

Regulatory and Enforcement Alert

App Annie and Its Founder to Pay \$10 Million to Settle First SEC Enforcement Action Against Alternative Data Provider

September 15, 2021

Yesterday, the SEC announced that App Annie Inc. (“App Annie”), a leading alternative data provider for the mobile app industry, and its co-founder and former CEO and Chairman, Bertrand Schmitt, had agreed to pay a penalty of \$10 million and \$300,000, respectively, to settle anti-fraud charges. Specifically, the SEC found that between late 2014 and mid-2018 App Annie and Schmitt made material misrepresentations to trading firm clients of the company about how App Annie’s alternative data was derived in order to induce those trading firms to become and remain subscribers of App Annie.

This is the SEC’s first enforcement action charging an alternative data aggregator with securities fraud. App Annie is one of the largest sellers of market data relating to user engagement with mobile apps, including data on the number of times a company’s app is downloaded, the amount of revenue that a company is generating through its app, and how often customers are using that company’s app. Trading firms commonly refer to this type of information as “alternative data,” *i.e.*, information about companies or investments that is not contained within financial statements or other traditional data sources. Trading firms will sometimes pay for subscriptions to alternative data sources like App Annie and use this alternative data to inform their investment decisions.

The SEC’s order found that App Annie and Schmitt represented to companies that any app usage data they shared with App Annie would be aggregated and anonymized before being used by a statistical model to generate estimates of app performance. However, the SEC found that App Annie used non-aggregated and non-anonymized data to alter its model-generated estimates, as well as manual alterations, to enhance the value of those estimates to trading firms by making them closer to actual app performance figures.

The SEC’s order further found that App Annie and Schmitt misrepresented to their trading firm clients that App Annie had obtained the appropriate consents for its use of the confidential company data that it used in its model-generated estimates, that App Annie had effective internal controls to prevent the misuse of confidential data, and that App Annie had ensured that it was in compliance with the federal securities laws. Moreover, according to the SEC’s order, App Annie and Schmitt were aware that their trading firm customers were making investment decisions based on App Annie’s estimates, although App Annie itself was not engaged in the buying or selling of securities—perhaps signaling the Staff and Commission’s willingness to read the “in connection with the purchase or sale of a security” requirement more expansively than it has in the past. In fact, Commissioner Hester Peirce expressed her disagreement with the SEC’s action in a somewhat non-conventional forum, taking to Twitter at the

end of the day yesterday and stating that this settlement “stretches the ‘in connection with the purchase and sale of securities’ requirement under 10b/10b-5 beyond where I think it should go,” signaling that at least one public dissent by a Commissioner may be forthcoming.

While the SEC did not charge any of the trading firms that utilized App Annie’s data, the settlement is a potent reminder of the SEC’s interest in hedge fund and other market participants’ burgeoning use of alternative trading data. More specifically, firms should ensure that their internal procedures for onboarding vendors selling alternative data provide for the review and documentation of both the manner in which the vendor obtains the underlying data and its permissible use. Firms should also periodically refresh their diligence review of third-party providers rather than relying on initial onboarding checklists. Notably, the SEC’s press release credited the role of the Private Funds Unit and the Division of Examinations in facilitating the investigation, suggesting that the conduct may have been detected during an exam of an end-user of App Annie’s data. Firms should take the opportunity to review their relationships with alternative data providers and ensure robust diligence procedures around these relationships, and be prepared for this topic to arise during an exam.

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