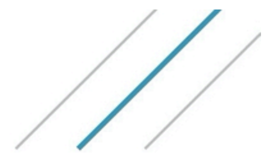
SECURITIES OPERATIONS

REGULATORY UPDATE



June 1, 2022

For more information please contact info@mediantonline.com

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TAKE ACTION NOW

Two Federal Court Decisions Deal the SEC a Loss and a Victory on Two Important Matters

On May 18, 2022, the U.S. Court of Appeals for the Fifth Circuit held in *Jarkesy v. SEC,* that the Securities and Exchange Commission's ("SEC" or "Commission") decision in the enforcement action brought as an administrative proceeding against Jarkesy was vacated on the grounds that the proceedings, as currently implemented, are unconstitutional. Specifically, the Court explained that the in-house adjudicative proceedings violated the respondent's right to a jury trial, that Congress violated the nondelegation doctrine by granting the Commission the discretion to choose between an administrative proceeding or federal court, and the Take Care Clause of Article II of the Constitution was also violated as a result of the statutory restrictions on the removal of SEC administrative law judges, which runs afoul of the President's removal power. If this decision stands, it calls into question the viability of contested administrative proceedings going forward.

https://www.ca5.uscourts.gov/opinions/pub/20/20-61007-CV0.pdf

In another important federal case for the SEC, decided on May 24, 2022, the U.S. Court of Appeals for the District of Columbia Circuit ruled in favor of the Commission's 2020 rule on market data infrastructure to increase the content of equity market data provided to investors and to introduce competition into the dissemination of that data. A petition from the Nasdaq Stock Market LLC ("Nasdaq"), the New York Stock Exchange LLC ("NYSE") and other exchanges arguing the rule is arbitrary and capricious and should be overturned was rejected. The Court ruled that the market data infrastructure rule "clearly represents a reasonable balancing" by the SEC of the objectives Congress directed the Commission to address "in a complex and technical area." The Court also held that "the Commission considered each of the petitioners' concerns and reasonably determined, based on the information available to it, that the Rule was warranted."

Nasdaq Stock Mkt. LLC v. Sec, No. 21-1100 Consolidated with 21-1101, 2022 BL 178200 (D.C. Cir. May 24, 2022), Court Opinion (bloomberglaw.com)

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SEC EXPANDS STAFFING FOR ENFORCEMENT'S CRYPTO ASSETS AND CYBER UNIT

On May 3, 2022, the SEC announced the allocation of 20 additional positions to the newly renamed Crypto Assets and Cyber Unit in the Division of Enforcement which will grow to 50 dedicated positions. Since its creation in 2017, the unit has brought more than 80 enforcement actions related to fraudulent and unregistered crypto asset offerings and platforms, resulting in monetary relief totaling more than $2 billion. The Crypto Assets and Cyber Unit focuses on investigating violations related to crypto asset offerings, crypto asset exchanges, crypto asset lending and staking products, decentralized finance platforms, non-fungible tokens and stablecoins.

Press Release: https://www.sec.gov/news/press-release/2022-78

SEC EXTENDS COMMENT PERIOD FOR CLIMATE-RELATED DISCLOSURES

On May 9, 2022, the SEC announced it had extended the comment period on the proposed rulemaking to enhance and standardize climate-related disclosures for investors until June 17, 2022 (Release Nos. 33-11042, 34-94478). The proposed rules would require information about a registrant's climate-related risks that are reasonably likely to have a material impact on its business, results of operations, or financial condition to be included in their registration statements and annual reports. The required information about climate-related risks would also include disclosure of a registrant's greenhouse gas emissions, which have become a commonly used metric to assess a registrant's exposure to such risks. In addition, under the proposed rules, certain climate-related financial metrics would be required in a registrant's audited financial statements.

Proposed Rule: https://www.sec.gov/rules/proposed/2022/33-11061.pdf
Comments Due: June 17, 2022
Press Release: https://www.sec.gov/news/press-release/2022-82

SEC REOPENS COMMENT PERIOD RELATED TO PROPOSED RULES REGARDING PRIVATE FUND ADVISERS AND REGULATION ATS

On May 9, 2022, the SEC announced it had reopened the comment periods for the proposed rulemakings "Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews," Release Nos. IA-5955 (Feb. 9, 2022) to enhance private fund investor protection and "Amendments Regarding the Definition of 'Exchange' and Alternative Trading Systems ("ATSs") That Trade U.S. Treasury and Agency Securities, National Market System Stocks, and Other Securities," Release No. 34-94062 (Jan. 26, 2022) to include significant Treasury markets platforms within Regulation ATS.

Proposed Rule: https://www.sec.gov/rules/proposed/2022/34-94868.pdf
Comments Due: June 13, 2022
Press Release: https://www.sec.gov/news/press-release/2022-82

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SEC PUBLISHES DATES FOR DATA COLLECTION INITIATION AND CONTINGENT PHASE-IN TERMINATION RELATED TO THRESHOLDS OF SECURITY-BASED SWAPS

On May 11, 2022, the SEC announced the data collection initiation date was November 8, 2021, and, absent additional Commission action, the phase-in termination date shall be November 8, 2026. The definition of "security-based swap dealer" ("SBSDs") is subject to a de minimis exception whereby a person is deemed not to be a SBSD as a result of security-based swap dealing activity that falls below certain de minimis thresholds. These de minimis thresholds are subject to temporarily higher phase-in levels of security-based swap dealing activity that will be in effect until the phase-in termination date. The phase-in termination date is determined in part by reference to a data collection initiation date.

SEC Announcement: https://www.sec.gov/rules/other/2022/34-94896.pdf

SEC PROPOSES TO ENHANCE DISCLOSURES ABOUT ESG INVESTMENT PRACTICES

On May 25, 2022, the SEC announced a proposal to amend rules and reporting forms to promote consistent, comparable and reliable information for investors concerning funds' and advisers' incorporation of environmental, social and governance ("ESG") factors. The proposed changes would apply to certain registered investment advisers, advisers exempt from registration, registered investment companies, and business development companies. The amendments seek to categorize certain types of ESG strategies broadly and require funds and advisers to provide more specific disclosures in fund prospectuses, annual reports and adviser brochures based on the ESG strategies they pursue. Funds focused on the consideration of environmental factors generally would be required to disclose the greenhouse gas emissions associated with their portfolio investments. Funds claiming to achieve a specific ESG impact would be required to describe the specific impact(s) they seek to achieve and summarize their progress on achieving those impacts. Funds that use proxy voting or other engagement with issuers as a significant means of implementing their ESG strategy would be required to disclose information regarding their voting of proxies on particular ESG-related voting matters and information concerning their ESG engagement meetings. To complement the proposed ESG disclosures in fund prospectuses, annual reports and adviser brochures, the proposal would require certain ESG reporting on Forms N-CEN and ADV Part 1A.

Proposed Rule: https://www.sec.gov/rules/proposed/2022/ia-6034.pdf
Comments Due: 60 days from publication in the Federal Register
Fact Sheet: https://www.sec.gov/files/ia-6034-fact-sheet.pdf
Press Release: https://www.sec.gov/news/press-release/2022-92

SEC NAMES RICHARD R. BEST DIRECTOR OF DIVISION OF EXAMINATIONS

On May 24, 2022, the SEC announced the appointment of Richard R. Best as Director of the Division of Examinations, effective immediately. He has served as the Division's acting director since March 23, 2022. Until March, Mr. Best was the Director of the SEC's New York Regional Office. He previously served as the Director of the Atlanta and Salt Lake City Regional Offices.

Press Release: https://www.sec.gov/news/press-release/2022-87

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FINRA ISSUED MARCH 2022 OPTIONS DISCLOSURE DOCUMENT

On May 6, 2022, the Financial Industry Regulatory Authority, Inc. ("FINRA") issued the March 2022 Options Disclosure Document ("ODD"). The ODD contains general disclosures on the characteristics and risks of trading standardized options. The March 2022 ODD: (i) contains supplemental material to accommodate trading of certain index options and index flex options with a multiplier of one; and (ii) makes certain administrative changes to correct references to chapter subtitles contained in the original ODD text and to update references to sections in the document. Rule 9b-1 under the Securities Exchange Act ("Exchange Act") requires broker-dealers to deliver the ODD and supplements to customers. FINRA Rule 2360(b)(11)(A)(1) requires firms to deliver the current ODD to each customer at or before the time the customer is approved to trade options.

Information Notice: https://www.finra.org/rules-guidance/notices/information-notice-050622

FINRA PROPOSES TO EXPAND TRACE REPORTING REQUIREMENTS

On May 11, 2022, the SEC published for comment a FINRA proposal to expand Trade Reporting and Compliance Engine ("TRACE") reporting requirements to trades in U.S. dollar-denominated foreign sovereign debt securities. Under the proposal, trades in U.S. dollar-denominated foreign sovereign debt securities would be subject to same-day reporting and would not be disseminated publicly.

Notice Release: https://www.sec.gov/rules/sro/finra/2022/34-94891.pdf
Comments Due: June 7, 2022

FINRA TRACE REPORTING AMENDED FOR IDENTIFICATION OF PORTFOLIO TRADES

On May 24, 2022, FINRA published *Regulatory Notice 22-12* to announce the adoption of amendments to Rule 6730 (Transaction Reporting) that requires members append a modifier to a corporate bond trade that is part of a portfolio trade when reporting to FINRA's TRACE and which provides responses to frequently asked questions with respect to the application of the portfolio trade modifier requirement. The amendments to Rule 6730 will take effect on May 15, 2023.

Regulatory Notice 22-12: https://www.finra.org/sites/default/files/2022-05/Notice_Regulatory_22-12.pdf

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NASDAQ PROPOSES TO ADD CATEGORIES AND REORGANIZE EQUITY 4 SECTION 4120

On May 3, 2022, the SEC published for comment Amendment No. 1, which amended and superseded a proposed rule originally filed by Nasdaq to modify Equity 4, Section 4120 to add categories of regulatory and operational halts, to reorganize the remaining text of the rule, and to make conforming changes to related rules. In conjunction with the adoption of an amended Nasdaq UTP Plan proposed by its participants ("Amended Nasdaq UTP Plan"), Nasdaq is amending Rule 4120 entitled Limit Up-Limit Down Plan and Trading Halts to integrate several definitions and concepts from the Amended Nasdaq UTP Plan and to reorganize the rule in light of Nasdaq's experience with applying the rule for more than 15 years. The rule sets forth Nasdaq's authority to halt trading under various circumstances. Nasdaq is also a participant of the transaction reporting plan governing Tape C Securities ("Nasdaq UTP Plan"). Nasdaq has been working with other Self-Regulatory Organizations ("SROs) to establish common criteria and procedures for halting and resuming trading in equity securities in the event of regulatory or operational issues. These common standards are designed to ensure that events which might impact multiple exchanges are handled in a consistent manner that is transparent. Nasdaq believes that implementation of these common standards will assist the SROs in maintaining fair and orderly markets. As part of the proposed changes, Nasdaq will add categories of regulatory and operational halts, improve the rule's clarity, adopt defined terms from the Amended Nasdaq UTP Plan and delete parts of the rule that are no longer needed. Lastly, Nasdaq is updating cross references in other rules that are affected by the proposed changes.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-94838.pdf

NASDAQ'S LISTING AND TRADING OF SHARES OF THE VALKYRIE XBTO BITCOIN FUTURES FUND APPROVED

On May 5, 2022, the SEC published an order granting approval of a Nasdaq proposal, modified by Amendment Nos. 1 and 2, to list and trade shares of the Valkyrie XBTO Bitcoin Futures Fund under Nasdaq Rule 5711(g) (Commodity Futures Trust Shares). In approving the proposed rule change, the Commission emphasized—as it has with previous orders regarding bitcoin-related exchange-traded products—that its action does not rest on an evaluation of whether bitcoin, or blockchain technology more generally, has utility or value as an innovation or an investment.

SEC Approval Order: https://www.sec.gov/rules/sro/nasdaq/2022/34-94853.pdf

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NASDAQ PROPOSAL TO EXEMPT NON-CONVERTIBLE BONDS EXTENDED

On May 18, 2022, the SEC published an order instituting proceedings to determine whether to approve or disapprove a Nasdaq-proposed rule change to exempt non-convertible bonds listed under Rule 5702 from certain corporate governance requirements. Nasdaq proposed to amend Nasdaq Rule 5702 to exempt these issuers from the requirements relating to Review of Related Party Transactions (Nasdaq Rule 5630), Shareholder Approval (Nasdaq Rule 5635), and Voting Rights (Nasdaq Rule 5640). According to Nasdaq, it is appropriate to exempt these issuers from governance requirements because the interests of bond holders are protected contractually through the trust indenture, and therefore, "holders of non-convertible bonds do not expect to have governance rights the way equity investors may." In addition, Nasdaq proposed to consolidate under Nasdaq Rule 5702 other exemptions currently applicable to such issuers pursuant to Nasdaq Rules 5605(f)(4), 5606(c), and 5616(a)(6)(A). The Commission is instituting proceedings to allow for additional consideration and comment.

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-94941.pdf
Comments Due: June 14, 2022
Rebuttal Comments Due: June 28, 2022

NASDAQ CHANGE TO MODIFY PRICING LIMITATIONS GRANTED LONGER PERIOD

On May 19, 2022, the SEC designated a longer period for Commission action on proceedings to determine whether to approve or disapprove a Nasdaq proposal to allow companies to modify certain pricing limitations for companies listing in connection with a Direct Listing with a Capital Raise in which the company will sell shares itself in the opening auction on the first day of trading on Nasdaq. The Commission designated July 7, 2022, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SRNASDAQ-2022-027).

Notice Release: https://www.sec.gov/rules/sro/nasdaq/2022/34-94947.pdf

NYSE WITHDRAWS PROPOSAL TO RULE 7.31, 7.35, 98, AND 104 RELATING TO THE CLOSING AUCTION

On May 3, 2022, the SEC published a NYSE notice of withdrawal of a proposed rule change to amend Exchange Rules 7.31 (Orders and Modifiers), 7.35 (General), 7.35B (DMM-Facilitated Closing Auctions), 7.35C (Exchange-Facilitated Auctions), 98 (Operation of a DMM Unit), and 104 (Dealings and Responsibilities of DMMs) relating to the Closing Auction.

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-94835.pdf

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NYSE AMENDS ITS PRICE LIST

On May 17, 2022, the SEC published for comment a NYSE proposal, effective upon filling, to amend its price list to introduce a new adding credit for providing displayed liquidity to NYSE in Tape B and C Securities and proposed to implement the fee changes effective May 11, 2022.

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-94933.pdf
Comments Due: June 13, 2022

NYSE AND NYSE AMERICAN TO MODIFY RULE 7.31 REGARDING DIRECTED ORDERS

On May 3, 2022, the SEC published for comment a proposal by the NYSE and NYSE American LLC ("NYSE American") (collectively "the Exchanges"), to modify Rules 7.31 and 7.31E, respectively, (Orders and Modifiers) to add new subparagraphs (f)(1) and (f)(4), also respectively, to provide for Directed Orders. The Directed Order, as defined, would be a Limit Order sent to the Exchanges to be routed directly at its limit price to an ATS specified by a member organization/ATP Holder along with other specific criteria. The Exchanges also proposed to make other conforming changes to its Rules in connection with the addition of this new order type. The Exchanges also proposed conforming changes to Rules 7.19(a)(5) and 7.19E(a(5) (Pre-Trade Risk Controls) to specify that orders routed on arrival pursuant to Rules 7.31(f)(1) and 7.31(f)(4) would also be included for purposes of the Gross Credit Risk Limit calculation. NYSE Rule 104 (Dealings and Responsibilities of Designated Market Maker ("DMMs")) would also be amended to add Directed Orders to Rule 104(b)(6) as an order type that DMM units may not enter. Because of the technology changes associated with this proposed rule change, the Exchanges will announce the implementation date by Trader Update. Subject to effectiveness of this proposed rule change, the Exchanges anticipate that the proposed change will be implemented in the second quarter of 2022.

NYSE Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-94839.pdf
NYSE American Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-94840.pdf

NYSE EXCHANGES PROPOSAL ON CME GROUP WIRELESS CONNECTIVITY AND FEES GRANTED LONGER PERIOD

On May 12, 2022, , the SEC designated a longer period for Commission action on proceedings to determine whether to approve or disapprove proposed rules changes by NYSE, NYSE American, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively "NYSE Exchanges"), that were effective upon filing, to amend their respective fee schedules to offer wireless connectivity to CME Group, Inc. market data and establish associated fees. The Commission designates July 16, 2022, as the date by which the Commission should either approve or disapprove the proposed rule changes (File Nos. SR-NYSE-2021-67, SR-NYSEAMER-2021-43, SR-NYSEArca-2021-97, SR-NYSECHX-2021- 17, SR-NYSENAT-2021-23).

Notice Release: https://www.sec.gov/rules/sro/nyse/2022/34-94899.pdf

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NYSE AMERICAN AMENDMENT TO RULE 7.31-E(h)(3) GRANTED LONGER PERIOD

On May 6, 2022, the SEC designated a longer period for Commission action on an NYSE American proposal, to modify certain factors relevant to the quote instability calculation for Discretionary Pegged Orders. The Commission designates June 26, 2022, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NYSEAMER-2022-15).

Notice Release: https://www.sec.gov/rules/sro/nyseamer/2022/34-94865.pdf

DTC PROPOSES NETWORK AND COMMUNICATION TECHNOLOGY REQUIREMENTS

On May 24, 2022, the SEC announced a Depository Trust Company ("DTC") proposal to adopt a requirement that each participant provide documentation demonstrating that the participant's network technology and communication technology or protocols meet the standards that DTC is currently requiring. The determination to require changes or upgrades is incorporated into DTC's procedures and includes an evaluation of the external threat landscape, threats to DTC's technology infrastructure and information assets, industry cybersecurity priorities, a review of the root causes of incidents, and an evaluation of the current state of the network infrastructure as expressed using third-party assessments. For existing participants and pledgees, a new requirement is proposed to require such participants to upgrade their network technology and communication technology or protocols and shall be set forth in the form of a notice posted on DTC's website. Applicants to become a participant or pledgee shall be required to test connectivity to DTC using the current network technology or communication technology or protocols with their application for membership upon the effective date of the proposal.

Proposed Rule: https://www.sec.gov/rules/sro/dtc/2022/34-94975.pdf
Comments Due: 21 days from publication in the Federal Register

OCC PROPOSED CHANGED TO MARGIN METHODOLOGY RELATED TO VOLATILITY PROCEEDINGS INSTITUTED

On May 12, 2022, the SEC published an order instituting proceedings to determine whether to approve or disapprove of the Options Clearing Corporation ("OCC")-proposed rule change concerning the OCC's margin methodology for incorporating variations in implied volatility. Specifically, the OCC proposes to implement a new model for incorporating variations in implied volatility within OCC's margin methodology for products based on the S&P 500 Index; implement a new model to margin futures on volatility indexes; and replace OCC's model for margining variance futures. The Commission is providing notice of the grounds for disapproval under consideration and is instituting proceedings to allow for additional analysis of, and input from, commenters.

Notice Release: https://www.sec.gov/rules/sro/occ/2022/34-94900.pdf
Comments Due: June 8, 2022
Rebuttal Comments Due: June 22, 2022

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OCC CHANGES TO THE CASH-SETTLED FLEX ETF OPTIONS APPROVED

On May 13, 2022, the SEC published an order granting approval of an OCC-proposed rule change to accommodate the issuance, clearance and settlement of flexibly structured options on exchange-traded funds ("fund shares" or "ETFs") that are cash-settled ("Cash-Settled Flex ETF Options"). To accommodate Cash-Settled Flex exchange-traded fund ("ETF") Options, the OCC rule change revises its bylaws and rules to do the following: (i) make distinctions between Cash-Settled Flex ETF Options and physically-settled options on the same underlying security; (ii) clarify that certain provisions that currently apply only to physically-settled options will also apply to Cash-Settled Flex ETF Options; and (iii) exclude application of certain provisions to Cash-Settled Flex ETF Options that otherwise would apply to all cash-settled.

SEC Approval Order: https://www.sec.gov/rules/sro/occ/2022/34-94910.pdf

OCC REVISIONS TO PARTIAL TEAR-UP RULES APPROVED

On May 18, 2022, the SEC published an order granting approval of an OCC-proposed rule change to amend rules regarding payment obligations and the allocation of losses related to the use of Partial Tear-Up as a recovery tool. "Partial Tear-Up," is a process designed to return OCC to a matched book by extinguishing positions that remain open after OCC has attempted one or more auctions. The rule change provides clarity regarding the nature of an unsecured claim issued following a Partial Tear-Up.

SEC Approval Order: https://www.sec.gov/rules/sro/occ/2022/34-94938.pdf

OCC NEW SETTLEMENT TIMING APPROVED

On May 19, 2022, the SEC published an order granting accelerated approval of an OCC proposal, modified by Partial Amendment No. 1, to amend various provisions of OCC's rules to change the definition of "settlement time" from 9:00 a.m. Central Time ("CT") to 8:00 a.m. CT.

SEC Approval Order: https://www.sec.gov/rules/sro/occ/2022/34-94950.pdf
Comments Due: June 15, 2022

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MSRB AMENDS RULE G-19 AND G-48

On May 4, 2022, the SEC published for comment a Municipal Securities Rulemaking Board ("MSRB") proposal to amend MSRB Rule G-19, on suitability of recommendations and transactions, and MSRB Rule G-48, on transactions with sophisticated municipal market professionals ("SMMPs"). The proposed rule change would align MSRB Rule G-19 to the Commission's Rule 15l-1 under the Exchange Act ("Regulation Best Interest") for certain municipal securities activities of bank dealers (the "Best Interest Amendments"). In addition, the proposed rule change would amend MSRB Rule G-48 to modify the quantitative suitability obligation of brokers, dealers, and municipal securities dealers by eliminating the quantitative suitability obligation for recommendations in circumstances where a dealer does not have actual control or de facto control over the account of an Institutional SMMP (the "Institutional SMMP Amendment"). Subject to Commission approval, the respective compliance dates for the amendments to MSRB rules included in the proposed rule change will be announced in a regulatory notice published by the MSRB on its website within 30 days of the publication of the Commission's approval order in the Federal Register. The compliance date for the Best Interest Amendments will be no earlier than one year from the MSRB's publication of the regulatory notice announcing it. The compliance date for the Institutional SMMP Amendment will be no earlier than 30 days from the MSRB's publication of the regulatory notice announcing it.

Notice Release: https://www.sec.gov/rules/sro/msrb/2022/34-94850.pdf

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Notable Enforcement Actions

This month's enforcement actions highlight the cover-up of a fraud may be worse than the fraud, AML is still important to the SEC, and reporting and filing obligations must be timely.

A firm was censured, agreed to a cease and desist order, and has agreed to pay $315.2 million in disgorgement, $34 million in prejudgment interest, and a $675 million civil penalty, a portion of which will be distributed to certain investors, with the amount of disgorgement and prejudgment interest deemed satisfied by amounts it paid to the U.S. Department of Justice as part of an integrated, global resolution. In a parallel criminal proceeding, the U.S. Attorney's Office for the Southern District of New York announced criminal charges for similar conduct against the firm and three of its senior portfolio managers ("PMs"). As part of the parallel criminal proceeding, the firm and PMs have agreed to guilty pleas. The firm and PMs are charged with a massive fraudulent scheme that concealed the immense downside risks of a complex options trading strategy they called "Structured Alpha." The firm marketed and sold the strategy to approximately 114 institutional investors, including pension funds. After the COVID-19 market crash of March 2020 exposed the fraudulent scheme, the strategy lost billions of dollars as a result of the misconduct. The SEC's complaint, filed in the federal district court in Manhattan, alleges that Structured Alpha's lead PM orchestrated the multi-year scheme to mislead investors who invested approximately $11 billion in Structured Alpha, and paid the over $550 million in fees. It further alleges that, with assistance from the other PMs, the lead PM manipulated numerous financial reports and other information provided to investors to conceal the magnitude of Structured Alpha's true risk and the funds' actual performance. When the 2020 COVID-related market volatility revealed that the firm and PMs had misled investors about the fund's level of risk, the fund suffered catastrophic losses and investors lost billions while the PMs profited from their deception. The PMs also made multiple, ultimately unsuccessful, efforts to conceal their misconduct from the SEC, including false testimony and meetings in vacant construction sites to discuss sending their assets overseas. The SEC's complaint seeks permanent injunctions, disgorgement plus interest, and penalties against the PMs. In addition, the complaint seeks an officer and director bar against the lead PM. The accompanying PMs have agreed to the entry of partial judgments against them in which they consent to injunctive relief with monetary relief to be determined by the court in the future. These settlements are subject to court approval. As a consequence of the guilty plea, the firm is automatically and immediately disqualified from providing advisory services to US registered investment funds for the next 10 years and will exit the business of conducting these fund services. To avoid disruptions to these funds and for the protection of the fund investors, the SEC will allow a brief transition period solely to transition these services to another investment adviser. The transition period will be 10 weeks for the US mutual funds that the firm sub-advises and four months for the US closed-end funds that the firm advises.

SEC Complaint: https://www.sec.gov/litigation/complaints/2022/comp-pr2022-84.pdf
SEC Order 1: https://www.sec.gov/litigation/admin/2022/34-94925.pdf
SEC Order 2: https://www.sec.gov/litigation/admin/2022/34-94926.pdf
SEC Order 3: https://www.sec.gov/litigation/admin/2022/34-94927.pdf
Press Release: https://www.sec.gov/news/press-release/2022-84

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A firm was censured, agreed to a cease and desist order, and agreed to pay $7 million to settle charges for failing to file at least 34 Suspicious Activity Reports ("SARs") in a timely manner between April 2017 and October 2021. According to the SEC's order, due to the firm's deficient implementation and failure to test a new version of its internal anti-money laundering ("AML") transaction monitoring and alert system adopted in January 2019, the system failed to reconcile the different country codes used to monitor foreign wire transfers. As a result, the firm did not timely file at least 25 SARs related to suspicious transactions in its customers' brokerage accounts involving wire transfers to or from foreign countries that it determined to be at a high or moderate risk for money laundering, terrorist financing, or other illegal money movements. The order also found that, beginning in April 2017, the firm failed to timely file at least nine additional SARs due to a failure to appropriately process wire transfer data into its AML transaction monitoring system in certain other situations. This is the second Bank Secrecy Act action against this firm in the last five years. In November 2017, the SEC issued a settled order against the firm for failing to timely file at least 50 SARs. The SEC's order finds that the firm violated Section 17(a) of the Exchange Act and Rule 17a-8.
SEC Order: https://www.sec.gov/litigation/admin/2022/34-94955.pdf
Press Release: https://www.sec.gov/news/press-release/2022-85

A firm was censured and fined $400,000 for failing to report 82,311 short interest positions totaling more than nine billion shares, in violation of FINRA Rules 4560 and 2010. The firm also failed to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with short interest reporting requirements, in violation of National Association of Securities Dealers Rule 3010 and FINRA Rules 3110 and 2010. The findings stated that the firm set up trading accounts for its parent company, however the firm's legacy systems were not updated to capture the accounts in its short interest reports. As a result, the firm did not report any short interest positions in the accounts over more than six years. Subsequently, the firm implemented a technology solution to include all relevant accounts for short interest reporting. The firm failed to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with short interest reporting requirements and were solely operational. The firm's procedures listed the steps personnel were to follow to transmit the short interest report every two weeks but required no supervisory review to determine the accuracy of the reports. As a result, the firm failed to detect the unreported positions until the issue was identified during a compliance review by an outside consultant. Ultimately, the firm implemented a supervisory review and related written procedures outlining the steps supervisors are required to take to review the firm's short interest reports. **(FINRA Case #2019063203501)**
https://www.finra.org/sites/default/files/fda_documents/2019063203501%20Natixis%20Securities%20Americas%20LLC%20CRD%201101%20AWC%20jlg%20%282022-1650673218191%29.pdf

A firm was censured and fined $150,000, ordered to pay $250,710.41, plus interest, in restitution to certain customers who purchased an alternative mutual fund, and required to establish and implement policies, procedures and internal controls reasonably designed to address and remediate the issues pertaining to alternative mutual funds identified in the FINRA action and have an officer and registered principal of the firm certify to such actions. The firm failed to reasonably supervise its registered representatives' recommendations of an alternative mutual fund. The findings stated that the firm did not have a reasonably designed supervisory system with respect to the approval and recommendation of alternative mutual funds. The firm had no system or procedures to determine whether a new mutual fund constituted a complex product or was an alternative mutual fund, such that heightened due

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diligence of the product may be appropriate. Rather, in reviewing and approving new alternative mutual funds, the firm subjected them to the same standards as traditional mutual funds, which did not evaluate the potential risks and rewards associated with the strategy of the funds. In addition, the firm did not have any written supervisory procedures ("WSPs") advising firm principals how to supervise recommendations of alternative mutual funds. The firm utilized an electronic trade review system to assist with the supervision of the trading activity of the firm's financial professionals. However, the system was not modified to account for risk factors associated with alternative mutual funds that would warrant heightened principal review. As a result, certain of the firm's alternative mutual fund transactions may not have been identified for additional suitability review, even for customers with low-risk tolerances. The findings also stated that the firm negligently omitted to tell investors material information concerning an offering of limited partnership interests. The firm made at least three sales of the limited partnership interests totaling $165,000 and earned a total of $11,550 in commissions from the sales, however, firm representatives did not inform the customers that the issuer failed to timely file audited financial statements. The firm voluntarily offered to purchase the limited partnership interests sold to the three customers at issue and those offers were accepted. For that reason, there is no order of restitution relating to the firm's sales. **(FINRA Case #2019061764701)**
https://www.finra.org/sites/default/files/fda_documents/2019061764701%20Geneos%20Wealth%20Management%2C%20Inc.%20CRD%20120894%20AWC%20jlg%20%282022-1650241215034%29.pdf

A firm was censured and fined $115,000, based on findings that it failed to report 1,247 TRACE-eligible security transactions to TRACE within the 15-minute timeframe required by FINRA and without any applicable exception. The findings also stated that the firm failed to establish and maintain a supervisory system reasonably designed to achieve compliance regarding timely TRACE reporting. The firm tracked its late reporting to TRACE and imposed small fines and penalties on staff involved in late reporting. However, the firm did not remediate its ongoing late TRACE reporting effectively. The firm failed to reasonably train its supervisors regarding their responsibilities to conduct oversight and follow-up with staff regarding TRACE reporting and failed to reasonably train its staff regarding their obligation to timely report trades to TRACE. The firm's system of fines and penalties for late reporting was ineffective because it did not deter non-compliance and was inconsistently applied. In addition, the firm failed to allocate sufficient compliance department and administrative staff resources needed to reasonably monitor, surveil, and follow up on late reporting, given the firm's trading volume, which contributed to the firm's late TRACE reporting. **(FINRA Case #2019063924601)**
https://www.finra.org/sites/default/files/fda_documents/2019063924601%20Performance%20Trust%20Capital%20Partners%2C%20LLC%20CRD%2036155%20AWC%20jlg%20%282022-1650154818661%29.pdf

A firm was censured and fined $100,000, of which $85,000 is to be paid jointly and severally with a principal based on findings that they created and transmitted investment materials that made false, exaggerated, misleading, promissory, and unwarranted claims about a platform they were purportedly developing. The principal is also suspended from association with any FINRA member in all capacities for seven months from April 4, 2022, to November 3, 2022. The findings stated that the firm and the principal falsely claimed they had received a patent, overstated the progress that had been made toward bringing the platform to market, falsely claimed the platform was stalled due to a FINRA materiality consultation and made baseless and unwarranted valuation claims and revenue projections. The findings also stated

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that the principal used over $42,000 of the firm's funds to pay for personal expenses and directed the firm's Financial and Operations Principal to misclassify those expenses as business expenses of the firm. This caused the firm to maintain inaccurate books and records, which were in turn used to create Financial and Operational Combined Uniform Single reports that inaccurately understated the principal's compensation and overstated the firm's expenses. The findings also included that the firm failed to provide written disclosures in private placement offerings. The firm failed to make all the required disclosures with respect to the intended use of proceeds, offering expenses, and the amount of selling compensation to be paid in its offering documents and, relatedly, failed to timely file offering documents with FINRA for two private offerings. **(FINRA Case #2019060648701)**
https://www.finra.org/sites/default/files/fda_documents/2019060648701%20StockKings%20Capital%20LLC%20CRD%20164445%20Gregory%20Antonius%20Lewis%20CRD%202793976%20Order%20Accepting%20Offer%20jlg%20%282022-1649895620717%29.pdf

A firm was censured and fined $100,000, based on findings that it overstated its executed daily trading volume advertised on a private subscription-based provider of market data. The findings stated that the firm's overstatements resulted from a flaw in the advertising logic of its third-party order management system ("OMS"). The firm relied on its OMS to automatically report its executed order flow to the private market data provider on the firm's behalf. In certain circumstances, when calculating trading volume for advertising purposes, the firm's OMS incorrectly summed multiple fills for the same order, resulting in significant over-advertising of trading volume. As a result of this flaw persisting for more than a three-year period, the firm overstated its advertised trading volume through the private market data provider by 90,446,177 shares. The findings also stated that the firm's supervisory system, including its WSPs, was not reasonably designed to achieve compliance with FINRA Rule 5210, which governs the accuracy of advertised trading volume. The firm did not have any procedures relating to how its trading volume should be collected and submitted to market data providers, or how the firm should monitor its advertised trading volumes to ensure they were accurate. Likewise, the firm did not have any supervisory system to ensure the accuracy of its advertised trading volumes. The firm's OMS generated a daily list of securities traded, total shares traded, and the number of shares advertised via the private market data provider. However, the firm failed to review the report for the purpose of identifying instances of over-advertisement, and therefore, failed to identify any of the instances that it overstated its advertised trading volume. **(FINRA Case #2020067770401)**
https://www.finra.org/sites/default/files/fda_documents/2020067770401%20Wolfe%20Research%20Securities%20CRD%20151850%20AWC%20jlg%20%282022-1650759632573%29.pdf

A firm was censured and fined $75,000 and required to certify that all of its commission and payment arrangements, including but not limited to those paid in connection with any networking agreements, comply with FINRA Rule 2040. The firm paid approximately $19.3 million in transaction-based compensation earned by its registered representatives to unregistered entities. The findings stated that the unregistered entities were corporations and limited liability companies created by the firm's representatives to serve as doing business as names for their securities businesses and were disclosed and approved outside business activities. The firm made payments to the unregistered entities instead of paying commissions directly to the representatives. **(FINRA Case #2020068109001)**
https://www.finra.org/sites/default/files/fda_documents/2020068109001%20Crown%20Capital%20Securities%2C%20L.P.%20AWC%20CRD%206312%20jlg%20%282022-1649982023821%29.pdf

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A firm was censured and fined $70,000, and ordered to pay $29,840, plus interest, in partial restitution to customers. The firm sold four limited partnership interests without informing the customers that the issuer had not timely filed its audited financial statements with the SEC or the reasons for the delay. The findings stated that this was material information that should have been disclosed. The firm's sales of the limited partnership interests totaled $323,000, and the firm received a total of $25,840 in commissions from the sales. The findings also stated that firm's registered representatives recommended and sold the limited partnership interests to customers that were unsuitable in light of the customers' investment profiles despite all of the sales being reviewed and approved by firm principals. The firm received a total of $24,000 in commissions from these sales. **(FINRA Case #2019061213901)**
https://www.finra.org/sites/default/files/fda_documents/2019061213901%20Dempsey%20Lord%20Smith%2C%20LLC%20CRD%20141238%20AWC%20sl%20%282022-1650586829747%29.pdf

A firm was censured and fined $45,000, and ordered to pay partial restitution of $40,000, plus interest. The firm negligently omitted to tell seven investors in an offering that the issuer failed to timely make required filings with the SEC, including filing audited financial statements, and/or the reasons why the filings were not timely made. The findings stated that while the firm learned of the delays and the issuer's stated intention to complete a forensic audit, it sold seven limited partnership interests totaling $500,000 and received a total of $40,000 in commissions from these seven sales. The firm's representatives told only one of the seven customers that the issuer had not timely filed its audited financial statements with the SEC and did not tell any of the customers the reasons for the delay. The delay in filing audited financial statements and the reasons for the delay was material information that should have been disclosed. **(FINRA Case #2019061596401)**
https://www.finra.org/sites/default/files/fda_documents/2019061596401%20BD4RIA%2C%20Inc.%20CRD%20290240%20AWC%20sl%20%282022-1650586827735%29.pdf

A firm was censured and fined $7,500, based on findings that it failed to conduct annual independent testing of its AML compliance program. The findings stated that although the firm conducted quarterly testing of its AML compliance program, the test was performed by a registered representative who was supervised by, and reported to, the firm's AML Compliance Officer and therefore was not independent as required. The firm also failed to conduct a risk-based review of its AML program and its compliance with the Bank Secrecy Act because the testing focused on reviewing transactions for unusual activity and did not evaluate the firm's written AML procedures or compliance program. **(FINRA Case #2021069363301)**
https://www.finra.org/sites/default/files/fda_documents/2021069363301%20Aegis%20Investments%2C%20Inc.%20CRD%2016033%20AWC%20jlg%20%282022-1649895621424%29.pdf

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