

SEC Rings Up F-Squared Piggybackers For \$2.2M In Penalties

By **Pete Brush**

Law360, New York (August 25, 2016, 2:55 PM ET) -- The U.S. Securities and Exchange Commission on Thursday announced settlements in which 13 investment advisory firms agreed to pay a total of \$2.2 million in penalties for parroting bogus claims about exchange-traded index fund returns made by bankrupt adviser F-Squared Investments.

The SEC billed the slew of administrative proceedings as an "enforcement sweep" in the wake of F-Squared's 2014 admission that made it false and misleading statements to investors related to its AlphaSector ETF indexes. F-Squared, which agreed to pay \$35 million, filed for bankruptcy last year and faces private litigation.

In Thursday's announced agreements AssetMark agreed to pay \$500,000; BB&T Securities agreed to pay \$200,000; Banyan Partners agreed to pay \$200,000; Congress Wealth Management agreed to pay \$100,000; Constellation Wealth Advisors agreed to pay \$100,000; Executive Monetary Management agreed to pay \$100,000; HT Partners agreed to pay \$100,000; Hilliard Lyons agreed to pay \$200,000; Ladenburg Thalmann Asset Management agreed to pay \$200,000; Prospera Financial Services agreed to pay \$100,000; Risk Paradigm Group agreed to pay \$100,000; Schneider Downs Wealth Management Advisors agreed to pay \$100,000 and Shamrock Asset Management agreed to pay \$200,000.

The agreements did not contain admissions of wrongdoing. The settlements contain findings that they violated Sections 204 and 206(4) of the Investment Advisers Act of 1940. Those sections deal in bookkeeping requirements and bars on deceptive practices.

"When an investment adviser echoes another firm's performance claims in its own advertisements, it must verify the information first rather than merely accept it as fact," SEC Enforcement Division Director Andrew J. Ceresney said in a statement.

Risk Paradigm Group counsel Juan M. Marcellino of Nelson Mullins called his client a "victim of the misrepresentations of F-Squared" and said his client no longer has a relationship with F-Squared.

"In the future [Risk Paradigm Group] will endeavor to be more careful and give closer scrutiny in evaluating who it does business with," Marcellino said.

The actions are not the first time the SEC has hit other firms in connection with F-Squared.

AssetMark is represented by Hardy Callcott of Sidley Austin LLP. BB&T Securities is represented by

William Donnelly of Murphy & McGonigle. Banyan Partners is represented by Robert Bramnik of Duane Morris LLP. Congress Wealth Management is represented by Luke Cadigan of Cooley LLP. Constellation Wealth Advisors is represented by Merri Jo Gillette of Morgan, Lewis & Bockius LLP. Executive Monetary Management is represented by Sam Lieberman of Sadis & Goldberg LLP. HT Partners is represented by Max Schatzow of Stark & Stark. Hilliard Lyons is represented by John Walsh of Sutherland Asbill & Brennan LLP. Ladenburg Thalmann Asset Management is represented by Mari-Anne Pisarri of Pickard Djinis & Pisarri LLP. Prospera Financial Services is represented by Olga Greenberg of Sutherland Asbill & Brennan. Risk Paradigm Group is represented by Juan M. Marcellino of Nelson Mullins. Schneider Downs Wealth Management Advisors is represented by Peter Blume of Clark Hill PLC. Shamrock Asset Management is represented by John Kincade of Winstead PC.

The SEC is represented by Robert Baker, William Donahue, John Farinacci, Jeffrey Finnell, Corey Schuster, Naomi Sevilla, Rory Alex, Marc Jones, Alicia Reed, and Sonia Torrico.

--Editing by Rebecca Flanagan.

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