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Legal Update: Reed Smith LLP Investment Adviser News 2010 Quarterly Update

The *Investment Adviser News* features regulatory and other news items of interest to the investment management industry and investment advisers. The items are summarized and, where possible, contain links to more information about the item.

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DATE	TOPIC	SUMMARY
APRIL 2010		
<p>4.1.2010</p>	<p>SECURITIES AND EXCHANGE COMMISSION ('SEC') CHARGES CALIFORNIA MAN FOR POSING AS PORTFOLIO MANAGER</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • <i>The SEC charged a California man with posing as a “fund manager” in a fraudulent hedge fund scheme in which he allegedly attended meetings with investors where he posed as a fund manager. Written materials were provided to investors that described the defendant’s involvement in investment decisions of the hedge funds.</i> • <i>The SEC alleges that the defendant’s apparent “knowledge of the securities markets and role as investment manager” were significant to investors and contributed to their decision to invest in the hedge funds.</i> • <i>The SEC also alleges that the defendant personally received about \$900,000 from the scheme.</i> • <i>The defendant is charged with violating section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder, and sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) and Rule 206(4)-8 thereunder. The SEC is seeking a final judgment permanently enjoining the defendant from future violations of federal securities laws.</i>
<p>4.1.2010</p>	<p>SEC FILES SETTLED CHARGES AGAINST INVESTMENT ADVISER FOR MISREPRESENTING INVESTMENT RISKS AND FAILING TO DISCLOSE A SIDE COMPENSATION AGREEMENT</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • <i>The SEC alleged that the defendant represented to clients that their investments in a hedge fund would be supported by a legitimate bank guarantee or other form of collateral; that their principal would not be at risk; and that he would not personally profit from any transaction he recommended to them, other than his management fee.</i> • <i>The SEC also alleged that the defendant failed to disclose a side compensation agreement to clients when recommending that they invest in the hedge fund, thereby breaching his fiduciary duty to those clients.</i> • <i>The defendant consented to a permanent injunction from further violations of section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.</i> • <i>The defendant also consented to the entry of an order permanently barring him from association with an investment adviser.</i>

DATE	TOPIC	SUMMARY
4.2.2010	<p>ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(B) OF THE EXCHANGE ACT, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> Respondent was head of a stock loan department from 1999 through 2001. In that period, Respondent allegedly participated in the manipulation of the share price of the common stock of a company, by loaning millions of shares of the company, thereby limiting the amount of shares available on the market. The loans of these shares created millions in loan proceeds that were then used to buy and sell shares of the company in question to create a false perception of demand for the stock. Respondent also allegedly concealed from the loan department that the recipient of the stock loan was not another broker-dealer, but the CEO of the company-in-question and related entities acting on behalf of the CEO. Respondent was also alleged to have been secretly compensated for facilitating these loans. <p>The SEC ordered that:</p> <ul style="list-style-type: none"> Respondent is barred from any association with any broker or dealer. Any reapplication is subject to the completion of certain conditions, such as: any awards from arbitration, whether from investors or self-regulatory organizations (“SROs”), be paid, and any restitution to any regulatory organizations must be to the satisfaction of the SEC.
4.6.2010	<p>FINANCIAL INDUSTRY REGULATORY AUTHORITY (“FINRA”) ISSUES GUIDANCE ON MASTER AND SUB-ACCOUNT ARRANGEMENTS</p> <p>(Link to Notice)</p>	<ul style="list-style-type: none"> FINRA issued Regulatory Notice 10-18 relating to master/sub-account arrangements, reminding firms that they may be required to recognize the sub-accounts as separate customer accounts for purposes of applying FINRA rules, federal securities laws, and applicable federal laws in certain circumstances. Certain master/sub-account arrangements, established for legitimate business reasons, do not disclose or identify the beneficial owner. These arrangements complicate the determination of whether there is one or more beneficial owners for purposes of FINRA rules, federal securities laws, and other applicable federal laws, and, as a result, a firm is permitted to rely on the investment adviser’s instructions as to whether to treat such an account as having a single beneficial owner. However, if a firm has actual notice that the sub-accounts of a master account have different beneficial ownership (but does not know the identities of the beneficial owners), or if the firm is aware of facts and circumstances that would reasonably raise the issue as to whether the sub-accounts may have separate beneficial owners (such as transactions that would indicate different beneficial owners, or the number of accounts is so numerous as to raise suspicion), the firm must inquire with the investment adviser further and satisfy itself as to the beneficial ownership of each sub-account.

DATE	TOPIC	SUMMARY
4.7.2010	<p>SEC PROPOSES RULE REGARDING ASSET-BACKED SECURITIES</p> <p>(Link to Proposed Rule)</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • On April 7, 2010, the SEC proposed comprehensive changes to the rules governing offers, sale and reporting with respect to asset-backed securities (“ABS”). The proposed revisions are intended to improve investor protection and increase transparency and efficiency in the public and private markets for ABS. • Under current rules, ABS may be registered on a Form S-3 registration statement and later offered “off the shelf” if the securities are rated investment-grade by a nationally recognized statistical rating organization. The SEC plans to remove the investment-grade requirement for ABS shelf-offerings and instead, require, among other things, that the CEO certify that there is a reasonable basis to believe the assets will produce cash flows, and that the issuer holds, without a hedge against such position, 5 percent of each class of the ABS. • In order to give investors more time to consider transactions, the SEC is proposing to revise the filing deadlines applicable to shelf offerings. An ABS issuer would be required to file a preliminary prospectus with the SEC for each takedown off of the shelf at least five business days prior to the first sale in the offering. • Other proposed rule changes would be to require that the same type of information be provided to investors in unregistered securities as is provided in registered securities, and generally to provide more detailed and current information to aid in investment decisions. • The SEC is also proposing to revise Regulation AB, which currently requires disclosure of material, aggregate information about the composition, and characteristics of asset pools, to provide additional disclosure requirements for ABS offerings. For each loan or asset in the asset pool, the SEC is proposing to require disclosure of specified data relating to the terms of the asset, obligor characteristics, and underwriting of the asset. Such data would be provided in a machine-readable, standardized format. Issuers would be required to provide the asset-level data or grouped account data at the time of securitization, when new assets are added to the pool underlying the securities, and on an ongoing basis. <p>Public comment on the proposed rules was due before August 2, 2010.</p>

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4.7.2010	<p>SEC CHARGES COMPANY AND TWO EMPLOYEES WITH FRAUD RELATED TO SUBPRIME MORTGAGES</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> On April 7, 2010, the SEC announced that it began administrative proceedings against an investment adviser, a broker-dealer and two employees, including a portfolio manager, for overstating the value of securities backed by subprime mortgages held by funds they managed. The SEC alleged that the company failed to use reasonable procedures to internally price the portfolio securities in, and therefore did not accurately calculate “net asset values” (“NAVs”) of, five funds that it managed. The two employees charged were a portfolio manager who allegedly lied to investors about the value of the assets in his funds, and a head of fund accounting who allegedly ignored the fund’s inaccurate valuation process. The SEC alleged that the portfolio manager instructed the firm’s Fund Accounting Department to inflate the fair values of certain portfolio securities, ignoring lower prices, and manipulating at least one price, quoted by other dealers. The portfolio manager’s actions fraudulently prevented a reduction in the NAVs of the funds that otherwise would have occurred as a result of the deterioration of the subprime securities market. Additionally, the SEC alleged that while the company’s SEC filings stated that the fair value of securities would be determined by a valuation committee using adopted procedures, such responsibility had essentially been delegated to the company, which along with the valuation committee, failed to comply with the adopted procedures.
4.8.2010	<p>PROPOSED RULE CHANGE TO ALLOW FINRA MEMBERS TO USE THE OTC REPORTING FACILITY TO TRANSFER TRANSACTION FEES CHARGED BY ONE MEMBER TO ANOTHER MEMBER</p> <p>(Link to Notice)</p>	<ul style="list-style-type: none"> FINRA has proposed a rule change that would adopt FINRA Rule 7330(i) to permit FINRA members to use the OTC Reporting Facility (“ORF”) to transfer transaction fees charged by one member to another member on trades reported to the ORF, and amend FINRA Rule 7710 to establish the fee to be charged by the ORF for use of the transaction fee transfer service. Under the amended rule, a member may allow another member to report and lock-in trades on its behalf if they complete an agreement to that effect and submit it to ORF. A member may agree to transfer a transaction fee charged by one member to another on a transaction reported to ORF through the submission of a clearing report to ORF. In this instance, members would submit two price amounts as part of their report to ORF: one price including the transaction fee, and one price exclusive of the transaction fee. FINRA is also proposing to establish the fee to be charged by the ORF for use by members of the transaction fee transfer service.

DATE	TOPIC	SUMMARY
4.12.2010	<p>ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(F) OF ADVISERS ACT, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> Respondent was president and majority owner of an investment adviser. From 2007-2009, Respondent recommended investment opportunities to clients of the investment adviser. Respondent allegedly failed to disclose conflicts of interest on a particular investment for which the Respondent had negotiated a separate compensation agreement and from which Respondent received benefits. Respondent also allegedly failed to receive any bank guarantees or collateral and falsely assured clients that their investments in a third party were safe. Only later did the Respondent allegedly discover that the investments were a sham operation run by a convicted felon. <p>The SEC has ordered that:</p> <ul style="list-style-type: none"> Respondent is hereby barred from association with any investment adviser for violations of section 203(f) of the Advisers Act for breaching fiduciary duties by failing to disclose Respondent's conflicts of interest and perpetrating fraud.
4.14.2010	<p>SEC PROPOSES LARGE TRADER REPORTING SYSTEM</p> <p>(Link to Press Release)</p> <p>(Link to Rule Release)</p>	<ul style="list-style-type: none"> On April 14, 2010, the SEC proposed the creation of a large trader reporting system that would enhance its ability to identify market participants engaged in substantial trading activity, collect information on their trades, and analyze their activity. Specifically, the SEC is interested in a firm or individual whose transactions in exchange-listed securities equal or exceed 2 million shares or \$20 million during any calendar day, or 20 million shares or \$200 million during any calendar month (a "large trader"). Under the proposal, large traders would be required to file a form with the SEC, which would assign them an identification number. Broker-dealers would be required to maintain and report data similar to the information covered by the SEC's Electronic Blue Sheets system, as well as the ID number of the large trader and the time of the transaction. The proposed changes would enable the SEC to monitor the impact of large trades on the market and analyze market participant's trading activity. Public comment on the proposed rules were due on or before June 22, 2010.
4.14.2010	<p>SEC CHARGES INVESTMENT ADVISER FOR OPERATING A FRAUDULENT SCHEME</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> The SEC announced April 14, 2010 that a court order was obtained to halt a securities fraud operated by the defendant. The complaint alleged that the defendant, through three investment advisory companies, purported to be a certified financial planner. The complaint also alleged that the defendant gave investors a false impression that he was associated with a legitimate broker-dealer, and provided investors false trade confirmations to further his scheme and led them to believe that their investments were insured. On April 7, 2010, a temporary restraining order was issued freezing all of the defendant's assets and prohibiting him from destroying company records. The defendant is charged with violating the antifraud provisions of the federal securities laws, section 17(a) of the Securities Act of 1933 ("1933 Act"), section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and sections 206(1) and 206(2) of the Advisers Act. He is also charged with violating of Section 15(a) of the Exchange Act.

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4.14.2010	<p>PROPOSED AMENDMENTS TO RULE 610 OF REGULATION NMS</p> <p>(Link to Proposed Rule)</p>	<ul style="list-style-type: none"> • The SEC has proposed to amend Rule 610 of Regulation NMS under the Exchange Act to promote fair and efficient access to displayed quotations by prohibiting options exchanges from imposing "unfairly discriminatory" terms, and to limit access fees that an options exchange may charge investors for access to its best bid and offer for listed options. • The proposal would expand existing provisions of Rule 610, which currently apply only to transactions in exchange-listed NMS stocks, to also cover the listed options markets. • The proposed amendments to Rule 610(a) aim to prohibit unfair discrimination that prevents non-members from "piggybacking" on the access of members of options exchanges. The SEC intends to support a non-member's ability to indirectly access quotations in listed options through exchange members. Accordingly, it proposes to amend Rule 610(a) such that the prohibition on national securities exchanges and national securities associations from unfairly imposing discriminatory terms that prevent any person from efficiently accessing quotations displayed by the exchange or association through exchange or association members, applies to listed options as well as to NMS stocks. The unfair discrimination standard is intended to apply only to access in NMS securities.
4.15.10	<p>SEC APPROVAL AND EFFECTIVE DATE FOR NEW CONSOLIDATED FINRA RULES, AND THE REPEAL OF CERTAIN NASD AND INCORPORATED NEW YORK STOCK EXCHANGE ('NYSE') RULES</p> <p>(Link to Notice)</p>	<p>Following the consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA established a process to develop a new consolidated rulebook (the "Consolidated FINRA Rulebook"). FINRA is proposing new consolidated rules in phases for approval by the SEC as part of the Consolidated FINRA Rulebook. In February and March 2010, the SEC approved six rule filings relating to the Consolidated FINRA Rulebook:</p> <ul style="list-style-type: none"> • FINRA Rule 2261 sets forth members' obligations to, upon request, make available (or furnish copies) to customers and other members information contained in a member's most recent balance sheet. • FINRA Rule 3160 requires that a member that is a party to a networking arrangement with a financial institution provide certain written (or, in some cases, oral) disclosures regarding the nature of the securities and investment risk, and expands certain disclosure requirements with respect to advertisement and sales literature. • FINRA Rule 3240 prohibits registered persons from borrowing money from or lending money to their customers unless, under certain limited conditions, the firm has written procedures allowing such lending arrangements. • NASD Rule 2760 (Offerings "At the Market") and NASD Rule 2780 (Solicitation of Purchases on an Exchange to Facilitate a Distribution of Securities) were repealed as duplicative. • NASD Rule 2450 (Installment or Partial Sales), NASD IM-2830-2 (Maintaining the Public Offering Price), and Incorporated NYSE Rule 413 (Uniform Forms) were repealed as no longer necessary and duplicative, respectively. • Additionally, NYSE Rule 405(4) (Common Sale Accounts) was repealed because of undefined terms raising potential investor protection concerns. <p>The effective date for all of the proposed rule changes was June 14, 2010.</p>

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4.16.2010	<p>SEC CHARGES COMPANY WITH FRAUD IN STRUCTURING AND MARKETING OF CDO TIED TO SUBPRIME MORTGAGES</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> On April 16, 2010, the SEC charged a company for defrauding investors by misstating and omitting key facts about a financial product tied to subprime mortgages as the U.S. housing market was beginning to falter. The SEC alleged the company structured and marketed a synthetic collateralized debt obligation (“CDO”) that hinged on the performance of subprime mortgage-backed securities, but it failed to disclose to investors vital information about the CDO, including: <ul style="list-style-type: none"> The role played by a major hedge fund in the portfolio selection process The fact that the hedge fund had taken a short position against the CDO subsequent to the participation in the portfolio selection
4.20.2010	<p>OBLIGATION OF BROKER-DEALERS TO CONDUCT REASONABLE INVESTIGATIONS IN REGULATION D OFFERINGS</p> <p>(Link to Notice)</p>	<ul style="list-style-type: none"> FINRA has issued a notice stating that broker-dealers have an obligation to conduct a reasonable investigation of the issuer and the securities they recommend, including those sold in a Regulation D offering, as well as to meet suitability requirements under NASD 2310 (Suitability). A broker-dealer should determine the scope of its investigation based on the facts and circumstances. If a broker-dealer lacks essential information about an issuer or its securities when it makes a recommendation, it must disclose this fact, as well as the risks that arise from its lack of information. With respect to suitability, the broker-dealer should, after an investigation, have a reasonable basis to believe that the security is suitable for some investors, and, specifically, that it is suitable for the investor to whom it is recommended. A violation of these obligations may result in a violation of the antifraud provisions of the federal securities laws.
4.20.2010	<p>SEC HALTS INTERNET-BASED SCAM LURING INVESTORS WITH FALSE STOCK TIPS AND FICTIONAL TRADING EXPERTS</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> On April 20, 2010, the SEC charged an investment advisory firm, its owner, and four associates with operating a scam through the Internet that charged investors fees for phony stock tips and investment advice from alleged “financial experts.” The complaint alleged that the defendants marketed themselves through false claims of trading profits; by using fictitious names, educational backgrounds and experience; and by creating exaggerated client testimonials. The complaint stated that over the past three years, the defendants obtained more than \$17.5 million from investors through their material misrepresentations. A temporary restraining order has been issued that froze all of the defendants’ assets. The SEC is also seeking a temporary order enjoining the defendants from further violations of the applicable federal securities laws.

DATE	TOPIC	SUMMARY
4.23.10	<p>SEC APPROVES REPORTING ASSET-BACKED SECURITIES TRANSACTIONS TO TRACE</p> <p>(Link to Notice)</p>	<ul style="list-style-type: none"> • Effective February 14, 2011, FINRA member firms must begin reporting asset- and mortgage-backed securities transactions to the Trade Reporting and Compliance Engine (“TRACE”). FINRA will collect the data for study, not dissemination. However, in the future, it may propose to distribute data collected. • In 2009, FINRA proposed two major expansions to TRACE. The first of these became effective March 1, 2010 and added debt securities issued or guaranteed by U.S. federal agencies and government-sponsored enterprises as TRACE-Eligible Securities. On February 22, 2010, the SEC approved the second proposed expansion of TRACE to include Asset-Backed Securities as TRACE-Eligible Securities, to require the reporting of Asset-Backed Securities transactions, and to establish reporting fees.
4.23.2010	<p>SEC CHARGES PRIVATE EQUITY FIRM AND MONEY MANAGER FOR DEFRAUDING PUBLIC PENSION FUNDS</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • On April 22, 2010, the SEC charged a private equity firm, its owner and an associate with participation in a fraudulent scheme that took more than \$3 million from a Detroit-area pension fund. • The complaint alleges that the defendants raised approximately \$23.8 million from three public pension funds under the pretense of a start-up private equity fund, and then withdrew money invested by the pension funds to cover personal and business expenses. The firm and the owner of the firm allegedly took more than \$2.06 million from the fund via excess or advanced management fees, while the associate diverted nearly \$1.05 million into companies that he controlled. • The complaint alleges that the defendant violated section 17(a) of the 1933 Act, section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.
4.23.2010	<p>SPEECH BY SEC COMMISSIONER WALTER: PLANS AND PROSPECTS FOR FINANCIAL REGULATORY REFORM</p> <p>(Link to Speech)</p>	<ul style="list-style-type: none"> • On April 23, 2010, at the UC San Diego Economics Roundtable, Elisse B. Walter discussed financial regulatory reform, including the regulation of hedge funds and hedge fund advisers. • Ms. Walter noted that in 2004, the SEC sought to obtain additional data regarding hedge funds and hedge fund advisers by requiring hedge fund advisers to register with the SEC. However this action was quickly overturned by the courts. • She noted that both the House and Senate bills attempt to narrow the current exemptions from registration, thus subjecting hedge fund advisers to the full investment adviser regulatory regime, and mentioned that both bills include recordkeeping, reporting and information-sharing requirements important to effective examination of those entities. • Ms. Walter expressed disagreement with the bills on two points: (1) regarding the proposed exclusions for venture capital and private equity advisers (noting that the goals and strategies of such advisers are not so different from those employed by hedge fund advisers), and (2) regarding the proposed increase in the asset threshold that brings advisers within SEC registration territory (noting that the effect would be that fewer advisers would be within the SEC’s oversight).

DATE	TOPIC	SUMMARY
4.27.2010	<p>1940 ACT – SECTION 15(a) NO-ACTION LETTER</p> <p>(Link to No-Action Letter)</p>	<ul style="list-style-type: none"> • The SEC granted no-action relief to an investment adviser seeking to rely on the temporary exemption in Rule 15a-4. Section 15(a) of the 1940 Act deems it unlawful for any person to serve as investment adviser to a company unless party to a written contract approved by a majority of outstanding shareholders. Rule 15a-4 provides a temporary exemption from the shareholder approval requirement of section 15(a), which permits a person to act as investment adviser under an interim agreement. • A registered investment adviser sought no-action relief in connection with its request to serve as investment adviser to registered investment companies, organized as exchange-traded funds ("ETFs"), pursuant to an advisory agreement that had not been approved by the majority of shareholders because of complications from a merger. • The parent company of the adviser and other related subsidiaries entered into a plan of merger so that the adviser and subsidiaries would become indirect, wholly owned subsidiaries of a new third-party parent. This transaction caused the automatic termination of the advisory agreements between the investment adviser and the ETFs. Pursuant to Rule 15a-4(b)(2) of the 1940 Act, the Board of Trustees of the ETFs approved interim advisory agreements (the "Interim Agreements"). The Interim Agreements took effect as of the closing date of a merger transaction, and were scheduled to terminate upon the earlier of 150 calendar days after the effective date of the merger or the approval of a new advisory agreement. • The adviser and its parent company did not receive the votes necessary to constitute a quorum for five registered investment companies in the ETFs' series prior to the 150-day deadline. The adviser and ETFs represented that they made extraordinary efforts to hold a shareholder meeting at which the shareholders could approve the new advisory agreements; however, these efforts failed because of the high shareholder turnover common to ETFs, which impedes the ability of the ETFs to identify current shareholders and decreases the likelihood that current shareholders vote proxies. • The adviser proposed, with permission from the Board, that it continue to serve as investment adviser for an additional period of time, pursuant to the other requirements set forth in Rule 15a-4, believing that a quorum could be obtained before the additional period (45 calendar days) expires. The adviser further represented that it would continue to serve as investment adviser without any compensation or reimbursement of costs during the additional period, and that shareholders would not incur any expenses associated with the merger transaction or any new investment advisory agreement.
4.28.10	<p>SEC APPROVES AMENDMENTS TO REQUIRE REPORTING OF OTC TRADES IN EQUITY SECURITIES WITHIN 30 SECONDS OF EXECUTION; EFFECTIVE DATE: NOVEMBER 1, 2010</p> <p>(Link to Notice)</p>	<ul style="list-style-type: none"> • Effective November 1, 2010, firms will be required to report to FINRA over-the-counter transactions in equity securities, including trade cancellations, within 30 seconds of execution. Firms will also be required to report secondary market transactions in securities of non-exchange-listed direct participation programs within 30 seconds of execution. • Trades are to be reported as soon as practicable, and firms are restricted from withholding trade reports by programming their systems to delay reporting until the last permissible second.

DATE	TOPIC	SUMMARY
4.29.2010	<p>CORPORATION TO PAY \$14 MILLION IN CIVIL PENALTIES TO SETTLE COMMODITY FUTURES TRADING COMMISSION ('CFTC') CHARGES THAT COMPANY CONCEALED A LARGE BLOCK CRUDE OIL TRADE</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • The CFTC ordered Company A to pay a \$14 million civil monetary penalty, and that the aiding and abetting corporation, Company B, pay a \$200,000 civil monetary penalty. The order also required the companies to cease and desist from further violations of the Commodity Exchange Act, and to comply with certain undertakings. • The CFTC order, entered April 29, 2010, found that, in early February 2009, Company A's trader and a Company B broker discussed an opportunity for Company A to act as a counterparty to a third-party Company B customer to purchase a block of March 2009 crude oil futures contracts and to sell a block of a similar quantity of April 2009 contracts on the New York Mercantile Exchange ("NYMEX"). "The price of the two legs of the trade was to be determined later by the market closing price, an arrangement known as a TAS (Trade at Settlement) block trade." • The order found that, on February 6, 2009, prior to the trade being finalized, the Company A trader requested that the Company B broker not report the TAS block trade until after the close of trading. Company B broker agreed to this arrangement. • The CFTC order further found that both companies' actions concealed the occurrence of the trade from the NYMEX, contrary to NYMEX Rule 6.21C(6), which provides that the "buyer and seller must ensure that each block trade is reported to the Exchange within five minutes of the time of execution." • In addition to the civil monetary penalties, Company A agreed for the next three years to (1) notify all Company A traders of significant new and modified trading rules; (2) administer a yearly enhanced training program regarding CFTC and exchange trading rules for all appropriate Company A employees; and (3) implement, within 90 days, enhanced surveillance of TAS block trades on the NYMEX.
4.29.2010	<p>SPEECH BY SEC COMMISSIONER AGUILAR: PROTECTING INVESTORS BY REQUIRING THAT ADVICE-GIVERS STAY TRUE TO THE FIDUCIARY FRAMEWORK</p> <p>(Link to Speech)</p>	<ul style="list-style-type: none"> • Mr. Aguilar's speech at the Investment Adviser Association Annual Conference focused on the need for a Congressional mandate that all providers of investment advice be fiduciaries, and for increased regulatory action by the SEC. • He noted that lack of a fiduciary duty leads to real investor harm, suggesting that broker-dealers be held to the same fiduciary standard as investment advisers. • Mr. Aguilar stated that laws and regulations are only one component of an effective regulatory framework, noting that robust examination and enforcement oversight are also significant. • Mr. Aguilar also discussed three initiatives important to strengthening the regulatory framework: (1) strengthening custodial practices to safeguard client assets, (2) reducing the temptation of advisers to misuse political contributions, and (3) revising Part II of Form ADV to include, among other things, a brochure supplement.

DATE	TOPIC	SUMMARY
MAY 2010		
<p>5.5.2010</p>	<p>FUND COMPANY DENIED NO-ACTION RELIEF FOR OMITTING SHAREHOLDER PROPOSAL FROM PROXY STATEMENT</p> <p>(Link to No-Action Letter)</p>	<ul style="list-style-type: none"> • <i>The SEC denied no-action relief to a fund company seeking to omit a shareholder proposal and a proponent's corresponding supporting statement from its 2010 proxy materials.</i> • <i>The proposal asked the fund's board of directors to adopt an interval fund structure. An interval fund is a closed-end fund with a hybrid structure, making the fund open for sale or redemption during pre-determined intervals. The fund company sought no-action relief in reliance upon Rule 14a-8(i)(10) of the Exchange Act, arguing that the proposal had already been substantially implemented, because the directors considered and rejected the proposed adoption of this structure. The fund company further argued, in reliance upon Rule 14a-8(i)(7), that the proposal dealt with the fund's ordinary business operations, and also argued, in reliance upon Rules 14a-8(i)(2) and Rule 14a-8(i)(6), that including such a proposal would be deemed a violation of law, as well as violation of the board's fiduciary duty to submit a proposal that it determined to be against the best interest of shareholders. Additionally, in reliance upon Rule 14a-8(i)(3), the fund company argued that it conflicts with proxy rules that permit vague and indefinite proposals to be omitted, and further argued that, pursuant to Rule 14a-9, the proponent's supporting statement contained false and misleading information, and, therefore, may also be excluded, in reliance upon Rule 14a-8(i)(3).</i> • <i>The SEC disagreed with the fund company regarding omission of the proposal under these rules. The SEC also disagreed with proposed omission of the proponent's supporting statement, noting that the fund would have an opportunity to cite its own arguments within the proxy.</i>
<p>5.6.2010</p>	<p>SEC CHAIRMAN'S KEYNOTE ADDRESS AT THE COMPLIANCE AND LEGAL SOCIETY OF THE SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION 2010 ANNUAL SEMINAR</p> <p>(Link to Speech)</p>	<ul style="list-style-type: none"> • <i>SEC Chairman Mary L. Schapiro noted that the federal securities laws were originally drafted with three central principals in mind: transparency, fairness and enforcement.</i> • <i>Chairman Schapiro mentioned that investment products were simpler when the securities laws were drafted in the 1930s, noting that trading and products, including asset-backed securities and over-the-counter derivatives, have since become more complex in ways that inhibit transparency to investors.</i> • <i>Chairman Schapiro addressed fairness, noting that all investors should have the same opportunity to profit from their investments, and have confidence that the investment professionals and institutions on which they rely are qualified, supervised, and compliant with the appropriate rules and regulations.</i> • <i>Lastly, she noted that key elements of the legislative proposals provided by the SEC to Congress would improve the SEC's ability to exercise its authority of enforcement and examination.</i>

DATE	TOPIC	SUMMARY
<p>5.6.2010; 5.7.2010; 5.10.2010</p>	<p>STATEMENT OF THE SEC AND THE CFTC</p> <p>(Link to 5/06 Release)</p> <p>(Link to 5/07 Release)</p> <p>(Link to 5/10 Release)</p>	<ul style="list-style-type: none"> • On May 6, 2010, the securities markets experienced unusual trading activity, including extreme volatility for a number of individual securities. • In response, the SEC and CFTC announced that they, along with other financial regulators, would review the unusual trading activity, publish the findings, and make any necessary regulatory changes. • On May 10, 2010, the SEC met with the leaders of the New York Stock Exchange, NASDAQ, BATS, Direct Edge, ISE and CBOE, and FINRA, where a consensus was reached that circuit breakers need to be adjusted and the process for handling erroneous trades will be strengthened.
<p>5.7.2010</p>	<p>SEC REMARKS AT THE INVESTMENT COMPANY INSTITUTE 2010 GENERAL MEMBERSHIP MEETING, AS DELIVERED BY THE DIRECTOR OF THE DIVISION OF INVESTMENT MANAGEMENT</p> <p>(Link to Speech)</p>	<ul style="list-style-type: none"> • SEC Director Andrew J. Donahue relayed remarks of SEC Chairman Mary L. Schapiro focused on increasing transparency in the municipal securities markets. • Mr. Donahue noted that certain gaps in regulatory authority over disclosure relating to municipal securities transactions limit the information available to municipal market investors. • Mr. Donahue noted that retail investors and mutual funds are the most significant source of demand and liquidity in the municipal market, and mentioned that primary concerns to be addressed include the clarity of information concerning funding obligations and expected revenue, investor dependence on ratings instead of independent analysis, and whether the lack of uniformity of municipal disclosure requirements impedes investor understanding. • Mr. Donahue described potential steps that could improve municipal securities disclosure, including standardized offering documents and reports, and mandating the use of uniform accounting standards.
<p>5.11.2010</p>	<p>ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE EXCHANGE ACT, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • Respondent was an individual investor who controlled more than 30 brokerage accounts at more than a dozen broker-dealers. Respondent used accounts to gain access to initial public offerings ("IPOs") underwritten by these same broker-dealers. • SEC determined that Respondent willfully violated Rule 105, Regulation M of the Exchange Act, by using securities obtained in a public offering to cover short sales that occurred during a restricted period for the securities in question (normally five business days). Respondent violated this section of Rule 105 on at least 90 different occasions between March 2006 and December 2008. • Rule 105(a) generally prohibits a person from purchasing securities from an underwriter or a broker-dealer participating in a firm commitment offering if the person sold short the security that is the subject of the offering during the "restricted period" outlined in the Rule. • The SEC has ordered that Respondent cease and desist from committing violations of Rule 105; and Respondent pay a fine of \$331,387 and interest of \$16,613.

DATE	TOPIC	SUMMARY
5.12.2010	<p>ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(F) OF THE ADVISERS ACT, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> Respondent is an unregistered investment adviser who resides in Argentina. Respondent used a website to solicit funds to promote his advisory services in the United States for clients in the United States and abroad between 2005 through 2007. Respondent was able to obtain approximately \$34 million from investors in Argentina, the United States and other countries to invest in what Respondent said would be highly rated stocks and indexes. Respondent indicated that the investments would only consist of securities listed on the NYSE or NASDAQ. Respondent invested heavily in futures and options, losing one-third of the initial investment. To hide these losses, Respondent provided falsified account statements to investors. <p>The SEC ordered that:</p> <ul style="list-style-type: none"> Respondent be barred from association with any investment adviser; any reapplication is subject to the completion of certain conditions, such as: any awards from arbitration, whether from investors or self-regulatory organizations, be paid, and any restitution to any regulatory organizations must be to the satisfaction of the SEC.
5.12.2010	<p>SEC OBTAINS PERMANENT INJUNCTIONS IN MULTIMILLION-DOLLAR PONZI SCHEME</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> On May 11, 2010 in the U.S. District Court of the Middle District of Florida, a permanent injunction was entered for an Apopka Florida resident for operating an online Ponzi scheme. The SEC's complaint alleged that the defendant engaged in a fraudulent scheme to misappropriate investor funds for personal use. Acting as an investment adviser, the defendant allegedly acquired approximately \$22 million from investors by fraudulently leading them to believe that their money would be used to buy international bonds, stocks and other investments. The defendants consented to a permanent injunction order that enjoins the defendant from violating the section 10(b) of the Exchange Act and Rule 10b-5 thereunder; section 15(a)(1) of the Exchange Act; sections 5(a) and 17(a) of the 1933 Act; sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder; and section 7(d) of the 1940 Act. The defendant also pleaded guilty to money laundering in a related criminal matter filed in the U.S. District Court for the Middle District of Florida, where he could be sentenced to pay up to \$8 million in restitution and serve up to a 15-year prison term.

DATE	TOPIC	SUMMARY
5.14.2010	<p>PROPOSED RULE CHANGE TO ADOPT FINRA RULES 4210, 4220 AND FINRA RULE 4230 IN THE CONSOLIDATED FINRA RULEBOOK</p> <p>(Link to Rule Filing)</p>	<ul style="list-style-type: none"> • FINRA has proposed a rule change to adopt and consolidate a number of its rules. • NASD Rules 2520, 2521, 2522 and IM-2522 regarding margin requirements will be consolidated into FINRA Rule 4210. NASD Rule 2520 provides the margin requirements for currency warrants, currency index warrants and stock index warrants. NASD Rule 2521 provides that any member examined by another SRO is exempt from Rule 4210. NASD Rule 2522 provides a list of definitions related to margining options and the warrants in Rule 2520. Finally, IM-2522 dictates how to calculate days elapsed and accrued interest on Treasury bonds and notes. • NASD Rule 3160, which addresses requests for extension of time to meet margin requirements under Regulation T and SEA Rule 15c3-3, will be renumbered as FINRA Rule 4230. NASD Rule 3160 provides that, under certain conditions, members may request an extension of time to allow customers to meet their margin requirements. FINRA has proposed to amend Rule 4230 to require monthly summary filings with FINRA in instances where the ratio of requested time extensions is not exceeded by any broker-dealer of the member firm. • Incorporated NYSE Rule 432(a), which addresses daily recordkeeping requirements for margin maintenance and calls, will be renumbered as FINRA Rule 4220. Incorporated NYSE Rule 432(a) requires certain daily recordkeeping of margin calls issued under Regulation T and the margin rules. • Comments are due on or before June 23, 2010.
5.17.2010	<p>SEC COMMISSIONER'S SPEECH AT THE FOURTH MEETING OF THE INVESTMENT ADVISORY COMMITTEE – 'AMPLIFYING THE VOICES OF INVESTORS: THE WORK OF THE INVESTOR ADVISORY COMMITTEE'</p> <p>(Link to Speech)</p>	<ul style="list-style-type: none"> • SEC Commissioner Luis A. Aguilar acknowledged the market events of May 6, noting that as these events raise a significant series of questions for investors, the SEC and other regulators are reviewing the events of that day and focusing on how to prevent a repeat of such events in the future. • Mr. Aguilar then noted that at the last committee meeting, the committee made its first two unanimous resolutions to the SEC. The first involved the request for interpretive guidance as to how issuers can deal with Regulation FD-related concerns regarding the potential selective disclosure of corporate governance information in private meetings with investors. • Mr. Aguilar noted that the second recommendation suggested that, in connection with its review of the current proxy voting system, the SEC should review the costs and benefits of standardizing a tag-data format for certain proxy and proxy voting filings. • Lastly, Mr. Aguilar noted that items for presentation at the current committee meeting would address the committee's continuing work with respect to factors that drive decision-making by investors; mandatory arbitration; money market funds; and the efforts of, and a recommendation by, the Education Subcommittee.

DATE	TOPIC	SUMMARY
5.18.2010	<p>SEC TO PUBLISH FOR PUBLIC COMMENT STOCK-BY-STOCK CIRCUIT BREAKER RULE PROPOSAL</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • In response to the unusual trading activity and market disruption May 6, 2010, the SEC announced that it will file proposed rules under which circuit breakers would pause trading in certain individual stocks if the price moves 10 percent or more in a five-minute period. • The SEC stated its belief that the market disruption of May 6, 2010 was complicated by the fact that the various exchanges have different trading rules and practices. The proposed rules seek to reduce volatility by unifying practices across the exchanges, and setting up circuit breakers that would be triggered under certain circumstances. • A 10-day comment period will be provided when the rules are published and, after being approved, the new procedures would go into effect on a pilot basis through December 10, 2010. It is anticipated that any appropriate changes to the procedures could be made following the pilot program.
5.18.2010	<p>SEC-CFTC RELEASE PRELIMINARY FINDINGS IN REVIEW OF MAY 6 MARKET EVENTS</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • The joint report by the staffs of the CFTC and the SEC was released with their findings regarding the irregular market events May 6, 2010. • The report also described a number of potential regulatory responses by the SEC, some of which include: (1) the implementation of uniform, cross-market circuit breakers for individual securities, (2) enhancing controls over market orders, including collars to place limits on the price such trades will execute and risk disclosures by broker-dealers, and (3) regulating the use by broker-dealers of \$0.01 stub quotes to satisfy the two-sided quote requirement, which, alternatively, could be modified. • The SEC will continue its investigation and provide supplemental reports when additional information is available.
5.20.2010	<p>PROPOSAL TO AMEND FINRA RULE 6121 (TRADING HALTS BECAUSE OF EXTRAORDINARY MARKET VOLATILITY)</p> <p>(Link to Rule Filing)</p>	<ul style="list-style-type: none"> • FINRA has proposed a change to FINRA Rule 6121 to permit FINRA to halt trading by FINRA members under certain circumstances. If extraordinary market conditions cause a primary listing market to issue a stock trading pause under its rules, FINRA will pause trading in that security otherwise than on an exchange. • However, FINRA may allow for trading to resume after 10 minutes, even if the primary listing market has not resumed trading, if trading in that security has commenced on at least one other national securities exchange.
5.20.2010	<p>PROPOSED RULE CHANGE TO ADOPT FINRA RULE 5121 (PUBLIC OFFERINGS OF SECURITIES WITH CONFLICTS OF INTEREST) IN THE CONSOLIDATED FINRA RULEBOOK</p> <p>(Link to Rule Filing)</p>	<ul style="list-style-type: none"> • FINRA has proposed to adopt NASD Rule 2720 (Public Offerings of Securities with Conflicts of Interests) as FINRA Rule 5121 in the consolidated FINRA rulebook. • The Rule prohibits a member with a conflict of interest from participating in a public offering, unless disclosure of the conflict is made and certain other requirements are met.

DATE	TOPIC	SUMMARY
5.21.2010	<p>APPELLATE COURT AFFIRMS DEFAULT JUDGMENT AGAINST HEDGE FUND MANAGER</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> On May 6, 2010, the U.S. Court of Appeals for the First Circuit rejected the appeal of the defendant seeking to overturn the default judgment entered against him April 9, 2009 in the U.S. District Court in Massachusetts. The original complaint was filed April 12, 2007, and allegedly the hedge fund manager acting through an investment adviser entity defrauded more than 60 investors of approximately \$34 million by fabricating hedge fund performance, fraudulent business claims, failure to disclose his prior criminal history, and providing investors with insufficient risk management and investment process disclosures. The Judgment entered against the defendant permanently enjoined him from violating section 17(a) of the 1933 Act, section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and sections 206(1) and 206(2) of the Advisers Act. In addition, the Judgment holds the defendant liable for \$2.,35 million in disgorgement, plus prejudgment interest of \$425,998, and a civil penalty in the amount of \$130,000.
5.21.2010	<p>SEC ANNOUNCES \$178 MILLION DISTRIBUTION FROM FUND ESTABLISHED TO REMEDY DAMAGES FROM FRAUDULENT MARKET TIMING PRACTICES</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> The SEC announced that it completed the distribution of more than \$178 million to more than 1,000 mutual funds and annuities affected by improper market timing by a company and its numerous related entities. Part of this distribution is the result of Sarbanes-Oxley, which allows for the use of civil financial penalties to make injured investors whole. The distribution reportedly fully reimburses the mutual funds and annuities for their injury from the fraudulent market timing practices. Any remaining funds will be sent to the U.S. Treasury.
5.21.2010	<p>PROPOSED RULE CHANGE RELATING TO THE RESTATED CERTIFICATE OF INCORPORATION OF FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.</p> <p>(Link to Rule Filing)</p>	<ul style="list-style-type: none"> FINRA has proposed an amendment to its Restated Certificate of Incorporation in anticipation of an amendment to the General Corporation Law of the State of Delaware (the "DGCL") in order to maintain the status quo with respect to quorum requirements at meetings of its members. Currently, the DGCL provides that, absent a specification in the Certificate of Incorporation or Bylaws, one-third of the members constitute a quorum. FINRA's Restated Certificate of Incorporation and Bylaws do not specify the number of members needed for a quorum. The proposed amendment would amend the Certificate of Incorporation to specify that the presence of one-third of its members at a meeting constitutes a quorum.

DATE	TOPIC	SUMMARY
5.21.2010	<p>PROPOSED RULE CHANGE TO ADOPT FINRA RULE 4320 (SHORT SALE DELIVERY REQUIREMENTS) IN THE CONSOLIDATED RULEBOOK</p> <p>(Link to Rule Filing)</p>	<ul style="list-style-type: none"> • <i>FINRA has proposed a rule change to adopt NASD Rule 3210 (Short Sale Delivery Requirements) as FINRA rule 4320 in the consolidated FINRA rulebook.</i> • <i>Despite temporary Rule 204 passed in July 2009 that requires delivery of securities by the settlement date (or a close-out transaction the next day), Rule 4320 maintains NASD Rule 3210. As adopted, Rule 4320 requires, for certain non-reporting securities, that if securities have not been delivered after 13 days, registered clearing agency participants are required to close out the position by purchasing the outstanding security. After 13 days, and until the position is closed out, Rule 4320 prohibits registered clearing agency participants or any broker-dealer for which it clears transactions from effecting further short sales in the specified security without first borrowing the security.</i>

DATE	TOPIC	SUMMARY
5.26.2010	<p>SEC ADOPTS AMENDMENT TO MUNICIPAL SECURITIES DISCLOSURE</p> <p>(Link to News Release)</p>	<ul style="list-style-type: none"> • <i>The SEC adopted amendments to Rule 15c2-12 under the Exchange Act concerning the obligations of Participating Underwriters of municipal bonds. Currently, Rule 15c2-12 requires Participating Underwriters of municipal bonds to make a reasonable determination that issuing municipalities will disclose certain annual information and event notices before the Participating Underwriter purchases or sells primary offerings of covered municipal securities. (Note that the SEC is not authorized to directly require disclosure by issuing municipalities.)</i> • <i>The rule amendments are intended to increase transparency in the municipal securities market by broadening the scope of securities covered and the nature of the events that issuers must disclose, and by more tightly defining the time period in which the disclosures must be made. Specifically, the amendments will:</i> <ol style="list-style-type: none"> 1. <i>Eliminate VRDO Exemption. Rule 15c2-12(d) previously exempted certain primary offerings of Variable Rate Demand Obligations from the requirements. This exemption for VRDOs is eliminated in Amended Rule 15c2-12.</i> 2. <i>File Disclosure Notices Within 10 Days. Amended Rule 15c2-12 requires a Participating Underwriter to determine that a continuing disclosure agreement requires the municipality to submit notices within 10 business days after a particular event occurs.</i> 3. <i>Determine Materiality. Rule 15c2-12(b)(5)(i)(C) formerly required notice of certain important events only “if material.” Under Amended Rule 15c2-12, the materiality determination is largely eliminated, and now notices must be filed for a variety of events that the SEC has determined to be per se material including, among others, (i) default in payments, (ii) certain payments that signal financial difficulty, and (iii) a change in the security’s rating.</i> 4. <i>Disclose Tax Events. Amended Rule 15c2-12 provides specifically for disclosure of events that could negatively affect a bond’s tax exemption.</i> 5. <i>Disclose Additional Events. Amended Rule 15c2-12 requires disclosure of additional events under continuing disclosure agreements. The amended rule requires that the Participating Underwriter reasonably determine that a municipal issuer will provide continued disclosure of (i) tender offers; (ii) bankruptcy, insolvency, receivership or similar proceedings; (iii) material mergers, consolidations, and acquisitions; and (iv) appointment of a successor or additional trustee or change of name of trustee, if material.</i> • <i>Amended Rule 15c2-12 also reaffirms the SEC’s previous position that the federal securities laws require that underwriters review disclosure documents in a professional manner. These documents, in turn, often provide a reasonable basis for underwriters to make recommendations to clients concerning municipal securities.</i>

DATE	TOPIC	SUMMARY
5.26.2010	<p>FINRA PROPOSES NEW REGISTRATION CATEGORY, QUALIFICATION EXAMINATION AND CONTINUING EDUCATION REQUIREMENTS FOR OPERATIONS PROFESSIONALS</p> <p>(Link to Notice)</p>	<ul style="list-style-type: none"> • <i>FINRA is proposing to establish a new registration category, qualification examination and continuing education requirements for certain operations personnel.</i> • <i>Historically, federal and state law and self-regulatory organization rules, including NASD Rules 1021 and 1031, have required that individuals engaged in or supervising the securities or investment banking business of a member firm be “qualified” and “registered persons.” These requirements generally have applied to individuals with customer contact providing advice (sales persons and investment bankers) or effecting securities transactions (traders), and their supervisors. However, unregistered individuals who perform operations functions also play a role in the business of the firm, and their activities often have a meaningful connection to client funds, accounts and transactions.</i> • <i>The proposal would expand FINRA's registration requirements to include certain individuals who are engaged in, or supervising, activities relating to sales and trading support, and the handling of customer assets to enhance the regulatory structure surrounding a member firm's back-office operations.</i> • <i>The proposed Operations Professional registration category is aimed at covering those persons with decision-making and/or oversight authority in furtherance of the covered operations functions. Persons required to register under this proposal also would be subject to FINRA's continuing education requirements.</i> • <i>FINRA believes the new qualifications would provide reasonable assurance that individuals understand their professional responsibilities, including key regulatory and control themes, as well as the importance of identifying red flags that may harm a firm, its customers, the integrity of the marketplace or the public.</i>

DATE	TOPIC	SUMMARY
5.26.2010	<p>CONSOLIDATED AUDIT TRAIL</p> <p>(Link to Proposed Rule)</p>	<ul style="list-style-type: none"> • The SEC is proposing a new rule under the Exchange Act that would require SROs to establish a centralized repository system (“CAT”) for the collection of real-time order and execution data for all secondary market transactions in National Market System (“NMS”) equity securities and listed options. • Currently, each SRO maintains and uses its own “audit trail” system for the tracking and collection of order data for the markets it oversees. As a result, when regulators such as the SEC or SROs seek to gather and analyze cross-market data, they must first obtain the data from each relevant SRO and then piece together the different data sets before beginning to review and examine the data. • The proposed rule would require the SROs to develop and file a plan for a CAT system and to propose rule changes to require members to comply with the CAT system. The exchanges, FINRA and the SEC would have access to the information stored in the repository, which would include trade information, customer identification numbers, and unique identifying tags. The proposed rule would require the exchanges to incorporate their access to this information into their surveillance programs. • Within 90 days of the adoption of this proposed rule, FINRA and the SROs must submit their joint CAT system plan to the SEC. FINRA and the SROs will be required to provide CAT Data to the repository within one year after the CAT system becomes effective, and FINRA and SRO members will be required to provide CAT data to the repository within two years after the CAT system becomes effective. • Public comment on the proposal was due by August 6, 2010.
5.27.2010	<p>MONEY MANAGERS CHARGED WITH AFFINITY FRAUD</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • On May 26, 2010, the SEC charged a money manager and two of his associates with conducting a fraud and Ponzi scheme targeted toward Caribbean and African-American communities. • The defendants made claims of 4-20 percent investor returns through “risk-free” “stop-loss” trading techniques and made material misstatements about their experience and trading qualifications. • The complaint alleges the defendants acquired approximately \$800,000 from at least 20 investors of Caribbean and African-American descent living in New York City. The money manager defendant then allegedly dissipated all of the funds for personal use, such as private school tuition for his child, exotic trips and meals. • The SEC charged the defendants with violating sections 5(a), 5(c) and 17(a) of the 1933 Act; section 10(b) of the Exchange Act and Rule 10b-5 thereunder; section 7(a) of the 1940 Act; sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder; and with aiding and abetting violations of section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

DATE	TOPIC	SUMMARY
5.28.10	<p>SEC APPROVES AMENDMENTS TO TRADE REPORTING REQUIREMENTS FOR RESTRICTED EQUITY SECURITIES AND REVISIONS TO THE DEFINITION OF OTC EQUITY SECURITY</p> <p>(Link to Notice)</p>	<ul style="list-style-type: none"> • To address the elimination of PORTAL, effective June 28, 2010, FINRA member firms must report transactions in restricted equity securities traded under SEC Rule 144A to the OTC Reporting Facility (“ORF”) no later than 8 p.m. Eastern Time. • The definition of “OTC Equity Security” has been updated to mean “any equity security that is not an ‘NMS stock’ as defined by the SEC in Regulation NMS.” In addition, FINRA proposed conforming changes to maintain the exception for transactions in OTC securities reported on or through an exchange.

DATE	TOPIC	SUMMARY
JUNE 2010		
6.1.2010	<p>SEC FILES EMERGENCY INJUNCTION AGAINST A NEW YORK INVESTMENT ADVISER</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> On May 27, 2010, the SEC filed an emergency injunction in the Southern District of New York against an investment adviser and his business management firm alleging fraud and misappropriation of client funds. The SEC's complaint alleged that the defendant, through companies he controlled, misappropriated client funds in the amount of \$7.6 million through the abuse of the signatory power granted to him on client accounts. The complaint also alleged that the defendants held client assets in physical form in violation of custody rules as neither was a qualified custodian.
6.2.2010	<p>ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(B) OF THE EXCHANGE ACT AND SECTION 203(F) OF THE ADVISERS ACT, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> Respondent was a registered investment adviser affiliated with two different investment adviser/broker-dealers firms, and acquired control of approximately \$2.9 million from clients through various entities. The SEC alleged that while affiliated with the two investment advisers, Respondent had clients liquidate holdings and transfer their assets to a third investment adviser, controlled by Respondent. Respondent promised, among other things, easy access to the funds invested in the third investment adviser and in one instance, actually guaranteed returns to an investor. Respondent never invested any of the funds received from clients and used the funds for his own benefit. The SEC has ordered that pursuant to section 15(b)(6) of the Exchange Act and section 203(f) of the Advisers Act, Respondent is barred from any association with any broker, dealer, or investment adviser.
6.3.2010	<p>MULTIMILLION-DOLLAR PONZI SCHEME DEFENDANT CONVICTED OF MAIL AND WIRE FRAUD</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> The SEC announced June 3, 2010, after a three-day jury trial, that a Florida investment adviser was convicted of seven counts of mail fraud, six counts of wire fraud and one count of embezzlement from an employee benefit plan. The complaint alleged that the defendant received monies in the amount of \$5.2 million from 44 clients on the pretense of investing their funds in stocks, bonds and mutual funds. The complaint further alleged that the defendant misappropriated approximately \$2.4 million for personal use, including the purchase of a home, a sports car, and season tickets to local sporting events. Sentencing is scheduled for August 17, 2010, and the defendant faces a maximum sentence of 22 years incarceration and up to several million dollars in restitution.

DATE	TOPIC	SUMMARY
6.11.2010	<p>SEC CHARGES NEW YORK-BASED MONEY MANAGER AND FIRM TOUTING TIES TO BELGIAN ROYAL FAMILY</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • The SEC charged a money manager and his firm with fraud for promoting investments he claimed were tied to a royal family. • The money manager allegedly represented that he was related to the Belgian royal family and solicited investments in a vehicle known as the Bridge Loan Facility that supposedly pooled investor funds with millions of dollars of the royal family’s money, and then made safe short-term loans to companies. The money manager allegedly guaranteed that investors would receive annual returns of approximately 12 percent. Instead, the money manager allegedly used investors’ money for personal gain. • The SEC is seeking permanent injunctions, disgorgement of ill-gotten gains plus prejudgment interest and financial penalties.
6.14.2010	<p>FINRA AND NYSE EURONEXT COMPLETE AGREEMENT FOR FINRA TO PERFORM NYSE REGULATION’S MARKET OVERSIGHT FUNCTIONS</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • Effective immediately, FINRA will assume responsibility for performing market surveillance and enforcement functions currently conducted by NYSE Regulation, a subsidiary of NYSE Euronext. FINRA will assume regulatory functions for NYSE Euronext’s U.S. equities and options markets. • NYSE Euronext remains ultimately responsible for overseeing FINRA’s performance of regulatory services for the NYSE markets.
6.14.2010	<p>SEC, QUEBEC AUTORITÉ DES MARCHES FINANCIERS AND ONTARIO SECURITIES COMMISSION SIGN REGULATORY COOPERATION AGREEMENTS</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • The SEC, Quebec Autorité des Marchés Financiers (“AMF”) and Ontario Securities Commission (“OSC”) announced an arrangement to facilitate their supervision of regulated entities that operate across the U.S.-Canadian border. • The SEC, AMF and OSC recently executed a Memorandum of Understanding describing a framework for consultation, cooperation and information-sharing beyond securities enforcement matters. The Memorandum sets forth the terms and conditions for the sharing of information concerning regulated entities, such as broker-dealers and investment advisers, which operate in the United States, Quebec and Ontario.

DATE	TOPIC	SUMMARY
6.16.2010	<p>INVESTMENT COMPANY ADVERTISING: TARGET DATE RETIREMENT FUND NAMES AND MARKETING</p> <p>(Link to Proposed Rule)</p> <p>(Link to Release)</p>	<p>The SEC is proposing amendments to rule 482 and rule 34b-1 under the 1933 Act and 1940 Act, respectively. If adopted, the amendments will require the following:</p> <ul style="list-style-type: none"> • A target date retirement fund that includes the target date in its name must also disclose the fund's asset allocation at the target date immediately adjacent to the fund's name in marketing materials. • Marketing materials for target date retirement funds will need to include a table, chart, or graph indicating the fund's asset allocation over a period of time, along with a statement explaining the fund's final asset allocation. • Marketing materials will need to include a statement indicating that a target date retirement fund should not be selected based solely on age or retirement date, that it is not a guaranteed investment, and asset allocations may be subject to change. • The SEC is also proposing amendments to Rule 156 under the 1933 Act that will require marketing materials to provide clarification for statements and additional guidance for target date retirement funds and other investment companies that could be misleading.
6.17.2010	<p>SEC TO PUBLISH FOR PUBLIC COMMENT PROPOSED RULES FOR CLEARLY ERRONEOUS TRADES</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • The national securities exchanges and FINRA are filing proposed rules to clarify the process for breaking erroneous trades. The rules address when and at what prices a trade would be broken. • The proposal is a series of thresholds for breaking trades when prices diverge from the defined standard known as the "reference price." Current rules do not have a clearly defined standard.
6.22.2010	<p>CIVIL CHARGES FILED AGAINST AN INVESTMENT ADVISER, ITS FOUNDER AND AFFILIATED BROKER-DEALER FOR MISMANAGEMENT OF MULTI-BILLION-DOLLAR COLLATERALIZED DEBT OBLIGATIONS (CDOs)</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • On June 21, 2010, the SEC filed a civil action in the Southern District of New York against an investment adviser, the founder and affiliated broker-dealer alleging fraud and mismanagement of multi-billion-dollar CDOs. • The complaint alleged that the defendants engaged in fraudulent practices and misrepresentations that caused the CDOs to lose millions while the defendants collected tens of millions in advisory fees and undisclosed profits. According to the complaint, the defendants knowingly and repeatedly paid inflated prices for securities in order to generate profits for the investment adviser and protect other clients from realizing losses. • The complaint further alleged that the defendants made misrepresentations to investors and trustees, made numerous prohibited investments without proper trustee approval, and inflated the prices of the securities in order to obtain higher advisory fees. • The SEC's complaint seeks an order requiring the defendants to pay civil penalties and disgorgement of illegal profits plus interest.

DATE	TOPIC	SUMMARY
6.24.2010	<p>FINRA FINES PHOENIX DERIVATIVES GROUP AND EIGHT BROKERS AT FIVE FIRMS A TOTAL OF \$4.3 MILLION FOR IMPROPER COMMUNICATIONS ABOUT CUSTOMERS' INTERDEALER BROKERAGE RATE NEGOTIATIONS</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • FINRA fined a brokerage firm and eight brokers for improper communications regarding customers' proposed brokerage rate reductions. • The brokers were supposedly involved in communications with personnel at other interdealer brokerage firms and were improperly attempting to influence those firms and individuals. The eight brokers communicated with personnel at other interdealer brokers about their reactions to customers' proposed rate reductions and statements consenting broker responses or counterpositions to the proposed rate reductions. Certain brokers' communications with out interdealer brokers also included discussions about creating identical or similar individual counter-proposals to rate-reduction requests. • The brokers settled the matter without admitting or denying the allegations.
6.28.2010	<p>ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE EXCHANGE ACT, SECTIONS 203(F) AND 203(K) OF THE ADVISERS ACT, AND SECTION 9(B) OF THE 1940 ACT, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • Respondent was the Chief Compliance Officer of a registered investment adviser in charge of the day-to-day operations of the investment adviser and a private pooled investment fund. • Respondent used approximately \$376,000 of fund assets for personal expenses and expenses of the investment adviser. Respondent also overpaid two investors who requested redemption of their assets, in an effort to hide the poor performance of the fund. Respondent instructed the bookkeeper of the fund to deduct the overpayment from the accounts of Respondent's family members who were also investors in the fund. • In addition, the fund did not provide financial statements to investors for approximately two years. <p>The SEC has ordered that:</p> <ul style="list-style-type: none"> • Respondent cease and desist from committing or causing any violations and any future violations of section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder; and be barred from association with any investment adviser.
6.29.2010	<p>SEC CHARGES INVESTMENT ADVISER AND ITS PRINCIPAL WITH BREACH OF FIDUCIARY DUTIES AND FRAUD</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • On June 28, 2010, the SEC filed a civil action in the Central District of California against an investment adviser and its owner alleging fraud and breach of fiduciary duty. • The complaint alleged that the defendant invested approximately \$6.9 million of client funds in unsuitable investments and failed to disclose the risks of such investments. • The defendants allegedly knowingly invested the clients' monies in unsecured promissory notes contrary to their risk tolerances, which resulted in almost total losses to the clients. • The SEC's complaint charges the defendants with violating section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and sections 206(1) and 206(2) of the Advisers Act. The SEC is seeking disgorgement of the defendant's illegal profits plus interest, and monetary penalties.

DATE	TOPIC	SUMMARY
6.29.2010	<p>FINRA HEARING PANEL BARS BROKER FOR MANIPULATING STOCK PRICE DOWNWARD TO BENEFIT HEDGE FUND CLIENT</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • A FINRA hearing panel has barred a former broker from the securities industry. He allegedly manipulated stock prices to enrich a hedge fund client, himself and his family. • Supposedly, the broker’s trading practices deliberately drove down a stock in order to drive up the value of the contingent value rights (“CVR’s”) on that stock. For every penny that the price of the stock dropped below \$2.90, the value of the broker’s hedge fund’s CVR’s increased by \$185,000. • The panel’s conclusion was that the objective of the broker’s selling strategy was to drive down the price of the shares rather than to obtain the best price.
6.29.2010	<p>SEC CHARGES TWO CANADIANS WITH FRAUDULENTLY TOUTING PENNY STOCKS ON A WEBSITE, FACEBOOK AND TWITTER</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • The SEC obtained an emergency asset freeze against a Canadian couple and two companies under their control for fraudulently promoting penny stocks through their website, Facebook and Twitter. • The couple is charged with promoting the stocks at the same time that they were profiting by selling the stocks. They also allegedly did not disclose the full amount of compensation they received from such sales. • The SEC is seeking disgorgement of ill-gotten gains plus prejudgment interests and a financial penalty.
6.30.2010	<p>SEC ADOPTS NEW MEASURES TO CURTAIL PAY-TO-PLAY PRACTICES BY INVESTMENT ADVISERS</p> <p>(Link to Release)</p>	<ul style="list-style-type: none"> • The SEC adopted new rules to curtail investment advisers from participating in “pay to play” practices. • Under the new rules (i) an investment adviser who makes a political contribution to an elected official who is in a position to influence the selection of the adviser is prohibited for two years from providing advisory services compensation from any such appointment by the elected official, (ii) advisers are prohibited from soliciting campaign contributions from others for an official who is in a position to influence the selection of an adviser, and (iii) advisers are prohibited from paying a third party to solicit a government client on behalf of the adviser unless that third party is subject to similar pay-to-play restrictions. • The rules become effective 60 days after publication in the Federal Register.