

Securities Investigations and Enforcement Newsletter — October 2024

WRITTEN BY

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SAVE THE DATE: SEC ENFORCEMENT PRIORITIES WEBINAR

Thursday, February 6, 2025

12:00 – 1:00 PM ET

Please join Troutman Pepper for a discussion hosted by the Atlanta Bar Association with Regional Securities and Exchange Commission Directors Nicholas Grippo (Philadelphia Regional Office) and Nekia Jones (Atlanta Regional Office) on the SEC's 2025 enforcement and examination priorities.

Invitation and more details to follow.

[Click here](#) to add this event to your calendar.

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 “Broker/Dealer Lawyer and Compliance Officer Roundtable” panel at [PLI's upcoming Broker/Dealer Regulation and Enforcement 2024 conference](#). The panel will share challenges they face managing regulatory, enforcement and compliance issues affecting their firms. Participants will leave this program with a greater understanding of the current regulatory issues and priorities facing in-house lawyers and compliance officers, and lessons to be learned from recent examinations and/or enforcement actions, including:
 - Decision-making throughout the enforcement process, including self-reporting, cooperation and remediation
 - Advising supervisors and employees
 - Handling whistleblower complaints

- Approaches for assessing compliance program effectiveness and maintaining a robust program
 - Strategies for mitigating compliance in the regulatory cross-hairs
- Jay Dubow will be speaking at the [2024 PACDL White Collar Practice Seminar](#) on Friday, November 15, during the “Recent Developments and Hot Topics in SEC Enforcement Practice” panel. The panel will discuss the SEC’s enforcement program, including significant new cases, the impact of recent legal challenges, and their implications for defense strategies.
 - Ghillaine Reid was quoted in the October 14, 2024 International Banker article, “[Recent Charges Against Financial Firms Show That the SEC’s Texting Probe is Far From Over.](#)”

SEC DEPARTURES

SEC ANNOUNCES DEPARTURE OF ENFORCEMENT DIRECTOR GURBIR S. GREWAL

By [Jay Dubow](#), [Ghillaine Reid](#), and [Isabela Palmieri](#)

Earlier this month, the Securities and Exchange Commission (SEC) announced that Gurbir S. Grewal, director of the Division of Enforcement, will be departing the agency effective October 11. Sanjay Wadhwa, the division’s deputy director, will assume the role of acting director.

During his three-year tenure as director, Grewal prioritized several key initiatives, including enforcement against crypto asset trading platforms, protecting investors from market manipulation, and rooting out insider trading. Under his leadership, the division recommended, and the SEC authorized, more than 2,400 enforcement matters, resulting in more than \$20 billion in disgorgement, prejudgment interest, and civil penalties, as well as significant awards to whistleblowers and the return of billions of dollars to harmed investors.

Grewal prioritized enforcement in the rapidly growing crypto space, leading to more than 100 enforcement actions, some of which included actions against two of the largest crypto asset trading platforms. Additionally, the Division doubled the size of its Crypto Assets and Cyber Unit in 2022.

Under Grewal’s leadership, the division also brought enforcement actions against insiders abusing access to material nonpublic information and against gatekeepers, including a massive fraud by an audit firm affecting more than 1,500 SEC filings.

Upon Grewal’s departure, Wadhwa will take on the role of acting director. Wadhwa, a 21-year veteran of the SEC, has served as deputy director since August 2021. He has already led critical investigations resulting in successful enforcement actions against hedge fund advisers, prominent Wall Street figures, the former head of McKenzie Consulting, a Goldman Sachs board member, and the founder of S.A.C. Capital.

Joining him in this transition is Sam Waldon, who will serve as acting deputy director. Waldon has been with the SEC since March 2022 as chief counsel for the Division of Enforcement.

As we approach a presidential election, we expect there to be more senior staff changes at the SEC in the coming

months.

FINRA UPDATES

FINRA'S CRACKDOWN ON FIRMS' USE OF SOCIAL MEDIA INFLUENCERS CONTINUES

By [Jay Dubow](#), [Ghillaine Reid](#), Tim Bado, and [Sophia Harmelin](#)

The Financial Industry Regulation Authority's (FINRA) Enforcement Division recently announced a resolution to a nearly two-and-a-half-year investigation in which TradeZero America, Inc. (TradeZero) agreed to pay a fine of \$250,000. FINRA found that TradeZero, a self-directed trading platform for retail investors, failed to establish, maintain, and enforce a reasonably designed supervisory system for its influencers' social media posts, and failed to preapprove and preserve records of these retail communications. FINRA also found that social media posts made by influencers on the firm's behalf were not fair or balanced, and contained exaggerated, unwarranted, promissory, or misleading claims. Notably, TradeZero allegedly provided inaccurate privacy notices to firm customers.

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SEC UPDATES

SEC APPROVES SPOT ETHER ETFS

By [John Falco](#), [John Ford](#), and [Ted Edwards](#)

On July 22, 2024, the Securities and Exchange Commission (SEC) declared nine registration statements effective under the Securities Act of 1933 for spot Ether ETFs, clearing the way for the ETFs to begin trading on July 23. Spot Ether ETFs are exchange-traded funds (ETFs) that invest directly in Ether, a digital asset that supports the Ethereum Network. The Ethereum Network is a decentralized network that operates on cryptographic protocols. Ether is the second-largest cryptocurrency after Bitcoin.

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SEC CHARGES BROKER-DEALER AND TWO AFFILIATED INVESTMENT ADVISERS WITH VIOLATING WHISTLEBLOWER PROTECTION RULE

By [Stephanie Constantino](#), [Jay Dubow](#), [Genna Garver](#), [Ghillaine Reid](#), [Casselle Smith](#), and [Ted Edwards](#)

On September 4, 2024, the Securities and Exchange Commission (SEC) issued an order against three investment adviser firms for violating the whistleblower protections of Rule 21F-17(a) under the Securities Exchange Act of 1934, as amended, which prohibits any person from taking any action to impede an individual from communicating directly with the SEC about possible securities law violations, including enforcing or threatening to enforce a confidentiality agreement with respect to such communications.

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PRIORITIZE DOCUMENT REVIEW FOR SEC WHISTLEBLOWER RULE COMPLIANCE

By [Sheri Adler](#), [Jay Dubow](#), and [Mary Weeks](#)

If you have not recently reviewed your company's documents to ensure they comply with Securities and Exchange Commission (SEC) whistleblower protection rules, you should put it at the top of your to-do list. On September 9, the SEC [announced](#) settled charges against seven public companies for violating whistleblower protection rules, sending a clear message that this area continues to be a top priority for the agency. This came on the heels of a September 4 SEC [order](#) against three investment adviser firms for violating whistleblower protection rules.

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CYBERSECURITY AND THE SEC

SOLARWINDS RULING OFFERS CYBER INCIDENT RESPONSE TAKEAWAYS

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By [Casselle Smith](#), [Sadia Mirza](#), and [Dave Meyers](#)

A federal judge in New York has issued a devastating blow for the U.S. Securities and Exchange Commission's high-profile cybersecurity case against SolarWinds Corporation and its chief information security officer, Timothy Brown.

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6 CONSIDERATIONS TO DETERMINE IF A CYBER INCIDENT IS MATERIAL

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By [Jay Dubow](#), [Sadia Mirza](#), and [Dave Meyers](#)

In late June, the staff of the U.S. Securities and Exchange Commission's Division of Corporation Finance released five new compliance and disclosure interpretations regarding the disclosure of material cybersecurity incidents under Item 1.05 of Current Reports on Form 8-K, specifically in situations involving ransomware payments.

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SUPREME COURT UPDATES

HIGH STAKES IN HIGH COURT: SUPREME COURT TO CLARIFY SECURITIES FRAUD PLEADING REQUIREMENTS FOR FALSITY AND SCIENTER

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By [Jay Dubow](#), [Joanna Cline](#), and Sierra Stockley

Plaintiffs pleading fraud in securities actions under Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 are required to plead both falsity and scienter with specificity—but a crucial question remains: How specifically? This June, the U.S. Supreme Court granted certiorari in two cases that will answer this question, *NVIDIA v. E. Ohman J:or Fonder AB* (No. 23-970) and *Facebook v. Amalgamated Bank* (No. 23-980). These cases present the court with an opportunity to resolve significant circuit splits on pleading requirements under the Private Securities Litigation Reform Act of 1995 (PSLRA), a statute enacted to deter frivolous securities lawsuits and abusive litigation practices.

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