

Wenchi Hu PLLC
Regulatory Recap
July 16, 2024

Notable Developments:

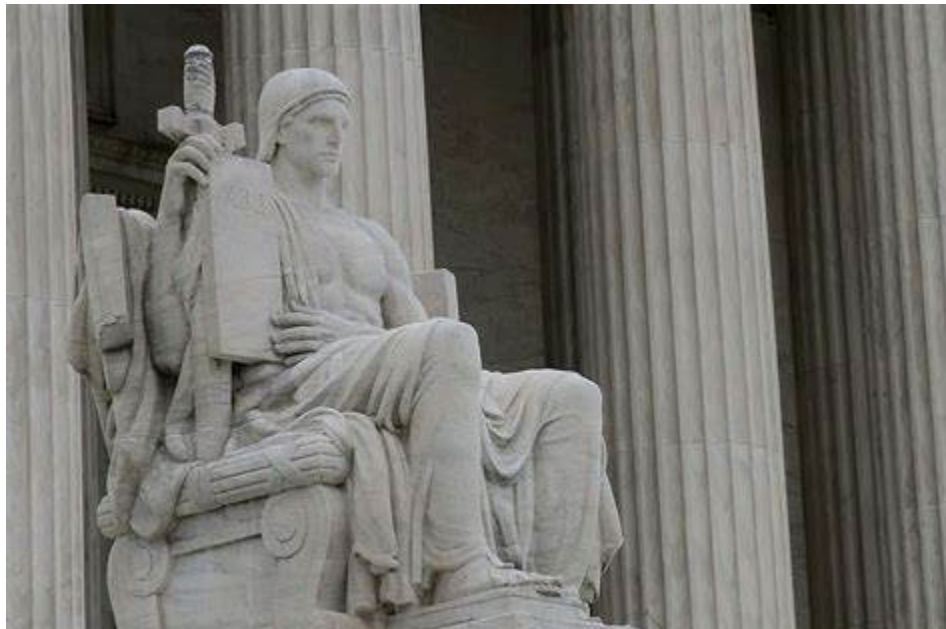
- **U.S. Supreme Court overturns *Chevron***
- **Federal Court Partially Blocks FTC Ban on Noncompetes**
- **SEC and Treasury Issue Joint Rules Concerning Investment Advisers**
- **SEC Issues Statement on Spring 2024 Regulatory Agenda**

SEC Enforcement:

- **Motion For Summary Judgment Granted Against Former Apple Attorney for Insider Trading**

In Case You Missed It:

- **SEC Describes Risk-Based Approach to Examinations**
- **FINRA Reminds Members of Regulatory Obligations When Using Generative Artificial Intelligence and Large Language Models**



Notable Developments:

U.S. Supreme Court overturns *Chevron*

In a 6-3 decision, the Supreme Court in *Loper Bright Enterprises et al. v. Raimondo* [overturned](#) *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.* *Chevron* established the requirement that the courts defer to an administrative agency's interpretation of statutes that are administered by the agency.

The majority opinion in *Loper*, authored by Chief Justice Roberts, concluded that the *Chevron* doctrine was inconsistent with the statutory requirement of the Administrative Procedure Act, which "incorporates the traditional understanding of the judicial function under which courts must exercise independent judgement in determining the meaning of statutory provisions." Justice Kagan, writing in dissent, characterized the Court's decision as an assumption of interpretive powers to the court that were once delegated from Congress to administrative agencies.

Federal Court Partially Blocks FTC Ban on Noncompetes

The U.S. District Court for the Northern District of Texas has [partially blocked](#) the government's ban on noncompete agreements that was set to take effect September 4. The FTC's rule was previously discussed [here](#). Ryan LLC, a tax services firm in Dallas, had sued to block the rule after the Federal Trade Commission voted to ban noncompetes. The decision postpones the effective date of the noncompete ban for the plaintiffs.

According to the ruling, the plaintiffs are likely to succeed on the merits of the case and blocking the rule is temporarily in the public interest. In its complaint, Ryan LLC accused the FTC of overstepping its statutory authority in declaring all noncompetes unfair and anticompetitive. The District Court agreed, "The FTC lacks substantive rulemaking authority with respect to unfair methods of competition." In requesting relief, Ryan, a tax services firm, had argued that the ban on noncompetes would inflict "serious and irreparable injuries" on its business, including by putting its confidential information at risk and enabling its competitors to poach valuable employees, whose knowledge and training would go out the door. A separate but similar case in Pennsylvania, *ATS Tree Services, LLC v. Federal Trade Commission*, had a hearing scheduled for July 10.

SEC and Treasury Issue Joint Rules Concerning Investment Advisers

SEC and the Department of the Treasury are jointly issuing a proposed rulemaking implementing the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 with regard to certain investment advisers. The proposed rules would generally require certain investment advisers that are “financial institutions” under the Bank Secrecy Act to be required to implement reasonable procedures to verify the identities of their customers. See the proposed rules [here](#).

SEC Issues Statement on Spring 2024 Regulatory Agenda

The SEC’s Office of Information and Regulatory Affairs released the Spring Unified Agenda of Regulatory and Deregulatory Actions, which includes short- and long-term regulatory actions that administrative agencies, including the SEC, plan to take.

The Proposed Rule Changes on the agenda [include](#), but are not limited to, rules concerning Financial Data Reporting, Incentive Based Compensation and Conflicts of Interest Involving Predictive Data Analytics.

SEC Enforcement:

Motion For Summary Judgment Granted Against Former Apple Attorney for Insider Trading

The U.S. District Court for the District of New Jersey granted the SEC summary judgment for insider trading charges against Gene Daniel Levoff, a former senior attorney at Apple Inc. The SEC’s complaint [alleged](#) that Levoff, an attorney who previously served as Apple’s global head of corporate law and corporate secretary, and whose duties included executing the company’s insider trading compliance efforts, received confidential information about Apple’s quarterly earnings announcements. The SEC’s complaint alleges that Levoff, using that information, traded Apple securities ahead of three quarterly earnings announcements in 2015 and 2016.

On June 30, 2022, Levoff pled guilty to federal criminal charges for securities fraud in a parallel criminal action before the District Court of New Jersey.

In Case You Missed It:

SEC Describes Risk-Based Approach to Examinations

In a Risk Alert, the SEC Division of Examination [described](#) its criteria for selecting broker-dealers for examinations and the scope of an inquiry.

Division staff said they may consider, among other things: "(1) prior examination history; (2) supervisory concerns, such as disciplinary history of associated individuals or affiliates; (3) tips, complaints, or referrals involving the firm; (4) the length of time since the firm's last examination; (5) the firm's customer base; (6) products and services the firm offers; (7) financial notifications or alerts that indicate that the broker-dealer is experiencing financial stress; (8) reporting by news and media that may involve or impact the firm; (9) information filed by the firm with the SEC or with a self-regulatory organization; and (10) whether the firm holds customer cash and securities."

In selecting examination focus areas, staff said they "may also consider whether the firm has been subject to an examination in a similar area by a self-regulatory organization" and the examination scope "may be adjusted during the examination based on information received and staff observations."

FINRA Reminds Members of Regulatory Obligations When Using Generative Artificial Intelligence and Large Language Models

In a [Regulatory Notice](#), FINRA reminded its members that while it intends its rules and guidance to be technologically neutral and to function dynamically with evolutions in technology and member firms' processes, current rules apply when member firms use AI, including Gen AI or similar technologies in the course of their business, just as they apply when member firms use any other technology or tool.

According to FINRA, "a member firm should evaluate Gen AI tools prior to deploying them and ensure that the member firm can continue to comply with existing FINRA rules applicable to the business use of those tools." Current FINRA rules "applicable to Gen AI use will depend on how a member firm deploys the technology, and FINRA will consider issuing further guidance on how particular rules may apply with respect to specific use cases."

By way of example, FINRA's release references the guidance that the content standards of Rule 2210 (Communications with the Public) "apply whether member firms' communications are generated by a human or technology tool, and that guidance discusses the specific application of the rules to certain AI-generated communications." Depending on

the ways in which a member firm may use Gen AI, such use could implicate virtually every area of a member firm's regulatory obligations.