



NOVEMBER 26, 2014

Milne Legal Press Release

“SEC Charges HSBC’s Swiss Private Banking Unit”

Summary

Yesterday, November 25, 2014, the U.S. Securities and Exchange Commission (“SEC”) charged HSBC Private Bank (Suisse) SA (“HSBC”) with providing investment advisory and brokerage services to U.S. clients without being registered as an investment adviser under the Investment Advisers Act of 1940 (“Advisers Act”) and without being registered as a broker-dealer under the Securities Exchange Act of 1934 (“Exchange Act”).

The SEC’s order and settlement states that, from 2003 until HSBC’s exit from the U.S. business in 2011, “HSBC Private Bank’s relationship managers among other things, traveled to the United States to solicit new clients and/or service existing clients by providing investment advice and by soliciting or attempting to solicit securities transactions. These activities required HSBC Private Bank to register with the Commission, and it did not do so.”

HSBC agreed to settle the charges with the SEC for USD 12.5 million. See the following address for the complete SEC order: <http://www.sec.gov/litigation/admin/2014/34-73681.pdf>.

Prior Bank Settlements

HSBC settlement with the SEC follows on the heels of two other well-known SEC administrative proceedings involving similar regulatory violations committed by foreign financial institutions: (i) Banco Espirito Santo S.A. (“BES”) on October 11, 2011; and (ii) Credit Suisse Group AG (“CSAG”) on February 21, 2014.

In the BES proceeding, Sanjay Wadhwa, Associate Director of the SEC stated: *“Foreign entities seeking to provide financial or securities-related services in the U.S. must familiarize themselves with the statutory and regulatory framework in this arena. A failure to do so, as was the case here, can be a costly misstep.”*

ML’s Reaction

The SEC’s message from the HSBC proceeding is that providing services without proper SEC registration to U.S. clients will not be tolerated and should be a warning to financial institutions and independent external asset managers doing business with U.S. clients.

By simply observing: (i) the sheer number of newly registered investment advisers that have been organized throughout Western Europe, and (ii) the vast number of European

financial institutions that have elected not to service U.S. clients if such services would require an SEC registration, you see that advisers are beginning to heed the SEC's message.

Milne Legal, however, cautions all newly registered investment advisers that they must be absolutely committed to living-up to the duties and obligations that come with their newly acquired SEC registration.



Dustin W. Milne
Managing Partner



Charles Lerner

“While registering with the SEC as an investment adviser by filing Form ADV Part 1 and 2 is certainly a positive step in the right direction, it is only the beginning of a rigorous, daily commitment to honor your RIA registration requirements. These requirements include, among others, pro-actively reviewing and updating your compliance manual and related policies and procedures, performing numerous, routine compliance checks, providing compliance trainings for all employees, and conducting the SEC mandated annual review of the compliance program - all of which is to ensure the RIA firm is honoring its public disclosures in both its ADV and advisory contracts, and ultimately ensuring that the firm (and each of its advisers) is performing as a “fiduciary” looking out continuously for the best interests of its clients. New registrants must immediately begin to perform these tasks, as the SEC does not grant a ‘trial period’ for RIAs to learn what is expected of an SEC registered adviser”

Conclusion

Yesterday's HSBC's settlement continues to echo the SEC's determination to bring enforcement actions against foreign financial institutions that provide services to U.S. clients without the proper investment advisory and/or broker –dealer registrations. While taking note of the importance of registering with the SEC, all new registrants would be well advised to be committed to satisfying the day-to-day responsibilities that their SEC registration mandates. Registering with the SEC, but not performing the duties and obligations required under either the Advisers Act or the Exchange Act, would not be a wise strategy for how best to move forward.

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