DUFF & PHELPS

Protect, Restore and Maximize Value

Quarterly U.S. Regulatory Roundup

Third Quarter 2019

INSIDE

Duff & Phelps In The News

Kroll, a division of Duff & Phelps, published the Global Fraud and Risk Report 2019/20

Duff & Phelps named Best Compliance Consultancy at 2019 HFM European Quant Awards

Noah Gottdiener, Duff & Phelps CEO, speaks on Bloomberg's "Money Undercover" about the growth of private equity and fending off criticism from outside the industry

Ken C. Joseph featured in *Bloomberg Law* – Enforcement Risks Reshaping Compliance

Emanuel Batista featured in SCCE's Compliance and Ethics Blog

Request an invitation to Duff & Phelps' 13th Annual New York Alternative Investments Conference

SEC

Risk Alert: Investment Adviser Principal and Agency Cross Trading Compliance Issues

September 9, 2019

The Securities and Exchange Commission Office of Compliance Inspections and Examinations (OCIE) published a risk alert to encourage advisers to review their written policies and procedures to ensure they are compliant with the principal trading and agency cross transaction provisions under Section 206(3) of the Advisers Act.

Under Section 206(3), advisers are required to give a client written disclosure of the capacity in which the adviser is acting and to obtain the client's consent prior to effecting and principal or agency trade. Additionally, to ensure that a client's consent to a principal trade or agency cross transaction is informed, the adviser is required to disclose facts necessary to alert the client to the advisers' potential conflicts of interest in a principal trade or agency cross transaction. Section 206(3)-2 notes that certain agency cross transactions are permitted without disclosure and consent prior to each transaction provided specific criteria is met. OCIE noted that the most common deficiencies or weaknesses were in connection to Section 206(3) and Rule 206(3)-2.

OCIE has observed instances where advisers engaged in principal trade but either failed to obtain appropriate client consent for each principal trade or failed to provide sufficient disclosure regarding the potential conflicts of interest and terms of the transactions. Also, OCIE observed instances where advisers maintained policies and procedures surrounding principal trades and agency cross transaction but failed to follow and enforce the adviser's policies and procedures.

Read more here.

SEC

SEC Clarifies Investment Advisers' Proxy Voting Responsibilities and Application of Proxy Rules to Voting Advice

August 21, 2019

The Securities Exchange Commission (SEC) provided guidance to assist investment advisers in fulfilling their proxy voting responsibilities. Investment advisers owe each of their clients a duty of care and loyalty with respect to services undertaken on the clients' behalf. Rule 206(4)-6 under the Advisers Act requires an investment adviser who exercises voting authority with respect to client securities to adopt and implement written policies and procedures that are reasonably designed to ensure that the investment adviser votes proxies in the best interest of its clients.

In addition, the SEC issued an interpretation that proxy voting advice provided by proxy advisory firms generally constitutes a "solicitation" under the federal proxy rules. The SEC also provided related guidance about the application of the proxy antifraud rule to proxy voting advice. The SEC's interpretation does not affect the ability of proxy advisory firms to continue to rely on the exemptions from the federal proxy rules' filing requirements. These exemptions, found in Rule 14a-2(b), among other things, provide relief from the obligation to file a proxy statement, if the advisory firm complies with the exemption's conditions.

Read more here.

SEC

Risk Alert: Observations from Examinations of Investment Advisers: Compliance, Supervision and Disclosure of Conflicts of Interest

July 26, 2019

The SEC's Office of Compliance Inspections and Examination's (OCIE) issued a risk alert on July 23, 2019 following a series of examinations which assessed the oversight practices of SEC-registered investment advisers that previously employed, or currently employ, any individual with a history of disciplinary events. A vast majority of deficiencies related to compliance issues, but several related to disclosure issues, including undisclosed conflicts of interest.

The SEC observed that nearly half of the disclosure-related deficiencies of the advisers examined were due to the firms providing inadequate information regarding disciplinary events. The SEC also observed that many advisers did not adopt and implement compliance policies and procedures that included whether the supervised persons' self-attestations included all reportable disciplinary events.

The SEC also observed that many advisers did not have policies and procedures to sufficiently document the responsibilities of supervised persons as they related to fees, advertising, monitoring, compliance policies and procedures and annual compliance reviews.

Read more here.

SEC

SEC Rules and Interpretations Related to Fiduciary Duty and Standards of Conduct

September 26, 2019

On June 5, 2019, the SEC formally adopted four measures for the protection of retail investors: Interpretation of Investment advisers; (IAs fiduciary duties; Form CRS; and Regulation Best Interest (Reg BI); and Interpretation of the "solely incidental" prong of the broker-dealer (BD) exclusion from definition of IAs. The SEC adopted a final interpretation (interpretation) of the standard of conduct applicable to IAs. However, this does not purport to modify existing IA standard of conduct.

The Interpretation reaffirms the SEC's belief that an IA's fiduciary duty may not be waived, but it may be shaped and altered by the underlying advisory agreement. Further, the Interpretation states the duty of care includes the duty to provide advice that is in the client's best interest; the duty to seek best execution; and the duty to provide advice and monitoring over the course of the relationship.

IAs and BDs will be required to provide relationship summaries on Form CRS to retail investors and to post Form CRS on websites. The forms must include descriptions of services, standards of conduct, summaries of conflicts, and discussions of fees. Furthermore, the general obligations of Regulation BI should be met by satisfying the four key obligations of: Disclosure, Care, Conflicts of Interest and Compliance.

Read more here.

FINRA

FINRA Encourages Firms to Notify FINRA if they Engage in Activities Related to Digital Assets

July 18, 2019

In 2018, Financial Industry Regulatory Authority (FINRA) took an initiative to engage with member firms regarding current and planned activities relating to digital assets, such as cryptocurrencies and other virtual coins and tokens. As part of the initiative, FINRA requested that communication between member firms and FINRA be ongoing and asked that, until July 31, 2019, each member keep its Regulatory Coordinator informed of new activities or plans regarding digital assets, including cryptocurrencies and other virtual coins and tokens (whether they meet the definition of "security" for the purposes of the federal securities laws and FINRA rules). FINRA is issuing this Notice to encourage each firm to continue to keep FINRA up to date on the firm's new and planned activities relating to digital assets not previously disclosed.

As was the case under Regulatory Notice 18-20, FINRA asks that each firm promptly notify its Regulatory Coordinator in writing if it, or its associated persons, or affiliates, currently engages, or intends to engage, in any activities related to digital assets.

Read more here.

FINRA

Disclosure Innovations in Advertising and Other Communications with the Public

September 19, 2019

This Notice responds to questions that FINRA has received from members about how they can comply with FINRA rules when communicating with customers – particularly when using websites, email and other electronic media – while ensuring fair and balanced presentations. FINRA's communications rules, Rule 2210 through 2220, are based on the principles of ensuring that member communications are fair and balanced, and that investors do not receive misleading information.

FINRA encourages members to be precise and succinct in their explanations and disclosures and consistent with the requirements of Rule 2210(d)(1)(C) and to ensure the additional information does not inhibit an Investor's understanding of the required information. Also, FINRA rules require that communications be fair and balanced, but do not require them to be exhaustive of all possible risks and warnings associated with a product or service.

Read more here.

MARKET MANIPULATION

In CFTC Actions, Two Former Precious Metals Traders Admit to Engaging in Spoofing and Manipulation at New York Banks

July 25, 2019

The Commodity Futures Trading Commission (CFTC) issued two orders filing and settling charges against former precious metals traders at separate financial institutions who entered into formal cooperation agreements with the CFTC's Division of Enforcement (Division) and admitted to spoofing and manipulative conduct in the futures markets.

In one order, the CFTC found that one trader engaged in a pattern of spoofing in the precious metals futures market between 2007 and 2016 while employed at a New York bank and subsequently at the New York office of another bank. The Order found that the trader and others at the banks placed futures orders they intended to cancel before execution, for the purpose of creating false signals of buying or selling interest. These spoof orders were placed to deceive other market participants into transacting against the orders the trader and others wanted filled, at least in part for the benefit of the banks.

In the other order, the CFTC found that a separate trader and others had placed futures orders they intended to cancel before execution, with the purpose of falsely inducing market participants to execute against the orders they wanted filled. Additionally, the order found that the trader, his employer and others had benefitted financially from the conduct.

Read more here.

MARKET MANIPULATION

SEC Charges Portfolio Manager with Mispricing Fund Investments

July 18, 2019

The SEC announced settled administrative proceedings against a portfolio manager and trader, for mispricing private fund investments, resulting in a large personal bonus. According to the SEC's order, from June 2016 to April 2017, while by the fund's adviser, the manager manipulated the inputs he used to value interest rate swaps and swap options to create the false impression that his investments for the fund were profitable. This conduct artificially inflated the funds reported returns and caused the fund to pay too much in fees. The manager took steps to conceal his mispricing from the fund's adviser and because of his inflated valuations, he received a $600,000 bonus.

The SEC's order finds that the manager aided and abetted and caused the adviser's violations of the antifraud provisions of Sections 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-8 thereunder. The manager agreed to a cease-and-desist order, an associational bar and investment company prohibition with a right to apply for re-entry after three years, disgorgement of ill-gotten gains of $600,000 plus prejudgment interest, and a civil penalty of $100,000.

Read more here.

MARKET MANIPULATION

SEC Charges Broker-Dealer and CEO With Supervision Failures Related to Hedge Fund Valuation Scheme

August 21, 2019

The SEC charged a broker-dealer and its former CEO with failing to supervise a broker who provided inflated price quotes for certain securities to a significant customer of the broker-dealer. According to the SEC's order, the broker provided inflated price quotes to a New York-based RIA. The RIA's traders dictated to the broker the prices at which he should value certain mortgage-backed securities in the RIA's portfolios. In return, the RIA's traders promised to send securities trades to the broker-dealer.

The SEC had previously charged the broker, the RIA and certain founders, partners and employees of the RIA in connection with the fraudulent valuation scheme, and then had decided to charge the broker-dealer and its CEO because they both had knowledge of the price quotes and had failed to establish or implement policies or procedures reasonably designed to prevent and detect the misconduct.

The broker-dealer and former CEO did not admit or deny the SEC's findings but agreed to pay penalties of $250,000 and $40,000, respectively. The SEC's orders also censure the broker-dealer and impose a 12-month supervisory bar against its former CEO.

Read more here.

MARKET MANIPULATION

SEC Brings New Charges in Multimillion Dollar Boiler Room Schemes

September 23, 2019

The SEC announced new charges arising from a New York-based boiler-room scheme, alleging a securities fraud recidivist orchestrated the manipulation of millions of shares of a renewable energy company, generating approximately $3.1 million in illegal proceeds. The SEC alleges the fraudulent scheme began when the recidivist acquired large blocks of shares through convertible notes purchased from the energy company by an investment entity the recidivist controlled.

From approximately March 2017 to July 2017, the recidivist paid a New York boiler room to promote the energy company's stock to seniors and unsophisticated retail investors, fraudulently "pumping" the market price and trading volume of the stock. According to the SEC's complaint, the recidivist engaged in manipulative trading, including by coordinating trading on the opposite side of the boiler room victims through encrypted messaging, which further artificially raised the stock's market price. The SEC further alleges the recidivist sold more than eight million shares of the stock, generating millions in illicit profits and disguised the source of his payments to the boiler room by making payments to an intermediary pursuant to fabricated invoices.

The SEC's complaint charges the recidivist with market manipulation and fraud. The SEC is seeking a permanent injunction, return of allegedly ill-gotten gains with interest, civil penalties and a penny-stock bar.

Read more here.

FRAUD

CFTC Charges Trader and his Company with $7 Million Fraud

August 21, 2019

The SEC charged a broker-dealer and its former CEO with failing to supervise a broker who provided inflated price quotes for certain securities to a significant customer of the broker-dealer. According to the SEC's order, the broker provided inflated price quotes to a New York-based RIA. The RIA's traders dictated to the broker the prices at which he should value certain mortgage-backed securities in the RIA's portfolios. In return, the RIA's traders promised to send securities trades to the broker-dealer.

The SEC had previously charged the broker, the RIA and certain founders, partners and employees of the RIA in connection with the fraudulent valuation scheme, and then had decided to charge the broker-dealer and its CEO because they both had knowledge of the price quotes and had failed to establish or implement policies or procedures reasonably designed to prevent and detect the misconduct.

The broker-dealer and former CEO did not admit or deny the SEC's findings but agreed to pay penalties of $250,000 and $40,000, respectively. The SEC's orders also censure the broker-dealer and impose a 12-month supervisory bar against its former CEO.

Read more here.

FRAUD

SEC Charges Major Automobile Manufacturer, Former CEO and Former Director with Fraudulently Concealing from Investors More Than $140 Million of Compensation and Retirement Benefits

September 23, 2019

The SEC filed and settled fraud charges against a major automobile manufacturer, its former CEO and its former director related to false financial disclosures that omitted more than $140 million to be paid to the CEO in retirement.

According to the SEC's complaint, beginning in 2004, the automobile manufacturer's board delegated to the CEO the authority to set individual director and executive compensation levels, including his own. From 2009 until his arrest in Tokyo in November 2018, the CEO, with substantial assistance from the former director and subordinates at the automobile manufacturer, engaged in a scheme to conceal more than $90 million of compensation from public disclosure, while also taking steps to increase the CEO's retirement allowance by more than $50 million.

The CEO and his subordinates, including the former director, crafted various ways to structure payment of the undisclosed compensation after the CEO's retirement, such as entering into secret contracts, backdating letters to grant the CEO's interests in the manufacturers' Long Term Incentive Plan, and changing the calculation of the CEO's pension allowance to provide more than $50 million in additional benefits. The CEO and former director misled the automobile manufacturer's CFO and the manufacturer issued a misleading disclosure in connection with the increased pension allowance. The $140 million in undisclosed compensation and retirement benefits was never paid to the CEO.

Read more here.

FRAUD

SEC Halts Alleged $125 Million Offering Fraud

September 18, 2019

The SEC announced that it has filed an emergency action and obtained a temporary restraining order and asset freeze against three individuals and three entities in connection with an alleged fraudulent, ongoing international trading program that has placed at risk more than $125 million of investor funds.

The SEC's complaint stated that beginning in March 2016, a trading advisory firm and its three principles induced investors to invest by falsely representing that their money would be invested using a highly profitable algorithmic trading strategy that had never experienced an unprofitable month and had returned more than 1,600% since inception. However, the complaint alleges the defendants' trading strategy consistently lost money, including more than $18 million from its trading in 2018 alone. Further, the complaint alleges the defendants also misled investors by falsifying account statements and making Ponzi-like payments, all while misappropriating more than $35 million of investor money for defendants' personal use, including to purchase luxury properties and vehicles.

The SEC's complaint charges all defendants with violating the antifraud provisions of Section 17(a) of the Securities Act of 1933, as well as with violating the registration provisions of Section 5(a) and 5(c) of the Securities Act. The complaint also charges the trading advisory firm and its three principles with violations of the antifraud provisions of the Investment Advisers Act of 1940.

Read more here.

FRAUD

SEC Shuts Down $300 Million Fraud Perpetrated by San Diego Company and Its Principal

August 29, 2019

The SEC announced it has filed charges and obtained a consented-to asset freeze against a San Diego based investment firm, its principal and a relief defendant, for operating a multi-year $300 million scheme that defrauded approximately 50 retail investors. The complaint states that, beginning in 2012, defendants fraudulently raised hundreds of millions of dollars from investors by claiming to offer investors an opportunity to make short-term, high-interest loans to parties seeking to acquire California alcohol licenses.

Contrary to the defendant's representations, the SEC asserts, the firm did not use investor funds to make loans to alcohol license applicants but instead, the principal directed significant amounts of investor funds to a relief defendant that she controlled.

The SEC's complaint, filed in federal district court in San Diego on August 28, 2019, charges defendants with violating the antifraud provisions of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and Section 17(a) of the Securities Act of 1933.

Read more here.

FRAUD

SEC Obtains Emergency Asset Freeze, Charges Pennsylvania Investment Adviser with $100 Million Fraud

August 27, 2019

The SEC has obtained an emergency asset freeze amid charging a Pennsylvania investment adviser and its principal with operating an investment advisory fraud involving over $100 million in investments. The complaint alleges the principal and fund raised approximately $105 million from approximately 40 investors by representing she would invest their money in publicly-traded securities through various trading strategies that she championed as providing consistent high returns.

However, the principal made very few investments in these trading strategies, and instead largely used investors' money to repay other investors and for her own personal investments. The complaint further alleges that the principal, and the entities she controls, also disseminated false statements touting positive returns and most recently fabricated documents in an attempt to inflate the investment adviser's assets and lull her investors into believing their capital was safe.

The court granted the SEC's request for an asset freeze and temporary restraining order. The SEC seeks disgorgement of ill-gotten gains and prejudgment interest, and civil penalties against the defendants.

Read more here.

FRAUD

SEC Charges Publicly Traded Real Estate Investment Trust and Former Executives with Accounting Fraud

August 1, 2019

The SEC charged a publicly-traded real estate investment trust, and four former senior executives with fraud in connection with a scheme to manipulate a key non-GAAP metric relied on by analysts and investors to evaluate the company's financial performance. The complaint alleges that from the third quarter of 2013 to the third quarter of 2015, the senior executives improperly adjusted the trust's same property net operating income (SP NOI) in order to report quarterly numbers that hit the Company's publicly issued growth targets.

According to the complaint, the defendants used tactics such as selectively recognizing income from a "cookie jar" account, incorporating certain income that the company had represented was excluded, and improperly lowering the prior year's SP NOI to give the appearance of stronger growth in the current year.

Without admitting or denying the allegations, the company agreed to pay a $7 million penalty and comply with certain undertakings, including retaining an independent consultant to review and assess controls relating to the calculation and presentation of non-GAAP measures including SP NOI.

Read more here.

INSIDER TRADING

SEC Wins Jury Trial Against Broker Charged with Insider Trading

August 14, 2019

Jurors in Atlanta federal court returned a verdict finding a securities broker liable for insider trading in advance of three merger and acquisition transactions.

The SEC's evidence at trial showed the broker received highly confidential non-public information about the impending acquisitions from a partner at an international accounting firm who performed tax work on each acquisition. The broker, in turn, tipped his former colleague and long-time friend who traded in the securities of each of the three companies. According to evidence presented during the trial, the friend and his family made at least $107,922 in illicit trading profits and shared at least $21,500 of these profits with the broker.

The jury found the broker liable on all counts, finding that he violated Sections 10(b) and 14(e) of the Securities Exchange Act of 1934, and Rules 10b-5 and 14e-3 thereunder.

Read more here.

INSIDER TRADING

SEC Charges Investment Banking Analyst with Insider Trading

August 12, 2019

The SEC charged an analyst at a large international investment bank with insider trading based on confidential information he learned about a private equity firm's upcoming acquisition.

According to the SEC's complaint, the investment banker learned of the acquisition when the private equity firm consulted the bank about providing financing and advice on the transaction. The SEC alleges that soon after learning about the deal, the investment banker purchased call options which he sold for $98,750 shortly after the deal was announced. The investment banker allegedly attempted to hide his illegal activity by conducting his trading in a brokerage account that he concealed from his employer, and by circumventing the bank's policies that require employees to pre-clear securities trades.

The SEC's complaint charges the investment banker with violating the antifraud provisions of the federal securities laws and seeks disgorgement of ill-gotten gains plus interest, penalties and injunctive relief.

Read more here.

INSIDER TRADING

SEC Charges Accountant and Friend in $6.2 Million Insider Trading Scheme

July 10, 2019

The SEC filed insider trading charges against an accountant and her friend, whom she illegally tipped with confidential information in advance of her company's quarterly performance announcements in exchange for all-expense paid travel and other expensive gifts. The alleged insider trading scheme generated profits of more than $6.2 million and was uncovered by the SEC through analysis and technology that it uses to detect suspicious trading activity.

The SEC's complaint alleges the certified public accountant and their close friend engaged in a scheme to trade in advance of the accountant's company's release of confidential revenue information. In exchange for extravagant gifts, the accountant allegedly tipped their friend in advance of four quarterly financial performance announcements from her employer from April 2016 to July 2018. Based on those tips of inside information, the friend allegedly purchased the company's securities using accounts held by business associates and acquaintances to conceal his involvement. According to the SEC's complaint, the friend personally realized approximately $4 million from the illicit trading and tipped at least four others who made $2.2 million in profits.

The SEC's complaint charges the accountant and her friend with knowingly or recklessly violating the antifraud provisions of the federal securities laws, and seeks permanent injunctions, disgorgement with prejudgment interest, and penalties.

Read more here.

MISCELLANEOUS

Charges International Accounting Firm with Violating Auditor Independence Rules and Engaging in Improper Professional Conduct

September 23, 2019

The SEC charged an international accounting firm with improper professional conduct on behalf of 15 SEC-registered issuers and violating auditor independence rules in connection with engagements for one issuer where the firm performed prohibited non-audit services. The SEC also charged a firm partner with causing the firm's independence violations.

The SEC's order finds that the firm violated the SEC's auditor independence rules by performing prohibited non-audit services during an audit engagement, including exercising decision-making authority in the design and implementation of software relating to an audit client's financing reporting, and engaging in management functions. The order further states the violations occurred due to breakdowns in the firm's independence-related quality controls, which resulted in the firm's failure to properly review and monitor whether non-audit services for audit clients were permissible and approved by clients' audit committees.

The firm and partner have agreed to settle the charges and the firm will pay over $7.9 million in monetary relief.

Read more here.

MISCELLANEOUS

SEC Charges Subsidiaries of Large International Insurance and Investment Firm for Misleading Funds They Advised, Generating Tens of Millions in Tax Benefits

September 16, 2019

The SEC charged two subsidiaries of a large international insurance and investment firm with failing to disclose conflicts of interest and making misleading disclosures to the boards for 94 mutual funds they advised. In 2006, the funds were reorganized so the firm could receive certain tax benefits, which however, came with certain negative consequences to the funds. First, the subsidiaries cost the funds tens of millions of dollars in interest income when they temporarily recalled securities the funds had out on loan, and second, the reorganized subjected them to less favourable tax treatment in certain jurisdictions. Further, the firm did not timely reimburse the funds for resulting losses despite the subsidiaries assurances it would do so.

The order acknowledges the subsidiaries self-reported the conduct after initially failing to disclose it during an examination and voluntarily reimbursed the funds over $155 million. The order also censures the subsidiaries, and requires them to disgorge and additional $27.6 million, pay a civil monetary penalty of $5 million, and cease and desist from committing any further violations.

Read more here.

MISCELLANEOUS

SEC and CFTC Charge Large Clearing House With Failing to Establish and Maintain Adequate Risk Management Policies

September 4, 2019

The SEC and CFTC announced a large clearing house will undertake remedial efforts and pay $20 million in penalties to settle charges that it failed to implement policies to manage certain risks as required by U.S. laws and SEC and CFTC rules. According to the order, the clearing house failed to establish and enforce policies and procedures involving financial risk management, operational requirements, information systems security, and charged policies on core risk management issues without obtaining required SEC approval.

As the U.S.'s sole registered clearing agency for exchange-listed option contracts on equities, the clearing house is designated as a systematically important financial market utility (SIFMU). This designation makes the clearing house subject to enhanced regulation and transparency regarding its risk management systems because disruption to its operations might be costly not only for itself and its members, but also for other market participants or the broader financial system.

The enforcement action is the SEC's first charging violations of SEC clearing agency standards adopted in 2012 and in 2016, and the CFTC's first charging violations of Core Principles applicable to Derivatives Clearing Organizations.

Read more here.

MISCELLANEOUS

SEC Awards More Than $1.8 Million to Whistleblower

August 29, 2019

The SEC announced an award of more than $1.8 million to a whistleblower whose information and assistance were critically important to the success of an enforcement action involving misconduct committed overseas. After alerting the agency to the violations, the whistleblower provided extensive and ongoing cooperation during the course of the investigation, including the review of documents and the provision of sworn testimony, and continued to provide additional new information that advanced the investigation.

Read more here.

MISCELLANEOUS

SEC Awards Half-Million Dollars to Overseas Whistleblower

July 23, 2019

The SEC announced a half-million-dollar award to an overseas whistleblower whose expeditious reporting helped the Commission bring a successful enforcement action. "The Commission's whistleblower award program has reached an important milestone," said Jane Norberg, Chief of the SEC's Office of the whistleblower. "With recent actions, more than $2 billion in monetary sanctions have been ordered against wrongdoers based on actionable information received by whistleblowers. This represents the direct and important role that whistleblowers, like the overseas whistleblower being awarded today, have in enforcement actions and the protection of investors."

Read more here.

MISCELLANEOUS

FINRA Fines Large Global Markets Firm $1.25 Million for Employee Screening Violations

July 29, 2019

FINRA today announced it has fined a large global markets firm $1.25 million for failing to conduct timely or adequate background checks on approximately 10,400 non-registered associated persons spanning a seven-year period.

FINRA found that from January 2010 through May 2017, the firm did not fingerprint at least 520 of the 10,400 non-registered associated persons until after they began their association with the firm, thus preventing the firm from determining whether any individuals were subject to statutory disqualification from associating with a FINRA member firm. Additionally, the firm was unable to determine whether it timely fingerprinted at least an additional 520 non-registered persons.

While the firm fingerprinted other non-registered associated persons, it failed to screen them as required as required by federal securities laws, and instead limited its screening to what was required by federal banking laws. FINRA found that because of these failures, three individuals who were subject to statutory disqualification because of criminal convictions were allowed to associate, or remain associated, with the firm during the relevant period. This arose from its failure to maintain a reasonable supervisory system and procedures to identify and properly screen all individuals who became associated with the firm in a non-registered capacity.

Read more here.

MISCELLANEOUS

FINRA Fines Major Investment Management Company $1.1 Million for Failing to Timely Disclose 89 Allegations of Misconduct over a Six-Year Period

September 16, 2019

FINRA announced it has censured and fined a major investment management company $1.1 million for failing to timely disclose 89 internal reviews or allegations of misconduct by its registered representatives and associated persons over a six-year period. FINRA also required an undertaking by the firm to certify within 60 days that it has taken appropriate corrective measures.

FINRA found that from January 2012 to April 2018, the company failed to disclose, or timely disclose, 89 internal reviews or allegations of misconduct by its registered representatives and associated persons, including misappropriation of customer and company funds, borrowing from customers, forgery or falsification or alteration of documents, unauthorized trading, making unsuitable recommendations, structuring and other suspicious activity.

When the company eventually filed the required information with FINRA, it was, on average, more than two years late. This prevented FINRA or other regulators from learning about the allegations or pursuing allegations against former representatives after FINRA's jurisdiction expired. These failures resulted primarily from the firm's failure to establish and maintain reasonably designed written supervisory procedures and supervisory systems to identify all instances when Form U.S. disclosures were necessary.

Read more here.

MISCELLANEOUS

CFTC Orders Securities Broker-Dealer to Pay a $200,000 Penalty to Settle Charges for Failing to Supervise Its Employees

July 12, 2019

The U.S. Commodity Futures Trading Commission (CFTC) issued an Order filing and settling charges against a securities broker-dealer located in Stamford, Connecticut. From at least May 1990 to April 2015, the broker-dealer was a registered futures commission merchant (FCM) and commodity pool operator. The Order requires the broker-dealer to pay a civil monetary penalty of $200,000 and cease and desist from any further violations of the Commodity Exchange Act or CFTC Regulations.

The Order found that from at least January 1, 2014 to November 30, 2014, the broker-dealer failed to supervise the handling of commodity interest accounts carried by the broker-dealer and introduced by a guaranteed introducing broker (GIB). The Order found that the broker-dealer failed to adequately supervise its employees and agents to ensure they: (1) executed bunched orders that properly segregated the GIB's proprietary trades from its customer trades; (2) executed bunched orders that properly segregated trades from discretionary and non-discretionary GIB customer accounts; and (3) executed orders for non-discretionary GIB customers only when the GIB had obtained specific customer authorization for the transaction.

Read more here.

MISCELLANEOUS

NFA Takes Emergency Enforcement Action Against California Commodity Pool Operator, Trading Advisor and its Principal

August 6, 2019

The National Futures Association (NFA) has taken an emergency action against an NFA Member commodity pool operator and commodity trading advisor and its principal and sole associated person. The action was taken to protect the investing public, the derivatives markets and other NFA members since the NFA Member and its sole associated person, among other things, commingled pool funds, improperly calculated the pool's rates of return, provided misleading information to their investors and NFA, and failed to cooperate in an investigation of the firm.

The NFA Member and its sole associated person are suspended from NFA membership and are prohibited from soliciting, accepting, disbursing or transferring any funds for any investment vehicle controlled or operated by either party, without the NFA's prior approval. The NFA member and its sole associated person are also prohibited from placing any commodity interest trades, including forex, except to liquidate positions.

Read more here.

MISCELLANEOUS

NFA Orders San Francisco, California Swap Dealer to Pay a $2,500,000 fine

August 9, 2019

The NFA ordered a San Francisco swap dealer to pay a $2,500,000 fine for violating NFA Compliance Rule 2-49(a) by failing to communicate with a counterparty in a fair and balanced manner as required under Commodity Futures Trading Commission Regulation 23.433. In 2017, NFA's OTC Derivatives Department commenced an examination of the swap's operations. Prior to starting the exam fieldwork, the NFA asked the swap dealer to provide certain documents and information, including a list of any incidents where it had identified or investigated misconduct by an associated person pertaining to the swap dealing activities.

In response, the swap dealer reported it was in the business of reviewing an August 2014 transaction involving a client which had secured financing to acquire a Canadian-based company. To hedge the risk associated with fluctuations in the U.S. dollar, the swaps dealer acted as a counterparty to the client. The contract's settlement date of December 31, 2014 coincided with the expected closing date of the client's acquisition of the Canadian Company. However, instead of calculating a settlement price based on the weighted average of actual spot trades, the swaps dealer devised a rate they thought the client would accept and failed to tell the client the rate was arbitrary.

Read more here.

DUFF & PHELPS

Protect, Restore and Maximize Value

About Duff & Phelps

Duff & Phelps is the global advisor that protects, restores and maximizes value for clients in the areas of valuation, corporate finance, investigations, disputes, cyber security, compliance and regulatory matters, and other governance-related issues. We work with clients across diverse sectors, mitigating risk to assets, operations and people. With Kroll, a division of Duff & Phelps since 2018, our firm has nearly 3,500 professionals in 28 countries around the world.

For more information, visit www.duffandphelps.com.