IV. Examining Deutsche Bank's Dark Pool Settlements in the Context of Wider Dark Pool Concerns

In December 2016, Deutsche Bank entered into a settlement agreement with the Securities and Exchange Commission (SEC) and the Attorney General of the State of New York in which the bank agreed to pay $37 million to close the regulators' investigations into its practices with respect to routing client orders to so-called "dark pools."[351] This settlement capped a legal battle that arose largely from technical errors within Deutsche Bank and was exacerbated by the bank's failure to either correct the errors or notify its clients about them.[352] More broadly, the settlement again brought into question the pervasive issues of transparency and trustworthiness that have dogged dark pools in the past.[353]

As will be discussed in more detail later in this article, dark pools are similar to traditional stock exchanges in the sense that they provide a venue to match buyers' and sellers' orders.[354] Unlike traditional exchanges, however, dark pools are designed to allow traders to sell large blocks of stock without affecting the stock's price in the market by hiding the identities of traders as well as the price and size of orders.[355] Section A will provide a brief history of dark pools and look at the pros and cons of these exchange platforms. Sections B and C will then examine the Deutsche Bank settlement,

---

[351] Aruna Viswanatha & Jenny Strasburg, *Deutsche Bank to Pay $37 Million to End 'Dark Pool' Investigations*, WALL ST. J. (Dec. 16, 2016), https://www.wsj.com/articles/deutsche-bank-to-pay-37-million-to-end-dark-pool-investigations-1481902287 [https://perma.cc/KC49-H8KA].

[352] *See* N.Y. ATTORNEY GEN., SETTLEMENT AGREEMENT: IN THE MATTER OF DEUTSCHE BANK SECURITIES INC. (2016) [hereinafter NYAG DB SETTLEMENT].

[353] *See* Sarah N. Lynch, *Deutsche Bank to pay more than $40 million to settle dark pool cases*, REUTERS (Dec. 16, 2016), http://www.reuters.com/article/us-deutsche-bank-settlement-idUSKBN145245 [https://perma.cc/R6N3-RGKU]. *See generally* LUIS A. AGUILAR, U.S. SEC. & EXCH. COMM'N, SHEDDING LIGHT ON DARK POOLS (2015); Scott Patterson, *'Dark Pools' Face Scrutiny*, WALL ST. J. (June 5, 2013), https://www.wsj.com/articles/SB10001424127887324069104578527361102049152 [https://perma.cc/3PU2-YYNZ].

[354] *See* GARY SHORTER & RENA S. MILLER, CONG. RESEARCH SERV., R43739, DARK POOLS IN EQUITY TRADING: POLICY CONCERNS AND RECENT DEVELOPMENTS 2 (2014) (explaining the key difference between traditional exchanges and dark pools).

[355] *See id.*

first by looking at the facts of the case and then by analyzing these facts in the context of wider concerns about dark pools. Section D will examine other recent dark pool settlements to evaluate similarities and differences between the Deutsche Bank settlement and other such settlements. Finally, Section E will examine some potential regulatory options and gauge potential positions that the Trump Administration may take with respect to dark pool regulation.

A. The History, Pros, and Cons of Dark Pools

The term "dark pool" refers to a type of stock trading venue designed to conceal traders' buy and sell orders until after trades are executed.[356] These trading venues provide an alternative to traditional, "lit" trading venues such as the New York Stock Exchange (NYSE) or Nasdaq, which publicly display traders' buy and sell orders prior to execution.[357] In contrast, dark pools show neither the price nor the size of orders, but instead match sell orders with buy orders that correspond to the price that the sellers are willing to pay, without any visibility by the trading parties themselves.[358] This lack of public order information is particularly beneficial for large institutional buyers, who, at least originally, were the primary users of dark pools.[359] By concealing buyers' and sellers' orders, dark pools allow large blocks of stock

[356] *See* Patterson, *supra* note 3.

[357] *See* SHORTER & MILLER, *supra* note 4, at 1. ("Although it is sinister sounding to some, the "dark" appellation simply means that dark pools do not publicly display traders' buy and sell interests (quotes) as the traditional "lit" platforms do").

[358] *See* D. Keith Ross, *10 Things People Don't Get About Dark Pools: Ross*, CNBC (Feb. 2, 2013), http://www.cnbc.com/id/100424690 [https://perma.cc/2GVE-SQ26].

[359] *See* Jared Bernstein, *The Importance of Shedding Some Light on Dark Pools*, N.Y. TIMES: THE UPSHOT (July 22, 2014), https://www.nytimes.com/2014/07/23/upshot/the-importance-of-shedding-some-light-on-dark-pools.html [https://perma.cc/46GZ-C6C8] (explaining the original purpose of dark pools was to provide institutional investors with a venue to make large trades among themselves); David Bogoslaw, *Big Traders Dive Into Dark Pools*, BLOOMBERG (Oct. 3, 2007), https://www.bloomberg.com/news/articles/2007-10-03/big-traders-dive-into-dark-poolsbusinessweek-business-news-stock-market-and-financial-advice [https://perma.cc/EK36-6F8W] ("[t]rading huge quantities of stock on traditional exchanges has become ever more challenging, costly, and potentially disruptive. And if other players see your moves, they can disrupt your trades.").

to be moved without alerting other traders to the stock movement, thereby preventing price changes from occurring before the trades can be completed.[360]

Dark pools are not a particularly new phenomenon; rather, they have existed in some form since the late 1960s.[361] The subsequent growth in these trading venues was aided by the development of new trading technologies as well as by the SEC's passage of Regulation ATS in 1998.[362] Regulation ATS imposed stricter regulatory requirements on dark pools and other alternative trading systems, requiring, among other things, that these entities register with the SEC, submit to certain recordkeeping requirements, and establish protocols to ensure that client trading data remained confidential.[363] In addition to these safeguards, Regulation ATS also codified dark pools' ability to keep their trades secret, requiring quote disclosure when 5 percent or more of a given stock's shares trade in an exchange—a level to which trades in dark pools rarely rise.[364] Further, even if a trade does reach the 5 percent threshold, Regulation ATS may provide an exemption from reporting requirements for the dark pool.[365]

Dark pools became even more attractive after the SEC implemented Regulation NMS in 2007.[366] Under prior trading regulations, exchanges with a physical trading floor (like the NYSE) were given priority in filling trades.[367] Regulation NMS, in contrast, mandated that trades be filled at the best possible price at any given moment, meaning that more-rapid electronic exchanges played a

---

[360] *Shining a light on dark pools*, THE ECONOMIST: SCHUMPETER (Aug. 18, 2011), http://www.economist.com/blogs/schumpeter/2011/08/exchange-share-trading [https://perma.cc/7PNM-2A9S].
[361] SHORTER & MILLER, *supra* note 4.
[362] *See id.*
[363] *See* 17 C.F.R. § 242.301 (2017) (enumerating the SEC's regulatory requirements for alternative trading systems, a catch-all term that includes dark pools).
[364] *See* SHORTER & MILLER, *supra* note 4.
[365] *See id.*
[366] *See* Jacob Bunge, *A Suspect Emerges in Stock-Trade Hiccups: Regulation NMS*, WALL ST. J. (Jan. 27, 2014), https://www.wsj.com/articles/SB10001424052702303281504579219962494432336 [https://perma.cc/9ZNX-FS6C].
[367] *See id.* ("NYSE floor traders were allowed to adjust their own offer price, and fill the trade. It was as if the electronic exchange had a yield sign that let floor traders pass first").

greater role in the market.[368] Regulation NMS also encouraged the growth of dark pools, with traders able to execute their trades at a lower price on these platforms, and hide their trades from increasingly sophisticated high-frequency traders who were using computer algorithms to track market movements.[369]

Dark pools' anonymity and general lack of transparency also give rise to many of the controversies surrounding them.[370] One of the major concerns around dark pools is their possible susceptibility to manipulation by high-frequency traders.[371] While dark pools began as a way for institutional investors to shield themselves from these sophisticated, computer-driven traders, high-frequency traders eventually gravitated toward them as dark pools grew in popularity.[372] While high-frequency traders have been touted as both providing liquidity to stock markets and causing prices to be updated more efficiently, they have also been criticized for increasing market volatility and utilizing trade strategies that disadvantage market participants who trade more slowly, in particular institutional investors.[373] The issue of high-frequency traders in dark pools reflects one of the major concerns posed by dark pools—specifically, that participants' lack of insight as to their trade counterparties allows dark pool operators to mislead traders about the nature of trading in

---

368 *See id.* ("Reg NMS removed the yield sign. It required exchanges and brokers to immediately 'hit,' or accept, the most competitive bid or offer prices posted at any U.S. trading venue that displays price quotes").

369 *See id.*

370 *See, e.g.*, Patterson, *supra* note 3.

371 *See, e.g.*, SHORTER & MILLER, *supra* note 4; Max Colchester et al., *Deutsche Bank, UBS Sucked Into Dark-Pools Trading Probe*, WALL ST. J. (July 30, 2014), https://www.wsj.com/articles/deutsche-bank-ubs-sucked-into-dark-pools-trading-probe-1406637594 [https://perma.cc/XVS2-WLKN]. For a more in-depth discussion of high frequency trading, including the practice's pros and cons, see generally GARY SHORTER & RENA S. MILLER, CONG. RESEARCH SERV., R43608, HIGH-FREQUENCY TRADING: BACKGROUND, CONCERNS, AND REGULATORY DEVELOPMENTS (2014).

372 *See* Matthew Phillips, *Barclays Probe Casts Ugly Light on Dark Pools*, BLOOMBERG (July 2, 2014), https://www.bloomberg.com/news/articles/2014-07-02/barclays-probe-casts-ugly-light-on-dark-pools [https://perma.cc/LX6R-P4NN].

373 *See generally* Andrew J. Keller, Note, *Robocops: Regulating High Frequency Trading After the Flash Crash of 2010*, 70 OHIO ST. L.J. 1457 (2012).

the dark pool.[374] Another major concern with dark pools is the wide amount of discretion that their operators have in determining how individual trades are executed, particularly when coupled with traders' general lack of insight into how the trading venues operate.[375] These two issues of operator discretion and lack of investor insight lie at the heart of Deutsche Bank's regulatory investigation and subsequent settlement.[376]

B. Structure of Deutsche Bank's Dark Pool

Deutsche Bank has operated a dark pool called SuperX[377] since 2009.[378] Starting in 2010, Deutsche Bank began marketing a product called SuperX+, a "router" that selected the optimal venue to execute a client's order from a group of dark pools (including SuperX), based on the client's preferences and Deutsche Bank's own proprietary ranking models.[379] Deutsche Bank's algorithm, the Dark Pool Ranking Model (DPRM), purported to rank dark pools using frequently-updated trade data to determine the likelihood that a client's order would be filled at any given trade venue (such likelihood, the Fill Probability).[380] As Deutsche Bank explained in its SuperX+ marketing materials, the DPRM "rank[ed] liquidity on a real-time and historical basis to determine the optimal sources according to the order characteristics and urgency."[381]

To use SuperX+, a client designated an order as "aggressive," "neutral," or "passive," with aggressive orders placing the highest

---

[374] *See, e.g.*, Bernstein, *supra* note 9 (highlighting a case where a dark pool operator told investors that a pool was free from high-frequency traders when in fact it was not).

[375] *See* AGUILAR, *supra* note 3 ("A common thread running through the enforcement actions against dark pools is that market participants lack crucial information about how these ATSs function—and about the serious conflicts of interest they can harbor").

[376] *See* Viswanatha & Strasburg, *supra* note 1.

[377] *SuperX ATS*, DEUTSCHE BANK, https://autobahn.db.com/microSite/html/superxUS.html [https://perma.cc/2NZH-E8HD].

[378] NYAG DB SETTLEMENT, *supra* note 2, at 2.

[379] *Id*. at 3.

[380] *See id.* at 3 (describing the correlation between the DPRM and Fill Probability).

[381] DEUTSCHE BANK, SUPERX PLUS: DEUTSCHE BANK'S DARK LIQUIDITY SEEKING ALGORITHM (2012), https://autobahn.db.com/microSite/docs/DB_Equities_-_SuperX_Plus_on_Autobahn_A4.pdf [https://perma.cc/WUE3-KGJ6].

priority on fulfillment and passive orders placing the highest priority on trading at the client's preferred price.[382] Specifically, "aggressive" orders were eligible for execution on 100 percent of the dark pools to which SuperX+ linked, "neutral" orders were eligible for execution on 80 percent of the dark pools to which SuperX+ linked, and "passive" orders were eligible for execution on 60 percent of the dark pools to which SuperX+ linked.[383] Trade eligibility for each dark pool under these criteria was determined by the DPRM, and once the group of eligible dark pools had been determined, SuperX+ used Fill Probability to determine the specific venue on which the trade would be executed.[384] Deutsche Bank was responsible for updating both the DRPM and the Fill Probability data periodically and incorporating these updates into the logic for SuperX+, thereby fulfilling Deutsche Bank's pledge to use "real-time and historical" data to drive its trade routing protocol.[385]

C. The Legal Controversy Around SuperX and SuperX+

The heart of Deutsche Bank's legal problems with the New York Attorney General and the SEC was that, contrary to what Deutsche Bank had indicated to its clients and in its marketing materials, it had failed to update its DPRM and Fill Probability data for approximately two years.[386] In the settlements filed with both the New York Attorney General and the SEC, these failures are attributed to a computer coding error that lasted from December 2011 through February 2014.[387] From the period of December 20, 2011 through February 19, 2013, Deutsche Bank used DPRM rankings and Fill Probability scores from December 20, 2011 (the final time the bank was able to successfully update these figures), despite informing its clients that the data was

---

[382] *See* NYAG DB SETTLEMENT, *supra* note 2, at 3.
[383] *See id.*
[384] *See id.*
[385] *See* Deutsche Bank Secs., Inc., Exchange Act Release No. 79576, at 3 (Dec. 16, 2016) [hereinafter DB SEC Settlement]; NYAG DB SETTLEMENT, *supra* note 2, at 4.
[386] *See* DB SEC Settlement, *supra* note 35, at 3–4; NYAG DB SETTLEMENT, *supra* note 2, at 4–5.
[387] DB SEC Settlement, *supra* note 35, at 4; NYAG DB SETTLEMENT, *supra* note 2, at 5.

updated quarterly.[388] Also during this time, Deutsche Bank integrated seven new trading venues to SuperX+ and attempted to compensate for the bank's lack of existing trade data on them by estimating how these venues would perform.[389] Specifically, Deutsche Bank directed its employees to determine comparable dark pools among those then accessed by SuperX+ and use those dark pools' DPRM rankings and Fill Probabilities for the newly-added ones.[390] Deutsche Bank's comparisons were not always correct, however, and many of these new venues had DPRM Rankings and Fill Probability scores that were either too high or too low given the venues' actual performance—a fact about which Deutsche Bank also failed to inform its clients.[391]

Deutsche Bank finally tried to update the DPRM on February 19, 2013 and was able to do so after breaking from its normal update protocol.[392] In this update, Deutsche Bank's own dark pool, SuperX, was placed in the lowest tier, meaning that only trades marked as "aggressive" would be eligible to use it.[393] Deutsche Bank employees (correctly, as it turned out) believed this ranking to be an error, and manually placed SuperX in the top tier of the rankings, again without informing customers of this manual override of the DPRM.[394] After the February 19, 2013 update, Deutsche Bank performed no further updates to the DPRM rankings or Fill Probability scores until February 5, 2014, at which point it implemented a new ranking methodology that no longer relied on the erroneous code.[395]

---

[388] *See* NYAG DB SETTLEMENT, *supra* note 2, at 4–5.
[389] *Id.* at 5.
[390] *See id*. ("[b]ecause Deutsche Bank had not previously routed orders to these venues, it did not have historical execution data to use in calculating Rankings and Fill Probability scores . . . Instead, Deutsche Bank personnel chose existing venues they believed to be similar to the new venues, copied those existing venues' Rankings and Fill Probability scores, and assigned them to the new venues").
[391] *See id*. at 5–6.
[392] *Id*. at 6.
[393] *Id*.
[394] *See id.* at 6, n.3.
[395] *See id.* at 7.

D. Enforcement Actions Against Deutsche Bank by the State of New York and the SEC

New York's primary claims against Deutsche Bank were brought under the Martin Act, which forbids false and misleading statements regarding the sale of securities.[396] The Martin Act provides the Attorney General of the State of New York with broad powers to prosecute securities fraud,[397] and is considered to be one of the most powerful state securities laws in the United States.[398] The Martin Act has served as a powerful tool to prosecute malfeasance relating to dark pools, despite initial concerns that it may not be applicable to these trading venues.[399] In its settlement with the Attorney General for the claims brought under the Martin Act, Deutsche Bank agreed to pay $18.5 million to the State of New York and also agreed to an official censure brought by the Attorney General.[400]

The SEC brought its claims against Deutsche Bank under Section 17(a)(2) of the Securities Act and Rule 301(b)(2) of Regulation ATS.[401] Section 17(a)(2) is a general fraud provision covering fraud "in the offer or sale of any securities."[402] Rule 301(b)(2), meanwhile, concerns dark pools' filing requirements under Regulation ATS and requires the trading venues to file an update with the SEC prior to implementing any "material change" to the way an exchange operates.[403] To settle the SEC's claims, Deutsche Bank agreed to

---

[396] N.Y. GEN. BUS. LAW § 352-c (Consol. 2016); NYAG DB SETTLEMENT, *supra* note 2, at 1.
[397] Brooke Sgambati, *Using the Martin Act to Bring Fraudulent Practices in Dark Pool Promotion to Light: An Analysis of the Martin Act's Applicability to Misrepresentations Regarding the Operation of Dark Pools*, 49 COLUM. J. L. & SOC. PROBS. 585, 598 (2016) ("the Martin Act grants the New York Attorney General extraordinary authority to investigate and prosecute securities fraud").
[398] *See id.* at 594 ("Under the Martin Act, the Attorney General has 'the broadest and most easily triggered investigative and prosecutorial powers of any securities regulator, state or federal'" (quoting State v. 7040 Colonial Rd. Assocs. Co., 671 N.Y.S.2d 938, 941–42 (N.Y. Sup. Ct. 1998))).
[399] *See id.* at 601–02 (describing the New York Supreme Court's decision to allow a different dark pool fraud case to be prosecuted under the Martin Act).
[400] NYAG DB SETTLEMENT, *supra* note 2, at 9.
[401] DB SEC Settlement, *supra* note 35, at 13.
[402] 15 U.S.C. § 77q (2012).
[403] 17 C.F.R. § 242.301(b)(2)(ii) (2017).

pay $18.5 million to the SEC, to cease and desist from any further violations of Section 17(a)(2) and Rule 301(b)(2), and to an official censure by the SEC.[404]

E. Similar Cases: Barclays and Credit Suisse

In January 2016, Barclays and Credit Suisse settled regulatory investigations by the Attorney General of the State of New York and the SEC into allegations that these firms lied to investors about the dark pools they managed.[405] The Barclays case echoed many of the general concerns expressed about dark pools with respect to both transparency and high-frequency traders operating in them.[406] The charges against Barclays alleged that despite publicly marketing its dark pool as a trading venue that would be kept safe from high-frequency traders, Barclays, in fact, actively sought to attract high-frequency traders and to provide a favorable environment in which they could trade.[407] The Barclays case also contained some of the same issues that would later be unearthed in the Deutsche Bank investigation: the failure to update data as frequently as promised to clients and the granting of preferential treatment to the bank's own dark pool in routing orders.[408] For these misrepresentations, Barclays was fined $70 million, the highest monetary penalty ever assessed on a dark pool operator.[409]

Credit Suisse, meanwhile, also misrepresented basic facts to clients about the way its dark pool operated.[410] Similar to Barclays, Credit Suisse told its clients that it would implement countermeasures against overly aggressive traders, but instead, Credit Suisse enforced these countermeasures far less stringently than it represented.[411] Furthermore, Credit Suisse informed clients that their orders would

---

[404] DB SEC Settlement, *supra* note 35.

[405] *See* Keri Geiger & Sam Mamudi, *Barclays, Credit Suisse Agree to Dark Pools Settlements*, BLOOMBERG (Jan. 31, 2016), https://www.bloomberg.com/news/articles/2016-01-31/barclays-credit-suisse-to-pay-154-3-million-in-dark-pool-deals [https://perma.cc/E638-M2HH].

[406] *See* Complaint at 2, New York *ex rel.* Schneiderman vs. Barclays Capital, Inc., 1 N.Y.S.3d 910 (N.Y. Sup. Ct. 2015) (No. 451391/2014).

[407] *See id.* at 2–3.

[408] *See id*. at 17.

[409] *See* Geiger & Mamudi, *supra* note 55.

[410] *See* Credit Suisse Secs. LLC, Exchange Act Release No. 77003, at 2 (Jan. 31, 2016).

[411] *See id*. at 2–3.

be routed a certain way using a mathematical formula, but did not implement the formula at the time it told investors that it would.[412] The SEC utilized its authority under both Regulation ATS and Regulation NMS to pursue enforcement against Credit Suisse, bringing charges against Credit Suisse under Rule 301(b)(2) of Regulation ATS and Rule 602(b) of Regulation NMS.[413] The Attorney General of the State of New York, meanwhile, brought its enforcement action under the Martin Act.[414] Under settlement agreements to both of these actions, Credit Suisse paid a $30 million fine to the State of New York, and a $30 million fine and $24.3 million in disgorgement and pre-judgment interest to the SEC.[415]

F. Regulatory Options Going Forward

The securities industry itself has taken steps to ensure greater transparency in the operation of dark pools.[416] The Financial Industry Regulatory Authority (FINRA), the securities industry's self-regulatory body, began to release weekly dark pool trade data in 2014, allowing the trading public for the first time to see the volume of trades that occur in dark pools.[417] FINRA attributed this decision to its goal of "increas[ing] market transparency and thereby enhanc[ing] investor confidence."[418] FINRA has also been active in fining members for failure to disclose required information, e.g., levying a $3.25 million fine on Deutsche Bank for its failure to update its Form ATS for SuperX.[419]

---

412 *See id.* at 3.

413 *See id.*

414 *See* N.Y. ATTORNEY GEN., SETTLEMENT AGREEMENT: IN THE MATTER OF CREDIT SUISSE SECURITIES (USA) LLC, at 1 (2016).

415 Geiger & Mamudi, *supra* note 55.

416 *See* John McCrank, *FINRA may cut or drop fees for dark pool reports*, REUTERS (June 10, 2015), http://www.reuters.com/article/us-wealth-summit-finra-fees-idUSKBN0OQ2GE20150610 [https://perma.cc/7PPX-XHL9] ("Wall Street's self-funded watchdog said on Wednesday it may cut the fees it charges . . . of its weekly report on off-exchange trading volumes in order to make the information more accessible following industry complaints").

417 *See id.*

418 Press Release, Fin. Indus. Regulatory Auth., FINRA Makes Dark Pool Data Available Free to the Investing Public (June 2, 2014), http://www.finra.org/newsroom/2014/finra-makes-dark-pool-data-available-free-investing-public [https://perma.cc/KE4K-ZWJA].

419 *See* Press Release, Fin. Indus. Regulatory Auth., FINRA Fines Deutsche

The SEC can also reinvigorate earlier ideas about dark pool regulation in an effort to ensure greater transparency on these exchanges. In 2015, the SEC proposed a rule that would require each dark pool operator to file a form with the SEC describing in detail the way the dark pool operated.[420] While dark pool operators previously had to disclose some information to the SEC, the new rule would require them to disclose more information and would make these disclosures available to the public.[421] Then-SEC Chair Mary Jo White did concede, however, that the rule was difficult to create as the SEC did not want to hinder any of the benefits offered by dark pools.[422] Ultimately, the rule's issuance was delayed due to resistance from the securities industry, and its future is unclear.[423] While President Trump has expressed his interest in lightening the regulatory burden on the financial sector, in announcing his pick of Jay Clayton to chair the SEC, Trump also stated his hope that Clayton would "provid[e] strong oversight of Wall Street and related industries."[424] Furthermore, Trump's advisor on managing the transition at the SEC, former SEC Commissioner Paul Atkins, has criticized Regulation NMS on the grounds that it directed trading into dark pools.[425] Accordingly, it

---

Bank $3.25 Million for Deficient Disclosures Concerning the Operation of Its Alternative Trading System (Dec. 16, 2016) (https://www.finra.org/newsroom/2016/finra-fines-deutsche-bank-325-million-deficient-disclosures-concerning-its-ats) [https://perma.cc/7EJM-PCWY].

[420] *See* Regulation of NMS Stock Alternative Trading Systems, 80 Fed. Reg. 248, at 80,998 (proposed Dec. 28, 2015) (to be codified at 17 C.F.R. pts. 240, 242, 249).

[421] *See* Dave Michaels, *SEC Preparing to Finalize Transparency Rules for Dark Pools, Mary Jo White Says*, WALL ST. J. (Sept. 14, 2016), https://www.wsj.com/articles/dark-pools-convince-sec-to-delay-transparency-rules-mary-jo-white-says-1473876535 [https://perma.cc/3XWQ-GF23].

[422] *See id.*

[423] *See* Dave Michaels, *Dark pools make SEC delay transparency rules*, MARKETWATCH (Sept. 14, 2016), http://www.marketwatch.com/story/dark-pools-make-sec-delay-transparency-rules-2016-09-14 [https://perma.cc/936A-5KMAj].

[424] *See* Bourree Lam, *Trump Picks Jay Clayton to Head the SEC*, THE ATLANTIC (Jan. 4, 2017), https://www.theatlantic.com/business/archive/2017/01/jay-clayton-sec/512171/ [https://perma.cc/FQ2Q-8WAC].

[425] *See* Sarah N. Lynch, *A post-Trump SEC could shake up current policy*, REUTERS (Nov. 16, 2016), http://www.reuters.com/article/us-usa-trump-sec-analysis-idUSKBN13B0E2 [https://perma.cc/LFF8-94D4].

remains to be seen what action, if any, the SEC under President Trump will pursue with respect to dark pool regulation, and what effect any regulation will have on the issues brought to light in cases similar to Deutsche Bank's recent dark pool settlements.

Ryan Class[426]

[426] Student, Boston University School of Law (J.D. 2018).