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White Collar Roundup - February 2013

FINRA: Referring Fraud to All the Right Places

The Financial Industry Regulatory Authority (FINRA) [reported](#) on its success in referring allegedly fraudulent conduct to the SEC and other law-enforcement agencies. The statement reported that in 2012, the agency obtained \$68 million in fines and \$34 million in restitution for aggrieved customers. The agency also stated it filed 1,541 disciplinary actions and made 347 referrals of insider trading to the U.S. Securities and Exchange Commission (SEC) and other law-enforcement agencies in 2012.

Are Foreign Executives Subject to FCPA Suits in the U.S.?

At a hearing on a motion to dismiss an SEC Foreign Corrupt Practices Act (FCPA) action against a foreign company and its executives, the SEC argued jurisdiction was proper because the company's stock is listed on U.S. exchanges, the company files with the SEC and the foreign executives purposefully directed conduct at the United States, namely, "conscious, direct action toward falsifying an SEC filing." The executives, Hungarian nationals who resided and worked outside the United States during the period alleged in the complaint, argued that they had insufficient ties to the United States and that the alleged scheme to bribe officials in Macedonia and Montenegro occurred entirely overseas. The motion is currently under advisement in the U.S. District Court for the Southern District of New York. To read more about the issues in this case, click [here](#).

Keeping Track of the Whistleblowers

The Office of Inspector General of the SEC (OIG) issued a [report](#) on the commission's whistleblower program. The OIG generally commended the SEC on the program but made two recommendations for improvement, which the SEC has committed to implementing. First, the OIG recommended the Office of Market Intelligence assess the manual triage process and establish performance metrics to measure the performance of the process. Second, the OIG recommended the Office of the Whistleblower assess the key performance measures in its internal control plan and develop appropriate performance metrics. All told, it appears the whistleblower program will continue in much the same fashion with these two minor tweaks.

Opening the Tap

The U.S. Court of Appeals for the Second Circuit affirmed the conviction of a securities fraudster in a summary order in [United States v. Fleishman](#). The summary order dismissed each of the defendant's arguments with little or no analysis, including his attack on the legality of the government's wiretap evidence. Given the importance of that issue in the pending appeal of Raj Rajaratnam, who also attacked the use of wiretaps in his case, some thought the Fleishman appeal could be a bellwether. But given the short shrift paid to the issue (and the dissimilarity of the attack on the wiretaps), nothing can really be gleaned from this order.

Homing In on Private Equity

The SEC is stepping up enforcement in the private equity space, according to a [speech](#) by Bruce Karpati, chief of the SEC Enforcement Division's Asset Management Unit. Karpati lauded the SEC for its efforts in this area and noted that in the last few years the Enforcement Division has brought more cases involving private equity firms and hedge funds. And he hinted there are more cases to come, especially "private equity cases, as well as hedge fund and registered fund cases with private equity-like issues." Karpati explained the SEC has "identified enough misconduct to know that enforcement oversight of the private equity industry is important for investor protection."

Running (Up) Numbers on Remand

A remand for resentencing does not authorize the sentencing court to order increased restitution, according to the Fourth Circuit. In [United States v. Pileggi](#), the defendant had been sentenced to 600 months of incarceration and was ordered to pay \$4.2 million in restitution for his participation in a fraudulent sweepstakes scheme. The defendant appealed his prison sentence, and the Fourth Circuit vacated his sentence and remanded for resentencing. On remand, the district court sentenced him to 300 months' incarceration and ordered him to pay \$20.7 million in restitution. The defendant appealed the restitution increase. The Fourth Circuit agreed, vacating the new restitution award and holding that the government had waived its appeal of the issue after the original sentencing. In short, the court ruled "the [original Fourth Circuit] opinion limited the district court to correcting only the incarceration term of Pileggi's sentence."

The *USS Constitution* and Other Miscellany from the Chief Justice

Opening with an homage to "[Old Ironsides](#)," Chief Justice John Roberts' [2012 Year-End Report on the Federal Judiciary](#) detailed the state of the federal courts. He emphasized the judiciary's cost-cutting successes and stressed the need for judicial vacancies to be filled in short order to allow the judiciary to continue to work effectively. The chief justice paid special tribute to the Honorable Mark Kravitz of the U.S. District Court for the District of Connecticut, who passed away last year after a battle with [Lou Gehrig's disease](#).