

SEC Reaches Settlement with Adviser Relating to Use of Hypothetical Back-tested Performance Information in Marketing Material

Tuesday, September 25, 2018

SEC ENFORCEMENT ACTIONS

On August 31, 2018, the SEC announced that it had settled an enforcement action with Massachusetts Financial Services Company (MFS) relating to alleged material misstatements and omissions in connection with the use of hypothetical back-tested performance information in institutional marketing materials. In the order setting forth the settlement terms, the SEC stated that between 2006 and 2015 MFS marketed its proprietary “blended research strategies,” which used combined ratings from fundamental analysts and quantitative models to manage client stock portfolios, to institutions and intermediaries by presenting the performance since 1995 of a portfolio invested in stocks with “buy” ratings generated by the strategies. The SEC alleged that the first eight years of the performance track record involved completely or partially hypothetical results because MFS had only back-tested quantitative ratings for the period 1995 to 2000 and partially back-tested quantitative ratings for the period 2000 to 2003, and that MFS did not properly disclose that the performance information for these periods contained back-tested results. The SEC also alleged that choosing 1995 as the start date for the performance presentation generated much more favorable comparative results than if MFS had chosen 2000 or 2003. In addition, the SEC alleged that MFS failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Investment Advisers Act of 1940 and the rules thereunder relating to the preparation and use of false and misleading advertising material.

Without admitting or denying the foregoing, in settlement of the allegations, MFS agreed to be censured, to cease and desist from violating relevant provisions of the Advisers Act and to pay a civil penalty of \$1.9 million.

The order is available at: <https://www.sec.gov/litigation/admin/2018/ia-4999.pdf>

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