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Securities Enforcement Update August 22, 2024

Securities Enforcement 2024 Mid-Year Update

A dichotomy in enforcement: a continued aggressive enforcement agenda tempered by litigation setbacks.

I. INTRODUCTION

The first half of 2024 reflected a dichotomy in SEC enforcement. On one hand, the Enforcement Division continued to pursue an aggressive enforcement agenda, including a number of notable enforcement actions, and continued demand for heightened penalties. On the other hand, the Commission incurred a number of significant litigation setbacks with potentially broad implications for the SEC's enforcement program.

A. Notable Enforcement Activity

In the first half of 2024, the SEC won a significant insider trading litigation and continued to recover unprecedent penalties as part of its sweep activities relating to recordkeeping and whistleblower protections rules.

Shadow Trading Victory

In April 2024, the SEC won its trial against Matthew Panuwat, in a highly publicized insider trading case relating to a novel "shadow trading" theory. The SEC alleged that Panuwat's trading in a competitor company (Incyte)—which was critically *not* the subject of the inside information that he received concerning the proposed acquisition of his company (Medivation)—constituted trading on the basis of material non-public information. In denying Panuwat's motion for summary judgment, the Court held that a jury could find that information concerning Medivation was material to Incyte on the basis that Incyte had a "market connection" to Medivation. The Court also held that a jury could find that Panuwat breached a fiduciary duty when trading (a necessary component of a misappropriation theory of insider trading) on three potential grounds: (i) Medivation's insider trading policy, which broadly prohibited trading *in any company* on the basis of confidential information; (ii) Medivation's confidentiality policy; and (iii) Panuwat's general duties as an employee of Medivation. As we described in our alert, although the SEC described its theory as standard insider trading, there is no doubt that *Panuwat* expanded potential insider trading liability, with broad implications for future civil and criminal enforcement.

Recordkeeping

To date, in 2024, the SEC has brought three additional rounds of settlements with broker-dealers and investment advisers as part of its ongoing sweep relating to recordkeeping and off-channel communications. Firms have paid a combined total of over $480 million in penalties in 2024, and over $3 billion in fines as part of the overall sweep. Each of the firms have also agreed to retain independent compliance consultants to conduct comprehensive reviews of their implementation and enforcement of policies and procedures related to the retention of electronic communications on personal devices. Notably, the firms admitted the facts in the SEC's orders.

- In February, the SEC announced settled charges against five broker-dealers, seven dually registered broker-dealers and investment advisers, and four affiliated investment advisers for failing to maintain and preserve electronic communications.[1]
- In April, the SEC announced settled enforcement charges against a registered investment adviser for alleged recordkeeping and ethics code violations.[2]
- In August, the SEC announced settled charges against 26 broker-dealers, investment advisers, and dually-registered broker-dealers and investment advisers.[3]

The SEC has used its recordkeeping sweep enforcement efforts as an example of the benefits of cooperation. In his remarks at SEC Speaks in April, Deputy Director of Enforcement Sanjay Wadhwa noted that self-reporting is "the most significant factor in moving the needle on penalties" in the recordkeeping matters.[4] In its August announcement, the SEC noted that three of the firms paid significantly lower civil penalties, ranging from $400,000 to $1.6 million, as a result of self-reporting, which Director of Enforcement Gurbir Grewal described as "demonstrating once again the real benefits of proactive cooperation."[5]

Whistleblower Protection

In 2024, the SEC has also continued to expand the scope of what it interprets as a violation of whistleblower protection rules under Exchange Act Rule 21F. In January, the SEC announced settled charges against a broker-dealer for allegedly violating Rule 21F not with respect to its employees, but to its *clients*.[6] Moreover, the information that the broker-dealer allegedly forbade individuals from disclosing did not relate broadly to the broker-dealer's operations or financial undertakings, but instead related narrowly to the contents of specific release agreements between the clients and the broker-dealer. The SEC order alleged that, from March 2020 to July 2023, the broker-dealer asked retail clients to sign release agreements through which clients promised "not to sue or solicit others to institute any action or proceeding against [the broker-dealer] arising out of events concerning the Account." With respect to the alleged Rule 21F violations, the release agreements included a clause requiring clients to "keep t[he] Agreement confidential and not use or disclose the allegations, facts, contentions, liability, damages, or other information relating in any way to the Account, including but not limited to, the existence or terms of t[he] Agreement." Though the clause also included a carveout that "neither prohibited nor restricted [clients] from responding to any inquiry about t[he] settlement or its underlying facts by FINRA, the SEC, or any other government entity," the SEC alleged that the carveout was not expansive enough, and that the release agreements nonetheless prohibited clients from "affirmatively reporting" information to the Commission staff. Without admitting or denying the SEC's findings, the broker-dealer agreed to pay an $18 million civil penalty.

The above enforcement action marks yet another instance where the SEC expanded the scope of the types of conduct it perceives as violating Rule 21F. For example, even confidentiality agreements between an entity and its external clients (as opposed to internal employees with more intimate knowledge of the entity) are subject to the rule. Moreover, it seems that any confidentiality clause, regardless of how narrow its scope, may fall within the seemingly expanding contours of whistleblower protection. Though it is unclear from publicly available materials whether the confidentiality clause in the above action related narrowly to the information in the release agreement and its underlying facts, or more broadly to any information about the clients' accounts, the SEC's discussion throughout the order implied that the Commission may require whistleblower carveout clauses for any confidentiality agreement, no matter how narrow.

B. Litigation Setbacks

In June and July 2024, the SEC suffered a number of notable litigation setbacks, including decisive decisions vacating the SEC's proposed private funds rule and prohibiting the use of the SEC's in-house courts when seeking civil penalties for fraud. A recent ruling in the SolarWinds case also casts doubt—echoing the sentiments voiced by Commissioners Peirce and Uyeda—on the SEC's ability to continue to use the internal accounting controls provision as a wide-ranging hammer in enforcement matters.

Private Funds Rule

In June, a unanimous panel of the Fifth Circuit vacated the SEC's proposed private funds rule. As described in our alert on the ruling, the Court held that the rule exceeded the SEC's statutory authority. The SEC's proposed rule would have required a host of restrictions on private funds. Gibson Dunn represented the petitioners in the Fifth Circuit case.

In-House Courts

Also in June, the Supreme Court held 7-3 in *SEC v. Jarkesy* that the Seventh Amendment requires the SEC to sue in federal court when seeking civil penalties for fraud. As described in our 2023 Mid-Year alert, the Court held that the SEC's prior use of its in-house adjudication process was unconstitutional. Although the decision may have little impact on pending enforcement actions (given that the SEC has not recently pursued actions in its in-house tribunals), there is no doubt that the decision alters the calculus going forward of whether to settle with the SEC by putting defendants on equal footing with the government before a federal court.

Internal Accounting Controls

In June 2024, the SEC announced settled charges against a public company that was the subject of a ransomware attack for alleged violations of the internal accounting controls and disclosure controls provisions of the federal securities laws.[7] As we described in our alert regarding the action, the SEC's order, which alleged that the company failed to develop and maintain a system of cybersecurity-related internal accounting controls sufficient to prevent unauthorized access to the company's information technology systems and networks, is notable for extending the internal controls provisions of Section 13(b)(2)(B) of the Exchange Act to a company's IT systems. The SEC had previously brought actions in 2020 and 2023 using the same provision to bring cases relating to stock buybacks and Rule 10b5-1 plans. As with those cases, the action brought a strongly-worded dissent from Commissioners Hester Peirce and Mark Uyeda criticizing "the Commission's decision to stretch the law to punish a company that was the victim of a cyberattack."[8]

One month later, in a separate ongoing litigation, the United States District Court for the Southern District of New York largely granted SolarWinds' motion to dismiss the SEC's claims in a litigation against the company and its former Chief Information Security Officer (CISO) propounding a similar theory of liability. Specifically, as described in our alert concerning the case, the Court dismissed the SEC's claim that cybersecurity-related deficiencies are actionable under rules relating to internal accounting and disclosure controls. The Court echoed the prior views of Commissioners Peirce and Uyeda, noting that "[a]s a matter of statutory construction, [the SEC's] reading is not tenable." The Court's decision calls into question the SEC's attempts to adopt an expansive reading of its rules relating to internal accounting controls and disclosure controls.

C. Senior Staffing Update

The Commission has already announced notable staff updates in Fiscal Year 2024 and has also publicized plans to shut down one of its regional offices.

Just before the turn of the year, Mark T. Uyeda was sworn in as a Commissioner for a second term, which expires in 2028.[9] Commissioner Uyeda first joined the SEC in 2006 as a staff member, and subsequently served in various roles—including as Senior Advisor to Chairman Jay Clayton, Senior Advisor to Acting Chairman Michael S. Piwowar, and Counsel to Commissioner Paul S. Atkins—before becoming a Commissioner in 2022. Prior to his service with the SEC, Commissioner Uyeda served as Chief Advisor to the California Corporations Commissioner and worked as an attorney for several law firms.

In June, the SEC announced the appointment of Erica Y. Williams to a second term as Chair of the Public Company Accounting Oversight Board (PCAOB), which will run from October 25, 2024, and through October 24, 2029.[10] Prior to joining the PCAOB in January 2022, Chair Williams was a litigation partner at a law firm, and had previously served in various roles at the SEC, including as Deputy Chief of Staff to three former SEC Chairs and Assistant Chief Litigation

Counsel in the SEC's Division of Enforcement trial unit. Chair Williams also served as Special Assistant and Associate Counsel to President Barack Obama.

There were also several changes at the senior staff level and in regional leadership, including within the Division of Investment Management, Office of the Advocate for Small Business Capital Formation, Office of Minority and Women Inclusion, and other policy and office directors:

- In January, Stacey Bowers was named director of the SEC's Office of the Advocate for Small Business Capital Formation (OASB), which was formed in January 2019 as an independent office aimed to promote the interests of small businesses and their investors during the capital formation process.[11] This is not Ms. Bowers' first time serving with the Commission; she began her legal career at the SEC as a staff attorney in the Division of Corporation Finance before leaving for private practice. From 2007 until becoming the Director of OASB, Ms. Bowers was a law professor at the University of Denver's Sturm College of Law and served as the Director of the Corporate and Commercial Law Program since 2018.

- In March, Natasha Vij Greiner, the former Deputy Director of the Division of Examinations, became Director of the Division of Investment Management, which regulates investment advisers and investment companies.[12] Greiner has served in various roles in the SEC for over 22 years including Acting Chief Counsel and Assistant Chief Counsel in the Division of Trading and Markets. As Director of the Division of Investment Management, Ms. Greiner replaced William Birdthistle, who joined the SEC in December 2021 and oversaw the adoption of major rulemakings related to public and private funds. Mr. Birdthistle left the SEC to teach law at the University of Chicago.

- In May, the SEC announced the appointment of Nathaniel H. Benjamin to be the Director of the Office of Minority and Women Inclusion (OMWI) and replace Allison Wise, who is OMWI's Deputy Director and had been serving as Acting Director since October 2023.[13] Benjamin previously served as Chief Diversity and Inclusion Officer of AmeriCorps and Deputy Chief Human Capital Officer at the Department of Education, and also served in similar roles at the Office of Management and Budget and the U.S. Department of State.

- In May, the SEC named Tina Diamantopoulos as Director of the Chicago Regional Office.[14] Diamantopoulos joined the Enforcement Division in the Chicago Regional Office in 1994, and has since served in various roles, including Branch Chief, Senior Special Counsel in the Examinations Division, Counsel to the Regional Director, and Associate Director for the regional broker-dealer examination program.

- In May, the SEC announced the departure of Policy Director Heather Slavkin Corzo, who joined the SEC in April 2021 to lead the policy team, and who oversaw the proposal and adoption of almost 40 rulemakings.[15] Corey Klemmer, who joined the SEC in 2021 and served as the former Corporation Finance Counsel to Chairman Gary Gensler, was appointed to fill Ms. Corzo's role.

Separately, the SEC announced the pending closure of its Salt Lake Regional Office (SLRO), which is expected to occur later this year due to budget and organizational efficiency concerns.[16] Current SLRO staff will be aligned to existing SEC organizational components upon the office's closure, and the enforcement jurisdiction over the state of Utah will be shifted to the SEC's Denver Regional Office. The Commission said it has no plans to close any additional regional offices.

II. PUBLIC COMPANY ACCOUNTING, FINANCIAL REPORTING, AND DISCLOSURE

A. Financial Reporting

In February, the SEC announced settled accounting fraud charges against a China-based technology company, whose American depositary shares formerly traded on the New York Stock Exchange, for allegedly violating antifraud, reporting, recordkeeping, and internal controls provisions of the federal securities laws.[17] According to the SEC's order, from May 2021 through February 2022, two senior managers of the company allegedly orchestrated a fraudulent scheme to prematurely recognize revenue on service contracts, and to improperly recognize revenue on contracts for which the company had not completed work. The SEC alleged that as a result of the managers' alleged misconduct, the company overstated its unaudited financial results for the second and third quarters of 2021 and its announced revenue guidance for the fourth quarter of 2021. Without admitting or denying the allegations, the company agreed to cease and desist from further violations of the charged securities laws. The SEC did not impose civil penalties because the company self-reported the accounting issues, provided extensive cooperation, and took remedial measures, including firing or disciplining those involved in the alleged scheme, reorganizing departments engaged in the misconduct, strengthening accounting controls, and recruiting new finance and accounting staff.

In March, the SEC announced settled charges against a California-based footwear company for violations of related person transaction disclosure requirements, as well as reporting and proxy solicitation provisions, of the federal securities laws.[18] The SEC's order alleged that, from 2019 through 2022, the company allegedly failed to disclose payments for the benefit of its executives and their immediate family members, the company's employment of two relatives of its executives, and a consulting relationship involving an individual sharing a household with a company executive. The company allegedly further failed to disclose that two of its four executives owed more than $120,000 to the company for multiple years in relation to personal expenses paid for by the company, but subject to reimbursement by the executives. Without admitting or denying the SEC's allegations, the company agreed to pay a $1.25 million civil penalty.

B. Public Statements and Disclosures

In January, the SEC announced settled charges against a U.S.-based special purpose acquisition company (SPAC) for allegedly making misleading statements in forms filed with the SEC as part of its January 2021 initial public offering (IPO).[19] The SEC's order alleged that, despite a statement in the SPAC's SEC filings that the company had not initiated any substantive discussions with potential target companies prior to the IPO, the SPAC discussed a potential business combination with a target company starting in December 2020. The SEC's order further alleged that, after announcing a merger agreement with the target company, the SPAC did not adequately disclose its interactions with the target company in its Form S-4 filings. Without admitting or denying the allegations, the SPAC agreed to pay a $1.5 million penalty in the event it closes a merger transaction.

In February, the SEC filed fraud charges against the former CEO and co-founder of a Florida-based advertising technology company for allegedly making materially misleading false statements on social media regarding the company's financial and performance metrics to elevate the company's stock price.[20] The SEC's complaint alleges that, shortly after the company's May 2021 initial public offering, the former CEO submitted a post on social media that misrepresented company revenues to be between $10 million and $20 million, even though the company was set to report $17,450 in revenue for 2021. Soon thereafter, the former CEO allegedly falsely misrepresented in a YouTube interview that the company was entering into a new contract with the founder of a restaurant chain, though no contract existed and no related discussions had taken place. The SEC's complaint further alleges that, in August 2021 when the company's stock price opened at its lowest level in almost two months, the former CEO made misleading false statements on social media and in a company-issued press release that the company's projected available advertising inventory for 2021 as more than $100 million, when at the time the company had less than $5 million in advertising inventory. The SEC's complaint, which is continuing to litigations, seeks a permanent injunction, an officer-and-director bar, and a civil penalty against the former CEO.

In late February, the SEC announced settled charges against an American electric vehicle automaker for violations of antifraud, proxy, and reporting provisions of the federal securities laws by allegedly misleading investors about the company's flagship electric vehicle.[21] The SEC's order alleged that the company exaggerated demand for the vehicle by obtaining over 100,000 "pre-orders" from non-serious customers that never intended to purchase the vehicles. The SEC's order also alleged that the company misrepresented the delivery timeline for the vehicle by failing to account for production delays, partially due to the company's inability to access critical parts. Though the SEC's investigation remains ongoing, the company agreed—without admitting or denying the SEC's findings—to pay disgorgement of $25.5 million, subject to bankruptcy court approval.

The SEC also announced settled charges in a related administrative proceeding against the company's former auditor for violating auditor independence standards.[22] The SEC's order alleged that, prior to the company becoming public in 2020 through merging with a SPAC, the auditor provided certain non-audit services, including financial statement services and bookkeeping, during the company's audit. The auditor then audited the same financial statements related to the company's merger with the SPAC, thus allegedly violating auditor independence standards of the SEC and the PCAOB. Without admitting or denying the allegations, the auditor agreed to a censure, a cease-and-desist order, payment of over $80,000 in civil penalties, disgorgement, and certain undertakings to improve policies and procedures.

C. Auditors and Accountants

In May, the SEC announced settled charges against a Colorado-based audit firm and its owner for violations of antifraud, recordkeeping, and other provisions of the federal securities laws, by allegedly failing to comply with PCAOB standards in hundreds of audits and reviews, and in thousands of SEC filings, on behalf of hundreds of clients from January 2021 through June

2023.[23] The SEC's order alleged that the audit firm and owner misrepresented to clients their compliance with PCAOB standards, fabricated documents to appear compliant, and falsely claimed adequate compliance in over 500 public company SEC filings. With respect to the owner, the SEC's order alleged that he failed to adequately prepare and maintain audit documentation, resulting in the firm's lack of quality reviews of audits, and the false documentation of uncompleted work. Without admitting or denying the SEC's findings, the audit firm and owner settled the charges—agreeing to pay civil penalties of $12 million and $2 million, respectively, and to a permanent accounting bar.

III. INVESTMENT ADVISERS

A. Misleading Statements and Disclosures

In January, the SEC announced settled charges against a Chicago-based registered investment adviser and one of its former partners for allegedly misleading a client regarding investment returns.[24] The SEC order alleged that, in June 2020, the company and the partner misled a public-school pension fund as to the reason for a discrepancy between investment returns. Without admitting or denying the SEC's findings, the company agreed to settle the charges and pay over $1.5 million in penalties and disgorgement, and the former partner agreed to settle the charges and pay a civil penalty of $30,000.

In February, the SEC announced settled charges against a registered investment adviser for failing to disclose certain details to a client about how it planned to launch the client's product.[25] The SEC order alleged that, in March 2021, the adviser failed to inform the Board of an exchange-traded fund (ETF) about a social media influencer's role in the launch of the ETF. The investment adviser also allegedly did not inform the ETF Board about the sliding-scale fee structure under which the provider of the ETF-tracked index would receive a greater proportion of the ETF-paid management fees based on how much the fund grew. Without admitting or denying the SEC's findings, the investment adviser agreed to settle the charges and pay a $1.75 million civil penalty.

In June, the SEC filed charges against an investment management firm and its founder for allegedly defrauding investors of at least $3 million.[26] The SEC's complaint alleged that, from 2020 to 2023, the firm and its founder raised at least $3 million from investors by lying about nearly every aspect of the fund, and then used over $1 million on personal expenses, lost more than $1.7 million on high-risk trading and speculative investments, and falsified documents to conceal the trading losses from investors. The firm and its founder settled the civil charges, agreeing to permanent injunctions and to pay disgorgement and civil penalties determined by the court. The company's founder has also pleaded guilty to related criminal charges brought against him by the U.S. Attorney's Office for the District of New Jersey.

B. Marketing Rule

In April, the SEC announced settled charges against five registered investment advisers for Marketing Rule violations.[27] The SEC's orders alleged that the five firms advertised hypothetical performance to the general public on their websites without adopting and implementing policies and procedures reasonably designed to ensure that the hypothetical performance was relevant to the likely financial situation and investment objectives of each advertisement's intended audience, as required by the Marketing Rule. One of the firms allegedly committed additional securities laws violations by making false and misleading statements in advertisements, failing to enter into written agreements with people it compensated for endorsements, and committing recordkeeping and compliance violations. Without admitting or denying the SEC's findings, all five firms agreed to settle the charges regarding alleged violations of the Investment Advisers Act of 1940, to pay civil penalties totaling $200,000, and to comply with certain undertakings. Four of the firms received reduced penalties for taking corrective steps in advance of being contacted by the SEC, and they resultingly paid civil penalties ranging from $20,000 to $30,000. The other firm, which was the firm alleged to have committed additional regulatory violations beyond the Marketing Rule violations, agreed to pay a civil penalty of $100,000.

C. Conflicts of Interest

In May, the SEC announced settled charges against a New York-based registered investment adviser and its owner for breaching fiduciary duties by allegedly failing to disclose conflicts of interest and making misleading statements to clients.[28] The SEC's order alleged that, between September 2017 and October 2021, the company and the owner advised certain clients to invest in films produced by a particular film production company without disclosing that the adviser would receive payments from the production company in exchange for the money the clients invested in the films. The adviser and owner then later allegedly misrepresented to clients that such payments to the owner were for work as an executive producer on the films. The SEC's order also alleged that the firm and its owner satisfied a redemption request from one client but not from several others submitted at the same time, and that by preferencing one client over the others they violated their fiduciary duties to the other clients. The adviser and owner agreed to settle the charges, which involved alleged violations of the antifraud provisions of the Investment Advisers Act—with the firm agreeing to pay a civil penalty of $200,000, and the owner agreeing to pay disgorgement and penalties totaling more than $750,000.

Also in May, the SEC announced settled charges against a New York-based, formerly registered investment adviser and its co-founder and CEO for making false and misleading statements to investors.[29] The SEC's orders alleged that, from 2020 to 2022, the firm made a series of materially false and misleading statements about its flagship opportunity fund's holdings and exposures. The SEC's orders alleged that these statements were the result of modifications the co-founder and CEO made to underlying portfolio data which was then included in various investor communications. The firm allegedly also did not report to investors a conflict of interest arising from its other co-founder's operation of a separate hedge fund in China. Without admitting or denying the SEC's findings, the firm and the co-founder and CEO agreed to settle the charges, which involved alleged violations of the antifraud and compliance provisions of the Investment Advisers Act—with the firm agreeing to pay a civil penalty of $350,000, and the co-founder and CEO agreeing to pay a civil penalty of $250,000 and undergo a 12-month suspension from industry-related work.

D. Beneficial Ownership Rules

In March, the SEC announced settled charges against a New York-based investment adviser for its alleged failure to make timely ownership disclosures in the lead-up to its May 2022 acquisition bid for a publicly traded trucking fleet company.[30] The SEC's order alleged that the investment adviser increased its position in the trucking company and formed a control purpose no later than April 26, 2022, requiring it to report that information by May 6, 2022, but that it did not do so until May 13, 2022. Additionally, before the time it reported its control purpose, the investment adviser allegedly purchased swap agreements giving it economic exposure to the equivalent of 450,000 more shares of the trucking fleet company's stock. Further, according to the order, when the investment adviser eventually reported the information, it allegedly proposed to buy all the trucking fleet company's shares for a sizable premium over the trading price, and the trucking company's stock price increased significantly. Without admitting or denying the SEC's findings, the investment adviser settled the charges alleging violations of the beneficial ownership provisions of the Securities Exchange Act of 1934, and agreed to pay a $950,000 civil penalty.

IV. BROKER-DEALERS

A. Regulation Best Interest and Pricing

In February, the SEC announced settled charges against a broker-dealer for failing to comply with Regulation Best Interest (Reg BI), allegedly causing investors to collectively incur hundreds of thousands of dollars in combined expenses.[31] According to the SEC order, the broker-dealer allegedly disclosed to investors that for certain funds it only offered certain share classes, and failed to inform investors that equivalent, lower-cost share classes for affiliated funds were also available. As a result, a portion of investors paid higher expenses for certain funds that they could have avoided by purchasing substantially similar funds. Without admitting or denying the findings, the broker-dealer agreed to pay a combined total of $2.2 million in disgorgement and civil penalties.

We predicted in an alert in June that the SEC would pursue more Reg BI cases, particularly on the conflicts and duty of care elements of the Rule. In late July, the SEC charged a dual registrant for "a risky day trading strategy" one of its registered representatives employed for several of his customers.[32] The trading strategy involved the purchase and sale of options contracts for customers, some of whom had "moderate to conservative risk profiles." The SEC imposed a relatively small penalty of $140,000, but specifically noted (1) the firm's cooperation (*e.g.*, disclosing information about conduct the Staff had not yet uncovered, conducting an internal investigation, regularly briefing the Staff regarding its investigation, identifying key documents found in its investigation, and voluntarily providing tables summarizing information from these documents), and (2) the firm's remediation, including "changes to senior management, the $9 million in financial remediation paid to affected customers, and substantive improvements in [the firm's] policies and procedures," as mitigating factors.

B. Disclosure Obligations

In May, the SEC announced settled charges against an American multinational financial services company and nine of its affiliates.[33] According to the SEC order, following a cyber intrusion, the company allegedly failed to alert the appropriate legal and compliance officials promptly. As a result, the company and its affiliates allegedly did not inform the Commission within the required period, violating regulatory disclosure obligations. Without admitting or denying the Commission's findings, the company and its affiliates consented to the SEC's order and agreed to pay a $10 million penalty.

In June, the SEC charged three individuals who allegedly engaged in a multi-year scheme defrauding investors by selling unregistered membership interests in LLCs investing in shares of two pre-IPO companies.[34] The complaint alleged that from mid-2019 to early 2022, the individuals directed an unregistered sales force to pressure investors into making investments without disclosing substantial markups on the shares. The individuals further allegedly misled investors by overstating their research capabilities and market projections, violating antifraud and other provisions of the federal securities laws. The complaint seeks permanent injunctive relief, disgorgement, and civil penalties, and litigation is ongoing.

V. CRYPTOCURRENCY AND ARTIFICIAL INTELLIGENCE

The SEC's enforcement activity in the crypto space has remained active but has slowed compared to past periods and has changed form. In the past, the Commission focused its efforts on enforcing what it does, and does not, believe qualifies as a security under the securities laws. Such enforcement efforts have remained in place, but the SEC now has seemingly begun to shift its enforcement efforts toward entities and individuals it believes are taking advantage of the novelty of the crypto space, and other emerging informational and technological advances, such as artificial intelligence, to secure improper investments and investor proceeds.

A. Cryptocurrency

In January, the SEC charged two individuals with violating the antifraud and registration provisions of the federal securities laws for allegedly operating a crypto asset pyramid scheme.[35] According to the SEC's complaint, from mid-2020 to early 2022, both individuals allegedly lured investors with promises of high profits despite lacking any genuine revenue source other than the funds received from investors. The complaint seeks permanent injunctive relief, conduct-based injunctions prohibiting the defendants from engaging in multi-level marketing or offering crypto assets, disgorgement, and civil penalties. One of the individuals settled the charges and agreed to pay disgorgement and civil penalties to be announced at a later court date.

In February, the SEC charged a company and its founder with violating the antifraud provisions under the federal securities laws through an alleged scheme targeting students of the founder's online crypto trading course.[36] From early 2018 to mid-2019, the founder allegedly encouraged hundreds of students to invest in the founder's hedge fund he claimed would utilize advanced strategies to secure profits. The SEC alleged that the founder never launched the fund or executed the advertised strategies, instead holding the invested money in bitcoin. Without admitting or denying the allegations, the defendants consented to injunctive relief and agreed to pay $1.2 million in disgorgement and civil penalties.

Also in February, the SEC announced settled charges against a broker-dealer for allegedly failing to register the offer and sale of a crypto lending product that allowed investors to deposit or purchase crypto assets in their account in exchange for the company's promise to pay interest.[37] According to the SEC order, from late 2020 to early 2022, the broker-dealer allegedly offered a crypto lending product intended to generate revenue to pay interest to investors. However, the broker-dealer allegedly sold this product as a security without registering it, violating registration provisions of the federal security laws. Without admitting or denying the SEC's findings, the broker-dealer agreed to pay $1.5 million in civil penalties.

In March, the SEC announced final judgment against a financial services company for violating disclosure requirements by allegedly failing to register its retail crypto lending product before offering it to the public.[38] The SEC further alleged that the company was unable to liquidate its assets when investors sought to withdraw their funds due to the volatility of the crypto market. Without admitting or denying the allegations, the company settled charges and agreed to pay $21 million in civil penalties.

In June, the SEC announced settled fraud charges against a publicly traded South Korean crypto asset company and its co-founder.[39] According to the SEC's order, the company allegedly misrepresented the use of its blockchain for transaction settlements and the stability of its crypto asset security, violating antifraud provisions of the federal securities laws. The SEC further alleged that in May 2022, after the company's token asset de-pegged from the U.S. dollar, the value of the token and the company's other tokens plummeted to near zero, allegedly wiping out $40 billion in market value overnight and causing significant losses to investors. The company settled the charges, which included allegations of securities fraud and the offering and selling of securities in unregistered transactions, agreeing to pay a combined total of $4.5 billion in disgorgement and civil penalties. The company also agreed to cease the sale of its crypto asset securities, wind down its operations, replace two of its directors, and distribute its remaining assets to investor victims and creditors. The company's co-founder also settled charges and agreed to pay a combined total of $204 million in disgorgement and civil penalties.

B. Artificial Intelligence

In March, the SEC announced settled charges against two investment advisers, one Toronto-based and the other San Francisco-based, for allegedly making false and misleading statements about their purported use of artificial intelligence (AI).[40] The SEC's order against the Toronto-based firm alleged that, from 2019 to 2023, it violated the marketing rule and made false and misleading statements in its SEC filings, in a press release, and on its website regarding its purported use of AI and machine learning capabilities that it did not in fact have. The SEC's order against the San Francisco-based firm similarly alleged that the firm made false and misleading claims in 2023 on its website and on social media about its purported use of AI, and that it violated the Marketing Rule by, among other things, falsely claiming it offered tax-loss harvesting services. Without admitting or denying the SEC's findings, both firms agreed to settle the charges against them, which involved violations of the Advisers Act—with the Toronto-based firm agreeing to pay a civil penalty of $225,000, and the San Francisco-based firm agreeing to pay a civil penalty of $175,000.

In June, the SEC charged the CEO of an artificial intelligence recruitment startup who allegedly made false and misleading statements in a multi-year scheme that defrauded investors.[41] According to the complaint, from 2018 to mid-2023, the CEO allegedly lied to investors about the quantity and quality of customers, the number of candidates on the platform, and the company's revenue, violating the antifraud provisions of the federal securities laws. The complaint seeks a permanent injunction, civil monetary penalties, disgorgement, and an officer-and-director bar against the company's CEO. Additionally, the U.S. Attorney's Office for the Southern District of New York brought criminal charges against the CEO in a parallel action.

VI. INSIDER TRADING AND MARKET MANIPULATION

The SEC has continued to aggressively investigate potential insider trading. The Commission's enforcement in this area will likely maintain its pace, given not only the trends that are prevalent, but also the SEC's victory at trial in April 2024 in the *Panuwat* case discussed *supra*.

In January, the SEC announced settled charges against an investment bank and its former head of equity syndicate chair for their alleged involvement in an alleged multi-year fraud related to the disclosure of purportedly confidential information about block trades and alleged failure to enforce policies regarding the misuse of material non-public information related to the block-trades.[42] According to the SEC's order, from mid-2018 to mid-2021, the investment bank and former head allegedly disseminated non-public information concerning upcoming block trades, violating federal securities laws. The SEC further alleged that the investment bank failed to enforce information barriers that would have prevented the former head from disseminating the information. Both the investment bank and the former equity syndicate chair settled the charges; the bank agreed to pay a combined total of $249 million in disgorgement and civil penalties (which were partially satisfied by payments in a parallel action brought by the U.S. Attorney's Office for the Southern District of New York). The Southern District of New York resolved its criminal investigation pursuant to a Non-Prosecution Agreement with the bank, and Deferred Prosecution Agreement with the former equity syndicate chair.

Also in January, the SEC charged the CEO of a China-based FinTech company with violating the antifraud and beneficial ownership provisions of the Securities Exchange Act of 1934.[43] The SEC's complaint alleged that the CEO manipulatively traded company stock through an offshore account prior to becoming CEO in 2020 to raise the company stock price, and that the CEO failed to disclose his beneficial ownership of, and transactions in, company stock. According to the complaint, in late 2019 or early 2020, the founder and former CEO of the company approached the current CEO with the prospect of taking over the CEO position. At that time, the company risked delisting from NASDAQ due to its stock price falling below the minimum $1.00 per share bid price requirement. Beginning in January 2020 and prior to becoming CEO, the current CEO allegedly traded company stock through a Hong Kong account, purchasing more than 530,000 shares of company stock over the next two-month period—allegedly making nonsensical trades at such a high volume that they comprised a high percentage of daily volume of company stock transactions—with the intent and eventual effect of driving the stock price up. Then, upon becoming CEO in March 2020, the CEO allegedly failed to file change of ownership forms regarding his holdings of company stock. Similarly, the following year after he allegedly no longer owned any company stock, the CEO belatedly filed a misleading initial form representing that he owned no company stock. The SEC is seeking permanent injunctive relief, a civil penalty, and an officer-and-director bar, in the ongoing litigation.

In February, the SEC filed charges against the husband of an energy company manager for allegedly trading on material, nonpublic information about a proposed acquisition the energy company planned to execute.[44] The individual allegedly overheard his wife's work-related conversations about the proposed acquisition and executed trades based on that information in February 2023 without his wife's knowledge, for a profit of $1.76 million. The individual agreed to the entry of a partial judgment permanently enjoining him from violating the antifraud provisions of the federal securities laws, barring him from acting as an officer or director of a public company, and requiring him to pay disgorgement and an undetermined civil penalty. The SEC's investigation is still ongoing, and the U.S. Attorney's Officer for the Southern District of Texas has brought charges against the individual in a parallel action.

In March, the SEC announced charges against a former board member of an energy company, along with four of his associates, for allegedly trading on material nonpublic information.[45] According to the complaint, in July 2019, the former board member learned of a pending investment offered to privatize the energy company. The former board member and four of his associates then allegedly purchased company securities prior to the public announcement of the offer, and then traded the shares to earn gains totaling tens of thousands of dollars. The former board member settled with the SEC, agreeing to a $801,742 civil penalty plus disgorgement, along with an officer and director bar. The four other defendants each agreed to pay civil penalties plus disgorgement.

In March, the SEC filed insider trading charges against the founder of a technology company regarding trades he made in July 2019 that earned profits of $415,726.[46] The individual allegedly learned from a friend about a multinational technology company's pending acquisition of a communications equipment company, and then he allegedly traded options for the target company through a close relative and an associate. The individual settled with the SEC and agreed to a civil penalty of $923,740 and a five-year officer and director bar.

In May, the SEC charged an individual with violations of the securities laws for allegedly trading on inside information about a publicly traded company that resulted in profits of more than $800,000.[47] According to the complaint, between November 2019 and May 2021, the individual solicited updates from a company employee on the company's performance. Then, despite requests from the employee not to trade company securities, the individual allegedly used the information to trade in the company's securities. The individual settled with the SEC and agreed to pay disgorgement, prejudgment interest, and a civil penalty to be determined by the U.S. District Court for the Western District of Pennsylvania. The U.S. Attorney's Office for the Western District of Pennsylvania also brought criminal charges against the individual in a parallel action.

In May, the SEC charged a Massachusetts-based venture investment company and its founder with violations of antifraud provisions under the federal securities laws arising from an alleged scheme to artificially inflate the stock price of a Seattle-based visual media company.[48] The SEC's complaint alleged that in April 2023, the founder and venture investment company issued a press release offering to purchase all outstanding stock of the media company for $10 a share, almost double the closing price of the previous trading day, which allegedly caused the company's stock price to spike. Though the founder and his company allegedly pledged in the press release to hold their shares, they allegedly began liquidating stock in the visual media company shortly after the market opened on April 24, 2023, before the media company responded to the offer. The founder and venture investment company settled the charges—

agreeing to pay civil penalties and disgorgement to be determined by the court, along with an officer and director bar. In a parallel action, the U.S. Attorney's Office for the District of Massachusetts announced criminal charges against the founder of the venture investment company.

[1] SEC Press Release, Sixteen Firms to Pay More Than $81 Million Combined to Settle Charges for Widespread Recordkeeping Failures (February. 9, 2024), *available at* https://www.sec.gov/news/press-release/2024-18.

[2] SEC Press Release, SEC Charges Advisory Firm Senvest Management with Recordkeeping and Other Failures (Apr. 3, 2024), *available at* https://www.sec.gov/news/press-release/2024-44.

[3] SEC Press Release, Twenty-Six Firms to Pay More Than $390 Million Combined to Settle SEC's Charges for Widespread Recordkeeping Failures (Aug. 14, 2024), *available at* https://www.sec.gov/newsroom/press-releases/2024-98.

[4] SEC Speech, Remarks at SEC Speaks 2024, Sanjay Wadhwa, Deputy Director, Division of Enforcement (Apr. 3, 2024), *available at* https://www.sec.gov/newsroom/speeches-statements/sanjay-wadhwa-sec-speaks-2024-04032024.

[5] SEC Press Release, Twenty-Six Firms to Pay More Than $390 Million Combined to Settle SEC's Charges for Widespread Recordkeeping Failures (Aug. 14, 2024), *available at* https://www.sec.gov/newsroom/press-releases/2024-98.

[6] SEC Press Release, J.P. Morgan to Pay $18 Million for Violating Whistleblower Protection Rule (Jan. 16, 2024), *available at* https://www.sec.gov/news/press-release/2024-7.

[7] SEC Press Release, SEC Charges R.R. Donnelley & Sons Co. with Cybersecurity-Related Controls Violations (June 18, 2024), *available at* https://www.sec.gov/news/press-release/2024-75.

[8] SEC Statement, Hey, look, there's a hoof cleaner! Statement on R.R. Donnelley & Sons, Co., Commissioners Hester M. Peirce and Mark T. Uyeda (June 18, 2024), *available at* https://www.sec.gov/newsroom/speeches-statements/peirce-uyeda-statement-rr-donnelley-061824.

[9] SEC Press Release, Mark Uyeda Sworn in for Second Term as SEC Commissioner (Jan. 3, 2024), *available at* https://www.sec.gov/news/press-release/2024-1.

[10] SEC Press Release, SEC Appoints Erica Y. Williams to a Second Term as PCAOB Chairperson (Jun. 11, 2024), *available at* https://www.sec.gov/news/press-release/2024-71.

[11] SEC Press Release, SEC Appoints Stacey Bowers as Small Business Advocate (Jan. 5, 2024), *available at* https://www.sec.gov/news/press-release/2024-3.

[12] SEC Press Release, SEC Announces Departure of William Birdthistle; Natasha Vij Greiner Named Director of the Division of Investment Management (Feb. 28, 2024), *available at* https://www.sec.gov/news/press-release/2024-27.

[13] SEC Press Release, SEC Names Nathaniel H. Benjamin as Director of the Office of Minority and Women Inclusion (May 3, 2024), *available at* https://www.sec.gov/news/press-release/2024-52.

[14] SEC Press Release, Tina Diamantopoulos Named Regional Director of Chicago Office (May 16, 2024), *available at* https://www.sec.gov/news/press-release/2024-59.

[15] SEC Press Release, SEC Announces Departure of Policy Director Heather Slavkin Corzo and Appointment of Corey Klemmer to the Role (May 17, 2024), *available at* https://www.sec.gov/news/press-release/2024-60.

[16] SEC Press Release, SEC to Close Salt Lake Regional Office (Jun. 4, 2024), *available at* https://www.sec.gov/news/press-release/2024-67.

[17] SEC Press Release, SEC Charges China-Based Tech Company Cloopen Group with Accounting Fraud (Feb. 6, 2024), *available at* https://www.sec.gov/news/press-release/2024-15.

[18] SEC Press Release, SEC Charges Skechers with Making Undisclosed Payments to Executives' Family Members (Mar. 7, 2024), *available at* https://www.sec.gov/news/press-release/2024-33.

[19] SEC Press Release, SEC Charges Northern Star SPAC for Material Misrepresentations in its IPO-Related Disclosures (Jan. 25, 2024), *available at* https://www.sec.gov/news/press-release/2024-10.

[20] SEC Press Release, SEC Charges Former Alfi CEO Paul Pereira with Fraud for Making False Statements on Social Media (Feb. 27, 2024), *available at* https://www.sec.gov/news/press-release/2024-26.

[21] SEC Press Release, SEC Charges Lordstown Motors with Misleading Investors about Company's Flagship Electric Vehicle (Feb. 29, 2024), *available at* https://www.sec.gov/news/press-release/2024-29.

[22] *Id*.

[23] SEC Press Release, SEC Charges Audit Firm BF Borgers and Its Owner with Massive Fraud Affecting More Than 1,500 SEC Filings (May 3, 2024), *available at* https://www.sec.gov/news/press-release/2024-51.

[24] SEC Press Release, SEC Charges Chicago-based Aon Investments and Former Partner with Misleading Pennsylvania Public Employees' Pension Fund (Jan. 25, 2024), *available at* https://www.sec.gov/news/press-release/2024-9.

[25] SEC Press Release, SEC Charges Van Eck Associates for Failing to Disclose Influencer's Role in Connection with ETF Launch (Feb. 16, 2024), *available at* https://www.sec.gov/news/press-release/2024-20.

[26] SEC Press Release, SEC Charges JAG Capital Advisors and its Founder Joshua Goltry with Defrauding Investors (Jun. 12, 2024), *available at* https://www.sec.gov/news/press-release/2024-72; DOJ Press Release, New York Fund Manager Admits Multimillion-Dollar Investment Fraud Scheme (June 12, 2024), *available at* https://www.justice.gov/usao-nj/pr/new-york-fund-manager-admits-multimillion-dollar-investment-fraud-scheme.

[27] SEC Press Release, SEC Charges Five Investment Advisers for Marketing Rule Violations (Apr. 12, 2024), *available at* https://www.sec.gov/news/press-release/2024-46.

[28] SEC Press Release, SEC Charges Hudson Valley Wealth Management Advisory Firm and Founder for Failing to Disclose Conflicts of Interest (May 14, 2024), *available at* https://www.sec.gov/news/press-release/2024-55.

[29] SEC Press Release, SEC Charges Advisory Firm Mass Ave Global and Co-Founder and CEO Winston Feng with False Statements and Undisclosed Conflicts (May 29, 2024), *available at* https://www.sec.gov/news/press-release/2024-64.

[30] SEC Press Release, SEC Charges Advisory Firm HG Vora for Disclosure Failures Ahead of Ryder Acquisition Bid (Mar. 1, 2024), *available at* https://www.sec.gov/news/press-release/2024-30.

[31] SEC Press Release, SEC Charges TIAA Subsidiary for Failing to Act in the Best Interest of Retail Customers (Feb. 16, 2024), *available at* https://www.sec.gov/news/press-release/2024-22.

[32] SEC Order Instituting Administrative and Cease and Desist Proceedings, *In the Mater of Western International Securities, Inc.* (Administrative Proceeding File No. 3-21986) (July 30, 2024), *available at* https://www.sec.gov/files/litigation/admin/2024/34-100618.pdf.

[33] SEC Press Release, SEC Charges Intercontinental Exchange and Nine Affiliates Including the New York Stock Exchange with Failing to Inform the Commission of a Cyber Intrusion (May 22, 2024), *available at* https://www.sec.gov/news/press-release/2024-63.

[34] SEC Press Release, SEC Charges Three New Yorkers for Raising More Than $184 Million Through Pre-IPO Fraud Schemes (June 7, 2024), *available at* https://www.sec.gov/news/press-release/2024-69.

[35] SEC Press Release, SEC Charges Founder of $1.7 Billion "HyperFund" Crypto Pyramid Scheme and Top Promoter with Fraud (Jan. 29, 2024), *available at* https://www.sec.gov/news/press-release/2024-11.

[36] SEC Press Release, SEC Charges Founder of American Bitcoin Academy Online Crypto Course with Fraud Targeting Students (Feb. 2, 2024), *available at* https://www.sec.gov/news/press-release/2024-13.

[37] SEC Press Release, SEC Charges TradeStation Crypto for Unregistered Offer and Sale of Crypto Asset Lending Product (Feb. 7, 2024), *available at* https://www.sec.gov/news/press-release/2024-16.

[38] SEC Press Release, Genesis Agrees to Pay $21 Million Penalty to Settle SEC Charges (Mar. 19, 2024), *available at* https://www.sec.gov/news/press-release/2024-37.

[39] SEC Press Release, Terraform and Kwon to Pay $4.5 Billion Following Fraud Verdict (June 11, 2024), *available at* https://www.sec.gov/news/press-release/2024-73.

[40] SEC Press Release, SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence (Mar. 18, 2024), *available at* https://www.sec.gov/news/press-release/2024-36.

[41] SEC Press Release, SEC Charges Founder of AI Hiring Startup Joonko with Fraud (June 11, 2024), *available at* https://www.sec.gov/news/press-release/2024-70.

[42] SEC Press Release, SEC Charges Morgan Stanley and Former Executive Pawan Passi with Fraud in Block Trading Business (Jan. 12, 2024), *available at* https://www.sec.gov/news/press-release/2024-6.

[43] SEC Press Release, SEC Charges Future FinTech CEO Shanchun Huang With Fraud and Disclosure Failures (Jan. 11, 2024), *available at* https://www.sec.gov/news/press-release/2024-5.

[44] SEC Press Release, SEC Charges Husband of Energy Company Manager with Insider Trading (Feb. 22, 2024), *available at* https://www.sec.gov/news/press-release/2024-24.

[45] SEC Press Release, SEC Charges Tallgrass Energy's Former Board Member Roy Cook and Four Others with Insider Trading in Advance of Blackstone Acquisition (Mar. 12, 2024), *available at* https://www.sec.gov/news/press-release/2024-34.

[46] SEC Press Release, SEC Charges Former Arista Networks Chairman Andy Bechtolsheim with Insider Trading (Mar. 26, 2024), *available at* https://www.sec.gov/news/press-release/2024-40.

[47] SEC Press Release, SEC Charges Pennsylvania Resident with Insider Trading in Dick's Sporting Goods Securities (May 10, 2024), *available at* https://www.sec.gov/news/press-release/2024-53.

[48] SEC Press Release, SEC Charges Robert Scott Murray and Trillium Capital with Fraudulent Scheme to Manipulate Getty Images Stock (May 31, 2024), *available at* https://www.sec.gov/news/press-release/2024-66.

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