

Securities Investigations and Enforcement Newsletter – March 2022

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SPAC

JOHN COATES CALLS FOR SPAC MYTH-BUSTING

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

In a recent interview with *Law360*, Harvard Law Professor and former U.S. Securities and Exchange Commission official John Coates expressed the need for regulators to be more aggressive in disputing myths perpetuated by the special purpose acquisition company (SPAC) industry and promoters.

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Climate-Related Disclosures

SEC PROPOSES NEW RULES TO ENHANCE AND STANDARDIZE CLIMATE-RELATED DISCLOSURES

By Brinkley Dickerson, [Heather Ducat](#), [Dave Meyers](#), [Betty Segaar](#), [Shelli Willis](#), [Andrea Wortzel](#), Stuart Craft, Joseph Goldman, and [Adrianna ScheerCook](#)

On March 21, the SEC proposed a highly anticipated set of rules that would require public companies to include a suite of climate-related disclosures in their SEC filings. Although the SEC published guidance in 2010 emphasizing that existing rules might require disclosures about climate-related risks, the proposed rules would impose a mandatory disclosure framework of significantly more information about climate-related risks, plans, governance, and costs. Even though the proposal is in an open comment period, subject to litigation challenges, and contains phase-in periods, many companies already have been preparing for the requirements, and all should be engaged in understanding and adapting to the proposed requirements in the interim.

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Russian Sanctions

FINCEN IMplores Vigilance from Financial Institutions in Anticipation of Attempted Russia Sanctions Evasion

By [Jay Dubow](#), [Ghillaine Reid](#), [Keith Barnett](#), [Kalama Lui-Kwan](#), [Ethan Ostroff](#), Angela Monaco, and [Carlin McCrory](#)

Following the significant sanctions and other restrictions imposed by the United States and its global allies resulting from the Russian Federation's invasion of Ukraine, the Financial Crimes Enforcement Network (FinCEN) issued [an alert](#) (FinCEN Alert) on March 7, advising financial institutions on how to identify and report potential attempts to evade sanctions.

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Crypto Updates

BIDEN SIGNS EXECUTIVE ORDER ON CRYPTOCURRENCY

By [Keith Barnett](#), [Jay Dubow](#), [Kalama Lui-Kwan](#), [Ethan Ostroff](#), [Ghillaine Reid](#), [Zachary Epstein](#), [Carlin McCrory](#), and Gerar Mazarakis

On March 9, President Biden signed an [Executive Order](#) (the Order) to establish the first comprehensive federal digital asset strategy for the U.S., which would promote digital asset innovation while balancing benefits and associated risks. The order directs the Justice Department, U.S. Department of the Treasury, the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau (CFPB), and many other federal agencies to study the legal and economic implications of creating a U.S. Central Bank Digital Currency (CBDC).

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FINRA Updates

FINRA ISSUES GUIDANCE CLARIFYING LIABILITY FOR CHIEF COMPLIANCE OFFICERS

By [Jay Dubow](#), [Ghillaine Reid](#), and Sam Hatcher

On March 17, the Financial Industry Regulatory Authority (FINRA) issued a notice, clarifying when chief compliance officers (CCOs) will face liability as supervisors under FINRA Rule 3110. Under Rule 3110, member firms are required to designate individual supervisors and identify their responsibilities as a part of implementing an overall system to "achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules." Ultimate responsibility for supervisory obligations in Rule 3110 lies with a member firm's president, CEO, or equivalent officer or individual.

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FINRA REPORT HIGHLIGHTS NEW TOPICS AND EMERGING RISKS FOR 2022

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

On February 9, FINRA published its [2022 Report on FINRA's Examination and Risk Management Program](#) (2022 Report), an authoritative resource for member firms to evaluate and, where necessary, enhance their compliance programs and operations procedures. The 2022 Report is just the second iteration of FINRA's pathbreaking annual Report on FINRA's Examination and Risk Management Program, which FINRA describes as an "up-to-date, evolving resource or library of information for firms." The annual report outlines relevant rule(s), key considerations, noteworthy findings, and effective practices on a broad range of regulatory obligations organized into four categories: (1) firm operations, (2) communications and sales, (3) market integrity, and (4) financial management.

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SEC Settlements

SEC SETTLEMENT SHOWS COMMISSION'S WILLINGNESS TO WAIVE PENALTIES FOR INVESTIGATORY TARGETS FOCUSING ON CORRECTIVE ACTION

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

On January 28, the Securities and Exchange Commission (SEC or Commission) issued a press release, announcing the settlement of various fraud charges against a private technology company in light of their "significant remedial efforts" made during the course of an internal investigation into alleged misconduct by the firm's former CEO. A demonstration of regulatory pragmatism, this matter is indicative of the Commission's willingness to credit investigatory targets that take holistic, corrective action.

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Insider Trading

SEC'S NEW INSIDER "SHADOW TRADING" THEORY SURVIVES ITS FIRST TEST

By [Jay Dubow](#), [Seth Erickson](#), and [Ghillaine Reid](#)

The Securities and Exchange Commission (SEC) is testing the bounds of insider trading laws (as previously reported [here](#)), and it recently survived the first challenge to its newest theory. On January 14, the U.S. District Court for the Northern District of California issued a decision in *SEC v. Panuwat*, No. 3:21-cv-06322-WHO (N.D. Cal.), supporting the SEC's legal theory that "shadow trading" can violate securities law(s).

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Private Funds Update

SEC PROPOSED FORM PF AMENDMENTS KICK OFF SEC CHAIR GENSLER'S PUSH FOR INCREASED TRANSPARENCY FOR PRIVATE FUNDS

By [Stephanie Costantino](#), [Jay Dubow](#), [Genna Garver](#), [Ghillaine Reid](#), and [Zachary Epstein](#)

On January 26, the SEC approved [proposed amendments to Investment Advisers Act Rule 204\(b\)-1](#) and Form PF to require prompt reporting of certain extraordinary events that may signal distress or market instability. The proposals are material and could significantly impact private fund advisers, including smaller advisers falling below the current threshold for large reporters. In a shift from prior SEC practice of 60 days, the comment period for the proposal is only 30 days from the date of publication in the *Federal Register* (which has yet to occur as of the date of this advisory).

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