

# Securities Investigations and Enforcement Newsletter — October 2023

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## SPEAKING ENGAGEMENTS

Our Securities Investigations + Enforcement attorneys are frequently called upon to speak on topics related to securities investigations and enforcement. They are recognized for their insightful analysis and commentary on a range of regulatory and enforcement issues. Their expertise extends to understanding and interpreting industry trends, providing our clients with a comprehensive view of the evolving legal landscape. Recent and upcoming speaking engagements include:

- Ghillaine Reid will be speaking during the “Current Trends in Broker-Dealer Regulations and Enforcement” session at the New York City Bar Association’s [Compliance Institute 2023](#) on October 24 in New York City.
- Jay Dubow will be speaking at the upcoming Philadelphia Bar Association Federal Securities Law Forum on December 7.
- Megan Raman recently spoke at the [Virginia Bar Association’s Seventh Annual White Collar Crime Criminal Law Forum](#) on the “Practical and Ethical Considerations for Joint Defense Agreements” panel. Megan shared her perspectives on the ethical, practical, and strategic considerations whenever counsel seeks to enter a joint defense agreement in anti-competition investigations.

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## SECURITIES FRAUD TASK FORCE

### THE US ATTORNEY’S OFFICE FOR THE CENTRAL DISTRICT OF CALIFORNIA ANNOUNCES SECURITIES FRAUD TASK FORCE

By [Jay A. Dubow](#), [Ghillaine A. Reid](#), and Sophia Harmelin\*

On October 4, U.S. Attorney for the Central District of California Martin Estrada announced the formation of a new task force, the Corporate and Securities Fraud Strike Force.

The Corporate and Securities Fraud Strike Force will focus on complex corporate and securities offenses that impact the nation's financial systems and trading markets. The strike force will work alongside federal law enforcement agencies to prioritize and expand investigations of abuses by company insiders and corporate executives, such as accounting fraud and insider trading.

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## **RISK-BASED APPROACH**

### **SEC PROVIDES PARAMETERS ON THE RISK-BASED APPROACH FOR SELECTING REGISTERED INVESTMENT ADVISERS FOR EXAMINATION**

By [Jay A. Dubow](#) and Jennifer N. Prushan

On September 6, the Securities and Exchange Commission (SEC) issued a risk alert, which detailed the factors the division considers in its risk-based approach for selecting SEC-registered investment advisers (advisers) to examine. The SEC has highlighted that their risk-based approach is dynamic and regularly adapts to market shifts. This client alert is intended to summarize those risk factors in order for advisers to best prepare for an examination.

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## **PRIVATE FUND UPDATES**

### **SEC ADOPTS NEW ADVISERS ACT RULES FOR PRIVATE FUND ADVISERS**

By [Genna Garver](#) and Joseph A. Goldman

On August 23, the 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). The new rules require private fund advisers to provide investors with quarterly reports and obtain annual audits of each private fund and fairness opinions or valuation opinions for adviser-led secondaries, while also restricting advisers from engaging in several practices.

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## **LITIGATION UPDATE**

### **EXERCISE CAUTION BEFORE STATING A LAWSUIT IS “WITHOUT MERIT”**

By [Mary Weeks](#), [Jay A. Dubow](#), and [Nicole E. Crossey](#)

Many publicly reporting companies often respond to lawsuits by characterizing them as “without merit” in their securities filings. If the company does not prevail in such litigation, can it still be held responsible for making these statements when its executives had actual knowledge that the suit had validity? The answer is yes, according to a recent decision out of the District of Massachusetts.

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## CONTINUED CHALLENGES ARISING FROM SPAC-RELATED LITIGATION

By [Jay A. Dubow](#), [Joanna J. Cline](#), and [Erica Hall Dressler](#)

Special purpose acquisition companies, or SPACs, have grown in popularity over the past decade, and as a result, more than 30% of all transactions that took companies public in 2021 involved a de-SPAC merger. The rise in SPACs' popularity led to the rise of SPAC-related litigation, especially following the poor performance of many companies taken public by SPACs. Recent decisions by the Delaware Court of Chancery demonstrate that when a SPAC transaction and the disclosures surrounding it are challenged, defendants may face an uphill battle to prevail on a motion to dismiss, especially where breach of fiduciary duty claims have been asserted.

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## CASE REVIEW — *AXON ENTERPRISE, INC. V. FEDERAL TRADE COMMISSION*

By [Jay A. Dubow](#) and [Mary Weeks](#)

In *Business Law Today*'s new video series analyzing major court decisions, Troutman Pepper Partners Jay Dubow and Mary Weeks examine the recent U.S. Supreme Court case *Axon Enterprise, Inc. v. Federal Trade Commission*. In *Axon*, the Court [held](#) in a 9–0 decision that the “review schemes set out in the Securities Exchange Act and Federal Trade Commission Act do not displace district court jurisdiction” over claims challenging the structure or existence of the SEC or FTC as unconstitutional.

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\* *Sophia Harmelin contributed to this is not admitted to practice law in any jurisdiction; bar admission pending.*

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