Blogs
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Asset Management ADVocate

Federalism, Regulatory Assets under Management (“RAUM”), and Voluntary Registration with the SEC as an Investment Adviser -- Part Two

My initial post examined the risk of miscalculating regulatory assets under management ("RAUM") for purposes of registering with the SEC as an investment adviser. This post shows that the SEC is highly motivated to bring reasonably punitive enforcement proceedings against investment advisers that "voluntarily" register with the SEC instead of with the appropriate state.

First Warning In 2011, the SEC brought administrative proceedings against RetireHub, Inc. and its president. IA-3337 (Dec. 15, 2011). Citing Form ADV's instructions on how to calculate RAUM, the SEC found that "RetireHub did not meet the general criteria for non-discretionary accounts because it does not have ongoing responsibility to select or make investment recommendations and to effect or arrange for the purchase and sale of those investments if they are accepted by the client … [and] also did not meet any of the additional factors provided in the instructions to Form ADV." RetireHub did have some discretionary accounts, but the SEC found that even with respect to those "RetireHub provided only investment rebalancing at the beginning of an account holder's use of the site and quarterly thereafter for these accounts. RetireHub did not provide the continuous and regular advisory services necessary to qualify its discretionary accounts as assets under management." Accordingly, the SEC found that RetireHub was not entitled to count *any* assets towards its RAUM. RetireHub and Bhatia received an administrative cease-and-desist order, were censured, and Bhatia was assessed a civil money penalty of $25,000. **Recent Cases** Despite this clear signal that it would take the jurisdictional element of Section 203A very seriously, the SEC has in the first eight months of 2015 brought proceedings against four more investment advisers that had improperly registered with the SEC. The first matter involved Logical Wealth Management, Inc. and Daniel J. Gopin. IA-4027 (Feb. 19, 2015). In this case, the investment adviser simply overstated its RAUM, then in 2011 switched its site of organization as a corporation from Massachusetts to Wyoming, a state that did not have any requirement that an investment adviser register with that state, to assert that it was doing business in Wyoming (and was thus eligible for SEC registration) without actually moving to Wyoming. Logical Wealth also was charged with numerous other violations of the requirements of the Advisers Act. Logical Wealth and Gopen received an administrative cease-and-desist order, their registrations were revoked, Gopen was barred from association with any kind of securities firm, and Gopen was assessed a civil money penalty of $25,000. The second matter involved Acamar Global Investments, LLC, and Rudolph A. Martin. IA-4050 (March 18, 2015). Acamar Global reported on its Form ADV that it had in excess of $180 million in RAUM when it never had more than $200,000. Acamar was charged with numerous violations of the Advisers Act. Acamar Global and Martin received an administrative cease-and-desist order, Amacar was censured, Martin was barred from association with any kind of securities firm, and Amacar and Martin avoided being assessed a civil money penalty by virtue of a notice of inability to pay. The third matter involved Aegis Capital, LLC, Circle One Wealth Management, LLC, Diane W. Lamm, Strategic Consulting Advisors, LLC, and David I. Osunkwo, the registrants' chief compliance officer. IA-4054 (March 30, 2015). In this matter, the SEC has instituted administrative cease-and-desist proceedings against all of the respondents, alleging that they had overstated RAUM by over $119 million, failed to maintain the required books and records, and had otherwise violated a number of provisions of the Advisers Act. The matter has not been adjudicated to a final result. The fourth matter involves three separate administrative proceedings against the CEO, the Vice President, and the CCO of Ariston Wealth Management, Inc. IA-4175, IA-4176, and IA-4177 (August 17, 2015). The investment

adviser initially registered with the SEC in June 2011 and its Form ADV stated that it had over $32 million in RAUM, more than double its actual RAUM. The Form ADV filed in March 2012 reported RAUM of $190 million, more than double is actual RAUM. Bradford Szczencinski, the CEO, filed the Form ADV based on the information provided by Theodore R. Augustyniak, who got the RAUM information from Tamara S. Kraus, who did nothing substantive to verify her guesstimate of the RAUM. Kraus also failed to file Form ADV-W in November 2011. Szczencinski consented to taking 30 hours of compliance training and was assessed a civil money penalty of $25,000; Augustyniak and Kraus each consented to taking 30 hours of compliance training and each was assessed a civil money penalty of $10,000. All three received administrative cease-and-desist orders.
Conclusion An investment adviser that insists on registering "voluntarily" with the SEC, notwithstanding the RAUM requirement in Section 203A, takes the very serious risk of being punished for that transgression and every other violation of the Advisers Act that may be uncovered by the SEC staff.

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