

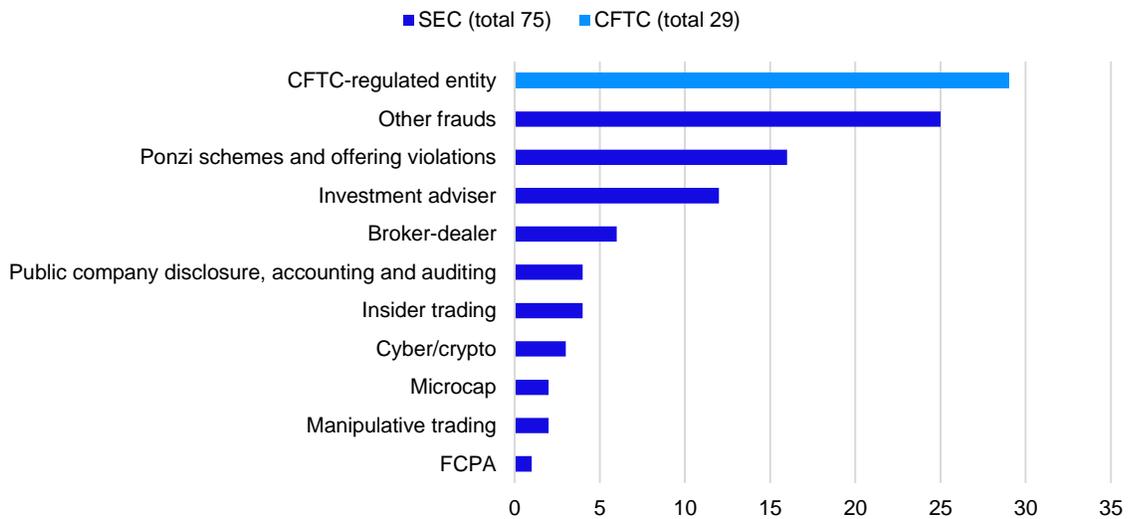
September 2021

September was the most active month for SEC and CFTC enforcement in the past 12 months – as is typical at the end of the agencies’ fiscal year. The SEC filed 75 actions and the CFTC filed 29, against a combined total of 208 defendants and respondents. (This tally excludes follow-on actions, bars and suspensions.)

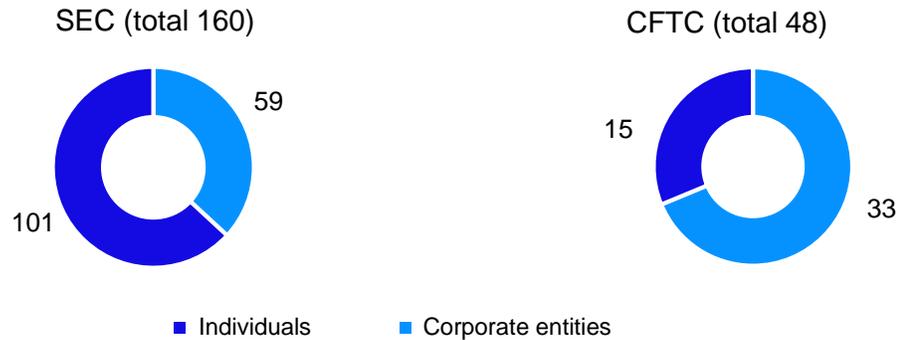
The SEC’s actions included Ponzi scheme and offering violations, investment adviser, broker-dealer and insider trading cases. The CFTC took various actions concerning failures to comply with swap dealer requirements.

## Actions initiated by the SEC and CFTC in September 2021

*Number of actions, by matter type*



*Types of defendants/respondents*



**Key cases and developments**

**SEC settles case against public company for accounting misconduct**

**In re The Kraft Heinz Co., et al. (A.P. September 3, 2021, settled)**

**SEC v. Klauf Hofmann (S.D.N.Y. September 3, 2021, settled)**

The SEC settled a case against a large public food and beverage company and two of its executives for an expense management scheme. The scheme allegedly included recognition of unearned discounts from suppliers and maintenance of false and misleading supplier contracts. According to the SEC, these accounting improprieties resulted in the company reporting an adjusted EBITDA that was inflated by approximately \$208 million in improperly-recognized cost savings.

The SEC also alleged that the company failed to design effective internal accounting controls and that the company’s chief operating officer ignored warning signs and pressured the procurement division to deliver unrealistic savings targets. The SEC further alleged that the company’s chief procurement officer violated negligence-based anti-fraud provisions. The company agreed to pay a civil penalty of \$62 million and the chief operating officer agreed to pay disgorgement and prejudgment interest of \$14,211.31 and a civil penalty of \$300,000. The chief procurement officer agreed to pay a civil penalty of \$100,000, with the settlement subject to court approval.

[SEC press release](#) | [SEC order](#) | [SEC complaint](#)

**SEC settles case against three companies for unregistered stock, digital token offerings**

**In re GTV Media Group, Inc., et al. (A.P. September 13, 2021, settled)**

The SEC settled a case against three media companies, one for an unregistered offering of common stock, and two for an unregistered offering of a digital asset security. According to the SEC, the companies used social media platforms to solicit individuals to invest in the unregistered stock and digital asset offerings. The companies collectively raised \$487 million from more than 5,000 investors. Together, the companies agreed to pay disgorgement of \$486 million, prejudgment interest of approximately \$18 million, and a civil penalty of \$20 million.

[SEC press release](#) | [SEC order](#)

## **SEC settles case against data provider for deceptive practices**

**In re App Annie Inc., et al. (A.P. September 14, 2021, settled)**

The SEC settled a case against a mobile application data provider and its former CEO for misrepresenting how its data was derived. According to the SEC, the data provider, one of the largest sellers of market data on mobile application performance, collected confidential data from companies about application performance and represented to those companies that it would not disclose the data to third parties without first aggregating and anonymizing it. The data provider then allegedly used non-aggregated and non-anonymized data to create more valuable models that it could sell to trading firms, while misrepresenting to those customers that it generated its models with the consent of companies. The data provider agreed to pay a penalty of \$10 million. The former CEO agreed to a bar against serving as an officer or director of a public company for three years and to pay a civil penalty of \$300,000.

[SEC press release](#) | [SEC order](#) | [Client update](#)

## **SEC brings case against former investment bank compliance analyst for insider trading**

**SEC v. Jose Luis Casero Sanchez (S.D.N.Y. September 29, 2021, contested)**

The SEC brought an insider trading case against a former compliance analyst of an international investment bank. According to the SEC, the former analyst had access to information regarding mergers and other transactions. The former analyst allegedly used this information to trade on at least 45 events, using multiple brokerage accounts held in the name of one of his parents to evade detection. According to the SEC, the former analyst generated more than \$471,000 in profits.

[SEC press release](#) | [SEC complaint](#)

## **SEC brings case against individuals for wash trading in meme stocks**

**SEC v. Suyun Gu, et al. (D.N.J. September 27, 2021, partly contested)**

The SEC brought a case against two individuals for engaging in a wash trading scheme. According to the SEC, the individuals collected liquidity rebates from exchanges by wash trading put options of so-called meme stocks. The individuals used broker-dealer accounts that passed rebates back to their customers to place initial orders on one side of the market, then used broker-dealer accounts without fees to take liquidity for orders on the other side of the market. The individuals allegedly continued this scheme by misrepresenting their trading strategies and using accounts in the names of other people after certain broker-dealers closed out their accounts. According to the SEC, the individuals pocketed at least \$720,005 in liquidity rebates. One of the individuals agreed to a settlement and paid \$51,334 in disgorgement, \$515 in prejudgment interest, and a civil monetary penalty of \$25,000. The SEC's case against the second individual is contested.

[SEC press release](#) | [SEC complaint](#)

## **SEC charges analyst at investment adviser for insider trading scheme**

**SEC v. Sergei Polevikov (S.D.N.Y. September 23, 2021, contested)**

The SEC brought an insider trading case against a qualitative analyst who worked at two investment adviser firms. The SEC alleges that the analyst used nonpublic information from his employers to buy securities in advance of large purchases planned by the firms, and then benefitted from the bump in asset prices when the firms executed their buys. The analyst allegedly concealed these trades by using his wife's brokerage account. According to the SEC the front-running scheme generated a total of more than \$8.5 million in profits over a period of nearly six years. A parallel criminal action was filed in the Southern District of New York.

[SEC press release](#) | [SEC complaint](#)

## **SEC reaches \$19 million FCPA settlement with global advertising group**

**In re WPP PLC (A.P. September 24, 2021, settled)**

The SEC settled charges against a multinational advertising firm for alleged violations of the anti-bribery, books and records, and internal control provisions of the Foreign Corrupt Practice Act (FCPA). According to the SEC, when the firm expanded by acquiring pre-existing advertising agencies in a swath of emerging markets, the parent organization neglected to exercise adequate oversight of the local subsidiaries' compliance and accounting practices. According to the SEC, for example, the firm's Indian subsidiary continued to engage in a scheme to funnel payments to Indian officials in exchange for advertising contracts even after it was the subject of multiple whistleblower complaints. The SEC further alleges that the firm failed to detect or timely respond to bribery schemes involving its Chinese, Brazilian and Peruvian subsidiaries. The firm agreed to pay \$10.1 million in disgorgement, \$1.1 million in prejudgment interest, and an \$8 million civil penalty.

[SEC press release](#) | [SEC order](#)

## **Court issues permanent injunction, penalties in CFTC binary options case**

**CFTC v. Ronald Montano et al. (M.D. Fla. September 14, 2021, settled)**

The CFTC obtained a ruling against an individual and his company in a binary options fraud case filed in 2018. The CFTC alleged that the individual fraudulently solicited clients using emails, websites, and video sales letters by promising the clients free access to purportedly successful automated trading systems for binary options involving commodity interests. The CFTC alleged that the individual repeatedly misrepresented hypothetical and fictitious trading results as real results, fabricated testimonials as real, and misstated the qualifications of the creators of the trading systems. Judge Gregory Presnell ordered the individual and his company to pay restitution in the amount of \$825,000 and a civil monetary penalty of \$1.675 million.

[CFTC press release](#) | [Court order](#)

## **CFTC brings cases against 14 entities for registration failures**

On September 28, the CFTC brought cases against 14 entities for either failing to register as futures commission merchants or for misrepresenting CFTC registration and National Futures Association membership. Twelve entities allegedly acted as futures commission merchants by offering investors the opportunity to purchase binary options based off of the value of commodities such as foreign currencies and cryptocurrencies, but failed to register as a futures commission merchant with the CFTC. Two other entities allegedly offered services related to trading in futures or other derivative products while falsely claiming to be registered with the CFTC and a member of the National Futures Association.

[CFTC press release](#)

## **CFTC alleges embezzlement of \$1.2 million in digital currency fraud**

**CFTC v. Uduakobong Udo Inyangudo et al. (D. Mass. Sep. 30, 2021, contested)**

The CFTC brought a case against eight individuals for their alleged involvement in a fraudulent scheme purporting to facilitate trading in digital currencies such as Bitcoin. According to the CFTC, one of the individuals designed a website and flyers that induced investors with inaccurate statements, such as a promise that the enterprise would deliver month to month returns between 27.3% and 46.2%. The website succeeded in raising approximately \$1.2 million in funds.

[CFTC press release](#) | [CFTC order](#)

## **SEC brings case for \$2 billion bitcoin investment scheme**

**SEC v. BitConnect et al. (S.D.N.Y. Sep. 1, 2021, contested)**

The SEC announced a case against a digital currency trading platform, two individuals, and another associated entity, for a fraudulent scheme in connection with Bitcoin offerings. According to the SEC, the trading platform was used as a vehicle to solicit investments in a “lending program” with the help of various promoters. According to the SEC, the platform and its promoters represented to investors that funds would be managed by proprietary software that could generate up to 40 percent in monthly returns at no risk. The touted software, however, was never deployed, and funds were instead transferred to digital wallets controlled by the individuals and their associates. The alleged scheme generated investments of Bitcoin equivalent to approximately \$2 billion.

[SEC press release](#) | [SEC order](#)

## **President Biden nominates new CFTC commissioners**

This month, President Joe Biden nominated two individuals to fill Democratic Commissioner seats at the CFTC. President Biden nominated Christy Goldsmith Romero, who currently serves as the Special Inspector General for the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), and previously worked at the SEC, including in the Division of Enforcement. President Biden also nominated Professor Kristin Johnson of Emory University School of Law, whose academic work focuses on digital assets and AI, and who worked as in-house counsel at a financial institution earlier in her career. In addition to the nominations of new Commissioners, current Acting Chairman Rostin Behnam was nominated to become permanent Chair. Behnam has served as a CFTC Commissioner since 2017.

[White House press release](#)

## **Whistleblower awards**

The SEC announced four sets of whistleblower awards this month, with three individuals receiving a total of \$47.5 million in whistleblower payments. The SEC also announced that it barred two individuals, each of which had filed numerous frivolous applications, from the whistleblower program.

[SEC whistleblower page](#)

## **Personnel and organizational changes**

The SEC announced notable personnel and organizational changes this month:

- John Coates retired as SEC General Counsel. Former CFTC Commissioner Dan Berkovitz was named the new General Counsel.

[SEC press release](#)

- Erik Gerding was named Deputy Director, Legal and Regulatory Policy of the Division of Corporation Finance.

[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.

## New York

Greg D. Andres	+1 212 450 4724
Martine M. Beamon	+1 212 450 4262
Angela T. Burgess	+1 212 450 4885
Tatiana R. Martins	+1 212 450 4085

[greg.andres@davispolk.com](mailto:greg.andres@davispolk.com)  
[martine.beamon@davispolk.com](mailto:martine.beamon@davispolk.com)  
[angela.burgess@davispolk.com](mailto:angela.burgess@davispolk.com)  
[tatiana.martins@davispolk.com](mailto:tatiana.martins@davispolk.com)

## Washington DC

Uzo Asonye	+1 202 962 7057
Robert A. Cohen	+1 202 962 7047
Fiona Moran	+1 202 962 7137
Stefani Johnson Myrick	+1 202 962 7165
Paul J. Nathanson	+1 202 962 7055
Linda Chatman Thomsen	+1 202 962 7125

[uzo.asonye@davispolk.com](mailto:uzo.asonye@davispolk.com)  
[robert.cohen@davispolk.com](mailto:robert.cohen@davispolk.com)  
[fiona.moran@davispolk.com](mailto:fiona.moran@davispolk.com)  
[stefani.myrick@davispolk.com](mailto:stefani.myrick@davispolk.com)  
[paul.nathanson@davispolk.com](mailto:paul.nathanson@davispolk.com)  
[linda.thomsen@davispolk.com](mailto:linda.thomsen@davispolk.com)

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