

SEC Enforcement Case Summary Unregistered Broker-Dealer Activity & Improper Liability Disclaimers

On January 14, 2025, the Securities and Exchange Commission (**SEC**) charged three investment adviser representatives with acting as unregistered brokers in selling interests in a venture fund, StraightPath Venture Partners, LLC, that purportedly invested in shares of pre-IPO companies. The fund was previously subject to an [emergency order by the SEC in 2002](#) to halt an ongoing Ponzi scheme involving the pre-IPO stock. In a related case, the SEC charged VCP Financial, LLC, the investment adviser for which the representatives worked, with failing to disclose and manage conflicts of interest when recommending investments in affiliated private funds and disclaiming its role in their investment decisions by stating that VCP Financial was not acting as their investment adviser in connection with their investments in those funds.

According to SEC's orders, two of the defendants were principals of VCP Financial and its predecessor entity LPS Financial and formed an entity in 2019 for the purpose of entering into agreements with StraightPath, which entitled them to payments in connection with any investors they successfully solicited to make investments in the StraightPath Funds. The SEC's orders further found that the defendants operated a sales force of individuals not registered as brokers, including the third defendant an investment adviser representative with VCP Financial, to assist in these efforts. The SEC's orders against the three defendants state that each of them provided investors with marketing materials, advised investors on the supposed merits of the investments, and received transaction-based compensation, all hallmarks of broker activity, despite not being registered as brokers.

The SEC noted that VCP Financial disclosed in Form ADV that it had a financial conflict of interest when recommending investments offered by private funds managed by an affiliated entity under common ownership and control with VCP Financial (the **Affiliated Manager**) and that it would manage the conflict of interest by, among other things, reasonably ensuring all clients' accounts were invested in accordance with client approved investment policy statements and adopting policies and procedures to reasonably ensure that investments and recommendations were in the best interest of clients. According to the SEC's order, rather than follow these described procedures VCP Financial instead required its clients who invested in the funds managed by the Affiliated Manager to acknowledge that VCP Financial was disclaiming its role in their investment decision and that VCP Financial was not acting as their investment adviser in connection with their investment in those funds. These statements contradicted VCP Financial's Form ADV and further could lead a client to believe incorrectly that the client had waived a nonwaivable cause of action against VCP Financial that was provided by state or federal law. The SEC argued that as a result, VCP Financial violated Section 206(2) of the Investment Advisers Act of 1940.

SEC staff noted in the press release that "this case highlights yet another way the StraightPath Funds were marketed and reflects that being associated with a registered investment adviser does not give one license to also act as a broker without complying with broker registration requirements. This case is also an important reminder that investment advisers must carefully evaluate their use of liability disclaimer language. The fiduciary duties VCP Financial owed their clients could not be disclaimed under these circumstances, particularly when clients were being onboarded for that specific investment."

While the case involves an egregious pre-IPO stock fraud, it nevertheless provides an important reminder regarding activities that are frequently conducted by investment advisers and their related persons when selling private fund interests that the SEC deems to constitute broker-dealer activity.

Private funds should ensure that they review the activities and compensation of investor relations personnel and others involved in fundraising efforts to ensure that they are not conducting unregistered broker-dealer activity. The case also continues a theme from other recent enforcement cases focused on the use of liability disclaimers. Private fund managers should ensure that fund offering documents and other relevant investor agreements do not include improper liability disclaimers in consultation with outside counsel, as needed.

See SEC Summary - <https://www.sec.gov/newsroom/press-releases/2025-7>