

## [Securities Regulation Daily Wrap Up, WORTH NOTING—Other litigation, regulatory activity and industry news, \(Jan. 17, 2020\)](#)

Securities Regulation Daily Wrap Up

[Click to open document in a browser](#)

By WK Editorial Staff

A weekly roundup of other items of interest to the securities, commodities, and corporate governance communities.

**EXCHANGES AND MARKET REGULATION**—The SEC has [extended](#) for nine months exemptions in connection with the revision of the definition of "security" under the Dodd-Frank Act to encompass security-based swaps. The exemptions are not directly related to a specific security-based swap rulemaking ("Unlinked Temporary Exemptions"). The latest extension applies only to Unlinked Temporary Exemptions that relate to requests for permanent exemptions for security-based swaps from (1) limitations on hypothecation of securities carried for the account of a customer in Exchange Act Section 8 and in Rules 8c-1 and 15c2-1; (2) broker-dealer disclosure requirements relating to extensions of credit in Exchange Act Rules 10b-16 and 15c2-5; and (3) certain limitations on an OTC derivatives dealer's activities in Exchange Act Rule 15a-1. The extension expires on November 5, 2020.

**EXCHANGES AND MARKET REGULATION**—Ahead of next week's meeting of the SEC's Investor Advisory Committee, the IAC's Market Structure Subcommittee issued its [recommendation](#) on Exchange Rebate Tier Disclosure. The recommendation notes that at a previous IAC meeting, members had expressed concerns that present design of rebate tiers appears to be a mechanism by which exchanges are engaging in price discrimination. As a first step in addressing this issue, the subcommittee is recommending that the SEC: (1) receive regular disclosures regarding rebate tiers utilizing relevant market identifiers to review the volume of trades that receive a rebate and a disclosure of rebate amounts broken down by volume ranges; and (2) take steps to require monthly public disclosure by exchanges of rebate practices broken down by tiers using this information. The full committee will consider the recommendation at the IAC's January 24 [telephonic](#) meeting.

**PROXIES**—The IAC will also consider the [recommendation](#) made by the Investor-As-Owner Subcommittee on the Commission's recent proposals on proxy advisory firms and shareholder proposals, as well as its proxy voting guidance. The recommendation expresses concern that the proposals and the guidance may collectively shift the balance between management and shareholders in a manner that does not serve investor interests. According to the subcommittee, the proposals and guidance as written will not reliably achieve their stated goals because the system is in need of more basic reform and because it is necessary to establish a link between the proposed actions and clearly identified problems. The subcommittee also recommends that the Commission consider other alternatives.

**SEC NEWS AND SPEECHES**—The SEC [announced](#) that Dr. Austin Gerig has been named as its Chief Data Officer (CDO), a new position in the Commission. Dr. Gerig has headed the Division of Economic and Risk Analysis's (DERA) Office of Data Science since September 2016. In his new role as CDO, Dr. Gerig will help develop the SEC's data management strategy and priorities, enable data analytics to support enforcement, examinations, and policymaking, and ensure that the agency collects only the data it needs to fulfill its mission and that it can effectively secure. He will assume his new position on February 3.

**INTERNATIONAL NEWS**—The U.K.'s Financial Conduct Authority (FCA) has [urged](#) firms to accelerate their efforts to ensure they are prepared for LIBOR cessation by the end of 2021. Along with the Bank of England and the Working Group on Sterling Risk-Free Reference Rates, the FCA published a set of documents that outline priorities and milestones ahead of the transition away from LIBOR. According to the FCA, with these new tools

and the support of the official sector domestically and internationally, "market participants have what they need to leave LIBOR behind."

**ACCOUNTING AND AUDITING**—FASB [issued](#) an Accounting Standards Update (ASU) clarifying the interaction between accounting standards related to equity securities, equity method investments, and certain derivatives. The ASU clarifies that a company should consider observable transactions that require a company to either apply or discontinue the equity method of accounting under Topic 323 (*Investments—Equity Method and Joint Ventures*). It also states that when determining the accounting for certain forward contracts and purchased options, a company should not consider (whether upon settlement or exercise) if the underlying securities would be accounted for under the equity method or fair value option.

**ENFORCEMENT**—The SEC [obtained](#) final judgments against two attorneys for issuing false legal opinions. Diane Dalmy, who had been prohibited from preparing legal opinions by the OTC Markets Group, recruited Michael J. Woodford to sign legal opinion letters she had drafted. The final judgments order Dalmy and Woodford to pay disgorgement and interest of \$30,236 and \$29,762, respectively, although Woodford's payment was waived based on his financial condition. The SEC also [obtained](#) final judgments against three defendants in a fraudulent stock promotion scheme where paid advertisements pushing certain stocks were published as independent research pieces. The three defendants were ordered to pay disgorgement and penalties of \$704,672, \$466,578, and \$133,703.

**ENFORCEMENT**—Hill International and its former Chief Accounting Officer [settled](#) SEC charges of artificially boosting net earnings through fraudulent accounting practices and inaccurate books and records. The company and executive will pay civil penalties of \$500,00 and \$75,000, respectively, and the executive agreed to a suspension from practice before the SEC as an accountant. Litigation continues against another former executive. The SEC [obtained](#) another settlement in an unrelated matter against an individual who raised \$7.7 million from investors in an unregistered offering. Investors were not told that the medical device used by the defendant's company was imported from China in violation of FDA regulations.

**SEC NEWS AND SPEECHES**—The SEC [announced](#) that the Office of the Advocate for Small Business Capital Formation will hold a "virtual conference call event" to report on its findings regarding the state of capital formation for small businesses and its latest recommendations to the Commission. Styled after public companies' earning release calls, the "Capital Call" will also provide the public with opportunities to ask questions and engage directly with the office. The [Capital Call](#) will be held on Thursday, January 23, at 1:00 p.m. ET.

**ENFORCEMENT**—The Department of Justice [announced](#) that former NFL and University of Virginia football player Merrill Robertson, Jr. has been sentenced to 40 years in prison for his role in an investment scheme. Robertson, who was [convicted](#) in October of conspiracy, mail fraud, wire fraud, bank fraud, and money laundering, allegedly used his contacts in the football world to obtain \$10 million from investors, which he and his partner spent on personal and luxury expenses.

**ENFORCEMENT**—The CFTC is amending its rule governing the maximum amount of civil monetary penalties to adjust for inflation. The [rule](#) sets forth the maximum, inflation adjusted dollar amount for civil monetary penalties assessable for violations of the CEA and Commission rules, regulations, and orders. This rule is effective on January 13, 2020 and is applicable to penalties assessed after January 15, 2020.

IndustryNews: AccountingAuditing BrokerDealers CFTCNews Enforcement ExchangesMarketRegulation  
FraudManipulation InternationalNews Proxies SECNewsSpeeches