

SEC: Justice Deferred is Justice Served

March 31, 2014

The SEC recently announced its first deferred prosecution agreement (DPA) with an individual. The individual had recently resigned as the administrator of the Hepplewhite Fund, LP, a Connecticut-based hedge fund, and the SEC agreed not to prosecute him after he voluntarily contacted the SEC to report wrongdoing by the fund's manager. That report led to an emergency SEC enforcement action, which revealed both material misrepresentations regarding the fund's performance and the theft of \$1.5 million of investor money. As a result, the fund's manager and his firm, which was the fund's general partner, were required to pay \$6 million to compensate harmed investors. Under the terms of the DPA, the former administrator admitted to aiding and abetting the wrongdoing, disgorged \$50,000 he had received for his work with the fund, and accepted a five-year bar from work with hedge funds, brokers, dealers, investment advisers, or registered investment companies. Such a DPA is an example of the SEC's recent efforts to encourage cooperation by insiders who are reluctant to offer information to the SEC for fear of exposing themselves to prosecution. The SEC reserves the right to bring an enforcement action against such cooperators in the future, however, if they violate the terms of the DPA. While the SEC has not previously used a DPA with an individual, it has previously done so with corporate entities, companies that have self-reported violations or otherwise cooperated fully with the SEC.

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