CORE REGULATORY FORUM

Q4 UPDATE

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Regulatory Deadlines

- Form 13F – February 14
- Form 13H – February 14
- Schedule 13G – February 14
- Form PF Large HF – March 1
- Form ADV – March 31
- Form PF Annual – April 30

Notable News Headlines

- How the supply chain crisis is affecting six big economies…**The Guardian**
- In the world first, El Salvador makes bitcoin legal tender… **Reuters**
- Billionaire Ray Dalio: Economic Disaster is coming…**CNBC**

Upcoming Events

- CORE In-Person Private Fund Roundtable Events
- CORE Virtual Roundtable Webinars: Advertising Rule Compliance & Operational Due Diligence

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Introduction

The 2021 fiscal year (***FY 2021***) of the U.S. Securities and Exchanges Commission (***SEC***) ended September 30, 2021, and fiscal year 2022 (***FY 2022***) is currently underway. The SEC announced the appointment of William Birdthistle, a law professor, as the new Director of the Division of Investment Management. In addition, the SEC continued its focus on areas highlighted in prior Congressional testimony and the CORE Regulatory Forum Q3 Update, with public statements, new guidance, and enforcement actions involving special purpose acquisition companies (***SPACs***), cryptocurrency, fintech and alternative data. In addition, in recent comments at the Institutional Limited Partners Association Summit, Chairman Gensler again emphasized the SEC's focus on private funds, noting significant growth in hedge funds and private equity funds, with private fund gross assets under management of $17 trillion and net assets of $11.5 trillion based on data reported in Form ADV and Form PF. FY 2021 marked the ten-year anniversary of when many private funds were first required to register with the SEC and begin reporting under Form ADV and Form PF, following rulemaking mandated by the Dodd-Frank Act of 2010. Chairman Gensler noted that the SEC has learned a lot about private funds over the last decade and highlighted the following principles as keys to promoting sunshine and competition into the private fund space.

- Efficiency, Competition and Transparency
    - *Fees & Expenses* – Chairman Gensler noted that while registered investment funds have experienced significant reductions in fees over the prior decade, private funds have not, with average management fees and carried interest for private equity funds estimated at 1.76% and 20.3% and management and performance fees for hedge funds estimated at 1.4% and 16.4%. He estimated around $250 billion in fees and expenses from private funds annually and has asked SEC staff to consider recommendations to increase transparency regarding such fees.
    - *Side Letters* – Gensler further highlighted the increased use of side letters, through which certain limited partners receive preferred fees, liquidity terms or disclosures and noted that SEC staff are considering recommendations on strengthening transparency regarding side letters or whether certain side letter provisions should not be permitted.
    - *Performance Metrics* – Gensler noted that SEC staff is also focused on enhancing transparency regarding private fund performance on a risk-, liquidity- and leverage-adjusted basis in order to enable investors to effectively evaluate such funds relative to public markets.
- Market Integrity
    - *Fiduciary Duty* – Chairman Gensler affirmed that the fiduciary duty to which every investment adviser is subject may not be waived and is enforceable under the Investment Advisers Act of 1940 (***Advisers Act***).
    - *Conflicts of Interest* – Gensler noted that SEC staff is considering how to better mitigate conflicts of interest between general partners, their affiliates, and investors, which could include prohibitions on certain conflicts and practices.
- Resiliency
    - *Form PF* – The Chairman noted that Form PF is how private funds provide information about their activities and is an important barometer of financial system resiliency. However, he noted that notwithstanding information reported in Form PF, the role of hedge funds was not immediately apparent in the March 2020 dysfunction in the Treasury market. The Chairman asked the SEC staff for recommendations for the Commissioners' consideration around enhancing reporting and disclosure through Form PF.
    - *Joint Rulemaking* – Gensler reiterated that the SEC is working on potential joint rulemaking with the Commodity Futures Trading Commission (***CFTC***), Department of Treasury and Federal Reserve to require more granular or timelier information through Form PF or other reforms.

Regulatory Updates and Enforcement

Recent SEC Rulemaking

A number of the rule proposals that were expected to be considered in October or November have not yet been published. CORE is continuing to monitor for updates in the key rulemaking areas previously noted, including Environment, Social, Governance (***ESG***), Form PF updates, cybersecurity risk governance and others. Following are summaries of several rulemaking developments that have occurred in Q4 2021.

Performance-Based Investment Advisory Fees

Section 205(a)(1) of the Advisers Act generally prohibits an investment adviser from entering into, extending, renewing, or performing any investment advisory contract for compensation to the adviser based on capital gains or appreciation from the fund of the client. However, Rule 205-3, exempts an investment adviser from the prohibition under certain circumstances. Clients that meet particular financial thresholds are deemed to be a "qualified client" and may pay performance-based compensation to investment advisers. In 2011, Section 205(e) was amended to provide that by July 21, 2011, and every five years, thereafter, the SEC shall, by order, adjust for the effects of inflation the dollar amount thresholds in rules issued under Section 205(e), rounded to the nearest multiple of $100,000. In 2012, the SEC also amended Rule 205-3 to provide that the SEC will issue an order on or about May 1, 2016, and approximately every five years thereafter, adjusting for inflation the dollar amount thresholds of the assets-under-management and net worth tests of the rule. On June 17, 2021, the SEC issued an order, effective as of August 16, 2021, increasing the dollar amount threshold of the assets-under-management test from $1,000,000 to $1,100,000 and the dollar amount threshold of the net worth test from $2,100,000 to $2,200,000.

In final rulemaking dated November 4, 2021, effective immediately, the SEC adopted amendments to rule 205-3 to replace specific dollar amount thresholds in the rule's net worth and assets-under-management tests with references to "most recent order" issued by the SEC; "the most recent order" is defined as "the most recently issued SEC order in accordance with paragraph (e) of this section and as published in the *Federal Register*." By using "the most recent" order for in place of the specific dollar amount thresholds, the rule will reference the most recently issued and published adjusted dollar amounts. An additional amendment was adopted to update the reference date in the rule from "May 1, 2016" to "May 1, 2026" to identify the next expected date for an inflation adjustment.

SEC Final Rule – https://www.sec.gov/rules/final/2021/ia-5904.pdf

Rule 10b5-1 Insider Trading Plans

Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 (***Exchange Act***) prohibit the purchase or sale of a security on the basis of material non-public information (***MNPI***). However, Rule 10b5-1 permits officers, directors, affiliates or others presumed to have inside information to establish a written plan for trading securities, if such plan is established in good faith at a time when the person was unaware of MNPI. Thereafter, if pre-planned transactions are executed pursuant to such plan at a time when the individual may be aware of MNPI, the trader has an affirmative defense against accusations of insider trading. Under the rule, the trading plan must either (1) specify the price, amount and date of the trade, 2) include a written formula or algorithm for determining the price, amount and date of the trade, or (3) not allow the adopter of the plan to influence how, when or whether a trade occurs. The SEC proposed amendments to Rule 10b5-1 in December 2021 to impose significant restrictions on the adoption and use of Rule 105-1 trading plans and increase corporate disclosure requirements related to the use of such plans. The proposed amendments include the following additional provisions:

- Cooling-Off Periods – The current rule does not require any specific period between the date the plan is adopted and the date trading begins. The amended rule would require a 120-day cooling off period for officers and directors after a plan is adopted or modified before any trades can occur under such plan. The rule would require a 30-day cooling-off period for issuers after a plan is adopted or modified.

- Certifications – While there are currently no certification requirements for Rule 10b5-1 trading plans, the amended rule would require that insiders personally certify that they are not aware of any MNPI regarding the company or its securities at the time the trading plan is adopted. Such certifications must be maintained but would not be required to be filed with the SEC.
- Limitations on the Number of Trading Plans – Under the proposed amendments, the affirmative defense would not apply to multiple overlapping 10b5-1 trading arrangements for open market trades in the same class of securities. In addition, the amended rule would permit only a single plan during any 12-month period that is designed to execute a single trade.
- Extension of Good Faith Requirement – Currently, a 10b5-1 plan must be written in good faith. The amendment would also require that the plan be operated in good faith, intended to clarify that the affirmative defense would generally not be available if a trader cancelled, modified or inappropriately influence the timing or trades based on MNPI.
- Enhanced Disclosures – While no current disclosures are required regarding 10b5-1 plans, the proposed amendments would require issuers to disclose in annual reports 1) whether they have adopted insider trading policies and procedures and details regarding such procedures; and 2) the firm's option grant policies and practices, details regarding grants made within 14 days of release of MNPI and the market price before and after such information was provided. The proposed amendments would already require issuers to disclose in quarterly reports the adoption or termination of any 10b5-1 plans and details regarding the plan. Finally, the amendments would require officers and directors to disclose on Forms 4 and 5 whether such transactions were pursuant to a 10b5-1 plan.

Private fund managers, their affiliates or related persons with control positions, significant beneficial ownership, board memberships or other relationships that cause them to be control persons of public companies may be directly impacted by such rule amendments, if adopted. In addition, private funds that monitor the activities of insiders related to public companies they own or analyze may benefit from enhanced disclosures.

SEC Proposed Rule – https://www.sec.gov/rules/proposed/2021/33-11013.pdf

Amendments for Form 13F Filers

Private fund managers and other institutional investment managers that exercise investment discretion over $100 million or more in 13(f) securities (generally U.S. public equities) are required to file Form 13F quarterly reflecting their long positions in such securities. The SEC recently proposed two rule changes that, if adopted, would or may impact institutional managers that are subject to Section 13(f) reporting. It is noteworthy that one of the recent rule proposals re-proposed certain amendments that were originally proposed in July 2020, in the same proposal that would have materially raised the 13F reporting threshold from $100 million to $3.5 billion, although the current proposal does not modify the threshold. This essentially confirms what has been expected since Chairman Gensler took over at the helm of the SEC under President Biden, that is the current Commission has no intention of raising the reporting threshold and decreasing transparency of institutional holdings.

Executive Compensation Voting Disclosures

First, under a proposed amendment to Rule 14Ad-1 of the Exchange Act, Form 13F filers would be required to annually file Form N-PX to report their proxy voting on executive compensation matters or so called "say-on-pay" votes. Currently Form N-PX is only required to be filed by registered investment companies but not by private fund managers. If the proposed rule amendment is adopted, all private funds that are required to file Form 13F would be required to disclose their voting on executive compensation for any securities, not just 13(f) securities. Such disclosures would include 1) the number of shares voted or instructed to be voted; 2) how those shares were voted (for, against or abstain); and 3) the number of shares the manager had loaned and did not recall for voting. Of note, the proposal would require managers to report on all positions held with the power to vote, even if their policies and procedures did not require the manager to vote or they did not vote such proxies (e.g., certain de minimis positions and/or algorithmic trading strategies). The proposed disclosures are part of the SEC's focus on ESG and corporate governance. Particularly for fund managers that market ESG strategies, executive compensation voting is expected to be scrutinized.

SEC Proposed Rule – https://www.sec.gov/rules/proposed/2021/34-93169.pdf

Confidential Treatment Requests

Institutional investment managers subject to reporting under Form 13F may request confidential treatment of 13F information. Current procedures for requesting confidential treatment involve a lengthy multi-step process. First, a manager must file the public Form 13F that includes disclosure of the securities that are required via the EDGAR system, excluding the securities that the manager wants treated as confidential. At the same time as the public EDGAR filing is made, the manager must submit a confidential treatment request (CTR) application to the SEC Office of the Secretary via a confidential paper filing, with multiple copies submitted, that includes the confidential information clearly marked as well as the manager's factual and legal analysis for the exemption request, the requested duration for confidential treatment, and specified representations. The challenges that managers face due to this manual filing procedure were highlighted during the last year of the pandemic. As a result of the current procedure, there were delays in request submissions, approvals, and denials.

The SEC recently proposed to modernize the process for requesting confidential treatment of 13F filings to increase the speed and accuracy of requests for confidential treatment. First, the SEC proposes that requests for confidential treatment be submitted electronically through the EDGAR system as a non-public filing. The electronic form would include a confidential Form 13F report of the securities a manager wants covered under the request for confidential treatment. The proposed rule would also require managers to submit an updated Form 13F upon the expiration date or earlier if the request for confidential treatment is denied. Under the proposed amendment, managers would also include a Summary Page disclosing that confidential treatment was requested for some securities for the quarter-end period. Other proposed minor amendments to Form 13F would requires managers to include the CRD and SEC file numbers, if any, of the other manager(s) included in the 13F report and report security values to the nearest dollar rather than the nearest $1000.

SEC Proposed Rule – https://www.sec.gov/rules/proposed/2021/34-93518.pdf

Exam Developments

The SEC's Division of Examinations (***Exam Division***) continues to operate under the leadership of Acting Director, Daniel Kahl, who has been at the helm since former Director Peter Driscoll left the SEC in August 2021. Matt Harris was named co-head of the Private Fund Unit, replacing Igor Rozenblit who left in June 2021. SEC examination staff have continued to work and actively conduct examinations remotely throughout 2021, with no immediate plans to return to the office or in-person examinations. We expect to see FY 2022 Examination Priorities published in early 2022. SEC exam staff issued three risk alerts during the 4th quarter, including the following risk alert that is applicable to private fund managers, as well as one describing common deficiencies in examinations of so called "robo-advisers" and one regarding observations from examinations of registered investment companies, which we have not summarized in this regulatory update, as these alerts are generally not applicable to private fund managers.

Advisory Fee Risk Alert

On November 10, 2021, the Exam Division issued a risk alert titled "Division of Examinations Observations: Investment Advisers' Fee Calculations". The risk alert described a national initiative "focused on advisory fees, predominantly those charged to retail clients"; however, certain of the observations, while not specific to private fund advisers, were consistent with focus areas and findings of recent SEC examinations of private fund advisers. The initiative, which involved approximately 130 examinations, "assessed the various ways in which investment advisers charge fees for their services" and "identified deficiencies related to the advisory fees charged during most of these examinations." This risk alert is a follow-up and supplement to the April 12, 2018 Advisory Fees Risk Alert.

In its observations, the Exam Division staff noted deficient practices related to investment advisers' fee calculations among which were inaccurate calculations and incorrect valuations used to determine advisory fees both of which have corollaries applicable to private fund advisers. The staff also described observations with respect to false, misleading or omitted disclosures specifically on Form ADV Part 2. Such disclosures "did not accurately describe how fees would be calculated or billed" or were inconsistent with other disclosures. The observations related to disclosures also have parallels to private fund manager disclosure practices in Form ADV Part 2, marketing materials and fund governing documents including observations regarding deficient disclosures related to cash flows and their effect on fees; valuations used for fee calculations; and failure to disclose additional fees.

As has been the case with other recent risk alerts, this risk alert noted deficiencies with respect to failure to maintain adequate written policies and procedures in this instance describing advisers having generic policies and procedures that fail to adequately address advisory fee billing and calculations; monitoring of fee calculations and billing; and testing advisory fees. As with other observations in the risk alert, observations related to policies and procedures also have applicability to private fund advisers such as policies and procedures missing "critical advisory fee components that were relevant to the firms' businesses, including…valuation of illiquid or difficult-to-value assets included in the assets for the calculation of advisory fees" and fee offsets.

The risk alert continued with summaries of "issues or inaccuracies with financial statements at several examined advisers with respect to advisory fees." Among those was advisers failing to record "all advisory fee income, administrative fee revenue, and compensation expenses in general ledgers and on financial statements." Again, this has applicability to private fund advisers in that advisers do not necessarily record performance allocations or carried interest income on adviser or general partner financial records as such income is passed through to partners of the firm/general partner.

SEC Risk Alert – https://www.sec.gov/files/exams-risk-alert-fee-calculations.pdf

Enforcement Developments

The SEC Division of Enforcement (***Enforcement Division***) published its FY 2021 Enforcement Statistics in November noting that it filed 434 new enforcement actions and 697 total enforcement actions during the year, representing a 7% increase in new actions over the prior year. The SEC obtained nearly $2.4 billion in disgorgement and more than $1.4 billion in penalties based on such actions and awarded $564 million to whistleblowers. The Enforcement Division noted that 70% of these cases named at least one individual, in a continued effort to hold individuals accountable for securities law violations. Cases covered a broad range of topics, including emerging threats in the crypto and SPAC space, significant actions targeting insider trading and market manipulation, as well as more traditional cases involving fraudulent securities offerings, financial fraud and issuer disclosure, among others. We have summarized select cases with potential relevance for private funds below. (*SEC Press Release* – https://www.sec.gov/news/press-release/2021-238)

According to an October 12, 2021 Reuters article, staff have opened a "broad inquiry into how Wall Street banks are keeping track of employees' digital communications" and have contacted multiple banks to determine whether the banks "have been adequately documenting employees' work-related communications, such as text messages and emails, with a focus on their personal devices". This sweep apparently originated as a result of a probe into an individual financial institution. According to the article, JPMorgan Chase & Co "disclosed that it had been fielding regulatory inquiries concerning its 'compliance with records preservation requirements in connection with business communications sent over electronic messaging channels' that the bank had not approved" and said it was discussing a "resolution" with regulators. While this sweep appears specific to investment banks, the SEC and the Financial Industry Regulatory Authority (***FINRA***) require registered investment advisers and broker-dealers, respectively, to keep records of all business-related communications including email, instant messaging and, if pertaining to a regulated entity's business, text messages. As is noted by Reuters, and as is consistent with our observations, "many financial firms ban the use of personal email, texts and other social media channels for work purposes, but keeping up with a proliferation of communication apps -- especially during the pandemic -- is a challenge for companies." This sweep follows recent SEC enforcement cases that involved failure to maintain business-related communications including texts. Speeches by SEC staff members have also highlighted failure by regulated entities to retain and produce communication records especially in light of the use of personal devices, new communications channels, and other technological developments. According to Reuters, this sweep "is a further sign that the SEC is ramping up enforcement under its Democratic leadership, and highlights the challenges Wall Street banks face keeping track of staff communications in the work-from-home pandemic era." (*See Reuters Article on Sweep* – https://www.reuters.com/legal/litigation/exclusive-us-sec-opens-inquiry-into-wall-street-banks-staff-communications-2021-10-12)

SEC Enforcement Case Summaries

Private Equity Fund Fees and Expense Disclosures – Global Infrastructure Management (December 20, 2021)

The SEC charged private equity manager Global Infrastructure Management, LLC with failing to properly offset management fees. Fund governing documents noted that the firm would offset 80% of advisory fees and certain other fees received from portfolio companies, and 100% of director fees paid by portfolio companies to its affiliates, against management fees owed by fund partners. However, the firm failed to fully offset the fees received from portfolio companies consistent with what was required by fund governing documents. In addition, the SEC charged the firm with making misleading statements about the fees and expenses it charged. Specifically, the private placement memoranda (***PPM***) for certain funds stated that a partial disposition of a fund portfolio company would reduce management fees, while the respective funds' limited partnership agreements (***LPA***) each stated that a partial disposition would not reduce management fees. When questioned by limited partners about the impact of partial dispositions, the firm provided inconsistent information to investors. The firm ultimately did not reduce management fees to incorporate partial dispositions. The SEC further faulted the firm for failing to have written policies and procedures in place to 1) confirm that management fee and offset calculations were being made in a manner consistent with fund governing documents; and 2) identify and address inconsistencies in fund documents and communications with investors. The firm subsequently voluntarily repaid $5.4 million in excess fees and agreed to a $4.5 million penalty. This case highlights the SEC's focus on management fee and offset calculation practices and disclosures and private fund managers are encouraged to compare their practices with relevant governing documents and all disclosures.

SEC Press Release – https://www.sec.gov/news/press-release/2021-266

Electronic Messaging Recordkeeping – J.P. Morgan Securities LLC (December 17, 2021)

The SEC announced charges against J.P. Morgan Securities LLC (***JPMS***), a broker-dealer subsidiary of JPMorgan Chase & Co., for "widespread and longstanding failures by the firm and its employees to maintain and preserve written communications." JPMS agreed to pay a penalty of $125 million to the SEC. The CFTC also announced a settlement with JPMS and affiliated entities for related conduct with a penalty of $75 million. The firm admitted the facts set forth in the SEC's order and acknowledged that its conduct violated the federal securities laws. According to the SEC's press release, JPMS "will implement robust improvements to its compliance policies and procedures to settle the matter" and "agreed to retain a compliance consultant to conduct a comprehensive review of its policies and procedures relating to the retention of electronic communications found on personal devices and JPMS's framework for addressing non-compliance by its employees with those policies and procedures." From at least January 2018 through November 2020, JPMS "employees often communicated about securities business matters on their personal devices, using text messages, WhatsApp, and personal email accounts." These messages were not preserved as required by the federal securities laws.

JPMS admitted that these failures were firm-wide, involving managing directors and other senior supervisors who used their personal devices to communicate about the firm's securities business. During the time period, the SEC conducted numerous investigations of JPMS in which the firm received both subpoenas and voluntary requests. In responding to these subpoenas and requests, JPMS frequently did not search for relevant records contained on the personal devices of its employees, and it "acknowledged that its recordkeeping failures deprived the SEC staff of timely access to evidence and potential sources of information for extended periods of time and in some instances permanently." The firm's actions meaningfully impacted the SEC's ability to investigate potential violations of the federal securities laws. In addition to the recordkeeping failures, the firm failed reasonably to supervise its employees with a view to preventing or detecting certain of its employees' aiding and abetting violations. As a result of this investigation, the SEC has commenced additional investigations of record preservation practices at financial firms as described above. This case follows a September 2020 case against Jonestrading Institutional Services in which the firm also failed to maintain required electronic communications including text messages. (See https://www.sec.gov/litigation/admin/2020/34-89975.pdf)

SEC Press Release – https://www.sec.gov/news/press-release/2021-262

Global Management Consulting Firm Insider Trading – Puneet Dikshit (November 10, 2021)

A partner at consulting firm McKinsey & Company, Puneet Dikshit was charged with illegally trading in advance of a corporate acquisition by one of the firm's clients, which he learned of through the course of providing consulting services to one of the firm's clients. The firm was engaged to assist an investment bank concerning an impending acquisition. Upon receipt of the MNPI regarding such acquisition, Dikshit purchased, in his account and that of his spouse, call options for one of the companies involved in the acquisition. Shortly after the acquisition was announced, he sold his call options earning a profit of approximately 1,829%. Such trades were in violation of the firm's policies and procedures which required that employees maintain the confidentiality of information learned in connection with their employment and refrain from trading on such information. The firm's policies also required that Dikshit pre-clear any trades in publicly traded securities for themselves and members of their household. He did not pre-clear any of the trades in question. In addition to the SEC action, Dikshit is also being charged criminally by the Southern District of New York.

SEC Press Release – https://www.sec.gov/news/press-release/2021-230

Hedge Fund Market Manipulation Fraud – Lemelson Capital Management LLC (November 5, 2021)

Gregory Lemelson and Boston-based Lemelson Capital Management LLC were charged with fraud in September 2018 for reaping more than $1.3 million in illegal profits by making false statements to drive down the price of San Diego-based Ligand Pharmaceuticals Inc. The case was litigated and went to trial in 2021. During the trial, the SEC was able to demonstrate that Lemelson had established a short position in Ligand prior to making a series of false statements to shake investor confidence in the company, drive down the price of Ligand's stock, and, consequently, increase the value of Lemelson's short positions. Between June and October 2014, Lemelson engaged in manipulative activities, including publishing several "research reports" with falsified data, participating in live interviews in which he tried to create a negative view of the company and its value, and disseminating false statements about Ligand in press releases, on his hedge fund's blog, and through social media. As a result of these activities, Ligand's share price had dropped approximately 34 percent. During the same time period, Lemelson had "covered" the vast majority of his hedge fund's short position in Ligand, generating approximately $1.3 million in illegal profits. On November 5, 2021, the jury returned a verdict in the SEC's favor, finding the defendants liable for fraudulent misinterpretations. However, the jury rejected claims that Lemelson engaged in a scheme to defraud his fund's or Ligand's investors. The SEC seeks injunctive relief, disgorgement of ill-gotten gains together with prejudgment interest, and civil penalties. Lemelson's attorneys have noted that they plan to appeal the decision.

SEC Press Release – https://www.sec.gov/news/press-release/2021-224

Regulatory Updates and Enforcement

SPAC Case – Akazoo S.A. (October 27, 2021)

In connection with a 2019 SPAC merger between Akazoo Limited and Modern Media Acquisition Corporation (***MMAC***), the post-SPAC Akazoo S.A. (***Akazoo***) had charges brought against it by the SEC due to the misrepresentations made in order to enter into the SPAC. Akazoo had marketed itself as a rapidly growing subscription-based music streaming company focused on emerging markets with business metrics much like the Pandora streaming service. Falsely stating to have more than 38.2 million registered users, 4.6 million paying subscribers and over $120 million in annual revenue, Akazoo managed to defraud investors out of tens of millions of dollars while actually having no paying subscribers and negligible revenue. Akazoo received $14.2 million from the MMAC merger and an additional $40.6 million from accredited investors through a PIPE offering at the time of the business combination. While their shares were traded on the Nasdaq, Akazoo continued to mislead the public by claiming to have increased paying subscribers base by 28% and revenue by 39% year-over-year through operations in 25 countries. Thousands of additional retail investors purchased shares of the Company's stock from September 2019 to May 2020 before trading was halted due to a short-seller report exposing the fraudulent company. Akazoo conducted an internal investigation into their operations and admitted that "former members of Akazoo's management team and associates defrauded Akazoo's investors…by materially misrepresenting Akazoo's business, operations, and financial results as part of a multi-year fraud." They also admitted that "former members of Akazoo management and associates participated in a sophisticated scheme to falsify Akazoo's books and records" which hid their actual negligible revenue and subscriber count from investors. They had depleted $20 million of investor funds which prompted the SEC to file an emergency action in October 2020 in order to preserve the remaining $31.5 million and other assets. Ultimately, Akazoo was ordered to pay $38.8 million in disgorgement representing net profits gained which will be deemed satisfied upon final approval of pending settlement agreements. This in just another case in a growing number of enforcement actions involving SPACs.

SEC Press Release – https://www.sec.gov/news/press-release/2021-216

Penny Stock Scheme on Twitter – Steven M. Gallagher (October 26, 2021)

In this social media manipulation case, the SEC filed an emergency action and obtained an asset freeze order against Steven M. Gallagher for allegedly committing securities fraud through a long-running scheme to manipulate stocks using Twitter. The complaint alleges that, since at least December 2019, Gallagher used his Twitter account to encourage his followers to purchase stocks in which he had secretly taken a large position. Allegedly, Gallagher would then sell those stocks at inflated prices while continuing to recommend that others buy them – failing to disclose his own sell orders. Despite repeated warnings from his broker, Gallagher continued his activities, gaining illicit profits from trading in at least 60 micro-cap issuers. When his broker announced it was shutting down his account, Gallagher opened a trading account at a different brokerage firm, carrying on with his market manipulation. Gallagher allegedly engaged in these practices as recently as October 2021 and has generated at least $3.39 million in profits from his actions, a practice which is referred to as "scalping" or a scheme or artifice to defraud in which a defendant (i) acquires shares of a stock; (ii) recommends that others purchase the stock without disclosing his intention to sell; and (iii) subsequently sells the stock for his own benefit. The SEC seeks emergency action to (1) prevent further investor harm; (2) preserve assets sufficient for Gallagher to pay disgorgement, prejudgment interest and civil money penalties in accordance with any final judgment of this case; and 3) avert Gallagher from destroying evidence.

SEC Press Release – https://www.sec.gov/news/press-release/2021-214

Webcast Host Role in Market Manipulation Scheme – Mark Melnick (October 1, 2021)

In this market manipulation case, the SEC charged Mark Melnick, the host of a daily subscription based real-time trading webcast, with spreading false rumors among his webcast subscribers. Between January 2018 and January 2020, Melnick spread rumors designed to cause the prices of certain target companies' stock and options to temporarily rise, allowing him to profitably trade around such rumors. In this elaborate scheme, Melnick first received notice from another scheme participant ("Trader A") when certain publicly-traded companies were about to be the subjects of the false rumors. Trader A directed Melnick to purchase securities in the respective companies prior to the false rumors' dissemination. Subsequently, Melnick assisted in the dissemination of the rumors by informing his webcast subscribers that there was "chatter" about the subject companies. Melnick traded around the false rumors over 100 times, earning $374,835 in unlawful profits. Melnick has agreed to cooperate with the Enforcement Division and has consented to pay disgorgement plus prejudgment interest of nearly $415,000 and civil money penalties in an amount to be determined by the court. Melnick has also agreed to a penny stock bar and to be barred from the securities industry. In a parallel criminal action, Melnick pleaded guilty to criminal charges as well.

SEC Press Release – https://www.sec.gov/news/press-release/2021-206

Compliance Analyst Insider Trading – Jose Luis Casero Sanchez (September 29, 2021)

In an unusual case involving compliance personnel, the SEC charged Jose Luis Casero Sanchez, a former compliance analyst at a prominent U.S. investment bank, with insider trading. From 2019 to 2021, Sanchez worked as a compliance analyst, responsible for controlling confidential information concerning pending and potential transactions in which the investment bank was advising clients, including mergers, tender offers, and financings. His role was to help control the flow of information between the "private" and "public" sides of the firm and prevent and detect insider trading. Sanchez was subject to several internal agreements, policies and procedures which spelled out his duties to maintain confidentiality, refrain from engaging in insider trading, and pre-clear personal trading transactions. Sanchez completed various compliance attestations and trainings evidencing his understanding of the policies which he later violated. During an 8-month period, the SEC alleged that Sanchez abused his position of trust and confidence and executed numerous profitable trades in accounts held by his parents. The executed trades related to 45 deals upon which Sanchez had MNPI. To avoid detection, Sanchez executed small trades only generating modest profits. His ill-gotten gains totaled about $471,000. The SEC is seeking disgorgement of profits, interest, and civil penalties. Sanchez's parents have also been charged as relief defendants.

SEC Press Release – https://www.sec.gov/news/press-release/2021-203

Wash Trading Scheme – Suyan Gu and Yong Lee (September 27, 2021)

Suyan Gu and his friend, Yong Lee, were both charged by the SEC for engaging in a fraudulent scheme that used options trading to take advantage of a "maker-taker" fee models used by some exchanges. Under such program, a trade order that is sent to an exchange and executes against a subsequently received order makes liquidity and generates a rebate from the exchange. In contrast, an order that immediately executes against a pre-existing order takes liquidity and is charged a fee. In early 2021, "meme stocks" – stocks being actively promoted on social media platforms – had increased market volume and volatility, which Gu became aware of and saw as an opportunity to collect liquidity rebates by wash trading put options. He would use broker-dealer accounts that pass "maker" rebates back to their customers for the purpose of placing initial limit orders for out-of-the-money options, which would be unprofitable to exercise at the time, thus generating the rebate. Gu would then place an order on the other side of the market with a separate broker-dealer that does not pass "taker" fees onto its customers. The trades would wash and Gu would profit the liquidity rebate without paying any exchange fees. After initially testing his strategy, Gu brought his friend Lee into the scheme. The initial brokers used by Gu and Lee froze their accounts for concerns of market manipulation and wash trading. They continued to open new accounts and proceeded with their wash trading scheme resulting in net gains from rebates of $668,671 through approximately 11,400 trades for Gu and $51,334 in liquidity-rebates through approximately 2,300 trades for Lee. Whether they were aware of this or not, the wash trading scheme also impacted the market by inducing other traders to place trades by skewing the volume in certain option contracts. Following the SEC charges, Lee has consented to final judgement ordering him to pay approximately $53,000 in disgorgement and interest, and a civil monetary penalty of $25,000. The litigation against Gu is still in process. This case highlights the SEC's growing focus on meme stocks and indicates that even during times of significant market volatility, complex trading schemes can be quickly investigated and exposed by the SEC.

SEC Press Release – https://www.sec.gov/news/press-release/2021-195

FCPA Violations – WPP plc (September 24, 2021)

London-based WPP plc, the world's largest advertising group, agreed to pay more than $19 million to resolve charges that it violated the anti-bribery, books and records, and internal accounting controls provisions of the Foreign Corrupt Practices Act (***FCPA***). According to the SEC's order, WPP implemented an aggressive business growth strategy that included acquiring majority interests in many localized advertising agencies in high-risk markets. The order found that WPP failed to ensure that these subsidiaries implemented WPP's internal accounting controls and compliance policies, instead allowing the founders and CEOs of the acquired entities to exercise wide autonomy and outsized influence. The order also found that, because of structural deficiencies, WPP failed to promptly or adequately respond to repeated warning signs of corruption or control failures at certain subsidiaries. For example, according to the order, a subsidiary in India continued to bribe Indian government officials in return for advertising contracts even though WPP had received seven anonymous complaints touching on the conduct. The order also documents other schemes and internal accounting control deficiencies related to WPP's subsidiaries in China, Brazil, and Peru. Without admitting or denying the SEC's findings, WPP agreed to cease and desist from committing violations of the anti-bribery, books and records, and internal accounting controls provisions of the FCPA and to pay $10.1 million in disgorgement, $1.1 million in prejudgment interest, and an $8 million penalty.

SEC Press Release – https://www.sec.gov/news/press-release/2021-191

IT Manager Insider Trading – Dayakar R. Mallu (September 17, 2021)

In a parallel case with the Department of Justice (***DOJ***), the SEC charged Dayakar Mallu, a former global IT manager of a pharmaceutical company, Mylan N.V., with insider trading after receiving MNPI from a senior manager and current employee at the company. Mallu worked with the senior manager while he was employed at Mylan from 2014 to 2017, during which time they established a personal friendship. After Mallu's departure from Mylan, Mallu and the senior manager stayed in touch and the senior manager regularly tipped inside information about corporate activities, including FDA approvals, financial information, and products through a secure messaging and calling application to avoid detection. Mallu illicitly gained more than $7 million, while avoiding losses of more than $700,000. In exchange for the tips, Mallu shared a portion of the profits with the tipper. The senior manager had acknowledged receipt of the firm's Code of Conduct, which specifically prohibited trading in Mylan's securities while in possession of MNPI about the company or causing or recommending others to do so. Additionally, in his employment agreement, the senior manager agreed not to use or disclose any Mylan confidential information. Mallu pleaded guilty to criminal charges in the case and is awaiting sentencing. We expect additional cases are forthcoming against the tipper and other conspirators in the case.

SEC Press Release – https://www.sec.gov/news/press-release/2021-181

Alternative Data – App Annie Inc. and Bertrand Schmitt (September 14, 2021)

In the SEC's first enforcement action against an alternative data provider, it charged App Annie Inc. and its co-founder and former CEO and Chairman Bertrand Schmitt with securities fraud for misrepresenting themselves and their business practices to users, along with other deceptive practices. App Annie is an aggregator of "alternative data" which is then sold to trading firms on a subscription basis to be used in making their investment decisions. App Annie markets their free analytics product to companies ("Connect users") that offer mobile device applications and provides them with data on the number of times their app is downloaded, the amount of revenue generated through the app, and how often the app is used. The Connect users provide App Annie with their app store credentials in order for them to collect their data metrics and estimate app performance. App Annie purportedly assured companies that reported their app data that the information would be aggregated and anonymized before being used in a statistical model to generate estimates of app performance. However, the SEC found that App Annie used non-aggregated and non-anonymized data in order to induce trading firms to become paying subscribers. To make this product more valuable to subscribers, App Annie altered the information to make the data metrics appear closer to the Connect users' actual app metrics, while representing the information as being generated through a statistical model using confidential information consented to by the Connect users. App Annie and Schmitt also claimed to have internal controls and processes in place to prevent the misuse of the Connect users' confidential information and for its use to be in compliance with federal securities laws. They understood that trading firms would not subscribe to their product or use the data in making their trading decisions if App Annie had not made these representations. During the period of late-2014 to mid-2018, App Annie sold data to 100 trading firms, did not have effective internal controls, and used public company data to generate the Connect users' performance estimates. The case noted that the firm was aware that traders were able to use the data to trade ahead of upcoming earnings announcements. Due to the misleading representations and deceptive practices, App Annie was ordered to pay a $10 million penalty and Schmitt ordered to pay a $300,000 penalty as well as being prohibited from serving as officer or director of a public company for three years. We expect that this case is the first among others naming hedge funds and other traders with inappropriately accessing and utilizing alternative data.

SEC Press Release – https://www.sec.gov/news/press-release/2021-176

Deficient Cybersecurity Procedures – Cetera, Cambridge & KMS (August 30, 2021)

The SEC sanctioned eight firms in multiple actions for failures in their cybersecurity policies and procedures that resulted in email accounts being compromised, exposing personal information of thousands of customers and clients. The Firms were utilizing cloud-based email accounts that were hacked by an unauthorized third-party. The hackers were able to access personal identifiable information (PII) and other client information and records. In each case, the SEC faulted the firms for not effectively implementing safeguards such as multi-factor authentication to adequately protect customer and client information. The cases were brought by the Enforcement Division's Cyber Unit, the head of which noted that "it is not enough to write a policy requiring enhanced security measures if those requirements are not implemented or are only partially implemented, especially in the face of known attacks." The sanctioned firms were ordered to pay penalties ranging from $200,000 to $300,000 for the deficiencies.

SEC Press Release – https://www.sec.gov/news/press-release/2021-169

Front-Running Scheme – Sergei Polevikov & Maryna Arystava (August 23, 2021)

The SEC charged a quantitative analyst of two asset management firms with conducting a front-running scheme. The analyst had real-time access to his employers' order management system and to MNPI about the details of securities trades that his employer intended to execute on behalf of clients. According to the SEC complaint, Sergei Polevikov, made at least $8.5 million from engaging in a front-running scheme that spanned several years. The SEC alleged that from January 2014 to October 2019, the analyst traded on MNPI using the undisclosed account of his wife, who uses a different last name. On nearly 3,000 occasions, Polevikov transacted ahead of his employers' trades in the same stock, on the same side of the market. Then he would close his positions the same day as he opened them to gain from the price movement caused by his employers' large trades. The SEC charged him with violating the antifraud and reporting provisions of the federal securities laws. His wife is also named as a relief defendant. The case is ongoing and the SEC seeks injunctive relief as well as disgorgement of ill-gotten gains and penalties. Additionally, the analyst faces criminal charges by the U.S. Attorney's Office for the Southern District of New York.

SEC Press Release – https://www.sec.gov/news/press-release/2021-186

Netflix Insider Trading Ring – Sung Mo Jun, et al (August 18, 2021)

The SEC announced insider trading charges against three former Netflix employees and their two close associates for their part in orchestrating and facilitating trades based on MNPI from Netflix. The MNPI contained Netflix's subscriber growth metrics and other information reported alongside quarterly earnings figures. The SEC alleged that Sung Mo Jun, a former Netflix Software Engineer, repeatedly leaked these non-public performance figures to his brother, Joon Mu Jon, and close friend, Junwoo Chon, prior to quarterly earnings announcements while employed at Netflix from 2016 to 2017. After his departure from Netflix in 2017, Song Mu Jun, purportedly continued to receive similar non-public information from another Netflix insider, Ayden Lee and continued to use such MNPI himself, and tip such information to others for trading. The SEC further alleges that Sung Mo Jun, his brother and friend were participants in a group messaging channel together with another Netflix Software Engineer, Jae Hyeon Bae, through which they were tipped about Netflix subscription information in advance of earnings announcements. According to the SEC, the defendants were able to amass more than $3 million in profits from trading Netflix stock from 2016 to 2019.The defendants seemingly attempted to use encrypted messaging apps to evade detection from the SEC and other regulatory authorities but were unsuccessful. The Analysis and Detection Center of the SEC's Market Abuse Unit was able to uncover the insider trading scheme via the utilization of their various data analysis techniques. The Chief of the SEC's Market Abuse Unit, Joseph Sansone, heralds that "this case reflects our continued use of sophisticated analytical tools to detect, unravel and halt pernicious insider trading schemes that involve multiple tippers, traders, and market events."

SEC Press Release – https://www.sec.gov/news/press-release/2021-158

Shadow Insider Trading – Matthew Panuwat (August 17, 2021)

The SEC filed insider trading charges against a former employee of a biopharmaceutical company based on a novel concept referred to as "shadow insider trading." Traditional insider trading typically involves buying or selling securities of a company (for a fund or personal account) while in possession of MNPI about that company or tipping such information to another party who trades. In this case, a former business development employee of Medivation, Inc. was closely involved in acquisition discussions with access to MNPI presented by investment banks related to Pfizer's potential acquisition of his employer. The employee then purchased options of a firm that had been identified by investment bankers as a closely comparable competitor, Incyte Corporation, correctly anticipating that the news of the acquisition would positively impact the competitor's stock price. After the transaction was announced, Incyte's stock price increased by 8%. The SEC has alleged that the employee violated his employer's insider trading policies and his duty to his employer to keep information confidential and not to trade securities or profit in any way based upon it. Even though the employee's trading did not involve the securities of Medivation, the trade was made based on the MNPI regarding the impending acquisition, in violation of the Firm's policies and the employee's duty of trust or confidence to his employer. The SEC's complaint charges the former employee with violating the antifraud provisions of the federal securities laws, and seeks a permanent injunction, civil penalty, and an officer and director bar. The case is ongoing and its regulatory implications are not yet final.

SEC Press Release – https://www.sec.gov/news/press-release/2021-155

SEC Guidance

Withdrawal of Investment Adviser Marketing No-Action Letters

In conjunction with the amendments to Rule 206(4)-1, the Marketing Rule under the Advisers Act which replaces the current advertising and cash solicitation rules, the SEC's Division of Investment Management (***IM***) has withdrawn certain staff statements and no-action letters related to investment adviser advertising and solicitation practices. Such withdrawals are consistent with discussion in the Marketing Rule adopting release and will be effective as of November 4, 2022, the compliance date of the Marketing Rule. The withdrawn no-action letters, listed in Appendix A of the October 2021 IM Information Update, include letters on which investment advisers have relied since the 1970s as guidance for presentation of performance results and content of marketing materials, including the Clover series of no-action letters and related subsequent no-action letters. In many respects, the substance of the withdrawn no-action letters has been incorporated into the Marketing Rule.

IM Information Update – https://www.sec.gov/files/2021-10-information-update.pdf

Staff Report on Equity and Options Market Structure Conditions in Early 2021

As previously promised, the SEC issued a report analyzing the U.S. market structure and securities regulatory framework in light of the market events in early 2021 involving GameStop (***GME***). GME and multiple other stocks experienced a dramatic increase in share price when increasing numbers of individual investors expressed bullish sentiments about the stocks on social media. Companies with significant retail following on social media have become known as “meme stocks” and have experienced significant volatility, which does not necessarily correlate with fundamental analysis of the companies’ activities. Following the events of January 2021, several retail broker-dealers temporarily prohibited certain activity in stock and options of such meme stocks. The report noted that as more individual investors participate in the markets, incented by “free” or “no commission” trading through retail broker-dealers, it is important to understand how their orders are executed and the incentives broker-dealers receive when executing those orders and that other market participants have negotiated to benefit from retail order flow. The report further considered how short selling played a role in the GME events, with some in the media characterizing GME trading as an act of rebellion against short-selling professionals that had allegedly targeted the stock.

The report concluded by identifying four areas for potential study and further consideration in the interest of the SEC’s mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, including the following:

- Forces that may cause a brokerage firm to restrict trading – Noting the integral role clearing plays in risk management for equity trading and the potential effect of acute margin calls on more thinly-capitalized broker-dealers, the report suggested that one method to mitigate the systemic risk posed by such entities to the clearinghouse and other participants may be to shorten the settlement cycle.
- Digital engagement practices and payment for order flow – The report suggested that consideration be given to whether 1) game-like features and celebratory animations are likely to leave investors to trade more than they would otherwise and 2) payment for order flow and related incentives may cause broker-dealers to final novel ways to increase customer trading.
- Trading in dark pools and through wholesalers – The report noted that much of the retail order flow in GME was purchased by wholesalers and executed off exchange, which is less visible to the wider market and therefore raises questions about execution quality. The report further noted that wholesalers, which face fewer requirements, notwithstanding the fact that they increasingly handle individual investor order flow, consider increasing operational transparency and resiliency.
- Short selling and market dynamics – The report recognized that the interplay between short selling and price dynamics is more complex than the narratives ascribed through media attention in the GME events and that improved reporting of short sales would allow regulators to better track these dynamics.

SEC Staff Report – https://www.sec.gov/files/staff-report-equity-options-market-struction-conditions-early-2021.pdf

Regulatory Updates and Enforcement

Other Regulatory Developments

Anti-Money Laundering & Sanctions Developments

On June 30, 2021, FinCEN announced the first set of government-wide AML/CFT Priorities, as required by the Anti-Money Laundering Act of 2020 (***AML Act***). Consistent with the National Strategy for Combating Terrorist and Other Illicit Financing, the AML/CFT Priorities reflect a mix of new and long-standing threats to the U.S. financial system and national security. These threats involve attempts to exploit perceived legal, regulatory, supervisory, or enforcement vulnerabilities in the U.S. financial system that may be associated with a particular product, service, activity, or jurisdiction.The national AML/CFT Priorities FinCEN identified are (1) corruption; (2) cybercrime, including cybersecurity and virtual currencies; (3) foreign and domestic terrorist financing; (4) fraud; (5) transnational criminal organization activity; (6) drug trafficking organization activity; (7) human trafficking and human smuggling; and (8) proliferation financing.

The AML/CFT Priorities do not create any immediate changes to Bank Secrecy Act (***BSA***) requirements or supervisory expectations. Rather, FinCEN and other agencies will revise their BSA regulations within six months to clarify how financial institutions subject to the BSA should integrate the AML/CFT Priorities into their risk-based BSA programs. As a reminder, because investment advisers and private funds do not fall under the BSA's current definition of "financial institution", these entities are not yet formally subject to BSA requirements. However, investment advisers should be mindful of any contractual requirements they may be subject to via their relationships with certain regulated financial institutions, such as broker-dealers.

The FINRA issued a regulatory notice on October 8, 2021, encouraging its broker-dealer members to review and prepare to incorporate into their own compliance programs the national priorities. In its notice, FINRA made clear that, while the Priorities do not effect an immediate change to BSA requirements, its members should begin to assess their own AML compliance programs and, upon the effective date of the final regulations addressing the Priorities, "be in a position to review and incorporate, as appropriate, the AML/CFT Priorities into their risk-based AML programs." Among other things, FINRA noted that broker-dealers "may wish" to update their compliance programs by updating "red flags" incorporated into their AML compliance programs in light of their business activities, size, geographic location and considering "potential technological changes" to their programs, including "changes to the technology that they use to monitor and investigate suspicious activity."

On September 21, 2021, the U.S. Department of the Treasury's Office of Foreign Assets Control (***OFAC***) released an updated advisory to "highlight the sanctions risks associated with ransomware payments"—almost one year after issuing the first such guidance—and simultaneously imposed sanctions on SUEX, a virtual currency exchange accused of facilitating illegal transactions related to ransomware attacks. On November 8, continuing the Administration's "whole-of-government" effort to counter ransomware, the Treasury Department announced a set of actions focused on disrupting criminal ransomware actors and virtual currency exchanges that launder the proceeds of ransomware. These developments highlight OFAC's continuing focus on sanctions violations that broadly involve virtual currencies and digital assets.

Privacy Law Developments

On the heels of California passing its Consumer Privacy Act in 2018, similar bills in numerous states have been introduced and are in process, have passed, or have been struck down altogether. In addition to California, Colorado and Virginia have passed CCPA-like laws to date. Such comprehensive legislation affects individuals and companies doing business in these states and would impose notice requirements and other obligations in the event of a breach affecting the states citizens.

Bills have been introduced and are active in Massachusetts, Minnesota, New York, North Carolina, Ohio, and Pennsylvania. In several states, including Texas, bills have died while in committee. In such states, there was intense debate over specific provisions included in the bills including private rights of action, which lead to the bill's ultimate demise. While there are still about 15 states that do not currently have active bills, state privacy legislation activity is at an all-time high, and we expect to see an increased number of proposals heading into 2022 and as state legislatures reconvene.

Digital Asset Developments

In light of the continuous growth in crypto markets, the SEC and other regulators continue to discuss possible ways to introduce regulation into the digital asset space. Until now, many market participants expected the SEC and CFTC to come up with a brand-new set of laws and regulations that would guide this expanding market. However, SEC Chairman Gary Gensler recently reframed the regulatory thought process by stating, "The technology and offerings may be new, but old rules still apply." In his statement, Gensler addressed the question whether digital assets were securities and therefore fell under the SEC's purview. In a highly anticipated interview at the Digital Asset Compliance & Market Integrity Summit, Gensler agreed with his interviewer, Republican predecessor Jay Clayton, reiterating that "cryptocurrency tokens are largely used to raise money for entrepreneurs and, as such, meet the time-tested definitions of an investment contract and are thus under the securities laws." Their agreement on this issue is significant because it suggests that many, if not most, crypto issuers are violating the law by failing to register with the SEC and could be subject to enforcement actions. Gensler and other SEC Commissioners have defended the tough stance the SEC and other regulators have taken on cryptocurrency, calling the cryptoverse the "Wild West" and arguing that there is a lot of "hype" in the markets for digital assets, and that investors in these markets lack the protection they enjoy in markets for stocks and bonds. (See https://www.nytimes.com/2021/12/02/business/dealbook/crypto-trump-biden.html)

The President's Working Group on Financial Markets recently issued recommendations for regulating stablecoins, suggesting that Congress pass legislation that would require stablecoin issuers to be insured and regulated like banks. Stablecoins are a kind of digital asset that peg their values to the U.S. dollar and have become widely used to facilitate trading in popular cryptocurrencies. Chairman Gensler has previously noted that a stablecoin could be a security and therefore under SEC jurisdiction. Gensler has noted that that most cryptocurrency platforms generally have not operated under an "investor protection framework" as established by either the CFTC or the SEC and that he intends for the SEC to be very active in trying to bring the market into such framework. He has urged crypto entrepreneurs to work with the SEC to figure out how they can work within the existing framework for investor protection. (https://home.treasury.gov/news/press-releases/jy0454)

Surprisingly, the call for regulation is also coming from the private sector. Binance, the world's largest exchange for trading Bitcoin and other cryptocurrencies, says it's time for global regulators to establish rules for crypto markets. The call for regulation from the inside may seem strange in an industry whose popularity initially exploded because it sought to operate outside the heavy hand of governments. However, Binance CEO Changpeng Zhao says more regulation for the industry is inevitable and being pro-active allows his company to play a role in the discussions. Contrary to his critics, Zhao believes that formal regulation may help draw in people who are still hesitant to get into crypto. (See https://www.prnewswire.com/news-releases/binance-calls-for-global-regulatory-frameworks-for-crypto-markets-releases-10-fundamental-rights-that-protect-crypto-users-301424879.html)

Following China's universal ban on all domestic cryptocurrency transactions, India has entered the crypto asset regulation discussion as well. In March, India was considering a law that would ban cryptocurrencies, fine anyone trading in the country or even holding such digital assets. Since then, the government has softened its stance and is now trying to discourage trading in crypto by imposing hefty capital gains and other taxes. Local regulators as well as government representatives acknowledge the potential benefits of the underlying technology and aim to establish a framework for creating an official digital currency to be issued by the Reserve Bank of India. The central bank is considering a digital Indian rupee that could reportedly launch a pilot in the second quarter of 2022, an idea that is being explored by the U.S. Federal Reserve as well. (See https://www.cnbc.com/2021/11/25/crypto-india-may-tighten-rules-not-impose-outright-ban-zebpay-says.html and https://www.cnbc.com/2021/05/20/the-fed-this-summer-will-take-another-step-ahead-in-developing-a-digital-currency.html)