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Regulatory Recap
January 15, 2025

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Notable Development:

Federal Reserve Bank of New York Publishes Staff Report on Sponsored Repo

The Federal Reserve Bank of New York ("FRBNY") staff published a report in December 2024 that analyzed the forces behind dealers' decisions to move bilateral repo transactions with counterparties into central clearing. The report concluded that (i) dealers turn to sponsored repo trades during times of balance sheet strain, such as large Treasury issuances or end-of-month reporting periods; and (ii) "sponsored repo spreads tend to be affected by a range of factors, with the three largest drivers being money market fund assets, a proxy for hedge fund demand for repo funding, and end-of-month dates." The report's analysis highlighted recent Treasury market disruptions in market functioning, most notably during the pandemic. The report also raised questions about the drivers of spreads charged by firms. FRBNY staff emphasized that the SEC's recently instituted rule amendments on central clearing of repos are expected to greatly expand the size of sponsored repo, increasing its importance.

SEC Enforcement:

SEC files complaint against Elon Musk for Failing to Timely File Report of Beneficial Ownership in Twitter Exceeding 5%

On January 14, 2025, the SEC filed a complaint against Elon Must in the U.S. District Court for the District of Columbia. The complaint alleges that Elon Musk failed to timely file a beneficial ownership report disclosing his acquisition of more than 5% of the outstanding shares of Twitter's common stock in March 2022, in violation of Section 13(d)(1) of the Securities Exchange Act of 1934 and Rule 13d-1 thereunder. The SEC alleges that, Musk was required to file a beneficial ownership report with the SEC to publicly disclose his acquisition of Twitter common shares of more than 5% within 10 days of crossing the 5% threshold, i.e., by March 24, 2022. According to the complaint, Musk finally filed the report on April 4, 2022, 11 days after the report filing was due. On that day, Twitter stock price rose more than 27% over its previous day's closing price. The SEC alleges that, during the period that the report was overdue, Musk spent more than $500 million buying additional Twitter common shares. Because he filed to disclose his acquisition of more than 5% of Twitter shares by March 24, 2022, the SEC alleged that, between March 24, 2022 and April 4, 2022, Musk was able to make his purchases at artificially low prices, which did not yet reflect the undisclosed material information of Musk's beneficial ownership of more than 5% of Twitter common stock and his investment purpose. In total, the SEC estimated that Musk underpaid Twitter investors by more than $150 million for his purchases of Twitter common stock during the

period. The SEC argued that those investors who sold Twitter common stock during this period did so at artificially low prices and suffered substantial economic harm.

SEC Charges Advisory Firm Navy Capital with Making Misrepresentations to Investors Regarding AML Procedures

On January 14, 2025, the SEC announced settled charges against Navy Capital Green Management, LLC ("Navy Capital") with mispresenting AML procedures to investors. According to the SEC's order, Navy Capital represented to investors that it voluntarily complied with AML due diligence laws even though the laws would not apply to investment advisers; however, the SEC found that the firm did not, in fact, conduct the AML due diligence as represented to investors. According to the SEC's order, a foreign court eventually froze assets of one of Navy Capital's private funds because the fund held assets of an individual investor publicly reported to have suspected connections to money laundering activities. The SEC's order also finds that Navy Capital failed to adopt and implement written policies and procedures reasonably designed to ensure the accuracy of offering documents provided to investors.

SEC Charges Three Investment Adviser Representatives with Acting as Unregistered Brokers and Charges the Investment Adviser Firm with Failure to Manage Conflict of Interest

On January 14, 2025, the SEC announced settled charges against three individuals associated with the investment advisory firm VCP Financial LLC with acting as unregistered brokers. According to the SEC's orders, the individuals solicited investors for an entity that offered investments in investment vehicles purported to invest in pre-IPO companies and earned transaction-based compensation for successful solicitation of investors.

Separately, the SEC charged VCP Financial LLC with failure to manage a conflict of interest in a manner consistent with its firm brochures, when recommending investments offered by private funds managed by an affiliated entity under common ownership and control. The SEC's order finds that, VCP Financial LLC's brochure disclosed that it had a conflict of interest when recommending investments offered by private funds managed by an affiliate under common ownership and control with itself. The brochure disclosed that VCP Financial LLC would manage the conflict by, among other things, reasonably ensuring all clients' accounts were invested in accordance with client approved investment policy statements and adopting policies and procedures to reasonably ensure that investments and recommendations were in the best interest of clients. In fact, VCP Financial LLC required its clients who invested in the private funds managed by its affiliate to acknowledge that VCP Financial was disclaiming its role in their investment decision and that VCP Financial was

not acting as their investment adviser in connection with their investment in those funds, which was inconsistent with the statements in the firm's brochure and misleading investors to believe that the client had waived a non-waivable cause of action against VCP Financial under the federal or state laws.

Twelve Firms Settle SEC's Charges for Recordkeeping Failures

On January 13, 2025, the SEC announced charges against nine investment advisers and three broker-dealers for failures by the firms and their personnel to maintain and preserve electronic communications, in violation of recordkeeping provisions of the federal securities laws.

The firms admitted the facts set forth in their respective SEC orders, acknowledged that their conduct violated recordkeeping provisions of the federal securities laws, agreed to pay combined civil penalties and have begun implementing improvements to their compliance policies and procedures to address these violations.

The firms named in the SEC announcement include: Blackstone Alternative Credit Advisors LP, together with Blackstone Management Partners L.L.C. and Blackstone Real Estate Advisors L.P.; Kohlberg Kravis Roberts & Co. L.P.; Charles Schwab & Co., Inc.; Apollo Capital Management L.P.; Carlyle Investment Management L.L.C., together with Carlyle Global Credit Investment Management L.L.C., and AlpInvest Partners B.V.; TPG Capital Advisors LLC; Santander US Capital Markets LLC; and PJT Partners LP.

Each of the SEC's investigations uncovered the use of unapproved communication methods, known as off-channel communications, at these firms. As described in the SEC's orders, the firms admitted that, during the relevant periods, their personnel sent and received off-channel communications that were records required to be maintained under the securities laws. The failures involved personnel at multiple levels of authority, including supervisors and senior managers.

Two Robinhood Broker-Dealer Entities Settle Charged for Violating Multiple Separate Securities Law Provisions

On January 13, 2025 the SEC announced that broker-dealers Robinhood Securities LLC and Robinhood Financial LLC have agreed to pay $45 million in combined civil penalties to settle a range of SEC charges arising from their brokerage operations.

According to the SEC's order, the violations by Robinhood Securities LLC or Robinhood Financial LLC Robinhood included: (1) failing to timely investigate suspicious transactions, resulting in systematic failures to timely file suspicious activity reports; (2) failing to implement adequate policies and procedures designed to protect their customers from the

risk of identity theft; (3) failing to adequately address known risks posed by a cybersecurity vulnerability related to remote access to their systems; (4) failing to maintain and preserve electronic communications in violation of the recordkeeping provisions of the federal securities laws; (5) failing to maintain copies of core operational databases in a manner that ensured legally required records were protected from deletion or modification for the required length of time; and (6) failing to maintain some of their communications with their brokerage customers as legally required; (7) failing to provide complete and accurate securities trading information to the SEC; (8) failing to comply with Regulation SHO, the regulatory framework designed to address abusive short selling practices.

The SEC's order finds that Robinhood Securities violated Rules 200(g), 203(b)(1), and 204(a) of Reg SHO. The order further finds that both firms violated Rule 30(a) of Regulation S-P, Rule 201 of Regulation S-ID, and the broker-dealer recordkeeping and reporting provisions of the federal securities laws.

SEC Charges BMO Capital Markets with Failing to Supervise Agency Bond Desk

On January 13, 2025, The SEC announced charges against BMO Capital Markets Corp., a registered broker-dealer, regarding failing to supervise employees who sold mortgage-backed bonds using offering sheets and bond metrics that were misleading concerning the characteristics of the collateral underlying the bonds.

According to the SEC's order, BMO representatives structured mixed collateral bonds backed by pools of residential mortgages, using a small sliver of higher-interest mortgages in a way that caused the systems of third-party data providers to generate inaccurate information about the bonds' overall composition. BMO then sent misleading metrics about the bonds to customers, even though its representatives should have known they were about the inaccurate and misleading information.

The SEC's order found that BMO's policies and procedures did not include guidance concerning the structure and sale of these bonds. Furthermore, according to the SEC, BMO did not have a process for reviewing the type of information firm representatives shared with customers about the bonds or have in place a process for reviewing bond structures against marketing communications.

The SEC's order finds that BMO failed to reasonably supervise its registered representatives involved in the offer and sale of the securities as required by Section 15(b)(4)(E) of the Exchange Act.

Alternative Trading Systems Operator Liquidnet Charged with Violations of Market Access Rule and for Failing to Protect Confidential Subscriber Trading Information

On January 10, 2025, the SEC announced settled charges against broker-dealer Liquidnet Inc., an operator of multiple alternative trading systems (ATSs), for failing to have necessary controls and procedures regarding market access, for failing to protect confidential subscriber trading information, and for related disclosure failures.

As an ATS operator that provides market access to non-broker-dealers, Liquidnet is required to have a system of controls and procedures to prevent the entry of orders that would exceed appropriate credit thresholds for its customers. The SEC's order finds that Liquidnet violated the market access rule by, among other things, setting inappropriate credit thresholds, including having a default of $1 billion.

In addition, to satisfy the applicable ATS exemption from having to register as an exchange, Liquidnet is required to have written safeguards and procedures to limit access to confidential subscriber trading information to certain employees of the ATS. According to the SEC's order, Liquidnet failed to adequately limit access to systems containing confidential subscriber trading information and failed to make adequate related disclosures on certain forms. The SEC's order finds that Liquidnet also made material misrepresentations to customers about its market access controls and to subscribers about its ATS safeguards for subscriber confidential trading information.

According to the SEC, Liquidnet undertook remedial efforts, including retaining an outside consultant to correct and improve its controls and procedures.

Vince McMahon, Former CEO of WWE, Charged for Failure to Disclose to WWE Two Settlement Agreements He Executed on Behalf of WWE

On January 10, 2025, the SEC settled charges against Vince McMahon, the former Executive Chairman and CEO of World Wrestling Entertainment Inc., for signing two settlement agreements on behalf of himself and WWE without disclosing the agreements to WWE's Board of Directors, legal department, accountants, financial reporting personnel, or auditor. This action, according to the SEC, circumvented WWE's system of internal accounting controls and caused material misstatements in WWE's financial statements.

The SEC's order finds that, because McMahon failed to disclose agreements concerning payments to former employees and contractors to WWE, WWE did not evaluate the disclosure implications or the appropriate accounting for these transactions in its financial statements. The order finds that, as a result of this failure, WWE overstated its 2018 and 2021 net income.

McMahon consented to the entry of the SEC's order finding that he violated the Exchange Act by knowingly circumventing WWE's internal accounting controls and that he directly or indirectly made or caused to be made false or misleading statements to WWE's auditor. The

order also finds that McMahon caused WWE's violations of the reporting and books and records provisions of the Exchange Act.

In Case You Missed It:

SEC Chief Accountant Paul Munter to Retire from Federal Service

On January 14, 2025, the SEC announced that Chief Accountant Paul Munter will retire from federal service effective January 24, 2025. Mr. Munter joined the agency in 2019.

CFTC Chair Announces Departure from CFTC; CFTC Clearing and Risk Division Director and Enforcement Division Director also to Depart the Agency

The CFTC Chair, Rostin Behnam, announced on January 7, 2025 that he would step down from his position on January 20, 2025, with his final day at the Commission set for February 7, 2025. Mr. Behnam has been a CFTC Commissioner since 2017 and CFTC Chair since January 2022.

Clark Hutchinson, the Director of the CFTC Division of Clearing and Risk, also announced his departure from the agency on January 15, 2025. Mr. Hutchinson has served as director since July 2019. Ian McGinley, Director of the CFTC's Division of Enforcement, will also step down on January 17, 2025. Mr. McGinley was appointed Director in February 2023.

Bank of America, N.A. Settles OCC Charges for AML Violations

On December 23, 2024, Bank of America, N.A. settled OCC charges for "unsafe or unsound practices" related to compliance with the Bank Secrecy Act and for failing to correct previously identified anti-money laundering compliance deficiencies.

According to the Consent Order, the OCC found deficiencies as to the bank's internal controls, governance, transaction and suspicious activity monitoring and reporting, risk assessments, staffing, internal audits and training. The OCC also cited the bank for failing to address deficiencies identified in prior examinations, including those concerning suspicious activity reporting and risk governance frameworks.

As part of the settlement, the bank agreed to take corrective actions, including: (i) establishing a compliance committee of at least three independent directors to oversee implementation of remedial measures; (ii) submitting a corrective action plan within 90 days, detailing specific timelines, accountability measures and steps to address deficiencies; (iii) engaging third-party consultants to conduct assessments of BSA/AML compliance programs, transaction monitoring systems and prior suspicious activity reporting; (iv) implementing enhanced systems for customer due diligence, risk

assessments and transaction monitoring tailored to the bank's size and complexity; (v) rolling out BSA and sanctions compliance training for staff; and (vi) refraining from introducing new high-risk products or entering high-risk markets without prior OCC approval.

BofA Securities, Inc. Settles FINRA Charges for TRACE Reporting Violations

On January 2, 2025, BofA Securities, Inc. settled FINRA charges for untimely reporting of transactions, the failure to use required modifiers and related supervisory failings.

According to FINRA's letter of acceptance, waiver and consent, the firm failed to: (i) timely report approximately 5,200 transactions to TRACE during the relevant period; (ii) include the required "B" modifier (which identifies transactions tied to certain futures contracts) on approximately 57,000 TRACE reports; and (iii) maintain an adequate supervisory system.