WILMERHALE®

WILMER CUTLER PICKERING HALE AND DORR LLP ®

Dealing With the Second Shoe to Drop: How to Respond to the Inevitable FINRA Inquiry After Your Stock Price Moves

June 27, 2019

Presenters: Michael G. Bongiorno, Joseph B. Conahan and Lia Der Marderosian

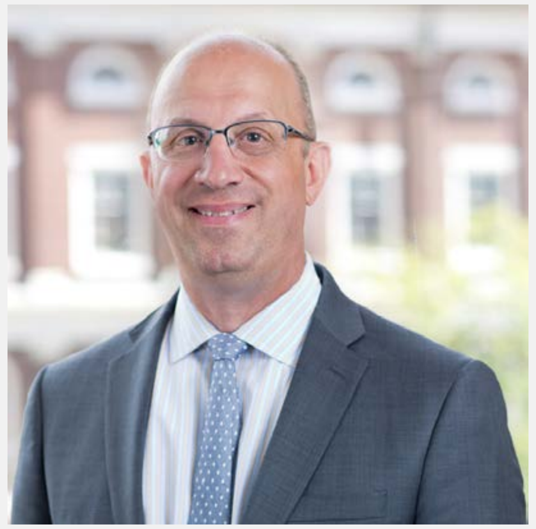
Webinar Guidelines

- Participants are in listen-only mode
- Submit questions via the Q&A feature
- Questions will be answered as time permits
- Offering 1 CLE credit in California and New York*

WilmerHale has been accredited by the New York State and California State Continuing Legal Education Boards as a provider of continuing legal education. This program is being planned with the intention to offer CLE credit in California and non-transitional CLE credit in New York. This program, therefore, is being planned with the intention to offer CLE credit for experienced New York attorneys only. Attendees of this program may be able to claim England & Wales CPD for this program. WilmerHale is not an accredited provider of Virginia CLE, but we will apply for Virginia CLE credit if requested. The type and amount of credit awarded will be determined solely by the Virginia CLE Board. Attendees requesting CLE credit must attend the entire live program. CLE credit is not available for those who watch on-demand webinar recordings.

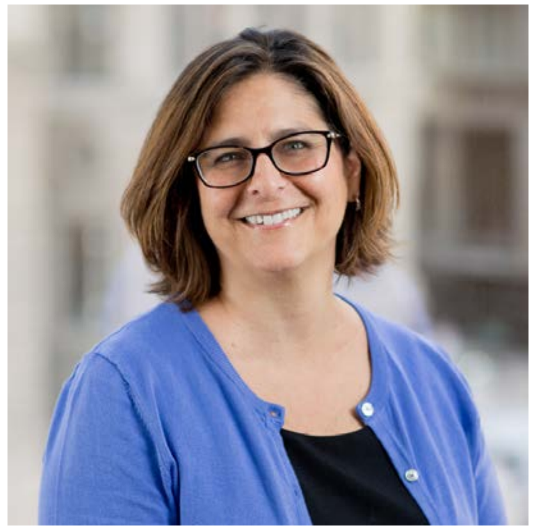
WEBINAR

Speakers



Michael G. Bongiorno
Co-Chair, Securities Litigation and Enforcement Practice Group
WilmerHale

Joseph B. Conahan
Partner
WilmerHale



Lia Der Marderosian
Chair, Transactional Department
WilmerHale

Agenda

- Introductions
- What is FINRA?
- The Initial Contact
- Chronology Request Letter
- Name Recognition Letter
- Closing Letter and SEC Involvement
- Q&A

What is FINRA?

- The Financial Industry Regulatory Authority (FINRA) is a self-regulator of the securities industry.
- FINRA is given authority by the SEC to do three main things:
  - **(1) conduct surveillance of securities markets;**
  - (2) license stockbrokers; and
  - (3) create rules to govern the conduct of brokers and brokerage firms.
- FINRA's overall mission is to protect investors and ensure market integrity. FINRA's Office of Fraud Detection and Market Intelligence conducts market surveillance looking for suspicious activity.
- FINRA uses an electronic market surveillance system called SONAR to identify "well timed trades," or trades that occur shortly before a public announcement that causes a significant increase or decrease in stock price (e.g., announcement of merger).

The Initial Contact

- When a major announcement comes out, FINRA can go back and see if SONAR picked up any unusual movements in the stock prices of the companies involved.
- If FINRA identifies unusual trading activity or “well timed trades,” it will first make “informal” contact with the company. This might be a phone call where the FINRA representative makes a general inquiry about the announcement or change in stock price.
- This initial contact is often followed up by an email from FINRA, recounting the conversation or asking for more information.
- While these conversations may seem informal or friendly, they are often the precursor to a formal inquiry.

Chronology Request Letter

- If FINRA remains concerned after the initial “informal” contact, the FINRA Office of Fraud Detection and Market Intelligence will then send the company a Chronology Request Letter.
- The Chronology Request Letter will recount the announced event and inquire as to who knew about the information prior to the public announcement, and when those people first became aware of the information.
- The Chronology Request Letter will also solicit other information, such as a list of events leading up to the announcement.

Name Recognition Letter

- Once the company has provided FINRA with the information requested in the Chronology Request Letter, FINRA will likely send a Name Recognition Letter.
- A Name Recognition Letter includes a list of individuals and entities. Though the letter does not say so, these are people or entities that made well-timed trades before the announcement at issue. The Name Recognition Letter asks for any connections between the folks the company identified as knowing the news before it was released and those on the list of apparent traders.
- Combined with SONAR data about unusual trading patterns, the list gives FINRA the basic ingredients necessary for identifying “well timed trades” related to insider trading.

Closing Letter and SEC Involvement

- Once the information requested in the Chronology Request and Name Recognition Letters has been provided, there are two common outcomes:
  - The company receives a closing letter confirming that FINRA has closed its review without further action

OR

  - FINRA turns over its findings to the SEC, which then decides whether to take further action. FINRA also often continues to work on the case through its Criminal Prosecution Assistance Group, which assists the SEC or DOJ is those authorities decide to pursue insider trading enforcement action or prosecution.

Questions

Michael Bongiorno
Co-Chair, Securities Litigation and Enforcement Practice Group
WilmerHale
michael.bongiorno@wilmerhale.com

Joseph Conahan
Partner
WilmerHale
joseph.conahan@wilmerhale.com

Lia Der Marderosian
Chair, Transactional Department
WilmerHale
lia.dermarderosian@wilmerhale.com