SEC Enforcement Case Summary
SEC Charges Investment Adviser and His Firm with Fraud and Other Violations

On March 17, 2025, the Securities and Exchange Commission (***SEC***) announced it had filed charges against David Yow Shang Chiueh and his investment advisory firm, Upright Financial Corp. (***Upright***), for misconduct and for investing more than 25 percent of the assets of Upright Growth Fund (***Fund***), a series of a registered investment company, in a single company over more than two-and-a-half years thereby causing losses of approximately $1.6 million. In November 2021, Chiueh and Upright settled SEC charges that they, as investment advisers to the Fund, violated its policy by investing more than 25 percent of its assets in one industry between July 2017 and June 2020, committing fraud and breaching their fiduciary duties. The SEC complaint alleges that, despite being ordered to stop this conduct, the defendants Chiueh and Upright continued their fraud by violating the 25 percent industry concentration limit and making misrepresentations about it between at least November 24, 2021, and June 23, 2024. As a result, the complaint alleges that the defendants' decision to wait to sell the relevant stock resulted in the aforementioned losses to the Fund and its investors.

Additionally, the SEC's complaint alleges the defendants engaged in further misconduct during this same period when Chiueh operated the Fund's board without the required number of independent trustees and misrepresented, in filings with the SEC, the independence of one trustee. According to the complaint, the defendants also failed to provide or otherwise withheld key information from the board and hired an accountant for the Fund without the required vote by the board. The Fund's auditor had resigned, and Chiueh allegedly sought to use an auditor that had never been registered with the Public Company Accounting Oversight Board (***PCAOB***).

The SEC alleges that the defendants violated various provisions of the federal securities laws including the anti-fraud provisions of the Investment Advisers Act of 1940 (***Advisers Act***). The SEC seeks a final judgment permanently enjoining the defendants from violating the federal securities laws and rules and ordering defendants to disgorge all ill-gotten gains they received as a result of the alleged violations as well as pay civil monetary penalties.

While concentration limits are not applicable by rules and regulations to private funds, the violations alleged in the SEC's complaint can be instructive to private fund managers, which are prohibited by Rule 206(4)-8 under the Advisers Act from making any misleading statements to investors or prospective investors in pooled investment vehicles. As with recent amendments to the Names Rule under the Investment Company Act of 1940, we believe it is important for private fund managers to consider the following:

- **Disclosures**
    - Private fund offering documents and marketing materials should clearly describe and define the fund's investment strategy, particularly any terms that suggest concentration, limits or focus in a particular type of investment, industry, region or in individuals names or securities.
    - Quarterly and annual updates to private fund investors should provide transparency in how portfolio investments reflect the fund's stated investment focus and any deviations from its policies and limitations.

- **Investment Monitoring**
    - Compliance policies and procedures should be designed to regularly monitor portfolio investment holdings and transactions for consistency with stated and implied investment objectives, strategy, and focus areas.
    - If a fund departs from its stated or implied investment strategy, guidelines, limitations or focus areas, the manager should take prompt steps to get back into compliance, and the compliance team should monitor and confirm such activity.
    - Private funds should maintain documentation of their compliance review and monitoring activity as described above.
- **Changes to Policy or Strategy**
    - If a private fund determines revise its investment strategy, guidelines, limitations or focus areas in a way that is materially different than what was originally disclosed to investors, we believe the fund generally should seek approval from fund investors or a fund's limited partner advisory committee.
    - Private fund managers should consult with legal counsel regarding whether proposed changes require an amendment to the limited partnership agreement or other fund governing documents and investor consent requirements.
    - Private fund managers should consider when and how to effectively disclose other changes or refinements to the investment process that do not reflect a material deviation from prior disclosures.

In addition, should a private fund avail itself of the audit exemption provided in Rule 206(4)-2, the Custody Rule under the Advisers Act, it should follow all the requirements of the audit exemption including engaging an auditor registered with, and subject to inspection by, the PCAOB.

Standish Compliance can work with clients to review and update fund disclosures and design and execute effective compliance monitoring, as needed.

See SEC Summary – https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26270