

## CORPORATE & FINANCIAL

### WEEKLY DIGEST

August 1, 2014

Volume IX, Issue 30

## BROKER-DEALER

### Amendments to FINRA Rule 2210 Regarding Communications With the Public

Financial Industry Regulatory Authority, Inc. Rule 2210 requires member firms to file certain communications with FINRA's Advertising Regulation Department, including retail communications. The Rule 2210 filing requirements apply to "research reports" to the extent that they constitute retail communications that are required to be filed pursuant to Rule 2210. "Research reports" are any written (including electronic) communications that include an analysis of equity securities of individual companies or industries, and that provide information reasonably sufficient upon which to base an investment decision. The definition specifically excludes certain types of communications, such as discussions of broad-based indices or commentaries on economic, political or market conditions.

On July 26, the Securities and Exchange Commission approved amendments to Rule 2210 that exclude from Rule 2210's filing requirements research reports concerning only securities listed on a national securities exchange, other than research reports which must be filed pursuant to Section 24(b) of the Investment Company Act of 1940, as amended.

In addition, Rule 2210(c)(7)(F) and Rule 2210(d)(8) have been amended to clarify that (i) free writing prospectuses and similar documents that are exempt from filing with the SEC are excluded from Rule 2210's filing and content standards (other than "omitting prospectuses" of registered investment companies governed by Securities Exchange Act Rule 482), and (ii) Rule 2210's filing and content requirements apply to free writing prospectuses required to be filed with the SEC pursuant to Securities Exchange Act Rule 433(d)(1)(ii).

Click [here](#) to read Regulatory Notice 14-30.

## LITIGATION

### Smith & Wesson Pays \$2 Million to Resolve SEC Charges

On July 28, Smith & Wesson Holding Corporation, one of the largest gun manufacturers in the United States, agreed to pay more than \$2 million to settle Securities and Exchange Commission charges alleging that it had bribed foreign officials to sell firearms in other countries in violation of the Foreign Corrupt Practices Act (FCPA). In the settlement, Smith & Wesson neither admitted nor denied that SEC's findings.

According to the SEC, Smith & Wesson sought to expand into overseas markets beginning in 2007 and continuing into early 2010. The SEC alleged that the company's sales staff attempted to attract new business by offering, authorizing or making illegal payments, or by providing gifts meant for government officials in Pakistan and other countries.

In one such instance, Smith & Wesson used a third-party agent in Pakistan to help win a contract with a Pakistani police department. The SEC alleged that company officials authorized the agent to provide more than \$11,000 worth of guns to Pakistani police officials as gifts and to make additional cash payments to them. Smith & Wesson

ultimately won a contract to sell 548 pistols to a Pakistani police department. The SEC also cited similar incidents in Indonesia, Turkey, Nepal and Bangladesh.

According to the SEC, Smith & Wesson failed to implement adequate internal accounting control procedures or compliance programs, did not perform any anti-corruption risk assessment, and failed to perform due diligence on third-party agents, all of which allowed the bribes to continue undetected for years.

The SEC settlement noted that Smith & Wesson “took prompt remedial action to remediate its FCPA issues” and cooperated with the SEC staff during the investigation.

The company agreed to disgorge its profits of \$107,852 on the Pakistani police department transaction (plus \$21,040 in interest). Smith & Wesson also agreed to pay a civil monetary penalty of \$1.9 million. Finally, the company agreed to report to the SEC on its compliance efforts for two years.

*In the Matter of Smith & Wesson Holdings Corporation*, Adm. Proc. File No. 3-15906 (July 28, 2014).

### **Former Chief Operating Officer Settles SEC Fraud Claims**

The Securities and Exchange Commission recently announced that Peter Jenson, the former chief operating officer of Harbinger Capital Partners LLC, agreed to pay a \$200,000 civil penalty to resolve charges that he aided the firm and its owner, Phillip Falcone, in misappropriating fund assets to pay Falcone’s personal taxes.

According to the SEC, in 2009, Falcone owed federal and state authorities \$113.2 million in taxes and elected to pay that amount using a loan from Harbinger Capital Partners Special Situations Fund, L.P. (Special Situations Fund). The SEC alleged that Falcone and Harbinger, aided by Jenson, made several material misrepresentations and omissions in seeking legal advice regarding the loan and in subsequent communications with investors, including: the ability of the Special Situations Fund to furnish the loan without disadvantaging investors; the terms and conditions of the loan, including the interest rate charged and the amount of collateral posted by Falcone; and the role of Harbinger’s outside legal counsel in vetting the transaction.

Jenson also agreed to admit certain facts and that his conduct violated the federal securities laws. Among other things, Jenson admitted that he failed to ensure that the Special Situations Fund retained separate counsel, failed to ensure that Falcone paid an “above market” interest rate and failed to timely disclose the loan to investors.

In addition, Jenson agreed to be prohibited from working in the securities industry for at least two years, and to be suspended for at least two years from practicing as an accountant on behalf of any publicly traded company or other entity regulated by the SEC.

The settlement papers were filed in the US District Court for the Southern District of New York and must be approved by the District Court. The deal follows an \$18 million settlement in August 2013 with Harbinger and Falcone, who agreed to a five-year ban from the financial industry and admitted wrongdoing as part of the scheme.

*U.S. Securities and Exchange Commission v. Harbinger Capital Partners LLC*, Case No 1:12-cv-05028 (S.D.N.Y. July 28, 2014).

For more information, contact:

FINANCIAL SERVICES

<b>Janet M. Angstadt</b>	+1.312.902.5494	janet.angstadt@kattenlaw.com
<b>Henry Bregstein</b>	+1.212.940.6615	henry.bregstein@kattenlaw.com
<b>Kimberly L. Broder</b>	+1.212.940.6342	kimberly.broder@kattenlaw.com
<b>Wendy E. Cohen</b>	+1.212.940.3846	wendy.cohen@kattenlaw.com
<b>Guy C. Dempsey Jr.</b>	+1.212.940.8593	guy.dempsey@kattenlaw.com
<b>Kevin M. Foley</b>	+1.312.902.5372	kevin.foley@kattenlaw.com
<b>Jack P. Governale</b>	+1.212.940.8525	jack.governale@kattenlaw.com
<b>Arthur W. Hahn</b>	+1.312.902.5241	arthur.hahn@kattenlaw.com
<b>Carolyn H. Jackson</b>	+44.20.7776.7625	carolyn.jackson@kattenlaw.co.uk
<b>Kathleen H. Moriarty</b>	+1.212.940.6304	kathleen.moriarty@kattenlaw.com
<b>Ross Pazzol</b>	+1.312.902.5554	ross.pazzol@kattenlaw.com
<b>Kenneth M. Rosenzweig</b>	+1.312.902.5381	kenneth.rosenzweig@kattenlaw.com
<b>Fred M. Santo</b>	+1.212.940.8720	fred.santo@kattenlaw.com
<b>Christopher T. Shannon</b>	+1.312.902.5322	chris.shannon@kattenlaw.com
<b>Peter J. Shea</b>	+1.212.940.6447	peter.shea@kattenlaw.com
<b>James Van De Graaff</b>	+1.312.902.5227	james.vandegraaff@kattenlaw.com
<b>Robert Weiss</b>	+1.212.940.8584	robert.weiss@kattenlaw.com
<b>Lance A. Zinman</b>	+1.312.902.5212	lance.zinman@kattenlaw.com
<b>Krassimira Zourkova</b>	+1.312.902.5334	krassimira.zourkova@kattenlaw.com

LITIGATION

<b>William M. Regan</b>	+1.212.940.6541	william.regan@kattenlaw.com
-------------------------	-----------------	-----------------------------

.....  
\* [Click here](#) to access the *Corporate and Financial Weekly Digest* archive.

Attorney advertising. Published as a source of information only. The material contained herein is not to be construed as legal advice or opinion.

©2014 Katten Muchin Rosenman LLP. All rights reserved.

# Katten

**KattenMuchinRosenman LLP** [www.kattenlaw.com](http://www.kattenlaw.com)

AUSTIN | CENTURY CITY | CHARLOTTE | CHICAGO | HOUSTON | IRVING | LONDON | LOS ANGELES | NEW YORK | ORANGE COUNTY | SAN FRANCISCO BAY AREA | SHANGHAI | WASHINGTON, DC

*Katten Muchin Rosenman LLP is an Illinois limited liability partnership including professional corporations that has elected to be governed by the Illinois Uniform Partnership Act (1997).*

*London: Katten Muchin Rosenman UK LLP.*