



Securities Enforcement & Regulatory

REPORT

Q4 2020

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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.

NAVIGATING SEC WHISTLEBLOWER RULE 21F-17

by Griffith Green and Erica Robertson

Congress created the Securities and Exchange Commission's whistleblower program 10 years ago by adding Section 21F (Whistleblower Incentives and Protection) to the Securities Exchange Act. One of the SEC's implementing regulations—Rule 21F-17(a)—prohibits actions to impede communications with the SEC staff:

No person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement...with respect to such communications.

The SEC reads the term "impede" broadly and has sought to enforce Rule 21F-17(a) in circumstances that may be surprising to the unwary. The SEC gives close scrutiny to employment and severance agreements, confidentiality agreements, compliance manuals, codes of ethics, and other policies and procedures that might have the effect of discouraging employees from providing information to the SEC. In a recently filed case, the SEC charged an investment adviser with—among other things—violating Rule 21F-17(a) by executing an agreement with an employee that "contained confidentiality provisions that did not carve out any exceptions for communications with the Commission." See *SEC v. GPB Capital Holdings, LLC*, Civil Action No. 21-584 (E.D.N.Y.).

Although the interpretation of Rule 21F-17(a) continues to evolve, the SEC's enforcement actions to date provide some useful guideposts. In all cases, it is important to bear in mind that the SEC does not require evidence that anyone was, in fact, prevented from communicating with the SEC before finding a Rule 21F-17(a) violation. A company need not, for example, take action to enforce a confidentiality agreement for the agreement to violate the rule. In the SEC's view, executing an improper agreement with an employee is an "action to impede," regardless of whether the agreement was enforced or the employee felt inhibited from communicating with the SEC staff.

- **Confidentiality Provisions Lacking Express Carve Outs.** As the *GPB Capital* case shows, the SEC considers broadly-worded confidentiality provisions in employee agreements to violate Rule 21F-17(a) *unless* those provisions contain an express carve out permitting communications with the SEC staff. In the SEC's view, general limiting clauses—for instance, ones permitting communications as "required by law"—are insufficient.

GRIFFITH GREEN, *Editor-in-Chief*

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ENFORCEMENT ACTIONS

11/13—SEC brings a settled action against a bank's former CEO and a litigated action against its former head of community banking for allegedly misleading investors about the performance of the bank's community banking business. The former CEO agrees to pay a civil penalty of \$2.5 million. *In Matter of John G. Stumpf; SEC v. Carrie Toldstedt*

11/13—Five investment advisers agree to settle charges relating to sales of complex exchange-traded products to retail investors and pay over \$3 million in disgorgement. *In Matter of American Portfolios Financial Services, Inc.; Benjamin F. Edwards & Company, Inc.; Summit Financial Group, Inc.; Securities America Advisors, Inc.; and Royal Alliance Associates, Inc.*

FINRA Regulatory Notice 14-40 provided an example of the type of carve out that would pass muster under Rule 21F-17(a):

Any non-disclosure provision in this agreement does not prohibit or restrict you (or your attorney) from initiating communications directly with, or responding to any inquiry from, or providing testimony before, the SEC, FINRA, any other self-regulatory organization or any other state or federal regulatory authority, regarding this settlement or its underlying facts or circumstances.

- **Waivers of Whistleblower Bounties.** Agreements forbidding employees from reporting information to the SEC would obviously violate Rule 21F-17(a). Agreements that permit communications with the SEC but prevent the whistleblower from collecting any resulting bounty are treated the same way. For example, a severance agreement in which a former employee waived "the right to file an application" for an SEC whistleblower bounty was found to violate Rule 21F-17(a). In another case, a waiver of "any damages or monetary recovery" resulting from communications with "any government agency" was found to violate the rule.
- **Requirements to Provide Notice.** Agreements that require employees to notify their employer or obtain the employer's consent before communicating with the SEC staff have also been found to violate Rule 21F-17(a). In one case, the SEC found a violation where a confidentiality agreement permitted employees to disclose confidential information as required by "law, court or other legal process" only if they first provided "the Company's Legal Department with prompt written notice of such requirement in time to permit the Company to seek an appropriate protective order or other similar protection prior."
- **Attempts to Identify Whistleblowers.** Rule 21F-17(a) has also been applied to companies' efforts to identify suspected whistleblowers. In a 2017 case, for example, a company was found to have violated the rule by asking employees if they had provided information to the SEC and by demanding that an employee confirm he was not a whistleblower before advancing legal fees in connection with the SEC's investigation.
- **Agreements with Nonemployees.** Most of the SEC's Rule 21F-17(a) enforcement cases to date have involved companies' dealings with their employees. The SEC clearly views the rule as applying outside the employment context, however. In 2019, the SEC filed an enforcement action against a private company that had entered into a settlement agreement to resolve a lawsuit by two of its investors. The settlement agreement required the investors to confirm that they would "not initiate on a going forward basis, any communications with any regulatory agencies such as the [SEC]...concerning the matters related to this Agreement." That case is ongoing.

To reduce enforcement risk, firms should consider taking the following steps:

- Review confidentiality provisions in past and present employee and severance agreements, settlement agreements, compliance manuals, etc. to confirm that they contain appropriate carve outs for communications with the SEC and cannot be read, out of context, to suggest that individuals cannot communicate with the SEC or other agencies.
- Based on the results of that review, assess whether clarification should be provided to current and former employees regarding communications with the SEC.

[Griffith Green](#), a former clerk for Justice Antonin Scalia, regularly represents broker-dealers, financial services firms, hedge funds, and issuers in investigations by the SEC, FINRA, DOJ and state regulators. Erica Roberston is an associate in Sidley's Securities Enforcement and Regulatory group.



ENFORCEMENT ACTIONS

11/23 – SEC files charges against e-commerce startup and its CEO for allegedly misleading investors about purported contracts with well-known consumer brands. DOJ also files parallel criminal charges against the CEO. *SEC v. Benja, Inc.*

12/3 – Publicly traded energy company and subsidiary agree with SEC to settle pending suit alleging false statements about a nuclear power plant expansion for \$25 million in penalties and \$112.5 million in disgorgement and prejudgment interest. *SEC v. SCANA Corporation, et al.*

CFTC DEVELOPMENTS: TAKEAWAYS FROM A BUSY YEAR-END 2020

by Kate Lashley

Like many of us, the U.S. Commodity Futures Trading Commission (CFTC) had a busy year-end notwithstanding the continued challenges presented by COVID-19. This article highlights certain fourth-quarter developments from the CFTC that you might have missed, with key takeaways for legal and compliance personnel.

Enforcement

- **FY 2020 Division of Enforcement Annual Report.** In December, the CFTC's Division of Enforcement (the Division) released its annual report for fiscal year 2020 (FY 2020), announcing that it had a record-breaking year by a number of different measures. Highlights from the report include that the CFTC filed more enforcement actions than in any prior year. The total monetary relief ordered (over \$1.3 billion) stands as the fourth-highest in CFTC history. The CFTC filed its largest-ever spoofing and manipulation case, with a \$920 million resolution (the CFTC's highest-ever monetary relief).

The report highlights the CFTC's "robust market surveillance program that utilizes sophisticated systems to analyze trade data and respond to outlying events" and indicates that this technology resulted in the three largest spoofing cases in the CFTC's history. The report also outlines four priorities for the Division: (1) preserving market integrity, (2) protecting customers, (3) promoting individual accountability, and (4) coordinating with other regulators and criminal authorities on parallel matters. In 2021, under the new administration, we expect that the CFTC will continue to pursue enforcement actions aggressively, with continued focus on, among other things, spoofing and manipulation, the adequacy of compliance programs, and individual accountability.

- **First CFTC Enforcement Action Involving Foreign Corruption.** In December, the CFTC announced resolution of its first enforcement action involving foreign corruption, an area that had been enforced only by the DOJ and the SEC. As CFTC Chairman Heath Tarbert stated, "[t]his historic enforcement action demonstrates that the CFTC will actively pursue fraud tied to foreign corruption and manipulation that impacts the U.S. derivatives and related physical markets." The CFTC's order recognized the substantial cooperation and significant remedial actions taken by the respondent, including strengthened due diligence and approval processes related to the use of third parties, updated relevant model agreements, a global review of payment processes, and enhanced trading surveillance processes. Firms should consider reviewing their internal controls and compliance programs with an eye toward making appropriate enhancements to identify potential manipulative and deceptive conduct.

Key Rulemakings

- **Adoption of Federal Position Limits.** In October, the CFTC adopted final amendments to the federal position limits rules for commodity futures contracts and new position limit rules for economically equivalent swaps. This action marks the CFTC's fifth attempt to adopt federal position limit rules. At a high level, the rules (1) establish federal position limits for 25 different futures contracts, including nine "legacy" futures contracts on certain agricultural products and 16 new futures contracts on certain additional agricultural products and on certain metals and energy products; (2) address the setting of position limits and granting exemptions by exchanges; (3) establish exemptions from the federal position limits (including eliminating certain risk management exemptions); and (4) eliminate certain previously required reporting requirements for hedgers. Although compliance with the rules is being phased in, with certain key aspects not taking effect until 2022 or 2023, market participants transacting derivatives on agricultural and energy-related commodities and metals should familiarize themselves with these new rules and consider the effect on their trading activities.



ENFORCEMENT ACTIONS

12/4—SEC files settled charges against a publicly traded restaurant chain for making misleading disclosures about the impact of the COVID-19 pandemic on its business operations and financial condition for \$125,000. *In Matter of The Cheesecake Factory, Inc.*

12/8—UK-based investment adviser agrees to pay \$170 million in disgorgement to settle charges relating to disclosures concerning its assignment of traders to a proprietary fund and use of an algorithm. *In Matter of Bluecrest Capital Management Ltd.*

- **Amendments to Margin Rules for Uncleared Swaps.** In December, the CFTC approved two final rules that make amendments to its margin regulations for uncleared swaps. The rules, among other things, (1) modify the application of minimum transfer amounts to separately managed accounts and (2) amend the period for calculation of “average aggregate notional amount” (AANA) used to determine whether a particular counterparty is in scope for initial margin requirements. Market participants evaluating whether they will be subject to initial margin requirements should be mindful of the amendments to the AANA calculation and take note that the U.S. prudential regulators have not to date made similar modifications to their parallel rules, so two separate calculations may be required.
- **Amendments to the CFTC’s Part 190 Bankruptcy Rules.** In December, the CFTC approved amendments to its regulations governing bankruptcy proceedings of commodity brokers. The CFTC described the amendments as being intended to “comprehensively update” the CFTC’s existing Part 190 regulations (which were first adopted in 1983 and have not been comprehensively revised since) “to reflect current market practices and lessons learned from past commodity broker bankruptcies.” Among other things, the amendments adopt comprehensive rules governing the bankruptcy of derivatives clearing organizations, an area that was previously unaddressed and has become increasingly important with Dodd-Frank’s clearing mandate for swaps.

Other

- **LabCFTC Digital Assets Primer.** In December, the CFTC, through its innovation office, LabCFTC, released a “primer” on digital assets that, among other things, discusses the various potential regulatory characterizations of digital assets and what activities with respect to digital assets fall within the CFTC’s jurisdiction. The primer highlights that trading in digital asset derivatives is growing and that a number of CFTC-registered platforms have listed digital asset derivatives products, including Bitcoin and Ether futures. In a disclaimer, the CFTC notes that the primer is intended to be an educational tool and that it is not intended to state the official policy or position of the CFTC. The CFTC’s jurisdiction over any particular digital asset continues to depend on specific facts and circumstances, which almost always involve complicated analyses of legal characterization. We expect continued focus from the CFTC in this area in 2021.

[*Kate Lashley*](#) advises a wide range of clients in all aspects of their derivatives trading, documentation, and regulation and has extensive experience advising both regulated entities and end users on regulatory and compliance issues relating to the Commodity Exchange Act and the Dodd-Frank Act.

MESSAGING APPS MAY EXPOSE FIRMS TO REGULATORY RISKS

by Christopher Mills, David Petron, and John Sakhleh

Since the start of the COVID-19 pandemic, financial firms have altered how they conduct their business. For many, remote work arrangements are now the norm. Video conferences have largely replaced in-person, in-office meetings. And all types of business communications, especially calls and emails, are handled more frequently using personally owned mobile phones. The ease with which mobile phones allow individuals to stay connected with colleagues and clients provides obvious benefits during the pandemic.

At the same time, some of the most frictionless methods of communications, such as text messaging and communications apps, may present compliance challenges under Section 17(a) and Rule 17a-4 of the Exchange Act, and Section 203 and Rule 204-2 of the Advisers Act. Capturing and storing communications sent on employees’ personal devices in a firm’s communications archive can raise both technological and regulatory hurdles. As



ENFORCEMENT ACTIONS

12/9—SEC brings settled charges against a global securities pricing service for compliance deficiencies relating to its delivery to clients of prices based on quotes it received from a single market participant, also known as single-broker quotes. The service agreed to pay an \$8 million penalty. *In Matter of Ice Data Pricing & Reference Data, LLC*

12/9—Publicly traded company agrees to pay \$200 million penalty to the SEC to settle charges relating to disclosure failures in its power and insurance businesses. *In Matter of General Electric Co.*

financial institutions continue to review their supervisory framework and plan ahead, they should be mindful that regulators have increasingly focused attention on whether firms are capturing business-related text messages and similar communications.

The failure to appropriately capture and supervise business-related texts or similar messages can result in regulatory scrutiny, including examination findings and enforcement actions. An action brought by the SEC toward the end of its fiscal year against a broker-dealer may indicate the approach the SEC may take during the Biden administration. See *In the Matter of JonesTrading Institutional Services LLC*, Rel. No. 34-89975 (Sept. 23, 2020). There, during the course of an investigation into a third party, the SEC staff learned that the broker-dealer did not retain records of business-related text messages that the broker-dealer's employees had exchanged with one another, with the firm's customers, and with other third parties. The broker-dealer's policies prohibited employees from sending business-related text messages. The broker-dealer trained employees on this prohibition and required employees to attest to compliance with its policies every year. The SEC alleged that despite the training and annual certifications, the employees frequently violated the firm's policies by sending business-related texts. Because the broker-dealer did not have a system in place to capture those communications, the SEC determined that the broker-dealer violated its recordkeeping obligations. To resolve the matter, the broker-dealer agreed to pay a six-figure penalty.

The SEC's action may foreshadow a more assertive enforcement focus on recordkeeping issues related to text messages and similar messaging apps, especially with remote working arrangements becoming more prevalent. This may be particularly true where a failure to retain the required communications affects the Commission's ability to gather facts it considers relevant to other investigations. As the recent SEC action shows, regulators may consider an enforcement action to be warranted, even if the firm has taken a number of seemingly reasonably designed steps to meet its recordkeeping obligations. As a result, broker-dealers and investment advisers should confirm that they have appropriate supervisory policies, procedures, and systems in place that are reasonably designed to capture all relevant communications, regardless of form, and are able to withstand the increased regulatory scrutiny that is likely under the Biden administration.

[Christopher Mills](#) is an associate who focuses on representing clients in SEC and FINRA examinations, investigations, and enforcement actions. [David Petron](#) is a partner who defends clients in the full range of SEC enforcement investigations. [John Sakhleh](#) is a partner whose practice focuses on broker-dealers and fintech companies in regulatory, enforcement, and transactional matters.

IMPACT OF EXECUTIVE ORDER ON CHINESE MILITARY COMPANIES

By *Corin Swift and John Ruth*

On January 11, 2021, certain provisions of Executive Order (EO) 13959, "Addressing the Threat from Securities Investments that Finance Communist Chinese Military Companies," that prohibit transactions in certain securities related to "Communist Chinese military companies" (CCMCs) went into effect. The EO was signed by President Trump on November 12, 2020, to limit contributions of U.S. capital in the development of Chinese military capabilities. This EO and subsequent amendments require that as of January 11, 2021, U.S. market participants not purchase or sell securities in companies designated as CCMCs except to divest from those companies, and all divestment should occur within a 10-month wind-down period ending November 11, 2021. More specifically, the EO disallows "any transaction in publicly traded securities, or any securities that are derivative of, or are designed to provide investment exposure to such securities, of any Communist Chinese military company...by any United States person." CCMCs are identified by the Department



ENFORCEMENT ACTIONS

12/16—China-based public company agrees to pay \$180 million penalty to SEC to settle accounting and disclosure charges relating to alleged misstatements of revenue, expenses, and net operating losses. *SEC v. Luckin Coffee, Inc.*

12/17—Broker-dealer agrees to pay \$65 million penalty to SEC for alleged misstatements regarding the firm's receipt of payments for order flow and failures to provide best execution of customer orders. *In Matter of Robinhood Financial, LLC*

12/18—SEC files suit against biotechnology company and CEO for making misleading claims regarding development of rapid COVID-19 blood test. *In Matter of Decision Diagnostics Corp.*

of Defense, in consultation with the Department of the Treasury, and the list is regularly updated. The current list of CCMCs may be found [here](#), but this list is subject to change.

The U.S. Treasury Department's Office of Foreign Assets Control (OFAC) has provided guidance in the form of Frequently Asked Questions (FAQs) [857](#), [858](#), [859](#), [860](#), [861](#), [862](#), [863](#), [864](#), [865](#), [871](#), [872](#), [873](#), [874](#), [878](#), and [879](#) covering certain key topics. For example, FAQ 858 indicates that the prohibitions apply to entities with names "that exactly or closely match the name of" identified CCMCs, although it does not further explain what a "close match" is. FAQ 865 explains that market intermediaries and other participants may "engage in ancillary or intermediary activities that are necessary to effect divestiture during the relevant wind-down period or that are otherwise not prohibited under the E.O."

Regulated financial institutions should be aware of this divestment requirement and the impact on institutional and retail client holdings. The SEC's Division of Examinations has published a Risk Alert to notify investment advisers, broker-dealers, and other market participants of the EO, <https://www.sec.gov/files/risk-alert-securities-investments-finance-communist-chinese-military-companies.pdf>, and encourages them to assess the EO's effect and evaluate their related processes. Although neither the SEC nor FINRA has published further guidance to date, financial institutions should be reviewing this issue carefully and considering:

- internal processes for tracking any updates to the list of covered securities as well as updates from Treasury and OFAC
- how to identify positions in covered securities, particularly with respect to index, mutual funds, or derivative positions
- communications with affected customers

Corin Swift has extensive experience representing broker-dealers, investment advisers, and financial institutions in both internal and external investigations and enforcement proceedings. John Ruth is an associate in *Sidley's Securities Enforcement and Regulatory* practice.

AML IS IN OUR FUTURES—CFTC STEPS UP AML ENFORCEMENT

By Paul Tyrrell and Andrew Yodis

The SEC and FINRA have been bringing enforcement actions involving anti-money-laundering (AML) violations for years. In 2020, the CFTC announced itself as another key regulator in AML enforcement by bringing three significant AML cases. One case involved an unregistered entity involved in cryptocurrency—another hot area for CFTC regulation.

The CFTC's three cases focused on three different aspects of AML enforcement. One case involved an implementation failure—a failure to establish an AML program at all. Another involved a design failure; the entity allegedly devoted insufficient resources to its program to ensure it was reasonably able to detect suspicious activities. The third involved an execution failure based on a single alleged failure to file a suspicious activity report (SAR).

Given the scope and size of these unprecedented enforcement actions, entities regulated by the CFTC should use this time as an opportunity to evaluate the implementation, design, and execution of their AML programs. Entities subject to CFTC jurisdiction, including futures commission merchants (FCMs), introducing brokers, and swap execution facilities (SEFs) should all assess the effectiveness of their AML programs, the sufficiency of the resources devoted to AML compliance, and the types of surveillance tools used in those programs in light of the recent enforcement actions.

The CFTC has made clear that boilerplate written policies will be found to be inadequate. Instead, entities should invest sufficient compliance resources in the program and have a



ENFORCEMENT ACTIONS

12/21 – Brokerage firm agrees with FINRA to pay a total of \$8.8 million for failing to supervise its registered representatives' recommendations of variable annuities, mutual funds, and 529 plans. *In Matter of Transamerica Financial Advisors, Inc.*

12/22 – SEC files suit against company and two executives for allegedly raising over \$1.3 billion through an unregistered offering of digital asset securities. *SEC v. Ripple Labs, Inc.*

12/31 – Brokerage firm agrees with FINRA to pay \$1.2 million in restitution to customers whose accounts were excessively traded by the firm's representatives and a \$350,000 fine for supervisory and other violations. *In the Matter of Worden Capital Management LLC*

strong culture to detect, prevent, and report suspicious activity. Deficiencies in these areas will leave the entity open to potentially significant regulatory actions.

Interactive Brokers

In August 2020, in parallel with the SEC and FINRA, the CFTC issued an order finding that Interactive Brokers had violated Regulations 42.2 and 166.3 by failing to have a reasonably designed AML program. The CFTC ordered the firm to pay a civil penalty of \$11.5 million and disgorgement of \$706,214. See *In the Matter of Interactive Brokers LLC*, CFTC Docket No. 20-25 (Aug. 10, 2020). The firm also agreed to continue its engagement of an independent consultant to evaluate its AML program and a second consultant to assess implementation of the first consultant's recommendations.

The CFTC found that the firm had basic written policies related to AML and filing of SARs but did not commit sufficient resources to its AML program. The CFTC specifically cited the firm for:

- not employing a sufficient number of compliance analysts
- not having automated reports designed to monitor for trends and patterns over time
- lacking adequate policies and procedures for documenting and escalating investigations

The CFTC alleged that these shortfalls caused the firm to miss red flags that should have led it to detect and report suspicious behavior in five customer accounts.

A&A Trading Inc.

In September 2020, the CFTC issued an order finding that A&A Trading Inc. had violated Regulations 42.2 and 166.3 by failing to file a SAR and to diligently supervise the handling of customer accounts. The CFTC ordered the firm to pay a civil penalty of \$400,000 and disgorgement of \$95,329. See *In the Matter of A&A Trading, Inc.*, CFTC Docket No. 20-77 (Sept. 30, 2020).

The CFTC found that A&A, a registered introducing broker, had assisted another introducing broker in connection with the handling of customer accounts. The other firm communicated with the customers, but A&A handled many of the order processing and other administrative, bookkeeping, and recordkeeping tasks. A&A earned a portion of the commissions associated with customers' trades.

According to the order, the other firm informed A&A that one of its associated persons was engaged in unauthorized trading in two customer accounts. However, A&A did not file a SAR or report the suspected violations to the CFTC, which would have relieved it in these circumstances of the duty to file a SAR. A&A also did not take steps to ensure that the associated person did not engage in further unauthorized trading, which according to the CFTC allowed the associated person to continue the unauthorized trading until the other firm terminated him several months later.

BitMEX Trading Platform

In October 2020, in parallel to criminal proceedings brought by the DOJ, the CFTC filed a civil enforcement action against the owners and operators of BitMEX, an offshore cryptocurrency derivatives exchange. See *CFTC v. HDR Global Trading Ltd. Et. al.* No. 1:20-cv-08132 (S.D.N.Y. Oct. 1, 2020). According to the CFTC's complaint, BitMEX was one of the largest cryptocurrency derivatives platforms, offering leveraged retail commodity transactions, futures, options, and swaps on cryptocurrencies including bitcoin, ether, and litecoin. BitMEX had billions of dollars of trading volume each day, much of it from U.S. customers.

The CFTC's complaint alleges that BitMEX failed to register with the CFTC as a FCM, a designated contract market, or a SEF. The complaint further charges that BitMEX failed to implement AML policies and procedures, Know-Your-Customer (KYC) procedures, or a



ENFORCEMENT ACTIONS

1/8—Multinational financial services firm agrees to pay more than \$120 million to settle parallel FCPA charges with the SEC and DOJ. *In Matter of Deutsche Bank AG*

2/1—SEC charges an asset management firm and individuals with running a Ponzi-like scheme that raised over \$1.7 billion. The firm was also charged with violating whistleblower protections by including language in termination and separation agreements that impeded individuals from coming forward and by retaliating against a known whistleblower. *SEC v. GPB Capital Holdings, LLC*

Customer Information Program (CIP). According to the CFTC, by failing to implement such procedures and programs, BitMEX was unable to identify its customers or ascertain whether customers were U.S. persons. While the BitMEX complaint involves an unregistered entity, the inclusion of the AML/CIP/KYC charges highlights the importance to the CFTC of such procedures.

The CFTC's recent enforcement actions show that the CFTC views the AML program rule as a vital enforcement tool, for both registered entities as well as entities that conduct activities requiring registration. The actions also show the breadth of cases the CFTC is willing to bring. It is likely the CFTC's role as AML regulator will continue to grow.

[*Paul Tyrrell*](#) focuses on securities and commodities compliance and enforcement matters, with an emphasis on sales practices, supervisory rules, and anti-money-laundering requirements. *Andrew Yodis* is an associate who focuses on SEC, FINRA, and CFTC enforcement matters.

STAFF MOVES

- 10/27 The SEC announced that **William H. Hinman**, Director of the SEC's Division of Corporation Finance, planned to leave the SEC later in 2020. Hinman served as Director since 2017.
- 10/29 The SEC announced that **Raquel Fox**, Director of the Office of International Affairs (OIA), would leave the agency in November 2020. Fox joined the SEC in 2011 and was named Director of OIA in 2018.
- 11/12 The SEC named **Mike Willis** an Associate Director in the Division of Economic and Risk Analysis (DERA). Willis will lead DERA's newly created Office of Data Science and Innovation. He previously served as Assistant Director of the Office of Structured Disclosure within DERA.
- 11/16 **Jay Clayton**, Chairman of the SEC, confirmed that he would conclude his tenure at the end of 2020. Clayton had served as Chairman since May 2017.
- 11/18 The SEC named **Marie-Louise Huth** an Associate General Counsel for Legal Policy in its Office of the General Counsel. Huth previously served as Chief Counsel for DERA and has been with the SEC in various roles since 2012.
- 11/19 The SEC announced that **Lourdes Caballes** and **Michael Rufino** had been named Associate Directors of the OCIE Broker-Dealer Examination Program in the New York Regional Office. Caballes and Rufino succeed **Robert Sollazzo**, who retired in July 2020, and will oversee a staff of nearly 80 accountants, examiners, and attorneys responsible for inspections of SEC-registered broker-dealers in New York and New Jersey.
- 12/3 The SEC named **Nekia Hackworth Jones** Director of the Atlanta Regional Office. Jones previously served as an Assistant U.S. Attorney in the U.S. Attorney's Office for the Northern District of Georgia and in senior positions at the DoJ Office of the Deputy Attorney General.
- 12/8 The SEC announced that the SEC's General Counsel, **Robert B. Stebbins**, would leave the agency in January 2021. Stebbins was named to that post in May 2017.
- 12/10 **Stephanie Avakian**, Director of the Division of Enforcement, announced she would leave the agency by the end of 2020. Prior to her role as Director, Avakian served as Co-Director from June 2017 until August 2020 and as Acting Director from December



ENFORCEMENT ACTIONS

2/16—SEC files suit alleging disclosure and internal controls violations by former credit ratings agency in rating commercial mortgage-backed securities. *SEC v. Morningstar Credit Ratings LLC*

2016 to June 2017. Before that, she served as Enforcement's Deputy Director beginning in June 2014.

- 12/15 The SEC announced that **Brett Redfearn**, Director of the SEC's Division of Trading and Markets, would leave the agency at the end of the year. Redfearn had served in this role since October 2017. Upon Redfearn's departure, **Christian Sabella**, a Deputy Director of the Division, assumed the role of Acting Director.
- 12/15 FINRA appointed **Scott W. Anderson** Executive Vice President and Head of Market Regulation and Transparency Services. Anderson began his career at the National Association of Securities Dealers, FINRA's predecessor organization, and has 25 years of experience in the regulation of the U.S. securities markets.
- 12/21 **S.P. Kothari**, Chief Economist and Director of the SEC's Division of Economic and Risk Analysis, announced he would leave the agency by the end of January 2021. Kothari joined the SEC in March 2019 and was previously a professor at the Massachusetts Institute of Technology (MIT).
- 12/21 The SEC named **John Moses** Deputy Director of its Office of Investor Education and Advocacy. Moses previously served as Managing Executive in the Office of the Chairman.
- 12/22 The SEC named **Charles Koretke** as Managing Executive of the Division of Examinations. Koretke had been serving as Acting Managing Executive of Examinations since October 2019. He first joined the SEC in 1996 as a compliance examiner.
- 12/23 The SEC announced that **Sean Memon** would conclude his tenure as the agency's Chief of Staff in January 2021. Memon joined the SEC as Deputy Chief of Staff in May 2017 and was named Chief of Staff in June 2019.
- 12/28 President Donald Trump designated **Elad L. Roisman** Acting Chairman of the SEC. Roisman was sworn in as a Commissioner of the SEC in September 2018. Prior to joining the Commission, he served as Counsel to SEC Commissioner Dan Gallagher.
- 1/7 The SEC announced that **Paul G. Cellupica**, Deputy Director and Chief Counsel of the Division of Investment Management, would depart the agency. Cellupica rejoined the division as Deputy Director in November 2017 and became Chief Counsel in June 2018.
- 1/8 The FINRA Board of Governors appointed **Deborah Bailey** and **Kathryn Ruemmler** as new Governors. Bailey will serve as a public member and Ruemmler as an industry member.
- 1/12 **Marc P. Berger**, Acting Director of the SEC's Division of Enforcement, announced he would leave the agency. Berger joined the SEC as Director of the New York Regional Office in December 2017 and was named Deputy Director of the Division of Enforcement in August 2020. He served as an Assistant United States Attorney in the Southern District of New York from 2002 to 2014.
- 1/13 The SEC announced that Chief Accountant **Sagar Teotia** would leave the agency by the end of February. Teotia was named as the SEC's Chief Accountant in 2019 after serving as Deputy Chief Accountant.
- 1/18 President Biden nominated **Gary Gensler** to serve as Chairman of the SEC. Gensler served as Chairman of the CFTC from 2009 to 2014, as Under Secretary of the Treasury for Domestic Finance from 1999 to 2001, and as Assistant Secretary of the Treasury for



Financial Markets from 1997 to 1999. He was Chairman of the Maryland Financial Consumer Protection Commission from 2017 to 2019 and is a professor at MIT.

- 1/19 **Shelley E. Parratt**, Acting Director of the Division of Corporation Finance, announced she would retire after 35 years of service to the SEC. Parratt joined Corporation Finance in 1986, served as its Deputy Director since 2003, and served as Acting Director of the Division three separate times.
- 1/19 The SEC announced that **Kimberly Hamm**, Chief Counsel to the Chairman, would conclude her tenure at the agency. Hamm had been appointed by Chairman Clayton in August 2019.
- 1/21 President Biden designated **Allison Herren Lee** as Acting Chair of the SEC. Lee was sworn in as a Commissioner in July 2019 and had previously served on the staff of the SEC for over a decade in various roles.
- 1/22 The SEC named **Melissa R. Hodgman** Acting Director of the SEC's Division of Enforcement. Hodgman had served as an Associate Director in the Division of Enforcement since October 2016. She joined the SEC in 2008 as a staff attorney.
- 1/22 **Paul Munter** was appointed to serve as the SEC's Acting Chief Accountant beginning in February 2021. Munter had previously served as Deputy Chief Accountant and led the international work of the SEC's Office of the Chief Accountant.
- 1/26 The SEC announced that **Manisha Kimmel** would conclude her tenure as Senior Policy Advisor, Regulatory Reporting, at the end of January. Kimmel had joined the SEC in January 2019 and coordinated the SEC's oversight of the creation and implementation of the Consolidated Audit Trail by self-regulatory organizations.
- 2/1 **John Coates** was named Acting Director of the SEC's Division of Corporation Finance. Coates was previously a professor of law and economics at Harvard Law School.
- 2/1 The SEC named **Satyam Khanna** to serve as Senior Policy Advisor for Climate and ESG in the office of Acting Chair Lee. Khanna will advise the SEC on ESG matters and was previously a resident fellow at the NYU School of Law.
- 2/1 The SEC released a roster of the executive staff for Acting Chair Lee. The executive staff includes **Prashant Yerramalli**, Chief of Staff; **Frank Buda**, Deputy Chief of Staff; and **Eric Juzenas**, Chief Counsel.
- 2/5 The SEC announced that **Katherine K. Martin** would leave the agency in February. Martin had served as Associate Director in the Office of International Affairs since 2015.
- 2/5 The SEC named **Kelly L. Gibson** as Acting Deputy Director of the Division of Enforcement. Gibson joined the SEC in 2008, and had served as Director of the Philadelphia Regional Office since February 2020.

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