

CLIENT UPDATE

INVESTMENT ADVISER PLEADS GUILTY TO LYING TO SEC OFFICIALS DURING AN EXAMINATION

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On September 13, 2013, the SEC charged Fredrick D. Scott (“Scott”), the owner of a New York-based investment advisory firm, with defrauding investors while exaggerating the amount of assets under his management. On the same day, in a parallel criminal action in the Eastern District of New York, Scott pled guilty to making materially false statements to the SEC in the course of an examination. These cases serve as a reminder of the government’s aggressive pursuit of fraudulent investment advisers, including its willingness to bring criminal charges based on statements made during an examination.

The SEC alleges that Scott, the CEO of ACI Capital Group, LLC (“ACI”), an SEC-registered investment adviser, touted ACI’s registered status to gain credibility with potential investors when ACI was not in fact a viable investment advisory business. Furthermore, Scott falsely claimed to have \$3.7 billion in assets under management and “continued his web of lies” when confronted by the SEC during an examination. Specifically, Scott stated in writing to SEC exam staff that no person other than Scott had loaned money to ACI, when in fact Scott knew that an investor had loaned \$100,000 to ACI. The SEC examiners notified the agency’s Enforcement Division, which investigated and referred the matter to criminal authorities.

On June 3, 2013, in addition to being charged for conspiracy to commit wire fraud, Scott was criminally charged under 18 U.S.C. § 1001(a)(3) for making material false statements to SEC exam staff. Last week Scott waived indictment and pled guilty to the criminal charges. Scott, who will be sentenced later this year, faces up to five years' imprisonment for the false statements charge alone.

The joint efforts of the SEC and the U.S. Attorney's Office in pursuing Scott make clear that the government is prepared to proceed criminally against those who make material false statements in the course of an SEC examination. The Scott cases therefore serve as a useful reminder to investment advisers to be vigilant in preparing for and participating in examinations. This preparation should include steps to ensure that all individuals responsible for communicating with SEC exam staff are aware of the potential consequences for withholding material information or otherwise failing to respond truthfully.

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Please do not hesitate to contact us with any questions.

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