

SEC and CFTC Enforcement Update

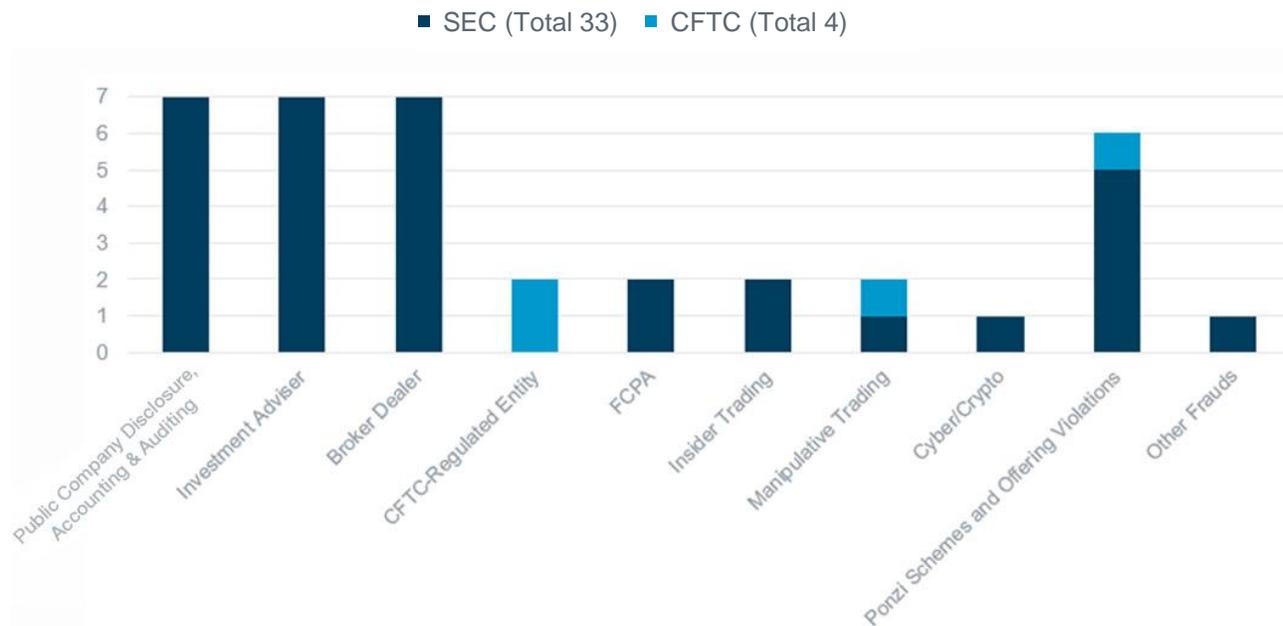
August 2020

In this edition of the newsletter, we discuss enforcement developments at the agencies during August 2020. As illustrated below, the SEC brought 33 actions (excluding follow-on actions, bars, and suspensions) and the CFTC brought 4 actions. The SEC and CFTC brought these actions against a combined total of 56 defendants and respondents.

The SEC's 33 actions spanned numerous case types, including public company disclosures, FCPA, investment adviser, and broker-dealer cases. The CFTC's 4 actions included spoofing and Ponzi scheme cases.

Actions Initiated by the SEC and CFTC in August 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 and DOJ Settle FCPA Claims Against Global Nutrition Company

In re Herbalife Nutrition LTD (A.P. Aug. 28, 2020, Settled)

The SEC settled administrative claims against a global nutrition company for alleged violations of the bribery provision of the Foreign Corrupt Practices Act (FCPA). According to the SEC, the company's wholly-owned Chinese subsidiary provided improper payments, gifts, and entertainment to Chinese government officials in exchange for required business licenses and to remove negative mentions of the company from state-owned media. The SEC further alleges that the company suffered from insufficient internal controls and that employees made false expense reimbursement reports. The company agreed to pay disgorgement of \$58,669,993 and prejudgment interest of \$8,643,504.50. The company also entered into a deferred prosecution agreement with the Department of Justice (DOJ) and paid a criminal penalty of approximately \$55,000,000.

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

SEC Settles FCPA Complaint with Consumer Loan Company

In re World Acceptance Corp. (A.P. August 6, 2020, Settled)

The SEC settled charges with a consumer loan company for alleged violations of the bribery and books and records provisions of the FCPA stemming from the company's former wholly-owned subsidiary in Mexico. The SEC alleged that the company's subsidiary made payments to Mexican government officials to secure business for its government employee lending line and timely repayment of loans employees took out under this line. The company agreed to pay disgorgement of \$17,826,000, prejudgment interest of \$1,900,000, and a civil penalty of \$2,000,000.

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

SEC Settles with Computer Server Company and its Former CFO for Accounting Violations; CEO Agrees to Reimburse Company Under SOX 304

In re Super Micro Computer, Inc. (A.P. August 25, 2020, Settled); In re Howard Hideshima (A.P. August 25, 2020, Settled); In re Charles Liang (A.P. August 25, 2020, Settled)

The SEC settled administrative claims against a company that produces computer servers and its former CFO for alleged accounting violations resulting from improper revenue recognition practices. According to the SEC, employees were pushed to maximize revenue at the end of a quarter and to minimize expenses through a variety of practices. The alleged practices include: recognizing revenue prior to the delivery of goods; sending goods prior to their requested delivery date; sending incomplete goods; recognizing revenue upon shipment rather than delivery; recognizing revenue prior to acceptance by customers; and recognizing extended warranty revenue at the time of sale rather than over the length of the warranty. The SEC further alleges that the company underreported expenses through a cooperative marketing program, and by failing to record an expense when the company no longer held certain inventory. The company agreed to pay a \$17.5 million penalty and the former CFO agreed to pay disgorgement of \$260,844, prejudgment interest of \$40,212, and a \$50,000 civil penalty. Separately, the company's CEO agreed to reimburse the company for \$2,122,000 under Sarbanes-Oxley Section 304, although the SEC did not bring any claims of misconduct against him.

[SEC Press Release](#) | [SEC Order \(Company\)](#) | [SEC Order \(Former CFO\)](#) | [SEC Order \(CEO\)](#)

SEC Settles with Former CEO of Global Car Rental Company for Disclosure Violations

SEC v. Frissora (D.N.J. August 13, 2020, Settled)

The SEC filed a settled complaint against the former CEO and Chairman of a major international car rental company for alleged financial reporting and disclosure violations. According to the SEC, the former CEO aided and abetted the company in filing inaccurate financial statements and disclosures by pressuring subordinates to “find money” through re-analysis of reserve accounts, which led to inaccurate financial reports. The SEC further alleged the former CEO led the company to hold vehicles in its fleet for longer periods to lower its depreciation costs without disclosing this change or the risks of relying on an older fleet. The SEC also claimed the former CEO approved the company reaffirming its earnings guidance despite internal projections showing lower earnings figures. The former CEO agreed to repay the company nearly \$2 million in incentive-based compensation. In December 2018, the company settled related fraud allegations with the SEC for \$16 million.

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

SEC Brings Complaint Against Founder and Former Board Member of Pharmaceutical Company for Insider Trading

SEC v. Sarshar (S.D.N.Y. August 25, 2020, Contested)

The SEC filed a complaint against the founder and former board member of a pharmaceutical company for alleged insider trading. According to the SEC, the former board member tipped off friends and family about a forthcoming tender offer announcement by the company, which caused his friends and family to trade in the pharmaceutical company’s stock ahead of the tender offer announcement. The SEC brought claims pursuant to Section 14(e) of the Exchange Act of 1934, which governs tender offers. The U.S. Attorney’s Office for the Southern District of New York announced parallel criminal charges against the former board member.

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

SEC Settles an Administrative Action Regarding Allocation of Expenses and Fees with an Investment Adviser

In re Rialto Capital Management, LLC (A.P. August 7, 2020, Settled)

The SEC settled an administrative proceeding with a registered investment adviser for alleged misallocation and misreporting of costs and expenses for “third party tasks” (such as account and valuation services) performed by the investment adviser for investment funds. The SEC alleged that the investment adviser over-allocated the costs of third party tasks to the funds when the adviser should have allocated part of the costs to related co-investment vehicles the adviser managed. The investment adviser agreed to pay a civil penalty of \$350,000.

[SEC Order](#)

SEC Settles Charges with an Investment Adviser for Recommending Mutual Funds with Higher Fees

In re SCF Investment Advisors, Inc. (A.P. August 13, 2020, Settled)

The SEC settled charges with an investment adviser for alleged breach of fiduciary duty by recommending higher-cost mutual funds without disclosing potential conflicts of interest. According to the SEC, the investment adviser recommended higher-cost mutual and money market funds to clients that were held by the investment adviser’s affiliated broker-dealer without disclosing a conflict stemming from a revenue sharing agreement with the broker-dealer. The investment adviser agreed to pay disgorgement of \$544,446, prejudgment interest of \$22,746, and a civil penalty of \$200,000. In a speech

last fall, SEC Director of Enforcement Stephanie Avakian previewed this type of case. Ms. Avakian highlighted increased future enforcement focus on investment advisors with an affiliated broker-dealer business selecting cash sweep accounts or money market funds that would generate greater income. For further analysis, see our client memorandum discussing the speech [here](#).

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

CFTC Settles with Bank for Spoofing, False Statements, and Compliance Violations

In re The Bank of Nova Scotia (A.P. August 19, 2020, Settled)

The CFTC settled three administrative proceedings against a global bank for alleged false statements, spoofing, compliance, and supervision violations. In the first proceeding, the CFTC alleged that the bank made false statements in a previous enforcement action investigation related to spoofing gold and silver futures contracts. In the prior enforcement action, the bank agreed to pay an \$800,000 penalty. In the second proceeding, the CFTC alleged that the improper spoofing activity by the bank exceeded the scope of the prior enforcement action and warranted additional claims. In the third proceeding, the CFTC alleged the bank failed to provide accurate pre-trade mid-market marks for swaps, violated recordkeeping and reporting requirements for swaps, and made misleading statements about its audio retention and supervision practices. The bank agreed to pay a CFTC record-setting \$17 million penalty related to the false statements action, another record-setting penalty, for \$42 million, related to the spoofing action, and over \$18 million in restitution and disgorgement. The bank also entered a deferred prosecution agreement with the DOJ in a parallel action related to spoofing and agreed to pay \$60.4 million in criminal fines, forfeiture, and restitution. Finally, the bank agreed to a \$50 million civil penalty related to the compliance and supervision proceeding.

[CFTC Press Release](#) | [CFTC Order \(False Statements\)](#) | [CFTC Order \(Spoofing\)](#) | [CFTC Order \(Compliance\)](#) | [DOJ Press Release](#)

Personnel Changes

The SEC announced several notable personnel changes:

- The SEC announced that Co-Director of Enforcement Steve Peikin departed the SEC. Mr. Peikin served as Co-Director of the Enforcement Division for over three years. Stephanie Avakian will remain as the Director of Enforcement.

[SEC Press Release](#)

- The SEC named Marc Berger Deputy Director of the Enforcement Division. Mr. Berger previously served as Director of the New York Regional Office since December 2017.

[SEC Press Release](#)

- The SEC named Richard Best Director of the New York Regional Office. Mr. Best has been with the SEC since 2015 and succeeds Marc Berger.

[SEC Press Release](#)

- The SEC named Scott A. Thompson Associate Regional Director for Enforcement in the Philadelphia Regional Office. Mr. Thompson has been with the SEC since 2007 and succeeds Kelly L. Gibson, who became the Regional Director of the Philadelphia Regional Office earlier this year.

[SEC Press Release](#)

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your usual Davis Polk contact.

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