Davis Polk

SEC Enforcement Division Annual Report Reflects Areas of Focus on Public Companies

November 27, 2018 | Client Update | 2-minute read

Cryptocurrency fraud and schemes against mom-and-pop retail investors may consume the limelight and make for good press, but the SEC enforcement division's **annual report** also highlights continued interest in public company actions.

Individual accountability is one of the staff's five key initiatives. In FY 2018, the Commission charged individuals in more than 70% of the enforcement actions it brought, including "numerous" CEOs and CFOs, as well as accountants, auditors and other gatekeepers.

The Division's Cyber Unit is up and running. The Unit brought the case against Yahoo! Inc., which was the agency's first case against a public company for failing to properly inform investors about a cyber breach.

Financial remedies are supplemented with governance changes. The Division intends to continue to explore alternative means of relief, such as stripping the CEO of super-majority voting control in the Theranos case and "enhanced" corporate governance that included appointment of two new independent directors, a committee of independent directors and the CEO stepping down as chairman, in the Tesla case.

Issuer reporting and disclosure issues and auditor misconduct accounted for 16% of cases. The Division brought actions against 54 entities and 94 individuals related to reporting and disclosure allegations. Besides Tesla and Theranos, the cases involve: failing to disclose bribery schemes; inflating the value of assets; misleading investors about increased risk that a company would miss a key financial goal announced previously in connection with a merger; misleading investors about the impact of a documentary on the company's reputation and business; and misleading investors about the development of a cancer drug.

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

Ning Chiu
+1 212 450 4908
ning.chiu@davispolk.com
