Davis Polk

Investment Management & Funds Regulatory Update - April 2026

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In this issue, we discuss a recent enforcement action involving fraud and registration charges against three venture capital fund managers and their owner.

Litigation

SEC charges venture capital fund managers for making false and misleading disclosures, failing to disclose certain conflicts of interest and failing to comply with Securities Act and Investment Company Act registration requirements.

On April 8, 2026, the SEC issued an order (the Order) instituting and settling administrative and cease-and-desist proceedings against three unregistered investment advisers and their owner (the Respondents). The Respondents managed several venture capital funds (the Funds) whose investors were mostly individual investors. According to the Order, the Respondents caused the Funds to violate Section 7(a) of the Investment Company Act by failing to register the Funds, which did not have an available exemption, as investment companies. The Order also stated that the Respondents failed to file registration statements with respect to securities offerings made by the Funds, which violated Sections 5(a) and 5(c) of the Securities Act.

In addition, the SEC found that the Respondents made materially inaccurate statements and omissions in marketing materials provided to prospective investors in the Funds. According to the Order, the Respondents provided misleading assurances that investments in the Funds had "minimal risk and limited downside" and were "low risk, high return" because certain well-known institutional investors were "co-investors" alongside the Funds. The Order noted that the institutional co-investors that the Respondents touted had not in fact invested in the Funds' portfolio companies, except for one investment in an earlier funding round that occurred years before any Fund had made its investment. The Respondents also allegedly misrepresented the Funds' performance in a marketing deck which stated that a portfolio company was exited at a multiple of invested capital of "0-5x," whereas none of the Funds had earned more than 2x on such portfolio company. According to the Order, the Respondents also included a "Wins" and "Loss" chart in a marketing deck distributed as late as June 2023, which omitted a portfolio company investment that had been sold earlier in 2023 at a significant loss. In addition, the Order stated that the Respondents omitted material negative information about the financial condition of three portfolio companies in marketing materials for prospective Fund investors and in written updates to existing Fund investors, which included positive projections regarding such portfolio companies' businesses. According to the Order, each of the three portfolio companies eventually failed financially, and the Funds' investors suffered a 100% or near 100% realized or unrealized loss amounting to tens of millions of dollars.

The SEC also found that the Respondents failed to disclose certain material conflicts of interest arising from the Respondents' significant investment in the Funds' portfolio companies. For example, the Order noted that although the Respondents disclosed that their owner's family were large investors in certain of the Funds' portfolio companies, the Respondents did not disclose that the owner and his family could potentially lose millions if the Funds did not make additional investments in such portfolio companies. According to the Order, the Respondents also failed to disclose that

one of the Funds' portfolio companies paid equity compensation to the owner for fundraising and other services, where the amount of such compensation increased based on funds raised, including from the Funds, and that such incentive compensation arrangement could give rise to a conflict of interest.

As a result of this conduct, the SEC found that the Respondents violated the anti-fraud provisions of the Securities Act and Exchange Act, and Sections 206(4) and 206(2) of the Advisers Act and Rule 206(4)-8 thereunder.

The Respondents consented to cease and desist orders and to pay a total of $1,764,449.64 in disgorgement and prejudgment interest, and the owner also agreed to pay a civil penalty of $600,000. In addition, the advisers were censured, and the owner consented to an associational bar and a prohibition under the Investment Company Act.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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