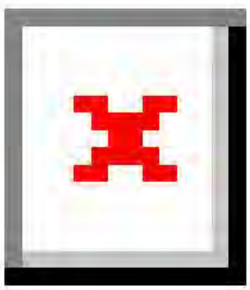
From: Persefoni
Sent: Thu, 5 Jan 2023 11:00:34 -0600
To: Gensler, Gary
Subject: ICYMI: A Guide to Climate Assurance

A Guide to Climate Assurance

Hi Gary,

2023 has arrived, and the Persefoni team is excited to share another year of climate news, industry insights, guides, and more! For this week's edition, our team of Greenhouse Gas (GHG) auditing experts put together this handy guide to ensure your climate reporting is ready for assurance. Climate assurances are essential to GHG reporting in the SEC proposals for climate disclosures and the EU's Corporate Sustainability Reporting Directive (CSRD). To help you stay compliant and ahead of investor and stakeholder pressure, we outline what climate assurance entails, the frameworks involved, best practices, and how Persefoni can help.

Learn more



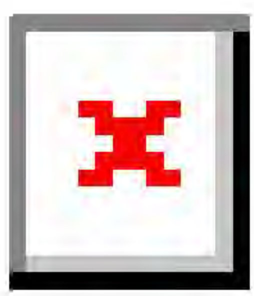
Understanding Corporate Carbon Footprints

Pressure is growing for businesses to measure and reduce their carbon footprint accurately. We've created this starter guide to help you navigate the complex world of measuring and reducing corporate carbon footprints.

Read more

Scope 2 Dual Reporting

Scope 2 emissions are generated from purchased electricity, heat, steam, and cooling. In 2015, the GHG Protocol introduced "dual reporting," requiring



companies to report their scope 2 emissions using market- and location-based approaches. This blog explains the difference between the two and why the change was necessary.

Read more

Industry News Briefing

2023 Climate Change in Numbers

2023 is likely to continue the warming trend of recent years, with emissions following the same upward trajectory. Conversely, renewable energy output is expected to reach record highs, as is the number of global climate policies.

Keep reading

Allstate Commits to Net Zero Value Chain

Leading insurance company Allstate committed to reaching net zero by 2030, not only in their direct use but across their value chain, and expects to set a net zero goal for their investment portfolio by 2025.

Keep reading

More Companies Linking Compensation to ESG

A recent report revealed that in 2022 around 75% of companies link at least one ESG metric to executive pay, and the number of companies tying DEI and environmental metrics doubled from 2021.

Keep reading

Carbon Accounting Needs a Makeover

Too many companies use industry averages and guesstimates to generate their carbon footprint. With the GHG Protocol proposing an update to their over 20-year-old standard and carbon accounting software reaching maturity, the time has come to improve carbon accounting practices.

Keep reading

From: MediaAnalyst
To: MediaAnalyst
Subject: 4 Jan 2023 SEC Daily News Clips
Date: Wednesday, January 4, 2023 4:42:12 AM

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Securities and Exchange Commission - Seal

January 04, 2023
Daily News Clips

Mobile version and searchable archives available at https://sec.barbaricum.com
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Wall Street Journal

1. SEC Charges Former SPAC Finance Chief With Fraud

3 Jan 2023 (11:30 PM), Denny Jacob

The Securities and Exchange Commission on Tuesday said it issued fraud charges against Cooper Morgenthau after he allegedly stole more than $5 million from a special-purpose acquisition company and from investors in two other SPACs that he incorporated.

The regulator alleged Mr. Morgenthau, the former chief financial officer of African Gold Acquisition Corp. , embezzled money from the company. The SEC also alleged he stole funds from another SPAC series called Strategic Metals Acquisition Corp. I and II to pay for his personal expenses and to trade in crypto assets and other securities. Both allegations took place from June 2021 to July 2022, the regulator said.

The U.S. attorney's office for the Southern District of New York also issued criminal charges against Mr. Morgenthau in a parallel action.

African Gold Acquisition in August ousted Mr. Morgenthau as CFO following an internal investigation over improper withdrawals from its operating bank accounts and attempts to conceal the withdrawals.

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2. Federal Reserve, FDIC and OCC Warn Banks About Cryptocurrency Risks

3 Jan 2023 (11:37 PM), Paul Kiernan

A group of powerful bank regulators on Tuesday highlighted what they said were a litany of risks stemming from cryptocurrencies and expressed skepticism that the assets can be safely held by the financial institutions they oversee.

The Federal Reserve, Federal Deposit Insurance Corp. and Office of the Comptroller of the Currency said that recent failures of major crypto firms led them to exercise caution in reviewing banks' proposals to engage with the market. They highlighted fraud and scams, market volatility, legal uncertainty, and weak risk-management and governance practices at crypto firms, among other things, as reasons for concern.

"It is important that risks related to the crypto-asset sector that cannot be mitigated or controlled do not migrate to the banking system," the regulators said in a joint statement. Based on their experience, they said, issuing or holding cryptocurrencies "is highly likely to be inconsistent with safe and sound banking practices."

The warning reinforced policy makers' dimming view of cryptocurrencies following the collapse of trading platform FTX in November and suggested bank regulators could throw up more hurdles for firms in the sector. Prosecutors say FTX and its affiliates misused customer funds, and they have charged its founder, Sam Bankman-Fried, with criminal offenses including fraud. He has pleaded not guilty.

The agencies said banks “are neither prohibited nor discouraged” from providing services to customers of any specific type. They said they are “continuing to assess whether or how” banks can deal with cryptocurrencies in a way that adequately ensures the institutions’ safety and soundness, consumer protection and legal compliance.

Since the 2009 launch of bitcoin, the first cryptocurrency, most large banks have been reluctant to embrace the asset class. The Securities and Exchange Commission says it considers most cryptocurrencies to be unregistered securities, making them legally risky for regulated firms to offer or sell.

But a handful of banks have gotten involved. California bank Silvergate Capital Corp. transformed itself from a small lender into a bank for cryptocurrency investors and exchanges and gets 90% of its deposits from such digital customers. Its stock has fallen nearly 80% in the past three months amid questions about its exposure to the industry.

In the statement Tuesday, the bank regulators said they “have significant safety and soundness concerns with business models that are concentrated in crypto-asset-related activities or have concentrated exposures to the crypto-asset sector.”

They also warned of the susceptibility of so-called stablecoins—cryptocurrencies backed by supposedly safe, dollar-denominated assets—to potential runs by spooked investors. Such events could cause sudden deposit outflows for banks that hold cash reserves for stablecoin issuers.

The second-largest stablecoin issuer, Circle Internet Financial Ltd., said recently that it had more than $11 billion in cash held at banks including Silvergate, Bank of New York Mellon Corp., Citizens Trust Bank and Customers Bank.

Dante Disparte, Circle’s chief strategy officer, said in an email that the risks highlighted by regulators Tuesday “were mostly about greed, arrogance and in some cases fraud, not blockchain finance or neutral, decentralized technology.”

Customers Bank said in an emailed statement that it has worked closely with federal and state regulators on its blockchain-based payment system and other crypto-related banking products. The bank said it is confident in its risk-management standards and “welcomes the opportunity to work cooperatively with regulators and policymakers.”

A spokesman for BNY Mellon declined to comment. Representatives of Silvergate and Citizens Trust Bank didn’t respond to requests for comment.

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3. Ukraine War and Upcoming SEC Rules Push Boards to Sharpen Cyber Oversight

3 Jan 2023 (10:30 AM), Catherine Stupp and Kim S. Nash

Corporate boards and cybersecurity leaders are expected to collaborate more closely in the coming year to comply with new regulations and relentless attacks from hackers looking to steal data and disrupt business operations.

The war in Ukraine, which is stretching both Russian and Ukrainian resources, further elevates cyber risks and remains high on corporate agendas.

In many companies, the role of cybersecurity officers was elevated at the start of the Covid-19 pandemic when businesses quickly shifted to remote work and the volume of cyberattacks grew, said Lucia Milica, global resident chief information security officer at cybersecurity firm Proofpoint Inc.

"It was sort of this 'a-ha' moment for a lot of boards," she said.

In 2023, the U.S. Securities and Exchange Commission is expected to complete a proposal to require companies to disclose details about cybersecurity oversight and attacks, including which board members have security expertise. Those rules are "going to focus a lot on increasing board responsibilities," said Patrick Gaul, executive director of the National Technology Security Coalition, an advocacy group for chief information security officers, or CISOs.

Businesses have received repeated warnings from U.S. government agencies about risks to companies after Russia's invasion of Ukraine nearly one year ago. There haven't been any destructive cyberattacks on American companies disclosed in connection to the war, but many CISOs remain wary, Mr. Gaul said. Members discussed the war during several roundtable discussions the coalition held in 2022, he said.

Marc Hofmann, chief security officer at Finnish bank Nordea Bank Abp, said directors are asking more pointed questions about his work.

They want to know how the bank might defend against a cyberattack from hackers working for a foreign government, he said. Mr. Hofmann and the board have also discussed hypothetical situations such as whether the bank, which mainly operates in northern Europe, needs satellite phones in case communications go down in a particular country, he said. In the past year, he has interacted with directors more frequently than in prior years, he said.

"There's a mindshift change going on that nobody would be safe from a nation-state attack," he said.

The war, along with the hybrid work models that have been put in place at many companies as a result of the pandemic, prompted corporate directors to carefully consider how their companies might be exposed to cyber risks, said Andrea Bonime-Blanc, chief executive of GEC Risk Advisory LLC, a New York-based firm that advises boards and executives about cybersecurity and risk management.

Board awareness of cybersecurity "was already increasing glacially, but I think the Ukraine war has sharpened the minds," Ms. Bonime-Blanc said.

Some boards now rate cyber threats on a par with trade wars and supply-chain problems among risks that could have major impact on companies, said Michael Hilb, a professor of corporate governance at the University of Fribourg in Switzerland.

"This had implications about the whole approach. Planning and predictability has changed, how they budget, how they do strategy, is another indirect effect of the war," he said.

Still, many large companies don't have board members with significant cyber expertise. Only 1.9%, or 86 of 4,621, board directors representing S&P 500 companies have held relevant professional cybersecurity roles in the past 10 years, according to a WSJ Pro analysis published in November.

About 34% of directors don't believe their boards have enough expertise to properly govern cybersecurity, according to a survey of 312 directors by the National Association of Corporate Directors.

A communication gap between boards and security chiefs means neither side is as effective as needed to govern cybersecurity, said Yael Nagler, chief executive of Yass Partners, a consulting firm focused on aligning security leadership.

Directors sometimes fail to understand core threats, Ms. Nagler said. "They're not shy people but when it comes to cyber, they feel like they're asking dumb questions," she said.

CISOs, in turn, often don't take time to understand the role of a board and the specific experience and knowledge of their directors, she said. Successful CISOs ask directors what they want to know before meetings and follow up afterwards on whether they got what they expected, she said.

Security leaders "often wait for permission," she said. "There just isn't enough dialogue."

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4. Sam Bankman-Fried Pleads Not Guilty as Trial Is Set for October

3 Jan 2023 (11:29 PM), Corinne Ramey

FTX founder Sam Bankman-Fried pleaded not guilty to fraud and other criminal charges Tuesday, as a judge set his trial to begin Oct. 2.

Mr. Bankman-Fried, 30 years old, entered his not-guilty plea to all eight criminal counts he faces before U.S. District Judge Lewis Kaplan in federal court in Manhattan. It was his second appearance in a U.S. court after the collapse of his cryptocurrency exchange.

Prosecutors have accused him of stealing billions of dollars of customer funds from FTX and of defrauding investors and lenders to his trading firm, Alameda Research. He also evaded campaign-finance contribution limits and reporting requirements when he made millions of dollars in illegal political contributions funded by Alameda, prosecutors said.

Mr. Bankman-Fried has previously said he didn't intend to commit fraud but has acknowledged making mistakes while running the company.

The former chief executive, who is being detained at his parents' California home but returned to New York for the hearing, sat at the defense table between his lawyers, who entered the plea on his behalf. Assistant U.S. Attorney Danielle Sassoon told the judge the October trial would last about four weeks, while Mark Cohen, a lawyer for Mr. Bankman-Fried, estimated it would last from two to three weeks.

Judge Kaplan set the next court hearing for May 18.

Two of Mr. Bankman-Fried's associates, Caroline Ellison and Gary Wang, pleaded guilty to related charges last month and are cooperating with prosecutors' investigation into the alleged scheme. Damian Williams, the U.S. attorney for the Southern District of New York, said Tuesday that his office had formed an FTX task force, drawing on prosecutors from multiple units, including those focused on securities fraud, public corruption and money laundering. Mr. Williams said his office "is working around the clock to respond to the implosion of FTX."

In December, Mr. Bankman-Fried was arrested in the Bahamas and, after consenting to extradition, flown to New York.

During his first appearance in federal court last month, a magistrate judge released him on a $250 million bond, which was secured by his parents' home in Stanford, Calif., where he was ordered detained while awaiting trial.

While Mr. Bankman-Fried wasn't required to deposit any money with the court, if he were to fail to appear in court, the government could move to seize his parents' property.

The judge required that Mr. Bankman-Fried's parents and one nonfamily member co-sign the $250 million bond and that two additional people sign other bonds in lesser amounts.

In a letter Tuesday, lawyers for Mr. Bankman-Fried asked Judge Kaplan to order that the names of the sureties, or signers of the lesser bonds, not be disclosed to the public.

The lawyers said that Mr. Bankman-Fried's parents had been subjected to intense media scrutiny and threats.

"There is serious cause for concern that the two additional sureties would face similar intrusions on their privacy as well as threats and harassment if their names appear unredacted on their bonds or their identities are otherwise publicly disclosed," the letter said.

Judge Kaplan granted the request, though said he would allow members of the media or others to contest the sealing of the information.

Ms. Sassoon, the prosecutor, asked the judge to impose an additional bond condition barring Mr. Bankman-Fried from transferring or accessing FTX and Alameda assets.

Mr. Cohen said his client hadn't accessed those funds, echoing a point Mr. Bankman-Fried had made in a tweet last week.

"In terms of defendant's tweet, that it was not him, we don't put full stock in that," Ms. Sassoon said.

Judge Kaplan granted prosecutors' request.

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5. 'Madoff: The Monster of Wall Street' Review: Ponzi Scheme of a Sociopath

3 Jan 2023 (11:05 PM), John Anderson

The subject of director Joe Berlinger's captivating, penetrating, four-part "Madoff: The Monster of Wall Street" is described by one of its kinder voices as a "financial sociopath." Later, someone just comes right out and calls him a "serial killer." All of which may help explain our persistent obsession with the man who perpetrated the largest Ponzi scheme in U.S. history. After so many productions, dramatic and documentary, shouldn't we be tired of Bernie Madoff? One might as well ask if we're tired of Charles Manson, or Jack the Ripper.

It's certainly not violence that makes the Madoff story magnetic, although the death toll does begin to resemble the post-heist body count in “Goodfellas” after Madoff’s nearly $65 billion rip-off goes belly up in 2008. Our native fascination with tragedy and skullduggery is made even more irresistible by the idea of an empathy-free human, one who could live such an enormous lie for so long, victims be damned, while presumably still sleeping at night. Those of us who can’t balance our bank accounts are a little in awe of someone who could juggle money and numbers, fictitious or otherwise, the way Madoff did, while living the lifestyle Madoff did, with so little perceptible concern or remorse: One of the novel attractions of Mr. Berlinger’s production is its use of clips from Madoff’s video depositions, which were given during victim lawsuits in 2016 and ’17. Madoff, who died in 2021, is very matter-of-fact about the crimes he committed, dispassionate, even clinical.

Among Mr. Berlinger’s accomplishments in “The Monster of Wall Street” is not making the Madoff story remotely romantic, or even a parable, while at the same time putting blood in its veins. This he does partly by having actors play the lead characters in re-creations while giving them no lines; they exist in a gauzy, icy space, a kind of dream state, especially if the dream involves someone standing on a precipice. The words we hear are all from the mouths of the Madoff employees, authors, journalists and bankers, who were either bit players in the illicit enterprise, studied and wrote about it afterward or tried to derail it mid-scam—Harry Markopolos, for instance, who was a portfolio manager for Boston-based Rampart Investment Management when he was asked to devise something to compete with Madoff’s stock strategies, which seemingly never lost money. As Mr. Markopolos tried to tell his employer—and the Securities and Exchange Commission, five times over the next 10 years—Madoff’s “strategy” was nonexistent. The Markopolos conclusions, arrived at in minutes, made no impression on anyone.

The Madoff scheme “was not a complex fraud,” says forensic accountant Bruce Dubinsky. “It involved simply taking people’s money [and] telling them he was going to invest their money. And he never did.” For years no one caught on, or so it seemed. Among the major points Mr. Berlinger makes accessible and unavoidable is that the Madoff operation should have been—and very likely was—detected as a crime-in-progress years before it was dragged naked into the daylight by the 2008 financial crisis (a point at which Madoff could no longer call on his biggest investors for cash to cover his shortfall). Mr. Markopolos was the most insistent of Madoff debunkers. But when journalist Erin Arvedlund (“Too Good to Be True: The Rise and Fall of Bernie Madoff”) wrote about him for Barron’s in 2001, no one whom she spoke to on the trading floors of New York recalled ever having made a trade with Bernie Madoff. That some parties avoided him entirely—Goldman Sachs and Salomon Brothers among them—might have been a tipoff.

That Madoff is referred to as a “scapegoat” for the financial crisis of ’08 is ironic, given how deeply Mr. Berlinger digs into the ethnic angle of the Madoff scam. He even interviews the Palm Beach rabbi Leonid Feldman, who weighs in on how Madoff used his membership at the Palm Beach Country Club to target trusting fellow Jews as investors, one of the uglier aspects of the Madoff tale.

“The Monster of Wall Street” will be, to no one’s surprise, a complex series and downbeat story, but one that is told with enormous style and narrative energy. There are quite a few likably chagrined people among the cast—those who worked in the Madoff offices at the “lipstick building” on Third Avenue in Manhattan. Several who weigh in have written what amounts to the historical record on Madoff, including Jim Campbell (“Madoff Talks”) and Diana Henriques (“Wizard of Lies”). Then there’s Madoff himself: When you’re a success on Wall Street, he says in an archival clip, “Your word is your bond.” More laughably cynical words have seldom been spoken.

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POLITICO Pro

6. Tempered techno-optimism is the theme for 2023

3 Jan 2023 (12:00 PM), Debra Kahn

HYDROGEN HYPE — 2022 was a big year for policy victories. This year will be about implementation and jockeying over the details that separate winners from losers.

The Inflation Reduction Act, with its $369 billion in tax incentives for clean energy, will live up to its billing and buffer the broader economic slowdown that's starting to infect climate tech.

"Any space the IRA touches — there's a rising tide for everyone in there," said Apoorv Bhargava, CEO of WeaveGrid, a Bay Area software company that helps utilities handle electric vehicles' impact on the grid. "However, if there was a specific carveout for you, you're probably screaming with happiness."

The law's hydrogen benefits are particularly buoyant: A production tax credit of up to $3 per kilogram, the highest in the world, could encourage petroleum refiners, fertilizer manufacturers and eventually other industries to source their hydrogen from low-carbon electricity or sequester the emissions generated from producing it from natural gas.

It's a sign of where we are in the energy transition that it could either transform industry or backfire spectacularly.

The Treasury Department and the IRS are taking comments on how they should structure the rules, and they're getting an earful about the risks of failing to account for pipeline leaks and the mix of electricity used to make the hydrogen, as David Iaconangelo reports for POLITICO's E&E News.

(One concern recently flagged by Princeton University researchers: Even if the hydrogen is made from renewable electricity, it could end up increasing emissions if more renewables don't come online to fill the increased demand.)

In the meantime, the Department of Energy is getting ready to hand out $7 billion from the bipartisan infrastructure law for regional hydrogen "hubs" that combine production, transportation, storage and consumption.

DOE sent "notices of encouragement" last week to 33 hydrogen consortiums across the country, as David reports. Full proposals are due in April.

GOOD NEWS FOR CARBON CRUNCHERS — The hydrogen buzz could also recharge interest in the carbon-accounting field, which got a boost last year from the SEC's proposed climate risk disclosure rule. (The timeline for a final SEC rule is TBD, and economically chastened tech companies are now less likely to be interested in supporting carbon-footprint analysis.)

"Billions and billions of dollars will hinge on how the rules get interpreted," said Eric Gimon, a senior fellow with the think tank Energy Innovation. "That's really going to supercharge that field of lifecycle analysis and carbon analysis."

BUILDING BLOCKS

NEW LEASE ON LIFE — Treasury and the IRS released tentative guidance last week for the IRA's electric vehicle tax credits that includes a clever way to evade Sen. Joe Manchin's domestic-content manufacturing requirements: exempting commercial leased vehicles from the rules.

Foreign automakers and U.S. allies alike have bristled at the IRA's domestic supply-chain aims and have seized on the commercial lease loophole as a potential work-around. Manchin is furious, as Benjamin Storrow reports for POLITICO's E&E News.

The guidance “bends to the desires of the companies looking for loopholes and is clearly inconsistent with the intent of the law,” the West Virginia Democrat said in a statement. “It only serves to weaken our ability to become a more energy secure nation.”

The agencies are defending their move. Final rules are due out in March.

WASHINGTON WATCH

WHITHER GENSLER? — Speaking of the SEC's climate disclosure rule, we're still waiting on a finalized version, along with another half-dozen or so pending federal rulemakings aimed at incorporating climate change into financial regulations.

The SEC is dealing not only with thousands of public comments and a near-guarantee of litigation, but a heavy agenda, with 26 rules proposed in 2022 alone. Climate disclosure experts and advocates say there's no way to say for sure when the agency will finalize their rules, but think it's likely it will happen at some point this year.

"I would expect to see it sometime this year," said Corinne Snow, counsel at Vinson & Elkins LLP who focuses on environmental law and regulatory compliance. "I know the SEC is trying to do a lot, but they've indicated in the past that this is a really high priority for them. And if it's a high priority they're also going to want to be the ones to defend it [in court] during the Biden administration."

Avery Ellfeldt of POLITICO's E&E News has a handy status update.

CRUISE CONTROL — The future is here, it's just not evenly distributed. Long Game took a ride in an autonomous vehicle over the holidays. It was...fine!

Between EVs from Cruise and Waymo and San Francisco's hollowed-out vibe, driverless vehicles seemed to make up the majority of traffic in the not-very-Blade Runner-y quadrant of the city where Cruise is permitted to operate commercially from 10 p.m.-5:30 a.m.

Aside from a couple instances of hard braking, our ride felt nearly indistinguishable from a human-powered one — and it was a couple of dollars cheaper. GM-owned Cruise just got approval from the DMV to expand autonomous commercial service to the rest of San Francisco, although it still needs one more signoff from the California Public Utilities Commission.

Ride-sharing drivers aren't that concerned about AVs taking their jobs yet — they're engaged in a more immediate fight over worker benefits. A decision is expected in the next few months on a California lawsuit challenging an Uber/Lyft-sponsored ballot initiative that classified drivers as independent contractors rather than employees.

"There's a lot of threats to labor," said Nicole Moore, president of the nonprofit Rideshare Drivers United. "One is removing all labor rights, the second is automating jobs."

SF Gate weighs in on Waymo: "I found myself wondering ... does anyone need this?"

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7. Fintech's Washington fortunes imperiled by scandals

3 Jan 2023 (8:30 AM), Zachary Warmbrodt

This was supposed to be fintech's big year in Washington.

Crypto firms and other financial technology startups had amassed armies of lobbyists and were poised to be at the top of the fin reg legislative agenda. Friendly lawmakers and agency officials were readying policies to give the companies a bipartisan regulatory boost.

The series of scandals that emerged in late 2022 are derailing that momentum, putting the once-ascendant challengers to traditional banks on defense. Here’s how it’s shaking out.

— The crypto meltdown continues — Americans are getting bad news every day about the integrity of the cryptocurrency industry, with executives now openly accusing each other of wrongdoing following the FTX fraud scandal and market crash. Some lawmakers who bought into crypto’s potential are starting to voice mea culpas. Long-time skeptics are emboldened.

Just look at what could be the biggest U.S. business story on Tuesday: FTX founder Sam Bankman-Fried’s expected not-guilty plea to sweeping criminal charges. Expect more damning revelations as the government makes its case against Bankman-Fried and other FTX and Alameda Research executives who were once the digital currency world’s leading ambassadors in Washington.

Other crypto dominoes are falling. Federal prosecutors revealed over the holiday break that bankrupt digital asset lender Voyager Digital may be the focus of a CFIUS review — an interagency process designed to police foreign investment in U.S. companies. Why does it matter? Binance.US — the domestic affiliate of the behemoth international crypto exchange Binance — is making a bid to acquire Voyager. It underscores how Binance is primed for greater Washington scrutiny for a host of reasons.

While companies rarely comment on the secretive CFIUS process, Binance.US — in a potential indicator of the political pressure it faces — wasted no time issuing a statement saying it "looks forward to working with the committee and instilling confidence in its business."

— Fraud clouds hang over fintech lenders — Fintech lenders gained major clout in Washington by shoveling out billions of dollars worth of government-backed small business rescue loans during the Covid-19 pandemic. The SBA in 2022 moved to let fintechs take on a bigger role in its flagship non-emergency lending program. But those firms are facing new investigations and political backlash after the House coronavirus subcommittee outlined in December how a number of the companies exposed the Paycheck Protection Program to fraud.

— Progressives and banks are teaming up — One big political development to watch in 2023 is the growing collaboration between former foes who now see fintech as a common enemy. Frequent bank bashers like Sens. Sherrod Brown and Elizabeth Warren are finding themselves aligned with traditional lenders when it comes to derailing fintech lobbying campaigns. Case in point is the lame-duck bill Brown introduced — with the backing bank trades and consumer groups — that would make it harder for tech firms to compete with banks through industrial loan company charters.

— Regulators are under pressure — While all of this casts a pall over fintech on Capitol Hill, it more importantly means that Biden appointees at key regulatory agencies have a new mandate to crack down. Treasury in a November report called for greater oversight of fintechs in the consumer space. SEC Chair Gary Gensler has spent his tenure warning about the dangers of crypto and will now be expected to do something about it — in particular when it comes to the big exchanges that he says are skirting securities laws. CFPB Director Rohit Chopra, a Warren ally, has a make-or-break piece of fintech-related policy at the top of his agenda — standards for the sharing of banking data. The SBA has also started to take, at least publicly, a more skeptical tone toward fintech lenders in the wake of the House fraud investigation.

— Elon Musk is a wildcard — Musk has hinted that he wants to build out Twitter's financial services offerings. A big move by the social media giant — as Meta learned the hard way with Libra — could trigger a backlash.

Welcome back – Thanks for returning to MM after our brief hiatus. What's on your Washington to-do list in 2023? Hit us up at zwarmbrodt@politico.com and ssutton@politico.com.

Driving the week … House Republicans will decide Tuesday whether to make Rep. Kevin McCarthy the next speaker of the House … House GOP committee chairs will be able to unveil subcommittee structures and leaders after the speaker vote … Japan's Minister of Economy, Trade and Industry, Yasutoshi Nishimura, speaks at CSIS Thursday at noon … December unemployment numbers are out Friday at 8:30 a.m. .. Officials from Treasury, the Fed and other agencies speak at the American Bar Association's Banking Law Committee annual meeting Friday and Saturday …

DRIVING THE DAY

New Congress prep: Wall Street's lobbying dilemma — Set aside whether McCarthy has the support he needs to become House speaker. The incoming Republican majority is already making life difficult for corporate lobbyists.

Your MM host reported how the world's biggest asset managers — mainly BlackRock, State Street and Vanguard — are finding themselves politically isolated as GOP lawmakers plan to pummel them for advancing environmental and social investing causes.

They aren't getting cover from major business trade groups whose members are divided on the issue, and they have no Republican allies, according to nearly a dozen industry representatives, lawmakers and climate advocates. The U.S. Chamber of Commerce, which has been on the outs with Republicans in the Biden era, is among the groups caught in the middle.

MM economic roundup: The outlook for 2023

— More than two-thirds of the economists at 23 large financial institutions that trade with the Fed are betting the U.S. will have a recession in 2023. They're citing Americans who are spending down their pandemic savings, a declining housing market and tightening lending standards.

— China ended 2022 in a major economic slump as business and consumer spending plunged. A Covid surge will hold back a recovery in the early months of this year.

— The UK is facing one of the worst recessions in the G7, according to economists.

— State leaders overseeing some of the nation's largest pension systems are bracing for a hit, threatening the political aspirations of Democrats including California Gov. Gavin Newsom and New Jersey Gov. Phil Murphy.

— Higher-income professionals have felt the brunt of U.S. layoffs so far but lower-income workers could quickly feel the pain if a recession arrives as many economists predict.

Biden's next economic challenge — NYT: "One vital test Mr. Biden faces is making all his new economic laws work as intended. Much of his economic legacy will depend on how effectively his administration allocates trillions of dollars in spending and tax incentives contained in the economic bills that Mr. Biden signed into law during his first two years in office."

— As National Economic Council Director Brian Deese told MM last month, "Making good on the policy tailwinds that we've now enacted but haven't gotten through into the system is going to be a big, important priority starting on Jan. 1."

CRYPTO

Crypto crash triggers executive feud — WSJ: "Tensions between crypto magnates Cameron Winklevoss and Barry Silbert erupted into an open dispute on Twitter at the start of the new year, with Mr. Winklevoss accusing Mr. Silbert of 'bad faith stall tactics' that are hurting rank-and-file customers.

"The back-and-forth on Monday deals another blow to a sector struggling for credibility, especially since the collapse of FTX and its affiliated trading firm, Alameda Research. The fall of the two companies led to outflows from other crypto exchanges and the near-erasure in value of coins tied to FTX and Alameda, domino effects in a closely linked industry."

David Marcus sees two more years of crypto winter — David Marcus, who once led PayPal and spearheaded Meta's foray into digital currency, says it will take the digital asset market a couple more years to recover from "the abuse of unscrupulous players, and for responsible regulation to come through." Marcus is CEO of the Bitcoin-focused company Lightspark.

"Consumer trust is also going to take a few years to rebuild, but ultimately I believe this will prove to be a beneficial reset for legitimate industry players over the long run."

REGULATORY CORNER

The 2023 fin reg outlook — Cravath, Swaine & Moore: "Policymakers for the U.S. banking sector have a packed agenda in 2023, in part because of a backlog of matters that require attention and in part because the market continues to present policy issues that require attention."

Credit union regulator warns of looming risks — National Credit Union Administration Chair Todd Harper in a Q&A with MM and POLITICO's Victoria Guida: "We're looking at interest rate risks. We're looking at liquidity risk also. We are looking at cybersecurity risk. We're remaining watchful in all of those areas."

FLY AROUND

Biden antitrust aide to step down – NYT: "Tim Wu, a central architect of President Biden's push to clip the wings of the nation's largest companies, is leaving the White House. Mr. Wu's last day at the National Economic Council will be Wednesday, ending his 22-month tenure as special assistant to the president for competition and tech policy, the White House said."

Japan to offer families ¥1mn per child to leave Tokyo – FT: "Japan is planning to sweeten the financial incentive for parents who opt to move out of Tokyo as the government attempts to reverse decades of demographic decline, economic migration and the lure of the world's biggest metropolis."

Tesla faces demand problem – Bloomberg: "Tesla Inc. delivered fewer vehicles than analysts expected last quarter, missing estimates despite taking the unusual step of offering hefty incentives in its two biggest markets."

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Bloomberg

8. Auditors Spurn Crypto After FTX, Misleading Reserve Estimates

3 Jan 2023 (11:00 AM), Amanda Iacone and Nicola M. White

In the rush to reassure customers and the markets, crypto exchanges like Kraken and Binance Holdings Ltd. in 2022 touted auditor-provided tests of their reserves testing to show customer deposits were safe.

But those reports—point-in time snapshots of reserves that don't reflect fund volatility or outstanding obligations—failed to reassure jittery customers and regulators, including Securities and Exchange Commission Chair Gary Gensler. Instead of offering a lifeline to crypto firms, the practice of vetting collateral triggered renewed scrutiny from regulators and provided fresh ammunition for auditor critics.

Risk-adverse auditors are now rethinking their relationship with crypto players after the risks of working with the industry were laid bare in the bankruptcy filings for collapsed exchange FTX, whose founders face criminal charges.

Mazars Group, Marcum LLP, and Armanino LLP have said they would reconsider their crypto industry work after the implosion of FTX and a flurry of bankruptcies including bitcoin miner Core Scientific Inc. created panic in the market. Pulling back on crypto could limit the firms' reputational and legal risks that could undermine investor confidence in work auditors provide for their publicly traded clients.

But skepticism of the proof of reserves testing has raised questions about why some auditors agreed to perform this type of work.

"They wanted in on what was perceived to be the next hot industry," Poppy Alexander, a partner with Constantine Cannon LLP who represents SEC whistleblowers, said of accounting firms. "They wanted to touch what seemed like gold."

Risky Business

Exchanges and other players in the often opaque industry bring a host of risks for auditors. To start, many offshore businesses operate beyond the reach of US regulators. Gaps in audit and accounting standards, which don't address digital currencies or tokens, add to the challenges for auditors.

"There's huge liability with this," said Kyle Welch, an assistant accounting professor at George Washington University. "When it comes to the audit, their name is on the line at the end of that book."

Many crypto businesses are relatively young and are developing their accounting teams and building up internal governance checks. Audit firms weigh that level of maturity when they decide whether to work with clients. They also factor in what level of service they could provide, and whether they can meet those needs, said Brian Neil Hoffman, a partner with Holland & Hart LLP.

How firms make that calculation varies based on the expertise of their staff, their risk appetite, and business goals.

Deloitte, Ernst & Young, KPMG, and PwC, behemoths of the audit industry, have generally steered clear of providing assurance services for crypto-involved companies. Still, affiliates of those Big Four firms have at least a dozen such audit clients listed on public stock exchanges globally including Coinbase Global Inc., WisdomTree Inc., Northern Data AG, and Bitfarms LTD/Canada—companies that meet strict audit, disclosure, and other regulatory requirements that come with a public listing.

US affiliates for Deloitte and EY did not respond to requests for comment; PwC and KPMG declined to comment.

Even outside of crypto challenges, CPA firms were already facing mounting pressure from the SEC. The regulator has put auditors, critical market gatekeepers, on notice to stick to its core mission: to challenge corporate accounting and provide a true check on management.

“They will not be shy about opening investigations or taking action,” Hoffman said of the SEC’s auditor oversight.

Proof of reserve reports also have grabbed the attention of Gensler, who told Bloomberg News that the asset snapshots aren’t sufficient to protect investors.

Marcum Chairman and CEO Jeffrey Weiner said that the firm had raised its risk monitoring assessments for determining whether to take on new crypto clients and continue working with existing clients. The firm, which does not offer of proof of reserve reports, had not yet decided whether to pull out of the industry entirely. “Most lay people don’t understand what’s in it versus what is not,” Weiner said.

‘Flying Colors’

How the market perceives auditors’ work and the chance that the limitations of that work could be misunderstand is another risk that comes with crypto clients. Backlash could spill over and taint the investor confidence in auditors work for their public company clients.

Crypto businesses sought auditors help to demonstrate that they had enough funds on hand to cover depositor claims, hyping the point-in-time snapshots to customers even though they fall far short of traditional financial statement audits. Those proof of reserve reports don’t vet a company’s total financial health or assess their ability to continue operating in the months ahead, nor do they show an exchange’s total liabilities.

Crypto exchange Kraken touted “next-generation audit standards” that showed how the exchange was “exceeding the transparency offered by legacy financial firms,” the firm announced in February.

Yield App’s website announced the crypto wealth platform passed a “stringent” reserves audit “with flying colors” in January.

“It’s just inaccurate to say this is an audit,” said Aaron Jacob, head of accounting solutions at TaxBit, a cryptocurrency software company. “Firms have to think, 'What risks are we subjecting ourselves to if our client is saying this is an audit and they're telling the market something that it's not?'"

The reports accounting firm Armanino wrote for Kraken and Yield App detailing its findings were more measured and technical than what their clients announced via press release. The firm, which analyzed assets on a single day, said they were limited only to demonstrating that outstanding customer liabilities are adequately reserved by the assets held by both companies.

Armanino LLP, the firm that audited FTX US—an arm of collapsed crypto exchange FTX—previously told the Financial Times that it was halting its financial statement audits and no longer providing proof of reserve reports for companies in the industry. Armanino did not respond to requests for comment.

Crypto exchange Binance Holdings Ltd. promoted its proof of reserve report as a sign of transparency, but is now downplaying the report's significance after negative publicity caused the auditor it hired, Mazars, to remove the report from its website and quit offering proof of reserve reports entirely.

A proof of reserves report is "just the first of many steps" the exchange plans in the weeks ahead as it aims to be more transparent about the health of the company and the collateral it has on hand, Binance said in a statement.

Francine McKenna, a longtime critic of the audit industry who teaches financial accounting at the Wharton School of Business, blamed audit firms for selling these services to companies eager to allay market fears. She called the reports a number matching exercise.

"They ginned up this agreed-upon procedures report that didn't fool anybody," McKenna said. "Even the crypto devoted are skeptical. They're worried. They're worried about customer assets going missing; they're worried about the stable coins crashing."

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9. Priest Who Ran Hedge Fund Sees $160,000 Penalty to SEC Affirmed

4 Jan 2023 (12:22 AM), Martina Barash

An ordained Greek Orthodox priest who also works as a hedge fund manager must pay a $160,000 civil penalty for misleading investors, the US Court of Appeals for the First Circuit affirmed Tuesday.

Some of the statements made by Gregory Lemelson, also known as Father Emmanuel Lemelson, were factual, not opinions that would potentially be protected under the First Amendment, Judge Sandra L. Lynch said for the appeals court. And the Securities and Exchange Commission presented enough evidence for a jury to find in its favor, Lynch said.

Lemelson and his firm, Lemelson Capital Management LLC, allegedly made misleading public...

[...]

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10. Ex-SPAC CFO Pleads Guilty in Scheme to Trade Meme Stocks, Crypto

4 Jan 2023 (12:16 AM), Austin Weinstein and Chris Dolmetsch

A former chief financial officer for blank-check firms pleaded guilty to wire fraud in a scheme to embezzle more than $5 million to trade crypto assets and meme stocks.

Cooper Morgenthau, 35, who was the top financial official at African Gold Acquisition Corp., admitted to the misconduct that spanned about a year starting in June 2021, the US Attorney's Office for the Southern District of New York said on Tuesday. The Securities and Exchange Commission said that he committed fraud in a separate complaint, and had agreed to a bar from serving as an officer or director of a publicly traded company.

Morgenthau "has admitted that he breached the trust that he owed to his public and private investors, stealing millions of dollars from them to trade meme stocks and cryptocurrencies," said Damian Williams, the US Attorney for the Southern District of New York, in a statement. Michael Paul Bowen, an attorney for Morgenthau, didn't immediately respond to messages seeking comment on the allegations.

Morgenthau wired more than $1.2 million of African Gold's money to his personal accounts, which he then lost trading mostly meme stocks or spent, according to the SEC. Morgenthau then fabricated bank statements to African Gold's accountants and auditor to cover the hole, the regulator alleged.

To attempt to cover his losses, the SEC said Morgenthau raised about $4.7 million for two other blank-check companies, Strategic Metals Acquisition Corp. I and Strategic Metals Acquisition Corp. II. He used some of that money to cover his losses at African Gold, and then withdrew that money again to trade crypto, according to the SEC's complaint.

African Gold discovered the withdrawals in August 2022, fired Morgenthau, and disclosed his activity to the SEC. The firm didn't immediately respond to an emailed request for comment sent outside of normal business hours.

The cases are US v Morgenthau, 23-cr-2, and Securities and Exchange Commission v Morgenthau, 23-cv-22, both in US District Court, Southern District of New York.

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11. West Virginia AG Seizes on ESG Wars With Eye on Higher Office

3 Jan 2023 (11:00 AM), Andrew Ramonas

West Virginia Attorney General Patrick Morrisey is itching for a fight on ESG.

Morrisey has made a name for himself helping net his state hundreds of millions of dollars from cases over the opioid crisis and taking the Environmental Protection Agency all the way to the Supreme Court—and winning.

The Republican also has threatened to sue the Securities and Exchange Commission, if it requires companies to report on greenhouse gas emissions and other environmental, social and governance matters. Morrisey has tried to deflect what he sees as attacks on the state's coal industry, joining former Vice President Mike Pence, Florida Gov. Ron DeSantis and other Republicans who've made ESG investing a frequent target and stoked Democratic ire.

Such battles are often embraced in Appalachia, the land of the infamously feuding Hatfield and McCoy families, whose homes are depicted in illustrations on Morrisey's office wall. The ESG foe and onetime Washington lobbyist and congressional staffer now is deciding whether to run in 2024 for governor or for the seat held by Sen. Joe Manchin (D-W.Va.), who defeated him in 2018.

"West Virginians are a warm, generous, giving people," Morrisey told Bloomberg Law in an interview. "But they also know how to fight."

West Virginia v. EPA

The 55-year-old New Jersey native became attorney general in 2013, ousting a five-term Democratic incumbent as President Barack Obama began his second term. He campaigned on stopping the "war on coal" and "overreaching federal agencies," placing the EPA in this crosshairs.

Morrisey and other Republican attorneys general sued Obama's EPA over its efforts to curb power plants' greenhouse gas emissions in 2015. The Supreme Court eventually reviewed the power of the agency to regulate emissions, moving to limit agencies' rulemaking authority in West Virginia v. EPA last year.

Agencies need clear permission from Congress to issue regulations that have major economic or political importance, the Supreme Court ruled. The decision is talked about widely in conservative circles, said David Burton, a senior fellow in economic policy at the Heritage Foundation, a right-leaning think tank.

“It gives a lot of people, including myself, hope that some of these administrative agencies, when they get outside of their lane, will be checked by the courts,” Burton said.

Morrisey and other Republicans have cited the Supreme Court ruling in their push to keep the SEC from adopting rules that would require companies to report their greenhouse gas emissions and make other disclosures about how climate change affects their businesses.

He led several Republican attorneys general in writing a July 2022 letter that told the SEC that West Virginia v. EPA shows why the agency’s proposed rules are problematic. The SEC could “save everyone years of strife” if the agency scrapped its climate disclosure proposal, the attorneys general said.

SEC Chair Gary Gensler, a Democrat, said last year the high court decision was “significant and meaningful.” But he has no plans to abandon the proposal completely, saying investors are demanding information from companies about climate change. The agency is expected to adopt climate disclosure regulations early this year.

“The SEC would be quite foolish to replicate its proposed rule because that type of final rule would go down about as quick as a bolt of lightning,” Morrisey said.

An SEC spokesman declined to comment.

Manchin also has raised concerns about the SEC’s climate reporting proposal, telling Gensler last year it unfairly targets fossil fuel companies. But Morrisey’s anti-ESG work is drawing at least some Democratic pushback in West Virginia.

Morrisey’s attacks on ESG are “fool’s errands” to help wealthy interests at the expense of West Virginians, said West Virginia lawyer Sam Petsonk, a Democrat who tried to unseat the attorney general in 2020. ESG-minded investors have helped push coal companies to reduce emissions and invest in their workers in an effort to sustain the state’s mining industry, he said.

“Attacking rules that will preserve American competitiveness is harmful to the very interests he purports to represent,” Petsonk said. “In fact, he is not representing American coal miners or American manufacturing when he attacks these ESG rules.”

Fighting Manchin

Any litigation over final climate disclosure rules likely would play out during any campaign Morrisey might wage for governor or senator.

The attorney general already has made fighting ESG a key pillar of any run for elected office, with a campaign website that prominently features a Politico newsletter that says the “woke wars intensify” and “Morrisey is back for more.”

Morrisey is trying to use ESG to play to voters who back the coal industry, said Jena Martin, a West Virginia University College of Law professor who studies business and human rights. She pointed to a June 2022 letter in which Morrisey and other Republican attorneys general told the SEC it is “redefining itself at the behest of political interests bent on destroying industries central to the American economy—building blocks like energy companies, traditional automakers, and more.”

“When he does campaign and say, ‘I’m trying to save coal, I’m trying to save our industries,’ he can point to things like ESG,” Martin said.

Morrisey said he expects to announce whether he will run for governor or senator in the coming months. A run for Senate would be Morrisey’s third attempt to join Congress. He lost a bid to represent New Jersey in the House in 2000, before moving to Harpers Ferry, W.Va., in 2006 and losing to Manchin in 2018.

If Morrisey ran for governor, he wouldn’t have to face Gov. Jim Justice (R), who is unable to run for reelection in 2024 due to term limits. But Morrisey could face Justice in the Republican primary for Manchin’s seat, if both decide to run for Senate in 2024. Other Republicans also have announced gubernatorial and Senate bids.

Manchin, 75, hasn’t said whether he will seek reelection. The Democrat, who joined the Senate in 2010, received 49.6% of the vote compared to Morrisey’s 46.3% in the 2018 race.

Lobbying Past

Morrisey faced scrutiny during his Senate run over his time lobbying for pharmaceutical companies in Washington from 2004 to 2012, raising questions about his commitment to fighting the opioid epidemic in a state devastated by the drug. His clients included Sunovion Pharmaceuticals Inc., Bayer AG and Novartis AG at various points while he was a partner at Sidley Austin LLP and later King & Spalding LLP, according to congressional records.

“Once a lobbyist, always a lobbyist,” Manchin’s campaign tweeted in 2018. “Patrick Morrisey is still doing the dirty work of the opioid industry that’s ravaging West Virginia.”

Manchin and others have pointed to opioid-related settlements that they said shortchanged West Virginia. One of the deals, a $20 million settlement with Cardinal Health Inc. in 2017, was “pennies on the dollar,” according to a campaign ad from Don Blankenship, who lost to Morrisey in the 2018 Republican primary for the Senate.

Morrisey once lobbied for the Healthcare Distribution Management Association, now the Healthcare Distribution Alliance, which counts Cardinal as a member. His wife, Denise Henry Morrisey, also lobbied for Cardinal until 2016, according to congressional records. She's a founding partner of Wasington lobbying firm Capitol Counsel LLC , which has clients that include Fox Corp., the National Football League and the Planned Parenthood Federation of America, according to congressional records.

West Virginia's Lawyer Disciplinary Board in 2016 announced it found no ethics violations by the attorney general, according to news reports. Morrissey recused himself from the case in 2013.

'Hell of a Record'

Morrisey has long fought to improve health care in the US, said Preeya Noronha Pinto, a King & Spalding partner, who worked with the attorney general at the firm. He used his experience with the legislative and regulatory processes in Washington to help his firm's clients try to make innovative treatments available to patients, she said.

Before entering private practice, Morrisey served as deputy staff director and chief health care counsel on the House Energy and Commerce Committee from 1999 to 2004, helping Republicans pass bioterrorism legislation in 2002 and a Medicare overhaul in 2003.

"Patrick hasn't changed a bit," Pinto said. "He's the same fighter that he has always been."

The attorney general touts success in battling opioids, with his official biography noting more than $380 million in state settlements with drugmakers, distributors and manufacturers. Voters also can see how he's helping protect their jobs from federal government overreach in areas like ESG, he told Bloomberg Law.

His message to any 2024 challengers: Bring it on.

"Voters are going to have a chance to know my background and my record at a level of depth that they didn't quite fully appreciate in 2018," Morrisey said. "It's a hell of a record."

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12. Bankman-Fried Pleads Not Guilty, Faces Trial in October

3 Jan 2023 (3:14 PM), Ava Benny-Morrison and Chris Dolmetsch

FTX founder Sam Bankman-Fried pleaded not guilty to criminal charges Tuesday and is set to face a trial in October, a courtroom showdown likely to be one of the highest-profile white-collar fraud cases in recent years.

Bankman-Fried appeared in US District Court in New York wearing a blue suit, white shirt and blue tie, and sitting at the defense table between his lawyers, Mark Cohen and Christian Everdell. US District Judge Lewis Kaplan set a trial date for Oct. 2, after US prosecutors said they expect to produce all evidence for the case in the next four weeks.

While the plea was not unexpected, it buys the 30-year-old more time, legal experts say. Bankman-Fried will get a better idea on the evidence prosecutors have against him and plan his next move. The plea puts the case on track for a lengthy trial, which could last at least four weeks.

Bankman-Fried emerged from a black SUV into a crowd of photographers and TV crews Tuesday, ahead of a 2 p.m. hearing scheduled in New York. In December, US prosecutors in Manhattan revealed eight criminal counts against him, including wire fraud and campaign finance violations.

Additional bail condition

Assistant US Attorney Danielle Sassoon summarized the evidence against Bankman-Fried, noting that from the beginning FTX had a unique relationship with Alameda that allowed it to receive preferential treatment. The US proposed an addition bail condition for Bankman-Fried, asking to judge to prohibit him from accessing or transferring any FTX or Alameda Research assets.

The ask comes after Bloomberg News reported last week that federal prosecutors were looking into a series of crypto transactions tied to digital wallets associated with Bankman-Fried. Sassoon said there was not yet any evidence that the transfers reported last week were done by Bankman-Fried but that prosecutors were probing it.

“We do have concerns that within a period of a few days additional assets could become inaccessible,” Sassoon said, noting that while SBF has denied making the transfers in a tweet he has made false statements in that fashion before.

A magistrate judge granted Bankman-Fried a $250 million bail package in December. Earlier today, Bankman-Fried asked US District Judge Lewis Kaplan to keep confidential the identities of two people who will help him secure bail. Judge Kaplan on Tuesday said he will grant the request pending motions by the press or any parties to make the names of the guarantors public. Prosecutors said they have appointments to interview both of the potential sureties for Bankman-Fried’s bail.

New task force

Manhattan US Attorney Damian Williams, who is leading the Bankman-Fried case, announced on Tuesday the formation of a task force of senior prosecutors to handle the investigation and prosecuting matters related to the collapse, made up of members of units probing securities and commodities fraud, public corruption, money laundering and transnational criminal enterprises. The task force, which will use the office's asset forfeiture and cyber capabilities to "trace and recover victim assets."

The group will be led by the office's chief counsel Andrea Griswold, who serves as a co-chief of the Securities and Commodities Fraud Task Force, and will be supervised by the heads of the securities and commodities fraud unit with consultation by the heads of the public corruption and money laundering and transnational criminal enterprise units.

"All the machinations of getting to trial will start rolling after the arraignment," Andrew Jennings, a law professor and former white collar defense attorney, said. "But it doesn't mean the government and Bankman-Fried can't negotiate a plea."

Jennings, now a professor at Brooklyn Law School, said Bankman-Fried would likely be considering whether he could and should negotiate a plea bargain. In that case, prosecutors may be willing to budge on what sentencing recommendations – the time they believe Bankman-Fried should spend in prison – they submit to a judge or drop one or more charges.

"Even if you have a strong evidential case going to trial, it does carry some risks," Jennings said. "If the case is going to take weeks, it does take a very serious commitment of government resources. So the government, in general, is always open to reaching some agreement if it avoids the cost of trial."

Legal pathways

Pleading not guilty also opens up discovery channels. Bankman-Fried and his legal team, led by defense attorney Mark S. Cohen, will get a better insight into what evidence prosecutors have, including any exculpatory material.

US Attorney Damian Williams previously revealed the government had spoken to dozens of FTX employees and had tens of thousands of pages of material, including emails, financial statements and Signal messages.

The government's star witnesses are some of Bankman-Fried's closest associates – former Alameda Research chief executive Caroline Ellison and FTX chief technology officer Gary Wang. They have pleaded guilty to fraud charges in cooperation agreements carved out with the government while Bankman-Fried was still in the Bahamas.

While negotiating a plea is one thing, Bankman-Fried's overall value as cooperator is somewhat diminished by the fact he is at the top of the FTX hierarchy.

"Even if Bankman-Fried wanted to cooperate," the US Attorney's Office for the Southern District of New York "would only agree to do so if he brought substantial value," defense attorney Tim Howard, a former SDNY prosecutor, said. "SDNY does not like to cooperate down, and Bankman-Fried is likely at the top of their pyramid, so it's unlikely."

Only a fraction of criminal cases in the US end up going to trial. The FTX founder was arrested in the Bahamas on Dec. 12 after US prosecutors filed an indictment accusing him of spearheading a yearslong fraud through the cryptocurrency exchange.

Bankman-Fried fraudulently raised $1.8 billion from investors under the guise of FTX having appropriate controls and risk management measures, authorities allege. FTX's catastrophic collapse in November, and subsequent bankruptcy filing, shattered trust in the cryptocurrency industry.

He also is accused of misusing customers' funds at FTX to cover personal expenses, real estate purchases and trading at Alameda Research, the hedge fund he established in 2017. In media interviews before his arrest, Bankman-Fried conceded being a poor manager with lapses in oversight but denied knowingly committing fraud.

He was extradited to the US last month and released from custody on a $250 million bail package. He is also facing civil action from the Securities and Exchange Commission and Commodity Futures Trading Commission. Those cases will likely be paused while the criminal case plays out.

The case is USA v. Bankman-Fried, 22-cr-00673, US District Court, Southern District of New York (Manhattan).

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Reuters

13. Ex-CFO pleads guilty to stealing from SPACs to trade meme stocks, cryptocurrencies

3 Jan 2023 (11:43 PM), Jonathan Stempel

A former chief financial officer of multiple special purpose acquisition companies (SPACs) has pleaded guilty to embezzling more than $5 million from them, and losing almost all of it trading meme stocks and cryptocurrencies.

Cooper Morgenthau, 35, of Fernandina Beach, Florida, pleaded guilty to one count of wire fraud on Tuesday before U.S. District Judge Paul Engelmayer in Manhattan federal court.

Morgenthau faces a possible prison sentence of about six to 7-1/4 years, under recommended federal guidelines, at his scheduled April 25 sentencing.

He also agreed to forfeit $5.11 million and pay an equal amount in restitution, and settled related civil charges by the U.S. Securities and Exchange Commission.

Michael Bowen, a lawyer for Morgenthau, declined to comment.

Authorities said that between June 2021 and August 2022, Morgenthau stole more than $1.2 million from African Gold Acquisition Corp (AGAC.N), concealed the theft by falsifying its account statements, and spent or lost all of it in securities trading.

To cover his losses, Morgenthau then raised $4.7 million from investors in SPACs known as Strategic Metals Acquisition Corp, only to lose most of it through crypto trading, the SEC said.

African Gold, which is based in New York and was created to buy a gold mining business, had raised $414 million in a Feb. 2021 initial public offering.

It fired Morgenthau last August after he ran out of money and vendors refused to work for the company, the SEC said.

African Gold said at the time it terminated Morgenthau after learning about his "improper withdrawals" and attempts to conceal them.

In pleading guilty, Morgenthau "admitted that he breached the trust that he owed to his public and private investors," U.S. Attorney Damian Williams in Manhattan said in a statement.

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Law360

14. SPAC Exec Admits Taking $5M For Meme Stock, Crypto Trades

3 Jan 2023 (9:15 PM), Katryna Perera

The former chief financial officer of three special purpose acquisition companies pled guilty on Tuesday to embezzling more than $5 million from the businesses to, among other things, fuel his trading of so-called meme stocks and cryptocurrencies, according to the U.S. Attorney's Office for the Southern District of New York.

As part of his guilty plea, Cooper Morgenthau, 35, a Florida resident, has agreed to forfeit $5.1 million and pay the same amount in restitution, prosecutors said. Morgenthau's sentencing is scheduled for April.

In a statement, U.S. Attorney Damian Williams said that Morgenthau "has admitted that he breached the trust that he owed to his public and private investors, stealing millions of dollars from them to trade meme stocks and cryptocurrencies. This office remains committed to rooting out fraud in the SPAC market and to protecting Main Street investors from abuses on Wall Street."

According to the criminal information, Morgenthau stole more than $5 million between June 2021 and August 2022 to cover his personal expenses and his trading in meme stocks, such as AMC Entertainment Holdings Inc. and GameStop Corp., which had gained large followings on social media by retail investors.

A parallel civil complaint filed by the U.S. Securities and Exchange Commission on Tuesday identified Morganthau as the CFO of African Gold Acquisition Corp., a SPAC seeking to acquire a company in the gold mining industry.

Both prosecutors and the SEC claim Morgenthau stole approximately $1.2 million from African Gold Acquisition Corp. and wired it to his personal bank and brokerage accounts.

Authorities say Morgenthau falsified African Gold's monthly bank statements to conceal his theft by deleting his unauthorized transactions and overstating the available account balance. He then emailed these false statements to the company's accountants and auditor and falsely attested that he was unaware of any fraud and that the statements and records were correct.

"Morgenthau knew that African Gold's accountants and auditor would rely on his falsified bank statements and his false assurances in those letters to prepare financial statements that were incorporated into African Gold's quarterly and annual reports filed with the Commission," the SEC's complaint states.

Prosecutors and the SEC allege Morgenthau eventually lost all the money he stole from African Gold, which prompted him to launch two other SPACs, named Strategic Metals Acquisition Corp. I and Strategic Metals Acquisition Corp. II.

Authorities say Morgenthau raised approximately $4 million from investors in these two new SPACs, all of which he misappropriated for himself. According to the SEC, he deposited part of the money into African Gold's accounts to hide his previous embezzlement.

Morgenthau's scheme continued until August 2022, when he ran out of money, and the bank accounts of all three SPACs were empty, according to the SEC and prosecutors. This exposed Morgenthau's scheme, authorities said, and he was fired by African Gold shortly after.

The SEC is seeking disgorgement, civil money penalties and an order barring Morgenthau from serving as an officer or director to any issuer of registered securities.

In a statement on Tuesday, John Dugan, the SEC's associate director for enforcement in its Boston Regional Office, said the SEC's complaint "demonstrates our commitment to holding individuals accountable, particularly when they seek to take advantage of public interest in investment vehicles such as SPACs."

"Our enforcement team worked swiftly and efficiently to file today's action in just over four months since it was disclosed, which should serve to deter future bad actors in the SPAC market," Dugan added.

Counsel for Morgenthau did not immediately respond to requests for comment on Tuesday.

The government is represented by Joshua A. Naftalis and Anden Chow of the U.S. Attorney's Office for the Southern District of New York.

The SEC is represented in-house by Anne Hancock, David D'Addio, Ryan Murphy and Amy Gwiazda.

Morgenthau is represented by Michael Paul Bowen of Glenn Agre Bergman & Fuentes LLP.

The cases are USA v. Cooper Morgenthau, case number 1:23-cr-00002-PAE, and Securities and Exchange Commission v. Cooper Morgenthau, case number 1:23-cv-00022, both in the U.S. District Court for the Southern District of New York.

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15. SEC, Sports Stock Market Disagree On Damages In Fraud Suit

3 Jan 2023 (8:11 PM), Renee Hickman

The Securities and Exchange Commission and Crystal World Holdings said Tuesday that they still have not come to an agreement on monetary damages in their settlement talks to end a $1.5 million fraud lawsuit, despite the partial resolution reached in previous discussions.

The SEC also could not reach a settlement with the owner of the marketplace, Christopher Paul Rabalais, according to a joint status report filed Tuesday.

The parties previously reported that the SEC had reached a "bifurcated settlement" with Crystal World Holdings Inc., an experimental sports marketplace it sued in 2019, and that the only matter outstanding was monetary relief.

But since that report, issued in September 2022, the parties have been unable to finalize an agreement, said the status report, issued in D.C. federal court.

The parties will proceed to the discovery phase now, Tuesday's report said, and the matter of monetary relief will be decided if the defendants are found liable at trial.

In its complaint from 2019, the SEC accused Rabalais of selling unregistered shares in Crystal World Holdings, which owns AllSportsMarket.com, from roughly 2014 until at least April 2019, through ads on his own site and periodic fundraising emails.

The SEC sued Rabalais for securities fraud and sought an injunction that would prevent him from selling additional Crystal World Holdings shares, as well as an order directing him to return the money he has taken in thus far, in addition to unspecified damages.

AllSportsMarket was promoted as an "experimental" marketplace where sports fans could "buy & sell shares of your favorite sports teams in a 24-hour, worldwide marketplace" and "earn money when your stocks perform well," according to the SEC.

For years, the SEC said, Rabalais sold the shares, referring to them as gifts for donations, and promised shareholders that he would register them with the SEC, after which their prices would soar.

But in fact he never did and, according to one email, he indicated to one shareholder that he did not even know how to begin the registration process.

The parties to the lawsuit could not immediately be reached on Tuesday for comment.

The SEC is represented by its own Patrick Reinhold Costello.

Crystal World Holdings, New Sports Economy Institute and Christopher Paul Rabalais are represented by Cheryl D. Stein of Cheryl D. Stein, Attorney at Law and James Falvey of The Law Office of James Falvey.

The case is Securities and Exchange Commission v. Crystal World Holdings Inc. et al., case number 1:19-cv-02490-CJN, in the United States District Court for the District of Columbia.

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16. The Cryptocurrency Law And Policy Outlook For 2023

3 Jan 2023 (5:19 PM), Joshua Smeltzer

Digital assets have experienced a bumpy ride over the last two years.

In 2021, we saw the adoption rate and value of digital assets skyrocket. Then, in 2022, the value of those same digital assets and the NFT market fell precipitously, followed by the bankruptcy and demise of several large digital asset companies as the first breezes of crypto winter began to blow.

Spectators who had never entered the digital asset space pointed fingers and said, "I told you so." Many true believers stayed the course and even increased their digital asset holdings believing the value would rise again.

However, even the truest of believers are now reevaluating what the future of digital assets and blockchain will look like. The chaos of 2022 created a lot of cynicism — but those feelings may be more aptly labeled as confusion.

As we enter a new year, with hopes of digital asset recovery, we should consider several things about how the industry will change over the coming year.

Trust is a digital asset company's biggest priority.

Digital assets proposed a peer-to-peer financial system that was trustless. The implementation of that system, however, required more trust than many individuals, companies and policymakers anticipated.

Those who interact with digital assets, especially new adopters, do not directly use the underlying blockchain technology. Instead, they rely on a variety of mostly unregulated intermediaries. While blockchain technology is trustless, intermediaries that interact with the blockchain on behalf of others create a need for trust that can, and has been, abused.

Many digital asset users and investors do not have the time to acquire the requisite technological skill to interact directly with the blockchain technology. Therefore, this year there will be a premium on companies that develop procedures and implement safeguards to allay fears and encourage continued growth in the space.

The companies that will survive are those willing and able to provide a trusted system while still leveraging the decentralized nature of the technology and its associated digital assets.

Recent company failures can be blamed on poor management and, in some cases, outright fraud. But there are solutions to protect the integrity of the industry, and the consumers and investors participating.

It can be expected that the first proposals, introduced at the end of 2022, will be discussed and potentially implemented this year. These include proof of reserves — i.e., proof that a company has sufficient assets to cover its liabilities at any given time — and other consumer protections using blockchain technology or some other public verification of on-chain assets or third-party audit results.

Customers may also demand self-custody — i.e., noncustodial — of their wallets to keep a more direct store of their private keys. There will be inevitable tradeoffs in privacy, anonymity and convenience, but those will be balanced against a more trusted system that encourages broader participation.

Years ago, a similar scenario played out for internet companies during in the so-called dot-com bubble. The internet created new technology that fueled wild speculation, followed by the public failure of several large internet companies — e.g., Pets.com, eToys, etc.

This did not result in the end of the internet, just in more cautious consumers and investors. Many companies failed, and significant capital was lost, but some of the largest technology companies emerged out of that chaos — Amazon.com Inc., eBay Inc., etc.

Self-imposed protections will help reinstitute trust in the digital asset space. However, policymakers will not be satisfied with the industry governing itself, especially given the recent company failures.

More government regulation is inevitable and necessary.

Governments mostly ignored digital assets since their creation in 2008, until widespread adoption started in 2021. The digital asset community, until recently, mostly expressed antagonism toward regulators, and regulators themselves expressed antagonism toward the digital asset industry.

However, many within the digital asset community appear to acknowledge that some form of regulation would be a good thing. The ethos of digital assets is still focused on operating outside government control — but operating outside some form of government oversight hasn't had great results.

Prior to 2021, governmental involvement in the digital asset space primarily involved the Internal Revenue Service, which focused merely on locating all the digital assets so that they could be taxed. The IRS issued letters and notices threatening taxpayers about not reporting and paying taxes on their digital assets, but actual guidance was very limited.

Official guidance on the taxation of digital assets didn't really occur until 2014, and then not again until 2019, despite increased adoption and technological advancement. Even unofficial guidance in the form of chief counsel advice memoranda and private letter rulings, which cannot be cited as authority, was limited.

Instead, the IRS continued to march forward on its hunt for hidden treasure by issuing John Doe summonses to various exchanges — Coinbase, Kraken, Circle, sFox, etc. — for names and transactions that couldn't otherwise be obtained through analytics. There were no mandatory information reporting requirements — yet.

The IRS and other agencies like the U.S. Securities and Exchange Commission and the Commodity Futures Trading Commission, have been focused on fitting digital assets into the frameworks they already have.

In some situations, digital assets could fit comfortably into the existing rules. However, increasingly, the unique aspects of borderless digital assets fall outside historic tax and securities principles, laws and regulations.

The only real legislative change in the treatment of digital assets was in 2021's Infrastructure Investment and Jobs Act, which extended tax information reporting requirements to digital asset "brokers." However, the new reporting rules, again, merely focused on making sure that the transactions and the people transacting were known for tax purposes.

The industry has expressed concern over the broad scope of the act's broker definition. However, clarifying regulations that were expected in 2022 never arrived, and on Dec. 23, 2022, the IRS postponed any reporting requirements until final regulations are provided.[1]

The proposed regulations and the industry's ability to comment have been pushed to this year, and most likely will be among several new legislative or regulatory rules addressing the current needs and concerns.

The IRS has substantial new funding, and digital asset guidance is long overdue. The recent industry failures will likely prompt the completion, finally, of several digital asset guidance projects languishing on the desks of IRS officials.

As new rules are provided, the industry, individuals, trade groups and others should prepare to participate in the notice and comment process and attend hearings, to provide a thoughtful approach rather than a knee-jerk reaction to some bad actors.

In the tax context, additional guidance is not just something that is nice to have; it is necessary for tax advisers to be able to provide proper advice to their clients.

Understanding the tax treatment of financial transactions, even when the assets and the transactions are well known, often requires knowledge and nuanced interpretation of multi-faceted Internal Revenue Code provisions. When you add an unknown and unique asset class, the analytical problems are exacerbated.

For example, the concept of deferring taxable gains by exchanging like-kind assets is a well-known tax principle that has been applied in various forms since the 1920s. In 2018, like-kind exchanges were limited to real-property.

Prior to 2018, the only official IRS guidance on digital assets was Notice 2014-21, which indicated that cryptocurrencies were considered property and that tax principles associated with property applied.[2]

Analytically, it appeared that prior to 2018 like-kind exchanges of cryptocurrencies — i.e., taxable property — could be deferred through the like-kind-exchange process. However, in 2021, the IRS released a chief counsel advice memorandum stating that some of the most popular cryptocurrencies — bitcoin, ether and litecoin — were not considered like-kind.[3]

As digital assets, the companies that use them and the technology itself evolve, many more tax questions are being raised, but the guidance isn't keeping pace. For example, no guidance has been issued on the tax treatment of non-fungible tokens.

This lack of specific guidance is untenable and needs to change.

Courts will decide legal issues involving digital assets this year.

Lawsuits involving digital assets have been limited and sporadic. However, many legal issues involving digital assets have finally made their way to the courts.

Most notably are the bankruptcy proceedings of Voyager Digital Holdings Inc., Celsius Network LLC and FTX Trading Ltd. Many other smaller digital asset companies have also found themselves in need of bankruptcy protections.

These cases are important for the digital asset industry because some real questions about the characterization of the digital assets involved — e.g., security or commodity? — will likely need to be decided in order to administer the bankruptcy estate.

Also, the nature of the property and how it should be treated for bankruptcy purposes could provide guidance for other areas, like taxation, where digital assets are involved.

Other lawsuits, like Grayscale Investments LLC's suit against the SEC for the denial of their application for a digital asset exchange traded fund, currently pending in the U.S. Court of Appeals for the District of Columbia Circuit, and digital asset valuation questions in the U.S. Tax Court, will also start answering questions on legal definitions and issues that policymakers and regulators have been unwilling or unable to answer.

The courts may not be the best place to resolve these legal questions, but many of these cases will likely require resolution this year, and certain legal questions must be answered in the process.

Recovery will start this year and may be driven by traditional finance.

This is a bold prediction given the seemingly endless crypto winter of 2022 and continued problems that seem to hurt actual recovery.

In 2022, the cracks in the current digital asset industry were exposed, but exposure allows the industry to determine solutions that can be proposed to policymakers and regulators charged with protecting consumers and investors. Remarkably, traditional finance may provide a good guide for the recovery of the digital asset industry.

Traditional finance has, until recently, stayed away from the digital asset space, probably because of doubts about digital asset viability or concerns over inserting a speculative and volatile asset into a highly regulated banking system. However, in 2022 the traditional banking and finance industry started to accept digital assets.

The Coinbase exchange became a publicly traded company — subjecting it to normal disclosure and other requirements of public companies — and then teamed up with the world's largest traditional asset manager, BlackRock Inc.

Fidelity Investments, the largest 401(k) administrator, began offering a bitcoin fund to workers in 2022 as well, despite warnings from the U.S. Department of Labor on its volatility.

JPMorgan Chase & Co., Morgan Stanley and Goldman Sachs all have dedicated groups within their firms for cryptocurrency and blockchain technology. Although there will still be startup companies that flourish in the digital asset space, the presence of blue-chip financial firms will help with both credibility and recovery of a battered industry.

Potentially more important is that traditional finance has navigated multiple financial downturns, recoveries, bubbles and other potential disasters, and done it all in a highly regulated and competitive environment.

Traditional financial firms are also very familiar with the taxation of a variety of regular and more exotic financial assets, and can provide guidance to regulators on how new assets might fit into systems already tested.

This year, hopefully we will see more partnerships between digital asset companies and traditional finance companies that are mutually beneficial to the companies involved, that benefit the industry in general and that encourage the development of the blockchain technology.

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17. Crypto Bankruptcies Highlight Need For Better Due Diligence

3 Jan 2023 (10:23 PM), David Lopez-Kurtz, Alex Albers and Tanner Dowdy

Just two weeks after the implosion of cryptocurrency exchange FTX Trading Ltd., credit services provider BlockFi Lending LLC filed for Chapter 11[1] protection with the U.S. Bankruptcy Court for the District of New Jersey, indicating that it is burdened with billions of dollars of estimated liabilities and more than 100,000 creditors.

In the Nov. 28 filing, BlockFi states it is seeking protection "despite their best efforts to stabilize the enterprise and protect clients," and that this was a result of the unprecedented, expedited collapse of FTX.

Hoping to differentiate itself from FTX, BlockFi claims that, because of its "industry-leading protections" and "best-in-class financial services," it does not face the myriad issues that plagued FTX.

Instead, BlockFi maintains it is quite the opposite, and are well-positioned to continue business operations, despite 2022 being a "uniquely terrible year."

Owing to its proximity to the fall of FTX, BlockFi's bankruptcy is drawing heightened public scrutiny, and it is unclear whether crypto sector enthusiasm can rebound.

Millions of people have purchased digital assets in recent years due to increased awareness and interest in the industry, including 16% of adult Americans. However, enthusiasm is turning to cautious participation as the wave of crypto exchange failure is coinciding with general unfavorable economic conditions.

Over the past year, many cryptocurrencies have experienced a decrease in value.

BlockFi's filing included bitcoin's slump as an example, which dropped 65% in 2022. Price drawdowns have driven investor pessimism, causing a significant number of BlockFi clients to withdraw funds from their accounts.

Several cryptocurrency entities had the same fate as BlockFi and FTX earlier in the year, all of which BlockFi cites as part of the investor pessimism trend.

Three Arrows Capital, one of BlockFi's largest borrower clients, was forced into liquidation in June. And two competitors of BlockFi — Voyager Digital and Celsius Network LLC — filed for Chapter 11 protection on July 5 and July 11, respectively.

This cascade of collapsing crypto projects fueled an uptick in customer withdrawals from BlockFi's products.

Though all of these failures affected BlockFi, the root cause of the firm's problems is its exposure to FTX. In June, when BlockFi needed a capital infusion, FTX stepped in to provide $400 million in debt, coupled with an irrevocable and exclusive option to acquire BlockFi.

Despite BlockFi's belief that this financing caused executives and employees to sacrifice hundreds of millions of dollars of equity, it was deemed the best and perhaps only way forward.

However, BlockFi's own bankruptcy filing has frozen access to its assets and, as of the date of its filing, BlockFi had $275 million outstanding under the agreement and a pending request for the additional $125 million, submitted just days before FTX's bankruptcy filing.

Without this additional liquidity, BlockFi paused customer withdrawals and limited platform activity on Nov. 10 and, in preparation for bankruptcy filing, liquidated digital assets in the amount of $256.5 million, as of the petition date.

Moving forward, BlockFi plans to reemerge and recover a substantial portion of the investments.

BlockFi has submitted a proposed plan of reorganization with the bankruptcy court, which, it believes, will allow it to "emerge as reorganized debtors on the most expedited timetable that is realistic." BlockFi has also stated that it will fight to maximize client recoveries.

However, the potential for this is questionable. At this time, BlockFi has informed customers that protecting crypto assets is a top priority without detail on what those customers can expect from the proceedings.

Regardless of BlockFi's ultimate fate, if the fall of FTX highlights the need for regulatory infrastructure, BlockFi's fall highlights the need for due diligence.

If there is any hope for widespread adoption of blockchain and Web3 projects, it will rest with the development of meaningful infrastructure, policies, procedures and controls.

Anyone looking to work, build or play in this space would be well-advised to proactively create systems to mitigate and undercut risk, while simultaneously demanding the same of those with whom they conduct business.

To this end, firms must begin to reassess their compliance and diligence programs, prioritize safe custody and corresponding good custody practices when dealing with digital assets, and continue an industrywide push for regulatory clarity.

Prioritizing Compliance and Due Diligence

Entrepreneurs cannot rely on faith that so-called established companies have adopted strong internal controls. Third-party due diligence and robust policies and procedures must be part of a proactive compliance program.

The major issues underlying FTX's filing were foreseeable, and it was clear to anyone who took the time to examine FTX that it lacked the proper competencies to effect meaningful controls and had fatally inadequate strategies for risk management.

This has all been highlighted by John J. Ray III, CEO of FTX, who, in his first act as CEO, authorized Chapter 11 filings. Upon his recent appointment, Ray stated that he has never seen "such a complete failure of corporate controls" and "a complete absence of trustworthy financial information" as he saw with FTX.

Even while FTX held billions of dollars' worth of digital assets, the company was controlled by "a very small group of inexperienced, unsophisticated, and potentially compromised individuals" who led a company with faulty regulatory oversight and compromised systems integrity.

These failings, along with a lack of proper financial safekeeping and any sort of meaningful conflict of interest policy, combined to create compliance catastrophe.

Prioritizing Safe Custody of Crypto Assets

The events surrounding FTX, BlockFi and other troubled crypto projects highlight the need for custody solutions in the digital assets industry beyond the traditional dichotomy of self-custody or bust.

Customers unfamiliar with the crypto self-custody best practice treat accounts with exchanges as trusted depository accounts, with the faulty belief that the custodial practices relating to such accounts will be commensurate with banking or other traditional financial institution custodial policies, procedures and best practice.

Instead, many of these exchange accounts are routinely accessed, without customer knowledge, to hypothecate, loan and collateralize funds. In order to reach an appropriate balance of user convenience and security, specialized solutions are emerging.

Crypto Vendors

In order to provide a more robust custodial solution, certain vendors are providing accounts where assets are held on account on a 1-to-1 basis, with reserves held in cash or highly liquid cash-equivalent stablecoins.

Special Purpose Depositor Charters

State legislation may allow for chartering special purpose depository institutions within states, which would be legally required to hold digital assets on account at a 1-to-1 reserve ratio.

Traditional Banking Solutions

Traditional chartered banking institutions may be wading into custody. The Bank of New York Mellon Corp. announced earlier this year that it would begin offering custody services.

Prioritizing Regulatory Clarity

Addressing this regulatory disconnect, President Joe Biden issued the Executive Order No. 14067 on ensuring responsible development of digital assets on March 9.

After discussing the incredible growth of digital assets in the prior years and the combined market capitalization of $3 trillion in November 2021, the order hit on the significant financial risks consumers face with digit assets, indicating that some crypto platforms and services may "not be subject to or in compliance with appropriate regulations or supervision."

This statement would prove to be prophetic. Crypto market participants have typically had little explicit regulation to look to, and when coupled with rapid growth, control failures may have been inevitable.

In order to undermine the potential of future misconduct and to remediate confidence in digital asset markets, regulatory guidance is nonnegotiable.

There are three specific areas that will need to be part of any comprehensive regulatory infrastructure governing the crypto world.

Clarify the Status of Digital Assets

Digital assets are extraordinarily diverse in both form and function.

Any given asset can have properties akin to securities, commodities or software all at once. This has made classifying digital assets exceedingly difficult, since analysis must be done on a case-by-case basis.

The muddy waters have not been clarified by the regulatory turf war between agencies as they jockey to be the primary regulator overseeing all digital assets in the U.S. While there has been some guidance in the form of the U.S. Securities and Exchange Commission's framework for investment contract analysis of digital assets, there needs to be a cohesive and comprehensive update.

This will need to better accommodate the broader and deeper understanding of digital assets we have today relative to when the framework was published in 2017.

This could be similar to or expand beyond the Markets in Crypto-Assets Regulation framework proposed in the European Union, which aims to regulate and define crypto assets, asset-referenced tokens and e-money tokens.

Disclosures for Issuers

Guidelines for proper risk disclosure are critical to the development and deployment of novel financial instruments.

In the absence of a cohesive regulatory regime, digital asset market participants must instead look to other, roughly analogous disclosure requirement guidelines, which prime the possibility of insufficient disclosure.

Require Custodial Vendors to Hold Reserves

Without proper custody, these asset classes will be volatile, subject to counterparty risk, liquidity risk and difficult to adopt on an enterprise scale.

It is important that custodial service providers have guidance on what ratio of reserves they need to hold, what sorts of reserves are permissible and what the reserve requirements are for various asset classes, whether tokenized assets or stablecoin.

Conclusion

The ultimate consequences that are produced by the downfall of FTX, BlockFi and the onset of crypto winter cannot be stated with certainty.

While casual market observers might have seen crypto on the precipice of becoming a global economic powerhouse just a year ago, the same observer might find that same possibility bordering on impossibility, given the turbulent year financially, legally and structurally.

However, one hallmark of decentralization is resilience.

So long as even a small number of users, developers and investors continue to believe in the promise of a decentralized future, the crypto markets will continue to be primed for reestablishment as a meaningful market presence.

It behooves global and domestic lawmakers to press forward with establishing meaningful, robust, and clear regulatory frameworks and interpretive guidance.

In the interim, it will fall to market participants themselves to press forward toward the digital horizon.

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18. Riding Circuit: January's Notable Appellate Arguments

3 Jan 2023 (10:01 PM), Jess Krochtengel

Circuit courts will kick off 2023 with oral arguments by parties questioning the authority given to the Centers for Disease Control and Prevention, pushing back against U.S. Patent and Trademark Office policy on patent reviews and claiming Chinese nationals were wrongly targeted for alleged economic espionage.

The courts will also tackle major energy market changes, questions about standing in class action challenges to local regulations and arbitration in representative actions.

Here, Law360 previews selected appellate arguments in the month ahead.

January 10

Third Circuit, Philadelphia

The Federal Energy Regulatory Commission will defend a substantial change to the energy market for 13 Mid-Atlantic and Midwest states and Washington, D.C. Grid regulator PJM Interconnection rolled back what's known as the minimum offered price rule, which required state-backed renewable energy sources to meet a price floor in electricity capacity auctions.

FERC commissioners were divided on the legality of the proposal, blowing a deadline to act on PJM's proposal and letting the rollback take effect.

Regulators for Ohio and Pennsylvania want the Third Circuit to vacate FERC's default approval of the revised MOPR, saying FERC wrongly allowed PJM to overturn existing market rules without any meaningful review. The states and a group of independent power producers in PJM's footprint argue the rule made it more likely that subsidized renewable energy supplies from some states would be pushed into regional markets, increasing costs in other states less supportive of alternative energy subsidies.

In December, the Third Circuit rejected an attempt to exclude FERC from the arguments despite argument from the rule challengers that the commission's deadlock precluded it from actively defending the rollback.

FERC says the Third Circuit can't force it to break the agency stalemate that let the rollback take effect. And it says there's no support for argument that the price floor rule is unjust and unreasonable.

The case is PJM Power Providers Group v. FERC, case numbers 21-3068, 21-3205 and 21-3243, in the U.S. Court of Appeals for the Third Circuit.

January 11

Eighth Circuit, St. Louis

A Monsanto scientist and Chinese national who pled guilty to conspiracy to commit economic espionage is trying to overturn his 29-month sentence by arguing the U.S. government unlawfully seized his phone, laptop, two SIM cards and a flash drive at the airport as he was on his way to visit family and vacation in China.

Haitao Xiang argues evidence from the seized devices, including trade secret information about a Monsanto algorithm to optimize plant nutrients, should not have been part of the case because it was seized without a warrant and the FBI had no reasonable suspicion of criminal activity. He says he was wrongly swept up in the U.S. Department of Justice's "China Initiative" and that law enforcement officers drew unwarranted conclusions that he was acting criminally on behalf of China.

He has amicus support from the Electronic Frontier Foundation and American Civil Liberties Union, which argue the Fourth Amendment requires a warrant for electronic device searches at the border, and from the Reporters Committee for Freedom of the Press and the Knight First Amendment Institute, which argue border searches violate the First Amendment by burdening the freedom of speech and press.

But prosecutors say the devices were lawfully searched, that law enforcement had reasonable suspicion to search Xiang's devices and that the agents acted in good faith, giving no basis to suppress evidence from those searches. The government says Xiang downloaded the nutrient optimizer information from Monsanto and made suspicious Google searches about evidence during a period when he was interviewing for a position at the state-run Chinese Academy of Sciences.

The government says its search of the devices interrupted cross-border criminal activity and an economic espionage plot that would have benefited China — results it says are in line with the purposes behind longstanding border search doctrine, which does not require a warrant.

The case is U.S. v. Xiang, case number 22-1801, in the U.S. Court of Appeals for the Eighth Circuit.

Sixth Circuit, Cincinnati

Michigan counties will try to sway the Sixth Circuit to reverse certification of a class of tax debtors who allege the counties illegally auctioned off their property and kept the excess proceeds. The case is one of dozens of federal and state court challenges to the state's tax foreclosure system and how counties allocate those proceeds.

In this case, lead plaintiff Thomas Fox won certification in October 2020 on behalf of property owners in dozens of Michigan counties who say their property was unconstitutionally taken. In January 2021, the district court said Fox has standing to sue numerous counties, not just the one that foreclosed his property after he failed to pay taxes on it, because their actions under the same statewide regulatory scheme are "juridically linked."

The juridical link doctrine has not been explicitly recognized by the Sixth Circuit, and on appeal the counties argue it cannot be used to circumvent traditional standing requirements for class actions.

The counties say the standing question should be simple: Plaintiffs must have standing against each defendant. Juridical links may bear on questions of whether a plaintiff can adequately represent a class but cannot create standing, the counties say.

The property owners say the juridical link doctrine is a well-established principle allowing redress against systemic government overreach and misconduct. It permits classwide representation of "victims who suffered the same injury at the hands of different government units committing the same misdeed," and was appropriately and sensibly applied by the district court, they argue.

Other elements of the case have previously come before the Sixth Circuit, which ruled in February 2022 that sovereign immunity does not insulate the counties from being sued. Another Sixth Circuit panel in November affirmed a lower court ruling that one of the counties being sued does not have insurance coverage for the class action.

The cases are Fox v. County of Saginaw et al., case numbers 22-1265 and 22-1272, in the U.S. Court of Appeals for the Sixth Circuit.

January 12

Federal Circuit, Washington, D.C.

Tech powerhouses Apple, Cisco, Google and Intel want the Federal Circuit to rule that patent judges cannot reject inter partes review petitions based on pending district court litigation. They've gotten support from Tesla, Comcast, Dell and Mylan for the high-profile fight over how patent validity is reviewed.

At issue is a Patent Trial and Appeal Board precedent called NHK-Fintiv, which the patent office says allows it to deny inter partes review when it thinks that a jury in the district court could hear the case before the board is due to deliver its own opinion on patent validity.

A California federal judge ended the challenge, saying the courts' hands are tied by the America Invents Act because the law makes decisions on launching inter partes review "final and nonappealable."

The tech giants say on appeal that the AIA is supposed to allow patent reviews by PTAB even while district court patent litigation about the same patents is proceeding. They have told the Federal Circuit that the NHK-Fintiv denials are not evenly applied and in particular have the effect of taking PTAB review off the table when litigation is filed in "rocket docket" jurisdictions, where cases get to trial faster. That in turn leads to forum shopping by patent litigants that don't want to go through PTAB review, they say.

The patent office says the tech companies don't have standing to challenge the policy because there is no statutory right to inter partes review. Though the companies can petition for review before PTAB, the patent office has "unreviewable discretion" to decline those petitions, it says.

The case is Apple Inc. v. Vidal, case number 22-1249, in the U.S. Court of Appeals for the Federal Circuit.

January 17

Eleventh Circuit, Miami

The federal government's authority to mandate mask-wearing on public transportation is teed up for the Eleventh Circuit in an appeal of a Florida federal court's ruling that Congress never gave the Centers for Disease Control and Prevention that much power.

The government wants that decision reversed, arguing in briefing that the CDC's statutory authority to implement "sanitation measures" gave it the power to require travelers to wear face masks on planes, trains and buses as the country tried to stop the spread of COVID-19.

The judge who struck down the mask mandate had ruled that the statutory definition of sanitation did not extend to measures that would limit the spread of a disease but not actively destroy or remove the disease. The lower court ruling also interpreted the statute to limit "sanitation" to apply to property, not people.

On appeal, the government is also defending the procedural validity of the mandate, saying the 2021 order was necessary in light of newly emerged COVID-19 variants that were highly transmissible. And it's challenging the nationwide reach of the Florida court's injunction, saying it preempted similar cases pending in eight other circuits and undermined the airing of competing views.

Health Freedom Defense Fund Inc., the group spearheading the challenge to the mandate, said the "breathtaking and unprecedented" scope of the mask mandate means the case triggers scrutiny under the "major questions doctrine," which the U.S. Supreme Court invoked in this summer's West Virginia v. EPA decision on the Clean Air Act. The doctrine requires Congress to clearly indicate when it assigns decisions of "vast economic and political significance" to administrative agencies.

The case has drawn many amicus briefs, including from Congressional Republicans and Republican-led states who say the mask mandate exceeds the CDC's authority. The American Medical Association and a group of public health experts defended the mandate in separate briefs as part of the core regulatory function of the CDC, which they argued has authority to make public health decisions. Other physicians' groups opposed to the mandate also filed briefs that questioned the efficacy of masks and argued the CDC did not have the authority to enact a nationwide requirement.

The case is Health Freedom Defense Fund et al. v. President of the United States et al., case number 22-11287, in the U.S. Court of Appeals for the Eleventh Circuit.

Tenth Circuit, Denver

A radiology company wants the Tenth Circuit to overturn a Colorado federal court and rule that its employees must individually arbitrate claims they were overcharged in a stock ownership sale rather than litigating as a proposed class.

The U.S. Department of Labor will be arguing in support of plaintiff Robert Harrison. The government is staking out the position that the arbitration agreement in Envision Management Holding Inc.'s employee stock ownership plan is not enforceable because it included a waiver of a participant's right to pursue planwide relief. That provision violates the Employee Retirement Income Security Act, and because it is nonseverable from the rest of the agreement, the entire thing is unenforceable, the agency said in briefing.

Harrison argues that the arbitration clause is invalid because it would eliminate ERISA-guaranteed remedies and prevent getting relief for the entire plan.

The case tees up the chance for the Tenth Circuit to apply the U.S. Supreme Court's 2022 Viking River Cruises Inc. v. Moriana decision , in which the justices found that the Federal Arbitration Act does not prevent all forms of representative actions from moving forward when an arbitration agreement is present. The DOL said a claim like Harrison's, brought under Section 502(a)(2) of ERISA on behalf of plan participants, is in line with the type of nonclass representative actions that the Viking ruling distinguished from a class action.

Envision says Viking River does not change the lay of the land, comparing an ERISA representative action to a class action. It argues seeking planwide monetary relief is a procedural right, not a substantive right under ERISA, and can be waived in favor of individual arbitration.

The U.S. Chamber of Commerce, among the amici supporting Envision, told the Tenth Circuit that the lower court ruling would harm businesses and invite "abusive" class-action litigation. It says ERISA does not override the Federal Arbitration Act and that the provisions of ERISA at issue in Harrison's lawsuit do not require planwide relief and so allow for the waiver of planwide claims resolution.

The case is Harrison v. Envision Management Holding Inc., case number 22-1098, in the U.S. Court of Appeals for the Tenth Circuit.

Second Circuit, New York City

Former Oak Investment Partners venture capitalist Iftikar Ahmed's fight against an order to cough up about $65 million in fraudulently obtained funds tees up questions about the limitations period under the National Defense Authorization Act and the U.S. Securities and Exchange Commission's disgorgement authority.

The case, launched in 2015, took twists and turns under two U.S. Supreme Court securities rulings, including 2017's Kokesh v. SEC decision that disgorgement sought by the SEC is subject to a five-year time limit and 2019's Liu v. SEC ruling putting limits on disgorgement.

The NDAA contained a provision responding to both those rulings, with Congress expressly authorizing the SEC to seek disgorgement in enforcement actions and setting a 10-year time limit for disgorgement in fraud cases.

Ahmed argues the SEC can't retroactively use the NDAA to disgorge unlawfully obtained profits for the 10 years before the civil enforcement action was brought. The district court ruled that because the statute says it applies to pending proceedings, the SEC could disgorge about $65 million in illegal profits from Ahmed.

Ahmed says his case shouldn't have been treated as pending because the district court had already entered final judgment.

The SEC says there's not a constitutional problem with applying the NDAA to extend the time frame for which it can disgorge Ahmed's illicit profits because the disgorgement is not a penalty, but an equitable remedy. It says that in 2015, when it brought the action, no time limits applied until the Kokesh decision changed the status quo, so Ahmed can't plausibly argue he had a settled expectation he could keep assets frozen before Kokesh.

In this appeal, Ahmed's wife and minor children also argue that assets Ahmed put into their names can't be seized. The SEC says it was "entirely appropriate" for the district court to have considered that the money for those assets came from Ahmed.

The case is SEC et al. v. Ahmed et al., case numbers 21-1686 and 21-1712, in the U.S. Court of Appeals for the Second Circuit.

January 18

Third Circuit, Philadelphia

Although U.S. Sugar Corp. has now completed its $315 million acquisition of the former Imperial Sugar Co., the U.S. Department of Justice will try to sway the Third Circuit to revive its challenge to the merger, after its bench trial loss. The DOJ opposed the acquisition on the grounds it would leave wholesale sugar buyers in the Southeast only two suppliers to choose from.

The DOJ argued Nov. 1 that a Delaware federal judge legally erred in holding that the government failed to identify a relevant market and wrongly assumed regulations could offset any anti-competitive impacts if the deal goes through.

But U.S. Sugar said the Third Circuit should uphold findings that customers aren't limited to regional markets because sugar flows easily and cost-effectively across the country. Customers in the Southeast could buy sugar from other regions, defeating any hypothetical price increase post-acquisition, it said. The geographic and product markets DOJ presented during a four-day bench trial were overly narrow and did not reflect the reality of the industry, the sugarcane producer said in briefing.

In response, the DOJ argued U.S. Sugar is trying to "turn horizontal-merger law on its head" by treating sugar distributors as competitors even though the merger is between two sugar refiners, at a different level of the supply chain.

The case is U.S. v. U.S. Sugar Corp. et al., case number 22-2806, in the U.S. Court of Appeals for the Third Circuit.

January 19

Second Circuit, New York City

Disgraced former attorney Michael Avenatti will try to sway the Second Circuit to overturn his 30-month sentence for attempting to extort Nike Inc. and an order requiring him to pay about $260,000 in restitution. Avenatti is currently serving prison sentences in the Nike extortion case and for embezzling from former client Stormy Daniels, which will be followed by a 14-year sentence for stealing from four other clients.

In the Nike conviction appeal, Avenatti argues insufficient evidence backs his conviction on attempted extortion, transmission of interstate communications with intent to extort, and honest services wire fraud. He says the jury should have gotten an instruction on allocating authority between an attorney and client and argues the restitution to Nike was improper for a company with pecuniary loss of only attorney fees.

In briefing, Avenatti maintains he committed no crime when he demanded Nike hire his firm to conduct an internal investigation of alleged improprieties in its amateur basketball program for a fee of $15 million to $25 million and threatened that if the company did not hire him or pay a substantial fee, he would go public with allegations he said would tank the company's stock. His demands of Nike were neither wrongful nor fraudulent and he did not solicit a bribe, he argues.

The government says it presented "extensive" evidence to support each charge, including "overwhelming" evidence that Avenatti had no rightful claim to a $20 million payout. There's no basis to overturn the jury's reasonable conclusion Avenatti was seeking to funnel money to himself through "sham" negotiations about a purported internal investigation, prosecutors say.

The case is U.S. v. Avenatti, case numbers 21-1778 and 22-351, in the U.S. Court of Appeals for the Second Circuit.

D.C. Circuit, Washington, D.C.

The D.C. Circuit is tasked with deciding whether American courts have jurisdiction to hear ExxonMobil Corp. claims that a Cuban state-owned company wrongly took over its predecessor's oil refinery and gas stations in 1960.

Cuba's Corporación CIMEX SA says it took the assets from Esso Standard Oil SA, or Essosa, when the company refused to refine Soviet crude oil and allegedly acted with the United States to overthrow the Cuban government. Exxon says it's owed $71.6 million in compensation, with interest dating back to 1969 — when its expropriation claim was certified by the Foreign Claims Settlement Commission — and treble damages.

CIMEX says the Foreign Sovereign Immunities Act should insulate it from the litigation, while Exxon raises two exceptions under that law. Exxon says CIMEX's use of the gas stations to sell U.S. goods to Cuban consumers and process money sent to Cubans from the U.S. through Western Union constitutes commercial activity under FSIA. It also argues it should be able to assert the expropriation exception to FSIA, or to establish jurisdiction through the Helms-Burton Act, also known as the Cuban Liberty and Democratic Solidarity Act of 1996, which allows U.S. citizens to sue instrumentalities of the Cuban government for trafficking in seized property.

But CIMEX maintains on appeal that because only the property of Essosa, a Panamanian company, was expropriated, not that of its parent company Exxon, the expropriation exception does not apply. And it's asking the D.C. Circuit to overturn the application of the commercial activity exception, arguing that the gas stations' processing of Western Union transfers and sales of food imported from the U.S. does not cause a "direct effect" in the United States under FSIA. Those transactions do not affect any commercial dealings between CIMEX and Exxon and there is no injury to anyone in the U.S. from those transactions, it argues.

The case is ExxonMobil Corp. v. Corporación CIMEX SA, case number 21-7127, in the U.S. Court of Appeals for the District of Columbia Circuit.

January 25

Fourth Circuit, Richmond, Virginia.

The en banc Fourth Circuit will convene to weigh whether to award attorney fees to plaintiffs who challenged a Virginia law that suspended drivers' licenses for failure to pay court fines and fees.

The plaintiffs claim victory on the ground that the district court enjoined the statute based on the facial unconstitutionality of the law. Every other circuit to have considered the question treats them as the prevailing party entitled to fees, they argue. They say they should not be penalized with denied fees after the state declined to appeal the preliminary injunction and the statute in question was repealed.

But Virginia contends that the Supreme Court has never ruled that attorney fees are available for a party that wins a preliminary injunction but never reaches a final decision on the merits of its claim for permanent injunctive relief. It relies on Fourth Circuit precedent from 2002, Smyth ex rel. Smyth v. Rivero , which establishes that parties who win a preliminary injunction without final judgment are not prevailing parties.

In June, a Fourth Circuit panel affirmed a decision to deny attorney fees, citing Smyth.

The plaintiffs want the en banc Fourth Circuit to overturn Smyth, which they say runs counter to other circuit court rulings and high court precedent.

The case is Stinnie et al. v. Holcomb, case number 21-1756, in the U.S. Court of Appeals for the Fourth Circuit.

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InvestmentNews

19. SEC meets strong industry resistance on advisor outsourcing proposal

3 Jan 2023 (1:00 AM), Mark Schoeff Jr.

Financial industry representatives are pushing back against an SEC proposal that would impose new obligations on investment advisors who outsource some of their services.

In late October, the Securities and Exchange Commission released a proposal that would establish due diligence and monitoring requirements for advisors who hire a third party to perform a "covered function." The proposal doesn't define what services it covers, but they could include providing investment guidelines, portfolio management, advice models, custom indices, trading services and software, according to an SEC fact sheet.

In light of the increase in outsourcing, the SEC said it is concerned about potential investor harm if advisors don't properly vet and monitor their service providers.

But trade associations representing investment advisors and the financial industry are blasting the proposal, saying it's superfluous because advisors' fiduciary duty already requires them to ensure that outsourcing firms are acting in their clients' best interests. Trade groups also assert that the measure will significantly increase advisors' regulatory costs.

The Investment Adviser Association wants the SEC to scuttle the proposal.

“[W]e urge the Commission not to move forward with the proposal and instead consider alternative approaches to achieve its goals,” IAA general counsel Gail Bernstein and associate general counsel Dianne Descoteaux wrote in a Dec. 23 comment letter. “While we understand the Commission’s objectives, we strongly believe that the proposal is unnecessary and unwarranted. It will have sweeping implications for all advisers and their services providers and substantial negative consequences for smaller advisers and smaller service providers. The Commission has significantly underestimated the potential costs of the proposal, with little evidence of benefit.”

The deadline for public comments was last Tuesday. The agency has received about 90 letters. It will review the input and could modify the proposal before releasing a final version. The timeline is unclear.

The Investment Company Institute, which represents the mutual fund sector, also called on the SEC to withdraw the proposal.

““[T]he proposal includes requirements that are outside the SEC’s authority under the federal securities laws and the cost-benefit analysis is wholly inadequate,” ICI general counsel Susan Olson wrote in a Dec. 23 comment letter. “As a result, the SEC should not move forward on this proposal.”

The Securities Industry and Financial Markets Association said advisors’ fiduciary duty to their clients incorporates most outsourcing decisions and suggested that the SEC instead zero in on high-risk situations.

“Existing fiduciary principles are sufficient to regulate advisers’ use of service providers, and tailored guidance on specific topics may better achieve the Commission’s objectives,” SIFMA managing director and associate general counsel Melissa MacGregor and managing director Kevin Ehrlich wrote in a Dec. 23 comment letter.

John Gebauer, chief regulatory officer at COMPLY, a compliance consulting firm, warned of the proposal’s impact on small advisors.

“[T]he prohibitive costs of compliance would fall disproportionately on small and mid-sized advisers, who will then be compelled to make a Faustian bargain between committing the additional staffing and resources necessary to outsource tasks they are not well-equipped to perform in-house or committing additional staffing and resources to develop their own in-house expertise; either path would appear to increase the risks to clients,” Gebauer wrote in a letter last Tuesday.

The Institute for the Fiduciary Standard said the SEC should do more homework on outsourcing.

“[G]iven the growth of outsourced services, the Institute urges the Commission to conduct new research to obtain a better sense of the risks of increased reliance on these services and then bring together investment advisers to discuss this new research and what SEC actions can best address outsourced services," Institute president Knut Rostad wrote in a letter last Tuesday.

The SEC did receive support for the proposal from state securities regulators, who applauded enhanced oversight of outsourcing.

"We agree that insufficient supervision of and disclosure regarding such service providers can leave clients insufficiently informed as to how their assets are being managed and protected, how their fees are being spent, and what value advisers are providing," North American Securities Administrators Association president Andrew Hartnett wrote in a letter last Tuesday.

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20. Finra smacked 15 firms over GPB sales in 2022

3 Jan 2023 (1:00 AM), Bruce Kelly

The Financial Industry Regulatory Authority Inc. last year penalized 15 broker-dealers a total of $3.7 million for sales of GPB Capital Holdings private placements dating back to the spring of 2018. That's when the firms sold the private placement to customers, at a time when GPB had failed to file required audited financial statements for two of its biggest limited partnerships with the Securities and Exchange Commission.

The firms routinely did not inform customers of this shortcoming by GPB, which violated industry rules and was the main reason for the Finra penalties cited in the settlements.

Finra closed 2022 by penalizing two small firms that had sold the high-commission, high-risk private placements: Nashville-based Center Street Securities Inc. with 75 registered reps last Thursday, and Missouri-based Moloney Securities Co. Inc. with 130 reps last Wednesday. Finra pointed to the firms negligently failing to inform customers that GPB had not submitted audited financial statements, according to the Finra actions. Finra uses similar language throughout the actions it took against the other 13 firms.

In the settlements, which both firms agreed to without admitting or denying Finra's findings, Center Street agreed to a $70,000 fine and restitution to clients of almost $90,000. Moloney Securities agreed to $268,000 in restitution to clients.

Senior executives at both firms did not return phone calls Tuesday morning to comment.

The penalties, a combination of fines and restitution to clients or merely the latter, last year averaged $247,000 per firm, according to an InvestmentNews tally. But the costs per firm in such matters typically go deeper; attorneys' fees add up in such matters, which can also serve as road maps for plaintiff's lawyers to sue brokerage firms on behalf of clients who bought the product.

Case in point: Kalos Capital Inc., a midsize independent broker-dealer based in suburban Atlanta.

In October, Kalos Capital, a proponent of alternative investments for retail clients, said it was closing down, crushed by more than $9 million in legal fees and costs related to sales of GPB private placements.

GPB Capital, a New York-based alternative asset management firm founded in 2013, served as the general partner for limited partnerships formed to acquire income-producing companies such as auto dealerships and trash businesses. GPB eventually raised $1.8 billion from investors. GPB has been selling assets but it has not yet released clear plans for investors to get back money from those transactions.

The most notable and largest firms penalized last year by Finra in the GPB sales matter were four of the Advisor Group broker-dealers. The four Advisor Group firms — FSC Securities Corp., Royal Alliance Associates Inc., SagePoint Financial Inc. and Woodbury Financial Services Inc. — were penalized close to $1.3 million in fines and restitution to clients over shortcoming in GPB sales, according to the Finra settlement from the end of November.

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ThinkAdvisor

21. FINRA Files to Provide 'Greater Transparency' to Arbitrator Selection Process

3 Jan 2023 (3:30 PM), Melanie Waddell

The Financial Industry Regulatory Authority has filed a rule change with the Securities and Exchange Commission to provide greater transparency and consistency regarding the arbitrator list selection process.

The proposed rule change, filed on Dec. 23, would enhance the transparency of the arbitration forum administered by FINRA Dispute Resolution Services.

FINRA notes the changes are in response to recommendations made last June by Lowenstein Sandler LLP.

An independent review of an arbitration decision in favor of Wells Fargo that was thrown out in court when a judge ruled that the wirehouse had manipulated the FINRA's arbitrator selection process "found no evidence of an improper agreement to remove certain arbitrators from arbitration cases."

However, the review — ordered by FINRA and conducted by Lowenstein Sandler — recommended that FINRA provide greater transparency to the arbitrator selection process.

Last June, FINRA published a report from Lowenstein Sandler relating to an independent review and analysis of the DRS arbitrator list selection process. The report made several recommendations to provide greater transparency.

FINRA's proposed changes include clarifying the current practices regarding the selection and removal of arbitrators and conflicts of interest.

Effective Sept. 1, 2022, DRS updated its policy to provide a written explanation whenever a party-initiated challenge to remove an arbitrator is granted or denied, regardless of whether an explanation is requested by either party, according to FINRA.

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Other Outlets

22. The collapse of FTX shows the urgent need for clearer regulation of the crypto industry (Boston Globe)

3 Jan 2023 (4:00 AM), The Editorial Board

The worst of crypto's great crash of 2022 seems to be over, and thankfully it wasn't 1929. Sam Bankman-Fried, the head of the scandal-ridden and now-bankrupt exchange FTX, has been arrested, released on $250 million bail, and confined to his parents' California home. Two of his former senior executives have pleaded guilty to fraud. The company, once worth an estimated $32 billion, has all but evaporated, leaving more than a million customers and creditors in the lurch.

Other crypto firms also suffered massive setbacks this year, losing as much as $2 trillion in value since the boom of 2021. But the panic that engulfed the crypto world never quite spread to the traditional banking system, as some analysts had feared. A few small banks that held deposits for or lent money to FTX's customers took significant losses. But by and large, the global financial system seems relatively unscathed despite the cratering of cryptocurrencies.

But just because the alleged mismanagement and corruption at FTX didn't trigger a global recession the way Lehman Brothers' bankruptcy touched off the stock market crash of 2008 shouldn't be cause for celebration. It is just a reminder that the still-nascent business remains relatively small and walled off from the mainstream financial system. For now, most bankers seem to agree with Jamie Dimon, the chief executive of JPMorgan Chase & Co., that cryptocurrencies are "decentralized Ponzi schemes."

Will crypto remain a niche investment? Many American regulators aren't so sure, predicting that the largely unregulated industry could destabilize the broader economy as more and more investors — small individual and large institutional ones alike — dip into digital assets. Indeed, a year before FTX's implosion, the head of the Securities and Exchange Commission, Gary Gensler, warned that "right now, we just don't have enough investor protection in crypto. Frankly, at this time, it's more like the Wild West."

What then to do?

Investigators are now picking through the rubble of FTX trying to discern what went wrong. The company was among the largest crypto exchanges — the firms that help investors trade digital assets, including using fiat money. And virtually up until its precipitous fall, it was considered among the best run. No longer: Congressional hearings and court filings paint a picture of a company with crude and disorganized bookkeeping practices, where Bankman-Fried may have misappropriated investors' money to finance risky investments, campaign contributions, and his own luxurious lifestyle.

Those revelations may have given momentum to efforts in Washington to toughen crypto regulations and push federal agencies, including the SEC, to be more assertive with the industry. "Power is worthless if the cop on the beat won't use it," Senator Elizabeth Warren said in a Wall Street Journal op-ed following FTX's demise. "The SEC has brought some enforcement actions related to fraudulent and unregistered crypto offerings over the past few years, but it has fallen far behind as the crypto industry has drawn in millions of new investors."

In December, Warren proposed legislation with Senator Roger Marshall, a Republican of Kansas, that would extend anti-money laundering rules to the digital asset market. A central goal would be to make it harder for criminals or terrorists to use anonymous accounts to finance their activities.

Though some experts have raised concerns that the bill would impose burdens on small operators, it seems a good first step toward bringing the industry into the sunlight. The measure does not, however, address ways to protect investors from fraud and malfeasance of the sort Bankman-Fried is charged with; Congress should turn its attention to that task in 2023 as well.

Some in the crypto world, where anti-government libertarianism runs strong, have attacked Warren's bill as "an unconstitutional assault on cryptocurrency." But the reality is that many companies would prefer a modicum of regulation, hoping to bring greater stability — and an aura of legitimacy — to their services. The big question in Washington is: Who would do the regulating, and how much regulation would be appropriate?

This was a lobbying battle Bankman-Fried had vigorously engaged before his company went belly up. Spending tens of millions in campaign contributions, he and other crypto firms were pushing for Congress and the Biden administration to regulate their industry with a relatively light touch. But Warren and other crypto-skeptics in Congress have pushed back, and FTX's collapse may have strengthened their hand.

True-believer crypto fans are fond of repeating a mantra: came for the gains, stayed for the revolution. Or, as Peter McCormack, who got rich on Bitcoin and created a popular podcast devoted to crypto, said recently: "Stop buying Bitcoin to get rich. Anyone who goes out there to buy it to get rich will probably fail."

Such advice might work for the disciplined, long-term, mission-driven investor. But as financial crises over the centuries have proven, most investors are indeed looking to get rich, and quick, whether via tulips or Bitcoin. Once memories of this dismal year fade, crypto speculation is likely to soar again.

The FTX scandal has shown that a clearer and tougher regulatory structure is needed before the next crypto crisis sends the broader economy into a tailspin — and ever greater numbers of people lose their savings. Financial calamity in the traditional markets may be useful to the revolutionaries, but it won't be good for the rest of us.

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23. Financial Firms May Have to Reveal their Climate Risk (E&E News)

3 Jan 2023 (1:00 AM), Avery Ellfeldt

U.S. regulators laid the groundwork last year to address the threats that climate change poses to the global financial system.

This year could see those efforts bear fruit.

Success will depend on how quickly agencies such as the Securities and Exchange Commission can finalize the climate-related policies they outlined in 2022, as well as the level of resistance they face in Congress and the courts. The outcome could fundamentally reshape how the U.S. economy responds to the consequences of a warming planet.

Last year was the "year of proposing and planning," said financial regulation expert Todd Phillips, founder of Phillips Policy Consulting LLC, a progressive consulting firm. And so this year "we should reap the benefits."

Here are the top issues to watch on climate-fueled financial risk in 2023.

SEC rules

The SEC last year proposed three rules that aim to provide investors with more clarity into companies and their climate-related financial risks, as well as investment options that purport to account for social and environmental issues.

Some big questions moving forward are when those rules will be finalized and enforced — and what the finished versions will look like.

Perhaps the most contentious rule would require public companies to disclose their greenhouse gas emissions, as well as their climate-related risks, plans and strategies. The new approach would overhaul the corporate disclosure process.

The other two rules aim to put guardrails around what types of investment products can be categorized as green; sustainable; or environmental, social and governance (ESG) funds. Those types of products have exploded in popularity as investment firms race to meet public demand for sustainable investment options, sparking fears that some funds are mislabeled to attract more customers.

Now that the climate disclosure and ESG rules' comment periods have ended, the SEC's current job entails working through the thousands of submitted comments, writing a final rule and making a case for why they are both necessary and legally defensible.

The SEC did not respond to questions about the timeline moving forward. Climate disclosure experts and advocates say there's no way to say when the agency will finish and enforce the rules. But some think it's likely to happen this year.

"I would expect to see it sometime this year. I know the SEC is trying to do a lot, but they've indicated in the past that this is a really high priority for them. And if it's a high priority, they're also going to want to be the ones to defend it [in court] during the Biden administration," said Corinne Snow, counsel at Vinson & Elkins LLP who focuses on environmental law and regulatory compliance.

There are several factors that complicate the timeline. For starters, SEC Chair Gary Gensler has embarked on an ambitious rulemaking agenda — proposing 26 new rules in the first eight months of 2022 — when compared to his predecessors, according to the agency's Office of Inspector General. The intense workload has the potential to slow the agency's progress.

But the main challenge is the sheer volume of feedback the agency has received on these issues. While many investors, outside groups and Democratic lawmakers are in favor of the rules, the agency has faced intense pushback, too. The opposition likely will lead to legal challenges, which have the potential to delay implementation even after the final rule is released.

Working in the agency's favor: a growing consensus among investors, regulators and companies around the world that climate change poses substantial financial risks that merit additional clarity.

"I don't see that slowing down," said Kristina Wyatt, senior vice president of global regulatory disclosure at carbon accounting company Persefoni, who previously was a senior counsel for climate and environmental, social and governance at the SEC.

Climate guidance

The three major banking regulators over the last year proposed near-identical guidance that lays out how they expect major U.S. banks — with more than $100 billion in assets — to manage their exposure to climate change (Climatewire, Dec. 5, 2022).

The proposal makes clear that the Federal Reserve, Office of the Comptroller of the Currency and the Federal Deposit Insurance Corp. want the largest lenders to assess and limit their exposure to climate impacts and the clean energy transition.

That's the case, the FDIC said, because climate change poses a "clear and significant risk to the U.S. financial system and, if unmitigated, may pose a near-term threat to safe and sound banking and financial stability."

Each agency issued its own request for comment. While the OCC and FDIC's comment periods ended in February and June, respectively, the Federal Reserve's won't wrap up until next month.

The next step for these regulators will be working through the comments and releasing a final version of the guidance to make clear future expectations.

Fed scenario analysis

The Fed also is set to do something else — kicking off its first-ever exercise meant to gauge major banks' preparedness for the financial realities of a warming world.

Central bank officials said in September that beginning in 2023 it would require the country's six largest banks to undergo "pilot climate scenario analysis," which are meant to provide clarity into how the lenders are thinking about climate-fueled risks (Climatewire, Sept. 30, 2022).

Fed officials have emphasized that the exercise would not have direct consequences for the lenders, which include Bank of America Corp., Citigroup Inc., Goldman Sachs Group Inc., JPMorgan Chase & Co., Morgan Stanley and Wells Fargo & Co.

Still unknown, however, are when the tests will begin and what they might entail. The Fed said the exercise would end in late 2023, but other details are still up in the air.

Some outside experts expect the Fed will design several climate scenarios, such as a future in which no meaningful steps are taken to curb global warming. The banks then would assess how their balance sheets would perform in those hypothetical situations.

CFTC

The Commodity Futures Trading Commission may also get it in on the action.

The agency, which regulates U.S. derivatives markets, said in June it plans to take a closer look at the $1 billion voluntary carbon market that allows companies to offset their planet-warming emissions by investing in green projects.

CFTC Chair Rostin Behnam has acknowledged the markets' capacity for fraud and other abusive practices as companies race to green their operations and reputations — and in some cases purchase offsets that don't result in the emissions reductions they advertise.

What Behnam has not said is how the agency might get involved. But the agency held a daylong event in June to gather insight from experts and it issued a formal request for public comment (Climatewire, June 3, 2022).

The comment period closed in August.

Though the CFTC hasn't provided additional information about how it's thinking about the issue, Phillips Policy Consulting founder Phillips, a former director at Citizens for American Progress and attorney at the FDIC, said he expects the agency would release a proposal that builds off the public input.

"The question is, are they going to just tackle the offset market, or are they going to tackle the problem of offsets themselves," Phillips said.

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24. Bernie Madoff went to jail to avoid mob hit: new Netflix docuseries (New York Post)

3 Jan 2023 (1:00 AM), Alex Mitchell

The day in December 2008 when FBI agents put Ponzi schemer Bernie Madoff in cuffs will be remembered for generations — and not just by the people who lost everything.

The numbers were staggering. A whopping $19 billion, all gone, stolen from more than 40,000 investors — the New York Mets, Larry King, Kevin Bacon, hospitals, colleges, pension funds — over more than two decades.

Now, a new Netflix docuseries tells the rest of the story. According to Joe Berlinger, director of the four-part "Madoff: The Monster of Wall Street," out Wednesday, Madoff had also been managing "a significant chunk" of money for international organized crime,

That's why the New York native, who died in jail in 2021 at the age of 82, was so willing to take the rap, as well as the 150-year prison sentence that followed, Berlinger said. Madoff felt no remorse — his guilty plea was just one last selfish act. He was trying to stay alive.

"People feel like one of the reasons he was so willing to immediately acknowledge his guilt, say it was all him, and go to jail wasn't an act of courage," Berlinger told The Post. "Instead of trying to obfuscate or find a legal way out or to delay [a verdict], I do think part of that was self-protection to avoid a mob hit."

In fact, during unearthed video depositions, Madoff — who was rumored for years to have ties with Russian crime syndicates and who famously befriended Colombo family boss Carmine John Persico Jr. while in prison — states that there were potential deals from the federal government on the table at the time of his trial.

"The prosecutor wanted me to plea-bargain with them to make some sort of a deal by providing information as to who else was involved with this fraud," Madoff said during one deposition. "The belief was that I couldn't be doing this all by myself, that there had to be other people involved."

In addition to potential Mafia ties, the new series looks at Madoff's right-hand man, Frank DiPascali. The fellow New Yorker was a "trusted lieutenant for all his evil misdeeds," Berlinger said.

In tandem with Madoff, DiPascali — who first joined the team in 1975 and died in 2015 at age 58 while awaiting sentencing on multiple financial felonies — created false returns and investments which, even for the savviest (or luckiest) traders, yielded profits that were unimaginable.

"There was one simple fact that Bernie Madoff knew, that I knew, and that other people knew, but we never told the clients nor did we tell the regulators like the SEC," DiPascali admits in a deposition. "No purchases or sales of securities were actually taking place in their accounts. It was all fake, it was all fictitious."

Once considered a Wall Street titan, Madoff advised the Securities and Exchange Commission after the 1987 market crash and was instrumental in the formation of NASDAQ — an exchange he chaired in the 1990s.

But from the start of his career, Madoff was living a double life, with the respectable Bernard L. Madoff Investment Securities, LLC occupying the 19th floor of Midtown Manhattan's Lipstick building at 885 Third Ave., two floors above where Madoff's historic heist was being orchestrated by an unlikely cast of characters.

"The 17th floor [was] full of people plucked from high school for the most part — or people who would not have this kind of an opportunity to make this kind of money — who Bernie felt he could control and manipulate," said Berlinger, an Academy Award nominee who also produced "Jeffrey Epstein: Filthy Rich." The documentarian added that the claustrophobic space was a maze of dot matrix printers, filing boxes and fraudulent financial documents.

Ultimately, Madoff's downfall was brought on by the infamous housing market collapse of 2008, which annihilated the stock market and caused investors to abruptly pull their money out of the fund.

"If it wasn't for this one black swan event of the mortgage meltdown that caused the financial crisis, literally a once-in-a-century event," Berlinger said. "Had that not happened? I think this would have gone on for decades."

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25. Center Street Securities Fined $160K For GPB Capital Fund Sales (Financial Advisor)

3 Jan 2023 (1:00 AM), Tracey Longo

The Financial Industry Regulatory Authority last week fined another broker-dealer, Nashville-based Center Street Securities Inc., for selling scandal-ridden GPB Capital Holding private placements without disclosing to customers that audited financial statements on their investments had not been filed on time with the SEC.

Center Street, which employs about 75 registered representatives in 56 branch offices across the country, agreed to a public censure and to pay a $70,000 fine and partial restitution of $89,652.50 without admitting or denying guilt, Finra announced December 29.

Finra said Center Street "negligently failed" to tell 20 investors in two offerings related to GPB Capital Holdings LLC, a New York-based alternative asset management firm, that the issuer failed to make timely required filings with the Securities and Exchange Commission regarding the limited partnership's financial health.

While Center Street received letters from GPB Capital, which acted as a general partner for limited partnerships formed to acquire income-producing companies, stating that the firm had not filed forensic financial audits, Center Street went ahead and sold $1,206,000 worth of limited partnerships to 20 customers between May 4 and June 28, 2018, anyway, Finra said in the settlement.

Center Street received $98,727.50 in commissions from the sales and has settled two claims with customers previously, Finra added.

"In connection with these 20 sales, Center Street representatives did not inform the customers that the partnerships in question, Automotive Portfolio and Holdings II had not timely filed their audited financial statements with the SEC or the reasons for the delay. The delay in filing audited financial statements and the reasons for it was material information that should have been disclosed," Finra said in the settlement.

Center Street did not immediately respond to a request for comment.

Finra said its investigation into GPB Capital and its affiliates also uncovered that the firm filed a lawsuit in New York City in July 2017 against one of its former partners "who had allegedly failed to acquire certain automotive dealership interests."

The GPB Capital partner "asserted various counterclaims against GPB Capital and alleged that GPB Capital had falsified financial statements to conceal that GPB Capital was defrauding its investors. GPB Capital denied the former partner's allegations and the litigation remains pending," Finra noted.

GPB Capital itself has been beseiged by multiple regulator investigations and lawsuits filed by customers. In February 2021, the Justice Department and the SEC charged the firm and its founder, David Gentile, CEO Jeffry Schneider, and former managing partner, Jeffrey Lash, with engaging in a Ponzi-like scheme that raised about $1.7 billion from investors.

In December, Finra sanctioned four broker-dealers for failing to disclose to investors that audited financial statements on funds they sold from scandal-ridden GPB Capital Holdings had not been filed on time with the SEC. The firms, FSC Securities, Royal Alliance, SagePoint Financial and Woodbury Financial agreed to be censured, and to pay fines totaling $200,000 and restitution in the amount of nearly $1.1 million, according to Finra.

Finra said that between May and June 2018 the four firms "negligently failed" to tell investors that GPB Capital had failed to timely make required financial filings with the SEC, including filing audited financial statements, the industry regulatory organization said.

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26. BitBoy's 2023 Predictions: Breaking 'Ripple Curse,' SEC Chair Gary

[Gensler To Resign?]() (Benzinga)

3 Jan 2023 (11:41 AM), Justin Roberti

Like many crypto projects, Ripple battled for survival in 2022, with U.S. Securities Exchange Commission (SEC) chair Gary Gensler leading the charge.

But crypto influencer Ben Armstrong — popularly known as by his moniker, BitBoy — expects 2023 to bring an end to the Ripple curse. He also predicts Gensler will resign.

While there have been no clear indications he wishes to retire, there have been calls for Gensler's resignation since before the FTX collapse.

Armstrong's prognostication must rely on a pre-trial settlement, which is something the community has hoped for but is far from guaranteed.

Ripple claimed it has spent more than $100 million defending its case against the SEC — and in essence resisting XRP and crypto in general from being regulated as a security.

Legal team head and traditional finance pro Stuart Alderoty enlisted former Obama administration SEC chair Mary Jo White and her former deputy chair Andrew Ceresney to debate the SEC.

Ripple claims that it is fighting this battle in order to stop over-reaching regulation by the SEC for the whole crypto industry.

The SEC accused Ripple CEO Bradley Galinhouse and co-founder Christian Larsen of misleading the public by failing to register XRP as a security.

Ripple raised more than $1.3 billion through the initial coin offering (ICO) according to the lawsuit filed in December 2020.

In a countersuit, Ripple argued that XRP isn't an "investment contract" and shouldn't be regulated by the SEC. The filing states: "The undisputed facts show that these "essential ingredients of an investment contract are missing here."

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27. The collapse of FTX shows the urgent need for clearer regulation of the crypto industry (The Beacon Bolt)

3 Jan 2023 (10:00 AM), N/A

But just because the alleged mismanagement and corruption at FTX didn't trigger a global recession the way Lehman Brothers' bankruptcy touched off the stock market crash of 2008 shouldn't be cause for celebration. It is just a reminder that the still-nascent business remains relatively small and walled off from the mainstream financial system. For now, most bankers seem to agree with Jamie Dimon, the chief executive of JPMorgan Chase & Co., that cryptocurrencies are "decentralized Ponzi schemes."

Will crypto remain a niche investment? Many American regulators aren't so sure, predicting that the largely unregulated industry could destabilize the broader economy as more and more investors — small individual and large institutional ones alike — dip into digital assets. Indeed, a year before FTX's implosion, the head of the Securities and Exchange Commission, Gary Gensler, warned that "right now, we just don't have enough investor protection in crypto. Frankly, at this time, it's more like the Wild West."

What then to do?

Investigators are now picking through the rubble of FTX trying to discern what went wrong. The company was among the largest crypto exchanges — the firms that help investors trade digital assets, including using fiat money. And virtually up until its precipitous fall, it was considered among the best run. No longer: Congressional hearings and court filings paint a picture of a company with crude and disorganized bookkeeping practices, where Bankman-Fried may have misappropriated investors' money to finance risky investments, campaign contributions, and his own luxurious lifestyle.

Those revelations may have given momentum to efforts in Washington to toughen crypto regulations and push federal agencies, including the SEC, to be more assertive with the industry. "Power is worthless if the cop on the beat won't use it," Senator Elizabeth Warren said in a Wall Street Journal op-ed following FTX's demise. "The SEC has brought some enforcement actions related to fraudulent and unregistered crypto offerings over the past few years, but it has fallen far behind as the crypto industry has drawn in millions of new investors."

In December, Warren proposed legislation with Senator Roger Marshall, a Republican of Kansas, that would extend anti-money laundering rules to the digital asset market. A central goal would be to make it harder for criminals or terrorists to use anonymous accounts to finance their activities.

Though some experts have raised concerns that the bill would impose burdens on small operators, it seems a good first step toward bringing the industry into the sunlight. The measure does not, however, address ways to protect investors from fraud and malfeasance of the sort Bankman-Fried is charged with; Congress should turn its attention to that task in 2023 as well.

Some in the crypto world, where anti-government libertarianism runs strong, have attacked Warren's bill as "an unconstitutional assault on cryptocurrency." But the reality is that many companies would prefer a modicum of regulation, hoping to bring greater stability — and an aura of legitimacy — to their services. The big question in Washington is: Who would do the regulating, and how much regulation would be appropriate?

This was a lobbying battle Bankman-Fried had vigorously engaged before his company went belly up. Spending tens of millions in campaign contributions, he and other crypto firms were pushing for Congress and the Biden administration to regulate their industry with a relatively light touch. But Warren and other crypto-skeptics in Congress have pushed back, and FTX's collapse may have strengthened their hand.

True-believer crypto fans are fond of repeating a mantra: came for the gains, stayed for the revolution. Or, as Peter McCormack, who got rich on Bitcoin and created a popular podcast devoted to crypto, said recently: "Stop buying Bitcoin to get rich. Anyone who goes out there to buy it to get rich will probably fail."

Such advice might work for the disciplined, long-term, mission-driven investor. But as financial crises over the centuries have proven, most investors are indeed looking to get rich, and quick, whether via tulips or Bitcoin. Once memories of this dismal year fade, crypto speculation is likely to soar again.

The FTX scandal has shown that a clearer and tougher regulatory structure is needed before the next crypto crisis sends the broader economy into a tailspin — and ever greater numbers of people lose their savings. Financial calamity in the traditional markets may be useful to the revolutionaries, but it won't be good for the rest of us.

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28. Financial Services' Inconvenient Need for WhatsApp Archiving (Finextra)

3 Jan 2023 (12:00 PM), Harriet Christie

In September 2022, the Securities Exchange Commission (SEC) and Commodity Futures Trading Commission (CTFC) reached settlements totalling around $1.8 billion with 12 of Wall Street's leading investment banks. The prominent institutions, which included Morgan Stanley, Citigroup, Goldman Sachs and Bank of America, were penalized for failing to monitor employees' use of unauthorized messaging apps, like Whatsapp, with colleagues and clients.

The probe followed on from JP Morgan's $200 million fine in December 2021, with the floodgates apparently opening. Authorities seem to have used that initial $200 million settlement figure as a yardstick for the industry, signifying the end of an unofficial grace period afforded firms adapting to the pandemic.

Such monumental penalties have of course had a seismic impact on the financial services landscape, with the repercussions reaching far beyond the behemoths evidently being made an example of. But how did we get to this stage, and how can firms address the employee behaviors which are clearly no longer going to be tolerated?

What's up with WhatsApp?

The SEC mandates that banks maintain records of all communication between clients and brokers. Private exchanges, like those occurring through WhatsApp, are far more difficult to monitor, and the likelihood of data being compromised only increases as personal devices are introduced to the equation.

It's important to note that the issue here is not with WhatsApp itself; the same concerns apply with WeChat, Telegram, and other 'ephemeral' messaging apps. It is the difficulties in documenting communications on these encrypted platforms, and the subsequent contravention of record-keeping requirements, that is problematic.

Phone Call Fatigue

Until relatively recently, consumers had limited options available to them if they wanted to reach out to a regulated firm. To discuss their bank account, for instance, they'd need to either get on the phone or head over to their local branch for a personal discussion. Now, they are able to communicate with the organization through a multitude of digital channels.

It's not just an option, but a preference. WhatsApp, Facebook Messenger and Telegram were among the most downloaded apps in Q1 2022, and WhatsApp itself has an astronomical 2 billion active users worldwide. According to Forbes, 93% of US consumers want to communicate via text message, with speed, ease of use and (consumer) familiarity with the platforms proving decisive advantages.

This works both ways; it's also easier and more efficient for employees to communicate through tools that they're familiar with using in their day-to-day life, than one provided by their employer.

Remote Channels

The disruption of the Covid-19 pandemic led to far greater reliance on messaging apps, as physical proximity, even with colleagues, was prohibited. In 2019, 68.1 million U.S. mobile phone users accessed WhatsApp to communicate. This figure is projected to grow to 85.8 million users in 2023. A by-product of this reliance on new digital channels was an escalation in the number of workers using personal phones or tablets for business, as lines began to blur and professional and personal lives intertwined.

Employees are more likely to act casually when working remotely, whether that means taking longer breaks or messaging clients or colleagues through an unauthorized channel. Having allowed these communication habits to set in over a sustained period, they're now very difficult to shift back to a pre-Covid level, given the inherent convenience and usability that employees have become accustomed to.

Paying the Bill

JP Morgan's $200 million dollar fine in December 2021 was the first significant penalty in a probe that has also impacted the aforementioned dozen leading investment banks to the tune of $1.8 billion. The SEC's crackdown has since continued to expand, as Wall Street's private equity giants have revealed that they're under investigation.

The enforcement unit has also launched enquiries about smaller Registered Investment Advisor (RIA) protocols for 'off-channel' business communications. RIAs are subject to the same regulations as the larger firms that were previously penalized, so while they may have been spared the ambush of the initial investigations, they should be mindful that they're in the regulators' crosshairs nevertheless.

What Now?

The situation leaves business leaders and compliance teams in a quandary. Should they sacrifice convenience and operational efficiency in the pursuit of compliance, banning messaging apps outright and instead relying on the tried and tested solutions of email, phone calls and, to a lesser extent, social media?

This is probably a tempting option given the enormity of the penalties being administered. It has certainly been the more popular approach given that, in July 2022, just 15% of financial firms were monitoring WhatsApp.

But it's not quite that simple. Banning employees from using particular channels doesn't necessarily mean that all risks are eliminated. The prohibition of helpful tools will probably lead to disgruntled employees and "compliance gaps" in the workplace. The safer option is for business leaders to understand the platforms that employees and consumers prefer to use, then developing suitable policies accordingly.

Ultimately, if employees want to use unauthorized apps, they will do so, unless a supervisory procedure is in place to police it correctly. This has had immense repercussions for the likes of Goldman Sachs, Bank of America et al, who have not succeeded with this step, despite their resources.

Can WhatsApp be Monitored?

The preferable option here is surely to empower staff to utilize the platforms with which they're most comfortable, minimizing limitations wherever possible.

To achieve compliance on encrypted platforms like WhatsApp, business leaders must ensure they can capture, preserve, and monitor conversations. This is easier said than done, and the process has historically been a source of great difficulty. However, in recent years, new solutions have been developed specifically to tackle this emerging necessity.

Much as they had previously for social media platforms, leading digital archiving vendors have built the technology to capture and archive communications data from apps like WhatsApp, WeChat, Signal and Telegram. This rescues business leaders from the frustration of having to choose between efficiency and compliance; both can now co-exist very peacefully.

Crucially, firms can also allocate secondary numbers on personal devices, allowing employees to differentiate between business and non-work-related contacts, and capture pertinent data accordingly. This means that privacy can also be maintained despite heightened levels of professional scrutiny.

It would be counter-intuitive to ignore the rising demand for encrypted messaging apps in the workplace. Thankfully, businesses no longer have to.

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29. Former U.S. House lawyer named SEC's next general counsel (Legal Dive)

3 Jan 2023 (1:00 AM), Lyle Moran

The Securities and Exchange Commission recently announced that Megan Barbero will become the agency's general counsel when current GC Dan Berkovitz departs at the end of January.

Barbero, who now serves as a principal deputy general counsel, joined the SEC in July 2021. She has advised the agency on legal issues relating to rulemaking initiatives and litigation strategy.

For example, she was credited with assisting with the agency's adoption of rules pertaining to clawbacks of erroneously awarded incentive-based compensation.

Just prior to joining the SEC, Barbero served as deputy general counsel for the U.S. House of Representatives, where she managed strategic litigation for the House. She worked for the House during a period in which it engaged in legal disputes with the Trump administration.

Barbero also worked as an attorney for the U.S. Department of Justice's civil

Appellate Staff and worked in the Supreme Court and appellate litigation practice at WilmerHale.

SEC Chair Gary Gensler said in a press release that the agency will benefit from Barbero's "incredible judgment and highest-level legal experience."

"Megan has been one of the Commission's most trusted counselors, and she will bring a skilled and steady hand to the role of general counsel," Gensler said. "She is a tested leader, and just the person to succeed Dan during a critical time for our agency."

"I am honored to be asked to serve the Commission in this new role and look forward to continuing to work with my outstanding SEC colleagues," Barbero said in a prepared statement.

She also said she was grateful for the leadership of Berkovitz and will miss working with him.

Berkovitz was appointed the SEC's general counsel on Nov. 1, 2021. He previously served as a commissioner of the Commodity Futures Trading Commission (CFTC) from Sept. 2018 until Oct. 2021. He also served as the CFTC's General Counsel from 2009 to 2013.

Earlier in his career, Berkovitz was a senior staff lawyer for the U.S. Senate Permanent Subcommittee on Investigations and deputy assistant secretary in the Department of Energy's Office of Environmental Management.

"After thirty-four years of public service, it is time for me to pursue new and different challenges and opportunities," Berkovitz said in a prepared statement. "It has been a tremendous honor and privilege to work with so many exceptionally talented and dedicated people throughout this agency to contribute to the success of SEC's mission to enhance investor protection, strengthen our capital markets, and facilitate capital formation."

Gensler praised Berkovitz for his "exceptional public service" and dedication to the SEC.

"Dan has led the Office of General Counsel during a time in which we've proposed critical reforms throughout the capital markets," Gensler said. "His counsel, judgment, and leadership have been invaluable to our work at the SEC."

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30. SEC commissioner opposes 'ballooning' PCAOB budget (CFO Dive)

3 Jan 2023 (1:00 AM), Jim Tyson

Dive Brief:

Securities and Exchange Commissioner Hester Peirce criticized approval of a 12.6% expansion in the 2023 budget for the Public Company Accounting Oversight Board (PCAOB), warning that the “ballooning” increase “may facilitate mission creep” by the agency overseeing firms that audit public companies.

The PCAOB has shown signs of potentially overstepping its mandate by signaling excessive reliance on enforcement, reconsidering audit standards without clear justification and indicating that it will identify issuers or broker-dealers whose audits are flawed, rather than just the erring auditing firm, Peirce said.

“A smaller budget might assist the PCAOB in being more selective, hewing more closely to its narrow mandate and better stewarding its resources,” Peirce said in a statement after the Securities and Exchange Commission (SEC) approved the PCAOB budget on Dec. 23.

Dive Insight:

The PCAOB, created under the Sarbanes-Oxley Act of 2002 after the Enron accounting scandal, must gain SEC authorization for its budget and changes to auditing standards.

The SEC approved a $349.5 million budget for the PCAOB and a 10.6% increase in its “accounting support fee” to $329.4 million. The fee is assessed from public companies and broker-dealers.

Soon after becoming SEC chair in April 2021, Gary Gensler shook up the PCAOB leadership and called for tougher regulation of audit firms.

“The PCAOB plays a critical role to ensure that investors can trust a company’s financial disclosures,” Gensler said in a statement. “I’m glad to support this budget, providing the PCAOB the resources to promote its mission under the Sarbanes-Oxley Act, benefiting investors and issuers alike.”

The PCAOB is insufficiently accountable to the public and, through the accounting support fee, imposes an onerous burden on public companies and broker-dealers, Peirce said.

“The ongoing ballooning of the PCAOB’s budget and associated accounting support fee is not a trivial matter,” she said. “The accounting support fee adds to the cost of being a public company or an SEC-registered broker-dealer.”

Peirce in a speech in October called for the elimination of the PCAOB, saying that the SEC should streamline oversight of auditors and better deploy regulatory resources by taking over the PCAOB’s responsibilities.

“The PCAOB budget process is a clunky accountability tool,” Peirce said in her recent statement. “A structure that would afford Congress more direct oversight of the audit regulator could enhance its efficiency and accountability.”

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31. Crypto Crystal Ball: Biggest Trends to Watch in 2023 (Decrypt)

3 Jan 2023 (6:00 AM), Sander Lutz

If 2022 made one thing clear about crypto, it’s that there’s absolutely no point in predicting anything.

Overnight collapses of multi-billion dollar companies, historic technological achievements, industry-wide crashes, blockbuster confrontations with world governments, shocking revelations of corporate malfeasance, billionaires on the run, surprise arrests: 2022 had it all—if not too much.

Where does crypto go from here? While the future may not be certain, it's too tempting not to make some educated guesses. A number of 2022’s seismic events will certainly reverberate well into the new year; some new trends, too, are poised to play a major role in shaping what already looks to be another critical year for crypto.

Here are some potential answers to a few questions likely to have major implications for the industry in 2023.

When will winter end?

By late fall, the crypto market looked poised for a recovery after months of relentless battering: the stock market was coming up for air, inflation was slowing, and prognostications for 2023 were cautiously optimistic.

Then, one of crypto’s most prominent institutions exploded in real time.

The stunning collapse last month of crypto exchange FTX cratered crypto prices, sending Bitcoin to its worst low in two years. Ethereum plunged to almost $1,100 in late November, due to a combination of market-wide panic and the dumping of millions of dollars worth of ETH by an attacker who purportedly drained FTX wallets in the midst of the company’s unraveling.

Crypto prices have since marginally recovered, but the contagion sparked by FTX’s collapse only continues to spread. Digital asset lender BlockFi, which took a $250 million line of credit from FTX over the summer, declared bankruptcy late last month, weeks after freezing all withdrawals.

The company joined the ranks of a litany of crypto firms impacted by FTX’s demise. Cryptocurrency exchange Liquid Global, acquired by FTX earlier in the year, froze all fiat and cryptocurrency withdrawals just days after its parent company collapsed; Sino Global, a blockchain-focused venture firm, confirmed “mid-seven figure” exposure to FTX; crypto investment and trading group CoinShares confirmed a $30.3 million exposure; crypto prime broker Genesis suffered a whopping $175 million exposure to FTX, and suspended client withdrawals for its lending arm as a result; crypto lender SALT also paused withdrawals.

As 2023 unfolds, it's all-but-certain that even more firms will be forced to disclose potentially devastating relationships with once-dominant FTX, which seemed to have spread its tendrils across every corner of the crypto industry.

Until the full impact of FTX’s $32 billion collapse is accounted for, and its myriad connections are divulged and processed, it’s unlikely a crypto spring will be able to take hold. With crypto contagion looking unlikely to let up any time soon, color us surprised if the proverbial line goes up before actual spring.

Crypto laws, finally?

Despite the crypto-related cacophony and controversy that emanated from Washington this year, there remains a jarring lack of clarity from the American government about the regulatory fate of crypto assets, protocols, and exchanges. Will 2023 finally bring some solid guidelines and guardrails?

“I am less bullish on regulatory clarity,” Miller Whitehouse-Levine, policy director of crypto lobbying group DeFi Education Fund, told Decrypt about 2023’s prospects.

With control of Congress set to be narrowly split between Democrats and Republicans in 2023, Whitehouse-Levine is skeptical that warring political factions will be able to put aside their differences to pass sweeping crypto regulatory legislation.

“I think it's going to be difficult for those two constituencies—each with completely different views on crypto policy—to come to a consensus that can pass Congress,” he said.

One bipartisan crypto bill that looked poised to go the distance now appears all-but doomed. The Digital Commodities Consumer Protection Act (DCCPA), also known as the Stabenow-Boozman bill, would have granted crypto regulatory powers to the Commodity Futures Trading Commission (CFTC), and was by late 2022 gaining traction on the Hill.

One of the bill’s most prominent supporters, though, was now-disgraced FTX founder and former CEO Sam Bankman-Fried, who favored the bill’s mainstreaming of centralized crypto exchanges like FTX. Weeks after FTX’s historic collapse, the bill was put on hold. It appears seismic changes in political calculus may have permanently sealed its fate.

There is, however, one area of crypto legislation with potential for movement in 2023: stablecoin regulation.

“If anything moves, stablecoin regulation seems to be the area where action is most likely to occur legislatively,” Whitehouse-Levine said. “Seemingly everyone agrees that something needs to be done, and everyone wants a deal.”

Outgoing House Financial Services Committee Chair Maxine Waters (D-CA) and incoming Chair Patrick McHenry (R-NC) have been working towards a stablecoin bill for years, ever since Facebook stirred panic with its since-thwarted attempt to create its own stablecoin, Libra.

In the absence of any comprehensive legislation, stablecoins have continued to make headlines: in May, so-called algorithmic stablecoin UST depegged from the US dollar, collapsing its maker, Terra, wiping out some $40 billion in value, and kickstarting crypto’s current winter.

SEC vs crypto

Another key character in crypto’s ongoing, unfolding battle with Washington is the Securities Exchange Commission (SEC) and headline-grabbing head honcho Gary Gensler.

Gensler made waves in 2022 for escalating enforcement actions against crypto companies without providing baseline rules or guidelines for the emergent industry. Gensler’s own colleague, SEC commissioner Hester Peirce, previously labeled such policies of education by enforcement “just not a good way of regulating,” in an interview with Decrypt.

Will 2023 bring any clarity, good or bad for crypto, from the SEC?

One major crypto development on deck at the SEC is a suite of pending updates to the agency’s rules on security exchanges. The SEC has released a proposed draft of its revised rules, which defines security exchanges in extremely broad terms that appear poised to ensnare decentralized finance (DeFi) protocols.

The rule is currently in the comments stage, and has not yet been adopted. If adopted next year in its current form, the rule could have devastating consequences for DeFi, essentially requiring the sector to be regulated as a securities marketplace.

“If a DeFi protocol is required to be regulated like the New York Stock Exchange, obviously that is totally impossible,” DeFi Education Fund’s Whitehouse-Levine said. “It would effectively make smart contracts illegal in the US.”

Whitehouse-Levine is confident, however, that if such a rule were adopted, it would be challenged and potentially overturned in federal court.

What’s more, the SEC may soon be embroiled in political problems of its own.

Republican lawmakers—and some Democrats—have recently ramped up criticism of Gensler and the SEC’s inability or unwillingness to produce concrete rules on crypto assets. In the wake of FTX’s collapse in November, Representative Tom Emmer (R-MN) demanded that Gensler testify before Congress, linking 2022’s slew of crypto company collapses to the SEC’s enduring failure to create a crypto regulatory framework.

Whitehouse-Levine believes that, with Republicans soon to take charge of the House, stern words could soon evolve into real consequences for the federal regulator.

“Every regulatory agency reports back to Congress, so there's a lot they [Republicans] can do,” Whitehouse-Levine said. “For example, they could say, until the SEC issues rulemaking on digital assets, they can't spend any of this money on enforcement. It could be quite impactful.”

Will Ripple’s battle offer answers in crypto’s war?

One of 2022’s highest-profile—and still ongoing—crypto lawsuits saw blockchain payments company Ripple battle the SEC in federal court. The government asserts that the company’s XRP token was illegally sold as an unregistered security.

The lawsuit has pitted a dominant crypto company with deep pockets against a federal agency with much to prove—see above—in one of finance’s key arenas: the United States District Court, Southern District of New York. That court, colloquially referred to as the “Mother Court” by legal professionals, oversees all Wall Street activity and holds a particularly influential sway over federal finance law.

Will the case, ongoing for almost two years, finally see resolution in 2023? And if it does, what will that verdict mean for crypto as a whole?

Some experts believe that the SEC is angling to use its case against Ripple not just to prevent the unregistered sale of tokens like XRP, but to set the stage for the agency to finally go after centralized crypto exchanges like Coinbase, Kraken, and Binance.US—the beating hearts of America’s crypto trade.

The SEC, in its recent victory against blockchain-based publishing platform LBRY, successfully got a federal court to take the unprecedented step of labeling certain crypto tokens as securities in themselves, not just their sale as an illegal securities offering.

If the SEC can get its Manhattan-based judge to make a similar ruling on Ripple, the repercussions for crypto could be profound.

“They want to go all the way and say the XRP tokens are the security,” Lewis

Cohen, an attorney specializing in crypto and securities regulation, previously told Decrypt. "If they got their way, most US token marketplaces could not allow users to buy and sell 'crypto securities' without registering as an exchange or getting an exemption."

Such an outcome would unquestionably upend the place of crypto exchanges in American finance, bringing stock exchange-caliber regulation to any entity trying to sell crypto assets.

2023 will likely see either the realization of such a verdict, or an equally-consequential victory for Ripple, which would signify the dodging of a major bullet for the beleaguered industry.

What next for Ethereum?

Finally, some good news.

September's historic Ethereum merge transitioned crypto's dominant network to a proof of stake consensus mechanism that instantly cut its energy consumption by a whopping 99.99%, according to reports.

After that technical triumph, what's in store for Ethereum as it moves into 2023?

First up will be the network's Shanghai upgrade, expected to launch in March.

Shanghai will, first and foremost, enable withdrawals of staked ETH. Since the merge went live in September, users have been able to deposit existing ETH with the Ethereum network to help validate Ethereum transactions and create new ETH for themselves in the process. All staked ETH and newly generated ETH, however, have not yet been made available for withdrawal.

Come March that will change, and some $20 billion worth of staked ETH will finally be made available to Ethereum users following the network's Shanghai upgrade.

Ethereum's core developers are so committed to rolling out staked ETH withdrawals that they're trying to keep Shanghai as light as possible, eliminating other much-anticipated network upgrades from the update in the name of expeditiousness.

One such improvement that many hoped would be included in Shanghai is proto-danksharding, a preliminary version of a process by which huge amounts of data on Ethereum rollups—a tool used to combine many Ethereum transactions and treat them as one speedy, cheap transaction—will one day be verified by only sampling small pieces of data.

Danksharding will take a process that already makes Ethereum transactions cheaper and faster, and make them far cheaper and faster. The update will dramatically increase the speed and ease with which huge amounts of data could be verified on Ethereum layer-2 networks like Optimism and Arbitrum.

Many see danksharding as the key to Ethereum's future proliferation and dominance as a reliable, secure network that's also incredibly fast and inexpensive to use.

While proto-danksharding may not come as soon as March, Ethereum's developers hope it will still arrive by the end of next year.

"I'm very confident that it will be shipped in 2023," Ethereum core developer Marius Van Der Wijden told Decrypt. He expects the proto-danksharding tool to be included in Ethereum's next upgrade after Shanghai, which has been tentatively labeled Cancun.

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From: Persefoni
Sent: Thu, 22 Dec 2022 11:00:29 -0600
To: Gensler, Gary
Subject: ICYMI: Carbon Credits Explained

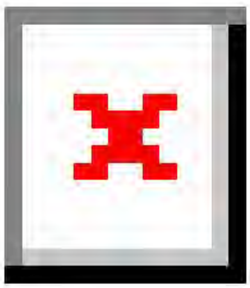
CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Carbon Credits Explained

Hi Gary,

The market for carbon credits has grown exponentially in recent years, as companies try to meet their ambitious climate targets and governments implement compulsory cap and trade schemes. Buying a carbon credit permits a company to emit one tonne of CO_2e, but are they effective in reducing emissions, and how can they be traded? Learn more in our detailed guide to carbon credits.

Learn more



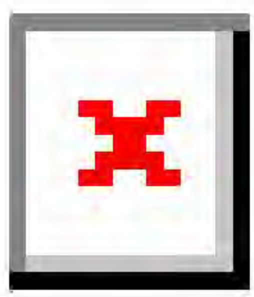
Making Sense of Climate Disclosures

The climate disclosure landscape evolves quickly to help companies make sense of this rapidly changing field. Persefoni has teamed up with its partner Novata to write this eBook sharing how our joint solutions can help companies navigate this complex ecosystem.

Access the White Paper

What are Emissions Factors?

Emission factors allow organizations to take some of their activity data, like miles traveled by vehicle fleet or financial information, and get a CO_2e. Read our quick guide to get a better idea of what emission factors are and how they are used.



Read more

Industry News Briefing

COP15 Agrees to Halt Decline in Nature by 2030

In a Paris Agreement moment for biodiversity, nations agreed to protect a third of the earth for nature by 2030. The deal came despite objections to funding from developing nations but was hailed as biodiversity's last hope.

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World's First Major Carbon Border Tax

The EU announced it would implement a carbon border tax as part of its net zero by 2050 goal. The move will place a price on the pollution of some goods entering the EU.

Keep reading

ISSB Releases Scope 3 Guidance

The ISSB released guidance to support companies trying to comply with their new Climate-related Disclosures Standard. The guidance aims to improve processes for measuring and reporting scope 3 emissions, which are notoriously difficult to calculate.

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First-Ever Net Zero Transatlantic Flight

The UK Government has announced funding, which will allow Virgin Atlantic to be the first net zero flight from London to New York using 100% sustainable fuel.

Keep reading

Happy Holidays

The Persefoni Marketing Team will take a well-deserved break over the coming week to spend time with family and friends. But we look forward to continuing to share in-depth articles, helpful resources, and the latest climate news with you in this quickly evolving and exciting space in the new year.

From: Persefoni
To: Gensler, Gary
Subject: ICYMI: Carbon Neutral vs. Net Zero
Date: Thursday, December 15, 2022 10:30:38 AM

Carbon Neutral vs. Net Zero

Hi Gary,

As companies strive to reduce their carbon emissions and set ambitious targets, you may have heard the terms carbon neutral and net zero being used more frequently. While these terms are often used interchangeably, they do have some important differences. Our explainer guide on carbon neutral vs. net zero aims to provide insight into these differences and why a company may choose to align with one approach over the other.

Learn more

Persefoni at AWS re:Invent 2022

Both Amazon and Persefoni are signatories of the Climate Pledge, a commitment to reach net zero by 2040, which is ten years ahead of the Paris Agreement. Persefoni's Manager of Data Engineering, Blake Blackwell, spoke at a recent AWS event to discuss how Persefoni can help companies reach this ambitious milestone.

Watch the session

Persefoni's General Counsel recognized as NACD Directorship Certified®

Persefoni's Executive Vice President, General Counsel & Corporate Secretary at Persefoni, Peter Bartolino, was recently recognized as NACD Directorship Certified. The NACD Directorship Certification program® is the nation's premier certification for board directors.

Read more

Grocers, Farmers, and Climate Ambition

The scope 3 issue is still the primary objection to the SEC's climate disclosure proposal. Yet, companies like Ahold Delhaize, a global grocery corporation, are marching ahead of the SEC's proposed rules, asking their suppliers to disclose emissions and set science-based emission reduction targets.

Read the newsletter

Industry News Briefing

Australia Plans for Mandatory Climate Reporting

The Australian government announced the launch of a consultation paper on making climate reporting mandatory, starting with large entities. The rules will follow other international climate reporting mandates and be aligned with the recommendations of the ISSB.

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Norwegian Sovereign Wealth Fund Boosts Net

Zero

Norway's $1.3 trillion sovereign wealth fund, the world's largest, will start voting against companies they have shares in that fail to set a net zero emissions target, overpay their top leaders, or do not have sufficiently diverse boards.

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Plans to Protect 30% of Land Divides COP15

The UN's biodiversity summit began on December 7th. Much like the 1.5C goal of climate COPs, the success of COP15 hinges on an agreement to protect 30% of land globally.

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Limitless Clean Energy

A breakthrough in nuclear fusion technology brings us closer to the prospect of "limitless clean energy." scientists, for the first time, created a net energy gain in a fusion reaction, giving hope for the zero-emissions energy tech.

Keep reading

From:	Jim Coburn
To:	Gensler, Gary
Cc:	Slavkin Corzo, Heather; Morse, Mika; Mindy Lubber; sisson@wbcsd.org; maria@wemeanbusinesscoalition.org; acramer@bsr.org; nat.keohane@c2es.org; Steven Rothstein; Randi Mail; Holly Li
Subject:	Joint business organizations" letter on climate risk disclosure rulemaking (attached)
Date:	Monday, December 12, 2022 11:34:19 AM
Attachments:	Final - Business Coalition Sign on for SEC Disclosure Rulemaking December 2022.pdf

Dear Chair Gensler,

Thank you very much for meeting with us last month to discuss the SEC's climate risk disclosure rulemaking. We truly appreciate your time and attention, and we stand ready to continue supporting the SEC's important work on this topic.

We are writing with a joint letter (attached) from Ceres, World Business Council for Sustainable Development North America, We Mean Business Coalition, BSR, and Center for Climate and Energy Solutions (C2ES), urging the SEC to swiftly finalize the rule to enhance and standardize climate-related financial disclosure for investors. Collectively, we work with thousands of companies – including 22% of the S&P 500 – with trillions in revenue and millions of employees in a large range of sectors. Additional details are included in the letter.

In our view, clear rules and comparable information on climate-related risks are a critical component for well-functioning capital markets, and thus fall directly into the purview of the SEC. As you know, disclosure benefits business strategy by improving risk management, competitive edge, and attract investors. Without information on greenhouse gas emissions and governance of climate risk, investors cannot evaluate the market performance of their securities.

Thank you very much for your leadership and focus on finalizing this important rulemaking as soon as possible. If you or your staff have thoughts or questions, please reach out to Randi Mail at rmail@ceres.org and Steven Rothstein at srothstein@ceres.org.

Sincerely,

December 12, 2022

Chair Gary Gensler
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors, Release No. 33-11042, 34-94478; File No. S7-10-22

Dear Chair Gensler,

We greatly appreciate the opportunity to meet with you last month. Together, as leading business organizations we urge the SEC to swiftly finalize its rule to enhance and standardize climate-related financial disclosure for investors.

Collectively, we work with thousands of companies – including 22% of the S&P 500 – with trillions in revenue and millions of employees. Our members include apparel and footwear, communications, consumer products, energy, financial services, food and beverage, healthcare, heavy industrial and manufacturing companies, media and entertainment, real estate, retail, technology, transportation, and utilities.

In our view, clear rules and comparable information on climate-related risks are a critical component for well-functioning capital markets, and thus fall directly into the purview of the SEC.

Finalizing this rule will affirm the market signals already in motion. Most major investors and hundreds of leading companies have already determined climate risk is material and are calling for mandatory disclosure. Standardized disclosure protects investors, facilitates capital formation and ensures efficient and orderly markets as U.S. companies improve risk management and their ability to compete in a transitioning economy.

Issuers with unabated emissions will be exposed to significant transition risks, including exposure to litigation, changing consumer behavior, increased employee and stakeholder concern, potential energy price volatility, among others. To gauge their exposure to transition risks, investors must be able to access issuers' scope 1 and 2 emissions data, at minimum.

As for scope 3, we believe that reporting is essential. Moreover, there are ways to effectively address the legitimate concerns raised. We believe that many private, small businesses that are not currently receiving requests for data from the companies they supply are unlikely to be impacted by the rule as proposed. Suppliers that are material in a company value chain, meanwhile, likely already receive emissions data requests in most instances.

In our view, the rule will simplify the process for thousands of companies that already report this kind of emissions data. It will also reduce the burden that results from the current lack of standardization with the use of multiple voluntary reporting frameworks.

According to the ERM report submitted to the SEC, institutional investors spend on average, over $1.3 million annually to collect, analyze and report climate-related information. Lack of harmonization in the regulatory landscape is increasing costs, as issuers need to meet divergent requirements and investors are forced to collect and analyze data of limited comparability. Alignment and harmonization across jurisdictional requirements would reduce costs, and ensure the disclosure of comparable, decision-useful information.

In light of this, we propose the following recommendations for consideration in the final rule. We hope the Commission will retain these provisions:

- Align to the greatest extent possible with the TCFD, working towards the International Financial Reporting Standards' International Sustainability Standards Board standard as the global baseline.
- Climate disclosures should be made in financial filings, either the Form 10-K or another appropriate form that is incorporated by reference into the Form 10-K.
- Governance and strategy disclosures should provide insights into companies' climate risk exposure, strategies, and scenario planning.
- Scope 1 and 2 emissions disclosure should be required and subject to attestation by an independent third-party to be investor-grade information.
- Scope 3 disclosures should be required but exempt small reporting companies.

We hope the Commission will consider amending these provisions:

- The safe harbor for scope 3 emissions is appropriate and could be strengthened.
- State that for foreign issuers, the SEC will accept alternative reporting mechanisms for climate disclosure namely, the IFRS' International Sustainability Standards Board. To the greatest extent possible ensure that terminology and definitions in the final rule are interoperable with those of the ISSB's approach to ensure that the regulation of climate disclosures for issuers with accounts in international markets is not dictated by foreign legislation.
- Allow companies additional time (possibly a few months) after the 10-K filing, at least in the initial years, to file reports of the GHG emissions.
- Explore alternatives to the Regulation S-X requirement.
- State, in the rule text, that estimates and industry averages are acceptable for scope 3.
- Board oversight information should be disclosed, including information about training board members on climate risks.

Thank you for your leadership and focus on finalizing this important rulemaking as soon as possible. We stand ready to provide further information if helpful. If there are questions, please reach out to Randi Mail at rmail@ceres.org or Steven Rothstein srothstein@ceres.org.

Signed,

Mindy Lubber, Chief Executive Officer and President, Ceres

William Sisson, Executive Director, World Business Council for Sustainable Development, North America

Maria Mendiluce, Chief Executive Officer, We Mean Business Coalition

Aron Cramer, President and Chief Executive Officer, BSR

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To: MediaAnalyst
Subject: 10 Dec 2022 SEC Daily News Clips
Date: Saturday, December 10, 2022 4:45:32 AM

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Securities and Exchange Commission - Seal

December 10, 2022
Daily News Clips

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Wall Street Journal

1. SEC Rule Aims to Make Every Company a Climate Company

9 Dec 2022 (7:46 PM), James Freeman

Securities and Exchange Commissioner Hester Peirce is sounding the alarm on the destructive climate proposal that SEC Chairman Gary Gensler is still trying to jam through on a partisan vote.

This week Commissioner Peirce explained that beyond requiring public companies to demand data on climate risks from even small businesses and farmers in their supply chains, the rule could also force changes in how companies operate and even who runs them. In a speech at the American Enterprise Institute Ms. Peirce noted:

... the climate proposal mandates disclosure about board oversight of climate-related risks, including identifying board members or board committees responsible for overseeing climate-related risks; detailing board member climate expertise; describing the processes and frequency of discussions about climate-related risks; explaining how the board is informed about, and how often it

thinks about, climate-related risks and whether it considers climate-related risks as part of its business strategy, risk management, and financial oversight; and describing whether and how the board sets climate-related targets or goals and how it oversees progress in achieving them.The proposal also includes a corresponding set of disclosures related to management: who is responsible for managing climate-related risks, what their climate expertise is, how they get informed about those risks, and how often the managers responsible for climate-related risks report to the board...
One comment letter objected that the “disclosures usurp the decision-making authority of corporate boards and executive management, authority specifically granted to them by state corporate law.”
Washington would essentially be forcing every public company, regardless of industry, to focus on climate, while also pressuring them to hire leaders who share this obsession. But even the most climate-obsessed ought to recognize that such change requires a new law, not unelected financial regulators suddenly deciding to appoint themselves ministers of global warming.

One also has to wonder why Mr. Gensler—running an agency with no particular expertise in the science of climate—feels compelled to impose this system on businesses that are already facing enormous pressure to adopt the climate agendas of institutional financiers.

Whether overreaching regulators or Wall Street wokesters, the new House majority will likely seek to ensure that neither group is abusing its lawful authority.

“There is mounting evidence the grassroots backlash on the right against ‘woke’ corporate America has tremendous momentum and is reshaping” Republican priorities, Piper Sandler’s Andy Laperriere is telling clients. “This could have potentially broad policy implications, and industries like big tech, Wall Street, and entertainment are in the crosshairs,” he adds.

Blocking the SEC from its outrageous attempt to become the nation’s climate regulator is also likely to be a House GOP priority.

Democrats Lose a Senator
Sen. Kyrsten Sinema of Arizona is changing her political affiliation from Democratic to independent and explains in the Arizona Republic:

Each day, Arizonans wake up, work and live alongside people with different views and experiences, usually without even thinking about partisan politics... Americans are more united than the national parties would have us believe. We’ve shown that a diverse democracy can still function effectively.
... if anyone previously supported me because they believed, contrary to my promise, that I would be a blindly loyal vote for a partisan agenda – or for those who believe our state should be represented by partisans who push divisive, negative politics, regardless of the impact on our state – then there are sure to be others vying for your support.
I offer Arizonans something different.

Some partisans believe they own this Senate seat.
They don't.
Sen. Sinema seems likely to continue caucusing with Democrats in organizing the Senate. Majority Leader Chuck Schumer (D., N.Y.) says in a press release:

Senator Sinema informed me of her decision to change her affiliation to Independent. She asked me to keep her committee assignments and I agreed. Kyrsten is independent; that's how she's always been. I believe she's a good and effective Senator and am looking forward to a productive session in the new Democratic majority Senate. We will maintain our new majority on committees, exercise our subpoena power, and be able to clear nominees without discharge votes.
But there could be an important policy result from her decision to drop the partisan label. Dan Clifton at Strategas writes today:

...Sinema has been in talks with Senators Manchin and Romney about an entitlement commission as part of a debt ceiling deal. The switch to Independent gives her a little more flexibility to broker a deal on how the debt ceiling gets raised, which will be important given that conservatives are demanding action on spending cuts in exchange for the debt ceiling [increase], and clearing 60 votes in the Senate on spending cuts seems unlikely.
Sinema has a chance to carve a path.
Carving into bloated federal budgets would demonstrate true independence from the Beltway establishment.

Necessity Is the Mother of Bureaucratic Reinvention
Very far from Washington and the SEC, Germans are discovering how much red tape they can live without—and how quickly societal progress can be achieved—when there is a broad understanding of the continuing need for fossil fuels.

The Journal's Georgi Kantchev reports from Wilhelmshaven on the country's response to the loss of Russian gas imports:

In March, the German government asked energy companies to weigh a seemingly impossible engineering task. Could a new liquefied natural gas import terminal, which normally takes at least five years to build, be erected in this port town by year's end?
As businesses sprint to meet the deadline, they have found that even the government has been willing to adjust its pace. Mr. Kantchev reports:

The parliament passed an LNG Acceleration Act, speeding up procedures for reviewing, approving and awarding contracts for LNG projects.
"If there is a chance in this really terrible situation, it is that we shake off all this sleepiness and, in some cases, grouchiness that exists in Germany," Economy Minister Robert Habeck said in March about speeding up the construction of LNG terminals.
Sleepy and grouchy is no way to go through life. Is it possible that this

experience could inspire more alert and friendly bureaucracies in Germany? The Journal account highlights the contrast between this year's effort and the typical infrastructure build:

Other large construction projects have moved slowly in Germany. In 2020, Berlin opened its new airport nine years behind schedule. Stuttgart's new railway station, under construction since 2010, is now scheduled to open in 2025, after years of delays and ballooning costs.
The state of Niedersachsen issued some of the necessary permits for the LNG terminal on May 1, the International Workers' Day, a Sunday. "It's not a day when you'd expect that to happen," said Olaf Lies, the state's economy minister. "We needed a new German speed."
Blue-State Model: Still Not Working
Steve Hughes reports in the Albany Times-Union:

New York is falling behind the rest of the country when it comes to combating poverty.
A new report on poverty trends in the state over the last decade shows that while the statewide poverty rate has dropped, there remain millions of New Yorkers who can't meet their basic needs. The report from state Comptroller Tom DiNapoli's office shows that the poverty rate in the rest of the country fell faster than it did in New York, and that poverty remains persistently high among some groups in the state.
The Game
A friend who excelled in college football reports that he never liked playing against the service academies because he "felt like I was playing against America." On Saturday patriotic fans can pick either side while still rooting for the USA. Preparations for the famous football game have been extensive.

Jonathan Lehrfeld reports for Military Times:

Following a time-honored tradition, the Army West Point Marathon Team will run the game ball from the academy in New York to Lincoln Financial Field in Philadelphia ahead of the 123rd Army-Navy game on Dec. 10...
Along their route, even late into the night, they will be greeted with cheers from local residents in the various towns they pass through. Once the marathoners reach Philadelphia, they will make their way to the Philadelphia Museum of Art. What the team does next is drawn straight from the iconic scene of the film "Rocky" where actor Sylvester Stallone's titular character runs up the flight of museum stairs during a training sequence...
Midshipmen from the Naval Academy's marathon team are planning to make their own 130-mile plus trip to deliver an Army-Navy football to the game...
Battles are not just won on the ground. A Tuesday press release out of Annapolis announced:

The United States Naval Academy can confirm that on Dec. 5, 2022, at 11:59 a.m. EST, midshipmen from the Class of 2023 successfully conducted an air-to-ground spirit mission over the U.S. Military Academy at West Point, New York,

ahead of Saturday's 123rd Army-Navy Game.
Twelve delivery passes dropped "Beat Army" and "Fly Navy" leaflets, along with ping pong balls, over Army West Point's "The Apron." Army cadets could be seen breaking formation and running for cover.
Haley Brtizky at CNN reports:

A statement from the West Point public affairs office on Tuesday confirmed the Naval Academy's mission, but said that while they completed 12 passes, "unfortunately not all the drops hit the intended targets."
... While West Point's statement said there was no planned retaliation against the Naval Academy, a video on a popular Instagram page that frequently posts about West Point appeared to show a group of cadets quietly sneaking around the Naval Academy's campus in the dead of night, pulling off one prank after another.
Go Army. Go Navy.

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Financial Times

2. Apple to end employee gagging clauses after activist campaign

9 Dec 2022 (4:53 PM), Patrick McGee

Apple has agreed to drop all employee gagging clauses related to workplace harassment in a win for shareholders and activists who had pressured the iPhone maker's board to investigate following a worker uprising called Apple Together.

The pledge comes after independent counsel found instances in which the $2.3tn company may have restricted employees from speaking out on sensitive issues related to discrimination and abuse.

In a note published this week called "Our Commitment to an Open and Collaborative Workplace", Apple said it is committed to "a safe, inclusive and respective work environment" and that "employees have the right to speak freely about their workplace conditions".

The tech giant said provisions that might bar "a person's ability to speak about [unlawful] conduct" were only found in "limited instances", and that it "committed to not enforce those restrictions and to make improvements and clarifications going forward".

Kristin Hull, chief executive of Nia Capital, who alongside the Minderoo Foundation, led a petition supported by more than 50 per cent of shareholders in a vote last March, said Apple's concession represented a victory for activists.

“Apple has agreed to remove concealment clauses from employee contracts, both for full-time employees, as well as for contract workers,” she said. “That is huge in itself. Then the fact that this commitment spans for US as well as international workers is also groundbreaking and should set the trend for the rest of US-based companies.”

Activist investors have been stepping up their efforts in recent years. In 2020, Apple published its first human rights policy committing to “freedom of information and expression” after shareholder agitation.

Hull had previously argued Apple’s policies were inconsistently applied and that the company appeared not to know whether its contractors were asked to sign arbitration, non-disclosure or non-disparagement agreements.

Her petition followed allegations that the company had retaliated against employees complaining of discrimination. This led to the Apple Together online movement with hundreds of employees collecting and sharing their stories.

Apple’s use of concealment clauses received widespread attention in November 2021 when a former software engineer on its security team, Cher Scarlett, broke her non-disclosure agreement by showing media that the company had made her severance package contingent on withdrawing a work complaint to the National Labor Relations Board and agreeing not to “encourage” other complaints against Apple.

Scarlett’s allegation appeared to contradict Apple’s claim to the Securities and Exchange Commission that it “supports the rights of its employees and contractors to speak freely” about workplace issues, and treasurers from eight US states called on the SEC to investigate.

Nia successfully lobbied a majority of shareholders to support its call for Apple to investigate, arguing that other tech companies such as Pinterest had suffered negative backlash when workers broke their non-disclosure agreements and spoke up against racism. For Pinterest, this led to a $23mn settlement and a $50mn pledge to promote diversity.

“When previously hidden discrimination or harassment problems surface, multiple employees may step forward at once, creating a sudden and significant brand liability,” Nia said last year.

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3. Sam Bankman-Fried to testify to Congress over FTX failure

10 Dec 2022 (12:33 AM), Nikou Asgari

FTX founder Sam Bankman-Fried will testify next week at a US congressional hearing on the collapse of his crypto group, in a U-turn that will mark his first public contact with US officials about the events surrounding its bankruptcy.

Maxine Waters, chair of the US House committee on financial services, on Friday announced Bankman-Fried's participation in the first hearing on the topic scheduled for December 13. Just hours before the entrepreneur said he was "willing to testify".

The panel is investigating the collapse of FTX as lawmakers try to piece together how Bankman-Fried's once-$32bn crypto empire imploded, leaving potentially millions of creditors including retail investors with losses.

The 30-year-old has been on a media blitz since FTX filed for bankruptcy last month, providing interviews to numerous outlets against the advice of his lawyers in an apparent attempt to explain his role and understanding of the events leading to its collapse, but he has expressed reluctance to speak to Congress.

Now he has bowed to pressure after Waters made it clear a subpoena was on the table if he refused, and implored him to speak to "help the company's customers, investors and others".

In a series of Twitter posts on Friday, Bankman-Fried said he would be willing to testify. "I still do not have access to much of my data — professional or personal. So there is a limit to what I will be able to say, and I won't be as helpful as I'd like," he added.

John J Ray, who took over as chief executive of the now defunct exchange and is running its bankruptcy proceedings, is also scheduled as a witness in a separate panel.

The rapid collapse of Bankman-Fried's crypto empire has sent shockwaves through the digital assets industry, triggering multiple investigations worldwide, with dozens of authorities seeking to understand how FTX and its related trading shop Alameda Research operated and failed. A string of other crypto companies including broker Genesis and lender BlockFi have also encountered stress because of links with FTX.

Bankman-Fried, who has remained in the Bahamas since FTX collapsed, said he would "try to be helpful during the hearing" and shed light on issues including "what I think led to the crash", "my own failings" and "pathways that could return value to users internationally".

He has repeatedly denied knowingly misusing customer funds and committing fraud, but has admitted to a lack of basic risk management and losing track of the cosy relationship between FTX and Alameda.

"I had thought of myself as a model CEO, who wouldn't become lazy or disconnected," he said on Friday. "Hopefully people can learn from the difference between who I was and who I could have been."

US lawmakers are increasing their scrutiny of the crypto industry. On Thursday, the US Securities and Exchange Commission told US-listed companies to disclose any impact from the "widespread disruption" in crypto markets. The regulator added public companies should aim to provide investors with "specific, tailored disclosure" around how market events including bankruptcies had affected their businesses.

Meanwhile, Changpeng "CZ" Zhao, chief executive of crypto exchange Binance, continued his online criticism of his former rival. When FTX first encountered difficulties last month, Zhao initially offered to buy some or all of the platform. That deal would probably have represented a rescue deal, but it quickly unravelled.

Binance was also an early investor in FTX and exited the investment last year. Zhao on Friday said that decision was met with an "unhinged" response from Bankman-Fried.

"He launched a series of offensive tirades at multiple Binance team members, including threatening to go to 'extraordinary lengths to make us pay'," Zhao wrote on Twitter.

"You won," Bankman-Fried responded. "None of this is necessary. You won. Why are you lying about this now?"

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POLITICO Pro

4. The Real Reason Washington Is Silent on the Crypto Scandal

9 Dec 2022 (10:30 AM), Michael Schaffer

To most people, the implosion of the cryptocurrency marketplace FTX seems like an emblematic 21st century imbroglio, replete with indecipherable technological and financial jargon. But to Washington good-government advocates watching the political fallout this month, it also points to something that feels distinctly retro: A bipartisan Beltway scandal.

Writ large, the Washington aspect involves the speed with which the crypto industry managed to insinuate itself at the nexus of money and power across the political spectrum just as the government was grappling with how to regulate this confounding new industry.

Writ small, it involves a March letter from eight members of Congress to

Securities and Exchange Commission Chair Gary Gensler sharply criticizing the organization's ongoing investigation of blockchain and cryptocurrency firms. The legislators, most of whom had gotten significant contributions from crypto players, essentially called on the feds to back off.

"Federal agencies must be good stewards of the public's time, and not overwhelm them with unnecessary or duplicative requests for information," the letter scolded, warning against bureaucratic buttinskis who might "stifle innovation." The letter, written when the likes of Sam Bankman-Fried were riding high, somehow didn't suggest that watching out for fraud or protecting the broader financial system might also be worthwhile endeavors.

The American Prospect, which reported on the missive in the spring and followed up last month with a report noting that one of the firms the legislators were protecting was FTX, dubbed them the "Blockchain Eight."

It's a neat bit of populist labeling. What's notable about the Blockchain Eight, though, is that four of them are Democrats and four are Republicans. Like the Keating Five at the center of the infamous 1989 savings and loan scandal, the group is bipartisan: The letter's signatories included Republicans Tom Emmer, Warren Davidson, Byron Donalds and Ted Budd, as well as Democrats Darren Soto, Jake Auchincloss, Josh Gottheimer and Ritchie Torres.

"It's cross ideological," says Aaron Scherb, who keeps an eye on Congress for Common Cause, the good-government watchdog group. "All sorts of crypto players throw their money around, to progressive causes, conservative causes."

"There's a big bipartisan element there, which certainly can't be said" of most other recent legislative furors, says Robert Maguire, the research director for Citizens for Responsibility and Ethics in Washington, which filed a campaign-finance complaint against Bankman-Fried yesterday.

To be clear, no one is accusing the eight of breaking the law. Rather, they're under fire for advocating dubious government actions that benefit a deep-pocketed industry whose public reputation has just gone sideways. It's about grossness, not criminality. (They've denied that they were trying to get the feds to back off.)

"The whole FTX fiasco is nothing but the latest example of how a particular firm, but really an industry, uses all the levers of the influence industry to basically hijack the agenda and put its narrow self-interest on the top and subordinating the public interest at the same time," says Dennis Kelleher of the advocacy organization Better Markets.

In the grand scheme of things, one measly letter is not the biggest deal. But, Kelleher says, the bipartisan nature of the Blockchain Eight — and crypto's legislative fans more generally — is actually a big deal. "The point of those letters, and by the way, the unreported phone calls that almost always accompany such letters, is not to get a particular response. It's to bully regulators in the hope that they will back off, because of the political pressure and the political scrutiny, particularly when it's bipartisan."

Whatever effect the authorship of that March letter did or didn't have on the SEC, the bipartisan cast of crypto's legislative support has likely had a major impact on another Beltway institution: Washington's scandal-industrial complex.

An optimist might think that at this time of constant political warfare, a good, old-fashioned both-sides-do-it scandal is just what an exhausted country needs — a chance to sing kumbaya and remind ourselves that, however much we may disagree about issues, avarice is an enemy we can all fight together.

But the political maneuvering over crypto during the past few weeks suggests that the modern capital's polarized political-media ecosystem can't do much with a potential scandal if there's no partisan advantage to drive it.

Partisanship, it turns out, is the secret ingredient that turns a mere outrage into the sort of scandal that has a name and a cast of characters and a chance to drive Capitol Hill news cycles, wreck careers, or mint media stars. A Democratic administration's disastrous gun-tracing program. A Republican president's attempt to create foreign trouble for a domestic rival. A disproportionately GOP group of senators accused of trading on advance Covid information. The degrees of outrageousness vary. But it takes nothing away from them to note that all were hyped up by people with an obvious partisan interest in throwing tomatoes at the other side.

By contrast, what are the incentives for current pols to hyperventilate for the cameras about the letter to Gensler? Hakeem Jeffries could take to the floor to demand grave consequences for these perpetrators of financial-industry impunity. But he'd be hitting four prominent figures in his own caucus. A back-bench Republican could make a name for herself by calling for resignation or censure or some other unlikely, over-the-top punishment. But she'd be calling out her own party's incoming majority whip, Emmer, and sliming a member who's since been elected as a GOP Senator, Budd.

Instead of knifing colleagues as a way of riding the crypto meltdown to political fame, ambitious members seem to be giving FTX-adjacent colleagues cover. As POLITICO's Lisa Kashinsky reported in Massachusetts Playbook this week, Assistant House Speaker Katherine Clark told "Meet the Press" that she won't be demanding that fellow Democrats return contributions from Bankman-Fried, providing cover to her fellow Massachusetts legislator Auchincloss, a recipient of $5,800 from the FTX leader and thousands more from other figures at the company. (In an MSNBC interview, Auchincloss denied that the signatories were asking the SEC to back off.)

In a political system that is more ideologically sorted than ever, even the subject of a scandal or pseudo-scandals hints at its partisan impact. Of course a scandal over solar-panel subsidies — like Solyndra, which briefly occupied GOP attention during the Obama years — is going to hit Democrats. Likewise, of course a scandal over an energy-trading concern, like Enron in the Bush years, is going to be used against Republicans. But in the case of crypto, the money arrived before the partisan valence did, leaving Washington flummoxed.

Which is why the political system is spending a great deal of energy trying to fix a partisan overlay atop the industry, or at least atop its most high-profile disaster. As it happens, there is a pretty obvious target: Bankman-Fried has been an enormous funder of Democrats and left-leaning causes. In the year and a half before FTX blew up, he donated almost $40 million to campaigns and PACs, nearly all of it in support of Democrats. He had pledged to drop $1 billion ahead of the 2024 election. Sure enough, some pols quickly returned the donations, including former Rep. Beto O'Rourke, whose unsuccessful Texas gubernatorial campaign got $1 million. But many more did not.

And it doesn't take much digging to see that FTX money landed in a lot of Republican coffers, too. Bankman-Fried's partner Ryan Salame's $23 million went largely to conservative causes. In an interview with a crypto reporter last month, Bankman-Fried said he'd sent about the same amount of money to Republicans as Democrats, but had funneled it as dark money because, as the Guardian reported, "reporters freak the fuck out if you donate to Republicans. They're all super liberal, and I didn't want to have that fight."

Bankman-Fried's outsize persona — combined with our cultural fascination with alleged fraudsters — has still made FTX a huge story, one that has included plenty of strong reporting about the crypto kingpin's courtship of Washington. But without the organized chorus of voices calling for heads to roll, it's harder to make sense of the outrage and what it should lead to. Even the $3 million Capitol Hill townhouse a Bankman-Fried nonprofit had purchased to throw lavish parties for Washington players, according to a sweeping Insider story, had a Democratic night and a Republican night.

Ultimately, the incoherence has real implications for regular people. After all, crypto's wooing of Washington involved a tangible question before Congress: Which part of the government should keep tabs on the industry? Should it be the larger, more aggressive SEC? Or the smaller Commodity Futures Trading Commission, which skeptics think could be more easily captured by industry (and several of whose veterans have gone to work for crypto)? Bankman-Fried and other crypto bigshots very much wanted the latter.

Absolutely nothing that's happened suggests that goal has been derailed. A Bankman-Fried backed bill to codify the CFTC's role, consponsored by Democratic Senators Debbie Stabenow and Republican colleague John Boozman, remains before the Senate. At a hearing last week that examined the FTX bankruptcy, Stabenow pushed back against the notion that the bill would cut the SEC out of the picture. But the scandal had not scuttled the effort. Nor has it wiped out another bill, from Democrat Kirsten Gillibrand and Republican Cynthia Lummis, would also give CFTC more sway and is also viewed skeptically by crypto critics.

It's tough to imagine that happening if one party — it almost doesn't matter which one — had decided to weaponize FTX for political advantage.

"There's definitely been a disappointing response in terms of, like, you're still seeing Gillibrand trying to push her bill," says the Revolving Door Project's Jeff Hauser, whose organization has tracked the flow of public servants into the industry. "No one's showing any shame."

Ironically, thanks to the ongoing evolution of the two parties, there is a scenario where elements of both could join together to do just that. Among Democrats, notables like Elizabeth Warren have predicted economic doom as a result of crypto. My colleague Zachary Warmbrodt reported back in March about tensions between her group of mostly older, left-leaning Democratic crypto skeptics and younger Democratic colleagues like the letter signatories. And emerging elements of the GOP have also turned against the casino-ification of the economy. At the hearing last week, Kansas Senator Roger Marshall, a conservative who voted against certifying the 2020 election, came out swinging against crypto.

When I asked him about the issue, Oren Cass of American Compass, a think tank devoted to reforming markets from the right, put his feelings thusly: "Free markets aren't enough — public policy must prevent senseless financialization of the economy and ensure that our markets are productive ones."

But right now, the absence of partisan advantage still makes it feel like a car with no gas in the tank.

It's a notable difference from the bipartisan fallout from the Keating Five, the group of senators accused of intervening improperly in the regulation of a politically connected savings and loan. Bartlett Naylor of Public Citizen, who was an investigator with the Senate Banking Committee at the time, said the shame felt by John McCain about his role pushed him toward a reformist political stance. "Among the positive byproducts of the Keating Five scandal is that John McCain went from your standard bad Republican on banking to one of the outstanding reform guys on banking," he says. "He saw Jesus."

For their part, members of the Blockchain Eight don't seem to be acting as if their warmth towards the industry is a political liability that requires a visit with the almighty. In a letter this week to the U.S. Comptroller General, Torres sharply criticized the SEC…for not watchdogging hard enough. "If the SEC had done the due diligence of thoroughly investigating the financials of FTX, there would have been a greater likelihood of exposing the crypto exchange for what it truly is: a house of cars built on monopoly money printed out of thin air," he wrote.

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5. Nasdaq, NYSE Set to Ease Rules on Direct-Listing Capital Raises

9 Dec 2022 (7:48 PM), Katherine Doherty

Nasdaq Inc. won approval to expand the limits on capital raises in direct listings in an effort to encourage more companies to go public using them, with New York Stock Exchange soon to follow.

The US Securities and Exchange Commission approved Nasdaq's request earlier this month and is expected to do the same for NYSE's proposal, according to people familiar with the matter, who asked not to be identified discussing private information.

Representatives for NYSE and the SEC declined to comment.

"Once we see the new issue markets open, this will be much more topical in terms of being an alternative," Karen Snow, senior vice president and head of US listings and revenue at Nasdaq, said in an interview. "This is a silver bullet, because you now have the option to issue primary, not just secondary shares."

The revised rules on both exchanges could make direct listings more appealing to companies as an alternative to traditional initial public offerings. The changes will allow companies to raise more money in a direct listing, as well as garner wider investor participation.

Too Limiting

Nasdaq and NYSE already allow a company to raise money in a direct listing, but only if the shares are sold in the range stated in the company's registration statement. This has proved too limiting and presents too high of a risk of a failed offering. As a result, no companies have raised capital in a direct listing to date.

"We've removed the friction with this solution and you will see large and small companies using it on a more regular basis going forward," Snow said.

The new Nasdaq rule will allow a company to sell shares in the opening auction on the exchange at a price outside of the range in their registration statement—up to 20% below and 80% above. It will also require that the company listing securities retain and identify an underwriter.

Nasdaq scored a direct listing from Coinbase Global Inc. in 2021, which was the biggest of its kind. Companies including Slack Technologies Inc., Palantir Technologies Inc. and Roblox Corp. have listed on the NYSE.

Read More: Coinbase's Whipsaw Debut Takes It Past $100 Billion, Then Back

In those direct listings, the companies didn't issue any new shares. Unlike a traditional IPO, banks in a direct listing don't underwrite shares or allocate them to institutional investors the night before they begin trading. They are instead sold by shareholders on the day of the listing based on market demand. One of the key advantages of a direct listing is that that investors can sell shares without waiting for a lock-up period—typically six months—to expire.

Heralded by some as the cure for the shortcomings of IPOs, there have been only 11 significant direct listings on US exchanges, with eyeware retailer Warby Parker Inc.'s September 2021 debut being one of the most recent. The most recent large listing was by cannabis company Bright Green Corp., whose shares surged as high as $58 in their Nasdaq debut in May and have since fallen to about 53 cents.

Traditional IPOs set a record last year with more than 1,000 companies raising almost $339 billion on US exchanges, according to data compiled by Bloomberg. So far this year, only 207 companies have raised a combined total of $24 billion, the data show.

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6. Microsoft, Salesforce Join Startups With Products to Track Emissions

10 Dec 2022 (12:00 AM), Brody Ford

A rush of regulation and investor pressure is forcing companies to do a better job of tallying up the environmental impact of their operations and the products they sell. That's stirring demand for software that helps businesses measure carbon emissions.

Salesforce Inc. and Microsoft Corp. have joined at least a dozen startups providing products to help companies calculate their impact on the environment. Their customers are facing US Securities and Exchange Commission rules expected next year that will mandate disclosure on carbon emissions, as well as increasing demands from other governments around the world and environmental, social, and corporate governance investors.

There's significant money at stake. Spending on new software services is part of the $18 billion Bloomberg Intelligence's Nathan Dean estimates companies will have to shell out on climate accounting services over the next six years to keep up with disclosure requirements. The SEC sees an average company paying about $500,000 a year to comply with the new rules.

"A lot of our customers recognize the time is now to get their systems up and running for more-detailed reporting," said Ari Alexander, general manager of Salesforce's Net Zero Cloud platform, which helps companies forecast and account for emissions and was rolled out globally this year. "You can't switch on a system like this overnight."

Microsoft launched its emissions tracking platform in June. Elisabeth Brinton, Microsoft corporate vice president of sustainability, said there will be a “constant drumbeat of new products” including a recently-announced carbon offset marketplace.

The flurry of reporting activity is an opportunity not just for new enterprises — it’s also fertile ground for consolidation. Microsoft would “absolutely” consider acquisitions and venture investment in the space, Brinton said. Salesforce’s Alexander said “there has already been a lot of activity on the partnership and on the acquisition front in the industry, I think it's going to continue to heat up.”

The tech giants are joining the dozen or more startups that have popped up in recent years, offering software that helps companies calculate and reduce the emissions created in the course of doing business. Venture capital and private equity firms have channeled more than $5 billion to startups that offer software, satellite imagery and other tech to tackle climate problems since the start of last year, according to data from BloombergNEF, a clean energy research group.

"We always get these sales pitches by these companies who promise a lot,” said Ralf Pfitzner, global head of sustainability at carmaker Volkswagen AG, which has been reporting detailed emissions for over a decade. Still, “these vendors are helpful. A database is good and always better than spreadsheets,” he said. “It would be a nightmare if it was a bunch of spreadsheets.”

Read More: How Measuring and Reducing Emissions Has Become Its Own Business

The activity comes despite protests from big American companies and some Republican lawmakers against proposed Securities and Exchange Commission regulations to force them to account for their carbon emissions. They argue the rules due to be decided next year will be too onerous and should be weakened or eliminated entirely.

The SEC reporting rules will require publicly-traded companies to disclose emissions and whether any lines of revenue are threatened by climate change. But still in question is exactly which kind of emissions will have to be detailed. The regulator has proposed companies report not only those known as Scope 1, which they produce directly, and Scope 2, which are produced from energy they use, but in some cases Scope 3, emissions generated by customers or a potentially vast network of suppliers.

Among the companies pushing back on the rules was General Motors Co., which said in public comments the requirements were “exceedingly onerous.” Bank of America Corp. said the rules should be delayed in part because of difficulties related to reporting Scope 3, while Fidelity Investments argued Scope 3 emissions shouldn’t have to be reported as the data is “speculative.”

Those three companies are already reporting emissions to CDP, formerly known as the Carbon Disclosure Project, a nonprofit that operates the world's largest inventory of emissions data and accepts submissions to help firms meet a range of demands for disclosure. A World Resources Institute analysis showed about 13,000 companies reported 2021 emissions, a 38% increase from the prior year. However, more than half them are submitting this data in a way viewable only to some institutional investors or supply chain customers. The SEC rules would make this kind information publicly accessible, subjecting the companies to increased scrutiny.

The US rules are expected to be finalized in the first half of next year. They could be watered down to exclude Scope 3, and a legal challenge is possible. Regardless, multinationals will likely still have to contend with planned European Union rules that will mandate emissions disclosure by most companies – public or private – including Scope 3. Many firms listed on Singapore stock exchanges will have to begin reporting emissions next year, something that's already a requirement in the UK and New Zealand.

This constellation of emerging regulations plus investor pressure means that the trend toward disclosure is clear, said Kristina Wyatt, who used to work on climate rulemaking at the SEC and is now deputy general counsel at Persefoni, an Arizona-based climate accounting startup that has raised $114 million. "A lot of companies are already reporting their greenhouse gas emissions because they're under pressure from a whole host of different parties."

Philip Morris International Inc., which has a market capitalization of $155 billion and sells over half a trillion cigarettes a year, started accounting for emissions in 2010, and it took about six years to get its detailed reporting system up and running, said Claudia Berardi, director of environmental sustainability. The company uses bespoke software that links internal records with third-party data to produce climate reports for operations in 89 countries. However, Philip Morris is considering working with traditional software giants for a more-complete platform experience. Berardi sees a need to be prepared as worldwide regulations increase.

"We are exploring more of these platforms, especially because when you start to seriously tackle your Scope 3 emissions, the level of complexity multiplies," she said. "It's critical for each company to be equipped with a digital solution that can account for your emissions properly and simulate what will happen based on your forecast of how your business will develop."

The situation echoes the aftermath of the 2002 passage of the Sarbanes–Oxley Act, said Lee Ballin, managing director of ESG services at Deloitte. That legislation tightened accounting standards after a string of financial scandals, including the collapse of energy giant Enron. It also accelerated demand for accounting software and consultants as financial reports had to be more detailed and reviewed by outside auditors. The economic impacts of new SEC environmental rules may duplicate that experience for carbon accounting, and getting prepared will be key, Ballin said.

"There's a clear direction of travel toward regulation, not just here, but internationally," he said. "The companies that are going to get this right are the ones that are getting started now. Delaying is not going to be a great strategy."

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7. An Obscure Bank Found Its Key to Success. Then FTX Collapsed

9 Dec 2022 (2:15 PM), Max Reyes

Silvergate Capital Corp. was dealing with the same problem many small US banks face: How do you differentiate yourself when larger competitors do everything you do, only better?

The solution it found was to focus on a sector other banks didn't want to touch: cryptocurrency. Over the course of a decade, the La Jolla, California-based company transformed itself from a bank catering to small businesses into a publicly traded firm known for providing banking services to major crypto clients such as Coinbase Global Inc. and Gemini Trust Co. — as well as Sam Bankman-Fried's FTX and Alameda Research.

The arrangement was going well, with Silvergate shares soaring to an all-time high of $222.13 in November 2021 as digital-asset prices set records. Then a painful crypto winter set in, with the value of virtual coins sinking. Capping off what was already a difficult year for the industry, crypto exchange FTX and its sister entities spiraled into bankruptcy last month, and are now facing probes from regulators including the Securities and Exchange Commission, the Commodity Futures Trading Commission and the Department of Justice over missing funds and trading on the platform.

The collapse raised questions about how regulators, investors and the retail traders who lost everything fell for what may have been a scam. But it also raised questions for Silvergate, which held deposits for FTX units and Alameda Research, the hedge fund at the heart of the crypto exchange's collapse. Now, lawmakers are scrutinizing the bank as short sellers circle, with Silvergate stock slumping to less than $23 a share. They dropped as much as 6.2% in intraday trading Friday.

While Silvergate said this month it has "a resilient balance sheet and ample liquidity," and analysts call its financials sound, the bank is today contending with a question as difficult as the one that led it to crypto in the first place: whether the experiment was worth it.

The thesis behind Silvergate's crypto-focused payment platform, known as the Silvergate Exchange Network, is a relatively simple one. Crypto companies that might otherwise have trouble finding a banking partner can put their money on the platform and send it to each other in exchange for digital assets. Silvergate's network is only for US dollars and euros, and virtual-currency transactions don't take place on the platform.

Tokens that exist on the blockchain can change hands almost instantly, and companies that swap them for US dollars want a way to complete these fiat-currency transactions at the same speed they carry out their digital ones.

Silvergate's network lets clients do exactly that — but the deposits placed on the system don't pay interest, giving the bank an almost-free method of funding its activities. Deposits from digital-currency customers swelled to more than $14 billion at the end of last year from $1.2 billion two years earlier.

"When Silvergate got into this business, it was a commercial bank in Southern California, and the deposit market was competitive, and they just really were trying to explore opportunities for lower-cost funding," said Michael Perito, an analyst with Keefe, Bruyette & Woods. "When you have a low-cost deposit base, you can make good return on acceptable risk. It's not rocket science."

One hitch is that banks historically have been squeamish about dealing with crypto firms, given the absence of clear regulations governing a sector infamous for fraud and financial malfeasance.

Silvergate introduced its crypto payments platform in early 2018, according to a filing tied to the bank's initial public offering. In November of that year, the company sold its small-business-lending division and a retail branch to HomeStreet Bank as part of an effort to "increase its focus on its digital-currency initiative and its specialty-lending competencies," according to a regulatory filing.

Silvergate hasn't been charged with any wrongdoing. Neither has Bankman-Fried, but federal prosecutors in Manhattan have begun investigating FTX's collapse due in part to an unexplained $8 billion shortfall in funds. Other probes into FTX and related entities are ongoing.

Read more: FTX Bankruptcy Team Said to Meet With Federal Prosecutors in NY

'Difficult' Weeks
A Silvergate representative, in response to a request for comment, referred to a Dec. 5 message from Chief Executive Officer Alan Lane, in which he said that it's "been a very difficult few weeks for the digital-asset industry, as we have all come to terms with the apparent misuse of customer assets and other lapses of judgment by FTX and Alameda Research."

Silvergate "monitors transaction activity for every account and identifies activity outside of the expected usage. When we identify certain kinds of activity, we are required to file suspicious activity reports, and we do so routinely," Lane wrote. "Silvergate conducted significant due diligence on FTX and its related entities, including Alameda Research, both during the onboarding process and through ongoing monitoring, in accordance with our risk-management policies" and legal requirements.

In a letter to Lane, lawmakers including Senator Elizabeth Warren, a Democrat from Massachusetts, raised questions about the bank's controls, including anti-money-laundering practices. The senators suggested those measures should have caught allegedly suspicious transactions between Alameda Research and FTX, which they said should have been reported to the Financial Crimes Enforcement Network.

'Egregious Failure'

"Your bank's involvement in the transfer of FTX customer funds to Alameda reveals what appears to be an egregious failure of your bank's responsibility to monitor for and report suspicious financial activity carried out by its clients," Warren and fellow Senators John Kennedy and Roger Marshall wrote in the Dec. 5 letter. "The public is owed a full accounting of the financial activities that may have led to the loss of billions in customer assets, and any role that Silvergate may have played in these losses."

The lawmakers cited reporting by Bloomberg News that indicated FTX customers were directed to wire funds to a Silvergate bank account belonging to Alameda.

Read more: FTX Received Some Customer Deposits Via Alameda Bank Accounts

"We have received Senator Warren's letter and are reviewing it," Silvergate said in a statement.

Red Flags

Those transactions wouldn't necessarily raise red flags because of how banks look for fraud and suspicious activity, according to Joseph Silvia, an attorney with Dickinson Wright who advises banks and doesn't work with Silvergate. Bankman-Fried has attributed the loss of customer funds to loose accounting practices, and the exchange's new CEO has cited weak controls throughout the organization.

Amid the turmoil in the crypto industry, Silvergate has been targeted by short-sellers betting against the company's stock. As of Thursday, about 29% of the bank's shares available for trading were sold short, up from 11% a month ago. Silvergate shares have plunged 85% this year.

Silvergate is now valued at roughly half its book value, compared with an average multiple of 1.5 for comparable banks, data compiled by Bloomberg show. In February 2021, Silvergate's price-to-book valuation of 11 was almost six times that of its peers.

If FTX directed clients to send funds to an Alameda account on the Silvergate Exchange Network, the bank wouldn't typically have visibility into the relationship between the parties transacting or the reasons for the transactions, Silvia said. There's a limit on how closely a bank can investigate its clients, he added.

'Rabbit Hole'

"At some point, you ask so many questions and you go down the investigative rabbit hole with your own customers, and they don't stay your customers," Silvia said. "They just move on."

One question raised by the implosion of FTX is how a firm with such shoddy book-keeping gained access to the traditional financial system in the first place. Bankman-Fried has said it took longer for his exchange to secure a bank account than it took Alameda Research. And regulators tend to shy away from telling banks not to do business with firms unless they're engaged in illegal activity.

Read more: FTX's Banking Web Raises Awkward Questions for Regulators

"There's been a big controversy generally about whether regulators should tell banks, 'You just can't do business with certain entities,'" former Federal Deposit Insurance Corp. Chair Sheila Bair said in a Bloomberg Television interview earlier this month. Bair is on the board of Paxos, a stablecoin project listed as a Silvergate client in the bank's prospectus. "If a business is legal, then to tell a bank not to have dealings with them I think is hard, and I am unaware that any of the entities doing business with US banks were illegal."

Growing Pains

Silvergate pushed into the world of crypto in the years after the global financial crisis. CEO Lane has said that he bought his first Bitcoin in 2013, and that curiosity propelled him and the bank deeper and deeper into the world of digital assets.

"Recognizing that neither the US dollar nor Bitcoin were likely to disappear anytime soon, connecting these two worlds has been my profession and passion ever since," Lane said in a Nov. 21 letter to customers.

Building a deposit base off of an industry known for volatility and uncertain regulatory regimes in the US and elsewhere wasn't a painless process. Former Silvergate employees said it was challenging to expand the bank quickly enough to keep up with the rapid growth in deposits from digital-asset customers. The burgeoning workloads brought on by the sudden expansion contributed to high turnover, said the former employees, who asked not to be identified discussing private matters at the bank.

The bank's workforce grew to 279 full-time employees at the end of last year from 208 two years earlier. Among the firm's executives are Chief Technology Officer Chris Lane — the CEO's son — and Jason Brenier, manager of correspondent banking, a son-in-law of the CEO. Another son-in-law, Tyler Pearson, previously held the title of chief risk officer.

A Silvergate representative declined to comment on the expansion challenges or family ties among the bank's management. Silvergate's CEO "does not directly supervise or evaluate the performance" of his family members, the bank said in a regulatory filing.

Signature's Move
Not everyone who has taken the plunge into digital assets is willing to continue stomaching the risk. Signature Bank said earlier this week that it plans to cap the overall share of its deposit base contributed by digital-asset customers and limit the percentage of deposits from individual crypto clients.

In a note, BTIG analysts led by Mark Palmer identified the move as a potential opportunity for Silvergate to capture more market share.

Signature Bank's "pivot away from crypto is also likely to have a negative impact on the network effects" offered by its Signet payments platform, the analysts wrote. "At the same time, the potential influx of new clients to the Silvergate Exchange Network that have been using Signet could serve as an accelerant for its network effects."

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Law360

8. FAR Council Proposal Adds Teeth To Climate Disclosure Rules

9 Dec 2022 (10:12 PM), Barron Avery and Sarah-Jane Lorenzo

Federal contractors' fitness for the job may soon be tied to more detailed disclosures of their greenhouse gas emissions and plans to reduce them.

The Biden administration's recently proposed amendment to the Federal Acquisition Regulation would create additional emissions disclosure requirements for all offerors that earned at least $7.5 million in federal contract funds during the prior fiscal year.

The amendment would also require contracting officers to presume that prospective contractors are not responsible — and therefore ineligible for receipt of federal funds — unless they meet those disclosure requirements.

Key Changes to the FAR

The proposed amendment would amplify and add teeth to the FAR's current greenhouse gas emissions clause, FAR 52.223-22, on public disclosure of greenhouse gas emissions and reduction goals.

That clause requires all offerors that received at least $7.5 million in federal contract funds during the prior fiscal year to represent whether they publicly disclose their greenhouse gas emissions, and whether they publicly disclose a quantitative greenhouse gas emissions reduction goal.

But this proposed rule would create more stringent requirements, especially for the highest-earning federal contractors.

The amendment proposes two tiers of obligations based on a newly proposed distinction that would label contractors as "significant" or "major" depending on how much federal funding they receive.

Significant Contractors

Offerors that received between $7.5 million and $50 million in federal funds the prior fiscal year would be considered significant contractors. Significant contractors would need to assess two types of greenhouse gas emissions each year: Scope 1 and Scope 2 emissions.

Scope 1 emissions include direct greenhouse gas emissions from sources owned or controlled by the reporting entity. Scope 2 emissions include indirect greenhouse gas emissions associated with the generation of electricity, heating and cooling, or steam that is purchased or acquired for the reporting entity's consumption but occurs at sources owned or controlled by another entity.

Significant contractors would be required to report their total annual Scope 1 and 2 emissions in the System for Award Management.

Major Contractors

Offerors that received more than $50 million in federal funds would be considered major contractors. Major contractors would be subject to the same Scope 1 and Scope 2 assessment and reporting requirements, and would also be required to complete an annual inventory of their Scope 3 greenhouse gas emissions.

Scope 3 emissions include greenhouse gas emissions other than Scope 2 emissions that are a consequence of the reporting entity's operations, but that occur at sources other than those owned or controlled by the reporting entity.

Major contractors would also be required to publish an annual climate disclosure, completed within theirs current or prior fiscal year, using the CDP climate change questionnaire, and develop a science-based target for greenhouse gas reduction validated by the Science Based Targets Initiative within the last five fiscal years.

Exemptions

Not all types of entities will be subject to these requirements.

The amendment proposes that higher education institutions, nonprofit research entities, state and local governments, and entities that derive at least 80% of their annual revenue from federal management and operating contracts will be exempt.

So will Alaska Native corporations, community development corporations, Indian tribes, Native Hawaiian organizations and tribally owned concerns.

Finally, while major contractors that are considered small businesses or nonprofits must still complete and report a greenhouse gas inventory for their Scope 1 and Scope 2 emissions, they will not be required to complete an annual climate disclosure or to set science-based targets.

The FAR amendments would also permit contracting officers to exercise some discretion. Contracting officers may still find that an offeror that could not certify compliance with the requirements is responsible if (1) that noncompliance resulted from circumstances properly beyond the offeror's control; (2) the offeror provided documentation that demonstrates substantial efforts to comply; or (3) the offeror made a public commitment to comply as soon as possible.

Implementation

If the proposed emissions disclosure amendments take effect, those offerors who are subject to the requirements will have time to prepare.

Scope 1 and Scope 2 emissions reporting requirements will not take effect until one year after publication of the final rule.

Scope 3 emissions reporting requirements, and requirements to submit an annual climate disclosure and develop a science-based target, will also have a delayed implementation, set to take effect two years after publication of the final rule.

Takeaways

Although the rule is not final, it represents part of a broader push by the Biden administration to intensify U.S. efforts to address climate change head-on. In May 2021, the administration issued Executive Order No. 14030 on climate-related financial risk, which directed various federal agencies to find ways of measuring and mitigating climate-related financial risks that could affect the U.S. economy.

This proposed rule directly responds to language in the executive order that asked the Federal Acquisition Regulatory Council to consider certain climate-related amendments to the FAR.

While the proposed rule only purports to implement some of those suggestions, the order also asked that the FAR Council consider amending the regulations to give preference to bids and proposals from suppliers with lower social-cost greenhouse gas emissions, perhaps in line with the Buy American and domestic preference requirements in the FAR.

It is unclear whether the FAR Council decided against making this change or whether it will be included in a future rulemaking.

We also note that the FAR Council is not the first to address federal climate goals by implementing stringent and tiered reporting requirements.

For example, this proposed rule advances similar goals to regulations proposed by the U.S. Securities and Exchange Commission in March. Those proposed rules would require investors to include certain climate-related disclosures in their registration statements and periodic reports.

The SEC's proposed rules were the subject of substantial comments and criticism. In the wake of that criticism, the SEC missed a self-imposed October deadline to publish final rules, and has not announced a new timeline for their completion. But the SEC's experience and delay did not dissuade the FAR Council from proposing a similar approach.

Within this broader context, we expect that the proposed rule and its reporting requirements will be pushed through in some form.

The FAR amendment was published in the Federal Register on Nov. 14, and interested parties have until Jan. 13, 2023, to submit written comments to the rule.[1] We encourage federal contractors to review the rule in detail to assess how they may be affected by the reporting requirements and to submit comments to the rule before the deadline.

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9. After FTX, SEC Advises Cos. to disclose Crypto Risks

9 Dec 2022 (9:22 PM), Lauren Berg

The U.S. Securities and Exchange Commission has asked public companies to include in disclosures to investors their exposure and risk to the cryptocurrency market, amid the dramatic crash and subsequent bankruptcy of crypto exchange FTX.

The SEC wants companies to think about whether they need to update their disclosures to include information related to the cryptocurrency market, according to guidance on its website that The Wall Street Journal reports was posted Thursday.

"In meeting their disclosure obligations, companies should consider the need to address crypto asset market developments in their filings generally, including in their business descriptions, risk factors and management's discussion and analysis," the statement reads.

The agency said its sample letter focuses on "the need for clear disclosure about the material impacts of crypto asset market developments, which may include a company's exposure to counterparties and other market participants; risks related to a company's liquidity and ability to obtain financing; and risks related to legal proceedings, investigations or regulatory impacts in the crypto asset markets."

The SEC's guidance comes on the heels of the spectacular collapse last month of FTX, which has since filed for bankruptcy.

FTX quickly installed new leadership across its corporate structure after its sudden collapse in which $32 billion in value disappeared over the course of a few days as its proprietary digital token foundered and users rushed to withdraw their holdings from the platform.

Founder Sam Bankman-Fried resigned as CEO just before the bankruptcy filing, and John J. Ray III was appointed to replace him. Ray is an experienced restructuring executive, the company said, and previously worked on the liquidation of Enron.

A couple of days after taking the reins, Ray said in a court filing that the crypto exchange's downfall stemmed from an unprecedented "failure of corporate controls," the likes of which he had never seen before in his career.

The new CEO's first-day declaration painted a damning picture of FTX's previous leadership, detailing what he said were extreme failures that have prevented him from determining the true state of its financials.

In the declaration, Ray said Bankman-Fried ran the operation without any internal controls or appropriate accounting practices and left the new leadership unable to piece together a balance sheet for the business.

"Never in my career have I seen such a complete failure of corporate controls and such a complete absence of trustworthy financial information as occurred here," Ray said in the declaration.

These failures include not keeping centralized control of the cash held by FTX and its dozens of subsidiaries, Ray said, to the point he can't determine how much cash the company has or where it might be.

During a hearing in Wilmington, Delaware, on Nov. 22, FTX said its new leadership is now "writing things down" and is aiming to implement robust internal controls to straighten out the mess of its financial records.

Last week, a bankruptcy watchdog for the U.S. Department of Justice urged a Delaware bankruptcy judge to appoint a special examiner to sift through the wreckage of FTX and to determine what led to company's "free fall" into bankruptcy.

And on Wednesday, Sens. Elizabeth Warren, D-Mass., and Tina Smith, D-Minn., sent letters to the Federal Reserve, the Federal Deposit Insurance Corp. and the Office of the Comptroller of the Currency, raising concerns about ties between the banking industry and cryptocurrency firms.

The senators said that while the banking system seems to have emerged unscathed by FTX's crash, the firm's collapse shows that the cryptocurrency industry may be more integrated into the banking system than previously thought.

They want to know whether the regulators plan to conduct a review of crypto firms' relations with banks, the process by which the agencies evaluate banks' relationships with crypto firms, and the number and names of banks regulated by each agency that are engaged in cryptocurrency activities.

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10. How Will The FTX Collapse Affect Other Companies?

9 Dec 2022 (8:38 PM), Christopher Ott

Christopher Ott
Given the scope of its coverage, nearly everyone is aware of cryptocurrency exchange FTX's swift destabilization and bankruptcy.

There has been extensive coverage about how the collapse will affect FTX. However, given my experience as a federal fraud prosecutor and with digital asset companies, I wanted to ask: How does FTX legally affect everyone else?

Bankruptcy

For the FTX customers, the risks are best first examined from the perspective of bankruptcy law, which was ably done in a conversation between my colleague, Loeb & Loeb partner Daniel Besikof and the Associated Press.[1] "Unlike a case where there's (securities insurance in the failure of a brokerage) or where the [Federal Deposit Insurance Corporation] steps in with a bank failure, these customers are totally exposed," Besikof said.

This is bad news, of course. However, the spillover risks do not end with FTX customers' accounts.

Regulator Inquiries

There will be robust regulator inquiries. Although the idea of a cryptocurrency exchange is new, the venerable U.S. Securities and Exchange Commission oversees its regulation. The similarly well-established U.S. Commodity Futures Trading Commission oversees financial tools like futures and options.

The state attorneys general for California and New York, along with the New York Department of Financial Services, will also scrutinize this situation. This is because crypto exchanges are supposed to work similarly to a stock-trading platform and these crypto exchanges are regulated similarly.

The road map for regulatory response should therefore be familiar. However, an investigation of FTX itself does not necessarily eliminate risks to your company. The SEC has broad subpoena power related to its investigation. If your company has evidence that shows how FTX did its business, even if you have no primary criminal liability, you may be dragged into the litigation via subpoena. Almost any entity that did business with FTX will face some scrutiny during the investigation.

The problem is that you may have been doing business with FTX without even knowing it. FTX was the exchange side of at least 130 interrelated businesses. According to reports, this conglomerate of FTX businesses was never subject to outside auditing. As such, it is very unlikely that they adhered to accounting norms or controls. Accordingly, everyone's chance of receiving a regulatory subpoena is at least 130 times of your prior expectations.

To prepare for that regulatory subpoena, a company's risk department should begin an audit of all contacts with FTX and its related entities. Once one has identified those points of contact, the risk department can work to identify the scope of documents and communications that memorialize those contacts.

This preparatory auditing exercise will serve two primary purposes: (1) It will render subpoena response easier, and (2) it will enable the company to start examining and questioning the wisdom of those contacts.

Criminal Investigations

The lack of accounting controls also leads to another distinct risk to third parties: criminal investigations. Early reporting suggests that FTX was commingling its exchange funds with its other affiliated companies. That action is almost always a federal felony. On Nov. 22, an FTX lawyer stated in court that a substantial amount of FTX's assets were either missing or stolen. Those are still more felonies.

Based upon my experience as a federal fraud prosecutor, I am not surprised that an investigation in the U.S. District Court for the Southern District of New York is already underway, and expect that the U.S. District Court for the Northern District of California and others will soon follow.

At some point, those investigations will have to coalesce. However, in the near term, there will be several competing investigations issuing subpoenas.

This situation is unfortunately typical in the digital asset world. Some companies have received as many as a dozen subpoenas from different agencies with overlapping investigations involving the same matter. These situations are complex, but the first step to confronting that complexity is beginning to audit the contacts, as described above.

As an additional step, companies should consider ongoing interviews and discussions about how and why contacts were made with FTX.

Interviews and Depositions

The evidentiary burden may not come in document requests. These investigations may well involve interviews of the persons who did business with the FTX entities.

Given that FTX's management was so centralized and so much of the business was conducted in the Bahamas, away from many direct subpoenas, anyone who dealt with the FTX management team should brace themselves for multiple testimonial subpoenas. Because of the potential commingling of fees, nearly any transaction with an FTX entity could be fodder for an interview.

When you receive the subpoena, there may be some courtroom remedies available, such as a motion to quash the subpoena itself. Even more likely, however, it is possible to negotiate with the responsible agency as to the width and breadth of the subpoena.

That process of negotiation can serve to lessen the production burden, and it can also open the lines of communication with the subpoena. That communication could provide a real advantage in such a tense investigation.

That subpoena response should be paired with a robust public relations strategy. Most subpoenas will be kept confidential. However, leaks can and will happen. With that in mind, everyone with exposure should marry an existing FTX-related public relations strategy with the ability to righteously advertise your cooperation with the authorities.

Forfeiture

Another twist flows from the commingling of deposits with affiliated entities. Those funds could be subject to government seizure under either civil or criminal forfeiture. Most business fortunately have little experience with the forfeiture laws.

However, they can reach far. Of the monies recovered in the Bernie Madoff fraud, approximately $4 billion[2] was recovered from his investors and vendors. It was then distributed evenly among the victims. The point is that if you received the misappropriated money, even if it was done innocently, the government can claw it back. All of a sudden, having been paid by an FTX subsidiary two years ago opens up a new kind of risk.

Forfeiture risk cannot be easily addressed. However, it is worthwhile to perform a financial audit of all funds sent to and received from FTX entities. That audit will help your company's team identify all the funds that could potentially be attachable in a forfeiture action. In identifying those funds, your company should pay close attention to how and where those monies are flowing.

For example, if those funds always pass through a particular operating account at your company, you should brace yourself for the risk that this operating account may be frozen or even forfeited. With that risk in mind, your company should have some deep conversations about where and how FTX funds touched your own financial architecture. Those discussions may lead to changes in the way that normal, non-FTX business is conducted.

None of this analysis is meant to provide a definitive path for the FTX drama. Indeed, little about the case will develop in a straight line. From the web of companies that FTX built in the dark, several overlapping investigations will emerge to entangle companies that merely witnessed the disaster. However, all forward-thinking companies should think about where FTX's web may have touched them.

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InvestmentNews

11. Finra slaps LPL with $150,000 supervisory fine

9 Dec 2022 (1:00 AM), N/A

The Financial Industry Regulatory Authority has censured LPL Financial and imposed a fine of $150,000, charging that the firm failed to supervise one of its affiliated brokers whose outside dealings cost LPL customers more than $650,000.

Finra said that LPL ignored several red flags raised by the behavior of the registered representative, who was not identified in the regulator's letter of acceptance, waiver and consent.

From September 2018 through August 2019, LPL ignored the broker's use of social media for business purposes, which it had never approved, according to Finra. The firm also is charged with ignoring the broker's unauthorized use of an LPL email account, which contained emails with references to his work for an advisory firm in which he claimed to be an executive.

Finra's action sprang from a review of an LPL termination form filed in August 2019 in which the regulator noted that the former firm representative had been charged in an arbitration with moving a customer's retirement account to another firm and using forged documents to invest the money in a Ponzi scheme.

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Other Outlets

12. SEC calls for disclosure on crypto risks, citing 'financial distress' (CFO Dive)

9 Dec 2022 (1:00 AM), Jim Tyson

Since the implosion of FTX, the SEC and other regulators have come under fire from lawmakers for lagging behind rapid growth in crypto markets.

"The SEC has brought some enforcement actions related to fraudulent and unregistered crypto offerings over the past few years, but it has fallen far behind as the crypto industry has drawn in millions of new investors," Sen. Elizabeth Warren, D-Mass., said after the failure of FTX.

"The Securities and Exchange Commission needs to suit up" and fight fraud, she said. "The longstanding legal test defining securities gives the agency the power — but power is worthless if the cop on the beat won't use it."

SEC Chair Gary Gensler on Wednesday rebuffed the criticism. "We're already suited up," Gensler said in an interview with Yahoo Finance.

"We have a robust enforcement history in the crypto space — I think over 100 actions — a couple of dozen while I've been here as chair against crypto exchanges, against crypto lending platform, against, of course, tokens," Gensler said, citing moves against BlockFi, Poloniex and Coinbase, the largest U.S. crypto exchange.

"Unfortunately for the investing public, the entrepreneurs in this field have chosen — and it's a choice — they've chosen to try to skirt the law," he said.

Advocates of cryptocurrency say that CFOs can use blockchain technology to gain access to fresh pools of capital, serve new groups of customers who transact in cryptocurrencies and streamline Treasury functions such as money transfers.

Some CFOs have adopted crypto-enabled payments or, in the high-profile examples of Tesla and MicroStrategy, brought cryptocurrencies onto their balance sheets. They helped push up the value of non-state digital assets to a total market capitalization of $3 trillion in November 2021 from $14 billion in

2016, the White House said, citing unidentified surveys.

Yet cryptocurrencies and related markets have proven extremely volatile this year. Shares in Coinbase, the biggest U.S. cryptocurrency exchange, have plunged more than 82%, while bitcoin and ethereum have plummeted more than 63% and 65%, respectively.

Gensler has repeatedly compared the crypto market to "the Wild West." Under guidance that took effect in April, the SEC said companies should disclose the risks to investors from cryptocurrencies held on behalf of customers and account for the assets as liabilities.

Gensler in May announced plans to expand the SEC's Cyber Unit to 50 enforcers from 30, adding investigative staff attorneys, trial counsels and fraud analysts and renaming it as the Crypto Assets and Cyber Unit.

The stepped-up enforcement team focuses on investigating violations in securities law related to crypto asset offerings, exchanges and lending, as well as staking products, nonfungible tokens, stablecoins and DeFi platforms, the SEC said.

Since its creation in 2017, the cyber unit has imposed penalties exceeding $2 billion against companies involved in crypto assets, the agency said.

"Recent bankruptcies and financial distress among crypto asset market participants have caused widespread disruption in those markets," the SEC said in its newest guidance.

The agency underscored to companies "the need for clear disclosure about the material impacts of crypto asset market developments, which may include a company's exposure to counterparties and other market participants; risks related to a company's liquidity and ability to obtain financing; and risks related to legal proceedings, investigations, or regulatory impacts in the crypto asset markets."

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13. SEC Urges Firms to Disclose Crypto Exposure in New Letter (Decrypt)

9 Dec 2022 (6:00 AM), Will McCurdy

The Securities and Exchange Commission (SEC) has unveiled new guidelines for companies making financial disclosures, which call on them to provide a more detailed record of their exposure to the crypto industry in the wake of recent market chaos.

The guidelines, which are outlined in a sample letter, go beyond simply the amount of cryptocurrencies held on the balance sheet.

The letter also includes guidelines on exposure to third-party crypto market participants, risks related to firms' liquidity, their ability to obtain financing, as well as risks relating to "legal proceedings, investigations, or regulatory impacts" within the crypto markets.

Explaining the recent guidelines, the regulator referenced the Securities Act Rule 408 and Exchange Act Rule 12b-20. These rules states that companies may need to make additional disclosures "as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading."

Firms were also urged to discuss the "downstream effect" of how the bankruptcies of certain third-party companies have affected their company as well as their partners and customers.

More broadly, the letter asked firms to disclose any "reputational harm" they may face as a result of recent market disruption.

SEC guidelines in wake of market chaos
The news comes as the market has seen many firms encounter severe difficulties as a result of their exposure to insolvent firms within the crypto industry.

Crypto exchange Gemini was forced to shutter withdrawals of its Gemini Earn service as a direct result of the severe liquidity issues experienced by the crypto broker Genesis.

Gemini Earn offered customers interest in exchange for depositing their cryptocurrencies, between 0.45% and 8.5%, which was facilitated via the use of Genesis as a third-party lending party.

The SEC's letter touches on events like Gemini and Genesis.

The regulator also recommended firms detail any risks involved in "excessive redemptions or withdrawals," having "suspended redemptions or withdrawals," as well as any risks stemming from "unauthorized or impermissible customer access" to their offerings outside of the jurisdictions they are authorized to operate in.

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14. SEC's New Executive Compensation Clawback Rules To Become Effective In January 2023 – What That Means For Public Companies (National Law Review)

9 Dec 2022 (1:00 AM), Barnes & Thornburg LLP

The Securities and Exchange Commission (SEC) has unveiled new guidelines for companies making financial disclosures, which call on them to provide a more detailed record of their exposure to the crypto industry in the wake of recent market chaos.

The guidelines, which are outlined in a sample letter, go beyond simply the amount of cryptocurrencies held on the balance sheet.

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15. SEC Needs to 'Get Moving' on Crypto, Former SEC Enforcement Lawyer Says (Financial Advisor IQ)

9 Dec 2022 (1:00 AM), Alex Padalka

The Securities and Exchange Commission may be touting its tough stance on the cryptocurrency space, but some lawyers — including one who used to work for the commission — believe much more could have been done, according to news reports.

The regulator is investigating crypto exchange Coinbase Global and the U.S. arms of Binance as well as FTX, which filed for Chapter 11 bankruptcy protection a month ago, the Wall Street Journal writes, citing regulatory disclosures and people familiar with the matter. And over the past six years, the SEC has fined or sued dozens of crypto token developers, according to the publication.

SEC chairman Gary Gensler, meanwhile, has been consistently vocal about tougher regulation of the space. He has accused crypto exchanges of violating the law by peddling unregistered cryptocurrencies that should be treated as securities, the Journal writes.

But some lawyers believe the commission hasn't done enough.

"It was a gap in their strategy to not go after these entities," said John Reed Stark, a former SEC enforcement attorney, according to the publication.

For example, the SEC sued a former Coinbase employee in July, alleging that Coinbase sold seven illegally issued securities, but Coinbase continued trading six of them thereafter, the Journal writes. The regulator could have sued the company directly but didn't, according to the Journal.

A Coinbase spokeswoman told the publication that the firm doesn't believe any of the six digital coins are securities.

Part of the reason there's such pushback from the crypto space against the SEC is the regulator's use of its enforcement division to get the industry into compliance, some lawyers tell the Journal.

"Because the SEC has taken such indefensible positions, the industry doesn't take the SEC as seriously as it used to," said Jake Chervinsky, head of policy at the Blockchain Association, whose members include many large crypto firms, according to the publication.

Furthermore, while the SEC made overtures to exchanges to get registered with the commission — with Gensler saying in the wake of the FTX implosion that the "runway is getting shorter" for them to do so — it simply doesn't make sense for the exchanges, Chervinsky told the Journal.

"The exchange could register, but it would have to delist every single asset that they trade, which would destroy their business," Chervinsky said, according to the publication.

Gensler has been adamant about imposing the exchange regulatory approach on crypto platforms that deal with retail investors, people familiar with the matter tell the Journal. The chairman rejected various proposals from FTX and IEX Group — a stock-exchange operator in which FTX took a minority ownership stake in April — to set up an alternative trading system subject to less stringent regulation, the people said, according to the Journal.

Gensler, for his part, has kept up the message that crypto exchanges must be regulated. In an interview with Yahoo Finance Wednesday, the SEC chair argued that the exchanges — "these intermediaries, these storefronts, these casinos" — must work with the commission to come into compliance.

He may be running out of time.

Stark said that Gensler "is risking significant criticism if he doesn't get things moving," according to the Journal.

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16. House GOP ready to investigate Biden administration's 'war on American energy' (Fox Business)

9 Dec 2022 (1:00 AM), Fred Lucas

Gas prices may be falling, but House Republicans are ready to go after the Biden administration for policies they say caused record energy prices over the past year.

The new Republican majority is set to tackle a full plate of investigations in the coming year that includes the Biden family foreign business entanglements, the botched exit from Afghanistan, Big Tech and a potentially politicized FBI. But it could be energy issues that hit home to most Americans.

Rep. James Comer, R-Ky., the incoming chairman of the House Oversight and Reform Committee come January, offered a glimpse into what the panel will be investigating regarding how the Biden administration has handled energy issues, targeting information about an alleged secret deal with Saudi Arabia as well as the depletion of the nation's strategic petroleum reserves.

What today are only requests for information from the State Department, the Energy Department and other agencies could become subpoenas in January when Republicans take over the House majority.

Republicans on the oversight committee plan to hold hearings on what they call the Biden administration’s "war on American energy." If the committee Republicans don’t get a response from agencies by the end of the year, they plan to renew the requests in January.

Since taking office, President Biden shut down the construction of the Keystone XL pipeline and implemented a moratorium on oil and gas production on federal lands.

"With the power of the gavel, we will hold the Biden administration responsible for recklessly attacking a critical industry that provides the American people affordable energy and good-paying job opportunities," Comer said in a statement.

Comer wrote to Secretary of State Anthony Blinken to get more information about Biden’s deal with Saudi Arabia to lower gas prices before the election.

The New York Times reported administration officials thought Biden’s trip to Saudi Arabia in August 2022 "could shore up a Saudi commitment to convince OPEC to increase oil production." However, in October, Saudi Arabia and the Organization of the Petroleum Exporting Countries cut production by 2 million barrels a day.

"According to press reports, this decision infuriated the Biden administration officials who sought the deal to provide temporary fuel price reductions before the November midterm elections," Comer’s letter to Blinken says. "If the administration is brokering secret agreements to the detriment of American energy producers and for campaign purposes, the American people deserve to know. To understand what transpired, we are requesting documents and communications as well as a transcribed interview."

Comer is requesting a transcribed interview with Amos Hochstein, the Biden administration’s special envoy and coordinator for international affairs at the State Department.

The Times reported Hochstein and National Security Council Brett McGurk sought a clandestine, two-part arrangement with Saudi Arabia to increase oil production. In June, OPEC’s affiliates announced the accelerated output timetables in compliance with the initial part of the "secret deal." But the affiliates reversed course after Biden’s August visit.

In response, a State Department spokesperson told Fox News Digital, "As a general matter, we do not comment on congressional correspondence."

Comer wrote two separate letters to Energy Secretary Jennifer Granholm, one asking for more information related to the Biden administration's strategy to address high energy prices, the other letter asking about what Comer characterized as "abuse" of strategic oil reserves.

"The SPR had only been used in emergency situations — and only three times — before President Biden took office," Comer wrote to Granholm. "However, less than two years into President Biden's first term, he has released more of our nation's emergency stockpiles than all previous presidents combined, and the SPR now sits at approximately half the levels reported the week he took office. Because the SPR was intended to bridge gaps caused by temporary disruptions, it cannot function as a permanent solution to bolster domestic supply and ease fuel prices."

The Energy Department disputes the characterization, noting Russian President Vladimir Putin's invasion of Ukraine disrupted the global energy supply and required the use of strategic petroleum reserves.

"The SPR is a critical tool designed to address global supply disruptions, and as Putin's war continues to create upheaval to energy markets, the Biden administration, like administrations of both parties have done in the past, is using the SPR as intended — to address supply disruptions and provide relief to American families when they need it most," an Energy Department spokesperson told Fox News Digital.

In a letter to Environmental Protection Agency Administrator Michael Regan, Comer requested a staff-level briefing with documents about the agency's methane rule and compliance costs. The letter said the regulation encourages third parties to access private property.

"We will review the letter and respond accordingly," an EPA spokesperson told Fox News Digital.

In a letter to Securities and Exchange Commissioner Gary Gensler, Comer requested information about the technical glitch that led to the loss of public comments regarding the commission's ESG rule, short for environmental, social governance.

"Chair Gensler will respond to the members of Congress directly, rather than through the media," an SEC spokesperson told Fox News Digital.

As the minority party, Republicans on the House oversight panel issued a report last month titled "Democrats War on Domestic Energy and its Impact on the American People." The report outlined what it said were the Biden administration's dangerous energy policies, charging the administration failed to produce a coherent plan to address rising energy prices.

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17. [SEC's top spot in Texas opens as regulatory challenges loom](#) (Houston Chronicle)

9 Dec 2022 (1:00 AM), Mark Curriden

The U.S. Securities and Exchange Commission is looking for a new sheriff to aggressively police corporations, cryptocurrency operations, hedge funds and thousands of investment brokers and dealers in Texas, Arkansas, Oklahoma and Kansas.

Only a handful of people even qualify for the position, legal experts say.

Law degree required. Experience prosecuting securities and accounting fraud is a must, preferably with the SEC or U.S. Attorney's Office. Preference for those with a history of significant public service. Must manage a staff of 112 professionals, including more than 40 securities lawyers, and be willing to go to battle against some of the largest and most powerful corporate executives in the world. Annual pay: $280,000.

The position opened up last week when SEC Regional Director David Peavler resigned his position as head of the Fort Worth office, which oversees securities enforcement of scores of publicly traded companies including Exxon Mobil, Chevron, Haliburton, AT&T, Dell, Toyota North American, Southwest Airlines and Walmart.

A 19-year veteran of the SEC, Peavler is joining the global law firm Jones Day, which has large offices in Dallas and Houston.

"This region, especially Texas, has grown dramatically over the last five years in terms of population, large public companies and regulated entities, but Fort Worth regional office's headcount is smaller than it was in 2016," Peavler said. "And with the SEC's impending rulemaking and the growth of new and complicated types of investments, especially digital asset investments, the office will have to make harder and harder decisions about how to use its limited resources most effectively.

He and his two predecessors have lobbied their bosses in Washington to open an SEC branch office in Houston, which is the largest city in the U.S. without an SEC presence.

"Clearly, the fourth-largest city in the U.S. – a city that is home to many of the largest corporations in the world – should not be without any SEC coverage," Peavler said. "The SEC should have a presence in Houston, but with the budgetary concerns, I think it would take a literal act of Congress for it to happen."

Shamoil Shipchandler,who preceded Peavler, said the argument for the SEC to open a Houston office is strong.

"SEC enforcement and exam folks should learn the industries within their jurisdiction and have a collaborative relationship with the leaders to be effective regulators, and when you have a physical presence in a place like Houston, you have those things," said Shipchandler, who is now chief counsel at financial services giant Charles Schwab.

"When you are jetting in and out of Houston for meetings, you don't have those things," he said.

Focus on fraud
Peavler and others said the SEC and white-collar prosecutors with the U.S. Department of Justice are focused on fraud related to corporate accounting and disclosures, conflicts of interest involving investment professionals, inept gatekeepers, fraudulent digital asset investments and market integrity issues such as insider and manipulative trading.

"The challenge will be to look around the corner for risks that are coming, which may depend on a number of unpredictable variables such as the economy, the markets and financial innovation," Peavler said.

The SEC was expected to post the job opening this week and start accepting applications for the regional director's position over the next two months.

"This is one of the most important jobs that most people don't even know exists," said Winstead law partner Toby Galloway, a former SEC senior trial attorney. "The SEC should look for someone with deep experience within the agency, considerable expertise with the federal securities laws and the demeanor to lead a diverse and talented workforce."

Former SEC lawyers practicing in Texas said the next regional director faces some monumental challenges as commissioners in Washington, D.C., push new regulations involving cryptocurrency, cybersecurity and climate change.

Scott Mascianica, a former SEC assistant director of enforcement and now a partner at Holland & Knight, said the next regional director has "significant shoes to fill" following Peavler.

"The Fort Worth regional office will benefit from someone who can bring a combination of strong leadership skills and high technical acumen to lead both enforcement and exam [divisions] through a period following a steady stream of proposed rules and significant legal challenges that could have significant impacts on the agency," he said.

No one has officially raised her or his hand as being interested in the position, but legal experts agree there are a few front-runners for the position if they choose to apply. Current SEC Associate Regional Director Eric Werner and former Associate Director Jessica Magee are viewed by insiders as most qualified. Magee is now a partner at Holland & Knight.

Vinson & Elkins partner Rebecca Fike, a former senior SEC enforcement lawyer, said the next regional director needs to be someone who is "enthusiastic" and "ready to hit the ground running."

"The next director needs to be someone who will continue to raise the FWRO's status within the commission and the legal and business community in Texas and beyond," she said.

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18. Confusion, concern continue around SEC's climate reporting plans (Houston Chronicle)

9 Dec 2022 (1:00 AM), Mella McEwen

Proposed rules from the Securities and Exchange Commission that would -- for the first time -- require companies to report climate change risks to their operations remain in limbo.

"The SEC received an inordinate amount of comments across the board," Stephen Grant, partner in Haynes Boone, told the Reporter-Telegram in a telephone interview.

The volume of comments, combined with a technical glitch that may have prevented some comments on the proposal from reaching the agency, have pushed back the timeline, he said.

"Our expectation is there will be a final rule early next year. As a result of the final rule (being pushed back) to next year, our expectation is the phase-in process, which is important, will be moved back a year," he said.

The rules could impact how companies report under Regulation S-K, which deals with narrative disclosures and could involve how a company's board oversees climate change and assesses climate risk, and Regulation S-X, which deals with financial disclosures.

"The biggest report will be the emissions report," said Grant.

His company and EnerCom Oil & Gas released its ESG Tracker report in October that surveyed 30 public oil and gas companies for trends in ESG data. The survey found most companies have implemented some form of ESG leadership in their boardrooms. It also found 25 of the 30 companies disclose their Scope 1 emissions – those from its own or controlled operations – and Scope 2 emissions – indirect emissions from the generation of purchased electricity, steam, heating and cooling consumed by the company.

What is causing a lot of concern and consternation is the possible requirement to disclose Scope 3 emissions – those that are not generated by the company itself but by those it's indirectly responsible for up and down its value chain.

"It's asking for emissions data that's completely out of your control," said Grant. The SEC's use of the term "oil and gas manufacturing" suggests it would be material to the report, he added.

The rules could also require line-item disclosure on climate impact under Regulation S-X, and Grant noted that most companies' financial reporting systems "aren't that granular."

One complaint is that the rules would be applied across all industries without differentiation, he said. The challenge will be to make the accounting consistent and comparable across industries, he said.

"We think there will continue to be investor focus on ESG" and demand for greater transparency, he said.

He advised oil and gas companies to be proactive – to think about governance and add formal ESG policies and procedures. When it comes to emissions reporting, he recommended companies look at their greenhouse gas protocols and "ramp up those resources. Internally, do more of a ramp-up and prepare for new rules."

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19. The SEC Wants Public Companies to Disclose Their Crypto Exposure (Investopedia)

9 Dec 2022 (1:00 AM), Kevin George

The Securities and Exchange Commission (SEC) told publicly listed companies to disclose any exposure to cryptocurrency, a month after the collapse of FTX sparked market chaos.

The SEC Takes Action After The FTX Collapse
The regulator said the firms must tell investors whether they face a material impact from the crypto market, including exposure to counterparties, any risk to their ability to get financing and whether they could be endangered by legal proceedings.

"Companies may have disclosure obligations under the federal securities laws related to the direct or indirect impact that these events and collateral events have had or may have on their business," the SEC said in a statement.

What Companies Need to Answer About Cryptocurrencies
The financial watchdog shared a "sample letter" companies can use as

guidance to meet disclosure obligations. In the first question, the companies are asked to disclose any "significant crypto asset market developments" that could affect their financial condition, results, or share price, including the volatility of crypto assets' prices.

The companies are also asked about how certain bankruptcies may have affected their business, including whether excessive redemptions or withdrawals have occurred or to what extent crypto assets are being used as collateral. The companies need to describe any material risks they face as a result of regulatory developments related to crypto assets or as a result of U.S. and foreign regulators asserting jurisdiction over crypto assets and crypto asset markets.

The Bottom Line
The guidance comes a day after SEC Chair Gary Gensler defended the agency from claims that it failed to prevent crypto firms from misusing customer funds. He emphasized that the regulator does not need further powers to regulate the crypto industry.

The sample letter and guidance indicate the government intends to take action in response to FTX's demise.

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From: Persefoni
To: Gensler, Gary
Subject: ICYMI: What is Investor-Grade Reporting?
Date: Thursday, December 8, 2022 10:30:56 AM

What is Investor-Grade Reporting?

Hi Gary,

As climate and ESG reporting move from a voluntary exercise to a mandated one, companies are expected to disclose their sustainability information with the same accuracy as they disclose their financial information. As a result, investors and regulators now expect ESG data to be accurate, timely, and auditable, or in other words, investor-grade. However, companies face many challenges in making ESG reporting investor-grade. To help companies understand what investor-grade reporting is, why it's important, and how to effectively perform investor-grade disclosures, we put together a handy guide.

Let's dive in

SEC's Emily Pierce Joins Persefoni

Emily was the SEC's Assistant Director in the Office of International Affairs. She joins as Associate General Counsel and VP of Global Regulatory Climate Disclosure, and will support Persefoni and our customers in responding to rapidly evolving global climate disclosure regulations.

Read more

How Financial Markets Can Make Climate Progress

As the dust settles on COP27 and we look forward to COP28, three of Persefoni's climate experts share what they think the future holds for financial markets with five ways they can make actual climate progress.

Learn more

Race to Net Zero Webinar Recap

If you missed Persefoni's recent webinar on how technology accelerates the decarbonization journey, with our partner Bain & Company and customer Rodan + Fields, don't worry; we've compiled a list of key takeaways for you.

Read key takeaways

Industry News Briefing

ESG Investing is Soaring

A recent PwC report revealed that ESG investing will soar 84% to $33.9 trillion by 2026. But what does this mean? Is it a temporary trend, or is it something more?

Keep reading

Earthshot Prizes: Here are the winners

This year's five Earthshot prize winners include innovators turning CO_2 into rocks and developing sustainable stove fuels. Each winner will be awarded $1.2 million to support their innovations.

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US Pays Millions to Move Climate Migrants

Two tribes of indigenous Alaskans and another in Washington state will each get $25 million to move their buildings to higher ground, away from rising sea levels. Despite the high initial costs of relocating whole communities, it may save money in climate change adaptation costs in the long run.

Keep reading

Parking Lots' Role in Climate Mitigation

France recently passed a bill ensuring that any car parking lot with over 80 spaces must be covered by solar panels. As costs for solar panels comes down, US businesses are beginning to do the same in their lots.

Keep reading

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Securities and Exchange Commission - Seal

December 08, 2022
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42. Biden warned on 'heavy-handed' ESG policies hitting companies, families (FOX News)
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44. BlackRock CEO Larry Fink pushed to exit over ESG 'hypocrisy' (New York Post)

45. Gensler Says SEC Is Fine Going After Crypto With Its Current Authority (CoinDesk)
46. Congressman Calls for Investigation Into Gensler, SEC's Role in FTX Collapse (Decrypt)
47. Congressional Subpoena for SBF 'Definitely on the Table', Says Rep. Maxine Waters (Decrypt)
48. Congressman calls SEC Chair Gensler "singularly responsible" for FTX collapse as the latter aims at crypto (FXStreet)
49. Judge: Celsius Must Refund $50M to Users (PYMNTS)
50. Pro-XRP Lawyer Says Gary Gensler Could Trigger Another 50% Crypto Market Crash (The Daily Hodl)
51. Robinhood Opens Waitlist for IRA Offering (Financial Advisor IQ)
52. Report: Short Sellers May Have Used FTX to Manipulate AMC Stock (The Street)

Wall Street Journal

1. SEC to Float Proposals to Get Small Investors Better Prices on Stock Trades

7 Dec 2022 (9:09 PM), Paul Kiernan

The Securities and Exchange Commission signaled plans to issue four proposals next week that aim to help small investors get better prices on their stock trades.

The SEC said Wednesday its five-member commission will consider proposing the rules in an open meeting Dec. 14. If a majority of the panel, which includes Chair Gary Gensler and two other Democrats, support the proposals, they will be opened to public comment before the SEC decides whether to finalize them.

The proposals are a key element of Mr. Gensler's policy agenda. He has repeatedly said U.S. equity markets can be improved for ordinary investors who often pay no commissions for trading but face other, more-opaque, costs. In a June speech he outlined a series of potential regulatory changes that SEC staff were drafting.

Most small investors, when they place an order with their broker to buy or sell shares, pay little heed to what happens next. Sometimes the broker sends the order to a public exchange like the New York Stock Exchange, which matches it with a counterparty. But in many cases, brokers sell their customers' orders to high-speed trading firms such as Citadel Securities or Virtu Financial Inc., which profit from the small difference between the buying and selling price of the stock.

Mr. Gensler says the practice, known as payment for order flow, represents a conflict of interest for brokers, which are required to act in the best interest of their customers. He left open the possibility of banning it in a 2021 interview that dinged the stock price of Robinhood Markets Inc., one of the many brokers that rely on the practice to offer zero-commission trading.

Virtu and Citadel Securities, as well as brokers that accept payment for order flow, say the stock market's current rules work well for small investors. They have campaigned against major changes by the SEC.

Mr. Gensler has since backed away from an outright ban of payment for order flow, saying more recently that he wants to increase transparency and competition in the business of executing stock trades.

The proposals on next week's agenda include an "order competition rule." That would require some trades by individual investors "to be exposed to competition in fair and open auctions before they could be executed internally by any trading center that restricts order-by-order competition," the SEC meeting notice said.

The Wall Street Journal detailed some of the contours of that idea, which seeks to ensure that small investors get better prices when buying or selling stocks, in October.

Additionally, the SEC plans to consider proposing a "best execution" regulation for broker-dealers. Such a rule would require brokers to take steps to ensure that they send investor orders to the trading venue that offers the best-available price to their customers—meaning the highest price for a seller or the lowest price for a buyer.

The agency also plans to propose updating mandatory disclosures from market intermediaries about "execution quality" for stock trades, and to shrink the minimum increments at which stock prices are quoted.

Nominated by President Biden, Mr. Gensler took office in April 2021 when the SEC was facing questions from Congress about the GameStop Corp. trading frenzy a few months earlier. The episode helped put the normally obscure internal workings of the stock market near the top of his regulatory agenda.

Write to Paul Kiernan at paul.kiernan@wsj.com

Corrections & Amplifications

Securities and Exchange Commission Chair Gary Gensler outlined a series of potential regulatory changes to stock trading in a June speech. An earlier version of this article incorrectly said the speech was in July. (Corrected on Dec. 7)

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2. Accounting Red Flags Are Common Among Public Crypto Companies

7 Dec 2022 (10:30 AM), Ben Foldy and Jean Eaglesham

Investors bemoan the lack of disclosure in the crypto industry. But many crypto companies disclose a lot of information, and some of it is worrisome, a review of financial statements shows.

The blowups of FTX and Celsius Network LLC exposed hidden risks that might have raised red flags for investors, including related-party transactions, commingled customer funds, sketchy record-keeping and questionable accounting. Some of these problems often appear in disclosures by public crypto companies, including weak systems used to keep numbers accurate.

A look at 19 of the publicly traded crypto miners showed that 16 disclosed significant internal-control weaknesses in the past four years, some of which were "alarming," according to Bedrock AI, which makes software that analyzes financial filings. Crypto miners build powerful networks of computers that process transactions and are rewarded in newly generated currency.

The bitcoin miner Riot Blockchain Inc. filed an annual report in March that identified four material weaknesses in internal controls. One of those weaknesses raised questions about how the company determines its revenue, one of the simplest and most important numbers in accounting.

On the day before Thanksgiving, the company filed its second amended version of the March report to say that auditors didn't assess internal controls on a third of the company's revenue and assets. They hadn't analyzed two of Riot's significant acquisitions from 2021, the company said.

A spokeswoman for Riot said the filing was amended because the notice that the subsidiaries had been excluded from the assessment was inadvertently left out of the company's disclosures.

"Crypto auditing and accounting is very much still a work in progress," said Sean Stein Smith, an accounting professor at Lehman College, City University of New York.

Checks on internal controls are important parts of an audit because they give accountants confidence that the numbers they are looking at are valid. Weak internal controls can lead to restatements of financial reports.

Another large bitcoin miner, Marathon Digital Holdings Inc., disclosed problems with internal controls tied to revenue and its assets. It added that it hadn't effectively designed a control to detect significant misstatements in revenue.

The company said it would work to remedy the problem by adding staff in financial and information-technology roles. The company, with a stock-market value of about $700 million, has in the past two years grown to 26 full-time employees from three, Marathon said.

Marathon has also made investments in related parties. In September, the company invested $30 million in a private company called Auradine Inc., whose business isn't described in Marathon's filings. Marathon's chief executive officer, Fred Thiel, serves on Auradine's board, and another Marathon board member is a 10% shareholder of Auradine, according to Marathon's disclosures.

A Marathon spokesman said Auradine is an early-stage company that is a strategic investment for Marathon.

Basic accounting and operational controls can take a back seat to growth at crypto companies, as the Celsius implosion indicated. The bankrupt lender failed to ensure that customer funds in certain deposit accounts were set aside from the rest of its crypto holdings, an independent examiner appointed in the company's chapter 11 case found.

"Due to time pressure and lack of engineering resources, Celsius chose [instead of controls] to rely on manual reconciliations and transfers of crypto assets…for the custody program," the examiner wrote in November.

Celsius didn't respond to a request for comment.

The lack of standardized accounting rules for cryptocurrencies can mean that even audited financial statements might fail to convey the true state of a company's finances. Crypto doesn't fit neatly into the definitions used to categorize assets. It lacks the government or commodity backing needed to be treated as cash, it is too volatile to be a cash equivalent, and it isn't necessarily a financial instrument or security either, said Vivian Fang, an accounting professor at the University of Minnesota.

Regulators and accounting rule makers are working to fill the void in crypto accounting standards. The Financial Accounting Standards Board, the U.S. standards setter, aims to issue proposed rules next year.

Most companies holding cryptocurrencies have been treating them as indefinite-lived intangible assets, similar to intellectual property such as trademarks. But accounting rules allow such assets to be valued upward only when they are sold, meaning a company's reported balance sheet might not reflect the current value of its holdings. FASB has signaled that companies should hold bitcoin and many other crypto assets at fair value.

There are also questions over whether exchanges should have to include customer deposits as assets and corresponding liabilities. The Securities and Exchange Commission in March issued accounting guidance saying they should do so.

The wild price moves of bitcoin can create odd results for miners that hold big slugs of the cryptocurrency.

Riot Blockchain said in disclosures that it has booked $126 million in revenue from bitcoin mining through September. That was more than offset by $132 million in impairment charges related to bitcoin's declining price.

The full impact of these big price moves can sometimes only be seen in the footnotes to financial statements. In early November, Marathon said, it held approximately 11,440 bitcoin. Mr. Thiel, the CEO, citing third-party data, has described the holding as the second-largest among publicly traded companies.

In the footnotes, Marathon also said that roughly 83% of that bitcoin amount was pledged as collateral on around $100 million in loans.

On the company's earnings call Nov. 8, Marathon's chief financial officer said the company didn't expect significant additional collateral requirements for the borrowing. The next day, cryptocurrencies' volatility struck again. FTX's collapse drove down bitcoin's price, and Marathon was called on to post more bitcoin holdings as additional collateral, the company disclosed.

Marathon said Tuesday that it has since paid down its loan balance to around $80 million, reducing currently pledged bitcoin to roughly 65% of Marathon's holdings.

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3. Key Data Points from the WSJ Pro Cybersecurity Forum

7 Dec 2022 (5:30 PM), Rob Sloan

This article focuses on data points shared within the WSJ Pro Cybersecurity Forum that took place online on Nov. 30, 2022. An overview of every session can be found here.

54% of Businesses Ready to Report an Incident Within 72 Hours

Rules for reporting cybersecurity incidents, including those for critical infrastructure and proposed rules from the U.S. Securities and Exchange Commission, are becoming increasingly complex.

During a WSJ Pro Cybersecurity Forum session examining how companies should prepare, an audience poll asked how soon after the discovery of a data breach would attendees feel ready to disclose the incident to a regulator. The majority of the 177 responses, 54%, said they would be ready within 72 hours or less. Thirty percent would require seven days and 16% said they would need 30 days before they were ready to disclose.

Nubiaa Shabaka, Adobe Inc.'s chief privacy officer and chief cybersecurity legal officer, highlighted the challenge of responding in short timeframes and the lack of consistency among U.S. states, sectoral regulators, government agencies and the SEC: "You have different triggers, not only in terms of timeline, but in terms of content, how you report, what you report, who you report to and different materiality thresholds." Watch the full session here.

1.8% of S&P 500 Board Directors Have Cybersecurity Experience

During a breakout session, moderator and WSJ Pro Research Deputy Director David Breg shared data on the prevalence of professional cybersecurity experience among S&P 500 board directors.

The research from WSJ Pro drew on analysis of the profiles of 4,621 board members and found only 1.8% of board members had worked in a role likely to have given them notable exposure to cybersecurity. The 86 directors represented 91 companies comprising 18% of the S&P 500. Only seven of those directors had served in the chief information security officer role and only two were still active in the role.

Shiva Rajgopal, Kester and Byrnes Professor at Columbia Business School, agreed that cyber expertise among board directors is extremely low. He pointed to the average age of board members (63 according to the U.S. Spencer Stuart Board Index) and the challenge associated with keeping up with the explosion of technology as key factors for the difficulty in addressing this challenge, as well as low turnover rates on boards. Watch the full session here.

54% of CEOs and Boards Not Briefed on Whistleblower Risk

The measures organizations are expected to take to secure data and networks are not defined in the various cybersecurity standards and frameworks. This can lead to disagreements between company leaders and security executives about what constitutes ‘reasonable security’, a term often used in regulations. Some cybersecurity chiefs have decided to become whistleblowers to alert the board or regulators about unchecked risks.

An audience poll during a session centered on preparing for the risk of cyber whistleblowers showed the majority of respondents have not yet made their chief executive and board aware of the increasing risk of cyber whistleblowers: 54% of the 110 respondents said neither the board nor CEO have been briefed and only 32% said both have been briefed.

Businesses need to act to avoid cases being brought by regulators, such as the complaints made by Twitter Inc.’s former chief information security officer, Peiter Zatko, which are being investigated by the U.S. Securities and Exchange Commission, the Federal Trade Commission and the Justice Department. Watch the video of the discussion here.

66% of Organizations Have a Third-Party Cybersecurity Risk Management Program

Two-thirds of respondents to the third annual WSJ Pro Research cybersecurity survey said their organization had a third-party cyber risk management program, including 88% of respondents from firms with over $1 billion in annual revenue. As a result of the increased focus on third-party cybersecurity, 34% of respondents had terminated supplier relationships because they felt the risks posed by the supplier were too high.

WSJ Pro Research’s David Breg and Research Analyst Leslie Acebo presented highlights of the study, which collected responses from 343 cybersecurity leaders and covered a number of critical cyber risk themes. The reports detailing the findings can be found here and the session recording is here.

2,453 Leak Site Ransomware Victims in 2022

Ransomware attacks continue to cause disruption and damage, but some cybercriminals have been stealing corporate data before encrypting it to increase their leverage over the victim. If a ransom isn’t paid, the stolen data is publicly leaked via websites on the darkweb.

The Forum featured a workshop to explore leak sites and best practices for preparing and responding to the attacks. Expert contributor Wendi Whitmore, senior vice president at Unit 42 at Palo Alto Networks Inc., revealed there have been 2,453 victims of leak site ransomware so far in 2022. According to Unit 42 data, attackers demand $2.2 million on average to unlock data and to refrain from leaking stolen data. The average payment made to attackers was significantly lower at $541,000.

Workshop panelist Erik Moser, managing director of consulting firm Kroll Holdings Inc.'s cyber risk practice, recommended that leadership teams participate in tabletop exercises to simulate an attack and the company's response. Forty-five percent of the respondents to an audience poll said they had a plan for this kind of attack and had conducted an exercise to test themselves. Eight percent said they had no plans to develop a plan. Watch the workshop session here.

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4. FTX Hires Forensic Team to Probe Money Trail

7 Dec 2022 (8:53 PM), Alexander Gladstone

FTX's new management has hired a team of forensic investigators from advisory firm AlixPartners to help track the billions of dollars that have gone missing from the failed cryptocurrency exchange, people familiar with the matter said.

The AlixPartners team is led by Matt Jacques, a former chief accountant for the Securities and Exchange Commission's enforcement division, people familiar with the matter said. Mr. Jacques didn't respond to a request for comment.

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New York Times

5. FTX Founder Sam Bankman-Fried Is Said to Face Market Manipulation Inquiry

7 Dec 2022 (1:00 AM), Emily Flitter, David Yaffe-Bellany and Matthew Goldstein

Federal prosecutors are investigating whether FTX's founder, Sam Bankman-Fried, manipulated the market for two cryptocurrencies this past spring, leading to their collapse and creating a domino effect that eventually caused the implosion of his own cryptocurrency exchange last month, according to two people with knowledge of the matter.

U.S. prosecutors in Manhattan are examining the possibility that Mr. Bankman-Fried steered the prices of two interlinked currencies, TerraUSD and Luna, to benefit the entities he controlled, including FTX and Alameda Research, a hedge fund he co-founded and owned, the people said.

The investigation is in its early stages, and it is not clear whether prosecutors have determined any wrongdoing by Mr. Bankman-Fried, or when they began looking at the TerraUSD and Luna trades. The matter is part of a broadening inquiry into the collapse of Mr. Bankman-Fried's Bahamas-based cryptocurrency empire, and the potential misappropriation of billions of dollars in customer funds.

Federal prosecutors and the Securities and Exchange Commission have been examining whether FTX broke the law by transferring its customer funds to Alameda. Last month, a run on deposits exposed an $8 billion hole in the exchange's accounts, causing the company to collapse. Mr. Bankman-Fried stepped down as FTX's chief executive when the company filed for bankruptcy on Nov. 11.

FTX is also under investigation for violating U.S. money-laundering laws that require money transfer businesses to know who their customers are and flag any potentially illegal activity to law enforcement authorities, three people familiar with the investigation said. That investigation, first reported by Bloomberg News, began several months before the bankruptcy of FTX. Investigators are also looking into the activities of other offshore cryptocurrency trading platforms.

The Aftermath of FTX's Downfall

The sudden collapse of the crypto exchange has left the industry stunned.

A Spectacular Rise and Fall: Who is Sam Bankman-Fried and how did he become the face of crypto? The Daily charted the spectacular rise and fall of the man behind FTX.

Market Manipulation Inquiry: Federal prosecutors are said to be investigating whether Mr. Bankman-Fried manipulated the market for two cryptocurrencies, leading to their collapse.

Clinging to Power: Emails and text messages show how FTX lawyers and executives struggled to persuade Mr. Bankman-Fried to give up control of his collapsing company.

A Symbiotic Relationship: Mr. Bankman-Fried's built FTX partly to help the trading business of Alameda Research, his first company. The ties between the two entities are now coming under scrutiny.

In a statement, Mr. Bankman Fried said he was "not aware of any market manipulation and certainly never intended to engage in market manipulation."

“To the best of my knowledge, all transactions were for investment or for hedging,” he added.

Representatives of the U.S. attorney for the Southern District of New York declined to comment. Representatives of FTX did not immediately respond to requests for comment.

The focus on possible market manipulation adds to the legal storm brewing around Mr. Bankman-Fried. It is illegal for an individual to knowingly stage market activity designed to move the price of an asset up or down.

TerraUSD was a so-called stablecoin, but unlike other stablecoins, its value wasn’t backed directly by the U.S. dollar. Rather, it maintained its value from a second coin called Luna through a complex set of algorithms. Traders within the digital ecosystem could mint these coins, the prices of which would fluctuate based on how many were in circulation. Anytime the price of TerraUSD fell, the supply of Luna would increase, as traders created more Luna to try to capitalize on the difference.

In May, major cryptocurrency market makers — exchanges or individuals who arrange for buyers and sellers to be matched — noticed a flood of “sell” orders coming in for TerraUSD, said one person with knowledge of the market activity. The orders were in small denominations, but they were placed very quickly, the person said.

The sudden jump in sell orders for TerraUSD overwhelmed the system, making it hard to find matching “buy” orders for them. Under normal conditions, any sell orders that remained unfulfilled for too long would be matched with buy orders at a lower price. The longer the orders lingered without being matched, the more they forced down the price of TerraUSD and caused a corresponding drop in Luna prices because of the way the two coins were linked.

The exact causes of the collapse of the two cryptocurrencies remain unclear. However, the bulk of the sell orders for TerraUSD appeared to be coming from one place: Sam Bankman-Fried’s cryptocurrency trading firm, which also placed a big bet on the price of Luna falling, according to the person with knowledge of the market activity.

Had the trade gone as expected, the price declines in Luna could have yielded a fat profit. Instead, the bottom fell out of the entire TerraUSD-Luna ecosystem. The collapse caused more trouble in the cryptocurrency industry, sending several prominent companies into bankruptcy and erasing about $1 trillion in value from the crypto market.

The ripple effects from the Luna crash ultimately contributed to the collapse of Mr. Bankman-Fried’s business empire. In November, Caroline Ellison, the chief executive of Alameda, told staff that loans to Alameda were recalled as a result of the market chaos unleashed by the crash, according to a person familiar with the matter. But the funds that Alameda had borrowed were no longer easily available, Ms. Ellison told the staff, so the company used FTX customer funds to make the payments.

An attorney for Ms. Ellison did not return requests for comment.

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6. The 'SPAC King' Is Over It

7 Dec 2022 (1:00 AM), Maureen Farrell

Not long ago, Chamath Palihapitiya could be called the Jim Cramer of SPACs.

A Facebook executive turned venture capitalist, Mr. Palihapitiya talked up the special purpose acquisition companies — shell entities that provide companies a backdoor entry to public markets — to everyday investors with the same fervor that Mr. Cramer has long pitched stocks on television.

Mr. Palihapitiya found an eager audience in 2020, when millions of people were stuck at home during the pandemic lockdowns, flush with stimulus checks and looking for new excitements. He launched 10 SPACs — one before the pandemic and nine since. He promoted several on CNBC and social media platforms as a path to riches for small investors. From 2019 to early 2021, his Twitter following swelled from 147,000 to more than one million.

Mr. Palihapitiya was the "evangelist and the apostle of SPACs," said Usha Rodrigues, a professor at the University of Georgia School of Law. "He was spreading the word and getting the attention. For a while it felt like he had the Midas touch."

Now, the SPAC boom has ended, throttled partly by new regulations. The Federal Reserve's sharp interest rate increases have made such speculative betting less enticing for big investors, who can now get higher returns from safer assets.

In recent months, some of the stocks of Mr. Palihapitiya's SPACs have dropped nearly 90 percent from when they listed. By selling most of his shares early, he roughly doubled the $750 million he put in, mostly into the entities he backed. But many small investors who followed his advice may not fare so well.

Mr. Palihapitiya — once known as the "SPAC king" — said that he was promoting SPACs at a time when investors were embracing all kinds of risky trades, and that he wasn't responsible for the cratering stock prices of the companies he took public.

Instead, he blames the Fed's policies.

“Nobody forced anybody to invest in anything,” Mr. Palihapitiya, 46, said in an October interview.

A Wall Street innovation, special purpose acquisition companies list on stock exchanges, raise money from investors and use the funds to buy a private company. They have a primary backer — sometimes called a sponsor — when they list. Once a SPAC finds an operating business to merge with, it gets far less regulatory scrutiny than a company selling shares through a traditional public listing.

Long seen as dubious, SPACs went mainstream in 2016 when private equity firms embraced them as an easier way to take their portfolio companies public. By 2020, they had become a legitimate alternative route to the public markets, especially after DraftKings, Hostess Brands and other familiar names used them to go public.

The involvement of celebrities like Jay-Z and Martha Stewart gave SPACs extra sparkle. In 2007, 66 SPACs raised $12 billion. Last year, 613 SPACs raised $163 billion. Major Wall Street banks reaped more than $4 billion in fees last year, according to Dealogic.

Mr. Palihapitiya was an early cheerleader for SPACs. Born in Sri Lanka and raised in Canada, he arrived in Silicon Valley after the dot-com bubble burst, joining Facebook in 2007. By the time he left, he had a fortune worth hundreds of millions of dollars, some of which he plowed into Social Capital, a venture capital firm he co-founded in 2011.

The firm raised more than $1 billion and backed some successful start-ups, including the messaging company Slack. For a time, its fund was a top performer.

Mr. Palihapitiya started his first SPAC, Social Capital Hedosophia, in 2017, teaming up with Ian Osborne, a British technology investor. The vehicle raised about $600 million from investors. At the time, many entrepreneurs said the traditional process for initial public offerings was onerous, and Mr. Palihapitiya began pitching SPACs as an easier way for high-quality companies to go public.

He called his vision “I.P.O. 2.0.”

In 2018, Mr. Palihapitiya wrote in a Medium post that Social Capital had become too much like a traditional venture firm and would stop taking money from outside investors.

The following year, Social Capital Hedosophia found its merger target: Virgin Galactic. The spacecraft company, founded by Richard Branson, told investors that by 2022, it would operate 170 flights to space annually, generating $398 million in revenue. Wall Street analysts said Virgin Galactic — the first publicly traded spacecraft company — held the promise of Tesla. The company’s stock skyrocketed.

To prevent them from influencing investors, companies going public through I.P.O.s are largely barred from making projections. But SPACs have no such restrictions because the Securities and Exchange Commission treats the deals as mergers.

Encouraged by his success, Mr. Palihapitiya launched two more SPACs in April 2020, raising roughly $1.2 billion. For companies hesitant to go public in the early days of the coronavirus pandemic, when the market was volatile, Mr. Palihapitiya's pitch became more attractive because his vehicles were already trading.

To whip up interest, Mr. Palihapitiya began targeting everyday traders, posting incessantly about SPACs on Twitter and on his podcast. He was also a frequent guest on CNBC, one of the country's top-rated business television networks and the longtime home of Mr. Cramer.

In September 2020, after one of his SPACs agreed to buy the real estate platform Opendoor Technologies, Mr. Palihapitiya announced his deal on CNBC. He co-hosted the network's morning show, Squawk Box, and thanked the anchors "for letting me do this with you guys."

Then, for the next six minutes, he walked viewers through a slide presentation on his plans for SPACs and why Opendoor would be a winner, outlining revenue projections. The anchors later expressed skepticism about his numbers on the show. (Andrew Ross Sorkin, an employee of The New York Times and a business columnist and the editor at large of the DealBook newsletter, is a co-anchor on Squawk Box.)

By the end of that trading day, shares of Opendoor soared more than 30 percent.

Mr. Palihapitiya followed a similar playbook the following month, teaming up with CNBC to announce his third SPAC's merger with Clover Health Investments, a health care technology firm. He told the audience that he expected the company's shares to rise tenfold in 10 years, but by the end of that trading day, the shares fell.

Soon after, Mr. Palihapitiya took three other SPACs public, raising roughly $2.2 billion in total. By December 2020, he told his Twitter followers that if they had bought shares in each of those companies on the day they went public or when he posted about them, "your return would have been 355 percent. My commitment to you is to continue to find investments, put a bunch of my money in it and share them with you."

Retail investors were so taken by Mr. Palihapitiya's SPAC talk that his advisers used it as part of their pitch when discussing potential mergers with target companies. Any company that merged with Mr. Palihapitiya's SPAC would get a "Chamath premium," they said, because retail investors pushed the stock up, according to two people with knowledge of the firm's pitches.

By February of last year, the SPAC market was booming. Virgin Galactic, Opendoor, Clover Health and SoFi — a personal finance company Mr. Palihapitiya took public — were up 440 percent, 246 percent, 20 percent and 130 percent.

Lincoln Daniel, a 29-year-old software engineer who started making investment videos on YouTube in 2020, was among those who followed Mr. Palihapitiya's lead and bought into his SPACs and other investments he pitched. In an interview, Mr. Daniel said he did well with his investments because he sold out at the right time.

"People like Chamath gave us the opportunity to invest on equal footing with them," he said, referring to large institutional investors.

But they weren't on equal footing with Mr. Palihapitiya.

Michael Klausner, a professor at Stanford Law School, has written about the difference between those who back SPACs, like Mr. Palihapitiya, and investors who buy their shares after the listing. A backer can put in a small amount of money but still gets 20 percent of the shares, essentially for free. Ordinary investors don't get the same terms.

"Sponsors make a killing, and public shareholders take a bath," Mr. Klausner said.

Even as he was pitching his newest SPACs, Mr. Palihapitiya was selling out of his older ones. In March 2021, he sold his personal stake in Virgin Galactic for roughly $200 million, according to public filings, saying he would put the proceeds into fighting climate change. (He invested in Palmetto, a clean energy platform company.) Virgin's stock was trading around $33 a share, more than triple its $10 I.P.O. price.

But as lawmakers started scrutinizing SPACs in the fall of 2021, the mania began to subside. Several Democratic senators sent a letter to Mr. Palihapitiya and other SPAC sponsors requesting information on their deals.

"We are concerned about the misaligned incentives between SPACs' creators and early investors on the one hand, and retail investors on the other," the letter said.

Reze Wong, a spokesman for Mr. Palihapitiya, said none of his deals were singled out and that he was in favor of increased regulation.

In November 2021, Mr. Palihapitiya raised questions on Twitter about the fate of the SPAC market and said he sold 15 percent of his stake in SoFi. Less than a year later, he said he was shuttering some of his SPACs that hadn't found merger targets and returning money to investors, although he still had two looking for biotech deals.

Virgin Galactic has generated less than $2 million in revenue this year and racked up $346 million in losses. It launched just one spaceflight last year with four people onboard, including Mr. Branson. Its stock was down more than 50 percent on Tuesday.

Opendoor, Clover and SoFi were down 88 percent, 86 percent and 57 percent. While the market was reeling, Mr. Palihapitiya spent much of the summer at a chateau in Italy.

At a conference in Manhattan in late October, he told the crowd that SPACs weren't the problem. Instead, he blamed the Fed for creating the mania around SPACs when interest rates were low and investors were hungry for returns.

"The long-term regime in which we operate has changed," Mr. Palihapitiya said. "That is not in the control of one human being except Jerome Powell," he added, referring to the Fed chairman.

After his talk, Mr. Palihapitiya entered a large black van while his security team followed in a second van. They were headed to Teterboro, N.J., where they would board the private jet he purchased in late 2020 to meet with potential investors.

He was mostly done with SPACs, but according to people familiar with his plans, he was reopening his venture firm Social Capital to outside investors.

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Financial Times

7. DWS to lift dividend as asset manager battles greenwashing scandal

7 Dec 2022 (2:39 PM), Olaf Storbeck

DWS has pledged to lift its dividend by almost 50 per cent and possibly hand investors up to €1bn more as one of Germany's biggest asset management firms battles to overcome a greenwashing scandal.

New chief executive Stefan Hoops said on Wednesday that he would boost the payouts despite the group facing an "increasingly uncertain" market backdrop. Hoops, who was parachuted into the top job in June after the ousting of Asoka Wöhrmann, also promised to grow the group's passive and alternative investment businesses and cut costs.

DWS, which is majority owned by Deutsche Bank, was rocked by allegations that it had misrepresented the share of its assets that were invested using environmental, social and governance criteria.

The allegations from a whistleblower have triggered investigations by the Securities and Exchange Commission and German authorities. Wöhrmann was ousted a day after police raided the asset manager's offices in Frankfurt.

DWS lost €1bn in market capitalisation on a single day in August 2021 when the SEC's probe was made public. Shares in DWS climbed almost 6 per cent on Wednesday but remain 10 per cent below their level in late May, shortly before Hoops, a confidant of Deutsche Bank chief executive Christian Sewing, took over.

Hoops said on Wednesday that it was his "utmost management priority" to work "with the authorities to resolve the investigations". An internal probe by the group involving 2.5mn documents was about to be concluded, he added.

DWS has ditched a controversial "smart integration" ESG approach that was at the heart of the whistleblower's complaint, a decision that has cut the size of the ESG assets it reports.

In its 2021 annual report, the company reported €115bn in "ESG assets" down 75 per cent from a year earlier when its €459bn in assets were described as "ESG integrated".

Hoops suggested that the asset manager's previous communication on ESG might have been too bullish. While DWS was "fully committed" to ESG "you will not hear me use terms like 'leader' or 'world class'", Hoops said, adding that such superlatives "shouldn't be kind of the setting point."

The cost cutting will aim save €100mn a year and bring the asset manager's cost-income ratio back below 59 per cent by 2025. It is expected to be 65 per cent this year. Hoops also pledged to lift the group's earnings per share to €4.50, up from last year's €3.90. Given DWS wants to pay out two-thirds of the earnings to shareholders, this implies a dividend of close to €3 a share, up from €2 for 2021.

Hoops said that the company has earmarked another €1bn that it wants to either spend on M&A activity over the coming 18 months or hand back to shareholders as a special dividend.

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POLITICO Pro

8. Gensler: Crypto companies moving overseas can 'protect U.S.

investors'

7 Dec 2022 (7:42 PM), Declan Harty

SEC Chair Gary Gensler on Wednesday indicated that the exit of some cryptocurrency companies from the U.S. may be welcome news for investors.

"Unfortunately for the investing public, the entrepreneurs in this field have chosen — and it's a choice — to try and skirt the law," Gensler said in an interview with Yahoo Finance, during which he equated crypto exchanges to "casinos." "But if they're tapping into U.S. markets, they need to come into compliance."

Why it matters: In the wake of the one-time giant FTX's blowup, Gensler has doubled down on the SEC's authority over a large part of the $840 billion crypto market — much of which he says trades on unregistered securities exchanges.

Crypto companies have long fought off Gensler's conclusion, though. Some have suggested that his unwillingness to budge on providing a light-touch regulatory framework for crypto is leading companies to close their U.S. operations. Nexo, a crypto lender whose operations have become the subject of regulatory intrigue, said Monday that it was winding down U.S. access to its products and services.

Gensler said such moves are "a way to protect U.S. investors as well."

'Suited up': The SEC chair has faced questions over how the agency has handled crypto. Sen. Elizabeth Warren (D-Mass.) recently wrote in an op-ed for The Wall Street Journal that the agency has "fallen far behind as the crypto industry has drawn in millions of new investors," while calling for a crackdown.

But Gensler defended the SEC's track record, citing the 100 cases already brought against crypto companies and signaling that enforcement would soon ramp up. It usually takes the agency about two years to bring a case forward, likely setting the stage for more enforcement in the new year.

"We're already suited up," Gensler said.

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9. SEC set to vote on long-awaited stock trading proposals Dec. 14

7 Dec 2022 (5:29 PM), Declan Harty

The SEC will vote Dec. 14 on a slate of proposals that could lead to one of the biggest overhauls to the U.S. stock market in nearly two decades.

Up for consideration are a series of plans that would, among other things, reconstruct how individual investors' stock orders are executed, introduce new best-execution standards on brokerages and change exchanges' pricing structures, according to an agenda for the meeting that was released Wednesday.

"It's about driving greater competition, transparency and efficiency in the marketplace," SEC Chair Gary Gensler said Wednesday in an interview with Yahoo Finance.

Wall Street has been quaking for months now over the potential changes. Gensler first previewed the proposals in a June speech that focused on concerns about whether investors are getting the best deal possible. Since then, executives have expressed concern about the ripple effects of the plans, many of which could upend how certain brokerages and trading firms do business. Litigation threats have even surfaced.

The SEC is also slated to vote on whether to finalize a proposal around insider trading, according to the agenda.

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10. The Washington-Wall Street 'woke' war has only just begun

7 Dec 2022 (12:00 AM), Sam Sutton

If you thought a tepid performance in the midterms might give Republicans pause before taking on Wall Street over "woke" investment strategies, think again.

Senate Banking Republicans on Tuesday released a 20–page blueprint for lawmakers eager to wage war against BlackRock, Vanguard and State Street over how financial behemoths have cajoled corporate America into adopting policies that reduce greenhouse gas emissions, identify gender and race-based pay disparities and encourage board diversity and racial equity.

"Regardless of whether these changes are ultimately good or bad, these campaigns are inconsistent with a passive investment strategy," Republican staff wrote in their report, which recommends investigations, new financial reporting standards and changes to shareholder voting practices to bring the multitrillion-dollar investment firms to heel, per our Declan Harty.

Of course, now that the GOP squandered its chance at a majority in the upper house, Senate Republicans won't have much opportunity to follow through on any of this.

Any pain inflicted on BlackRock, Vanguard or State Street will have to come from House Financial Services, where likely Chair Patrick McHenry (R-N.C.)

faces pressure from populist Republicans to grill financiers who've prioritized environmental, social and governance issues.

But while Wall Street's bound to catch flak from congressional Republicans over any hint at progressivism, there's also very real pressure outside the Beltway to make companies cleaner, more inclusive and sustainable.

"The market is clearly speaking," Ceres managing director Steven Rothstein, whose sustainability nonprofit counts JPMorgan Chase and Bank of America as members, told MM over coffee on Tuesday morning. (Not for nothing, most voters want the GOP to lay off the harangues against ESG).

Natural disasters have caused at least $115 billion in insured damages this year, he said. Global supply chains are increasingly snarled by storms and fires. Premature deaths in Europe attributed to poor air quality are counted in the tens of thousands.

There are obvious financial consequences to all of that. So while state leaders and lawmakers can fire off resolutions and send letters attacking sustainability policies, corporate America is already on its way toward reducing emissions and pivoting to renewable energy, he said.

A key caveat to all this is that the path forward for those companies could also contain very real market challenges as well. The investment research firm MSCI published a report warning that geopolitical instability and persistent inflation might "limit near-term pressure to reduce global greenhouse-gas emissions … as governments prioritize energy security and affordability."

JPMorgan CEO Jamie Dimon made a similar point on CNBC.

"If the lesson was learned from Ukraine, we need cheap, reliable, safe, secure energy, of which 80% comes from oil and gas. And that number's going to be very high for 10 or 20 years," Dimon said. While leaders should focus on renewables as well, the ready availability of natural gas and oil "has the virtue of reducing CO2, because … poorer nations and richer nations are turning back on their coal plants."

IT'S WEDNESDAY — And your music recommendations were greatly appreciated. Please send tips to ssutton@politico.com and zwarmbrodt@politico.com.

DRIVING THE DAY

Q3 productivity and labor cost data released at 8:30 a.m. … The CFTC agricultural advisory committee meets at 9 a.m. … House Financial Services holds a hearing on financial institutions' role in slavery at 10 a.m. … The House Select Committee on Economic Disparity and Fairness in Growth holds a markup to approve its final report at 1 p.m. … Consumer credit data released at 3 p.m.

What are you expecting from travel this holiday season? Hit and miss; highs with and some expensive lows? POLITICO invites you to debate the Travel Experience Redefined, with Sen. Jacky Rosen (D-Nev.), and a host of consumer and industry voices, Dec. 7, 8.30 a.m. ET. You can join online or at the Madison Hotel in D.C. Register here.

BUSTED — Our Erin Durkin: “The Trump Organization was convicted on all charges in a criminal tax fraud scheme on Tuesday. A New York Supreme Court jury reached the verdict in the case — which could cost the Trump Org. up to $1.6 million in fines — after two days of deliberation following a monthlong trial that included convicted former Trump Org. chief finance officer Allen Weisselberg as a star witness.”

LAWMAKERS FILE NDAA — Our Connor O’Brien: “Lawmakers filed a compromise version of their annual defense policy bill on Tuesday that proposes a Pentagon budget that's $45 billion more than what President Joe Biden requested. The House will vote on the fiscal 2023 National Defense Authorization Act this week, with the Senate to follow.”

SAFE BANKING OUT — Our Natalie Fertig: “The SAFE Banking Act will not be included as part of the National Defense Authorization Act, marking yet another setback for the legislation, which enjoys widespread bipartisan support but has repeatedly stalled out on Capitol Hill.”

MORE ON NDAA — As Connor reported earlier Tuesday, Senate Minority Leader Mitch McConnell “came out swinging against a push by Democrats to attach energy and cannabis banking measures to major defense policy legislation, marking another twist as negotiations come down to the wire.”

— Natalie on why McConnell is essential to SAFE Banking: Even if there are enough votes to pass this bill on the floor of the Senate, the rules of procedure don’t give the Senate time to put a smaller bill on the floor and still get must-pass funding legislation done this year. Senate Majority Leader Chuck Schumer plans to attach it to a must-pass bill, but that’s where McConnell comes in: because these bills are essentially negotiated behind the scenes, all four House and Senate leaders have to agree on the final package before it heads to either chamber for a vote. If McConnell doesn’t want cannabis banking in the omnibus, it isn’t going to be considered in lame duck.

THE FTX NEWS CYCLE ENDS WHEN WE SAY SO — From our Zachary Warmbrodt: “The Senate Banking Committee will hold a hearing on the FTX crypto meltdown on Dec. 14, Chair Sherrod Brown said in an interview Tuesday. Brown said the committee was still working out witnesses and would likely invite FTX founder Sam Bankman-Fried.”

SBF HIRES GHISLAINE MAXWELL’S ATTORNEY — Reuters’s Chris Prentice: Bankman-Fried “has hired former prosecutor Mark S. Cohen to represent him, as U.S. authorities probe the crypto exchange's collapse … Cohen, a former assistant United States attorney for the Eastern District of New York, recently defended Ghislaine Maxwell in her sex trafficking trial."

WALLS ARE GOING UP — Our Barbara Moens and Hans von der Burchard: "The last big defender of rules-based open trade — the European Union — is about to fall. It is happening in slow-motion and the impact will be painful. If the world's largest trading bloc gives up on the concept of free trade, the entire global economy will be hurt. But such an outcome seems increasingly likely, as the European Commission and its powerful trade department come under intense pressure to join China and the United States in a game of economic self-interest and protectionism."

WALL STREET

WE WARNED YOU THE VIBES WERE GETTING WORSE — Bloomberg's Sridhar Natarajan and Sonali Basak: "Goldman Sachs Group Inc. Chief Executive Officer David Solomon struck a downbeat note about the economic outlook and said smaller bonuses and even potential job cuts should come as no surprise. 'You have to assume that we have some bumpy times ahead,' Solomon said."

— While consumers still have roughly $1.5 trillion from pandemic-era savings — including stimulus — "inflation is eroding everything … and that trillion and a half dollars will run out sometime mid-year next year," JPM's Dimon said on CNBC. "When you're looking out forward, those things may very well derail the economy and cause a mild or hard recession that people worry about."

— Bloomberg's Katherine Doherty and Sonali Basak: "Bank of America Corp. is slowing hiring as fewer employees leave in an attempt to manage the company's headcount ahead of a possible US recession, Chief Executive Officer Brian Moynihan said."

— Bloomberg's Sridhar Natarajan: "Morgan Stanley will reduce its global workforce by about 2% as Wall Street seeks to tame costs ahead of a potential US recession. The cuts amount to roughly 1,600 of the workforce, according to a person familiar with the matter who asked not to be identified discussing private information."

— WSJ's Will Horner and Jack Pitcher: "U.S. stock indexes extended declines Tuesday as investors weighed fears about the outlook for interest rates against optimism surrounding China's reopening."

CRYPTO

SILVERGATE ON THE HOT SEAT — Sen. Elizabeth Warren (D-Mass.) — along with Republican Sens. Roger Marshall (R-Kan.), and John Kennedy (R-La.) — blasted San Diego-based crypto bank Silvergate on Monday for its role in potentially transferring funds between Sam Bankman-Fried's global crypto exchange FTX and his hedge fund Alameda Research. FTX is alleged to have misused customer funds to plug holes in Alameda's balance sheet during this year's crypto market crash.

"Your bank's involvement in the transfer of FTX customer funds to Alameda reveals what appears to be an egregious failure of your bank's responsibility to monitor for and report suspicious financial activity carried out by its clients," the lawmakers wrote.

SHADE AT GRAYSCALE — Grayscale Investments is suing the SEC for blocking its application to convert its $10.7 billion Bitcoin trust into an exchange-traded fund. Now, "Fir Tree Capital Management is suing Grayscale Investments for information to investigate potential mismanagement and conflicts of interest … The hedge fund said there's no legal reason that stops the trust from allowing investors to exit, as long as it complies with securities laws. Grayscale has said in regulatory filings it can't offer an 'ongoing redemption program.'"

TREASURY'S CRYPTO WALLET RULES ARE STILL OUTSTANDING — POLITICO's Bjarke Smith-Meyer: "EU governments are pushing to prevent crypto companies and banks from offering any digital assets or online wallets that hide the identity of their clients."

— Meanwhile, in the U.K., officials are "finalizing plans for regulation of the crypto sector, moving ahead with plans to make Britain a hub for the industry as it grapples with the fallout from FTX's collapse," write Bloomberg's Joe Mayes and Emily Nicolle.

OP-ED — Uniswap Labs CEO Hayden Adams for The Economist: "The past 12 months have tested DeFi protocols—and they have proven resilient … In fact, the FTX-associated hedge fund at the centre of this mess — Alameda Research — paid back its loans to DeFi money markets before its centralised counterparties because you cannot negotiate margin calls with smart contract code."

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Bloomberg

11. Tesla SEC Deal Ruled Off-Limits in Musk Tweet-Fraud Trial

7 Dec 2022 (9:49 PM), Joel Rosenblatt

Elon Musk has never been a fan of the settlement he reached with the US Securities and Exchange Commission over his infamous 2018 tweet about having secured funding to take Tesla Inc. private.

Lucky for the billionaire chief executive officer, that deal can't be used as ammunition against him and the electric car-maker when investors take them to trial in January. A federal judge on Wednesday ruled it would be unfair to introduce Musk's accord with the regulator as evidence for the jury that will decide whether the false tweet defrauded investors.

While Musk and Tesla quickly settled the SEC case for $40 million without admitting wrongdoing — and with a promise that the CEO would have his tweets vetted by a Tesla lawyer before posting them — the investor case could set them back more than $1 billion if they lose the trial.

The ruling may give Musk and Tesla some leverage in talks aimed at resolving the dispute before the class-action trial kicks off Jan. 17.

US District Judge Edward Chen in San Francisco brushed away the argument by investors that the jury must learn about both the SEC investigation and settlement as part of its evaluation of the losses they suffered from wild swings in Tesla's stock price attributed to Musk's tweets.

"It would be confusing and artificial for the jury to be kept in the dark about its conclusion," lawyers for the investors argued in a court filing.

Lawyers for Musk and Tesla argued that dredging up the SEC case at trial would "corrupt the jury's evaluation" of the shareholder case.

Chen said he won't bar lawyers for the investors from telling the jury about the SEC's investigation, which made headlines the day after Musk's initial go-private tweets. But the judge ruled that telling jurors that the probe resulted in a lawsuit and a settlement more than a month later might create "unfair prejudice" against Musk and Tesla.

Investors contend Tesla's CEO was intentionally deceitful when he tweeted the go-private proposal to his millions of Twitter followers on Aug. 7, 2018, adding that the transaction was buttressed by "funding secured."

Lawyers for shareholders have never publicly revealed how much they're seeking in damages for hundreds of investors. A recent court filing by Musk and Tesla cited "billions" at stake.

Musk insists investors are wrong to accuse him of manipulating the stock price and maintains that his short-lived plan to take Tesla private was solid based on discussions he had with Saudi Arabia's Public Investment Fund.

The judge made it significantly easier for the investors to prevail when he ruled in April that the "funding secured" tweet was false and reckless.

Musk in September asked a federal appeals court to throw out the so-called Twitter Sitter provision of his SEC settlement, calling it an illegal effort to muzzle him.

The world's richest person complained that the pressure he faced to settle with the regulator was "like having a gun to your child's head."

The case is In re Tesla Inc. Securities Litigation, 18-cv-04865, US District Court, Northern District of California (San Francisco).

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12. Deutsche Bank Investment Boss Wants to 'Tone Down' ESG Hype

7 Dec 2022 (11:03 AM), Steven Arons

The chief executive of Deutsche Bank AG's investment unit, DWS Group, said it's time to dial back the "exuberant" language used in ESG sales pitches.

Stefan Hoops, who took over as CEO after allegations of greenwashing expedited the departure of his predecessor earlier this year, acknowledged there's been a need to rethink how DWS markets environmental, social and governance investing opportunities.

"It is important that large asset managers remain committed to driving ESG," he said at a press briefing on Wednesday. "And given everything that's happened to us, we need to remain one of the flag-bearers for ESG in Europe."

Looking back, however, "there was definitely exuberant marketing for quite some time, which should be toned down," Hoops said.

Speaking after DWS announced financial targets that drove up its share price, Hoops said the firm's internal investigations into alleged exaggerated ESG claims are now nearing an end. He also said he continues to "stand by" the firm's previous ESG disclosures, as it works closely with authorities in the US and Germany to resolve the case.

The asset manager, which is roughly 80% owned by Deutsche Bank, is being investigated by the Securities and Exchange Commission and German regulator BaFin after its former sustainability head, Desiree Fixler, accused it of misleading clients as to the extent of its ESG work. The probes triggered a police raid earlier this year that hastened the exit of then-CEO Asoka Woehrmann. DWS has rejected allegations of greenwashing from the outset.

Hoops said he's carefully reviewed how DWS arrived at previous ESG disclosures, including those made in the firm's 2020 and 2021 annual reports, which were singled out by Fixler for criticism. That review gave him "confidence" that the information contained in them was accurate at the time, though he said evolving regulation meant DWS subsequently changed how it handles ESG disclosures.

Hoops isn't alone in urging the industry to tone down its ESG talk. Lawyers advising asset managers have offered similar advice, amid a surge in ESG rules and a more aggressive regulatory environment.

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13. [SEC Climate Proposal Would Mislead Investors, Peirce Warns]

7 Dec 2022 (10:11 PM), Andrew Ramonas

The SEC has entered dicey territory with climate reporting plans that risk confusing investors seeking corporate environmental information, Commissioner Hester Peirce said Wednesday.

Peirce, a Republican, likened the Securities and Exchange Commission's proposal to require corporate greenhouse gas emissions reporting and other climate disclosures to a "flea flicker," a risky trick play deployed in a football game.

"The climate rule may be a flea flicker in its own right, cast as a rule to bring consistency, comparability and reliability," Peirce said at an American Enterprise Institute discussion on the plan, adding: "The proposal, much of which is rooted in conjecture...

[...]

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14. [SEC Court Victory on Proxy Firm Rules Facing Industry Appeal]

7 Dec 2022 (11:19 AM), Andrew Ramonas

The National Association of Manufacturers has appealed a federal judge's decision to uphold Securities and Exchange Commission proxy advice rules easing Trump-era restrictions on firms that counsel shareholders voting at companies' annual meetings.

The trade group on Tuesday notified Judge David Counts of the US District Court for the Western District of Texas that it's contesting his ruling, which he made in favor of the SEC on Dec. 4. The US Court of Appeals for the Fifth Circuit will handle the appeal.

The National Association of Manufacturers "will continue our work to ensure that these commonsense and much-needed protections for...

[...]

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15. US SEC Poised to Propose Its Equity-Market Overhaul Next Week

7 Dec 2022 (5:25 PM), Katherine Doherty and Lydia Beyoud

The US Securities and Exchange Commission will vote Dec. 14 to propose its plan for new equity-trading rules.

The proposals are meant to level the playing field between exchanges and wholesalers, SEC Chair Gary Gensler said Wednesday in an interview with Yahoo! Finance.

"We have a marketplace today that, depending upon the day, between a third and half is not in what's called the lit markets but is in the dark venues: dark pools or just being purchased by wholesalers," he said.

The vote will kick off a process in which the regulator will take into account public feedback and...

[...]

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Reuters

16. U.S. SEC to vote on proposals that could overhaul Wall St. trading

7 Dec 2022 (8:49 PM), John Mccrank

The U.S. Securities and Exchange Commission will vote on whether to propose some of the biggest changes to the American equity markets in nearly two decades at a Dec. 14 meeting, the agency said on Wednesday.

The potential changes include new rules that would require marketable retail stock orders to be sent to auctions before they are executed, a new standard for brokers to show they get the best possible executions for client orders, and lower trading increments and access fees on exchanges, the SEC said.

"It's about driving greater competition, transparency and efficiency and the marketplace," SEC Chair Gary Gensler said in an interview with Yahoo Finance.

The changes, if adopted, would represent the biggest shake up to stock market rules since the SEC introduced Regulation National Market System in 2005, which was aimed at modernizing and enhancing an increasingly fragmented and largely electronic marketplace.

The regulator will also consider whether to propose requiring brokers to provide more information on the quality of their customer trades, and requiring more firms to file the order execution reports.

Gensler has said he would like to see more order-by-order competition for individuals' stock orders, and for a more even playing field between stock exchanges, which display customer interest, and broker-run venues, which mostly do not.

Currently, retail brokerages send most marketable customer orders directly to wholesale brokers to be executed, as long as the broker is matching or bettering the best price available on U.S. exchanges. Large market-makers typically improve on the best price by a fraction of a cent. Gensler has criticized this model as limiting competition for retail orders.

If the SEC votes to propose the changes, they will be put up for public comment before the regulator votes on whether to adopt them.

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17. Judge Tosses Manufacturers Group's Challenge to SEC Proxy Advice Rule

7 Dec 2022 (1:00 AM), Bill Flook

A U.S. District Court judge on Dec. 4, 2022, threw out a lawsuit by the National Association of Manufacturers (NAM) challenging the SEC's revision to proxy voting advice rules under Chair Gary Gensler.

In an 18-page memorandum opinion granting the commission's motion for summary judgment, Judge David Counts of the Western District of Texas concluded that "like it or not, changing political winds may factor into an agency's policy preference," and found the July rules in Release No. 34-95266, Proxy Voting Advice, were within "the bounds of reasoned decision making."

NAM and the Natural Gas Services Group sued the SEC shortly after the release of those final rules, which rolled back core elements of 2020 rules imposing new requirements on so-called proxy voting advice businesses (PVABs) in Release No. 34-89372, Exemptions from the Proxy Rules for Proxy Voting Advice. Groups such as NAM and the U.S. Chamber of Commerce – longtime critics of proxy firms – had supported those original rules, accusing the firms of being conflicted and opaque in their methodology. The Chamber and other groups are separately suing the commission in U.S. District Court for the

Middle District of Tennessee.

Proxy firms such as Institutional Shareholder Services (ISS) and Glass, Lewis & Co. make recommendations on how institutional investors should vote on a range of topics, including director elections, executive compensation, and environmental, social and governance (ESG) issues such as climate risk disclosure.

Release No. 34-89372 set new conditions for proxy firms to remain exempt from the information and filing requirements of the proxy rules that included making new conflict-of-interest disclosures; making their recommendations available to the companies either before or the same time they provide them to clients; and providing a way for clients to access any response that the company provides to the voting advice in a timely manner before the vote. (See SEC Issues Rule Increasing Regulation of Proxy Advisers in the July 23, 2020, edition of Accounting & Compliance Alert.)

The Gensler-led revisions in Release No. 34-95266 scrapped the latter two conditions and amended a provision related to liability for failing to disclose material information in proxy voting advice. The commission concluded that the informational benefits provided by the 2020 requirements did not justify the potential harm to proxy firms.

NAM, in its complaint, had argued that the SEC did not provide an adequate basis for reversing the 2020 rules. But Counts concluded that the 2022 rules were based on the same factual record as the prior ones, and since the commission did not contradict those prior factual findings, it was not required to provide a more detailed justification.

“The 2022 Rescission’s conclusion was an abrupt about-face,” Counts wrote. “But the factual findings on which the 2022 Rescission based that conclusion were the same.”

Counts also rejected the plaintiff’s argument that the 31-day comment period on the rule proposal, which overlapped with the Christmas and Hanukkah holidays last year, violated the Administrative Procedure Act (APA).

Counts’ opinion comes months after he sided with NAM in a separate but related suit over the commission’s non-enforcement policy on the 2020 rules. (See Judge Strikes Down SEC’s Non-Enforcement Policy on 2020 Proxy Advisory Firm Rules in the Oct. 4, 2022, edition of ACA.)

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18. SEC chair says crypto intermediaries should comply with law

7 Dec 2022 (7:43 PM), Kanishka Singh

U.S. Securities and Exchange Commission (SEC) Chair Gary Gensler said that companies that help facilitate transactions in the cryptocurrency market should come into compliance with law.

"Their business model right now is offering the public… an interest return in crypto… and then possibly trading against their customers," Gensler told Yahoo Finance in an interview on Tuesday. "The runway is getting shorter" between crypto lenders' compliance and SEC enforcement, the SEC chair added.

The SEC has enough authority but could use more resources, Gensler said in the interview. He labeled the crypto intermediaries as "crypto casinos."

"The entrepreneurs in this field have chosen - it's a choice - to try and skirt the law, whether they're setting up overseas and servicing overseas actors," Gensler said. "But if they're tapping into U.S. markets, they need to come into compliance."

The SEC chair added that next Wednesday, the agency will take up recommendations from agency staff on equity market structure.

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Law360

19. SEC's Peirce Tells Panel That Climate Plan Is A Distraction

7 Dec 2022 (2:45 PM), Tom Zanki

U.S. Securities and Exchange Commissioner Hester Peirce told a panel on Wednesday that the SEC's proposal to bolster disclosures of climate-related risks is distracting companies and investors with immaterial and speculative information that could distort corporate priorities.

Peirce's comments sparked a spirited debate before a panel hosted by the right-leaning American Enterprise Institute, whose participants expressed views that ranged from describing the SEC's proposal as unduly burdensome to those who see the agency as responding to investor demand that companies disclose climate risks more accurately.

The discussion comes as the SEC has received more than 14,000 comment letters on its 510-page proposal released in March, widely seen as an ambitious attempt to expand corporate disclosure. The SEC — which recently reopened comment periods on the climate and other proposals after it discovered a computer glitch that may have prevented some people from commenting online — may vote on the climate-disclosure rules in 2023.

Peirce, a critic of the proposal who voted against its release, said the plan departs from the agency's tendency to follow "principles-based" disclosures, allowing companies the discretion to determine what is material based on their circumstances.

"The SEC should not inundate investors with immaterial items but should focus their attention on material information," said Peirce, one of two Republican commissioners on the five-member commission. "Principle-based mandates enable companies to present information about risks and opportunities that are material to them and omit information that's not financially material. The climate proposal, by contrast, through numerous specific disclosure mandates, could elicit granular immaterial information."

Peirce noted that the plan calls on companies to assess climate risks by describing their short-, medium- and long-term financial impacts, which she said are not time frames used in standard disclosures and may not elicit meaningful comparisons. Peirce also objected to the proposal's requirement that companies describe the potential impact of "physical risks" — such as wildfires or hurricanes — on their operations as well as the operations with whom they do business, including companies in their supply chains.

"These disclosures will require companies to speculate about fundamentally unknowable risks," Peirce said.

Others on the AEI panel took a different view. Boston University professor Madison Condon noted that the SEC's proposal provides liability protections for companies if they provide good-faith estimates regarding the environmental impact of their supply chains.

"I don't think it's quite as harrowing a disclosure requirement as it's potentially made out to be," said Condon, who teaches environmental and corporate law.

Condon added that various jurisdictions including the European Union have stepped up climate-related disclosures in response to market demand.

"This is the SEC in part doing our part to keep up where the rest of the world is going," Condon said.

Former SEC Commissioner Paul Atkins said the climate proposal represents a "huge departure" from the SEC's obligation to focus on material disclosures and will likely invite legal challenges. Atkins urged the SEC to withdraw the proposal, saying companies are already obligated to disclose climate risks that are materially relevant.

The proposal "oversteps the commission's congressionally delegated regulatory authority," said Atkins, a Republican. "Its rulemaking powers simply don't authorize it to require disclosure of the vast quantities of immaterial information that the proposal contemplates."

Suggestions that the SEC lacks the authority to proceed with its proposal drew a rebuke from former SEC Commissioner Robert Jackson, who called such statements ridiculous.

"The SEC has been requiring disclosure on climate related matters for 50 years," said Jackson, a Democrat. "The first rule in this area was promulgated during the Nixon administration. By the way, as a footnote, that rule had no materiality qualifier."

Jackson also took issue with the idea that investors need to be protected from information overload.

"The more information we have in the marketplace, the more likely it is that assets will be accurately priced," Jackson said. "That's a basic precept. That's Economics 101."

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20. SEC To Unveil Plan For Major Stock Market Overhaul

7 Dec 2022 (3:51 PM), Jessica Corso

The U.S. Securities and Exchange Commission is preparing to introduce sweeping changes next week to the way stocks are bought and sold in what Chair Gary Gensler is billing as the first major overhaul of the equity market rules in nearly two decades.

The agency revealed that it will hold a meeting on Dec. 14 to discuss four proposed new rules that Gensler told Yahoo! News on Wednesday will make the equity markets more competitive and transparent, especially the growing market for off-exchange trades. The commission is then expected to vote on whether to approve the proposals, opening them up to public comment.

Some in the industry are likely to challenge Gensler's positive view of the changes. Virtu Financial Inc., one of the country's largest high-frequency trading firms, has already said it fears the rules will be biased in favor of the stock exchanges in a lawsuit it filed against the agency last month.

Gensler has previewed potential new equity market rules for months, but the newly posted hearing schedule gives some idea as to what the changes could look like, although a full writeup of the proposals wasn't available Wednesday. The SEC didn't immediately respond to a request for further information.

Among the proposals to be voted on are three that would amend or update Regulation National Market System, a rule passed by the SEC in 2005 that requires broker-dealers to publicly disclose certain information about the way they execute customer orders.

One would expand the scope of the entities subject to the rule as well as modify what information is required to be reported, while another would change the acceptable minimum pricing increments for stock trades.

A third Regulation NMS change would create an open auction system for fulfilling retail orders — possibly targeting a practice known as "payment for order flow." Gensler has said in the past that more than 90% of individual market orders are sent to a small group of electronic market makers known as wholesalers, who pay for access to such order flow, rather than to stock exchanges.

Companies like Robinhood Markets Inc., which gives individual investors a chance to buy and trade stocks without paying a fee, rely on sales of their order flow to make money.

The fourth proposal would create a rule called Regulation Best Execution that would require brokerage firms to put policies in place to deal with "certain conflicted transactions." The agency agenda does not detail what the SEC means by conflicted transactions.

Gensler said the proposals would prove to be the greatest overall of equity market regulations in 17 years, but Virtu has accused the SEC of keeping market participants in the dark about what exactly the agency is proposing.

The trading firm's lawsuit accused the SEC of "stonewalling" on Virtu's request for certain records that could reveal who top staffers, including Gensler, met with as they crafted the proposals.

Virtu said it was "clear" that the SEC had met with representatives from national market exchanges like Nasdaq and the New York Stock Exchange based on publicly available information, but it wasn't clear what the parties spoke about.

According to Virtu, the exchanges stand to benefit financially from the proposals. The trading firm said it is seeking "to confirm whether there has been impermissible bias in the rulemaking process."

Gensler has said that investors deserve greater transparency as to how their orders are being executed, particularly with more retail investors betting on the market.

In 2020, retail investing represented 25% of the total equities volumes, compared to 10% historically, according to a report released by the Securities Industry and Financial Markets Association.

"This is a really important piece of our capital markets, and it's important to investors, and the retail public has certainly paid a lot of attention to this market," Gensler said in conversation with Yahoo Wednesday.

There is a fifth vote the SEC is slated to take on Dec. 14, although it doesn't relate to equity market structure, according to the agency's schedule.

That vote will determine whether the commission adopts an earlier proposed rule to crack down on insider trading by removing a safe harbor often relied upon by executives buying and trading stock.

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21. Kardashian, Mayweather, Others Beat Crypto Investors' Suit

7 Dec 2022 (9:00 PM), Bonnie Eslinger

A California federal judge has tossed a proposed class action that claims reality television star Kim Kardashian, boxer Floyd Mayweather and others misleadingly promoted the cryptocurrency EthereumMax, but gave the investors permission to file an amended complaint.

The suit alleges EthereumMax's executives collaborated with the celebrity promoters to sell EMAX tokens to unsuspecting investors in what essentially amounted to a "pump-and-dump" scheme.

U.S. District Judge Michael W. Fitzgerald granted the motion to dismiss filed by several celebrities and EthereumMax's executives — including co-founders Stephen Gentile and Giovanni Perone — saying in his order filed Tuesday that the investors' complaint insufficiently backed its allegations of racketeering, unfair competition, false advertising and other claims. He gave the investors until Dec. 22 to file an amended complaint.

The court concluded the investors lacked standing to bring their federal Racketeer Influenced and Corrupt Organizations Act-related claim, "because, at bottom, their injury is nothing more than disappointment over what their EMAX tokens are worth today — not what they were worth at the time of their purchase."

The investors also fail to adequately allege a RICO enterprise, the judge said.

"Plaintiffs ask the court to make huge leaps of logic to string together disconnected acts that when read together, supposedly evince a premeditated and well orchestrated pump and dump scheme," the judge said. "But a hodgepodge of conclusory and disparate allegations does not a RICO claim make."

The allegations more likely suggested that the individual defendants — especially the celebrity promoters — were acting in their own personal interest, the judge added.

Judge Fitzgerald also dismissed claims filed under state consumer protection laws in California and other states, saying the investors didn't detail which promotions they saw and how that resulted in them buying the cryptocurrency. Instead, the investors broadly alleged that they each "viewed numerous celebrity endorsements" over the span of the time period at issue in the suit, from May 14, 2021, to June 27, 2021.

The judge underscored that, according to the complaint, at least some of the plaintiffs purchased their EMAX tokens "prior to certain of the statements they allegedly relied on."

He denied leave to amend for claims brought under California's Consumer Legal Remedies Act claim, saying the act is inapplicable to the sale of intangible goods such as cryptocurrency, "and therefore, granting leave to amend would be futile."

The misleading promotions from the celebrities and the company artificially increased interest in and inflated the price of the EMAX tokens that investors purchased, according to the complaint, which also alleged aiding and abetting and unjust enrichment.

In his Tuesday ruling, Judge Fitzgerald said the action "demonstrates that just about anyone with the technical skills and/or connections can mint a new currency" and emphasizes the power of social media. As a result, "highly volatile investment ventures" have gone viral based on the "paid-for word of celebrity promoters," the judge said.

While the case raises legitimate concerns, the allegations were insufficiently pled in the complaint before the court, Judge Fitzgerald said.

The suit also names as a defendant Paul Pierce, a former NBA player and television personality, who promoted EthereumMax in a widely discussed post on Twitter, according to the suit.

The claims against Kardashian relate to two social media posts the reality TV star made on Instagram that promoted EMAX in May and June of 2021. While the first post did not state it was an advertisement, the second did have an "#AD" disclaimer.

Mayweather, according to the suit, wore a t-shirt with "EthereumMax" emblazoned across the chest when he attended a Bitcoin conference — where he stated during a panel discussion, "I believe there's gonna be another cryptocurrency just as large as Bitcoin someday."

Since the filing of the suit, the U.S. Securities and Exchange Commission has accused Kardashian of failing to disclose that she was paid $250,000 to publish a post about EMAX tokens on her Instagram account. In early October, Kardashian settled the claims, paying $1.26 million in penalties, reimbursement and interest, without admitting or denying the SEC's allegations.

Mayweather has also run afoul of federal regulators in connection with cryptocurrency promotion. In 2018, he paid a penalty, reimbursement and interest totaling nearly $615,000 to end SEC claims that he failed to publicly disclose that he was being paid to promote initial coin offerings by several issuers. He also neither admitted nor denied the claims.

A lawyer for Kardashian, Michael Rhodes of Cooley LLP, told Law360 in an email Wednesday that "we are pleased with the court's well-reasoned ruling."

Other representatives for the parties did not immediately respond to requests for comment Wednesday.

The investors are represented by John T. Jasnoch of Scott + Scott Attorneys at Law LLP.

Floyd Mayweather is represented by James L. Sanders and Carla M. Wirtschafter of Reed Smith LLP.

Kim Kardashian is represented by Michael G. Rhodes, Travis Leblanc, Max Sladek de la Cal and Robby L.R. Saldaña of Cooley LLP.

Paul Pierce is represented by Joel R. Weiner, Mark A. Wooster and Sarah J. Lee of Katten Muchin Rosenman LLP.

Stephen Gentile is represented by Corey E. Klein of Kendall Brill & Kelly LLP and Andrew M. Zeitlin and Alison Baker of Shipman & Goodwin LLP.

Giovanni Perone is represented by Craig Carpenito, Andrew Michaelson, David K. Willingham and Meghan H. Strong of King & Spalding LLP.

The case is In re: EthereumMax Investor Litigation, case number 2:22-cv-00163, in the U.S. District Court for the Central District of California.

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22. Tesla Investors Can't Cite SEC Fine Over Musk Tweets At Trial

7 Dec 2022 (9:00 PM), Katryna Perera

A California federal judge on Wednesday barred any mention of Tesla Inc. CEO Elon Musk's 2018 settlement with the U.S. Securities and Exchange Commission over his infamous tweets about taking the company private at $420 a share during an upcoming securities fraud trial over the same matter.

U.S. District Judge Edward M. Chen issued a final pretrial conference order and granted Musk and Tesla's request to bar mention of the settlement, saying "the danger of unfair prejudice outweighs the probative value of the SEC settlements and complaints."

During a nearly four-hour pretrial hearing held via Zoom in October, counsel for Musk, Tesla and the other defendants urged Judge Chen to bar the plaintiffs from mentioning the automaker's 2018 deal with the SEC over the tweets, arguing that the evidence is too prejudicial since Tesla and Musk never admitted liability in reaching the settlement.

Judge Chen agreed on Wednesday and said that because the complaints and settlement in the SEC case did not result in any official agency findings, "their probative value (even if admissible) is minimal."

However, counsel for the class is permitted to mention the SEC investigation that was launched soon after Musk's 2018 tweets.

The judge added that there is a heightened risk of undue prejudice because a jury could be tempted to find Musk and Tesla liable in the current action based on the SEC case and settlement since the two suits are "virtually identical."

Additionally, admission of the SEC materials could create a "mini-trial" for the defendants and could cause them to defend themselves against both the claims in the current action and the dismissed SEC claims, Judge Chen said.

The judge also called the SEC complaint hearsay and said he could not see how a complaint and settlement that materialized more than a month after the end of the class period of the current action was relevant.

According to the order, Judge Chen will issue a limited instruction to the jury during trial — which is slated to kick off Jan. 17 in San Francisco — that they should not make any assumptions about the outcome of the SEC investigation.

In a statement to Law360 on Wednesday, counsel for the investors said Judge Chen's ruling was not unexpected and does not have a meaningful effect on their preparation for trial.

"Judge Chen has already granted summary judgment in plaintiff's favor on the issues of falsity and scienter regarding the Aug. 7, 2018, tweets that are the focus of our case and were the basis for the SEC settlement. So the SEC settlement added little, if anything, to that ruling," said Nicholas Porritt of Levi & Korsinsky LLP.

Judge Chen stood by his April summary judgment decision that Musk's statements were inaccurate and reckless at the time they were made and said the defense counsel cannot argue at trial that Musk's tweets were true.

"The issues of factual falsity and Mr. Musk's recklessness were decided as a matter of law at summary judgment," the order states.

But Judge Chen noted that lead plaintiff Glen Littleton must still prove at trial that Musk's statements were materially false and damaged investors, as well as the level of scienter, or recklessness, with which they were made.

The consolidated securities class action that investors initially launched against Musk and the electric vehicle company in 2018 alleges that Musk inflated Tesla's stock prices by posting false and misleading statements on Twitter about his alleged plans to take Tesla private, causing billions of dollars in damage.

In the tweets, Musk wrote that he was "considering taking Tesla private at $420. Funding secured." He also tweeted that "investor support is confirmed. Only reason why this is not certain is that it's contingent on a shareholder vote."

In April, the investors asked for a temporary restraining order against Musk after he called SEC officials "bastards" during a TED Talk, which they claim was part of a broader effort by the billionaire to deny accountability for his 2018 tweets. Judge Chen eventually denied the request.

In a separate but related action, Musk is fighting to vacate his settlement with the SEC, under which he agreed to step down as chairman of Tesla and pay a $20 million fine while also having his tweets vetted by an attorney. The deal allowed him to remain CEO. Tesla also agreed to pay its own $20 million fine and make changes to its corporate governance and internal controls.

During the TED Talk, which took place days after Judge Chen's April summary judgment order, Musk defended the tweets at issue by claiming that "funding was actually secured" and that SEC officials coerced him into a 2018 settlement to resolve securities fraud charges stemming from the posts.

Representatives for the parties did not immediately respond to requests for comment on Wednesday.

Littleton and the class are represented by Adam M. Apton, Adam C. McCall, Nicholas I. Porritt, Elizabeth K. Tripodi, Alexander A. Krot III, Joseph Levi and Eduard Korsinsky of Levi & Korsinsky LLP.

Musk, Tesla and the other defendants are represented by Alex Spiro, Andrew J. Rossman, Ellyde R. Thompson, Jesse Bernstein, Michael T. Lifrak and Kyle Batter of Quinn Emanuel Urquhart & Sullivan LLP.

The case is In re: Tesla Inc. Securities Litigation, case number 3:18-cv-04865, in the U.S. District Court for the Northern District of California.

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23. Assessing 2 FCPA Actions Under Lens Of Corp. Crime Memos

7 Dec 2022 (11:23 PM), Ben O'Neil, Andrew Thornton-Dibb and Jah Akande

Following a year in which Foreign Corrupt Practices Act enforcement dipped to its lowest mark in a decade, 2022 has seen a steady climb, with more than 20 FCPA enforcement actions through the end of September.[1]

In the backdrop of this ascent, guidance from the U.S. Department of Justice indicates that more vigorous corporate enforcement may be looming and that corporations are facing increased scrutiny as the DOJ evaluates its criteria affecting the resolution of corporate crime.

Deputy Attorney General Lisa Monaco's second and most recently issued policy memo on revisions to corporate criminal enforcement policies, released Sept. 15, outlines an aggressive strategy to combat corporate misconduct and doubles down on the longstanding DOJ priorities of individual accountability, self-disclosure and remediation, contained in the Monaco's first memo, issued Oct. 28, 2021.[2]

This article evaluates two FCPA resolutions from this year in light of the updated guidance.

The DOJ's Posture

In the first Monaco memo issued on Oct. 28, 2021, Monaco announced the formation of the Corporate Crime Advisory Group, underscored the DOJ's renewed focus on prosecuting individuals, and set forth three key revisions to the DOJ's corporate enforcement strategy.

First, the memorandum reinstated Obama-era guidance stating that to qualify for cooperation credit, companies must provide information about all individuals involved in corporate misconduct, not just those individuals deemed by the corporation as substantially involved.

Second, prosecutors were instructed to consider a company's entire criminal, civil and regulatory enforcement history when making determinations about criminal charges and resolutions.

Third, Monaco instructed that independent corporate monitors are generally favored and should be used frequently.

The second Monaco memo, issued 11 months later, amended the first and provides a more thorough positioning of the DOJ's enforcement priorities. The second memo also highlights the steps and proposed policies the DOJ is taking to be able to effectively investigate and prosecute corporate crime.

The key takeaways are noted below:

Individual accountability is critical.

The DOJ continues to be focused on individual accountability and prosecution. Under the first Monaco memo, companies were already required to provide all relevant, nonprivileged facts about individual misconduct to receive cooperation credit.

In her second memo, Monaco has advised that cooperation credit will also hinge on the speed at which companies provide information about individual wrongdoing to the DOJ, and that companies "bear the burden of ensuring" that this is done in a timely enough manner.

Monaco also encouraged the use of clawback provisions or other methods to hold those individuals who contribute to criminal misconduct financially accountable.

Full and effective cooperation is expected.

In addition to underscoring the importance of targeting individual misconduct to receive cooperation credit, the second memo carries heightened expectations for full and effective cooperation, including that the DOJ will provide credit for companies that find ways to navigate foreign data privacy laws — and that a failure to do so may lead the DOJ to draw an adverse inference.

Voluntary self-disclosure is a key driver for the DOJ.

The second Monaco memo reflects the DOJ's continued focus on corporations' voluntary self-disclosure and the timing of any such disclosure. Monaco noted that when a corporation becomes aware of misconduct and decides to come forward to the government, DOJ policies "must ensure that a corporation benefits from its decision" to do so.

Each division of the DOJ is henceforth required to draft and publicly disseminate a policy on corporate voluntary self-disclosure that explains what constitutes a voluntary self-disclosure under the division's policy, and what benefits corporations can expect from self-disclosure.

The memo offers clarification on the use of independent monitors.

Monaco clarified that there is no longer a presumption against independent monitors as part of a corporate criminal resolution, nor a presumption in favor of one.

The second Monaco memo provided a nonexhaustive list of ten factors that prosecutors should consider when evaluating the need for a monitor on a case-by-case basis, including: an assessment of whether a company voluntarily self-disclosed the misconduct; the effectiveness of its compliance program; whether the underlying conduct was long-lasting, pervasive, or known and ignored by senior management; and the company's remedial measures.

Compliance officers are on the hook to ensure compliance culture.

Going forward, it's all but certain that the DOJ will incorporate CEO and chief compliance officer certifications in its resolutions to ensure that compliance officials are empowered to create and sustain effective compliance programs.

Two FCPA Resolutions Under the Lens of Recent Guidance

Stericycle

On April 20 — in the period between the first and second Monaco memos — Stericycle Inc., an international waste management company headquartered in Lake Forest, Illinois, agreed to resolve parallel investigations into bribery and corruption by the DOJ, the U.S. Securities and Exchange Commission and Brazilian authorities, paying a total of $84 million.

As part of the resolution, Stericycle entered into a three-year deferred prosecution agreement[3] in connection with allegations of conspiracy to violate the FCPA's anti-bribery and the books and records provisions.

According to the DPA, between 2011 and 2016, Stericycle, through several employees and agents, made over $10.5 million in improper payments to foreign officials in Brazil, Mexico and Argentina. Bribes were made to obtain and retain business and other improper advantages in connection with Stericycle's business.

In executing the scheme, an executive at Stericycle's Latin America division directed employees in the company's offices in Brazil, Mexico and Argentina to pay bribes, calculated as a percentage of contract payments owed to Stericycle from government customers.

Stericycle earned at least $21.5 million in improper profits from the scheme.

Stericycle's criminal resolution suggests that the DOJ was closely attuned to guidance provided in the first Monaco memo.

The company did not have sufficient internal accounting controls in place, such as a centralized compliance department, to prevent or detect the misconduct, and it failed to implement FCPA policies or procedures prior to 2016. The company also did not self-report its misconduct.

However, Stericycle ultimately received full credit from the DOJ for providing to the agency all relevant facts known about the individual actors involved in the bribery scheme and for engaging in extensive remedial measures — including, but not limited to, conducting an internal investigation, updating internal controls, hiring new leadership, terminating third-party relationships and revamping its risk-assessment processes.

The DOJ did require a monitor because Stericycle had not fully implemented or tested its compliance program. This is consistent with the first Monaco memo's endorsement of the liberal use of independent compliance monitors, even with companies that have fully cooperated and adopted widespread remedial measures.

Gol

The DOJ's most recent FCPA resolution was announced the same day as the release of the second Monaco memo, perhaps in an attempt to expedite a pending resolution that, going forward, would not be a standard-bearer for the DOJ's updated policy.

On Sept. 15, the DOJ, SEC and Brazilian authorities reached a combined $45 million settlement with Gol Linhas Aereas Inteligentes SA, Brazil's second-largest domestic airline, to resolve a multiyear probe into a bribery scheme involving several Brazilian officials.

The São Paulo-based company, also known as Gol Intelligent Airlines, entered into a three-year DPA[4] with the DOJ to settle criminal charges for conspiracy to violate the anti-bribery and books-and-records provisions of the FCPA, in a similar posture to Stericycle.

According to the DPA, the bribery scheme took place between 2012 and 2013 and was led by a member of Gol's board of directors.

As part of the scheme, Gol paid $3.8 million in bribes to Brazilian government officials to influence the passage of two pieces of legislation that allowed Gol to ultimately achieve favorable payroll tax and aviation fuel tax reductions.

The DPA's statement of facts further reveals that to effectuate the bribery scheme, the Gol director caused the company to enter sham contracts with entities connected to the relevant Brazilian officials.

The bribes were then characterized as legitimate expenses in Gol's record-keeping, resulting in an improper total tax savings of $39.7 million for the company.

Gol did not self-report the misconduct but still was able to obtain a DPA and avoid the imposition of a monitor.

While this resolution would seem particularly lenient in light of the language of the second Monaco memo, the DOJ appears to have relied heavily on Gol's swift cooperation, in which the airline provided a number of materials from its own internal investigation and verification of thousands of transactions, and made employees readily available for questioning.

The DOJ also credited Gol with promptly engaging in significant remedial measures, including revamping its anti-corruption program, hiring a new chief compliance officer, and terminating its relationships with third parties involved with the misconduct.

Gol's cooperation also appears to have assisted in the DOJ's investigation of the single Gol director involved in the scheme.

Because Gol's conduct involved the bribery of foreign officials, the DOJ required that the company's CEO and CCO certify at the end of the DPA term that the "compliance program is reasonably designed to detect and prevent violations of the [FCPA] and other applicable anti-corruption laws throughout the Company's operations."[5]

This aspect of Gol's DPA is very much in line with the DOJ's pronouncement in the second Monaco memo that such certification will be a practice going forward to promote continued compliance and mitigate against future misconduct.

It is notable that while both companies achieved relatively positive outcomes due in part to their cooperation, the investigations were lengthy — five years in the case of Stericycle and six years in the case of Gol. That is a significant amount of time for a company to bear the expense and disruption that cooperation with the department can entail.

While most companies enter into a cooperative posture to avoid penalties and achieve the finality necessary to move forward with normal business operations out from under a cloud of allegations, the costs associated with half a decade of cooperation with the government may make that decision at least a little harder to make.

Conclusion

Only time will define the precise contours of the DOJ's approach to dealing with corporate misconduct, and how the policy pronouncements of the last two years will apply practically.

It is also unclear whether the aggressive tone emanating from the department will affect the desire among corporate actors to self-report and cooperate with government investigations.

If the two resolutions outlined above can serve as precedent, however, companies will always be able to achieve some measure of leniency on the strength of rapid cooperation aimed at assisting the DOJ with the prosecution of individuals involved in criminal activity.

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24. 11th Circ. Says Insurance Trustee Didn't Breach Duty To Acheron

7 Dec 2022 (11:15 PM), Brian Steele

The Eleventh Circuit has sided with the trustee of a package of life insurance policies held by investors, ruling that he did not breach a contract or his fiduciary duties when he gave Acheron Trusts and its money managers a discount on service fees.

A three-judge panel on Tuesday dismissed claims that were brought by six entities under the Acheron umbrella and upheld an October decision from a Florida federal court that granted summary judgment to Barry Mukamal, who oversees the Mutual Benefits Keep Policy Trust.

"We reject Acheron's efforts to elevate its contractual relationship with the trustee to that of a fiduciary relationship," the panel wrote in its opinion, describing the Acheron firms' arrangement with Mukamal as fundamentally different from his responsibility to the other investors.

The opinion says Mukamal did not err when he distinguished between two types of investors: those who bought their interests directly from victims of the Mutual Benefits fraud that ran from 1994 to 2004, and those like Acheron, which in 2008 started buying fractional interests that defaulted. A third-party loan servicing agreement struck in 2014 gave fee discounts to the former group but not to Acheron, which the companies described in a 2020 complaint as "discriminatory."

"Acheron's relationship with the trustee was an arms-length contractual relationship — it purchased interests in the Keep policies with knowledge that they were under a receivership formed to protect the interests of victim investors and not third-party purchasers of defaulting interests such as Acheron," the panel wrote.

In May 2004, the U.S. Securities and Exchange Commission sued Mutual Benefits Corp. in Florida federal court, claiming it was lying to investors about expected returns on life insurance policies known as viatical settlements. The agency also accused it of distributing payments "in a Ponzi-like fashion" and stashing investor money in shell corporations controlled by MBC principals and their relatives.

A viatical settlement lets a buyer take over the premium payments on insurance policies from the insured in exchange for the right to collect the death benefit. MBC purchased more than 9,000 policies from terminally ill patients, paying a deep discount on the face value upfront, and promised investors "guaranteed" returns between 12% and 72%, according to the SEC.

Each policy was fractionalized so that multiple investors could buy in. The SEC said that at the time it sued, 90% of the settlements were past the life expectancy that MBC had assigned to them, which kept investors waiting for payment while they remained responsible for the premiums.

The $857 million scheme led to a $25 million settlement and long prison sentences for CEO Joel Steinger and others.

In 2009, the court established the trust that Mukamal now oversees. It contained thousands of active policies that the defrauded investors had chosen to keep once the receivership ended. He won court approval in June to auction off the policies that remain, in part due to the cost of litigation with Acheron.

Acheron paid $9 million for its fractional interests during the receivership period in 2008 and 2009, shortly before all the retained policies were moved into the Mutual Benefits Keep Policy Trust.

At first, all investors were given a discount on the service fees, according to Acheron, but the trust began applying the distinction in 2015, a few months after it renewed a loan servicing agreement. The firm said it made a deal with Mukamal that it would have the same rights as other investors, but the version of the agreement approved in court did not require the fee credits.

"Because the motion for approval covered both the renewal agreement and the 2015 agreement, Acheron — by signing the motion — stipulated that the two agreements were consistent," the panel wrote, and that action negated Acheron's instant claim that it was entitled to the credits.

Acheron sued for breaches of contract, fiduciary duty and implied duty of good faith and fair dealing. Its appeal asked the panel to decide if summary judgment for Mukamal was legal under the circumstances and to weigh in on whether Acheron was entitled to a hearing on its standing claim for breach of contract.

The five entities that comprise the Acheron Trusts lack standing because only Acheron Capital, their investment manager, was a party to the 2015 agreement with Mukamal, the district court ruled. The panel said Acheron Capital "has standing to enforce the agreement," but it affirmed the lower court's decision to dispose of the case.

John Arrastia of Continental PLLC, an attorney for Mukamal, said the ruling "could be a step toward the ultimate resolution" of all actions related to the MBC fraud.

"This is part of years of litigation that's been vigorously, vigorously contested," he said. "[Mukamal's] hopeful that this is going to allow him to wrap it all up and to liquidate the trust."

A representative for Shutts & Bowen LLP, which is representing Acheron, did not immediately provide a comment.

U.S. Circuit Judges Kevin C. Newsom, Barbara Lagoa and Andrew L. Brasher sat on the panel for the Eleventh Circuit.

Mukamal is represented by John Arrastia and Angelo Castaldi of Continental PLLC, David L. Rosendorf of Kozyak Tropin & Throckmorton LLP, and Jean-Pierre Bado of Genovese Joblove & Battista PA.

The Acheron Trusts are represented by Julissa Rodriguez and Larry I. Glick of

Shutts & Bowen LLP, Steven Schreckinger of Anderson & Kreiger LLP, and Miranda Lundeen Soto and Daniel R. Lazaro of Buchanan Ingersoll & Rooney PC.

The case is Acheron Portfolio Trust et al. v. Mukamal, case number 22-10748, in the U.S. Court of Appeals for the Eleventh Circuit.

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25. SEC Must Improve Enforcement Quality With 3 Key Factors

7 Dec 2022 (10:03 PM), Stephen Hall and Houston Shaner

On Nov. 15, the U.S. Securities and Exchange Commission's Division of Enforcement released its summary of the enforcement actions it brought in fiscal year 2022.[1] It offers good news and bad news.

The good news first: The case total climbed nearly 10% from the prior fiscal year.[2] The dollar figures are even more impressive — the SEC imposed $6.4 billion in monetary recovery through enforcement.[3]

That is a significant increase from fiscal year 2021, when the SEC imposed less than $4 billion.[4] Of that amount, civil penalties — those specifically intended to deter future misconduct — jumped from $1.4 billion to $4 billion.[5]

These gains undoubtedly reflect the vigor and hard work of the enforcement staff and that staff's commitment to protecting investors and market integrity. The agency has certainly trumpeted these numbers.

On the same day that the SEC released its 2022 results, the director of the SEC's Division of Enforcement, Gurbir Grewal, gave the keynote address to the Securities Enforcement Forum.[6] He emphasized the growth in penalties, noting that the SEC imposed the highest amount for a single fiscal year, and he highlighted many of the positive aspects from the largest individual fines.[7]

But the bad news is that raw numbers tell only part of the story. The quality of the enforcement cases is often as important as the quantity, especially when that quantity is judged only by aggregate dollars.

A quality case is one that not only requires disgorgement of ill-gotten gains but also imposes fines large enough to actually punish violators and deter future misconduct. It must also hold the individuals involved in the misconduct accountable, including those at the top of the corporate ladder.

And, when settled, it must include nonmonetary sanctions such as admissions of liability and conduct remedies that require companies to change their practices and improve their compliance cultures.

Below, we review these critical principles of effective enforcement and how well some particular SEC cases have met the challenge. The bottom line is that the SEC must do more on all three fronts: higher penalties, more individual accountability, and greater use of remedial sanctions and disqualifications.

How much does it matter? It is tremendously important: The SEC is the first and most important line of defense against securities fraud, unregistered offerings, insider trading, market manipulation, foreign corruption and other misconduct in the capital markets.

If the SEC's enforcement program falls short, more investors suffer losses, fraudsters are emboldened and confidence in the integrity of our capital markets wanes, along with investor willingness to participate in those markets.

Beyond disgorgement, monetary penalties must exceed a mere cost of doing business.

Disgorgement is a baseline for effective enforcement, as it deprives wrongdoers of the fruits of their crimes while often enabling the SEC to return money to victims and mitigate their losses.[8]

But this remedy alone cannot be an effective deterrent because it creates no risk of loss. The lawbreaker wagers that it simply won't get caught — and can keep the proceeds — or that, if it does get caught, it will be no worse off after returning its profits.[9]

Civil penalties are thus an essential complement to disgorgement, and the amount of the penalty is key. As Grewal noted in his address, the SEC has made strong progress here: This is the first time in at least several years that civil penalties have overtaken disgorgement in terms of total dollars.[10]

To be sure, the SEC often levies seemingly large penalties, and fiscal year 2022 saw a spate of high-dollar enforcement actions. An Allianz subsidiary,[11] The Boeing Co.,[12] Nikola Corp.,[13] Ernst & Young LLP[14] and a murderers' row of Wall Street banks[15] all received fines of at least $100 million last year.

These mega-penalty cases go a long way toward accounting for the leap in the SEC's aggregate annual monetary sanctions.

Yet even some of the splashier penalties are simply not large enough. Grewal certainly understands the key principle. In a 2021 speech, he said the SEC "must design penalties that actually deter and reduce violations, and are not seen as an acceptable cost of doing business."[16]

Still, it's far from obvious that this goal is being met. For example, in one of the highest profile enforcement actions last year, the SEC imposed a collective $1.1 billion penalty against a host of Wall Street banks and other financial institutions for widespread, systematic record-keeping violations.[17] The largest of these banks paid $125 million apiece in civil penalties.[18]

Was that amount above the acceptable cost of doing business? Doubtful.

For starters, the penalties were announced — and presumably agreed upon — near the end of the fiscal year. That timing suggests that the SEC might have felt pressure to cut a more generous deal in part to boost its own enforcement numbers for fiscal year 2022.

In any event, these banks count their net revenues in tens of billions of dollars and their assets in trillions of dollars. The penalties that headline the SEC's work, then, are close to rounding errors for the big banks.

The lack of deterrence seems especially clear since many of the same banks have paid out large fines or judgments in prior years, or even this year, with little indication of real contrition or meaningful changes in behavior.[19]

Grewal again articulated the issue well: "[D]espite all of the strong enforcement actions ... the types of behavior described in the headlines ... persist, and as a result, a significant part of the public continues to feel that our markets are essentially a game that is rigged against them."[20]

In some cases, the SEC has chosen to forego a fine altogether. Over the last year, for instance, the agency took the unusual step of settling fraud claims with technology company HeadSpin Inc. without levying a penalty.[21]

HeadSpin raised over $80 million in equity thanks to fraudulent claims by its then-CEO Manish Lachwani but, after an internal investigation, forced out the CEO and other senior officers, revised its valuations and remitted roughly 70% of the amount raised, with an offer to remit the remainder as promissory notes.[22]

HeadSpin, in other words, disgorged most if its ill-gotten gains on its own initiative. That, along with consequences for management, might be sufficient deterrence to future misconduct by HeadSpin. But what does it signal to other regulated entities?

In short, for entities the size of the biggest banks, the SEC's statutory authority — and its resolve — to levy fines simply don't appear to be sufficient for real deterrence.

What's necessary, in addition to monetary sanctions — even in eye-catching amounts — is deterrence against individuals within those entities, the next topic.

Individuals must be held accountable.

Every time a company violates the law, a human being has been responsible for the misconduct. As we have said, banks don't violate the law, but bankers do.[23]

Especially for super-sized corporate defendants, the SEC should presume that enforcement against responsible individuals is necessary for effective deterrence. The SEC made some commendable progress here during the prior fiscal year.

Executives or senior management at Nikola, Boeing and Allianz all stood alongside their companies as defendants.[24] And in the case of one smaller investment entity Hamilton Investment Counsel LLC, the SEC sought relief specifically against an officer responsible for implementing compliance controls,[25] undoubtedly a strong signal to other compliance professionals.

According to Grewal, most of the SEC's stand-alone cases last year included at least one individual defendant.[26]

But these actions stand out because they are exceptions, not the norm. More typically, when the SEC brings enforcement against individuals, they are more junior employees or one of a few principals behind a small corporate shell.

Recall the large banks described above that were collectively fined over $1 billion. Not one individual is mentioned, much less charged, in the announcement for those cases.[27]

And that is despite SEC allegations of "widespread and longstanding failure of ... employees throughout the firm, including at senior levels, to adhere to certain ... essential requirements and the firm's own policies" — failures that, in the SEC's own view, "likely impacted the Commission's ability to carry out its regulatory functions and investigate violations of the federal securities laws across these investigations."[28]

Worse still, perhaps, is the example of Ernst & Young, another member of fiscal year 2022's $100-million-penalty club.[29] As described in Ernst & Young's settlement with the SEC:

Over multiple years, a significant number of EY audit professionals cheated on the ethics component of the Certified Public Accountant (CPA) exam, as well as on a variety of other examinations required to maintain their CPA licenses. As this was ongoing, EY withheld this misconduct from SEC staff conducting an investigation of potential cheating at the firm.[30]

This conduct was certainly systemic within the company, and that was precisely because numerous individuals within the company had systematically decided to engage in misconduct. It even reflected recidivism, as Grewal noted.[31]

But where is the accountability for those individuals, including those impeding the SEC's investigation? Sanctions for this misconduct aimed solely at the company are wholly inadequate.

The individuals responsible for knowingly and intentionally violating the law must be held accountable if such egregious lawbreaking is to be punished and deterred.

A range of nonmonetary sanctions must also be applied alongside fines and disgorgement orders.

Because monetary penalties, and particularly corporate penalties, are rarely sufficient deterrents, the SEC must also include nonmonetary measures as well.

Admitting fault should be a starting point for every case. Far too often the agency allows a settling defendant to neither admit nor deny the alleged misconduct. This result, in fact, seems to be the default practice.

But the agency undoubtedly has a strong case for liability in many of these same instances, and an admission is an important measure for communicating responsibility to the public and to other market actors.

On this front, the SEC did have some notable achievements last fiscal year. Ernst & Young admitted misconduct and liability in its settlement, for instance.[32] And the SEC even managed to make the big banks do the same with respect to their violations.[33]

The agency achieved real wins for market integrity in both cases, and it will hopefully continue to make further progress on admissions throughout the current fiscal year.

Furthermore, "prophylactic relief—such as officer and director bars, associational bars, suspensions, conduct-based injunctions, and undertakings—is an important part of robust remedies," Grewal said.[34]

Here, too, the SEC has genuinely advanced the public interest in some of its highest-profile cases from fiscal year 2022. Once again, the Ernst & Young and bank settlements include meaningful commitments to retain independent compliance monitors or consultants[35] — measures that the agency might not have achieved under past administrations. But even these exemplars have some apparent weaknesses.

For example, Ernst & Young can object to the compliance monitor's recommendations as "unnecessary, unjust, ... unduly burdensome, or impractical."[36] And the banks can object on similar grounds.[37]

These provisions raise real questions about the ultimate effectiveness of these commitments.

Finally, as an adjunct to enforcement, the SEC must adopt a more robust and transparent approach to disqualifications.

The law presumes that when a company violates the law, it cannot be trusted to engage in certain types of securities market activities, ranging from the use of streamlined procedures for raising capital to serving as a trusted investment adviser.[38]

The SEC has routinely waived these disqualifications, sometimes even for egregious violators.

For example, Credit Suisse Group AG and one of its subsidiaries pleaded guilty to defrauding investors in a foreign tuna fishing project involving hundreds of millions of dollars.[39] Yet the SEC exempted Credit Suisse almost immediately thereafter.[40]

And the SEC has issued these waivers largely in the shadows, with a little-noticed letter quietly transmitted to the violator.

In a positive step, the SEC has rescinded its earlier policy of considering waivers in conjunction with settlements of enforcement actions, appropriately choosing instead to evaluate a settlement proposal on its own merits and later deciding on whether a waiver request should be granted under applicable standards.[41]

Yet the process is still opaque, waivers remain common and few seem to be paying attention. That must change.

Conclusion

The SEC's enforcement work is vital. It is also challenging, as the myriad forms of financial fraud and abuse are often complex and difficult to prove.

And the SEC must bring its enforcement authority to bear on a multitrillion-dollar marketplace involving a huge collection of market participants, including brokers, investment advisers, exchanges and others.

Discharging this responsibility means having adequate resources at its disposal and, while that's a topic for another day, it bears directly on the effectiveness of the SEC's enforcement program.

The results announced on Nov. 15 paint a mixed picture.

As much cause for commendation as they bring, the SEC's victories must not distract from the more fundamental truth: Enforcement of the securities laws against firms and individuals must be stronger. Protecting the public and preserving the integrity of the securities markets demand more.

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26. Lawmakers Downplay Book Tax's Effect On Accounting Board

7 Dec 2022 (10:32 PM), Stephen K. Cooper

The new 15% corporate book tax that takes effect next year has sparked concerns that businesses seeking to avoid the tax could pressure accounting rulemakers for more flexibility, but federal lawmakers...

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27. Ex-SEC Assistant Director Joins Persefoni As Climate Reg VP

7 Dec 2022 (10:16 PM), Adrian Cruz

Climate data company Persefoni announced that it hired a former U.S. Securities and Exchange Commission assistant director as its new associate general counsel and vice president of global climate regulatory disclosure....

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28. SEC Seeks Input On Tax Effects Of Stock Buyback Plan

7 Dec 2022 (10:02 PM), Jessica Corso

The U.S. Securities and Exchange Commission on Wednesday called for additional public input on a proposal that would require additional disclosures around corporate stock buybacks, reopening the proposal for comments in light of a new tax on buybacks that goes into effect next year.

The SEC first proposed a rule in December 2021 that would require corporations to notify investors of buybacks within one business day, instead of quarterly, and to provide a more detailed explanation of their reasons for repurchasing stock.

Though the initial comment period on that proposal originally closed in April, it was reopened for 14 days in October due to a technical error that locked some people out of the commenting process.

It has now reopened a second time, this time for 30 days, in light of the August passage of the Inflation Reduction Act.

One provision of that law will levy a 1% tax on shares repurchased by U.S. based companies starting next year, generally applicable to repurchases totaling over $1 million.

The SEC asked the public Wednesday to focus their comments on the economic impacts of the new law.

Agency staff estimated that 2,300 of the 3,600 companies that conducted buybacks last year would have been subject to the tax, according to a memorandum released concurrently with the announced rule reopening.

The agency is asking commenters if companies will be less likely to conduct buybacks given the new tax and, if so, what spillover effects would fewer buybacks have on the agency's proposed rulemaking.

The staff said in its memo that data limitations make it difficult to determine how many companies would forgo stock buybacks in favor, for instance, of paying stockholders dividends once the tax goes into effect.

"It is difficult to analyze the effects discussed above because the excise tax on buybacks is only one factor affecting payout decisions," the staff said.

Buyback activity has risen steadily for four decades along with broader growth in the stock market. SEC data shows companies in 2019 repurchased $1 trillion in shares, a figure that fell to $670 billion in 2020 amid the coronavirus pandemic.

Share repurchases hit a record of $270.1 billion in the fourth quarter of 2021, with 325 companies reporting buybacks of at least $5 million during that quarter, according to data published by S&P Global.

Companies conduct stock buybacks for a number of reasons, including to offset dilution after new stock is issued, to enable stock-based employee compensation or because they feel it's a good use of excess cash.

But critics like Wall Street reform advocacy organization Better Markets worry that executives are using the buybacks to game certain financial metrics, such as earnings per share, in their favor.

The organization urged the SEC in an April statement to follow through on its promise to require enhanced disclosures on buybacks, calling the current requirements "weak" and "molasses-like."

Market participants have said the enhanced disclosures would be onerous on companies and not useful to investors, who could be subject to information overload.

SEC Commissioner Mark Uyeda criticized the 30-day comment period in a statement Wednesday, saying 45 days would be more appropriate given the upcoming holiday season.

"One might ask: what is the purpose of the comment period? Is it merely an item to be checked off to satisfy the lowest acceptable standard of process required by the Administrative Procedures Act?" he said. "Or is it a vital component of a discussion between an administrative agency and the public in order to better understand the effects of a proposed rule, especially under a changed factual scenario?"

A U.S. district judge ruled earlier this week that the SEC could count holidays toward the 30 days it is required to collect public input.

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29. [Horse-Racing Authority Given Too Much Power, 6th Circ. Told]

7 Dec 2022 (10:00 PM), Eric Heisig

The Sixth Circuit on Wednesday weighed a constitutional challenge to the regulatory power held by a private entity tasked with establishing certain horse-racing rules, as states and industry organizations urged a panel to find the law that created the entity takes too much power away from the Federal Trade Commission.

A three-judge panel pressed FTC attorney Courtney L. Dixon for several minutes on what they saw as differences between the FTC's relationship with the Horseracing Integrity and Safety Authority and the U.S. Securities and Exchange Commission's relationship with the Financial Industry Regulatory Authority.

"I mean, we don't have to keep talking if you don't want to acknowledge that distinction," Judge Jeffrey S. Sutton said. "But you have to explain why that isn't meaningful."

Dixon maintained that the FTC had more power over the horse-racing authority than Judge Sutton was stating.

"The commission in every circumstance is reviewing the authority's proposal, based on the requirements set out in the statute … and the commission absolutely gets to have an independent view of what those requirements, considerations and principles mean," Dixon said. "It doesn't have to take the authority's word for it."

The court is considering whether the Horseracing Integrity and Safety Act of 2020 unconstitutionally grants power to a private body by allowing the authority to draft rules on doping, medication and safety. Wednesday's oral arguments came in the wake of a Nov. 18 decision by the Fifth Circuit that declared the law unconstitutional.

State racing commissions must pay taxes and fees to the authority, a provision that three states — Louisiana, Oklahoma and West Virginia — and organizations challenging the law claim violates the anti-commandeering doctrine, which bars Congress from giving orders directly to states, by forcing them to bear the costs of federal regulations. They want the Sixth Circuit to overturn a Kentucky federal judge's ruling upholding the law.

They also say the FTC cannot rely on precedent upholding the constitutionality of the SEC's relationship with FINRA because the horse-racing authority is not "subordinate" to the FTC but actually oversees its rules.

The federal government and the authority maintain the FTC has oversight over the authority, including reviewing the substance of its rules, so it is the FTC, not the authority, that ultimately decides policy matters.

The government also told the Sixth Circuit that the statute reflects bipartisan support to have a nonprofit organization set standards and uniform health and safety guidelines for horse racing after a wave of deaths and injuries in the sport. It argues the statute was designed to appropriately limit the authority's discretion, with the FTC retaining authority to promulgate rules based on the authority's proposed standards. It denies that the law forces states to pay for federal regulation.

Attorney Matthew D. McGill, who argued on behalf of the challenging states and racing organizations, used his arguments to try to differentiate the horse-racing authority-FTC relationship from the one FINRA has with the SEC, something the Fifth Circuit did to come to its conclusion.

"What the Fifth Circuit found dispositive, and I think could be equally dispositive here, is that the SEC has unilateral authority to modify [FINRA's] regulations," McGill said. "And that does not exist here. All the FTC can do is make recommendations to modify a regulation."

He also differentiated it by saying that no board member or officer of the horse-racing authority is appointed by the federal government, nor does the government own stock.

Still, Pratik A. Shah, who represents the authority, argued that case law actually spells out exactly what agencies overseeing private authorities must do, putting to rest questions about the amount of power a federal agency has over a private regulatory body.

"There's a whole line of D.C. Circuit cases, but it explains that the agency actually has to exercise real independent review. It can't just sign off on the determination," Shah said. "It has to exercise its own discretion, make its own reasoned findings and second-guess that. And so we think all that applies here."

U.S. Circuit Judges Jeffrey S. Sutton, R. Guy Cole Jr. and Richard Allen Griffin sat on the panel for the Sixth Circuit.

The state of Oklahoma, the Oklahoma Horse Racing Commission and Tulsa County Public Facilities Authority, dba Fair Meadows Racing and Sports Bar, are represented by Zach West and Bryan Cleveland of the Office of the Oklahoma Attorney General.

The state of West Virginia and the West Virginia Racing Commission are represented by Lindsay S. See of the Office of the West Virginia Attorney General.

The state of Louisiana is represented by Elizabeth B. Murrill of the Louisiana Department of Justice.

Hanover Shoe Farms Inc. and the United States Trotting Association are represented by Matthew D. McGill and Lochlan F. Shelfer of Gibson Dunn & Crutcher LLP. Hanover Shoe Farms is also represented by Michael J. Gartland of the DelCotto Law Group PLLC.

Global Gaming RP LLC, dba Remington Park, is represented by Michael Burrage of Whitten Burrage and Jared C. Easterling of Green Law Firm PC.

The Oklahoma Quarter Horse Racing Association is represented by Joseph Bocock of Bocock Law PLLC.

Will Rogers Downs LLC is represented by Todd Hembree of Cherokee Nation Businesses.

The federal government defendants are represented by Mark B. Stern, Joseph F. Busa and Courtney L. Dixon of the U.S. Department of Justice's Civil Division.

The horse-racing authority defendants are represented by Pratik A. Shah and Lide E. Paterno of Akin Gump Strauss Hauer & Feld LLP, and John C. Roach of Ransdell Roach & Royse PLLC.

The case is State of Oklahoma et al. v. United States of America et al., case number 22-5487, in the U.S. Court of Appeals for the Sixth Circuit.

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30. 4th Circ. Mulls SEC's Rare Midtrial Loss In Insider Trading Suit

7 Dec 2022 (8:52 PM), Hayley Fowler

The U.S. Securities and Exchange Commission took its final stab Wednesday at reviving an insider trading case it claimed "checked all the boxes" before a federal judge suddenly cut the trial short in a stunning defeat for the agency, telling the Fourth Circuit during oral arguments the case should have been left for a jury to decide.

SEC in-house attorney David Lisitza argued there was enough circumstantial evidence showing mortgage broker Christopher Clark acted on material, nonpublic information about his brother-in-law's information technology advisory firm to merit moving forward with the trial, adding that the SEC did not take its decision to appeal lightly.

"We're very careful in our review of what appeal to take," Lisitza told the panel Wednesday. "And we just had no answer to why this strong case was taken away from the jury."

Clark and his brother-in-law, William Wright, were both sued by the SEC in December 2020 in a complaint alleging that Wright, the former corporate controller for CEB Inc., provided Clark and his son with material nonpublic information about CEB's $2.6 billion merger with Gartner, a global technology research and advisory company.

According to the SEC, Clark had traded CEB stock in the past and used the information to enter "highly speculative" out-of-the-money call options on CEB stock to cash in on the merger completed in April 2017. The scheme allegedly generated nearly $300,000 in illegal profits.

Wright agreed in October 2021 to resolve the SEC's claims without admitting or denying the allegations in a deal that included a $240,000 fine.

Clark, meanwhile, went to trial in December last year, which U.S. District Judge Claude M. Hilton ended in a near-unheard-of move without hearing any evidence from the defendant. In his ruling, the Virginia federal judge said the SEC had not put forth enough circumstantial evidence indicating Clark received and acted on insider information.

The Fourth Circuit dropped few hints Wednesday whether it agreed with that decision, though Circuit Judge Albert Diaz indicated the opposite at one point during arguments.

"We can all disagree as to the import and strength of the evidence," he said. "This case was dismissed at the Rule 50 stage. I mean it seems, it would seem clear that this was something for a jury to figure out."

The judge later said he didn't know what a jury would do with all the evidence, only that the question remained whether it should have been up to it to decide Clark's fate.

"I'm not making any judgments about that right now," he told Clark's counsel. "I just have some concerns about the evidence that apparently the district court seemed to not properly weigh, or frankly should have not been weighing but left it to a jury to decide."

Lisitza and opposing counsel, Mark Cummings of Sher Cummings & Ellis LLP, agreed the date on which the case turns is Dec. 9, 2016, when Clark allegedly began making trades on CEB.

Lisitza pointed to a series of emails between Wright and a close friend, CEB's former chief accounting officer Barron Anschutz, from early November 2016 indicating the pair were aware of the impending merger. The emails included discussions about a change of control at CEB and what that would mean for their valuable restricted stock options, he said.

Wright, who was considering looking for a new job, had also exchanged emails with recruiters in which he allegedly touted his experience at CEB helping close a merger, Lisitza said. He told the panel that circumstantial evidence shows Wright had knowledge of the merger prior to Dec. 9 and could have reasonably tipped his brother-in-law off about the deal.

But Circuit Judge A. Marvin Quattlebaum Jr. seemed skeptical that was enough.

"It seems like there's a big difference in knowing about specific offers and being in a company where, you know, things get talked about and there might be some potential transaction on the horizon," he told Lisitza.

Cummings, meanwhile, accused the SEC of throwing "wild allegations" at his client regarding Clark's history of trading CEB stock. He told the panel Clark "watches the market" and had a thesis on which he based his trades. At the time of the December 2016 CEB trades, Cummings said Clark was betting on the "Trump Bump" in which stock prices went up after former President Donald Trump was elected.

He argued there wasn't a shred of evidence indicating Wright knew about the merger prior to Clark making his trades, and Wright reportedly would have testified as much if the SEC had called him as a witness.

Cummings said the agency never put Wright on the stand at trial, who instead "hung out in the hallway for two days." Regardless, he argued the judge knew that Wright denied knowing about the merger until Dec. 15, 2020, when he was reportedly on a trip to London.

Judge G. Steven Agee later questioned Cummings about Clark's interview with the FBI, in which Clark initially claimed to have not disclosed any information to his son but eventually admitted that he did. The SEC had alleged Clark's son made $53,000 using that information.

"Isn't that change of story something a jury would be entitled to weigh in a credibility find?" Judge Agee asked.

Cummings said the district court had determined it wasn't, but the judge seemed skeptical.

"Well I understand that," Judge Agee said in response. "But that kind of goes back to the central question of what the jury gets to decide and what the judge gets to decide and when they get to decide."

Circuit Judges G. Steven Agee, Albert Diaz and A. Marvin Quattlebaum Jr. sat on the panel for the Fourth Circuit.

The SEC was represented in-house by David Lisitza.

Clark was represented by Mark D. Cummings of Sher Cummings & Ellis LLP.

The case is SEC v. Christopher Clark, case number 22-1157, in the U.S. Court of Appeals for the Fourth Circuit.

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Bond Buyer

31. Final defense bill includes new muni disclosure standards

7 Dec 2022 (5:27 PM), Caitlin Devitt

Congress unveiled a final version of the 2023 defense bill Tuesday night that includes, as feared by municipal market issuers, a closely watched and controversial financial disclosure mandate.

The mandate is slightly altered from the original version, which the House passed in July, in that it shifts rulemaking and enforcement to the Securities and Exchange Commission and away from the Municipal Securities Rulemaking Board.

That opens a path to more direct communication through Congressional oversight, said Emily Brock, federal liaison for the Government Finance Officers Association.

"We certainly didn't hope for this to happen, but this is a new opportunity to work with the SEC to help them better understand our financial reporting requirements and to have a sequence of events that allows for Congressional oversight," Brock said.

Muni issuer groups like the GFOA pushed hard against the disclosure standard provision, which would move municipal issuers and other financial entities toward a financial reporting standard like eXtensible Business Reporting Language, or XBRL. Issuers argue it's a costly unfunded mandate that fails to recognize the wide variety of governments that make up the market.

The House is expected to take up the 2023 National Defense Authorization Act as soon as today. The Senate could vote on it next week.

The disclosure provision requires that no later than two years after the bill's enactment, the SEC must issue rules to adopt the new data standards.

The provision assigns to the SEC the responsibility to "scale" the standards "to reduce any unjustified burden on smaller regulated entities" and "to minimize disruptive changes to the persons affected by those rules," which could include small issuers or other types of issuers, Brock said.

The provision also requires the SEC to "consult market participants in establishing data standards."

It also features expanded language that prohibits any new disclosure information requirements beyond what is already required.

Muni issuers have always been free of direct regulatory requirements on the presentation and delivery of their financial disclosure, though the SEC since 2009 has required private companies to use XBRL on their financial statements.

Shifting the data standards rulemaking and oversight away from the MSRB is a "key distinction," Brock said.

"With the SEC, we at least know there are administrative procedures that have to be followed, and we can stay in touch with Congressional delegates and they can communicate with the SEC," she said.

Negotiations over the bill were briefly hung up on whether it would include various non-defense related amendments, including Sen. Joe Manchin's permitting provision for energy infrastructure projects, which ultimately was not included in the final version.

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Accounting Today

32. Companies prepare for increased ESG disclosure

7 Dec 2022 (10:23 PM), Michael Cohn

Companies are getting ready to disclose more information about their efforts to control greenhouse gas emissions as the Securities and Exchange Commission gets set to unveil new rules for climate-related disclosures.

In March, the SEC proposed a new rule for climate disclosures that has been hotly debated and received thousands of comments and is likely to provoke lawsuits when it's eventually finalized. A survey released last week by Deloitte of 300 senior finance, accounting, legal and sustainability leaders found their organizations are preparing for the increased disclosures, whatever they finally turn out to be.

In response, 89% of the executives surveyed said they have enhanced internal goal-setting and accountability mechanisms, while 81% reported creating new roles and responsibilities to prepare for additional disclosure requirements. Technology has become a major focus when it comes to preparedness, with 99% of the respondents indicating they are somewhat likely or very likely to invest in more technology and tools in the next 12 months. Over half the executives surveyed (57%) reported having implemented a cross-functional ESG working group, a significant increase from 21% only a year ago. Another 42% of the respondents said they're taking steps to set up a cross-functional ESG working group.

"Companies are looking at and self-examining where they are today and where they need to go, specifically as it relates to greenhouse gas emissions," said Lee Ballin, managing director for sustainability and ESG services at Deloitte. "They're making sure that before they go out and set a goal or a target that they understand the impact that they're having in terms of emissions and that they have a plan that's embedded into their overall business strategy to address some of these ESG issues that they know are front and center in the investors and the regulators' minds, as well as other stakeholders. This is now becoming an enterprise-wide initiative."

Executives are anticipating business benefits to integrating sustainability into business strategy. More than half name talent attraction and retention (52%), increased efficiencies and ROI (52%), and building stronger stakeholder trust (51%) as potential business outcomes of enhanced ESG reporting.

While most companies are taking steps to improve their sustainability disclosures, there are still plenty of challenges. Sustainability data is a top concern, with 35% of executives citing ESG data quality and 25% citing access to ESG data as their greatest challenge. Additionally, executives continue to face hurdles when addressing Scope 3 greenhouse gas emissions disclosures, with just over a third (37%) currently prepared to disclose details.

"Sustainability reporting and disclosure is more than a 'check-the-box' compliance exercise — it is a business imperative," said Jon Raphael, national managing partner, sustainability, transformation and assurance at Deloitte & Touche, in a statement. "Sustainability, integrated with business strategy, is about unlocking value for a company and its stakeholders, as well as creating a sustainable future, where people and the planet prosper together."

Most of the executives surveyed (95%) are preparing for more disclosure requirements, including nearly three out of five that said they're already making extensive preparations.

"Stakeholders increasingly expect a company's business strategy to align with its climate and equity commitments," said Kristen Sullivan, U.S. sustainability and ESG services leader and global audit and assurance climate services leader at Deloitte & Touche, in a statement. "While companies are at various stages on their sustainability journey, they must drive accountability today for a sustainable tomorrow."

One of the main concerns for many companies is whether the SEC will require them to disclose information about the emissions they anticipate not only from their own operations, but also from their suppliers and customers.

"To put in place the systems and controls to deliver the quality information that the market is asking for is going to be an undertaking for most organizations, especially for those organizations that haven't done a Scope 1 or Scope 2 emissions inventory," said Ballin. "I would say that the urgency hasn't left the conversation despite the fact that the rule hasn't been finalized. The time to get going is now and to start thinking about the overall implications for your organization."

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InvestmentNews

33. Senate approves bill to streamline regulatory paperwork for index-linked annuities

7 Dec 2022 (1:00 AM), Mark Schoeff Jr.

The Senate approved legislation Tuesday that would streamline regulatory filing requirements for annuities tied to indexes, a move that supporters say would help consumers better understand the investments.

The Registration for Index Linked Annuities Act now heads to the House, which approved its own version of the bill earlier in the year. If the House passes the Senate version, the bill can head straight to President Biden's desk to be enacted into law.

Time is running out on the legislation. If Congress does not approve the bill before the end of the year, it must be reintroduced in the new congressional session that begins in January.

"With the Senate passage tonight, we urge the House to act expeditiously to pass the Senate bill," Paul Richman, chief government and political affairs officer for the Insured Retirement Institute, said in a statement Tuesday evening. "Consumer demand for RILAs continues to accelerate because they can bring balance to retirement portfolios by allowing participation in market growth while reducing exposure to market loss, helping savers reach retirement goals."

The bill would direct the Securities and Exchange Commission to develop a registration document specifically for registered indexed-linked annuities. Currently, RILAs use an SEC form designed for equities that backers say inundates investors with irrelevant information.

Supporters of the investments say the extensive paperwork discourages insurers from issuing RILAs and consumers from buying them.

"The [bill] will help consumers make informed and knowledgeable investment decisions when considering a registered index linked annuity," Paul Kangas, vice president for financial services at the American Council of Life Insurers, said in a statement. "It directs the SEC to design a new RILA specific form that ensures consumers receive the information they need. Moreover, by reducing unnecessary regulatory barriers that hinder product development, the bill will help bring new and innovative options for consumers preparing for retirement."

A RILA is a type of variable annuity tied to a stock market index that allows investors to limit their losses while also capping the upside return. Touted for use during volatile markets, RILAs racked up $10 billion in sales during the second quarter of 2021.

Supporters of the bill hope the House will consider it using a fast-track legislative process for measures that have strong bipartisan support. The Senate passed the bill through unanimous consent, its own fast-track approach.

The RILA measure is one of the pieces of legislation affecting financial advisers that is being considered during the lame-duck session. Congress might also consider a major retirement savings bill, known as SECURE 2.0, as part of an economic package later this month.

A provision that would have required investment advisers to implement anti-money-laundering programs was knocked out of a defense bill that is being voted on by the House this week.

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ThinkAdvisor

34. SEC to Propose New Regulation Best Execution

7 Dec 2022 (3:46 PM), Melanie Waddell

The Securities and Exchange Commission plans to consider a new best execution rule, Regulation Best Execution, for client trades.

According to the Dec. 14 open meeting notice, the new rule "would establish a best execution standard and require detailed policies and procedures for brokers, dealers, government securities brokers, government securities dealers, and municipal securities dealers and more robust policies and procedures for entities engaging in certain conflicted transactions with retail customers, as well as related review and documentation requirements."

SEC Chairman Gary Gensler noted the potential rulemaking in comments earlier this year, in which he noted upcoming rules aimed at overhauling the stock market. Gensler said he'd asked SEC staff to consider for the first time having the SEC define directly what it means for a broker to give its clients "best execution" to satisfy agency requirements.

Dan Gallagher, chief legal officer of Robinhood, said in July that "it would be nice" to have an SEC best execution rule.

Ron Rhoades, associate professor of finance at Western Kentucky University and director of its personal financial planning program, told ThinkAdvisor Wednesday in an email that if the Commission "truly desired to ensure best execution, they would outlaw payment for order flow.

"This would decrease bid-ask spreads significantly, but also result in the return of commissions," he explained. "Overall, consumers would be better off, as greater transparency in how broker-dealers are compensated, along with the elimination of the conflict of interest inherent when brokers receive payment for order flow, would result in greater competition and reduced transaction costs."

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35. Senate Passes RILA Annuity Bill

7 Dec 2022 (12:08 PM), Melanie Waddell

The full Senate late Tuesday passed S. 3198, the Registered Index-Linked Annuities Act, which directs the Securities and Exchange Commission to develop a registration form designed for RILA products within 18 months after enactment of the act.

The House Financial Services Committee approved companion legislation H.R. 4865, the Registration for Index-Linked Annuities Act, on July 28 by a unanimous vote.

The bill "will improve consumer access to innovative lifetime income solutions that help protect against the possibility of outliving savings during retirement," the Insured Retirement Institute said Tuesday in a statement. "The RILA Act will eliminate the most significant impediment now constraining insurers from issuing RILAs as well as consumers' use of RILAs."

In addition, the bill "would direct the SEC to promulgate a new form to replace the largely inapplicable forms annuity issuers currently are required to use when filing RILAs with the Commission," IRI said.

IRI has advocated for the legislation's passage.

"With the Senate passage tonight, we urge the House to act expeditiously to pass the Senate bill," Paul Richman, chief government and political affairs officer at IRI, said in the statement. "Consumer demand for RILAs continues to accelerate because they can bring balance to retirement portfolios by allowing participation in market growth while reducing exposure to market loss, helping savers reach retirement goals."

IRI maintains that the "current forms used to file RILAs are ones designed for use in connection with Initial Public Offerings or other 'catch-all' forms not germane to insurance products. These forms require the disclosure of financial information in line with GAAP, as well as other extensive information that is irrelevant for prospective annuity purchasers."

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Other Outlets

36. Cryptocurrency firms need to 'come into compliance' with existing rules, SEC Chair Gary Gensler says (CNBC)

7 Dec 2022 (7:57 PM), Chelsey Cox

Securities and Exchange Commission Chair Gary Gensler on Wednesday pushed back against criticism that the agency failed to enforce rules preventing malfeasance by cryptocurrency firms, such as the unlawful trading that led to the demise of crypto exchange giant FTX.

Gensler told Yahoo Finance in an interview that the SEC has brought more than 100 enforcement cases in the crypto space, directly challenging lawmakers' questions about the agency's oversight.

In November, Sen. Elizabeth Warren, D-Mass., called on the SEC to "suit up" in the wake of the FTX failure, arguing the agency has "fallen behind" the crypto industry. Members of the House Financial Services Committee also called on Gensler to answer questions about what he knew leading up to the FTX collapse.

"We're already suited up," Gensler told Yahoo Finance.

The SEC chief said cryptocurrency firms should be held liable for compliance with existing rules.

"You might think of them as the casinos wherein the investing public is looking for a better future," Gensler said. "And because most of these tokens are securities, that means that the ... casinos need to come into compliance with our time-tested laws."

"Their business model right now is offering the public, they say, an interest return in crypto ... and then possibly trading against their customers, trading ahead of their customers, lending that out," he said. "Anywhere else in finance, these conflicts are not allowed and they're separated out."

Former FTX CEO Sam Bankman-Fried's firm Alameda Research used billions of dollars in FTX customer assets for trading, a practice that Gensler said violates a federal statute. The company filed for bankruptcy Nov. 11, and Bankman-Fried stepped down as CEO, as the firm faced a liquidity crisis.

Bankman-Fried has denied committing fraud.

Lawmakers have observed that federal oversight of FTX was hampered because the company is headquartered in the Bahamas.

Gensler told Yahoo Finance that the SEC has successfully deterred other suspicious crypto firm activities. He cited charges against Poloniex and Coinbase for unauthorized operations as examples.

"We brought actions against crypto lending platforms including BlockFi, and we will continue to be a vigorous securities regulator, but I really do suggest to these intermediaries, these storefronts, these casinos, if you wish, to come into compliance, work with the SEC to get into compliance, disaggregate these businesses," he said.

Gensler said the SEC would take more enforcement actions if cryptocurrency exchanges will not comply, but he did not elaborate on what those would be.

"We can use some exemptive authority to tailor things ... but it's not to drop the basic protections: separating out these businesses into a separate exchange," he said.

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37. Tether investors are not seeing 'a whole lot of utility' amid crypto fallout: Reporter (Yahoo! Finance)

7 Dec 2022 (1:44 PM), N/A

Semafor Business & Finance Editor Liz Hoffman joins Yahoo Finance Live to discuss the state of tether and how it's faring amid the crypto market meltdown.

Video Transcript

DAVE BRIGGS: All right, today, our Jennifer Schonberger interviewed SEC chairman Gary Gensler about the crypto collapse. Here's what he had to say.

GARY GENSLER: There's about 10,000 of these crypto tokens. And then there is not just dozens, but maybe hundreds of service providers, broker dealers. They might call themselves exchanges. Some might call themselves other things. You might think of them as the casinos, where wherein the investing public is looking for a better future. And because most of these tokens are securities, that means that the storefronts, if you wish, or the casinos, need to come into compliance with their time tested laws.

DAVE BRIGGS: More from that interview later in the show, but in the weeks following the FTX collapse, the question has turned to when, not if, the next domino falls, and whom it might be, how widespread will the damage be. Is there any longer such thing as an actual stablecoin? Well, Liz Hoffman is a writer at semafor.com. She's been reporting on this story. Liz, good to see you. How stable is the stablecoin Tether?

LIZ HOFFMAN: So far, it's mostly held up. And we should explain the stablecoin, the idea is that it's tied to something. Its price is pegged to something else. Most of them are pegged to the US dollar, but there are some that are pegged to euros or gold. And the idea is that you give them your money, they give you a stablecoin, and when you want it back, you can get it back at exactly that $1 peg.

So these things should trade kind of like money market funds, right at $1, and if they start to, quote unquote, "break the buck," that's when things get [INAUDIBLE]. Tether has dipped under it a couple of times. It's regained its ground, for the most part, since the FTX collapse. But the real concern about Tether is the assets that it holds. But what did it do with customers' money once it got it, and how liquid is that cash? Could they get it back if they needed it? And everything is seizing up across the crypto ecosystem.

SEANA SMITH: Yeah, and Liz, that's a big question. I know you dug deep into this, just in terms of what this could potentially mean, how big of a risk this does mean, or this could be, for investors. So what did you find?

LIZ HOFFMAN: So Tether, the last sort of disclosure they made was in September. And they had about $69 billion of assets. The vast majority, 82% of which, was in things that look pretty liquid, things like treasuries, cash, some reverse repurchase agreements, but things that, if they are what they say they are, should mostly be fine.

The problem is that when you get redemptions, you have to sell the stuff that you can sell. And so over time, the less liquid parts of the balance sheet, what you're looking at there, the other investments, which appear to be mostly equity stakes in crypto startups, secured loans-- again, they're lending against tokens-- that stuff is much harder to sell.

And so if there's a lack of confidence, and you start to see real reserves come out of that company, people wanting their money back, they're going to have to sell the stuff they can sell, which means the stuff they can't start to make up a larger percent of what they own.

DAVE BRIGGS: And to that point, investors have pulled 4 billion out since late October. Why? And what's been the impact?

LIZ HOFFMAN: Well, in part, everyone is just freaked out, right? This was a-- the FTX collapse is just a real life existential moment for confidence in the crypto ecosystem. The other thing, though, is that there's a couple of reasons you might want to own Tether. Certainly, if you're just bearish on crypto and you like the space, but it's also sort of a token that you can use within crypto ecosystems. You get some trading benefits. Sort of, it's a pretty easy way to move around.

You might think about it, if you go to a video game-- video arcade and get a bunch of tokens, they're helpful to have. There's just a lot less of that happening right now, right? A lot of people have just been totally scared out of the crypto business or sitting on their hands. So there's not a whole lot of utility. There's not real reason to own Tether if you're not doing a lot of crypto trading.

And you're not getting really compensated for the risk of whatever else is on their balance sheet, whereas you can put your money in treasuries and get 4% these days. So it's really a push and a pull that people really got scared and driven out, but also if you're not playing in the arcade, there's not a whole lot of reason to own a bunch of tokens.

SEANA SMITH: Well, Liz, let's do a scenario here. What if it fails? Talk to us just about the ripple effect, how concerning that would then be for the entire crypto industry.

LIZ HOFFMAN: Thether is hugely popular. If you think about it like a stock, it's got a market cap of-- in the $60 billion range. Obviously, not quite as big as some others with Bitcoin and Ether, but it's big, and it's held in a lot of places, and it is the collateral for a lot of loans. It's a thread that, if you start to tug on it, could unravel very quickly. I should say, outflows have stabilized in the last couple of days. They have said very publicly that they are perfectly solvent, perfectly liquid, that they will be fine.

But I think if you look at FTX, I want to be a little careful because there's some underlying behavior at FTX that's problematic. When confidence comes out of these systems, it just comes out all at once, and you end up with what looks to most laypeople like a run on the bank, and it just happens incredibly fast.

SEANA SMITH: Liz, when you take a look, I guess, if people are interested in crypto, don't really know where to put their money, a little bit spooked about everything that's played out within that industry over the last several months, from your reporting, I guess, where would you identify the safest places to be at this point?

LIZ HOFFMAN: I try very hard not to give financial advice, particularly in crypto.

Look, Bitcoin has held its value better. I mean, we all remember a time a year ago, it was 50,000, 60,000. It's now around 16. And it was, I think, a little over 20 before FTX went under. But that seems to be-- people have, more or less, gotten their head around that there will be some, more or less, permanent value there. So that's held up pretty well. Ether has held somewhere between 1,000 and 1,500 for a while. So those seem to be the winners in all of this, but as we've seen, the stuff can just change so quickly.

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38. 'You need to properly segregate customer funds': SEC Chair Gensler suggests FTX may have violated securities laws (Yahoo! Finance)

7 Dec 2022 (2:12 PM), Jennifer Schonberger

Securities & Exchange Commission Chair Gary Gensler suggested Wednesday in an exclusive interview with Yahoo Finance Live failed crypto exchange FTX violated securities laws by using customer assets to trade at its affiliated hedge fund, Alameda Research.

"I can't speak to any one case or any one situation, but our securities laws say that you need to properly segregate customer funds," Gensler said.

"You also shouldn't be running a broker dealer or a hedge fund, and an exchange. The New York Stock Exchange doesn't also have a hedge fund on the side and trade against their customers."

Gensler said some crypto platforms have asked the SEC to continue the ability to lend, trade, and operate an exchange and a hedge fund under one company, something the agency won't allow, as is custom under traditional securities laws.

"We have said, no, you have to separate it out," Gensler said. "Some have come in and said: can we have a lighter touch regulation? We've said, no."

'The basic message that I have had is the same public message as private message," said Gensler. "Come into compliance. Your field will not last long outside of public policy norms."

FTX fallout

Lawmakers on both sides of the aisle have been pointing fingers at the SEC over the failure of FTX.

Democratic Senator Elizabeth Warren has called on the agency to "suit up" and said federal agencies should use their expansive authority to crack down hard on crypto fraud. The SEC and Department of Justice are reportedly investigating FTX for criminal and civil violations.

Gensler told Yahoo Finance: "We're already suited up."

When it comes to regulating crypto, Gensler wouldn't say whether the agency would write new tailored rules next year, despite the crypto meltdown seen this year. Data from Coinmarketcap shows the total value of crypto assets has declined to around $840 billion as of Wednesday afternoon, down from north of $2 trillion at the star of the year.

Gensler again emphasized the agency would enforce securities laws already in place, noting the SEC has taken 100 enforcement actions total against crypto firms — a few dozen of which have come under Gensler's leadership.

"We are enforcing [existing securities laws]. We have publicly been saying to these crypto intermediaries — they might call themselves crypto lenders or exchanges — these crypto intermediaries, in essence, the casinos, if I might say it again, to come into compliance with the law," he said.

Gensler told Yahoo Finance he has one goal when it comes to regulating crypto next year: making crypto exchanges and lending platforms come into compliance.

"They can do that appropriately, working with the SEC, or we can continue on a course with more enforcement actions, and I would have to say that the runway's getting shorter," he said.

Asked why it's taking so long for crypto exchanges to register with the SEC, Gensler deferred to the exchanges.

"It's really on them," said Gensler. "We've been clear. We can use some exemptive authority to tailor things, as you said earlier, but it's not to drop the basic protections of separating out these businesses into a separate exchange."

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39. Kim Kardashian, Floyd Mayweather crypto lawsuit dismissed (Fox Business)

7 Dec 2022 (1:00 AM), Tracy Wright

A federal judge dismissed a lawsuit against Kim Kardshian and Floyd Mayweather Jr. Wednesday over their alleged roles in a cryptocurrency scheme.

Kardashian, along with the boxing legend and retired basketball player Paul Pierce were just a few of the celebrities involved in the EthereumMax (EMAX) promotion.

"We are pleased with the court's well-reasoned ruling," Michael Rhodes, lead counsel to Kim Kardashian, told FOX Business.

The class-action suit filed in January claimed celebrity promoters made "false or misleading statements to investors about EthereumMax through social media advertisements and other promotional activities."

Attorneys who represent investors in the EMax case did not immediately respond to FOX Business' request for comment.

EMax co-founders were also included in the class-action complaint, which said EthereumMax was a "speculative digital token created by a mysterious group of cryptocurrency developers."

While the lawsuit was dismissed, U.S. District Judge Michael Fitzgerald said that the EMax investors could amend their suit and refile the proposed class action.

The "Keeping Up with the Kardashians" star still paid $1.26 million to the U.S. Securities and Exchange Commission in October for her failure to disclose she was paid $250,000 for a social media post about the EMax tokens.

"Are you guys into crypto????" the post on her Instagram story from June 2021 stated. "This is not financial advice but sharing what my friends just told me about the Ethereum Max token!

"A few minutes ago Ethereum Max burned 400 trillion tokens- literally 50% of their admin wallet giving back to the entire E-Max community."

Mayweather promoted the company during a boxing match with Logan Paul in 2021. Pierce took his EthereumMax promos to Twitter while airing out grievances with ESPN.

".@espn I don't need you. I got @ethereum_max I made more money with this crypto in the past month then [sic] I did with y'all in a year," Pierce tweeted.

Kardashian, who recently launched her own private equity firm, is not the first celebrity to be disciplined by the SEC.

In 2018, both Mayweather and music producer DJ Khaled were charged after allegedly failing to disclose how much they were each paid to promote investments in initial coin offerings.

Neither Mayweather nor Khaled confirmed nor refuted the charges but agreed to pay fines that totaled $767,500.

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40. [SEC chief Gary Gensler says crypto platforms need to 'come into compliance' or face the regulator's wrath] (Markets Insider)

7 Dec 2022 (9:40 PM), Morgan Chittum

US Securities and Exchange Commission (SEC) chairman Gary Gensler urged crypto platforms to "come into compliance" with the agency or face potential enforcement action.

"The runway is getting shorter," Gensler told Yahoo Finance in an interview on Wednesday.

The regulator has "enough authority" for a crackdown in the space, Gensler said, adding that the SEC is "already suited up."

In February, BlockFi agreed on a $100 million settlement with the SEC after facing penalties over its lending product. Crypto exchange Coinbase faced legal threats from the regulator for its lending offering as well, leading it to scrap the effort.

"We brought actions against crypto lending platforms including BlockFi, and we will continue to be a vigorous securities regulator, but I really do suggest to these intermediaries, these storefronts, these casinos, if you wish, to come into compliance, work with the SEC to get into compliance, disaggregate these businesses," Gensler said.

Gensler's comments come after the demise of FTX, the once-$32 billion crypto exchange started by Sam Bankman-Fried.

The 30-year-old founder was propping up his quant trading firm Alameda Research with FTX's native token, Coindesk reported in early November. In response, investors dumped their FTT holdings and tried to flee the platform all at once, causing a liquidity crunch for the exchange.

"The New York Stock Exchange doesn't also have a hedge fund on the side, and trade against their customers," Gensler said.

Bankman-Fried is facing a slew of other allegations against him, such as losing $8 billion of customer funds, but maintains that he did not intentionally commit fraud and has blamed the financial chaos on accounting mistakes.

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41. [Amid FTX fallout, SEC's Gensler once again asks for a bigger budget but doesn't say how he'd use it] (Fortune)

7 Dec 2022 (7:06 PM), Marco Quiroz-Gutierrez

Securities and Exchange Commission Chair Gary Gensler stuck to his time-tested talking points in a Wednesday interview with Yahoo Finance even as criticism mounts for not doing anything to prevent the implosion of crypto exchange FTX.

Gensler, who's previously called crypto "the Wild West" and launched several enforcement actions against the sector, once again called on crypto companies operating in the country to "come into compliance" with U.S. securities laws or face the consequences.

"The runway is getting shorter," Gensler told Yahoo Finance.

The SEC and the Commodity Futures Trading Commission have been jostling for control of crypto regulations for several years. A bill proposed by Sens. Kirsten Gillibrand (D-N.Y.) and Cynthia Lummis (R-Wyo.) earlier this year would give the CFTC more oversight, but Sen. Elizabeth Warren (D-Mass.) is working on a separate bill that instead would give more authority to the SEC, which has been tougher on crypto, according to Semafor.

Gensler reiterated in the Yahoo Finance interview that his agency would benefit from having more resources and more "extraterritorial reach overseas," without elaborating on any specific enforcement methods.

The SEC chair refused to speak specifically about FTX and disgraced former CEO Sam Bankman-Fried, and would not say whether FTX had violated U.S. securities laws. Still, Gensler acknowledged that U.S. law requires companies to properly segregate funds.

"The New York Stock Exchange doesn't also have a hedge fund on the side, and trade against their customers," he added.

Gensler has made headlines with a handful of high-profile enforcement actions —what critics have called "regulation by enforcement"—that have done little to prevent wide-scale fraud or the misuse of customer funds, both of which FTX stands accused, or Terra's $60 billion implosion.

Despite the criticism, Gensler told CNBC last month that "building the evidence, building the facts, often takes time." And in the Yahoo Finance interview, Gensler said he was happy with some of his agency's enforcement actions, including those against BlockFi and Coinbase in the last couple of years.

As the contagion linked with FTX's collapse last month continues to spread, notable business leaders and politicians have continued to voice concerns over the sector.

In a Tuesday interview with CNBC, JPMorgan CEO Jamie Dimon compared cryptocurrencies to "pet rocks," meanwhile in Congress, Warren and Sen. Dick

Durbin (D-Ill.) have demanded FTX send over documents, including copies of balance sheets for its subsidiaries, according to CNN.

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42. Biden warned on 'heavy-handed' ESG policies hitting companies, families (FOX News)

7 Dec 2022 (4:04 PM), Brianna Herlihy

President Biden's push to impose environmental, social and governance standards (ESG) on companies is imposing significant costs on companies and hurting families, Sen. John Thune warned Biden in a letter on Wednesday.

"While businesses may elect to pursue their own ESG agendas as part of a free-market society, the heavy-handed imposition from the federal government will have (and in some cases, already has had) negative real-world impacts on our economy and American families, especially by deepening the ongoing energy and inflation crises," wrote Thune, R-S.D., in a letter reviewed exclusively by Fox News Digital.

"These efforts, though sold by administration officials as steps necessary to mitigate climate risks, are solely an attempt to strong-arm financial institutions and other firms into choking off capital to industries that are foundational to our nation's economy, yet are continually villainized by the far left," he wrote.

Thune said one example of overreach is the Securities and Exchange Commission's proposed climate-disclosure rule that would not only require registrants to disclose information about their own greenhouse gas emissions, but, in many cases, report indirect emissions "from upstream and downstream activities (i.e., their suppliers and customers)" in their value chain – known as scope 3 emissions.

Thune said that rule would, "almost certainly reduce or potentially even eliminate businesses' access to the resources they need to operate, as it would discourage firms from investing in or extending capital to them."

"Equally alarming," Thune said, is the recently proposed Federal Supplier Climate Risks and Resilience Rule that would require certain federal contractors to publicly disclose not only their greenhouse gas emissions, but also their scope 3 emissions, compounding the burden imposed by the SEC.

"Ultimately, private companies would be disincentivized to apply for these federal contracts altogether, which would increase project costs for the federal government and harm taxpayers," Thune wrote.

Thune highlighted several other examples of how ESG priorities have infected

U.S. financial regulators.

Thune said the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Federal Reserve have all published draft principles for climate-related financial risk management for large banks. The Department of Labor just finalized a rule that would require pension fiduciaries to consider climate change and ESG factors in making investment decisions, regardless of their financial relevance.

"And last, but certainly not least, the National Credit Union Administration published a since-rescinded strategic plan that seemed to recommend credit unions need to alter their field of membership and loan offerings in farming communities," Thune said.

Thune warned Biden that while his ESG push is generally aimed at big banks on Wall Street, the president needs to recognize the "trickledown effect" those policies have on local community banks and credit unions which are "feeling the pressure from Washington" to comply.

Thune says that those community financial entities are worried about how the Biden administration's environmental agenda "could impede their ability to lend to their clients and foster the growth necessary to steer our economy away from a recession."

"And in rural communities, community banks and credit unions are acutely wary of how your administration's overreach could harm their ability to lend to their agriculture clients," Thune wrote.

"It would be prudent for your administration to actually take the time to evaluate the costs its actions are directly and indirectly imposing on American businesses and families," Thune said.

"As our nation continues to grapple with record-high inflation, administrative actions that increase prices should be the last thing on your agenda," he said.

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43. GOP reps warn ESG efforts could violate antitrust laws, demand answers from key players (Fox Business)

7 Dec 2022 (1:00 AM), Ronn Blitzer

Several Republican members of the House Judiciary Committee are warning that corporate environmental, social, and governance (ESG) efforts may run afoul of federal antitrust laws, if there is a concerted effort by different companies to advance certain goals.

Ranking member Jim Jordan, R-Ohio, and Reps. Dan Bishop, R-N.C., Matt Gaetz,R-Fla., Scott Fitzgerald, R-Wis., Tom McClintock, R-Calif.,and Cliff Bentz, R-Ore., expressed their concerns in a letter to two members of the steering committee for Climate Action 100+, a group that works to get corporations to take action against climate change.

"Woke corporations are collectively adopting and imposing progressive policy goals that American consumers do not want or do not need," the letter said. "An individual company's use of corporate resources for progressive aims might violate fiduciary duties or other laws, harming its viability and alienating consumers. But when companies agree to work together to punish disfavored views or industries, or to otherwise advance environmental, social, and governance (ESG) goals, this coordinated behavior may violate the antitrust laws and harm American consumers."

The letter likened Climate Action 100+ to a "cartel" that gets businesses to change policies and practices to meet its goals.

The letter was addressed to Mindy Lubber, CEO of Ceres, which works to get corporate leaders to take action related to the environment, and Simiso Nzima, and the Managing Investment Director for Global Equity at the California Public Employees' Retirement System.

Fox Business reached out to Ceres, CalPERS, and Climate Action 100+ for comment, but none immediately responded.

"Many domestic corporate interests increasingly march in unison in advancing progressive policy goals," the House members continued, noting that this may be contrary to the public's wishes and interests.

"At its core, ESG is merely partisan politics masquerading as responsible corporate governance," the Republicans said, noting that a central "policy centerpiece" of ESG is "stifling investments in oil and gas," while other goals could include gun control, abortion access, and "fake news dissemination."

"Corporate America's collusion in pursuit of ESG goals may violate federal or state antitrust laws," the lawmakers continued, arguing that "cooperation among competitors" is frowned upon regardless of the purpose.

"When enterprises like Climate Action 100+ or Ceres invite or facilitate collusion to achieve progressive policy goals, that activity can aid anticompetitive and unlawful agreements and behavior," they added.

The Republicans are requesting documents and communications related to subjects including markets and industries where Ceres and Climate Action 100+ try to advance ESG goals, and efforts "to obtain or solicit agreements, commitments, or other types of participation from any investors, members, or other companies[.]"

The letter follows the announcement from Reps. Bill Huizenga, R-Mich., and Andy Barr, R-Ky., of a new bill opposing the Securities and Exchange Commission's proposed new rule requiring public companies to provide extensive information on how their operations affect the climate.

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44. BlackRock CEO Larry Fink pushed to exit over ESG 'hypocrisy' (New York Post)

7 Dec 2022 (1:00 AM), Lydia Moynihan

A small activist fund fired a slingshot at goliath investment firm BlackRock, calling for the ouster of CEO Larry Fink for his "hypocrisy" in pushing a "woke" political agenda.

Bluebell Capital — a London-based firm with just $250 million in assets under management, compared to the roughly $8 trillion BlackRock oversees — accused Fink of not adhering to his espoused environmental, social and governance (ESG) principles.

"We see BlackRock endorsing a number of bad practices from a governance, social and environmental perspective which is not actually in tune with what they say," said Bluebell co-founder Giuseppe Bivona in an interview with CNBC on Wednesday.

"Let me say that when the price of coal was around $76 per ton, BlackRock was talking about essentially divesting," Bivona continued. "Now that the price of coal is $380 per ton, they are talking about responsible ownership. I think there is a high correlation between BlackRock's strategy on coal and the price of coal."

"In the past 18 months, Bluebell has waged a number of campaigns to promote their climate and governance agenda," a spokesperson for BlackRock told The Post. "BlackRock Investment Stewardship did not support their campaigns as we did not consider them to be in the best economic interests of our clients."

In an annual letter to shareholders earlier this year, Fink promoted what he called "stakeholder capitalism" — which takes into account the needs of employees, customers, the environment and even the government — and criticized those accusing BlackRock of pushing a political agenda.

"Stakeholder capitalism is not about politics. It is not a social or ideological agenda. It is not 'woke'," Fink wrote in his January letter.

In a Nov. 10 letter to BlackRock, Bluebell investors wrote it had concerns for the "reputational risk (including greenwashing risk) to which BlackRock under the leadership of Larry Fink have unreasonably exposed the company."

BlackRock insiders told The Post on Wednesday that Bluebell holds less than 0.01% in BlackRock. A source also pointed to BlackRock's performance: the stock is up 4,900% since the company's initial public offering in 1999. In comparison the S&P 500 is up roughly 365% during that same period of time.

Given Bluebell's size, it's unlikely the firm will be able to affect change on its own.

However, BlackRock is likely going to continue to be in the crosshairs. Republicans who regained the majority in the House are pushing to launch a series of investigation into companies embracing "woke" values and ESG when they assume power next year.

Earlier this month, Florida Gov. Ron DeSantis divested $2 billion in state pension funds from the firm. And in August, BlackRock faced nearly $1 billion in withdrawals from Republican state treasurers who grew tired of the financial giant's investment priorities.

The withdrawals came as 19 state attorneys general, led by Arizona's Mark Brnovich, wrote to the Securities and Exchange Commission asking the agency to look into BlackRock's ties to China and whether or not it was prioritizing its fiduciary responsibility over its investors.

The letter highlighted that the firm invests in and does business with Chinese companies that often flout environmental concerns even as BlackRock pushes for US companies to embrace net-zero carb emissions.

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45. Gensler Says SEC Is Fine Going After Crypto With Its Current Authority (CoinDesk)

7 Dec 2022 (1:00 AM), Jesse Hamilton

U.S. Securities and Exchange Commission Chairman Gary Gensler isn't waiting for new powers from Congress to enforce securities laws against crypto companies, though he said Wednesday it would be good to have more money and additional reach beyond U.S. borders.

Gensler, who declined to specifically talk about failed crypto exchange FTX and its former CEO, Sam Bankman-Fried, said in an interview on Yahoo Finance that the SEC has the basic disclosure and governance requirements in place to hold digital-assets firms accountable. The SEC chief also didn't directly address questions about whether his agency would push out tailored crypto rules next year, but he insisted that it doesn't need any.

“The rules are there,” he said. “The law firms know how to advise their clients to comply.”

As the fiery crash of FTX taught harsh lessons about the dangers of running a global platform without walls between customer funds and investment operations, Gensler underlined that crypto firms can’t do everything.

“Your field will not last long outside of public policy norms,” he said. “Some of these platforms have come in and said, ‘We want to continue running a commingled platform. We want to continue doing lending, trading, hedge fund functions, an exchange function, a custody function.’ We said, ‘No, you have to separate it out.’”

Gensler has expanded his crypto-enforcement team, though the agency hasn’t yet dropped a bomb on a major cryptocurrency platform. The court case over whether Ripple’s XRP is a security – and within reach of SEC authority – has been seen as the major lingering question holding the agency back. However, Gensler said Wednesday that a federal judge’s decision last month determining crypto startup LBRY violated securities laws by selling its native LBC tokens was a “very big win” for the SEC’s legal campaign.

So far, the SEC hasn’t directly gone after U.S. exchange Coinbase (COIN) for listing what the agency believes are securities without registering as a national securities exchange. Still, the SEC has – in another recent enforcement action – listed several tokens it considered unregistered securities that were traded on the company’s platform.

"If the SEC has the authority Mr. Gensler claims, why did he fail to uncover the largest crypto Ponzi scheme in US history?" Rep. Ritchie Torres (D-N.Y.), said in a letter this week to the Government Accountability Office requesting a review of the SEC's role with FTX. "One cannot have it both ways, asserting authority while avoiding accountability."

However, Torres, a member of the House Financial Services Committee who is on the Congressional Blockchain Caucus, was also among lawmakers who sent a letter to Gensler earlier this year expressing concerns about how SEC investigators were gathering information from crypto companies.

Whether the SEC wants new laws or not, Congress has made crypto a new priority this year, and lawmakers from both parties are expected to push for the first major crypto legislation in the next session. Most of the preliminary efforts have sought to raise the U.S. Commodity Futures Trading Commission into a prominent role in the oversight of crypto trading.

Gensler’s agency doesn’t need new crypto rules, he argued, adding that what would really help would be more resources and more powers over activity happening in other jurisdictions. The SEC already regulates $100 trillion markets – mainly in stocks, bonds and government securities – and no matter how much attention crypto is getting, he said Wednesday, it's a relatively small market.

"Worldwide, it's about $800-ish billion," he said. "We don't know the exact number in the U.S., but far smaller than the $800 billion."

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46. Congressman Calls for Investigation Into Gensler, SEC's Role in FTX Collapse (Decrypt)

7 Dec 2022 (1:00 AM), Sander Lutz

A Democratic congressman is calling for an independent investigation into the Security and Exchange Commission's failure to prevent the historic collapse of crypto exchange FTX.

In a strongly worded letter sent Tuesday, Representative Ritchie Torres (D-NY) called upon the Government Accountability Office (GAO) to conduct an independent review of the SEC's actions—or lack thereof—in the months leading up to FTX's implosion last month.

The letter specifically singled out SEC chair Gary Gensler for claiming exclusive regulatory dominion over crypto exchanges, while simultaneously failing to meaningfully regulate them.

"If the SEC has the authority Mr. Gensler claims, why did he fail to uncover the largest crypto Ponzi scheme in US history?" Torres wrote. "One cannot have it both ways, asserting authority while avoiding accountability."

The letter minced no words in claiming that Gensler is therefore "singularly responsible for the regulatory failures surrounding the collapse of FTX."

Torres went on to attack Gensler's character and motivations, criticizing his decision to investigate celebrities like Kim Kardashian instead of crypto exchanges like FTX.

In October, the SEC fined Kardashian $1.26 million for promoting EthereumMax, a cryptocurrency the agency determined to be an unregistered security. The day of the charge, the SEC rolled out a flashy video starring Gensler to promote awareness of the action—an uncommon practice in the typically bone-dry realm of securities regulation.

Today @SECGov, we charged Kim Kardashian for unlawfully touting a crypto security.

This case is a reminder that, when celebrities / influencers endorse investment opps, including crypto asset securities, it doesn't mean those investment products are right for all investors.

— Gary Gensler (@GaryGensler) October 3, 2022

"The operating principle of the SEC must be protection for the investing public, rather than publicity for the political appointee in charge," Torres wrote Tuesday.

The letter also made allusions to discord within the SEC's own ranks, accusing Gensler's policies of fomenting mutiny among his staff.

"Mr. Gensler's leadership has left the career staff at the SEC fundamentally demoralized to an extent rarely seen, with the SEC Inspector General reporting the highest attrition rate in a decade," Torres wrote.

One of Gensler's colleagues, SEC Commissioner Hester Peirce, previously told Decrypt that Gensler's approach is "not a good way of regulating," and that many people have rightfully "given up on us."

"To what extent has Mr. Gensler's demoralization of his own workforce crippled the Commission in the performance of its duty to protect investors?" Torres wrote. "The public deserves an answer."

While the SEC has yet to produce any fines or charges against FTX, the agency has been investigating the crypto exchange for some time. In the aftermath of FTX's implosion, though, the Commodity Futures Trading Commission (CFTC) and the Department of Justice have also launched investigations into the failed $32 billion behemoth.

The SEC may have similarly lost its monopoly over crypto regulation as a whole. A pending bipartisan Senate bill, yet to be voted on, would grant most authority over crypto regulation to the CFTC.

On Monday, Representative Torres introduced two bills in the House that would immediately enact crypto exchange regulations.

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47. Congressional Subpoena for SBF 'Definitely on the Table', Says Rep. Maxine Waters (Decrypt)

7 Dec 2022 (1:00 AM), Jason Nelson

Even after adopting a more assertive posture on Twitter, it did not appear that House Financial Services Committee chair Maxine Waters intended to subpoena FTX founder Sam Bankman-Fried to testify before Congress on December 13, 2022, according to a CNBC report.

In response to such reports, however, Rep. Waters posted to Twitter, "A subpoena is definitely on the table."

Lies are circulating @CNBC that I am not willing to subpoena @SBF_FTX. He has been requested to testify at the December 13th hearing. A subpoena is definitely on the table. Stay tuned.

— Maxine Waters (@RepMaxineWaters) December 8, 2022

Citing individuals with knowledge of a private meeting with SEC chair Gary Gensler earlier this week, CNBC reported that Congresswoman Waters told colleagues that she had no plans to compel the disgraced ex-CEO to come to Washington officially.

According to anonymous sources, Waters said she would prefer to convince Bankman-Fried to instead testify of his own free will rather than by subpoena. This would explain the almost friendly request on Twitter that the Representative sent Bankman-Fried on December 2.

.@SBF_FTX, we appreciate that you've been candid in your discussions about what happened at #FTX. Your willingness to talk to the public will help the company's customers, investors, and others. To that end, we would welcome your participation in our hearing on the 13th.

— Maxine Waters (@RepMaxineWaters) December 2, 2022

"Once I have finished learning and reviewing what happened, I would feel like it was my duty to appear before the committee and explain," Bankman-Fried responded, punting on the invitation. "I'm not sure that will happen by the 13th. But when it does, I will testify."

Watching the developments, Crypto Twitter wanted to know why Bankman-Fried remains free and not forced to testify.

Auntie Maxine Listen, why are you begging him to show up?

If he harmed millions, shouldn't you just subpoena him?

Like I'm seriously wondering why the back and forth?
pic.twitter.com/vUUvVlfyLM

— Cryptomom (@MsCryptomom1) December 5, 2022

"SBF is one of the greatest fraudsters in history," Binance CEO Changpeng "CZ" Zhao tweeted. "He is also a master manipulator when it comes to media and key opinion leaders."

4.2 SBF perpetuated a narrative painting me and other people as the "bad guys". It was critical in maintaining the fantasy that he was a "hero." SBF is one of the greatest fraudsters in history, he is also a master manipulator when it comes to media and key opinion leaders.

— CZ Binance (@cz_binance) December 6, 2022

On November 11, FTX filed for Chapter 11 bankruptcy protection, days after Zhao tweeted that Binance would not buy FTX and that the company was liquidating its entire position in FTT, FTX's native token.

After filing for bankruptcy, Bankman-Fried went on what some call an apology tour, giving interview after interview. In a series of phone calls with Journalist Tiffany Fong, Bankman-Fried said he had used dark money to donate to Republican candidates while publicly donating to Democratic candidates.

Considering Bankman-Fried donated to both parties, the former billionaire may be waiting for Republicans, who are seen as more favorable to business and right now crypto, to take control of the House and Committee on January 3, 2023, before testifying.

As of Rep. Waters' latest public statement, however, he may not have the option of waiting.

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48. Congressman calls SEC Chair Gensler "singularly responsible" for FTX collapse as the latter aims at crypto (FXStreet)

7 Dec 2022 (1:00 AM), Aaryamann Shrivastava

FTX's collapse was unprecedented. Retail and institutional investors took a hit along with FTX's creditors. However, according to a letter by Congressman Ritchie Torres, all of this could have been avoided had the Securities and Exchange Commission (SEC) and its Chairman Gary Gensler intervened earlier.

FTX collapse could have been prevented by the SEC

In a letter on Wednesday, Ritchie Torres of the Democratic Party asked the Government Accountability Office (GAO) to look into the conduct of the SEC in regard to FTX's downfall. According to Torres, the federal agency and its chair, Gensler, failed to save the investors despite claiming authority.

In an interview with Yahoo Finance on Wednesday, Gensler stated that the SEC had enough disclosure and governance authority to regulate crypto companies. The chairman went on to say that the agency would only need more money and additional reach beyond the United States to practice authority.

Thus despite claiming such power, as per Torres, Gensler should have avoided a fiasco as huge as FTX. In the letter to the GAO, Torres stated.

“If the SEC has the authority Mr. Gensler claims, why did he fail to uncover the largest crypto Ponzi scheme in US history. One cannot have it both ways, asserting authority while avoiding accountability.”

He further added that Gensler is single-handedly responsible for the regulatory failures pertaining to the bankrupt exchange FTX. He even commented on Gensler’s failure as a leader.

Gensler stirring up mutiny within the SEC

According to Torres, Gensler is not the fondest of a person in the SEC, as his performance as the Chairman has left the staff demoralized. The letter noted,

“Mr. Gensler’s leadership has left the career staff at the SEC fundamentally demoralized to an extent rarely seen, with the SEC Inspector General reporting the highest attrition rate in a decade.”

Regardless, SEC continues to approach regulations on the crypto space head-on, all the while fighting Ripple in a lawsuit.

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49. Judge: Celsius Must Refund $50M to Users (PYMNTS)

7 Dec 2022 (1:00 AM), N/A

A judge has ordered Celsius Network to return cryptocurrency in custody accounts to customers.

U.S. Bankruptcy Judge Martin Glenn told the bankrupt crypto lender that it must return those coins, which were worth $44 million in September, Bloomberg reported Wednesday (Dec. 7).

“I want this case to move forward,” Glenn said, per the report. “I want creditors to recover as much as they possibly can as soon as they possibly can.”

Glenn also ordered Celsius Network to return some coins that had been moved from interest-bearing accounts to custody accounts shortly before the firm’s bankruptcy filing. This order applies to the coins involved in transfers that were under $7,500 — a group that was worth about $11 million in September. The others remain with Celsius Network, according to the report.

Celsius Network still owes billions of dollars’ worth of coins to customers, the report said.

The moves came after Celsius advisors and stakeholders determined that coins in custody accounts belong to users, per the report.

Glenn has not yet decided the ownership of crypto that is in interest-bearing accounts at Celsius Network, according to the report.

PYMNTS reported Monday (Dec. 5) that Glenn will decide if crypto that was put into interest-bearing accounts before the firm's filing for Chapter 11 in July belongs to the depositors or Celsius.

Advisers to Celsius said the company's terms of service told customers they were signing over the ownership of coins placed in the accounts, while some creditors said the terms were ambiguous and had changed over time.

Celsius asked the judge for permission to sell the $18 million worth of crypto to keep paying its bills.

Celsius Network filed for Chapter 11 bankruptcy protection July 13, a month after it had frozen customer accounts.

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50. Pro-XRP Lawyer Says Gary Gensler Could Trigger Another 50% Crypto Market Crash (The Daily Hodl)

7 Dec 2022 (1:00 AM), N/A

Attorney and XRP supporter John Deaton thinks the actions of U.S. Securities and Exchange Commission (SEC) chair Gary Gensler could cause the crypto markets to crash by another 50%.

Deaton says on Twitter that he first argued six months ago that Gensler might sue a major crypto exchange.

"I believe it even more today because it could cause another 50% crash. Then incumbents take a larger share."

Deaton says Gensler has been coming after crypto for two years, pointing to the fact that the SEC nearly doubled the size of its Enforcement Division's Crypto Assets and Cyber Unit under his leadership.

Deaton claims the SEC is bankrupt crypto lending platform BlockFi's second-largest creditor, though a bankruptcy filing actually indicates the regulator is BlockFi's fourth-largest creditor. The SEC has a $30 million unsecured claim against the company.

Says Deaton,

"That fact alone speaks volumes regarding intent. Ask yourself what registration requirements were implemented with the $100 million BlockFi settlement? How did it improve industry practices?"

The attorney has played an active role in the ongoing SEC lawsuit against the San Francisco payments company Ripple. Deaton has filed an amicus brief on behalf of XRP supporters in opposition to the regulator's motion for summary judgment in that case.

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51. Robinhood Opens Waitlist for IRA Offering (Financial Advisor IQ)

7 Dec 2022 (1:00 AM), Alex Padalka

Zero-commission brokerage Robinhood is entering the individual retirement account game, rolling out a waitlist for what the firm calls "the first and only IRA with a Robinhood 1% match."

Robinhood Retirement, as the new offering is called, comes with no account minimums, zero commissions and the match, though the firm warns that "other fees may apply."

Customers can choose a traditional or Roth IRA, investing in stocks and exchange traded funds they can set up in a custom portfolio with the option to use in-app recommendations, according to the firm.

The waitlist opened Tuesday, with plans to open access on a rolling basis and full availability next month, Robinhood says.

The company adds that it's also giving early access to customers who refer a friend to the waitlist.

The announcement indicates that Robinhood is aiming specifically at gig economy workers, though the firm is touting the IRA offering as "an added tax benefit," even for those with an existing 401(k) plan.

"People are relying on themselves. They're taking on gig work, side hustles and building their own companies. Tools that can make it easier to save for retirement — such as automatic transfers from a paycheck or contribution matching — are often not available to the gig economy — which makes up as much as 40% of America's total workforce," Robinhood said, citing a September 2022 Pew Charitable Trust survey.

The survey also found that 54.5% of "nontraditional workers" worry that they'll run out of money in retirement. Robinhood's new offering comes in the wake of headwinds to the firm's traditional revenue stream.

Payments for order flow — which make up the bulk of Robinhood's revenue —

have been in the crosshairs of the Securities and Exchange Commission. While the commission is reportedly no longer planning to ban the practice outright, as previously hinted at by SEC chair Gary Gensler, new rules are likely to make it less profitable, sources told Bloomberg in September.

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52. Report: Short Sellers May Have Used FTX to Manipulate AMC Stock (The Street)

7 Dec 2022 (1:00 AM), Bernard Zambonin

An article by The Chainsaw, a Web3 and cryptocurrencies news site, alleges that short sellers possibly used crypto exchange FTX to manipulate the share price of AMC stock via FTX's AMC tokenized shares.

The report indicates that FTX had about 525,000 AMC crypto tokens, versus the exchange's official claims of having more than 400,000 million.

Short sellers could have been redeeming AMC tokens for actual shares, which would have allowed them to avoid paying the stock's high borrowing fees.

Was FTX Clearing the Way for Illicit Trading Tactics?

The Chainsaw reported that short-selling hedge funds were using Sam Bankman-Fried's crypto exchange FTX — which recently filed for bankruptcy — as a "back door" for shady trading practices.

This is because FTX had a feature that made it possible to trade synthetic shares and tokenized stocks — digital assets that mirror the price action of stocks.

According to FTX's terms, customers could redeem all tokenized stocks with FTX Switzerland for underlying shares, if desired. See FTX's tokenized stock generation process, according to Forbes, below:

According to The Chainsaw, there is evidence that, through a contract with Etherscan, about 525,000 AMC Entertainment (AMC) - Get Free Report tokens were listed on the FTX crypto exchange. That's inconsistent with official website statements that said there were 400 million AMC tokenized shares available for trading.

The tipping point for this suspicion came in a comment by Chartered Financial's Peter Hann.

"When you borrow shares to short, your broker has to claim they can locate. If some stupid crypto exchange says they have 400 million AMC shares, then maybe the broker claims they can easily find," he wrote.

Still, according to The Chainsaw, FTX claimed that its 400 million AMC digital tokens were backed by AMC shares held by custodian CM-Equity.

But the news site noted that FTX had severed ties with the escrow agent late last year, suggesting that during 2022 there were no AMC shares in CM-Equity's custody.

Raising further suspicion, FTX removed the white paper on AMC tokens from its website in late November.

How Were Short Sellers Allegedly Using FTX to Short AMC?

Short sellers who want to bet against AMC need to borrow shares of the stock to launch their short positions.

However, it's been hard to borrow AMC shares for some time now, given the high borrowing costs.

Currently, short sellers need to pay about 30% in annual fees to borrow AMC shares. In mid-November, AMC borrow fees even exceeded 100% annualized. See below:

There is a suspicion that short sellers have been redeeming AMC tokenized shares, which are supposed to be held by a custody agent, for real AMC shares.

This would have given short sellers a way to borrow AMC shares without having to pay the high borrowing fees.

What's Next?

For now, The Chainsaw's report raises many suspicions, but nothing has been concretely proven yet.

The next step would be to look for hard evidence that any brokerage firm used the FTX's AMC tokenized shares to short the stock. But even then, it's not clear whether any wrongdoing has technically occurred, thanks to regulatory confusion surrounding cryptocurrencies.

In September, SEC Chairman Gary Gensler spoke about his views on the regulation of cryptocurrency exchanges. According to Gensler, he visualizes that the functions of exchanges should be separated. For example, an exchange shouldn't act as both a broker and a custodian.

He also said that the Commodity Futures Trading Commission (CFTC) needs “greater authorities” to regulate crypto non-security tokens and related intermediaries.

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From: Persefoni
Sent: Thu, 1 Dec 2022 12:30:37 -0600
To: Gensler, Gary
Subject: ICYMI: A Starter Guide to the CSRD

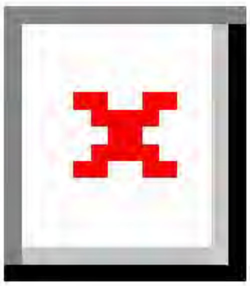
CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

A Starter Guide to the CSRD

Hi Gary,

The European Union's (EU) new sustainability legislation, the Corporate Sustainability Reporting Directive (CSRD), provides comprehensive requirements for ESG disclosures. CSRD replaces and aims to improve the Non-Financial Reporting Directive (NFRD). The landmark legislation will apply to almost 50,000 EU and multinational companies with operations in the EU. But what is the CSRD, and what sustainability reporting will it require? Learn more with our handy guide.

Read the guide

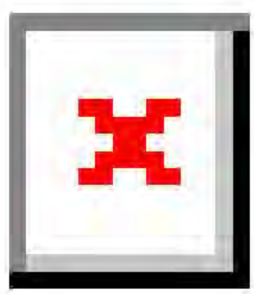


A COP27 Recap

Fresh off of attending COP27, Persfoni's Deputy General Counsel and Senior Vice President of Global Regulatory Climate Disclosure, Kristina Wyatt, shared her reflections on the event, which she saw as a progressive move in the right direction.

Read more

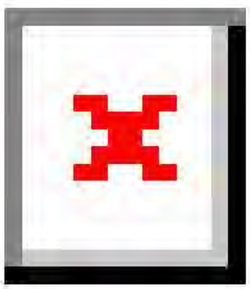
Key COP27 Takeaways for Corporate Directors



This year's COP may not have featured some of the prominent CEOs that attended last year's edition, but corporate directors should note some key outcomes. Kristina Wyatt shares her five key takeaways in this elucidatory piece for the National

Association of Corporate Directors.

Read key takeaways



New Insured Emissions Standard

The Partnership for Carbon Accounting Financials (PCAF) recently released new guidance on measuring and reporting insured or re-insured emissions. To understand what this new standard means for insured emissions, read our recently updated explainer blog post.

Learn more

Industry News Briefing

From COP27 to Cop15

The UN's biodiversity conference, Cop15, starts in Montreal in December. With biodiversity and climate change so inextricably linked, this will be an essential event for the future of nature and the climate.

Keep reading

The Science of Climate Change Damage is Still Unsettled

Although climate change is often cited as a cause for individual extreme weather events, proving the extent to which climate change causes harm is testing the limits of a new field known as attribution science.

Keep reading

EC Charges Goldman Sachs

The SEC announced that it charged Goldman Sachs for failing to implement and follow policies and procedures for some of its ESG Funds. The charge comes as regulators look to increase efforts in the fight against greenwashing.

Keep reading

Swiss Mandate Climate Reporting

Law-makers in Switzerland have made new rules requiring Swiss companies and financial institutions with over 500 employees to report climate information in line with the TCFD.

Keep reading

2415 W Broadway Rd #41022
Mesa AZ 85274-3042
USA

Walker, Gloria H

From: Steven Rothstein <srothstein@ceres.org>
Sent: Tuesday, November 29, 2022 8:45 AM
To: Gensler, Gary
Subject: Invitation to the Ceres 2022 Climate Risk Scorecard Webinar

Dear Gary,

On behalf of the Ceres Accelerator, I would like to invite you to join a discussion about the 2022 Ceres Climate Risk Scorecard on **Tuesday, December 6**. The Scorecard benchmarks U.S. federal financial regulator progress on climate-related financial risk, and demonstrates the rapidly changing risk management landscape, highlighting regulatory actions in the United States.

This webinar will review and highlight regulatory actions addressing climate-related financial risk, explore progress made in the six months since the 2022 Scorecard's publication, and discuss important next steps. The Ceres Accelerator will be joined by the **Office of the Comptroller of the Currency's Dr. Yue (Nina) Chen and the Federal Housing Finance Agency's Daniel Coates** to discuss the actions their agencies have taken to manage climate risk.

We hope you can join us for this event.

Register Here

Webinar: 2022 Climate Risk Scorecard: Assessing U.S. Financial Regulator Action

Time: **Tuesday, December 6, 2022, at 1 p.m. EST**

Walker, Gloria H

From: Persefoni <reply@persefoni.com>
Sent: Thursday, November 24, 2022 10:31 AM
To: Gensler, Gary
Subject: ICYMI: What is Net Zero?

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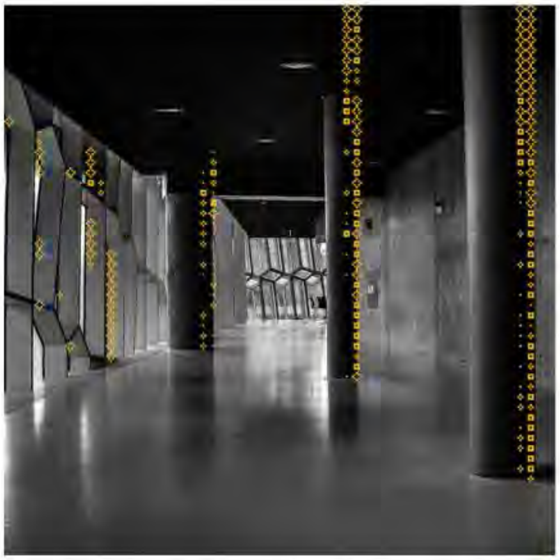
PERSEFONI

What is Net Zero?

Hi Gary,

Net zero has become a buzzword as companies set ambitious environmental goals. Put simply, it is the balance between the number of greenhouse gasses emitted and removed from the atmosphere. Reaching the net zero goal will require huge structural changes in companies' operations. So, why is it so important? Is it an achievable goal? How do we get there? Find the answers to these questions and more in our in-depth guide.

Read the guide



How the SEC's ESG Proposals Affect Investor Relations

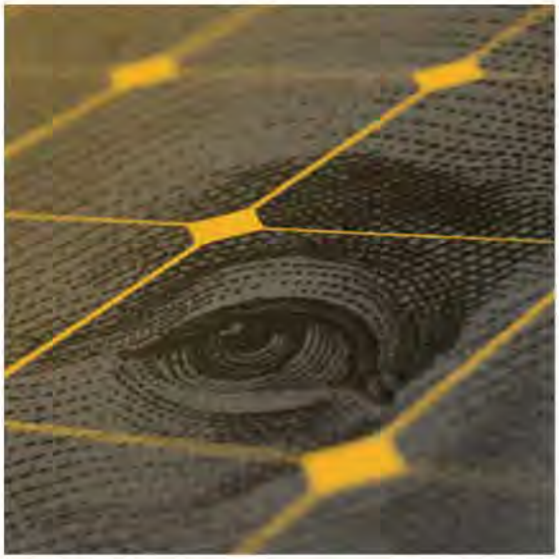
In this week's National Investor Relations Institute's Fall Update, Persefoni's Kristina Wyatt lays out the series of SEC proposals for ESG disclosure and what they mean for investor relations professionals.

Read more

10 Takeaways From Financial Executives International Event

Financial Executives International held its Corporate Financial Reporting Insights Conference in New York City this month. ESG and climate sessions dominated the agenda, as regulators, investors, and other stakeholders increasingly demand such information. Read our 10 key takeaways from the event.

Learn more



New Webinar Alert!

Join us on Thursday, **December 1st at 8 AM PST / 4 PM GMT**, for a joint webinar with Patch. We will discuss how private market participants can be a solution for climate change, where the industry is moving, and how to leverage the power of technology to make a positive impact.

Register now

Industry News Briefing

COP27 Ends With Deal on Climate Reparations

This year's UN climate talks in Egypt ended with a deal to compensate developing nations for climate change mitigation and adaptation efforts. However, many believe the event needed to go further.

Keep reading

Exxon Mobil Reveals a Deal to Decarbonize Oil and Gas

With support from the U.S. Inflation Reduction Act, Exxon Mobil put pen to paper on its first carbon capture and storage deal. Although the technology has its critics, it has the potential to decarbonize heavy GHG-emitting sectors like oil and gas.

Keep reading

COP27 Ends in Frustration

Despite an agreement on climate payments to the developing world, COP27 is considered a failure by some, as countries failed to reach an agreement on phasing out fossil fuels to address the root causes of global warming.

Keep reading

Is the Patagonia Model the Future for Business

Earlier this year, Patagonia founder Yvon Chouinard decided to flow the company's profits into climate action. Is this a new business model in the age of climate change, or is “for profit” here to stay?

Keep reading

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2415 W Broadway Rd #41022
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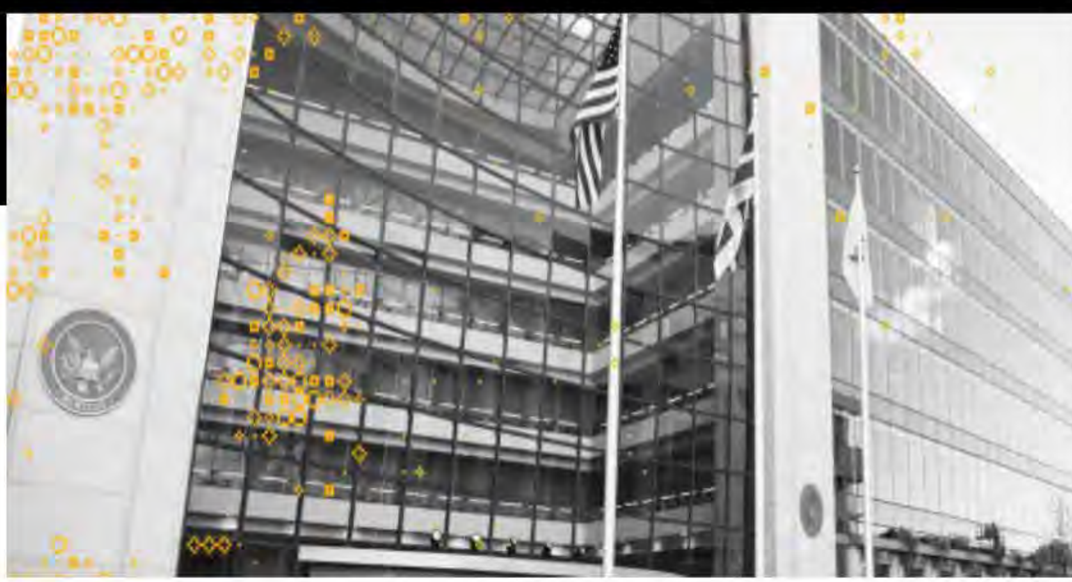
Walker, Gloria H

From: Persefoni <reply@persefoni.com>
Sent: Wednesday, October 12, 2022 2:43 PM
To: Gensler, Gary
Subject: Save the Date: Persefoni and Workiva Webinar on November 1st

PERSEFONI

The SEC's Climate Proposal in Action: The Realities of Integrating SEC and Climate Reporting



Hi Gary,

As we anxiously await a final ruling for the SEC's Climate Disclosure, many organizations are wanting to get ahead of the ruling and enhance their climate reporting now. Accounting and finance teams are beginning to engage with sustainability teams to learn how they can report carbon footprint emissions with the same rigor as revenue and expense metrics while adhering to the same internal control and disclosure standards.

In this webinar, join us for a conversation between Persefoni's Kristina Wyatt, Deputy General Counsel & SVP Global Regulatory Climate Disclosure, Mike Wallace, SVP, Strategic Market Engagement, and Workiva's Steve Soter, Senior Industry Principal where they'll discuss the realities of integrating SEC and Climate Reporting.

Join Persefoni and Workiva executives in our upcoming webinar to learn:

- Key implications of SEC Climate proposal for aligning your organization's financial and ESG reporting efforts
- Organizational and regulatory benefits of incorporating investor grade reporting for climate data
- How to get started with investor grade reporting achieving cohesion within financial and climate reporting

We look forward to seeing you on **Tuesday, November 1st** at **2 PM ET**!

Register Now

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USA

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Walker, Gloria H

From: Persefoni <reply@persefoni.com>
Sent: Thursday, October 13, 2022 11:03 AM
To: Gensler, Gary
Subject: ICYMI: CMAP 2.0 is here

PERSEFONI

Hi Gary,

Last week Persefoni hosted a webinar, "The State of the Climate Industry Panel Discussion," with leading experts from Burlington, Forrester, and Persefoni. The panel discussed the genesis of the climate tech industry, its current state, and where it's going. The webinar also introduced the next generation of Persefoni's Climate Management and Accounting Platform (CMAP), CMAP 2.0!

If you missed the webinar, don't worry. We have you covered with five of the key takeaways.

Persefoni content:

- Carbon offsets markets have received a lot of negative attention in recent months, with no international body verifying offsets are valid. However, offsets have seen an increase in popularity among companies wanting to meet their ambitious climate targets, especially for those difficult-to-decarbonize industries like oil and gas and aviation. To learn more about what carbon offsets are and how they can play an important role in a company's decarbonization plan, read our explainer blog post.

- Greenwashing is the act of inflating environmental or social performance through intentionally or unintentionally misinforming. Greenwashers either use misinterpreted or biased data to make claims that are not true as a means of marketing themselves as sustainable. However, recent regulations and legal challenges are ensuring greenwashers are punished. To understand what greenwashing is, the dangers of doing it, and how to avoid it, read our guide to greenwashing.

Other news we are following:

- The aviation sector is responsible for around 2.5% of yearly global emissions. To mitigate their impact, the International Civil Aviation Organisation (ICAO) this week pledged to support an "aspirational" net zero aviation goal by 2050. A move criticized by some environmental activists because it is solely aspirational and not legally binding.
- After recent concerns from members of the Glasgow Financial Alliance for Net Zero (GFANZ), the group looks set to review its Race to Zero oversight. The GFANZ group is in urgent talks to review the terms of oversight by the UN's Race to Zero campaign, which has come under fire from some high-profile members over restrictions to fossil fuel investments.
- New research released last week revealed that global warming made the extreme heat and droughts experienced this year more likely to occur. A global study from the World Weather Attribution initiative indicated that the summer of extreme droughts and heat experienced in 2022 is at least 20x more likely to happen than 100 years ago.

Walker, Gloria H

From: Persefoni <reply@persefoni.com>
Sent: Thursday, October 20, 2022 11:02 AM
To: Gensler, Gary
Subject: ICYMI: TCFD releases its progress report

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PERSEFONI

Hi Gary,

Last week, the Task Force on Climate-Related Financial Disclosures (TCFD) released its fifth annual status report. It showed a considerable increase in the number of companies reporting their climate risks and opportunities (1,400+, up 19% since 2019). However, it wasn't all sunshine and rainbows: the report also revealed that critical work remains to be done to increase adoption in other areas of the TCFD.

Read about the key takeaways from the TCFD status report and more in Kristina Wyatt's Full Disclosure Newsletter.

Persefoni content:

- Sustainable finance is the term for any financial activity considering Environmental, Social, and Governance (ESG) factors. As the amount of money flowing towards sustainable finance has dramatically increased in recent years, regulations have been developed to stop entities from using the term to "greenwash." To learn more about sustainable finance, why it is necessary, its different types, and the regulations developing around it, read our sustainable finance blog.

- The Glasgow Financial Alliance for Net Zero (GFANZ) is a voluntary group that aims to accelerate the shift to a net zero economy. GFANZ includes more than 450 of the world's largest financial institutions with more than $130 trillion in assets, all with the joint objective of reducing their emissions to net zero by 2050 to mitigate climate change. A recent update to GFANZ's membership criteria has come under fire from signatories, prompting some to leave. Read about what the GFANZ group is, what it does, and the recent updates … all in our GFANZ starter guide.

- Last month's Workiva Amplify event brought together Workiva partners and customers to discuss reporting, compliance, and how it intersects with ESG. If you missed this year's three-day event either in person or virtually, don't worry - we have you covered! Here are five key takeaways to get you up to speed.

Other news we are following:

- As a first, the U.S. Treasury Department is collecting data from the private insurance market to help identify climate-related risks. Treasury is attempting to quantify the potential disruption of private insurance in those parts of the country at particular risk of climate impacts. "This issue of climate-related financial risk in the insurance sector is here, it's real. I think there's no ignoring it. No denying it," said Graham Steele, Treasury's assistant secretary for financial institutions.
- According to a survey by PwC, ESG-related AUM will continue surging, materially outpacing overall asset and wealth management growth. In conducting the report, PwC spoke with global institutional investors and asset managers accounting for about half of the world's total AUM. The global professional services firm forecasts that by 2026, ESG AUM will reach ~22% of all assets, roughly $34 trillion.

- Wildfires in America's West are fueling extreme weather elsewhere in the country. For the first time, a new study has linked the climate change-driven forest fires of California to hail, extreme precipitation, and flash floods in Colorado, Wyoming, Oklahoma, and Nebraska.
- Climate-focused investor engagement initiative Climate Action 100+ (CA100+) released the results of their Net Zero Company Benchmark assessments, which assess the decarbonization goals, strategies, and disclosures of the world's highest GHG emitting companies. It found that although companies are making progress in setting net zero goals, they still lack the strategies to meet these new ambitious targets.

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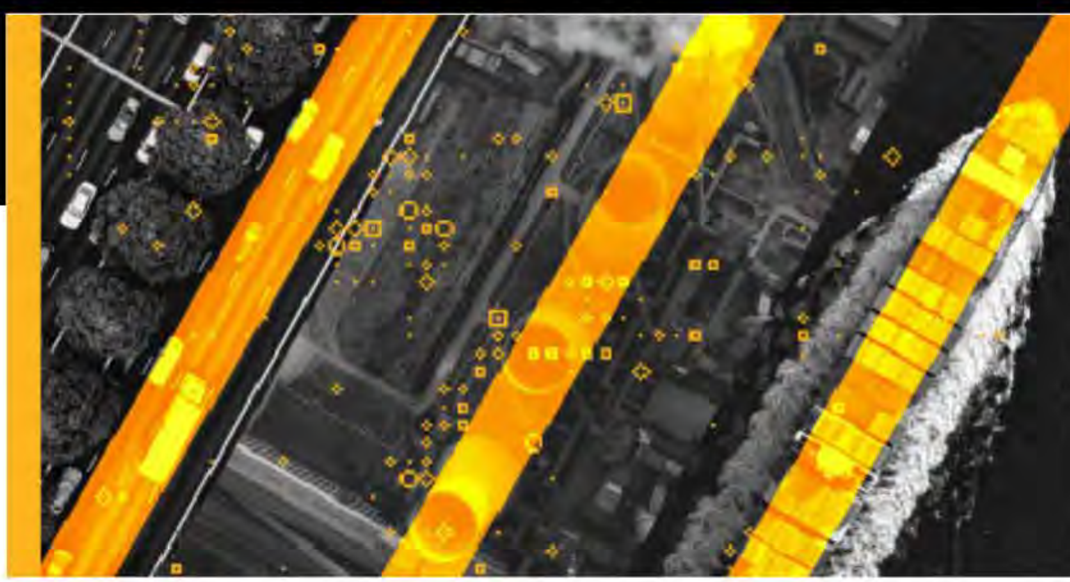
Walker, Gloria H

From: Persefoni <reply@persefoni.com>
Sent: Friday, October 21, 2022 11:53 AM
To: Gensler, Gary
Subject: Join us for a webinar panel on how to accelerate decarbonization planning

PERSEFONI

On the Race to Net Zero: How Technology Accelerates the Decarbonization Journey



Hi Gary,

Join us on Thursday, November 17th, at 12:30 PM ET, for a webinar panel discussion featuring Bain and Persefoni users “On the Race to Net Zero: How Technology

Accelerates the Decarbonization Journey."

Register Now

As temperatures increase and extreme weather patterns become the norm, the need to mitigate climate change and commit to reaching the Paris Agreement by 2050 is more timely than ever. However, organizations struggle to make the changes needed to drive decarbonization and become more sustainable. According to research from Bain and Company, only 2% of corporate sustainability programs achieve or exceed their aims.

Persefoni understands the challenges of creating and achieving the aims of a decarbonization plan. Technology can help address critical decarbonization challenges so organizations can tailor decarbonization plans to a net-zero target and ensure the plan is on track on an ongoing basis.

Our webinar will discuss the challenges, trends, and best practices for being successful on your decarbonization journey. We will also announce and showcase our latest product to help you on your way.

We look forward to seeing you on **Thursday, November 17th** at **12:30 PM ET**!

Register Now

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Walker, Gloria H

From:	Persefoni <reply@persefoni.com>
Sent:	Thursday, October 27, 2022 11:01 AM
To:	Gensler, Gary
Subject:	ICYMI: The Urgent Need For Global Climate Action And Adaptation

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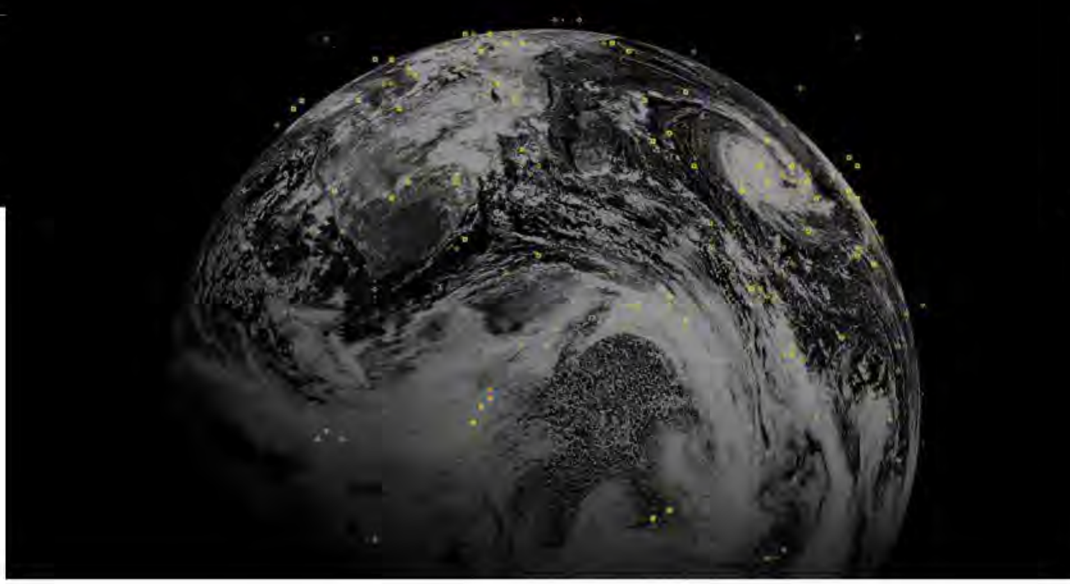
The Urgent Need For Global Climate Action And Adaptation



Hi Gary,

Financial institutions have an enormous role to play in funding the global transition to a low-carbon economy and the global efforts to adapt to the physical impacts of climate change. According to some reports, financed emissions account for more than 700 times a financial institution's direct emissions. Last week, Lloyds Banking Group became the first UK bank to announce that it would stop funding new oil and gas projects. The move comes just three years after then-governor of the Bank of England, Mark Carney, warned that firms ignoring the climate crisis would go bankrupt. Our **guide on financed emissions** breaks down what they are, why they're important, and the practical steps firms can take to manage them.

Read more

ESG Terms You Need to Know

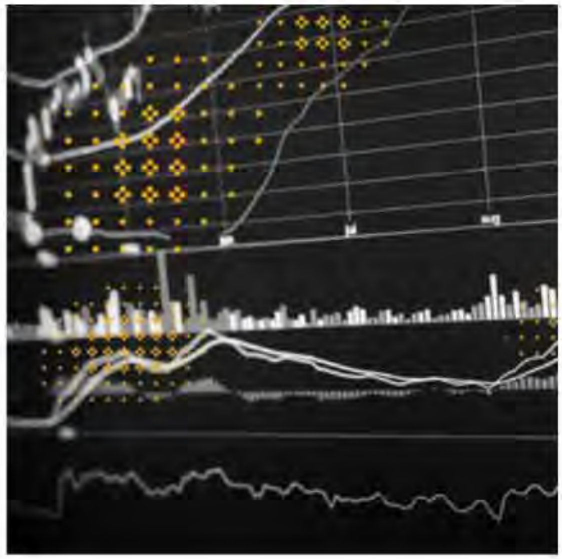
If you're new to sustainability and ESG, you've probably come across an array of unfamiliar terms such as "decarbonization" and "materiality", along with an alphabet soup of arcane acronyms such as "PCAF" and "VRF". To help shed some light, we've created a comprehensive glossary of the top ESG terms.

Learn more

A Beginner's Guide to PCAF

PCAF established the GHG accounting and reporting standard for the financial industry to improve its alignment with the goals of the Paris Agreement. Our guide to the PCAF reporting standard outlines what it is and how to start measuring financed emissions.

Learn more



The SEC's Climate Proposal in Action

In our upcoming webinar, Tuesday, November 1st at 2 PM ET, Persefoni and Workiva experts discuss the SEC Climate proposal and how best to prepare your investor-grade reporting.

Register now

Industry News Briefing

Scope 3 emissions will be included in the ISSB's new disclosure standard

In its October meeting, the International Sustainability Standards Board (ISSB) voted unanimously to include Scope 3 emissions in the new climate and sustainability-related disclosure standards its developing for companies. While Scope 3 emissions often account for the bulk of corporate emissions, they are some of the most challenging to manage and measure; requirements to disclose them have proven controversial in past proposals.

Continue reading

Climate change tops the list in AXA's Future Risk Report 2022

For the first time, climate risk ranked as the #1 risk across the world and became the main concern amongst the US public in AXA's ninth edition of its Future Risk Report. The report's findings are based on a survey of 4,500 risk experts from 58 countries and 20,000 people from 15 countries.

Continue reading

Unicef report highlights the urgent need for climate change adaptation

A new Unicef report found that even in a best-case climate mitigation scenario, the number of children who face four to five deadly heatwaves a year (25% of children globally) will quadruple to 2 billion by 2050 (99% of children globally) as a consequence of global warming. Heatwaves, which already kill nearly half a million people every year, are becoming much more frequent and severe. Children are more vulnerable and less able to adapt to prolonged and extreme heat than adults.

Continue reading

95% of "recyclable" plastic in the US isn't recycled

Almost all of the plastic used and discarded into recycling bins ends up in landfills, oceans, or worse, according to a new report, which found that only 5% of plastic waste generated by the US was recycled in 2021. More plastic is being produced as the economy grows, yet none of it meets the threshold for the "recyclable" label; a standard that requires a minimum recycling rate of 30%.

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Walker, Gloria H

From: Persefoni <reply@persefoni.com>
Sent: Thursday, November 3, 2022 11:01 AM
To: Gensler, Gary
Subject: ICYMI: Breaking Down Scope 3

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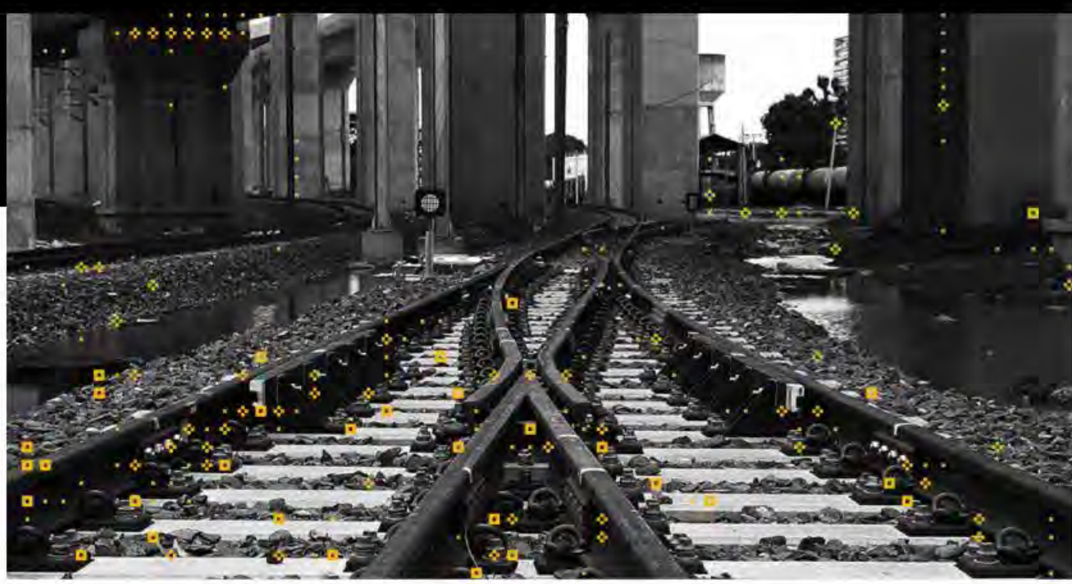
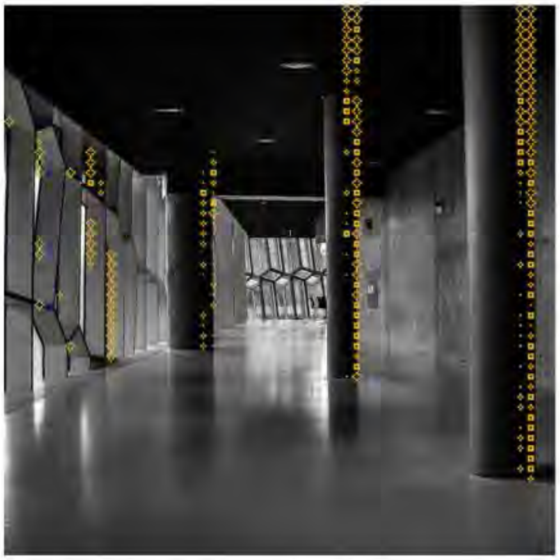
Breaking Down Scope 3



Hi Gary,

Scope 3 emissions are a common pain point for organizations collecting, calculating, and reporting their carbon footprint. Understanding how scope 3 is broken down across the 15 categories of the upstream and downstream value chain is essential to accurately calculating and reporting scope 3. Learn what upstream and downstream emissions are and how to measure and reduce them in our explainer guide.

Read the guide



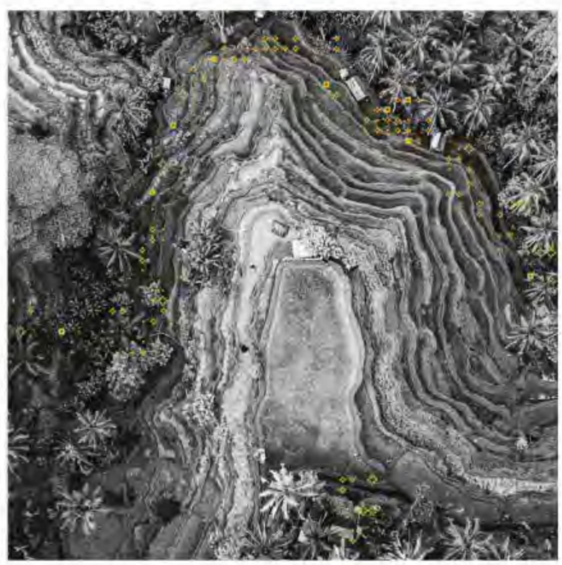
Kristina Wyatt's Full Disclosure

In this week's Full Disclosure, Kristina draws on her experiences at a host of recent sustainability events where the important role of innovation in enabling companies to mitigate their climate-related risks and unlock opportunities were highlighted.

Read more

Carbon Offset Programs Guide

Carbon offset programs allow organizations to offset their carbon footprint by investing in a project that removes or avoids carbon emissions. To learn about some of the carbon offset program marketplaces, we have compiled a list of some examples of offset markets, how they differ, and what they offer.



Learn more

New Webinar Alert!

In our upcoming webinar, we are joined by our partner Bain and customer Rodan + Fields to discuss how technology can help you tailor your decarbonization journey to the needs of your organization and operations. Register and join us on **Tuesday, November 17th at 3 pm ET**.

Register now

Industry News Briefing

UN Report Warns Temperatures Set to Rise

A new report from the UN revealed that under current conditions, temperatures are likely to rise by 2.9C by 2100. The study revealed that global emissions are likely to be 10% more than they were in 2010, far beyond the 43% emissions reduction by 2030 necessary to meet the Paris Agreement.

Continue reading

Climate Change top of Gen Z Voting Agenda

Gen Z is the generation that will be most affected by the impacts of climate change, which is why they support taking bold action to prevent it. They are using their votes in next week's mid-term elections to force the issue.

Continue reading

More Board Compensations Tied to ESG

A recent survey found that 73% of S&P 500 companies now tie their executive compensation to ESG performance. Yet, most executives still see ESG as being of medium importance.

Continue reading

New Brazilian President Good for Climate

New Brazilian president Luiz Inácio Lula da Silva, or simply Lula, was voted in last week. Lula says he wants to cut deforestation of the Amazon, a policy he looks to continue from his first tenure in 2003, when he slashed deforestation rates by 80%.

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Walker, Gloria H

From: Persefoni <reply@persefoni.com>
Sent: Monday, November 7, 2022 10:01 AM
To: Gensler, Gary
Subject: Reminder: On the Race to Net Zero: How Technology Accelerates the Decarbonization Journey Webinar

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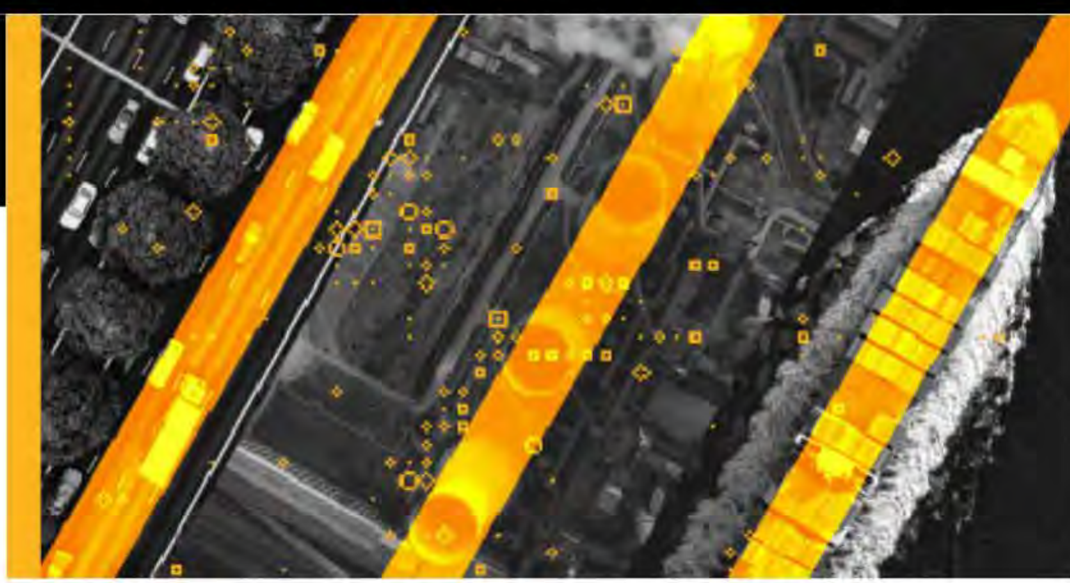
On the Race to Net Zero: How Technology Accelerates the Decarbonization Journey



Hi Gary,

This is a friendly reminder to register for our webinar: "On the Race to Net Zero: How

Technology Accelerates the Decarbonization Journey"

We look forward to seeing you on **Thursday, November 17th** at **3:00 PM ET**!

Register Now

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Walker, Gloria H

From: Persefoni <reply@persefoni.com>
Sent: Thursday, November 10, 2022 12:02 PM
To: Gensler, Gary
Subject: ICYMI: What to Expect at COP27

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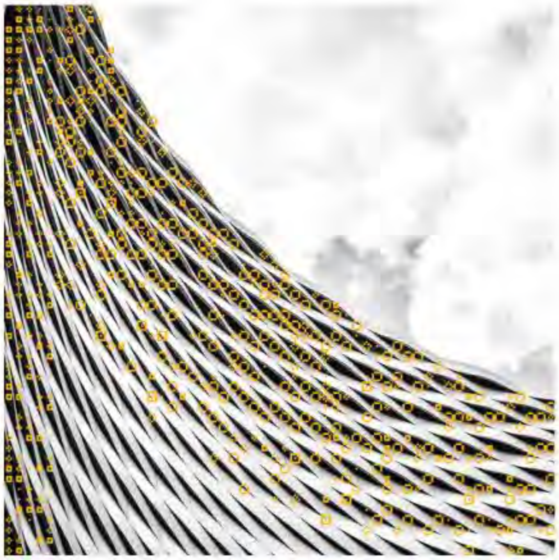
What to Expect at COP27

Hi Gary,

The 27th annual gathering of the world's most crucial climate gathering, the Conference of Parties (COP), is underway in Egypt. COP27 will look to build on the progress of Glasgow's COP26, with negotiations centered around measurable action, more ambitious commitments, and climate finance for developing nations. For five things to expect from this year's COP, read our attendee Kristina Wyatt's synopsis of the proceedings in this Fast Company article.

Read the guide

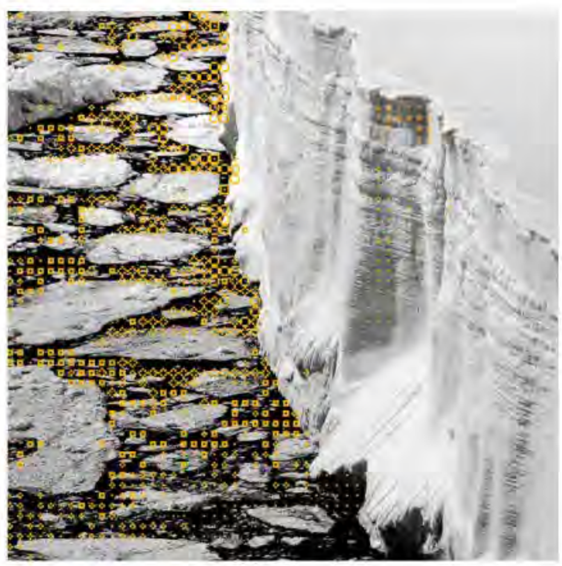


SEC Climate Proposal in Action Webinar Recap

Last week, Persefoni and Workiva experts discussed the SEC Climate proposal and how to best prepare your investor-grade reporting. If you missed the webinar, don't worry; we've got you covered with a recap.

Read more

How Nature-related Risks and Climate Intersect



The development of standards that help companies understand their nature-related risks, like the Taskforce for Nature-related Financial Disclosures (TNFD), has brought the issue to global attention. But what are nature-related risks? And how do they intersect with climate change?

Read more

How Technology Accelerates the Decarbonization Journey

A quick reminder to register for our upcoming webinar, where we discuss with Bain & Company and Rodan + Fields how organizations can tailor decarbonization plans to a net-zero target. Join us on **November 17th at 3 pm ET**.

Register now

Industry News Briefing

COP27: Kicks off in Egypt

The world's most important climate conference kicked off this week with a warning from UN secretary general António Guterres, who said, "We are on a highway to climate hell with our foot on the accelerator." Top of the gathering's agenda is matching climate action with commitments and delivering climate finance for the developing world.

Continue reading

US Works to Decarbonize the Developing World

US climate envoy John Kerry is working on a plan to develop a new framework for carbon credits to be sold to businesses. The proceeds from the carbon credits would go toward funding the green energy transition in developing countries.

Continue reading

Who Will Pay for Climate Change?

The big question hanging over COP 27 is the debate over who bears responsibility for climate change. The most vulnerable nations are typically the least responsible and are seeking more financial commitments from rich countries.

Continue reading

We Are Going To Miss the 1.5°C Climate Target

With global warming already sitting at 1.2°C and emissions still rising, the growing consensus is it will now be virtually impossible to reach the symbolic 1.5°C climate target from the Paris Agreement. It is now time to come to terms with this and set a new achievable ambition.

Continue reading

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Walker, Gloria H

From:	Steven Rothstein <srothstein@ceres.org>
Sent:	Monday, November 14, 2022 11:21 AM
To:	Gensler, Gary; Slavkin Corzo, Heather; Gerding, Erik; Fischer, Amanda; Morse, Mika; Jones, Renee; Chea, Keo; Wachter, Jessica; Barbero, Megan
Cc:	Jane Thostrup Jagd; Aron Cramer; David Wei; Maria Troya; jenny@wemeanbusinesscoalition.org; senter@wbcsd.org; Verena Radulovic; William Sisson; Dominic Gogol; Taylor@wbcsd.org; Jason Ye; merchan@wbcsd.org; Randi Mail; Jim Coburn; Thomas Riesenberg; Vladimir Proaño; Jordan Armstrong
Subject:	Ceres follow-up to our conversation
Attachments:	Ceres letter to SEC Scope 3 11-10-22_Final.pdf; SEC + Business Coalitions 10.28.22.pdf

Dear Chair Gensler, Heather, Amanda, Erik, Jessica, Renee, Mika, Megan, and Keo,

It was a pleasure meeting with you recently alongside representatives from the World Business Council for Sustainable Development (WBCSD), the We Mean Business Council, Business for Social Responsibility, and C2ES' Business Environmental Leadership Council. We value your time and input in these constructive conversations.

I'm writing to follow up on some of the topics we discussed. Regarding costs and benefits of climate-related disclosures for companies and investors, here you can access findings from am ERM study commissioned by Ceres and Persefoni which found that on average, corporate issuers are spending $533,000 annually on climate-related disclosure and that institutional investors are spending an average of $1,372,000 annually to collect, analyze, and report climate data.

To Erik's question about market cap values for priority issuers and investor AUM figures discussed in our meeting, we researched market cap data for 85 large issuers and AUM data for 313 investors. (When we scrubbed the data from our presentation, we found a few organizations that had to be recategorized, and several duplicates were deleted.) These 85 issuers represented $9.25 trillion of total market cap. The 313 investors had $62.69 trillion of assets under management. AUM data is up to date as of Dec. 31, 2021, and some of the data is more recent. Market cap figures are current.

We have also reattached the presentation we used and a separate letter regarding Scope 3

Please let us know if you have any questions or if there is any other information that would be helpful for us to share.

Best wishes,

Steven

Steven M. Rothstein
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The Accelerator Team is hiring! Click here to see our open positions

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From: Steven Rothstein <srothstein@ceres.org>
Sent: Thursday, November 17, 2022 12:50 AM
To: kelly@f-a-f.org
Cc: jwauchincloss@f-a-f.org; constantino@f-a-f.org; Gensler, Gary; Munter, Paul H; Morse, Mika; Thomas Riesenberg; Randi Mail; Vladimir Proaño; Jim Coburn
Subject: Your support would be valued
Attachments: Letter to FAF.11.12.2022.pdf

Lynette Kelly, Chair - Appointments Committee, Financial Accounting Foundation
John W. Auchincloss - Executive Director, Financial Accounting Foundation
Lou Costantino, Jr., Vice President, Government Affairs and External Relations
Gary Gensler, Chair, Securities and Exchange Commission
Paul Munter, Chief Accountant, Securities and Exchange Commission
Mika Morse, Climate Policy Counsel, Securities and Exchange Commission

Dear Ms. Kelly, Mr. Auchincloss, Mr. Costantino, Chair Gensler, Mr. Munter and Ms. Morse,

It is a pleasure to send the attached letter regarding the selection of a new chair of the Financial Accounting Foundation Board of Trustees. Please let us know if you have questions or would like more information.

Thank you for your consideration, it is appreciated.

Steven

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Walker, Gloria H

From: MediaAnalyst
Sent: Wednesday, October 12, 2022 4:43 AM
To: MediaAnalyst
Subject: 12 Oct 2022 SEC Daily News Clips

View in Browser

U.S. Securities and Exchange Commission

October 12, 2022
Daily News Clips

Mobile version and searchable archives available at https://sec.barbaricum.com
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Wall Street Journal

1. Federal Officials Trade Stock in Companies Their Agencies Oversee

11 Oct 2022 (1:50 PM), Rebecca Ballhaus, Brody Mullins, Chad Day, et al.

Thousands of officials across the government's executive branch reported owning or trading stocks that stood to rise or fall with decisions their agencies made, a Wall Street Journal investigation has found.

More than 2,600 officials at agencies from the Commerce Department to the Treasury Department, during both Republican and Democratic administrations, disclosed stock investments in companies while those same companies were lobbying their agencies for favorable policies. That amounts to more than one in five senior federal employees across 50 federal agencies reviewed by the Journal.

A top official at the Environmental Protection Agency reported purchases of oil and gas stocks. The Food and Drug Administration improperly let an official own dozens of food and drug stocks on its no-buy list. A Defense Department official bought stock in a defense company five times before it won new business from the Pentagon.

The Journal obtained and analyzed more than 31,000 financial-disclosure forms for about 12,000 senior career employees, political staff and presidential appointees. The review spans 2016 through 2021 and includes data on about 850,000 financial assets and more than 315,000 trades reported in stocks, bonds and funds by the officials, their spouses or dependent children.

The vast majority of the disclosure forms aren't available online or readily accessible. The review amounts to the most comprehensive analysis of investments held by executive-branch officials, who have wide but largely unseen influence over public policy.

AMONG THE JOURNAL'S FINDINGS:

• While the government was ramping up scrutiny of big technology companies, more than 1,800 federal officials reported owning or trading at least one of four major tech stocks: Meta Platforms Inc.'s Facebook, Alphabet Inc.'s Google, Apple Inc. and Amazon.com Inc.

• More than five dozen officials at five agencies, including the Federal Trade Commission and the Justice Department, reported trading stock in companies shortly before their departments announced enforcement actions, such as charges and settlements, against those companies.

• More than 200 senior EPA officials, nearly one in three, reported investments in companies that were lobbying the agency. EPA employees and their family members collectively owned between $400,000 and nearly $2 million in shares of oil and gas companies on average each year between 2016 and 2021.

• At the Defense Department, officials in the office of the secretary reported collectively owning between $1.2 million and $3.4 million of stock in aerospace and defense companies on average each year examined by the Journal. Some held stock in Chinese companies while the U.S. was considering blacklisting the companies.

• About 70 federal officials reported using riskier financial techniques such as short selling and options trading, with some individual trades valued at between $5 million and $25 million. In all, the forms revealed more than 90,000 trades of stocks during the six-year period reviewed.

• When financial holdings caused a conflict, the agencies sometimes simply waived the rules. In most instances identified by the Journal, ethics officials certified that the employees had complied with the rules, which have several exemptions that allow officials to hold stock that conflicts with their agency's work.

Federal agency officials, many of them unknown to the public, wield "immense power and influence over things that impact the day-to-day lives of everyday Americans, such as public health and food safety, diplomatic relations and regulating trade," said Don Fox, an ethics lawyer and former general counsel at the U.S. agency that oversees conflict-of-interest rules.

He said many of the examples in the Journal analysis "clearly violate the spirit behind the law, which is to maintain the public's confidence in the integrity of the government."

Some federal officials use investment advisers who direct their stock trading, but such trades still can create conflicts under the law. "The buck stops with the official," said Kathleen Clark, a law professor and former ethics lawyer for the Washington, D.C., government. "It's the official who could benefit or be harmed.... That can occur regardless of who made the trade."

Investing by federal agency officials has drawn far less public attention than that of lawmakers. Congress has long faced criticism for not prohibiting lawmakers from working on matters in which they have a financial interest. The rules were tightened in 2012 by the Stop Trading on Congressional Knowledge (STOCK) Act, passed following a series of Journal articles on congressional trading abuses.

Journal reporting last year on federal judges, revealing that more than 130 jurists heard cases in which they had a financial interest, led to a law passed this May requiring judges to promptly post online any stock trades they make.

This article launches a Journal series on the financial holdings of senior executive-branch employees and, in some instances, conflicts of interest hidden in their disclosure forms.

U.S. law prohibits federal officials from working on any matters that could affect their personal finances. Additional regulations adopted in 1992 direct federal employees to avoid even an appearance of a conflict of interest.

The 1978 Ethics in Government Act requires senior federal employees above a certain pay level to file annual financial disclosures listing their income, assets and loans. The financial figures are reported in broad dollar ranges.

Most officials' financial disclosures are public only upon request. The Journal obtained disclosure forms by filing written requests with each federal agency.

Some made it difficult to obtain the forms, and several agencies haven't turned over all of them. The Department of Homeland Security hasn't provided any financial records. (See an accompanying article on methodology.)

Under federal regulations, investments of $15,000 or less in individual stocks aren't considered potential conflicts, nor are holdings of $50,000 or less in mutual funds that focus on a specific industry. The law doesn't restrict investing in diversified funds.

Some federal officials, especially those at the most senior levels, sell all their individual stocks when they enter the government to avoid the appearance of a conflict.

The Office of Government Ethics, which oversees the conflict-of-interest rules across the executive branch, is "committed to transparency and citizen oversight of government," said a spokeswoman. She said the agency publishes financial disclosures of the most senior officials on its website, along with instructions for getting disclosures from other agencies.

At the EPA, an official named Michael Molina and his husband owned oil and gas stocks while Mr. Molina was serving as senior adviser to the deputy EPA administrator, according to agency records. Such companies stood to benefit from former President Donald Trump's pledge to promote energy production by rolling back environmental regulations and speeding up projects.

Mr. Molina's job gave him a front-row seat to deliberations about environmental regulations relating to energy. He "reviews and coordinates sensitive reports, documents and other materials," said his job description, provided by the EPA in response to a public-records request. He served as a "personal and confidential representative" of the EPA deputy administrator in communications with the White House and Congress, according to the job description.

In the month he started the job, May 2018, Mr. Molina reported purchases totaling between $16,002 and $65,000 of stock in Cheniere Energy Inc., a leading producer and exporter of liquefied natural gas. He reported adding Cheniere stock five additional times over the next year. At the time, senior EPA officials were encouraging the production of natural gas in the U.S.

The trades were made through a financial adviser in his husband's account, according to emails and disclosure forms reviewed by the Journal. Mr. Molina was required to enter the trades into the EPA's electronic-disclosure system within 30 days of receiving notice of the transactions, under the 2012 STOCK Act.

Officials are responsible for ensuring that their holdings don't conflict with their work, regardless of whether they use a financial adviser. The Journal's review of disclosures shows that many federal officials tell their financial advisers to avoid investing in certain industries or to shed specific stocks.

In an interview on Sept. 28, Mr. Molina indicated that he didn't know much about the energy trades. "I can say this on the record: I didn't even know what Cheniere was until 36 hours ago," he said.

In February 2019, Mr. Molina was promoted to EPA deputy chief of staff. He attended scores of meetings on environmental issues, reviewed matters for the then-head of the agency, Andrew Wheeler, and was sometimes asked his opinions in meetings, according to records reviewed by the Journal and people familiar with the matter.

In about 2½ years at the EPA, Mr. Molina reported more than 100 trades in energy and mining companies including Duke Energy Corp., NextEra Energy Inc. and BP PLC. About 20 of the transactions were for between $15,001 and $50,000 each, according to Mr. Molina's disclosures. Those trades also were made for his husband by his financial adviser.

In the month he was promoted, February 2019, his husband made several stock purchases through the adviser in Cheniere and Williams Cos., which builds and operates natural-gas pipelines.

Two months later, Mr. Trump said the EPA would propose new rules to help the gas industry.

After publication of this article, Mr. Molina said in a written statement: "Neither I nor my husband knew about or directed any of these trades. Our financial advisor had complete discretion to trade in the account, and these same trades were made on behalf of a 'pool' of several dozen clients—not for us individually."

Mr. Molina left the EPA in January 2021. An EPA spokeswoman said the agency's ethics office "counseled Mr. Molina on his ethics and financial disclosure obligations." EPA officials signed Mr. Molina's financial-disclosure statement in each year he worked at the agency, an indication they believed he was in compliance with the conflict-of-interest rules.

U.S. law leaves it to individual agencies to decide whether they need rules to beef up the federal conflict-of-interest law. The Federal Energy Regulatory Commission explicitly bars its officials from investing in natural gas, interstate oil pipeline, utility and other energy firms.

The EPA doesn't have additional agencywide rules. A spokeswoman for the EPA said its officials may invest in energy companies so long as they aren't working on policies that could affect their investments. Mr. Molina's boss told ethics officials that he had no influence over public policy matters.

Greg Zacharias was the chief scientist for the Defense Department's director of operational test and evaluation until last fall. He repeatedly bought stock in a defense contractor in the weeks before the Pentagon announced it would pay the company $1 billion to deliver more F-35 combat jets, while his division was overseeing testing of those planes.

Mr. Zacharias made five purchases of Lockheed Martin Corp. stock, collectively worth $20,700, in August and September 2021, according to figures he provided. On Sept. 24, 2021, the Defense Department said it was buying 16 F-35 jets from Lockheed for the Air Force and Marine Corps. Lockheed shares closed up 1.1% the next trading day. The stock made up a small part of Mr. Zacharias's portfolio.

Mr. Zacharias's office had been involved for years in overseeing testing of combat jets, and testing officials regularly met with the Pentagon's F-35 Joint Program Office and with Lockheed directly, according to former defense officials. Mr. Zacharias, who provided scientific and technical expertise on how to assess the effectiveness of weapons systems, didn't attend those meetings.

In an interview, Mr. Zacharias said he wasn't involved in decisions on contracting and had no inside knowledge ahead of the contract, beyond the public information that the Pentagon remained committed to the F-35 program. He acknowledged that his role could have allowed him to access information about specific weapons systems. "I could always walk downstairs and ask them how it's going. But that really wasn't an interest of mine," he said, adding that his focus was emerging technologies.

Mr. Zacharias said he wanted to buy stock in defense contractors, including Lockheed, because of their dominance of the defense market. He said he didn't pay much attention to the timing of trades, adding: "I'm just the pipe-smoking science guy."

The Lockheed investments were among more than 50 trades Mr. Zacharias reported in about a half-dozen defense contractors in 2020 and 2021, according to the Journal's analysis.

"I apologize that things don't look good on the buy side," Mr. Zacharias added. Of the trades in defense contractors, he said: "I just decided that would be a good investment at the time."

He said ethics officials didn't raise concerns about his trades in Lockheed or any of the other defense contractors he reported investments in, beyond periodically sending a letter reminding him not to take part in contract negotiations involving the companies. He said ethics rules could be "a little tighter."

A Pentagon spokeswoman said Mr. Zacharias "worked with his supervisor and ethics officials to implement appropriate disqualifications." She said the department requires supervisors to screen their employees' disclosures for conflicts in addition to the review conducted by ethics officials. Ethics officials certified that he complied with the law.

Some conflicts of interest stemmed from agencies' misunderstanding of their own rules.

The FDA prohibits employees, their spouses and their minor children from investing in companies that are "significantly regulated" by the agency. The FDA maintains an online list of the prohibited companies for officials to check.

An FDA official named Malcolm Bertoni disclosed that he and his wife owned stock in about 70 pharmaceutical, diagnostics, medical device and food companies regulated by the agency in 2018 and 2019, including drug giants Pfizer Inc. and Takeda Pharmaceutical Company Ltd. All were on the prohibited list.

Mr. Bertoni, a career executive, ran the FDA's planning office from 2008 to 2019, researching and analyzing agency programs. Most of the investments he reported were in the range of $1,001 to $15,000, but his 2019 disclosure showed he and his wife owned between $15,001 and $50,000 in each of Allergan PLC, Sanofi SA, Takeda and Zoetis Inc.

Mr. Bertoni's lawyer, Charles Borden, said Mr. Bertoni and his wife held these stocks despite the bans because they got bad advice from the FDA ethics office.

The stocks were in accounts managed by professionals who had discretion to trade without the knowledge of Mr. Bertoni or his wife, the attorney said. He said that years ago, Mr. Bertoni asked the ethics office how he should treat the accounts and was told they fell into an exception to the rules for mutual funds.

They did not. The ethics office discovered its error in a routine review of Mr. Bertoni's forms in early 2019, Mr. Borden said. "The FDA's Office of Ethics and Integrity took full responsibility for the inaccurate guidance given to Mr. Bertoni," the attorney said in an email.

After considering the tax and retirement-planning consequences of having to sell the stocks, and other personal factors, Mr. Bertoni chose to retire instead, his lawyer said.

An FDA spokesman said Mr. Bertoni was recused from matters involving the companies once he reported his family's holdings in them. The spokesman declined to comment on the events leading up to his departure.

"The FDA takes seriously its obligation to help ensure that decisions made, and actions taken, by the agency and its employees, are not, nor appear to be, tainted by any question of conflict of interest," said the spokesman.

When federal officials are found to have violated conflicts rules and are referred to criminal authorities, they often receive light punishment if any, according to records reviewed by the Journal.

Valerie Hardy-Mahoney, a lawyer who runs the National Labor Relations Board's Oakland, Calif.-based regional office, held Tesla Inc. shares as her office pursued complaints against the auto maker and Chief Executive Elon Musk and considered whether to file more.

Members of the labor relations board, appointed by the president, review decisions made by agency administrative courts. Ms. Hardy-Mahoney acts as a prosecutor in those courts. She is a career employee who joined the NLRB in the 1980s.

Ms. Hardy-Mahoney's office filed complaints against Tesla in 2017 and 2018. She reported holding Tesla shares worth $1,001 to $15,000 in 2019 while those cases were ongoing. The next year, her disclosure form shows, she owned Tesla shares valued at between $30,002 and

$100,000 in E*Trade accounts. She purchased two chunks of Tesla stock in August 2020, each valued at between $1,001 and $15,000, according to her disclosure form.

The NLRB ruled in March 2021 that Tesla had illegally fired an employee involved in union organizing and that Mr. Musk, in a tweet, had coerced employees by threatening them with the loss of stock options if they unionized. It ordered Tesla to reinstate the employee and Mr. Musk to delete the tweet. Tesla has disputed the findings and has appealed the decision to a federal appeals court.

Ms. Hardy-Mahoney's office has in other cases rejected charges against Tesla filed by employees, including allegations her office received in 2020, after she bought more Tesla stock, according to an NLRB case docket. An employee who worked at the Tesla Gigafactory alleged that the company interfered with workers' rights. Ms. Hardy-Mahoney's office dismissed the charge in January 2021.

Last November, an NLRB ethics official declined to certify that Ms. Hardy-Mahoney was in compliance with ethics laws and regulations, according to her disclosure form.

The NLRB's inspector general said in a report that his office had substantiated an allegation of violating federal law by participating in a matter in which an employee had a financial interest. An agency spokeswoman confirmed that the report involved Ms. Hardy-Mahoney.

The report said that the matter was referred to the local U.S. attorney's office, but that federal prosecutors declined to take it. The report said the subject of the report—Ms. Hardy-Mahoney—received additional training regarding financial conflicts of interest and the case was closed.

Ms. Hardy-Mahoney declined to comment. She recused herself from Tesla cases last year and now is in compliance with conflict-of-interest rules, the NLRB spokeswoman said.

At the Federal Reserve, an economist named Min Wei reported trades in stock of a marijuana company after the Fed sought clarity about whether banks could serve cannabis businesses. A Fed spokeswoman said the trades were made by Ms. Wei's husband.

In June 2018, Fed Chairman Jerome Powell said publicly that the issue put the central bank "in a very, very difficult position." Even though its mandate has nothing to do with marijuana, Mr. Powell said, he "just would love to see" a clear policy on the matter.

Because Mr. Powell didn't dismiss the idea, investors saw the comment as bullish for cannabis companies such as Tilray Brands Inc., a leading producer. Tilray went public the following month, and its stock skyrocketed.

In early September 2018, Ms. Wei's husband bought between $480,005 and $1.1 million of Tilray shares, according to her disclosure form and the Fed. The stock continued to surge.

It then became clear that neither the Fed nor the Treasury would take action; it would be up to Congress, with no quick fix in sight. In October, shares of cannabis companies began to fall.

Ms. Wei's husband sold his Tilray stake in five sales in early October. By then, the shares had nearly doubled, worth between $800,005 and $1.75 million, according to Ms. Wei's disclosure.

The Fed imposed new restrictions this year on investing by bank presidents, Fed board governors and senior staff after the Journal reported questionable trading by presidents of two Fed banks, who subsequently resigned. The new rules prohibit trading individual stocks and bonds and require that trades, even in mutual funds, be preapproved and prescheduled.

The new Fed rules for top people don't apply to Ms. Wei because she isn't senior enough. The trades were "permissible then and are permissible now," said the Fed spokeswoman.

Ms. Wei referred questions to the Fed. The spokeswoman said Ms. Wei had "no responsibility or involvement with policy decisions related to bank supervision or the provision of banking services." She said the Fed "did not assert any interest at the time in the Federal Reserve resolving the conflict between federal and state law in the area of cannabis companies and their access to banking services, but rather pointed out that the appropriate resolution of those issues should come from the Congress."

Ethics lawyers said trading such large amounts of an individual stock while the Fed is publicly addressing an issue creates an appearance problem, even if Ms. Wei's trades didn't violate conflicts rules.

Roughly seven dozen federal officials reported more than 500 financial transactions apiece over the six-year period analyzed by the Journal. Some traded a single stock frequently, while others reported hundreds or even thousands of trades across a broad array of stocks, bonds and funds.

In one instance, the Commodity Futures Trading Commission permitted short sales contrary to one of the CFTC's own rules.

The financial disclosure of Lihong McPhail, an economist at the CFTC, showed the most trading reported by any federal official in the Journal's review. Her husband made more than 9,500 trades in 2020—an average of about 38 each trading day, according to her disclosure form and the CFTC.

About one-third of those reported 2020 trades—2,994—involved shorting stocks, or betting on a fall in their price. They ranged from Amazon to Ford Motor Co. to Zoom Video Communications Inc. The CFTC said all the short sales were made by her husband.

Over the years, to safeguard the CFTC's integrity, Congress imposed tighter restrictions than at other agencies on employees' investing. In amending the Commodity Exchange Act, Congress also declared that any breach by a CFTC employee of an investment rule set by the commission could be punishable by up to a $500,000 fine and five years in prison. The CFTC's role doesn't include regulating stocks, but in 2002, the agency adopted a rule banning short selling by its employees and their families.

Nonetheless, a CFTC ethics official approved short selling by Ms. McPhail's husband, Joseph McPhail, a CFTC spokesman said, fearing that the commission "could possibly be sued by the employee if we said no." The spokesman said the ethics office believed the regulatory provision exceeded the commission's statutory authority.

Mr. McPhail referred questions to the CFTC. The CFTC spokesman said he didn't speak for the McPhails. Ms. McPhail didn't respond to requests for comment.

At the CFTC, "employees are required by statute and by regulations to adhere to strict ethical standards and to disclose personal investments to ensure that the work of the CFTC to oversee markets is free from any conflict of interest," said the agency spokesman. "In this instance, several years ago the employee sought advice regarding their spouse's investments and received approval from career ethics counsel."

Mr. McPhail was a senior policy analyst at the Federal Deposit Insurance Corp. until September 2021. In a written statement, that agency said: "The FDIC expects our employees, as public servants, to devote their time and efforts to our mission to maintain stability and public confidence in the nation's banking system."

The Defense Department was among the federal agencies with the most officials who invested in Chinese stocks, even as the Pentagon in recent years has shifted its focus to countering China.

Across the federal government, more than 400 officials owned or traded Chinese company stocks, including officials at the State Department and White House, the Journal found. Their investments amounted to between $1.9 million and $6.6 million on average a year.

Reed Werner, while serving as deputy assistant secretary of defense for south and southeast Asia, in December 2020 reported a purchase of between $15,001 and $50,000 of stock in Alibaba Group Holding Ltd.

At the time, discussions were under way at the Pentagon over whether to add the Chinese e-commerce giant to a list of companies in which Americans were barred from investing because of their alleged ties to the Chinese government.

Defense and State officials pushed to add the company to the blacklist, while the Treasury feared this would have wide capital-markets ramifications. Mr. Werner had been involved over a period of months in some discussions about what companies to add to the blacklist, former defense officials said.

Nearly two weeks after the Alibaba purchase, the Treasury updated its list and didn't include Alibaba. The company's stock rose 4% that day.

Three days later, Mr. Werner's financial-disclosure form shows a sale of between $15,001 and $50,000 of Alibaba stock.

The sale came a day before a meeting where defense officials planned to press their case for adding Alibaba and two other companies to the blacklist. Then-Treasury Secretary Steven Mnuchin ultimately blocked the effort.

In an interview, Mr. Werner acknowledged he was involved in discussions about adding Alibaba to the list, saying he attended a meeting in late 2020 and was on an email chain about the matter. He said that he wasn't involved in blacklist discussions during the period the Alibaba trades were made, and that the trades resulted in a $1,556.51 gain. He declined to answer further questions.

The Pentagon spokeswoman said that the officials who formally compiled and approved the blacklist didn't own stock in affected companies, and that supervisors and ethics officials review reports for holdings that could conflict with an employee's duties. Ethics officials certified that Mr. Werner complied with the law.

At least 15 other defense officials in the office of the secretary reported that they or family members owned or traded Alibaba between 2016 and 2021, including Jack Wilmer, who served as senior cybersecurity adviser at the White House and then as the Pentagon's top cybersecurity official.

Between 2018 and 2020, Mr. Wilmer reported at least six trades, which he said totaled around $10,000, in the Chinese companies Alibaba, search-engine giant Baidu Inc. and China Petroleum & Chemical Corp.

Mr. Wilmer said that a money manager handles his trades and that he didn't direct any of those transactions. He said he wasn't involved in policy-making decisions that would have affected those stocks and said he didn't see a conflict between his job and investments. He left the government in July 2020, before Mr. Trump signed the executive order barring Americans from investing in certain Chinese companies.

Within federal agencies, ethics officials generally don't consider it their job to investigate whether employees are making stock trades based on information they glean from their government jobs. Ethics officials' ability to spot potential conflicts is limited because they usually don't know what employees are working on.

When ethics officials do see a potential violation, they can refer it to their agencies' inspectors general, who refer cases on to the Justice Department if they find evidence of wrongdoing.

A Journal review of inspector general reports showed that the offices rarely investigated financial conflicts. As more federal officials invest in the stock market, ethics officials say they have less time to look into possible wrongdoing. When findings have been referred to the Justice Department, prosecutors in most cases have declined to open an investigation.

One matter at the Securities and Exchange Commission involved an official who failed to report or clear his and his spouse's financial holdings and trades for at least seven years. The trades included stocks that SEC employees and their families weren't allowed to own, some of which the SEC inspector general determined posed a conflict with the official's work, according to a report the inspector general provided to Congress.

When a U.S. attorney declined to prosecute, the SEC's inspector general reported the findings to SEC management. The unnamed official ultimately was suspended for seven days and gave up 16 hours of leave time.

The SEC declined to comment. A Justice Department spokeswoman declined to comment on individual investigations but said: “We take all inspector general referrals seriously and bring charges when the facts and law support them, consistent with the principles of federal prosecution.”

Most federal agencies don’t have protocols to verify that officials’ financial disclosures are complete. One Agriculture Department official disclosed wheat, corn and soybean futures and options trades. The Journal discovered that he had made additional large trades in corn and soybean futures in 2018 and 2019 and omitted them from his reports.

The official, Clare Carlson, who is no longer at the USDA, said that he tried to be scrupulous in his disclosures, and that the omissions were honest mistakes. The Agriculture Department declined to comment.

At the EPA, Mr. Molina’s financial-disclosure reporting caught the attention of ethics officials.

The conflict-of-interest rules say executive-branch employees may not “participate personally and substantially” in matters that have a “direct and predictable effect” on their investments and those of family members.

When the ethics officials contacted Mr. Molina about energy stocks he reported on his forms, they were told he didn’t have any influence over environmental policy.

His “duties are administrative in nature,” his boss, the EPA’s chief of staff at the time, told the ethics officials. “He provides logistical support to the principal but does not participate personally and substantially in making any decisions, recommendations or advice that will have any direct or substantial effect” on his financial interests, the chief of staff said, according to Mr. Molina’s financial disclosure.

In his time at the EPA, Mr. Molina clashed with ethics officials. Many of his financial disclosure reports were inaccurate and tardy, according to EPA emails reviewed by the Journal. At one point, he didn’t file accurate monthly trading disclosures for 12 months, according to the EPA emails. Mr. Molina reported the stock trades on his annual financial reports, as required.

Ethics officials said they contacted Mr. Molina “scores” of times to press him to file timely reports, according to the emails reviewed by the Journal.

In one email, a senior ethics official said his office had “provided you with at least 3-5 times more personal assistance than for any other agency employee, yet the required ethics reports were still late.”

Mr. Molina told EPA officials that he initially didn’t know he was supposed to complete regular stock-trading reports. He later struggled to keep up with the EPA’s electronic-disclosure system, according to the emails reviewed by the Journal.

In September 2020, the EPA fined Mr. Molina $3,200 for numerous failures to disclose stock trades to the agency on time. Mr. Molina refused to pay.

“We have never before had an employee refuse to pay the late fee,” wrote one ethics officer in an email to Mr. Molina on Oct. 21, 2020, “so I will have to inquire about how to commence garnishment proceedings.”

The next month, Mr. Molina accused ethics officials of discriminating against him. “I feel that I am being targeted and have been asked to report more than anyone else,” he wrote in a Nov. 3, 2020, email.

“If the intent of these filings is to curb any corruption or misbehavior,” Mr. Molina wrote, the EPA should open an investigation. “I believe that paying such an outrageous fine would be an admission that I have done something wrong in this regard.”

Ethics officials didn’t investigate Mr. Molina’s trades or refer the matter to internal investigators.

On the evening of Jan. 19, 2021, Mr. Molina’s final day working for the government, EPA ethics officials offered to end the matter if he paid a discounted fine of $1,067.

Mr. Molina wrote out a personal check to “U.S. Treasury” and sent it to officials in the EPA’s ethics office, including to Justina Fugh, an official with whom he had clashed.

In the memo line of his check, Mr. Molina wrote: “Justina tax.”

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2. America’s Oldest Bank, BNY Mellon, Will Hold That Crypto Now

11 Oct 2022, Justin Baer

Bank of New York Mellon Corp. BK -1.86%▼ is now open for crypto business.

The nation’s oldest bank said it would begin receiving clients’ cryptocurrencies on Tuesday, becoming the first large U.S. bank to safeguard digital assets alongside traditional investments on the same platform.

BNY Mellon won the approval of New York’s financial regulator earlier this fall to begin receiving select customers’ bitcoin and ether starting this week. The bank will store the keys required to access and transfer those assets, and provide the same bookkeeping services on those digital currencies that it offers to fund managers for their portfolios of stocks, bonds, commodities and other assets.

The move marks an important milestone for traditional banks and their growing acceptance of digital assets as a legitimate market and a source of new business. While many Wall Street executives still question crypto’s potential and aim to tread cautiously until Washington clarifies how the market will be regulated, firms have responded to calls from a growing number of large investment-firm clients to step into their traditional role as intermediaries.

Money managers have long relied on BNY Mellon and other custody banks for an array of vital, if humdrum, back-office functions such as tracking changes to the value of their assets. Founded by Alexander Hamilton more than two centuries ago, BNY Mellon is the world's biggest custody bank.

Until now, fund managers would have had to custody their digital currencies with a crypto specialist. BNY Mellon said it is the first of the eight systemically important U.S. banks to store digital currencies and allow customers to use one custody platform for both its traditional and crypto holdings.

"We are excited to help drive the financial industry forward," Robin Vince, BNY Mellon's president and chief executive, said in a statement.

BNY Mellon unveiled its plans in February 2021 to hold and transfer digital currencies on behalf of investment firms, and has since integrated its crypto custody business into its core accounting platform. The bank is using software developed with Fireblocks to store those digital holdings, BNY Mellon said. And Chainalysis's software will help the bank analyze and track the path the assets take before they arrive at the bank, it said.

The platform will go live with select investment-fund firms this week. The bank said it expects to expand its crypto custody offerings to additional clients in the future, pending regulatory approvals.

This year's dramatic selloff in digital currencies wiped out $2 trillion in value, reminding individual investors and deep-pocketed institutions alike of the market's volatility. The downturn also triggered the collapse of several prominent crypto firms, renewing calls to impose more investor protections on businesses that trade, store and lend digital assets.

Earlier this month, a panel of U.S. officials pressed for tougher oversight. The Financial Stability Oversight Council, chaired by Treasury Secretary Janet Yellen, asked Congress to consider legislation to address any gaps that don't already fall under existing securities regulations. In August, Securities and Exchange Commission Chairman Gary Gensler said the market for digital assets was rife with "fraud, scams and abuse."

Many investment managers remain eager to invest, according to a recent survey commissioned by BNY Mellon. Some 41% of 271 institutional investors polled by Celent in August and September said they were currently holding cryptocurrencies in their portfolios, BNY Mellon said. Another 15% they likely would in the next two to five years.

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3. Crypto Exchange Bittrex to Pay $29 Million Over Violating Sanctions

11 Oct 2022 (11:00 AM), Mengqi Sun

Cryptocurrency exchange Bittrex Inc. will pay $29 million to the U.S. Treasury Department to settle allegations that it violated sanctions and anti-money-laundering laws.

The Treasury said Tuesday that fined Seattle-based Bittrex a total of $53 million: a $24 million penalty from the Office of Foreign Assets Control, the Treasury unit that enforces sanctions, and $29 million fine from the Financial Crimes Enforcement Network, which combats illicit finance.

FinCEN said it would credit Bittrex's settlement with OFAC toward the total. As a result, Bittrex will pay about $29 million out of pocket.

The Treasury said Tuesday's actions highlight the importance of crypto firms maintaining risk-based sanctions and anti-money-laundering compliance programs, and that noncompliance with these requirements can result in enforcement actions and exposure to potential abuse by illicit actors.

OFAC alleged that Bittrex failed to prevent people located in jurisdictions facing U.S. sanctions, including Ukraine's Crimea region, Cuba and Iran, from using its platform to conduct crypto transactions between 2014 and 2017. Bittrex collected customers' internet protocol address and physical address information when they joined the platform, OFAC said, but the exchange failed to screen this information for potential sanctions violations.

FinCEN's investigations found that Bittrex failed to maintain an effective anti-money-laundering program between 2014 and 2018, including inadequate transaction monitoring on its platform and a failure to address risks related to products and services it offered, particularly those related to anonymity-enhanced cryptocurrencies. FinCEN said Bittrex also failed to file required suspicious activity reports between 2014 and 2017.

Bittrex said it has had controls in place from the company's earliest stages and has routinely assessed and improved these functions during the time frame mentioned in the settlements.

"We are proud of our steadfast commitment to robust compliance, and the strong compliance measures that we have in place today," a company spokesman said in a statement. "Importantly, both FinCEN and OFAC acknowledge that Bittrex's longstanding responsive remedial efforts have significantly curtailed the risk of continued violations."

The actions, the largest against a crypto firm by OFAC and the first parallel action taken by OFAC and FinCEN, comes as the virtual-currency sector faces increasing regulatory scrutiny. The Treasury Department last month started seeking public comment on the possible illicit-finance and national-security risks posed by the use of digital assets, as part of the agency's mandate under President Biden's March executive order to study the development of cryptocurrency.

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4. Six Takeaways From WSJ's Investigation Into the Stock Trades of Government Officials

11 Oct 2022, Michael Siconolfi

Wall Street Journal investigation revealed that thousands of officials across the U.S. government's executive branch disclosed owning or trading stocks that stood to rise or fall with decisions their agencies made.

Across 50 federal agencies ranging from the Commerce Department to the Treasury Department, more than 2,600 officials reported stock investments in companies while those companies were lobbying their agencies for favorable policies, during both Republican and Democratic administrations. When the financial holdings caused a conflict, the agencies sometimes simply waived the rules.

The Office of Government Ethics, which oversees the conflict-of-interest rules across the executive branch, is "committed to transparency and citizen oversight of government," said a spokeswoman.

Among the findings of the investigation, which is the most comprehensive analysis of stock trading by officials in the executive branch of the government:

Numerous federal officials owned shares of companies lobbying their agencies:

More than 200 senior officials at the Environmental Protection Agency, or nearly one in three, reported that they or their family members held investments in companies that were lobbying the agency. EPA employees and their family members collectively owned between $400,000 and nearly $2 million in shares of oil and gas companies on average each year between 2016 and 2021.

Issues emerged at a wide array of agencies:

At the Defense Department, officials in the office of the secretary or their family members collectively owned between $1.2 million and $3.4 million of stock in aerospace and defense companies, on average, during years the Journal examined. Some owned stock in Chinese companies while the U.S. considered blacklisting the companies.

An EPA official reported purchases of oil and gas stocks. The Food and Drug Administration improperly let an official own dozens of food and drug stocks on its no-buy list. A Defense Department official bought stock in a defense company five times before it won new business from the Pentagon.

Some officials traded ahead of regulatory actions:

More than five dozen officials at five agencies reported trading stocks of companies shortly before their departments announced enforcement actions against those companies, such as charges or settlements.

Federal officials are big technology investors:

While the government was ramping up scrutiny of large technology companies, more than 1,800 federal officials reported owning or trading at least one of four major tech stocks: Meta Platforms Inc.'s Facebook, Alphabet Inc.'s Google, Apple Inc. and Amazon.com Inc.

Some officials made large and risky trades:

About 70 federal officials or their family members reported using sophisticated techniques such as options trading and short selling, with some individual trades of between $5 million and $25 million. In all, the disclosure forms revealed more than 90,000 stock trades during the six-year period reviewed.

The husband of a Commodity Futures Trading Commission economist in a single year shorted nearly 3,000 stocks, betting on a drop in their price. Such trading is contrary to CFTC rules, but the agency waived them, fearing it could be sued.

The scope of the investigation was extensive:

The Journal obtained and analyzed more than 31,000 financial-disclosure forms for about 12,000 senior career employees, political staff and presidential appointees. The review spans 2016 through 2021 and includes data on about 850,000 financial assets and more than 315,000 trades reported in stocks, bonds and funds by the officials, their spouses or dependent children.

The federal government doesn't maintain a comprehensive public database of the mandatory financial disclosures of all senior executive-branch officials. The Journal built its own.

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Washington Post

5. Crypto regulations are on the front burner this week

11 Oct 2022, Tory Newmyer

Good morning! I'm sitting in for Tim this morning and thankful I didn't have to monitor any flight info yesterday. More below on the apparent Russian hack that knocked more than a dozen airport websites offline yesterday.

Below: Officials say flight operations weren't affected by pro-Russian hackers' denial-of-service attacks and in a speech today, the U.K. intelligence chief will warn about China's use of technology.

Watch for new global rules for cryptocurrency, used by criminals to profit off cyber attacks

Washington is the center of the world for the cryptocurrency industry this week, as top crypto executives and global financial regulators converge on the city for a pair of meetings that could indicate how the sector will fit into the broader financial system.

The meetings come as U.S. law enforcement and national security officials warn that cybercriminals are using cryptocurrencies and tools to profit off cyberattacks and launder their ill-gotten gains.

Fintech Week

U.S. policymakers take the stage first, starting today, as the two-day DC Fintech Week kicks off with speeches from acting comptroller of the currency Michael Hsu and Rostin Behnam, the Commodity Futures Trading Commission chair who has been angling to oversee more of the industry.

But a potentially bigger reveal will come as soon as Wednesday: The Financial Stability Board, which coordinates international financial regulation, is set to unveil its proposed global rules for crypto amid a conference of Group of 20 finance ministers. The board's plan is expected to advocate a strict approach to ensuring digital assets don't pose a systemic risk or allow terrorists and other criminals to fund their exploits.

The group has no formal power to set policy. But it has a track record of pushing its views into force. For one, its recommended capital and liquidity requirements for banks in the aftermath of the global financial crisis helped establish the new standard, Cowen Washington Research analyst Jaret Seiberg wrote in a note to clients. "That gives it clout."

And U.S. regulators who have called for getting tough on the crypto industry play a key role in the group. "It's fair to say the U.S. wants to lead on this globally and largely has been leading on it," said Patrick Dougherty, a former Securities and Exchange Commission lawyer who is now on the board of the Global Digital Asset and Cryptocurrency Association.

Cracking down

The White House has called for oversight and enforcement in the cryptocurrency space, with officials citing massive North Korean hacks and the use of cryptocurrency in the ransomware ecosystem. President Biden is considering amendments to finance and other laws so that prosecutors can investigate and crack down on criminals using cryptocurrencies, the White House said.

Law enforcement officials have clawed back some ransoms paid to cybercriminals, and the Treasury Department has sanctioned cryptocurrency mixers that have been used by cybercriminals to launder their profits. But the cryptocurrency industry has been critical of the sanctions on Tornado Cash, a mixer, with cryptocurrency exchange Coinbase bankrolling a lawsuit to challenge the sanctions.

The crypto industry has won powerful friends in Congress, but federal financial watchdogs remain skeptical.

Just last week, the U.S. supercommittee of financial regulators known as the Financial Stability Oversight Council issued a warning that left unchecked, crypto could grow into a systemic financial threat.

SEC Chairman Gary Gensler, who sits on both that panel and the global board, has drawn criticism from the crypto industry for arguing that existing securities laws give him the authority he needs to police the industry.

The Financial Stability Board appears primed to make a similar case. Steven Maijoor, who is crafting the group's policy, told Politico last month that a "lot of the activities in crypto assets and crypto assets markets resemble activities in the traditional financial system and therefore we take the approach: Same activity, same risk, same regulation."

Stablecoins

The board is also set to take a closer look at stablecoins, the digital tokens that peg their value to an external asset such as the dollar. The failure of the Terra stablecoin in May wiped out $40 billion in value and accelerated a downturn in crypto markets, underlining the urgency of establishing rules for issuers of those cryptocurrencies. Yet a congressional push to regulate stablecoins has foundered ahead of the midterm elections. Congress, rather than global regulators, still needs to resolve the matter with clearer rules for the assets, said Dario de Martino, co-head of the fintech and blockchain practice at law firm Allen & Overy.

In the meantime, the Crypto Council for Innovation, an industry group that takes an international approach, warned "a heavy-handed approach could cut this technology off at its knees." Linda Jeng, the group's chief global regulatory officer, said in a statement that global coordination "is a good thing. It means companies don't have dozens of different rules to follow. But we are headed into a web3 economy and we hope they considered the benefits of what a web3 economy can do."

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Bloomberg

6. SEC Expands WhatsApp Scrutiny to Money Manager Communications

11 Oct 2022 (11:50 PM), Lydia Beyoud

The US Securities and Exchange Commission is looking into whether asset managers used WhatsApp and other outside messaging apps to conduct official business, ratcheting up its probe into Wall Street's record-keeping practices.

The regulator has recently sent letters to investment firms requesting information on their employees' communications practices, according to three people familiar with the matter. Dozens of firms have received the queries into which devices and apps they allow for official communications, said one of the people who, like the others, asked not to be identified discussing the matter due to its sensitivity. The SEC, which declined to comment, also wants to know whether the investment firms are retaining electronic records generated on those platforms, the person said.

Under US rules, financial firms must monitor business communications to head off improper conduct. Compliance with that requirement, already made more difficult by the proliferation of mobile-messaging apps, was strained further as employees worked remotely during the Covid-19 outbreak.

Over the past year, banking giants including JPMorgan Chase & Co., Bank of America Corp., Citigroup Inc. and Goldman Sachs Group Inc. have paid a record combined $2 billion in SEC and Commodity Futures Trading Commission penalties to settle allegations that some of their employees used unapproved channels to conduct business. Reuters reported the inquiries into money managers' practices earlier on Tuesday.

The SEC's previous investigations into similar issues at brokerages put the financial services industry on notice about the agency's stringent record-keeping expectations, according to Peter Dugas, executive director at financial compliance advisory firm Capco. "We would expect the SEC to look into investment advisers given the fact there's so much complexity around the technology for communication within these financial institutions," he said.

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7. SEC Official Wants Auditors to Get an Attitude Adjustment

11 Oct 2022 (12:04 AM), Amanda Iacone

US auditors have a responsibility to detect fraud, and failure to do so is a breach of their responsibility to investors and the public, the SEC's top accountant said Tuesday.

Auditors are gatekeepers, and their importance to "the detection of material misstatements in the financial statements due to fraud should not be underestimated," Paul Munter, acting chief accountant to the Securities and Exchange Commission, said in written staff guidance. He urged auditors to work harder to uncover errors and be more skeptical of corporate managers.

Munter warned that auditors shouldn't focus on what they are "not required...

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8. SEC Director Defends Proposal to Better Police ESG Fund Names

11 Oct 2022 (8:04 PM), Andrew Ramonas

A senior SEC official dismissed concerns of agency overreach in a proposal intended to ensure environmental, social and governance fund names correlate with sustainable or socially responsible investing.

Fund labels are "extraordinarily important," William Birdthistle, director of the Securities and Exchange Commission's Division of Investment Management, said Tuesday. The SEC has faced criticism from the funds industry, which supports updating name rules, but objects to the agency stressing labels' importance compared to other disclosures "I don't really believe that the industry doesn't think that names are important."

The proposal is meant to better combat greenwashing under rules that generally...

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9. Washington, D.C., Is Starting to Crack Down on Crypto

11 Oct 2022 (10:39 PM), Victoria Vergolina

Back in March, President Joe Biden issued an executive order that directed every relevant federal agency to work on guidance related to digital assets and to submit a report with their recommendations.

We're now in that "time to report back" window, and the White House, along with other government agencies, have started providing updates on their findings. The White House's policy recommendations included suggestions for better consumer and investor protections.

But what about agencies like the Securities and Exchange Commission or the Commodity Futures Trading Commission, both of whom have a stake in crypto regulation?

Bloomberg reporter Allyson Versprille joins this episode to break down the latest developments.

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10. SEC Has Valid Claims Against Stock Owner for Market Manipulation

11 Oct 2022 (11:39 PM), Martina Barash

A Canadian man who allegedly made about $11 million in illicit profits through a market manipulation scheme lost a bid Tuesday to defeat the SEC's suit against him.

George Stubos allegedly used New York-based US markets for penny stocks and funneled money to a Washington state corporation, Judge Lewis J. Liman of the US District Court for the Southern District of New York said.

Stubos' argument that he's "a Canadian citizen who did not step foot in the United States during the relevant time period" comes up short, Liman said. The Securities and Exchange Commission isn't "powerless to prosecute those...

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11. Crypto's Evolution as an Asset Class Needs Better Accounting

11 Oct 2022 (10:45 AM), Aaron Jacob

Digital asset accounting is fraught with complexity. But as institutional adoption continues, regulatory clarity and compliance are the keys to success, says TaxBit's Aaron Jacob.

Last year, bitcoin passed a key milestone toward institutional acceptance as an array of publicly traded companies added it to their corporate treasuries. Alongside traditional financial instruments, and despite a significant price drawdown, companies such as Tesla, Block (formerly Square), and Coinbase still hold over $100 million worth of bitcoin today.

But after last year's initial hype, the corporate balance sheet clamor for bitcoin has slowed to a crawl, likely due in part to complex accounting rules. For observers and investors in public companies holding bitcoin, disclosure rules are also vague and deter transparency. Tesla recently left a mystery in its wake as it sold 75% of its initial $1.5 billion bitcoin stake, leaving questions about its initial cost basis and disposition unanswered. To be fair, such transparency is by no means required under current accounting rules.

According to today's accounting standards, bitcoin, which is considered an "intangible asset," is disclosed in a markedly different way than typical investments such as cash, stocks, or bonds. Publicly traded firms are required to incur impairment charges against their bitcoin purchases whenever prices dip below the initial cost basis. In other words, and especially for volatile assets like bitcoin and other cryptocurrencies, impairment ends up harming the bottom line of public earnings reports and requires companies to hold these assets on their balance sheets at their lowest valuation since the point of purchase.

It also can be a significant logistical challenge for accounting teams to accurately track intraday price movements to properly record impairments. As crypto winter has set in, the bitcoin-heavy balance sheet for the publicly traded Microstrategy has weighed especially heavily, as it has had to report hundreds of millions of dollars' worth of losses via impairment charges over recent quarters.

While corporates have slowed or reversed their bitcoin balance sheet acquisitions, institutional adoption is continuing in other meaningful ways. Blackrock recently teamed up with Coinbase to enable crypto investment for institutional investors, and Fidelity plans to enable 401(k) investment in bitcoin later this year. If the digital asset class is truly ready for maturity, however, it's past time for better accounting rules and regulatory transparency.

Transparency enforced by official institutional guidance can help prevent meltdowns and undue harm to investors. In the wake of high-profile crypto bankruptcies such as Celsius and Voyager, these tenets are as critical as ever. Key institutions such as the Financial Accounting Standards Board and the Securities and Exchange Commission are poised to fill the digital asset accounting gap for public and private firms.

Last March, the SEC issued Staff Accounting Bulletin 121, which offered SEC staff interpretations on crypto accounting safeguards. In this guidance, the SEC staff expressed views related to "entities that have obligations to safeguard crypto-assets held for their platform users." The guidance requires that these entities recognize a safeguarding asset and liability and notes "that crypto-assets should be recorded as a liability and corresponding asset on their balance sheet at fair value." The staff interpretation recommends that companies gross up their balance sheet when they are responsible for safeguarding customer assets.

But soon after SAB 121 was issued, SEC Commissioner Hester Peirce raised several dissenting concerns. First, she wondered "why now?" as bankruptcies and thefts from cryptocurrency custodians have been occurring for years. Second, she noted, "the SAB does not acknowledge the Commission's own role in creating the legal and regulatory risks that justify this accounting treatment. The Commission has refused, despite many pleas over many years, to provide regulatory guidance about how our rules apply to crypto-assets, so some of the responsibility for the lack of legal and regulatory clarity lies at our doorstep."

Further, Peirce seeks coordination between the SEC and the FASB in setting official accounting standards. In that regard, and after requests by companies and investors frustrated by impairment charges and lack of transparency, the FASB may soon share its own official guidance. Ideally, the new FASB rules will lead to clearer accounting outcomes that are more aligned with economic realities—for example, holding digital assets on the balance sheet at fair value rather than impaired cost—along with better disclosure and transparency rules for crypto-asset holdings by corporations.

Given official accounting standards and guidance by institutions such as the FASB, crypto should evolve to meet the same standards as traditional asset classes. Similar to what traditional asset classes experienced in 2008, cryptocurrency recently experienced its own high-profile Lehman-like bankruptcies. In the wake of the 2008 financial crisis, a speech by SEC Commissioner Kathleen Casey homed in on the need for accounting standards to promote transparency.

After the traditional mark-to-market accounting standard came under duress as asset prices dropped and liquidity receded, the FASB and other institutions swiftly coordinated to offer definitive guidance for fair value accounting in illiquid markets, in addition to improved disclosure transparency. Crypto needs similar standards—and fast. The FASB is coordinating with other relevant agencies to offer formal guidance in the foreseeable future, and that will be critical for cryptocurrency's maturation as a new asset class.

After a chaotic crypto winter, regulatory clarity, transparency, and better accounting will let spring finally emerge again.

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12. Grayscale Brief Says SEC Unfairly Rejected Bid for Bitcoin ETF

12 Oct 2022 (4:45 AM), Sunil Jagtiani

Grayscale Investments LLC, the largest crypto asset manager, said the US Securities and Exchange Commission acted arbitrarily in rebuffing a bid to convert its $12 billion spot Bitcoin trust into an exchange-traded fund.

The rejection over the risk of fraud and manipulation in the spot Bitcoin market is "capricious" and "discriminatory" because the SEC has allowed futures-based Bitcoin ETFs and they are exposed to similar concerns, Grayscale said in the opening brief of its lawsuit against the regulator.

In a statement, the firm said the brief argues that "the test the SEC has applied to Bitcoin-related ETFs, and only Bitcoin-related ETFs, is flawed and has been inconsistently applied with a 'special harshness' to spot Bitcoin ETFs."

The SEC didn't immediately reply to an email outside business hours for comment on the Grayscale argument.

Grayscale sued the SEC mid-year after the regulator denied the company's application to convert its Grayscale Bitcoin Trust, the world's largest Bitcoin fund, into an ETF. The fund was started in 2013 and the company filed its plan to change the structure in October last year.

The shift would help to close the fund's near-record discount to net asset value. The ETF structure has a creation and redemption process that helps to keep a fund's price in line with its underlying holdings.

Bitcoin, the biggest digital token by market value, has sunk about $50,000 from a peak of nearly $69,000 hit in November at the height of a pandemic-era mania for crypto.

A global wave of monetary-policy tightening to tackle high inflation has sucked liquidity from financial markets and hurt demand for speculative investments.

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13. BNY Mellon Debuts Crypto Custody Platform for Bitcoin and Ether

11 Oct 2022 (9:45 PM), Sabrina Kharrazi and Yueqi Yang

Bank of New York Mellon Corp. launched a digital asset platform in the US that will allow some clients to hold and transfer Bitcoin and Ether.

The firm, with $43 trillion of assets under custody or administration at midyear, “has the scale to reimagine financial markets through blockchain technology and digital assets,” Chief Executive Officer Robin Vince said Tuesday in a statement.

The move comes even after the US Securities and Exchange Commission published an accounting guideline in March that said public companies holding crypto assets on behalf of clients should should treat them as liabilities on their balance sheets. The guideline has made crypto custody more capital-intensive for banks, which are subject to capital rules.

The SEC guideline is “definitely something we see as restricting our ability to scale our offering fully,” said Caroline Butler, BNY Mellon’s CEO of custody services, in an interview. Still, the bank will follow the SEC guideline while continuing its discussions with the regulator on this topic, she added.

BNY Mellon, which formed its enterprise Digital Assets Unit in 2021, got approval from the New York Department of Financial Services before launching crypto custody. It plans to expand its offerings, such as providing clients with access to crypto exchanges, pending market demand and regulatory guidance.

The bank sponsored a recent survey that found strong demand for infrastructure that can accommodate traditional and digital assets and that 41% of institutional investors hold cryptocurrencies in their portfolios. The bank partnered with fintech startups Fireblocks and Chainalysis - which it has invested in - to develop the platform.

Shares of the bank fell 1.9% to $38.43 as of 3:21t p.m. in New York, extending their decline this year to 32%.

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14. Ripple CEO Expects ‘Answer’ in SEC Suit by First Half of 2023

11 Oct 2022 (7:57 PM), Carly Wanna and Allyson Versprille

Brad Garlinghouse expects an “answer” in the US Securities and Exchange Commission’s suit against his crypto payments company, Ripple Labs Inc., by the first half of next year.

The SEC sued Ripple in 2020. The regulator alleged that Ripple and its top executives misled XRP investors because it failed to register the digital asset as a security and did not provide adequate disclosure.

Garlinghouse, Ripple’s chief executive officer, said on Tuesday that it is hard to predict the pace of court proceedings.

“I think we’ll have an answer in the first half of next year,” Garlinghouse said during an event for DC Fintech Week. “Whether that’s the first quarter or second quarter, we shall see.”

In September, Ripple filed a motion seeking to dismiss the suit, claiming its XRP token is not a security that is subject to SEC authority. The SEC has also asked for a ruling in its favor without a trial.

Ripple would consider a settlement with the SEC if the regulator states that XRP is not a security, Garlinghouse said Tuesday. The case “is about the whole industry” he said. “Everyone acknowledges how important this is.”

Already, Ripple’s business in the US is limited, according to Garlinghouse. “For all intents and purposes, XRP does not have liquidity in the United States,” he said.

XRP is the sixth-largest cryptocurrency, with a market value of about $25 billion. The token fell about 5% to 49 cents on Tuesday, and is down around 40% this year.

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15. Bored-Ape Creator Yuga Labs Faces SEC Probe Over Unregistered Offerings

12 Oct 2022 (7:45 PM), Matt Robinson

The US Securities and Exchange Commission is investigating Yuga Labs Inc., the creator of the popular Bored Ape Yacht Club collection of NFTs, over whether sales of its digital assets violate federal law.

The SEC is examining whether certain nonfungible tokens from the Miami-based company are more akin to stocks and should follow the same disclosure rules, according to a person familiar with the matter, who asked not to be named because the probe is private. Wall Street’s main regulator is also examining the distribution of ApeCoin, which was given to holders of Bored Ape Yacht Club and related NFTs. The cryptocurrency was created in part for web3, a vision of a decentralized internet built around blockchains.

Yuga hasn’t been accused of wrongdoing and the opening of an SEC probe doesn’t mean the agency will sue the firm.

“It’s well-known that policymakers and regulators have sought to learn more about the novel world of web3. We hope to partner with the rest of the industry and regulators to define and shape the burgeoning ecosystem,” Yuga said in a statement to Bloomberg News. “As a leader in the space, Yuga is committed to fully cooperating with any inquiries along the way.”

A spokesperson for the SEC declined to comment.

The investigation is the latest attempt by SEC Chair Gary Gensler to ensure the crypto market adheres to its regulations. Gensler has repeatedly said that most crypto assets should be regulated by the agency since they have characteristics of securities as defined by a 1940s

Supreme Court decision. That ruling gave the agency authority to label investments as securities when there's an expectation of profit from management. In recent years, the regulator has brought dozens of enforcement cases against digital asset firms for failing to register their offerings, including a $50 million penalty against BlockFi Inc. in February.

Yuga Labs, which was founded in 2021, has become one of the most prominent brands in crypto. Its NFTs of cartoon primates are a sought-after status symbol -- buyers include celebrities Jimmy Fallon and Madonna -- and often trade for hundreds of thousands of dollars.

NFTs are digital assets that can be used to denote ownership of items such as paintings or sports memorabilia. The tokens can also serve as certificates of authenticity that can't be replicated.

The SEC has been probing the NFT market broadly, including the crypto exchanges where they trade, Bloomberg News reported in March. As part of that review, the SEC is investigating so-called fractional NFTs, which involve breaking down the assets into units that can be easily bought and sold.

The SEC is also investigating whether ApeCoin, which was distributed in March to certain holders of Bored Ape NFTs, is tantamount to a security. ApeCoin gives holders influence over another crypto-native entity known as a decentralized autonomous organization, or DAO. The idea was to give the Bored Ape community a hand in shaping the decentralized, blockchain-powered vision of the internet that venture capitalists often describe as web3. The Bored Ape DAO will use the blockchain to enable and record votes on decisions related to how the community is managed.

The price of ApeCoin fell about 9% to $4.76 as of 1:45 pm in New York, according to data from CoinMarketCap.

The key legal question is whether NFTs are securities as defined by the agency. The SEC applies the so-called Howey test, which comes from a 1946 US Supreme Court decision, to decide if something is a security. Under that framework, an asset generally falls under the agency's remit when it involves investors kicking in money to fund a company with the intention of profiting from the efforts of the organization's leadership.

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16. ESG Strategy Too Hot for SEC Is Attracting Fund Bosses in Europe

11 Oct 2022 (4:21 PM), Frances Schwartzkopff and Gautam Naik

An ESG strategy that's too controversial for US regulators and some major ratings companies has been embraced by Fidelity International and other European financial firms as a way to safeguard long-term returns.

Double materiality, whereby an investor doesn't just screen for the environmental, social or governance risks facing their portfolio, but also measures its ESG impact on the world, isn't part of a Securities and Exchange Commission proposal on climate-risk disclosure. It's also not woven into the main ESG ratings provided by firms such as MSCI Inc. But in Europe, the idea is gaining serious traction.

Fidelity, one of the UK's biggest money managers with more than $665 billion in assets as of June 30, now applies double materiality across all managed assets after incorporating the strategy earlier this year. In so doing, Fidelity hopes to capture financial risks that more traditional analysis might miss.

"The range of non-financial factors that influence financial value has increased and will continue to increase," said Jenn-Hui Tan, Fidelity International's global head of stewardship and sustainable investing, in an interview. "And that's why we have that prominence of ESG factors in that process."

It's the latest sign that the giants of finance are building one of the most far-reaching ESG tools into their financial management. JPMorgan Chase & Co. introduced a product last month that gives clients access to double-materiality analysis as a way to manage their financial risks. Robeco uses double materiality to manage about a fifth of its €178 billion in assets. And Germany's DWS Group says it uses the method to drive investment decisions for equity, fixed income and multi-asset funds.

DWS is asking analysts and portfolio managers "to look inside-out, not just outside-in," said Susana Penarrubia, head of ESG integration at the Deutsche Bank AG investment arm.

Fidelity uses 127 "materiality maps" to score companies from zero to three. A score of three indicates that a company is managing impacts with a likely "long-term benefit" to its value. Over a 10-year horizon, that line of thinking has the potential to increase the market value of Fidelity's investment portfolios, according to Tan.

"Essentially, what our ratings do is they enable us to look at the risks of a business over a longer-term horizon than you would do by only looking at it through the financial materiality lens," said Tan. "That's where we see the value of this double-material concept and that's why we think it helps us to become better investors."

The European Union, which is ahead of other jurisdictions in building a rulebook for ESG investing, has embedded double materiality into its framework. And in early 2023, the International Sustainability Standards Board (ISSB) will publish a global rulebook on sustainability and climate disclosure, with guidelines that may acknowledge the importance of double materiality over time.

Emmanuel Faber, chair of the ISSB, has said it's his "mission" to ensure that companies produce "carbon warnings" a few years from now, just as they publish profit warnings today.

But such goals look set to meet resistance in the US. "The SEC will find it difficult to back an investing concept whose short-term fiduciary value can be difficult to prove," said Rob Du Boff, senior ESG analyst at Bloomberg Intelligence.

Fiduciaries must account for ESG issues because it's necessary for managing portfolio risks, "not because it's the right thing to do and I don't see that priority shifting anytime soon," he said.

MSCI, among the world's most-used providers of corporate ESG ratings, doesn't apply double materiality across its ratings. In a statement, MSCI said its ESG scores are designed "to support the building of a resilient portfolio for the specific purpose of enhancing long-term risk-adjusted returns. For investors applying double materiality, it added, "MSCI has found that priorities and approaches vary significantly and many prefer to use flexible building blocks that they can tailor to their specific needs over a single combined product."

S&P Global, on the other hand, said it considers double materiality to be "an integral part of the analysis" when assigning ESG ratings to about 8,000 companies. As a result, ESG scores can vary considerably. Chevron Corp., for example, gets an ESG rating of A at MSCI, and a score of just 52 out of 100 at S&P, according to data compiled by Bloomberg.

The investment industry, meanwhile, remains divided. A September analysis by Morningstar Inc. of the 20 largest asset managers that responded to an ISSB consultation found that eight firms -- all European -- support double materiality. Another six, including Vanguard Group, UBS Group AG and Legal & General Investment Management, would only consider it if a clear financial risk can be established. Five US firms -- BlackRock Inc., Invesco, Northern Trust Corp., State Street Corp. and T. Rowe Price Group Inc. -- want the flexibility to choose.

"It is probably slightly concerning that asset managers on both sides of the Atlantic seem to be so far apart," said Lindsey Stewart, director of investment stewardship research at Morningstar. "It does give the ISSB and the other regulators around the world a bit of a knotty problem to solve."

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17. The Latest on the US's Approach to Crypto

11 Oct 2022

Back in March, President Biden issued an Executive Order that directed every relevant federal agency to work on guidance related to crypto - and then to report back. We're now into that "time to report back" window, and the White House, along with other agencies, have started providing updates on their findings. On the White House end, the policy recommendations included better suggestions focused on better consumer and investor protections. But what about agencies like the Securities and Exchange Commission or the Commodity Futures Trading Commission, both of whom have a stake in crypto regulation? Bloomberg reporter Allyson Versprille joins this episode to break down the latest developments.

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Reuters

18. SEC scrutiny into Wall Street communications shifts to investment funds - sources

11 Oct 2022, Chris Prentice

The U.S. Securities and Exchange Commission's scrutiny of how Wall Street handles work-related communications on personal devices and apps such as WhatsApp has expanded beyond broker-dealers to investment funds and advisers, according to four people familiar with the inquiry.

Late last month, the SEC and the Commodity Futures Trading Commission (CFTC) fined 16 financial firms, including large banks such as Goldman Sachs Group Inc (GS.N) and Morgan Stanley (MS.N), a combined $1.8 billion after staff discussed deals and trades on their personal devices and apps, in a sweeping probe of record-keeping practices.

That probe primarily targeted broker-dealers rather than asset managers, although funds did become more cautious as a result and joined banks in tightening controls on personal cellphones, as well as text messages and apps such as WhatsApp.

The SEC's enforcement unit has sent inquiries to a number of funds and advisers asking for information about their protocols for so-called "off-channel" business communications as recently as last week, the four sources told Reuters. The agency has asked firms to preserve and produce documents and share information on policies related to the use of devices and platforms, the sources said, speaking on condition of anonymity.

The regulatory agency has also asked for details on the firms' organizational charts and past violations and remediation efforts, two of the sources said.

Details of the investigative "sweep" have not previously been reported. A spokesperson for the SEC declined to comment, saying: "We don't comment on the existence or nonexistence of a possible investigation."

The SEC periodically conducts such sweeps to quickly gather information on issues it suspects may be widespread. Sweeps can sometimes, although not necessarily, lead to formal probes.

The SEC has been aggressive on enforcement under Democratic leadership and the industry probe into the banks was a landmark case for the SEC and the Commodity Futures Trading Commission, marking one their largest collective resolutions.

The banks' staff routinely communicated about business matters such as debt and equity deals with colleagues, clients and other third-party advisers using applications on their personal devices such as text messages and WhatsApp, the agencies said when it announced the resolution with the banks last month.

The institutions did not preserve most of those personal chats, violating federal rules which require broker-dealers and other financial institutions to preserve business communications.

That impeded the agencies' ability to oversee financial markets, ensure compliance with key rules, and gather evidence in other, unrelated investigations, the agencies said.

Like broker-dealers, investment companies and registered investment advisers are required by the SEC to maintain records of business communications.

In response to the heightened regulatory scrutiny, asset managers have been tightening controls on personal communication tools such as WhatsApp as they join banks in trying to ensure employees play by the rules when they do business with clients remotely.

Keeping up with a proliferation of communication apps -- especially during the pandemic - has been a challenge for many companies.

Global regulators had already begun to clamp down on the use of unauthorized messaging tools to discuss potentially market-moving matters, but the issue gathered urgency when the coronavirus pandemic forced more finance staff to work from home in 2020.

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19. Grayscale says U.S. SEC set bar too high for Bitcoin funds

12 Oct 2022 (2:51 AM), Jody Godoy

Grayscale Investments said in a court filing Tuesday that the U.S. Securities and Exchange Commission set the bar too high for spot bitcoin exchange-traded funds, which have so far not been approved for listing on U.S. exchanges.

Grayscale sued the regulator in June, after the SEC denied its bid to convert its Grayscale Bitcoin Trust (GBTC.PK), the world's largest bitcoin fund, into an ETF for listing on Intercontinental Exchange Inc's (ICE.N) NYSE Arca exchange.

The regulator had said that the proposal did not meet standards designed to prevent fraudulent practices and protect investors.

The SEC has rejected over a dozen spot bitcoin ETF applications, and approved several bitcoin futures-based ETFs. The rejections have focused on applicants' lack of surveillance-sharing agreements with regulated markets relating to the spot funds' underlying assets. Such agreements entail sharing trade data and other information to allow the exchange to detect manipulation.

Grayscale argued in the court filing that the SEC had not applied its standards evenly to spot bitcoin ETFs and bitcoin futures-based ETFs, even though both types of funds are both fundamentally tied to the price of bitcoin.

"There is only one reasonable conclusion to draw: the Commission is treating spot bitcoin ETPs with special harshness based on its opinion about bitcoin's merits as compared to other types of investments," the company said in the filing.

There is no spot bitcoin market that the SEC considers to be regulated, Grayscale said. But the NYSE Arca had entered a surveillance-sharing agreement with the Chicago Mercantile Exchange, where bitcoin futures trade, it said.

Since the SEC deemed other agreements with CME sufficient to prevent fraud in bitcoin futures-based ETFs, the same should apply to bitcoin spot ETFs since both types of fund rely on the price of bitcoin, Grayscale said.

Grayscale also argued the SEC acted outside its authority by not accepting other means of mitigating fraud risk.

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20. Crypto's Grayscale blasts SEC over 'special harshness' toward bitcoin trading

12 Oct 2022 (1:07 AM), Soyoung Ho

Crypto asset manager Grayscale Investments LLC, which manages the world's largest bitcoin investment fund, told a federal appeals court on Tuesday that the U.S. Securities and Exchange Commission is so suspicious of bitcoin spot trading that it blocked a proposal to make it easier and safer for investors to gain exposure to the cryptocurrency.

That is the only reasonable conclusion, Grayscale argued in a new brief filed with the District of Columbia U.S. Circuit Court of Appeals, to be drawn from the SEC's decision last June to reject a proposal from the New York Stock Exchange to convert Grayscale's $15 billion bitcoin investment trust into an exchange-traded fund, despite the commission's previous approval of exchange-traded funds based on bitcoin futures. (Challenges to final SEC orders are heard by federal appellate courts, not trial courts.)

Grayscale told the D.C. Circuit that its bitcoin trust, which is based on an index of spot, or instantaneous, bitcoin trading prices, is no more susceptible to fraud and manipulation than the SEC-blessed exchange-traded bitcoin futures funds, which rely on nearly identical bitcoin trading price indexes.

Since bitcoin futures and spot bitcoin prices are both rooted in the same underlying spot markets for the cryptocurrency, Grayscale's lawyers at Munger, Tolles & Olson told the D.C. Circuit, the SEC's refusal to approve an exchange-traded fund that references actual bitcoin, rather than bitcoin futures contracts, reflects a "special harshness based on [the SEC's] opinion about bitcoin's merits as compared to other types of investments."

Bitcoin spot prices and bitcoin futures, said Grayscale chief legal officer Craig Salm in an exclusive interview, are subject to the same fraud risk that has historically worried the SEC. "So logically speaking," Salm said, "if you're OK with one, you must also be OK with the other because you otherwise would be arbitrary."

The SEC did not immediately respond to a request for comment on Grayscale's filing. The commission has said that its rejection of Grayscale's proposed spot bitcoin exchange-traded fund should not be viewed as a judgment on the relative merits of bitcoin and bitcoin futures contracts or “an assessment of whether bitcoin, or blockchain technology more generally, has utility or value as an innovation or an investment.”

The commission’s June order attributed its rejection of Grayscale’s application to concerns that the New York Stock Exchange does not have an adequate surveillance-sharing agreement with a regulated market where a “significant share” of spot bitcoin trading takes place. The NYSE had pointed out that it shares information with the Chicago Mercantile Exchange, but the SEC said it was not convinced that the CME bitcoin futures market qualified as a “market of significant size” for spot bitcoin trading.

Grayscale’s new brief, which says that the SEC’s rejection was arbitrary and capricious under the Administrative Procedure Act, argues that the SEC’s significant market test is “deeply flawed” and has no basis in the text of the Securities and Exchange Act.

But even if the test is appropriate, Grayscale contends, the commission has not applied it consistently in distinguishing between exchange-traded funds based on spot bitcoin prices and those based on bitcoin futures contracts.

“That stark arbitrariness cannot be justified,” the brief argued. “In disapproving the proposed spot bitcoin [exchange-traded product] here, the commission applied an exceedingly stringent version of the test — going so far as to make findings that directly contradict findings that it made in its orders approving the bitcoin futures ETPs."

Grayscale launched its bitcoin trust way back in 2013 through a private placement for accredited investors. Shares of the trust currently trade over the counter but, according to Grayscale, the shares trade at a discount from bitcoin’s actual price because of restrictions that would be eliminated if the SEC had allowed the trust to be converted into an exchange-traded fund.

Grayscale’s brief asserted that its existing investors would reap about $4 billion if the trust were converted to an exchange-traded fund. The conversion would also subject the fund to public reporting requirements that, according to Grayscale, would enhance investor protection. The asset manager told the D.C. Circuit that the investment market is "clamoring" for a product that offers a safe, simple way to buy bitcoin — and that an exchange-traded fund based on the actual cryptocurrency is easier for investors to understand than a fund based on a bitcoin derivative.

A central pillar of Grayscale’s brief is its contention that bitcoin futures and spot bitcoin prices are inextricably linked. The filing refers several times to a letter that Vanderbilt University professor Robert Whaley sent to the SEC during the comment period on the NYSE’s request to allow trading in a Grayscale exchange-based fund. Whaley, who developed key indexes for the Chicago Board Options Exchange and the NASDAQ, told the SEC that the bitcoin indexes underlying the Grayscale Trust and the bitcoin futures traded on the Chicago Mercantile Exchange are “near perfect substitutes” for one another.

Whaley’s statistical conclusion, the Grayscale brief argued, aligns with common sense, since bitcoin futures derive from the spot price of actual bitcoin. If the spot price is tainted by fraud or manipulation, Grayscale said, the futures price will likewise be affected. So it’s arbitrary, the brief argued, to refuse to allow an exchange-trade fund based on spot bitcoin prices while allowing a product based on futures.

It doesn't matter, in the view of Grayscale chief legal officer Salm, that the SEC-approved bitcoin futures funds trade on the Chicago exchange, which also regulates the futures contracts underlying those funds. In the end, Salm said, bitcoin futures and spot bitcoin indexes arise from the same trading market.

"I believe we have very simple, straightforward and compelling arguments here," Salm said. "In many ways it's not about bitcoin at all. It's about fair treatment under the law."

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Law360

21. SEC Fights Hedge Fund Priest's Fraud Verdict Appeal

11 Oct 2022 (8:38 PM), Jessica Corso

The U.S. Securities and Exchange Commission said a Greek Orthodox priest should not get a second bite of the apple after a jury found him liable last year for making false statements online and in the media about a pharmaceutical company whose stock he was shorting.

The Rev. Emmanuel Lemelson, whom the SEC refers to as Gregory Lemelson, asked the First Circuit last month to overturn a jury verdict that found him liable for making false statements about the pharmaceutical company.

Lemelson is the owner of hedge fund Lemelson Capital Management LLC, which is also named as a defendant in the suit.

The SEC responded to Lemelson's appeal last Friday, arguing that the jury heard the same arguments being put to the First Circuit and rejected them.

"Lemelson and LCM do not argue that the jury was improperly instructed," the agency wrote in its brief to the appellate court. "And ample evidence supports the jury's verdict that each of the three misstatements here at issue concerned material facts, was made with scienter, and was not a protected statement of opinion."

A federal jury largely found in Lemelson's favor last November when it absolved him of some claims of securities fraud and violations of the Investment Advisers Act in what the SEC said was an attempt to drive down the stock price of Ligand Pharmaceuticals Inc.

But it did find him liable for making three false statements against the company on a radio program and through the website Seeking Alpha, where Lemelson published a report taking aim at a drug development deal Ligand entered into with another pharmaceutical company.

The SEC said that Lemelson placed a $4.6 million short position on Ligand in 2014 and profited to the tune of $1.3 million when the company's stock price dipped.

A judge ordered him to pay a $160,000 civil penalty following the jury verdict and enjoined him from violating securities laws for five years, a penalty that Lemelson said the SEC is attempting to use to bar him from fund management for life.

He asked for a new trial earlier this year but was turned down.

He is now asking the First Circuit to, at the very least, vacate the injunction, arguing that he should not be "punished" for refusing to admit wrongdoing.

The SEC said that refusal represents a "genuine risk of recidivism," particularly given statements that Lemelson made at a court hearing.

"Lemelson told the district court that 'I have no doubt about anything I did' and that 'I'll never regret the things I did,'" according to the SEC. "In light of those statements, the district court could hardly conclude that Lemelson presented no reasonable likelihood of recidivism."

The SEC told the First Circuit that no oral argument was needed in the case because the appeal "does not concern any novel or difficult questions of law."

But Lemelson's counsel said the case raises "significant questions" about the standard of liability under securities law and that the court should hear oral argument.

An attorney for Lemelson and a spokesperson for the SEC both declined to comment.

The SEC is represented by general counsel Dan Berkovitz, deputy solicitor John Avery, Paul Alvarez and Ezekiel Hill.

Lemelson is represented by Douglas Brooks, Brian Sullivan and Thomas Hoopes of Libby Hoopes Brooks PC, and Kevin Martin and William Evans of Goodwin Procter LLP.

The case is SEC v. Lemelson et al., case number 22-1630, in the U.S. Court of Appeals for the First Circuit.

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22. SEC Official Cautions Auditors About Lax Fraud Investigations

11 Oct 2022 (8:15 PM), Jessica Corso

The U.S. Securities and Exchange Commission's chief accountant put out a statement Tuesday outlining the responsibilities that auditors have when conducting fraud investigations, saying his office has received "deeply concerning" reports that suggest auditors are not acting skeptical enough in the face of public company pressure.

Paul Munter, who heads the SEC's Office of the Chief Accountant, said he wanted to remind auditors of their legal and professional duty to protect investors from fraud in the wake of his office noticing shortcomings in financial statement audits.

He said the office has heard feedback from stakeholders that auditors "many times frame the discussion of their responsibilities related to fraud by describing what is beyond the auditor's responsibilities and what auditors are not required to do."

Munter said that attitude was "deeply concerning" because it could undermine auditors' professional skepticism and lessen the chance of fraud detection.

He also noted several enforcement actions taken against auditors this year, including a $2 million penalty paid by CohnReznick LLP in June after the SEC accused the accounting firm of ignoring red flags that allowed two clients to file false financial statements.

On the same day as the CohnReznick settlement, the SEC also announced that two Utah-based accountants agreed to settle similar allegations that they missed red flags that could have detected fraud.

Munter warned auditors against being distracted from fraud detection duties through client pressure, including tight deadlines and resource constraints, and said attitudes at the top of auditing firms were key to overcoming those pressures.

"[A] strong tone at the top of the audit firm that supports and encourages an auditor's focus on their responsibilities for identifying and responding to fraud risks is foundational to establishing the professionally skeptical mindset auditors need to fulfill their professional responsibilities with respect to the detection of material misstatements resulting from fraud," he said.

Auditors should be wary of adopting a mindset that company management is acting honestly, Munter said, and should question things like large invoices with vague descriptions and late-stage attempts to produce evidence addressing a contentious auditing matter.

He said they should also probe whether company culture allows whistleblowers to report accounting concerns.

While not as strongly worded as his September statement warning accounting firms that enforcement actions could result if they don't maintain auditing independence, Munter did remind auditors of their responsibility under federal securities law "to provide reasonable assurance of detecting illegal acts."

"The value of the audit and the related benefits to investors, including investor protections, are diminished if the audit is conducted without the appropriate levels of due professional care and professional skepticism," he said.

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23. Broker settles with SEC after luring investors into fake tax-exempt bonds

11 Oct 2022 (12:19 PM), Connor Hussey

Joliet, Illinois-based broker dealer Ronald Molo has entered into a final judgment with the Securities and Exchange Commission for his role in defrauding three investors out of $800,000 by luring them into nonexistent tax-exempt bonds.

Molo has been ordered to pay $815,104 in disgorgement and prejudgment interest and has been permanently barred from participating in the issuance, purchase, offer or sale of any security.

The SEC alleged that between January 2019 and November 2020, Molo stole $250,000 and $300,000 respectively from two of his investment advisory clients and another $250,000 from a brokerage firm customer.

The investors were Molo's longstanding clients and he proposed the investments during regularly scheduled meetings, telephone calls, and casual gatherings, without providing them with any sort of written materials on the investments.

"Without the investors' knowledge or authorization, Molo stole a total of $800,000 of their money by convincing them to transfer money out of their financial institution accounts for the purported investment in tax-free bonds," the complaint said. "Molo did not tell the investors that he owned the account to which he directed them to transfer their money."

He then misused at least $778,000 of the investors' money for his own personal use and tried to cover up the fraud by sending $22,000 of the investors' money back for supposed interest payments from the nonexistent bonds.

Molo's personal uses from the stolen money included $132,457 to pay the mortgage of a relative, $116,812 for his own mortgage payments, $80,920 to pay Molo's attorney in connection with a previous lawsuit, $52,000 for his relatives, $39,053 for the purchase and repair of automobiles, $28,675 to Molo's housing association, $25,636 for renovations to his own house and $15,289 in cash withdrawals.

Molo used cashier's checks from his bank funded with the money drawn down from his own personal account to pay the interest checks to investors.

"In all but one instance, white out, or something similar, obscured the remitter line on the check," the complaint said. "The remitter line would have shown that Molo, not the issuer, provided the money to fund the cashier's check."

The scheme became evident when one of Molo's investors called his Edward Jones office because she had not received an interest check for Q2 2021.

"An employee of the financial institution tried to address the issue for the investor but could not find any information about the purported bond issuer in the investor's file or elsewhere," the complaint said. "The employee left a note for Molo on the financial institution's internal communication system, but Molo deleted it and did not contact the investor."

Molo's employer Edward Jones then conducted an investigation and after interviewing Molo, determined that he hadn't invested the money in the bonds he claimed. He was fired and Edward Jones reimbursed the investors for the money Molo misappropriated.

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Accounting Today

24. SEC reopens comments for 11 proposals in wake of tech error

11 Oct 2022 (4:58 PM), Chris Gaetano

The Securities and Exchange Commission is reopening comments on 11 different proposals after realizing that a technology error prevented some from not being received by the agency.

The error affected comments on the following proposals:

"Reporting of Securities Loans," Release No. 34-93613 (Dec. 8, 2021)

"Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition against Undue Influence over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions,:" Release No. 34-93784 (Feb. 4, 2022)

"Money Market Fund Reforms," Release No. IC-34441 (Feb. 8, 2022)

"Share Repurchase Disclosure Modernization," Release Nos. 34-93783, IC-34440 (Feb. 15, 2022)

"Short Position and Short Activity Reporting by Institutional Investment Managers," Release No. 34-94313 (Mar. 16, 2022); as well as "Notice of the Text of the Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail for Purposes of Short Sale-Related Data Collection," Release No. 34-94314 (Mar. 16, 2022)

"Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure," Release Nos. 33-11038, 34-94382, IC-34529 (Mar. 23, 2022)

"Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews," Release No. IA-5955 (Mar. 24, 2022)

"The Enhancement and Standardization of Climate-Related Disclosures for Investors Release Nos. 33-11042, 34-94478 (Apr. 11, 2022)

"Special Purpose Acquisition Companies, Shell Companies, and Projections, Release Nos. 33-11048, 34-94546, IC-34549 (May 13, 2022)

"Investment Company Names," Release Nos. 33-11067, 34-94981, IC-34593 (June 17, 2022)

"Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices," Release Nos. 33-11068, 34-94985, IA-6034, IC-34594 (June 17, 2022)

"Request for Comment on Certain Information Providers Acting as Investment Advisers," Release Nos. IA-6050, IC-34618 (June 22, 2022)

Commenters who submitted a public comment to any of these files through the internet comment form between June 2021 and August 2022 are advised to check the relevant comment file posted on SEC.gov to determine whether their comment was received and posted. If a comment has not been posted, commenters should resubmit that comment. Any resubmitted comment will be treated as if it were received on its original submission date. The SEC is also reopening the comment periods for the affected releases until 14 days following publication of the reopening release in the Federal Register.

The majority of the affected comments were submitted in August 2022; however, the technological error is known to have occurred as early as June 2021.

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American Banker

25. OCC's Hsu warns against commingling banks and crypto

11 Oct 2022, Claire Williams

Acting Comptroller of the Currency Michael Hsu warned against crypto firms integrating with the traditional financial system, saying that crypto companies often "disguise" their products as being similar to banking ones.

To that end, he promoted a cautious view of regulating digital assets, and said that bringing crypto into the regulatory perimeter would only help tame crypto's risks depending "on whose terms it is brought in."

"Using the familiar to introduce something novel can downplay or mask the risks involved and establish false expectations," Hsu said. "In time, people get hurt."

While the Office of the Comptroller of the Currency's authority is limited to banks' interactions with crypto on the digital assets regulation front, that still leaves the agency with several important sets of guidance and rulemakings that could have a big impact on crypto firms' ability to scale in the United States. The agency is currently under pressure on several fronts to reconsider Trump-era guidance that allowed banks to explore crypto-related banking activity.

Hsu, speaking at DC Fintech Week Tuesday, described some behind-the-scenes interactions between crypto companies and banking regulators. He said that in July, a representative from FTX submitted a proposal to the Financial Stability Oversight Council and argued that integrating crypto and the traditional banking sector would enhance financial stability, Hsu said.

"I could not disagree more," Hsu said. "Crypto today is an immature industry based on an immature technology."

Hsu also took issue with crypto firms that are attempting to integrate their products. That includes companies that are trying to get customers to use their digital wallets as well as their platforms for buying and selling crypto; issuing stablecoins; and a number of other activities.

"While commingling these activities may offer convenience for consumers and cost savings for crypto firms, conflicts abound and the riskiest activity threatens the whole bundle," Hsu said. "Consider the recent failures of Three Arrows Capital, Celsius and Voyager Digital. All three engaged in a range of crypto activities, from crypto custody to borrowing and lending to proprietary trading."

One of the most harmful, he said, are "crypto savings accounts," such as those offered by Celsius and Voyager Digital, which encouraged customers to "unbank" themselves and offered some crypto incentives for them to do so on the crypto firms' platforms.

"As many are now learning the hard way, the risks of these arrangements are materially different than their representations," Hsu said.

Hsu said he urges people to read the letters that Celsius clients sent to the bankruptcy judge. The model has come under security from the Federal Deposit Insurance Corp., which issued a cease-and-desist letter to Voyager in July for misrepresenting deposit insurance on those accounts.

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Other Outlets

26. Fake billionaire fugitive Justin Costello had gold bars, $60K in cash, Mexican pesos and phony ID when FBI nabbed him (CNBC)

11 Oct 2022 (4:24 PM), Dan Mangan

Prosecutors on Tuesday asked a California federal judge to jail without bail a recent fugitive accused of a brazen $35 million fraud that involved him falsely telling investors he was a billionaire, a Harvard MBA and a special forces veteran who was wounded twice in Iraq.

An FBI SWAT team caught the fugitive, Justin Costello, in a remote area near San Diego on Oct. 4. He was carrying a backpack loaded with six one-ounce gold bars worth $12,000, U.S. currency worth $60,000, $10,000 in Mexican pesos and banking cards and checkbooks, prosecutors said in a court filing.

Costello, 42, also had a receipt for a prepaid phone number in the backpack, along with a driver's license with his photograph under the name "Christian Bolter," the filing revealed.

The U.S. Attorney's Office for the Southern District of California cited the backpack's contents and other factors in the filing as it urged a judge to remand Costello to jail pending trial. Prosecutors argued he is "a serious flight risk and a danger to the community."

They noted that Costello failed to surrender to the FBI's San Diego office as he had agreed through his lawyer on Sept. 29. He had been informed that he was set to face a new indictment in federal court in Washington state on a slew of charges related to schemes involving penny stocks, shell companies and cannabis businesses.

Instead, he "became a fugitive," prosecutors wrote.

"The FBI tried to track Costello by his known cellphone numbers but were unsuccessful," prosecutors wrote. "It is believed Costello took countersurveillance measures to prevent being tracked on devices registered to those numbers."

The FBI eventually "was able to track Costello through location information received from the theft recovery service for the Alfa Romeo vehicle he was driving," the filing revealed.

The SWAT team tracked that car to a remote area of El Cajon, California, where they saw him walking wearing the backpack, the filing said.

When agents arrested him, Costello "stated he was surprised agents had found him because he turned his phone off."

He also told the agents he had not surrendered as agreed, "because he recently had a stroke and needed to recover."

"Costello said that he could have outrun the SWAT agents but for the stroke," the filing said. "Costello admitted that he was the person charged in the Indictment and encouraged agents to 'Google' him to read about the case," it continued.

"Costello was likely referring to the very significant media coverage of both his criminal charges and subsequent flight from prosecution," prosecutors wrote in a footnote, which links to CNBC's article about him published last week.

Prosecutors said the FBI soon after learned that the gold in the backpack was part of a larger quantity of gold, worth $94,000, that Costello purchased in April “using money he had stolen from a banking client.”

Investigators have determined that since mid-September, the accused stopped using his only known personal bank account for personal expenses, and instead was using multiple corporate accounts in an apparent effort to cover his tracks online, prosecutors said.

“The weight of the evidence” against Costello in the pending case — where is he charged with wire fraud and securities fraud — “is strong and heavily documented,” they added.

Costello, who has ties to La Jolla, California, and Las Vegas, is accused of scamming thousands of investors and others out of millions of dollars by making false claims that companies he controlled had plans to buy 10 other firms.

He also is accused of using one of the companies, Pacific Banking Corp., to divert at least $3.6 million from three marijuana companies that were clients to benefit himself and other companies he owned.

Prosecutors have said that Costello used about $42,000 of money allegedly scammed from investors to pay for costs associated with his wedding. The event featured a cake and ice sculpture with the iconic James Bond 007 movie logo, as well as a belly-dancing performance by his bride.

Costello allegedly duped investors with his tall tales of being a billionaire, an Ivy League grad and an Iraq veteran, prosecutors said. They noted that none of the claims were true.

He also “falsely claimed that two ‘[l]ocal titans’ of the Seattle business community were ‘supporting’ him,” prosecutors wrote in their court filing. They did not identify those business leaders by name.

Costello is due to appear in San Diego federal court on Tuesday. He is expected to soon be transferred to Washington state to face the indictment in U.S. District Court for the Western District of Washington.

A lawyer who is representing him in civil litigation by one of the marijuana companies he is accused of swindling did not immediately respond to a request for comment.

Costello also faces a civil lawsuit filed by the SEC on the same day that criminal charges against him were unsealed. That suit largely tracks the claims in the criminal indictment.

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27. Defendants plead not guilty in case of $100 million New Jersey deli (CNBC)

11 Oct 2022 (3:24 PM), Jack Stebbins

Two men charged in an alleged stock-manipulation scheme involving a small-town New Jersey deli pleaded not guilty Tuesday morning.

Peter Coker Sr., 80, and James Patten, 63, who were arrested by federal authorities last month in North Carolina, made their pleas at a federal courthouse that's about a 20-minute drive from the now-closed shop at the heart of the case.

Patten told CNBC before the hearing Tuesday that he hired attorney Ira Sorkin, who is known for representing the late Ponzi schemer Bernie Madoff. Sorkin previously represented Patten in a dispute with the Securities and Exchange Commission, which was dismissed in 2006.

Coker Sr. is represented by Marc Agnifilo, who has previously defended fraudster and "pharma bro" Martin Shkreli, disgraced movie producer Harvey Weinstein, NXIVM cult leader Keith Raniere, and a Russian bank sanctioned over the invasion of Ukraine.

Agnifilo told CNBC that he expects the process to be drawn out. "I'm not sure why they would pursue a case where no one lost any money," he said, referring to federal prosecutors.

Patten was in good spirits at court Tuesday, making jokes about CNBC's coverage of the case and saying he felt pretty good. Coker Sr. was joined by his wife, Susan, and kept quiet, his hands folded or resting on his chin. The judge said that a pre-hearing test Tuesday morning revealed both men had alcohol in their system. Coker said he and his wife had drinks at dinner the night before, while Patten denied he had any alcohol in the past 48 hours.

The judge said Patten also tested positive for buprenorphine, an FDA-approved prescription drug used to treat pain and opioid addiction. Patten denied he had taken it. The judge said the lab would review the test and reminded Patten that he was under oath when he denied he had consumed alcohol and the drug.

Patten and Coker are accused of several federal crimes, including fraud, for allegedly pumping up the value of a publicly traded company that achieved a market capitalization of more than $100 million last year despite having only Your Hometown Deli in Paulsboro, New Jersey, to its name. The deli made less than $40,000 in sales a year.

Federal prosecutors have described the case as a tale of international fraud and betrayal. Peter Coker Jr., 53, the son of Coker Sr., is based in Hong Kong and is considered at large. Federal authorities sought to detain Coker Sr. before agreeing to a conditional release. Agnifilo said he has not been in contact with Coker Jr. The attorney also declined to say whether Coker Jr. would return to the United States, or whether he had been in touch with his father.

Coker Sr. surrendered his passport to authorities in North Carolina on Friday. Both he and Patten are out on $100,000 bond and not permitted to leave the continental United States.

The SEC also sued the men in a civil case over the alleged plot.

The men were charged for their involvement in Hometown International and a similar shell company called E-Waste. Prosecutors alleged that the men sought to enrich themselves by inflating the prices of Hometown International and E-Waste. At one point, their values on so-called over-the-counter markets had surged by 939% and 19,900%, respectively.

The men are charged with conspiracy to commit securities fraud, securities fraud and conspiracy to manipulate securities prices. The fraud and manipulation charges carry a maximum sentence of 20 years and a maximum fine of $5 million.

Patten is also charged with manipulation of securities, wire fraud and money laundering.

According to the indictment, the men duped the founders of Your Hometown Deli — Paul Morina, a former high school wrestling teammate of Patten's, and Morina's co-worker Christine Lindenmuth — telling them that the umbrella corporation could help with the restaurant's expansion. Neither Morina, principal and wrestling coach at Paulsboro High School, nor Lindenmuth, a math teacher at the same school, were mentioned by name in court documents.

The defendants then coordinated to control and transfer Hometown International stock between themselves and their friends for the purpose of inflating the share price, prosecutors said.

Patten didn't comment when asked Tuesday morning whether he had since spoken to Morina.

Prosecutors said Patten and the Cokers personally enriched themselves through consulting contracts that paid $15,000 a month to Coker Sr.'s company, North Carolina-based Tryon Capital, and $25,000 a month to Coker Jr.'s company, Macao-based VCH Limited. James Patten was a partner at Tryon Capital.

The men had similar, albeit smaller, consulting contracts with E-Waste.

Ultimately, the men planned to use both Hometown International and E-Waste as vessels for reverse mergers, which would allow other companies to go public through the two vehicles, authorities said.

When Makamer Holdings

, a bioplastics company, initiated a reverse merger with Hometown International, the deli was sold for $15,000. The deli is now permanently closed.

Coker Sr. and Patten have had brushes with regulators and the law before.

Coker Sr. was sued in 1992 for allegedly hiding money from creditors and alleged business-related fraud. He has denied wrongdoing in those cases, one of which was settled out of court in recent years in North Carolina. The same year, Coker Sr. was also accused of indecent exposure to minors.

In 2006, Patten was barred from FINRA, the broker-dealer regulator, for not complying with an arbitration award of more than $753,000 for violating securities laws, unauthorized trading and churning a client's account.

Patten in 2010 pleaded guilty to a federal mail fraud charge. The FBI said he sent an investor a false financial statement after he took about half of the $538,000 she gave him to invest and used it to cover bad investments he had made using her account. He was sentenced to 27 months in prison.

The peculiarities surrounding Your Hometown Deli first caught the eye of hedge-fund manager David Einhorn in 2021.

"The pastrami must be amazing," Einhorn quipped at the time. After the indictments last month, he tweeted: "I guess the pastrami wasn't so great."

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28. Two men charged in $100M New Jersey deli scheme plead not guilty (FOX Business)

11 Oct 2022 (2:27 PM), Lucas Manfredi

Two men charged with securities fraud for an alleged scheme involving a $100 million New Jersey deli pleaded not guilty during a court hearing on Tuesday.

Peter Coker Sr., 80, and James Patten, 63, were arrested in North Carolina last month. They were indicted by the Department of Justice in a 12-count indictment for conspiracy to commit securities fraud, securities fraud, and conspiracy to manipulate securities prices. Patten is also charged with four counts of manipulation of securities, four counts of wire fraud, and one count of money laundering.

In addition, the U.S. Securities and Exchange Commission has accused the men of market manipulation.

According to a complaint filed by the DOJ, Coker Sr., his 53-year-old son Peter Coker Jr. and Patten took steps to gain control of Hometown International and a separate shell company called E-Waste Corporation with the intention of selling their shares at a significant profit through reverse mergers. A reverse merger is a transaction where an existing public company merges with a private operating company.

After gaining control of the companies, the trio allegedly arranged for the transfer of millions of the company's shares to a number of entities, including some controlled by Coker Jr., as well as to the trading accounts of family members, friends and associates. The accounts were then accessed to commit a number of "match and wash" trades.

Hometown International, which began selling shares around October 2019 on the OTC Marketplace, operated Paulsboro, New Jersey-based Your Hometown Deli. The deli closed on Aug. 9 after Makamer Holdings disposed of its subsidiary Your Hometown Deli, LLC. In addition, the company disposed of any remaining inventory. All Your Hometown Deli, LLC transactions have been recorded as discontinued operations as of June 30, 2022, a regulatory filing said.

The DOJ alleges the scheme artificially inflated Hometown and E-Waste's stocks by approximately 939% and 19,900%, respectively.

The Securities and Exchange Commission says Hometown International saw its share price climb from approximately $1 per share in October 2019 to nearly $14 per share by April 2021, leading to a "grossly inflated" market capitalization of $100 million for one deli that produced less than $40,000 in annual revenue.

Peter Coker Sr. is represented by Marc Agnifilo, who has previously defended "pharma bro" Martin Shkreli and disgraced film producer Harvey Weinstein. Meanwhile, Patten has hired Ira Sorkin, who has previously represented late Ponzi schemer Bernie Madoff.

Sorkin told FOX Business the charges are "not supported by the facts" and that he believes the evidence at trial will support Patten and the legal team's position. Agnifilo declined to comment. Sorkin did not immediately return FOX Business' request for comment. Coker Jr., who is also being charged, is based in Hong Kong and considered at large.

The securities fraud and manipulation of securities prices counts each carry a maximum penalty of 20 years in prison and a $5 million fine. The wire fraud and money laundering counts are punishable by a maximum penalty of 20 years in prison and a $250,000 fine, or twice the gross gain or loss from the offense, whichever is greatest. The counts of conspiracy to commit securities fraud and conspiracy to manipulate securities prices both carry a maximum penalty of five years in prison and a $250,000 fine, or twice the gross gain or loss from the offense, whichever is greatest.

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29. Leveraging Women-Owned Businesses Can Maximize Meeting New SEC Climate Rules (Forbes)

11 Oct 2022 (10:52 AM), Joan Michelson

Women-owned small businesses may be the secret weapon in the supply chain, especially in light of the Securities and Exchange Commission's new climate risk disclosure rules.

The SEC's new climate disclosure rules, expected to be released in their final form any day now, will affect almost every business decision publicly-traded companies make. But these companies could leverage women-owned small businesses to gain a range of benefits, and maximize compliance with those new rules, according to Kristina Wyatt, who oversaw the team developing these SEC rules as Senior Counsel for Climate and ESG to the Director of Corporate Finance.

These new climate rules will require detailed disclosure about the financial impact of climate change on their business – from where they get their electricity and energy from, to the carbon emissions of their operations, down through their supply chains and beyond. Importantly, that data will need to be verified in their audited financial statements.

The financial impact of climate change is on vivid, heart-wrenching display in the massive devastation of homes, businesses, and communities from Hurricanes Ian and Fiona. Hurricane Ian alone is estimated to have caused about $67 billion in damage.

Investors need “good, reliable information” on climate impacts, but it’s not that easy to get

The days of reporting only selective climate-related information in their voluntary corporate responsibility or sustainability reports are over, and they will need data from their small suppliers too.

“The goal is to get good, reliable information in the hands of investors, hopefully at the least cost to companies as possible. So that's where having platforms and tools to make reporting easier is critical,” as Kristina Wyatt explained on my Electric Ladies Podcast recently.

One of the big hurdles with these new reporting requirements is managing supply chain reporting. There’s a whole industry now of climate-related accounting and management platforms to do so, including Salesforce, Donnelly Financial Solutions, and Wyatt’s current company, Persefoni, where she is Senior Vice President of Global Regulatory Climate Disclosure and Deputy General Counsel.

Having women-owned small businesses in your supply chain can be a benefit in climate reporting

The SEC rules include a process that allows for disclosing more and more detailed reporting over time, Wyatt said, adding that “eventually smaller companies will be asked to report their greenhouse gas emissions” at least. But these small businesses “are not going to have the wherewithal, the means to engage in difficult, sophisticated reporting,” Wyatt said.

It’s important not to see these new reporting requirements as a disincentive to use these small businesses, especially women-owned businesses (as well as minority- , veteran-, or disabled-owned businesses). On the contrary, Wyatt said, partnering with women-owned businesses in particular provide a lot of important benefits, including that subcontracting with them can help win government and other contracts.

“There are so many opportunities to create wealth, to create greater equity and to drive value through innovation and finding these multiple benefits…by making it easier for women owned businesses, for minority owned businesses, to innovate and prosper while we're addressing the climate crisis,” Wyatt explained.

Women leaders tend to be more detail-oriented, more accountable, better communicators, more values-oriented and more innovative, so women-owned business suppliers may actually improve the quality of the data corporates collect – and their business decision making.

Corporates and data management firms should make it easy for small businesses

Because the data collection infrastructure can be onerous for a small business, Wyatt said corporates should help them. She specifically suggested that “SaaS companies that are facilitating reporting, it would be a good public service (for them) to offer a free version of that

SaaS platform for exactly this purpose, to facilitate reporting by smaller companies in your supply chain."

She added, "it's just something that the companies who are facilitating the reporting need to step up and make it easy for all companies to report. It shouldn't be that difficult for the smaller companies to report, and the bigger companies ought to have that data going really down into their supply chains." She implied that her company will be offering an option soon.

Wyatt insists that companies should make it easy to collect the data they need from small businesses, so they can reap the reliability and innovation benefits of collaborating with women-owned ones.

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30. Crypto Rule Suggestions From U.S. Panel Seek To Plug Holes (Forbes)

11 Oct 2022 (6:00 AM), Rosemarie Miller

Although a panel of state and federal financial regulators has identified three areas in which new laws could help plug holes in U.S. cryptocurrencies rules, widely seen as a necessary precursor to broader adoption of blockchain-based finance, Congress may not be able to act on them any time soon. That could leave the market overseen by regulators competing for jurisdiction, encouraging the crypto industry to move offshore.

"New technology often requires a fresh look at regulation. It's clear that we need a regulatory framework for stablecoin and crypto spot markets," Kristin Smith, executive director of the Blockchain Association, tells Forbes. She is more optimistic than other observers about the outlook for rapid progress "Legislation is moving fast in Congress, and it's possible we will see something before the end of the year. If not, we expect quick action in 2023."

With mid-term elections looming next month, however, it is hard to see how legislation could be passed in 2022.

The three areas identified in an Oct. 3 report by the federal Financial Stability Oversight Council, created after the Great Recession that began in 2007, are:

Spot trading of crypto assets not considered securities

Regulatory arbitrage, where market participants seek to take advantage of different rules among agencies

Lack of traditional intermediaries, such as brokers and clearinghouses, in transactions involving retail investors

"There is no state or federal regulator with authority to regulate spot-market trading activity. If done correctly, regulation could provide for better consumer protection and lead to additional investment by institutions," says Smith.

The report considers spot trading of crypto assets a regulatory gap because the lack of rules could result in conflicts of interest and market manipulation that would be damaging to investors and the economy.

Arbitrage issues arise when "the same activity can be carried out lawfully under more than one regulatory framework." Consequently, says Smith, the report indicates there could be "a wide range of financial-stability implications if activities that bear the same risks are subject to different rules or if firms can operate in a manner that prevents regulators from assessing the totality of an entity's risks."

The third area of concern is the lack of buffers in financial transactions with retail investors. In the stock market, investors are protected by intermediaries such as brokers, exchanges and clearing houses. Many crypto firms offer vertically integrated services that allow retail customers to directly access the markets. According to the report, risk arises from credit, or leverage, provided by the platforms. Automatic liquidations and margin calls raise investor- and consumer-protection issues.

"With legislation, the devil is in the details. We believe the political environment is in a place where legislation is inevitable. The key for us is that we get the legislation done right, and we are willing to take the time needed to ensure that there aren't any unintended consequences as a result," says Smith.

With Congress having failed to define rules in these areas, regulators are taking matters into their own hands by bringing actions against crypto-market participants based on the assumption that certain digital assets fall under their jurisdiction.

Last week, Kim Kardasian settled with the Securities and Exchange Commission for $1.2 million for promoting EthereumETH 0.0% Max, a cryptocurrency built on the Ethereum blockchain, without disclosing she was paid $250,000 to provide the publicity. This high-profile settlement concluded with the crypto industry still uncertain about whether Ethereum Max—which the agency considers an "unregistered security"—is truly a security. If the case had gone to trial, the verdict would've given more clarity as to which cryptocurrencies are considered securities versus commodities.

Currently the SEC Chairman Gary Gensler considers most cryptocurrencies to be securities; while he maintains the grandfather of crypto and the largest by market capitalization, BitcoinBTC 0.0%, a commodity.

Meanwhile, the Commodities Futures Trading Commission charged Ooki DAO, a decentralized autonomous organization, on Sept. 22 with illegally offering leveraged and margined trades without a know-your-customer program. The CFTC generally oversees commodities, while the SEC is mainly concerned with securities including stocks and bonds.

While the regulators battle for jurisdiction, the financial industry is eagerly awaiting regulatory clarity to incorporate digital assets into its services. Just last week Nasdaq, the second-largest stock exchange in the world, announced that it had no plans of launching a cryptocurrency exchange in the U.S. without clear regulations.

"The education gap in lawmaker crypto knowledge is always a challenge. At the Blockchain Association, we have worked hard to be a resource to members of Congress. This is an ongoing process. Better policymaker education will lead to better legislation," says Smith.

Although there have been many proposals on crypto regulation, uncertainty remains over what may make Congress act.

Ironically, while the U.S. has no official crypto regulation, it still has some of the tightest crypto rules in the world, according to market information provider Forex Suggest.

The company ranked the U.S. along with seven other countries a five out of five for each of these categories: Legalizing the ownership of crypto, requiring a license for crypto business, taxing crypto as an asset, having crypto widely used to purchase goods and having central banks developing their own digital currency to protect investors by offering less volatile alternatives to traditional cryptocurrencies.

Joining the U.S. with top rankings were Australia, South Korea, the U.K., Denmark, Japan, Norway and Canada.

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31. Thousands of federal officials own stock in regulated companies: WSJ (Federal Times)

11 Oct 2022 (4:33 PM)

Thousands of federal government officials across the executive branch reported owning or trading stocks that stood to rise or fall with decisions made by their agencies, a Wall Street Journal investigation found.

More than 2,600 officials at agencies from the Commerce Department to the Treasury Department, during both Republican and Democratic administrations, disclosed stock investments in companies that were lobbying their agencies for favorable policies. That amounts to more than one in five senior federal employees across 50 federal agencies reviewed by the Journal, is said in an article published Oct. 11.

An official at the Environmental Protection Agency reported purchases of oil and gas stocks. The Food and Drug Administration improperly let an official own dozens of food and drug stocks on its "no-buy" list. A Defense Department official bought stock in a company before it won new business from the Pentagon, according to the report.

Title 18, section 208 of the U.S. Code, a criminal statute, prohibits employees in the executive branch from participating in a government matter that will have a direct and predictable effect on their financial interests, Federal Times has reported.

Such conflict-of-interests can include insider trading, a hot-button issue that the U.S. House of Representatives has grappled with in seeking to reform the Stop Trading on Congressional Knowledge Act.

The STOCK Act, by some experts' estimation, is the closest the government has come thus far in targeting stock trading by members of Congress. Then-President Barack Obama signed it into law in 2012, amending the Securities Exchange Act of 1934 and making explicit that the prohibition against insider trading would apply to members.

The Journal said it analyzed more than 31,000 financial-disclosure forms for about 12,000 senior career employees, political staff and presidential appointees. The review spans 2016 through 2021 and includes data on about 850,000 financial assets and more than 315,000 trades in stocks, bonds and funds by the officials, their spouses or children.

While the Ethics in Government Act, passed on the heels of the Watergate scandal, mandated that senior employees of the executive branch submit public financial disclosures, the vast majority aren't available online or readily accessible. The review amounts to the most comprehensive analysis of investments held by executive-branch officials, who have wide but largely unseen influence over public policy, the Journal said.

Among the findings:

— While the government was ramping up scrutiny of big technology companies, more than 1,800 federal officials reported owning or trading at least one of four major tech stocks: Meta Platforms's Facebook, Alphabet's Google, Apple and Amazon.com.

— Dozens of officials at agencies including the Federal Trade Commission and the Justice Department reported trading stock in companies shortly before their departments announced enforcement actions.

— More than 200 senior EPA officials, nearly one in three, reported investments in companies that were lobbying the agency.

— At the Defense Department, officials in the office of the secretary reported collectively owning between $1.2 million and $3.4 million of stock in aerospace and defense companies on average each year examined by the Journal. Some held stock in Chinese companies while the U.S. was considering blacklisting the companies.

Not every member of the executive branch is a public filer. Most that are hold high-level leadership positions. In addition to new entrant, annual, and termination reports, public filers must also report transactions of certain securities as they occur so that ethics officials can evaluate potential red flags.

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32. Deloitte-China Ordered to Pay $20 Million SEC Fine (The Epoch Times)

11 Oct 2022, David Chu

The SEC has issued a $20 million fine against Deloitte-China, for failing to comply with U.S. audit requirements.

In a Sept. 29 announcement, the Securities and Exchange Commission (SEC) penalized Deloitte Touche Tohmatsu Certified Public Accountants LLP (Deloitte-China) for “failing to comply with fundamental U.S. auditing requirements in its component audits of U.S. issuers and its audits of foreign companies listed on U.S. exchanges.”

The announcement revealed that, “In the course of numerous audits, Deloitte-China personnel asked clients to select their own samples for testing and to prepare audit documentation purporting to show that Deloitte-China had obtained and assessed the supporting evidence for certain clients’ accounting entries. This created the appearance that Deloitte-China had conducted the required testing of clients’ financial statements and internal controls when there was no evidence in the audit file that it had in fact done so.”

SEC chair Gary Gensler said in a statement: “We find that Deloitte-China fell woefully short of professional auditing requirements in numerous component audits of the Chinese operations of U.S. issuers and audits of Chinese companies listed on U.S. exchanges. While the SEC’s action today does not imply a violation of the Holding Foreign Companies Accountable Act, the action does underscore the need for the Public Company Accounting Oversight Board to be able to inspect Chinese audit firms.”

In response, Deloitte-China agreed to pay the $20 million fine and to take extensive corrective measures.

Statement of Protocol Agreement

Public Company Accounting Oversight Board (PCAOB) staff arrived in Hong Kong to begin an audit inspection.

According to a Sept. 22 report by Reuters, sources familiar with the matter disclosed that the China Securities Regulatory Commission and the Ministry of Finance dispatched about 10 officials to Hong Kong to participate in the audit inspection, which began on Sept. 19. The sources further revealed that the officials would also be present to assist a team from the PCAOB, whose job is to interview and collect evidence with audit firm staff.

The accounting audit inspection of Chinese stock companies launched by the PCAOB in Hong Kong was carried out in accordance with the Statement of Protocol (SOP) agreement signed between China and the United States in August.

On Aug. 26, the China Securities Regulatory Commission and the Ministry of Finance officially announced the signing of the SOP agreement with the PCAOB and stated that cooperation in the oversight of PCAOB-registered public accounting firms in China and Hong Kong, as required by the agreement, would be launched in the near future.

Two weeks prior, on Aug. 12, five Chinese government-owned enterprises—PetroChina, Sinopec, China Life, Aluminum Corporation of China, and Shanghai Petrochemical—collectively announced their delisting from the New York Stock Exchange.

CCP Fears Financial Decoupling

Shi Shan, a U.S.-based Chinese current affairs expert on political and economic issues, believes that, since the United States has already taken actions to proactively decouple from China in the fields of science and technology, the Chinese Communist Party (CCP) is worried about a financial decoupling and has to make concessions.

Shi told The Epoch Times that the delisting of these five enterprises from the New York Stock Exchange was a desperate move by the CCP. It had to hide the fact that these enterprises are fully controlled by the Chinese central government in order to evade the requirements of the Holding Foreign Companies Accountable Act (HFCAA).

In December 2020, the HFCAA was signed into law by U.S. President Donald Trump. Subsequently, the SEC issued detailed rules for the implementation of the act.

The most important HFCAA rules stipulate that the PCAOB must be allowed to inspect the audits of China-based, U.S.-listed firms, and these companies must declare that they are not owned or controlled by the Chinese regime.

Shi pointed out that in China's so-called "three-year reform of state-owned enterprises," the CCP helped government-owned enterprises become industry giants through state monopoly.

"Their goal is to participate in global competition and influence the global economy by manipulating the domestic market," he said.

For nearly a decade, U.S. regulators have been demanding audit documents from U.S.-listed Chinese companies. But the CCP, citing national security concerns, refused to provide them and refused to allow U.S. regulators to inspect accounting firms, leading to a stalemate between the two sides.

Since March this year, Chinese concept stocks that did not meet the PCAOB audit requirements were placed on the pre-delisting list. Then in April, the CCP was forced to revise relevant regulations, so that the two countries could finally sign the SOP agreement.

According to Shi, the CCP had to make concessions out of fears that the United States would start financial decoupling from China, indicating that the CCP has fallen into a passive position in its confrontation with the United States.

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33. SEC panel to address entrepreneurship hubs, IPO market (Financial Regulation News)

11 Oct 2022 (4:24 PM), Douglas Clark

The Securities and Exchange Commission's (SEC) Small Business Capital Formation Advisory Committee will host an Oct. 13 meeting focusing on entrepreneurship hubs and the initial public offering (IPO) market.

The SEC Small Business Advocate Act of 2016 established the 19-member panel to provide a formal mechanism for the SEC to receive advice and recommendations on agency rules, regulations, and policy matters relating to small businesses.

The meeting's morning session is slated to examine nationwide best practices to foster start-up creation and growth, per the meeting agenda, with the Committee receiving information from experts and discussing factors contributing to entrepreneurial communities working effectively while considering methods to support nationwide small business growth.

In the afternoon session, the Committee is expected to explore how economic conditions, recent changes in IPO activity, and other factors could potentially impact companies going public.

The discussion will include the state of play in the IPO market over the last year, a tighter investing environment, and numerous recent SEC rulemakings, according to the agenda, while field experts will share market data and insights and address how the various pathways to going public have been impacted.

The public will be able to view the meeting on the SEC's website from 10 a.m. to 3 p.m. (ET).

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34. Analysis Shows that Investors Strongly Support the SEC's Proposed Climate Disclosure Rule (Accesswire)

11 Oct 2022 (5:24 PM), Steven M. Rothstein

Investors have spoken-they are strongly in favor of the disclosure rule proposed by the U.S. Securities and Exchange Commission to require companies to disclose climate risk information, whether physical or transitional. Their comments to the SEC solidly underscore their support for standardizing climate risk disclosures so that the SEC can fulfill its mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. Ceres analyzed the comment letters of 320 institutional investors, including both asset owners and asset managers, who collectively own or manage more than $50 trillion in assets. We looked at their positions on key provisions in the SEC's proposed rule. Our analysis included direct letters sent to the SEC, as well as investors that signed this statement in support of a strong rule.

Our analysis pinpoints the solid support found in these investors' comments, giving the SEC a clear guidance of what investors want going forward:

Key Provisions 320 Institutional Investors

Require disclosures in form 10-K.

270 investors mention

97% support

Align the required disclosures with the recommendations of the Task Force on Climate- related Financial Disclosures (TCFD).

296 investors mention

100% support

Require disclosure of Scope 1 and 2 GHG emissions.

292 investors mention

99% support

Require disclosure of Scope 3 GHG emissions with safe harbor if it's material or if there is a target.

297 investors mention

97% support

Require governance disclosures related to board and management oversight.

262 investors mention

98% support

Require disclosure of climate-related targets and goals, if they exist.

45 investors mention

95% support

Require attestation of Scopes 1 and 2 GHG emissions.

57 investors mention

80% support

In their comment letters, at least 129 investors describe how they use climate-related data in investment decision-making and how standardized disclosure will improve the comparability, consistency, and reliability of this information.

Asset managers are bound by fiduciary duty to manage risks, including climate risk. Investors need to understand how climate risk is integrated into risk management frameworks and how risk analysis undertaken feeds into business decision making. Given scientifically based projections that climate change will disrupt social, ecological, and financial systems, this is particularly important to long-term time investment horizons.

Company financial performance is positively and negatively affected by material climate issues, over different time horizons. Investment decisions are better informed knowing a company's exposure to and transition readiness for impacts from physical and transition risks. Incomplete information can adversely impact companies' costs of capital and is increasingly relevant to top line revenues.

Climate disclosures contribute to informed capital allocation and business decisions by investors, resulting in improved value creation, risk mitigation, and effective portfolio design. This information is used during due diligence and securities selection to help compare one company's risk to its peers and, consistent with fiduciary duty, to determine position adjustment.

Investors need to understand the magnitude of company-specific risk exposures to prioritize engagements and inform proxy voting. The failure of companies to appropriately manage and comprehensively report climate risk may lead investors to withhold support from board members. When they adopt a rule on climate risk disclosure, the SEC will join a growing number of jurisdictions throughout the world requiring TCFD disclosures, contributing to a global baseline that will benefit investors and companies. The SEC's efforts will complement the work of the International Sustainability Standards Board, established last year by the IFRS Foundation. ISSB recently proposed a climate disclosure standard and is reviewing comments. 140 jurisdictions around the world currently follow the IFRS' global accounting standards.

Given the clear need highlighted by investors in their comments for comparable, complete, decision-useful information, demand for climate disclosures and international momentum is only going to keep growing. Last month, 532 institutional investors representing $39 trillion in assets issued the most ambitious investor call for government action on the crisis, including a call for mandatory climate disclosure globally.

Investors are speaking loudly and clearly. It is time to mandate standardized climate disclosure.

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35. SEC Investigating Bored Ape Creator Yuga Labs Over Securities Violations: Report (Decrypt)

11 Oct 2022, Andrew Hayward

The United States Securities and Exchange Commission is investigating Yuga Labs over whether its Bored Ape Yacht Club Ethereum NFTs and the ApeCoin token are unregistered securities, according to Bloomberg.

The report, which cites an unnamed source, claims that the agency is exploring whether the crypto startup broke federal law by issuing NFTs that act like stocks, as well as exploring the distribution of the Ethereum-based ApeCoin token that launched earlier this year. Yuga Labs has not yet been accused of any wrongdoing and the investigation may not necessarily lead to charges, per the report.

“It’s well-known that policymakers and regulators have sought to learn more about the novel world of Web3. We hope to partner with the rest of the industry and regulators to define and shape the burgeoning ecosystem,” Yuga Labs told Bloomberg in a statement. “As a leader in the space, Yuga is committed to fully cooperating with any inquiries along the way.”

The Bored Ape Yacht Club is one of the most successful NFT projects to date, with the main collection of 10,000 NFTs initially selling to the public at $190 worth of Ethereum apiece. That sale yielded Yuga roughly $1.9 million. Follow-up and spinoff projects, the Mutant Ape Yacht Club and the Otherside metaverse game, then raked in $96 million and $319 million, respectively.

BAYC has also generated nearly $2.5 billion worth of secondary trading volume, per data from CryptoSlam. Mutant Ape Yacht Club and Otherside have added another $3.35 billion worth of secondary trading volume to that tally. Yuga Labs earns a 2.5% royalty fee on each of those sales.

Bored Ape NFT owners are entitled to various benefits, including access to a private community and live events, as well as the ability to use their owned illustration to create and sell derivative artwork and projects. Many of the NFTs have sold for seven-figure sums, and the project has attracted a number of celebrity owners as it has gained popularity.

Furthermore, Bored Ape NFT holders have been granted various past benefits, including free Bored Ape Kennel Club, Mutant Ape Yacht Club, and Otherside NFTs, plus an allotment of ApeCoin when that token launched in March.

Officially, ApeCoin was not created or launched by Yuga Labs—it was issued by the Ape Foundation, which is fronted by a board that includes prominent Web3 builders like Reddit co-founder Alexis Ohanian and FTX Ventures head Amy Wu.

That approach was apparently chosen due to regulatory concerns, although Bloomberg reports that the SEC is still investigating the launch and distribution of the token. Yuga Labs and its founders have benefited greatly from the launch of ApeCoin, which has a current price of about $4.75 per token and a market cap of just over $1.5 billion.

ApeCoin’s price tumbled shortly after the report was published, and now is down about 9% over the last 24 hours per data from CoinGecko.

The SEC has increased its scrutiny of the crypto and NFT markets under the leadership of chair Gary Gensler, who was named to the post in April 2021. Gensler has shared a view that nearly any other crypto token besides Bitcoin could be a security, and has pursued a number of recent actions—including naming nine tokens listed on Coinbase as securities.

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36. SEC Rejects WisdomTree Bitcoin Spot ETF Application—Again (Decrypt)

11 Oct 2022, Andrew Throuvalas

The Securities and Exchange Commission (SEC) has once again stonewalled the launch of a Bitcoin spot ETF in the United States.

On Tuesday, the commission released an order rejecting Cboe BZX Exchange's latest application for the product, on grounds similar to those cited in multiple applications before it.

"The Commission concludes that BZX has not met its burden under the Exchange Act and the Commission's Rules of Practice," read the filing.

Specifically, the SEC ruled that the exchange hasn't demonstrated that its WisdomTree Bitcoin Trust would be "designed to prevent fraudulent and manipulative acts and practices" while protecting investors and public interest.

The decision follows two delays on the company's application decision in March and August, and the denial of a former application from WisdomTree in December on the exact same grounds.

The SEC has approved multiple Bitcoin futures ETFs since last October, but is yet to approve a Bitcoin spot ETF. The former product type is backed by cash-settled futures contracts which bet on Bitcoin's future price. By contrast, the latter tracks the price of actual Bitcoin held by the ETF provider.

The commission's refusal to accept a spot ETF within U.S. markets consistently comes back to one problem: the lack of a sufficiently regulated Bitcoin spot market within the country.

"An exchange that lists bitcoin-based ETPs can meet its obligations… by demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying or reference bitcoin assets," explained the SEC's order.

Grayscale—the world's largest Bitcoin fund—received a similar explanation in May after the commission rejected its lengthy appeal to convert its fund into a spot ETF. CEO Michael Sonnhenshein suspected foul play, however, and decided to pursue a lawsuit against the SEC.

"The SEC is failing to apply consistent treatment to similar investment vehicles, and is therefore acting arbitrarily and capriciously in violation of the Administrative Procedure Act and Securities Exchange Act of 1934," Grayscale's legal counsel said at the time.

Other countries such as Canada and Australia have already approved multiple spot ETFs for both Bitcoin and Ethereum.

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37. Grayscale fires first salvo in case against SEC over Bitcoin ETF refusal (CoinTelegraph)

11 Oct 2022 (4:24 PM), Brayden Lindrea

Digital asset manager Grayscale has filed its opening brief against the U.S. Securities Exchange Commission (SEC) to challenge its decision denying Grayscale's application to convert the Grayscale Bitcoin Trust (GBTC) to a spot Bitcoin ETF.

The world's largest digital asset management firm filed its opening legal brief on Oct. 11 in the U.S. Court of Appeals in the District of Columbia Circuit, in which it claimed the SEC's knockback to be "arbitrary, capricious and discriminatory."

Grayscale argued that the SEC treats spot Bitcoin Exchange-Traded Products (ETPs) with "special harshness" and is doing so "in excess of its statutory authority."

Attorneys for Grayscale argued that several Bitcoin Futures ETFs that have been previously approved by the SEC generate their prices based on the same indices as the spot Bitcoin ETF.

They stated that the SEC could not rationally conclude that Bitcoin Futures ETFs do not take on "the very same risks in the very same market" as the spot Bitcoin ETF, adding:

"Although Bitcoin may be a relatively new asset, the legal issue here is straightforward. The Commission has violated the APA's most basic requirements by failing to justify its vastly different treatment of Bitcoin Futures ETPs and spot Bitcoin ETPs."

Grayscale also argued that the SEC's "significant-market test" — one which assesses whether an exchange's proposal to list an ETP is "designed to prevent fraudulent and manipulative acts and practices" – is "flawed" and that the SEC "set the bar so high" that it couldn't possibly be satisfied.

Attorneys for Grayscale also noted that this significant-market test only applies to Bitcoin-related ETPs — which led them to believe that they have been discriminated against.

Grayscale also argued the SEC's decision "harms the 850,000 investors who own shares in the Trust":

“Given that the Commission did not approve the Trust to trade as an ETP on the Exchange, the value of its shares cannot closely track the value of the Trust’s underlying Bitcoin assets—depriving Trust shareholders of billions of dollars in value.“

“There is simply no justification for continuing to inflict such serious investor harm,” the brief stated.

The filing in the U.S. Court of Appeals comes after the SEC officially denied Grayscale’s application to convert GBTC to a spot Bitcoin ETF on Jun. 29.

On the same day, Grayscale initiated litigation by filing a “Petition For Review.”

According to Grayscale, the SEC must submit its brief by Nov. 9. Grayscale will then submit a reply brief on Nov. 30 before both parties submit a final brief on Dec. 21.

Grayscale had $26.4 billion in assets under management (AUM) in Mar. 2022.

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38. In SEC Lawsuit, Grayscale Calls Spot ETF Rejection ‘Arbitrary, Capricious, and Discriminatory’ (CoinDesk)

12 Oct 2022 (2:11 AM), Cheyenne Ligon

Grayscale Investments called the the U S. Securities and Exchange Commission's (SEC) June decision to reject its application to convert its flagship Grayscale Bitcoin Trust (GBTC) into a spot bitcoin exchange traded fund (ETF) “arbitrary, capricious, and discriminatory" in an opening legal brief filed as part of its lawsuit against the regulator.

Grayscale filed suit against the SEC on June 29th, asking the U.S. Court of Appeals for the District of Columbia Circuit to review the regulator’s decision, which the SEC has published earlier in the day.

Grayscale is a wholly-owned subsidiary of Digital Currency Group, the parent company of CoinDesk.

Grayscale is far from the only company whose spot bitcoin ETF application has been rejected – over the last year, the SEC has denied over a dozen similar applications from other major players in the crypto space, including WisdomTree and Ark21Shares, citing a lack of investor protections and the potential for fraud and manipulation.

WisdomTree's latest application was rejected the same day Grayscale filed its brief.

While the agency has repeatedly rejected bitcoin spot ETF applications, it has approved several bitcoin futures ETFs, making a distinction between the offerings that Grayscale’s lawyers say is “arbitrary” and “outside the Commission’s authority.”

In the brief, the attorneys argue that, because Bitcoin futures and spot Bitcoin both generate their price based on overlapping indices, the spot price of Bitcoin in both spot and futures ETFs are subject to the same risks – and therefore, approving one and denying another is unfair.

"The Administrative Procedure Act and Exchange Act require rules and regulations to be

applied without favoritism for one type of product or another," said Craig Salm, Grayscale's Chief Legal Officer, in a press statement.

The SEC's response is due Nov. 9.

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39. SEC Investigating Bored Ape Creator Yuga Labs Over Its Offerings (Investopedia)

11 Oct 2022, Kevin George

The U.S. Securities and Exchange Commission is investigating Yuga Labs, the company behind Bored Ape Yacht Club (BAYC), over its non-fungible token (NFT) collections and cryptocurrency. According to a report, the financial watchdog wants to know whether some of Yuga's non-fungible tokens and cryptocurrency ApeCoin are similar to stocks and should follow the same disclosure regulations. In response to the news, ApeCoin, Bored Aped Club's native token, lost more than a tenth of its value.

BAYC On The Radar

Bored Ape Yacht Club is the largest NFT collection built on the Ethereum blockchain network. The collection of 10,000 lazy-looking apes has a floor price of $96,230 at the time of writing.

Its native token, ApeCoin, was created in March 2022, which acts as the main cryptocurrency of the Bored Ape Yacht Club ecosystem.

It's important to note that ApeCoin (APE) was not launched by Yuga Labs, but by the Ape Foundation, whose board members include prominent names, such as Reddit's Alexis Ohanian and FTX Ventures' Amy Wu.

The SEC is closely looking into the NFT collection and ApeCoin both. The regulator is investigating whether Yuga Labs' issuance of NFTs and launch of its native cryptocurrency violated any rules. As of now, Yuga Labs has not been accused of any wrongdoing, but the investigation may or may not result in charges. Yuga Labs said it would fully cooperate with any inquiries from the SEC, according to the report.

NFTs Are New Target

The SEC has reportedly been investigating the NFT market since March over its offerings. Its goal was to determine whether non-fungible tokens had breached federal securities laws.

The agency wanted to investigate the bloated NFT market which saw a peak in 2021 due to celebrity endorsements and record sales. Due to the hype, NFT trading volumes in 2021 exceeded $13 billion, up 42,988% from 2020.

The Bottom Line

SEC Chair Gary Gensler has repeatedly stated that cryptocurrencies are securities and should be subject to Securities Laws. A final decision on whether XRP is a security is still pending between the SEC and Ripple, and in the most recent case, it charged TV star Kim Kardashian over an Instagram post. It's unlikely the SEC will stop investigating crypto anytime soon, considering how far it has expanded its investigation.

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40. SPAC backing Trump media delays merger vote (CFO Dive)

11 Oct 2022, Jim Tyson

Dive Brief:

- Digital World Acquisition (DWAC), the blank-check company planning to merge with an online media venture created by former President Donald Trump, extended for a third time the deadline for allowing shareholders to vote on the deal. The new deadline is Nov. 3.
- If Digital World does not gain investor approval by Dec. 8 for a 12-month extension of its merger effort, it may need to shut down and reimburse investors with the nearly $300 million it raised last year in an initial public offering (IPO).
- "We continue to strongly believe that a stockholder vote to approve a one-year extension is important and in the best interests of our stockholders," Digital World CEO Patrick Orlando said in a statement. "I believe we have some — if not the most — passionate and enthusiastic stockholders of any public company."

Dive Insight:

Digital World, a special purpose acquisition company, went public in Sept. 2021. Its shares rocketed from less than $10 to as high as $175 in intraday trading after it announced a merger with Trump Media & Technology Group (TMTG) and the launch of a Trump-led social network in Oct. 2021. Company shares traded on Tuesday at around $15.90.

Digital World is seeking formal approval for the merger from the Securities and Exchange Commission (SEC) even as the agency investigates whether the company, before its IPO, engaged in illegal negotiations with Trump's company on details of a merger. The Justice Department is pursuing a similar probe.

Digital World said in May in an S-4 registration statement with the SEC that it had received an SEC subpoena seeking documents and information about meetings of the company's board, "communications with and the evaluation of potential targets, including TMTG" and communications related to TMTG. The agency also required the company to hand over "agreements with and payments made to certain advisors."

TMTG rallied behind Digital World investors last month, criticizing the SEC for allegedly pursuing political aims and withholding approval of the merger.

"The SEC has needlessly delayed its review of our proposed merger, causing real and unnecessary financial harm to DWAC investors," TMTG said in a statement.

"Despite its standard practice to provide comments within 30 days, the SEC has failed to give meaningful feedback on DWAC's registration statement for a stunning 115 days and counting," Trump's media company said. "In the interests of simple fairness, the SEC needs to set aside any improper political considerations and bring its review to a swift conclusion."

In line with SEC rules, Digital World described in its 259-page registration statement several potential post-merger risks to investors. The details on risks span 57 pages.

"President Trump is involved in numerous lawsuits and other matters that could damage his reputation, cause him to be distracted from the business or could force him to resign from TMTG's board of directors," according to Digital World.

Among several instances of litigation, Digital World flagged the U.S. House investigation of Trump's role in the rioting at the U.S. Capitol on Jan. 6, 2021, by insurrectionists opposed to the results of the November 2020 presidential election.

Digital World noted that the district attorney in Fulton County, Georgia is investigating Trump's alleged interference in the presidential election. It also acknowledged that a U.S. House committee is probing whether Trump destroyed and removed classified documents and White House records. The company did not mention a similar investigation by the Justice Department.

Digital World cautioned investors that "a number of companies that were associated with President Trump have filed for bankruptcy," including the Trump Taj Mahal, Trump Plaza, Trump Castle and Plaza Hotel.

Also, "a number of companies that had license agreements with President Trump have failed," Digital World said, citing Trump Shuttle, Trump University, Trump Vodka, Trump Mortgage, Trump Steaks and GoTrump.com, a travel site.

"There can be no assurances that TMTG will not also fail," Digital World said in the statement, noting that after a merger Trump would control 57.8% of the voting power of the outstanding common stock.

The merger has planned to back Truth Social, a social media channel created by the former president.

Trump was banned from Facebook, Twitter and YouTube after the 2021 insurrection. The social media networks said Trump spread falsehoods about voting fraud during the 2020 presidential election.

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41. As crypto regulation looms ahead, here are the bills to look out for (TechCrunch)

11 Oct 2022 (2:00 PM), Jacquelyn Melinek

Regulation around crypto is far from final in the U.S., and some would argue that the path is just being paved. As crypto-focused bills are being introduced to Congress, there are a few the industry and regulators should keep an eye on, according to a new report by Prime Trust.

To date, Congress has introduced over 50 bills related to digital assets, blockchain technology and other policies within the crypto sector. But of those, three stand out: The Digital Commodity Exchange Act of 2022, the Lummis-Gillibrand Responsible Financial Innovation Act and The Digital Commodities Consumer Protection Act of 2022, the report stated.

"Based on industry discussions, those three seemed to have the most legislative momentum and were the most comprehensive," Jeremy Sheridan, VP of regulatory affairs at Prime Trust, told TechCrunch.

While all three bills are different, each aims to have the Commodity Futures Trading Commission (CFTC) as the main regulator and overseer for cryptocurrencies, unless they are defined as securities, in which case they would remain under the purview of the U.S. Securities and Exchange Commission (SEC).

"Just having that primary regulator is really important," Sheridan said. "It starts establishing the roles of the road."

The CFTC and the SEC's roles around cryptocurrency regulation have been somewhat blurred, as both organizations have tried to get involved, but each of these bills aim to provide greater clarity on that front, in addition to other areas.

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42. FinCEN, SEC, and CFTC's Update on Crypto Tax Audit, & Other Regulatory Framework of Crypto (The Tech Outlook)

12 Oct 2022

The core fundamental of the crypto world can be expressed in two words — decentralized and uncontrolled. However, the US government isn't very concerned with cryptocurrency's underlying principles.

This is due to the recent growth in interest among American lawmakers and governmental bodies in the regulation of cryptocurrencies. Organizations like Financial Crimes Enforcement Network (FinCEN), U.S. Securities and Exchange Commission (SEC), Commodity Futures

Trading Commission (CFTC), and others focus on strengthening the security of the crypto world.

In this article, we have summarized some of the major updates from popular organizations on the crypto tax audit, anti-money laundering (AML) as well as other security regulations.

Financial Crimes Enforcement Network, U.S. Treasury

In 2013, FinCEN (Financial Crimes Enforcement Network) was among the first ones in establishing its jurisdictional flag in the early days of cryptocurrency.

They stated that "administrators or exchangers" of virtual currency qualified as money services organizations as per the FinCEN rules and Bank Secrecy Act (BSA).

Money service companies must also create, execute, and manage an AML compliance program in addition to registering with FinCEN. Congress has stated that companies that exchange or transport virtual currencies qualify as regulated enterprises under the Anti-Money Laundering Act of 2020.

The BSA must also be followed by tumbler or mixer service providers, according to FinCEN guidelines published in 2019.

Decentralized Finance is subject to AML regulations, according to FinCEN. Additionally, FinCEN has made it plain that Decentralized Finance is subject to AML requirements.

U.S. Securities and Exchange Commission

During the Biden term, the SEC's attack on the cryptocurrency sector has substantially grown. As of now, the SEC has mostly focused on whether or not cryptocurrency should be regulated in accordance with the U.S. Securities Exchange Act and other relevant regulations as security. In fact, the SEC has concentrated its crypto enforcement resources largely in relation to claims of unregistered securities transactions.

Commodity Futures Trading Commission

Organizations that trade swaps related to cryptocurrencies are under the authority of the CFTC since it has adopted the viewpoint that cryptocurrencies are equivalent to commodities. The CFTC's authority over digital assets would also be strengthened by a recent proposal, however, the senators recently stated that the proposal will probably be postponed.

State Regulators

One of the top regulators of cryptocurrencies is the New York State Department of Financial Services (DFS), and the state's regulatory framework is still the strongest of all the states.

When it comes to cryptocurrency regulation, there is rarely consistency throughout the states. Even though some states have claimed regulatory authority over enterprises using virtual currencies, many others have not.

For instance, Florida lawmakers recently enacted a bill that nullified an existing Florida statute meant to prevent money laundering in the cryptocurrency business, in contrast to New York, which has seemed optimistic about crypto enforcement. Wyoming has enacted legislation aimed at establishing itself as a bitcoin-friendly state while also attempting to clarify the rules governing cryptocurrency firms.

The Bottom Line

In the future, there will probably be more regulation of cryptocurrencies and crypto tax audits. Some still need to be answered. What threats are present by nature? What are the safeguards that could lessen such risks? Which risks are acceptable? Only future regulations will address these questions.

Although there are many safe harbors and regulatory grey areas, authorities continue to impose supervision over this expanding business. Federal and state authorities may target regulated cryptocurrency businesses that don't abide by basic AML compliance procedures including doing KYC on new clients, keeping an eye on transactions, and looking into questionable transactions.

FAQs

Will I get audited if I don't report crypto?

Although selling or trading cryptocurrencies won't result in a tax audit, you still need to declare your gains and losses in order to complete a tax return that is accurate.

Can crypto be audited?

IRS crypto tax audits of cryptocurrency tax returns are increasing.

Making sure all cryptocurrencies and cryptocurrency transactions have been correctly declared for income tax and reporting reasons is the best strategy to withstand an IRS cryptocurrency audit. If you own cryptocurrencies, you should proactively be ready for an IRS audit.

Does the IRS investigate crypto?

The IRS has increased its oversight of and enforcement of cryptocurrency laws over time. Virtual money should be recognized as an asset for federal tax reasons, and capital gains tax laws apply, according to IRS advice that has been in place since 2014.

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43. Tech Error Forces SEC to Reopen Several Comment Periods (National Association of Plan Advisors)

11 Oct 2022

REGULATORY AGENCIES

Due to a technological error, the Securities and Exchange Commission (SEC) has reopened the public comment periods for 11 rulemaking releases and one request for comment, including projects that may impact retirement industry stakeholders.

According to the SEC's announcement, the technological error resulted in a number of public comments submitted through the Commission's internet comment form not being received. Most of the affected comments were submitted in August 2022, but the technological error was found to have occurred as early as June 2021.

To ensure that interested stakeholders and affected commenters are able to comment on the impacted releases and resubmit comments, the Commission is reopening the comment periods for the affected releases from Oct. 7 until 14 days following publication of the reopening release in the Federal Register.

The SEC further advises all commenters who submitted a public comment to one of the affected comment files through the internet comment form between June 2021 and August 2022 to check SEC.gov to determine whether their comment was received and posted. If a comment has not been posted, commenters should resubmit that comment.

The affected Commission releases include the following.

- Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices, Release Nos. 33-11068, 34-94985, IA-6034, IC-34594 (June 17, 2022)
- Request for Comment on Certain Information Providers Acting as Investment Advisers, Release Nos. IA-6050, IC-34618 (June 22, 2022)
- Investment Company Names, Release Nos. 33-11067, 34-94981, IC-34593 (June 17, 2022)
- Special Purpose Acquisition Companies, Shell Companies, and Projections, Release Nos. 33-11048, 34-94546, IC-34549 (May 13, 2022)
- The Enhancement and Standardization of Climate-Related Disclosures for Investors Release Nos. 33-11042, 34-94478 (Apr. 11, 2022)
- Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, Release No. IA-5955 (Mar. 24, 2022)
- Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, Release Nos. 33-11038, 34-94382, IC-34529 (Mar. 23, 2022)
- Short Position and Short Activity Reporting by Institutional Investment Managers, Release No. 34-94313 (Mar. 16, 2022); see also Notice of the Text of the Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail for Purposes of Short Sale-Related Data Collection, Release No. 34-94314 (Mar. 16, 2022)
- Share Repurchase Disclosure Modernization, Release Nos. 34-93783, IC-34440 (Feb. 15, 2022)
- Money Market Fund Reforms, Release No. IC-34441 (Feb. 8, 2022)
- Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition against Undue Influence over Chief Compliance Officers; Position

Reporting of Large Security-Based Swap Positions, Release No. 34-93784 (Feb. 4, 2022)

- Reporting of Securities Loans, Release No. 34-93613 (Dec. 8, 2021)

The SEC further advises that the technological error may have also affected certain comments with respect to self-regulatory organization matters listed in the reopening release. The Commission will evaluate any comments resubmitted with respect to these matters and consider whether further action is warranted.

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44. The Fintech Files: Crypto funds dumped Ethereum after the Merge – here's why (Financial News, UK)

11 Oct 2022 (2:28 PM), Alex Daniel

The Ethereum Merge might be complete, but it's not caused investors to pile into the asset as much as some might have hoped.

Ether saw outflows of $2.2m last week, part of a bigger $361m dumping of the asset in the first three quarters, according to CoinShares research.

The token is 60% down for the year – despite its supposedly era-defining software update – to $1,282 on 11 October.

Part of the reason for that is US regulatory chief Gary Gensler. (Remember him?)

Last month, he signalled that the digital currency may now qualify as a security because of the new staking model it employs after the Merge, thus making it fall under the jurisdiction of the Securities and Exchange Commission.

Crypto firms don't like this one bit. If a token is regulated as a security – like a stock – it becomes far more costly and complex to run because of the strict retail investor protection rules applied by the SEC.

Instead, the industry by and large wants to be regulated by the Commodities and Futures Trading Commission, the derivatives watchdog.

There, the rules are less stringent, and more focused on making sure companies can use derivatives to hedge against the risks of volatile price swings than on the role of retail investors.

SEC oversight could "potentially destroy" a big part of ether's valuation, said Marc P Bernegger, co-founder of Zurich-based crypto fund AltAlpha Digital.

He added that some investors are waiting for "regulatory clarity" before allocating funds to ether and other cryptocurrency assets.

Ether remains in demand, he added, but its short-term outlook remains gloomy due to the "SEC threat".

Rocky markets in general haven't helped, of course. Almost every asset class has reeled in 2022 from the war in Ukraine and roller coaster energy shocks, as well as soaring inflation and rising interest rates.

European CBDCs 'will not replace the euro'...

Currency traditionalists breathed a sigh of relief at this year's Sibos conference in Amsterdam after European Union Commissioner Mairead McGuinness said that a central bank digital currency would "be a companion to the physical euro".

"The digital euro would provide an alternative, not a replacement to private means of payment," the EU commissioner for financial stability, financial services and the capital markets union said.

Nine out of 10 central banks are exploring the possibility of issuing a digital form of cash. The European Central Bank is currently in the research phase. But like with other Western central banks, no decision has been made on whether to go through with issuing one.

…while MiCA edges forward

Meanwhile, the bloc came a step closer to regulating crypto, after EU lawmakers voted in favour of the Markets in Crypto Assets Regulation.

MiCA is a comprehensive set of regulations for the digital asset space in Europe – officials voted 28 to 1 in favour of the legislation.

If passed in the next vote, it will mean stricter rules for crypto companies, such as bringing stablecoins such as tether and USD coin under a stricter regime to make sure they can meet redemption requests during mass withdrawals.

Earlier this month, European Banking Authority chair José Manuel Campa wrote in FN about what MiCA might mean for crypto cops and criminals.

Our favourite stories from around the web

Rug pulls in crypto are usually the domain of scammers – constructing hype around their coins then abandoning the project and making off with the cash. But now, US news giant CNN has been accused of doing just that after pulling the plug on its own crypto project, reports Decrypt.

Crypto and gambling have a lot in common – but with crypto, people often have no idea what they're getting themselves into. The Financial Times asks: is there really such a thing as crypto addiction?

An Australian woman who was accused of theft over a $10.5m mistaken crypto refund from Crypto.com has been released on bail, along with her husband – despite allegedly trying to flee the country. The money was allegedly used to buy four houses worth $4m, plus vehicles, art and furniture, reports the Guardian.

The last word

The Financial Conduct Authority thinks Binance is “not capable” of supervision by regulators and poses a “significant risk to consumers”, as per a consumer warning last year.

But Binance's co founder, He Yi, has another version of events.

She told Financial News the exchange had merely made “communicating mistakes” when seeking a license to operate in Britain, and that it was “not professional” enough in the language it used when applying.

Yi added that the UK was the “most stressful” country from the perspective of crypto regulation – but that Binance was engaging the FCA in a fresh charm offensive.

Will it work? Is Yi correct? The FCA declined to comment.

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Walker, Gloria H

From: Persefoni <reply@persefoni.com>
Sent: Thursday, October 6, 2022 11:03 AM
To: Gensler, Gary
Subject: ICYMI: What is Decarbonization?

PERSEFONI

Hi Gary,

With carbon emissions continuing to climb and organizations setting ambitious commitments to reduce emissions to net zero by 2050, decarbonization has become a hot topic. But what is decarbonization? Why are countries and companies committing to decarbonization? How is it achieved? Why is it so difficult?

Find out all of this and more in Persefoni's guide on decarbonization.

Persefoni content:

- Scope 4 Emissions Explained: Scope 1, 2, and 3 emissions have become quite well known as the three flows of emissions, as defined by the GHG Protocol - but what are "Scope 4" or "avoided emissions? Scope 4 emissions, although not an official emissions stream, are counted by some companies to register the emissions they avoid through implementing more efficient goods and services. Find out more about this relatively unknown stream of emissions in our Scope 4 article.
- How will we solve the climate crisis? A host of new technologies are being developed to decarbonize our way to a low-carbon economy.

These technologies are known as "climate technologies." Learn more about what climate technology is, some examples of it in action, and how important it is in our introductory blog post.

- At this year's NYC Climate Week, our SVP Global Regulatory Climate Disclosure, Kristina Wyatt, was our boots on the ground, speaking on the Sustainable Investment Forum panel. Read her top 10 takeaways in her Full Disclosure newsletter.

Other news we are following:

- In an unusual diplomatic intervention, the host of COP27, Egypt, ask the hosts of COP 26, the UK, to maintain their net zero commitments. The intervention comes at a time when new Prime Minister Liz Truss looks set to reverse course on some of the UK's commitments to decarbonization.
- A 100% solar community in Florida got out of Hurricane Ian with minimal damage and never lost power. Babcock Ranch, a small eco-community of just 2000 residents, just a few miles from the epicenter of Hurricane Ian's damage in Fort Myers, got through the storm relatively unscathed.
- Banks continue to face accelerating climate scrutiny, most recently in the form of the US Federal Reserve's announcement last week that six of the nation's largest banks would engage in a pilot climate scenario analysis exercise in 2023.
- The four leaks found in the Nord Stream pipelines are being quantified by scientists for their climate impact. Scientists from Germany have estimated that the possibly sabotaged pipeline that delivers gas from Russia to Europe could release 300,000 tonnes of methane into the atmosphere.

Walker, Gloria H

From:	MediaAnalyst
Sent:	Saturday, October 1, 2022 4:40 AM
To:	MediaAnalyst
Subject:	1 Oct 2022 SEC Daily News Clips

View in Browser

U.S. Securities and Exchange Commission

October 01, 2022
Daily News Clips

Mobile version and searchable archives available at https://sec.barbaricum.com
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Wall Street Journal

1. Consumer Complaints About Crypto Are on the Rise Amid Industry Slump, Data Shows

30 Sep 2022 (2:00 PM), Mengqi Sun

Consumer complaints about cryptocurrency have surged during an increase in its market volatility over the past two years, hitting not only crypto-trading platforms but also traditional financial institutions such as JPMorgan Chase & Co. and Wells Fargo & Co.

The Consumer Financial Protection Bureau, prompted under a presidential order to increase efforts to monitor consumer complaints and "to enforce against unfair, deceptive or abusive practices" in cryptocurrency markets, received 2,734 confirmed crypto-related consumer complaints against digital-asset-centric companies in its public database between Jan. 1, 2020, and Aug. 26, 2022, according to analysis of data from Dynamic Securities Analytics Inc., a Tampa, Fla.-based compliance data firm. Of those, more than 1,800 came in 2021 alone.

The crypto-related consumer complaints fielded by the CFPB range from fraud and scams to an inability to withdraw funds. Firms involved in the complaints include crypto-native companies such as Binance.US, Coinbase Global Inc., Gemini Trust Co. and Block Inc., as well as traditional financial institutions such as JPMorgan, Wells Fargo and PNC Bank NA, the data show.

Although complaints about crypto products and services are still a narrow slice of the overall volume of reports received by the consumer financial regulator, the general upward trend suggests that concerns about consumer complaints could drive additional regulatory scrutiny of cryptocurrency. The industry up to now has received less attention from regulators than areas such as investor protection and market integrity.

The CFPB uses the complaints to inform its rule-making process and enforcement actions. The agency shares its complaints data with the Federal Trade Commission, and the FTC adds the data to its Consumer Sentinel Network, which is available for use by law-enforcement agencies such as the Federal Bureau of Investigation.

Transaction-related problems topped the list of complaints, including issues with applications not working or placing orders. About 28% of the complaints were about crypto-related frauds or scams, while another 20% derived from funds not being available, according to the data. Consumers also have reported to the agency issues related to credit reporting, debt collection, mortgage and student loans, among others.

The public data set for registering complaints, created in 2012, was meant to provide transparency and real-time information so that the public could understand larger industry trends. The CFPB contacts companies named in complaints to give them an opportunity to respond, then publishes reports that outline the specific problems consumers faced, minus their personal identifying information.

Alison Jimenez, founder of Dynamic Securities Analytics, said the analysis shows that “not all complaints about crypto are at crypto firms,” adding that banks and other traditional financial services businesses were also named in these crypto complaints. She said exchanges Coinbase, Gemini and Binance.US received the most complaints, and that complaints about crypto firms included those about other financial products such as credit cards, as well as sending and receiving funds.

“It’s a good starting point for other research and adding more probing questions to what’s going on at these firms,” she said of the analysis.

Kathy Kraninger, a former CFPB director in the Trump administration, serves as vice president of regulatory affairs at crypto compliance platform Solidus Labs.

Kathy Kraninger, a former CFPB director under the Trump administration, said it remains to be seen how the CFPB will attempt to clarify its jurisdiction to regulate cryptocurrency, as a number of agencies could claim authority over providing consumer protection. She said other agencies, such as the Securities and Exchange Commission, have authority over investor protection, and the Justice Department and state attorneys general are also acting on fraud- and scam-related issues. “Who has the primacy, which agency has the best authority, is an important aspect here,” she said.

But for crypto firms, said Ms. Kraninger, who is now vice president of regulatory affairs at crypto compliance platform Solidus Labs, it is important that responsible actors in the crypto ecosystem call out the bad players. She added that the industry currently has monitoring tools to look for problems such as malicious code in smart contracts, market manipulation and money laundering, and firms should use them to call out scams and help educate consumers.

Additionally, crypto firms should take a look at their disclosures to ensure they aren’t providing misleading information about the products consumers engage with, the risks their products entail and the protection the firms can provide, she said.

“Those are the kind of things that are typical in traditional finance, including disclosing [what risks there are] to the customer base,” she said. “There are companies that are doing it, and they should do it…That’s the assurance that investors are looking for as well.”

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Financial Times

2. US settlements bare the ‘off-channel’ world of bankers

1 Oct 2022 (12:00 AM), Gary Silverman

For months, US regulators have been investigating leading Wall Street banks and brokerages, searching for evidence that traders and dealmakers have been using unofficial messaging channels like WhatsApp and Signal to evade rules requiring them to preserve work communications.

This week, the world learned the price tag to resolve the probe: about $2bn. In addition to a $200mn settlement reached with JPMorgan Chase in December, the Securities and Exchange Commission and Commodity Futures Trading Commission said on Tuesday that Bank of America, Citigroup, Goldman Sachs, Morgan Stanley, Credit Suisse, UBS, Barclays, Deutsche Bank, Nomura, Jefferies and Cantor Fitzgerald — would pay an additional $1.8bn.

Those are sizeable sums. But as big settlements go, it left a lot unsettled.

The regulators essentially admitted how difficult it has become to keep tabs on Wall Street during a tumultuous period marked by the growing use of encrypted communications channels by the technologically savvy and the flight from the office triggered by the Covid-19 pandemic.

Technically speaking, the cases resolved involve the violation of electronic record-keeping rules, under which communications sent through company-approved channels are supposed to be monitored and, when appropriate, archived. But these misdeeds raise the possibility that some folks in finance were trying to avoid scrutiny by the cops on the Wall Street beat. The regulators said they found that tens upon tens of thousands of messages were sent through unapproved communications channels in recent years.

At Bank of America, one trading desk "had a longstanding practice of using unapproved methods to communicate about business on their personal devices", the CFTC alleged. In March 2021, when the bank was aware of a CFTC investigation into "certain trading" on that desk, the "desk head instructed three of his subordinates to delete messages from their personal devices", the regulator said. BofA — which agreed to pay the SEC and the CFTC a total $225mn, the biggest fine of all the banks — did not admit or deny these allegations.

Some Nomura traders "intentionally deleted certain of their personal device communications after receiving a preservation notice" from the CFTC, the regulator alleged. One trader, who was employed by Nomura affiliates in the UK and Japan, deleted messages and then "made false statements to the commission about his compliance", the CFTC claimed. As part of its settlement with the regulator, Nomura did not admit or deny those allegations.

What regulators now know is how much they have to learn about what happened in financial markets in the years leading up to and including the pandemic. The SEC said it was "likely deprived" of material in "various" investigations.

Tellingly, Gurbir Grewal, SEC enforcement director, described US record-keeping requirements as "sacrosanct" in a statement that was issued along with Tuesday's settlements, adding: "If there are allegations of wrongdoing or misconduct, we must be able to examine a firm's books and records to determine what happened."

To be sure, the bad actors of finance were able to do their thing before they wielded iPhones as weapons. Conversations could be conducted on street corners or in bars. In primitive times, miscreants in realms ranging from Wall Street to the mafia used an early telecommunications device called the payphone to avoid surveillance.

Modern communication methods simply make misbehaviour easier. From January 2018 to September 2021, a single senior Goldman Sachs banker "sent and received tens of thousands of off-channel text messages" that "concerned among other things, the broker-dealer's business", the SEC said in a statement acknowledged as fact by the bank.

From my experience, Goldman hires some very energetic people, but it is hard to imagine one of them leaving their desk at work and making so many payphone calls during a similar period without raising concerns about bladder-control issues or something like that.

Like so many of us, people on Wall Street have grown accustomed to chatting online in several places at once. According to Goldman's settlement with the CFTC, they even joked about it. The regulator said one of the bank's senior swaps traders "established a desk WhatsApp chat in April 2017 because, in his words, 'BlackBerrys are too tedious'," and told his team: "What is said on chat stays on chat."

In announcing the latest settlements, Christy Goldsmith Romero, a CFTC commissioner, said regulators were "sending a zero-tolerance message that we will not allow Wall Street to undermine our law enforcement by obfuscating or deleting communications surrounding trading". It is anyone's guess whether the furtive wheeler-dealers of finance will stop texting for long enough to get that message.

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Bloomberg

3. Barclays Bankers Face Possible Discipline, Pay Cuts for Paperwork Blunder

30 Sep 2022 (8:08 PM), Benjamin Bain

Barclays Plc said some of its bankers may face disciplinary action and pay cuts after the firm agreed to a $361 million penalty to settle US allegations that it failed to register billions of dollars worth of securities offerings.

The bank didn't put in place a mechanism to track the sales as required by the Securities and Exchange Commission, even as managers had "consistently emphasized the importance of maintaining effective controls," Barclays said Friday in a statement announcing the results of a review into the matter. Employees found responsible for the blunder could face internal repercussions.

"The review's findings will be used to consider individual accountabilities in relation to this matter and may include adjustments to remuneration, including to past variable remuneration, the potential for disciplinary action and performance management as appropriate," Barclays said. Losses from the incident were in line with the bank's previous guidance, the firm said.

The SEC said on Thursday that Barclays and its Barclays Bank Plc unit offered and sold "an unprecedented amount of securities" due to failures in its internal controls that were supposed to track transactions in real time. The bank was required to continually register offerings after losing a special frequent-issuer status with the agency in 2017.

Read More: Barclays Gets $361 Million Penalty Over 'Staggering' Blunder

Barclays didn't do that and it ultimately offered and sold approximately $17.7 billion of securities in unregistered transactions, according to the SEC. "The scope of the conduct at issue here was simply staggering," the regulator's head of enforcement said Thursday.

On Friday, the bank said the "over-issuance" was in part due to senior executives not having been made aware of the impact of Barclays losing its special "well-known seasoned issuer" status with the SEC. After losing the special tag in 2017, Barclays was required to quantify anticipated offerings and pay registration fees.

The UK lender will pay a $200 million civil penalty to resolve the matter. Barclays has already taken a £165 million ($184 million) provision for the expected fine. The bank's so-called rescission offer, which it completed earlier this month, satisfies the $161 million disgorgement and interest portion of the penalty, according to the SEC.

Barclays didn't admit or deny the SEC's allegations as part of its settlement with Wall Street's main regulator.

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Reuters

4. Former Infinity Q exec settles charges related to alleged fraud

30 Sep 2022 (11:45 PM), John Mccrank

The former chief risk officer of defunct investment adviser Infinity Q Capital Management LLC agree to settle charges of misconduct related to a fraudulent scheme to inflate the value of assets the firm advised by more than $1 billion, securities regulators said on Friday.

Scott Lindell failed to exercise reasonable care and to undertake an appropriate investigation concerning multiple red flags that indicated the value of Infinity Q funds' positions were inappropriate, the U.S. Securities and Exchange Commission said in charges filed in Manhattan federal court.

Lindell agreed to settle the charges, with determination of disgorgement, prejudgment interest, and civil money penalties to be decided by the court at a later date, the regulator said.

Lindell could not immediately be reached for comment.

Infinity Q was forced last year to liquidate its mutual funds after the SEC found that the firm's founder and former chief investment officer, James Velissaris, manipulated a third-party pricing model used to value fund investments. read more

The SEC said Lindell negligently misrepresented to investors, representatives of the mutual fund's board, and others that the pricing service was independent from Infinity Q when, in fact, Velissaris exercised control over it.

Lindell also helped Velissaris submit misleading documents to the SEC in response to the regulator's initial inquiries over the valuations and, on one occasion, helped mislead the mutual fund's auditor "with at least reckless disregard of the truth," the SEC said.

Lindell, who was also Infinity Q's head of operations, chief compliance officer and a former portfolio manager and member of the firm's valuation committee, also willfully made misstatements on some Infinity Q SEC filings, the regulator said.

Velissaris was charged in February over the matter by the SEC, the Commodities Futures Traders Commission and the Southern District of New York (SDNY).

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5. Digital World CEO urges Donald Trump to press shareholders to vote on merger extension

1 Oct 2022 (1:00 AM), N/A

Patrick Orlando, the head of the blank-check acquisition firm that has agreed to take Donald Trump's social media company public, on Friday urged Donald Trump and Trump Media boss Devin Nunes to promote an upcoming vote to extend the merger deadline.

The shell company, Digital World Acquisition Corp, earlier this month failed to secure enough shareholder support for a one-year extension to complete the deal.

The deadline has been pushed back to Oct. 10 in an effort to get more shareholders to vote.

"@realDonaldTrump @DevinNunes let's get the vote awareness up," Orlando wrote on a Truth Social post with attached information about the shareholder vote.

TMTG and Digital World did not immediately respond to requests for comment.

Digital World, a special purpose acquisition company, in October last year agreed to take Trump Media & Technology Group (TMTG) public. TMTG operates the Truth Social app co-founded by the former U.S. president after he was banned from Twitter.

The transaction has been on ice amid civil and criminal probes into the circumstances around the deal. Digital World had been hoping that the U.S. Securities and Exchange Commission, which is reviewing its disclosures on the deal, would have given its blessing by now.

The company is also facing an uphill task as individual investors, which comprise about 90% of its shareholder base, are not as accustomed to voting their shares.

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6. U.S. CFTC must seek admissions of wrongdoing from Wall Street, commissioner says

30 Sep 2022 (4:54 PM), Michelle Price

Wall Street companies and others that break the rules should be required to admit their wrongdoing when settling enforcement actions, especially as the growth of retail investing puts more Americans at risk, a U.S. regulator told Reuters.

Christy Goldsmith Romero, a commissioner at the Commodity Futures Trading Commission (CFTC), said she planned to use her vote on enforcement actions to push for more admissions of wrongdoing, particularly from repeat-offender Wall Street companies.

"We've seen Wall Street banks get one enforcement action after another, after another, after another and the deterrence doesn't seem to be working, so I'm looking for a greater deterrent impact," she told Reuters on Thursday.

"If a defendant has to admit to their conduct and suffer the full consequences, maybe they won't engage in the same conduct."

On Tuesday, the CFTC and the Securities and Exchange Commission fined 16 financial firms, including Bank of America, Citigroup, Goldman Sachs and Morgan Stanley, a combined $1.8 billion because staff used personal devices to discuss trades and deals, violating record-keeping rules.

In a victory for the agencies, the 16 institutions admitted the facts and acknowledged that they violated federal laws.

But that's unusual. It is common for civil regulators to include language in settlements requiring the company "neither admit nor deny" the agency's findings, a clause that protects the company from private litigation, among other adverse secondary consequences.

Goldsmith Romero, who joined the CFTC in March after a decade serving as the watchdog of a key 2009 financial crisis bailout program, said the CFTC was "routinely" agreeing to include the wording in settlements without negotiation.

"Why are we doing that? Consequences often flow from illegal conduct, and I don't think it's the government's job to alleviate those consequences."

The CFTC should push for admissions of wrongdoing in cases of egregious conduct, recidivism, or where the agency needs to send a message about a particular issue, among other factors, she said.

Growing retail participation in the markets increases the need for greater accountability and deterrence, she added.

"Particularly as we have crypto and other digital asset retail products coming in, I think it's going to be incredibly important that we require defendant admissions."

The CFTC's sitting commissioners vote to approve enforcement settlements.

"I am hopeful that there will be change, but I am going to use my vote to try to bring change as well," said Goldsmith Romero.

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7. SEC Sues Calif. Atty Over Role In $910M Solar Ponzi Scheme

1 Oct 2022 (1:30 AM), Katryna Perera

The U.S. Securities and Exchange Commission on Friday accused a California lawyer of participating in a $910 million Ponzi scheme wherein the owners of two solar companies promised investors revenue from leasing mobile solar generators when, in fact, thousands of those generators "were never even manufactured, let alone put into use."

According to the SEC's complaint filed in California federal court, attorney Ari J. Lauer "played an important role" in the scheme by acting as the "de-facto" general counsel to the solar companies from 2009 through 2018.

The scheme was perpetrated by Jeff and Paulette Carpoff, who privately owned DC Solar Solutions Inc. and DC Solar Distribution Inc. and who have since pled guilty over their role in the fraud. According to prosecutors, the Carpoffs and others raised $910 million from investors in their mobile solar generator business through false financial statements and fake lease contracts, and as the lies deepened the company eventually stopped making its generator products altogether, even though it kept accepting new investments and selling thousands of units that did not exist.

The SEC says Lauer participated in the scheme by "lending the imprimatur of a lawyer to the operation." According to the complaint, he hid material facts from investors, created and sent misleading transaction documents and misled investors about the amount of lease revenue, despite knowing that such revenue was "virtually nonexistent."

"Over the course of many years, [Lauer] negotiated, drafted and provided transaction documents to investors that promised payments based on revenue produced by [DC Solar Distribution] leasing the generators to end-users, despite knowing that [DC Solar Distribution] was never able to lease the generators on any scale and was dependent on transfers of money from [DC Solar Solutions] in order to meet its contractual lease payments," the complaint states.

The SEC accused Lauer of fraud and aiding and abetting the Carpoffs' fraud, among other things. The commission requests that he be permanently enjoined from violating securities laws and seeks disgorgement of his ill-gotten gains and an order for him to pay civil penalties.

Lauer did not immediately return calls for comment. According to his LinkedIn profile, he has operated his own law firm since 2001, and California bar records show he has an active law license. According to federal court records, Lauer has not been criminally charged for his alleged involvement in the scheme.

Jeff Carpoff was sentenced to 30 years in prison last November after he pled guilty to conspiracy to commit wire fraud and money laundering connected to a scheme that ran between 2011 and 2018. The DC Solar entities were in the business of manufacturing and selling mobile solar generator units but became a Ponzi scheme in which older investors were paid off with new investors' funds, prosecutors said.

Carpoff's wife, Paulette, has also pled guilty to conspiracy to commit an offense against the U.S. and money laundering. The couple entered their pleas in January 2020 while simultaneously settling parallel civil claims with the U.S. Securities and Exchange Commission. According to the SEC's complaint against Lauer, Paulette is currently serving a sentence of 11 years and three months in federal prison for the scheme.

In April, a California federal judge sentenced the former chief financial officer of the DC Solar entities, Robert A. Karmann, to six years in prison and ordered him to pay $624 million in restitution for his role in the Ponzi scheme.

Karmann admitted to his role in the scheme in December 2019, pleading guilty to securities fraud and conspiracy to defraud the U.S.

The SEC declined to comment Friday.

The SEC is represented in-house by Dean M. Conway and Sarra Cho.

Counsel information for Lauer was not immediately available.

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8. Southern Co. Ends Fight With Ga. Nuclear Plant Partner

30 Sep 2022 (10:35 PM), Keith Goldberg

Southern Co. said Friday that it's settled litigation with a minority partner over how to divvy up cost overruns for the $20 billion Vogtle nuclear power plant expansion project in Georgia.

Southern Co. unit Georgia Power Co., the majority owner of the Vogtle plant, inked a settlement agreement Thursday with the Municipal Electric Authority of Georgia, which claimed in a state court lawsuit that the Vogtle project crossed a cost overrun threshold of $2.1 billion and potentially triggered cost-allocation and ownership stake changes.

Georgia Power said in a U.S. Securities and Exchange Commission filing Friday that under the settlement, it will pay a portion of MEAG's future construction costs, which are estimated to be as much as $76 million and won't include any adjustments for force majeure. Georgia Power said it will also pay 20% of MEAG's construction costs that exceed the project's current, forecasted price tag.

MEAG said in its own filing with the Municipal Securities Rulemaking Board on Thursday that Georgia Power will reimburse 15% of MEAG's share of the Vogtle project's actual construction costs that are between $18.7 billion and $19.6 billion, and 20% of MEAG's share of the project's actual costs that exceed $19.6 billion.

MEAG will keep its approximately 23% ownership stake, divided between three of its subsidiaries, in the Vogtle project.

Georgia Power said in its SEC filing that litigation with Vogtle's other minority owners, electricity cooperative Oglethorpe Power and the city of Dalton, Georgia's municipal utility, over the project's cost overruns remains active and that the company's potential financial exposure could be as much as $165 million of further pre-tax charges to its income.

The Vogtle project, which involves the construction of two additional nuclear power plant units, was first approved by Georgia utility regulators in 2009 but has been plagued by construction delays and billions in cost overruns.

In a 2018 co-owner agreement, Georgia Power — which owns the biggest stake in the project and is building the new reactors after taking over the project from now-bankrupt Westinghouse — agreed to take on more of any cost overruns than its co-owners.

According to a financial statement released by Georgia Power shortly after the 2018 agreement was announced, Vogtle's co-owners will pay their proportionate shares of construction costs based on their ownership interest up to the estimated cost at completion, plus $800 million in additional construction costs.

But Georgia Power will be on the hook for 55.7% of any construction cost overruns between $800 million and $1.6 billion, and 65.7% of any construction cost overruns between $1.6 billion and $2.1 billion, according to the financial statement.

If cost overruns exceeded $2.1 billion, Vogtle's co-owners would have the option of tendering a portion of their ownership interest to Georgia Power in exchange for the utility's covering all of their remaining share of construction cost overruns. Georgia Power would also have the option of canceling the project instead, the financial statement said.

At the time, the cost of the Vogtle project was estimated to be $17.1 billion. But when MEAG lodged its state court complaint in June, it said the co-owners voted on and approved an updated estimated budget of $20.5 billion in February, which MEAG contends means cost overruns have exceeded the $2.1 billion threshold.

Meanwhile, Oglethorpe Power moved to cap its contributions to the project and exercise the option for Georgia Power to absorb its share of future cost overruns in exchange for an additional sliver of ownership.

Georgia Power argued that the 2018 estimated cost of the project was actually $18.4 billion, which means the $2.1 billion threshold hadn't been crossed, according to MEAG's complaint.

Representatives for Southern Co. and MEAG declined to comment further Friday.

MEAG is represented by Michael B. Terry, Kamal Ghali, Megan E. Cambre and Eliza L. Taylor of Bondurant Mixson & Elmore LLP.

Southern Co. is represented by Brandon R. Keel, David L. Balser and Peter Starr of King & Spalding LLP.

The case is Municipal Electric Authority Of Georgia et al. vs. Georgia Power Company, case number 2022CV366416, in the Superior Court Of Fulton County, State Of Georgia.

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9. Latham Adds 2 Ex-Weil White Collar Litigators In New York

30 Sep 2022 (10:04 PM), Kevin Penton

Latham & Watkins LLP has added two former Weil Gotshal & Manges LLP litigators who specialize in white collar matters as partners in its New York office, the firm said Friday.

Christopher L. Garcia and Raquel Kellert joined as members of Latham's white collar defense and investigations practice and its litigation and trial department, the firm said. They will focus on representing individuals and companies facing matters such as internal investigations, state and federal court litigation, and government defense.

"Chris and Raquel are both exemplary trial lawyers and adept strategists, who will make great additions to our white collar team," Doug Greenburg, the practice's global chair, said in the firm's statement Friday. "They will leverage their substantive skills across white collar matters and help lead a variety of large teams in connection with high-stakes trials, investigations and enforcement matters."

Garcia concentrates on defending clients facing criminal and regulatory investigations, litigating securities class actions in state and federal courts, and conducting internal investigations, according to Latham.

He previously served as chief of the Securities and Commodities Fraud Task Force in the U.S. Attorney's Office for the Southern District of New York, where he led a unit of more than 35 prosecutors, law enforcement agents and staff on securities fraud probes, trials, appeals and related matters, according to the firm.

"I am drawn to the firm for its global, integrated transactional and dispute platforms," Garcia said in the statement. "Latham will provide me with unique and exciting opportunities to contribute to the firm's incredible success and growth while serving a varied client base."

Kellert regularly defends companies and individuals facing criminal, civil and regulatory enforcement matters involving the U.S. Department of Justice, the U.S. Securities and Exchange Commission and the Commodity Futures Trading Commission, according to the firm.

She also conducts internal investigations on behalf of boards and companies related to allegations of commercial bribery, cybersecurity incidents, accounting irregularities and employee misconduct, according to Latham.

"I am eager to join such an outstanding group of lawyers at Latham," Kellert said in the firm's statement. "I have long admired their work, and along with Chris, I am delighted to be joining the team."

Garcia received his undergraduate degree from Harvard University and his law degree from Harvard Law School. Kellert received her undergraduate degree from Yale University and her law degree from Georgetown University Law Center.

"Chris and Raquel offer clients a proven ability to navigate a wide range of legal and regulatory crises," Christopher Clark, deputy managing partner of the firm's New York office, said in Friday's statement. "Their creative counsel and tenacious advocacy make them the people you want in your corner."

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10. Biz Groups Fear 'Penny Stock' Rule Could Upset Debt Markets

30 Sep 2022 (10:36 PM), Tom Zanki

Industry groups are worried the U.S. Securities and Exchange Commission's intent to extend enforcement of a recently revised rule governing unlisted securities to certain private bonds — even though the rule is historically associated with over-the-counter stocks — could disrupt debt markets.

The SEC in 2020 approved changes to its Rule 15c2-11, which governs how unlisted securities are quoted on a medium other than a registered stock exchange. The changes aimed to upgrade investor protections to reflect advances in electronic trading.

The rule has traditionally focused on assuring that investors have adequate information to trade over-the-counter stocks, sometimes called "penny stocks," since its inception in 1971. After the 2020 changes, the SEC's Division of Trading and Markets also informed market participants through staff letters that the rule covers all securities, including fixed-income or debt issuances.

To allow time for market adjustments, SEC staff last year began phasing in compliance requirements in three stages, a key portion of which is set to expire in January.

Trade groups including the U.S. Chamber of Commerce and the Securities Industry and Financial Markets Association were surprised by SEC plans to apply Rule 15c2-11 to debt securities, which they view as a change in practice that should require separate rulemaking and public comments.

"Making this very substantial change without any analysis, particularly an economic cost-benefit analysis, is really troubling," Kristen Malinconico, director of the Chamber of Commerce's Center for Capital Markets Competitiveness, told Law360.

The SEC declined to comment. But its staff, in the form of a no-action letter in December, explained the text of Rule 15c2-11 has always applied to all securities, except for specific exceptions, rather than just equity.

The rule requires that a broker-dealer must be able to verify certain information about an issuer, and that such information be publicly available, before publishing a quote on a security that is traded on a medium other than a registered exchange. Trade groups worry the rule may not function well when applied to debt markets, noting that the SEC's 2020 rule did not raise concerns about fraud in fixed-income markets.

"The rule has never been applied to or enforced in fixed-income securities and was not developed with the finance-income market structure in mind," SIFMA said in a Sept. 12 letter on its website.

The SEC's 297-page rule passed in September 2020 referenced debt three times, while mentioning equity 59 times largely within the context of OTC trading. The agency's 2019 original proposal also asked whether nonequity securities, such as debt or certain asset-backed securities, should be excepted from the rule but received no responses.

Observers say a key market subject to the revised rule is debt securities sold under Rule 144A, which provides an exemption from SEC registration rules under certain conditions.The SEC's no-action relief for this market expires Jan. 4.

As Rule 15c2-11 stands, private companies that issue debt under the 144A exemption would have to publicly disclose certain financial information that they now withhold in order for investors to be able to trade these securities on a secondary market. Critics worry this requirement could raise compliance costs for certain private companies or harm liquidity if investors are less sure they can resell their bonds.

Twenty members of Congress have joined attempts to persuade the SEC to indefinitely extend relief from enforcement of the rule until a separate rulemaking addresses the impact on the 144A market. They note that at least 30 of the United States' largest private companies have outstanding debt sold under this exemption, which they rely on to fund operations.

"We are concerned that this change will make it more difficult and expensive for privately held companies to raise capital through 144A offerings, negatively impacting their investors, employees, customers, and prospects for spurring growth in the U.S. economy," said a July 26 letter to the SEC, signed by 20 representatives, mostly of the House Financial Services Committee and evenly split among Democrats and Republicans.

Securities lawyers say one rationale for SEC's Rule 15c2-11 — to protect retail investors from microcap fraud — doesn't match well with the 144A regime, which requires that such securities be sold to wealthy and sophisticated entities defined as qualified institutional buyers, who are considered able to fend for themselves under securities laws. These QIBs can also negotiate for certain disclosures that companies must reveal upon request.

Rule 15c2-11 was "very clearly focused on that kind of activity where people were issuing equity securities and then using the secondary market to pump up the price of them and dump those securities in the secondary market," said Mayer Brown LLP partner Jerry Marlatt. "Debt securities to QIBs are a very different world."

Outstanding 144A securities amount to more than $4.2 trillion when including public and private companies, according to the July congressional letter. The market has grown massively since the SEC carved this exemption from its registration requirements in 1990.

Yet to what extent implementation of the SEC's revised rule could disrupt this market is not clear. Disclosure wouldn't affect registered companies who use the 144A exemption, since their financial reports and other information are already public. Private firms would need to disclose more information, but not at a level comparable to a public company.

Marc Steinberg, a professor at Southern Methodist University's Dedman School of Law and a former SEC enforcement attorney, said disclosure required of companies by Rule 15c2-11 is less descriptive and would be considered stale compared with most public disclosures. He noted that a private company's earnings statements need to be current within 12 months, compared with three months for a typical SEC reporting company.

"We're talking about minimal information here," Steinberg said. "How the SEC calls this adequate disclosure is not based on reality."

Tyler Gellasch, president and CEO for investor group Healthy Markets Association, said concerns that debt markets could freeze up after implementation of the rule are "wildly overstated." Gellasch lauded the SEC's effort to improve transparency, although he added that regulators could do more to limit potential disruptions in the fixed-income market.

Regulators should better educate the public on how Rule 15c2-11 works, Gellasch said, fearing that many market participants mistakenly believe the rule would prevent an investor from selling a previously acquired debt security.

Gellasch said the SEC should also address technical matters, including directing the Financial Industry Regulatory Authority to tailor Form 211 filings required under Rule 15c2-11 so that they better reflect issuers of fixed-income instruments or any asset class of securities for which a broker-dealer is seeking to publish quotations. The agency should further clarify terminology in the rule where needed, he said, including what constitutes a "quotation" in a "medium."

"But the overall gist is good," Gellasch said of the rule. "If we want these markets to be readily liquid and traded, we should make sure there's real information backing them up."

Gellasch said he expects the SEC's rule will impact select companies, namely private equity-owned nonpublic businesses in industries such as retail, telecommunications, health care, or oil and gas. These companies are often graded as high-yield issuers, meaning their debt is considered speculative and pays higher interest. The high-yield market is smaller than the investment-grade market, which consists of many larger public companies.

While it's unclear how private companies will respond to the SEC's new rule, lawyers note such companies — if they don't want to face additional compliance costs or reveal financial information publicly to competitors — could seek other forms of debt.

Baker Botts LLP partner Doug Getten said options for companies could include revolver debt issued by banks, or term loans. Companies could also raise money from private debt funds, which he said can be more expensive than 144A bonds.

Skeptics of the SEC's pending rule hope there's still time to persuade the agency to pause its plans. The Chamber's Malinconico said changes affecting fixed-income securities should be considered by SEC commissioners rather than staff guidance, echoing a prior statement by SEC Commissioner Hester Peirce, who has called for more deliberation.

Mayer Brown's Marlatt said he would like to see a fresh rule proposal regarding how Rule 15c2-11 should apply to fixed-income securities.

"We're talking about a pretty significant sector of the financial market, and we really haven't taken the time to think about how it's going to be impacted by the rule," Marlatt said. "What's the rush?"

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11. SEC Fines Tupperware Brands $900K Over Accounting Flaws

30 Sep 2022 (9:09 PM), Katryna Perera

Tupperware Brands Corp. has agreed to pay the U.S. Securities and Exchange Commission $900,000 to resolve claims that a Mexican unit of its makeup brand business failed to maintain accurate accounting books and records from 2016 through 2020.

The SEC issued an order Thursday saying the food storage company had agreed to pay the civil monetary penalty to settle allegations from the commission that the House of Fuller Mexico reporting unit, which Tupperware acquired as part of the Fuller Cosmetics beauty products business, had a flawed system of internal accounting controls for the stated four-year period.

According to the order, after Tupperware acquired Fuller Cosmetics in 2005, it allowed the Mexico unit to retain certain legacy policies and procedures and sales practices, including continuing shipments of unordered products without purchase orders — or so-called non-PO sales — to independent sales representatives known as Fullerettes.

The SEC also said that until 2019, Tupperware used a legacy practice from the Mexico unit of estimating the returns reserve based on the average returns that occurred over the prior year. Tupperware's practice, in contrast, estimates the returns reserve based on the average returns over the prior six-month period, "resulting in a higher, more conservative return reserve than Fuller Mexico's legacy practice."

The SEC says the retention of those legacy practices and policies resulted in a failure by Tupperware to adequately recognize the Mexico's unit's direct sales model and waning financial performance.

As Fuller Mexico's sales stopped meeting targets between 2017 and 2019, the unit increased its use and reliance upon non-PO sales and, at certain times, sent more products via non-PO sales than the independent sales representatives could reasonably sell, the SEC says. Several non-PO sales were also made at the end of financial reporting periods.

"The non-PO sales here included products that were not offered at a discount," the order states. "At least as early as 2018, the number of non-PO sales began to increase and shifted towards products with a higher profit margin, such as perfume, and away from the intended purpose of providing new or promotional products at a discount."

But increased non-PO sales led to increased product returns, according to the order, and Tupperware failed to adequately reserve for the increased returns due to Fuller Mexico's "lenient" legacy practice of determining reserves based on sales.

The SEC also claims Fuller Mexico's management overrode existing internal accounting controls by failing to book various required reserves in an attempt to show better results for the unit.

Following an audit and internal investigation of Fuller Mexico in 2019, several members of Fuller Mexico's management team were terminated, the company began phasing out non-PO sales and Tupperware made adjustments to its financial reports, according to the order.

In August 2021, the order says, Tupperware finally disclosed in its amended annual report that from 2016 through 2020, it had misstated net sales, accounts receivable, inventories and accrued liabilities in its financial statements. The company also disclosed that it had approximately $5.2 million of reserves, including those related to non-PO sales, that had been "erroneously recorded and should have been reflected in prior periods."

Tupperware said in October 2021 that it had entered an agreement to sell Fuller Mexico, as part of a plan to divest "non-core assets."

In a statement Thursday, Tupperware CEO Miguel Fernandez said, "When we first discovered certain accounting issues in our now divested beauty business in Mexico, we took swift action to conduct a thorough internal review and proactively address the findings to improve our processes, procedures and internal control framework in this former business. We are pleased to put this issue to rest and focus on moving the Tupperware brand into the future."

A representative for the SEC declined to comment Friday.

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12. SEC Says Fake Veteran Defrauded Millions From Investors

30 Sep 2022 (5:43 PM), Mike Curley

The U.S. Securities and Exchange Commission is suing a stock trader they say defrauded investors of millions by posing as a Special Forces veteran and Harvard-educated hedge fund billionaire, while trading stocks of companies he had control of.

In a complaint filed Thursday in Washington federal court, the SEC said Justin Costello created this false persona to secure more than $900,000 in investment funds for two companies he controlled that he had told investors would pivot into a cannabis venture, and used a $4 million brokerage account belonging to two of his clients to sell them his own stocks for his own profit.

The SEC said Costello included false information about his persona and experience in numerous public statements, including the SEC filings for his company GRN Holding Corp. Nevada, or GRNF, which is at the center of his alleged schemes. The complaint also names as a defendant David Ferraro, accusing him of participating in a stock promoting scheme with Costello.

Costello is also facing a 25-count indictment charging him with wire fraud and securities fraud, the U.S. Department of Justice announced Thursday.

According to the SEC complaint, Costello acquired GRNF in 2019, and purportedly planned to merge it with cannabis companies to bring it into the industry. SEC filings at the time said Costello was a University of Minnesota and Harvard Business School graduate, and that he had managed a hedge fund worth more than $1 billion.

However, Costello had in fact attended Winona State University, he had taken just one class through Harvard's Division of Continuing Education, and his company was not registered as a hedge fund, according to the complaint.

Nonetheless, the SEC said, Costello used these false credentials and promoted a deal with "Pacific Banking Corp." to provide specialized banking services to his clients — while failing to tell them he owns the majority of that company as well — to drive GRNF's stock price up.

Costello also induced two advisory clients into giving him control of their $4 million brokerage account, which he used to buy stocks on their behalf, and while he told them he was diversifying their portfolio, he was in fact buying stocks in companies he owned, resulting in a profit for him, and losses for his clients, the SEC said.

According to the complaint, Costello also sold $1.8 million of GRNF stock to those clients at a 9,000% mark-up from the price at which he had bought them in the first place.

Separately, the SEC alleges Costello induced investors to buy shares in GRN Holding (WA), a private company based in Washington, by telling them they were buying stocks of GRNF, using the nearly identical names to mislead the buyers, and brought in $700,000 in those sales. In a similar scheme, Costello took in $200,000 from the sale of stock in Hempstract, another private company he owned, according to the complaint.

In addition, the SEC alleged Costello and Ferraro engaged in a stock promotion scheme in which Costello would alert Ferraro about stocks he was buying, so that Ferraro would promote the stock to his followers on social media — without disclosing that he and Costello intended to sell their shares once the price was inflated by the promotion. This scheme brought in nearly $800,000 in illicit profits, the SEC said.

"As we allege in the complaint, Costello brazenly used fictitious accomplishments to win over investors and directed numerous manipulative stock promotion campaigns," Sheldon L. Pollock, associate regional director of the SEC's New York Regional Office, said in a statement. "This case highlights our ongoing efforts to protect investors from fraudsters posing as investment professionals and to safeguard the markets from social media schemes and other online fraud."

A spokesperson for the SEC declined to comment further on Thursday.

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13. CFTC Says Digitex Exchange Founder Inflated Crypto Price

1 Oct 2022 (2:00 AM), David Minsky

The founder of the Digitex Futures exchange was charged Friday by the Commodity Futures Trading Commission with violating trading laws by artificially inflating the price of his cryptocurrency and failing to implement verification procedures designed to prevent money laundering.

In a complaint filed in the Southern District of Florida, the CFTC accused Miami resident Adam Todd and his companies of violating several regulations by operating the unregistered commodity exchange and inflating the price of a digital asset known as DGTX prior to its launch in July 2020.

Todd is also accused of failing to implement procedures designed to verify the true identities of customers who purchase the digital asset, known as "know your customer" procedures, which are designed to match identities with known terrorists, according to the complaint.

"Unless restrained and enjoined by this court, defendants are likely to continue to engage in the acts and practices alleged in this complaint and similar acts and practices, as more fully described below," according to the CFTC's complaint.

Additionally, the complaint lists defendants, including Digitex LLC and Blockster Holdings Limited Corporation, also known as Digitex Futures. The defendants are charged with five counts, including failing to register as commodities merchants and failing to implement anti-money laundering procedures.

The CFTC is seeking civil penalties, restitution and a permanent injunction against Todd preventing him and any associates from trading commodities.

Neither Todd nor the CFTC immediately responded to requests seeking comment.

Todd's scheme allegedly began in January 2018 when he started selling DGTX tokens directly to customers through Digitex Futures, which were traded in the secondary market through third-party digital exchanges.

The CFTC considers the DGTX tokens "commodity derivative transactions" that must be conducted on registered exchanges. And because Digitex Futures met the statutory definition of a "futures commission merchant," it was required to abide by certain requirements of the Bank Secrecy Act, including implementing the KYC procedures, according to the complaint.

Other than trading crytocurrency, Todd called himself the "handstand champion of Miami," winning three times leading up to 2019, according to an interview published by Decrypt.co.

Between May and August 2020, the CFTC alleges Todd attempted to manipulate DGTX prices and artificially inflated his own tokens through a process called "pumping," meant to increase demand by touting the digital asset and trading tokens across third-party exchanges.

The price rose sharply, increasing about 200% from May to July 31, 2020, when Todd launched the Digitex Futures Exchange, according to the complaint, adding that he drove up the price by purchasing DGTX tokens on third-party exchanges despite already having hundreds of millions of tokens.

The complaint states that in 2020, Todd held several live YouTube videos in which he tried to enlist others to generate interest in the token and touted its "massive gains," but failed to disclose his third-party trading that drove up the price.

After the public launch of his exchange on July 31, 2020, the CFTC said Todd disclosed his plan to pump up the price of the DGTX token through other exchanges, including by feeding

$100,000 into a "pump machine bot" that consisted of algorithms set up on the exchanges to keep increasing the token's price.

Todd told a customer that he has millions of DGTX tokens across numerous accounts on third-party exchanges, which were designed to create "relentless pressure that isn't noticed as much because I do it through my market-making bot that is always buying more than it is selling," according to the complaint.

Following the launch of the exchange, the CFTC said Todd accepted customers' money, which was used to trade bitcoin and other digital assets, until he removed the trading interface from his website in May 2022.

In addition, Todd allowed customers to open accounts with anonymous emails and didn't require customers to provide verification documents — and refused to implement any controls, according to the complaint.

During a March 2020 YouTube video, the CFTC said Todd disparaged anti-money laundering programs and noted his refusal to comply.

"People are not laundering Ethereum into Digitex to fund international terrorism," Todd said, according to the complaint. "We are not doing KYC on anybody for any reason. We don't have the right to ask you for those documents; you should not have to give them in order to use my product."

The plaintiff is represented by CFTC attorneys Ansley H. Schrimpf, Joseph C. Platt, Allison V. Passman and Scott R. Williamson.

Attorney information for Todd wasn't immediately available.

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14. Implications Of SEC's Latest Insider Trading Charges

1 Oct 2022 (12:08 AM), Matthew Solomon, Tom Bednar and Sarah Choi

On Sept. 21, the U.S. Securities and Exchange Commission announced settled insider trading charges against the CEO and the former president and chief technology officer of Cheetah Mobile Inc., a China-based mobile internet company.

The executives allegedly possessed material nonpublic information, or MNPI, about a fall in revenues when they set up a trading plan under Rule 10b5-1 of the Securities Exchange Act, and by virtue of sales pursuant to that plan avoided significant losses when the bad news was disclosed and the stock price fell sharply.

Rule 10b5-1 trading plans allow company insiders to trade in circumstances where they later come to possess MNPI, but insiders cannot establish plans while in possession of MNPI. The case underscores that the SEC will scrutinize whether such plans are adopted in good faith, and provides some clues about proposed changes to the rules governing such plans.

Most fundamentally, companies should put in place and enforce policies and procedures to ensure that when executives establish Rule 10b5-1 plans, they understand the company's insider trading policy, are not in possession of MNPI and are acting in good faith.

Just as important, companies should document that executives were informed of the policies and that the company inquired into whether they possessed MNPI.

The SEC has proposed changes to the rules governing Rule 10b5-1 plans, several of which are implicated by this case, making it all the more likely that the SEC will adopt them as proposed.

Rule 10b5-1 Plans

Exchange Act Rule 10b5-1 provides that if a person, including a company, is aware of MNPI when the person trades, that is sufficient to establish a violation of the anti-fraud provisions of the Exchange Act.

Rule 10b5-1 also provides, however, an affirmative defense if the trade is made under a Rule 10b5-1 plan established when the trader was not aware of MNPI. These plans effectively provide a safe harbor that allows executives, who frequently are in possession of MNPI, to lawfully trade in company stock by passively making periodic, prescheduled trades, typically with the assistance of a broker who has no flexibility to alter the original trading schedule.

The Cheetah Mobile Case

Cheetah Mobile is a China-based mobile internet company with American depositary shares listed on the New York Stock Exchange.

According to the SEC's allegations, in 2015, the company's largest advertising partner changed its algorithm in a way that halved the revenues it paid to the company, leading to a steep revenue decline in late 2015 and early 2016.

In late March 2016, while allegedly in possession of MNPI regarding the basis for the loss of revenue, CEO Sheng Fu and chief technology officer Ming Xu set up a Rule 10b5-1 plan through a private, jointly-held British Virgin Islands entity to sell company American depositary shares.

The company's insider trading policy, reflecting current law, prohibited employees from trading in company securities and from establishing Rule 10b5-1 plans while in possession of MNPI.

According to the SEC, Fu nonetheless established the plan, and then quickly sold 96,000 Cheetah Mobile American depositary shares in a six-week period in the spring of 2016, just before the company announced lower-than-expected financial results caused by the decline in advertising revenues.

After the announcement, the price of Cheetah Mobile's American depositary shares dropped approximately 18%. By selling ahead of the announcement, Fu and Xu allegedly avoided losses of approximately $203,290 and $100,127, respectively.[1]

Remedies

Without admitting or denying the SEC's findings, Fu and Xu agreed to cease-and-desist orders and paid civil penalties of $556,580 and $200,254, respectively.[2]

Fu agreed to a set of undertakings relating to his future securities trading for a five-year period, including:

Promptly notifying the SEC's Enforcement Division of any trading conducted in company securities;

Notifying the SEC of the establishment or modification of Rule 10b5-1 plans relating to company securities;

Preclearing with the company's legal department any non-Rule 10b5-1 trading in company securities;

Observing a cooling-off period of at least 120 days before a new or modified Rule 10b5-1 plan relating to company securities goes into effect;

Maintaining no more than one Rule 10b5-1 plan with respect to company securities at a time; and

Engaging in company securities transactions only via brokerage accounts disclosed to the SEC.

The CTO, who is no longer with the company, agreed to disclose his brokerage accounts to the SEC and trade company securities only through these accounts for five years.

Key Takeaways

This case provides insight into the SEC's focus on potential insider trading by corporate executives, which is likely to inform both the SEC's regulatory agenda and its approach to enforcing existing regulations.

Proposed Rule Changes

In late 2021, the SEC proposed changes to the rules governing Rule 10b5-1 plans.

According to then-Commissioner Allison Herren Lee, the proposals responded to "troubling evidence to suggest Rule 10b5-1 may be used to enable rather than avoid trading on the basis of inside information," and were necessary to ensure that the rule "offer[s] a safe harbor, not a pirates' cove."[3]

After a notice and comment period in 2022, the SEC is expected to take action on the proposed rule changes soon. Key features of the proposed changes include:

A 120-day cooling-off period from when an officer or director sets up or modifies a Rule 10b5-1 plan to when trades can be executed under the plan;

A 30-day cooling-off period from when an issuer sets up or modifies a plan to when trades can be executed under the plan;

A requirement for an officer or director to certify at the time of setting up or modifying a Rule 10b5-1 plan that they are not aware of MNPI and are acting in good faith;

A requirement that no person would be allowed to maintain more than one Rule 10b5-1 plan at a time, and could not use more than one single-trade plan, trading all of a holding at once, in a 12-month period; and

An existing requirement that Rule 10b5-1 plans be entered into in good faith, and the amendments would also require that they be operated in good faith, which would cover decisions to cancel or modify a plan, as well as the timing of corporate disclosures in ways that could make a scheduled trade more profitable or reduce or avoid a loss.

Several of the proposed rule changes are implicated in the Cheetah Mobile settlement.

First, Fu agreed that for five years, he would observe a 120-day cooling-off period, just like what would be imposed by the proposed rule changes.

Similarly, Fu agreed not to maintain more than one Rule 10b5-1 plan at a time, reflecting another proposed rule change. This settlement is a strong signal that the SEC will adopt both of these rule changes as proposed, because it would be odd for the SEC to impose undertakings that were inconsistent with soon-to-be-adopted rules.

Finally, by alleging that Fu established the Rule 10b5-1 plan while in possession of MNPI and was responsible for the company's delayed disclosure of the negative revenue trends, the SEC effectively alleged that the plan was both entered into and operated in bad faith.

The SEC may point to this case as an example of gaps in existing regulation that would be addressed by the proposed requirement that plans be operated in good faith, as well as the related certification requirements.

Enforcement Tactics

The primary message from this case is clear: Do not set up Rule 10b5-1 plans while even arguably in possession of MNPI.

If subsequent trading draws scrutiny, the SEC will investigate the circumstances in which such plans were adopted to determine if they were set up in good faith and followed a legitimate process. That scrutiny is likely to continue throughout the life of the plan.

It will be important for companies to ensure that they have robust insider trading policies and training on those policies, that they have procedures in place to ensure that plans are being set up, modified, canceled and operated in good faith, and that they document each step of their compliance with these procedures.

The SEC did not charge Cheetah Mobile with any wrongdoing, and the order notes the company had an insider trading policy that specifically prohibited trading or establishing a Rule 10b5-1 plan while in possession of MNPI.

This underscores the importance of such policies in protecting companies from liability. The SEC also will scrutinize the timing of significant corporate announcements in relation to prescheduled Rule 10b5-1 trades, and will investigate what it considers to be suspicious timing.

The case is also a reminder of the SEC's ability to build insider trading cases in seemingly challenging circumstances: The company is incorporated in the Cayman Islands and headquartered in China, both defendants reside in China, and they conducted their trading through a British Virgin Islands company.

Although the order does not detail how the SEC built its case, geography does not seem to have been a limitation. The fact that the trading occurred in Cheetah Mobile American depositary shares also did not hinder the SEC, indicating the agency will not hesitate to enforce the insider trading laws in cases involving trading in only American depositary shares that reference a foreign company's foreign shares.

Finally, when it does catch insider trading, the SEC will not let the U.S. Supreme Court's 2020 decision in Liu v. SEC pose an impediment to tough insider trading enforcement, and will seek penalties for insider trading up to three times the trader's gains or losses avoided.

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15. SEC Accuses French Nationals Of $40M RE Fraud Scheme

1 Oct 2022 (12:00 AM), David Minsky

Two French half-brothers have been charged with multiple fraud-related counts connected to an "international web" of unregistered companies in Michigan and Florida they allegedly used to bilk $40 million from investors in exchange for returns on properties they didn't own, according to the U.S. Securities and Exchange Commission.

In a lawsuit filed Thursday in the Southern District of Florida, the agency said Paulo Fernando De Bastos, Joao Pedro Fonseca and their companies — RBF Trust LLC and D3 Gestion Immobiliere LLC — solicited cash from more than 250 investors who were promised returns on rental properties that were either in disrepair or occupied by squatters.

De Bastos and Fonseca also failed to disclose key facts of their past business activities, including that France had previously banned them from managing companies for a period of five years and that De Bastos violated securities laws in a prior real estate scheme in North Dakota, according to the SEC.

"The defendants' fraudulent offering operated through multiple layers of fraud and deceit," according to the SEC's complaint. "Unless enjoined, the defendants are reasonably likely to engage in future violations of the federal securities laws."

As a result, De Bastos and Fonseca face eight counts of securities fraud, including violations of the Securities Act of 1933 and Securities and Exchange Act of 1934. The SEC is seeking a permanent injunction against the defendants and those who participated in the scheme, civil penalties, and orders prohibiting them from issuing securities with registered companies.

Amie R. Berlin, who's listed as the SEC attorney in the complaint, did not immediately respond to requests for comment. The defendants, whose companies are listed with addresses in Plantation, Florida, and Michigan, were unable to be reached for comment.

The SEC complaint alleges De Bastos and Fonseca operated their scheme between April 2016 and January 2020, during which they were able to solicit investments in more than 900 properties.

De Bastos is listed as a resident of Crestview, Florida, and worked out of his Plantation, Florida, and Detroit offices, along with Fonseca, who is named as a manager and resides in France, according to the complaint.

The scheme allegedly involved using a team to solicit real estate investments in the U.S. and abroad in the form of various types of contracts.

They marketed "passive" investments in rental properties and lured investors by touting their real estate experience while failing to disclose their previous bad deals, including a 2015 cease-and-desist order De Bastos received in North Dakota, according to the complaint.

The defendants allegedly offered two investment methods. The first involved investors using cash upfront to purchase rental properties, with the titles being transferred to a limited liability company in which they'd have an ownership interest, according to the complaint.

The second allegedly involved a land contract in which investors would provide down payments of at least 50% of the purchase price while paying the rest of the balance over a five-year period, with interest going toward De Bastos and Fonseca.

The first and second methods resulted in the purchase of 220 and 700 properties, respectively, according to the complaint.

The contracts allegedly came in various forms and were pre-filled agreements showing the investment structures with the purchase and management of properties, including some that were notarized by De Bastos' wife.

For the returns, the SEC said the defendants either offered to make deposits in bank accounts they would open on behalf of investors or provide international debit cards, although the proceeds were transferred to the defendants, their entities and their family members.

But De Bastos and Fonseca never owned a vast majority of the properties and, to conceal this fact, they submitted affidavits of error with the county registrar in Michigan and had them notarized in Broward County, while the defendants continued paying investors in a Ponzi-like scheme, according to the complaint.

The SEC said many of the investors were from France, including one entity called Saint Gery LLC, owned by a person identified as "A.V.," who provided a $175,000 down payment for six properties in Detroit that the defendants promised to manage for a period of five years.

De Bastos and Fonseca's scheme was ultimately interrupted in mid-January 2020 when they faced an audit from an investor, identified as "S.R." and their company, Capital Gain US LLC, according to the complaint.

Afterward, the defendants stopped making payments to investors and emptied the balances of the investors' bank accounts and debit cards, according to the complaint.

"In truth, neither the defendants nor the related entities owned most of the real property at issue in the investment offerings," according to the SEC. "In addition, defendants used investor funds in a Ponzi-like fashion by paying investors the purported rental payments that far exceeded the rental payments actually received."

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Bond Buyer

16. Issuer coalition pushes senators to oppose financial disclosure bill

30 Sep 2022 (6:58 PM), Caitlin Devitt

A coalition of major issuer groups Thursday delivered a letter to Senate leaders urging them to oppose a bill that would require governments and other bond-issuing agencies to standardize financial disclosure.

The Financial Disclosure Transparency Act, which is opposed by many muni market participants, is currently attached to the National Defense Authorization Act, a bill that the Senate must pass by the end of the year and is currently expected to take up in November. Sen. Majority Leader Chuck Schumer has also said the Senate may consider it in October, before midterms. The House in July passed the NDAA, with the FDTA attached. Sen. Jack Reed, chair of the Armed Service Committee, is still taking amendments to the NDAA on the Senate side.

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Accounting Today

17. RSM to pay $3.75M to SEC for improper audits

30 Sep 2022 (5:46 PM), Michael Cohn

RSM US LLP agreed to pay a $3.75 million penalty to the Securities and Exchange Commission to resolve charges Friday over improper professional conduct for failing to properly audit a client, Revolution Lighting Technologies Inc. The SEC charged the Chicago-based Top 10 Firm and three of its senior employees with not properly auditing Revolution's financial statements over a four-year period when the company was inflating its revenue with bill and hold sales. "Bill and hold" sales generally involve a company selling a product to a customer but not delivering the product to the customer until some later date. Such sales need to satisfy several criteria in order for a company to be able to recognize them as revenue.

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ThinkAdvisor

18. SEC Smites Pastor of Fake Church Over Ponzi Scheme

30 Sep 2022 (6:04 PM), Jeff Berman

T he Securities and Exchange Commission on Friday barred one of two California pastors who had been charged in 2019 with operating a $33 million Ponzi scheme.

As part of an agreement, David Lee Parrish, 50, can no longer associate with any broker, dealer, advisor, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and also can't participate in any offering of a penny stock ever again, according to an SEC order filed on Friday.

In 2019, the SEC announced fraud charges and an asset freeze against Parrish and Kent R.E. Whitney, founder of a fake church called The Church for the Healthy Self.

As part of their Ponzi scheme, they promised high annual returns with minimal to no risk to investors in the Vietnamese community of Orange County, California, according to the SEC.

Whitney founded the phony church three months after being released from federal prison for orchestrating a prior investment scheme involving commodities, the SEC said in 2019.

Undeterred by prison, Whitney established a church to defraud more investors after he was released in 2014, according to the SEC. Shortly thereafter, he became an ordained minister through an online program. A month later, he formed The Church for the Healthy Self, purportedly as a nonprofit, religious organization.

The church's websites provided the facade of a "virtual church." For example, they provided links to YouTube channels offering religious videos and online prayer request forms. But The Church for the Healthy Self did not hold religious services typically associated with churches. The primary mission of the church appeared to be obtaining investor funds, according to the SEC.

The Church for the Healthy Self's investment program, CHS Trust, promised investors tax-deductible, guaranteed and insured returns of at least 12%, via reinsurance investments and options trading, according to the SEC.

Parrish, who assisted Whitney's earlier fraud, joined his friend as a co-pastor of the fake church and as the purported director of CHS Trust.

Prior to the SEC filing its charges in 2019, the FBI obtained a criminal seizure of the funds in CHS Trust's main account, citing potential violations of federal wire fraud and money laundering statutes as the predicate for the seizure. Despite the FBI seizure, Whitney and Parrish continued to solicit investors.

In March 2020, Parrish pleaded guilty to one count of conspiracy. In November 2021, he was was sentenced to 12 months and one day in prison followed by three years of supervised release and ordered to pay $166,574 in restitution.

Parrish is incarcerated at Terre Haute FCI in Terre Haute, Indiana, according to the SEC order filed Friday.

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19. FINRA Raises Fine Ranges for Large, Midsize Firms

30 Sep 2022 (3:30 PM), Melanie Waddell

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Other Outlets

20. SEC charges Justin Costello and David Ferraro for securities fraud and posing as billionaire veteran (Finance Feeds)

30 Sep 2022 (2:28 PM), Rick Steves

The Securities and Exchange Commission charged Cannabis executive Justin Costello and David Ferraro, an associate of Costello's, for promoting the stock of several microcap companies on social media without disclosing their own simultaneous stock sales as market prices rose.

Justin Costello used a false persona, as a Harvard-educated military veteran and hedge fund billionaire, to defraud investors out of millions of dollars.

Sheldon L. Pollock, Associate Regional Director of the New York Regional Office, said: "As we allege in the complaint, Costello brazenly used fictitious accomplishments to win over investors and directed numerous manipulative stock promotion campaigns. This case highlights our ongoing efforts to protect investors from fraudsters posing as investment professionals and to safeguard the markets from social media schemes and other online fraud."

Justin Costello posed as billionaire to raise $900,000 for Cannabis projects
Allegedly portraying himself to the public as a seasoned, licensed investment professional who was building a conglomerate in the cannabis industry, Justin Costello included fake credentials as a Harvard MBA, experience managing a $1.15 billion hedge fund, and years of experience on Wall Street.

He used his fake persona to secure approximately $900,000 of investments in two different companies from more than 30 investors.

Costello and Ferraro engaged in penny stock scheme
As an investment advisor to a married couple, he sold them $1.8 million of shares in a penny stock at a markup of 9,000 percent over the price paid by Costello and used their $4 million brokerage account to trade, at a significant loss, securities of microcap companies in which Costello had an undisclosed financial interest.

Costello and Ferraro engaged in various stock promotion schemes using penny stocks and social media. The complaint alleges that Ferraro posted hundreds of tweets to hype those stocks and did not disclose that Costello intended to sell his shares once the stock price increased or that Ferraro would receive a share of Costello's profits. Through these alleged schemes, Costello and Ferraro together made approximately $792,000 in illicit trading profits.

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21. SEC Must Turn Over Emails About Ethereum—But It Won't Help Ripple, Lawyers Say (Decrypt)

30 Sep 2022 (7:00 AM), Sander Lutz

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22. SEC finally catching on to Ethereum centralization, according to new enforcement action (Coin Geek)

30 Sep 2022 (1:14 PM), Jordan Atkins

The U.S. Securities and Exchange Commission (SEC) appears to be warming up to the notion that Ethereum is a highly centralized network, according to a lawsuit filed against crypto promoter Ian Balina. The change in tone is likely to have serious implications for the SEC’s attitude toward whether digital asset networks like BTC and ETH constitute securities offerings.

The SEC is accusing Balina of offering unregistered securities in relation to his re-sale of the Ethereum-based SPRK token to an investing pool he organized, as well as failing to disclose that he’d been paid by SPRK’s offeror to promote the tokens. Significantly, the SEC said that because those who contributed to the investing pool did so in ETH, those transactions took place in the U.S. by virtue of the fact that ETH transactions are validated by a network of nodes “clustered more densely in the United States than any other country.”

The effect the SEC's reasoning would be to theoretically bring the entirety of the Ethereum network within the jurisdiction of the SEC, including any projects built atop the network. Though despite the outraged response from many 'crypto' supporters, it's important to remember that it is merely a statement of the SEC's case against Balina and has no legal effect whatsoever. Balina will presumably challenge the SEC's reasoning concerning jurisdiction, though it's unlikely the SEC needs to rely on this argument in order to establish jurisdiction over Balina's case, which concerns a U.S. defendant taking investments within the U.S. in every material respect.

Nonetheless, the brief comment has rightly been ascribed great significance by proponents of Ethereum who are outraged by the idea that any regulator might have oversight over the network, and who would argue that Ethereum is decentralized and not answerable to any legal authority.

This is one of the more persistent myths among crypto evangelists: the idea that these so-called decentralized projects mean that anything that takes place on or with them somehow exists 'outside' the real world and is therefore not subject to the reach of the judicial system. Remember Changpeng Zhao's laughable claim that Binance isn't based within any jurisdiction because "Bitcoin has no office," and you'll get the idea.

The myth is especially thin when it comes to Ethereum, whose development is closely managed by core developers under the banner of the Ethereum Foundation: it is these people who propose the rules by which the protocol operates and who spring into action should disaster strike (as happened in 2016). This was true before Ethereum's move to proof of stake, but now that the network's consensus mechanism is essentially pay-to-win, control over the network overwhelmingly lies with whoever holds the most ETH—and 40% of the liquidity in the network is concentrated in the top 100 holders.

But before you even get to the realities of proof-of-stake, the SEC is entirely correct to point out that the Ethereum network is primarily effected inside the United States. Ethernodes.org shows that 44.89% of Ethereum nodes are based in the United States, more than triple the number of any other country. To argue that these transactions cannot fall within the jurisdiction of a U.S. regulator is convenient for those who want to resist all regulation over digital assets, because if these transactions can't be said to be taking place in the U.S., then they can't be said to be taking place anywhere.

But this approach from the SEC is most significant because it provides a strong signal that the SEC is finally ready to assert its authority over the more egregious violations of securities laws taking place within the digital asset industry; focusing too closely on the SEC's justification for jurisdiction here is missing the forest for the trees. Yes, it's significant that the SEC is using the concentration of Ethereum nodes in the U.S. as reasoning for Ethereum transactions taking place in the U.S., but the fact that the SEC seems to be warming to the idea that there is no decentralization in Ethereum should be much more foreboding. The SEC's idea that Ethereum and BTC are decentralized has "to date" saved those assets from being classified as securities until now, but if this myth has indeed begun to melt away, a reclassification may be on the horizon.

Many will read these signals from the SEC as a drastic departure from their hitherto cautious approach toward ETH and BTC, the two largest digital assets by market capitalization. However, the writing has been on the wall since well before Ethereum completed its transition to proof-of-stake. SEC officials have often excused the likes of Bitcoin and Ethereum under proof-of-work as failing to meet the threshold for securities due to their belief that those projects are sufficiently decentralized—implying that a move away from the POW model might be cause for regulators to reassess their stance. And following the completion of Ethereum's upgrade to proof-of-stake, SEC Chair Gary Gensler became even more forthright: the Wall Street Journal reported that Gensler told reporters that the introduction of a 'staking' mechanism could bring Ethereum within the Howey test for securities.

Ultimately, while the SEC's stated case against Ian Balina doesn't depend on this point, it's a sign that regulators are beginning to see the myth of decentralization for what it is. It's undoubtedly a bad sign for those projects who have profited off this myth, but it's a good sign for those wanting sensible regulation over digital assets.

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23. Deloitte China to pay $20M SEC penalty (CFO Dive)

30 Sep 2022 (2:00 AM), Maura Webber Sadovi

Both the SEC and the PCAOB have recently been focusing on holding foreign companies listed on U.S. exchanges accountable to the same accounting standards with which companies based in the U.S. must comply.

U.S. audit watchdog the PCAOB announced last month that it had reached a long-sought agreement with the China Securities Regulatory Commission (CSRC) and the Ministry of Finance of the People's Republic of China, marking the first step toward the PCAOB gaining "complete access" to inspect public accounting firms based in mainland China and Hong Kong. At the time, SEC Chair Gary Gensler warned if the PCAOB could not actually inspect and investigate audit firms in China, roughly 200 China-based issues could be de-listed.

While the SEC's actions do not "implicate a violation of the Holding Foreign Companies Accountable Act," Gensler in a statement said it underscores the importance of the PCAOB being able to inspect Chinese audits.

The SEC found that the misconduct in connection with Deloitte-China involved both junior and senior executives and reflected a lack of supervision by audit partners. In addition to the financial penalty, Deloitte China will be required by the order to complete a review and an assessment of its policies by an independent consultant retained by a U.K. entity with which it is indirectly affiliated, to address the deficiencies and to require additional training.

Gensler in a statement criticized Deloitte China for falling "woefully short of professional auditing requirements in numerous component audits of Chinese operations of U.S. issuers and audits of Chinese companies listed on U.S. exchanges."

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24. SEC charges pharma CEO, 2 companies with offering fraud (Compliance Week)

30 Sep 2022 (8:42 PM), Adrianne Appel

Edalat has been chief executive officer, controlling shareholder, and chairman of the board at Vivera Pharmaceuticals since April 2018. During that time, he was also controlling shareholder and chairman of the board at Sentar Pharmaceuticals. From May 2018 until June 2020, Vivera raised about $6.6 million from 63 investors through a private placement memorandum that claimed Vivera owned an exclusive global license for a method of delivering CBD and THC, both derived from cannabis, under the tongue, according to the SEC's complaint, filed Friday in U.S. District Court for the Central District of California.

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25. SEC Issues Risk Alert on Future Examination Review Areas Focused on the New Investment Adviser Act Marketing Rule (Lexology)

30 Sep 2022 (2:00 AM), Kramer Levin Naftalis & Frankel LLP

On Sept. 19, 2022, the Division of Examinations of the Securities and Exchange Commission (EXAMS) published a Risk Alert (the Risk Alert) that identified the upcoming areas of review with respect to examinations of SEC-registered investment advisers (RIAs) focusing on compliance with amended Rule 206(4)-1 of the Investment Advisers Act of 1940 (the Marketing Rule). The Marketing Rule was adopted by the SEC on Dec. 22, 2020 (the New Marketing Rule Release), creating a single rule in lieu of the previous separate advertising and cash solicitation rules. The EXAMS staff issued the Risk Alert in anticipation of the approaching compliance date for the Marketing Rule, which is Nov. 4, 2022 (Compliance Date).

The Risk Alert encourages RIAs to consider their compliance with the Marketing Rule by reviewing their practices, policies and procedures and by modifying their training, supervisory, oversight and compliance programs, as necessary. The Risk Alert identifies four areas of review that the EXAMS staff will focus on in their upcoming examinations, each of which is discussed below.

The Areas of Review

Marketing Rules Policies and Procedures

The EXAMS staff will assess whether the written policies and procedures of RIAs are reasonably designed to prevent violations of the Investment Advisers Act of 1940 (the Advisers Act), including violations of the Marketing Rule. The SEC reiterated its position from the New Marketing Rule Release that effective policies and procedures should include objective and testable means aimed at preventing violations of the Marketing Rule. According to the Risk

Alert, such means may include pre-approving advertisements or advertisement templates or reviewing a sample of advertisements based on risk.

Substantiation Requirement

The EXAMS staff will also review whether RIAs have a reasonable basis to believe that they will be able to substantiate material statements of fact in their advertisements. As initially set forth in the New Marketing Rule Release, some ways in which RIAs can demonstrate a reasonable belief are (i) by making a record contemporaneous with the advertisement that demonstrates a reasonable basis for the RIA's belief, or (ii) by implementing policies and procedures to address how the RIA meets the reasonable belief requirement. According to the Risk Alert, if an RIA is unable to substantiate the claims made in an advertisement when demanded by the SEC, the SEC will presume that the RIA did not have a reasonable basis for believing it can substantiate those claims.

Performance Advertising Requirements

The EXAMS staff will also review whether RIAs are compliant with the Marketing Rule's performance advertising requirements, including the prohibitions on including the following in advertisements:

Gross performance unless accompanied by net performance.
Any performance results that are not for specific time periods (this is not applicable to the performance of private funds).
Any statement that the SEC has approved or reviewed any calculation or presentation of performance results.
If an advertisement includes the performance of portfolios other than the specific portfolio being advertised, performance results from fewer than all portfolios having substantially similar investment policies, objectives and strategies as the portfolio offered in the advertisement, unless the advertised performance results are not materially higher than if all related portfolios had been included and the exclusion does not alter the presentation of any applicable prescribed time period.
Performance results from a subset of investments extracted from a portfolio, unless the performance results for the total portfolio are also provided or offered to be promptly provided.
Hypothetical performance (which does not include performance generated by interactive analysis tools), unless the RIA implements policies and procedures reasonably designed to ensure that such performance is relevant to the likely financial situation and investment objectives of the intended audience and the RIA provides additional information about the hypothetical performance that is tailored to the audience receiving the advertisement, such that the intended audience has sufficient information to understand the criteria, assumptions, risks and limitations.
Predecessor performance, unless the personnel primarily responsible for achieving such performance manage accounts at the RIA and the predecessor accounts are sufficiently similar to the accounts that they manage at the RIA. All relevant disclosures must be clearly and prominently included in the advertisement.
Books and Records

Finally, the EXAMS staff will examine compliance with the amendments to the recordkeeping requirements under the Advisers Act that were adopted in connection with the Marketing Rule.

These amendments require, among other things, that RIAs keep records of advertisements disseminated by them and maintain all written communications relating to the performance or rate of return of any portfolios. RIAs will need to maintain accounts, books, internal working papers and other documents necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any portfolios, including, with respect to hypothetical performance and predecessor performance, all information provided or offered to investors.

In addition to these four focus areas, the Risk Alert also reminds RIAs that Item 5 of Form ADV Part 1A is being amended to require additional disclosures regarding marketing practices. RIAs filing Form ADV (or filing an annual update) after the Compliance Date will need to respond to the amended version of Item 5. With these points in mind, RIAs should consider their current compliance programs, practices, policies and procedures to make sure that they are prepared for any upcoming examinations.

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26. The first crypto insider trading case: the SEC's charge against ex-Coinbase manager (Lexology)

30 Sep 2022 (2:00 AM), Penningtons Manches Cooper LLP

The US Securities and Exchange Commission (SEC) recently saw its first insider trading case involving cryptocurrencies. The case comes just weeks after the US Department of Justice (DOJ) brought insider trading charges against an employee of OpenSea, a marketplace for non-fungible tokens (NFTs). Both cryptocurrencies and NFTs are based on blockchain technology that is rapidly disrupting the financial sector. This article considers the case and whether similar action can be expected in the UK.

On 21 July 2022 the SEC and DOJ filed civil and criminal charges against Ishan Wahi, a former manager in the assets and investing products group at Coinbase Global, Inc Charges were also filed against Ishan's brother, Nikhil Whai, and their friend, Sameer Ramani.

Coinbase is one of the largest crypto asset trading platforms in the US, with more than 98 million registered users. Since May 2020, Coinbase has publicly announced on its blog or Twitter feed when it will list certain crypto assets on its trading platform. Ishan was in possession of first-hand knowledge of what crypto assets Coinbase planned to support and when Coinbase intended to make listing announcements. In relation to this information, he owed a duty of trust and confidence to Coinbase that required him to keep listings information confidential.

Ahead of multiple listing announcements between June 2021 and April 2022, Ishan repeatedly tipped Nikhil and Ramani with material, non-public information about the timing and content of various listings. Ishan communicated by phone and text with Nikhil and Ramani, including exchanging phone calls and messages with both that would not be captured in US phone company records because, among other things, Ishan was using a phone with a non-US phone number. Nikhil and Ramani used this information to make trades in advance of at least 14 public listing announcements. In doing so, they allegedly purchased and sold at least 25 crypto assets for a profit of more than $1.1 million using Ethereum blockchain wallets.

SEC's jurisdiction

The SEC claims that at least nine of the crypto assets involved were securities. A crypto asset security refers to an asset that is issued and/or transferred using distributed ledger or blockchain technology and meets the definition of 'security' under the federal securities laws. Under section 2(1)(a) of the Securities Act 1933, the definition of a security includes 'investment contracts'. For an asset to be considered an investment contract, it must satisfy the Howey Test, which was developed and named after the Supreme Court case SEC v WJ Howey Co 328 US 293 (1946). Under the Howey Test a digital asset, including a crypto asset, will be deemed a security 'if it constitutes an investment of money, in a common enterprise, with a reasonable expectation of profit derived from the efforts of others' (emphasis added).

The SEC claims that the factors in the Howey Test were satisfied because:

the 'securities were offered and sold by an issuer to raise money that would be used for the issuer's business';
'the issuers and their promoters solicited investors by touting the potential for profits to be earned from investing in these securities based on the efforts of others'; and
statements were made regarding 'the ability for investors to engage in secondary trading of the token, with the success of the investment depending on the efforts of management and others at the company'.
At least nine of the crypto assets involved in the charges against Ishan, Nikhil and Ramani are, therefore, considered by the SEC to be securities. Without such interpretation by the SEC, it would have no statutory authority to bring an action alleging insider trading.

The SEC defines insider trading as 'buying or selling a security, in breach of a fiduciary duty or other relationship of trust and confidence, while in possession of material, non-public information about the security'. The SEC goes on to clarify that insider trading violations may include the 'tipping' of such information, trading by the person 'tipped', and trading by those who misappropriate such information.

Whilst the claims alleged by the SEC appear to be strong, they hinge on the definition of 'security'. In August 2021, the current chair of the SEC, Gary Gensler, told CNBC (a provider of financial market coverage and business information) that the SEC considers many cryptocurrency coins and tokens to be securities under the Howey Test, stating that "if somebody is raising money selling a token and the buyer is anticipating profits based on the efforts of that group to sponsor the seller, that fits into something that's a security". Paul Grewal, chief legal officer at Coinbase, however, disputes the SEC's claim that the instruments involved in the charges against Ishan, Nikhil and Ramani, were securities, recently tweeting that: "Coinbase doesn't list securities. Period."

Conversely, the US Commodity Futures Trading Commission (CFTC) asserts that cryptocurrencies are commodities and, therefore, subject to its own jurisdiction. This assertion is supported by a federal jury decision made in Boston on 21 July 2022, where the jury held that a virtual currency could be considered a commodity within the CFTC's jurisdiction in a case where Randall Crater, founder of crypto currency business 'My Big Coin Inc', was convicted of fraud.

Many in the digital asset industry would prefer cryptocurrencies to be treated as commodities rather than securities, as the CFTC rules that govern the former impose lighter regulation than the SEC rules that govern the latter.

The brother of Ishan, Nikhil, has since pleaded guilty to a wire fraud conspiracy charge, admitting before a US district judge in Manhattan that he made trades based on confidential Coinbase information. Ishan, however, has pleaded not guilty and it is understood he is due to next appear in court on 22 March 2023. Ramani remains at large.

The charges made by the SEC on 21 July 2022 mark the first time the SEC has formally identified certain cryptocurrencies offered on a major trading platform as securities. Cryptocurrency traders have, therefore, been put on notice that the SEC considers some cryptocurrencies to be securities and are advised to act accordingly. They also highlight the SEC's desire to establish jurisdiction and regulatory oversight of digital assets and platforms, with this action becoming another part of the battle between the SEC and the CFTC as they seek to persuade authorities who should be the main US regulator of crypto.

Crypto assets and market abuse in the UK

As is highlighted in the US case, with crypto assets, before getting into the issue of whether any market abusive conduct has taken place, prosecutors and other authorities have to show that the crypto asset is capable of being caught by the market abuse regime. In other words, there is an initial, and perhaps high, hurdle to overcome before even getting into the facts of the alleged abusive conduct. So, for example, before considering whether or not someone had dealt in shares based on relevant inside information before that information had become public, authorities will have to establish first whether the particular crypto asset is a form of security or financial instrument to which the market abuse regimes apply.

In the UK, there are two regimes under which forms of market abuse can arise: (i) the Criminal Justice Act 1993 (CJA) (insider dealing), and (ii) the UK Market Abuse Regulation (UK MAR)[1] (market manipulation, insider dealing and unlawful disclosure of inside information).

Under part V of the CJA, insider dealing is a criminal offence which involves dealing in securities on the basis of insider information – ie information that is not yet publicly known and which would affect the price of the securities if it were made public.

Under article 8 of UK MAR, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of financial instruments to which that information relates, whether for its own account or for the account of a third party and whether directly or indirectly. The other forms of market abuse under UK MAR also involve conduct relating to financial instruments.

Whether crypto assets are caught, potentially, by either regime – CJA or UK MAR – depends, therefore, on whether such assets are securities (under CJA) or financial instruments (under UK MAR).

'Securities' are listed in schedule 2 of the CJA and covers shares, debt securities, and other instruments based on or derived from such shares or debt securities – namely, warrants, depositary receipts, options, futures and contracts for differences. Debt securities are any instrument creating or acknowledging indebtedness which is issued by a company or public sector body.

'Financial instruments' are listed in schedule 2 of the Regulated Activities Order. It is a fairly long and involved list, but for these purposes, one item on the list - transferable securities - is of particular interest. This includes classes of securities which are negotiable on the capital market and includes shares in companies (and comparable interests in partnerships and other entities and equivalent securities) and securities giving the right to acquire or sell transferable securities (eg warrants, options, futures and convertible bonds) and securitised cash-settled derivatives (eg certain futures, options, swaps and contracts for differences).

The individual features of the crypto asset will have to be analysed and assessed to determine whether they are caught by either of the UK's market abuse regimes. The FCA has created a framework for crypto assets based on their intrinsic structure as well as their designed use and has indicated that there are three broad categories of crypto assets: (i) security tokens; (ii) e-money tokens (both of which are referred to as regulated tokens); and (iii) unregulated tokens (being any token that is not a security or e-money token). Only the first category is likely to be relevant here but this, again, will depend upon the specific characteristics of the security token.

The FCA guidance states that a token that creates or acknowledges indebtedness by representing money owed to the token holder is considered a debenture and constitutes a security token. This analysis may be sufficient for 'debt securities' under the CJA. If a token is negotiable on the capital markets (eg because it can be transferred from one person to another who then acquires legal title of the token), then it might be considered a transferable security. In other words, a crypto asset that is a security token could, in these circumstances, be a transferable security and fall within UK MAR.

As mentioned above, UK MAR prohibits insider dealing, unlawful disclosure and market manipulation. UK MAR describes activities that fall within these prohibitions, and they include spoofing - a strategy deployed to artificially influence the price of a financial instrument using fake buy or sell orders to create the (false) impression of optimism or pessimism in the market, causing the market price to move in response. Spoofing, and other prohibited practices, can readily occur – and have occurred – in relation to crypto assets.

The problem arises that the novel and changeable characteristics of crypto assets and their markets mean that new forms of abusive behaviour could emerge that have not been anticipated in UK MAR; the complex and often poorly understood technology underpinning crypto assets makes manipulation harder to recognise or detect. Crypto assets are also more susceptible to pure market sentiment than traditional markets – as is evident from the recent volatility in cryptocurrency markets which has caused the 'crypto winter'.

Where crypto assets fall within UK MAR or CJA, there are clearly issues and hurdles to overcome for any authority pursuing a market abuse action or prosecution. There are many crypto assets that are, on any analysis, outside the scope of the market abuse regimes and therefore beyond any regulatory or legal framework that can provide for orderly trading and safe markets.

That being said, those companies that are potentially permitting the trading of securities or financial instructions via their platforms, or otherwise, ought to ensure that their policies and procedures adequately cover insider trading and market abuse to avoid any potential liability that could be imposed on them via their employees' activities.

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27. SEC Declines to Accelerate Enforcement Case Against Crypto Issuer Planning Distribution of Unregistered Tokens but Warns Issuer it Proceeds with Distribution Plan at its own Peril Blog Blockchain (Lexology)

29 Sep 2022 (2:00 AM), Baker McKenzie

On September 15, 2020 the U.S. Securities and Exchange Commission ("SEC" or "Commission") issued an order denying the SEC's Division of Enforcement's (the "Division") motion to expedite enforcement proceedings against American CryptoFed DAO LLC ("CryptoFed") an issuer of digital assets. CyrptoFed DAO had previously filed a Form 10 registration statement with the SEC seeking to register two classes of digital assets, the Ducat and Locke tokens, as equity securities under Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act"). The SEC instituted a proceeding under Section 12(j) of the Exchange Act alleging that CryptoFed's Form 10 registration statement was materially deficient. The effect of the 12(j) proceeding was to stay the effectiveness of CryptoFed's Form 10.

The Division's motion sought to expedite the 12(j) proceeding after CryptoFed allegedly "announced its intent to begin distributing the Locke tokens … notwithstanding the Commission's prior order staying the effectiveness of [CryptoFed's] Form 10." The Division argued that CryptoFed's plan to ignore the SEC's stay order and engage in an unregistered offering of securities made it imperative that the 12(j) proceeding move forward on an expedited basis.

CryptoFed affirmed that it planned to proceed with implementing its business plan by conducting auctions for non-fungible tokens that will later be exchangeable for Locke tokens, unless the Division provides it with a Cease-and-Desist Order including a Howey Test Analysis or other legal justifications to prove that the Locke and Ducat tokens are securities.

In issuing its order the Commission found there was no immediate need to expedite the resolution of the Section 12(j) proceeding, as CryptoFed would be acting "at its peril in beginning to distribute the tokens now regardless of the status of the Section 12(j) proceeding."

The Commission reasoned that, under the Securities Act of 1933 (the "Securities Act"), an offering of securities is unlawful—and subject to significant civil and criminal penalties—unless it is either registered or exempt from registration. Securities Act Section 5(a) prohibits the sale of securities unless a registration statement is in effect or an exemption applies. Additionally, Securities Act Section 5(c) prohibits offers of sale, which include sales, "while the [filed-but-not-yet-effective] registration statement is the subject of . . . any public proceeding or examination" under Securities Act Section 8.

All of the above Securities Act prohibitions appear to be present and unresolved with respect to the distribution of the Ducat and Locke tokens. For example, the Commission found that

CryptoFed had not identified, or purported to identify, any exemption under the Securities Act that applies to the distribution of its tokens. Further, there is no Securities Act registration statement in effect for the offering. CryptoFed had filed a Form S-1 registration statement seeking to register transactions involving the Ducat and Locke tokens under the Securities Act;, however the Form S-1 contains a delaying amendment, and therefore is not effective until the Commission declares it effective (which it has not done). In November 2021, the Commission commenced an examination under Securities Act Section 8(e) with respect to the Form S-1, the pendency of which would therefore prohibit the sale of the tokens under Securities Act Section 5(c). In June 2022, CryptoFed filed a Form RW seeking withdrawal of the Form S-1 registration statement acknowledging that the Form S-1 has not been declared effective by the Commission.

The Commission noted that, should CryptoFed proceed with the distribution of its tokens—irrespective of when and how the Section 12(j) proceeding is resolved—the above facts will be highly relevant to the determination of whether any violation of the Securities Act on its part was willful and deliberate.

Furthermore, the Commission noted that CryptoFed's potential liability under the Securities Act for an unregistered, non-exempt offering of the tokens is independent of the effectiveness of CryptoFed's Exchange Act registration statement with respect to the tokens (i.e., the Form 10). In its order the Commission reiterated that registration of securities offerings under the Securities Act is distinct from registration of classes of securities under the Exchange Act and registration under one statute does not excuse registration under the other when it is otherwise required. So even if the Form 10 was effective, any securities offering would still need to be pursuant to a Securities Act registration statement or pursuant to a Securities Act exemption from registration.

The Commission's order clearly warns CryptoFed that if it proceeds with its distribution plan it will face additional potential liability for violations of the Securities Act regardless of the pendency of the 12(j) proceeding. Accordingly, in denying the Division's motion the Commission left CryptoFed with a Hobson's choice – resolve its registration issues under both the Securities Act and Exchange Act with regards to the Ducat and Locke tokens prior to distributing them or proceed to do so at its own peril.

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28. DAOs in CFTC's Enforcement Crosshairs (National Law Review)

30 Sep 2022 (2:00 AM), Peter Y. Malyshev

On September 22, the Commodity Futures Trading Commission ("CFTC") asserted its jurisdiction over a decentralized autonomous organization ("DAO") and its founders, signaling for the industry that even an unincorporated association cannot violate U.S. commodity derivatives regulations. This enforcement action exemplifies a novel approach to liability for violations under the Commodity Exchange Act ("CEA") and the CFTC's jurisdictional reach over decentralized markets in digital assets. CFTC Commissioner Summer K. Mersinger issued a dissent, arguing that this action is regulation by enforcement and an impermissible exercise of CFTC's jurisdiction.

First, the CFTC announced that it had reached a settlement with bZeroX, LLC (a decentralized Blockchain-based software protocol) and its founders for illegally offering leveraged and margined commodity transactions for retail participants in digital assets without being registered as a designated contract market ("DCM"), engaging in activities of a futures commission merchant ("FCM") without registration and failing to adopt a customer identification program.

Second, simultaneously with the settlement, the CFTC filed a federal civil enforcement action in California charging Ooki DAO (a successor to bZeroX) with the same violations as the first action. Ooki is an unincorporated association comprising holders of Ooki DAO Tokens ("Ooki Tokens") who vote these tokens to operate the Ooki Protocol. CFTC's reach over Ooki DAO Protocol via the Ooki Token is, according to Commissioner Mersinger's dissent, regulation by enforcement. However, even the dissent noted that "blatant" violation of the CEA cannot be tolerated, especially if it was the intention of the founders to make the new venture (i.e., the DAO) enforcement-proof while knowing that the CEA was violated.

The CFTC presented the following analysis:

Cryptocurrencies are "commodities," which has been established law for several years now. As such, the CFTC has "general" jurisdiction to prosecute for fraud and manipulation in the interstate commerce.

If there is a leveraged contract on a "commodity" (i.e., a contract is margined), then the CFTC immediately can exercise its "exclusive" jurisdiction, meaning it can dictate how, where, under what circumstances, and when a derivative contract can trade. Contracts offered through the Ooki DAO Protocol were clearly derivatives and, therefore, the CFTC could exercise its exclusive jurisdiction.

If a derivative is offered to a "retail" participant (i.e., entities that are not eligible contract participants (ECPs)), then these contracts can only be traded on a registered DCM. Ooki DAO is not registered as a DCM.

Only FCMs can act as brokers or facilitators to execute retail commodity transactions and hold customer margin. Neither bZeroX (and its successor, Ooki DAO) nor its founders were registered as FCMs.

It is noteworthy that the CFTC did not charge Ooki DAO Protocol for operating as but failing to register as a DCM. In all likelihood, the CFTC could not reasonably argue that an unincorporated association governed by Ooki DAO Token holders can register as a DCM because it is not a legal entity. CFTC prior enforcement action in January 2022 involving another DeFi entity specifically sanctioned this entity for failure to register as a DCM.

Finally, this enforcement action and a complaint stand out in the context of SEC's Wahi complaint, which was also characterized as "regulation by enforcement" by CFTC Commissioner Caroline D. Pham. In the Wahi complaint, unlike in the Ooki complaint, DAO tokens were characterized as securities.

It is clear that the CFTC's Ooki settlement and complaint and the SEC's complaint in Wahi are breaking new ground for both CFTC and SEC jurisdictional reach while the agencies grapple with conceptualizing new technology and what entities would constitute a trading facility. The CFTC generally has been expanding the scope of a "trading facility" – e.g., with respect to swap execution facilities ("SEFs") in September 2021. The SEC has done the same with its Reg ATS proposal in January 2022, and so did the ESMA in the EU with the April 2022 trading facility proposal. It is clear that the concept of a trading facility is undergoing a fundamental reevaluation, and there is no doubt it will be much broader and much more flexible in the very near future.

Likewise, in the absence of clear guidance from Congress, the CFTC and the SEC will continue to grapple on an ad hoc basis with their jurisdictional and definitional matters.

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29. CFTC Charges Digitex Founder Adam Todd With Multiple Violations of Commodity Exchange Act (Coin Desk)

30 Sep 2022 (7:14 PM), Cheyenne Ligon

Adam Todd, founder of crypto futures and spot market exchange Digitex, has been charged by the Commodity Futures Trading Commission for multiple violations of the Commodity Exchange Act (CEA).
According to a complaint filed in the Southern District of Florida on Friday, Todd is accused of using various corporate entities – including Digitex LLC, Digitex Ltd., Digitex Software Ltd. and Blockster Holdings Ltd. Corp., – to run an illegal crypto derivatives trading platform.

The CFTC's enforcement action against Todd is one in a recent string of crypto-related lawsuits brought by the agency, which appears to be cracking down on lawbreakers in the digital-assets industry.
Read more: CFTC's Ooki DAO Action Shatters Illusion of a Regulator-Proof Protocol
Michael Selig, a crypto attorney at the law firm of Willkie Farr & Gallagher, said that while the CFTC's action against Todd and Digitex is the regulator's first against a decentralized-finance (DeFi) platform for failing to register as an exchange, it's not a surprise to anyone paying attention to what the regulator has been saying about DeFi platforms.

"Former CFTC Commissioner Dan Berkovitz foreshadowed this action in a June 2021 speech where he stated that 'not only do I think that unlicensed DeFi markets for derivative instruments are a bad idea, I also do not see how they are legal under the CEA,;'" Selig said. "The Digitex action demonstrates that the CFTC is focused on both intermediaries that offer margin and financing to retail crypto-asset traders as well as the platforms."

Because Todd and the Digitex platforms were never registered with the CFTC as futures commission merchants, the operation was a violation of the CEA, according to the complaint. Todd and the entities are further accused of failing to implement proper know-your-customer practices as required by the Bank Secrecy Act – a violation that can land rulebreakers in prison for up to five years.

Todd is also accused by the CFTC of attempting to manipulate Digitex's native token, DGTX, using noneconomic trading to "pump" its price higher.

The CFTC is seeking civil monetary penalties, disgorgement, restitution, and trading and registration bans against Todd and the Digitex-related entities.

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30. Barclays Agrees to Multi-Million Settlement in Securities Case (Miami Herald)

30 Sep 2022 (3:16 PM), Rob Lenihan

The SEC stresses the importance of having 'robust internal controls over their offers and sales of securities.' Simply staggering. Those were the words that regulators at the Securities and Exchange Commission used when announcing a $361 million settlement with Barclays to resolve charges the financial services giant offered and sold about $17.7 billion of securities in unregistered transactions.

The UK-based bank declined to comment and there was no finding of intentional misconduct by the company or its employees. Gurbir S. Grewal, Director of the SEC's Division of Enforcement, said in a statement that the case "highlights why it is essential for firms like Barclays to have robust internal controls over their offers and sales of securities." "While we acknowledge Barclays' efforts to identify, disclose and remediate this conduct, the control deficiencies and the scope of the conduct at issue here was simply staggering," he said. "The time for other firms employing similar shelf registrations to take notice and improve their internal compliance and control functions is now." The bank offered $17.7 billion worth of financial products that had not been registered for sale with the SEC, regulators said.

Officials said the offering was the result of "a failure to implement any internal control to track such transactions in real time." 'NO INTERNAL CONTROL' The SEC said Barclays lost its status as a well-known seasoned issuer (WKSI) following an action by regulators against an affiliate. "As a result, BBPLC had to quantify the total number of securities that it anticipated offering and selling and pay registration fees for those offerings upon the filing of a new registration statement," the SEC said. "The SEC's order notes that, given this requirement, BBPLC personnel understood that the firm needed to track actual offers and sales of securities against the amount of registered offers and sales on a real-time basis; yet, no internal control was established for this purpose." Barclays agreed to pay a $200 million civil penalty and the SEC ordered $161 million for disgorgement and prejudgment interest of, which was deemed satisfied by an offer of rescission Barclays made to investors in the unregistered offerings.

The announcement comes in the same week the SEC and the Commodity Futures Trading Commission fined Barclays $200 million for failing to meet record keeping requirements. A total of 11 banks and brokerages were fined more than $1.8 billion. The regulators said the companies failed to stop its employees, including those at senior levels, from communicating both internally and externally using unapproved communication methods, including messages sent via personal text, WhatsApp, or Signal.

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31. Cryptocurrencies XRP, MKR Shine as BTC, ETH Hold Steady Ahead of US Inflation Figure (Coin Desk)

30 Sep 2022 (1:25 PM), Omkar Godbole

Payments-focused cryptocurrency XRP and MKR, the governance token of the peer-to-peer lending platform Maker, are rallying in an otherwise moribund crypto market awaiting the release of the Federal Reserve's preferred measure of U.S. inflation: core personal consumption expenditure (PCE). XRP traded recently at around 50 cents, representing an 11% gain over 24 hours, and MKR changed hands at $775, up 7%, according to CoinDesk data. Market leaders bitcoin (BTC) and ether (ETH) traded little changed near $19,500 and $1,340, respectively. XRP has been a "court case play" this month, outperforming the broader market in hopes that the long-drawn-out legal tussle between Ripple Labs, a San Francisco-based company with close ties with the cryptocurrency, and the U.S. Securities and Exchange Commission, will be resolved soon.

On Sept. 29, a U.S. District Court Judge ordered the release of documents about a 2018 speech by the then-Director of the SEC's division of corporation finance, William Hinman, bringing cheer to the XRP community. In that speech, Himnan said ether, the second-largest cryptocurrency, was not a security – a comment Ripple Labs seeks to use as a defense against the SEC's charge that Ripple violated securities law by raising $1.3 billion through XRP sales to investors between 2013 to 2020. Ripple plans to argue that if the regulator didn't consider ether as a security back then, how can it subject XRP to securities law?

The SEC filed the suit against Ripple in December 2020. XRP has crossed above the widely-tracked 200-day moving average. (TradingView) XRP moved above a multimonth bear-market trendline early this month and was trading above its 200-day moving average at press time. MKR's move to a three-week high comes a day after Tyler Winklevoss, co-founder of crypto exchange Gemini and a longtime crypto investor, submitted a proposal on the Maker forum to boost the adoption of the Gemini dollar (GUSD) stablecoin in the latter's ecosystem. Winklevoss proposed a three-month marketing incentive plan, under which Gemini would pay a fixed annual interest of 1.25% on the total GUSD balance in MakerDAO's vault. Focus on core PCE The Core PCE released by the U.S. Bureau of Economic Analysis gauges the average amount of money consumers spend on goods and services each month. It excludes volatile components like food and energy, and is considered to provide a better understanding of the underlying demand-pull inflation than other figures, like the consumer price index.

The Core PCE for August, scheduled for release at 12:30 UTC, is likely to show a 0.5% month-on-month rise, taking the year-on-year rate up to 4.7% from July's 4.6%, according to Reuters estimates sourced from FXStreet. A higher-than-expected reading would imply stickier price pressures and a more challenging inflation fight for the Fed, weakening the case for a meaningful bounce in the battered risk assets, including cryptocurrencies. "Remember that, according to the Fed's quarterly economic projections, the central bank expects this inflation measure to drop to 4.5% by the end of this year. Even that drop to 4.5% will require Fed Funds being taken into the 4.25-4.50% range, according to the Fed," ING's global head of markets Chris Turner, wrote in a note to clients. The Fed's target range is currently 3%-3.25%. "Therefore, any upside surprises in this data suggest the Fed may have to hike even harder," Turner added.

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32. SEC Accuses 2 Firms of Crypto Pump-and-Dump Scheme (Coin Desk)

30 Sep 2022 (6:21 PM), Nelson Wang

The U.S. Securities and Exchange Commission has filed charges against Bermuda-based Arbitrade Ltd and Canada-based Cryptobontix, as well as their principals, for carrying out an alleged pump-and-dump scheme involving a crypto asset called “Dignity” or “DIG,” according to a press release.

According to the complaint, the two firms falsely claimed between May 2018 and January 2019 that Arbitrade had acquired and received title to $10 billion in gold bullion, and that the company planned to back each DIG token issued and sold to investors with $1 worth of this gold.

In reality, however, the SEC claims the gold acquisition transaction was a ruse to boost demand for DIG, allowing the company’s principals to sell at least $36.8 million of DIG, including to U.S. investors, at inflated prices.
The SEC is charging the defendants with violating the antifraud and securities registration provisions of the federal securities laws.

The complaint seeks permanent injunctive relief, disgorgement plus prejudgment interest, and civil penalties against all of the defendants, as well as officer-and-director bars against the individual defendants.

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33. US senator bill seeks to cushion crypto exchanges from SEC enforcement actions (Coin Telegraph)

1 Oct 2022 (8:01 AM), Arijit Sarkar

United States Senator Bill Hagerty, a member of the Senate Banking Committee, introduced legislation seeking a safe harbor for cryptocurrency exchanges from "certain" Securities and Exchange Commission (SEC) enforcement actions.

The Digital Trading Clarity Act of 2022, introduced by Sen. Hagerty, aims to provide regulatory clarity around two primary concerns plaguing crypto exchange establishments — (i) the classification of digital assets and (ii) related liabilities under existing securities laws.

Sen. Hagerty outlined an overview of the problems amid regulatory hurdles:

The aforementioned regulatory uncertainty, according to Sen. Hagerty, discourages investments in the crypto spaces and hampers job creation opportunities in the US. As a result, the blockade "jeopardizes the United States' leadership in this transformational technology at such a crucial time."

The senator believed that the legislation, when passed, would not only provide "much-needed certainty" to crypto businesses but also improve the growth and liquidity of U.S. cryptocurrency markets.

To establish the legislation as law, the bill needs approval from the Senate, the House and the President of the United States.

Running parallel to the regulatory reforms recommended by the US senators, the federal government amped up efforts to study the feasibility of central bank digital currencies (CBDCs) in the American market.

Under Biden's directive, the Office of Science and Technology Policy (OSTP) analyzed 18 CBDC design choices — outlining various pros and cons of each system:

The technical evaluation for a U.S. CBDC system highlighted the department's inclination toward an off-ledger, hardware-protected system.

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34. ICO Hype Man Ian Balina Launches GoFundMe to Tackle SEC Lawsuit (Decrypt)

30 Sep 2022 (7:00 AM), Tim Hakki

Crypto influencer Ian Balina has launched a GoFundMe page to pay for his legal defense against the U.S. Securities and Exchange Commission (SEC), which earlier this month filed a lawsuit against him for allegedly selling unregistered securities.

Balina claims to be fighting "on behalf of the whole crypto community" and challenging what he feels to be "SEC over-reach [sic]." He's raised $1,192 three days after launching, with an objective of $25,000.

The Ugandan entrepreneur left his sales role at IBM to promote crypto full-time in 2017, with content such as "How to Make Millions with Initial Coin Offerings (ICOsICOs)" racking up hundreds of thousands of views.

However, Balina is now having to solicit funds from supportive crypto community members "due to the costly and exhaustive process ahead." Balina, who currently resides in Austin, is now looking to challenge the SEC's "expansive definition" of a security.

Industry pundits have long said the same about the SEC—chairman Gary Gensler is a notorious crypto hardliner.

SEC targets Ethereum through Balina
Perhaps the most striking aspect of the SEC's lawsuit against Balina is the regulator's argument that every Ethereum transaction in the world falls under its jurisdiction.

Because most of the network's proof-of-work (PoW) validator nodes were clustered in the U.S., argued the Commission, the U.S. government, therefore, has jurisdiction over the whole network.

Several in the community took to Twitter to vent their outrage at the SEC's alleged overreach.

This month, the Ethereum network transitioned to proof-of-stake technology. However, Gensler could still use a similar argument to try and argue for SEC jurisdiction over it.

According to Martin Köppelmann, popular crypto exchange Coinbase and liquidity staking pool Lido Finance (both based in the United States) together account for 42% of post-merge Ethereum validators.

Further, the top seven entities control more than two-thirds of the stake validating transactions, with the bulk of the stake being hosted on cloud services like Amazon.

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35. CFOs will be at the center of climate-risk disclosure reporting, says an author of the SEC's proposed rules (Fortune)

30 Sep 2022 (1:05 PM), Sheryl Estrada

As public companies await the passage of the U.S. Securities and Exchange Commission's proposed mandatory climate-risk disclosure rule, internal teams are gearing up to tackle these new requirements. Will a company's finance operation led by the CFO be at the center of the need for enhanced reporting to the SEC?

"At the end of the day, yes. That's where the rubber meets the road," Kristina Wyatt, deputy general counsel and SVP of global regulatory climate disclosure at Persefoni, a software company that provides a climate management and accounting platform, told a group of finance chiefs in Dallas last night.

Wyatt was the guest speaker during Fortune's CFO Collaborative, in partnership with Workday and sponsored by Deloitte. Formerly senior counsel for climate and ESG (environmental, social, and governance) at the SEC, Wyatt is one of the authors of the proposed ESG climate regulations.

"These are disclosures that are going into the company's filings," she explained. "There will have to be some cross-functional collaboration necessary. But the proposals are built on something called the Task Force on Climate-Related Financial Disclosures. The key there is financial disclosure. So, it's taking climate risk and opportunity and translating that into financial impact."

"I have read speculation that there wouldn't be a rule issued by the end of the year. What do you think?" Fortune Senior Editor-at-Large Geoff Colvin asked Wyatt. "I have no insider knowledge whatsoever," Wyatt responded. "I'd love to see it issued by the end of the year. But it's a heavy lift. I'm guessing sometime early next year."

'It's quite feasible for companies to report their Scope 3'

Wyatt explained what the SEC's proposal requires of companies. "The proposal actually is a little bit unusual in that it covers both what's called the front part of the 10-K, the narrative portion, that includes the business description management's discussion and analysis, etc. And proposes a section on climate that would include a narrative discussion of the company's greenhouse gas emissions, and also its strategy for addressing climate-related financial risks."

She continued, "But the proposal also addresses what's called the back part of the document, which is the financial statement portion, and proposes that there be a note in the financial statements that address the impact of climate-related risks and opportunities, on the company's financial statements."

In terms of data, the proposal would require all filers to disclose Scope 1 and Scope 2 greenhouse gas emissions, such as onsite or controlled by the company, Wyatt said. Some companies may need to include more information about Scope 3 emissions, which are emissions that aren't produced directly from the reporting company but from the activities of its value chain, she said.

Colvin asked Wyatt if reporting Scope 3 quantification is realistic for big companies.

"I think that there's something of a misperception about how hard it will be for companies to report their Scope 3," Wyatt said. "It's perfectly permissible to report on your Scope 3 using averages and spend-based data, for example, if you're reporting on your supply chain. We expect that companies over time will start to report more and more actual data that they get from other companies in their supply chain. But it is quite feasible for companies to report their Scope 3."

'The trend is very clear'

The public had an opportunity to comment on the SEC's 500-page-long proposal. During that time period, there were over 15,000 comments made from people using the SEC's online form, but "unique comment letters tipped the scales at something over 4,000," Wyatt said. "There were those who really supported the proposal and others who were less sanguine about it. And I'm sure that that will impact the final rule."

She continued, "The investor community was, by and large, very supportive. Much of the corporate community was supportive. But then, others, particularly some industry groups, were less supportive. I think that some of the areas of concern are around Scope 3 reporting and the fear that it will be difficult to gather that data."

"So the trend is very clear," Colvin said to Wyatt. "There's going to be considerably significantly more reporting on ESG. We're focusing on the 'E' right now, but ESG data in financial filings."

"Yes, absolutely," Wyatt responded. "And that's driven by regulation. It's also driven by investors. It's driven by a whole host of different factors that are all sort of pushing in the same direction."

Back to Top

Walker, Gloria H

From: Persefoni <reply@persefoni.com>
Sent: Thursday, September 29, 2022 11:31 AM
To: Gensler, Gary
Subject: ICYMI: Unpacking Scope 3 Emissions

PERSEFONI

Hi Gary,

Scope 3 refers to the indirect emissions in an organization's upstream and downstream value chain. They comprise the vast majority of most companies' carbon footprint and are usually considered the most challenging to measure, report, and reduce.

Our Scope 3 Guide (+ Infographic) explains what Scope 3 is, why companies should start measuring it, and how to begin.

Persefoni content:

- Green Financing is the use of any financial product or service which has an environmental outcome. It has moved from a niche part of the economy to a more prominent role in recent years. Find out what green finance is, what types of green financing exist, and how it is helping the world move toward a low-carbon economy in our short guide.
- PCAF Asset Classes: The Partnership for Carbon Accounting Financials (PCAF) is a calculation methodology used by financial institutions to measure their financed emissions (the emissions from loans,

investments, and other financial services). Read our PCAF asset classes guide to learn why PCAF is essential for financial institutions to measure emissions and the six asset classes it supports.

- Establishing organizational and operational boundaries is a critical first step for companies to build a carbon management strategy. Persefoni's guide on organizational and operational boundaries defines what they are and how to use them in your organization to start the carbon accounting process.

Other news we are following:

- Exxon's gamble with carbon capture and storage: Despite criticism from environmentalists, carbon capture and storage has received huge support from the US Congress. Exxon's plans include a subsidized investment of $100 billion to capture 50 million tonnes of CO_2 from its oil and gas operations in Houston.
- Two pension funds become the first asset owners to leave the Net Zero Asset Owners Alliance (NZAOA): Pension funds, Cbus Super and Bundespensionskasse, have become the first institutions to leave NZAOA; citing a burdensome level of resources needed to meet requirements.
- How is climate change making hurricanes stronger and faster? Warmer oceans and other elements of a warmer climate are contributing to higher winds, increasing the speed at which hurricanes grow in force. As a result, more storms are rapidly intensifying into hurricanes in 24 hours, stunning forecasters and leaving residents little time to prepare.

Walker, Gloria H

From: Persefoni <reply@persefoni.com>
Sent: Tuesday, September 27, 2022 3:03 PM
To: Gensler, Gary
Subject: Reminder: State of the Climate Industry with Forrester, Burlington & Persefoni

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

PERSEFONI

Hi Gary,

This is a friendly reminder to register for our webinar: "**The State of the Climate Industry: Burlington/Forrester/Persefoni Panel Discussion**" on Monday, October 3, 2022. In this webinar, we will showcase our product capabilities for kickstarting your decarbonization journey and reducing your carbon footprint.

Join Burlington, Forrester and Persefoni experts in our upcoming webinar to learn about:

- The rapidly-evolving climate market
- Decarbonization insights and best practices
- A significant company and product announcement on the call

We look forward to seeing you on **Monday, October 3, 2022** at **12:30 PM ET / 5:30 PM BST**.

REGISTER NOW

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2415 W Broadway Rd #41022
Mesa AZ 85274-3042
USA

Walker, Gloria H

From: Persefoni <reply@persefoni.com>
Sent: Thursday, September 22, 2022 12:01 PM
To: Gensler, Gary
Subject: ICYMI: A Beginner's Guide to SASB

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PERSEFONI

Hi Gary,

The Sustainability Accounting Standards Board (SASB) is a sustainability standard used by hundreds of companies to report financially material sustainability information. SASB helps provide sector-specific sustainability reporting by establishing 77 industry-specific guides to identify the Environmental, Social, and Governance issues most likely to be financially material within those industries.

Read our beginner's guide to SASB and learn more about the importance of this sustainability reporting standard, how to use it, its future plans, and how it relates to other frameworks.

Persefoni content:

- The upcoming NYC Climate Week will focus the world's attention on climate change. The economic will is there, with groups like the GFANZ group and others committing trillions to net zero and policies like the Inflation Reduction Act. Now the focus moves to accelerate decarbonization pathways. In the words of the late Queen Elizabeth II, “The time for words has now moved to the time for action.”

- The Task Force for Nature-related Financial Disclosures (TNFD), is set for general release in Q4 of 2023. Now in its pilot beta stage, the new framework aims to assist in shifting the global financial system from one that exploits nature to one that supports and nourishes it. It is built on the same reporting structure and four pillars as the highly successful Task Force for Climate-related Financial Disclosures (TCFD). The TNFD will enable users to assess their nature-related risks and opportunities; our guide explains how.
- In this week’s edition of Persefoni’s climate tech podcast “Climate Tech with Kentaro,” our CEO Kentaro Kawamori was joined by Ben Gleisner, CEO and Founder of Sustainability Data Service company, Cogo. Cogo is trying to track individuals' carbon footprint and empower individuals and businesses to measure, reduce, and offset the impact they have on the climate.

Other news we are following:

- Patagonia has a new sole shareholder, the planet. Instead of selling the company or taking it public, the apparel company's billionaire owner Yvon Chouinard put the company in a special trust. The trust ensures that all of Patagonia’s profits — some $100 million a year — are used to combat climate change and protect undeveloped land around the globe.
- Developing nations vulnerable to climate change ask the UN for a climate tax. A group of nations vulnerable to the effects of climate change are asking the UN to enact a global fossil fuel tax on big emitters and air travel. The tax would finance adaptation and recuperate some of the irrecoverable losses from the climate crisis.
- More executives could see their pay linked to ESG goals if SEC climate disclosures go through. Traditionally, only profit was linked to executive pay, but now a small amount (5-15%) is linked to ESG performance. With the SEC’s climate disclosure mandate and other legislative measures, this is likely to increase substantially.

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Walker, Gloria H

From: Persefoni <reply@persefoni.com>
Sent: Thursday, September 15, 2022 1:00 PM
To: Gensler, Gary
Subject: ICYMI: Social Cost of Carbon Higher Than Ever

PERSEFONI

Hi Gary,

The US government estimates the "social cost of carbon" at $51 per ton, but a recent study in Nature implies that the cost should be substantially higher. The analysis found that the actual cost of carbon is closer to more than three times that at $186. This new figure could significantly impact the cost-benefit analysis for making new climate policies for decision-makers in businesses and governments.

Read more about the benefits of cleaning up carbon in this week's Sustainability Decoded newsletter.

Persefoni content:

- Net Zero Insurance Alliance: Risk managers, insurers, and investors interested in decarbonizing their underwriting portfolios have banded together under the Net Zero Insurance Alliance. This quick guide explains what the group does, its members, and its goals.
- The GHG Protocol is the most widely used standard for measuring GHGs. Learn more about the GHG Protocol, its standards and protocols,

and why organizations should get started with their GHG inventory today.

- Sustainability Decoded Podcast Season Finale: In the final episode of season 1 of Sustainability Decoded with Tim and Caitlin, they were joined by Mandi McReynolds. Mandi is the Head of Global Environment, Social, and Governance at Workiva and the host of her own podcast, ESG Talk. Mandi broke down why the 'S' and 'G' in ESG are just as important as the 'E.' She shared why good governance is good business, and that social impact is a growing interest area for businesses around the world.

Other news we are following:

- Disaster in Pakistan: Flooding in Pakistan reached catastrophic levels, killing 1,100 people and displacing hundreds of thousands more. Up to a third of the country has been left underwater by the deluge. But with climate change, these extreme precipitation events are likely to become even more extreme.
- Climate Tipping Points: A new study, published in the Science Journal, found climate change tipping points lurking much closer to the present level of warming, and that the Paris Agreement's most stringent warming target of 1.5°C compared to preindustrial levels could trigger four of them.
- The Good News on the Climate Crisis: There is no shortage of things to say about what's going wrong. But there is also evidence that action to combat the climate crisis is belatedly accelerating. Acknowledging that every fraction of a degree of global heating avoided makes a difference, here are some things to be positive about.

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Walker, Gloria H

From: Yerramalli, Prashant
Sent: Wednesday, September 14, 2022 5:40 PM
To: (b)(6) Fischer, Amanda; Slavkin Corzo, Heather
Subject: Re: deck
Attachments: Outlook-t1ivlttf.jpg; Outlook-2dhf2p2k.jpg; SEC Comment Analysis 2022 Chair Gensler (2).pptx

Gary are you signing on to the 530?

Sent from my iPhone

> On Sep 14, 2022, at 5:37 PM, (b)(6) @sec.gov> wrote:
>
> FYI
>
> ---
>
> **From:** Morse, Mika <(b)(6) @SEC.GOV>
> **Sent:** Wednesday, September 14, 2022 3:32 PM
> **To:** (b)(6) @SEC.GOV>
> **Cc:** Slavkin Corzo, Heather <(b)(6) @SEC.GOV>
> **Subject:** FW: deck
>
> Gary, attached is the slide deck that Steven mentioned during the Ceres call with their analysis of 500 letters in the comment file. (b)(5)
>
> (b)(5)
>
> Mika
>
> ---
>
> **From:** Steven Rothstein <srothstein@ceres.org>
> **Sent:** Wednesday, September 14, 2022 2:31 PM
> **To:** Morse, Mika <(b)(6) @SEC.GOV>
> **Subject:** deck
>
> **CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Steven

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The Accelerator Team is hiring! Click here to see our open positions

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Join us with climate finance experts on Sep 28 to establish a common focus on climate transition plans. Register today.

Join us in Boston on Oct 17 to raise our ambitions—and our glasses—as we toast climate leadership. Reserve your seat today!

Walker, Gloria H

From: Morse, Mika
Sent: Wednesday, September 14, 2022 3:32 PM
To: (b)(6)
Cc: Slavkin Corzo, Heather
Subject: FW: deck
Attachments: SEC Comment Analysis 2022 Chair Gensler (2).pptx

Gary, attached is the slide deck that Steven mentioned during the Ceres call with their analysis of 500 letters in the comment file. (b)(5)

(b)(5)

Mika

From: Steven Rothstein <srothstein@ceres.org>
Sent: Wednesday, September 14, 2022 2:31 PM
To: Morse, Mika <(b)(6) @SEC.GOV>
Subject: deck

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Steven

Steven M. Rothstein
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Financing a
Net Zero Economy

September 28, 2022 / 9am – 5pm
New York City, NY

Join us with climate finance experts on Sep 28 to establish a common focus on climate transition plans. Register today.

EVENING WITH
Ceres

Join us in Boston on Oct 17 to raise our ambitions—and our glasses—as we toast climate leadership. Reserve your seat today!

Walker, Gloria H

From: Persefoni <reply@persefoni.com>
Sent: Tuesday, September 13, 2022 12:00 PM
To: Gensler, Gary
Subject: Save the Date - Climate Industry Panel on October 3rd

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PERSEFONI

Hi Gary,

The decarbonization landscape is changing at a rapid pace. Ten years ago approximately 4,000 companies disclosed to CDP; that number has since increased by 218% in 2022 - with most of the increase happening in the last 4 years.

Committing to carbon reduction goals is now table stakes, and organizations are scrambling to incorporate sustainability data into their business strategy and operations. As emerging regulations become more and more bold, organizations need new solutions to help them navigate through the various changes.

Please join our webinar on October 3rd for an expert panel discussion with Forrester and a leading consumer products company. We will discuss the rapidly-evolving climate market, and highlight how simplicity, accuracy and quality are the three pillars to ensure a trusted decarbonization journey. We will share decarbonization insights and best practices, as well as a significant company and product announcement on the call.

We look forward to seeing you on **Monday, October 3, 2022** at **12:30 PM ET**!

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Walker, Gloria H

From: Persefoni <reply@persefoni.com>
Sent: Thursday, September 8, 2022 2:31 PM
To: Gensler, Gary
Subject: ICYMI: Why We Love the TCFD

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PERSEFONI

Hi Gary,

The TCFD is emerging as the singular framework for reporting on climate change. Countries around the world, as well as the newly formed International Sustainability Standards Board (ISSB), all build on the TCFD's four central disclosure pillars. This is progress, as it harmonizes a fragmented alphabet soup of ESG standards.

But why else do we love the TCFD, aside from the regulatory convergence it inspired as the de facto climate reporting standard? Persefoni's Deputy GC, SVP Global Regulatory Climate Disclosure, shares five reasons why she loves the TCFD as a management tool for companies to understand and address their climate-related risks and opportunities.

Read the five reasons in Kristina's Full Disclosure Newsletter.

Persefoni content:

- Floods Leave a Third of Pakistan Underwater: Flood water from an unprecedented monsoon season has wreaked havoc across Pakistan killing hundreds and affecting over 30 million people. Plus, California enacts five bills which added a record $54 billion in climate spending and comedian John Oliver takes a satirical swipe at carbon offsets.

- Reduce to Net Zero with Persefoni: Did you know that the majority of public companies now set climate targets? Well, if you missed our "Reduce To Net Zero with Persefoni" webinar on August 25th, 2022, we have you covered! We outlined our five key takeaways from the session in this "Too Long, Didn't Watch" post.
- Carbon Disclosure Project Beginner's Guide: CDP runs the international sustainability disclosure system that helps states, regions, cities, investors, and companies manage their environmental impacts. Today, over 13,000 companies disclose their carbon emissions through CDP. Read our CDP Beginner's Guide to find out more about how CDP started, what it does, and how it relates to your organization.

Other news we are following:

- The cost of climate change is much higher than previously thought: Recent research from Nature indicated that the cost of climate change far surpasses government estimates. The analysis puts the current cost of carbon at $185 a tonne, tripling government estimates.
- Clean energy projects surge: In the weeks after Biden signed the Inflation Reduction Act, a series of investments in battery power and solar energy increased dramatically.
- Corporate emissions reduction goals fall short: A new report from consulting firm Oliver Wyman, reveals that although more companies are setting science-based climate targets, "not enough companies have embraced target setting, and those that have are not nearly ambitious enough in their plans to reduce emissions."

Walker, Gloria H

From: Kelly, Katherine
Sent: Thursday, July 14, 2022 2:47 PM
To: Lee, Allison
Subject: FW: Ceres Accelerator Team is Growing
Attachments: Program Director_Net Zero Finance_06.2022.docx; Director, U.S. Fin Reg, Banking and Housing Finance_06.2022.docx; Director, U.S. Fin Reg, Disclosure and Securities_ 06.2022.docx

(b)(5)

From: Kelly, Katherine
Sent: Monday, June 13, 2022 8:42 AM
To: Lee, Allison (b)(6) @SEC.GOV>; #CommrLeeStaff <(b)(6) @SEC.GOV>
Subject: FW: Ceres Accelerator Team is Growing

FYI, (b)(5) I believe the second of these positions is Isabel's – she's headed to the Department of Energy.

From: Steven Rothstein <srothstein@ceres.org>
Sent: Saturday, June 11, 2022 6:36 PM
To: Kelly, Katherine (b)(6) @SEC.GOV>
Cc: Sherry Ettleson <(b)(6) @gmail.com>
Subject: Ceres Accelerator Team is Growing

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Katherine,

I hope you are well. I think Isabel may have talked with you but I want to reach you personally.

It is a special pleasure to share three job descriptions with you for senior roles at the Ceres Accelerator's work with federal and state financial regulators and related activities. The three roles are:

- **Program Director, Net Zero Finance**
- **Director, U.S. Financial Regular, Disclosure & Securities**
- **Director, U.S. Financial Regulator, Banking and Housing Finance**

These positions will allow the Ceres Accelerator to expand the depth of our work in this vital work. You are a leader in this work. We would truly value any recommendations for potential candidates for any or all of these positions. We would welcome an opportunity to receive ideas of specific people and other ideas. Please share this with others you feel could be appropriate. We are especially interested in candidates that will further diversify our team.

These positions are also listed on our website https://www.ceres.org/careers/opportunities

Job Openings

www.ceres.org

Katherine, I have copied our consultant, Sherry Ettleson. Please feel free to reach out to her or me.

Your thoughts and recommendations would be valued.

Steven

Steven M. Rothstein
Managing Director, Ceres Accelerator for Sustainable Capital Markets
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617-247-0700 ext. 237
(b)(6) cell
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Twitter: @stevenrothstein

The Accelerator Team is hiring! Click here to see our open positions

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Walker, Gloria H

From: Isabel Munilla <imunilla@ceres.org>
Sent: Tuesday, June 21, 2022 1:24 PM
To: Lee, Allison
Subject: Re: Moving on - Ceres and other contacts

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thanks Allison! I couldn't say in a larger group, but I'm headed for a DAS position in the international office of DOE. I'm very excited and will definitely keep in touch.

Take care and thanks again.
Isabel

From: Lee, Allison (b)(6) @SEC.GOV>
Sent: Tuesday, June 21, 2022 12:12 PM
To: Isabel Munilla <imunilla@ceres.org>
Subject: RE: Moving on - Ceres and other contacts

Also, thanks for providing your personal contact info. Here is mine: (b)(6) cell (b)(6)
(b)(6)

From: Isabel Munilla <imunilla@ceres.org>
Sent: Tuesday, June 21, 2022 11:49 AM
To: Lee, Allison (b)(6) @SEC.GOV>; Kelly, Katherine (b)(6) @SEC.GOV>
Cc: Jim Coburn <coburn@ceres.org>; Steven Rothstein <srothstein@ceres.org>; Tom Riesenberg <triesenberg@g.ceres.org>; Vladimir Proaño <vproano@ceres.org>
Subject: Moving on - Ceres and other contacts

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Commissioner Lee and Katherine,
I'm moving on from Ceres to a role in the federal government working on climate and clean energy. Today is my last day. I'll follow up with my new work details, but I included my personal contacts below.
I wanted to write and tell you what an honor and a pleasure it has been to work with you on climate disclosure and of course, the resource extraction rule. You have both made such an incredible contribution and I count myself lucky to have been able to play a small part in some of the critical work you have done at the Commission. Our markets and our world are better for it.
As always, please count on Ceres to support the critical work of the SEC (and PCAOB!) to address climate financial risk and protect investors.
Please feel free at any time to reach out directly to Jim Coburn (coburn@ceres.org, (b)(6) Tom Riesenberg (triesenberg@ceres.org, (b)(6) or Steven Rothstein (srothstein@ceres.org, (b)(6)
You can text to all of these numbers. You can also reach out to Vladimir Proaño (vproano@ceres.org) to find any of these folks or general inquiries, and to Reggie Zimmerman (rzimmerman@ceres.org, (b)(6)
(b)(6) for any communications issues.
Finally, for cost analysis support and any questions related to the ERM cost study, please do not hesitate to reach out directly to the ERM team: Mark Lee (Director, ERM SustainAbility Institute, mark.lee@erm.com, (b)(6)
(b)(6) Emily Brock PhD (Manager Corp Sustainability, emily.brock@erm.com, (b)(6) Doug McNair

PhD (Technical Director, Economics, doug.mcnair@erm.com). They are planning to continue work on this, and are a great resource on cost analysis and cost claim questions.

Again, thanks for all of your incredible work. Looking forward to staying in touch!

Warmly,
Isabel
PS: You can always reach me at (b)(6) [redacted] and (b)(6) [redacted]

Walker, Gloria H

From: Isabel Munilla <imunilla@ceres.org>
Sent: Tuesday, June 21, 2022 11:49 AM
To: Lee, Allison; Kelly, Katherine
Cc: Jim Coburn; Steven Rothstein; Tom Riesenberg; Vladimir Proaño
Subject: Moving on - Ceres and other contacts

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Finally, for cost analysis support and any questions related to the ERM cost study, please do not hesitate to reach out directly to the ERM team: Mark Lee (Director, ERM SustainAbility Institute, mark.lee@erm.com (b)(6) [redacted]), Emily Brock PhD (Manager Corp Sustainability, emily.brock@erm.com, (b)(6) [redacted]), Doug McNair PhD (Technical Director, Economics, doug.mcnair@erm.com). They are planning to continue work on this, and are a great resource on cost analysis and cost claim questions.

Again, thanks for all of your incredible work. Looking forward to staying in touch!

Warmly,
Isabel

PS: You can always reach me at (b)(6) [redacted] and (b)(6) [redacted]

Walker, Gloria H

From:	Steven Rothstein <srothstein@ceres.org>
Sent:	Saturday, June 18, 2022 2:27 PM
To:	Morse, Mika; Crenshaw, Caroline; Gensler, Gary; Lee, Allison
Cc:	Kelly, Katherine; Vladimir Proaño; Monica Barros; Kelsey Condon
Subject:	Embargoed SEC Scorecard
Attachments:	Executive Summary_Ceres 2022 Climate Risk Scorecard 2022 Embargoed.pdf; Methodology_Ceres Scorecord 2022_ Embargoed.pdf; Ceres Scorecard 2022 _Embargoed.pdf; SEC_Ceres Scorecard Analysis .pdf

Dear Chair Gensler, Comm Lee, Comm Crenshaw

Thank you for all of your leadership.

I am pleased to share an embargoed version of our 2022 Climate Risk Scorecard: Assessing U.S. Financial Regulator Action on Climate Financial Risk.

Please find attached the following materials:

- 2022 Climate Risk Scorecard graphic
- Executive summary
- Methodology overview
- Analysis and description of your score

You will be able to view and explore these materials through our interactive scorecard website launching on June 27th. Until our release date, please only share these materials with your colleagues.

With deep appreciation, we thank you for your time and feedback throughout this process.

Many thanks,

Steven

Steven M. Rothstein
Managing Director, Ceres Accelerator for Sustainable Capital Markets
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Boston, MA 02111
617-247-0700 ext. 237
(b)(6) [redacted] cell
srothstein@ceres.org
www.ceres.org
Twitter: @stevenrothstein

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Walker, Gloria H

From:	Kelly, Katherine
Sent:	Thursday, July 14, 2022 2:47 PM
To:	Lee, Allison
Subject:	FW: Ceres Accelerator Team is Growing
Attachments:	Program Director_Net Zero Finance_06.2022.docx; Director, U.S. Fin Reg, Banking and Housing Finance_06.2022.docx; Director, U.S. Fin Reg, Disclosure and Securities_ 06.2022.docx

(b)(5)

From: Kelly, Katherine
Sent: Monday, June 13, 2022 8:42 AM
To: Lee, Allison <(b)(6) @SEC.GOV>; #CommrLeeStaff <(b)(6) @SEC.GOV>
Subject: FW: Ceres Accelerator Team is Growing

FYI, (b)(5) I believe the second of these positions is Isabel's – she's headed to the Department of Energy.

From: Steven Rothstein <srothstein@ceres.org>
Sent: Saturday, June 11, 2022 6:36 PM
To: Kelly, Katherine <(b)(6) @SEC.GOV>
Cc: Sherry Ettleson <(b)(6) @gmail.com>
Subject: Ceres Accelerator Team is Growing

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Dear Katherine,

I hope you are well. I think Isabel may have talked with you but I want to reach you personally.

It is a special pleasure to share three job descriptions with you for senior roles at the Ceres Accelerator's work with federal and state financial regulators and related activities. The three roles are:

- **Program Director, Net Zero Finance**
- **Director, U.S. Financial Regular, Disclosure & Securities**
- **Director, U.S. Financial Regulator, Banking and Housing Finance**

These positions will allow the Ceres Accelerator to expand the depth of our work in this vital work. You are a leader in this work. We would truly value any recommendations for potential candidates for any or all of these positions. We would welcome an opportunity to receive ideas of specific people and other ideas. Please share this with others you feel could be appropriate. We are especially interested in candidates that will further diversify our team.

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Job Openings

www.ceres.org

Katherine, I have copied our consultant, Sherry Ettleson. Please feel free to reach out to her or me.

Your thoughts and recommendations would be valued.

Steven

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Managing Director, Ceres Accelerator for Sustainable Capital Markets
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(b)(6) cell
srothstein@ceres.org
www.ceres.org
Twitter: @stevenrothstein

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Walker, Gloria H

From: Isabel Munilla <imunilla@ceres.org>
Sent: Tuesday, June 21, 2022 11:49 AM
To: Lee, Allison; Kelly, Katherine
Cc: Jim Coburn; Steven Rothstein; Tom Riesenberg; Vladimir Proaño
Subject: Moving on - Ceres and other contacts

Dear Commissioner Lee and Katherine,

I'm moving on from Ceres to a role in the federal government working on climate and clean energy. Today is my last day. I'll follow up with my new work details, but I included my personal contacts below.

I wanted to write and tell you what an honor and a pleasure it has been to work with you on climate disclosure and of course, the resource extraction rule. You have both made such an incredible contribution and I count myself lucky to have been able to play a small part in some of the critical work you have done at the Commission. Our markets and our world are better for it.

As always, please count on Ceres to support the critical work of the SEC (and PCAOB!) to address climate financial risk and protect investors.

Please feel free at any time to reach out directly to Jim Coburn (coburn@ceres.org, (b)(6) Tom Riesenberg (triesenberg@ceres.org, (b)(6) or Steven Rothstein (srothstein@ceres.org, (b)(6). You can text to all of these numbers. You can also reach out to Vladimir Proaño (vproano@ceres.org) to find any of these folks or general inquiries, and to Reggie Zimmerman (rzimmerman@ceres.org, 617-247-0700 x136) for any communications issues.

Finally, for cost analysis support and any questions related to the ERM cost study, please do not hesitate to reach out directly to the ERM team: Mark Lee (Director, ERM SustainAbility Institute, mark.lee@erm.com, (b)(6) Emily Brock PhD (Manager Corp Sustainability, emily.brock@erm.com, (b)(6), Doug McNair PhD (Technical Director, Economics, doug.mcnair@erm.com). They are planning to continue work on this, and are a great resource on cost analysis and cost claim questions.

Again, thanks for all of your incredible work. Looking forward to staying in touch!

Warmly,
Isabel

PS: You can always reach me at (b)(6) and (b)(6)

Walker, Gloria H

From: Steven Rothstein <srothstein@ceres.org>
Sent: Saturday, June 18, 2022 2:27 PM
To: Morse, Mika; Crenshaw, Caroline; Gensler, Gary; Lee, Allison
Cc: Kelly, Katherine; Vladimir Proaño; Monica Barros; Kelsey Condon
Subject: Embargoed SEC Scorecard
Attachments: Executive Summary_Ceres 2022 Climate Risk Scorecard 2022 Embargoed.pdf; Methodology_Ceres Scorecord 2022_ Embargoed.pdf; Ceres Scorecard 2022 _Embargoed.pdf; SEC_Ceres Scorecard Analysis .pdf

Dear Chair Gensler, Comm Lee, Comm Crenshaw

Thank you for all of your leadership.

I am pleased to share an embargoed version of our 2022 Climate Risk Scorecard: Assessing U.S. Financial Regulator Action on Climate Financial Risk.

Please find attached the following materials:

- 2022 Climate Risk Scorecard graphic
- Executive summary
- Methodology overview
- Analysis and description of your score

You will be able to view and explore these materials through our interactive scorecard website launching on June 27th. Until our release date, please only share these materials with your colleagues.

With deep appreciation, we thank you for your time and feedback throughout this process.

Many thanks,

Steven

Steven M. Rothstein
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Walker, Gloria H

From: Steven Rothstein <srothstein@ceres.org>
Sent: Wednesday, June 15, 2022 5:03 PM
To: Lee, Allison
Subject: further opportunities to collaborate?

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Allison,

I hope you are well and looking forward to your next professional steps

We are really going to miss your leadership at the SEC. You have played such a transformative role. Thank you, thank you, thank you.

I am not sure what you are thinking about after you leave but we have two ideas that we would like to explore with you. If you are open to considering ideas, let me know. I am happy to talk after you transition or before, depending what is better for you.

I only have an SEC email.

Either way, best wishes and thank you for moving so many initiatives forward in such an impactful way.

Steven

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Subject: FW: Ceres Accelerator Team is Growing
Attachments: Program Director_Net Zero Finance_06.2022.docx; Director, U.S. Fin Reg, Banking and Housing Finance_06.2022.docx; Director, U.S. Fin Reg, Disclosure and Securities_ 06.2022.docx

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Cc: Sherry Ettleson <settleson@gmail.com>
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From: gonzalo de juan <(b)(6) [redacted]@yahoo.es>
Sent: Friday, June 10, 2022 10:57 AM
To: srothstein@ceres.org; lubber@ceres.org
Cc: Rule-Comments; (b)(6) [redacted]@yahoo.es; Gensler, Gary
Subject: Re: Build Your Board's ESG Competence

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Hi Steven,Did you receive my email?.Still interested in collaboration?.Great job with Sec and Gary!.Abrazo.G

En lunes, 6 de junio de 2022, 17:54:05 CEST, gonzalo de juan <(b)(6) [redacted]@yahoo.es> escribió:

Hola Steven,

Time ago I spoke with Mindy. My idea is to re-start collaborating with you again.LMK your thoughts.

Abrazos SINCEROS.

Gonzalo

P.S.: An Example of Collaboration in Copy.He, the Vatican, I am sure they will want to collaborate with you.

"El “motor” de nuestra vida espiritual" https://twitter.com/Pontifex_es/status/1533456107145990144

En lunes, 6 de junio de 2022, 13:59:04 CEST, Steven Rothstein <srothstein@ceres.org> escribió:

Thanks. Can you resend it, I did not receive this email.

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From: gonzalo de juan <(b)(6) [redacted]@yahoo.es>
Sent: Sunday, June 5, 2022 2:20 PM
To: Ceres <reply-73869100-3939930_HTML-1866348801-10154637-3008@reply.ceres.org>
Cc: Steven Rothstein <srothstein@ceres.org>; gonzalo de juan <(b)(6) [redacted]@yahoo.es>
Subject: Re: Build Your Board's ESG Competence

Dear Steven,how are you?.Did you receive my previous email?.All the Best.Gonzalo de Juan

En domingo, 5 de junio de 2022, 16:09:23 CEST, Steven Rothstein <info@ceres.org> escribió:

To view this email as a web page, gohere.

Dear gonzalo,

In company boardrooms across the nation, Environmental, Social and Governance (ESG) issues are hot topics. Investors and other stakeholders are increasing the pressure for companies to act, and new regulations are in development.

To help corporate directors navigate this shifting landscape, Ceres and Berkeley School of Law have partnered to offer**ESG: Navigating the Board's Role,** a self-paced online course led by some of the field's leading experts.

Enrollment is OPEN for our Fall cohort starting September 12, 2022.

Get 35% off if you register by July 15!

Claim Your Discount!

The course includes:

- A deep dive into executive compensation linkages to ESG performance.
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- Rising investor demands for board-level lobbying oversight.
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Warm regards,

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Managing Director,
Ceres Accelerator for Sustainable Capital Markets
srothstein@ceres.org
@stevenrothstein

P.S. Click to Tweet and share the early enrollment discount on Twitter now!

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This email was sent by:
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Boston, MA 02111

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Walker, Gloria H

From: Steven Rothstein <srothstein@ceres.org>
Sent: Saturday, June 4, 2022 2:09 PM
To: Lee, Allison; Kelly, Katherine
Cc: Vladimir Proaño; Isabel Munilla; Monica Barros
Subject: 2022 Draft Ceres Financial Regulator Scorecard
Attachments: Ceres_Scorecard_Methodology.pdf

Dear Commissioner Lee and Katherine,
I hope this message finds you well. Thank you for everything you are doing

This note is not specifically about the proposed climate disclosure of fund name rules

The purpose of this message is to make you aware of a Ceres website to be launched in early June that will describe the SEC's work on addressing climate financial risk and assess progress against recommendations of the Financial Stability Oversight Council.

The website reviews major SEC actions documented in the public domain alongside those of other financial regulators. The purpose is to provide information to the public and to the market about progress by US financial regulators on addressing climate financial risk. The website will include a high-level interactive visual of each agency's assessment, as well as a PDF summary of results and more background on each agency's related work.

With this email, we wanted to give you the opportunity to review our assessment of major SEC work in this area. **We welcome any feedback this week**

Below please find the SEC assessment results and some additional background. Attached please find the method that explains how we are assessing each agency's progress.

We are happy to discuss your views or reactions by phone if you wish. Otherwise, please do not hesitate to let us know if you have any questions.

Thanks in advance for your consideration. We have also shared this with the Chair and the other Commissioners.

Steven
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2022 FINANCIAL REGULATOR SCORECARD

The assessment builds on the Ceres scorecard produced in April 2021, with additional categories of action to evaluate progress on key recommendations of the October 2021 FSOC report on Climate-Related Financial Risk.

For each of the categories described in the table below, we assess each agency's public reports and official statements, as well as progress updates shared directly with us verbally or in writing. While some activities and agency progress may not be reported in the public domain, we will seek to ensure our assessment reflects any significant advances. However, certain categories of action are best served by proactive transparency. Where this is relevant to a specific category we will assess, we make this clear in the description below.

As before, we will use a color-coded system of red, yellow and green indicating the general level of progress within each category, with a legend explaining the grading for each category. Text in the scorecard will be interactive, to redirect the user to standalone webpages that explain the rating for each agency by category. The scorecard will be published with a separate brief, which will summarize and highlight agency progress and the rationale for the grading. Where an agency has no relevant authorities in a specific category, we will mark this category as "not applicable" (N/A).

Timing: We will assess each agency's performance until April 2022, send you the assessment in raw design format, and offer time to provide feedback and share additional advances we may have missed. We will share a final mockup with each agency before it goes live. We are available and eager to hear from you or meet to discuss your feedback at any point between now and May 3rd.

Rollout: As before, the scorecard will be accompanied by an outreach strategy. We welcome your comments on any element of our plans, but especially on accurately reflecting agency performance.

We are sharing our draft assessment of the SEC below. We have also included the factors that we considered in grading each category, as well as actions we believe are missing but vital to each category. Please note that due to the structure and authority of the SEC, we are not assessing category 3 (marked as N/A).

Based on our assessment, our initial scoring of the SEC is as follows:

Assessment Category	1. Publicly affirm climate as a systemic risk	2. Produce research and data on climate change	3. Assess climate risks on "financially vulnerable communities"	4. Appoint senior staff to focus on climate change	5. Improve climate-related disclosure	6. Include climate risk in supervision and regulation
SEC Grading						

Supporting Evidence Assessed

1. Publicly affirm climate as a systemic risk – Green

The SEC has consistently recognized the widespread nature of climate risks to issuers and other entities that it regulates. The SEC's recognition of climate as a systemic risk is evident in its work on climate change rulemaking, reviewing issuers' disclosure, examination priorities, enforcement, funds, municipal finance, and international collaboration. Because it is not in the SEC's mandate to focus on financial stability risks, the SEC has appropriately viewed systemic climate risks through the lens of regulation.

- Chair Gary Gensler statement on the FSOC report (October 2021)
- Chair Gensler remarks before the European Parliament Committee on Economic and Monetary Affairs[1] (September 2021)

- Chair Gensler testimony for Senate Committee on Banking, Housing, and Urban Affairs (September 2021)
- Chair Gensler remarks before the Investor Advisory Committee before the Investor Advisory Committee (December 2021)
- Proposed Rule: The Enhancement and Standardization of Climate-Related Disclosures for Investors (March 2022)

2. Produce research and data on climate change – Green
The SEC has produced research and data on climate change risk to implement its statutory mandate to regulate risk disclosures to protect investors. In March 2022, the SEC issued a proposed climate disclosure rule that includes analysis of climate and related market risks, investor information demands, and economic analysis of the existing reporting baseline, proposed disclosures, and alternative reporting options. The proposal requests extensive research and data on key questions to aid in refining the SEC's proposed approach and the agency's understanding of climate risk and its impact on issuers and investors. These efforts fulfill the FSOC recommendation to identify data, perform an inventory, and develop a data procurement plan.
3. Assess climate risks on "financially vulnerable communities" – Red
Ceres is unaware of any work the SEC has carried out to assess the risks posed by climate to financially vulnerable communities per FSOC Recommendations 1.8 and 1.9. Based on the SEC's statutory mandate, we understand this is not a direct, core responsibility. However, the SEC is a member of the Financial Literacy and Education Commission (FLEC), which is studying climate-related financial impacts on households, including financially vulnerable households in line with the FSOC recommendation that "Treasury Department engage other members of the Financial Literacy and Education Commission (FLEC) to analyze and understand the impact of climate change on the financial well-being of financially vulnerable populations." FSOC Recommendation 1.9 notes that "FSOC members that are also FLEC members should actively participate in [the FLEC's] analysis."
4. Appoint senior staff to focus on climate change – Green
Mika Morse was appointed in July 2021 as climate counsel in the SEC Chairman's office. The SEC has also hired several other staff in various offices with significant climate background who are working on these issues.
5. Improve climate-related disclosure – Green
SEC actions toward improving climate related disclosure include the 2021 Request for Comment on Climate Disclosure,the 2022 proposed rules on the Enhancement and Standardization of Climate-Related Disclosure for Investors (climate disclosure rule), and the 2022 proposed rule on Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices (ESG fund disclosure rule). The SEC has improved its reviewing and comment letter process regarding current filings and has been improving its proxy voting policies to allow investors to request more climate-related information through shareholder proposals. It has also reminded issuers of their obligations to comply with the SEC's 2010 interpretive guidance on climate disclosure. The SEC Chair, other commissioners, and senior staff here made numerous speeches and presentations on these topics.

6. Include climate risk in supervision and regulation – Green
The SEC has enhanced risk management expectations and guidance through its climate-related disclosure, examinations, rulemaking, and ESG funds initiatives. This includes a 2021 Sample Letter to Companies Regarding Climate Change Disclosures, its 2022 Examination Priorities, which include review of disaster plans with particular focus on climate risk impact, and proposals for ESG fund naming rules. Most importantly, the SEC published a proposed rule on the Enhancement and Standardization of Climate-Related Disclosures for Investors. This rule requires "registrants to include certain climate-related disclosures in their registration statements and periodic reports, including information about climate-related risks that are reasonably likely to have a material impact on their business, results of operations, or financial condition, and certain climate-related financial statement metrics in a note to their audited financial statements. The required information about climate-related risks also would include disclosure of a registrant's greenhouse gas emissions, which have become a commonly used metric to assess a registrant's exposure to such risks."

Walker, Gloria H

From: Anderson, Adrien
Sent: Wednesday, May 4, 2022 10:30 AM
To: Lee, Allison
Cc: #CommrLeeStaff
Subject: FW: Winners and losers at this year's AGMs

From: FT Moral Money <FT@newsletters.ft.com>
Sent: Wednesday, May 4, 2022 7:00 AM
To: Anderson, Adrien <andersonadr@SEC.GOV>
Subject: Winners and losers at this year's AGMs

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Patrick Temple-West, Governance Reporter
May 4, 2022

Hello from New York, where unionisation is in the air. Across the harbour from our Manhattan offices, Amazon employees on Staten Island rejected efforts to form a union earlier this week, dealing a blow to the nascent labour movement at the ecommerce giant. Amazon's management has deployed union-busting tactics to halt the drive. It is an issue that investors will consider at the company's annual meeting later this month.

Unionisation played a role in BlackRock's recent decision to vote against board members at Warrior Met Coal, an Alabama-based coal producer, where about 1,000 unionised miners have been on strike (as our colleagues have previously reported). BlackRock said it has been leaning on the company to settle the labour fight.

That's just one of many hot topics on the agenda this annual meetings season. Today, I delve into the question of how BlackRock and the other giant asset managers are voting at company meetings this year? Where are activists scoring wins and which issues have underwhelmed? Also, Kristen has a report on the Securities and Exchange Commission's climate proposal and its implications for an unexpected group of people: chief financial officers. Please read on. *Patrick Temple-West*

Don't miss Gillian Tett at our inaugural US FT Weekend Festival in Washington, DC (and online) on May 7. Explore the full line-up and get 50 per cent off your ticket price here.

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Who is winning AGM season 2022?

Salesforce last week said it would adopt the California non-disclosure ban nationwide rather than face a shareholder vote © Reuters

Shareholder activism for environmental and social causes broke new ground in 2021 when big asset managers hammered ExxonMobil for its climate intransigence and voted for two directors nominated by activist hedge fund Engine No 1. Such a showdown is not in the works this year. Still, companies are sweating as institutional investors turn up the heat on management.

While the voting figures for the annual general meetings season will not be official until after June, shareholder activists can already point to some notable wins in recent weeks.

Take, for example, workplace rights issues. A majority of shareholders at Apple and IBM supported a request that the companies eliminate certain non-disclosure agreements in their employee contracts in the US. The issue stems from a new California law that bans such agreements. Shareholder activists have been pushing companies to stop using them across the whole country.

Salesforce last week said it would adopt the California non-disclosure ban nationwide rather than face a shareholder vote.

A call for a civil rights audit at Apple also won investor support at the company's annual meeting in March.

Not all issues have enjoyed such success. Shareholders at the biggest US banks showed little enthusiasm for proposals that asked the lenders to wind down lending to fossil fuel businesses.

More than three quarters of UBS shareholders supported a climate proposal, but only 18 per cent of Credit Suisse shareholders endorsed a similar climate petition.

One of the biggest themes this AGM season is likely to be the number of companies that readily settled with shareholder activists so that petitions would be withdrawn instead of going to a vote. As You Sow, a top shareholder proposal filer, has withdrawn 52 petitions so far this year, up from 49 in 2021 and 44 in 2020. Its wins this year include one at Coca-Cola, which agreed to increase its sales of reusable bottles, and another at electricity company Duke Energy, which promised to tackle methane emissions linked to natural gas production.

But many crunch votes are coming in the weeks ahead, especially at the big US technology companies. Amazon faces no fewer than 12 shareholder proposals on issues ranging from facial recognition to working conditions in warehouses. Clearly, investor pressure is forcing companies to clean up their businesses, but how quickly the public will see results remains uncertain. (*Patrick Temple-West*)

SEC climate proposal has finance chiefs ‘in the hot seat’

Finance chiefs are discussing how hard they should fight the SEC’s proposal that companies disclose new carbon-emissions metrics © Bloomberg

When the SEC in March unveiled its long-awaited climate disclosure proposal, which would force companies to disclose new carbon-emissions metrics, some chief financial officers started to worry.

Since the Enron and WorldCom accounting scandals from the early 2000s, finance chiefs have been required to sign and attest to the accuracy of annual 10k regulatory filings. If the SEC's changes to climate disclosures go into effect, 10k filings would also need to include climate disclosures — making finance chiefs liable for the accuracy of carbon emission statements.

"CFOs would be responsible for putting in place the processes, procedures and controls for gathering and reporting that information and ensuring its auditability. For most companies, this will be a big lift, in terms of time, complexity and cost," said Michael Littenberg, a partner at law firm Ropes and Gray. "The rule as proposed will put CFOs on the hot seat and make them accountable for detailed climate risk disclosures."

After years leaving carbon disclosures to the corporate folks who handle sustainability reporting, finance chiefs must now get to grips with the field fast. And it will come at a cost. Large companies can expect to spend about $840,000 on compliance in the first year under the new rules, according to Persefoni, a carbon consulting and tracking company.

Moral Money has heard from sources at accounting firms and law firms that finance chiefs are already getting in touch about the SEC proposal. A team at a Big Four accounting group that typically helps finance chiefs on auditing matters is "knee-deep" in sustainable finance, sources have said. Finance chiefs are also discussing how hard they should push back against the SEC's proposal, and whether it's worth arm wrestling with the regulator that grades their homework.

Finance chiefs already lost an effort to soften the SEC's climate rules. Earlier this year, companies pushed the SEC to create a separate filing process for carbon reporting, in which lawsuit liability would be less severe than it is for annual 10k reports. Further, the finance chief at chemical company Dow wrote to the SEC last year saying that climate-related disclosures should extend beyond the annual report deadlines. For now, the SEC has said no to that idea.

Even if the rules are finalised by the end of this year, finance chiefs will have at least a year to comply with new requirements. Moral Money will keep you updated on how they fare. (*Kristen Talman*)

Chart of the Week

Today's US Board Monitor report from headhunter Heidrick & Struggles hails "an infusion of fresh thinking" in 2021 as a record 45 per cent of board seats went to women, a record 43 per cent went to first-time directors and the number of new directors with sustainability experience more than doubled. But the diversity progress only goes so far: appointments of black directors slowed notably in the second half of the year, it found, while Hispanic, Asian and Asian-American directors remained heavily under-represented.

Smart reads

- Russia's war tests Europe's moral mettle as much as its economy, writes our colleague Martin Wolf. "The challenge is to defend Europe's liberal civilisation. The opportunity is for historic redemption. Russia must not prevail. This is what matters most. There will indeed be pain. But it must be borne for a far greater cause."

- In the latest sign that Russia's Ukraine invasion is frustrating ESG investing, BaFin, Germany's financial regulator has suspended an effort to classify investment funds as sustainable. "The environment isn't stable enough for permanent regulation," BaFin president Mark Branson said on Tuesday, Bloomberg reports.

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Walker, Gloria H

From: Kirsten Spalding <spalding@ceres.org>
Sent: Thursday, April 21, 2022 6:10 PM
To: Lee, Allison
Cc: Kaede Kawauchi
Subject: Your presentation to Ceres' Paris-Aligned Investment Working Group

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Commissioner Lee,
Thank you for joining us for the Ceres Paris Aligned Investment Working Group call yesterday to share your thoughtful views on important areas for investor comment and answer questions about the proposal. Your comments helped spur robust conversations in the breakout rooms and we will be following up with many of these investors to support them in their letter writing. Thank you for your leadership in driving this forward - we are delighted to have this opportunity to work with you to engage as many investors as we can to participate in the rulemaking of this landmark proposal.
Sincerely,
Kirsten Spalding

The Rev. Kirsten Snow Spalding
Senior Program Director, Ceres Investor Network
(b)(6) [redacted]
spalding@ceres.org

Walker, Gloria H

From: Kelly, Katherine
Sent: Monday, April 18, 2022 10:31 AM
To: Lee, Allison; #CommrLeeStaff
Subject: FW: Invitation to Apr 20 Ceres Paris Aligned Investnt Working Group
Attachments: 2022 PAI WG participant list.xlsx; Apr 20 Ceres PAI WG - Agenda - SEC.docx

FYI, this is probably too many questions for the time allotted, but I wasn't planning to cut any.

From: Kaede Kawauchi <kkawauchi@ceres.org>
Sent: Friday, April 15, 2022 7:05 PM
To: Anderson, Adrien <(b)(6) @SEC.GOV>
Cc: Kelly, Katherine <(b)(6) @SEC.GOV>; Jim Coburn <coburn@ceres.org>; Benjamin Tabor <btabor@ceres.org>; Randi Mail <rmail@ceres.org>; Isabel Munilla <imunilla@ceres.org>; Natalie Queathem <nqueathem@ceres.org>; Vladimir Proaño <vproano@ceres.org>; Kirsten Spalding <spalding@ceres.org>
Subject: Re: Invitation to Apr 20 Ceres Paris Aligned Investnt Working Group

Hi Adrien,

Happy Friday! Please see attached for a list of proposed questions for Commissioner Lee and the participant list for the Working Group. A couple of points:

Proposed questions: We included all of the questions that our moderator, Kirsten Spalding, may ask Commissioner Lee during the dialogue portion as well as questions that we can seed into the chat during the 10-minute Q&A. Given that we have limited amount of time, we won't be able to get to all of the listed questions but we wanted to share the full list for now. We will work on prioritizing and shortlisting the questions when we come back into the office on Tuesday (the office is closed on Monday). At which point, we're happy to send you the updated version.

Participant list: As I mentioned during the call, we have about 300 people on the Working Group member list and 80-100 of them participate each month. We don't have a registration system for our calls so we don't know who will show up until the day of. However, I put together a list based on the most active members of our Working Group by screening for attendance in any of our meetings this year. There are 155 people on the list, including our staff. I hope that this works for you.

Thank you so much and please let me know if you need anything else from us to facilitate the clearance process or to help Commissioner Lee prepare for her participation in our Working Group next week.

Warm regards,
Kaede

--
Kaede Kawauchi
(she/her/hers)
Manager, Investor Network
Ceres

(617) 247-0700 ext. 296
kkawauchi@ceres.org

From: Anderson, Adrien <(b)(6) @SEC.GOV>
Date: Thursday, April 14, 2022 at 1:55 PM
To: Kaede Kawauchi <kkawauchi@ceres.org>
Cc: Kelly, Katherine <(b)(6) @SEC.GOV>, Jim Coburn <coburn@ceres.org>, Benjamin Tabor <btabor@ceres.org>, Randi Mail <rmail@ceres.org>, Isabel Munilla <imunilla@ceres.org>, Natalie Queathem <nqueathem@ceres.org>, Vladimir Proaño <vproano@ceres.org>
Subject: RE: Invitation to Apr 20 Ceres Paris Aligned Investnt Working Group

Hi Kaede,

We received it and everything looks in order.

Thanks!
Adrien

From: Kaede Kawauchi <kkawauchi@ceres.org>
Sent: Thursday, April 14, 2022 4:18 PM
To: Anderson, Adrien <(b)(6) @SEC.GOV>
Cc: Kelly, Katherine <(b)(6) @SEC.GOV>; Jim Coburn <coburn@ceres.org>; Benjamin Tabor <btabor@ceres.org>; Randi Mail <rmail@ceres.org>; Isabel Munilla <imunilla@ceres.org>; Natalie Queathem <nqueathem@ceres.org>; Vladimir Proaño <vproano@ceres.org>
Subject: Re: Invitation to Apr 20 Ceres Paris Aligned Investnt Working Group

Hi Adrien,

It was great to connect with you yesterday during the prep call. You should have received an invitation to the Ceres Paris Aligned Investment Working Group on Wednesday, April 20th at 4pm ET from my colleague, Natalie, including the Zoom link. Please let me know if it didn't come through. The calendar invite is for the full hour, but as we discussed, we have Commissioner Lee scheduled to participate in the first 30 minutes of the meeting.

We will work on getting the preplanned set of questions for the Commissioner for you to review as well as the participant list by tomorrow.

Thank you so much for your collaboration on this private event. We're looking forward to welcoming Commissioner Lee next week.

Best,
Kaede

--
Kaede Kawauchi
(she/her/hers)
Manager, Investor Network

Ceres
(617) 247-0700 ext. 296
kkawauchi@ceres.org

From: Vladimir Proaño <vproano@ceres.org>
Date: Thursday, April 14, 2022 at 9:33 AM
To: Anderson, Adrien <(b)(6) [redacted]@SEC.GOV>
Cc: Kelly, Katherine <(b)(6) [redacted]@SEC.GOV>, Jim Coburn <coburn@ceres.org>, Kaede Kawauchi <kkawauchi@ceres.org>
Subject: Re: Invitation to Apr 19 Ceres Investor Policy Working Group Meeting

Hi Adrien,

I'd like to introduce you to my colleague Kaede Kawauchi (copied), who will follow up with the Zoom link and other details for Tuesday.

Best,

Vladimir Proaño
Associate, Financial Regulation
Ceres Accelerator for Sustainable Capital Markets
Ceres
99 Chauncy St. 6th Floor
Boston, MA 02111
617-247-0700 ext. 120
vproano@ceres.org

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From: Isabel Munilla <imunilla@ceres.org>
Sent: Thursday, April 14, 2022 12:05 PM
To: Anderson, Adrien <(b)(6) [redacted]@SEC.GOV>
Cc: Kelly, Katherine <(b)(6) [redacted]@sec.gov>; Vladimir Proaño <vproano@ceres.org>; Jim Coburn <coburn@ceres.org>
Subject: Re: Invitation to Apr 19 Ceres Investor Policy Working Group Meeting

We'll get that to you asap!
Isabel

From: Anderson, Adrien <(b)(6) [redacted]@SEC.GOV>
Sent: Thursday, April 14, 2022 12:03 PM

To: Isabel Munilla <imunilla@ceres.org>
Cc: Kelly, Katherine <(b)(6) @SEC.GOV>; Vladimir Proaño <vproano@ceres.org>; Jim Coburn <coburn@ceres.org>
Subject: RE: Invitation to Apr 19 Ceres Investor Policy Working Group Meeting

Hi Isabel,

Quick question – when can we expect the zoom connection? I just want to make sure I didn't miss it if you already sent it.

Thanks!
Adrien

From: Isabel Munilla <imunilla@ceres.org>
Sent: Friday, April 8, 2022 3:02 PM
To: Anderson, Adrien <(b)(6) @SEC.GOV>
Cc: Kelly, Katherine <(b)(6) @SEC.GOV>; Vladimir Proaño <vproano@ceres.org>; Jim Coburn <coburn@ceres.org>
Subject: Re: Invitation to Apr 19 Ceres Investor Policy Working Group Meeting

Hi Adrien,

Thanks very much, and apologies for the delay in getting back to you.

We have heard from our investor network colleagues that, if at all possible, it would be more strategic to have Commissioner Lee join an investor call planned for **April 20th at 4pm for 30mins.**

Is there any way this would be possible? This is a similar investor group to the April 19th group and but would let us expand the coverage of investors attending.

- **Attendees -** Paris Aligned Investment (PAI) Working Group of Ceres Investor Network, diverse group, large asset managers and owners and others, attendees are ESG and sustainability leads mainly
- **Length of time** - 30mins
- **Format** - private meeting, 1hr long
- **Desired format and time for Commissioner Lee's participation**
  - 30 mins total - 10mins remarks, 20mins questions facilitated by Ceres
  - We would also provide suggested areas to cover and some key questions prior to the meeting

If this doesn't work, we would still appreciate her time on the 19th, and the format and timing would be largely the same.

Let us know if this is possible and feel free to call my cell phone to discuss: 202-680-4606 including over the weekend.

Apologies for the shift in request, and many thanks!
Isabel

From: Anderson, Adrien <(b)(6) @SEC.GOV>
Sent: Wednesday, April 6, 2022 4:09 PM
To: Vladimir Proaño <vproano@ceres.org>
Cc: Jim Coburn <coburn@ceres.org>; Isabel Munilla <imunilla@ceres.org>; Kelly, Katherine <(b)(6) @SEC.GOV>
Subject: RE: Invitation to Apr 19 Ceres Investor Policy Working Group Meeting

Hi Vladimir,

Katherine and I usually cover any prep calls for speaking events or visits to keep Commissioner Lee's schedule as open as possible. We would be happy to join you. Can you tells us a bit more about the meeting:

- Attendees
- Length of time
- Format
- Desired format and time for Commissioner Lee's participation

Depending on these details, I may suggest we do an earlier prep call.

Thanks,
Adrien

From: Vladimir Proaño <vproano@ceres.org>
Sent: Tuesday, April 5, 2022 3:42 PM
To: Anderson, Adrien <(b)(6) @SEC.GOV>
Cc: Jim Coburn <coburn@ceres.org>; Isabel Munilla <imunilla@ceres.org>; Kelly, Katherine <(b)(6) @SEC.GOV>
Subject: Re: Invitation to Apr 19 Ceres Investor Policy Working Group Meeting

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Hi Adrien,

We're very happy to hear that Comm. Lee will be joining us on the 19th. We will reach out with more details and info as the date approaches.

I did, however, want to check with you if the Commissioner would have any availability on April 14th for a 30-minute prep call with us, as I'm aware calendars fill quickly. Please let me know if any particular times would work best.

Thank you,

Vladimir Proaño
Associate, Financial Regulation
Ceres Accelerator for Sustainable Capital Markets
Ceres
99 Chauncy St. 6th Floor
Boston, MA 02111
617-247-0700 ext. 120
vproano@ceres.org

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From: Kelly, Katherine <(b)(6) @SEC.GOV>
Sent: Monday, April 4, 2022 3:01 PM
To: Isabel Munilla <imunilla@ceres.org>; Anderson, Adrien <(b)(6) @SEC.GOV>
Cc: Vladimir Proaño <vproano@ceres.org>; Jim Coburn <coburn@ceres.org>
Subject: RE: Invitation to Apr 19 Ceres Investor Policy Working Group Meeting

Hi, Isabel. Commissioner Lee would be pleased to join you. Maybe we can circle back a little closer to the date to touch on logistics (duration, expected attendees, questions, etc.). Thanks very much.

From: Isabel Munilla <imunilla@ceres.org>
Sent: Monday, April 4, 2022 9:33 AM
To: Anderson, Adrien <(b)(6) @SEC.GOV>
Cc: Kelly, Katherine <(b)(6) @SEC.GOV>; Vladimir Proaño <vproano@ceres.org>; Jim Coburn <coburn@ceres.org>
Subject: Invitation to Apr 19 Ceres Investor Policy Working Group Meeting

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Dear Adrien,

We would very much appreciate it if Commissioner Lee would consider joining us for a meeting of Ceres' Investor Network's Policy Working Group on April 19 at 1pm.

This is a regular, private meeting we have with our Investor Network to discuss a range of federal policy issues. We will focus this meeting on the SEC's climate rule, and it would be fantastic to have Commissioner Lee provide her views on important areas for investor comment, and answer questions about the proposal.

Please let us know if she might be interested and available to join us.

Many thanks!
Isabel

Isabel Munilla (she/her)
Director, US Financial Regulation
Ceres
617.247.0700 ext. 206
imunilla@ceres.org
www.ceres.org
Twitter: @isabelmunilla

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Walker, Gloria H

Subject:	FW: Ceres Paris Aligned Investment Working Group
Start:	Wed 4/20/2022 4:00 PM
End:	Wed 4/20/2022 5:00 PM
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	Natalie Queathem

-----Original Appointment-----
From: Natalie Queathem <nqueathem@ceres.org>
Sent: Thursday, April 14, 2022 3:22 PM
To: Natalie Queathem
Subject: Ceres Paris Aligned Investment Working Group
When: Wednesday, April 20, 2022 1:00 PM-2:00 PM (UTC-08:00) Pacific Time (US & Canada).
Where:

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Agenda:

1. Welcome and review agenda
2. Private dialogue with SEC Commissioner Allison Herren Lee on SEC proposed rule on climate disclosure
3. Investor discussions in breakout sessions
4. Wrap up

•

Please RSVP to the calendar invitation ahead of each meeting. If you have any questions or would like to add a colleague to the calendar invite, please email Natalie (nqueathem@ceres.org).

--

Join Zoom Meeting

Non Responsive Record

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From: Ceres
To: Gensler, Gary
Subject: Panelist for Briefing on the SEC Climate Disclosure Rule, with Keynote by SEC Chair Gary Gensler
Date: Monday, April 11, 2022 10:24:01 AM

Hi Gary Gensler, Chair, U.S. Securities and Exchange Commission,

You are invited to a Zoom webinar.

Date Time: Apr 12, 2022 02:00 PM Eastern Time (US and Canada)
Topic: Briefing on the SEC Climate Disclosure Rule, with Keynote by SEC Chair Gary Gensler

Join from a PC, Mac, iPad, iPhone or Android device:
Click Here to Join
Note: This link should not be shared with others; it is unique to you.
Add to Calendar Add to Google Calendar Add to Yahoo Calendar
Description: The U.S. Securities and Exchange Commission (SEC) just released a proposed rule requiring climate disclosure from all U.S. public companies, called the Enhancement and Standardization of Climate-Related Disclosures for Investors. Public comments will be accepted until at minimum, May 20.

The mission of the SEC is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. With this proposed rule, the SEC is responding to the need by investors for clear, consistent and comparable reporting from companies to produce useful investment insights and ensure financial markets can properly price and act on the physical and transitional risks and opportunities of climate change.

Participants will:
- Hear keynote remarks from SEC Chair Gary Gensler
- Gain insight from Ceres' high-level summary of the rule
- Listen to reactions of the rule from a panel of distinguished investors

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Dial(for higher quality, dial a number based on your current location):

US: [redacted]

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Webinar ID: [redacted]

Participant ID: [redacted]

International numbers available: https://ceres-org.zoom.us/u/kbEYLTHt09

From: Ceres
To: Gensler, Gary
Subject: Reminder: Briefing on the SEC Climate Disclosure Rule, with Keynote by SEC Chair Gary Gensler starts in 1 day
Date: Monday, April 11, 2022 2:13:24 PM

Hi Gary Gensler, Chair, U.S. Securities and Exchange Commission,

This is a reminder that "Briefing on the SEC Climate Disclosure Rule, with Keynote by SEC Chair Gary Gensler" will begin in 1 day on:
Date Time: Apr 12, 2022 02:00 PM Eastern Time (US and Canada)

Join from a PC, Mac, iPad, iPhone or Android device:

Click Here to Join
Note: This link should not be shared with others; it is unique to you.
Add to Calendar Add to Google Calendar Add to Yahoo Calendar

Or join by phone:

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We welcome your questions in advance here:
https://forms.office.com/r/14K5AHPZYB

Let us know any key areas about the proposed rule where you need more information. Your feedback will help our speakers as they prepare their remarks. Please understand that we may not get to all questions submitted.

Thank you for your interest. We encourage you to participate in this rulemaking process during the comment period to help shape the outcome. This is a crucial opportunity for companies and investors to demonstrate leadership and position themselves well in a global economy that recognizes the risks and opportunities of climate-related financial risk.

You can cancel your registration at any time.

From: Ceres
To: Gensler, Gary
Subject: Panelist for Briefing on the SEC Climate Disclosure Rule, with Keynote by SEC Chair Gary Gensler
Date: Monday, April 11, 2022 5:08:07 PM

Hi Gary Gensler, Chair, U.S. Securities and Exchange Commission,

You are invited to a Zoom webinar.

Date Time: Apr 12, 2022 02:00 PM Eastern Time (US and Canada)
Topic: Briefing on the SEC Climate Disclosure Rule, with Keynote by SEC Chair Gary Gensler

Join from a PC, Mac, iPad, iPhone or Android device:
Click Here to Join
Note: This link should not be shared with others; it is unique to you.
Add to Calendar Add to Google Calendar Add to Yahoo Calendar
Description: The U.S. Securities and Exchange Commission (SEC) just released a proposed rule requiring climate disclosure from all U.S. public companies, called the Enhancement and Standardization of Climate-Related Disclosures for Investors. Public comments will be accepted until at minimum, May 20.

The mission of the SEC is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. With this proposed rule, the SEC is responding to the need by investors for clear, consistent and comparable reporting from companies to produce useful investment insights and ensure financial markets can properly price and act on the physical and transitional risks and opportunities of climate change.

Participants will:
- Hear keynote remarks from SEC Chair Gary Gensler
- Gain insight from Ceres' high-level summary of the rule
- Listen to reactions of the rule from a panel of distinguished investors

Or One tap mobile:
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Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: [redacted] Non Responsive Record

Webinar ID: [redacted]

Participant ID: [redacted]

International numbers available: https://ceres-org.zoom.us/u/kbEYLTHt09

From:	Ceres
To:	Gensler, Gary
Subject:	Reminder: Briefing on the SEC Climate Disclosure Rule, with Keynote by SEC Chair Gary Gensler starts in 1 hour
Date:	Tuesday, April 12, 2022 12:55:37 PM

Hi Gary Gensler, Chair, U.S. Securities and Exchange Commission,

This is a reminder that "Briefing on the SEC Climate Disclosure Rule, with Keynote by SEC Chair Gary Gensler" will begin in 1 hour on:
Date Time: Apr 12, 2022 02:00 PM Eastern Time (US and Canada)

Join from a PC, Mac, iPad, iPhone or Android device:

Click Here to Join
Note: This link should not be shared with others; it is unique to you.
Add to Calendar Add to Google Calendar Add to Yahoo Calendar

Or join by phone:

Non Responsive Record

We welcome your questions in advance here:
https://forms.office.com/r/14K5AHPZYB

Let us know any key areas about the proposed rule where you need more information. Your feedback will help our speakers as they prepare their remarks. Please understand that we may not get to all questions submitted.

Thank you for your interest. We encourage you to participate in this rulemaking process during the comment period to help shape the outcome. This is a crucial opportunity for companies and investors to demonstrate leadership and position themselves well in a global economy that recognizes the risks and opportunities of climate-related financial risk.

You can cancel your registration at any time.

From: Ceres
To: Gensler, Gary
Subject: Panelist for Briefing on the SEC Climate Disclosure Rule, with Keynote by SEC Chair Gary Gensler
Date: Tuesday, April 12, 2022 1:56:16 PM

Hi Gary Gensler, Chair, U.S. Securities and Exchange Commission,

You are invited to a Zoom webinar.

Date Time: Apr 12, 2022 02:00 PM Eastern Time (US and Canada)
Topic: Briefing on the SEC Climate Disclosure Rule, with Keynote by SEC Chair Gary Gensler

Join from a PC, Mac, iPad, iPhone or Android device:
  Click Here to Join
  Note: This link should not be shared with others; it is unique to you.
  Add to Calendar Add to Google Calendar Add to Yahoo Calendar
Description: The U.S. Securities and Exchange Commission (SEC) just released a proposed rule requiring climate disclosure from all U.S. public companies, called the Enhancement and Standardization of Climate-Related Disclosures for Investors. Public comments will be accepted until at minimum, May 20.

The mission of the SEC is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. With this proposed rule, the SEC is responding to the need by investors for clear, consistent and comparable reporting from companies to produce useful investment insights and ensure financial markets can properly price and act on the physical and transitional risks and opportunities of climate change.

Participants will:
- Hear keynote remarks from SEC Chair Gary Gensler
- Gain insight from Ceres' high-level summary of the rule
- Listen to reactions of the rule from a panel of distinguished investors

Or One tap mobile:
  US: Non Responsive Record

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +[redacted]

Non Responsive Record

Webinar ID: [redacted]

Participant ID: [redacted]

International numbers available: https://ceres-org.zoom.us/u/kbEYLTHt09

From: Ceres
To: Gensler, Gary
Subject: Panelist for Briefing on the SEC Climate Disclosure Rule, with Keynote by SEC Chair Gary Gensler
Date: Monday, April 11, 2022 10:24:01 AM

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Webinar ID: [redacted]

Participant ID: [redacted]

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From: Ceres
To: Gensler, Gary
Subject: Reminder: Briefing on the SEC Climate Disclosure Rule, with Keynote by SEC Chair Gary Gensler starts in 1 day
Date: Monday, April 11, 2022 2:13:24 PM

Hi Gary Gensler, Chair, U.S. Securities and Exchange Commission,

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Date Time: Apr 12, 2022 02:00 PM Eastern Time (US and Canada)

Join from a PC, Mac, iPad, iPhone or Android device:

Click Here to Join
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Or join by phone:

Non Responsive Record

We welcome your questions in advance here:
https://forms.office.com/r/14K5AHPZYB

Let us know any key areas about the proposed rule where you need more information. Your feedback will help our speakers as they prepare their remarks. Please understand that we may not get to all questions submitted.

Thank you for your interest. We encourage you to participate in this rulemaking process during the comment period to help shape the outcome. This is a crucial opportunity for companies and investors to demonstrate leadership and position themselves well in a global economy that recognizes the risks and opportunities of climate-related financial risk.

You can cancel your registration at any time.

From:	Ceres
To:	Gensler, Gary
Subject:	Panelist for Briefing on the SEC Climate Disclosure Rule, with Keynote by SEC Chair Gary Gensler
Date:	Monday, April 11, 2022 5:08:07 PM

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Dial(for higher quality, dial a number based on your current location):

US: [redacted]

Non Responsive Record

Webinar ID: [redacted]

Participant ID: [redacted]

International numbers available: https://ceres-org.zoom.us/u/kbEYLTHt09

From:	Ceres
To:	Gensler, Gary
Subject:	Reminder: Briefing on the SEC Climate Disclosure Rule, with Keynote by SEC Chair Gary Gensler starts in 1 hour
Date:	Tuesday, April 12, 2022 12:55:37 PM

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- Listen to reactions of the rule from a panel of distinguished investors

Or One tap mobile:
Non Responsive Record

Or Telephone:

Non Responsive Record

From: Scott Donachie
To: Chair
Subject: SPEAKING OPPORTUNITY FOR SEC - SEPTEMBER 20, 2022 NJIT NEWARK, NJ
Date: Monday, March 21, 2022 2:55:29 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chairperson at the SEC,

We are delighted to announce that our Second Annual Zero Waste Summit will convene September 20-21, 2022, at N.J.I.T. , Newark, N.J. (https://strategicevents.njit.edu/)

Zero Waste 2022 will continue the collaboration of global leaders that are delivering demonstrable solutions. Via our interactive panel discussions, participants will learn how to measure, plan, engage and deliver solutions across the full value chain to accelerate net zero outcomes.

At the center of the topics will be a panel on the discussion of ESG, Carbon Tracking and Disclosure guidelines.

Planned Topics:

- Trends in E-Waste Recycling & Organic Disposal
- Emerging Technologies & Impact on the Waste Mitigation Value Chain
- The Future of ESG & Net Zero Regulations
- Advances in Sustainable Packaging
- Carbon pricing demystified
- Enabling Government Policies to Drive Innovation

RSVP'd Panelists

- **Jayant Kairam,** Director, Global Public Policy, **Walmart**
- **Martin Wolf,** Director Sustainability & Authenticity, **Seventh Generation**
- **Leanne Kemp,** CEO, **Everledger**
- **Ann Tracy,** Chief Sustainability Officer, **Colgate-Palmolive**
- **Aline Casagrande**, Circular Packaging Global Director, **AB InBev**
- **Stephanie Benedetto,** Co-Founder **Queen of Raw**
-

Panel Speaker Opportunities:

Given that Commissioner Herron's has stepped down, we would like to explore the right leader from the SEC how can join our esteemed panelists?

Kristina (Schillinger) Wyatt has been invited to speak in her new role at Persefoni and we are waiting on her approval.

Cheers

Scott Donachie

From: Scott Donachie
Sent: Wednesday, December 29, 2021 5:11 PM
To: Anderson, Adrien <(b)(6) [redacted]@SEC.GOV>; Kelly, Katherine <(b)(6) [redacted]@SEC.GOV>
Cc: Scott Donachie <sdonachie@companiesfornetzero.com>

Subject: RE: Speaking Opportunity for Commissioner Allison Herren Lee Feb 2021 & Comped Passes to Net Zero North America

Hi Katherine & Adrien,

Good evening.

I found this great article from Gary Gensler https://www.sec.gov/news/speech/gensler-pri-2021-07-28

We wanted to come back to Commissioner Allison Herren as you recommended and offer the Commissioner the opportunity in Q1 2022 to discuss her work so we can educate our 24k global corporate members.

Would the Commissioner be available for 20 minutes to record a professional video at her convenience?

Here is an example of a recording form the U.S. Dept. of Energy that we recorded in November https://vimeo.com/manage/videos/644773036

Please let me know the best time or you can schedule here so we can discuss further https://calendly.com/cnz/30min

Happy New Year!

Scott Donachie

CEO

From: Kelly, Katherine <(b)(6) [redacted]@SEC.GOV>
Sent: Monday, September 20, 2021 2:51 PM
To: Scott Donachie <sdonachie@companiesfornetzero.com>; Anderson, Adrien <(b)(6) [redacted]@SEC.GOV>
Subject: RE: Speaking Opportunity for Commissioner Allison Herren Lee Feb 2021 & Comped Passes to Net Zero North America

Hi, Scott. Perfect timing: I was just about to email you to clarify what I thought I understood from our call, that at this point you are suggesting that someone from our office might attend your upcoming meeting in November just to listen in, but that you are looking for Commissioner Lee to participate in your February meeting. It looks like that is correct based on the below.

Since February is a little far down the road, we were going to take up on the invite to sit in on some part of your November meeting. And then make a decision about her participation in February after that. I think the attendees for November would just be me and Adrien.

Please let us know if that works for you, or if you have any other questions for us.

Many thanks,

Katherine

From: Scott Donachie <sdonachie@companiesfornetzero.com>
Sent: Monday, September 20, 2021 2:37 PM
To: Anderson, Adrien <(b)(6) [redacted]@SEC.GOV>; Kelly, Katherine <(b)(6) [redacted]@SEC.GOV>
Cc: Scott Donachie <sdonachie@companiesfornetzero.com>
Subject: Speaking Opportunity for Commissioner Allison Herren Lee Feb 2021 & Comped Passes to Net Zero North America

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Dear Katherine and Adrien,

Thank you for your valuable time last week regarding your work at the SEC and the potential opportunity to have Commissioner Allison Herren Lee as a leading speaker at our soon to be announced ESG **invite-only** global summit in February 2022.

I spoke with my advisory board and the ESG meeting we are hosting in February will be held under the **Chatham House Rule.** And while participants would be free to use the information received, neither their identity nor any affiliation with any of the speakers or that of any other participant, may be revealed. There will also be no press coverage.

We would like to offer Commissioner Lee the ability to educate our members on her expertise on how the U.S. Securities and Exchange Commission is addressing net zero targets, including the SEC's recent consultation into how it should change its guidance on climate reporting.

As mentioned, our members are C-suite decision makers from global corporations that need to fully learn from experts like Commissioner Lee.

Here are some suggested top objectives for Commissioner Lee to cover if wanted (Else we are open to further suggestions)

- Learn about the guidelines that are being set to fully comply with the Paris Agreements on Scope 1+ 2+3 emissions
- How global organizations can learn significant operational improvements that can help to reduce their carbon footprint with demonstrable and proven technology
- How do "net zero investors" make investment into organizations that are aligned with these goals and then to recognize which global organizations are making shifts in their supply chains to support the net zero transition
- What are some of the data enhancements that will provide public access to financial statements and other disclosures made by publicly traded companies on its Electronic Data Gathering, Analysis, and Retrieval system (EDGAR).

When suits, we welcome Commissioner Lee sharing her intended topic coverage (as above).

Likely to also be of major interest for this coming November 9^{th} – 11^{th} 2021, we are holding our annual **Net Zero North America** virtual 'thought-leadership' seminar on **accelerating the journey to net zero**.

I would personally like to extend an invitation to you Katherine & Adrien and up to three other members from the SEC to attend our next meeting our **Net Zero North America** at no cost. Here is the latest agenda for your reference.

This will be an opportunity to hear from fellow senior executives, industry experts and policymakers on the latest progress to achieve net zero across multiple industry sectors and provide a feedback loop to Commissioner Lee on the quality of our meeting.

We've designed the format so you can choose themes most relevant to you to join in and listen to. In case you can't spare any time to attend, we will be sharing recordings of the entire conference in due course on our soon to be announced new 'CNZ eco-forum' smartphone App that will share daily news and learnings on net zero topics.

If you would like to attend, can you please kindly let me know the names and emails of attendees and we'll send the registration details to you and them directly (or share this email

with them inviting them to get in touch).
Here is my diary if you want to discuss anything.
https://calendly.com/zerowastevents/15min
Humbly,
Scott Donachie
CEO & Founder
www.companiesfornetzero.com
"Our mission is to curate relationships with the thought leaders striving for Net Zero."

From: Anderson, Adrien
To: Lee, Allison
Cc: Kelly, Katherine
Subject: FW: Ceres call with Cmmr Lee
Date: Thursday, March 24, 2022 8:21:41 AM

Allison – Ceres cannot meet this morning. Will you be traveling tomorrow? If not, can I schedule Ceres for tomorrow?

From: Isabel Munilla <imunilla@ceres.org>
Sent: Thursday, March 24, 2022 8:16 AM
To: Anderson, Adrien <(b)(6) [redacted]@SEC.GOV>
Subject: Re: Ceres call with Cmmr Lee

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Adrien, unfortunately those times don't work. Does she have times on Friday or Monday?
Thanks!
Isabel

From: Anderson, Adrien <(b)(6) [redacted]@SEC.GOV>
Sent: Wednesday, March 23, 2022 4:58:00 PM
To: Isabel Munilla <imunilla@ceres.org>
Subject: RE: Ceres call with Cmmr Lee

Hi Isabel,
Since I emailed you a Commission meeting was rescheduled so that time is no longer available. Can you do 10:00am or 11:00am tomorrow?
Thanks,
Adrien

From: Anderson, Adrien
Sent: Wednesday, March 23, 2022 2:57 PM
To: 'Isabel Munilla' <imunilla@ceres.org>
Subject: RE: Ceres call with Cmmr Lee

Perfect. Will you please send me a list of your attendees names and titles as well as a list of discussion points. Once I have this, I can send you a WebEx.
Thanks,
Adrien

From: Isabel Munilla <imunilla@ceres.org>
Sent: Wednesday, March 23, 2022 2:12 PM
To: Anderson, Adrien <(b)(6) [redacted]@SEC.GOV>
Subject: Re: Ceres call with Cmmr Lee

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Adrien - we can do 230pm. Thanks!
Isabel

From: Anderson, Adrien <(b)(6) [redacted]@SEC.GOV>
Sent: Wednesday, March 23, 2022 1:58 PM

To: Isabel Munilla <imunilla@ceres.org>
Subject: RE: Ceres call with Cmmr Lee

Hi Isabel,

Can you do tomorrow at 2:30pm or 3:00pm ET?

Thanks,

Adrien

From: Kelly, Katherine <(b)(6) [redacted]@SEC.GOV>
Sent: Wednesday, March 23, 2022 1:50 PM
To: Isabel Munilla <imunilla@ceres.org>
Cc: Anderson, Adrien <(b)(6) [redacted]@SEC.GOV>
Subject: Ceres call with Cmmr Lee

Hi, Isabel. Per my call, I'm copying Adrien to try and get some time for you all to check in with Allison in the next couple days if possible. Looking forward to talking soon.

Best,

Katherine

Katherine Kelly
Office of Commissioner Allison Herren Lee
(b)(6) [redacted] | (b)(6) [redacted]@sec.gov

From:	Scott Donachie
To:	Chair
Subject:	RE: SPEAKING OPPORTUNITY FOR SEC - SEPTEMBER 20, 2022 NJIT NEWARK, NJ
Date:	Sunday, April 3, 2022 5:12:11 PM

Hi,

Given Gary Gensler's leadership in net zero and the SEC's incredible work we're delighted to explore if he would be open to moderating a panel on September 20th in Newark, NJ at an invite only meeting at N.J.I.T.

If you might like to explore this with me at your convenience, then please feel welcome to set up a quick catch-up to suit: https://calendly.com/cnz/30min

A few of the RSVP'd Panelists

- **Jayant Kairam,** Director, Global Public Policy, **Walmart**
- **Sophia Leonora Mendelsohn,** Chief Sustainability Officer & Global Head of ESG, **Cognizant**
- **Martin Wolf,** Director Sustainability & Authenticity, **Seventh Generation**
- **Ann Tracy,** Chief Sustainability Officer, **Colgate-Palmolive**
- **Aline Casagrande**, Circular Packaging Global Director, **AB InBev**
- **Cory Tatarzyn, Sr.** Sustainability Engineer, **General Motors**

Cheers,

Scott Donachie

CEO

From: Scott Donachie

Sent: Monday, March 21, 2022 2:55 PM

To: chair@sec.gov

Subject: SPEAKING OPPORTUNITY FOR SEC - SEPTEMBER 20, 2022 NJIT NEWARK, NJ

Dear Chairperson at the SEC,

We are delighted to announce that our Second Annual Zero Waste Summit will convene September 20-21, 2022, at N.J.I.T. , Newark, N.J. (https://strategicevents.njit.edu/)

Zero Waste 2022 will continue the collaboration of global leaders that are delivering demonstrable solutions. Via our interactive panel discussions, participants will learn how to measure, plan, engage and deliver solutions across the full value chain to accelerate net zero outcomes.

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The Future of ESG & Net Zero Regulations

- Advances in Sustainable Packaging
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From: Scott Donachie

Sent: Wednesday, December 29, 2021 5:11 PM

To: Anderson, Adrien <(b)(6)@SEC.GOV>; Kelly, Katherine <(b)(6)@SEC.GOV>

Cc: Scott Donachie <sdonachie@companiesfornetzero.com>

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CEO

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To: Scott Donachie <sdonachie@companiesfornetzero.com>; Anderson, Adrien <(b)(6) @SEC.GOV>
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Humbly,
Scott Donachie
CEO & Founder
www.companiesfornetzero.com
"Our mission is to curate relationships with the thought leaders striving for Net Zero."

From:	Haghshenas, Parisa
To:	Lee, Allison; #CommrLeeStaff
Subject:	Kristina Wyatt joins Persefoni
Date:	Tuesday, March 8, 2022 5:13:40 PM

I am sure you saw this but I just got this from a colleague: https://www.prnewswire.com/news-releases/kristina-wyatt-joins-persefoni-as-deputy-general-counsel-and-svp-global-regulatory-climate-disclosure-301496249.html

From:	Steven Rothstein
To:	Lee, Allison; Mindy Lubber
Cc:	Kelly, Katherine; Isabel Munilla
Subject:	Re: Congratulations and thank you
Date:	Friday, March 11, 2022 1:48:13 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Comm Lee, both you and Katherine are definitely leaders in this important work. The final outcome would be very different without your hard work and thoughtful engagement

Thanks again.

Steven

Steven M. Rothstein
Managing Director, Ceres Accelerator for Sustainable Capital Markets
Ceres
99 Chauncy St. 6th Floor
Boston, MA 02111
617-247-0700 ext. 237
(b)(6) [redacted] cell
srothstein@ceres.org
www.ceres.org
Twitter: @stevenrothstein

From: Lee, Allison (b)(6) [redacted] @SEC.GOV>
Sent: Friday, March 11, 2022 10:36 AM
To: Mindy Lubber <lubber@ceres.org>
Cc: Kelly, Katherine (b)(6) [redacted] @SEC.GOV>; Steven Rothstein <srothstein@ceres.org>; Isabel Munilla <imunilla@ceres.org>
Subject: RE: Congratulations and thank you

Thanks, Mindy. And you are right about the team effort – especially Katherine who has been an amazing and relentless champion of this work.

From: Mindy Lubber <lubber@ceres.org>
Sent: Friday, March 11, 2022 7:40 AM
To: Lee, Allison (b)(6) [redacted] @SEC.GOV>
Cc: Kelly, Katherine (b)(6) [redacted] @SEC.GOV>; Steven Rothstein <srothstein@ceres.org>; Isabel Munilla

<imunilla@ceres.org>
Subject: Congratulations and thank you

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Commissioner Lee,

I wanted to send a note of congratulations for the progress on the climate rule. The vote will be a historic moment. We know this was the result of an incredible team effort at the commission. We are very excited to read it and provide our comments. We will take nothing for granted.

As always, please let us know if there's anything we can do to support you or your team.

Again, many thanks for your continued leadership.

Sincerely,

Mindy

From: Kelly, Katherine
To: Lee, Allison; #CommrLeeStaff
Subject: FW: Citi"s TCFD report - materiality, net zero, GHG assurance etc
Date: Friday, March 11, 2022 1:54:49 PM

FYI.

From: Isabel Munilla <imunilla@ceres.org>
Sent: Friday, March 11, 2022 12:46 PM
To: Kelly, Katherine <(b)(6) @SEC.GOV>
Cc: Jim Coburn <coburn@ceres.org>; Thomas Riesenberg <triesenberg@ceres.org>
Subject: Citi's TCFD report - materiality, net zero, GHG assurance etc

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Katherine - I wanted to call your attention to Citi's most recent TCFD report. It's very interesting, and I wanted to highlight a few areas.

Hope all is well,

Best,

Isabel

- A page related to their take on materiality (pasted below but also on p.9).
- Information on how their net zero & climate work streams have shared data needs, including GHG emissions.
  - For example, they say in the intro "Our climate risk and net zero work are related and reinforce each other. Whereas our climate risk work focuses on the integration of climate risk into Citi's risk management governance, processes and strategies, our net zero work focuses on Citi's impacts on the climate and achieving our net zero emissions targets. Common linkages exist between the two workstreams. For example, **both rely on common data elements such as GHG emissions** and better understanding of our clients' climate change mitigation and/or adaptation plans." (emphasis added)
- C suite & board oversight of net zero: The CEO message makes clear that the net zero plan is supported by the management and was reviewed by the board.
- GHG reporting & assurance: "
  - "We plan to continue reporting on our emissions, including ***select*** Scope 3 emissions, in our annual voluntary reports. **Currently, our Scope 1, Scope 2 and a portion of Scope 3 emissions data associated with our operations undergo a third-party limited assurance review. We anticipate procuring some form of third-party verification for our Scope 3 financed emissions by 2024, as required by NZBA.** In the interim, we will continue to work internally to improve our financed emissions data, including using client engagement to increase publicly

reported data and to encourage verification of that data. While we are working to increase our client engagement efforts, in many instances the client-level emissions data that is currently available to us is either (i) estimates of emissions data for companies that do not currently disclose their emissions, or (ii) self-reported data that may not be verified. ***Certain data quality hurdles may be overcome by a regulatory mandate for emissions disclosures. We expect that anticipated mandatory disclosure requirements in some jurisdictions will improve our clients' disclosures, and we will also continue to engage with our clients in other jurisdictions to encourage high-quality reporting."*** (emphasis added) (P. 24)

  - "We anticipate regulators imposing greater stress and scenario testing and disclosure obligations in the coming years and **expect to see greater involvement of auditors in the assurance and verification of climate related disclosures.**
    - ....To help us prepare to address current and anticipated climate regulatory obligations, we are strengthening our internal regulatory teams with legal and subject matter experts and we are continually seeking to improve our access to relevant, accurate data to sharpen our scenario analyses and enhance the utility of our public disclosures. We are also continuing to build a consistent global climate disclosure strategy that can monitor and manage requirements and consistently report across Citi's operations." (P. 44)

- How GHG emissions disclosure performance by portfolio companies factors into their net zero plan:
  - "The first step of our net zero plan involves engagement, client by client, to understand their GHG emissions disclosure and their perspective and plans for transition. Additionally, we will review public disclosures, climate governance and the commitments and actions they have taken to date. We are beginning this process of client engagement and anticipate this initial review phase will continue through the end of 2023." (P. 27)

A Brief Note on Materiality (P.9)

At Citi, we recognize that in general, assessing materiality requires thoughtful consideration not only of any applicable materiality standard, but also of our purpose in assessing materiality and in communicating to our stakeholders. Our public disclosures, including our voluntary environmental, social and governance (ESG) and climate-related disclosures, include a range of topics that we believe are relevant to our businesses and that are of interest to investors and other stakeholders. We use the definition of materiality established under U.S. federal securities laws for the purposes of complying with the disclosure rules and regulations promulgated by the U.S. Securities and Exchange Commission (SEC) and applicable stock exchange listing standards. However, in our voluntary ESG disclosures, including those that relate to our climate change-related efforts, we have adapted our approach to materiality based on both the subject matter and purpose of the disclosures.

In particular, our approach to these voluntary disclosures often considers broader definitions of materiality promulgated by certain external frameworks and reporting guidelines that take into consideration a wider range of factors relevant to climate and ESG disclosures, including the views of our key stakeholders and our desire to be a climate leader in the financial industry. To accommodate this multi-lensed approach to materiality, Citi occasionally adopts new frameworks and standards when we believe that doing so will allow us to better address sustainability matters.

For the purposes of discussing climate risks and opportunities in this TCFD report, we use an approach to materiality that is consistent with the TCFD recommendations. This means this report incorporates a climate change “double materiality” perspective — looking at both the climate’s impact on our company, and our company’s impact on climate — and uses longer time frames to assess potential impacts than those time frames customarily used in our required disclosures, including those mandated by SEC rules and regulations. This layered approach means that this TCFD report and many of our other voluntary disclosures capture details on ESG issues, including climate-related risks and opportunities that may not be, and are not necessary to be, incorporated into our required disclosures.

Our approach to materiality in this TCFD report and other voluntary ESG disclosures also means that statements made in this report and in our other voluntary disclosures use a greater number and level of assumptions and estimates than many of our required disclosures. These assumptions and estimates are highly likely to change over time, and, when coupled with the longer time frames used in these voluntary disclosures, make any assessment of materiality inherently uncertain. In addition, our climate risk analysis and net zero strategy remain under development, and the data underlying our analysis and strategy remain subject to evolution over time. As a result, we expect that certain disclosures made in this report and our other voluntary ESG disclosures are likely to be amended, updated or restated in the future as the quality and completeness of our data and methodologies continue to improve.

From:	Jim Coburn
To:	Annino, Angelica; Yerramalli, Prashant
Cc:	Chair; Jim Coburn; Vladimir Proaño
Subject:	Meeting request
Date:	Monday, January 24, 2022 12:24:26 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Angelica and Prashant,

Greetings! I'm writing to request a meeting with Chair Gensler on behalf of Ceres President Mindy Lubber and Ceres board members California Controller Betty Yee and New York State Comptroller Tom DiNapoli. They're interested in discussing the climate change disclosure rulemaking.

Would Chair Gensler have any availability the week beginning February 7th?

Thank you very much for your consideration. I really appreciate it.

Sincerely,

Jim Coburn

Jim Coburn
Senior Manager, Disclosure
Ceres
99 Chauncy Street, 6th Fl.
Boston, MA 02111
Tel: 617-247-0700 ext. 119
coburn@ceres.org
www.ceres.org

Follow us on Facebook, LinkedIn and Twitter.

From:	Jim Coburn
To:	Chair; Morse, Mika; Wyatt, Kristina
Cc:	Isabel Munilla; Jim Coburn
Subject:	Request for a call
Date:	Sunday, October 3, 2021 6:34:01 PM

Dear Mika and Kristina,

I hope you're both doing well. I'm writing to check on your availability for a call with Isabel Munilla, myself, Rob Schuwerk of Carbon Tracker, and Sam Ross of Assurancemark. Isabel and I have been speaking to Rob recently regarding his amazing work on oil and gas reserves reporting in SEC filings. We were really impressed and are sure you'd find his insights helpful. He can expand and provide updates on important points in Carbon Tracker's June 14th letter to the SEC, as well as Carbon Tracker's September 27th letter, which includes a new report on climate risks in financial reporting.

If you're able to let me know about any availability you have for a call, I can confirm times with Rob and Sam?

Thank you very much for your consideration.

Sincerely,

Jim Coburn

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coburn@ceres.org
www.ceres.org

Follow us on Facebook, LinkedIn and Twitter.

From: Morse, Mika
To: Jim Coburn; Chair; Wyatt, Kristina
Cc: Isabel Munilla
Subject: RE: Request for a call
Date: Monday, October 4, 2021 9:14:32 AM

Jim,

Thanks for reaching out. I'm happy to set up a time to talk. Could you send over some options that work for your group and we can see which works for us?

Thanks,

Mika

From: Jim Coburn <coburn@ceres.org>

Sent: Sunday, October 3, 2021 6:34 PM

To: Chair <chair@sec.gov>; Morse, Mika (b)(6) @SEC.GOV>; Wyatt, Kristina (b)(6) @SEC.GOV>

Cc: Isabel Munilla <imunilla@ceres.org>; Jim Coburn <coburn@ceres.org>

Subject: Request for a call

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coburn@ceres.org
www.ceres.org
Follow us on Facebook, LinkedIn and Twitter.

From: Jim Coburn
To: Morse, Mika
Cc: Chair; Wyatt, Kristina; Isabel Munilla
Subject: Re: Request for a call
Date: Monday, October 4, 2021 9:20:55 AM

Mika, Thank you so much, that's great. I'll check in with Rob and Sam and then suggest some dates/times. Best, Jim

On Mon, Oct 4, 2021 at 9:15 AM Morse, Mika <(b)(6) @sec.gov> wrote:

> Jim,
>
> Thanks for reaching out. I'm happy to set up a time to talk. Could you send over some options that work for your group and we can see which works for us?
>
> Thanks,
>
> Mika
>
> **From:** Jim Coburn <coburn@ceres.org>
> **Sent:** Sunday, October 3, 2021 6:34 PM
> **To:** Chair <chair@sec.gov>; Morse, Mika (b)(6) @SEC.GOV>; Wyatt, Kristina (b)(6) @SEC.GOV>
> **Cc:** Isabel Munilla <imunilla@ceres.org>; Jim Coburn <coburn@ceres.org>
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> Sincerely,

Jim Coburn

Jim Coburn

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coburn@ceres.org

www.ceres.org

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From: Jim Coburn
To: Morse, Mika
Cc: Chair; Wyatt, Kristina; Isabel Munilla
Subject: Re: Request for a call
Date: Monday, October 4, 2021 9:20:57 AM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mika, Thank you so much, that's great. I'll check in with Rob and Sam and then suggest some dates/times. Best, Jim

On Mon, Oct 4, 2021 at 9:15 AM Morse, Mika <(b)(6) @sec.gov> wrote:

> Jim,
>
> Thanks for reaching out. I'm happy to set up a time to talk. Could you send over some options that work for your group and we can see which works for us?
>
> Thanks,
>
> Mika
>
> **From:** Jim Coburn <coburn@ceres.org>
> **Sent:** Sunday, October 3, 2021 6:34 PM
> **To:** Chair <chair@sec.gov>; Morse, Mika (b)(6) @SEC.GOV>; Wyatt, Kristina (b)(6) @SEC.GOV>
> **Cc:** Isabel Munilla <imunilla@ceres.org>; Jim Coburn <coburn@ceres.org>
> **Subject:** Request for a call
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Senior Manager, Disclosure

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coburn@ceres.org

www.ceres.org

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From:	Jim Coburn
To:	Morse, Mika
Cc:	Chair; Wyatt, Kristina; Isabel Munilla
Subject:	Re: Request for a call
Date:	Friday, October 8, 2021 4:52:00 PM

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Mika, Thank you so much. Here's a couple of time ranges that work for us, Rob and Sam. Would you mind letting me know if either of these work?

Tuesday, Oct. 19 -- 2-3 ET
Wed., Oct. 20 -- 1-2 ET

Thanks very much,

Jim

On Mon, Oct 4, 2021 at 9:15 AM Morse, Mika <(b)(6) @sec.gov> wrote:

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> Thanks for reaching out. I'm happy to set up a time to talk. Could you send over some options that work for your group and we can see which works for us?
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> **From:** Jim Coburn <coburn@ceres.org>
> **Sent:** Sunday, October 3, 2021 6:34 PM
> **To:** Chair <chair@sec.gov>; Morse, Mika (b)(6) @SEC.GOV>; Wyatt, Kristina (b)(6) @SEC.GOV>
> **Cc:** Isabel Munilla <imunilla@ceres.org>; Jim Coburn <coburn@ceres.org>
> **Subject:** Request for a call
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If you're able to let me know about any availability you have for a call, I can confirm times with Rob and Sam?

Thank you very much for your consideration.

Sincerely,

Jim Coburn

Jim Coburn

Senior Manager, Disclosure

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coburn@ceres.org

www.ceres.org

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From: Jim Coburn
To: Morse, Mika
Cc: Chair; Wyatt, Kristina; Isabel Munilla
Subject: Re: Request for a call
Date: Friday, October 8, 2021 4:52:07 PM

Mika, Thank you so much. Here's a couple of time ranges that work for us, Rob and Sam. Would you mind letting me know if either of these work?

Tuesday, Oct. 19 -- 2-3 ET
Wed., Oct. 20 -- 1-2 ET

Thanks very much,

Jim

On Mon, Oct 4, 2021 at 9:15 AM Morse, Mika <(b)(6) @sec.gov> wrote:

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> Mika
>
> **From:** Jim Coburn <coburn@ceres.org>
> **Sent:** Sunday, October 3, 2021 6:34 PM
> **To:** Chair <chair@sec.gov>; Morse, Mika (b)(6) @SEC.GOV>; Wyatt, Kristina (b)(6) @SEC.GOV>
> **Cc:** Isabel Munilla <imunilla@ceres.org>; Jim Coburn <coburn@ceres.org>
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Sincerely,

Jim Coburn

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Jim Coburn

Senior Manager, Disclosure

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From: Jim Coburn
To: Morse, Mika
Cc: Chair; Wyatt, Kristina; Isabel Munilla
Subject: Re: Request for a call
Date: Friday, October 8, 2021 4:52:08 PM

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Mika, Thank you so much. Here's a couple of time ranges that work for us, Rob and Sam. Would you mind letting me know if either of these work?

Tuesday, Oct. 19 -- 2-3 ET
Wed., Oct. 20 -- 1-2 ET

Thanks very much,

Jim

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> **From:** Jim Coburn <coburn@ceres.org>
> **Sent:** Sunday, October 3, 2021 6:34 PM
> **To:** Chair <chair@sec.gov>; Morse, Mika (b)(6) @SEC.GOV>; Wyatt, Kristina (b)(6) @SEC.GOV>
> **Cc:** Isabel Munilla <imunilla@ceres.org>; Jim Coburn <coburn@ceres.org>
> **Subject:** Request for a call
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coburn@ceres.org

www.ceres.org

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From:	Wyatt, Kristina
To:	Jim Coburn; Morse, Mika
Cc:	Chair; Isabel Munilla; Klemmer, Corey
Subject:	RE: Request for a call
Date:	Friday, October 8, 2021 5:10:16 PM

Hi Jim,

Thank you for sending over these times.

October 19th from 2:30-3:00 would work for us.

Would you like us to set up the call or would you prefer to?

I'm also copying Corey Klemmer as well from our team.

Best,

Kristina

From: Jim Coburn <coburn@ceres.org>
Sent: Friday, October 8, 2021 4:52 PM
To: Morse, Mika (b)(6) [redacted]@SEC.GOV>
Cc: Chair <chair@sec.gov>; Wyatt, Kristina (b)(6) [redacted]@SEC.GOV>; Isabel Munilla <imunilla@ceres.org>
Subject: Re: Request for a call

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Mika, Thank you so much. Here's a couple of time ranges that work for us, Rob and Sam.
Would you mind letting me know if either of these work?
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Wed., Oct. 20 -- 1-2 ET
Thanks very much,
Jim

On Mon, Oct 4, 2021 at 9:15 AM Morse, Mika <(b)(6) [redacted]@sec.gov> wrote:

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> Mika
>
> **From:** Jim Coburn <coburn@ceres.org>
> **Sent:** Sunday, October 3, 2021 6:34 PM
> **To:** Chair <chair@sec.gov>; Morse, Mika (b)(6) [redacted]@SEC.GOV>; Wyatt, Kristina (b)(6) [redacted]@SEC.GOV>
> **Cc:** Isabel Munilla <imunilla@ceres.org>; Jim Coburn <coburn@ceres.org>
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Follow us on Facebook, LinkedIn and Twitter.

From:	Jim Coburn
To:	Wyatt, Kristina
Cc:	Morse, Mika; Chair; Isabel Munilla; Klemmer, Corey
Subject:	Re: Request for a call
Date:	Sunday, October 10, 2021 7:44:51 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Kristina,

That's great. Would you mind setting up the call, please, or just providing us webex information to call in? We've found the SEC's system for calls to be more reliable at times than the system we're currently using.

Thank you very much. We look forward to speaking.

Best regards,

Jim

On Fri, Oct 8, 2021 at 5:10 PM Wyatt, Kristina <(b)(6) [redacted]@sec.gov> wrote:

> Hi Jim,
>
> Thank you for sending over these times.
>
> October 19th from 2:30-3:00 would work for us.
>
> Would you like us to set up the call or would you prefer to?
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> I'm also copying Corey Klemmer as well from our team.
>
> Best,
>
> Kristina
>
> ---
>
> **From:** Jim Coburn <coburn@ceres.org>
> **Sent:** Friday, October 8, 2021 4:52 PM
> **To:** Morse, Mika (b)(6) [redacted]@SEC.GOV>
> **Cc:** Chair <chair@sec.gov>; Wyatt, Kristina (b)(6) [redacted]@SEC.GOV>; Isabel Munilla <imunilla@ceres.org>
> **Subject:** Re: Request for a call
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> Mika
>
> ---
>
> **From:** Jim Coburn <coburn@ceres.org>
> **Sent:** Sunday, October 3, 2021 6:34 PM
> **To:** Chair <chair@sec.gov>; Morse, Mika (b)(6) @SEC.GOV>; Wyatt, Kristina (b)(6) @SEC.GOV>
> **Cc:** Isabel Munilla <imunilla@ceres.org>; Jim Coburn <coburn@ceres.org>
> **Subject:** Request for a call
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> Dear Mika and Kristina,
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> I hope you're both doing well. I'm writing to check on your availability for a call with Isabel Munilla, myself, Rob Schuwerk of Carbon Tracker, and Sam Ross of Assurancemark. Isabel and I have been speaking to Rob recently regarding his amazing work on oil and gas reserves reporting in SEC filings. We were really impressed and are sure you'd find his insights helpful. He can expand and provide updates on important points in Carbon Tracker's June 14th letter to the SEC, as well as Carbon Tracker's September 27th letter, which includes a new report on climate risks in financial reporting.
>
> If you're able to let me know about any availability you have for a call, I can confirm times with Rob and Sam?
>
> Thank you very much for your consideration.
>
> Sincerely,
>
> Jim Coburn

Jim Coburn

Senior Manager, Disclosure

Ceres

99 Chauncy Street, 6th Fl.

Boston, MA 02111

Tel: 617-247-0700 ext. 119
coburn@ceres.org

www.ceres.org

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From:	Jim Coburn
To:	Wyatt, Kristina
Cc:	Morse, Mika; Chair; Isabel Munilla; Klemmer, Corey
Subject:	Re: Request for a call
Date:	Sunday, October 10, 2021 7:44:52 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Kristina,

That's great. Would you mind setting up the call, please, or just providing us webex information to call in? We've found the SEC's system for calls to be more reliable at times than the system we're currently using.

Thank you very much. We look forward to speaking.

Best regards,

Jim

On Fri, Oct 8, 2021 at 5:10 PM Wyatt, Kristina <(b)(6) @sec.gov> wrote:

> Hi Jim,
>
> Thank you for sending over these times.
>
> October 19th from 2:30-3:00 would work for us.
>
> Would you like us to set up the call or would you prefer to?
>
> I'm also copying Corey Klemmer as well from our team.
>
> Best,
>
> Kristina
>
> **From:** Jim Coburn <coburn@ceres.org>
> **Sent:** Friday, October 8, 2021 4:52 PM
> **To:** Morse, Mika (b)(6) @SEC.GOV>
> **Cc:** Chair <chair@sec.gov>; Wyatt, Kristina (b)(6) @SEC.GOV>; Isabel Munilla <imunilla@ceres.org>
> **Subject:** Re: Request for a call
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> Mika, Thank you so much. Here's a couple of time ranges that work for us, Rob and Sam. Would you mind letting me know if either of these work?

Tuesday, Oct. 19 -- 2-3 ET
Wed., Oct. 20 -- 1-2 ET

Thanks very much,

Jim

On Mon, Oct 4, 2021 at 9:15 AM Morse, Mika <(b)(6) [redacted]@sec.gov> wrote:

Jim,

Thanks for reaching out. I'm happy to set up a time to talk. Could you send over some options that work for your group and we can see which works for us?

Thanks,

Mika

From: Jim Coburn <coburn@ceres.org>
Sent: Sunday, October 3, 2021 6:34 PM
To: Chair <chair@sec.gov>; Morse, Mika <(b)(6) [redacted]@SEC.GOV>; Wyatt, Kristina (b)(6) [redacted]@SEC.GOV>
Cc: Isabel Munilla <imunilla@ceres.org>; Jim Coburn <coburn@ceres.org>
Subject: Request for a call

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From:	Wyatt, Kristina
To:	Jim Coburn
Cc:	Morse, Mika; Chair; Isabel Munilla; Klemmer, Corey
Subject:	RE: Request for a call
Date:	Sunday, October 10, 2021 8:31:09 PM

Hi Jim,

I'm happy to set up the call.

Thank you.

From: Jim Coburn <coburn@ceres.org>
Sent: Sunday, October 10, 2021 7:45 PM
To: Wyatt, Kristina (b)(6) @SEC.GOV>
Cc: Morse, Mika (b)(6) @SEC.GOV>; Chair <chair@sec.gov>; Isabel Munilla <imunilla@ceres.org>; Klemmer, Corey (b)(6) @SEC.GOV>
Subject: Re: Request for a call

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Sent: Sunday, October 3, 2021 6:34 PM

To: Chair <chair@sec.gov>; Morse, Mika <(b)(6) @SEC.GOV>; Wyatt, Kristina <(b)(6) @SEC.GOV>

Cc: Isabel Munilla <imunilla@ceres.org>; Jim Coburn <coburn@ceres.org>

Subject: Request for a call

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Walker, Gloria H

From: Chea, Keo
Sent: Tuesday, October 12, 2021 11:20 AM
To: (b)(6)
Cc: Slavkin Corzo, Heather; Morse, Mika
Subject: FW: Chair Gensler Climate Listening Session
Attachments: Ceres_ Gensler Listening Oct 12 (1).pptx

This is the deck that Steven is referring to, currently on slide 9.

From: Steven Rothstein <srothstein@ceres.org>
Sent: Tuesday, October 12, 2021 8:00 AM
To: Chea, Keo <(b)(6)@SEC.GOV>
Cc: Morse, Mika <(b)(6)@SEC.GOV>
Subject: Chair Gensler Climate Listening Session

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Keo and Mika,

We are looking forward to the listening session this morning at 10:45 am.

This is a presentation I would like to share. I would only cover a portion of the slides. Are you able to present the slides during the meeting and then share with SEC staff and others?

Thank you for your consideration, it is appreciated.

Steven

Steven M. Rothstein
Managing Director, Ceres Accelerator for Sustainable Capital Markets
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Boston, MA 02111
617-247-0700 ext. 237
(b)(6) cell
srothstein@ceres.org
www.ceres.org
Twitter: @stevenrothstein

Walker, Gloria H

From: Steven Rothstein <srothstein@ceres.org>
Sent: Thursday, October 21, 2021 11:15 AM
To: Lee, Allison
Cc: Kelly, Katherine; Isabel Munilla
Subject: Thanks and could you possibly join us

Dear Commissioner Lee,

I am writing for two reasons. First thank you for your Remarks at the PRI/LSEG Investor Action on Climate Webinar Your thoughtful comments continue to show great thought leadership. We shared this on social media.

Second, we were talking internally about the upcoming meeting of the **Ceres Board of Directors** next week. Based on the dramatic wave of significant activities with the SEC and other financial regulators the Board asked for insights into this area of work. Isabel and I thought, if your very busy schedule allows, you would be amazing. Realizing this is short notice and your schedule is busy, would you be available to consider joining us virtually next week **October 28, 2021 between 3:00 - 3:45 pm**

If your busy schedule allows, we would value your joining the meeting of the Board of Directors and the senior leadership. You would not be asked to give formal remarks but to open with your off-the-record thoughts and be available for a few questions. if this might be possible, we can send a more detailed memo and work with Katherine

Recognizing your busy schedule, thanks for your consideration.

Steven

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Walker, Gloria H

From: Steven Rothstein <srothstein@ceres.org>
Sent: Tuesday, October 26, 2021 8:23 AM
To: Lee, Allison
Cc: Kelly, Katherine; Isabel Munilla; Anderson, Adrien
Subject: Re: Thanks and could you possibly join us

Dear Comm Lee,

Thanks so much for the kind offer. In the last few days, we were trying to see if the Ceres Board meeting that ends at 4:30 pm could be extended but, after talking with several board members, that does not work for their schedules.

We will follow up in the future, your insights would be truly valuable. Thanks so much and look forward to talking with you and Katherine soon. As always, we stand ready to be a resource as you and your fellow Commissioners review possible actions for the SEC to take.

Again, thanks so much.

Steven

On Thu, Oct 21, 2021 at 12:07 PM Lee, Allison (b)(6) [redacted] @sec.gov> wrote:

Hi Steven – Thank you for the invitation. I'd be pleased to speak with the Ceres Board, but cannot do so during that timeframe next Thursday because of a scheduling conflict. I'm open after 5 on that day, but unfortunately not earlier. Happy to join a future meeting if you think it would be useful. Best,

Allison

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Sent: Thursday, October 21, 2021 11:15 AM
To: Lee, Allison (b)(6) [redacted] @SEC.GOV>
Cc: Kelly, Katherine (b)(6) [redacted] @SEC.GOV>; Isabel Munilla <imunilla@ceres.org>
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--
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Walker, Gloria H

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Walker, Gloria H

From: The United States Law Week - Bloomberg Law <bloomberg@bna.com>
Sent: Tuesday, November 9, 2021 7:06 AM
To: Gensler, Gary
Subject: Biden dismays Puerto Ricans with SCOTUS benefits case

Listen

View Online | Print/Download All Articles

The United States Law Week

Tuesday, November 9, 2021

Inside: **Leading the News Supreme Court 3rd Cir. 8th Cir. 9th Cir. Business & Practice Also in the News Insights Companies & Law Firms**

Biden DOJ Disappoints Puerto Ricans in SCOTUS Benefit Case

The Justice Department will defend the government's decision not to extend Social Security benefits to Puerto Ricans Tuesday at the Supreme Court, a move that civil rights groups say goes against promises Joe Biden made during the 2020 presidential campaign.

'Equal Protection' Question: The justices will consider whether Congress violated the Constitution's equal protection guarantees when it extended Supplemental Security Income benefits for the elderly and disabled to people in the states, Washington, D.C., and the Northern Mariana Islands, but not Puerto Rico, whose residents are U.S. citizens. Lower federal courts rejected the government argument in *United States v.*

Vaello-Madero that Puerto Ricans don't pay federal income taxes and extending the benefit to them would cost taxpayers as much as $2 billion per year.

Biden Flip 'Dismaying': Biden opposed the government stance as a candidate. "He really created some expectations for how his administration would treat those who live in Puerto Rico differently" from the way they were treated under the Trump administration, "and it's very dismaying that he has continued the Trump administration's actions" in pursuing the case, said Laura Esquivel of the Hispanic Federation.

Read More

Leading the News

DOJ Moves to Merge Challenges to Biden's Vaccine-or-Test Rule

Document Attached

The multiple legal challenges to the Biden administration's rule requiring employers to mandate Covid-19 vaccination or regular testing will be considered by a single, randomly selected appeals court, the U.S. Department of Justice said Monday. **Read More**

Column: Outrage Defense Stretches Texas Abortion Law Into New Territory

Welcome to Opening Argument, a column where I'll dig into interesting arguments in complex litigation, unpack issues dividing appeals courts across the country, and discuss disputes that are ripe for Supreme Court review. First up: The role "tort of outrage" plays in the battle over the Texas abortion law.

Read More

Supreme Court

H&M Grilled by Justices Over Escape From Copyright Verdict (1)

Several U.S. Supreme Court justices appeared skeptical during oral argument Monday of the Ninth Circuit's interpretation of when a copyright registration should be invalidated for errors. Read More

Justices Seek to Avoid 'Drive-By' Ruling on National Security (1)

The U.S. Supreme Court seemed likely to rule narrowly in a case about government surveillance in order to avoid deciding what Justice Sonia Sotomayor called a "very knotty question" of when the U.S. can dismiss lawsuits over national security concerns. Read More

SCOTUS Expands Argument Time Over Northwestern Retirement Plan

Documents Attached

A U.S. Supreme Court case that could affect dozens of pending 401(k) plan lawsuits will get extra time for oral arguments, the justices said Monday, granting a request by the U.S. solicitor general's office in a case against Northwestern University. Read More

Justices Again Decline to Review Retroactive Patent Challenges

Documents Attached

The U.S. Supreme Court declined to review two issues raised frequently by patent owners who are unhappy their patents are invalidated in an administrative process. **Read More**

PDVSA Hacking Suit Dismissal Denied Supreme Court Scrutiny

Documents Attached

A litigation trust's effort to revive its lawsuit over an alleged hacking scheme that targeted Venezuelan state-owned oil company Petróleos de Venezuela SA won't go before the U.S. Supreme Court, the high court decided Monday. **Read More**

Mentor Breast Implant Preemption Challenge a SCOTUS Skip

Documents Attached

J&J unit Mentor Worldwide LLC held onto a win in breast implant litigation Monday, as two women who allege the company's product caused numerous health problems failed to convince the U.S. Supreme Court to review a Tenth Circuit decision saying federal law blocks their claims. **Read More**

Justices Pass on Watch Hill Teller's Challenge to Age Bias Test

Documents Attached

The U.S. Supreme Court on Monday declined a former Watch Hill Bank teller's call for clarification of what a worker must prove to establish age discrimination under federal law. **Read More**

High Court Rejects SEC Financial Crime Reports Authority Case

Documents Attached

Alpine Securities Corp. lost its bid for a chance to argue the SEC lacks authority to enforce the Bank Secrecy Act after the U.S. Supreme Court rejected its petition for review Monday. **Read More**

Supreme Court Ducks Second Look at Ruling on Liens in Bankruptcy

Documents Attached

The U.S. Supreme Court declined an opportunity to reexamine a 1992 ruling that bankrupt debtors cannot ditch a lien on an underwater property. **Read More**

3rd Cir.

Prior Conviction for 'Attempt' Can't Add to Drug Sentence

Documents Attached

A Delaware man was properly convicted on drug and firearms charges after police found more than three kilograms of marijuana in his storage unit, but he must be resentenced, the Third Circuit said Monday in an opinion curtailing its deference to the U.S. Sentencing Commission. **Read More**

8th Cir.

Kidney Transplant Allocation Policy Change Clears Legal Hurdle

Documents Attached

A recent change in how donated kidneys are allocated to kidney transplant patients withstood a legal test Monday, when the Eighth Circuit upheld a ruling allowing the policy to take effect while a legal challenge moves forward. **Read More**

9th Cir.

Meta's Suit Against NSO Group Over WhatsApp Spyware to Proceed (1)

Documents Attached

Israeli spyware maker NSO Group can't claim immunity from a lawsuit brought by Meta Platforms Inc.'s WhatsApp over malware that allegedly targeted users of the messaging service, the Ninth Circuit ruled. **Read More**

Twitter Appeals to Ninth Circuit in Child Sex Trafficking Case

[Documents Attached]

Twitter Inc. petitioned the Ninth Circuit in an attempt to overturn part of a district court's decision allowing two young men to proceed with a claim that the social media giant benefited from sex trafficking involving teenagers. **Read More**

Analysis: Corporate Reputation Is What Drives ESG Disclosures

Corporate ESG disclosures are getting a lot of attention right now. Between SEC priorities, COP26, and investor activism, this isn't a surprise. However, that corporate reputation is the primary driver for companies preparing these disclosures is notable.

Read More

Business & Practice

Steptoe & Johnson Names Renigar Law Firm's First Woman Chair (1)

Steptoe & Johnson has elected Washington litigation partner Gwendolyn Prothro Renigar as its executive committee chair, the first woman and youngest lawyer to hold the role. **Read More**

Wilson Sonsini Adds Five Ex-Munger Tolles Litigators in L.A.

Wilson Sonsini Goodrich & Rosati has hired five partners in its litigation department, bringing on board a group of former Munger, Tolles & Olson litigators in Los Angeles. **Read More**

Carbon Accounting Startup Persefoni Names New Legal Chief

Carbon accounting startup Persefoni AI has named former AECOM lawyer Peter Bartolino as its new general counsel. **Read More**

Also in the News

ANALYSIS: FTC Report Hints ISP Data Practices Could Be Reined In

A recent Federal Trade Commission report paints a troubling portrait of the data collection and monetization techniques of major internet service providers and their sprawling corporate networks. An analysis of the report suggests that the FTC might be willing and able to rein in some common practices that have been allowed to flourish. **Read More**

Insights

Perspectives from Legal Practitioners, Law Professors and Other Thought Leaders

Money Laundering Whistleblowers Can Maximize Their Bounties

By Ezra Bronstein of Mehri & Skalet PLLC

The SEC's whistleblower program allows for potentially more significant bounties than the Treasury program's flawed award structure, explains Ezra Bronstein, an attorney at

Mehri & Skalet and the former director of the Federal Housing Finance Agency Office of Inspector General's whistleblower operations. He examines how a recent SEC anti-money laundering enforcement action has implications for broker-dealer whistleblowers. Read More

Social Media Endorsements Can't Escape FTC's Watch

By Mary Kohler of Kohler Health Law P.C.

The FTC recently sent 700 retailers and advertisers a letter alerting them to potential problems with social media endorsements. Attorney Mary Kohler offers tips for companies to manage social media influencers and avoid facing civil penalties for deceptive advertising. Read More

Companies

Mentioned in this issue

AECOM

Alphabet Inc

Charter Communications Inc

Comcast Corp

Hennes & Mauritz AB

Hudson's Bay Co

Lukoil PJSC

Meta Platforms Inc

T-Mobile US Inc

Twitter Inc

Law Firms

Mentioned in this issue

Akin Gump

Barnes & Thornburg

Belin McCormick

Boies Schiller Flexner

Cooley LLP

Davis Polk & Wardwell

Dechert LLP

DLA Piper

Faegre Drinker Biddle & Reath

Jones Day

Kellogg Hansen Todd Figel & Frederick

King & Spalding

Latham & Watkins

Mehri & Skalet

Munger Tolles & Olson

O'Melveny & Myers

Orrick Herrington & Sutcliffe

Paul Hastings

Quarles & Brady

Quinn Emanuel

Schlichter Bogard & Denton

Stris & Maher

Ulmer & Berne

White & Case

Willkie Farr & Gallagher

Wilson Sonsini Goodrich & Rosati

Winston & Strawn

From:	Robert Eccles
To:	Curtis Ravenel
Cc:	Lee, Allison
Subject:	Carbon Reporting in the Private Markets
Date:	Monday, December 6, 2021 3:14:35 PM
Attachments:	image001.png image002.png image003.png image004.png image005.png image006.png

---

Dear Curtis,

I had a very interesting discussion this morning with SEC Commissioner Allison Herren Lee. I told her what I'd been learning in my research project on the PE industry. Not surprisingly, a big focus of our discussion was on carbon. An obvious issue is what the SEC can and should do regarding carbon disclosures by private companies. One big issue here is that even if all the PE-owned companies get serious about this, there's the big arbitrage of the bad actors not having to report anything.

I told Allison about various initiatives going on like the ESG Convergence project, initiative Climate International, Novata and some other commercial ESG platforms, and how Persefoni will make it easy for small companies to report on carbon. I told her about some GPs and LPs to talk to and I've made those introductions.

I also told her about you!! I told her you are much more knowledgeable than I am about regulatory and market-level initiatives like GFANZ and things like how banks can be a source of pressure on the bad guys.

I know you're slammed but if you could find some time to talk to her, I'd certainly appreciate it and I'm sure Allison will learn a lot from you.

Kind Regards,

Robert G. Eccles

Saïd Business School, University of Oxford

The Investor Revolution:

Shareholders Are Getting Serious About Sustainability

Email: Robert.Eccles@sbs.ox.ac.uk

Tel: +44 (0) 1865 278822

Mob: (b)(6)

Saïd Business School, Park End Street, Oxford OX1 1HP

www.sbs.oxford.edu

Walker, Gloria H

From:	Steven Rothstein <srothstein@ceres.org>
Sent:	Wednesday, December 29, 2021 2:46 PM
To:	Chair; Gensler, Gary
Cc:	Yerramalli, Prashant; Morse, Mika
Subject:	Thank you for climate leadership – Quick flag for 2022

Dear Chair Gensler,

I hope that you and your family are safe and well and you and your team and enjoying a well-deserved break.

I was writing with a quick note to thank you for your excellent work and leadership on climate this year. We are so grateful for all the efforts that you and your staff have made at a very challenging time. We thank them for making themselves available to talk to us, investors and a range of experts.

Your work on climate in 2022 will make it a historic year for our country. The climate disclosure rulemaking is our top institutional priorities for the coming year. We are making significant investments to prepare ourselves and our investor and company networks to ensure the comments you receive support your work to develop the strongest and most defensible rule possible.
As always, please consider Ceres a resource to support your crucial deliberations. Should you or your amazing staff find a need to talk to any of our staff, board members or investor network, please do not hesitate to let us know.

I also wanted to flag that we will be updating our financial regulator scorecard that we released last April. We'll come back early next year with more details. As with our scorecard last year, you will be given an opportunity to review and comment on our assessment of SEC progress. We hope it will serve as a tool to highlight the important progress the SEC and other U.S. financial regulators are making to regulate and address climate risk.

Again, many thanks for your crucial leadership on climate this year. We know it has been a big lift to juggle climate along with other critical regulatory risks that you and your team have tackled this year. We also know that the coming year brings many political and regulatory challenges. Please know that Ceres is with you.

All the best for a safe holiday, we look forward to working with you next year.

Sincerely,

Steven

Steven M. Rothstein
Managing Director, Ceres Accelerator for Sustainable Capital Markets
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Twitter: @stevenrothstein

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Ceres is proud to receive the above nonprofit ratings and seals, a reflection of our effectiveness, integrity and impact.
Please support Ceres!

Walker, Gloria H

From:	Kelly, Katherine
Sent:	Wednesday, September 29, 2021 2:44 PM
To:	Lee, Allison; #CommrLeeStaff
Subject:	RE: Climate: Topics for Thurs mtg w/Ceres & investors

(b)(5) [redacted]

From: Lee, Allison <(b)(6) [redacted]@SEC.GOV>
Sent: Wednesday, September 29, 2021 2:01 PM
To: Kelly, Katherine <(b)(6) [redacted]@SEC.GOV>; #CommrLeeStaff <(b)(6) [redacted]@SEC.GOV>
Subject: RE: Climate: Topics for Thurs mtg w/Ceres & investors

(b)(5) [redacted]

From: Kelly, Katherine <(b)(6) [redacted]@SEC.GOV>
Sent: Wednesday, September 29, 2021 1:08 PM
To: Lee, Allison <(b)(6) [redacted]@SEC.GOV>; #CommrLeeStaff <(b)(6) [redacted]@SEC.GOV>
Subject: FW: Climate: Topics for Thurs mtg w/Ceres & investors

(b)(5) [redacted]

From: Isabel Munilla <imunilla@ceres.org>
Sent: Wednesday, September 29, 2021 10:11 AM
To: Kelly, Katherine <(b)(6) [redacted]@SEC.GOV>
Cc: Jim Coburn <coburn@ceres.org>
Subject: Climate: Topics for Thurs mtg w/Ceres & investors

Hi Katherine - Looking forward to the discussion on Thursday. We'll ask these folks to be prepared to discuss the items below, but I wanted to check if there was something in particular you or Allison would like to cover. We would love to give them a heads up on what you most need covered, so please let us know.

Thanks! Hope you're well!
Isabel

Possible topics for discussion with Commissioner Lee:

- Scope 3 emissions sequencing options:
  - market cap

    - high emitting sectors
    - by % emissions - SBTi criteria (require scope 3 if emissions are 40% or more of total)
- Safe harbors
- Assurance
- Oil and gas reserves reporting

Isabel Munilla (she/her)
Director, US Financial Regulation
Ceres
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imunilla@ceres.org
www.ceres.org
Twitter: @isabelmunilla

Walker, Gloria H

From: Lee, Allison
Sent: Wednesday, September 29, 2021 2:01 PM
To: Kelly, Katherine; #CommrLeeStaff
Subject: RE: Climate: Topics for Thurs mtg w/Ceres & investors

(b)(5) [redacted]

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Sent: Wednesday, September 29, 2021 1:08 PM
To: Lee, Allison <(b)(6) [redacted]@SEC.GOV>; #CommrLeeStaff <(b)(6) [redacted]@SEC.GOV>
Subject: FW: Climate: Topics for Thurs mtg w/Ceres & investors

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Sent: Wednesday, September 29, 2021 10:11 AM
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Walker, Gloria H

From: Isabel Munilla <imunilla@ceres.org>
Sent: Wednesday, September 8, 2021 5:36 PM
To: SEC Public Affairs Office (news@sec.gov); Chair
Subject: FYI - Filming near the SEC on Friday

Dear SEC colleagues,

We hope this email finds you well. I was writing to advise that on Friday, our organization (Ceres) will be filming a promotional video on the important role that financial regulators play in addressing climate risk on the sidewalk near the SEC.

This should cause no disruption, and we are happy to share the video once released later in the month if you are interested. We simply wanted to give you a heads up.

Please don't hesitate to let me know if you have any questions or concerns.

Many thanks for the crucial work that you do protecting our country and investors.

All the best,

Isabel Munilla (she/her)
Director, US Financial Regulation
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www.ceres.org
Twitter: @isabelmunilla

Walker, Gloria H

From: Adele Morris <AMorris@brookings.edu>
Sent: Thursday, September 2, 2021 3:22 PM
To: Lee, Allison
Subject: RE: Fed report - Implications of Climate Change on Financial Stability

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Allison,

I hope things are going well for you at the SEC. I just wanted to let you know that I will be leaving Brookings soon for position in government. I am going to the Board of Governors at the Fed to chair their Financial Stability Climate Committee. I start on October 12.

I don't know what interactions I will have with the SEC in my new role, but I hope that our paths will cross!

Warm regards,
Adele

Adele C. Morris, Ph.D.
Joseph A. Pechman Senior Fellow, Economic Studies,
Policy Director, Climate and Energy Economics Project
Urban-Brookings Tax Policy Center
BROOKINGS 1775 Massachusetts Ave. NW, Washington, DC 20036
amorris@brookings.edu | Phone (202) 797-4376
Twitter @AdeleCMorris
https://www.brookings.edu/experts/adele-morris/

From: Lee, Allison <(b)(6) @SEC.GOV>
Sent: Tuesday, November 10, 2020 5:50 PM
To: Adele Morris <AMorris@brookings.edu>
Subject: RE: Fed report - Implications of Climate Change on Financial Stability

Yes, I was pleased to see that. Thanks for the note, Adele. Best,

Allison

From: Adele Morris <AMorris@brookings.edu>
Sent: Tuesday, November 10, 2020 5:21 PM
To: Lee, Allison (b)(6) @SEC.GOV>
Subject: FW: Fed report - Implications of Climate Change on Financial Stability

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Allison,

You probably already saw this but just in case not…

Hope you are well!

Best,
Adele

Adele C. Morris, Ph.D.
Joseph A. Pechman Senior Fellow, Economic Studies
The Brookings Institution
amorris@brookings.edu
@AdeleCMorris
https://www.brookings.edu/experts/adele-morris/

From: Mankikar, Divya <(b)(6) @calpers.ca.gov>
Sent: Tuesday, November 10, 2020 4:49 PM
To: Gillers, David <(b)(6) @CFTC.gov>; armin.sandhoevel@allianzgi.com; peter@alignedclimatecapital.com; nbullard@bloomberg.net; Naty.Figueroa@bp.com; herve.duteil@bnpparibas.com; Adele Morris <AMorris@brookings.edu>; Robert.Coviello@bunge.com; John Hartmann <John_Hartmann@cargill.com>; lubber@ceres.org; Eubank, Eliza <eliza.eubank@citi.com>; Winkler, Julie <Julie.Winkler@cmegroup.com>; Paul, Daniel R (Commercial - L48) <Daniel.R.Paul@conocophillips.com>; Eastwood, Athena <AEastwood@willkie.com>; Nathaniel Keohane <nkeohane@edf.org>; Keenan, Jesse M <jkeenan@tulane.edu>; Sara Menker <sara.menker@gro-intelligence.com>; Ramos, Rene A <rene.a.ramos@jpmorgan.com>; Colas, John <john.colas@oliverwyman.com>; clark.anderson@morganstanley.com; johannes.stroebel@nyu.edu; Simkins, Betty <betty.simkins@okstate.edu>; tsemans@os-climate.org; Dukes, Jeffrey S <jsdukes@purdue.edu>; martina.cheung@spglobal.com; Moch, Stephen <smoch@mba2021.hbs.edu>; david.parham@sasb.org; Dave.Jones@tnc.org; Monley,Adrienne <adrienne_monley@vanguard.com>; Ben Caldecott <ben.caldecott@smithschool.ox.ac.uk>; David Vogel <dvogel@voloridge.com>; Goolgasian, Chris J. <CJGoolgasian@wellington.com>; Leonardo Martinez-Diaz <Leonardo.Martinez@wri.org>; Zakir, Nadia <Nadia.Zakir@pimco.com>; Burke, Kyndra <(b)(6) @CFTC.gov>; (b)(6) @googlemail.com; Herve DUTEIL <herve.duteil@us.bnpparibas.com>; Admin <admin@os-climate.org>
Cc: Bob Litterman <(b)(6) @gmail.com>
Subject: Fed report - Implications of Climate Change on Financial Stability

Hello all,
I'm writing to share the Federal Reserve's Financial Stability report, which for the first time has a section on climate risk: https://www.federalreserve.gov/publications/files/financial-stability-report-20201109.pdf

"... Within the financial system, increased transparency through improved measurement and disclosure could improve the pricing of climate risks, such as an increase in the frequency and severity of extreme weather events, thereby reducing the probability of sudden changes in asset prices. Continued research into the interconnections between the climate, the economy, and the financial sector could strengthen knowledge of transmission, clarify linkages and exposures, and facilitate more efficient pricing of risk. Outside the financial system, efforts to mitigate or adapt to the physical effects of climate change through technological advances and policy changes could also reduce climate risks in the long run...."

Best,
Divya

Divya Mankikar

Investment Manager | Sustainable Investment & Climate Strategy

CalPERS Investment Office

Lincoln Plaza East, Sacramento, CA 95811

Walker, Gloria H

From: Gensler, Gary
Sent: Tuesday, November 29, 2022 10:18 AM
To: Morse, Mika
Cc: Schneider, Scott; Chea, Keo
Subject: FW: Invitation to the Ceres 2022 Climate Risk Scorecard Webinar

FYI

From: Steven Rothstein <srothstein@ceres.org>
Sent: Tuesday, November 29, 2022 8:45 AM
To: Gensler, Gary (b)(6) @SEC.GOV>
Subject: Invitation to the Ceres 2022 Climate Risk Scorecard Webinar

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Gary,

On behalf of the Ceres Accelerator, I would like to invite you to join a discussion about the 2022 Ceres Climate Risk Scorecard on **Tuesday, December 6**. The Scorecard benchmarks U.S. federal financial regulator progress on climate-related financial risk, and demonstrates the rapidly changing risk management landscape, highlighting regulatory actions in the United States.

This webinar will review and highlight regulatory actions addressing climate-related financial risk, explore progress made in the six months since the 2022 Scorecard's publication, and discuss important next steps. The Ceres Accelerator will be joined by the **Office of the Comptroller of the Currency's Dr. Yue (Nina) Chen and the Federal Housing Finance Agency's Daniel Coates** to discuss the actions their agencies have taken to manage climate risk.

We hope you can join us for this event.

[Register Here](#)

Webinar: 2022 Climate Risk Scorecard: Assessing U.S. Financial Regulator Action

Time: **Tuesday, December 6, 2022, at 1 p.m. EST**

Sincerely,

Steven M. Rothstein

Managing Director, Ceres Accelerator for Sustainable Capital Markets
Ceres
99 Chauncy St. 6th Floor
Boston, MA 02111
617-247-0700 ext. 237
(b)(6) [redacted] cell
srothstein@ceres.org
Twitter: @stevenrothstein

If you wish to be removed from future communication, please email here.

Walker, Gloria H

From: (b)(6)
Sent: Wednesday, September 14, 2022 5:37 PM
To: Jones, Renee; Gerding, Erik; Bloom, Luna; Wachter, Jessica; Berkovitz, Dan; Barbero, Megan; Morris, Daniel (Bryant); Slavkin Corzo, Heather; Fischer, Amanda; Yerramalli, Prashant; Burris, Kevin
Cc: Morse, Mika
Subject: FW: deck
Attachments: SEC Comment Analysis 2022 Chair Gensler (2).pptx

FYI

From: Morse, Mika <(b)(6) @SEC.GOV>
Sent: Wednesday, September 14, 2022 3:32 PM
To: (b)(6) @SEC.GOV>
Cc: Slavkin Corzo, Heather <(b)(6) @SEC.GOV>
Subject: FW: deck

Gary, attached is the slide deck that Steven mentioned during the Ceres call with their analysis of 500 letters in the comment file. (b)(5)

(b)(5)

Mika

From: Steven Rothstein <srothstein@ceres.org>
Sent: Wednesday, September 14, 2022 2:31 PM
To: Morse, Mika <(b)(6) @SEC.GOV>
Subject: deck

Steven

Steven M. Rothstein
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(b)(6) cell

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Twitter: @stevenrothstein

The Accelerator Team is hiring! Click here to see our open positions

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Join us with climate finance experts on Sep 28 to establish a common focus on climate transition plans. Register today.

EVENING WITH
Ceres

Join us in Boston on Oct 17 to raise our ambitions—and our glasses—as we toast climate leadership. Reserve your seat today!

Walker, Gloria H

From: Lee, Allison
Sent: Thursday, July 14, 2022 5:26 PM
To: Kelly, Katherine
Subject: RE: Ceres Accelerator Team is Growing

(b)(5)
(b)(5) Separately, wishing the very best for you at the PCAOB and hope you will give serious thought to coming out here for a visit.

From: Kelly, Katherine <(b)(6) @SEC.GOV>
Sent: Thursday, July 14, 2022 12:47 PM
To: Lee, Allison <(b)(6) @SEC.GOV>
Subject: FW: Ceres Accelerator Team is Growing

(b)(5)

From: Kelly, Katherine
Sent: Monday, June 13, 2022 8:42 AM
To: Lee, Allison <(b)(6) @SEC.GOV>; #CommrLeeStaff <(b)(6) @SEC.GOV>
Subject: FW: Ceres Accelerator Team is Growing

FYI, (b)(5) I believe the second of these positions is Isabel's – she's headed to the Department of Energy.

From: Steven Rothstein <srothstein@ceres.org>
Sent: Saturday, June 11, 2022 6:36 PM
To: Kelly, Katherine <(b)(6) @SEC.GOV>
Cc: Sherry Ettleson <(b)(6) @gmail.com>
Subject: Ceres Accelerator Team is Growing

Dear Katherine,

I hope you are well. I think Isabel may have talked with you but I want to reach you personally.

It is a special pleasure to share three job descriptions with you for senior roles at the Ceres Accelerator's work with federal and state financial regulators and related activities. The three roles are:

- **Program Director, Net Zero Finance**
- **Director, U.S. Financial Regular, Disclosure & Securities**
- **Director, U.S. Financial Regulator, Banking and Housing Finance**

These positions will allow the Ceres Accelerator to expand the depth of our work in this vital work. You are a leader in this work. We would truly value any recommendations for potential candidates for any or all of these positions. We would welcome an opportunity to receive ideas of specific people and other ideas. Please share this with others you feel could be appropriate. We are especially interested in candidates that will further diversify our team.

These positions are also listed on our website https://www.ceres.org/careers/opportunities

Job Openings

www.ceres.org

Katherine, I have copied our consultant, Sherry Ettleson. Please feel free to reach out to her or me.

Your thoughts and recommendations would be valued.

Steven

Steven M. Rothstein
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Walker, Gloria H

From: Lee, Allison
Sent: Tuesday, June 21, 2022 2:45 PM
To: Isabel Munilla
Subject: RE: Moving on - Ceres and other contacts

That's wonderful news!

From: Isabel Munilla <imunilla@ceres.org>
Sent: Tuesday, June 21, 2022 1:24 PM
To: Lee, Allison (b)(6) [redacted]@SEC.GOV>
Subject: Re: Moving on - Ceres and other contacts

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Thanks Allison! I couldn't say in a larger group, but I'm headed for a DAS position in the international office of DOE. I'm very excited and will definitely keep in touch.

Take care and thanks again.
Isabel

From: Lee, Allison (b)(6) [redacted]@SEC.GOV>
Sent: Tuesday, June 21, 2022 12:12 PM
To: Isabel Munilla <imunilla@ceres.org>
Subject: RE: Moving on - Ceres and other contacts

Also, thanks for providing your personal contact info. Here is mine: (b)(6) [redacted] cell (b)(6) [redacted]

From: Isabel Munilla <imunilla@ceres.org>
Sent: Tuesday, June 21, 2022 11:49 AM
To: Lee, Allison (b)(6) [redacted]@SEC.GOV>; Kelly, Katherine (b)(6) [redacted]@SEC.GOV>
Cc: Jim Coburn <coburn@ceres.org>; Steven Rothstein <srothstein@ceres.org>; Tom Riesenberg <triesenberg@g.ceres.org>; Vladimir Proaño <vproano@ceres.org>
Subject: Moving on - Ceres and other contacts

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Dear Commissioner Lee and Katherine,

I'm moving on from Ceres to a role in the federal government working on climate and clean energy. Today is my last day. I'll follow up with my new work details, but I included my personal contacts below.

I wanted to write and tell you what an honor and a pleasure it has been to work with you on climate disclosure and of course, the resource extraction rule. You have both made such an incredible contribution and I count myself lucky to have been able to play a small part in some of the critical work you have done at the Commission. Our markets and our world are better for it.

As always, please count on Ceres to support the critical work of the SEC (and PCAOB!) to address climate financial risk and protect investors.

Please feel free at any time to reach out directly to Jim Coburn (coburn@ceres.org, (b)(6), Tom Riesenberg (triesenberg@ceres.org, (b)(6) or Steven Rothstein (srothstein@ceres.org, (b)(6). You can text to all of these numbers. You can also reach out to Vladimir Proaño (vproano@ceres.org) to find any of these folks or general inquiries, and to Reggie Zimmerman (rzimmerman@ceres.org, 617-247-0700 x136) for any communications issues.

Finally, for cost analysis support and any questions related to the ERM cost study, please do not hesitate to reach out directly to the ERM team: Mark Lee (Director, ERM SustainAbility Institute, mark.lee@erm.com, (b)(6) Emily Brock PhD (Manager Corp Sustainability, emily.brock@erm.com, (b)(6) Doug McNair PhD (Technical Director, Economics, doug.mcnair@erm.com). They are planning to continue work on this, and are a great resource on cost analysis and cost claim questions.

Again, thanks for all of your incredible work. Looking forward to staying in touch!

Warmly,
Isabel

PS: You can always reach me at (b)(6) and (b)(6)

Walker, Gloria H

From: Lee, Allison
Sent: Tuesday, June 21, 2022 12:13 PM
To: Isabel Munilla
Subject: RE: Moving on - Ceres and other contacts

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From: Isabel Munilla <imunilla@ceres.org>
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Cc: Jim Coburn <coburn@ceres.org>; Steven Rothstein <srothstein@ceres.org>; Tom Riesenberg <triesenberg@g.ceres.org>; Vladimir Proaño <vproano@ceres.org>
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Again, thanks for all of your incredible work. Looking forward to staying in touch!

Warmly,
Isabel

PS: You can always reach me at (b)(6) [redacted] and (b)(6) [redacted]

Walker, Gloria H

From: Lee, Allison
Sent: Tuesday, June 21, 2022 12:04 PM
To: Isabel Munilla; Kelly, Katherine
Cc: Jim Coburn; Steven Rothstein; Tom Riesenberg; Vladimir Proaño
Subject: RE: Moving on - Ceres and other contacts

Thank you, Isabel. I know that Ceres will miss you and your remarkable talent and dedication, but I'm thrilled to hear that you are stepping into a government role! Wishing you the very best and looking forward to staying in touch. Warm regards,

Allison

From: Isabel Munilla <imunilla@ceres.org>
Sent: Tuesday, June 21, 2022 11:49 AM
To: Lee, Allison <(b)(6) @SEC.GOV>; Kelly, Katherine (b)(6) @SEC.GOV>
Cc: Jim Coburn <coburn@ceres.org>; Steven Rothstein <srothstein@ceres.org>; Tom Riesenberg <triesenberg@g.ceres.org>; Vladimir Proaño <vproano@ceres.org>
Subject: Moving on - Ceres and other contacts

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Again, thanks for all of your incredible work. Looking forward to staying in touch!

Warmly,
Isabel

PS: You can always reach me at (b)(6) and (b)(6)

Walker, Gloria H

From:	Lee, Allison
Sent:	Monday, June 13, 2022 12:53 PM
To:	Varghese, Thankam
Subject:	Fwd: Ceres Accelerator Team is Growing
Attachments:	Outlook-qyveylpv.jpg; Program Director_Net Zero Finance_06.2022.docx; Director, U.S. Fin Reg, Banking and Housing Finance_06.2022.docx; Director, U.S. Fin Reg, Disclosure and Securities_06.2022.docx

Sent from my iPhone

Begin forwarded message:

From: "Kelly, Katherine" <(b)(6) [redacted]@sec.gov>
Date: June 13, 2022 at 8:42:00 AM EDT
To: "Lee, Allison" <(b)(6) [redacted]@sec.gov>, #CommrLeeStaff <(b)(6) [redacted]@sec.gov>
Subject: FW: Ceres Accelerator Team is Growing

FYI, (b)(5) [redacted] I believe the second of these positions is Isabel's – she's headed to the Department of Energy.

From: Steven Rothstein <srothstein@ceres.org>
Sent: Saturday, June 11, 2022 6:36 PM
To: Kelly, Katherine <(b)(6) [redacted]@SEC.GOV>
Cc: Sherry Ettleson <(b)(6) [redacted]@gmail.com>
Subject: Ceres Accelerator Team is Growing

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Katherine,
I hope you are well. I think Isabel may have talked with you but I want to reach you personally. It is a special pleasure to share three job descriptions with you for senior roles at the Ceres Accelerator's work with federal and state financial regulators and related activities. The three roles are:

- **Program Director, Net Zero Finance**
- **Director, U.S. Financial Regular, Disclosure & Securities**
- **Director, U.S. Financial Regulator, Banking and Housing Finance**

These positions will allow the Ceres Accelerator to expand the depth of our work in this vital work. You are a leader in this work. We would truly value any recommendations for potential candidates for any or all of these positions. We would welcome an opportunity to receive ideas of specific people and other ideas. Please share this with others you feel could be appropriate. We are especially interested in candidates that will further diversify our team.
These positions are also listed on our website https://www.ceres.org/careers/opportunities

[Job Openings](#)

http://www.ceres.org

Katherine, I have copied our consultant, Sherry Ettleson. Please feel free to reach out to her or me.

Your thoughts and recommendations would be valued.

Steven

Steven M. Rothstein
Managing Director, Ceres Accelerator for Sustainable Capital Markets
Ceres
99 Chauncy St. 6th Floor
Boston, MA 02111
617-247-0700 ext. 237
(b)(6) [redacted] cell
srothstein@ceres.org
http://www.ceres.org
Twitter: @stevenrothstein

The Accelerator Team is hiring! Click here to see our open positions
Follow us on Facebook, LinkedIn and Twitter, and YouTube!

Ceres is proud to receive the above nonprofit ratings and seals, a reflection of our effectiveness, integrity and impact. Please support Ceres!

From: Lee, Allison
To: Anderson, Adrien
Cc: Kelly, Katherine
Subject: RE: Ceres call with Cmmr Lee
Date: Thursday, March 24, 2022 8:41:44 AM

I am traveling tomorrow. Let's shoot for early next week.

From: Anderson, Adrien <(b)(6) [redacted]@SEC.GOV>
Sent: Thursday, March 24, 2022 8:22 AM
To: Lee, Allison <(b)(6) [redacted]@SEC.GOV>
Cc: Kelly, Katherine <(b)(6) [redacted]@SEC.GOV>
Subject: FW: Ceres call with Cmmr Lee

Allison – Ceres cannot meet this morning. Will you be traveling tomorrow? If not, can I schedule Ceres for tomorrow?

From: Isabel Munilla <imunilla@ceres.org>
Sent: Thursday, March 24, 2022 8:16 AM
To: Anderson, Adrien <(b)(6) [redacted]@SEC.GOV>
Subject: Re: Ceres call with Cmmr Lee

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Adrien, unfortunately those times don't work. Does she have times on Friday or Monday?
Thanks!
Isabel

From: Anderson, Adrien <(b)(6) [redacted]@SEC.GOV>
Sent: Wednesday, March 23, 2022 4:58:00 PM
To: Isabel Munilla <imunilla@ceres.org>
Subject: RE: Ceres call with Cmmr Lee

Hi Isabel,

Since I emailed you a Commission meeting was rescheduled so that time is no longer available. Can you do 10:00am or 11:00am tomorrow?

Thanks,
Adrien

From: Anderson, Adrien
Sent: Wednesday, March 23, 2022 2:57 PM
To: 'Isabel Munilla' <imunilla@ceres.org>
Subject: RE: Ceres call with Cmmr Lee

Perfect. Will you please send me a list of your attendees names and titles as well as a list of discussion points. Once I have this, I can send you a WebEx.

Thanks,
Adrien

From: Isabel Munilla <imunilla@ceres.org>
Sent: Wednesday, March 23, 2022 2:12 PM
To: Anderson, Adrien <(b)(6) [redacted]@SEC.GOV>
Subject: Re: Ceres call with Cmmr Lee

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Adrien - we can do 230pm. Thanks!

Isabel

From: Anderson, Adrien <(b)(6)@SEC.GOV>
Sent: Wednesday, March 23, 2022 1:58 PM
To: Isabel Munilla <imunilla@ceres.org>
Subject: RE: Ceres call with Cmmr Lee

Hi Isabel,

Can you do tomorrow at 2:30pm or 3:00pm ET?

Thanks,

Adrien

From: Kelly, Katherine <(b)(6)@SEC.GOV>
Sent: Wednesday, March 23, 2022 1:50 PM
To: Isabel Munilla <imunilla@ceres.org>
Cc: Anderson, Adrien <(b)(6)@SEC.GOV>
Subject: Ceres call with Cmmr Lee

Hi, Isabel. Per my call, I'm copying Adrien to try and get some time for you all to check in with Allison in the next couple days if possible. Looking forward to talking soon.

Best,

Katherine

Katherine Kelly
Office of Commissioner Allison Herren Lee
(b)(6)@sec.gov

From:	Lee, Allison
To:	Kelly, Katherine
Subject:	HOLD - Ceres Investor Policy Working Group Meeting

From: Kelly, Katherine <(b)(6) @SEC.GOV <mailto(b)(6) @SEC.GOV> >
Sent: Monday, April 4, 2022 3:01 PM
To: Isabel Munilla <imunilla@ceres.org <mailto:imunilla@ceres.org> >; Anderson, Adrien <(b)(6) @SEC.GOV <mailto(b)(6) @SEC.GOV> >
Cc: Vladimir Proaño <vproano@ceres.org <mailto:vproano@ceres.org> >; Jim Coburn <coburn@ceres.org <mailto:coburn@ceres.org> >
Subject: RE: Invitation to Apr 19 Ceres Investor Policy Working Group Meeting

Hi, Isabel. Commissioner Lee would be pleased to join you. Maybe we can circle back a little closer to the date to touch on logistics (duration, expected attendees, questions, etc.). Thanks very much.

From: Isabel Munilla <imunilla@ceres.org <mailto:imunilla@ceres.org> >
Sent: Monday, April 4, 2022 9:33 AM
To: Anderson, Adrien <(b)(6) @SEC.GOV <mailto:(b)(6) @SEC.GOV> >
Cc: Kelly, Katherine <(b)(6) @SEC.GOV <mailto(b)(6) @SEC.GOV> >; Vladimir Proaño <vproano@ceres.org <mailto:vproano@ceres.org> >; Jim Coburn <coburn@ceres.org <mailto:coburn@ceres.org> >
Subject: Invitation to Apr 19 Ceres Investor Policy Working Group Meeting

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Adrien,

We would very much appreciate it if Commissioner Lee would consider joining us for a meeting of Ceres' Investor Network's Policy Working Group on April 19 at 1pm.

This is a regular, private meeting we have with our Investor Network to discuss a range of federal policy issues. We will focus this meeting on the SEC's climate rule, and it would be fantastic to have Commissioner Lee provide her views on important areas for investor comment, and answer questions about the proposal.

Please let us know if she might be interested and available to join us.

Many thanks!

Isabel

Isabel Munilla (she/her)

Director, US Financial Regulation

Ceres <https://protect2.fireeye.com/v1/url?k=31323334-50bba2bf-3132d782-4544474f5631-70bf7ccc8f2a6310&q=1&e=14a34812-a196-41b8-82ff-fef370bda753&u=http%3A%2F%2Fwww.ceres.org%2F>

617.247.0700 ext. 206

imunilla@ceres.org <mailto:imunilla@ceres.org>

www.ceres.org <https://protect2.fireeye.com/v1/url?k=31323334-50bba2bf-3132d782-4544474f5631-70bf7ccc8f2a6310&q=1&e=14a34812-a196-41b8-82ff-fef370bda753&u=http%3A%2F%2Fwww.ceres.org%2F>

Twitter: @isabelmunilla

From: Lee, Allison
To: Kelly, Katherine
Subject: HOLD - Ceres Investor Policy Working Group Meeting

Prep call –

(b)(5)

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From: Kelly, Katherine (b)(6) @SEC.GOV <mailto:(b)(6) @SEC.GOV> >
Sent: Monday, April 4, 2022 3:01 PM
To: Isabel Munilla <imunilla@ceres.org <mailto:imunilla@ceres.org> >; Anderson, Adrien (b)(6) @SEC.GOV <mailto:(b)(6) @SEC.GOV> >
Cc: Vladimir Proaño <vproano@ceres.org <mailto:vproano@ceres.org> >; Jim Coburn <coburn@ceres.org <mailto:coburn@ceres.org> >
Subject: RE: Invitation to Apr 19 Ceres Investor Policy Working Group Meeting

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Sent: Monday, April 4, 2022 9:33 AM
To: Anderson, Adrien <(b)(6) @SEC.GOV <mailto:(b)(6) @SEC.GOV> >
Cc: Kelly, Katherine (b)(6) @SEC.GOV <mailto(b)(6) @SEC.GOV> >; Vladimir Proaño <vproano@ceres.org <mailto:vproano@ceres.org> >; Jim Coburn <coburn@ceres.org <mailto:coburn@ceres.org> >
Subject: Invitation to Apr 19 Ceres Investor Policy Working Group Meeting

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Please let us know if she might be interested and available to join us.

Many thanks!

Isabel

Isabel Munilla (she/her)

Director, US Financial Regulation

Ceres <https://protect2.fireeye.com/v1/url?k=31323334-50bba2bf-3132d782-4544474f5631-70bf7ccc8f2a6310&q=1&e=14a34812-a196-41b8-82ff-fef370bda753&u=http%3A%2F%2Fwww.ceres.org%2F>

617.247.0700 ext. 206

imunilla@ceres.org <mailto:imunilla@ceres.org>

www.ceres.org <https://protect2.fireeye.com/v1/url?k=31323334-50bba2bf-3132d782-4544474f5631-70bf7ccc8f2a6310&q=1&e=14a34812-a196-41b8-82ff-fef370bda753&u=http%3A%2F%2Fwww.ceres.org%2F>

Twitter: @isabelmunilla

From:	Lee, Allison
To:	Kelly, Katherine
Subject:	Ceres Investor Policy Working Group Meeting
Attachments:	Ceres Investor Network Questions.docx Apr 20 Ceres PAI WG - Agenda - SEC.docx 2022 PAI WG participant list.xlsx

Dear PAI WG Colleagues,

Please see the agenda and slides for the meeting today at 1pm PST/4pm EST below. We look forward to your participation.

Agenda:

* Welcome and review agenda
* Private dialogue with SEC Commissioner Allison Herren Lee on SEC proposed rule on climate disclosure
* Investor discussions in breakout sessions
* Wrap up

Slides for today's meeting found here

Non Responsive Record

Join Zoom Meeting

Non Responsive Record

Prep call -

(b)(5)

-

From: Kelly, Katherine <(b)(6) @SEC.GOV <mailto:(b)(6) @SEC.GOV> >
Sent: Monday, April 4, 2022 3:01 PM
To: Isabel Munilla <imunilla@ceres.org <mailto:imunilla@ceres.org> >; Anderson, Adrien <(b)(6) @SEC.GOV <mailto(b)(6) @SEC.GOV> >
Cc: Vladimir Proano <vproano@ceres.org <mailto:vproano@ceres.org> >; Jim Coburn <coburn@ceres.org <mailto:coburn@ceres.org> >
Subject: RE: Invitation to Apr 19 Ceres Investor Policy Working Group Meeting

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From: Isabel Munilla <imunilla@ceres.org <mailto:imunilla@ceres.org> >
Sent: Monday, April 4, 2022 9:33 AM
To: Anderson, Adrien <(b)(6) @SEC.GOV <mailto(b)(6) @SEC.GOV> >
Cc: Kelly, Katherine <(b)(6) @SEC.GOV <mailto(b)(6) @SEC.GOV> >; Vladimir Proaño <vproano@ceres.org <mailto:vproano@ceres.org> >; Jim Coburn <coburn@ceres.org <mailto:coburn@ceres.org> >
Subject: Invitation to Apr 19 Ceres Investor Policy Working Group Meeting

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Please let us know if she might be interested and available to join us.

Many thanks!

Isabel

Isabel Munilla (she/her)

Director, US Financial Regulation

Ceres <https://protect2.fireeye.com/v1/url?k=31323334-50bba2bf-3132d782-4544474f5631-70bf7ccc8f2a6310&q=1&e=14a34812-a196-41b8-82ff-fef370bda753&u=http%3A%2F%2Fwww.ceres.org%2F>

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www.ceres.org <https://protect2.fireeye.com/v1/url?k=31323334-50bba2bf-3132d782-4544474f5631-70bf7ccc8f2a6310&q=1&e=14a34812-a196-41b8-82ff-fef370bda753&u=http%3A%2F%2Fwww.ceres.org%2F>

Twitter: @isabelmunilla

From: Lee, Allison
To: Kirsten Spalding
Cc: Kaede Kawauchi
Subject: RE: Your presentation to Ceres" Paris-Aligned Investment Working Group
Date: Friday, April 22, 2022 3:19:22 PM

Thank you for having me, Kirsten. And please reach out anytime I may be of assistance. Best,
Allison

From: Kirsten Spalding <spalding@ceres.org>
Sent: Thursday, April 21, 2022 4:10 PM
To: Lee, Allison (b)(6) @SEC.GOV>
Cc: Kaede Kawauchi <kkawauchi@ceres.org>
Subject: Your presentation to Ceres' Paris-Aligned Investment Working Group

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Commissioner Lee,

Thank you for joining us for the Ceres Paris Aligned Investment Working Group call yesterday to share your thoughtful views on important areas for investor comment and answer questions about the proposal. Your comments helped spur robust conversations in the breakout rooms and we will be following up with many of these investors to support them in their letter writing. Thank you for your leadership in driving this forward - we are delighted to have this opportunity to work with you to engage as many investors as we can to participate in the rulemaking of this landmark proposal.

Sincerely,

Kirsten Spalding

The Rev. Kirsten Snow Spalding
Senior Program Director, Ceres Investor Network
(b)(6)
spalding@ceres.org

From: Lee, Allison
To: Kelly, Katherine; #CommrLeeStaff
Subject: RE: Climate: Topics for Thurs mtg w/Ceres & investors
Date: Wednesday, September 29, 2021 2:01:01 PM

(b)(5) [redacted]

From: Kelly, Katherine <(b)(6) [redacted]@SEC.GOV>
Sent: Wednesday, September 29, 2021 1:08 PM
To: Lee, Allison <(b)(6) [redacted]@SEC.GOV>; #CommrLeeStaff <(b)(6) [redacted]@SEC.GOV>
Subject: FW: Climate: Topics for Thurs mtg w/Ceres & investors

(b)(5) [redacted]

From: Isabel Munilla <imunilla@ceres.org>
Sent: Wednesday, September 29, 2021 10:11 AM
To: Kelly, Katherine <(b)(6) [redacted]@SEC.GOV>
Cc: Jim Coburn <coburn@ceres.org>
Subject: Climate: Topics for Thurs mtg w/Ceres & investors

Hi Katherine - Looking forward to the discussion on Thursday. We'll ask these folks to be prepared to discuss the items below, but I wanted to check if there was something in particular you or Allison would like to cover. We would love to give them a heads up on what you most need covered, so please let us know.
Thanks! Hope you're well!
Isabel

Possible topics for discussion with Commissioner Lee:

- Scope 3 emissions sequencing options:
    - market cap
    - high emitting sectors
    - by % emissions - SBTi criteria (require scope 3 if emissions are 40% or more of total)
- Safe harbors
- Assurance
- Oil and gas reserves reporting

Isabel Munilla (she/her)
Director, US Financial Regulation
Ceres
617.247.0700 ext. 206
imunilla@ceres.org
www.ceres.org
Twitter: @isabelmunilla

From: (b)(6)
To: Chea, Keo
Cc: Slavkin Corzo, Heather; Morse, Mika
Subject: RE: Chair Gensler Climate Listening Session
Date: Tuesday, October 12, 2021 12:00:00 PM

Thanks. Helpful meeting

From: Chea, Keo <(b)(6) @SEC.GOV>
Sent: Tuesday, October 12, 2021 11:20 AM
To: (b)(6) @SEC.GOV>
Cc: Slavkin Corzo, Heather <(b)(6) @SEC.GOV>; Morse, Mika <(b)(6) @SEC.GOV>
Subject: FW: Chair Gensler Climate Listening Session

This is the deck that Steven is referring to, currently on slide 9.

From: Steven Rothstein <srothstein@ceres.org>
Sent: Tuesday, October 12, 2021 8:00 AM
To: Chea, Keo <(b)(6) @SEC.GOV>
Cc: Morse, Mika <(b)(6) @SEC.GOV>
Subject: Chair Gensler Climate Listening Session

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Keo and Mika,

We are looking forward to the listening session this morning at 10:45 am.

This is a presentation I would like to share. I would only cover a portion of the slides. Are you able to present the slides during the meeting and then share with SEC staff and others?

Thank you for your consideration, it is appreciated.

Steven
Steven M. Rothstein
Managing Director, Ceres Accelerator for Sustainable Capital Markets
Ceres
99 Chauncy St. 6th Floor
Boston, MA 02111
617-247-0700 ext. 237
(b)(6) cell
srothstein@ceres.org
www.ceres.org
Twitter: @stevenrothstein
Follow us on Facebook, LinkedIn and Twitter!

From: Lee, Allison
To: Steven Rothstein
Cc: Kelly, Katherine; Isabel Munilla; Anderson, Adrien
Subject: RE: Thanks and could you possibly join us
Date: Thursday, October 21, 2021 12:07:22 PM

Hi Steven – Thank you for the invitation. I'd be pleased to speak with the Ceres Board, but cannot do so during that timeframe next Thursday because of a scheduling conflict. I'm open after 5 on that day, but unfortunately not earlier. Happy to join a future meeting if you think it would be useful.

Best,

Allison

From: Steven Rothstein <srothstein@ceres.org>
Sent: Thursday, October 21, 2021 11:15 AM
To: Lee, Allison (b)(6) [redacted] @SEC.GOV>
Cc: Kelly, Katherine (b)(6) [redacted] @SEC.GOV>; Isabel Munilla <imunilla@ceres.org>
Subject: Thanks and could you possibly join us

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Commissioner Lee,

I am writing for two reasons. First thank you for your Remarks at the PRI/LSEG Investor Action on Climate Webinar Your thoughtful comments continue to show great thought leadership. We shared this on social media.

Second, we were talking internally about the upcoming meeting of the **Ceres Board of Directors** next week. Based on the dramatic wave of significant activities with the SEC and other financial regulators the Board asked for insights into this area of work. Isabel and I thought, if your very busy schedule allows, you would be amazing. Realizing this is short notice and your schedule is busy, would you be available to consider joining us virtually next week **October 28, 2021 between 3:00 - 3:45 pm**

If your busy schedule allows, we would value your joining the meeting of the Board of Directors and the senior leadership. You would not be asked to give formal remarks but to open with your off-the-record thoughts and be available for a few questions. if this might be possible, we can send a more detailed memo and work with Katherine

Recognizing your busy schedule, thanks for your consideration.

Steven

Steven M. Rothstein
Managing Director, Ceres Accelerator for Sustainable Capital Markets
Ceres
99 Chauncy St. 6th Floor
Boston, MA 02111
617-247-0700 ext. 237
(b)(6) [redacted] cell
srothstein@ceres.org
www.ceres.org
Twitter: @stevenrothstein
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Ceres is proud to receive the above nonprofit ratings and seals, a reflection of our effectiveness, integrity and impact. Please support Ceres!

From: Lee, Allison
To: Mindy Lubber
Cc: Kelly, Katherine; Steven Rothstein; Isabel Munilla
Subject: RE: Congratulations and thank you
Date: Friday, March 11, 2022 10:36:08 AM

Thanks, Mindy. And you are right about the team effort – especially Katherine who has been an amazing and relentless champion of this work.

From: Mindy Lubber <lubber@ceres.org>
Sent: Friday, March 11, 2022 7:40 AM
To: Lee, Allison (b)(6) @SEC.GOV>
Cc: Kelly, Katherine (b)(6) @SEC.GOV>; Steven Rothstein <srothstein@ceres.org>; Isabel Munilla <imunilla@ceres.org>
Subject: Congratulations and thank you

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Commissioner Lee,

I wanted to send a note of congratulations for the progress on the climate rule. The vote will be a historic moment. We know this was the result of an incredible team effort at the commission. We are very excited to read it and provide our comments. We will take nothing for granted.

As always, please let us know if there's anything we can do to support you or your team.

Again, many thanks for your continued leadership.

Sincerely,

Mindy