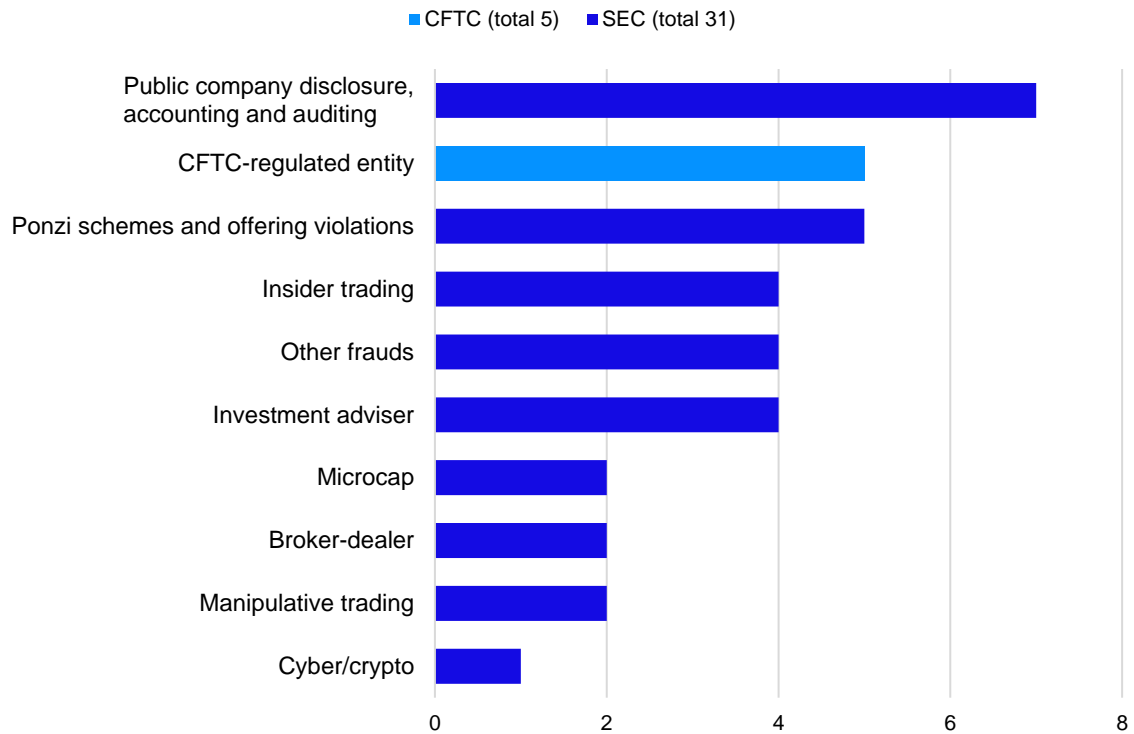


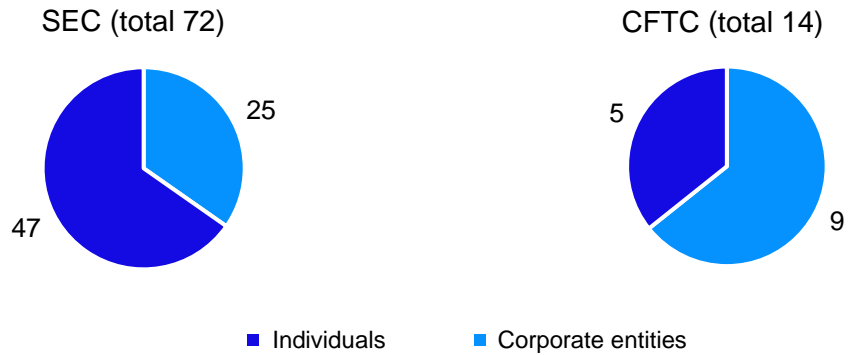
December 2021

In December, the SEC filed 31 enforcement actions and the CFTC filed five, against a combined total of 86 defendants and respondents, picking up the pace to close out the calendar year. (This tally excludes follow-on actions, bars and suspensions.) The SEC’s actions spanned numerous types, including public company accounting and disclosure issues, Ponzi schemes and insider trading cases. The CFTC’s five actions included ones concerning misappropriation, recordkeeping failures and fraud.

## Actions initiated by the SEC and CFTC in December 2021

*Number of actions, by matter type*





## Key cases and developments

### SEC settles with public company for misleading investors

**In re Nikola Corporation (A.P. December 21, 2021, settled)**

The SEC settled a case against a public company, which went public via a SPAC transaction, for allegedly misleading investors about its products, technical developments, and business prospects. According to the SEC, the company’s founder and former CEO and Chairman attempted to inflate the company’s stock price via his tweets and other statements to the media. The SEC alleged that these statements created the false impression that the company was reaching certain technological milestones with its products, and that the statements additionally misled investors regarding the company’s production capacity and financial outlook, among other issues. Further, the SEC alleged that the company lacked adequate disclosure controls because other personnel did not review the individual’s posts on social media to determine whether the information should have been disclosed in the company’s SEC filings. The SEC previously brought a case against the CEO, and in this filing the company agreed to pay a civil penalty of \$125 million.

[SEC press release](#) | [SEC order](#)

### SEC brings suit against company, executives for revenue manipulation

**SEC v. American Renal Associates Holdings, Inc. et al. (S.D.N.Y. December 6, 2021, contested)**

The SEC brought a case against a dialysis provider and three of its former senior executives for an alleged revenue manipulation scheme that required the company to restate its financial reporting. According to the SEC, over a roughly one-year period, the company manipulated “topside” revenue adjustments to reach targets on two of its financial metrics. The complaint alleges that the company used a revenue “cookie-jar,” where it noted topside adjustments to be recorded, but did not actually record them until more revenue was necessary to reach certain targets. The SEC further alleges that the company misled its auditor to prevent discovery of this practice. The company agreed to pay a \$2 million civil penalty, while litigation will continue against the named individuals.

[SEC press release](#) | [SEC complaint](#)

## **SEC settles with public company over subsidiary's accounting controls**

**In re WEX, Inc. (A.P. December 13, 2021, settled)**

The SEC reached a settlement with a financial technology service provider for allegedly failing to devise and maintain sufficient internal accounting controls at its Brazilian subsidiary. According to the SEC, the company's auditor identified issues with accounting at its subsidiary in 2016 and 2017; further issues arose in 2018. The SEC alleged that the subsidiary's financial statements dating back to 2013 contained accounting errors, including millions in suspected unauthorized transactions and possible theft by its employees. The company agreed to pay a \$350,000 civil penalty.

[SEC press release](#) | [SEC order](#)

## **SEC suffers an unusual midtrial loss in insider trading action**

**SEC v. Christopher Clark et al. (E.D. Va. December 11, 2020, contested)**

A Virginia federal judge dismissed the SEC's insider trading case against a mortgage broker before hearing any of the defendant's evidence. After the SEC rested its case against the broker, who was accused of insider trading based on information obtained from his brother-in-law, the judge determined that the government had failed to provide any direct or circumstantial evidence that the individual received or acted on any confidential information. The SEC had argued that its market surveillance tools identified "highly suspicious trading" by the individual, but the judge disagreed that any of the actions appeared suspicious. The SEC originally brought suit against the individual and his brother-in-law in December 2020.

[News coverage](#) | [Complaint](#)

## **SEC sues CFO and former partner for insider trading**

**SEC v. Usama Malik et al. (D.N.J. December 2, 2021, contested)**

The SEC brought a case against a pharmaceutical company's former CFO and his former partner for alleged insider trading. According to the SEC, the former CFO learned by virtue of his position that an ongoing FDA trial for the company's breast cancer drug indicated the drug was effective. While he was subject to a trading "black-out," he allegedly shared this information with his live-in girlfriend and three family members. The SEC alleges that his girlfriend and two of the family members, as well as the third family member's spouse, then purchased company stock. The Company's stock price almost doubled after the company announced the news regarding the drug. According to the complaint, the former CFO was asked about this incident as part of a FINRA inquiry but did not identify the relevant individual as his partner and incorrectly claimed that he had not communicated with her during the pertinent time period.

[SEC press release](#) | [SEC complaint](#)

## **SEC brings insider trading case against clinical drug trial investigator**

**SEC v. Daniel V.T. Catenacci (N.D. Ill. December 17, 2021, contested)**

The SEC brought suit against a Chicago-based medical school professor for allegedly engaging in insider trading while serving as a lead clinical investigator for a biotechnology company's cancer drug trial. According to the SEC, the individual learned material nonpublic information about the drug's trial results—which were positive—through his role, and subsequently purchased thousands of shares in the company. After the company's share price increased by 300% due to its announcement about the results, the individual sold his shares.

[SEC press release](#) | [SEC complaint](#)

## **SEC brings suit against five Russians in hacking and trading scheme**

**SEC v. Vladislav Kliushin et al. (D. Mass. December 20, 2021, contested)**

The SEC brought a case against five Russian citizens for allegedly hacking into two U.S. filing agent companies to obtain corporate earnings announcements before they were made public, and subsequently profiting from the information in the announcements. The complaint alleges that one of the Russians hacked into the companies' systems and then provided the information he obtained to the others. According to the SEC, the group used the information to engage in trading ahead of over 500 earnings announcements, resulting in profits of over \$82 million.

[SEC press release](#) | [SEC complaint](#)

## **CFTC sues individual, his firm for misappropriation and fictitious trading**

**CFTC v. Peter Miller et al. (S.D. Tex. December 10, 2021, contested)**

The CFTC brought a case against an individual and his firm for allegedly misappropriating nonpublic information and engaging in fictitious trading. According to the CFTC, from 2015 through 2018, the individual and his firm received confidential block trade information from a trader at an energy company and then engaged in trading based on that information. The CFTC alleges that this trading included entering into non-arm's length, fictitious block trades in natural gas futures. According to the complaint, this allowed the individual to receive beneficial prices for the block trades, resulting in over \$1.5 million in profit.

[CFTC press release](#) | [CFTC complaint](#)

## **SEC settles with broker-dealer over microcap sales, failure to file SARs**

**In re Webbush Securities Inc. (A.P. December 15, 2021, settled)**

The SEC reached a settlement with a broker-dealer for allegedly distributing almost 100 million unregistered shares of low-priced microcap companies and failing to file suspicious activity reports ("SARs") regarding the sales. According to the SEC, the broker-dealer engaged in the unregistered sales over a period of roughly eighteen months and did not conduct reasonable inquiries into the sales. The SEC further alleged that, despite various warning signs, the company failed to file SARs for the transactions. The company agreed to pay a \$1 million civil penalty and an additional \$207,000 in disgorgement.

[SEC press release](#) | [SEC order](#)

## **SEC reaches settlement with investment adviser for disclosure failures**

**In re Global Infrastructure Management, LLC (A.P. December 20, 2021, settled)**

The SEC settled an action with a registered private equity fund adviser for allegedly failing to offset its management fees and making misleading statements about its fees and charged expenses. According to the SEC, the adviser failed to follow terms in offering and governing documents requiring it to offset specific portfolio company fees against management fees charged to clients. This allegedly resulted in clients overpaying millions of dollars in management fees. The SEC additionally alleged that the adviser provided its investors with inconsistent information about calculation of these fees due to deficiencies in the adviser's compliance program. The investment adviser agreed to pay a \$4.5 million civil penalty and to repay \$5.4 million to its affected clients.

[SEC press release](#) | [SEC order](#)

## Whistleblower awards

The SEC announced one whistleblower award this month, with one individual receiving nearly \$5 million in whistleblower payments.

[SEC whistleblower page](#)

## Personnel and organizational changes

The SEC announced notable personnel and organizational changes in December:

- William Birdthistle was named Director of the Division of Investment Management.

[SEC press release](#)

- James E. Grimes was named the agency's Chief Administrative Law Judge.

[SEC press release](#)

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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