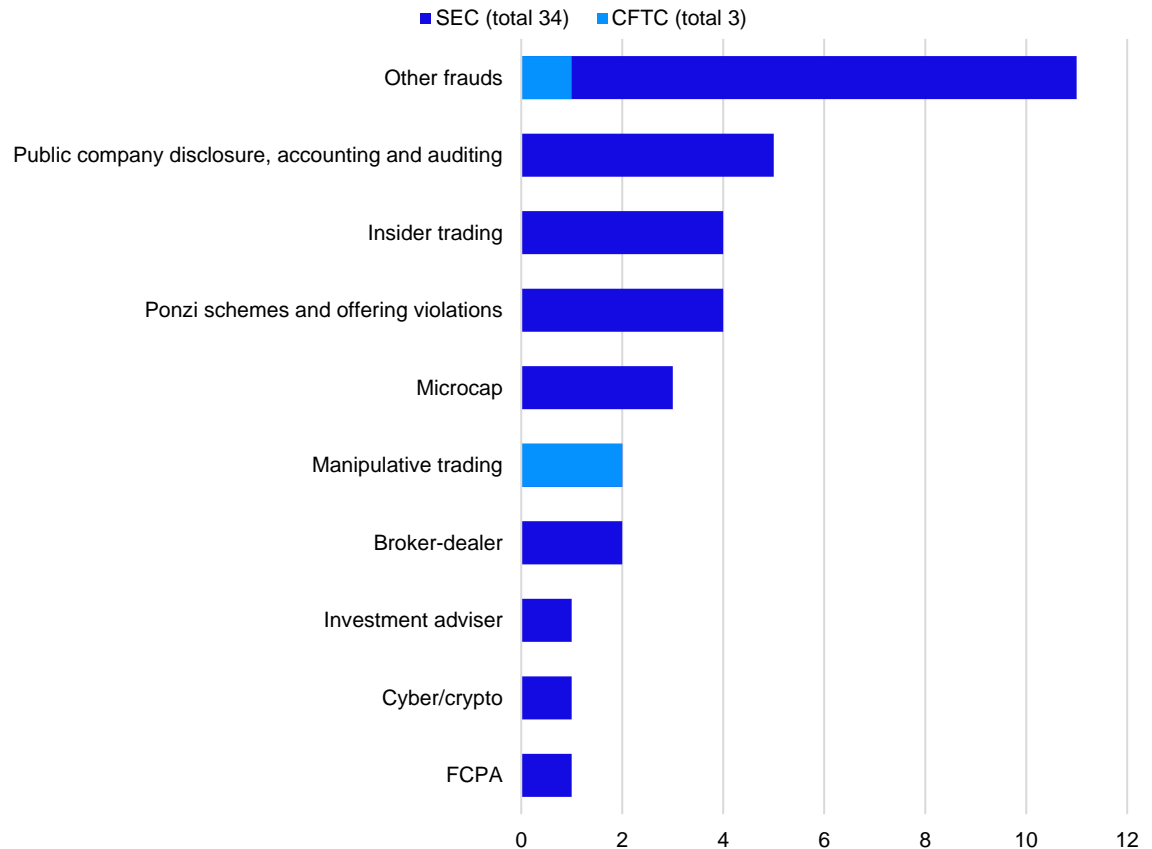


April 2022

In this edition of the newsletter, we discuss enforcement developments at the agencies in April 2022. The SEC filed 34 actions and the CFTC filed 3 (excluding follow-on actions, bars and suspensions) against a combined total of 86 defendants and respondents. The SEC’s actions included general fraud, accounting cases, insider trading, and Ponzi schemes, among others. The CFTC’s actions concerned manipulative trading and fraud.

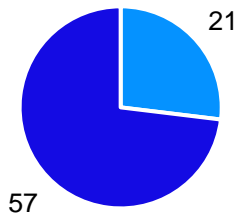
Actions initiated by the SEC and CFTC in April 2022

Number of actions, by matter type

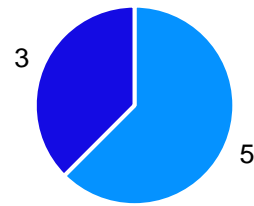


Types of defendants/respondents

SEC (total 78)



CFTC (total 8)



■ Individuals ■ Corporate entities

Key cases and developments

SEC releases findings on investigation of its internal control deficiencies

On April 5, 2022, the SEC announced the findings of an internal review of what it described as a deficiency in its separation of enforcement and adjudicatory actions within the Commission’s system for administrative adjudications. The SEC reported that, for some period of time, its databases did not restrict the access of Enforcement personnel to memoranda created by Adjudication staff with regards to the same matters. The SEC identified at least two specific administrative proceedings implicated by the deficiency—*SEC v. Cochran*, No. 21-1239 (S. Ct.) and *Jarkesy v. SEC*, No. 20-61007 (5th Cir.)—though it concluded for both actions that there was no evidence suggesting Enforcement personnel actually reviewed the administrative memoranda they inadvertently had access to. The SEC has indicated that this is an ongoing internal review and the publishing of future findings is likely.

[SEC press release](#)

SEC brings FCPA suit for alleged bribery scheme in Latin America

In re Stericycle, Inc. (A.P. April 20, 2022, settled)

The SEC brought and settled an action against an international medical waste services provider under the Foreign Corrupt Practices Act for an alleged bribery scheme that took place across Argentina, Brazil, and Mexico. The SEC alleged that, from 2012 to 2016, the company made millions of dollars in unlawful payments to government officials in all three countries in order to acquire and maintain government customers. Specifically, the SEC contended that the company maintained a spreadsheet identifying government customers that were the recipients of bribes. According to the SEC, third-party vendors were relied upon to fabricate invoices that concealed these alleged cash payments. To settle these claims, the company consented to an order finding that it did violate anti-bribery, books and records, and internal accounting controls provisions under the FCPA. The company is paying over \$84 million to settle parallel criminal and civil charges, with roughly \$28.2 million being paid to the SEC in disgorgement and pre-judgment interest.

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

SEC alleges sham takeover bid of aircraft company

SEC v. Melville Peter Ten Cate (S.D.N.Y. April 5, 2022, contested)

The SEC brought an action against a U.S. citizen alleging that his bid to purchase a U.S.-listed aircraft and industrial company was a sham. According to the SEC, in November 2020, the individual and his now-defunct private company published an advertisement in *The New York Times* proclaiming an intent to buy all of the aircraft company’s existing stock at a fifty-six percent premium over its previous closing price. This advertisement allegedly led to a spike in the company’s trading and subsequently a trading halt. The SEC alleges that the advertisement was false and misleading because neither the individual nor his company had the necessary financial resources to finalize the purchase. Further, the SEC alleges that the advertisement did not disclose that the individual and various entities he controlled had been subject to a number of

bankruptcy proceedings and default judgments and that the aircraft company had already rejected the individual's previous proposals.

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

SEC settles with asset manager for allegedly misleading clients, investors

In re Medley Management Inc. et al (A.P. April 28, 2022, settled)

The SEC settled with a publicly-traded asset manager and its former CEOs for allegedly misleading investors and clients about the company's future growth prospects. The SEC alleged that dating back to 2016, the company overstated its assets under management in its public filings by including "committed capital" amounts from non-discretionary clients. These clients had no obligation to invest with the company, but the company and its CEOs failed to disclose the risk that much of the clients' capital would not actually be invested with the company. Further, the CEOs allegedly provided positive projections of the company's future growth to recommend a merger to advisory clients despite not having a reasonable basis upon which to base those projections. The projections were included in proxy materials encouraging investors to vote for the merger. The company and the former CEOs agreed to pay \$10 million in civil penalties.

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

SEC brings suit for alleged pandemic-related insider trading scheme

SEC v. Carl Iberger & Timothy Iberger (D. Mass. April 15, 2022, contested)

The SEC brought an action against the former Chief Financial Officer of a medical diagnostics company and his son for allegedly engaging in insider trading. The SEC contends that, in 2020, the former CFO disclosed to his son and another unnamed individual confidential information that the company had received Emergency Use Authorization from the FDA for its COVID-19 antibody test. One day before the Company announced this information, according to the SEC, the CFO's son purchased 25,000 shares of the company's stock and the other unnamed individual purchased 450 shares. The company's subsequent July 30, 2020 announcement caused its stock price to rise significantly. Without admitting or denying the SEC's allegations, the CFO and his son have both consented to a judgment enjoining them from future violations of the Securities Exchange Act and imposing disgorgement and civil penalties. The CFO will pay a \$69,223 civil penalty and his son will pay \$68,350 in disgorgement, \$3,305 in pre-judgment interest, and \$68,350 in civil penalties.

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

SEC brings suit against Brazilian mining company related to dam collapse

SEC v. Vale S.A. (E.D.N.Y. April 28, 2022, contested)

The SEC brought an action against a publicly-traded Brazilian mining company for allegedly making false and misleading statements about the safety of the company's dams. These alleged statements were made prior to the January 2019 collapse of the company's Brumadinho dam, which killed 270 individuals and caused over \$4 billion in loss to the company's market capitalization. Specifically, the SEC alleges that the company manipulated dam safety audits, acquired fraudulent stability certificates, and misled both government entities and investors with its environmental, social, and governance disclosures. In addition, the SEC contends that the company falsely assured the compliance of its dams in public sustainability reports even though it allegedly knew the Brumadinho dam did not satisfy international safety standards.

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

SEC and CFTC bring suit against woman for alleged fraud scheme

SEC v. Kay X. Yang et al (E.D. Wis. April 13, 2022, contested); CFTC v. Kay Yang et al (E.D. Wis. April 13, 2022, contested)

The SEC and CFTC each brought an action against a Wisconsin woman and her company for allegedly making false and misleading statements to investors. The agencies allege that these statements led the woman to raise over \$16 million, more than \$4 million of which she allegedly misappropriated for her own personal use. According to the agencies, the woman told prospective investors that she would invest their money through foreign exchange trading and could expect the trading to be consistently successful and lead to annual returns anywhere from twenty to fifty percent. The agencies allege that the woman used less than

half of investors' money for this purpose and used much of it for her and her family's own personal expenses. The agencies allege that the money she did invest in foreign exchange trading sustained many losses and resulted in negative returns for the investors. The SEC specifically alleges that the scheme targeted the Hmong-American community in Wisconsin and Minnesota.

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

Whistleblower awards

In April 2022, the SEC announced an award of \$6 million to two groups of whistleblowers in connection with the same covered action.

[SEC press release](#)

Personnel and organizational changes

A number of notable SEC-related personnel and organizational changes were announced in April:

- President Biden announced his intent to nominate Jamie Lizárraga and Mark Uyeda as SEC Commissioners.
[White House statement](#)
- Rebecca Sharek has been named Acting Inspector General of the SEC following the retirement of former Inspector General Carl Hoecker.

[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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