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SEC Enforcement Case Summary
Hedge Fund Managers Collude with Activist Short Publishers to Generate Illegal Profits

On June 11, 2024, the SEC brought a settled action against hedge fund managers, Anson Funds Management, LP and Anson Advisors, Inc., for working with activist short publishers who released reports presenting bearish information about target companies and trading in target securities in advance of short report postings to generate illegal trading profits. The firms agreed to pay civil penalties of $1.25 million and $1 million, respectively.

According to the SEC's order, the managers served as co-investment advisers to a number of private funds, including Anson Investments Master Fund ("***AIMF***"), their private flagship fund. The Anson Fund managers allegedly had arrangements, including certain formal consulting agreements, with the activist short publishers, who posted their short reports on independent social media sites operated by the short publishers. Pursuant to such agreement, the short publisher would share its work with the fund managers prior to public posting. In exchange, the managers agreed to pay the short publisher, at times based on a percentage of AIMF's profits from trading in the target security for an agreed period of time around the publication of the report. The SEC noted that the fund managers had other informal arrangements with short publishers whereby they would exchange research and content with the short publishers but would not enter into a formal consulting agreement with them.

The SEC noted that the Private Placement Memorandum ("***PPM***") for AIMF, described a short position investment strategy for AIMF but omitted that AIMF's investment strategy involved working with activist short publishers and trading in the target securities. The PPM for AIMF did not disclose this strategy, including that managers entered into agreements with activist short publishers and would compensate some short publishers by paying them a share of AIMF trading profits. By not disclosing this practice, the SEC alleged that Anson Funds did not implement its written policy to "clearly articulate" AIMF's short strategy or the risks associated with this strategy, in violation of the Investment Advisers Act.

The SEC further noted that Anson Advisors agreed to pay the principal of a short activist firm a share of AIMF trading profits in connection with the short publisher's bearish reports and tweets on two securities. As a result of AIMF's trading, the individual's share of AIMF's trading profits exceeded $1.1 million, which were paid through a third-party intermediary via invoices for purported research services that the third-party intermediary had not performed. Anson Funds inaccurately recorded these payments as payments to the third-party intermediary for such research services and in doing so violated the Advisers Act books and records provisions.

This case highlights the SEC's focus on activist and potentially manipulative activities using social media and online platforms. It should encourage hedge fund managers and investment advisers to proceed cautiously when interacting with activist short publishers or proactively posting on social media information intended to impact the price of investment holdings.

See Summary – https://www.sec.gov/enforcement-litigation/administrative-proceedings/ia-6622-s