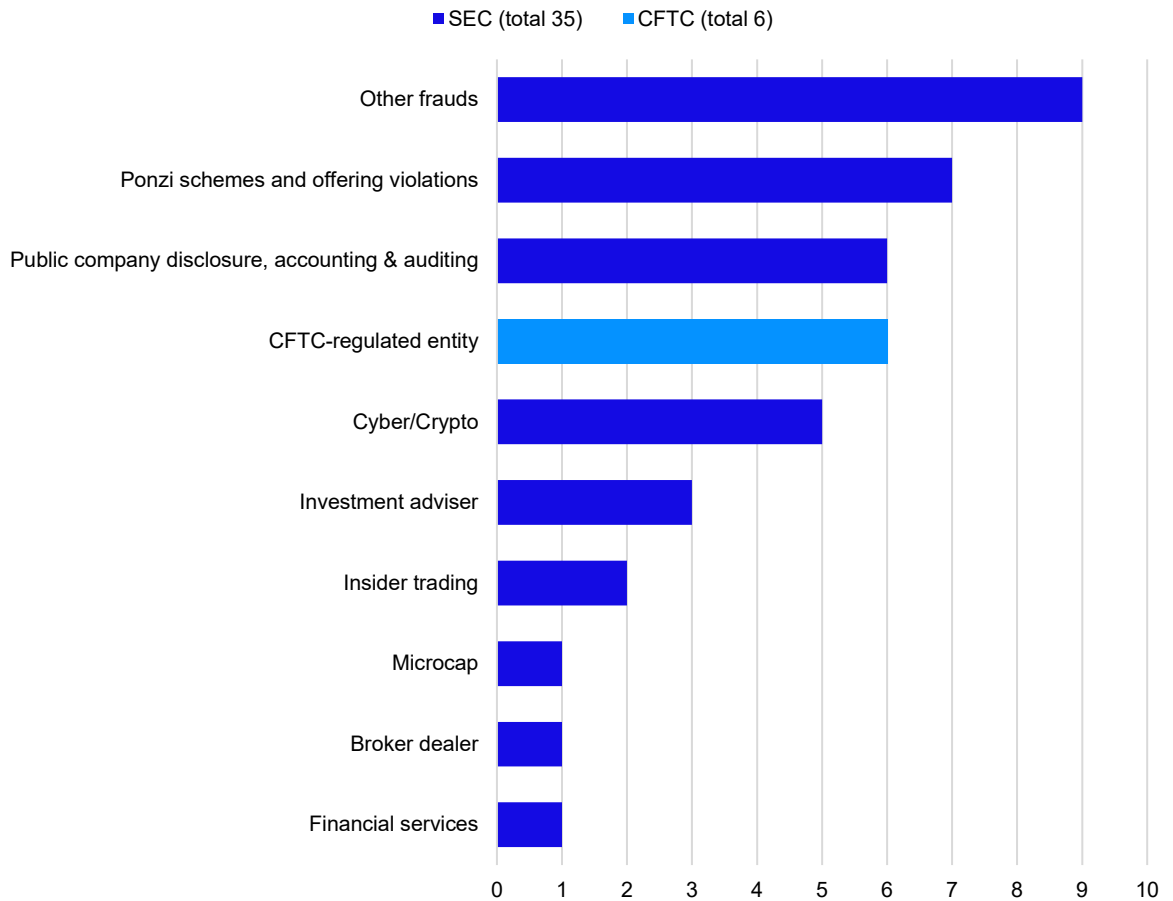


February 2023

In February 2023, the SEC filed 35 actions and the CFTC filed 6, against a combined total of 88 defendants and respondents. (These figures exclude follow-on actions, bars and suspensions.) The actions included crypto matters, accounting, and disclosure controls, among others.

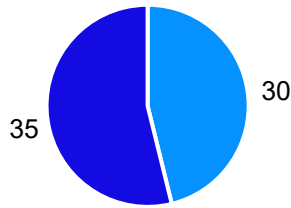
Actions initiated by the SEC and CFTC in February 2023

Number of actions, by matter type

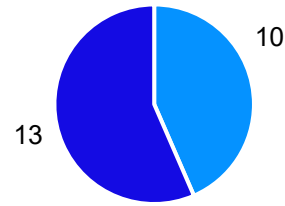


Types of defendants/respondents

SEC (total 65)



CFTC (total 23)



■ Individuals ■ Corporate entities

Accounting & disclosure

SEC settles disclosure controls and whistleblower protection claims

In the Matter of Activision Blizzard, Inc. (A.P. Feb. 3, 2023, settled)

As previewed in an earlier Davis Polk [client update](#), the SEC brought and settled claims against a video game development and publishing company for an alleged failure to maintain adequate disclosure controls and procedures relating to workplace misconduct complaints and for a violation of a whistleblower protection rule. The SEC alleged that the company lacked controls and procedures to understand the volume and substance of employee complaints. This alleged lack of information, according to the SEC’s order, left the company without a means to measure (i) if there were material issues warranting disclosure to investors or (ii) if the disclosures it made were correct. The order also alleged that the company entered into separation agreements that included a notification clause requiring former employees to notify the company of any request from an administrative agency relating to a report or complaint. The SEC found that the clause undermined the purpose of its whistleblower protection rule. Without admitting or denying the SEC’s findings, the company agreed to pay a \$35 million penalty to settle the charges.

Commissioner Peirce disagreed with the SEC’s findings for both violations, writing in a dissent that the SEC “alleges no fraud, misrepresentations, omissions, or investor harm” and that the order “does not articulate any securities law violations.”

[SEC press release](#) | [SEC order](#) | [Statement of Commissioner Peirce](#) | [Davis Polk client update](#)

SEC settles with acquisitions company over internal controls failures

In the Matter of African Gold Acquisition Corp. (A.P. Feb. 22, 2023, settled)

The SEC settled claims against a special purpose acquisitions company (SPAC) for alleged internal controls, reporting, and recordkeeping violations. Specifically, the SEC order alleged that the company’s failure to maintain sufficient internal accounting controls enabled its former chief financial officer to misappropriate nearly \$1.2 million from the company’s operating bank account for over one year without detection. As a result of the alleged oversight, the company, according to the SEC order, materially misstated information in several required filings with the Commission. Without admitting or denying the SEC’s findings, the company agreed to pay a \$103,591 penalty to settle the charges. The SEC charged the company’s former CFO separately in January 2023.

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

[SEC settles action for failure to register crypto staking program](#)

SEC v. Payward Ventures, Inc. and Payward Trading, Ltd. (N.D. Cal. Feb. 9, 2023, settled)

The SEC brought and settled claims against two connected entities for failing to register the offer and sale of their crypto asset staking-as-a-service program. “Staking” is a process in which investors commit their crypto assets to a blockchain validator with the goal of receiving new tokens when their staked crypto tokens become part of the process for validating data for the blockchain. The resolving entities allegedly created the program to pool investor assets together to achieve a competitive advantage in the staking marketplace and, in exchange, claimed that investors could receive annual investment returns of as much as 21%.

To settle the charges, the company agreed to pay \$30 million in disgorgement, prejudgment interest, and civil penalties.

Commissioner Peirce dissented, stating that the SEC has long known about these staking programs but has not offered clear guidance. Commissioner Peirce suggested that greater transparency surrounding crypto-staking programs is needed, rather than the SEC’s use of enforcement actions to curtail these programs.

[SEC press release](#) | [SEC complaint](#) | [Statement of Commissioner Peirce](#)

[SEC brings suit for alleged unregistered crypto asset fraud scheme](#)

SEC v. Terraform Labs PTE Ltd. and Do Hyeong Kwon (S.D.N.Y. Feb. 16, 2023, contested)

The SEC brought suit against a company and its chief executive officer, alleging that together they offered and sold crypto asset securities in unregistered transactions. According to the SEC, the company and its CEO also repeatedly misled investors about the stability of the asset algorithm. In addition, they allegedly deceived investors when they advertised that a popular electronic mobile payment application used the company’s blockchain to settle transactions. As alleged in the complaint, the scheme caused investors to suffer from the company’s \$40 billion loss in market value.

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

[SEC settles with NBA Hall of Famer for statements related to digital asset](#)

In the Matter of Paul Anthony Pierce (A.P. Feb. 17, 2023, settled)

The SEC brought and settled claims against a former professional basketball player over allegations that he made false and misleading statements while promoting a digital asset that the SEC alleged is a security. Specifically, the SEC alleged that the former player failed to disclose that he was being compensated to promote the digital security. Further, the former player allegedly made misleading statement by exaggerating the amount he had earned from holding the digital asset. The athlete agreed to pay \$1.409 million in penalties, disgorgement, and prejudgment interest to settle the claims. The SEC has made statements cautioning investor reliance on celebrity-backed crypto offerings.

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

SEC, CFTC settle cryptocurrency exchange claims

SEC v. Nishad Singh (S.D.N.Y. Feb. 28, 2023, settled)

CFTC v. Nishad Singh (S.D.N.Y. Feb. 28, 2023, settled)

The SEC and CFTC brought and settled parallel claims against the former Co-Lead Engineer of the cryptocurrency exchange FTX over allegations that he furthered the company's alleged multi-billion-dollar crypto scheme. Specifically, as alleged in the complaints, the former Co-Lead Engineer created the software code that allowed the company, now bankrupt, to divert customer funds to a crypto hedge fund owned by participants in the scheme, many of whom the agencies filed actions against late last year. The complaints further alleged that as the company neared collapse, he misappropriated approximately \$6 million from the company for personal use and expenditures

The former Co-Lead Engineer has agreed to settle the claims with both agencies. The SEC has also stated that he is cooperating in its ongoing investigation of the company and related individuals.

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

Financial services

SEC, CFTC settles claims over operational risk system failures

In the Matter of The Options Clearing Corporation (A.P. Feb. 16, 2023, settled)

The SEC and CFTC each brought and settled an action against a derivative clearing organization (DCO) for allegedly failing to appropriately manage operational risks. Under DCO Core Principles, organizations are required to abide by certain standards and regulations, among them that the organization establish and maintain policies and procedures designed to identify, manage, and mitigate operational risks. Here, the agencies alleged that the organization failed to implement the appropriate rule for its stress testing and clearing fund methodology due to deficiencies in certain internal controls, human errors, and management failures. According to the agencies, the oversight caused the organization's clearing fund to be underfunded by nearly \$600 million for approximately two years. The organization will undertake remedial efforts and pay \$17 million in penalties to settle the claims with the SEC. The organization also agreed to pay a \$5 million penalty to the CFTC.

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

Insider trading

SEC brings suit for insider trading ahead of planned government contract

SEC v. James Andrew Stiles, Jr. and Edward Gray Stiles, Jr. (S.D.N.Y. Feb. 23, 2023, contested)

The SEC brought action against a company executive and his cousin over allegations that the parties traded on nonpublic information. According to the SEC, the executive, through his company, learned about a \$765 million government loan for the provision of COVID-19-related pharmaceutical components in advance of its public announcement. In turn, according to the SEC, the executive traded on the material, nonpublic information and tipped his cousin, who also traded on the information before any public announcement of the loan. The parties allegedly profited more than \$1.5 million from the activity.

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

[SEC brings misrepresentations claims against entertainment company](#)**SEC v. Ozy Media, Inc., et al. (E.D.N.Y. Feb. 23, 2023, partially settled)**

In a matter that received media attention several months ago, the SEC brought claims against a start-up media and entertainment company, as well as its CEO, former COO, and former Chief of Staff, for a variety of alleged misrepresentations made to investors concerning the company's financial condition, business relationships, and fundraising efforts. The SEC alleges that these misrepresentations included presenting investors with inflated historical revenue data by nearly 100% per year over two years, and that the individuals crafted a plan in which the former COO impersonated a YouTube executive on a conference call to suggest that the company had a close business relationship with YouTube. The SEC alleges that the defendants raised approximately \$50 million from investors as a result of the alleged scheme.

The former COO and Chief of Staff agreed to settle the claims with the SEC, with civil monetary penalties to be determined by the court at a later date.

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

CFTC enforcement actions**[CFTC brings suit alleging fraudulent solicitation and misappropriation](#)****CFTC v. Armen Temurian and Vista Network Technologies (E.D.N.Y. Feb, 15, 2023, contested)**

The CFTC brought suit against an individual and his company over allegations that they fraudulently solicited over \$7 million worth of bitcoins and ether and misappropriated customer funds intended for use in digital asset trading. The parties allegedly made several false representations to customers, including to guarantee profits despite having not traded any assets on behalf of investors. The CFTC also alleges that the parties did not have in place any trading program capable of generating investors the promised returns and instead used customer funds to pay profits to earlier investors.

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

SEC Division of Examinations announces 2023 priorities

The SEC Division of Examinations announced its 2023 examination priorities. The Division of Examinations, which conducts the SEC's National Exam Program, publishes its examination priorities each year. For 2023, the Division announced that, in addition to core risk areas, it will prioritize areas that pose unique or emerging risks to investors or the markets. These notable new and significant focus areas include:

- New investment adviser and investment company rules,
- Topics related to registered investment advisers ("RIA") to private funds, including conflicts of interest, calculation and allocation of fees and expenses, and compliance with a variety of Advisers Act rules,
- Broker-dealers and RIAs' standards of conduct, with an emphasis on ensuring that retail investors and working families receive recommendations and advice in their best interests, and
- ESG-related advisory services and fund offerings.

[SEC press release](#) | [2023 examination priorities](#)

SEC names Deputy Director, Disclosure Operations for the Division of Corporation Finance

The SEC announced that Cicely LaMothe will serve as Deputy Director, Disclosure Operations for the Division of Corporation Finance. LaMothe has served as the Acting Deputy Director since August 2022.

[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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