

MEMO# 35661

March 28, 2024

SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence

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TO: ICI Members

Advertising Compliance Advisory Committee

Broker/Dealer Advisory Committee

Chief Compliance Officer Committee

Investment Adviser and Broker-Dealer Standards of Conduct Working Group

Investment Advisers Committee

Retail SMA Advisory Committee

SEC Rules Committee SUBJECTS: Investment Advisers RE: SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence

On March 18, 2024, the SEC announced that it settled separate charges against two investment advisers, Delphia (USA) Inc. ("Delphia") and Global Predictions Inc. ("Global Predictions"), each for making false and misleading statements about their alleged use of artificial intelligence ("AI") to inform their investment decisions and advice, a practice the Commission describes as AI-washing.[\[1\]](#) Delphia and Global Predictions, without admitting or denying the charges, agreed to pay \$225,000 and \$175,000, respectively, in civil penalties to settle with the Commission.

Delphia Order

With respect to the Delphia matter, the SEC alleged that from 2019 to 2023 Delphia made false and misleading statements in its Form ADV Part 2A brochures, press releases, website, advertisements, and social media relating to its purported use of AI and machine learning. The SEC asserted that during the period, Delphia represented that it used AI and machine learning to analyze its retail clients' spending and social media data to inform its investment advice when, in fact, no such data was being used in its investment process.

The SEC charged that Delphia willfully violated Section 206(2) of the Advisers Act, a key

anti-fraud provision, which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." The firm was also charged with violating the Marketing Rule (Section 206(4) of the Advisers Act and Rule 206(4)-1 thereunder), which, among other things, prohibits a registered investment adviser from disseminating any advertisement that includes any untrue statement of material fact. In addition, the SEC alleged that Delphia violated the Compliance Rule (Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder) because it failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

It is noteworthy that Delphia matter stemmed from an examination by the SEC's Division of Examinations. In 2021, Delphia agreed to correct the false and misleading statements and to take steps to ensure that no such statements were made in the future. While certain corrective efforts were made, the settled order states additional false and misleading statements concerning the use of its retail clients' data in the investment process continued to be made through August 2023.

Global Predictions Order

According to the SEC's order against Global Predictions, the SEC alleged that Global Predictions violated the Advisers Act by making false and misleading claims about its use of AI with respect to claims the firm made as the "first regulated AI financial advisor" and its investment services offered. In addition to the claim of being an "AI financial advisor," SEC also asserted that the firm promoted the use of "AI-driven forecasts" to inform investment recommendations on their public website, in emails to current and prospective clients, and on various social media sites and, in turn, could not produce documents to substantiate these claims in violation of the Marketing Rule.

The settled order against Global Predictions also found several other false and misleading statements and Marketing Rule violations unrelated to AI, including false claims relating to tax-loss harvesting services, the value of assets on the platform, the relative performance of its models and failure to disclose material conflicts of interest resulting from its relationships with certain individuals giving testimonials. The order alleges Global Predictions failed to implement certain of its compliance policies and procedures involving its marketing activities and that Global Predictions included an impermissible liability hedge clause in its advisory contract, among other securities law violations.

Settlements

As stated above, without admitting or denying the SEC's findings, Delphia and Global Predictions consented to the entry of orders finding that they violated the Advisers Act and ordering them to be censured and to cease and desist from violating the charged provisions. Delphia agreed to pay a civil penalty of \$225,000, and Global Predictions agreed to pay a civil penalty of \$175,000. For its cooperation and as a part of its settlement, Global Predictions agreed, among other things to the removal of advertisements that violated the Marketing Rule from its public website and/or social media sites and to retain a compliance consultant to review its marketing and training materials.

Investor Alert on Artificial Intelligence and Investment Fraud

Lastly, on January 24, 2024, the SEC's Office of Investor Education and Advocacy, along with the North American Securities Administrators Association (NASAA) and the Financial Industry Regulatory Authority (FINRA), issued a joint alert to increase investor awareness

regarding the increase of investment frauds involving the purported use of AI and other emerging technologies.^[2] The alert provides investors with information to help them identify fraud and steps that they can take to protect themselves against bad actors using AI to lure victims into scams. Likewise, on January 25, 2025 the Commodity Futures Trading Commission (CFTC) Office of Customer Education and Outreach issued a customer advisory warning the public about AI scams.^[3] The CFTC advisory is intended to help investors identify and avoid potential scams, including a reminder that AI technology cannot predict the future. It also lists four important items investors may consider, including researching the background of a company or trader, before trusting their money to trading bots or trade-signal providers.

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Notes

^[1] See SEC Order, In the Matter of Delphia (USA) Inc. (2024) (3-21894), available at <https://www.sec.gov/files/litigation/admin/2024/ia-6573.pdf>; see also SEC Order, In the Matter of Global Predictions, Inc. (2024) (3-21895), available at <https://www.sec.gov/files/litigation/admin/2024/ia-6574.pdf>.

^[2] See Artificial Intelligence (AI) and Investment Fraud: Investor Alert (January 24, 2024) available at <https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-alerts/artificial-intelligence-fraud>.

^[3] See Customer Advisory: AI Won't Turn Trading Bots into Money Machines (January 25, 2024) available at <https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/AITradingBots.html>. See also <https://www.cftc.gov/PressRoom/PressReleases/8854-24>.