

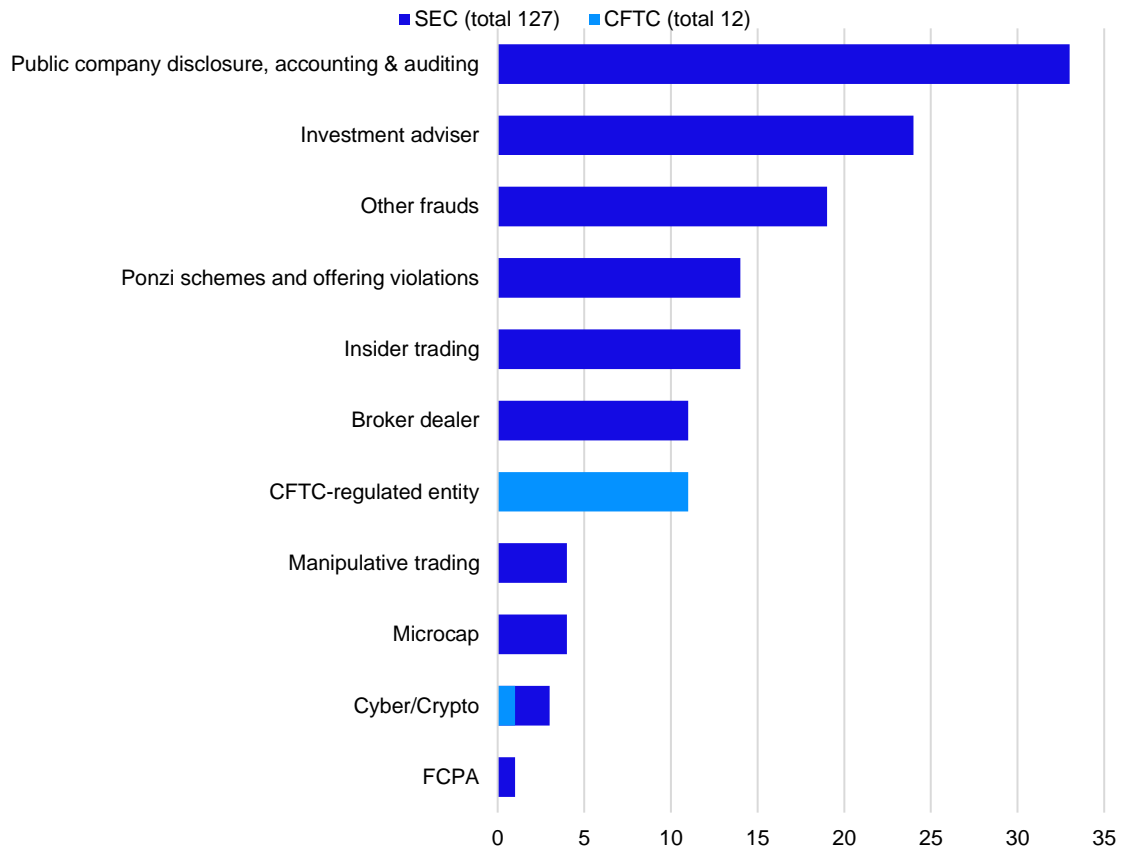
SEC & CFTC Enforcement Update

Summer 2022

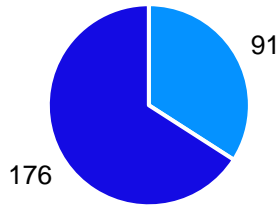
In June, July and August 2022, the SEC filed 127 actions and the CFTC filed 12, against a combined total of 290 defendants and respondents. (These figures exclude follow-on actions, bars and suspensions.) The SEC’s actions included public company disclosure and accounting cases and actions against investment advisers, among others. The CFTC’s actions concerned alleged misstatements and fraud, as well as crypto.

Actions initiated by the SEC and CFTC in Summer 2022

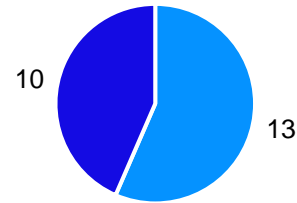
Number of actions, by matter type



SEC (total 267)



CFTC (total 23)



■ Individuals ■ Corporate entities

Key cases and developments

SEC brings suit over alleged \$16 million accounting scheme

SEC v. Frank Okunak (S.D.N.Y. July 27, 2022, contested)

The SEC charged an individual for allegedly falsifying books and records, and evading accounting controls to misappropriate more than \$16 million. The SEC alleges that the individual, the former chief financial officer and chief operating officer of a public global marketing company’s subsidiary, directed the creation of falsified purchase orders and invoices that reflected alleged services being offered to the company. According to the SEC, those services were not actually offered and the invoices instead directed funds to pay the individual’s personal expenses and benefit companies in which he had an interest. The SEC alleges that the individual altered invoices to avoid scrutiny, submitted falsified certifications that failed to disclose conflicts of interest and knowledge of the improper payments, and circumvented controls related to onboarding and vendor payments. The individual has agreed to an officer and director bar, with monetary relief to be determined by the court. The U.S. Attorney’s Office for the Southern District of New York instituted a parallel criminal proceeding against the individual.

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

SEC brings accounting case against company, former executives

In re Surgalign Holdings, Inc. et al. (A.P. August 3, 2022, settled)

SEC v. Brian K. Hutchison (D.D.C. August 3, 2022, contested)

The SEC charged a surgical implant manufacturer and its former CEO and CFO for allegedly hiding poor sales numbers by shipping future orders earlier than scheduled to “pull forward” revenue and failing to disclose this practice to investors while reassuring investors that the company was meeting revenue guidance. According to the SEC, this use of pull-forwards cannibalized future streams of revenue and damaged customer relationships. The SEC also alleged that the company at times shipped orders ahead of schedule absent customer approval and then recognized revenue for those shipments in violation of GAAP. The SEC further alleged that the company’s former CEO and CFO were aware of and permitted this practice. In June 2020, the company restated its 2014 through 2019 public financial statements to correct the errors that resulted from this practice. This action arose out of the SEC’s Earnings Per Share Initiative. The company agreed to pay a \$2 million penalty and its former CFO agreed to a \$75,000 penalty and a five year accountant bar. The former CFO and three other executives also returned approximately \$550,000 in incentive-based compensation to the company. The SEC’s case against the former CEO is continuing.

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

SEC brings several actions over alleged financial reporting fraud

SEC v. Granite Construction, Inc. (N.D. Cal. August 25, 2022, settled)

SEC v. Dale Swanberg (N.D. Cal. August 25, 2022, contested)

In re Jigisha Desai (A.P. August 25, 2022, settled)
In re Laurel Krzeminski (A.P. August 25, 2022, settled)
In re James H. Roberts (A.P. August 25, 2022, settled)

The SEC brought suit against an infrastructure-construction company and a former senior vice president for allegedly inflating the financial performance of one of the company's major subdivisions. The SEC alleges that the individual defendant manipulated the subdivision's profit margins and improperly deferred recording increases in expected costs to conceal the subdivision's declining performance. The company agreed to pay a \$12 million penalty, and the SEC's complaint credits the company for taking remedial measures, including increasing transparency in and accuracy of its internal accounting controls. In addition, in three separate proceedings the company's former CEO and CFOs agreed to pay clawbacks under Section 304 of the Sarbanes-Oxley Act. The former CEO agreed to pay \$1.4 million in cash and stock, while the two former CFOs agreed to pay \$327,000 and \$176,000. The SEC's case against the former SVP is continuing.

[SEC press release](#) | [SEC order 1](#) | [SEC order 2](#) | [SEC order 3](#) | [SEC complaint 1](#) | [SEC complaint 2](#)

SEC brings numerous insider trading cases in July

SEC v. Amit Bhardwaj et al. (S.D.N.Y. July 25, 2022, contested)
SEC v. Brijesh Goel et al. (S.D.N.Y. July 25, 2022, contested)
SEC v. Seth Markin et al. (S.D.N.Y. July 25, 2022, contested)
SEC v. Stephen E. Buyer (S.D.N.Y. July 25, 2022, contested)
SEC v. Doron A. Tavlin et al. (D. Minn. July 6, 2022, contested)

The SEC brought a number of insider trading actions in July, including three separate actions arising from the Market Abuse Unit's (MAU) Analysis and Detection Center, which uses data analysis tools to detect suspicious trading patterns. The MAU cases involved nine individuals and three different insider trading schemes. In one case, the SEC alleges that a former Chief Information Security Officer traded in advance of two corporate acquisition announcements and generated over \$5 million in improper profits. The SEC further alleges that the former CISO shared relevant information about the acquisitions with his friends, who also profited. In the second case, the SEC alleges that an investment banker learned about four acquisitions in advance of their public announcements and then traded on the information himself and tipped off a friend. In the third case, the SEC alleges that a former FBI trainee secretly reviewed deal documents about a planned tender offer that he had access to via his romantic partner, an associate at a law firm. The former trainee then traded on the information and tipped a friend about the information.

In addition, the SEC also brought an insider trading action against a former Congressman from Indiana. The SEC alleges that the former Congressman formed a consulting firm after leaving Congress and learned that one of his clients, T-Mobile, was planning to acquire Sprint. He allegedly began purchasing Sprint securities the day after learning of this plan and profited over \$100,000. The SEC also alleges that the former Congressman engaged in the same actions prior to an anticipated acquisition by one of his other clients. He allegedly profited over \$220,000 from that activity.

Finally, the SEC brought an insider trading action against the former Vice President of Business Development for a medical devices company and two of his friends, who allegedly profited over \$500,000 after trading in advance of the company's announcement of its pending acquisition.

[MAU press release](#) | [Bhardwaj complaint](#) | [Goel complaint](#) | [Markin complaint](#) | [Buyer press release](#) | [Buyer complaint](#) | [Tavlin press release](#) | [Tavlin complaint](#)

SEC brings FCPA action against global steel pipe manufacturer

In re Tenaris S.A. (A.P. June 2, 2022, settled)

The SEC settled with a global manufacturer of steel pipe products over allegations that the company violated the Foreign Corrupt Practices Act. According to the SEC, the company's Brazilian subsidiary was involved in a bribery scheme designed to obtain and retain business from Petrobras, a Brazilian state-owned entity. The order alleges that the scheme resulted in over \$10 million in bribes being paid to Petrobras, all of which were funded by other companies associated with the company's controlling shareholder. The SEC appears to have relied on an agency theory of liability, imputing the anti-bribery liability of the subsidiary to the parent-issuer. The company agreed to pay \$78 million to the SEC and to self-report to the SEC for two years.

[SEC press release](#) | [SEC order](#) | [DPW client update](#)

SEC brings suit against software company for alleged accounting issues

In re Synchronoss Technologies, Inc. (A.P. June 7, 2022, settled)
In re Clayton “Charlie” Thomas (A.P. June 7, 2022, settled)
In re Marc Bandini (A.P. June 7, 2022, settled)
In re Daniel Ives (A.P. June 7, 2022, settled)
In re John Murdock (A.P. June 7, 2022, settled)
In re Stephen G. Waldis (A.P. June 7, 2022, settled)
In re Ronald Prague, Esq. (A.P. June 7, 2022, settled)
SEC v. Karen Rosenberger et al. (S.D.N.Y. June 7, 2022, contested)

The SEC charged a software company and seven of its senior employees, including its former CFO, with alleged accounting improprieties that occurred over a four-year period, resulting in materially misleading financial statements. The SEC alleged that the company improperly recognized revenue on multiple transactions, including with respect to transactions where there was not persuasive evidence of an arrangement, acquisitions/divestitures in which the company recognized revenue on licensing agreements, licensing agreements in which the company recognized revenue up front, and side-letter arrangements. According to the SEC, the company also misled its auditor and had material weaknesses in its internal controls related to financial reporting. The company paid a civil penalty of \$12.5 million, and the four former employees and one current employee agreed to penalties ranging from \$15,000 to \$90,000. In addition, the company’s founder and former CEO, who was not charged with misconduct, agreed to a clawback of approximately \$1.3 million in compensation pursuant to SOX Section 304. The SEC cases against the former CFO and former Controller are continuing.

[SEC press release](#) | [Synchronoss order](#) | [Thomas order](#) | [Bandini order](#) | [Ives order](#) | [Murdock order](#) | [Waldis order](#) | [Prague order](#) | [SEC complaint](#)

SEC settles with accounting firm over alleged improper conduct

In re CohnReznick LLP (A.P. June 8, 2022, settled)
In re Stephen M. Wyss, CPA et al. (A.P. June 8, 2022, settled)

The SEC settled with an audit firm and three of its partners based on allegations that the firm and individuals engaged in improper professional conduct. According to the SEC, the firm accepted a client’s assertions that its “goodwill” in an acquisition was not impaired or reduced in value during a given quarter despite numerous red flags that this assertion was inaccurate. Further, the three partners allegedly accepted this assertion after being personally presented with evidence it was inaccurate. According to the SEC, the firm allegedly failed to address concerns involving related party transactions of a second client that the client used to fraudulently inflate its revenue. Both clients were previously subject to SEC enforcement actions for filing fraudulent financial statements. The audit firm agreed to pay a \$1.9 million penalty, retain an independent consultant, and abide by restrictions on new audit client engagements. The individual partners each agreed to penalties of between \$20,000 and \$30,000.

[SEC press release](#) | [CohnReznick order](#) | [Wyss et al order](#)

SEC alleges improper expense fund allocations by investment adviser

In re Energy Capital Partners Management, LP (A.P. June 14, 2022, settled)

The SEC settled with an investment adviser in connection with alleged allocation of undisclosed, disproportionate expenses to a private equity fund. According to the SEC, the adviser was involved in a “take-private transaction” in which it led an investment consortium to acquire shares of a public company. In the context of this transaction, the adviser agreed that third party co-investors would not be subject to expenses from a credit facility used to finance the transaction, resulting in allocation of a disproportionate share of those expenses to a private equity fund it advised. The investment adviser agreed to pay a \$1 million penalty.

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

SEC settles case involving alleged violations of whistleblower protections

In re The Brink’s Company (A.P. June 22, 2022, settled)

The SEC settled a case against a public company involving alleged violations of the whistleblower protection rule. According to the SEC, the company required its employees to sign confidentiality agreements that prohibited disclosure of any financial or business information to third parties without approval from the company but did not provide an exemption for SEC whistleblowers. The SEC alleged that the agreement threatened employees with damages and legal fees if they did not provide proper notice to the company before disclosing any financial or business information to third parties. The company agreed to a \$400,000 penalty and to modify its employment agreements.

Following announcement of the order, Commissioner Hester M. Peirce released a statement articulating her view on the scope of the SEC's authority under the whistleblower protection rule (Exchange Act Rule 21F-17(a)). Commissioner Peirce argued that the Commission's authority to enforce the rule is limited to ensuring the free flow of information to the Commission only. The order in this case required the company to include a provision in its employment agreements making clear that confidentiality agreements do not extend to the SEC "or any other federal, state, or local governmental regulatory or law enforcement agency."

[SEC press release](#) | [SEC order](#) | [Commissioner Peirce statement](#)

SEC brings suit against rating organization over conflict of interest claims

In re Egan-Jones Ratings Company, et al. (A.P. June 21, 2022, settled)

The SEC settled with a registered statistical rating organization and the organization's CEO in connection with alleged violations of conflict of interest provisions. In particular, the SEC alleged that the CEO was involved in a client's business and marketing activities while simultaneously contributing to the client's credit rating determination. The SEC further alleged that, in 2018, the organization issued a credit rating for one client despite that client contributing at least 10% of the organization's net revenue for the fiscal year. The SEC also alleged that the organization failed to maintain policies and procedures reasonably designed to address such conflicts of interest. The organization agreed to pay a \$1.7 million penalty and over \$146,000 in disgorgement and pre-judgment interest, and to certain undertakings related to its conflict of interest policies and procedures. The CEO agreed to a \$300,000 penalty.

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

SEC alleges Reg BI violations against broker dealer and five individuals

SEC v. Western International Securities, Inc., et al. (C.D. Cal. June 15, 2022, contested)

The SEC brought suit against a registered broker dealer and five of its registered representatives for allegedly recommending and selling a high-risk debt security to risk-averse investors. The SEC alleges that, from July 2020 to April 2021, the company and its representatives sold L Bonds to moderate risk retail customers even though the bond issuer identified that the securities were high risk and intended for investors with significant resources. The SEC alleges that the parties violated Reg BI for failing to perform reasonable diligence or adequately understand the risks, resulting in the parties not acting in the investors' best interests. The SEC further alleges that the broker dealer failed to establish or maintain policies and procedures adequate to ensure compliance.

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

SEC brings suit for alleged concealment of consumer complaints

In re Health Insurance Innovations, Inc. et al. (A.P. July 20, 2022, settled)

The SEC settled with a health insurance services company and its CEO in connection with allegations that the parties concealed consumer complaints about certain insurance products that the company offered. Specifically, the SEC alleged that the parties made false statements to investors that the company's insurance distributors were held to strict compliance standards prohibiting them from making misrepresentations to consumers about health insurance products. The parties allegedly told investors during earnings calls that the company had 99.99% consumer satisfaction and that state regulators received minimal consumer complaints when the parties were aware of thousands of consumer complaints asserting that distributors were, among other things, making misrepresentations and charging consumers for unauthorized products. The Company agreed to pay an \$11 million civil penalty, and the company's CEO agreed to pay over \$1 million in penalties, disgorgement, and interest.

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

Company pays \$50 million to settle claim of misleading account statements

In re Equitable Financial Life Insurance Co. (A.P. July 18, 2022, settled)

The SEC settled with a life insurance company in connection with alleged materially misleading account statements to roughly 1.4 million investors. The SEC alleged that the company provided investors with the false impression that their quarterly account statements reflected all fees paid during that same period. Instead, the investors' account statements listed only infrequently applied fees and reflected zero dollar fee balances. To settle these claims, the company agreed to pay a \$50 million penalty.

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

SEC brings suit over alleged \$75 million investment adviser scheme

SEC v. Gregory E. Lindberg, et al. (M.D.N.C. August 30, 2022, contested)

The SEC brought suit against two North Carolina-based executives and their Malta-based investment adviser for allegedly collecting over \$75 million from clients through undisclosed transactions. The SEC alleges that the parties engaged advisory clients in undisclosed third-party transactions that were not in their best interests, including by directing clients to sell certain interests and repurchase the same investments through a different investment vehicle at a higher price. The SEC alleges that, through this scheme, the parties misappropriated roughly \$57 million in client funds and that the investment adviser collected over \$21 million in advisory fees.

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

SEC amends its whistleblower rules to further incentivize whistleblower tips

On August 26, 2022, the SEC announced it had adopted two amendments to the rules governing its whistleblower program. The first amendment expands the number of scenarios in which the SEC can compensate whistleblowers for information or assistance in connection with non-SEC actions, but only where the other entity's program is not comparable to the SEC's or the SEC's maximum award on the related action is \$5 million. The second amendment affirms the SEC's authority under Rule 21F-6 to consider a potential award's dollar amount, but only for purposes of increasing a would-be award amount.

[SEC press release](#)

CFTC brings suit alleging misleading statements in connection with bitcoin

CFTC v. Gemini Trust Company, LLC (S.D.N.Y. June 2, 2022, contested)

The CFTC brought suit against a company for alleged false and misleading statements to the CFTC about its self-certification of a bitcoin futures product. The CFTC alleges that the company provided misleading factual information, and in some cases omitted relevant information, when assisting the agency's understanding of whether the proposed contract would be particularly susceptible to manipulation. According to the CFTC, company personnel knew or reasonably should have known that the statements were false or misleading.

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

CFTC brings suit for alleged billion-dollar Bitcoin fraud

CFTC v. Mirror Trading International Proprietary Ltd., et al. (W.D. Tx. June 30, 2022, contested)

The CFTC brought suit against a South African company and its principal agent for allegedly orchestrating the largest scheme involving Bitcoin ever pursued by the CFTC. According to the CFTC, the parties participated in an international multilevel marketing scheme in which they used websites to solicit Bitcoin from the public in exchange for participation in their commodity pool, which they represented would achieve profits of 10% per month. The CFTC alleges that the parties acquired over 29,000 Bitcoin, valued at over \$1.7 billion, from more than 23,000 individuals in the United States. According to the CFTC, the company was not registered as a commodity pool operator, no profitable trading in forex or anything else took place on behalf of pool participants, and defendants misappropriated all of the Bitcoin they accepted.

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

CFTC brings suit alleging fraudulent solicitation and misappropriation

CFTC v. Rathnakishore Giri et al. (S.D. Ohio August 11, 2022, contested)

The CFTC brought suit against an individual and his two companies, alleging that together they fraudulently solicited over \$12 million and at least 10 bitcoins from over 150 customers and misappropriated customer funds intended for use in digital asset trading. According to the CFTC, the individual and his companies made a number of false and misleading statements in their solicitations to customers, including guaranteeing profits, and the individual's success as a digital asset trader. The individual and his companies allegedly misrepresented to customers that they would be able to withdraw their initial investments and profits at any time. The individual and his companies also allegedly used customer funds to pay profits to other customers and to fund the individual's own lifestyle.

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

Whistleblower awards

The SEC announced an award of more than \$17 million to one whistleblower who provided information relevant to one covered action and a related action.

[SEC press release](#)

The SEC announced an award of more than \$6 million to two whistleblowers who provided information and assistance in two separate covered actions.

[SEC press release](#)

The SEC announced an award of more than \$16 million to two whistleblowers who provided information and assistance in a successful SEC enforcement action.

[SEC press release](#)

The SEC issued a denial of a whistleblower award claim after concluding that the individual did not make a disclosure to the SEC voluntarily because the individual had already provided testimony and been subpoenaed on related subject matter.

[SEC order](#)

Personnel and organizational changes

A number of notable SEC-related personnel and organizational changes were announced this summer:

- The SEC has sworn in Mark T. Uyeda as an SEC Commissioner.
[SEC press release](#)
- Tracy S. Combs was named Director of the SEC's Salt Lake Regional Office.
[SEC press release](#)
- The SEC has sworn in Jaime Lizarraga as an SEC Commissioner.
[SEC press release](#)
- Lori H. Price was named Director of the SEC's Office of Credit Ratings.
[SEC press release](#)
- Nicholas Grippo was named Regional Director of the SEC's Philadelphia Office.
[SEC press release](#)
- Monique Winkler was named Regional Director of the SEC's San Francisco Office.
[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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