

SEC and CFTC Enforcement Update

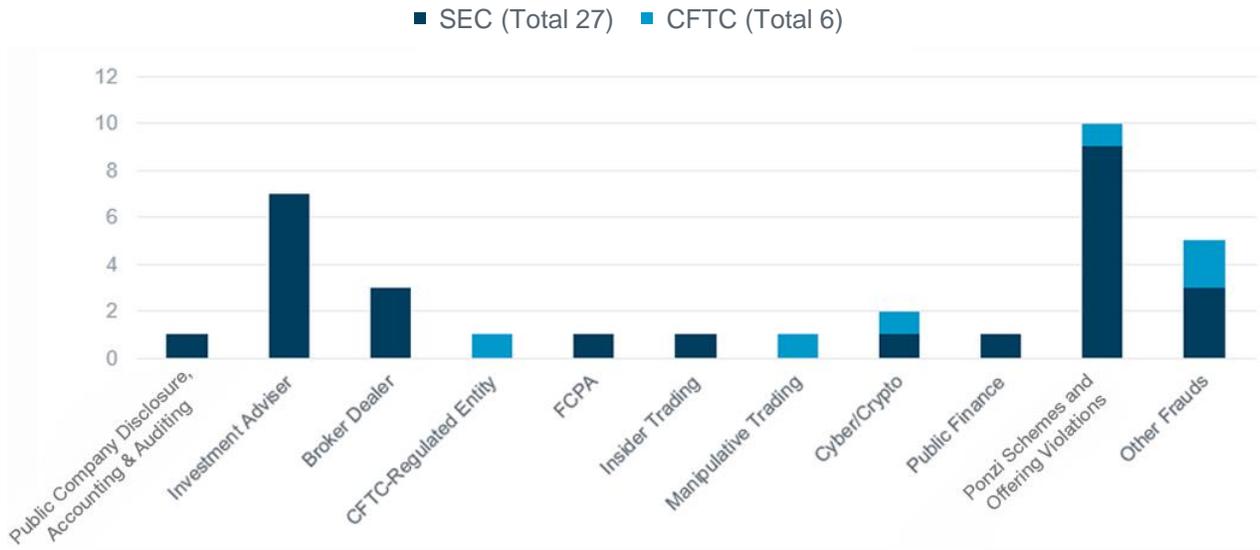
July 2020

In this edition of the newsletter, we discuss enforcement developments at the agencies during July 2020. As illustrated below, the SEC brought 27 actions (excluding follow-on actions, bars, and suspensions) and the CFTC brought 6 actions. The SEC and CFTC brought these actions against a combined total of 96 defendants and respondents.

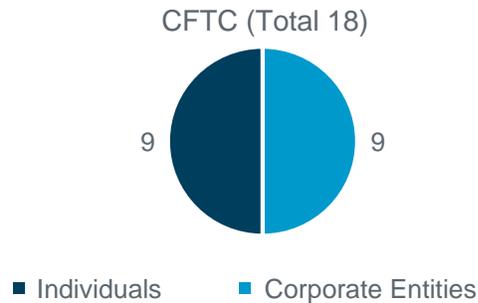
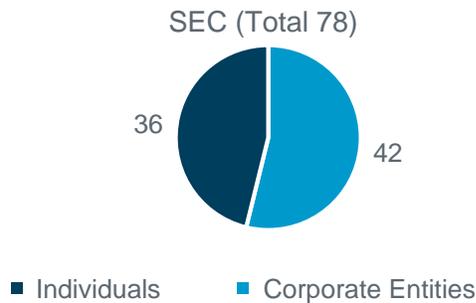
The SEC's 27 actions spanned numerous case types, including investment adviser cases, offering disclosure and accounting cases, an FCPA case, and a public finance case. The CFTC's 6 actions included a cryptocurrency-related case and the CFTC's first COVID-related case.

Actions Initiated by the SEC and CFTC in July 2020¹

Actions Categorized by Matter Type



Types of Defendants/Respondents



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

Key Cases and Developments

[SEC Settles with Pharmaceutical Company for FCPA Violations](#)

In re Alexion Pharmaceuticals, Inc. (A.P. July 2, 2020, Settled)

The SEC settled administrative claims against a pharmaceutical company for alleged violations of the books and records and internal accounting controls provisions of the Foreign Corrupt Practices Act. The SEC alleged that the company's Turkish and Russian subsidiaries made improper payments to government officials to secure favorable regulatory treatment and to increase prescriptions for the company's medication. The SEC further alleged that inadequate internal accounting controls resulted in the company's failure to maintain accurate books and records of third-party payments by subsidiaries in Brazil and Colombia. The company agreed to pay disgorgement of \$14.2 million, prejudgment interest of \$3.8 million, and a civil penalty of \$3.5 million.

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

[SEC Settles with Pharmaceutical Company and Former Executives for Inaccurate Disclosures](#)

In re Valeant Pharmaceuticals International, Inc. (A.P. July 31, 2020, Settled); In re J. Michael Pearson (A.P. July 31, 2020, Settled); In re Howard B. Schiller (A.P. July 31, 2020, Settled); In re Tanya R. Carro (A.P. July 31, 2020, Settled)

The SEC settled administrative claims against a pharmaceutical company and its former top executives for alleged improper revenue recognition and inaccurate disclosures on a no-admit, no-deny basis. According to the SEC, the company touted growth based on sales to an entity the company established, funded, and subsidized without disclosing the company's relationship to that entity. The SEC further alleged that the company attributed revenue growth from a single drug to other, unrelated products. The company agreed to pay a \$45 million civil penalty. The former CEO agreed to pay a \$250,000 civil penalty and to reimburse the company \$450,000. The former CFO agreed to pay a \$100,000 civil penalty and to reimburse the company \$110,000. The former controller agreed to pay a \$75,000 civil penalty and consented to a suspension from appearing before the SEC as an accountant.

[SEC Press Release](#) | [SEC Order \(Company\)](#) | [SEC Order \(CEO\)](#) | [SEC Order \(CFO\)](#) | [SEC Order \(Controller\)](#)

[First CFTC Enforcement Action Targeting Fraud Linked Directly to COVID-19](#)

CFTC v. James Frederick Walsh (W.D. Tex. July 7, 2020, Contested)

In its first enforcement action targeting misconduct directly related to the COVID-19 pandemic, the CFTC alleges that an unregistered commodity trading advisor made fraudulent solicitations for a forex trading scheme. According to the CFTC, the advisor falsely touted his trading experience and claimed he could predict market movements and generate high profits due to the impact of COVID-19 on financial markets.

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

SEC and CFTC Settle with App Developer for Unregistered Security-Based Swaps

In re Plutus Financial, Inc. and Plutus Technologies Philippines Corp. (A.P., July 13, 2020, Settled)

In parallel enforcement actions, the SEC and CFTC settled a case against two companies that developed a currency trading mobile phone application that enabled retail investors to buy contracts for synthetic exposure to U.S.-listed equities through the Bitcoin blockchain. The SEC alleged that the companies violated Section 5 of the Securities Act by selling security-based swaps to retail investors without a registration statement in place, and violated Section 6(l) by selling the swaps in transactions that were not executed through a registered securities exchange. The CFTC alleged that the sales violated Section 2(e) of the Commodity Exchange Act because they were not transacted on a board of trade designated as a contract market, and because the companies operated as unregistered futures commission merchants. The two companies agreed to jointly pay civil penalties of \$150,000 to both the SEC and CFTC.

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

SEC Settles with Financial Services Company for Violating Rules that Give Priority to Retail Investors in Municipal Offerings

In re UBS Financial Services, Inc. (A.P. July 20, 2020, Settled)

The SEC settled administrative claims against a financial services company for alleged violations of the Securities Exchange Act and of Municipal Securities Rulemaking Board (MSRB) Rules. According to the SEC, the company improperly allocated bonds intended for retail customers to “flippers,” who then immediately resold, or “flipped,” the bonds to other broker-dealers at a profit. The SEC alleges that the company was able to obtain bonds for its own inventory through this process, thereby circumventing the priority of orders set by the issuers and improperly obtaining a higher priority in the bond allocation process. The SEC also instituted related settled proceedings against two registered representatives who allegedly knew or should have known that flippers were not eligible for retail priority. The company agreed to pay a civil penalty of \$1.75 million, disgorgement of \$6.74 million, and prejudgment of approximately \$1.5 million.

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

SEC Brings Claims Against Investment Adviser for Disclosure Failures in Promotions Made to Teachers

In re Valic Financial Advisors (A.P. July 28, 2020, Settled)

The SEC settled administrative claims against an investment adviser for its alleged failure to disclose payments it made to an entity owned by a Florida teachers’ union in exchange for that entity’s exclusive endorsement of the adviser’s services. The SEC further alleged that the adviser made misleading and false statements regarding its mutual-fund selection process because the adviser purportedly selected mutual funds that were more expensive for its clients, but had lower fees for the adviser. The adviser agreed to pay a civil penalty of \$24.5 million and disgorgement of \$15.4 million.

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

SEC Settles with Pharmaceutical Company Employee and his Cousin for Insider Trading

In re Edmond Leung (A.P. July 21, 2020, Settled); In re Joseph Zhang (A.P. July 21, 2020, Settled)

The SEC settled administrative proceedings against a pharmaceutical company employee and his cousin for alleged insider trading. The SEC alleges that the employee obtained material nonpublic information about his employer's collaboration with another pharmaceutical company and then tipped off his cousin. The cousin then purportedly traded on that information to net \$66,703 in profits. The SEC further alleged that the employee traded his own stock in the company to avoid losses while relying on material nonpublic information about a delay in the company's clinical trials. Both parties agreed to a cease-and-desist order. The cousin agreed to pay disgorgement of \$66,703, prejudgment interest of \$5,573, and a civil money penalty of \$66,703. The employee agreed to pay disgorgement of \$2,863, prejudgment interest of \$493, and a civil money penalty of \$69,566.

[SEC Press Release](#) | [SEC Order \(Employee\)](#) | [SEC Order \(Cousin\)](#)

CFTC and SEC Announce Whistleblower Awards Totaling Over \$13.8 Million

The CFTC and SEC announced three whistleblower awards in July. The CFTC announced two of these awards, including an award for approximately \$9 million—one of the five largest granted in the history of the CFTC program. The SEC announced a single \$3.8 million award. As of the publication of this newsletter, the SEC has awarded approximately \$505 million to 87 individuals since 2012. This includes awards to 20 individuals in the last 10 months, totaling almost \$119 million. The CFTC has awarded approximately \$120 million to whistleblowers since issuing its first award in 2014.

[SEC Press Release](#) | [CFTC Press Release \(\\$1 million award\)](#) | [CFTC Press Release \(\\$9 million award\)](#)

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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