Wenchi Hu PLLC
Regulatory Recap
December 16, 2024

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- **Paul Atkins Nominated to Chair SEC**
- **SEC Announces Departure of Trading and Markets Division Director Haoxiang Zhu and Corporation Finance Division Director Erik Gerding**
- **SEC Staff Extends No-Action Relief for Broker-Dealer to Treat RIAs as Subject to AML Program Rules**

**SEC Enforcement:**

- **SEC Charges Cantor Fitzgerald with Misleading SPAC Disclosures**
- **SEC Charges Former Personnel of Advisory Firm SeaCrest with Cherry-Picking**
- **SEC Charges Morgan Stanley Smith Barney for Policy Deficiencies Resulting in Failure to Prevent Theft of Investor Funds**
- **SEC Charges Kiromic BioPharma and Executives with Misleading Investors about Status of FDA Reviews**

**In Case You Missed It:**

- **CFTC Staff Issues Advisory on AI Use**

**Notable Developments:**

**Paul Atkins Nominated to Chair SEC**

On December 4, 2024, President-Elect Trump named Paul Atkins to chair the Securities Exchange Commission, subject to the Senate confirmation. Mr. Atkins currently serves as CEO of Patomak Global Partners. Mr. Atkins formerly served as SEC Commissioner from 2002 to 2008. From 2009 to 2010, he was appointed a member of the Congressional Oversight Panel for the Troubled Asset Relief Program. From 2012 to 2015, he served as an independent director and non-executive Chair of the Board of BATS Global Markets, Inc.

**SEC Announces Departure of Trading and Markets Division Director Haoxiang Zhu and Corporation Finance Division Director Erik Gerding**

On December 9, 2024, the SEC announced the departure of Haoxiang Zhu, Director of the Division of Trading and Markets, as of December 10, 2024. Upon Mr. Zhu's departure, David Saltiel, a Deputy Director who also heads the Division's Office of Analytics and Research, will serve as Acting Director.

On December 13, 2024, the SEC announced that Eric Gerding, Director of the Division of Corporation Finance, will depart the agency effective December 31, 2024 and Cicely LaMothe will serve as Acting Director upon Mr. Gerding's departure.

**SEC Staff Extends No-Action Relief for Broker-Dealer to Treat RIAs as Subject to AML Program Rules**

On December 5, 2024, the staff of the SEC extended its no-action position allowing broker-dealers to treat registered investment advisers as if they are subject to an anti-money laundering program rule under the AML program rule for the purposes of customer identification program rule in the Bank Secrecy Act. This no-action letter extends the staff's no-action position in the 2022 no-action letter until January 1, 2026, the date on which the FinCEN's new AML program rule for investment advisers will take effect.

**SEC Enforcement:**

**SEC Charges Cantor Fitzgerald with Misleading SPAC Disclosures**

On December 12, 2024, Cantor Fitzgerlad, L.P. settled charges with the SEC concerning misleading statements to investors by two SPACs that it controlled. According to the SEC's order, the two SPACs raised $750 million from investors through IPOs ahead of the SPACs' eventual mergers with the respective target companies. In the SPACs' SEC filings, each SPAC denied having had contact or substantive discussions with potential business combination targets prior to their IPOs. However, at the time of each SPAC's IPO, Cantor Fitzgerald personnel, acting on behalf of the SPACs, had already commenced negotiations with a small group of potential target companies for the SPACs, including with the companies with which the SPACs eventually merged.

Commissioner Uyeda issued a dissenting statement, in which he argues that, unlike a normal operating company, a SPAC is set up to extinguish itself via a merger. Given the purpose of a SPAC, the most important information to an investor in deciding whether to purchase securities in the SPAC's IPO are information about SPAC's sponsor, such as its ability to source an acquisition and conflicts of interest, and the investor's rights, including those related to the SPAC's redemption of purchased securities. The boiler plate disclosure that the SPAC had not yet selected a specific target or had not had "substantive discussions" with any target company, is immaterial. To treat discussions of SPAC with target companies as material may result in investors being inundated with details about specific interactions that obscure more important information about the target's business prospects. Commissioner Uyeda argues that the SEC's allegations against Cantor Fitzgerald (and the other two prior SPAC enforcement actions) do not rise to the materiality level. He also objects to the SEC order that did not include facts demonstrating that the SPAC investors were financially harmed.

**SEC Charges Former Personnel of Advisory Firm SeaCrest with Cherry-Picking**

On December 12, 2024, the SEC announced charges against a former employee of an advisory firm SeaCrest with cherry-picking by allocating profitable securities trades to favored accounts and unprofitable trades to disfavored clients. Separately, the SEC settled charges against SeaCrest regarding the firm's failure to implement policies and procedures reasonably designed to prevent violations and failure to supervise in connection with the cherry-picking scheme.

**SEC Charges Morgan Stanley Smith Barney for Policy Deficiencies Resulting in Failure to Prevent Theft of Investor Funds**

On December 9, 2024, the SEC announced settled charges against Morgan Stanley Smith Barney LLC (MSSB) with failing to reasonably supervise four investment advisers and registered representatives who stole millions of dollars of advisory clients' and brokerage customers' funds. MSSB was also charged with failing to adopt policies and procedures reasonably designed to prevent and detect such theft.

According to the SEC's order, MSSB failed to implement policies and procedures reasonably designed to prevent its financial advisors from using two forms of unauthorized third-party disbursements - ACH payments and certain patterns of cash wire transfers, to misappropriate funds from advisory client accounts and brokerage customer accounts. As a result, MSSB financial advisors made hundreds of unauthorized transfers from customers' or clients' accounts to themselves or for their own benefit.

According to the SEC's order, MSSB did not have a policy or procedure to screen externally initiated payment instructions to detect instances in which an MSSB financial advisor assigned to the account bore the same name as the beneficiary listed in the payment instructions. The order finds that this led to the firm failing to detect hundreds of unauthorized ACH transfers from its customers' or clients' accounts to pay the credit card bill of the financial advisor assigned to the MSSB account or to otherwise benefit the financial advisor.

The SEC's order finds that MSSB violated Section 206(4) of the Investment Advisers Act and Rule 206(4)-7 thereunder and failed reasonably to supervise investment advisers and registered representatives within the meaning of Section 203(e)(6) of the Advisers Act and Section 15(b)(4)(E) of the Exchange Act.

**SEC Charges Kiromic BioPharma and Executives with Misleading Investors about Status of FDA Reviews**

On December 3, 2024, the SEC announced settled charges against Kiromic BioPharma, Inc., its former CEO, Maurizio Chiriva-Internati, and its former chief financial officer, Tony Tontat, for failing to disclose material information about Kiromic's two cancer fighting drug candidates being put on clinical hold by the FDA before, during, and after a July 2021 follow-on public offering. Kiromic and Tontat have agreed to settle the SEC's charges in separate administrative proceedings and Chiriva has agreed to settle the charges in federal district court.

According to the SEC's order, the company raised $40 million in a public offering on July 2, 2021, for the purpose of funding the prospective clinical trials for its two cancer fighting drug candidates. However, the SEC found that two weeks before the public offering, the FDA notified Kiromic that it had placed the drug candidates on clinical hold. The SEC's order also found that Kiromic did not disclose the FDA clinical holds in its SEC filings, investor roadshow calls, or during due diligence calls leading up to the offering, despite the fact that Kiromic disclosed the hypothetical risk of a clinical hold and the potential negative consequences on Kiromic's business. Without admitting or denying the SEC's findings, Kiromic consented to the SEC's order, which requires Kiromic to cease and desist from committing or causing future violations of the antifraud, reporting, and disclosure controls provisions of the federal securities laws.

**In Case You Missed It:**

**CFTC Staff Issues Advisory on AI Use**

On December 5, 2024, the CFTC's Division of Clearing and Risk, Division of Data, Division of Market Oversight and Market Participants Division staff issued an advisory emphasizing that CFTC-regulated entities leveraging AI technology must ensure compliance with applicable CFTC statutory and regulatory requirements. The advisory reiterates that CFTC-regulated entities remain responsible for regulatory compliance with respect to utilization of AI products and services, regardless of whether such algorithms or software are developed in-house or procured from third-party providers. The advisory also reaffirms that DCMs, SEFs, SDRs and DCOs must provide advance notice to CFTC Staff of any material changes to automated systems that could impact the reliability, security, or capacity of such systems.