

SEC Announces Settled Charges Against Rimar Capital Entities and Owner for Defrauding Investors in “AI Washing” Scheme

October 11, 2024

Background

On October 10, 2024, the Securities and Exchange Commission (the “SEC”) announced settled charges against Rimar Capital USA, Inc. (“Rimar USA”), Rimar Capital, LLC (“Rimar LLC”), Itai Liptz (“Liptz”), and Clifford Boro (“Boro”) for violating the antifraud provisions of the federal securities laws.ⁱ The SEC’s order alleged that Liptz and Boro made materially false and misleading statements to investors, including but not limited to statements about Rimar LLC’s purported use of artificial intelligence (“AI”) to perform automated trading for advisory clients.ⁱⁱ Specifically, the SEC alleged that respondents defrauded investors by raising \$3.725 million from 45 investors for the development of Rimar LLC’s purportedly AI-based trading platform.ⁱⁱⁱ

According to the SEC’s order, between 2022 and 2023, Liptz and Boro engaged in a Simple Agreement for Future Equity (“SAFE”) offering through Rimar USA.^{iv} The SAFE’s terms provided that investors would receive equity in Rimar USA in the event of any equity financing and that they would receive a share of proceeds upon a liquidity event, such as an initial public offering.^v

The SEC alleged that throughout the SAFE fundraising period, Liptz and Boro made numerous misrepresentations in pitch decks, online posts in a members-only investment group, and emails.^{vi} Specifically, the SEC’s order notes that Liptz and Boro made false and misleading claims about Rimar LLC’s technological operations.^{vii} Such claims included representing that Rimar LLC had an extensive infrastructure of coders and data processing capabilities, which actually belonged to overseas entities in which neither Rimar USA nor Rimar LLC had any ownership interest.^{viii} The marketing materials and solicitation communications also repeatedly referred to Rimar LLC as having an artificial intelligence-driven platform for trading stock and crypto assets, among other products, despite having no such trading application.^{ix}

In addition to the AI washing allegations, the SEC asserted numerous other claims involving misrepresentations regarding managed client account performance and Rimar

LLC's assets under management, as well as its status as a hedge fund.^x The SEC also alleged that Liptz used some of the proceeds raised from investors for personal purposes.^{xi}

Andrew Dean, Co-Chief of the SEC Enforcement Division's Asset Management Unit, issued [a statement](#) in conjunction with the settlement emphasizing that “[a]s AI becomes more popular in the investing space,” the SEC “will continue to be vigilant and pursue those who lie about their firms’ technological capabilities and engage in ‘AI washing’”—the SEC’s term to describe what they view as overselling the use of AI or machine learning models or misrepresenting their performance or features. That statement follows [an “Office Hours” session](#) held last month by SEC Chair Gary Gensler reinforcing the Commission’s commitment to combatting AI washing.

This settlement represents the latest in a series of enforcement actions by the SEC this year involving allegedly false or misleading AI disclosures. The SEC announced that AI would be one of its [examination priorities](#) for 2024 and brought its [first AI-related fraud cases](#) in March 2024 against two investment advisers, Delphia (USA) Inc. and Global Predictions Inc., for making false and misleading statements about their purported use of AI in connection with providing investment advice. Subsequently, on June 11, 2024, the SEC filed its [third matter this year](#) involving AI washing against Ilit Raz, the founder and Chief Executive Officer of tech startup Joonko Diversity, Inc. (“Joonko”), for, among other allegations, making material misrepresentations regarding Joonko’s use of AI. Most recently, on August 27, 2024, the SEC announced [charges](#) against China-based investment adviser QZ Asset Management Limited (“QZ Asset”), its South Dakota-based holding company QZ Global Limited, and CEO Blake Yeung Pu Lei in part for making allegedly false claims that QZ Asset would employ proprietary AI-based technology to generate high returns while offering complete protection for client funds.

SEC’s Charges and Relief

Without admitting or denying the SEC’s findings, Rimar USA, Rimar LLC, Liptz, and Boro each agreed to the entry of an order finding violations of the antifraud provisions of the federal securities laws. First, the SEC charged Rimar USA and Liptz with violating (i) Section 17(a) of the Securities Act of 1933 (“Securities Act”) and (ii) Section 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder for making false and misleading statements to investors in connection with the SAFE offering. Second, the SEC charged both Rimar LLC and Liptz with willfully violating Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 for making false and misleading claims in connection with their investment advisory services. Lastly, the SEC charged Boro with violating Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933. Notably, violations of Sections 17(a)(2) and 17(a)(3) can be established by a finding of simple negligence and do not require proof of scienter.

Rimar USA, Rimar LLC, Liptz, and Boro each agreed to cease and desist from violating the charged provisions. Additionally, Liptz agreed to (i) pay disgorgement and prejudgment interest totaling \$213,611, (ii) pay a \$250,000 civil penalty, and (iii) be subject to an investment company prohibition and associational bar. Boro agreed to pay a \$60,000 civil penalty. Lastly, Rimar LLC agreed to be censured.

Impact and Takeaways

- This settlement is indicative of the SEC's willingness to use existing federal securities laws to charge AI-related fraud cases in the absence of an AI-specific rule.
- Despite the relatively small scale of the fraud alleged and the numerous allegations pertaining to fraud beyond AI washing, this settlement is an important reminder that public and private companies, investment advisers, and broker-dealers should implement policies and procedures to ensure the accuracy of all AI-related marketing materials and disclosures, including in pitch decks, online investment forums, and emails.
- The SEC will pursue AI-related fraud charges based on negligence under Sections 17(a)2 and 17(a)(3) of the Securities Act. For example, the SEC order alleged that Boro "should have known" about the misstatements made "had he exercised reasonable care as a board member." This shows that the SEC may pursue misstatement claims under Sections 17(a)(2) and 17(a)(3) where the respondent participated in preparing allegedly false or misleading statements or "should have known" that they were false or misleading.

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Please do not hesitate to contact us with any questions.



Andrew J. Ceresney
Partner, New York
+1 212 909 6947
aceresney@debevoise.com



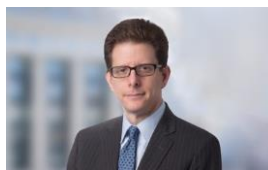
Charu A. Chandrasekhar
Partner, New York
+1 212 909 6774
cchandrasekhar@debevoise.com



Avi Gesser
Partner, New York
+ 1 212 909 6577
agesser@debevoise.com



Arian M. June
Partner, Washington, D.C.
+1 202 383 8053
ajune@debevoise.com



Robert B. Kaplan
Partner, Washington, D.C.
+ 1 202 383 8060
rbkaplan@debevoise.com



Benjamin R. Pedersen
Partner, New York
+ 1 212 909 6121
brpedersen@debevoise.com



Julie M. Riewe
Partner, Washington, D.C.
San Francisco
+ 1 202 383 8070
jriewe@debevoise.com



Kristin A. Snyder
Partner, San Francisco
+ 1 415 738 5718
kasnyder@debevoise.com



Jonathan R. Tuttle
Partner, Washington, D.C.
+ 1 202 383 8124
jrtuttle@debevoise.com



Mark D. Flinn
Counsel, Washington, D.C.
1 202 383 8005
mflinn@debevoise.com



Matt Kelly
Counsel, New York
1 212 909 6990
makelly@debevoise.com



Anna Moody
Counsel, New York
1 202 383 8017
amoody@debevoise.com



Sofia Squatriti Muno
Associate. New York
1 212 909 6958
ssmuno@debevoise.com



Cameron B. Wolfe
Associate. Washington D.C.
1 202 383 8279
cbwolfe@debevoise.com

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- ⁱ SEC Press Release, SEC Charges Rimar Capital Entities and Owner Itai Liptz for Defrauding Investors by Making False and Misleading Statements About Use of Artificial Intelligence (Oct. 10, 2024), https://www.sec.gov/newsroom/press-releases/2024-167?utm_medium=email&utm_source=govdelivery.
- ⁱⁱ See Order at ¶¶ 1, 8.
- ⁱⁱⁱ Id. ¶ 8.
- ^{iv} Id. at ¶ 7.
- ^v Id.
- ^{vi} Id. at ¶¶ 10, 12.
- ^{vii} Id. at ¶¶ 12–13.
- ^{viii} Id. at ¶ 12.
- ^{ix} Id.
- ^x See id. at ¶¶ 10–11, 14–20.
- ^{xi} Id. at ¶¶ 21–23.