MarketWatch

Steven Cohen raises eyebrows by using auditor to sell fund assets holding up SEC settlement

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PwC affiliate is unloading the illiquid ‘side pocket’ investments for funds it’s audited

Reuters
Steven Cohen, Chairman and CEO of Point72 Asset Management

SAC Capital’s Steven Cohen, faced with a Securities and Exchange Commission deadline to liquidate his funds as part of an insider-trading settlement, has turned to an affiliate of his firm’s auditor to take the remaining investments off his hands.

The move appears to fly in the face of SEC auditor independence rules that prohibit business relationships between auditors and their clients—rules that apply not only to the organization under audit, but the audit client’s affiliates as well.

Those rules, strengthened by Dodd-Frank after the financial crisis, protect fund investors from conflicts of interest between advisers/general partners and the fund auditors who are supposed to be protecting investors’ interests.

David Chase, a former attorney with the SEC’s division of enforcement, who now defends those accused of insider trading at his own firm, told MarketWatch that, in this context, avoiding actions that might cause the SEC to change its mind about a settlement is critical.

“Why risk it?” said Chase. “Why not bring in a totally unrelated third party to liquidate the assets instead of a potentially conflicted one?”

At issue were investments that had been steadily losing value since SAC Capital and several related firms plead guilty in November 2013 to a large-scale insider trading scheme. In January 2016, Cohen personally settled with the SEC for failing to supervise a former portfolio manager who engaged in insider trading while employed at his firm by agreeing to stop managing outside money for two years.

As part of the settlement with the SEC, Cohen agreed to distribute any proceeds from the liquidation of any investments managed by SAC LP and an affiliated firm, 72 Credit, and to cease to be “investment advisers,” by the end of 2015. But the firm had difficulty completing an “orderly wind down” of its investment adviser activities so in October 2015, the SEC agreed to extend the deadline for distributing the proceeds from the so-called side pocket investments until Dec. 31, 2016.

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The single largest side pocket investment remaining at SAC Capital, approximately 78% of the total by value as of the time the firm requested the one-year extension, was in Laureate Education. Laureate was taken private in a leveraged buyout led by private-equity firm Kohlberg Kravis Roberts & Co. L.P. and investors, including SAC Capital, in 2007. The investment was held in the 72 LAUR Holdings private fund advised by SAC Capital and audited by PwC.

The remaining side pocket investments were invested in five private funds and some receivables from a bankruptcy estate, a portfolio of Indian loans and an investment in a non-U.S. bank. They were held in separate funds also advised by SAC Capital and audited by PwC.

According to Cohen’s extension request filed with the SEC in October 2015 and subsequent filings, the value of the side pocket investments was dropping quickly. In January 1, 2014, the investments had a fair market value of approximately $712 million, according to the request to the SEC. By June of 2014, the firm put the value at approximately $623 million. And by the end of August that year, the remaining side pocket investments had a fair market value of only $367 million.

Two years later, in August of 2016, when the firm filed an update with the SEC, assets under management were valued at $354 million, still well off the $0 goal set for December 31 of that year.

As the clock ticked toward the Dec. 31 deadline, Cohen arranged for the remaining investments to be liquidated by two partners from PwC Corporate Finance & Recovery (Cayman) Limited, a PwC global network firm.

A final Form ADV-W filing from Dec. 23, 2016, finally shows $0 under management. The arrangement, a business relationship between funds that were audited by the PwC U.S. firm and a consulting member firm of the PwC global network, allowed SAC Capital Advisors to finally shut down.

> ‘Steven Cohen had one job: to stay squeaky clean ...’
>
> *Nell Minow of ValueEdge*

A spokeswoman for the SEC declined comment on whether the agency was aware of the appointment of PwC as liquidator of the side pocket investments, one of which held a pre-IPO firm also audited by PwC.

Laureate LAUR, +0.41% finally did go public in February 2017. PwC continues to be the outside auditor of Laureate, and PwC’s Brazilian firm was auditor for two companies that were acquired by Laureate before its IPO.

According to PwC spokeswoman Caroline Nolan, “PwC network member firms have not audited any SAC Capital Fund financial statements or Point72 financial statements for periods ending after December 31, 2015.”

However, PwC was still the auditor of record, per the last full Form ADV filed by SAC Capital Advisors, L.P. on Aug. 26, 2016, of the private funds that held the remaining side pocket investments now being liquidated by PwC’s Cayman Islands consulting arm. It was also auditor of record per SEC filings of the main fund, Stamford Harbor Investments LP, under Cohen’s new investment adviser.

Corporate governance expert Nell Minow, the vice chair of ValueEdge Advisors, told MarketWatch “Steven Cohen had one job: to stay squeaky clean until he could get permission to manage outside money again. Instead he cut a corner he didn’t have to, creating a conflict of interest with the public accounting firm he’s paying to protect his family, his employees and future investors.”

A spokesman for Point72 declined comment on the transaction between SAC Capital and PwC.

Cohen’s newly registered investment advisory firm, Stamford Harbor Capital L.P., was approved by the SEC in March 2016 and is poised to accept non-family money when Cohen’s supervisory restraints are removed in January. It’s also audited by PwC.

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