

SEC and CFTC Enforcement Update

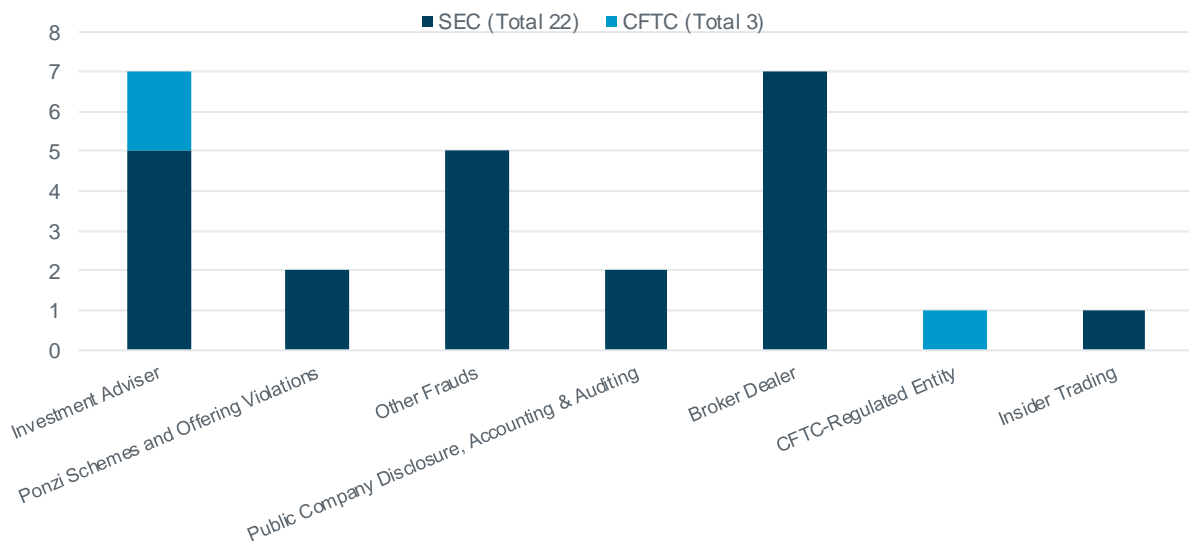
May 2021

In this edition of the newsletter, we discuss enforcement developments at the agencies during May 2021. The SEC filed 22 actions and the CFTC filed three (excluding follow-on actions, bars and suspensions) against a combined total of 51 defendants and respondents.

The SEC's 22 actions spanned numerous case types, including a cryptocurrency fraud case against five individuals, an issuer disclosure case, seven cases involving broker-dealers, and five cases involving investment advisers. The CFTC's three actions included two actions against CFTC-regulated asset managers.

Actions Initiated by the SEC and CFTC in May 2021¹

Actions Categorized by Matter Type



Types of Defendants/Respondents



¹ Follow-on administrative proceedings, suspensions, bars, and delinquent filings excluded.

Key Cases and Developments

U.S. House Passes Insider Trading Bill

On May 18, the U.S. House of Representatives passed the Insider Trading Prohibition Act (H.R. 2655, 117th Cong.) by a 350-75 vote. In contrast to current reliance on case law, the bill would be the first statute directly banning insider trading in the securities markets. As detailed in our [client memo](#), the bill generally would adopt current case law, but would also expand the scope of insider trading by prohibiting trades based on stolen or hacked MNPI. The bill awaits a vote in the Senate.

[H.R.2534 - Insider Trading Prohibition Act](#)

SEC, CFTC File Claims Regarding Fraudulent Management of Mutual Fund

SEC v. Anthony Caine et al. (N.D. Ill. May 27, 2021, Contested)

CFTC v. LJM Funds Management Ltd., et al. (N.D. Ill. May 27, 2021, Contested)

The SEC and CFTC filed parallel actions alleging that a mutual fund and its portfolio managers misled investors about the fund's risk management practices and profile, in particular with respect to commodity pool trading. The agencies allege that the defendants told investors that the fund used historical event stress testing and maintained a consistent risk profile. However, the complaints allege that the fund increased its risk profile beginning in late 2017 to meet target returns. When markets experienced a volatility spike in February of 2018, the fund suffered trading losses exceeding \$1 billion. The fund manager's chief risk officer, who allegedly authored documents containing misstatements related to the fund's risk management practices, separately reached settlements with the SEC and CFTC, agreeing to pay a civil penalty of \$150,000 and more than \$97,000 in disgorgement to each of the agencies.

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

SEC Settles Claim Alleging Revenue Disclosure Failures

In re Under Armour, Inc. (A.P. May 3, 2021, Settled)

The SEC settled a case against a sports apparel manufacturer for allegedly misleading investors. The SEC alleged that, over the course of six quarters, the company "pulled forward" a total of \$408 million in future shipment orders to create the appearance of robust revenue growth but failed to disclose the impact of this practice to its investors. According to the SEC, without the additional \$408 million in revenue, the company would not have met revenue growth forecasts. The company agreed to pay a \$9 million civil penalty.

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

SEC Settles Claim against Broker-Dealer for Failure to File Suspicious Activity Reports

In re GWFS Equities, Inc. (A.P. May 12, 2021, Settled)

The SEC settled a case against a broker-dealer for failing to file Suspicious Activity Reports (SARs). As detailed in our recent [client memo](#), the SEC alleged that the broker-dealer became aware of outside attempts to access retirement accounts and personally identifying information and failed to file up to 130 SARs with the Financial Crimes Enforcement Network. The SEC also alleged that the broker-dealer filed 300 incomplete SARs. The broker-dealer agreed to pay a \$1.5 million penalty.

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

CFTC Settles Claim Alleging Wash Sales by Asset Management Firm

In re SummerHaven Investment Management LLC (A.P. May 18, 2021, Settled)

The CFTC settled a case against an asset management firm regarding alleged wash sales of commodities futures. According to the CFTC order, the firm generated more than \$570 million through a series of offsetting wash sales July 2018. The CFTC also alleges that the firm failed to diligently supervise its trading activities. The firm agreed to pay a civil penalty of \$500,000 to the CFTC.

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

SEC Brings Case Against Individuals for Promoting Billion-Dollar Cryptocurrency Fraud

SEC v. Trevon Brown et al. (S.D.N.Y. May 28, 2021, Contested)

The SEC brought a case against five individuals for their alleged involvement in an alleged cryptocurrency fraud worth more than \$2 billion. According to the SEC, the defendants earned hundreds of thousands of dollars from promoting BitConnect, a digital asset that purported to generate “interest payments” based on investments in Bitcoin. On January 16, 2018, the price of BitConnect collapsed, losing 92% of its value. The SEC alleges that defendants violated securities laws by selling BitConnect assets, which were not registered as securities.

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

SEC Pays Over \$88 million in Whistleblower Awards

In May, the SEC awarded 9 individual whistleblowers a total of \$88.6 million. Over the lifetime of the program, which began in 2012, the agency has awarded more than \$900 million to more than 160 individuals. SEC whistleblower awards in FY 2021 have already surpassed all prior years in terms of both the number of individual whistleblowers receiving awards and the combined size of awards.

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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