

Securities Investigations and Enforcement Newsletter – January 2022

WRITTEN BY

Peter N. Villar | Tiffany N. Bracewell | Todd R. Kornfeld | J. Timothy Mast | Megan Conway Rahman | Bryan B. Lavine | Jay A. Dubow | Jordi de Llano | Thomas H. Cordova | Whitney Tantisuwanna | John S. West | Mary Weeks | Brian M. Nichilo | Stephen J. Steinlight | Miranda Hooker | Katherine E. Stark | Aaron Hardy | Zachary R. Epstein | Sam Hatcher | Angela Monaco | Bonnie Gill | Brielle Landis | Matthew White | Mary Grace W. Metcalfe | Casselle A.E. Smith | Ghillaine A. Reid | Lauren H. Geiser

Circuit Court Rulings

SECOND CIRCUIT AFFIRMS *DE MAISON* DISGORGEMENT AMOUNT AS REASONABLE

By [Jay Dubow](#), [Ghillaine Reid](#), and Lauren Geiser

On December 16, 2021, the [Second Circuit affirmed](#) a lower court's judgment, ordering disgorgement and imposing a civil penalty involving a defendant (Ms. de Maison) charged with participating in a microcap "pump and dump" scheme. The underlying case had been vacated and remanded on the basis of the Supreme Court's decision in *Liu v. SEC*, and Ms. de Maison appealed, arguing that the district court had not appropriately taken her expenses into account when the court ordered the revised disgorgement amount. The Second Circuit affirmed the lower court's decision, which was that the SEC had demonstrated that Ms. de Maison had misappropriated investor funds by inappropriately transferring those funds into her own personal accounts. The Second Circuit also found that the civil penalty reasonably reflected Ms. de Maison's gross pecuniary gain, and was thus affirmed.

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CIRCUIT DECISION PROVIDES SEC ROADMAP TO SEEK DISGORGEMENT POST-LIU

By [Ghillaine Reid](#), [Jay Dubow](#), and Thomas Cordova

On October 12, the Fifth Circuit Court of Appeals affirmed a district court's decision in *SEC v. Blackburn*, awarding disgorgement to alleged victims of a penny stock fraud scheme subject to SEC enforcement action. This decision signifies the first time that a circuit court has interpreted the new standard by which the SEC may seek disgorgement under the Supreme Court's *Liu v. SEC* decision.

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New Team Members

TROUTMAN PEPPER'S BOSTON OFFICE ADDS JORDI DE LLANO, FORMER DEPUTY CHIEF OF THE SECURITIES, FINANCIAL & CYBER FRAUD UNIT OF THE U.S. ATTORNEY'S OFFICE FOR THE

DISTRICT OF MASSACHUSETTS

Jordi de Llano, an experienced federal prosecutor, has joined Troutman Pepper's national White Collar and Government Investigations Practice Group. De Llano most recently was the Deputy Chief of the Securities, Financial & Cyber Fraud Unit in the United States Attorney's Office for the District of Massachusetts, the state's top federal law enforcement agency.

Whistleblower Protections

SDNY BACKS SEC WHISTLEBLOWER PROTECTIONS, CLARIFYING THEIR SCOPE

By [Ghillaine Reid](#), [Jay Dubow](#), and Matt White

On November 17, a federal judge in the Southern District of New York [ruled](#) that a sports memorabilia company violated the Securities and Commission's (SEC) whistleblower protections when it sued to silence and intimidate investors. A blow against the company and its [FBI-Wanted](#) CEO in the SEC's civil fraud case against the defendants, the ruling gives a clear statement that the "individuals" contemplated by Rule 21F-17 expands beyond employee whistleblowers.

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SEC Risk Alerts

SEC INVESTMENT ADVISER EXAMINATIONS HIGHLIGHT ERRORS

By [Jay Dubow](#), [Ghillaine Reid](#), and Aaron Hardy

The U.S. Securities and Exchange Commission (SEC) recently issued two risk alerts, highlighting issues found at investment firms that could lead to sanctions, following recent examinations of firms and advisers. Advisers have been alerted of risks relating to digital investment advisory services after an increased focus on examining these practices led to a deficiency letter being issued to nearly every examined adviser. Additionally, following a sweep of over 130 firms, the SEC issued a warning to advisers that fee errors may constitute fraud.

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Crypto Updates

PRESIDENT BIDEN'S WORKING GROUP ON FINANCIAL MARKETS ISSUES REPORT ON STABLECOINS

By [Ghillaine Reid](#), Todd Kornfield, [Bonnie Gill](#), and [Casselle Smith](#)

On November 1, the President's Working Group on Financial Markets (PWG), along with the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency, issued a "Report on Stablecoins" (Report) that provided background on stablecoins, identified regulatory gaps related to such digital assets, and offered recommendations for addressing those gaps. After outlining the risks and deficiencies in the current regulatory landscape as it relates to stablecoins, the Report recommended that Congress enact legislation requiring that stablecoins be governed according to a comprehensive federal framework.

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NEW YORK DOUBLES DOWN ON REGULATORY SCRUTINY OF CRYPTO LENDING FIRMS

By [Jay Dubow](#), [Ghillaine Reid](#), [Bonnie Gill](#), and [Casselle Smith](#)

On October 18, New York Attorney General Letitia James issued cease-and-desist letters directing two virtual currency lending platforms to cease “unregistered and unlawful” lending activities in New York State within 10 days, while also ordering three additional digital currency platforms to provide information about their activities and products within the state by November 1. James’ office issued a press release on the same day, announcing the actions and attaching copies of the letters with recipient names redacted.

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SEC Speaks Forum

SEC OUTLINES DIVISION OF EXAMINATIONS PRIORITIES AT ANNUAL “SEC SPEAKS” FORUM

By [Jay Dubow](#), [Ghillaine Reid](#), and [Zachary Epstein](#)

On August 13, the Financial Industry Regulatory Authority released a regulatory notice to member firms, clarifying their existing obligations on the supervision of third-party vendors. The Notice details four categories of regulatory obligations associated with third-party vendor relationships: (1) supervision, (2) registration, (3) cybersecurity, and (4) business continuity planning (BCP). The Notice should serve as a reminder to FINRA member firms that a decision to outsource carries regulatory implications not present in other industries. By focusing on the deliberative process rather than substantive outcomes, FINRA is sending a message that member firms should exercise increased diligence.

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