

Statement

Second Commission Statement Relating to Certain Administrative Adjudications

The Commission

June 2, 2023

On April 5, 2022, the Commission issued a Statement Relating to Certain Administrative Adjudications (the “April 5 Statement”) describing a control deficiency related to the separation of enforcement and adjudicatory functions within the agency’s system for administrative adjudication. As the [April 5 Statement](#) explained, for a period of time, certain databases maintained by our Office of the Secretary (“OS”) were not configured to restrict access by staff from our Division of Enforcement (“Enforcement”) to memoranda drafted by staff from the Adjudication Group (“Adjudication”) in our Office of the General Counsel (“OGC”). As a result, in a number of adjudicatory matters, administrative support staff from Enforcement responsible for maintaining Enforcement’s case files accessed Adjudication memoranda via OS’s databases. In many instances, those administrative staff also emailed Adjudication memoranda to other administrative staff for potential upload to Enforcement databases; once uploaded, the memoranda became accessible more broadly to Enforcement staff.

When it was discovered that Enforcement staff had access to Adjudication memoranda, the Commissioners were notified, as was the Commission’s Office of Inspector General. As the April 5 Statement explained, the Chair immediately directed the implementation of remedial measures, including enhanced access controls, to ensure that Enforcement staff would no longer be able to access these memoranda in the OS databases or through the Enforcement databases to which they may have been uploaded. The Chair also initiated a comprehensive internal review to assess the scope and potential impact of the control deficiency. This review has been conducted by experienced investigative staff from the Division of Examinations under the supervision of the Commission’s General Counsel (the “review team”). As noted in the April 5 Statement, the review team has been supported by Berkeley Research Group, LLC, a consulting firm retained by OGC that includes a team of experienced investigators and forensic analysts.

The April 5 Statement disclosed the review team’s findings regarding two matters arising from administrative adjudicatory proceedings as to which challenges were pending in the federal courts. In the April 5 Statement, the Commission also committed to releasing information about additional affected matters. We are now releasing the below statement from the review team, which provides additional information about the two matters discussed in the April 5 Statement, as well as findings regarding additional adjudicatory matters that are currently pending before us. Those matters include 28 matters as to which one or more Adjudication memoranda specific to a particular matter were accessed by Enforcement administrative staff, as well as 61 additional matters in which one or more

Adjudication memoranda broadly applicable to numerous pending matters were accessed by Enforcement administrative staff.

We deeply regret that the agency's internal systems lacked sufficient safeguards surrounding access to Adjudication memoranda, and we are continuing our work to ensure that, going forward, work product from the Adjudication staff is appropriately safeguarded. We take this lapse in controls very seriously and are committed to both informing the public about the scope of this issue and preventing any similar lapses in the future.

The information presented below is based on the work of the review team. We will release additional findings from the review team as appropriate.

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Review Team Findings

Summary of Review and Findings

The review team has interviewed more than 250 current and former staff members, including individuals from Enforcement, OS, and OGC. The review team has collected and considered documents from Enforcement, OS, and OGC, including over 500,000 pages of emails and attachments. The team has also reviewed hundreds of case files in Enforcement's case management database (the "Enforcement Centralized Database"), including the electronic case files of each of the matters discussed below. Working with Berkeley Research Group, the review team has analyzed over 25 million rows of data from access logs for various systems.

Part A and Exhibit 1 provide additional information regarding *Cochran*^[1] and *Jarkesy*,^[2] the two matters addressed in the Commission's April 5 Statement.

In addition to those two matters, the review team identified additional matters that are currently pending before the Commission in which Enforcement administrative staff accessed one or more Adjudication memoranda that either: (1) pertained specifically to that matter (or in some instances to another matter but were maintained in the same Enforcement case file); or (2) were not specific to any individual adjudicatory matter but rather described procedural actions that Adjudication staff recommended that the Commission take in many (or all) pending adjudicatory proceedings. For ease of reference, the first set of memoranda is referred to as "case-specific memoranda," and the matters they address are referred to as the "Affected Matters." As discussed below, the review team identified 28 Affected Matters. The second set of memoranda—those addressing more generally applicable procedural actions—is referred to as "Omnibus Memoranda." The review team determined that Enforcement administrative staff accessed eight Omnibus Memoranda and that there are 61 additional currently pending matters encompassed by one or more of those memoranda.

Part B and Exhibit 2 provide the review team's findings about the 28 Affected Matters, identifying the case-specific memoranda accessed by Enforcement staff that relate to each of those matters. Part B also notes the instances in which an Omnibus Memorandum was uploaded to one of the Enforcement case files for the Affected Matters.

Part C and Exhibit 3 provide additional information about the eight Omnibus Memoranda that were accessed, including the scope of the adjudicatory matters encompassed by each. Exhibit 4 identifies—as to *Cochran*, *Jarkesy*, and all of the Affected Matters—the Omnibus Memoranda that encompass

each matter. Exhibit 5, in turn, identifies the 61 additional pending adjudicatory matters in which *only* an Omnibus Memorandum encompassing that matter was accessed by Enforcement staff—that is, those currently pending matters encompassed by an Omnibus Memorandum as to which the review team found no evidence that a case-specific Adjudication memorandum was also accessed by Enforcement staff.

In all instances, the review team found that the Enforcement administrative staff accessed the Adjudication memoranda as part of an effort to track and upload to the Enforcement Centralized Database all Enforcement memoranda recommending Commission action in enforcement proceedings. Consistent with this effort, the overwhelming majority of the memoranda accessed by the Enforcement administrative staff were memoranda to the Commission submitted by Enforcement staff. But because the OS databases were not configured to prevent Enforcement staff from accessing Adjudication memoranda—and the Enforcement administrative staff did not distinguish between Enforcement and Adjudication memoranda—those administrative staff included some Adjudication memoranda in their effort to continually upload relevant materials into the Enforcement Centralized Database.

As indicated in Part B and Exhibit 2, in each of the 28 Affected Matters, an Enforcement administrative staff member accessed one or more case-specific Adjudication memoranda and emailed many of those memoranda to other Enforcement administrative staff. The administrative staff member who initially accessed the memoranda generally did not distribute the documents to other administrative staff members until after the Commission had voted on the action recommended by the memoranda. The administrative staff members who received these memoranda via email then typically uploaded the memoranda into the Enforcement Centralized Database.^[3] As a result, some case-specific Adjudication memoranda became accessible in the Enforcement Centralized Database to all Enforcement staff, including individuals investigating and prosecuting the matters referenced in those memoranda.^[4] None of the administrative staff members had a practice of contacting Enforcement staff directly responsible for investigating and prosecuting the relevant matters. And the review team found no evidence that any Enforcement staff assigned to investigate and prosecute any of the Affected Matters accessed any case-specific Adjudication memoranda before the Commission approved the action recommended in those memoranda.^[5]

As indicated in Part C and Exhibit 3, one of the eight Omnibus Memoranda accessed by Enforcement administrative staff was uploaded to the Enforcement Centralized Database in the Enforcement case files for *Cochran* and four of the Affected Matters and thus became accessible to all Enforcement staff. The remaining Omnibus Memoranda were accessed by Enforcement administrative staff via the OS databases but were not uploaded to the Enforcement Centralized Database, emailed to, or otherwise accessed by, any other Enforcement staff.

Access to Adjudication Memoranda by Enforcement Staff in the New York Regional Office

Enforcement administrative staff in the Commission's New York Regional Office ("NYRO") maintained a practice of uploading Enforcement memoranda relating to matters handled by NYRO staff to a separate database created and maintained by NYRO Enforcement staff (the "NYRO database"). The NYRO database was intended to serve as a supplemental reference resource for Enforcement memoranda and ultimately contained over 250 Enforcement memoranda.^[6] When the NYRO Enforcement administrative staff received Adjudication memoranda via the process described above,

they too did not distinguish between memoranda drafted by Enforcement staff and those drafted by Adjudication staff.

Between February 2019 and August 2020, NYRO administrative staff emailed several Adjudication memoranda to an Enforcement supervisor in NYRO (“Enforcement Supervisor”), an attorney responsible for overseeing the work of other Enforcement attorneys in NYRO. The administrative staff’s emails sought instruction whether the Adjudication memoranda should be uploaded to the NYRO database. This occurred with respect to *Jarkesy*, as well as three of the Affected Matters; where it occurred with respect to those matters, it is noted below and in Exhibit 1 or 2, as appropriate. In two such instances, the NYRO Enforcement staff uploaded the memoranda to the NYRO database at the direction of the Enforcement Supervisor.

The review team found no evidence that either NYRO administrative staff or the Enforcement Supervisor circulated any Adjudication memoranda to anyone else, including anyone directly involved in investigating and prosecuting the relevant matters. The review team also determined that, for each of the Adjudication memoranda sent to the Enforcement Supervisor, transmission occurred after the Commission had already approved the action recommended in the Adjudication memorandum. For the Adjudication memoranda uploaded to the NYRO database, the review team determined that no one other than administrative staff accessed those memoranda in the NYRO database.

Outstanding Seriatim Reports

From at least 2015 through 2021, OS generally sent a weekly report to senior staff in Enforcement (including, at times, the Director, Deputy Director, and Chief Counsel) that provided the status of certain outstanding recommendations from Enforcement to the Commission.^[7] Referred to as the “Outstanding Seriatim Report,” this report listed all outstanding recommendations from Enforcement as to which the Commissioners intended to vote sequentially (*in seriatim*) without convening a meeting. The report briefly described the Enforcement staff’s recommendation and the status of the Commissioners’ votes on each recommendation. OS staff members generated the reports from one of the OS databases that did not adequately segregate Adjudication memoranda. While OS staff typically excluded information about Adjudication matters from the Outstanding Seriatim Reports, in some instances, limited information briefly describing Adjudication staff’s recommendations was inadvertently included in the reports.

Thirteen weekly Outstanding Seriatim Reports—one sent in February 2016 and twelve sent between June 2019 and July 2020—included Adjudication-specific information regarding one of the matters discussed below. Where this occurred, it is noted below and in Exhibit 1 or 2, as appropriate. The review team found that none of these Outstanding Seriatim Reports attached an Adjudication memorandum, nor did the review team find any evidence that the Outstanding Seriatim Reports were forwarded to any staff assigned to investigate and prosecute any of the matters.

A. *Cochran and Jarkesy*

As explained in the April 5 Statement, in both *Cochran* and *Jarkesy*, Enforcement administrative staff accessed one or more Adjudication memoranda and emailed those documents to other administrative staff who, in a number of instances, uploaded the memoranda to the Enforcement Centralized Database. As a result, certain Adjudication memoranda were accessible to all Enforcement staff, including attorneys investigating and prosecuting *Cochran* and *Jarkesy*.

1. *David S. Hall, P.C. d/b/a The Hall Group CPAs, David S. Hall, CPA, Michelle L. Helterbran Cochran, CPA, and Susan A. Cisneros*, Admin. Proc. 3-17228

The Commission issued an Order Instituting Proceedings (“OIP”) in this matter on April 26, 2016.^[8] In March 2017, an administrative law judge (“ALJ”) issued an initial decision finding that respondents, auditors Michelle Helterbran Cochran and Susan Cisneros, had engaged in improper professional conduct in connection with their audits of publicly traded companies.^[9] In June 2017, the Commission issued an order providing that the ALJ’s decision had become the final decision of the Commission.^[10] Cochran sought Commission review of that decision, but while that review was pending, the matter was remanded and assigned to a new ALJ in light of the Supreme Court’s decision in *Lucia v. SEC*.^[11] While the proceeding was pending before the new ALJ, Cochran filed a lawsuit in federal district court, seeking to enjoin the administrative proceeding.^[12] The district court dismissed her complaint for lack of jurisdiction, and a panel of the U.S. Court of Appeals for the Fifth Circuit affirmed.^[13] In December 2021, the en banc Fifth Circuit reversed the district court’s decision and remanded the case to the district court.^[14] The Supreme Court subsequently granted the government’s petition for certiorari and, on April 14, 2023, affirmed the en banc court’s decision, holding that the district court has jurisdiction to hear Cochran’s complaint.^[15] All deadlines in the administrative proceeding are postponed pending resolution of the litigation in federal court.^[16]

As described in the Commission’s April 5 Statement (and further detailed in Exhibit 3), administrative staff in Enforcement accessed—and uploaded to the *Cochran* case file in the Enforcement Centralized Database—one Omnibus Memorandum, dated November 29, 2017, encompassing the *Cochran* matter. Enforcement administrative staff initially accessed the memorandum the day after the Commission issued its order on the issues presented in the Adjudication memorandum (hereinafter referred to as a “corresponding order”). The staff emailed the memorandum to other Enforcement administrative staff, who uploaded the document to the *Cochran* case file (as well as to several other case files, as indicated in Exhibit 3).

As described in the Commission’s April 5 Statement—and in submissions to the U.S. District Court for the Northern District of Texas^[17] and the U.S. Supreme Court^[18] by the Department of Justice (“DOJ”)—the review team found no evidence that Enforcement staff accessed any case-specific Adjudication memoranda relating to the *Cochran* matter, that any of the individuals assigned to investigate and prosecute the *Cochran* matter ever accessed or took any action influenced by the November 29, 2017 (or any other) Omnibus Memorandum, or that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.^[19]

2. *John Thomas Capital Mgmt. Grp. LLC d/b/a Patriot28 LLC, and George R. Jarkey Jr.*, Admin. Proc. 3-15255

The Commission issued an OIP in this matter on March 22, 2013.^[20] In October 2014, an ALJ issued an initial decision finding that respondents George R. Jarkey Jr. and John Thomas Capital Management Group LLC, d/b/a Patriot28 LLC (“JTMG”), had violated the antifraud provisions of the federal securities laws.^[21] Respondents appealed that decision to the Commission, and Enforcement cross-appealed the ALJ’s determination on sanctions. While the appeal was pending, the proceeding was remanded and reassigned to a different ALJ in light of *Lucia*, though respondents moved to vacate the remand order and proceed with their previously filed appeal on the existing record.^[22] The Commission granted that request and, in September 2020, issued an opinion finding that respondents had violated the antifraud provisions and an order imposing a penalty, disgorgement on JTMG, and an

industry and penny stock bar on *Jarkesy*.^[23] *Jarkesy* filed a petition for review with the Fifth Circuit, which, in May 2022 vacated the Commission’s decision.^[24] The Fifth Circuit denied the government’s petition for rehearing en banc. On March 8, 2023, the government filed a petition for a writ of certiorari, seeking the Supreme Court’s review of the Fifth Circuit’s decision.^[25]

As described in the Commission’s April 5 Statement—and as DOJ notified the Fifth Circuit^[26]—and as further detailed in Exhibit 1, an administrative staff member in Enforcement accessed nine case-specific Adjudication memoranda relating to the *Jarkesy* matter and emailed them to other administrative staff in Enforcement, who uploaded seven of them to the *Jarkesy* case file in the Enforcement Centralized Database. The review team found that administrative staff also emailed one of these *Jarkesy*-specific memoranda to the NYRO Enforcement Supervisor but that the memorandum was never uploaded to the NYRO database. In addition, in one instance, an Outstanding Seriatim Report circulated to senior Enforcement staff included a reference to one of the case-specific Adjudication memoranda relating to the *Jarkesy* matter.

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Jarkesy* matter ever accessed these Adjudication memoranda. The review team found no evidence that either the NYRO Enforcement Supervisor or any of the individuals assigned to investigate and prosecute the *Jarkesy* matter ever took any action influenced by these memoranda.^[27] The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.^[28]

B. Affected Matters

As noted above, there are 28 Affected Matters. In 20 of those matters, Enforcement administrative staff uploaded one or more case-specific Adjudication memoranda to a case file in the Enforcement Centralized Database.

As to all of the Affected Matters, the review team found no evidence—including through interviews with Enforcement staff—that access to Adjudication memoranda impacted any Enforcement filings or decision-making in those matters. In 23 of the Affected Matters, Enforcement made no filings between the date an Adjudication memorandum was initially accessed by a member of Enforcement’s administrative staff and the date the Commission voted to take action on the recommendation presented in the memorandum. In all of the remaining five Affected Matters—those in which an Enforcement filing was made during the time period between initial access and Commission approval—the Enforcement filing was unrelated to the subject matter of the recommendation in the Adjudication memorandum.^[29]

The review team’s findings as to each Affected Matter are set forth below in chronological order, based on the date the proceeding was instituted.

1. *Dominic O’Dierno*, Admin. Proc. 3-15123

The Commission issued an OIP in this matter on December 6, 2012, accepting an offer of settlement from respondent *Dominic O’Dierno* and finding that *O’Dierno* had violated a registration provision of the federal securities laws.^[30] The Commission entered a cease-and-desist order and imposed disgorgement and industry and penny stock bars.^[31] In October 2018, and again in March 2020, *O’Dierno* requested that the Commission vacate the industry bars.^[32] On April 13, 2020, the Commission issued an order vacating the industry bars but otherwise leaving the December 6, 2012

order unmodified.[33] On April 16, 2020, O'Dierno requested the return of disgorgement he had paid; that request remains pending before the Commission.

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed one case-specific Adjudication memorandum relating to the *O'Dierno* matter. That individual emailed the memorandum to other administrative staff, who uploaded it to the *O'Dierno* case file in the Enforcement Centralized Database.[34] The administrative staff member also uploaded another Adjudication memorandum to the Enforcement case file containing the *O'Dierno* matter, though that memorandum was not related to the *O'Dierno* matter.[35]

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *O'Dierno* matter ever accessed or took any action influenced by these memoranda. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

2. *Mark Feathers*, Admin. Proc. 3-15755

The Commission issued an OIP in this matter on February 18, 2014.[36] In May 2014, an ALJ issued an initial decision finding that respondent Mark Feathers had been permanently enjoined by a federal district court from violating various antifraud and broker-dealer registration provisions of the federal securities laws and, on the basis of that district court judgment, imposing industry and penny stock bars.[37] The Commission affirmed the ALJ's decision in November 2014,[38] and Feathers filed a petition for review with the U.S. Court of Appeals for the Ninth Circuit. In light of *Lucia*, and with the Commission's consent, in May 2019, the court vacated and remanded the Commission's order for reconsideration by a new ALJ.[39] The new ALJ issued an initial decision in September 2020, finding that Feathers had been enjoined for violations of federal securities laws and re-imposing industry and penny stock bars.[40] Feathers appealed that decision to the Commission, where the matter remains pending.

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed three case-specific Adjudication memoranda relating to the *Feathers* matter. That individual emailed two of the *Feathers*-specific memoranda to other administrative staff, who uploaded those memoranda to the *Feathers* case file in the Enforcement Centralized Database. The other administrative staff also emailed one of those two *Feathers*-specific memoranda to the individuals assigned to investigate and prosecute the *Feathers* matter and to those individuals' supervisors. At least one of those individuals assigned to investigate and prosecute the matter read the memorandum. The email attaching the memorandum was sent, however, after the Commission had issued the order corresponding to the Adjudication recommendation. The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Feathers* matter ever accessed the other *Feathers*-specific memorandum uploaded to the Enforcement Centralized Database. The third *Feathers*-specific memorandum was never emailed after it was initially accessed by the administrative staff; it was also subsequently withdrawn by Adjudication staff and never acted upon by the Commission.

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Feathers* matter ever took any action influenced by any of the memoranda pertaining to the *Feathers* matter. The review team also found no evidence that any individuals assigned to investigate and prosecute the *Feathers* matter contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

3. *The Robare Group, Ltd., Mark L. Robare, and Jack L. Jones, Jr.*, Admin. Proc. 3-16047

The Commission issued an OIP in this matter on September 2, 2014.^[41] In November 2016, the Commission issued an opinion finding that the respondents either violated, or caused violations of, antifraud provisions of the federal securities laws and imposing a cease-and-desist order and penalty on each respondent.^[42] The respondents filed a petition for review, and in April 2019, the U.S. Court of Appeals for the D.C. Circuit affirmed certain findings and reversed others, vacated the Commission's order imposing sanctions, and remanded for the Commission to determine the appropriate sanctions for remaining violations.^[43] The matter remains pending before the Commission.

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed 15 case-specific Adjudication memoranda relating to the *Robare* matter. That individual emailed those memoranda to other administrative staff, who uploaded 10 of the 15 memoranda to the *Robare* case file in the Enforcement Centralized Database. In addition, in one instance, an Outstanding Seriatim Report circulated to senior Enforcement staff included a reference to one of the 15 memoranda.

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Robare* matter ever accessed or took any action influenced by these memoranda. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

4. *Laurie Bebo and John Buono, CPA*, Admin. Proc. 3-16293

The Commission issued an OIP in this matter on December 3, 2014.^[44] The Commission entered a settlement against respondent John Buono in January 2015.^[45] In October 2015, an ALJ issued an initial decision finding that respondent Laurie Bebo violated various antifraud provisions, and violated or caused violations of various other provisions of the federal securities laws.^[46] Bebo sought Commission review of that decision, but while that review was pending, the matter was remanded and reassigned to a different ALJ in light of *Lucia*. The new ALJ issued an initial decision in August 2020, finding that Bebo violated or caused violations of various federal securities laws, including antifraud provisions.^[47] Bebo appealed the ALJ's decision to the Commission, where the matter remains pending.

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed one case-specific Adjudication memorandum relating to the *Bebo* matter. That individual emailed the memorandum to other administrative staff, who uploaded it to the *Bebo* case file in the Enforcement Centralized Database. As detailed in Exhibit 3, Enforcement administrative staff also uploaded the November 29, 2017 Omnibus Memorandum to the *Bebo* case file in the Enforcement Centralized Database.

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Bebo* matter ever accessed or took any action influenced by these memoranda. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

5. *Michael W. Crow, Alexander S. Clug, Aurum Mining, LLC, PanAm Terra, Inc., and The Corsair Group, Inc.*, Admin. Proc. 3-16318

The Commission issued an OIP in this matter on December 16, 2014.^[48] In February 2016, an ALJ issued an initial decision finding: that respondents Michael Crow, Alexandre Clug, and Aurum Mining violated or caused to be violated antifraud, reporting, and registration provisions of the federal securities laws; that respondent PanAm Terra violated an antifraud provision of the federal securities laws; and that respondent Corsair Group violated a registration provision of the federal securities laws.

[49] The ALJ sanctioned Clug and Crow, imposing disgorgement and bars on each of them, and, as to Crow, imposed a penalty. The ALJ did not sanction the corporate respondents. Clug appealed the ALJ's initial decision to the Commission, and Enforcement cross-appealed, challenging the ALJ's decision as to every respondent.

In November 2017, the Commission ratified the appointment of its ALJs and remanded all appeals from an ALJ's initial decision for further proceedings.[50] Clug and Enforcement submitted new evidence and briefing, and the ALJ ultimately issued a decision increasing the disgorgement ordered against Clug.[51] Clug and Enforcement continued to seek review of the ALJ's initial decision, as modified. In November 2020, the Commission issued an opinion finding that Clug had violated antifraud, reporting, and registration provisions of the federal securities laws; that Aurum Mining and PanAm Terra violated antifraud provisions of the federal securities laws; and that Corsair Group violated a registration provision of the federal securities laws. The Commission imposed disgorgement, a penalty, and industry and penny stock bars on Clug and disgorgement on Aurum Mining, PanAm Terra, and Corsair Group.[52] Clug moved for reconsideration of the monetary sanctions imposed on him;[53] that motion remains pending before the Commission.[54]

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed 14 case-specific Adjudication memoranda relating to the *Clug* matter. That individual emailed those memoranda to other administrative staff, who uploaded five of the 14 memoranda to the *Clug* case file in the Enforcement Centralized Database. The administrative staff also emailed two of these *Clug*-specific memoranda to the NYRO Enforcement Supervisor, but those memoranda were never uploaded to the NYRO database. In addition, in one instance, an Outstanding Seriatim Report circulated to senior Enforcement staff included a reference to one of the case-specific Adjudication memoranda relating to the *Clug* matter.

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Clug* matter ever accessed these Adjudication memoranda. The review team found no evidence that either the NYRO Enforcement Supervisor or any of the individuals assigned to investigate and prosecute the *Clug* matter ever took any action influenced by these memoranda.[55] The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

6. *Traci J. Anderson, CPA, Timothy W. Carnahan and CYIOS Corporation*, Admin. Proc. 3-16386.

The Commission issued an OIP in this matter on February 13, 2015.[56] In December 2015, an ALJ issued an initial decision finding that respondents Timothy Carnahan and CYIOS Corporation violated or caused to be violated various reporting and antifraud provisions of the federal securities laws, and dismissing the proceeding against respondent Traci Anderson.[57] Respondents Carnahan and CYIOS appealed the ALJ's initial decision to the Commission. While that appeal was pending, the matter was remanded and reassigned to a different ALJ in light of *Lucia*; that ALJ issued an initial decision in January 2020, finding that Carnahan and CYIOS violated or caused to be violated various reporting and antifraud provisions of the federal securities laws.[58] Carnahan and CYIOS appealed the ALJ's decision to the Commission, where the matter remains pending.

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed one case-specific Adjudication memorandum relating to the *Carnahan* matter. That individual emailed the memorandum to other administrative staff, who uploaded it to the *Carnahan* case file in the Enforcement Centralized

Database. As indicated in Exhibit 3, Enforcement administrative staff also uploaded the November 29, 2017 Omnibus Memorandum to the *Carnahan* case file in the Enforcement Centralized Database.

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Carnahan* matter ever accessed or took any action influenced by these memoranda. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

7. *Edward M. Daspin, a/k/a "Edward (ED) Michael," Luigi Agostini, and Lawrence R. Lux*, Admin. Proc. 3-16509

The Commission issued an OIP in this matter on April 23, 2015.^[59] The Commission entered settlements with respondents Lawrence Lux and Luigi Agostini in October 2015 and November 2016, respectively.^[60] After the remaining respondent, Edward Daspin, failed to appear at two scheduled hearings, an ALJ issued an initial decision in August 2016, finding Daspin in default and that Daspin had committed various violations of the federal securities laws based on the allegations in the OIP.^[61] Daspin appealed the initial decision to the Commission. While that appeal was pending, in November 2017, the Commission ratified the appointment of its ALJs and remanded all appeals from an ALJ's initial decision. Daspin sought Commission reconsideration of that order as applied to his case; the Commission denied that motion in March 2018. Later, the matter was assigned to a new ALJ in light of *Lucia*. Daspin submitted numerous filings in 2018 directed to both the ALJ and the Commission. In June 2019, the Commission issued an order treating those filings as interlocutory motions and denying them.^[62] The newly assigned ALJ issued an initial decision in October 2019, finding that Daspin violated various provisions of the federal securities laws.^[63] Daspin appealed the ALJ's decision to the Commission, where the matter remains pending.

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed five case-specific Adjudication memoranda relating to the *Daspin* matter. That individual emailed those memoranda to other administrative staff, who uploaded two of the five memoranda to the *Daspin* case file in the Enforcement Centralized Database. In addition, the administrative staff emailed two other of the five *Daspin*-specific memoranda to the NYRO Enforcement Supervisor and uploaded one of those two memoranda to the NYRO database.

As relates to two of the case-specific memoranda (one of which was uploaded to the Enforcement Centralized Database and the other of which was uploaded to the NYRO database), Enforcement made filings in the *Daspin* matter between the date Adjudication staff submitted the memorandum to the Commission and the date the Commission approved the staff's recommendation and issued the corresponding order. Those Enforcement filings were unrelated to the subject matter of either memoranda.^[64]

In addition, two of the case-specific Adjudication memoranda relating to the *Daspin* matter were referenced in Outstanding Seriatim Reports circulated to senior Enforcement staff. As detailed in Exhibit 2, Outstanding Seriatim Reports in two consecutive weeks included a reference to one of the case-specific Adjudication memoranda relating to the *Daspin* matter. Outstanding Seriatim Reports in two consecutive weeks also included a reference to the other *Daspin*-specific Adjudication memorandum. As indicated in Exhibit 2, one of the memoranda referenced by the Outstanding Seriatim Reports was accessed by Enforcement staff,^[65] but the other was not.

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Daspin* matter ever accessed these memoranda. The review team found no evidence that either

the NYRO Enforcement Supervisor or any of the individuals assigned to investigate and prosecute the *Daspin* matter ever took any action influenced by these memoranda.[66] The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

8. *Charles R. Kokesh*, Admin. Proc. 3-16517

The Commission issued an OIP in this matter on April 28, 2015.[67] In September 2015, an ALJ issued an initial decision, finding respondent Charles Kokesh in default and imposing various associational bars.[68] In May 2021, the Commission issued an order stating that it would review the ALJ's initial decision and authorizing the parties to submit briefing and evidence as to whether remedial action against Kokesh is in the public interest.[69] The matter remains pending before the Commission.

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed three case-specific Adjudication memoranda relating to the *Kokesh* matter. That individual emailed two of those memoranda to other administrative staff, who uploaded them to the *Kokesh* case file in the Enforcement Centralized Database. One of those two memoranda was subsequently withdrawn by Adjudication staff and never acted upon by the Commission. The administrative staff member did not email the third *Kokesh*-specific memorandum, which was also withdrawn by Adjudication staff and never acted upon by the Commission.

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Kokesh* matter ever accessed or took any action influenced by these memoranda. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

9. *Christopher M. Gibson*, Admin. Proc. 3-17184

The Commission issued an OIP in this matter on March 29, 2016.[70] In January 2017, an ALJ issued an initial decision finding that respondent Christopher Gibson had violated or caused to be violated various antifraud provisions of the federal securities laws.[71] Gibson sought Commission review of that decision, but while that review was pending, the matter was remanded and reassigned to a different ALJ in light of *Lucia*. The new ALJ issued an initial decision in March 2020, finding that Gibson had violated or caused to be violated various antifraud provisions of the federal securities laws.[72] Gibson appealed the ALJ's decision to the Commission, where the matter remains pending.[73]

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed four case-specific Adjudication memoranda relating to the *Gibson* matter. That individual emailed two of those memoranda to other administrative staff, who uploaded them to the *Gibson* case file in the Enforcement Centralized Database.

In one instance, Enforcement made a filing in the *Gibson* matter between the date Adjudication staff submitted a memorandum to the Commission and the date the Commission approved the staff's recommendation and issued the corresponding order. As indicated in Exhibit 2, that Enforcement filing occurred before the date the Adjudication memorandum was accessed by Enforcement administrative staff. The Adjudication memorandum at issue also was not uploaded to the Enforcement Centralized Database. The Enforcement filing was unrelated to the subject matter of the memorandum.[74]

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Gibson* matter ever accessed or took any action influenced by these memoranda. The review

team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

10. *James A. Winkelmann, Sr., and Blue Ocean Portfolios LLC*, Admin. Proc. 3-17253

The Commission issued an OIP in this matter on May 19, 2016.^[75] In March 2017, an ALJ issued an initial decision finding that respondents James Winkelmann and Blue Ocean Portfolios LLC violated or caused to be violated various antifraud provisions of the federal securities laws.^[76] Respondents appealed to the Commission, Enforcement cross-appealed, and while that appeal was pending, the matter was remanded in light of *Lucia* but assigned to the same ALJ by agreement of the parties. The ALJ issued a revised initial decision in October 2018, finding that Winkelmann and Blue Ocean Portfolios violated or caused to be violated various antifraud provisions of the federal securities laws.^[77] Respondents and Enforcement both appealed the ALJ's decision to the Commission, where the matter remains pending.

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed 10 case-specific Adjudication memoranda relating to the *Winkelmann* matter. That individual emailed eight of those memoranda to other administrative staff, who uploaded seven of them to the *Winkelmann* case file in the Enforcement Centralized Database. As indicated in Exhibit 3, Enforcement administrative staff also uploaded the November 29, 2017 Omnibus Memorandum to the *Winkelmann* case file in the Enforcement Centralized Database.

In one instance, Enforcement made a filing in the *Winkelmann* matter between the date Adjudication staff submitted a memorandum to the Commission and the date the Commission approved the staff's recommendation and issued the corresponding order. As indicated in Exhibit 2, that Enforcement filing occurred before the date the Adjudication memorandum was accessed by Enforcement administrative staff. The Enforcement filing was unrelated to the subject matter of the memorandum.^[78] In addition, Outstanding Seriatim Reports circulated to senior Enforcement staff in two consecutive weeks included a reference to one of the *Winkelmann*-specific Adjudication memoranda.

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Winkelmann* matter ever accessed or took any action influenced by these memoranda. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

11. *Saving2Retire, LLC, and Marian P. Young*, Admin. Proc. 3-17352

The Commission issued an OIP in this matter on July 19, 2016.^[79] In October 2017, an ALJ issued an initial decision finding that respondents Marian Young and Saving2Retire, LLC, violated or caused to be violated various recordkeeping and registration provisions of the federal securities laws.^[80] Respondents sought Commission review of that decision, but while that review was pending, the matter was remanded and reassigned to a different ALJ in light of *Lucia*. The new ALJ issued an initial decision in August 2019, finding that Young and Saving2Retire violated or caused to be violated various recordkeeping and registration provisions of the federal securities laws.^[81] Respondents appealed the ALJ's decision to the Commission, where the matter remains pending.^[82]

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed four case-specific Adjudication memoranda relating to the *Saving2Retire* matter. That individual emailed those memoranda to other administrative staff, who uploaded all of them to the *Saving2Retire* case file in the Enforcement Centralized Database. As indicated in Exhibit 3, Enforcement administrative staff also

uploaded the November 29, 2017 Omnibus Memorandum to the *Saving2Retire* case file in the Enforcement Centralized Database.

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Saving2Retire* matter ever accessed or took any action influenced by these memoranda. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

12. *Digital Brand Media & Marketing Group, Inc. and Intellicell Biosciences, Inc.*, Admin. Proc. 3-17990

The Commission issued an OIP in this matter on May 16, 2017.[83] In June 2017, an ALJ issued an initial decision, finding respondent Intellicell in default, determining that it had violated the Exchange Act by failing to file required periodic reports, and directing that the registration of all classes of its securities should be revoked. In October 2017, the Commission issued an order providing that the ALJ's decision regarding Intellicell had become the final decision of the Commission.[84] In November 2017, the ALJ issued an initial decision finding that respondent Digital Brand Media had violated the Exchange Act by failing to file required periodic reports and directing that the registration of all classes of its securities should be revoked.[85] Days later, the Commission issued an order remanding for additional proceedings all pending adjudicatory matters; that order encompassed proceedings like this one in which final Commission opinions had issued as to at least one respondent but the time to seek further review of those decisions had not yet expired.[86]

In February 2018, the ALJ ratified the initial decision as to Intellicell.[87] Before the ALJ had completed reconsideration of the initial decision as to Digital Brand Media, the Commission assigned the entire matter (encompassing both respondents) to a new ALJ for further reconsideration in light of *Lucia*. The new ALJ issued initial decisions as to each respondent in November 2019, finding (1) that Intellicell remained in default, and (2) that although Digital Brand Media had failed to timely file its required periodic reports, the company had become and remained current in its reporting requirements and therefore that no sanctions should be imposed.[88] Enforcement appealed the decision regarding Digital Brand Media to the Commission, where the matter remains pending as to both respondents.

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed one case-specific Adjudication memorandum relating to the *Digital Brand Media* matter. That individual emailed the memorandum to other administrative staff, who uploaded it to the *Digital Brand Media* case file in the Enforcement Centralized Database. The administrative staff member also uploaded another Adjudication memorandum to the same case file, though that memorandum was not related to the *Digital Brand Media* matter.[89]

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Digital Brand Media* matter ever accessed or took any action influenced by these memoranda. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

13. *American Locker Group, Inc., Intreorg Systems, Inc., and Pegasi Energy Resources Corp.*, Admin. Proc. 3-18733

The Commission issued an OIP in this matter on September 7, 2018.[90] In November 2018, Enforcement filed a motion for summary disposition as to respondent Intreorg Systems, which Intreorg Systems opposed. That motion remains pending before the Commission. In July 2019, the

Commission found the remaining respondents, American Locker Group and Pegasi Energy Resources, in default, determined that each had violated the Exchange Act by failing to file required periodic reports, and revoked the registration of all classes of their securities.[91]

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed one case-specific Adjudication memorandum relating to the *American Locker* matter. That individual emailed the memorandum to other administrative staff, who uploaded it to the *American Locker* case file in the Enforcement Centralized Database. In addition, Outstanding Seriatim Reports circulated to senior Enforcement staff in two consecutive weeks included a reference to that same *American Locker*-specific Adjudication memorandum.

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *American Locker* matter ever accessed or took any action influenced by this memorandum. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

14. *Royal B.Y. Investment Mgmt. LLC, Inc., Toda International Holdings Inc., Westpoint Energy, Inc., and 360 Global Investments (f/k/a 360 Global Wine Co.)*, Admin. Proc. 3-18746

The Commission issued an OIP in this matter on September 12, 2018.[92] In June 2019, the Commission found respondents Westpoint Energy and 360 Global Investments (f/k/a 360 Global Wine Co.) in default, determined that each had violated the Exchange Act by failing to file required periodic reports, and revoked the registration of all classes of their securities.[93] In September 2019, the Commission similarly found respondent Royal B.Y. in default, determined that it had violated the Exchange Act by failing to file required periodic reports, and revoked the registration of all classes of its securities.[94] The matter remains pending as to the remaining respondent, Toda International Holdings.

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed two case-specific Adjudication memoranda relating to the *Royal B.Y.* matter. That individual emailed the memoranda to other administrative staff, who uploaded them to the *Royal B.Y.* case file in the Enforcement Centralized Database.

In one instance, Enforcement made a filing in the *Royal B.Y.* matter between the date Adjudication staff submitted a memorandum to the Commission and the date the Commission approved the staff's recommendation and issued the corresponding order. As indicated in Exhibit 2, that Enforcement filing occurred before the Adjudication memorandum was emailed to administrative staff for upload to the case file. The Enforcement filing was unrelated to the subject matter of the memorandum.[95] In addition, Outstanding Seriatim Reports circulated to senior Enforcement staff in two consecutive weeks included a reference to one of the *Royal B.Y.*-specific Adjudication memoranda.

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Royal B.Y.* matter ever accessed or took any action influenced by these memoranda. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

15. *Joseph S. Amundsen, Michael T. Remus, and Michael Remus CPA*, Admin. Proc. 3-18994

The Commission issued an OIP in this matter on February 8, 2019.[96] In December 2019, an ALJ issued an initial decision finding that respondents Joseph Amundsen, Michael T. Remus, and Michael

Remus CPA had violated auditor independence requirements and imposing sanctions.^[97] Respondents appealed to the Commission, where the matter remains pending.

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed four case-specific Adjudication memoranda relating to the *Amundsen* matter. That individual emailed three of those memoranda to other administrative staff, who uploaded one of them to the *Amundsen* case file in the Enforcement Centralized Database. In addition, the administrative staff emailed another one of the four case-specific memoranda to the NYRO Enforcement Supervisor and uploaded it to the NYRO database.

In two instances, Enforcement made filings in the *Amundsen* matter between the date the Adjudication staff submitted a memorandum to the Commission and the date the Commission approved the staff's recommendation and issued the corresponding order. As indicated in Exhibit 2, those Enforcement filings occurred before the Adjudication memorandum was emailed to administrative staff for upload to the case file. Those filings were unrelated to the subject matter of either memorandum.^[98]

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Amundsen* matter ever accessed these memoranda. The review team found no evidence that either the NYRO Enforcement Supervisor or any of the individuals assigned to investigate and prosecute the *Amundsen* matter ever took any action influenced by these memoranda.^[99] The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

16. *Matthew R. Rossi and SJL Capital, LLC*, Admin. Proc. 3-19145

The Commission issued an OIP in this matter on April 17, 2019.^[100] In December 2019, an ALJ issued an initial decision finding that respondents Matthew Rossi and SJL Capital, LLC had violated the antifraud provisions of the federal securities laws and imposing sanctions.^[101] Rossi and SJL Capital appealed to the Commission, where the matter remains pending.

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed four case-specific Adjudication memoranda relating to the *Rossi* matter. That individual emailed the memoranda to other administrative staff, who uploaded them to the *Rossi* case file in the Enforcement Centralized Database.

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Rossi* matter ever accessed or took any action influenced by these memoranda. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

17. *ERHC Energy, Inc. and IDdriven, Inc.*, Admin. Proc. 3-19419

The Commission issued an OIP in this matter on September 5, 2019.^[102] In January 2021, the Commission found respondent IDdriven in default, determined that it had violated the Exchange Act by failing to file required periodic reports, and revoked the registration of all classes of its securities.^[103] In April 2021, Enforcement filed a motion for summary disposition as to the remaining respondent, ERHC Energy; that motion remains pending before the Commission.

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed two case-specific Adjudication memoranda relating to the *ERHC* matter. That individual emailed the memoranda to

other administrative staff, who uploaded them to the *ERHC* case file in the Enforcement Centralized Database.

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *ERHC* matter ever accessed or took any action influenced by these memoranda. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

18. *Genoil, Inc. and SAMEX Mining Corp.*, Admin. Proc. 3-19661

The Commission issued an OIP in this matter on January 15, 2020.^[104] In August 2021, Enforcement filed a motion for summary disposition as to respondent Genoil; that motion remains pending before the Commission. In September 2021, the Commission found respondent SAMEX Mining in default, determined that it had violated the Exchange Act by failing to file required periodic reports, and revoked the registration of all classes of its securities.^[105]

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed one case-specific Adjudication memorandum relating to the *Genoil* matter. That individual emailed the memorandum to other administrative staff, who uploaded it to the *Genoil* case file in the Enforcement Centralized Database.

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Genoil* matter ever accessed or took any action influenced by this memorandum. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

19. *Barton W. Stuck*, Admin. Proc. 3-19685

The Commission issued an OIP in this matter on January 31, 2020.^[106] Respondent Barton Stuck failed to answer the OIP, and, in October 2020, the Commission issued an order to show cause why Stuck should not be found in default.^[107] In February 2021, Enforcement filed a motion for summary disposition. On September 28, 2021, the Commission considered and voted on the Adjudication staff's recommendation as to the disposition of that motion. Following that vote, the Commission identified the control deficiency and matters potentially impacted by it; as a result, an order implementing the September 2021 vote has not issued.

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed one case-specific Adjudication memorandum relating to the *Stuck* matter. That individual did not email the memorandum to other administrative staff, nor was it uploaded to the *Stuck* case file in the Enforcement Centralized Database.

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Stuck* matter ever accessed or took any action influenced by this memorandum. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

20. *EliteSoft Global Inc. and Capital Access Point 1, Inc.*, Admin. Proc. 3-19868

The Commission issued an OIP in this matter on July 9, 2020.^[108] In June 2021, the Commission found respondent Capital Access Point 1 in default, determined that it had violated the Exchange Act by failing to file required periodic reports, and revoked the registration of all classes of its securities.^[109] Respondent EliteSoft Global also failed to answer the OIP, and, in September 2021, the

Commission issued an order to show cause why it should not be found in default, to which EliteSoft Global has not responded.[110] That matter remains pending before the Commission.

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed one case-specific Adjudication memorandum relating to the *EliteSoft* matter. That individual emailed the memorandum to other administrative staff, who uploaded it to the *EliteSoft* case file in the Enforcement Centralized Database.

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *EliteSoft* matter ever accessed or took any action influenced by this memorandum. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

21. *MJ Biotech, Inc. (f/k/a Michael James Enterprises, Inc.)*, Admin. Proc. 3-20297

The Commission issued an OIP in this matter on May 11, 2021.[111] In September 2021, the Commission found respondent MJ Biotech in default, determined that it had violated the Exchange Act by failing to file required periodic reports, and revoked the registration of all classes of its securities. [112] In January 2022, MJ Biotech moved to set aside the default; that matter remains pending before the Commission.

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed one case-specific Adjudication memorandum relating to the *MJ Biotech* matter. That individual emailed the memorandum to other administrative staff, who uploaded it to the *MJ Biotech* case file in the Enforcement Centralized Database.

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *MJ Biotech* matter ever accessed or took any action influenced by this memorandum. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

22. *Spectrascience, Inc.*, Admin. Proc. 3-20308

The Commission issued an OIP in this matter on May 17, 2021.[113] In July 2021, the Commission issued an order to show cause why the respondent's securities should not be revoked by default for failure to answer the OIP or otherwise defend the proceeding.[114] Respondent did not subsequently answer the OIP or respond to the show cause order. On September 28, 2021, the Commission considered and voted on the Adjudication staff's recommendation as to the disposition of that motion. Following that vote, the Commission identified the control deficiency and matters potentially impacted by it; as a result, an order implementing the September 2021 vote has not issued.

As detailed in Exhibit 2, an administrative staff member in Enforcement accessed an Adjudication memorandum dated September 14, 2021 (the "September 14 Memorandum") that contained recommendations for multiple matters, including eight of the Affected Matters. Among the matters encompassed by the September 14 Memorandum was *Spectrascience*. The staff member did not email the September 14 Memorandum to other administrative staff, nor was the memorandum uploaded to the Enforcement Centralized Database's case file for any of the eight Affected Matters.

Although the September 14 Memorandum was not emailed or uploaded to the *Spectrascience* case file, Enforcement administrative staff accessed and uploaded another Adjudication memorandum to the

Enforcement case file containing the *Spectrascience* matter.[115] That memorandum was not, however, related to the *Spectrascience* matter.[116]

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Spectrascience* matter ever accessed or took any action influenced by these memoranda. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

23. *UBI Blockchain Internet Ltd.*, Admin. Proc. 3-20309

The Commission issued an OIP in this matter on May 17, 2021.[117] In July 2021, the Commission issued an order to show cause why the respondent's securities should not be revoked by default for failure to answer the OIP or otherwise defend the proceeding.[118] Respondent did not subsequently answer the OIP or respond to the show cause order. On September 28, 2021, the Commission considered and voted on the Adjudication staff's recommendation as to the disposition of that motion. Following that vote, the Commission identified the control deficiency and matters potentially impacted by it; as a result, an order implementing the September 2021 vote has not issued.

As described above and in Exhibit 2, an administrative staff member in Enforcement accessed the September 14 Memorandum; one of the matters for which it contained a recommendation was *UBI Blockchain*. The administrative staff member did not email the September 14 Memorandum to other administrative staff, nor was the memorandum uploaded to the Enforcement Centralized Database's case file for any of the eight Affected Matters. As previously noted, the administrative staff member uploaded another Adjudication memorandum to the Enforcement case file containing the *UBI Blockchain* matter, though that memorandum was not related to the *UBI Blockchain* matter.[119]

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *UBI Blockchain* matter ever accessed or took any action influenced by these memoranda. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

24. *Traqer Corp.*, Admin. Proc. 3-20312

The Commission issued an OIP in this matter on May 17, 2021.[120] In July 2021, the Commission issued an order to show cause why the respondent's securities should not be revoked by default for failure to answer the OIP or otherwise defend the proceeding.[121] Respondent did not subsequently answer the OIP or respond to the show cause order. On September 28, 2021, the Commission considered and voted on the Adjudication staff's recommendation as to the disposition of that motion. Following that vote, the Commission identified the control deficiency and matters potentially impacted by it; as a result, an order implementing the September 2021 vote has not issued.

As described above and in Exhibit 2, an administrative staff member in Enforcement accessed the September 14 Memorandum; one of the matters for which it contained a recommendation was *Traqer*. The administrative staff member did not email the September 14 Memorandum to other administrative staff, nor was the memorandum uploaded to the Enforcement Centralized Database's case file for any of the eight Affected Matters. As previously noted, the administrative staff member uploaded another Adjudication memorandum to the Enforcement case file containing the *Traqer* matter, though that memorandum was not related to the *Traqer* matter.[122]

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Traqer* matter ever accessed or took any action influenced by these memoranda. The review team

also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

25. *Rystar Communications Ltd.*, Admin. Proc. 3-20344

The Commission issued an OIP in this matter on May 27, 2021.^[123] In July 2021, the Commission issued an order to show cause why the respondent's securities should not be revoked by default for failure to answer the OIP or otherwise defend the proceeding.^[124] Respondent did not subsequently answer the OIP or respond to the show cause order. On September 28, 2021, the Commission considered and voted on the Adjudication staff's recommendation as to the disposition of that motion. Following that vote, the Commission identified the control deficiency and matters potentially impacted by it; as a result, an order implementing the September 2021 vote has not issued.

As described above and in Exhibit 2, an administrative staff member in Enforcement accessed the September 14 Memorandum; one of the matters for which it contained a recommendation was *Rystar Communications*. The administrative staff member did not email the September 14 Memorandum to other administrative staff, nor was the memorandum uploaded to the Enforcement Centralized Database's case file for any of the eight Affected Matters. As previously noted, the administrative staff member uploaded another Adjudication memorandum to the Enforcement case file containing the *Rystar Communications* matter, though that memorandum was not related to the *Rystar Communications* matter.^[125]

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Rystar Communications* matter ever accessed or took any action influenced by these memoranda. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

26. *Spongetech Delivery Systems, Inc.*, Admin. Proc. 3-20345

The Commission issued an OIP in this matter on May 27, 2021.^[126] In July 2021, the Commission issued an order to show cause why the respondent's securities should not be revoked by default for failure to answer the OIP or otherwise defend the proceeding.^[127] Respondent did not subsequently answer the OIP or respond to the show cause order. On September 28, 2021, the Commission considered and voted on the Adjudication staff's recommendation as to the disposition of that motion. Following that vote, the Commission identified the control deficiency and matters potentially impacted by it; as a result, an order implementing the September 2021 vote has not issued.

As described above and in Exhibit 2, an administrative staff member in Enforcement accessed the September 14 Memorandum; one of the matters for which it contained a recommendation was *Spongetech Delivery Systems*. The administrative staff member did not email the September 14 Memorandum to other administrative staff, nor was the memorandum uploaded to the Enforcement Centralized Database's case file for any of the eight Affected Matters. As previously noted, the administrative staff member uploaded another Adjudication memorandum to the Enforcement case file containing the *Spongetech Delivery Systems* matter, though that memorandum was not related to the *Spongetech Delivery Systems* matter.^[128]

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Spongetech Delivery Systems* matter ever accessed or took any action influenced by these memoranda. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

27. *Globesat Holding Corp.*, Admin. Proc. 3-20355

The Commission issued an OIP in this matter on June 1, 2021.^[129] In July 2021, the Commission issued an order to show cause why the respondent's securities should not be revoked by default for failure to answer the OIP or otherwise defend the proceeding.^[130] Respondent did not subsequently answer the OIP or respond to the show cause order. On September 28, 2021, the Commission considered and voted on the Adjudication staff's recommendation as to the disposition of that motion. Following that vote, the Commission identified the control deficiency and matters potentially impacted by it; as a result, an order implementing the September 2021 vote has not issued.

As described above and in Exhibit 2, an administrative staff member in Enforcement accessed the September 14 Memorandum; one of the matters for which it contained a recommendation was *Globesat Holding*. The administrative staff member did not email the September 14 Memorandum to other administrative staff, nor was the memorandum uploaded to the Enforcement Centralized Database's case file for any of the eight Affected Matters. As previously noted, the administrative staff member uploaded another Adjudication memorandum to the Enforcement case file containing the *Globesat Holding* matter, though that memorandum was not related to the *Globesat Holding* matter.^[131]

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Globesat Holding* matter ever accessed or took any action influenced by these memoranda. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

28. *Golden Goliath Resources Ltd.*, Admin. Proc. 3-20356

The Commission issued an OIP in this matter on June 1, 2021.^[132] In July 2021, the Commission issued an order to show cause why the respondent's securities should not be revoked by default for failure to answer the OIP or otherwise defend the proceeding.^[133] Respondent did not subsequently answer the OIP or respond to the show cause order. On September 28, 2021, the Commission considered and voted on the Adjudication staff's recommendation as to the disposition of that motion. Following that vote, the Commission identified the control deficiency and matters potentially impacted by it; as a result, an order implementing the September 2021 vote has not issued.

As described above and in Exhibit 2, an administrative staff member in Enforcement accessed the September 14 Memorandum; one of the matters for which it contained a recommendation was *Golden Goliath*. The administrative staff member did not email the September 14 Memorandum to other administrative staff, nor was the memorandum uploaded to the Enforcement Centralized Database's case file for any of the eight Affected Matters. As previously noted, the administrative staff member uploaded another Adjudication memorandum to the Enforcement case file containing the *Golden Goliath* matter, though that memorandum was not related to the *Golden Goliath* matter.^[134]

The review team found no evidence that any of the individuals assigned to investigate and prosecute the *Golden Goliath* matter ever accessed or took any action influenced by these memoranda. The review team also found no evidence that any of these individuals contacted or communicated with the Adjudication staff advising the Commission in its decision-making in this matter.

C. Omnibus Memoranda

As noted above, and described in greater detail in Exhibit 3, Enforcement administrative staff accessed a total of eight Omnibus Memoranda recommending that the Commission take certain procedural

actions in then-pending administrative adjudicatory proceedings.[135] Six of the memoranda involved recommendations following legal developments in litigation challenging the constitutionality of the Commission's ALJs.[136] The remaining two involved recommendations by Adjudication staff related to the 2018-2019 federal government shutdown.

As indicated in Exhibit 3, one of the eight Omnibus Memoranda—the November 29, 2017 memorandum—was uploaded to the Enforcement Centralized Database. It was not uploaded to the NYRO database. The remaining seven were never emailed to, or otherwise accessed by, other Enforcement administrative staff; nor were they uploaded to either the Enforcement Centralized Database or the NYRO database. The review team found no evidence that the administrative staff member who accessed the Omnibus Memoranda contacted any Enforcement staff responsible for investigating and prosecuting the relevant matters about any of these memoranda.

Exhibit 4 identifies the particular Omnibus Memoranda that encompassed each matter described in Parts A and B (and listed in Exhibits 1 and 2). Exhibit 5 lists the additional currently pending adjudicatory matters in which the review team found that only an Omnibus Memorandum encompassing that matter was accessed (*i.e.*, the review team found no evidence that a case-specific Adjudication memorandum was accessed relating to those matters). For each such matter, Exhibit 5 also indicates the particular Omnibus Memoranda that encompassed that matter.

[1] *David S. Hall, P.C. d/b/a The Hall Group CPAs, David S. Hall, CPA, Michelle L. Helterbran Cochran, CPA, and Susan A. Cisneros*, Admin. Proc. 3-17228 (filed Apr. 26, 2016).

[2] *John Thomas Capital Mgmt. Grp. LLC d/b/a Patriot28 LLC, and George R. Jarkesy Jr.*, Admin. Proc. 3-15255 (filed Mar. 22, 2013).

[3] One of the administrative staff members who received these emails also placed some of the memoranda in a network folder accessible only to the Enforcement administrative staff responsible for maintaining Enforcement's case files. The memoranda have since been removed from the network folder.

[4] As detailed in Part B and Exhibit 2, there were three matters in which the administrative staff member who accessed case-specific Adjudication memoranda did not circulate all of the accessed memoranda to other administrative staff. As detailed in Parts A and B and in Exhibits 1 and 2, there were six matters for which the administrative staff members who received case-specific Adjudication memoranda did not upload all of the memoranda they received relating to those matters to the Enforcement Centralized Database. Overall, the review team found no consistent basis for the administrative staff's determination as to which Adjudication memoranda to circulate; nor did the review team find any consistent basis for the administrative staff's determination as to which Adjudication memoranda to upload to the Enforcement Centralized Database. Adjudication memoranda uploaded to the Enforcement Centralized Database have been removed and are no longer accessible to Enforcement staff.

[5] In one instance discussed below, the administrative staff emailed a case-specific Adjudication memorandum to the Enforcement staff assigned to investigate and prosecute that matter; that transmission occurred after the Commission approved the action recommended in the memorandum.

- [6] NYRO leadership determined in September 2020 that the database was no longer needed; administrative staff stopped updating it, and Enforcement staff no longer have access to it.
- [7] The same reports that were sent to senior staff in Enforcement were also sent to the Director of the Division of Examinations.
- [8] Exchange Act Release No. 77718, 2016 WL 1665164 (Apr. 26, 2016).
- [9] Initial Decision Release No. 1114, 2017 WL 894965 (ALJ Mar. 7, 2017). The Commission entered settlements with respondents The Hall Group and David Hall on October 24, 2016. Exchange Act Release No. 79147, 2016 WL 6158193 (Oct. 24, 2016).
- [10] Exchange Act Release No. 80949, 2017 WL 10927113 (June 15, 2017).
- [11] 138 S. Ct. 2044 (2018). The Supreme Court held that the Commission's ALJs are inferior constitutional officers who must be appointed in a manner consistent with the Constitution's Appointments Clause and directed that the appropriate remedy for this violation was a new hearing before a properly appointed ALJ. *Id.* at 2055. Following the decision, the Commission remanded a number of administrative proceedings with directions that they proceed before a new ALJ.
- [12] Complaint, *Cochran v. SEC*, No. 19-cv-066-O (N.D. Tex. Jan. 18, 2019).
- [13] *Cochran v. SEC*, No. 19-CV-066-O, 2019 WL 1359252, at *1 (N.D. Tex. Mar. 25, 2019); *Cochran v. SEC*, 969 F.3d 507, 518 (5th Cir. 2020).
- [14] *Cochran v. SEC*, 20 F.4th 194 (5th Cir. 2021) (en banc).
- [15] *See Axon Enter., Inc. v. FTC*, 143 S. Ct. 890, 893 (2023).
- [16] Admin. Proc. Rulings Release No. 6906 (May 23, 2023), *available at* <https://www.sec.gov/alj/aljorders/2023/ap-6906.pdf>.
- [17] Notice, *Cochran v. SEC*, No. 19-CV-066-O (N.D. Tex. Apr. 5, 2022).
- [18] Letter from the Solicitor General, *SEC v. Cochran*, No. 21-1239 (S. Ct. Apr. 8, 2022), *available at* https://www.supremecourt.gov/DocketPDF/21/21-1239/220641/20220408165202974_Letter%2021-1239%20final.pdf.
- [19] Exhibits 3 and 4 contain the only information relevant to *Cochran* not previously released by the Commission.
- [20] Exchange Act Release No. 69208, 2013 WL 1180836 (Mar. 22, 2013).
- [21] The Commission entered settlements with two other parties to this matter, respondents John Thomas Financial, Inc., and Anastasios Belesis. *See John Thomas Capital Mgmt. Grp. LLC, d/b/a Patriot28 LLC*, Exchange Act Release No. 70989, 2013 WL 6327500 (Dec. 5, 2013).
- [22] Exchange Act Release No. 85172, 2019 WL 857535 (Feb. 21, 2019).
- [23] Exchange Act Release No. 89775, 2020 WL 5291417 (Sept. 4, 2020).
- [24] *Jarkesy v. SEC*, 34 F.4th 446 (5th Cir. 2022).
- [25] Petition for Writ of Certiorari, *SEC v. Jarkesy*, No. 22-859 (S. Ct. Mar. 8, 2023); *see also* Petition for Writ of Certiorari, *Jarkesy v. SEC*, No. 22-991 (S. Ct. Apr. 10, 2023) (conditional cross-petition).

[26] Notice of Supplemental Authorities, *Jarkesy v. SEC*, No. 20-61007 (5th Cir. Apr. 5, 2022).

[27] The second-level supervisor on this matter was the NYRO Enforcement Supervisor.

[28] The information relevant to *Jarkesy* not previously released by the Commission is: the data presented in Exhibits 1, 3, and 4, which includes the review team's findings relating to the NYRO Enforcement Supervisor; and the review team's findings regarding the Outstanding Seriatim Report mentioning the *Jarkesy* matter. The review team's work related to this information was completed after the Commission issued the April 5 Statement and DOJ notified the Fifth Circuit.

[29] The review team based these findings on the docket sheets maintained for each Affected Matter, which are available on the Commission's website at <https://www.sec.gov/litigation/admin.htm>.

[30] Exchange Act Release No. 68371, 2012 WL 6054567 (Dec. 6, 2012).

[31] *Id.*

[32] In February 2017, the Commission announced a program allowing individuals subject to collateral industry bars to request that the Commission exercise its discretion to vacate certain of those bars. See Commission Statement Regarding Decision in *Bartko v. SEC* (Feb. 23, 2017), available at <https://www.sec.gov/news/statement/commission-statement-regarding-bartko-v-sec.html>; see also *Bartko v. SEC*, 845 F.3d 1217, 1225 (D.C. Cir. 2017).

[33] Exchange Act Release No. 88624, 2020 WL 1862512 (Apr. 13, 2020).

[34] The case-specific memorandum also related to one other adjudicatory matter. The administrative staff member who accessed the memorandum uploaded it to the other matter's separate case file in the Enforcement Centralized Database. This other matter was final as of April 2020.

[35] The memorandum addressed requests to vacate collateral bars in other matters that were unrelated to *O'Dierno*. The electronic case file containing the *O'Dierno* matter also contained case files for several other unrelated matters.

[36] Exchange Act Release No. 71565, 2014 WL 606596 (Feb. 18, 2014).

[37] Initial Decision Release No. 605, 2014 WL 2418472 (ALJ May 30, 2014).

[38] Exchange Act Release No. 73634, 2014 WL 6449870 (Nov. 18, 2014).

[39] *SEC v. Feathers*, 774 F. App'x 354 (9th Cir. 2019) (unpublished).

[40] Initial Decision Release No. 1403, 2020 WL 5763383 (ALJ Sept. 25, 2020).

[41] Exchange Act Release No. 72950, 2014 WL 4296690 (Sept. 2, 2014).

[42] Investment Advisers Act Release No. 4566, 2016 WL 6596009 (Nov. 7, 2016).

[43] *Robare Grp., Ltd. v. SEC*, 922 F.3d 468, 471-72 (D.C. Cir. 2019).

[44] Exchange Act Release No. 73722, 2014 WL 6805491 (Dec. 3, 2014).

[45] Exchange Act Release No. 74177, 2015 WL 366000 (Jan. 29, 2015).

[46] Initial Decision Release No. 893, 2015 WL 5769700 (ALJ Oct. 2, 2015).

[47] Initial Decision Release No. 1401, 2020 WL 4784633 (ALJ Aug. 13, 2020).

- [48] Exchange Act Release No. 73851, 2014 WL 7145626 (Dec. 16, 2014).
- [49] Initial Decision Release No. 953, 2016 WL 489352 (ALJ Feb. 8, 2016).
- [50] Exchange Act Release No. 82178, 2017 WL 5969234 (Nov. 30, 2017).
- [51] Admin. Proc. Rulings Release No. 5691 (Apr. 20, 2018), *available at* <https://www.sec.gov/alj/aljorders/2018/ap-5691.pdf>.
- [52] Exchange Act Release No. 90385, 2020 WL 6585907 (Nov. 9, 2020).
- [53] Exchange Act Release No. 90666, 2020 WL 7364187 (Dec. 15, 2020).
- [54] The Commission entered a settlement with respondent Michael W. Crow in December 2018. Exchange Act Release No. 84914, 2018 WL 6722724 (Dec. 21, 2018). The remaining respondents did not seek reconsideration of the Commission's November 2020 order.
- [55] The second-level supervisor on this matter was the NYRO Enforcement Supervisor.
- [56] Exchange Act Release No. 74273, 2015 WL 627340 (Feb. 13, 2015).
- [57] Initial Decision Release No. 930, 2015 WL 9297356 (ALJ Dec. 21, 2015). The ALJ's decision dismissing the proceeding against Anderson became the final decision of the Commission on February 2, 2016. Exchange Act Release No. 77039, 2016 WL 9990696 (Feb. 2, 2016).
- [58] Initial Decision Release No. 1394, 2020 WL 260282 (ALJ Jan. 10, 2020).
- [59] Exchange Act Release No. 74799, 2015 WL 1843839 (Apr. 23, 2015).
- [60] Exchange Act Release No. 76178, 2015 WL 6086849 (Oct. 16, 2015); Securities Act Release No. 10243, 2016 WL 6441564 (Nov. 1, 2016).
- [61] Initial Decision Release No. 1051, 2016 WL 4437545 (ALJ Aug. 23, 2016).
- [62] Exchange Act Release No. 86230, 2019 WL 2717085 (June 28, 2019).
- [63] Initial Decision Release No. 1387, 2019 WL 5513181 (ALJ Oct. 16, 2019).
- [64] See Admin. Proc. 3-16509 Docket Sheet, *available at* <https://www.sec.gov/litigation/apdocuments/ap-3-16509.xml>.
- [65] The memorandum related to an extension of time for the ALJ to issue an initial decision.
- [66] The second-level supervisor on this matter was the NYRO Enforcement Supervisor.
- [67] Investment Advisers Act Release No. 4070, 2015 WL 1906694 (Apr. 28, 2015).
- [68] Initial Decision Release No. 876, 2015 WL 5245248 (ALJ Sept. 9, 2015).
- [69] Investment Advisers Act Release No. 5739, 2021 WL 2182244 (May 26, 2021).
- [70] Exchange Act Release No. 77466, 2016 WL 1213259 (Mar. 29, 2016).
- [71] Initial Decision Release No. 1106, 2017 WL 371868 (ALJ Jan. 25, 2017).
- [72] Initial Decision Release No. 1398, 2020 WL 1610855 (ALJ Mar. 24, 2020).

[73] Gibson filed a lawsuit in the Northern District of Georgia seeking to enjoin the Commission from further pursuing this administrative proceeding. See Complaint, *Gibson v. SEC*, No. 23-cv-01723-WMR (N.D. Ga. Apr. 18, 2023).

[74] See Admin. Proc. 3-17184 Docket Sheet, available at <https://www.sec.gov/litigation/apdocuments/ap-3-17184.xml>.

[75] Securities Exchange Act Release No. 77862, 2016 WL 2910089 (May 19, 2016).

[76] Initial Decision Release No. 1116, 2017 WL 1047106 (ALJ Mar. 20, 2017).

[77] Initial Decision Release No. 1261, 2018 WL 5004712 (ALJ Oct. 15, 2018).

[78] See Admin. Proc. 3-17253 Docket Sheet, available at <https://www.sec.gov/litigation/apdocuments/ap-3-17253.xml>.

[79] Investment Advisers Act Release No. 4457, 2016 WL 4363887 (July 19, 2016).

[80] Initial Decision Release No. 1195, 2017 WL 4728747 (ALJ Oct. 19, 2017).

[81] Initial Decision Release No. 1384, 2019 WL 4135409 (ALJ Aug. 26, 2019).

[82] Young and Saving2Retire filed a petition in the Fifth Circuit, seeking a writ of mandamus to compel the Commission to dismiss the administrative proceeding against them. See Petition for a Writ of Mandamus to the U.S. Securities and Exchange Commission, No. 23-20179 (5th Cir. Apr. 24, 2023).

[83] Exchange Act Release No. 80701, 2017 WL 2130823 (May 16, 2017).

[84] Initial Decision Release No. 1145, 2017 WL 2629364 (ALJ June 19, 2017); Exchange Act Release No. 81809, 2017 WL 4404077 (Oct. 3, 2017).

[85] Initial Decision Release No. 1226, 2017 WL 5516325 (ALJ Nov. 16, 2017).

[86] Exchange Act Release No. 82178, 2017 WL 5969234 (Nov. 30, 2017); see generally 15 U.S.C. §§ 77i, 78y(a) & 80b-13 (providing under the Securities Act of 1933, the Exchange Act of 1934, and the Investment Advisers Act of 1940 that a petition for review of a final order of the Commission be filed within 60 days after entry of the order).

[87] Admin. Proc. Rulings Release No. 5616, 2018 WL 10038838 (Feb. 16, 2018).

[88] Initial Decision Release No. 1389, 2019 WL 6118538 (ALJ Nov. 12, 2019); Initial Decision Release No. 1390, 2019 WL 6118539 (ALJ Nov. 12, 2019).

[89] The memorandum addressed the dismissal of matters unrelated to *Digital Brand Media*. The electronic case file containing the *Digital Brand Media* matter also contained case files for several other, unrelated matters instituted pursuant to Section 12(j) of the Exchange Act, which was consistent with Enforcement's general practice of storing the files of multiple Section 12(j) matters together.

[90] Exchange Act Release No. 84064, 2018 WL 4293448 (Sept. 7, 2018).

[91] Exchange Act Release No. 86367, 2019 WL 3074080 (July 12, 2019).

[92] Exchange Act Release No. 84088, 2018 WL 4347769 (Sept. 12, 2018).

[93] Exchange Act Release No. 86188, 2019 WL 2604022 (June 24, 2019).

[94] Exchange Act Release No. 87010, 2019 WL 4572710 (Sept. 19, 2019).

[95] See Admin. Proc. 3-18746 Docket Sheet, *available at* <https://www.sec.gov/litigation/apdocuments/ap-3-18746.xml>.

[96] Exchange Act Release No. 85081, 2019 WL 497277 (Feb. 8, 2019).

[97] Initial Decision Release No. 1391, 2019 WL 6683122 (ALJ Dec. 5, 2019).

[98] See Admin. Proc. 3-18994 Docket Sheet, *available at* <https://www.sec.gov/litigation/apdocuments/ap-3-18994.xml>.

[99] The second-level supervisor on this matter was the NYRO Enforcement Supervisor.

[100] Exchange Act Release No. 85683, 2019 WL 1723740 (Apr. 17, 2019).

[101] Initial Decision Release No. 1393, 2019 WL 7284956 (ALJ Dec. 23, 2019).

[102] Exchange Act Release No. 86880, 2019 WL 4242449 (Sept. 5, 2019). In *ERHC Energy* and the remaining matters discussed in this Statement, the Commission ordered the evidentiary hearing before itself; it did not designate an ALJ for this purpose. See 17 C.F.R. § 201.110.

[103] Exchange Act Release No. 90870, 2021 WL 74869 (Jan. 7, 2021).

[104] Exchange Act Release No. 87979, 2020 WL 260279 (Jan. 15, 2020).

[105] Exchange Act Release No. 92943, 2021 WL 4149101 (Sept. 10, 2021).

[106] Investment Advisers Act Release No. 5439, 2020 WL 508866 (Jan. 31, 2020).

[107] Investment Advisers Act Release No. 5619, 2020 WL 6286293 (Oct. 26, 2020).

[108] Exchange Act Release No. 89284, 2020 WL 3883288 (July 9, 2020).

[109] Exchange Act Release No. 92245, 2021 WL 2593568 (June 23, 2021).

[110] Exchange Act Release No. 93138, 2021 WL 4427196 (Sept. 27, 2021).

[111] Exchange Act Release No. 91850, 2021 WL 1911710 (May 11, 2021).

[112] Exchange Act Release No. 92880, 2021 WL 4067015 (Sept. 3, 2021).

[113] Exchange Act Release No. 91899, 2021 WL 1966309 (May 17, 2021).

[114] Exchange Act Release No. 92517, 2021 WL 3191417 (July 28, 2021).

[115] The electronic case file containing the *Spectrascience* matter also contained case files for several other, unrelated matters instituted pursuant to Section 12(j) of the Exchange Act.

[116] The memorandum addressed 31 matters instituted pursuant to Section 12(j) of the Exchange Act that were unrelated to *Spectrascience*. Those matters included the *MJ Biotech* and *Genoil* matters, discussed above, and 29 other matters, all of which were final as of September 2021.

[117] Exchange Act Release No. 91900, 2021 WL 1966312 (May 17, 2021).

[118] Exchange Act Release No. 92516, 2021 WL 3191369 (July 28, 2021).

[119] The electronic case file containing the *UBI Blockchain* matter also contained case files for several other, unrelated matters instituted pursuant to Section 12(j) of the Exchange Act. The Adjudication memorandum uploaded to this case file is described in more detail in footnote 116.

[120] Exchange Act Release No. 91907, 2021 WL 1997680 (May 17, 2021).

[121] Exchange Act Release No. 92519, 2021 WL 3191491 (July 28, 2021).

[122] The electronic case file containing the *Traqer* matter also contained case files for several other, unrelated matters instituted pursuant to Section 12(j) of the Exchange Act. The Adjudication memorandum uploaded to this case file is described in more detail in footnote 116.

[123] Exchange Act Release No. 92042, 2021 WL 2182233 (May 27, 2021).

[124] Exchange Act Release No. 92477, 2021 WL 3128187 (July 23, 2021).

[125] The electronic case file containing the *Rystar Communications* matter also contained case files for several other, unrelated matters instituted pursuant to Section 12(j) of the Exchange Act. The Adjudication memorandum uploaded to this case file is described in more detail in footnote 116.

[126] Exchange Act Release No. 92043, 2021 WL 2182234 (May 27, 2021).

[127] Exchange Act Release No. 92478, 2021 WL 3128188 (July 23, 2021).

[128] The electronic case file containing the *Spongetech Delivery Systems* matter also contained case files for several other, unrelated matters instituted pursuant to Section 12(j) of the Exchange Act. The Adjudication memorandum uploaded to this case file is described in more detail in footnote 116.

[129] Exchange Act Release No. 92083, 2021 WL 2226589 (June 1, 2021).

[130] Exchange Act Release No. 92509, 2021 WL 3173318 (July 27, 2021).

[131] The electronic case file containing the *Globesat Holding* matter also contained case files for several other, unrelated matters instituted pursuant to Section 12(j) of the Exchange Act. The Adjudication memorandum uploaded to this case file is described in more detail in footnote 116.

[132] Exchange Act Release No. 92084, 2021 WL 2226592 (June 1, 2021).

[133] Exchange Act Release No. 92508, 2021 WL 3173315 (July 27, 2021).

[134] The electronic case file containing the *Golden Goliath* matter also contained case files for several other, unrelated matters instituted pursuant to Section 12(j) of the Exchange Act. The Adjudication memorandum uploaded to this case file is described in more detail in footnote 116.

[135] Enforcement administrative staff also accessed a March 17, 2020 Adjudication memorandum recommending that the Commission issue an order directing that, in all pending matters, the parties should, where possible, file documents with the Commission electronically. An Outstanding Seriatim Report that included a reference to this memorandum also was circulated to senior Enforcement staff. Because this memorandum addressed only the mechanics of filing in pending proceedings—not any substantive or procedural decisions to be made within any adjudicatory proceedings—it is not included within the set of Omnibus Memoranda, nor is it addressed further in this statement.

[136] These recommendations were made by Adjudication staff with input and advice from a working group of staff in OGC's Appellate Litigation Group and certain senior and supervisory Enforcement staff. None of the members of the working group had been assigned to investigate or prosecute any of the Affected Matters. The working group was formed to advise the Commission following the decision by the Tenth Circuit Court of Appeals in *Bandimere v. SEC*, 844 F.3d 1168 (10th Cir. 2016) (holding that

the Commission's ALJs were inferior officers who must be appointed consistent with the Appointments Clause).

Related Materials

- [Exhibit 1 – Case-Specific Memoranda Accessed by Enforcement Staff Relating to C...](#)
- [Exhibit 2 – Case-Specific Memoranda Accessed by Enforcement Staff Relating to A...](#)
- [Exhibit 3 – Omnibus Memoranda](#)
- [Exhibit 4 – Application of Omnibus Memoranda to Cochran, Jarkesy, and Affected ...](#)
- [Exhibit 5 – Other Pending Matters Encompassed by Omnibus Memoranda](#)