

# SEC and CFTC Enforcement Update

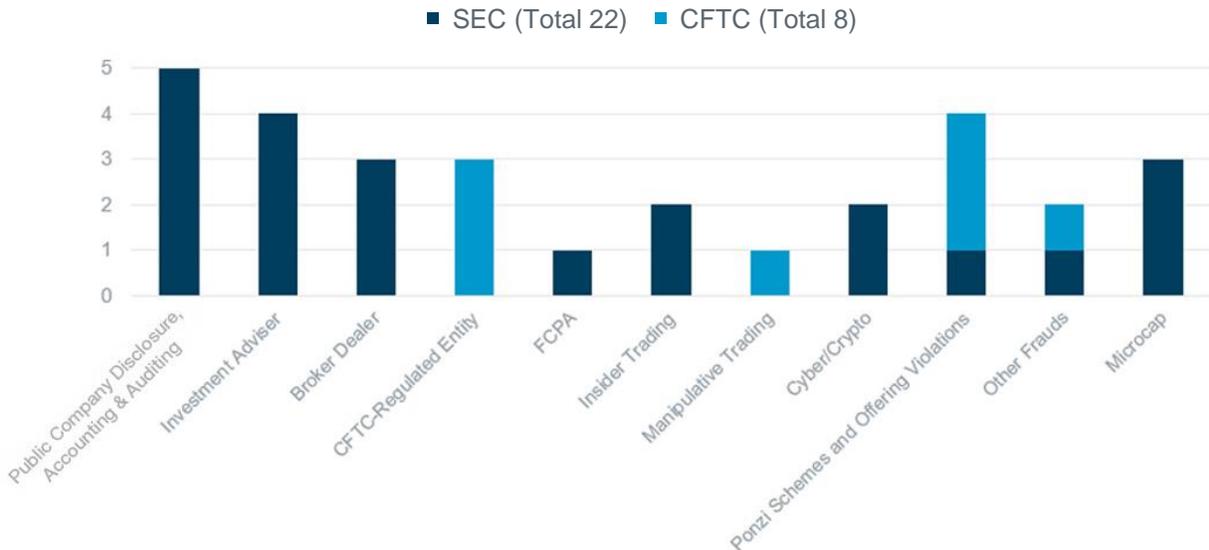
June 2020

In this edition of the newsletter, we discuss enforcement developments at the agencies during June 2020. As illustrated below, the SEC brought 22 actions (excluding follow-on actions, bars, and suspensions) and the CFTC brought eight actions, marking its busiest month so far this year. The SEC and CFTC brought these actions against a combined total of 66 defendants and respondents evenly split between individuals (33) and corporate entities (33).

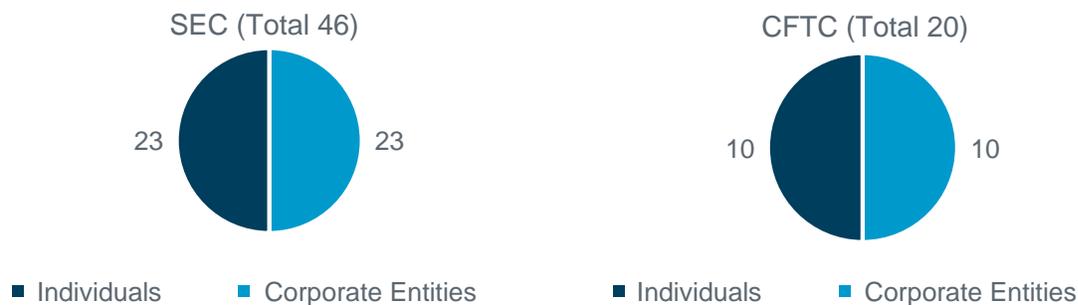
The SEC’s 22 actions spanned numerous case types, including several investment adviser, broker-dealer, and disclosure and accounting cases. The CFTC’s actions involved regulation violations, manipulative trading, and frauds.

## Actions Initiated by the SEC and CFTC in June 2020<sup>1</sup>

### Actions Categorized by Matter Type



### Types of Defendants/Respondents



<sup>1</sup> Follow-on administrative proceedings, suspensions, bars, and delinquent filings excluded.

## Key Cases and Developments

### Supreme Court Limits SEC's Disgorgement Authority

#### **Liu v. SEC (U.S. June 22, 2020)**

In an 8-1 opinion on June 22, 2020, the Supreme Court upheld the SEC's authority to obtain disgorgement in federal court actions but identified three equity principles that will serve as limitations to the SEC's authority. First, the Court held that the statutory requirement that relief be "for the benefit of investors" usually means that the SEC should return funds to victims, and declined to address whether disgorgement would be permissible when it is impractical to distribute funds. Second, the Court expressed doubt as to whether the SEC could seek disgorgement against multiple individuals on a joint-and-several liability basis, but noted there could be exceptions. Third, the Court held that disgorgement should be limited to "net" profits and that the SEC must deduct legitimate business expenses from disgorgement awards, unless those expenses are "merely wrongful gains 'under another name.'" For further details and analysis, see our client memorandum [here](#).

### SEC Settles with Pharmaceutical and Healthcare Company for FCPA Violations

#### **In re Novartis AG (A.P. June 25, 2020, Settled)**

The SEC settled administrative claims against a global pharmaceutical company for alleged violations of the books and records and internal accounting controls provisions of the Foreign Corrupt Practice Act. The SEC alleged that local subsidiaries or affiliates of the pharmaceutical company or its former subsidiary made improper payments to or provided benefits to public and private healthcare providers in South Korea, Vietnam, and Greece. The SEC further alleged the company lacked adequate accounting controls in its former subsidiary in China, including by using forged contracts as part of financing arrangements. The company agreed to pay disgorgement of \$92.3 million and prejudgment interest of \$20.5 million, and to comply with self-reporting obligations for three years. Subsidiaries of the company entered into deferred prosecution agreements with the Department of Justice and agreed to pay \$233 million in criminal monetary penalties.

[SEC Press Release](#) | [SEC Order](#)

### SEC Settles with Publicly-Traded Company for Inadequate Perk Disclosures

#### **In re Argo Group International Holdings, Ltd. (A.P. June 4, 2020, Settled)**

The SEC settled an administrative proceeding against a publicly-traded company for allegedly failing to ensure that perks for its former CEO were properly recorded as compensation. According to the SEC, the company failed to disclose more than \$5.3 million in perks, including costs related to air and car travel, housing, and tickets for entertainment events. The company agreed to pay a \$900,000 civil penalty. For further analysis, see our client memorandum [here](#).

[SEC Order](#)

### SEC Settles with Insurance Company and its Former CFO for Faulty Disclosures

#### **SEC v. AmTrust Financial Services, Inc. (S.D.N.Y. June 17, 2020, Settled)**

The SEC settled a case against an insurance company and its former CFO concerning disclosures of loss reserves. According to the SEC, the company and its former CFO disclosed the company's general actuarial process for estimating loss reserves but did not disclose consolidated accounting adjustments that did not properly incorporate the actuarial analyses and diverged from the actuarial estimates. The SEC further alleged that the company failed to disclose the factors or assumptions underlying the adjustments and did not sufficiently document management's best estimate. The SEC alleged the adjustments exceeded \$300 million by the end of 2015. The insurance company agreed to pay a penalty of \$10.3 million and its former CEO agreed to pay a \$75,000 penalty, \$140,000 in disgorgement, and \$22,499 in prejudgment interest.

[SEC Press Release](#) | [SEC Complaint](#)

## [SEC Settles with Real Estate Investment Trust for Accounting Violations and Fraud](#)

**In re Vereit, Inc. (A.P. June 23, 2020, Settled)**

The SEC instituted a settled administrative proceeding against a publicly traded real estate investment trust (REIT). According to the SEC, the REIT falsely reported and manipulated its “adjusted funds from operations (AFFO),” a non-GAAP performance metric, in 2014. The REIT agreed to pay an \$8,000,000 civil penalty. The former executives alleged to have been responsible were the subject of SEC claims in 2016 and also were charged criminally.

[SEC Order](#)

## [SEC Settles with Broker-Dealer and Former CEO for Order Routing Misrepresentations](#)

**In re Potamus Trading LLC (A.P. June 30, 2020, Settled)**

The SEC settled administrative claims against a broker-dealer and its former CEO for violations of Sections 17(a)(2) and (3) for allegedly misrepresenting how it handled orders from its broker-dealer clients. According to the SEC, the broker-dealer told its clients that it executed most trades by trading out of its own inventory, and also that it operated a dark pool in which it was the sole liquidity provider. The SEC alleged that, in fact, the broker-dealer only internalized approximately 3.5% of the orders it filled. The broker-dealer agreed to pay a penalty of \$50,000 after submitting a sworn statement showing it could not pay a larger penalty. The former CEO, who was one of two members of the broker-dealer’s sales force and allegedly involved in the misrepresentations, agreed to pay a separate \$50,000 penalty.

[SEC Press Release](#) | [SEC Order](#)

## [CFTC Settles Two Cases with Global Bank for Reporting Violations and Spoofing](#)

**CFTC v. Deutsche Bank AG (S.D.N.Y. June 17, 2020, Settled); In re Deutsche Bank Securities, Inc. (A.P. June 18, 2020, Settled)**

The CFTC settled two enforcement proceedings brought against an international bank. The first matter involved an alleged outage of the bank’s swap reporting platform, which prevented the bank from reporting certain swap data. The bank agreed to pay a \$9 million penalty, which the order states was reduced based on the bank’s cooperation with CFTC staff, including a court-appointed monitor. The second matter involved allegations of spoofing in Treasury futures and Eurodollar futures contracts by two Tokyo-based traders in 2013. As part of the settlement, the bank agreed to pay a civil monetary penalty of \$1,250,000.

[CFTC Press Release](#) | [SDNY Consent Order](#) | [CFTC Order](#)

## [CFTC Brings Claims Against Options Trading Firm and Associated Individuals](#)

**CFTC v. Long Leaf Trading Group, Inc. (N.D. Ill. June 26, 2020, Contested); In re Scott J. Gecas (A.P. June 29, 2020, Settled); In re James E. Leeney (A.P. June 29, 2020, Settled)**

The CFTC brought a case against an options trading firm and four individuals for defrauding customers in relation to options on future transactions. The CFTC also brought and settled two administrative proceedings against two additional individuals for related conduct. According to the CFTC, the firm and its associated individuals made false and misleading statements to customers about its options trading program, “Time Means Money.” The CFTC alleges that all of the firm’s customers lost money on the trades, which the firm purportedly designed primarily to generate commissions, while the firm failed to disclose the losses to customers. The two individuals who settled administrative proceedings agreed to civil monetary penalties of \$150,000 and \$350,000.

[CFTC Press Release](#) | [CFTC Complaint](#) | [CFTC Order](#) | [CFTC Order](#)

## CFTC Settles Proceeding Against UK Firm for Registration and Supervision Violations

### In re Gain Capital UK Limited (A.P. June 8, 2020, Settled)

The CFTC brought a case against a UK foreign exchange dealer for allegedly failing to register as a retail foreign exchange dealer (RFED) and for failing to supervise the handling of an account of a U.S.-based customer. According to the CFTC, the dealer acted as a counterparty to customers with U.S. addresses without registering and the dealer failed to detect fraudulent conduct of an unregistered commodity-trading advisor who solicited a U.S.-based customer to open a forex account with the dealer. As part of a settlement, the dealer agreed to pay a \$250,000 civil monetary penalty and \$241,671 in disgorgement.

[CFTC Press Release](#) | [CFTC Order](#)

## Personnel Changes

The SEC announced two notable personnel changes.

- The SEC named Jennifer S. Leete as associate director of the enforcement division. Ms. Leete joined the division in 1999, and served most recently as an Assistant Director. She succeeds Antonia Chion, who retired earlier this year. [SEC Press Release](#)
- The SEC announced the retirement of Robert Sollazzo, leader of the New York Regional Office's Broker-Dealer Examination Program. Mr. Sollazzo worked at the SEC for more than 38 years. [SEC Press Release](#)

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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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\*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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