# Securities Enforcement & Regulatory

REPORT

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**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.

## IMPLICATIONS OF ARCHEGOS ON FUND DISCLOSURE OF DERIVATIVE SECURITIES

*By Kevin Campion, Katie Klaben, and Erica Robertson*

The recent collapse of Archegos Capital Management may have significant implications for disclosure obligations of private funds and other market participants regarding derivative securities. Archegos, a family office, reportedly obtained substantial economic exposure to public companies by entering into total return swaps with several investment banks. It ultimately defaulted on margin calls and caused billions of dollars of losses.

Despite the size of its positions, Archegos never disclosed the degree of its financial exposure to the public or, apparently, to the counterparties to its swap transactions. Large shareholders are typically required to make certain disclosures to the public by filing Schedule 13D or 13G or Form 13F with the SEC. Archegos never made these filings and was likely not required to have done so. The SEC appears to be evaluating how to address this perceived gap in its current reporting framework. Investment managers and family offices (collectively, "managers") should expect to see proposals soon for changes to their reporting obligations under Section 13(d) and (g) and Section 13(f) of the Exchange Act, especially with respect to derivative transactions.

Section 13(d) and (g) of the Exchange Act require certain disclosures by beneficial owners of more than 5% of any class of equity securities with voting rights that is registered under the Exchange Act. Rule 13d-3 defines a "beneficial owner" as any person who directly or indirectly has voting and/or investment power over a class of such securities or has the right to acquire such power within 60 days. Historically, the SEC staff has taken the position that a synthetic long position via cash-settled derivative securities—for example, a total return swap that gives a manager economic exposure but not the right to acquire the underlying securities—does not give the manager voting or investment power over the underlying shares. Under this view, taking a synthetic long position, despite the economic or business interests, does not constitute beneficial ownership. Accordingly, a manager does not have to "look through" a cash-settled swap and count the underlying securities toward its beneficial ownership if it does not have the right to acquire the underlying securities within 60 days (assuming passivity), unless it (i) is able to instruct or influence the short counterparty how to vote or sell the underlying securities, (ii) can settle the derivative instrument in shares of the

underlying securities or can otherwise "cross out" and buy the underlying securities directly from the short counterparty to the swap upon termination of the swap, (iii) is using the derivative instrument as part of a plan to control or influence the issuer of the underlying securities, or (iv) is using the derivative instrument as part of a plan or scheme to evade the reporting requirements of Section 13(d) of the act or to prevent the vesting of beneficial ownership.

Under Section 13(f), a manager, whether registered or unregistered, that exercises investment discretion over accounts with an aggregate fair market value of at least $100 million in Section 13(f) securities is required to disclose its gross long holdings on quarterly Forms 13F. To date, SEC staff guidance has indicated that swaps are not reportable on Form 13F even if the underlying security is a Section 13(f) security.

The SEC has declined previous opportunities to alter this approach. Section 766 of the Dodd-Frank Wall Street Reform and Consumer Protection Act required the SEC to identify, by rule, when the purchase or sale of a security-based swap would be deemed to confer "beneficial ownership" under Section 13(d) and (g). In 2011, the SEC re-adopted its existing definitions of "beneficial ownership," thereby maintaining the status quo of the treatment of swaps for purposes of Schedule 13D and 13G filings. Section 766 of Dodd-Frank was supposed to amend Section 13(f) to include security-based swaps but failed to do so because of a drafting error. The SEC never adopted rules to require disclosure of swaps on Form 13F.

In his testimony before the House Committee on Financial Services on May 6, 2021, SEC Chair Gary Gensler signaled that the SEC may soon reconsider this approach:

Under Dodd-Frank, Congress gave the SEC rulemaking authority to extend beneficial ownership reporting requirements to total return swaps and other security-based swaps. Among other things, I've asked staff to consider recommendations for the Commission about whether to include total return swaps and other security-based swaps under new disclosure requirements, and if so how.

In light of this statement, combined with the attention surrounding the Archegos collapse, we anticipate the SEC may engage in aggressive enforcement, propose or adopt new rules, and/or issue interpretive guidance related to the treatment of derivative securities—particularly total return swaps—for purposes of disclosures on Schedule 13D and 13G and Form 13F. As a result, managers should evaluate whether their disclosures pertaining to derivative transactions adequately comply with the current SEC rules under Section 13(d) and (g) and Section 13(f) of the Exchange Act and should stay alert of possible proposals and changes to the current governing laws, rules, and regulations.

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ENFORCEMENT ACTIONS

02/17–SEC and NY Attorney General file parallel suits against a cryptocurrency trading platform and its CEO for selling unregistered digital tokens worth over $141,000. *SEC v. Coinseed, Inc.*

02/24–Publicly-traded energy company and former CEO agree to settle SEC charges for failing to disclose $650,000 in executive perks and related-party transactions involving the former CEO. *In the Matter of Gulfport Energy Corp.*

02/26–Investment adviser agrees to pay $450,000 to settle pending SEC action for failing to disclose conflicts of interest related to mutual fund share class selection and self-dealing transactions. *SEC v. Bolton Securities Corp.*

## SEC FOCUS ON ESG *An Interview with Sonia Barros*

*Sonia Barros is a partner in Sidley's Capital Markets group and focuses on advising clients in corporate disclosures and governance matters. Formerly the Chief Corporate Governance Counsel in the SEC Division of Corporation Finance, Barros was the division's senior adviser on corporate governance policy and disclosures. Prior to that, she served as the Assistant Director in the SEC Office of Real Estate and Commodities, where she had oversight authority for thousands of transactions and reviews of corporate disclosures..*

***Q: What are the SEC's priorities under the Biden administration?***

Environmental, social, and governance (ESG) is a critical priority for the SEC. In January, the Biden administration adopted an "all-agency" approach to combat the climate crisis and issued an executive order stating that the administration's policy is to implement a government-wide approach that reduces climate pollution in every sector of the economy. The SEC is following suit and moving aggressively toward the creation of a new ESG disclosure framework. The SEC's newly appointed Chair, Gary Gensler, made it clear in his confirmation hearing that he supports additional corporate disclosures on climate risk, diversity, human capital, and political spending. Gensler recognizes increasing investor demands for these types of disclosures, and we expect to see the SEC play a role in bringing consistency and comparability to ESG disclosures.

***Q: Gensler just started at the SEC in mid-April. What has the SEC done so far?***

To date, the SEC has taken a number of steps toward establishing an ESG disclosure framework. First, the agency hired a number of personnel in newly created roles that will drive this effort. Before Gensler's arrival, the agency hired an agencywide Senior Policy Advisor for Climate and ESG and a Senior Counsel for Climate and ESG in the Division of Corporation Finance. Recently, Gensler appointed Heather Slavkin Corzoa as his policy director. Corzo was previously the Director of Capital Markets Policy at the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Head of U.S. Policy at the Principles for Responsible Investment. She is known to have very significant relationships with investors, union leaders, and public interest advocates and supports the integration of ESG factors into investment decision-making.

Second, the SEC opened a comment file requesting public input from investors, registrants, and other market participants by June 13 on how the agency can best regulate and guide ESG disclosures. Although this comment file is not an official rulemaking action by the agency, the information collected will help guide the agency in making a proposal for an ESG disclosure framework. The agency still needs to take formal action by proposing rules that are subject to an official comment and review period and then by adopting final rules. However, the SEC plans to move forward quickly. Gensler recently told Congress he expects the SEC to propose new disclosure rules on climate risk and human capital in the second half of 2021.

***Q: How is this different from when you were at the SEC, and what might a new ESG disclosure framework look like?***

During my 17-year tenure at the SEC, the agency was primarily focused on a principles-based approach to ESG. Senior SEC officials often stated that existing rules require companies to disclose the current and expected future effects of climate-related issues on their operations and performance, to the extent material. When the SEC amended Regulation S-K last year, the agency did not revise existing disclosure requirements to add or include prescriptive ESG disclosures, a point of contention for the agency's current Democratic commissioners, who were in the minority at that time. The SEC's

### ENFORCEMENT ACTIONS

03/05 – SEC charges a global telecommunications company and three executives for alleged selective disclosures to research analysts in violation of Regulation FD. *SEC v. AT&T Inc.*

03/17 – FINRA fines a broker-dealer $450,000 for failing to reasonably supervise communications between private-side and public-side personnel. *In re Merrill Lynch, Pierce, Fenner & Smith Incorporated*

03/22 – SEC files suit against a day-trader-focused Bahamian broker-dealer and its principal for operating in the U.S. without being registered. *SEC v. MintBroker International, Ltd.*

ENFORCEMENT ACTIONS

03/29 – SEC sues cryptocurrency issuer for conducting an unregistered offering of over $11 million in digital tokens. *SEC v. LBRY, Inc.*

03/29 – FINRA imposes $3.4 million in fines and restitution on broker-dealer for failing to supervise representatives' recommendations of an alternative mutual fund that incurred heavy losses and was ultimately closed. *In the Matter of Cambridge Investment Research, Inc.*

04/06 – SEC obtains emergency asset freeze and files suit against a Los Angeles-based actor for an alleged $690 million Ponzi scheme in which investors were falsely told they were buying film rights that would be resold to online streaming services. *SEC v. Horwitz*

new human capital requirement adopted in 2020 is principles-based rather than prescriptive, as it calls for disclosure of human capital resources, to the extent that disclosure would be material to an understanding of a company's business. Current SEC Commissioner Allison Herren Lee, however, has signaled support for new prescriptive ESG disclosures, noting that materiality alone does not mandate sufficient disclosure and that "principles-based" disclosure rules often do not get the materiality determination right. She has expressed support for the disclosure of specific human capital metrics such as workforce diversity, part-time vs. full-time workers, workforce expenses, and turnover.

*Q: What should companies be thinking of right now for their ESG disclosures?*

Companies should ensure that they have adequate disclosure controls and compliance procedures in place surrounding their ESG disclosures. The SEC's Division of Enforcement has designated a 22-member Climate and ESG Task Force that is proactively attempting to identify ESG-related misconduct. The Task Force will look to identify material gaps or misstatements in climate risk disclosures under existing rules and will use sophisticated data analysis to mine and assess information to identify potential violations.

Companies should also enhance their attention to ESG and climate risk statements and disclosures with materiality in mind. The SEC's definition of materiality remains the same — substantial likelihood that a reasonable investor would consider the information important in making an investment decision and information that would significantly alter the "total mix" of information made available. Because investors increasingly view ESG matters as material, companies should consider whether statements made by officials may implicate obligations under Regulation FD and whether ESG developments could be considered "material nonpublic information" under insider trading policies.

Finally, it's worth noting that the SEC's Division of Corporation Finance is actively looking at both financial and nonfinancial climate-related disclosures and will engage with companies on this topic. In March, the Financial Accounting Standards Board published an educational paper providing an overview of the intersection of ESG matters with financial accounting standards. In addition, in response to a statement by Acting Chair Lee in February, the SEC staff is reviewing climate-related nonfinancial disclosures based on current rules and the SEC's 2010 guidance on disclosures related to climate change. This increased scrutiny and focus may result in comments from the SEC's disclosure review staff.

## NO-ACTION RELIEF: POTENTIAL APPLICATION TO DISTRIBUTED LEDGER PROJECTS UNDER GENSLER'S SEC

*By Jamie Brigagliano and Andrew Sioson*

Gary Gensler's appointment as SEC Chair has been accompanied by much speculation about rulemakings and a tougher enforcement environment. An important area that has received less attention, however, is the "no-action process." Indeed, Chair Gensler noted during his confirmation hearing that no-action relief could be an important tool for regulating the burgeoning digital asset space. Thus, now is a good time to examine the no-action process, how it works, and how it can be both useful and abused.

### Overview of No-Action Process

The SEC permits market participants to seek guidance on whether SEC staff would view a proposed course of conduct as violating the federal securities laws. A party seeking such guidance must submit a written request. If the staff decides to grant no-action relief, it will normally issue a letter describing the facts, discussing applicable laws and rules, and stating that—assuming the requestor engages in the conduct exactly as described —the staff would not recommend that the SEC take enforcement action against the requestor. No-action relief may sometimes be subject to conditions. Unlike "exemptive" relief, no-action letters do not legally bind the SEC, although it is unlikely that the SEC would bring an action without first withdrawing the no-action relief.

When done correctly, the no-action process provides a mechanism for regulators and industry to make regulation workable as products, technologies, and markets evolve. Market participants can get certainty on how existing regulations apply to new products, new technologies, and market innovations without running the risks and costs of simply trying something and seeing if it draws regulatory attention. The SEC can clarify how existing laws and regulations apply to new situations without engaging in formal rulemaking or bringing enforcement actions. Investors and markets can benefit from legitimate innovations and be protected from impermissible ones.

The no-action process can, however, also be subject to abuse. Regulators sometimes exploit the no-action process to strong-arm a market participant into taking on responsibilities that are neither explicitly stated nor fairly implied in the regulations. Other market participants may feel pressured to follow suit out of fear that the staff may later apply the "law of the no-action letter" versus the law as written in the rule. No-action letters can, thus, expand the effective requirements of regulations without the checks of notice and comment rulemaking. Moreover, the views expressed in separate no-action letters may inconsistent or even contradictory. The result can be a patchwork of regulations and no-action clarifications that is difficult to interpret and creates uncertainty for market participants who are attempting to comply with the securities laws.

### Potential Role of No-Action Relief for Distributed Ledger and Digital Asset Initiatives

One area that market participants are watching for potential no-action relief guidance is the distributed ledger and digital asset space. While the SEC has applied the federal securities laws to many distributed ledger projects and initiatives proposed or active in the market today, in some cases it is not certain how exactly market participants should structure their projects under the applicable laws, including for offerings of digital assets that may be securities. Further, it remains to be seen whether initiatives that seek to apply distributed ledger technology to securities trading and settlement will be able to move forward with sufficient clarity on how custody of digital assets could occur in a manner consistent with the securities laws.

The Division of Corporation Finance has issued multiple no-action letters analyzing whether certain digital assets are securities. Market participants have generally been unable to rely on these no-action letters given their fact-specific nature. Recognizing this lack of clarity, Commissioner Hester Peirce has released an updated version of a "Token Safe Harbor Proposal" for consideration by the SEC. Commissioner Peirce has also expressed her support for use of the no-action relief process and other informal processes to address issues involving new categories of products, such as digital assets.

On the question of digital asset custody, the SEC released a statement on custody by special purpose broker-dealers, and it remains to be seen how or whether market participants will avail themselves of the guidance in that statement or whether more guidance will need to be provided. Market participants note that in the past, statements by the SEC and FINRA staff were followed by a no-action letter issued by the Division of Trading and Markets with

### ENFORCEMENT ACTIONS

04/19–SEC charges trading platform and two former executives with fraudulent and unregistered sales of binary options. *SEC v. Spot Tech House, Ltd.*

04/20–FINRA bars research analyst from industry for buying stock in two companies after learning that a fellow analyst was upgrading his recommendations on those companies. *In re Maguire*

04/22–Broker-dealer agrees to pay FINRA $525,000 for misstating cost basis information in customer statements on Forms 1099. *In re Oppenheimer & Co. Inc.*

ENFORCEMENT ACTIONS

05/03–Sports apparel manufacturer agrees to pay $9 million fine to SEC for disclosure failures regarding its revenue management practices and "pull forwards" of future revenues into current periods. *In the Matter of Under Armour, Inc.*

05/12–Broker-dealer settles SEC charges of failing to file Suspicious Activity Reports (SARs) relating to attempts to improperly access retirement plan accounts for $1.5 million. *In the Matter of GWFS Equities, Inc.*

05/17–SEC fines index provider $9 million for publishing stale and static index values during a period of high market volatility due to an undisclosed "auto hold" feature of the index that was triggered by market events. *In the Matter of S&P Dow Jones Indices, LLC*

respect to noncustodial digital asset trading. Further, newly appointed Chair Gensler, who oversaw the issuing of an unprecedented number of no-action letters at the CFTC, may face pressure from Congress regarding regulation of digital assets. Thus, many market participants hope the SEC will provide some additional clarity on the regulatory framework for distributed ledger initiatives through no-action relief.

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## RECENT DECISION CLEARS THE WAY FOR PRIVATE FUND ADVISERS TO CLAIM AN EXEMPTION FROM SECTION 16

*By Katie Klaben*

Section 16 of the Exchange Act applies to any person who is, directly or indirectly, the beneficial owner of more than 10% (a "10% Beneficial Owner") of any class of an equity security that is registered pursuant to Section 12 of the Exchange Act (other than an exempted or nonvoting security) as well as directors and officers of the issuer. Section 16 imposes reporting obligations and short sale restrictions on covered persons, but it is best known for requiring that "short-swing profits"—that is, profits realized on purchases and sales within a period of less than six months—be disgorged to the issuer on a strict liability basis. Section 16 provides a private right of action and is aggressively enforced by plaintiff's attorneys, who can reap substantial attorneys' fees from successful actions..

The determination whether a person is a 10% Beneficial Owner is based not on economic interest but on whether the person has direct or indirect voting and/or dispositive power over the subject securities, or the right to acquire such power within 60 days. However, there is an exemption that provides that certain institutional investors that hold the securities for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business and for purely investment purposes do not need to count such securities toward the 10% threshold. Large institutional managers rely on this exemption to avoid application of Section 16.

Historically, there has been controversy about whether advisers to private funds can rely on this exemption. Private funds cannot themselves rely on the exemption because they fall outside the terms of the exemption. The question has been whether a private fund can avoid Section 16 liability if it has delegated beneficial ownership to its adviser, which can rely on the exemption.

It is generally accepted that beneficial ownership (i.e., the powers to vote and dispose of the securities) can be delegated away to a third party so long as the delegator (a) does not have the ability to regain those powers within 60 days and (b) remains passive with respect to its investments. In theory, delegating beneficial ownership from a private fund to its adviser should foreclose liability for short-swing profits for both the fund (which would no longer be a beneficial owner) and the adviser (which falls within the exemption).

Application of these principals in the Section 16 context was called into question in *Huppe v. Special Situations Fund III QP, L.P.*, 565 F.Supp. 2d 295 (S.D.N.Y. 2008). In that case, the court held that even though a limited partnership had delegated all voting and investment power over its securities to its general partner, it was still the beneficial owner of the securities under principles of agency law. Notably, in *Huppe,* there was no separate adviser entity and no formal investment management agreement between the partnership and the general partner. Instead, voting and investment powers were granted to the general partner only

generically through the partnership agreement. *Huppe* created significant uncertainty as to whether and when private fund advisers could rely on the exemption from Section 16.

Late last year, however, the Second Circuit breathed new life into the exemption, holding that a delegation of voting and investment authority by a private fund to its adviser could effectively eliminate its liability under Section 16(b). *Packer v. Raging Capital*, 2020 WL 6844063 (2d Cir. Nov. 23, 2020), involved a private fund that had delegated voting and disposition powers to an adviser that was a separate (albeit affiliated) legal entity through an investment management agreement that could not be terminated in fewer than 60 days. The district court held that the private fund had not successfully delegated beneficial ownership to the adviser, but the Second Circuit reversed. In doing so, the court distinguished the explicit delegation of voting and investment power from a client to an adviser pursuant to an investment management agreement from the agency relationship at issue in *Huppe*.

Although Raging Capital expands the availability of the Section 16 exemption to certain private fund advisers, it is important to keep in mind that there remains an active plaintiffs' bar that has and will continue to use the private right of action afforded under Section 16 to attack and limit this exemption. This continues to be an area of developing case law, and it is possible—even likely—that plaintiffs' attorneys will continue to bring lawsuits alleging the misuse of the Section 16 exemption in situations involving different and novel facts. As such, it is important that any private fund adviser seeking to rely on the Section 16 exemption have facts that closely align with those in *Raging Capital* in order to mitigate possible Section 16 liability. In situations where a private fund adviser's facts are not closely aligned with *Raging Capital*, advisers that are arguably eligible to rely on the exemption may nonetheless choose to trade only in a manner that avoids potential short-swing liability under Section 16.

*Katie Klaben advises financial services firms—particularly hedge funds, investment advisers, and broker-dealers—on a wide range of regulatory, compliance, enforcement, and transactional matters, including the ownership reporting requirements and related liability under Sections 13 and 16 of the Exchange Act.*

## INCREASING SEC SCRUTINY OF SPACS

*By Ike Adams and Paul Bello*

Special-purpose acquisition companies (SPACs) have garnered significant attention over the last year as an intriguing alternative to traditional initial public offerings (IPOs). SPACs have also caught the eye of the SEC, which recently signaled its intent to scrutinize SPAC transactions, the resulting public companies, and the intermediaries involved in the transactions, including underwriters, investment banks, and placement agents.

**How SPACs Work.** At a high level, SPACs are non-operating shell companies that are generally formed by their sponsors with the intention of pursuing a deal in a particular industry or business sector. After being formed, the SPAC raises capital through an IPO. Those proceeds, along with additional financing, are then used to attempt to acquire an existing private company or "target." If the SPAC is successful, the private target merges into the SPAC and succeeds to the SPAC's status as a public company in a "de-SPAC" transaction. If the SPAC is unable to acquire a target in the allotted time (and an extension is not approved by the investors), the SPAC returns the IPO proceeds to its investors.

Although similar entities, such as "blank check companies" and "public shells," have existed for decades, the use of SPACs exploded in 2020, both in terms of volume and size. The rise was largely due to a convergence of factors, including concerns about the uncertainty of IPO pricing, investor apathy toward traditional IPOs, and the availability of significant private equity capital.

ENFORCEMENT ACTIONS

05/19–SEC files suit against broker-dealer for Reg. SHO violations for mismarking 90 customer short orders as "long" or "short exempt."
*SEC v. BTIG, LLC*

05/27–SEC and CFTC bring parallel charges against a mutual fund adviser and two portfolio managers for misleading investors about the risks of a fund that suffered losses of 80% in two days.
*SEC v. LJM Funds Management, Ltd.*

05/28–SEC files suit against paid promoters of $2 billion in investments in a cryptocurrency lending program for conducting an unregistered offering of digital securities and failing to register as broker-dealers.
*SEC v Brown*

**SEC Warnings.** The SEC recently issued several public statements that have damped SPAC activity as market participants evaluate how the SEC will approach new and existing transactions.

- On April 8, 2021, Acting Director John Coates of the SEC Division of Corporation Finance issued a statement stressing that contrary to claims by some commentators, SPAC transactions are not subject to "lesser securities law liability exposure." Specifically, Coates warned that misleading statements about the target company's expected performance growth potential were prohibited by the securities laws and that the Private Securities Litigation Reform Act safe harbor did not prevent the SEC from taking action.
- On April 12, 2021, Coates, along with the SEC's Acting Chief Accountant Paul Munter, issued a joint statement discussing certain accounting and reporting considerations related to warrants issued by SPACs. The statement called for warrants to be reclassified as liabilities (depending on their terms) and urged registrants to evaluate whether previously filed financial statements were correct and errors were identified to determine whether a restatement was required.

**Enforcement Activity.** The SEC Division of Enforcement recently began requesting information from various financial institutions about their SPAC-related activities. The SEC has reportedly sought information about all SPAC transactions in which those institutions participated as far back as 2017, including basic information about each deal, the sponsors involved, and the fees paid out.

These requests appear to be a preparatory step for a more substantial enforcement program targeted at all aspects of the SPAC market, including the following:

- **Intermediaries**. Financial institutions will likely face scrutiny regarding their roles as SPAC underwriters and, in some cases, as placement agents for related private investments in public equity. Based on the SEC's public statements, the agency's focus will likely be on potential misrepresentations or omissions in investor materials and on the adequacy of disclosures regarding fee structures and the control and use of IPO proceeds. The SEC is likely to scrutinize whether broker-dealers took reasonable steps to ensure that SPAC offerings were being accurately described in investor materials and offering documents.
- **SPACs.** The SEC is also likely to subject SPAC sponsors and management teams to significant scrutiny in the coming months. The SEC staff has indicated they will pay close attention to sponsor disclosures related to conflicts of interests arising from the economic interests of sponsors, officers, and directors. The staff is also likely to focus on
  - whether SPAC registration statements and proxy materials contained adequate disclosure about SPAC sponsors, directors, and officers, including disclosures related to their financial incentives, prior SPAC experience, and the amount of control they will have over approval of a proposed business combination
  - whether statements about a target company's expected future performance were properly vetted by the SPAC sponsor and management team
  - for SPACs associated with public figures such as celebrities and athletes, whether the SPACs adequately disclosed their arrangements with those individuals
- **Targets.** By participating in a SPAC transaction, targets take on the many regulatory requirements of being a public company, often on a compressed timeframe. The SEC is likely to examine whether companies are meeting these requirements, particularly with respect to internal controls over financial reporting and disclosure.
- **Insider Trading.** The SEC is almost certain to continue to focus on the insider trading risks associated with SPACs. Investors, sponsors, and management teams should remain vigilant about whether they are in possession of material nonpublic information at all stages of a SPAC transaction. The SEC staff will continue to closely monitor trading in

SPAC securities in advance of public announcements and will want to ensure that market participants are implementing and maintaining policies and procedures reasonably designed to prevent the misuse of material nonpublic information.

*Ike Adams represents a wide variety of clients in investigations and enforcement actions by the SEC, DOJ, and other law enforcement authorities. Paul Bello is an associate who represents public companies, private funds, financial services firms, and individuals before the DOJ, SEC, FINRA, and the PCAOB.*

## STAFF MOVES

3/08 FINRA named **Stephanie Dumont** as Executive Vice President and Head of Market Regulation and Transparency Services. Dumon joined FINRA in 1999 and had served as Senior Vice President and Director of Capital Markets Policy for FINRA's Office of General Counsel.

4/08 The SEC announced that **Jane Norberg**, Chief of the SEC Office of the Whistleblower, would leave the SEC at the end of April. The Whistleblower Office's Deputy Chief, **Emily Pasquinelli**, was named to serve as Acting Chief following Norberg's departure.

4/16 The SEC announced that **Joel Levin**, Director of its Chicago Regional Office, would leave the agency at the end of May. Prior to joining the SEC in 2018, Levin served for over 30 years as a federal prosecutor.

4/17 **Gary Gensler** was sworn in as Chair of the SEC.

4/19 SEC Chair Gensler named **Prashant Yerramalli** as the SEC's Chief of Staff, **Heather Slavkin Corzoas** as Policy Director, **Kevin Burris** as Counselor to the Chair and Director of the Office of Legislative and Intergovernmental Affairs, and **Scott Schneider** as Counselor to the Chair and Director of the Office of Public Affairs.

4/22 The SEC announced that **Alex Oh** had been appointed as Director of the SEC Division of Enforcement. Oh had served as an Assistant United States Attorney in the Southern District of New York.

4/26 The SEC named **Keo Chea** as Director of Public Engagement and Aisha Johnson as Director of Media Relations.

4/28 The SEC announced that **Alex Oh** had resigned as Director of the Division of Enforcement and that **Melissa Hodgman**, who served as Acting Director of Enforcement from January to April 2021, would return to that role.

5/03 **Jessica Wachter** was appointed Chief Economist and Director of the SEC Division of Economic and Risk Analysis. Wachter was previously a professor at the Wharton School of the University of Pennsylvania.

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