Published on *The National Law Review* https://natlawreview.com

SEC Charges Navy Capital in AML Failures: Say What You Do and Do What You Say

Article By:

Jon K. Jurva

Emily B. Lewis

The US Securities and Exchange Commission (SEC) released a press release on January 15 announcing that it had charged Navy Capital Green Management, LLC, an investment adviser, with violations of the Investment Advisers Act of 1940 related to its Anti-Money Laundering (AML) policies and procedures.

Navy Capital agreed to a settlement offer in which they did not admit or deny the SEC's findings and agreed to pay a $150,000 civil penalty, to cease and desist from committing any further violations, and to be censured. The charges against Navy Capital emphasize the SEC's priority in ensuring registered investment advisers (RIAs) say what they do and do what they say.

Read the SEC's press release here.

Currently, RIAs do not have any affirmative duties under AML rules and regulations. RIAs may implement AML policies and procedures voluntarily. If an RIA does implement AML policies, then it must ensure that it follows through with its own policies and procedures.

AML-Related Charges Against Navy Capital

The SEC charged Navy Capital with making misrepresentations related to Navy Capital's AML policies and procedures in various investor and prospective investor materials, and for and failing to ensure that its written investor materials accurately represented its AML policies and procedures. More generally, Navy Capital represented to its investors and prospective investors that it would follow certain procedures to mitigate AML risks.

The SEC's findings were based on the relevant period of October 2018 through January 2022 when Navy Capital was registered with the SEC. Throughout this period, Navy Capital represented to its investors and prospective investors that it voluntarily maintained robust AML policies and procedures in accordance with the USA Patriot Act, even though it was not required to do so. Navy Capital published these representations in its offering memoranda, subscription booklets and agreements, due diligence questionnaires, and internal compliance manual, which was provided to prospective investors upon request.

In several of the written investor materials, Navy Capital claimed that investment into the funds would not be complete until investors satisfied all of Navy Capital's AML requirements. However, in several separate instances described in the SEC's order, Navy Capital approved investments — against its own policies and procedures — without (1) obtaining documents identifying an investor's beneficial ownership, (2) investigating reported police suspicions that a foreign entity investor's money was possibly connected to money laundering schemes, (3) resolving contradictory beneficial ownership documents, and (4) sufficiently confirming the source of funds. Also, in violation of its own policies, Navy Capital accepted funds from bank accounts not held in the name of the subscribing investor and from investors that disclosed they had zero assets.

Applicable SEC Rules

The SEC ultimately found that Navy Capital violated Section 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8. By way of background, Rule 206(4)-7 requires an investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act. Rule 206(4)-8 makes it unlawful for any investment adviser of a pooled investment vehicle to "[m]ake any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle; or [o]therwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle."

The SEC held that Navy Capital misled investors about the level of risk they were taking by investing in Navy Capital's funds.

New RIA AML Responsibilities

In August 2024, the Financial Crimes Enforcement Network (FinCEN) issued a rule that broadens the definition of "financial institution" as used in the Bank Secrecy Act to include RIAs and exempt reporting advisers (ERAs) (some exceptions apply). FinCEN's new rule goes into effect on January 1, 2026, and will require all RIAs and ERAs under this rule to either implement an AML program, or if they already have one, to ensure their AML policies and procedures comply with the rule.

Briefly, the rule will require RIAs and ERAs to implement a risk-based and reasonably designed AML program, file certain reports with FinCEN, keep certain records, and fulfill certain other obligations applicable to financial institutions subject to the Bank Secrecy Act and FinCEN's implementing regulations.

For more information on FinCEN's new rule, see our recent client alert.

Key Takeaways

RIAs should note the distinction between SEC and FinCEN requirements. The SEC does not require RIAs to implement an AML policy. For SEC compliance, RIAs should ensure that they are abiding by their policies and procedures, particularly those that stand to impact funds raised from investors.

However, for RIAs to comply with FinCEN rules, they will need to implement an AML policy according to the new rule by the effective date.

Additionally, although the new Administration has promised to repeal several SEC rules, the Trump Administration's focus remains on repealing SEC rules related to environmental, social, and governance and crypto. At this time, it looks unlikely that any rules related to proper disclosure will be affected. FinCEN's rule is also likely to be enforced. ArentFox Schiff attorneys are closely monitoring any developments that could impact the effectiveness of FinCEN's new rule or could impact SEC compliance.

Listen to this article

National Law Review, Volume XV, Number 28

Source URL:https://natlawreview.com/article/sec-charges-navy-capital-aml-failures-say-what-you-do-and-do-what-you-say