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March 5, 2026

# SEC Charges Adviser Over Principal Trade Practices in Season and Sell Program

## Executive Summary

On February 25, 2026, the U.S. Securities and Exchange Commission (the “SEC”) [announced](#) settled charges against Madison Capital Funding LLC (“Madison Capital”), formerly a registered investment adviser, for breaching its fiduciary duty and failing to act in accordance with its agreements with and disclosures to investors. In particular, the SEC found that Madison Capital engaged in principal trades with certain pooled investment vehicles that it advised (the “Funds”) by originating loans and selling portions of these loans to the Funds without reasonably determining whether those trades were effectuated at fair market value, as was required by the Funds’ advisory agreements and investor disclosures. The SEC found that Madison Capital’s conduct constituted violations of Sections 206(2) and 206(4) of the Investment Advisers Act of 1940, as amended (the “Advisers Act”), and Rule 206(4)-8 promulgated thereunder and imposed a civil penalty of \$900,000. Notably, the SEC proceeded with an investigation against Madison Capital which resulted in the settled charges despite the fact that Madison Capital’s voluntarily reimbursed the Funds and enhanced its loan transfer practices in response to an SEC staff examination deficiency letter.

## Key Takeaways

- **Advisers Should Ensure Valuation Practices are Consistent with Disclosures and Agreements.** Investment advisers should assess whether their valuation practices are consistent with those disclosed to, and agreed upon with, investors.
- **Enforcement Action Despite Remediation.** Even though Madison Capital took significant and prompt remedial action during the exam process, including voluntarily reimbursing the Funds for the cost of the transactions, the SEC imposed a substantial monetary penalty.
- **Negligence-Based Fraud.** The SEC continues to bring non-scienter based fraud actions, even where investor harm was remediated.

## Background

On February 25, 2026, the SEC announced a settled enforcement action against Madison Capital. Madison Capital employed a “season and sell” strategy in which it originated senior loans and later sold a portion of those loans to the Funds, typically 30-60 days after origination.

The sales of loans to the Funds were principal transactions subject to Section 206(3) of the Advisers Act, which requires an adviser acting as principal in a transaction with a client to (i) disclose to such client in writing the capacity in which the adviser is acting and (ii) obtain the consent of the client. Each Fund contracted with a third-party review agent to provide the required consent on behalf of the Funds (the “Funds’ Review Agent”). When initiating a sale to a Fund, Madison Capital sent the Funds’ Review Agent a consent form with information about the loan and certified that (i) the transaction was being conducted on an

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arm's length basis and (ii) based on current market conditions, Madison Capital believed the acquisition to be at fair market value.

Madison Capital's advisory agreements required transactions between Madison Capital and the Funds be on terms no less favorable than transactions at arm's length with a non-affiliate and at "fair value" as reasonably determined by Madison Capital without any third-party valuation. Disclosures to investors made in the Funds' private placement memoranda stated that the purchase price paid by the Funds for loans acquired from Madison Capital would be "an amount equal to the fair market value thereof as reasonably determined by [Madison Capital], consistent with applicable law and without third-party valuation."

Madison Capital assigned each loan it underwrote an internal credit rating ranging from "A" to "F" and sold loans to the Funds only if the loans were rated "B" at the time of sale. When Madison Capital sold loans to the Funds it did so at par value less the unamortized loan fee, believing this represented fair market value given the short amount of time between origination and sale to the Funds and because the loans were rated "B" or above. Madison Capital's written valuation policy contemplated this valuation methodology, but provided that it would be used "subject to market adjustments that may be made in Madison's sole discretion."

The violations cited in the settlement order relate to sales of loans to the Funds during the market volatility resulting from the coronavirus pandemic between March and May of 2020. Despite acknowledging volatile market conditions in investor communications, Madison Capital continued to sell loans to the Funds at par value less the unamortized loan fee without any market adjustment or analysis to determine the effect that such market disruptions might have on the fair market value of the loans.

The SEC found Madison Capital willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder by failing to determine the effect of the market disruption on the fair market value of the loans it sold to the Funds, as required by the Funds' advisory agreements, investor disclosures, valuation policies and principal trade consent requests.

### Penalties Despite Remediation

Notably, the SEC acknowledged (i) that all but one of the 143 loans sold to the Funds during this period continue to perform or were fully repaid by the borrowers and (ii) prompt remedial efforts undertaken by Madison Capital in response to the SEC staff's examination deficiency letter. These remedial efforts consisted of voluntary reimbursement by Madison Capital to the Funds and efforts to enhance the firm's disclosures and policies regarding loan transfer practices. Nonetheless, the SEC examination evolved into an SEC enforcement action that resulted in the foregoing violations. Madison Capital agreed to a civil monetary penalty of \$900,000, a censure and a cease-and-desist order.

### Scrutiny of Private Credit Valuations

As evidenced by this settlement order and the SEC Division of Examinations 2026 Examination Priorities,<sup>1</sup> the SEC and its staff appears to be increasingly focused on private credit. Recent press surrounding private credit valuations is likely to generate more scrutiny. With the Form ADV annual amendment deadline of March 31 fast approaching, advisers to private credit funds that regularly engage in principal trades should assess whether the disclosures in their Form ADV Brochures accurately capture their practices with respect to valuation.

### Focus on Principal Transactions

The enforcement action stems from the principal trades engaged in between Madison Capital and its Funds. It is notable that the settlement order indicates that misleading the Funds' Review Agent formed the basis for antifraud violations related to the principal trades, even in the absence of a Section 206(3) violation.

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<sup>1</sup> Fiscal Year 2026 SEC Examination Priorities, SEC Division of Examinations (Nov. 17, 2025), available at <https://www.sec.gov/files/2026-exam-priorities.pdf>.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

### Our Investment Funds Group

Recognized as one of the premier private funds practices in the marketplace, the Paul, Weiss Investment Funds Group serves as industry-leading advisors to a diverse group of private equity firms, ranging from up-and-coming middle market firms to large alternative asset managers. Our deep and sophisticated team of investment funds lawyers has experience in all aspects of the organization and operation of alternative asset management products across the spectrum. Our extensive market knowledge is built on decades of experience working hand in hand with private equity managers, investors and other key market participants, equipping us with unrivaled data about evolving trends and market dynamics and making us uniquely positioned to offer cutting-edge yet practical advice. We provide advice on both day-to-day questions and firm-defining decisions with respect to the full range of asset management services, including fund and management company formation, seed capital and strategic arrangements, partner arrangements and employee compensation, regulatory and compliance considerations and investment management M&A. The full suite of the firm's resources are at our clients' fingertips, and we work closely across practice areas to provide seamless advice to private equity funds throughout their lifecycles.

### Our Investment Funds Partners

**Kirk Anderson**

+1-212-373-3101

[kwanderson@paulweiss.com](mailto:kwanderson@paulweiss.com)

**Brad M. Brown**

+1-212-373-3222

[bbrown@paulweiss.com](mailto:bbrown@paulweiss.com)

**Andrew C. Day**

+1-212-373-3554

[acday@paulweiss.com](mailto:acday@paulweiss.com)

**Victoria S. Forrester**

+1-212-373-3595

[vforrester@paulweiss.com](mailto:vforrester@paulweiss.com)

**Matthew B. Goldstein**

+1-212-373-3970

[mgoldstein@paulweiss.com](mailto:mgoldstein@paulweiss.com)

**Udi Grofman**

+1-212-373-3918

[ugrofman@paulweiss.com](mailto:ugrofman@paulweiss.com)

**Toby M. Karenowski**

+44-20-7601-8689

[tkarenowski@paulweiss.com](mailto:tkarenowski@paulweiss.com)

**Caitlin T. Kelly**

+1-202-223-7342

[ctkelly@paulweiss.com](mailto:ctkelly@paulweiss.com)

**Jeremy Leggate**

+44-20-7601-8734

[jleggate@paulweiss.com](mailto:jleggate@paulweiss.com)

**Marco V. Masotti**

+1-212-373-3034

[mmasotti@paulweiss.com](mailto:mmasotti@paulweiss.com)

**Ted McBride**

+1-310-982-4313

[tmcbride@paulweiss.com](mailto:tmcbride@paulweiss.com)

**Caitlin Melchior**

+1-212-373-3352

[cmelchior@paulweiss.com](mailto:cmelchior@paulweiss.com)

**Prem Mohan**

+44-20-7601-8769

[pmohan@paulweiss.com](mailto:pmohan@paulweiss.com)

**Ross A. Oliver**

+1-212-373-3055

[roliver@paulweiss.com](mailto:roliver@paulweiss.com)

**David Pritchett**

+44-20-7601-8732

[dpritchett@paulweiss.com](mailto:dpritchett@paulweiss.com)

**Reva Raghavan**

+44-20-7601-8751

[rraghavan@paulweiss.com](mailto:rraghavan@paulweiss.com)

**Michael Ronca**

+1-212-373-3098

[mronca@paulweiss.com](mailto:mronca@paulweiss.com)

**Jyoti Sharma**

+1-212-373-3712

[jsharma@paulweiss.com](mailto:jsharma@paulweiss.com)

**Rachel X. Shepardson**

+1-212-373-2257

[rshepardson@paulweiss.com](mailto:rshepardson@paulweiss.com)

**Marian S. Shin**

+1-212-373-3511

[mshin@paulweiss.com](mailto:mshin@paulweiss.com)

**Anusha Simha**

+1-212-373-3632

[asimha@paulweiss.com](mailto:asimha@paulweiss.com)

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**Maury Slevin**

+1-212-373-3009

[mslevin@paulweiss.com](mailto:mslevin@paulweiss.com)

**Brendon R. Smith**

+1-212-373-2626

[bsmith@paulweiss.com](mailto:bsmith@paulweiss.com)

**Jennifer Songer**

+1-202-223-7467

[jsonger@paulweiss.com](mailto:jsonger@paulweiss.com)

**Robert Tananbaum**

+1-212-373-3603

[rtananbaum@paulweiss.com](mailto:rtananbaum@paulweiss.com)

**Conrad van Loggerenberg**

+1-212-373-3395

[cvanloggerenberg@paulweiss.com](mailto:cvanloggerenberg@paulweiss.com)

**Lindsey L. Wiersma**

+1-212-373-3777

[lwiersma@paulweiss.com](mailto:lwiersma@paulweiss.com)

**Hannah Wilson**

+44-20-7601-8761

[hwilson@paulweiss.com](mailto:hwilson@paulweiss.com)

**Steve Y. Yoo**

+1-310-982-4306

[syoo@paulweiss.com](mailto:syoo@paulweiss.com)

*Associates Ryan Arredondo and Christine L. Kopp contributed to this Client Memorandum.*