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SEC Charges Broker-Dealer and Two Affiliated Investment Advisers With Violating Whistleblower Protection Rule

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On September 4, 2024, the Securities and Exchange Commission (SEC) issued an order against three investment adviser firms for violating the whistleblower protections of Rule 21F-17(a) under the Securities Exchange Act of 1934, as amended, which prohibits any person from taking any action to impede an individual from communicating directly with the SEC about possible securities law violations, including enforcing or threatening to enforce a confidentiality agreement with respect to such communications.

According to the SEC's order, from May 2021 to February 2024, the firms asked certain retail customers to sign release agreements in connection with payments for losses caused by the firms' alleged breaches of federal or state securities laws. The SEC alleged that these agreements contained confidentiality provisions that restricted such clients from proactively reporting potential securities law violations to the SEC or other regulatory authorities. Additionally, according to the SEC, some of the confidentiality agreements also required clients to affirm they had not reported and would not report the underlying disputes to any securities regulator.

Without admitting or denying the SEC's findings, each firm agreed to be censured and to cease and desist from violating the whistleblower protection rule. They further agreed to a combined penalty of \$240,000, which was apportioned among the firms according to their relative size and financial condition.

This SEC order highlights the importance of adhering to whistleblower protection regulations, whether with employees or outsiders, including customers. Firms should review their confidentiality agreements to ensure compliance with Rule 21F-17(a) to avoid similar enforcement actions.

If you have any questions, comments, or concerns regarding whistleblower protection regulations, Jay Dubow, Ghillaine Reid, and our other Securities Investigations + Enforcement attorneys are available to guide you through these issues and evaluate the best strategy for your business.

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