilities to money laundering

posed by mutual funds.[\[5\]](#)

Failure to Establish and Implement Reasonably Designed Policies, Procedures and Controls

The Order states that mutual funds are required to "establish and implement policies, procedures, and internal controls reasonably designed to detect activities indicative of money laundering."[\[6\]](#) For several years, the Mutual Funds relied on a vendor-provided transaction monitoring software system ("TMS System"). The SEC made three findings regarding the operation of the TMS System.

- First, the SEC found that, to ensure that the TMS System would detect potentially suspicious transaction activity, the system's scenario-based rules for generating alerts needed to be periodically "calibrated" or "tuned." The SEC found that the applicable AML policies and procedures were not reasonably designed because they did not clearly state how often the TMS System was required to be calibrated or tuned. The SEC further found that the Mutual Funds failed to comply with the policies and procedures for calibrating and tuning the TMS System.
- Second, the SEC found that the TMS System automatically closed approximately 90% of transaction alerts without review by AML personnel. The Order states that, although samples of the automatically closed alerts were subject to periodic review, during the period from March 2017 to September 2018, no alerts were reviewed by AML personnel.
- Third, the SEC found that certain Mutual Fund transaction activity during the relevant period was not maintained or reviewed by the TMS System.

For these reasons, the SEC found that the AML policies and procedures applicable to the TMS System were not reasonably designed to detect activities indicative of money laundering.

Failure to Provide Training Tailored to Mutual Funds

Finally, the SEC found that, although the Adviser offered mandatory BSA/AML training to relevant employees, the training was not specific to the Mutual Funds or the risks applicable to mutual funds.

As a result of these failures, the SEC found that the Adviser caused the Mutual Funds to violate Rule 38a-1 under the Investment Company Act of 1940.

Sanctions Imposed

The Adviser was ordered to cease and desist from further violations and to pay a civil money penalty of \$6 million.

The Order states that the SEC considered the Adviser's remedial efforts and cooperation, including that: (i) the Mutual Funds' board approved a written, standalone AML compliance program; (ii) Adviser personnel reviewed samples of automatically closed alerts for the applicable period; (iii) the Mutual Funds stopped using the TMS System; and (iv) Mutual Fund-specific AML training was created and incorporated into the AML employee training program.

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Notes

[1] The SEC Press Release announcing the charges is available here: <https://www.sec.gov/news/press-release/2023-194>. The relevant SEC order ("Order") is available here: <https://www.sec.gov/files/litigation/admin/2023/ia-6431.pdf>.

[2] In connection with a separate enforcement action announced on the same day, the Adviser also agreed to pay a civil money penalty of \$19 million in connection with certain misstatements regarding ESG investing. This memorandum focuses only the enforcement action related to AML violations.

[3] Order at 3.

[4] Id.

[5] Id.

[6] Id. at 4.

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