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Regulatory Update and Recent SEC Actions

REGULATORY UPDATES

FINRA Issues Regulation Best Interest Checklist for Brokers

On October 8, 2019, the Financial Industry Regulatory Authority ("FINRA") announced it will provide new resources to assist member firms in their efforts to comply with the Securities and Exchange Commission's (the "Commission" or "SEC") Regulation Best Interest ("Reg BI") and Form CRS by the compliance date of June 30, 2020. FINRA is assisting members in a variety of ways, including by providing a new Reg BI and Form CRS Checklist—available on FINRA's Reg BI webpage—and by hosting several FINRA Reg BI events. The Reg BI and Form CRS Checklist is provided to help members with their assessment and implementation of necessary changes to their policies, procedures, and compliance programs in light of Reg BI and Form CRS. This Checklist outlines the major requirements of the rules and notes key differences between FINRA rules and Reg BI and Form CRS.

SEC Announces the Formation of Asset Management Advisory Committee

On October 9, 2019, the SEC announced the formation of its Asset Management Advisory Committee. The committee was formed to provide the Commission with diverse perspectives on asset management and related advice and recommendations. Topics the committee may address include trends and developments affecting investors and market participants, the effects of globalization, and changes in the role of technology and service providers. The committee is comprised of a group of outside experts, including individuals representing the views of retail and institutional investors, small and large funds, intermediaries, and other market participants. Chairman Clayton has appointed Edward Bernard, senior advisor to T. Rowe Price, as the initial committee chairman.

"Asset management is a critical component of our markets and is especially important to Main Street investors," said SEC Chairman Jay Clayton. "This committee will help the Commission ensure that our regulatory approach to asset management meets the needs of retail investors and market participants at a time when the industry is evolving rapidly. I would like to thank each of the committee members for agreeing to participate on this important committee."

Division of Investment Management Responds to Inquiries Regarding BDC Reduced Asset Coverage and Repurchase Obligations

On October 17, 2019, the SEC's Division of Investment Management (the "Division") provided guidance regarding the repurchase obligations of an unlisted business development company ("BDC") that has obtained the requisite approvals for lowering its asset coverage. Section 61(a) of the Investment Company Act of 1940 ("1940 Act") permits a BDC to lower its asset coverage for a class of senior security that is a stock or represents indebtedness from 200 percent to 150 percent, subject to certain conditions, including that the change in asset coverage be approved either by a "required majority" of the BDC's board, or by a vote of the BDC's shareholders. Section 61(a)(2)(D)(ii) of the 1940 Act requires unlisted BDCs (*i.e.,* BDCs whose common stock is not listed on a national securities exchange) to offer shareholders an opportunity to sell their shares back to the BDC upon approval of the lower asset coverage threshold, and requires the BDC to repurchase 25 percent of those securities on a quarterly basis for each of the four quarters following the approval date. In its response to inquiries, the Division clarified that (i) an unlisted BDC may extend a single offer to repurchase or four separate offers to repurchase, and may also effectuate a repurchase of shares earlier than required; (ii) an unlisted BDC may, but is not required to, conduct offers to repurchase in accordance with Section 23(c) of the 1940 Act and Sections 13(e) and 14(e) of the Securities and Exchange Act of 1934; and (iii) even if an unlisted BDC lists its common stock on a national securities exchange after receiving approval to reduce its asset coverage ratio, it is still required to offer to repurchase all the shares held by shareholders as of the date of approval and to repurchase the shares from the shareholders who accept the offer.

SEC Releases FAQs Regarding Disclosure of Certain Financial Conflicts Related to Investment Adviser Compensation

On October 18, 2019, the SEC issued frequently asked questions ("FAQs") clarifying disclosure obligations related to the types of compensation that investment advisers receive, such as 12b-1 fees and revenue sharing. The FAQs, which are available on the SEC's website, discuss certain compensation arrangements and related disclosure obligations arising from both the investment adviser's fiduciary duty and Form ADV. In its release, the SEC pointed out that the FAQs focus on the identification and disclosure of certain conflicts of interest and are not a comprehensive discussion of an investment adviser's fiduciary duty with respect to these or other conflicts. For example, an investment adviser owes its clients a duty of care that requires it to provide investment advice that is in the best interest of the client based on the client's objectives. In addition, investment advisers are required to adopt and implement policies and procedures reasonably designed to prevent violations of the Investment Advisers Act of 1940 (the "Advisers Act") and the rules thereunder.

SEC Proposes Amendments to Exemptive Applications Procedures

On October 18, 2019, the SEC announced that it voted to propose rule amendments to establish an expedited review procedure for applications under the 1940 Act that are substantially identical to recent precedent, as well as a new informal internal procedure for applications that would not qualify for the new expedited process. The proposed amendments are intended to grant relief as efficiently and quickly as possible, while also ensuring that applications continue to be carefully analyzed consistent with the relevant statutory standards. A more efficient application process will allow applicants to realize the benefits of relief more quickly than otherwise would be the case, and fund shareholders would generally share in these benefits. The proposed expedited review procedure should also make the application process less expensive for applicants and would ensure that SEC staff could devote additional resources to the review of more novel requests.

Natasha Vij Greiner Named Associate Director in SEC's Investment Adviser/Investment Company Examination Program

On October 29, 2019, the SEC announced that Natasha Vij Greiner was named associate director in its Office of Compliance Inspections and Examination's ("OCIE") investment adviser and investment company examination program. Greiner will be responsible for leading the Washington, D.C.-based investment adviser and investment company examination office. This new position was created to oversee and direct the work of the approximately 40 lawyers, accountants, and examiners whose primary responsibility is to conduct examinations of offshore SEC registrants and support National Examination Program initiatives throughout the country. Greiner has served in various roles at the SEC for the past 18 years, including recently as acting chief counsel and assistant chief counsel in the Division of Trading and Markets where she provided legal and policy advice to the SEC on rules affecting market participants and the operation of the securities markets. Prior to joining the Division of Trading and Markets, Greiner spent almost a decade in the SEC's Division of Enforcement, including in its Asset Management Unit, where she investigated possible violations of the federal securities laws and litigated civil enforcement proceedings in federal district court and administrative proceedings. Greiner began her career at the SEC in OCIE where she conducted examinations of broker-dealers.

"Natasha is an experienced and thoughtful leader with a deep well of regulatory knowledge," said OCIE Director Peter Driscoll. "Her extensive experience in securities regulation, including international cooperative efforts, and demonstrated ability to resolve complex issues will be extremely valuable to OCIE in fulfilling our mission."

ISS Sues SEC to Stop Proxy Guidance

On October 31, 2019, Institutional Shareholder Services ("ISS") filed a lawsuit against the SEC to halt the guidance that the SEC issued on August 21, 2019. The guidance included, among other things, a requirement that proxy advisory firms disclose how they reach their shareholder recommendations. The complaint, filed in the U.S. District Court for the District of Columbia, contends that the guidance is unlawful because it exceeds the SEC's statutory authority and was not developed according to rulemaking standards. The lawsuit also contends that the guidance is arbitrary and capricious and claims that while the guidance marks a significant change in the regulatory regime applicable to proxy advice, the SEC has denied that it is changing its position at all.

SEC Proposes to Modernize the Advertising and Cash Solicitation Rules for Investment Advisers

On November 4, 2019, the SEC voted to propose amendments to modernize the rules under the Advisers Act addressing investment adviser advertisements and payments to solicitors. The proposed amendments are intended to update the rules to reflect changes in technology, the expectations of investors seeking advisory services, and the evolution of industry practices. The proposed amendments to the advertising rule would replace the current rule's broadly-drawn limitations with principles-based provisions. The proposed approach would also permit the use of testimonials, endorsements, and third-party ratings, subject to certain conditions, and would include tailored requirements for the presentation of performance results based on an advertisement's intended audience. The proposed amendments to the solicitation rule would expand the current rule to cover solicitation arrangements involving all forms of compensation, rather than only cash, subject to a new *de minimis* threshold. They would also update other aspects of the rule, such as who is disqualified from acting as a solicitor. The SEC also voted to propose amendments to Form ADV, the investment adviser registration form, and Rule 204-2, the books and records rule, which would reflect the changes proposed to the advertising and solicitation rules. The public comment period will remain open for 60 days following publication of the proposal in the Federal Register.

"The advertising and solicitation rules provide important protections when advisers seek to attract clients and investors, yet neither rule has changed significantly since its adoption several decades ago," said SEC Chairman Jay Clayton. "The reforms we have proposed today are designed to address market developments and to improve the quality of information available to investors, enabling them to make more informed choices."

SEC Proposes Rule Amendments to Improve Accuracy and Transparency of Proxy Voting Advice

On November 5, 2019, the SEC voted to propose amendments to its rules governing proxy solicitations to enhance the quality of the disclosure about material conflicts of interest that proxy voting advice businesses provide their clients. The proposal would also provide an opportunity for a period of review and feedback during which companies and other soliciting parties would be able to identify errors in the proxy voting advice. The review and feedback period would only be available to companies that file definitive proxy materials 25 days or more in advance of the relevant meeting. The proposal aims to enhance the accuracy and transparency of the information that proxy voting advice businesses provide to investors and others who vote on investors' behalf, and thereby facilitate their ability to make informed voting decisions. The proposal will have a 60-day public comment period following its publication in the Federal Register.

SEC Proposes Amendments to Modernize Shareholder Proposal Rule

On November 5, 2019, the SEC voted to propose amendments to modernize the rule that governs the process for shareholder proposals to be included in a company's proxy statement. The proposed amendments, which are based on the staff's extensive experience reviewing shareholder proposals, would update the criteria, including the ownership requirements, that a shareholder must satisfy to be eligible to require a company to include a proposal in its proxy statement. The proposed amendments would also update the "one proposal" rule to clarify that a single person may not submit multiple proposals at the same shareholder's meeting on behalf of different shareholders. In addition, the proposed rule would update, for the first time since 1954, the levels of shareholder support a proposal must receive to be eligible for resubmission at the same company's future shareholder meetings. The public comment period will remain open for 60 days following publication of the proposing release in the Federal Register.

"Today's proposed amendments follow from the staff's extensive experience with shareholder proposals and recognize the significant changes that have taken place in our markets in the decades since these regulatory requirements were last revised, including, in particular, the types and use of communications, the types and frequency of shareholder-company engagement and the substantial shift to investing through mutual funds and ETFs, rather than directly by Main Street investors," said Chairman Jay Clayton.

OCIE Issues Risk Alert Related to Top Compliance Topics

On November 7, 2019, the OCIE issued a risk alert concerning the most often cited deficiencies and weaknesses observed by its staff in nearly 300 fund examinations over a two-year period. As set forth in the alert, the most often cited deficiencies and weaknesses were related to the fund compliance rule, disclosure to investors, the board approval process involving advisory contracts (also known as the Section 15(c) process), and the fund code of ethics rule. The most often cited deficiencies or weaknesses OCIE staff observed in connection with the fund compliance rule were (i) compliance programs that did not take into account the nature of funds' business activities; (ii) policies and procedures not followed or enforced; (iii) inadequate service provider oversight; and (iv) annual reviews not being performed or not addressing the adequacy of the funds' policies and procedures. For disclosure to investors, the most often cited deficiencies or weaknesses were funds that provided incomplete or potentially materially misleading information in their prospectuses, statements of information, or shareholder reports. For the Section 15(c) process, the most often cited deficiencies or weaknesses were (i) failure to request or consider reasonably necessary information; and (ii) inadequate discussion forming the basis of board approval. The most often cited deficiencies and weaknesses OCIE staff observed in connection with the fund code of ethics rule were (i) failure to implement code of ethics; (ii) failure to follow or enforce code of ethics; and (iii) deficient code of ethics approval and reporting. The risk alert also summarized the staff's observations from its recently conducted national examination initiatives focusing on Money Market Funds and Target Date Funds.

SEC Approves 'Semi-Transparent' ETF Models

On November 14, 2019, the SEC issued a notice of approval of active equity exchange-traded-fund ("ETF") models that would not be required to disclose portfolio holdings on a daily basis. The new type of ETF, often referred to as "semi-transparent" or "nontransparent ETFs," are an investment vehicle that allows active asset managers to capitalize on the benefits of the ETF structure, including more liquid trading and tax advantages, while keeping their strategy hidden to protect shareholders. While the preliminary SEC approval clears an important hurdle, additional regulatory steps must take place before any semi-transparent ETF can be launched.

SEC Proposes to Modernize Regulation of the Use of Derivatives by Registered Funds and Business Development Companies

On November 25, 2019, the SEC proposed new rule designed to enhance the regulation of the use of derivatives by registered investment companies, including mutual funds, ETFs, and closed-end funds, as well as business development companies. The proposed rule would provide an updated and more comprehensive approach to the regulation of funds' derivatives use. It would permit funds to use derivatives that create future payment obligations, provided that they comply with certain conditions designed to protect investors, including adopting a derivatives risk management program and complying with a limit on the amount of leverage-related risk that the fund may obtain, based on value-at-risk. A streamlined set of requirements would apply to funds that use derivatives in a limited way. The proposed rule would also permit a fund to enter into reverse repurchase agreements and similar financing transactions, as well as "unfunded commitments" to make certain loans or investments, subject to conditions tailored to these transactions. In addition, the SEC proposed sales practice rules that would establish a set of due diligence and approval requirements for broker-dealers and SEC-registered investment advisers with respect to trades in shares of certain leveraged investment vehicles. The proposal will be published on SEC.gov and in the Federal Register. The comment period for the proposal will be 60 days after publication in the Federal Register.

SEC Releases FAQs Regarding Investment Advice Rule

On November 26, 2019, the SEC published answers to FAQs about its investment advice rule, which will begin to take effect in May 2020. The FAQs pertained to one section of the four-part investment advice rule known as Form CRS, a new disclosure meant to help retail investors understand a firm's services, fees, conflicts of interest, and disciplinary history. Broker-dealers and registered investment advisers must file the form with the SEC between May 1, 2020 and June 30,

2020. Among other things, the FAQs clarified that registered investment advisers and brokerage firms should only submit one disclosure form instead of separate disclosures for each separate service they provide. The SEC expects to update the FAQs with responses to additional questions.

Kristina Littman Named Chief of the Cyber Unit

On December 2, 2019, Kristina Littman was named chief of the SEC Division of Enforcement's Cyber Unit, a national, specialized unit, which focuses on protecting investors and markets from cyber-related misconduct. Littman succeeds Robert Cohen, who left the Commission in August 2019. Littman joined the SEC's Division of Enforcement in 2010 as a staff attorney in the Philadelphia office. Since then, she has held senior attorney positions in the Market Abuse Unit and the Trial Unit. During her SEC tenure, Littman conducted and led significant enforcement investigations and litigations. Since August 2017, Littman has served as senior advisor to SEC Chairman Jay Clayton.

SEC Proposes to Update Accredited Investor Definition to Increase Access to Investments

On December 18, 2019, the SEC proposed amendments to the definition of accredited investor, one of the principal tests that determines who is eligible to participate in private capital markets. The proposed amendments would allow more investors to participate in private offerings by adding new categories of natural persons that may qualify as accredited investors based on their professional knowledge, experience, or certifications. The proposal would also expand the list of entities that may qualify as accredited investors by, among other things, allowing any entity which meets an investment's test to qualify. The public comment period will remain open for 60 days following publication in the Federal Register.

"The current test for individual accredited investor status takes a binary approach to who does and does not qualify based only a person's income or net worth," said Chairman Jay Clayton. "Modernization of this approach is long overdue. The proposal would add additional means for individuals to qualify to participate in our private capital markets based on established, clear measures of financial sophistication. I also am pleased that the proposal specifically recognizes that certain organizations, such as tribal governments, should not be restricted from participating in our private capital markets."

SEC Names David Bottom as Chief Information Officer

On December 19, 2019, the SEC announced that David Bottom has been appointed as the agency's chief information officer ("CIO"). In this role, Bottom will be responsible for overseeing the security and overall functions of the agency's information technology systems. As a current federal agency CIO, Bottom brings significant senior leadership and technical expertise in leveraging information technology to achieve mission objectives. Most recently, Bottom has served as chief information officer and chief data officer at the Office of Intelligence and Analysis in the Department of Homeland Security. Bottom also served for 10 years as a senior executive at the National Geospatial-Intelligence Agency, including as director of its Information Technology Directorate and deputy director of Enterprise Operations.

Susan Nash, Associate Director in Division of Investment Management, to Leave SEC After 30 Years of Public Service

On December 23, 2019, the SEC announced that Susan Nash, Associate Director and Senior Policy Advisor to the Director, Division of Investment Management, will retire from the SEC at the end of 2019 after 30 years of public service. Nash has been a leader in the agency's domestic and international work related to emerging trends in the asset management industry and in discussions of financial stability. Throughout her service, she has also been a key architect of disclosure policy for mutual funds, variable annuities, and other investment companies. Nash played an instrumental role in the development of many of the SEC's disclosure policy initiatives for mutual funds and other investment companies, including the mutual fund summary prospectus, improvements to fee and performance disclosures, electronic document delivery, harmonization of SEC and Commodity Futures Trading Commission requirements for dual registrants, and tailored disclosure requirements for variable life insurance.

SEC Proposes to Codify Certain Consultations and Modernize Auditor Independence Rules

On December 30, 2019, the SEC announced that it is proposing amendments to codify certain staff consultations and modernize certain aspects of its auditor independence framework. The proposed amendments would update select aspects of the nearly two-decade-old auditor independence rules to more effectively structure the independence rules and analysis so that relationships and services that do not pose threats to an auditor's objectivity would not trigger non-substantive rule breaches or potentially time-consuming audit committee reviews of non-substantive matters. The proposed amendments primarily focus on fact patterns presented to SEC staff through consultations that involve a relationship with, or services provided to, an entity which has little or no relationship with the entity under audit, and no relationship to the engagement team conducting the audit. The public comment period will remain open for 60 days following publication of the proposing release in the Federal Register.

Adviser Obligations Under the California Consumer Privacy Act

On January 1, 2020, the California Consumer Privacy Act ("CCPA"), a statute which imposes new data privacy obligations on certain companies that do business in California, became effective. In general, the CCPA will apply to advisers that (i) do business in California (even if they have no place of business in California); (ii) have annual gross revenue in excess of $25 million; and (iii) collect, process, use, or share personal information regarding natural persons who are residents of California. The CCPA will require advisers to, among other things, (i) disclose information about their collection, use, disclosure, and sale of personal information pertaining to clients and investors; (ii) allow persons to opt out of the sale of their personal information; (iii) develop policies to receive and respond to CCPA-related requests made by clients and others; and (iv) secure against data breaches.

ENFORCEMENT ACTIONS

***SEC v. Richard Eden, et al.* (Case No. 19-cv-99358 C.D. Cal.) and *SEC v. Dale Pearlman* (Case No. 19-cv-02108 C.D. Cal.)**

On October 31, 2019 and November 4, 2019, the SEC charged Richard Eden, Christopher Neumann, and Dale Pearlman with fraud, acting as unregistered brokers, and participating in an unregistered offering in connection with the sale of microcap securities. These securities were issued by Intertech Solutions, Inc. ("ITEC")—a company previously charged with fraud and registration violations. According to the complaints, Eden and Pearlman solicited investors and fraudulently convinced them to purchase shares of ITEC. Eden, Pearlman, and an undisclosed third party within ITEC systematically orchestrated a matched trading scheme where the purchased shares were offloaded into the market. The October 31, 2019 complaint further alleges that Eden engaged in similar conduct with different securities where he was assisted by Neumann. Neumann purportedly received transaction-based compensation for aiding Eden to solicit investors. Although the defendants have yet to admit or deny the SEC's allegations, they have consented to the entry of judgments that include disgorgement of ill-gotten gains, injunctive relief, and civil monetary penalties.

***SEC v. Bolton Securities Corporation* (Case No. 4:19-cv-40143 D. Mass.)**

On November 4, 2019, the SEC charged a Massachusetts-based investment adviser, Bolton Securities Corp., with violating federal laws against "self-dealing" trades, racking up $325 million in unlawful transactions, and failing to disclose conflicts of interest. The complaint alleges that Bolton Securities violated the Advisers Act by not properly informing clients and getting their permission when it used an affiliated broker-dealer, Bolton Global Capital Corp., to trade over $325 million worth of fixed income securities. In addition, the SEC alleges that Bolton Securities advised clients to make investments in securities that paid "substantial amounts of fees" to Bolton Global Capital, which the agency said was under "common control" with Bolton Securities. The SEC claims that Bolton Securities failed to adequately disclose the conflict in recommending investments that would funnel fees to its affiliate and that the investment adviser's generalized disclosure did not meaningfully inform clients about the nature of the conflict of interest because it implied that those fees were routine. The SEC is seeking injunctions, disgorgement of allegedly ill-gotten gains, and civil penalties.

***SEC v. Ruless Pierre* (Case No. 19-cv-10299 S.D.N.Y.)**

On November 6, 2019, the SEC filed charges in the U.S. District Court for the Southern District of New York against Ruless Pierre, a New York investment adviser. The complaint alleged that Pierre fraudulently targeted members of the local Haitian community and convinced at least 100 people to invest in his multimillion-dollar Ponzi scheme, which operated under the name Amongst Friends Investment Group. Since at least March 2017, Pierre allegedly raised over two million dollars from predominantly Haitian New Yorkers by promising the unrealistically high rate of return of at least 20 percent every 60 days. In reality, Pierre was concealing the massive losses by using funds from new investors to pay older investors, which he substantiated by issuing false account statements indicating financial gains. Pierre contributed to this scheme by making interest payments using money he embezzled from a former employer. The complaint further alleges that dating back to November 2018, Pierre raised over $375,000 by defrauding more than 15 investors in a scheme involving partnership interests in a fast food chain. He executed agreements that falsely promised monthly returns, totaling 60 percent per year plus quarterly profit sharing. The SEC is seeking injunctions, disgorgement of allegedly ill-gotten gains, and civil penalties.

SEC v. Neil Burkholz, et al. **(Case No. 19-cv-24713 S.D. Fla.)**
On November 14, 2019, the SEC charged Neil Burkholz, Frank Bianco, and their companies, Palm Financial Management LLC and Shore Management Systems LLC, with operating a Ponzi scheme. Burkholz's and Bianco's wives were also named as relief defendants. The complaint alleges that, through their companies, the two defendants defrauded at least 55 people, mostly senior citizens and small business owners, of an alleged six million dollars. The relief requested by the SEC includes disgorgement, civil monetary penalties, and various forms of preliminary relief. The SEC's request for preliminary relief was granted, which prohibited the defendants from soliciting new investors, froze their assets, and ordered them to provide a sworn accounting of their assets.

SEC v. International Investment Group, LLC
(Case No. 19-cv-10796 S.D.N.Y.)
On November 21, 2019, the SEC filed a complaint in New York federal court charging the New York-based investment firm International Investment Group LLC ("IIG") with securities fraud for concealing losses in its flagship hedge fund by grossly overstating the value of defaulted loans and selling at least $60 million in fraudulent loan assets. IIG's registration was subsequently revoked on November 26, 2019. The complaint further alleges that IIG falsified records to indicate that defaulted loans had been repaid and that they used the repaid sums to issue new loans. The SEC contends that IIG sought to raise money to satisfy investor redemption requests and other liabilities by selling a minimum of $60 million in fake trade finance loans. IIG bolstered its scheme by providing its investors with fake documentation about non-existent loans. IIG agreed to a bifurcated settlement on November 26, 2019, enjoining it from future violations of the anti-fraud provisions of the federal securities law. The judgment also reserves potential monetary relief.

SEC v. NIT Enterprises, Inc., et al. **(19-cv-24822 S.D. Fla.)**
On November 27, 2019, the SEC obtained an asset freeze against NIT Enterprises, Inc., NIT's CEO Gary R. Smith, Jason M. Ganton, and James E. Clearly based on an investment scheme that defrauded over 100 retail investors, mostly senior citizens, of $4.9 million. The complaint charged defendants with violating the anti-fraud registration provisions of the federal securities laws and for acting as unregistered broker-dealers and violating past Commission orders. The defendants allegedly raised $4.9 million by demonstrating a false intention to raise money to develop radiation protection products for medical and military applications. The SEC contends that, in reality, Smith misappropriated one quarter of the funds, $1.25 million, for personal use. Another 25 percent of the proceeds were purportedly used to pay undisclosed commissions. NIT guaranteed its investors that it would double or triple their investments while knowingly concealing two of the defendants'—Ganton and Clearly—disciplinary histories and prior SEC actions and bars. In addition to the asset freeze, the SEC seeks injunctions, civil penalties, and disgorgement.

In the Matter of Jefferies LLC **(SEC File No.: 3-19614)**
On December 9, 2019, broker-dealer Jefferies LLC settled with the SEC in the SEC's 14th enforcement action against a bank or broker for misconduct related to American Depositary Receipts ("ADRs"). Jeffries will pay nearly four million dollars in connection with charges of improper handling of pre-released ADRs. Since ADRs require a corresponding number of foreign shares before they can be held in depositary banks, the SEC's order contended that Jeffries should have known that the ADRs it improperly borrowed were not owned by the other brokers. Without admitting or denying fault, Jeffries will disgorge over $2.2 million in ill-gotten gains and will pay over $468,000 in prejudgment interest and $1.25 million in civil penalties.

SEC v. Keith Springer, et al.
(Case No. 2:19-cv-02559 E.D. Cal.)
On December 19, 2019, the SEC charged Sacramento, California-based investment advisor firm Springer Investment Management, Inc. d/b/a Springer Financial Advisors ("SFA") and owner Keith Springer with defrauding hundreds of retail clients, most of them in or close to retirement. The SEC's complaint alleges that Springer and SFA received millions of dollars in undisclosed compensation and other benefits for recommending certain investment products while claiming that they did not have any conflicts of interest. According to the complaint, many clients learned of Springer through his radio show, *Smart Money with Keith Springer,* and Springer misled prospective clients into believing he was selected to host the show because of his industry expertise when, in reality, SFA paid to broadcast the show. The SEC's complaint further alleges that Springer went to great lengths to hide prior charges by the SEC and his disciplinary history with the New York Stock Exchange, hiring Internet search suppression consultants and instructing employees not to provide the information to prospective clients. The SEC's complaint charges Springer and SFA with violating the antifraud provisions of the federal securities laws as well as SEC rules concerning advertisements, compliance, required disclosures, SEC reporting, and recordkeeping. The SEC is seeking injunctions, disgorgement of allegedly ill-gotten gains, and civil penalties.

SEC's Annual Report from the Division of Enforcement

On November 6, 2019, the Division of Enforcement's Annual Report was released to the public, giving an overview of the Division's work during Fiscal Year ("FY") 2019. In FY 2019, the SEC brought 862 enforcement actions—526 of which were standalone actions—generating over $4.3 billion in disgorgement and penalties. Notably, the SEC was able to return an estimated $1.2 billion to injured investors. The majority of the actions concerned issues related to investment advisers, securities offerings, and issuer reporting/accounting and auditing. Other cases involved broker-dealer misconduct, insider trading, and market manipulation. The amount of standalone actions involving investment advisory issues increased significantly from FY 2018 (108) to FY 2019 (191), making investment advisory-related actions the most common type of standalone enforcement action in FY 2019. The SEC listed several noteworthy enforcement actions and initiatives, including (i) the "Share Class Selection Disclosure Initiative" in which the Division agreed to recommend standardized settlement terms for investment advisory firms that self-reported failures to disclose conflicts of interest associated with the selection of fee-paying mutual fund share classes when a lower- or no-cost share class of the same mutual fund was available; and (ii) a series of actions against a number of the world's largest financial institutions for engaging in improper conduct that undermined market integrity in connection with the "pre-release" of ADRs.

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