SEC Enforcement Case Summary
Private Fund Manager & Private Issuer Failure to File Form D

On December 20, 2024, the SEC charged a registered investment adviser that served as a private fund manager and two private companies for failing to timely file Form Ds for unregistered securities offerings, in violation of Rule 503 of Regulation D. The investment adviser consented to a $60,000 penalty, while the two private issuers consented to penalties of $175,000 and $195,000. This case underscores how critically important it is that private fund managers and private issuers consult with legal counsel and compliance professionals to identify the applicable private offering exemption they are relying on prior to raising funds and take proactive steps to ensure timely Form D filings.

In this case, the SEC charged registered investment adviser, GRID 202 LLC d/b/a Re-Envision Wealth, who offered interests in two private funds. The SEC noted that the adviser engaged in general solicitation in contacting more than 285 prospective investors to invest in the funds. Accordingly, the funds were unable to rely on Section 4(a)(2) of the Securities Act of 1933 (the "***Securities Act***") and needed to rely on Rule 504 or 506(c) of Regulation D, both of which require filing of Form D for each offering. However, the firm failed to file Form D within 15 calendar days of the first sale of private fund interests.

Similarly, the SEC charged two private companies, Pipe Technologies, Inc. and Underdog Sports Holdings, Inc. with raising millions from investors through unregistered securities offerings and engaging in communications that constituted general solicitation without properly filing Form D for each new securities offering within 15 calendar days of first sale. The SEC order noted that while a failure to file a notice of sales on Form D does not result in a loss of the exemption from Section 5 of the Securities Act, the failure to comply with the requirements of Rule 503 itself is a violation of the Securities Act and rules promulgated thereunder.

The SEC justified the cases noting that an issuer's failure to follow the requirements to file a Form D (or amend its existing Form D filing) impedes the SEC's ability to fully assess the scope of the Regulation D market. It also harms the SEC's ability to monitor and enforce compliance with the requirements of Regulation D and the ability of state securities regulators and self-regulatory organizations to monitor and enforce other securities laws and rules. In addition, it hampers the ability of investors and other market participants to understand whether companies are complying with federal securities laws in their offerings, to research and analyze the Regulation D market, and to report on capital-raising in industries that use Regulation D.

Form D filings are publicly available through the SEC's EDGAR system. The desire for privacy has led some companies to not file Form D. In most cases, such decision is based on the incorrect assumption that the consequences will be insignificant. While the SEC has not frequently brought cases solely for a failure to file Form D, we believe that this is an important development that should prompt private fund managers and other firms who routinely raise funds from investors for real estate projects, venture capital, oil and gas development projects and other unregistered securities offerings pay more attention to the regulatory filing requirements to which they are subject. Note that Question 22 of Form ADV Part 1, Section 7.B. requires private funds to note the Form D number if they have relied on a Reg D exemption and the SEC actively looks for this information to be provided. While this case was brought by the SEC, state regulators generally also require filing of Form D notifications through so called "Blue Sky filings" when private offerings are sold to investors within the state. We have seen state regulators take exception to private issuers who are not aware of and do not make required state filings.

See Summary – https://www.sec.gov/newsroom/press-releases/2024-210