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2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

U.S. Government Enforcement Alert

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It's been a busy year for securities regulators. The SEC recently reported that in FY 2014 new investigative approaches and innovative use of data and analytical tools contributed to a record 755 enforcement actions with orders totaling $4.16 billion in disgorgement and penalties.[1] By comparison, in FY 2013 it brought 686 enforcement actions with orders totaling $3.4 billion in disgorgement and penalties. We do not yet have FINRA's fiscal year 2014 enforcement action totals, but we know that FINRA too has taken a more aggressive approach to enforcement—in 2013 FINRA barred 135 more individuals and suspended 221 more individuals than it did in 2012.[2] Moreover, like the SEC, FINRA increasingly is relying on data and analytical tools to make its enforcement program more effective. FINRA's proposed Comprehensive Automated Risk Data System (CARDS) is a further step in that direction. CARDS will help FINRA more quickly identify patterns of transactions and monitor for excessive concentration, lack of suitability, churning, mutual fund switching, and other potentially problematic misconduct.[3] Both broker-dealers and investment advisers now find themselves in a position in which, from an enforcement perspective, regulators often have far better data and analytical tools than the firms have.

We review below the SEC's enforcement actions against broker-dealers and investment advisers in 2014 and FINRA's most significant actions against broker-dealers for the same period.[4] We have organized the enforcement actions into 50 categories, which provide a useful checklist for compliance and risk officers. Where at least one of the actions in the category involves an investment advisory firm, we have used the ★ symbol in both the list and the category heading. Although we have described each of the issues only briefly, in each case we reference the original public announcement of the enforcement action,[5] which in turn references the relevant complaint, Notice of Charges, or Acceptance Waiver and Consent for a more detailed discussion of the issues.

1. Acquisitions ★
2. Advertisements ★
3. Alternative Trading Systems
4. AML
5. Asset Transfers ★
6. Best Execution ★
7. Blue Sheets
8. Complex Products
9. Concealing Errors ★
10. Conflicts of Interest ★
11. Cross Border Activities ★
12. Cross Trades ★

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

13. Custody ★
14. Cybersecurity
15. Email Retention and Review
16. Exaggerated Claims/Misleading Marketing Scripts
17. Fees, Expenses and Markups ★
18. Financial Crisis Cases
19. Finders
20. Hedge Funds ★
21. High-Frequency Trading
22. Inaccurate/Delayed Information to SEC
23. Inaccurate Order Transmission
24. Inadequate Supervisory Staffing
25. Inside Information
26. IPOs
27. Manipulative Trading
28. Margin Requirements
29. Market Access
30. Misappropriation of Assets ★
31. Municipal Bonds
32. Net Capital
33. Pay to Play ★
34. Payment of Commissions to Unregistered Persons
35. Penny Stocks ★
36. Placement Agent Obligations
37. Ponzi Schemes ★
38. Principal Transactions ★
39. Prospectus Delivery
40. Recordkeeping
41. Revenue Sharing ★
42. Selective Disclosure of Research
43. Short Sales ★
44. Supervision
45. Trade Allocations ★
46. Trade Reporting/Position Reporting
47. U4/U5 and Related Litigation Filings
48. Valuation ★
49. Variable Annuities ★
50. Whistleblower Retaliation ★

1. **Acquisitions**. ★ The SEC charged an investment adviser that acquired another firm's advisory business with failing to take the necessary steps to assure that its infrastructure was enhanced to support the newly acquired advisory business, and with failing to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act.[6] It charged that, as a result of these violations, the acquiring firm executed more than 1,500 principal transactions with advisory clients without making the required written disclosures or obtaining client consent, that it charged

commissions and fees to 2,785 advisory clients that were inconsistent with its disclosures to clients, that it violated certain of the custody provisions of the Advisers Act, that it underreported its assets under management by $754 million, and that it failed to make and keep certain books and records. As part of the settlement, the adviser agreed to pay a $15 million penalty.

2. **Advertisements**.[7] ★ The SEC charged an investment adviser and its CEO/Chief Compliance Officer (CCO) with issuing misleading performance advertisements.[8] According to the SEC, the two advertisements at issue purported to show historical performance and historical returns of its investment allocation and equities models but relied in part on sources other than performance of the adviser's clients. In addition, the company failed to disclose that the data did not reflect mark-ups, mark-downs, and other transaction costs, did not disclose that the results were gross of fees, and thus did not reflect the effect of the advisory fees on the performance results advertised. As part of the settlement, the adviser agreed to pay $586,000 in disgorgement, penalty, and prejudgment interest.

The SEC charged that an investment adviser and its President/CCO published newsletters that claimed a rate of return that was not based on actual fund performance. [9] Further, the advertisements 1) stated that the fund was ranked number 1 out of 375 World Allocation funds without disclosing that was only for a one-year period, 2) stated that a fund was ranked 7 of 381 peers when, in fact, there were 138 funds with higher returns, 3) compared the Fund to a model portfolio that held very different securities, 4) selectively highlighted recommendations without providing a list of all recommendations made by the adviser within the past year, 5) represented it was a "five-star" (Morningstar) money manager" even though Morningstar rates mutual funds, not investment advisers and, since February 2009 the adviser had not been the investment manager for an mutual fund rated five stars by Morningstar. As part of the settlement, the President/CCO agreed to pay a penalty of $100,000.

3. **Alternative Trading Systems**. Alternative Trading Systems, also known as "dark pools," provide a marketplace for buyers and sellers but, unlike exchanges, generally do not display their best bids and offers. They execute approximately 12% of U.S. equity trading volume. The Commission charged that an Alternative Trading System operated by a broker-dealer violated Rule 301(b)(1) of Regulation ATS. Rule 301(b)(1) requires Alternative Trading Systems to establish and implement safeguards to protect subscribers' confidential trading information.[10] The purpose of the rule is to prevent the use of information about a customer's trading orders. The Commission charged that the firm failed to protect subscribers' non-displayed order flow from being accessed by the firm's affiliated smart order router business, and that, without customer consent, the affiliate applied its knowledge of non-displayed order flow when determining how to route orders. As part of the settlement, the firm agreed to pay a $2.85 million penalty—the Commission's largest penalty against an alternative trading system.

Similarly, the Commission charged a broker-dealer that operated a block-trading Alternative Trading System for large institutional investors sought to attract business from corporate issuers by sharing confidential information about its customers' indications of interest and trade executions. For example, marketing presentations to corporate issuers included descriptive characteristics of members that had recently indicated an interest or buying or selling the issuers' stock, including information about the members' geographic locations, approximate assets under management, and investment styles. The Commission charged

that these external communication practices were inconsistent with the firm's statements to members that the firm would preserve the confidentiality of its members' trading information. As part of the settlement, the firm agreed to pay a $2 million penalty.

FINRA charged a broker-dealer with failing to have reasonably designed written policies and procedures in place to prevent executions on its alternative trading system at prices inferior to the National Best Bid and Offer.[11] FINRA stated that the violations were caused by "market data latencies" (*i.e.,* delays) that went unnoticed for a significant period of time, and that the firm failed to to ascertain the effectiveness of its policies and procedures designed to prevent executions at prices inferior to the National Best Bid and Offer. As part of the settlement, the firm agreed to pay an $800,000 penalty.

4. **Anti-Money Laundering**. Under FINRA Rule 3310, broker-dealers are required to develop and implement written anti-money laundering (AML) programs reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, *et seq*) and the implementing regulations promulgated by the Department of Treasury. Among other things, the Bank Secrecy Act requires financial institutions to report suspicious transactions relevant to a possible violation of law (31 U.S.C. 5318(g)).

FINRA fined a broker-dealer $8 million for alleged AML compliance failures related to penny stock transactions—its highest fine to date for AML violations.[12]It also fined and suspended the former AML compliance officer for the firm. FINRA alleged that over a four-and-a-half year period, the firm executed transactions or delivered securities involving at least six billion shares of penny stocks without basic information such as the identity of the stock's beneficial owner, the circumstances under which the stock was obtained, and the seller's relationship to the issuer. It also claimed that the firm failed to follow up on red flags to determine whether the penny stocks were part of an illegal unregistered distribution. It also stated that the firm's AML program failed to ensure that suspicious activity in penny stocks was reported where the firm had already responded to regulatory requests regarding information deemed to be suspicious.

FINRA brought action for what it characterized as "egregious and systemic" AML and supervisory violations related to its providing market access to broker-dealers and non-registered market participants.[13] FINRA alleged that the firm enabled market access customers to flood the markets with thousands of potentially manipulative trades involving penny stocks without appropriate risk management and supervisory systems and procedures. FINRA stated that despite its own obligations, the firm largely relied on market access customers to self-monitor and self-report their own suspicious trades without sufficient oversight and controls by the firm. While the firm had AML procedures, FINRA found that they were not tailored to the firm's market access practices. The matter is in litigation.

FINRA brought an action against a securities firm for not having adequate AML systems and procedures tailored to its business.[14] FINRA found that the firm used off-the-shelf AML procedures that did not focus on the fact that the firm was in the business of opening accounts, transferring funds, and effecting securities transactions for customers located in a high-risk jurisdiction for money laundering and that the firm relied on foreign finders for those clients. It also found that the firm did not fully enforce its AML program and did not detect certain suspicious activities, including activities by a person with reported ties to a Mexican

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

drug cartel who deposited and withdrew large amounts of money within a single month. As part of the settlement, the firm agreed to pay a fine of $475,000.

5. **Asset Transfers**.[15] ★ The SEC obtained a jury verdict in its favor in a case alleging that an investment adviser and its principal sent misleading communications to his former clients to induce them to transfer firms.[16] The SEC alleged that the investment adviser and its principal sent materially false and misleading communications to clients when the individual defendant left one firm and formed his own new firm (the investment adviser defendant). The SEC alleged that he falsely represented to former clients that the firm from which he was transferring had refused to continue managing their assets and that their wrap fee at the new firm had proven to be historically less expensive than the prior arrangement, and that he failed to disclose that the fee structure at the new firm would result in greater compensation to the defendants rather than to the advisory clients.

6. **Best Execution**.[17] ★ The SEC charged that an investment adviser and its chief operating officer (COO) violated the duty of best execution because the adviser's best execution analysis did not account for brokerage commissions and the adviser did not analyze the commissions being charged to advisory clients after it negotiated a reduction in execution and clearing costs with its clearing firm.[18] The SEC named the COO because, it found, he was responsible for conducting the firm's best execution analysis and implementing its written best execution policies and procedures for advisory clients. As part of the settlement, the firm agreed to pay disgorgement and prejudgment interest of $147,000.

FINRA brought an action against a broker-dealer related to its execution of retail transactions in exchange listed non-convertible preferred securities executed electronically on the firm's proprietary order execution system and manually through the firm's fixed income retail preferred trading desk.[19] FINRA alleged that the firm's proprietary system had a flawed pricing logic that only incorporated the quotations from the primary listing exchange for each particular non-convertible preferred security and, as a result, executed thousands of trades at prices that were inferior to the National Best Bid or Offer (NBBO). It also found that the firm's traders employed a manual pricing methodology that did not appropriately incorporate the NBBO and, as a result, executed transactions at prices inferior to the NBBO. Finally, FINRA found that the firm's supervisory system was deficient with respect to non-convertible preferred transactions because it did not provide for: 1) the identification of the person(s) responsible for supervision with respect to applicable rules; 2) a statement of the supervisory step(s) to be taken by the identified person(s); 3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how completion of the step(s) included in the supervisory procedures should be documented. As part of the settlement, the firm agreed to pay a $1.85 million fine and $638,000 in restitution.

FINRA brought an action against a broker-dealer for failing to provide best execution in 51 transactions in corporate bonds.[20] FINRA stated that the firm failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the price to the customer was as favorable as possible under prevailing market conditions. As part of the settlement of the best execution charges, the firm agreed to pay a fine of $210,000 and restitution of $70,548.

In addition, FINRA announced that it was reviewing order routing and execution quality of customer orders.[21]

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

7. **Blue Sheets**. Firms routinely provide "blue sheet" responses to FINRA and the SEC in response to requests for detailed information about trades for the firm and its customers. Blue sheets provide the security's name, date trade, price, transaction size, and parties involved. Regulators often use these as part of their investigations into insider trading and mark manipulation. The SEC brought an action against a broker-dealer in which it found (and the broker-dealer admitted) that as a result of an erroneous code change to the program for the back office data processing system, the firm failed to report in its blue sheet responses to the Commission trades that were transferred from customers' accounts to its error accounts.[22] The Commission also charged that although the firm tested the data processing program after the coding change, its testing was inadequate and failed to reveal the exclusion of error account trades. Further, the firm did not have an audit system that provided for accountability regarding the inputting of records required to be maintained and preserved. As part of the settlement, the firm agreed to pay a $2.5 million penalty.

FINRA fined three firms, and filed an unsettled action against a fourth firm, for allegedly providing inaccurate blue sheet information.[23] FINRA charged that the firms failed to include some customer names and contact information, failed to include some transactions, contained incorrect name and contact information for some customers, or contained inaccurate details of the transactions. FINRA stated that the violations arose from problems with the firms' electronic systems used to compile and produce blue sheet data, and that the firms also did not have adequate audit systems regarding blue sheet submissions. As part of the settlement, each of the three settling firms agreed to pay a $1 million fine.

8. **Complex Products**. Complex products have grown significantly as investors reach for yield in a low interest rate environment. Complex products often involve embedded derivatives and may include, for example, structured products, equity-indexed annuities, leveraged and inverse exchange-traded funds (ETFs), principal protected notes, reverse convertibles, and commodity future-linked securities. The SEC and FINRA have devoted significant attention to these products. For example, the SEC has a separate unit within the Enforcement Division that conducts investigations into complex financial instruments. The SEC issued a risk alert on investment adviser due diligence processes for selecting alternative investments.[24] The staff expressed the following concerns: 1) some advisers did not include in their annual reviews a review of their due diligence policies and procedures for recommending alternative investments; 2) advisers' disclosures sometimes deviated from actual practices, and sometimes failed to describe notable exceptions made to the adviser's typical due diligence process; 3) marketing materials contained information about the scope and depth of the due diligence process that appeared to be unsubstantiated; and 4) advisers sometimes did not conduct periodic reviews of their service providers to determining whether they were abiding the terms of their agreements. FINRA issued its own notice on the supervision of complex products in recognition of the fact that the features of these products "may make it difficult for a retail investor to understand the essential characteristics of the product and its risks."[25]

Not surprisingly, complex financial products have been on FINRA's annual list of examination priorities since the NASD began sending out the letter of examination priorities in 2005. Its January 2, 2014, list of examination priorities states, "FINRA remains concerned about the suitability of recommendations to retail investors for complex products whose risk-return profiles, including their sensitivity to interest rate changes, underlying product or index volatility, fee structures or complexity may be challenging for investors to understand. These

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

concerns are magnified when there is a strong incentive for the firm or registered representative to recommend the product because of its fee or compensation structure."[26] The letter went on to express concern about the challenge of understanding complex products, disclosure practices including a balanced discussion of the risks and potentially negative scenarios that might result in customer losses.

FINRA charged a broker dealer with failing to have an adequate supervisory system and written procedures concerning its suitability review of transactions in non-traded real estate investment trusts (REITS), non-traditional exchange-traded funds (ETFs) and other alternative investments.[27] It alleged that the method used by the firm to calculate concentration limits and enforce its own aggregate alternative investment suitability standard did not accurately record all of the alternative investments, including managed future, oil and gas programs, equipment leasing, business development companies, and non-traded REITs, in a customer's portfolio; that the firm did not train its supervisory staff to appropriately analyze state suitability standards as part of its suitability review of certain alternative investments; that the paperwork used by the reviewing principal to assess state suitability standards did not consistently contain the appropriate state's suitability standards; and that the Firm had inadequate controls to ensure that its staff, in effecting alternative investment transactions, used current and accurate subscription agreements as part of the alternative investment purchase paperwork. As part of the settlement, the firm agreed to pay a fine of $775,000.

FINRA charged a broker-dealer with supervisory deficiencies related to the sale of alternative investment products, including non-traded REITS, oil and gas partnerships, business development companies, equipment leasing programs, real estate limited partnerships, hedge funds, managed futures, and other illiquid pass-through investments.[28] FINRA alleged that the absence of supervisory procedures caused a customer's account to be unsuitably concentrated in alternative investments in violation of the firm's, prospectus or certain state suitability standards. It also alleged that the firm's computer system and written materials used by the firm's supervisory personnel did not consistently identify alternative investment transactions that fell outside of the firm's suitability, prospectus, and state suitability standards, and that the firm did not adequately train its supervisory staff to appropriately analyze state suitability standards as part of their suitability review of certain alternative investment transactions. As part of the settlement, the firm agreed to pay, the firm agreed to pay a fine of $950,000.

FINRA charged a broker-dealer with supervisory deficiencies in connection with the sale of leveraged, inverse, and inverse-leveraged ETFs.[29] FINRA alleged that even though these non-traditional ETFs have risks that are not found in traditional ETFs (*e.g.,* daily reset, leverage, compounding, and potential variance from the benchmark after a very short period), the firm supervised these non-traditional ETFs the same way it supervised traditional ETFs. It stated that the firm's registered representatives did not have an adequate understanding of the non-traditional ETFs before they recommended these products to retail investors and, therefore, made unsuitable recommendations, and that the firm should have had a different supervisory system for the non-traditional ETFs and should have provided formal training regarding the non-traditional ETFs. As part of the settlement, the firm agreed to pay a fine of $275,000 and restitution of $33,183. FINRA charged a second firm with the same misconduct concerning nontraditional ETFs and imposed a fine of $200,000 and restitution of $51,581.[30]

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

9. **Concealing Errors**. ★ The SEC charged an investment adviser with concealing investor losses that resulted from a coding error.[31] The SEC charged that as a result of a coding error, restricted private investments were allocated to nearly 100 ERISA plans that were not permitted to invest in private placements. The SEC alleged that the firm violated its error correction policy (set forth in the firm's ADV) by failing to notify most of its affected ERISA clients of the error for more than a year. The Commission acknowledged that the adviser had conducted a three- month investigation of the matter and consulted with outside counsel, but the Commission disagreed with the outcome of that review. The Commission concluded, "By applying a narrow definition of the term 'error' under its error correction policy, [the firm] was able to conclude that a coding and allocation issue affecting 99 ERISA client accounts did not require disclosure." As part of the settlement related to the coding error, the firm agreed to pay more than $10 million in restitution and a penalty of $1 million (and also to pay a penalty of $1 million to the Department of Labor).

10. **Conflicts of Interest**. ★ Many of the cases discussed above and below involve conflicts of interest, and FINRA, in particular, is highly focused on conflicts of interest, as its 2013 Report on Conflicts of Interest demonstrates. [32] Occasionally, the principal allegation is that the firm failed to disclose a conflict of interest. In 2014, the SEC brought an administrative action against an investment adviser and its co-owners, alleging that they failed to disclose compensation the adviser received through agreements with a broker-dealer.[33] According to the Order Instituting Administrative and Cease-and-Desist Proceedings, the broker agreed to pay the investment adviser a specified amount for all client assets that the adviser invested in certain mutual funds offered on the broker's platform. This agreement created incentives for the adviser to favor particular mutual funds over other mutual funds and to favor the broker's platform when giving investment advice to its client. The Commission charged that the adviser failed to disclose this agreement and the resulting conflicts of interests to its clients for years, and then disclosed it inadequately because it failed to disclose that the arrangements created potential conflicts of interest. The matter is in litigation.

11. **Cross Border Activities.** ★ Non-U.S. firms are at risk of violating U.S. broker-dealer and investment adviser registration provisions when they conduct business in the U.S. The fines in these cases have been substantial—in part because of concerns that the activities are designed to help U.S. citizens hide assets and avoid tax obligations. The SEC brought actions against two non-U.S. firms for engaging in advisory or brokerage business in the U.S. without registering as U.S. broker-dealers or investment advisers. In the first case, the SEC charged that relationship managers of a Swiss financial services holding company provided cross-border brokerage and investment advisory services in the U.S. or by use of the mails in violation of U.S. broker-dealer and investment adviser registration requirements.[34] The Commission acknowledged that the firm had adopted policies designed to comply with U.S. securities laws, but concluded that it "did not effectively implement these policies and did not sufficiently monitor the U.S. cross-border securities business." For example, certain relationship managers traveled to the U.S. to meet with existing and prospective clients to provide investment advice and/or solicit securities transactions and were encouraged to do so, and received broker-dealer and investment adviser fees in connection with the investments. As part of the settlement, the firm paid $196 million and "acknowledge[d] that its conduct violated the federal securities laws."

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

In the second case, the SEC charged that the relationship managers of the private banking unit of a different Swiss bank solicited, established, and/or maintained brokerage and investment advisory accounts for U.S. clients, accepted and executed orders for securities transactions, solicited securities transactions, handled U.S. clients' funds and securities, provided account statements and other account information, and provided investment advice to U.S. clients without complying with U.S. broker-dealer and investment adviser registration requirements. The SEC alleged that the relationship managers traveled to the U.S., communicated with U.S. clients while the clients were present in the U.S., and made recommendations as to the merits of various types of investments. The Commission alleged that nearly two years after an internal audit identified problems with the bank's cross-border activities, the bank's cross-border activities were still not fully compliant with the bank's cross-border policy. As part of the settlement, the firm agreed to pay $5.7 million in disgorgement, $4.2 million in prejudgment interest, and a $2.6 million penalty.

12. **Cross Trades**. ★ Cross trades (typically trades between different clients) are not prohibited under the federal securities laws, but are subject to a number of restrictions designed to prevent clients from being disadvantaged in trades that do not have the protection of the market or an independent counterparty setting the price. Rule 206(3)-2 under the Investment Advisers Act, 17 C.F.R. 275.206(3)-2, sets forth the requirements for agency cross transactions. For investment companies, Rule 17a-7, 17 C.F.R. 270.17a-7, defines the circumstances in which cross trades are permissible.

The SEC charged that during the financial crisis an investment adviser arranged dealer-interposed cross trade transactions in which counterparty dealers purchased fixed-income securities from certain clients of the adviser and then resold the same securities to other clients of the adviser in violation of Sections 17(a)(1) and (2) of the Investment Company Act.[35] The Commission also charged that the adviser violated Section 206(2) of the Advisers Act by cross trading securities at the bid, rather than at an average between the bid and the ask, and thus favoring the buyers in the transactions over the sellers. The Commission stated that the cross trading violations were caused in large part by the adviser's failure to adopt adequate policies and procedures to prevent unlawful cross trading by its trading personnel through these repurchases and by its failure reasonably to supervise a trader who aided and abetted the cross trade violations. As part of the settlement of the cross trade charges, the firm agreed to pay more than $7.4 million in disgorgement and a $1 million penalty (in addition to a $607,717 penalty to the Department of Labor).

13. **Custody**. ★ The SEC's Custody Rule (Investment Advisers Act Rule 206(4)-2) requires that advisers who have custody of client assets put in place a set of procedural safeguards to prevent loss of those assets.[36] The Commission brought administrative proceedings against an investment adviser, its two co-chairmen, and the Chief Compliance/Chief Operating Officer for alleged violations of the "custody rule."[37] The Commission charged that the adviser, contrary to the requirements of the rule, failed to submit to a surprise examination by an independent public accountant , failed to distribute audited financials within the 120-day window imposed by the rule, and took no remedial action in response to a prior order requiring it to implement policies and procedures aimed at ensuring compliance with the custody rule. The matter is in litigation.

FINRA charged that a broker-dealer consistently failed to disclose to clients the purpose and nature of a custody fee for over seven years.[38] FINRA charged that the firm's supervisory procedures were inadequate because the firm "has never had a system in place the review

the reasonableness of fees and has never performed a reasonableness test concerning the fee charged on an individual account basis." It also charged that the reference to a "custody fee" was misleading because the firm did not act as custodian for any client assets; instead, custody servicers were provided by the firm's clearing firm. The firm sometimes used the term "fee based brokerage charge" to describe the custody fee, which FINRA said was also misleading because that is a term normally associated with accounts that collect all-inclusive wrap fees as compensation for transactions and investment advice. FINRA also charged that the firm gave clients only 11 days advance written notification prior to changing the fee, which violated the requirement set forth in Notice to members 92-11 that customers be provided with written notification at least 30 days prior to the implementation or change of any service charge. As part of the settlement, the firm agreed to pay a $650,000 fine.

14. **Cybersecurity**. Item 30 of SEC Regulation S-P, "Privacy of Consumer Financial Information and Safeguarding Personal Information," requires broker-dealers, investment advisers, and investment companies to establish written policies and procedures reasonably designed to insure the security and confidentiality of customer records and information, protect against any anticipated threats or hazards to the security or integrity of customer records and information, and protect against unauthorized access to or use of customer records or information.

Although the SEC and FINRA did not bring any major cybersecurity cases in 2014, the massive scope of recent data breaches is almost certain to increase the enforcement focus.[39] The Commission held a Cybersecurity Roundtable on March 26, 2014, and the SEC's Office of Compliance Inspection and Examinations (OCIE) issued a Cybersecurity Risk Alert on April 15, 2014.[40] The Risk Alert stated that OCIE will be conducting examinations of more than 50 registered broker-dealers and registered investment advisers focused on cybersecurity. The examinations focus on cybersecurity governance, identification and assessment of cybersecurity risks, protection of networks and information, risks associated with remote customer access and funds transfer requests, risks associated with vendors and other third parties, detection of unauthorized activity, and historical experience with cybersecurity threats, including how the firm has responded. Cybersecurity is also one of FINRA's major examination priorities.[41]

15. **Email Retention and Review.** SEC Rule 17a-4(b)(4), 17 C.F.R. 240.17a-4(b)(4), requires broker-dealers to retain copies of all communications "relating to its business as such" and subsection (j) of the rule requires firms to produce such records "promptly" upon request by the Commission. Emails are "communications" and brokerage firms, therefore, have to retain emails related to their business and be able to produce those promptly at the request of the SEC.[42] The complexity and multiplicity of email systems, however, often results in firms inadvertently failing to retain a portion of the required emails. FINRA requires broker-dealers to have supervisory policies and procedures to monitor all electronic communications technology used by the firm and its associated persons to conduct the firm's business.[43] In 2014, the Commission and FINRA brought several actions related to email retention and review.

The SEC charged that a broker failed reasonably to supervise a trader on its mortgage-backed securities desk because its review of the trader's emails was inadequate.[44] The Commission acknowledged that the firm's supervisors reviewed emails that were selected both randomly and based on language-specific searches. It stated, however, that the firm failed "reasonably to implement this procedure for review of communications in a manner

that would reasonably be expected to detect the misrepresentations about purchase price made by [a trader] and other representatives on respondent's [mortgage backed securities] desk."[45] It also stated that the firm failed to include Bloomberg group chats in its review of electronic communications. In a separate criminal trial, the trader was convicted of misrepresenting the price at which the firm acquired the securities in order to charge a higher purchase price to customers. As part of the SEC settlement, the firm agreed to pay $4.2 million in disgorgement and $292,515 in prejudgment interest.

FINRA charged several affiliated brokerage firms with failing to retain and supervise emails sent via BlackBerry outside the firm that did not copy a recipient within the firm and failure to retain and timely supervise BlackBerry instant and text messages sent or received by certain associated persons.[46] The errors resulted from a faulty configuration of the BlackBerry Enterprise Server. As part of the settlement, the respondents agreed to pay a $275,000 fine.

FINRA also charged that when a broker-dealer updated the software that directed the flow of its registered representatives' emails to the firm's email retention server, it turned out that the software upgrade was not compatible with the computerized tool that the firm used to conduct daily reviews of its associated persons' emails.[47] The firm, however, failed to test its email supervisory system during the software update and, as a result, did not identify that the surveillance tool was not surveilling the emails. As a result, the firm's supervisory system failed to surveil over 12 million emails. When it learned of the problem, the firm self-reported the issued described to FINRA, undertook an internal review of its supervisory systems related to the issues, and subjected the emails that had not been reviewed to review. As part of the settlement, the firm agreed to pay a $250,000 fine, which FINRA stated reflected credit for the self-reporting.

16. **Exaggerated Claims/Misleading Marketing Scripts.** FINRA charged that a registered rep sent potential investors emails that contained exaggerated, unwarranted, and misleading claims.[48] These included the following: 1) The [company's stock] is a 10x+bagger in the next 12-24 months!!!!"; 2) "This is a company with huge investment potential and arguably the most impressive list of investors of any company I have ever seen"; 3) "As hot as the company is it really does not matter because you have the 6 months put at a 50% profit!"; 4) "We are extremely confident that there will be substantial demand for the stock in six months—the stock will be worth more than $60 million in six months but if we are wrong we have the ware withal [sic] to buy it ourselves which we will do." None of the email correspondence included any discussion of the potential risks with the investments. FINRA charged that the firm and a supervisor failed to reasonably supervise the registered rep even after he was placed on a plan of heightened supervision. As part of the settlement, the broker-dealer agreed to pay a fine of $300,000, the supervisor agreed to pay a fine of $10,000, and the registered rep agreed to a permanent bar from associating with any FINRA member.

FINRA charged that a brokerage firm retained a third-party vendor to educate its customers regarding options trading and that the third party used marketing scripts that failed to adequately discuss the inherent risk in options trading or that, despite the successful completion of the training, the customers might never become profitable options traders.[49] For example, the script stated: 1) "So we are going to follow a proven, step-by-step process"; 2) "Do you believe you have the ability to adapt to the market as it changes direction? Or in other words, are you making money when the market goes up, down, and sideways?"; 3) "We'll need to discuss whether or not you're open to having our coaches literally take you by

the hand and move you through this project successfully, at whatever level that is for you." FINRA also charged that the firm failed to supervise its employees in their review and approval of the marketing scripts used by the vendor or to ensure that its employees monitored the vendor's interactions with the firm's customers. As part of the settlement, the broker-dealer agreed to pay a fine of $275,000.

17. **Fees, Expenses, and Markups**. ★ Broker-dealers and investment advisers face considerable pressure to increase fees as a way of increasing their profitability. The SEC and FINRA brought a number of cases in 2014 involving fees, expenses and markups.

The SEC charged an investment advisory firm with breaching its fiduciary duty to two private equity funds by sharing expenses in a manner that benefitted one fund over the other.[50] The two portfolio companies, which were acquired at different times, integrated a number of business and operations functions (such as human resources, marketing, and technology) and shared expenses that were generally allocated based on each company's contributions to their combined revenue. The Commission found, however, that in some cases a portion of the shared expenses were misallocated or undocumented—for example, one portfolio paid the entire third-party payroll and 401(k) administrative expenses for the employees of both companies and some employees performed work that benefitted both companies but their salaries were not allocated between the two. As part of the settlement, the firm agreed to pay $1.5 million in disgorgement, a $450,000 penalty, and $358,112 in prejudgment interest.

The SEC sued a brokerage firm for taking more than $18 million in "secret profits" by adding hidden markups and markdowns to customer trades.[51] The Commission alleged that traders on the firm's cash desk represented in connection with riskless principal transactions that it was charging customers, primarily large foreign institutions and foreign banks, only small commissions generally ranging between a fraction of a penny and two pennies per share. According to the SEC, however, during periods of market volatility the firm considered other transactions in the relevant securities occurring in seconds or minutes before and after the actual trade executed and, where advantageous to the firm, entered a false execution price for the client. The Commission stated, "When a broker represents that it will act as an agent for the customer and negotiates the compensation the customer will pay on transactions, if the broker then imbeds an undisclosed markup or markdown in the price reported and charged to the customer, it violates the law...." As part of the settlement, the firm agreed to pay $14 million in disgorgement and to cease acting as a broker-dealer. Two sales brokers and one sales trader pled guilty to criminal charges in connection with the conduct. Litigation is continuing against a fourth former broker.

The SEC charged the former CEO of a broker-dealer subsidiary with concealing the practice of routing orders to an offshore affiliate to add mark-ups and mark-downs that were in addition to commissions that the customers paid to have their orders executed.[52] The firm marketed itself as a "conflict-free," agency-only broker offering global execution services and acted on a riskless principal capacity. The Commission charged that if employees believed that they could add a mark-up or mark-down without detection by the customer, they added one to the price received from the local broker and kept the difference as a trading profit. In a criminal proceeding against the firm, the firm agreed to pay $43.8 million and two employees pled guilty to criminal charges. At the same time, the SEC sued the CEO civilly, and the Department of Justice announced a parallel criminal proceeding against the CEO. The matter is in litigation.

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

The SEC charged an investment adviser that offered breakpoint discounts to clients when they increased their assets in certain investment programs failed in some cases to aggregate related client accounts and thus failed to pass on appropriate discounts.[53] The Commission stated that its examination staff had flagged the issue in an examination, that the adviser had taken steps to address the aggregation issue after that examination, but that a subsequent examination revealed that the aggregation problem still existed, which led to the enforcement action. The Commission charged that the failures occurred because of inadequate policies and procedures at the adviser's headquarters to implement the breakpoint policy—in particular, the firm's policies and procedures did not clearly delineate who was responsible for reviewing new account forms for aggregation purposes and, as a result, the firm failed in certain instances to appropriately link accounts together to apply breakpoints in the billing process. The Commission also alleged that the adviser maintained two separate policy and procedure manuals, and that they contained conflicting policies on the application of advisory fee breakpoints—one making the breakpoint discounts mandatory and the other making them discretionary. In connection with the action, the firm reviewed client records and paid reimbursement of $553,624; as part of the settlement, it also paid an additional $553,624 penalty.

The SEC charged that a private equity manager used assets from 19 private equity funds to pay more than $3 million of expenses that the manager should have borne.[54] This was in addition to the management fees already being paid to the manager. The Commission charged that the manager failed to disclose the payment arrangement in fund offering documents, and stated that private equity advisers can only charge expenses to their fund when they clearly spell out those arrangements for investors. The Commission also charged a number of other violations, including that the manager caused the funds to borrow money from the manager at unfavorable rates. The matter is in litigation.

FINRA fined a firm $8 million and ordered it to pay $24.4 million in restitution in addition to $64.8 million in refunds the firm had already paid.[55] FINRA alleged that the mutual funds available on the firm's retail platform offered fee waivers to retirement accounts and disclosed those waivers in their prospectuses, but that at various times the firm failed to waives these fees, that its written supervisory procedures provided little guidance on mutual fund sales charge waivers, and that the firm relied on financial advisors to waive the charges but did not properly train them. FINRA also alleged that the firm learned of the problem five years before disclosing it to FINRA and that the problem persisted long after the firm became aware of it. FINRA also charged that the firm failed to provide certain mutual fund fee waivers that the mutual funds offered to charitable organizations purchasing shares of their funds.

FINRA charged a broker-dealer with charging excessive markups in 50 transactions in zero-coupon municipal bonds and 83 transactions involving U.S. Treasury and Agency Separate Trading of Registered Interest and Principal Securities (STRIPS).[56] FINRA charged that BD1's trading desk purchased the securities from the street, sold the securities to BD1's salesmen inclusive of a markup, BD1's salesmen sold the securities to BD2 inclusive of a second markup, and BD2 then sold the securities to the customer inclusive of a third markup. BD1 owned a non-voting 20% preferred stock interest in BD2. FINRA concluded that the excessive markups in the municipal bond transactions ranged from 5.24% to 8.48% and that the excessive markups on the STRIPS ranged from 3.87% to 6.75%. As part of the settlement, the firm agreed to pay a fine of $200,000.

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

18. **Financial Crisis Cases**. While the SEC filed the vast majority of its enforcement actions related to the financial crisis between 2010 and 2013,[57] it brought two significant actions against broker-dealers in 2014 related to the financial crisis.

In one, it settled a previously filed action charging that a bank and an affiliated broker-dealer misrepresented and omitted certain material facts regarding residential mortgage-backed securities (RMBS) backed by prime mortgage loans.[58] The Commission alleged that the defendants failed to disclose that a significant portion of the mortgage loans had been originated through unaffiliated mortgage brokers and that such loans were more likely to be subject to material underwriting errors, become severely delinquent, fail early in the life of the loan, or prepay. The Commission also alleged that the defendants misrepresented that the mortgage loans backing the RMBS were underwritten in accordance with the bank's guidelines. The defendants settled that action and a subsequently filed SEC action alleging that the bank failed to adequately disclose known uncertainties to future income from its exposure to mortgage loan repurchase claims as part of a $16.65 billion settlement to resolve various investigations by a number of federal agencies.

The Commission also charged a broker-dealer and two related entities with misleading investors in two RMBS offers that the firms underwrote, sponsored, and issued.[59] The SEC alleged that the respondents misrepresented the current or historical delinquency status of certain loans collateralizing the transactions. The Commission alleged, for example, that even though one of the transactions had a May 1 cut-off date for establishing the composition of the asset pool, by the time the transactions were issued the RMBS market was experiencing unprecedented delinquencies and respondents had an obligation to disclose updated remittance data they received a week before the transaction closed on June 20, 2007. Defendants agreed to settle by paying $275 million in disgorgement, penalty and prejudgment interest.

19. **Finders.**[60] FINRA fined a New York-based securities firm that services Mexican clients investing in the U.S. in part for failing to register 200-400 foreign finders who interacted with the firm's Mexican clients.[61] FINRA alleged that the finders were employed by the firm's Mexican affiliates, that they served as the firm's primary point of contact with customers (including discussing investments, placing orders, responding to inquiries, and, in some instances, obtaining limited trading authority over customer accounts), and that they were required to be registered with the firm. FINRA acknowledged that foreign finders are not required to be registered if they limit their activities to the initial referral of non-U.S. customers to the firm and adhere to certain other conditions, but stated that here they did not limit their activities and, therefore, were associated persons of the broker-dealer and were required to be registered as foreign associates in another appropriate registration category. As part of the settlement, the firm agreed to pay a fine of $475,000.

20. **Hedge Funds**. ★ Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directed the SEC to require registration of advisers to hedge funds and other funds that were previously exempt from SEC registration. The SEC brought a half-dozen cases against hedge fund managers and brokerage firms that facilitated unlawful conduct by hedge funds.[62] The SEC announced charges against an investment adviser to a hedge fund for failing to adequately supervise a managing member of the adviser who misappropriated approximately $320,000 from the fund for his own personal use. The Commission charged that several deficiencies at the adviser enabled the individual to perpetrate his fraud, including the failure to provide employees with a copy of the firm's

policies and procedures on an annual basis, the failure to adopt policies and procedures that imposed controls around the individual's ability to withdraw money from the fund, the failure to enforce its policies requiring that firm employees use the firm's email and instant message systems for all firm business rather than their personal emails, and the failure to comply with its requirement to conduct an annual review of the adequacy and effectiveness of the firm's policies and procedures. As part of the settlement, the firm agreed to pay a $150,000 penalty.

The Commission charged that the portfolio manager of a hedge fund received tips from his brother concerning five different public companies. [63] The Commission's complaint alleged that this resulted in over $3 million in illicit profits, but the case was ultimately settled for $372,000 in disgorgement and a penalty in the same amount.[64]

The SEC charged that a hedge fund manager, his investment advisory firm, and a third-party caused the funds to reimburse the adviser for fake research expenses and then routed much of that money to his personal checking account.[65] The Commission charged that the firm also improperly paid the manager's salary with soft dollars that were supposed to be used to purchase third-party investment research that benefitted the funds. The Commission also charged that the adviser manipulated the price of a thinly-traded stock, which comprised over 75% of the funds' portfolios, by placing multiple buy orders seconds before the market closed on the last trading day of the month in order to artificially pump up the value of the funds' portfolios. The matter is in litigation.

The SEC charged a Bahamas-based brokerage firm and its president with falsely representing that they were the custodian of the assets invested in the hedge fund, allowing the hedge fund to create false account statements that overstated the value of the investors' assets, and that permitted the hedge fund manager to misappropriate at least $45 million.[66] The matter is in litigation.

The SEC charged the chief investment officer (CIO) for an investment adviser to several hedge funds with facilitating an improper loan from the hedge fund to a principal of the adviser.[67] In the settlement, the CIO admitted that he failed to ensure that 1) the fund that lent the money had separate counsel, 2) the loan was consistent with the individual's fiduciary obligations to the fund, 3) the individual paid an "above market" interest rate on the loan, and 4) the loan was disclosed to investors in a timely manner. The COO also admitted that he failed to take actions to cause the fund to accelerate the repayment of the loan once investors in the fund were permitted to begin redeeming their investments. As part of the settlement, he admitted certain SEC allegations, agreed to pay a $200,000 penalty, and consented to a two-year bar from working in the securities industry.

The SEC charged a hedge fund advisory firm and its principal with shifting money from one of the hedge funds to a third-party entity, which paid $750,000 to the principal, his son, and the adviser's general counsel. [68] According to the SEC, after diverting the money, the advisory firm sent false statements to investors indicating that the hedge fund was continuing to perform well without disclosing that that almost all of the money in the fund had been invested in the third-party entity. The matter has been settled by the adviser, the principal and the general counsel, but the release disclosing the settlement stated that the amount of the monetary sanctions will be determined by the court at a later date.

The SEC charged a hedge fund adviser with causing the hedge fund client to engage in prohibited principal transactions with a broker-dealer affiliated with the adviser.[69] The trades

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

were part of a strategy designed to reduce the tax liability of the firm's hedge fund investors—with the traders selling securities that had unrealized losses to a proprietary account the affiliated broker-dealer in order to offset the hedge fund's realized gains. After the sale to the broker-dealer, the hedge fund repurchased most of those positions for the hedge fund. The transaction had been approved by the firm's conflict committee, but the SEC charged that the conflicts committee was itself conflicted and thus its approval had no effect. As discussed below in the section on Whistleblower Retaliation, the SEC also charged the adviser with retaliating against the firm's head trader for reporting the trading activity to the SEC. As part of the settlement, the adviser and its principal agreed to pay disgorgement of $1.7 million, a penalty of $300,000, and prejudgment interest of $181,771.

The SEC charged an advisory firm for a hedge fund and its chief investment officer (CIO) with misappropriating investor funds for personal expenses and with altering an outside audit firm's report in order to convert an investment loss of more than 3% into an investment gain of 30%.[70] The Commission also charged the CIO with altering an outside audit firm's report reviewing the performance of an investment account and the chief financial officer, who learned about the falsification and also allegedly siphoned investor proceeds for personal expenses. The SEC's complaint also alleges that the defendants misrepresented the CFO's litigation history to investors. The Commission obtained a temporary restraining order and asset freeze.

21. **High-Frequency Trading.** Especially after the publication of Michael Lewis's **Flash Boys**, high-frequency trading has attracted considerable attention from the SEC, FINRA, the New York Attorney General, the Commodity Futures Trading Commission, and private litigants.[71] In a May 19, 2014, speech, FINRA Chairman and Chief Executive Officer Rick Ketchum stated that FINRA had 170 open investigations concerning abusive algorithms, inadequate supervision of algorithms and deficient order controls.[72] In a June 5, 2014 speech on high-frequency trading, SEC Chair Mary Jo White stated that she has asked the SEC staff to draft rules to subject unregistered active proprietary traders to SEC and FINRA oversight and to improve oversight over trading algorithms.[73] A June 17, 2014, Reuters article stated that the SEC was seeking information on 10 registered broker dealers as part of an ongoing investigation into high-frequency trading strategies.[74] Most high-frequency trading violations, however, do not involve broker-dealers or investment advisers.

One of the SEC's high-frequency trading cases involved net capital violations and is discussed below under the Net Capital heading. In another, the SEC charged that the general partner and investment manager for master and feeder funds engaged in manipulative high-frequency trading.[75] The Commission charged that the firm made large purchases or sales of stocks in the last two seconds before Nasdaq's 4 p.m. close in order to drive the stocks' closing prices slightly higher or lower and that its trades made up over 70% of the total NASDAQ trading volume of the affected stocks in the seconds before the close almost every trading day. The Commission's order notes that a stock's closing price "is the data point most closely scrutinized by investors, securities analysts, and the financial media, and is used to value, and assess management fees on mutual funds, hedge funds, and individual investor portfolios." As part of the settlement, the firm agreed to pay a $1 million penalty.

22. **Inaccurate/Delayed Information to SEC.** As its blue sheet case discussed above shows, the SEC is increasingly intolerant of conduct that it believes interferes with its investigations. In connection with an enforcement action against a broker-dealer for failing to

prevent an employee from trading on inside information allegedly provided by a retail client, the SEC also charged the firm with unreasonably delaying producing documents related to the firm's review of the trading and failing to produce an accurate record of the review as it existed at the time of the staff's request.[76] As part of the settlement, the firm made certain admissions and agreed to a $5 million penalty. A former member of the compliance department at the firm is litigating the SEC's allegation that a document was altered.[77]

23. **Inaccurate Order Transmission.** FINRA charged that a firm that conducts its business through fully-automated electronic trading desks failed to reasonably prevent the transmission of erroneous orders to NASDAQ and other exchanges.[78] FINRA charged that 1) on 24 occasions, the firm used the exchanges' process to obtain cancellation of erroneous customer orders that the firm's supervisory and risk controls failed to detect and prevent, 2) the firm's implementation of a software upgrade caused it to erroneously sell short 2.75 million shares of an issuer during an 11-minute period, 3) the firm's implementation of an updated version of its order sizing software caused the firm to enter into an order sending and cancellation loop, and 4) the failure of the firm's data server dedicated to handling NYSE Arca market data to start up properly caused the firm to send erroneous limit orders in 16 different stocks. FINRA charged that the firm's supervision and risk management controls were deficient because they were not reasonably designed to 1) check for order accuracy; 2) reject orders that exceeded appropriate price and/or size parameters; 3) reject duplicative orders; and 4) monitor appropriate message level activity. As part of the settlement, the firm agreed to pay a fine of $800,000, of which $420,000 was paid to NASDAQ, $50,000 to FINRA, and the balance to other exchanges.

24. **Inadequate Supervisory Staffing.** FINRA brought an action against a firm for relying on too few people to remotely conduct all of the supervisory and compliance functions for 1,274 registered representatives in 854 branch offices.[79] FINRA charged that the firm's supervision was inadequate with regard to email review, reporting customer complaints, gifts and gratuities, outside business activities, due diligence regarding the sale of structured products, and protection of confidential client information. As part of the settlement, the firm agreed to a fine of $100,000.

25. **Inside Information.** The SEC brings dozens of insider trading cases almost every year. Few of those cases, however, involve broker-dealers and, when they do, they have usually involved persons on the investment banking side of the broker-dealer or persons in other areas who routinely obtain material nonpublic information. In what it described as its first case ever against a broker-dealer for failing to protect nonpublic information conveyed by a customer of a retail financial adviser, the SEC charged that a broker-dealer failed to implement procedures reasonably designed to prevent a financial adviser from trading on material nonpublic information provided by a customer.[80] The Commission acknowledged that the firm conducted "look back" reviews of trading in employee and customer accounts after market-moving announcements, but stated that these procedures were inadequate because a single group within the firm's compliance department was designated as having primary responsibility for conducting the look back reviews "even though other departments [*i.e.,* the firm's AML and central supervision units] within the firm often had relevant information." The Commission also stated that the firm's reviews were delayed, that news stories were not consistently printed, and that in some cases the reviewer did not contact the branch about red flags if the reviewer thought that they were not important. As part of the settlement, the firm made certain admissions and agreed to a $5 million penalty.

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

In a more traditional insider trading case, the Commission charged a managing clerk at a law firm with tipping material nonpublic information about more than a dozen mergers or other corporate transactions to a stockbroker, who traded on his own behalf as well as for family members and other customers.[81] The SEC alleged that the tips were conveyed through a middleman, who revealed the ticker symbols of the companies on a post-it note or napkin and then chewed up and sometimes ate the note or napkin. The managing clerk and the stock broker were also charged in parallel criminal proceedings. The matter is in litigation.

The SEC also charged that an investment banker used confidential information he obtained on the job to trade in his former girlfriend's account and his father's brokerage account.[82] The banker was also charged in a parallel criminal proceeding. At the SEC's request, the court granted an emergency order freezing the banker's brokerage account.

The Commission also charged that a research analyst at a broker-dealer tipped changes in his ratings to a trader at the firm, who generated $117,000 in profits for the firm by trading ahead of six ratings changes.[83] The SEC alleges that after learning in advance of rating changes, the trader either purchased the stock or sold it short. The research analyst and trader have contested the allegations, and the matter is in litigation.

The SEC charged two Hong Kong-based asset management firms and clients of those firms with trading on the basis of inside information related to the announcement of the acquisition of a Canadian energy company.[84] The SEC initially obtained an emergency asset freeze. As part of the settlement, defendants agreed to pay nearly $11 million in disgorgement and penalties.

The SEC charged two brokers with trading on inside information ahead of the acquisition of SPSS Inc. by IBM Corporation.[85] The Commission alleged that a research analyst misappropriated the information from an attorney working on the transaction and that the analyst passed the information on to the brokers, who traded. Criminal charges were also filed against the two brokers. The matter is in litigation.

FINRA also brought insider trading cases in 2014, including cases against 1) a vice president in the conflicts office of an investment bank, who shared material nonpublic information regarding at least 15 pending corporate merger and acquisition transactions,[86] and 2) a former equity trader for trading in Japanese securities on the basis of material nonpublic information he received from a corporate insider.[87] As part of the settlements, both individuals agreed to bars from being associated with any FINRA member.

26. **IPOs.** FINRA fined a securities firm $5 million for supervisory failures related to the sale of shares in 83 initial public offerings.[88] FINRA charged that the firm used the terms "indications of interest" and "conditional offers" interchangeably in its written policies and procedures related to the sale of securities in IPOs even though the terms mean different things. FINRA stated that a firm may solicit non-binding "indications of interest" in an IPO prior to the effective date of the registration statement, but that a trade following an indication of interest is an unauthorized sale unless the indication of interest is reconfirmed by the investor after the registration statement becomes effective. FINRA stated that brokerage firms are also permitted to solicit "conditional offers to buy," but that to prevent them from becoming *de facto* contracts for sale prior to the effectiveness of the registration statement, the customer should be given a meaningful opportunity to withdraw the offer following the effectiveness of the registration statement. A conditional offer becomes a contract when the firm accepts the offer following the effectiveness of the registration statement.

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

27. **Manipulative Trading.** The SEC charged the owner of an unregistered broker-dealer with manipulative trading by engaging in "layering" or "spoofing."[89] Layering, the Commission stated, involves "the use of non-bona fide orders, or orders that the trader does not intend to have executed, to induce others to buy or sell the security at a price not representative of actual supply and demand." The Commission alleged that the owner placed sell orders that he intended to have executed, and then immediately entered numerous non-bona fide buy orders for the purpose of attracting interest to the sell offer, and similarly that he placed bona fide buy orders and then placed and quickly cancelled non-bona fide sell orders to attract interest to his buy order. As part of the settlement, two firms and five individuals agreed to pay a total of nearly $3 million in disgorgement, penalties, and prejudgment interest.

28. **Margin Requirements.** NASD and NYSE margin rules permit certain securities to qualify for portfolio margin treatment in which all positions in a product class or group are margined using computer modeling to perform risk analysis across multiple pricing scenarios.[90] However, a non-marginable security—for example, foreign securities that are not deemed to be foreign margin stock and securities not traded on a national securities exchange—must have a 100% regulatory maintenance requirement applied regardless of the type of account in which it is held. FINRA charged that a clearing firm's predecessor firm violated margin requirements by extending credit on non-marginable securities that were contained in portfolio margin accounts. As part of the settlement, the successor firm agreed to pay a fine of $200,000.

29. **Market Access.** In 2010, the Commission adopted the Market Access Rule (Rule 15c3-5, 17 C.F.R. 240.15c3-5) to require that broker-dealers with market access "appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system." Under the Market Access Rule, broker-dealers with market access, or that provide market access to others, are required to "establish document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks" of its market access business.

In 2014, the SEC brought its first action under the Market Access Rule. It charged that a broker-dealer, which it characterized as one of the largest volume market access providers in the U.S., violated the Commission's Market Access Rule by allowing dozens of trading firms and thousands of traders to engage in trading that did not flow through any of the firm's systems before reaching exchanges and other trading venues in the U.S.[91] The Commission stated that the firm's lack of reasonably-designed market access controls and procedures resulted in the firm violating other regulatory requirements as well, including Reg SHO and Reg NMS, failure to preserve written communications with customers, and failure to file suspicious activity reports pursuant to AML requirements. The Commission also brought actions against an executive vice president and senior vice president in the Correspondent Services Division of the firm. The Commission announced the settlement of the case on November 20, 2014.[92] As part of the settlement, the firm admitted that it granted access to thousands of overseas traders without having appropriate safeguards in place and agreed to pay a $2.44 million penalty.

30. **Misappropriation of Assets.** ★ The SEC filed an action against a private equity manager for treating fund assets "as his own personal and professional slush fund."[93]

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

According to the Commission, the adviser purported to pay the fees to a third party to conduct due diligence in connection with potential investments by the fund, but the third party kicked backed the money to companies and accounts controlled by the adviser, which used the funds to rent office space, pay commissions to third parties to secure investments from pension funds, and project a misleading image of the adviser. The Commission alleged that the adviser lied to auditors and forged documents in order to mask the scheme. The matter is in litigation.

The SEC charged a broker with stealing funds from elderly customers, including some who were legally blind, and falsifying their account statements to cover up her fraud.[94] The SEC alleged that the registered rep stole $730,289 from her clients by engaging in unauthorized trading, and that she forged brokerage, banking and other documents. Parallel criminal charges were also filed. As part of the SEC settlement, the broker agreed to disgorge the $730,289 in ill-gotten gains.

31. **Municipal Bonds.** The SEC Enforcement Division has a unit, the Municipal Securities and Public Pensions Unit, focused on municipal bond enforcement actions. Most of the Commission's enforcement actions in the municipal securities market are against issuers for allegedly inadequate disclosure in municipal offerings.[95] In 2014, however, the SEC also brought an enforcement action against 13 brokerage firms for violating Municipal Securities Rulemaking Board Rule G-15(f).[96] Rule G-15(f) prohibits dealers from effecting customer transactions in municipal securities in amounts below the minimum denomination of the issues. The Commission charged that the firms executed sales transactions in Puerto Rico bonds with customers in amounts below the $100,000 minimum denomination of the issue.

FINRA charged a firm with violating MSRB Rule G-17, which requires each municipal securities dealer and municipal advisor to deal fairly with all persons and not engage in any unfair practice.[97] FINRA charged that the firm used the proceeds of municipal and state bond offerings to reimburse itself for voluntary payments that the firm made to the California Public Securities Association. FINRA stated that the firm requested that these payments be reimbursed as underwriting expenses even though the California Public Securities Association's activities did not bear a direct relationship to the bond offerings and were not expenses of conducting the underwritings. As part of the settlement, the firm agreed to pay a fine of $200,000 and restitution of $43,564.

32. **Net Capital.** The net capital rule, 15c3-1, 17 C.F.R. 240.15c3-1, is the principal tool by which the SEC monitors the financial health of brokerage firms. It requires that broker-dealers effecting transactions in securities to "at all times have and maintain net capital" no less than the greatest of the highest minimum requirement applicable to its business. These amounts vary based on the nature of the firm's business. For the most part, "net capital" means "net worth" (assets minus liabilities) subject to certain adjustments.

The SEC charged that a high-frequency trading firm that accounted for as much as 9% of the trading volume in equity securities for the entire U.S. violated minimum net capital requirements on 19 or 24 reporting dates during a two-year period.[98] The Commission alleged that the firm miscalculated its net capital amounts by failing to take appropriate haircuts on its proprietary and other positions. The Commission stated, "[H]igh-frequency trading firms that are registered as broker-dealers must have and maintain the required minimum net capital to support the dollar volume of both their end-of-day and intra-day

positions; the speed with which these broker-dealers trade in and out of positions does not change the requirement." As part of the settlement, the firm agreed to a $16 million penalty, which is 40 times the previously largest penalty for net capital violations. The firm's COO also agreed to a separate $150,000 penalty.

The SEC charged that a broker-dealer that had only a $5,000 net capital requirement with violating the net capital rule by failing to include the amount that a vendor had billed an affiliate for services performed for the broker-dealer because the services were actually provided to the broker-dealer rather than the affiliate.[99] In addition, the SEC stated that for a broker-dealer to be relieved of liabilities for net capital purposes as a result of an expense-sharing agreement with a third party, the third party must have adequate resources to pay the obligations and, in this case, the third party did not have resources independent of the broker-dealer. In addition, the broker-dealer improperly included shares of a microcap issuer that were non-marketable and thus should not have been included as an allowable asset. The SEC matter is in litigation and the U.S. Attorney's Office for the Southern District of New York has filed criminal charges against the broker-dealer for obstructing the SEC's examination.

33. **Pay-to-Play**. ★ SEC Rule 206(4)-5, adopted in 2010, prohibits investment advisers from providing advisory services for compensation to government clients (or to an investment vehicle in which a government entity invests) for two years after the adviser or certain of its executives or employees make a campaign contribution to certain elected officials or candidates. According to the SEC, the rule does not require a showing of quid pro quo or intent to influence an elected official or candidate.

In 2014, the SEC brought its first case against an investment adviser for violation of the rule.[100] It found that an investment adviser violated the rule by continuing to receive compensation from two public pension funds within two years after an associate made a $2,500 campaign contribution to a Philadelphia mayoral candidate and a $2,000 campaign contribution to the governor of Pennsylvania. It required the firm to pay close to $300,000 in disgorgement, penalty, and prejudgment interest.

The SEC charged that the co-founder/CEO and a managing partner of global strategy for a broker-dealer paid kickbacks to secure the bond trading business of a state-owned Venezuelan bank.[101] The Commission alleged that these kickbacks were funded in part by markups from securities trades made by the bank. Parallel criminal proceedings were also been filed. The matter is in litigation.

34. **Payment of Commissions to Unregistered Persons.** The SEC brought an action against two firms and five individuals related to the payment of commissions to unregistered persons and to other violations.[102] The Commission alleged that the firm's four owners rented an office and outfitted it with computer equipment necessary to permit on-site trading. They then encouraged other traders, including family members, friends, and other associates, to trade at their office. The Commission alleged that the registered broker-dealer to whom the firm paid commissions ultimately rebated a portion of the commissions to the firm by making payments to registered representatives who were affiliated with the firm and who shared the commission payments with the firm. The Commission charged that the broker-dealer that executed the trades ignored red flags and improperly shared commissions with an unregistered entity. It alleged that the registered broker-dealer failed to adopt reasonable policies and procedures to monitor for commission-sharing between its

registered representatives and others or to guide employees in identifying inappropriate commission-sharing. The Commission also charged that because the firm received a portion of the commission payments, it fell within the definition of a broker-dealer and was required to (but failed to) register.

FINRA fined a firm $1 million because it shared commissions with unregistered retired former registered representatives without complying with the terms of an SEC no-action letter.[103] FINRA alleged that the firm did not have any centralized method for supervising the payments, failed to create or maintain the required retired representative certifications or customer letters for a significant portion of the retired representatives to whom it paid continuing commissions, and failed to have an effective mechanism for determining whether those payments complied with Section 15(a) of the Securities Exchange Act.

35. **Penny Stocks.** ★ The SEC filed over a dozen actions involving the sale of penny stocks, but most of them were against the issuers and their promoters rather than against broker-dealers or investment advisers. The actions against broker-dealers, with the exception of cases already discussed above under the AML category, are described below.

The SEC charged that a brokerage firm and its subsidiaries improperly sold billions of penny stock shares for three institutional customers during a four-year period without an applicable exemption from the registration requirements.[104] The Commission stated that the customers routinely deposited large quantities of newly issued penny stocks into their brokerage accounts, claimed that these stocks were "freely tradable," and then placed orders to sell these securities to the public without any registration statements being in effect. The Commission stated, "Circumstances such as these constitute red flags of possible unlawful distributions of securities in violation of Section 5 of the Securities Act." The Commission acknowledged that the respondents made inquiries regarding the customers' resale transactions, but stated that they failed to "conduct the required searching inquiry so that they could be reasonably certain that the claimed exemptions or any other exemptions were available." On the same day it brought the enforcement action, the SEC issued a Risk Alert that summarized deficiencies discovered by the SEC's OCIE during a targeted sweep of 22 broker-dealers frequently involved in the sale of penny stocks.[105] These included inadequate procedures to identify potential red flags in customer-initiated sales, inadequate controls to evaluate how customers acquired the securities and whether they could be lawfully resold without registration, and failure to file suspicious activity reports when encountering "unusual or suspicious activity" in connection with the customers' sales of penny stock. As part of the settlement, the firms agreed to pay $1.5 million in disgorgement and prejudgment interest related to commissions they earned and a combined penalty of $1 million.

The SEC charged that five individuals, including the registered representative of a brokerage firm and an adviser at an investment advisory firm, engaged in a "pump and dump" scheme to flood the market with purportedly unrestricted shares of penny stock companies, and to sell those shares to their clients.[106] The Commission alleged that the shares were restricted and could not legitimately be sold without complying with the registration requirements of the Securities Act and that the market price of the securities had no relationship to the company's true worth. The matter is in litigation. Criminal charges have also been brought.

Because FINRA filed a large number of actions against broker dealers in 2014 in connection with the sale of penny stocks, we mention only a few of those below.

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

FINRA fined a broker-dealer $1 million because it failed to comply with the suitability, disclosure, and record-keeping requirements for broker-dealers who engage in penny stock business.[107] FINRA alleged that the firm did not provide certain of its customers with the standardized SEC risk disclosure documents two days prior to effecting a penny stock transaction in the customers' accounts and received a signed and dated acknowledgment of its receipt, that it failed to sufficiently supervise penny stock transactions for compliance with applicable rules and regulations, and that it failed to annually test and verify its supervisory procedures.

FINRA fined a broker-dealer $300,000 because the firm's AML compliance program did not routinely monitor unsolicited penny-stock trades executed through the firm.[108] FINRA also alleged that the firm failed to establish, maintain and enforce a supervisory program to achieve compliance with the registration requirements, that the firm failed to conduct due diligence on penny stocks received through the Automated Customer Account Transfer Service (ACATS) system, and that it failed to ensure that adequate supervisory reviews were performed to determine whether the securities were registered or if an exemption from registration applied.

FINRA filed a complaint alleging that a broker-dealer liquidated nearly 3.9 billion shares of penny stocks that customers deposited into their accounts at the firm.[109] The complaint alleged that the shares were not registered and were not exempt from registration. FINRA alleged that the firm failed to conduct "a reasonable searching inquiry" to determine if the sales were exempt, that the firm and its CCOs failed to establish, maintain and enforce a supervisory system reasonable designed to achieved compliance with the registration requirements for penny stocks. FINRA alleged that while the firm and its compliance officers collected some documents about the transactions, "they failed to adequately and meaningfully analyze the collection documents and information, and to independently verify the provided information" and that in reality "their collection efforts merely served to paper the file." The matter is in litigation.

36. **Placement Agent Obligations.** FINRA charged that a placement agent for an issuer failed to identify and correct material omissions of material fact made by the issuer in connection with a private placement offering.[110] FINRA alleged that prior to an offering by a manufacturer of hybrid automobiles, the placement agent learned that the issuer was unlikely to meet certain revenue and production volume covenants contained in a loan facility agreement with the Department of Energy and that it would, therefore, not access the loan facility. FINRA charged that the placement agent failed to correct the representation in the offering materials that the issuer was receiving financial assistance from the Department of Energy pursuant to the loan facility agreement. It stated that the placement agent's failure to correct the information violated the requirement that FINRA members and associated persons "observe high standards of commercial honor and just and equitable principles of trade." As part of the settlement, the firm agreed to pay a fine of $250,000.

37. **Ponzi Schemes**. ★ The SEC brought only three Ponzi scheme cases in 2014 compared to at least ten in each of the prior four years. The Commission brought two cases against investment advisers for operating Ponzi schemes in 2014, both of which also involved parallel criminal proceedings. In one case, the investment adviser allegedly told investors that they were investing in a "long-short" trading strategy, but, according to the SEC, did little trading, sent out phony account statements that overstated the funds'

performance, and used new investor funds to pay redemptions to existing investors.[111] The matter is in litigation.

In the other SEC case, the Commission charged that a private fund manager lost nearly all of his investors' money on poor investments and then, in an effort to cover up the losses, began operating a Ponzi scheme by using money from newer investors to pay fake returns to prior investors.[112] According to the Commission, he provided some investors with false statements to misleading them into believing they were profiting by investing their money with him. The matter is in litigation.

38. **Principal Transactions**. ★ Section 206 of the Investment Advisers Act prohibits an investment adviser, acting as a principal for its own account, knowingly to sell any security to, or purchase any security from, a client without disclosing to the client in writing before the completion of the transaction the capacity in which the adviser is acting and obtaining the client's consent to the transaction. The SEC charged that an investment advisory firm, through an affiliated broker-dealer, purchased fixed-income securities from other broker-dealers and then resold them at a higher price to its clients with disclosing in advance that it was acting as principal (through its affiliated broker-dealer) and without obtaining transaction-by-transaction consent.[113] The adviser also allegedly misrepresented in its Form ADV that neither it nor any related person engaged in principal transactions. As part of the settlement, the firm agreed to pay $368,459 in disgorgement, a penalty of $200,000, and prejudgment interest of $17,831.

39. **Prospectus Delivery**. Absent an exemption, Section 5(b)(2) of the Securities Act requires firms to deliver a prospectus at or before the time a security is delivered to the purchaser. [114] FINRA charged that due to a configuration error in its automated systems used for prospectus delivery in certain fee-based discretionary accounts, a broker-dealer directed its service provider to deliver prospectuses for mutual funds and ETFs to an investment adviser affiliate rather than to the firm's customers. FINRA charged that the broker-dealer delegated prospectus delivery to a third-party vendor, but lacked a formal procedure for reviewing the vendor's prospectus delivery reports and failed to review information identifying to whom prospectuses were delivered. As part of the settlement, the firm agreed to pay a fine of $825,000.

40. **Recordkeeping.** FINRA charged that a broker-dealer failed to record certain order information required on options order memoranda.[115] The order stated that representatives in one branch did not follow the firm's procedures to complete a paper ticket when options orders were called into the trading desk. As a result, the firm's order memoranda did not have the information reflecting the time the order was received and the identity of any other person who entered or accepted the order on the customer's behalf. As part of the settlement, the firm agreed to pay a fine of $300,000.

41. **Revenue Sharing.** ★ The SEC charged an investment advisory firm and its CEO with entering into undisclosed revenue sharing agreements throughout which they paid themselves kickbacks in the form of revenue sharing fees.[116] The Commission alleged that the ADV disclosure that the adviser "may" receive revenue sharing fees was inaccurate because it failed to disclose that the advise already was receiving revenue sharing fees and failed to inform investors about the sources, recipients, amounts and duration of the fees. The Commission alleged that investors would not have invested with the adviser if they knew that most of the funds were invested in a manner that resulted in the payment of revenue

sharing fees to the adviser, and that the firm's "persistent and pervasive practice of recommending and making investments in the underlying funds that paid revenue sharing fees… created extensive conflicts of interest" that the adviser had a duty to fully disclose. The matter is in litigation.

42. **Selective Disclosure of Research.** In its largest fine since the early 2000s, FINRA fined a broker-dealer $15 million for failing to adequately supervise communications from equity research analysts to clients and sales and trading staff and for permitting one of its analysts to participate indirectly in two road shows promoting IPOs.[117] FINRA stated that the firm encouraged equity research analysts to engage in frequent interactions with clients as a means of cultivating relationships, failed to adequately supervise participation by its equity research analysts at "idea dinners" at which analysts provided stock picks to institutional clients and the firm's sales representatives that were sometimes inconsistent with the analysts' published research, and failed to prevent a foreign sales representative from disclosing information about a change in a research forecast that had not been published. FINRA also charged that when it learned of violations of its policies regarding selective dissemination of information, its disciplinary actions "were inconsistent and, in many cases. . . significantly delayed from the infraction" with the result that the analysts tended to discount its efforts to impose discipline. FINRA also charged that a senior equity research analyst "indirectly" participated in an investment banking road show by providing guidance to two companies in preparing road show presentation materials.

43. **Short Sales.** ★ The SEC fined 19 firms, including a number of investment advisers, for violating Rule 105 of Regulation M, which prohibits firms and individuals from short selling a stock within five business days of participating in an offering for that same stock.[118] The objective of the rule is "to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity." The penalties ranged from $65,000 to $904,570 and disgorgement ranged from $26,613 to $2,646,395.

The SEC accused an independent clearing firm of violating Regulation SHO (17 C.F.R. 242.204), which requires broker-dealers to close out fails to deliver from short sales within a specific period of time.[119] Under Reg SHO, a broker-dealer with a fail-to-deliver resulting from a long or short sale, must close out the fail-to-deliver within a specified period of time. The Commission alleged that senior officers of the firm willfully ignored the requirements of the rule because they did not want the costs of complying with the rule to negatively affect the revenues of the stock loan department. The Commission also charged the firm's president, the firm's CCO, and other individuals.

FINRA fined a clearing firm and its affiliated broker-dealer $6 million for Reg SHO violations.[120] FINRA found that the clearing firm did not take any action to close out certain fail-to-deliver positions, and did not have systems and procedures in place to address the close-out requirements of Reg SHO for most of that period. It also found that the broker dealer's supervisory systems and procedures improperly permitted the firm to allocate fail-to-deliver positions to clients based solely on each client's short position without regard to which clients caused the fail-to-deliver position.

FINRA also fined a broker-dealer $559,000 for short selling in advance of five public offerings and required it to disgorge profits of $538,000.[121] FINRA also stated that the firm's supervisory system regarding short sales was inadequate because it did not provide 1) the

identification of the person(s) responsible for supervision, 2) a statement of the supervisory steps to be taken by the identified person, 3) a statement as to how often such person should take such steps, and 4) a statement as to how the completion of the steps should be documented.

FINRA fined a clearing firm $325,000 because when it purchased and/or borrowed shares to close out customer fail-to-deliver positions, certain of its options market maker clients short sold the same securities on the same day.[122] These short sales offset, in whole or in part, the effect of the firm's purchases to close out the fail-to-deliver positions. FINRA also charged that the firm did not, as a general matter, allocate responsibility for closing out fail to deliver positions to its broker-dealer clients.

44. **Supervision.** Many of the FINRA cases discussed above and below involve, in addition to the underlying violations, charges that the firm failed to exercise adequate supervision with regard to the specific conduct at issue. Occasionally, FINRA brings cases in which there is a wholesale lack of supervision across areas. Thus, FINRA charged a broker-dealer and its principal with across-the-board failures to supervise.[123] According to FINRA, the firm 1) failed to properly inspect its home and branch offices, 2) filed inaccurate Forms BR resulting in the improper deregistering of many branch offices despite being advised by FINRA that the branch offices needed to be examined, 3) failed to preserve and maintain emails and to establish and maintain written supervisory procedures with regard to the review of emails, 4) failed to monitor representatives' outside business activities, 5) failed to enforce procedures requiring the review of registered representatives' communications with the public, 6) failed to satisfy its minimum net capital requirement, 7) failed to have a compliant AML program, 8) failed to ensure that representatives' suitability determinations made in connection with certain variable annuity exchanges were documented, 9) allowed an employee to act in a capacity requiring registration as a principal, and 10) failed to comply with rules related to supervisory control systems. As part of the settlement, the firm agreed to a $200,000 fine and its principal agreed to a $25,000 fine and a two-year suspension from acting in any principal capacity with a FINRA firm.

45. **Trade Allocations.** ★ The Commission charged that a hedge fund adviser and its affiliated advisers failed to adopt and implement written compliance policies and procedures reasonably designed to address trade allocations among three advised hedge funds. [124] A single trader traded Treasuries for three different funds. The Commission stated that the conflict was disclosed but inadequately addressed because inadequate guidance was provided on allocating the Treasuries among the funds. A internal review concluded that one of the funds consistently traded at better prices than the other two funds.

FINRA expelled a broker-dealer for delaying trade allocations and then allocating more profitable trades to a proprietary account while steering unprofitable and less profitable trades to discretionary customers' accounts.[125] FINRA stated that the firm failed to complete order tickets and, in furtherance of the cherry-picking scheme, created order tickets with inaccurate allocation times and without timely providing information about customer names and account numbers.

46. **Trade Reporting/Position Reporting.** FINRA brings a large number of actions against firms for inaccurate trade reports and position reports. Most of these result in modest sanctions. Cases in 2014 involving sanctions of $200,000 or more are described below.

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

FINRA charged that a broker-dealer incorrectly 486,000 reported large conventional non-index option positions to the Large Options Position Reporting System (LOPR) as index options and submitted other inaccurate reports to LOPR in over 233,000 instances.[126] LOPR is a system used by self-regulatory organizations to identify holders of large options positions and is used to analyze potential violations related to, among other things, insider trading, front-running, manipulation, and marking the close. FINRA also found that the firm failed to report a position in one security to The Options Clearing Corporation for 23 business days. As part of the settlement, the firm agreed to pay a fine of $750,000.

FINRA charged that as a result of two separate programming errors, a broker-dealer submitted 64 inaccurate monthly reports of execution of covered orders on its Alternative Trading Systems and 14 inaccurate quarterly reports on its routing of non-directed orders in securities on its Alternative Trading Systems. [127] FINRA also charged that the firm incorrectly reported 1.5 million long sales to the Trade Reporting Facility with a “short sale” indicator, that it over-reported 400,000 transactions to the Trade Reporting Facility. As part of the settlement, the firm agreed to pay a fine of $425,000, most of which was related to the reporting violations described above.

FINRA charged that over a four-year period, a clearing firm submitted reports to FINRA that did not include short interest positions for over 380 million shares.[128] As part of the settlement, the firm paid a fine of $250,000, of which $175,000 was for the short interest reporting violations and $75,000 was for the related supervision violations.

47. **U4/U5 Filings and Related Litigation Filings.** FINRA Rule 4530, which replaced former NASD Rule 3070 and former NYSE Rule 351 as of July 1, 2011, requires firms to promptly report specified events to FINRA no later than 30 calendar days after the firm knows or should have known of their existence. Rule 4530(f) requires firms to promptly file with FINRA copies of specified civil complaints, criminal actions, and non-FINRA arbitration claims. In addition, firms are required to amend the Uniform Application for Securities Industry Registration (Form U4) for registered persons within 30 days after learning of facts requiring the amendments. Among the items that must be reported on Forms U4 are civil litigation alleging sales practice violations by a registered person. Firms are also required to file a Uniform Termination Notice for Securities Industry Registration (U5) when it terminates the registration of an individual and must disclose in that filing, among other things, whether at the time of termination the individual was under internal review for compliance-related matters or the individual was named in a sales practice complaint or, though not named, was involved in an alleged sales practice violation alleged in a complaint.

FINRA charged that a broker-dealer failed to timely file 121 of 131 securities-related private civil litigation complaints field against it.[129] FINRA stated that when the firm amended its written procedures in advance of the effective date of FINRA Rule 4530, it failed to include securities-related private civil litigation complaints are reportable under Rule 4530(f)(2). FINRA also charged that in 13 of 20 instances requiring the firm to amend the U4s for four registered representatives named as defendants in multiple securities-related private civil litigation complaints, the firm failed to timely update the registered representatives’ Forms U4. As part of the settlement, the firm agreed to pay a $350,000 fine. FINRA charged that another firm failed to file timely reports on 80 occasions over a five-year period. [130] As part of the settlement, the firm agreed to pay a fine of $120,000.

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

48. **Valuation**. ★ The SEC settled a previously filed action against an individual portfolio manager for misrepresenting the valuation of a fund consisting of other private equity funds.[131] The Commission alleged that the portfolio manager had valued the investment himself at a significant markup to the value estimated by the underlying fund's portfolio manager and that he sent marketing materials to potential fund investors reporting a misleading internal rate of return that failed to deduct the fund's fees and expenses. The portfolio manager settled the case by paying a $100,000 and agreeing to be barred from the securities industry.

49. **Variable Annuities.** ★ The SEC charged two brokers, an investment advisory firm, and several others with a fraudulent scheme to profit from the imminent deaths of terminally ill hospice and nursing home patients through the purchase and sale of more than $80 million in deferred variable annuities.[132] The brokers solicited wealthy investors and institutional investors to make large investments in variable annuities, which provided death benefits without either a physical examination or proof of an insurable interest in the annuitant (the person whose death would trigger the products' payout provisions). The annuitants were selected based on their terminal illnesses and the likelihood that they would die in the very near term and the information was obtained under false pretenses. The Commission charged that the brokers submitted false information to their firms stating that their customers intended to hold the annuities for the long-term and that there was a relationship between the customers purchasing the annuities and the annuitants, and that as a result they were able to obtain approval of the annuities and to submit those approvals to the variable annuity issuer. The Commission charged that the investment adviser also submitted false information in order to secure broker-dealer approvals of the annuities sales. As part of a partial settlement, respondents have agreed to pay more than $4.5 million. The matter is in litigation with the non-settling respondents.

50. **Whistleblower Retaliation**. ★ Section 21F(h) of the Securities Exchange Act, enacted as part of the Dodd-Frank Act, prohibits an employer from retaliating against a whistleblower because of any lawful act done by the whistleblower in, among other things, providing information to the SEC. In 2014, the SEC brought its first case charging violations of the whistleblower anti-retaliation provision. It charged that a hedge fund advisory firm retaliated against a whistleblower who reported potentially illegal activity to the Commission.[133] The SEC alleged that after the firm's head trader made a whistleblower submission to the Commission that revealed improper principal transactions, the firm removed him from the trading desk, temporarily relieved him of his day-to-day trading and supervisory responsibilities, directed him to work from home, took away access to certain trading and account systems, took away access to his existing email account, instructed him to prepare a report that would detail all of the facts that supported the potential violations he reported, advised the trader's employment counsel that the employment relationship had been "irreparably damaged," and refused to let him return as head trader. It also assigned him to review 1,900 pages of hard-copy trading data for the purpose of identifying potential wrongdoing by the firm and, when he said that the trading manual was deficient, directed him to consolidate the multiple trading manuals into one comprehensive document and propose revisions to enhance the firm's policies and procedures. The Commission stated that the advisory firm "had no legitimate reason for removing the Whistleblower from his position as head trader, tasking him with investigating the very conduct he had reported to the Commission, changing his job function from head trader to a full-time compliance assistant, stripping him of his supervisory responsibility, and otherwise marginalizing him."

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

Conclusion

It is difficult even to skim through the 50 categories of enforcement cases discussed above without being struck by the sheer breadth of the things that can go wrong for both broker-dealers and investment advisers. This creates a heavy burden on compliance departments, risk management, and internal audit; it creates significant risk for management as well. To state the obvious, it is already a challenging enforcement environment; as both the SEC and FINRA continue to develop enhanced tools for collecting and analyzing massive amounts of data, it will become yet more challenging for both firms and individuals.

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[1] Press Release, *SEC's FY 2014 Enforcement Actions Span Securities Industry and Include First Ever Cases* (Oct. 16, 2014).
[2] FINRA Statistics & Data, avail. at http://www.finra.org/Newsroom/Statistics/.
[3] *See, e.g.,* Carlo di Florio, Remarks at NSCP 2014 National Conference (Oct. 20, 2014), avail. at http://www.finra.org/Newsroom/Speeches/diFlorio/P601320.
[4] For the most part, we have excluded actions in which FINRA imposed fines of less than $200,000, which excludes over 90% of FINRA enforcement actions. We also do not cover most FINRA actions against registered representatives rather than against the firms. As a result of these two exclusions, we do not cover general suitability, churning, gifts and gratuities, exercising discretion without written customer authorization, engaging in undisclosed outside business activities, falsely guaranteeing the authenticity of a customer's signature on wire transfer requests, forging customer signatures, participating in undisclosed private securities transactions, sending misleading information to clients, marking the close, check kiting, and the vast majority of FINRA enforcement cases involving trade and position reporting and books and records.
[5] The SEC press releases cited below are available at http://www.sec.gov/News/Page/List/Page/1356125649507. The FINRA press releases are available at http://www.finra.org/Newsroom/NewsReleases/2014/. We also cite to the monthly Disciplinary and Other FINRA Actions, which are available at http://www.finra.org/Industry/Enforcement/DisciplinaryActions/MonthlyActions/2014/.
[6] Press Release, *SEC Charges Barclays Capital with Systemic Compliance Failures After Acquiring Lehman's Advisory Business* (Sept. 23, 2014).
[7] For detailed SEC guidance on advertising standards, see the staff's no-action letter in Clover Capital Management, Inc. (available October 28, 1986) and SEC Rule 206(4)-1 under the Investment Advisers Act, 17 C.F.R. 275.206(4)-1.
[8] Press Release, *SEC Charges Tacoma, Wash.-Area Firm for Undisclosed Principal Transactions and Misleading Performance Advertisements* (Sept. 18, 2014).
[9] Press Release, *SEC Charges N.Y.-Based Money Manager and Firm for Misleading Advertisements* (Jan. 20, 2014).
[10] Press Release, *Citigroup Business Unit Charged With Failing to Protect Confidential Subscriber Data While Operating Alternative Trading System* (July 25, 2014).
[11] Press Release, *FINRA Fines Goldman Sachs Execution & Clearing, L.P. $800,000 for Failing to Prevent Trade-Throughs in its Alternative Trading System* (July 2, 2014).
[12] Press Release, *FINRA Fines Brown Brothers Harriman a Record $8 Million for Substantial AML Compliance Failures* (Feb. 5, 2014).
[13] Press Release, *FINRA Charges Wedbush Securities for Systemic Market Access Violations, AML and Supervisory Deficiencies* (Aug. 18, 2014).
[14] Press Release, *FINRA Fines Banorte-Ixe Securities $475,000 for Inadequate AML Program and for Failing to Register Foreign Finders: Firm Failed to Monitor, Detect and Report $27 Million Activity in Customer Account Reportedly Tied to Mexican Drug Cartel* (Jan. 28, 2014).
[15] For a description of the normal transfer process involving broker-dealers, see SEC, *Transferring Your Brokerage Account: Tips on Avoiding Delays*, avail. at http://www.sec.gov/investor/pubs/acctxfer.htm.
[16] Litigation Release No. 23066, *Jury Returns Verdict Against Massachusetts Investment Adviser in SEC Fraud Case* (Aug. 13, 2014).
[17] For the SEC's very brief articulation of the best execution standard for brokers, see SEC, *Best Execution*, avail. at http://www.sec.gov/answers/bestex.htm.
[18] *In the Matter of Dominick & Dominick LLC and Robert X. Reilly*, Administrative Proceeding File No. 3-15987 (July 28, 2014).
[19] Press Release, *FINRA Fines Citigroup Global Markets Inc. $1.85 Million and Orders Restitution of $638,000 for Best Execution and Supervisory Violations in Non-Convertible Preferred Securities Transactions* (Aug. 26, 2014).

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

[20] *Disciplinary and Other FINRA Actions Reported for January 2014, UBS Financial Services Inc.*, FINRA Case #2009018081101.
[21] *Targeted Examination Letters Re: Order Routing and Execution Quality of Customer Orders,* (July 2014).
[22] *In the Matter of Scottrade, Inc.*, Administrative Proceeding File No. 3-15703 (Jan. 29, 2014).
[23] Press Release, *FINRA Fines Barclays Capital, Goldman Sachs and Merrill Lynch $1 Million Each for Submitting Inaccurate Blue Sheet Data* (June 4, 2014).
[24] Press Release, *SEC Issues Risk Alert on Advisers' Due Diligence Processes for Selecting Alternative Investments*," (Jan. 28, 2014).
[25] FINRA Regulatory Notice 12-03, *Heightened Supervision of Complex Products*, avail. at http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p125397.pdf.
[26] Press Release, *FINRA Releases 2014 Regulatory and Exam Priorities* (Jan. 2, 2014).
[27] Press Release, *FINRA Fines Berthel Fisher and Affiliate, Securities Management & Research, $775,000 for Supervisory Failures Related to Sales of Non-Traded REITS and Leveraged and Inverse ETFs* (Feb. 24, 2014).
[28] Press Release, *FINRA Fines LPL Financial LLC $950,000 for Supervisory Failures Related to Sales of Alternative Investments* (Mar. 24, 2014).
[29] *Disciplinary and Other Finra Actions Reported for February 2014, PNC Investments LLC*, FINRA Case #2011028232801.
[30] *Disciplinary and Other FINRA Actions Reported for March 2014, Edward D. Jones & Co., L.P.*, FINRA Case #2010022283702.
[31] Press Release, *SEC Charges Legg Mason Affiliate with Defrauding Clients*," (Jan. 27, 2014).
[32] FINRA, *Report on Conflicts of Interest* (Oct. 2013), avail. at http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p359971.pdf.
[33] *In the Matter of The Robare Group, Ltd., et al.*, Order Instituting Administrative Cease-and-Desist Proceedings, Administrative Proceeding File No. 3-16047 (Sept. 2, 2014).
[34] Press Release, *Credit Suisse Agrees to Pay $196 Million and Admits Wrongdoing in Providing Unregistered Services to U.S. Clients* (Feb. 21, 2014).
[35] Press Release, *SEC Charges Legg Mason Affiliate With Defrauding Clients*, (Jan. 27, 2014).
[36] For a description of the requirements of the Custody Rule, see Press Release, *SEC Issues Risk Alert and Investor Bulletin on Investment Adviser Custody Rule* (Mar. 4, 2013).
[37] Press Release, *SEC Announces Charges Against Investment Advisory Firm and Top Officials for Custody Rule Violations* (Oct. 29, 2014).
[38] *Disciplinary and Other FINRA Actions Reported for March 2014, Banesto Securities, Inc. nka Santander International Securities, Inc.,* FINRA Case #2011026005801.
[39] To give just one of many examples, in October 2014 a financial services firm reported 76 million customers had been affected by a data breach.
[40] National Exam Program Risk Alert, Volume IV, Issue 2 (Apr. 15, 2014).
[41] FINRA, *Targeted Examination Letters Re: Cybersecurity* (January 2014).
[42] Although record-keeping requirements for investment advisers under Rule 204-2, 17 C.F.R. 275.204-2, are more limited, as a practical matter it is difficult to build an email retention system that distinguishes among different types of business-related emails. As a result, most broker-dealers and investment advisers try to retain all business-related emails for a significant period of time and be able to promptly produce them to regulators upon request.
[43] FINRA Regulatory Notice 07-59 (Dec. 2007), avail. at http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p037553.pdf.
[44] Press Release, *SEC Charges Jefferies LLC With Failing to Supervise Its Mortgage-Backed Securities Desk During Financial Crisis* (Mar. 12, 2014).
[45] Of course, one might ask how many electronic communications a firm would have to review to have any chance of seeing an email that misrepresented the price of a security or how elaborate

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

its system of email review would have to be for the email reviewer to know that the price identified was not the correct price.

[46] *Disciplinary and Other FINRA Actions Reported for February 2014, BNY Mellon Capital Markets, LLC et al.,* FINRA Case #2012032995001.

[47] *Disciplinary and Other FINRA Actions Reported for May 2014, Commonwealth Equity Services, Inc. dba Commonwealth Financial Network,* FINRA Case #2012032025201.

[48] *Disciplinary and Other FINRA Actions Reported for August 2014, Felix Investments LLC,* FINRA Case #2011029660001.

[49] *Disciplinary and Other FINRA Actions Reported for June 2014, ConvergeEx Execution Solutions LLC,* FINRA Case #2012033096901.

[50] *Press Release, SEC Charges New York-Based Private Equity Fund Adviser With Misallocation of Portfolio Company Expenses* (Sept. 22, 2014).

[51] Press Release, *SEC Charges N.Y.-Based Brokerage Firm With Overcharging Customers in $18 Million Scheme* (Aug. 14, 2014).

[52] Press Release, *SEC Charges Former CEO of ConvergEX Subsidiary in Scheme to Deceive Customers About Trading Fees* (Aug. 7, 2014).

[53] Press Release, *SEC Charges Transamerica Financial Advisors With Improperly Calculating Advisory Fees and Overcharging Clients* (Apr. 3, 2014).

[54] Press Release, *SEC Announces Charges Against Arizona-Based Private Equity Fund Manager in Expense Misallocation Scheme* (Feb. 25, 2014).

[55] Press Release, *FINRA Fines Merrill Lynch $8 Million; Over $89 Million Repaid to Retirement Accounts and Charities Overcharged for Mutual Funds* (June 16, 2014).

[56] *Disciplinary and Other FINRA Actions for June 2014, Howe Barnes Hoefer & Arnett, Inc.*, FINRA Case #2008012367904.

[57] *See SEC Enforcement Actions Addressing Misconduct that Led to or Arose from the Financial Crisis: Key Statistics through September 11, 2014.* avail. at http://www.sec.gov/spotlight/enf-actions-fc.shtml

[58] Press Release, *Bank of America Admits Disclosure Failures to Settle SEC Charges: Bank Also Resolves Separate SEC Case in $245 Million Settlement* (Aug. 21, 2014).

[59] Press Release, *Morgan Stanley to Pay $275 Million for Misleading Investors in Subprime RMBS Offerings* (July 24, 2014).

[60] Exactly who is a finder and who needs to register as a broker-dealer is open to debate. The SEC has long focused on the receipt of transaction-based compensation. In *SEC v. Kramer*, 778 F. Supp. 2d 1320 (M.D. Fla. 2011), the court rejected the SEC's position and applied a six-factor test.

[61] Press Release, *FINRA Fines Banorte-Ixe Securities $475,000 for Inadequate AML Program and for Failing to Register Foreign Finders* (Jan. 28, 2014).

[62] Press Release, *Former Hedge Fund Manager in Bay Area Charged With Taking Excess Management Fees to Make Lavish Purchases* (Sept. 17, 2014).

[63] Complaint, *SEC v. Rajarengan (a/i/a Rengan) Rajaratnam* (S.D.N.Y. Mar. 21, 2013).

[64] Press Release, *Rengan Rajaratnam Agrees to Settle Insider Trading Charges* (Oct. 23, 2014).

[65] Press Release, *SEC Charges Minneapolis-Based Hedge Fund Manager with Billing Investors and Portfolio Pumping* (Sept. 8, 2014).

[66] Press Release, *SEC Charges Bahamas-Based Brokerage Firm and President With Facilitating Fraudulent Scheme by Hedge Fund Manager* (Aug. 8, 2014).

[67] Press Release, *Harbinger's Former Chief Operating Officer Agrees to Settle Charges for Assisting Hedge Fund Scheme* (July 28, 2014).

[68] Press Release, *SEC Charges Hedge Fund Advisory Firm and Others in South Florida-Based Scheme to Misuse Investor Proceeds* (June 23, 2014).

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

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[69] Press Release, *SEC Charges Hedge Fund Adviser With Conducting Conflicted Transactions and Retaliating Against Whistleblower: First SEC Case Under New Authority to Bring Anti-Retaliation Enforcement Actions* (June 16, 2014).
[70] Press Release, *SEC Announces Charges and Asset Freeze Against Hedge Fund Advisory Firm Distributing Falsified Performance Results* (May 7, 2014).
[71] See, e.g., Complaint, *The People of the State of New York v. Barclays Capital, Inc.* (June 25, 2014), avail. at http://www.ag.ny.gov/pdfs/Barclays_complaint_as_filed_June_25_2014.pdf. Barclays has denied the charges and moved to dismiss.
[72] Rick Ketchum, Chairman and Executive Officer of FINRA, *Remarks to the FINRA, FINRA Annual Conference Welcome Remarks* (May 19, 2014).
[73] Chair Mary Jo White, *Enhancing Our Equity Market Structure* (June 5, 2014), avail. at http://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.VHdmtIta_cM
[74] John McCrank, *Exclusive: SEC Targets 10 Firms in High Frequency Trading Probe–SEC Document* (Reuters, July 17, 2014).
[75] Press Release, *SEC Charges New York-Based High Frequency Trading Firm With Fraudulent Trading to Manipulate Closing Prices* (Oct. 16, 2014).
[76] Press Release, *Wells Fargo Advisors Admits Failing to Maintain Controls and Producing Altered Document, Agrees to Pay $5 Million Penalty* (Sept. 22, 2014).
[77] Press Release, *SEC Announces Enforcement Action Against Wells Fargo Advisors Compliance Officer for Altering Document* (Oct. 15, 2014).
[78] *Disciplinary and Otsher FINRA Actions Reported for August 2014, Citadel Securities LLC,* FINRA Case #2010022334505.
[79] *Disciplinary and Other FINRA Actions Reported for November 2014, Parkland Securities, LLC fka Sammons Securities Company, LLC,* FINRA Case #2012030717301.
[80] Press Release, *Wells Fargo Advisors Admits Failing to Maintain Controls and Producing Altered Document, Agrees to Pay $5 Million Penalty* (Sept. 22, 2014).
[81] Press Release, *SEC Charges Stockbroker and Law Firm Managing Clerk in $5.6 Million Insider Trading Scheme* (Mar. 19, 2014).
[82] Press Release, *SEC Charges Wall Street Investment Banker With Insider Trading in Former Girlfriend's Account to Pay Child Support,* (Feb. 21, 2014).
[83] Press Release, *Two Former Wells Fargo Employees Charged With Insider Trading in Advance of Research Reports Containing Ratings Changes* (Sept. 29, 2014).
[84] Press Release, *Two Hong Kong-Based Firms to Pay $11 Million for Insider Trading Ahead of Nexen Acquisition by Company in China* (Feb. 22, 2014).
[85] Press Release, *SEC Charges Former Brokers with Trading Ahead of IBM-SPSS Acquisition* (June 25, 2014).
[86] Press Release, *FINRA Bars J.P. Morgan Vice President and Broker Friend in Insider Trading Scheme* (Jan. 16, 2014).
[87] Press Release, *FINRA Bars Broker for Insider Trading in Japanese Securities* (July 2, 2014),
[88] Press Release, *FINRA Fines Morgan Stanley Smith Barney LLC $5,000,000 for Supervisory Failures Related to Sales of Shares in 83 Initial Public Offerings to Retail Investors* (May 6, 2014).
[89] Press Release, *SEC Charges Owner of N.J.-Based Brokerage Firm With Manipulative Trading* (Apr. 4, 2014).
[90] NASD Notice to Members 07-11, February 2007.
[91] Press Release, *SEC Announces Charges Against Wedbush Securities and Two Officials for Market Access Violations* (June 6, 2014).
[92] Press Release, *Wedbush Securities and Two Officials Agree to Settle SEC Case* (Nov. 20, 2014).
[93] Press Release, *SEC Charges Manhattan-Based Private Equity Manager With Stealing $9 Million in Investor Funds* (Jan. 30, 2014).

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

[94] Press Release, *SEC Charges Virginia-Based Broker With Stealing Funds from Elderly Customers* (July 31, 2014).
[95] For example, in 2014, the SEC sued the state of Kansas for failing to properly disclose material pension liabilities and other risks to investors. *See* Press Release, *SEC Charges Kansas for Understating Municipal Bond Exposure to Unfunded Pension Liability* (Aug. 11, 2014).
[96] Press Release, *SEC Sanctions 13 Firms for Improper Sales of Puerto Rico Junk Bonds* (Nov. 3, 2014).
[97] *Disciplinary and Other FINRA Actions Reported for January 2014, E.J. De La Rosa & Co., Inc.,* FINRA Case #2013037910801.
[98] Press Release, *SEC Charges N.Y.-Based high Frequency Trading Firm With Violating Net Capital Rule for Broker-Dealers* (Sept. 17, 2014).
[99] Press Release, *SEC Announces Charges Against N.Y.-Based Brokerage Firm and Found Despite Attempts to Mislead Examiners* (Aug. 8, 2014).
[100] Press Release, *SEC Charges Private Equity Firm With Pay-to-Play Violations Involving Political Campaign Contributions in Pennsylvania: First Case Under Pay-to-Play Rules for Investment Advisers* (June 20, 2014).
[101] Press Release, *SEC Charges Brokerage Firm Executives in Kickback Scheme to Secure Business of Venezuelan Bank* (Apr. 14, 2014).
[102] Press Release, *SEC Charges Owner of N.J.-Based Brokerage Firm With Manipulative Trading* (Apr. 4, 2014). Other aspects of this case are also discussed under the Manipulative Trading heading.
[103] Disciplinary and Other FINRA Actions Reported for September 2014, Morgan Stanley Smith Barney, LLC, FINRA Case # 2011029683301.
[104] Press Release, *SEC Charges Current and Former E*TRADE Subsidiaries With Improperly Selling Penny Stocks Through Unregistered Offerings* (Oct. 9, 2014).
[105] Press Release, SEC Staff Issue Risk Alert and FAQs on Customer Sales of Securities (Oct. 9, 2014).
[106] Press Release, *SEC Charges Self-Described Banks, Dishonest Brokers, and Microcap Company Executive in Pump-And-Dump Scheme* (July 17, 2014).
[107] *Disciplinary and Other FINRA Actions Reported for November 2014, Feltl & Company*, FINRA Case #2010022962401.
[108] Disciplinary and Other FINRA Actions Reported for November 2014, Stifel, Nicolaus & Company , Incorporated, FINRA Case #2009020810101.
[109] *Disciplinary and Other FINRA Actions Reported for October 2014, Aegis Capital Corp.,* FINRA Case # 2011026386001.
[110] *Disciplinary and Other FINRA Actions Reported for August 2014, Advanced Equities, Inc. ,* FINRA Case#2012030737501.
[111] Press Release, *SEC Charges Chicago-Based Investment Fund Manager with Stealing Investor Money and Conducting Ponzi Scheme* (May 29, 2014).
[112] Press Release, *SEC Charges Sarasota-Based Private Fund Manager with Stealing Investor Money and Conducting Ponzi Scheme* (May 21, 2014).
[113] Press Release, *SEC Charges Tacoma, Wash.-Area Firm for Undisclosed Principal Transactions and Misleading Performance Advertisements* (Sept. 18, 2014).
[114] *Disciplinary and Other FINRA Actions Reported for February 2014, Chase Investment Services Corp.*, FINRA Case #2011026279101.
[115] *Disciplinary and Other FINRA Actions Reported for October 2014, Merrill Lynch, Pierce, Fenner & Smith Incorporated,* FINRA Case #2011030744101.
[116] Press Release, SEC Charges San Diego-Based Investment Adviser (Apr. 15, 2014).
[117] Press Release, *FINRA Fines Citigroup Global Markets Inc. $15 Million for Supervisory Failures Related to Equity Research and Involvement in IPO Roadshows* (Nov. 24, 2014).

2014 SEC and FINRA Enforcement Actions Against Broker-Dealers and Investment Advisers

[118] Press Release, *SEC Sanctions 19 Firms and Individual Trader for Short Selling Violations in Advance of Stock Offerings* (Sept. 16, 2014).
[119] Press Release, *SEC Announces Charges Against Four Former Officials at Clearing Firm Penson Financial Services for Regulation SHO Violations* (May 19, 2014).
[120] Press Release, *FINRA Fines Merrill Lynch a Total of $6 Million for Reg SHO Violations and Supervisory Failures* (Oct. 27, 2014).
[121] Press Release, *FINRA and BATS Order Citigroup Global Markets Inc. to pay $1.1 Million for Illegal Short Selling in Advance of Five Public Offerings and for Related Supervisory Violations* (Mar. 18, 2014).
[122] *Disciplinary and Other FINRA Actions Reported for May 2014, Goldman Sachs Execution & Clearing, L.P.*, FINRA #20060060880-01.
[123] *Disciplinary and Other FINRA Actions Reported for January 2014, Sicor Securities Inc. and Gregory Lunar Merrick*, FINRA Case #2012030718001.
[124] *In the Matter of Structured Portfolio Management, L.L.C.*, Administrative Proceeding File No. 3-16046 (Aug. 28, 2014).
[125] *Disciplinary and Other FINRA Actions Reported for July 2014, The Dratel Group, Inc.*, FINRA Case #2008012925001.
[126] *Disciplinary and Other FINRA Actions Reported for March 2014, Barclays Capital, Inc.*, FINRA Case #2010023567201.
[127] *Disciplinary and Other FINRA Actions Reported for June 2014, ConvergEx Execution Solutions LLC,* FINRA Case #2012033096901.
[128] *Disciplinary and Other FINRA Actions Reported for May 2014, Goldman Sachs Execution & Clearing, L.P.*, FINRA Case 32008014987401.
[129] *Disciplinary and Other FINRA Actions Reported for July 2014, RBS Securities Inc.,* FINRA Case #20110299758.
[130] *Disciplinary and Other FINRA Actions Reported for October 2014, Crowell, Weedon & Co. nka Crowell Weedon, a Division of D.A. Davison & Co.,* FINRA Case # 2012030559801.
[131] Press Release, Former Oppenheimer Fund Manager Agrees to Settle Fraud Charges (Jan. 22, 2014).
[132] Press Release, *SEC Announces Charges Against Brokers, Adviser, and Others Involved in Variable Annuities Scheme to Profit from Terminally Ill* (Mar. 13, 2014).
[133] Press Release, *SEC Charges Hedge Fund Adviser With Conducting Conflicted Transactions and Retaliating Against Whistleblower: First SEC Case Under New Authority to Bring Anti-Retaliation Enforcement Actions* (June 16, 2014).