SEC Enforcement Case Summary
Inadequate MNPI Policies and Procedures

On September 30, 2024, the SEC charged Marathon Asset Management, L.P. with failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information (MNPI) related to its participation on ad hoc creditors' committees. This was the second of two cases in less than a month for similar facts (see also the case against Sound Point Capital Management at https://www.sec.gov/newsroom/press-releases/2024-106). Marathon invested in distressed corporate bonds and other debt instruments and had significant holdings in distressed debtors and similar special situations as part of its strategy. Because of such strategy, Marathon regularly engaged with investors and financial advisers seeking to form ad hoc committees of creditors for issuers in distress. The purpose of these committees is to group large creditors with similar interests together to explore potential favorable debt restructuring opportunities with the issuer prior to the issuer filing for bankruptcy, reorganizing the company, or otherwise initiating formal restructuring proceedings.

In one instance, Marathon analysts engaged in multiple discussions and obtained non-public information regarding an issuer in connection with the issuer establishing a creditors' committee. Such discussion ensued in August 2020, more than two months before Marathon entered into a non-disclosure agreement (NDA) with the issuer on November 5, 2020, at which time the company restricted trading in the issuer's securities. According to the SEC order, Marathon had begun building a position in the issuer's bonds between in March 2020. After joining the creditors' committee, from September 2020 until the date the company restricted trading, Marathon continued to build its position and accumulated an additional €94 million in bonds and sold over €22 million in credit default swaps (CDS), while in possession of MNPI.

The SEC noted that Marathon had established Insider Trading and Information Barrier policies and procedures in place, as well as MNPI procedures, which listed examples of situations where Marathon may be deemed to be in possession of MNPI, including a situation in which a Marathon employee serves on a creditors' committee of restructuring. Notwithstanding such procedures, the SEC faulted the firm for not effectively monitoring or supervising employees to effectively address the risk of receiving or misusing MNPI during participation on ad hoc creditors' committees. Specifically, there were no policies or procedures for Marathon employees to conduct due diligence concerning advisers' evaluation or handling of any potential MNPI or for obtaining a representation from advisers concerning their policies and procedures for handling of any MNPI.

This enforcement action demonstrates that it is not sufficient to establish Insider Trading and MNPI procedures without fully considering and addressing all the ways in which an investment adviser may have access to MNPI and effectively establishing controls to prevent the misuse of such information. To settle the SEC's charges, Marathon agreed to pay a $1.5 million civil penalty.

See Summary – https://www.sec.gov/newsroom/press-releases/2024-158

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