

MEMO# 35861

September 24, 2024

SEC Charges Investment Adviser for ESG-Related Misrepresentations

[35861]

September 23, 2024

TO: ICI Members
Investment Company Directors
Chief Compliance Officer Committee
ESG Advisory Group
SEC Rules Committee SUBJECTS: Compliance
Disclosure
ESG
Litigation & Enforcement RE: SEC Charges Investment Adviser for ESG-Related Misrepresentations

On September 19, 2024, the SEC instituted public administrative and cease-and-desist proceedings against an asset manager arising from "material misstatements concerning how it managed investments for clients." [\[1\]](#) To settle the charges, the asset manager has agreed to pay a penalty of \$300,000 and retain an independent compliance consultant.

The SEC's order found that from at least 2019 to March 2024, the asset manager represented in its Form ADV Part 2A Brochure and in the prospectuses of ETFs it advised that separately-managed accounts and ETFs advised by the asset manager "would not invest in companies that 'ha[ve] any degree of participation in' certain enumerated activities or products that [asset manager] determined did not align with biblical values [Prohibited Activities]." The SEC's order found that the asset manager "misrepresented its research process, did not apply its investment criteria consistently, invested in companies that should have been excluded based on [asset manager]'s stated investment criteria, and had a research process that failed to prevent departures from its stated investment criteria." The order also found that the asset manager "failed to adopt reasonably designed policies and procedures related to its investment process."

Investment Practices Were Inconsistent and Failed to Comply with Representations

The order found that the asset manager's "actual investment process deviated from what it represented to clients and ... ETF investors in its Brochure and the ... ETF prospectuses." The order noted that the asset manager touted a "rules-based, scientifically rigorous

methodology of faith-based ESG analysis which creates a level of consistency and reliability of results necessary for making well-informed, quantitatively sound, biblically responsible investment decisions" and represented to investors that it would "introduc[e] best-practice disciplines of data science into the collection, organization, and analysis of faith-based screening data." However, the SEC's order found that the asset manager's research "was primarily limited to cross-referencing company names with donor and sponsor lists of well-known national organizations that it determined were associated with Prohibited Activities." The order noted that "[d]espite its representations to clients, [asset manager] did not typically conduct research at an individual company level to determine whether a company engaged in any of the Prohibited Activities."

Compliance Deficiencies

The SEC's order found that the asset manager "failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder," and "lacked written policies or procedures establishing a due diligence process that would support the representations made to investors and clients." Further, the asset manager "also lacked written policies and procedures setting forth a process for evaluating companies' activities as part of its investment process, which at times resulted in inconsistent application of [asset manager]'s investment criteria in determining that certain sponsorships, donations, or products were Prohibited Activities while other companies' similar activities were not deemed to be Prohibited Activities."

Violations, Sanctions and Remedial Efforts and Cooperation

The asset manager consented to the entry of the order, which stated that, as a result of the conduct, the investment adviser willfully violated Sections 206(2) and 206(4) of the Investment Advisers Act of 1940 (Advisers Act) and Rules 206(4)-7 and 206(4)-8 under the Advisers Act and Section 34(b) of the Investment Company Act of 1940. The asset manager was ordered to cease and desist from committing or causing future violations of these provisions, censured, and ordered to pay a civil money penalty of \$300,000. Additionally, the asset manager undertook to retain an independent compliance consultant to "review the firm's practices, disclosures, and written policies and procedures concerning selection of investments and application of investment criteria, including due diligence and monitoring relating to investment selections and holdings."

In determining to accept the offer, the SEC considered remedial acts undertaken by the asset manager and cooperation afforded the SEC staff. The order noted that "[t]hroughout the investigation, [asset manager] voluntarily met with the Commission staff on multiple occasions and cooperated to provide factual summaries of relevant information," and that "[f]ollowing the identification of certain issues by the Commission staff, [asset manager] began to make changes to its disclosures and policies and procedures."

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Notes

[1] See In the matter of Inspire Investing, LLC, IA Rel. No. 6710, IC Rel. No. 35326, File No. 3-22145 (Sept. 19, 2024), available at: <https://www.sec.gov/files/litigation/admin/2024/ia-6710.pdf>.

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