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

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On July 30, 2021, the SEC posted 14 Notices of Covered Actions, after which individuals have 90 calendar days to apply for a whistleblower award. As discussed in our prior post, the SEC publishes these Notices for cases in which the final judgment or order, either 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 14 Notices of Covered Actions from July 2021. (See our previous post on the SEC's Notices of Covered Actions from June 2021.) Several of the alleged misconducts in the 14 Covered Actions also resulted in parallel criminal actions.

2021-062: In the Matter of Gateway One Lending & Finance, LLC

On June 24, 2021, the SEC entered an order with Gateway One Lending & Finance, LLC based on an Offer of Settlement and findings of false and misleading statements regarding loan performance under Section 17 of the Securities Act of 1933. According to the order, Gateway, an auto loan originator, securitizer, and servicer, understated the historic losses of its auto loans and overstated the projected future performance for six auto loan-backed securitizations between July 2014 and December 2016 by excluding important liquidation expenses. Without admitting or denying the findings in the SEC's order, Gateway agreed to pay $6.5 million for disgorgement, prejudgment interest, and civil penalties.

2021-063: SEC v. The Legacy Group, Inc.; Colorado Ventures I, LLC; Radiant Holdings, LLC; Randy R. King; Matthew B. King; and Andrea S. Trout

On June 11, 2021, final judgments were entered against Colorado and Florida residents Randy R. King, Matthew B. King, and Andrea S. Trout and three entities they operated, The Legacy Group, Inc., Colorado Ventures I, LLC, and Radiant Holdings, LLC, stemming from alleged violations of Section 17(a) and Section 5 of the Securities Act and Section 10(b) of the Securities Exchange Act of 1934. The SEC's charges asserted the defendants conducted fraudulent, unregistered securities offerings related to investment opportunities in "fix-and-flip" residential real estate properties in high-end markets. The SEC alleged the defendants misused investor funds, made material misrepresentations about the value of certain properties and the amount of equity and liabilities tied to certain properties, and materially misstated the risks of certain investments. The defendants also allegedly took undisclosed compensation, contrary to the business plan presented to the investors. The defendants, without admitting or denying the allegations, consented to judgments and injunctions, which, among other things, resulted in orders of disgorgement, prejudgment interest, and civil penalties totaling more than $1.2 million.

2021-064: SEC v. Sethi Petroleum, LLC and Sameer P. Sethi

On June 24, 2021, a final judgment was entered against defendant Sethi Petroleum, LLC, ordering it to pay disgorgement and prejudgment interest of $3.2 million for violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act. The case stemmed from an emergency civil action filed by the SEC on May 14, 2015, against Sethi Petroleum and its president, Sameer P. Sethi, for offering fraudulent oil and gas investments. The SEC alleged that the defendants used the proceeds of joint venture securities offerings on undisclosed and unapproved expenditures, contrary to the stated purpose in the offering materials and diverted funds to defendants and other individuals. The SEC also alleged that defendants made other misrepresentations (including false claims of partnering directly with large public oil and gas companies) misled investors about the company's assets and expected returns, and failed to adequately disclose prior enforcement actions against the company and its affiliates (including the prior criminal conviction and incarceration of Sameer Sethi). In response to these allegations, the U.S. District Court for the Eastern District of Texas found Mr. Sethi had violated the federal securities laws and ordered disgorgement, prejudgment and civil penalties of more than $4.5 million, less any amounts returned to investors. Mr. Sethi's appeal was denied and the district court's judgment was affirmed by the Fifth Circuit, which resulted in this final judgment being entered.

2021-065: SEC v. Emil Botvinnik

On May 20, 2021, a final judgment was entered by the United States District Court for the Southern District of New York ordering Emil Botvinnik to pay $1.5 million for disgorgement, prejudgment interest, and civil penalties. The SEC's 2018 complaint alleged Botvinnik engaged in a fraud involving frequent, short-term trades for his customers with costly commissions and fees that made almost certain that his customers would lose money. Botvinnik also engaged in unauthorized trading and concealment of material information from his customers regarding transaction costs. The SEC charged Botvinnik with violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

2021-066: SEC v. The Owings Group, LLC, Owings-1, LLC, Owings Capital Group, LLG, Owings Capital Funds, LLC, Mark Johnson, Kevin Drost, Brian Koslow, David Waltzer

On May 12, 2021, the United States District Court for the District of Maryland issued a memorandum opinion and corresponding final judgments against Mark Johnson, Kevin Drost, Brian Koslow, David Waltzer, and their associated entities. The SEC's July 2018 complaint charged the defendants with multiple violations, including Section 10(b) of the Exchange Act, Sections 5 and 17(a) of the Securities Act, and Section 206(4) of the Investment Advisers Act of 1940. These violations were based on an alleged fraudulent scheme surrounding an untested, and ultimately unsuccessful, method devised by the defendants to take a company public. The defendants allegedly used various fraudulent methods to attract investors, including making fake escrow accounts and shell companies, and issuing false and misleading statements. According to the SEC, the defendants lost all investor funds except for payments made to early investors using new investors' money. The court ordered varying judgment amounts against the defendants, each ranging from $172,774 to $1,480,648, some of which include jointly and severally liable amounts. Most of the individual defendants had consented to judgments in 2019, but in June 2021, one individual defendant (Mark Johnson) filed an appeal to the Fourth Circuit regarding the amount of disgorgement and penalty ordered against him, which remains pending.

2021-067: In the Matter of Loci, Inc. and John Wise

On June 22, 2021, the SEC settled charges with Loci Inc. and its CEO John Wise for making materially false and misleading statements relating to an unregistered offer and sale of digital asset securities. The order found that the digital tokens, called "LOCIcoins," constituted securities and that defendants made numerous materially false statements in connection with the tokens relating to the company's revenues, number of employees, and user base of its software platform. Without admitting or denying the findings of the SEC's order, the defendants consented to a civil money penalty of $7.6 million, disgorgement of $38,163 and prejudgment interest of $6,209.

2021-068: SEC. Eric Pulier

On May 20, 2021, the United States District Court for the Central District of California issued a final judgment against Eric Pulier, who, without admitting or denying the allegations, consented to a judgment of $4.8 million. According to the SEC's complaint filed in September 2017, Pulier, a former executive at Computer Sciences Corporation ("CSC") and co-founder of ServiceMesh, Inc., defrauded CSC out of over $98 million in connection with its November 2013 acquisition of ServiceMesh. He allegedly paid approximately $2.5 million in bribes to third parties to assist with his scheme, made material misrepresentations to CSC and its auditors, and circumvented CSC's internal accounting controls.

A parallel criminal case, no. 17-CR-00599, was filed in September 2017 but was dismissed in December 2018 upon the U.S. Government's ex parte application to dismiss the indictment in the case with prejudice.

2021-069: In the Matter of Centaurus Financial, Inc.

On June 2, 2021, the SEC settled charges with Centaurus Financial, Inc., a dually-registered investment adviser and broker-dealer, regarding breaches of fiduciary duty in connection with its receipt of third-party compensation from client investments without fully and fairly disclosing its conflicts of interest. The order found violations of Sections 206(2) and 206(4) of the Advisers Act. The SEC also alleged Centaurus had breached its duty to seek best execution despite a more favorable value present at the time of the investment transactions, and that it had failed to adopt and implement written compliance policies and procedures reasonably designed to prevent these violations. Without admitting or denying the findings of the SEC's order, Centaurus consented to pay $1.3 million.

2021-070: In the Matter of Crown Capital Securities, L.P.

On June 24, 2021, the SEC settled charges of violations of Sections 206(2) and 206(4) of the Advisers Act with Crown Capital Securities, L.P., a dually-registered investment adviser and broker-dealer, regarding disclosure failures concerning investment advice on mutual funds and cash sweep money market funds. The SEC's order found Crown Capital had breached its fiduciary duties in connection with its receipt of third-party compensation from client investments without fully and fairly disclosing its conflicts of interest, its failure to seek best execution despite a more favorable value present at the time of the investment transactions, and its failure to adopt and implement written compliance policies and procedures reasonably designed to prevent these violations. Without admitting or denying the findings of the SEC's order, Crown Capital consented to pay $1.6 million.

2021-071: SEC v. Savraj Gata-Aura (a/k/a Samuel Aura a/k/a Sam Aura) and Core Agents, Ltd. (d/b/a Core Agents International, Ltd.)

On June 22, 2021, the United States District Court for the Southern District of New York issued a final judgment against Savraj Gata-Aura and Core Agents, Ltd. for $3.7 million, which is to be offset by an amount equal to the order of restitution and the forfeiture amount set forth in the parallel criminal case. In that proceeding, Aura had pleaded guilty to one count of conspiracy to commit wire fraud under 18 U.S.C. § 1349. The SEC's allegations and Aura's admissions in the criminal case set forth that Aura recruited a network of sales agents to sell fraudulent investments in co-working spaces Bar Works, Inc. and Bar Works 7th Avenue, Inc., using false and misleading offering materials, including false statements regarding the identity and background of Bar Works' purported CEO, "Jonathan Black," a pseudonym for a defendant in a related case, Renwick Haddow.

In July 2020, Aura was sentenced to 48 months in prison, supervised release for 3 years, and forfeiture of $3.0 million. In December 2020, an order of restitution was entered against Aura for $40.0 million, for which he is jointly and severally liable with any other defendant in that matter, defendants in related matters, as well as any defendants who have not yet been charged.

2021-072: SEC v. Joseph Andrew Paul, John D. Ellis, Jr., James S. Quay, a/k/a "Stephen Jameson," and Donald H. Ellison

On May 27, 2021, the United States District Court for the Eastern District of Pennsylvania issued a final judgment as to John D. Ellis, Jr. for payment of $1.3 million, which is to deemed satisfied by the entry of a restitution order in a parallel criminal case.

In April 2016, the SEC alleged Josepha Andrew Paul and John D. Ellis, Jr. created fraudulent marketing materials about the historical performance of their investment advisory firm, Paul Ellis Investment Associates. According to the SEC, Paul and Ellis recruited James S. Quay and Donald H. Ellison to find and mislead potential investors. Quay, who was previously convicted of tax fraud in 2005 and found liable for securities fraud in 2012, allegedly used an alias to conceal his true identity. A final judgment against Ellison, including an amount of $83,118 for disgorgement, prejudgment interest and civil penalties, was entered in October 2017 with Ellison's consent.

In 2017, defendants Paul, Ellis, and Quay were charged in the parallel criminal action, in which all three individuals pled guilty. Paul was sentenced to 34 months imprisonment, 5 years supervised release, and payment of $1.5 million in restitution. Quay was sentenced to 125 months imprisonment, 3 years supervised release, and payment of $1.3 million in restitution. Ellis was again charged with fraud in a separate case, filed in April 2021. Sentencing in both cases against Ellis is set for October 2021.

2021-073: In the Matter of Maxwell Drever

On May 5, 2021, the SEC settled charges of violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act with Maxwell Drever, a real-estate developer. According to the SEC's order, Drever raised approximately $53 million to purchase and redevelop a commercial building in Texas but failed to disclose his receipt of $10.2 million in fees charged to investors in connection with the purchase and redevelopment. Drever also invested $9 million of the undisclosed fees he received to take an equity stake in the project for himself and falsely told certain investors that the investment had come from his own funds. Without admitting or denying the findings of the SEC's order, Drever consented to pay $1.6 million for disgorgement, prejudgment interest and civil penalties, and cancel the equity stake in the project he received in exchange for the $9 million investment.

2021-074: In the Matter of Gurprit Chandhoke and VII Peaks Capital, LLC

On June 4, 2021, the SEC settled charges against investment adviser VII Peaks Capital, LLC and its co-owner, co-principal, and managing member, Gurprit Chandhoke, for breaches of fiduciary duty. The SEC found that from late 2015 through 2017, VII Peaks and Chandhoke engaged in transactions that were not disclosed to or approved by the board of directors of the client, VII Peaks Co-Optivist Income BDC II, Inc. These transactions included over $700,000 in due diligence fees collected by VII Peaks for loans made by the BDC to portfolio companies, an undisclosed $400,000 payment by a portfolio company for technology services to a company which Chandhoke partially owned and served as CEO, and an undisclosed $250,000 personal loan to Chandhoke from a company owned and controlled by a portfolio company's CEO. The SEC also alleged that the transactions with Chandhoke violated the Investment Company Act for failure to obtain approval from the Commission for the affiliated person transactions, and that VII Peaks failed to implement its own valuation policies and procedures in valuing two portfolio companies of the BDC in 2018. Without admitting or denying the findings of the SEC's order, VII Peaks agreed to pay $1.0 million for disgorgement, prejudgment interest and civil penalties, and Chanhoke agreed to a payment of $194,357 as well as an association suspension, investment company prohibition, and penny stock suspension, all for 12 months.

A related settlement was entered into with Michelle E. MacDonald, the CFO of the BDC, for causing VII Peaks' violations under Section 206(2) of the Advisers Act and for a $20,000 penalty.

2021-075: SEC v. Hemp, Inc.; Bruce J. Perlowin; Barry K. Epling; Jed M. Perlowin; Ferris Holdings, Inc.; Hobbes Equities Inc.; Diversified Investments LLC; and Quantum Economic Protocols LLC

On May 31, 2021, the United States District Court for the District of Nevada issued final judgment as to defendants Hemp, Inc., Bruce J. Perlowin, Barry K. Epling, Ferris Holding, Inc., and Hobbes Equities Inc., on consent from each defendant.

In its June 2016 complaint, the SEC charged Hemp, Inc., its CEO Bruce Perlowin, Perlowin's friend Barry Epling, Perlowin's brother Jed Perlowin, and private companies owned by Epling or Jed Perlowin with violations of Section 5 of the Securities Act and Section 10(b) of the Exchange Act for engaging in a long-running fraudulent scheme to evade registration requirements. The defendants allegedly sold hundreds of millions of unregistered and purportedly unrestricted Hemp shares to public investors through the use of, among other things, purported gifts and consulting agreements, nominee companies, and fraudulent statements made to registered broker-dealers.

The final judgments entered on May 31 ordered, among other things, civil penalties of $300,000 from Hemp Inc., $1.7 million from Bruce Perlowin, and $8 million from Epling, respectively. On August 23, 2021, the remaining defendants also submitted stipulations and consents for entry of final judgments, proposing, among other things, a civil penalty of $150,000 for Jed Perlowin.

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