

SEC and CFTC Enforcement Update

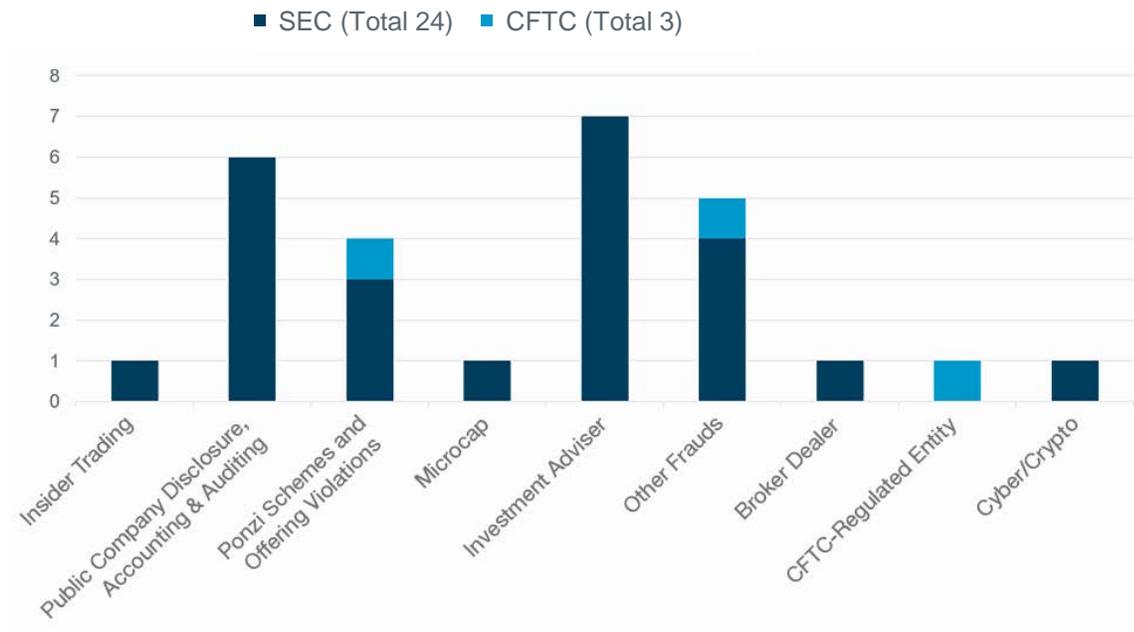
May 2020

In this edition of the newsletter, we discuss enforcement developments at the agencies during May 2020. As illustrated below, the SEC brought 27 actions (excluding follow-on actions, bars, and suspensions) and the CFTC brought three actions against a combined total of 50 defendants and respondents. The defendants/respondents were roughly evenly split between individuals (26) and legal entities (24).

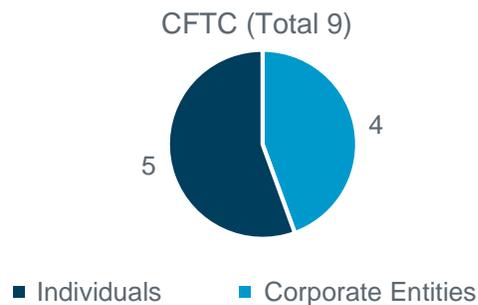
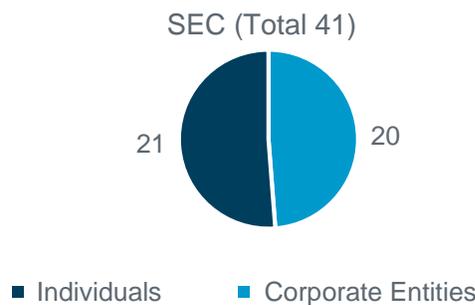
The SEC's 27 actions spanned a variety of case types, including some related to the ongoing COVID-19 pandemic. The CFTC's actions involved Ponzi Schemes, frauds, and regulation violations.

Actions Initiated by the SEC and CFTC in May 2020¹

Actions Categorized by Matter Type



Types of Defendants/Respondents



¹ Follow-on administrative proceedings, suspensions, bars, and delinquent filings excluded.

Key Cases and Developments

[SEC Files Fraud Complaints Against Two Microcap Companies and One of the Companies' CEOs for Statement Regarding COVID-19](#)

SEC v. Applied BioSciences Corp. (S.D.N.Y. May 14, 2020, Contested); SEC v. Turbo Global Partners, Inc. and Robert W. Singerman (M.D. Fla. May 14, 2020, Contested)

The SEC filed civil actions against Applied BioSciences Corp., Turbo Global, and Turbo Global's CEO for alleged misleading claims regarding COVID-19 commercial opportunities. According to the SEC, Applied BioSciences said that it was manufacturing COVID-19 finger-prick tests for the general public to use in homes and schools, and for anyone wanting immediate and private results. The SEC alleged that the tests were not intended for home use, the tests could be administered only in consultation with a medical professional, the tests were not authorized by the FDA, and that the company had not shipped any tests. Regarding Turbo Global and its CEO, the SEC alleged that they issued a press release concerning a public-private partnership to sell crowd thermal scanning machines. Among other claims, the SEC alleged that the company had no agreement to sell the product and had no partnerships with government entities. The SEC alleged that the CEO drafted the statements and knew they were false, and also was subject to a prior injunction relating to SEC claims of securities fraud.

[SEC Press Release](#) | [SEC Complaint \(Applied BioSciences\)](#) | [SEC Complaint \(Turbo Global\)](#)

[SEC Settles with Private Equity Firm for Insider Trading Compliance Failures](#)

The SEC instituted a settled administrative proceeding against a private equity investment adviser under Sections 204A and 206(4) of the Investment Advisers Act for alleged failure to implement sufficient insider trading controls. According to the SEC's allegations, the firm experienced "special circumstances" by having a representative on the board of a public portfolio company while the employee continued to participate in trading decisions for the adviser. The adviser had controls in place, such as including the portfolio company on its restricted list, limiting trading to the portfolio company's open trading windows, and requiring the compliance department to conduct follow-up before pre-approving any trades in the stock of the portfolio company. However, the SEC alleged that the policies were not sufficiently detailed in stating what the compliance department should do as follow-up, and that the documentation of their work was insufficient to show that the compliance staff had inquired at all. The firm agreed to a censure and to pay a civil penalty of \$1,000,000. For more details about the facts of the case, see Davis Polk's recent [Private Equity Regulatory Update](#).

[SEC Press Release](#) | [SEC Order](#)

[SEC Settles with ICO Issuer with a Fair Fund](#)

In re BitClave PTE Ltd. (A.P. May 28, 2020, Settled)

The SEC instituted a settled proceeding against a blockchain search-engine company for conducting an alleged unregistered initial coin offering ("ICO") in violation of Section 5(a) of the Securities Act. According to the SEC, the company conducted an ICO to fund its development and launch of a blockchain search engine. The company agreed to pay disgorgement of \$25,000,000, prejudgment interest of \$3,444,197, and a civil penalty of \$400,000. The financial sanctions would be put into a Fair Fund for distribution to harmed investors. The settlement differs from prior SEC settlements involving ICOs and non-fraud Section 5 violations. In prior cases, the settling companies agreed to undertakings to conduct a claims process to return money to investors, and also register the tokens as a class of securities. Here, the company is not undertaking to register the tokens as a class of securities, and is paying money into the Fair Fund instead of administering its own claims process.

[SEC Pres Release](#) | [SEC Order](#)

[SEC Institutes Settled Administrative Proceeding for Alleged Section 13\(d\) Violation](#)

In re 1Globe Capital, LLC and Jiaqiang “Chiang” Li (A.P. May 13, 2020, Settled)

The SEC settled claims against an investor and his investment firm for alleged violations of Section 13(d) of the Exchange Act. According to the SEC, the Respondents failed to disclose all the stock of a biotechnology company they owned together with a group of relatives, who collectively owned nearly one-third of the company’s stock. They also allegedly failed to disclose periodic increases in their position and their activist plan for the company, including support of a plan to take the company private and a plan to replace company directors. The investment firm agreed to pay a civil penalty of \$200,000 and the investor agreed to pay a civil penalty of \$90,000.

[SEC Administrative Summary](#) | [SEC Order](#)

[SEC Settles Claims Concerning Order Routing Disclosures](#)

In re Bloomberg Tradebook, LLC (A.P. May 6, 2020, Settled)

The SEC settled administrative claims against a broker-dealer for alleged misrepresentations about how it routed orders on its trading platform in violation of Section 17(a)(2) of the Securities Act. According to the SEC, the broker-dealer’s marketing material emphasized that it would use its technology to decide where to route orders, using factors such as price and liquidity, but routed certain categories of orders to unaffiliated broker-dealers and allowed them to determine where to route orders for execution. The broker-dealer agreed to pay a civil penalty of \$5,000,000.

[SEC Press Release](#) | [SEC Order](#)

[CFTC Announced a \\$2 Million Whistleblower Award](#)

The CFTC announced a \$2,000,000 award to be split between four whistleblowers who jointly submitted a tip to the CFTC. In addition to filing the original tip, the whistleblowers provided ongoing support to the CFTC and other regulators. This \$2 million award is part of \$100 million the CFTC has awarded pursuant to the Dodd-Frank Act.

[CFTC Press Release](#) | [CFTC Order](#)

[CFTC Division of Enforcement Issues New Guidelines for Determining Civil Monetary Penalties in Enforcement Actions](#)

The CFTC announced an update to its Civil Monetary Penalty guidance. The guidance calls for a three-pronged penalty analysis based on (1) the “gravity of the violation”; (2) “mitigating and aggravating circumstances”; and (3) “other considerations.” The gravity of the violation prong includes assessment of factors such as the nature and scope of the violations, the Respondent’s state of mind, and the nature of scope of any consequences flowing from the violations. The mitigating and aggravating circumstances prong includes factors such as the Respondent’s conduct following the violation, whether the Respondent self-reported the violation, and various factors related to the Respondent’s remediation and compliance efforts. Other considerations can include other potential liability, penalties in similar cases, and the conservation of CFTC resources over the course of the investigation. Notably, penalties can be assessed on a per violation basis or up to three times the gain the Respondent received.

[CFTC Civil Monetary Penalty Guidance](#) | [CFTC Press Release](#)

CFTC Settles Claims against Principal and Commodities Trading Fund for Engaging in Wash Trading

In re Mehran Khorrami and Cayley Investment Management, LLC (A.P., May 28, 2020, Settled)

The CFTC settled charges with a commodities trading firm and one of its principals for alleged wash trading. According to the CFTC, the principal entered both buy and sell trades that matched one another's bid and ask prices on various commodity contracts on behalf of the firm's client. Both the firm and the principal agreed to pay a joint and several civil penalty of \$150,000.

CFTC Order

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