

## SEC and CFTC Enforcement Update

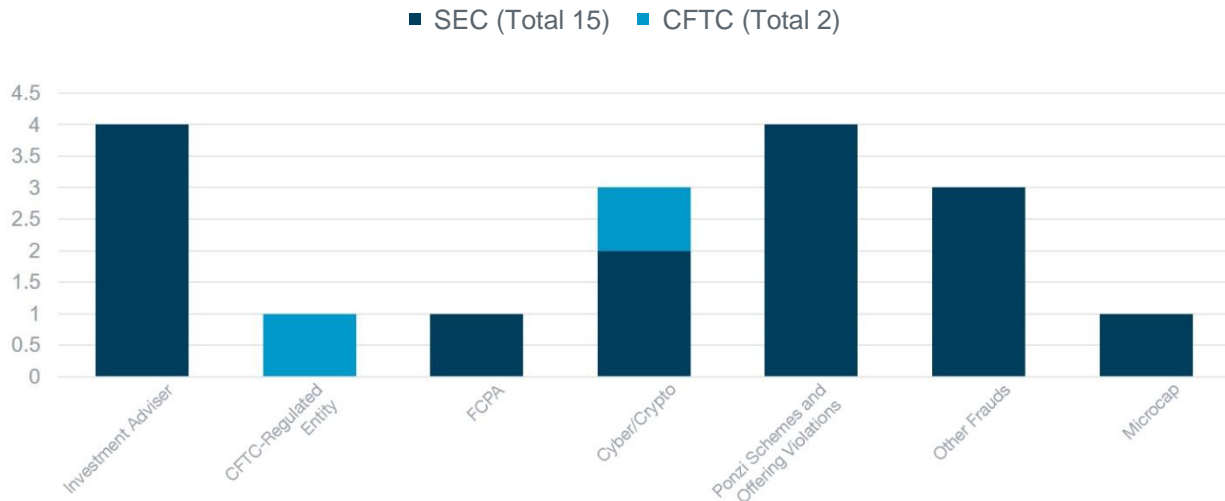
January 2021

In this edition of the newsletter, we discuss enforcement developments at the agencies during January 2021. SEC activity was relatively limited this month, as the agency transitions to new leadership under the Biden administration. The SEC filed 15 actions and the CFTC filed two (excluding follow-on actions, bars and suspensions) against a combined total of 29 defendants and respondents.

The SEC's 15 actions spanned numerous case types, including investment adviser, FCPA, and Ponzi scheme and offering violation cases. The CFTC's two actions concerned cryptocurrency and position limits violations.

### Actions Initiated by the SEC and CFTC in January 2021<sup>1</sup>

#### Actions Categorized by Matter Type



#### Types of Defendants/Respondents



<sup>1</sup> Follow-on administrative proceedings, suspensions, bars, and delinquent filings excluded.

## Key Cases and Developments

### **SEC Settles with Bank for FCPA Violations Related to Third-Party Intermediaries**

**In re Deutsche Bank AG (A.P. Jan. 8, 2021, Settled)**

The SEC settled a case against a multinational financial services company for alleged violations of the internal accounting controls and books and records provisions of the Foreign Corrupt Practices Act. According to the SEC, the company failed to implement sufficient controls for business development consultants and other intermediaries it retained to obtain global business. The company agreed to pay disgorgement of \$35,145,619 and prejudgment interest of \$8,184,003. The SEC did not seek to impose a civil fine in light of the criminal fines the company agreed to pay in a deferred prosecution agreement with the Department of Justice.

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

### **SEC Issues Investor Alert on Short-Term Trading Based on Social Media**

The SEC issued a warning regarding the significant risks inherent in short-term investing based on social media, and cautioned that online platforms create additional potential for fraud. The SEC further noted that broker-dealers may reserve the ability to reject or limit transactions, as provided in their customer agreements. The alert came days after internet-fueled buying created rapid movements of the stock prices of several public companies. Davis Polk partner Robert Cohen commented about the trading activity to the Wall Street Journal, which published his comments [here](#).

[SEC Alert](#)

### **CFTC Brings Ponzi Scheme Case Involving Cryptocurrency**

**CFTC v. Spence (S.D.N.Y. Jan. 26, 2021, Contested)**

The CFTC filed a civil fraud case against an individual for allegedly operating a Ponzi scheme involving digital assets. The CFTC alleges that the defendant solicited approximately \$5 million worth of virtual currencies, including bitcoin and ether, based on misleading statements and the promise of outsized returns. According to the CFTC, the defendant made further false statements to conceal trading losses and prevent customers from withdrawing their assets. Parallel criminal charges were filed in the U.S. District Court for the Southern District of New York.

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

### **SEC Settles with Investment Adviser for Disclosure, Supervisory, and Compliance Failures**

**In re Advance Practice Advisors LLC and Paul Spitzer (A.P. Jan. 14, 2021, Settled)**

The SEC settled administrative claims against a California-based investment advisor and its sole principal for alleged violations of disclosure, compliance, and supervisory obligations under the Investment Advisers Act. The SEC alleged that the investment adviser allowed the father of an employee to advise clients, even though the father was not formally associated with the investment adviser. The principal agreed to pay a civil penalty of \$20,000 as part of the settlement.

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

## SEC Settles Case with Cryptocurrency Issuer for False and Misleading Statements

**In re Wireline, Inc. (A.P. Jan. 15, 2021, Settled)**

The SEC settled a case with a financial technology company for allegedly making false and misleading statements in connection with an unregistered offer and sale of digital asset securities. According to the SEC, the company represented to investors that it planned to create digital tokens that would be used as the means of exchange between software developers and end-users on a platform the company created. The SEC further alleged that in its efforts to raise funds from investors, the company distributed marketing materials that materially misrepresented the functionality of the platform and the timing of the token distribution. The company agreed to pay a civil penalty of \$650,000. The SEC has said it will distribute the \$650,000 to harmed investors.

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

## SEC Brings Case Against an Individual for a Fraudulent Free Riding Scheme

**SEC v. Abhi Batra a/k/a Abhimanyu Batra (Jan. 15, 2021, Contested)**

The SEC brought a fraud case against a California resident for allegedly conducting a free-riding scheme in which he reversed more than \$1 million in Automated Clearing House (ACH) transfers. According to the SEC, the resident transferred money from bank accounts to brokerage accounts via ACH, and then used the funds to purchase speculative options contracts. The SEC also alleged that when the options trades lost money, the resident would recall the ACH transfers to the brokerage firm by falsely representing to the bank that he had not authorized the initial transfers. The SEC further alleged that when the trading was profitable, the resident would keep the profits for himself.

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

## Whistleblower Awards

The SEC announced two sets of whistleblower awards during the month, including five different whistleblowers awards for a total of \$1.1 million and a \$600,000 award to another whistleblower.

[SEC Whistleblower Page](#)

## Personnel and Organizational Changes

The SEC and CFTC announced a number of notable personnel and organizational changes this month:

- President Joe Biden announced that he would nominate Gary Gensler, the former head of the Commodity Futures Trading Commission, to serve as the Chairman of the SEC.

[WSJ Article](#)

- President Joe Biden designated Allison Herren Lee as the Acting Chair of the SEC.

[SEC Press Release](#)

- The SEC named Melissa Hodgman the Acting Director of the Division of Enforcement. Ms. Hodgman previously served as an Associate Director of the Division of Enforcement.

[SEC Press Release](#)

- Rostin Behnam was elected Acting Chairman of the CFTC.

[CFTC Press Release](#)

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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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