Morgan Lewis

2015 YEAR IN REVIEW: SELECT SEC AND FINRA DEVELOPMENTS AND ENFORCEMENT CASES

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Executive Summary

This Outline highlights key US Securities and Exchange Commission (the SEC or the Commission) and Financial Industry Regulatory Authority (FINRA) enforcement developments and cases regarding broker-dealers, investment advisers, and investment companies.*

THE SEC

There were few significant personnel changes at the SEC last year. The Commission's composition remained unchanged in fiscal year 2015, with Chair Mary Jo White continuing to lead the SEC, joined by Commissioners Luis A. Aguilar, Daniel M. Gallagher, Kara M. Stein, and Michael S. Piwowar. Shortly following the end of the fiscal year, Commissioner Gallagher departed, followed by Commissioner Aguilar at calendar year end, each having waited in vain for their replacements to be confirmed by the US Senate.

The enforcement statistics compiled by the SEC during fiscal year 2015 (which ran from October 1, 2014 through September 30, 2015) set several records. Once again this last year, the SEC highlighted what it called "high impact" and "first-of-their-kind" actions, and the agency claims to be already "paving new ground" in fiscal year 2016.

In fiscal year 2015, the SEC brought a record 807 cases, which, according to the SEC, were composed of 507 independent actions and 300 actions against issuers that were delinquent in making required filings or "follow on" administrative proceedings seeking bars against individuals. Moreover, the SEC's actions again resulted in a record tally of monetary sanctions being imposed against defendants and respondents.

In fiscal year 2015, the SEC obtained orders requiring the payment of $4.19 billion in penalties and disgorgement, which is a less than 1% increase from the amounts ordered in fiscal year 2014, but still a record for the Commission.

In what has become a trend, the SEC brought 3% fewer cases against investment advisers and investment companies—126 cases in 2015 compared to 130 actions in 2014. And actions against broker-dealers were down to 124 from last year's 166, suggesting that the surge in broker-dealer actions brought in 2014 was a one-time event. Although the SEC continued to

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* This outline was prepared by partners Timothy Burke, Amy Greer, Merri Jo Gillette, Ben Indek, Jennifer Klass; of counsel Matthew Applebaum and Mary Dunbar; associates Michael Ableson, Jasmin Ali, Brian Baltz, Jennie Berman, Matthew Bohenek, David Braun, Peter Byrne, Bruno Campos, Carmen Chan, Alla Digilova, Jane Dudzinski, Alyse Gramaglia, Ariel Gursky, Elizabeth Hays, Martin Hirschprung, Olga Kamensky, Jessica Joy, Kerry Land, Christine Lombardo, Nicholas Losurdo, Grant MacQueen, Matthew McDonough, Kathy Mularczyk, Sarah Paige, Mary Pennisi, Eric Perelman, Ignacio Sandoval, Harya Tarekegn, and Zachary Vonnegut-Gabovitch; and legal assistant Caroline Ball. Administrative support was provided by Michele Landry and Veda Nieves. Morgan Lewis served as counsel in certain actions described herein.

devote significant resources to investigating regulated entities, cases in these areas have dropped to approximately 31% of the total caseload in 2015, down from about 39% in the two prior fiscal years. Notably, the Municipal Securities and Public Pensions cases made up nearly 10% of the Commission's docket in 2015, an increase likely attributable, in large part, to the Municipalities Continuing Disclosure Cooperation (MCDC) initiative launched last year.

The SEC's Office of the Whistleblower program continued to receive a large number of leads for the Commission's investigators. Last year, whistleblowers submitted 3,923 tips, complaints, and referrals to the SEC, an increase of 303 (or approximately 8%) from the 3,620 received in fiscal year 2014. The largest numbers of complaints fell into three categories: corporate disclosure and financials (17.5%), offering fraud (15.6%), and manipulation (12.3%).

According to the Division of Enforcement, during 2015, it pursued a number of creative strategies that allowed it to expand its reach in targeting misconduct. Chair White continues to concentrate the Division's efforts on bringing new and innovative actions to expand the Commission's footprint and to strengthen the deterrent effect of its enforcement program, ensuring that the Commission's resources are effectively and efficiently used, across offices and divisions. The current administration seems to have successfully reduced the "silo effect" within the organization. This has been seen throughout the last fiscal year most plainly in the apparent closer collaborations between the Enforcement and Examination teams. On that basis, among other priorities, we can anticipate continued focus in the coming year on the use of data analytics to direct Commission resources toward areas with the highest likelihood or risk of misconduct.

FINRA

The biggest change at FINRA came at the top of the organization. In October 2015, FINRA announced that its Chairman and Chief Executive Officer Richard Ketchum would retire in the second half of 2016 and that the FINRA Board of Governors was conducting a search for his successor, taking both internal and external candidates into consideration. In other changes, Russ Ryan joined FINRA as Senior Vice President, Deputy Chief of Enforcement in March 2015. In June 2015, the SEC announced that Richard Best would join the Commission as director of the Salt Lake Regional Office. Prior to his appointment, Mr. Best was a senior director and chief counsel in FINRA's Department of Enforcement in New York.

Although FINRA instituted more disciplinary cases in 2015 than in 2014, the total fines levied were significantly lower than in the prior year; in contrast, the amount of restitution FINRA ordered in 2015 nearly tripled. In 2015, FINRA brought 1,512 new disciplinary actions, an increase from the 1,397 cases initiated in 2014. Last year, FINRA barred 492 people (versus 481 in 2014) and suspended 737 others (compared to 705 such actions in the prior year). FINRA also referred more than 800 fraud and insider trading cases to the SEC and other agencies for litigation and/or prosecution; this was an increase from the 700 plus such matters referred by FINRA in 2014.

With respect to penalties and restitution, last year FINRA levied $95 million in fines (versus $134 million in 2014) and ordered $96.6 million (versus $32.3 million in 2014 and $9.5 million in 2013) to be paid in restitution to harmed investors.

In May 2015, FINRA announced significant revisions to its Sanction Guidelines, including amending the overarching principles that apply to sanction determinations and revising the guidelines to call for increased sanctions for fraud and unsuitable recommendations. The amendments reiterated FINRA's longstanding position that sanctions in disciplinary cases should be more severe for recidivists.

In August 2015, FINRA issued its only targeted examination letter for the year, which asked 19 questions concerning retail conflicts of interest. Referencing its 2015 annual Priorities Letter, FINRA noted that conflicts of interest represented a recurring challenge that compromised the quality of client service.

In January 2016, FINRA published its annual Regulatory and Examination Priorities Letter. The letter identifies supervision, liquidity, and firm culture as broad themes for 2016. As in previous years, FINRA will focus on areas of risk affecting investor interests and market stability. Areas of continued focus include senior citizens and vulnerable investors (an area where FINRA proposed new rules), suitability and concentration, fixed-income orders, market access, and sales charge discounts and waivers. New priorities for 2016 include firm culture, conflicts of interest, supervision of technology, and anti-money laundering controls. Areas of diminished focus appear to include individual retirement account rollovers and other wealth events, municipal adviser registration, and reporting of disclosable information.

US Securities and Exchange Commission

PERSONNEL CHANGES[1]

The Commission composition remained unchanged in fiscal year 2015. The Commission was composed of Chair Mary Jo White and four Commissioners: Luis A. Aguilar, Daniel M. Gallagher, Kara M. Stein, and Michael S. Piwowar. Since the end of fiscal year 2015, on September 30, 2015, both Commissioner Gallagher and Commissioner Aguilar have departed.

As set forth below, there were some changes in key Commission Staff positions during 2015. On May 28, 2015, Andrew J. "Buddy" Donohue (a Morgan Lewis partner in the investment management practice from 2011 to 2012) was named the agency's chief of staff, replacing Lona Nallengara. Mr. Donohue will serve as senior adviser to the Chair on policy, management, and regulatory issues. Mr. Donohue began his legal career in 1975, and has held various senior roles at multiple firms, including service as General Counsel and Director, and member of the executive committee of the investment fund subsidiary of Massachusetts Mutual Life Insurance Company, OppenheimerFunds Inc., and as Global General Counsel at Merrill Lynch Investment Managers. From 2006 to 2010, Mr. Donohue served as Director of the SEC's Division of Investment Management. Most recently, Mr. Donohue was managing director, associate general counsel, and investment company general counsel at Goldman, Sachs & Co.

On October 5, 2015, Michael Liftik was appointed deputy chief of staff of the agency, replacing Erica Williams. He joins Nathaniel Stankard, who currently serves as the other deputy chief of staff. Since April 2013, Mr. Liftik has served as Senior Advisor to Chair Mary Jo White, and has provided legal advice on enforcement policy matters and cases. Prior to that, Mr. Liftik was Counsel to the Director of the Division of Enforcement. He began his career with the SEC in 2007, when he joined the San Francisco regional office as an Enforcement Division staff attorney.

DIVISION OF ENFORCEMENT

On September 10, 2015, Robert Cohen and Joseph Sansone were named co-chiefs of the Division of Enforcement's Market Abuse Unit. The two had previously served as acting co-chiefs, following the departure of Daniel Hawke in July 2015. Director of Enforcement Andrew J. Ceresney said that Mr. Cohen and Mr. Sansone "were deeply involved in groundbreaking and first-of-their-kind cases involving market structure and abusive trading schemes," and he is confident that they will "continue their great work in protecting investors and the fair, orderly, and efficient function of our markets."[2] Mr. Cohen joined the SEC in 2004, while Mr. Sansone

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1 Unless otherwise noted, the information regarding these personnel changes was drawn from SEC Press Releases available on the Commission's website.

2 *See* SEC Press Release No. 2015-188, Robert Cohen and Joseph Sansone Named Market Abuse Unit Co-Chiefs (Sept. 10, 2015), http://www.sec.gov/news/pressrelease/2015-188.html.

joined in 2007.

DIVISION OF CORPORATION FINANCE

On July 17, 2015, Michele Anderson was promoted to the position of Associate Director in the Division of Corporation Finance. Ms. Anderson previously served as Chief of the Office of Mergers and Acquisitions since 2008. Ms. Anderson joined the SEC in 1998 as an attorney-advisor, and she also served as Legal Branch Chief in the Office of Telecommunications from 2004 to 2008.

On August 19, 2015, Shelly Luisi was named an Associate Director in the Division of Corporation Finance, succeeding Kyle Moffatt, who joined the senior leadership program of the Division's disclosure review program. Ms. Luisi previously served as a Senior Associate Chief Accountant in the Office of the Chief Accountant. She began her SEC career in 2000 as Associate Chief Accountant, and before that worked in the private sector for eight years.

DIVISION OF ECONOMIC RISK ANALYSIS (DERA)

On October 2, 2015, the SEC announced that Chyhe Becker was named Associate Director in the Division of Economic Risk Analysis, within the Office of Litigation Economics, which is a new position created to "reflect the significance of data-driven economic and statistical analysis in investigations and litigated cases," according to the press release.[3] Dr. Becker previously served as Assistant Director of the Office of Litigation Economics since 2009. She joined the SEC in 2008 as Assistant Chief Economist after spending 11 years as an economist in the private sector.

DIVISION OF INVESTMENT MANAGEMENT

On May 8, 2015, the Commission appointed David Grim as Director of the Division of Investment Management. Mr. Grim had served as acting director for the division since February 2015, following the departure of former director Norm Champ. Mr. Grim joined the SEC in 1995 as a staff attorney in the Office of Investment Company Regulation. He moved to the Office of the Chief Counsel in 1998, and was eventually named Assistant Chief Counsel in 2007. In 2013, Mr. Grim was named Deputy Director of the Division.

DIVISION OF TRADING AND MARKETS

On February 11, 2015, Heather Seidel was named Chief Counsel for the Division of Trading and Markets. Ms. Seidel previously served as an Associate Director in the Office of Market Supervision, a position she held since October 2010. Ms. Seidel first joined the SEC in 1996,

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[3] *See* SEC Press Release No. 2015-228, Chyhe Becker Named as Associate Director in the Division of Economic and Risk Analysis (Oct. 2, 2015), http://www.sec.gov/news/pressrelease/2015-228.html.

where she served in the Division of Market Regulation (now known as the Division of Trading and Markets) and the Division of Investment Management. In 1999, Ms. Seidel left the SEC to join the private sector, as an associate at Wilmer, Cutler & Pickering, and as an associate and vice president at Morgan Stanley, until her return to the SEC in 2003.

On December 17, 2014, the SEC named Gary Barnett and Gary Goldsholle as Deputy Directors in the Division of Trading and Markets. Mr. Barnett is responsible for the Office of Broker-Dealer Finances and the Office of Derivatives Policy and Trading Practices. Mr. Barnett joined the SEC from the Commodity Futures Trading Commission (CFTC), where he served as Director of the Division of Swap Dealer and Intermediary Oversight. Mr. Goldsholle is responsible for the offices of the Chief Counsel, Clearance and Settlement, and Market Supervision. Prior to joining the SEC, Mr. Goldsholle served as General Counsel at the Municipal Securities Rulemaking Board (MSRB). Mr. Goldsholle's experience prior to the MSRB includes 15 years as Vice President and Associate General Counsel at FINRA, as well as positions at the CFTC and in private practice.

On October 20, 2015, the SEC named Wenchi Hu and Christian Sabella as Associate Directors in the Division of Trading and Markets' Office of Clearance and Settlement. Ms. Hu serves as Associate Director, Risk and Supervision, and will oversee supervision of registered clearing agencies, including firms that clear securities-based swaps. Ms. Hu previously served as an Assistant Director in the Office of Clearance and Settlement. She joined the SEC in 2011 as a senior special counsel in the Office of Compliance Inspections and Examinations and later moved to the Office of Derivatives Policy in the Division of Trading and Markets. Mr. Sabella serves as Associate Director, Regulation, and leads a team that develops recommendations for Commission policy and rulemaking regarding clearing agencies, transfer agents, security-based swap data repositories, and other financial market infrastructure. He joined the SEC in 2011 as a branch chief in the division's Office of Trading Practices and was a special counsel to the division director from July 2013 to April 2015.

OFFICE OF COMPLIANCE INSPECTIONS AND EXAMINATIONS

National Examination Program

On November 12, 2015, Marc Wyatt was appointed Director of the Office of Compliance Inspections and Examinations (OCIE) and leader of its National Exam Program. He has held the position of Acting Director since April 2015, following the departure of director Andrew Bowden. Prior to that, Mr. Wyatt served as Deputy Director of the OCIE since October 2014. Mr. Wyatt joined the SEC in December 2012 as a senior specialized examiner focused on examinations of advisers to hedge funds and private equity funds. Prior to joining OCIE, Mr. Wyatt was a principal and senior portfolio manager at Stark Investments, a global hedge fund.

Regional Offices

On June 5, 2015, Daniel R. Gregus was appointed Associate Director for the broker-dealer examination program in the Chicago Regional Office. Mr. Gregus has served as acting Associate Director since February 2014, and has been with the broker-dealer examination program since

February 2007. Mr. Gregus first joined the SEC in the Enforcement Division, where he rose to the position of Assistant Regional Director for the Chicago office.

On November 5, 2015, Bryan Bennet was named to lead the examination program in the Los Angeles Regional Office. Mr. Bennet joined the SEC in 2008, and served as an examiner, and later as an exam manager, in the Los Angeles Regional Office. Mr. Bennet replaces Karol K. Pollock, who was appointed to this position on December 10, 2014.

On September 29, 2015, the SEC announced the appointment of William Royer to head the examination program in the Atlanta Regional Office. Mr. Royer joined the SEC in August 2013 as an Assistant Director in OCIE's Office of Chief Counsel. Prior to that, he was a securities lawyer with Ropes & Gray LLP, and held a number of other positions in the financial services industry.

On November 26, 2014, Kevin Kelcourse was named Associate Director for OCIE in the SEC's Boston office. Mr. Kelcourse joined the SEC in 1999 as Senior Counsel in the Enforcement Division, and later served as a Branch Chief of the Boston office. He has worked with the exam program since 2011, and served on the office's joint Enforcement Examination Referral Committee.

On October 28, 2014, Steven Levine was named Associate Director for the Investment Adviser/Investment Company examination program in the SEC's Chicago Regional office. Mr. Levine joined the SEC in 2000 as Senior Trial Counsel in the Enforcement Division of the Chicago office. In 2010, he joined the Investment Adviser/Investment Company examination program, where he served as one of its two acting Associate Directors since March 2013.

REGIONAL OFFICES

New Directors were appointed in two of the SEC's 11 regional offices:

- Salt Lake Regional Office: Richard R. Best
- Fort Worth Regional Office: Shamoil T. Shipchandler

New Associate Regional Directors were appointed in two of the SEC's 11 regional offices:

- San Francisco Regional Office: Erin Schneider
- New York Regional Office: Lara Shalov Mehraban

Office of the Chief Accountant

On May 14, 2015, Wesley R. Bricker was appointed Deputy Chief Accountant, replacing Daniel Murdock. Mr. Bricker joined the SEC from PricewaterhouseCoopers LLP (PwC), where he was a partner responsible for clients in various sectors, including banking, capital markets, financial technology and investment management. Mr. Bricker has more than 15 years of experience in the public accounting sector. He began his accounting career at PwC, first in the Harrisburg, PA

office, and later in the Washington, DC office. Mr. Bricker also served as a professional accounting fellow in the SEC's Office of the Chief Accountant from 2009 to 2011, after which he returned to PwC.

Office of Credit Ratings

On September 8, 2015, Smeeta Ramarathnam was named Deputy Director in the Office of Credit Ratings, after serving as Chief of Staff for Commissioner Aguilar for seven years. Ms. Ramarathnam joined the SEC in 2005, and served as counsel to Commissioner Roel Campos, and as a senior counsel in the Office of the General Counsel and in the Division of Investment Management, before joining Commissioner Aguilar's staff in 2008.

Office of the General Counsel

On November 13, 2015, Sanket J. Bulsara was appointed Deputy General Counsel for Appellate Litigation and Adjudication, succeeding Michael A. Conley, the newly appointed SEC Solicitor. Jacob H. Stillman, who served as SEC Solicitor for the last 17 years, will remain as senior advisor to the Solicitor. Before joining the SEC, Mr. Bulsara was a partner at WilmerHale. Mr. Conley joined the SEC in October 2000 from Pillsbury Madison and Sutro where he was a member of the appellate litigation group and managing partner of the firm's Washington, DC office. In 2011, he was named Deputy General Counsel for Appellate Litigation and Adjudication, and previously served as Deputy Solicitor.

Office of International Affairs

On November 30, 2015, the SEC named Katherine K. Martin as Associate Director of the Office of International Affairs. Ms. Martin has held various roles at the SEC for more than a decade, most recently as an Assistant Director in the Office of International Affairs and prior to that as a Senior Special Counsel in the Office of Clearance and Settlement in the Division of Trading and Markets. Ms. Martin has also served as Assistant Chief Counsel in the Division of Economic and Risk Analysis, and as a Senior Counsel in the Office of International Affairs.

Office of Municipal Securities

On May 20, 2015, the SEC announced that Jessica Kane had been named director of the Office of Municipal Securities, replacing John Cross. Ms. Kane previously served as deputy director since April 2013. She first joined the SEC in 2007 in the Division of Corporation Finance, and later worked in the Office of Legislative and Intergovernmental Affairs from 2012 to 2013.

Also on May 20, 2015, Rebecca J. Olsen was appointed deputy director of the Office of Municipal Securities, replacing Jessica Kane. Ms. Olsen served as chief counsel since April 2014, and before that served as the office's liaison to the Division of Enforcement's Municipal Securities and Public Pensions Unit. Ms. Kane spent more than a decade practicing law at Ballard Spahr LLP, until she joined the Office of Municipal Securities in 2013.

ENFORCEMENT STATISTICS[4]

In fiscal year 2015, the SEC brought a record 807 cases, including 507 independent actions for securities laws violations, and 300 actions against issuers who were delinquent in making required filings or administrative proceedings seeking bars against individuals. For the first time, the Commission provided the number of "independent" actions for this last year and for prior years, perhaps to avoid the perception that it has been inflating its numbers by including follow-on actions and 12(j) proceedings in reaching ever higher "records."

This last year's totals represent an increase from 755 enforcement actions in 2014, of which 413 were independent actions, and from 676 enforcement actions in 2013, of which 341 were independent actions.

Moreover, the SEC's fiscal year 2015 actions resulted in another record tally of monetary sanctions being imposed against defendants and respondents.

In comments on these results, Chair White stated that "[v]igorous and comprehensive enforcement protects investors and reassures them that our financial markets operate with integrity and transparency, and the Commission continues that enforcement approach by bringing innovative cases holding executives and companies accountable for their wrongdoing sending clear warnings to would-be violators."[5]

"PAVING NEW GROUND" FOR FISCAL YEAR 2016

According to Chair White, new investigative approaches and innovative uses of data and analytical tools contributed to a very strong year for Enforcement.[6] Enforcement actions in 2015 included a number of first time cases, reflecting new initiatives. Director Ceresney said the Division has already "continued to pave new ground in the new fiscal year."[7]

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4 Unless otherwise noted, the information in this section is drawn from the Commission's Press Release titled "SEC Announces Enforcement Results for FY 2015," https://www.sec.gov/news/pressrelease/2015-245.html. The SEC's fiscal year 2015 ended on September 30, 2015.

5 *See supra* note 4.

6 *See supra* note 4.

7 *See supra* note 4.

The chart below reflects the cases brought by the SEC over the last decade:

Fiscal Year	Number of Enforcement Actions
2006	574
2007	656
2008	671
2009	664
2010	681
2011	735
2012	734
2013	686
2014	755
2015	807

CATEGORIES OF CASES

The major categories of cases and the number of actions for fiscal year 2015 within each are as follows:

Type of Case	Number of Actions	Percentage of Total Actions
Issuer Reporting and Disclosure	135	16.7%
Delinquent Filings	132	16.4%
Investment Advisers/Investment Companies	126	15.6%
Broker-Dealer	124	15.4%
Securities Offering Cases	98	12.1%
Municipal Securities and Public Pensions	80	9.9%
Market Manipulation	43	5.3%
Insider Trading	39	4.8%
FCPA	13	1.6%
Miscellaneous	11	1.4%
National Recognized Statistical Ratings Organization (NRSRO)	4	0.5%
Transfer Agent	1	0.1%
Self-Regulatory Organization (SRO)/Exchange	1	0.1%

In what has become a trend, the SEC brought 3% fewer cases against investment advisers and investment companies—126 cases in 2015 compared to 130 actions in 2014. Perhaps more noteworthy, however, is the sharp decrease in actions brought against broker-dealers, down to 124 from last year's 166. This may seem like a substantial shift, but this year's broker-dealer numbers are nearly identical to those in 2013, suggesting that the surge in broker-dealer actions brought in 2014 was a one-time event. Although the SEC continued to devote significant resources to investigating regulated entities, there has been a noticeable decrease in the Commission's docket, and cases in these areas have dropped to approximately 31% of the total case load in 2015, down from about 39% in the two prior fiscal years.

Reversing last year's upward trend, the Commission brought 39 insider trading cases in fiscal year 2015, which represents a 25% decrease from fiscal year 2014. While the Commission continues to bring actions aimed at rooting out insider and abusive trading practices, this year's decline was expected as a result of the Second Circuit's decision in *United States v. Newman* and subsequent cases.

The Municipal Securities and Public Pensions cases made up nearly 10% of the Commissions docket in 2015, a significant increase from the six total cases brought in 2014. This jump can likely be attributed, in large part, to the MCDC initiative launched last year.

PENALTIES, DISGORGEMENT, AND DISTRIBUTIONS TO INJURED INVESTORS

In fiscal year 2015, the SEC obtained orders requiring the payment of $4.19 billion in penalties and disgorgement, a 0.7% increase from the amounts ordered in fiscal year 2014 and a record for the Commission. Last year, the SEC obtained orders in judicial and administrative cases requiring the payment of approximately $1.175 billion in civil penalties, and about $3.019 billion in disgorgement.

Below is a chart reflecting the amount of fines and disgorgement orders obtained by the Commission between fiscal year 2005 and fiscal year 2015.

Fiscal Year	Penalties and Disgorgement
2006	$3.275 billion
2007	$1.6 billion
2008	$1.03 billion
2009	$2.435 billion
2010	$2.85 billion
2011	$2.806 billion
2012	$3.0 billion
2013	$3.4 billion
2014	$4.16 billion
2015	$4.19 billion

ADDITIONAL STATISTICS

Recently, the Commission published its report titled "Select SEC and Market Data Fiscal 2015."[8] In the report's section on "Enforcement Milestones," the SEC noted the following fiscal year 2015 statistics:

- The Commission sought orders barring 111 individuals from serving as officers or directors of public companies.
- The SEC filed 12 actions to enforce its investigative subpoenas.
- The Commission went to federal court and sought temporary restraining orders to stop ongoing fraudulent conduct in 27 actions and sought asset freezes in 41 cases.
- The SEC halted trading in the securities of 334 issuers for which there was inadequate public disclosure.

Perhaps of more interest to those who are or may find themselves in the sights of the SEC Staff are the statistics about opened and closed investigations:[9]

- Investigations opened in fiscal year 2015: 980
- Investigations closed in fiscal year 2015: 821
- Investigations ongoing as of close of fiscal year 2015: 1,677

The Enforcement Division opened somewhat fewer cases, yet closed nearly the same number of cases, than in fiscal year 2014. While these figures are encouraging, it is too early to tell if this is a new trend.

- Investigations opened in fiscal year 2014: 995
- Investigations closed in fiscal year 2014: 822
- Investigations ongoing as of close of fiscal year 2014: 1,612

Based on the review of fiscal year 2015 investigations, it appears that the Enforcement Division has become somewhat slower to close investigations, giving the Enforcement Division a healthy start on another record year for enforcement actions, simply based on its investigations inventory.

OFFICE OF THE WHISTLEBLOWER[10]

The SEC's whistleblower program completed its fifth year of operation in fiscal year 2015.

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8 *See* Select SEC and Market Data Fiscal 2015, https://www.sec.gov/about/secstats2015.pdf.

9 *Id.*

10 *See* "Annual Report on the Dodd-Frank Whistleblower Program: Fiscal Year 2015" (Nov. 2015), http://www.sec.gov/whistleblower/reportspubs/annual-reports/owb-annual-report-2015.pdf.

Persons who voluntarily provide the SEC with original information leading to a successful enforcement case resulting in monetary sanctions of more than $1 million may be eligible to receive an award between 10% and 30% of the funds collected by the Commission or in a related enforcement case.

In fiscal year 2015, the SEC's Office of the Whistleblower received 3,923 tips, complaints, and referrals from whistleblowers, an increase of 303 from the 3,620 received in fiscal year 2014—a bit more than an 8% uptick. This last year, tips, complaints, and referrals came from all 50 states, the District of Columbia, Puerto Rico, the US Virgin Islands, and 61 foreign countries. The United Kingdom (72), Canada (49), and the People's Republic of China (43) led the way in referring complaints to the SEC from outside the country last year. Most complaints fell into three categories: corporate disclosure and financials (17.5%), offering fraud (15.6%), and manipulation (12.3%). The number of allegations received by the SEC in these and other categories is presented below.

Allegation Type	Number of Allegations	Approx. Percentage of Total Allegations
Corporate Disclosure and Financials	687	17.5%
Offering Fraud	613	15.6%
Manipulation	482	12.3%
Insider Trading	273	7.0%
Trading and Pricing	213	5.4%
FCPA	186	4.7%
Unregistered Offerings	150	3.8%
Market Event	192	4.9%
Municipal Securities and Public Pension	57	1.5%
Other	956	24.4%
Not Reported	114	2.9%

Last year, the SEC reported that it had paid eight whistleblowers a combined total of more than $37 million. This 2015 figure includes the largest award to date, which was authorized on September 22, 2014, in the amount of more than $30 million.

KEY ENFORCEMENT DEVELOPMENTS

"High-Impact and First-of-their-Kind Actions"

The latest fiscal year was marked by a number of what the SEC refers to as "high impact" and "first-of-their-kind" actions. Enforcement Division Director Ceresney stated that the Division's "hard work, tremendous energy, and efficiency uncovered significant misconduct during the past fiscal year, and helped bring a significant number of high-impact, first-of-their-kind

actions."[11] While some of these new actions indeed represent the first time a regulation has been enforced, in other instances, these first time actions represent extensions of existing law either to novel products or programs, or to settled practices, which is somewhat unsettling for those in the Division's sights. Some examples of these "high impact" and "first-of-their-kind" cases follow.

"*Broken Deal" Expenses*

In the first action charging a private equity adviser with misallocating so-called "broken deal" expenses, the SEC charged Kohlberg Kravis Roberts & Co. (KKR) with misallocating more than $17 million in broken deal expenses to its flagship private equity funds.[12] The investigation revealed that KKR incurred $338 million in broken deal expenses over a six-year period, and the Commission alleged that the firm failed to properly allocate the funds to co-investors. Without admitting any liability, KKR agreed to settle the matter for approximately $30 million in disgorgement, prejudgment interest, and penalties.

Failure to Disclose a Conflict of Interest

In another first, the SEC charged BlackRock Advisors LLC with breaching its fiduciary duty for its alleged failure to disclose to clients and fund boards a conflict of interest related to the outside business activity of a portfolio manager.[13] BlackRock's former Chief Compliance Officer (CCO) was charged with causing the funds' failure to report a material compliance matter to the fund board, and with causing BlackRock's failure to adopt and implement policies and procedures for outside activities of employees. In settling the case, without admitting or denying liability, BlackRock agreed to pay a $12 million penalty and to hire an independent compliance consultant; the former CCO paid a $60,000 penalty.

Distribution-in-Guise Initiative

In September 2015, the SEC brought its first-ever action under its Distribution-in-Guise initiative, under which the SEC has been investigating payments from investment advisers to distributors of fund shares that perform administrative and servicing tasks for investors in the fund.[14] The Commission charged investment adviser First Eagle Investment Management and its affiliated distributor, FEF Distributors, alleging improper use of mutual fund assets to cover the costs of the marketing and distribution of fund shares. First Eagle and FEF agreed to settle the charges for $40 million, without admitting or denying liability.

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11 *Id.*

12 *See* SEC Press Release No. 2015-131, SEC Charges KKR With Misallocating Broken Deal Expenses (June 29, 2015), http://www.sec.gov/news/pressrelease/2015-131.html.

13 *See* SEC Press Release No. 2015-71, SEC Charges BlackRock Advisors With Failing to Disclose Conflict of Interest to Clients and Fund Boards (Apr. 20, 2015), http://www.sec.gov/news/pressrelease/2015-71.html.

14 *See* SEC Press Release No. 2015-198, SEC Charges Investment Adviser With Improperly Using Mutual Fund Assets to Pay Distribution Fees (Sept. 21, 2015), http://www.sec.gov/news/pressrelease/2015-198.html.

Novel Municipal Securities Actions

The Enforcement Division continued to focus on violations in the municipal bond market during fiscal year 2015, and brought its first actions against underwriters under the MCDC initiative, a self-reporting program launched in 2014 intended to target material misstatements and omissions in municipal bond offering documents.[15] On June 18, 2015, the SEC charged 36 municipal underwriting firms for violations related to disclosure obligations.[16] On September 30, 2015, the final day of the fiscal year, the SEC charged an additional 22 municipal underwriting firms with similar violations.[17] All 58 firms agreed to settle the actions, on a no-admissions basis, by paying penalties ranging from $20,000 to $500,000, and agreeing to retain independent consultants to review their municipal underwriting due diligence policies and procedures.

On August 13, 2015, the SEC announced its first-ever action against an underwriter for pricing-related fraud in the primary market for municipal securities.[18] The SEC alleged that brokerage firm Edward Jones and the former head of its municipal underwriting desk overcharged customers in connection with the sale of new municipal bonds. Without admitting or denying liability, Edward Jones agreed to settle the case for more than $20 million. In addition, the former head of its municipal underwriting desk agreed to settle for a $15,000 penalty and a two-year industry bar.

In another first, the SEC sanctioned 13 firms for violating MSRB Rule G-15(f), a rule that was primarily designed to protect retail investors in the municipal securities market.[19] The SEC charged the 13 dealers with effecting customer transactions in municipal securities in amounts below the minimum denomination allowed to be sold in a single transaction. Each of the 13 firms agreed to settlements, without admitting or denying the allegations, which included penalties ranging between $54,000 and $130,000.

Whistleblower Rules and Confidentiality Agreements

The SEC brought its first action against a company for using language in a confidentiality agreement that the Commission claims improperly restricts employees from engaging in whistleblowing, in violation of Rule 21F-17.[20] The SEC claimed that KBR, Inc. used confidentiality agreements that could hinder a whistleblower from communicating with the SEC.

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15 *See* SEC Press Release No. 2014-46, SEC Launches Enforcement Cooperation Initiative for Municipal Issuers and Underwriters (Mar. 10, 2014), http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370541090828#.VKqvq2xOVfw.

16 *See* SEC Press Release No. 2015-125, SEC Charges 36 Firms for Fraudulent Municipal Bond Offerings (June 18, 2015), http://www.sec.gov/news/pressrelease/2015-125.html.

17 *See* SEC Press Release No. 2015-220, SEC Sanctions 22 Underwriting Firms for Fraudulent Municipal Bond Offerings (Sept. 30, 2015), http://www.sec.gov/news/pressrelease/2015-220.html.

18 *See* SEC Press Release No. 2015-166, Edward Jones to Pay $20 Million for Overcharging Retail Customers in Municipal Bond Underwritings (Aug. 13, 2015), http://www.sec.gov/news/pressrelease/2015-166.html.

19 *See* SEC Press Release No. 2014-246, SEC Sanctions 13 Firms for Improper Sales of Puerto Rico Junk Bonds (Nov. 3, 2014), http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370543350368.

20 *See* SEC Press Release No. 2015-54, SEC: Companies Cannot Stifle Whistleblowers in Confidentiality Agreements (Apr. 1, 2015), https://www.sec.gov/news/pressrelease/2015-54.html.

In settling the matter, without admitting or denying liability, KBR agreed to pay a $130,000 penalty, to change the language of its agreements and to undertake reasonable efforts to inform employees of the updated procedure.

Although the Order and the Press Release acknowledge that the SEC investigation had identified no actual instances where an employee had been stifled or otherwise prevented from reporting potential violations of law, Enforcement Director Ceresney was quoted in the KBR Press Release as saying that "SEC Rules prohibit employers from taking measures through confidentiality, employment, severance, or other type of agreements that may silence whistleblowers before they can reach out to the SEC. We will vigorously enforce this provision."[21]

This novel interpretation of its own rules also launched a sweep by the SEC and the significant review by many companies of their internal documentation relating to employees, even those that were not a part of the sweep.

High-Frequency Trading Manipulation

In its first action alleging high-frequency trading manipulation, the SEC charged Athena Capital Research, a high-frequency trading firm, with fraud for using a complex algorithm that, according to the Commission, placed a large number of aggressive, rapid-fire trades in the final two seconds of almost every trading day during a six-month period to manipulate the closing prices of thousands of NASDAQ-listed stocks.[22] Athena agreed to settle the charges for $1 million, without admitting or denying liability.

Dark Pool Disclosures

The SEC brought its first action to address alleged violations arising from a dark pool's disclosure of order types to its subscribers. The SEC charged UBS Securities LLC with disclosure failures and other violations related to the operation and marketing of its dark pool.[23] Without admitting liability, the subsidiary agreed to settle the charges for $14.4 million.

First Action Against a Big-Three Credit Rating Agency

In another first-of-its-kind action in fiscal year 2015, the SEC charged Standard & Poor's (S&P) with fraudulent misconduct in its ratings of certain commercial mortgage-backed securities.[24]

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21 *Id.*

22 *See* SEC Press Release No. 2014-229, SEC Charges New York–Based High Frequency Trading Firm With Fraudulent Trading to Manipulate Closing Prices (Oct. 16, 2014), http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370543184457.

23 *See* SEC Press Release No. 2015-15, SEC Charges UBS Subsidiary With Disclosure Violations and Other Regulatory Failures in Operating Dark Pool (Jan. 15, 2015), http://www.sec.gov/news/pressrelease/2015-15.html.

24 *See* SEC Press Release No. 2015-10, SEC Announces Charges Against Standard & Poor's for Fraudulent Ratings Misconduct (Jan. 21, 2015), http://www.sec.gov/news/pressrelease/2015-10.html.

S&P agreed to a settlement that included factual admissions, a penalty of $58 million paid to the SEC and $19 million paid to authorities in New York and Massachusetts, an overhaul of S&P's internal controls, and the retraction of certain public research concerning its ratings. This action also reflects the Commission's focus on misconduct related to complex financial instruments.[25]

Largest Penalty Imposed on a National Securities Exchange

The Commission brought charges against two exchanges formerly owned by Direct Edge Holdings, and imposed a $14 million penalty—the largest ever imposed against a national securities exchange.[26] The case involved price-sliding orders, a complex order type that can affect execution priority, which the SEC alleged that the exchanges used in violation of their rules and without properly disclosing information about those orders. The matter settled on a no-admissions basis.

Largest Penalty Against an Alternative Trading System[27]

In August 2015, the SEC charged ITG Inc., and its affiliate AlterNet Securities, alleging that the firms operated a secret trading desk and misused the confidential information of dark pool subscribers, leading to an admission of wrongdoing and an $18 million penalty—the largest penalty ever imposed on an ATS.[28] According to the allegations of the Commission Order, ITG was operating an undisclosed proprietary desk for more than a year, and it used the order and execution information of its subscribers to implement high-frequency algorithmic trading strategies.

AREAS OF FOCUS FOR THE ENFORCEMENT DIVISION

An Increased Focus on Investment Advisers

Investment advisers have traditionally been a focus of the Enforcement Division, though the number of cases brought against them has slightly decreased over the last few years. As noted above, several "first-of-their-kind" actions were brought against investment advisers in fiscal year 2015, as the SEC continues to aggressively enforce violations by investment advisers.

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25 *See* SEC Press Release No. 2015-245, SEC Announces Enforcement Results For FY 2015 (Oct. 22, 2015), http://www.sec.gov/news/pressrelease/2015-245.html.

26 *See* SEC Press Release No. 2015-2, SEC Charges Direct Edge Exchanges With Failing to Properly Describe Order Types (Jan. 12, 2015), http://www.sec.gov/news/pressrelease/2015-2.html.

27 On January 31, 2016, the Commission announced still larger penalties imposed against alternative trading systems (ATSs), as Barclays Capital Inc. and Credit Suisse Securities (USA) LLC each agreed to settle separate cases alleging violations concerning their ATSs. *See* SEC Press Release No. 2016-16, "Barclays, Credit Suisse Charged With Dark Pool Violations." Each firm settled with both the SEC and the NY Attorney General's office, with Barclays agreeing to pay a total of $70 million in penalties, and Credit Suisse agreeing to pay $60 million in penalties, plus $24.3 million in disgorgement and interest to the SEC. Each firm settled its matter without admitting or denying any liability.

28 *See* SEC Press Release No. 2015-164, SEC Charges ITG With Operating Secret Trading Desk and Misusing Dark Pool Subscriber Trading Information (Aug. 12, 2015), http://www.sec.gov/news/pressrelease/2015-164.html.

The Enforcement Division has recently launched a number of initiatives aimed at rooting out violations that often go unnoticed, such as custody rule violations, adequacy of compliance programs, and undisclosed adviser fees.[29] And, the Enforcement Division, in conjunction with other divisions at the SEC, has developed new tools to help detect unusual returns by investment advisers.[30] For example, Enforcement's Asset Management Unit and the Division of Economic and Risk Analysis jointly developed a tool that uncovers potential wrongdoing by isolating unusual performance returns posted by hedge fund advisers—an initiative that resulted in more than 10 enforcement actions.[31] However, in addition to the subtle, the complex, and the high end, the SEC also has committed significant resources to more basic issues like conflicts of interest, protection of investors saving for retirement, and performance misrepresentations.

Gatekeepers and Compliance Officers

One of the recurring topics in public statements made by the SEC Commissioners and staff is the accountability of "gatekeepers," which has included accountants, lawyers, and compliance officers. This last year, however, once again the focus seemed most squarely on compliance professionals. Given the Commission's focus on compliance generally, and its recent "broken windows" willingness to turn compliance failures into enforcement actions, this may be disappointing but it is not surprising.

Earlier this year, in an effort to quiet growing concerns, Chair White addressed the potential liability of compliance professionals: "To be clear, it is not our intention to use our enforcement program to target compliance professionals . . . We do not bring cases based on second guessing compliance officers' good faith judgments, but rather when their actions or inactions cross a clear line that deserve sanction."[32]

However, Commissioner Daniel M. Gallagher seemed unconvinced, expressing concerns about the impact of actions against compliance officers in a public statement, in which he dissented from two settled enforcement actions involving compliance professionals.[33] Commissioner Gallagher said he "has long called on the Commission to tread carefully when bringing enforcement actions against compliance personnel."[34] In response to those comments, Commissioner Luis A. Aguilar issued his own statement, intended to dispel the notion that CCOs

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29 *See* Director Andrew Ceresney, Testimony on "Oversight of the SEC's Division of Enforcement" (Mar. 19, 2015), http://www.sec.gov/news/testimony/031915-test.html.

30 *Id.*

31 *Id.*

32 *See* Chair Mary Jo White, Opening Remarks at the Compliance Outreach Program for Broker-Dealers (July 15, 2015), http://www.sec.gov/news/speech/opening-remarks-compliance-outreach-program-for-broker-dealers.html.

33 *See* Commissioner Daniel M. Gallagher, Statement on Recent SEC Settlements Charging Chief Compliance Officers With Violations of Investment Advisers Act Rule 206(4)-7 (June 18, 2015), http://www.sec.gov/news/statement/sec-cco-settlements-iaa-rule-206-4-7.html.

34 *Id.*

are "needlessly under siege from the SEC."[35]

Most recently, Director Ceresney addressed the issue of compliance officer liability by saying that both the Commission and the Enforcement Division carefully consider whether to bring a case against a CCO.[36] When compliance officers are charged, according to the Director, it will generally be because the CCO is involved in "misconduct unrelated to his or her compliance function," "obstructs or misleads the Commission staff," or "exhibits a wholesale failure to carry out his or her responsibilities."[37]

Anti-Money Laundering/Suspicious Activity

In a February 2015 speech, Director Ceresney stressed the importance of promoting a "culture of compliance" at companies, and ensuring that anti-money laundering (AML) compliance is "integrated fully into the other compliance operations of the firm" so that "suspicious activity detected by other compliance functions makes its way to the AML compliance function and vice versa."[38]

Director Ceresney also made clear that a critical component of AML compliance is ensuring that Suspicious Activity Reports (SARs) are filed when potential illegal activity is detected.[39] The Enforcement Division's Office of Market Intelligence reviews between 18,000 and 25,000 SARs filed by broker-dealers each year. Yet, based on the number of broker-dealers in the United States (approximately 4,700), each securities firm files only an average of about five SARs per year, a number that Director Ceresney believes is far too low given the volume of transactions executed each year.[40] And, Director Ceresney found the number of firms that filed zero or one SAR last year to be "disturbingly large" and "troubling," and suggested the potential for further investigation.[41]

On June 18, 2015, Kevin W. Goodman, the National Associate Director of the Broker-Dealer Examination Program, gave a speech on AML Compliance intended to further elaborate on Director Ceresney's remarks.[42] Director Goodman highlighted the broad scope of potential suspicious activity with the following vulnerabilities: (i) thinly traded or low market value securities, (ii) direct market access from higher risk jurisdictions, (iii) master/sub account relationships, and (iv) banking-oriented products and services.[43] Several of these areas proved

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35 *See* Commissioner Luis A. Aguilar, The Role of Chief Compliance Officers Must be Supported (June 29, 2015), http://www.sec.gov/news/statement/supporting-role-of-chief-compliance-officers.html.

36 *See* Director Andrew Ceresney, 2015 National Society of Compliance Professionals, National Conference: Keynote Address, Washington, DC (Nov. 4, 2015), http://www.sec.gov/news/speech/keynote-address-2015-national-society-compliance-prof-cereseney.html.

37 *Id.*

38 *See* Director Andrew Ceresney, Remarks at SIFMA's 2015 Anti-Money Laundering & Financial Crimes Conference, New York, NY (Feb. 25, 2015), http://www.sec.gov/news/speech/022515-spchc.html.

39 *Id.*

40 *Id.*

41 *Id.*

42 *See* Kevin W. Goodman, Anti-Money Laundering: An Often-Overlooked Cornerstone of Effective Compliance (June 18, 2015), https://www.sec.gov/news/speech/anti-money-laundering-an-often-overlooked-cornerstone.html.

43 *Id.*

fertile ground for enforcement actions during the fiscal year.

Crunching the Numbers – Leveraging and Analyzing Data Across the Agency

According to the SEC's Annual Report, the Division of Enforcement and the DERA have found new and productive ways to collaborate in fiscal year 2015, working together on 120 new projects "in matters involving market manipulation, insider trading, structured products, accounting fraud, and abusive practices by investment advisers and brokerage firms."[44] That the Commission believes the leveraging of data is the best use of its resources may be best reflected by the almost 20% increase in DERA staff now focused on Enforcement matters.[45] The DERA/Enforcement collaboration, taken together with the OCIE focus on data collection and analysis, in part through its National Exam Analytics Tool (NEAT), continues to change how the SEC works, even with limited resources, and how even complex violations are identified.

As a result of these efforts, the SEC was able to identify fraudulent trading through a statistical analysis to determine whether the trade results were lucky or coincidental.[46] And, the SEC has used analytical tools to expose misconduct and identify suspicious trading patterns.[47] The Enforcement staff also tracked a manipulative filing to an IP address in Bulgaria.[48]

Cybersecurity

Over the last year and a half, the SEC has intensified efforts at promoting the adoption and implementation of adequate cybersecurity policies and procedures by registered investment advisers and broker-dealers. Specifically, OCIE published two Risk Alerts on cybersecurity;[49] the SEC published a guidance update on cybersecurity;[50] and the Commission hosted a Cybersecurity Roundtable.[51]

Recently, the SEC announced charges against investment adviser R.T. Jones Capital Equities Management for its alleged failure to establish the required cybersecurity policies and procedures in advance of a breach that compromised the personally identifiable information of approximately 100,000 individuals.[52]

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44 *See* US Securities and Exchange Commission, "Fiscal Year 2015 Agency Financial Report," p.16, https://www.sec.gov/about/secafr2015.shtml.

45 *Id.*

46 *Id.* at 17.

47 *Id.*

48 *Id.*

49 *See OCIE Cybersecurity Examination Sweep Summary*, OCIE, National Exam Program Risk Alert, Vol. IV, Issue 4 (Feb. 3, 2015), http://www.sec.gov/ about/offices/ocie/cybersecurity-examination-sweep-summary.pdf (providing summary observations from the examinations of 57 broker-dealers and 49 advisers conducted under OCIE's Cybersecurity Initiative); s*ee also OCIE Cybersecurity Initiative*, OCIE, National Exam Program Risk Alert, Vol. IV, Issue 2 (Apr. 15, 2014), http://www.sec.gov/ocie/announcement/Cybersecurity-Risk-Alert-- Appendix---4.15.14.pdf.

50 IM Guidance Update No. 2015-02 (Apr. 2015), http://www.sec.gov/investment/im-guidance-2015-02.pdf.

51 *See generally* Cybersecurity Roundtable, SEC, http://www.sec.gov/ spotlight/cybersecurity-roundtable.shtml.

52 *See* SEC Press Release No. 2015-202, SEC Charges Investment Adviser With Failing to Adopt Proper Cybersecurity Policies and Procedures Prior To Breach (Sept. 22, 2015), http://www.sec.gov/news/pressrelease/2015-202.html.

Abusive and Insider Trading

In 2014, many predicted a sharp decline in insider trading cases after the decision in *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014), *cert. denied,* 136 S. Ct. 438 (2015). *Newman* limits the liability in so-called "tipping" cases to situations where tippees know both that the material nonpublic information at issue is confidential and that the tipper divulged such information in exchange for some tangible personal benefit. Although in October 2015, the United States Supreme Court declined to review the decision in *Newman*, and the Second Circuit decision remains intact, in January 2016, the Court agreed to hear the appeal of a defendant from a Ninth Circuit decision in *United States v. Salman*, 792 F.3d 1087 (9th Cir. 2015), *cert. granted in part*, 15-628, 2016 WL 207256 (U.S. Jan. 19, 2016), affirming his conviction for insider trading, in spite of his *Newman* claims.

While the *Newman* decision may have drastically narrowed the scope of tippee liability, at least for the time being, the Commission continues to bring actions aimed at rooting out insider and abusive trading practices. In fiscal year 2015, the SEC brought several significant actions involving abusive or insider trading, and has relied on new technological tools that have allowed the SEC to identify suspicious trading patterns. Among other cases, the Commission used data analytics to bring charges against 87 parties related to insider trading.[53] And, analytical tools were used to charge dozens in an alleged scheme to turn a profit using hacked information on corporate earnings.[54]

In a More Opaque Market, Fair Market Structure Becomes a Priority

Over the last decade, the Enforcement Division has increasingly shifted its focus toward ensuring that exchanges, traders, and other market participants operate fairly. As Director Ceresney pointed out, prior to 2007 the New York Stock Exchange handled almost 80% of the volume for stocks listed on the exchange, while it now only has 15% of that volume.[55] Today, there are 11 different equity exchanges, and more than 40 dark pool alternative trading systems. And, the average speed of execution for orders has gone from 10 seconds in 2005 to 500 milliseconds or less in today's market. These significant changes—increased competition and speed—can, according to the SEC, generate "an incentive to cut corners."[56]

In addition to the above-noted actions, which resulted in the largest penalties ever against a national securities exchange and against an alternative trading system, in fiscal year 2015, the SEC brought several actions under Exchange Act Rule 15c3-5, known as the market access rule, each based on the lack of compliance and/or controls to avoid fraud or errors entering the market.[57]

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53 *See* SEC Press Release No. 2015-245, SEC Announces Enforcement Results For FY 2015 (Oct. 22, 2015), http://www.sec.gov/news/pressrelease/2015-245.html.

54 *See* SEC Press Release No. 2015-163, SEC Charges 32 Defendants in Scheme to Trade on Hacked News Releases (Aug. 11, 2015), http://www.sec.gov/news/pressrelease/2015-163.html.

55 *See* Director Andrew Ceresney, Market Structure Enforcement: Looking Back and Forward, New York, NY (Nov. 2, 2015), http://www.sec.gov/news/speech/ceresney-speech-sifma-ny-regional-seminar.html.

56 *Id*.

57 *See* SEC Press Release No. 2015-221, Latour Trading Charged With Market Structure Rule Violations (Sept. 30, 2015), http://www.sec.gov/news/pressrelease/2015-221.html; *see also* SEC Press Release No. 2015-133, SEC

Director Ceresney has stated that, rather than go after individual traders who originate manipulative trades, it is more important and more effective to focus on "regulated broker-dealers that serve as the gateways and gatekeepers to our markets."[58]

The Foreign Corrupt Practices Act (FCPA)

In a November 17, 2015 speech, Director Ceresney stated that the SEC has taken "a lead role in combatting corruption worldwide, enforcing the FCPA vigorously against issuers and individuals within its jurisdiction and working with foreign partners to enhance their anticorruption efforts."[59] During fiscal year 2015, the SEC brought 14 cases against entities and individuals for FCPA violations, and imposed more than $215 million in financial remedies.[60] Director Ceresney also announced that, in the FCPA context, companies would now need to self-report their potential misconduct in order to be eligible for deferred prosecution agreements (DPA) and nonprosecution agreements (NPA).[61] While Director Ceresney made it clear that self-reporting will not result in an automatic DPA or NPA, companies must now carefully consider self-reporting an FCPA violation in order for the SEC to recommend those outcomes.[62]

In one action brought during the fiscal year, the first FCPA action against a financial institution and the first involving hiring practices, the SEC charged BNY Mellon with violations stemming from internships provided to family members of government officials affiliated with a Middle Eastern Sovereign wealth fund.[63] BNY Mellon settled the case, without admitting liability, for a total of $14.8 million.[64]

The Commission Becomes the Whistleblowers' Advocate

In 2015, the Whistleblower Office received nearly 4,000 whistleblower tips and eight whistleblowers received actual cash awards. The *KBR* matter, discussed above, was followed by significant media coverage and public statements by the Commission relating to what the Order meant and what was expected going forward, as well as a "sweep" investigation of internal employment-related and confidentiality agreements in place.

Some have criticized the Commission for applying an overly broad interpretation of Rule 21F-17,

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Charges Goldman Sachs With Violating Market Access Rule (June 30, 2015). http://www.sec.gov/news/pressrelease/2015-133.html; SEC Press Release No. 2014-274, SEC Penalizes Morgan Stanley for Violating Market Access Rule (Dec. 10, 2014), http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370543668817.

58 *See* Director Andrew Ceresney, Market Structure Enforcement: Looking Back and Forward, New York, NY (Nov. 2, 2015), http://www.sec.gov/news/speech/ceresney-speech-sifma-ny-regional-seminar.html.

59 *See* Director Andrew Ceresney's Keynote Address at the ACI's 32nd FCPA Conference, Washington, DC (Nov. 17, 2015) http://www.sec.gov/news/speech/ceresney-fcpa-keynote-11-17-15.html.

60 *Id.*

61 *Id.*

62 *Id.*

63 *See* SEC Press Release No. 2015-170, SEC Charges BNY Mellon With FCPA Violations (Aug. 18, 2015), http://www.sec.gov/news/pressrelease/2015-170.html.

64 *Id.*

thereby calling into question the enforceability of confidentiality agreements.[65] Chair White defended the agency's reading of the rule, and reiterated the need for companies to "speak clearly in and about confidentiality provisions, so that employees . . . understand that it is always permissible to report possible securities laws violations to the Commission."[66]

Shortly following the announcement of the case, Chair White gave a speech in which she stressed the importance and vibrancy of the Commission's whistleblower program, but stated most notably that KBR was not, nor was it intended to be, "a sweeping prohibition on the use of confidentiality agreements. Companies conducting internal investigations can still give standard *Upjohn* warnings that explain the scope of attorney-client privilege in that setting. Companies may continue to protect their trade secrets or other confidential information through the use of properly drawn confidentiality and severance agreements."[67]

The other open question during the course of the fiscal year was who, precisely, qualifies as a whistleblower. On August 4, 2015, the Commission issued its "Interpretation of the SEC's Whistleblower Rules Under Section 21F of the Securities Exchange Act of 1934."[68] Some viewed this release as an effort by the SEC to shift federal courts in its direction on the open legal question of whether a whistleblower needed to actually report a potential violation of the securities laws to the SEC to qualify for Dodd-Frank's protection from retaliation. The Commission has filed amicus briefs in the trial and appellate courts across the country on the issue.[69]

Fewer Trials and More Success for the SEC in Fiscal Year in 2015

Unlike fiscal year 2014, when the Commission's rather mixed trial record was a topic of much discussion, in fiscal year 2015, the SEC had fewer trials and experienced more success. The SEC went undefeated in its six trials in federal court in fiscal year 2015. In four of the victories, the SEC won on all of its claims, while the remaining two had mixed results.[70] In addition,

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65 *See, e.g.*, Letter from Center for Capital Markets Competitiveness to Chair Mary Jo White (Apr. 9, 2015), http://www.centerforcapitalmarkets.com/wp-content/uploads/2015/04/2015.-4.8-SEC-Whistleblower.pdf.

66 *See* Chair Mary Jo White, The SEC as the Whistleblower's Advocate (Apr. 30, 2015) http://www.sec.gov/news/speech/chair-white-remarks-at-garrett-institute.html.

67 *Id.*

68 Available at http://www.sec.gov/rules/interp/2015/34-75592.pdf.

69 *See, e.g.*, Brief of the Securities and Exchange Commission as Amici Curiae Supporting Appellant, Berman v. Neo@Ogilvy LLC, 801 F.3d 145 (2d Cir. 2015) (No. 12-4626), 2015 WL 3533004; Brief of the Securities and Exchange Commission as Amici Curiae Supporting Appellant, Liu Meng-Lin v. Siemens AG, 763 F.3d 175 (2d Cir. 2014) (No. 13-4385-cv), 2014 WL 663875; Brief of the Securities and Exchange Commission as Amici Curiae Supporting Appellant, Safarian v. Am. DG Energy Inc., 622 F. App'x 149 (3d Cir. 2015) (No. 14-2734), 2014 WL 7240193; Brief of the Securities and Exchange Commission as Amici Curiae Supporting Appellant, Beacom v. Oracle Am., Inc., Case No. 15-1729 (8th Cir. 2015), http://www.sec.gov/litigation/briefs/2015/beacom-v-oracle-081915.pdf.

70 The four cases in which the SEC won on all its claims are ***SEC v. George G. Levin and Frank J. Preve***, Civil Action No. 1:12-cv-21917 (S.D. Fla., filed May 22, 2012) (offering fraud); ***SEC v. Morando Berrettini, et al.***, Civil Action No. 10-cv-1614 (N.D. Ill., filed Apr. 1, 2010) (insider trading); ***SEC v. Charles R. Kokesh***, Civil Action No. 6:09-cv-1021 (D.N.M., filed Oct. 27, 2009) (false statements and misappropriation of investor funds); and ***SEC v. iShopNoMarkup.com, Inc.***, Civil Action No. 04-CV-4057 (E.D.N.Y., filed Sept. 20, 2004) (offering fraud).

according to comments made by Matthew C. Solomon, the SEC's Chief Litigation Counsel, at the recent "SEC Speaks" Conference, the Division of Enforcement tried 21 cases in administrative proceedings and won all but two. Commenting on the comparison between the two years, Director Ceresney stated that while fiscal year 2014 was unusually active in the courtroom, he does expect the litigation docket to expand.[71] This expected increase in litigation is due in part to added focus on individual liability, aggressive enforcement of securities laws, and significant sanctions sought by the Commission.[72]

Requiring Admissions as a Settlement Term

In June 2013, in a significant departure from past practice, Chair White announced that the SEC would begin requiring admissions of facts and misconduct from defendants as a condition of settlement in cases where there was a heightened need for public accountability. Since then, Director Ceresney has stated that admissions will be considered in certain types of cases, including those where large numbers of investors were harmed, where the markets or investors were placed at significant risk, where the wrongdoer posed a particular future threat to investors or the markets, where the defendant engaged in unlawful obstruction of the Commission's processes, or where admissions would significantly enhance the deterrence message of the action.[73] However, in reviewing the 17 cases where admissions have been obtained, it would appear that these criteria remain largely aspirational.[74]

The two cases in which the SEC won partial victories are ***SEC v. BankAtlantic Bancorp., Inc. and Alan Levan,*** Case No. 0:12-cv-60082 (S.D. Fla., filed Jan. 18, 2012) (financial statement fraud); and ***SEC v. Heart Tronics, Inc., et al.***, Civil Action No. SACV11-1962-JVS (C.D. Cal., filed Dec. 15, 2011) (stock manipulation).

71 *See* Director Andrew Ceresney, Keynote Speech at New York City Bar 4th Annual White Collar Institute, Washington, DC (May 12, 2015), http://www.sec.gov/news/speech/ceresney-nyc-bar-4th-white-collar-key-note.html#_ftnref22.

72 *Id.*

73 *See* Director Andrew Ceresney, Remarks to the American Bar Association's Business Law Section Fall Meeting, Washington, DC (Nov. 21, 2014), http://www.sec.gov/News/Speech/Detail/Speech/1370543515297#.VH3b-GxOU6Y.

74 The following is a list of the 17 cases from fiscal year 2015 in which the SEC obtained admissions: ***In the Matter of Credit Suisse Securities (USA) LLC***, Exchange Act Rel. No. 75992, Sept. 28, 2015 (deficient blue sheet data related to customer trades); ***In the Matter of ITG Inc. and Alternet Securities, Inc.***, Securities Act Rel. No. 9887, Aug. 12, 2015 (undisclosed alternative trading system); ***In the Matter of Chih Hsuan "Kiki" Lin***, Exchange Act Rel. No. 75483, July 17, 2015 (global pyramid scheme); ***In the Matter of OZ Management, LP***, Exchange Act Rel. No. 75445, July 14, 2015 (investment adviser provided inaccurate trade data to four of its prime brokers, causing brokers' books and records and blue sheet submissions to be inaccurate); ***SEC v. Aquaphex Total Water Resources and Gregory Jones,*** Civil Action No. 4:15-cv-00438-A (N.D. Tex., filed June 10, 2015) (offering fraud case); ***In the Matter of Merrill Lynch, Pierce, Fenner & Smith Inc. and Merrill Lynch Professional Clearing Corporation***, Exchange Act Rel. No. 75083, June 1, 2015 (inaccurate data used in connection with execution of short sale orders); ***SEC v. Sage Advisory Group, LLC and Benjamin Lee Grant***, Civil Action No. 11-cv-11538, (D. Mass., filed in Sept. 1, 2011) (admissions filing/court order May 29, 2015) (misrepresentations to clients; violation of prior associational bar order); ***In the Matter of Houston American Energy Corp., John F. Terwilliger, Undiscovered Equities, Inc., and Kevin T. McKnight***, Securities Act Rel. No. 9757, Apr. 23, 2015 (oil and gas offering fraud; settlement as to Undiscovered Equities and McKnight only); ***In the Matter of Sean C. Cooper***, Advisers Act Rel. No. 4063, Apr. 16, 2015 (using excess management fees for personal use); ***SEC v. Katsuichi Fusamae***, Civil Action No. 15-cv-03142 (N.D. Ill., filed Apr. 9, 2015) (unauthorized trading resulting in $110 million in losses; loan transactions to try to cover the losses); ***SEC v. Craig S. Lax***, Civil Action No. 2:15-cv-01079 (D.N.J., filed Feb. 10, 2015) (former Convergex Group CEO charged in alleged scheme to overcharge

In May 2015, Director Ceresney noted that the Staff had obtained admissions in certain settlements after proceedings had been commenced, rather than solely as an element of a settled action.[75] According to Chair White, admissions can bring about "greater public accountability and that public accountability can boost investors' confidence and serve as a stronger deterrent."[76] As such, she anticipates the program to "continue to evolve and grow."[77]

Administrative Proceedings vs. Federal Court

A bigger litigation story this last year has been the focus on forum selection. In May 2015, Director Ceresney gave a speech in which he outlined the Division's decisionmaking process when selecting a forum to recommend.[78] Director Ceresney referenced the guidance posted on the SEC website,[79] but made clear that "there is no rigid formula dictating the choice of appropriate forum." Instead, Ceresney said, the Division's "overriding goal is to achieve strong and effective enforcement of the federal securities laws in a fair and efficient manner and . . . recommend the forum that will best utilize the Commission's limited resources to carry out its mission."

According to *The Wall Street Journal*, the SEC's win rate in administrative proceedings was 86% over the last five years, noticeably higher than the 70% win rate in federal court.[80] Yet, this trend may be on the decline, as the *Journal* found a 67% success rate for the agency in administrative proceedings in fiscal year 2015.[81]

Recently, plaintiffs have turned to federal courts to challenge the constitutionality of SEC administrative proceedings. Challenges based on equal protection and due process claims have not succeeded.[82] However, constitutional objections on the ground that the Commission

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customers for commissions); ***In the Matter of BDO China Dahua CPA Co. et al.***, Exchange Act Rel. No. 74217, Feb. 6, 2014 (Chinese auditor matter); ***In the Matter of Oppenheimer & Co.***, Securities Act Rel. No. 9711, Jan. 27, 2015 (violations related to unregistered penny stock and violations of the Market Access Rule); ***In the Matter of Standard & Poor's Ratings Services***, Securities Act Rel. No. 9705, Jan. 21, 2015 (order concerning S&P's conduit fusion ratings methodology); ***In the Matter of F-Squared Investments, Inc.***, Advisers Act Rel. No. 3988, Dec. 22, 2014 (false performance claims); ***In the Matter of HSBC Private Bank (Suisse), SA***, Exchange Act Rel. No. 73681, Nov. 25, 2014 (unregistered services provided to US clients); ***In the Matter of Wedbush Securities, Inc.***, Exchange Act Rel. No. 73652, Nov. 20, 2014 (violations of the Market Access Rule).

75 *See* Director Andrew Ceresney, Keynote Speech at New York City Bar 4th Annual White Collar Institute, Washington, DC (May 12, 2015), http://www.sec.gov/news/speech/ceresney-nyc-bar-4th-white-collar-key-note.html#_ftnref22.

76 *See* Chair Mary Jo White. Remarks Before the SEC Historical Society, Washington, DC (June 4, 2015), http://www.sec.gov/news/speech/remarks-before-the-sec-historical-society.html.

77 *Id.*

78 *See* Director Andrew Ceresney, Keynote Speech at New York City Bar 4th Annual White Collar Institute, Washington, DC (May 12, 2015), http://www.sec.gov/news/speech/ceresney-nyc-bar-4th-white-collar-key-note.html#_ftnref22.

79 Available at http://www.sec.gov/divisions/enforce/enforcement-approach-forum-selection-contested-actions.pdf.

80 Jean Eaglesham, *Fairness of SEC Judges Is In Spotlight*, Wall St. J. (Nov. 22, 2015).

81 Jean Eaglesham, *SEC Judges Are Finding Against Agency More Often Lately*, Wall St. J. (Nov. 22, 2015).

82 *See, e.g., Chau v. SEC*, Civil Action No. 14-cv-01903 (S.D.N.Y. Dec. 11, 2014).

appoints its administrative law judges in violation of Article II of the United States Constitution (the Appointments Clause) have resulted in some stays of administrative proceedings.[83] Although federal courts differ in their treatment of the claims, in some circuits these cases are gaining traction, and other respondents are likely to follow suit, where they can, at least until the law becomes more certain.

The SEC, perhaps in response to this litigation, has issued proposed changes to its Rules of Practice for administrative proceedings.[84] These rule proposals, issued on September 24, 2015, include enhancements to the AP deposition process, and offer further flexibility in setting hearing dates. The proposed rule changes may represent some progress in cooling the criticism surrounding the agency's use of administrative proceedings, yet the larger concerns (i.e., the independence of the ALJs who serve as hearing officers, the lack of access to a jury, and the Commission's combined role as both prosecutor and adjudicator) continue to linger.[85]

LOOKING AHEAD

The SEC Enforcement program under Chair White has continued its efforts to work smarter and more efficiently, increasing the use of data analytics to focus Enforcement resources on practices and industries where the likelihood or risk of misconduct is highest, and working across the agency to bring all of its resources to bear on the issues it identifies as priorities.

In the coming year, we can expect this work to continue. In addition, the Commission has promised that the focus on investment advisers and investment companies will carry into the new fiscal year. OCIE has announced its renewed efforts to reach those never-before-examined entities specifically. Further, the Enforcement Division has promised to continue to bring cases against gatekeepers; cases involving financial reporting and accounting issues; and market structure cases against exchanges, ATSs, transfer agents, and/or clearing agencies. We also can anticipate more cases involving complex products, and more cases related to suspicious activity or AML violations. And, above all, since so much of the invested money in this country is invested by those saving for retirement, the SEC will continue its efforts to protect those assets

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83 *See, e.g, Hill v. SEC*, No. 15-cv-1801 (N.D. Ga. June 8, 2015), *appeal docketed*, No. 15-12831 (11th Cir. June 24, 2015) (holding the district court has jurisdiction to hear the constitutional question, and finding a significant likelihood of success on the merits of the Appointments Clause argument); *Timbervest, LLC, et al. v. SEC*, No. 15-cv-2106 (N.D. Ga. Aug. 4, 2015) (same); *Duka v. SEC*, No. 15-cv-357 (S.D.N.Y. Aug. 12, 2015), *appeal docketed*, No. 15-2732 (2d Cir. Aug. 27, 2015) (holding the district court has jurisdiction, but reaching a contrary conclusion on the merits). *But see Jarkesy v. SEC*, No. 14-5196, 803 F.3d 9 (D.C. Cir. Sept. 29, 2015) (affirming the lower court's dismissal for lack of subject-matter jurisdiction to hear similar constitutional claims); *Bebo v. SEC*, No. 15-1511, 799 F.3d 765 (7th Cir. Aug. 24, 2015) (holding that district courts are without jurisdiction to hear these constitutional challenges); *Bennett, et al. v. SEC,* No. 15-3325 (D. Md. Dec. 17, 2015) (same).

84 *See* SEC Press Release No. 2015-209, SEC Proposes to Amend Rules Governing Administrative Proceedings (Sept. 24, 2015), http://www.sec.gov/news/pressrelease/2015-209.html.

85 For more information on this topic, please see the Morgan Lewis law flash titled "Tweaking the 'Home Court' Rules for SEC Administrative Proceedings" (Sept. 28, 2015), http://www.morganlewis.com/pubs/tweaking-the-home-court-rules-for-sec-administrative-proceedings?p=1.

and investors.[86]

SEC ENFORCEMENT AND EXAMINATION PRIORITIES

Based upon our review of currently available information, we believe the following list reflects some of the SEC's top enforcement and examination priorities:

Investment Advisers/Investment Companies

- Including private funds and separately managed accounts
  - Particular focus on never-before-examined entities
  - Disclosures
    - Conflicts of interest
    - Fees and expenses
    - Performance disclosures and advertising
    - Product disclosures
  - Asset valuation, especially for difficult-to-value assets
  - Valuation practices, particularly for infrequently traded securities
  - ETFs
    - Compliance with regulatory requirements
    - Creation/redemption process
    - Primary and secondary market trading
  - Compliance, controls, and governance

Investors Saving for Retirement

  - Dual Registrants
    - Fee arrangements
    - Compliance
  - Sales and Marketing Practices
    - Suitability
    - Churning and/or abusive trading

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86 *See* SEC, *Fiscal Year 2015 Agency Financial Report*, https://www.sec.gov/about/secafr2015.shtml; SEC, Office of Compliance Inspections and Examinations, *Examination Priorities for 2016*, https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2016.pdf.

        - Conflicts presented by sales of own firm products
        - Promotion of new, high-risk, and/or complex products
    - Suitability/disclosures around variable annuity sales

Higher-Risk Broker-Dealer Trading

- Trade execution in fixed-income securities
- Equity order routing
- Trading in subaccounts

Market Structure

- Algorithmic and high-frequency trading
- SCI entities (e.g., exchanges, SROs, ATSs, clearing agencies)
    - Policies and procedures
    - Focus on security and resiliency
- Cybersecurity
    - Information technology compliance, controls, governance, and supervision
    - Policies and procedures relating to security and business continuity

Data-Based Enforcement Initiatives

- Recidivist financial advisers
- Liquidity controls
- AML violations/suspicious activity
    - Filing of Suspicious Activity Reports
    - Market manipulation (practices such as marking the close, parking, spoofing, and excessive markups and markdowns)
    - Focus on AML programs of broker-dealers that offer customers the ability to deposit or withdraw cash and/or that allow customers direct access to the markets from higher-risk jurisdictions
- Microcap fraud and pump-and-dump schemes

Other Enforcement and Examination Priorities

- Financial reporting and accounting fraud
    - Revenue recognition concerns
    - Faulty valuations and impairment calculations

- Insufficient disclosures

– Municipal Securities market
  - Municipal advisors: compliance, policies, and procedures
  - Pricing in the primary and secondary markets for municipal securities

– Public Pension Advisers – pay to play

SEC ENFORCEMENT ACTIONS[87]

Cases Relating to Broker-Dealer Firms and Their Employees/Affiliated Persons

Anti-Money Laundering and Suspicious Activity

***In re Oppenheimer & Co.*, Securities Act Rel. No. 9711, 2015 SEC LEXIS 289 (Jan. 27, 2015).**

The Commission accepted an offer of settlement from Oppenheimer & Co., Inc. (the Firm), a broker-dealer and investment adviser, regarding two separate courses of conduct. In connection with the first course of conduct, the Commission alleged that the Firm violated Section 15(a) of the Securities Exchange Act of 1934 (the Exchange Act) by aiding and abetting the actions of an unregistered broker-dealer, and violated Section 17(a) of the Exchange Act and Rules 17a-3(a)(2), 17a-3(a)(9), and 17a-8 thereunder by failing to withhold taxes on transactions that it knew or should have known were subject to withholding (resulting in inaccurate books and records), and failing to file Suspicious Activity Reports when it had knowledge of potential money-laundering and tax evasion. Specifically, the Commission alleged that a Bahamian customer of the Firm had falsely certified that it was using its account solely for proprietary trading, and that transactions in the account were exempt from US tax withholding. In reality, the Bahamian customer was acting as an unregistered broker-dealer and executing trades on behalf of third parties, some of whom were US residents. The Commission alleged that the Firm was aware of this misconduct, in part because the Firm's AML department had investigated the customer and found multiple red flags to suggest it was trading on behalf of third parties, and in part because the customer had sent emails to the Firm explicitly stating that it was executing some transactions for the benefit of clients.

In connection with the second course of conduct, the Commission alleged that the Firm violated Sections 5(a) and 5(c) of the Securities Act of 1933 (the Securities Act) by acting as a necessary participant and substantial factor in the illegal sale of unregistered securities, and violated Sections 15(b)(4)(E) of the Exchange Act by failing reasonably to supervise its personnel in connection with these transactions. The Commission alleged that over a 14-month period, a customer of the Firm's Boca Raton branch deposited more than 2.5 billion shares of several newly issued penny stocks into the customer's account, none of which had registration statements on file with the Commission, and then resold those shares to the public. According

[87] The cases described herein are settlements in which respondents neither admitted nor denied the allegations against them, unless the description explicitly states otherwise.

to the Commission, the customer's account activity exhibited a pattern of red flags indicating that the transactions were part of illegal unregistered distributions, including a pattern of depositing and liquidating the shares and withdrawing the proceeds from each sale, the fact that the certificates deposited did not have restricted legends even though the customer had only recently acquired them in a private transaction with the issuer or third parties who themselves had recently acquired them from the issuer, and the fact that the cumulative number of shares owned and sold over short periods of time constituted a significant percentage of the issued and outstanding shares. Although Section 4(a)(4) of the Securities Act exempts "brokers' transactions executed upon customers' orders," the broker must first conduct a reasonable inquiry to ensure that the customer is not engaged in an illegal, unregistered distribution. Given the red flags that were present, Firm personnel were required to, but did not, make a "searching inquiry" in order to properly rely on the Section 4(a)(4) exemption. With respect to the failure-to-supervise allegation, the Commission alleged, among other things, that the Firm's policies and procedures did not adequately address compliance with Section 5, including how to conduct a reasonable inquiry to determine whether there was an available exemption from registration.

The Firm admitted to certain of the findings in the Commission's Order. As a remedial undertaking relating to both courses of conduct, the Firm agreed to appoint an independent compliance consultant to review the applicable policies and procedures. The Commission censured the Firm, ordered it to cease and desist from any future violations of Section 5 of the Securities Act and Sections 15 and 17 of the Exchange Act, and to pay a $10 million civil penalty (rising to $20 million if the Firm failed to pay a separate $10 million civil penalty entered against it in a related proceeding brought by the Financial Crimes Enforcement Network).

Blue Sheets

In re Credit Suisse Securities (USA) LLC, Exchange Act Rel. No. 75992, 2015 SEC LEXIS 3983 (Sept. 28, 2015).

The Commission accepted an offer of settlement from Credit Suisse Securities (USA) LLC (the Firm), a broker-dealer. The Commission alleged that from January 2012 to January 2014, the Firm failed to provide complete and accurate blue sheet data in response to requests from the Commission, in violation of Section 17(a) of the Exchange Act and Rules 17a-4(j) and 17a-25 thereunder. According to the Commission, a series of technological and human errors during the Firm's migration to a new blue sheet reporting system resulted in the submission of incomplete blue sheets. The Commission alleged that these errors affected more than 593 blue sheet submissions, with the result that more than 553,400 reportable trades were omitted. The Commission took into consideration certain remedial efforts by the Firm to identify and cure the deficient blue sheets and to correct the errors that led to the violations. In addition, the Firm admitted to certain of the findings in the Commission's Order. The Commission censured the Firm, and ordered it to cease and desist from future violations of Section 17(a) and to pay a $4.25 million civil penalty.

Supervision

In re UBS Fin. Servs. Inc. of Puerto Rico, Exchange Act Release No. 76013, 2015 SEC LEXIS 4009 (Sept. 29, 2015).

The Commission accepted an offer of settlement from UBS Financial Services Incorporated of Puerto Rico (the Firm), a registered broker-dealer. The Commission alleged that the Firm failed to reasonably supervise Ramirez, a registered representative, from 2011 to 2013. According to the Commission, Ramirez engaged in a fraudulent scheme involving the use of proceeds of nonpurpose lines of credit (LOCs) to purchase securities. The Firm's internal policy prohibited customers from using LOC proceeds to purchase securities, but Ramirez circumvented the policy by having customers route the proceeds through an outside bank before depositing the funds into their brokerage accounts, and then soliciting customers to use the LOC proceeds to purchase closed-end funds (CEFs) that held Puerto Rico municipal bonds. The Commission alleged that the Firm did not have procedures and systems adequately designed to prevent and detect Ramirez's fraud. In particular, while its policy prohibited the use of LOC proceeds to purchase securities, it did not provide for how the policy should be implemented, and the procedures did not call for specific reports or review with respect to this issue. According to the Commission, the Firm was made aware on at least two occasions that Ramirez may have been violating the Firm's policy (specifically, when an operations manager questioned a series of transactions in the accounts of one of Ramirez's customers and later when a branch manager raised concerns about potential misuse of LOCs to Firm compliance), but the Firm's procedures failed to address reasonable follow-up for violations of this policy. The Commission censured the Firm, ordered it to disgorge $1,188,149, plus prejudgment interest of $174,197, and to pay a $13,637,654 civil penalty. The Commission considered the Firm' agreement to cooperate in determining whether to accept the offer of settlement.

In re Colon, Exchange Act Rel. No. 76014, 2015 SEC LEXIS 4010 (Sept. 29, 2015).

The Commission accepted an offer of settlement from Colon, a registered representative and former branch office manager of a broker-dealer. The Commission alleged that Colon failed to reasonably supervise Ramirez, a registered representative in Colon's office. According to the Commission, Ramirez engaged in a fraudulent scheme involving the use of proceeds of LOCs to purchase securities. The firm's internal policy prohibited customers from using LOC proceeds to purchase securities, but Ramirez circumvented the policy by having customers route the proceeds through an outside bank before depositing the funds into their brokerage accounts, and then soliciting customers to use the LOC proceeds to purchase CEFs that held Puerto Rico municipal bonds. The Commission alleged that in 2011, Colon was alerted to the possibility that Ramirez was engaged in this scheme when an operations manager questioned a series of transactions in the accounts of one of Ramirez's customers, which the operations manager believed could involve improper use of LOC proceeds. Instead of reasonably investigating this red flag, after reviewing the customer's profile, Colon accepted Ramirez's explanation and did not follow up with the customer. The Commission also alleged that Colon failed to follow up on this red flag despite Colon's awareness that Ramirez's performance and the performance of the branch with respect to LOC originations exceeded that of other registered representatives and branches in the region. The Commission suspended Colon from association for 12 months, and

ordered him to pay a $25,000 civil penalty. The Commission considered Colon's agreement to cooperate in determining whether to accept the offer of settlement.

In re Signator Investors, Inc., Exchange Act Rel. No. 75690, 2015 SEC LEXIS 3372 (Aug. 13, 2015).

The Commission accepted offers of settlement from Signator Investors, Inc. (the Firm), a registered broker-dealer and investment adviser, and Gregory Mitchell, a former Director of Compliance for a Firm Office of Supervisory Jurisdiction. The Commission alleged that the Firm did not have policies and procedures reasonably designed to prevent and detect two employees from conducting an offering fraud that defrauded at least 125 Firm clients of approximately $13.5 million. The Commission alleged that the employees solicited clients to invest in a security that was not approved for sale by the Firm, made false and misleading statements regarding that security, and provided clients with consolidated investments reports (known as "Albridge Reports" after the software provider for the reports) that included false valuations for that security. In particular, the Albridge Reports had a manual entry function that the two employees used to add information about the outside investment that was the vehicle for their fraudulent scheme. The Commission alleged that the Firm had no policies or procedures governing the creation, use, review and dissemination of the Albridge Reports, and that reasonable policies and procedures for internal review of the reports likely would have detected the fraud. The Commission also alleged that Mitchell, who was responsible for supervising the two employees, failed reasonably to implement the Firm's policies and procedures for reviewing client files. Specifically, the Commission alleged that rather than conducting a random review, Mitchell permitted representatives to select files for his review, or provided them with an advance list of the files he would review, which allowed the two employees to remove incriminating references from the files prior to Mitchell's review. Mitchell also reviewed fewer files than called for by the Firm's policies. The Commission censured the Firm and ordered it to pay a $450,000 civil penalty. The Commission suspended Mitchell from association for 12 months and ordered him to pay a $15,000 civil penalty.

In re H.D. Vest Inv. Sec., Inc., Exchange Act Rel. No., 2015 SEC LEXIS 860 (Mar. 4, 2015).

The Commission accepted an offer of settlement from H.D. Vest (the Firm), a registered broker-dealer. The Commission alleged that the Firm failed to reasonably supervise a registered representative who engaged in a scheme to misappropriate customer funds through unauthorized and deceptive wire transfers. The representative misappropriated approximately $300,000 from customers, by soliciting them to invest in purported guaranteed bank investments, and then using the proceeds for personal and business expenses. As part of the scheme, the representative wired funds from customer brokerage accounts to bank accounts in the name of his outside business activities (OBAs). According to the Commission, despite knowing that the overwhelming majority of its representatives conduct their securities business through OBAs, the Firm did not have policies and procedures in place to review third-party disbursements from customer brokerage accounts to determine whether funds were being transferred to OBAs. The Commission also alleged a related violation of Section 15(c)(3) of the Exchange Act and Rule 15c3-3 thereunder for failing to comply with reserve bank account

deposit requirements. Because a representative transferred customer funds into OBA bank accounts and misused the funds, the Firm was required to account for these amounts as customer liabilities in its reserve formula calculation, but did not do so. The Commission also alleged that the Firm violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder by failing to preserve electronic communications. Specifically, the Firm permitted registered representatives to communicate with customers using non-Firm email accounts so long as investment-related communications were copied or forwarded to the Firm. The Firm learned, however, that certain communications were not being forwarded. The Commission censured the Firm, and ordered it to cease and desist from future violations and to pay a $225,000 civil penalty. The Firm undertook to retain an independent consultant to review its written supervisory policies and procedures relating to the maintenance of electronic communications and the handling of customer funds by registered representatives.

Financial Reporting

In re Pendergraft, Securities Act Rel. No. 9914, 2015 SEC LEXIS 3867 (Sept. 17, 2015).

The Commission accepted offers of settlement from Pendergraft, formerly an executive and associated person of Penson Financial Services, Inc. (Penson), a former registered broker-dealer, and CEO of Penson's parent company, Penson Worldwide, Inc. (PWI); McAleer, a state-licensed certified public accountant and former CFO of PWI; Johnson, a FINRA-licensed person and formerly a director of PWI and the President and CEO of an unrelated third-party company, Call Now; and Yancey, formerly the President and CEO of Penson and currently associated with another registered broker-dealer. The Commission alleged that Penson, formerly one of the largest clearing firms in the country, made approximately $100 million in failed margin loans, most of them to Call Now and Hall, Call Now's Chairman and controlling shareholder (the Margin Loans). According to the Commission, the collateral for the Margin Loans consisted of distressed municipal bonds related to a financially struggling horse racetrack in Texas, and their value was directly related to an anticipated change in Texas gambling laws that would allow slot machines at horse racetracks, a change that did not materialize. Penson allegedly did not designate these loans as impaired, or liquidate the collateral for the loans, because doing so would have locked in losses for Penson and PWI. Instead, Penson extended additional loans to Call Now and Hall, increasing their indebtedness to Penson in violation of federal margin regulations. During a 2009 FINRA exam, FINRA staff concluded that because the bonds were not marginable, Penson should apply a 100% haircut to the bonds, reducing Penson's net capital. Penson subsequently sent margin calls to Call Now and related entities, but these entities failed to make any deposits in response, and Penson still did not designate the loans as impaired. Because of their delay in recognizing losses on the loans, Penson and PWI filed financial statements that were false and not in accordance with GAAP, and failed to adequately disclose the nature of these loans during that time period. PWI ultimately recorded more than $60 million in losses on the loans in 2011 and 2012, contributing to the events that led to the firms' bankruptcies in 2013.

The Commission alleged that Pendergraft violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, and Section 13(b)(5) of the Exchange Act and Rules 13a-14 and 13b2-1

thereunder, and that he aided and abetted Penson's violation of various federal securities laws by, among other things, approving the Margin Loans in contravention of Regulation T and Penson's policies and procedures, and directing Penson's associated persons not to record losses on the Margin Loans. The Commission barred Pendergraft from association, and ordered him to cease and desist from committing or causing any violations or future violation of enumerated federal securities laws and to pay a $100,000 civil penalty.

The Commission alleged that Johnson caused PWI to violate Sections 13(a), 13(b)(2)(A), and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, and 14a-9 thereunder by signing PWI's filings with the Commission when he knew or should have known that they were materially misleading. The Commission ordered Johnson to cease and desist from committing or causing any violations or future violation of enumerated federal securities laws and to pay a $25,000 civil penalty.

The Commission alleged that Yancey violated Section 15(b)(6) of the Exchange Act for failing to supervise Pendergraft. Although Yancey reported to Pendergraft in Pendergraft's capacity as CEO of PWI, Yancey supervised Pendergraft in Pendergraft's capacity as an associated person of Penson. Despite repeatedly voicing his concerns about the Margin Loans, Yancey failed to detect and prevent Pendergraft's actions with respect to the Regulation T violations and noncompliant financial statements, and instead deferred to Pendergraft's assurances that the Margin Loans were being properly managed and would recover in value. The Commission suspended Yancey from association in a supervisory capacity for six months and ordered him to pay a $25,000 civil penalty.

The Commission alleged that McAleer willfully violated Section 13(b)(5) of the Exchange Act and Rules 13a-14 and 13b-2-1 thereunder, and that he caused PWI to violate various federal securities laws because he directed Penson and PWI to conclude that the Margin Loans were not impaired, which led to financial statements that were not in accordance with GAAP. The Commission barred McAleer from practicing before the Commission as an accountant, with a right to reapply after one year, and ordered him to cease and desist from committing or causing any violations or future violation of enumerated federal securities laws and to pay a $25,000 civil penalty.

In re Sagawa, Securities Act Rel. No. 9733, 2015 SEC LEXIS 835 (Feb. 27, 2015).

The Commission accepted an offer of settlement from Sagawa, the principal and minority owner of a now-defunct registered broker-dealer. The Commission alleged that Sagawa was involved in a scheme by Olympus Corp. to cover up billions of dollars in losses. The Commission alleged that two Olympus executives devised and executed a scheme whereby Olympus hid billions of dollars of losses by transferring them to a secret web of off-balance-sheet entities, which "purchased" Olympus's soured investments with proceeds from bank loans. In order to repay these bank loans, the executives paid a disproportionate financial advisory fee to Axes, Sagawa's broker-dealer. Through a series of additional transactions, Axes effectively transferred the excess fee to the off-balance-sheet entities, which in turn used the money to repay the bank loans. The Commission ordered Sagawa to cease and desist from violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act and Section 15(c)(1)(A) of the Exchange Act, and

barred him from association. Due to his cooperation with the Commission's investigation, the Commission did not impose a civil penalty.

Material Nonpublic Information

In re Marwood Grp Research, LLC, Exchange Act Rel. No. 76512, 2015 SEC LEXIS 4880 (Nov. 24, 2015).

The Commission accepted an offer of settlement from Marwood Group Research, LLC (the Firm), a registered broker-dealer and state-registered investment adviser. The Commission alleged that in 2010 the Firm violated Section 15(g) of the Exchange Act and Section 204A of the Investment Advisers Act of 1940 (the Advisers Act) by failing to establish and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information (MNPI) consistent with the nature of its business. According to the Commission, the Firm, a political intelligence firm, collected information from various government employees, some of which, in the context in which it was conveyed, presented a substantial risk that it could be MNPI. Based in part on that information, the Firm drafted research notes and distributed those research notes to its clients, who were likely using that information to inform securities trading. The Commission alleged that the Firm's procedures for handling MNPI were not followed, including instances in which potential MNPI was not quarantined and the receipt of potential MNPI was not brought to the attention of the Firm's chief compliance officer. The Commission also alleged that the procedures were inadequate, in that they did not sufficiently address the risks associated with the nature of the Firm's business activities. The Commission ordered the Firm to retain an independent compliance consultant to review the Firm's policies and procedures, to cease and desist from committing violations of Section 15(g) of the Exchange Act and Section 204A of the Advisers Act, and to pay a $375,000 civil penalty. The settlement also included Marwood's admission to certain facts in the Commission Order.

In re Wolverine Trading, LLC, Exchange Act Rel. No. 76109, 2015 SEC LEXIS 4171 (Oct. 8, 2015).

The Commission accepted an offer of settlement from Wolverine Trading, LLC (WT), a registered broker-dealer, and its affiliate Wolverine Asset Management LLC (WAM), a registered investment adviser. The Commission alleged that in late February to early March 2012, WT and WAM personnel exchanged information concerning trading strategies and positions in an exchange-traded note (ETN) during a "creation suspension period" with respect to the ETN. According to the Commission, as a result of the communications between a WT trader and WAM's CEO and CIO, WAM became aware of the trading positions, activities, and strategy of WT, a market maker with a significant and increasing short position designed to benefit from any premium that developed as a result of the creation suspension period. Certain communications relating to WT's swap strategy with respect to the ETN provided WAM with a trading opportunity that no other non-market maker received at the time. According to the Commission, this information sharing breached information barrier procedures under which the Wolverine entities were to "conduct business as separate and distinct organizations" with "functional and physical separation" between them. The Commission alleged that WT and WAM

did not adequately enforce their written policies and procedures in connection with information sharing, and that the policies themselves were not reasonably designed to prevent the misuse of material, nonpublic information. The Commission censured WT and ordered it to cease and desist from violating Section 15(g) of the Exchange Act and to pay a $375,000 civil penalty. The Commission censured WAM and ordered it to cease and desist from violating Section 204A of the Advisers Act and to pay disgorgement of $364,146, prejudgment interest of $39,158, and a $375,000 civil penalty. The Commission noted remedial actions promptly undertaken by the firms.

In re Bolan, Securities Act Rel. No. 9795, 2015 SEC LEXIS 2201 (May 28, 2015).

The Commission accepted an offer of settlement from Bolan, a formerly registered representative and research analyst of a registered broker-dealer. Bolan, a well-respected research analyst in the healthcare sector, was in the business of publishing ratings of companies within the sector. The Commission alleged that Bolan provided material, nonpublic information to a trader within his firm ahead of publishing a ratings downgrade of a publicly traded company. The trader then took short positions in that company's stock ahead of Bolan's report, generating gains in the trader's account of $24,944. The Commission alleged that Bolan benefitted from providing information to the trader by virtue of his friendship with the trader and the trading desk's positive feedback to Bolan's superiors, which aided in his promotion. The Commission also alleged that Bolan was aware of the firm's policies specifically prohibiting dissemination of information regarding impending rating changes, and that Bolan knew or should have known that he was providing the trader with material nonpublic information. The Commission alleged that Bolan's actions constituted a violation of Section 17(a)(3) of the Securities Act. The Commission ordered Bolan to cease and desist from violating Section 17(a)(3), to pay in installments a $75,000 civil penalty, and to disgorge the $24,944 in profits obtained by the trader, plus interest, which disgorgement would be satisfied if paid by the firm.

Interpositioning

In re Burke, Securities Act Rel. No. 9968, 2015 SEC LEXIS 4460 (Oct. 28, 2015).

The Commission accepted an offer of settlement from Burke, a formerly registered representative at a formerly registered broker-dealer. According to the Commission, for a two-year period, Burke needlessly inserted his longstanding customer, a proprietary day trader at another firm, into transactions he executed on behalf of other customers. In approximately 100 transactions, Burke either (1) transmitted customer trade order information to his day-trading customer in order for it to fill orders through its own account with the broker-dealer, or (2) exercised discretionary trading authority to route trade orders through the day-trading customer's account with the broker-dealer. As a result, Burke's day-trading customer typically reaped a profit by either purchasing from or selling to the original customer at a better price than that available in the contemporaneous market. Likewise, Burke's customers were often forced to purchase securities at higher prices or sell them at lower prices than they could have obtained in the open market. Burke and the broker-dealer with which he was associated earned double commissions on these trades, one for the trade on behalf of the day-trading customer and one for the trade on behalf of the original customer. The Commission alleged that Burke's

conduct constituted a failure to comply with his duty of best execution and a violation of the antifraud provisions of the federal securities laws. The Commission ordered Burke to cease and desist from violating the antifraud provisions of the federal securities laws and barred him from association with the right to reapply after five years. The Commission also ordered Burke to pay a $50,000 civil penalty and disgorge $6,300 in illicit commissions, plus prejudgment interest.

In re Tunick, Securities Act Rel. No. 9969, 2015 SEC LEXIS 4461 (Oct. 28, 2015).

The Commission accepted an offer of settlement from Tunick, a former principal of and co-head of the equities trading desk at a now defunct registered broker-dealer. The Commission alleged that Tunick perpetrated a fraudulent scheme by needlessly inserting his long-standing customer, a proprietary trader, into the filling of other customers' orders often at a profit to the long-standing customer. The Commission alleged that Tunick failed to seek to obtain best execution on those orders by causing them to be filled at prices worse than those readily available in the market. As a result of Tunick's conduct, other customers generally paid higher average prices on purchase orders or received lower average prices on sale orders than they would have paid or received had Tunick's long-standing customer not been inserted. The Commission further alleged that Tunick knowingly put the interests of his long-standing customer ahead of other customers, and that Tunick's firm earned double trading commissions as a result of his conduct. The Commission ordered Tunick to cease and desist from violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10(b)-5 thereunder, barred him from association, and ordered him to pay a $125,000 civil penalty.

Market Access Rule

In the Matter of Goldman, Sachs & Co., Exchange Act Rel. No. 75331, 2015 SEC LEXIS 2726 (June 30, 2015).

The Commission accepted an offer of settlement from Goldman, Sachs & Co. (the Firm) for alleged violations of Exchange Act Rule 15c3-5, also known as the "market access rule." The Commission alleged that on August 20, 2013, a series of human and computer errors at the Firm caused it to erroneously submit thousands of $1.00 limit orders to options exchanges prior to the start of regular market trading. Although the Firm attempted to cancel these orders before the start of trading, it received executions for a portion of the orders, representing approximately 150 million shares. The Firm faced potential losses of up to $500 million, but was able to limit its losses to $38 million by invoking the relevant exchanges' rules on obviously erroneous orders. The Commission alleged that the events of August 20, 2013 could have been avoided if the Firm had appropriate risk management controls and supervisory procedures in place, as required by the market access rule. According to the Commission, among other things, the Firm's written policies did not require that a software configuration change, which had contributed to the erroneous orders, be reviewed by an employee other than the person who made the particular change. In addition, policies relating to the manual "lifting" of circuit breakers intended to block erroneous orders were not disseminated to or fully understood by the employees responsible for deciding when the circuit breakers should be lifted. The Commission ordered the Firm to cease and desist from any future violations of the market access rule, censured it, and ordered it to pay a $7 million civil penalty. The Commission noted

the remedial efforts promptly undertaken by the Firm and its cooperation with the Commission Staff.

Market Manipulation

In re Borg, Securities Act Rel. No. 9957, 2015 SEC LEXIS 4073 (Sept. 30, 2015).

The Commission accepted offers of settlement from Respondents Borg and Mulkeen. Borg was a former owner, officer, and registered representative of a now defunct broker-dealer, All Funds, Inc. Mulkeen was the President, Comptroller, Chief Compliance Officer, and Borg's direct supervisor at All Funds, Inc. The Commission alleged that Borg periodically manipulated the market for the common stock of Natural Alternatives International, Inc. ("NAII") between 2003 and 2011, engaging in trading to support NAII's stock price and give the false appearance of investor interest. The Commission alleged that he directed trading in several of his customers' accounts, personally invested heavily in NAII, and had several of his customers invest heavily in NAII. Although Borg personally owned as much as 22.5% of NAII's outstanding stock, and customers at the Firm, combined with Borg's personal holdings, owned as much as 55% of the outstanding shares, Borg did not report any of his holdings, as required by the federal securities laws, until 2012, when he filed a Schedule 13G and other forms that understated the number of shares he beneficially owned. Finally, the Commission alleged that in order to maintain control over customer accounts that transferred to another brokerage firm after All Funds closed, Borg impersonated several of his customers in recorded calls. As to Mulkeen, the Commission alleged that as Borg's long-time associate, he failed to supervise Borg in any meaningful way. Mulkeen reviewed and approved all of Borg's trades, notwithstanding repeated red flags related to wash trading, matched orders among customer accounts, and questionable suitability for one customer with a concentrated position in NAII stock. Mulkeen told Borg to file beneficial ownership reports, but took no action when he failed to do so.

The Commission ordered Borg to cease and desist from future violations of Section 17(a) of the Securities Act, and Sections 9(a)(1), 10(b), 13(d), and 16(a) of the Exchange Act and Rules 10b-5, 13d-1, 13d-2, and 16a-3 thereunder. The Commission also barred Borg from association, and ordered him to disgorge $145,728 plus prejudgment interest of $48,575, and to pay a $1,300,000 civil penalty. The Commission barred Mulkeen from association and ordered him to pay a $50,000 civil penalty.

In re Richard, Securities Exchange Act Rel. No. 76058, 2015 SEC LEXIS 4078 (Sept. 30, 2015).

The Commission accepted an offer of settlement from Richard, a former advisory representative of a registered investment adviser and former registered representative of a registered broker-dealer. The Commission alleged that Richard violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act when, as a significant shareholder of a particular company, he purchased $1.1 million worth of shares of that company in clients' accounts on a discretionary basis, executed transactions in the company's stock at the end of the day to affect the closing price, and prevented sales of shares of the company's stock or caused other clients to simultaneously purchase shares of the stock

when placing sale orders. He also allegedly misrepresented to clients the market for the stock, which was dominated by Richard's trading, and failed to disclose that his activity outlined above inflated the price of the stock. Richard also failed to disclose his ownership interest in the company or loans or other benefits he gave to the company. The Commission barred Richard from association, and ordered him to cease and desist from committing or causing any violations or future violations and to pay disgorgement of $62,000, prejudgment interest of $7,000, and a $75,000 civil penalty.

Misappropriation

SEC v. Thornes, Litigation Rel. No. 23320, 2015 SEC LEXIS 3316 (C.D. Cal. Aug. 13, 2015).

The US District Court for the Central District of California entered a final judgment by consent against Thornes, the former owner of Thornes & Associates, Inc., a broker-dealer. In its Complaint, the Commission alleged that Thornes misappropriated $4.4 million from two customers' brokerage accounts: a trust account established for the benefit of a dementia patient in her eighties, for which Thornes was the trustee and broker; and a scholarship trust account for local students, for which Thornes's mother was trustee. The court permanently enjoined Thornes from future violations of the antifraud provisions of the federal securities laws, and ordered him to pay disgorgement of $4,366,790, prejudgment interest of $278,540, and a penalty of $4,366,790. In a related action, the Commission barred Thornes from association.

Misrepresentation/Sales Practices

In re Fretz, Securities Act Rel. No. 9925, 2015 SEC LEXIS 3926 (Sept. 23, 2015).

The Commission accepted offers of settlement from Fretz and Freeman, who, as de facto controlling parties of a limited partnership, solicited 58 others to become partners and, according to the Commission, fraudulently used the proceeds to prop up a failing broker-dealer they controlled. Fretz and Freeman also acted as investment advisers to the partnership. Allegedly, they represented to prospective partners that the partnership's purpose was to invest in direct marketing companies, that Fretz and Freeman would act as fiduciaries to the partnership, and that the partnership would pay advisory fees to Fretz and Freeman only if certain performance metrics were achieved. In reality, according to the SEC, Fretz and Freeman did not invest all of the funds invested by the solicited partners, but used the funds to (1) cover operating losses of a broker-dealer that they controlled in an amount of at least $1,100,500; (2) pay nearly $4 million in personal expenses; and (3) pay themselves approximately $600,000 in performance fees despite the partnership's failure to achieve the required metrics. Fretz and Freeman also put up certain of the partnership's assets as collateral for personal loans. As a result of these alleged activities, none of which were disclosed to the partners, the partnership eventually was forced to file for bankruptcy. The Commission ordered Fretz and Freeman to cease and desist from violating the antifraud provisions of the federal securities laws, barred them from association, and ordered them collectively to pay disgorgement of $5,476,928 plus prejudgment interest of $353,582, and individually to pay a $500,000 civil penalty.

Acknowledging that Fretz and Freeman had waived any rights or interests they may have had in the partnership in bankruptcy, the Commission stated that any such interest to which the bankruptcy proceeding found Fretz and Freeman entitled would be offset against their disgorgement and penalty sanctions, in that order.

In re Fox, Securities Act Rel. No. 9908, 2015 SEC LEXIS 3700 (Sept. 8, 2015).

The Commission accepted an offer of settlement from Fox, the Chief Executive Officer of Ditto Holdings, Inc. (Ditto), and former registered representative of its broker-dealer subsidiary, Ditto Trade, Inc. The Commission alleged that over the course of several years, Ditto raised millions of dollars through multiple offerings of Ditto common and preferred stock without filing a registration statement as required by Sections 5(a) and 5(c) of the Securities Act. The Commission also alleged that offering documents were not made available to every potential investor whose interest was solicited, that the offering documents did not contain required financial information, and that large sales of securities were made to nonaccredited individual investors. The Commission ordered Fox to cease and desist from any future violations of Sections 5(a) and 5(c) of the Securities Act, and to pay disgorgement of $125,210 (plus prejudgment interest) and a $75,000 civil penalty. Fox also consented to additional proceedings to determine whether additional nonfinancial remedial sanctions were necessary.

In re Citigroup Alternative Invs. LLC, Securities Act Rel. No. 9893, 2015 SEC LEXIS 3364 (Aug. 17, 2015).

The Commission accepted an offer of settlement from Citigroup Alternative Investments LLC (CAI) and Citigroup Global Markets Inc. (CGMI) (together, the Firms). According to the Commission, between 2002 and 2007, while CAI was the investment manager of two hedge funds, a CAI fund manager and his staff made material misstatements and omissions to wholesalers and financial advisers of CGMI, and to investors, concerning the performance of and risks associated with the hedge funds. The wholesalers, in turn, passed these material misstatements and omissions on to financial advisers, who relayed them to investors. The alleged misrepresentations involved assurances that investments in the hedge funds were safe, low-risk "bond substitutes," when, in reality, they were much riskier. The alleged omissions included the manager's failure to reveal to the wholesalers, financial advisers, or investors that the manager's internal analyses revealed a significant risk of loss in the hedge funds, that the manager had to sell additional fund assets to cover margin calls, and that the funds' liquidity was seriously compromised.

The Commission alleged that the Firms lacked policies and procedures sufficient to review the fund manager's communications with the wholesalers, financial advisers, and investors in order to ensure the accuracy of oral and written communications related to the funds' risk, performance, and liquidity. According to the Commission, the Firms' lack of adequate review policies and procedures constituted violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act; CAI violated Section 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder; and CGMI violated Section 206(2) of the Advisers Act. The Commission ordered the Firms to cease and desist from violating these provisions, censured the Firms, and ordered them to pay disgorgement of $139,950,239 and prejudgment interest of $39,612,089 and to

submit, within 120 days, a plan of distribution to the hedge funds' investors of the disgorgement and interest amounts.

In re Success Trade, Inc., Securities Act. Rel. No. 75707, 2015 SEC LEXIS 3390 (Aug. 14, 2015).

The Commission accepted an offer of settlement from Success Trade, Inc. (STI); its registered broker-dealer subsidiary Success Trade Securities, Inc. (STS); and Ahmed, the principal and Chief Executive Officer of both STI and STS (collectively, Respondents). The Commission alleged that proceeds from certain promissory notes issued by STI (Notes) were used for purposes that were not disclosed in the Notes' private placement memoranda (PPMs), including paying previous noteholders, expenses for Ahmed, and interest-free, undocumented, and unsecured loans to Ahmed's brother. According to the Commission, among other allegations, the PPMs also allegedly misrepresented the amount of funds to be raised by the Notes and the interest rate payable on the Notes. In addition, the Notes were neither registered nor exempt from registration with the Commission. The Commission ordered Respondents to cease and desist from committing or causing any violations or future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and to pay disgorgement of $12,777,396 plus prejudgment interest of $1,503,425 and a $12,777,396 civil penalty. The Commission also revoked STS's registration. Ahmed agreed to additional proceedings to determine whether he should be barred.

In re Dorkan, Securities Act Rel. No. 9878, 2015 SEC LEXIS 3237 (Aug. 5, 2015).

The Commission accepted an offer of settlement from Dorkan, a registered representative. The Commission alleged that Dorkan raised more than $7 million from investors in an unregistered sale of bonds. According to the Commission, Dorkan sold $3.5 million of the bonds to customers and others without any prospectus or offering materials, and induced investors to purchase the bonds by making material misrepresentations concerning, among other things, the issuer's financial condition and the risks of the bonds. Dorkan's sales, for which he received undisclosed compensation of at least $143,000, contravened his firm's policies and a specific directive from the firm that he not sell the bonds. The Commission ordered Dorkan to cease and desist from violating Sections 5(a), 5(c), and 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, barred Dorkan from association, and ordered him to pay disgorgement of $143,000, prejudgment interest of $23,593, and a $115,000 civil penalty.

In re Evans, Exchange Act Rel. No. 75340, 2015 SEC LEXIS 2728 (July 1, 2015).

The Commission accepted an offer of settlement from Evans, formerly registered as a representative of a succession of registered broker-dealers. The Commission alleged that, in his capacity as a registered representative, Evans was tasked with providing independent monthly price quotes for mortgage-backed securities held in a portfolio managed by his client, an investment adviser. However, Evans agreed to adopt the price quotes suggested by the investment adviser, from whom he received a large portion of his annual commissions, after only a cursory review. These price quotes improperly inflated the net asset values of the funds held by the investment adviser, which in turn inflated the fees the adviser collected. The

Commission alleged that Evans thereby aided and abetted the adviser's violations of Section 206(2) of the Advisers Act. The Commission ordered Evans to cease and desist from committing violations, barred him from association with a right to reapply after one year, and ordered him to pay a $15,000 civil penalty.

In re VCAP Sec., LLC, Exchange Act Rel. No. 74305, 2015 SEC LEXIS 655 (Feb. 19, 2015).

The Commission accepted an offer of settlement from VCAP Securities, LLC, a formerly registered broker-dealer and Brett Thomas Graham, VCAP's CEO (collectively, the Respondents). The Commission alleged that the Respondents engaged in a scheme in which they misused VCAP's position as the liquidation agent for collateralized debt obligations (CDOs) to improperly benefit funds managed by VCAP's affiliated investment adviser, Vertical Capital. According to the Commission, although VCAP and its affiliates were not allowed to bid in the CDO auctions, Graham arranged for a third-party broker-dealer to make bids using confidential bidding information to which VCAP gained access due to its role as liquidation agent, which allowed the third-party broker to purchase the bonds that Vertical Capital wanted at prices just slightly higher than other bids. After winning the bonds in the auction, the third-party broker immediately sold them to Vertical Capital at a small markup. The Commission alleged that the Respondents' conduct violated the terms of their engagement with the trustees of the CDOs, in which Graham falsely represented that VCAP would not bid in the auctions it conducted or misuse confidential information and/or bidding information it obtained as the liquidation agent. The Commission ordered Respondents to cease and desist from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The Commission censured VCAP and ordered it to pay disgorgement of $1,064,555 and prejudgment interest of $85,044. In light of its financial condition, no fine was imposed on VCAP. The Commission ordered Graham to pay disgorgement of $118,284, prejudgment interest of $9,499, and a $200,000 civil penalty, and barred him from association with the right to reapply in three years.

Municipalities Continuing Disclosure Cooperation Initiative

During fiscal year 2015, the Commission accepted offers of settlement from 58 separate municipal underwriting firms, announced on June 18, 2015 and on September 30, 2015, in connection with the Municipalities Continuing Disclosure Cooperation Initiative (MCDC Initiative).[88] In each of the settlements, the Commission alleged that the firm failed to conduct adequate due diligence in connection with certain representations in official statements for a number of municipal securities offerings for which it was a senior or sole underwriter. According to the Commission, the official statements for these issuances represented that the issuer had not failed to comply with previous continuous disclosure undertakings required by Rule 15c2-12, when in fact there had been instances of noncompliance. The settling firms neither admitted nor denied liability in settling the enforcement action, which was brought after a voluntary self-

[88] *See* SEC Press Release No. 2015-125, SEC Charges 36 Firms for Fraudulent Municipal Bond Offerings (June 18, 2015), http://www.sec.gov/news/pressrelease/2015-125.html; SEC Press Release No. 2015-220, SEC Sanctions 22 Underwriting Firms for Fraudulent Municipal Bond Offerings (Sept. 30, 2015), http://www.sec.gov/news/pressrelease/2015-220.html.

report as part of the MCDC Initiative.

Under the MCDC Initiative, the Division of Enforcement agreed to recommend civil penalty amounts that were capped in a tiered structure, based on 2013 reported total annual revenues. The Division recommended a civil penalty capped at $500,000 for firms with revenues of more than $100 million, a cap of $250,000 for firms with revenues between $20 million and $100 million, and a cap of $100,000 for firms with revenues of less than $20 million.[89] A chart of the firms[90] and the settlements follows.

Penalties up to $100,000	Amount
Central States Capital Markets, LLC	$60,000
Comerica Securities, Inc.	$60,000
Commerce Bank Capital Markets Group*	$40,000
Davenport & Company LLC	$80,000
Estrada Hinojosa & Company, Inc.	$40,000
Fifth Third Securities, Inc.	$20,000
Loop Capital Markets, LLC	$60,000
The Northern Trust Company	$60,000
Smith Hayes Financial Services Corporation	$40,000
Sterne, Agee & Leach, Inc.	$80,000
U.S. Bank Municipal Securities Group, a Division of U.S. Bank National Association*	$60,000
William Blair & Co., L.L.C.	$80,000

Penalties from $100,000 to $249,999	Amount
Ameritas Investment Corp.	$200,000
BB&T Securities, LLC	$200,000
Benchmark Securities, LLC	$100,000
Bernardi Securities, Inc.	$100,000
BNY Mellon Capital Markets, LLC	$120,000
Country Club Bank*	$140,000
Edward D. Jones & Co., L.P.	$100,000
First National Capital Markets, Inc.	$100,000
The Frazer Lanier Company, Incorporated	$100,000
Hutchinson, Shockey, Erley & Co.	$220,000
Joe Jolly & Co., Inc.	$100,000

89 *See* SEC Press Release No. 2014-156, SEC Enforcement Division Modifies Municipalities Disclosure Initiative (July 31, 2014), http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542578459.

90 According to the relevant SEC Order, each of the listed respondents denoted with an asterisk is registered with the Commission as a municipal securities dealer and not a broker-dealer.

Penalties from $100,000 to $249,999	Amount
L.J. Hart and Company	$100,000
Martin Nelson & Co., Inc.	$100,000
Merchant Capital, L.L.C.	$100,000
Mesirow Financial, Inc.	$100,000
Northland Securities, Inc.	$220,000
NW Capital Markets Inc.	$100,000
Prager & Co., LLC	$100,000
Ross, Sinclaire & Associates, LLC	$220,000
Siebert Brandford Shank & Co., LLC	$240,000
Wells Nelson & Associates, LLC	$100,000

Penalties from $250,000 to $500,000	Amount
The Baker Group, LP	$250,000
B.C. Ziegler and Company	$250,000
BMO Capital Markets GKST Inc.	$250,000
BOSC, Inc.	$250,000
Citigroup Global Markets Inc.	$500,000
City Securities Corporation	$250,000
Crews & Associates, Inc.	$250,000
Dougherty & Co., LLC	$250,000
Duncan-Williams, Inc.	$250,000
George K. Baum & Company	$250,000
Goldman, Sachs & Co.	$500,000
J.J.B. Hilliard, W.L. Lyons, LLC	$420,000
J.P. Morgan Securities LLC	$500,000
Merrill Lynch, Pierce, Fenner & Smith Incorporated	$500,000
Morgan Stanley & Co., LLC	$500,000
Oppenheimer & Co., Inc.	$400,000
Piper Jaffray & Co.	$500,000
PNC Capital Markets LLC	$500,000
Raymond James & Associates, Inc.	$500,000
RBC Capital Markets, LLC	$500,000
Robert W. Baird & Co. Incorporated	$500,000
Stephens Inc.	$400,000
Stifel, Nicolaus & Company, Inc.	$500,000
UBS Financial Services, Inc.	$480,000
UMB Bank, N.A. Investment Banking Division*	$420,000

Municipal Securities Offerings

In re Edward Jones & Co., L.P., Securities Act Rel. No. 9889, 2015 LEXIS 3369 (Aug. 13, 2015).

The Commission accepted an offer of settlement from Edward D. Jones & Co., L.P. (the Firm), a registered broker-dealer. According to the Commission, from at least February 2009 to December 2012, the Firm violated its obligations as a member of the underwriting syndicate for new issue municipal bonds. Specifically, the Commission alleged that the Firm's municipal syndicate desk, in several negotiated offerings where it served as a co-manager, obtained bonds for its own inventory and then offered them to customers at prices higher than the initial offering prices negotiated with the issuer. The Commission also alleged that in some instances, the municipal syndicate desk refrained entirely from offering new issue municipal bonds to customers until after the bonds began trading, at which point the firm offered and sold the bonds to customers at prices above the initial offering prices. According to the Commission, this conduct increased the Firm's revenues from municipal bond trading and caused customers to pay higher prices, and in one instance resulted in an adverse federal tax determination for a municipal issuer, creating a risk that the issuer could lose valuable federal tax subsidies. The Commission also made certain allegations concerning the Firm's trading of municipal bonds in the secondary market; specifically, that between January 2011 and October 2013, the Firm's supervisory system did not enable it to adequately monitor whether the markups it charged for certain transactions were reasonable. According to the Commission, the alleged conduct violated Sections 17(a)(2) and 17(a)(3) of the Securities Act; Section 15B(c)(1) of the Exchange Act; and Rules G-17, G-11(b) and (d), G-27, and G-30(a) of the MSRB, and also constituted a failure to supervise under Section 15(b)(4)(E) of the Exchange Act. The Commission censured the Firm and ordered it to cease and desist from violations. The Firm was also ordered to pay disgorgement of $4,524,332.60 and prejudgment interest of $670,068.77 to a disgorgement fund it would administer, and a $15 million civil penalty. The Commission took into account that in 2013, the Firm began to undertake significant remedial measures related to these matters, and provided partial restitution to customers.

In re Wishman, Securities Act Rel. No. 9890, 2015 SEC LEXIS 3370 (Aug. 13, 2015).

The Commission accepted an offer of settlement from Wishman, former head of the municipal syndicate desk at Edward D. Jones & Co., L.P. (the Firm), a broker-dealer. The Commission alleged that Wishman violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, various MSRB Rules governing sales of municipal bonds, and Section 15B(c)(1) of the Exchange Act by causing the Firm to violate MSRB Rules. The Commission alleged that, in certain instances where the Firm was acting as underwriter and co-manager for public offerings of municipal bonds, Wishman either offered the bonds to customers at prices above the initial offering price or refrained from selling bonds entirely until after public trading had begun so that she could offer the bonds to customers for more than the initial offering price. The Commission alleged that the Firm collected at least $4.67 million in increased revenues as a result of these practices. The Commission ordered Wishman to cease and desist from any future violations, barred Wishman from association with a right to reapply after two years, and ordered her to pay a $15,000 civil penalty.

In re StateTrust Invs., Inc., Exchange Act Rel. No. 74792, 2015 SEC LEXIS 1560 (Apr. 23, 2015).

The Commission accepted an offer of settlement from StateTrust Investments, Inc. (the Firm), a broker-dealer and municipal securities dealer. The Firm was alleged to have violated MSRB Rule G-15(f), which sets minimum denominations for transactions in municipal securities by broker-dealers. Specifically, the Commission alleged that the Firm executed one unsolicited sale transaction to a customer in noninvestment-grade bonds issued by the Commonwealth of Puerto Rico in an amount below the $100,000 minimum denomination of the issue. The Firm also failed to disclose to the customer that the transaction fell below the minimum denomination and to explain how this could affect the liquidity of the customer's position. The Commission censured the Firm, and directed it to cease and desist from future violations, to review and (if necessary) revise its MSRB compliance policies and procedures within six months, and to pay a $90,000 civil penalty. The Commission took notice of the Firm's remedial efforts, which included canceling the transaction at issue prior to settlement and instituting additional compliance training on MSRB Rules.

Net Capital Violations

In re Krill, Exchange Act Rel. No. 74994, 2015 SEC LEXIS 1987 (May 19, 2015).

The Commission accepted an offer of settlement from Krill, the former Financial and Operations Principal and CFO of Lighthouse Financial Group, LLC, a registered broker-dealer. The Commission alleged that Krill violated Section 17 of the Exchange Act and Rules 17a-3(a) and 17a-5(a) thereunder by making multiple errors in the preparation of Lighthouse's financial statements, which resulted in its reported net capital being overstated by approximately $5 million, or 350%. Among other things, Krill overstated the firm's assets, understated liabilities, and erred in calculating haircuts on equity holdings. According to the Commission, Krill acted negligently in several respects, and knew or should have known that certain reports he relied on were incomplete. The Commission ordered Krill to cease and desist from any future violations of Section 17 or Rules 17a-3(a) and 17a-5(a) thereunder, and suspended Krill from association for 12 months. In a subsequent proceeding (*In re Krill,* Exchange Act Rel. No. 758906 (Sept. 11, 2015)), Krill was ordered to pay disgorgement of $20,833 and prejudgment interest of $25,384.

Regulation ATS

In re ITG Inc., Securities Act Rel. No. 9887, 2015 SEC LEXIS 3346 (Aug. 12, 2015).

The Commission accepted an offer of settlement from ITG Inc. (the Firm), a subsidiary of a registered broker-dealer. The Commission alleged that the Firm operated an ATS or "dark pool" that publicly disclosed that the type of order and identity of pool participants were to be kept confidential. In 2010, the Firm launched a confidential proprietary trading desk. Although the Firm established policies intended to prevent the flow of order and identity information to the proprietary trading desk, those policies were ineffective, and persons on the trading desk obtained and used order and identity information to buy and sell securities at prices

advantageous to the desk. Upon discovering the policy violations, management at the Firm temporarily suspended the trading desk's operations, but later permitted them to resume without effectively implementing augmented policies and procedures to prevent the desk's access to confidential information. The trading desk's gross revenues for the approximately 15 months that it was in existence totaled about $2,081,304.

According to the Commission, the Firm violated Rule 301(b)(10) of Regulation ATS by failing to restrict access to dark pool subscriber information, and Rule 301(b)(2) of Regulation ATS by failing to amend its Form ATS to reflect the implementation of a proprietary trading desk with access to order and identity information of dark pool participants. The Commission also alleged that the Firm's conduct violated Sections 17(a)(1) and 17(a)(3) of the Securities Act. The Commission ordered the Firm to cease and desist from violating these provisions, censured the Firm, and ordered it to pay an $18,000,000 civil penalty, disgorgement of $2,081,304, and prejudgment interest of $256,532. As part of the settlement, the Firm admitted to the conduct described in the Commission Order.

In re UBS Sec. LLC, Securities Act Rel. No. 9697, 2015 SEC LEXIS 200 (Jan. 15, 2015).

The Commission accepted an offer of settlement from UBS Securities LLC (the Firm), a registered broker-dealer. The Commission alleged that between May 2008 and May 2012, the Firm's operation of its ATS violated federal securities laws and regulations at different times and in various ways. According to the Commission, the Firm violated Rule 612 of Regulation NMS by accepting and ranking orders priced in increments smaller than one cent. The Commission noted that Rule 612 was designed to prevent orders from executing before others based upon economically insignificant subpenny price differences. Although many of the subpenny orders resulted from technical problems, some were a feature of an order type that the Firm created and marketed to high-frequency trading firms and/or market makers. The Commission further alleged that the Firm violated Section 17(a)(2) of the Securities Act by failing to provide all subscribers with notice of a feature that could prevent an order from executing in the ATS against orders from subscribers whose flow was designated as "non-natural." This feature could only be used to benefit orders on behalf of certain users who paid to have their orders executed systematically through an algorithmic trading tool. Additionally, the Commission alleged that the Firm violated Rule 301(b)(2) of Regulation ATS by filing and failing to amend, or failing to file, multiple Forms ATS relating to its subpenny order acceptance and its "natural-only" selling restrictions. The Commission also alleged that the Firm violated Rule 301(b)(10) of Regulation ATS by failing to limit access to confidential trading information, including by allowing information technology personnel to access the information. Finally, the Commission alleged that the Firm violated Section 17(a) of the Exchange Act, Exchange Act Rule 17a-4(b)(1), and Rules 301(b)(8) and 303 of Regulation ATS by failing to keep order data for prescribed periods of time. The Commission censured the Firm, and ordered it to cease and desist from future violations and to pay disgorgement of $2,240,702, prejudgment interest of $235,686, and a $12 million civil penalty.

Regulation NMS

In re Latour Trading LLC, Exchange Act Rel. No. 76029, 2015 SEC LEXIS 4061 (Sept. 30, 2015).

The Commission accepted an offer of settlement from Latour Trading LLC (Latour), a registered broker-dealer. The Commission alleged that the firm used high-speed algorithmic trading and associated automated processes to send Intermarket Sweep Orders (ISOs) that, as a result of changes to software code made by Latour's parent company, did not comply with the requirements of Regulation NMS. These software changes were made without Latour's knowledge or approval, and introduced errors into the software Latour used to send ISOs to the market. The Commission alleged that these actions were in violation of Section 15(c)(3) of the Exchange Act and Rule 15c3-5(d) thereunder, which require that controls and supervisory procedures of a broker or dealer to manage financial and regulatory risks of its market access must be under the direct and exclusive control of the broker or dealer. The Commission further alleged that Latour made changes to its ISO routing logic that caused it to send ISOs to the market that, under certain circumstances, did not comply with the requirements of Regulation NMS Rule 611(c), in that they did not include necessary destination instructions on Latour's directed ISOs. The Commission also alleged that Latour's procedures were not reasonably designed to prevent the entry of orders that did not comply with Regulation NMS, in violation of Rules 15c3-5(b) and 15c3-5(c)(2)(i). The Commission ordered Latour to cease and desist from violations of Section 15(c) of the Exchange Act and Rule 15c3-5 thereunder and Rule 611(c) of Regulation NMS, and to pay a $5 million civil penalty, disgorgement of $2,784,875, and prejudgment interest of $268,564.

Regulation SHO

In re DeLaSierra, Exchange Act Rel. No. 75938, 2015 SEC LEXIS 3828 (Sept. 17, 2015).

In re Hall, Exchange Act Rel. No. 75939, 2015 SEC LEXIS 3829 (Aug. 4, 2015).

The Commission accepted an offer of settlement from Hall, a registered person and previously a vice president of Penson, a formerly registered broker-dealer and clearing firm. Hall was responsible for securities lending activities at Penson. The Commission also accepted an offer of settlement from DeLaSierra, a former vice president of Penson, also responsible for securities lending activities.

The Commission alleged that Penson failed to close out Continuous Net Settlement (CNS) failures to deliver resulting from certain long sales by market open on the third business day after the settlement date (T+6), in violation of Rule 204(a) of Regulation SHO. According to the Commission, from October 2008 through November 2011, the firm systematically failed to close out CNS failures to deliver resulting from certain long sales by market open T+6. Specifically, the Commission alleged that when a margin customer sold hypothecated securities that were out on loan, Penson issued account-level recalls to the borrowers on T+3. If the borrowers did not return the shares by the close of business T+3 and Penson did not otherwise have enough

shares of the relevant security to meet its CNS delivery obligations, Penson incurred a CNS failure to deliver in the relevant security. When the open stock loan continued to cause a CNS failure to deliver as of market open T+6, it was Penson's procedure not to purchase or borrow shares sufficient to close out its failure-to-deliver position. Instead, Penson systematically violated Rule 204(a) by allowing its CNS failure to deliver position to persist beyond market open T+6.

The Commission alleged that DeLaSierra implemented procedures that he knew, or was reckless in not knowing, did not comply with Rule 204 of Regulation SHO, which requires registered participants of clearing agencies to close out CNS failures to deliver within specified time frames. Although the Commission alleged that DeLaSierra notified his supervisor of this issue, Penson continued to employ deficient procedures, and the Commission charged that DeLaSierra knew or was reckless in not knowing of the continuing deficiencies. The Commission censured DeLaSierra and ordered him to cease and desist from future violations of Rule 204(a) of Regulation SHO. Based upon his cooperation with the Commission, the Commission did not impose a civil penalty.

As to Hall, the Commission alleged that he knew or was reckless in not knowing that these deficient procedures were causing Penson to violate Rule 204. However, Hall played a significant role in bringing the violations to the attention of the regulators. Penson had failed to disclose the noncompliant procedures to FINRA over the course of more than two years, while Commission and FINRA examiners were focusing on its Rule 204 practices. The practices were finally disclosed in a letter to FINRA that Hall drafted. According to the Commission, early drafts of the letter prepared by Penson personnel other than Hall did not disclose the noncompliant procedures. Midway through the drafting process, Hall took over responsibility for the draft and included the language disclosing Penson's noncompliant procedures. The Commission censured Hall, and ordered him to cease and desist from Regulation SHO violations, but did not impose a civil penalty in light of his cooperation.

In re Merrill Lynch, Pierce, Fenner & Smith Inc. and Merrill Lynch Professional Clearing Corp., Exchange Act Rel. No. 75083, 2015 SEC LEXIS 2219 (June 1, 2015).

The Commission accepted an offer of settlement from Merrill Lynch, Pierce, Fenner & Smith Incorporated and its subsidiary, Merrill Lynch Professional Clearing Corporation, each a registered broker-dealer (together, the Respondents). According to the settlement, the Respondents admitted the Commission's findings and acknowledged that their conduct violated the federal securities laws. Specifically, the Commission found that the Respondents' conduct violated Regulation SHO in that its use of Easy to Borrow (ETB) lists failed, in two respects, to comport with Commission guidance relating to reliance on such lists. First, the Respondents' execution platforms were designed to continue accepting short-sale orders throughout the day in reliance on the Respondents' lending desk's daily ETB list, even as to stocks that the lending desk had placed on a watch list due to intraday developments impacting that stock's availability. Although the Respondents' practice under these circumstances was that the Respondents' lending desk could not rely exclusively on the ETB list to grant "locates," the Respondents' execution platforms continued to execute short sales solely in reliance on the ETB list. Second, due to a systems flaw, the Respondents in certain instances used data that was more than 24

hours old for purposes of constructing the Respondents' ETB lists, with the result that multiple securities were included on ETB lists on days when they should not have been, leading to short sales where the Respondents did not have reasonable grounds to believe the security could be borrowed for delivery. As part of the settlement, the Respondents agreed to retain an independent consultant with respect to the Respondents' policies and procedures concerning ETB lists. The Commission censured the Respondents, and ordered them to cease and desist from committing or causing any violations of Rule 203(b) of Regulation SHO, and to pay disgorgement of $1,566,245.67 plus prejudgment interest of $334,564.65, and a $9 million civil penalty.

Undisclosed Principal Trading and Cross-Trading

***SEC v. Nadel*, Litigation Rel. No. 23235, 2015 SEC LEXIS 1291 (E.D.N.Y. Apr. 8, 2015).**

The US District Court for the Eastern District of New York entered partial summary judgment in favor of the Commission in a civil action against Nadel, his broker-dealer entity, and his investment advisory firm. In its complaint, the Commission alleged that Nadel fraudulently induced clients to invest in a purported investment program, inflated the amount of assets he held under management, and repeatedly misrepresented to clients that he was executing open-market transactions on their behalf, when in fact most transactions consisted of cross-trades between client accounts he controlled or principal transactions with his own firm. The court entered judgment against Nadel for violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; Section 17(a) of the Securities Act; and Sections 206(1), 206(2), and 206(3) of the Advisers Act. The court referred the action to a magistrate judge for further proceedings on damages and/or equitable relief.

Unregistered Penny Stock Transactions and Related Supervision Issues

***In re Eisler*, Securities Act Rel. No. 9868, 2015 SEC LEXIS 3053 (July 23, 2015);**
***In re Lewis*, Securities Act Rel. No. 9869, 2015 SEC LEXIS 3054 (July 23, 2015);**
***In re Okin*, Exchange Act Rel. No. 75512, 2015 SEC LEXIS 3056 (July 23, 2015).**

The Commission accepted an offer of settlement from Eisler, a former registered representative and financial adviser of the Boca Raton branch of Oppenheimer & Co., Inc. (the Firm). The Commission alleged that Eisler violated Sections 5(a) and 5(c) of the Securities Act by participating in the illegal sale of unregistered securities.

The Commission also accepted an offer of settlement from Lewis, a registered representative and branch office manager for the Boca Raton branch of the Firm. The Commission alleged that Lewis violated Sections 5(a) and 5(c) of the Securities Act by acting as a necessary participant and substantial factor in the illegal sale of unregistered securities, and violated Sections 15(b)(4)(E) and 15(b)(6) of the Exchange Act by failing to adequately supervise a financial adviser who facilitated a customer's illegal securities transactions.

Finally, the Commission accepted an offer of settlement from Okin, a former executive vice president and head of the private client division of the Firm. The Commission alleged that Okin failed to adequately supervise Lewis, who facilitated illegal sales of unregistered securities on behalf of a customer.

According to the Commission, over a 14-month period a customer of the Firm's Boca Raton branch deposited more than 2.5 billion shares of several newly issued penny stocks into its account, none of which had registration statements on file with the Commission, and then worked with Eisler to resell the shares to the public, generating approximately $12 million in proceeds. The Commission alleged that there were substantial red flags to suggest that the customer was circumventing applicable registration requirements, including that (1) the customer acquired substantial amounts of newly issued penny stocks; (2) directly from little known, nonreporting issuers; (3) through private, unregistered transactions; (4) then immediately resold those shares; (5) wired out the sales proceeds; and (6) repeated the process over and over again. Although Section 4(a)(4) of the Securities Act exempts "brokers' transactions executed upon customers' orders," the broker must conduct a reasonable inquiry to ensure that the customer is not engaged in an illegal, unregistered distribution.

In regard to Eisler, the Commission asserted that since red flags were present, Eisler was required to, but did not, make a "searching inquiry" before relying on the Section 4(a)(4) exemption. The Commission ordered Eisler to cease and desist from any future violations of Section 5 of the Securities Act, barred Eisler from association with a right to reapply after one year, and ordered him to pay a civil penalty of $50,000.

Similarly, as to Lewis, given the red flags, the Commission alleged that neither Lewis nor Eisler could rely on the Section 4(a)(4) exemption without making a "searching inquiry." Moreover, according to the SEC, Lewis, despite observing the repetitive nature of the financial adviser's trading activity in the penny stocks, and his awareness of red flags, approved the resales and in some cases personally requested and obtained from senior management exceptions to Firm policies that placed limits on penny stock sales. As a result, the Commission ordered Lewis to cease and desist from any future violations of Section 5 of the Securities Act, barred him from association in a supervisory capacity with a right to reapply after one year, and ordered him to pay a $50,000 civil penalty.

Finally, in regard to Okin, the Commission alleged that in 2009 and 2010, the Firm implemented policies that were designed to limit the number of penny stock transactions at the Firm, including by limiting the number and type of customers authorized to engage in such transactions. According to the Commission allegations, these policies would have barred the sales by the Boca Raton branch customer, but Lewis requested that Okin and another senior executive grant exemptions to the policy. The SEC alleged that in the course of reviewing one of Lewis's requests, Okin reviewed a spreadsheet showing that the customer had a pattern of depositing and liquidating large blocks of penny stocks at mostly subpenny prices, and that this pattern of activity occurred regularly in a given security over relatively short periods of time. Despite these red flags, Okin agreed to grant exemptions and allow the resales to occur. The Commission barred Okin from association in a supervisory capacity with a right to reapply after one year, and ordered him to pay a $125,000 civil penalty.

Cases Relating to Investment Advisers/Investment Companies and Their Employees/Affiliated Persons[91]

Advertising

***In re Alpha Fiduciary, Inc.,* Advisers Act Rel. No. 4283, 2015 SEC LEXIS 4966 (Nov. 30, 2015).**

The Commission accepted an offer of settlement from Alpha Fiduciary, Inc. (Alpha), a registered investment adviser, and Doglione, its majority owner, managing member, president and former chief compliance officer (collectively, the Respondents). The Commission alleged that the Respondents created and distributed to clients and prospective clients performance advertising that failed to disclose with sufficient prominence and detail that certain advertised performance was hypothetical rather than actual. The performance data in question was created when Doglione back-tested static models dating back to the preexistence of Alpha, consisting of indices that generated minimized volatility and maximized returns. The Commission alleged that while several pieces of performance advertising contained disclosure noting the use of "certain hypothetical performance and portfolio information," the Commission found that disclosure to be imprecise and often not located on the same page as the hypothetical performance data. Specifically, the Commission noted that the disclosure did not make clear that all of the performance data with respect to certain strategies was completely hypothetical and the disclosure was located at or near the end of a 25- or 60-page document. Further the Commission found that disclosure to be contrary to other statements indicating that the performance data represented actual, rather than hypothetical, returns. In addition, the Commission alleged that Alpha's advertising materials included examples of favorable investment decisions with returns up to 58.62% without providing or offering to provide all of the Alpha's investment decisions, and that Alpha showed a redacted report of an existing client's portfolio with high gains without considering whether it was representative of the performance of other Firm clients. Finally, the Commission alleged that the Firm failed to implement written compliance policies and procedures reasonably designed to prevent its employees from presenting performance advertising to clients or prospective clients that violated the Advisers Act and its rules. In determining to accept the offer of settlement, the Commission took the Respondents' remedial efforts into account. The Commission ordered the Firm to hire an independent compliance consultant to conduct a review of its compliance program. The Commission censured the Respondents and ordered the Respondents to cease and desist from future violations of Section 206(2) and 206(4) of the Advisers Act and Rules 206(4)-1 and 206(4)-7 thereunder. The Commission further ordered the Respondents to pay civil monetary penalties of $250,000.

[91] Because of dual registration or multiple parties, a number of the previously discussed cases in the prior section entitled "Cases Relating to Broker-Dealer Firms and Their Employees/Affiliated Persons" could be placed in this section as well; however, we have chosen not to repeat them here.

***In re Virtus Inv. Advisers, Inc.*, Advisers Act Rel. No. 4266, 2015 SEC LEXIS 4867 (Nov. 16, 2015).**

The Commission accepted an offer of settlement from Virtus Investment Advisers, Inc. (Virtus), a registered investment adviser. The Commission alleged that Virtus made false statements to certain of its separately managed account and mutual fund clients concerning its subadviser's materially inflated, and hypothetical and back-tested, performance track record for a certain strategy (the Strategy). Specifically, the Commission alleged that, in certain client presentations, marketing materials, filings, and other communications regarding the Strategy, Virtus used hypothetical and back-tested historical performance figures that had been miscalculated by the subadviser, resulting in substantially inflated performance, and falsely stated that the Strategy in question had been in use beginning approximately seven years earlier than was actually the case. The Commission alleged that Virtus was negligent in not knowing that the subadviser's track record and performance were false, noting that Virtus had expressed skepticism at the outset of the relationship but had taken no steps to verify the data, and had failed to follow up to obtain answers regarding conflicting representations about the Strategy or allegations that the track record may have been miscalculated. The Commission further alleges that, despite being notified by FINRA in 2009 that the subadviser's performance prior to a certain date was back-tested and may have been manipulated, Virtus continued to use the misleading performance figures in prospectuses and marketing materials. Furthermore, Virtus allegedly failed to maintain adequate books and records necessary to substantiate the calculation of the subadviser's performance, and to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules by addressing the accuracy of marketing materials or performance information obtained from subadvisers and ensuring the retention of books and records required with respect thereto. The Commission censured Virtus and ordered it to cease and desist from violating Sections 204, 206(2), and 206(4) of the Advisers Act and Rules 204-2, 206(4)-1, 206(4)-7, and 206(4)-8 thereunder and Section 34(b) of the Investment Company Act, and to pay disgorgement of $13.4 million, prejudgment interest of $1.1 million, and a civil penalty of $2 million.

***In re Trust & Inv. Advisors, LLC*, Advisers Act Rel. No. 4087, 2015 SEC LEXIS 1975 (May 18, 2015).**

The Commission accepted an offer of settlement from Trust & Investment Advisors, Inc. (TIA), a registered investment adviser, and its chief executive officer, Pitts, and its senior vice president and CFO, Prugh (collectively, the Respondents). The Commission alleged that the Respondents failed to cure deficiencies noted during OCIE's 2005 and 2007 onsite examinations, which included a failure to complete an annual compliance review or develop a compliance manual, and the use of misleading statements in TIA marketing materials. Despite assurances from TIA that its errors would be corrected, OCIE identified the same deficiencies in a 2011 examination. In its 2011 examination, OCIE uncovered additional misleading statements in TIA's marketing materials, such as the distribution of misleading performance information in weekly summary marketing emails. The Commission alleged that Pitts and Prugh, as TIA's ultimate decisionmakers, repeatedly failed to ensure that TIA was in compliance with federal securities laws and failed to address the numerous deficiencies cited in OCIE's examinations. As part of the settlement, Pitts and Prugh were ordered to undertake 30 hours of compliance

training. TIA was also required to engage an independent compliance consultant to render compliance services for a period of at least three years. The Commission also ordered TIA and Pitts, jointly and severally, to pay a $50,000 civil penalty, and Prugh to pay a $10,000 civil penalty. The Commission further censured the Respondents and ordered them to cease and desist from future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-1(a)(5) and 206(4)-7 thereunder.

Allocation of Expenses

In re Alpha Titans, LLC, Advisers Act. Rel. No. 4073, 2015 SEC LEXIS 1736 (Apr. 29, 2015).

The Commission accepted an offer of settlement from Alpha Titans, LLC (Alpha), a registered adviser to private funds (the Funds), and its principal, McCormack, and its chief investment officer and chief compliance officer, Kaeser (collectively, the Respondents). The Commission alleged that over a period of four years, the Respondents used Fund assets to pay for adviser-related operating expenses in a manner (1) not clearly authorized under the Funds' operating documents, and (2) not accurately reflected in the Funds' financial statements as related party transactions. The Commission alleged that Alpha and McCormack also distributed materially misleading financial statements for the Funds that were not prepared in accordance with GAAP, violating the Custody Rule under the Advisers Act. The Commission also found that Kaeser, as Alpha's general counsel and chief operating officer, aided and abetted Alpha and McCormack's violations. Under the settlement, Alpha and McCormack were required to wind down the operations of the Funds and engage an independent monitor to oversee the completion of the winding down. The Commission also ordered Alpha and McCormack to cease and desist from future violations of Sections 206(2), 206(4), and 207 of the Advisers Act and Rules 206(4)-2, 206(4)-7, and 206(4)-8 thereunder. Further, the Commission ordered Kaeser to cease and desist from future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-2, 206(4)-7, and 206(4)-8 thereunder. In addition, McCormack and Kaeser were suspended from association for 12 months. The Commission further ordered Alpha and McCormack to jointly and severally pay disgorgement of $469,522, prejudgment interest of $28,928, and a civil penalty of $200,000. Finally, the Commission suspended Kaeser from appearing or practicing before the Commission as an attorney for 12 months.

In re Cranshire Capital Advisors, LLC, Advisers Act Rel. No. 4277, 2015 SEC LEXIS 4884 (Nov. 23, 2015).

The Commission accepted an offer of settlement from Cranshire Capital Advisors, LLC, a registered investment adviser (the Respondent). During the relevant period, the Respondent advised five clients, including a private fund with a master/feeder structure (the Fund). The Commission alleged that the Respondent used Fund assets to pay for certain of the Respondent's compliance, legal, and operating expenses in a manner not disclosed in the Fund's offering documents. The Commission further alleged that the Respondent failed to adopt policies and procedures regarding the allocation of Fund expenses and failed to implement other aspects of its compliance program. In determining to accept the offer of settlement, the Commission considered remedial acts by the Respondent. The Commission censured the

Respondent and ordered the Respondent to cease and desist from future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder. The Commission further ordered the Respondent to conduct an undertaking and to pay a civil monetary penalty of $250,000.

In re Cherokee Inv. Partners, LLC, Advisers Act Rel. No. 4258, 2015 SEC LEXIS 4605 (Nov. 5, 2015).

The Commission accepted an offer of settlement from Cherokee Investment Partners, LLC, a registered investment adviser, and Cherokee Advisers, LLC, its relying adviser (the Respondents). The Commission alleged that the Respondents allocated to certain private equity funds that they managed the Respondents' own consulting, legal, and compliance expenses relating to investment adviser registration, compliance, and responding to a Commission investigation of Respondents' conduct without the appropriate disclosure and thus in breach of their fiduciary duties. The Respondents also allegedly failed to adopt written policies or procedures reasonably designed to prevent violations of the Advisers Act arising from the allocation of expenses to the private equity funds in question, and failed to adequately review, no less frequently than annually, the adequacy of their policies and procedures to prevent violations of the Advisers Act and the rules thereunder. The Commission ordered the Respondents to cease and desist from violating Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder and to pay a civil penalty in the amount of $100,000.

In re Rubin, Advisers Act Rel. No. 4196, 2015 SEC LEXIS 3825 (Sept. 15, 2015).

The Commission accepted an offer of settlement from Rubin, a former registered representative of a registered broker-dealer and a former affiliate of a registered investment adviser, after alleging that Rubin failed to disclose to investors the personal expenses for which he reimbursed himself using the offering proceeds of an entertainment complex/casino in which Rubin had advised investors to invest. According to the SEC, Rubin's clients knew that he was to be reimbursed by the entertainment complex/casino for legitimate marketing expenses; however, Rubin claimed approximately $600,000 in reimbursement for expenses unrelated to the marketing of the entertainment complex/casino. The Commission ordered Rubin to cease and desist from violating Sections 17(a)(1) and 17(a)(3) of the Securities Act and Sections 206(1) and 206(2) of the Advisers Act, barred Rubin from association, and ordered Rubin to pay a civil penalty of $250,000, but waived the payment of disgorgement and prejudgment interest due to Rubin's inability to pay.

In re Kohlberg Kravis Roberts & Co., L.P., Advisers Act Rel. No. 4131, 2015 SEC LEXIS 2668 (June 29, 2015).

The Commission accepted an offer of settlement from Kohlberg Kravis Roberts & Co., L.P., a registered investment adviser (the Respondent or KKR). The Commission alleged that the Respondent, a private equity fund manager, misallocated expenses relating to unsuccessful buyout opportunities and other similar types of expenses ("broken deal expenses") among its flagship private equity fund and co-investment vehicles ("co-investors") and vehicles in which its

executives invested ("partner vehicles"). Specifically, the Commission alleged that during the relevant period, the Respondent did not allocate broken deal expenses to KKR co-investors even though those co-investors participated in and benefited from KKR's sourcing of private equity transactions, resulting in a misallocation of $17.4 million in expenses. Further, the Commission alleged that the offering documents for KKR's flagship fund did not disclose that the Respondent did not allocate broken expenses to co-investors. Finally, the Commission alleged that the Respondent did not adopt and implement a written compliance policy or procedure governing its fund expense allocation practices until 2011. Notably, the policy that was implemented beginning in 2012 included a methodology for allocating broken deal expenses among KKR's private equity funds, as well as among co-investors and partner vehicles. The Commission noted that the 2012 policy and associated allocation methodology was not a subject of its order. During the course of a 2013 examination by OCIE, the Respondent refunded to its flagship funds certain broken deal expenses that had been misallocated. The Commission noted that it took remedial efforts by the Respondent into account when determining to accept the offer of settlement. The Commission ordered the Respondent to cease and desist from future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. The Commission further ordered the Respondent to pay disgorgement and prejudgment interest of $18,677,409.

In re Kornitzer Capital Mgmt., Inc., Investment Company Act Rel. No. 31560, 2015 SEC LEXIS 1503 (Apr. 21, 2015).

The Commission accepted an offer of settlement from Kornitzer Capital Management, Inc. (KCM), a registered investment adviser, and the firm's chief financial officer and chief compliance officer, Koster (collectively, the Respondents). The Commission alleged that the Respondents furnished inaccurate and incomplete information to the board of trustees (the Board) of funds that KCM acted as investment adviser to, in violation of Section 15(c) of the Investment Company Act of 1940 (Investment Company Act). The Commission alleged that in its Section 15(c) submission to the Board, Koster, on behalf of KCM, prepared and provided a profitability analysis, including an explanation of the methodology that the fund used to allocate its expenses. The methodology represented that KCM allocated compensation expenses to each of the funds based on estimated labor hours. In fact, according to the SEC, Koster adjusted the allocation of the compensation of KCM's CEO to the funds in a manner designed, in part, to achieve consistency of KCM's reported profitability in managing the funds year over year, including considering what profit margin and revenue growth would result from the proposed allocation of the CEO's compensation. The Commission alleged that such information was reasonably necessary for the Board's consideration of KCM's advisory contracts under Section 15(c), yet it was not disclosed by the Respondents, causing information concerning KCM's reported profitability in managing the funds to be inaccurate and incomplete. The Commission ordered the Respondents to cease and desist from future violations of Section 15(c) of the Investment Company Act, and KCM and Koster were ordered to pay civil penalties in the amounts of $50,000 and $25,000, respectively.

Best Execution

In re Pekin Singer Strauss Asset Mgmt. Inc., Advisers Act Rel. No. 4126, 2015 SEC LEXIS 2618 (June 23, 2015).

The Commission accepted an offer of settlement from Pekin Singer Strauss Asset Management Inc. (PSSAM), a registered investment adviser, and its President, R. Strauss, and two of its portfolio managers, Pekin and J. Strauss. The Commission alleged that PSSAM, Pekin, and J. Strauss failed to seek best execution for certain clients and failed to adequately disclose their conflicts of interest in placing and maintaining certain clients who were eligible for a less expensive share class in the more expensive share class of an open-end mutual fund that PSSAM managed. The Commission also alleged that PSSAM failed to conduct timely annual compliance program reviews and failed to implement and enforce provisions of its policies and procedures and code of ethics. In addition, R. Strauss failed to provide sufficient guidance, staff, and adequate resources to the chief compliance officer and the PSSAM's compliance program, and allowed PSSAM's Form ADV to include misleading disclosures regarding its code of ethics. Finally, the Commission also alleged that PSSAM, Pekin, and J. Strauss failed to seek best execution for certain clients and failed to adequately disclose their conflicts of interest in placing and maintaining certain clients who were eligible for a less expensive share class in the more expensive share class of an open-end mutual fund that PSSAM managed. The Commission ordered PSSAM to cease and desist from future violations of Sections 204A, 206(2), 206(4), and 207 of the Advisers Act and Rules 204A-1 and 206(4)-7 thereunder, R. Strauss to cease and desist from future violations of Sections 204A, 206(4), and 207 of the Advisers Act and Rules 204A-1 and 206(4)-7 thereunder, and Pekin and J. Strauss to cease and desist from future violations of Sections 206(2) and 207 of the Advisers Act. The Commission further ordered PSSAM to pay a civil penalty of $150,000, and for each of R. Strauss, J. Strauss, and Pekin to pay a $45,000 civil penalty. Further, the Commission censured PSSAM, Pekin, and J. Strauss, and suspended R. Strauss from acting in a compliance or supervisory capacity for 12 months. Notably, the Commission did not include any charge against the chief compliance officer.

Custody Rule

In re Johnson, Advisers Act Rel. No. 4161, 2015 SEC LEXIS 3257 (Aug. 6, 2015).

The Commission issued an order instituting administrative and cease-and-desist proceedings against Johnson, the sole owner, manager, and chief compliance officer of a formerly registered investment adviser, The Planning Group of Scottsdale, LLC (the Firm). The Commission alleged that Johnson and his Firm violated the Advisers Act when he failed to accurately determine which of the Firm's private fund clients' securities were subject to the Custody Rule, failed to ensure that client securities were maintained by a qualified custodian, and failed to obtain independent verification of client funds and securities by an independent public accountant. The Commission further alleged that Johnson and his Firm did not adopt and implement adequate compliance policies and procedures that reflected the Commission's 2009 amendments to the Custody Rule, and that Johnson made false representations on the Firm's Form ADV concerning its compliance with the Custody Rule and its affiliation with the managing members of private funds that Johnson and the Firm advised. The Commission alleged that, by this conduct,

Johnson willfully aided and abetted and caused the Firm's violation of Section 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 thereunder. The Commission ordered a public hearing regarding the Commission's allegations.

***In re Water Island Capital LLC*, Investment Company Act Rel. No. 31455, 2015 SEC LEXIS 552 (Feb. 12, 2015).**

The Commission accepted an offer of settlement from Water Island Capital LLC, a registered investment adviser (the Respondent). The Commission alleged that the Respondent failed to ensure that certain assets of its mutual fund clients were maintained in the custody of the funds' qualified bank as required by Section 17(f)(5) of the Investment Company Act and the funds' policies and procedures. The Commission further alleged that the Respondent failed to create and maintain an approved list of executing brokers for the funds pursuant to policies and procedures under Investment Company Act Rule 12b-1(h), and failed to maintain documentation reflecting monitoring of the funds' compliance with such policies and procedures. The Respondent was ordered to cease and desist from future violations of Sections 12(b) and 17(f) of the Investment Company Act and Rules 12b-1 and 38a-1 thereunder. The Commission also ordered the Respondent to pay a civil penalty in the amount of $50,000.

Distribution in Guise

***In re First Eagle Inv. Mgmt., LLC*, Advisers Act Rel. No. 4199, 2015 SEC LEXIS 3908 (Sept. 21, 2015).**

The Commission accepted offers of settlement from First Eagle Investment Management, LLC (First Eagle), a registered investment adviser, and from FEF Distributors, LLC (FEF), a wholly owned subsidiary of First Eagle and a registered broker-dealer (collectively, the Respondents), in connection with the Commission's first case brought under its "Distribution-in-Guise" Initiative. The Distribution-in-Guise Initiative seeks to protect mutual fund shareholders from bearing the costs when firms improperly use fund assets to pay for distribution-related services by masking the payments as subtransfer agency payments. The Commission alleged that the Respondents misused approximately $25 million in mutual fund assets when FEF caused First Eagle to pay two financial intermediaries for purported "sub-Transfer Agent services" using fund assets. In addition, the Commission alleged that such use of mutual fund assets rendered prospectus disclosures inaccurate to the extent they represented that First Eagle would pay for distribution expenses not covered under a fund's Rule 12b-1 Plans. As part of the settlement, First Eagle agreed to hire an independent compliance consultant and adopt all measures the consultant proposed. The Commission also censured First Eagle and ordered it to cease and desist from future violations of Advisers Act Section 206(2) and Investment Company Act Sections 34(b) and 12(b) and Rule 12b-1 thereunder. FEF was ordered to cease and desist from future violations of Section 12(b) of the Investment Company Act and Rule 12b-1 thereunder. The Commission also ordered First Eagle and FEF to pay disgorgement, prejudgment interest, and a civil monetary penalty totaling $39,747,880. The Division of Investment Management also issued a recent guidance update on mutual fund distribution and sub-accounting fees available at https://www.sec.gov/investment/im-guidance-2016-01.pdf.

False ADV/Registration Status

In re Jacob, CPA, Exchange Act Rel. No. 76079, 2015 SEC LEXIS 4111 (Oct. 5, 2015).

The Commission instituted public administrative and cease-and-desist proceedings against Jacob and the company he owns and controls, Innovative Business Solutions, LLC (IBS) (collectively, the Respondents). The Commission alleged that the Respondents acted as unregistered investment advisers by providing investment advice to approximately 30 client accounts, including retirement accounts, having an approximate total value of $18 million under management. The Commission also alleged that Respondents engaged in a fraudulent scheme involving material misrepresentations and omissions and other deceptive devices and practices, including by Jacob falsely informing clients that he was not required to register as an investment adviser and failing to disclose that in fact, he and IBS were required to be registered as investment advisers with several states. The Commission alleged that Jacob engaged in this scheme in order to obtain and retain investment advisory clients from whom he collected over $500,000 in advisory fees. According to the SEC, for at least five years, Jacob made false statements to clients, including misrepresenting the risks of their investments, his investment adviser registration statement, and his disbarment from the State of Maryland Bar for fraud; misappropriating client funds; and providing clients with false information about advisory services. The Commission alleged that the Respondents' false statements and failure to disclose material information were breaches of their duties as investment advisers to the clients, in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and of Sections 206(1) and 206(2) of the Advisers Act. The Commission ordered a public administrative and cease-and-desist proceeding be instituted to assess the allegations.

In re Kraus, Advisers Act Rel. No. 4176, 2015 SEC LEXIS 3410 (Aug. 17, 2015).

The Commission accepted an offer of settlement from Kraus, chief compliance officer for Ariston Wealth Management, L.P. (Ariston), an investment adviser formerly registered with the Commission. The Commission alleged that Kraus caused Ariston to violate Sections 203A and 207 of the Advisers Act when she prepared and filed on behalf of Ariston a number of Form ADV amendments that overstated the amount of Ariston's assets under management (AUM). The Commission alleged that Kraus failed to take reasonable steps to ascertain Ariston's accurate AUM figures, which resulted in Ariston's filing materially false information with the Commission and maintaining its registration as an investment adviser with the SEC when Ariston's actual AUM would have required it to withdraw its registration. The Commission ordered Kraus to cease and desist from violating Sections 203A and 207 of the Advisers Act. The Commission ordered Kraus to complete compliance training related to the Advisers Act and pay a civil penalty of $10,000.

In re Acamar Global Investments, LLC, Advisers Act Rel. No. 4050, 2015 SEC LEXIS 1045 (Mar. 18, 2015).

The Commission accepted an offer of settlement from Acamar Global Investments, LLC (Acamar), a former SEC-registered investment adviser, and its principal, Martin (collectively, the Respondents). The Commission alleged that the Respondents made material misstatements

about Acamar's AUM by falsely claiming in Form ADV that it managed assets in excess of $180 million in order to qualify for SEC registration when, in fact, it managed less than $200,000. The Commission further alleged that Acamar's website and promotional materials included misleading reports that purported to detail the past performance of investment models Acamar used in managing assets for its advisory clients, but such materials failed to disclose that the performance data was hypothetical and not based on actual trading. Further, the Commission alleged that Acamar misrepresented the investment strategy and amount of investor subscriptions for a hedge fund Acamar managed and failed to adopt and implement an adequate compliance program. The Respondents were ordered to cease and desist from future violations of Sections 203A, 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rules 206(4)-1(a)(5), 206(4)-7, and 206(4)-8 thereunder. Martin was barred from association and Acamar was censured. Based on the Respondents' sworn statements on inability to pay a civil penalty, the Commission did not impose a penalty, but the Commission's Division of Enforcement reserved the right to petition the Commission to reopen the matter in the future and to seek an order directing payment of the maximum civil penalty.

In re Logical Wealth Mgmt., Inc., Advisers Act Rel. No. 4027, 2015 SEC LEXIS 656 (Feb. 19, 2015).

The Commission accepted an offer of settlement from Logical Wealth Management, Inc. (Logical Wealth), a registered investment adviser, and Gopen, the owner, president, and chief compliance officer of Logical Wealth (collectively, the Respondents). The Commission alleged that Logical Wealth overstated its AUM in order to create the appearance that it qualified for registration with the Commission when it did not. Subsequently, Logical Wealth falsely represented that its principal office and principal place of business was in Wyoming, a state that does not regulate investment advisers, in filings with the Commission in order to maintain its registration with the Commission. In addition, according to the SEC, Logical Wealth failed to adopt and implement compliance policies and procedures and failed to maintain and make available to the Commission's staff books and records as required under the Advisers Act. Gopen was responsible for all of Logical Wealth's filings, compliance procedures, and recordkeeping, and therefore the Commission alleged that Gopen aided and abetted and caused all of Logical Wealth's violations. The Respondents were ordered to cease and desist from future violations of Sections 203A, 204(a), 204A, 206(4), and 207 of the Advisers Act and Rules 204-2(a)(2), 204-2(a)(6), 204-2(a)(8), 204A-1, and 206(4)-7 thereunder. The Commission revoked Logical Wealth's registration as an investment adviser. The Commission barred Gopen from association, with the conditional right to reapply, and ordered him to pay a civil penalty in the amount of $25,000.

In re Arete Ltd., Advisers Act Rel. No. 4015, 2015 SEC LEXIS 460 (Feb. 4, 2015); *In re Ridley*, Advisers Act Rel. No. 2016, 2015 SEC LEXIS 461 (Feb. 4, 2015); *In re Arete Ltd.,* Admin. Proc. File No. 3-16369 (Apr. 27, 2015); *In re Arete Ltd.,* Advisers Act Rel. No. 4111, 2015 SEC LEXIS 2292 (June 9, 2015).

The Commission accepted offers of settlement from Arete Ltd., a registered investment adviser (Arete), and Ridley, the chief compliance officer and sole employee of Arete (collectively, the Respondents). The Commission alleged that Arete misrepresented that its principal office and

place of business was in Wyoming, a state that does not regulate investment advisers, in order to register with the Commission as an investment adviser, when in fact its principal office and place of business was in California. Ridley was solely responsible for filing Arete's Form ADV. The Commission further alleged that Ridley failed to disclose disciplinary actions against her in Arete's Form ADV. The Commission alleged that the Respondents violated Sections 203A, 207, and 204(a) of the Advisers Act and Rules 204-1(a)(1) and (2) thereunder. The Commission ordered Ridley to cease and desist from future violations or Sections 203A, 204(a), and 207 of the Advisers Act and Rules 204-1(a)(1) and (2) thereunder. The Commission further barred Ridley from association. The Commission ordered Arete to file an Answer to the allegations and ordered a public hearing on whether the allegations are true and on remedial action and sanctions. On April 27, 2015 an administrative law judge entered an initial decision on default against Arete. The order revoked the investment adviser registration of Arete and ordered Arete to cease and desist from future violations of Sections 203A, 204(a), and 207 of the Advisers Act and Rules 204-1(a)(1) and 204-1(a)(2) thereunder. Arete was further ordered to pay a civil monetary penalty of $400,000. On June 9, 2015, the Commission issued notice that the initial decision against Arete became final.

The Commission also entered into an offer of settlement with two other investment advisers on February 4, 2015 for similar actions, including falsely claiming the adviser's principal office and place of business was in Wyoming in order to have a basis to register with the Commission. *See* In re New Line Capital, LLC, Advisers Act Rel. No. 4017, 2015 SEC LEXIS 462 (Feb. 4, 2015) and In re Wyoming Investment Management Services, LLC, Advisers Act Rel. No. 4014, 2015 SEC LEXIS 459 (Feb. 4, 2015).

Failure to Disclose Conflicts of Interest / Related Party Transactions

In re JH Partners, LLC, Advisers Act Rel. No. 4276, 2015 SEC LEXIS 4883 (Nov. 23, 2015).

The Commission accepted an offer of settlement from JH Partners, LLC, a registered investment adviser (the Respondent). The Commission alleged that the Respondent, an adviser to several private equity funds (Funds), breached its fiduciary duty to its Fund clients by failing to disclose to the affected Funds' advisory boards loans made by the Respondent and its principals to certain of the Funds' portfolio companies to provide interim financing for working capital and other urgent cash needs. In certain cases, according to the SEC, the loans, totaling approximately $62 million, caused the Respondent and its principals to obtain interests in the portfolio companies that were senior to the equity interests held by the Funds. The Commission further alleged that the Respondent caused more than one Fund to invest in the same portfolio company at differing priority levels and/or valuations, thereby potentially favoring one client over another. In addition, the Commission alleged that the Respondent failed to adequately disclose to, or obtain written consent from, the Funds' advisory boards when certain of the Funds' investments exceeded concentration limits provided in the Funds' offering documents. The Commission censured the Respondent and ordered it to cease and desist from violating Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. The Commission further ordered the Respondent to pay a civil monetary penalty of $225,000.

***In re Fenway Partners, LLC*, Advisers Act Rel. No. 4253, 2015 SEC LEXIS 4566 (Nov. 3, 2015).**

The Commission accepted an offer of settlement from Fenway Partners, LLC (Fenway), a registered investment adviser; Lamm, Smart, and Mayhew, the Managing Directors, members, and control persons of Fenway at the time of the alleged violations; and Wiacek, Fenway's chief financial officer and chief compliance officer at such time. The Commission alleged that Fenway caused certain portfolio companies of a private equity fund to which it served as the investment adviser (the Fund) to terminate their agreements with Fenway, pursuant to which Fenway had provided management and other services to the portfolio companies in exchange for fees that were offset against the Fund's advisory fee, and instead enter into new agreements for similar services with a Fenway affiliate principally owned and operated by Lamm, Smart, and Mayhew. The Commission further alleged that the fees paid pursuant to the new agreements were not offset against the advisory fee paid by the Fund to Fenway, thus resulting in a larger advisory fee, and that the conflict of interest presented by this arrangement was not disclosed to Fund investors. In addition, in 2012, Fenway, Lamm, and Smart allegedly asked Fund investors, in a letter signed and sent by Wiacek, to provide $4 million in connection with a potential investment in a new portfolio company, without disclosing that $1 million of the requested amount would be used to pay Fenway's affiliate. Furthermore, according to the SEC, Fenway, Lamm, and Mayhew allegedly caused Mayhew and two former Fenway employees to receive $15 million in incentive compensation from the sale of a portfolio company for services that they had almost entirely provided when they were Fenway employees, which conflict of interest Fenway also failed to disclose in financial statements provided to Fund investors. The Commission alleged that by virtue of this conduct, Fenway, Lamm, and Smart willfully violated, and Wiacek caused violations of, Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, and Mayhew willfully violated Section 206(2) of the Advisers Act. The Commission censured Fenway, Lamm, Smart, and Mayhew, and ordered them to cease and desist from violating Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, and to jointly and severally pay disgorgement in the amount of $7.892 million and prejudgment interest of $824,471, as well as civil penalties of $1 million by Fenway and $150,000 each by Lamm, Smart, and Mayhew. The Commission ordered Wiacek to cease and desist from violating Section 206(2) of the Advisers Act and to pay a civil penalty in the amount of $75,000.

***In re Blackstone Mgmt. Partners L.L.C.,* Advisers Act Release No. 4219, 2015 SEC LEXIS 4146 (Oct. 7, 2015).**

The Commission accepted an offer of settlement from registered investment advisers, Blackstone Management Partners L.L.C., Blackstone Management Partners III L.L.C., and Blackstone Management Partners IV L.L.C. (collectively, the Respondents) with regard to allegations of inadequate disclosures to certain of its funds' investors that involved two distinct breaches of fiduciary duty. The Commission alleged that the Respondents failed to adequately disclose the acceleration of monitoring fees paid by fund-owned portfolio companies upon termination of the monitoring agreements. The Commission noted that although the Respondents disclosed that they may receive monitoring frees from portfolio companies held by the funds, and disclosed the amount of monitoring fees that had been accelerated following the

acceleration, the Respondents failed to disclose to its funds, and to the funds' investors, that they may accelerate future monitoring fees upon termination of the monitoring agreements. According to the SEC, the payments to the Respondents essentially reduced the value of the portfolio companies prior to sale, to the detriment of the funds and their investors. The Commission also alleged that fund investors were not informed about a separate fee arrangement that provided the Respondents with a much greater discount on services by an outside law firm than the discount that the law firm provided to the funds. Finally, the Commission alleged that the Respondents failed to adopt and implement written policies and procedures reasonably designed to prevent violations arising from the undisclosed receipt of fees and conflicts of interest. The Commission ordered the Respondents to cease and desist from further violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder. The Commission further ordered the Respondents to pay disgorgement of $26.2 million, plus prejudgment interest of $2.6 million to affected fund investors as well as a $10 million civil penalty.

In re Taberna Capital Mgmt. LLC, Advisers Act Rel. No. 4186, 2015 SEC LEXIS 3635 (Sept. 2, 2015).

The Commission accepted an offer of settlement from Taberna Capital Management, LLC (TCM), a subsidiary of RAIT Financial Trust, in connection with an alleged multiyear effort to retain "exchange fees" belonging to collateralized debt obligation (CDO) clients resulting from restructuring transactions. The Commission alleged that TCM's retention of the exchange fees was neither permitted by the CDO clients' governing documents nor disclosed to the CDO clients' investors. Moreover, the Commission alleged that TCM failed to disclose the conflict of interest arising from its acceptance of exchange fees. The Commission also accepted offers for settlement from TCM's former managing director Fralin due to his alleged role in exchange fee negotiations and documentation that incorporated false and misleading language about exchange fees, as well as from TCM's former chief operating officer Licht, who, as supervisor, allegedly oversaw and approved TCM's collection of exchange fees. The Commission ordered TCM to cease and desist from violating Section 15(a) of the Exchange Act and Sections 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rule 206(4)-8 thereunder. TCM agreed to pay disgorgement of $13 million, prejudgment interest of $2 million, and a civil money penalty of $6.5 million, and was barred from acting as an investment adviser for three years. The Commission ordered Fralin to cease and desist from violating Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. Fralin agreed to pay a $100,000 penalty and is barred from the securities industry for at least five years. The Commission ordered Licht to cease and desist from violating Sections 206(2) and 207 of the Advisers Act. Licht agreed to pay a $75,000 penalty and is barred from the securities industry for at least two years.

In re Guggenheim Partners Inv. Mgmt., LLC, Advisers Act Rel. No. 4163, 2015 SEC LEXIS 3293 (Aug. 10, 2015).

The Commission accepted an offer of settlement from Guggenheim Partners Investment Management, LLC, a registered investment adviser (the Respondent). The Commission alleged that the Respondent breached its fiduciary duty to clients and created a potential conflict of interest when it failed to disclose that one of its senior executives had received a $50 million

personal loan from an advisory client in order to participate personally in an acquisition led by an affiliate of the Respondent, and then invested that client's assets on different terms than other participating advisory clients in two transactions. The Commission further alleged that the Respondent violated the Advisers Act when, due to inaccurate coding on its books and records, an institutional client was charged $6.5 million in advisory fees on investments that the Respondent did not manage. The Commission also alleged that the Respondent failed to fully implement its compliance policies and procedures governing loans involving clients, gifts and entertainment accepted by supervised persons, investigation and documentation of trade errors, and maintenance of certain books and records. The Commission censured the Respondent and ordered it to cease and desist from violating Sections 204, 204A, 206(2), and 206(4) of the Advisers Act and Rules 204-2, 204A-1, and 206(4)-7 thereunder. The Commission further ordered the Respondent to retain an independent consultant to conduct a comprehensive compliance review and pay a $20 million civil monetary penalty.

In re Dion Money Mgmt., LLC, Advisers Act Rel. No. 4146, 2015 SEC LEXIS 3081 (July 24, 2015).

The Commission accepted an offer of settlement from Dion Money Management, LLC (the Respondent), a registered investment adviser, for failing to disclose to clients the terms of certain compensation arrangements in which the Respondent received payments from third parties that were calculated based on client assets invested in particular mutual funds. Although the Respondent disclosed the existence of these arrangements in its filings with the Commission, according to the Commission, it did not describe the interplay among the various arrangements, either in its filings or otherwise to clients. For example, in its Form ADV filed from 2011 through 2013, the Respondent stated that it was paid a fee for providing shareholder services that may be up to 30 basis points per year, but did not disclose that in certain instances it could and did receive payments at a rate greater than 30 basis points from multiple sources based on the same client assets. Thus, the SEC alleged, the Respondent understated the maximum payment rate under the multiple arrangements, and did not disclose the possibility of receiving payments from multiple parties based on the same client assets. The Commission censured the Respondent and ordered it to cease and desist from future violations of Sections 206(2) and 207 of the Advisers Act and to pay a $50,000 civil penalty.

In re BlackRock Advisors, LLC, Advisers Act Rel. No. 4065, 2015 SEC LEXIS 1478 (Apr. 20, 2015).

The Commission accepted offers of settlement from BlackRock Advisors, LLC, a registered investment adviser (BlackRock), and Battista, the chief compliance officer of BlackRock during the relevant period (collectively, the Respondents). The Commission alleged that BlackRock failed to disclose conflicts of interest associated with outside business activities of one of its portfolio managers (Portfolio Manager) who managed BlackRock energy-focused registered funds, private funds, and separate accounts. Specifically, the Portfolio Manager owned and operated an energy company that formed a joint venture with a publicly traded coal company held in the BlackRock funds and client accounts managed by the Portfolio Manager. According to the SEC, the joint venture became a significant holding for the BlackRock portfolios managed by the Portfolio Manager, and became the largest holding for one of the BlackRock registered

funds managed by the Portfolio Manager. The Commission alleged that BlackRock knew of the Portfolio Manager's involvement with his energy company, as well as the joint venture, but failed to disclose the conflict of interest to the BlackRock funds' boards of directors or to BlackRock advisory clients. The Commission further alleged that BlackRock failed to implement written policies and procedures addressing outside activities of its employees and how such activities should be assessed and monitored for conflict purposes, including when such activities should be disclosed to a fund's board of directors or BlackRock's advisory clients. The Commission alleged that Battista caused BlackRock's compliance-related violations. Finally, the Commission alleged that the Respondents caused the BlackRock fund's failure to have the funds' chief compliance officer report to the funds' boards of directors the Portfolio Manager's violation of BlackRock's private investment policy. The Commission ordered BlackRock to undertake a comprehensive review of its written compliance policies and procedures by an independent consultant and BlackRock's promptly updating its Form ADV disclosure. The Commission further ordered BlackRock to provide a written certification of compliance to the Commission regarding the undertakings required under the order. The Commission censured BlackRock and ordered BlackRock to cease and desist from future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, and Rule 38a-1 under the Investment Company Act. The Commission ordered Battista to cease and desist from future violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. The Commission ordered BlackRock to pay a civil monetary penalty of $12 million and Battista to pay a civil monetary penalty of $60,000.

In re Stilwell, Advisers Act Rel. No. 4049, 2015 SEC LEXIS 1016 (Mar. 16, 2015).

The Commission accepted an offer of settlement from Stilwell Value LLC, a registered investment adviser, and Stilwell, the principal, owner, and Managing Member of Stilwell Value LLC (the Respondents). The Commission alleged that the Respondents failed to adequately disclose in offering memoranda and limited partnership agreements for private funds that the Respondents managed that the funds would make interfund loans, and failed to describe the potential or actual conflicts of interest associated with such loans. The Respondents directed certain of Stilwell Value LLC's private fund clients to make a series of loans totaling approximately $20 million to other of its private fund clients' funds to help finance significant aspects of the borrowing funds' investment strategies, e.g., to purchase securities and repay margin. The Commission further alleged that Stilwell Value LLC did not maintain policies and procedures sufficient to address the compliance risks posed by interfund loans, including the mitigation and disclosure of related conflicts of interest. The Respondents were ordered to cease and desist from future violations of Sections 206(2), 206(4) and 207 of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder. The Commission ordered Stilwell Value LLC to retain an independent monitor to review and assess, on an ongoing basis for a three-year engagement, the adequacy of aspects of Stilwell Value LLC's policies, procedures, controls, recordkeeping and systems and to certify, in writing, compliance with the undertaking requirements. Stilwell Value LLC was ordered to provide notice of the proceedings to advisory clients and fund investors and was censured. The Respondents were ordered to pay disgorgement in the amount of $193,356 and prejudgment interest of $45,801. Stilwell Value LLC was ordered to pay a civil penalty in the amount of $250,000. The Commission suspended Stilwell from association for 12 months and ordered him to pay a civil penalty in the amount of

$100,000.

In re Page, Advisers Act Rel. No. 4044, 2015 SEC LEXIS 932 (Mar. 10, 2015); *In re Page*, Admin. Proc. File No. 3-16037 (June 25, 2015).

The Commission accepted an offer of settlement from PageOne Financial, Inc., a registered investment adviser, and Page, its sole owner and principal (the Respondents). The Commission alleged that the Respondents failed to disclose serious conflicts of interest to their advisory clients in connection with recommending investments in three private investment funds (the Private Funds). Specifically, the Commission alleged that the Respondents knowingly or recklessly failed to tell their clients that (a) one of the Private Fund's managers (the Fund Manager) was in the process of acquiring at least 49% of PageOne Financial; (b) as part of that acquisition, Page had agreed to raise millions of dollars for the Private Funds from his advisory clients; and (c) the Fund Manager was paying for the acquisition by making a series of installment payments over time, the timing and amounts of which were, at least partially, tied to the Respondents' ability to direct client money into the Private Funds. Further, according to the SEC, the disclosures that the Respondents did make in PageOne Financial's Form ADV materially misrepresented both the nature and the amounts of the Fund Manager's payments to Page. According to the Commission, unaware of the Respondents' conflicts of interest in recommending Private Funds, the Respondents' clients invested approximately between $13 and $15 million in the Private Funds at the Respondents' recommendation. During roughly the same period, the Fund Manager paid the Respondents (directly or indirectly) more than $2.7 million in acquisition payments. The Respondents were censured and ordered to cease and desist from future violations of Sections 206(1), 206(2), and 207 of the Advisers Act. After a hearing, the Commission's Administrative Court barred Page from association, revoked PageOne's registration as an adviser, and ordered Page and PageOne to pay disgorgement in the amount of $2,184,859, plus prejudgment interest.

In re Consulting Servs. Grp., LLC, Advisers Act Rel. No. 4000, 2015 SEC LEXIS 251 (Jan. 16, 2015); *In re Giovannetti*, Advisers Act Rel. No. 3999, 2015 SEC LEXIS 250 (Jan. 16, 2015); *In re Giovannetti*, Admin. Proc. File No. 3-16344 (Nov. 6, 2015).

The Commission accepted an offer of settlement from Consulting Services Group, LLC (CSG), a registered investment adviser. In a related action, the Commission instituted cease-and-desist proceedings against Giovannetti, the former CEO of CSG, as well as the former CEO and equity holder of CSG's parent holding company. The Commission alleged that Giovannetti failed to disclose to CSG's compliance group a personal loan from a third-party investment adviser that CSG and Giovannetti recommended to several of CSG's clients, in violation of CSG's policies and procedures, and later misrepresented the loan's repayment status. The Commission alleged that Giovannetti's initial concealment of the loan, and his subsequent misstatement and omission about its repayment status, caused CSG to file false Forms ADV that failed to disclose the loan and the associated conflicts of interest. CSG was ordered to cease and desist from future violations of Sections 206(2) and 207 of the Advisers Act and was ordered to pay a civil penalty in the amount of $150,000. After a hearing, Giovannetti was ordered to cease and desist from future violations of Sections 206(1), 206(2), and 207 of the Advisers Act and pay a civil penalty in the amount of $50,000, and was suspended from association for 12 months.

In re Shelton Fin. Grp. Inc., Advisers Act Rel. No. 3993, 2015 SEC LEXIS 153 (Jan. 13, 2015).

The Commission accepted an offer of settlement from Shelton Financial Group, Inc. (SFG), a registered investment adviser, and Shelton, founder, sole owner, president, and former CCO of SFG. The Commission alleged that SFG failed to disclose to its clients the compensation it received through an arrangement with a registered broker-dealer and conflicts of interest arising from that compensation. According to the SEC, the agreement created incentives for SFG to favor particular mutual funds over other investments, and to favor the broker-dealer with which SFG had the arrangement over other broker-dealers, when giving investment advice to its clients. The Commission noted that SFG initially did not disclose the arrangement and the resulting conflicts of interest, and that when it did disclose the arrangement, the description was inadequate. The Commission ordered SFG to retain an independent consultant to review its supervisory, compliance, and other policies and procedures and the making, keeping, and preserving of required books and records. SFG and Shelton were censured and ordered to cease and desist from future violations of Sections 206(2), 206(4), and 207 of the Advisers Act and Rule 206(4)-7 thereunder. SFG and Shelton on a joint and several basis, were ordered to pay disgorgement of $99,114.19, prejudgment interest of $20,952.91, and a civil penalty in the amount of $70,000.

Fraud/Failure to Supervise

In re Ret. Inv. Advisors, Inc., Advisers Act Rel. No. 4237, 2015 SEC LEXIS 4378 (Oct. 21, 2015).

The Commission accepted an offer of settlement from Retirement Investment Advisors, Inc. (RIA), a registered investment adviser, Research Holdings, LLC (Research Holdings), an unregistered investment adviser, and Bowie, the president of RIA and former co-manager of Research Holdings (collectively, the Respondents). The Commission alleged that from 2006 through the first quarter of 2009, Research Holdings and Bowie co-managed and sold to Bowie's private advisory clients at RIA five private funds (the Funds) for which they failed to obtain financial statements complying with the terms of their respective private placement memoranda, which provided that the financial statements would be prepared in compliance with GAAP and, in two cases, audited. In addition, Bowie and RIA allegedly, and in violation of RIA's policies and procedures, valued RIA's clients' investments in the Funds based on the acquisition costs of the Funds' assets, even though Bowie knew or should have known that some of the assets came to have little or no value. The Commission alleged that as a result of this conduct, RIA overcharged fees to clients who invested in the Funds. The Commission further alleged that Bowie, by using his personal email to communicate with RIA clients and deleting certain emails, caused RIA to violate Section 204 of the Advisers Act and Rule 204-2(a)(7)(i) thereunder by failing to maintain copies of all business communications relating to recommendations, advice, and disbursement of funds or securities. The Commission ordered RIA to provide a copy of the enforcement order to its current and any potential advisory clients who were invested or were solicited to invest in the Funds for a period of six months following the entry of the order, and to retain an independent consultant to review its policies and procedures relating to valuation, the maintenance of books and records, and communications

with clients, investors, and prospective clients and investors. The Commission further ordered RIA to certify in writing its compliance with these undertakings within 60 days of their completion. The Commission censured the Respondents and ordered RIA to cease and desist from violating Sections 206(2) and 204 of the Advisers Act and Rule 204-2 thereunder, Research Holdings to cease and desist from violating Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, and Bowie to cease and desist from violating Sections 204, 206(2), and 206(4) of the Advisers Act and Rules 204-2 and 206(4)-8 thereunder. The Commission further ordered RIA to pay disgorgement of $144,243, prejudgment interest of $14,724, and a civil penalty of $37,500, and Research Holdings and Bowie to pay civil penalties of $37,500 and $25,000, respectively.

***In re Richards,* Advisers Act Rel. No. 4212, 2015 SEC LEXIS 4073 (Sept. 30, 2015); *In re Goodland,* Advisers Act Rel. No. 4213, 2015 SEC LEXIS 4079 (Sept. 30, 2015).**

The Commission accepted an offer of settlement from Richards, an investment advisory representative associated with Securus Wealth Management, LLC (Securus) a registered investment adviser, for alleged fraud and conflict of interest violations. In a related matter, the Commission accepted an offer of settlement from the Firm and Goodland, its president and chief compliance officer, for alleged failure to supervise Richards. The Commission alleged that Richards had engaged in a manipulative scheme to support the market price of the common stock of Gatekeeper USA, Inc. (Gatekeeper). According to the SEC, Richards manipulated the price of Gatekeeper's shares by causing his advisory clients' accounts to invest more than $1 million in shares at higher prices when the stock's price fell below a certain level. In breach of his fiduciary duty as an investment adviser, the Commission alleged, Richards also failed to disclose to clients significant conflicts of interest arising from his ownership of Gatekeeper's shares, personal loans to Gatekeeper's officers, payment of Gatekeeper expenses, and editing and providing of content for Gatekeeper's shareholder communications. Richards was ordered to cease and desist from violating Section 10(b) and Rule 10b-5 of the Exchange Act and Sections 206(1) and 206(2) of the Advisers Act. The Commission further ordered Richards to pay $69,000 in disgorgement and civil penalties of $75,000, and barred him from association. In the related matter, the Commission alleged that Securus and Goodland failed to properly supervise Richard's actions and also failed to adopt and implement an adequate system of internal controls with a view toward preventing and detecting violations of the Advisers Act. Securus and Goodland were ordered to cease and desist from violating Sections 206(4) and 206(4)-7 of the Advisers Act. Goodland was ordered to pay a penalty of $30,000 and barred from association. The Firm was censured.

Identity Theft/Privacy

***In re R.T. Jones Capital*, Advisers Act Rel. No. 4204, 2015 SEC LEXIS 3909 (Sept. 22, 2015).**

The Commission accepted an offer of settlement from R.T. Jones Capital (the Respondent), a registered investment adviser, resulting from the Respondent's alleged failure to adopt written policies and procedures reasonably designed to protect customer records and information, as required by Rule 30(a) of Regulation S-P. Specifically, the Commission alleged that during a

nearly four-year period from 2009 through 2013, the Respondent failed to adopt any written policies and procedures to ensure the security and confidentiality of personally identifiable information (PII) and protect it from anticipated threats or unauthorized access. In July 2013, an unauthorized, unknown third party hacked into the Respondent's web server and gained access rights and copy rights to the data on the server. According to the SEC, after the incident, the Respondent appointed an information security manager to oversee data security, adopted written policies and procedures in accordance with Regulation S-P, stopped saving sensitive PII on its web server, encrypted any such information stored on its internal network, and installed a new firewall. The Commission issued an order censuring the Respondent, enjoining it from future violations of Regulation S-P, and requiring it to pay a civil penalty of $75,000. On the same day, the SEC's Office of Investor Education and Advocacy published a new Investor Alert, "*Identity Theft, Data Breaches, and Your Investment Accounts*." The alert, also available on Investor.gov, the SEC's website for individual investors, offers steps for investors to take regarding their investment accounts if they become victims of identity theft or a data breach.

Misrepresentations

In re UBS Willow Mgmt. L.L.C., Advisers Act Rel. No. 4233, 2015 SEC LEXIS 4314 (Oct. 16, 2015).

The Commission accepted an offer of settlement from UBS Willow Management L.L.C. (UWM) and UBS Fund Adviser L.L.C. (UFA) (collectively, the Respondents). The Commission alleged that UWM, a joint venture between UFA and an external portfolio manager, marketed a closed-end fund they advised, UBS Willow Fund (the Fund), as one that primarily invested in distressed debt, a strategy predicated on the debt increasing in value. However, in 2008, according to the SEC, UWM changed the Fund's strategy and instead had the Fund purchase large quantities of credit default swaps. The Commission alleged that UWM did not provide adequate disclosure of this change in investment strategy to the Fund's investors or board of directors. According to the Commission, a marketing brochure UWM provided to potential investors misstated the Fund's strategy and letters it sent to investors contained false or misleading information about the Fund's exposure to credit default swaps. UWM also allegedly caused the Fund to misrepresent its investment strategy in shareholder reports filed with the SEC. The Commission alleged that UFA, which retained ultimate control over the Fund, was aware of the change in investment strategy and failed to adequately supervise UWM by allowing the change to occur without adequate disclosure to the Fund's investors or board of trustees. The Respondents agreed to be censured and to jointly and severally pay $17.5 million, consisting of $8.2 million in disgorgement of advisory fees, $1.4 million in prejudgment interest, a $3 million civil penalty, and $4.9 million to compensate investors for losses. The Respondents were also ordered to cease and desist from future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-8(a)(l) and 206(4)-8(a)(2) thereunder, and Section 34(b) of the Investment Company Act and Rule 8b-16 thereunder.

Trade Allocation

In re Welhouse & Assoc. Inc,. Advisers Act Rel. No. 4231, 2015 SEC LEXIS 4282 (Oct. 16, 2015).

The Commission accepted an offer of settlement from Welhouse & Associates, a registered investment adviser, and Welhouse, its owner, principal and chief compliance officer (collectively, the "Respondents"). The Commission alleged that the Respondents executed a cherry-picking scheme by disproportionately allocating trades that had appreciated in value during the course of a trading day to Welhouse's personal and business accounts, while allocating trades that had depreciated in value during the day to the accounts of the Welhouse & Associates' advisory clients. Additionally, the Commission alleged that Welhouse & Associates' Form ADV falsely stated that it did not trade for its own account and that it restricted the trading of employees' accounts and failed to discuss the conflicts of interest such trading presents. The Respondents were ordered to cease and desist from future violations of Section 10(b) and Rule 10b-5 of the Exchange Act and Sections 206(1) and 206(2) of the Advisers Act. The Firm was censured and Welhouse was barred from association. The Respondents were together ordered to pay disgorgement and prejudgment interest of $468,500 and a civil penalty of $300,000.

Undisclosed or Inadvertent Principal Transactions

In re Citigroup Glob. Mkts., Inc., Advisers Act Rel. No. 4178, 2015 SEC LEXIS 3406 (Aug. 19, 2015).

The Commission accepted an offer of settlement from Citigroup Global Markets, Inc., a dually registered investment adviser and broker-dealer (the Respondent). The Commission alleged that the Respondent failed to review thousands of trades executed by several of its trading desks during a 10-year period due to omissions of relevant trades in the electronically generated daily reports on executed trades resulting from technological errors. The Commission also alleged that the Respondent inadvertently routed more than 467,000 of its advisory client transactions to an affiliated market maker, which then executed the transactions on a principal basis despite having policies and procedures to the contrary. The Commission alleged that this occurred as a result of deficient policies and procedures and faulty trade surveillance. The Respondent voluntarily paid $2.5 million (its total profits from the principal transactions) to the affected advisory client accounts. The Commission also censured the Respondent and ordered it to cease and desist from violating Section 15(g) of the Exchange Act and Section 206(4) of the Advisers Act and Rule 206(4)-(7) thereunder. The Respondent further agreed to pay a $15 million civil money penalty and retain a consultant to review and recommend improvements to its trade surveillance and advisory account order handling and routing.

Nat'l Asset Mgmt., Inc., Advisers Act Rel. No. 4243, 2015 SEC LEXIS 4424 (Oct. 26, 2015).

The Commission accepted an offer of settlement from National Asset Management, Inc. (NAM), a registered investment adviser, for alleged violations of the Advisers Act. The Commission

alleged that NAM failed to disclose to and obtain the consent of its advisory clients to more than 21,000 securities trades executed in a principal capacity by NAM's affiliated broker-dealers. NAM also allegedly failed to report in its Form ADV and timely disclose to its clients the disciplinary histories of several of its associated persons. The Commission also alleged that NAM did not enforce its code of ethics when its CEO, several directors, and many of its employees failed to submit hundreds of required reports on their personal securities trading to NAM. The Commission further alleged that NAM failed to adopt and implement compliance policies and procedures reasonably designed to prevent violations of certain provisions of the Advisers Act and the rules thereunder, and failed to conduct a required annual review of its compliance policies and procedures. The Commission ordered NAM to retain an independent consultant to review its policies and procedures relating to compliance with Section 206(3) of the Advisers Act, Form ADV disclosures, enforcement of its code of ethics provisions on reporting of personal securities transactions, and ensuring completion of annual compliance reviews pursuant to Rule 206(4)-7(b). The Commission further ordered NAM to submit to the Commission annual written reports regarding principal trades for three years, to notify existing and potential clients of the order and post the order on the home page of NAM's website, and to certify in writing its compliance with these undertakings within 60 days of their completion. The Commission also censured NAM, ordered it to cease and desist from violating Sections 204, 204A, 206(3), 206(4), and 207 of the Advisers Act and Rules 204-1, 204-3, 204A-1, and 206(4)-7(a)-(b) thereunder, and required it to pay a civil penalty of $200,000.

In re Parallax Invs., LLC, Exchange Act Rel. No. 70944, 2015 SEC LEXIS 3256 (Aug. 6, 2015).

The Commission accepted offers of settlement from Parallax Investments, LLC (Parallax), a formerly registered investment adviser; Bott, its sole owner and manager, and an officer and owner of affiliate Tri-Star Financial (TSF), a broker-dealer; and Falkenberg, chief compliance officer for both the Firm and TSF (collectively, the Respondents). The Commission alleged that Parallax engaged in at least 2,000 principal transactions with advisory clients through TSF, its broker-dealer affiliate, without giving prior disclosure to and obtaining transaction-by-transaction consent in writing from clients. The Commission also alleged that Respondents violated the Custody Rule by failing to obtain audited financial statements by an independent auditor registered with the Public Company Accounting Oversight Board for a private fund client, and failing to distribute audited financial statements to the private fund's limited partners within 120 days of the fund's fiscal year-end. The Commission further alleged that the Firm failed to adopt and implement written compliance policies and procedures and a code of ethics for two years. The Commission censured the Respondents and ordered each to cease and desist from future violations of Sections 204A, 206(3), and 206(4) of the Advisers Act and Rules 204A-1, 206(4)-2, and 206(4)-7 thereunder. The Commission ordered Parallax to retain an independent consultant to conduct a comprehensive compliance review designed to prevent and detect prohibited principal transactions, and to adopt and implement adequate compliance policies and procedures. The Commission further ordered Falkenberg to complete 30 hours of compliance training related to the Advisers Act. The Commission also ordered Parallax to pay a civil penalty of $200,000, Bott to disgorge $450,000 plus prejudgment interest of $5,604 and pay a civil penalty of $70,000, and Falkenberg to pay a civil penalty of $40,000.

In re Tri-Star Advisors, Inc., Advisers Act Rel. No. 4160, 2015 SEC LEXIS 3276 (Aug. 6, 2015).

The Commission accepted an offer of settlement from Tri-Star Advisors, Inc. (TSA), a registered investment adviser, and its principals Payne and Vaughan, who each were owners of Tri-Star Financial (TSF), an affiliated broker-dealer (collectively, the Respondents). The Commission alleged that TSA engaged in approximately 2,212 principal transactions with advisory clients through TSF, its broker-dealer affiliate, without giving prior disclosure to and obtaining transaction-by-transaction consent in writing from clients. Of the $1.9 million in gross sales credits received by the broker-dealer for the principal transactions, approximately $1 million was paid to the Respondent principals of the Firm. The Commission further alleged that TSA failed to adopt and implement written compliance policies and procedures addressing principal transactions. The Respondents were permanently enjoined from future violations of Sections 206(3) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. The Commission ordered TSA to retain an independent consultant to conduct a comprehensive compliance review designed to prevent and detect prohibited principal transactions, and to adopt and implement adequate compliance policies and procedures. TSA was ordered to pay a $150,000 civil penalty. The Commission ordered Payne to pay disgorgement of $142,500, prejudgment interest of $3,235, and a civil penalty of $50,000. The Commission also ordered Vaughan to pay disgorgement of $232,500, prejudgment interest of $5,278, and a civil penalty of $50,000.

Valuation

In re Lynn Tilton et al., Advisers Act Rel. No. 4053, 2015 SEC LEXIS 1144 (Mar. 30, 2015).

The Commission instituted public administrative and cease-and-desist proceedings against Tilton and the Patriarch Partners advisory firms that she controls (collectively, the Respondents), alleging that the Respondents breached their fiduciary duties and defrauded clients by failing to value assets using the methodology described to investors in offering documents for certain funds (the Funds) investing in collateralized loan obligations (CLOs), which have portfolios composed of loans to distressed companies. Instead, according to the Commission, nearly all valuations of loan assets reported to investors by the Respondents were unchanged from the time they were acquired, despite many of the companies making partial or no interest payments to the Funds for several years. The Commission alleged that such misrepresentations misled Fund investors to believe that objective valuation analyses were being performed and that through the misrepresentation, Respondents have avoided significantly reduced management fees because the valuation methodology described in Fund documents would have given investors greater Fund management control and earlier principal repayments if collateral loans were not performing to a particular standard. The Commission also alleged that the Respondents subsequently misled investors about asset valuations in Fund financial statements. The Respondents are alleged to have violated Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206-4(8) thereunder. The Commission ordered public administrative cease and desist proceedings to determine whether the allegations are true and appropriate remedial action, if any. Those proceedings have not yet occurred.

Financial Industry Regulatory Authority

PERSONNEL CHANGES

The biggest change at FINRA came at the top of the organization. In October 2015, FINRA announced that its Chairman and Chief Executive Officer, Richard Ketchum, would retire in the second half of 2016 and that the FINRA Board of Governors was conducting a search for his successor, taking into consideration internal and external candidates. A regulator for more than 30 years, Mr. Ketchum previously served as CEO of NYSE Regulation, President of NASD and The Nasdaq Stock Market, Inc., and Director of the SEC's then Division of Market Regulation.

Russ Ryan joined FINRA as Senior Vice President, Deputy Chief of Enforcement, in March 2015. Mr. Ryan had previously been in private practice and served for many years in the SEC's Division of Enforcement.
In June, the SEC announced that Richard Best would join the Commission as director of the Salt Lake Regional Office. Prior to his appointment, Mr. Best was a senior director and chief counsel in FINRA's Department of Enforcement in New York.

ENFORCEMENT STATISTICS[92]

Although FINRA instituted more disciplinary cases in 2015 than in 2014, the total fines levied were significantly lower than in the prior year. In contrast, the amount of restitution FINRA ordered in 2015 nearly tripled the amount that had been returned to investors in 2014.

In 2015, FINRA brought 1,512 new disciplinary actions, an increase from the 1,397 cases initiated in 2014. Last year, FINRA barred 492 people (versus 481 in 2014), and suspended 737 individuals (compared to 705 such actions in the prior year). FINRA also referred more than 800 fraud and insider trading cases to the SEC and other agencies for litigation and/or prosecution; this was an increase from the more than 700 such matters referred by FINRA in 2014.

With respect to penalties and restitution, last year FINRA levied $95 million in fines (versus $134 million in 2014) and ordered $96.6 million to be paid in restitution to harmed investors (versus $32.3 million in 2014 and $9.5 million in 2013).

SANCTION GUIDELINES

In Regulatory Notice 15-15, published in May 2015, FINRA announced significant revisions to its Sanction Guidelines, including amending the overarching principles that apply to sanction determinations and revising the guidelines to call for increased sanctions for fraud and

[92] *See* the current About FINRA page on the FINRA website, http://www.finra.org/AboutFINRA/.

unsuitable recommendations.

The amended Sanction Guidelines "reiterate FINRA's longstanding position that sanctions in disciplinary cases should be more severe for recidivists." The amendments emphasize a policy of imposing progressively escalating sanctions where there are patterns of similar misconduct or evidence of a reckless disregard for regulatory requirements, investor protection, or market integrity. FINRA noted that, as amended, the Sanction Guidelines "incorporates the concept that sanctions in disciplinary cases should be significant enough to achieve deterrence, and not a mere cost of business." In that regard, pursuant to the revisions, adjudicators should consider imposing sanctions above the recommended range when a respondent's conduct "has widespread impact, is intentional or results in significant ill-gotten gains."

The revised guidelines also advise FINRA adjudicators to strongly consider bars for individuals or expulsion for firms in cases involving fraud. For suitability violations, the range of the suspension has increased from one year to two years, and adjudicators are advised to strongly consider bars if aggravating factors outweigh mitigating ones.

TARGETED EXAMINATION LETTERS AND SWEEPS

In August 2015, FINRA issued a targeted examination letter concerning retail conflicts of interest. Referencing its 2015 Annual Priorities Letter, FINRA noted that conflicts of interest represented "a recurring challenge that contribute to compliance and supervisory breakdowns which can lead to firms and registered representatives, at times, compromising the quality of service they provide to clients." While FINRA recognized instances of positive change since it issued its Report on Conflicts of Interest in October 2013, the intent of the 2015 review was to continue the assessment of the efforts to identify, mitigate, and manage conflicts of interest, specifically with respect to compensation practices. FINRA's review covered the period of August 2014 through July 2015 and requested responses to 19 questions concerning firms' retail accounts.

FINANCIAL EXPLOITATION OF SENIORS AND OTHER VULNERABLE ADULTS[93]

In October 2015, FINRA released Regulatory Notice 15-37, seeking comments on proposed rules relating to financial exploitation of seniors and other vulnerable adults.

FINRA proposed changes to Rule 4512 (Customer Account Information). These changes would require firms to make reasonable efforts to assign a trusted contact upon opening an account for a noninstitutional customer. Regarding existing accounts, the rule requires obtaining information for a trusted contact only if a firm were to update a customer's account information as part of its routine processes or as otherwise required by applicable rules. Changes to Rule 4512 also require firms to disclose in writing their ability to contact the trusted contact and

[93] This section of the outline was drafted by Ben A. Indek, Ariel Gursky, and Elizabeth Buechner in connection with the 2016 SIFMA Compliance and Legal Society Annual Seminar.

disclose account information to confirm the account holder's information, health status, and identity of legal guardian or other person holding similar status. FINRA also proposed the adoption of Rule 2165 (Financial Exploitation of Specified Adults), which would permit "qualified persons" to place temporary holds on the accounts of certain customers if they reasonably believe that financial exploitation is occuring. Customers who may fall under Rule 2165 included individuals who are 65 or greater or individuals with mental or physical impairments. "Qualified persons" include associated persons of a firm who are related to an account and serve in a supervisory, compliance, or legal capacity. "Financial exploitation" is broadly defined.

The comment period expired on November 30, 2015. FINRA received 40 comment letters in response to the notice.

Finally, as noted below, FINRA identified "Seniors and Vulnerable Investors" as an area of focus in its 2016 Regulatory and Examination Priorities Letter.

FINRA'S 2016 REGULATORY AND EXAMINATION PRIORITIES[94]

On January 5, 2016, FINRA published its annual Regulatory and Examination Priorities Letter (the 2016 Letter). The 2016 Letter identifies supervision, liquidity, and firm culture as broad themes for 2016. As in previous years, FINRA focused on areas of risk affecting investor interests and market stability.

The below discussion highlights potential new areas of concern for firms as well as identifying topics that have fallen down (or off) the priority list since 2015—to help guide firms' assessment of risk management policies in order to align with FINRA's priorities in the new year.

New Priorities for 2016

Firm Culture

Expanding on last year's "tone from the top" message, the 2016 Letter announces that FINRA will formalize its assessment of a firm's culture when reviewing how its executives, supervisors, and employees conduct business. We expect this to mean a top-to-bottom focus on how firms implement their policies and procedures. Indicators that FINRA will consider when assessing a firm's culture include management of conflicts of interest, adequacy of compliance functions, and responses to breaches of firm policies.

Conflicts of Interest

Underscoring FINRA's focus on firm culture, ethics, and supervision, the 2016 Letter emphasizes specific areas that could create conflicts of interest, including compensation incentive structures, investment banking and research business conflicts, information leakage inside and

[94] The information in this section is contained in a Law Flash authored by Timothy P. Burke, Merri Jo Gillette, and Ben A. Indek. It was published on January 6, 2016.

outside a firm, and position valuation. FINRA will review whether research analysts are inappropriately involved in banking activities, whether information is being inappropriately leaked between different areas of a firm's trading activities, and the many conflicts that can arise when traders provide valuations for the illiquid (level 3) positions they establish. The 2016 Letter also notes concern with potentially inadequate review by firms of employees' outside business activities.

Supervision of Technology
FINRA will review firms' approaches to cybersecurity risk management and consider the ability of firms to protect the confidentiality and integrity of sensitive customer information, as well as high-frequency trading firms' ability to protect systems from unauthorized access. FINRA notes that firms retain the responsibility to supervise certain activities outsourced to third-party providers.

Anti-Money Laundering Controls
FINRA addresses AML controls as a supervisory issue. The 2016 Letter states that FINRA expects firms to routinely test their AML compliance systems. FINRA will focus on high-risk accounts and activity and will review documentation of any decision to exclude certain customer transactions from surveillance.

Continued Focus

The 2016 Letter also lists a host of perennial priorities that appear year after year. This year's list includes the following:

Seniors and Vulnerable Investors
FINRA has again identified this class of investor as an increased priority. Of particular note, the 2016 Letter highlights instances of third-party fraud perpetrated upon seniors by bad actors in positions of trust who hold powers of attorney or other means of controlling assets. FINRA also previewed that it will look closely at the sale of high-commission products to senior or vulnerable investors.

Suitability and Concentration
FINRA indicated that it would continue its focus on complex products, speculative or longer-duration interest-rate sensitive products, and alternative investments. FINRA's 2016 Letter notes that while "many firms have established robust systems" to support recommendations of these products, "others have not." Regardless, firms should expect continued scrutiny regarding the recommendations of these products.

Fixed-Income Orders
Handling of fixed-income orders seems likely to remain a priority in 2016, given the attention in FINRA's 2016 Letter as well as guidance in its 2015 regulatory notice "Guidance on Best Execution Obligations in Equity, Options and Fixed Income Markets." In the 2016 Letter, FINRA explains that it will augment its best execution surveillance using spread-based surveillance

patterns. This focus coincides with the MSRB's focus on best execution in the fixed-income markets, outlined in its new rule scheduled to take effect on March 21, 2016.

Market Access
FINRA also seems likely to continue its focus on market access, and will begin publishing monthly "report cards" focused on layering and spoofing. These reports may be useful for firms to assess their own surveillance systems and enhance their policies, practices, and protocols as appropriate.

Sales Charge Discounts and Waivers
Another recurring priority (and the subject of several 2015 settlements) is FINRA's continued concern with firms that fail to provide appropriate volume discounts (breakpoints) or sales charge waivers for products such as mutual funds, Unit Investment Trusts (UITs), nontraded Real Estate Investment Trusts (REITs), and Business Development Companies (BDCs).

Diminished Focus in 2016?

Of arguably equal use to firms may be areas that have "dropped off" the letter since last year. None of the following areas in FINRA's 2015 Regulatory and Examination Priorities Letter (2015 Letter) were included in the 2016 Letter:

IRA Rollovers and Other Wealth Events
In 2015, FINRA focused on fair and balanced communication related to wealth events, such as IRA rollovers. The 2015 Letter emphasized concern with adequate communication of fees, as well as policies to ensure that no recommendation would occur if a broker-dealer did not intend for its registered representative to recommend securities transactions as a result of an IRA rollover.

Municipal Adviser Registration
The 2015 Letter expressed concern about failure to register as a municipal adviser, noting that the SEC's municipal advisor registration rules became effective July 1, 2014.

Reporting of Disclosable Information
The 2015 Letter focused on adequate and timely disclosure of information, primarily information derived from U4 and U5 registration filings. FINRA indicated that this focus would include a review of all registered persons to determine whether there were any reporting failures.

FINRA ENFORCEMENT ACTIONS[95]

Blue Sheets

***Macquarie Capital (USA) Inc. (Macquarie),* AWC No. 2014041862801 (Dec. 15, 2015).**

In a settlement with Macquarie, FINRA alleged that between 2012 and 2015, the firm submitted inaccurate blue sheets to the SEC and FINRA. Specifically, Macquarie submitted at least 1,143 inaccurate blue sheets to the SEC that misreported approximately 178,000 transactions, and submitted at least 600 inaccurate blue sheets to FINRA that misreported approximately 160,000 transactions. FINRA found that between 2012 and 2014, the firm did not have an adequate audit system providing for accountability of its blue sheet submissions. Macquarie consented to a censure and a fine of $2.95 million. In determining the sanction, FINRA considered that Macquarie detected and self-reported the issues, initiated internal reviews, identified the cause of the issues, and engaged in remediation. Macquarie also agreed to conduct a review of its blue sheet policies, systems, and procedures.

***Wedbush Sec. Inc. (Wedbush),* Disc. Proc. No. 2012034964301 (Aug. 2015).**

In an Office of Hearing Officers decision, a hearing panel found that, between April 2012 and December 2013, Wedbush had submitted 816 incomplete and inaccurate blue sheets, failing to report more than 5.6 million transactions, in violation of Exchange Act Section 17(a), and FINRA Rule 2010. The panel found that Wedbush failed to audit its blue sheets, and failed to have any supervisory system or written supervisory prorcedures (WSPs) for supervising its blue sheets. The firm was fined $1 million.

Closed-End Funds

***Santander Sec. LLC (Santander),* AWC 2014041355501 (Oct. 13, 2015).**

In an AWC with Santander, FINRA alleged that between December 2012 and October 2013, the firm failed to maintain an adequate system of supervision and procedures to ensure it accurately represented market risks of investing in Puerto Rico municipal bonds (PRMBs) and CEFs, thereby causing certain of its customers to incur losses. FINRA also alleged that the firm failed to reasonably supervise employee trading in its Puerto Rico office, resulting in a significant amount of conflicted trades. According to FINRA, the firm failed to ensure that its proprietary product risk–classification tool accurately reflected market risks of investing in PRMBs when recommending such investments to its customers. Most notably, the firm did not review or assess the tool's PRMB risk classifications after significant market events, such as a December 13, 2012 downgrade by Moody's of certain PRMBs. FINRA alleged that the firm also failed to adequately supervise its customers' use of margin and concentrated positions in their accounts to ensure suitability of new purchases. Finally, FINRA alleged that the firm failed to

[95] The cases described herein are settlements in which respondents neither admitted nor denied the allegations against them, unless the description explicitly states otherwise.

reasonably supervise employee trading in its Puerto Rico office, which resulted in approximately 400 customer orders being filled through positions held in a broker's personal account. In settlement, the firm consented to a censure, a fine of $2 million, restitution of $4.3 million to certain customers, additional restitution of $121,000, and the firm's agreement to make offers of rescission to buy back securities sold to certain customers.

UBS Fin. Servs. Inc. of Puerto Rico (UBSPR), AWC 2013039142101 (Sept. 29, 2015).

In an AWC with UBSPR, FINRA alleged that the firm failed to supervise the suitability of transactions in Puerto Rican CEF shares, causing the firm's customers with CEF positions to suffer substantial losses. FINRA also alleged that the firm failed to implement a supervisory system reasonably designed to identify the combination of leverage and concentration levels in customer accounts so as to ensure that related CEF transactions adhere to customer risk profiles. According to FINRA, the firm was aware of unique aspects of the Puerto Rican economy, whereby retail customers typically maintain high levels of concentration in Puerto Rican assets and use those highly concentrated accounts as collateral for cash loans. Despite this awareness, for more than four years the firm failed to adequately monitor such concentration and leverage levels to identify whether certain customers' CEF transactions were suitable in light of their heightened exposure to risk. FINRA alleged that the firm solicited certain customers to open lines of credit collateralized by their securities accounts, which were highly concentrated in CEF shares. Since such lines of credit subject an account to a maintenance call where the account's value falls below required collateral levels, highly concentrated accounts rendered certain customers more vulnerable to loss if they had to liquidate their accounts to meet a call. Market events in August 2013 caused the prices of many CEF shares to plummet, triggering maintenance calls in the accounts that were highly concentrated in CEF shares and forcing customers to realize substantial losses. In settlement, the firm accepted a censure and a fine of $7.5 million, and FINRA ordered it to pay approximately $11 million in restitution to 165 customers. FINRA also recognized the assistance of the SEC, which also brought an action against the firm for CEF-related losses, settling for $15 million in disgorgement, interest, and penalties.

CMOs

Brookstone Securities, Inc. (Brookstone), Disc. Proc. No. 2007011413501 (July 2015).

A National Ajudicatory Council (NAC) hearing panel found that Brookstone, acting through registered representatives Antony Lee Turbeville and Christopher Dean Kline, fraudulently made material misrepresentations and omissions of fact that misled senior and retired customers concerning the risks associated with collateralized mortgage obligations (CMOs). The panel further found that the firm and Turbeville made misrepresentations, omitted material facts, and utilized misleading statements in letters sent to some customers. According to FINRA, the firm, acting through its CCO, David William Locy, failed to review customer discretionary accounts at frequent intervals, failed to reasonably supervise the firm's activities, and failed to enforce the firm's procedures for safeguarding customer information. The firm was censured, fined $1 million and required to pay restitution of $1,620,100, jointly and severally with Kline and

Turbeville. Kline and Turbeville were also barred. Locy was fined $25,000, suspended for two years, and barred from acting in a supervisory or principal capacity. This matter is on appeal to the SEC.

Consolidated Statement Reporting

H. Beck, Inc. (H. Beck), AWC No. 2012031552601 (Mar. 30, 2015).

In a settlement with H. Beck announced on the same day as the J.P. Turner case, below, FINRA alleged that from July 2011 to May 2012, the firm inadequately supervised consolidated reports provided to approximately 47 customers. FINRA found that the firm did not have WSPs specifically addressing consolidated reports; FINRA's review indicated that certain reports were inaccurate, primarily due to manually inputted valuations. FINRA also found that from October 2008 to September 2013, H. Beck failed to provide sales charge discounts to 1,017 unit investment trust purchases totaling about $23 million. According to FINRA, the firm relied on its registered representatives to apply the discount, but did not appropriately train them. Finally, FINRA found that certain non-registered employees used outside email addresses for firm business, but did not register such addresses with the firm's vendor for archiving. H. Beck consented to a censure and a fine of $425,000.

J.P. Turner & Co. (J.P. Turner), AWC No. 2013036404301 (Mar. 27, 2015).

In a settlement with J.P. Turner, FINRA alleged that from June 2010 to July 2012, the firm inadequately supervised the dissemination of consolidated reports provided to customers. FINRA found that approximately 43 registered representatives prepared and disseminated consolidated reports to customers. While the firm had procedures for correspondence generally, FINRA alleged they were inadequate to address consolidated reports, and as a consequence, there were 50 instances of consolidated reports being disseminated without adequate disclosures. J.P. Turner consented to a censure and a fine of $100,000.

Signator Investors, Inc. (Signator), AWC No. 2012032782402 (Aug. 13, 2015).

FINRA entered into an AWC with Signator and its former compliance specialist, Mitchell, in which FINRA alleged that, between May 2004 and March 2014, Signator failed to have a reasonable supervisory system, including WSPs, regarding its registered representatives' use of consolidated reports. Signator allowed the representatives to enter customized values for assets and accounts held away from the firm into a consolidated report; however, the firm did not review the accuracy of the manually entered valuations provided to customers. The firm's lack of procedures led to confusion among firm supervisors regarding who was responsible for reviewing the reports. The firm also failed to maintain certain consolidated reports sent to its customers, and consequently has no record of them. FINRA also alleged that Mitchell provided advance notice of unannounced branch audits to registered representatives, and informed them in advance of which client files would be reviewed. Despite having been reprimanded for this conduct previously, Mitchell continued to provide such advance notice, and the firm failed to take any additional steps to monitor him. FINRA further alleged that Signator, through Mitchell, failed to review incoming and outgoing correspondence through one fax machine. The firm's

procedures were also inadequate in that they did not require a review of the fax machine's log on a regular basis, nor did they require a duplicate copy of faxed material to be sent automatically for review. In settlement, Signator consented to a censure and a fine of $450,000. Mitchell consented to a fine of $10,000 and was suspended from association in a supervisory capacity for seven months.

Delivery of Prospectuses

Citigroup Global Markets Inc. (Citigroup), AWC No. 2011026502901 (Dec. 11, 2014).

In an AWC that FINRA published in early 2015, FINRA alleged that, from 2009 through April 2011, Citigroup failed to deliver prospectuses in an estimated 1.5 million instances of customer purchases of ETFs. For example, the firm failed to delivery prospectuses for approximately 255,000 customer purchases of approximately 160 ETFs during a three-month period. FINRA alleged that the firm failed to have adequate supervisory systems regarding ETF prospectus delivery. According to FINRA, the firm's decentralized supervisory system contributed to a failure to identify deficiencies in the process, even after the firm detected certain failures in 2009, and a failure to appropriately respond to "red flags" regarding failures to deliver. FINRA also alleged that the firm failed to have supervisory controls that tested and verified that its ETF prospectus delivery procedures complied with regulatory requirements, despite the firm's representations in an undertaking following a prior NYSE matter from 2007 relating to ETF prospectus delivery failures. In settling the matter, Citigroup consented to a censure and a fine of $3 million to be paid jointly to FINRA and NYSE. Citigroup self-reported the ETF prospectus delivery failures in January 2011.

First Southwest Co., LLC (First Southwest), AWC No. 2013038322901 (July 16, 2015).

FINRA entered into an AWC with First Southwest, alleging that from August 2012 to April 2013, the firm failed to timely deliver prospectuses to its customers for 506 transactions as the result of a coding error. FINRA also found that the firm had an inadequate supervisory system and procedures for confirming that customers who purchased certain investment products were receiving a required prospectus. In addition, First Southwest delayed notification of its prospectus delivery failures to 36 correspondent firms that were affected by the failures for more than one year. In settlement, the firm consented to a censure and a fine of $450,000.

Form U-4 Filings

UBS Fin. Servs. Inc. (UBS), AWC No. 2013037118101 (May 2015).

In an AWC with UBS, FINRA alleged that, between May 2010 and May 2013, the firm failed to amend, or timely amend, the Uniform Applications for Securities Industry Registration or Transfer (Forms U4) on 103 occasions. FINRA alleged that the firm failed to establish and maintain a supervisory system and WSPs reasonably designed to ensure that it disclosed registered representatives' reportable unsatisfied liens and judgments on Forms U4 in instances where the firm's payroll department had received a garnishment notice. The firm did not have

supervisory procedures in place to ensure that its payroll department notified compliance or supervisory personnel to determine if the numerous wage garnishment orders it processed involved reportable events. In settlement, the firm consented to a censure and fine of $500,000.

Large Option Position Reporting

BNP Paribas Sec. Corp. (BNP Paribas), AWC No. 2012031320301 (Oct. 6, 2015).

FINRA submitted an AWC with BNP Paribas in which it alleged that, at various times between January 19, 2010 and July 9, 2015, the firm failed to report certain over-the-counter (OTC) options positions to the Large Options Position Reporting (LOPR) system in approximately 14.9 million instances, and effected opening transactions for customers or proprietary accounts that exceeded the position limits in 12 different securities. Specifically, FINRA alleged that the firm inaccurately reported other OTC options positions to the LOPR systems, including under-reporting positions with an incorrect multiplier; inaccurately reporting positions with "TBA" in certain data fields; reporting positions with incorrect strike prices; reporting positions without entries in the tax identification and/or tax type data fields; reporting positions with the incorrect quantity of contracts; failing to report transactions involving foreign underlying securities; and failing to report transactions in which the firm misclassified the counterparties. Further, FINRA alleged that the firm failed to establish and maintain an appropriate supervisory system, in that it did not include sufficient WSPs regarding reporting of positions to the LOPR system. In settling the matter, BNP Paribas consented to a censure, a fine of $2.4 million, and certain undertakings to implement procedures related to its LOPR system. In determining the fine, FINRA took into account the firm's cooperation and the fact that it self-reported the violations and took significant remedial steps.

Merrill Lynch, Pierce, Fenner & Smith Inc. (Merrill Lynch) and Merrill Lynch Prof'l Clearing Corp. (Merrill Lynch Pro), AWC No. 2012032249301 (Feb. 2015) and AWC No. 20110277299 (June 8, 2015).

FINRA settled with Merrill Lynch and Merrill Lynch Pro (collectively, the Firms) as a result of allegations that the Firms had systemic deficiencies in LOPR submissions spanning from 2008 to 2013, and failed to supervise, maintain reasonable procedures, and conduct adequate reviews to ensure compliance with LOPR requirements.

FINRA alleged that the Firms violated (1) FINRA Rule 2360(b)(5) by reporting inaccurate information and failing to report certain positions in their LOPR submissions, and (2) Rules 3010 and 2010 by failing to supervise and implement procedures to ensure compliance with LOPR requirements. In addition, FINRA alleged that Merrill Lynch violated Rule 2360(b)(3) by, among other things, in more than 26.8 million instances between January 2010 and April 2013, failing to report positions in accounts acting in concert that established an aggregate position of 200 or more options on the same side of the market, and covering the same underlying security. FINRA alleged that Merrill Lynch Pro, among other things, made the same reporting error in 700,000 instances between 2010 and 2013. FINRA also alleged the Firms' procedures were not designed to detect whether reportable positions were actually reported and reported accurately.

Merrill Lynch consented to a censure and a fine of $5.796 million (payable in part to FINRA and in part to three options exchanges). Merrill Lynch Pro consented to a censure and a fine of $1.454 million (payable in part to FINRA and in part to the three options exchanges). The Firms agreed to an undertaking to review, correct, and provide a written report on their LOPR reporting systems. In setting the sanction, FINRA considered the Firms' extraordinary cooperation and remedial actions taken, including hiring outside counsel and an independent auditor.

In a separate AWC, the Firms settled similar allegations with NASDAQ OMX PHL (the Exchange) in which the Exchange alleged that Merrill Lynch (from 2004 to 2014) and Merrill Pro (from 2005 to 2014) violated (1) Section 17(a)(1) of the Exchange Act and Rule 17a-3 thereunder, and Exchange Rules 707, 760, 785(c), 1014(g)(i)(A), 1053, and 1063(e)(i) by entering and executing orders with incorrect origin codes; and (2) Exchange Rule 748 by failing to have adequate supervisory systems and controls in place. The Exchange alleged that the Firms' use of incorrect origin codes resulted in (1) transactions executed by the Firms that may have traded ahead of other orders entitled to execution priority; (2) potential adverse impact to the execution price and quantity of other market participants' orders; (3) an inaccurate audit trail and inaccurate order records; (4) trades being reported to The Options Clearing Corporation with inaccurate trade details; and (5) an adverse impact to the Exchange's ability to detect potential violations of its rules and federal securities laws. The Exchange also alleged that the Firms' supervisory procedures, systems, and controls were inadequate in that they failed to reasonably address origin code requirements and failed to provide adequate training and supervision of employees to ensure that origin codes were properly marked. The Firms consented to a censure and a fine of $1.125 million (jointly and severally), and agreed to certain undertakings about making submissions to the Exchange regarding compliance with origin code requirements.

optionsXpress, Inc. (optionsXpress), AWC No. 2012031310901 (Mar. 19, 2015).

In an AWC with optionsXpress, FINRA and the NASDAQ Options Market (NOM) alleged that, from January 2010 to February 2013, the firm violated Chapter III, Section 10 of the NOM Rules by failing to report positions to the LOPR connected to accounts that were AIC. Specifically, the firm failed to report positions in approximately 1,290,679 instances due to the firm's failure to aggregate, and inaccurately reported positions without the relevant AIC identifier in approximately 1,546,196 instances where AIC accounts had established an aggregate position of 200 or more options contracts on the same side of the market covering the same underlying security. FINRA and NOM also alleged that, between September 2006 and August 2013, the firm failed to maintain an adequate system of supervision and WSPs. In settling the matter, the firm consented to a censure, and a fine of $2.4 million, of which the firm would pay $650,000 to FINRA and the balance to NOM. FINRA credited the firm's remedial measures, including its creation and enhancement of WSPs and voluntary implementation of in-depth reviews and training regarding its reporting to the LOPR, as well as voluntary ongoing submission of reports to FINRA.

Clearview Correspondent Servs., LLC nka BB&T Sec., LLC (Clearview), **AWC No. 2011027537401 (Feb. 2015).**

Clearview entered an AWC with FINRA, in which FINRA alleged that, between October 2007 and September 2011, Clearview failed to properly aggregate positions for accounts that were acting in concert (AIC), or under common control, and as a result the firm failed to timely report positions to the Options Clearing Corporation Large Options Position Reporting (LOPR) system in more than 1.4 million instances. FINRA also alleged that the firm failed to establish and maintain a reasonable supervisory system concerning the reporting of options positions to the LOPR. Additionally, the firm's supervisory system did not include adequate written supervisory procedures providing for the reporting of options positions to the LOPR. In settlement, the firm consented to a censure and a fine of $1,000,000.

Margin Reporting

J.P. Morgan Clearing Corp. (J.P. Morgan), **AWC No. 2013036767101 (July 30, 2015).**

FINRA entered into an AWC with J.P. Morgan that alleged that from October 2008 to July 2012, the firm inaccurately reported to NYSE and FINRA the total of its customer debit balances in securities margin accounts and the total of its customer free credit balances in cash accounts and securities margin accounts. This information is published in aggregate amounts for the industry as a whole. FINRA found that the firm's systems for preparing the required reports and its written procedures were inadequate and had not kept pace with changes in the firm's business and account mapping over the years. After the firm became concerned in 2012 that the totals it had reported were disproportionately high compared to the industry as a whole, the firm identified and self-reported the issue to FINRA and subsequently provided certain corrected figures. The firm then implemented new systems and procedures. However, according to FINRA, while comparing and validating information obtained from the new systems, J.P. Morgan personnel failed to make certain manual adjustments as a result of inadequate guidance in the firm's procedures. This caused inaccurate reports from May to November 2014, which J.P. Morgan self-reported in January 2015. In settling the matter, J.P. Morgan consented to a censure and a fine of $500,000, and to provide a written certification concerning the adequacy of its margin reporting systems, policies, and procedures.

Cantor Fitzgerald & Co. (Cantor), **AWC No. 20120349643 (Dec. 21, 2015).**

In an AWC with Cantor, FINRA alleged that the firm sold more than 73.6 billion shares of microcap securities without proper due diligence, in contravention of Section 5 of the Securities Act and in violation of FINRA Rules 2010 and 3010. According to FINRA, the firm's supervisory system for microcap securities trading was not reasonable in that it did not include procedures for determining whether the shares sold were restricted or control securities, or whether the sales were exempt. The supervisory system also did not provide an adequate way for supervisors to identify red flags that might indicate unlawful distributions of unregistered securities. Specifically, the firm's trading surveillance system was inadequate in that it did not monitor whether a customer's sales of a microcap security represented a significant percentage of a day's market volume, whether the shares deposited were in certificate form and recently

issued, whether those shares were liquidated promptly after deposit, or whether the customer owned more than 20% of the issuer's total outstanding shares. Further, FINRA alleged that the firm's written policies and procedures did not identify red flags related to microcap securities, did not include adequate guidance on how to monitor red flags, and did not specify which type of activity should be reported. According to FINRA, the firm's training regarding the risks associated with microcap securities was inadequate. In settling the matter, Cantor consented to a $6 million fine, and disgorgement of $1.3 million in commissions. A trader and the firm's managing director were both separately fined and suspended.

Aegis Capital Corp. (Aegis), Disc. Proc. No. 2011026386001 (Aug. 3, 2015).

In a settled matter with Aegis, Charles D. Smulevitz (Aegis's CCO from June 2009 to June 2010), and Kevin C. McKenna (Aegis's CCO from June 2010 to June 2013) (collectively, the Respondents), FINRA alleged that, between April 2009 and June 2011, Aegis improperly sold nearly 3.9 billion shares of five unregistered penny stocks in seven customer accounts, and generated more than $1.1 million in commissions. Generally, customers first acquired shares of microcap stocks and then a third party acquired a debt instrument from the issuer. The customers then acquired the debt instrument from the third party and negotiated with the issuer to convert the instrument to stock. Finally, the customers deposited the shares of the microcap stocks into their accounts at Aegis, liquidated the shares, and wired the proceeds out of their accounts. According to FINRA, these sales were schemes to evade the registration requirements of Section 5 of the Securities Act. According to FINRA, the Respondents failed to establish, maintain, and enforce a reasonable supervisory system, including WSPs. Specifically, they failed to conduct reasonable inquiries into sales of 10 unregistered microcap stocks. FINRA additionally alleged that the Respondents failed to adequately implement the firm's AML program by not detecting or investigating red flags, including the fact that the customers involved were referred to Aegis by a broker who was barred from the industry. Aegis was censured, fined $950,000, and ordered to retain an independent consultant. Smulevitz was suspended for 30 days and fined $5,000. McKenna was suspended for 60 days and fined $10,000. In a separate proceeding, Robert Eide, Aegis's President and CEO, was suspended for 15 days and fined $15,000 for failing to disclose more than $640,000 in outstanding liens.

Mutual Fund Sales Charges

Barclays Capital, Inc. (Barclays), AWC 2015044544001 (Dec. 29, 2015).

FINRA entered into an AWC in which it alleged that, between January 2010 and June 2015, Barclays had inadequate supervisory systems and WSPs for supervising the sale of mutual funds to retail brokerage customers. FINRA alleged that the firm failed to ensure that customers received available breakpoint discounts and that the firm's procedures did not provide adequate guidance to supervisors regarding the steps to be taken to confirm that recommended mutual fund transactions were consistent with the financial situation and needs of the customer. FINRA alleged that Barclays incorrectly defined a mutual fund switch to require three separate mutual fund transactions and, as a result, the firm closed out switch alerts and excluded transactions from consideration as switches. In addition, Barclays failed to have WSPs that provided adequate guidance on how to assess the suitability of a switch. FINRA further alleged that the

firm failed to have a reasonable supervisory system so that customers were provided with available breakpoint discounts. FINRA recognized that Barclay's cooperated by initiating, prior to detection by a regulator, an investigation to identify the supervisory failures and by retaining an outside consultant to conduct mutual fund reviews. In settling the matter, the firm consented to a censure, a fine of $3,750,000, restitution of more than $10 million, and an undertaking to review for unsuitable mutual fund transactions and certain missed letters of intent and rights of accumulation breakpoint discounts.

***Edward D. Jones & Co. L.P. (Edward Jones),* AWC No. 2015045354201; *Stifel Nicolaus & Co. Inc. (Stifel)*, AWC No. 2015045163601; *Janney Montgomery Scott, LLC (JMS),* AWC No. 2015045368001; *AXA Advisors, LLC (AXA),* AWC No. 2015045369801; and *Stephens Inc. (Stephens),* AWC No. 2015046029901 (Oct. 27, 2015).**

FINRA entered into AWCs with five entities, alleging that each firm overcharged certain retirement plan and charitable organization customers by failing to identify and apply available sales charge waivers. Specifically, FINRA alleged that each firm sold Class A shares with front-end sales charges, or Class B or C shares with back-end sales charges and higher carrying fees and expenses, to customers that qualified for Class A shares without front-end sales charges. Additionally, FINRA alleged that each firm failed to establish, maintain, and enforce a supervisory system and WSPs reasonably designed to ensure proper application of charge waivers. FINRA further alleged that the firms improperly relied on their financial advisors to decide application of sales charge waivers and provided inadequate training on the topic. In settlement, each firm consented to a censure and restitution in the following amounts: Edward Jones – $13.5 million; Stifel – $2.95 million; JMS – $1.2 million; AXA – $602,000; and Stephens – $150,000. In determining how to resolve these cases, FINRA acknowledged the firms' extraordinary cooperation. No fines were assessed.

***Wells Fargo Advisors, LLC & Wells Fargo Advisors Financial Network, LLC,* AWC No. 2014042689901; *Raymond James & Assocs., Inc.,* AWC No. 201504409001; *Raymond James Fin. Servs., Inc.,* AWC No. 2015044309501; and *LPL Fin., LLC,* AWC No. 2015045270901 (collectively, the Firms) (July 2, 2015).**

In AWCs with the five Firms, FINRA alleged that, at various times between July 2009 and December 2014, the Firms failed to waive mutual fund sales charges for Class A shares purchased by customers in certain charitable and retirement accounts. FINRA alleged that more than 50,000 eligible retirement and charitable organization accounts either paid sales charges on purchases of Class A shares or purchased other classes of shares at higher costs. FINRA also alleged that the Firms failed to supervise the sales of mutual funds, in that they unreasonably relied on financial advisors to waive the sales charges but did not provide them with adequate training, did not have written policies and procedures, and did not have controls to detect instances when sales charge waivers were not provided. In settling the matter, the Wells Fargo entities consented to a censure and to pay $15 million in restitution related to transactions in approximately 35,000 accounts between July 2009 and September 2014. In settlement, the Raymond James entities consented to a censure and to pay restitution of approximately $8.7 million related to approximately 118,000 transactions between July 2009 and December 2014.

In settling the matter, LPL consented to a censure and to pay restitution of $6.3 million related to approximately 76,500 transactions prior to December 2014, and additional restitution for certain customers who purchased after December 2014. In resolving these matters, FINRA noted each of the five Firms' "extraordinary cooperation" for detecting, remediating, and self-reporting the issues. None of the firms were fined.

Net Capital

Charles Schwab & Co. (Schwab), AWC No. 20140428736 (Aug. 24, 2015).

In an AWC with Schwab, FINRA alleged that, on three occasions between May 15, 2014 and July 1, 2014, Schwab was net capital deficient by amounts ranging from $287 million to $775 million. After receiving excess cash inflows, Schwab made unsecured transfers of $1 billion to its parent corporation for overnight investment, pursuant to a revolving loan agreement, leaving the firm net capital deficient. FINRA alleged that Schwab failed to establish, maintain, and enforce an adequate supervisory system, including policies and procedures to prevent the transfers which caused the net capital violations. Further, FINRA alleged that Schwab did not maintain an adequate process to ensure that proprietary accounts of broker-dealers (PAB) were properly categorized and coded, resulting in the firm's failure to maintain the appropriate level of reserves in its PAB Reserve account. In settling the matter, Schwab consented to a censure and a fine of $2 million. In settling the action, FINRA considered the fact that the firm identified and self-reported the net capital violations, and hired an independent consultant and quickly adopted remedial measures. Lastly, with respect to the PAB account violations, Schwab conducted an internal review of all PAB accounts to ensure that those accounts were properly coded, and the firm adjusted its PAB Reserve account to resolve the deficiency.

OATS Reporting

RBC Capital Markets, LLC (RBC), AWC No. 201303377846-01 (July 27, 2015).

FINRA entered into an AWC with RBC that alleged that from November 2011 to March 2014, the firm failed to transmit to OATS approximately 1.1 billion reportable order events (ROEs), which represented about 16% of the firm's ROEs over the 28-month period. FINRA found that RBC's supervisory system was not reasonably designed to achieve compliance with OATS reporting requirements. The firm first self-reported the matter to FINRA in July 2013, advising the staff that the firm and its affiliate had discovered that an OATS reporting system logic change implemented in January 2012 caused the firm's system to cease reporting certain ROEs. After implementing a system fix, the firm engaged an external consulting firm to assess and evaluate the efficacy of its corrective actions. The review identified additional OATS reporting issues, which were self-reported in March 2014. In settlement, RBC consented to a censure and a fine of $450,000, as well as an undertaking to revise the firm's procedures. FINRA stated that the sanctions took into consideration the firm's initial and subsequent self-reporting to the staff and the remedial measures implemented.

Goldman Sachs Execution & Clearing, L.P. (Goldman Sachs), AWC No. 20130378671-01 (July 24, 2015).

In an AWC with Goldman Sachs, FINRA alleged failures of the firm to comply with Order Audit Trail System (OATS) reporting requirements, failure to accurately submit required trade reports to the appropriate FINRA/NYSE Trading Reporting Facility (TRF), and related supervisory failures over an eight-year period. Specifically, FINRA alleged that the firm failed to transmit to OATS approximately 6.3 billion Reportable Order Events (ROEs) between July 14, 2006 and July 30, 2013 for its ATS, which constituted a failure to report 6.10% of all ROEs it was required to transmit to OATS. FINRA further alleged that the firm transmitted to OATS 42.1 billion inaccurate and/or incomplete required ROE data elements between July 14, 2006 and March 9, 2015, which constituted approximately 20.53% of all ROEs it was required to transmit to OATS during that period. FINRA also alleged that the firm transmitted a substantial number of ROEs that did not report order event timestamps in milliseconds, as required under FINRA Rule 7440. In settling the matter, the firm consented to a censure, a fine of $1.8 million, and an undertaking to implement procedures to address the OATS and TRF reporting deficiencies included in the AWC. FINRA took into account the fact that the firm self-reported the violations and undertook remedial steps. FINRA also noted that the firm provided "substantial assistance" to FINRA Staff during the investigation.

Order Handling

Citigroup Glob. Mkts. Inc. (CGMI), AWC No. 20130354661-01 (Aug. 18, 2015).

FINRA, on behalf of New York Stock Exchange LLC (NYSE), settled a matter with CGMI, in which FINRA alleged that the firm improperly caused its associated floor brokers to effect transactions for the firm's own account without qualifying for an exemption. According to FINRA, on more than 1,500 occasions from July 2007 through October 2014, CGMI transmitted proprietary orders to the NYSE floor without identifying the orders in the appropriate manner to enable order handling pursuant to certain requirements, such as priority, parity, and precedence. CGMI also caused an affiliated NYSE member to effect more than 1,500 transactions on the NYSE floor for an account in which the firm had an interest, but without qualifying for an exemption. FINRA also alleged that, from September 2007 through April 2013, CGMI submitted to NYSE inaccurate account type indicators (ATIs) on approximately 1.5 million occasions as a result of a programming error. According to FINRA, CGMI knew of the inaccurate ATIs in December 2010, but continued to use the associated trading platform for 28 additional months. FINRA further alleged related books and records and supervisory violations by CGMI. CGMI consented to a censure, a fine of $2.85 million, and an undertaking to retain an independent consultant to conduct a comprehensive review of the adequacy of the firm's policies, systems, procedures, and training relating to the alleged conduct. FINRA noted that the firm self-reported certain violations.

Barclays Capital, Inc. (Barclays), AWC No. 2012033725601 (July 14, 2015).

FINRA entered into an AWC with Barclays alleging that from August 2009 to December 2012, the firm failed to change the reporting logic in its order management system to comply with FINRA requirements. Consequently, the firm failed to identify the correct executing party on approximately 90 million nonmedia clearing reports with other broker-dealers that were reported to the FINRA/Nasdaq Trade Reporting Facility. FINRA also alleged that the firm's supervisory procedures were not reasonably designed to achieve compliance with rules concerning the accurate reporting of the executing party. In settling the matter, the firm consented to a censure, a fine of $800,000, and an undertaking to revise its procedures.

Private Placements

Brookville Capital Partners LLC (Brookville), FINRA Disc. Proc. No. 2012030968601 (Mar. 12, 2015).

In a settlement with Brookville and its president, FINRA alleged that they defrauded customers in connection with a private placement offering; made unsuitable recommendations to customers; and failed to establish, maintain, or enforce a reasonable supervisory system related to the sale of private placements. According to FINRA, from January 2011 through October 2011, Brookville solicited its customers to invest in a private placement in Wilshire Capital Partners Group LLC (Wilshire). During this time, the president learned that Wilshire's CEO had effected transactions for Wilshire and that the CEO (1) had been sanctioned and fined by the SEC in 2010 for securities fraud, and (2) was convicted of a felony in 2003 in the State of Florida. Brookville's president and Brookville also knew or should have known that the escrow company associated with the Wilshire private placement was controlled by an individual who was sanctioned by the SEC in the same action as Wilshire's CEO. Neither Brookfield nor its president disclosed to customers the CEO's role with Wilshire or his criminal and regulatory background. Brookville consented to a censure, a fine of $500,000, and payment of full restitution of approximately $1 million to any customers who had not settled with the firm. Brookville's president was barred from association with any FINRA member in all capacities. In settling the matter, FINRA noted that Brookville and its president settled an earlier matter with FINRA in June 2010 in which FINRA found multiple violations.

WFG Investments, Inc. (WFG), AWC No. 2013035346501 (Feb. 2015).

FINRA entered into an AWC with WFG alleging that, between March 2007 and January 2014, the firm failed, among other things, to supervise a registered representative's private securities transactions that were executed through the representative's registered investment advisory (RIA) firm, in contravention of WFG's WSPs. According to FINRA, the representative structured and sold two funds that had substantial investments in a now-defunct entity, and that investors were kept unaware of substantial declines in their investments because the valuations in the funds were unchanged on account statements. FINRA also alleged that the firm failed to detect and follow up on red flags indicating that the business was engaged in fraudulent activity.

FINRA further alleged that the firm failed to maintain an adequate supervisory system to ensure that transactions executed in its customer accounts were suitable. One registered representative traded with unauthorized discretion in several customer accounts, engaged in excessive trading, and traded in unsuitable securities. The firm's exception reports highlighting this activity either were not reviewed or were not properly processed. FINRA also alleged that the firm failed to supervise a registered representative's radio broadcasts, and failed to timely report customer complaints. In settlement, the firm consented to a censure and a fine of $700,000.

Procedures Regarding Material Nonpublic Information

First N.Y. Sec. L.L.C. (First New York), AWC No. 2012033432302 (Feb. 24 2015).

In an AWC with First New York, FINRA alleged that, from May 2010 through October 2010, First New York failed to establish, maintain, and enforce a supervisory system to ensure that its registered representatives did not engage in insider trading. In a separate action in July 2014, FINRA barred First New York proprietary trader Kenneth Allen for shorting securities on the Tokyo Stock Exchange while in possession of inside information about a secondary public offering that Allen received from a Japanese consultant he retained. FINRA alleged that the firm's policies and procedures did not provide adequate guidance regarding detection of potential insider trading red flags during random monthly "look-back reviews," and did not describe which accounts should be included in the sample. FINRA alleged that Allen's relationship with the consultant should also have been treated as a red flag. FINRA also alleged that the firm's supervisory review of electronic communications was inadequate, in that the procedures did not state whether every associated person's electronic communications would be reviewed daily or whether the review would consist of a random sample of only some associated persons' communications. Further, the surveillance system did not use key word searches to generate review samples. FINRA alleged that the firm's review of Allen's electronic communications was inadequate because he was not questioned about his suspicious communications with the consultant, some of which were written in Japanese. In settling the matter, First New York consented to a censure, a fine of $400,000, and an undertaking to review and revise its policies and procedures relating to detecting and preventing insider trading.

Records Retention

Scottrade, Inc. (Scottrade), AWC No. 2014039991001 (Nov. 16, 2015).

In a settlement with Scottrade, FINRA alleged that, between January 2011 and January 2014, Scottrade failed to retain certain electronic records in the required non-re-writable, non-erasable format (WORM format), failed to retain more than 168 million outgoing emails, failed to report nine settlements of customer complaints, and had a deficient supervisory system that contributed to the books and records violations and failure to adhere to records retention requirements. According to FINRA, the firm failed to keep records of Suspicious Activity Reports, WSPs, account statements, certain customer transactions confirmations, identity verification records, tax forms, social media advertising and communications, and third party

emails in WORM format. Furthermore, FINRA alleged that the firm failed to properly retain certain email communications included margin call, account lockout, failed password attempts, pattern day trader warning, and marketing emails and address change notifications. FINRA also alleged that the firm's supervisory procedures were insufficient as each firm department had varying procedures for retention and many failed to specify the format in which these records need to be maintained. The firm consented to a censure, and a fine of $2,600,000. In setting the sanction, FINRA noted the firm's cooperation, and its internal review undertaking, self-reporting of the records retention issues, and prompt corrective actions.

***UBS Fin. Servs. Inc. (UBS)*, AWC No. 2014041645601, (Aug. 12, 2015).**

FINRA submitted an AWC in which it alleged that, from July 2009 through December 2013, UBS inaccurately represented to 4,371 customers that approximately $1,165,000 in interest that the firm paid to those customers was exempt from taxation. In fact, the interest was taxable as ordinary income. FINRA alleged that UBS had failed to consider whether the interest it paid to customers should be coded as nontaxable when the firm, rather than a municipal issuer, paid the interest. According to FINRA, the firm's short municipal bond positions were also held in aggregate, and not offset against specific customer holdings. According to the AWC, the firm also failed to maintain records identifying particular customer accounts that offset its short municipal bond positions. According to FINRA, the firm also sent certain customers inaccurate Forms 1099 and account statements that incorrectly classified firm-paid interest as tax-exempt when it should have been classified as taxable. These failures resulted in the underpayment of approximately $282,261 in federal income taxes. FINRA also alleged that the firm did not provide adequate guidance or oversight on how and when municipal short positions should be covered. While UBS did take steps to mitigate the failures, nevertheless, during the relevant period, according to the AWC, the firm often did not cover municipal short positions for a month or more, and some of the short positions were not covered for more than a year. In settling the matter, UBS consented to a censure and a fine of $750,000.

Regulation M

FINRA continued its focus on Regulation M matters and potential violations of Rule 105. Here are examples.

***First N.Y. Sec. L.L.C. (First New York),* AWC No. 20120353680-01 (Mar. 19, 2015).**

In a settlement with First New York, FINRA alleged that from September 2010 through April 2013, First New York engaged in short selling during the five-business-day restricted period leading up to 14 public offerings and then purchased securities in the offerings in violation of Rule 105 of Regulation M. FINRA also alleged that First New York did not maintain a supervisory system reasonably designed to achieve compliance with Rule 105, including by not sufficiently addressing qualifications for exceptions from the Rule 105 trading restrictions. First New York consented to a censure, a fine of $400,000, disgorgement of $516,132 of unlawful profits, and a six-month prohibition from participation in secondary or follow-on offerings. In settling the matter, FINRA noted that it took into consideration that First New York self-reported six of the violative instances of short selling and voluntarily ceased participation in secondary or follow-on

offerings in March 2014. FINRA also noted that First New York had settled another Regulation M matter in 2008 that included a censure, a fine, disgorgement, and an undertaking.

Regulation SHO

Deutsche Bank Sec., Inc. (Deutsche Bank), AWC No. 20110273488-01 (Nov. 19, 2015).

In an AWC with Deutsche Bank, FINRA alleged violations of Regulation SHO and short interest reporting rules. FINRA alleged that between January 2005 and November 2015, the firm improperly aggregated in its net positions numerous securities positions of a non-US broker-dealer affiliate, in violation of FINRA Rule 200(f). According to FINRA, between April 2004 and September 2012, the firm also improperly reported certain short interest positions on a net, rather than gross, basis. Further, FINRA alleged that the firm's WSPs regarding aggregation and short interest reporting were deficient. In settling the matter, the firm consented to a fine of $1.4 million ($375,000 for the Rule 200(f) violations, $650,000 for the short interest reporting violations, and $375,000 for the supervisory violations).

Lek Sec. Corp. (LSC), NYSE Proc. No. 20110270056 (Feb. 6, 2015).

The NYSE Regulation Board of Directors affirmed a Hearing Board decision finding that LSC violated NYSE, SEC, and Exchange Act rules regarding odd-lot trading, short sales, and BlueLine trading. Specifically, the Hearing Board found the following:

- LSC introduced odd-lot orders in a pattern of day trading prohibited by NYSE rules and failed to learn essential facts regarding its customers' orders. For these violations, LSC was fined $50,000.
- LSC introduced short sales in common stock of financial services companies in contravention of an SEC Emergency Order. For this violation, LSC was fined $75,000.
- LSC failed to timely close out failure-to-deliver positions in certain equity securities, accepted short-sale orders in equity securities for which LSC had open failure-to-deliver positions while LSC and the customer were in the "penalty box," and failed to timely notify customers of open failure-to-deliver positions. For these violations, LSC was fined $50,000.
- LSC conducted "upstairs" operations on the NYSE Floor without approval and without adopting written procedures. LSC was fined $100,000.
- LSC failed to comply with cancellation of market-on-close and limit-on-close requirements. LSC was censured.
- LSC failed to have adequate supervisory procedures and controls in place designed to achieve compliance with rules regarding odd-lot trading, short sales, and BlueLine trading, and failed to have rules against potentially manipulative trading practices, such as "spoofing," wash trading, and marking the close. LSC was censured and fined $500,000.

Scout Trading, LLC (Scout), **AWC No. 2010024386601 (Apr. 7, 2015).**

NASDAQ and Scout entered an AWC in which NASDAQ alleged that, from January 2010 to March 2012, the firm violated Rule 204 of Regulation SHO and NASDAQ Rule 2110 through a systemic "naked" redemption and short-sale trading strategy that resulted in the firm's failure to timely deliver exchange-traded fund (ETF) shares associated with its orders to redeem creation unit(s) in those ETFs and its short sales of such ETF shares on the secondary market. According to NASDAQ, the firm's trading strategy generally followed a pattern whereby it chronically failed to timely deliver ETF shares by regular-way (T+3) settlement deadlines. Instead, the firm waited to close out the resulting fail until just before the beginning of regular trading hours, on the T+6 close-out time frames allowed for bona fide market making, even though the trades did not qualify as bona fide market-making activities. NASDAQ alleged that the firm submitted at least 255 naked redemption orders in 11 ETFs, totaling nearly 296 million shares for which the firm was not long the requisite number of shares. NASDAQ alleged that the firm engaged in this strategy in order to take advantage of the inherent financial benefits of being short versus long in the ETF shares. NASDAQ also alleged that the firm failed to establish, maintain, and enforce a supervisory system, including WSPs, regarding Regulation SHO. In settling the matter, the firm consented to a censure, and a fine of $3 million.

StockCross Fin. Servs., Inc. (StockCross), **AWC No. 2010022593201 (Aug. 12, 2015).**

In an AWC with StockCross, FINRA alleged that, from November 2009 through May 2013, the firm violated SEC Rule 204(a) of Regulation SHO, because the firm's system for monitoring and tracking its "close out" positions failed to consider offsetting buying or selling activity in any accounts other than the one causing a fail, which potentially could affect the firm's net flat or net long position at the end of a day. According to FINRA, the firm did not put any limit or restrictions on trading activity in securities after cover transactions were executed. Additionally, the firm did not execute affirmative buy-in transactions in determining its buy-in obligations and did not track or close out any fails that were attributable to odd-lot transactions. The firm's system failures caused it to fail to deliver for seven or more consecutive settlement days on 1,826 occasions. StockCross also executed 4,132 short sales at times that it had outstanding close-out obligations for the securities, without first borrowing the securities. Finally, FINRA alleged that the firm's supervisory system was not reasonably designed to achieve compliance with SEC Rule 204 and that the firm did not have in place adequate written supervisory procedures. In settlement, StockCross consented to a censure and an $800,000 fine, and agreed to revise its supervisory system.

Risk Management Controls

Stock USA Execution Servs., Inc. (Stock USA), AWC Nos. 20120310864 and 2008013749203 (Apr. 10, 2015).

FINRA, on behalf of itself and seven exchanges, entered into a settlement with Stock USA that resolved three examinations conducted by FINRA's Department of Market Regulation on behalf of itself and the seven other exchanges as well as a Department of Enforcement investigation. The first examination concerned alleged violations involving potentially manipulative trading by

firms to which Stock USA provided direct market access (DMA) and subsumed more than a dozen regulatory inquiries that arose from thousands of trading alerts of potentially violative activity on multiple market centers from April 2011 to September 2013. FINRA alleged that the firm failed to establish, maintain, and enforce reasonable risk management controls and supervisory systems and procedures to prevent trading that could potentially be manipulative, suspicious, or otherwise violative, including wash sales, prearranged trading, spoofing, and marking the close.

The allegations relating to the second examination covered four days in 2013 and found that the firm had failed to preserve records or maintain complete records with respect to certain orders, failed to mark certain orders long or short, transmitted certain inaccurate or incomplete OATS reports, failed to make certain disclosures with respect to extended hours trading, failed to notify customers at least annually about the availability of order routing information, failed to have adequate written supervisory procedures relating to certain rules of FINRA and the exchanges, and failed to evidence completion of certain supervisory reviews.

The allegations relating to the third examination were that Stock USA failed to report approximately 23 million Reportable Order Events to OATS from September 2012 to April 2013.

Finally, the settlement also resolved a Department of Enforcement investigation concerning DMA issues. The department alleged that from October 2008 to March 2013 Stock USA failed to establish adequate AML procedures for detecting, investigating, and preventing potentially suspicious activity; failed to enforce procedures relating to due diligence on correspondent accounts for foreign financial institutions; failed to make tickets for all orders through its DMA platform; and failed to comply with DMA monitoring and access control requirements.

Stock USA consented to a censure, a total fine of $595,000 to be paid jointly to the regulators, and an undertaking to provide certain reports to FINRA concerning the firm's implementation and effectiveness of its policies, procedures, systems, and training relating to the above findings. FINRA noted that the settlement took into account that Stock USA had self-reported some of the OATS violations and undertook remediation.

Short Interest Reporting

Morgan Stanley & Co. LLC (Morgan Stanley), AWC No. 20080151992-01 (May 13, 2015).

In an AWC with Morgan Stanley, FINRA alleged that, during certain review periods from 2007 to 2013, the firm failed to accurately report its short positions and failed to provide a supervisory system reasonably designed to achieve compliance with short interest reporting requirements.

FINRA alleged that the firm variously underreported or overreported its short interest positions by, among other things, (i) inadvertently coding certain short positions held for other broker-dealers as a Proprietary Account of an Introducing Broker; (ii) treating certain proprietary accounts of its foreign affiliates as not reportable; (iii) inaccurately reporting short interest positions accumulated in connection with syndicate offerings; (iv) including in its short interest

reports sales of restricted stock that should have been excluded; and (v) maintaining two programs that updated overnight and caused reporting errors on settlement dates. FINRA further alleged that, during certain periods, the firm overreported some short interest positions as a result of a coding error, and underreported positions for certain securities that traded on a foreign exchange. Additionally, FINRA alleged that, from January 2005 through December 2011, the firm improperly included the securities of its non-broker-dealer affiliates in determining its net short position, in violation of SEC Rule 200(f). FINRA further alleged that the firm's written plan of authorization (for its trading desks) and its WSPs were inadequate in that they improperly permitted inclusion of non-broker-dealer short positions.

In settling the matter, the firm consented to a censure, a fine of $2 million ($1.4 million for the short interest reporting violations; $250,000 for the short interest supervision violations; $250,000 for the short sale violations; and $100,000 for the short sale supervision violations), and an undertaking to revise its WSPs. In determining a resolution, FINRA took into account the fact that Morgan Stanley had retained an independent consultant on three occasions during the relevant periods to review its short interest reporting processes. Morgan Stanley also identified and self-reported certain of the short interest reporting violations at issue, and had demonstrated "extraordinary cooperation" during FINRA's investigation.

Suitability

Capitol Sec. Mgmt. Inc. (CSM), AWC No. 2011025548801 (Oct. 20, 2015).

FINRA entered into an AWC in which it alleged that, from January 2008 through August 2011, CSM's registered representative recommended unsuitable purchases of customized reverse-convertible notes (RCNs) totaling approximately $4 million. According to the AWC, most of the customers were over the age of 60, and had modest or conservative investment objectives and risk profiles. All of the customers' accounts were heavily concentrated in RCNs, and these investments represented a substantial portion of the customers' net worth. FINRA alleged that the firm failed to have a supervisory system, including WSPs, reasonably designed to supervise the sale of RCNs to retail customers. According to FINRA, the firm's WSPs were inadequate in that they did not provide guidance regarding customer-specific suitability and concentration considerations, and the firm did not have an exception report to detect concentration levels of RCNs in customer accounts. Additionally, the firm did not provide training to representatives regarding the sale of RCNs.

FINRA also alleged that the firm failed to have an adequate AML program in place to detect and report potential suspicious activity related to the deposit and liquidation of low-priced securities, despite the firm having been notified of red flags by its clearing corporation. According to the AWC, the firm failed to implement an adequate customer identification program by not collecting and verifying identifying information for certain new accountholders. FINRA further alleged that CSM failed to apply sales-charge discounts to eligible UITs and mutual fund purchases, resulting in customers paying $32,343 in excess sales charges. According to FINRA, the firm also charged some customers excessive commissions on equity transactions, failed to record on its books and records certain private securities transactions, and failed to file an application for approval of a material change in business activities. Finally, FINRA charged that

the firm also failed to have a supervisory system, including WSPs, to ensure compliance related to the issues identified in the AWC. In settlement, CSM consented to a censure and a fine of $470,000, and to pay restitution of $226,449 to certain customers.

Wells Fargo Advisors, LLC (Wells Fargo), AWC No. 2012033568901 (Aug. 3, 2015).

FINRA submitted an AWC in which it alleged that, from August 2005 to July 2012, Wells Fargo made unsuitable recommendations to retail customers to purchase structured repackaged asset-backed trust securities (STRATS), a complex structured product that paid a floating rate of periodic income. FINRA alleged that the firm did not provide product-specific training to its registered representatives, and the internal-use-only materials made available to its registered representatives did not adequately inform them about the risks of investing in STRATS. Specifically, the materials did not address the risk of loss to customer principal in the event of redemption of the underlying capital security, or risks related to swap termination fees. According to FINRA, the firm's internal-use-only materials were not fair and balanced, and did not provide a sound basis for evaluating the facts surrounding STRATS or its risks. As a result, the firm's registered representatives did not comprehend the risks to customers of investing in STRATS and lacked a reasonable basis for recommending these products to the firm's retail customers. FINRA further alleged that the firm failed to have supervisory procedures, including training, that were reasonably designed to achieve compliance with FINRA suitability standards. Approximately $12 million in STRATS were sold to retail customers. According to the AWC, eventually, the underlying capital security was redeemed, the STRATS were terminated, and many customers holding STRATS received less, and in some cases significantly less, than their principal. In settling the matter, Wells Fargo consented to a censure and a fine of $500,000, and to pay restitution of $241,974.

Supervision

Fidelity Brokerage Servs., LLC (Fidelity), AWC No. 2014041374401 (Dec. 18, 2015).

FINRA entered into an AWC in which it alleged that, between August 2006 and May 2013, Fidelity failed to prevent or detect a conversion scheme whereby more than $1 million was stolen from nine customers, who were primarily senior citizens, by a convicted felon who posed as a Fidelity broker. According to FINRA, the firm failed to detect red flags related to the scheme, including the fact that the customers' accounts shared common identifiers tying them to the felon, and failed to detect patterns of money movements. FINRA alleged that the firm failed to establish and maintain adequate supervisory systems or WSPs, and failed regarding monitoring the transmittal of funds from customer accounts to outside entities. In settling the matter, Fidelity agreed to a fine of $500,000 and to reimburse its customers for losses attributable to the violations, which amounted to $529,270 plus interest.

ICAP Corporates LLC (ICAP), AWC 2014039995801 (Feb. 2015).

In an AWC with ICAP, FINRA alleged that, between January 2011 and December 2013, ICAP failed to have an adequate supervisory system, including WSPs, reasonably designed to monitor business entertainment to ensure that expenses incurred conformed to regulatory requirements, and to safeguard against potential or actual conflicts of interest. FINRA alleged that the firm violated (1) NASD Rule 3010 and FINRA Rule 2010 by failing to adequately supervise and implement supervisory procedures regarding business entertainment expenses; and (2) Section 17(a) of the Exchange Act and SEC Rule 17a-3 thereunder, NASD Rule 3110 (for the period before December 5, 2011), FINRA Rule 4511 (for the period on and after December 5, 2011), and FINRA Rule 2010 by failing to maintain accurate and complete expense records for business entertainment. According to FINRA, ICAP failed to exercise "adequate supervisory scrutiny" because it did not (1) require itemized receipts for entertainment reimbursement claims; (2) deny expense claims with inadequate and/or inaccurate descriptive information; (3) aggregate entertainment expenses incurred over time for the same individuals; and (4) require that business entertainment expense submissions include the name of every person entertained and his or her respective employer. Specifically, FINRA alleged that the firm's expense records inaccurately listed "ICAP" as the client entertained, incorrectly indicated that one client company was entertained when multiple companies were entertained, and/or did not record the names of all the individuals entertained and their affiliations. FINRA alleged that, as a result of these deficiencies, ICAP was unable to verify the type and cost of entertainment provided and/or evaluate whether the expenses included any improper gifts to customers. The firm also could not guard against patterns of excessive and overly frequent entertaining of the same individuals. In settlement, the firm consented to a censure and a fine of $800,000.

LPL Fin. LLC (LPL), AWC No. 2013035109701 (May 6, 2015).

In a settlement with LPL, FINRA alleged that the firm significantly increased the size of its business without a concomitant dedication of resources to permit LPL to meet its supervisory obligations and consequently did not have adequate systems and procedures in place to supervise certain aspects of its business. Specifically, FINRA alleged that the firm failed to reasonably supervise certain non-traditional ETF, variable annuity, mutual fund, and nontraded Real Estate Investment Trust transactions. FINRA also alleged that the firm failed to implement adequate systems for the review and accurate reporting of certain trades and for the delivery of certain trade confirmations. FINRA further alleged that the firm failed to implement adequate systems to monitor certain suspicious activity; confirm that it provided complete and accurate information to regulators about certain variable annuity transactions; supervise reasonably certain advertising and other communications, including consolidated reports; and comply with certain registration and Regulation SHO requirements.

The firm consented to a censure, a $10 million fine, and restitution of approximately $1.66 million to certain nontraditional ETF customers. The firm also agreed to undertakings to review the adequacy of the policies, systems, procedures, and training related to the conduct alleged in the AWC and to engage an independent consultant to review the adequacy of its nontraditional ETF policies, systems, procedures, and training. Finally, LPL agreed to review and remediate an AML surveillance system. In setting the sanction, FINRA considered the firm's substantial

commitment of additional resources, including the hiring of additional legal and compliance personnel, and its representation that it will continue its increased commitment of resources to improve its supervisory systems and procedures.

Morgan Stanley & Co., LLC & Morgan Stanley Smith Barney LLC (collectively, Morgan Stanley), AWC No. 201303806401 (Apr. 1, 2015).

Morgan Stanley entered into an AWC in which FINRA alleged that the firm failed to reasonably supervise, implement adequate written procedures, or maintain a supervisory system that was reasonably designed to ensure compliance with MSRB rules. Specifically, FINRA alleged that, from July 2009 through December 2013, the firm lacked adequate supervisory procedures to address short positions in tax-exempt municipal bonds that primarily resulted from trading errors at the retail branches of the firm. According to FINRA, the firm inaccurately represented to at least 1,500 customers that at least $880,000 in interest that the firm had paid to these customers was exempt from taxation, when in fact the firm did not hold the bonds on behalf of those customers, the interest was paid by Morgan Stanley, and such interest was taxable income. In settlement, Morgan Stanley consented to a censure and fine of $675,000, of which $124,406.93 was jointly and severally imposed on the two firms.

Morgan Stanley Smith Barney LLC (Morgan Stanley), AWC No. 2011025479301 (June 19, 2015).

In an AWC with Morgan Stanley, FINRA alleged that, from June 2009 through November 2014, the firm failed to implement reasonable supervisory systems to monitor the transmittal of outgoing wire transfers and branch check disbursements from customer accounts, and third-party service providers' acceptance of money orders that were deposited into customer accounts. FINRA alleged that due to these gaps, three of the firm's registered representatives in two branch offices were able to convert, collectively, $494,400 from 13 of the firm's customers through fraudulent wire transfers and branch checks sent from the customers' accounts to third-party accounts. In settling the matter, the firm consented to a censure and monetary fine of $650,000.

NFP Advisor Servs., LLC (NFP), AWC No. 2011025618702 (July 16, 2015).

FINRA entered into an AWC with NFP, alleging that at various times from December 2006 through January 2014, the firm failed to commit the necessary time, attention, and resources to supervising its registered representatives in four areas. First, the firm failed to supervise the private securities transactions of 79 representatives who were dually registered with 14 registered investment advisors (RIAs). The firm incorrectly treated its trading activities for the RIAs as outside business activities rather than private securities transactions. In addition, during a FINRA examination, the firm learned that another representative was recommending managed accounts and alternative investments via an RIA that had not been disclosed to the firm, and thereafter had failed to adequately investigate his activities. Second, NFP failed to preserve securities-related emails sent and received by five of its registered representatives from January 2009 to December 2011. Third, the firm failed to approve and preserve advertising materials contained on three websites that were maintained by one of its registered

representatives from January 2009 to April 2011. Finally, NFP failed to timely update the Forms U4 of its registered representatives in 81 instances between April 2011 to July 2014, even after being notified of certain deficiencies by FINRA. In settlement, the firm consented to a censure and a fine of $500,000.

Oppenheimer & Co. (Oppenheimer), AWC No. 2009017408102 (Mar. 26, 2015).

In a settlement with Oppenheimer, FINRA alleged that, from November 2005 to February 2009, the firm failed to supervise a registered representative who allegedly (1) misappropriated funds from his customers by convincing them to wire funds to entities that the representative controlled and (2) excessively traded their accounts. Specifically, FINRA alleged that the firm failed to supervise the representative by conducting an inadequate prehire review, failing to put him on heightened supervision after learning that he had been sued for diverting about $4 million, failing to respond to red flags about the wire activity, and failing to take action after surveillance analysts identified the excessive trading. In addition, FINRA alleged that the firm did not timely file 320 updates to Forms U4 and U5, which were on average 238 days late, and that the firm provided untimely responses to six Rule 8210 requests. The firm consented to a censure; a fine of $2.5 million; restitution of approximately $1.25 million to customers; and an undertaking to retain an independent consultant to conduct a comprehensive review of the firm's supervisory policies and procedures, systems, and training relating to wire transfers, Form U4 and U5 reporting, and excessive trading.

RBC Capital Mkts., LLC (RBC), AWC No. 2010022918701 (Apr. 23, 2015).

In a settlement with RBC, FINRA alleged that, between 2009 and 2012, the firm failed to have supervisory systems and procedures reasonably designed to ensure compliance with applicable securities laws and regulations, National Association of Securities Dealers (NASD) and FINRA rules, and RBC's written supervisory procedures concerning the suitability of reverse convertibles. FINRA further alleged that the firm lacked reasonable systems to ensure that its written supervisory procedures for sales of reverse convertibles were followed by RBC-registered representatives who sold them to their retail customers. FINRA found that RBC failed to ensure that it implemented reasonably designed systems and procedures to flag for its supervisory personnel potentially unsuitable transactions in reverse convertibles. Further, the firm's procedures failed to ensure that RBC's registered representatives were adequately trained on the risks associated with reverse convertibles and the customers for whom the investments were suitable. Consequently, during the relevant period, RBC supervisors failed to detect the sale of approximately 364 reverse convertible transactions in approximately 218 customer accounts that were unsuitable for those customers. The customers incurred losses totaling at least $1.1 million. FINRA found that the firm violated NASD Rules 3010(a), 2310, and 2110, as well as FINRA Rule 2010. RBC consented to a censure, a fine of $1 million, and restitution of $433,898.

UIT Sales Charges

***First Allied Sec., Inc.*, AWC No. 2014041677801 (Oct. 19, 2015); *Fifth Third Sec., Inc.*, AWC No. 2014041677601 (Oct. 19, 2015); *Sec. Am., Inc.,* AWC No. 2014041679301 (Oct. 19, 2015); *Cetera Advisors LLC*, AWC No. 2014041676801 (Oct. 19, 2015); *Park Avenue Sec. LLC,* AWC No. 2014041679201 (Oct. 19, 2015); *Commonwealth Fin. Network,* AWC No. 2014041839401 (Oct. 19, 2015); *MetLife Sec., Inc.*, AWC No. 2015044101901 (Oct. 19, 2015); *Comerica Sec.,* AWC No. 2014041677101 (Oct. 19, 2015); *Cetera Advisor Networks LLC*, AWC No. 2014041838501 (Oct. 19, 2015); *Ameritas Inv. Corp.*, AWC No. 2014041675701 (Oct. 19, 2015); *Infinex Inv., Inc.,* AWC No. 2014041841901 (Oct. 19, 2015); *Huntington Inv. Co.*, AWC No. 2014041679801 (Oct. 19, 2015).**

In AWCs with 12 entities, FINRA alleged that each firm failed to apply sales charge discounts to customers' purchases of Unit Investment Trusts (UITs). Specifically, FINRA alleged that the firms failed to apply "breakpoint," "rollover," and "exchange" discounts. A breakpoint discount is a reduced sales charge based on the dollar amount of a purchase. Rollover or exchange discounts are reduced sales charges offered to investors who use the termination or redemption proceeds from one UIT to purchase another UIT. Additionally, FINRA alleged that the firms failed to establish, maintain, and enforce supervisory systems and written supervisory procedures reasonably designed to ensure that customers received sales charge discounts on all eligible UIT purchases. In settlement, each firm consented to a censure, a fine, and restitution, as follows:

- First Allied Securities, Inc. – Fine: $325,000; Restitution: $689,647
- Fifth Third Securities, Inc. – Fine: $300,000; Restitution: $663,534
- Securities America, Inc. – Fine: $275,000; Restitution: $477,686
- Cetera Advisors LLC – Fine: $250,000; Restitution: $452,622
- Park Avenue Securities LLC – Fine: $300,000; Restitution: $443,255
- Commonwealth Financial Network – Fine: $225,000; Restitution: $357,521
- MetLife Securities, Inc. – Fine: $300,000; Restitution: $349,748
- Comerica Securities – Fine: $150,000; Restitution: $197,757
- Cetera Advisor Networks LLC – Fine: $150,000; Restitution: $151,108
- Ameritas Investment Corp. – Fine: $150,000; Restitution: $128,544
- Infinex Investments, Inc. – Fine: $150,000; Restitution: $109,627
- The Huntington Investment Company – Fine: $75,000; Restitution: $60,973

Securities Enforcement and Litigation Practice

BOSTON

Matthew C. Applebaum	+1.617.951.8488	matt.applebaum@morganlewis.com
Timothy P. Burke	+1.617.951.8620	timothy.burke@morganlewis.com
David C. Boch	+1.617.951.8485	david.boch@morganlewis.com
Steven W. Hansen	+1.617.951.8538	steven.hansen@morganlewis.com
Thomas J. Hennessey	+1.617.951.8520	thomas.hennessey@morganlewis.com
Jason S. Pinney	+1.617.951.8684	jason.pinney@morganlewis.com
T. Peter R. Pound	+1.617.951.8728	peter.pound@morganlewis.com

CHICAGO

Peter K.M. Chan	+1.312.324.1179	pchan@morganlewis.com
Merri Jo Gillette	+1.312.324.1134	mgillette@morganlewis.com

DALLAS

Danny S. Ashby	+1.214.466.4118	danny.ashby@morganlewis.com
Steve Korotash	+1.214.466.4114	korotash@morganlewis.com

MIAMI

Ivan P. Harris	+1.305.415.3398	ivan.harris@morganlewis.com

NEW YORK

Michele A. Coffey	+1.212.309.6917	mcoffey@morganlewis.com
Mary Gail Gearns	+1.212.309.6750	marygail.gearns@morganlewis.com
Amy J. Greer	+1.212.309.6860	agreer@morganlewis.com
Brian A. Herman	+1.212.309.6909	bherman@morganlewis.com
Ben A. Indek	+1.212.309.6109	bindek@morganlewis.com

PHILADELPHIA

Elizabeth Hoop Fay	+1.215.963.5712	efay@morganlewis.com

SAN FRANCISCO

Joseph E. Floren	+1.415.442.1391	jfloren@morganlewis.com
Susan D. Resley	+1.415.442.1351	sresley@morganlewis.com

WASHINGTON, DC

Elizabeth H. Baird	+1.202.373.6561	elizabeth.baird@morganlewis.com
Christian J. Mixter	+1.202.739.5575	cmixter@morganlewis.com
E. Andrew Southerling	+1.202.739.5062	asoutherling@morganlewis.com

Investment Management Practice

BOSTON

Marion Giliberti Barish	+1.617.951.8801	marion.barish@morganlewis.com
Lea Anne Copenhefer	+1.617.951.8515	leaanne.copenhefer@morganlewis.com
Steven M. Giordano	+1.617.951.8205	steven.giordano@morganlewis.com
Richard A. Goldman	+1.617.951.8851	rich.goldman@morganlewis.com
Barry Hurwitz	+1.617.951.8267	barry.hurwitz@morganlewis.com
Roger P. Joseph	+1.617.951.8247	roger.joseph@morganlewis.com
Gerald J. Kehoe	+1.617.341.7840	gkehoe@morganlewis.com
Paul B. Raymond	+1.617.951.8567	paul.raymond@morganlewis.com
Toby R. Serkin	+1.617.951.8760	toby.serkin@morganlewis.com
Stephen C. Tirrell	+1.617.951.8833	stephen.tirrell@morganlewis.com

CHICAGO

Michael M. Philipp	+1.312.324.1905	mphilipp@morganlewis.com

LOS ANGELES

Michael Glazer	+1.213.680.6646	michael.glazer@morganlewis.com

MIAMI

Ethan Johnson	+1.305.415.3394	ejohnson@morganlewis.com

NEW YORK

Akshay Belani	+1.212.309.6150	akshay.belani@morganlewis.com
Daniel N. Budofsky	+1.212.309.6160	daniel.budofsky@morganlewis.com
Thomas V. D'Ambrosio	+1.212.309.6964	tdambrosio@morganlewis.com
Jennifer L. Klass	+1.212.309.7105	jklass@morganlewis.com
Georgette A. Schaefer	+1.212.309.6607	gschaefer@morganlewis.com
Louis H. Singer	+1.212.309.6603	lsinger@morganlewis.com
Jedd H. Wider	+1.212.309.6605	jwider@morganlewis.com

PHILADELPHIA

Sean Graber	+1.215.963.5598	sgraber@morganlewis.com
Timothy W. Levin	+1.215.963.5037	tlevin@morganlewis.com
John J. O'Brien	+1.215.963.4969	jobrien@morganlewis.com

SAN FRANCISCO

Paul C. McCoy	+1.415.442.1385	pmccoy@morganlewis.com
Peter Phleger	+1.415.442.1096	pphleger@morganlewis.com

SILICON VALLEY

Jarrod Huffman	+1.650.843.7582	jhuffman@morganlewis.com

WASHINGTON

John V. Ayanian	+1.202.739.5946	jayanian@morganlewis.com
Laura E. Flores	+1.202.373.6101	lflores@morganlewis.com
Thomas S. Harman	+1.202.373.6725	tharman@morganlewis.com
Charles M. Horn	+1.202.739.5951	chorn@morganlewis.com
Daniel R. Kleinman	+1.202.739.5143	dkleinman@morganlewis.com
Amy Natterson Kroll	+1.202.739.5746	amy.kroll@morganlewis.com
W. John McGuire	+1.202.373.6799	wjmcguire@morganlewis.com
Christopher D. Menconi	+1.202.373.6173	cmenconi@morganlewis.com
Joshua B. Sterling	+1.202.739.5126	jsterling@morganlewis.com
Steven W. Stone	+1.202.739.5453	sstone@morganlewis.com

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