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Securities Enforcement & Litigation Alert

SEC Speaks 2013: Waiting for the New Guard

*by Christian Bartholomew, Christopher Garcia and Jill Baisinger**

To be blunt, this year's "SEC Speaks" conference in Washington, D.C. was perhaps most remarkable for what did not happen: Mary Jo White, who is widely expected to be easily confirmed as Chairman of the Commission, did not attend. This was, of course, proper and to be expected, but it nevertheless cast a shadow over the proceedings, since none of the speakers could speak definitively to Ms. White's and her new team's regulatory and enforcement priorities. Indeed, given that three of the four SEC division directors who spoke—including the director of the Enforcement Division—are acting directors who may be replaced, it was not surprising that none set out bold or groundbreaking initiatives. Instead, with some important exceptions, this year's conference largely updated issues that had been covered in 2012.[1]

This is not to say that the conference failed to provide useful information. All four of the sitting commissioners emphasized different issues. Elisse Walter, the current Chairman, emphasized the SEC's role in developing fair and transparent markets and promoting entrepreneurship, capital growth, and job-building.[2] Luis Aguilar discussed signs of "weakness and instability" in the market's infrastructure and recommended that the SEC regulate and address these technological issues by, among other things, developing a "kill switch" for each exchange.[3] Troy Paredes (who is expected to leave the Commission this summer) argued that "too much disclosure may actually obscure useful information and result in worse decision-making by investors," and called for a "top-to-bottom review" of the current disclosure regime. Finally, Daniel Gallagher emphasized the importance of maintaining the SEC's independence, and strongly questioned whether new legislative mandates (particularly those contained in the Dodd-Frank legislation) and the Financial Stability Oversight Council compromised that independence and minimized the SEC's effectiveness. Whether the initiatives proposed by Commissioners Aguilar and Paredes come to fruition under Ms. White's leadership remains to be seen.

Enforcement officials also provided significant insights regarding their priorities going forward, and many of these insights are sure to remain valuable. These officials repeatedly emphasized market integrity issues, asserted that they would be looking increasingly at "gatekeepers," and stressed numerous different efforts to improve the staff's ability to investigate,

- For a discussion of the SEC's renewed focus on valuation decisions, see our Valuation Alert.
- For a discussion of the first award issued under the SEC's whistleblower program, please see our Whistleblower Alert.
- For a comprehensive analysis of the SEC's whistleblower program, see our Whistleblower PowerPoint.

* This alert was prepared with the assistance of Weil associate Erin Yates.

evaluate, and litigate cases. Officials described these latter efforts as ranging from technological initiatives, to predictive databases designed to ferret out accounting fraud, to "empowering" the staff to bring more actions in federal court to compel firms to comply quickly and fully with SEC enforcement subpoenas. The enforcement panels also focused on the SEC's cooperation initiative and the agency's efforts to provide additional guidance and transparency on a wide range of issues, including the Foreign Corrupt Practices Act (FCPA). Finally, some of the other panels touched on subjects that could potentially affect enforcement priorities in the future. We summarize some of the more significant items below.

Overview of Enforcement Issues

Calling this a "period of inflection," Acting Director of the Enforcement Division George Canellos (who worked closely with Ms. White during her tenure as United States Attorney in New York) indicated that, five years after the credit crisis, the Enforcement Division's priorities are shifting. According to Canellos, the Division is focusing on the conduct of gatekeepers, such as auditors, board members, and exchanges. He also said that, in response to changes in the capital markets and securities industry generally, Enforcement is reexamining its overall set of enforcement tools. Although Canellos did not raise this point, subsequent speakers, including Chief Counsel Joseph Brenner, commented specifically on what appears to be the Enforcement Division's growing use of secondary liability charges, including aiding-and-abetting charges and charges brought pursuant to the "control person" provisions of the securities laws.[4] Canellos stated that the SEC intends to seek more powerful specific conduct injunctions that do more than say "obey the law," but he did not elaborate on how these would work and to what conduct they might apply.

Canellos also suggested that the SEC would bring more administrative proceedings, because these proceedings "provide a better vehicle for explaining the law" and, under authority granted by Dodd-Frank, permit the Commission to obtain penalties against any person.[5] Interestingly, however, Matthew Martens, Chief Litigation Counsel for the Enforcement Division, later diverged from Canellos' view, stating that there is "no impetus" to move to the administrative setting. Martens's comments were in the context of a discussion regarding whether the SEC would pursue more administrative proceedings in light of recent federal court questioning of SEC settlements, but it remains an open question whether, as some have expected since the passage of Dodd-Frank, the Commission will pivot in any significant way to bringing more cases in the administrative forum as opposed to federal court.

Acting Deputy Director David Bergers explained that a new, internal SEC Enforcement Advisory committee, which he chairs, has been established to improve how the Division investigates and litigates its cases, with a particular focus on identifying ways to make it easier for staff to bring cases. Bergers emphasized the use of technology in this regard, and explained that the Division is rolling out new tools to assist accounting and attorney staff in analyzing large data sets, as well as developing an automated "accounting quality model" to mine information from public filings. Bergers also asserted that, in response to what the Enforcement Division views as a consistent problem in obtaining timely and complete responses to subpoenas, management of the Enforcement Division is "empowering" the staff to aggressively pursue these issues through subpoena enforcement actions, although he did not identify any specific cases.[6]

Whistleblowers

Through Jane Norberg, Deputy Director for the Office of the Whistleblower, the SEC again touted its whistleblower program, stating that it had received over 3,000 tips in the last year and noting that it had made its first award in 2012.[7] Norberg emphasized that the SEC is seeking "specific" information that leads the agency to open an action; the goal for 2013 is to respond to all tips within 24 business hours. The most common subjects of tips in 2012 were financial disclosure issues, market manipulation, and offering fraud.[8]

Norberg emphasized two issues in particular. First, she stressed the anti-retaliation provisions of the

Dodd-Frank legislation and the SEC's whistleblower rules and reminded the audience that the SEC can, under Dodd-Frank, bring an enforcement action based on retaliatory behavior.[9] Second, Norberg made clear the SEC's position that employers cannot in any way require employees to waive their rights under the SEC's whistleblower rules or bind employees by confidentiality agreements that impinge on the right to report misconduct to the SEC.[10]

Cooperation Initiative

Miami Regional Office Director Eric Bustillo updated the audience on the Enforcement Division's Cooperation initiative, which was launched in 2010.[11] Bustillo explained that the initiative was intended to help the enforcement program "bring better cases faster," and indicated that that was happening. According to Bustillo, every Enforcement office in the country has used cooperation agreements, deferred prosecution agreements (DPA), or non-prosecution agreements (NPA) in connection with ongoing enforcement investigations. Bustillo said that, to date, the SEC has entered into 51 cooperation agreements in a broad variety of cases, including those addressing financial statements, insider trading, and the FCPA.

Bustillo reported that there have been two DPAs and three NPAs; he also contended that the Commission is trying to be "very transparent" about how and when the Division will use such agreements. As an example, Bustillo pointed to the SEC's second DPA,[12] involving the Amish Helping Fund (AHF), a non-profit corporation that offers securities to fund mortgage and construction loans for young Amish families in Ohio. AHF allegedly made misrepresentations in its offering memorandum, which had not been updated since 1995. Nonetheless, the SEC did not sanction AHF, because, according to Bustillo, AHF cooperated immediately and fully once the SEC informed AHF of the alleged violations, promptly updated and circulated a revised offering memorandum, agreed to hire an auditor to perform annual audits of the fund, and agreed to take other steps to ensure compliance with federal securities laws.[13]

Key Legal Issues Affecting the Enforcement Program

The enforcement panel focused on three main legal issues: the aftermath of the Supreme Court's *Janus*[14] and *Morrison*[15] decisions and Section 304 clawbacks.

As he had predicted last year, Joseph Brenner, Chief Counsel of the Enforcement Division, contended that the Supreme Court's decision in *Janus* has had only a "modest" effect on how Enforcement brings cases. (*Janus*'s primary holding was that only the "maker" of a statement is subject to Section 10(b) liability.) According to Brenner, if a primary violation is foreclosed by *Janus*, the SEC will simply bring a secondary charge.[16] Brenner also stated that case law developments have generally favored the SEC's approach and strengthened its secondary liability theories. As an example, Brenner pointed to a recent Second Circuit decision, *SEC v. Apuzzo*, which, he noted, makes it easier to bring aiding-and-abetting claims.[17] Brenner also suggested that, as a result of *Janus*, the division might bring claims under Section 20(b) of the Exchange Act, which imposes liability for improper actions taken indirectly through others.

As to *Morrison*, the panelists described the case law in this area as confusing. Importantly, Dodd-Frank exempts the SEC from *Morrison*'s strictures, but only for post-Dodd-Frank conduct.[18] Accordingly, there is and will continue to be for some time litigation relating to how *Morrison* should apply to pre-Dodd-Frank SEC enforcement cases. The panelists opined that this litigation has resulted in decisions that consistently focus on what "transactions" are sufficient to allow Section 10(b) claims with an extra-territorial element to be brought in United States courts, while involving tests that are difficult to apply and require detailed factual analysis. (For example, the panelists noted a recent Second Circuit decision, *Absolute Activist v. Ficeto*,[19] which applied a two-part test examining where "irrevocable" liability was created and where title transferred.) Similarly, there are questions about how (or if) to apply *Morrison* outside the Section 10(b) setting. The panelists took the position that any transaction that satisfies the "in connection with" standard also satisfies the *Morrison* standard.

Finally, Brenner addressed Section 304 of the Sarbanes-Oxley Act (SOX), which provides that, if a company restates its financials because of misconduct, the CFO and CEO can be subject to reimbursement claims (*i.e.*, clawbacks), even where they are not charged with any misconduct. Brenner said that, although most Section 304 actions have been against individuals who have also been charged with wrongdoing, approximately 15 percent have been brought against individuals who have not been charged with any underlying misconduct. Brenner contended that the case law is developing slowly but generally in a way that is helpful for the SEC. He gave several recent examples, including *SEC v. Baker*,[20] in which the court rejected all of the standard statutory, constitutional, and equitable arguments against clawbacks. It bears noting that when this provision was enacted in 2002, Enforcement officials informally indicated that they did not foresee bringing clawback cases absent some misconduct by the senior officer, and the SEC did not bring any such actions until 2009 in *SEC v. Jenkins*.[21]

Market Structure and Integrity Issues

Many of the panelists throughout the conference discussed market structure issues, and the Enforcement panel was no exception. Daniel Hawke, Regional Director of the Philadelphia Office and Chief of the Market Abuse Unit, addressed the proliferation of trading venues and off-exchange trading. Hawke contended that the SEC cannot effectively investigate violative conduct unless the agency understands the governing technology; he, like other speakers, emphasized the need for specialized knowledge in this area.

Hawke then turned to the important role of the exchanges, noting that they act in at least two functions—they play a regulatory role, but they are also profit-seeking market participants. Both roles are subject to enforcement, and like Canellos, Hawke emphasized the gatekeeping role of exchanges. He described two actions brought against exchanges. For the first time, the SEC secured a financial penalty against an exchange when the NYSE settled charges relating to the improper release of market data through proprietary feeds to its customers before distributing the data on a consolidated basis to the public.[22] Hawke also referred to sanctions secured against Direct Edge Holdings LLC in a 2011 administrative proceeding. He recounted allegations that two of the Direct Edge's exchanges failed adequately to police their own conduct when technological glitches resulted in overfilling customer orders.[23] Direct Edge agreed to be censured and to undertake remedial measures.[24]

Insider Trading

Sanjay Wadhwa, Senior Associate Regional Director of the New York Office, summarized the extensive insider-trading enforcement efforts the SEC has undertaken, both on its own and in conjunction with criminal authorities. Interestingly, Wadhwa emphasized the recent cases the SEC has brought that **did not** involve the use of wiretaps and stated that he thought there would be many more such cases to come.

Private Equity

Private equity remains a high-priority of the SEC. The Asset Management Unit Deputy Chief Julie Riewe confirmed that the Commission is continuing to focus on the private equity market and expects to be active in the months ahead. Riewe warned that improper fees will also be the subject of enforcement actions. In addition, the Commission is examining conflicts of interest (such as self-dealing and making loans to the funds) and fraud in connection with fundraising, particularly with respect to valuation issues.[25]

Mutual Funds

Bruce Karpati, Chief of the Asset Management Unit, identified mutual funds as a focus of his Unit. As he has in various other public statements, he emphasized the importance of hiring experts in the field. He identified key issues as valuation of assets, fees, conflicts of interest, and appropriate oversight. He described the Morgan Keegan case, brought by the Atlanta office against several directors of a mutual fund,[26] as a prime example of an oversight action.

FCPA

Kara Brockmeyer, Chief of the FCPA Unit, spent most of her time discussing the joint DOJ/SEC FCPA guidance issued in fall 2012 and urging the audience to refer to it.[27] She emphasized that the guide is written in "non-lawyer" English and is intended to dispel the myth that the SEC will bring charges over minor violations. As she put it, a corporation can fly a government official from Hong Kong to visit a factory in Maine; a corporation can even fly the official first class if a corporation's own employees would be able to do so. However, according to Brockmeyer, a company cannot fly a Hong Kong official to Las Vegas for a 30-minute meeting with the CEO and a week of sightseeing.

Brockmeyer also discussed two very recent decisions addressing personal jurisdiction issues under the FCPA. In one, *SEC v. Straub*,[28] the court found that jurisdiction was proper over a foreign defendant where that defendant had signed misleading letters to the auditors as well as signing false US filings. In the other, *SEC v. Sharef*,[29] the court failed to find personal jurisdiction over a foreign executive where the executive did not authorize the bribery at issue, did not direct the cover-up of the bribes, and had no role in the creation of the falsified SEC filings. The *Straub* decision further reinforces US regulators' authority—and ability—to enforce the FCPA against foreign executives of public companies, while the *Sharef* decision demonstrates that such authority is not limitless.

Trials and Settlements

Matthew Martens, Chief Litigation Counsel for the Enforcement Division, began by discussing Judge Rakoff's rejection of a settlement in the *Citigroup* matter.[30] The appeal of that decision was recently argued before the Second Circuit and, as Martens stated, "no one was interested" in defending the argument that the defendant had to admit wrongdoing before a settlement could be approved. Rather, Martens described the real issues as what information a trial judge can legitimately demand and consider in assessing a settlement. The SEC does not object to the court asking for information, and it has, in other matters, provided extensive information. Martens stated that the SEC was "cautiously optimistic" as to the outcome of the case. He also contended that the SEC has a 23-to-1 record on trials in 2012, but he did not elaborate on how these numbers were compiled.

Accounting

Howard Scheck, Chief Accountant for the Enforcement Division, identified several accounting issues that have received significant attention by the SEC in recent months: cross-border accounting issues (particularly those relating to Chinese entities), banking cases, improper revenue and expense recognition, valuation issues, and auditor independence issues. In discussing cross-border accounting issues, Scheck recounted assertions by Chinese entities that Chinese law prohibits them from providing their work papers. Scheck stated that this is not an argument that the SEC finds compelling.[31] Separately, Charles Wright, Counsel to the Enforcement Division's Chief Accountant, discussed many of the same issues, noting that the cross-border working group was particularly active in 2012, filing 12 actions against more than 50 entities, including foreign offices of the so-called Big Four accounting firms.

Compliance Inspections and Examinations

Carlo di Florio, Director of the Office of Compliance Inspections and Examinations (OCIE), began the session by announcing that the OCIE had just released a memorandum setting forth the 2013 examination priorities.[32] He stated that the SEC hoped to release such a memorandum annually. Although none of the panelists explicitly stated that the examination process is being used to generate enforcement cases, David Bergers, acting Deputy Director of the Enforcement Division, commented earlier that the enforcement section was working closely with the national exam program. Moreover, the first cross-program priority described in the memorandum and discussed by the panel is "fraud detection and prevention." More specific fraud

detection efforts were also identified in particular programs, including the broker-dealer program. The third cross-program priority is conflicts of interest, including preferential treatment, undisclosed fees, and certain affiliate relationships. It is not difficult to imagine that the priorities of the examination program could result in enforcement actions.

Other Developments Potentially Affecting Enforcement

First, speakers on both the Corporate Finance and Trading and Markets panels repeatedly discussed the so-called crowdfunding provisions of the Dodd-Frank legislation. The panelists explained that the SEC is trying to formulate a position as to how existing statutes and regulations will apply to this provision. David Blass, Chief Counsel and Associate Director of the Trading and Markets Division, described the crowdfunding provision as effectively an "exemption" to the Securities Exchange Act of 1933. Although fraud in crowdfunding is, at least for the time being, an issue outside of the enforcement arena, it seems certain that the issue will eventually become part of the enforcement agenda.

Second, Thomas Kim, Chief Counsel and Associate Director of Corporation Finance, addressed the new Iran disclosure provisions found in Section 219 of the Iran Threat Reduction and Syria Human Rights Act of 2012.[33] Kim described a variety of new reporting obligations and emphasized that the provision "has no materiality threshold." He specifically noted that this disclosure is subject to the executive certifications required by SOX. Again, this is an area that may ultimately affect enforcement practitioners.

Finally, several panelists, including Heather Seidel, an Associate Director of Trading and Markets Division, focused on the proliferation of sophisticated new products (such as exchange traded funds) that are making their way into the portfolios of retail investors. Panelists emphasized that the SEC is looking closely at the disclosures for these products, especially with respect to the clarity of the product description, transparency as to its investment objectives, and how arbitrage functions will work. Although none of the panelists specifically connected the increasing prevalence of such products with any particular enforcement initiative, it is certainly possible that there will be enforcement actions addressing such complex products and associated disclosures.

Conclusion

Former Chairman Mary Schapiro's nearly four-year tenure was marked by substantial and successful efforts to improve upon and streamline the SEC's enforcement efforts. But, despite Ms. Schapiro's enormous talent, energy and good faith, her tenure was also plagued, to a significant degree, by numerous congressional inquiries aimed at exploring the SEC's failures in the Madoff matter and otherwise, and by numerous negative (and sometimes unfair) Inspector General investigations. Some believe these issues, combined with the extraordinary rule-making demands imposed upon the SEC by Dodd-Frank, had a substantial negative effect on the SEC's enforcement efforts and morale. Indeed, despite the SEC's protestations to the contrary, there is empirical evidence that enforcement efforts in several key areas have declined greatly, *e.g.*, financial statement/accounting cases are down to 10% of all enforcement matters, and there has also been significant criticism regarding how the SEC counts cases and whether it is accurately categorizing cases.[34] Against this background, President Obama's appointment of Ms. White, and her sterling reputation as someone "not to be messed with," in President Obama's words, may augur a new and truly re-invigorated enforcement effort. If nothing else, Ms. White will need to address the remarkable fall off in financial statement/accounting cases lest the SEC, in its efforts not to miss the next Madoff, misses the next Enron.

1 *See* Christian Bartholomew and Sarah Nilson, SEC Speaks 2012: An 'Entrepreneurial' and Restructured SEC Pledges Proactive Enforcement, Weil Newsletters, Mar. 2012. [hereinafter *SEC Speaks 2012*]

2 The full text of the commissioners' speeches is located at http://www.sec.gov/news/speech.shtml. None of the Staff's comments have been published on the SEC's website. All of the speakers prefaced their remarks with the standard disclaimer that they were expressing their own views and not necessarily the views of the Commission.

3 This has been a topic of discussion for several months and was addressed in recent congressional testimony. *See Computerized Trading Venues: What Should the Rules of the Road Be?: Hearing Before the Subcomm. on Securities, Insurance, and Investment* (Dec. 18, 2012), *available at* http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=fa72aed9-c380-4cce-84ac-727fe4f6b214.

4 *See*, e.g., Section 20(a) of the Securities Exchange Act of 1934.

5 Section 929P(a), Dodd-Frank Wall Street Reform and Consumer Protection Act, PUB. L. NO. 111-203, 124 STAT. 1376 (2010); 15 U.S.C. sec. 77h-1(g).

6 Recent SEC releases reveal that the Commission has brought subpoena enforcement actions against Wells Fargo and Deloitte & Touche. *See SEC Files Subpoena Enforcement Acton Against Wells Fargo for Failure to Produce Documents in Mortgage-Backed Securities*, SEC Litigation Release No. 22305 (March 23, 2012), *available at* http://www.sec.gov/litigation/litreleases/2012/lr22305.htm#); *SEC Files Subpoena Enforcement Action Against Deloitte & Touche in Shanghai*, SEC Release 2011-180 (Sept. 8, 2011), *available at* http://www.sec.gov/news/press/2011/2011-180.htm).

7 For a list, by subject matter and month, of tips received, *see* SEC's Annual Report on the Dodd-Frank Whistleblower Program for Fiscal Year 2012 (Nov. 2012) *available at* http://www.sec.gov/about/offices/owb/annual-report-2012.pdf.

8 For a discussion of whistleblower issues, *see* Christian Bartholomew and Sarah Nilson, SEC Issues First Whistleblower Award, Weil Newsletters, Aug. 2012.

9 *See* Rule 21F-2(b)(2); 17 CFR Parts 240 and 249; *see also Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934*, Release No. 34-64545, at 18 (Aug. 12, 2011), *available at* http://www.sec.gov/rules/final/2011/34-64545.pdf ("Because the anti-retaliation provisions are codified within the Exchange Act, . . . we have enforcement authority for violations of Section 21F(h)(1) by employers who retaliate against employees for making reports in accordance with Section 21F.").

10 *See* 15 U.S.C. § 78cc(a); Rule 21F-17(a), 21 C.F.R. sec. 240.21F-17, Release No. 34-64545, *supra* note 8, at 20 ("[E]mployers may not require employees to waive or limit their anti-retaliation rights under Section 21F" because 15 U.S.C. § 78cc(a) applies to Section 21F as it is codified in the Exchange Act).

11 For a discussion of Bustillo's update on the Cooperation Initiative last year, *see* Bartholomew, *SEC Speaks 2012, supra* note 1.

12 DPA between SEC and the Amish Helping Fund (July 17, 2012), *available at* http://www.sec.gov/news/press/2012/2012-138-dpa.pdf. Previously, the Commission entered into a DPA with Tenaris S.A. (http://www.sec.gov/news/press/2011/2011-112-dpa.pdf). The Commission entered into NPAs with Fannie Mae (http://www.sec.gov/news/press/2011/npa-pr2011-267-fanniemae.pdf), Freddie Mac (http://www.sec.gov/news/press/2011/npa-pr2011-267-freddiemac.pdf), and Carter's, Inc. (http://www.sec.gov/litigation/cooperation/2010/carters1210.pdf).

13 *See* Amish Helping Fund DPA, *supra* note 11.

14 *Janus Capital Group, Inc. v. First Derivative Traders*, 113 S. Ct. 2296 (2011).

15 *Morrison v. National Australia Bank Ltd.*, 130 S. Ct. 2869 (2010).

16 Notably, though, a speaker from the Office of General Counsel took a different position on the use of secondary charges, contending that the SEC would much prefer to bring primary charges.

17 689 F.3d 204 (2d Cir. 2012). *Apuzzo* reversed a district court decision that required the SEC to establish proximate causation to satisfy the "substantial assistance" test in an aiding-and-abetting claim. Instead, the Second Circuit held that the SEC need only allege that the defendant "in some way associated himself with the venture, that he participated in it as in something that he wished to bring about, and that he sought by his action to make it succeed." *Id*. at 206 (citations, internal punctuation omitted). As Brenner put it, the holding effectively allows the SEC to rely on the more relaxed standard used in the criminal setting.

18 Notwithstanding *Morrison*'s holding on extraterritoriality issues, Section 929P(b) provides federal jurisdiction over some cases involving foreign securities transactions if the SEC or DOJ is plaintiff. 15 U.S.C. sec. 77v(c).

19 677 F.3d 60 (2d Cir. 2012).

20 *SEC v. Baker*, No. A-12-CA-285, 2012 WL 5499497 (W.D. Tex. Nov. 13, 2012).

21 *SEC v. Jenkins*, No. 09-01510 (D. Ariz. July 23, 2009).

22 Cease-and-Desist Order, *In the Matter of New York Stock Exchange LLC, and NYSE Euronext*, Administrative Proceeding File 3-15023 (Sept. 14, 2012), *available at* http://www.sec.gov/litigation/admin/2012/34-67857.pdf.

23 Cease-and-Desist Order, *In the Matter of EDGX Exchange, Inc., EDGA Exchange, Inc., and Direct Edge ECN LLC*, Administrative Proceeding File No. 3-14856 (Oct. 13, 2011), *available at* http://www.sec.gov/litigation/admin/2011/34-65556.pdf.

24 Of course, the SEC is not the only agency taking action in this area. Most notably, in February 2013, the CFTC initiated litigation against CME's New York Mercantile Exchange for disclosing nonpublic information to a commodities broker who was not authorized to receive the information. *See CFTC Charges CME Group's New York Mercantile Exchange and Two Former Employees with Disclosing Material Nonpublic Information about Customer Trades*, Release No. PR6519-13 (Feb. 21, 2013), *available at* http://www.cftc.gov/PressRoom/PressReleases/pr6519-13.

25 *See* Christian Bartholomew and Jill Baisinger, SEC's Chief of Asset Management Unit Announces Increased Focus on Private Equity And Predicts More Enforcement Actions, Weil Newsletters (Feb 7, 2013), Christian Bartholomew and Sarah Nilson, SEC Enforcement Staff Focuses on PE Sponsors, Weil Newsletters (Feb. 2012).

26 *SEC Charges Eight Mutual Fund Directors for Failure to Properly Oversee Asset Valuation*, SEC Release No. 2012-259 (Dec. 10, 2012), *available at* http://www.sec.gov/news/press/2012/2012-259.htm.

27 A Resource Guide to the US Foreign Corrupt Practices Act by the Criminal Division of the DOJ and the Enforcement Division of the SEC (Nov. 14, 2012), *available at* http://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf.

28 No. 11-9645 (S.D.N.Y. 2011).

29 No. 11-9073 (S.D.N.Y. 2011).

30 *SEC v. Citigroup Global Markets, Inc.*, 827 F. Supp. 2d 328 (S.D.N.Y. 2011).

31 In December 2012, the SEC initiated administrative proceedings against the Chinese affiliates of BDO, Deloitte & Touche, Ernst & Young, KMPG, and PricewaterhouseCoopers for refusing to produce audit work papers and other documents sought by the SEC as part of its investigations of nine China-based companies with securities publicly traded in the United States. *See SEC Charges China Affiliates of Big Four Accounting Firms with Violating US Securities Laws in Refusing to Produce Documents*, Release No. 2012-249 (Dec. 3, 2012), *available at* http://www.sec.gov/news/press/2012/2012-249.htm.

32 See National Exam Program, OCIE, Examination Priorities for 2012 (Feb. 21, 2013), *available at* http://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2013.pdf.

33 H.R. 1905, 112th Cong. § 219.

34 "SEC Boosts Tally of Enforcement Successes With Routine Actions," Joshua Gallu, *Bloomberg* (Feb 22, 2013), *available at* http://www.bloomberg.com/news/2013-02-22/sec-boosts-tally-of-enforcement-successes-with-routine-actions.html.

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Contributing Authors:

Christian Bartholomew (DC)	Bio Page	christian.bartholomew@weil.com	+ 1 202 682 7070
Christopher Garcia (NY)	Bio Page	christopher.garcia@weil.com	+ 1 212 310 8896
Jill Baisinger (DC)	Bio Page	jill.baisinger@weil.com	+ 1 202 682 7033

Editors:

Christian Bartholomew (DC)	Bio Page	christian.bartholomew@weil.com	+ 1 202 682 7070
Jonathan Polkes (NY)	Bio Page	jonathan.polkes@weil.com	+ 1 212 310 8881