

Alert | Securities Litigation

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SEC Enforcement: Report on Priorities and FY 2017 Results

On Nov. 15, 2017, the SEC's Enforcement Division issued a report on its priorities for 2018 and its results for the 2017 fiscal year which ended Sept. 30, 2017. See [SEC Enforcement Division Issues Report on Priorities and FY 2017 Results](#). The Division's report is in the form of its own separate annual report and represents a departure from the SEC's past practice of merely including "Enforcement" as one of the appendices to the agency's comprehensive annual financial report.

According to the Division's report, the SEC brought a total of 754 enforcement actions in FY 2017. These actions consisted of: 446 "standalone" actions brought in federal court or as administrative proceedings; 196 "follow-on" proceedings seeking bars based on the outcome of actions brought by the SEC, criminal authorities, or other regulators; and 112 proceedings to deregister public companies that were delinquent in their SEC filings. By comparison, the SEC brought 868 enforcement actions in FY 2016. The report acknowledges this decline and attributes the majority of the difference to the 84 actions brought in FY 2016 in connection with the SEC's voluntary self-reporting Municipalities Continuing Disclosure Cooperation (MCDC) Initiative which involved misstatements and omissions in municipal bond offering documents.

Regarding the monetary relief ordered in SEC actions, the total amount of monetary relief declined from \$4.083 billion in FY 2016 to \$3.789 billion in FY 2017, as did the amount of penalties from \$1.273 billion to \$832 million, although the amount of disgorgement actually rose from \$2.809 billion to \$2.957 billion. With respect to the types of cases the SEC brought, the report indicates that the FY 2017 results are consistent with those of FY 2016, in that a significant number of standalone cases concerned investment

advisory issues, securities offerings, and issuer/reporting/accounting and auditing, with each comprising approximately 20 percent of the overall number of actions. According to the report, the SEC also continued to bring cases relating to market manipulation, insider trading, and broker-dealers, with each comprising approximately 10 percent of the overall number of actions, as well as in other areas such as public finance abuse and FCPA. In addition, regarding SEC charges against individuals, the report states that “[i]ndividual accountability is critical to an effective enforcement program[,]” and notes that in both FY 2017 and FY 2016 (excluding MCDC), 73 percent of standalone actions involved charges against one or more individuals. Moreover, the report indicates that enforcement actions resulted in over 625 bars and suspensions of wrongdoers in FY 2017 and over 650 bars and suspensions in FY 2016.

Going forward, in the press release accompanying the report, the Division’s Co-Directors Stephanie Avakian and Steven Peikin state that there are “five core principles that will guide their enforcement decision-making: focus on the Main Street investor; focus on individual accountability; keep pace with technological change; impose sanctions that most effectively further enforcement goals; and constantly assess the allocation of resources.” The report emphasizes that the Division’s area of greatest focus is the protection of retail investors and its priorities involve: risks posed by cyber-related misconduct; issues raised by the activities of investment advisers, broker-dealers, and other registrants; financial reporting and disclosure issues involving public companies; and insider trading and market abuse.

According to the report, as part of its efforts to protect retail investors and combat cyber-related threats, at the end of FY 2017, the Division created the Cyber Unit and the Retail Strategy Task Force. The Cyber Unit will focus on: market manipulation schemes involving false information spread through electronic and social media; hacking to obtain material nonpublic information and trading on that information; violations involving distributed ledger technology and initial coin offerings (ICOs); misconduct perpetrated using the dark web; intrusions into retail brokerage accounts; and cyber-related threats to trading platforms and other critical market infrastructure. The Retail Strategy Task Force will focus on: wrongdoing implicating the microcap market; Ponzi schemes; offering frauds; and misconduct in other areas such as that which occurs at the intersection of investment professionals and retail investors, including steering clients to higher-cost mutual fund shares, abuses in wrap-fee accounts, investment adviser recommendations to buy and hold highly volatile products, suitability issues involving the sale of structured products, and abusive sales practices such as churning and excessive trading.

Although it remains to be seen, the Division’s articulation of its current focus and priorities may signal an end to its pursuit of minor infractions or technical regulatory violations where there is no proof of any tangible investor harm or loss. The closing of the curtain on the “Broken Windows” Enforcement era would indeed be viewed by its critics as a welcome change of direction.

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