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Featured Topics

Introduction

In the final quarter of 2022, the U.S. Securities and Exchange Commission ("SEC" or "Commission") continued to bring enforcement actions that reinforce the SEC's stated commitment to scrutinizing compliance and digital assets. Specifically, the SEC has made a point of investigating and taking action against gatekeepers (in compliance, accounting or legal) who failed to uphold their obligations to their clients and taking action where cryptocurrencies or other digital assets purportedly meet the definition of a "security" but have not been registered with the SEC. In this edition of Schulte Roth & Zabel's *Securities Enforcement Quarterly*, we discuss in depth recent enforcement activity in the digital asset arena, and we highlight noteworthy actions against advisers, broker-dealers and others.

The SEC has committed to pushing investigation and enforcement boundaries and so far it has shown no signs of backing down.

SEC Enforcement: Not Business As Usual in 2023

A new era of aggressive and targeted SEC enforcement came into its own in 2022, during SEC Chair Gary Gensler's first full year at the helm of the Commission. Public statements by Chair Gensler and Director of the Division of Enforcement Gurbir Grewal during the fourth quarter of 2022 suggest that robust enforcement will continue in 2023, as the SEC pursues priorities including digital assets, insider trading, and actions against gatekeepers and individuals as part of a push toward "accountability" by the Enforcement Division.

Chair Gensler has emphasized that bringing high-impact cases that "send a message" are a key aspect of the Commission's playbook.[1] Chair Gensler's comments have emphasized the SEC's expectation that regulated entities learn from prior missteps — their own or those of others. For example, in his remarks to the securities industry in early November, Chair Gensler highlighted a large investment bank that, one year earlier, had been cited for recordkeeping violations, including "off-channel" communications. Gensler indicated that other firms had engaged in similar conduct in recent decades, demonstrating that the message the Commission intended to convey through its prior actions was not received. So the Commission determined a more significant penalty of $125 million was warranted — nearly 10 times the previous penalties for similar conduct — and required the firm to admit its misconduct. The SEC also conducted an industry-wide sweep for similar off-channel and recordkeeping violations in 2022. Ultimately, the SEC charged 15 additional broker-dealers and an investment advisor that collectively paid over $1.1 billion in penalties — eight firms settled for a $125 million penalty *each*, two firms each agreed to a $50 million penalty and one firm settled for a $10 million penalty.[2] In addition, each of the firms was required to admit to its misconduct and agree to undertakings designed to prevent future violations. As Chair Gensler noted ominously, the SEC's investigation of similar misconduct is ongoing.[3] Mindful of the SEC's expectation that regulated entities learn from the mistakes of others, market participants should conduct their own individualized risk assessments, building on lessons drawn from prior SEC actions.

Civil Monetary Penalties

According to Enforcement Director Grewal, the SEC has sought to "recalibrate" its approach to civil penalties to more effectively promote deterrence, and move away from the perception that penalties are simply a business expense.[4] To that end, Director Grewal noted that during fiscal year 2022, the Commission imposed nearly $4.2 billion in penalties — the highest amount *ever* in a single year and more than the penalties the SEC imposed in the prior three years *combined*. Moreover, during its most recent fiscal year, the SEC brought nine percent more enforcement actions and obtained a record $6.4 billion in civil penalties, disgorgement and pre-judgment interest.[5]

Beyond the total amount of SEC monetary sanctions, Director Grewal has emphasized the evolving relationship among civil penalties, disgorgement and other sanctions in the SEC's enforcement toolkit. For example, for each of at least the past five years, the SEC has ordered more than twice as much in disgorgement as it did in penalties, a ratio that Grewal called "backwards." The SEC flipped that ratio last year, and according to Grewal, for the first time ever imposed penalties that were double the amount of disgorgement ordered. Although legal developments have impacted the SEC's ability to seek disgorgement, Grewal stressed that imposing higher penalties was part of the

[1] Gary Gensler, *"This Law and Its Effective Administration": Remarks Before the Practising Law Institute's 54th Annual Institute on Securities Regulation*, Nov. 2, 2022, available here (hereinafter, "Gary Gensler, Nov. 2, 2022 Remarks").

[2] *SEC Charges 16 Wall Street Firms with Widespread Recordkeeping Failures*, SEC Press Release No. 2022-174, Sept. 27, 2022, available here.

[3] Gary Gensler, Nov. 2, 2022 Remarks.

[4] Gurbir Grewal, *Remarks at Securities Enforcement Forum*, Nov. 15, 2022, available here (hereinafter, "Gurbir Grewal, Nov. 15, 2022 Remarks").

[5] *SEC Announces Enforcement Results for FY22*, SEC Press Release No. 2022-206, Nov. 15, 2022, available here (hereinafter, "SEC Enforcement Results FY22").

SEC's strategy to increase deterrence and move away from penalties simply being a cost of doing business. In addition, Grewal noted that the SEC increasingly is imposing prophylactic remedies such as undertakings, compliance monitors and, in certain egregious cases, requiring admissions of wrongdoing.[6]

Gatekeepers

Gatekeepers like auditors, lawyers and underwriters remain squarely in the SEC's cross-hairs. Chair Gensler and Director Grewal both noted the irony of the SEC's $100 million penalty imposed against a Big Four auditor — the largest penalty *ever* against an auditor[7] — for ignoring and concealing cheating on the *ethics* portion of the CPA exam by its employees, given that among the auditor's responsibilities is to catch clients who cheat. In addition, the auditor was required to admit its misconduct and to implement extensive remedial measures, including engaging two separate compliance consultants.[8] The first consultant's mandate was to review the audit firm's policies and procedures relating to ethics and integrity. A second consultant was tasked with conducting a privileged review of the firm's response to the SEC's investigation by its in-house lawyers and executive committee, including authority to order terminations and other personnel actions. Stay tuned for further activity relating to this matter arising from this latter consultant's review.

The SEC also will continue efforts intended to hold individuals accountable. Director Grewal stressed that more than two-thirds of the SEC's stand-alone enforcement efforts during fiscal 2022 involved at least one individual defendant or respondent. Grewal believes that holding individuals accountable is critical to the SEC's mission, and cited the SEC's use of Sarbanes-Oxley Section 304 to require several public company executives to return compensation following misconduct at their companies, even when the executives were not personally charged with any wrongdoing.[9]

Cooperation

Even as the SEC's enforcement efforts have resulted in record penalties and unprecedented sanctions, officials have emphasized the agency's willingness to reward those who cooperate in meaningful ways with the Commission's investigations, including reduced penalties or even no penalties at all. Director Grewal recounted the example of the SEC's action against a health care company and its executives for accounting improprieties involving foreign exchange transactions.[10] According to Grewal, the Commission agreed to "substantially limit" the penalties imposed for the wrongdoing due to the company's self-reporting, cooperation (including detailed explanations how the transactions worked and witness interviews), and remedial measures taken as a result. Moreover, Grewal also cited two examples where, due to extensive cooperation and remediation by the entities charged, the Commission imposed no penalty whatsoever.[11]

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[6] Gurbir Grewal Nov. 15, 2022 Remarks.

[7] *Ernst & Young to Pay $100 Million Penalty for Employees Cheating on CPA Ethics Exams and Misleading Investigation*, SEC Press Release No. 2022-114, June 29, 2022, available here.

[8] *Id.*

[9] Gurbir Grewal, Nov. 15, 2022 Remarks.

[10] *Id.*, *citing Baxter Int'l Inc.*, Securities Act Release No. 11032, Feb. 22, 2022, available here.

[11] Gurbir Grewal Nov. 15, 2022 Remarks, *citing SEC Charges Oilfield Services Company and Former CEO With Failing to Disclose Executive Perks and Stock Pledges*, SEC Press Release No. 2021-244, Nov. 22, 2021, available here, and *SEC's Fraud Case Against Silicon Valley-Based Headspin, Inc.'s Former CEO Is Ongoing*, SEC Litigation Release No. 25320, Jan. 28, 2022, available here; *see also* SRZ Alert: *DOJ Highlights Self-Disclosure and Cooperation by Corporate Entities*, Jan. 24, 2023, available here.

Conclusion

As calendar year 2022 drew to a close, Congress approved the SEC's $2.2 billion budget request,[12] which includes funding to add 125 additional personnel to the Division of Enforcement. The SEC justified its budget request by noting its expectation that "the number of litigated cases will continue to rise as the Enforcement Division increasingly holds wrongdoers accountable for the misconduct with more meaningful and, in some instances, escalating sanctions."[13] With expected growth in the Enforcement Division in 2023, we anticipate that the Division will continue its aggressive enforcement of the securities laws, and that the SEC's enforcement actions will reflect senior management's priorities, focused on accountability, increased penalties and deterrence.

[12] David Shepardson and Diane Bartz, *Government Funding Bill to Bolster U.S. Antitrust Regulators*, REUTERS (Dec. 22, 2022 8:14 PM EST), available here.

[13] SEC, SEC Fiscal Year 2023 Congressional Budget Justification Annual Performance Plan, at 25, Mar. 25, 2022, available here.

Cryptowinter Lingers: Recent Developments in the Regulation of Cryptocurrencies and Other Digital Assets

Throughout his tenure, Chair Gensler has been consistent in his position that the regulatory requirements for the crypto and digital asset industry are clear and that cryptocurrency firms must come into compliance with existing rules.[14] In recent remarks directed at the cryptocurrency industry, Chair Gensler invoked Justice Thurgood Marshall, who, in describing the scope of the federal securities laws, noted that Congress adopted the laws to "regulate investments, in whatever form they are made and by whatever name they are called."[15] Gensler stressed that the Commission "look[s] to underlying economic realities regardless of the 'form' or 'name' of the securities, funds or investors involved. We follow Aristotle's principle: 'Treat like cases alike.'"[16]

To drive home the point, Gensler cited two examples. First, he noted that where market participants fail to register a security as required, they violate the securities laws, regardless of the "form" or "name" of the securities involved. According to Gensler, that's why when BlockFi failed to register transactions involving a crypto lending product, and allegedly made material false and misleading statements about those securities, the SEC charged them with violating registration requirements and making false statements.[17] Second, when securities trades are based on material nonpublic information, they violate the securities laws, regardless of the "form" or "name" of the securities involved. Again according to Gensler, that is why when a former Coinbase manager and others allegedly misappropriated confidential information about which crypto tokens would soon become listed to trade on the Coinbase platform, the SEC brought insider trading charges against the manager and his alleged tippees.[18] As Gensler succinctly put it, "fraud is fraud, regardless of the types of investors you have defrauded and the types of securities used in the fraud."[19]

The lack of new-cryptocurrency laws or regulation has not, however, been a barrier to regulators' pressing the boundaries of existing laws in order to bring enforcement actions against a variety of actors in the cryptocurrency and digital asset space. The whirlwind pace of crypto-related events during the final quarter of 2022 and early 2023 featured the highly publicized collapse of FTX, arrest of its founder, Samuel Bankman-Fried and the guilty pleas of two other FTX employees, the bankruptcies and related enforcement inquiries of several other cryptocurrency exchanges, and SEC and CFTC courtroom successes in applying old rules to modern crypto-related concepts. While no one event or ruling provides a definitive regulatory framework to addressing the securities status of cryptocurrency assets, each sheds light on positions that regulators and law enforcement authorities may take, especially with respect to consumer protections.

[14] *E.g.*, Gary Gensler, *Remarks Before the Aspen Security Forum*, Aug. 3, 2021, available here; Gary Gensler, *Prepared Remarks of Gary Gensler On Crypto Markets Penn Law Capital Markets Association Annual Conference*, Apr. 4, 2022, available here.

[15] Gary Gensler, Nov. 2, 2022 Remarks, *quoting Reves v. Ernst & Young*, 494 U.S. 56, 60-61 (1990) ("Gary Gensler, Nov. 2, 2022 Remarks").

[16] *Id*.

[17] *BlockFi Agrees to Pay $100 Million in Penalties and Pursue Registration of its Crypto Lending Product*, SEC Press Release No. 2022-26, Feb. 14, 2022, available here.

[18] *SEC Charges Former Coinbase Manager, Two Others in Crypto Asset Insider Trading Action*, SEC Press Release No. 2022-127, available here.

[19] Gary Gensler, Nov. 2, 2022 Remarks.

Collapse of Crypto Lending Platforms: FTX & Others

The highly publicized financial collapse and insolvency of several cyrptocurrency exchanges and lending programs in 2022 and early 2023, has only served to sharpen regulatory scrutiny of cryptocurrency exchanges.

In connection with a recent action against Gemini and Genesis, Gurbir S. Grewal, Director of the SEC's Division of Enforcement noted, "[t]he recent collapse of crypto asset lending programs and the suspension of Genesis' program underscore the critical need for platforms offering securities to retail investors to comply with the federal securities laws."[20] The charges against Gemini and Genesis concern Gemini's high-yield Earn product, which the SEC has characterized the sale of as an unregistered securities offering. Gemini customers were able to loan their cryptocurrency assets to Genesis and, in exchange, earn interest through Gemini Earn. In November, Genesis paused customer withdrawals as it lacked sufficient liquidity to meet withdrawal demands. In the wake of the Genesis' liquidity issues and the collapse of FTX, Grewal further stated "[a]s we've seen time and again, the failure to do so denies investors the basic information they need to make informed investment decisions."[21]

The rapid deterioration of FTX began in early November following press reports concerning FTX's liquidity constraints and solvency concerns. The DOJ, SEC and others swiftly brought charges against FTX co-founder, Samuel Bankman-Fried (filed on Dec. 13, 2022 – approximately one month after FTX sought Chapter 11 protection), and settled civil actions and guilty pleas against other senior leaders of the exchange and its related entities, which were announced on Dec. 21, 2022.

The Charges Against Bankman-Fried

On Dec. 13, 2022, the U.S. Attorney's Office for the Southern District of New York, the SEC, and the CFTC announced charges against Bankman-Fried in parallel actions in connection with an alleged scheme to defraud more than $1.8 billion from FTX investors.[22]

For its part, the SEC alleges that from May 2019 to March 2022, Bankman-Fried "built a house of cards on a foundation of deception while telling investors that it was one of the safest buildings in crypto."[23] Specifically, the Complaint alleges that Bankman-Fried led FTX investors to believe that FTX had appropriate controls and risk management measures, and touted his responsible leadership in the crypto community.[24] Unbeknownst to those investors, Bankman-Fried was allegedly diverting billions of dollars of customers' funds for his personal benefit and finance his privately-held crypto trading fund, Alameda Research, in violation of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder. When prices of crypto assets plummeted in May 2022, Alameda's lender demanded repayment of billions of dollars in loans. Bankman-Fried allegedly directed FTX to divert billions more in customer assets to Alameda to ensure that it maintained its lending relationships and that money could continue to flow in from lenders and other investors. Ultimately the lack

[20] *SEC Charges Genesis and Gemini for the Unregistered Offer and Sale of Crypto Asset Securities Through the Gemini Earn Lending Program*, SEC Press Release No. 2023-7, Jan. 12, 2023, available here.

[21] *Id.*

[22] *United States Attorney Announces Charges Against FTX Found Samuel Bankman-Fried*, DOJ Press Release No. 22-386, Dec. 13, 2022, available here; *CFTC Charges Sam Bankman-Fried, FTX Trading and Alameda with Fraud and Material Misrepresentations*, CFTC Press Release No. 8638-22, Dec. 13, 2022, available here; *SEC Charges Samuel Bankman-Fried with Defrauding Investors in Crypto Asset Trading Platform FTX*, SEC Press Release No. 2022-2019, Dec. 13, 2022, available here.

[23] SEC Press Release No. 2022-2019, *supra* note 22.

[24] Complaint, *SEC v. Bankman-Fried*, No. 1:22-cv-10501 (S.D.N.Y. Dec. 13, 2022), ECF No. 1, available here.

of liquidity led FTX to suspend customer withdrawals and declare bankruptcy, and resulted in Alameda defaulting on its loan obligations.

The lack of internal controls highlighted in the SEC's Complaint, was echoed in the First Day Declaration of John Ray III in support of the Chapter 11 petitions. Ray declared:

> Never in my career have I seen such a complete failure of corporate controls and such a complete absence of trustworthy financial information as occurred here. From compromised systems integrity and faulty regulatory oversight abroad, to the concentration of control in the hands of a very small group of inexperienced, unsophisticated and potentially compromised individuals, the situation is unprecedented.[25]

The Charges Against Wang & Ellison

On Dec. 21, 2022, the SEC announced the filing of a contested injunctive action in the U.S. District Court for the Southern District of New York against Caroline Ellison and Zixiao "Gary" Wang for securities fraud.[26] Simultaneously, Wang and Ellison plead guilty to a variety of conspiracy charges filed by the DOJ for wire, securities and commodities fraud, among other charges.[27]

For its part, the SEC alleges that Ellison, the former CEO of Alameda research, and Wang, the former CTO of FTX Trading Ltd., were active participants in the scheme to defraud FTX's equity investors. The SEC's Complaint details alleges manipulation of FTX's propriety token, FTT, by purchasing large quantities on the open market to prop up its price. FTT served as collateral for undisclosed loans by FTX of its customers' assets to Alameda.[28] By manipulating the price of FTT, Bankman-Fried and Ellison allegedly caused the valuation of Alameda's FTT holdings to be inflated, which in turn caused the value of collateral on Alameda's balance sheet to be overstated, and misled investors about FTX's risk exposure.

With respect to Wang, the SEC alleges that he developed FTX software code which allowed Alameda to divert FTX customer funds and that Ellison used misappropriated FTX customer funds for Alameda's trading activity. The Complaint also alleges that, even as it became clear that Alameda and FTX could not make customers whole, Bankman-Fried, with the knowledge of Ellison and Wang, directed hundreds of millions of dollars more in FTX customer funds to Alameda.[29]

SEC Response: Increased Scrutiny and a Suggestion of Heightened Disclosure Obligations

In response to the collapse of FTX and other cryptocurrency exchanges and lending platforms, the SEC's Division of Corporation Finance released a "Sample Letter to Companies Regarding Recent Developments in Crypto Asset Markets."[30] In the letter and accompanying announcement, the Division of Corporation Finance states that it "[i]n meeting their disclosure obligations, companies should consider the need to address crypto asset market

[25] Declaration of John J. Ray III in Support of Chapter 11 Petitions and First Day Pleadings at ¶ 5, *In re FTX Trading Ltd. et al.*, No. 22-11068 (JTD) (Bankr. D. Del. Nov. 17, 2022), ECF No. 24, available here.

[26] *SEC Charges Caroline Ellison and Gary Wang With Defrauding Investors in Crypto Asset Trading Platform FTX*, SEC Press Release, Dec. 21, 2022, available here.

[27] *United States Attorney Announces Extradition of FTX Found Samuel Bankman-Fried to the United States and Guilty Pleas of Former CEO of Alameda Research and Former Chief Technology Officer of FTX*, DOJ Press Release No. 22-407, Dec. 22, 2022, available here.

[28] Complaint, *SEC v. Ellison et al.*, 22-cv-10794 (S.D.N.Y. 2022), ECF No. 1, available here.

[29] *Id.*

[30] *Sample Letter to Companies Regarding Recent Developments in Crypto Asset Markets*, SEC, modified Dec. 8, 2022, available here.

developments in their filings generally, including their business descriptions, risk factors, and management's discussion and analysis."[31] Suggested categories of disclosure and consideration to meet these obligations include: "disclosure of significant crypto asset market events material to understanding or assessing your business"; exposure to crypto market participants that have filed for bankruptcy or experienced material corporate compliance failures, risk factors such as material concentrations, potential for regulatory changes and related impact, and safeguarding cryptocurrency assets.[32]

***OokiDao*: Individual Governance Token Holder Liability?**

On Sept. 22, 2022, the CFTC initiated a settled administrative proceeding against bZeroX, LLC and others for engaging in activities in which only a registered designated contract market ("DCM") or a registered futures commission merchant ("FCM") could engage.[33] Specifically, the CFTC found that from June 1, 2019 to Aug. 23, 2021, bZeroX "designed, deployed, marketed, and made solicitations concerning" a decentralized Ethereum blockchain-based software protocol to accept and facilitate margined and leveraged transactions based on the price difference between digital assets.[34] The CFTC also found that, as of Aug. 23, 2021, bZeroX transferred control over the protocol to Ooki DAO ("Ooki"), which is a decentralized autonomous organization ("DAO") that was formerly known as bZx DAO, to insulate the protocol from U.S. regulatory oversight and compliance accountability.

In a related contested action against Ooki, the CFTC alleges that Ooki DAO continues to operate the protocol essentially the same as it bZeroX, and therefore is also in violation of Commodity Exchange Act Sections 4(a) and 4d(a)(1) and Regulation 42.2.[35] Setting aside the underlying charges against Ooki DAO, early motion practice has centered on the proper mechanism to serve the CFTC's complaint on the DAO.[36] Initially, the court approved the CFTC's motion to serve Ooki DAO "via the online mechanisms the Ooki DAO has created to allow itself to be contacted by the public"—by posting summons documents in Ooki DAO's online discussion forum and in its help chat box.[37]

Although Ooki DAO and several amici argued against service in this fashion as both improper and unconstitutional, the court held that service was sufficient. In its order, the court analyzed how service of process fits with new and evolving technologies, including a de-centralized internet platform with no registered agent for service or corporate presence.[38] As a practical matter, although the CFTC opted to sue Ooki DAO the entity rather than token holders individually, the framework under Rule 4 of the Federal Rules of Civil Procedure and relevant state law (in this case, California) permitted service via chat box or discussion forum. As of the date of this publication, the DAO did not answer or respond to the CFTC's Complaint and the CFTC moved for an entry of default against Ooki DAO.[39]

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[31] *Id.*

[32] *Id.*

[33] *CFTC Imposes $250,000 Penalty Against bZeroX, LLC and Its Founders and Charges Successor Ooki DAO for Offering Illegal, Off-Exchange Digital-Asset Trading, Registration Violations, and Failing to Comply with Bank Secrecy Act*, CFTC Press Release No. 8590-22, Sept. 22, 2022, available here.

[34] *Id.*

[35] Complaint, *CFTC v. Ooki DAO*, 22-cv-05416 (WHO) (N.D. Cal. Sept. 22, 2022), ECF No. 1, available here.

[36] Order, *CFTC v. Ooki DAO*, 22-cv-05416 (WHO) (N.D. Cal. Dec. 12, 2022), ECF No. 59, available here.

[37] Plaintiff's Svc. Mot., *CFTC v. Ooki DAO*, 22-cv-05416 (WHO) (N.D. Cal. Sept. 27, 2022), ECF No. 11, available here; Order, *CFTC v. Ooki DAO*, 22-cv-05416 (WHO) (N.D. Cal. Oct. 3, 2022), ECF No. 17, available here.

[38] Order, *CFTC v. Ooki DAO*, 22-cv-05416 (WHO) (N.D. Cal. Dec. 20, 2023), ECF No. 63, available here.

[39] Plaintiff's Request for Default Judgment, *CFTC v. Ooki DAO*, 22-cv-05416 (WHO) (N.D. Cal. Jan. 11, 2023), ECF No. 64, available here.

Although the *Ooki* order is narrowly tailored to the question of the sufficiency of service of process under the particular facts of case, it raises the specter that individual governance token holders can be liable for the actions of the DAO. Funds should be mindful of this ruling when conducting risk assessments attendant to any positions they might take that would include holding governance tokens or other digital assets that include rights similar to the rights associated with Ooki DAO token holders.

LBRY: Howey Continues to Control

At SEC Speaks last September, Chair Gensler proclaimed that, of the nearly 10,000 tokens in the crypto market, he believes the "vast majority are securities" and that the "[o]ffers and sales of these thousands of crypto security tokens are covered under the securities laws."[40] Chair Gensler made clear that the greater guidance on applying securities laws to cryptocurrencies that many are clamoring for may not be necessary and he opined that "most crypto tokens are investment contracts under the *Howey Test.*"[41] In fact, the application of *Howey* to determine whether cryptocurrency tokens are securities is neither novel or new. The argument underpins the SEC's insider trading charges in *Wahi*, several recent settled matters involving initial coin offerings and the SEC's case against Ripple.[42]

On Nov. 7, 2022, the SEC prevailed on its motion for summary judgment in its suit against LBRY, Inc. (LBRY), a blockchain-based file and media platform.[43] LBRY launched "LBRY Credit" (LBC) coins in 2016. LBC is LBRY's native currency, intended to be deployed on the LBRY blockchain for a variety of purposes including the purchase of content and to support others on the network. LBCs were not issued in an initial coin offering ("ICO"), rather LBRY sold LBCs directly to users. In its ruling, the Court found that LBCs offered and sold by LBRY were, in fact, unregistered securities and the offering violated the registration provisions of Sections 5(a) and 5(c) of the Securities Act.[44]

For its part, the SEC argued in its motion for summary judgment that LBC is a security under *Howey* because:

- LBRY offered and sold LBC for money and other consideration;
- LBC purchasers invested into a common enterprise because LBRY pooled the money raised from LBC sales and used it to fund the development and operation of its platform; and
- A reasonable purchaser of LBC would expect to earn profits derived from the efforts of LBRY.

In support of its arguments, the SEC highlighted statements made by LBRY to potential investors in blog posts, emails, and interviews that suggested that the value of LBC would appreciate as LBRY further developed its network.[45]

[40] Gary Gensler, *SEC Speaks: Kennedy and Crypto*, Sept. 8, 2022, available here.

[41] *Id.*

[42] *SEC Charges Ripple and Two Executives with Conducting $1.3 Billion Unregistered Securities Offering,* SEC Press Release, Dec. 22, 2020, available here; Complaint, *SEC v. Ripple Labs, Inc. et al.*, No. 1:20-cv-10832 (S.D.N.Y. Dec. 22, 2020), ECF No. 4, available here. For further discussion, see Schulte Roth & Zabel, LLP, *The SEC Continues to Target Cryptocurrencies and Other Digital Assets*, June 28, 2021, available here.

[43] *SEC Granted Summary Judgment Against New Hampshire Issuer of Crypto Asset Securities for Registration Violations*, SEC Press Release, Nov. 7, 2022, available here.

[44] Order, *SEC v. LBRY, Inc.*, No. 1:21-cv-00260-PB (D.N.H. Nov. 7, 2022), ECF No. 86, available here.

[45] *Id.*; *see also* Complaint, *SEC v. LBRY, Inc.*, No. 1:21-cv-00260-PB (D.N.H. filed March 29, 2021), ECF No. 1, available here.

LBRY, in turn, countered that LBC coins are not securities because:

- LBC tokens are consumptive in nature, with purchasers using LBC for on-chain activities rather than investment purposes;
- The "primary focus" of LBRY's promotional statements and materials was the utility of LBC, not its potential price appreciation; and
- LBRY stated explicitly in marketing materials that LBC was intended for consumption on the LBRY network, not as an investment.

Although the LBRY ruling is not binding on cases like Ripple, it will likely feature prominently in the SEC's arguments concerning any token that bears similar features to LBC.

Conclusion

There is no doubt the SEC, and other agencies are laser focused on enforcement activity in the cryptocurrency space, investment advisers should reassess their existing analyses regarding the impact on their clients and operations of treating cryptocurrencies as securities – particularly with respect to insider trading, personal trading, and Custody Rule compliance. Treatment of certain cryptocurrency assets as securities could materially impact liquidity, and advisers should consider the potential impacts on portfolio management and whether existing risk disclosures are adequate. Going forward, in evaluating the impacts of cryptocurrency investments and internal controls around the same, advisers should consider:

- Which tokens are securities or meet the criteria that the SEC considers when evaluating whether a token is a security, the trading of which must be done in compliance with SEC regulations;
- Whether holding tokens that are securities impacts the SEC and CFTC registration status of the investment manager;
- Whether participation in a Decentralized Autonomous Organization ("DAO") or other token governance process could give rise to individual token holder liability;
- Whether, in the event of an insolvency event on the part of the exchange, tokens deposited on an exchange become the asset of the debtor exchange; and
- Whether existing recordkeeping practices are sufficient—recordkeeping requirements for crypto-related investments are the same as those for a fund's other investments, but participants in the crypto and digital asset space often utilize non-traditional messaging platforms (such as Signal, Discord servers, or Telegram).

Recent Enforcement Actions[46]

Investment Adviser Enforcement Actions

A. Breach of Fiduciary Duty: *SEC v. McDermott et al.*

Investment adviser breaches fiduciary duty in selection of higher-cost unit investment trusts. On Oct. 28, 2022, following a July 12, 2022, jury verdict, the U.S. District Court for the Eastern District of Pennsylvania entered final judgments against Defendants McDermott Investment Advisors, LLC ("MIA"), Dean Patrick McDermott ("McDermott"), MIA's owner and principal, and Relief Defendant McDermott Investment Services, LLC ("MIS"), MIA's affiliated broker-dealer, for breaches of fiduciary duty in violation of Sections 206(1) and 206(2) of the Investment Advisers Act ("Advisers Act").[47]

In its Complaint filed in September 2019, the SEC alleged, and the jury ultimately found, that Defendants MIA and McDermott breached fiduciary duties in connection with the selection of unit investment trusts that imposed an avoidable transactional sales charge on to advisory clients.[48] At the time of the investments, there existed other identical options that did not impose transactional sales charges. By choosing an option with charges, MIS received unlawful revenue from the avoidable transaction charges at the expense of MIA's clients. The SEC also found McDermott liable for aiding and abetting MIA's primary violations.

The district court's final judgment finds that Defendants MIA and McDermott violated Sections 206(1) and 206(2) of the Advisers Act and that McDermott is liable for aiding and abetting MIA's violations of the same. The final judgment imposes the following sanctions: "(1) McDermott, MIA, and MIS jointly and severally must pay $143,379 in disgorgement; (2) McDermott, MIA, and MIS jointly and severally must pay $50,983 in prejudgment interest; (3) MIA must pay $110,000 in civil penalties; and (4) McDermott must pay $50,000 in civil penalties."[49]

B. Principal Account Transactions Without Proper Disclosure: *In re Legal & General Investment Management America, Inc.*

Failure to make proper written disclosures and obtain consent from clients prior to effecting principal transactions results in a civil penalty. On Nov. 21, 2022, the SEC announced the filing of a settled administrative proceeding against Legal & General Investment Management America, Inc. ("LGIMA"), a registered investment adviser, for effecting principal transactions without required disclosures or client approval, and for failing to implement adequate supervisory systems.[50]

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[46] The enforcement proceedings described below are based on allegations by the SEC, CFTC, DOJ and other agencies that either are being contested in active litigation or are part of a settled action in which the respondents have agreed to "neither admit nor deny" the allegations.

[47] *Court Enters Final Judgments Against Investment Adviser and Its Principal for Defrauding Clients Through Their Selection of Higher-Cost Unit Investment Trusts*, SEC Litigation Release No. 25570, Nov. 3, 2022, available here; Final Judgment, *SEC v. McDermott et al.*, No. 19-4229-KSM (E.D. Pa. Oct. 28, 2022), ECF No. 158, available here.

[48] Complaint, *SEC v. McDermott et al.*, No. 19-4229 (E.D. Pa. Sept. 13, 2019), ECF No. 1, available here.

[49] SEC Litigation Release No. 25570.

[50] *SEC Charges Chicago-Based Investment Adviser for Unlawful Principal Transactions and Cross Trades*, SEC Administrative Proceeding File No. 3-21244, Nov. 21, 2022, available here; *Legal & General Investment Management America, Inc.*, Advisers Act Release No. 6188, Nov. 21, 2022, available here.

In its Order Instituting Proceedings ("Order"), the SEC finds that from August 2017 to December 2020, LGIMA effected 44,125 principal transactions between clients and LGIMA principal accounts without having made the required client disclosures or obtaining the required client consents. LGIMA also failed to comply with certain provisions governing cross trades in connection with 547 cross trades between certain of its registered investment company ("RIC") clients and other LGIMA clients who were affiliated persons of those RICs. The SEC finds that these failures were caused by LGIMA's failure to adopt and implement policies and procedures reasonably designed to prevent unlawful principal and cross trading.

The SEC also credits LGIMA for discovering and self-reporting the violations, and cooperating with the SEC's investigation.

The Order finds that LGIMA violated Sections 206(3) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, and caused violations of Sections 17(a)(1) and 17(a)(2) of the Investment Company Act of 1940 ("Investment Company Act") and Rule 38a-1 thereunder. The SEC's Order seeks a cease-and-desist order, a censure and a civil penalty of $500,000.

C. Evaluation of ESG Factors: *In re Goldman Sachs Asset Management, L.P.*

Failure to adopt adequate policies and procedures for evaluating ESG factors results in a penalty of $4 million. On Nov. 22, 2022, the SEC announced the filing of a settled administrative proceeding against Goldman Sachs Asset Management, L.P. ("GSAM") for failing to adopt and implement adequate supervisory and compliance policies concerning its ESG factor disclosures in connection with several investment products.[51]

In its Order, the SEC finds that from April 2017 to June 2018, GSAM did not maintain any written policies and procedures concerning ESG research. Despite then adopting such policies and procedures, GSAM failed to follow those policies and procedures consistently until February 2020. For example, despite having procedures that required employees to complete an ESG questionnaire prior to the selection of a security, such employees would complete the questionnaires after securities were selected. In some cases, in completing the questionnaire, employees relied on dated ESG research that was not conducted in accordance with GSAM's policies and procedures.

The SEC's Order finds that GSAM willfully violated Advisers Act Section 206(4) and Rule 206(4)-7 thereunder. Without admitting or denying the SEC's findings, GSAM agreed to cease-and-desist, a censure and a civil monetary penalty of $4 million.

D. Conflicts of Interests: *SEC v. Cetera Advisors, LLC et al.*

Investment adviser assessed significant monetary sanctions for fraudulently breaching the fiduciary duties to clients and failing to disclose conflicts of interest. On Oct. 24, 2022, the SEC announced the settled resolution of its 2019 action filed in the U.S. District Court for the District of Colorado against Cetera Advisors LLC and Cetera Advisor Networks LLC for breach of fiduciary duties.[52]

[51] *SEC Charges Goldman Sachs Asset Management for Failing to Follow its Policies and Procedures Involving ESG Investments*, SEC Press Release No. 2022-209, Nov. 22, 2022, available here; *Goldman Sachs Asset Management, L.P.*, Advisers Act Release No. 6189, Nov. 22, 2022, available here.
[52] *SEC Obtains Final Judgment Against Investment Advisers Charged with Defrauding Their Advisory Clients*, SEC Litigation Release No. 25564, Oct. 24, 2022, available here; *see also* Second Amended Complaint, *SEC v. Cetera Advisors LLC et al.*, No. 19-cv-02461-MEH (D. Colo. Apr. 29, 2020), ECF No. 58, available here.

In its Second Amended Complaint, the SEC alleged that the defendants invested and held advisory client assets in higher-cost share classes of certain mutual funds, which enabled defendants to collect higher fees, despite knowing otherwise identical lower-cost share classes were available and accessible to their clients. Further, the SEC alleged that the defendants treated clients differently based on the timing of their investments and failed to disclose material facts to their clients, including their conflicts of interest related to compensation in the form of 12b-1 fees, revenue sharing, administrative fees and markups, and other information necessary for their clients to make informed investment decisions.

The SEC consented to a final judgment from the district court finding that Cetera Advisors LLC and Cetera Advisor Networks LLC violated Sections 206(2), 206(4), and Rule 206(4)-7 of the Advisers Act. Pursuant to the final judgment, the Cetera entities consented to (1) an order permanently enjoining the defendants from further violations; (2) disgorgement on a joint and several basis of $5,614,509, plus prejudgment interest of $990,961; and (3) a civil monetary penalty of $1 million per entity.

Broker-Dealer Enforcement Actions

A. Missed Red Flags: *In re Clearview Trading Advisors, Inc.*

FINRA, like the SEC, remains focused on individual liability, and will hold individual officers accountable for a failure to supervise. On Nov. 11, 2022, FINRA announced the filing of a settled Letter of Acceptance, Waiver, and Consent ("AWC") against Clearview Trading Advisors, Inc. ("Clearview") and Gregg H. Ettin ("Ettin"), Clearview's CEO, founder and at all relevant times, its Chief Compliance Officer and Anti-Money Laundering ("AML") Compliance Officer ("AMLCO") for failing to establish and maintain adequate compliance and supervisory programs.[53]

In its AWC, FINRA finds that Clearview and Ettin failed to establish and implement an AML compliance program reasonably designed to detect and cause the reporting of suspicious activity, and to achieve compliance with Section 5 of the Securities Act. For example, despite having procedures in place identifying the liquidation of large volumes of low-priced securities as a red-flag for AML concerns, Ettin failed to conduct a reasonable inquiry when two accounts owned by the same individual sold nearly 20 million shares of a "thinly-traded penny stock" on the same date. Clearview's procedures at the time identified "trading of an illiquid stock suddenly and simultaneously by two of more account as a red flag."[54] In this case, neither Clearview, nor Ettin, identified the red flag or investigated.

Clearview and Ettin delegated the duties of verifying customer information and compliance review of accounts to a third party, Company A. However, the AWC finds that Clearview lacked procedures governing its supervision of Company A. As a result, although Company A collected relevant documents, and made them available to Clearview, the parties lacked a specific procedure for Company A to notify Clearview of any red flags. Clearview's AML policy also required "another individual to monitor transactions executed by the firm's AMLCO," however, at times Ettin executed trades himself and no such other person reviewed those trades.[55] Additionally, Clearview failed to utilize procedures and tools such as exception reports or automated tools to monitor customer account activity for suspicious trading, and although its AML procedures identified examples of red flags, Clearview lacked a procedure for *how* the firm should monitor for and investigate those red flags.

The AWC finds that Clearview and Ettin violated FINRA Rules 3110(a), 3110(b), 3310(a), and 2010. The AWC seeks a censure and $100,000 fine against Clearview and a nine month suspension from associating with any FINRA member, a $25,000 fine, and a requirement to requalify as a general securities principal against Ettin.

B. Penny-Stock Broker Failed to Registered as a Broker-Dealer: *SEC v. GEL Direct Trust et al.*

Registered brokers charged by the SEC with operating unregistered broker-dealers and facilitating nearly $1.2 billion in penny stock trades. On Nov. 17, 2022, the SEC announced the filing of a contested injunctive action in the U.S. District Court for the Southern District of New York against GEL Direct Trust ("GEL"), GEL Direct, LLC ("GEL Trustee"),

[53] *Clearview Trading Advisors, Inc.*, FINRA Letter of Acceptance, Waiver, and Consent No. 2019064126802, Nov. 11, 2022, available here.

[54] *Id.* at 4.

[55] *Id.*

Jeffrey K. Galvani ("Galvani"), and Stuart A. Jeffery ("Jeffery") for facilitating more than $1.2 billion of securities trading without being registered broker-dealers.[56]

In its Complaint, the SEC alleges that from 2019 through at least May 2022, Galvani and Jeffery (who were both registered brokers at a different broker-dealer unrelated to the case) provided brokerage services to approximately 60 customers involving at least 19,000 securities trades. The securities traded were primarily penny stocks. Galvani and Jeffrey created GEL, which they managed through its trustee, GEL Trustee. Neither GEL nor GEL Trustee registered with the SEC as a broker-dealer, nor were they associated with another registered broker-dealer. Services provided by the defendants included: taking possession of customer securities, directing trades to executing brokers, facilitating trade settlements and disbursing trading proceeds to customers. During the relevant period, Defendants received at least $12.4 million in transaction related fees and compensation.

The SEC Complaint charges the Defendants with violating Section 15(a) of the Exchange Act and that Galvani and Jeffery are liable for Control Person Liability for Violations of Section 20(a) of the Exchange Act. The Complaint seeks a permanent injunction, disgorgement, civil penalties, a penny stock bar, and any other relief the court deems just and proper.

C. Overstated Trading Volume: *In re Barclays Capital Inc.*

Failure to detect overstated advertised trading volume results in fine for failure to supervise. On Nov. 21, 2022, FINRA announced the filing of a settled AWC against Barclays Capital Inc. ("BCI") for overstating its daily trading volume on Bloomberg and for failing to implement adequate supervisory procedures to prevent the same.[57]

In its AWC, FINRA finds that BCI advertised its daily securities trading volume through Bloomberg, L.P. Between January 2014 and February 2019, BCI's proprietary system used to calculate and transmit information to be displayed on Bloomberg suffered from several defects that caused BCI to overstate the firm's trading volume. The system automatically sent these calculations to Bloomberg, which in turn posted them for advertisement. As a result, BCI overstated its advertised trading volume in more than 4,500 instances, but corrected the technology flaws by February 2019.

BCI detected the issue and self-reported the matter to FINRA pursuant to FINRA Rule 4530.

The AWC finds that BCI violated FINRA Rules 5210, 2010, and 3110, and NASD Rule 3010. BCI consented to a censure and a $175,000 fine.

D. Improper Trade Allocations: *In re Chad Robert Henderson, et al*.

Failure to adopt policies and procedures and to require review of transfers between employee and customer accounts results in a CFTC enforcement action. On Oct. 20, 2022, the CFTC announced the filing of a settled administrative proceeding against Prime Agricultural Investors, Inc. ("PAI," an introducing broker), and its associated

[56] *SEC Charges Unregistered Brokers That Facilitated More Than $1.2 Billion in Primarily Penny Stock Trades*, SEC Press Release No. 2022-207, Nov. 17, 2022, available here; Complaint, *SEC v. GEL Direct Trust et al.*, No. 1:22-cv-09803 (S.D.N.Y. Nov. 17, 2022), ECF No. 1, available here.
[57] *Barclays Capital Inc.*, FINRA Letter of Acceptance, Waiver, and Consent No. 2019061298301, Nov. 21, 2022, available here.

person and principal, Chad R. Henderson, for improper allocation of trades between employee and customer accounts and failing to supervise.[58]

In its Order, the CFTC finds that between January 2018 through at least September 2019, Henderson transferred profitable futures transactions from PAI customers' commodity interest accounts to his own account, thereby fraudulently allocating profits to himself that should have gone to his customers. Henderson also would transfer his own unprofitable futures transactions to PAI customers' accounts to avoid losses. The transactions at issue included futures transactions in corn, soybeans, wheat and cattle. The CFTC also finds that PAI failed to implement policies and procedures to prevent the fraudulent transfers between employee and customer accounts, and to diligently supervise Henderson.

The CFTC Order finds that Henderson violated Sections 4b(a)(1)(A) and (C) of the Commodities Exchange Act and that PAI violated Commission Regulation 166.3, 17 C.F.R. § 166.3. The Order requires PAI to pay a $100,000 civil monetary penalty, Henderson to pay a $300,000 civil monetary penalty, and requires both defendants, jointly and severally, to pay $463,459 in restitution. Henderson further agreed to a bar against trading in any account involving commodity interests.

[58] *CFTC Orders Wisconsin Broker to Pay Over $750,000 for Improper Trade Allocation and Additional Violations*, CFTC Press Release No. 8614-22, available here; *Chad Robert Henderson et al.*, CFTC Docket No. 23-01, Oct. 20, 2022, available here.

Other Enforcement Actions

A. Materially Misleading Statements in Public Statements: *In re Koppers Holdings Inc.*

The SEC highlights remedial efforts and cooperation with the investigation in its findings. On Nov. 1, 2022, the SEC announced the filing of a settled administrative proceeding against Koppers Holdings Inc., ("Koppers") for failing to disclose the impact of its debt reduction practices, which made its publicly filed statements materially misleading.[59]

In its Order, the SEC finds that Koppers failed to disclose material information about its debt reduction efforts during fiscal year 2019, and made materially misleading statements in press releases attached to its Forms 8-K filed with the SEC and during its earnings calls. Koppers announced that it planned to reduce its debt by $80 million during the fiscal year 2019 and later informed investors at year-end 2019 that it had reached its goal. Koppers failed to disclose, however, that it achieved this target by delaying payment to certain vendors in the amount of $72 million – which accounted for 85 percent of the reported $81.6 million net debt reduction for 2019.

The SEC specifically credits Koppers's remedial efforts including: cooperating with the investigation and engaging an outside consultant to identify and adopt remedial measures strengthening policies and procedures related to accounts payable and non-GAAP disclosures.

The Order finds that Koppers violated Section 17(a)(3) of the Securities Act, Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-11 thereunder, and Rule 100(b) of Regulation G thereunder. The Order requires Koppers to cease and desist from further violations of securities laws, and pay a civil penalty in the amount of $1.3 million.

B. *Insider Trading*

Financial regulators brought a number of insider trading cases during the fourth quarter of 2022. We have briefly summarized five of these matters below.

- *In re Michael E. Mueller.*[60] Respondent received material nonpublic information ("MNPI") by telephone and text messages from his friend, John P. Mendes, an employee at an investment adviser who had received MNPI about Layne Christensen Company ("Layne") as a potential acquisition target. Mendes tipped Mueller in November 2017 and Mueller authorized Mendes to purchase Layne securities in Mueller's account. After the company publicly agreed to acquire Layne, the shares increased in value, resulting in profits based on the trading of MNPI. Respondent agreed to a cease-and-desist order, disgorgement of $38,075.32, prejudgment interest of $8,003.38, and a civil penalty of $52,118.87.
- *SEC v. Rayapureddy.*[61] Respondent allegedly tipped his work colleague with MNPI concerning Mylan N.V. ("Mylan"). The MNPI concerned Mylan's financial results, an acquisition, and at least one FDA drug application approval. The SEC alleges that Respondent knew or was recklessly indifferent to whether his

[59] *SEC Charges Koppers Holdings Inc. for Materially Misleading Statements Regarding Non-GAAP Financial Measures*, SEC Administrative Proceeding File No. 3-21223, Nov. 1, 2022, available here; *Koppers Holdings Inc.*, Exchange Act Release No. 96193, Nov. 1, 2022, available here.
[60] *Michael E. Mueller*, Exchange Act Release No. 96243, Nov. 4, 2022, available here.

[61] *SEC Charges Pharmaceutical Co. Chief Information Officer in $8 Million Insider Trading Scheme*, SEC Press Release No. 2022-204, Nov. 10, 2022, available here; Complaint, *SEC v. Rayapureddy*, No. 2:22-cv-01592-WSH (W.D. Pa. Nov. 10, 2022), ECF No. 1, available here.

work colleague would trade on this information. His colleague traded on the MNPI and gained at least $7,264,008 and avoided losses of $703,337, and Respondent received a portion of the profits in exchange for his tips. The SEC's Complaint seeks permanent injunctive relief, disgorgement and a civil monetary penalty. Also on Nov. 10, 2022, the DOJ Fraud Division announced criminal charges against Respondent for the same conduct.[62]

- *SEC v. Billimek et al.*[63] In its Complaint, the SEC alleges that Respondent Williams traded on MNPI provided to him by Respondent Billimek, an employee of a major asset management firm. Billimek's employer routinely bought and sold securities in such large amounts that the trades caused the price of those securities to increase or decrease in a predictable way. Billimek advised Williams of these market-moving trades prior to their execution and Williams traded to take advantage of the expected price change. The Complaint alleges that Billimek received a personal benefit from his tips to Williams, including payments of at least $540,000. The insider trading and front-running scheme generated at least $47 million in illegal proceeds. The SEC's Complaint seeks disgorgement plus prejudgment interest, penalties, and injunctive relief. The DOJ filed criminal charges on Dec. 14, 2022 against Billimek and others for the same conduct.[64]
- *In re Lee Tippett.*[65] Respondent, a broker for Classic Energy LLC ("Classic") who facilitated block trades between Classic's customers on ICE Futures, U.S. ("ICE") or New York Mercantile Exchange ("NYMEX"), repeatedly brokered natural gas futures block trades for one of Classic's brokerage customers, whose employee received most of Respondent's commission on these trades as part of an ongoing kickback scheme. Respondent concealed these kickback payments in various ways. Respondent also misappropriated confidential company information and disclosed it to a trader who traded on the information and gained profits. The CFTC Order settling this action imposes a cease-and-desist order, and orders that Respondent is permanently prohibited from trading on or subject to the rules of any registered entity and all registered entities shall refuse him trading privileges. Respondent must also pay disgorgement of $695,000 and a monetary penalty of $500,000.
- *SEC v. Wong.*[66] Respondent allegedly received MNPI from his brother concerning a planned tender offer transaction between Merck & Co., Inc. ("Merck") and Pandion Therapeutics, Inc. ("Pandion"). The MNPI allegedly originated from the brother's close friend, an agent in training with the FBI and romantic partner of a law firm associate working on the Merck-Pandion deal. The agent in training is the alleged initial tipper. He frequently stayed at the law firm associate's apartment where the associate worked on the Merck-Pandion deal. After Respondent was tipped by his brother, he purchased Pandion stock ahead of the announcement and made over $400,000 in profits. The SEC's Complaint seeks a permanent injunction, disgorgement, prejudgment interest and civil monetary penalties.

[62] *Chief Information Officer of Publicly Traded Pharmaceutical Company Charged for Insider Trading Scheme*, DOJ Press Release No. 22-1212, Nov. 10, 2022, available here.

[63] *SEC Charges Financial Services Professional and Associate in $47 Million Front-Running Scheme*, SEC Press Release No. 2022-228, Dec. 14, 2022, available here; Complaint, *SEC v. Billimek et al.*, No. 1:22-cv-10542 (S.D.N.Y. Dec 14, 2022), ECF No. 1, available here.

[64] *Insider at Major Financial Services Organization and Retired Financial Professional Charged with Multimillion Dollar Front-Running Scheme*, DOJ Press Release No. 22-389, Dec. 14, 2022, available here.

[65] *CFTC Charges Former Energy Broker with Paying Brokerage Kickbacks and Misappropriating Nonpublic Information*, CFTC Press Release No. 8627-22, Nov. 16, 2022, available here; *Lee Tippett*, CFTC Docket No. 23-03, Nov. 16, 2022, available here.

[66] *SEC Announces Additional Charges in Scheme to Trade Ahead of Pharma Tender Offer*, SEC Litigation Release No. 25576, Nov. 10, 2022, available here; *SEC v. Wong*, No. 1:22-cv-09618 (S.D.N.Y. Nov. 10, 2022), ECF No. 1, available here. Respondent's brother and the FBI agent in training were previously charged with insider trading violations on July 25, 2022. *SEC Charges Former FBI Trainee and His Friend with Insider Trading*, SEC Litigation Release No. 25451, July 26, 2022, available here; *see also SEC v. Markin et al.*, No. 1:22-cv-06276 (S.D.N.Y. July 25, 2022), ECF No. 1, available here.

C. Improper Reliance on Registration Exemption Rule 506(c): *In re PIC Renegade Properties, LLC*

When relying on the offering exemption of Rule 506(c), firms must take reasonable steps to verify that all purchasers are accredited investors. On Nov. 9, 2022, the SEC announced the filing of a settled administrative proceeding against PIC Renegade Properties, LLC ("PIC Renegade"), for violations of securities offering registration provisions.[67]

In its Order, the SEC finds that PIC Renegade launched PICR Fund III, LP (the "Fund") to raise money from investors for the purpose of acquiring and renovating single-family homes for rental or resale. PIC Renegade was the general partner of the Fund and raised over $54 million in investments. PIC Renegade advertised and solicited investors through an unrestricted website, YouTube videos, a press release and employee referrals.

On June 15, 2015, PIC Renegade filed a Form D Notice of Exempt Offering of Securities which stated the Fund was relying on the exemption of Rule 506(c). Rule 506(c) permits certain issuers to solicit offerings if all purchasers are accredited investors and reasonable steps are taken to verify as much. However, PIC Renegade failed to verify more than two dozen investors' accreditation status and sold investments to at least four unaccredited investors. Accordingly, PIC Renegade improperly relied on Rule 506(c).

The SEC's Order found that PIC Renegade violated Sections 5(a) and 5(c) of the Securities Act. PIC Renegade consented to a cease-and-desist order and to pay a civil monetary penalty of $400,000.

D. Materially Misstated NAV: *SEC v. Infinity Q Diversified Alpha Fund*

In an effort to make defrauded investors whole, the SEC continues its string of charges in connection with the Infinity Q overvaluation scheme that allegedly resulted in millions of dollars in unlawful profits for those involved.[68] On Nov. 10, 2022, the SEC announced the filing of a settled injunctive action in the U.S. District Court for the Southern District of New York against Infinity Q Diversified Alpha Fund (the "Fund") for materially misstating its net asset value ("NAV") and violating the pricing provisions of Rule 22c-1 of the Investment Company Act.[69]

In its Complaint, the SEC alleges that the Fund's investment adviser, Infinity Q Capital Management, LLC, led by James Velissaris, mismarked and materially inflated the Fund's NAV between March 31, 2017 and Feb. 18, 2021. As a result of the overstated NAV, investors in the Fund purchased and sold their holdings based on materially false valuations.

The Complaint alleges the Fund violated Rule 22c-1 of the Investment Company Act, and the Fund consents to the SEC's requested appointment of a Special Master to oversee the wind down of the Fund and distribution of remaining assets to harmed investors.

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[67] *PIC Renegade Properties, LLC*, Securities Act Release No. 11132, Nov. 9, 2022, available here.

[68] *Misrepresentations about Fund Performance: SEC v. Lindell*, SRZ Securities Enforcement Quarterly, Nov. 2022, available here; *Fund Value Fraudulent Overstated: SEC v. Velissaris*, SRZ Securities Enforcement Quarterly, May 2022, available here.

[69] *SEC Seeks Special Master to Oversee Return of Remaining Funds to Harmed Investors of the Infinity Q Mutual Fund*, SEC Litigation Release No. 25575, Nov. 10, 2022, available here; Complaint, *SEC v. Infinity Q Diversified Alpha Fund*, No. 1:22-cv-09608 (S.D.N.Y. Nov. 10, 2022), ECF No. 1, available here.

E. Fraudulent Sales of pre-IPO Shares: *SEC v. Iakovou et al.*

SEC charges promoters for fraudulent offering in sale of private company shares. In its efforts to protect investors from fraudulent schemes, the SEC announced charges against Vika Ventures LLC ("Vika") and its CEO and co-founder George Iakovou ("Iakovou") on Dec. 7, 2022 for defrauding at least 46 investors of a combined $6 million through fraudulent offers and sales of purported shares of private companies that might hold an IPO. The SEC also announced settled charges against Penelope Zbravos ("Zbravos"), Vika's other co-founder, for her role in the scheme.[70]

In its Complaint, the SEC alleges that Iakovou attracted investors to Vika by offering for sale hard to acquire securities in desirable pre-IPO companies at lower prices than other venture capital firms. Iakovou created and distributed documents that contained materially false and misleading information about Vika's business model, investment opportunities, and shares owned. At both the time of the solicitation and the execution of the contracts for sale, Vika did not actually own the shares advertised, and failed to subsequently acquired them. Rather than purchasing the securities, Iakovou allegedly used investor money to fund his lavish lifestyle.

The SEC alleges that Vika and Iakovou violated Exchange Act Section 10(b) and Rule 10b-5 thereunder, and Securities Act Section 17(a). The SEC alleges that Zbravos violated Securities Act Section 17(a). The Complaint seeks permanent injunctive relief, disgorgement with prejudgment interest, and civil penalties against Iakovou and Zbravos. The Complaint also seeks permanent injunctive relief and a civil penalty against Vika. Without admitting or denying the allegations, Zbravos agreed to a permanent injunction from future violations and to pay disgorgement, prejudgment interest, and a civil penalty.

On Dec. 7, 2022, the U.S. Attorney's Office for the Middle District of Georgia filed a parallel complaint in the Middle District of Georgia for related criminal charges.[71]

F. Incomplete Registration Statement: *In re The Registration Statement of American CryptoFed DAO LLC*

Failure to comply with examination requests and respond to questions concerning a registration statement results in enforcement proceedings. On Nov. 18, 2022, the SEC announced the filing of a contested administrative proceeding with respect to American CryptoFed DAO LLC's ("CryptoFed") allegedly defective registration statement and CryptoFed's failure to cooperate with the SEC's examination.[72]

In its Order, the SEC alleges that on Sept. 16, 2021, CryptoFed filed a Form 10 registration statement with the SEC. CryptoFed sought to register two classes of crypto assets as securities under Section 12(g) of the Exchange Act. The following day, CryptoFed filed a Form S-1 registration statement seeking to register the offer and sale of the two classes of securities under the Securities Act. The registration statement is still pending. On Nov. 9, 2021, the SEC ordered an examination into the registration statement of CryptoFed, and the next day, the SEC issued an Order

[70] *SEC Charges Vika Ventures and its CEO in $6 Million Fraudulent Offering*, SEC Press Release No. 2022-217, Dec. 7, 2022, available here; Complaint, *SEC v. Iakovou et al.*, No. 4:22-cv-00194-CDL (M.D. Ga. Dec. 7, 2022), ECF No. 1, available here.

[71] *Indictment Unsealed Charging Two Individuals in Alleged Financial Fraud Scheme*, DOJ Press Release, Dec. 7, 2022, available here.

[72] *SEC Seeks to Stop the Registration of Misleading Crypto Asset Offerings*, SEC Press Release No. 2022-208, Nov. 18, 2022, available here; *The Registration Statement of American CryptoFed DAO LLC*, Securities Act Release No. 11134, Nov. 18, 2022, available here.

Instituting Administrative Proceedings and Notice of Hearing against CryptoFed to determine whether to deny or suspend the effective date of its registration statement.

On June 6, 2022, CryptoFed filed an application to withdraw its registration. The SEC subsequently issued an order denying withdrawal of the registration statement. In its Nov. 18, 2022 Order, the SEC alleges that CryptoFed's registration statement omitted material information, including: financial statements; management's discussion and analysis of CryptoFed's financial condition and results of operations; security ownership; executive compensation; general business description; material contracts; and a legality opinion. The SEC also alleges the registration statement contained materially misleading information. For example the registration statement provided that the two classes of securities "are not securities" despite the statement also identifying them as "Securities to be Registered."

The SEC further alleges that CryptoFed failed to cooperate with the SEC's Section 8(e) exam. First, the SEC issued a document subpoena to CryptoFed on June 15, 2022. It did not produce any documents responsive to the subpoena, and instead sent a letter by e-mail to the SEC objecting to each of the document requests in the June 15 subpoena. CryptoFed later provided narrative responses to 12 of the 15 document requests, however, the SEC alleges that it generally failed to address the specific requests and did not produce any documents. In addition, when the SEC took testimony from CryptoFed's president, he failed to respond to many of the questions, including those designed to determine whether the tokens sought to be registered were in fact securities.

The SEC's Order alleges that CryptoFed's registration statement included material omissions and misstatements and that it failed to cooperate with the SEC's Section 8(e) exam. Public hearing sessions in the proceedings instituted under the Order, pursuant to Section 8(d) of the Securities Act, concluded on Jan. 19, 2023. The overseeing Administrative Law Judge ordered the parties to confer and file a joint proposed exhibit list by Feb. 14, 2023 and briefing is scheduled to extend into April.[73]

G. Margin Payment Red Flags Ignored: *In re CHS Hedging, LLC*

Speculative trading and insufficient inquiry into source of margin payments results in Commodity Exchange Act violations. On Dec. 20, 2022, the CFTC announced the filing of a settled administrative proceeding against CHS Hedging, LLC ("CHS") for failing to implement a proper compliance program.[74]

In its Order, the CFTC finds that from January 2017 through December 2020, one of CHS's customers owned and controlled a ranching company and other related businesses. The customer engaged in speculative trading through the ranching company that sustained millions of dollars in losses in the ranching company's account at CHS. The ranching company made net margin payments of more than $147 million to CHS Hedging over the four years. However, according to the CFTC's Order, CHS accepted these margin payments without sufficiently investigating the source of the funds. Ultimately the source of the funds was a third-party company from whom the ranching company misappropriated $230 million.

Additionally, CHS failed to report the customer's transactions in a Suspicious Activity Report ("SAR") to the Department of the Treasury. The CFTC's Order finds that the customer's trading losses were facilitated by CHS's failure to impose and enforce appropriate trading limits on the account and that the trading limits imposed on the

[73] *The Registration Statement of American CryptoFed DAO LLC*, Admin. Proceedings Rulings Release No. 6896, Jan. 20, 2023, available here.

[74] *CFTC Orders Minnesota Futures Commission Merchant to Pay $6.5 Million for Anti-Money Laundering, Risk Management, Recordkeeping, and Supervision Violations*, CFTC Press Release No. 8642-22, Dec. 20, 2022, available here; *CHS Hedging, LLC*, CFTC Docket No. 23-05, Dec. 19, 2022, available here.

customer's account were inconsistent with the customer's financial resources and hedging needs. As a result, the customer frequently exceeded trading limits, and CHS then raised those limits and thus permitted the customer to continue speculative trading and incur greater losses.

The CFTC's Order further finds that CHS failed to maintain certain required records for pre-trade communications, including text messages, and failed to produce certain required records promptly or in the form requested by CFTC staff taking "more than nine months to produce the pre-trade communications."

In its Order, the CFTC finds that CHS violated Section 4g(a) of the Commodity Exchange Act, and CFTC Regulations 1.11(c)(1), (d), and (e)(4); 1.31(b)(4) and (d)(3)(ii); 1.73(a)(1) and (2); 1.31(b)(4) and (d)(3)(ii); 1.73(a)(1) and (2); 42.2; and 166.3. CHS agreed to a cease-and-desist order and a civil monetary penalty of $6.5 million.

H. Conflict of Interest: *In re S&P Global Ratings*

SEC focus on conflicts of interest extends to ratings agencies. On Nov. 14, 2022, the SEC announced the filing of a settled administrative proceeding against S&P Global Ratings ("S&P"), a nationally recognized statistical rating organization ("NRSRO") for violations of conflict of interest rules designed to prevent sales and marketing considerations from influencing credit ratings.[75]

In its Order, the SEC finds that in 2017 an issuer engaged S&P to rate a jumbo residential mortgage backed security transaction. S&P commercial employees who managed the direct relationship with the issuer attempted to pressure the S&P analytical employees responsible for issuing ratings to rate the transaction consistent with earlier feedback. The early feedback contained a calculation error, and certain of the correspondence between the commercial and analytical divisions contained statements reflecting sales and marketing considerations that violated S&P's compliance policies and procedures.

NRSRO's are required to maintain and enforce policies and procedures designed to prevent conflicts of interest. In this case, the SEC found that the rating process was improperly influenced by the correspondence between the commercial and analytical divisions that contained sales and marketing considerations. The SEC's Order credits S&P for self-reporting the conduct at issue, cooperating with the investigation and taking remedial steps to enhance its conflicts of interest policies and procedures.

The SEC Order finds that S&P willfully violated Rules 17g-5(c)(8)(i) and 17g-5(c)(8)(ii), and Section 15E(h)(1) of the Exchange Act. S&P agreed to cease-and-desist, a censure and a civil penalty of $2.5 million. S&P also agreed to review and enhance its policies and procedures governing conflicts of interest, and withdraw ratings that are the subject of the Order.

[75] *SEC Charges S&P Global Ratings with Conflict of Interest Violations*, SEC Press Release No. 2022-205, Nov. 14, 2022, available here; *S&P Global Ratings*, Exchange Act Release No. 96308, Nov. 14, 2022 available here.

I. The SEC Settles Regulation FD Violations with AT&T: *SEC v. AT&T, Inc. et al.*

After more than 18 months of litigation in federal court, on Dec. 5, 2022, the SEC and AT&T settled charges concerning AT&T's alleged violation of Regulation FD ("Reg FD") in connection with the selective disclosure of MNPI to certain research analysts.[76]

The Complaint dated March 5, 2021,[77] alleged that AT&T selectively disclosed MNPI to certain Wall Street research analysts in an attempt to prevent the company's revenue from falling short of analysts' estimates for the quarter.[78] Reg FD, enacted in 2000, prohibits publicly traded issuers from selectively disclosing MNPI to third parties while not making the same information generally available to the public. In this case, the SEC alleged that in March 2016, AT&T and three of its executives recognized that a steep decline in smart phone sales would be a record low for the company, causing a revenue shortfall in excess of $1 billion against consensus estimates for Q1 2016. Three AT&T executives allegedly made private, one-on-one calls to approximately 20 different analyst firms between March 9, 2016 and April 26, 2016 encouraging each to lower their revenue estimate for AT&T.

AT&T and the executives named as defendants, without admitting or denying the allegations in the SEC's Complaint, consented to final judgments permanently enjoining each from violating, aiding, or abetting violations of Reg FD and Exchange Act Section 13(a), ordering AT&T to pay $6.25 million in penalties, and ordering the three executives to pay $25,000 in penalties each. The settlement represents the largest ever penalty for a Reg FD violation.

J. FCPA Violations: *In re ABB Ltd.* and *In re Honeywell International Inc.*

Two publicly traded companies received significant civil monetary penalties for their roles in long running foreign bribery schemes.

- *In re ABB Ltd.* On Dec. 3, 2022, the SEC announced the filing of a settled administrative proceeding against ABB Ltd. ("ABB") for violations of the Foreign Corrupt Practices Act ("FCPA").[79] In its Order, the SEC finds that from 2015 to 2017, ABB executives in Switzerland and South Africa colluded with a high-ranking government official at Eskom, an electricity provider owned by the South African government, to make more than $37 million in payments to a local official through third-party service providers. In return, ABB received a $160 million contract to provide cabling and installation work at Eskom's Kusile Power Station. The SEC finds that, despite prior FCPA violations and previously identified corruption risks, ABB continued to fail to implement sufficient supervisory policies to detect the Eskom-related bribery scheme.

  The Order finds that ABB violated Sections 30A, 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act. ABB agreed to cease-and-desist, undertake certain remedial actions and report the status of those actions to the SEC for a period of three years, pay disgorgement of $58 million plus prejudgment interest of $14,554,267, and pay

[76] *AT&T Settles SEC Charge of Selectively Disclosing Material Information to Wall St. Analysts*, SEC Press Release No. 2022-215, Dec. 5, 2022, available here. There have only been a few Regulation FD cases brought since its enactment in 2000, which SRZ discussed in an article about the filing of this Complaint, entitled *SEC Brings Rare Regulation FD Enforcement Case—Implications for Private Fund Managers and Broker-Dealers*, available here.

[77] Complaint, *SEC v. AT&T, Inc. et al.*, No. 1:21-cv-01951 (S.D.N.Y. March 5, 2021), ECF No. 1, available here.

[78] *The Return of Reg FD: SEC Charges AT&T With Selective Disclosure*, SRZ Securities Enforcement Quarterly, April 2021, available here.

[79] *ABB Settles SEC Charges That It Engaged in Bribery Scheme in South Africa*, SEC Press Release No. 2022-214, Dec. 3, 2022, available here; *ABB Ltd.*, Exchange Act Release No. 96444, Dec. 3, 2022, available here.

a civil monetary penalty of $75 million. ABB also reached an agreement with the Department of Justice to pay a $315 million penalty in a parallel criminal action.[80]

- *In re Honeywell International Inc.* On Dec. 19, 2022, in another foreign corruption case, the SEC announced the filing of a settled administrative proceeding against Honeywell International Inc. ("Honeywell") for violations of the FCPA.[81] In its Order, the SEC finds that Honeywell violated the anti-bribery, books and records, and internal accounting provisions of the FCPA in connection with bribery schemes in Brazil and Algeria. In Brazil, one of Honeywell's wholly-owned subsidiaries offered as much as $4 million to win a contract with the Brazilian state-owned oil company, Petroleo Brasileiro S.A. - Petrobras. In Algeria, Honeywell employees paid money to an Algerian government official to secure a contract amendment with La Société Nationale pour la Recherche, la Production, le Transport, la Transformation, et la Commercialisation des Hydrocarbures, the Algerian state-owned oil company. The Order finds that, in connection with the schemes, Honeywell did not accurately maintain books and records and failed to maintain sufficient internal accounting controls to detect or prevent the misconduct. The Order credits Honeywell's remedial actions and cooperation in the investigation. In a parallel criminal proceeding brought by the Department of Justice, Honeywell entered into a three-year deferred prosecution agreement and pled guilty to one count of conspiracy.[82]

  The Order notes that the SEC is not imposing a civil penalty in light of the imposition of a $39,621,375 criminal fine in the criminal proceeding. Honeywell agrees to cease-and-desist, disgorgement of $64,672,563 and prejudgment interest of $16,485,630. Honeywell shall receive a disgorgement and prejudgment interest offset of up to $38,712,216 based on the U.S. dollar value of any disgorgement paid in a related Brazilian proceeding.

K. Lack of Auditor Independence & Financial Misstatements: *In re Mattel & In re Joshua Abrahams, CPA*

SEC continues to caution auditors from betraying their independence from clients. On Oct. 21, 2022, the SEC announced the filing of a settled administrative proceeding against Mattel Inc. ("Mattel") for misstatements in its financial statements for the third and fourth quarters of 2017.[83] On the same day, the SEC announced a separate administrative proceeding against former PricewaterhouseCoopers LLP ("PwC") audit partner, Joshua Abrahams, for his role in the matter.[84]

In the *Mattel* Order, the SEC finds that Mattel understated a tax-related valuation allowance by $109 million in Q3 2017 and overstated the tax-related valuation allowance by $109 million in Q4 2017, both misstatements were material. The misstatements were discovered following an anonymous whistleblower letter describing the accounting errors and questioning the independence of Abrahams. During the relevant time period, Abrahams was

[80] *ABB Agrees to Pay Over $315 Million to Resolve Coordinated Global Foreign Bribery Case*, DOJ Press Release No. 22-1296, Dec. 2, 2022, available here. The DOJ and SEC also coordinated their settlements with authorities in South Africa and Switzerland. *Id.*

[81] *SEC Charges Honeywell with Bribery Schemes in Algeria and Brazil*, SEC Press Release No. 2022-230, Dec. 19, 2022, available here; *Honeywell International Inc.*, Exchange Act Release No. 96529, Dec. 19, 2022, available here.

[82] *Honeywell UOP to Pay Over $160 Million to Resolve Foreign Bribery Investigations in U.S. and Brazil*, DOJ Press Release No. 22-1383, Dec. 19, 2022, available here.

[83] *SEC Charges Mattel with Financial Misstatements and Former PwC Audit Partner with Improper Professional Conduct*, SEC Press Release No. 2022-189, Oct. 21, 2022, available here; *Mattel Inc.*, Securities Act Release No. 11122, Oct. 21, 2022 available here.

[84] *Joshua Abrahams, CPA*, Exchange Act Release No. 96127, Oct. 21, 2022 available here.

the lead PwC engagement partner for Mattel. During an internal audit, Mattel discovered that, in Q3, Mattel's "Thomas the Tank Engine" asset was incorrectly treated as a definite-lived asset for the purposes of lowering its tax valuation allowance, while also being accurately classified as an indefinite-lived asset on Mattel's balance sheet for that quarter. Upon discovering the error in January 2018, Mattel ultimately decided to reclassify the "Thomas the Tank Engine" asset as definite-lived, causing the overstatement in Q4. The Order finds that Mattel lacked sufficient internal controls concerning the valuation allowance, and for reporting the error, the error remained unreported to the audit committee and Mattel's CEO until a 2019 restatement.

In the *Abrahams* Order, the SEC alleges that Abrahams, fully informed of the error, violated a number of professional accounting standards in the course of auditing the financial statements. The allegations against Abrahams include: failing to document the error, failing to communicate the error to Mattel's audit committee and failing to maintain independence while providing prohibited human resources advice to Mattel, including recommendations regarding candidates for senior positions within Mattel.

The *Mattel* Order finds that Mattel violated Securities Act Sections 17(a)(2) and 17(a)(3), and Exchange Act Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and Rules 12b-20, 13a-1, 13a-11, and 13a-13, thereunder. Mattel agreed to pay a civil penalty of $3.5 million. The *Abrahams* Order alleges that Abrahams engaged in improper professional conduct as defined in Section 4C of the Exchange Act and Rule 102(e)(1)(iv)(B) thereunder and seeks a hearing on the charges.

L. Unregistered Offering of Cryptocurrency: *SEC v. Thor Technologies, Inc. et al.*

SEC continues its targeted enforcement against the unregistered offerings of cryptocurrency products. On Dec. 21, 2022, the SEC announced the filing of a contested injunctive action against Thor Technologies ("Thor") and David Chin ("Chin")[85] and a settled injunctive action against Matthew Moravec ("Moravec")[86] in the Northern District of California in connection with the alleged unregistered offering of securities.[87]

In its Complaint against Thor and Chin, Thor's co-founder and CEO, the SEC alleges that, between March and May 2018, Thor and Chin offered and sold cryptocurrency assets called "Thor Tokens" to the general public for the purpose of funding Thor's business activities. Thor purports to operate a software platform for "gig" economy workers and companies. The Complaint against Thor and Chin alleges that Thor marketed the Thor Tokens as an investment opportunity by promoting the potential increase in value of the Thor Tokens and claiming that the tokens would be made available on other crypto asset trading platforms. The offers and sales of Thor Tokens were not registered with the SEC and, as alleged in the Complaint, did not qualify for any registration exemption. The offers and sales generated approximately $2.6 million in cash and cryptocurrency assets from investors.

The SEC's Complaint against Moravec, Thor's co-founder and former CTO, alleges that he also engaged in the unregistered offer and sale of Thor Tokens.

[85] Complaint, *SEC v. Thor Technologies, Inc. et al.*, No. 3:22-cv-09043 (N.D. Cal. Dec. 21, 2022), ECF No. 1, available here.

[86] Complaint, *SEC v. Moravec*, No. 3:22-cv-09044 (N.D. Cal. Dec. 21, 2022), ECF No. 1, available here.

[87] *SEC Charges Issuer, CEO, and Former CTO for $2.6 Million Unregistered Crypto Asset Securities Offering*, SEC Litigation Release No. 25599, Dec. 21, 2022, available here.

The Complaints allege that the above conduct violated Sections 5(a) and 5(c) of the Securities Act. The Complaint against Thor and Chin seeks an injunction, disgorgement, prejudgment interest, and civil penalties. Moravec consented to the entry of a judgment against him imposing (1) permanent and conduct-based injunctions, including a prohibition for a period of three years from participating in any offering of a cryptocurrency asset security; (2) disgorgement of $407,103 plus prejudgment interest of $72,209; and (3) a civil penalty of $95,000.

About Schulte Roth & Zabel

SRZ's Securities Enforcement Group represents public and private companies, financial institutions, broker-dealers, private funds and their senior executives in securities-related enforcement proceedings and government investigations involving the full range of federal and state law enforcement and regulatory authorities. With numerous former federal prosecutors from U.S. Attorneys' offices, including chiefs of the Appeals and Major Crimes Units, and former SEC officials, our deep bench of lawyers offers guidance on matters ranging from informal inquiries and formal or grand jury investigations to administrative proceedings and cases brought in federal and state courts.

SRZ lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the SRZ lawyer with whom you usually work, the authors, or any of the following members of the Securities Enforcement practice group:

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