

SEC and CFTC Enforcement Update

April 2020

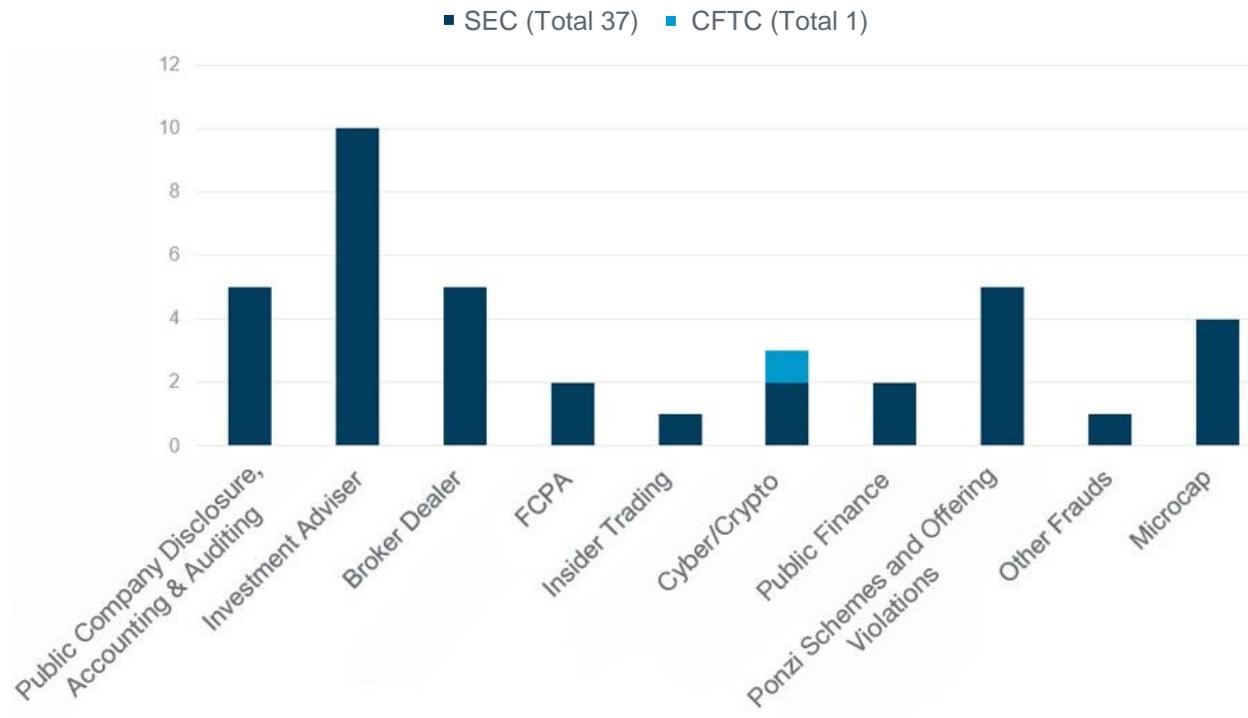
In this edition of the newsletter, we discuss enforcement developments at the agencies during April 2020. As illustrated below, the SEC brought 37 actions (excluding follow-on actions, bars, and suspensions) and the CFTC brought one action.

The SEC’s 37 actions represented a busy month, in comparison to the 121 actions brought during the first six months of the fiscal year. In April, the SEC filed ten investment adviser cases, five broker-dealer cases, five accounting and disclosure-related cases, and two FCPA cases. The SEC also initiated 22 trading suspensions in connection with the coronavirus pandemic, discussed below.

Enforcement activity at the CFTC appears to have slowed. The CFTC brought one new case in April, although it resolved two cases that were pending in federal court.

Actions Initiated by the SEC and CFTC in April 2020¹

Actions Categorized by Matter Type



¹ Follow-on administrative proceedings, suspensions, bars, and delinquent filings excluded.

Types of Defendants/Respondents



Key Cases and Developments

SEC Coronavirus (COVID-19) Enforcement Efforts

The SEC accelerated its enforcement efforts related to the coronavirus pandemic. The SEC suspended trading in twenty-two issuers as a result of conduct tied to the coronavirus pandemic, up from the two coronavirus-related trading suspensions in March and two in February. Many of the suspensions involved statements to the market related to the manufacturing and availability of personal protective equipment or treatment and testing for COVID-19. For example, the SEC suspended trading in Sandy Steele Unlimited Inc.'s securities as a result of alleged statements from unknown sources about the company's ability to produce personal protective equipment. The SEC also suspended trading in BioXyTran, Inc.'s securities as a result of the issuer's alleged statements about its ability to produce a treatment for COVID-19.

The SEC brought its first fraud case related to disclosures involving COVID-19. The SEC alleges that Praxsyn Corp. and its CEO issued false press releases claiming the company could acquire large quantities of masks to protect individuals from COVID-19. The SEC had previously suspended trading in Praxsyn securities.

The SEC also announced the formation of a temporary cross-divisional COVID-19 market monitoring group to assist with actions and analysis related to the effects of COVID-19, and to address requests from other regulators and public sector entities. The group will be chaired by S.P. Kothari, the SEC's Chief Economist and Director of the Division of Economic and Risk Analysis. The group does not include Enforcement staff, but draws from a number of other divisions and offices.

[Order \(Sandy Steele Unlimited Inc.\)](#) | [Order \(BioXyTran, Inc.\)](#) | [Complaint \(Praxsyn Corp. and Frank J. Brady\)](#) | [SEC Press Release](#)

SEC Announces Whistleblower Awards Totaling Over \$50 Million

The SEC announced four whistleblower awards, including awards for \$27 million and \$18 million, demonstrating its continued commitment to the program. In each of the four cases, and consistent with its typical practice, the SEC noted the whistleblowers provided information that was significant to an investigation without revealing the case or underlying conduct. Two of these awards are among the ten highest whistleblower awards the SEC has granted since it began issuing awards in 2012. The highest-

ever was nearly \$50 million awarded to two individuals in 2018. As of the publication of this newsletter, the SEC has awarded approximately \$450 million to 82 individuals since 2012.

[SEC Press Release \(\\$27 million award\)](#) | [SEC Press Release \(\\$18 million award\)](#) | [SEC Press Release \(\\$5 million award\)](#) | [SEC Press Release \(\\$2 million award\)](#)

SEC Settles Disclosure Case Against Private Equity Fund

In re Monomoy Capital Management, L.P. (A.P. Apr. 22, 2020, Settled)

The SEC filed an enforcement action against a private equity fund adviser for its alleged failure to disclose certain costs it charged its funds' portfolio companies, resulting in an allegedly undisclosed conflict of interest regarding allocation of expenses. The SEC alleges that the adviser disclosed the services provided by its in-house operations group in raising investments but failed to disclose that it would charge the portfolio companies for those services. The SEC alleges the adviser violated Section 206(2) of the Advisers Act. The adviser agreed to pay disgorgement of \$1,521,972, prejudgment interest of \$204,606, and a \$200,000 civil penalty. For more detail on this action, please see the longer analysis in Davis Polk's quarterly Private Equity Regulatory Update [here](#).

[SEC Order](#) | [SEC Administrative Summary](#)

SEC Settles Misrepresentations Case Against Hedge Fund Investment Adviser

In re Everest Capital LLC and Marko Dimitrijevic (A.P. Apr. 30, 2020, Settled)

The SEC brought an enforcement action against a hedge fund investment adviser and its sole managing member for their alleged failure to maintain proper risk management procedures and for allegedly providing misleading information about a fund's exposure to currencies. The SEC alleges that the fund stated it would not take positions concentrated in a single geographic region but took a significant position in the euro to Swiss franc exchange rate. Further, the SEC alleges that the adviser and its managing member promised that a risk management team would conduct extensive research and risk management, but the team allegedly had no authority or ability to reduce risk related to the fund's currency positions. The SEC alleged violations of the antifraud provisions of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8. The adviser and its managing member agreed to a joint and several civil penalty of \$750,000, and the adviser agreed to pay disgorgement of \$2,000,000 and prejudgment interest of \$750,000.

[SEC Order](#) | [SEC Administrative Summary](#)

SEC Settles Unusual Financial Disclosure Case Against Two Individual Respondents

In re Brian M. Storms (A.P. Apr. 22, 2020, Settled); Kenneth D. Shifrin (A.P. Apr. 22, 2020, Settled)

The SEC settled enforcement actions against two individuals, the former chief executive officer and former chief financial officer of a formerly Nasdaq-listed financial services technology company. It is not common for the SEC to assert claims against individuals in non-fraud, public company reporting cases. The SEC alleges that the CEO and CFO signed financial disclosures that misled investors about the size and nature of the company's client base by failing to disclose sufficiently the company's reliance on a single client and the reliability of that client's business. The SEC alleges the individuals caused violations of Exchange Act Section 13(a) and Rules 13a-1, 13a-13, and 12b-20, which are non-fraud filing violations. The CEO agreed to pay a civil penalty of \$40,000 and the CFO agreed to pay a civil penalty of \$25,000.

[SEC Order \(Storms\)](#) | [SEC Order \(Shifrin\)](#)

SEC Settles Valuation Case Concerning Derivative Odd Lots

In re Semper Capital Management, L.P. (A.P. Apr. 28, 2020, Settled)

An investment adviser settled an SEC enforcement action alleging that it misled investors and overvalued its fund's securities. The SEC alleges that the adviser caused the overvaluation of smaller-sized odd-lot bond positions by valuing its purchases – which focused on non-agency mortgage-backed securities – as if they were larger round lots positions. The SEC alleges that the adviser violated Section 206(4) and Rules 206(4)-7 and 206(4)-8 of the Advisers Act and Section 34(b) of the Investment Company Act. The Investment Company Act violation was based on allegedly untrue statements in letters to shareholders included in two annual reports. The SEC also alleged a violation of Rule 22c-1 under the Investment Company Act for redeeming securities at prices that the SEC alleged were not based on current net asset values. The adviser agreed to a civil penalty of \$375,000, disgorgement of \$103,228, and prejudgment interest of \$25,000.

[SEC Order](#) | [SEC Administrative Summary](#)

Personnel Changes

The SEC and CFTC both announced notable personnel changes.

- The SEC named Louis Gracia and Vanessa Horton as associate directors of the investment adviser/investment company examination program at the agency's Chicago office.
[SEC Press Release](#)
- CFTC Commissioner Brian D. Quintenz released a statement marking the end of his statutory term as a commissioner. He stated that he will not seek renomination, but will remain in office until the earlier of the confirmation of his successor or October 31, 2020.
[Statement of Commissioner Quintenz](#)

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

Martine M. Beamon	+1 212 450 4262	martine.beamon@davispolk.com
Angela T. Burgess	+1 212 450 4885	angela.burgess@davispolk.com
Gary Lynch	+1 212 450 4582	gary.lynch@davispolk.com

Washington, DC

Robert A. Cohen*	+1 202 962 7047	robert.cohen@davispolk.com
Neil H. MacBride	+1 202 962 7030	neil.macbride@davispolk.com
Stefani Johnson Myrick	+1 202 962 7165	stefani.myrick@davispolk.com
Paul J. Nathanson	+1 202 962 7055	paul.nathanson@davispolk.com
Annette L. Nazareth	+1 202 962 7075	annette.nazareth@davispolk.com
Linda Chatman Thomsen	+1 202 962 7125	linda.thomsen@davispolk.com
Kenneth L. Wainstein	+1 202 962 7141	ken.wainstein@davispolk.com

*Mr. Cohen is admitted to practice in New York and Maryland, and is practicing in DC under the supervision of partners of the firm.

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