

SEC and CFTC Enforcement Update

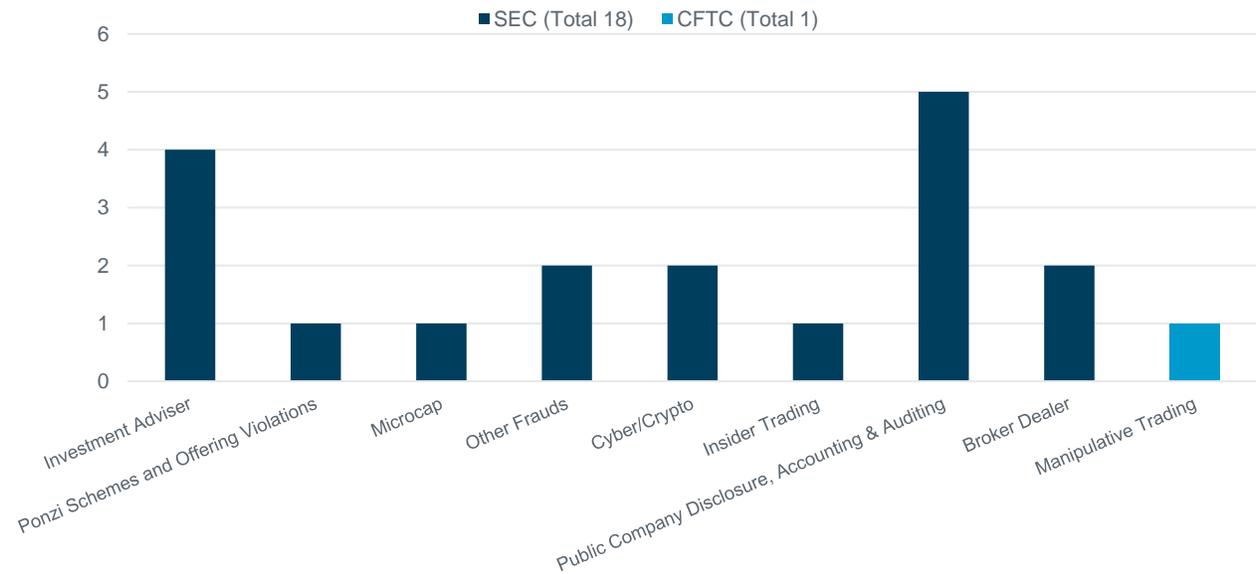
February 2021

In this edition of the newsletter, we discuss enforcement developments at the agencies during February 2021. The SEC filed 18 actions and the CFTC filed one (excluding follow-on actions, bars and suspensions) against a combined total of 33 defendants and respondents.

The SEC's 18 actions spanned numerous case types, including public company disclosure, accounting and auditing; investment adviser; and cryptocurrency cases. The CFTC's single action concerned manipulative trading.

Actions Initiated by the SEC and CFTC in February 2021¹

Actions Categorized by Matter Type



Types of Defendants/Respondents



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

Enforcement Policy Changes

[SEC Delegates Formal Order of Investigation Authority](#)

On February 9, the Acting Chair of the SEC announced that senior enforcement officers will be empowered to exercise the Commission's delegated authority to issue Formal Orders of Investigation, which authorizes front-line staff to subpoena documents and sworn testimony. Formal order authority was previously delegated to senior officials during the Obama administration, but withdrawn by the Trump administration in 2017 and delegated to the Co-Directors of Enforcement.

[Statement by Acting Chair Lee](#)

[SEC Changes Enforcement Practice for Settlement Offers Involving Waivers](#)

On February 11, the Acting Chair of the SEC announced that the Division of Enforcement will no longer recommend settlement offers that are conditioned on the granting of waivers from automatic disqualifications. Since the SEC initiated a new waiver-approval process in 2019, settlement offers and waiver requests were considered together as a package. The recent announcement ends that practice. Two Commissioners issued a statement disagreeing with the policy change. As discussed in our recent [client memo](#), if the change reduces transparency between SEC staff and parties negotiating a possible settlement, the result likely will be a more difficult and protracted process for both sides.

[Statement by Acting Chair Lee](#) | [Statement by Commissioners Peirce and Roisman](#)

Key Cases and Other Developments

[SEC Does Not Impose Penalty Due to Company's Cooperation in Perks Case](#)

[In re Gulfport Energy Corporation \(A.P. Feb. 24, 2021\); In re Michael Moore \(A.P. Feb. 24, 2021\)](#)

The SEC settled administrative claims against an oil and gas company and its former CEO for failing to disclose executive compensation and related person payments, including personal use of chartered aircraft. The SEC did not impose a civil penalty against the company in light of its "extensive remedial efforts," which included replacing senior leadership, developing new expense policies and procedures, and strengthening internal controls. The former CEO agreed to pay a civil penalty of \$88,248.

[SEC Press Release](#) | [SEC Order \(Gulfport\)](#) | [SEC Order \(Moore\)](#)

[SEC Settles Case with Introducing Brokerage for Misdirecting Customer Orders](#)

[In re Lightspeed Trading, LLC \(A.P. Feb. 2, 2021, Settled\)](#)

The SEC settled a case involving an introducing broker over misdirecting customer orders. The SEC alleged that the broker disregarded many of its customers' directions and instead sent orders to an affiliated broker-dealer that routed the customer orders for execution and generally charged the broker no or low market center fees. The SEC further alleged that the broker still charged its customers the fees for the market centers that they had selected, allowing the broker to receive more than \$300,000 from overcharging customers. The broker agreed to pay more than \$250,000 in disgorgement. As discussed in our recent [client memo](#), the SEC's order includes the first apparent acknowledgment that the three equitable principles for disgorgement from the Supreme Court decision in *Liu v. SEC* also apply to administrative proceedings.

[SEC Order](#)

[SEC Sanctions Two Accountants for College Audit Failures](#)

In re Christopher L. Stanley (A.P. Feb. 23, 2021); In re Jennifer M. Stewart (A.P., Feb. 23, 2021)

The SEC settled administrative proceedings against a former partner and a former senior manager of an international accounting firm for allegedly not adhering to professional standards in the audit of a not-for-profit college. The SEC alleged that the auditor's "numerous and pervasive" failures significantly reduced the audit team's ability to detect fraud by a university controller. The SEC suspended the former partner and former senior manager from appearing or practicing before the Commission as accountants for 3 years and 1 year, respectively.

[SEC Press Release](#) | [SEC Order \(Stanley\)](#) | [SEC Order \(Stewart\)](#)

[SEC Requires Clawback from Two Individuals for False Accounting Statements](#)

In re Joseph Jackson et al. (A.P. Feb. 2, 2021, Settled)

The SEC settled a case involving the former CEO and former CFO of a publicly traded employee benefits company for allegedly making false accounting statements to the company's internal accountants and the company's independent auditor related to a significant contract between the company and a large public-sector client. The SEC alleged that because of these false and misleading statements, the company improperly recognized \$3.6 million worth of revenue in 2016 from the client. The SEC further alleged that the two individuals earned incentive-based compensation based on the company's 2016 financial performance in violation of Section 304 of the Sarbanes-Oxley Act. The individuals agreed to reimburse the company for their bonuses and to pay \$175,000 in civil penalties to the SEC.

[SEC Order](#)

[SEC Brings Civil Action against Credit Ratings Agency](#)

SEC v. Morningstar Credit Ratings, LLC (S.D.N.Y. Feb. 16, 2021, Contested)

The SEC brought a civil action against a credit ratings agency for allegedly violating disclosure and internal controls provisions of the federal securities laws in rating commercial mortgage-backed securities (CMBS). According to the SEC, the credit ratings agency permitted analysts to make undisclosed adjustments to key stresses in the model that it used to rate CMBS transactions. The SEC also alleged that the ratings agency failed to establish and enforce an effective internal control structure governing the adjustments for certain CMBS transactions.

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

[SEC Brings Case against Three Individuals for Digital Asset Frauds](#)

SEC v. Kristijan Krstic et al. (E.D.N.Y. Feb. 1, 2021, Contested)

The SEC brought a case against three individuals for allegedly defrauding hundreds of retail investors out of more than \$11 million through two fraudulent and unregistered digital asset securities offerings. According to the SEC, the individuals induced investors to buy digital asset securities through two companies. The SEC alleged that the individuals falsely claimed that one of the companies was "the largest Bitcoin exchange in euro volume and liquidity" and "consistently rated the best and most secure Bitcoin exchange by independent news media." The SEC further alleged that the individuals made false claims that the tokens would function on the Ethereum blockchain, that investor funds would be used to develop a mineable coin, and that the tokens would be tradeable on a proprietary platform.

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

SEC Charges Biotech Company and CEO for False Statements about COVID-19 Test

SEC v. Arrayit Corporation and Rene Schena (N.D. Cal. Feb 11, 2021, Contested)

The SEC brought a case against a biotechnology company and its CEO for allegedly misleading investors and failing to file required financial reports. According to the SEC, the company made various false statements to investors, including that it had a COVID-19 test before it had acquired the necessary components, that its test was pending emergency approval when none had been requested, and by overstating orders received. The SEC filed related charges against the company's president in September 2020.

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

SEC Brings Case against Investment Adviser and Others for Defrauding Retail Investors

SEC v. GPB Capital Holdings, LLC et al. (E.D.N.Y. Feb. 4, 2021, Contested)

The SEC brought a case against three individuals and their affiliated entities for allegedly running a Ponzi-like scheme that raised over \$1.7 billion from securities issued by a New York-based asset management firm and registered investment adviser. According to the SEC, the individuals misled investors about the source of money used to make 8% annualized distribution payments that were purportedly from monies generated by the firm's portfolio companies. The SEC alleged that the firm used investor money to pay portions of the annualized 8% distribution payments.

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

Whistleblower Awards

The SEC announced five whistleblower awards during the month, totaling approximately \$13.8 million. The largest award, of more than \$9.2 million, was the first award based on a Non-Prosecution Agreement (NPA) or Deferred Prosecution Agreement (DPA) with the DOJ. Those actions became eligible for whistleblower awards in December 2020.

Whistleblower awards in fiscal year 2021 have already surpassed the previous record of approximately \$175 from fiscal year 2020. A record-setting award of \$114 in October 2020 accounts for much of this fiscal year's total.

[SEC Whistleblower Page](#)

Personnel and Organizational Changes

The SEC and CFTC announced a number of notable personnel and organizational changes this month:

- Kelly Gibson was named Acting Deputy Director of the SEC's Division of Enforcement.

[SEC Press Release](#)

- John Coates was named Acting Director of the SEC's Division of Corporation Finance.

[SEC Press Release](#)

- Alicia Lewis was named Special Counsel at the CFTC.

[CFTC Press Release](#)

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