PRESS RELEASE

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SEC Charges Van Eck Associates for Failing to Disclose Influencer's Role in Connection with ETF Launch

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Washington D.C., Feb. 16, 2024 — The Securities and Exchange Commission today announced that registered investment adviser Van Eck Associates Corporation has agreed to pay a $1.75 million civil penalty to settle charges that it failed to disclose a social media influencer's role in the launch of its new exchange-traded fund (ETF).

According to the SEC's order, in March 2021, Van Eck Associates launched the VanEck Social Sentiment ETF (NYSE:BUZZ) to track an index based on "positive insights" from social media and other data. The provider of that index informed Van Eck Associates that it planned to retain a well-known and controversial social media influencer to promote the index in connection with the launch of the ETF. To incentivize the influencer's marketing and promotion efforts, the proposed licensing fee structure included a sliding scale linked to the size of the fund so, as the fund grew, the index provider would receive a greater percentage of the management fee the fund paid to Van Eck Associates. However, as the SEC's order finds, Van Eck Associates failed to disclose the influencer's planned involvement and the sliding scale fee structure to the ETF's board in connection with its approval of the fund launch and of the management fee.

"Fund boards rely on advisers to provide accurate disclosures, especially when involving issues that can impact the advisory contract, known as the 15(c) process," said Andrew Dean, Co-Chief of the Enforcement Division's Asset Management Unit. "Van Eck Associates' disclosure failures concerning this high-profile fund launch limited the board's ability to consider the economic impact of the licensing arrangement and the involvement of a prominent social media influencer as it evaluated Van Eck Associates' advisory contract for the fund."

Van Eck Associates consented to the entry of the SEC's order finding that it violated the Investment Company Act and Investment Advisers Act. Without admitting or denying the SEC's findings, Van Eck Associates agreed to a cease-and-desist order and a censure in addition to the monetary penalty.

The SEC's investigation was conducted by Salvatore Massa, Gregory Padgett, and John Farinacci under the supervision of Virginia Rosado Desilets, Mr. Dean, and Corey Schuster, all with the Enforcement Division's Asset Management Unit.

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RESOURCES

- SEC Order