

# Your Quarterly Regulatory Briefing\*

(compliments of Daphne Chisolm)

**May 23, 2019**

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## Education & Training

This section lists upcoming conferences as well as on-line learning opportunities and free webinars suitable for various parties – trustees, compliance professionals, or those seeking CPE or CLE credits.

*\* For the Quarter Ended March 31, 2019.*

*About the Author: Daphne Chisolm is an attorney that has over 20 years of experience in the financial services and investment management industry. Ms. Chisolm has particular expertise in the area of exchange-traded funds. The Author thanks Nanlee Vang, who has extensive experience and proficiency in Workiva, a cloud-based EDGAR filing platform, for her contributions to this Quarter's Briefing.*

## **REGULATORY & ENFORCEMENT ACTIVITY**

The following discussion has been excerpted from SEC releases, which can be found [HERE](#).

### **1. SEC Brings Charges in EDGAR Hacking Case**

On January 15, 2019, the Securities and Exchange Commission (“SEC”) announced charges against nine defendants for participating in a previously disclosed scheme to hack into the SEC’s EDGAR system and extract nonpublic information to use for illegal trading. The SEC charged a Ukrainian hacker, six individual traders in California, Ukraine, and Russia, and two entities. The hacker and some of the traders were also involved in a similar scheme to hack into newswire services and trade on information that had not yet been released to the public. The SEC’s complaint alleges that after hacking the newswire services, Ukrainian hacker Oleksandr Ieremenko turned his attention to EDGAR and, using deceptive hacking techniques, gained access in 2016. Ieremenko extracted EDGAR files containing nonpublic earnings results. The information was passed to individuals who used it to trade in the narrow window between when the files were extracted from SEC systems and when the companies released the information to the public. In total, the traders traded before at least 157 earnings releases from May to October 2016 and generated at least \$4.1 million in illegal profits.

### **2. Deloitte Japan Charged With Violating Auditor Independence Rules**

On February 13, 2019, the SEC announced that Deloitte Touche Tohmatsu LLC (Deloitte Japan) will pay \$2 million to settle charges that it issued audit reports for an audit client at a time when dozens of its employees maintained bank accounts with the client’s subsidiary. According to the SEC’s order, the accounts had balances that exceeded depository insurance limits in violation of the SEC audit independence rules. Deloitte Japan’s former CEO Futomichi Amano and former reputation and risk leader and director of independence Yuji Itagaki settled related charges.

### **3. SEC Charges Former Senior Attorney at Apple With Insider Trading**

On February 13, 2019, the SEC filed insider trading charges against a former senior attorney at Apple. The SEC’s complaint alleges that Gene Daniel Levoff, an attorney who previously served as Apple’s global head of corporate law and corporate secretary, received confidential information about Apple’s quarterly earnings announcements in his role on a committee of senior executives who reviewed the company’s draft earnings materials prior to their public dissemination. Using this confidential information, Levoff traded Apple securities ahead of three quarterly earnings announcements in 2015 and 2016 and made approximately \$382,000 in combined profits and losses avoided. The SEC’s complaint alleges that Levoff was responsible for securities laws compliance at Apple, including compliance with insider trading laws. As part of his responsibilities, Levoff reviewed and approved the company’s insider trading policy and notified employees of their obligations under the insider trading policy around quarterly earnings announcements.

### **4. SEC Charges Broker-Dealer and Transfer Agent in Microcap Shell Factory Fraud**

On February 20, 2019, the SEC announced charges against a broker-dealer, a transfer agent, and three individuals for their roles in the creation of over a dozen undisclosed “blank check” companies from 2009 to 2014. In its complaint, the SEC alleges that broker-dealer Spartan Securities Group, Ltd. and transfer agent Island Capital Management LLC, which does business as Island Stock Transfer, helped create and sell at least 19 purportedly legitimate public companies that were in fact shams. To effectuate the scheme, the complaint alleges that Spartan Securities filed fraudulent applications with Financial Industry Regulatory Authority (FINRA) to publicly list the companies’ common stock and ultimately enable the shares to become free-trading and available to public investors. The complaint also alleges that Spartan Securities’ principals, Carl E. Dilley and Micah J. Eldred, signed the false applications even though they knew or at least were reckless that the companies were fake and David D. Lopez failed to investigate red flags raised by FINRA or even familiarize himself with the companies. The SEC further alleges that Island Stock Transfer and Dilley facilitated the public sale of the stock of at least 12 of the sham companies through the bulk issuance and transfer of the “free-trading” securities.

**5. SEC Modifies Timing for Filing Non-Public Form N-PORT Data to Align With Its Approach to Data Management and Cybersecurity**

On February 27, 2019, the Commission modified the submission deadlines for registered investment companies filing non-public monthly reports on Form N-PORT. Form N-PORT is a new form for reporting both public and non-public fund portfolio holdings to the Commission in a structured data format. As a result of the changes, rather than filing non-public monthly reports with the Commission within 30 days after each month-end, funds will be required to maintain the relevant information in their records and file all three monthly reports with the Commission no later than 60 days after the end of each fiscal quarter. The non-public monthly reports on Form N-PORT for the first and second months of the fiscal quarter will remain non-public and the monthly report for the third month will become publicly available upon filing (with the exception of certain specific data items), rather than being filed non-publicly no later than 30 days after the end of the fiscal quarter and being made public 60 days after the end of the fiscal quarter. Filing Form N-Port through the EDGAR system will begin in April 2019 for larger fund groups and in April 2018 for smaller fund groups.

**6. SEC Celebrates African American History Month with Presentation by Award-Winning Filmmaker**

The SEC celebrated African American History Month with events in its Regional Offices and a presentation by scholar and award-winning filmmaker Dr. Henry Louis Gates, Jr. to discuss his latest documentary series, "Reconstruction: America After the Civil War," at the agency's headquarters in Washington, D.C. This year's African American History Month theme, "Black Migrations," focuses on the movement of African Americans throughout the United States from the early 20th century to today.

**7. BB&T to Return More Than \$5 Million to Retail Investors and Pay Penalty Relating to Directed Brokerage Arrangements**

On March 5, 2019, the SEC announced that BB&T Securities has agreed to return more than \$5 million to retail investors and pay a \$500,000 penalty to settle charges that a firm it acquired misled its advisory clients into believing they were receiving full service brokerage services in-house at a discount while significantly less expensive options were available externally. According to the SEC's order, Valley Forge Asset Management used misleading statements and inadequate disclosures about its brokerage services and prices to convince customers to choose the in-house broker. Despite promises of a high level of service at a low cost, the SEC's order found that Valley Forge did not provide any additional services to advisory clients using its in-house brokerage than it did to advisory clients who chose other brokerages with significantly lower commission rates. According to the order, Valley Forge charged commissions averaging roughly 4.5 times more than what clients would have paid using other brokerage options, and the firm obscured the price difference by claiming that it was giving clients a 70 percent discount off of its supposed retail commission rate.

**8. SEC Share Class Initiative Returning More Than \$125 Million to Investors**

On March 11, 2019, the SEC announced settled charges against 79 investment advisers who will return more than \$125 million to clients, with a substantial majority of the funds going to retail investors. The actions stem from the SEC's Share Class Selection Disclosure Initiative, which the SEC's Division of Enforcement announced in February 2018 in an effort to identify and promptly correct ongoing harm in the sale of mutual fund shares by investment advisers. The initiative incentivized investment advisers to self-report violations of the Advisers Act resulting from undisclosed conflicts of interest, promptly compensate investors, and review and correct fee disclosures. The orders issued on March 11, 2019, address advisers who directly or indirectly received 12b-1 fees for investments selected for their clients without adequate disclosure, including disclosures that were inconsistent with the advisers' actual practices.

**9. Wedbush Settles Failure to Supervise Charge**

On March 13, 2019, the SEC announced that Wedbush Securities Inc. will pay a \$250,000 penalty and has agreed to be censured to settle its failure to supervise charge in a pending administrative proceeding. According to the SEC's March 2018 order instituting proceedings, Wedbush ignored numerous red flags indicating that one of its registered representatives was involved in a long-running pump-and-dump scheme targeting retail investors. Wedbush conducted two flawed and insufficient investigations into the registered representative's conduct, and failed to take appropriate action.

**10. SEC Charges Registered Investment Adviser and Former Chief Operating Officer With Defrauding Client**

On March 15, 2019, the SEC charged Talimco LLC, a registered investment adviser, and Grant Gardner Rogers, the former chief operating officer of the firm, with manipulating the auction of a commercial real estate asset on behalf of one client for the benefit of another. According to the SEC's order, in or about April 2015 while selling a commercial real estate asset on behalf of a collateralized debt obligation client, Talimco and Rogers were aiming to acquire the asset for another client, a private fund. Talimco and Rogers owed its selling client a fiduciary duty, which included an obligation to take steps to use its best efforts to maximize the price obtained for the asset by identifying willing bidders. However, rather than seek out multiple bona fide bidders, the order found that Rogers used the firm's affiliated private fund client for one bid and convinced two unwilling bidders to participate in the auction by giving assurances that the bidders would not win the auction. As a result of this manipulation, Talimco's private fund client was the highest bidder and acquired the asset, only to then later sell it for a substantial profit. Talimco and Rogers's conduct deprived the selling client of the opportunity to obtain multiple bona fide bids for the asset and maximize their profit.

**11. SEC Proposes Offering Reforms for Business Development Companies and Registered Closed-End Funds**

On March 20, 2019, the SEC voted to propose rule amendments to implement certain provisions of the Small Business Credit Availability Act and the Economic Growth, Regulatory Relief, and Consumer Protection Act. The proposed amendments would modify the registration, communications, and offering processes available to Business development companies and registered closed-end funds, building on offering practices that operating companies currently use.

**12. SEC Charges New Jersey Man With Fraudulently Causing Advisory Firm to Overbill Clients**

On March 28, 2019, the SEC filed charges against the former chief operating officer (COO) of a Commission-registered investment adviser for aiding and abetting the advisory firm's actions to overbill its clients as part of a fraudulent scheme to improperly inflate his own pay. According to the SEC's complaint, between 2011 and December 2018, former COO Richard T. Diver, a resident of Spring Lake, New Jersey, engaged in an illicit scheme to steal approximately \$6 million from his employer. Diver, whose duties included managing the advisory firm's payroll and client billing functions, allegedly inflated his salary by hundreds of thousands of dollars per year. As part of this scheme, Diver defrauded investors by causing the investment adviser to overbill more than 300 investment advisory client accounts by approximately \$750,000, for the purpose of generating additional revenue. As alleged in the complaint, Diver used this revenue to finance his inflated salary and when confronted by the investment adviser's CEO in December 2018, Diver confessed to having carried out the scheme.

**13. Investment Adviser Charged With Stealing Millions From Private Fund**

On March 28, 2019, the SEC revoked the registration of a Seattle area-based registered investment adviser and barred its principal from the securities industry for stealing money from a private fund the adviser managed. The remaining assets will be liquidated and placed in a fund for distribution to harmed investors. According to the SEC's order, Dennis Gibb, the owner of Sweetwater Investments Inc., stole more than \$3 million from Sweetwater Income Flood LP, a private fund Sweetwater managed, to pay for personal expenses, including his mortgage and car payments, and to keep Sweetwater's business afloat. To hide his theft and convince investors to put even more money into the fund, he sent fraudulent account statements and tax documents to investors. The false documents showed, in the aggregate, that there was \$7.8 million in the fund, when there was actually only about \$1.8 million. Gibb also falsely reported in SEC filings that Income Flood had been audited, and that Sweetwater had over a billion dollars in assets under management, when it really had only \$73 million. Gibb failed to hire an independent auditor or have a surprise verification of the fund's assets conducted. Gibb's fraud was discovered by the SEC's San Francisco Office of Compliance Inspections and Examinations staff when they conducted an examination of Sweetwater.

## **15. The Securities and Exchange Commission and the UK Financial Conduct Authority Sign Updated Supervisory Cooperation Arrangements**

On March 29, 2019, the SEC and the United Kingdom (UK) Financial Conduct Authority (FCA) reaffirmed their commitment to continue close cooperation and information sharing in the event of the UK's withdrawal from the European Union (EU). As evidence of their long-standing partnership, SEC Chairman Jay Clayton met with FCA CEO Andrew Bailey and signed two updated Memoranda of Understanding (MOUs) to ensure the continued ability to cooperate and consult with each other regarding the effective and efficient oversight of regulated entities across national borders. At the meeting in London, Chairman Clayton and Andrew Bailey also discussed risks posed by jurisdictional share trading obligations, which could increase market fragmentation and impose unnecessary costs on investors.

### **SEC EXECUTIVES ON THE MOVE**

#### **1. Shamoil T. Shipchandler, Regional Director of the SEC's Fort Worth Regional Office, Has Left the Agency**

On January 28, 2019, the SEC announced that Shamoil T. Shipchandler, Director of the Fort Worth Regional Office, left the agency on Friday, January 25th. He is now in private practice.

#### **2. SEC Names Manisha Kimmel as Senior Policy Advisor to the Chairman on the Consolidated Audit Trail**

On January 29, 2019, the SEC announced that Manisha Kimmel will serve as Senior Policy Advisor for Regulatory Reporting to Chairman Jay Clayton. In this new role, Ms. Kimmel will coordinate the SEC's oversight of the self-regulatory organizations' (SROs) creation and implementation of the Consolidated Audit Trail (CAT). Ms. Kimmel will work closely with the Division of Trading and Markets and other divisions and offices on the CAT and other regulatory reporting matters.

#### **3. Elizabeth McFadden Named Deputy General Counsel**

On February 4, 2019, Elizabeth McFadden was named Deputy General Counsel for General Law and Management of the agency. The Deputy General Counsel for General Law and Management provides daily oversight into representation of the Commission, its members and employees in litigation and advises the Commission and Divisions and Offices within the Commission with respect to general law responsibilities, personnel management and budget. The Deputy General Counsel for General Law and Management also serves as Managing Executive for the Office of the General Counsel.

#### **4. SEC Names James P. McNamara as Chief Human Capital Officer**

On February 21, 2019, James P. McNamara was named the agency's Chief Human Capital Officer (CHCO) and Director of the Office of Human Resources (OHR). As CHCO, Mr. McNamara will manage the agency's human resources programs and policies in areas such as leadership and employee development, recruitment and retention, labor relations, performance management, and compensation and benefits, and will continue to play a key role in driving efforts to sustain a high performing, highly engaged SEC workforce.

#### **5. Giles Cohen Named Acting Chief Counsel, Office of the Chief Accountant**

On February 21, 2019, the SEC announced that Giles Cohen has been named Acting Chief Counsel, Office of the Chief Accountant (OCA). Mr. Cohen joined the SEC in 2005 as senior counsel in the Division of Enforcement, and later served as counsel in the Office of Commissioner Luis Aguilar.

#### **6. SEC Names S.P. Kothari as Chief Economist and Director of the Division of Economic and Risk Analysis**

On February 26, 2019, the SEC announced that S.P. Kothari has been named Chief Economist and Director of the agency's Division of Economic and Risk Analysis (DERA). Mr. Kothari joined the SEC from the Sloan School of Management at the Massachusetts Institute of Technology (MIT), where he is a professor of accounting and finance and recently ended a six-year term as Deputy Dean of MIT Sloan School of Management.

**7. Brent J. Fields Named Associate Director in the Division of Investment Management**

On February 26, 2019, Brent J. Fields was named Associate Director of Disclosure Review and Accounting in the Division of Investment Management. In his new role, Mr. Fields will oversee the division's disclosure and accounting review programs. He will be primarily responsible for the implementation of disclosure and accounting policy that impacts nearly 16,000 investment companies, including open-end, closed-end, exchange-traded funds, unit investment trusts, and business development companies.

**8. SEC Names Gabriel Benincasa As Its First Chief Risk Officer**

On February 28, 2019, the SEC announced that Gabriel Benincasa has been named the Commission's first Chief Risk Officer. This position was created by SEC Chairman Jay Clayton to strengthen the agency's risk management and cybersecurity efforts. As Chief Risk Officer, Mr. Benincasa will coordinate the SEC's continued efforts to identify, monitor, and mitigate key risks facing the Commission. Working within the SEC's Office of the Chief Operating Officer, he will also serve as a key adviser on other matters related to enterprise risks and controls. Julie Erhardt, who had been serving as Acting Chief Risk Officer while the SEC completed its recruitment efforts, will return to her role as Deputy Chief Accountant for Technology and Innovation in the Commission's Office of the Chief Accountant.

**9. Jason J. Burt Named Associate Regional Director for Enforcement in SEC's Denver Office**

On March 14, 2019, Jason J. Burt was named the Associate Regional Director for enforcement in the SEC's Denver Regional Office. Mr. Burt joined the SEC's Division of Enforcement as a staff attorney in 2007. After the division was reorganized in 2010, he served as a member the division's Market Abuse Unit until he was promoted to Assistant Regional Director in the SEC's Asset Management Unit in 2016. Since August 2018, he also has served as an Assistant Regional Director in the SEC's Market Abuse Unit.

**10. Justin C. Jeffries Named Associate Regional Director for Enforcement in Atlanta Office**

On March 18, 2019, Justin C. Jeffries was named the Associate Regional Director for enforcement in the Atlanta Regional Office. In his new role, Mr. Jeffries will oversee the Atlanta office's enforcement efforts in Georgia, North Carolina, South Carolina, Tennessee, and Alabama.

**11. SEC Names Jeffrey Dinwoodie Senior Counsel and Policy Advisor for Market and Activities-Based Risk**

On March 25, 2019, Jeffrey T. Dinwoodie was appointed Senior Counsel and Policy Advisor for Market and Activities-Based Risk. Chairman Jay Clayton created this senior officer position to manage and coordinate the agency's efforts to identify, monitor and respond to market risks—including activities-based risks—affecting the U.S. capital markets. Mr. Dinwoodie will serve as the Chairman's Deputy Representative to the Financial Stability Oversight Council (FSOC) and as a primary liaison with respect to these matters to other federal regulatory agencies and international organizations. He will report directly to Chairman Clayton and will work closely with staff across the agency, including in the Divisions of Trading and Markets, Investment Management, and Economic and Risk Analysis, and the Office of Compliance Inspections and Examinations, among others.

**12. SEC Names Danae M. Serrano as Ethics Counsel**

On March 26, 2019, Danae M. Serrano was named the agency's Ethics Counsel. Ms. Serrano joined the SEC in 2010 as an Assistant Ethics Counsel and became Deputy Ethics Counsel and Alternate Designated Agency Ethics Official in 2013. Ms. Serrano also served as the Agency's Acting Chief Compliance Officer until August 2018.

**EDUCATION & TRAINING**

<b>Date</b>	<b>Location</b>	<b>Sponsor</b>	<b>Event</b>
Various	On-Line	Financial Industry Regulatory Authority (“FINRA”)	FINRA offers a variety of e-learning courses, free webinars, and other events that can be found <a href="#">HERE</a> .
May 15-17, 2019	Washington, DC	FINRA	2019 Annual Conference
September 22-25, 2019	Marco Island, FL	ICI	2019 Tax and Accounting Conference
October 16, 2019	Harrisburg, PA	FINRA	2019 FINRA District Compliance Seminar With the State of Pennsylvania
October 21-23, 2019	Chicago, IL	IDC	2019 Fund Directors Conference
October 23 – 24, 2019	Santa Monica, CA	FINRA	2019 Small Firm Conference
October 24 - 25, 2019	Washington, DC	FINRA	2019 Advertising Regulation Conference
November 7, 2019	New York, NY	ICI	2019 Closed-End Fund Conference
November 12, 2019	Washington, DC	FINRA	2019 Senior Investor Protection Conference
December 3, 2019	Washington, DC	ICI	2019 Securities Law Developments Conference