

Securities Investigations and Enforcement Newsletter – April 2021

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SEC Updates

SEC HAS ITS EYE ON SPACS

By [Jay Dubow](#), [Ghillaine Reid](#), and Travis Andrews

SPACs — short for “special purpose acquisition companies” — recently have drawn significant interest by companies and executives as a more seamless method to conduct an initial public offering. Often referred to as “blank check” companies, SPACs provide a vehicle by which companies may raise funds from public markets through initial public offerings (IPOs) that take a company from private to publicly listed. Unlike traditional IPOs, which often involve private companies that have developed over time, SPACs are shell companies when they become public and have no underlying operating business and no assets apart from cash and other limited investments. SPACs also have, in the SEC’s words, “distinct risks associated with” investing in them. These risks include conflicts of interests that SPAC sponsors may have, meaning that the sponsors’ economic interests may diverge from shareholders. In addition, SPACs are not all similarly structured, making it incumbent upon every investor to understand every SPAC’s unique features.

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New Team Member

CHARLIE PEELER JOINS TROUTMAN PEPPER TEAM

Troutman Pepper recently welcomed former U.S. Attorney for the Middle District of Georgia [Charles E. “Charlie” Peeler](#) as a partner in the firm’s Atlanta office. As a member of the firm’s White Collar and Government Investigations Practice Group, Charlie brings valuable insight and experience gained over 20 years in government service and private practice to clients facing investigations and government enforcement actions.

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SEC Enforcement

THE LONG AND SHORT OF IT

By [Jay Dubow](#), [Genna Garver](#), [Thao Le](#), and [Stephanie Pindyck Costantino](#)

In January 2021, commentary by members of the social news aggregator Reddit may have contributed to unprecedented trading activity that led some online brokerages to freeze trading of certain securities for a prolonged window of time. The unforeseen freeze angered traders, lawmakers, and regulators. All of this culminated in a hearing conducted by the House Financial Services Committee in February.

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CFTC Enforcement

RECORD-BREAKING YEAR FOR CFTC ENFORCEMENT DIVISION SHOWS CONTINUED GROWTH OF ENFORCEMENT PROGRAM AND NO SLOWING DOWN IN FY 2021

By [Jay Dubow](#), [Ghillaine Reid](#), and Katherine Stark

As evidenced in the FY 2020 Division of Enforcement Annual Report (Report), the COVID-19 pandemic did not hinder the Commodity Futures Trading Commission's (CFTC or Commission) Enforcement Division's (Division) efforts to protect the public and preserve market integrity. Rather, 2020 proved to be a record-breaking year for the Division, as the Commission ordered over \$1.3 billion in monetary relief and brought a record number of enforcement actions — a trend we expect to continue through 2021.

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DOJ's Focus on COVID-19 Fraud

DOJ'S ROBUST 2020 PANDEMIC RESPONSE SIGNALS INCREASING FOCUS ON COVID-19-RELATED FRAUD IN 2021

By [Jay Dubow](#), Miranda Hooker, [Megan Rahman](#), [Ghillaine Reid](#), and Angela Monaco

As evidenced in the recently published 2020 Year in Review Report (Report), the Department of Justice's Fraud Section (Fraud Section) demonstrated its resilience despite the COVID-19 pandemic, as well as its swift response to the evolution of pandemic-induced fraud — a trend we expect will continue throughout 2021.

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SEC Climate and ESG Task Force

SEC CREATES CLIMATE AND ESG ENFORCEMENT TASK FORCE

By [Jay Dubow](#), [Ghillaine Reid](#), and Brielle Landis

On March 4, the SEC announced the formation of a new Climate and ESG Task Force in the Division of Enforcement. The primary goal of the SEC's Climate and ESG Task Force is to identify material gaps or misstatements in issuers' disclosure of climate risks under existing rules and develop strategies to identify ESG-

related violations.

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Risk Alert

DIVISION OF EXAMINATIONS ISSUES RISK ALERT ON DIGITAL ASSET SECURITIES

By [Jay Dubow](#), [Genna Garver](#), [Stephanie Pindyck Costantino](#), [Ghillaine Reid](#), and [Theodore Edwards](#)

On February 26, the SEC Division of Examinations (Division) (formerly the Office of Compliance Inspections and Examinations) issued a Risk Alert (Alert) relating to the offer, sale, and trading of digital assets that are securities (Digital Asset Securities). The Alert describes observations of Division staff made during examinations of investment advisers, broker-dealers, national securities exchanges, and transfer agents regarding Digital Asset Securities. Since Digital Asset Securities continue to grow in popularity, the Alert also provides transparency about future focus areas of Division examinations.

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FINRA 2021 Annual Report

FINRA PUBLISHES NEW ANNUAL REPORT ON FINRA'S EXAMINATION AND RISK MONITORING PROGRAM

By [Jay Dubow](#), [Ghillaine Reid](#), [Brian Nichilo](#), and [Angela Monaco](#)

The 2021 Report on FINRA's Examination and Risk Monitoring Program serves as an authoritative resource for member firms to evaluate and, where necessary, enhance their compliance programs and operations procedures. The Report addresses 18 different regulatory obligations, which are grouped into four categories: (1) firm operations; (2) communications and sales; (3) market integrity; and (4) financial management.

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SEC Subpoena Power

RETURN OF MORE SUBPOENA POWER TO SEC'S DIVISION OF ENFORCEMENT AND RISK MONITORING PROGRAM

By [Jay Dubow](#), [Megan Rahman](#), [Ghillaine Reid](#), and [Whitney Tantisuwanna](#)

On February 9, Acting Securities and Exchange Commission (SEC or Commission) Chair Allison Herren Lee announced that senior officers in the SEC's Division of Enforcement (Division) will once again be authorized to approve the issuance of Formal Orders of Investigation (Formal Orders). A key building block of the Division staff's investigations, the Formal Order authorizes the staff to subpoena documents and take sworn testimony. With this subpoena power back in the hands of the Division's senior officers, the staff now may conduct and complete enforcement investigations at a faster pace. This is a significant development in the enforcement landscape given that market activity, and misconduct, frequently changes and is developing more rapidly than

ever.

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Securities Exchange Act Amendments

CONGRESS PASSES LAW EXPANDING THE SEC'S ABILITY TO SEEK DISGORGEMENT

By [Jay Dubow](#), [Megan Rahman](#), [Ghillaine Reid](#), [Casselle Smith](#), and Thomas Cordova

On Friday January 1, with the Senate's floor vote to override the president's veto, Congress passed the 60th annual National Defense Authorization Act (NDAA). Encompassed within the \$740.5 billion military spending bill is an amendment (the Amendment) to the Securities Exchange Act of 1934 (Exchange Act), which (1) codifies the Securities and Exchange Commission's (SEC) authority to seek disgorgement in federal district court; (2) tolls the statute of limitations while defendants are outside of the United States; and (3) doubles the statute of limitations for scienter-based claims from five years to 10 years. For all other claims, the five-year statute of limitations remains. Congress passed the NDAA on December 11 and — for reasons unrelated to the Amendment — President Trump vetoed it on December 23. The House of Representatives voted to override the president's veto on December 28, and the Senate followed suit on January 1.

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