Morgan Lewis

2016 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 developments and cases regarding broker-dealers, investment advisers, and investment companies.[*]

THE SEC

During 2016, and in the period following the presidential election, there have been significant personnel changes at the SEC. The Commission's composition was stable during the fiscal year, but Chair Mary Jo White announced her departure with the end of President Obama's term, leaving the Commission down three members, as of this writing, awaiting the confirmation of President Trump's nominee for Chair. Further, significant transitions are underway in multiple senior staff positions, with acting directors in place in various divisions and offices.

The enforcement statistics compiled by the SEC for fiscal year 2016 (which ran from October 1, 2015 through September 30, 2016) again set records. Once again this last year, the SEC brought a record number of cases overall, including the most ever cases against investment advisers and investment companies, significant financial reporting matters, Foreign Corrupt Practices Act (FCPA) cases, and matters that continued to expand the reach of the agency's whistleblower program.

In large measure, fiscal year 2016 represented a successful continuation of the strategies and innovations that the Commission has implemented in recent years. Then-Chair White described as "transformative" the change in the way that the SEC uses "data and data analytics to detect and investigate misconduct. There are now huge quantities of data available for nearly all parts of the market, including corporate equity and bond trading, trading in complex financial instruments, municipal bond trading, and other market activity. More than ever, the SEC is developing in-house innovative analytical tools to take advantage of today's data-rich environment. The result is that the number of cases we are able to originate in-house has risen

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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 publicly available materials, including the websites of the US SEC and FINRA, and as otherwise expressly noted.

This outline was prepared by partners Timothy P. Burke, Michele A. Coffey, Merri Jo Gillette, Amy J. Greer, Ben A. Indek, and Jennifer L. Klass; of counsel Mary M. Dunbar; associates Michael J. Ableson, Daniel J. Ball, Brian J. Baltz, Matthew T. Bohenek, Vanessa M. Brown, Elizabeth Buechner, Bruno Campos, Arcangelo S. Cella, Melissa F. Feig, Alyse J. Gramaglia, Ariel Gursky, Ashley D. Hamilton, Elizabeth Geyelin Hays, Martin Hirschprung, Jessica L. Joy, Olga Kamensky, Paul J. Kim, Kerry J. Land, Christine M. Lombardo, Nicholas J. Losurdo, Grant MacQueen, John M. Maloy, Matthew C. McDonough, Sarah Paige, Eric Perelman, Zoe Rosenthal, Anna, Sandor, Ignacio Sandoval, and Robert Thompson; and paralegal Caroline Ball. Administrative support was provided by Meredith E. Brooks, Kate Lesko, and Veda M. Nieves.

dramatically."[1]

These continued efforts have also progressed the continued collaborations between and among the Divisions and Offices of the Commission, such as the Enforcement and Examination teams, with the result that the SEC appears to be operating more effectively and more efficiently. In fiscal year 2016, the SEC brought a record 868 cases, which, according to the SEC, were composed of 548 independent actions, 125 actions against issuers that were delinquent in making required filings, and 195 "follow on" administrative proceedings seeking bars against individuals. These actions resulted in a tally of monetary sanctions being imposed against defendants and respondents in excess of $4 billion, for the third straight year.

In the most significant change from 2015, cases against regulated entities – investment advisers, investment companies, and broker-dealers – approached 40% of the Enforcement docket, not taking into account cases that may have involved regulated entities or individuals, but which the SEC otherwise classifies, such as Insider Trading or Public Finance Abuse matters, for example. Again in 2016, Public Finance Abuse cases made up more than 10% of the Commission's docket, attributable, in large part, to the Municipalities Continuing Disclosure Cooperation (MCDC) initiative launched two years ago.

The SEC's Office of the Whistleblower program continued to receive thousands of leads. Last year, whistleblowers submitted 4,218 tips, complaints, and referrals to the SEC, an increase of 295 (or approximately 7.5%) from the 3,923 received in fiscal year 2015. The largest numbers of complaints fell into the same three categories as last year: corporate disclosure and financials (22%), offering fraud (15%), and manipulation (11%).

The Enforcement Division's trial program saw more success in federal court and fewer litigated matters overall. And looking ahead, one of the more interesting legal developments we can expect in the coming year is the United States Supreme Court's decision on whether the statute of limitations applies to claims for disgorgement.

FINRA

There were several significant changes to FINRA's leadership in 2016. After the October 2015 announcement that Chairman and Chief Executive Officer Richard Ketchum would retire, in June 2016 Robert W. Cook was appointed as President and CEO effective the second half of 2016. In July 2016, FINRA announced that its Board of Governors elected John J. (Jack) Brennan as FINRA Chairman effective August 15, 2016. In other changes, in December 2016, FINRA's Chief of Enforcement, J. Bradley Bennett, announced he would be leaving FINRA in February 2017 and Susan Schroeder, Deputy Head of Enforcement, was named Acting Head of Enforcement.

[1] *See* Chair Mary Jo White, Speech, A New Model for SEC Enforcement: Producing Bold and Unrelenting Results, New York University School of Law Program on Corporate Compliance and Enforcement (Nov. 18, 2016), https://www.sec.gov/news/speech/chair-white-speech-new-york-university-111816.html.

Last year, FINRA brought 1,434 new disciplinary actions and resolved 1,093 formal actions (down from 1,512 new disciplinary actions and 1,252 resolved actions in 2015). Interestingly, this was the lowest number of formal cases resolved in years. In addition, FINRA barred 517 people and suspended 727 individuals. FINRA also referred 785 fraud and insider trading cases to the SEC and other agencies for prosecution in 2016; this was a slight decrease from the more than 800 such matters referred by FINRA in 2015. With respect to penalties and restitution, last year FINRA levied $176.3 million in fines (an increase from $95 million in 2015) and ordered $27.9 million to be paid in restitution to harmed investors (a decrease from $96.6 million in 2015).

Since taking the helm at FINRA, Mr. Cook has been on a self-described "listening tour." In addition to soliciting views from member firms and others, he appears open to considering changes in FINRA's programs. In that regard, Mr. Cook recently stated that he wanted to take a fresh look at FINRA's enforcement program and that "philosophically . . . [FINRA] shouldn't be rulemaking by enforcement."

Early last year, FINRA announced its so-called "culture review," in which it undertook to examine the way firms establish, communicate, and implement cultural values. In April 2016, Mr. Bennett described that process and the factors used in the assessment. To date, FINRA has not published its observations or conclusions. From an enforcement perspective, Mr. Bennett noted that the same factors considered in the culture review are used by the Staff in determining the sanctions sought by FINRA in a disciplinary action.

Mr. Bennett also discussed individual liability in his April remarks, stating that FINRA looks at potential individual liability in each case and described some of the factors utilized by the Staff. At a later date, Mr. Bennett explained, however, that FINRA is "looking for reasons not to name compliance officers."

Last year FINRA released its first monthly cross-market equities supervision report cards to identify and stop spoofing and layering activity. The report cards are distributed when FINRA identifies potential problematic activity and provide a summary of the identified market activity, detailed information about the exceptions, and any trends in the preceding six months.

On another perennial topic, last year Mr. Bennett stated that FINRA, the SEC, and other regulators "are taking steps to reduce regulatory overlap and duplication," including increased coordination and information sharing. If interests are not distinct when both organizations are focused on the same firm, Mr. Bennett said that FINRA may defer to the Commission.

Late 2016 also saw a new and interesting development at the SEC regarding its oversight of FINRA. In particular, the Commission's Office of Compliance Inspections and Examinations (OCIE) established a dedicated FINRA inspection team. The team, called the FINRA and Securities Industry Oversight group (FSIO), consists of approximately 45 individuals and is headed by Kevin Goodman. FSIO began its work on October 1, 2016.

In 2016, FINRA issued five Targeted Examination letters on its website, versus one in 2015 and

two in 2014. These letters were in the following areas: (1) Establishing, Communicating and Implementing Cultural Values; (2) Mutual Fund Waivers; (3) Non-Traded Business Development Companies; (4) Unit Investment Trust Rollover Review; and (5) Review of Cross-Selling Programs.

In January 2017, FINRA published its Annual Regulatory and Examination and Priorities Letter. In Mr. Cook's cover letter, he describes two steps FINRA plans to take in the upcoming year: (1) publishing common exam findings; and (2) developing new resources and tools for small firms. As in previous years, FINRA will focus on sales practices, financial risks, operational risks and market integrity. New priorities include high-risk and recidivist brokers, excessive and short-term trading of long-term products, social media and electric communications retention and supervision, credit risk policies, procedures and risk limit determinations under FINRA Rule 4210, supervisory controls testing, municipal advisor registration, and trading examinations. Significantly, the letter did not include any references to the 2016 headline priority, "Culture, Conflicts of Interest and Ethics." Other areas of potentially diminished focus include Exchange-Traded Funds, internal audit, client onboarding, transmittal of customer funds, sales charge discounts and waivers, and excessive charges to customers in new bond sales. None of those products or issues were contained in the 2017 letter.

US Securities and Exchange Commission

PERSONNEL CHANGES[2]

The Commission composition remained unchanged in fiscal year 2016. The Commission was composed of Chair White and two Commissioners: Kara M. Stein and Michael S. Piwowar. Former Commissioners Daniel M. Gallagher and Luis A. Aguilar left the SEC on September 30, 2015, just before the start of the most recent fiscal year. On November 14, 2016, Chair White announced that she would step down from her role as the 31st Chair of the SEC at the end of the Obama Administration.

As of the writing of this publication, Commissioner Piwowar is serving as Acting Chair, and there are still two vacancies at the Commission. On January 4, 2017, then-President-Elect Trump announced his nomination of Jay Clayton, a partner at Sullivan & Cromwell, to succeed Chair White. President Trump has not yet announced his nominations for the two open Commissioner positions. President Obama had nominated Hester Peirce, a Republican, and Lisa Fairfax, a Democrat, for the open positions on October 20, 2015, but they never received a full Senate vote; it is unclear whether either of these nominations will be carried over by the new administration.

As set forth below, there were some changes in key Commission Staff positions during fiscal year 2016.

On October 5, 2015, Michael Liftik was appointed Deputy Chief of Staff of the SEC, replacing Erica Williams. He joins Nathaniel Stankard, who currently serves as the other Deputy Chief of Staff. Mr. Liftik had served as Senior Advisor to Chair White since April 2013, and has provided legal advice on enforcement policy matters and cases. Prior to that, Mr. Liftik was Counsel to the Director of the Division of Enforcement. He began his career with the SEC in 2007, when he joined the San Francisco regional office as an Enforcement Division staff attorney.

On June 2, 2016, Christopher R. Hetner was appointed Senior Advisor to the Chair for Cybersecurity Policy. In this new role, Mr. Hetner will advise the Chair on cybersecurity policy matters and will coordinate cybersecurity efforts across the agency. Mr. Hetner joined the Commission in January 2015 as the Cybersecurity Lead for the Technology Control Program within OCIE. Mr. Hetner has more than 20 years of experience in information security and technology, and prior to joining the SEC he served most recently as head of the Wealth and Asset Management Sector Cybersecurity practice at Ernst & Young.

On January 18, 2017, General Counsel Anne K. Small announced that she would leave the

2 Unless otherwise noted, the information regarding these personnel changes was drawn from SEC Press Releases available on the Commission's website.

Commission by the end of January 2017. Following Ms. Small's departure, Sanket Bulsara, Deputy General Counsel for Appellate Litigation, Adjudication, and Enforcement, will be named Acting General Counsel.

On January 27, 2017, the Commission announced that Chief Operating Officer Jeffery Heslop would leave the SEC in February 2017. Following Mr. Heslop's departure, Kenneth Johnson, Chief Financial Officer, will be named Acting Chief Operating Officer.

DIVISION OF ENFORCEMENT

On December 8, 2016, the SEC announced that Enforcement Director Andrew J. Ceresney would leave the agency by the end of 2016. In light of Director Ceresney's departure, Stephanie Avakian, Deputy Director of Enforcement, has been named Acting Director. Ms. Avakian joined the Commission in 2014, after previously serving as a partner and vice-chair of the securities practice at Wilmer Cutler Pickering Hale and Dorr LLP (WilmerHale). Earlier in her career, Ms. Avakian worked in the Enforcement Division as branch chief in the New York Regional Office. She also served as counsel to former SEC Commissioner Paul Carey.

On March 10, 2016, Anthony S. Kelly was named Co-Chief of the Division of Enforcement's Asset Management Unit, succeeding Julie Riewe after her departure in February 2016. Mr. Kelly began his career with the SEC in 2000 as a securities compliance examiner in OCIE's Broker-Dealer Group, during which time he attended law school, and he joined the Enforcement Division upon graduation.

On June 28, 2016, C. Dabney O'Riordan was appointed Co-Chief of the Division of Enforcement's Asset Management Unit, joining Anthony S. Kelly, and succeeding Marshall Sprung after his departure in April 2016. Ms. O'Riordan joined the SEC in 2005 as a staff attorney in the Division of Enforcement, and was most recently appointed Associate Regional Director for the Los Angeles Regional Office. Before coming to the SEC, Ms. O'Riordan practiced as a litigation associate with Munger, Tolles & Olson.

On November 21, 2016, Matthew C. Solomon, Chief Litigation Counsel for the Enforcement Division, announced that he would leave the Commission in December 2016. Since his departure, David Gottesman, the Deputy Chief Litigation Counsel, and Bridget Fitzpatrick, a supervisory trial counsel, have served as Acting Co-Chief Litigation Counsels.

On January 19, 2017, Jennifer A. Diamantis was named Chief of the Enforcement Division's Office of Market Intelligence, which collects and analyzes the numerous tips and referrals that the Commission receives. Ms. Diamantis joined the SEC in September 2016, and has served as Acting Chief of the office, following the departure of Vincente L. Martinez, the former head of the office. Before joining the SEC, Ms. Diamantis held positions at multiple federal agencies – including the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, and the Commodity Futures Trading Commission – as well as in the private sector, as a partner at the law firm of Schnader Harrison Segal & Lewis LLP.

SEC REGIONAL OFFICES

A new Director was appointed in one of the SEC's 11 regional offices:

Philadelphia Regional Office: G. Jeffrey Boujoukos

New Associate Regional Directors for Enforcement were appointed in three of the SEC's 11 regional offices:

Atlanta Regional Office: Aaron W. Lipson
Los Angeles Regional Office: John W. Berry[3] and Alka Patel
Denver Regional Office: Kurt Gottschall

DIVISION OF CORPORATION FINANCE

On December 6, 2016, Keith F. Higgins, Director of the Division of Corporation Finance, announced his plans to leave the Commission in January 2017. Upon his departure, Shelley Parratt, Deputy Director for the Division of Corporation Finance since 2003, was named Acting Director.

DIVISION OF ECONOMIC RISK ANALYSIS

On October 2, 2015, the SEC announced that Dr. Chyhe Becker was named Associate Director in the Division of Economic Risk Analysis (DERA), within the Office of Litigation Economics, which is a new position created to "reflect the significance of data-driven economic and statistical analysis in investigations and litigated cases."[4] Dr. Becker previously served as Assistant Director of the Office of Litigation Economics since 2009. She joined the SEC in 2008 as Assistant Chief Economist after spending 11 years as an economist in the private sector.

On December 2, 2016, DERA Director Dr. Mark J. Flannery announced that he would leave the Commission in January 2017 to return to his position as professor of finance at the University of Florida's Graduate School of Business Administration. Dr. Flannery had served as Chief Economist and DERA Director since September 2014. Dr. Scott W. Baugess, the Deputy Chief Economist and DERA Deputy Director, will be named Acting Chief Economist and Acting Director of DERA upon Dr. Flannery's departure. Prior to joining the SEC in 2007, Dr. Baugess was on the faculty in the College of Business at Texas Tech University.

On December 12, 2016, Dr. Narahari Phatak was named DERA's Associate Director for Policy.

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[3] Prior to Mr. Berry's appointment, Ms. O'Riordan served as Associate Regional Director from February 9, 2016 until June 28, 2016, when she was appointed Co-Chief of the Asset Management Unit.

[4] *See* SEC Press Release No. 2015-228, Chyhe Becker Named as Associate Director in the Division of Economic and Risk Analysis (Oct. 2, 2015), http://www.sec.gov/news/pressrelease/2015-228.html.

In this role, Dr. Phatak will provide support for the Commission's rulemaking and policy development by directing the development of economic analyses. Dr. Phatak has been a member of DERA since 2012, serving as a Financial Economist Fellow in the Office of Markets, a Supervisory Financial Economist in the Office of Financial Intermediaries, and Acting Assistant Director of the Office of Corporate Finance.

DIVISION OF INVESTMENT MANAGEMENT

On September 7, 2016, Sarah G. ten Siethoff was named Deputy Associate Director in the Division of Investment Management's Rulemaking Office. Ms. ten Siethoff joined the Division of Investment Management in 2008 and served as Assistant Director, Senior Special Counsel and Senior Counsel. Prior to joining the SEC, Ms. ten Siethoff was an associate at Cleary Gottlieb Steen & Hamilton LLP.

On December 22, 2016, Sara P. Crovitz was appointed Deputy Chief Counsel and Associate Director in the Division of Investment Management's Chief Counsel's Office. Ms. Crovitz joined the SEC in 1996 as an attorney in the Office of General Counsel. She joined the Division of Investment Management in 1999, and has since held the position of Senior Counsel in the Office of Investment Company Regulation, as well as several positions in the Chief Counsel's Office. Prior to joining the Commission, Ms. Crovitz was an associate with Steptoe & Johnson.

Also on December 22, 2016, Dr. Timothy Husson was named Associate Director in the Division of Investment Management's Risk and Examinations Office. Dr. Husson joined the Division of Investment Management in 2014, and has served as Branch Chief, Quantitative Research Analyst (Financial Engineer), and Financial Analyst Fellow in the division's Risk and Examinations Office. Prior to his Commission service, Dr. Husson was a Senior Financial Economist at Securities Litigation & Consulting Group.

DIVISION OF TRADING AND MARKETS

In December 2016, Heather Seidel was named Acting Director of the Division of Trading and Markets, following the departure of Stephen Luparello. Ms. Seidel began her career at the SEC in 1996, serving in both the Division of Market Regulation and the Division of Investment Management. From 1999 through 2003, Ms. Seidel was in the private sector as an associate at Wilmer, Cutler & Pickering (now WilmerHale), and as an associate and vice president at Morgan Stanley. She rejoined the SEC in 2003 in the Division of Trading and Markets, and in 2010 was named Associate Director in the Office of Market Supervision. In 2015 she was named Chief Counsel for the Division.

On October 20, 2015, the SEC named Christian Sabella and Wenchi Hu as Associate Directors in the Division of Trading and Markets' Office of Clearance and Settlement. Mr. Sabella serves as Associate Director, Regulation, and leads a team that develops recommendations for Commission policy and rulemaking regarding clearing agencies, transfer agents, security-based swap data repositories, and other financial market infrastructure. He joined the SEC in 2011 as a branch chief in the Division's Office of Trading Practices and was a special counsel to the

Division Director from July 2013 to April 2015. Ms. Hu, who has since announced that she would leave the Commission in early February 2017, served as Associate Director, Risk and Supervision, responsible for supervision of registered clearing agencies, including firms that clear securities-based swaps.

OFFICE OF COMPLIANCE INSPECTIONS AND EXAMINATIONS

National Examination Program

On November 12, 2015, Marc Wyatt was appointed Director of OCIE and leader of its National Exam Program. On January 30, 2017, Mr. Wyatt announced that he would leave the SEC in February to return to the private sector. Following the departure of Mr. Wyatt in February 2017, Pete Driscoll, OCIE's Chief Risk and Strategy Officer, will be named Acting Director. Mr. Driscoll previously served as OCIE's Managing Executive from 2013 through 2016. Mr. Driscoll began his career with the Commission in 2001 as a staff attorney in the Enforcement Division in the Chicago Regional Office, and as a Branch Chief and Assistant Regional Director in OCIE. Before that, Mr. Driscoll held several accounting positions in the private sector.

On February 3, 2016, Jane Jarcho was named Deputy Director of OCIE. Ms. Jarcho was previously appointed National Director of OCIE's Investment Adviser/Investment Company examination program on August 20, 2013, and she will continue in that role moving forward. Ms. Jarcho joined the SEC in 1990 in the Division of Enforcement, and has held several positions, including Associate Regional Director of the program in the Chicago Regional Office.

On August 10, 2016, Kristin Snyder was appointed Co-National Associate Director of OCIE's Investment Adviser/Investment Company examination program. Together with Ms. Jericho, Ms. Snyder will oversee more than 520 lawyers, accountants, and examiners responsible for inspections of investment advisers and investment companies that are registered with the SEC. Ms. Snyder joined the SEC in 2003, and spent eight years in the San Francisco office's enforcement program, after which she assumed the role of Associate Regional Director for Examinations in the San Francisco office, a position she will maintain in conjunction with her new leadership role.

On February 17, 2016, Daniel S. Kahl was named Chief Counsel of OCIE, where he oversees a staff of 15 lawyers and advises OCIE leadership on various matters related to the National Exam Program. Since joining the SEC in 2001, Mr. Kahl has held several positions in the Division of Investment Management, and has been Assistant Director of the division's Investment Adviser Regulation Office for the last five years. Prior to joining the Commission, Mr. Kahl was an attorney for the Investment Adviser Association, FINRA, and the North American Securities Administrators Association.

On March 8, 2016, Dr. Robert M. Fisher was appointed Managing Executive of OCIE, succeeding Peter B. Driscoll, who was appointed Chief Risk and Strategy Officer of the new Office of Risk and Strategy (ORS). As Managing Executive, Dr. Fisher will oversee the business operations, technology services, examiner training, and Tips, Complaints and Referrals programs. In 2002,

Dr. Fisher joined the SEC in the Office of Economic Analysis (now DERA). Since 2005, Dr. Fisher has held several positions in the Office of International Affairs (OIA), including Acting Director. Dr. Fisher came to OCIE in 2014 as an Associate Director within the Office of the Director. Before joining the Commission, Dr. Fisher worked in private practice in Washington, DC.

Office of Risk and Strategy

On March 8, 2016, the Commission announced the creation of the ORS within OCIE, and named Peter B. Driscoll as the inaugural Chief Risk and Strategy Officer. In addition to managing the new office, Mr. Driscoll will also manage the Investment Adviser/Investment Company staff in Washington, DC. Given Mr. Driscoll's additional responsibilities as Acting Director of OCIE, effective February 2017, he will be even busier than he might have anticipated, at least for some time.

Regional Offices - OCIE

On November 5, 2015, Bryan Bennet was named to lead the examination program in the Los Angeles Regional Office. Mr. Bennet joined the SEC in 2008, and served as an examiner, and later as an exam manager, in the Los Angeles Regional Office. Mr. Bennet replaces Karol K. Pollock, who was appointed to this position on December 10, 2014.

Office of the Chief Accountant

On November 22, 2016, Wesley R. Bricker was named Chief Accountant, succeeding James V. Schnurr, who announced his retirement. Mr. Bricker began his career with the SEC on May 14, 2015 as Deputy Chief Accountant. Mr. Bricker joined the SEC from PricewaterhouseCoopers LLP (PwC), where he was a partner responsible for clients in various sectors, including banking, capital markets, financial technology, and investment management. Mr. Bricker has more than 15 years of experience in the public accounting sector. He began his accounting career at PwC, first in the Harrisburg, PA office, and later in the Washington, DC office. Mr. Bricker also served as a professional accounting fellow in the SEC's Office of the Chief Accountant from 2009 to 2011, after which he returned to PwC.

On November 2, 2016, Marc A. Panucci was appointed Deputy Chief Accountant. In this role, Mr. Panucci will lead the activities of the office's professional practice group, and will assist in overseeing the activities of the Public Company Accounting Oversight Board. Mr. Panucci joined the SEC from PwC, where he was a partner in the national professional services group. He previously worked at the Commission from 2007 to 2010, and has 22-plus years of experience in accounting, regulatory, and standard-setting roles.

Office of the General Counsel

On November 13, 2015, Michael A. Conley was appointed SEC Solicitor. Jacob H. Stillman, who served as SEC Solicitor for the previous 17 years, remains as senior advisor to the Solicitor. Also on November 13, 2015, Sanket J. Bulsara was appointed Deputy General Counsel for Appellate Litigation and Adjudication, succeeding Mr. Conley. Mr. Conley joined the SEC in

October 2000 from Pillsbury Madison and Sutro, where he was a member of the appellate litigation group and managing partner of the firm's Washington, DC office. In 2011, he was named Deputy General Counsel for Appellate Litigation and Adjudication, and previously served as Deputy Solicitor. Before joining the SEC, Mr. Bulsara was a partner at WilmerHale.

Office of International Affairs

On November 30, 2015, the SEC named Katherine K. Martin as Associate Director of the OIA. Ms. Martin has held various roles at the SEC for more than a decade, most recently as an Assistant Director in the OIA and prior to that as a Senior Special Counsel in the Office of Clearance and Settlement in the Division of Trading and Markets. Ms. Martin has also served as Assistant Chief Counsel in the DERA, and as a Senior Counsel in the OIA.

Office of the Whistleblower

On September 28, 2016, the Commission announced that Jane Norberg was appointed chief of the Office of the Whistleblower. Ms. Norberg joined the SEC in 2012, serving as the first Deputy Chief of the Office of the Whistleblower, and has served as Acting Chief since the departure of Sean McKessy, the office's inaugural Chief. Prior to joining the SEC, Ms. Norberg held positions in private practice and as a special agent in the United States Secret Service.

Office of Legislative and Intergovernmental Affairs

On March 21, 2016, Keith Cassidy was named Director of the Office of Legislative and Intergovernmental Affairs. In this role, Mr. Cassidy advises the Chair, Commissioners, and SEC Staff on legislative matters; assists congressional committees with securities-related legislation; and counsels on preparation for testimony before congressional hearings by SEC personnel. Mr. Cassidy joined the SEC in 2010 as an Attorney Advisor in the Office of Legislative and Intergovernmental Affairs. Prior to that, he was Chief of Staff and Counsel at the Department of Justice's Office of Legislative Affairs.

ENFORCEMENT STATISTICS[5]

In fiscal year 2016, the SEC brought a record 868 enforcement cases, including 548 independent actions for securities laws violations, 125 actions against issuers who were delinquent in making required filings, and 195 "follow on" administrative proceedings seeking associational bars against individuals. Within these matters, a total of 1,700 defendants and respondents were named as parties.

This last year's totals represent an increase from 807 enforcement actions in 2015, of which 507 were independent actions, and from 755 enforcement actions in 2014, of which 413 were

5 Unless otherwise noted, the information in this section is drawn from the Commission's Press Release titled "SEC Announces Enforcement Results for FY 2016," https://www.sec.gov/news/pressrelease/2016-212.html. The SEC's fiscal year 2016 ended on September 30, 2016.

independent actions.

The chart below reflects the number of cases brought by the SEC over the last decade:

Fiscal Year	Number of Enforcement Actions
2007	656
2008	671
2009	664
2010	681
2011	735
2012	734
2013	686
2014	755
2015	807
2016	868

CATEGORIES OF CASES

The major categories of cases and the number of actions for fiscal year 2016 within each category are as follows; the totals below include civil actions filed in federal court, SEC administrative proceedings, and follow-on administrative proceedings (where applicable):[6]

Type of Case	Number of Actions	Percentage of Total Actions
Broker-Dealer	173	19.9%
Investment Advisers/Investment Companies	159	18.3%
Delinquent Filings	121	14.4%
Issuer Reporting and Disclosure	103	11.9%
Securities Offering Cases	97	11.2%
Public Finance Abuse	97	11.2%
Insider Trading	45	5.2%
Market Manipulation	33	3.8%
FCPA	21	2.4%
Miscellaneous	11	1.3%
National Recognized Statistical Ratings Organization (NRSRO)	2	0.2%
Transfer Agent	2	0.2%

Last year the SEC brought its most cases ever against investment advisers and investment companies, at 159 matters, in which 254 individuals and entities were named as parties. In

6 Unless otherwise noted, the information in this section is drawn from the Commission's Report titled "Select SEC and Market Data Fiscal 2016," https://www.sec.gov/reportspubs/select-sec-and-market-data/secstats2016.pdf.

addition, the Commission brought 173 cases against broker-dealer defendants, naming 201 individuals and entities, after what had been a down year for broker-dealer cases in 2015. These increases do not appear to reflect a "surge" but rather a continued focus on regulated entities, the impact of data-driven regulation and enforcement, and continued referrals from OCIE. Together, these regulated entity categories of cases approach 40% of the Enforcement docket, and that does not take into account other categories of matters that likely also involve such entities—for example, the Public Finance Abuse and Insider Trading case types.

The SEC continues to bring more insider trading cases, perhaps as the Justice Department was slowed in its work in the area as the result of change in law effected by the *United States v. Newman* case. The Enforcement Division saw a 15% uptick in its insider trading matters in 2016. The US Supreme Court's December 6, 2016 decision in *Salman v. United States*[7] will not likely change this outcome and we can expect that data analytics will result in continued increases in cases in this area.

Once again, in 2016, as a result of the MCDC initiative, Public Finance Abuse cases comprised a significant portion of the SEC's cases, largely made up of settlements with entities choosing to participate in the program. Finally, the Commission's work in the FCPA in 2016 showed real gains, as the number of cases increased more than 60%—from 13 cases in 2015 to 21 cases this last year. Many of these matters were very significant, high-dollar resolutions.

CIVIL PENALTIES AND DISGORGEMENT ORDERS

In fiscal year 2016, the SEC obtained orders requiring the payment of $1.273 billion in civil penalties and $2.809 billion in disgorgement, a 2.6% decline from the total amounts ordered in fiscal year 2015, but the third year in a row that the total exceeded $4 billion.

Below is a chart reflecting the total amounts of fines and disgorgement obtained by the Commission between fiscal year 2007 and fiscal year 2016.

Fiscal Year	Penalties and Disgorgement
2007	$1.6 billion
2008	$1.03 billion
2009	$2.435 billion
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

7 580 U.S. ____ (2016).

ADDITIONAL STATISTICS

Recently, the Commission published its report titled "Select SEC and Market Data Fiscal 2016."[8] In the report's section on "Enforcement Milestones," the SEC noted the following additional fiscal year 2016 statistics:

- The Commission sought orders barring 113 individuals from serving as officers or directors of public companies.
- The SEC filed 7 actions to enforce its investigative subpoenas.
- The Commission went to federal court and sought immediate emergency relief to stop ongoing fraudulent conduct in 24 actions and sought asset freezes in 33 cases.

Perhaps of more interest to those who are or may find themselves in the sights of the SEC Staff are the statistics about opened and closed investigations:[9]

- Investigations opened in fiscal year 2016: 1,063
- Investigations closed in fiscal year 2016: 776
- Investigations ongoing as of close of fiscal year 2016: 1,729

In this last fiscal year, the Enforcement Division opened more cases than the previous year, and closed somewhat fewer. Overall, and likely somewhat anecdotally, the Morgan Lewis securities enforcement and litigation team saw some slowing in getting cases to resolution this last year; this may be a function of the substantial personnel transitions both at the Commission and at the senior Staff levels.

- Investigations opened in fiscal year 2015: 980
- Investigations closed in fiscal year 2015: 821
- Investigations ongoing as of close of fiscal year 2015: 1,677

Given the numbers of ongoing investigations that transitioned into the new fiscal year, the Enforcement Division once again has a head start on another record year for enforcement actions, simply based on its investigations inventory.

OFFICE OF THE WHISTLEBLOWER[10]

The SEC's whistleblower program, which was established pursuant to the Dodd-Frank Act,

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8 *See id.*

9 *Id.*

10 *See* "2016 Annual Report to Congress on the Dodd-Frank Whistleblower Program" (Nov. 15, 2016), https://www.sec.gov/whistleblower/reportspubs/annual-reports/owb-annual-report-2016.pdf.

completed its sixth year of operation in fiscal year 2015. Under the program, persons who voluntarily provide the SEC with original information leading to a successful enforcement case resulting in monetary sanctions of more than $1 million may be eligible to receive an award between 10% and 30% of the funds collected by the Commission or in a related enforcement case.

In fiscal year 2016, the SEC's Office of the Whistleblower received 4,218 tips, complaints, and referrals from whistleblowers, an increase of 295, or 7.5%, from the 3,923 received in fiscal year 2015. Again last year, tips, complaints, and referrals came from all 50 states, the District of Columbia, Puerto Rico, and 67 foreign countries. In the United States, in 2016, persons from California, New York, Florida, Ohio, and Texas referred the most tips to the Office of the Whistleblower. Canada, the United Kingdom, and Australia led the way in referring complaints to the SEC from outside the country last year. Aside from referrals that defy ready classification and are denominated "Other" (23.6%), most of these whistleblower referrals fell into three categories: corporate disclosure and financials (22%), offering fraud (15%), and manipulation (11%). The number of allegations received by the SEC in these and other categories is presented below.

Allegation Type	Number of Allegations	Approx. Percentage of Total Allegations
Corporate Disclosure and Financials	938	22%
Offering Fraud	646	15%
Manipulation	472	11%
Insider Trading	262	6.2%
Trading and Pricing	257	6%
FCPA	238	5.6%
Unregistered Offerings	143	3.4%
Market Event	102	2.4%
Municipal Securities and Public Pension	67	1.6%
Other	996	23.6%
Not Reported	97	2.3%

Last year, the SEC reported that it had paid 13 whistleblowers a combined total of more than $57 million. According to the Office of the Whistleblower, "six of the ten largest whistleblower awards were made by the Commission during FY 2016."[11]

KEY SEC ENFORCEMENT DEVELOPMENTS

Fiscal year 2016 was marked by the extraordinary number of cases against regulated entities and, specifically, matters involving investment advisers or investment companies, as well as a noteworthy increase in FCPA matters. These were the key accomplishments identified by the

[11] *Id.* at 10.

Commission when it announced its results.[12]

In addition, the Commission continues to look to changes and improvements in how it utilizes one of its most valuable resources, the data that it collects from throughout the market. As then–SEC Chair White put it, "Over the last three years, we have changed the way we do business on the enforcement front by using new data analytics to uncover fraud, enhancing our ability to litigate tough cases, and expanding the playbook bringing novel and significant actions to better protect investors and our markets."[13]

In what has become an annual custom, the SEC also heralded 2016's "first-of-their-kind" cases. While some of these "new" actions indeed represent the first time a law or regulation has been enforced, these "first time" actions often represent extensions of existing law to either new products or novel circumstances. For example, "first-of-their-kind" cases that were the function of new legislation included the cases related to violations by municipal advisors that stemmed from new obligations imposed by Dodd-Frank, but, by contrast, the case against the issuer of retail structured notes for material misstatements and omissions, or the auditor independence cases, were simply novel applications of existing law.[14]

AREAS OF FOCUS FOR THE ENFORCEMENT DIVISION

Regulated Entities, Market Integrity, and Retail Investors

After several years of the Enforcement Division's talking about its increased focus on investment advisers and investment companies, the division's 2016 statistics demonstrate that focus in real numbers, as the division brought its most ever cases against these registrants. Overall, the 2016 Enforcement docket revealed charges against regulated entities for violations that, at bottom, largely could be classified as disclosure violations, misrepresentations, conflicts of interests, and controls failures. Although the SEC annually makes some effort to sell these matters as "new" and "first," most of this last year's matters would be difficult to categorize as any extension of the securities laws. Perhaps the continued reliance on data and the Enforcement Division's access to information obtained through the examination process make this result inevitable, and the cases developed as a result somewhat less controversial, which was a necessity this last fiscal year, since they were presented for authorization to a Commission of only three members.

In the Investment Adviser/Investment Company area, the Enforcement Division's investigations

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12 *See* SEC Press Release No. 2016-212, SEC Announces Enforcement Results for FY 2016 (Oct. 11, 2016), https://www.sec.gov/news/pressrelease/2016-212.html.

13 *Id.*

14 *See id. See also, e.g., In the Matter of Central States Capital Markets, LLC et al.,* Exchange Act Rel. No. 77369 (March 15, 2016); *In the Matter of UBS AG,* Securities Act Rel. No. 9961 (Oct. 13, 2015); *and* SEC Press Release 2016-187, Ernst & Young, Former Partners Charged With Violating Auditor Independence Rules (Sept. 19, 2016), https://www.sec.gov/news/pressrelease/2016-187.html.

of private equity fund advisers resulted in numerous matters, mostly related to failure to disclose allocations of fees and expenses and conflicts of interests.[15] And in what was largely a cautionary tale for investment advisers that offer the products of others, after a sweep investigation the division brought 13 cases against investment advisers for negligently repeating to their own clients false performance data received from F-Squared Investments.[16] In matters that resulted from another OCIE sweep, two wrap fee program sponsors were charged with compliance failures for failing to establish policies and procedures related to commissions incurred when sub-advisers "traded away" from the program.[17] Finally, the Enforcement Division charged that failure to fully disclose 12b-1 fee paying mutual fund share classes presents a conflict of interest and the potential for a breach of fiduciary duty by investment advisers, which was quickly followed by an OCIE Risk Alert advising of the Commission's Share Class Initiative.[18] We can expect, as a result, to see more of these types of matters in fiscal year 2017.

On the broker-dealer side, in 2016, the Enforcement Division continued to bring significant cases that the Commission views as protecting the integrity of the markets. In each of the matters brought against alternative trading systems the Commission charged the firms with, among other issues, failure to handle and protect customer order flow as represented; collectively, the firms paid more than $150 million to resolve the matters.[19] The Commission also continued its scrutiny of complex structured products sold to retail customers; these matters followed an OCIE investigative sweep in the same area, announced at the end of fiscal year 2015.[20] And in one of the most significant broker-dealer matters of this last fiscal year, the SEC announced its Customer Protection Rule Initiative concurrently with the announcement that Merrill Lynch would pay a $415 million settlement for violating the rule over a period of years by failing to deposit customer funds in a reserve account and customer securities in accounts that

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15 *See, e.g., In the Matter of First Reserve Management, L.P.*, IA Rel. No. 4529 (Sept. 14, 2016); *see also* SEC Press Release No. 2016-212, SEC Announces Enforcement Results for FY 2016 (Oct. 11, 2016), https://www.sec.gov/news/pressrelease/2016-212.html (citing seven other private equity–related matters).

16 SEC Press Release No. 2016-167, Investment Advisers Paying Penalties for Advertising False Performance Claims (Aug. 25, 2016), https://www.sec.gov/news/pressrelease/2016-167.html (linking to the matters).

17 SEC Press Release No. 2016-181, Two Firms Charged With Compliance Failures in Wrap Fee Programs (Sept. 8, 2016), https://www.sec.gov/news/pressrelease/2016-181.html.

18 *See In the Matter of Royal Alliance Associates, Inc. et al.*, Exchange Act Rel. No. 77362 (Mar. 14, 2016); *see also* National Exam Program Risk Alert, OCIE's 2016 Share Class Initiative (July 13, 2016), https://www.sec.gov/ocie/announcement/ocie-risk-alert-2016-share-class-initiative.pdf.

19 *See* SEC Press Release No. 2016-16, Barclays, Credit Suisse Charged with Dark Pools Violations (Jan. 31, 2016), https://www.sec.gov/news/pressrelease/2016-16.html.

20 *See In the Matter of UBS Financial Services, Inc.*, Exchange Act Rel. No. 78958 (Sept. 28, 2016); *see also* National Program Risk Alert, Broker-Dealer Controls Regarding Retail Sales of Structured Securities Products (Aug. 24, 2015), https://www.sec.gov/about/offices/ocie/risk-alert-bd-controls-structured-securities-products.pdf. *See also* SEC Press Release No. 2016-212, SEC Announces Enforcement Results for FY 2016 (Oct. 11, 2016), https://www.sec.gov/news/pressrelease/2016-212.html (for additional matters related to violations concerning retail sales of structured notes and disclosure concerns in offering materials for these products).

were free of liens.[21] Under its initiative, the Commission encourages self-reporting of violations of the Customer Protection Rule in exchange for recommended favorable settlement terms, and also announces a sweep of risk-based examinations to identify violations.[22]

Public Finance Fraud

The Commission's heightened interest in the public finance markets continued in fiscal year 2016. The Enforcement Division's MCDC initiative, designed to ensure accuracy in the offering documents for municipal securities, concluded as to municipal securities underwriters, with the Commission's acceptance of 14 more self-reported violations and settlements from these market participants, but the Enforcement Staff turned its attention to municipal securities issuers.[23] The Commission accepted settlements from 71 issuers and other obligated persons in connection with MCDC.[24] Moreover, the Enforcement Division won at a jury trial, in its fraud case against the City of Miami for its failures to disclose the truth about its financial condition in connection with the sale of its securities.[25] Since the end of the fiscal year, pay-to-play issues have been front-and-center in this space, with the promise of more to come.[26]

Analyzing and Leveraging Data Across the Agency

In addition to the DERA, the Division of Enforcement's own Center for Risk and Quantitative Analytics and OCIE's newly created ORS, are each using data analytics to assess and support the work of the Commission. Enforcement's Center for Risk and Quantitative Analytics participated in more than 75 matters in fiscal year 2016, including enforcement actions against 67 entities, involving, by way of example, hedge funds and municipal issuers, and concerning, among other issues, insider trading and complex products.[27]

DERA's data-driven economic analyses serves the Commission by providing support for policy initiatives, including evaluating the effectiveness of disclosures and of rulemaking efforts, but

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21 *See* SEC Press Release No, 2016-128, Merrill Lynch to Pay $415 Million for Misusing Customer Cash and Putting Customer Securities at Risk (June 23, 2016), https://www.sec.gov/news/pressrelease/2016-128.html.

22 *Id. See also* Customer Protection Rule Initiative, Division of Trading and Markets, https://www.sec.gov/divisions/enforce/customer-protection-rule-initiative.shtml.

23 *See* SEC Press Release No. 2016-18, SEC Completes Muni-Underwriter Enforcement Sweep (Feb. 2, 2016), https://www.sec.gov/news/pressrelease/2016-18.html.

24 *See* SEC Press Release No. 2016-166, SEC Charges 71 Municipal Issuers in Muni Bond Disclosure Initiative (Aug. 24, 2016), https://www.sec.gov/news/pressrelease/2016-166.html.

25 *See* Statement of Andrew Ceresney, Sept. 14, 2016, https://www.sec.gov/news/statement/ceresney-statement-2016-09-14.html.

26 *See* SEC Press Release No. 2016-272, SEC Charges Former New York Pension Official and Two Brokers in Pay-to-Play Scheme (Dec. 21, 2016), https://www.sec.gov/news/pressrelease/2016-272.html; *see also* SEC Press Release No, 2017-15, 10 Firms Violated Pay-to-Play Rule By Accepting Pension Fund Fees Following Campaign Contributions (Jan. 17, 2017), https://www.sec.gov/news/pressrelease/2017-15.html.

27 *See* US Securities and Exchange Commission, "Fiscal Year 2016 Agency Financial Report," at 20-21, https://www.sec.gov/about/secafr2016.shtml.

the ability to identify, and perhaps prevent, violations simply through data analysis continues to be its most startling impact. In fiscal year 2016, DERA operationalized its Investment Company Risk Assessment, which ranks firms by risk profile and detects anomalies in an effort to detect violations.[28] The Broker-Dealer Risk Assessment, which supports broker-dealer exams and helps OCIE prioritize exams, has been in use for some time and continues to be refined, in partnership with OCIE.[29]

The work that DERA has undertaken in conjunction with the Enforcement Division is the most visible, since that support often is noted in press releases announcing enforcement cases. During the last fiscal year, DERA assisted the Division of Enforcement by developing a methodology to identify "cherry picking" by investment advisers and market manipulation in US Treasury securities.[30]

Abusive and Insider Trading

Insider trading law was somewhat unsettled during 2016, as recent legal challenges to criminal prosecutions worked their way through the court system. However, this uncertainty has been limited to so-called "tipping" cases, where the trader is not the person with the direct obligation to keep the information confidential. As a result, the SEC did not hesitate to proceed in charging 78 parties in 45 separate cases in insider trading matters during fiscal year 2016.[31] And, while many of those parties settled, the Enforcement Division also had two successful jury trials in insider trading cases, based on cases filed the previous year.[32] According to the Commission, among the most significant cases brought by the Division of Enforcement this last year were the insider trading cases against Leon Cooperman and Omega Advisors, and the case brought against William "Billy" Walters and Thomas C. Davis concerning trading in the securities of Dean Foods; each of these matters remains pending in the courts.[33]

On December 6, 2016, the United States Supreme Court ended the suspense, if not some of the uncertainty, with its decision in *Salman*[34] resolving an apparent split between the Ninth Circuit and the Second Circuit's decision in *Newman*[35] on the issue of tippee liability. The *Newman*

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28 *Id.* at 24-25.

29 *Id.* at 25.

30 *Id.*

31 *See* SEC Press Release No. 2016-212, SEC Announces Enforcement Results for FY 2016 (Oct. 11, 2016), https://www.sec.gov/news/pressrelease/2016-212.html.

32 *See* SEC Litigation Release No. 23476, SEC Obtains Final Judgment Against Former Capital One Employee for Insider Trading (Feb. 26, 2016), https://www.sec.gov/litigation/litreleases/2016/lr23476.htm; *see also* SEC Litigation Release No. 23478, SEC Obtains Jury Verdict in Its Favor Against Former Brokers On Insider Trading Charges (Mar. 2, 2016), https://www.sec.gov/litigation/litreleases/2016/lr23478.htm.

33 *See* SEC Press Release No. 2016-212, SEC Announces Enforcement Results for FY 2016 (Oct. 11, 2016), https://www.sec.gov/news/pressrelease/2016-212.html.

34 580 U.S. at ____.

35 773 F.3d 438 (2d Cir. 2014), *cert. denied,* 136 S. Ct. 438 (2015).

decision had limited liability in "tipping" cases to situations where tippees know both that the material nonpublic information at issue is confidential and that the tipper had divulged such information in exchange for some tangible personal benefit. In *Salman*, faced with different facts – Salman had received and traded on material nonpublic information from his brother-in-law, who, in turn, had received the information from his own brother – the Ninth Circuit affirmed his conviction for insider trading, in spite of his claims for relief under the *Newman* decision.[36]

Following its own precedent in *Dirks v. SEC*, the Supreme Court in *Salman* held that a tipper breaches a duty and also receives a personal benefit by making a gift of confidential information to a relative or friend who trades on that information.[37] In commenting on the *Newman* decision, the Supreme Court stated that, to the extent the *Newman* decision holds that a tipper must receive a pecuniary or similar benefit, in addition to the personal benefit already identified upon the gift of confidential information to a trading relative or friend, that decision is inconsistent with *Dirks*.[38]

Thus, it would appear that the courts likely will be making decisions going forward as to whether relatives and friends are close enough to a tipper that the "gift of information" is, under *Dirks* and *Salman*, in fact, a gift and, as such, also a "personal benefit." This is the very place where such matters had drifted from the confines of the law in the past and left tipping prosecutions, both civil and criminal, open to challenge.

The Foreign Corrupt Practices Act

After the close of fiscal year 2015, in a November 17, 2015 speech then–Enforcement Director Ceresney stated that the SEC had taken "a lead role in combatting corruption worldwide, enforcing the FCPA vigorously against issuers and individuals within its jurisdiction and working with foreign partners to enhance their anticorruption efforts."[39] The most recent fiscal year certainly bore out those statements, as the Commission brought its most ever FCPA cases at 21 cases and also announced two nonprosecution agreements with companies that self-reported conduct and cooperated with the SEC.[40]

The Whistleblowers' Advocate

In 2015, the SEC brought its first action under Rule 21F-17 of the Whistleblower Rules claiming that confidentiality provisions in employment-related documents were improperly drafted so as

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36 792 F.3d 1087 (9th Cir. 2015).

37 Slip op., at 9.

38 *Id.* at 10.

39 *See* Director Andrew Ceresney's Keynote Address at the ACI's 32nd FCPA Conference, Washington, DC (Nov. 17, 2015), http://www.sec.gov/news/speech/ceresney-fcpa-keynote-11-17-15.html.

40 *See* SEC Press Release No. 2016-212, SEC Announces Enforcement Results for FY 2016 (Oct. 11, 2016), https://www.sec.gov/news/pressrelease/2016-212.html.

to impede employees or former employees from freely communicating with Commission Staff.[41] The Commission has continued to bring these claims following its "sweep" investigation of internal employment-related and confidentiality agreements in place and also as add-on claims in matters where other substantive issues are the main consideration.[42]

This last fiscal year also saw the Commission's first "standalone" action for whistleblower retaliation,[43] a claim that the language of the Dodd-Frank Act does not actually authorize,[44] but which we can now expect to see more of, absent legislative action or a policy shift at the Commission level.

Finally, the Commission has continued to participate as amicus in private civil whistleblower actions throughout the country in an effort to sway federal courts in its direction on the open legal question of whether a whistleblower must actually report a potential violation of the securities laws to the SEC to qualify for Dodd-Frank's protection from retaliation.[45] The Commission's view – that no report to the SEC is required – is set forth in its "Interpretation of the SEC's Whistleblower Rules Under Section 21F of the Securities Exchange Act of 1934."[46] Presently, there remains a split among the Circuit courts, with the US Court of Appeals for the Fifth Circuit holding that one must make a complaint to the SEC prior to employment termination in order to qualify as a whistleblower under Dodd-Frank, and the Second Circuit holding that any whistleblower reporting, whether it be internal to one's employer or to any law enforcement agency, will suffice to qualify a person as a whistleblower under Dodd-Frank's SEC whistleblower provisions.[47]

Trial Success and Continuing Challenges

Similar to fiscal year 2015, in 2016 the Commission took fewer cases to federal court and was more successful.[48] According to former Chair White, the reason that fewer putative litigants

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[41] *See In the Matter of KBR, Inc.*, Exchange Act Rel. No. 74619 (Apr. 1, 2015).

[42] *See* "2016 Annual Report to Congress on the Dodd-Frank Whistleblower Program" (Nov. 15, 2016) at 19-20, https://www.sec.gov/whistleblower/reportspubs/annual-reports/owb-annual-report-2016.pdf.

[43] *See id.* at 21.

[44] *See* Section 21F(h)(1) of the Securities Exchange Act of 1934 (Exchange Act), which prohibits whistleblower retaliation and affords those retaliated against the right to a cause of action in federal court—nowhere in the law is there a cause of action for retaliation by the Commission; rather, that is found in the SEC's own rules, at Rule 21F-2(b)(2).

[45] *See* https://www.sec.gov/litigation/amicusbriefs.shtml for a partial list of cases in which the Commission has filed amicus briefs in whistleblower cases, including a note that the Commission has delegated authority to the Office of General Counsel to make similar filings in other matters.

[46] Available at http://www.sec.gov/rules/interp/2015/34-75592.pdf.

[47] *Compare Asadi v. G.E. Energy (USA), LLC*, 720 F.3d 620 (5th Cir. 2013), *with Berman v. Neo@Ogilvy LLC*, 801 F.3d 145 (2d Cir. 2015).

[48] *See* SEC Press Release No. 2016-212, SEC Announces Enforcement Results for FY 2016 (Oct. 11, 2016), https://www.sec.gov/news/pressrelease/2016-212.html (noting five federal trial victories, four of which were jury verdicts).

challenge the SEC Enforcement Staff and choose, instead, to settle, is because the focus of investigations is now on litigation: "[W]e have enhanced our focus on acquiring admissible – and persuasive – evidence of the underlying elements that we will have to prove at trial, so that whenever possible, we produce a trial-ready record that can be used to prevail at trial or to secure a strong settlement."[49] Also notable along these lines is the decline in the number of Administrative Proceedings that proceed before Administrative Law Judges – that is, cases other than settled actions.[50]

Those who follow SEC-litigated matters will also be watching the US Supreme Court closely this year, as it has granted certiorari in the matter of *Kokesh v. SEC* to consider whether claims for disgorgement can be time barred.[51] Such claims had been considered by some courts as equitable or forward looking and outside of the scope of 28 U.S.C. § 2462, which imposes a five-year statute of limitations for any fine, penalty, or forfeiture.[52] Until recent challenges, which ultimately have resulted in this consideration by the Supreme Court, the Enforcement Division has had good cooperation from regulated entities when making requests for tolling agreements, since penalty analyses are often difficult to tether to actual principles and disgorgement was considered to be without time limitation; however, a determination that disgorgement is subject to a statute of limitations may alter those outcomes significantly moving forward.

LOOKING AHEAD

Given the significant transition in personnel at the Commission and Senior Staff level, predicting the direction of the SEC or its Enforcement Division presents challenges. However, the Commission has announced priorities for Enforcement, many of which are not controversial, including continued work to leverage technology and data to identify market risks and prioritize the Commission's work overall, as well as continuing the seemingly successful joint efforts between and among the SEC's Divisions and Offices, which has resulted in successful partnerships between Enforcement and DERA and Enforcement and OCIE, just by way of examples.[53]

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[49] *See* Chair Mary Jo White, Speech, A New Model for SEC Enforcement: Producing Bold and Unrelenting Results, New York University School of Law Program on Corporate Compliance and Enforcement (Nov. 18, 2016), https://www.sec.gov/news/speech/chair-white-speech-new-york-university-111816.html.

[50] *See generally* Report on Administrative Proceedings for the Period April 1, 2016 through September 30, 2016, https://www.sec.gov/reportspubs/special-studies/34-79188.pdf; *see also* Report on Administrative Proceedings for the Period April 1, 2015 through September 30, 2015, https://www.sec.gov/reportspubs/special-studies/34-76299.pdf.

[51] *See* 196 L. Ed. 2d 596 (U.S. Jan. 13, 2017).

[52] The Petition for Certiorari, which outlines the split among the courts, may be found at http://www.scotusblog.com/wp-content/uploads/2016/10/16-529-cert-petition.pdf.

[53] *See* US Securities and Exchange Commission, "Fiscal Year 2016 Agency Financial Report," at 31-32, https://www.sec.gov/about/secafr2016.shtml.

Specifically, the Division of Enforcement expects to continue its focus on market integrity, and anticipates that 2017 will progress its initiatives relating to investment advisers, investment companies, and private funds, in many of the same areas we have seen this last year, such as performance reporting, conflicts of interest, and fees and expenses, as well as initiatives relating to broker-dealers and their sale of alternative or complex products.[54] In addition, the focus remains on investors saving for retirement, since these savings represent an enormous and continuing area of business growth for regulated entities, an unsettled regulatory area with the ongoing uncertainty surrounding the Department of Labor's Fiduciary Rule, and retirement savings represent the future for most investors. These are areas that fit well with OCIE's announced organizing themes for its 2017 priorities for the National Examination Program, which are retail investors, senior investors, and investors saving for retirement, and marketwide risks.[55]

SEC ENFORCEMENT AND EXAMINATION PRIORITIES

Based upon our review of currently available information, we believe that the following list reflects some of the SEC's top enforcement and examination priorities:[56]

Protecting Retail Investors

- Electronic Investment Advice
  - Investment Advisers/Broker-Dealers offering "Robo-Advice"
    - Compliance programs
    - Marketing
    - Algorithms that generate recommendations
- Wrap Fee Programs
  - Investment Advisers/Broker-Dealers
    - Suitability
    - Disclosure
    - Conflicts of interest
    - Brokerage practices
      - Trading away
      - Best execution

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54 *See id.*

55 *See* SEC Press Release 2017-7, SEC Announces 2017 Examination Priorities (Jan. 12, 2017), https://www.sec.gov/news/pressrelease/2017-7.html.

56 *See id.* at 30-32; *see also* OCIE National Exam Program 2017 Examination Priorities (Jan. 12, 2017), https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2017.pdf.

- Investment Advisers
    - Never-before-examined firms
    - Multibranch firms
- Recidivist Representatives and Firms That Employ Them
    - Oversight and controls
- Mutual Fund Share Class Selection
  - Conflicts of Interest
    - Recommendations to invest
    - Recommendations to remain invested

Senior Investors and Investors Saving for Retirement

- Sales and Marketing Practices
  - Suitability
  - Promotion of new, high-risk, and/or complex or structured products, including alternative investments
  - Supervision and controls related to products and services directed to senior investors
  - Suitability and disclosures around variable annuity sales
  - Suitability and disclosures around target date funds
- Cross-transactions, especially in regard to fixed-income securities

Market Structure

- Algorithmic and high-frequency trading
- Money Market Funds
  - Compliance with 2014 rule amendments
  - Policies and procedures
- Payment for order flow
  - Review of broker-dealers, particularly those serving retail customers, to consider how they are meeting their best execution obligations
- FINRA
  - Enhanced supervision of FINRA's operations and regulatory programs
  - Assessment of quality of FINRA examinations
- SCI Entities (e.g., exchanges, SROs, ATSs, clearing agencies)

- Policies, procedures, and controls
- Focus on security and resiliency

– Cybersecurity
  - Information technology compliance, controls, governance, and supervision
  - Policies and procedures relating to security and business continuity

– Anti-Money Laundering (AML)
  - Programs and controls tailored to specific firm risks
  - Monitoring for and reporting suspicious activity

Other Enforcement and Examination Priorities

– Private Fund Advisers
  - Conflicts of interest and disclosures

– Municipal Securities Market
  - Municipal advisors: compliance, policies, and procedures
  - Focus on broker-dealer abuses, including due diligence, pricing, and suitability failures
  - Public Pension Advisers – pay to play

– Financial Reporting and Accounting Fraud
  - Revenue recognition concerns
  - Faulty valuations and impairment calculations
  - Insufficient disclosures

SEC ENFORCEMENT ACTIONS[57]

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

Alternative Trade System

***In the Matter of Credit Suisse Sec. (USA) LLC*, Securities Act Rel. No. 10013 (Jan. 31, 2016)**

The SEC accepted a settlement offer from Credit Suisse Securities (USA) LLC (CSSU) relating to its role as owner and operator of Crossfinder, an alternative trading system (ATS) that operates as a "dark pool." Crossfinder executes orders to buy and sell equity securities from clients who access Crossfinder either directly or by sending orders to CSSU algorithms that route the orders to Crossfinder.

The Commission alleged that Crossfinder accepted and ranked sub-penny orders in violation of Rule 612 of Regulation NMS, and permitted subscribers to send orders at impermissible sub-penny prices. The Commission further alleged that, in violation of Rule 301(b)(10) of Regulation ATS, CSSU transmitted confidential subscriber trading information from Crossfinder to firm applications outside of Crossfinder, without either proper safeguards or notice to subscribers. Further, the Commission alleged that CSSU, in an effort to distinguish Crossfinder from other ATSs, developed "alpha scoring," which categorized order flow from subscribers according to certain characteristics of that trading flow. Alpha scoring was marketed as giving subscribers the power to avoid trading with pool participants that pursued certain trading strategies. Although CSSU described alpha scoring in Crossfinder as objective and transparent, and represented that categorizations of subscriber order flow were performed monthly, the Commission alleged that alpha scoring included significant subjective elements, the scoring was not transparent, and not all Crossfinder subscribers were categorized on a monthly basis. Finally, the Commission alleged that CSSU misrepresented how it routed orders, since it told clients that no venue received preference, but in truth the firm's order router prioritized Crossfinder orders over other venues during stages of its routing process.

In connection with the settlement, CSSU was censured, ordered to cease and desist from further violations of Section 17(a)(2) of the Securities Act; Rules 301(b)(2), (5) and (10) of Regulation ATS; and Rules 602(b) and 612 of Regulation NMS. The firm was fined $30 million, and ordered to pay disgorgement of $20,675,510.52 and prejudgment interest of $3,639,643.39.

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[57] 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 the Matter of Credit Suisse Sec. (USA) LLC*, Securities Act Rel. No. 10014 (Jan. 31, 2016)**
The Commission also accepted a settlement offer from CSSU relating to its role as owner and operator of Light Pool, an ATS and electronic communications network. Light Pool executes orders to buy and sell equity securities from clients who access Light Pool either directly or by sending orders to CSSU algorithms that route the orders to Light Pool.

As noted above, CSSU had developed "alpha scoring," which categorized order flow from subscribers according to certain characteristics of that trading flow. Alpha scoring was marketed as giving subscribers the power to avoid trading with pool participants that pursued certain trading strategies. According to the Commission, an "Alpha Formula/Scorecard" was marketed to Light Pool subscribers as being used to deny access to trade flow characterized as "opportunistic." However, the SEC alleges that for at least a year of its operational trading life, CSSU did not apply the Alpha Formula and did not inform its subscribers. Further, the Commission alleges that CSSU represented that traders identified as "opportunistic" would lose access to Light Pool; however, the system used to identify such traders permitted continued access to Light Pool through direct and indirect means, even for those few subscribers so identified. In connection with the settlement, CSSU was censured; ordered to cease and desist from further violations of Section 17(a)(2) of the Securities Act, Rule 301(b)(2) of Regulation ATS, and Rule 602(b) of Regulation NMS; and fined $10 million.

***In re Barclays Capital, Inc.*, Securities Act Rel. No. 10010 (Jan. 31, 2016)**

The Commission accepted an offer of settlement from Barclays Capital Inc. (Barclays), a registered broker-dealer, relating to its role as owner and operator of Barclays LX (LX), an ATS that operates as a "dark pool."

The Commission alleged that from December 2011 through June 2014, Barclays made materially misleading statements and omitted certain material facts regarding (1) the operation of an LX product feature called Liquidity Profiling and (2) the market data feeds it used. The Liquidity Profiling feature was developed to differentiate LX from other dark pool operators; it was used to categorize LX subscribers and their order flow, from most aggressive to least aggressive, and then to allow LX subscribers to block order flow from other subscribers based on how aggressively they traded. Barclays stated that this feature would "continuously police" the order flow in its dark pool, and that the firm would run "surveillance reports every week for toxic order flow. However, Barclays did not continuously police its system using the tool, nor did it run weekly reports.

Barclays also did not disclose that during 2012 and 2013 it occasionally overrode the Liquidity Profiling feature by moving certain subscribers from the most aggressive categories to the least aggressive, resulting in subscribers who intended to block aggressive subscribers nonetheless continuing to trade with them. According to the SEC, from October 2012 through March 2014, Barclays also omitted from marketing materials certain information about aggressive participants in LX, giving subscribers and potential subscribers a misimpression about the nature of the order flow in the pool. Finally, the Commission asserted that Barclays also

misrepresented the type and number of market data feeds that it used to calculate the National Best Bid and Offer in LX.

In connection with the settlement, Barclays admitted the factual allegations of the Commission's Order, and agreed to pay $35 million in penalties to the SEC and an additional $35 million in penalties to the New York Attorney General. The firm was censured and ordered to cease and desist from future violations of Section 17(a)(2) of the Securities Act of 1933 (Securities Act), Section 15(c)(3) of the Securities Exchange Act of 1934 (Exchange Act) and Rules 15c3-5(b) and 15c3-5(c)(i) thereunder, and Rules 301(b)(2) and 301(b)(10) of Regulation ATS.

In re Deutsche Bank Securities, Inc.**, Securities Act Rel. No. 10272 (Dec. 16, 2016)**

In a settled matter, the SEC alleged that Deutsche Bank Securities, Inc. (DBSI), a registered broker-dealer, made material misrepresentations to clients and potential clients about an algorithm used in connection with one of the order routers it used to route client orders to ATSs; that algorithm was called the Dark Pool Ranking Model (DPRM). The DPRM was designed to rank available dark pools by their execution quality and then calculate the likelihood that orders sent to those trading venues would actually be filled. The Commission alleged that DBSI represented that it was using "a sophisticated dark pool ranking model that profiles dark pools based on transaction cost, statistically determined compatibility for each order, client order attributes, and real time market conditions." DBSI also told clients and potential clients that the DPRM was updated "periodically."

The Commission alleged that, contrary to DBSI's representations, between January 2012 and February 2013 DBSI was unable to update the DPRM rankings or fill probabilities due to unanticipated technical problems. During this period, when DBSI connected new dark pools to its order routing system, it would make subjective judgments about what their rankings and fill probabilities should be. In February 2013, DBSI successfully updated the rankings and fill probabilities for the first time since December 2011. The Commission alleged that after implementing the February 2013 update, DBSI discovered that, as the result of a coding error, its own dark pool had been ranked extremely low. According to the Commission, DBSI manually overrode the DPRM to assign its own dark pool the highest ranking. The Commission further alleged that this same coding error also caused two other dark pools to be given higher rankings than they deserved, causing millions of orders to be routed to them that otherwise would have been routed to other trading venues. According to the Commission, at no point during the relevant period did DBSI inform its clients that the DPRM was not fully operational, or that the firm was making subjective judgments about the ranking and fill probabilities for certain venues.

The Commission alleged that these misrepresentations and omissions violated Section 17(a)(2) of the Securities Act. The Commission separately alleged that between August 2009 and May 2015, whenever DBSI filed a Form ATS for its own dark pool, it failed to attach a copy of the subscriber agreement for that dark pool, as required by Rule 301(b)(2) of Regulation ATS. The Commission censured DBSI, ordered it to cease and desist from any future violations of Section 17(a)(2) of the Securities Act and Rule 301(b)(2) of Regulation ATS, and ordered it to pay a civil penalty of $18,500,000.

Anti-Money Laundering

***In the Matter of E.S. Fin. Services, Inc. n/k/a Brickell Glob. Markets, Inc*., Exchange Act Rel. No. 77056 (Feb. 4, 2016)**

The Commission entered into a settlement with E.S. Financial Services, Inc. n/k/a Brickell Global Markets, Inc. In the settled Order, the Commission alleged that the firm violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder, which require broker-dealers to comply with 31 C.F.R. § 1023.220, commonly known as the customer identification program (CIP) rule. Specifically, the Commission alleged that in 2003, a Central American bank, then affiliated with the firm, opened a brokerage account with the firm for the purpose of trading on its own account. However, the Central American bank had 13 sub-account holders who were beneficially owned by 23 non-US citizens, each of whom interacted with the firm's registered representatives for securities advice and to request securities transactions, which were effected through the Central American bank account.

Although the firm had CIP procedures in place, the Commission alleged these procedures were not followed with regard to the Central American bank's account. During the course of 2011 and 2013 routine examinations by the Miami Regional Office, a request was made for the firm to provide documents sufficient to identify all "customer master and corresponding sub-accounts," but, in connection with those examinations, the firm failed to produce documents relating to the Central American bank's sub-accounts and beneficial owners. During a 2014 OCIE examination, the firm voluntarily reported the various issues regarding the Central American bank account relating to the CIP Rule.

In connection with this settlement, the firm agreed to pay a $1 million fine; retain an independent monitor to directly review its anti-money laundering/CIP policies, procedures, and practices for two years; and cease and desist from committing or causing future violations.

***In re Albert Fried & Company, LLC*, Exchange Act Rel. No. 77971 (June 1, 2016)**

The Commission accepted an offer of settlement from Albert Fried & Company (Albert Fried), a registered broker-dealer. The Commission determined that Albert Fried violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder by failing to file Suspicious Activity Reports (SARs). According to the Commission, for the period of at least August 2010 through October 2015, Albert Fried's anti-money laundering policies and procedures included specific examples of suspicious activities, including red flags that indicate potential securities fraud, which should have resulted in internal reviews and the filing of SARs; among these included heavy trading in low-priced securities and trading that constituted a significant portion of the volume in a security for a particular trading day. Despite these red flags, the SEC alleged that the requirements of their written policies, and several instances of suspicious activity, including a customer being charged with criminal securities fraud, Albert Fried never filed a single SAR during the relevant period. In connection with its settlement of this matter, the Commission ordered Albert Fried to cease and desist from committing future violations, and the firm was censured and ordered to pay a civil money penalty of $300,000.

Blue Sheets

***In re Citigroup Global Markets, Inc.*, Exchange Act Rel. No. 78291 (July 12, 2016)**

The Commission entered into a settlement with Citigroup Global Markets, Inc., a registered broker-dealer, for failing to furnish to the Commission true and complete trade data (blue sheets) in response to Commission requests made over the course of 15 years, in violation of Section 17(a) of the Exchange Act and Rules 17a-4(j) and 17a-25 thereunder. According to the Commission Order, as the result of a coding error, Citigroup failed to produce records for 26,810 securities transactions comprising more than 291 million shares of stock and options in response to 2,382 electronic blue sheet data requests. In addition, despite Citigroup's discovering this error, it did not report the issue or take any steps to produce the omitted data until 9 months later. As with all of the Commission's recent blue sheet settlements, Citigroup admitted the factual allegations of the Commission's Order. In connection with the settlement, the Commission censured the firm, and ordered it to cease and desist from future violations and to pay a $7 million penalty.

Customer Protection Rule

***In re Merrill Lynch, Pierce, Fenner & Smith Inc.*, Exchange Act Rel. No. 78141 (June 23, 2016)**

The Commission accepted an offer of settlement from Merrill Lynch, Pierce, Fenner & Smith Inc. and Merrill Lynch Professional Clearing Corp. (collectively, ML) for violating Exchange Act Rule 15c3-3, known as the Customer Protection Rule.

First, the SEC alleged that from 2009 to 2012 ML used cash belonging to its customers to fund its own business activities through complex trades referred to as "Leveraged Conversion Trades." Essentially, the Commission alleged that ML used complex margin loans to finance trades that ML structured and executed with counterparty entities created solely for entering into these transactions, and which transactions the Commission described as lacking "defined terms and economic substance," through which ML was able to significantly reduce the amounts it was required to deposit in its customer reserve account.

Second, the Commission alleged that from June 2009 to April 2015 ML allowed tens of billions of fully paid customer securities to be held in clearing accounts that were subject to a general lien by the firm's US clearing bank in violation of Exchange Act Rule 15c3-3, and ML identified additional instances of noncompliance with the no-lien requirement relating to $1.38 billion worth of customer securities in other clearing accounts across Europe and Asia in violation of Rule 15c3-3(c).

Finally, the Commission charged ML with violations of the Commission's Whistleblower Rules. Specifically, the Commission alleged that certain of ML's confidentiality language in employment-related agreements could have had the effect of impeding communications with the Commission in violation of Rule 21F-17 of the Whistleblower Rules.

In settling this matter, ML agreed to admit the factual allegations of the Commission's Order. As a result of the violations, the Commission censured ML, and ordered it to cease and desist from future violations, to pay a disgorgement together with prejudgment interest of $57 million, and to pay a civil penalty of $358 million.

Disclosures - Misrepresentations Related to Broker Compensation

***In re J.P. Morgan Secs. LLC*, Securities Act Rel. No. 10001 (Jan. 6, 2016).**

In a settled Order with J.P. Morgan Securities, Inc. (JPMS), a registered broker-dealer and investment adviser, the Commission alleged that JPMS made certain false statements regarding the compensation of advisors employed with J.P. Morgan Private Bank (JPM Private Bank), a business unit of J.P. Morgan Chase & Co. providing banking and investment services to high-net-worth and ultra-high-net-worth customers. The SEC alleged that between 2009 and 2012 JPMS made false and misleading statements in certain marketing materials distributed to its private banking customers concerning the factors JPMS used to determine compensation for its JPM Private Bank registered representatives, or "advisors." On its private banking website and in certain other JPM Private Bank marketing materials, JPMS stated that advisor compensation was based solely on the performance of the investments in customer accounts. Specifically, JPMS stated that it compensated these advisors based on client account performance and that advisors were not paid on commission. While it was true that JPMS did not pay JPM Private Bank advisors on commission, the Commission alleged that statements suggesting that advisor compensation was based on client account performance were not true. Instead, advisors were paid a salary and a discretionary bonus that took into account a number of factors other than client account performance.

According to the Commission, the misstatement regarding advisor compensation appeared in a number of places, including on JPM Private Bank's webpage; on its Tampa, Florida, branch office webpage; in an internal pitch book circulated to advisors; in a November 2009 marketing letter; and from March 2009 until at least May 2012 on a "prospecting card," an index-sized card containing key points about JPM Private Bank that was disseminated to advisors within JPM Private Bank to be used with current and prospective customers. The Commission alleged that on at least four separate occasions over the course of three years, JPMS personnel responsible for compliance indicated their awareness that the statement was inaccurate and needed to be corrected.

The Commission charged JPMS with violating Section 17(a)(2) of the Securities Act, ordered JPMS to cease and desist from further violations, censured JPMS, and ordered JPMS to pay a civil monetary penalty in the amount of $4 million.

Disclosures - Structured Notes

***In re UBS AG*, Securities Act Rel. No. 9961 (Oct. 13, 2015).**

The SEC accepted an offer of settlement from UBS AG (UBS), a registered broker-dealer and investment adviser. Between December 2009 and November 2010, UBS issued approximately $190 million of notes linked to the V10 Currency Index, a proprietary index, developed and sponsored by UBS, that measured the performance of a hypothetical algorithmic trading strategy designed to identify and exploit trends in certain foreign exchange forward rates. UBS sold the notes in a series of registered offerings with the Commission under automatic shelf registration statements.

The Commission alleged that UBS made certain statements regarding the transparency and the risk factors of the notes, but failed to disclose certain information necessary to make these statements, in light of the circumstances, not false or misleading. Namely, according to the Commission's Order, UBS failed to disclose that its employees in Switzerland added markups to hedge transactions that made the prices used to calculate the index inconsistent with market prices; that the spot desk at UBS added undisclosed discretionary spreads to internal transactions that reduced the index by approximately 4%; and that the spot desk engaged in more than two dozen trades ahead of potentially market-moving, internal V10 hedging transactions, which were directionally consistent with those hedging transactions.

According to the Commission, because UBS did not disclose this conduct, its statements regarding the transparency, pricing, and performance of the notes were false and misleading. The Commission asserted that UBS was negligent in not having an effective policy in place to ensure that those drafting the offering and disclosure documents were aware of the conduct by the traders. The Commission found UBS to have violated Section 17(a)(2) of the Securities Act, and ordered UBS to cease and desist from further violations, to pay disgorgement and prejudgment interest in the amount of $11.5 million, and to pay a civil monetary penalty in the amount of $8 million.

Market Access Rule

***In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, Exchange Act Rel. No. 78929 (Sept. 26, 2016).**

In a settled matter with Merrill Lynch, Pierce, Fenner & Smith, Inc. (Merrill Lynch), a registered broker-dealer, the Commission alleged that between July 2011 and December 2014 Merrill Lynch failed to establish and maintain reasonably designed controls to prevent erroneous orders from being sent to the markets in violation of the Market Access Rule, and Section 15(c)(3) of the Exchange Act and Rule 15c-3 thereunder. Specifically, according to the SEC's Order, Merrill Lynch's primary controls for the prevention of erroneous orders were composed of maximum share volume and maximum notional value controls, which prevented the entry of trades exceeding certain preset share volume and notional value limits. However, the Commission alleged that these limits were set at too high a level to prevent erroneous trades. In addition,

the Commission alleged that Merrill Lynch failed to apply its market impact review controls across all of the firm's order flow channels. According to the SEC, Merrill Lynch's Market Access Rule control failures resulted in numerous erroneous orders getting to the market, some of which caused at least 15 "mini-flash crashes," i.e., sudden and dramatic swings in a stock's price in the seconds following the trade, including two instances that resulted in price drops of 99% in individual stock prices.

Finally, the Commission alleged that compliance certifications signed by Merrill Lynch's co-CEO for the years 2013 and 2014 failed to satisfy the requirements of Rule 15c3-5(e)(2), in that the 2013 certification was expressly limited in scope and explicitly stated that it did not certify the firm's controls relating to the prevention of erroneous orders, and that the 2014 certification was untimely.

In settling the matter, Merrill Lynch consented to the entry of a Commission Order censuring the firm, ordering the firm to cease and desist from future violations of the Market Access Rule, and ordering the firm to pay a civil money penalty of $12.5 million.

Market Manipulation/"Spoofing"

***In re Briargate Trading, LLC*, Securities Act Rel. No. 9959 (Oct. 8, 2015).**

The SEC settled with Briargate Trading LLC, an unregistered proprietary trading firm (the Firm), and one of the Firm's principals and co-founders, Eric Oscher. The Commission's Order alleged that from October 2011 through September 2012, the Firm had engaged in a market manipulation practice known as "spoofing," pursuant to which Oscher would place premarket orders on the NYSE that were large enough to move the market price. The Firm would then place orders on the same stocks, but on the other side of the market, at exchanges that opened before the NYSE. Once the latter trades were executed and the Firm had benefitted from the price shift, Oscher would cancel the NYSE premarket orders. The Commission alleged that this trading strategy violated Section 9(a)(2) of the Exchange Act, which makes it unlawful to effect a series of transactions "creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others," as well as Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 17(a)(1) and 17(a)(3) of the Securities Act. The Commission ordered the Firm to cease and desist from any future violations; to disgorge its profits in the amount of $525,000, plus prejudgment interest of $37,842.32; and to pay a civil penalty of $350,000 and Oscher to pay a civil penalty of $150,000.

***In re Afshar*, Exchange Act Rel. No. 78043 (June 13, 2016).**

In a settled Order with Behruz Afshar, Shahryar Afshar, Richard F. Kenny, IV, Fineline Trading Group LLC, and Makino Capital LLC (together with Fineline, the Firms), the Commission alleged that the Afshars perpetrated two fraudulent trading schemes, the "customer-priority" scheme and the "spoofing" scheme. In the "customer-priority" scheme, the Commission alleged that the Afshars, through the Firms that they controlled, improperly marked option orders as "customer" instead of "professional," thereby avoiding approximately $2 million in transaction

fees and receiving improper rebates from a number of exchanges, including the Chicago Board Options Exchange, the NYSE AMEX Options, the International Securities Exchange, and the Nasdaq OMX PHLX, and disadvantaging other customers by improperly receiving execution priority.

In the "spoofing" scheme, the Commission alleged that the Firms placed All-Or-None orders in options on the Nasdaq OMX PHLX, then subsequently placed small-lot orders in the same option series and price as the larger All-Or-None orders. According to the Commission, these small-lot orders were not meant to be executed, but were meant to induce, or "spoof," other market participants into submitting orders at the altered best bid offer. The Commission alleged that this scheme netted the Firms more than $240,000 in ill-gotten rebates.

According to the Commission, the alleged conduct violated Sections 17(a)(1), (2), and (3) of the Securities Act and Sections 9(a)(2) and 10(b) of the Exchange Act and Rules 10b-5(a), (b), (c) thereunder. The Commission barred Behruz Afshar and Kenny from association, and from participating in any penny stock offering, and ordered the Firms to cease and desist from committing or causing future violations. The Commission also ordered the Afshars jointly to pay disgorgement of $1,048,825, Behruz Afshar to pay a civil penalty of $150,000, Shahryar Afshar to pay a civil penalty of $75,000; and Kenny to pay disgorgement of $524,412 and a civil penalty of $100,000.

Material Nonpublic Information

***In re Marwood Group Research, LLC*, Exchange Act Rel. No. 76512 (Nov. 24, 2015).**

The SEC accepted an offer of settlement from Marwood Group Research, LLC (the Firm), a regulatory and legislative policy firm that is also a registered broker-dealer. In connection with the settlement, the Firm admitted the factual allegations of the Commission's Order.

As a part of its business, the Firm provided regulatory and policy research updates to securities markets participants concerning potential government actions. In connection with this work, the Firm sought and received information from employees of certain government agencies. The Commission alleged that some of this information presented a risk that it could have been considered material, nonpublic information (MNPI). According to the Commission, the Firm's existing policies and procedures concerning MNPI were not reasonably enforced and the Firm also failed to address the risk that analysts could obtain and disseminate MNPI to its clients, who would be likely use that information in connection with their trading.

According to the Commission, the Firm violated Section 15(g) of the Exchange Act and Section 204A of the Investment Advisers Act of 1940. In connection with this Order, the Firm undertook to retain an independent compliance consultant to review its policies and procedures concerning the use of potential MNPI. The Commission ordered the Firm to cease and desist from committing or causing future violations, and to pay a civil penalty of $375,000.

In re Deutsche Bank Securities, Inc., Exchange Act Rel. No. 79083 (Oct. 12, 2016).

In a settled Order with Deutsche Bank Securities, Inc. (DBSI), the SEC alleged that between January 2012 and December 2014 DBSI failed to prevent its equity research analysts from sharing nonpublic research with customers and with its sales and trading department. Specifically, according to the Commission, DBSI failed to reasonably establish, maintain, and enforce appropriate policies and procedures intended to prevent its equity research analysts from sharing unpublished research, sharing changes in estimates that were going to appear in forthcoming reports, and sharing short-term trading recommendations, some of which were inconsistent with forthcoming research reports. Further, the Commission alleged that DBSI's policies and procedures were inadequately enforced in relation to information shared in morning calls and over the squawk box, and in connection with interactions between equity research analysts and DBSI's customers at events such as "idea dinners."

The Commission alleged that the identified inadequate policies and procedures violated Section 15(g) of the Exchange Act. The Commission also charged, in an unrelated violation, that a DBSI research analyst who had published favorable research about a company, and signed a certification attesting that his report accurately reflected his opinion, was encouraging individual customers to sell their stock in the company, and he admitted privately that he believed the company should have been downgraded. The Commission alleged that this conduct violated Rule 501 of Regulation Analyst Certification. Finally, the Commission alleged that, as a result of the Commission's investigation, DBSI discovered it had not adequately preserved messages sent via its internal messaging system, and could not recover all of the messages or turn them over to the Commission in a prompt fashion. The Commission alleged that this failure violated the recordkeeping requirements of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder. As the result of the violations, the Commission censured DBSI; ordered it to cease and desist from any future violations of Sections 15(g) and 17(a) of the Exchange Act and Rule 17a-4 thereunder, as well as Rule 501 of Regulation AC; and ordered it to pay a civil penalty of $9,500,000.

Municipal Advisor - Conflicts of Interest

In re Cent. States Capital Mkts, LLC, Exchange Act Rel. No. 77369 (Mar. 15, 2016).

Central States Capital Markets, LLC (Central States), a registered broker-dealer and municipal advisor, as well its CEO and two employees (collectively, Respondents) settled claims asserted by the Commission that Respondents breached their fiduciary duty by failing to disclose a conflict of interest.

According to the Commission Order, a municipality retained Central States to serve as a municipal advisor and the firm advised on three separate municipal debt offerings, during which Central States and its employees provided advice on all aspects of the offerings, including interest rates, underwriter selection, and fees. The SEC alleged that the three individuals arranged to have these offerings underwritten by a broker-dealer for which each individual was also still working as a registered representative, without disclosing the conflict. The charged

individuals then provided both underwriting and municipal advisor services in connection with the offerings, and Central States and the broker-dealer each were paid fees.

The Commission alleged that as a result of Respondents' failure to disclose this conflict of interest, Central States and the individuals violated Section 15B(c)(1) of Exchange Act, MSRB Rule G-17, and MSRB Rule G-23. In settlement, the Commission censured Central States and ordered it to cease and desist from future violations, and to pay disgorgement of $251,650, prejudgment interest of $38,178, and a civil money penalty of $85,000. The Commission ordered the individuals to cease and desist from future violations, issued associational bars or suspensions, and ordered the payments of civil penalties of $25,000, $20,000, and $17,500.

Municipal Advisor Fraud

***In re: Keygent LLC,* et al., Exchange Act Rel. No. 78053 (June 13, 2016).**

The Commission accepted an offer of settlement from Keygent LLC (Keygent), a California municipal advisor, and two individuals associated with the firm. Keygent entered into a contractual arrangement with a consulting firm to advise Keygent on strategy, new business, public policy, and research. As part of this arrangement, the consulting firm's principal also made recommendations to its school district clients on the selection of municipal advisors, such as Keygent. In connection with the municipal advisor hiring process for five school districts, the Commission alleged that Keygent and its two associates received confidential information about the hiring process, including information about its competitors' proposals, which the consulting company and its principal did not have authority to share. As a result of this confidential information, each of the five school districts subsequently hired Keygent. According to the Commission, this conduct was in violation of Section 15B(c)(1) of the Exchange Act and MSRB Rule G-17. The Commission sanctioned Keygent and the associates, ordering them to cease and desist from future violations, censuring Keygent and one associate, and imposing civil monetary penalties of $100,000 on Keygent and a combined $50,000 on the associates.

Short Sale Violations

***In re Goldman, Sachs & Co.*, Exchange Act Rel. No. 76899 (Jan. 14, 2016).**

The Commission accepted an offer of settlement from Goldman, Sachs & Co. (Goldman), a dually registered broker-dealer and investment adviser. The Commission alleged that between November 2008 and mid-2013 Goldman's Securities Lending Demand Team (Demand Team) routinely processed locate requests in connection with short sale orders by relying on a "fill from autolocate" function of the firm's order management system. The inventory available for filling locate requests through Goldman's automated model and through the autolocate function was based on information provided once daily before market open, which inventory automatically was depleted through the day. The Demand Team received locate requests directly and also received requests through the automated system, when those requests could not be automatically filled and the system had marked them for further review and processing. The Commission alleged that the Demand Team did not conduct a further review of the locate

requests or attempt to identify additional sources of inventory; rather, they continued to "fill from autolocate" from the depleted inventory. In addition, the Commission alleged that Goldman's locate logs were inaccurate in that they failed to sufficiently differentiate between locates that were filled by automated model, as opposed to those filled using the F3 function key—in both cases the log simply contained the term "autolocate." The Commission further alleged that in responding to a 2013 examination by OCIE, Goldman's responses were incomplete and unclear. For example, the Commission alleged that those responses created the incorrect impression that the Demand Team conducted an individualized review for all locate requests pended to it from Goldman's automated model.

The Commission alleged that Goldman violated Rule 203(b)(1) of Regulation SHO and Section 17(a) of the Exchange Act. In connection with the settlement, the Commission censured Goldman, and ordered it to cease and desist from future violations and to pay a $15 million civil penalty.

Suitability – Complex Products

***In re UBS Fin. Servs. Inc.*, Exchange Act Rel. No. 78958, 2016 SEC LEXIS 3659 (Sept. 28, 2016).**

UBS Financial Services Inc. (UBS) agreed to settle allegations that it failed to develop and implement policies and procedures reasonably designed to train its registered representatives on certain single stock-linked reverse convertible notes (RCNs), which are complex securities that contain embedded derivatives, structured to equate to certain options-type features, and structured based on underlying stocks selected for their implied volatility, among other criteria.

The Commission alleged that from 2011 to 2014 UBS sold $548 million of notional RCNs to retail investors, many of whom were inexperienced, had modest incomes and net worths, and had moderate or conservative investment objectives, and some of whom were retired. According to the SEC, although RCNs constituted a major UBS business initiative, the firm's initial training on the products for its registered representatives consisted primarily of describing anticipated payouts for the products and failed to discuss important aspects of the RCNs, including the risks and the role of implied volatility in the selection of the stocks underlying the RCNs. As a result, according to the Commission's Order, the registered representatives did not sufficiently understand these products, nor could they reasonably determine whether these products were suitable for particular investors.

The Commission alleged that UBS's inadequate training of its registered representatives led to their making unsuitable recommendations of RCNs in violation of Section 17(a)(3) of the Securities Act. The Commission further alleged that UBS's supervisory policies and procedures were not reasonably designed and, as a result, failed to supervise the training and the product recommendations of the representatives, and further failed to detect the Securities Act violations, in violation of Section 15(b)(4)(E) of the Exchange Act. In the settlement, the Commission censured UBS, and ordered it to pay disgorgement of $8,227,566, prejudgment interest of $798,316, and a civil money penalty of $6 million.

Cases Relating to Investment Advisers/Investment Companies and Their Employees/Affiliated Persons[58]

Allocation of Investment Opportunities

***In re Bruce A. Hartshorn*, Investment Advisers Act Release No. 4371, 2016 SEC LEXIS 1550 (Apr. 19, 2016).**

The Commission accepted an offer of settlement from Hartshorn, the founder, president, CEO, and sole employee of an investment adviser formerly registered in California. The Commission alleged that Hartshorn engaged in "cherry-picking" by disproportionately and fraudulently allocating profitable trades to his proprietary accounts and unprofitable trades to client accounts. The Commission further alleged that Hartshorn delayed allocation until the day after purchasing securities through an omnibus trading account in order to determine whether the securities had appreciated. The Commission ordered Hartshorn to cease and desist from further violations of Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder, and Section 206(1) and 206(2) of the Advisers Act, and barred Hartshorn from association and from serving in any capacity for a registered investment company or affiliated person of an investment adviser, depositor, or principal underwriter. The Commission further ordered Hartshorn to pay disgorgement of $109,516, prejudgment interest of $5,036, and a civil penalty of $75,000.

***In re James Caird Asset Management LLP*, Investment Advisers Act Release No. 4413, 2016 SEC LEXIS 3278 (June 2, 2016).**

The Commission accepted an offer of settlement from James Caird Asset Management LLP (JCAM) and its principal, Leslie (collectively, Respondents). The Commission alleged that Respondents engaged in fraud and deceit by not accurately disclosing to JCAM's investors the nature and scope of the overlap in the trading of JCAM's closed-end private fund, the JCAM Credit Opportunities Fund (CrOp), and their flagship hedge fund client, the JCAM Global Fund (Global) (collectively, the Funds), which was approximately 20 times larger than CrOp. The Commission alleged that Respondents' disclosures, marketing materials, and offering memoranda regarding the Funds that were furnished to the Funds' investors and boards provided expectations that the Funds would have little overlap between the trading of the Funds, which had different stated investment strategies. Specifically, CrOp was intended for less-liquid, -stressed, and -distressed assets, whereas Global was a multistrategy fund with different risk and liquidity constraints. The Commission alleged, however, that Leslie allocated all or a portion of certain liquid equity new issues to CrOp, including equity initial public offerings, that fell within Global's investment strategy. The Commission alleged that in such instances, 33% to 100% of highly profitable new issues were allocated to CrOp. The Commission alleged that primarily due to this activity, most of CrOp's positions overlapped with

[58] Because of dual registration or multiple parties, a number of the previously discussed cases 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.

Global's positions. The Commission alleged that the management of these Funds was inconsistent with the prior disclosure that had been made to investors and the board. The Commission censured Respondents and ordered Respondents to cease and desist from further violations of Section 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder. The Commission ordered Leslie to pay disgorgement of $1,708,957, prejudgment interest of $212,117, and a civil money penalty of $200,000. JCAM was ordered to pay a civil money penalty of $400,000.

***In re Simpson Hughes Fin., LLC*, Investment Advisers Act Release No. 4433, SEC LEXIS 2991 (June 22, 2016).**

The Commission accepted offers of settlement from Simpson Hughes Financial, LLC, an Idaho limited liability company registered as an investment adviser with the State of Idaho (Simpson Hughes) and Mark C. Simpson, a former registered investment adviser representative associated with Simpson Hughes and its sole owner and control person (collectively, Respondents). The Commission alleged that Respondents engaged in a cherry-picking scheme whereby securities were purchased through an omnibus account and allocated at the end of the day with profitable trades being allocated to proprietary accounts and two favored client accounts and the other trades to disfavored client accounts. As a result of the conduct above, the Commission alleged that Respondents willfully violated Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder by knowingly or recklessly allocating profitable trades to proprietary accounts at the expense of advisory clients. The Commission also alleged that Respondents willfully violated Section 206(1) and 206(2) of the Advisers Act. The Commission ordered Respondents to cease and desist from further violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Section 206(1) and 206(2) of the Advisers Act. The Commission censured Simpson Hughes and barred Simpson from association. Simpson was also prohibited from serving in any capacity for a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter. The Commission ordered Respondents to pay, jointly and severally, disgorgement of $130,450, prejudgment interest of $6,669, and a civil penalty of $150,000.

***In re Laurence I. Balter d/b/a/ Oracle Investment Research*, Investment Advisers Act Release No. 4545, 2016 SEC LEXIS 3752 (Oct. 4, 2016).**

The Commission brought an action against Laurence Balter (Balter), the principal, CCO, and sole owner of Oracle Investment Research (Oracle), formerly a registered investment adviser, for alleged breaches of fiduciary duty and violations of the federal securities laws. Balter, through Oracle, was the investment adviser to the Oracle Mutual Fund (the Fund) and between 100 and 120 separately managed accounts (SMAs). The Commission alleged that Balter engaged a day-trading strategy for himself and certain SMA clients whereby he cherry-picked profitable trades for himself without his clients' knowledge and in contravention of Oracle's Form ADV disclosure regarding trade allocation. The Commission further alleged that Balter materially misrepresented the fees that SMA clients would be charged in connection with an investment in the Fund. Finally, the Commission alleged that Balter caused the Fund to deviate from its fundamental investment limitations. As a result, the Commission alleged that Balter violated Section 17(a) of the Securities Act; Section 10(b) of the Securities Exchange Act; and

Sections 206(1), 206(2), 207, and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, as well as aided and abetted and caused the Fund's violations of Sections 34(b) and 13(b) of the Investment Company Act and violated and aided and abetted and caused the Fund's violations of Section 34(b) of the Investment Company Act. The Commission ordered that public administrative and cease-and-desist proceedings be instituted against Balter. Those proceedings are pending.

***In re TPG Advisors LLC*, Investment Advisers Act Release No. 4588, 2016 SEC LEXIS 4638 (Dec. 15, 2016).**

The Commission accepted offers of settlement from TPG Advisors LLC, a formerly registered investment adviser (TPG), and Phillips, its sole owner and principal. The Commission alleged that TPG and Phillips engaged in "cherry-picking" by unfairly and systematically allocating profitable trades to certain accounts while harming other accounts by allocating unprofitable trades. The Commission alleged that, while TPG's Form ADV filings and policies and procedures required equitable trade allocation that did not favor any particular client, TPG and Phillips allocated trades in a manner that favored the accounts of a handful of clients with whom Phillips had personal connections. The Commission further alleged that TPG and Phillips ignored express warnings about their allocation process from a third-party broker that maintained custody of TPG client accounts. The Commission ordered TPG and Phillips to cease and desist from further violations of Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2) and 207 of the Advisers Act, and barred Phillips from association, from participating in any penny stock offering, and from serving in any capacity for a registered investment company or affiliated person of an investment adviser, depositor, or principal underwriter. The Commission further ordered TPG and Phillips to jointly and severally pay disgorgement of $25,295, prejudgment interest of $3,143, and a civil penalty of $300,000.

Best Execution

***In re The Bank of New York Mellon*, Investment Company Act Release No. 32151, 2016 SEC LEXIS 3301 (June 13, 2016).**

The Commission accepted an offer of settlement from The Bank of New York Mellon (BNY Mellon), in which it admitted certain facts. The Commission alleged that BNY Mellon misled certain custodial clients with regard to the execution of their Standing Instruction (SI) foreign currency transactions. The Commission alleged that BNY Mellon communicated to customers, including registered investment companies, that its SI program provided foreign exchange execution according to best execution standards, provided "best rates," priced the transactions at levels that "generally reflected the interbank market at the time the trade was executed," and was "free of charge." However, the Commission alleged that BNY Mellon priced its clients' SI transactions near the end of the trading day or near the worst interbank rates reported during the day, which resulted in substantial revenue to BNY Mellon. The Commission further alleged that the trade confirmations and monthly transaction reports disseminated by BNY Mellon did not specify the time the transactions were executed or provide information to customers about how the specific rates were assigned. The Commission alleged that had such information been included, it would have been revealed that the SI program did not provide

execution in the manner represented by BNY Mellon. The Commission ordered BNY Mellon to cease and desist from future violations of Sections 31(a) and 34(b) of the Investment Company Act and Rule 31a-1(b) thereunder. The Commission ordered BNY Mellon to pay disgorgement of $120 million and prejudgment interest of $13,022,207 (the payment of such amount to be deemed satisfied by its payment under the terms of BNY Mellon's settlements with the US Department of Justice and the New York Attorney General in related civil actions), and pay a civil money penalty in the amount of $30 million.

***In re State Street Bank and Trust Company*, Investment Company Act Release No. 32390, 2016 SEC LEXIS 4584 (Dec. 12, 2016).**

The Commission accepted an offer of settlement from State Street Bank and Trust Company (State Street), a Massachusetts trust company and bank that is a member of the Federal Reserve System and acts as a custody bank for a wide range of clients, including mutual funds, closed-end funds, and unit investment trusts that are registered with the Commission as investment companies under the Investment Company Act. The Commission alleged that from January 2006 to October 2009 State Street provided certain of its custody clients, including a large number of registered investment companies, with materially misleading statements regarding how it priced a method of foreign currency exchange (FX) it offered, known as Indirect FX. The Commission alleged that State Street represented to its custody clients that, among other things, it provided "best execution" on FX transactions, that its priority was to obtain the best possible prices on FX transactions, that it priced FX transactions at prevailing interbank or market rates, and that its Indirect FX rates were based on the size of the trade, State Street's inventory of the currency, prevailing market conditions and rates, and/or State Street's risk management assessment. The Commission alleged that these representations were materially misleading because State Street priced most Indirect FX transactions near the end of each trading day, irrespective of when the orders were received, and applied a predetermined, uniform markup to current interbank market rates to price the Indirect FX transactions. As a result, Indirect FX trades were often executed for custody clients at or near the highest and lowest rates in the interbank market between market open and the time the transactions were priced. The Commission alleged that State Street violated Section 34(b) of the Investment Company Act for providing custody clients with materially misleading statements about how it priced and provided "best execution" for Indirect FX. The Commission enjoined State Street from committing any further violations of Sections 31(a) and 34(b) of the Investment Company Act, and Rule 31a-1(b) thereunder. The Commission further ordered State Street to pay a civil money penalty of $75 million, disgorgement of $75 million and prejudgment interest of $17,369,417.

Compensation Payments for Representatives

***In re Advantage Investment Management, LLC*, Investment Advisers Act Release No. 4455, 2016 SEC LEXIS 3317 (July 18, 2016).**

The Commission accepted an offer of settlement from Advantage Investment Management, LLC, a registered investment adviser (Advantage). The Commission alleged that Advantage failed to disclose a loan of approximately $3 million, forgivable over a five-year period, from a

dual registrant (Broker) that it had engaged to provide clearing and custody and other services for its clients. The Commission alleged that Advantage's representatives each received a portion of the proceeds of the loan based, in part, on its respective assets under management and that the loan proceeds were used, in part, to cover costs associated with transitioning clients from Advantage's prior broker-dealer to Broker. The associated conflict of interest and the forgivable loan itself was not disclosed in Advantage's regulatory filings or otherwise to clients. Based on the conduct described, the Commission alleged that Advantage violated Sections 206(2) and 207 of the Advisers Act. The Commission ordered Advantage to cease and desist from committing violations and any future violations of Sections 206(2) and 207 of the Advisers Act and to pay a civil money penalty of $60,000.

***In re Washington Wealth Management, LLC*, Investment Advisers Act Release No. 4456, 2016 SEC LEXIS 3287 (July 18, 2016).**

The Commission accepted an offer of settlement from Washington Wealth Management, LLC, a registered investment adviser (Washington Wealth). Washington Wealth is a Delaware limited liability company with its principal place of business in San Diego, California. The Commission alleged that Washington Wealth engaged a dually registered broker-dealer and registered investment adviser (Broker) to provide client clearing and custodial services and that Washington Wealth received more than $1.8 million in loans from Broker, of which more than $1.1 million was intended to be forgivable over a five-year period. The Commission alleged that certain of the loans were used to cover costs associated with transitioning Washington Wealth's business from its prior broker-dealer to Broker. In addition, two of the loans, by their terms, would be forgiven over a five-year period provided that Washington Wealth's relationship with Broker continued and that Washington Wealth maintained certain asset levels on Broker's custodial platform. The Commission alleged that for nearly a year Washington Wealth did not disclose to clients its receipt of the loans from Broker. The Commission alleged that Washington Wealth thus failed to timely disclose its receipt of potential revenue from a third party that it had engaged to provide services to its clients. The Commission alleged that by failing to timely disclose its conflicts of interest completely and accurately, Washington Wealth violated Section 206(2) of the Advisers Act. The Commission further alleged that Washington Wealth also violated Section 207 of the Advisers Act by virtue of omissions of material facts from its Commission filings concerning its relationship with Broker. The Commission censured Washington Wealth and ordered it to cease and desist from further violations of Advisers Act Sections 206(2) and 207. In addition, Washington Wealth was ordered to pay a penalty of $50,000.

Compliance Policies and Procedures

***In re Dupree Financial Group, LLC*, Investment Advisers Act Release No. 4546, 2016 SEC LEXIS 3782 (Oct. 5, 2016).**

The Commission accepted an offer of settlement from Dupree Financial Group, LLC (Dupree Financial), a registered investment adviser. The Commission alleged that Dupree Financial failed to conduct annual compliance reviews over a multiyear period. The Commission censured

Dupree Financial and ordered it 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)-7 thereunder. The Commission also ordered Dupree Financial to pay a civil money penalty in the amount of $25,000.

Conflicts of Interest Disclosure

***In re Biscayne Capital Int'l, LLC*, Investment Advisers Act Release No. 4399, 2016 SEC LEXIS 3275 (May 27, 2016).**

The Commission accepted offers of settlement from Biscayne Capital International, LLC, a former US registered investment adviser (Biscayne); Chatburn, an investment adviser representative for and principal of Biscayne; and Roberto Cortes, Juan Cortes, and Weisson, three Biscayne principals (the Primary Principals) (together with Biscayne, Respondents). The Commission alleged that Biscayne failed to disclose conflicts of interest and other material information relating to the recommendation and sale to non-US clients of securities issued by private offshore investment companies formed by the Primary Principals, which companies were under common beneficial ownership with Biscayne (the Proprietary Products). The Commission further alleged that Biscayne failed to disclose the financial condition of its majority beneficial owner, a Florida-based real estate development entity, which during the relevant period failed to generate enough revenue or cash flow to meet maturing debt obligations or sustain operations absent the additional financing it was obtaining from the sale of the Proprietary Products. The Commission alleged that Chatburn and the Primary Principals willfully aided and abetted and caused Biscayne's violations, and that Chatburn, in recommending and selling approximately $3.49 million in Proprietary Products to Biscayne clients, also failed to analyze the Proprietary Products (in contravention of Biscayne's Form ADV representations), and failed to disclose his personal conflicts of interest, including beneficial ownership interest in Biscayne and receipt of undisclosed compensation. The Commission further alleged that Juan Cortes, as chief compliance officer, failed to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act, that Biscayne made material misstatements in its Form ADV, and that Biscayne and the Primary Principals failed to reasonably supervise Chatburn. The Commission censured Biscayne; ordered Respondents to cease and desist from committing violations of Sections 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rule 206(4)-7 thereunder; and barred Chatburn, Roberto Cortes, Juan Cortes, and Weisson 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 the right to reapply after three or, in Chatburn's case, four years. The Commission further ordered Biscayne and Chatburn to pay $30,024 and $78,924 in disgorgement and $3,063 and $8,052 in prejudgment interest, respectively; and imposed civil penalties of $125,000 on Biscayne, $100,000 on Chatburn, and $50,000 on each of Roberto Cortes, Juan Cortes, and Weisson.

***In re Lee D. Weiss*, Investment Advisers Act Release No. 4442, 2016 SEC LEXIS 2992 (June 29, 2016).**

The Commission accepted an offer of settlement from Lee D. Weiss, the owner of Family Endowment Partners, LP (FEP), a registered investment adviser. The Commission alleged that Weiss urged advisor clients to invest in more than $40 million in illiquid securities issued by several related companies without disclosing that Weiss had an ownership interest in the parent company of the entities and received payments from the entities. The Commission further alleged that FEP urged clients to invest in entities owned and controlled by Weiss where the funds were used primarily to benefit FEP. The Commission barred Weiss from association, ordered Weiss and FEP to pay a civil penalty of $1 million and $500,000, respectively, and ordered Weiss and certain relief defendants to pay disgorgement of $8,436,766.

***In re Concert Global Group Ltd.,* Investment Advisers Act Release No. 4459, 2016 SEC LEXIS 3058 (July 21, 2016).**

The Commission accepted an offer of settlement from Concert Global Group Limited, a California corporation (Concert Global); its CEO, Felipe Luna; and its subsidiary, Concert Wealth Management Inc. (Concert Wealth), a registered investment adviser (together, Respondents). The Commission alleged that from 2010 through 2013 Concert Global provided investors with materially misleading private placement memoranda that (i) overstated Concert Global subsidiaries' assets under management, (ii) overstated Concert Global's financial results, and (iii) misrepresented or failed to disclose conflicts of interest arising from the potential use of offering proceeds to pay several affiliated entities. The Commission further alleged that Concert Wealth failed to implement adequate policies and procedures to address the disclosure of possible conflicts of interest between the various entities controlled by Luna. The Commission ordered Respondents to cease and desist from further violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder. The Commission censured Concert Wealth and Luna and further ordered Concert Global and Concert Wealth to pay $120,000 and Luna to pay $60,000 in penalties. The Commission also ordered Concert Wealth to retain a compliance consultant for at least three years, keep all records of compliance with the ordered undertakings for the next six years, provide a notice of the order to all its customers, post a summary of the order on its website, and certify compliance with these undertakings. In a related action, *In re Navarra*, Investment Advisers Act Release No. 4460, 2016 SEC LEXIS 3008 (July 21, 2016), the Commission censured Dennis Navarra, the CFO, COO, and Chief Strategy Officer for Concert Global.

***In re Gleisner*, Investment Advisers Act Release No. 4537, 2016 SEC LEXIS 3679 (Sept. 28, 2016).**

The Commission accepted an offer of settlement from Jan Gleisner, the president and managing director of Belvedere Asset Management LLC (Belvedere), formerly a registered investment adviser, and Keith D. Pagan, Belvedere's CEO, CIO, CCO, and principal, who was solely responsible for Belvedere's compliance and operations functions. The Commission alleged that the two principals failed to disclose material conflicts of interests to clients whose money

Belvedere used to fund an affiliated mutual fund (the Fund). Specifically, the Commission alleged that Gleisner invested approximately one-third of the assets held by Belvedere's individual clients into the new Fund, and that Gleisner and Pagan failed to disclose to clients the material conflicts of interest inherent in such investments due to the adviser's financial incentives to invest clients in the affiliated Fund. The Commission alleged that clients invested in the Fund paid both advisory fees and undisclosed fees and expenses associated with their investment in the Fund. The Commission further alleged that Pagan caused Belvedere's violations of the Investment Advisers Act relating to compliance rules and Form ADV delivery requirements, which were tasks he was specifically required to perform under Belvedere's written policies and procedures. The Commission ordered Gleisner and Pagan to cease and desist from further violations of Section 206(2) of the Advisers Act and enjoined Pagan from causing any future violations of Sections 204(a) and 206(4) of the Advisers Act and Rules 204-3 and 206(4)-7 promulgated thereunder. Additionally, the Commission censured Gleisner and ordered Gleisner to pay disgorgement of $63,887, prejudgment interest of $4,614, and a civil money penalty in the amount of $40,000. Pagan was ordered to pay disgorgement of $39,702 and prejudgment interest of $2,867.

***In re John Leo Valentine*, Investment Advisers Act Release No. 4557, 2016 SEC LEXIS 3946 (Oct. 20, 2016).**

The Commission accepted an offer of settlement from John Leo Valentine, the president and owner of Valentine Capital Asset Management, Inc. (VCAM), a formerly registered investment adviser, who was also a registered representative formerly associated with several registered broker-dealers. The Commission alleged that Valentine failed to provide full and fair disclosure to his clients by failing to disclose that he had a conflict of interest when he recommended that his clients sell shares of a fund for which he did not earn commissions and buy shares of another fund for which he would earn a commission. The Commission further alleged that Valentine misrepresented the reasons why VCAM changed custodians by failing to note that the previous custodian terminated the relationship with VCAM due in part to concerns about a prior Commission administrative proceeding against Valentine and VCAM. Instead, Valentine claimed that he terminated the custodian relationship after conducting a year-long independent review and then concluding that the termination would benefit clients. In previous cease-and-desist and administrative proceedings against Valentine, the Commission found that Valentine violated Section 206(2) of the Advisers Act by failing to disclose a financial conflict of interest to clients in connection with his recommendation that clients exchange one series of managed futures fund for another series of the same fund. *See In re Valentine Capital Asset Management, Inc.*, 2010 SEC LEXIS 3210, Investment Advisers Act Release No. 3090 (Sept. 29, 2010). The Commission ordered Valentine to cease and desist from further violations of Section 206(2) of the Advisers Act and ordered him to pay a civil penalty of $140,000. Valentine was also barred from associating with any broker-dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization with the right to apply for reentry after two years. The Commission also barred Valentine from participating in any offering of a penny stock, with the right to apply for reentry after two years.

***In re Derik J. Todd*, Investment Advisers Act Release No. 4567, 2016 SEC LEXIS 4200 (Nov. 10, 2016).**

The Commission accepted offers of settlement from Todd and Madison Capital Energy Income Fund II GP LLC (the GP), both unregistered investment advisers, and several of their affiliated entities, Madison Capital Investments LLC, Big Horn Minerals LLC, and Madison Royalty Management LLC (the Affiliates). The Commission alleged that Todd and the GP improperly used the Affiliates, which were controlled by Todd, as intermediaries in numerous purchases and sales of oil and gas royalty interests on behalf of the Madison Capital Energy Income Fund II LP (the Fund), thereby misappropriating $308,638 from the Fund and its investors. The Commission further alleged that Todd and the GP acted in breach of their fiduciary duties and contrary to disclosures in the Fund's offering materials stating that the Fund's assets would be used for the "exclusive benefit" of the Fund to purchase assets at the "best possible price," and that affiliate transactions would be conducted on an "arms-length" basis. The Commission censured the GP and the Affiliates, ordered Respondents to cease and desist from further violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(1) and 206(2) of the Advisers Act, and barred Todd from association and from serving in any capacity for a registered investment company or affiliated person of an investment adviser, depositor, or principal underwriter. The Commission further ordered Respondents to jointly and severally pay $205,673 in disgorgement and $21,581 in prejudgment interest, and imposed a civil penalty of $50,000 on Todd.

***In re Harold D. Garrison*, Investment Advisers Act Release No. 4584, 2016 SEC LEXIS 4517 (Dec. 7, 2016).**

The Commission accepted an offer of settlement from Garrison, the chief executive officer and a principal of fund manager HDGM Advisory Services (HDGM). Between 2002 and 2013, HDGM served as investment manager for two commercial property investment funds (the Funds). The Commission alleged that during 2012 Garrison caused HDGM to charge $5,800,000 in transactional fees to the Funds without adequately disclosing such fees to their respective boards of directors. The Commission specifically alleged that Garrison, acting on behalf of HDGM, failed to adequately disclose the prepayment of $5,800,000 in transaction fees in its 2012 quarterly reports on the financial condition of the Funds to the Funds' board of directors and Investment Committee. The prepaid fees were charged to the Funds in anticipation of the sale of portfolio holdings of the Funds, the refinancing of certain of the Funds' lending arrangements, and the leasing of the Funds' holdings. The Commission also alleged that Garrison failed to disclose these fees while present at numerous board of directors and Investment Committee meetings, or during email communications and conference calls that he participated in regarding the financial affairs of the Funds. The Commission ordered that Garrison cease and desist from further violations of Section 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, barred him from association with a right to reapply for reentry, and ordered him to pay disgorgement of $1,350,000.

***In re New Silk Route Advisors, L.P.*, Investment Advisers Act Release No. 4587, 2016 SEC LEXIS 4612 (Dec. 14, 2016).**

The Commission accepted an offer of settlement from New Silk Route Advisors, L.P. (New Silk Route), the manager of two Cayman Islands–domiciled private equity funds (the Funds). The co-founder and CEO of New Silk Route was also a co-founder and CEO of another Commission-registered investment advisor (the Related Adviser). The Commission alleged that from 2008 through 2014 New Silk Route breached its fiduciary duty by repeatedly failing to obtain required advisory board consents for certain co-investments made by the Funds. In the order, the Commission alleged that New Silk Route caused the Funds to invest more than $250 million in four portfolio companies in which another private equity fund managed by the Related Adviser invested. To address such conflicts, the Funds' Limited Partnership Agreements had required the consent of the Funds' advisory boards in order to co-invest with a fund managed by the Related Adviser. The Commission alleged that New Silk Route negligently failed to obtain the required advisory board consents for the co-investments made by the Funds, thereby violating Section 206(2) and 206(4) of the Advisers Act, and Rules 206(4)-7 and 206(4)-8 thereunder. The Commission censured New Silk Route and enjoined it from further violations of Section 206(2) and 206(4) of the Advisers Act, and Rules 206(4)-7 and 206(4)-8 thereunder, and ordered it to pay a civil money penalty of $275,000.

***SEC v. Interinvest Corporation, Inc.*, Litigation Release No. 23713, 2016 SEC LEXIS 4817 (Dec. 28, 2016).**

In a civil action brought by the Commission, the US District Court for the District of Massachusetts entered a default judgment against Interinvest Corporation (Interinvest), a registered investment adviser, and Black, its owner (the Defendants). The Commission's complaint, which the Defendants failed to answer, alleged that the Defendants funneled more than $17 million of client assets into four Canadian penny stock companies in which Black had an undisclosed interest, causing investors to lose as much as $12 million. The Commission further alleged that the Defendants failed to disclose to their advisory clients the conflict of interest resulting from the facts that Black served on the companies' boards of directors, and that the companies paid approximately $1.9 million to an entity controlled by Black. The Court enjoined the Defendants from future violations of Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder, Section 17(a) of the Securities Act, and Section 206(1) and 206(2) of the Advisers Act, and ordered the Defendants, jointly and severally, to pay $5.4 million in disgorgement and prejudgment interest. The court also imposed civil penalties of $1.5 million on Interinvest and $2 million on Black.

Custody Rule

***In re Reid S. Johnson*, Investment Advisers Act Release No. 4368, 2016 SEC LEXIS 1486 (Apr. 14, 2016).**

The Commission accepted an offer of settlement from Johnson, the founder, sole owner, president, managing director, and chief compliance officer of a formerly registered investment adviser (the Adviser). The Commission alleged that the Adviser had custody of certain client

funds and securities, including securities of pooled investment vehicles whose managing members were entities owned and controlled by Johnson and operated as a single integrated investment adviser with the Adviser, and that the Adviser violated the Custody Rule under the Advisers Act by failing to adequately determine the securities of which it had custody, to ensure the maintenance of such securities by a qualified custodian, and to obtain adequate surprise examinations. The Commission further alleged that the Adviser violated Advisers Act Rule 206(4)-7, that Johnson willfully aided and abetted these violations, and that the Adviser and Johnson made materially false representations in the Adviser's Form ADV filings. Johnson admitted to the Commission's findings. The Commission ordered Johnson to cease and desist from further violations of Sections 206(4) and 207 of the Advisers Act and Rules 206(4)-2 and 206(4)-7 thereunder, and barred Johnson from association, from participating in any penny stock offering, and from serving in any capacity for a registered investment company or affiliated person of an investment adviser, depositor, or principal underwriter, with the right to reapply after one year. The Commission further ordered Johnson to pay a civil penalty of $45,000 and to complete, and certify to the Commission that he has completed, 30 hours of Advisers Act compliance training.

***In re Santos, Postal & Co., P.C.*, Investment Advisers Act Release No. 4380, 2016 SEC LEXIS 1581 (Apr. 29, 2016).**

The Commission accepted offers of settlement from Santos, Postal & Company, P.C., an accounting firm (Santos), and Scolaro, one of its partners (together, Respondents). The Commission alleged that Respondents had engaged in improper professional conduct in connection with Santos's examination of client funds and securities of which a certain registered investment adviser had custody, and filed reports on Form ADV-E containing untrue statements of material fact regarding certain examinations. Specifically, the Commission alleged that Respondents failed to exercise due professional care and professional skepticism, failed to obtain sufficient evidence, and failed to prepare and maintain appropriate documentation in the course of their examinations, and that Respondents failed to assign an adequately trained team to the examinations. The Commission further alleged that Santos's reports on the examinations in question contained untrue statements of material fact, including regarding confirmation of the contributions to and withdrawals from the accounts of the adviser's clients, testing procedures (which were not actually followed), and an unqualified opinion regarding the adviser's compliance with the Advisers Act rules relating to custody when in fact Respondents were aware of misappropriation of client funds by the adviser's president. The Commission ordered Respondents to cease and desist from further violations of Section 207 of the Advisers Act, and barred Respondents from practicing before the Commission as accountants, granting Santos the right to reapply after one year and Scolaro the right to reapply after five years. The Commission further ordered Santos to pay $25,800 in disgorgement and $3,277 in prejudgment interest, and imposed a civil penalty of $15,000 on Scolaro.

***In re Fortius Financial Advisors, LLC*, Investment Advisers Act Release No. 4483, 2016 SEC LEXIS 3294 (Aug. 15, 2016).**

The Commission accepted an offer of settlement from Fortius Financial Advisers, LLC, a formerly registered investment adviser (Fortius), and Gary E. Oliver and Jeff M. Bollinger, each

members of the firm (together, Respondents). Respondents managed the assets of certain trust entities for which Oliver served as trustee. The Commission alleged that Respondents invested more than $800,000 of the entities' assets in unsuitable, illiquid investments in which Respondents had an undisclosed financial interest. Second, the Commission alleged that Oliver misappropriated approximately $137,000 from the trust entities' accounts over the course of approximately four years. Third, the Commission alleged that Fortius and Bollinger failed to reasonably supervise Oliver and failed to comply with the requirements of the custody rule under the Advisers Act, in light of Oliver's full signatory authority over the trust entities' accounts, by failing to engage an independent public accountant to conduct a surprise examination of such accounts. Fourth, the Commission alleged that Fortius and Bollinger failed to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules, particularly as to Oliver's misappropriation of client assets. Finally, the Commission alleged that Oliver caused Fortius to make untrue statements in its Form ADV registration application filed with the Commission. The Commission ordered Respondents to cease and desist from further violations of Sections 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 206(4)-2 and 206(4)-7 promulgated thereunder. The Commission censured Fortius and Bollinger. The Commission ordered that Oliver be barred from association and prohibited from serving in any capacity at an investment adviser. Fortius was ordered to pay $21,000 in disgorgement and $70,000 in penalties. Bollinger was ordered to pay $2,000 in disgorgement and $25,000 in penalties.

Fees and Allocation of Expenses

***In re Equinox Fund Management, LLC*, Investment Advisers Act Release No. 4315, 2016 SEC LEXIS 237 (Jan. 19, 2016).**

The Commission accepted an offer of settlement from Equinox Fund Management, LLC (Equinox) for material misstatements and omissions that the Commission alleged Equinox made in connection with the offer and sale of units in a publicly registered managed futures fund with multiple series (the Fund). Equinox was the manager of the Fund. The Commission alleged that from 2004 through March 2011 the Fund's registration statements disclosed that Equinox charged management fees based upon the net asset value (NAV) of each series of the Fund, when in reality the management fees were based upon the notional trading value of the assets (including leverage) in the Fund. This resulted in clients being charged an additional $5.4 million in management fees than would have been charged had the fees been calculated on the basis of NAV. Further, the Commission alleged that during this timeframe the Fund's disclosures (including its Forms 10-K and 10-Q) included a number of material misstatements regarding the methodology for valuation of certain derivatives and options transactions. The Commission alleged that, as a result of this conduct, Equinox violated Sections 17(a)(2) and 17(a)(3) of the Securities Act as well as Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder. The Commission censured Equinox, and ordered it to cease and desist from further violations of the federal securities laws and to pay disgorgement of $5,404,004 and prejudgment interest of $596,063, as well as a civil money penalty of $400,000.

***In re Marco Investment Management, LLC*, Investment Advisers Act Release No. 4348, 2016 SEC LEXIS 3264 (Mar. 2, 2016).**

The Commission accepted an offer of settlement from Marco Investment Management, LLC (MIM) and its principal owner, Steven S. Marco. The Commission alleged that from approximately 2005 through 2014 Marco, through MIM, charged certain clients advisory fees that were calculated differently, and in certain instances were in excess, of what was provided for in those clients' respective written advisory agreements. MIM's investment management agreements with clients provide for an advisory fee calculated as an identified percentage of the portfolio's gross assets, billed quarterly. A quarter of MIM's client base had margin agreements in place for their custodial accounts permitting Marco to utilize margin in managing the portfolio. The Commission alleged that, for those clients with margin accounts, MIM calculated quarterly management fees without adjusting for the sales proceeds or other credits that had been applied against the clients' margin balance by the account's custodial broker-dealer. The Commission alleged that these billing practices were inconsistent with the written billing terms set out in the written advisory agreements, and resulted in MIM's providing incorrect figures for its regulatory assets under management in its Form ADV. The Commission censured MIM and Marco and ordered each to cease and desist from further violations of Sections 204(a), 206(4), and 207 of the Advisers Act, and Rules 204-2 and 206(4)-7 thereunder. The Commission further ordered MIM to retain an independent compliance consultant, and pay disgorgement of $124,750.44 and prejudgment interest of $7,595.94, and, together with Marco, cumulative civil money penalties of $150,000.

***SEC v. Momentum Investment Partners LLC*, Litigation Release No. 23549, 2016 SEC LEXIS 1913 (May 31, 2016).**

The Commission initiated proceedings against Momentum Investment Partners LLC (d/b/a Avatar Investment Management) (Momentum) and one of its principals, Fernandes (collectively, Respondents). The Commission alleged that Respondents moved some of their clients' assets from individual accounts to newly created mutual funds, which increased management fees, without providing them notice. The Commission further alleged that Respondents deployed the same investment strategy and did not provide any additional services when the assets were moved into the mutual funds, even though clients were charged higher management fees as the result of the asset movement. The Commission alleged that Respondents violated Section 206(1) and 206(2) of the Advisers Act, Momentum violated Sections 206(4) and 207 of the Advisers Act, and Fernandes aided and abetted Momentum's violations of Sections 206(1), 206(2), 206(4), and 207 of the Advisers Act. The Commission is also seeking permanent injunctions, disgorgement of ill-gotten gains plus prejudgment interest, and a civil penalty. This litigation is pending.

***In re Blackstreet Capital Management, LLC*, Investment Advisers Act Release No. 4411, 2016 SEC LEXIS 2062 (June 1, 2016).**

The Commission accepted an offer of settlement from Blackstreet Capital Management, LLC (BCM) and its principal, Gunty (collectively, Respondents). The Commission alleged that BCM received transaction-based compensation in connection with the acquisition and disposition of

portfolio companies, thereby providing brokerage services, while not being registered as a broker. The Commission further alleged that BCM improperly charged operating partner oversight (OPO) fees to the portfolio companies owned by one of the private funds it managed, even though the fund's governing documents did not authorize the OPO fees. The Commission further alleged that BCM improperly used fund assets to make political and charitable contributions and for entertainment expenses, even though it was not expressly authorized by the funds' governing documents to do so. The Commission further alleged that BCM acquired a departing employee's shares in portfolio companies also held by a fund managed by BCM in contravention of the terms of the agreement by which the employee received the shares. Specifically, the shares should have been repurchased by the portfolio companies for the benefit of the fund and its limited partners. In addition, by acquiring the shares the Commission alleged that BCM engaged in a conflicted transaction without disclosing the conflict to investors. Further, the Commission alleged that, through a controlled entity, Gunty acquired interests in a fund advised by BCM from limited partners instead of having the interests forfeited back to each fund as required by each fund's governing document and that Gunty improperly waived his obligation to satisfy future capital calls on new investments, contrary to the funds' governing documents. The Commission further alleged that BCM failed to adopt and implement written policies and procedures to prevent violations of the Advisers Act. The Commission censured BCM and ordered Respondents to cease and desist from further violations of Sections 15(b) and 21C of the Securities Exchange Act and Sections 203(e) and 203(k) of the Advisers Act. The Commission ordered Respondents to pay disgorgement of $2,339,000, prejudgment interest of $283,737, and a civil money penalty of $500,000.

***In re Apollo Mgmt. V, L.P.*, Investment Advisers Act Release No. 4493, 2016 SEC LEXIS 3297 (Aug. 23, 2016).**

The Commission accepted an offer of settlement from four affiliated registered investment advisers: Apollo Management V, L.P., Apollo Management VI, L.P., Apollo Management VII, L.P., and Apollo Commodities Management, L.P. (together, Respondents or Apollo). Respondents had entered into agreements with certain portfolio companies owned by certain private equity funds managed by Respondents (Funds) whereby Respondents received fees from the portfolio companies for providing certain monitoring and consulting services (Monitoring Fees). The Commission alleged that Respondents failed to adequately disclose to the Funds, and the Funds' limited partners prior to their commitment of capital, that Respondents could accelerate future monitoring fees upon termination of the monitoring agreements. The Commission separately alleged that Apollo Management VI failed to disclose that accrued interest from a lending agreement among several funds would be allocated solely to one fund. In addition, the Commission alleged that from at least January 2010 through June 2013 a former senior partner at Apollo (Partner) improperly charged personal items and services to Apollo-advised Funds and the Funds' portfolio companies. The Commission alleged that Respondents failed to reasonably supervise the Partner to prevent his conduct. Finally, the Commission alleged that Respondents failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act arising from the undisclosed receipt of accelerated monitoring fees and failed to implement its policies and procedures concerning employees' reimbursement of expenses. In determining to accept Respondents' offer of settlement, the Commission considered remedial acts taken by Apollo and

cooperation afforded the Commission staff. The Commission ordered Respondents to cease and desist from further violations of Section 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder and pay $37,527,000 in disgorgement, $2,727,552 in prejudgment interest, and a $12,500,000 civil monetary penalty. Respondents agreed to distribute the disgorgement and interest amounts to affected fund investors and provide a final accounting and certification to the Commission regarding the disgorgement.

***In re WL Ross & Co. LLC*, Investment Advisers Act Release No. 4494, 2016 SEC LEXIS 3298 (Aug. 24, 2016).**

The Commission accepted an offer of settlement from WL Ross & Co., LLC (WL Ross), a registered investment adviser. The Commission alleged that WL Ross failed to disclose its fee allocation practices to certain private equity funds that it advised (the Funds) and each Fund's underlying investors, resulting in the Funds paying higher management fees than disclosed. The limited partnership agreements for the Funds provided that WL Ross may receive fees from the portfolio companies owned by the Funds from time to time, including break-up, origination, commitment, broken deal, topped bid, cancellation, monitoring, closing, financial advisory, investment banking, director, or other transaction fees (collectively, Transaction Fees). The limited partnership agreements further provided that the quarterly management fees payable by the Funds would be reduced by an amount equal to 50% or 80% of any Transaction Fees received by WL Ross during the prior quarter from portfolio companies of each Fund. Each Fund's governing documents, however, did not disclose how transaction fees would be allocated when multiple Funds and co-investors were invested in the same portfolio company. The Commission alleged that between 2001 and 2011 WL Ross adopted a Transaction Fee allocation methodology that resulted in it retaining a significant amount of fees for itself rather than allocating them to the Funds for the purpose of offsetting the management fee. The Commission alleged that WL Ross did not make appropriate disclosure related to this practice. WL Ross voluntarily reimbursed $11,873,571 to the affected Funds, revised its allocation methodology and self-reported the violation to the Commission. The Commission ordered WL Ross to cease and desist from further violations of Section 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder and pay a penalty of $2,300,000.

***In re First Reserve Mgmt., L.P.*, Investment Advisers Act Release No. 4529, 2016 SEC LEXIS 3446 (Sept. 14, 2016).**

The Commission accepted an offer of settlement from First Reserve Management, L.P. (First Reserve), a registered investment adviser. Firstly, the Commission alleged that First Reserve did not adequately disclose certain financial conflicts of interest to private equity funds it managed (the Funds) or to the underlying investors in the Funds. Between 2010 and 2015 First Reserve allocated certain expenses to the Funds without making appropriate disclosures or receiving effective consent, including certain fees and expenses of two entities formed as advisers to a Fund portfolio company that was a pooled investment vehicle, which the Commission alleged enabled First Reserve to avoid incurring certain expenses in connection with providing advisory services to the Funds. Secondly, the Commission alleged that First Reserve allocated certain liability insurance premiums associated with an insurance policy covering it for risks not entirely arising from its management of the Funds to the Funds, while

the relevant fund-governing documents provided that the Funds would only pay insurance expenses relating to the affairs of the Funds. Thirdly, the Commission alleged that First Reserve negotiated a legal fee discount for itself for certain legal services based on the large volume of work the law firm performed for the Funds, while the Funds did not receive a discount on the same services. The Commission ordered First Reserve to cease and desist from further violations of Section 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder and pay a penalty of $3,500,000.

Foreign Corrupt Practices Act

***In re Och-Ziff*, Investment Advisers Act Release No. 4540, 2016 SEC LEXIS 3687 (Sept. 29, 2016).**

The Commission accepted an offer of settlement from Och-Ziff Capital Management Group LLC (Och-Ziff), an institutional alternative asset manager; OZ Management LP (OZ Management), a registered investment adviser and subsidiary of Och-Ziff; Daniel S. Och, the founder, CEO, and Chairman of the Board of Och-Ziff; and Joel M. Frank, the CFO for Och-Ziff (collectively, Respondents). The Commission alleged that Och-Ziff, through the misconduct of two senior employees, entered into a series of transactions in which Och-Ziff paid bribes, using managed investor funds, to corruptly influence foreign government officials to obtain or retain business for Och-Ziff and its business partners between 2007 and 2011. The Commission further alleged that OZ Management failed to disclose all material facts and conflicts of interest in its communications with certain investors relating to specific transactions that resulted in self-dealing. The Commission further alleged that Och-Ziff inaccurately categorized these transactions as legitimate investments in its books and records, despite the fact that Och-Ziff employees knew that investor funds would be used, in whole or in part, for corrupt payments to foreign government officials and other self-dealing. The Commission alleged that Och-Ziff had final authority to approve all of the transactions at issue and was aware of the risk of corruption in certain transactions, and contrary to the recommendation of his legal and compliance team he approved the use of investor funds in such transactions, which the Commission alleged caused Och-Ziff's violations of the books and records provision of the Foreign Corrupt Practices Act (FCPA). The Commission alleged that Frank had ultimate authority for maintaining Och-Ziff's and OZ Management's books and records and authorized all disbursements relating to the transactions at issue, despite allegedly believing there to be a high risk of corruption associated with the transactions. In addition to other undertakings, Respondents undertook to engage an independent monitor, to implement enhanced internal accounting controls and policies, and to separate the CCO from other officer positions. The Commission ordered (i) Och-Ziff to cease and desist from further violations of Sections 30A, 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, (ii) OZ Management to cease and desist from further violations of Section 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, (iii) Frank to cease and desist from further violations of Section 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and (iv) Och from further violations of Section 13(b)(2)(A) of the Exchange Act. The Commission censured Och-Ziff and OZ Management and ordered Och-Ziff and OZ Management to jointly pay disgorgement of $173,186,178 and prejudgment interest of $25,858,989, and ordered Och to pay disgorgement of $1,900,000 and prejudgment interest of $273,718.

Front Running

***In re Christopher M. Gibson*, Investment Advisers Act Release No. 4359, 2016 SEC LEXIS 1200 (Mar. 29, 2016).**

The Commission instituted public administrative and cease-and-desist proceedings against Gibson for alleged fraudulent and deceptive conduct while he acted as an investment adviser to a private investment fund (the Fund). The Commission alleged that Gibson engaged in a number of transactions that caused him to breach his fiduciary duties to the Fund. Specifically, the Commission alleged that Gibson "front-ran" the Fund by selling personal shares, and shares in other accounts that he controlled, in advance of liquidating the Fund's substantial position in the same security, resulting in the Fund receiving a price that was more than $0.50 per share lower than the price obtained for the personal accounts. The Commission also alleged that Gibson favored other investors over the Fund by causing the Fund to purchase more than 680,00 shares from another investor in a private transaction, enabling that investor to sell his entire position in the security at a favorable price and without the price-depressing impact of a publicly executed sale. The Commission alleged that during the course of this transaction the other investor paid Gibson an annual salary of $150,000 through a commercial real estate business, creating a conflict of interest that was not disclosed to the Fund. As a result of this transaction, the Fund suffered a total loss of approximately $1.1 million when its position in the security was liquidated. The Commission alleged that Gibson willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(1), (2), and (4) of the Advisers Act and Rule 206(4)-8 thereunder. Gibson was ordered to file an answer to the allegations in the Commission's Order.

Gatekeepers

***In re Apex Fund Serv. (US), Inc.*, Investment Advisers Act Release Nos. 4428 and 4429, 2016 SEC LEXIS 3282 and 2016 SEC LEXIS 3283 (June 16, 2016).**

Apex Fund Services (US), Inc. (Apex), a private fund administrator, was charged with failing to identify red flags for two private fund complexes, ClearPath Wealth Management, LLC (ClearPath) and EquityStar Capital Management LLC (EquityStar), for which it had been engaged to serve as administrator. Specifically, in two separate actions the Commission alleged that Apex ignored a series of red flags in both cases. With respect to ClearPath, the Commission alleged that Apex failed to act appropriately after detecting undisclosed brokerage and bank accounts, undisclosed margin and loan agreements, and inter-series and inter-fund transfers made in violation of fund offering documents and failed to correct previously issued accounting reports and capital statements and continued to provide materially false reports and statements to ClearPath and the funds' independent auditor that resulted in incorrect information being provided to the funds' investors. With respect to EquityStar, the Commission alleged that Apex accounted for more than $1 million in undisclosed withdrawals by EquityStar's owner from the EquityStar funds as receivables owed to the funds, despite no evidence that the owner was able or willing to repay the withdrawals; confronted the owner about the withdrawals; and concluded that he was unlikely to repay the funds, yet Apex failed to properly account for the withdrawals—which grew to more than half of the NAV of one fund, and more

than one quarter of the other. Finally, the Commission alleged that Apex sent monthly account statements to investors in the EquityStar funds that it knew or should have known materially overstated the investors' true holdings in the funds. Each of ClearPath and EquityStar was separately charged by the Commission. The Commission charged Apex with causing both ClearPath's and EquityStar's violations of Section 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. Without admitting or denying the Commission's findings, Apex agreed to retain an independent consultant and pay a total of $352,449, including disgorgement of $96,800 plus interest of $8,813 and a penalty of $75,000 for its role in the ClearPath fraud, as well as disgorgement of $89,050 plus interest of $7,786 and a penalty of $75,000 for its role in the EquityStar fraud.

***In re Grassi & Co., CPAs, P.C.*, Investment Advisers Act Release No. 4572, 2016 SEC LEXIS 4329 (Nov. 21, 2016); *In re Gary R. Purwin, CPA*, Investment Advisers Act Release No. 4573, 2016 SEC LEXIS 4330 (Nov. 21, 2016).**

The Commission accepted offers of settlement from Grassi & Co., CPAs, P.C. (Grassi), a public accounting firm registered with the Public Company Accounting Oversight Board, and Purwin, one of its partners. The Commission alleged that during Grassi's engagement as independent auditor for several private funds, the funds were being defrauded by their adviser and its principal, who were misappropriating fund assets and making repeated misstatements to investors about the value and existence of fund investments. The Commission further alleged that Grassi repeatedly violated professional standards in failing to heed indications of the fraud, and thus negligently issued multiple materially false audit reports, thereby enabling the adviser and principal to continue to report materially inflated valuations, to conceal use of fund assets for their own benefit, and to continue their scheme to defraud the funds and their investors. The Commission also alleged that Purwin authorized Grassi to issue the materially false audit reports and failed to fulfill his role as the engagement partner for the funds' audits by failing to appropriately assess audit risks, establish audit plans to effectively address those risks, properly supervise the audit engagement, and exercise professional skepticism in light of the indicia of the fraud apparent from the accounting records. The Commission further alleged that Purwin also failed to sufficiently review certain audit paperwork due to health reasons, but nonetheless authorized the release of the relevant audit upon Grassi's instructions. The Commission censured Grassi, ordered Grassi and Purwin to cease and desist from further violations of Section 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, ordered Grassi to pay $130,000 in disgorgement and $11,510 in prejudgment interest, and imposed civil penalties of $260,000 on Grassi and $20,000 on Purwin. The Commission further barred Purwin from practicing before the Commission as an accountant, with the right to reapply after one year, and ordered Grassi to require additional training for its audit professionals and to hire an independent compliance consultant to review and improve its quality controls.

Material Nonpublic Information

***In re Federated Global Inv. Mgmt. Corp.*, Investment Advisers Act Release No. 4401, 2016 SEC LEXIS 3276 (May 27, 2016).**

The Commission accepted an offer of settlement from Federated Global Investment Management Corp., a registered investment adviser (Federated). The Commission alleged that Federated maintained inadequate policies and procedures for preventing the misuse of material, nonpublic information in connection with its use of outside consultants. Specifically, the Commission alleged that while Federated had written policies and procedures regarding both material nonpublic information and personal trading activities of individuals with access to confidential information, Federated did not establish policies and procedures for identifying outside consultants who should be subject to compliance oversight due to their access to confidential information. The Commission alleged that due to this lack of policies and procedures, a particular consultant was not made subject to the firm's Code of Ethics, and consequently Federated was unaware that the consultant was a member of the boards of four public companies of which the funds sub-advised by Federated were shareholders, and that the consultant purchased and sold for his personal account, at times in close proximity to trades by the funds, the securities of certain companies held by the funds. The Commission, noting that Federated took remedial actions promptly upon becoming aware of the situation in 2010, censured it and ordered it to cease and desist from further violations of Section 204A of the Advisers Act and to pay a $1,500,000 civil penalty.

***In re Artis Capital Management, L.P.*, Investment Advisers Act Release No. 4550, 2016 SEC LEXIS 3868 (Oct. 13, 2016).**

The Commission accepted offers of settlement from Artis Capital Management L.P. (Artis), formerly a registered investment adviser, and Michael W. Harden, formerly employed as a senior analyst at Artis. The Commission alleged that Artis and Harden failed to reasonably supervise an Artis employee (Employee) who procured material nonpublic information from a public company insider and then provided such information to Artis, which subsequently executed profitable trades based on such information. The Commission noted that the Employee had shared information with Harden that should have caused a reasonable supervisor to question whether the Employee had improperly obtained material nonpublic information. The Commission further alleged that Artis failed to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information consistent with the nature of its business. Although Artis had written policies and procedures that prohibited the receipt and use of material nonpublic information, the Commission alleged that Artis failed to adopt policies and procedures to address the particular risk presented by the Employee's frequent interaction with contacts at public companies whose securities Artis traded. The Commission censured Artis and ordered it to pay disgorgement of $5,165,862, prejudgment interest of $1,129,222, and a civil money penalty in the amount of $2,582,991. The Commission suspended Harden from association with any broker-dealer, investment adviser, municipal securities dealer, or other transfer agent for 12 months and ordered Harden to pay a civil money penalty in the amount of $130,000.

Investment Adviser Registration

***In re Saving2Retire, LLC*, Investment Advisers Act Release No. 4457, 2016 SEC LEXIS 3319 (July 19, 2016).**

The Commission instituted proceedings against Saving2Retire, LLC (Saving2Retire), which is an investment adviser located in Sugar Land, Texas, and its sole owner, Marian P. Young (collectively, Respondents). The Commission alleged that Saving2Retire was improperly registered as an investment adviser with the SEC, failed to produce documents to the examination staff, and failed to keep required books and records. Saving2Retire registered under the internet investment adviser exemption despite not qualifying for the exemption, as it did not advise any clients through an interactive website but did advise clients outside of the website. Further, during an examination by the SEC's examination staff, Saving2Retire refused to produce or retain certain client account documents and firm financial records as required by the Advisers Act. As a result of said conduct, the Commission alleged that Respondents willfully violated Section 203A of the Advisers Act and has ordered a public cease-and-desist hearing on the alleged violations.

***In re Bank Leumi le-Israel B.M.*, Investment Advisers Act Release No. 4555, 2016 SEC LEXIS 3911 (Oct. 18, 2016).**

The Commission accepted offers of settlement from Bank Leumi le-Israel B.M., an Israeli corporation holding an Israeli banking license; Leumi Private Bank; and Bank Leumi (Luxembourg) S.A., wholly owned subsidiaries of Bank Leumi le-Israel B.M (collectively, Respondents). The Commission alleged that from 2002 to 2013 Respondents provided cross-border investment advisory and brokerage services to customers in the United States without registering with the Commission as either an investment adviser or a broker-dealer. Specifically, the Commission alleged that among other actions certain employees of Respondents traveled to the United States to solicit new and/or service existing US customers, in part by soliciting or attempting to solicit securities transactions and/or through the provision of investment advice for compensation. The Commission censured Respondents and ordered each of Respondents to cease and desist from further violations of Section 15(a) of the Exchange Act and Section 203(A) of the Advisers Act. The Commission also ordered Respondents to pay disgorgement of $65,700, representing the outstanding unpaid balance from a total disgorgement figure of $3,372,700, less $3,307,000 already disgorged to the US Department of Justice for related conduct, and pay prejudgment interest of $8,713 and a civil money penalty in the amount of $1,517,715.

Misappropriation

***In re Markusen*, Investment Advisers Act Release No. 4406, 2016 SEC LEXIS 3277 (May 31, 2016).**

The Commission initiated administrative proceedings against Markusen, the former CEO of Archer Advisors LLC (Archer), an unregistered investment adviser to private funds (the Funds),

and Cope, a former employee of Archer's. The Commission alleged that Markusen and Cope engaged in a scheme to defraud the Funds of illegitimately claimed research expenses by misrepresenting Cope as an independent research consultant so that he could be paid with investor money. The Commission further alleged that Markusen misappropriated improper research expenses from the Funds and failed to disclose conflicts of interest associated with Cope, an Archer insider, receiving fees and soft dollars from the Funds. The Commission further alleged that Markusen and Cope inflated monthly returns reported to existing and prospective investors by marking the close in the Funds' largest holding, which resulted in Archer collecting additional management fees. The Commission ordered a public hearing before an administrative law judge to make findings on their allegations.

In a related civil action filed by the Commission, the US District Court for the District of Minnesota entered a final judgment against (i) Markusen permanently enjoining him from future violations of Section 17(a) of the Securities Act, Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder, and Section 206(1) and 206(2) of the Advisers Act and (ii) Cope permanently enjoining him from future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and from aiding and abetting any violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Section 206(1) and 206(2) of the Advisers Act. The court ordered Markusen and Archer to pay disgorgement of $630,830, plus prejudgment interest, and a civil penalty of $100,000. The court also ordered Cope to pay disgorgement of $549,285, prejudgment interest of $81,037, and a civil penalty of $100,000. *See also SEC v. Markusen*, No. 14-cv-3395, 2016 U.S. Dist. LEXIS 55419, at *1 (D. Minn. Apr. 25, 2016).

***SEC v. Davis, Jr.*, Litigation Release No. 23554, 2016 SEC LEXIS 1965 (June 2, 2016).**

The Commission accepted a partial offer of settlement from Davis, the owner and operator of an unregistered investment adviser. The Commission's allegations relate to Davis's management of two unregistered pooled investment vehicles (the Funds). The Commission alleged that there was no exemption from registration available for the Funds' securities and yet no registration statement was filed or in effect for such securities. The Commission further alleged that Davis communicated to investors that he planned to invest their money in "hard assets," such as real estate or mineral rights, but instead entered into business transactions with unregistered pooled investment vehicles that he owned and/or controlled, and failed to disclose this conflict of interest to all investors. The Commission further alleged that Davis transferred money he raised from investors into bank accounts he controlled to satisfy business expenses that were not related to the investment strategy of the Funds, without disclosing it to investors. Finally, the Commission alleged that Davis falsely reported to investors that their investments were growing based on speculative valuations and, as a result, he received management fees that were in excess of what he was entitled to under the Funds' offering materials. The Commission alleged that Davis violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, as well as Sections 5 and 17(a) of the Securities Act and Section 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. The Commission ordered Davis to pay disgorgement plus interest and civil penalties, subject to the approval and determination by the court at a later date. Further, without admitting or denying the allegations, Davis agreed to a partial settlement that barred him from any further sale of

securities in a pooled investment vehicle as well as from future violations of antifraud and securities registration provisions of the federal securities laws. The Commission also ordered Davis to cooperate with a court-appointed receiver.

***In re Augustine Capital Management, LLC*, Investment Advisers Act Release No. 4591, 2016 SEC LEXIS 4709 (Dec. 20, 2016).**

The Commission instituted administrative and cease-and-desist proceedings against Augustine Capital Management, LLC, an unregistered investment adviser owned by three principals (together, Respondents). Respondents advise a private fund (the Fund). Following an investigation, the Division of Enforcement (the Division) alleged that Respondents caused the Fund to engage in conflicted transactions without providing disclosure to, or obtaining the consent of, the Fund's investors. Specifically, the Division alleged that Respondents invested in and lent money on behalf of the Fund to two entities in which they had an interest. Respondents also lent themselves money from the Fund in order to finance an investment in a business venture; when the venture failed and the loan went into default, the Fund internalized the resulting losses. The Division alleged that Respondents actively concealed these investments and loans from investors, which investments and loans were not authorized under the Fund's offering documents. Further, the Division alleged that Respondents collected nearly $1 million in investor funds by charging the Fund for all of the manager's expenses (including personal salaries), in contravention of the Fund's offering documents, and even though the principal Respondents were themselves investors in the Fund, they exempted themselves and certain of their relatives who were investors in the Fund from paying their pro rata shares of employee salaries. The Division also alleged that Respondents did not form separate partnership interest classes for the Fund, as provided in the private placement memorandum; actively concealed and misrepresented the Funds' losses in communications to investors; and denied investor redemption requests. The Division alleged that these actions violated the anti-fraud provisions of the Advisers Act. The Commission ordered that an evidentiary hearing be convened, and required that Respondents file an answer to the Division's allegations.

Mutual Fund Share Class Selection

***In re Everhart Financial Group, Inc.*, Investment Advisers Act Release No. 4314, 2016 SEC LEXIS 185 (Jan. 14, 2016).**

The Commission accepted an offer of settlement by the Everhart Financial Group and its principals (together, Respondents) for violations of the anti-fraud provisions of the Investment Advisers Act in connection with investments Everhart Financial Group made on behalf of advisory clients into a single family of mutual funds. The Commission alleged that Respondents nearly always had clients invest in a share class offered by the fund complex that charged 12b-1 fees, which were paid back to Respondents' principal owners, who were also registered representatives of a broker-dealer firm registered with the Commission. In doing so, the Commission alleged that Respondents violated Advisers Act Section 206(2) and 206(4) by creating a conflict of interest that they did not adequately disclose to clients, and failing to fulfill their duty to seek best execution for client transactions by favoring share classes that charged 12b-1 fees. The Commission also alleged that Respondents caused several other compliance

failures, including failure to conduct an annual compliance review for a number of years pursuant to Advisers Act Rule 206(4)-7, and issuing insufficient disclosures regarding the receipt of 12b-1 fees. The Commission censured Respondents and ordered them to cease and desist from committing or causing any violations of Sections 204, 206(2), 206(4), and 207 of the Advisers Act and Rules 204-3(a), 204-3(b)(1) and (2), and 206(4)-7 thereunder. The Commission ordered Respondents to pay disgorgement of $201,986 and prejudgment interest of $23,423 as well as cumulative civil money penalties of $140,000, and to retain the services of an independent compliance consultant.

***In re Royal Alliance Associates, Inc.*, Investment Advisers Act Release No. 4351, 2016 SEC LEXIS 1027 (Mar. 14, 2016).**

The Commission accepted an offer of settlement from Royal Alliance Associates, Inc., SagePoint Financial, Inc., and FSC Securities Corporation (together, Respondents), each indirectly owned by American International Group, Inc. (AIG). The Commission alleged that Respondents breached their fiduciary duty under Section 206 of the Advisers Act by having advisory clients invest in mutual fund share classes with 12b-1 fees when a lower-fee share class of the same fund was otherwise available. Respondents, in their capacity as broker-dealers, each received the 12b-1 fees paid by the funds in which such clients were invested. The Commission alleged that Respondents did not adopt any compliance policies and procedures governing mutual fund share class selection, and failed to disclose in their Forms ADV or otherwise that they had a conflict of interest due to the financial incentive to place advisory clients in share classes that resulted in higher fees for Respondents. The Commission also alleged that Respondents failed to monitor advisory accounts for inactivity or "reverse churning," as required under their compliance policies and procedures, to ensure that a wrap fee program (e.g., one with a single fee inclusive of trading and advisory costs) was appropriate for those clients who traded infrequently. The Commission censured Respondents and ordered each to cease and desist from further violations of Sections 206(2), 206(4), and 207 of the Advisers Act and Rule 206(4)-7 thereunder. Respondents were further ordered to retain an independent compliance consultant, and to jointly and severally pay disgorgement of $1,956,460 and prejudgment interest of $93,399, and a civil money penalty of $7,500,000.

***In re Alison, LLC*, Investment Advisers Act Release No. 4468, 2016 SEC LEXIS 2946 (Aug. 2, 2016).**

The Commission instituted proceedings against Alison, LLC, a registered investment adviser, and Stephen D. Alison, its sole owner and control person (together, Respondents), alleging violations of Sections 206(2), 207, and 204(a) of the Advisers Act. The Commission alleged that for more than three years, during a time when they had escalating financial difficulties, Respondents generated approximately 8.3% to 11.2% of the revenue produced from Alison LLC's advisory clients from 12b-1 fee payments that were charged to clients by third parties. These fees were ultimately paid to Stephen Alison out of client assets. The Commission alleged that Alison LLC failed to disclose to clients that cheaper share classes, which did not pay the 12b-1 fees but had identical holdings, were available. The Commission alleged that Respondents did not disclose this conflict of interest and misrepresented in Alison LLC's Forms ADV and updating amendments that Alison LLC did not receive 12b-1 fee payments. In

addition, the Commission alleged that Respondents repeatedly failed to produce required books and records to the Commission's examination staff. The Commission also alleged that Respondents failed to include disclosure in Alison LLC's Form ADV regarding its distressed financial condition, which was reasonably likely to impair its ability to meet contractual commitments to clients. The Commission ordered that public administrative and cease-and-desist proceedings be instituted. Such proceedings are pending.

Performance Advertising

***In re Peter Kuperman, L.L.C.*, Investment Advisers Act Release No. 4323, 2016 SEC LEXIS 353 (Jan. 28, 2016).**

The Commission accepted an offer of settlement from QED Benchmark Management, L.L.C. (QED) and its founder and principal Kuperman. The Commission alleged that Kuperman, acting on behalf of QED, fraudulently marketed and offered interests in a private investment fund (the Fund) based on promises to follow a scientific stock selection strategy, while in practice repeatedly deviating from that strategy. When deviations from this strategy resulted in heavy losses, the Commission alleged that Kuperman misled current and prospective investors about those losses by marketing the fund using purported historical results that contained hypothetical performance figures. Kuperman also failed to disclose to investors that he had invested most of the Fund's assets in a single penny stock for which he had a conflict of interest. The Commission further alleged that Kuperman marketed the Fund using unsupported valuations of portfolio assets, and made a number of misleading statements to current investors about the health and liquidity of the Fund. The Commission censured and enjoined Kuperman and QED from further violations of Section 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder; Section 17(a) of the Securities Act; and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The Commission ordered that Kuperman be barred from association, with the right to reapply. The Commission additionally ordered Kuperman to pay disgorgement of $2,877,000 and a civil penalty of $75,000.

***In re Cantella & Co.*, Investment Advisers Act Release No. 4338, 2016 SEC LEXIS 3262 (Feb. 23, 2016).**

The Commission accepted an offer of settlement from Cantella & Co. (Cantella) for alleged misstatements made to certain of its clients who were invested in a model investment strategy developed by F-Squared Investments, Inc. (F-Squared). As model manager for the investment strategy, F-Squared was alleged to have provided Cantella with inaccurate performance information on the strategy, including hypothetical and back-tested performance figures that were materially inflated. The Commission alleged that Cantella took insufficient steps to confirm the accuracy of the historical data and other information provided by F-Squared, and failed to obtain sufficient documentation that substantiated F-Squared's claims. As a result, the Commission alleged that Cantella violated Rule 206(4)-1(a)(5) under the Advisers Act for publishing, circulating, and distributing advertisements that contained the misleading performance information provided by F-Squared. The Commission also alleged that Cantella violated Section 204(a) of the Advisers Act and Rule 204-2(a)(16) thereunder by not making

and keeping records necessary to form the basis for, or demonstrate the calculation of, advertised performance figures. The Commission ordered Cantella to cease and desist from further violations of the federal securities laws, and ordered it to pay a civil money penalty of $100,000.

***In re Shamrock Asset Mgmt. LLC*, Investment Advisers Act Release No. 4496, 2016 SEC LEXIS 3020 (Aug. 25, 2016); *In re Schneider Downs Wealth Mgmt. Advisors, LP*, Investment Advisers Act Release No. 4497, 2016 SEC LEXIS 3021 (Aug. 25, 2016); *In re Prospera Fin. Serv., Inc.*, Investment Advisers Act Release No. 4498, 2016 SEC LEXIS 3022 (Aug. 25, 2016); *In re Banyan Partners LLC*, Investment Advisers Act Release No. 4499, 2016 SEC LEXIS 3023 (Aug. 25, 2016); *In re HT Partners*, Investment Advisers Act Release No. 4500, 2016 SEC LEXIS 3024 (Aug. 25, 2016); *In re Ladenburg Thalmann Asset Mgmt. Inc.*, Investment Advisers Act Release No. 4501, 2016 SEC LEXIS 3025 (Aug. 25, 2016); *In re J.J.B. Hilliard, W.L. Lyons, LLC*, Investment Advisers Act Release No. 4502, 2016 SEC LEXIS 3026 (Aug. 25, 2016); *In re Executive Monetary Mgmt., LLC*, Investment Advisers Act Release No. 4503, 2016 SEC LEXIS 3027 (Aug. 25, 2016); *In re Risk Paradigm Grp., LLC*, Investment Advisers Act Release No. 4504, 2016 SEC LEXIS 3028 (Aug. 25, 2016); *In re Constellation Wealth Advisors LLC*, Investment Advisers Act Release No. 4505, 2016 SEC LEXIS 3029 (Aug. 25, 2016); *In re BB&T Secs., LLC*, Investment Advisers Act Release No. 4506, 2016 SEC LEXIS 3030 (Aug. 25, 2016); *In re Congress Wealth Mgmt. LLC*, Investment Advisers Act Release No. 4507, 2016 SEC LEXIS 3031 (Aug. 25, 2016); *In re Assetmark, Inc.*, Investment Advisers Act Release No. 4508, 2016 SEC LEXIS 3032 (Aug. 25, 2016).**

The Commission accepted offers of settlement from 13 registered investment advisers (each, a Respondent and together, Respondents). The Commission alleged that Respondents had made misstatements to certain clients, including clients with separately managed accounts invested in a strategy offered by an unaffiliated investment management firm, F-Squared, in negligent reliance on F-Squared's false claims about the strategy's exceptional performance over the 2001-2008 period. Specifically, the Commission alleged that Respondents' advertisements of the strategy failed to disclose that the performance figures were hypothetical and back tested, and contained performance figures that had been miscalculated by F-Squared, resulting in substantially inflated performance figures. The Commission alleged that Respondents failed to have a reasonable basis to believe the accuracy of F-Squared's statements regarding the strategy's performance and performance-related claims, having taken insufficient steps to confirm the accuracy of the performance data and not having obtained adequate documentation that would have substantiated F-Squared's assertions. Furthermore, Respondents allegedly failed to maintain adequate books and records necessary to substantiate the calculation of the strategy's advertised performance. Without admitting or denying the findings, Respondents consented to the Commission's order to cease and desist from further violations of Sections 204(a) and 206(4) of the Advisers Act and Rules 204-2(a)(16) and 206(4)-1(a)(5) thereunder, and to each pay a civil penalty in an amount based upon the fees each Respondent earned from the relevant strategy. The penalties assessed against Respondents ranged from $100,000 (against seven of the Respondents) to $500,000 (against Assetmark, Inc.) with a penalty of $200,000 assessed against each of the remaining five Respondents

(BB&T Securities, Banyan Partners, Hilliard Lyons, Ladenburg Thalmann Asset Management, and Shamrock Asset Management).

After Respondents had stopped, at F-Squared's instruction, advertising the strategy's 2001-2008 performance, the Commission instituted a settled fraud action against F-Squared in which F-Squared admitted, among other things, to making the materially false claims regarding the performance of the strategy in question. *See In re F-Squared Inv., Inc.*, Investment Advisers Act Release No. 3988 (Dec. 22, 2014).

Principal Trades

In re Moloney Securities Co., Inc., Investment Advisers Act Release No. 4542, 2016 SEC LEXIS 3722 (Sept. 30, 2016).

The Commission accepted an offer of settlement from Moloney Securities Co. Inc. (Moloney), formerly a registered investment adviser and a registered broker-dealer, and Joseph Ronald Medley, Jr. (Medley), the CIO and President of Moloney who has been associated with Moloney as both a registered representative and as an investment advisory representative. The Commission alleged that, despite receiving two prior deficiency letters from the Commission's Office of Compliance Inspections and Examination regarding failures relating to its written compliance policies and procedures, the implementation of such policies and procedures and the manner in which Moloney conducted principal transactions, the issues were ongoing, which resulted in a third deficiency letter alleging that Moloney failed to (i) properly conduct principal transactions, (ii) accurately disclose its practices regarding principal transactions in its Form ADV, and (iii) implement compliance policies and procedures regarding principal transactions and best execution. In determining to accept the settlement offer, the Commission considered Moloney's remedial acts, including the fact that Moloney reimbursed certain clients for noncompliant principal transactions, segregated brokerage and advisory accounts, and hired a compliance consultant to revise and enhance its compliance policies and procedures and also hired an experienced CCO. Moloney also undertook to hire an independent compliance consultant. The Commission censured Moloney and ordered it to cease and desist from committing or causing any violations and future violation of Sections 206(2), 206(3), 207, and 206(4) of the Advisers Act and Rule 204-4(7) promulgated thereunder. The Commission further ordered Moloney to pay a civil money penalty in the amount of $34,000. Medley was ordered to pay a civil money penalty in the amount of $7,500.

Privacy and Data Security

In re Morgan Stanley Smith Barney LLC, Investment Advisers Act Release No. 4415, 2016 SEC LEXIS 2142 (June 8, 2016).

The Commission accepted an offer of settlement from Morgan Stanley Smith Barney LLC (MSSB). The Commission alleged that MSSB failed to adopt written policies and procedures reasonably designed to protect customer records and information. The Commission alleged that Marsh, an MSSB employee, misappropriated data of approximately 730,000 customer

accounts by downloading and transferring it to a personal server at his home. Portions of this stolen data were posted to internet sites with an offer to sell additional data in exchange for digital currency. The Commission further alleged that although MSSB had adopted written policies and procedures to protect customer data, they were not reasonably designed to safeguard the data as required by Rule 30(a) of Regulation S-P. The Commission alleged that MSSB failed to (i) adequately restrict and monitor employee access to confidential customer data and (ii) effectively audit or test its authorization models. In determining to accept MSSB's offer of settlement, the Commission considered the remedial efforts promptly undertaken by MSSB, as well as its cooperation provided to the Commission staff. The Commission censured MSSB and ordered it to cease and desist from further violations of Rule 30(a) of Regulation S-P. The Commission further ordered MSSB to pay a civil money penalty of $1 million.

Senior Investors

***SEC v. Joseph Andrew Paul*, Litigation Release No. 23510, 2016 SEC LEXIS 1223 (Apr. 4, 2016).**

The Commission filed a complaint in the US District Court for the Eastern District of Pennsylvania against Paul and Ellis, co-founders of a formerly registered investment advisory firm; Ellison, a formerly registered representative associated with numerous securities firms; and Quay (a/k/a Jameson), a disbarred attorney previously convicted of securities fraud. The Commission's complaint alleged that Paul and Ellis lied about the investment track record of their advisory firm, including by cutting and pasting performance numbers from another firm's website, and that Quay and Ellison used these materials to mislead and solicit investors, including senior citizens who responded to a mass-mailing offer of a free dinner. The Commission's complaint further alleged that Paul and Ellis stole investors' money, and that Quay and Ellison concealed Quay's real name, instead using a fictitious name to prevent prospective investors from researching his history of tax fraud conviction and disbarment. The Commission requested that the court permanently enjoin the defendants from further violations of Section 17(a) of the Securities Act, Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rule 206(4)-1(a)(5) thereunder, and sought disgorgement and civil penalties.

***SEC v. Cody*, Litigation Release Nos. 23702 and 23710, 2016 SEC LEXIS 4771 (Dec. 22, 2016).**

The Commission filed a complaint in federal court in Boston charging investment adviser and broker representative Richard G. Cody and his firm Boston Investment Partners, LLC, through which he provides investment advisory and brokerage services (collectively, Respondents). The Commission alleged that Respondents made misrepresentations to three clients regarding the true value of their retirement accounts. Cody allegedly took various steps to conceal a substantial decline in the value of the retired clients' accounts over a 12-year period, for example, by transferring in funds from other sources when there were insufficient funds for distribution and fabricating tax forms. The Commission alleged that Respondents' deceptive acts caused the retirees to believe that their accounts were secure when they were not. The

Commission alleges violations of Section 10(b) of the Exchange Act and Section 206(1) and 206(2) of the Advisers Act and seeks disgorgement of ill-gotten gains plus interest and penalties as well as permanent injunctive relief. The matter is pending.

Valuation

***In re Calvert Investment Management, Inc.*, Investment Advisers Act Release No. 4554, 2016 SEC LEXIS 3910 (Oct. 18, 2016).**

The Commission accepted an offer of settlement from Calvert Investment Management, Inc. (Calvert), a registered investment adviser, for alleged improper fair valuation of the securities held by certain registered investment companies managed by Calvert (the Funds), which led the Funds to be priced at an incorrect NAV. The Commission alleged that this resulted in the Funds executing shareholder transactions at the wrong NAV and stating inaccurate performance figures. The Commission further alleged that Calvert failed to accurately remedy the harm to Fund investors in accordance with Calvert's NAV error correction procedures and failed to disclose this procedural deviation to investors. The Commission also alleged that Calvert caused a violation of Section 17(a) of the Investment Company Act when a Calvert-advised Fund engaged in a prohibited transaction with another Calvert sub-advised fund and where Calvert did not timely report the transaction to the Fund's board. In determining whether to accept the settlement offer, the Commission considered Calvert's remedial efforts, including the fact that Calvert enhanced its compliance and fair valuation policies and procedures, revised the fair value for each of the securities in question, thereby updating the affected Funds' portfolios with the newly calculated prices during the relevant period, and adjusting the NAVs for the relevant period for each affected Fund. The Commission censured Calvert and ordered Calvert to cease and desist from further violations of Section 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, and Sections 17(a) and 34(b) of the Investment Company Act and Rules 22c-1 and 38a-1 thereunder. Calvert was also ordered to pay a civil money penalty in the amount of $3,900,000.

***In re Pacific Investment Management Company LLC*, Investment Advisers Act Release No. 4577, 2016 SEC LEXIS 4453 (Dec. 1, 2016).**

The Commission accepted an offer of settlement from Pacific Investment Management Company LLC (PIMCO), a registered investment adviser. The Commission alleged that PIMCO pursued a strategy that caused the PIMCO Total Return Exchange-Traded Fund, an actively managed exchange-traded fund (the Fund), to overvalue its portfolio and thus fail to price Fund shares at their NAV. The Commission alleged that PIMCO systematically purchased "odd lots" of nonagency mortgage-backed securities, which traded at a discount to "round lots," for the Fund, and then used a third-party pricing vendor's valuations of the odd lot positions at the higher round lot price. The Commission further alleged that, based on this pricing process, PIMCO lacked a reasonable basis to believe that it could obtain the higher price upon exit for 43 positions. The Commission further alleged that PIMCO failed to address odd lot pricing in its pricing policy, failed to elevate the issue in accordance with that policy, negligently made misleading disclosures regarding Fund performance to investors that did not discuss the odd lot

strategy, and failed to disclose the odd lot strategy and its impact to the Fund's board of trustees. The Commission censured PIMCO and ordered it to cease and desist from further violations of Section 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder, and Section 34(b) of the Investment Company Act and Rule 22c-1 thereunder. The Commission further ordered PIMCO to pay $1,331,629 in disgorgement, $198,179 in prejudgment interest, and a civil penalty of $18,300,000, and to hire an independent compliance consultant to review and improve PIMCO's policies and procedures with respect to the pricing and valuation of odd lots and the elevation of pricing issues.

Wrap Fee Programs

***In re WFG Advisors, L.P.*, Investment Advisers Act Release No. 4441, 2016 SEC LEXIS 2996 (June 28, 2016).**

The Commission accepted an offer of settlement from WFG Advisors, L.P., a registered investment adviser based in Dallas with branch offices throughout the United States (WFG). The Commission alleged that WFG represented that clients participating in its wrap account program would not be charged commissions in connection with alternative investments. Nevertheless, from January 2011 through August 2013 clients were in fact charged a commission in addition to an advisory fee. During approximately the same period, WFG also engaged in securities transactions with advisory clients on a principal basis through its broker-dealer without providing prior written disclosures or obtaining consent from the clients. The Commission alleged that WFG failed to adopt policies and procedures reasonably designed to ensure that advisory fees were calculated as represented. The Commission alleged that WFG violated Sections 206(2), 206(3), 206(4), and 207 of the Advisers Act, and Rule 204(4)-7 thereunder. The Commission ordered WFG to cease and desist from further violations of Sections 206(2), 206(3), 206(4), and 207 of the Advisers Act and Rule 206(4)-7 thereunder. The Commission also censured WFG and ordered it to pay a civil penalty of $100,000.

***In re RiverFront Investment Group, LLC*, Investment Advisers Act Release No. 4453, 2016 SEC LEXIS 3285 (July 14, 2016).**

The Commission accepted an offer of settlement from RiverFront Investment Group, LLC (RiverFront), which is a registered investment adviser that served as a subadviser to clients in various wrap fee programs created by a number of different sponsors. The Commission alleged that RiverFront made materially misleading disclosures in its Forms ADV concerning the frequency that it traded in a manner that resulted in additional, insufficiently disclosed transaction costs to advisory clients in wrap fee programs that were not covered by the annual wrap fee. Specifically, when RiverFront first began serving as a subadviser to advisory clients in wrap fee programs, it disclosed that it may trade away from the wrap free program's designated broker-dealer in an effort to obtain best execution on behalf of its clients, but that it would "generally" execute trades through the designated broker-dealers, which it did. However, the Commission alleged that beginning in late 2009 RiverFront substantially increased the amount it was trading away. RiverFront claimed that trading away resulted in improved execution prices. However, the Commission alleged that by trading away, RiverFront caused its

clients to pay millions of dollars' worth of transaction costs that were not covered by the annual wrap fee, and not adequately disclosed to clients. The Commission alleged that RiverFront violated Sections 204(a) and 207 of the Advisers Act and Rule 204-1(a) thereunder. The Commission ordered RiverFront to cease and desist from further violations of Sections 207 and 204(a) of the Advisers Act and Rule 204-1 promulgated thereunder. The Commission also censured RiverFront and ordered it to pay a civil money penalty of $300,000.

In re Raymond James & Assoc., Inc., **Investment Advisers Act Release No. 4525, 2016 SEC LEXIS 3369 (Sept. 8, 2016).**

The Commission accepted an offer of settlement from Raymond James & Associates, Inc. (Raymond James), a registered investment adviser, relating to allegations regarding compliance failures associated with its wrap fee program. Specifically, the Commission alleged that Raymond James failed to adopt and implement policies and procedures reasonably designed to determine the amount of commissions its clients were being charged when subadvisers "traded away" with a broker-dealer outside the wrap fee program. Within Raymond James's wrap fee program, clients selected a participating subadviser to develop a model portfolio and pay a negotiable wrap fee as well as any commissions on equity transactions executed by unaffiliated broker-dealers. Although Raymond James's ADV did disclose that subadvisers may "trade away" with broker-dealers other than the broker-dealer associated with the program, resulting in commission charges in addition to the wrap fee, the Commission alleged that Raymond James did not obtain information regarding the amount of commissions charged for such transactions or whether that amount was material. Consequently, the Commission alleged that Raymond James (i) failed to adopt and implement policies and procedures reasonably designed to allow Raymond James to determine whether the wrap fee program or particular subadvisers were suitable for its prospective and existing advisory clients (such as collecting, tracking, and disclosing information regarding commissions associated with trading away), and (ii) failed to adopt and implement procedures to communicate the subadvisers' trading away practices and associated costs to wrap fee program clients, resulting in clients not having adequate information to negotiate meaningfully the wrap fee with Raymond James, assess the total cost of the wrap fee program, and determine which subadviser(s) to select. Raymond James undertook to properly disclose trading away practices and all associated costs as well as update its policies and procedures, conduct periodic reviews, and report and certify all these undertakings. The Commission ordered Raymond James to cease and desist from further violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder and pay a penalty of $600,000.

In re Robert W. Baird & Co., Inc., **Investment Advisers Act Release No. 4526, 2016 SEC LEXIS 3370 (Sept. 8, 2016).**

The Commission accepted an offer of settlement from Robert W. Baird & Co., Inc. (Baird), a registered investment adviser, relating to allegations regarding compliance failures associated with its wrap fee program. Specifically, the Commission alleged that Baird did not track or monitor which subadvisers were trading away from the broker-dealer associated with the wrap fee program, how often those subadvisers were trading away, or the specific costs associated with such trade-aways. The Commission alleged that Baird began collecting cost information

from subadvisers who were trading away in August 2013, but failed to adopt or implement any policies and procedures designed to provide information to Baird's clients and financial advisors about the amount of the additional costs of trading away. Without the availability of such information, Baird's financial advisors could not separately consider the costs associated with trading away practices when conducting their initial and periodic suitability analyses for advisory clients in wrap fee programs whose funds were managed by certain subadvisors. The Commission ordered Baird to cease and desist from further violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder and pay a penalty of $250,000.

Financial Industry Regulatory Authority

PERSONNEL CHANGES

The year 2016 saw several significant changes to FINRA's leadership. Following its announcement in October 2015 that Chairman and Chief Executive Officer Richard Ketchum would retire, in June 2016 the FINRA Board of Governors announced that it appointed Robert W. Cook as President and CEO effective the second half of 2016. FINRA contemporaneously announced that it would move to a nonexecutive chair structure for its board governance. Prior to his appointment Mr. Cook served as Director of the Division of Trading and Markets of the SEC from 2010 to 2013 and spent many years in private practice. Mr. Ketchum had been chairman and CEO since 2009.

FINRA announced in July 2016 that its Board of Governors elected John J. (Jack) Brennan, Vanguard Group Chairman Emeritus and Senior Advisor, as FINRA Chairman effective August 15, 2016. Mr. Brennan succeeds Mr. Ketchum as Chairman and, prior to this role, served as FINRA's Lead Governor since 2011. Before FINRA, Mr. Brennan served on the Board of Governors of the National Association of Securities Dealers.

In December 2016, FINRA's Chief of Enforcement, J. Bradley (Brad) Bennett, announced he would be leaving FINRA in February 2017. Mr. Bennett served in the position for nearly six years. Susan Schroeder, Deputy Head of Enforcement, was named Acting Head of Enforcement while FINRA searches for a replacement for Mr. Bennett.

FINRA announced in January 2017 that it had named Gregory J. Dean, Jr. as its Senior Vice President for the Office of Government Affairs effective January 30, 2017. Mr. Dean was previously a Senior Director in Regulatory & Government Affairs at the Royal Bank of Canada and prior to that served in a variety of roles on Capitol Hill. He also has served as an attorney in the Office of General Counsel at NASD Regulation and in the Office of Advocacy at the US Small Business Administration.

ENFORCEMENT STATISTICS[59]

FINRA recently announced its enforcement program statistics for 2016. Last year, FINRA brought 1,434 new disciplinary actions and resolved 1,093 formal actions. In addition, FINRA barred 517 people and suspended 727 individuals. FINRA also referred 785 fraud and insider trading cases to the SEC and other agencies for prosecution in 2016; this was a slight decrease from the more than 800 such matters referred by FINRA in 2015.

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[59] See the current Statistics page on the FINRA website, http://www.finra.org/newsroom/statistics.

With respect to penalties and restitution, last year FINRA levied $176.3 million in fines and ordered $27.9 million to be paid in restitution to harmed investors.

The below chart illustrates the trends in FINRA's statistics over the last five years.

	2012	2013	2014	2015	2016	Trend
New Disciplinary Actions Filed	1,541	1,535 (↓0.4%)	1,397 (↓9%)	1,512 (↑8.2%)	1,434 (↓5.2%)	
Formal Actions Resolved	1,370	1,307 (↓4.6%)	1,110 (↓15%)	1,252 (↑13%)	1,093 (↓13%)	
Firms Expelled	30	24† (↓20%)	18 (↓25%)	31 (↑72%)	24 (↓23%)	
Firms Suspended	0	38†	5 (↓87%)	25 (↑400%)	26 (↑4%)	
Individuals Barred	294	429† (↑46%)	481 (↑12%)	496 (↑3.1%)	517 (↑4.2%)	
Individuals Suspended	549	670† (↑22%)	705 (↑5.2%)	736 (↑4.4%)	727 (↓1.2%)	
Fines	**$68 Million**	**$60 Million** (↓12%)	**$134 Million** (↑123%)	**$95 Million** (↓29%)	**$176.3 Million** (↑86%)	
Total Ordered in Restitution	**$34 Million**	**$9.5 Million** (↓72%)	**$32.3 Million** (↑240%)	**$96.6 Million** (↑199%)	**$27.9 Million** (↓71%)	

† Includes sanctions resulting from expedited proceedings.

ENFORCEMENT DEVELOPMENTS

There were several FINRA enforcement developments of note last year.

Rulemaking by Enforcement

In recent remarks, Mr. Cook stated that he believed that, "philosophically . . . [FINRA] shouldn't be rulemaking by enforcement." Mr. Cook stated that he had a particular interest in FINRA's enforcement program and wanted to "take a fresh look at it, and to ask . . . what is the process by which we create an enforcement action. What kind of steps we go through and how do we think about that."[60]

Firm Culture and Sanctions Analyses

By way of background, in early 2016 FINRA began to undertake an extensive project to review firm culture. (See below for a description of the firm culture Targeted Examination letter.) In April 2016, Mr. Bennett publically described the process by which FINRA was "formalizing [its] assessment of firm culture." According to Mr. Bennett, FINRA was focusing on "the frameworks that firms use to develop, communicate and assess conformance with their culture." Mr. Bennett stated that FINRA was looking at five indicators of a firm's culture: "(1) whether control functions are valued within the organization; (2) whether policy or control breaches are tolerated; (3) whether the organization seeks to proactively identify risk and compliance events; (4) whether supervisors are effective role models of firm culture; and (5) whether firms identify and address sub-cultures – such as the culture at a branch office, a trading desk or an investment banking department – that may not conform to the overall culture."[61] To date, FINRA has not published its observations derived from its firm culture review.

Interestingly, from an enforcement perspective, Mr. Bennett noted that the foregoing factors are used by the Staff in determining the sanctions sought by FINRA in a disciplinary action.

Factors Considered for Individual Liability

Mr. Bennett also discussed individual liability in his April remarks, stating that FINRA looks at potential individual liability in each case. Among the factors FINRA considers in its analysis are "(1) recidivism; (2) extent the individual was involved in the wrong-doing; (3) whether the individual has taken corrective measure; (4) the extent of the underlying conduct and degree of investor harm; and (5) willful blindness or intentional participation in the violations." "In each and every case," Mr. Bennett stated, "it's [a] facts and circumstances analysis of conduct."[62] At

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60 Bruce Kelly, "FINRA's new chief Robert Cook vows to take a 'fresh look' at enforcement," Investment News (Jan. 24, 2017), http://www.investmentnews.com/article/20170124/FREE/170129982/finras-new-chief-robert-cook-vows-to-take-a-fresh-look-at.

61 "Remarks From the SIFMA Anti-Money Laundering and Financial Crimes Conference," J. Bradley Bennett, https://www.finra.org/newsroom/speeches/040516-remarks-sifma-anti-money-laundering-and-financial-crimes-conference (Apr. 5, 2016).

62 *Id.*

a later date, Mr. Bennett explained, however, that FINRA is "looking for reasons not to name compliance officers . . . . It's not something we do lightly; it's something we wish we never did at all."[63]

New Spoofing and Layering Report Cards

In April, FINRA released its first monthly cross-market equities supervision report cards to identify and stop spoofing and layering activity. The report cards, distributed when FINRA identifies potential problematic activity, provide a summary of the identified market activity, detailed information about the exceptions, and any trends in the preceding six months. Although the report cards are intended to be a preventive measure, FINRA will continue its standard surveillance protocols in this area. The Staff will also continue to take enforcement action or refer activity to the SEC if a participant is outside of FINRA's jurisdiction.

Changes to NAC Composition and the Balloting Process

In June 2016, the SEC approved FINRA's proposed rule change to expand the size of the National Adjudicatory Council (NAC) to 15 members. (The NAC reviews certain FINRA disciplinary proceedings.) The rule also requires that (1) NAC have more nonindustry members (including at least three public members) than industry members; (2) NAC member terms are increased from three to four years; and (3) the election balloting process is streamlined to align it with the process currently used for elections involving the FINRA District Committees.[64]

Right to Request Arbitration

In July 2016, FINRA released Regulatory Notice 16-25 to reiterate its views on its arbitration rules. The notice stated that customers are permitted to request arbitration in FINRA's arbitration forum at any time, and that right may not be superseded or disclaimed by any separate agreement. FINRA also declared that member firms may not require an associated person to waive his or her right to arbitration. The notice emphasized that "a member firm's failure to comply with FINRA's rules relating to predispute arbitration agreements with customers or predispute agreements with associated persons, or failure to submit a dispute to FINRA arbitration as required by FINRA's rules, would violate FINRA rules, and member firms may be subject to disciplinary action."

FINRA AND THE SEC

Coordination

In his April remarks, Mr. Bennett conveyed that FINRA, the SEC, and other regulators "are taking steps to reduce regulatory overlap and duplication." Specifically, Mr. Bennett stated that

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[63] Carmen Germaine, "FINRA Enforcement head Says More AML Cases to Come," LAW360 (May 24, 2016).

[64] *See* Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to Composition, Terms of Members and Election Procedures for the National Adjudicatory Counsel, Release No. 34-78094; File No. SR-FINRA-2016-014, Fed. Reg. 81,121 (June 23, 2016).

FINRA increased its "coordination and information sharing with the SEC's Enforcement Division and the SEC's Office of Compliance Inspections and Examinations," such as sharing information "on cycle examinations, branch examinations and investigations of individual registered representatives, and significant investigations." Further, Mr. Bennett stated that "FINRA and OCIE share information for specific examinations to avoid overlap and duplications. Our staffs confer when both organizations are focused on the same firm to ensure that we have distinct interests. If interests are not distinct, we may defer our matter to OCIE."[65]

FINRA to Be Overseen by a Dedicated SEC Team

In the Keynote Address at the National Society of Compliance Professionals 2016 National Conference in Washington, DC, Marc Wyatt, the then-Director of OCIE, announced that, in conjunction with shifting SEC Staff to cover the expanding investment advisor/investment company examination program, OCIE established a dedicated FINRA inspection team. The team, called the FINRA and Securities Industry Oversight group (FSIO), consists of approximately 45 individuals and is headed by Kevin Goodman. FSIO began its work on October 1, 2016.

TARGETED EXAMINATION LETTERS

In 2016, FINRA issued five Targeted Examination letters on its website, versus one in 2015 and two in 2014. These letters were in the following areas:

Establishing, Communicating, and Implementing Cultural Values

In February 2016, a month after setting forth culture as the first item in its 2016 priorities letter, FINRA announced that it was undertaking a comprehensive review of how firms establish, communicate, and implement cultural values, and analyzing whether cultural values are guiding business conduct. To do so, FINRA indicated its intention to meet with personnel from various areas within firms, including the business, compliance, legal, and risk management areas. Among other things, the letter requested a summary of the key policies and procedures that establish the firms' cultural values, as well as the processes that communicate and implement them. The specific list of requests for the review can be found on FINRA's website.

Mutual Fund Waiver

In May 2016, FINRA posted a letter in connection with its Mutual Fund Waiver Sweep. For the review period of January 1, 2011 through December 31, 2015, the FINRA Staff requested information regarding sales of mutual fund shares to retirement plan and/or charitable accounts, agreements with mutual fund carriers that offered sales charge waivers to eligible accounts, the processes and supervisory controls to ensure sales charge waivers to eligible accounts, and any internal reviews regarding the provision of sales charge waivers. The

[65] "Remarks From the SIFMA Anti-Money Laundering and Financial Crimes Conference," J. Bradley Bennett, https://www.finra.org/newsroom/speeches/040516-remarks-sifma-anti-money-laundering-and-financial-crimes-conference (Apr. 5, 2016).

specific list of requests for the review can be found on FINRA's website. Cases in this area are described in the summaries below.

Nontraded Business Development Companies

In August 2016, FINRA posted a letter announcing that it was conducting an assessment of nontraded Business Development Companies (BDCs). The letter outlined a review of documents and information that covers the period from January 1, 2015 through June 30, 2016. The FINRA Staff requested a list containing information about each BDC offered, including, but not limited to, the role of the firms in the offering, the broker-dealers with related selling agreements, and details regarding any sales of the BDCs by broker-dealers to their customers in initial or follow-on offerings. In addition, FINRA requested copies of any due diligence procedures related to the BDCs and the participating broker-dealers.

Unit Investment Trust Rollover Review

In September 2016, FINRA posted a letter announcing that it was reviewing Unit Investment Trust (UIT) Rollovers. The letter outlined a review of firms' UIT processes and supervision covering the period from January 1, 2014 through June 30, 2016. The FINRA staff requested, among other things, copies of written supervisory procedures, descriptions of exception reports used to follow UIT activity, and information regarding registered representatives that generated the highest number of early rollovers and the associated transactions.

Review of Cross-Selling Programs

In October 2016, FINRA posted a letter announcing that it was conducting an inquiry regarding incentives for broker-dealer employees to cross-sell. The review covers the period from January 1, 2011 through September 30, 2016 and the FINRA Staff requested, among other things, descriptions of any cross-selling programs, the metrics to evaluate employee performance, and revenues. The specific list of requests for the review can be found on FINRA's website.

FINRA'S 2017 REGULATORY AND EXAMINATION PRIORITIES

On January 4, 2017, FINRA published its Annual Regulatory and Examination and Priorities Letter (the 2017 Letter). The 2017 Letter describes the areas FINRA intends to focus on during its 2017 exams.[66] This was the first priorities letter issued under the leadership of the new FINRA President and CEO, Robert Cook. In Mr. Cook's cover letter, he describes two steps FINRA plans to take in the upcoming year: (1) publishing common exam findings; and (2) developing new resources and tools for small firms.

To help guide firms' assessment of risk management policies in order to align with FINRA's priorities in the new year, the below discussion highlights the priorities outlined in the 2017

[66] *See* 2017 Regulatory and Examination Priorities Letter (Jan. 4, 2007), http://www.finra.org/industry/2017-regulatory-and examination-priorities-letter.

Letter, identifying with an asterisk potential new areas of concern for firms as well as recognizing topics that have fallen down (or off) the priority list since 2016.

2017 Priorities

High-Risk and Recidivist Brokers

FINRA will assess firms' hiring and oversight of high-risk and recidivist brokers. FINRA created a dedicated examination team tasked with identifying and investigating such financial advisors. FINRA indicated that it will review whether firms establish a supervisory plan to detect and prevent misconduct by recidivist brokers. FINRA will also assess firms' supervision of branch offices, including firms' branch office examinations and their monitoring systems.

Sales Practices

- Senior Investors: FINRA will review firms' controls to protect senior investors from exploitation and unsuitable advice.
- Product Suitability and Concentration: FINRA will evaluate firms' processes for reasonable-basis and customer-specific suitability reviews. FINRA will also expand its review of how firms monitor recommendations that may result in excess concentration.
- *Excessive and Short-Term Trading of Long-Term Products: FINRA will assess firms' oversight and controls for short-term trading of long-term products.
- *Outside Business Activities and Private Securities Transactions*: FINRA will continue to focus on firms' procedures to evaluate, and their monitoring of, registered persons' proposed outside business activities.
- *Social Media and Electric Communications Retention and Supervision: FINRA will assess firms' compliance with supervisory and record-retention obligations for social media and electronic communication.

Financial Risks

- Liquidity Risk: FINRA will continue to assess firms' liquidity plans, contingency plans, and whether firms conduct appropriate reviews, such as stress tests.
- Financial Risk Management: FINRA will ask select firms to explain how they would react to different stress scenarios, and will determine whether their plans and responses to the stress scenarios are reasonable.
- *Credit Risk Policies, Procedures and Risk Limit Determinations Under FINRA Rule 4210: FINRA will evaluate firms' implementation of the first phase of Rule 4210, which became effective on December 15, 2016.

Operational Risks

- Cybersecurity: FINRA will continue to review firms' programs to limit cybersecurity risks. The assessment may include a review of firms' controls to prevent data loss, how firms handle vendor relationships, and the firms' protections to prevent insider threats.

- *Supervisory Controls Testing: FINRA will evaluate whether firms adequately test their internal supervisory controls and will identify any control breakdowns, such as record-retention issues.

- Customer Protection/Segregation of Client Assets: FINRA will assess whether firms have implemented proper controls and monitoring consistent with SEA Rule 15c3-3 to protect client assets.

- Regulation SHO – Close Out and Easy to Borrow: FINRA will continue to review compliance with SEC Regulation SHO and will evaluate whether firms have a reasonable basis to believe that securities are available to borrow before engaging in short sales.

- Anti-Money Laundering and Suspicious Activity Monitoring: FINRA will assess firms' anti-money laundering programs with a focus on automated trading and money movement surveillance systems.

- *Municipal Advisor Registration: FINRA will review whether firms have registered with both the SEC and MSRB, and whether firms identify all individuals engaged in municipal advisor activity. (This was left off of FINRA's 2016 Priorities Letter, but was a feature of the 2015 Priorities Letter.)

Market Integrity

- Manipulation: FINRA is expanding its surveillance of cross-product manipulation to Exchange Traded Products trading and improper trading strategies.

- Best Execution: FINRA reminds firms of their best execution obligations for customer orders considering technology advances and increased market automation.

- Audit Trail Reporting Early Remediation Initiative and Expansion: FINRA maintains an Audit Trail Reporting Early Remediation Initiative to identify and notify firms of potential equity audit trail issues.

- Tick Size Pilot: The Tick Size Pilot will continue in 2017, and FINRA will analyze the data to assess compliance with the data requirements, and trading and quoting restrictions.

- *Trading Examinations: FINRA will launch a pilot trading examination program to assess the value of targeted examinations of low-volume trading firms that have not been subject to trading examinations.

- Fixed Income Securities Surveillance Program: FINRA continues to enhance its fixed income surveillance program to include additional manipulation-based surveillance patterns. FINRA indicated that it will develop a data integrity program to monitor the accuracy of TRACE data submissions.
- Market Access Rule: FINRA emphasizes that firms must improve compliance with the Market Access rule. FINRA also highlights best practices including memorializing and monitoring pre- and post-trade controls.

Diminished Focus in 2017?

Of arguably equal use to firms may be areas that have "dropped off" the Priorities Letter since last year. The headline priority, "Culture, Conflicts of Interest and Ethics," was noticeably absent from the 2017 Letter. Among other items, the 2017 Letter did not focus on topics such as ETFs, internal audit, client onboarding, transmittal of customer funds, 529 college savings plans, sales charge discounts and waivers, private placements, public offerings, nontraded Real Estate Investment Trusts and Direct Participation Programs, excessive charges to customers in new bond sales, or the Vendor Display Rule.

FINRA ENFORCEMENT ACTIONS

Advertised Trading Volumes

***RBC Capital Markets, LLC*, FINRA AWC No. 2014041377101 (Nov. 3, 2016).**

In a Letter of Acceptance, Waiver and Consent (AWC) with RBC Capital Markets, LLC (RBC), FINRA alleged that, from April 2011 through April 2014, and from November 2002 through December 2014, the firm experienced problems with its order management system, which resulted in the firm significantly overstating or inaccurately stating the advertised aggregate trading volumes transmitted to AUTEX, Bloomberg, and Ullink's NYFIX systems. Specifically, FINRA alleged that a computer coding error caused the firm to advertise the same trading volume multiple times, thereby overstating the volume in at least 350,000 instances across more than 6,000 securities totaling at least 20 billion shares. FINRA also alleged that a computer coding error caused the firm to report the wrong execution dates in some instances. FINRA alleged that RBC had certain supervisory failures, including failing to establish a reasonable supervisory system concerning advertised trade volumes and failing to have adequate written supervisory procedures (WSPs). RBC consented to a censure and a fine of $975,000. FINRA also took into account the firm's cooperation, including that RBC self-reported the violations and took immediate remedial steps.

Alternative Trade System

***Deutsche Bank Securities, Inc.*, FINRA AWC No. 2014042913401 (Dec. 16, 2016).**

In an AWC with Deutsche Bank Securities, Inc.(DBSI), FINRA alleged that the firm failed to disclose to all users of its ATS the availability of all services and features of the system (including the ability to include or exclude counterparties or groups of counterparties against whom orders would execute), despite having indicated on the Form ATS that the firm filed with the SEC that it would provide all ATS users with "identical access to all services and features" of the ATS. As a result, certain clients, including high-frequency trading firms, requested and received services that other clients may not have known were available. FINRA also alleged that DBSI did not have adequate supervisory procedures in place to ensure that it disclosed material information to all users of the firm's ATS. In settlement, DBSI consented to a censure, a fine of $3,250,000, and an undertaking to revise its policies and procedures with respect to the allegations in the AWC.

Anti-Money Laundering

***Raymond James & Associates, Inc., Raymond James Financial Services, Inc., and Linda L. Busby*, FINRA AWC No. 2014043592001 (May 18, 2016).**

FINRA entered into an AWC with Raymond James & Associates, Inc. (RJA), Raymond James Financial Services, Inc. (RJFS), and Linda L. Busby (Busby) (RJA's former anti-money laundering (AML) compliance officer) in which FINRA alleged that, in certain periods from 2002 through February 2013, the firms and Busby failed to develop and implement an AML program that was reasonably designed to detect and report suspicious activity. FINRA further alleged that in light of the firms' growth, there was an inadequate commitment of resources and a failure to establish reasonable procedures and AML programs tailored to each firm's business. Due to the gaps in the firms' procedures, RJA, RJFS, and Busby failed to reasonably investigate red flags. The firms also failed to conduct necessary due diligence, enhanced due diligence, and periodic risk review for foreign financial institutions. According to FINRA, RJFS also failed to establish and maintain an adequate Customer Identification Program. Further, RJFS did not maintain WSPs related to journaling securities between customer accounts and employee-related accounts, and, as a result, an RJFS branch manager failed to detect that a RJFS registered person converted approximately $1 million in customer funds for her own use. In addition, FINRA alleged that in certain instances the firms failed to follow their policy that prohibited trading in low-priced securities until a due diligence review was complete. Finally, the AWC alleged that RJFS failed to have reasonable WSPs with respect to its review of variable annuity exchange transactions and suitability reviews.

In settling this matter, RJA and RJFS consented to censures and $8 million and $9 million fines, respectively. Both firms also agreed to conduct a comprehensive review of the adequacy of their AML and supervisory policies, systems, procedures and training and submit a compliance certification to FINRA. (The AWC noted that RJFS had previously agreed in 2012 to review its AML compliance program and procedures as part of another settlement.) Busby consented to a three-month suspension and a $25,000 fine.

***Credit Suisse Sec. (USA) LLC*, FINRA AWC No. 2013038726101 (Dec. 5, 2016).**

In an AWC with Credit Suisse Sec. (USA) LLC (Credit Suisse), FINRA alleged that between January 2011 and December 2015, the firm had significant deficiencies in its AML program. FINRA alleged that the firm failed to identify and escalate certain potentially suspicious trades to AML Compliance, and that the firm did not have systems and procedures in place designed to detect potentially suspicious activity. For example, FINRA alleged that the firm failed to identify certain trading patterns commonly associated with microcap fraud (e.g., depositing and then quickly selling and wiring the proceeds out of the account shortly thereafter). FINRA also alleged that the firm (1) failed to implement sufficient "scenarios" for its automated surveillance system; (2) failed to implement effectively the surveillance "scenarios" that it did choose; and (3) failed to adequately review and investigate the potentially suspicious activities flagged by the surveillance scenarios. FINRA further alleged that the firm failed to prevent the distribution of unregistered securities through the firm's banking businesses. Finally, FINRA alleged that the firm failed to perform adequate due diligence or enhanced due diligence on correspondent accounts for its affiliated foreign financial institutions and foreign banks. Credit Suisse consented to a censure, and a fine of $16,500,000.

***In re Convergex Execution Solutions LLC*, FINRA AWC No. 2014040667001 (Dec. 7, 2016).**

In an AWC with Convergex Execution Solutions LLC (Convergex), FINRA alleged that, from June 2008 through December 2015, Convergex failed to establish and implement an AML program that was reasonably designed to detect and cause the reporting of potentially suspicious transactions in microcap securities. In particular, FINRA alleged that Convergex failed to detect and investigate certain red flags in connection with (1) the deposit and liquidation of nearly 47 billion shares of microcap stock for three US clients for which Convergex provided custody, execution, and clearing between 2009 and 2012; (2) the clearing of liquidation transactions of approximately 18.5 billion shares of microcap securities executed by a US broker-dealer client between 2012 and 2014; (3) the execution of more than 260 million microcap shares on a delivery-versus-payment basis for three foreign financial institutions from June 2008 through December 2015. FINRA also alleged that Convergex executed the sale of approximately seven million shares of an unregistered microcap security for a US client that were not eligible for an exemption from the registration requirements of Section 5 of the Securities Act of 1944 ("Section 5") from October 2010 through March 2011. FINRA further alleged that Convergex failed to maintain and enforce a supervisory system, including WSPs, reasonably designed to ensure compliance with Section 5, from September 2009 until September 2012. Convergex consented to a censure and a fine of $3 million.

***Citi Int'l Fin. Serv., LLC*, FINRA AWC No. 2013036434501 (Dec. 20, 2016).**

In an AWC with Citi Int'l Fin. Serv., LLC (CIFS), FINRA alleged that, from January 2011 through July 2012, the firm violated certain AML regulations in that its AML program was not reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act. According to FINRA, CIFS conducted substantially all of its business in a region with elevated

AML risk (Latin America), but nevertheless the firm relied on manual supervisory review of transactions, which did not sufficiently focus on the AML risks. During the relevant period, the firm processed more than a thousand transactions (with an approximate value of $380 million) involving converting foreign currency from or into US dollars. FINRA also alleged that, although CIFS delegated AML monitoring of transfers of money between its customers' brokerage accounts and related customer bank accounts held at CIFS banking affiliates to one of its banking affiliates, activity that occurred entirely within customers' CIFS brokerage account was not adequately monitored. Finally, FINRA alleged that CIFS did not conduct adequate independent testing for AML compliance. In settlement, CIFS consented to a censure and a $5,750,000 fine, and an undertaking to submit a written certification confirming that the firm has developed and implemented written policies, procedures, and internal controls reasonably designed to address the shortcomings identified in the AWC.

Best Execution

***E*Trade Securities LLC*, FINRA AWC No. 2013036881501 (June 2, 2016).**

In a settled matter with E*Trade Securities LLC (E*Trade), FINRA alleged that, between July 2011 and June 2012, E*Trade failed to adequately review the quality of execution of its customers' orders, and failed to adequately supervise the protection of customer order information. FINRA alleged that E*Trade's Best Execution Committee lacked sufficient accurate information to reasonably assess the execution quality E*Trade provided to its customers. FINRA also alleged that E*Trade regularly accepted requests from its affiliated market maker, G1 Execution Services (G1X), to change prioritization in the order routing system and to redirect certain order flow without adequately assessing whether such changes would improve the quality of execution. In addition, FINRA alleged that E*Trade failed to establish a system to detect and prevent misuse of customer confidential order information, particularly with respect to two individuals who were dually registered with E*Trade and G1X. E*Trade consented to a censure and fine of $900,000.

Blue Sheets

***Deutsche Bank Sec., Inc.*, FINRA AWC No. 2015044296601 (June 28, 2016).**

FINRA settled a matter with Deutsche Bank Sec., Inc. (DBSI) in which FINRA alleged that DBSI failed to provide complete and accurate electronic blue sheets to FINRA. According to FINRA, from 2008 through at least 2015, DBSI submitted more than 3,600 inaccurate blue sheets that misreported more than one million transactions. According to FINRA, the problems were caused by programming errors in DBSI's reporting system's logic and DBSI's failure to implement enhancements to address new regulatory reporting requirements. The inaccuracies included (1) inaccurate opposing-broker codes, (2) omitted primary-party identifiers and contra-party identifiers, (3) duplicate transactions, (4) omitted transactions, (5) omitted order execution times, and (6) inaccurate reporting of "short" positions as "long." FINRA also alleged that, from 2008 to at least 2015, DBSI did not have WSPs relating to blue sheets or blue sheet validation and did not have an adequate audit system in place for accountability of its blue sheet submissions. In addition, between January 2014 and August 2015, about 40% of the

firm's blue sheet submissions were untimely. DBSI consented to a censure, a fine of $6 million, and undertakings to retain an independent consultant. In setting the sanction, FINRA noted that the firm was fined $575,000 in 2010 for various issues, including submitting inaccurate blue sheets.

Consolidated Reporting

Lincoln Financial Securities Corporation, FINRA AWC No. 2013035036601 (Nov. 14, 2016).

In an AWC with Lincoln Financial Securities Corporation (LFS), FINRA alleged that the firm failed to establish, maintain, and enforce a supervisory system, including WSPs, so that confidential customer information stored on electronic systems was secure, and so that consolidated reports created by registered representatives were preserved and reviewed. Specifically, FINRA alleged that LFS failed to adopt WSPs related to the storage of customer data on cloud-based systems until November 2012. According to FINRA, after the firm implemented such policies, they were insufficient in that the policies allowed registered representatives to interpret the policies when those representatives did not have the technical background to do so. FINRA also alleged that the firm did not take adequate steps to ensure that its registered representatives and third-party vendors adequately applied the policies or otherwise protected the information stored on the systems at LFS's branch offices. FINRA further alleged that, with respect to consolidated reports, the firm (1) did not have adequate policies in place to address what constituted the "written authorization" necessary before using the manual entry feature of the program used to create the reports; (2) did not have policies that outlined the backup documentation necessary for manually entered assets; and (3) had inadequate systems for ensuring that such backup documentation had been received. Finally, FINRA alleged that LFS failed to retain many of the consolidated reports generated from December 2010 to December 2013. LFS consented to a censure and fine of $650,000.

Wells Fargo Advisors, LLC (n/k/a Wells Fargo Clearing Services, LLC), Wells Fargo Advisors Financial Network, LLC, FINRA AWC No. 2015043740201 (Dec. 5, 2016).

In an AWC with Wells Fargo Advisors, LLC (n/k/a Wells Fargo Clearing Services, LLC) and Wells Fargo Advisors Financial Network, LLC (collectively, Wells Fargo), FINRA alleged that, between June 2009 and June 2015, the firm failed to supervise consolidated reports that its registered representatives generated through a particular application. Specifically, FINRA alleged that the firm reviewed only approximately 2% of the reports generated through the application, and failed to review the content of those reports, including customized values for assets and accounts held away from the firm. FINRA further alleged that the firm failed to provide supervisory tools by which the firm could distinguish between draft reports and completed reports that were sent to customers. Wells Fargo consented to a censure and a fine of $1 million, jointly and severally.

Customer Personal Information

***In re Raymond James & Assocs., Inc. and Raymond James Financial Services, Inc.*, FINRA AWC No. 2013035599201 (Mar. 8, 2016).**

In an AWC, FINRA alleged that, from January 2011 through March 2015, Raymond James & Assocs., Inc. and Raymond James Financial Services, Inc. (collectively, the firms) (1) caused certain recruits to disclose nonpublic personal information of certain customers, and (2) failed to have reasonable supervisory systems to prevent disclosure of such information. FINRA alleged that, as part of the transition process for certain registered representatives recruited to the firms, the firms assisted them with disclosing customer nonpublic personal information before the recruits left their prior broker-dealer employers. The information was used to pre-populate the firms' new account forms. These disclosures were allegedly made without any determination as to whether the recruits or the prior broker-dealers had obtained customers' consent for the disclosure. FINRA also alleged that the firms (1) had no systems or WSPs that required confirmation of customers' consent; (2) failed to adequately train transition staff regarding nonpublic personal information; and (3) failed to demonstrate that they followed their own WSPs for monitoring disclosure of nonpublic personal information by the firms' outgoing registered representatives. In settling the matter, the firms consented to a censure, a fine of $500,000, and an undertaking to review and revise their policies and procedures. The AWC noted a prior FINRA fine for inadvertently disclosing such nonpublic personal information.

Customer Protection Rule

***Stifel, Nicolaus & Co., Inc.*, FINRA AWC No. 2013036354001 (Apr. 11, 2016).**

In an AWC with Stifel, Nicolaus & Co., Inc. (Stifel), FINRA alleged that, from 1999 through June 2012, the firm routinely used permissible customer-owned securities as collateral for bank loans procured by the firm (valued between $30 million and $100 million during the period), but prior to conducting its Customer Reserve computations, the firm substituted the loans with new loans secured by firm-owned collateral, potentially reducing the amount that the firm was required to deposit into the Customer Reserve Account. FINRA alleged that the firm incorrectly calculated its Proprietary Accounts of Introducing Brokers and Dealers (PAIB) Reserve and Customer Reserve deposit requirements, and that the errors were due to improper treatment of various cash and securities balances in the accounts of a newly acquired introducing broker-dealer. According to FINRA, the firm's computation of its Customer Reserve Deposit requirements erred within a range of $825,000 to $18 million, and resulted in inaccurate books and records and inaccurate FOCUS filings to FINRA. FINRA further alleged that the firm failed to have reasonable supervisory systems to ensure accurate PAIB and Customer Reserve computations. FINRA alleged that the accuracy of the Customer Reserve computation was dependent on the output of two separate departments, and failed to ensure that each department was aware of the other's business practices or that the two departments communicated regarding the accuracy of Customer Reserve computations. The firm agreed to a censure and a fine of $750,000.

***Citigroup Global Markets, Inc.*, FINRA AWC No. 2012032923301 (Dec. 2, 2016).**

In an AWC with Citigroup Global Markets, Inc. (Citigroup), FINRA alleged that, from 2009 through June 2012, the firm failed to have adequate supervisory systems, including WSPs, reasonably designed to ensure accurate calculations of the value of the securities the firm held. Specifically, FINRA alleged that the firm failed to verify the consistency of its pricing for some hard-to-price securities, and failed to identify and investigate discrepancies in pricing between different groups in the firm that had marked the same securities at different prices. FINRA also alleged that, from December 2010 through July 2011, the firm had an inadequate system for applying deductions to the value of certain mortgage-backed securities positions for purpose of computing the firm's net capital. Specifically, FINRA alleged that the firm's system did not update required deductions after they were manually adjusted, and, as a result, the firm overstated its net capital by $26 million. FINRA further alleged that, between 1998 and June 2012, the firm failed to have adequate systems in place to ensure that stock records accurately reflected bond loan transactions and related repurchase agreements. The firm consented to a censure and a fine of $850,000.

***First Clearing, LLC (n.k.a. Wells Fargo Clearing Services, LLC)*, FINRA AWC No. 2015047064901 (Dec. 2, 2016).**

In a matter with First Clearing, LLC (n.k.a. Wells Fargo Clearing Services, LLC) (First Clearing), FINRA alleged that, from January 2014 through February 2016, the firm failed to maintain a "good control location" over $1 billion of customer assets held in IRA accounts. Although First Clearing was the custodian of the IRA accounts, the accounts held approximately 31,000 positions of approximately 450 different uncertified alternative investments which were physically held by the product sponsors. FINRA alleged that First Clearing failed to obtain the required written assurances from the product sponsors that the uncertified securities were free of liens or other encumbrances. FINRA further alleged that First Clearing failed to record "unresolved differences" between the values reflected on its stock record and the values reflected on the sponsor records, a failure that FINRA alleged led to inaccurate customer reserve and net capital computations and inaccurate books and records. Finally, FINRA alleged that First Clearing failed to enforce written procedures designed to protect customer assets. First Clearing consented to a censure and a fine of $750,000.

***Morgan Stanley & Co. LLC*, FINRA AWC No. 2014040071002 (Dec. 19, 2016).**

In an AWC with Morgan Stanley & Co. LLC (Morgan Stanley), FINRA alleged that between at least January 2012 through 2013, the firm failed to establish and maintain systems and procedures reasonably designed to ensure that it maintained possession and control of all customer fully paid and excess margin securities. As a result, the firm erroneously released certain customer shares for firm use, in violation of the "Customer Protection Rule," which requires broker-dealers to obtain and maintain physical possession or control of all fully paid and excess margin securities it holds for customers. Broker-dealers typically comply with the rule by segregating customer securities and holding them in separate accounts from the broker-dealers' own assets. While Morgan Stanley maintained a control system that calculated what customer securities it should segregate, the system had a design flaw in that it allowed the firm

to release certain securities from segregation that the system deemed to be excess when no such excess existed. Such releases created a series of intraday deficits in the customer securities. Although the firm corrected these deficits at the end of each day, the deficits ranged in value from $100,000 to $41,200,000. Morgan Stanley agreed to a censure and a fine of $2,750,000.

Disclosures to Customers

***Capital One Investing, LLC*, FINRA AWC No. 2013039465901 (Nov. 28, 2016).**

Capital One Investing, LLC (Capital One) entered into an AWC with FINRA related to the firm's practices regarding certain customers who used "PortfolioBuilder," an investment tool that allows self-directed investors to create an ETF portfolio. According to FINRA, from 2004 through December 10, 2013, Capital One collected suitability information for approximately 730,000 customers, but failed to timely send approximately 650,000 of them certain pieces of account-opening information, as required under the securities laws. Additionally, according to FINRA, Capital One, in certain instances from May 2014 to May 2016, inaccurately provided historical weighted average performance results to its customers who used another version of PortfolioBuilder. FINRA also alleged that Capital One did not maintain a supervisory system reasonably designed to achieve compliance with FINRA and the SEC's recordkeeping and advertising rules. Capital One consented to a censure, undertaking, and fine of $500,000.

***LPL Financial, LLC*, FINRA AWC No. 2015045887301 (Dec. 21, 2016).**

In an AWC with LPL Financial, LLC (LPL), FINRA alleged that, from 2009 through 2016, LPL failed to send more than 1.67 million required account notices for accounts in which a suitability determination had been made during the prior 36-month period. The failure to send notices amounted to approximately 25% of all the notices that the firm was required to send during the relevant period. Further, the AWC states that LPL's supervisory systems and procedures were not reasonably designed to ensure compliance with its books and records obligations, in that the firm's written procedures did not require supervisory review to confirm that the required notices had been sent. In settlement, LPL consented to a censure, a fine of $900,000, and an undertaking to implement reasonable policies. FINRA considered that LPL self-identified and investigated the systemic issues addressed in the AWC and undertook an internal review, which included retaining a third-party consultant to review its supervisory policies, procedures, and systems relating to these issues.

Exchange-Traded Funds

***Oppenheimer & Co.*, FINRA AWC No. 2013038180801 (June 7, 2016).**

In an AWC with Oppenheimer & Co. (Oppenheimer), FINRA alleged that the firm, during the period of August 2009 to September 2013, failed to maintain and enforce a reasonably designed supervisory system and corresponding WSPs related to the sales of leveraged, inverse, and inverse-leveraged ETFs. FINRA alleged that Oppenheimer representatives recommended these nontraditional ETFs to their customers even though such products were

unsuitable based on their customers' ages, investment objectives, and financial situations. Oppenheimer consented to a censure and fine of $2,250,000.

Large Options Position Reporting

***In re Deutsche Bank Securities Inc.*, FINRA AWC No. 2011029600301 (Mar. 28, 2016), NASDAQ PHLX AWC No. 20120330918 (Mar. 23, 2016).**

FINRA entered into an AWC with Deutsche Bank Securities Inc. (Deutsche Bank), alleging that the firm violated certain options rules. Specifically, FINRA alleged that Deutsche Bank (1) violated the relevant options position limit in three different securities for five different customers for between one and seven consecutive days during October 2011, January 2014, November 2014, and January 2015 through February 2015; (2) reported an incorrect Options Contract Equivalent of the Net Delta (OCEND) in certain instances from March 2008 to December 2014; and (3) in numerous instances reported inaccurate information and failed to report certain positions in its Large Options Positions Report (LOPR) submissions between January 2010 and March 2015. FINRA also alleged that Deutsche Bank failed to establish and maintain an appropriate supervisory system. Deutsche Bank consented to a censure and a total fine of $4,070,000 (with $1,403,334 paid to FINRA and the balance to NASDAQ PHLX LLC and International Securities Exchange, LLC pursuant to separate settlement agreements) and undertook to make a written submission to FINRA regarding its options positions reporting to the LOPR system 90 days after the AWC became final and again 180 days after the AWC became final. In accepting the AWC, FINRA considered significant actions already implemented or planned by the firm, including providing extraordinary cooperation in the investigation, hiring an independent consultant, and enhancing systems and supervisory procedures.

***In re Morgan Stanley Smith Barney LLC*, NYSE AWC No. 20150441008 (Sept. 20, 2016), FINRA AWC No. 20150441008-01 (Sept. 16, 2016).**

NYSE MKT LLC (NYSE MKT) and FINRA entered AWCs with Morgan Stanley Smith Barney LLC (Morgan Stanley) alleging that, from September 2010 to January 2016, Morgan Stanley reported positions to the Options Clearing Corporation (OCC) LOPR system without identifying the relevant accounts as acting in concert in more than 13 million instances. The regulators further alleged that Morgan Stanley failed to accurately or completely report positions to the LOPR by reporting (1) positions for domestic and foreign accounts without tax identification numbers or Social Security numbers in more than 500,000 instances, (2) positions in the wrong account type in more than 38 million instances, (3) positions with incomplete address fields in more than 36,000 instances, and (4) positions without a ZIP Code in more than 500,000 instances. They also alleged that in a significant but unquantified number of instances the firm (1) failed to capture certain account types for in-concert reporting; (2) failed to include FLEX options in its LOPR aggregation; (3) failed to include options marked as inactive in its LOPR position file; and (4) incorrectly populated the effective date of options with the submission date rather than the trade date. According to the regulators, Morgan Stanley failed to have adequate supervisory systems and controls in place for option reporting rules. Morgan Stanley consented to a censure and fine of $2,200,000, of which $1,650,000 was paid to NYSE MKT ($825,000 for LOPR violations and $825,000 for related inadequate supervision) and $550,000

was paid to FINRA ($275,000 for LOPR violations and $275,000 for related inadequate supervision). The AWCs credited Morgan Stanley for self-reporting the violations, cooperating, and taking subsequent remedial measures.

***UBS Securities LLC*, FINRA AWC No. 2013038258901 (Dec. 2, 2016).**

In an AWC with UBS Securities LLC (UBS), FINRA alleged that the firm failed to report and/or inaccurately reported over-the-counter (OTC) options positions to the LOPR system in approximately 7.59 million instances, from January 19, 2010 through December 7, 2015. FINRA also alleged that the firm failed to have adequate supervisory systems relating to reporting positions to LOPR in that UBS's system did not include sufficient LOPR procedures, including a statement of supervisory steps and a review of the LOPR process. FINRA alleged that these deficiencies led to the firm's failure to detect its LOPR violations. In settlement, the firm consented to a censure and a fine of $2,450,000. FINRA recognized that the firm undertook a significant review of its LOPR submissions process, self-reported some of the LOPR violations, and promptly remediated the LOPR violations once detected (including creating a new regulatory risk management group responsible for LOPR and other reporting and hiring additional experienced staff). FINRA considered these supervisory enhancements in lieu of an undertaking.

Market Access Rule

***Electronic Transaction Clearing, Inc.*, FINRA Office of Hearing Officers Order, No. 2010025475601 (Feb. 19, 2016).**

In a settled matter before the Office of Hearing Officers, FINRA alleged that, between November 1, 2009 and March 31, 2015, Electronic Transaction Clearing, Inc. (ETC) failed to establish an adequate supervisory system and WSPs reasonably designed to investigate red flags. FINRA alleged that ETC failed to monitor the trading activity of its Market Access customers to detect and prevent potentially manipulative trades. FINRA also alleged that ETC failed to establish reasonable risk management controls to manage the risks of its Market Access business involving thousands of foreign-based traders. According to FINRA, despite numerous red flags, heightened risks, and repeated notice by regulators of potentially manipulative activity by certain Market Access customers, ETC failed to detect and prevent manipulative activity. Additionally, FINRA alleged that ETC failed to dedicate sufficient compliance resources and staff to meet its regulatory responsibilities as its business grew, to conduct adequate follow-up and review of potentially manipulative activity, and to ensure that its regulatory risk management controls and supervisory procedures were under its direct and exclusive control. ETC consented to a censure and fine of $875,000.

***Merrill Lynch, Pierce, Fenner & Smith Inc.*, FINRA Disc. Proc. No. 20120344693 (Sept. 28, 2016).**

FINRA, on behalf of several exchanges, settled a matter with Merrill Lynch, Pierce, Fenner & Smith Inc. (Merrill Lynch) alleging that, from July 14, 2011 through October 20, 2014, Merrill Lynch violated Rule 15c3-5 under the Exchange Act (the "Market Access Rule") and the

exchanges' corresponding rules. FINRA alleged that the firm failed to establish and maintain a risk management control system and supervisory procedures, and that the firm's written descriptions of its risk management controls were incomplete and inaccurate. FINRA alleged that the firm's erroneous order controls were deficient in that the limits were set too high in some cases, resulting in the firm filing more than 200 "clearly erroneous" petitions between July 2011 and June 2013. In addition, FINRA alleged that the firm did not regularly review the effectiveness of its erroneous order controls until May 2013, after regulators expressed their concerns. FINRA further alleged that Merrill Lynch (i) did not reasonably design its risk management controls to detect and prevent prohibited wash sales transactions; (ii) failed to implement a preset capital threshold for its Cash and Global Equity Linked Products desks by the November 30, 2011 compliance date; and (iii) did not reasonably design its credit threshold for direct market access customers to systematically limit Merrill Lynch's financial exposure. Under the Offer of Settlement and Consent, Merrill Lynch agreed to pay a $3 million fine, of which $525,000 would be paid to NYSE Arca, Inc., $300,000 to Bats BZX Exchange, Inc., $100,000 to Bats BYX Exchange, Inc., $200,000 to Bats EDGX Exchange, Inc., $525,000 to the NYSE LLC, and $1,350,000 to The NASDAQ Stock Market LLC. In determining the sanctions, FINRA took into account sanctions imposed by the SEC in a parallel action against Merrill Lynch, and the firm's retention of an independent consultant to review its compliance with SEC Rule 15c3-5.

Mortgage-Backed Securities Valuations

***Morgan Stanley & Co.*, FINRA AWC No. 2014040071001 (Dec. 8, 2016).**

In an AWC with Morgan Stanley & Co. (Morgan Stanley), FINRA alleged that, from 2010 through 2013, Morgan Stanley failed to have reasonably designed systems and procedures to accurately value its Commercial Mortgage Backed Securities (CMBS) and Residential Mortgage-Backed Securities (RMBS) holdings. According to FINRA, Morgan Stanley reviewed valuations at an aggregate level that was insufficient to identify potentially material discrepancies at an individual instrument level. FINRA alleged that the firm's process increased the risk of inaccurate pricing and calculations for the firm's balance sheet and other purposes. Morgan Stanley consented to a censure and a fine of $500,000.

Municipal Bond Trading

***In re Merrill Lynch, Pierce, Fenner & Smith Inc.*, FINRA AWC No. 2009020201201 (Mar. 24, 2016).**

FINRA entered an AWC with Merrill Lynch, Pierce, Fenner & Smith Inc. (Merrill Lynch), alleging that the firm violated certain rules in connection with specific municipal and corporate bond transactions in various periods from January 2009 to June 2011. Specifically, FINRA alleged that the firm purchased 55 municipal securities for its own account from a customer and/or sold municipal securities for its own account to a customer at an aggregate price that was not fair and reasonable; failed to use reasonable diligence in 40 corporate bond transactions to ascertain the best inter-dealer market and failed to buy or sell in such market so that the price to its customer was as favorable as possible under prevailing market conditions; and sold

(bought) 12 corporate bonds to (from) customers and failed to sell (buy) such bonds at a price that was fair, taking into consideration all relevant circumstances. Merrill Lynch consented to a censure and fine of $565,000 ($317,500 of which pertains to the violations of MSRB Rules G-17 and G-30(a)). Merrill Lynch was also ordered to pay $95,531 in restitution to relevant customers.

Mutual Fund Sales Charges

***J.J.B. Hilliard, W.L. Lyons, LLC*, FINRA AWC No. 2015048307001 (Sept. 9, 2016).**

In an AWC with J.J.B. Hilliard, W.L. Lyons, LLC (Hilliard Lyons), FINRA alleged that, from July 1, 2009 to Sept. 1, 2015, 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. According to FINRA, the customers were sold Class A shares with a front-end sales charge or Class B or C shares with back-end sales charges and higher ongoing fees and expenses. FINRA also alleged that Hilliard Lyons failed to establish and maintain a supervisory system and procedures reasonably designed to ensure that retirement plan and charitable organization customers that purchased mutual fund shares received the benefit of applicable sales charge waivers. In settlement, FINRA recognized the firm's extraordinary cooperation. Hilliard Lyons agreed to a censure and to pay restitution in the amount of $812,596 to customers. FINRA did not impose a fine.

OATS Reporting

***In re Barclays Capital Inc.*, FINRA AWC No. 2014041749901 (Aug. 3, 2016).**

FINRA entered into an AWC with Barclays Capital Inc. (Barclays), alleging that the firm violated rules related to Order Audit Trail System (OATS) reporting and related supervisory obligations. Specifically, FINRA alleged that Barclays had 15 systems issues that led to approximately 3.6 billion OATS reporting violations dating back to September 2008 (including 3.3 billion inaccurate or incomplete events and 332 million events that were not reported), which impacted up to 3% of all reportable order events that Barclays was required to transmit to OATS during that time. FINRA also alleged that Barclays failed to establish and maintain an appropriate supervisory system reasonably designed to achieve compliance with the OATS reporting requirements. Barclays consented to a censure and a total fine of $1,300,000 (which included a $950,000 fine for the OATS reporting violations and a $350,000 fine for the supervisory violations) and undertook to revise its supervisory system regarding OATS reporting. In accepting the AWC, FINRA considered Barclays's self-reporting of certain OATS violations and remedial steps, including enhancements to some of its supervisory systems.

***Merrill Lynch, Pierce, Fenner & Smith Inc.*, FINRA AWC No. 2013035822901 (Oct. 17, 2016).**

FINRA settled a matter with Merrill Lynch, Pierce, Fenner & Smith Inc. (Merrill Lynch) that arose from two Market Regulation examinations of the firm's trading activity. According to FINRA, during the course of the examinations, it identified a number of systemic issues concerning

trade and OATS reporting, books and records, and supervision. With respect to trade reporting, FINRA alleged that, between May 2010 and April 2014, a system configuration error caused the firm to inaccurately report more than 20 million trades to FINRA. FINRA further alleged that, from January 2012 to April 2014, Merrill Lynch failed to properly configure market participant identifiers, causing inaccuracies in more than 8.7 million trade reports. With respect to OATS, in various periods between January 2011 and October 2015, FINRA found that (1) the firm failed to submit trade execution reports for a particular desk; (2) the firm's vendor inaccurately appended the "cancel" timestamp to new order reports and caused wrong "time in force" tags to be reported; (3) a system error caused reopened orders to be treated as new order events; (4) an inaccurately configured client profile caused the firm to report broker-dealer orders as customer orders; and (5) the firm failed to report certain trades as intermarket sweep orders. Based on sampling, FINRA estimated that Merrill Lynch submitted millions of inaccurate OATS reports or failed to submit millions of reports. With respect to books and records, FINRA alleged that the firm failed to capture the minimum quantity special handling instructions for millions of order tickets that are used for transactions that should be canceled if a specified minimum quantity cannot be executed. Merrill Lynch also recorded incorrect receipt and route timestamps on millions of order tickets. FINRA further alleged that the firm's WSPs were not reasonably designed to achieve compliance with the relevant rules, in particular because the sample sizes reviewed were insufficient. According to FINRA, Merrill Lynch also published an SEC Rule 605 order execution quality report that included incorrect information about cancelled shares. Merrill Lynch consented to a censure and fine of $2,800,000 ($360,000 for trade reporting, $360,000 for OATS reporting, $10,000 for customer confirmations, $620,000 for supervision, and $1,450,000 for books and records and Rule 605). The firm also consented to an undertaking to revise its WSPs.

Options Order Reporting

***UBS Securities LLC*, NASDAQ Enf. No. 2016-16, FINRA Proc. No. 20130374482-03 (Dec. 19, 2016), NYSE AWC No. 2013037448202 (Oct. 15, 2016); and *Automated Trading Desk Financial Services, LLC (n/k/a Citi Order Routing and Execution)* (ATD), NASDAQ AWC No. 20140418701-05 (Dec. 21, 2016).**

FINRA, NYSE, and several option exchanges settled a matter with UBS Securities LLC (UBS) and Automated Trading Desk Financial Services, LLC (n/k/a Citi Order Routing and Execution) (ATD) in which the regulators alleged that both firms marked incorrect order origin codes on millions of options orders between July 2009 and August 2013, and sent those same orders to the exchanges through various order entry systems. This activity, according to the regulators, resulted in orders that were potentially traded ahead of other orders that were entitled to execution priority, a potential adverse impact on the execution price and quantity of other market participant orders, inaccurate audit and order records, and trades that were reported to the OCC with inaccurate details. The regulators further alleged that USB failed to establish a reasonable system of supervision, including WSPs, designed to achieve compliance with the option exchanges' order origin code requirements. Similarly, the regulators alleged that ATD used incorrect origin codes during certain periods and failed to have supervisory systems and controls in place, including a separate system of follow-up and review, reasonably designed to achieve compliance with the option exchanges' order origin code requirements. UBS consented

to a censure and a fine in the amount of $650,000 (which was apportioned among BOX Options Exchange LLC; Chicago Board Options Exchange, Incorporated; International Securities Exchange, LLC; NASDAQ PHLX LLC; NYSE Arca, Inc.; and NYSE MKT LLC). ATD consented to a censure, a fine in the amount of $625,000 (which was apportioned among Bats BZX Exchange, Inc.; BOX Options Exchange LLC; Chicago Board Options Exchange, Inc.; Miami International Securities Exchange, LLC; NASDAQ Options Market; NASDAQ PHLX LLC; and NYSE MKT); and an undertaking to address the origin code deficiencies to ensure that ATD has implemented procedures that are reasonably designed to achieve compliance with the relevant rules and regulations.

Prospectus Delivery

***Morgan Stanley Smith Barney*, FINRA AWC No. 2014042651801 (Dec. 1, 2016).**

In an AWC with Morgan Stanley Smith Barney (Morgan Stanley), FINRA alleged that the firm failed to deliver certain prospectuses and required investment objective change letters to customers. Prior to November 2013, Morgan Stanley delivered prospectuses to customers via electronic hyperlinks attached to transaction confirmations delivered online. FINRA alleged that, between November 2013 and August 2014, Morgan Stanley's transaction confirmations did not include the hyperlinks to the relevant prospectuses, and due to that failure the firm did not timely deliver approximately 2.1 million prospectuses. FINRA also alleged that a coding error caused a failure to deliver approximately 23,500 investment objective change letters to customers. Additionally, FINRA alleged that, in certain cases, an investment objective change request was rejected by the firm's system and the firm did not have an adequate way to notify supervisors of those instances. FINRA further alleged that, between June 2012 and June 2016, due to a system coding error regarding account number changes, Morgan Stanley failed to send at least 4,000 investment objective change letters within 30 days of the change. The firm consented to a censure and a fine of $1,500,000. In settling this matter, FINRA took into account the firm's extraordinary cooperation in initiating an investigation, making rescission offers, retaining an outside consultant, and providing substantial assistance to FINRA in its investigation. The remedial steps resulted in a reduced fine regarding the prospectus delivery–related violations.

Regulation SHO

***Barclays Capital Inc.*, FINRA AWC No. 2013035402401 (May 24, 2016).**

In a settlement with Barclays Capital Inc. (Barclays), FINRA alleged that, during two periods from July 1, 2009 to June 29, 2012, a programming error in a firm algorithm caused the firm to splice 16,000-plus parent short sale orders into more than 2.9 million child orders marked as long sales. As a result, the firm routed more than 2.9 million short sale orders and failed to properly mark them as short. According to FINRA, the firm executed 777,000-plus short exempt transactions and reported each of those transactions as nonexempt short sales in nontape reports to the Trade Reporting Facility (TRF). FINRA also alleged that the firm's WSPs did not provide for supervision designed to ensure that the relevant algorithm marked the orders in compliance with SEC Rule 200(g) of Regulation SHO, and did not provide for

supervision designed to ensure that short exempt transactions received from its broker-dealer clients were accurately reported. The firm agreed to a censure, a fine of $600,000, and an undertaking to revise the firm's supervisory system.

Regulatory Reporting

***Oppenheimer & Co., Inc.*, FINRA AWC No. 2015046355401 (Nov. 7, 2016).**
In a settlement with Oppenheimer & Co., Inc. (Oppenheimer), FINRA alleged that the firm failed to report required information to FINRA, including disciplinary actions taken by Oppenheimer against its employees, settlements of securities-related arbitration and litigation claims, and the institution of securities-related civil litigation against Oppenheimer. According to the AWC, although Oppenheimer self-reported its "systemic reporting violations" in July 2015, "it should have reasonably concluded, prior to July 2015, that its Rule 4530 reporting was different." FINRA further alleged that, between January 2009 and August 2016, Oppenheimer failed to apply applicable sales charge waivers to its customers by selling Class A shares in certain mutual funds with a front-end sales charge or Class B or Class C shares with back-end sales charges to customers that were eligible to purchase Class A shares without a front-end sales charge. According to FINRA, between 2010 and 2013 Oppenheimer also failed to produce relevant documents to customers who had filed arbitrations against it for failing to supervise a former registered representative. Oppenheimer consented to a censure and fine of $1,575,000, and remediation payments totaling $1,845,741.

Research Analyst "Flash Emails"

***Stephens Inc.*, FINRA AWC No. 2014041823201 (May 11, 2016).**

In a settlement with Stephens Inc. (Stephens), FINRA alleged that, from at least August 2013 to January 2016, the firm did not adequately supervise the content and dissemination of firmwide "flash" emails. Although they were intended to be used by research analysts to inform other firm personnel of publicly available information, the firm did not have adequate procedures to supervise their content, and in practice "flash" emails sometimes conveyed more than that. FINRA alleged that the firm's policies and procedures did not adequately restrict the content and distribution of the emails; in some instances, although marked "internal use only," Stephens personnel forwarded certain "flash" emails or their content to customers in violation of firm policy. FINRA further alleged that the firm did not adequately restrict and monitor trading around the distribution of "flash" emails. Stephens consented to a censure, a fine of $900,000, and an undertaking to (1) cease distribution of "flash" emails and (2) provide FINRA with a plan to conduct a comprehensive review of its policies, procedures, and training relating to the firm's alleged misconduct.

Structured Return Notes

***Merrill Lynch, Pierce, Fenner & Smith Inc.*, FINRA AWC No. 2012032967901 (June 23, 2016).**

In a settled matter with Merrill Lynch, Pierce, Fenner & Smith Inc. (Merrill Lynch), FINRA alleged that the firm failed to disclose material facts relating to retail sales of volatility-linked structured notes. According to FINRA, from around September 1, 2010 through July 5, 2011, Merrill Lynch sold approximately $168 million in "Structured Return Notes" that were linked to a proprietary volatility index, without adequately disclosing certain fixed costs. In particular, FINRA alleged that Merrill Lynch's disclosures made it appear as if the notes had relatively low fixed costs. However, Merrill Lynch failed to adequately disclose one of three related fixed costs – the "Execution Factor" – which totaled 1.5% per quarter, accruing daily. In FINRA's opinion, a reasonable retail investor would have considered the Execution Factor important to the total mix of information available when purchasing the notes. Accordingly, FINRA determined that the disclosures in the offering materials related to fixed costs associated with the notes were materially misleading, were not fair and balanced, and failed to provide a sound basis for evaluating the notes. FINRA also found that Merrill Lynch failed to maintain supervisory procedures reasonably designed to ensure compliance with applicable disclosure standards. Merrill Lynch consented to a censure and a fine of $5 million.

Suitability

***Investors Capital Corp.*, FINRA AWC No. 2013035035901 (Oct. 3, 2016).**

In settling a matter with Investors Capital Corp. (ICC), FINRA alleged that, from June 2010 to September 2015, the firm, through two of its registered representatives, recommended unsuitable short-term trading of UITs and Steepener Notes (Steepeners) in the accounts of 74 customers. Specifically, FINRA alleged that despite UITs generally carrying significant upfront charges and the UITs at issue having maturity dates of two years or more, two ICC-registered representatives effected 971 short-term UIT transactions in 11 customer accounts. Some of the UITs were held for less than a month and many of the transactions involved switching, whereby the representatives used some or all of the sales proceeds from one UIT to purchase another UIT, resulting in losses of approximately $242,892 to ICC customers. FINRA also alleged that, from April 2011 through December 2012, two of the firm's representatives recommended unsuitable short-term trading of Steepeners, which typically have long maturities, in the accounts of 63 customers. The Steepeners were held for as little as one month and resulted in customer losses of approximately $125,765. Additionally, FINRA alleged that, from January 2009 through December 2013, ICC failed to identify and apply sales charge discounts to certain customers' eligible purchases of 1,995 UITs, resulting in customers paying excessive sales charges of approximately $472,876. Finally, FINRA alleged that, from January 2009 through September 2015, ICC (1) failed to establish an adequate supervisory system to ensure that its representatives made suitable UIT and Steepener recommendations to its customers or to apply UIT sales charge discounts; (2) failed to sufficiently train its representatives regarding the risks, features, and costs of UITs and Steepeners; and (3) did not adequately monitor the length of

time that these products were held in customers' accounts. ICC consented to a censure and a fine of $250,000, and to pay restitution in the amount of $841,532.

***Newport Coast Sec., Inc.*, FINRA Disc. Proc. No. 2012030564701 (Oct. 17, 2016).**

In a FINRA Office of Hearing Officers decision, the panel found that Newport Coast Sec., Inc. (Newport Coast), through five of its registered representatives, engaged in unsuitable trading, churning, and recommendations of leveraged or inverse exchange-traded products in customers' accounts. The hearing panel found that Newport Coast failed to properly supervise its representatives. The hearing panel further found that one of the registered representatives gave one customer inaccurate information overstating the value of the customer's account on five occasions. For these violations, the panel expelled Newport Coast from FINRA membership, barred two of the registered representatives from association with any FINRA member firm, and required that Newport Coast pay a fine of $1 million, inclusive of restitution paid to the customers. The panel also required that two of the registered representatives, jointly and severally with Newport Coast, pay fines of $400,000 and $125,000 respectively, inclusive of restitution to customers.

Supervision

***In re Prudential Annuities Distributors Inc.*, FINRA AWC No. 2012034423502 (July 13, 2016).**

FINRA entered into an AWC with Prudential Annuities Distributors Inc. (Prudential), alleging that Prudential failed to detect and prevent the misappropriation of nearly $1,300,000 from an elderly customer's variable annuity account by its former registered sales assistant (and since-convicted felon). FINRA alleged that Prudential repeatedly failed to adequately investigate red flags and failed to implement adequate supervisory procedures and controls that would have alerted the firm to the transmittal of customer funds to third-party accounts. Prudential consented to a censure and a fine of $950,000.

***Deutsche Bank Sec., Inc.*, FINRA AWC No. 2012035003201 (Aug. 8, 2016).**

In an AWC with Deutsche Bank Sec., Inc. (DBSI), FINRA alleged that, between January 2008 and August 2016, the firm failed to maintain adequate supervisory systems, policies, and procedures reasonably designed to supervise certain registered representatives' access to internal broadcast transmissions (known as "Hoots") or their communications with customers regarding Hoots. The Hoots contained potentially material nonpublic or confidential information. According to FINRA, these supervisory failures were aggravated by numerous red flags as early as 2008, including internal audit findings and recommendations, multiple internal warnings from members of the firm's compliance department, and internal risk assessments. FINRA alleged that there were two instances in which information was not protected from public dissemination. In one instance, a registered representative contemporaneously relayed, to at least one customer, information from a Hoot indicating that the impact of a positive news announcement had not been factored into the price of the company's security. Another registered representative shared confidential information contained in a Hoot with a customer

who traded on it through an outside broker-dealer. DBSI consented to a censure, a fine of $12,500,000, and an undertaking to certify that it had implemented a supervisory system reasonably designed to achieve compliance with FINRA rules and the federal securities laws concerning Hoots.

***Caldwell Int'l Sec. Corp.*, FINRA Disc. Proc. No. 2014039091903 (Aug. 25, 2016).**

In a settled matter with Caldwell Int'l Sec. Corp. (CISC), Greg Allen Caldwell (founder and 100% owner of the firm) and Paul Joseph Jacobs (CCO of the firm), FINRA alleged that the firm failed to develop, maintain, and enforce a supervisory system, including WSPs, reasonably tailored to its business model. FINRA alleged that the firm permitted many of its registered representatives to improperly recommend a trading investment strategy that the registered representatives did not understand and which led to substantial customer losses. At the same time, these investments generated significant profits for the firm. FINRA alleged that the firm permitted unauthorized trading with discretion and permitted excessive trading and churning. According to FINRA, Caldwell and Jacobs did not take meaningful steps to supervise these activities or to investigate or halt the misconduct. FINRA also alleged that the firm failed to follow its WSPs when it (1) failed to implement heightened supervision for certain registered representatives; (2) failed to ensure that branch electronic correspondence was reviewed; and (3) failed to report customer complaints. FINRA further alleged that the firm failed to offer customers certain waived or reduced sales charges, resulting in customers being overcharged $107,367. FINRA also alleged that the firm charged customers incorrect or misleading fees, and failed to have a reasonable supervisory system to prevent such charges. Finally, FINRA alleged further supervisory failures related to AML requirements. CISC consented to a censure and a fine of $1 million, and to pay restitution in the amount of $1,026,089. Caldwell was barred from associating with any FINRA member in a principal capacity and fined $50,000. Jacobs was suspended for six months in all principal capacities from associating with any FINRA member firm.

***Ameriprise Fin. Serv., Inc.*, FINRA AWC No. 2014040269301 (Sept. 14, 2016).**

In an AWC with Ameriprise Fin. Serv., Inc. (Ameriprise), FINRA alleged that, between October 2011 and September 2013, the firm failed to adequately supervise and prevent an employee from converting funds from multiple customer brokerage accounts. According to FINRA, the firm's employee (an office manager and registered representative) converted more than $370,000 from customer accounts via nine wire transfers in a two-step process. First, he submitted wire request forms to transfer the funds from the customers' accounts into an account owned by another firm registered representative, purportedly to make investments. Second, the office manager converted the funds by paying himself unearned salary and commissions. FINRA also found that the firm missed numerous red flags, including the following: (1) the firm should have known that the account receiving the wired funds belonged to its other registered representative because, among other reasons, the firm paid compensation into that account; (2) although the firm flagged and reviewed four of the wires for potential signature discrepancies, it nonetheless approved all four wires; (3) the firm initially rejected one of the attempted wires for "recycling" a signature, but because it failed to contact the relevant customer and further investigate the matter, the firm permitted a duplicate wire

request to go through two weeks later; and (4) the firm processed eight of the nine wires even though they were submitted at irregular late night hours and with facsimile coversheets plainly identifying the recipient account owned by the firm's other registered representative. The firm discovered the conversions in September 2013 when an employee found in a trash can evidence that the office manager had practiced forging account signatures. The firm paid more than $560,000 in restitution to the five customers whose funds had been converted. The firm also consented to a censure and fine of $850,000.

***J.P. Morgan Securities LLC*, FINRA AWC No. 2014040597101 (Nov. 3, 2016).**

In an AWC with J.P. Morgan Securities LLC (JPMS), FINRA alleged that, from 2013 through 2015, the firm failed to supervise the execution and approval of powers of attorney (POAs) for certain non-US-resident customers. Specifically, FINRA alleged that the firm failed to enforce its own procedures regarding POAs, and, as a result, failed to detect and investigate red flags in the POAs, including in hundreds of POAs that lacked signatures and dates. FINRA also alleged that the firm failed to detect that its representatives were signing POAs as witnesses, despite not having actually witnessed the signatures. FINRA further alleged that, once the firm identified the problem, it required additional training for employees, but the problems persisted. The firm consented to a censure, a fine of $500,000, and an undertaking regarding implementing reasonable supervisory systems regarding review and approval of POAs.

***Merrill Lynch, Pierce, Fenner & Smith Inc.*, FINRA AWC No. 2014042578001 (Nov. 30, 2016).**

In an AWC, FINRA alleged that, between January 2010 and November 2014, Merrill Lynch, Pierce, Fenner & Smith Inc. (Merrill Lynch) failed to prevent its customers from using the proceeds from "non-purpose" lines of credit (extended by the firm's banking affiliate) to purchase securities on margin, which use is restricted by the firm's contracts and policies, and government regulations. FINRA alleged that the firm insufficiently educated its representatives about those restrictions. FINRA also alleged that the firm failed to prevent customers from concentrating holdings in certain tax-favored Puerto Rico (PR) securities and over-leveraging those securities to purchase more. Despite customers' modest net worths and conservative or moderate investment objectives, the firm allowed customers to invest 75% or more of their account assets in the PR securities. FINRA alleged that, between January 2010 and July 2013, 25 customers collectively had losses of $1,200,000 when their accounts eventually received margin or maintenance calls. Merrill Lynch agreed to a censure and a fine of $6,250,000, and to reimburse customers and pay restitution of $780,000. The firm discovered and reported certain of these violations to FINRA and provided substantial assistance during FINRA's investigation.

***Allstate Fin. Serv., LLC*, FINRA AWC No. 2015047806501 (Dec. 15, 2016).**

In an AWC with Allstate Fin. Serv., LLC (Allstate), FINRA alleged that the firm failed to supervise certain communications and transactions, retain certain records, and provide customers with certain required notices and information. Specifically, FINRA alleged that Allstate failed to monitor 3,500 secondary email accounts of registered persons, resulting in the firm's failure to

review approximately 44 million emails, including 11,000 with customers and/or relating to the firm's securities business. FINRA also alleged that Allstate failed to adequately supervise the creation of consolidated reports and failed to appropriately retain several thousand consolidated reports. According to FINRA, Allstate maintained incomplete records, or had no records, for approximately 9,200 customer accounts (from 2001 to 2016), resulting in the firm's failure to send 60,000 privacy notices and 11,000 required periodic account records. FINRA also alleged that Allstate paid commissions totaling $587,000 to approximately 4,400 unregistered persons who were either previously registered with the firm or worked for affiliated insurance companies, and that Allstate incorrectly labeled approximately 2,900 customer accounts as closed in a database, resulting in the firm's failure to create or send approximately 6,500 required privacy notices and approximately 2,200 required period account records. In settlement, the firm consented to a censure and a fine of $1 million. FINRA recognized Allstate's extraordinary cooperation by self-reporting three of its issues and substantially assisting FINRA with its investigation of the firm's payments of commissions to unregistered persons.

Variable Annuities

***MetLife Securities, Inc.*, FINRA AWC No. 2014040870001 (May 3, 2016).**

In a settlement with MetLife Securities, Inc. (MetLife), FINRA alleged that, from 2009 through 2014, the firm misrepresented or omitted material facts related to variable annuity replacement applications for 72% of the 35,500 replacement applications the firm approved. In particular, FINRA alleged that MetLife (1) represented to customers that their existing variable annuities were more expensive than the recommended replacement, when it was not; (2) failed to disclose to customers that the recommended replacement would eliminate certain features of their existing variable annuities, such as accrued death benefits, guaranteed income benefits, and guaranteed fixed interest account rider; and (3) understated the value of customers' existing death benefits. FINRA also alleged that MetLife did not adequately train its registered representatives to assess accurate information regarding variable annuity replacements and to consider the relative costs and guarantees involved in replacing variable annuities. FINRA further alleged that MetLife sent customers misleading quarterly account statements that understated the total charges and fees related to variable annuity contracts. MetLife consented to a censure, a fine of $20 million, to pay up to $5 million in compensation to customers for variable annuity replacement contracts, and an undertaking to review and revise the firm's systems, policies, and procedures regarding variable annuities.

***Voya Financial Advisors Inc.,* FINRA AWC No. 2014039172901 ; *Cetera Advisor Networks LLC, Cetera Financial Specialists LLC, First Allied Securities, Inc., Summit Brokerage Services, Inc., and VSR Financial Services, Inc.,* FINRA AWC No. 2015045234401 ; *Kestra Investment Services, LLC and NFP Securities, Inc.,* FINRA AWC No. 2014039418401 ; and *FTB Advisors, Inc.*, FINRA AWC No. 2015043292101 (Nov. 2, 2016).**

In AWCs with eight firms publicized on the same day, FINRA alleged that each firm failed to maintain supervisory systems reasonably designed to identify red flags in the sale of multishare

class variable annuities. According to FINRA, in periods ranging from nine months to two years, the firms sold L-share variable annuity contracts to customers with long-term investment horizons, even though the product is designed for short-term investors willing to pay higher fees for shorter surrender periods. The issue was compounded by combining the transactions with complex riders that only provided benefits over longer holding periods. FINRA alleged that the firms had inadequate systems, procedures, and training to identify these transactions as red flags. FINRA also found that some of the firms had inadequate supervision of variable annuity exchanges and/or inadequate supervision of consolidated reporting. In settlement, the each firm consented to a censure and penalty, as follows:

- Voya Financial Advisors Inc. – Fine: $2,750,000; Restitution: $1,800,000;
- Kestra Investment Services, LLC – Fine: $475,000;
- FTB Advisors, Inc. – Fine: $250,000;
- First Allied Securities, Inc. – Fine: $950,000;
- Cetera Advisor Networks LLC – Fine: $750,000;
- Summit Brokerage Services, Inc. – Fine: $500,000;
- VSR Financial Services, Inc. – Fine: $400,000; and
- Cetera Financial Specialists LLC – Fine: $350,000.

Collectively, First Allied Securities, Inc., Cetera Advisor Networks LLC, Summit Brokerage Services, Inc., and VSR Financial Services, Inc. also agreed to pay $4,500,000 in restitution and certify that they had each revised their systems, policies, procedures, and training to address the areas identified by the AWC.

***VALIC Financial Advisors, Inc.*, FINRA AWC No. 2014042360001 (Nov. 28, 2016).**

In a settlement with VALIC Financial Advisors, Inc. (VFA), FINRA alleged that, from October 2011 through October 2014, the firm's supervisory system failed to identify certain conflicts of interest in VFA's compensation policy. Specifically FINRA alleged that VFA's policy provided for little or no compensation for certain investments where the proceeds were transferred from a VALIC variable annuity, but did provide for compensation if those proceeds were rolled into VFA's managed investment program. FINRA alleged that VFA's supervisory system was inadequate in that it (1) failed to provide principals reviewing and approving variable annuity transactions sufficient information concerning the customers' existing assets; (2) failed to enforce existing procedures relating to the review of customer information on annuity transaction disclosure forms; (3) allowed principals to approve variable annuity transactions before obtaining all required documentation; and (4) failed to enforce WSPs requiring heightened review of variable annuity transactions that exceeded certain concentration levels. According to FINRA, VFA also failed to have WSPs that provide guidance about the suitability of variable annuities with multiple share classes. FINRA further alleged that, from January 2009 through August 2014, VFA failed to enforce its WSPs regarding review of emails flagged by the firm's surveillance system, and from October 2011 through December 2014 VFA failed to establish a supervisory process to ensure VFA accurately and timely reported customer

complaints to FINRA. Finally, FINRA alleged that, from January 2000 through November 2015, VFA failed to send almost 25,000 account notices to customers. VFA consented to a censure and a fine of $1,750,000.

WORM

***Wells Fargo Securities, LLC; Wells Fargo Prime Services, LLC; RBC Capital Markets LLC; RBC Capital Markets Arbitrage S.A.; RBS Securities, Inc.; Wells Fargo Advisors, LLC; Wells Fargo Advisors Fin. Network, LLC ; First Clearing, LLC; SunTrust Robinson Humphrey, Inc.; LPL Fin. LLC; Georgeson Securities Corp.; PNC Capital Markets LLC,* FINRA AWC Nos. 2016049784101, 2016049821601, 2016048685301, 2016050274801, 2016050194501, 2014043539001, 2016050194001, 2016050445901 (Dec. 21, 2016).**

In AWCs with 12 firms, FINRA alleged that each firm had deficiencies relating to the preservation of broker-dealer and customer records in "write once, read many," or "WORM" format, which prevents the alteration or destruction of records stored electronically. According to FINRA, each firm's WORM-related deficiencies affected a substantial number of records (in certain cases, hundreds of millions of records). FINRA also alleged that the firms had procedural and/or supervisory deficiencies that led to the WORM-related violations. Further, with respect to three of the firms, FINRA alleged that they did not retain certain records required to be maintained under the relevant records-retention rules. In settlement, each firm consented to a censure and a fine in the following amounts:

- Wells Fargo Securities, LLC (Wells Fargo) and Wells Fargo Prime Services, LLC (Wells Fargo Prime)- $4,000,000, jointly;
- RBC Capital Markets LLC (RBC Capital) and RBC Capital Markets Arbitrage S.A. (RBC CMA) - $3,500,000, jointly;
- RBS Securities, Inc.(RBS) - $2,000,000;
- Wells Fargo Advisors, LLC (Wells Fargo Advisors), Wells Fargo Advisors Fin. Network, LLC (Wells Fargo AFN), and First Clearing, LLC (First Clearing)- $1,500,000, jointly;
- SunTrust Robinson Humphrey, Inc. (SunTrust) - $1,500,000;
- LPL Fin. LLC (LPL) - $750,000;
- Georgeson Securities Corp.(Georgeson) - $650,000; and
- PNC Capital Markets LLC (PNC) - $500,000.

Wells Fargo, Wells Fargo Prime, RBC Capital Markets, RBC CMA, RBS, Wells Fargo Advisors, Wells Fargo AFN, First Clearing, and SunTrust each also consented to undertakings to adopt and implement policies and procedures reasonably designed to achieve compliance with the federal securities laws and FINRA rules addressed in the AWC.

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