Investment Services Regulatory Update

June 1, 2011

NEW RULES, PROPOSED RULES AND GUIDANCE

SEC Adopts Whistleblower Rules under the Dodd-Frank Act

On May 25, 2011, the SEC adopted final rules to implement the whistleblower provisions of the Dodd-Frank Act. Regulation 21F under the Exchange Act expands the SEC's ability to reward whistleblowers who alert the SEC to federal securities law violations. Pursuant to the requirements of Regulation 21F, the SEC will pay awards of between 10% and 30% of the monetary sanctions that the SEC and other authorities are able to collect to whistleblowers who voluntarily provide the SEC with original information about a possible violation of federal securities laws that leads to a successful enforcement action with monetary sanctions exceeding $1 million. The SEC will aggregate smaller actions arising from the same set of facts when determining whether reported violations meet the $1 million threshold.

Under Regulation 21F, only a natural person, either alone or jointly with others, is eligible to be a whistleblower. Regulation 21F generally allows for whistleblower anonymity and otherwise provides that the SEC will not reveal a whistleblower's identity, except under certain circumstances. Anonymous whistleblowers must be represented by an attorney who is required to provide certification as to the whistleblower's identity and the completeness and accuracy of the whistleblower's submission. In order to receive an award as a whistleblower, the following requirements apply:

- the whistleblower must voluntarily provide the SEC with the information,
- the whistleblower must provide original information based on his/her independent knowledge or analysis, and
- the whistleblower's information must lead to successful enforcement by the SEC of a federal court or administrative action, which could be satisfied: (1) if the information was sufficiently specific, credible and timely to cause the staff to (a) commence an examination, (b) open an investigation, (c) reopen an investigation that the SEC had closed, or (d) inquire concerning different conduct as part of a current examination or investigation and the SEC's successful enforcement was based on the information, (2) if the conduct was already under investigation when the information was submitted, but the information significantly contributed to the success of the action, or (3) if the whistleblower reported information through the company's internal reporting system and the company reported the information to the SEC, leading to successful enforcement.

Regulation 21F does not require whistleblowers to report possible securities law violations through a company's internal reporting system before submission to the SEC in order to be eligible for an award; however, the SEC adopted certain provisions in an effort to incentivize whistleblowers' utilization of internal compliance and reporting systems. In determining the amount of the award, a whistleblower's participation in a company's internal compliance and reporting system is a factor that can increase the amount of the award, while interference with the internal compliance and reporting system can decrease the amount. In addition, when a possible violation is reported to the SEC by a company based on information provided by a whistleblower through the company's internal compliance and reporting system, all the information provided by the company to the SEC in any resulting investigation will be attributed to the whistleblower, potentially increasing the amount of the whistleblower's award.

Regulation 21F provides that culpable whistleblowers may not recover awards and are not given amnesty. Additionally, individuals whose job descriptions require them to investigate and uncover corporate wrongdoing generally may not receive an award.

Regulation 21F becomes effective 60 days after its publication in the Federal Register.

SEC Proposes Adjustment to Dollar Amount Thresholds and Rule Amendment Relating to Investment Adviser Performance Fees

On May 10, 2011, the SEC gave notice of its intent to issue an order that would adjust for inflation the dollar amount tests for determining if a person is a "qualified client" for purposes of Rule 205-3 under the Advisers Act, which permits investment advisers to charge a performance fee to "qualified clients." Currently, a person would be considered a "qualified client" for purposes of Rule 205-3 if the person had at least $750,000 under the management of the adviser immediately after entering into the advisory contract or the adviser reasonably believed that the person had a net worth of more than $1.5 million at the time the advisory contract was entered into. The SEC's order will increase these thresholds to $1 million and $2 million, respectively. In addition to stating its intent to adjust the dollar amount tests for determining if a person is a "qualified client," the SEC also proposed further amendments to Rule 205-3 to: (1) provide that the SEC will adjust the dollar amount thresholds for inflation approximately every five years; (2) exclude the value of a person's primary residence for purposes of determining a person's net worth under the Rule; and (3) clarify that the amended Rule requirements would apply to new contractual arrangements and not to existing contractual arrangements, except that new parties to existing contracts would be subject to the amended Rule requirements.

Comments on the proposals are due by July 11, 2011. The SEC intends to issue the order adjusting the dollar amount tests of Rule 205-3 by July 21, 2011 in accordance with the requirements of the Dodd-Frank Act.

FINRA Proposes New Rules Governing Fund Cash Compensation Disclosure

On May 3, 2011, the SEC published for comment a proposal by FINRA to adopt NASD Rule 2830 as FINRA Rule 2341 in the consolidated FINRA rulebook and to make amendments to FINRA Rule 2341. As amended, Rule 2341 would require FINRA members to make new disclosures to investors purchasing fund shares relating to the member's arrangements to receive "cash compensation" from the fund or its affiliates.

Rule 2341 defines "cash compensation" to include any "discount, concession, fee, service fee, commission, asset-based sales charge, loan, override or cash employee benefit received in connection with the distribution of investment company securities." FINRA's proposed amendments to Rule 2341 clarify that "cash compensation" includes revenue sharing payments regardless of whether payments are based upon the amount of fund assets that a member's customers hold, the amount of fund shares the member has sold, or any other amount if the payment is related to the sale and distribution of the fund's shares. The current rule requires "cash compensation" arrangements to be disclosed in a fund's prospectus and SAI. Amended Rule 2341 would no longer require prospectus and SAI disclosure.

Under the proposed amendments to Rule 2341, if a FINRA member has received, or entered into an arrangement to receive, cash compensation from an offeror (i.e., a fund, its adviser, a fund administrator, fund underwriter or any of their affiliated persons) other than sales charges and fees disclosed in the prospectus fee table, the member must provide: (1) prominent disclosure that the member has received, or has entered into an arrangement to receive, cash compensation, in addition to the sales charges/service fees disclosed in the prospectus (including fees for services such as sub-transfer agency and sub-administration fees); (2) prominent disclosure that the additional cash compensation may influence the selection of funds that the customer may be offered or recommended; and (3) a prominent reference to a web page or toll-free number where the investor can obtain detailed additional information regarding these arrangements. This additional detailed information regarding cash compensation arrangements must include: (a) a narrative description of the additional cash compensation received from offerors, or to be received pursuant to an arrangement entered into with an offeror, and any services provided, or to be provided, by the member to the offeror or its affiliates for this additional cash compensation; (b) if applicable, a narrative description of any preferred list of funds to be recommended to customers that the member has adopted as a result of the receipt of additional cash compensation, including the names of the funds on this list; and (c) the names of the offerors that have paid, or entered into an arrangement with the member to pay, this additional cash compensation to the member. Each FINRA member would be required to update this information within 90 days of December 31st of each year, or when any of the information becomes materially inaccurate.

The disclosures required under amended Rule 2341 would have to be provided to new customers prior to the time that the customer first purchases shares of a fund through the FINRA member firm. Existing customers would have to receive the information required under amended Rule 2341 by the later of either: (a) 90 days after the effective date of the rule change or (b) prior to the time that the existing customer purchases shares of a fund after the rule's effective date (other than purchases pursuant to reinvestment of dividends or capital distributions through automatic investment plans).

If approved by the SEC, the proposed amendments to Rule 2341 would become effective on June 23, 2011 or such later date designated by the SEC or consented to by FINRA. Following the effective date, FINRA, within 90 days, will publish a *Regulatory*

Notice setting the compliance date for amended Rule 2341, which will be no later than one year from the effective date.

FINRA Proposes New Rule Regarding Outsourcing to Third-Party Service Providers

On March 29, 2011, FINRA proposed Rule 3190 to clarify the scope of the obligations and responsibilities of its member firms with respect to outsourcing arrangements. In addition to formalizing the current guidance and restrictions on outsourcing arrangements, the new rule would subject clearing and carrying firms to additional requirements and explicitly treat affiliates of member firms in the same manner as any other third-party service provider.

As proposed, Rule 3190 provides that a member firm outsourcing functions or activities related to its business as a broker-dealer is not relieved of its obligation to comply with all applicable securities laws and regulations and prohibits member firms from delegating their responsibilities for, or control over, such functions or activities being performed by third parties. The proposed rule further requires member firms to establish and maintain a supervisory system and written procedures for any outsourced functions, including ongoing due diligence measures, to ensure that arrangements with third parties are reasonably designed to achieve compliance with applicable securities laws and regulations. FINRA member firms that clear or carry customer funds and securities would be subject to additional requirements under the proposed rule. Clearing or carrying member firms would be required to limit certain activities to persons subject to the direct control and supervision of the member firm, have additional procedures to oversee third-party service providers and notify FINRA of their outsourcing arrangements.

SEC Proposes Rule Amendments to Remove Credit Rating References From Money Market Fund and Other Rules

On March 3, 2011, the SEC proposed various rule and form amendments under the 1940 Act in response to the requirements of the Dodd-Frank Act that any references to or requirements regarding credit ratings in the SEC's regulations be removed and replaced with other standards of creditworthiness. Specifically, the SEC proposes to remove the references to credit ratings in Rules 2a-7 and 5b-3 and replace them with alternative standards of creditworthiness, eliminate credit ratings disclosures in Form N-MFP and remove from Forms N-1A, N-2 and N-3 the requirement that credit ratings by a nationally recognized statistical rating organization ("NRSRO") be used when portraying credit quality in shareholder reports.

The proposed amendments to Rule 2a-7 would remove references to credit ratings from: (1) the determination of "eligible securities" for money market funds and whether such securities are characterized as "first tier securities" or "second tier securities," (2) the credit quality standards for securities with a conditional demand feature, (3) the monitoring requirements in connection with NRSRO ratings downgrades, and (4) the "stress testing" requirements.

As proposed, the definition of "eligible security" would be amended to remove references to credit ratings and an eligible security would be a security that the board or its delegate determines presents minimal credit risks based on factors pertaining to credit quality and the issuer's ability to meet its short-term financial obligations. For purposes of determining whether a security would be a "first tier security," the board or its delegate would have to conclude that the security's issuer has the "highest capacity to meet its short-term financial obligations." A "second tier security" would continue to be an eligible security that is not a first tier security. According to the SEC, an issuer of a first tier security would satisfy the SEC's proposed standard if it displays "an exceptionally strong ability to repay its short-term debt obligations and the lowest expectation of default." In turn, an issuer of second tier securities would satisfy the SEC's proposed standard if it displays "a very strong ability to repay its short-term debt obligations and a very low vulnerability to default."

With respect to securities with a conditional demand feature, the proposed rule amendments would replace references to NRSRO ratings with a requirement that a board or its delegate determine that the underlying security is of high quality and subject to low credit risk. Under the proposed rule amendments, the fund's board or its delegate would be required to reassess whether a security continues to pose minimal credit risk if the board or its delegate becomes aware of any credible information regarding a security or its issuer suggesting that the security is no longer a first tier or second tier security. The SEC indicated that, to satisfy the proposed standard, a fund's adviser would be required to exercise reasonable diligence in keeping abreast of new information about a portfolio security that the adviser believes to be credible. Finally, the proposed amendments to Rule 2a-7 would remove references to credit rating downgrades from the "stress test" requirements by replacing the hypothetical event of a downgrade with a new hypothetical event of "an adverse change in the ability of a portfolio security issuer to meet its short-term financial obligations." Under the proposed amendments, money market funds could continue to test their portfolios by treating a downgrade as a credit event that might adversely affect the value or liquidity of the portfolio security.

In addition to the proposals related to money market funds, the SEC also proposed amendments to Rule 5b-3 under the 1940 Act to remove references to credit ratings with respect to securities collateralizing repurchase agreements. Under the proposed amendments, a fund's board or its delegate would be required to determine at the time the repurchase agreement is entered into that any collateral consisting of non-governmental securities is "issued by an issuer that has the highest capacity to meet its financial obligations" and is "sufficiently liquid [such] that [it] can be sold at approximately [its] carrying value in the ordinary course of business within seven calendar days."

OTHER NEWS

FASB Issues Accounting Standards Update on Fair Value Measurement

In May 2011, the Financial Accounting Standards Board released an Accounting Standards Update to *Fair Value Measurement (Topic 820)* that amends certain fair value measurement and disclosure requirements. The Update is a culmination of the work performed by FASB and the International Accounting Standards Board to develop common requirements for measuring fair value and for disclosing information about fair value measurements in accordance with U.S. GAAP and International Financial Reporting Standards. The Update reflects a number of amendments to the requirements for measuring fair value and the application of such fair value measurements. According to the Update, many of those amendments are not expected to significantly affect current practices for reporting entities.

The Update also reflects amendments to certain fair value disclosure requirements. In particular, a reporting entity will be required to disclose the amount of *any* transfers between Level 1 and Level 2 of the fair value hierarchy. (Currently, only the amounts of *significant* transfers between Level 1 and Level 2 are required to be disclosed.) Additionally, with respect to Level 3 fair value measurements, a reporting entity will be required to:

- disclose the quantitative information about the significant unobservable inputs used in the fair value measurement (however, no disclosure will be required if the quantitative unobservable inputs were not developed by the reporting entity (e.g., when the reporting entity uses third-party pricing information without adjustment));

- provide a description of the valuation process used by the reporting entity (including, for example, how the entity decides its valuation policies and procedures and analyzes changes in fair value measurements from period to period); and

- provide a narrative description of (1) the sensitivity of a fair value measurement to changes in unobservable inputs, if a change in those inputs might result in a significantly different fair value measurement, and (2) any interrelationships between those inputs and other unobservable inputs used in the fair value measurement and how such interrelationships might magnify or mitigate the effect of changes in the unobservable inputs on the fair value measurement.

The amendments in the Update are effective during interim and annual periods beginning after December 15, 2011.

SEC to Consider Extending Compliance Deadlines for Mid-Sized and Private Advisers until First Quarter 2012

In a letter dated April 8, 2011 to David Massey, President of the North American Securities Administrators Association, Robert E. Plaze, Associate Director of the SEC's Division of Investment Management, stated the staff's belief that the SEC will meet its July 21, 2011 rulemaking deadline to implement two provisions of the Dodd-Frank Act related to investment adviser registration but that the SEC will consider extending until the first quarter of 2012 the compliance deadlines for advisers affected by the provisions.

Under Section 410 of the Dodd-Frank Act, mid-sized advisers (those with $25 million to $100 million of assets under management) will have to withdraw from registration with the SEC and register with one or more states. According to the letter, the IARD system must be reprogrammed to accept the transition filings of mid-sized advisers, which could take until the end of 2011. Accordingly, the SEC may extend until the first quarter of 2012 the deadline for mid-sized advisers to withdraw from the SEC and register with the appropriate states.

As of July 21, 2011, Section 403 of the Dodd-Frank Act repeals Section 203(b)(3) of the Advisers Act (the "private adviser exemption"), which currently provides an exemption from SEC registration to any adviser who has less than 15 clients and who does not advise a registered investment company. The letter states that given the time required for advisers who have been relying on this exemption to register and come into full compliance with the Advisers Act, the SEC may postpone until the first quarter of 2012 the date by which private advisers must be registered with the SEC and in compliance with the obligations of a registered adviser.

SEC Staff Issues No-Action Letter on Funds Placing Assets in the Custody of Credit Default Swap Clearinghouse

On March 1, 2011, the SEC staff issued a no-action letter to ICE Trust U.S. LLC providing that the Division of Investment Management would not recommend enforcement action under Section 17(f) of the 1940 Act against a fund if the fund or its custodian maintains certain assets in the custody of ICE Trust or its members for purposes of meeting ICE Trust's margin requirements for credit default swap ("CDS") contracts that are cleared by ICE Trust.

ICE Trust acts as a central clearing party for CDSs by accepting the rights and obligations under eligible CDS transactions entered into by its members. Upon its acceptance of a CDS transaction, ICE Trust becomes the seller of credit protection with respect to the CDS purchaser and the purchaser of credit protection with respect to the CDS seller.

Section 17(f) and the rules thereunder generally require funds to maintain their assets only with certain qualified custodians, including banks, in order to ensure they are properly safeguarded against misappropriation and other risks. The staff has previously indicated that a fund's initial margin payments on futures contracts are fund assets subject to the requirements of Section 17(f). While ICE Trust falls within the definition of a bank under Section 2(a)(5) of the 1940 Act, it would be holding a fund's margin payments at least partially for the benefit of its clearing operations and not purely for custodial purposes.

Rule 17f-6 permits a fund, subject to certain requirements, to deposit its initial margin in connection with exchange-traded futures contracts and commodity options with a futures commission merchant ("FCM"), rather than a qualified custodian. The staff notes that Rule 17f-6 does not address CDS transactions, but ICE Trust's clearing structure is similar to the arrangements of FCMs and derivatives clearing organizations that maintain custody of fund assets in compliance with the rule.

The staff noted ICE Trust's argument that the custody principles underlying Section 17(f) are supported by ICE Trust's requirements when its members deal with non-members, including funds. These requirements include members segregating assets held on behalf of non-members, maintaining adequate capital and liquidity, and maintaining adequate books and records. The staff also noted the SEC's prior statement that facilitating the establishment of central counterparties for CDS transactions can help reduce counterparty risk and mitigate potential systemic impact.

The no-action relief is subject to several representations made by ICE Trust and its members, including complying with certain recordkeeping and reporting requirements. Each ICE Trust member must be in compliance with the ICE Trust rules and all laws and regulations with respect to CDS transactions. Each member must provide disclosure that insolvency laws may affect a fund's ability to recover assets in any insolvency proceeding of a member. Each member must also promptly transfer assets to the omnibus margin account, provide an annual self-assessment, and provide the SEC with information upon request.

The no-action relief granted by the staff is temporary and expires on July 16, 2011, which is the date the subtitle of the Dodd-Frank Act regarding regulation of security-based swap markets becomes effective. The staff has granted similar no-action relief to LCH. Clearnet Limited and the Chicago Mercantile Exchange relating to the custody of assets for the purposes of meeting each entity's margin requirements for interest rate swaps. Like the relief granted to ICE Trust, the relief granted by these no-action letters is temporary, also expiring on July 16, 2011.

LITIGATION

Court Rules in Favor of Eaton Vance in Lawsuit Over Payments to Distributors

On March 30, 2011, the U.S. District Court for the District of Massachusetts granted a motion to dismiss all claims in *Weiner v. Eaton Vance Distributors, Inc.* for alleged violations of the 1940 Act and the Advisers Act. The lawsuit, which was a derivative action on behalf of Eaton Vance Municipals Trust, challenged the use of 12b-1 fees to compensate Eaton Vance Distributors and other broker-dealers for the distribution of the Trust's shares. Under the federal securities laws, broker-dealers are generally prohibited from receiving asset-based compensation unless they are registered as an investment adviser. Because 12b-1 fees are based on a percentage of a fund's net assets, the plaintiff argued that payment of 12b-1 fees to Eaton Vance Distributors, which is not a registered investment adviser, and to other selling broker-dealers not registered as investment advisers constituted asset-based compensation in violation of the Advisers Act. The plaintiff claimed that, by authorizing these payments, the Trust's board had breached its fiduciary duty under Section 36(a) of the 1940 Act failed to comply with the oversight responsibilities of Rule 38a-1 thereunder. These violations, in turn, served as the plaintiff's basis for seeking to void the distribution agreement with Eaton Vance Distributors under Section 47(b) of the 1940 Act.

In its decision, the court held that the plain language of Section 47(b) creates the presumption that a private right of action to void a contract thereunder only applies when the contract involves a violation of "substantive legal obligations" found in the 1940 Act. The court ultimately found that the plaintiff did not allege any violations of Section 36(a) or Rule 38a-1 that would provide a basis for voiding the distribution agreement under Section 47(b). In addition, the court found that the Trust's payment of 12b-1 fees did not automatically constitute compensation that would require Eaton Vance Distributors and the other broker-dealers to register under the Advisers Act, as it would depend on the facts and circumstances of the services being paid for by the 12b-1 fees. Moreover, the court stated that even if the 12b-1 fees constituted asset-based compensation under the Advisers Act, the Trust's distribution agreement would not violate the Advisers Act because it is the responsibility of the broker-dealer receiving such compensation to ensure compliance with its obligation to register as an investment adviser.

The dismissal of the *Eaton Vance* case followed the result in *Smith v. Franklin Templeton Distributors, Inc.*, a case based on similar allegations in which the U.S. District Court for the Northern District of California granted the defendant's motion to dismiss. A similar action is still pending against the distributor of the Oppenheimer Funds.

ENFORCEMENT ACTIONS

FINRA Fines Wells Fargo for Delayed Prospectus Deliveries

On May 5, 2011, FINRA announced that it fined Wells Fargo Advisors LLC $1 million for its failure to deliver prospectuses to customers purchasing mutual funds in 2009 and for delays in reporting material information, including arbitrations and complaints, about its current and former representatives. Federal securities laws require that a prospectus be delivered to a customer within three days of the purchase of a security. FINRA found that during 2009, Wells Fargo delivered late prospectuses to more than 900,000 customers, with delays ranging between one and 153 days. Moreover, FINRA determined that Wells Fargo failed to take any corrective action despite receiving reports from a third party service provider that prospectuses were not being timely delivered.

FINRA also found that Wells Fargo had failed to promptly report changes to or update information contained in its representatives' applications for registration (Form U-4) and representatives' termination notices (Form U-5). Specifically, FINRA found that from July 1, 2008 to June 30, 2009, 8.1% of the Form U-4 amendments and 7.6% of the Form U-5 amendments filed by Wells Fargo were not timely filed.

SEC Charges Brokerage Executives with Failing to Protect Confidential Customer Information

On April 7, 2011, the SEC charged Frederick O. Kraus, David C. Levine and Mark A. Ellis for failing to protect confidential customer information in violation of Regulation S-P. Messrs. Kraus, Levine and Ellis were the former president, national sales manager and chief compliance officer, respectively, of GunnAllen Financial Inc., a former Tampa, Florida-based registered broker-dealer.

According to the SEC, Mr. Levine, with the approval of Mr. Kraus, took information from more than 16,000 GunnAllen accounts to his new employer as GunnAllen wound down operations in April 2010. The SEC found that Mr. Levine downloaded customer names, addresses, account numbers and account values to a portable thumb drive, and provided the records to his new employer after resigning from GunnAllen. Since account holders found out about the information transfer after the fact and were not provided opt-out procedures, the SEC found that the record transfer violated Regulation S-P. Messrs. Kraus and Levine agreed to pay civil penalties of $20,000 each.

The SEC also found that Mr. Ellis, as CCO, aided and abetted and caused GunnAllen's violations of Regulation S-P as a result of his failure to revise or supplement GunnAllen's policies and procedures for safeguarding customer information even after several serious securities breaches between July 2005 and February 2009. According to the SEC, GunnAllen's policies and procedures to protect customer information were vague and did little more than recite a provision of Regulation S-P known as the "safeguard rule." Mr. Ellis agreed to pay a $15,000 civil penalty.

SEC Charges Adviser with Misrepresentations

On April 7, 2011, the SEC instituted cease-and-desist proceedings against Delta Global Advisors, Inc., a registered investment adviser, and its principal and control person, Charles P. Hanlon, with making materially misleading statements and omissions. According to the SEC, Delta made misrepresentations to existing and prospective investors regarding its eligibility for SEC registration, including that it served as an investment adviser to a registered investment company and managed as much as $1.5 billion in assets, when in fact, Delta was not an adviser to a registered investment company and at times managed no more than $9 million in assets. In addition, the SEC alleged that Delta failed to disclose its poor financial condition, a default judgment entered against it in a breach of fiduciary duty lawsuit brought by a client, and that Mr. Hanlon had been the subject of disciplinary action by FINRA. The SEC also alleged that Delta did not disclose its poor financial condition to clients, revise its Form ADV to accurately reflect assets under management or deregister with the SEC, after being requested to do so by the staff of the SEC.

SEC Charges Adviser and Officers for Undisclosed Financial Benefits

On March 14, 2011, the SEC charged JSK Associates, Inc., Jerome Keenan, JSK's president, and Paul Dos Santos, JSK's vice president, with failing to disclose to their advisory clients the financial benefits received as a result of cash held in client advisory accounts and from fixed-income trades on a riskless principal basis with advisory clients.

The SEC alleged JSK failed to disclose to advisory clients that, during 2006 through 2010, JSK's affiliated broker-dealer, International Equity Services, Inc. ("IES"), received a financial benefit in the form of payments based on cash holdings in advisory client accounts. According to the SEC, IES had clearing and custodial arrangements with Southwest Securities, Inc. ("SWS") and was entitled to receive payments from SWS equal to 0.25% of the average credit balances for JSK's advisory client accounts that were invested in the AMR Money Market Fund and the average balance of uninvested cash in JSK's advisory clients' brokerage accounts. According to the SEC, JSK disclosed that IES might receive forms of compensation such as clearing and processing fees, trail commissions and other revenues which broker-dealers normally receive in the course of doing business, but failed to disclose that compensation based on JSK's advisory clients' uninvested cash and certain money market fund balances would be received by IES.

The SEC also alleged that, during the same period, JSK, through IES, engaged in hundreds of fixed-income transactions on a riskless principal basis involving mark-ups and mark-downs with advisory clients without providing prior written disclosure to, or obtaining consent from, the clients. JSK, Keenan and Santos were ordered to pay civil money penalties of $60,000, $10,000 and $10,000, respectively, and to pay disgorgement, on a joint and several basis, of $60,350 and prejudgment interest of $3,805.

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