

Securities Investigations and Enforcement Newsletter — April 2024

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Recent Speaking Engagements

Our Securities Investigations + Enforcement attorneys are frequently called upon to speak on topics related to securities investigations and enforcement. They are recognized for their insightful analysis and commentary on a range of regulatory and enforcement issues. Their expertise extends to understanding and interpreting industry trends, providing our clients with a comprehensive view of the evolving legal landscape. Recent and upcoming speaking engagements include:

- Jay Dubow, Pam Palmer, Mary Weeks, and Tim Mast recently participated in a panel discussion focused on [recent securities decisions and trends to watch](#). The panel was joined by Michael Gil and Kelly Thoerig from Marsh McLennan's financial and professional liability (FINPRO) practice.
- Jay Dubow, Joanna Cline, and Milica Krnjaja recently led a CLE webinar, "The Increasing Trend of Opt-Outs in Securities Class Action Settlements." They explored the reasons behind opt-outs, potential risks, costs, and impacts on D&O insurance policy pricing.

Podcasts

NAVIGATING THE SEC'S WHISTLEBLOWER ENFORCEMENT WAVE: A GUIDE FOR FINANCIAL INSTITUTIONS

In this episode of *The Consumer Finance Podcast*, Chris Willis is joined by Partners Sheri Adler and Mary Weeks to discuss the recent uptick in SEC enforcement activity related to whistleblowers. They focus on the implications for financial institutions and other companies, particularly those targeted by the SEC for documents potentially restricting whistleblowers from reporting violations of securities laws.

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10 TIPS FOR WHISTLEBLOWER-COMPLIANT AGREEMENTS

Troutman Pepper Partners Sheri Adler and Mary Weeks recently joined Meredith Irvine on TheCorporateCounsel.net's *Timely Takes Podcast* to discuss whistleblower-compliant documents and related

SEC enforcement. The podcast can be accessed [here](#).

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2023 Year-In-Review

2023 YEAR-IN-REVIEW: KEY ENFORCEMENT INITIATIVES AND CASES IN CRYPTO, CYBER, SPACS, WHISTLEBLOWERS, AND THE FUTURE OF ADMINISTRATIVE LAW PROCEEDINGS

It was a busy year for enforcement activity in the cyber, crypto, SPAC, and whistleblower spaces, with several pending actions that will likely have wide-ranging implications in 2024. We are also awaiting a ruling from the U.S. Supreme Court that could alter the landscape on administrative law proceedings. From the SEC's release of expansive cybersecurity rules to the largest whistleblower award ever issued, 2023 had plenty of exciting developments. A detailed summary of key developments by category can be found below.

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Cryptocurrency Updates

SEC CONTINUES TO REGULATE CRYPTOCURRENCY THROUGH RECORD-HIGH ENFORCEMENT EFFORTS

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We expect the SEC's enforcement efforts in this area to continue at a high pace in 2024, even though whether or not cryptocurrency should be classified as a security or something else remains uncertain.

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SEC Settlements

HOW TO AVOID A SIMILAR FATE? SEC CHARGES FIRMS WITH RECORD-KEEPING VIOLATIONS FOR OFF-CHANNEL COMMUNICATIONS

On February 9, the Securities and Exchange Commission (SEC) announced settlements with 16 firms relating to record-keeping violations stemming from off-channel communications totaling \$81 million. The 16 firms were five broker-dealers (BD firms), seven dually registered broker-dealers and investment advisers, and four affiliated investment advisers (IA firms). Off-channel communications are unapproved methods of communication used for business-related communications.

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Preservation Priority

COMPANIES CAN NO LONGER AFFORD TO SLACK OFF IN PRESERVING CHATS AND MESSAGES

Doubling down on guidance originally issued in [September 2022](#), the U.S. Department of Justice (DOJ) Antitrust

Division and the Federal Trade Commission (FTC) recently announced updates to standard preservation letters and grand jury subpoenas regarding the preservation of collaborative messaging platforms, to respond to the increased use of such platforms in the workplace. The updates require companies under investigation to expressly preserve communications and chats exchanged on these messaging platforms, including Slack, Microsoft Teams, and Signal. While companies under investigation have always had a legal obligation to preserve documents while under investigation or involved in litigation, the explosion of collaborative and remote working in the COVID and post-COVID era has created preservation challenges for companies conducting business across these platforms, as we discussed [here](#). Now that collaborative messaging has become a routine feature of modern business, companies must update and adapt their preservation policies, or face potential civil and criminal liability for failing to properly preserve messages.

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Shareholder Report Guidance

SEC RELEASES NEW GUIDANCE ON TAILORED SHAREHOLDER REPORTS

On January 19, 2024, the Division of Investment Management staff at the Securities and Exchange Commission (SEC), released several responses to frequently asked questions (FAQs) related to the adoption of rules and form amendments for registered open-end funds (*i.e.*, mutual funds and ETFs) that will substantially alter the form and content of fund shareholder reports. In October 2022, the SEC [adopted amendments](#) (Adopting Release) to rules under the Securities Act of 1933 and Investment Company Act of 1940, as well as Forms N-1A and N-CSR, in an effort to require funds to, among other things, transmit “concise and visually engaging” shareholder reports.

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