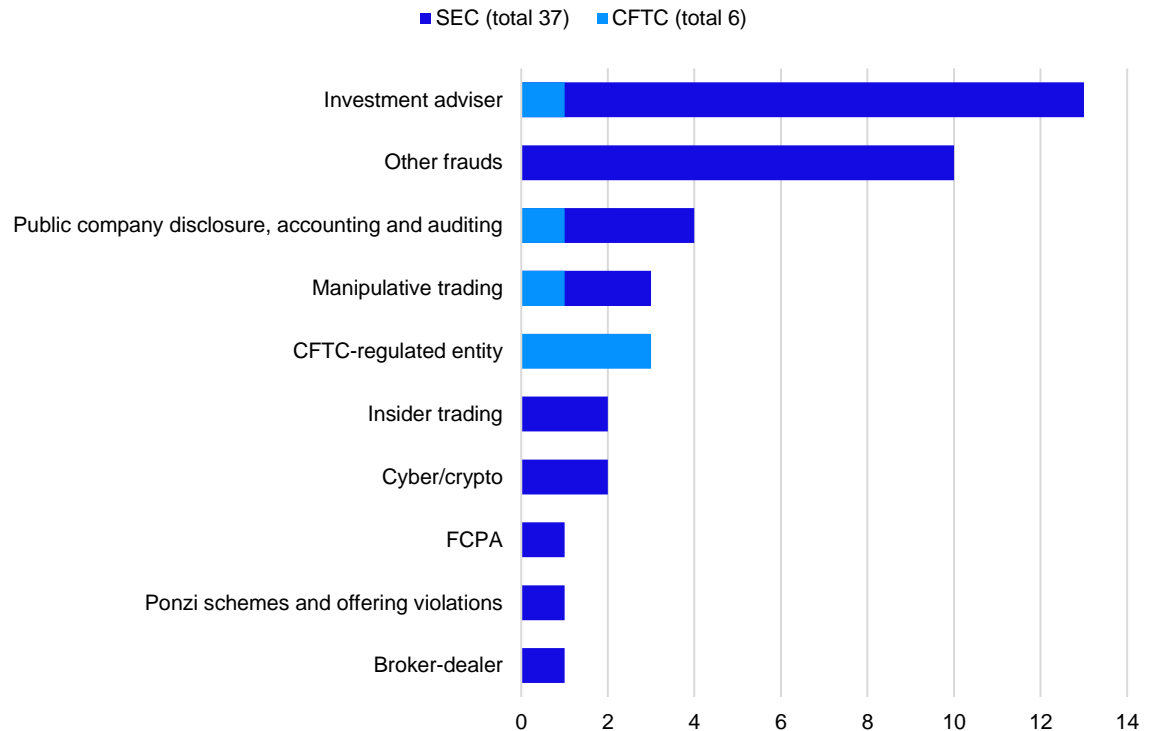


February and March 2022

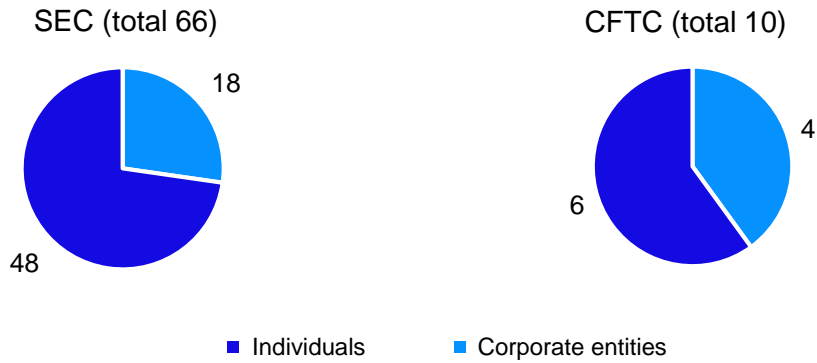
In this edition of the newsletter, we discuss enforcement developments at the agencies in February and March 2022. The SEC filed 37 actions and the CFTC filed 6 (excluding follow-on actions, bars and suspensions) against a combined total of 76 defendants and respondents. The SEC’s actions included investment adviser violations, general fraud, and accounting cases, among others. The CFTC’s actions concerned brokerage kickback schemes, valuation issues, and fraud.

Actions initiated by the SEC and CFTC in February and March 2022

Number of actions, by matter type



Types of defendants/respondents



Key cases and developments

SEC proposes cybersecurity, climate-related management, disclosure rules

In February and March, the SEC announced three major rule proposals. On February 9, the SEC announced proposed rules related to cybersecurity risk management that would require registered investment advisors and companies to adopt written cybersecurity policies, conduct an annual review of those policies, promptly report significant cybersecurity incidents, make disclosures to investors, and maintain records in relation to cybersecurity policies and incidents. On March 9, the SEC announced proposed amendments to its existing rules on cybersecurity disclosure requirements that would require public companies to report on material cybersecurity incidents and provide periodic updates on those previously reported incidents. On March 21, the SEC announced proposed rule changes that would require registrants to include in their disclosure statements information on climate-related risks likely to materially impact their business and include in their audited financial statements certain climate-related financial metrics. The SEC further proposes the reporting of registrants' direct and indirect greenhouse gas emission levels, as well as emission levels caused by their value chain activities. All three proposals, if adopted, could have a significant impact on enforcement risk.

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

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

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

SEC settles with company over registration violations on crypto lending

In re BlockFi Lending LLC (A.P. February 14, 2022, settled)

The SEC settled with a financial services company after the company allegedly failed to register offers and sales of its retail crypto lending product in violation of the Securities Act of 1933 and Investment Company Act of 1940. The SEC alleged that from March 2019 to present, the company sold to the public a product that allowed investors to lend crypto assets to the company in exchange for promised monthly interest payments that the company would pay. The SEC alleged that the crypto interest accounts were securities because they were notes, citing *Reves v. Ernst & Young*, 494 U.S. 56 (1990), and also were sold as investment contracts, citing *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). The SEC's reliance on *Reves* is notable given that most cryptocurrency cases of this kind have relied exclusively on *Howey* in finding that such products are securities. According to the SEC, the company also operated as an unregistered investment company for over 18 months by, among other things, holding over 40% of its assets in investment securities, which included crypto asset loans to institutional borrowers. The company agreed to pay a \$50 million penalty, stop the unregistered sale and offer of its crypto lending product, and register with the SEC under the Investment Company Act until it can provide sufficient evidence to show that such registration is no longer required. In addition, the company's parent entity promised to register the offer and sale of a new lending product under the Securities Act of 1933.

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

SEC settles with telecommunications company in FCPA case

In re KT Corp. (A.P. February 17, 2022, settled)

The SEC settled with South Korea's largest telecommunications company for alleged violations of the Foreign Corrupt Practices Act. The SEC alleged that the company made improper payments to Korean and Vietnamese government officials. According to the SEC, employees of the company—including high-level executives—maintained improper accounts that they used to make political contributions to officials that had influence over the company's business or could provide government customers. The SEC alleged that the company failed to maintain internal accounting controls to monitor charitable donations, third-party payments, and other related business operations. The company also allegedly lacked internal anti-corruption policies and procedures. The company agreed to pay \$3.5 million in civil monetary penalties and \$2.8 million in disgorgement.

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

SEC brings suit against healthcare company for accounting violations

In re Baxter International, Inc. (A.P. February 22, 2022, settled); In re Jeffrey Schaible (A.P. February 22, 2022, settled); In re Scott Bohaboy (A.P. February 22, 2022, settled)

The SEC settled with a public healthcare product company, its former treasurer, and former assistant treasurer in connection with allegations that the company violated negligence-based fraud reporting, books and records, and internal accounting control provisions. Specifically, the SEC alleged that, from 1995 to 2019, the company used a foreign exchange-rate convention to record certain foreign currency transactions on its financial statements in a way that did not accord with U.S. GAAP. According to the SEC, starting in about 2009, the company engaged in foreign exchange transactions for the purpose of generating non-operating foreign exchange accounting gains or to avoid foreign exchange accounting losses. All three parties agreed to cease and desist from future violations. The company's assistant treasurer agreed to pay \$100,000 in civil penalties, \$76,404 in disgorgement, and \$12,955 in prejudgment interest. The company's treasurer agreed to pay a civil monetary penalty of \$125,000.

[SEC press release](#) | [Baxter complaint](#) | [Schaible complaint](#) | [Bohaboy complaint](#)

SEC and CFTC bring suit against former CIO for alleged valuation scheme

SEC v. James Velissaris (S.D.N.Y. February 17, 2022, contested)
CFTC v. James Robert Velissaris (S.D.N.Y. February 17, 2022, contested)

The SEC and CFTC each brought a case against the former owner and Chief Investment Officer of an SEC-registered investment advisory company and CFTC-registered pool operator for engaging in alleged valuation fraud. According to the SEC, from 2017 to February 2021, the former executive overvalued company-held mutual and private fund assets by manipulating the code of a third-party pricing service that the company used to value fund assets. The SEC alleges that the executive failed to make necessary disclosures to investors and took affirmative steps to conceal his scheme from company employees. The SEC further alleges that the individual obtained over \$26 million in illicit profits. The former executive was removed from his position at the company in February 2021. The SEC is pursuing, among other relief, permanent injunctive relief, civil monetary penalties, and disgorgement of illicit gains.

In addition, the CFTC alleges that the individual engaged in a fraudulent valuation scheme through which he showed false gains on numerous swaps held by commodity pools that his company managed. According to the CFTC, the individual intentionally corrupted the independent pricing service models that his company used to value swaps held by the commodity pools. The purportedly false valuation led his company to charge inflated fees and entice new participants. The CFTC's order alleges that this scheme lasted from approximately 2018 to 2021 and that the alleged fraudulent conduct worsened during the pandemic.

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

SEC settles with investment adviser over alleged conflicts of interest

In re City National Rochdale, LLC (A.P. March 3, 2022, settled)

The SEC settled with a registered investment adviser due to alleged undisclosed conflicts of interest. According to the SEC, for at least three years, the investment adviser failed to disclose to its clients that it regularly invested their assets in proprietary mutual funds that were generating fees for the adviser and its affiliates, rather than in competitor funds that may have had lower fees. The SEC further alleged that the adviser failed to inform some of its prospective clients that they could invest in the adviser's proprietary funds at a lower cost. According to the SEC, clients who opened accounts with affiliates of the adviser did not pay certain fees, while clients who invested with the adviser through their own advisers did. The adviser agreed to pay over \$30 million in disgorgement, prejudgment interest, and penalties.

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

CFTC settles with swap dealer for alleged supervision failures

In re ED&F Man Capital Markets, Ltd. (A.P. March 15 2022, settled)

The CFTC settled with a provisionally registered swap dealer for a number of alleged violations and related supervision failures. The CFTC alleged that between 2014 and 2021, the swap dealer did not accurately report certain swaps data to a swaps data repository. In addition, the CFTC alleged that from 2014 to 2018, the swap dealer did not disclose to its US counterparties that some of its traders had access to the trade information of the counterparties. According to the CFTC, the swap dealer also failed to disclose mid-market marks to a number of its counterparties as was required. The CFTC alleged that the swap dealer did not have an adequate supervisory system in place to prevent the occurrence of these types of violations. The swap dealer agreed to pay a \$3.25 million penalty.

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

SEC brings suit against seven individuals for alleged insider trading ring

SEC v. Hari Prasad Sure et al (N.D. Cal. March 28, 2022, contested)

The SEC brings suit against three software engineers at a cloud computing communications company and four of their friends and family members for alleged insider trading. According to the SEC, the three software engineers had access to information relevant to the company's reporting of revenue and learned that the company's products and services were being used more frequently due to the Covid-19 pandemic. This led the three engineers to allegedly conclude that the company's stock price would rise. The SEC alleges that the engineers then encouraged their family and friends to trade company stock and options prior to the company's Q1 2020 earnings announcement. This trading activity allegedly generated over \$1 million in profits for the group collectively.

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

SEC settles with robo-adviser for allegedly misleading clients

In re Wahed Invest LLC (A.P. February 10, 2022, settled)

The SEC settled with a robo-adviser for allegedly making misleading statements to clients, breaching its fiduciary duty, and lacking appropriate compliance policies and procedures. According to the SEC, the robo-adviser in 2018 and 2019 advertised that it had its own proprietary funds and promised investors that it would rebalance their advisory accounts. The SEC alleged that the adviser did not follow through on these assurances. Additionally, the SEC alleged that when the robo-adviser launched its proprietary fund, it used client assets to seed the fund without disclosing any conflicts of interest to the clients. The SEC's order further alleged that the adviser portrayed itself to clients as advising in compliance with Islamic law, but lacked any written policies or procedures to ensure it abided by that guarantee. The adviser agreed to pay a civil penalty of \$300,000.

SEC brings suit against siblings for alleged crypto fraud operation

SEC v. John Barksdale et al (S.D.N.Y. March 8, 2022, contested)

The SEC brings suit against two individuals for allegedly obtaining illicit gains through fraudulent securities offerings of digital tokens called “Ormeus Coin” on crypto trading platforms. The SEC alleges that, from June 2017 to present, the two individuals made false claims that the crypto asset was supported by one of the world’s leading crypto mining operations despite the reality that it abandoned such mining operations after receiving minimal revenue. The two individuals, the SEC asserts, made false claims that the asset had a \$250 million crypto mining operation and could up to \$8 million a month in mining revenue. The SEC further alleges that, relying on these falsities, the two individuals sold Ormeus Coin on crypto trading platforms, sold subscription packages including the crypto asset, held roadshows promoting the offerings, and created a public website displaying an inflated valuation of the crypto asset. This operation allegedly generated over \$124 million in profits.

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

SEC settles with venture capital adviser for allegedly misleading investors

In re Alumni Ventures Group, LLC and Michael Collins (A.P. March 4, 2022, settled)

The SEC settled with a venture capital fund adviser for claims alleging that the adviser made misleading statements to investors about the adviser’s management fees and engagement in inter-fund transactions. The SEC also settled claims against the adviser’s Chief Executive Officer on allegations that the CEO caused the adviser’s violations. Specifically, the SEC alleged that the adviser’s website misled investors by suggesting the company offered industry standard fees incorporating a two-percent fee during each year of the funds’ ten-year term and a 20-percent performance fee; however, the adviser instead assessed management fees totaling 20 percent of the investment upon the investor’s initial fund investment. The SEC also alleged that the adviser violated certain fund operating agreements by impermissibly making inter-fund loans and cash transfers. To settle these claims, the adviser agreed to pay a \$700,000 monetary penalty and the CEO agreed to pay a \$100,000 monetary penalty.

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

CFTC brings suit against individual for alleged brokerage kickback scheme

CFTC v. Matthew Clark (S.D. Tex. February 3, 2022, contested)

The CFTC brought a case against an individual who allegedly engaged in a brokerage kickback scheme based on confidential information obtained from his employer. The complaint alleges that for roughly three years, the individual misappropriated confidential information about natural gas block trade orders from his employer and subsequently directed the trades to a brokerage firm in return for a share of the commissions charged to his employer for the trades. Additionally, the CFTC alleges that for roughly ten years, the individual received kickbacks from a voice broker in exchange for directing business from his employer to the broker. According to the CFTC, the individual withheld information from the CFTC to conceal the scheme.

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

Whistleblower awards

In March 2022, the SEC announced four sets of whistleblower awards, with six individuals receiving a total of roughly \$21.75 million in whistleblower payments.

[SEC press release 1](#) | [SEC press release 2](#) | [SEC press release 3](#) | [SEC press release 4](#)

In March 2022, the CFTC announced three sets of whistleblower awards, with seven individuals receiving a total of roughly \$11.1 million in whistleblower payments.

[CFTC press release 1](#) | [CFTC press release 2](#) | [CFTC press release 3](#)

Personnel and organizational changes

The SEC and CFTC announced a number of notable personnel and organizational changes in February and March:

- Four CFTC commissioner nominees—Kristin Johnson, Christy Goldsmith Romero, Summer Kristine Mersinger, and Caroline D. Pham—were all confirmed by the Senate.

[CFTC statement](#)

- Daniel S. Kahl left the SEC, with Richard R. Best to replace him as Acting Director of the Division of Examinations. Lara Shalov Mehraban will in turn replace Best as the Acting Director of the New York Regional Office.

[SEC press release](#)

- Kelly L. Gibson left the SEC, with Scott Thompson and Joy Thompson named to replace her as Acting Co-Directors of the Philadelphia Regional Office.

[SEC press release](#)

- Erin E. Schneider left the SEC, with Monique C. Winkler to replace her as Acting Director of the San Francisco Regional Office.

[SEC press release](#)

- Dave A. Sanchez was named Director of the Office of Municipal Securities.

[SEC press release](#)

- Lori H. Price was named to replace Ahmed Abonamah as Acting Director of the Office of Credit Ratings.

[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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