

Recommended Actions for Hedge Fund, Private Equity Fund and Other Private Fund Advisers To Prevent Possible Whistleblower Violations

June 8, 2015

On April 1, 2015, the Securities and Exchange Commission (SEC) announced that it had settled its first enforcement action under SEC Rule 21F-17, which prohibits companies from taking actions or using confidentiality agreements to impede whistleblowers from reporting possible securities law violations to the SEC. That enforcement action was highly fact-specific, involving an internal investigation by a corporation that was not an investment management business. The SEC took the position that confidentiality agreements that required employees (and, perhaps, others) to notify the company before contacting the SEC may have discouraged those persons from reporting securities violations and thereby ran afoul of the rule.[\[1\]](#)

The SEC has indicated that it is conducting additional investigations (which may include broad information requests of hedge fund, private equity fund and other private fund advisers) and has signaled that it is likely to bring further enforcement actions. In addition, this initiative by the SEC might well lead other federal and state regulators, along with self-regulatory organizations, to examine their own whistleblower rules and to investigate compliance by companies within their jurisdictions.

While the SEC has publicly stated that it is not trying to dictate the language that companies use in their agreements and policies, the SEC has indicated that it is closely scrutinizing various forms of these agreements and has concerns that extend beyond those addressed in the enforcement action. In light of the enforcement action and recent statements, all companies (including hedge fund, private equity fund and other private fund advisers), even those that are not public or regulated, should promptly review materials that contain confidentiality, non-disclosure, non-disparagement and whistleblower provisions. These types of provisions may appear in compliance manuals; employment, confidentiality and non-competition agreements; separation agreements; employee handbooks and codes of conduct; limited liability company, partnership and shareholder agreements; procedures for internal investigations; consulting and licensing agreements; and other forms and types of agreements and policies.

If you have any questions regarding the enforcement action and preventing possible whistleblower violations, please feel free to reach out to your usual Proskauer contact or any of the Proskauer lawyers listed in this alert. [\[1\]](#) A copy of the order can be obtained [here](#), and a copy of the SEC's press release about the order can be obtained [here](#).

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