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Regulatory Recap
November 15, 2024

Notable Developments:

- **SEC Adopts Amendments to Correct Errors in Various Rules and Forms**
- **Cboe and Nasdaq Challenge the SEC's Rules on Minimum Tick Sizes, Access Fees and Transparency of Better Priced Orders**
- **SEC Issues Final Rule to Reflect Fifth Circuit's Vacatur of the Private Fund Advisers Rules**
- **FINRA Proposes Rule Change to Increase Fees**

SEC Enforcement:

- **Invesco Advisers to pay \$17.5 Million Penalty for Misleading Statements About the Percentage of ESG Investments**
- **JP Morgan Affiliates to Pay \$151 Million to Resolve SEC Enforcement Actions**

In Case You Missed It:

- **SEC Publishes Risk Alert on Examination Process for Registered Investment Companies and Examination Observations Related to Core Areas**
- **FINRA Requests Comments on Day Trading Rules**
- **FINRA Fines Morgan Stanley for Market Access Risk Management Control Failure**
- **FINRA Fines Celadon for Disclosure and AML Failures**
- **SEC Office of Inspector General Issues Statement on the SEC's Management and Performance Challenges**



Notable Developments:

SEC Adopts Amendments to Correct Errors in Various Rules and Forms

On November 7, 2024, the SEC adopted technical [amendments](#) to correct errors in various rules and forms under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 and the Investment Advisers Act of 1940. Also amended is a rule that displays control numbers assigned to information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act.

Cboe and Nasdaq Challenge the SEC's Rules on Minimum Tick Sizes, Access Fees and Transparency of Better Priced Orders

On October 30, 2024, Cboe Global Markets, Inc., Nasdaq, Inc., and their related entities [petitioned](#) the DC Circuit for review of the SEC's rule amendments to Regulation NMS regarding minimum tick sizes, access fees and transparency of better priced orders, which were adopted on September 18, 2024.

SEC Issues Final Rule to Reflect Fifth Circuit's Vacatur of the Private Fund Advisers Rules

On November 8, 2024, the SEC issued a final [rule](#) under the Investment Advisers Act of 1940 to reflect the Fifth Circuit's vacatur of the Private Fund Advisers Rules adopted by the SEC on August 23, 2023. The U.S. Court of Appeals for the Fifth Circuit [vacated](#) the SEC's [Private Fund Advisers Rule](#) on June 5, 2024 in a unanimous decision, holding that the SEC exceeded its statutory authority in adopting the Private Fund Advisers Rules.

FINRA Proposes Rule Change to Increase Fees

FINRA has published on its website a proposed rule change, [SR-FINRA-2024-019](#) (which has not been published by the SEC for public comment as of November 15, 2024), to increase fees. According to FINRA's [news blog](#), FINRA estimates the median aggregate increase by 2029 for various sizes of member firms to be as follows:

- For large firms (*i.e.*, firms with 500 or more registered persons, which comprise approximately 4.3% of members), the median aggregate increase in annual fees by 2029 relative to today would be approximately \$415,000.
- For mid-size firms (*i.e.*, firms with 151 to 499 registered persons, which comprise approximately 6.4% of members), the median aggregate increase in annual fees by 2029 relative to today would be approximately \$82,500.
- For small firms with 10 to 150 registered persons (which comprise approximately 42.8% of members), the median aggregate increase in annual fees by 2029 relative to today would be approximately \$4,135.
- For small firms with fewer than 10 registered persons (which comprise approximately 46.5% of members), the median aggregate increase in annual fees by 2029 relative to today would be approximately \$625.

The fee increase will be phased in over five years, between 2025 and 2029. The bulk of the fee increase (over 90%) will be delayed until 2026.

SEC Enforcement:

Invesco Advisers to pay \$17.5 Million Penalty for Misleading Statements About the Percentage of ESG Investments

On November 8, 2024, the SEC [announced](#) settled charges against Investco Advisers, Inc. for making misleading statements about the percentage of total assets under management that integrated ESG factors in investment decisions. According to the SEC's [order](#), Investco marketed to investors that 70-94% of its parent company's AUM were ESG integrated when in fact such percentages included a substantial amount of assets that were held in passive

ETFs that did not consider ESG factors in investment decisions. The SEC found that Invesco lacked written policies defining ESG integration.

JP Morgan Affiliates to Pay \$151 Million to Resolve SEC Enforcement Actions

On October 31, 2024, the SEC charged affiliates of JPMorgan Chase & Co., specifically [J.P. Morgan Securities LLC](#) (JPMS) and [J.P. Morgan Investment Management Inc.](#) (JPMIM) in five separate enforcement actions for failures including misleading disclosures to investors, breach of fiduciary duty, prohibited joint transactions and principal trades, and failures to make recommendations in the best interest of customers.

Without admitting or denying the findings in the SEC's orders, the affiliates agreed to pay civil penalties and voluntary payments to investors to resolve four of the actions.

Conduit Private Funds Action (JPMS)

The SEC's order finds that JPMS made misleading disclosures to brokerage customers who invested in its "Conduit" private funds products, which pooled customer money and invested it in private equity or hedge funds that would later distribute to the Conduit private funds shares of companies that went public. The order finds that, contrary to the disclosures, a JP Morgan affiliate exercised complete discretion over when to sell and the number of shares to be sold. As a result, investors were subject to market risk, and the value of certain shares declined significantly as JP Morgan took months to sell the shares.

Portfolio Management Program Action (JPMS)

The SEC's order finds that JPMS failed to fully and fairly disclose the financial incentive it and some of its financial advisors had when they recommended JPMS's own Portfolio Management Program over third-party managed advisory programs offered by JPMS.

Clone Mutual Funds Action (JPMS)

The SEC's order finds that JPMS recommended certain mutual fund products, called Clone Mutual Funds, to its retail brokerage customers when materially less expensive ETF products that offered the same investment portfolios were available. According to the order, when recommending the Clone Mutual Funds, JPMS and its registered representatives failed to consider these cost differences and failed to have a reasonable basis to believe that their recommendations were in the best interest of the customers.

Joint Transactions Action (JPMIM)

The SEC's order finds that JPMIM caused \$4.3 billion in prohibited joint transactions, which advantaged an affiliated foreign money market fund for which it served as the delegated portfolio manager over three U.S. money market mutual funds it advised.

Principal Trades Action (JPMIM)

The SEC's order finds that JPMIM engaged in or caused prohibited principal trades with a combined notional value of approximately \$8.2 billion. The SEC's order finds that, to conduct these trades, a JPMIM portfolio manager directed an unaffiliated broker-dealer to buy commercial paper or short-term fixed income securities from JPMS, which JPMIM then purchased on behalf of one of its clients.

In Case You Missed It:

SEC Publishes Risk Alert on Examination Process for Registered Investment Companies and Examination Observations Related to Core Areas

On November 4, 2024, the SEC's Division of Examinations issued a [risk alert](#) outlining the examination process for funds, the types of documents and information that are typically requested by examination staff, as well as highlighting examination observations related to certain core review areas.

FINRA Requests Comments on Day Trading Rules

On October 29, 2024, FINRA [published](#) notice to solicit comments on its current rules governing day trading as part of a retrospective review process. The deadline of submission of comments is January 28, 2025.

FINRA Fines Morgan Stanley for Market Access Risk Management Control Failure

On November 1, 2024, Morgan Stanley [settled](#) charges with FINRA regarding its market access risk management control failures, including controls designed to prevent the entry of erroneous orders as required under the Exchange Act Section 15(c)(3) and Rule 15c3-5(c)(1)(ii) and FINRA Rules 3110(a) and (b) and 2010. According to the [Letter of Acceptance, Waiver and Consent](#), Morgan Stanley sends certain orders to the market via "low touch" or "high touch" order handling. FINRA found that, from August 2019 through June 2023, Morgan Stanley did not maintain a system of controls reasonably designed to manage the risks of certain of its market access activity with respect to certain of its low touch and high touch customers.

FINRA Fines Celadon and CCO for Order Routing Disclosure and AML Failures

On October 17, 2024, Celadon Financial Group its Chief Compliance Officer ("CCO") [settled](#) FINRA charges for inaccurate public disclosures of order routing practices and gaps in the firm's AML program.

According to the Letter of Acceptance, Waiver and Consent, during the relevant period, the firm published quarterly reports containing inaccurate information as to its handling of non-directed customer orders for National Market System securities. FINRA found that the firm's reports misstated data, including: (i) the proportion of orders routed as market or limit orders, (ii) primary execution venues, (iii) financial incentives or fees received by the firm and (iv) the firm's relationships with execution venues. FINRA attributed the inaccuracies to the firm's reliance on a third-party vendor for report generation, which the firm continued to use even after the vendor disclosed limitations in accurately processing the firm's trade data.

FINRA found that Celadon and its CCO failed to establish an adequate supervisory system to ensure accurate disclosures. FINRA also found that the firm's written supervisory procedures assigned review responsibility to the CCO, but the procedures lacked specifics on how to verify report data or address identified discrepancies.

FINRA also found that the firm failed to monitor multiple transactions tied to ten accounts that raised "red flags," including trades across accounts held by related parties, substantial dollar volumes in thinly traded securities and transactions by customers previously associated with regulatory violations.

SEC Office of Inspector General Issues Statement on the SEC's Management and Performance Challenges

Annually, the SEC's Office of Inspector General ("OIG") issues a [report](#) that provides an independent perspective on the SEC's top management and performance challenges. The OIG bases its report on "our recent oversight activities, the SEC's progress in implementing our recommendations, and our outreach during the year to leadership and senior officials throughout the SEC."

This year's report, issued on November 4, 2024, states that the top challenges are 1) Meeting Regulatory and Oversight Responsibilities, 2) Recruiting and Retaining a Skilled Workforce, 3) Protecting Systems and Data, and 4) Contract Management.