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June 2021 Update of the SEC's Covered Actions for Potential Whistleblower Claims

Corporate Defense and Disputes on **July 27, 2021**

On June 30, 2021, the SEC posted six Notices of Covered Actions, for which individuals have 90 calendar days to apply for a whistleblower award. As discussed in our prior post, the SEC publishes Notices for cases in which the final judgment or order, by itself or together with other prior judgments or orders in the same action issued after July 21, 2010, results in monetary sanctions exceeding $1 million.

In this post, we briefly survey the six June 2021 Notices of Covered Actions.

2021-056: In the Matter of Under Armour, Inc.

On May 3, 2021, the SEC entered an order with Under Armour Inc. based on an Offer of Settlement and findings of misleading statements regarding revenue growths. According to the order, Under Armour "pulled forward" existing orders that customers had requested be shipped in future quarters, in order to close the gap between the company's internal forecasts and analysts' revenue estimates. According to the SEC, Under Armour misleadingly attributed its revenue growth during this period to various factors without disclosing its pull forward practices. Without admitting or denying the findings in the SEC's order, Under Armour agreed to pay a $9 million penalty, as well as to cease and desist from any further violations.

2021-057: SEC v. CapSource, Inc., Stephen J. Byrne, and Gregory P. Herlean

On May 5, 2021, final judgment was entered against two principals of CapSource, Inc., Stephen J. Byrne and Gregory P. Herlean, for fraud and registration violations in connection with multiple related securities offerings. On December 21, 2020, the SEC had alleged the defendants knew, or were reckless in not knowing, that CapSource's largest client, Michael B. Zipprich, was diverting millions of dollars of proceeds raised through CapSource for various other projects managed by the client, in contrast to the representations made to the investors. The SEC alleged that the defendants further assisted Zipprich in defrauding investors and raising millions of dollars in subsequent offerings to improperly shore up the finances and replace the previous diversion shortfalls. CapSource, Byrne, and Herlean consented to entry of judgment that, among other things, orders Byrne and Herlean to pay $1.9 million and $1 million respectively for disgorgement, pre-judgment interest, and civil penalties.

2021-058: In the Matter of GWFS Equities, Inc.

On May 12, 2021, the SEC settled with GWFS Equities, Inc., a registered broker-dealer, for charges of federal securities law violations relating to Suspicious Activity Report ("SAR") filings. The SEC alleged that from September 2015 through October 2018, GWFS, which provides services to employer-sponsored retirement plans, began detecting increasing numbers of attempts by bad actors to gain unauthorized access to the retirement accounts of individual plan participants and the funds therein. According to the SEC, GWFS failed to implement its anti-money laundering program consistently in response to these attempts, which resulted in it not filing approximately 130 SARs and omitting required information from the 297 SARS it did file. The SEC's announcement of the settlement stated that GWFS agreed to a civil monetary penalty of $1.5 million, along with undertaking significant remedial measures (including implementing new SAR-related policies, procedures, standards, and trainings, and retaining an outside AML consulting firm) and providing substantial cooperation during the SEC's investigation.

2021-059: SEC v. Onix Capital LLC, and Ablerto Chang-Rajii

On April 21, 2021, a final judgment was entered by the United States District Court for the Southern District of Florida ordering Onix Capital LLC to pay $9.8 million, comprising $8.0 million in disgorgement and $1.8 million in prejudgment interest. The SEC's complaint had alleged Onix Capital, an asset management company based in Miami, made material misrepresentations regarding investments it offered, its use of the funds, and the background and financial success of Onix's owner Alberto Chang-Rajii. The SEC alleged that the defendants raised $7.4 million by, among other things, improperly guaranteeing annual returns of 12 to 19 percent on promissory notes, providing false depictions of Chang, and promising to use funds to invest in companies such as Uber, Snapchat, and Square, when the funds were instead diverted to Chang and other investors. Onix consented to the final judgment without admitting or denying the complaint's allegations.

2021-060: SEC v. Kai Christian Petersen; Gil Beserglik; and Raz Beserglik

On April 21, 2021, a final judgment was entered by the United States District Court for the Central District of California against three foreign individuals, Kai Christian Petersen, Gil Beserglik, and Raz Beserglik for the payment of disgorgement, prejudgment interest, and civil penalties. In 2019, the SEC's complaint alleged the three individuals engaged in the fraudulent and illegal offering and sale of more than $100 million of securities called "binary options" between 2014 and 2017. The SEC alleged the defendants and related entities, who were not registered broker-dealers, used high pressure sales tactics to offer and sell these securities to vulnerable investors, including lying to potential investors about their trading expertise and telling investors that the brokers would only earn money if the investors made money, when in reality, the brokers earned money on investor losses. The SEC also alleged the defendants misappropriated millions of dollars of investor deposits, by, among other things, sending investor money to entities owned and controlled by themselves. Without admitting or denying the allegations of the SEC's complaint, Gil Beserglik, Raz Beserglik, and Petersen consented to judgment of $2.6 million, $2.6 million, and $300,000, respectively.

2021-061: In the Matter of S&P Dow Jones Indices LLC

On May 17, 2021, the SEC settled charges with S&P Dow Jones Indices LLC for failures relating to a previously undisclosed quality control feature of one of its volatility-related indices, which led to publication of stale index values. Without admitting or denying the findings of the SEC's order, S&P DJI consented to a civil money penalty of $9 million. The SEC found that one of the indexes published by S&P DJI remained static due to an undisclosed "auto hold" feature during certain intervals between 4:00 pm and 5:08 pm on February 5, 2018, despite an unprecedented spike and market volatility that day. Notwithstanding the monetary penalty, the SEC recognized prompt remedial acts and undertaken by the company and its cooperation with the Commission.

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