

SEC and CFTC Enforcement Update

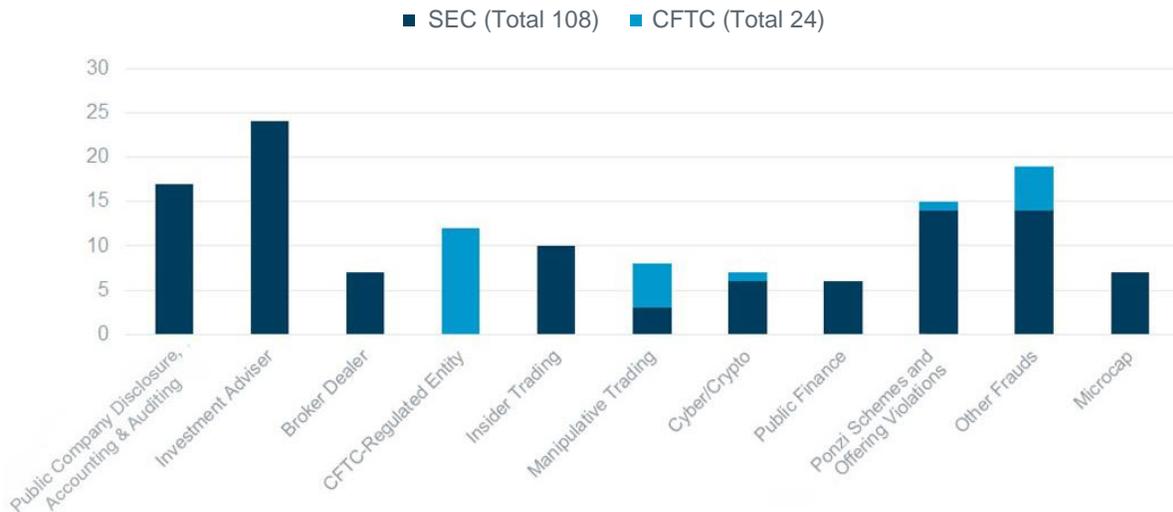
September 2020

In this edition of the newsletter, we discuss enforcement developments at the agencies during September 2020, which is the end of the fiscal year for both agencies. As is customary for the end of the year, both agencies brought a significant number of cases. As illustrated below, the SEC filed 108 cases (excluding follow-on actions, bars, and suspensions) and the CFTC filed 24, against a combined total of 280 defendants and respondents.

The actions spanned numerous case types, including disclosure and accounting violations, investment adviser and broker-dealer violations, insider trading and market manipulation, cryptocurrency, public finance, Ponzi schemes, frauds, and microcap. The CFTC’s 24 actions included CFTC-regulated entities, manipulative trading, cryptocurrency, a Ponzi scheme, and frauds. The CFTC also **announced** that it brought a record-breaking 113 enforcement actions in fiscal year 2020. The SEC is expected to release its yearly totals later in the fall.

Actions Initiated by the SEC and CFTC in September 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 Files Multiple Accounting Cases

Continuing its focus on public company accounting and disclosure violations, the SEC filed multiple cases in September, including cases involving:

- a manufacturing company and three former senior executives for allegedly creating false inventory lists and shipping documents to cover up a shortfall, and misleading its auditor about the nonexistent inventory. The company also allegedly recognized revenue for sales to a dormant company with no operations, and for which the former executives arranged financing without disclosing the company's role in the financing. [SEC Press Release](#) | [SEC Order](#)
- an engine manufacturing company that allegedly recognized revenue for sales that were not complete, for products for which the price was falsely inflated, and for improper "bill and hold" arrangements. The SEC previously charged the company's former CEO and two former senior sales executives. [SEC Press Release](#) | [SEC Order](#)
- a lighting manufacturer and four former executives for allegedly inflating recognized revenue from anticipated future sales and allegedly concealing the practice with backdated documents relating to "bill and hold" sales. [SEC Press Release](#) | [SEC Complaint](#)

SEC Settles a Compensation Disclosure Case with a Hospitality and Entertainment Company, its CEO, and CFO

In re RCI Hospitality Holdings, Inc. et. al (A.P. Sept. 21, 2020, Settled)

The SEC settled a case with a hospitality and entertainment company, the company's CEO and CFO regarding undisclosed compensation in the form of perquisites. According to the SEC, the company failed to disclose perquisites for the executives including the use of corporate aircraft, reimbursement for personal commercial flights, and food and housing allowances. The company agreed to pay a civil penalty of \$400,000. The CEO agreed to pay a civil penalty of \$200,000. The CFO agreed to pay a penalty of \$35,000. See our related [client memorandum](#) regarding the SEC's continued focus on compensation and perk disclosure.

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

SEC Settles with Finance Manager and Family Members for Insider Trading

SEC v. Bohra (W.D. Wash. Sept. 28, 2020, Settled)

The SEC settled proceedings against a finance manager and two of her family members for alleged insider trading. The SEC alleged that the finance manager obtained material nonpublic information about her employer's financial performance by virtue of her role in the company's tax department and then tipped off her family members with that information. According to the SEC, the family garnered approximately \$1.4 million of illicit profits. The finance manager and her two family members agreed to a consent judgment ordering payment of disgorgement of \$1,428,094, prejudgment interest of \$118,406, and civil penalties of \$1,106,399. The U.S. Attorney for the Western District of Washington filed parallel criminal charges against one of the family members.

We previously explained in a [client memorandum](#) that, following the Supreme Court's decision regarding SEC disgorgement in *Liu v. SEC*, the SEC has settled insider trading cases without seeking disgorgement, but with increased penalties. We note that the SEC did not follow that practice in this case, and instead sought disgorgement. The SEC also appears to have held the defendants jointly liable for the sanctions, including disgorgement, despite the Court's holding that joint and several liability

generally should not apply to disgorgement awards. We will continue to follow the SEC's treatment of disgorgement in the wake of the Supreme Court decision.

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

SEC Settles Exchange Act Section 13(d) Case with Investment Adviser

In re WCAS Management Corp. (A.P. Sept. 17, 2020, Settled)

The SEC settled claims against an investment adviser for alleged failure to update a Schedule 13D filing on a timely basis. According to the SEC, the investment adviser filed a Schedule 13D stating that it owned approximately 7% of a publicly traded prosthetics company while considering a possible takeover of the prosthetics company. The investment adviser allegedly failed to timely update the Schedule 13D when it decided against a takeover and liquidated its positions. The investment adviser agreed to pay a civil penalty of \$100,000.

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

CFTC and State Agencies Cooperate in Commodities Trading Fraud Case

CFTC v. TMTE, Inc. (N.D. Tex. Sept. 22, 2020, Contested)

The CFTC, with cooperation from 30 state regulators, filed a complaint alleging fraud by a metal dealer firms and its principals. According to the CFTC and state regulators, the metal dealers sold precious metals as investments at prices far above market rates by falsely claiming those metals were unique or semi-numismatic. The CFTC further alleged that the metal trading firms targeted elderly investors.

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

SEC Director of Enforcement Provides Remarks at the Institute for Law and Economics, University of Pennsylvania Carey Law School Virtual Program

On September 17, SEC Director of Enforcement Stephanie Avakian gave a speech about the Division's efforts. In particular, Avakian described the Supreme Court's decision in *Liu v. SEC* as a favorable decision for the SEC because it upheld the SEC's ability to seek disgorgement in enforcement actions. Most newsworthy was Director Avakian's comment that, due to the Court's decision, the SEC will likely change the balance between penalties and disgorgement in future cases, and that penalties might be higher in some cases. For further analysis of *Liu v. SEC*, see our client memoranda [here](#) and [here](#).

[SEC Speech](#)

Whistleblower Awards

The SEC announced six whistleblower awards in September, including a \$2.5 million **joint award** for outside whistleblowers who provided tips based on analyzing public company filings. The SEC announced that it had awarded approximately \$562 million since the program's first award in 2012, and awarded a record \$175 million to 39 individuals during fiscal year 2020.

[SEC Press Release](#)

Personnel Changes

The CFTC announced that Enforcement Director James McDonald would depart the Commission. Mr. McDonald served as Director of Enforcement since April 2017. Principal Deputy Director of Enforcement Vincent McGonagle will serve as Acting Director of Enforcement.

[CFTC Press Release](#)

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