

# Securities Investigations and Enforcement Newsletter — January 2024

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## SPEAKING ENGAGEMENTS

Ghillaine Reid recently participated in the “Current Trends in Broker-Dealer Regulations and Enforcement” session at the New York City Bar Association’s [Compliance Institute 2023](#) in New York City.

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## WHISTLEBLOWER UPDATES

### SEC’S WHISTLEBLOWER PROGRAM SEES RECORD INCREASE IN TIPS BUT FEWER PAYOUTS

Despite a 50% increase in whistleblower tips over fiscal year (FY) 2022, the number of whistleblowers who received awards from the Securities and Exchange Commission (SEC) decreased significantly in FY 2023. This trend highlights some key issues with the whistleblower program.

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### TOP 10 TIPS FOR DRAFTING WHISTLEBLOWER COMPLIANT ARRANGEMENTS

Under [Section 922](#) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Congress expanded protections for whistleblowers reporting possible violations of federal securities laws to the Securities and Exchange Commission (SEC). Specifically, the statute established certain financial incentives and confidentiality guarantees for whistleblowers reporting potential violations of securities laws. In 2011, the SEC implemented rules (as subsequently [amended](#)) regarding the Dodd-Frank whistleblower program. Under SEC Rule 21F-17(a), no person may take an action to impede an individual from communicating directly with the SEC about possible securities law violations, including by enforcing or threatening to enforce confidentiality agreements with respect to such communications (subject to certain limited exceptions).

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## FOREIGN PRIVATE ISSUERS

### FOREIGN PRIVATE ISSUERS ESCAPE POTENTIAL SECTION 16 REPORTING OBLIGATIONS ... FOR NOW

Foreign private issuers (FPIs) may have dodged a bullet on December 7 after Congress [scrapped](#) a [proposal](#) to impose the reporting obligations under Section 16 of the Exchange Act of 1934, as amended (Exchange Act), on FPIs that had been included in the [National Defense Authorization Act for Fiscal Year 2024](#). The proposal threatened to eliminate the FPI exemption from Section 16 of the Exchange Act.

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## **SEC UPDATES**

### **SEC'S USE OF IN-HOUSE JUDGES EXPECTED TO BE SHOT DOWN BY SUPREME COURT**

Jay Dubow, co-leader of Troutman Pepper's Securities Investigations + Enforcement Practice Group, was quoted in the December 7, 2023 *Pensions & Investments* article, "[SEC's Use of In-House Judges Expected to Be Shot Down by Supreme Court](#)."

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### **THE SEC'S PRIVATE FUND RULES: WHAT ADVISERS NEED TO KNOW**

On August 23, 2023, the U.S. Securities and Exchange Commission (SEC) adopted new rules (Adopting Release) for private fund advisers under the Investment Advisers Act of 1940, as amended (Advisers Act). Under the new rules, registered private fund advisers must: (1) provide quarterly statements to fund investors with details on performance, fees and expenses; (2) obtain an annual audit for private funds; and (3) comply with certain requirements for adviser-led secondaries, including obtaining a fairness opinion or valuation opinion. The rule heightens regulation for all private fund advisers, regardless of registration status, by establishing certain requirements. Under the final rules, private fund advisers are restricted from engaging in several activities that are viewed as contrary to public interest and protection of investors. These provisions apply to all private fund advisers, whether registered or exempt, with respect to private funds they advise (other than a securitized asset fund).

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### **SEC ADOPTS FINAL RULES AMENDING AND MODERNIZING BENEFICIAL OWNERSHIP REPORTING REQUIREMENTS**

On October 10, the Securities and Exchange Commission (SEC) adopted, by a bipartisan 4-1 margin, the [final rules](#) to amend and modernize the regulations governing beneficial ownership reporting under Sections 13D and 13G of the Securities Exchange Act of 1934, as amended (Exchange Act). The final rules will become effective 90 days after publication in the Federal Register. Compliance with the revised Schedule 13G filing deadlines will be required beginning September 30, 2024.

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### **TEXTING: WALL STREET'S LATEST DILEMMA**

Ghillaine Reid, co-leader of Troutman Pepper's Securities Investigations + Enforcement Practice Group, was

quoted in the October 30, 2023 *Wall Street Journal* article, [“Texting: Wall Street’s Latest Dilemma.”](#)

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## CLASS ACTION SETTLEMENTS

### OPT-OUTS IN SECURITIES CLASS ACTION SETTLEMENTS ARE CREATING ISSUES FOR LITIGANTS

The overwhelming majority of securities class actions that are not dismissed are settled, often with the assistance of a mediator. Defendants and their insurance companies want to end the litigation and any monetary exposure. The settlements contain broad releases that the parties hope will end the litigation, and they require court approval and notice to potential class members. The notice advises that class members may object to the settlement or opt out of the settlement.

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## SUPREME COURT UPDATES

### HIGH COURT TO REVIEW DISCLOSURE OMISSIONS CASE

Jay Dubow, co-leader of Troutman Pepper’s Securities Investigations + Enforcement Practice Group, was quoted in the October 23, 2023 *Pensions & Investments* article, [“High Court to Review Disclosure Omissions Case.”](#)

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## IPO UPDATES

### IPO FLOPS COULD SPUR A RISE IN STOCK-DROP LITIGATION

Jay Dubow and Pam Palmer were quoted in the October 27, 2023 *Law360* article, [“IPO Flops Could Spur a Rise in Stock-Drop Litigation.”](#)

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