



SEC Enforcement Case Summary ERA Registration & Custody Rule Violations

On September 20, 2024, the SEC announced settled charges against ACP Venture Capital Management Fund LLC (“ACPVC”), an exempt reporting adviser, for failure to register as an investment adviser and for failure to comply with the Custody Rule. According to the SEC order, as of January 2023 ACPVC managed twelve private funds with total regulatory assets under management (“RAUM”) of \$137,405,417. The firm took the position that it relied on the Rule 203(m)-1 private fund adviser exemption for advisers that manage only private funds with less than \$150 million in assets under management. However, the SEC found that ACPVC did not qualify for this exemption because there was operational and ownership overlap between ACPVC and an affiliate of ACPVC that is registered with the Commission as an investment adviser (the “Affiliated Adviser”). The Affiliated Adviser managed 298 advisory clients that were not private funds with over \$114,000,000 in RAUM. According to the SEC’s order, the Affiliated Adviser had overlapping owners, managers, advisory personnel, and operations, including shared office space, without any policies or procedures to ensure separation of the two advisers. Because the operationally integrated enterprise did not solely advise private funds, but also advised individuals, and had combined RAUM that exceeded the threshold for SEC registration, ACPVC did not qualify for the private fund adviser exemption from registration and should have registered as an investment adviser.

In addition, the SEC noted that investment advisers who are “registered or required to be registered” with the SEC must comply with the Custody Rule (Rule 206(4)-2 of the Advisers Act). ACPVC had custody of the assets of the Funds at issue because it served as the investment manager of each of the private funds and a related person of ACPVC served as the manager of each of the funds. However, ACPVC did not obtain annual audits or surprise examinations to verify its custody of these securities.

ACPVC agreed to engage an independent public accountant to verify assets and pay a civil penalty of \$45,000 to settle the charges. This is an instructive case that reminds private fund managers who are part of a larger organization of the risks in claiming or relying on exemption from registration. Any such fund manager should carefully evaluate whether they are operationally independent of their affiliates or require registration with the SEC or a state regulatory authority as an investment adviser and full compliance with the Custody Rule and other provisions of the Advisers Act and relevant state securities laws.

See Summary - <https://www.sec.gov/enforcement-litigation/administrative-proceedings/ia-6714-s>