

Securities Investigations and Enforcement Newsletter – July 2023

WRITTEN BY

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NEW TEAM MEMBER

TROUTMAN PEPPER ADDS ANTITRUST PARTNER TO GROWING CONSUMER FINANCIAL SERVICES PRACTICE

Andrew “Drew” Mann, a talented antitrust attorney, has joined Troutman Pepper in Washington, D.C. as a partner in the firm’s market-leading Consumer Financial Services Practice. He most recently practiced at K&L Gates and brings significant experience in the health care antitrust space from both his time at the Federal Trade Commission (FTC) and in private practice.

FINANCIAL SERVICES BLOG

TROUTMAN PEPPER LAUNCHES BLOG TO CREATE A SINGLE DESTINATION FOR ALL FINANCIAL SERVICES CONTENT

The [Troutman Pepper Financial Services blog](#) launched recently, with comprehensive analysis and insight into pertinent law, regulation, and business, and brings together thought leadership and news spanning the entirety of the financial services industry. Topics covered span consumer and bank regulatory, compliance and enforcement, litigation, consumer and commercial lending, M&A, capital raising and private equity, payments and fintech, banking as a service, the Bank Secrecy Act and anti-money laundering, bankruptcy, data security and privacy, strategic government relations issues, and more.

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PRIVATE FUNDS UPDATE

SEC ADOPTS SIGNIFICANT AMENDMENTS TO FORM PF

On May 3, the U.S. Securities and Exchange Commission (SEC) adopted significant amendments to Form PF, the confidential reporting form for certain SEC-registered investment advisers to private funds.^[1] The final amendments will require (1) new “quarterly event” reporting for all private equity fund advisers (PE Fund Advisers, defined as investment advisers having at least \$150 million in private equity fund assets under management) regarding certain events; (2) expanded reporting for “large private equity fund advisers” (Large PE Fund Advisers,

defined as investment advisers having at least \$2 billion in private equity fund assets under management); and (3) new “current” reporting for “large hedge fund advisers” (Large HF Advisers, defined as investment adviser having at least \$1.5 billion in hedge fund assets under management).

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SUPREME COURT UPDATES

CONSTITUTIONAL ATTACKS MOUNT AGAINST FEDERAL AGENCY PROCEEDINGS IN WAKE OF HIGH COURT DECISION

The U.S. Supreme Court has signaled its willingness to constrain the bounds of administrative enforcement power with its recent decision in *Axon Enterprise v. Federal Trade Commission (FTC)* and *Securities and Exchange Commission (SEC) v. Cochran*, which paves the way for parties subject to agency enforcement proceedings to bring early constitutional challenges to such proceedings in district court before the proceedings conclude.

[Read more](#)

UNANIMOUS SUPREME COURT SHARPLY LIMITS LIABILITY UNDER SECTION 11 FOR COMPANIES ISSUING SECURITIES THROUGH DIRECT LISTINGS

In a unanimous decision, the U.S. Supreme Court held in *Slack Technologies v. Pirani*, No. 22-200, 2023 WL 3742580, 598 U.S. ____ (June 1, 2023) that a claim under Section 11 of the Securities Act of 1933 is not viable unless a plaintiff is able to prove that the shares purchased were among the shares formally registered through the company’s registration statement. In so holding, the Court vacated the Ninth Circuit’s decision in *Pirani v. Slack Technologies*, 13 F.4th 940 (9th Cir. 2021) and followed historical precedent by sharply limiting liability under Section 11 claims related to direct listings.

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SUPREME COURT REVIEW MAY PROVE THE DEATH KNEEL TO SEC ADMINISTRATIVE COURTS

On June 30, the U.S. Supreme Court granted certiorari in *SEC v. Jarkesy, et al.* and agreed to hear the case that could potentially end the use of administrative courts and administrative law judges (ALJ) in administrative agency proceedings, including SEC administrative proceedings. The Court will soon decide the fate of the 2022 Fifth Circuit ruling that overturned an SEC judgment against hedge fund manager George Jarkesy Jr.

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CLAWBACK POLICIES

CLAWBACK POLICIES REQUIRED BY DECEMBER 1

The New York Stock Exchange (NYSE) and Nasdaq amended their previously proposed clawback listing standards on [June 5](#) and [June 6](#) respectively to give listed companies until December 1 to adopt required clawback policies. On June 9, the Securities and Exchange Commission (SEC) approved the [NYSE](#) and [Nasdaq](#)–amended clawback listing standards.

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CRYPTO UPDATES

SEC V. RIPPLE LABS, INC.: XRP CONSIDERED AN UNREGISTERED SECURITY IN INSTITUTIONAL SALES BUT NOT IN PROGRAMMATIC SALES OR OTHER DISTRIBUTIONS

In a long-awaited [decision](#) in *SEC v. Ripple Labs, Inc.*, U.S. District Judge Analisa Torres of the Southern District of New York held that Ripple Labs, Inc.'s (Ripple) XRP token is not, in and of itself, a security requiring registration. Although the decision is being regarded by many as a victory for both Ripple and the crypto industry, the nuances in the decision may result in an appeal from both sides.

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