StradleyRonon

Experience

Secures SEC Dismissal in First-Ever Liquidity Rule Enforcement Action

The U.S. Securities and Exchange Commission (SEC) voluntarily dismissed charges with prejudice against two mutual fund independent trustees in the agency's first enforcement action brought pursuant to the Liquidity Rule (Rule 22e-4) promulgated under the Investment Company Act of 1940 (the Act). The case was filed in the U.S. District Court for the Northern District of New York against registered investment adviser Pinnacle Advisors, two of its officers and two independent trustees of a mutual fund that Pinnacle advised. The SEC alleged that the independent trustees aided and abetted the mutual fund's purported misclassification of illiquid securities in violation of the Liquidity Rule.

Stradley Ronon argued on behalf of the independent trustees that the SEC had no legal basis for its aiding and abetting charges as the independent trustees did not write, review, or even see the liquidity classifications that formed the basis for those charges, did not substantially assist the alleged violation, and otherwise complied with all of their obligations pursuant to the Liquidity Rule. Stradley Ronon further argued that the agency lacked the necessary congressional authority pursuant to the Act to promulgate the Liquidity Rule.

The challenge to the agency's authority to promulgate the Liquidity Rule led the Court to order additional briefing to address the framework for interpreting federal statutes established by the U.S. Supreme Court's decision in *Loper Bright Enterprises v. Raimondo.* Stradley Ronon re-filed its motion to dismiss all charges on April 28 arguing that the plain text of the statute did not grant rulemaking authority related to fund liquidity and resubmitted its arguments challenging the SEC's failure to state a claim for aiding and abetting liability against the independent trustees. Following the briefing, the SEC agreed to dismiss all charges against the independent trustees with prejudice, meaning that the SEC cannot refile the charges.

"We are very pleased that the court took the merits of our arguments seriously and that the SEC responded by dismissing the complaint," said the NYSA Fund independent trustees. "We always believed in the strength of our case and are grateful for our lead attorney Jan Folena and Stradley Ronon's guidance, knowledge, and litigation capabilities that made this outcome possible."

Lead trial counsel Jan Folena was assisted by Eric Porter, Samantha Kats, Sara Crovitz, Dave Grim, and Eric Purple.

Related People

- Jan M. Folena
- Eric B. Porter
- Samantha B. Kats
- Sara P. Crovitz
- David W. Grim
- Eric S. Purple

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