

## SEC and CFTC Enforcement Update

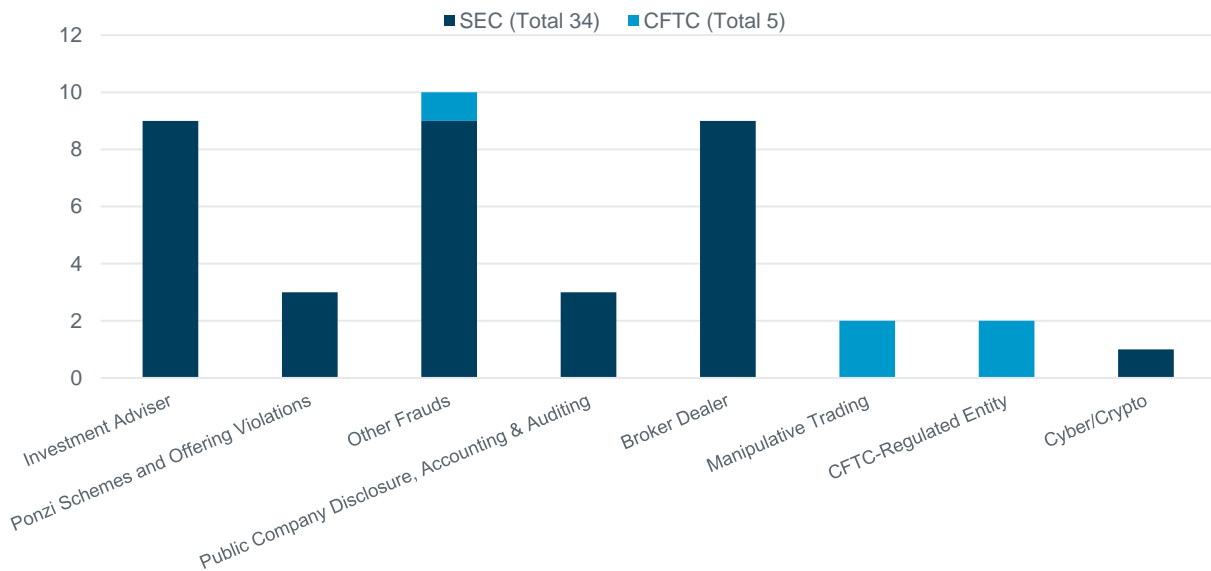
March 2021

In this edition of the newsletter, we discuss enforcement developments at the agencies during March 2021. The SEC filed 34 actions and the CFTC filed five (excluding follow-on actions, bars and suspensions) against a combined total of 71 defendants and respondents.

The SEC's 34 actions spanned numerous case types, including broker-dealer, investment advisor, and fraud cases. The CFTC's actions included two cases regarding manipulative trading.

### Actions Initiated by the SEC and CFTC in March 2021<sup>1</sup>

#### Actions Categorized by Matter Type



#### Types of Defendants/Respondents



<sup>1</sup> Follow-on administrative proceedings, suspensions, bars, and delinquent filings excluded.

## Key Cases and Developments

### SEC Creates Climate and ESG Task Force

On March 4, the SEC announced the creation of a new 22-member Climate and ESG Task Force. In its initial phase, the Task Force will focus on leveraging data analytics to identify materials misstatements by public companies related to climate change risks. As discussed in our recent [client memo](#), the Climate and ESG Task Force differs from prior task forces by focusing on a single disclosure issue that has not been the subject of significant prior enforcement actions.

[SEC Press Release](#)

### SEC Commissioner Opposes Consideration of Shareholder Harm for Corporate Penalties

Speaking to the Council of Institutional Investors on March 9, Democratic Commissioner Caroline Crenshaw discouraged the use of shareholder harm as a factor in penalty assessments for public companies. This was a key element of a [2006 penalty framework](#) issued by a unanimous five-member Commission. Although the SEC did not treat that framework as binding under the Obama and Trump administrations, some commissioners have considered the degree of shareholder harm among other factors in deciding whether to support penalties and public companies. Commissioner Crenshaw expressed the view that this approach “unnecessarily limits the Commission’s ability to craft appropriately tailored penalties that more effectively deter misconduct,” and urged the SEC to “focus on setting penalties that are based on the actual misconduct and reflect the extent of cooperation.”

[Statement by Commissioner Crenshaw](#)

### SEC Brings Reg FD Case

**SEC v. AT&T, Inc., et al. (S.D.N.Y. March 5, 2021, Contested)**

The SEC brought a Reg FD case against a public company and three of its Investor Relations executives for selectively providing material nonpublic information to Wall Street research analysts. The SEC alleged that, in to avoid falling short of consensus revenue estimates, the analysts called research analysts, while knowing nonpublic quarterly results, and caused the analysts to reduce lower their revenue forecasts. The case is unusual in that was filed as a litigated complaint. We discussed the implications of the case [here](#).

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

### CFTC Brings Case for Crypto Pump-and-Dump

**CFTC v. John David McAfee, et al. (S.D.N.Y. March 5, 2021, Contested)**

The CFTC brought a case against a software developer and his employee for a pump-and-dump scheme involving cryptocurrencies. The CFTC alleged that the two individuals purchased cryptocurrencies and used the software developer’s Twitter account to promote the cryptocurrencies deceptively as valuable long-term investments. The CFTC alleged that the software developer falsely stated that he held no positions in the cryptocurrencies. The CFTC further alleged that following the software developer’s Twitter endorsements, the prices of the cryptocurrencies rose, allowing the software developer to profit. This was the first case brought by the CFTC for a manipulative scheme involving digital assets. The cases followed similar cases filed by the [SEC](#) and [the U.S. Attorney’s Office in the Southern District of New York](#).

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

## SEC Files False Tweet Case

### SEC v. Andrew L. Fassari (C.D. Cal. March 15, 2021, Contested)

The SEC brought a case against an individual for tweeting false information about a defunct company to raise its stock price and profit from sales of the stock. The SEC alleged that the individual purchased over 41 million shares of a defunct company's stock, then tweeted false information to his Twitter followers, stating that the company was reviving operations, expanding business, and had "huge" investors. The SEC further alleged that the company's stock price increased over 4,000%, allowing the individual to garner profits of \$929,000. The SEC previously filed a [false tweet case](#) in 2015.

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

## SEC Sues Biotech Co-Founders for Defrauding Investors

### SEC v. Jessica Richman and Zachary Apte (N.D. Cal. March 18, 2021, Contested)

The SEC brought a case against the two co-founders of a medical testing company for falsely portraying to investors that the company was a successful start-up with strong future growth prospects. The SEC alleged that the two co-founders portrayed to investors that the company was receiving health insurance reimbursements for clinical tests. However, the SEC alleged that the company could only obtain these reimbursements by misleading doctors into ordering unnecessary tests and other improper practices—meaning that the reimbursements would be refused if insurers discovered the practices. The SEC further alleged that the co-founders concealed the improper practices from investors and insurers by directing employees to provide misleading medical records.

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

## SEC Brings Case against Private Fund Managers for Conflicts of Interest and Misleading Investors

### In re Troy E. Marchand (A.P. March 24, 2021, Settled); In re Tyler C. Sadek (A.P. March, 2021, Settled); In re Scott T. Wolfrum (A.P. March 24, 2021, Settled)

The SEC settled a case against three individuals related to alleged deceptive management of a private investment fund. According to SEC orders, two individuals who managed the fund issued newsletters to investors that misrepresented the financial and operational condition of the fund's holdings. The SEC also settled a case against a third individual, an investment adviser, who reportedly directed clients to invest in the fund while failing to disclose that he would benefit from those investments through equity holdings and a finder's fee.

[SEC Press Release](#) | [SEC Order \(Marchand\)](#) | [SEC Order \(Sadek\)](#) | [SEC Order \(Wolfrum\)](#)

## SEC Brings Dark Web Fake Insider Trading Case

### SEC v. James Roland Jones (S.D. Ind. March 18, 2021, Settled in Part)

The SEC brought a case against an individual for selling fake insider tips on dark web marketplaces. The SEC alleged that the individual lied about possessing material, nonpublic information to gain access to a dark web insider trading forum. The individual agreed to a bifurcated settlement that enjoined him from further violating antifraud provisions in federal securities laws.

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

## CFTC Brings Case for \$233 Million Fraud Involving More than 200,000 “Ghost Cattle”

CFTC v. Cody Easterday et al. (E.D. Wash. March 31, 2021, Contested)

The CFTC brought a case against a cattle ranch and its co-owner for allegedly defrauding one of the ranch’s primary business partners, a beef producer. According to the CFTC Complaint, the co-owner had amassed more than \$200 million in cattle futures trading losses by 2016. The co-owner reportedly attempted to meet cover these losses by submitting false invoices to the beef producer for the purchase and care of more than 200,000 non-existent cattle.

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

## Whistleblower Awards

The SEC announced four sets of whistleblower awards during the month, with six individuals receiving a combined total of more than \$7.5 million in awards. The SEC has awarded 40 individuals so far in fiscal year 2021, surpassing last year’s record of 39 individual awards.

[SEC Whistleblower Page](#)

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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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