Morgan Lewis

2019 YEAR IN REVIEW

SELECT SEC AND FINRA DEVELOPMENTS AND ENFORCEMENT CASES

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Executive Summary

The Morgan Lewis Year in Review highlights key US Securities and Exchange Commission (the SEC or the Commission) and Financial Industry Regulatory Authority (FINRA) enforcement and examination developments, and cases regarding broker-dealers, investment advisers, and investment companies.[*]

THE SEC

In Fiscal Year 2019, the SEC Enforcement Division (Division) remained "acutely focused" on the protection of "Main Street" investors. Throughout the year, we repeatedly saw the Commission highlight actions and initiatives with a direct impact on retail investors. More specifically, the Division promoted three initiatives for the benefit of such investors: (1) the Share Class Selection Disclosure Initiative (SCSDI); (2) the continued work of the Retail Strategy Task Force (RSTF); and (3) the launch of the Teachers' Initiative and the Military Service Members' Initiative. In addition, the Division continues to focus on cyber-related misconduct through its Cyber Unit, which is entering its third year.

In Fiscal Year 2019, the Commission increased its enforcement activity by bringing a total of 862 enforcement actions, comprised of 526 independent actions for securities law violations (stand-alone cases), 210 "follow on" administrative proceedings seeking associational bars against individuals, and 126 deregistration actions against issuers that were delinquent in making required filings. The number of stand-alone enforcement actions was nearly 7% higher this year than in Fiscal Year 2018 (490), despite the near total cessation of enforcement activity for 35 days during the government shutdown. As in prior years, the SEC has stated that it prioritizes quality over quantity when evaluating its enforcement activity. Recently, SEC Chairman Jay Clayton commented that the effectiveness of the Enforcement Division's work should be measured by assessing the

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[*] Morgan Lewis served as counsel in certain actions described herein. Information concerning the matters described in this outline was derived from generally available materials, including information available to the public on the websites of the SEC and FINRA, and as otherwise expressly noted.

This outline was prepared by partners T. Peter R. Pound, Jason S. Pinney, Ben A. Indek, and Christine M. Lombardo; of counsel Russell M. Fecteau; and associates Ariel Gursky, Jillian Harris, Jonathan E. Maier, and Zoe Phillips; with assistance from partners Michèle A. Coffey and Timothy P. Burke; and from associates Jessica L. Accurso, Christina M. Aylward, Dana N. Bach, Kathryn Ball, Matthew T. Bohenek, Emily W. Booth, Vanessa M. Brown, Evan W. Busteed, Bryan M. Connor, Matthew Cooper, Shannon F. Delaney, Amanda J. Ford, Martin Hirschprung, Elizabeth Hood, Sarah Hsu Wilbur, Micah Q. Jones, Jessica L. Joy, Ariel Landa-Seiersen, Lindsey Levy, John M. Maloy, David E. Marvin, Matthew C. McDonough, Chrishon A. McManus, Devon Minerve, Danielle J. Novelly, Haniel Ogburu-Ogbonnaya, Robert Raghunath, Emilee Siegl, Alexander Starr, Kyle T. Sullivan, Natalie R. Wengroff, Bryan R. Woll, and David J. Zylka; and from summer associates Gabriel Anaya, Benjamin Bhamdeo, Eva Du, Abby Jacobs, Clare Moretti, and Dimitra Rallis. Administrative support was provided by Kate Lesko.

"nature, quality and effects" of each enforcement action, as opposed to "purely quantitative measures alone."[1]

Last fiscal year, the Commission obtained orders and judgments for the payment of more than $4.3 billion in penalties and disgorgement, which is another record year for total money ordered. The Commission returned $1.2 billion to investors in Fiscal Year 2019, which represents more than 27% of the total recovery. This amount is more than $1 billion higher than it was in Fiscal Year 2015, and reflects the Commission's continued focus on putting money back in the pockets of retail investors.

In Fiscal Year 2019, the Commission completed more than 3,089 examinations—a 2.7% decrease from Fiscal Year 2018. The SEC Office of Compliance Inspections and Examinations (OCIE) examined approximately 2,180 registered investment advisers, covering 15% of this population. In addition, OCIE examined 150 investment companies, a 12% increase from last year. OCIE also examined 350 broker-dealers. In releasing these figures, OCIE commented that the "numbers never tell the complete story of our effectiveness and efficiency."[2]

The SEC's Office of the Whistleblower (OWB) was active in Fiscal Year 2019, receiving 5,212 whistleblower tips, just slightly below the amount received in 2018, but still the second largest number of tips received in a fiscal year, and a 74% increase since the beginning of the program. This year, the Commission awarded $60 million to a diverse group of whistleblowers, including $50 million related to a single enforcement action.

FINRA

There were several important developments relating to FINRA's enforcement and examination programs last year. These include new leadership, new guidance relating to credit for extraordinary cooperation, a new self-reporting initiative, and major changes to the examination program.

In January 2020, FINRA announced that Jessica Hopper had been promoted to lead the Department of Enforcement. Ms. Hopper replaced Susan Schroder, who left the organization in late 2019. Ms. Hopper is a 16-year veteran of FINRA's Enforcement Department.

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1 SEC Chairman Jay Clayton, *Testimony on "Oversight of the Securities and Exchange Commission" Before the U.S. Senate Committee on Banking, Housing and Urban Affairs*, SEC (Dec. 10, 2019), https://www.sec.gov/news/testimony/testimony-clayton-2019-12-10.

2 *See* SEC Office of Compliance Inspections and Examinations, *"2020 Examination Priorities"* (OCIE 2020 Priorities), at 2 (Feb. 19, 2020), https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2020.pdf.

Last year, FINRA issued Regulatory Notice (RN) 19-23 to provide firms with supplemental guidance about the circumstances that warrant credit for extraordinary cooperation. In RN 19-23, FINRA expands on its more-than-a-decade-old guidance by detailing and giving examples of the four types of extraordinary cooperation firms can provide: prompt and complete self-reporting, extraordinary corrective action, significant remediation to customers, and substantial assistance in FINRA's investigation. Key takeaways from the supplementary guidance include that: (i) a firm's extraordinary cooperation may lead Enforcement to recommend a sanction "well below" the ranges reflected in the Sanction Guidelines or relevant precedent; (ii) FINRA will include a new section titled, "Credit for Extraordinary Cooperation," in settlements for matters in which FINRA determines that the respondent provided extraordinary cooperation; (iii) FINRA will consider credit for prompt and broad remediation to customers; (iv) FINRA may credit remedial measures taken promptly *after* a self-report; and (v) FINRA emphasized the hiring of consultants and the sharing of their findings.

In January 2019, FINRA announced its 529 Plan Share Class Initiative (Initiative). The Initiative asked firms to self-report any areas of concern regarding the reasonableness of their supervisory systems and procedures governing 529 plan share-class recommendations. The Initiative highlighted several potential issues, including firm failures to: (i) provide training regarding the costs and benefits of different 529 plan share classes; (ii) assess and understand the different costs of share classes for individual transactions; (iii) review data reflecting 529 plan share classes sold; and (iv) review share-class information when reviewing the suitability of 529 plan recommendations. FINRA announced a set of standardized settlement terms for firms that participate in the Initiative, including restitution and a censure but no monetary fine. FINRA also stated that there may be instances in which Enforcement determines that formal action is not warranted.

Late last year, FINRA announced that it had restructured its examination program and put in place a new leadership team to oversee its new processes. Under the program, all firms are grouped into one of five business models: retail, capital markets, carrying and clearing, trading and execution, and diversified. Firms are assigned a Single Point of Accountability, who is responsible for ongoing risk monitoring, risk assessment, and planning and scoping of examinations. Each of these processes will be tailored to the risk associated with a firm's business activities.

In October 2019, FINRA released its third annual Report on Examination Findings and Observations (Report). The Report provides key findings from recent FINRA member firm examinations and is intended as a resource to help firms more easily comply with securities rules and regulations and to assist in strengthening firms' compliance programs and supervisory controls. Of note, last year FINRA revised the name of the Report to include the phrase "and Observations" to reflect the distinction between examination findings and observations. Findings constitute determinations of a violation. In contrast, observations are suggestions for improvements to address perceived weaknesses that do not otherwise rise to the level of a rule violation. Observations are provided separately from firms' formal examination reports. The Report also included a new sub-section called "Additional Resources" for most areas. These link to additional information, including Regulatory Notices, topic pages and the guidance contained in Frequently Asked Question postings.

Looking ahead to 2020, FINRA recently published its annual Risk Monitoring and Examination Priorities Letter (2020 Letter). The 2020 Letter continued the approach FINRA first took in 2019, highlighting new topics that FINRA will focus on in the upcoming year. The 2020 Letter also includes a list of practical considerations and questions for each highlighted topic to help firms evaluate the state of their compliance, supervisory, and risk management programs. The highlighted priorities outlined in the 2020 Letter include compliance with the SEC's soon to be implemented Regulation Best Interest, cash management and bank sweep programs, direct market access controls, disclosure of order routing information, digital asset controls, procedures and disclosures, and cybersecurity.

As of the date of publication of this outline, FINRA had not yet announced its 2019 enforcement statistics.

US Securities and Exchange Commission

KEY SEC ENFORCEMENT DEVELOPMENTS

In Fiscal Year 2019, the Commission continued to focus on the previous year's agenda, which also emphasized protecting retail investors and preventing cyber-related misconduct. The Commission also touted its use of "Big Data" to bring new enforcement matters. In the Division of Enforcement 2019 Annual Report (2019 Annual Report), the Commission commented that it "brought significant trading-related cases that may not have been possible without our ability to analyze voluminous amounts of data, including trading data and communications metadata."[3]

Protecting Retail Investors

Protecting "Main Street" or retail investors continues to be "a top Enforcement priority."[4] The Division's continued focus on retail investors can be seen in its statistics, which again this last year skewed toward matters that impact Main Street investors. Offering fraud actions, investment adviser and investment company actions, and market manipulation actions constitute 63% of the stand-alone enforcement actions. With the adoption of the broker-dealer actions, many of which have retail investor impact, the percentage rises to 70%.

The Division promoted three specific initiatives in Fiscal Year 2019 for the protection of Main Street investors: (1) the SCSDI; (2) the addition of the Teachers and Military Service Members Initiatives to the work of the RSTF[5]; and (3) the Cyber Unit.[6]

Share Class Selection Disclosure Initiative

The SCSDI arose out of a series of cases against investment advisers for their alleged failure to adequately disclose conflicts of interest presented by their receipt of mutual fund compensation, mostly in the form of SEC Rule 12b-1 fees, when the advisers allegedly selected for their clients a higher-expense-cost mutual fund, when a lower-cost share class of the same fund was available.[7]

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3 *See* SEC "*Division of Enforcement 2019 Annual Report*," at 13 (Nov. 26, 2019), https://www.sec.gov/files/enforcement-annual-report-2019.pdf.

4 *See id.* at 2, 11.

5 *See id*. at 11. The RSTF was created two years ago with the strong support of Chairman Clayton.

6 *See* SEC *"Fiscal Year 2019 Agency Financial Report"* (Agency Financial Report), at 13 (Nov. 26, 2019), https://www.sec.gov/files/sec-2019-agency-financial-report-508-11-26-19.pdf.

7 *See* SEC Division of Enforcement, *Announcement: Share Class Selection Disclosure Initiative*, (Feb. 12, 2018), https://www.sec.gov/enforce/announcement/scsd-initiative.

In Fiscal Year 2019, the SEC announced that the SCSDI resulted in settled charges against 95 investment advisers who will return more than $135 million to clients. According to the Commission, this initiative will have long-lasting benefits for Main Street investors, including through the improved disclosure of fees and conflicts and lower costs.[8]

The Retail Strategy Task Force's Teachers' Initiative and Military Service Members' Initiative

The RSTF is intended to: (1) develop data-driven, analytical strategies for identifying practices in the securities markets that harm retail investors and generate enforcement matters in these areas; and (2) collaborate within and beyond the SEC on retail investor advocacy and outreach.[9] The Teachers' Initiative and the Military Service Members' Initiative build on the ongoing efforts of the RSTF to focus additional enforcement and investor education resources on teachers, veterans, and active duty military personnel, particularly in the areas of savings and investment, investment fees and expenses, retirement programs specific to educators and service members, and the red flags of investment fraud. The initiatives demonstrate the Commission's commitment to protecting these market participants, including through efforts to fight affinity frauds, which target these groups by actors being (or pretending to be) "one of them."[10] As part of these initiatives, the RSTF has collaborated with the SEC's Office of Investor Education and Advocacy and the SEC's regional offices on nationwide investor outreach.[11] The San Francisco Regional Office, for example, recently launched *SECrets to Investing*, a podcast series for public school employees designed to inform them about retirement planning, unique options available to them as public school educators, investment basics, and avoiding fraud.[12]

The Cyber Unit

Two years after its initial creation, the Cyber Unit continues to investigate and recommend enforcement actions involving distributed ledger technology and digital assets, cyber intrusions, and hacking to obtain material, nonpublic information.

Initial Coin Offerings and Digital Assets

In Fiscal Year 2019 the Cyber Unit investigated and recommended a number of cases involving distributed-ledger technology and digital assets. The Commission settled three actions charging Initial Coin Offering (ICO) issuers with violating the registration requirements of the Securities Act of 1933, and requiring the issuers to establish claims processes for future resolutions, register their tokens with the Commission, and comply with applicable registration and reporting requirements.[13] The settlements also incentivized ICO issuers to self-report their registration violations. While two of the settling issuers paid civil penalties, no penalty was ordered against the third, which had self-

8 *See* Agency Financial Report, at 2, 11.

9 *See* 2019 Annual Report, at 1.

10 *See* Agency Financial Report, at 14.

11 *See* 2019 Annual Report, at 11.

12 *Id.*

13 *Id.* at 12.

reported its unregistered offering to the Commission.[14] Notably, in June 2019 the Commission filed its first contested litigation (*SEC v. Kik Interactive, Inc.*) against a digital asset issuer, alleging registration violations. These actions demonstrate the Commission's continued struggle to find a workable regulatory framework for these emerging technologies.

In a November 2019 speech, Commissioner Hester Peirce commented on the regulatory challenges that innovators face, acknowledging that there is still "a cloud of uncertainty in the [digital assets] industry."[15] On February 6, 2020, Commissioner Peirce issued her own "Token Safe Harbor Proposal," which would allow ICO sales subject to certain rules, including detailed disclosure requirements.[16] The SEC, however, does not have a formal process underway to consider the proposal.

Securing Systems Against Cyber Threats

The Cyber Unit has continued to focus on cybersecurity threats to public companies and regulated entities. In October 2018, the Cyber Unit issued an investigative report on nine public companies that were victims of "business email compromises," and considered whether these companies violated federal securities laws by failing to have a sufficient system of internal accounting controls in place. Although the Commission did not pursue any enforcement action against the companies based on its findings, the report highlights the Commission's concern over cyber-related fraud and states that public companies could be liable for federal securities violations if they do not have sufficient internal accounting controls that specifically take into account these new threats.[17]

Leveraging Technology to Investigate Unlawful Trading (a/k/a "Big Data")

In Fiscal Year 2019, the Cyber Unit, in a joint investigation with the Market Abuse Unit, announced charges against nine defendants who allegedly participated in a scheme to hack into the EDGAR system and extract nonpublic information to use for illegal trading.[18] According to the Division, the case required "painstaking analysis of numerous events" and "showcased a number of our complex analytic tools and capabilities."[19] The Division stated that market and trading specialists, using the SEC's "proprietary systems," were able to determine that the odds of the defendants randomly choosing to trade in front of the events at issue "ranged from less than 7 in 10 million to less than

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14 *Id.*

15 *See "A Conversation with Hester M. Peirce,"* The Twentieth Annual A.A. Sommer Jr. Lecture on Corporate, Securities & Financial Law, Fordham University School of Law (Nov. 14, 2019), https://www.fordham.edu/info/23050/public_lectures/6099/aa_sommer_jr_lecture_on_corporate_securities_and_financial_law.

16 *See "Running on Empty: A Proposal to Fill the Gap Between Regulation and Decentralization"* (Feb. 6, 2010), https://www.sec.gov/news/speech/peirce-remarks-blockress-2020-02-06.

17 2019 Annual Report, at 13. For more analysis of some of the considerations and issues, please see our contemporaneous Morgan Lewis LawFlash, *SEC Issues Report on Cyber Fraud Against Public Companies, Internal Control Requirements* (Oct. 31, 2018), https://www.morganlewis.com/pubs/sec-issues-report-on-cyber-fraud-against-public-companies-internal-control-requirements.

18 2019 Annual Report, at 13.

19 *Id.*

1 in 1 trillion."[20] The Division stated that it would not have been able to bring this case a few years ago due to the geographical dispersal and technological sophistication of the perpetrators.[21]

The Commission has been reluctant to explain its use of "Big Data." Although the SEC has acknowledged that it uses in-house analytics to help it identify trading patterns to review, it has declined to elaborate about its systems, stating that they consist of proprietary information.[22] The SEC has also indicated that it is working on systems that will use artificial intelligence to analyze data and identify patterns to investigate.[23]

ADDITIONAL AREAS OF FOCUS FOR THE ENFORCEMENT DIVISION

Investment Adviser and Investment Company Investigations

The case statistics, as classified by the Division staff, show that 36% of the stand-alone cases were against investment advisers and investment companies, an increase from 22% of the total in Fiscal Year 2018, indicating that these registrants continue to be a target of the Division's interest. Because of the overwhelming numbers of registered investment advisers and investment companies, the Commission has, for the most part, ceded periodic broker-dealer examinations to FINRA, focusing on data-identified, risk-based, or other issue-oriented broker-dealer exams.[24] As a result, only about 10% of the exams conducted by OCIE this last fiscal year were of broker-dealers; the balance of the oversight rested in the Commission review of FINRA exams. Given that circumstance, presumably, the pipeline of referred matters from OCIE exams is made up largely of issues identified at registered investment advisers and investment companies.

Conflicts of interest have taken center stage this year. Co-Director Stephanie Avakian recently emphasized the Commission's focus on an adviser's potential conflict of interests in a November 2019 speech.[25] Ms. Avakian stated that the Commission would continue to focus on situations where an adviser's financial conflicts affect investment recommendations to the adviser's clients, stating, "[i]f an investment adviser receives some or greater compensation for selecting certain

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20 *Id.*

21 *Id.*

22 David Bennett, Senior Counsel, Division of Enforcement, *Panelist at DC Bar: "SEC and FINRA Continue to Expand Use of Big Data—What Does this Mean for the Securities Bar?"* (Jan. 16, 2020), https://join.dcbar.org/eweb/DynamicPage.aspx?site=dcbar&webcode=EventInfo&Reg_evt_key=24116661-2554-4159-8f40-1c732bd1c175&RegPath=EventRegFees&FreeEvent=&Event=WEBCAST:%20SEC%20and%20FINRA%20Continue%20to%20Expand%20Use%20of%20Big%20Data%20%E2%80%93%20What%20Does%20this%20Mean%20for%20The%20Securities%20Bar?%20&FundraisingEvent=&evt_guest_limit=9999.

23 *Id.*

24 *See* OCIE 2020 Priorities, at 2 (stating there were 350-plus examinations of broker-dealers out of 3,089 examinations total).

25 *See* SEC Division of Enforcement Co-Director Stephanie Avakian, *Keynote Remarks at the 2019 SEC Regulation Outside the United States Conference: "What You Don't Know Can Hurt You"* (Nov. 5, 2019), https://www.sec.gov/news/speech/speech-avakian-2019-11-05.

share classes over others, the adviser has a conflict of interest. Under the federal securities laws, that conflict must be fully and fairly disclosed."[26]

One example is revenue sharing, where a clearing broker can enter into an agreement to share a portion of fees received from a mutual fund with an introducing broker—which may also be a dually-registered adviser or affiliated with an adviser. The adviser must disclose its conflict of interest when clients are selecting between funds or share classes of funds that pay revenue sharing and those that do not.[27] Another area of focus is cash sweep arrangements, in which cash from advisory accounts is automatically swept into money market accounts, and where an adviser with an affiliated broker-dealer may have a conflicting financial interest in recommending one cash investment over another.[28] Ms. Avakian also noted the Commission's interest in unit investment trusts, or UITs and teacher retirement plans, with the focus on material disclosure of fee structures.[29]

Ms. Avakian encouraged firms to be proactive in evaluating their potential conflicts of interests and disclosures, including assessing compensations structures and expenses.[30] "This is an iterative process—as the market evolves or the business changes, you need to ask yourselves continually: are we being true to long-standing, fundamental principles, including full and fair disclosure?"[31]

<u>Individual Accountability</u>

The Commission continues to focus on individual accountability. In its 2019 Annual Report, the Division stated that "[h]olding individuals accountable is the Commission's most effective method of achieving deterrence," and that "individual accountability drives behavior and can also broadly impact corporate culture."[32] The Division noted that 69% of the Commission's stan-dalone actions in 2019 involved charges against one or more individuals, including CEOs, CFOs, and COOs, as well as "gatekeepers" such as accountants, auditors, and attorneys.[33]

Ms. Avakian echoed this sentiment in an October 2019 speech to the SEC Historical Society, noting: "We really do think individual accountability is critical in an effective enforcement program but we also think it's probably the most critical deterrent in terms of the term other conduct by other people."[34]

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26 *Id.*

27 *Id.*

28 *Id.*

29 *Id.*

30 *Id.*

31 *Id.*

32 2019 Annual Report, at 17.

33 *Id.*

34 *See* SEC Historical Society, *Q&A with SEC Enforcement Division Co-Directors Stephanie Avakian & Steven Peikin* (Oct. 21, 2019), http://www.sechistorical.org/museum/programs/2019/.

Insider Trading Developments

Insider trading continues to be an important part of the Division's enforcement program. As the Division noted in its 2019 Annual Report, the Commission brought charges against 42 individuals in connection with insider trading–related claims in Fiscal Year 2019.[35] In many of these cases, the Division's Market Abuse Unit Analysis and Detection Center, which uses data analysis tools to detect suspicious trading patterns across different securities (*i.e.*, "Big Data"), is responsible for helping the Staff identify possible instances of insider trading.

LITIGATION MATTERS AFFECTING THE ENFORCEMENT DIVISION

Lingering Impacts of the *Kokesh* Decision and the Five-Year Statute of Limitations

In 2017, the Supreme Court held, in *Kokesh v. SEC*, that the five-year statute of limitations under 28 U.S.C. § 2462 applies to disgorgement orders sought by the SEC.[36] The Commission stated that this decision has had a significant impact on its enforcement activities, as it believes that many securities frauds are complex, well concealed, and are not discovered until investors have been victimized over many years.[37] The Commission estimates that the *Kokesh* ruling has caused it to forgo approximately $1.1 billion in disgorgement in filed cases.[38]

The actual impacts of *Kokesh* are likely far greater than this number reflects, however, because since the *Kokesh* decision the Division has shifted its resources to those investigations that hold the most promise for returning funds to investors. Thus, although the Division has seen some improvement this year in its effort to uncover, investigate, and bring cases as quickly as possible, it is likely that *Kokesh* will continue to impact the Commission's ability to recover for harmed investors in long-running frauds.[39]

The End of Disgorgement?

On November 1, 2019, the Supreme Court granted a petition for certiorari in what could prove to be a highly consequential case for the Commission's enforcement powers. The petitioners in *Liu v. SEC*[40] contend that courts lack any authority to award disgorgement of ill-gotten gains as a remedy in Commission enforcement actions. This argument rests on the fact that the governing statutes do not expressly authorize such relief. Instead, they enable the Commission to seek injunctions,

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35 *See* 2019 Annual Report, at 24.

36 *See Kokesh v. S.E.C.*, ––– U.S. ––––, 137 S. Ct. 1635, 1639 (2017).

37 2019 Annual Report, at 21.

38 *Id.*

39 *Id.*

40 *SEC v. Liu*, 754 F. App'x 505, 506 (9th Cir. 2018), *cert. granted*, No. 18-1501, 2019 WL 5659111 (Nov. 1, 2019).

certain civil monetary penalties, and equitable relief.[41] According to the Commission, however, courts' powers to issue injunctions and award other equitable relief include the power to order disgorgement.[42] Lower courts have widely endorsed that view.[43]

But in *Liu*, the petitioners argue that the Commission's view is incompatible with the Supreme Court's ruling in *Kokesh*.[44] The Supreme Court unanimously held in *Kokesh* that any disgorgement awards are subject to the five-year statute of limitations in 28 U.S.C. § 2462. That holding rested on the Court's conclusion that disgorgement awards in enforcement actions qualify as "penalties" because they are meant to vindicate the public interest and to punish and deter, rather than to compensate, victims.[45] Because disgorgement is a penalty, petitioners contend, it cannot be injunctive or equitable relief.

As we explained in our prior coverage of the *Kokesh* ruling, the decision seemed to invite future litigants to pursue the very arguments that petitioners raise here. At the *Kokesh* oral argument, several of the Justices asked about the source of the Commission's authority to seek disgorgement at all—a fact that the *Liu* petitioners discussed at length in their petition for certiorari. Then a footnote in the *Kokesh* opinion made clear that the Court did not want to implicitly suggest that courts actually have authority to order disgorgement in enforcement proceedings.[46] Before *Kokesh*, courts had recognized such authority for nearly half a century.[47] The Court's willingness to question that conventional wisdom suggested that some members of the Court harbor significant doubts about whether the authority to order disgorgement actually does exist.

The fact that the Court granted certiorari in *Liu* provides further evidence of some Justices' skepticism. Unlike the vast majority of cases that the Supreme Court reviews, here there was no division of lower court authority on whether disgorgement is an authorized remedy. Even after *Kokesh*, courts have only rejected the argument that disgorgement lies beyond courts' remedial powers. The Solicitor General emphasized that point in opposing certiorari in *Liu*, and also contended that the petitioners had failed to preserve their current arguments in the lower courts.[48] But at least four Justices voted to hear the case anyway, suggesting that a significant contingent of the Court is eager to address courts' current approach to disgorgement requests. Perhaps because of such concerns, the SEC has support from a range of amici curiae—including a coalition of 23 states plus the District of Columbia—whose briefs urge the Supreme Court not to adopt the petitioners' views. The Supreme Court may yet conclude that disgorgement or some similar type of restitutionary remedy is appropriate in certain circumstances, but it would not be surprising to see the Court dramatically cut back on disgorgement's currently wide availability.

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41 15 U.S.C. § 77t(b), (d); 15 U.S.C. § 78u(d)(1), (3), (5).

42 *See* Brief for the Respondent in Opposition, *Liu v. SEC*, No. 18-1501 (U.S. filed Sept. 4, 2019).

43 *See id.* at 8-9.

44 *Kokesh*, 137 S. Ct. at 1635.

45 *Id.* at 1642-44.

46 *Id.* at 1642 n.3.

47 *See SEC v. Texas Gulf Sulphur Co.*, 312 F. Supp. 77 (S.D.N.Y. 1970), *aff'd in part, rev'd in part on other grounds*, 446 F.2d 1301 (2d Cir. 1971).

48 *See* Brief for the Respondent in Opposition 8-9, 11-12, *Liu v. SEC,* No. 18-1501 (U.S. filed Sept. 4, 2019).

Post-*Kokesh* Injunctions

Beyond disgorgement, courts continue to grapple with how to apply *Kokesh* to other sorts of remedies. This year, in *SEC v. Gentile*, the US Court of Appeals for the Third Circuit addressed the extent to which the five-year statute of limitations in 28 U.S.C. § 2462 governs injunctions against future violations of the securities laws—sometimes called "obey-the-law" injunctions—and "industry-bar" injunctions against future participation in a segment of the industry (here, penny stock offerings).[49]

Reversing the district court, the Third Circuit held that these two types of injunctions are not penalties within the *Kokesh* framework and therefore not subject to the five-year limitations period.[50] The court of appeals distilled the *Kokesh* definition of "penalty" into two principles: whether the targeted conduct is a wrong against the public as a whole (rather than an individual) and whether the remedy is imposed for punishment and deterrence (rather than compensation).[51] The Third Circuit held that the Commission was clearly seeking an injunction to protect the public as a whole, and so the case turned on the second consideration—whether the requested injunctions would be imposed "for punitive reasons."[52] Under "established principles" of equity, however, the Third Circuit concluded that obey-the-law and industry-bar injunctions cannot legitimately be imposed to punish past wrongdoing; instead, they must be imposed to prevent a real threat of future harm.[53] And that is how such injunctions have historically functioned in practice.[54]

The Third Circuit thus found these two types of injunctions outside the five-year statute of limitations by recognizing limits on courts' authority to issue such injunctions in the first place. On this approach, "[i]njunctions may not be supported by the desire to punish the defendant or deter others, so courts abuse their discretion when they issue or broaden injunctions for those reasons."[55] That means that "[i]f an injunction cannot be supported by a meaningful showing of actual risk of harm, it must be denied as a matter of equitable discretion."[56] At the same time, the Third Circuit expressed some hesitation over whether obey-the-law injunctions are generally appropriate in enforcement actions and serve a valid preventive purpose.[57] Going forward, courts and litigants should give careful thought to whether a particular request for injunctive relief is sufficiently tailored and supported to satisfy the conditions outlined in *Gentile*.

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49 *SEC v. Gentile*, 939 F.3d 549, 552 (3d Cir. 2019).

50 *Id.*

51 *Id.* at 554.

52 *Id.*

53 *Id.* at 555-57.

54 *Id.* at 557-61.

55 *Id.* at 562.

56 *Id.*

57 *Id.* at 564-65.

Ongoing Impact of *Lucia*

The SEC continues to respond to the Supreme Court's decision in *Lucia v. SEC*, which held that the SEC's Administrative Law Judges (ALJs) were hired in violation of the Appointments Clause of the Constitution.[58] As a result, the Court held that petitioner Raymond Lucia had a right to a hearing before a constitutionally appointed ALJ, who was selected in a process involving the Commissioners, rather than by the Chief ALJ with the assistance of the Office of Personnel Management.[59] Immediately following the June 21, 2018 decision, the Commission issued an Order staying all pending administrative proceedings.[60] On August 22, 2018, the Commission issued an Order reiterating that it had ratified the appointments of the ALJs and reiterating that each is appointed by the Commission, effectively lifting the stay, and approximately 200 administrative proceedings were reassigned.[61] In Fiscal Year 2019, many of the matters were resolved without the need to have a rehearing.[62] Three matters were the subject of full rehearings before new ALJs, and the SEC anticipates additional rehearings in Fiscal Year 2020.[63]

Supreme Court Adopts Broad Interpretation of Primary Liability in SEC Antifraud Case

In a decision beneficial to the Commission, the Supreme Court in, *Lorenzo v. SEC*, affirmed that those persons who disseminate statements containing material misrepresentations or omissions are primarily liable for such misstatements even if they did not directly make them.[64] Private securities litigants will likely rely on *Lorenzo* to assert claims against secondary actors—including bankers, lawyers, and accountants—who disseminate statements made by others that they allegedly know are materially misleading, and the Commission is now clear to charge such persons as primary violators without demonstrating that the person who actually made the statement also violated federal securities laws.[65]

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58 *Lucia v. SEC*, 138 S. Ct. 2044 (2018).

59 *Id.* at 2051 (background on how SEC hired ALJs), 2055 (holding).

60 *In Re: Pending Administrative Proceedings*, Release No. 4974, 2018 WL 3494802 (July 20, 2018).

61 2019 Annual Report, at 21.

62 *Id*.

63 *Id*.

64 For more analysis of some of the considerations and issues, please see our contemporaneous Morgan Lewis LawFlash, *Supreme Court Adopts Broad Interpretation Of Primary Liability In SEC Antifraud Case* (Mar. 28, 2019), https://www.morganlewis.com/pubs/supreme-court-adopts-broad-interpretation-of-primary-liability-in-sec-antifraud-case.

65 *Id*.

ENFORCEMENT STATISTICS[66]

SEC enforcement activity continued to increase in Fiscal Year 2019, with a total of 862 enforcement actions, composed of 526 independent actions for securities laws violations (stand-alone cases), 210 "follow on" administrative proceedings seeking associational bars against individuals, and 126 deregistration actions against issuers that were delinquent in making required filings.[67] In bringing these enforcement actions, the Commission obtained orders and judgments for the payment of more than $4.3 billion in penalties and disgorgement.[68] According to the Division, $1.2 billion was returned to investors in Fiscal Year 2019.[69] The number of stand-alone enforcement actions was nearly 7% higher in Fiscal Year 2019 (526) than in Fiscal Year 2018 (490), despite the near total cessation of enforcement activity for 35 days during the government shutdown. The higher figures are due, in part, to the self-reporting nature and accelerated resolution process of the SCSDI.

The chart below reflects the number of cases brought by the SEC over the last decade. The total number of enforcement actions brought in 2019 was the second highest total during the last 10 years, despite the government shutdown. Over the last five years, the average number of enforcement actions per year is 822. During the preceding five-year period, the average number of enforcement actions per year was 718. This represents a significant increase in the average number of enforcement actions brought in recent years.

Fiscal Year	Number of Enforcement Actions
2010	681
2011	735
2012	734
2013	686
2014	755
2015	807
2016	868
2017	754
2018	821
2019	862

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66 Unless otherwise noted, the information in this section is drawn from the SEC Division of Enforcement, 2019 Annual Report. The SEC's Fiscal Year 2019 began on October 1, 2018, and ended on September 30, 2019.

67 *Id.* at 9, 14.

68 *Id.* at 9.

69 *Id.*

Categories of Cases

Below is a chart that reflects the major categories of independent enforcement actions for Fiscal Year 2019, and the number and percentage of those cases for each category. The 2018 numbers and percentages are also provided as a reference. The most significant increase in enforcement activity relates to actions involving investment advisers and investment companies, which made up 36% of Fiscal Year 2019 actions compared to 22% of last year's actions, for an increase of 14%. (Again, this uptick is partially the result of the SCSDI.) Actions involving broker-dealers are down 6% this year compared to last year.

Type of Case	Number of Actions	Percentage of Total Actions	Number/Percentage in 2018
Investment Advisers/ Investment Companies	191	36%	108 cases/22%
Securities Offering	108	21%	121 cases/25%
Issuer Reporting/Audit & Accounting	92	17%	79 cases/16%
Broker-Dealer	38	7%	63 cases/13%
Market Manipulation	30	6%	32 cases/7%
Insider Trading	30	6%	51 cases/10%
FCPA	18	3%	13 cases/3%
Public Finance Abuse	14	3%	15 cases/3%
SRO or Exchange	3	1%	1 case/0%
Miscellaneous	1	0%	3 cases/1%
Transfer Agent	1	0%	2 cases/0%
National Recognized Statistical Ratings Organization (NRSRO)	1	0%	2 cases/0%
TOTAL	**527**	**100%**	**490 cases/100%**

The protection of retail or "Main Street" investors continues to be at the forefront of the Division's priorities, as evidenced by its continued focus on cases involving investment advisers, securities offerings, broker-dealers, and market manipulation. Collectively, these cases make up 70% of the total number of actions for Fiscal Year 2019. This total also includes the cyber-related actions brought by the Division in Fiscal Year 2019—as "cyber related threats" represent another area of key enforcement this year.

Civil Penalties and Disgorgement Orders

In Fiscal Year 2019, the SEC obtained orders requiring the payment of $1.101 billion in civil penalties and $3.248 billion of disgorgement.[70] This is the highest total monetary relief ordered in the last 10 years, and is approximately 10% higher than last year. The increase is largely attributable to an increase in disgorgement, which was about 30% higher this year than in Fiscal Year 2018 ($2.506 billion). Civil penalties actually fell by more than 20% when compared to 2018 ($1.439 billion). Notably, the Commission does not collect a significant amount of the payments ordered.

70 *Id.* at 16.

Fiscal Year	Penalties and Disgorgement
2010	$2.85 billion
2011	$2.806 billion
2012	$3.0 billion
2013	$3.4 billion
2014	$4.16 billion
2015	$4.19 billion
2016	$4.082 billion
2017	$3.789 billion
2018	$3.945 billion
2019	$4.349 billion

The median amount of total money ordered in Fiscal Year 2019 (among actions where money was ordered) was more than $550,000. This figure has increased substantially in recent years. In 2015, the median amount of money ordered was just over $270,000.

In Fiscal Year 2019, the Commission continued the trend of having the top 5% of cases account for the vast majority of the total money ordered. This year the top 5% of cases accounted for approximately $3.1 billion, which represents 70% of the money ordered by the Commission. The remaining 95% of cases accounted for nearly $1.2 billion in money ordered, which represents roughly 30% of total monetary remedies.

The Commission continues to focus on returning money to harmed investors. Over the last five years, the amount of money distributed to harmed investors has skyrocketed from $158 million in 2015 to $1.2 billion in 2019, an increase of more than 700%.[71]

Fiscal Year	Distributed to Harmed Investors	Penalties and Disgorgement for the Relevant Years	Percentage of Monetary Sanctions Distributed
2015	$158 million	$4.19 billion	3.77%
2016	$140 million	$4.082 billion	3.43%
2017	$1.073 billion	$3.789 billion	28.32%
2018	$794 million	$3.945 billion	20.13%
2019	$1.197 billion	$4.349 billion	27.52%

Additional Enforcement Statistics

In this year's 2019 Annual Report, the Division indicated that it would focus on accelerating the pace of its investigations. The Division stated that in Fiscal Year 2019, on average, just under 24 months elapsed between case opening and the filing of an enforcement action, and that the Division

71 *Id.* at 17.

is "striving to further lower this metric in Fiscal Year 2020."[72] The Division stated that financial fraud and issuer disclosure cases present the greatest challenge, taking 37 months on average from case opening to filing.[73] The Division also highlighted two significant matters where enforcement actions were filed 10 and 17 months after case opening.

The more than two-year SEC hiring freeze was lifted on April 1, 2019, and the Division hired 15 new staff members in Fiscal Year 2019.[74] Since 2015, the total staff of the Division has fallen from 1,608 to 1,472.[75] Despite that, the number of enforcement actions has increased during this period. This means that the staff is doing more with less, or as the Division puts it, "increas[ing] the number of [enforcement] actions brought per person."[76]

The Division obtained 31 court-ordered asset freezes during the fiscal year, which is an increase from 26 in Fiscal Year 2018.[77] In 2019, the Division took five cases to trial in federal district court.[78] The Commission prevailed in four trials, including two jury trials.[79]

EXAMINATION STATISTICS

In Fiscal Year 2019, OCIE completed 3,089 examinations.[80] OCIE examined approximately 2,180 registered investment advisers, covering about 15% of this population.[81] Examinations of investment companies increased this year to more than 150.[82] This number represents a 12% increase from the previous year.[83] OCIE completed 350-plus examinations of broker-dealers, 110 examinations of national securities exchanges, and more than 90 examinations of municipal advisors and transfer agents.[84] OCIE also completed 160-plus examinations of FINRA, including examinations of critical FINRA program areas as well as oversight reviews of FINRA examinations.[85] Finally, OCIE completed 15 examinations of clearing agencies.[86]

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72 *Id*. at 7.

73 *Id*.

74 *Id*. at 22.

75 *Id*.

76 *Id*.

77 *Id.* at 20.

78 *Id*.

79 *Id*.

80 *See* 2020 Examination Priorities, at 2.

81 *Id*.

82 *Id.*

83 *Id.*

84 *Id.*

85 *Id.*

86 *Id.*

In Fiscal Year 2019, OCIE issued more than 2,000 deficiency letters.[87] In response to these letters, firms took corrective action, including amending compliance policies and procedures, amending disclosures, or returning fees to investors.[88] As in prior years, OCIE also committed significant resources to verify the existence of investor assets at custodians to ensure that they are valued properly, a process known as "asset verification." In 2019, OCIE verified more than 3.1 million investor accounts, totaling more than $1.5 trillion.[89]

In its annual report, OCIE commented that it "continues to work to get results for harmed investors," and that there was $13 million in recoveries in Fiscal Year 2019 from examinations that were completed in Fiscal Year 2018.[90] OCIE made 150-plus enforcement referrals from its examinations in Fiscal Year 2019, and the office anticipates "more to come" in Fiscal Year 2020.[91]

The 2020 Examination Priorities also states that many new rules were finalized in 2019—including Regulation Best Interest (Reg BI)—which "will be [a] FY 2020 examination priorit[y]."[92] OCIE recognizes that Reg BI will require firms to change their operations, and it noted that the SEC has established an Inter-Divisional Standards of Conduct Implementation Committee, which includes OCIE staff.[93] OCIE said it encourages firms to engage with OCIE and other SEC staff as the firms plan for the implementation of Reg BI, which goes into effect on June 30, 2020.

As in prior years, OCIE said that it would emphasize the protection of retail investors in 2020, particularly seniors and those saving for retirement. OCIE also indicated it would prioritize areas such as information security, financial technology, digital assets, electronic investment advice, (i.e., "robo-advisers") and AML programs in its 2020 examinations.

OCIE evaluates its work against four pillars: "promoting compliance, preventing fraud, identifying and monitoring risk, and informing policy."[94] OCIE refers to this as a "risk-based approach" that provides the staff with greater flexibility in selecting firms and areas to examine.[95] OCIE also commented that the selection of firms to examine is driven by several potential risk factors, such as "products and services offered, including certain products identified as higher risk; compensation and funding arrangements; prior examination observations and conduct; disciplinary history of associated individuals and affiliates of a registered firm; changes in firm leadership or other personnel; and, whether a firm has access to investor assets, i.e., custody."[96]

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87 *Id.*

88 *Id.*

89 *Id.*

90 *Id.*

91 *Id.* at 3.

92 *Id.* at 4.

93 *Id.*

94 *Id.* at 8.

95 *Id.*

96 *Id.*

OFFICE OF THE WHISTLEBLOWER[97]

The SEC's Whistleblower program was established pursuant to the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), which became effective in July 2010. The program directs the Commission to make whistleblower awards to those eligible individuals who provide information that leads to a successful SEC enforcement action resulting in monetary sanctions above $1 million.[98] The recovery amount can range from 10% to 30% of the sanctions collected, at the discretion of the Commission. The Office of the Whistleblower (OWB) has been reporting to Congress, as required under the law, since December 2010.

The OWB in its required Annual Report advises that, since its inception, enforcement cases brought based on whistleblower information have resulted in monetary sanctions orders totaling over $2 billion, including more than $1 billion in disgorgement and prejudgment interest, of which $500 million, has been or will be returned to harmed investors.[99] Based on those enforcement cases, the Commission has ordered the payment of more than $387 million to 67 individuals through the whistleblower program.[100]

In Fiscal Year 2019, despite the lapse in appropriations, $60 million was awarded through the program to eight individuals.[101] Recipients of whistleblower awards in FY 2019 were diverse, including overseas whistleblowers and insiders who reported internally and took meaningful and timely steps in an effort to have their employer remediate the harm caused by the misconduct.[102] Three award recipients in 2019 were located abroad, or reported conduct that was occurring abroad, demonstrating the international reach of the program.[103] Three award recipients reported misconduct that was impacting retail investors, furthering a Commission priority to protect the Main Street investor.[104]

On March 26, 2019, the Commission announced awards totaling $50 million to two whistleblowers.[105] The awards relate to a single enforcement action. One individual received an award of $37 million, and the other received an award of $13 million.[106] The $37 million award is the Commission's third-largest award to date.[107]

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97 *See* SEC "*2019 Annual Report to Congress Whistleblower Program*" (Whistleblower Annual Report) (Nov. 15, 2019), https://www.sec.gov/files/sec-2019-annual%20report-whistleblower%20program.pdf.

98 *Id*. at 4.

99 *Id*.

100 *Id.*

101 *Id.*

102 *Id.*

103 *Id.*

104 *Id.*

105 *Id.* at 10.

106 *Id.*

107 *Id.*

In Fiscal Year 2019, the Commission continued to consider the public comments received on the Whistleblower Rule amendments proposed in June 2018. In addition to clarifying the requirements for anti-retaliation protections under the whistleblower statute following the Supreme Court's ruling in *Digital Realty*,[108] the proposed amendments would, among other things, provide tools to increase efficiencies in the claims-review process and address other topics that have developed during the program's eight-year history. The Commission anticipates new rules being adopted in Fiscal Year 2020.[109]

In a November 2019 statement to Congress, Chairman Clayton clarified that the proposed amendments were "largely designed to allow [the Commission] to get money into the hands of more whistleblowers faster."[110] Chairman Clayton further clarified that one of the proposed amendments, giving the Commission discretion for awards of more than $30 million, was not a cap, stating: "I do not support a cap. Congress vested in the Commission the authority and responsibility to use our good judgment and experience to determine award amounts within the range of 10-30% prescribed by Congress, and we should do just that."[111]

Whistleblower Statistics

In Fiscal Year 2019, the OWB received 5,212 whistleblower tips, just slightly below the amount received in 2018, but still the second largest number of tips received in a fiscal year, and a 74% increase since the beginning of the program.[112] The OWB attributes recent increases, at least in part, to the Supreme Court decision in *Digital Realty,* which held that to qualify for the employment retaliation protections included in Section 21F(h) of Dodd-Frank, a putative whistleblower must report possible securities law violations to the Commission.[113]

In this last fiscal year, the OWB received tips from every state and the District of Columbia, with the largest number coming from California, Pennsylvania, New York, Florida, and Texas.[114] The Commission also received tips from individuals in 70 foreign countries, with most of the non-US tips coming from Canada, the United Kingdom, and Germany.[115]

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108 *Digital Realty Trust, Inc. v. Somers*, 138 S. Ct. 767 (2018).

109 *See* Whistleblower Annual Report, at 1.

110 *See* Statement on Whistleblower Program 2019 Annual Report to Congress (Nov. 15, 2019), https://www.sec.gov/news/public-statement/statement-clayton-2019-11-15-whistleblower.

111 *Id*.

112 *See* Whistleblower Annual Report, at 22.

113 *See generally, Digital Realty Trust, Inc. v. Somers*, 138 S. Ct. 767 (2018).

114 *See* Whistleblower Annual Report, at 24, Appendix B.

115 *Id*. at 25, Appendix C.

As in prior years, "Other" is the largest substantive area for tips, this last year accounting for more than 30% of the total tips.[116] Corporate Disclosures and Financials, Offering Fraud, and Manipulation categories are generally the next three types of allegations asserted.[117] Notably, the number of allegations related to Offering Fraud, Trading and Pricing, Unregistered Offerings, and Market Events decreased substantially.[118] Below is a tally of whistleblower tips by substantive allegation area over the last four years, based on the categories offered by the OWB.[119]

Allegation Type	Number of Allegations 2019	Number of Allegations 2018	Number of Allegations 2017	Number of Allegations 2016
Other	1,614	1,210	1,162	996
Offering Fraud	692	1,054	758	646
Corporate Disclosures and Financials	1,107	983	954	938
Manipulation	535	624	468	472
Trading and Pricing	201	333	271	257
Insider Trading	222	262	231	262
Unregistered Offerings	138	252	144	143
FCPA	200	202	210	238
Market Events	48	157	125	102
Not Reported	131	109	94	97
Municipal Securities and Public Pension	35	57	58	57

Retaliation Protections

Retaliation protection remains a key tenet of the whistleblower program. The OWB continues to support enforcement investigations where retaliation occurred after the whistleblower reported securities violations to the Commission. The OWB also continues to work to identify and investigate practices in the use of confidentiality and other kinds of agreements, or engagement in other practices, that may interfere with individuals' abilities to report potential wrongdoing to the Commission.[120]

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116 *Id.* at 23.

117 *Id.*

118 *Id.*

119 *Id.* at 23, Appendix C.

120 *Id.* at 21.

KEY PERSONNEL CHANGES[121]

Below is a selection of noteworthy personnel changes that occurred at the SEC in Fiscal Year 2019.

COMMISSION CHANGES

Allison Herren Lee was sworn into office on July 8, 2019, as SEC Commissioner, having been nominated to the SEC by President Donald J. Trump and unanimously confirmed by the US Senate. Commissioner Lee has more than two decades of experience as a securities law practitioner. She served for more than a decade in various roles at the SEC, including as counsel to Commissioner Kara Stein and as Senior Counsel in the Division's Complex Financial Instruments Unit. Prior to government service, Commissioner Lee was a partner at Sherman & Howard LLC, focusing on securities, antitrust, and commercial litigation. Commissioner Lee fills a term that expires on June 5, 2022.

In addition to Commissioner Lee, the composition of the Commission is presently as follows:

- Chairman **Jay Clayton** was appointed in 2017, and his term expires in 2021.
- Commissioner **Hester M. Peirce** was appointed in 2018, and her term expires in 2020.
- Commissioner **Elad L. Roisman** was appointed in 2018, and his term expires in 2023.

Commissioner **Robert J. Jackson Jr.,** who was appointed in 2018, announced his resignation on January 16, 2020.[122] Commissioner Jackson left the Commission on February 14, 2020, to return to teaching at the New York University School of Law. In December 2019, press articles reported that Senate Democrats had provided a replacement nominee to the White House, **Caroline Crenshaw**, an attorney in Commissioner Jackson's office.[123] Ms. Crenshaw, who has not yet been formally nominated, has been with the SEC since 2013, previously working for former Commissioner Kara Stein.[124] Ms. Crenshaw is also a judge advocate in the US Army Judge Advocate General's Corp.[125]

The SEC announced that **Vanessa Countryman** was named Acting Secretary on February 26, 2019. Ms. Countryman joined the SEC in July 2010 as Counsel to Commissioner Kathleen Casey and subsequently to Commissioner Daniel Gallagher. For the last five years, Ms. Countryman has

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121 Unless otherwise noted, the information regarding these personnel changes was drawn from SEC press releases available on the Commission's website.

122 *See* Paul Kiernan, *SEC Commissioner Jackson Resigns to Return to Law School Teaching Position*, THE WALL STREET JOURNAL (Jan. 16, 2020), https://www.wsj.com/articles/sec-commissioner-jackson-resigns-to-return-to-law-school-teaching-position-11579183208.

123 *See* Katanga Johnson, *White House expected to nominate SEC lawyer for Democratic commissioner seat – sources*, Reuters (Dec. 20, 2019), https://www.reuters.com/article/us-usa-sec-nominations-exclusive/exclusive-white-house-expected-to-nominate-sec-lawyer-for-democratic-commissioner-seat-sources-idUSKBN1YO2CN.

124 *See* note 4, *supra*.

125 *Id*.

served as Chief Counsel in the Division of Economic and Risk Analysis (DERA). Prior to joining the SEC, Ms. Countryman practiced law at Gibson, Dunn & Crutcher LLP.

On June 26, 2019, Chairman Clayton released a full roster of his executive staff, three of whom joined the team in 2019:

- **Sean Memon**, incoming Chief of Staff;
  - Mr. Memon had served as the SEC's Deputy Chief of Staff since May 2017. In that capacity, he served as Senior Advisor to Chairman Clayton. Prior to joining the SEC, Mr. Memon practiced law at Sullivan & Cromwell LLP.
- **Bryan Wood**, incoming Deputy Chief of Staff;
  - Mr. Wood had served as the Director of the SEC's Office of Legislative and Intergovernmental Affairs since June 2017. Prior to joining the agency, Mr. Wood spent 10 years on Capitol Hill, mostly recently as Senior Advisor and Counsel to the House Financial Services Committee.
- **Kristene Blake**, Director of Administration;
- **Alan Cohen**, Senior Policy Advisor to the Chairman;
- **Eric Diamond**, Senior Advisor to the Chairman;
- **Jeffrey Dinwoodie**; Chief Counsel and Senior Policy Advisor for Market and Activities-Based Risk;
- **Sharon Freeman**, Program Support Specialist;
- **Sebastian Gomez Abero**, Senior Advisor to the Chairman;
- **Kelly Halferty**, Special Assistant;
- **Kimberly Hamm**, Chief Counsel and Senior Policy Advisor;
- **Manisha Kimmel**, Senior Policy Advisor on the Consolidated Audit Trail;
- **Kristina Littman**, Senior Advisor to the Chairman (see also below regarding Ms. Littman's appointment as Chief of the Division of Enforcement's Cyber Unit in December 2019);
- **Awilda Santiago**, Correspondence Coordinator;
- **Kay Smith**, Senior Advisor to the Chairman;
- **Natalie Strom**, Communications Director;
- **Peter Uhlmann**, Managing Executive; and
- **Kevin Zerrusen**, Senior Advisor to the Chairman for Cybersecurity Policy.

Also on June 26, 2019, the SEC announced that SEC Chief of Staff **Lucas Moskowitz** was leaving the agency in early August 2019 to return to the private sector.

DIVISION OF ENFORCEMENT

On December 2, 2019, the SEC announced that **Kristina Littman** would be the next Chief of the Division of Enforcement's Cyber Unit, the SEC's specialized unit that focuses on cyber-related misconduct. Ms. Littman succeeds Robert Cohen, who left the SEC in August 2019. Ms. Littman was previously a staff attorney in the Division and, more recently, a Senior Advisor to Chairman Clayton. Before joining the SEC, Ms. Littman was an associate at Drinker Biddle & Reath LLP. Her practice had focused on white collar and securities litigation.

SEC REGIONAL OFFICES

Chicago Regional Office:

Robert Burson has retired from his role as Associate Regional Director of Enforcement after 29 years at the agency. Kathryn A. Pyszka remains Associate Regional Director (Enforcement).

Fort Worth Regional Office:

David Peavler was named Regional Director of the Fort Worth Office on June 6, 2019. Mr. Peavler previously served for nearly 15 years in senior Division roles in the Fort Worth Regional Office, most recently as an Associate Director. He rejoins the SEC from HD Vest Inc., where he served as General Counsel since 2017.

Los Angeles Regional Office:

Katharine E. Zoladz was named Associate Regional Director of Enforcement in the Los Angeles Regional Office on October 8, 2019. Ms. Zoladz succeeds John Berry, who left the agency in July 2019. Ms. Zoladz began working at the Division as a staff attorney in the Los Angeles Regional Office in 2010 and joined the Division's Asset Management Unit in 2017.

San Francisco Regional Office:

Erin E. Schneider was named the Director of the San Francisco Regional Office on May 28, 2019. In her role, Ms. Schneider leads a staff of more than 125 enforcement attorneys, compliance examiners, and others involved in the investigation and prosecution of enforcement matters and compliance inspections across the Northern California and Pacific Northwest region. Ms. Schneider has been with the SEC since 2005, and most recently served as Associate Regional Director of the San Francisco Regional Office since 2015.

On September 3, 2019, **Monique C. Winkler** was named Associate Regional Director of Enforcement in the San Francisco Regional Office. Ms. Winkler succeeds Ms. Schneider. In her role, Ms. Winkler will have oversight of the office's enforcement activities in Northern California and the Pacific Northwest. Ms. Winkler began working at the SEC in 2008, and was most recently an Assistant Regional Director.

DIVISION OF ECONOMIC AND RISK ANALYSIS

On November 13, 2019, the SEC appointed **Marie-Louise (Malou) Huth** as Chief Counsel for the Division of Economic and Risk Analysis. In this position, Ms. Huth leads DERA's Office of Chief Counsel and is responsible for collaborating with SEC staff across the Commission regarding integrating DERA's analyses into actions throughout the Commission. Previously, Ms. Huth had been the Assistant General Counsel for Investment Management and Administrative Law within the Office of the General Counsel, Counsel to the Director of the Division of Trading and Markets, and Special Counsel in that division's Office of the Chief Counsel. Ms. Huth joined the SEC in 2012.

DIVISION OF INVESTMENT MANAGEMENT

On February 26, 2019, **Brent J. Fields** was named Associate Director of Disclosure Review and Accounting of the SEC's Division of Investment Management, where he will oversee the division's disclosure and accounting review programs. Mr. Fields is a 23-year SEC veteran who has served as Secretary of the Commission since 2014.

On June 17, 2019, **Adam B. Glazer** was named Senior Advisor to the Director of the Division of Investment Management, where he will advise the Director of Investment Management on issues related to mutual funds and investment advisers. Mr. Glazer has been Counsel to SEC Commissioner Hester M. Peirce since 2018. Prior to that, he served as Counsel to SEC Commissioner Michael S. Piwowar from September 2013 until January 2018. He is a 19-year SEC veteran who joined the agency in 2000 as an attorney in the Division of Investment Management.

On December 23, 2019, the SEC announced that **Susan Nash**, Associate Director in the Division of Investment Management, would be leaving the SEC after 30 years of public service.

OFFICE OF COMPLIANCE INSPECTIONS AND EXAMINATIONS

On June 4, 2019, the SEC named **Marshall Gandy** as the Co-National Associate Director of the Investment Adviser/Investment Company examination program in the Office of Compliance Inspections and Examinations. Mr. Gandy will work with Co-National Director Kristin Snyder, who has been OCIE's Deputy Director since July 25, 2018. Mr. Gandy and Ms. Snyder will lead a team of 630 lawyers, accountants, and SEC examiners in their oversight of SEC-registered companies and individual advisers. Before assuming this new role, Mr. Gandy was the Associate Regional Director for Examinations in the SEC's Fort Worth Office. He has been with the SEC since 1999.

On October 29, 2019, **Natasha Vij Greiner** was named Associate Director of OCIE's investment adviser and investment company examination program. Ms. Greiner is responsible for leading the Washington, DC–based investment adviser and investment company examination office. Ms. Greiner has served in various roles at the SEC for the last 18 years, including recently as Acting Chief Counsel and Assistant Chief Counsel in the Division of Trading and Markets, where she provided legal and policy advice to the Commission on rules affecting market participants and the operation of the securities markets.

OFFICE OF ADMINISTRATIVE LAW JUDGES

On November 27, 2019, the SEC announced that Chief Administrative Law Judge **Brenda Murray** would be retiring, after having served 25-plus years as Chief Administrative Law Judge and having a total of 50 years of federal service. Following Judge Murray's departure, the Commission appointed the remaining three Administrative Law Judges (ALJs) to each serve successive 120-day details as Acting Chief Administrative Law Judge commencing December 1, 2019, beginning with Judge Carol Fox Foelak, followed by Judge James Grimes, and then Judge Jason Patil.

OFFICE OF THE CHIEF ACCOUNTANT

On December 3, 2019 the SEC announced the appointment of **Paul Munter** as the Deputy Chief Accountant for the SEC's Office of the Chief Accountant. In this role, Mr. Munter will lead the office's activities on international matters, working closely with various international organizations including the International Organization of Securities Commissions, the International Accounting Standards Board, and the International Auditing and Assurance Standards Board, among others. Mr. Munter was previously a partner at KPMG, LLP, and joins the SEC from the University of Colorado – Boulder, where he taught accounting. He has also been an academic fellow at the SEC.

Also on December 3, 2019, the SEC announced that **John Vanosdall** had been appointed as a Deputy Chief Accountant (Accounting Group) in the SEC's Office of the Chief Accountant. In this role, Mr. Vanosdall will lead the activities of the office's accounting group, as well as consult with internal divisions and offices and external persons and entities regarding the application of accounting standards and financial disclosure requirements. In his position, he will also help the SEC with its oversight of the Financial Accounting Standards Board. Before joining the SEC, Mr. Vanosdall was a partner in PricewaterhouseCoopers LLP's mergers and acquisitions group. He had also previously served as a professional accounting fellow in the SEC's Office of the Chief Accountant.

OFFICE OF MINORITY AND WOMEN INCLUSION

On December 19, 2019, the SEC announced that **Robert A. Marchman** had joined the SEC in the newly created role of Senior Policy Advisor on Diversity and Inclusion within the SEC's Office of Minority and Women Inclusion. Mr. Marchman will be focused on promoting diversity and inclusion throughout SEC offices, as well as liaising with other government agencies and market participants. Mr. Marchman joins the SEC from FINRA, where he served as special advisor to the head of the Department of Enforcement.

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

On October 11, 2019, the SEC appointed **Rebekah Goshorn Jurata** as a member of the Public Company Accounting Oversight Board (PCAOB) for a term ending October 24, 2024. Ms. Jurata currently serves as Special Assistant to the President for Financial Policy and is responsible for advising the President and the National Economic Council Director on an array of financial services policy matters.

The SEC also announced that **Kathleen M. Hamm** left the PCAOB after completing her term as a board member in October 2019. Ms. Hamm's term began in January 2018.

DEPUTY GENERAL COUNSEL FOR GENERAL LAW AND MANAGEMENT

On February 4, 2019, the SEC named **Elizabeth McFadden** as its Deputy General Counsel for General Law and Management of the Commission. In addition to other responsibilities, she will oversee representation of the Commission and its members and employees in litigation. Ms. McFadden joins the SEC after 15-plus years at the US Department of Education.

OFFICE OF THE CHIEF ACCOUNTANT

On February 21, 2019, the SEC named **Giles Cohen** as its Acting Chief Counsel, Office of the Chief Accountant (OCA). The OCA is responsible for accounting and auditing matters arising in the Commission's administration of the federal securities laws. Mr. Cohen has served in that office as its Deputy Chief Counsel since May 2016.

On April 15, 2019, the SEC named **Sagar Teotia** as its Acting Chief Accountant. As Acting Chief Accountant, Mr. Teotia will serve as the principal advisor to the Commission on accounting and auditing matters and will lead the Commission's Office of the Chief Accountant. He also will be responsible for assisting the Commission with the oversight of the Financial Accounting Standards Board and the PCAOB. Mr. Teotia had previously served as Deputy Chief Accountant since 2017.

DIVISION OF ECONOMIC AND RISK ANALYSIS

On February 26, 2019, the SEC named **Dr. S.P. Kothari** as Chief Economist and Director of the Division of Economic and Risk Analysis. In this role, he oversees economists, data scientists, and other professionals who provide financial economics and data science in support of the SEC's mission. Dr. Kothari joined the SEC from the Sloan School of Management at the Massachusetts Institute of Technology, where he served as both a professor and an administrator.

On February 28, 2019, the SEC named **Gabriel Benincasa** as its first Chief Risk Officer. Chairman Clayton created this position to strengthen the agency's risk management and cybersecurity efforts. In this new role, Mr. Benincasa will coordinate the SEC's continued efforts to identify, monitor, and mitigate key risks facing the Commission. Mr. Benincasa joins the Commission with extensive oversight experience in the private sector.

On June 3, 2019, the SEC named **Kevin A. Zerrusen** as Chairman Clayton's Senior Advisor for Cybersecurity Policy. In this role, Mr. Zerrusen will coordinate efforts across the agency to address cybersecurity policy, engage with external stakeholders, and help enhance the SEC's mechanisms for assessing cyber-related risks. Mr. Zerrusen also presently serves as chair of the Intelligence National Security Alliance's Cyber Council, a group chartered to promote effective public-private sector collaboration on cybersecurity issues. Mr. Zerrusen is a 30-year veteran of the Central Intelligence Agency. He joins the SEC from Goldman Sachs, where he worked as a Managing Director leading initiatives to strengthen technology risk governance, incident management, and insider threat programs.

DIVISION OF INVESTMENT MANAGEMENT

On April 15, 2019, the SEC named **Sara Cortes** and **David P. Bartels** as Deputy Chief Counsels of the Division of Investment Management. In these roles, Ms. Cortes will oversee the exemptive applications program and Mr. Bartels will oversee the enforcement liaison program. They will share responsibility for staff legal guidance by the Chief Counsel's Office. Ms. Cortes has been a member of the division's Rulemaking Office since 2013, serving most recently as Assistant Director and head of the Investment Adviser Regulation Office. Mr. Bartels has served in a number of capacities in the Division of Investment Management, most recently as Senior Policy Advisor to Director Dalia Blass.

OFFICE OF MUNICIPAL SECURITIES

On June 3, 2019, the SEC named **Ahmed Abonamah** as Deputy Director of the agency's Office of Municipal Securities (OMS). In this role, he will oversee many of OMS's strategic initiatives and advise its leadership on legal, strategic, and policy matters regarding the municipal securities market. Before the announcement, Mr. Abonamah worked with the SEC for three-plus years, most recently as OMS's Senior Counsel to the Director.

LOOKING AHEAD: SEC ENFORCEMENT AND EXAMINATION PRIORITIES IN 2020

Based on our review of currently available information, the following list reflects some of the SEC's top enforcement and examination priorities for Fiscal Year 2020.

Protecting Retail Investors

- Reg BI, the Investment Advisers Interpretation, and Form CRS
  - Implementing new rules
  - Updating policies and procedures
  - Forms and disclosures

- Conflicts of Interest
  - Use of affiliated products and services
  - Securities-backed lines of credit (SBLOCs)
  - Revenue sharing arrangements
  - Cash sweep arrangements
  - UITs

- Disclosure of Fees and Expenses

- Senior Investors and Retirement Accounts and Products
  - Recommendations
  - Supervision and controls
  - Complex products and products with high fees

- Retail-Targeted Investments
  - Financial incentives to sell certain funds
  - Municipal securities and other fixed-income securities
  - Microcap securities

- Management of Investment Portfolios and Trading
  - Fair allocation of investment opportunities
  - Ensuring that investments are consistent with client objectives
  - Suitability, in terms of client objectives and risk tolerance

RIAs and Investment Companies

- RIA compliance programs
  - Dually registered RIAs
  - Best execution, prohibited transactions, and fiduciary advice

- Never-Before or Not Recently Examined Investment Advisers
  - Updated compliance programs in light of growth or changed business model

- Mutual Funds and Exchange-Traded Funds (ETFs)
  - RIAs that use third-party administrators to sponsor funds
  - Never-before examined funds
  - RIAs to private funds

Broker-Dealers

- Broker-Dealer Financial Responsibility
  - Compliance with the Customer Protection Rule and the Net Capital Rule
  - Processes, procedures, and controls

- Trading and Broker-Dealer Risk Management
  - Odd lots
  - Automated trading algorithms
  - Procedures, practices, and controls to manage trading risk

- Municipal advisors

Market Infrastructure

- Clearing Agencies
  - Annual reviews of those firms identified as systemically important with a focus on:
    - Financial and operational risks
    - Resources and capabilities to monitor and control such risks
    - Safety and soundness of the organization
    - Compliance with the Exchange Act, Dodd-Frank Act, and other applicable rules and regulations
  - Risk-based exams of other registered clearing firms

- Reg SCI Entities
  - Policies, procedures, and controls
  - IT management and governance
  - Third-party vendor management

- Transfer Agents
  - Transfers, recordkeeping, and record retention
  - Annual audit reports
  - Blockchain technology
  - Microcap securities, private offerings, crowdfunded securities, and digital assets

- National Securities Exchanges
    - Operations and reaction to market disruptions

Financial Technology

- Digital Assets

- Suitability, portfolio management, safety of client funds, pricing and valuation, effectiveness of compliance programs, and supervision of employee outside business activities

- Electronic Investment Advice
    - SEC registration eligibility, cybersecurity, marketing practices, fiduciary duty, and compliance programs

Information Security

- Governance and ongoing risk assessment of cybersecurity programs

- Information security governance, policies and procedures, and controls

- Customer data protection

- Vendor management, training, and incident response

AML Programs

- Continued review of regulated entity AML programs
    - Implementing all elements of the AML programs
    - Independent and robust evaluation of AML program testing

- Continued review of appropriate filing of Suspicious Activity Reports

SEC ENFORCEMENT ACTIONS[126]

Cases Relating to Broker-Dealer Firms and Their Employees/Affiliated Persons

American Depositary Receipts (ADRs)

In re Citibank, N.A., Securities Act Rel. No. 10571, 2018 SEC LEXIS 3108 (Nov. 7, 2018)

The Commission accepted an Offer of Settlement from Citibank, N.A. (the Firm), relating to its handling of ADRs. The Firm served as a depositary bank that issued and canceled ADRs pursuant to a deposit agreement. The Commission alleged that despite its contractual obligation, the firm obtained and lent pre-released ADRs to broker-dealers without taking reasonable steps to determine whether the appropriate number of ordinary shares of the foreign company's stock evidenced by the ADRs was owned by and in the custody of either the broker or its customer on whose behalf the pre-released ADRs were obtained. The Firm also, at times, allegedly facilitated short sales and enabled the settlement of trades with ADRs that were not backed by ordinary shares. The Commission found that this conduct violated Section 17(a)(3) of the Securities Act. As a result, the Firm was ordered to cease and desist from future violations and pay approximately $20.9 million in disgorgement, approximately $4.3 million in prejudgment interest, and a civil monetary penalty of approximately $13.6 million. According to the SEC, the civil penalty would have been higher but for the Firm's cooperation and its ongoing agreement to cooperate in a related enforcement action.

In the Matter of the Bank of New York Mellon, Securities Act Rel. No. 10586, 2018 SEC LEXIS 3531 (Dec. 17, 2018)

The Commission accepted an offer from The Bank of New York Mellon (the Firm), a New York State chartered bank, without an admission or denial, to settle charges related to its role as a depositary in the issuance of pre-released ADRs. From 2011 to 2016, the Firm allegedly negligently failed to determine if, as required by pre-release agreements, the parties on whose behalf the pre-released ADRs were being obtained from the Firm beneficially owned the underlying shares of the foreign company's stock reflected in the ADRs. The Firm allegedly should have been aware that brokers were not complying with these agreements because, for instance, personnel knew that pre-release brokers routinely loaned pre-released ADRs and that activity should have alerted the personnel that the pre-release brokers were likely not the beneficial owners of the corresponding ordinary shares. The Commission found that this conduct violated Section 17(a)(3) of the Securities Act of 1933. The Firm was required to cease and desist from future violations and to pay $29,369,032 in disgorgement, $4,260,199 in prejudgment interest, and a civil monetary penalty of $20,558,322. The Commission credited the Firm's voluntary remediation and cooperation with the Staff in reaching this settlement.

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[126] The cases described herein are settlements in which the respondents neither admitted nor denied the allegations against them, unless the description explicitly states otherwise.

***In re JPMorgan Chase Bank, N.A.*, Securities Act Rel. No. 10600, 2018 SEC LEXIS 3650 (Dec. 26, 2018)**

The Commission accepted an Offer of Settlement from JPMorgan Chase Bank, N.A. (the Firm) related to its role as a depositary bank in the issuance of pre-released ADRs. From 2011 to 2015, the Firm allegedly negligently failed to determine if, as required by pre-release agreements, the parties on whose behalf pre-released ADRs were being obtained from the Firm beneficially owned the underlying shares of the foreign company's stock evidenced by the ADRs. This resulted in the issuance of ADRs that were not backed by ordinary shares. Firm personnel allegedly became aware of large pre-release brokers' failure to comply with pre-release obligations when the brokers could not return pre-released ADRs at the Firm's request and when brokers informed the Firm that neither they nor their customers possessed the ordinary shares. As a result, the Firm's reliance on pre-release agreements and annual compliance certifications by the brokers was alleged to be insufficient to address the known risks of pre-released ADRs being issued without being backed by ordinary shares. The Commission found that this conduct violated Section 17(a)(3) of the Securities Act of 1933. The Firm was required to cease and desist from future violations and to pay disgorgement of $71,041,225, prejudgment interest of $14,407,596, and a civil monetary penalty of $49,728,858. The Commission credited the Firm's remediation and cooperation in reaching this resolution.

***In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, Exchange Act Rel. No. 85395, 2019 SEC LEXIS 590 (Mar. 22, 2019)**

The Commission accepted an Offer of Settlement from Merrill Lynch, Pierce, Fenner & Smith Incorporated (the Firm), an investment adviser and broker-dealer, related to its securities lending practices involving pre-released ADRs. From 2012 to 2014, the Firm allegedly borrowed pre-released ADRs from other brokers pursuant to loan agreements that neither addressed pre-released ADRs nor contained any provisions requiring satisfaction of the brokers' pre-release obligations to the depositary banks that issued them. The Firm allegedly engaged in indirect pre-release transactions in which it should have known that neither it nor the brokers could satisfy the applicable pre-release obligations because neither owned the foreign shares underlying the ADRs. The Firm also was alleged to have failed to establish and implement policies, procedures, and supervision to prevent and detect violations of the securities laws by its personnel concerning these types of transactions. The Commission found that this conduct violated Section 17(a)(3) of the Securities Act of 1933 and Section 15(b)(4)(E) of the Securities Exchange Act of 1934. The Commission censured the Firm, and the Firm was required to pay disgorgement of $4,448,292, prejudgment interest of $724,795, and a civil monetary penalty of $2,891,389. The Commission credited the Firm's cooperation in the investigation in reaching this resolution.

***In re Industrial & Commercial Bank of China Financial Services, LLC*, Securities Exchange Act Rel. No. 86108, 2019 SEC LEXIS 1395 (June 14, 2019); In re Domenick Migliorato, Exchange Act Rel. No. 87302, 2019 SEC LEXIS 3917 (Oct. 15, 2019)**

The Commission accepted Offers of Settlement from Industrial and Commercial Bank of China Financial Services, LLC (the Firm), a broker-dealer headquartered in New York, and Domenick Migliorato (Migliorato), a Managing Director at the Firm who supervised its securities lending desk, related to its handling of ADRs. From 2011 to 2015, the Firm allegedly obtained and lent pre-released ADRs to other broker-dealers without taking reasonable steps to determine if, as required by pre-release agreements with depositary banks, the broker or its customer beneficially owned the corresponding number of ordinary shares of the foreign company's stock underlying the ADRs. The Firm allegedly facilitated short sales and enabled the settlement of trades with ADRs that were not backed by ordinary shares. The Firm also was alleged to have failed to implement effective policies and procedures to detect and prevent these types of transactions. The Commission found that this conduct violated Section 17(a)(3) of the Securities Act of 1933 and Section 15(b)(4)(E) of the Securities Exchange Act of 1934. The Commission also alleged that Migliorato had failed to take reasonable steps to ensure that personnel he supervised confirmed ownership of the requisite shares associated with the ADRs despite, among other things, knowing that personnel were lending pre-released ADRs pursuant to standard lending agreements that did not require compliance with any pre-release obligations. The Commission found that this conduct violated Section 15(b)(6) of the Securities Exchange Act of 1934. The Firm was censured and required to cease and desist from future violations and to pay $23,985,439 million in disgorgement, $4,458,491 million in prejudgment interest, and a civil monetary penalty of $14,391,262. The Commission credited the Firm's remediation and cooperation in reaching this resolution. Migliorato was censured, suspended from acting in a supervisory capacity for three years, and required to pay a civil monetary penalty of $150,000.

***In re Wedbush Securities, Inc.*, Securities Act Rel. No. 10650, Exchange Act Rel. No. 86133, 2019 SEC LEXIS 1431 (June 18, 2019)**

The Commission accepted an Offer of Settlement from Wedbush Securities, Inc. (the Firm), an investment adviser and broker-dealer, relating to its handling of pre-released ADRs. From 2011 to 2013, Firm personnel allegedly regularly obtained pre-released ADRs from depositary banks and loaned them to counterparties without taking reasonable steps to determine if, as required by pre-release agreements with those banks, the Firm or its borrowers owned and had custody of the foreign shares underlying the ADRs. The Firm also allegedly facilitated short sales and enabled the settlement of trades with ADRs that were similarly not backed by corresponding ordinary shares as required by the pre-release agreements and failed to establish and implement effective supervisory policies and procedures to address whether its employees complied with the Firm's obligations in connection with pre-release transactions. The Commission found that this conduct violated Section 17(a)(3) of the Securities Act of 1933 and Section 15(b)(4)(E) of the Securities Exchange Act of 1934. The Firm was required to cease and desist from future violations and to pay $4,869,072 in disgorgement, $805,641 in prejudgment interest, and a civil monetary penalty of $2,434,536. The Commission credited the Firm's voluntary remediation and cooperation with the Staff in reaching this resolution.

***In re BMO Capital Markets Corp.*, Exchange Act Rel. No. 86693, 2019 SEC LEXIS 2109 (Aug. 16, 2019)**

The Commission accepted an Offer of Settlement from BMO Capital Markets Corporation (the Firm), a broker-dealer, relating to its handling of pre-released ADRs. From 2012 to 2014, the Firm allegedly obtained pre-released ADRs from brokers that the Firm should have known did not comply with pre-release agreements with depositary banks that required the broker or its client to beneficially own the foreign shares underlying the ADRs. The Firm also allegedly failed to establish and implement supervisory policies and procedures designed reasonably to detect whether personnel borrowed ADRs that had been similarly inappropriately obtained by brokers and then used them to settle customer trades, lent them to customers, or used them for proprietary trading strategies. The Commission found that this conduct violated Section 15(b)(4)(E) of the Securities Exchange Act of 1934. The Commission censured the Firm and the Firm was required to pay $2,218,363 in disgorgement, $546,340 in prejudgment interest, and a civil monetary penalty of $1,200,000. The Commission credited the Firm's cooperation in the investigation in reaching this resolution.

***In re Cantor Fitzgerald & Co.*, Securities Act Rel. No. 10672, Exchange Act Rel. No. 86694, 2019 SEC LEXIS 2108 (Aug. 16, 2019)**

The Commission accepted an Offer of Settlement from Cantor Fitzgerald & Co. (the Firm), a broker-dealer, relating to its handling of pre-released ADRs. From 2012 to 2014, the Firm allegedly obtained pre-released ADRs from brokers without taking reasonable steps to ensure that the brokers or their clients beneficially owned the foreign shares underlying the ADRs, in violation of agreements between the brokers and the depositary banks that issued the ADRs. The Firm allegedly violated a similar agreement with a depositary bank by loaning pre-released ADRs that it obtained from the depositary to borrowers without taking reasonable steps to ensure that the Firm or the borrower beneficially owned the foreign shares underlying the ADRs. As a result, pre-release ADRs were issued that were not backed by ordinary shares, as required by various pre-release agreements with depositaries. The Firm also was alleged to have failed to establish and implement effective policies and procedures to reasonably address whether its securities lending desk was engaging in these types of transactions. The Commission found that this conduct violated Section 17(a)(3) of the Securities Act of 1933 and Section 15(b)(4)(E) of the Securities Exchange Act of 1934. The Firm was required to cease and desist from future violations and to pay $359,448 in disgorgement, $88,463 in prejudgment interest, and a civil monetary penalty of $200,000. The Commission credited the Firm's cooperation with the Staff in reaching this resolution.

***In re Katz*, Securities Act Rel. No. 10677, Securities Act Rel. No. 10677, Exchange Act Rel. No. 86809, 2019 SEC LEXIS 2294 (Aug. 29, 2019)**

The Commission accepted an Offer of Settlement from Wendy Katz (Katz), a securities lending desk employee of ITG Inc. (the Firm), for handling of pre-released ADRs. Katz allegedly understood that when she obtained pre-released ADRs, the Firm did not own the corresponding foreign shares, yet failed to take reasonable steps to determine whether the Firm's counterparties owned the foreign shares. Katz then allegedly lent the ADRs to counterparties pursuant to standard master securities loan agreements that did not contain any provisions requiring compliance with pre-release obligations to the depositary banks that issued them. This resulted in the issuance of pre-released ADRs that were not backed by ordinary shares, contrary to applicable agreements with depositary banks. In addition, several of the depositaries from which Katz obtained pre-released ADRs required the Firm to sign annual certifications stating that it was complying with certain pre-release obligations. Katz, who allegedly should have understood that the pre-release obligations were not being met, provided these certifications to her supervisor for signature and did not raise the Firm's noncompliance with anyone. The Commission found that this conduct by Katz violated Section 17(a)(3) of the Securities Act of 1933. Katz was required to cease and desist from future violations, barred from participating in the securities industry with the right to reapply for reentry after 18 months, and was required to pay a civil monetary penalty of $20,000. The Commission settled separate charges against the Firm in January 2017, *Matter of ITG Inc.*, Securities Act Rel. No. 10279 (Jan. 12, 2017).

***In re Jefferies LLC*, Exchange Act Rel. No. 87680, 2019 SEC LEXIS 5036 (Dec. 9, 2019)**

The Commission accepted an Offer of Settlement from Jefferies LLC (the Firm), a broker-dealer, relating to handling of pre-released ADRs. From 2012 to 2014, the Firm allegedly obtained pre-released ADRs from brokers without taking reasonable steps to ensure that the brokers or their customers beneficially owned the foreign shares underlying the pre-released ADRs, as required by the brokers' agreements with the depositary banks that issued them. In addition, the Firm allegedly borrowed ADRs from brokers in structured transactions opened in advance of dividend record dates, which should have informed the Firm that it may have been receiving ADRs not backed by the requisite shares, which it did contrary to applicable agreements between the brokers and depositaries. The Firm also was alleged not to have supervisory policies and procedures in place to govern the Firm's potential indirect borrowing of pre-released ADRs. The Commission found that this conduct violated Section 17(a)(3) of the Securities Act of 1933 and Section 15(b)(4)(E) of the Securities Exchange Act of 1934. The Firm was censured and was required to pay $2,275,609 in disgorgement, $468,346 in prejudgment interest, and a civil monetary penalty of $1,251,584.95. The Commission credited the Firm's cooperation in reaching this resolution.

Anti-Money Laundering (AML)/Suspicious Activity Reports (SARs)

***In re UBS Financial Services*, Exchange Act Rel. No. 84828, 2018 SEC LEXIS 3532 (Dec. 17, 2018)**

The Commission accepted an Offer of Settlement from UBS Financial Services, Inc. (the Firm), a dually registered broker-dealer and investment adviser, in connection with allegations that the Firm failed to file SARs for suspicious movements of funds in customer accounts that occurred at least between 2011 to 2013. The Firm resolved the matter on a neither-admit-nor-deny basis, except as noted in paragraph 1(a) of the Consent to the Assessment of Civil Money Penalty in the matter of *UBS Financial Services Inc.,* No. 2018-03. According to the Order, the subject transactions occurred in brokerage accounts that allowed customers to move funds via wires, journals, check-writing, ATM withdrawals, cash advances, and ACH transfers. According to the Commission, these accounts "presented additional money laundering risks not typically associated with brokerage-only accounts." The Commission alleged that the Firm did not have a reasonably designed AML program because certain transactions that occurred in these accounts contained red flags that were not flagged the Firm's alert system, and that certain alerts were not adequately reviewed by the AML Compliance team at the Firm. The Commission found that the Firm violated the SAR reporting requirements of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder. By the Commission's Order, the Firm was censured, ordered to cease and desist from future violations, and required to pay a $5 million civil monetary penalty. The Commission credited the Firm's substantial remedial efforts in accepting the Offer of Settlement.

***In re Central States Capital Markets, LLC*, Exchange Act Rel. No. 84851, 2018 SEC LEXIS 3568 (Dec. 18, 2018)**

The Commission instituted cease-and-desist proceedings, which were settled through an Offer of Settlement by Central States Capital Markets, LLC (the Firm), a dually registered broker-dealer and investment adviser. According to the Commission, the Firm failed to report more than $40 million in suspicious wire transfers in connection with a payday lending fraud that occurred between December 2012 and March 2013. The 18 transactions at issue allegedly occurred in a single customer's account and totaled more than $40 million. The Commission alleged that the Firm knew, suspected, or had reason to suspect that the transfers were derived from a so-called "rent-a-tribe" scheme in which the customer used tribal corporations to mask his involvement in a payday lending business in possible violation of state and federal laws. According to the Order, the Firm did not verify the identity of these tribal corporations, investigate the suspicious transactions, and or monitor the transactions. The Commission found that the Firm violated the SAR reporting requirements of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder. By the Commission's Order, the Firm was censured, ordered to cease and desist from future violations and was required to comply with certain undertakings, including hiring an independent compliance consultant. In determining whether to accept the Offer of Settlement, the Commission considered the U.S. Attorney's Office's deferred prosecution with the Firm, whereby it forfeited $400,000.

In re Vision Financial Markets LLC, Securities Act Rel. No. 85460, 2019 SEC LEXIS 664 (Mar. 29, 2019)

The Commission accepted an Offer of Settlement from Vision Financial Markets LLC (the Firm), for its alleged failure to report suspicious sales of hundreds of millions of penny stock shares. Beginning in 2012, the Firm allegedly entered into correspondent clearing arrangements under which it cleared large-volume transactions in penny stocks for its introducing brokers. The Firm allegedly did not update its AML policies and procedures to address the risks associated with these transactions until October 2014, and the employee reporting, manual reviews, and limited software-generated reports used by the Firm were not reasonably designed to flag potentially suspicious activity. As a result, in at least 250 instances the Firm allegedly cleared transactions in which customers deposited blocks of penny stocks, quickly sold them, and removed the proceeds. The Firm also was alleged to have not filed suspicious order reports for these transactions, which the Firm allegedly at least had reason to believe involved fraud or had no lawful purpose, in violation of regulations by the Financial Crimes Enforcement Network. The Commission found that this conduct constituted a violation 17(a) of the Exchange Act and Rule 17a-8 thereunder. The Firm was censured, required to cease and desist from future violations, and required to pay a $625,000 civil penalty. The Commission credited the Firm's remediation and cooperation in reaching this resolution.

In re Wilson-Davis & Co., Inc., Securities Act Rel. No. 85867, 2019 SEC LEXIS 1125 (May 15, 2019)

The Commission accepted an Offer of Settlement from Wilson-Davis & Co., Inc. (the Firm), for its alleged failure to report suspicious sales of hundreds penny stock shares. From 2013 to 2017, the Firm allegedly failed to file SARs for transactions in which physical stock certificates were deposited and liquidated and the proceeds were immediately wired out of the customer account, which the Firm's AML policies listed as a red flag associated with suspicious activity. The Firm also allegedly failed to investigate this and other red flags in accordance with its AML policy and ultimately failed to file SARs. The Commission found that this conduct constituted a violation of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder. The Firm was censured, required to cease and desist from further violations, and required to pay a $300,000 civil penalty. The Firm further agreed to hire, at its own cost, an independent AML Compliance Consultant.

***SEC v. Alpine Sec. Corp.*, No. 17cv4179, 2019 U.S. Dist. LEXIS 156374 (S.D.N.Y. Sept. 12, 2019)**

In this civil action filed by the Commission in June 2017, the U.S. District Court for the Southern District of New York entered a final judgment against Alpine Securities Corporation (the Firm), a registered broker-dealer. The Commission's complaint alleged that from 2011 to 2015, the Firm filed SARs with deficient narratives, failed to file SARs reflecting sales that followed large deposits of Failure to Report violations (LPS), filed SARs long after the transactions were completed, and failed to maintain and produce support files for SARs notwithstanding warnings by FINRA and OCIE. In two different summary judgment opinions issued by the Court in March and December of 2018, respectively, the Court granted the Commission's summary judgment motions in part, finding that the Firm was liable for several thousand violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder. The judgment permanently enjoined the Firm from future violations and imposed a $12 million civil penalty.

Collection, Review, and Retention of Issuer Information

***In re Canaccord Genuity LLC*, Exchange Act Rel. No. 86658, 2019 SEC LEXIS 2068 (Aug. 14, 2019)**

The Commission accepted an Offer of Settlement from Canaccord Genuity LLC (the Firm), a registered broker-dealer. According to the Order, the Firm failed to collect, review, and retain issuer information prior to publishing quotations for over-the-counter and nonexchange-listed securities pursuant to SEC Rule 15c2-11. The Commission alleged that the Firm delegated certain review responsibilities to a compliance associate with no trading experience and no formal training to conduct the required reviews. According to the Commission, the compliance associate placed the electronic signature of the designated principal on the Firm's Form 211 filings without having a reasonable basis to believe the representations made therein were accurate and despite that fact that the designated principal had not reviewed the filings. The Commission also alleged that the traders who intended to make a market in the relevant securities rarely, if ever, obtained or reviewed the information contained in the filings. As a result of the foregoing, the Commission found that the Firm violated Section 15(c)(2) of the Exchange Act and Rule 15c2-11 thereunder. In connection with the settlement, the Firm was censured and required to cease and desist from committing further violations and to pay a civil monetary penalty in the amount of $250,000. The Commission considered the Firm's remedial acts in determining to accept the Offer of Settlement.

Electronic Blue Sheets (EBS)

***In re Citadel Securities LLC*, Exchange Act Rel. No. 84759, 2018 SEC LEXIS 3445 (Dec. 10, 2018); *In re MUFG Securities Americas Inc.*, Exchange Act Rel. No. 84758, 2018 SEC LEXIS 3444 (Dec. 10, 2018); *In re Natixis Securities Americas LLC*, Exchange Act Rel. No. 84760, 2018 SEC LEXIS 3447 (Dec. 10, 2018)**

The Commission accepted Offers of Settlement from Citadel Securities LLC (Citadel), MUFG Securities Americas Inc. (MUSA), and Natixis Securities Americas LLC (Natixis), all registered broker-dealers, in which each firm admitted that it failed to submit complete and accurate data in response to the Commission Staff's requests for EBSs. According to the Commission, complete and accurate EBS data is critical to many aspects of the Commission's operations and its ability to discharge its enforcement and regulatory mandates. The Commission alleged that Citadel provided incorrect reporting of trade-execution time data for approximately 80 million trades; MUFG submitted incorrect trade information for approximately 650,000 trades; and Natixis provided inaccurate trade data for approximately 150,000 trades. According to the Commission, the incorrect reporting occurred, in large part, because the broker-dealers lacked processes to detect errors in their EBS submissions. As a result, the Commission found that each broker-dealer violated Section 17(a)(1) of the Exchange Act and Rules 17a-4(j) and 17a-25 thereunder. Citadel, MUFG, and Natixis, respectively, were censured, ordered to cease and desist from future violations, and required to pay civil penalties as follows: Citadel, $3.5 million; MUSA, $1.4 million; and Natixis, $1.25 million. The Commission considered the cooperation and remedial efforts by each broker-dealer in accepting their Offers of Settlement.

***In re BMO Capital Markets Corp.,* Exchange Act Rel. No. 86976, 2019 SEC LEXIS 2836 (Sept. 16, 2019)**

The Commission accepted a Settlement Offer from BMO Capital Markets Corp. (the Firm), a registered broker-dealer and investment adviser. According to the Order, the Firm admitted it had failed to take reasonable steps to ensure that the securities transactions reported in all of its 4,074 EBS submissions contained complete and accurate information. The Commission alleged that the Firm's 4,074 submissions, which contained trade data from 5,419,376 transactions, were deficient in one or more ways, including containing inaccurate EBS fields related to information about the securities transaction reported and/or firm or customer identifying information. According to the Commission Order, the Firm's failure to provide accurate EBS submissions resulted from an undetected coding error. The Commission also alleged that the Firm omitted 143,190 securities transactions from its EBS submissions because the transactions between the Firm and a Canadian affiliate were netted and incorrectly reported as one trade. According to the Commission, the Firm failed to detect the errors in its EBS submissions because the Firm did not have an adequate process to verify that all of the fields contained accurate values and information. The Commission found that the Firm violated Section 17(a)(1) of the Exchange Act and Rules 17a-4(j) and 17a-25 thereunder. In connection with this settlement, the Commission censured the Firm, ordered the Firm to cease and desist from future violations, and required it to pay a $1.95 million civil penalty. The Commission considered the Firm's cooperation and remedial efforts in accepting the Settlement Offer.

***In re Stifel, Nicolaus & Co., Inc.*, Exchange Act Rel. No. 86978, 2019 SEC LEXIS 2832 (Sept. 16, 2019)**

The Commission accepted a Settlement Offer from Stifel, Nicolaus & Company, Incorporated (the Firm), a US-based broker-dealer and investment adviser, in which the Firm admitted it had failed to submit complete and accurate data in response to the Commission Staff's requests for EBS data. According to the Order, the Firm reported information concerning approximately 17.8 million transactions in a compressed format, which caused the Firm to under-report the number of transactions and misreport certain data for the consolidated trades that it did report. The Commission alleged that the Firm only reported approximately 8 million transactions and failed to submit approximately 9.8 million. Further, the Commission alleged that of the transactions that the Firm did report, 1.4 million contained inaccurate data, including inaccurate reporting of street-side short sales as sales, and blank fields such as customer name and address and contra-party identifiers. According to the Commission Order, the Firm failed to detect the errors in its

EBS submissions because the Firm did not have an adequate process to verify that the information it was reporting was accurate. The Commission found that the Firm violated Section 17(a)(1) of the Exchange Act and Rules 17a-4(j) and 17a-25 thereunder. In connection with this settlement, the Commission censured the Firm, ordered the Firm to cease and desist from future violations, and required it to pay a $2.7 million civil penalty. The Commission considered the Firm's cooperation and remedial efforts in accepting the Settlement Offer.

Fraud

***In re Christopher S. Laws*, Exchange Act Rel. No. 87872, 2019 SEC LEXIS 5482 (Dec. 30, 2019)**

The Commission accepted an offer of settlement from Christopher S. Laws (Laws), owner, Chief Financial Officer, and Secretary of Keystone Capital Partners, Inc, *d/b/a* Federal Employee Benefits Counselors (the Firm), a registered broker-dealer. The Commission filed a complaint against the Firm, Laws, and two other employees of the Firm (collectively, the Co-Defendants) in the District Court for the Northern District of Georgia. From 2012 to 2014, the Co-Defendants allegedly fraudulently induced federal employees to roll over holdings from their federal Thrift Savings Plan (TSP) retirement accounts into private variable annuities. The Co-Defendants also allegedly intentionally misled investors concerning significant details about the variable annuities, including making false statements about the fees associated with the investments and whether the returns were guaranteed, falsely representing that the annuities were affiliated with or approved by the federal government, and falsely representing that the annuities were offered, vetted, or selected by the TSP. The Co-Defendants also were alleged to have provided investors with incomplete or modified transaction forms and written materials that misled investors about the private nature of the variable annuities. In a parallel civil proceeding, the Court entered a consent judgment against Laws restraining and enjoining him from violating Section 17(a)(1) of the Securities Act of 1933 and ordered him to pay disgorgement of $132,615, prejudgment interest of $30,426, and a civil penalty of $160,000. *See SEC v. Keystone Capital Partners, Inc.*, Civil Action No. 17-02873-JBP (N.D. Ga. July 31, 2017). The Commission also barred Laws from the securities industry association and from serving in any capacity for a registered investment company or affiliated person of an investment adviser, depositor, or principal underwriter.

Insider Trading

***In re Bill Tsai,* Exchange Act Rel. No. 87840, 2019 SEC LEXIS 5360 (Dec. 23, 2019)**

The Commission accepted an offer of settlement, with an admission of the Commission's allegations, from Bill Tsai (Tsai), an analyst for an investment bank that is dually registered as a broker-dealer and investment adviser. In a complaint filed before the District Court for the Southern District of New York, the SEC alleged that in March 2019, Tsai learned of an impending acquisition of a publicly traded company by a private equity fund when the private equity fund consulted with the investment bank on the acquisition. Shortly thereafter, Tsai allegedly purchased call options on the target company's stock in a personal brokerage account that he concealed from his employer. He then allegedly sold the options after the acquisition was publicly announced in April 2019. The Commission barred Tsai from the securities industry. In addition, the Court entered a consent judgment against him, restraining and enjoining him from committing further violations of Section 10(b) of the Securities Act of 1933 and Rule 10b-5 thereunder, and ordered him to pay disgorgement of $98,750, prejudgment interest of $1,837, and a civil penalty of $160,000. *See SEC v. Tsai*, Civil Action No. 19-07501 (S.D.N.Y. 2019). Tsai also pleaded guilty to one count of securities fraud in a parallel criminal proceeding for which sentencing is pending. *See United States v. Tsai*, Criminal Action No. 19 -00675-VM (S.D.N.Y. 2019).

Maintaining Customer Confidentiality

***In re GFI Securities LLC*, Securities Act Rel. No. 10710, Exchange Act Rel. No. 87152, (Sept. 27, 2019)**

The Commission accepted an Offer of Settlement from GFI Securities LLC, (the Firm) a broker-dealer, for violations relating to the handling of customer identities in certain transactions based on the following allegations. The Firm allegedly represented publicly and to its customers that it maintained customer anonymity when brokering certain trades. Although the Firm's internal policies generally required its representatives to maintain customer confidentiality and anonymity, the Firm allegedly did not sufficiently inform and train its representatives on those policies and did not inform the representatives that it had publicly committed to maintaining customer anonymity. As a result, at least three of GFI's representatives were alleged to have regularly disclosed customer identities from 2014 to 2016 despite internal policies and representations to customers. The Commission found that this conduct violated Section 17(a)(2) of the Securities Act. The Firm was ordered to cease and desist from future violations, censured, and required to pay a civil penalty of $4.3 million. The Commission credited the Firm's remediation and cooperation in reaching this resolution.

Municipal Bond Trading

***In re Chris D. Rosenthal*, Exchange Act Rel. No. 10587, 2018 SEC LEXIS 3544 (Dec. 18, 2018)**

The Commission accepted an Offer of Settlement from Chris D. Rosenthal (Rosenthal), a former registered representative for UBS Financial Services Inc. (the Firm), concerning improper trading in municipal bonds. The Commission alleged that Rosenthal engaged in fraudulent trading practices to help unregistered brokers who were deceptively posing as retail investors to obtain municipal bonds in primary offerings. The Commission further alleged that Rosenthal placed fraudulent retail orders for unregistered brokers by falsifying zip codes associated with brokers' accounts to make it appear as though the orders were placed by retail investors. The Commission also alleged that Rosenthal helped the Firm's traders improperly place customer orders on behalf of the Firm by placing dealer stock orders through the unregistered brokers to give the impression that the orders were for customers rather than the Firm's trading inventory. Finally, the Commission alleged that Rosenthal attempted to obtain new issue bonds for the Firm's trading inventory by parking certain bonds with unregistered brokers with the agreement that they would sell them back to the Firm at a prearranged price. In addition, Rosenthal allegedly disguised his trading activity by breaking up the amount of bonds sold into smaller lots, or by delaying trade tickets for transactions. The Commission found that Rosenthal violated Sections 17(a)(1) and (3) of the Securities Act of 1933, Section 10(b) of the Exchange Act of 1934, and Municipal Securities Rulemaking Board (MSRB) Rules G-11(b), G-11(k), and G-17. The Commission also found that Rosenthal caused the unregistered brokers' violations of Section 15(a)(1) of the Exchange Act. Rosenthal consented to a cease-and-desist order barring him from the securities industry with the right to apply for reentry after five years. He was required to pay $284,080 in disgorgement; $15,128 in prejudgment interest; and a $75,000 civil monetary penalty.

Municipal Bond Underwriting

***In re Thomas C. Muldoon*, Exchange Act Rel. No. 86848, 2019 SEC LEXIS 2420 (Sept. 3, 2019)**

The Commission accepted an Offer of Settlement from Thomas C. Muldoon (Muldoon), who served as a municipal bond trader at a registered broker-dealer from 2004 to December 2017. The Commission alleged that on at least 16 occasions between January and October 2017, Muldoon used "friendly" sales representatives at other underwriting firms to submit orders for new-issue municipal bonds that Muldoon fraudulently represented were for retail customers when, in reality, the orders were for his firm's own inventory. The Commission also alleged that Muldoon took steps to avoid detection of the fraudulent retail customer orders by the senior managers of the relevant municipal bond deals. According to the Order, Muldoon's conduct constituted violations of Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder, as well as MSRB Rule G-17. Muldoon was required to cease and desist from future violations, barred from the securities industry with the right to apply for reentry after two years and required to pay a civil penalty of $25,000.

Order Handling Practices

***In re ITG Inc. and AlterNet Securities, Inc.*, Exchange Act Rel. No. 84548, 2018 SEC LEXIS 3109 (Nov. 7, 2018)**

The Commission accepted an Offer of Settlement from ITG Inc. (ITG) and AlterNet Securities, Inc. (AlterNet), affiliated broker-dealers, in connection with the operation of POSIT, an alternative trading system or "dark pool." According to the Commission Order, ITG failed to establish adequate safeguards and procedures to protect the confidential trading information of POSIT subscribers. The Commission also alleged that ITG disclosed confidential trading information of POSIT subscribers, even though ITG represented to subscribers and prospective subscribers that POSIT would allow subscribers to trade without "signaling their trading intentions," and that ITG would maintain the confidentiality of subscriber order information. The SEC further alleged that ITG failed to disclose certain material features of POSIT, including that there were two separate liquidity pools in POSIT and that ITG had implemented a "speedbump" to slow interactions involving orders from certain high-frequency trading firms. The Commission found that ITG and AlterNet violated Section 17(a)(2) and 17(a)(3) of the Securities Act and ITG willfully violated Rule 301(b)(2) and (b)(10) of Regulation ATS. In connection with this settlement, ITG and AlterNet were censured, ordered to cease and desist from future violations, and required to pay a $12 million civil penalty. The Commission credited the remedial actions taken in determining to accept the Offer of Settlement.

Protection of Confidential Subscriber Information

***In re TMC Bonds LLC*, Exchange Act Rel. No. 87074, 2019 SEC LEXIS 3127 (Sept. 24, 2019)**

The Commission accepted an Offer of Settlement from TMC Bonds LLC (the Firm), a registered broker-dealer, in connection with the operation of an alternative trading system (ATS) for fixed-income securities. According to the Order, TMC failed to establish adequate safeguards and procedures to protect the confidential trading information of the ATS subscribers. The Commission also alleged that TMC's corporate-bond trading-desk employees disclosed to other ATS subscribers identities of large retail brokerage firms, in hundreds of Bloomberg messages and chats, despite TMC's representation to subscribers and potential subscribers that identities would be kept confidential from pre- or post-trade disclosure. The Commission further alleged that TMC failed to notify both its ATS subscribers and the Commission that it was actually disclosing to ATS subscribers the identities of other subscribers who were attempting to execute orders on the ATS. As a result, the Commission found that the Firm violated Rule 301(b)(2) and (b)(10) of Regulation ATS. In connection with this settlement, the Firm was censured, ordered to cease and desist from future violations, and was required to pay a $2,100,000 million civil penalty. The Commission considered the remedial actions taken in determining to accept the Offer of Settlement.

Recordkeeping

***In re Mahesh Agarwal*, Exchange Act Rel. No. 87127, 2019 SEC LEXIS 3346 (Sept. 26, 2019)**

The Commission accepted an Offer of Settlement from Mahesh Agarwal (Agarwal), a former registered representative for Citigroup Global Markets Inc. (CGMI), the registered broker-dealer subsidiary of Citigroup, Inc. (the Firm). According to the Commission, Agarwal took short positions in US Treasury Bonds that exceeded his trading authority, which resulted in large losses. The Commission also alleged that Agarwal mismarked certain illiquid credit derivatives and booked certain trades at off-market prices. The Commission found that Agarwal violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder. Agarwal also was charged with aiding and abetting and causing CGMI's violation of Section 17(a)(1) of the Exchange Act and Rule 17a-3(a) thereunder, as well as the Firm's violation of Section 13(b)(2)(A) of the Exchange Act. Agarwal was ordered to cease and desist from future violations, suspended from the securities industry for 12 months, and required to pay an $80,000 civil penalty. In a related action, *In re Citigroup Global Markets Inc. et al.*, Exchange Act Rel. No. 83859, 2018 LEXIS 2011 (Aug. 16, 2018), the Commission accepted Offers of Settlement from CGMI and Citigroup for alleged violations related to the above-described conduct.

Regulation SCI

***In re Virtu Americas, LLC, f/k/a KCG Americas LLC*, Exchange Act Rel. No. 87155, 2019 SEC LEXIS 3417 (Sept. 30, 2019)**

The Commission accepted an Offer of Settlement from Virtu Americas, LLC. (the Firm), f/k/a KCG Americas LLC., a registered broker-dealer, for allegedly failing to comply with Regulation SCI. The Firm allegedly utilized an automated system that monitored trading activity that was intended to keep its ATS's trading volume below the compliance threshold for Regulation SCI. However, the system allegedly did not function as intended, the Firm exceeded the trading volume under Regulation SCI, and as a result, and failed to comply with various provisions of Regulation SCI. According to the Order, the Firm violated Regulation SCI by failing to establish the policies and procedures required by Regulation SCI, file quarterly or annual reports, conduct an annual Regulation SCI compliance review, comply with business continuity and disaster recovery plans, and maintain books and records as required by Regulation SCI. The Commission found that the Firm violated the reporting and recordkeeping provisions of Rules 1001, 1003, 1004, and 1005 of Regulation SCI. The Firm consented to a cease-and-desist order, agreed to be censured, and agreed to pay a $1.5 million civil penalty.

Regulation SHO

***In re Vandham Securities Corp.*, Exchange Act Rel. No. 86970 2019, SEC LEXIS 2833 (Sept. 16, 2019)**

The Commission accepted a Settlement Offer from Vandham Securities Corp. (the Firm), a former broker-dealer, for its handling of trading in thinly traded, low-priced, over-the-counter securities on behalf of other broker-dealers. The Firm filed a Form BDW in November 2018 to withdraw its registration with the Commission. In its Order, the Commission alleged that the Firm did not obtain locates before executing short sales in its own account to facilitate the sales of its broker-dealer customers. The Commission also alleged that the Firm failed to obtain locates for several thousand short sales between January 2016 and April 2017. In addition, the Commission alleged that the Firm published quotations to sell its principal position in certain securities without first obtaining and reviewing documents and information about the issuers as required by Rule 15c2-11. The Commission also alleged that the Firm did not implement AML and procedures to reasonably address activity that raised red flags. The Commission found that this conduct violated Rule 203(b)(1) of Regulation SHO, and Section 17(a) and Rules 17a-8 and 15c2-11 of the Exchange Act. The Firm was censured, ordered to cease and desist from future violations, and required to pay a civil penalty of $200,000.

RMBS Transactions

***SEC v. Shapiro*, Litigation Rel. No. 24312, 2018 SEC LEXIS 2773 (Oct. 10, 2018)**

The US District Court for the Southern District of New York entered a final judgment against Ross B. Shapiro (Shapiro), the former head of the residential mortgage-backed securities trading desk at Nomura Securities International. According to the Commission's Complaint, which was initially filed on Sept. 8, 2015, Shapiro made material misrepresentations and omissions to investors to generate additional revenue for the firm. The Complaint alleged that Shapiro misrepresented the prices at which the firm bought and sold the securities and the spread earned on the transactions. He also allegedly directed other firm traders to engage in similar misconduct. As a result, Shapiro was permanently enjoined from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 17(a) of the Securities Act, and was required to pay a $200,000 civil penalty. The Commission also entered an administrative order barring Shapiro from the securities industry and from participating in any penny stock offering, with a right to reapply after two years. *See In re Shapiro*, Exchange Act Rel. No. 84390, 2018 SEC LEXIS 2770 (Oct. 10, 2018).

Suitability

***In re Raymond James & Associates, Inc. et al.,* Exchange Act Rel. No. 86985, 2019 SEC LEXIS 3954 (Sept. 17, 2019)**

The Commission accepted an Offer of Settlement from dually registered broker-dealer and investment adviser Raymond James & Associates, Inc. (RJA); broker-dealer Raymond James Financial Services, Inc. (RJFS); and investment adviser Raymond James Financial Services Advisors, Inc. (RJFSA, and, collectively with RJA and RJFS, the Firm). The Commission alleged that RJA and RJFSA failed to conduct suitability reviews and enact policies and procedures around fee-based advisory accounts; overvalued certain assets, and charged customers excess advisory fees. Further, the Commission alleged that RJA and RJFS failed to provide a reasonable explanation for recommending certain unit investment trust transactions to customers and did not disclose a conflict of interest resulting from the arrangement wherein brokers received greater compensation for recommending certain securities to retail customers. The Commission found that RJA and RJFS violated Sections 17(a)(2) and 17(a)(3) of the Securities Act Section 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. The Firm was ordered to cease and desist from future violations, was censured, and was required to pay discouragement of nearly $11.1 million, prejudgment interest of $1.1 million, and a civil penalty of $3 million. The Commission credited the Firm's remedial acts in determining to accept the Offer of Settlement.

Supervision

***In re Wedbush Securities, Inc.*, Exchange Act Rel. No. 85309, 2019 SEC LEXIS 465 (Mar. 13, 2019)**

The Commission accepted an Offer of Settlement from Wedbush Securities, Inc. (the Firm), an investment adviser and broker-dealer, related to allegations that it failed to reasonably supervise a registered representative, Timary Delorme (Delorme). The Commission previously accepted an Offer of Settlement from Delorme on a neither-admit-nor-deny basis based on allegations that she engaged in manipulative trading of penny stocks. *See In re Delorme*, Exchange Act Rel. No. 82953 (Mar. 27, 2018). According to the Commission, the Firm became aware of aspects of Delorme's securities laws violations, including two separate FINRA inquiries and her attempts to circumvent trade restrictions, but the Firm's supervisory policies allegedly failed to provide follow-up steps once such red flags were identified. The Firm placed Delorme on heightened supervision in March 2014, but allegedly maintained no documentation regarding its investigations and continued to allow Delorme to process orders and communicate with customers. According to the Commission, beginning in May 2018 the Firm took remedial measures to improve its supervision of registered representatives. The Commission, taking into account these remedial measures, censured the Firm pursuant to Section 15(b)(4)(E) of the Exchange Act and required it to pay a civil penalty of $250,000.

***In re Nomura Securities*, Exchange Act Rel. No. 86372, 2019 SEC LEXIS 1741 (July 15, 2019)**

The Commission accepted an Offer of Settlement from Nomura Securities International, Inc. (the Firm), a registered broker-dealer and investment adviser, for its alleged failure to reasonably supervise three of its traders in connection with residential mortgage-backed securities (RMBS) and manufactured housing asset-backed securities (MHABS). The Commission alleged that the three traders deliberately misled or lied to customers about (1) the price of securities, (2) offers made on the securities, (3) the Firm's profit on those trades, and (4) whether or not the Firm actually owned certain securities. The Commission filed a civil injunctive action against these three traders in September 2015. *See SEC v. Shapiro*, No. 15 Civ. 7045, 2018 U.S. Dist. LEXIS 93420 (S.D.N.Y. 2018). According to the Commission, the Firm failed to institute procedures to monitor for false and misleading statements to customers, and otherwise failed to supervise the traders in violation of Section 15(b)(4)(E) of the Securities Exchange Act of 1934. In deciding whether to accept the Firm's Offer of Settlement, the Commission considered the Firm's remedial efforts and ongoing cooperation, including its implementation of new procedures to prevent similar conduct in the future. According to the Order, the Firm was censured and required to pay disgorgement of $16.3 million, prejudgment interest of $3.8 million, and a civil monetary penalty of $1 million.

***In re Nomura Securities*, Exchange Act Rel. No. 86373, 2019 SEC LEXIS 1742 (July 15, 2019)**

The Commission accepted an Offer of Settlement from Nomura Securities International, Inc. (the Firm), a registered broker-dealer and investment adviser for its alleged failure to reasonably supervise two of its traders' purchase and sale of commercial mortgage-backed securities (CMBS). The Commission alleged that the two traders deliberately misled or lied to customers about (1) the price of securities, (2) offers made on the securities, (3) the Firm's profit on those trades, and (4) whether or not Nomura actually owned certain securities. In May 2015, the Commission filed two separate actions against the two traders. *See SEC v. Chan*, 17-CV-3605 (S.D.N.Y); *SEC v. Im*, 17-CV-3613, 2018 U.S. Dist. LEXIS 22993 (S.D.N.Y). According to the Commission, the Firm failed to supervise these traders in violation of Section 15(b)(4)(E) of the Securities Exchange Act of 1934. In deciding whether to accept the Firm's Offer of Settlement, the Commission considered the Firm's remedial efforts, including its implementation of new procedures to prevent similar conduct in the future. The Firm was required to pay disgorgement of $1.1 million, prejudgment interest of $242,610, and a civil monetary penalty of $500,000.

***In re Mosaic Capital, LLC., f/k/a AOC Securities, LLC.*, Exchange Act Rel. No. 86712, 2019 SEC LEXIS 2152 (Aug. 20, 2019)**

The Commission accepted an Offer of Settlement from broker-dealer Mosaic Capital, LLC, f/k/a AOC Securities, LLC (the Firm) for allegedly failing to reasonably supervise an AOC trader, Frank Dinucci Jr. (Dinucci). On April 6, 2017, Dinucci pleaded guilty to securities fraud, among other criminal counts. *See U.S. v. Frank Dinucci Jr.*, No. 18 Cr. 332 (S.D.N.Y.). He also agreed to a settlement in a related follow-on administrative proceeding brought by the Commission. *See In re Frank Dinucci, Jr.*, Exchange Act Release No. 85053 (Feb. 5, 2019). Further, as part of a deferred prosecution agreement with the Commission, Dinucci agreed to refrain for a period of one year from any association with any broker or dealer. The Commission alleged that Dinucci falsely certified that he was not associated with any broker-dealer during the time he was associated with the Firm. The Commission also alleged that Dinucci participated in a fraudulent valuation scheme by providing, among other things, artificially inflated price quotes for certain mortgage-backed securities to a significant customer of the Firm in return for the promise of trades being sent to Dinucci and the Firm. The Commission alleged that the Firm knew that Dinucci was providing price quotes on its behalf and failed to establish or implement policies or procedures designed to prevent and detect Dinucci's misconduct. The Commission found that this conduct violated Section 15(b)(4)(E) of the Exchange Act. The was censured and ordered to pay a civil penalty of $250,000.

***In re Ronaldo Gonzalez*, Exchange Act Rel. No. 86711, 2019 SEC LEXIS 2151 (Aug. 20, 2019)**

The Commission accepted an Offer of Settlement from Ronaldo Gonzalez (Gonzalez), the chief executive officer of Mosaic Capital, LLC, f/k/a AOC Securities, LLC (the Firm). Gonzalez allegedly failed to reasonably supervise Frank Dinucci Jr. (Dinucci), a former trader at the Firm. On April 6, 2017, Dinucci pleaded guilty to securities fraud, among other criminal counts. *See U.S. v. Frank Dinucci Jr.*, No. 18 Cr. 332 (S.D.N.Y.). According to the Commission, Dinucci participated in a fraudulent valuation scheme by providing, among other things, artificially inflated price quotes for certain mortgage-backed securities to a significant customer of the Firm in return for the promise of trades being sent to Dinucci and the Firm. The Commission alleged that Gonzalez was responsible for overall supervision at the Firm and was Dinucci's supervisor. According to the Order, Gonzalez knew of the alleged misconduct, but failed reasonably to supervise Dinucci. The Commission found that Gonzalez's conduct violated Section 15(b)(4)(E) of the Exchange Act. According to the Order, Gonzalez received a 12-month supervisory suspension and was required to pay a civil penalty of $40,000.

Tender Rule

***In re Bluefin Trading, LLC*, Exchange Act Rel. No. 87787, 2019 SEC LEXIS 5269 (Dec. 18, 2019); *In re Critical Trading, LLC*, Exchange Act Rel. No. 87786, 2019 SEC LEXIS 5367 (Dec. 18, 2019)**

The Commission accepted Settlement Offers from two broker-dealers, Bluefin Trading, LLC (Bluefin), and Critical Trading, LLC (Critical), for alleged violations related to their participation in a tender offer. According to the Commission, in July 2016, Lockheed Martin Corp. commenced a partial tender offer for shares of its common stock. In response to this tender offer, Bluefin and Critical each allegedly tendered more shares than their respective net long positions. Specifically, the Commission alleged that Bluefin tendered 75,000 shares in excess of its long position in Lockheed, and Critical tendered 55,500 Lockheed shares while only having a net long position of 5,500 shares. According to the Commission, by tendering shares in excess of its long position, each firm unlawfully profited at the expense of others in the tender offer. The Commission found that this conduct by both Firms violated Rule 14e-4 of the Exchange Act, commonly referred to as the "short tender rule." Bluefin and Critical each was censured and ordered to cease and desist from future violations. Bluefin was required to pay disgorgement of $223,836, prejudgment interest of $29,802, and a civil penalty of $50,000. Critical was required to pay disgorgement of $149,224, prejudgment interest of $19,868, and a civil penalty of $50,000.

Trading Activity

***In re Anthony Savino*, Exchange Act Rel. No. 86020, 2019 SEC LEXIS 1282 (June 3, 2019); *In re Joseph Palermo*, Exchange Act. Rel. No. 10643, 2019 SEC LEXIS 1283 (June 3, 2019)**

The Commission accepted Offers of Settlement from both Anthony Savino (Savino), a full-time day trader, and his long-time friend, Joseph Palermo (Palermo). From approximately 2013 to 2015, Savino allegedly engaged in a scheme where, under Palermo's name, Savino would use inflated prices to place multiple buy orders for the same security with multiple trading venues. That practice artificially raised the price of those securities and enabled Savino to sell the same securities at inflated prices. Savino allegedly allowed Palermo to retain approximately half of the net profits resulting from Savino's trading ($187,200 to Savino and $128,150 to Palermo by February 2015) in exchange for Palermo's giving Savino access to his brokerage account at a registered broker-dealer. The Commission found that Savino's conduct constituted violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act, Section 9(a)(2) and 10(b) of the Exchange Act, and Rules 10b-5(a) and 10b-5(c) thereunder. Savino was required to cease and desist from future violations, was barred from the securities industry with the right to apply for reentry after three years, and was required to pay disgorgement of $187,200, prejudgment interest of $20,144, and a civil penalty of $75,000. The Commission also found that Palermo caused Savino's violations of Section 17(a)(3) of the Securities Act. Palermo was required to cease and desist from future violations and to pay disgorgement of $128,150 and prejudgment interest of $22,860. Palermo also was sanctioned by FINRA for conduct related to his scheme with Savino. *See In re Joseph Palermo*, FINRA Matter No. 20150457534-01 (Nov. 29, 2017).

***SEC v. Lek Securities Corp. et al.*, No. 1:17-cv-01789 (S.D.N.Y. Oct. 1, 2019)**

A federal district court judge in New York entered final judgments by consent against the brokerage firm Lek Securities Corp. (the Firm) and its Chief Executive Officer, whom the Commission charged with facilitating manipulative US trading by a Ukraine-based firm (Avalon FA Ltd.) over a three-year period. The SEC's complaint, which was filed in 2017, alleged that the Ukraine firm illegally profited from layering (which involves placing buy and sell orders to simulate demand, then quickly cancelling them once market prices move in the intended direction) and that Lek and its CEO made the scheme possible by giving the Ukraine firm access to the US markets. For example, when the customer complained about certain layering controls, Lek allegedly reduced the restrictions, allowing the customer to conduct the subject trading activity. In settling the Commission's charges, the Firm and its CEO admitted that the customer's trading activity constituted violations of Section 10(b) of the Securities Exchange Act of 1943. The Firm agreed to a three-year injunction requiring it to terminate business with foreign customers potentially engaged in manipulative trading and largely prohibiting the Firm from providing intraday trading to foreign customers. The Firm also agreed to retain an independent compliance monitor for a three-year period and, along with its CEO, agreed to permanent injunctions from future violations. The Firm was ordered to pay a $1 million penalty plus $525,892 in disgorgement and prejudgment interest, and the CEO was ordered to pay a $420,000 penalty.

Cases Relating to Investment Advisers/Investment Companies and Their Employees/Affiliated Persons[127]

Compliance Policies & Procedures

***In re Kornitzer Capital Management, Inc. and John C. Kornitzer*, Investment Advisers Act Rel. No. 5416, 2019 SEC LEXIS 5065 (Dec. 10, 2019).**

The Commission accepted an Offer of Settlement from Kornitzer Capital Management, Inc. (the Firm), a Kansas-based registered investment adviser, and its President, CEO, and majority owner John C. Kornitzer (Kornitzer, and together with the Firm, collectively, Respondents) in connection with alleged failures to follow client instructions to reduce high concentrations in securities of a single company (Company A) held by four collective investment trusts (CITs) and failure to adopt and implement reasonably designed written policies and procedures to follow client objectives and restrictions. According to the Commission Order, the Firm served as investment adviser to the four CITs, and Kornitzer served as their portfolio manager. The Commission alleged that the CITs were heavily concentrated in a single issuer's securities, and as a result, several board members of the CITs directed the Firm and Kornitzer to reduce concentration levels and provide a plan for anticipated timing and process. Despite repeated requests, Respondents failed to reduce concentrations and did not provide any plan to reduce concentrations. The Commission further alleged that as of May 2016, the Firm failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act in connection with adhering to client objectives and restrictions. In February 2018, the Firm adopted a new compliance policy requiring that investments be consistent with client objectives and restrictions; however, Respondents still failed to adhere to that policy and reduce the CITs' concentrations. The Commission found that Respondents breached their fiduciary duty owed to the CITs, that the Firm violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, and that Kornitzer violated Section 206(2) of the Advisers Act and caused the Firm's violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. In connection with this settlement, the Commission censured Respondents and ordered Respondents to cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. The Commission also ordered that the Firm to pay disgorgement of $4,978,228 and that Respondents pay, jointly and severally, a civil penalty of $2.7 million.

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[127] Because of dual registration or multiple parties, a number of the cases previously discussed in the prior section titled "Cases Relating to Broker-Dealer Firms and Their Employees/Affiliated Persons" could be placed in this section as well; however, we have chosen not to repeat them here.

Compliance Policies & Procedures/Valuation

***In re Deer Park Road Management Company, LP & Scott E. Burg*, Investment Advisers Act Rel. No. 5245, 2019 SEC LEXIS 1312 (June 4, 2019)**

The Commission accepted an offer of settlement from Deer Park Road Management Company, LP (the Firm), and Scott E. Burg (Burg), the Firm's Chief Investment Officer (collectively, the Respondents), in connection with alleged failure to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the federal securities laws stemming from inaccurate valuations. The Commission alleged the Firm adopted a valuation policy to fair value securities in accordance with Generally Accepted Accounting Principles (GAAP), which requires investment advisers to calibrate pricing models to maximize the use of relevant observable inputs; however, the Firm's policies were not reasonably designed for the Firm's business practices and lacked procedures on how to ensure consistent application of the policy, reduce potential conflicts of interest, and maximize observable inputs, including transaction prices. Under the Firm's valuation policy, traders could choose between internal pricing and third-party vendor pricing, and the policy did not provide safeguards to prevent traders from undervaluing assets and gradually marking them up over time as opposed to marking to market. The valuation policy also permitted the Firm to challenge prices from third-party vendors, granting significant discretion on valuation to the Firm's traders. In addition, the Firm's valuation policy lacked guidelines for trader communication with pricing vendors, enabling traders to provide inaccurate or incomplete information to pricing vendors and ultimately influencing the vendor's price. The Commission further alleged that the Firm lacked meaningful checks on the trading desk's valuations, which were determined without the input of a pricing vendor. The Commission alleged that the foregoing shortcomings led to the Firm's traders developing practices that did not consider current market prices, thus failing to maximize observable inputs, and often resulted in traders knowingly undervaluing securities. As portfolio manager for the accounts affected by the valuation policy, the Commission alleged that Burg was responsible for the implementation of the valuation policy, and that he approved valuations that failed to follow the policy.

In determining to accept the offer of settlement, the Commission considered the Firm's hiring of a new Chief Compliance Officer with relevant expertise in compliance and valuation and its revisions to its valuation policy to automatically report trade information to third-party vendors and establish valuation and pricing surveillance reports.

The Commission censured Respondents, ordered Respondents to cease and desist from future violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder; imposed civil money penalties of $5 million to the Firm and $250,000 to Burg; and required the Firm to comply with undertakings that included 1) concluding its work with the independent compliance consultant the Firm hired during the Commission's investigation to review and recommend improvements to the valuation policy and 2) implementing the recommendations to be contained in the consultant's report to the Firm and the Commission.

Conflicts of Interest Disclosure

***SEC v. Cetera Advisors, LLC and Cetera Advisor Networks LLC*, Litigation Rel. Nos. 24581, 2019 LEXIS 2318 (Aug. 29, 2019) and 24643, 2019 LEXIS 3913 (Oct. 15, 2019)**

The SEC filed an initial complaint on August 29, 2019, in U.S. District Court for the District of Colorado and an amended complaint on October, 15, 2019, against Cetera Advisors, LLC and Cetera Advisor Networks, LLC (collectively, the Firm), alleging that the Firm breached its fiduciary duty and defrauded its clients by, among other things, failing to disclose conflicts of interest related to the Firm's receipt of over $10 million in undisclosed compensation. According to the Commission's complaint, the Firm failed to adequately disclose to its clients the conflicts of interest associated with the Firm (i) investing clients in mutual fund share classes that charged 12b-1 fees when the clients were eligible to invest in lower-cost share classes of the same funds, (ii) participating in a program in which the Firm's clearing broker agreed to share with the Firm revenues and service fees it received from certain mutual funds, and (iii) directing the clearing broker to mark-up certain fees charged to the Firm's clients, which the broker then paid to the Firm. The Commission charged defendants with violating the antifraud, fiduciary, and conflicts of interest provisions of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. The matter remains pending.

***In the Matter of AST Investment Services, Inc. and PGIM Investments LLC*, Investment Advisers Act Rel. No. 5346, 2019 SEC LEXIS 2835 (Sept. 16, 2019)**

The Commission accepted an offer of settlement from AST Investment Services, Inc., and PGIM Investments LLC (collectively, Respondents) in connection with two different issues affecting funds advised by the Respondents and offered as investment options to insurance companies on behalf of policyholders (Funds). First, the Commission alleged that, for more than ten years, Respondents directed the Funds' securities lending agent to recall securities on loan from the Funds prior to the securities' dividend record dates. According to the Commission, this action created a tax benefit of more than $229 million to Respondents' parent company and its affiliates, and caused the Funds to forgo approximately $72 million in securities lending revenue and additional investment income. The Commission alleged that Respondents failed to disclose this conflict of interest to the Funds' Boards of Trustees, in the Funds' offering documents, and to the Commission during an examination of Respondents' securities lending practices. The Commission alleged that the Respondents' disclosures described the securities lending practices in general terms, without sufficient detail regarding Respondents' recall practice or the implications of that practice for Respondents and the Funds. The second issue related to Respondents' failure to reimburse certain taxes incurred by the Funds as promised. The Commission alleged that in 2006 the Respondents caused the Funds to convert from being taxed as regulated investment companies to being taxed as partnerships so that Respondents' parent company and its affiliates could realize certain tax benefits. Respondents represented to the Funds' Boards of Trustees that their parent company would reimburse the Funds for the higher foreign taxes that the Funds would experience as a result of the conversion. The Commission alleged that despite this representation, as of March 2018, Respondents' parent company owed the Funds more than $58.6 million in past-due foreign taxes, which in turn caused the Funds to forgo approximately $25 million in additional investment income that they would have earned had the reimbursements been received timely. The Commission found that Respondents willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder. The Commission censured Respondents and ordered them to cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act, and Rules 206(4)-7 and 206(4)-8 thereunder. Additionally, Respondents were ordered to pay $27,632,560 in disgorgement and a $5 million civil penalty. The Commission credited the Firm's self-reporting, cooperation, and prompt remediation in reaching this settlement.

***In re Lefavi Wealth Management, Inc.*, Investment Advisers Act Rel. No. 5336, 2019 SEC LEXIS 2423 (Sept. 3, 2019)**

The Commission accepted an offer of settlement from Lefavi Wealth Management, Inc. (the Firm), a Utah-based registered investment adviser, in connection with recommending and investing client assets in alternative investments—namely, non-traded real estate investment trusts, business development companies, and private placements. The Commission alleged that from June 2014 through December 2016, the Firm recommended certain alternative investments to its advisory clients at a share price that included a sales commission paid to the Firm and its dual-registered investment adviser representatives (IARs). According to the Commission, the Firm failed to disclose that it could have invested client assets in the same alternative investments at a lower share price by purchasing the investments net of commission, or at a volume discount based on the aggregate purchases in each investment by the Firm's affiliated broker-dealer. The Commission further alleged that either method would have lowered or eliminated the amount of the sales commission received by the Firm and its IARs, creating a conflict of interest. According to the Commission, the Firm failed to adequately disclose this conflict in its Form ADV, and that the alleged practices rendered certain statements in its Form ADV concerning these conflicts of interest to be misleading or untrue. The Commission also alleged that the Firm failed to adopt and implement reasonable and adequate written policies and procedures regarding how to identify or disclose conflicts of interest, when it should apply net-of-commission and volume discounts, and how to meet its duty to seek the best execution related to alternative investments. The Commission found that this conduct violated Sections 206(2) and 206(4) of the Investment Advisers Act and Rule 206(4)-7 thereunder. The Commission censured the Firm and ordered the Firm to cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, review and update its policies and procedures, and correct its disclosure documents concerning alternative investments. The Commission also ordered the Firm to pay disgorgement of $994,296.10, prejudgment interest of $144,439.12, and a civil penalty of $150,000, and to administer a fund to distribute the disgorgement to affected clients.

***In re MVP Manager LLC*, Investment Advisers Act Rel. No. 5319, 2019 SEC LEXIS 2051 (Aug. 13, 2019)**

The Commission accepted an offer of settlement from MVP Manager LLC (the Firm), a New York–based investment adviser to and manager of various private funds (Funds), in connection with advising Funds on purchasing pre-IPO securities. The Commission alleged that on three occasions between December 2014 and January 2016, Firm personnel had dual roles with respect to the Funds in which they represented the sellers in their capacities as registered broker representatives while at the same time arranging to receive brokerage commissions from counterparties that were selling the pre-IPO securities to the Firm's advisory clients. The Commission found that these arrangements created actual or potential conflicts of interest because they created an economic incentive for the Firm to recommend that the Funds buy the securities at the prices that the Firm negotiated with the counterparties. The Commission further alleged that the Firm did not adequately disclose these conflicts of interest to its clients and client fund investors. The Commission alleged, among other things, that although the Firm, in its Fund private placement memorandums (PPMs) and series supplement (disclosure documents), disclosed to prospective investors a "potential" conflict of interest stating the broker could receive a brokerage commission or placement agency fee paid "only by the seller of such securities and not by the Fund." This was inadequate considering the actual arrangement in the commission counterparty agreements provided that the per-share commission would be paid out of the gross sale proceeds that the Fund paid to the seller. The Commission alleged that as a result of the Firm's conduct, the Firm was paid up-front fees of between 11%-12%, as opposed to the 8% that had been disclosed. The Commission found that this conduct violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. The Commission censured the Firm, ordered it to cease and desist from committing or causing any present or future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, and ordered the Firm to pay disgorgement of $150,058.88, prejudgment interest of $19,681.42, and a civil money penalty of $80,000.

***SEC v. Commonwealth Equity Services, LLC d/b/a Commonwealth Financial Network*, Litigation Rel. No. 24550, 2019 LEXIS 1918 (Aug. 1, 2019)**

The SEC filed a complaint in the U.S. District Court of Massachusetts against Commonwealth Financial Network (the Firm) for allegedly failing to disclose material conflicts of interest related to over $100 million in revenue-sharing payments that the Firm received on client investments in mutual funds. According to the SEC's complaint, the Firm received a portion of the money that certain mutual fund companies paid to a broker to be able to sell their funds through the broker, if the Firm invested client assets in certain share classes of the funds. The SEC's complaint alleges that the Firm breached its fiduciary duty to its clients by failing to disclose the conflicts of interest created by its receipt of the revenue sharing payments. Specifically, the SEC's complaint alleges that the Firm failed to tell its clients that (i) there were mutual fund share classes that were less expensive than some of the mutual fund share classes that resulted in revenue-sharing payments to the Firm, (ii) there were mutual funds that did not result in any revenue-sharing payments to the Firm, and (iii) there were revenue-sharing payments to the Firm on certain mutual fund investments for which the broker charged a transaction fee. Importantly, the Firm did have disclosures regarding revenue-sharing payments during the relevant time period; however the Commission alleges that such disclosures were inadequate due, in part, to the use of the words "potential" and "may." As a result, the Commission alleges that the Firm violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. This matter remains pending.

***In re Foundations Asset Management, LLC et al.*, Exch. Act Rel. No. 86446 (July 24, 2019); *SEC v. McKinley Mortgage Co. LLC et al.*, Lit. Rel. No. 24076 (Mar. 22, 2018)**

The Commission accepted an offer of settlement from Foundations Asset Management, LLC (the Firm), a registered investment adviser, and its two principals, Michael W. Shamburger and Rob E. Wedel (collectively, Respondents). The Commission alleged that Respondents improperly received compensation from a private investment fund (Fund) and its manager McKinley Mortgage Co., LLC (McKinley), while acting as an unregistered broker, failed to disclose this compensation to the Firm's clients, and made false and misleading statements in the Firm's Form ADV Brochures. Specifically, the Commission alleged that from May 2013 through June 2016, the Firm entered into compensation arrangements with McKinley, under which Respondents received compensation for soliciting Firm clients and recommending that they invest in the Fund's promissory notes. The Commission alleged that during the relevant period, Shamburger and Wedel, acting on behalf of the Firm, solicited clients and recommended they invest in the Fund. The Commission alleged that the Firm received an up-front payment after assisting its clients with investing in the Fund, despite the fact that the Firm was not registered as a broker-dealer. The Commission further alleged that although the Firm did not charge clients an advisory fee on the investments, the compensation was higher than the Firm's typical annual advisory fee, which gave the Firm an incentive to recommend the promissory notes. According to the Commission's Order, Respondents failed to adequately disclose these conflicts of interest in recommending the investments, and the Firm further failed to satisfy its fiduciary duties by failing to inform clients that its compensation was higher than the Firm's typical advisory fee. The Commission further alleged that Shamburger, as the sole individual at the Firm responsible for the Firm's Form ADV Brochures, filed five Form ADV Brochures between March 2014 and March 2015 that falsely stated that the Firm did not receive any compensation for the sale of securities or other investment products, and that the Firm did not receive any economic benefit from any third party for advice rendered to Firm clients.

The Commission found that this conduct violated Section 206(2) of the Advisers Act and Section 15(a) of the Exchange Act, and that the Firm, through Shamburger's actions, violated Section 207 of the Advisers Act. The Commission ordered that the Firm and Shamburger cease and desist from committing or causing any violations and future violations of Section 15(a) of the Exchange

Act and Section 206(2) and 207 of the Advisers Act. The Commission ordered that Wedel cease and desist from committing or causing any violations and future violations of Section 15(a) of the Exchange Act and Section 206(2) of the Advisers Act. The Commission censured the Firm and ordered it to pay disgorgement of $253,784, prejudgment interest of $25,163, and a civil monetary penalty of $85,000. The Commission also ordered that Shamburger and Wedel pay civil monetary penalties of $50,000 and $25,000, respectively. The Commission also ordered the Firm to comply with certain undertakings, including relinquishing all rights to receive trailing fees and providing notice of the Commission's order to the Firm's advisory clients.

In a related matter, the Commission filed an action against McKinley, its principals, and another individual and entity alleging violations of the antifraud and registration provisions of the federal securities laws related to the offering of the Fund's promissory notes.

***In re N. Gary Price*, Investment Advisers Act Rel. No. 5307 (July 24, 2019); *SEC v. Aequitas Management, LLC et al.*, Lit. Rel. No. 23485 (Mar. 10, 2016)**

The Commission accepted an offer of settlement from N. Gary Price (Price), a principal of Genesis Capital LLC (the Firm), a registered investment adviser. The Commission alleged that Price failed adequately to disclose to his advisory clients certain conflicts of interest relating to his interest in entities owned by Aequitas Capital Management, Inc. (ACM), and other entities affiliated with Aequitas Commercial Finance, LLC (ACF) (collectively, Aequitas), as well as his receipt of investor referral fees from ACM via his interest in RP Capital, LLC (RP Capital), a registered broker-dealer. Specifically, the Commission alleged that from 2013 to 2015, Price, while serving on the Firm's investment committee, approved multiple investments by three mutual funds (Funds) in promissory notes of ACF, which subsequently issued loans and lines of credit to certain affiliated entities in which Price and Aequitas held ownership interests. The Commission further alleged that during this time, Price received investor referral fees (separate from Firm clients) via his interest in RP Capital, from ACM, which received management fees from ACF. According to the Commission's Order, while the Firm's March 2014 Form ADV brochure described its and Price's affiliation with RP Capital and the Affiliated Entities, it provided no information about the relationships between those entities and ACF, ACM, and Aequitas. The Commission found that this conduct violated Section 206(2) of the Advisers Act. The Commission barred Price from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for one year and ordered that he cease and desist from committing or causing any violations and future violations of Section 206(2) of the Advisers Act. The Commission also ordered that Price pay disgorgement of $57,945, prejudgment interest of $9,088, and a civil monetary penalty of $75,000. In a related matter, the Commission charged ACF and several other Aequitas companies and officers with concealing the true financial condition of Aequitas while defrauding the purchasers of more than $300 million in ACF promissory notes and other Aequitas securities.

***SEC v. Dale M. Walker*, Litig. Rel. No. 24424, 2019 SEC Lexis 494 (Mar. 15, 2019)**

The Commission filed a civil complaint in the US District Court for the Middle District of Georgia Macon Division against Dale M. Walker (Walker). The Commission's complaint alleges that Walker misled three public pension fund boards in connection with their selection of an investment adviser to manage a cumulative $402 million pension fund portfolio. Specifically, the Commission alleges that Walker had an undisclosed personal relationship, and thereby a conflict of interest, with an individual at one investment adviser (the Adviser), to which Walker provided an unfair competitive advantage in the bidding process. The Commission alleges that Walker created this competitive advantage by allowing the Adviser to prepare a written analysis ranking each of the investment adviser proposals, but falsely representing to the pension fund boards that he had prepared such analysis and ranking. The Commission further alleges that Walker did not disclose this conflict of interest to the pension fund boards, each of which followed Walker's recommendation and selected Adviser as the investment adviser for their respective pension funds. The Commission alleges that Adviser violated Section 206(2) of the Advisers Act and that Walker aided and abetted such violations, and that, unless he is enjoined, Walker will continue to engage in acts, practices, and courses of business that aid and abet such violations. Without admitting or denying the allegations in the complaint, Walker consented to the entry of a final judgment permanently enjoining him from violating the antifraud provision of Section 206(2) of the Advisers Act and ordering him to pay a $10,000 civil penalty. The final judgment further enjoins Walker from participating, on behalf of a government entity, in the decision to select or retain an investment adviser or broker-dealer, any involvement with managing any public pensions or making investment recommendations to such entities, and from participating in the selection of underwriters or municipal advisers for any offering of municipal securities.

Digital Advice/Models

***In re Morgan Stanley Smith Barney LLC*, Investment Advisers Act Rel. No. 5408, 2019 SEC LEXIS 4476 (Nov. 7, 2019)**

The Commission accepted an offer of settlement from Morgan Stanley Smith Barney LLC (the Firm), a dually registered investment adviser and broker-dealer, in connection with the Firm's automated mutual fund share class selection calculator. The Commission alleged that the Firm made representations to clients that the automated formula would provide eligible customers with the least costly mutual fund share class. However, a number of issues with the calculator resulted in the Firm having failed to provide available sales charge waivers to approximately 16,748 retirement accounts and 1,772 charitable accounts, which resulted in the Firm receiving more revenue from shares with up-front sales charges and/or higher ongoing expenses, and which negatively impacted the customers' overall returns. According to the Commission, the Firm's failure to discover and remedy the calculator's issues rendered its customer representations misleading. The Commission found that this conduct violated Sections 17(a)(2) and 17(a)(3) of the Securities Act. The Commission censured the Firm and ordered it to cease and desist from committing or causing any present or future violations of Section 17(a)(2) and 17(a)(3) of the Securities Act. The Commission also ordered the Firm to pay disgorgement of $42,389.41, prejudgment interest of $3,369.58, and a civil money penalty of $1,500,000. In reaching the settlement, the Commission credited the Firm's promptly undertaken remedial acts, as well as its cooperation with the Commission staff.

Due Diligence

***In re Charter Capital Management, LLC and Steven Morris Bruce*, Investment Advisers Act Rel. No. 5226, 2019 SEC LEXIS 946 (Apr. 23, 2019)**

The Commission accepted an offer of settlement from Charter Capital Management, LLC (the Firm), a registered investment adviser, and its founder and chief executive officer, Steven Morris Bruce (Bruce) (collectively, Respondents), in connection with investment due diligence practices and conflicts disclosure. Specifically, the Commission alleged that the Respondents made a $4 million loan on behalf of two funds managed by the Firm to an individual and his company, who purported to use the proceeds to engage in trading international notes for huge profits. The Commission alleged that the individual and his entity promised the funds would receive payment of $40 million in 90 days; however, although $1.5 million was initially paid, the remaining $38.5 million was never paid, causing the funds to lose $2.5 million. The Commission alleged that Respondents performed limited due diligence on the investment, including telephone calls and Google searches, but without additional support for moving forward with the investment on behalf of the funds, despite disclosure to investors regarding the "great deal of time" spent doing diligence on the investment strategy and the individual's credentials. Bruce further told investors that Bruce had the "buy in" of the Firm's attorneys, CPA firm, and administrator with regard to the investment, when, in fact, certain of these outside professionals had raised concerns about the investment. In addition, the Commission alleged that in early August 2016, Bruce made a $115,000 loan of his own personal money to the individual and his company, and Respondents failed to disclose a conflict of interest arising out of Bruce's status, through his personal loan, as a creditor of the individual and his company. As a result of this conduct, the Commission found that Respondents violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. The Commission censured Respondents and ordered Respondents to cease and desist from committing or causing any violations and any future violations of Section 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder. The Commission also ordered Respondents to pay a civil penalty of $40,000.00. In determining to accept Respondents' offer, the Commission considered that Bruce voluntarily disgorged $184,540 of his own money to the funds in November 2017, to partially cover the loss.

Fees & Expenses

***In re ECP Manager LP*, Investment Advisers Act Rel. No. 5373, 2019 SEC LEXIS 3386 (Sept. 27, 2019)**

The Commission accepted an offer of settlement from ECP Manager LP (the Firm), a private equity fund adviser that provides investment advisory services to ECP Africa Fund II PCC (Fund) and other private funds, in connection with excessive management fees. Specifically, the governing documents of the Fund specified that the Firm, on a semiannual basis, would charge a management fee equal to 2% of the annual total invested capital contributions, with the exception that the amount would be reduced as a result of certain triggering events, including write-offs of specific portfolio investments. The Commission alleged that in June 2010, the Fund received warrants on the common stock of an African mining company of approximately $3.41 million of the Fund's invested capital contributions. The Commission then alleged that the Fund's financial statements valued the warrants at zero beginning with the period that ended on March 31, 2014, and the period that ended in mid-June 2014. The warrants expired as worthless, causing the Fund to write off the specific portfolio investment. The Commission alleged that the Firm included the approximately $3.41 million of invested capital contributions attributable to the warrants in the amount used to calculate their management fees charged to the Fund on July 1, 2014, January 1, 2015, and July 1, 2015, causing the Fund's investors to pay approximately $100,000 more in management fees than they should have paid. As a result of this conduct, the Commission found that the Firm violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. The Commission ordered the Firm to cease and desist from committing or causing any violations and any future violations of Section 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. The Commission also ordered the Firm to pay disgorgement of $102,304, prejudgment interest of $20,353, and a civil fine of $75,000. Additionally the Commission required the Firm to deposit $122,656 into a segregated account for the benefit of the Fund to repay the Fund and its investors the amount of the excessive management fees charged along with interest.

***In re State Street Bank and Trust Co.*, Investment Company Act Rel. No. 33534, 2019 SEC LEXIS 1520 (June 27, 2019)**

The Commission accepted an Offer of Settlement from State Street Bank and Trust Company (the Firm) in connection with allegedly overcharging its mutual fund clients and other registered investment companies (together, RICs) for certain reimbursable expenses and reflecting those inflated charges in records of RICs. Specifically, the Commission alleged that from 1998 to 2015, Respondent overcharged the RICs by approximately $170 million in thirteen categories of expenses. A significant portion of the overcharges related to Society of Worldwide Interbank Financial Telecommunication (SWIFT) messages, a secured messaging network used by banks and other financial institutions. The Firm allegedly presented the cost of SWIFT messages to RICs as an out-of-pocket expense with a $5.00 per message fee; however, it was estimated that the

Firm’s overhead was actually approximately $0.25 per message. The Commission alleged that Respondent overcharged approximately 5,000 RICs for SWIFT messages by a total of approximately $110 million. For the other categories of overcharged expenses, the Commission alleged that the Firm had established a rate to charge clients at some point in the past and failed to update that rate over time, including where volumes increased or costs decreased, creating disparity between the amount the charged and its cost per unit. State Street’s internal controls did not include procedures to periodically reassess these unit costs. The Commission further alleged that where the Firm had entered into custodial agreements with certain of the RICs, the Firm maintained records for RICs showing the inflated rates for the out-of-pocket expenses. As a result, the Commission found that the Firm caused recordkeeping violations of Section 31(a) of the Investment Company Act and Rules 31a-1(a) and (b) thereunder, and violated Section 34(b) of the Investment Company Act for overcharging the RICs. In connection with this settlement, the Commission ordered the Firm to cease and desist from committing or causing any violations and any future violations of Sections 31(a) and 34(b) of the Investment Company Act and Rules 31a-1(a) and (b) thereunder, and pay disgorgement of $48,473,242, prejudgment interest of $307,619 and a civil penalty of $40 million. The Commission credited the Firm’s remedial acts in accepting the Offer of Settlement, including self-reporting its conduct to the Commission.

***In re Stephen Brandon Anderson*, Investment Advisers Act Rel. No. 5242, 2019 SEC LEXIS 1239 (May 28, 2019)**

The Commission accepted an offer of settlement from Stephen Brandon Anderson (Anderson), owner and operator of River Source Wealth Management, LLC (the Firm), a defunct, formerly registered investment adviser. The Commission alleged that, in 2015 and 2016, Anderson charged Firm clients over $367,000 in advisory fees in excess of the maximum annual advisory fee permitted by clients’ investment advisory agreements. The Commission also alleged that, between 2015 and 2017, Anderson made material misstatements to clients when he: (1) overstated the Firm’s assets under management in the Firm’s Forms ADV; (2) failed to disclose in the Firm’s Forms ADV that former clients had brought suit against Anderson and the Firm for breaches of fiduciary duty, fraud, negligent and reckless supervision, and unjust enrichment; and (3) falsely told clients that the Firm had “chosen” to terminate its relationship with its asset custodian when, in reality, the custodian had terminated the relationship after noticing irregular billing practices by the Firm. The Commission further alleged that Anderson caused the Firm to fail to maintain a variety of records required to be maintained under Rule 204-2 of the Advisers Act. The Commission also alleged that Anderson failed to adopt or implement compliance policies related to the calculation and charging of fees, reporting assets under management, and maintaining client files and offsite electronic backup files. The Commission found that Anderson willfully violated Sections 206(2) and 207 of the Advisers Act and aided and abetted the Firm’s violation of Sections 204 and 206(4) of the Advisers Act and Rules 204-2 and 206(4)-7 thereunder. The Commission censured Anderson; ordered him to cease and desist from committing or causing violations of Sections 204, 206(2), 206(4), and 207 of the Advisers Act and Rules 204-2 and 206(4)-7 thereunder; ordered Anderson to pay disgorgement of over $367,000, prejudgment interest of $38,000, and a civil penalty of $100,000; barred Anderson from acting in a supervisory or compliance capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and barred Anderson from calculating or charging client advisory fees without supervision.

***In re Corinthian Capital Group, LLC, Peter B. Van Raalte, and David G. Tahan*, Investment Advisers Act Rel. No. 5229, 2019 SEC LEXIS 1035 (May 6, 2019)**

The Commission accepted an offer of settlement from Corinthian Capital Group, LLC (the Firm), a registered investment adviser; its Chief Executive Officer, Peter B. Van Raalte (Van Raalte); and its former Chief Compliance Officer, David G. Tahan (Tahan) (collectively, Respondents). The Commission alleged that from at least April 2014 to February 2015, the Firm misused assets in the Corinthian Equity Fund II, LP (Fund), a private equity fund that it advised, to the advantage of the Firm and three of its principals; failed to issue audited financial statements until more than 120 days after the fiscal years ended December 31, 2013, 2014, and 2015; and failed to adopt and implement written policies and procedures reasonably designed to prevent such violations of the Advisers Act. According to the Commission, the Firm failed to apply an offset against its management fees for the limited partners of the Fund who contributed additional capital to fund a "deemed contribution" by other limited partners. The Fund's limited partnership agreement (LPA) allowed certain limited partners to pay 20% of their capital call obligations and "deemed" them to have contributed the remaining 80%. The limited partners who did not participate in the deemed contribution provision paid the 80% difference on their own behalf and, in return, were to receive an offset against their previously collected management fees for the additional proceeds they contributed. The Commission alleged that the Firm delayed implementing a deemed contribution and failed to apply the corresponding offset, resulting in a $1.9 million credit payable to Van Raalte and two other principals. The Commission further alleged that from October 2014 through February 2015, the Firm improperly transferred the Fund's assets to the Firm's account to pay various Firm expenses, which was not authorized by the LPA. The Commission also alleged that the Firm misclassified some expenses that it charged to the Fund's limited partners as organizational expenses, contrary to the LPA. Though it subsequently issued audited financial statements that corrected these prior misclassifications, it did so more than 120 days after the end of the 2013, 2014, and 2015 fiscal years, in violation of the Custody Rule, according to the Commission. Finally, the Commission alleged that Van Raalte failed to adequately supervise Tahan's activities related to executing the transactions between the Fund's and the Firm's accounts when accounting for expenses and credits, and that the Firm lacked reasonable and effective policies and procedures to detect and prevent the violations described herein. The Commission found that this conduct violated Sections 203(e)(6), 206(2), and 206(4) of the Investment Advisers Act of 1940 and Rules 206(4)-2 and 206(4)-7 thereunder. The Commission censured Corinthian and ordered it to cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-2, 206(4)-7, and 206(4)-8 thereunder, and to pay a civil penalty of $100,000. The Commission also ordered Tahan to cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, and ordered Tahan and Van Raalte to pay civil penalties of $15,000 and $25,000, respectively. In determining to accept Respondents' Offers, the Commission considered remedial acts taken by the Firm and its cooperation during its investigation.

***SEC v. Direct Lending Investments, LLC*, Litig. Rel. No. 24432, 2019 SEC Lexis 604 (Mar. 25, 2019)**

The Commission filed a civil complaint in the United States District Court for the Central District of California against Direct Lending Investments, LLC (the Firm). The Commission's complaint alleges that the Firm, a registered investment adviser, perpetrated a multi-year fraud through its principal, Brendan Ross (Ross), resulting in approximately $11 million in overcharges of management and performance fees to fund investors, and the inflation of the Firm's private funds' returns. The complaint alleges that Ross (the Firm's 100% owner and CIO at the time) arranged with QuarterSpot, Inc. (QuarterSpot), an online small-business lending platform, to falsify borrower payment information for QuarterSpot's loans and to falsely report to the Firm that borrowers made hundreds of monthly payments which they had not. Many such loans should have been valued at zero, but were valued at par due to Ross's false payment scheme. The Commission alleges that, through such conduct between 2014 and 2017, the Firm cumulatively overstated the valuation of its QuarterSpot position by approximately $53 million and misrepresented the funds' performance by approximately 2%-3% annually. The Commission alleges that the Firm collected roughly $11 million in excess fees that would not have otherwise been collected had the QuarterSpot position been valued accurately. In addition, the Commission alleges that the Firm made false and misleading statements and engaged in deceptive conduct towards its clients through material misrepresentations in investor letters and the investor portal. Finally, the Commission alleges that the Firm filed multiple annual amendments to its Forms ADV between 2014 and March 2018, which included materially inflated numbers for the adviser's regulatory assets under management and for the funds' gross asset values. As a result of such conduct, the Commission alleges that the Firm violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, Section 17(a) of the Securities Act, and Sections 206(1), 206(2) and 207 of the Advisers Act. In its prayer for relief, the Commission requests that the Court issue: (i) an order permanently enjoining Respondent from any further violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, Section 17(a) of the Securities Act, and Sections 206(1), 206(2) and 207 of the Advisers Act and imposing a receiver over Respondent; (ii) an order that Respondent disgorge all funds received from its illegal conduct, together with prejudgment interest thereon; (iii) an order that Respondent pay civil penalties under Section 20(d) of the Securities Act, Section 21(d)(3) of the Exchange Act, and Section 209(e)(1) of the Advisers Act; (iv) an order retaining jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may have been entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court; and (v) to grant such other and further relief as may be necessary and appropriate.

Fees & Expenses/Conflicts of Interest Disclosure

***In re BB&T Securities, LLC*, Investment Advisers Act Rel. No. 5119, 2019 SEC LEXIS 320 (Mar. 5, 2019)**

The Commission accepted an offer of settlement from BB&T Securities, LLC (Respondent), a dually registered investment adviser and broker-dealer, which is a successor-in-interest to Valley Forge Asset Management LLC (Valley Forge), which was, at the time of the conduct at issue, a dually registered investment adviser and broker-dealer. The Commission alleged that Valley Forge made certain misleading statements and failed to adequately disclose to its clients the extent of its conflicts of interest. Specifically, the Commission alleged that from at least 2013 to 2016, the Commission alleged that Valley Forge used misleading statements and inadequate disclosures in its Form ADV and investment advisory contracts regarding the brokerage services and prices available if clients directed brokerage through Valley Forge (Affiliated Brokerage). According to the Commission, Valley Forge charged commissions averaging roughly 4.5 times more than what clients would have paid using other brokerage options, despite disclosures that its Affiliated Brokerage clients would receive a significantly discounted rate from the "full commission retail" rate. The Commission further alleged that because the excess fees inured largely to the benefit of Valley Forge, the firm had a conflict of interest concerning its Affiliated Brokerage program that was allegedly not adequately disclosed. As a result of the foregoing, the Commission found that Valley Forge violated Sections 206(2) and 207 of the Advisers Act. In determining to accept the settlement offer, the Commission considered Respondent's remedial acts, including terminating the Affiliated Brokerage program, amending its disclosures and the cost structure of its in-house brokerage services, and cooperating with the Commission staff. The Commission censured Respondent and ordered that it cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 207 of the Advisers Act. The Commission also ordered Respondent to pay a $500,000 civil money penalty, disgorgement of $4,712,366, and prejudgment interest of $497,387 to affected investors.

Fraud

***In re Grant Gardner Rogers*, Investment Advisers Act Rel. No. 5201, 2019 SEC LEXIS 490 (Mar. 15, 2019); *In re Talimco, LLC*, Investment Advisers Act Rel. No. 5202, 2019 SEC LEXIS 492 (Mar. 15, 2019)**

The Commission accepted offers of settlement from Talimco, LLC (the Firm), a registered investment adviser, and its chief operating officer, Grant Gardner Rogers (Rogers), in connection with the sale of a mortgage loan participation by one of the Firm's clients, a collateralized debt obligation (CDO), to another one of the Firm's clients, a commercial real estate investment fund (Fund). Specifically, the Commission alleged that, as the investment adviser for the selling CDO, the Firm owed a fiduciary duty to the CDO, which included an obligation to take steps to use its best efforts to maximize the price obtained for the mortgage loan participation by identifying willing bidders for the asset. The Commission alleged that, instead, the Firm, through Rogers, acquired bids from bidders that lacked interest in buying the asset and who, in the case of at least two bidders, agreed to bid only after receiving assurances that they would not win the auction. The Commission further alleged that, before the auction was concluded, Rogers invested in the Fund, committing $1 million in capital. According to the Commission's Orders, the Firm then caused the Fund to sell the mortgage loan participation for $43.5 million, to the highest bidder in the auction, realizing a profit of approximately $14.9 million. The Commission alleged that Rogers personally realized profits of approximately $14,000 on the sale through his investment in the Fund, and the Firm received approximately $74,000 in management and performance fees attributable to the purchase of the mortgage loan participation from the CDO by the Fund. As a result of this conduct, the Commission found that each of the Firm and Rogers willfully violated Section 206(2) of the Advisers Act.

The Commission ordered that the Firm and Rogers cease and desist from further violations of Section 206(2) of the Advisers Act, censured the Firm, and ordered the Firm to pay $74,000 in disgorgement, $8,758.80 in prejudgment interest and a civil money penalty of $325,000. The Commission also barred Rogers from association for twelve months and ordered Rogers to pay a civil money penalty of $65,000. The Commission further imposed certain undertakings on the Firm, including to produce (without service of a notice or subpoena) any and all non-privileged documents and other information requested by the Commission staff.

Investment Companies

***In the Matter of Garrison Investment Group LP and Garrison Capital Advisers LLC*, Investment Advisers Act Rel. No. 5345, Investment Company Act Rel. No. 33625, 2019 SEC LEXIS 2775 (Sept. 13, 2019)**

The Commission accepted an offer of settlement from two affiliated entities, Garrison Investment Group LP (GIG) and Garrison Capital Advisers LLC (GCA and, together with GIG, Respondents), in connection with their involvement in certain allegedly prohibited loan transactions. In November of 2012, Respondents applied for relief from the Commission to permit a business development company advised by GCA to enter into otherwise-prohibited loan transactions alongside private funds managed by GIG and its affiliates (private funds) and certain other co-investors. The Commission alleged that while the application was pending, Respondents effected nine such loan transactions without the Commission's approval. The Commission further alleged that Respondents' application for relief did not disclose all of the parties that would participate in the proposed loan transactions, or that GIG would receive compensation as a result of the transactions. The Commission also alleged that seven loan transactions Respondents effected after they received relief from the Commission did not comply with the conditions of that relief. Additionally, the Commission alleged that GIG maintained client assets with an affiliate without subjecting the affiliate to a surprise examination, and it pooled client assets in an account with its own fee revenue. The Commission found that this conduct violated Section 57(a) of the

Investment Company Act and Rule 17d-1 thereunder, Section 34(b) of the Investment Company Act, and Section 206(4) of the Investment Advisers Act and Rule 206(4)-2 thereunder. The Commission censured Respondents and ordered them to cease and desist from committing or causing any violations and any future violations of Sections 57(a) and 34(b) of the Investment Company Act and Rule 17d-1 thereunder, and also ordered GIG to cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder. Additionally, the Commission ordered Respondents pay a civil penalty of $250,000. In reaching this settlement, the Commission credited the remedial acts undertaken by Respondents and Respondents' cooperation with the Commission.

Investment Strategy Disclosure/Fraud

***In re Matthew R. Rossi and SJL Capital, LLC*, Investment Advisers Act Rel. No. 5224, 2019 SEC LEXIS 899 (Apr. 17, 2019)**

The Commission accepted an offer of settlement from Matthew R. Rossi (Rossi), founder, managing partner, and 80% majority owner of SJL Capital, LLC, a registered investment adviser (the Firm) (collectively, Respondents), in connection with allegedly concealing trading losses and misleading certain SJL advisory clients and at least one investor in SJL's MarketDNA Hedge Fund LP (Fund) regarding the nature and performance of the Firm's investment strategy. Specifically, the Commission alleged that Respondents represented to Fund investors that the Fund would invest in a diversified portfolio consisting primarily of publicly traded equity securities, using a highly successful proprietary algorithm, which allegedly included "safety valves" or stop losses to limit downside risk, when in fact, the strategy involved risky, unhedged options trading that did not fall within the disclosed strategy and did not include any safety valves or stop loss limits. The Commission further alleged that Respondents misled Fund investors and certain separate account clients about the performance of the strategy, including through distributing materials describing the returns generated by the strategy, when in reality the strategy caused the Fund to lose 88% of its value in August 2016, and it was wiped out completely by November 2016. The Commission further alleged that Respondents hid the full extent of the losses from (i) investors in the Fund by creating and distributing phony account statements and tax documents that falsely described the Fund's assets and the supposed returns generated by the algorithmic strategy and (ii) certain clients of its separately managed accounts, which adhered to the same algorithmic strategy, by distributing documents that falsely described the supposed returns generated by the strategy and concealed the losses suffered by the Fund. As a result of this conduct, the Commission found the Respondents violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. The Commission ordered the Respondents to cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. The Commission censured the Firm and barred Rossi from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and prohibited him from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter. The Commission further ordered a hearing to take evidence as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

Mutual Fund Share Class Selection & Disclosure

Share Class Selection Disclosure Initiative Settlements

On March 11, 2019, the SEC filed settled charges against 79 investment advisers, finding violations of Section 206(2) and Section 207 of the Investment Advisers Act of 1940. The cases arose out of the Division of Enforcement's Share Class Selection Disclosure Initiative, announced in February 2018 and led by the Division's Asset Management Unit. Under the Initiative, the Division offered to recommend favorable settlement terms for advisers who self-reported a failure to disclose in the adviser's applicable Forms ADV the conflict of interest stemming from the receipt of 12b-1 fees from mutual funds for investing advisory clients in a 12b-1 fee-paying share class in instances in which a lower-cost share class was available for the same fund from January 1, 2014 forward. The Initiative followed several 2018 settlements with investment advisers alleging similar violations. Each investment adviser consented to the entry of a cease-and-desist order, a censure, disgorgement of certain fees (plus prejudgment interest), and an undertaking to review and correct all relevant disclosure documents, and to evaluate whether to move existing clients to a lower-cost share class. Disgorgement ranged from just over $33,000 to more than $17 million, with an average amount of $1.6 million. In total, the settlements involved over $125 million in disgorgement to investors. None of the settlements involved a civil monetary penalty.

On September 30, 2019, the SEC filed settled charges against an additional 16 investment advisers that self-reported pursuant to the Initiative, finding violations of Section 206(2) of the Investment Advisers Act. The advisers received similarly favorable settlement terms as those that settled in March 2019. At the same time, the Commission also issued a settlement order against an adviser that did not self-report, despite the Commission determining that it was eligible to have done so, Mid Atlantic Financial Management Inc., finding violations of Section 206(2) and Section 206(4) of the Investment Advisers Act and Rule 206(4)-7 thereunder. Mid Atlantic was ordered to pay a $300,000 civil penalty. These settlements brought the total amount of disgorgement to investors to over $135 million.

In re Founders Financial Securities, LLC, Investment Advisers Act Rel. No. 5397, 2019 LEXIS 2862 (Sept. 30, 2019)

The Commission accepted an offer of settlement from Founders Financial Securities, LLC (the Firm), a dually registered investment adviser and broker-dealer. The Commission alleged that the Firm invested advisory clients in mutual fund share classes with 12b-1 fees instead of share classes of the same funds without 12b-1 fees, and received more than $1.24 million in 12b-1 fees as a result, between January 1, 2014 and February 1, 2017. The Commission also alleged that the Firm's Form ADV disclosures regarding these practices were inadequate, as they failed to disclose the conflict of interest that resulted from the Firm's receipt of additional compensation for investing advisory clients in a fund's 12b-1 fee-paying share class when a lower-cost share class was available, and that the Firm would and did select 12b-1 fee-paying share classes in those circumstances. The Commission further alleged that the Firm breached its duty to seek best execution by investing clients in 12b-1 fee-paying share classes when cheaper share classes were available. According to the Commission, the Firm failed to adopt and implement written compliance policies and procedures governing mutual fund share class selection. In determining to accept the settlement offer, the Commission considered the Firm's remediation. The Commission censured the Firm and ordered it to cease and desist from committing or causing further violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, and to pay disgorgement of $1,246,133.60 and prejudgment interest of $229,332.28. The Commission did not impose a civil monetary penalty and noted that the Firm was not eligible to self-report pursuant to the Division of Enforcement's Share Class Selection Disclosure Initiative because the Division contacted the Firm before the Initiative was announced.

***In re Sigma Planning Corp.*, Investment Advisers Act Rel. No. 5358, 2019 LEXIS 3520 (Sept. 19, 2019)**

The Commission accepted an offer of settlement from Sigma Planning Corp. (the Firm), a registered investment adviser. The Commission alleged that, from at least January 1, 2013 through March 1, 2017, the Firm failed to disclose the conflicts of interest that resulted from its receipt of a percentage of 12b-1 fees from its clearing broker and its selection of 12b-1 fee-paying share classes when clients were eligible for lower-cost share classes. The Commission also alleged that the Firm breached its duty to seek best execution by investing clients in 12b-1 fee-paying share classes when cheaper share classes were available. The Commission further alleged that, from at least January 1, 2013 through March 31, 2018, the Firm failed to disclose a conflict of interest related to the asset-based fee it was required to pay to its clearing broker for share classes that did not pay a 12b-1 fee and its avoidance of that fee by investing clients in 12b-1 fee-paying share classes, even when the clients were eligible for the lower-cost share classes. The Commission also alleged that the Firm failed to disclose that its affiliated broker-dealers received revenue-sharing payments pursuant to tiered sponsorship agreements with certain alternative investment sponsors. Further, according to the Commission, the Firm engaged in brokerage activities without registering as a broker-dealer. Finally, the Commission alleged that the Firm failed to adopt and implement written compliance policies and procedures governing its mutual fund share class selection and revenue sharing arrangements. The Commission censured the Firm and ordered it to cease and desist from committing or causing further violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, and Section 15(a) of the Exchange Act, and to pay disgorgement of $1,920,809, prejudgment interest of $225,909, and a civil penalty of $400,000. The Commission noted that the Firm was not eligible to self-report pursuant to the Division of Enforcement's Share Class Selection Disclosure Initiative because the Division contacted the Firm before the Initiative was announced.

Preferential Liquidity

***SEC v. Thomas Conrad, Jr. et al.*, Litig. Rel. No. 24390, 2019 SEC LEXIS 81 (Feb. 4, 2019)**

In a civil action brought by the Commission, the US District Court for the Northern District of Georgia granted in part and denied in part the Commission's motion for partial summary judgment against Thomas Conrad, Jr. (Conrad), and two unregistered advisory firms he controlled, Financial Management Corporation (FMC) and Financial Management Corporation, S.R.L. (FMC Uruguay). The Commission's complaint, originally filed in July 2016, alleged violations of the Federal anti-fraud provisions in Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. Specifically, the Commission alleged that Conrad directed preferential redemptions and other disbursements from private funds advised by FMC and FMC Uruguay for himself, his extended family, and certain favored investors, while representing to other investors that redemptions were suspended. The complaint also alleged that Conrad failed to disclose conflicts of interest arising from loans made to Conrad's family members and Conrad's appointment of himself as a sub-manager for a fee. The complaint further alleged that, in offering materials given to prospective investors, FMC and FMC Uruguay touted Conrad's significant experience in the securities industry, but failed to disclose his disciplinary history. The Court held that the Commission was entitled to summary judgment on its fraud claims based on the fraudulent redemption practices and failure to disclose Conrad's disciplinary history. The court denied the Commission's motion for summary judgment on its claims that Conrad failed to disclose conflicts of interest, finding that there were disputed issues of facts. The Court later entered final judgment against Conrad, enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. The Court also imposed a civil penalty against Conrad in the amount of $327,500. *See SEC v. Thomas Conrad, Jr. et al.*, Litig. Rel. No. 24640, 2019 SEC LEXIS 3839 (Oct. 10, 2019).

Proxy Voting

***In re Amadeus Wealth Advisors LLC*, Investment Advisers Act Rel. No. 5374, 2019 SEC LEXIS 3384 (Sept. 27, 2019); *In re Three Bridge Wealth Advisors, LLC*, Investment Advisers Act Rel. No. 5375, 2019 SEC LEXIS 3381 (Sept. 27, 2019)**

In two unrelated settled actions, the Commission accepted offers of settlement from two unaffiliated advisers, Amadeus Wealth Advisors, LLC (Amadeus), and Three Bridge Wealth Advisors LLC (Three Bridge) (together collectively, Respondents). Amadeus is a New York–based investment adviser. Three Bridge is a California-based investment adviser. The Commission alleged that Respondents, each engaged in voting client proxies on multiple occasions in 2015, notwithstanding representations that each made in their client advisory agreements and regulatory filings with the SEC that they would not accept or exercise proxy voting authority over client securities. The Commission alleged that at the request of representatives of the same registered broker-dealer, Respondents each executed and returned to the broker-dealer letters casting their clients' votes in favor of the proposition at issue for the proxy being solicited on behalf of the issuer. Lastly, the Commission alleged that neither Respondent provided disclosures to any client or sought authority to vote those client's proxies prior to executing and returning the letters. The Commission ordered Respondents to cease and desist from committing or causing any violations and any future violations of Section 206(2) Advisers Act. The Commission also ordered Amadeus and Three Bridge to pay civil penalties of $40,000 and $60,000, respectively.

Senior Investors

***In re Account Management LLC, Christopher De Roetth, and Peter De Roetth*, Investment Advisers Act Rel. No. 5305, 2019 SEC LEXIS 1793 (July 19, 2019)**

The Commission accepted an offer of settlement from Account Management LLC (the Firm), Christopher De Roetth, and Peter De Roetth (collectively, Respondents). The Firm is a registered investment adviser, Christopher De Roetth is one of its principals, and Peter De Roetth is a co-founder of the Firm and Christopher's father. The Commission alleged that Peter De Roetth convinced the Firm's largest customer, a 92-year-old woman recently diagnosed with senile dementia, to amend her trust to (a) give 85% of her assets to a charity that was also a customer of the Firm (an increase from the 10% contribution that was already in the trust agreement), and (b) to continue the trust until twenty years after her death, and appoint the Firm to manage the trust's assets during those twenty years. The Commission further alleged that the customer had declined to amend her trust in this way prior to being diagnosed with senile dementia. The Commission found that this conduct violated Section 206(2) of the Advisers Act. Respondents agreed to undertakings to (a) not charge or receive any compensation related to management of the trust's assets, (b) not object to the trust's termination of its relationship with the Firm, (c) notify the Firm's clients of the Order, and (d) certify in writing to the commission compliance with the undertakings. The Commission censured Respondents and ordered them to cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act. The Commission further ordered Respondents pay a civil penalty of $100,000.

Trading Practices

***In re Channing Capital Management, LLC*, Investment Advisers Act Rel. No. 5412, 2019 SEC LEXIS 4771 (Nov. 22, 2019)**

The Commission accepted an offer of settlement from Channing Capital Management, LLC (the Firm), a registered investment adviser providing institutional investment management services to institutional investors and pension funds, in connection with the Firm's allocation of trading commission costs associated with aggregated (or block) securities trades. The Commission alleged that the Firm failed to follow its policies and procedures mandating that the terms negotiated for block trades apply equally to each participating client. Specifically, the Commission alleged that the Firm's policies and procedures separately required compliance with and observance of all policies and prohibitions mandated by a client. The Commission alleged that four of the Firm's approximately 35-45 institutional clients had included a contractual provision that placed limitations on the amount they were willing to pay in commission rates for execution of their brokerage transactions. The Commission alleged that between January 2014 and January 2018, other clients that did not specify or otherwise limit their commission rate paid commission rate per share in block trades higher than those clients that had placed restrictions on their execution commission rates. The Commission alleged that this resulted in the Firm's failure to comply with its written trade aggregation policies and procedures concerning *pro rata* allocation of trading costs in block trading transactions. The Commission found that this conduct violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder. The Commission censured the Firm and ordered it to cease and desist from committing or causing any present or future violations of Section 206(4) of the Advisers Act and Rule 206(4)-7. The Commission also ordered the Firm to pay a civil penalty of $50,000.00. In reaching the settlement, the Commission credited the Firm's voluntary and promptly undertaken remedial acts, as well as its cooperation with the Commission staff.

***In re J.S. Oliver Capital Management L.P., and Ian O. Mausner*, Investment Advisers Act of 1940 Rel. No. 5236, 2019 SEC LEXIS 1169 (May 16, 2019)**

The Commission accepted an offer of settlement from J.S. Oliver Capital Management, L.P. (the Firm), a registered investment adviser, and the Firm's founder, president, head portfolio manager, and sole control person, Ian O. Mausner (Mausner) (collectively, Respondents), in connection with allegedly fraudulent trade allocations and misuse of client commission credits (soft dollars). The Commission alleged that from June 2008 to November 2009, Respondents engaged in a "cherry-picking" scheme in which they disproportionately allocated profitable equity trades to six clients, including affiliated hedge funds in which Mausner and his family were personally invested, and allocated less-profitable trades to three other clients: a widowed client, a profit sharing plan, and a charitable foundation. In addition, the Commission alleged that Mausner used the inflated profits to boost the performance of an affiliated fund, then both falsely marketed the Fund's profitability and growth and collected performance fees from the fund based on the inflated profits. According to the Commission, the total harm inflicted on the three clients was approximately $10.7 million. The Commission also alleged that Respondents engaged in a fraudulent soft dollar scheme by misusing over $1.1 million in soft dollar credits. According to the Commission, Respondents used soft dollars in ways not disclosed in the Firm's Form ADV or offering memorandum, including to pay Mausner's personal expenses. Finally, the Commission alleged that from May 2008 to June 2009, the Firm failed to maintain required books and records, including order tickets and original emails. The Commission found that this conduct violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1), 206(2), 206(4) and 207 of the Investment Advisers Act of 1940 and Rule 206(4)-8 thereunder. The Commission also alleged that the Firm violated, and Mausner aided and abetted and caused the Firm's violations of, Sections 204 and 206(4) of the Advisers Act and Rules 204-1(a)(2), 204-2(a)(3), 204-2(a)(7), and 206(4)-7 thereunder. Respondents were ordered to cease and desist from committing or causing any violations and any future violations of the Securities Act, the Exchange Act, and the Advisers Act. Mausner was barred from association and prohibited from acting as an employee, officer, or director of an investment adviser with a conditional right to reapply, and was ordered to pay disgorgement of $669,965. The Commission revoked the Firm's investment adviser registration.

Valuation

***In re Swapnil Rege*, Investment Advisers Act Rel. No. 5303, 2019 SEC LEXIS 1777 (July 18, 2019)**

The Commission accepted an offer of settlement from Swapnil Rege (Rege), a portfolio manager for a previously registered investment adviser (Fund Adviser) that provided investment advisory services to a number of private funds, including a certain fund (Fund). The Commission alleged that Rege changed the default discount curve setting in the Fund Adviser's pricing model when valuing certain swap and options on interest rate swaps positions held by the Fund. In doing so, Rege allegedly inflated the value of the positions and, correspondingly, the Fund, and allegedly caused the Fund's third-party administrator to send account statements reflecting overstated returns to its investors. According to the Commission, Rege concealed his conduct from the Fund Adviser. The Commission found that this conduct violated Sections 206(1) and 206(2) of the Advisers Act, as well as Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. The Commission ordered that Rege cease and desist from committing or causing any violations and any future violations of those provisions of the Advisers Act, and barred him from association and from serving in any capacity for a registered investment company or affiliated person of an investment adviser, depositor, or principal underwriter, with a right to reapply after three years. The Commission further ordered Rege to pay a civil penalty of $100,000, disgorgement of $600,000, and prejudgment interest of $49,171.

Financial Industry Regulatory Authority

NEW HEAD OF FINRA'S DEPARTMENT OF ENFORCEMENT

In September 2019, FINRA announced that Susan Schroeder, Executive Vice President of Enforcement, would leave FINRA at the end of that year. Schroeder had been in her role since 2017; during her tenure, she led the consolidation of FINRA's Department of Enforcement. In January 2020, Jessica Hopper, previously Deputy Head of Enforcement, was promoted to lead the Department of Enforcement after initially being named the Acting Head of Enforcement when Schroeder's departure was first announced. Hopper has been with FINRA Enforcement for approximately 16 years.

FINRA ISSUES ADDITIONAL EXTRAORDINARY COOPERATION GUIDANCE

Last year, FINRA issued Regulatory Notice 19-23 (RN 19-23 or the Notice) to provide member firms with supplemental guidance about the circumstances that warrant credit for extraordinary cooperation. The release was prompted by potential uncertainty regarding the interplay between FINRA Rule 4530(b) (requiring member firms to self-report certain conduct) and FINRA Rule 8210 (obligating those firms to comply with requests for information and documents) on the one hand, and the concept of credit for extraordinary cooperation on the other.

FINRA has stated on numerous occasions that it seeks to encourage firms to take proactive steps upon discovery of improper conduct by providing credit to firms that promptly take extraordinary steps to remediate the conduct beyond those required of all FINRA members. RN 19-23 expands on the more-than-a-decade-old guidance in Regulatory Notice 08-70 by providing examples and explanations for each of the four types of extraordinary cooperation: (1) self-reporting violative conduct before a regulator becomes aware of it; (2) taking extraordinary steps to correct deficient procedures and systems; (3) providing extraordinary remediation to impacted customers; and (4) providing substantial assistance to FINRA's investigation.

The Notice was accompanied by a press release and a video interview of Schroeder. In the press release, the Notice, and the video, FINRA underscores that its extraordinary cooperation policy has not changed; rather, the Notice is intended to provide transparency on what extraordinary cooperation looks like and how it differs from the cooperation expected of every firm.

Key takeaways from the supplemental guidance include:

- **Potential Sanctions May Be "Well Below" Sanction Guidelines Ranges.** RN 19-23 states that a firm's extraordinary cooperation may lead the Department of Enforcement to recommend a sanction "well below" the ranges reflected in the Sanction Guidelines or relevant precedent. The Notice explains that to better "recognize and incentivize" the actions that constitute extraordinary cooperation, FINRA weighs these steps "so heavily that the outcome of the matter is materially different" than it would have been without the extraordinary efforts taken by the firm. Indeed, FINRA has stated that in these cases reductions in fines "normally will be substantial."

- **New AWC Sections Aimed at Transparency.** FINRA will include a section titled "Credit for Extraordinary Cooperation" in all Letters of Acceptance, Waiver and Consent (AWCs) for matters in which FINRA determines that the respondent provided extraordinary cooperation. AWCs will also include, as applicable, a new section titled, "Sanctions Considerations" reflecting any mitigating or aggravating factors considered by the Staff in determining the sanction.

- **Increased Focus on Remediation and Restitution.** Consistent with recent messaging from FINRA regarding its focus on restitution to customers, RN 19-23 places special emphasis on both remediation and restitution as elements of extraordinary cooperation.

- **Emphasis on Promptness and Breadth of Remediation.** The Notice emphasizes and expands on ideas from the prior guidance: that credit should be given for prompt and immediate remediation to customers and to firms that broadens the scope of FINRA's investigation. It focuses on "accelerat[ing]" the restitution process to make payments "as quickly as possible." In Regulatory Notice 08-70, the idea of broadening the investigation is described in the section on remediation to customers. The supplemental guidance suggests that the consideration also applies to corrective action. Specifically, RN 19-23 discusses expanding internal assessments beyond the product or department for which an issue was first identified.

- **Corrective Action Can Be Before or After a Self-Report.** Recognizing that there may be tension between expecting firms to promptly self-report and the language of the prior guidance, which states that the Staff will give consideration to corrective measures put in place *prior to* any self-report, FINRA clarified that, where appropriate, it will consider providing credit for remedial measures taken promptly *after* a self-report.

- **It Matters Whether Conduct Was Proactively Detected.** RN 19-23 expands on the prior guidance, which provided that self-reporting before "any regulatory inquiry into the conduct" and before the conduct came to the "regulator's attention" would be considered, by explicitly stating that it will consider whether the conduct was "proactively detected." In other words, the Notice implies that conduct detected through "compliance, audits, or other surveillance" will be afforded more weight than detection "only after receiving notice from customers, counterparties or regulators."

- **More Examples of Substantial Assistance.** The supplemental guidance offers a number of new examples of substantial assistance that may result in extraordinary cooperation credit, including (i) providing analysis of trading or other data to assist FINRA in its understanding of the issues; (ii) providing detailed information or summaries of events prior to receiving a Rule 8210 or other request; and (iii) conducting a thorough internal audit or investigation, with assistance from counsel or consultants as appropriate, and disclosing the relevant findings to FINRA.

- **Publication of Matters Resulting in No Formal Action.** RN 19-23 states that FINRA will consider, where appropriate and useful, publishing information about cases in which FINRA gave a firm credit for extraordinary cooperation and determined not to proceed with formal action. The publication may include details about the factors that led to the Staff's decision but will do so anonymously, unless permission is granted by the subject firm.

Since publication of the Notice, settlements have taken varied approaches to implementing the guidance. Several examples in which FINRA has recognized and credited a firm's extraordinary cooperation are described in the case summaries below.

529 PLAN SHARE CLASS INITIATIVE

In January 2019, FINRA announced its 529 Plan Share Class Initiative (the Initiative) in Regulatory Notice 19-04. The Initiative asked member firms to self-report any areas of concern regarding the reasonableness of their supervisory systems and procedures governing 529 plan share-class recommendations. The Initiative highlighted several potential issues, including member firm failures to (i) provide training regarding the costs and benefits of different 529 plan share classes; (ii) assess and understand the different costs of share classes for individual transactions; (iii) review data reflecting 529 plan share classes sold; and (iv) review share-class information, including potential breakpoint discounts or sales charge waivers, when reviewing the suitability of 529 plan recommendations. FINRA announced a set of standardized settlement terms for firms that participate in the Initiative. Specifically, where the Enforcement decides to recommend formal action, the settlement will include restitution and a censure but no monetary fine. FINRA also stated that there may be instances in which Department of Enforcement determines that formal action is not warranted.

FINRA RESTRUCTURES EXAM PROGRAM AND ANNOUNCES SENIOR LEADERSHIP TEAM

In late 2018, FINRA announced that it planned to consolidate its Examination and Risk Monitoring Programs, integrating its three separate programs—Sales Practice, Risk Oversight and Operational Regulation, and Trading & Financial Compliance Examinations, which are responsible for business conduct, financial, and trading compliance—into one unified, integrated program. FINRA made significant progress with respect to that effort in 2019.

Under the new program, all member firms are grouped into one of five business models: Retail, Capital Markets, Carrying and Clearing, Trading and Execution, and Diversified. Firms are assigned a Single Point of Accountability, who is responsible for ongoing risk monitoring, risk assessment, and planning and scoping of examinations. Each of these processes will be tailored to the risk of a firm's business activities.

In December 2019, FINRA announced the senior leadership team that will oversee these processes under the direction of Bari Havlik, Executive Vice President, Member Supervision. Tom Nelli, Senior Vice President, will lead the teams responsible for executing examinations. The following individuals will lead the Single Point of Accountability and Risk Monitoring teams for the five business models: Ornella Bergeron for the Carrying and Clearing and Diversified firm groups; Bill St. Louis for the Retail and Capital Markets firm groups; and Tim Thompson for the Trading and Execution firm group. Additionally, Kerry Gendron (Senior Vice President, Data Analytics and Technology Strategy) and Ursula Clay (Senior Vice President and Chief of Staff) will provide guidance and support to FINRA's exam and risk-monitoring efforts.

FINRA also announced that two senior leaders had taken on new roles. Mike Rufino, Executive Vice President, will focus on investor protection issues, reporting directly to Havlik. Bill Wollman, Executive Vice President, will head a newly created Office of Financial and Operational Risk Policy in FINRA's Office of General Counsel. Wollman will report directly to FINRA's Chief Legal Officer, Robert Colby, and continue to coordinate closely with Member Supervision.

At the time of the announcement of the new examination and risk-monitoring structure and leadership team, FINRA also stated that in light of the mid-2019 retirement of Cam Funkhouser, Executive Vice President of the Office of Fraud Detection and Market Intelligence, the organization will create a new executive role leading the National Cause and Financial Crime Detection Programs. The new position will cover (i) a consolidated National Cause Program; (ii) the Office of the Whistleblower and Tip Program; (iii) Fraud Surveillance; (iv) Insider Trading and Private Investment in Public Equity Surveillance; and (v) Specialist teams for Anti-Money Laundering and Cybersecurity.

2019 FINRA REPORT ON EXAMINATIONS

In October 2019, FINRA released its third annual Report on Examination Findings and Observations (the Report). The Report provides key findings from recent FINRA member firm examinations and is intended as a resource to help firms more easily comply with securities rules and regulations and to assist in strengthening firms' compliance programs and supervisory controls.

Of note, last year FINRA revised the name of the Report to include the phrase "and Observations" to reflect the distinction between examination findings and observations. Findings constitute determinations of a violation. In contrast, observations are suggestions for improvements to address perceived weaknesses that do not otherwise rise to the level of a rule violation; observations are provided separately from firms' formal examination reports. The Report also included a new sub-section called "Additional Resources" for most areas. These linked to additional information, including Regulatory Notices, topic pages and the guidance contained in Frequently Asked Question postings.

The Report contained four main areas: (i) Sales Practice and Supervision; (ii) Firm Operations; (iii) Market Integrity; and (iv) Financial Management. Each area highlighted key sub-areas. Sales Practice and Supervision included a discussion of supervision, suitability, digital communication, anti-money laundering, and Uniform Transfers to Minors Act/Uniform Grants to Minors Act accounts. Firm Operations contained observations on cybersecurity, looked at business continuity plans, and fixed income mark-up disclosure. Market Integrity focused on best execution, direct market access controls, and short sales. Finally, Financial Management reported on observations on liquidity and credit risk management, the segregation of client assets, and net capital calculations.

END OF MUTUAL FUND WAIVER INITIATIVE

Last year, FINRA announced the final results of its mutual fund waiver initiative, which reviewed firms' activities, practices, and supervision related to eligible mutual fund sales charge waivers. In 2015, FINRA reached settlements with 10 member firms that self-reported that sales representatives did not consider applicable sales charge waivers for charitable and retirement accounts that had purchased mutual funds. Following those settlements, additional member firms self-reported similar failures and FINRA observed the same problem during examinations. As a result, in May 2016, FINRA launched a sweep to review firms that had not self-reported this issue. Through that effort, FINRA ultimately sanctioned 56 firms for failing to waive mutual fund sales charges for eligible charitable organizations and retirement accounts, and failing to reasonably supervise that sale of mutual funds offering those waivers. FINRA announced that it obtained a total of $89 million in restitution for nearly 110,000 charitable and retirement accounts.

FINRA REHEARS CASE DUE TO POTENTIAL CONFLICT AND REVISES POLICIES TO PROHIBIT DEPARTMENT OF ENFORCEMENT FROM HIRING HEARING OFFICERS

In March 2019, FINRA issued a decision to bar a former brokerage executive. It was later reported that the FINRA hearing officer presiding over the case had applied for a job in the Department of Enforcement, which had originally filed the case. In November 2019, FINRA chose to rehear the case due to the previously undisclosed potential conflict. FINRA stated that it determined to do so out of an abundance of caution, although it had found no evidence of bias on the part of the hearing officer. Following this matter, FINRA revised its policies to prohibit the Department of Enforcement from hiring a hearing officer and to change the reporting line for hearing officers. Hearing officers now report to FINRA's Chief Executive Officer, rather than its Chief Legal Officer.

FINRA 2020 PRIORITIES

Earlier this year, FINRA published its annual Risk Monitoring and Examination Priorities Letter (the 2020 Letter). The 2020 Letter continued the approach FINRA first took in 2019, highlighting new topics that FINRA will focus on in the upcoming year. The 2020 Letter also includes a list of practical considerations and questions for each highlighted topic to help firms evaluate the state of their compliance, supervisory, and risk management programs. Finally, it should be noted that the main categories of the 2020 Letter were consistent with those in the 2019 Report on FINRA Examination Findings and Observations discussed above.

Below are the highlighted priorities outlined in the 2020 Letter.

Sales Practice and Supervision

- Regulation Best Interest (Reg BI) and Form CRS: FINRA will review firms' preparedness for Reg BI to both gain an understanding of firms' implementation challenges and to examine firms' compliance after Reg BI's compliance date. FINRA anticipates coordinating with the SEC for consistency across broker-dealer examinations.

- Communications with the Public: FINRA will continue to assess firms' compliance with FINRA Rule 2210 (communications with the public) and related supervisory and recordkeeping requirements (FINRA Rules 3110(b)(4) and 4510, Securities Exchange Act of 1934 Rules 17a-3 and 17a-4). In addition, FINRA will also focus on two areas in this space: private placement retail communications (the way in which firms review, approve, supervise, and distribute retail communications regarding private placement securities via online distribution platforms and traditional channels); and communications via digital channels (how firms comply with obligations related to the review and retention of digital communication channels, such as texting, messaging, social media, or collaboration applications).

- Cash Management and Bank Sweep Programs: FINRA will evaluate firms' compliance with rules related to cash management services that sweep investor cash into firms' affiliated or partner banks or money market funds (Bank Sweep Programs). Specifically, as it relates to Bank Sweep Programs, FINRA will focus on firms' compliance with FINRA Rules 1017 (application for approval of change in ownership, control, or business operations), 2010 (standard of commercial honor and principles of trade), and 2210 (communications with the public), as well as Exchange Act Rule 15c3-1 (net capital) and Exchange Act Rule 15c3-3 (customer protection).

- Sales of Initial Public Offering (IPO) Shares: In light of the growing IPO market, FINRA will review firms' compliance with FINRA Rules 5130 (restrictions on the purchase and sale of initial equity public offerings) and 5131 (new issue allocations and distributions).

- Trading Authorization: FINRA will examine firms' supervisory systems relating to trading authorization, discretionary accounts, and key transaction descriptors and will assess whether firms' supervisory systems are reasonably designed to detect and address registered representatives exercising discretion without written client authorization (as required by FINRA Rule 3260).

Market Integrity

- Direct Market Access Controls: FINRA will review firms' compliance with Exchange Act Rule 15c3-5 and focus on issues specific to each firm's business activities and associated risks.

- Best Execution: FINRA's assessments will focus on whether firms use reasonable diligence when determining how to direct customer order flow in light of the size/type of order, terms/conditions of the order, and the other factors required by FINRA Rule 5310 (best execution and interpositioning). FINRA's review will focus on four areas: (i) routing decisions (reviewing for potential conflicts in order routing decisions); (ii) odd-lot handling (whether firms are filling customer odd-lot orders at the National Best Bid Offer and offsetting trades with odd-lot executions at superior prices reflected in the exchanges' proprietary data feeds); (iii) US treasury securities (the reasonableness of firms' policies and procedures for best execution for US treasury securities); and (iv) options (surveillance to specifically identify situations where a number of small-volume option executions are followed by a larger execution for the remainder of the order at inferior price levels).

- Disclosure of Order Routing Information: FINRA will review firms' compliance with amended Regulation National Market System (NMS) Rule 606, which revised the requirements for broker-dealers to publish reports of their routing of orders in NMS stocks and listed options, and requires broker-dealers to provide new customer-specific reports for not-held orders in NMS stocks.

- Vendor Display Rule: FINRA will assess whether firms' controls and supervisory systems are reasonably designed to provide customers with the current consolidated National Best Bid Offer, as required by the Vendor Display Rule.

Financial Management

- Digital Assets: Working with the SEC, FINRA will evaluate firms' business plans to engage in activities related to digital assets and determine how securities laws apply to those plans. FINRA's review may also evaluate whether firms filed a Continuing Membership Application, address firms' presentations regarding digital assets in marketing and retail communications, and review firms' controls and procedures around digital asset transactions.

- Liquidity Management: FINRA will review the areas addressed in Regulatory Notice 15-33 (Guidance on Liquidity Risk Management Practices) and clearing and carrying firms' contingency funding plans.

- Contractual Commitment from Underwriting Activities: FINRA will assess firms' compliance with Exchange Act Rule 15c3-1(c)(2)(viii) in connection with underwriting activities.

- London Interbank Offered Rate (LIBOR) Transition: FINRA noted that, outside of the examination program, it will engage with firms to understand how they are preparing for the end of LIBOR in 2021.

Firm Operations

- Cybersecurity: FINRA will review whether firms' policies and procedures are reasonably designed to protect customer records and information as required by Regulation S-P Rule 30.

- Technology Governance: FINRA will assess firms' change- and problem-management practices and compliance with FINRA Rules 4370 (business continuity plans and emergency contact information), 31110 (supervision), and 4511 (general requirements), as well as Exchange Act Rules 17a-3 and 17a-4.

ENFORCEMENT-RELATED PODCASTS

In 2018 and 2019, FINRA frequently released episodes of its podcast, "FINRA Unscripted." FINRA Unscripted serves as another resource for emerging regulatory topics that impact broker-dealers and often share best practices and other insights. Below are a few key 2019 enforcement- and examination-related episodes of interest:

- "The Annual Priorities Letter: A Fresh Take" (Jan. 22, 2019)

- "Beyond Hollywood: Money Laundering in the Securities Industry" (April 30, 2019)

- "Beyond Hollywood, Part II: AML Priorities and Best Practices" (May 14, 2019)

- "Credit for Cooperation: Recognizing Extraordinary Efforts" (Aug. 6, 2019)

- "Market Regulation Enforcement: Ensuring Market Integrity" (Oct. 1, 2019)

- "A Career Highlight: Exam and Risk Monitoring Program Transformation Update" (Dec. 10, 2019)

ENFORCEMENT STATISTICS

As of the date of publication of this outline, FINRA had not yet announced its 2019 enforcement statistics.

FINRA ENFORCEMENT ACTIONS[128]

529 Plans

***Merrill Lynch, Pierce, Fenner & Smith Incorporated*, FINRA AWC No. 2015044526701 (Nov. 6, 2019)**

In a letter of Acceptance, Waiver and Consent (AWC) with Merrill Lynch, Pierce, Fenner & Smith Inc. (Merrill Lynch), FINRA alleged that, from January 2011 through December 2015, the firm failed to have a reasonably designed supervisory system and written supervisory procedures (WSPs) related to 529 plan share-class recommendations. In particular, FINRA found that the firm's supervisory system was not reasonably designed to ensure that Merrill Lynch's representatives were considering how the beneficiary's age could factor into the unit class suitability determination because it did not require supervisors or registered representatives to conduct an age-based assessment. FINRA also found that Merrill Lynch did not include reasonable measures to require its registered representatives to consider sales charge discounts and/or waivers based on aggregate customer investments when making unit class recommendations. Further, FINRA found Merrill Lynch's training materials unreasonable because they did not give guidance to the firm's registered representatives on these issues. Merrill Lynch agreed to a censure, to pay restitution including interest (estimated to be at least $4 million), and to engage in several specific undertakings, including reviewing certain 529 plan accounts and using its best efforts to identify harmed investors eligible for restitution. In determining the sanction and deciding to resolve the matter without a monetary fine, FINRA recognized the firm's extraordinary cooperation and stated that Merrill Lynch's efforts warranted significant credit. Specifically, FINRA noted that the firm (i) engaged an outside consultant to conduct a complex analysis to identify potentially harmed customers; (ii) established a plan to provide broad remediation to customers harmed both before and during the relevant time frame; (iii) extensively reviewed the firm's systems, practices, and procedures with respect to 529 plan recommendations prior to regulatory intervention, voluntarily adopted new policies and procedures and enhanced its training related to 529 plan unit class recommendations; (iv) promptly corrected supervisory deficiencies identified in its internal review; and (v) provided substantial assistance to FINRA in its investigation.

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128 This section includes select summaries of FINRA enforcement actions, cases brought by FINRA and other SROs, and other related matters brought by other SROs without FINRA involvement.

The cases described herein are settlements in which the respondents neither admitted nor denied the allegations against them, unless the description explicitly states otherwise.

***Raymond James & Associates, Inc. and Raymond James Financial Services, Inc.*, FINRA AWC No. 2018058041101 (Nov. 6, 2019)**

FINRA settled a matter with Raymond James & Associates, Inc. (RJA) and Raymond James Financial Services, Inc. (RJFS) in which it alleged that, from January 2008 through March 2017, RJA and RJFS failed to supervise representatives' 529 plan share-class recommendations. In particular, FINRA found that the firms' supervisory systems and WSPs were not reasonably designed. Regarding RJA, FINRA found that the WSPs did not instruct supervisors to assess the beneficiary's age and the number of years until withdrawal when evaluating the suitability of the share-class recommendation, and did not address differences in share classes. FINRA also found that the firms did not provide guidance to representatives in their training materials until 2016. According to FINRA, there were neither systems nor procedures to test the automated surveillance system utilized by RJA and RJFS, and the firms failed to detect a breakdown in the system, which caused them to fail to conduct supervisory reviews on a combined 2.8 million 529 plan purchases. Both RJA and RJFS agreed to a censure and to pay restitution to certain 529 plan customers: RJA agreed to pay restitution of $3.8 million (plus interest) and RJFS agreed to pay restitution of $4.2 million (plus interest), for a combined restitution payment of $8 million. In determining its sanction and deciding to resolve the matter without a monetary fine, FINRA considered the firms' extraordinary cooperation and substantial assistance during the investigation, including giving FINRA detailed information about the challenges related to collecting and assessing data about 529 plans. In addition, FINRA took into account that RJA and RJFS engaged an outside consulting firm to conduct a complex analysis for remediation.

Anti-Money Laundering (AML)

***BNP Paribas Securities Corp.*, FINRA AWC No. 2016051105201 (Oct. 23, 2019)**

In a settlement with BNP Paribas Securities Corp. and BNP Paribas Prime Brokerage, Inc. (together, BNP), FINRA alleged failures related to BNP's AML program and supervisory failures involving penny stock deposits and resales, as well as wire transfers, from February 2013 through March 2017. Specifically, FINRA alleged that BNP did not develop and implement a reasonable written AML program to detect and cause the reporting of potentially suspicious transactions. In particular, FINRA found that the AML program did not include (i) any surveillance targeting potential suspicious transactions involving penny stocks, or transactions in securities trading outside of the traditional exchanges, until 2016; (ii) any surveillance of customer deliveries of securities by physical certificates and incoming electronic transfers to identify whether customer deposits and resales of securities complied with applicable registration requirements; or (iii) reasonable surveillance of wire transfers that involved high-risk entities or jurisdictions, smaller wire transfers originating from the same account(s), or wire transfers (or a pattern of wire transfers) conducted in amounts that would avoid attention or review. According to FINRA, these failures resulted in the deposit of nearly 31 billion shares of penny stocks with a notional value of approximately $338 million, without review to determine whether the shares were restricted, qualified for an exemption from registration, held by control persons of the issuer, or otherwise eligible for resale. FINRA also found that BNP allowed numerous red flags to go unchecked and facilitated the removal of restrictive legends from approximately $12.5 million worth of penny stocks without a review to evaluate the transactions for compliance with federal registration requirements. FINRA also found that 3,448 foreign-currency and suspicious wires were not reviewed to determine whether they involved high-risk entities or jurisdictions or represented the proceeds of potentially suspicious trading activity, and 20% of the 3,382 alerts triggered for BNP and its domestic affiliates during a nearly two-year period were not reviewed within the 30 business days required by BNP's procedures. FINRA also found that BNP did not reasonably respond to concerns identified by firm personnel or devote sufficient resources to its AML program. FINRA also found that BNP Paribas Prime Brokerage failed to timely close out open fails-to-deliver on 304 occasions due to an account coding error that resulted in treating short sales conducted by a foreign affiliate as long sales for purposes of calculating the firm's delivery and closeout obligations from June 1, 2013 through December 31, 2015. FINRA also alleged related supervisory failures. BNP agreed to a censure, a fine of $15 million, and an undertaking to submit a certification regarding its procedures. In settling the matter, FINRA considered the period over which the conduct occurred, the failure to timely address red flags and the volume of potentially suspicious activity not monitored or reported by BNP, as well as BNP's remediation efforts.

Background Checks/Fingerprinting

***Citigroup Global Markets, Inc.*, FINRA AWC No. 2017054329501 (July 29, 2019)**

In an AWC with Citigroup Global Markets, Inc. (CGMI), FINRA alleged that CGMI failed to fingerprint or timely fingerprint associated persons, adequately screen for statutory disqualifications, or create and maintain required records from January 2010 through May 2017. According to FINRA, CGMI failed to fingerprint at least 520 associated persons prior to employment, and could not determine whether at least an additional 520 nonregistered associated personnel were fingerprinted. FINRA also found that CGMI failed to adequately screen approximately 10,400 nonregistered associated persons to ensure that they were not subject to statutory disqualifications, and three CGMI associated persons who were subject to disqualification were allowed to associate with the firm for extended periods. For those three associated persons, FINRA alleged that CGMI failed to create and maintain the required records. FINRA also alleged that CGMI did not create and maintain fingerprint records for all of its eligible associated persons. FINRA further alleged that CGMI failed to establish and maintain a reasonable supervisory system and failed to establish, maintain, and enforce WSPs for fingerprinting and screening nonregistered persons. CGMI consented to a censure, a fine of $1.25 million, and an undertaking to review its systems and procedures regarding the identification, fingerprinting, and screening of nonregistered persons. In determining the sanction, FINRA considered, among other factors, that CGMI: (i) initiated, prior to the intervention of a regulator, an extensive review of its systems, practices, and procedures with respect to fingerprinting; (ii) shared the results of that review with FINRA; (iii) quickly corrected supervisory deficiencies identified by its own internal review; and (iv) provided substantial assistance to FINRA in its investigation.

Best Execution

***Robinhood Financial, LLC*, FINRA AWC No. 2017056224001 (Dec. 19, 2019)**

FINRA and Robinhood Financial, LLC (Robinhood) settled a matter related to allegations that Robinhood did not meet the reasonable diligence standard required by FINRA's best execution rule. According to FINRA, from October 2016 to November 2017, Robinhood routed nondirected orders to four broker-dealers in return for payment for order flow. FINRA alleged that Robinhood did not reasonably consider the quality of executions the firm could obtain from alternative markets, focusing only on the execution quality of its preexisting routing destinations. FINRA further alleged that the firm did not perform systematic best execution reviews of nonmarketable limit orders, stop orders, orders received outside regular trading hours, and residual fills of partially executed Good-Til-Canceled orders beyond the day a portion of the order was initially filled because these orders fell outside the firm's statistical execution quality analysis. FINRA also found that Robinhood's periodic reviews did not systematically consider the likelihood of execution of limit orders generally, or fill rates overall. According to FINRA, millions of orders fell outside of Robinhood's reviews. FINRA also found that Robinhood's WSPs concerning best execution and its reviews merely cited the regulatory requirements without a description of how the supervision should occur. Robinhood agreed to a censure, a $1.25 million fine, and an undertaking to retain an independent consultant and provide a certification. Robinhood submitted a corrective action statement, which noted the improvement and codification of its Best Execution Committee procedures, the implementation of best execution analytics software, and the hiring of a best execution manager.

Bond Fund Disclosures

***AXA Advisors, LLC*, FINRA AWC No. 201504760501 (May 2, 2019)**

In a settlement with AXA Advisors, LLC (AXA), FINRA alleged that, from September 2010 through November 2015, AXA distributed documents created by its affiliated life insurance company to retirement plan sponsors that negligently misrepresented that certain bond funds were investment-grade when a substantial portion of those funds' portfolios consisted of high-yield or junk bonds. In particular, FINRA found that AXA distributed 14,500 enrollment forms and 2,500 investment options attachments that misclassified five bond funds, affecting approximately 800 retirement plans and 6,200 plan participants. FINRA alleged that the misclassifications may have resulted in plan sponsors and participants selecting bond funds that carried a greater degree of credit risk than had been represented. FINRA further alleged that the distribution of the enrollment forms, investment options attachments, and other documents that AXA knew or had reason to know contained misleading information was a violation of FINRA's advertising rules. FINRA also found that AXA had not established, maintained, and enforced a supervisory system and WSPs reasonably designed to determine whether the documents created by its affiliated life insurance company and distributed by AXA contained accurate descriptions of the credit quality of the bond funds it sold. According to FINRA, AXA also failed to conduct periodic reviews to supervise the accuracy of the credit quality of the bond funds. The firm consented to a censure, a $600,000 fine, payment of $172,461 in restitution to certain plan participants who were invested in one or more of the five relevant bond funds, and an undertaking to send corrective disclosures to all affected plan participants.

Form U5 Disclosures

***J.P. Morgan Securities, LLC*, FINRA AWC No. 2015047127704 (Sept. 16, 2019)**

In an AWC with J.P. Morgan Securities, LLC (JPMS), FINRA alleged that, between January 1, 2012 and April 10, 2018, the firm failed to disclose on Form U5, or disclosed more than 60 days late, 89 internal reviews or allegations involving fraud, wrongful taking of property, or violations of investment-related statutes, regulations, rules or industry standards of conduct by JPMS's current or former registered representatives. According to FINRA, most of the failures concerned registered representatives who were employed by JPMS's affiliate bank while associated with JPMS and registered with FINRA, and voluntarily resigned after they became the subject of an internal review, or where the firm began the internal review after the registered representative was terminated. FINRA alleged that, in certain instances, JPMS failed to disclose the required information when the allegation or internal review related to (i) the misappropriation or transmission of proprietary firm information; (ii) a representative who was transitioning to a new firm and who brought customer information with him or her; or (iii) a violation of an investment-related banking industry standard of conduct by an individual who was an employee of JPMS's affiliated bank. FINRA further alleged that its jurisdiction expired more than 30 of the registered representatives, preventing it from taking potential disciplinary action, and that 36 individuals became associated with other FINRA member firms before JPMS disclosed required information. FINRA found that the firm's disclosure failures resulted primarily from the firm's failure to establish and maintain reasonable supervisory systems and WSPs regarding the required information in response to Questions 7B and 7F on Form U5, and that JPMS failed to reasonably train or provide guidance to employees about the circumstances in which these disclosures are required. JPMS agreed to a censure, a fine of $1.1 million, and an undertaking to submit a certification regarding the implementation of supervisory systems and WSPs.

Large Option Position Reporting (LOPR)

***Newedge USA, LLC n/k/a SG Americas Securities, LLC*, NYSE Arca Proc. No. 2014-04-34817 (Mar. 22, 2019)**

NYSE Arca settled a matter with Newedge USA, LLC n/k/a SG Americas Securities, LLC (Newedge) in which NYSE Arca alleged that, from June 1, 2010 through August 31, 2017, Newedge failed to report, or inaccurately reported options positions to the LOPR system, and that, from June 1, 2010 through October 31, 2018, the firm failed to have supervisory systems and procedures reasonably designed to ensure the accuracy of the firm's LOPR reporting. According to NYSE Arca, the firm failed to report and inaccurately reported options to LOPR in approximately 2.2 million instances. Specifically, NYSE Arca found that the firm's reporting errors were due to an undetected coding error and errors by the firm's service provider for LOPR reporting. NYSE Arca also alleged that the firm failed to have in place reasonably designed supervisory systems to ensure compliance with LOPR rules because they did not include a review of the back-office system to verify that it was operating as intended, nor did they include a review of the service provider to assess whether the service provider had reported all required options positions to LOPR. NYSE Arca further alleged that the firm failed to establish and maintain WSPs reasonably designed to ensure compliance with the rules related to the reporting of accounts acting in concert because the firm relied on its clients to provide in-concert information and to notify the firm of any relevant changes. Newedge consented to a censure and a fine of $550,000. In determining the sanction, NYSE Arca considered that the firm (i) self-reported a significant number of its LOPR violations and provided substantial assistance to FINRA's investigation, including providing a calculation of the number of unreported or inaccurate positions; and (ii) took remedial steps, including retaining a third-party consultant to assess the firm's procedures, controls and infrastructure for LOPR reporting; strengthening its supervisory controls; and updating its systems and procedures by establishing various committees with senior personnel to monitor and address ongoing LOPR reporting issues.

Market Access

Clearpool Execution Services, LLC, FINRA AWC No. 2014042373804 (July 10, 2019)

FINRA, on its own behalf and on behalf of 10 exchanges, entered into a settlement with Clearpool Execution Services, LLC (Clearpool) regarding allegations that Clearpool failed to establish and maintain a supervisory system, and failed to establish, maintain, and enforce WSPs, reasonably designed to detect and prevent manipulative trading. In particular, FINRA alleged that, from July 2014 through September 2016, Clearpool provided market access to a fund for which it was on notice of regulators' concerns regarding potentially manipulative trading by foreign traders, who traded for that fund's predecessor. FINRA further alleged that the fund's trading through Clearpool generated thousands of layering and other manipulation alerts to FINRA, to multiple exchanges, and in Clearpool's proprietary surveillance systems. According to FINRA, Clearpool's reviews of exception reports were limited to only the five securities with the most trading events and the five securities with the lowest average daily trading volume, and Clearpool's WSPs failed to explain how to select the review sample and the manner in which the activity should be reviewed. FINRA also found that Clearpool terminated trading access to individual traders of the fund, rather than the fund itself, allowing potentially violative trading to continue. Clearpool consented to a censure and a fine of $473,000 apportioned between FINRA and the 10 exchanges.

Credit Suisse Securities (USA) LLC, FINRA AWC No. 2012034734501 (Dec. 23, 2019)

FINRA and 11 exchanges settled a matter with Credit Suisse Securities (USA) LLC (Credit Suisse) related to allegations surrounding its direct market access (DMA) business. According to FINRA, Credit Suisse did not reasonably monitor and surveil for potentially manipulative trading by its DMA clients. In particular, FINRA alleged that the firm did not reasonably supervise its client's DMA activity for potential spoofing, layering, wash sales, and prearranged trading from July 2010 through July 2013, resulting in orders for billions of shares being entered into US markets without being subjected to post-trade supervisory reviews. FINRA alleged that, from July 2010 through October 2013, the firm did not have a supervisory system to detect potential spoofing or layering, and that, from October 2013 through late April 2014, the system failed to capture some of the firm's most active DMA clients. FINRA also alleged that the firm did not establish, document and maintain a system of risk-management controls and supervisory procedures to monitor for potential wash sales or prearranged trades by DMA clients until November 2013. FINRA further alleged that the firm's WSPs did not address potential layering, spoofing, wash sales, or prearranged trading by DMA clients from July 2010 through March 2014. In addition, FINRA found that the firm was on notice from an internal trade surveillance audit, a client, and FINRA of gaps in its surveillance system. Finally, FINRA also found that Credit Suisse's pretrade controls and procedures regarding thresholds were not reasonable from November 30, 2011 through April 2015 because they set a default credit limit for every DMA client without considering the individual client's financial condition, business, trading patterns, and other matters. FINRA also found that the firm's annual review of its controls was not reasonable from July 14, 2011 through July 2014, and that the firm did not establish, maintain and enforce WSPs to supervise its DMA activities, noting that the WSPs did not describe the reviews. In settling the matter, Credit Suisse agreed to a censure, a fine of $6.5 million ($566,593 to be paid to FINRA and the balance to be paid to the 11 exchanges), and an undertaking to provide a confirmation to FINRA that it took certain remedial actions.

***ITG Inc.*, NYSE AWC No. 2016-01-28-00002 (Feb. 19, 2019)**

In an AWC with ITG Inc. (ITG), NYSE alleged that, from January 1, 2013 to December 31, 2016, ITG failed to establish and implement a system of risk-management controls and supervisory procedures to manage the financial, regulatory, and other risks of providing market access. According to NYSE, ITG failed to (i) calculate and implement reasonable customer credit thresholds; (ii) implement reasonable erroneous order controls; and (iii) reasonably conduct a regular review of the effectiveness of the firm's risk-management controls. In particular, NYSE alleged that ITG adopted an unreasonable procedure for calculating customer credit thresholds, such that the customer's business, financial condition, trading patterns, and other matters were not properly taken into account. NYSE further alleged that ITG failed to reasonably implement its customer credit thresholds, allowing customers substantially greater credit limits than should have been permissible, and failed to adjust customer credit thresholds, even after an internal review revealed the need to do so. In addition, NYSE alleged that ITG established erroneous order controls that were unreasonable in light of the firm's business, and failed to timely implement revisions to these controls. Finally, NYSE found that ITG failed to regularly review the effectiveness of its risk-management controls and supervisory procedures and that the firm's annual reviews considered only whether the controls were functioning, rather than whether they were appropriate or effective given the firm's business. ITG consented to a censure and a fine of $500,000. In determining the sanction, NYSE considered the firm's remediation, including the completion of development changes and implementation of revised policies and WSPs concerning compliance with the Market Access Rule.

***LEK Securities Corporation and Samuel Fredrik Lek*, FINRA Disc. Proc. No. 2011029713004 (Dec. 17, 2019)**

In an Order Accepting Offer of Settlement, FINRA alleged that, between October 1, 2010 and June 30, 2015, LEK Securities Corporation (LSC) and its Chief Executive Officer (CEO) aided and abetted a customer's manipulative trading and operation of an unregistered broker-dealer. Specifically, FINRA alleged that LSC provided substantial assistance to a customer in furtherance of its manipulative layering activity, and that LSC failed to establish and maintain a supervisory system, including WSPs for a range of activity. FINRA found that LSC and its CEO committed Market Access Rule violations and supervisory violations. FINRA also found that the firm's conduct involved ancillary violations concerning know-your-customer rules, failure to retain electronic communications, failure to retain complete and accurate Central Registration Depository (CRD) records, and improperly paying transaction-based compensation to an unregistered person. In addition, FINRA alleged supervisory violations related to the review of electronic communications, ensuring the accuracy of CRD information, and enforcing procedures regarding outside business activities. FINRA also found that LSC failed to comply with timely information requests and failed to observe high standards of commercial honor and just and equitable principles of trade. The firm consented to a $900,000 fine ($69,230.77 to FINRA and the balance to several exchanges). Additionally, the firm agreed to business-line restrictions regarding foreign intraday trading, termination of certain foreign customers, and the retention of a monitor to conduct an ongoing review of the firm. The CEO was permanently barred from the securities industry in all capacities.

Lime Brokerage, LLC, FINRA AWC No. 2013037572601 (Aug. 15, 2019)

FINRA and Lime Brokerage, LLC (Lime) entered into an AWC in which FINRA alleged that, from September 1, 2012 through August 3, 2016, the firm failed to establish and maintain an adequate supervisory system and reasonably designed WSPs in connection with its DMA customers' trading activity through the firm. According to FINRA, although the firm had WSPs and a surveillance system that generated exception reports for potentially manipulative trading by its DMA customers, the WSPs did not describe how the firm should conduct the supervisory reviews or the factors to consider in reviewing the exception reports for potentially manipulative trading. In particular, FINRA alleged that for part of the relevant period, Lime tasked a single analyst with manually reviewing the surveillance alerts without providing the analyst with written guidance or an explanation of the factors to consider in the review. As a result, FINRA found that Lime failed to reasonably respond to red flags of potentially manipulative trading, including layering, spoofing, ramping, and marking, by the firm's DMA customers. Lime consented to a censure and a fine of $625,000 ($38,500 payable to FINRA and the balance payable to seven exchanges). Lime also agreed to an undertaking to provide a written report to FINRA concerning remediation.

Maxim Group LLC, NYSE Arca Proc. No. 2016-12-00089 (Apr. 22, 2019)

In a settlement with Maxim Group LLC (Maxim), NYSE Arca alleged that the firm failed to establish, document, and maintain a system of risk-management controls and supervisory procedures to manage risks related to its (i) calculation and implementation of customer credit thresholds, (ii) determination of erroneous order controls, (iii) post-trade reviews for spoofing and/or layering, and (iv) procedures for mandated annual reviews. NYSE Arca found that Maxim failed to apply credit limits to any of its institutional customers and failed to maintain any documentation, including WSPs, related to credit limits. NYSE Arca further found that Maxim did not employ controls and procedures reasonably designed to prevent erroneous orders because the firm did not utilize reasonable average daily volume control limit, dollar limit, limit away from market, and share limit controls. NYSE Arca also found that the erroneous order controls that were implemented were soft limits, rather than hard blocks. In addition, NYSE Arca alleged that Maxim did not have a spoofing or layering review. With regard to its WSPs, NYSE Arca alleged that Maxim's WSPs failed to describe in sufficient detail how the firm should conduct its mandated review and failed to provide evidence that it reviewed the effectiveness or reasonableness of its erroneous order controls or its credit limits. According to NYSE Arca, Maxim did not have written procedures related to credit limits, failed to apply credit limits to any of its customers, failed to document its process for setting its erroneous order controls or the methodology used to determine functional and appropriate erroneous order controls, and failed to detail its process for evaluating and reviewing control limits and procedures. Among other deficiencies, NYSE Arca alleged that the firm's WSPs did not include methods for supervising client trading, including how reviews should be conducted and how issues should be escalated. Maxim agreed to a censure, a fine of $450,000, and an undertaking to revise its WSPs, address deficiencies in its supervisory system, and hire a trading compliance specialist and/or independent consultant to address its compliance with Market Access Rule requirements.

***SG Americas Securities, LLC*, NYSE AWC No. 2016-12-00038 (Mar. 18, 2019)**

NYSE entered into a settlement with SG Americas Securities, LLC (SGAS) regarding allegations that, from January 1, 2015 through December 1, 2018, SGAS (i) failed to establish, document, and maintain a system of risk-management controls and supervisory procedures reasonably designed to prevent the entry of certain types of erroneous orders; (ii) failed to implement adequate supervisory systems concerning market-on-close/limit-on-close and error escalation; and (iii) failed to establish and maintain a supervisory system and procedures reasonably designed to detect and prevent errors and malfunctions in its trading technology. Specifically, NYSE alleged that SGAS utilized order-splitting tools as part of its trading technology that effectively circumvented the firm's erroneous order controls, allowing large orders to reach the market, and that the firm's single-order quantity control was not reasonably designed to prevent the entry of erroneous orders. Regarding the order-splitting tools, NYSE found that the firm had been put on actual notice of the risks of these tools in 2015, but did not take them into account in its annual reviews. NYSE also found that SGAS did not have adequate supervisory procedures or training concerning how to respond to erroneous orders and when these errors should be escalated. According to NYSE, this caused SGAS to execute a trade that effectively resulted in no change in beneficial ownership to offset an erroneous order, rather than canceling the order. Further, NYSE alleged that the firm's WSPs concerning software testing were not reasonably designed to ensure that certain macros were adequately tested prior to deployment to production. SGAS consented to a censure, a fine of $380,000, and an undertaking to certify that the firm addressed the supervisory deficiencies described in the AWC and provide the date any revised WSPs were implemented. In determining the sanction, NYSE considered the firm's disciplinary history.

Mutual Fund Share Class Waiver

***Kestra Investment Services, LLC*, FINRA AWC No. 2016048404601 (Feb. 13, 2019)**

In an AWC with Kestra Investment Services, LLC (Kestra), FINRA alleged that, from July 1, 2009 to February 22, 2018, the firm disadvantaged certain retirement plan and charitable organization customers that were eligible to purchase Class A shares in certain mutual funds without a front-end sales charge. FINRA further alleged that Kestra failed to reasonably supervise the application of sales charge waivers and share class determinations for eligible mutual fund sales by relying on its financial advisors to determine the applicability of the waivers, and failed to maintain reasonably designed written policies or procedures to assist those financial advisors in making their determinations. According to FINRA, the firm overcharged approximately 3,205 eligible customers during the almost nine-year relevant period. Kestra consented to a censure, a fine of $225,000, and payment of $1,648,984 plus interest in restitution (estimated to equal $1,947,704).

***Park Avenue Securities LLC*, FINRA AWC No. 2016049977201 (July 16, 2019).**

In a settlement with Park Avenue Securities (PAS), FINRA found that, from January 1, 2011 to August 31, 2018, PAS disadvantaged certain retirement plan and charitable organization customers that were eligible to purchase Class A shares in certain mutual funds without a front-end sales charge. FINRA further alleged that PAS failed to reasonably supervise the application of sales charge waivers for eligible mutual fund sales by relying on its financial advisors to determine the applicability of the waivers, without maintaining reasonably designed written policies or procedures to assist them in making their determinations and to notify and train them regarding waiver availability. FINRA found that PAS failed to adopt adequate controls to detect instances in which the firm did not provide sales charge waivers to eligible customers in connection with their mutual fund purchases. According to FINRA, the accounts held by 264 eligible customers purchased mutual fund shares for which an available sales charge waiver was not applied during the more than seven-year relevant period. PAS consented to a censure and payment of $640,552 in restitution ($560,170, plus interest). In resolving this matter, FINRA recognized PAS's extraordinary cooperation for initiating its own investigation prior to detection or investigation by a regulator, promptly establishing a remediation plan for eligible customers, and promptly taking remedial action to correct the violative conduct.

Prospectus Delivery

***RBC Capital Markets, LLC*, FINRA AWC No. 2015046652401 (Oct. 16, 2019)**

FINRA and RBC Capital Markets, LLC (RBC) entered into an AWC regarding allegations that RBC failed to deliver prospectuses to certain customers who purchased ETFs, Exchange-Traded Notes (ETNs), and mutual funds between March 2008 and June 2016. According to FINRA, RBC failed to deliver prospectuses in connection with approximately 165,000 ETF and ETN purchases and at least hundreds of thousands of mutual fund purchases. FINRA alleged that RBC's supervisory system was not reasonably designed to achieve compliance with prospectus delivery requirements and that RBC failed to enforce its WSPs. In particular, FINRA found that RBC's delivery process for ETFs and ETNs involved a single employee manually inputting coding for individual securities into third-party software to trigger the delivery of a prospectus when a customer purchased the security. As a result, RBC did not detect that the employee had inadvertently caused the system to overwrite the trailer codes that triggered prospectus delivery and failed to identify new ETFs and ETNs requiring a trailer code. FINRA further found that RBC's efforts to address the issues once discovered were not effective. With respect to mutual funds, FINRA found that the third-party software RBC relied on to automatically code mutual fund purchases for prospectus delivery failed to do so because of a sequencing error. According to FINRA, an employee was supposed to be designated to oversee the mutual fund prospectus delivery process, but RBC failed to designate an employee to perform the oversight duties. RBC consented to a censure, a fine of $2.9 million, and an undertaking to provide a written certification to FINRA. In determining the sanction, FINRA considered (i) RBC's prior disciplinary history for prospectus delivery and related supervisory violations; (ii) the fact that the violations lasted more than eight years; (iii) the extent of the supervisory deficiencies; and (iv) the absence of supervisory controls or testing. FINRA also considered RBC's corrective actions, including voluntarily undertaking a comprehensive review of its ETF and ETN prospectus delivery processes and disclosing the findings to FINRA, as well as implementing updated surveillance procedures.

Regulation SHO

Cantor Fitzgerald & Co., FINRA AWC No. 2014041817001 (Mar. 5, 2019)

In an AWC with Cantor Fitzgerald & Co. (Cantor), FINRA alleged that, from January 2013 through at least December 21, 2017, the firm failed to establish, maintain, and enforce a supervisory system, including WSPs, reasonably designed to achieve compliance with Rule 204 of Regulation SHO, resulting in violations of the rule. Specifically, FINRA found that Cantor failed to timely and properly close out fails-to-deliver on at least 4,879 occasions. FINRA also found that Cantor routed and executed thousands of short sales in securities for which it had an open fail-to-deliver without borrowing or arranging to borrow the security, as required by Rule 204(b), between January 2013 and October 2014. Further, FINRA found that Cantor, in its capacity as a clearing broker for other broker-dealers, failed to provide notice that short sale orders were subject to the preborrow requirement because Cantor had an open fail-to-deliver in the security. Regarding Cantor's alleged supervisory deficiencies, FINRA found that the firm failed to reasonably supervise short sales. In particular, FINRA alleged that, from January 2013 to July 2014, among other deficiencies, Cantor's manual system of supervision was not reasonably staffed and did not involve supervisory tasks, reviews or reports related to close out obligations or pre- and postfail credit eligibility determinations. FINRA further alleged that the autogenerated report that the firm implemented in July 2014 was insufficient because it still required a number of manual steps. FINRA also found that Cantor's supervisory system failed to include any supervision related to the penalty box provisions of Regulation SHO (Rule 204(b)) from January 2013 through September 2014. FINRA noted that the manual process implemented in October 2014 was not reasonable because it did not always result in timely identification of the penalty box applicability, delaying the imposition of restrictions on the subject securities. In addition, FINRA found that the firm failed to implement any supervisory system relating to the notice provision of Rule 204(c) from January 2013 through December 2018. Regarding WSPs, FINRA found that they were unreasonable because they inaccurately described the firm's obligations under Rule 204(a), failed to provide supervisory guidance relating to critical sections of Rule 204, and did not identify the individuals responsible for implementing the procedures. Finally, FINRA also alleged that the firm failed to remediate its lack of compliance in a timely manner despite deficiencies identified by firm personnel. Specifically, FINRA alleged that the firm's compliance personnel identified red flags indicating system issues with Regulation SHO compliance and that the firm's supervisory systems were not reasonably tailored to its business, but the firm did not enhance its systems or implement changes to staffing and training for several years. The firm consented to a censure, a fine of $2 million, and an undertaking to retain an independent consultant to conduct a comprehensive review of the firm's policies and procedures relating to Rule 204. In determining the sanction, FINRA considered the firm's prior disciplinary history relating to Regulation SHO, the approximately five-year period of alleged misconduct, failure to timely address red flags, and continuing supervision deficiencies, as well as the firm's efforts to improve its supervisory systems.

Short-Interest Reporting

***Nomura Securities International, Inc.*, FINRA AWC No. 20150448069 (Dec. 6, 2019)**

FINRA entered into a settlement with Nomura Securities International, Inc. (Nomura) regarding allegations that the firm failed to include certain short-interest positions in its reporting to FINRA. According to FINRA, between May 2012 and November 2015, a coding error caused the firm to fail to report 3,129 short-interest positions totaling 885,607,733 shares in foreign-listed securities that shared an International Securities Identification Number with a United States–listed security. FINRA also alleged that Nomura inaccurately reported six short-interest positions as totaling 6,790 shares, when they actually accounted for 68,724 shares. In addition, FINRA alleged that the firm's supervisory system, including its WSPs, was not reasonably designed. In particular, Nomura's procedures merely noted FINRA's short-interest reporting requirements for foreign-listed securities and failed to provide any supervisory guidance or direction for conducting reviews. Nomura agreed to a censure and a $300,000 fine ($200,000 for violations of short-interest reporting rules and $100,000 for supervisory violations).

Short Positions in Municipal Securities

***UBS Financial Services, Inc.*, FINRA AWC No. 2016050874301 (Oct. 2, 2019)**

FINRA entered into an AWC with UBS Financial Services, Inc. (UBS) in which FINRA alleged that UBS failed to establish and maintain reasonably designed supervisory systems and WSPs to address short positions in municipal securities. In particular, FINRA alleged that, from August 13, 2015 to December 31, 2017, UBS did not maintain procedures or provide training that instructed its employees responsible for identifying and covering short positions on how they should attempt to obtain municipal securities to cover those positions, nor did the firm provide guidance to supervisors that short positions in municipal securities held past settlement would result in the payment of substitute interest and inaccuracies in customer statements. FINRA also alleged that UBS generated and distributed a report identifying short positions in municipal bonds in firmwide error or other accounts on a post-settlement-date basis, resulting in tax consequences for thousands of municipal short positions. FINRA further alleged that UBS failed to allocate short positions in municipal securities to the appropriate customer accounts and made misstatements to customers regarding the tax status of their interest payments. Specifically, FINRA found that UBS's systems and procedures caused it to make inaccurate representations on approximately 2,853 customer account statements and Forms 1099, to the effect that approximately $261,610 in interest that customers had received on municipal bond positions in their accounts was tax exempt, and on approximately 950 other account statements and Forms 1099 that the interest was taxable when it was tax exempt. Additionally, FINRA found that, between March 16, 2015, and January 31, 2017, UBS failed to take prompt steps to bring short positions in municipal bonds and CDs within its control within 30 days, even after notification by FINRA's Credit Regulation

Department. UBS consented to a censure, a fine of $2 million, payment to the IRS to relieve customers of the burden of filing amended tax returns and paying additional federal income tax, payment of restitution to customers who may have incurred increased state tax liabilities, and an undertaking to provide FINRA with a certification regarding implementation of procedures relating to short positions in municipal securities. In determining the fine, FINRA considered the firm's disciplinary history.

Supervision

Spencer Edwards, Inc., FINRA AWC No. 2016051209102 (June 11, 2019)

FINRA and Spencer Edwards, Inc. (SEI) entered into an AWC regarding allegations of violative conduct relating to its (i) AML compliance program; (ii) falsifying documents; and (iii) charging unfair and unreasonable commissions in connection with stock transactions. Specifically, FINRA alleged that, from September 2013 to August 2015, though SEI maintained written AML procedures, it delegated review of transactions for AML red flags to an unregistered person, SEI's outside lawyer, whom the firm did not monitor, audit, or supervise. FINRA further alleged that even when the lawyer identified suspicious activity, SEI did not investigate the activity or implement the measures in its written procedures to prevent suspicious activity and did not determine whether SEI was required to file suspicious activity reports. According to FINRA, SEI failed to detect or investigate warning signs of suspicious activity related to the deposit and liquidation of billions of dollars of certificates in penny stocks. FINRA also found that, on approximately 75 occasions, SEI falsified its CEO's signature on documents submitted to its clearing firm. The CEO's signature purportedly reflected that the CEO had reviewed customer stock deposits, but the CEO had not actually performed such a review. Lastly, FINRA alleged that, on more than 5,500 occasions from November 2014 to August 2015, SEI charged commissions greater than 5% of the principal amount of the transaction. Because FINRA found that SEI charged additional commissions for its costs of reviewing the transactions, a market was readily available for the shares, the charges exceeded SEI's minimum commission, and the charges were part of an extensive pattern, FINRA found the commissions exceeding 5% to be excessive. SEI consented to a $250,000 fine, suspension of its business of accepting stock certificate deposits until the Chief Compliance Officer certifies in writing that SEI has remedied its AML compliance program, and payment of $512,261 in restitution for excessive commissions.

Summit Brokerage Services, Inc., FINRA AWC No. 2016052655301 (July 2, 2019)

In a settlement with Summit Brokerage Services, Inc. (Summit), FINRA alleged that Summit failed to reasonably supervise the suitability of its representatives' recommendations as they pertained to excessive trading from January 2012 through March 2017. FINRA also alleged that, from June 2015 through March 2018, Summit failed to establish and maintain a supervisory system and failed to enforce WSPs regarding registered representatives' creation and dissemination of consolidated reports. According to FINRA, Summit did not feed trade alerts provided by one of its two clearing firms into the system its compliance principals used to monitor its registered representatives' securities recommendations, relying instead on a manual review of the blotter to identify potential excessive trading. FINRA found that this resulted in the failure to identify that one registered representative excessively traded in 14 customer accounts, causing those customers to incur $651,405.23 in commissions and realize losses of $300,000. FINRA also alleged that Summit failed to supervise the creation and dissemination of consolidated reports to customers reflecting the customers' financial holdings. According to FINRA, only eight of the 103 registered representatives submitted templates to the firm's compliance department for review and approval. Of the 95 registered representatives who distributed consolidated reports without compliance review, one distributed a report that allegedly materially misstated the value of a customer's investment, and 15 allegedly used unapproved third-party vendors in violation of Summit's WSPs. Summit consented to a censure, a fine of $325,000, and payment of $559,296 in restitution.

Uniform Gift to Minors Act (UGMA)/Uniform Transfer to Minors Act (UTMA) Accounts

***Citigroup Global Markets Inc.*, FINRA AWC No. 2018060039001 (Dec. 26, 2019)**

In a settlement with CGMI, FINRA alleged that, from September 1, 2014 through September 6, 2018, the firm failed to establish and maintain a supervisory system and to establish, maintain, and enforce WSPs regarding accounts established under the UGMA and/or UTMA to consider any changes in the authority of the account custodians to effect transactions on behalf of the beneficiaries. In particular, FINRA alleged that CGMI did not establish reasonable systems or procedures related to the custodian's obligation to timely transfer control over the custodial property to the beneficiary, having no systems or procedures specifically designed for UTMA or UGMA accounts at all. According to FINRA, this resulted in account custodians transacting in at least 920 accounts when the beneficiaries had reached the age of the majority. CGMI consented to a censure, a $300,000 fine, and a certification requirement. FINRA released this settlement with the four other similar settlements described below.

***J.P. Morgan Securities LLC*, FINRA AWC No. 2017053791901 (Dec. 26, 2019)**

FINRA entered into a settlement with JPMS, in which it alleged that, at various times from January 1, 2014 through February 5, 2018, JPMS failed to establish and maintain a supervisory system and to establish, maintain and enforce WSPs regarding accounts established under the UGMA and/or UTMA to consider any changes in the authority of the account custodians to effect transactions on behalf of the beneficiaries. Noting that JPMS's procedures described UGMA/UTMA accounts and their features, FINRA alleged that JPMS did not establish reasonable systems or procedures related to the custodian's obligation to timely transfer control over the custodial property to the beneficiary. According to FINRA, this resulted in account custodians transacting in at least 5,666 accounts when the beneficiaries had reached the age of the majority (or termination). JPMS consented to a censure, a $200,000 fine, and a certification requirement. In resolving this matter, FINRA recognized JPMS's extraordinary cooperation, including that the firm conducted a review of its supervision of UGMA/UTMA accounts on its own and initiated a series of enhancements to its internal supervisory policies and procedures, and that JPMS provided substantial assistance to FINRA in its investigation.

***LPL Financial LLC*, FINRA AWC No. 2018058621001 (Dec. 26, 2019)**

In an AWC with LPL Financial LLC (LPL), FINRA alleged that, from January 1, 2014 through September 30, 2018, the firm failed to establish and maintain a supervisory system and to establish, maintain, and enforce WSPs regarding accounts established under the UGMA and/or UTMA to consider any changes in the authority of the account custodians to effect transactions on behalf of the beneficiaries. Noting that LPL's procedures described UGMA/UTMA accounts and their features, FINRA alleged that LPL did not establish reasonable systems or procedures related to the custodian's obligation to timely transfer control over the custodial property to the beneficiary. According to FINRA, this resulted in account custodians transacting in at least 5,249 accounts when the beneficiaries had reached the age of trust termination. LPL consented to a censure, a $300,000 fine, and a certification requirement.

***Merrill Lynch, Pierce, Fenner & Smith Incorporated*, FINRA AWC No. 2018059381801 (Dec. 26, 2019)**

FINRA entered into an AWC with Merrill Lynch in which FINRA alleged that, from January 1, 2014 through September 7, 2018, the firm failed to establish and maintain a supervisory system and to establish, maintain, and enforce WSPs regarding accounts established under the UGMA and/or UTMA to consider any changes in the authority of the account custodians to effect transactions on behalf of the beneficiaries. Noting that the firm's procedures described UGMA/UTMA accounts and their features, FINRA alleged that Merrill Lynch did not establish reasonable systems or procedures related to the custodian's obligation to timely transfer control over the custodial property to the beneficiary. According to FINRA, this resulted in account custodians transacting in at least 15,366 accounts when the beneficiaries had reached the termination age. Merrill Lynch consented to a censure, a $300,000 fine, and a certification requirement.

***Morgan Stanley Smith Barney LLC*, FINRA AWC No. 2018060038701 (Dec. 26, 2019)**

In a settlement with Morgan Stanley Smith Barney LLC (MSSB), FINRA alleged that, from September 1, 2014 through September 6, 2018, MSSB failed to establish and maintain a supervisory system and to establish, maintain and enforce WSPs regarding accounts established under the UGMA and/or UTMA to consider any changes in the authority of the account custodians to effect transactions on behalf of the beneficiaries. Noting that the firm's procedures described UGMA/UTMA accounts and their features, including restricting accounts and sending alerts to the representative responsible for the account, FINRA alleged that the alerts and restrictions stopped after the 2012 merger between Morgan Stanley and Smith Barney. Thus, FINRA found that MSSB did not establish reasonable systems or procedures related to the custodian's obligation to timely transfer control over the custodial property to the beneficiary. According to FINRA, this resulted in account custodians transacting in at least 53,384 accounts when the beneficiaries had reached the termination age. MSSB consented to a censure, a $300,000 fine and a certification requirement.

Unit Investment Trusts (UITs)

***Hennion & Walsh, Inc.*, FINRA AWC No. 2013039202501 (Jan. 23, 2019)**

FINRA entered into an AWC with Hennion & Walsh, Inc. (Hennion & Walsh) regarding allegations that the firm recommended early exchanges of certain UITs in violation of FINRA's suitability rule. Noting that UITs are typically designed to be held until their termination dates, FINRA found that 29 brokers recommended 645 early exchanges of UITs (the sale of one UIT and the purchase of another UIT, incurring a new front-loaded sales charge) that were sponsored by Hennion & Walsh, and had similar or substantially similar investment objectives and portfolios (known as series-to-series switches). FINRA found that the exchanges occurred in 438 customer accounts. FINRA further alleged that the firm failed to establish and maintain a reasonable system to supervise series-to-series switches. According to FINRA, the firm did not provide reasonable guidance to brokers of the special suitability concerns raised by early series-to-series switches and did not enforce its written procedures requiring switch forms to be signed by the customer for UIT exchanges. Additionally, FINRA found that although the firm's trade-alert system flagged UIT switches, the principal tasked with review responsibilities did not receive training on how to evaluate series-to-series switches. FINRA therefore found that any supervisory protocols or procedures in place were insufficiently enforced, designed, or utilized. Hennion & Walsh consented to a censure and a fine of $165,000. The firm also agreed to pay $305,438.83 in restitution.

***Key Investment Services LLC*, FINRA AWC No. 2013039634703 (Dec. 5, 2019)**

FINRA entered into an AWC with Key Investment Services LLC (KIS), in which FINRA alleged failures related to the firm's supervision of certain UIT recommendations. In particular, FINRA found that from November 2010 through June 2014, KIS recommended to certain customers purchases of UITs that held leveraged closed-end funds that either invested exclusively in one class of fixed income products (municipal bonds) or were substantially invested in high yield, below investment grade bonds. FINRA further found that KIS's written procedures did not provide reasonable guidance to the representatives or supervisors conducting the manual review of the transactions and the firm's electronic alerts were not designed with product-specific suitability factors for these investments. According to FINRA, as a result, KIS failed to identify and follow up on approximately 100 recommended purchases of UITs that raised concerns based upon the customers' risk tolerance and investment profiles and the firm did not cancel any of these transactions. FINRA also alleged that KIS failed to obtain account information containing additional suitability factors required by its policies between July 2012 and June 2014. FINRA further alleged that, between November 8, 2010 and October 10, 2013, KIS provided its customers with switch disclosure letters that contained material misrepresentations or omissions in connection with the purchases or sales of securities, understating the estimated fees, sales charges, or expenses of the UITs being purchased for 189 switch transactions. KIS consented to a censure, a fine of $425,000, payments of $589,222 in restitution and $134,169 in disgorgement, and the submission of a certification that it implemented supervisory systems and procedures designed to address each area of conduct at issue in the AWC, as well as achieve compliance with suitability requirements for UIT transactions. In determining the sanction, FINRA considered that the firm had previously paid $470,819 in restitution to complaining and noncomplaining customers.

***Oppenheimer & Co. Inc.*, FINRA AWC No. 2016050948101 (Dec. 30, 2019)**

FINRA entered into a settlement with Oppenheimer & Co. Inc. (Oppenheimer) in which FINRA alleged that, from January 2011 through December 2015, the firm failed to establish and maintain a supervisory system and failed to establish, maintain, and enforce WSPs reasonably designed to supervise the suitability of representatives' recommendations to customers relating to early rollovers of UITs. According to FINRA, because of the long-term nature of UITs, their structure and their costs, short-term trading of UITs (early rollovers) may be unsuitable. FINRA alleged that, although the firm's WSPs explained that UITs are generally intended as long-term investments and that frequent trading or switching raises questions regarding the appropriateness of the transactions, the WSPs did not address early rollovers and did not otherwise provide guidance on monitoring for potentially unsuitable patterns of early rollovers. FINRA also alleged that Oppenheimer did not use any automated reports or alerts to supervise for potentially unsuitable patterns of early rollovers and instead relied on a manual review of the firm's UIT trade report, which did not effectively flag early rollovers and did not identify that representatives recommended potentially unsuitable early rollovers. FINRA further alleged that this may have caused customers to incur $3,874,206.90 in sales charges that they would not have incurred had they held the UITs until their maturity dates. Oppenheimer agreed to a censure, an $800,000 fine, and payment of restitution of $3,874,206.90 plus interest to affected accounts. In resolving the matter, FINRA considered the firm's extraordinary cooperation, including that Oppenheimer (i) provided substantial assistance to FINRA, including retaining an outside consultant to analyze UIT trading data; (ii) developed and implemented a restitution methodology; and (iii) voluntarily employed corrective measures prior to intervention by a regulator.

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