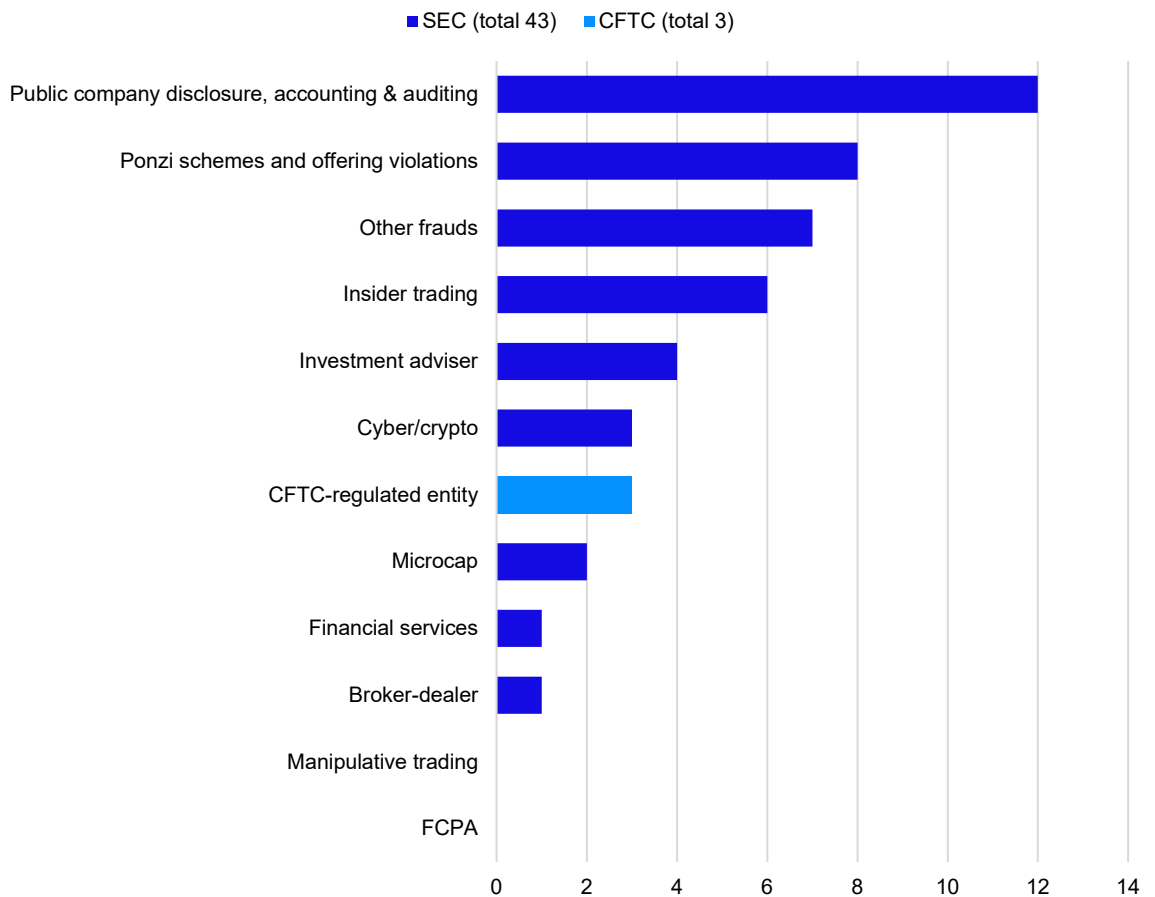


June 2023

In June 2023, the SEC filed 43 actions and the CFTC filed three, against a combined total of 87 defendants and respondents. (These figures exclude follow-on actions, bars and suspensions.) The actions include matters related to broker-dealers and investment advisers, among others.

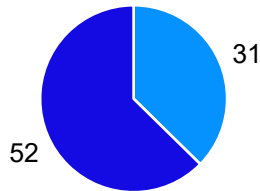
Actions initiated by the SEC and CFTC in June 2023

Number of actions, by matter type



Types of defendants/respondents

SEC (total 83)



CFTC (total 4)



■ Individuals ■ Corporate entities

Public company disclosures

SEC brings action for improper revenue recognition practices

In the Matter of Cantaloupe, Inc. (A.P. June 5, 2023, settled)

In the Matter of Michael K. Lawlor (A.P. June 5, 2023, settled)

In the Matter of Maeve M. Duska (A.P. June 5, 2023, settled)

The SEC brought and settled claims against a publicly traded cashless payment device company and two of its former officers for alleged improper revenue recognition practices. According to the SEC, the Company's financial statements contained material misstatements as a result of its efforts to maximize end-of-quarter revenue and meet internal sales targets. Specifically, the Company allegedly entered into purported bill-and-hold sales transactions that did not conform to GAAP or the Company's own revenue recognition policies and shipped devices that the receiving customer either had not ordered or had told the Company that they did not want.

The SEC also brought and settled claims against two officers—the former Chief Services Officer and former Vice President for Sales and Marketing. According to the SEC, the two officers facilitated the scheme and caused the Company to have inaccurate books and records and inadequate internal controls.

To settle the case, the Company agreed to pay \$1.5 million as a civil penalty. The SEC noted that this penalty reflects the Company's cooperation and remediation. The former Chief Services Officer agreed to pay a \$75,000 penalty and the former Vice President agreed to pay a \$15,000 penalty and \$11,749 in disgorgement and prejudgment interest.

[SEC press release](#) | [SEC company order](#) | [SEC officer order 1](#) | [SEC officer order 2](#)

SEC brings action against executives related to accounting and disclosures

SEC v. Brian H. Casutto, et al. (C.D. Cal. June 27, 2023, settled)

SEC v. Ryan C. Drexler (C.D. Cal. June 27, 2023, contested)

The SEC brought and settled claims against three executives at a publicly traded nutritional supplement company for allegedly engaging in improper revenue recognition practices. The SEC's complaint alleges that the former Executive Vice President of Sales and Operations, the former Vice President of Sales, and the former contract Chief Financial Officer engaged in improper revenue recognition practices to achieve unrealistic quarterly sales targets demanded by the Company's former Chief Financial Officer. According to the SEC, the former CEO threatened to fire—and in certain instances did fire—employees who disagreed or failed to achieve the unrealistic targets.

According to the SEC, the former EVP of Sales and Operations and VP of Sales allegedly engaged in an effort to recognize revenue prematurely for orders that had not yet been shipped in order to meet sales targets. Specifically, the former executives allegedly arranged for the product to be stored at the Company's expense. The Company then allegedly recognized revenue at the time of shipment—and before delivery—even though, under the Company's most significant customer contracts, title and risk of loss only passed when the orders were delivered and accepted. According to the SEC, the former contract CFO failed to correct the accounting for these transactions, despite receiving information that should have suggested that revenue had been recognized prematurely. These improper revenue recognition practices resulted in material misstatements in the Company's financial statements.

To settle the action, the former EVP of Sales and Operations agreed to pay a civil penalty of \$207,183 and \$79,760.01 in disgorgement and prejudgment interest. The former VP of Sales agreed to pay \$15,033.06 in disgorgement and prejudgment interest, with the civil penalty to be determined by the court at a later date. The former contract CFO agreed to pay a civil penalty of \$50,000.

The SEC initiated a separate, contested action against the former CEO for his role in the scheme. According to the SEC, the former CEO defrauded investors by misrepresenting the strength of the Company's controls over financial reporting and disclosures. The former CEO also allegedly made misleading statements regarding a \$10 million debt that had been automatically accelerated and was presently due, resulting in severe consequences for the Company and investors. The SEC also alleges that the former CEO failed to reimburse the Company for cash bonuses as a result of filing financial statements that were later restated due to his misconduct.

[SEC press release](#) | [SEC complaint 1](#) | [SEC complaint 2](#)

SEC settles perquisites disclosure claims against company and executive

In the Matter of Stanley Black & Decker Inc. (A.P. June 20, 2023, settled)

In the Matter of Jeffrey D. Ansell (A.P. June 20, 2023, settled)

The SEC brought and settled claims against a publicly traded tools company for alleged failure to disclose perquisites it provided to four executives and one director. In a related but separate action, the SEC brought and settled claims against the Company's former Executive Vice President for alleged failure to disclose personal benefits that he received from the Company, which in turn caused the Company's proxy solicitation and books and records to be inaccurate.

Specifically, the Company failed to disclose in its proxy statements from 2018 to 2021 approximately \$1.3 million worth of perquisites and personal benefits paid to four executives and one director, most of which involved executives' use of the Company's corporate aircraft.

In its order against the former Executive Vice President, the SEC also alleged that the proxy statement did not disclose over \$647,000 worth of perquisites and personal benefits provided to the former executive, including, among other things, approximately \$280,000 in personal expenses related to chauffeur services, travel items, meals, apparel, and car repair services. The remainder of the undisclosed compensation, as alleged in the order, included approved use of the corporate aircraft and other authorized items, such as gifts and products. According to the SEC, the executive did not disclose these perquisites and personal benefits in the annual internal questionnaire he was required to complete, which included requests for information regarding perquisites, nor did he disclose the perquisites despite being given drafts of the Company's proxy statements to review.

The Company and the Executive Vice President agreed to a cease-and-desist order to settle the claims, and the Executive also agreed to pay a \$75,000 civil penalty. The SEC did not impose a civil penalty against the Company, citing the Company's self-reporting, cooperation, and remediation efforts.

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

Investment adviser

SEC settles two disclosure and controls actions against investment adviser

In the Matter of Pacific Investment Management Company LLC (A.P. June 16, 2023, settled)

The SEC brought two separate actions against a registered investment adviser. In the first action, the SEC alleged that the Company did not have adequate policies and procedures in place to detect fee waiver miscalculations. In the second action, the SEC alleged that the Company failed to disclose material information about its use of paired interest rate swaps for a closed-end fund.

According to the SEC, the Company failed to waive certain advisory fees consistent with its agreement with a mutual fund it managed, which required that it waive a portion of the advisory fee it charged the mutual fund if certain thresholds were met. To calculate its monthly advisory fees and the Fee Waiver, the Company allegedly used a sub-administrator, who relied on the Company's spreadsheets and instructions for the calculations. According to the SEC, although the Company waived a portion of the agreed upon fee waiver amount, its spreadsheets and instructions allegedly did not incorporate the mutual fund's use of leverage, resulting in miscalculations. The SEC alleges that the Company did not have adequate written policies and procedures to prevent or detect the error because, despite its monthly review of the calculations, the Company did not learn of the error until the sub-administrator discovered it during an internal review.

In the second action, the SEC alleged that the Company failed to disclose that the closed-end fund it managed used paired interest rate swaps that had become a material source of distributable income, enabling the Company to maintain the fund's dividend rate. The order additionally alleged that the continued use of paired swaps contributed to a decline in the fund's net asset value (NAV).

The Company agreed to pay a combined penalty of \$9 million to settle both claims. Prior to the Staff's investigation, the Company disbursed the \$27 million in fees it allegedly should have waived, plus interest and a performance adjustment.

[SEC press release](#) | [SEC order 1](#) | [SEC order 2](#)

SEC brings action for naked short selling scheme

SEC v. Hal D. Mintz, et al. (D.N.J. June 12, 2023, contested)

The SEC brought a contested action against an investment adviser and its managing partner for an alleged fraudulent scheme involving naked short selling and order mismarking.

According to the SEC, the parties mismarked sales as long and failed to obtain borrows or locates prior to placing short sales. The parties also allegedly used their naked short sells to artificially deflate the price of securities, allowing them to obtain more shares at a cheaper price. The SEC further alleges that the parties took multiple steps to conceal the alleged scheme, including by making material misrepresentations to executing broker-dealers regarding the validity of how the sales were marked and whether they had obtained borrows or locates.

The SEC's complaint seeks permanent injunctive relief, disgorgement of ill-gotten gains plus prejudgment interest, and civil penalties.

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

SEC brings action for alleged fee overcharging and disclosure failures

In the Matter of Insight Venture Management LLC (A.P. June 20, 2023, settled)

The SEC brought and settled an action against a New York-based investment adviser for allegedly charging excess management fees and failing to disclose a conflict of interest relating to its fee calculations. Specifically, the SEC alleged that the Company inaccurately applied its “permanent impairment” policy by calculating management fees based on aggregated invested capital at the portfolio company level, rather than at the portfolio investment security level as required by the funds limited partnership agreements. The SEC further alleged that the Company failed to disclose the permanent impairment criteria, which, according to the SEC, were so narrow and subjective that they were difficult to satisfy and afforded the Company significant discretion in determining whether an asset was considered permanently impaired.

To settle the matter, the Company agreed to pay disgorgement and pre-judgment interest of \$864,958 and a civil penalty in the same amount.

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

Insider trading

SEC brings action for trading in advance of clinical trial announcement

SEC v. Amit Dagar, et al. (S.D.N.Y. June 29, 2023, contested)

The SEC filed an action against a former employee of a large pharmaceutical company and his close friend and business partner for trading in advance of a major announcement regarding a successful drug trial. The SEC alleges that the former employee, who was a senior statistical program lead for the Paxlovid drug trial, learned about the trial's successful outcome the day before it was to be announced. Upon learning this information, the former employee allegedly purchased short-term, out-of-the-money call options, including options that expired the next day. The SEC further alleges that the former employee shared information about the successful drug trial with his close friend and business partner, who purchased similar call options. According to the SEC, these individuals' trading generated approximately \$214,395 and \$60,300, respectively. This case originated in the Market Abuse Unit's Analysis and Detection Center, which uses data analysis tools to detect suspicious trading patterns.

The U.S. Attorney's Office for the Southern District of New York also announced a parallel action involving criminal charges against the two individuals.

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

CFTC enforcement action

CFTC, SEC brings action against New York resident for multi-million-dollar fraud scheme

SEC v. William K. Ichioka (N. D. Cal. June 22, 2023, contested)

CFTC v. William K. Ichioka (N.D. Cal. June 22, 2023, contested)

The SEC and the CFTC each brought contested claims against a New York resident for fraudulently soliciting and misappropriating more than \$20 million from investors.

According to the agencies, for nearly four years the individual solicited tens of millions of dollars from more than a hundred individuals on the basis that he would invest their money in various trade digital asset

commodities through the commodity interest pool he operated. As alleged in the complaints, the individual instead used investor funds to pay back other participants and for personal use and expenses, like rent payments, luxury automobiles, gym membership, and jewelry. In addition, the individual allegedly represented that investors would earn 10% returns every 30 business days and that his trading activities had actually generated returns in these amounts or had the ability to do so. To conceal his scheme, the individual allegedly doctored financial documents to overstate the value of the commodity pool's assets, among other things.

To settle the claims, the man agreed to partial final judgment and a proposed consent order with the SEC and the CFTC, respectively, subject to court approval. The SEC seeks an officer and director bar, and reserves issues of disgorgement, prejudgment interest, and a civil penalty for further determination by the court. The CFTC seeks full restitution to pool participants, a civil monetary penalty, and permanent trading and registration bans.

Parallel criminal charges have been brought in the Northern District of California.

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

SEC, CFTC announcements

SEC names new acting co-directors of Los Angeles regional office

The SEC announced that Michele Layne, Director of the Los Angeles Regional Office, is leaving the agency. Cindy Eson and Kate Zoladz will replace Layne as Acting Co-Directors.

[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.

Greg D. Andres	+1 212 450 4724	greg.andres@davispolk.com
Uzo Asonye	+1 202 962 7057	uzo.asonye@davispolk.com
Martine M. Beamon	+1 212 450 4262	martine.beamon@davispolk.com
Angela T. Burgess	+1 212 450 4885	angela.burgess@davispolk.com
Robert A. Cohen	+1 202 962 7047	robert.cohen@davispolk.com
Tatiana R. Martins	+1 212 450 4085	tatiana.martins@davispolk.com
Fiona Moran	+1 202 962 7137	fiona.moran@davispolk.com
Stefani Johnson Myrick	+1 202 962 7165	stefani.myrick@davispolk.com
Paul J. Nathanson	+1 202 962 7055	paul.nathanson@davispolk.com
Linda Chatman Thomsen	+1 202 962 7125	linda.thomsen@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's [privacy notice](#) for further details.