

Securities Litigation and Government Enforcement Trends

SPRING 2016

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SEC Continues Focus on Financial Reporting and Disclosure Fraud



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On January 25, 2016, Andrew Ceresney, Director of the Division of Enforcement (the Division) of the Securities and Exchange Commission (SEC), gave the keynote address at the 2016 Directors Forum. His focus was on the Division's enforcement efforts in the area of public company reporting and disclosure over the past few years. Ceresney highlighted the increased number and quality of financial reporting cases brought by the Division as a result, in part, of the work of the Financial Reporting and Audit Group (the FRAud Group). The FRAud Group is an outgrowth of the Financial Reporting and Audit Task Force announced by the SEC in 2013.¹

Since its inception, the FRAud Group has increased in size by adding 35 attorneys and accountants as "liaisons."² The FRAud Group is not a formal unit within the SEC—it is a collective effort among offices and personnel coordinating and identifying issues and trends in financial reporting and disclosures on a proactive basis. With the increased resources and personnel, the FRAud Group has been able to assist the Division in bringing more enforcement actions in this area. Indeed, in his remarks at the Directors Forum, Ceresney indicated that, excluding follow-on proceedings, the SEC "more than doubled its actions in the issuer reporting and disclosure area—from 53 in fiscal year 2013 to 114 in fiscal year 2015."³ He also indicated that, in fiscal years 2014 and 2015, the Division charged 128 and 191 parties, respectively, with issuer reporting and disclosure violations, "a significant increase over the prior years."⁴ In addition, Ceresney noted "some signs of progress in the issuer reporting area" including that "restatement trends are flat over the last five years, and down significantly from [the] last decade."⁵

Ceresney highlighted some traditional areas of focus of enforcement actions in the financial reporting and disclosure fraud area "with some new twists," including revenue recognition, valuation and impairment issues, earnings management, missing or insufficient disclosures, internal accounting controls, and clawbacks of bonuses and incentive-based compensation.⁶

Some of these "new twists" include an increased focus on abuses of specialized accounting methods, including issues with percentage of completion accounting, valuation adjustments and management discretion as avenues for

¹The Financial Reporting and Audit Task Force (the Task Force) was announced by the SEC on July 2, 2013 as part of the Division's "ongoing efforts to concentrate resources on high-risk areas of the market and bring cutting-edge technology and analytical capacity to bear in its investigations." SEC Press Release 2013-121, *SEC Announces Enforcement Initiatives to Combat Financial Reporting and Microcap Fraud and Enhance Risk Analysis* (July 2, 2013), available at <https://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171624975>. Initially chaired by David Woodcock, Director of the SEC's Fort Worth, Texas Office, the Task Force works closely with the Division's Office of the Chief Accountant, the SEC's Office of the Chief Accountant, the Division of Corporation Finance, and the Division of Economic and Risk Analysis. The FRAud Group is now chaired by Margaret McGuire, Senior Counsel to the Directors and Deputy Directors of the SEC.

² See *The SEC Turns Up the Heat on Financial Reporting Fraud*, a summary of remarks of Margaret McGuire, chair of the FRAud Group, American Law Institute's Accountant's Liability 2015 Conference (Oct. 2, 2015), available at <https://www.whitecollarbriefly.com/2015/10/05/the-sec-turns-up-the-heat-on-financial-reporting-fraud>.

³ Directors Forum 2016 Keynote Address, Andrew Ceresney, Director, Division of Enforcement (Jan. 25, 2016) at 2, available at <https://www.sec.gov/news/speech/directors-forum-keynote-ceresney.html> [hereinafter Ceresney Address].

⁴ *Id.*

⁵ *Id.* at 3.

⁶ *Id.* at 3-5.

improperly enhancing reported financial results. He also noted aggressive use of the SEC's authority under Section 304 of Sarbanes-Oxley (SOX) to claw back executive compensation.⁷ On February 17, 2016, the SEC announced that, in connection with settled charges brought against Marrone Bio Innovations and one of its former executives for inflating financial results to meet projections, the company's CEO and former CFO voluntarily reimbursed the company \$15,234 and \$11,789, respectively, for incentive-based compensation received following the misstated financial statements.⁸ The CEO and former CFO were not charged with any misconduct, but this case is indicative of the SEC's continued aggressive stance on clawbacks, given the small amounts involved.⁹

Ceresney also discussed the importance of gatekeepers in the financial reporting process, noting that "gatekeepers are critical to helping ensure that issuers make timely, comprehensive, and accurate disclosure[s]."¹⁰ Indeed, "[a]udit committee members and external auditors in particular are among the most important gatekeepers in this process, and each has a responsibility to foster high-quality, reliable financial reporting."¹¹ SEC Chair Mary Jo White also stressed the importance of gatekeepers in her Keynote Address at the 2015 AICPA National Conference. Chair White noted that her audience—preparers, auditors, audit committee members and their advisors—"is a very important one for the SEC. Investors, issuers, and the markets all depend on the work [these individuals] do and the judgments [they] make."¹²

Chair White also noted that, since she became Chair, "the staff has reinvigorated its investigative and enforcement efforts" in the area of financial reporting and disclosures "with a focus on issuers and gatekeepers."¹³ She noted that the SEC continues to closely scrutinize "the gatekeepers of financial reporting, continuing to hold accountants, auditors, and audit committees accountable in appropriate circumstances."¹⁴

Both Ceresney and Chair White referenced two recent actions brought against national audit firms BDO and Grant Thornton, as well as individual auditors from those firms.

In September 2015, the SEC alleged that BDO and five of its partners dismissed or ignored various red flags and issued false and misleading unqualified audit opinions about the financial statements of one of BDO's audit clients.¹⁵

The allegations against Grant Thornton and two of its partners also arose from

⁷ *Id.*

⁸ SEC Press Release 2016-32, *SEC Charges Biopesticide Company and Former Executive with Accounting Fraud* (Feb. 17, 2016), available at <https://www.sec.gov/news/pressrelease/2016-32.html>.

⁹ *Id.*

¹⁰ *Id.* at 5.

¹¹ *Id.*

¹² 2015 AICPA National Conference Keynote Address, *Maintaining High-Quality, Reliable Financial Reporting: A Shared and Weighty Responsibility*, Chair Mary Jo White (Dec. 9, 2015) at 1, available at <https://www.sec.gov/news/speech/keynote-2015-aicpa-white.html>.

¹³ *Id.* at 6.

¹⁴ *Id.*

¹⁵ SEC Press Release 2015-184, *SEC Charges BDO and Five Partners in Connection with False and Misleading Audit Opinions* (Sept. 9, 2015), available at <https://www.sec.gov/news/pressrelease/2015-184.html>.

the firm's disregard of numerous red flags and other warnings concerning alleged fraud at two publicly traded audit clients, both of which became the subject of subsequent SEC enforcement actions for improper financial reporting.¹⁶ The SEC alleged that the Grant Thornton engagement partner overseeing both audits had previously received warnings regarding the quality of her work, and further alleged that Grant Thornton and the engagement partners "repeatedly violated professional standards."¹⁷

Ceresney noted a few "important takeaways" and lessons from these two cases: (i) "auditors need to demand objective evidence and investigation when they come across situations which suggest inaccuracies in the company filings"; (ii) "national office personnel need to be the bulwark against client pressure"; (iii) "audit firms must not retreat from demanding an internal investigation unless they obtain evidence that dispels the issues that led them to request such an investigation in the first place"; and (iv) "engagement partners need to be actively monitored to ensure that they are fully capable of fulfilling their critical role as gatekeepers."¹⁸

External auditors are not the only gatekeepers that have fallen under the scrutiny of the SEC in the past few years. Ceresney also discussed the three cases brought against audit committee chairs, which he noted "provide helpful guidance on the type of failures that will attract our attention."¹⁹

In early 2014, the SEC charged AgFeed Industries, Inc. and its top executives with allegedly conducting a massive accounting fraud scheme involving reporting fake revenues from its China operations in order to meet financial targets and inflate its stock price.²⁰ The SEC alleged that the company's audit committee chair learned facts that suggested that the Chinese sales were inflated but, rather than conduct an internal investigation, he ignored the red flags of fraud and signed off on the publicly filed financial statements.²¹

In another recent case, the SEC charged an issuer's former audit committee chair for signing the Form 10-K annual report that she knew or should have known contained a false SOX certification.²² Finally, the SEC found that the former audit committee chair of MusclePharm Corporation signed off on several filings that did not fully or accurately disclose the extent of executive perks.²³

Ceresney noted that "[t]he takeaway from these cases is straightforward: when an audit committee member learns of information suggesting that company

¹⁶ SEC Press Release 2015-272, *SEC: Grant Thornton Ignored Red Flags in Audits* (Dec. 2, 2015), available at <https://www.sec.gov/news/pressrelease/2015-272.html>.

¹⁷ *Id.*

¹⁸ Ceresney Address at 7.

¹⁹ *Id.* at 6.

²⁰ SEC Press Release 2014-47, *SEC Charges Animal Feed Company and Top Executives in China and U.S. With Accounting Fraud* (Mar. 11, 2014), available at <https://www.sec.gov/News/PressRelease/Detail/PressRelease/1370541102314>.

²¹ *Id.*

²² SEC Press Release 2014-59, *SEC Announces Fraud Charges against Coal Company and CEO for False Disclosures About Management* (Mar. 27, 2014), available at <https://www.sec.gov/News/PressRelease/Detail/PressRelease/1370541317697>.

²³ SEC Press Release 2015-179, *SEC Charges Sports Nutrition Company with Failing to Properly Disclose Perks for Executives* (Sept. 8, 2015), available at <https://www.sec.gov/news/pressrelease/2015-179.html>.

filings are materially inaccurate, it is critical that he or she take concrete steps to learn all relevant facts and cease annual and quarterly filings until he or she is satisfied with the accuracy of future filings.”²⁴

Ceresney closed his remarks by highlighting some of the technological advances the FRAud Group and others within the SEC are using to detect possible financial misconduct, noting that, “[h]istorically, [the Division’s] enforcement efforts have been reactive, arising from restatements or some other public disclosure. We have attempted in recent years to be more proactive in our enforcement efforts, to try to detect misconduct before it becomes public.”²⁵ One key way the Division is doing this is by “leveraging data available” to it.²⁶ Last year, the Division of Economic and Risk Analysis (DERA) announced the Corporate Issuer Risk Assessment program (CIRA), a tool that aggregates and organizes corporate issuer financial information.²⁷ CIRA expands upon the “accounting quality model” (AQM) previously developed by the SEC. According to Mark J. Flannery, Chief Economist and Director of DERA, the tools developed under CIRA “seek to identify situations or activities at corporate filers that warrant further inquiry. The original (AQM) effort focused on estimates of earnings quality and indications of inappropriate managerial discretion in the use of accruals.”²⁸ With the development of CIRA, earnings quality and discretion in the use of accruals are only two of more than 100 custom metrics provided to the SEC.²⁹ For example, the SEC can look at how inventory is moving relative to sales, various performance metrics such as stock price or total shareholder return, and dozens of standard financial ratios such as return on assets and return on equity.³⁰

Ceresney noted that “CIRA’s multiple dashboards enable the staff to compare a specific company to its peers in order to detect abnormal, relative results, focus on particular financial reporting anomalies, and generate lists of companies that meet the criteria for further analysis.”³¹ Indeed, as a result of this “homegrown” tool, the FRAud Group is focused on identifying cases it would not otherwise find, “finding new ways to utilize [its] resources and developing new resources, and building out a methodology for proactive identification of financial reporting and audit issues.”³² At the annual SEC Speaks conference, held in Washington, D.C. on February 19 and 20, 2016, Margaret McGuire, the chair of the FRAud Group, highlighted the value of CIRA, noting that a significant benefit to CIRA is that the program can be tailored and refined to suit their needs, and it allows the FRAud Group and the staff to do things with the “click of a mouse” whereas, prior to the development of CIRA, it would have taken months.

²⁴ Ceresney Address at 6.

²⁵ *Id.* at 7.

²⁶ *Id.*

²⁷ Mark J. Flannery, Chief Economist and Director, Division of Economic and Risk Analysis, *Insights into the SEC’s Risk Assessment Programs (Feb. 25, 2015)* [hereinafter Flannery Speech], available at <https://www.sec.gov/news/speech/insights-into-sec-risk-assessment-programs.html>.

²⁸ Flannery Speech at 2.

²⁹ *Id.*

³⁰ *Id.*; see also DERA, *CIRA and XBRL at the SEC: Expanding the Availability and Use of XBRL Data, An Interview with Mark Flannery, SEC Chief Economist and Director of DERA, The Dimension*, Merrill Corp. (June 2015), available at <http://merrilldisclosuresolutions.org/2015/06/09/dera-cira-and-xbrl-at-the-sec-expanding-the-availability-and-use-of-xbrl-data>.

³¹ Ceresney Address at 7.

³² *Id.*

While the Division remains focused on more traditional areas of financial fraud such as revenue recognition and earnings management, it is also clear that, with the assistance and cooperation of the FRAud Group, the Division is being more proactive, instead of reactive, with respect to possible financial and disclosure fraud. They are not waiting for the next restatement to occur or material event to be announced. The Division, in conjunction with the FRAud Group, is taking a risk-based approach to identifying potential areas of financial misconduct through the use of sophisticated technology and, as a result, reporting companies can expect to see an increase in the number of subpoenas issued by the SEC in this area.

SEC Calls for Enhanced Scrutiny of ETFs



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In the roughly ten-year period from 2005 to late 2015, the aggregate assets in exchange-traded funds (ETFs) have increased from around \$300 billion to \$2.1 trillion.¹ With this increase in popularity has come an increase in regulatory scrutiny.

On August 24, 2015, in what has been dubbed a “Flash Crash,” the stock market experienced an abnormally high amount of early-day sell-offs and the Dow dropped over 1,000 points within minutes after opening. This Flash Crash had a significant impact on ETFs, as noted by former Commissioner Luis A. Aguilar:

[D]ozens of equity ETFs had their prices plunge far below the values of the indices they were designed to track. By one estimate, trading in ETFs was halted more than 1,000 times that morning pursuant to the limit up/limit down rules implemented in the wake of the 2010 flash crash, and this accounted for approximately 85 percent of all trade halts that day.²

For regulators already keeping an eye on the rapid proliferation of ETFs—in terms of both the creation of ETFs themselves and of the aggregate assets—the Flash Crash signaled a need for action. Within weeks, the SEC called for enhanced scrutiny of ETFs. In an October 2015 speech to the SEC’s Investor Advisory Committee, Commissioner Aguilar posited that “[i]t may be time to reexamine the entire ETF ecosystem.”³ Less than a month later, in a speech at Harvard Law School’s Fidelity Guest Lecture Series, Commissioner Kara Stein

¹ Jeff Cox, *There’s an ETF for That: Industry Sets Record*, CNBC, Oct. 16, 2015, available at <http://www.cnbc.com/2015/10/16/etf-industry-sets-record.html>; Exchange-Traded Funds, 2015 Investment Company Fact Book, INVESTMENT COMPANY INSTITUTE, available at http://www.icifactbook.org/fb_ch3.html.

² Luis A. Aguilar, *How Can the Markets Best Adapt to the Rapid Growth of ETFs*, Public Statement to Investor Advisory Committee, SEC, Oct. 15, 2015, available at <https://www.sec.gov/news/statement/how-can-markets-adapt-to-rapid-growth-etfs.html>.

³ *Id.*

offered similarly bold language, stating that “[n]ow is the time to be asking the hard questions about ETFs.”⁴ More specifically, Commissioner Stein called for analyses of “the roles that all of the individual players in this ecosystem play” as well as “how ETFs trade, as compared to mutual funds, and whether the way algorithmic traders utilize ETFs poses concerns to investors placing their retirement savings in these products.”⁵

On January 11, 2016, the SEC’s Office of Compliance Inspections and Examinations released their examination priorities for 2016. Under the category of “Protecting Retail Investors and Investors Saving for Retirement,” the priorities included:

[E]xamin[ing] ETFs for compliance with applicable exemptive relief granted under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 and with other regulatory requirements, as well as review the ETFs’ unit creation and redemption process. We will also focus on sales strategies, trading practices, and disclosures involving ETFs, including excessive portfolio concentration, primary and secondary market trading risks, adequacy of risk disclosure, and suitability, particularly in niche or leveraged/inverse ETFs.⁶

On January 21, 2016, SEC Chair Mary Jo White addressed the topic, confirming that the SEC is “closely reviewing how [exchange-traded funds] trade in the secondary market.”⁷ Importantly, Chair White provided insight as to how the SEC would approach its analysis of ETFs, stating that ETFs will be reviewed using the Flash Crash as “an important ‘case study.’” The basis for this case study is a research note (the Note) published by the staff of the SEC’s Office of Analytics and Research on December 29, 2015.⁸ The Note, entitled “Equity Market Volatility on August 24, 2015,” contains “empirical data and other information to help assess trading on August 24, including several issues that have been debated among market participants and in the media [including] the effects of market volatility on trading in exchange-traded products.” There are several statements and data points within the Note that may shed light on the SEC’s focuses, concerns and understanding of ETFs:

- During a control period from July 27, 2015 through August 21, 2015, “ETPs⁹ were less volatile than Corporates.” However, on August 24, “ETPs as a class experienced more substantial increases in volume and

⁴ Kara M. Stein, *Surfing the Wave: Technology, Innovation, and Competition*, Speech at Harvard Law School’s Fidelity Guest Lecture Series, Nov. 9, 2015, available at <https://www.sec.gov/news/speech/stein-2015-remarks-harvard-law-school.html>.

⁵ *Id.*

⁶ *Examination Priorities for 2016*, National Exam Program, Office of Compliance Inspections and Examinations, SEC, Jan. 11, 2016, available at <https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2016.pdf>.

⁷ Mary Jo White, *Opening Remarks to the Investor Advisory Committee*, Public Statement to Investor Advisory Committee, SEC, Jan. 21, 2016, available at <https://www.sec.gov/News/PublicStmnt/Detail/PublicStmnt/1370547028599>.

⁸ *Equity Market Volatility on August 24, 2015*, Research Note, Office of Analytics and Research, Division of Trading and Markets, SEC, Dec. 29, 2015, available at https://www.sec.gov/marketstructure/research/equity_market_volatility.pdf.

⁹ The Note uses the term “ETP,” or “exchange-traded products,” instead of “ETF.”

more severe volatility than Corporates.” Specifically, during the Flash Crash, “19.2% (288) of ETPs experienced price declines of 20% or greater, while only 4.7% (280) of Corporates experienced such declines.”

- Within the more volatile world of ETPs during the Flash Crash, “individual ETPs varied widely in terms of their volatility” and “[e]xtreme volatility seemed to occur idiosyncratically among otherwise seemingly similar ETPs.” For example, “SPY . . . traded at a premium to its NAV until 9:37, while the next largest ETP—the iShares Core S&P 500 (‘IVV’)—traded at a substantial discount to the SPY, E-Mini, and SPY NAV until 9:43.”
- During the Flash Crash, “83% of [limit up/limit down (LULD)] halts . . . were in ETPs, even though they represent less than 20% of the securities subject to the LULD Plan that were traded that day.”
- One of the metrics that proved to be an accurate predictor of volatility and LULD events was ADV turnover rate, defined as “the ratio of average daily volume in the secondary market for an ETP to its shares outstanding.” Data shows that “[t]he US Equity ETPs in the *least* volatile groups exhibited ADV Turnover Rates (3.8% and 5.3%) that are at least three times higher than the rates for the most volatile groups (0.6% and 1.0%).” Further, when “Large” and “Mid” sized U.S. Equity ETPs—which experienced a total of 322 LULD halts during the Flash Crash—are divided into four bins ranging from “lowest” ADV turnover rate to “highest” ADV turnover rate, all but six of the 322 LULD halts fall within the three lower turnover bins.

At the annual SEC Speaks conference on February 19, 2016, Commissioner Stein again addressed ETFs, noting that their rapid growth “is astounding and potentially good—as long as risks are identified; market participants and investors are informed; and appropriate safeguards are in place.”¹⁰ She further noted the growth in “volume, type, and variety” of ETFs and expressed concern that “the risk presented by some of these new products may not be fully understood by those who have invested in them.” However, she also expressed concern that “even plain-vanilla, equity index ETFs may present risks that are not always anticipated or fully understood.” As a basis for this concern, she reiterated the SEC’s focus on the August 24, 2015 Flash Crash which, she claimed, showed that “many ETFs behaved in an unpredictable

¹⁰ Kara M. Stein, *What Lies Ahead? The SEC in 2016*, SEC Speaks, SEC, Feb. 19, 2016, available at <https://www.sec.gov/news/speech/stein-sec-speaks-2016.html>.

and volatile manner.” With respect to enforcement priorities, Commissioner Stein suggested¹¹ that the SEC consider whether “investors have adequate disclosure of [exchange-traded products’¹²] risks,” “how these products are being marketed and by whom,” and whether certain exchange-traded products “are even suitable for buy-and-hold investors.”

In light of the foregoing statements and data, it is clear that the SEC has identified ETFs as an area of increased scrutiny. ETFs will be an examination priority this year, and may receive increased attention from the SEC’s Division of Enforcement. Simultaneously, the SEC will continue to rely on its industry experts and empirical analysis to enhance its understanding of these products.

Whistleblower Award Signals SEC’s Growing Reliance on Tips from Company Outsiders



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The SEC recently announced a whistleblower award of more than \$700,000 to a company outsider who “provided a detailed analysis to the Commission”¹ in connection with a successful SEC enforcement action against an unidentified company. While the SEC has provided whistleblower awards to external whistleblowers in the past, this recent award suggests that the SEC will likely continue to welcome and pursue tips from company outsiders.

Because the identity of the whistleblower remains confidential, the SEC’s order determining the whistleblower award provides minimal detail regarding the circumstances surrounding the whistleblower’s tip to the SEC. However, based on the SEC’s order, it is clear that the company outsider provided “analysis” to the SEC on at least two occasions, both before and after the Commission enacted its whistleblower award program.² The analysis that the SEC received from the external whistleblower before the enactment of the whistleblower award program did not serve as the basis of the whistleblower’s monetary award.

In connection with the SEC’s public announcement of this recent whistleblower award, Andrew Ceresney, Director of the SEC’s Enforcement Division, stated that “[t]he voluntary submission of high-quality analysis by industry experts can be every bit as valuable as first-hand knowledge of wrongdoing by company insiders.”³

¹¹ Commissioner Stein’s remarks did not identify actual Division of Enforcement priorities for 2016, but rather suggested these priorities as a means of effectively regulating exchange-traded products.

¹² Commissioner Stein used the broader term “exchange-traded product” as well as “exchange-traded fund” in her speech.

¹ SEC Order Determining Whistleblower Award, Release No. 76921, File No. 2016-2 (Jan. 15, 2016) [hereinafter SEC Order].

² *Id.*

³ *Id.*

This recent award highlights the SEC's continued willingness to pursue whistleblower tips that it receives from individuals who are not current or former employees of a company. Indeed, the Chief of the SEC's Office of the Whistleblower, Sean X. McKessy, noted that this recent whistleblower award "demonstrates the Commission's commitment to awarding those who voluntarily provide independent analysis as well as independent knowledge of securities laws violations to the agency. We welcome analytical information from those with in-depth market knowledge and experience that may provide the springboard for an investigation."⁴

Since its inception in 2011, the SEC Whistleblower program has awarded more than \$57 million to 26 whistleblowers.⁵ The SEC most recently announced the payment of almost \$2 million to three whistleblowers in March 2016. In the fiscal year 2015, the SEC received 3,923 whistleblower tips, complaints or referrals, which was an increase of 303 tips, complaints or referrals (or approximately 8%) from the fiscal year 2014.⁶ The most common categories for tips, complaints or referrals reported by whistleblowers in the fiscal year 2015 were corporate disclosure and financials (17.5%), offering fraud (15.6%) and manipulation (12.3%).⁷ Moreover, the SEC paid more than \$37 million in awards to eight whistleblowers in the fiscal year 2015.⁸ Whistleblower awards typically range from 10 to 30 percent of the money collected when the money sanctions at issue exceed \$1 million.⁹

The SEC recently reported in its 2015 Annual Report to Congress on the whistleblower program that, to date, "almost half of the award recipients [have been] current or former employees of the company on which they reported information of wrongdoing."¹⁰ Notably, the remaining whistleblower award recipients were company outsiders, or individuals who obtained information of possible misconduct by virtue of being "victims of the fraud, professionals working in a related industry, or [having] a personal relationship with the alleged wrongdoer."¹¹ The SEC also highlighted in its 2015 Annual Report to Congress that "[t]here is no requirement under the Whistleblower Rules that an individual must be a current or former employee to be eligible for an award."¹²

The SEC's whistleblower program continues to be a strong and powerful tool that the Division of Enforcement relies on to further its enforcement objectives.

⁴ *Id.*

⁵ *Id.*

⁶ Office of the Whistleblower, SEC, *2015 Annual Report to Congress on the Dodd-Frank Whistleblower Program* at 21 [hereinafter 2015 Annual Report].

⁷ *Id.* at 22.

⁸ *Id.* at 1.

⁹ SEC Order.

¹⁰ 2015 Annual Report at 16.

¹¹ *Id.* at 17.

¹² *Id.* at 16.

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