

SEC Sweep into Marketing Rule Violations Results in Charges Against Nine Investment Advisers

FOR IMMEDIATE RELEASE

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Washington D.C., Sept. 11, 2023 — The Securities and Exchange Commission today announced charges against nine registered investment advisers for advertising hypothetical performance to the general public on their websites without adopting and/or implementing policies and procedures required by the Marketing Rule. All nine firms have agreed to settle the SEC's charges and to pay \$850,000 in combined penalties.

The firms are:

- Banorte Asset Management Inc.
- BTS Asset Management Inc.
- Elm Partners Management LLC
- Hansen and Associates Financial Group Inc
- Linden Thomas Advisory Services LLC
- Macroclimate LLC
- McElhenny Sheffield Capital Management LLC
- MRA Advisory Group
- Trowbridge Capital Partners LLC

Registered investment advisers are prohibited from including any hypothetical performance in their advertisements unless they have adopted and implemented policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement. The SEC's orders find that each of the charged firms advertised hypothetical performance to mass audiences on their websites without having the required policies and procedures. In addition, two of the advisers, Macroclimate LLC and MRA Advisory Group, failed to maintain required copies of their advertisements.

"Because of their attention-grabbing power, hypothetical performance advertisements may present an elevated risk for prospective investors whose likely financial situation and investment objectives don't match the advertised investment strategy," said Gurbir S. Grewal, Director of the SEC's Division of Enforcement. "It is therefore crucial that investment advisers implement policies and procedures to ensure their compliance with the rule. Until that is the case, we will remain vigilant and continue our ongoing sweep to ensure that investment advisers comply with the Marketing Rule, including the requirements for hypothetical performance advertisements."

Without admitting or denying the SEC's findings, the charged firms agreed to be censured, cease and desist from violating the charged provisions, comply with undertakings not to advertise hypothetical performance without

having the requisite policies and procedures, and pay civil penalties ranging from \$50,000 to \$175,000.

The SEC's ongoing investigation of potential Marketing Rule violations is being conducted by Marilyn Ampolsk, Colin Forbes, Jonathan Menitove, Donna Norman, and Emily Shea and supervised by Brianna Ripa, Andrew Dean, and Corey Schuster, all of the Division of Enforcement's Asset Management Unit. The team was assisted by Alex Lefferts of the Division of Enforcement's Office of Investigative and Market Analytics; Robert Baker, Mavis Kelly, Chris Mulligan, Carolyn O'Brien, Karen Stevenson, Frank Sensenbrenner, Brian Snively, and Dmitry Chesnokov of the SEC's Division of Examinations; Janet Grossnickle, Julia Gilmer, Jennifer Paul, and Jennifer Sawin of the SEC's Division of Investment Management; and Jan Jindra and Stuart Jackson of the SEC's Division of Economic and Risk Analysis.

More information about the Marketing Rule, adopted by the Commission in December 2020, is available here:

- [Investment Adviser Marketing: A Small Entity Compliance Guide](#) (May 4, 2021)
- [Division of Examinations Risk Alert: Examinations Focused on the New Investment Adviser Marketing Rule](#) (Sept. 19, 2022)
- [National Compliance Outreach Program with a panel focused on the New Marketing Rule](#) (Nov. 15, 2022)
- [2023 Examination Priorities of the Division of Examinations](#) (Feb. 7, 2023)
- [Division of Examinations Risk Alert: Examinations Focused on Additional Areas of the Adviser Marketing Rule](#) (June 8, 2023)

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Related Materials

- [SEC Order - Banorte Asset Management Inc.](#)
- [SEC Order - BTS Asset Management Inc.](#)
- [SEC Order - Elm Partners Management LLC](#)
- [SEC Order - Hansen and Associates Financial Group Inc](#)
- [SEC Order - Linden Thomas Advisory Services LLC](#)
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