

Securities Investigations and Enforcement Newsletter – October 2021

WRITTEN BY

Peter N. Villar | Tiffany N. Bracewell | J. Timothy Mast | Megan Conway Rahman | Bryan B. Lavine | Jay A. Dubow | Stephen C. Piepgrass | Thomas H. Cordova | Whitney Tantisuwanna | John S. West | Keith J. Barnett | Mary Weeks | Brian M. Nichilo | Stephen J. Steinlight | Miranda Hooker | Meredith Sherman | Katherine E. Stark | Zachary R. Epstein | Namrata Kang | Sam Hatcher | Angela Monaco | Brielle Landis | Carlin A. McCrory | Matthew White | Mary Grace W. Metcalfe | Casselle A.E. Smith | Ghillaine A. Reid | Christopher Carlson | Lauren H. Geiser

SEC Enforcement Actions and Priorities

SEC SIGNALS SHIFT AWAY FROM “NEITHER ADMIT NOR DENY” APPROACH TO SETTLING ENFORCEMENT ACTIONS

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

The Securities and Exchange Commission (SEC) plans to return to a policy, requiring companies to admit wrongdoing to settle certain enforcement actions, according to the SEC Division of Enforcement Director Gurbir Grewal.

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SEC ENFORCEMENT PRIORITIES WEBINAR RECORDING

On August 25, Troutman Pepper Partner Charlie Peeler moderated the Securities Enforcement webinar hosted by the Atlanta Bar Association and Troutman Pepper. Panelist included Regional Securities and Exchange Commission Directors Richard Best (New York Regional Office) and Nekia Jones (Atlanta Regional Office). The webinar discussed insights on the latest SEC priorities, including climate, ESG, cryptocurrency, broker conflicts of interest, fintech, whistleblowers. Click [here](#) to view the full webinar recording.

SEC FOCUSED ON ENFORCEMENT IN THE CROWDFUNDING SPACE

By [Ghillaine Reid](#), [Jay Dubow](#), and Meredith Sherman

Following last year’s drastic increase in the annual limits permitted for crowdfunding campaigns, the Securities and Exchange Commission (SEC) has increased its focus on the regulation of crowdfunding, particularly for antifraud measures targeted at startups and crowdfunding “gatekeepers.” Companies, and especially startups, should be aware of greater likelihood of potential enforcement actions in this space.

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Cryptocurrency Updates

STATE REGULATORS BLOCK CELSIUS FROM OFFERING INTEREST-BEARING CRYPTOCURRENCY ACCOUNTS

By [Ghillaine Reid](#), [Casselle Smith](#), [Christopher Carlson](#), and [Namrata Kang](#)

State regulatory agencies in Alabama, Kentucky, New Jersey, and Texas have increased their efforts to challenge digital asset-related products by issuing cease-and-desist or “show cause” orders against New Jersey-based cryptocurrency company, Celsius Network LLC (Celsius). In September, Celsius — which provides a blockchain-based cryptocurrency lending and trading platform — became the most recent target of these states’ regulatory enforcement efforts against cryptocurrency products. Two months earlier, in July 2021, each of these states filed actions against BlockFi — another New Jersey-based cryptocurrency company that offers credit cards, loans, and interest-generating accounts. These state regulators variously allege that both BlockFi and Celsius have unlawfully offered unregistered securities in the form of high interest-bearing accounts used to fund their lending operations and proprietary trading.

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SEC FOCUSES ON CRYPTO ASSET TRADING PLATFORMS

By [Stephen Piepgrass](#) and [Mary Grace Metcalfe](#)

Over the summer of 2021, we have seen increased attention from the U.S. Securities and Exchange Commission (SEC) toward trading in cryptocurrency and other crypto assets. In particular, public comments by SEC Chair Gary Gensler have indicated that the SEC will soon take action against what he has described as the financial “Wild West.” On September 1, the form this action would take was clarified both by further comments from Gensler and by the filing of a complaint in the matter *SEC v. BitConnect*. As these comments and the complaint illustrate, the SEC’s concerns about the unregistered offering of securities and fraud on investors have led to a focus on crypto asset trading platforms and potential associated securities violations.

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GENSLER SPEAKS ON CRYPTO AT ASPEN SECURITY FORUM

By [Jay Dubow](#), [Ghillaine Reid](#), [Keith Barnett](#), and [Carlin McCrory](#)

On August 3, Securities and Exchange Commission (SEC) Chairman Gary Gensler spoke on cryptocurrencies at the *Aspen Security Forum* — his first significant remarks regarding cryptocurrency since his confirmation in April.

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Insider Trading

SECURITIES & EXCHANGE COMMISSION TESTS NEW INSIDER TRADING THEORY

By [Ghillaine Reid](#), [Jay Dubow](#), and Meredith Sherman

The Securities & Exchange Commission (SEC) is experimenting with a new theory of liability that potentially expands the bounds of the insider trading laws. Specifically, the SEC is requesting that a California court deem the practice of “shadow trading” illegal under existing law. The SEC’s theory has not yet been tested in court.

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Increased Scrutiny from FINRA

NEW FINRA GUIDANCE SUGGESTS INCREASED SCRUTINY OF MEMBER FIRMS’ RELATIONSHIPS WITH THIRD-PARTY VENDORS

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

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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Risk Alerts

SEC DIVISION OF EXAMINATIONS ISSUES RISK ALERTS ON CROSS TRADES AND WRAP FEE PROGRAMS

By [Jay Dubow](#), [Ghillaine Reid](#), Meredith Sherman, [Genna Garver](#), and [Stephanie Constantino](#)

On July 21, the Securities and Exchange Commission’s Division of Examinations (Division) released two separate “risk alerts,” encouraging investment advisers to implement written policies and procedures or review existing policies and procedures for (1) [principal and cross trades](#) to ensure consistency with the Investment Advisers Act of 1940 (Advisers Act) and the rules promulgated thereunder; and (2) “[wrap fee](#)” arrangements to address certain associated risks, conflicts, and challenges.

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