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IN THIS ISSUE

ARTICLES

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This report is published quarterly by Sidley's Securities Enforcement and Regulatory practice. It is designed to provide actionable information and insights on key securities enforcement and regulatory developments to help busy legal and compliance professionals be more effective in their roles.

COLLATERAL CONSEQUENCES: CONSIDERATIONS WHEN NEGOTIATING SETTLEMENTS

by Elizabeth Marino

Most securities defense lawyers are familiar with the remedies typically imposed in settled enforcement cases, such as civil penalties, disgorgement, and orders to cease and desist from future violations of the securities laws. The size and nature of those remedies tend to be the main focus of the negotiations when a firm or individual seeks to settle with the SEC or another regulator. Unfortunately, those negotiations also tend not to include any discussion of the collateral consequences of the settlement—i.e., the disqualifications that can be triggered by the form of a settlement or the remedies imposed. Collateral consequences are automatic and, absent a waiver or no-action letter, can completely prevent a firm from engaging in certain types of business or deny it the benefits of certain preferred statuses under the securities laws. Regulators have no obligation to warn a firm that a proposed settlement will trigger collateral consequences. Indeed, many firms have entered into settlements believing they were putting the matter to rest, only to find themselves facing collateral consequences more costly than the settlement itself.

Collateral consequences can be triggered by many aspects of a settlement, including:

- the form of a settlement (e.g., settled administrative proceeding with the SEC, CFTC, or other regulator; entry of an injunction by a court in connection with certain activities)
- the violations charged by the regulator or found by the court (e.g., scienter or non-scienter-based fraud charges or "willful" violations of the federal securities laws)
- the sanctions imposed by the regulator or court (e.g., certain cease-and-desist orders, injunctions, undertakings, suspensions, bars)

Collateral consequences can apply to entities beyond those specifically named in an action or settlement, including parent companies and affiliates of a named party.

Before starting settlement negotiations, it is important for firms to (i) identify which collateral consequences would be most damaging to their business, (ii) determine what would trigger those consequences, and (iii) assess whether they could negotiate settlement terms to eliminate or mitigate collateral consequences. If a settlement or litigated matter is certain to trigger collateral consequences, the firm must evaluate the

ENFORCEMENT ACTIONS

8/25—Computer server manufacturer agrees to pay $17.5 million penalty to SEC to settle accounting charges for prematurely recognizing revenue and understating expenses. *In Matter of Super Micro Computer, Inc.*

8/26—Auto parts manufacturer agrees to pay $950,000 to settle SEC charges relating to accounting for future asbestos lawsuits. *In Matter of BorgWarner Inc.*

8/28—Nutrition company agrees to pay more than $123 million to settle parallel FCPA charges with the SEC and DOJ. *In Matter of Herbalife Nutrition Ltd.*

chances it could obtain relief, either from the SEC in the form of a waiver, exemptive order or no-action letter, or from FINRA in the form of permission to remain associated with a self-regulatory organization (SRO). The availability of such relief will depend on the particular circumstances of the settlement.

The primary securities-related collateral consequences that firms and companies should consider when negotiating a settlement or handling a litigated matter include:

- *Section 9(a) of the Investment Company Act of 1940 Disqualification:* Section 9(a) disqualifies a named party and its affiliated companies from acting in certain capacities for registered investment companies, registered unit investment trusts, and registered face-amount certificate companies if they become subject to certain injunctive or criminal actions.
- *Statutory Disqualification Under the Securities Exchange Act of 1934:* This statutory disqualification prohibits a firm or associated person from becoming or remaining associated with an SRO if the firm or associated person is subject to certain disqualifying events.
- *Well-Known Seasoned Issuer (WKSI) Disqualification:* This disqualification prohibits a company from relying on the benefits afforded a WKSI, including the ability to use an automatic shelf registration, the use of certain free writing prospectuses and pay-as-you-go filing fees.
- *Safe Harbor for Forward-Looking Statements:* The forward-looking statements disqualification prohibits a company from relying on the statutory safe harbors for forward-looking statements under Section 27A of the Securities Act and Section 21E of the Exchange Act.
- *Regulation A/Rules 504 and 506 of Regulation D/Regulation CF Disqualification:* The "bad actor" disqualifications contained within Regulation A, Rules 504 and 506 of Regulation D, and Regulation CF prohibit an issuer from relying on the offering exemptions of those regulations if the issuer itself, or firms acting in certain capacities in connection with the offering, are subject to certain disqualifying events.
- *Rule 206(4)-3 Under the Investment Advisers Act of 1940 Disqualification (Cash Solicitation Rule):* The Cash Solicitation Rule disqualification prohibits an investment adviser from paying a solicitor if the solicitor is subject to certain disqualifying events.
- *Regulation E Disqualification:* The Regulation E disqualification prohibits an issuer from relying on the Regulation E offering exemption if the issuer or firms acting in certain capacities in connection with the offering are subject to certain disqualifying events.

Each settled matter must be carefully reviewed to determine whether any collateral consequences apply under the federal securities laws or other related laws and also to determine whether any related regulatory reporting will be required. Firms should conduct such analysis as early as possible in—and continuously throughout—any negotiations to ensure that any and all collateral consequences arising as a result of the settlement are handled properly.

Ms. Marino is a counsel who regularly helps broker-dealers, investment advisers, financial institutions, and issuers navigate the collateral consequences associated with settlements with the SEC, CFTC, state regulators, and others, including seeking and obtaining waivers and other relief.

ENFORCEMENT ACTIONS

8/28—Broker-dealer agrees to pay $550,000 to settle FINRA charges of supervisory violations related to the concentration and suitability of positions in customer accounts. *Wells Fargo Advisors, LLC*

8/31—SEC settles pending case alleging sales of unregistered binary options for $1.2 million. *SEC v. Senderov*

9/2—Broker-dealer agrees with FINRA to pay $2 million for supervisory violations related to variable annuity switches. *Wells Fargo Clearing Services, LLC*

SEC INVESTIGATIONS IN THE TIME OF COVID-19 *An Interview with Stephen Cohen*

Stephen Cohen advises clients on a wide range of government and internal investigations, enforcement-related litigation, whistleblower complaints, cyber breaches, and regulatory and compliance issues. Before joining Sidley, he was an Associate Director in the SEC's Division of Enforcement, where he oversaw hundreds of investigations involving broker-dealers, investment advisers, exchanges, and public companies.

Q: How has SEC enforcement changed in response to the pandemic?

The Enforcement Division has been very aggressive in emphasizing the importance of pandemic-related disclosures and seeking out retail frauds related to COVID-19. The staff was very busy bringing enforcement actions at the end of the SEC's fiscal year in September.

After some early growing pains, the enforcement staff seems to have mostly hit a rhythm for operating in the new normal. Conducting meetings, witness interviews, and testimony by video is now routine. The biggest hurdle remains dealing with documents during witness interviews, but the staff has been amenable in most cases to working with counsel to make these difficult mechanics more efficient. The SEC staff is expected to continue to work from home at least until December 2020 if not beyond.

Q: When you were at the SEC, what are some of the biggest mistakes you saw firms make in responding to investigations?

A surprising number of companies and firms treated subpoenas simply as a document production exercise without selecting the right counsel to help them evaluate how best to respond and what might be animating the SEC's interest. There are many things that can be done at the outset of an investigation to create efficiencies, narrow the scope, or sometimes even advocate for closure. Considerations about whistleblowers must also be part of that calculus. Likewise, as the end of an investigation nears, there are important strategic decisions about how and when to engage with the staff that can have a profound impact on the outcome of an investigation. This is an area where I saw many errors and missed opportunities.

Q: The SEC's whistleblower program just made some record awards. What are the implications for SEC-registered firms, and what should firms be thinking about?

This year has been a profound reminder that after 10 years, the SEC's whistleblower program is here to stay. The SEC recently awarded a record-setting $114 million to a whistleblower, breaking the previous record of $50 million, which was only set in June. The total amount awarded since the program's inception is almost $700 million. Through process improvements and recent amendments to the program's rules, the SEC also appears to have improved the award process as well. These eye-popping awards have had the intended effect of increasing the number of tips that the SEC receives. Firms need to be vigilant about their compliance programs and perform periodic review and improvement. Firms also need to ensure that there is a culture of compliance such that employees feel free to speak up about concerns without fear of retaliation or they may go to the SEC instead.

Q: Some recent SEC orders gave credit for "extensive cooperation." What does the SEC expect for that kind of credit?

The SEC has been trying to improve its public acknowledgement of cooperation and has been clear that simply complying with a subpoena, even if expensive, is not really

ENFORCEMENT ACTIONS

9/3—SEC and DOJ bring parallel civil and criminal charges against co-chair of unsecured creditors committee of bankrupt retailer for allegedly abusing his position. *SEC v. Kamensky*

9/11—SEC and DOJ bring parallel civil and criminal charges against a film producer for promoting unregistered initial coin offerings (ICOs). *SEC v. Felton*

9/15—Issuer of unregistered ICOs agrees with SEC to disable tokens and pay $6.1 million penalty to be distributed to investors. *In Matter of Unikrn, Inc.*

cooperation. Examples of the kinds of activities that have garnered the "extensive cooperation" designation include obtaining and providing difficult-to-obtain documents, especially from abroad; providing unconventional data that is not easy to compile and produce; translating documents; making employees (including former employees) available for interviews; and providing useful presentations and submissions that highlight critical facts in a way that substantially furthers the staff's investigation and conserves Commission resources.

DIGITAL ASSETS IN FINANCIAL SERVICES: KEY REGULATORY CONSIDERATIONS

By Lilya Tessler and Daniel Engoren

Blockchain technology, digital assets, and cryptocurrencies are transforming the financial services industry. Broker-dealers and other financial institutions are exploring and implementing a variety of new products and services using the emerging technology at a rapid pace. The regulatory landscape for these innovative products and services is still developing, however, and is littered with traps for the unwary.

This article highlights some of the prominent digital asset products and services along with some of the key securities law regulatory concerns. (The list of concerns is not exhaustive and should not be treated as such.) For more in-depth analysis and to keep abreast of regulatory developments, please visit the Sidley Blockchain Legal Launch Pad and sign up for our FinTech mailing list.

Distributing and Trading Digital Assets

- *Is the Digital Asset a Security?* The SEC and the courts use the venerable test from *SEC v W.J. Howey Co.*, 328 U.S. 293 (1946), to determine whether a digital asset is a security. This test is highly fact-intensive, as elaborated by SEC staff guidance that includes 38 factors to be considered. The SEC staff has issued two no-action letters for offerings of digital assets without registration and more recently intimated in a statement that not all digital assets are securities.
- *Does a Broker-Dealer Need to File a Continuing Membership Application (CMA) with FINRA?* FINRA has been focused on digital assets in recent years and requests that all member firms provide notice before engaging in any activity related to digital assets (including non-securities). Certain activities related to digital assets that constitute a material change in business operations may require a CMA to be filed and approved by FINRA.
- *What Activity Is Likely to Attract Regulatory Scrutiny?* Over the last several years, the SEC enforcement actions involving digital assets have focused on unregistered primary securities offerings, unregistered broker-dealer activity, and operating an unregistered securities exchange.

Custody of Digital Assets

- *Does the Customer Protection Rule Apply?* All fully-paid and excess margin securities carried by a broker-dealer for the account of customers must be in the broker-dealer's possession or control. But how a broker-dealer can maintain "possession" or "control" of a security that exists only in digital form on a distributed ledger is an open question. Guidance from the SEC and FINRA staffs illustrates their belief that digital assets present unique challenges for complying with the Customer Protection Rule as well as other recordkeeping and financial reporting obligations.
- *Can a Broker-Dealer Rely on a "Good Control Location"?* The Office of the Comptroller of the Currency issued an interpretative letter confirming the authority of national banks to provide custody services for digital assets (including securities). However, broker-dealers

still need approval from FINRA and the SEC before relying on a national bank as a "good control location" for purposes of the Customer Protection Rule.

- *How Does a Registered Investment Adviser Comply With the Custody Rule?* Investment advisers registered with the SEC are generally required to custody customer funds or securities with a "qualified custodian" pursuant to the Custody Rule. However, the ability of national banks and broker-dealers, each being a qualified custodian under the Investment Advisers Act, to provide custody of digital asset securities remains unsettled.

Digital Asset Funds and their Advisers

- *What Regulatory Issues Must Be Addressed Before Offering a Registered Digital Asset Investment Product?* The SEC's Division of Investment Management has raised several investor protection issues that need to be addressed before a registered fund may be offered to retail investors. In particular, the SEC has repeatedly denied rule proposals for the listing of ETFs pursuing bitcoin strategies, echoing public comments from SEC Chairman Jay Clayton about concerns of market manipulation in the underlying bitcoin market.
- *How Should Advisers Prepare for Routine SEC Examinations?* To date, most SEC enforcement activity has been related to the offer and sale, and trading, of digital assets. However, the SEC's Office of Compliance Inspections and Examinations has recently included a number of issues particular to digital assets among its examination priorities. It is likely only a matter of time before there is a referral to the SEC's Division of Enforcement.

Digital Asset Derivatives and Lending Products

- *What Registrations Are Required for Investments in Digital Asset Derivatives?* Fund advisers investing in digital asset derivatives may need to register with the CFTC as Commodity Pool Operators and/or Commodity Trading Advisors, and institutions offering digital asset derivatives may need to register as a Futures Commission Merchant (FCM), Swap Execution Facility, or Designated Contract Market, depending on the particular circumstances. The National Futures Association also requires mandatory reporting requirements and disclosures for persons engaging in certain digital asset activities.
- *When Is Digital Asset Lending Activity Considered a Retail Commodity Transaction?* If firms offer leverage or financing for digital asset transactions to retail customers, and the transaction does not result in "actual delivery" of the digital asset in keeping with recent interpretative guidance from the CFTC, the institution may be required to register as a FCM.

"DeFi"

- *What (and Who) Is Regulated?* DeFi, short for "decentralized finance," generally refers to the use of blockchain technology and self-executing software to offer financial services or products without a central intermediary. Most financial services regulations are aimed at regulated intermediaries. Nonetheless, firms using DeFi applications, particularly developers of DeFi applications, need to consider what activities are being conducted, whether such conduct is regulated by the securities, commodities, and/or banking laws (among others), and whether their role in the DeFi application or ecosystem requires registration with a regulator.

Ms. Tessler is the New York head of Sidley's FinTech and blockchain group, is ranked in the 2020 Chambers FinTech guide, and was named a "Rising Star" in FinTech by Law360. Her practice focuses on representing digital asset trading platforms, blockchain technology companies, broker-dealers, financial services firms, and cryptocurrency funds. Mr. Engoren is an associate who focuses on regulatory, corporate, and business issues related to blockchain technology and digital assets.

ENFORCEMENT ACTIONS

9/24—Foreign automobile manufacturer agrees to pay SEC $18 million for disclosing inaccurate retail sales volume information in corporate bond offerings. *In Matter of BMW AG*

9/24—Engine manufacturer settles SEC accounting charges relating to improper revenue recognition for $1.7 million and enters into non-prosecution agreement with DOJ. *In the Matter of Power Solutions International, Inc.*

9/24—Lighting products company and executives agree to pay combined $1.5 million to settle SEC accounting charges relating to improper revenue recognition. *SEC v. Revolution Lighting Technologies, Inc.*

RESPONDING TO FINRA'S FOCUS ON SENIORS

By Michael Wolk

On April 30, 2020, FINRA celebrated the five-year anniversary of the FINRA Securities Helpline for Seniors and issued a new report, Protecting Senior Investors 2015-2020. FINRA, the SEC, and state regulators consistently have included the protection of senior investors as an examination and enforcement priority. In the current environment, many firms have been concentrating on the challenges of having registered representatives and financial advisers working remotely and implementing Regulation BI and Consolidated Audit Trail reporting. It is critically important, however, that member firms maintain their efforts to protect senior investors. Regulator focus in this area has not waned.

Most enforcement actions in this area have been brought against rogue individuals, not firms. This is not a reason for firms to be complacent or put senior protection on a back burner. Whenever senior abuse is detected, the regulators look very carefully at whether the firm's procedures, policies, and training were reasonable and properly enforced in a timely manner. When regulators find failures in these areas, they will not hesitate to bring and publicize an action against a firm.

FINRA has warned that examinations will focus on many topics relating to seniors, including:

- policies and procedures, including written supervisory procedures required by FINRA Rule 2165(c)(1)-(2) (Financial Exploitation of Specified Adults)
- suitability procedures and controls, which should address the unique concerns of seniors, such as shortened time horizons, decreased risk tolerance, and additional liquidity needs
- training on senior-specific issues and how firms address issues relating to aging (e.g., diminished capacity and elder financial abuse or exploitation)
- use of "senior" designations
- marketing and communications to senior investors
- types of customer account information required to open accounts for senior investors
- disclosures provided to senior investors
- complaints filed by senior investors and the ways firms track those complaints
- supervision of registered representatives as they interact with senior investors
- processes for escalating issues relating to senior investors, including concerns about financial exploitation, diminished capacity, and cognitive decline.

Protecting senior investors is a high priority for FINRA, the SEC, and state regulators. Member firms need to continue to be vigilant in meeting their expectations.

Mr. Wolk focuses on SEC, FINRA, and exchange compliance and enforcement matters with an emphasis on equity and fixed-income trading and sales practice issues.

ENFORCEMENT ACTIONS

9/28—Automobile manufacturer agrees to pay $ 9.5 million penalty to settle SEC charges for making misleading disclosures about an internal audit of its emissions control systems. *In Matter of Fiat Chrysler Automobiles NV*

9/28—SEC files first cases from its EPS Initiative—an effort to use data analytics to identify potential accounting and disclosure violations—against two public companies for accounting violations resulting in the improper reporting of earnings per share (EPS) that met or exceeded analyst estimates. *In Matters of Fulton Financial Corp. and Interface, Inc.*

POSITION LIMITS FOR SECURITIES OPTIONS

By Andrew Blake

This year has seen all-time record volumes in U.S.-listed securities options. However, U.S. options exchanges and FINRA both place strict limits on the number of options a broker-dealer or its customers may hold.[1] Member firms are directly responsible for complying with the applicable position limits. Customers—who must make contractual representations that they are aware of and will not violate position limits—are also obligated to comply.

Given the recent increases in the use of securities options, market participants need to pay extra attention to the applicable position limits. Applying the position limits and ensuring that they are not exceeded is not, however, straightforward.

What Counts Against the Position Limit?

- *Positions in the Same Options Class.* Position limits are calculated separately for each "class of options," which means all option contracts covering the same underlying security or index. The rules of the options exchanges and FINRA prohibit member firms from effecting an opening option transaction that would cause the relevant account(s) of the member or its customer to exceed the position limit for the class of options involved.
- *Positions in the Same Account or a Group of Accounts That Act in Concert.* Positions in the same option class count against the position limit only if they are held in the same account or in a group of accounts that, based on the facts and circumstances, are acting in concert to control the relevant positions. Control is presumed in certain situations—such as when a party owns 10% or more of the entity holding an account—and may be found to exist where circumstances suggest that accounts are under common control.
- *Positions on the "Same Side of the Market."* For contracts of the same class and that are in the same account (or in accounts acting in concert), the member firm is required to aggregate the relevant contract positions that are on the "same side of the market." The "same side of the market" requirement means that positions in short calls and long puts are aggregated on the one hand and positions in long calls and short puts are aggregated on the other hand. The sum of the aggregate position is then compared to the limit to evaluate compliance.

What Does Not Count Against the Position Limit?

Not all options positions in the same class and on the same side of the market count against the relevant position limit, however. The following are the most common reasons for contract positions not to be counted against the position limit.

- *No Aggregation Where Accounts Do Not Act in Concert.* As noted, there is no aggregation of option positions if those accounts are not acting in concert. Therefore, if it can be shown that there is no common control between multiple accounts, then the positions on the same side of the market in each account would count separately against the position limit rather than being aggregated.
- *No Aggregation Between Standardized and Conventional Options.* There is also no aggregation between standardized options and conventional options. This surprises many market participants, but it is expressly addressed in FINRA Rule 2360.
- *Equity Option Hedge Exemptions.* Certain option hedging strategies are recognized in the rules of the options exchanges and FINRA as either (i) permitting relevant options contracts to not count against the operative position limit at all or (ii) increasing the operative position limit. Firms that are members of the self-regulatory organizations and

1 Position limits for options traded on the U.S. options exchanges that are issued, cleared, and settled by the Options Clearing Corporation (OCC) (i.e., "standardized options") are set by the exchanges and published daily on the OCC's website. Position limits for over-the-counter securities options (i.e., "conventional options") are set by FINRA Rule 2360(b)(3)(A)(iii).

ENFORCEMENT ACTIONS

9/29—Heavy equipment manufacturer and former executives agree to pay nearly $500,000 to settle SEC accounting charges of improper revenue recognition and inventory accounting. *In Matter of Manitex International, Inc.*

9/29—Credit ratings agency settles SEC charges relating to the ratings of CMBS and CLO combo notes for $2 million. *In Matter of Kroll Bond Rating Agency, LLC*

9/29—Broker-dealer settles charges of manipulative trading in U.S. Treasuries with SEC, CFTC, and DOJ for combined $920 million. *In Matter of J.P. Morgan Securities LLC*

their customers should carefully assess whether any strategies employed are clearly recognized in the relevant rules that set forth the equity option hedge exemptions.

- *Opening Transactions That Are Not by a Member of FINRA or a U.S. Options Exchange.* The rules of the U.S. options exchanges and FINRA apply only to their members. If an opening option transaction is effected by a broker-dealer that is not member of FINRA or one of the U.S. options exchanges (e.g., a foreign broker-dealer), then the position limits of FINRA and the options exchanges do not apply. Any such firm would, however, have to comply with any restrictions under other applicable law, such as position limits imposed on a foreign broker-dealer in its home country.
- *Permission From FINRA or the U.S. Options Exchanges.* In addition to the exceptions described above, the rules of the U.S. options exchanges and FINRA permit them to provide relief from the relevant position limit. In practice, market participants should expect this relief to be reserved for extraordinary circumstances.

Mr. Blake's practice focuses on regulatory and operational issues regarding the trading and clearance and settlement of equity, debt, and derivative instruments. He has deep experience in particular with the U.S. options markets.

TEN YEARS LATER: THE DODD-FRANK ACT NOW

By Gerald Russello and Kenyon Hall

This year marks the 10-year anniversary of the signing of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010. The Dodd-Frank Act, which was passed in direct response to the financial crisis of 2008, introduced new protections for consumers and increased regulation of entities involved in the financial crisis. This article reviews three core provisions of the Dodd-Frank Act and identifies key takeaways for legal and compliance personnel.

- *Expansion of the SEC's Authority in Connection With Administrative Proceedings.* The Dodd-Frank Act significantly expanded the SEC's enforcement authority, allowing it for the first time to impose civil penalties on non-regulated entities and individuals in administrative proceedings. Since the passage of the Dodd-Frank Act, the SEC has thus been able to bring dozens of actions as administrative proceedings that it would previously had to have filed in federal court. Given the procedural advantages to the SEC, administrative proceedings are likely to remain the agency's forum of choice in a wide range of cases. Unregistered entities, in particular, should be aware that the SEC may bring cases against them in a forum unfamiliar to them.
- *Implementation of the Whistleblower Program and Prohibition Against Employer Retaliation.* Section 922 of the Dodd-Frank Act prohibited employer retaliation against whistleblowers and has arguably become one of its most well-known and successful provisions. Section 922 also established a whistleblower program rendering whistleblowers who voluntarily provide original information to the SEC eligible to receive monetary awards in instances where the original information leads to a successful enforcement action yielding monetary sanctions of over $1 million. The SEC recently announced that 2020 has been a "record-setting" year for whistleblower awards, with approximately $175 million awarded.

  The whistleblower provisions apply to all entities that can be subject to SEC enforcement actions, including public companies. Accordingly, legal departments would be well advised to review whistleblower policies and training, and to consult with employment law experts, to ensure that (i) any complaints raised are addressed appropriately, (ii) no retaliation is or can be taken against any whistleblowers, and (iii) employees' ability to share information with regulators is not hampered or restricted in any way (e.g., by the

ENFORCEMENT ACTIONS

9/30—Hospitality company agrees to pay $600,000 penalty to SEC to settle charges of failing to disclose executive perquisites. *In Matter of Hilton Worldwide Holdings, Inc.*

9/30—Broker-dealer agrees to pay $5 million to settle SEC charges for Regulation SHO violations in prime brokerage swaps business. *In Matter of Morgan Stanley & Co. LLC*

9/30—Technology company settles SEC charges of failing to disclose the impact of sales practices undertaken to meet quarterly targets for $6 million. *In Matter of HP Inc.*

terms of any agreement or policy). In-house counsel should carefully review nondisclosure provisions of employee separation agreements, which have drawn intense SEC scrutiny in recent years.

- *Creation of the Consumer Financial Protection Bureau (CFPB).* The Dodd-Frank Act also created the CFPB, an agency aimed at "mak[ing] consumer financial markets work for consumers, responsible providers, and the economy as a whole" and "protect[ing] consumers from unfair, deceptive, or abusive practices."

  The CFPB's enforcement practices are still developing, but it has been very active and has obtained more than $11 billion in relief for over 25 million consumers. The CFPB's enforcement actions have typically involved large civil money penalties and orders for significant consumer redress. For example, in 2018, the CFPB required a single bank to pay a $1 billion penalty for purported violations of the Consumer Financial Protection Act. Recent data issued by the CFPB shows that the agency has received thousands of complaints relating to the COVID-19 pandemic in 2020, the majority of which pertain to mortgages, credit cards, and credit or consumer reporting. Financial services providers should be aware that these trends may affect the CFPB's enforcement priorities and practices.

In the 10 years since its passage, the Dodd-Frank Act has significantly altered the regulatory landscape. While some aspects of it have changed or been scaled back over time, its core provisions—including those described herein—have so far endured the test of time.

Mr. Russello, a former SEC Enforcement branch chief and a managing director at Bear Stearns, has a broad investigative and securities practice representing individual and institutional clients in a variety of enforcement and regulatory matters. Ms. Hall is an associate who focuses on defending SEC and FINRA enforcement proceedings.

STAFF MOVES

9/21 FINRA announced that Executive Vice President **Michael Rufino** would be leaving at the end of 2020. Rufino serves as Head of Member Regulation (Sales Practice), overseeing FINRA's Sales Practice Examination, Risk Monitoring, and Membership Application Programs in 14 district offices.

10/7 The SEC named **Nichola Timmons** as Chief of the newly-formed Office of Bankruptcy, Collections, Distributions, and Receiverships in the Division of Enforcement. Timmons joined the SEC as a staff attorney in 1998 and has served in a variety of distribution-related roles.

10/13 **Jessica Kane** was named Director of the SEC's Division of Corporation Finance's Disclosure Review Program. She previously served as Director of the Division of Corporation Finance's Office of Credit Ratings and Director of the Division's Office of Municipal Securities. Kane originally joined the SEC in 2007 as an attorney in the Division's Disclosure Review Program.

10/13 The SEC named **Tamara Brightwell** as Deputy Director of the SEC Division of Corporation Finance's Disclosure Review Program. Brightwell served as the Deputy Chief Counsel in the Division of Corporation Finance's Office of Chief Counsel since 2018.

ENFORCEMENT ACTIONS

10/5—SEC and DOJ bring parallel civil and criminal charges against individual for promoting an ICO to Twitter followers without disclosing that he was paid to do so. *SEC v. McAfee*

10/8—SEC sues a publicly-traded seismic data company and former executives for accounting violations and misappropriation of funds. *SEC v. SAExploration Holdings, Inc.*

10/14—Brazilian meat producers settle parallel FCPA charges by SEC and DOJ, agreeing to pay over $280 million. *In Matter of J&F Investimentos, S.A.*

10/15 The SEC announced the appointment of **Megan Zietsman** as a board member of the PCAOB for a term ending in October 2025. Zietsman had been the PCAOB's Chief Auditor and Director of Professional Standards since February 2019. Before joining the PCAOB, she was a partner in Deloitte & Touche LLP's professional practice network.

10/15 The SEC announced that **James Kaiser** will leave the PCAOB after completing his term as a board member. Kaiser was appointed to the PCAOB board in December 2017.

ENFORCEMENT ACTIONS

10/15 — Energy company agrees to pay $20 million to settle SEC charges relating to its implementation of a stock buyback plan while it was in discussions to be acquired by another company. *In Matter of Andeavor LLC*

10/22 — Broker-dealer agrees to pay $2.9 billion in global resolution of FCPA charges with SEC, DOJ, and foreign regulators. *In Matter of Goldman Sachs Group*

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