

CLIENT ALERT

SEC Announces Robust Enforcement Results for Fiscal 2023

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On November 14, the Securities and Exchange Commission (“SEC”) announced its fiscal year 2023 enforcement results.¹ The annual release of the results is a useful tool for benchmarking the Division of Enforcement’s results year-over-year, and the commentary in the accompanying press release identifies themes that the agency hopes to highlight. Below are our observations on some of the key takeaways from the 2023 results.

Incremental Increase in Enforcement Actions

The SEC reported 501 stand-alone enforcement actions and 784 total enforcement actions for 2023, reflecting increases of eight and three percent respectively. These results continue a gradual upward trend in the number of annual enforcement actions under Chair Gary Gensler. Interestingly, while high, the number of enforcement actions in 2023 is not the recent high-water mark; during fiscal 2019, the SEC filed 526 stand-alone actions and 862 total actions.

Historically High But Decreased Monetary Relief

In 2023, the SEC obtained over \$4.9 billion in ordered monetary relief, comprising nearly \$3.4 billion in disgorgement and over \$1.5 billion in penalties. The SEC highlighted in its press release that the total monetary relief, the disgorgement, and the penalties were all the second-largest amounts in SEC history after last year’s record haul. Still, the total monetary relief was down by more than 23% from 2022. And the ratio of disgorgement to penalties returned to its historical norm of

¹ SEC Announces Enforcement Results for Fiscal Year 2023, available at <https://www.sec.gov/news/press-release/2023-234>.

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roughly two to one, suggesting that last year's inversion of this ratio—driven by a handful of truly eye-popping penalties—may have been an anomaly.

Returning Money to Investors

Today's SEC makes significant efforts to return funds to investors. In its release of the 2023 results, the SEC notes that it distributed more than \$900 million to investors for the second year in a row. Similar to the increase in total cases, these numbers near, but do not exceed, the recent high-water mark in fiscal 2019, when the SEC returned nearly \$1.2 billion to investors.

Changing Mix of Enforcement Actions

The percentage of SEC enforcement actions coming from each of the category classifications the SEC assigns to actions generally remains consistent from year to year, with cases involving investment advisers and investment companies typically making up a plurality of both total actions and stand-alone actions. But 2023 was the SEC's year of crypto enforcement, and the focus on that industry was borne out in the mix of enforcement actions as a 33% plurality of stand-alone actions—including, for example, actions arising from the collapse of FTX—were categorized as involving securities offerings.

Rise of the Whistleblowers

In announcing the results, the SEC highlighted the explosive growth of its whistleblower program. In 2023, the SEC received more than 18,000 whistleblower tips—roughly a whistleblower tip every 30 minutes. This was up nearly 50% from the number of whistleblower tips in 2022. And those tips are paying off. The SEC paid out nearly \$600 million in whistleblower awards—including its largest-ever award to a single whistleblower of \$279 million. Beyond the rise in tips and awards, the SEC also highlighted that it brought several enforcement actions intended to protect whistleblowers' rights and ability to report.

Litigation Appetite

As is typical, the SEC touted its litigation and trial record in 2023. In particular, the agency noted that more than 40 percent of the stand-alone matters filed in 2023 were filed in whole or in part as litigated actions. This appears to be a substantial increase from recent years. Similarly to the changing mix of enforcement actions, it is likely driven in significant part by the number of crypto cases the SEC is currently litigating as well as the by the Commission's demanding settlement terms.

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Conclusion

Under the current administration, the SEC enforcement program has been assertive and proactive, and the 2023 results are consistent with those efforts. We anticipate a high level of enforcement activity across the SEC's regulatory remit to continue through 2024.

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