

Upcoming Event: Fireside Chat and Audience Q&A with SEC Commissioner Mark T. Uyeda Followed by Networking
June 18, 2024, 4:30 p.m. – 7:00 p.m.

Wenchi Hu, PLLC is co-sponsoring a DC Bar event - fireside chat with the SEC Commissioner Mark Uyeda. The discussion will range across the SEC's current regulatory posture, enforcement activity, and future direction. Networking and refreshments will follow the hour-long discussion. This event is free but pre-registration is required to attend. For more details, please click [here](#).

Notable Developments:

- **President Biden Vetoes Legislative Bill That Sought to Overturn SEC Staff Accounting Bulletin No. 121**
- **Fifth Circuit Strikes Down SEC's Private Fund Advisers Rules**

SEC Enforcement:

- **SEC Charged an Investment Adviser and Its Fund for Misleading Disclosures Regarding Investment Strategies and Failure to Maintain Accurate Books and Records and Follow Its Policies and Procedures**
- **Terraform and Founder Agreed to Pay \$4.5 Billion Civil Penalty**

In Case You Missed It:

- **SEC Appoints Erica Williams to a Second Term as PCAOB Chairperson**
- **SEC Invites Regulated Entities to Submit Self-Assessments of Diversity Policies and Practices**
- **SEC to Close Salt Lake Regional Office**
- **FINRA Reminds Members to Comply with New SEC Cybersecurity Requirements**
- **FINRA Settles Charges for Influencer Marketing Violations**
- **SEC Extends Comment Period Concerning FINRA Proposed Rule Change to Adopt the FINRA Rule 6500 Series Concerning Securities Lending Reporting**



Notable Developments:

President Biden Vetoes Legislative Bill That Sought to Overturn SEC Staff Accounting Bulletin No. 121

As previously [covered](#), President Biden followed through on his intention to [veto](#) H.J.Res. 109, a congressional resolution that sought to overturn [SEC Staff Accounting Bulletin No. 121](#). The Accounting Bulletin requires entities with obligations to safeguard crypto assets to present a liability on their balance sheets, backed by corresponding capital.

President Biden's veto comes shortly after House Financial Services Committee Chair Patrick McHenry (R-NC) and a bipartisan group of legislators [urged](#) President Biden either to sign H.J.Res. 109 into law, or "work with the SEC to rescind the staff guidance." The result of the President's veto means SEC's Accounting Bulletin remains applicable to the carrying of crypto assets.

President Biden emphasized that his administration remains committed to working with Congress on digital asset regulation.

Fifth Circuit Strikes Down SEC's Private Fund Advisor Rules

On June 5, 2024, the United States Court of Appeals for the Fifth Circuit, by 3-0 vote, unanimously [decided](#) that the SEC exceeded its statutory authority in adopting the [private fund advisers rule](#). The court stated that, "[b]ecause the promulgation of the Final Rule was unauthorized, no part of it can stand", and therefore, the entire private fund advisers rules were vacated. It remains to be seen whether the SEC will ask for a rehearing by the full Fifth Circuit, which may not be granted by the Fifth Circuit, or appeal the decision to the Supreme Court. The SEC has 90 days to petition the Supreme Court for certiorari and, if the SEC does so, the Supreme Court would decide whether to grant certiorari to hear the case.

SEC Enforcement:

SEC Charged an Investment Adviser and Its Fund for Misleading Disclosures Regarding Investment Strategies and Failure to Maintain Accurate Books and Records and Follow Its Policies and Procedures

On June 11, 2024, the SEC [settled](#) charges against Anson Advisors, Inc. and Anson Funds Management, LP for making misleading statements in the fund disclosure documents regarding the funds' investment strategies, failure to accurately record certain payments to a third-party for research services that such third-party had not performed, and failure to implement its policies and procedures regarding accuracy of books and records in violation of the Investment Advisers Act of 1940. Anson Advisors and Anson Funds were ordered to cease and desist and pay a civil penalty.

Terraform and Founder Agreed to Pay \$4.5 Billion Civil Penalty

On June 13, 2024, the SEC [announced](#) that Terraform Labs PTE, Ltd. and Do Kwon agreed to pay more than \$4.5 billion civil penalty following a unanimous jury verdict holding them liable for securities fraud.

In Case You Missed It:

SEC Appoints Erica Williams to a Second Term as PCAOB Chairperson

On June 11, 2024, SEC announced the appointment of Erica Williams to a second term as Chairperson of the Public Company Accounting Oversight Board beginning on October 25, 2024 and running through October 24, 2029.

SEC Invites Regulated Entities to Submit Self-Assessments of Diversity Policies and Practices

The SEC commenced its biennial collection of Diversity Self-Assessment Submissions from Regulated Entities. According to the SEC, engaging in a self-assessment provides “an opportunity for organizations to closely review their diversity and inclusion policies and practices for any strengths, opportunities, risks, and vulnerabilities.” The SEC uses the collected data to assess and report on progress and trends in regulated entity diversity-related activities.

Conducting and submitting diversity self-assessments is voluntary and is not part of the SEC’s examination process, although the SEC labels participation in the survey “critical for a more comprehensive understanding of the diversity practices.” SEC-regulated entities may use the [Diversity Self-Assessment Tool](#) (DSAT) to conduct a self-assessment. Alternatively, regulated entities may submit diversity self-assessments in the format of their choice.

The SEC has published a set of [Frequently Asked Questions](#) to provide more information about the self-assessments and the DSAT.

SEC to Close Salt Lake Regional Office

On June 4, 2024, the SEC announced that it will close its Salt Lake Regional Office later in 2024, reducing the number of its regional offices from 11 to 10.

FINRA Reminds Members to Comply with New SEC Cybersecurity Requirements

In a Cybersecurity Advisory, FINRA [reminded](#) members of their obligations to comply with recent [amendments](#) to [Regulation S-P](#) on May 15, 2024, "to ensure their cybersecurity programs are modified, as needed."

The amendments expanded the scope of information under the regulation by requiring covered institutions "to (1) adopt an incident response program and (2) notify affected individuals whose sensitive customer information was, or is reasonably likely to have been, accessed or used without authorization."

FINRA Settles Charges for Influencer Marketing Violations

A firm that provides direct on-line trading to retail investors [settled](#) FINRA charges for failing to oversee the marketing of its social media influencers.

According to the Letter of Acceptance, Waiver and Consent, the TradeZero America, Inc. engaged social media influencers to promote the firm on the influencers' social media platforms. FINRA found that the influencers' posts did not disclose the risk of investing, were not fair and balanced and contained promissory and exaggerated statements. Additionally, FINRA said that the firm did not have a qualified registered principal approve the influencer posts prior to publication online. FINRA also found that the firm did not preserve these posts.

As a result, FINRA found that the firm violated several FINRA Rules, including Rules 3110, 2010, 2110, 4511, Regulation S-P Rule 4 and Exchange Act Section 17(a).

SEC Extends Comment Period Concerning FINRA Proposed Rule Change to Adopt the FINRA Rule 6500 Series Concerning Securities Lending Reporting

The SEC published [notice](#) of FINRA's proposed rule change to implement new Exchange Act Rule 10c-1a, requiring a covered person who agrees to lend, either on its own behalf or on behalf of other persons, a covered securities loan to provide certain terms of the covered securities loans to FINRA. FINRA proposed to adopt the new FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™)) to establish reporting requirements for covered securities loans and to provide for the dissemination of individual and aggregate covered securities loan information and loan rate statistics. See the previous [coverage](#) for additional details.

The SEC is [extending](#) the comment period for this proposed rule change. The comment period now ends August 5, 2024.