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Bridging the Weeks by Gary DeWaal: February 4 – February 15 and February 19, 2019 (Cryptosecurities, Cryptocurrencies, Examination Priorities Redux) [Video]

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Last week, the Securities and Exchange Commission (SEC) obtained a reversal of a November 2018 decision by a federal court in California that denied it a preliminary injunction against an issuer of digital tokens that the SEC claimed was involved in a fraudulent and unlawful securities offering. The court agreed after reconsideration that the challenged conduct satisfied the criteria of a securities offering and there was a reasonable likelihood of new unlawful activity if the defendants were not formally enjoined at least preliminarily. Meanwhile, a well-known Canada-based social media company and an associated foundation are publicly opposing a privately threatened SEC enforcement action that might claim they too engaged in an unlawful securities offering for their distribution of virtual tokens that the entities claim are principally intended for use as a digital currency. Separately, divisions of the Commodity Futures Trading Commission issued, for the first time, a summary of their examination priorities for this year. As a result, the following matters are covered in this week's edition of *Bridging the Weeks*:

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Bridging the Week

Communications, Media & Internet
Financial Institutions & Banking
Securities & SEC
All Federal

- California Federal Court Reverses Itself and Grants SEC Preliminary Injunction in Purported Cryptoasset Scam (includes **Legal Weeds** and **My View**);
- CFTC Lays Out Examination Priorities for First Time and Extends Comment Period for Proposed Amended SEF Rules (includes **My View**);
- Department of Justice and SEC Bite Apple Alleged Insider Trader (includes **Culture and Ethics** and **Compliance Weeds**); and more.

Article Version:

Briefly:

- **California Federal Court Reverses Itself and Grants SEC Preliminary Injunction in Purported Cryptoasset Scam**: A federal court in California that in November 2018 denied the Securities and Exchange Commission a preliminary injunction against defendants it accused of engaging in a fraudulent and unlawful offer and sale of securities in connection with a new cryptoasset reversed course and granted the preliminary injunction last week. The defendants in this matter are Blockvest, LLC, and its chairman and founder, Reginald Buddy Ringgold, III a/k/a Rasool Abdul Rahim El.

The court ruled that the defendants' promotion of BLV tokens on Blockvest's website constituted the unlawful offer of unregistered securities. The court grounded its decision on the application of the three-prong indicia of an investment contract – a type of security – articulated by the US Supreme Court in its 1946 decision *SEC v. WJ*

Howey: (1) an investment of money, (2) in a common enterprise, (3) with an expectation of profits based solely on the managerial or entrepreneurial efforts of others. (Click here to access the *Howey* decision.)

The court held that the defendants' use of a website to solicit persons to provide digital currencies for BLV tokens satisfied the investment of money prong of *Howey*, while the website's indication that funds raised would be pooled and profits shared satisfied *Howey*'s common enterprise and expectation of profits requirements. The court rejected defendants' argument that an offer requires "manifestation of [an] intent to be bound," saying that while that standard might be relevant for an assessment of an offer under contract law, it was too narrow a view in connection with application of securities laws.

Previously, the court declined to find the SEC had made a *prima facie* case of past violations of securities law because there were disputed facts regarding what was promised to actual BLV purchasers. However, in reconsidering the SEC's request for a preliminary injunction, the court accepted the SEC's alternative argument that, standing alone, solicitations on Blockvest's website constituted an offer of unregistered securities because solely an unlawful offer (without regard to sales) was sufficient to demonstrate a securities law violation.

Additionally, the court said that absent a preliminary injunction, there was a "reasonable likelihood" of a future violation by defendants. In its earlier denial of a preliminary injunction, the court concluded that a reoccurrence of any law violation was unlikely because of the involvement of outside counsel. However, in light of defendants' reference to a fictitious government agency on their website to promote their initial coin offering of BLVs as safe and the withdrawal of defendants' counsel with no substitute counsel named, the court had no confidence that another violation would not reoccur.

In its original complaint, the SEC claimed the defendants falsely asserted that their ICO received regulatory approval from the SEC when it did not, and misrepresented that Blockvest had a relationship with Deloitte, a public accounting firm, when it did not. The SEC also charged that the defendants misrepresented their status with the National Futures Association even after being warned to stop such false claims by NFA. The SEC further alleged that defendants said on their website that a US government agency known as the Blockchain Exchange Commission (with the nearly identical seal, logo and mission statement of the SEC) oversaw the BLV offering when, in fact, the BEC does not exist.

(Click here for background regarding this matter in the article "California Federal Court Rejects SEC's View That Purportedly Fraudulent ICO Constituted a Security Offering – At Least for Now" in the December 2, 2018 edition of *Bridging the Week*.)

In other legal and regulatory developments involving cryptoassets:

- SEC Commissioner Rails Against Cryptoasset Regulation by Enforcement: In a speech at the University of Missouri Law School on February 8, SEC Commissioner Hester Peirce cautioned her agency not to "cast the *Howey* net so wide" that it characterizes all capital raises for decentralized blockchain projects as unlawful security offerings when, in fact, many project participants – such as miners as well as persons providing development services or other tasks – may play a material role in the success of the enterprise. She noted that while the SEC has "spoken indirectly" through enforcement actions about what type of digital token offerings might be security offerings, that was not her "preferred method for setting expectations" for people trying to raise money for innovative projects. She indicated that staff is currently working on supervisory guidance to help provide better clarity but ultimately it might be Congress that has to "resolve the ambiguities" in existing law by mandating that at least some digital assets be regarded as a different asset class than securities.

- NYSE Arca Seeks SEC Review of Rule Change to List Bitcoin Index ETF: NYSE Arca filed with the SEC a proposed rule change to trade and list shares of Bitwise Bitcoin ETF Trust to be managed and controlled by Bitwise Investment Advisers, LLC. The objective of the Trust is to mimic performance of the Bitwise Bitcoin Total Return Index which was designed to measure the performance of bitcoin as traded on 10 cryptocurrency exchanges located in the United States, Europe, and Asia. The SEC will accept public comments on the proposed rule change through March 8. In January, Cboe BZX Exchange, Inc. filed with the SEC for a second time a proposed rule change to enable trading of shares of SolidX bitcoin shares issued by the VanEck SolidX Bitcoin Trust. (Click here for background in the article "Try It Again, VanEck SolidX Bitcoin Trust" in the February 3, 2019 edition of *Bridging the Week*.)

- Bitcoin Cash Miners Claim Voting Against a Fork Is Not an Anti-Trust Law Violation: Bitmain Inc. and Payward Ventures Inc (Kraken) along with its chief executive officer, Jesse Powell, filed papers in a federal court in Florida to support their motions to have dismissed an anti-trust lawsuit filed against them and others by United American Corp. related to their purported nefarious roles in the forking of Bitcoin Cash in November 2018. UAC claimed that the three defendants (and others) conspired to effectuate the hard fork in violation of anti-trust laws by, among things, redirecting computer mining capacity to Bitcoin Cash that had been

dedicated to other cryptocurrencies in order to increase the probability that a particular hard fork would be adopted as opposed to an alternative fork favored by UAC. The three defendants claimed that UAC did not allege sufficient facts to demonstrate a conscious commitment to a common scheme to restrain trade as required to show a violation of applicable anti-trust law. (Click here for background regarding this lawsuit in the article "Lawsuit Filed Over Recent Bitcoin Cash Hard Fork" in the December 9, 2018 edition of *Bridging the Week*.)

Legal Weeds and **My View**: Kik Interactive, Inc., a Canada-based company that developed and promotes a widely popular internet chat messaging service, and the Kin Ecosystem Foundation, an associated entity (collectively, "Kik"), recently published a private letter they received from the SEC in November 2018 threatening legal action against them for their distribution of Kin digital tokens in violation of registration requirements of US securities laws. The SEC letter invited Kik to submit a response to explain why the Commission should not bring charges against it. Kik submitted a letter to the SEC on December 10, 2018, opposing an enforcement action and recently made this response public too.

According to Kik in its SEC submission, Kin is a digital currency and not subject to US securities registration requirements. It has consumptive uses not only within the Kin ecosystem but also for non-ecosystem transactions and is used to pay developers as well as to reward Kik users for performing certain functions. Additionally, the presale of Kin tokens, the 2017 initial coin offering of Kin, and the subsequent distributions of Kin tokens did not constitute investment contracts, argued Kik, because there was no common enterprise between Kik on the one hand and Kin purchasers on the other, and no expectation by any Kin purchaser of profits from the entrepreneurial or managerial efforts of Kik. Although Kin holders may profit from market transactions, Kik never offered or promoted Kin as a "passive investment opportunity" and "never promised [itself] to create and operate an exchange or to re-purchase Kin." Potential expectations of profits through resales on exchanges would solely be based on market forces, argued Kik. In short, Kik claimed its offer and sale of Kin tokens did not satisfy the requirements of *Howey* and thus did not constitute an unlawful offer or sale of securities.

In its letter to Kik, the SEC did not allege that Kik engaged in any fraudulent or similar nefarious activity.

The outcome of this back and forth between the SEC and Kik is well worth following. Kik appears ready and willing, if necessary, to fight any potential SEC enforcement action and appears to have taken significant steps to avoid the Kin token being considered a security digital token.

As I have noted many times before, and as increasingly recognized by other jurisdictions worldwide, not all cryptoasset distributions constitute securities offerings. The SEC has taken a very broad view of *Howey* that would effectively make all initial and subsequent sales of collectibles that are perceived to have potential secondary market value – like beanie babies and special edition automobiles – securities offerings or sales. This outcome does not appear contemplated by US securities laws or common sense.

(Click here for a copy of the SEC letter to Kik and Kik's response. Click here for the Kin white paper. Click here for general background regarding Kik's social media application.)

- **CFTC Lays Out Examination Priorities for First Time and Extends Comment Period for Proposed Amended SEF Rules**: Three divisions of the Commodity Futures Trading Commission issued their 2019 examination priorities. This marked the first time in its history the CFTC has issued such an advisory. The three divisions were the Division of Market Oversight, the Division of Swap Dealer and Intermediary Oversight and the Division of Clearing and Risk.

DMO – which oversees designated contract markets and swap execution facilities – said that in 2019 it would principally review DCMs and not SEFs because of the current consideration of SEF rule reform. (Click here for background in the article "Over One Commissioner's Vehement Dissent, CFTC Authorizes Publication for Comment Proposed Rules to Overhaul Swaps Trade Execution Requirements on Trading Facilities" in the November 11, 2018 edition of *Bridging the Week*.) During its rule enforcement reviews of DCMs, DMO will look at, among other things, DCMs' surveillance of cryptocurrency, disruptive trading and other trade practice offenses and block trades as well as practices regarding market maker and trading incentive programs and use of third-party regulatory service providers.

DMO also indicated that, during 2019, it will reach out to SEFs to begin formulating a future examination program.

DSIO – which is responsible for the oversight of futures commission merchants, introducing brokers, swaps dealers, major swap participants, commodity pool operators and commodity trading advisors – will concentrate on customer protection themes in its reviews, including the withdrawal of residual interest funds from customer accounts; accepted forms of non-cash margin; compliance with segregation requirements; and FCM use of customer depositories. The Division will also review FCM customer account documentation and swap dealers' and MSPs' relationships with third-party vendors.

DCR indicated that it will principally examine derivatives clearing organizations to "identify areas of weakness or non-compliance in activities that are critical to a safe and efficient clearing process." Among other topics these areas would include financial resources and cyber-security policies and procedures.

In November 2018, the CFTC's Division of Enforcement issued its annual report where it identified four of its priorities: preserving market integrity, protecting customers, promoting individual accountability, and augmenting cooperation with other regulators and criminal authorities. To accomplish these objectives, DOE said it began or continued a number of "key" initiatives during FY 2018: evolving its program of cooperation and self-reporting; enhancing data analytics (most notably by moving the Market Surveillance Unit from DSIO to DOE); and creating specialized task forces to address spoofing and manipulative trading, virtual currency, insider trading and protection of confidential information, and obligations to file suspicious activity reports and maintain know-your-customer programs for anti-money laundering purposes. (Click here for background in the article "CFTC Enforcement Division Lauds Success of FY 2018 Accomplishments; Says Goal Is to Foster 'True Culture of Compliance'," in the November 18, 2018 edition of *Bridging the Week*.)

Separately, the CFTC extended the comment period until March 15 for persons wanting to express views on the its proposed rulemaking related to SEFs and the trade execution requirement as well as pertaining to the practice of post-trade name give-ups. Both comment periods initially were scheduled to expire on February 13. (Click here for background in the article, "Over One Commissioner's Vehement Dissent, CFTC Authorizes Publication for Comment Proposed Rules to Overhaul Swaps Trade Execution Requirements on Trading Facilities" in the November 11, 2018, edition of *Bridging the Week*.)

My View: Although the CFTC's announcement of its 2019 examination priorities is very welcome, it would have been better to provide more details regarding the subjects staff identified for review, particularly for FCMs and DCOs. Most of the topics were simply flagged with a few words accompanied by no explanation. For example, is there something about FCM customer account documentation that is concerning to CFTC staff? If yes, what are the worrisome provisions and what are the CFTC's expectations? Likewise is there something unique about swap dealers' and MSPs' relationships with third-party vendors that warrants particular CFTC attention, as opposed to the relationship other registrants may have with such third-party entities?

Moreover, DMO's intention to review numerous specific surveillance activities of DCMs (e.g., block trades) should flash a cautionary light to other industry participants. Following a 2013 rule review of two CME Group exchanges regarding their handling of exchange for related position transactions, the number of inquiries to FCMs related to EFRPs substantially increased as did follow-up disciplinary actions. (Click here for background in the article "Alphabet Soup Under CFTC Scrutiny: CFTC Review of CME Handling of EFRPs, Suggests Tougher Times for Traders and FCMs" in the August 6, 2013 edition of *Bridging the Week*.)

The CFTC's announcement of examination priorities is a good development and is consistent with annual announcements by the Office of Compliance and Inspections at the SEC and the Financial Industry Regulatory Authority. Advance identification of exam topics enables registrants to help tailor their own compliance programs to meet the evolving expectations of the CFTC. However, to enhance the effectiveness of such announcements in the future – a few more details, please! (Click here for background on OCIE's 2019 examination priorities in the article "Offer and Sale of Digital Assets and Cybersecurity Among the Focus of SEC OCIE 2019 Examination Priorities" in the January 6, 2019 edition of *Bridging the Week*.)

- **Department of Justice and SEC Bite Apple Alleged Insider Trader**: A former senior in-house counsel at Apple Inc. responsible for securities law compliance, including adherence with insider trading prohibitions, was charged criminally by the Department of Justice and civilly by the Securities and Exchange Commission with illegally trading on nonpublic information regarding Apple's financial performance. In both actions – filed in a federal court in New Jersey – Gene Levoff was alleged at various times between February 2011 and April 2016 to have purchased or sold shares of Apple stock based on his knowledge of financial results that were not yet publicly announced. As a result, he purportedly realized profits of US $227,000 and avoided losses of US $377,000.

From 2008 through 2013, Mr. Levoff was Director of Corporate Law at Apple; subsequently through his termination in September 2018, he was Senior Director of Corporate Law. While in these capacities, Mr. Levoff was a member of the firm's Disclosure Committee where he saw draft SEC filings and earnings results before Apple disclosed such information to the public. During the times he allegedly executed trades in Apple stock subject to the enforcement actions, Mr. Levoff was subject to "blackout periods" that expressly prohibited anyone with nonpublic information regarding Apple from trading Apple stock. Mr. Levoff was responsible for reviewing and approving Apple's insider trading policy and notifying employees of their need to comply with blackout restrictions.

Mr. Levoff was charged with one count of securities fraud by the DOJ. If convicted of his criminal charge, Mr. Levoff faces up to 20 years' imprisonment and a US $5 million fine. The SEC also charged Mr. Levoff with fraud and seeks

fines and disgorgement, among other remedies.

Culture and Ethics and **Compliance Weeds**: This is a stunning matter to read about and very sad if the allegations made by the DoJ and SEC are proven true. Watchdogs must adhere to higher standards of professionalism and ethics to help enforce compliance of culture – not break laws, let alone violate common sense.

Post-adoption of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010, it's not just the DoJ and SEC that prosecute allegations of insider trading, but also the Commodity Futures Trading Commission.

The CFTC has now brought and resolved two enforcement actions charging persons with insider trading for misappropriating trading information. In the first action brought in 2015, the CFTC alleged that Arya Motazedi, a gasoline trader for an unnamed large, publicly traded corporation, similarly misappropriated trading information of his employer for his own benefit. In the second action, the CFTC brought and settled charges against Jon Ruggles, a former trader for Delta Airlines, for trading accounts in his wife's name based on his knowledge of trades he anticipated placing for his employer. Both actions were grounded in the Dodd-Frank provision and CFTC rule that prohibit the use of a manipulative or deceptive device or contrivance in connection with futures or swaps trading. (Click here to access Commodity Exchange Act Section 6(c)(1), US Code § 9(1), and here to access CFTC Rule 180.1. Click here for background on these CFTC enforcement actions in the article "Ex-Airline Employee Sued by CFTC for Insider Trading of Futures Based on Misappropriated Information" in the October 2, 2016 edition of *Bridging the Week.*)

Late last year, the CFTC filed a lawsuit against EOX Holdings LLC, a Commission-registered introducing broker, and one of its associated persons, Andrew Gizienski, for illegally sharing their customers' trading information with one customer, as well as impermissibly trading the one customer's account on a discretionary basis relying on other customers' trading information.

According to the CFTC, from approximately August 2013 through May 2014, Mr. Gizienski provided confidential, nonpublic information to one customer regarding the trading activities of other customers purportedly "knowing or with reckless disregard of the fact, that the information would be used for trading." In addition, charged the CFTC, during this time, Mr. Gizienski also traded for the one customer while having nonpublic information regarding other EOX customers, and executed block trades against other customers for the benefit of the one customer more than 100 times.

The CFTC's lawsuit was filed in a federal court in New York. Last week, the CFTC filed papers opposing defendants' motion to transfer this enforcement action to a federal court in Texas. (Click here to access the CFTC's memorandum of law in support of its opposition.)

More Briefly:

- **Metals Trader Settles CFTC Action for Purported Spoofing After Prevailing in Related Criminal Action**: A US federal court in Connecticut affirmed Andre Flotron's 2018 agreement to pay a fine of US $100,000 and submit to a one-year trading and registration ban to settle civil charges brought by the Commodity Futures Trading Commission that he engaged in spoofing-type trading activity from at least August 2008 through at least November 2013 involving precious metals futures contracts traded on the Commodity Exchange, Inc. In 2017, Mr. Flotron – a former metals trader with UBS – was indicted for conspiracy to defraud in connection with the same essential conduct. He was found not guilty of this charge by a jury in a federal court in Connecticut in April 2018. (Click here for details in the article "Former UBS Trader Found Not Guilty of Conspiracy to Defraud for Alleged Spoofing" in the April 29, 2018 edition of *Bridging the Week*.)

Separately, last week, the US Chamber of Commerce, the Bank Policy Institute and the Securities Industry and Financial Markets Association filed a friend of the court brief in connection with the criminal case against James Vorley and Cedric Chanu brought in summer 2018 related to the defendants' purported spoofing trading activities. The organizations claimed that charges against the defendants for wire fraud (and not spoofing) raised issues of concern to the business community because they implied that orders entered without an intent of execution for any reason constituted fraudulent statements to the marketplace. According to the organizations, "[o]rders subject to execution and market risk cannot constitute false statements." (Click here to access a copy of the relevant amicus brief.) Mr. Vorley and Mr. Chanu were named in criminal complaints filed in a US federal court in Chicago related to alleged spoofing trading activities on the Commodity Exchange, Inc. from at least December 2009 through November 2011. (Click here for details in the article "Alleged Spoofer Exonerated in Criminal Trial Agrees in Principle to CFTC Settlement; Two More Purported Spoofers Criminally Charged" in the August 5, 2018 edition of *Bridging the Week*.) FIA has also been granted permission to file an amicus brief in this matter, apparently intending to express views similar to the three organizations.

- **ICE Futures US Speed Bump Proposal Prompts CFTC Request for Public Comment**: The Commodity Futures Trading Commission delayed implementation of a proposed ICE Futures U.S. rule change scheduled to be effective February 18 that would impose a three-millisecond speed bump between existing resting orders and liquidity taking orders in the Gold Daily and Silver Daily futures markets. IFUS proposed this delay to address latency access differences among traders and to accord traders employing arbitrage strategies a short opportunity to respond to new, sudden external market conditions. In proposing its rule amendment, IFUS acknowledged that the FIA Principal Traders Group believed that speed bumps could "harm overall market quality, add complexity, and provide a mechanism for potential trade practice abuse." The CFTC will accept comments on IFUS's proposed rule amendment through May 14, 2019.

- **US Treasury Expresses Outrage Over Inclusion of Four US Territories on European Commission's AML Deficiencies List**: The US Department of Treasury condemned the inclusion of four US territories on last week's published list by the European Commission of 23 jurisdictions worldwide that have strategic weaknesses in their anti-money laundering and counterterrorism regimes. The four US jurisdictions are American Samoa, Guam, Puerto Rico, and the US Virgin Islands. EU financial institutions are required to conduct enhanced due diligence on customers and financial institutions located in jurisdictions on the deficiencies list, which also include Afghanistan, Iran, Iraq, North Korea, and Syria, among other countries. US Treasury criticized the EC for only notifying the 23 jurisdictions of their impending inclusion on the deficiencies list only a few days before its issuance, or providing the jurisdictions any meaningful chance to challenge their inclusion or address issues that might have landed them on the list. US Treasury also complained that it was not given "any meaningful opportunity" to discuss the EC's concerns regarding the four US jurisdictions prior to listing them on the deficiencies list. According to US Treasury, "[the] commitments and actions of the United States in implementing [Financial Action Task Force] standards extend to all U.S. territories." US Treasury indicated it does not expect US Financial institutions to consider the EC deficiencies list in designing or implementing their AML/Combating Financial Terrorism policies or procedures.

- **CPO and Principal Sanctioned by NFA for Not Cooperating with Examination**: Synergistic Group LLC – a Commodity Futures Trading Commission-registered commodity pool operator and commodity trading adviser as well as a National Futures Association member, and Geoffrey Thompson, a principal and sole associated person of the firm, agreed to settle an administrative complaint filed by NFA in August 2018. NFA charged the defendants with failing to cooperate with an investigation after NFA commenced a review of Synergistic following the firm's late financial filings and an SEC case charging Mr. Thompson and his wife with securities fraud. NFA alleged that Synergistic and Mr. Thompson willfully failed to cooperate with its investigation. To resolve this matter, Synergistic agreed to be banned permanently from NFA membership and from serving as a principal of an NFA member. Mr. Thompson agreed to a seven-year ban from NFA membership or serving as a principal of any member, and to pay a fine of US $50,000 should he reapply for NFA membership or principal status.

- **Purported Wash Trades Result in NYMEX Sanctions for Trader and Employer for Failure to Supervise**: The New York Mercantile Exchange sanctioned Banco ABC Brasil S.A., a member firm, and its employee Marcelo Diniz for allegedly engaging in wash trades. Separately, NYMEX found that the firm failed to diligently supervise Mr. Diniz to ensure his compliance with relevant exchange rules. According to NYMEX, on February 16 and 23, 2018, Mr. Diniz placed orders in trading at settlement heating oil futures markets for multiple accounts owned and controlled by Banco ABC, knowing that his orders would execute opposite each other; he apparently did this to hedge risks associated with the accounts' over-the-counter option positions. Banco ABC agreed to pay a fine of US $40,000 and Mr. Diniz a sanction of US $10,000 as well as a five-business-day trading ban on all CME Group exchanges.

- **Fishy Emails Spark FINRA Phishing Alert**: The Financial Industry Regulatory Authority issued a warning regarding a phishing email scam apparently aimed at compliance officers. The dubious email appears to be sent from an anti-money laundering compliance office of a legitimate credit union in Indiana warning the recipient about a money laundering scam involving a customer of the firm. According to FINRA, the email contains an attachment that when opened could create a cybersecurity problem for the targeted member. FINRA noted that the phishing email included the following red flags: a European email address although the sender was purportedly based in Indiana, poor grammar and sentence structure, and a request that the recipient open the email attachment for more details.

- **Three Securities Exchanges Challenge SEC's Authority to Restrict Fee Payments to Liquidity Providers**: The three principal United States national securities exchanges – NYSE, Cboe and Nasdaq – all filed petitions for review of the Securities and Exchange Commission's recent new rule that would limit transaction fees and rebates that national securities exchanges could charge or offer their broker-dealer members under certain circumstances and require them to publicly disclose rebate data on

a monthly basis. The petitions were filed in a US Court of Appeals in Washington, DC. The SEC's final rule was published on December 19, 2018 (click here to access). The petitioners seek a declaration that the SEC's new rule is illegal, as well as a permanent injunction against the SEC from enforcing it and an interim stay from implementation until a final court decision is issued. The SEC adopted its new rule – Rule 610T(c)(2) – as a pilot program to study the impact exchange fee and rebate models might have on order routing behavior as well as on execution quality. The rule was scheduled to go into effect 60 days after publication in the *Federal Register*.

Video Version:

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