

# SEC Reminds Private Equity Firms of Compliance Obligations

## WRITTEN BY

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In a settled enforcement action,<sup>[1]</sup> the Securities and Exchange Commission reminded private equity firms and registered investment advisors of their obligation to implement and enforce compliance procedures, in particular procedures to prevent the misuse of material non-public information. In this action, Ares Management LLC agreed to a \$1 million payment to settle charges that its compliance procedure failed to prevent trading of shares of a public portfolio company on whose board a representative of the private equity firm served as a director while it had material non-public information.

It is not unusual for private equity firms to have representatives serve on boards of public companies in which they invest. This service often puts these firms in the position of having access to material non-public information which is shared within the firm. The SEC emphasized that these special circumstances create particular risks for these firms and it is therefore critical that they have proper policies and procedures in place to address these risks. Although Ares had policies and procedures which placed the portfolio company's shares on its restricted list and its compliance staff checked with the company to make sure the company's trading window was open, according to the SEC the compliance staff failed, before approving the trading, to inquire whether the board representative and others in the firm were in possession of material non-public information. The SEC order also notes that the compliance staff failed to adequately document its inquiries.

This action should send a strong message to private equity firms that when they have representatives on the board of public portfolio companies they need to have appropriate compliance procedures in place to prevent improper trading when they have material non-public information and they need to make sure those procedures are followed. A failure to do so can result in not only antifraud liability for improper insider trading but also failure to comply with the Investment Advisers Act requirements that investment advisers have reasonable compliance policies and procedures.

[1] In the Matter of *Ares Management LLC*, IA-5511 (May 26, 2020), available [here](#).

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