

SEC Releases Enforcement Highlights for Fiscal Year 2023

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November 29, 2023

On November 14, 2023, the Securities and Exchange Commission (the “SEC” or the “Commission”) announced its enforcement results for fiscal year (“FY”) 2023, which ended on September 30, 2023. The SEC’s FY 2023 results continued to reflect an aggressive approach to enforcement, reaching record highs in multiple enforcement metrics. Specifically, the SEC announced that it brought 784 total enforcement actions, obtained orders totaling nearly \$5 billion in financial remedies, and distributed nearly \$1 billion to harmed investors.

SEC Chair Gary Gensler referred to the SEC’s Division of Enforcement as a “cop on the beat” that provided benefits to the investing public, while applauding the Division of Enforcement’s “effectiveness” during FY 2023. Director of the Division of Enforcement Gurbir Grewal noted that the Division achieved results by “leveraging risk-based initiatives, seeking robust remedies, rewarding cooperation, protecting whistleblowers, or returning nearly a billion dollars to harmed investors.”

Composition of Actions

The SEC stated that the number of enforcement actions filed in FY 2023 was in line with the previous year and continued to reflect the Commission’s continued push for increased enforcement activity. The SEC’s 784 enforcement actions during FY 2023 included actions aimed to protect whistleblowers, to enforce recordkeeping requirements, and to bolster investor protection requirements at broker-dealers and investment firms.

The SEC announced that it filed 501 “stand-alone” actions, ranging from billion-dollar frauds to crypto assets and cybersecurity matters. FY 2023 also included 121 actions against issuers who allegedly failed to timely make required filings with the SEC. The SEC filed 162 “follow-on” administrative proceedings seeking to impose “collateral bars” to restrict the activities of individuals who are already subject to a criminal conviction, civil injunction, or other orders.

The Division of Enforcement highlighted its “industry shaping” FY 2023 initiatives, which were designed to “proactively investigate recurring or widespread violations in the securities industry.” These initiatives included noncompliance with the Marketing Rule, failures to timely file required SEC forms and noncompliance with Regulation A. The Division of Enforcement also touted its efforts to address misconduct that prevented effective oversight of the securities industry through enforcement actions involving (i) violations of recordkeeping requirements, including the failure to preserve and supervise off-channel communications; (ii) failure to comply with other reporting obligations related to blue sheet data; (iii) failure to file suspicious activity reports, and (iv) safeguarding whistleblowers’ rights and their ability to report potential securities laws violations to the SEC.

Record-Breaking Penalties

Notably, the SEC obtained the second highest historical amount of financial remedies, a total of \$4.949 billion, second only to the financial remedies ordered in FY 2022. Of the penalties ordered, \$3.369 billion was attributed to disgorgement and prejudgment interest and \$1.580 billion was a result of civil penalties. The SEC set yet another record, with the highest number of individuals barred from serving as officers and directors in a decade—a total of 133 individuals.

The SEC stated that it distributed \$930 million to harmed investors, marking the second consecutive year with distributions exceeding \$900 million.

The SEC also broke records for its Whistleblower Program, issuing awards to whistleblowers totaling nearly \$600 million. One whistleblower received a record-breaking \$279 million award. The SEC stated that it received more than 18,000 whistleblower tips, a significant increase to the then-record 12,300 whistleblower tips received during the prior fiscal year. The SEC stated that it received more than 40,000 tips, complaints and referrals in total, which was 13 percent greater than FY 2022. The SEC issued its largest penalty ever for violating the Dodd-Frank whistleblower protection rule against an investment adviser for prohibiting employees from disclosing confidential information without a whistleblower carve out and for requiring departing employees to sign releases affirming that they would not file an SEC complaint for compensation. The SEC also penalized firms using employment and separation agreements that waive whistleblowers' rights to awards or mandate notice to the company upon SEC information requests.

Meaningful Cooperation Continues to Be Encouraged

In FY 2023, the SEC acknowledged cooperation in cases involving a spectrum of violations, such as material misstatements, recordkeeping breaches, undisclosed perquisites and violations of whistleblower protection rules. The SEC highlighted examples including a settlement with a telecommunications company for failing to disclose material information, a broker-dealer settling charges related to recordkeeping provisions and a publicly traded manufacturer settling charges for not disclosing warranty-related liabilities. In each case, in light of reported prompt self-reporting, affirmative remedial measures and substantial cooperation, the SEC either did not assess any civil penalties or reduced the civil penalties involved in the case.

Continued Focus on Individual Accountability, Retail Investors, Public Company Misstatements and Gatekeepers

Just as it emphasized last year, the SEC reiterated that individual accountability "remains a pillar of the SEC's enforcement program." The SEC noted that two-thirds of its cases during FY 2023 involved charges against one or more individuals and often included barring individuals from serving as officers and directors of public companies. The SEC continued its focus on identifying misconduct by investment professionals. For example, the SEC referenced cases involving a private equity firm failing to adequately disclose fees paid to a firm owned by its CEO, an investment adviser failing to disclose conflicts of interest and an investment adviser and its CEO misleading the trustees of a fund they managed.

The SEC highlighted its successes in protecting retail investors from frauds targeting affinity groups and Ponzi schemes, suggesting that its favored approach for dealing with such issues is through early stage asset freezing.

The SEC described accurate disclosures by public companies as "foundational," charging companies for accounting errors and materially misleading statements to investors related to sales growth, revenue projections and/or product launches.

Further, the SEC emphasized the role of gatekeepers, such as accountants, auditors and other professionals, as the "first lines of defense." The SEC charged gatekeepers for systemic quality control failures stemming from auditing deficiencies, violations of auditor independence rules, and deficient audits of acquisition targets.

Environmental, Social, and Governance ("ESG"), Crypto and Cybersecurity Remain in the Spotlight

The SEC stated it charged companies for making materially misleading statements about controls related to ESG products and policies and procedures related to accounts marketed as ESG investments.

FY 2023 featured a slew of enforcement actions related to crypto asset securities, including alleged misconduct related to crypto fraud and unregistered securities through crypto asset lending and/or staking programs. The SEC launched the first actions against issuers of non-fungible tokens and brought enforcement actions against crypto intermediaries that allegedly commingled exchange functions, broker-dealer functions and/or custodial and clearing functions. Lastly, the SEC pursued cases where "influencers" and celebrities touted crypto assets without disclosing that they had received compensation for their endorsements.

The SEC also charged public companies, broker-dealers and investment advisers for misuse or electronic data that contains personal identifying information, account information and other such valuable information.

SEC Remains Committed to Enforcing Market Abuse and Foreign Corrupt Practices Act (“FCPA”) Violations

In addition to the above areas, the SEC discussed its focus on addressing market abuse in the form of insider trading, front running and market manipulation. For example, the SEC charged eight social media influencers involved in a \$100 million securities fraud scheme. Additionally, the SEC filed charges against two professionals in the financial services industry, alleging their involvement in a prolonged front-running scheme that capitalized on undisclosed information, yielding illicit trading profits of over \$47 million.

The SEC emphasized its commitment to enforcing the FCPA against U.S.-based securities issuers that engaged in corrupt practices abroad. The SEC highlighted cases involving violations in China, Vietnam, India and Indonesia.

SEC Trial and Litigation Activity

More than 40 percent of the stand-alone matters the SEC brought were, in whole or in part, litigated actions against both individuals and entities. The SEC touted its successes in jury trials, including cases involving securities fraud in connection with false and misleading statements in press releases, a fraudulent offering scheme involving penny stock and fraudulent trading in microcap securities.

The SEC’s full enforcement statistics can be found [here](#). Please contact Vedder Price attorneys Brooke E. Conner at bconner@vedderprice.com, Rachel T. Copenhaver at rcopenhaver@vedderprice.com, Junaid A. Zubairi at jzubairi@vedderprice.com, Nitya Bhardwaj at nbhardwaj@vedderprice.com, or any Vedder Price attorney with whom you have worked with any questions.

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