

Securities Investigations and Enforcement Newsletter – October 2022

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Disclosure Requirements

SEC DIGS IN ON LOSS CONTINGENCY DISCLOSURE REQUIREMENTS

By [Jay Dubow](#), [Ghillaine Reid](#), and John Sample

On September 22, the U.S. Securities and Exchange Commission (SEC) filed [charges](#) against three former executives of a technology acquisition company (the Company) for making false and misleading statements to auditors, and failing to include required information in its financial statements — both relating to an ongoing SEC investigation into one of the Company's investments.

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SEC's Focus on 10B5-1 Plans

SEC REAFFIRMS 10B5-1 PLANS PROVIDE NO PROTECTION IF PLANS NOT ESTABLISHED IN GOOD FAITH

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

On September 21, the Securities and Exchange Commission (SEC) announced charges against Cheetah Mobile, Inc.'s CEO and former president for insider trading, even though the questionable trades occurred under a 10b5-1 trading plan. The SEC's [order](#) found that Cheetah Mobile's CEO Sheng Fu and its then-President and CTO Ming Xu established the trading plans only after the discovery of material nonpublic information that would later cause a drop in Cheetah Mobile's share price. Fu and Xu settled the action without admitting or denying the SEC's findings, agreeing to civil penalties and future trading restrictions. The SEC's action comes after officials voiced [concerns](#) about the potential abuse of 10b5-1 plans, and the SEC currently has a [pending proposal](#) to alter Rule 10b5-1 to curb these perceived abuses.

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SPACS

SEC TARGETS SPAC CONFLICTS OF INTEREST

By [Jay Dubow](#), [Ghillaine Reid](#), John Sample, and [Casselle Smith](#)

On September 6, investment advisory firm Perceptive Advisors LLC (Perceptive) agreed to a cease-and-desist [order](#) with the U.S. Securities and Exchange Commission (SEC) for failing to disclose alleged conflicts of interest involving its employees' ownership of sponsors of special purpose acquisition companies (SPACs) in which the firm advised its clients to invest.

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DOJ's Corporate Criminal Enforcement Efforts

IT'S NOT "BUSINESS AS USUAL" FOR DOJ'S CORPORATE CRIMINAL ENFORCEMENT EFFORTS

By [Jay Dubow](#), [Ghillaine Reid](#), [Megan Rahman](#), [Mike Schwartz](#), and [LA Kuykendall](#)

On September 21, the Securities and Exchange Commission (SEC) announced charges against Cheetah Mobile, Inc.'s CEO and former president for insider trading, even though the questionable trades occurred under a 10b5-1 trading plan. The SEC's [order](#) found that Cheetah Mobile's CEO Sheng Fu and its then-President and CTO Ming Xu established the trading plans only after the discovery of material nonpublic information that would later cause a drop in Cheetah Mobile's share price. Fu and Xu settled the action without admitting or denying the SEC's findings, agreeing to civil penalties and future trading restrictions. The SEC's action comes after officials voiced [concerns](#) about the potential abuse of 10b5-1 plans, and the SEC currently has a [pending proposal](#) to alter Rule 10b5-1 to curb these perceived abuses.

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Crypto Updates

PLEA DEAL IN FIRST-EVER CRYPTOCURRENCY INSIDER TRADING CASE

By [Jay Dubow](#), [Ghillaine Reid](#), and [Megan Rahman](#)

In what the Manhattan federal prosecutors have touted as the first-ever guilty plea in an insider trading case involving cryptocurrency, the brother of a former Coinbase Global, Inc. (Coinbase) product manager pled guilty to one count of conspiracy to commit wire fraud in connection with a scheme to commit insider trading in cryptocurrency assets.

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Whistleblower Incentives

SEC BOOSTS WHISTLEBLOWER INCENTIVES AFTER TWO RECORD-BREAKING YEARS

By [Jay Dubow](#), [Ghillaine Reid](#), and Tiffany Bracewell

On August 26, the Securities and Exchange Commission (SEC) quietly adopted two significant changes to the rules governing its whistleblower program, as proposed in February 2022. These reverse amendments to the same rules implemented in 2020 and reflect the commission's effort to further incentivize and reward tipsters for information about potential violations of the securities laws. If the headlining \$739 million in awards distributed to 147 program participants during 2020 and 2021 alone is not enough, the expanded incentives for potential whistleblowers come in two forms.

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Cyber Breaches

CYBER BREACHES POSE RISK OF SEC ENFORCEMENT ACTIONS, DERIVATIVE SUITS TO PUBLIC COMPANIES

By [Jay Dubow](#), [Robert Hickok](#), and Thomas Cordova

This article was previously published in The Legal Intelligencer.

In addition to potential private lawsuits and state attorney general investigations, public companies must be prepared for potential investigations by the U.S. Securities and Exchange Commission (SEC) and potential securities litigation, including class actions and stockholder derivative suits.

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Encrypted Messaging

SEC CRACKS DOWN ON ENCRYPTED MESSAGING

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

While the phrase “clandestine messaging” evokes secret notes slipped under doors and written in code, its meaning in the world of securities regulation and enforcement is not nearly as romantic as the name suggests. Clandestine messaging applications [use end-to-end encryption](#) to prevent third parties from accessing data, ensuring that no one but the sender and the recipient can read the communications. With some clandestine messaging services, [users can also send “ephemeral” messages](#) — texts that essentially self-destruct and are deleted either immediately after viewing or a specified amount of time after they are sent.

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