Proskauer

SEC Brings First Enforcement Action Against Alternative Data Provider

September 15, 2021

Yesterday, the Securities and Exchange Commission ("SEC") filed a settled securities fraud action against App Annie Inc., one of the largest sellers of market data on how apps on mobile devices are performing, and its co-founder and former CEO and Chairman Bertrand Schmitt. The settlement is the first enforcement action brought by the SEC against an alternative data provider. As part of the settlement, App Annie agreed to pay a $10 million civil penalty and Schmitt agreed to pay a $300,000 penalty and to be barred from serving as an officer or director of a public company for three years.

App Annie offered companies a free analytics product called "Connect," which allowed companies to track how their apps are performing. In return for access to Connect, companies allowed App Annie to collect confidential app performance metrics ("Connect Data"). App Annie represented to Connect users that it would generate estimates of app performance using their Connect Data, but that it would only use Connect Data in aggregated and anonymized form to generate those estimates. App Annie then sold those estimates of app performance to companies, including hedge funds and other trading firms, through a separate product called "Intelligence."

According to the SEC's order, App Annie and Schmitt represented to Intelligence subscribers that the estimates of app performance were generated using aggregated and anonymized Connect Data. However, the SEC found that those representations were false. Instead, according to the SEC, App Annie used confidential, non-aggregated and non-anonymized Connect Data to modify its Intelligence estimates (which were generated by a statistical model) so as to make the estimates closer to Connect users' actual app metrics.

The SEC's order also found that App Annie and Schmitt misrepresented to Intelligence subscribers that App Annie had effective internal controls to prevent the misuse of confidential data and to ensure that App Annie was in compliance with the federal securities laws. According to the SEC's order, during most of the relevant period, App Annie did not have effective internal controls, and, contrary to representations and other assurances made by App Annie and Schmitt and others at App Annie, certain public companies' Connect Data had been used to generate Intelligence estimates.

As a result of these findings, the SEC charged App Annie and Schmitt with violations of the antifraud provisions of the Exchange Act. The action highlights that the SEC is focused on alternative data providers, and that it is more than willing to bring enforcement actions based upon fraud in the alternative data space.

Please feel free to reach out to any member of our Alternative Data Team if you have any questions.

Robert Leonard
rleonard@proskauer
+1.212.969.3355

Jeffrey Neuburger
jneuburger@proskauer.com
+1.212.969.3075

Joshua Newville
jnewville@proskauer.com
+1.212.969.3336

Sam Waldon
swaldon@proskauer.com
+1.202.416.6858

Related Professionals

- **Jeffrey D. Neuburger**