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SEC 2015 Enforcement Results and Trends

In recent years, the Securities and Exchange Commission (the “SEC”) has been vocal about its heightened policing efforts. Recently SEC Chair, Mary Jo White, has emphasized that “aggressive enforcement against wrongdoers who harm investors and threaten our financial markets remains a top priority, and we brought and will continue to bring creative and important enforcement actions across a broad range of the securities markets.”

This statement is not an empty threat. The SEC has increased the number and value of its enforcement actions in the last several years. Up from 686 and 755 enforcement actions in the fiscal years 2012 and 2013, respectively, the SEC brought 807 enforcement actions in 2015. Similarly, the SEC obtained orders of \$4.19 billion in penalties and disgorgements for the fiscal year 2015, which showed an increase over 2013 and 2014 in which the SEC obtained orders totalling \$3.4 billion and \$4.16 billion, respectively.

The value of SEC enforcement actions brought in 2015 represented close to a 7% increase compared to the fiscal year 2014 and it was the second straight year that the number of SEC actions increased from the prior year. In addition to the increase in the number and value of actions filed, the relevant SEC press release highlighted that 2015 saw significant high-impact and first-of-their-kind SEC actions.

Enforcement Trends

Last year, the SEC cast a wide net with its domestic enforcement activities, focusing on areas ranging from cybersecurity to disclosure issues in municipal securities offerings; it also remained focused on activities outside the United States. Set out below are some highlights of last year’s enforcement trends.

Enforcement against unregistered broker-dealers

The SEC pursued significant enforcement actions against firms acting as unregistered broker-dealers, including against HSBC’s Swiss arm for a longstanding failure to register with the SEC before providing cross-border brokerage and investment advisory services to U.S. clients. Other



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unregistered broker-dealers actions involved microcap manipulation, including charges against International Capital Group for selling more than \$9 billion shares of unregistered penny stock.

Enforcement against gatekeepers

The SEC has emphasized that it will also hold “gatekeepers” accountable (*i.e.*, accountants, attorneys and broker-dealers) for failure to comply with professional standards and it is filing individual charges against such gatekeepers, as well as against members of issuers’ management and members of audit committees.

In 2015, the SEC brought the first non-independence case against a major audit firm since 2009; it charged BDO USA, LLP with issuing “false and misleading unqualified audit opinions about the financial statements of General Employment Enterprises, and five of the firm’s partners, including national office personnel, for their roles in the deficient audits.” The SEC also sanctioned Deloitte & Touche and eight other auditing firms for violating independence rules and charged Oppenheimer & Co. and current and former E*Trade subsidiaries for failing in their gatekeeping function as broker-dealers by allowing billions of unregistered microcap stock shares to be sold into the market. In addition, the SEC charged the former chair of the audit committee of MusclePharm Corp. who substituted his erroneous interpretation of SEC rules for those of an outside expert, resulting in an incorrect disclosure.

Enforcement against exchanges, traders and other market participants

The SEC took action against some of the biggest name firms in the market, including Morgan Stanley & Co., and Goldman Sachs & Co., as well as Latour Trading LLC for market access rule violations, which require firms to have adequate risk controls in place prior to providing market access to customers. Among numerous other actions in this space, the SEC also charged two exchanges formerly owned by Direct Edge; this was the SEC’s first case principally focused on stock exchange order types. The SEC issued its largest penalty for activities by an exchange to Direct Edge for failure to accurately describe its order types in SEC filings.



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Enforcement against investment advisers and investment companies

The SEC is increasingly focused on investigating potential misconduct by investment advisers and investment companies, including its first-ever action against the private equity firm, KKR, for misallocation of “broken deal” expenses, as described in a previous [Forum alert](#). The SEC also charged Blackrock Advisors LLC for breaching its fiduciary duty by failing to report a conflict of interest to its client and fund boards.

Awarding Whistleblowers

The SEC has emphasized recently that it will continue its Whistleblower Program administered by the SEC Office of the Whistleblower. Since 2011, the SEC has awarded \$54 million to whistleblowers, and in 2015, a payment of \$30 million (the largest award to date) was paid out to a non-U.S. resident, confirming that payments may be made to those who are not U.S. citizens or residents. The SEC also brought its first action for violating Exchange Act Rule 21F-17, prohibiting the use of confidentiality agreements to impede whistleblowers, against KBR Inc.

SEC Enforcement Cooperation Program

The SEC Enforcement Cooperation Program provides incentives to encourage greater cooperation in SEC investigations and enforcement actions. Andrew Ceresney (Director, SEC Division of Enforcement) has emphasized the importance of self-reporting and cooperation in the context of investigations and enforcement actions, noting that the SEC “has formally granted credit for cooperation by entities for more than five years. In 2001, the Commission identified four broad factors to be considered in evaluating a company’s cooperation when determining appropriate charges and remedies: self-policing, self-reporting, remediation, and cooperation.”

The SEC has emphasized that self-reporting and cooperation may have tangible benefits for individuals and entities in SEC investigations, including, for example, the SEC declining an enforcement action, narrowing charges and/or limiting sanctions.



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2016 Priorities

In its press release from January 11 of this year, the SEC stated that the Office of Compliance Inspections and Examinations' ("OCIE") areas of focus in 2016 are liquidity controls, public pension advisers, product promotion, exchange-traded funds (including the trading process) and variable annuities. The OCIE will continue to focus on cybersecurity, microcap fraud, fee selection, and reverse churning, as these areas are seen as ongoing risk areas.

The 2016 examination priorities include, among others, protecting retail investors (including those investing for retirement and risks relating to advisors to public pension funds) and market-wide risks, including new initiatives that will evaluate broker dealer and investment advisers' liquidity risk management practices. Further, the OCIE's ability to better analyze large amounts of data will facilitate the SEC's efforts in ensuring anti-money laundering compliance, detecting microcap fraud, and monitoring excessive trading.

Conclusion

Based on its public statements, it is expected that the SEC's investigations and enforcement actions will continue to increase this year and in coming years. Further, the OCIE is becoming more adept at using technology to its advantage through data analytics and, as a result, it is able to better monitor market risks and detect breaches of SEC regulations through the use of such technology. As always, investor protection is the SEC's ultimate goal and it is continuing pursue this vigorously on all fronts.

For more information:

See the SEC Press Release entitled "SEC Announces Enforcement Results for FY 2015" (October 22, 2015) [here](#).

See Director of Division Enforcement Andrew Ceresney's ACI's 32nd FCPA Conference Keynote Address (November 17, 2015) [here](#).



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See Director of Division Enforcement Andrew Ceresney's Remarks at University of Texas School of Law's Government Enforcement Institute in Dallas, Texas entitled "The SEC's Cooperation Program: Reflections on Five Years of Experience" (May 13, 2015) [here](#).

See the SEC Press Release entitled "SEC Announces 2016 Examination Priorities" (January 11, 2016) [here](#).

See the National Exam Program, Office of Compliance Inspections and Examinations, Examination Priorities for 2016 [here](#).