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Regulatory Update and Recent SEC Actions

REGULATORY UPDATES

Recent SEC Leadership Changes

The Securities and Exchange Commission (the "SEC") announced that Megan Barbero, currently SEC Principal Deputy General Counsel, will be appointed General Counsel, effective January 31, 2023. In its December 22, 2022, announcement, the SEC noted that Ms. Barbero joined the SEC in July 2021 and currently advises the SEC on complex legal issues relating to rulemaking initiatives and litigation strategy. Before joining the SEC, Ms. Barbero served as Deputy General Counsel for the U.S. House of Representatives, where she managed strategic litigation for the House. Prior to her work with the House, Ms. Barbero served as an attorney for the U.S. Department of Justice Civil Appellate staff, where she represented the United States and its agencies as lead counsel in the federal courts of appeals. Ms. Barbero previously worked in the Supreme Court and appellate litigation practice at WilmerHale.

On December 21, 2022, the SEC announced that Sarah ten Siethoff has been named Deputy Director of the Division of Investment Management. In addition to serving as Deputy Director, Ms. ten Siethoff will continue serving as the Associate Director of the Division's Rulemaking Office, a position she has held since 2018. Ms. ten Siethoff previously served as Acting Director of the Division of Investment Management. She joined the Division of Investment Management in 2008 and served in a variety of roles in its Rulemaking Office, including Deputy Associate Director and Assistant Director. Prior to joining the SEC, Ms. ten Siethoff was an associate with Cleary Gottlieb Steen & Hamilton LLP.

The SEC named Keith E. Cassidy and Natasha Vij Greiner as Deputy Directors of the Division of Examinations (the "Division") in a November 7, 2022, announcement. In addition to serving as Deputy Director, Mr. Cassidy is the National Associate Director of the Division's Technology Controls Program ("TCP") with responsibility for examinations of Regulation SCI entities and for overseeing the SEC's CyberWatch program and the Cybersecurity Program Office. Mr. Cassidy is a Major in the United States Marine Corps Reserve where he is the oncoming Executive Officer of 4th Reconnaissance Battalion. He has earned numerous awards, including a Bronze Star. Mr. Cassidy previously served as Deputy and then Director of the Commission's Office of Legislative and Intergovernmental Affairs. He also worked as Chief of Staff and Counsel at the Department of Justice's Office of Legislative Affairs. Earlier, he served as a legislative assistant in the United States Senate. In addition to serving as Deputy Director of the Division, Ms. Greiner is the National Associate Director of the Investment Adviser/Investment

Company ("IA/IC") examination program, which includes the Private Funds Unit, and is the Associate Director of the Home Office IA/IC examination program. She began her SEC career in the Division as a broker-dealer examiner and has served in a variety of roles across the agency for more than 21 years, including Acting Chief Counsel and Assistant Chief Counsel in the Division of Trading and Markets. Mr. Cassidy and Ms. Greiner will continue to serve in their current leadership roles within the TCP and IA/IC examination program, respectively, in addition to their new responsibilities as Deputy Directors.

Amanda Fischer has been appointed Chief of Staff, effective December 31, 2022. In its November 7, 2022, announcement, the SEC noted that Ms. Fischer has served as Senior Counselor to Chair Gensler since June 2021. She was one of Chair Gensler's principal advisers, with a focus on rulemaking and interagency work. Immediately before joining the SEC, Ms. Fischer was the Policy Director at the Washington Center for Equitable Growth, a non-partisan research organization focused on economic policy. Earlier in her career, she worked for more than a decade on Capitol Hill in roles related to financial services policymaking, including as Chief of Staff for Congresswoman Katie Porter; Professional Staff on the Senate Committee on Banking, Housing and Urban Affairs; Policy Advisor for Sen. Catherine Cortez Masto; and Deputy Staff Director for the House Committee on Financial Services.

SEC Releases Rulemaking Agenda for 2023

The Office of Information and Regulatory Affairs released the Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions, which provides public notice and disclosure about proposed regulatory and deregulatory actions within the Executive Branch. The release includes the SEC's rulemaking agenda and indicates whether the rules are in the proposed stages or the final stages. The SEC agenda includes:

Proposed rules

- Corporate board diversity disclosures (to enhance registrant disclosures about the diversity of board members and nominees)
- Amendments to the custody rules for investment advisers
- Changes to requirements relating to open-end fund liquidity and dilution management
- Changes to regulatory requirements relating to registered investment companies' fees and fee disclosure
- Investment advisers' use of predictive data analytics, differential marketing, and behavioral prompts
- Investment advisers' oversight of third-party service providers
- Cybersecurity

Final rules

- Requirements for excluding shareholder proposals under Rule 14a-8 of the Securities Exchange Act of 1934 (the "Exchange Act") (amendments to the substantial implementation exclusion, the duplication exclusion, and the resubmission exclusion)
- Share repurchase disclosure modernization (see "SEC Reopens Comment Period for Proposed Rule on Share Repurchase Disclosure Modernization" below)
- Enhanced reporting of proxy votes by registered management investment companies and reporting on executive compensation votes by institutional investment managers
- Amendments to Rule 35d-1 of the Investment Company Act of 1940 (the "Investment Company Act") (the "Names Rule") and amendments to prospectus disclosure requirements for terminology used in fund names
- Amendments requiring enhanced disclosure regarding environmental, social, and governance ("ESG") investment practices

"I support this agenda as it reflects the need to modernize our rule set, moving deliberately to update our rules in light of ever-changing technologies and business models in the securities markets," SEC Chairman Gary Gensler said in a statement. "Our ability to meet our mission depends on having an up-to-date rulebook—consistent with our mandate from Congress, guided by economic analysis and shaped by public input."

SEC Proposes Regulation Best Execution

On December 14, 2022, the SEC announced a set of proposed rules known as Regulation Best Execution, which would establish a best execution regulatory framework for brokers, dealers, government securities brokers, government securities dealers, and municipal securities dealers. The duty of best execution requires a broker-dealer to execute customers' trades at the most favorable terms reasonably

available under the circumstances. While a best execution rule was first established in 1968 by the National Association of Securities Dealers, Inc. (the predecessor to the Financial Industry Regulatory Authority, Inc.("FINRA")), if adopted, the proposed rules would create the first SEC-established rule concerning best execution. Regulation Best Execution requires a broker-dealer to use reasonable diligence to ascertain the best market for the security, and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Regulation Best Execution is consistent with the FINRA and Municipal Securities Rulemaking Board ("MSRB") best execution rules in many respects and, in some respects, goes beyond those rules by imposing additional and/or more specific requirements. For example, unlike the MSRB best execution rule, the proposed Regulation Best Execution does not exempt municipal fund securities or transactions with sophisticated municipal market participants. Broker-dealers would be required to comply with proposed Regulation Best Execution, in addition to their existing obligations to comply with the FINRA and MSRB best execution rules, as applicable. Regulation Best Execution would also require broker-dealers' best execution policies and procedures to address additional considerations with respect to "conflicted transactions" with retail customers, including specific documentation requirements. Under the proposed rules, broker-dealers would be required to review their best execution policies and procedures at least annually, document such reviews, and present written reports detailing the results of such reviews to their boards of directors or equivalent governing bodies. Broker-dealers that qualify as "introducing brokers" would be exempt from many of the operative provisions of the proposed rules so long as they meet certain requirements. The public comment period will remain open until March 31, 2023, or until 60 days after the date of publication of the proposing release in the Federal Register, whichever is later.

SEC Adopts Amendments to Modernize Rule 10b5-1 Insider Trading Plans and Related Disclosures

The SEC adopted amendments to Rule 10b5-1 under the Exchange Act which provide affirmative defenses to insider trading liability under Section 10(b) and Rule 10b-5 under the Exchange Act. The amendments update the conditions that must be met to satisfy the affirmative defenses provision provided in Rule 10b5-1(c). The amendments restrict the use of multiple overlapping trading plans, require cooling-off periods for persons other than issuers before trading can commence under a Rule 10b5-1 plan, and add a condition that all persons entering into a Rule 10b5-1 plan must act in good faith with respect to the plan. In addition, the amendments require the inclusion of certain representations and certifications in plans at the time of their adoption. The amendments also require more comprehensive disclosure about issuers' policies and procedures related to insider trading, including quarterly disclosure by issuers regarding the use of Rule 10b5-1 plans and certain other trading arrangements by its directors and officers for the trading of its securities. The rules will require that issuers report on a new table any option awards beginning four business days before the filing of a periodic report or the filing or furnishing of a current report on Form 8-K that discloses material nonpublic information, including earnings information (other than a Form 8-K that discloses a material new option award grant under Item 5.02(e)), and ending one business day after a triggering event. Insiders that report on Forms 4 or 5 will be required to indicate by checkbox that a reported transaction was intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) and to disclose the date of adoption of the trading plan. Finally, bona fide gifts of securities that were previously permitted to be reported on Form 5 will be required to be reported on Form 4. The final rules will become effective 60 days following publication of the adopting release in the Federal Register. Section 16 reporting persons will be required to comply with the amendments to Forms 4 and 5 for beneficial ownership reports filed on or after April 1, 2023. Issuers will be required to comply with the new disclosure requirements in Exchange Act periodic reports on Forms 10-Q, 10-K, and 20-F and in any proxy or information statements in the first filing that covers the first full fiscal period that begins on or after April 1, 2023. The final amendments defer by six months the date of compliance with the additional disclosure requirements for smaller reporting companies.

SEC Files Response Brief in Ongoing Spot Bitcoin ETF Lawsuit

The SEC recently filed its response to a petition for review by Grayscale Investments, LLC ("Grayscale"), sponsor of Grayscale Bitcoin Trust (the "Trust"), which challenged the SEC's decision to disapprove a proposed rule change to list and trade shares of the Trust as an exchange-traded product ("ETP") on NYSE Arca. In the December 9, 2022, response brief filed with the United States Court of Appeals for the District of Columbia Circuit, the SEC argued its disapproval was "reasonable, reasonably explained, supported by substantial evidence." The brief was filed in response to the October 11, 2022, opening brief filed by Grayscale in

its petition for review of the SEC's June 29, 2022, order disapproving the proposed rule change. In that order, the SEC stated that NYSE Arca did not meet its burden under the Exchange Act and the SEC's Rules of Practice to demonstrate that its proposed rule is consistent with the requirements of Exchange Act section 6(b)(5), which requires, in relevant part, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices" and "to protect investors and the public interest." In its October 2022 brief, Grayscale argued among other things, that, in disapproving the proposed rule change, the SEC arbitrarily treats a proposed spot bitcoin ETP differently than it treats similarly situated bitcoin futures ETPs. Grayscale has received support of other market participants who have submitted amicus briefs with the Court, including The Chamber of Commerce of the United States of America, The Blockchain Association (joined by crypto trade associations, think tanks, and advocacy groups), Investors Choice Advocacy Network (joined by economic and law professors, and former SEC, CFTC, and OCC officials), Coinbase, Inc., and NYSE Arca.

SEC Reopens Comment Period for Proposed Rule on Share Repurchase Disclosure Modernization

The SEC reopened the comment period on proposed amendments intended to modernize and improve the disclosure required about an issuer's repurchases of its equity securities (often referred to as "buybacks"). The proposed amendments require an issuer of securities registered under the Exchange Act (including exchange-listed closed-end funds) to provide more timely disclosure on a new Form SR regarding purchases of its equity securities for each day that it, or an affiliated purchaser, makes a share repurchase. The proposed amendments would also enhance the existing periodic disclosure requirements regarding these purchases. The comment period was reopened on December 7, 2022, as a result of the enactment of the Inflation Reduction Act of 2022, which imposes upon publicly traded corporations a non-deductible excise tax equal to one percent of the fair market value of any stock of the corporation repurchased by such corporation during the taxable year. Certain transactions are exempt from the excise tax, including repurchases made by regulated investment companies. The SEC staff prepared a memorandum that discusses potential economic effects of the new excise tax that may be helpful in evaluating the proposed amendments. The amendments were initially proposed by the SEC in December 2021, and the comment period for the proposal was reopened in October 2022. The staff memorandum is available for review as part of the public comment file. The public comment period will remain open for 30 days after publication in the Federal Register.

Observations from Broker-Dealer and Investment Adviser Compliance Examinations Related to Prevention of Identity Theft under Regulation S-ID

The Division of Examinations (the "Division") published a Risk Alert to highlight observations from recent examinations of SEC-registered investment advisers (the "advisers") and broker-dealers (together with advisers, "firms") related to compliance with Regulation S-ID. The Division issued the Risk Alert on December 5, 2022, to assist firms with implementing effective policies and procedures under Regulation S-ID, which requires the development and implementation of an identity theft prevention program (the "Program") for firms that offer or maintain covered accounts. The Risk Alert discussed the requirements of Regulation S-ID and identified practices that are inconsistent with the objectives of Regulation S-ID, noting the following as the most frequently observed compliance issues:

- failure to identify covered accounts, including failure to conduct initial and periodic assessments to identify whether accounts are "covered accounts" and failure to conduct risk assessments;
- failure to establish Programs that (i) are tailored to the business and are not generic, and (ii) cover all required elements of Regulation S-ID;
- inadequacy of required elements of the Program, including periodically updating the Program to reflect risks to customers and the firm, and identifying, detecting, and responding to red flags that are relevant to identity theft; and
- failure to administer the Program, including providing insufficient information to the board or designated senior management, inadequate training, and failure to evaluate controls of service providers.

The Division encouraged firms to review their practices, policies, and procedures with respect to their identity theft programs and to consider whether any improvements are necessary.

SEC Publishes Final FY22-26 Strategic Plan

The SEC released its final Strategic Plan for fiscal years 2022 to 2026. Announced on November 23, 2022, the SEC's new Strategic Plan establishes three primary goals: (i) protect the investing public against fraud, manipulation, and misconduct; (ii) develop and implement a robust regulatory framework that keeps pace with evolving markets, business models, and technologies; and (iii) support a skilled workforce that is diverse, equitable, and inclusive and is fully equipped to advance agency objectives. The Strategic Plan highlighted various areas of focus by the SEC, including:

- examinations program focus on uncovering key risks and violations that could impact individual investors, from cybersecurity to private fund adviser conflicts of interest;
- modernizing design, delivery, and content of disclosures for investors, including in particular retail investors, to provide access to consistent, comparable, and material information to make informed investment decisions;
- developing specific regulations to ensure investors remain informed and protected via broad-based disclosure frameworks;
- investor education and outreach for diverse and underserved communities and emerging and popular investment topics; and
- enhancing product markets beyond equities—including crypto assets, derivatives, and fixed income—and maintaining a nimble and flexible approach to address market changes expeditiously.

"Our capital markets touch all Americans' lives, whether they're saving for the future, borrowing for a mortgage, taking out an auto loan, or working for a company that raises money from the public," said SEC Chair Gary Gensler. "That's why it is critical that the SEC continue to evolve and modernize our rulesets as technology, business models, and our markets change. Our Strategic Plan will help guide these efforts and advance our work to protect American families, keep pace with ever-changing times, and invest in our talented staff."

The U.S. Department of Labor Issues Final Regulations Allowing ERISA Fiduciaries to Consider ESG Factors in Selecting Investments and Exercising Shareholder Rights

The U.S. Department of Labor ("DOL") issued its final regulations relating to the prudence and loyalty duties under the fiduciary rules of the Employee Retirement Income Security Act of 1974 ("ERISA"), including the consideration of ESG factors in investment decisions, and to the voting of proxies for accounts subject to ERISA. The DOL during the Biden administration originally issued the proposed regulations (the "Proposal") in October 2021 in response to its concern that final regulations adopted during the Trump administration (the "2020 rules") created uncertainty for ERISA fiduciaries considering climate change and other ESG factors when making investment decisions. The final regulations, released on November 22, 2022, amended the 2020 rules to clarify that ESG factors may be relevant to a fiduciary's investment decisions. According to the DOL, the final regulations are intended to clarify the application of ERISA's fiduciary duties of prudence and loyalty when: (1) selecting investments and investment courses of action, and (2) exercising shareholder rights, including the use of written proxy-voting policies and guidelines when engaging in proxy voting. The final regulations essentially restore the investment duty regulations for fiduciaries to its status prior to the adoption of the 2020 rules. The final regulations reaffirm two core principles for investment fiduciaries: (i) a fiduciary may not: (a) subordinate the interest of the participants and beneficiaries in their retirement benefits under a plan to other objectives, or (b) sacrifice investment return or take on additional investment risk to promote benefits or goals unrelated to interests of the participants and beneficiaries in their retirement benefits; and (ii) the fiduciary duty of managing plan assets that are stock includes the management of shareholder rights related to the shares, including the right to vote proxies. However, an important change adopted in the final regulations are the addition of regulatory text clarifying that a fiduciary's duty of prudence must be based on factors that the fiduciary reasonably determines are relevant to a risk-and-return analysis and that such factors may include the economic effects of climate change and other ESG considerations on the particular investment or investment course of action. In addition, the DOL removed proxy-voting-related written documentation requirements and safe harbor provisions contained in the 2020 rules. The eliminated safe harbors had allowed voting policies to be limited to certain types of proposals or to refrain from voting on certain proposals. Under the final regulations, a fiduciary may adopt proxy-voting policies providing the authority to vote a proxy pursuant to specific parameters prudently designed to serve the plan's interests in affording benefits to participants and their beneficiaries and covering reasonable expenses of administering the plan. It is under a fiduciary's discretion that they may choose to vote, or not vote, a proxy on a case-by-case basis if, in that case, the fiduciary determines its actions are prudent considering the significance of

the matter and the costs involved. The final regulations will take effect January 30, 2023, with the provisions related to proxy voting effective December 1, 2023.

SEC Announces Enforcement Results for FY22

The SEC announced that it filed 760 total enforcement actions in fiscal year 2022, a nine percent increase over the prior year. These included 462 new, or "stand alone," enforcement actions, a six and a half percent increase over fiscal year 2021; 129 actions against issuers who were allegedly delinquent in making required filings with the SEC; and 169 "follow-on" administrative proceedings seeking to bar or suspend individuals from certain functions in the securities markets based on criminal convictions, civil injunctions, or other orders. Per the November 15, 2022, announcement, the SEC's stand-alone enforcement actions in fiscal year 2022 ran the "gamut of conduct," from "first-of-their-kind" actions to cases charging traditional securities law violations. The SEC also highlighted its actions against gatekeepers that include auditors, lawyers, and transfer agents, and cases involving the crypto asset securities space, ESG, special purpose acquisition companies, private funds, and other recent high-profile matters. Money ordered to be paid in SEC actions, comprising civil penalties, disgorgement, and pre-judgment interest, totaled $6.439 billion, the most on record in SEC history and up from $3.852 billion in fiscal year 2021. Of the total money ordered to be paid, civil penalties, at $4.194 billion, were also the highest on record. This included $1.235 billion in aggregate penalties paid by 17 firms in connection with SEC actions against them for widespread and longstanding failures to maintain and preserve work-related text message communications and more than one billion dollars paid by an investment advisory firm in connection with an alleged massive fraudulent scheme that concealed the immense downside risks of a complex options trading strategy. Disgorgement, at $2.245 billion, decreased by six percent from fiscal year 2021. Fiscal year 2022 was the SEC's second highest year ever in whistleblower awards, in terms of both the number of individuals awarded and the total dollar amounts awarded.

"I continue to be impressed with our Division of Enforcement. These numbers, though, tell only part of the story," said SEC Chair Gary Gensler. "Enforcement results change from year to year. What stays the same is the staff's commitment to follow the facts wherever they lead."

SEC Adopts Rules to Enhance Proxy Voting Disclosure by Registered Investment Funds and Require Disclosure of "Say-on-Pay" Votes for Institutional Investment Managers

The SEC adopted amendments to Form N-PX to enhance the information mutual funds, exchange-traded funds ("ETFs") and certain other registered funds report about their proxy votes. The amendments, adopted on November 2, 2022, require funds and managers to categorize each matter by type and, where a form of proxy or "proxy card" subject to the SEC's proxy rules is available, to tie the description and order of voting matters to the issuer's form of proxy to help investors identify votes of interest and compare voting records. The amendments also prescribe how funds and managers must organize their reports and require them to use a structured data language to make the filings easier to analyze. Funds and managers are also required to disclose the number of shares that were voted or instructed to be voted, as well as the number of shares loaned and not recalled and thus not voted. The SEC indicates that this latter requirement is designed to provide shareholders with context to understand how securities lending activities could affect a fund's or manager's proxy-voting practices. The amendments also require institutional investment managers to disclose how they voted on executive compensation, or so-called "say-on-pay" matters, which fulfills one of the remaining rulemaking mandates under the Dodd-Frank Wall Street Reform and Consumer Protection Act. The new rules and form amendments will be effective for votes occurring on or after July 1, 2023, with the first filings subject to the amendments due in 2024.

SEC Proposes Amendments to Open-End Fund Liquidity Risk Management Programs and Swing Pricing

The SEC voted to propose amendments to its current rules for open-end management investment companies ("open-end funds") regarding liquidity risk management programs and swing pricing. The proposed amendments would amend Rule 22e-4 under the Investment Company Act (the "Liquidity Rule"), Rule 22c-1 under the Investment Company Act ("Swing Pricing Rule"), and certain reporting and disclosure forms under the Investment Company Act. The Liquidity Rule currently requires a fund to classify each portfolio investment (based on the number of days within which it reasonably expects the investment would be convertible to cash, sold, or disposed of without significantly changing its market value) into one of four liquidity classifications: highly liquid, moderately liquid, less liquid, and illiquid.

Per the SEC, the proposed amendments to the Liquidity Rule, released on November 2, 2022, are designed to help better prepare open-end funds for stressed conditions and prevent funds from over-estimating the liquidity of their investments. The proposed amendments revise the standards for making liquidity determinations, amend certain aspects of the liquidity categories, and require more frequent liquidity classifications. Among other things, the proposed amendments:

- provide objective minimum standards that funds would be required to use when classifying investments, including: (1) requiring funds to assume the sale of a set stressed trade size, rather than the rule's current approach of assuming the sale of a reasonably anticipated trade size in current market conditions; and (2) establishing a minimum value impact standard that defines with more specificity what constitutes a significant change in market value;
- remove classification by asset class;
- eliminate the "less liquid" investment category, reducing the number of liquidity categories from four to three, and expanding the scope of the "illiquid" investment category, as investments currently classified as "less liquid" will be classified as "illiquid," absent changes to shorten the settlement time of those investments;
- require daily classifications rather than the current requirement of at least monthly; and
- all funds to determine and maintain a minimum amount of highly liquid assets of at least ten percent of net assets.

The SEC also proposed amendments to the Swing Pricing Rule. The SEC stated that the proposed amendments would "mitigate dilution of shareholders' interests in a fund by requiring any open-end fund to use swing pricing" under certain conditions. These amendments would require open-end funds to use a liquidity management tool called "swing pricing," which is a method to allocate costs stemming from inflows or outflows to the investors engaged in that activity, rather than diluting other shareholders. The proposal would also require a "hard close" for funds that are required to implement swing pricing. The release also include request for comments about alternative liquidity management tools, such as the use of liquidity fees. The SEC would also require funds to file portfolio and other information on Form N-PORT on a monthly basis within 30 days of each month-end, with the report becoming public after 30 additional days (currently, funds are required file these reports on a quarterly basis with a 60-day delay, and the public only has access to information for the third month of each quarter). The amended N-PORT filing requirements would apply to all registrants that report on Form N-PORT, including most open-end funds and registered closed-end funds, with certain exceptions. The proposed amendments to the liquidity management program and certain reporting requirements would affect open-end funds and the proposed Swing Pricing Rules and related reporting requirements would apply to open-end funds (other than ETFs) that are not feeder funds. The comment period for the proposed amendments will remain open for 60 days after publication in the Federal Register.

SEC Proposes New Oversight Requirements for Certain Services Outsourced by Investment Advisers

The SEC proposed a new rule and rule amendments under the Investment Advisers Act of 1940 (the "Advisers Act") to prohibit registered investment advisers ("advisers") from outsourcing certain services and functions without conducting due diligence and monitoring of the service providers. The proposed rule, announced on October 26, 2022, would:

(i) require advisers to satisfy specific due diligence elements before retaining a service provider that will perform certain advisory services or functions, and to subsequently carry out periodic monitoring of the service provider's performance;

(ii) apply to advisers that outsource certain "covered functions." which include those services or functions that are necessary for providing advisory services in compliance with the federal securities laws (such as creating and providing custom indexes, or providing portfolio management or trading services or software) and that if not performed or performed negligently would result in material negative impact to clients;

(iii) require advisers to conduct due diligence and monitoring for all third-party recordkeepers and obtain reasonable assurances that the recordkeepers will meet certain standards; and

(iv) require advisers to maintain books and records related to the new rule's oversight obligations and to report census-type information about the service providers covered under the rule.

Under the proposed rule, an adviser will be required to obtain reasonable assurance from a service provider that it is able to, and will, coordinate with the adviser for purposes

of the adviser's compliance with the Federal securities laws, as applicable to the covered function. The SEC noted in its release that this proposed requirement would alert the service provider to those responsibilities and obtaining reasonable assurances would help the adviser ensure that it can continue to meet its compliance obligations despite outsourcing those functions. In addition, the proposed rule would require an adviser to identify the potential risks to clients, or to the adviser's ability to perform its advisory services, resulting from outsourcing a covered function. The public comment period will remain open for 60 days after the date of issuance and publication on SEC.gov or 30 days after the date of publication in the Federal Register, whichever period is longer.

SEC Adopts Amendments to Modernize Fund Shareholder Reports and Promote Transparent Fee- and Expense-Related Information in Fund Advertisements

On October 26, 2022, the SEC voted to adopt final rule and form amendments to require mutual funds and ETFs registered on Form N-1A to transmit concise and visually engaging shareholder reports and to promote transparent and balanced presentations of fees and expenses in investment company advertisements. The proposed rule and form amendments were originally released in August 2020. In the final rule adopting release, the SEC indicated it did not take action on several aspects of the 2020 proposal including: (1) a proposed new rule 498B, which would have provided a new alternative approach to satisfy prospectus delivery requirements for existing fund investors; and (2) proposed amendments to funds' prospectus fee and risk disclosure. The final amendments require funds to provide concise, tailored shareholder reports that highlight key information, such as fund expenses, performance, and portfolio holdings. The instructions for the revamped reports encourage the use of graphic and text features to make them more effective. Funds are required to tag the information in their reports in a structured data format. Further, the amendments require funds to make certain in-depth information available online and available for delivery free of charge to investors on request. Such information will no longer appear in funds' shareholder reports, but will remain available to investors on a website identified in the shareholder report, and must be filed semiannually with the SEC. The SEC also adopted amendments to exclude open-end funds from the scope of Rule 30e-3 of the Investment Company Act, which generally permits registered investment companies to satisfy shareholder report transmission requirements by making such reports and other materials available online and providing a notice of the reports' online availability, instead of directly providing the reports to shareholders. The SEC indicated that the amendments excluding open-end funds from Rule 30e-3 are intended to help ensure that all open-end fund investors will experience the benefits of the new tailored shareholder reports. In addition, the SEC has also adopted amendments to investment company advertising rules to require that fee and expense presentations in registered investment company and business development company advertisements and sales literature be consistent with relevant prospectus fee table presentations and be reasonably current. In addition, Rule 156 of the Securities Act of 1933 (the "Securities Act") has been amended to provide that representations about fees or expenses associated with an investment in a fund could be misleading because of statements or omissions involving a material fact, including situations where portrayals of the fees and expenses associated with an investment in the fund omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading. The SEC noted in the adopting release that the amendments to the investment company advertising rules are designed to address, among other things, concerns about funds that market themselves as "zero expense" or "no expense funds" without mentioning other costs investors would incur when investing in the fund. The amendments will become effective 60 days after publication in the Federal Register. The SEC has provided an 18-month transition period after the effective date of the amendments to allow mutual funds and ETFs adequate time to adjust their shareholder report and transmission practices. The SEC has also provided an 18-month transition period after the effective date to comply with the final amendments to the advertising rules. The rule amendments that address representations of fees and expenses that could be materially misleading will apply on the effective date.

SEC Adopts Compensation Recovery Listing Standards and Disclosure Rules

The SEC adopted rules ("Final Rules") to require securities exchanges to adopt listing standards that require issuers to develop and implement a policy providing for the recovery of erroneously awarded incentive-based compensation received by current or former executive officers. The Final Rules, adopted on October 26, 2022, require a listed issuer to file the policy as an exhibit to its annual report and to include disclosures related to its recovery policy and recovery analysis where a recovery is triggered. The SEC proposed

compensation recovery rules in 2015 and reopened the comment period on the proposal in October 2021, and again in June 2022. The Final Rules implement Section 10D of the Exchange Act, a provision added by the Dodd-Frank Wall Street Reform and Consumer Protection Act, which directs national securities exchanges and associations to establish listing standards that require a listed issuer to: (i) adopt and comply with a written policy for recovery of erroneously awarded incentive-based compensation received by its current or former executive officers in the event it is required to prepare an accounting restatement due to its material noncompliance with any financial reporting requirement under the securities laws, during the three completed fiscal years immediately preceding the date that the issuer is required to prepare an accounting restatement; and (ii) disclose those compensation recovery policies in accordance with SEC rules, including providing the information in tagged data format. Further the Final Rules require specific disclosure of the listed issuer's policy on recovery of incentive-based compensation and information about actions taken pursuant to such recovery policy. The Final Rules also require all listed issuers to: (i) file their written recovery policies as exhibits to their annual reports; (ii) indicate by check boxes on their annual reports whether the financial statements included in the filings reflect correction of an error to previously issued financial statements and whether any of those error corrections are restatements that required a recovery analysis; and (iii) disclose any actions they have taken pursuant to such recovery policies. The Final Rules will become effective 60 days following publication of the adopting release in the Federal Register. Exchanges will be required to file proposed listing standards no later than 90 days following publication of the release in the Federal Register, and the listing standards must be effective no later than one year following such publication. Issuers subject to such listing standards will be required to adopt a recovery policy no later than 60 days following the date on which the applicable listing standards become effective.

Schwab Asset Management™ Announces New Proxy Polling Solution

Schwab Asset Management ("Schwab"), the asset management arm of The Charles Schwab Corporation, announced in a press release issued on October 13, 2022, that it will pilot a new proxy polling solution with global fintech firm Broadridge Financial Solutions, Inc., in an effort to gather general preferences across a large base of shareholders. According to the press release, Schwab will poll shareholders of three of its funds (one mutual fund and two ETFs) to understand their key preferences regarding important proxy issues. Investors in the funds will complete a survey that will provide insights into their priorities on a range of core proxy issues concerning maximizing long-term shareholder value, company policies, corporate governance practices, and environmental and social issues. Shareholders will not be surveyed on specific proxy ballots, according to Schwab.

SEC Adopts Rule Amendments to Modernize How Broker-Dealers Preserve Electronic Records and Enhance the Electronic Recordkeeping Requirements for Security-Based Swap Entities

The SEC voted to adopt amendments to the electronic recordkeeping, prompt production of records, and third-party recordkeeping service requirements applicable to broker-dealers, security-based swap dealers ("SBSDs"), and major security-based swap participants ("MSBSPs"). The amendments to Rules 17a-4 and 18a-6 of the Exchange Act, adopted on October 12, 2022, are designed to modernize recordkeeping requirements given technological changes over the last two decades and to make the rule adaptable to new technologies in electronic recordkeeping. The amendments will also facilitate examinations of broker-dealers, SBSDs, and MSBSPs. The SEC's broker-dealer electronic recordkeeping rule currently requires firms to preserve electronic records exclusively in a non-rewriteable, non-erasable format, known as the "write once, read many" format. The amendments add an audit-trail alternative under which electronic records can be preserved in a manner that permits the recreation of an original record if it is altered, overwritten, or erased. The audit-trail alternative is designed to provide broker-dealers with greater flexibility in configuring their electronic recordkeeping systems to more closely align with current electronic recordkeeping practices while also protecting the authenticity and reliability of original records. The amendments apply the same requirements to nonbank SBSDs and MSBSPs. Among other things, the amendments also require broker-dealers and all types of SBSDs and MSBSPs to produce electronic records to securities regulators in a reasonably usable electronic format. The amendments also require a third party who prepares or maintains the regulatory records of a broker-dealer or security-based swap entity to file a written undertaking with the SEC. The final amendments will become effective 60 days after publication in the Federal Register. The compliance dates for the new

requirements will be six months after publication in the Federal Register in the case of broker-dealers and 12 months after publication in the Federal Register in the case of SBSDs and MSBSPs.

SEC Issues FAQ Relating to Investment Adviser Considerations of DEI Factors

The SEC issued an FAQ announcing that an investment adviser ("adviser") that recommends other investment advisers to, or selects other advisers for, its clients, may, under its fiduciary duty, consider diversity, equity, and inclusion ("DEI") factors provided that the use of such factors is consistent with a client's objectives, the scope of the relationship, and the adviser's disclosures. The FAQ was issued in response to the 2021 Asset Management Advisory Committee's ("AMAC") report and recommendations to the SEC on diversity and inclusion, addressing the "well-known and widely acknowledged" lack of gender and racial diversity in the asset management industry. In the October 12, 2022, FAQ, the SEC also stated that an adviser's fiduciary duty does not mandate restricting such a recommendation or selection to advisers with certain specified characteristics, such as a minimum amount of assets under management or a minimum length of track record.

Examinations Focused on the New Investment Adviser Marketing Rule

The Division of Examinations recently published a Risk Alert on September 19, 2022, to inform SEC-registered investment advisers ("advisers") about the review areas of focus with respect to amended Rule 206(4)-1 under the Advisers Act, known as the "Marketing Rule." The Marketing Rule, which had a compliance date of November 4, 2022, was adopted by the SEC in December 2020 to modernize rules that govern investment adviser advertisements and payments to solicitors, creating a single rule that replaced the previous advertising and cash solicitation rules. In the Risk Alert, advisers were directed to consider whether they need to update or revise their written policies and procedures, as required by the Advisers Act Rule 206(4)-7, to ensure they are reasonably designed to prevent violations of the Marketing Rule. The Risk indicated that SEC staff will conduct a number of specific national initiatives, as well as a broad review through the examination process, for compliance with the Marketing Rule that will focus on areas including marketing rule policies and procedures; substantiation requirement; performance advertising requirements; and books and records.

SEC ENFORCEMENT ACTIONS

SEC Charges Financial Services Professional and Associate in $47 Million Front-Running Scheme

The SEC announced fraud charges against Lawrence Billimek, an employee of a major asset management firm with securities portfolios worth billions of dollars, and Alan Williams, who previously worked at several financial industry firms, for perpetrating a multiyear front-running scheme that generated at least $47 million in illegal trading profits. The SEC's complaint, issued on December 14, 2022, and filed in federal district court in Manhattan, alleged that, since at least September 2016, Billimek would inform Williams of the asset management firm's market-moving trades prior to their execution. As the complaint alleges, on the same day, Williams would trade in the same securities prior to Billimek's employer or while multiple large orders were being placed by the employer. Williams would close his positions after the price of the security moved as expected. This alleged front-running scheme resulted in proceeds of more than $47 million. The SEC staff analyzed trading using the Consolidated Audit Trail ("CAT") database to uncover Williams' allegedly fraudulent trading and to identify how he profited by repeatedly front-running large trades by Billimek's employer. In a parallel action, the U.S. Attorney's Office for the Southern District of New York, on the same day the SEC's complaint was issued, announced criminal charges against Billimek and Williams. The SEC's complaint charged Billimek and Williams with violating the antifraud provisions of the federal securities laws and sought disgorgement of ill-gotten gains plus interest, penalties, and injunctive relief.

SEC Charges Four Individuals in Crypto Pyramid Scheme that Targeted Spanish-Speaking Communities

The SEC charged Francisley Valdevino Da Silva, Juan Antonio Tacuri Fajardo, Ramon Antonio Perez Arias, and Jose Ramiro Coronado Reyes for their roles in creating and promoting Forcount Trader Systems, Inc., a fraudulent crypto asset pyramid scheme that raised more than $8.4 million from hundreds of retail investors primarily from Spanish-speaking communities throughout the United States and other countries. According to the SEC's December 14, 2022, complaint, from approximately July 2017 to November 2020, Brazilian national Da Silva and U.S.-based promoters Tacuri, Perez, and Coronado enticed and defrauded investors out of millions of dollars with the promise of guaranteed returns resulting from investments in "memberships" in Forcount Trader Systems.

These memberships purportedly gave investors an interest in profits from Forcount's supposed crypto asset trading and mining operations. Investors could also participate in Forcount's referral program, which, as the complaint alleged, incentivized recruiting new victims. The complaint alleged that the defendants knew or were reckless in not knowing that Forcount had no crypto asset trading and mining operations and that the only way the scheme could continue was by increasing the investor base. The defendants allegedly accelerated Forcount's inevitable collapse by misappropriating investor funds to buy themselves homes, cars, and luxury goods. The SEC's complaint, filed in federal district court in the Southern District of New York, charged the defendants with violating the antifraud and registration provisions of the federal securities laws. The complaint sought permanent injunctive relief, conduct-based injunctions preventing the defendants from participating in multilevel marketing or crypto asset offerings, disgorgement of ill-gotten gains and prejudgment interest, civil penalties, and officer-and-director bars. In a parallel action, the U.S. Attorney's Office for the Southern District of New York, on the same day the SEC's complaint was issued, announced criminal charges against Da Silva and Tacuri.

SEC Charges a CEO and Co-Founder with Defrauding Investors in Crypto Asset Trading Platform

On December 13, 2022, the SEC charged a defendant with orchestrating a scheme to defraud equity investors in an Antigua- and Barbuda-based limited corporation (the "Company"), the crypto trading platform of which the defendant was the CEO and co-founder. Investigations as to other securities law violations and into other entities and persons relating to the alleged misconduct are ongoing. According to the SEC's complaint, since at least May 2019, the Company, based in The Bahamas, raised more than $1.8 billion from equity investors, including approximately $1.1 billion from approximately 90 U.S.-based investors. In his representations to investors, the defendant promoted the Company as a safe, responsible crypto asset trading platform, specifically touting the Company's sophisticated, automated risk measures to protect customer assets. The complaint alleged that, in reality, the defendant orchestrated a years-long fraud to conceal from the Company's investors (1) the undisclosed diversion of the Company customers' funds to a quantitative trading firm specializing in crypto assets (a "crypto hedge fund"), defendant's privately-held crypto hedge fund; (2) the undisclosed special treatment afforded to the crypto hedge fund on the Company platform, including providing the crypto hedge fund with a virtually unlimited "line of credit" funded by the platform's customers and exempting the crypto hedge fund from certain key Company risk mitigation measures; and (3) undisclosed risk stemming from the Company's exposure to the crypto hedge fund's significant holdings of overvalued, illiquid assets such as Company-affiliated tokens. The complaint further alleged that the defendant used commingled Company customers' funds at the crypto hedge fund to make undisclosed venture investments, lavish real estate purchases, and large political donations. The SEC's complaint charged the defendant with violating the antifraud provisions of the Securities Act and the Exchange Act. The SEC's complaint sought injunctions against future securities law violations; an injunction that prohibits the defendant from participating in the issuance, purchase, offer, or sale of any securities, except for his own personal account; disgorgement of his ill-gotten gains; a civil penalty; and an officer and director bar. In parallel actions, the U.S. Attorney's Office for the Southern District of New York and the Commodity Futures Trading Commission ("CFTC"), on the same day as the SEC's complaint was issued, announced charges against the defendant.

Relatedly, on December 21, 2022, the SEC charged two former Company officers for their roles in the multiyear scheme to defraud equity investors in the Company. Those officers are cooperating with the SEC's ongoing investigation and have consented to bifurcated settlements that are subject to court approvals.

SEC Charges a Bank with Fraud for Misleading Investors about Its Anti-Money Laundering Compliance Failures in Estonia

The SEC announced fraud charges against a multinational financial services corporation headquartered in Denmark (the "Bank"), for misleading investors about its anti-money laundering ("AML") compliance program in its Estonian branch and failing to disclose the risks posed by the program's significant deficiencies. The Bank agreed to pay $413 million to settle the SEC's charges. According to the SEC's complaint, issued on December 13, 2022, when the Bank acquired its Estonian branch in 2007, it knew or should have known that a substantial portion of the branch's customers were engaging in transactions that had a high risk of

involving money laundering; that its internal risk management procedures were inadequate to prevent such activity; and that its AML and Know-Your-Customer procedures were not being followed and did not comply with applicable laws and rules. The SEC alleged that, from 2009 to 2016, these high-risk customers, none of whom were residents of Estonia, utilized the Bank's services to transact billions of dollars in suspicious transactions through the United States and other countries, generating as much as 99 percent of the Estonian branch's profits. The complaint further alleged that, although the Bank knew of these high-risk transactions, it made materially misleading statements and omissions in its publicly available reports, stating that it complied with its AML obligations and that it had effectively managed its AML risks. As the full extent of the Bank's AML failures became apparent, its share price dropped precipitously. The SEC's complaint charged the Bank with violating the antifraud provisions of the Exchange Act. The Bank offered to settle the SEC's charges by consenting to the entry of a final judgment in U.S. District Court permanently enjoining it from future violations and ordering it to pay $178.6 million in disgorgement, $55.8 million in prejudgment interest, and $178.6 million in a civil penalty. The SEC deemed the disgorgement and prejudgment interest satisfied by forfeiture and confiscation ordered in parallel criminal cases. The Bank had agreed to pay more than two billion dollars as part of an integrated, global resolution with the SEC, the Department of Justice, the United States Attorney's Office for the Southern District of New York, and Denmark's Special Crime Unit.

SEC Charges Vika Ventures and Its CEO in Six Million Dollar Fraudulent Offering

The SEC charged venture capital firm Vika Ventures LLC ("Vika Ventures") and its CEO and co-founder, George Iakovou, with fraudulently offering and selling more than six million dollars of securities to at least 46 individual investors in multiple states. In the December 7, 2022, order, the SEC also announced that it settled charges against Vika Ventures' other co-founder, Penelope Zbravos, for her role in the scheme. The SEC's complaint alleged that between late 2019 and 2021, Iakovou and Vika Ventures offered to sell shares of private companies to investors without owning such shares at the time of the solicitations nor ever acquiring them. Rather than purchasing the securities, Iakovou allegedly used investor funds for himself and allegedly used fraudulent documentation and statements to convince investors that Vika Ventures was a successful venture capital firm. Per the SEC's complaint, Zbravos, Iakovou's then-girlfriend, was a negligent participant in the scheme as she had encountered but failed to act upon sufficient red flags regarding Vika Ventures. The complaint, filed in the United States District Court for the Middle District of Georgia, charged the two co-founders and Vika Ventures with violating the antifraud provisions of the federal securities laws. The SEC sought permanent injunctive relief, disgorgement with prejudgment interest, and civil penalties against Iakovou and Zbravos. The complaint sought permanent injunctive relief and a civil penalty against Vika Ventures. Without admitting or denying the allegations, Zbravos agreed to a permanent injunction from future violations, and to pay disgorgement, prejudgment interest, and a civil penalty, as determined by the district court. The settlement is subject to the approval of the district court. In a parallel action, the U.S. Attorney's Office for the Middle District of Georgia, on the same day the SEC's complaint was issued, announced the filing of related criminal charges.

SEC Charges an Asset Management Firm for Failing to Follow Its Policies and Procedures Involving ESG Investments

The SEC charged a New York-based investment adviser (the "Adviser") for policies and procedures failures involving two mutual funds and one separately managed account strategy marketed as ESG investments. To settle the charges, the Adviser agreed to pay a four million dollar penalty. The SEC's order, issued on November 22, 2022, found that from April 2017 until February 2020, the Adviser had several policies and procedures failures involving the ESG research its investment teams used to select and monitor securities. From April 2017 until June 2018, the Adviser failed to have any written policies and procedures for ESG research in one product, and once policies and procedures were established, it failed to follow them consistently prior to February 2020. The order found that the Adviser's policies and procedures required its personnel to complete a questionnaire for every company it planned to include in each product's investment portfolio prior to the selection; however, personnel completed many of the ESG questionnaires after securities were already selected for inclusion and relied on previous ESG research, which was often conducted in a different manner than what was required in its policies and procedures. The Adviser shared information about its policies and procedures, which it failed to follow consistently, with third parties, including intermediaries and the funds' board of trustees. Additionally, the SEC stated that the Adviser failed to maintain the ESG questionnaires in a central location, as required by its policies and procedures, which also delayed the

Adviser in producing relevant documents during the course of the SEC's investigation. The Adviser consented to the entry of the SEC's order finding that it violated Section 206(4) of the Advisers Act and Rule 206(4)-7. Without admitting or denying the SEC's findings, the Adviser agreed to a cease-and-desist order, a censure, and a four million dollar penalty.

SEC Charges Chicago-Based Investment Adviser for Unlawful Principal Transactions and Cross Trades

The SEC announced settled charges against a Chicago-based registered investment adviser (the "Adviser") for effecting thousands of unlawful principal transactions and cross trades. According to the SEC's order issued on November 21, 2022, from August 2017 through December 2020, the Adviser effected 44,125 principal transactions between advisory client accounts and Adviser principal accounts without making the required client disclosures or obtaining the required client consent. The SEC's order also found that during the same time period, the Adviser, through an internally developed automated trade matching program, effected 547 cross trades between certain of the Adviser's registered investment company clients and other Adviser clients or advisory clients of an Adviser affiliate, causing those registered investment company clients to violate statutory prohibitions against cross trading. The order found that the Adviser failed to adopt and implement policies and procedures reasonably designed to prevent unlawful principal transactions and caused certain of its registered investment company clients to fail to implement their policies and procedures regarding cross trades. The SEC's order found that the Adviser willfully violated Sections 206(3) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, and caused certain of its registered investment company clients to violate Sections 17(a)(1) and 17(a)(2) of the Investment Company Act and Rule 38a-1 thereunder. Without admitting or denying the SEC's findings, the Adviser consented to a cease-and-desist order, a censure, and a $500,000 civil penalty.

SEC Charges Unregistered Brokers That Facilitated More than $1.2 Billion in Primarily Penny Stock Trades

The SEC charged Jeffrey K. Galvani, Stuart A. Jeffery, and two New York-based entities they controlled with operating as unregistered broker-dealers that facilitated more than $1.2 billion of securities trading, primarily in penny stocks. The SEC's November 17, 2022, complaint alleged that Galvani and Jeffery—both registered brokers at a registered broker-dealer unconnected with this case—created GEL Direct Trust, which they managed through its trustee, GEL Direct, LLC. The GEL entities were not registered with the SEC as broker-dealers. Nonetheless, from 2019 through at least May 2022, Galvani and Jeffery, acting through the GEL entities, provided brokerage services to approximately 60 customers involving at least 19,000 securities trades, primarily in penny stocks. The brokerage services they allegedly provided included taking possession of customer securities, directing trades to executing brokers, facilitating trade settlements, and disbursing trading proceeds to customers. In return for these services, the defendants allegedly received at least $12 million in transaction-based and other compensation. The SEC's complaint, filed in United States District Court for the Southern District of New York, charged Galvani, Jeffery, GEL Direct Trust, and GEL Direct, LLC with violating the broker-dealer registration requirement of Section 15(a) of the Exchange Act and charged Galvani and Jeffery as "control persons" of the GEL entities under Section 20(a) of the Exchange Act. The SEC sought permanent injunctions, disgorgement, prejudgment interest, civil penalties, and penny stock bars against all defendants.

SEC Charges a Nationally Recognized Statistical Rating Organization with Conflict-of-Interest Violations

The SEC charged a nationally recognized statistical rating organization ("NRSRO") (the "Organization") registered with the SEC, with violating conflict-of-interest rules designed to prevent sales and marketing considerations from influencing credit ratings. The SEC's order, issued on November 14, 2022, found that an issuer engaged the Organization to rate a jumbo residential mortgage-backed security transaction in July 2017. Over a five-day period in August 2017, the Organization's commercial employees—employees responsible for managing the relationship with the issuer—on several occasions attempted to pressure the Organization's analytical employees—employees responsible for evaluating and assigning the rating—to rate the transaction consistent with preliminary feedback the analytical employees had given the customer that turned out to include a calculation error. Despite sending the communications through the compliance department as required by the Organization's policies and procedures at that time, some e-mails sent by the Organization's commercial employees to the Organization's analytical team contained statements reflecting sales and marketing considerations. The order found that, as a result of the content, urgent nature, high volume, and compressed timing of the communications, the Organization's commercial employees became participants in the rating process

during a time when they were influenced by sales and marketing considerations. After discovering the circumstances surrounding the rating of the transaction, the Organization self-reported the conduct at issue to the SEC, cooperated with the SEC's investigation, and took remedial steps to enhance its conflict-of-interest policies and procedures. The order found that, by issuing and maintaining these credit ratings, the Organization violated certain rules promulgated under the Exchange Act, which prohibit conflicts of interest at NRSROs, and also failed to establish, maintain, and enforce written policies and procedures designed to ensure compliance with those rules. Without admitting or denying the SEC's findings, the Organization agreed to settle this matter by paying a $2.5 million penalty and agreeing to the entry of a cease-and-desist order, a censure, and compliance with certain undertakings.

New Jersey Real Estate Development Firm and Four Executives Charged With $600 Million Ponzi-like Fraud

The SEC charged New Jersey-based National Realty Investment Advisors LLC ("NRIA") and four of its former executives with running a Ponzi-like scheme that raised approximately $600 million from about 2,000 investors. The SEC's complaint, issued on October 13, 2022, alleged that beginning in 2018, NRIA and its executives raised funds by promising investors their money would be used to buy and develop real estate properties, which would generate profits through a fund that NRIA set up to invest in the projects. The four executives solicited investors in a nationwide campaign promising returns of up to 20 percent. In reality, the complaint alleged, investor money was used to pay distributions to other investors, to fund an executive's family's personal and luxury purchases, and to pay reputation management firms to thwart investors' due diligence of the executives.

The complaint further alleged that NRIA manipulated the real estate fund's financial statements and the financial information in marketing material distributed to investors, intentionally disguising the misuse of investor funds and creating the false appearance that NRIA and the fund were generating more revenue than they actually were, and that operations were successful. However, NRIA had little to no revenue, and it and the fund filed for Chapter 11 bankruptcy protection on June 7, 2022. The SEC's complaint, filed in federal court for the District of New Jersey, charged NRIA and the four former executives with violating the antifraud provisions of the Securities Act and the Exchange Act. The complaint sought injunctions against future violations of the antifraud provisions, disgorgement of ill-gotten gains plus prejudgment interest, penalties, and officer and director bars against the four executives, and named Olena Budinska and Jamie Samul, a/k/a Jamie Samul Salzano, as relief defendants.

For additional information and assistance, contact Thomas R. Westle, Stacy H. Louizos, or another member of Blank Rome's Investment Management Group.

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