

SECURITIES OPERATIONS

REGULATORY UPDATE



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Take Action Now

SEC Enforcement Post Qualification of Securities Offerings

On May 16, 2023, the U.S. Securities and Exchange Commission (“SEC” or the “Commission”) announced charges against 10 microcap companies for offering and selling securities in unregistered offerings that failed to comply with Regulation A, which provides a limited exemption from registration under the Securities Act as long as specific requirements are met. The SEC’s orders found that, although the companies obtained qualification from the SEC for their securities offerings using Regulation A, they subsequently made one or more significant changes to their offerings. Recent changes included improperly increasing the number of shares offered, improperly increasing or decreasing the price of shares offered, failing to file updated financial statements at least annually for ongoing offerings, engaging in prohibited at the market offerings, or engaging in prohibited delayed offerings. As a result, each of the microcap companies offered and sold securities in violation of the offering registration provisions.

Each of the 10 microcap companies agreed to cease and desist from violations of Section 5 of the Securities Act and to pay the following civil penalties:

- CW Petroleum Corp., a Wyoming corporation based in Katy, Texas, agreed to pay a \$5,000 civil penalty;
- DNA Brands Inc., a Colorado corporation based in Alpharetta, Georgia, agreed to pay a \$10,000 civil penalty;
- Graystone Company Inc., a Colorado corporation based in Fort Lauderdale, Florida, agreed to pay a \$25,000 civil penalty;
- Green Stream Holdings Inc., a Wyoming corporation based in New York, New York, agreed to pay a \$75,000 civil penalty;
- Hemp Naturals Inc., a Delaware corporation based in Sunny Isles Beach, Florida, agreed to pay a \$50,000 civil penalty;
- LiveWire Ergogenics Inc., a Nevada corporation based in Anaheim, California, agreed to pay a \$50,000 civil penalty;
- Principal Solar Inc., a Delaware corporation based in Dallas, Texas, agreed to pay a \$40,000 civil penalty;
- SFLMaven Corp., a Wyoming corporation based in Fort Lauderdale, Florida, agreed to pay a \$25,000 civil penalty;
- The Marquee Group Inc., a Florida corporation based in St. Petersburg, Florida, agreed to pay a \$10,000 civil penalty; and
- Verde Bio Holdings Inc., a Nevada corporation based in Frisco, Texas, agreed to pay a \$90,000 civil penalty.

Press Release: <https://www.sec.gov/news/press-release/2023-94>

Regulatory Actions

On May 3, 2023, the SEC adopted amendments to modernize and improve disclosure about repurchases of an issuer's equity securities that are registered under the Securities Exchange Act of 1934 ("Exchange Act"). The amendments require additional detail regarding the structure of an issuer's repurchase program and its share repurchases, require the filing of daily quantitative repurchase data reported either quarterly or semiannually, and eliminate the requirement to file monthly repurchase data in an issuer's periodic reports. The amendments also revise and expand the existing periodic disclosure requirements about these repurchases. Finally, the amendments add new quarterly disclosure in certain periodic reports related to an issuer's adoption and termination of certain trading arrangements.

Final Rule: <https://www.sec.gov/rules/final/2023/34-97424.pdf>

Effective Date: 60 Days after Publication in the Federal Register

Press Release: <https://www.sec.gov/news/press-release/2023-85>

Fact Sheet: <https://www.sec.gov/files/34-97424-fact-sheet.pdf>

On May 3, 2023, the SEC adopted amendments to Form PF, the confidential reporting form for certain SEC-registered investment advisers to private funds to require event reporting upon the occurrence of key events. The amendments also require large private equity fund advisers to provide additional information to the SEC about the private equity funds they advise. The reporting requirements are designed to enhance the Financial Stability Oversight Council's ability to monitor systemic risk as well as bolster the SEC's regulatory oversight of private fund advisers and investor protection efforts. The amendments for current reporting will become effective six months after publication of the adopting release in the Federal Register, and the remaining amendments will become effective one year after publication in the Federal Register.

Final Rule: <https://www.sec.gov/rules/final/2023/ia-6297.pdf>

Effective Date: Current Reporting 180 Days after Publication in the Federal Register, remaining amendments 365 Days after Publication in the Federal Register

Press Release: <https://www.sec.gov/news/press-release/2023-86>

Fact Sheet: <https://www.sec.gov/files/ia-6297-fact-sheet.pdf>

On May 17, 2023, the SEC published for comment a proposal to amend certain portions of the Covered Clearing Agency Standards under the Exchange Act to strengthen the existing rules regarding margin with respect to intraday margin and the use of substantive inputs to a covered clearing agency's risk-based margin system. The Commission also proposed a new rule to establish requirements for the contents of a covered clearing agency's recovery and wind-down plan.

SEC Proposed Rule: <https://www.sec.gov/rules/proposed/2023/34-97516.pdf>

Comments Due: July 17, 2023

Press Release: <https://www.sec.gov/news/press-release/2023-95>

Fact Sheet: <https://www.sec.gov/files/34-97516-fact-sheet.pdf>

On May 2, 2023, the Financial Industry Regulatory Authority (“FINRA”) published Regulatory Notice 23-07 to announce the adoption of amendments to Rule 8312 (FINRA BrokerCheck Disclosure) to release information on BrokerCheck as to whether a particular current or former member firm is currently designated as a Restricted Firm pursuant to FINRA Rules 4111 (Restricted Firm Obligations) and 9561 (Procedures for Regulating Activities Under Rule 4111).

Regulatory Notice 23-07: <https://www.finra.org/rules-guidance/notices/23-07>

Effective Date: June 1, 2023

On May 9, 2023, FINRA published Regulatory Notice 23-08 to remind members of their obligations when selling private placements (*i.e.*, unregistered offerings sold pursuant to the Regulation D safe harbors under Sections 3 and 4 of the Securities Act of 1933). Members must conduct reasonable investigations of the issuers and the securities they recommend in private offerings made under Regulation D. Since FINRA published Regulatory Notice 10-22, the unregistered offering market and the related regulatory landscape has evolved, with FINRA observing areas of concern and effective practices. In response, FINRA released this Notice to update and supplement the prior guidance. This Notice is not intended to alter the principles or guidance FINRA provided in prior Regulatory Notices.

Regulatory Notice 23-08: <https://www.finra.org/rules-guidance/notices/23-08>

On May 9, 2023, FINRA published Regulatory Notice 23-09 to request comments on FINRA rules impacting capital formation. Since FINRA’s initial request in 2017 through Regulatory Notice 17-14, FINRA has completed actions (including rule changes) that promote capital formation. While these actions increase efficiency and reduce unnecessary burdens on the capital-raising process, FINRA is requesting comments on whether additional changes to these or other FINRA rules, operations or administrative processes would further enhance the capital-raising process without compromising protections for investors and issuers.

Regulatory Notice 23-09: <https://www.finra.org/rules-guidance/notices/23-09>

Comments Due: August 7, 2023

On May 9, 2023, the SEC published for comment, and granted immediate effectiveness to, a Nasdaq Stock Market LLC (“Nasdaq”) proposal to (i) eliminate various transaction credits at Equity 7, Section 118(a); and (ii) amend Equity 7, Section 118(a) and Section 118(j) to exclude certain days for purposes of calculating Consolidated Volume and trading activity.

Notice Release: <https://www.sec.gov/rules/sro/nasdaq/2023/34-97466.pdf>

Comments Due: June 5, 2023

On May 10, 2023, the SEC published for comment, and granted immediate effectiveness to, a Nasdaq proposal to amend The Nasdaq Options Market LLC’s Pricing Schedule at Options 7, Section 2(1), “Nasdaq Options Market - Fees and Rebates.” Specifically, Nasdaq proposes to amend note 2 within Options 7, Section 2(1).

Notice Release: <https://www.sec.gov/rules/sro/nasdaq/2023/34-97471.pdf>

Comments Due: June 6, 2023

Notable Enforcement Actions

This month's regulatory actions highlight firms' registration, securities marking, and supervisory failures, in addition to violations relating to the terms and conditions for securities offerings.

FINRA censures and fines firm [\\$500,000 for failing to register, or timely register](#), more than 400 call center personnel who engaged in securities business on the firm's behalf in capacities that required registration.

FINRA censures and fines firm [\\$250,000 for failing to establish, maintain, and enforce](#) a supervisory system, including WSPs, reasonably designed to ensure that it did not engage in general solicitations of private placements.

FINRA censures and fines firm [\\$180,000 for failing to reasonably supervise](#) a registered representative's disclosed, but unapproved, outside business activity involving the sale of a security described as a structured cash flow investment.

FINRA censures and fines firm [\\$175,000 for mismarking approximately 9.7 million](#) principal short sell orders that resulted in approximately 390,000 executions being marked as long.

FINRA censures and fines firm [\\$90,000 for violating Exchange Act Rule 10b-9](#) and FINRA Rule 2010 by permitting material changes to the terms of two related private placement offerings (the offerings) without terminating the offerings and returning funds to investors.

FINRA censures and fines firm [\\$40,000 for failing to establish and maintain a supervisory system](#), including WSPs, reasonably designed to review its traders' bond marks to ensure accurate books and records.