

SEC and CFTC Enforcement Update

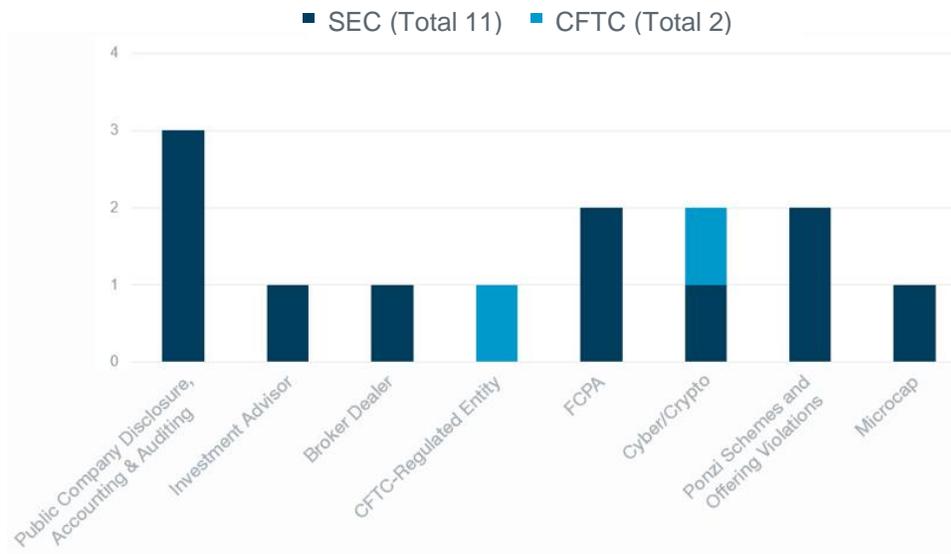
October 2020

In this edition of the newsletter, we discuss enforcement developments at the agencies during October 2020. Consistent with prior years, October was a relatively slow month after the large number of cases filed before the agencies’ fiscal years ended on September 30. As illustrated below, the SEC filed 11 cases (excluding follow-on actions, bars, and suspensions) and the CFTC filed two cases. The agencies filed actions against a combined total of 35 defendants and respondents.

The SEC’s 11 actions spanned numerous case types, including public company accounting and controls, cryptocurrency and FCPA cases. The CFTC’s two actions included cryptocurrency and CFTC-regulated entity cases.

Actions Initiated by the SEC and CFTC in October 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 Issues Annual Report

The SEC's Enforcement Division issued its [Annual Report](#) for fiscal year 2020. The SEC noted the impact of COVID as it reported that it filed fewer cases than in 2019, obtained slightly more monetary relief, and had a record-breaking year for the whistleblower program. See our more detailed summary [here](#).

[SEC Annual Report](#)

CFTC Issues Additional Guidance on Cooperation, Self-Reporting, and Remediation

The CFTC issued guidance regarding the circumstances when it recognizes cooperation, self-reporting, and remediation in enforcement orders. For example, the guidance noted that the CFTC will recognize whether a respondent's cooperation materially advanced an investigation. The guidance also provided the language that the CFTC will use in enforcement orders to recognize cooperation and remediation, and stated that the CFTC orders in such cases will describe the acts of cooperation or remediation that merited recognition. The CFTC will incorporate this guidance in its Enforcement Manual, and it will not change how the CFTC evaluates monetary penalties with respect to cooperation, self-reporting, and remediation. We previously discussed the CFTC's penalty guidance in our [May 2020 update](#).

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

SEC Settles with Energy Company for Inadequate Controls Surrounding Stock Buybacks

In re Andeavor LLC (A.P. Oct. 15, 2020, Settled)

The SEC settled a novel claim in which it applied the requirement for accounting controls to a public company's stock buyback decision. According to the SEC, the company had a policy prohibiting stock repurchases when it was in the possession of material nonpublic information ("MNPI"), but the company authorized a stock buyback program two days before resuming discussions about a potential takeover of the company. The company agreed to pay a civil penalty of \$20 million. The case highlights the need for policies and procedures around stock buyback authorizations and the entry into of 10b5-1 plans, including procedures for a company to determine that it is not in possession of MNPI when it enters into a 10b5-1 buyback plan. For further analysis, see our client memorandum [here](#).

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

SEC Brings Case Against Seismic Data Company for Accounting Fraud

SEC v. SAExploration Holdings, Inc. (S.D.N.Y. Oct. 8, 2020, Contested)

The SEC brought a case against a seismic data company and four of its former executives for alleged accounting fraud. According to the SEC, the company, at the direction of its former executives, entered into contracts with another company controlled by two of the former executives and then recorded revenue from that other company even though it had no ability to make payments. The U.S. Attorney's Office for the Southern District of New York filed parallel criminal charges against one of the former executives.

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

CFTC Brings Claims for Unregistered Cryptocurrency Exchange

CFTC v. HDR Global Trading Ltd. (S.D.N.Y. Oct. 1, 2020, Contested)

The CFTC brought an enforcement action against five entities and three individuals that collectively own and operate a cryptocurrency trading platform for allegedly running an unregistered trading platform and committing anti-money laundering violations. According to the CFTC, the platform collected more than \$1 billion in fees while conducting significant business in the United States without registering with the CFTC and without implementing procedures required by the CFTC, including anti-money laundering controls. The U.S. Attorney's Office for the Southern District of New York filed parallel criminal charges against the three individuals.

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

SEC Settles with Day-Trading Education Firm for Unregistered Swap Transactions

In re Tradenet Capital Markets Ltd. (A.P. Oct. 23, 2020, Settled)

The SEC settled proceedings against a day-trading education firm for engaging in security-based swaps without registration. According to the SEC, the firm sold packages to investors that claimed to be for investor education, but also paid investors a portion of profits from simulated trades. The SEC found that these were security-based swaps for which no registration statement was filed and that the swaps were not sold through a national securities exchange. The firm agreed to pay a civil penalty of \$130,000.

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

SEC Brings Case for Fraudulent Promotion of ICOs Without Disclosing Financial Interest

SEC v. John David McAfee and Jimmy Gale Watson, Jr. (S.D.N.Y. Oct. 5, 2020, Contested)

The SEC filed a complaint that included fraud charges against an individual and his personal bodyguard for touting initial coin offerings ("ICOs") without disclosing his financial interest in the ICOs. According to the SEC, they also engaged in a scheme by accumulating a large position in a digital asset, touting the security while intending to sell it, and then selling the holdings as the price rose. The Tax Division of the Department of Justice also filed criminal charges.

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

SEC Settles Litigation with Canadian Company for Unregistered ICO

SEC v. Kik Interactive Inc. (S.D.N.Y. filed June 4, 2019, Contested)

The SEC settled pending litigation against a Canadian company for allegedly conducting an unregistered offering of digital tokens. The SEC previously won summary judgment in the case, a decision followed by the industry for guidance about the SEC's theory that ICOs can constitute securities offerings. The company agreed to pay a \$5 million civil penalty and provide notice to the SEC at any point over the next three years if it plans to engage in the issuance, offer, sale, or transfer of digital assets.

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

Whistleblower Awards

The SEC announced three whistleblower awards during the month, including a record \$114 million award. Of the \$114 million awarded, approximately \$52 million was awarded based on an SEC enforcement action and approximately \$62 based on enforcement actions from another agency. The other amounts awarded this month are approximately \$800,000 and \$10 million.

[SEC Press Release](#) | [SEC Whistleblower Page](#)

Personnel Changes

The SEC announced Nichola L. Timmons as the chief of the newly-formed Office of Bankruptcy, Collection, Distributions, and Receiverships inside the Enforcement Division. As Chief, Ms. Timmons will oversee efforts to collect outstanding judgments and work with court-appointed receivers.

SEC Press Release

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