Speech

Protecting Everyday Investors and Preserving Market Integrity: The SEC's Division of Enforcement

Stephanie Avakian
Director, Division of Enforcement

Sept. 17, 2020

Remarks at the Institute for Law and Economics, University of Pennsylvania Carey Law School Virtual Program

Introduction

Good afternoon and thank you for inviting me to speak today. And thank you Jay for your kind remarks. Before I begin, I am required to tell you that the views I express here today are my own and do not necessarily represent the views of the Commission or its staff.[1]

So here we are in mid-September – just about two weeks from the end of our fiscal year. This is always a busy time for us and it is also a time when we start to reflect on our efforts over the prior year. Today I am going to look more broadly at the work of the Division of Enforcement since May 2017 when Chairman Clayton joined the agency and appointed Steve Peikin and me as Co-Directors of Enforcement. When we took the job, Chairman Clayton outlined his priorities for the Enforcement program – broadly speaking, to aggressively protect the everyday retail investor and preserve the integrity of our markets. And while he has been our strongest supporter, he left the overall direction and management of the program to us.

So what did we do?

Steve and I approached the job guided by a single, overarching principle – that vigorous enforcement of the federal securities laws is critical to combat wrongdoing, compensate harmed investors, and maintain confidence in the integrity and fairness of our markets. The overall direction of the enforcement program and the everyday decisions on individual cases reflect adherence to that principle throughout our tenure.

We had two main goals, which are two of the three areas I will cover today. First, investigating and recommending to the Commission impactful cases, in areas of importance to the protection of investors, that took into account and addressed new developments in the securities industry and markets. Second, identifying and making strategic changes in how we operate so that we could achieve those results more efficiently and effectively. And, finally, although we didn't realize it at the time, it turned out we would have to try to achieve those goals in the face of substantial, unexpected challenges. And those challenges are the third area I will discuss with you today.

Notwithstanding those challenges, through the mutual support and dedication of the more than 1400 professionals in the Division and the complementary efforts of our colleagues across the Commission, we succeeded in achieving our goals.

Part I – The Cases

From a macro perspective, so far during Chairman Clayton's tenure, the Commission has brought over 2,550 enforcement actions, obtained $14 billion in financial remedies, distributed more than $3.3 billion to harmed investors, and paid awards of more than $350 million to whistleblowers.

We continued to bring the types of cases that the Commission has historically brought against large public companies and financial institutions. This includes cases against Facebook, Tesla, Theranos, Valeant, Volkswagen, Fiat Chrysler, and Mylan, to name a few, as well as cases against many of the world's largest financial institutions – including Wells Fargo, Citigroup, JPMorgan Chase, Barclays, and Merrill Lynch.

The Commission has similarly continued to obtain substantial financial remedies in its enforcement actions. In fiscal year 2019, the Commission obtained financial remedies of $4.3 billion dollars. That is the highest the Commission has ever obtained in a single year – at least since 2002, which is as far back as we reliably track this metric. What's more, I can tell you now that we are going to surpass that amount this fiscal year.

These numbers provide some measurement, but they do not adequately convey the quality, nature, and effectiveness of our efforts. For that, we have to ask questions like: Did we focus on the most serious violations? Did we obtain meaningful punishments that deter unlawful conduct? Did we incapacitate wrongdoers? Did we recoup ill-gotten gains and return money to investors? I am not going to drag you through all of the cases we've brought – we provide this information in the annual report we have published each year. But I am going to discuss a few efforts I think answer those questions and merit highlighting.

Let me start with financial fraud. We put a sharp focus on financial fraud and issuer disclosure. Integrity and accuracy in financial statements and issuer disclosures are critical to the functioning of our capital markets. Over the past three years, the Commission has brought hundreds of enforcement actions involving virtually all aspects of the financial reporting process. These included actions charging entities and individuals with alleged:

- fraudulent accounting practices intended to misrepresent a company's underlying financial condition, as in the Commission's actions against Theranos,[2] Hertz,[3] and Penn West[4] and their former executives;
- intentionally distorted non-GAAP metrics and key performance indicators, as in the Commission's actions against Wells Fargo,[5] Fiat Chrysler,[6] Valeant,[7] and Walgreens;[8]

- misrepresentations or omissions in connection with risk factors, as in the Commission's actions against Facebook[9] and Mylan;[10]
- materially misleading and incomplete disclosures, as in the Commission's actions against Nissan[11] and Volkswagen[12] and their former executives; and
- failures by auditors to uphold their duties as gatekeepers, as in the action against KPMG for improperly obtaining information about PCAOB inspections,[13] as well as in dozens of actions brought against individuals and firms.

We are not the first to focus on financial fraud matters, but I believe our efforts in this space – including some of the important changes in strategy and approach that I'll discuss later – have made foundational changes that will reap benefits in the future.

A second area that merits discussion is our continued focus on misconduct by registrants that negatively impacts the integrity of our markets. These are often complex investigations that require substantial expertise. Some examples include:

- Charges the Commission brought against a number of the world's largest financial institutions, including JP Morgan Chase, Citibank, and Merrill Lynch, for engaging in improper conduct in connection with the "prerelease" of American Depository Receipts. In total, the Commission brought actions against 15 financial institutions and ordered more than $432 million in disgorgement and penalties in connection with this conduct.[14]
- Charges against broker-dealers and investment advisers involving the sale of unsuitable products, including an action against Wells Fargo for failing reasonably to supervise investment advisers and registered representatives who recommended single-inverse ETF investments to retail investors.[15]
- Complex market structure cases, including against Merrill Lynch for misleading customers about how it handled their orders.[16]
- And, cases against exchanges and similar market participants, including a case against the New York Stock Exchange and affiliates for regulatory failures in connection with several disruptive market events,[17] and a case against the Options Clearing Corp. for policy and procedure failures related to financial risk management, operational requirements, and information-systems security.[18]

A third core area has been insider trading. Over the last several years we have gotten even smarter and more sophisticated in how we analyze data to identify and pursue insider trading schemes. Examples range from allegations involving a large international insider trading scheme involving investment bankers and traders,[19] to then-Congressman Christopher Collins tipping his son after receiving confidential information about negative clinical drug trial results,[20] to a scheme by a hacker and multiple traders to hack into the SEC's EDGAR system.[21]

Fourth, is the Foreign Corrupt Practices Act, where we have continued to be very active. A few cases to note include actions against Novartis, after subsidiaries engaged in schemes to make improper payments or provide benefits to healthcare providers in South Korea, Vietnam, and Greece in exchange for prescribing or using certain products;[22] Ericsson for engaging in a large-scale bribery scheme involving the use of sham consultants to secretly funnel money to government officials in multiple countries;[23] and Telia – which is a good example of international cooperation – for offering and paying at least $330 million in bribes to win business in Uzbekistan.[24]

Another traditional enforcement focus is Ponzi schemes and offering frauds. One of the greatest threats to retail investors continues to be those who outright prey on people, including sometimes their own friends, family members, and those in their communities. Even now, having been back in the Division for more than six years, I continue to be shocked by how many and how widespread these schemes are. We aggressively pursue these schemes by filing emergency actions to stop conduct, freeze assets, and appoint receivers to manage the assets, as well as by litigating in bankruptcy court and with receivers to maximize the return to victims.

There are unfortunately way too many of these cases to name, but the largest in recent years was an emergency action against Robert Shapiro and the Woodbridge Group of Companies to halt misconduct and freeze assets in an alleged ongoing Ponzi scheme that raised more than $1.2 billion from more than 8,400 retail investors.[25] Due in part to the Commission's intervention and successful litigation in Bankruptcy Court, we expect that investors will ultimately recover 50% or more of their investments.[26] That is a very meaningful recovery in a case like this.

Let me pivot now for a moment to a new area of focus – initial coin offerings. At the start of our tenure, we found ourselves confronted with the sudden proliferation of these offerings.[27] I do not want to repeat what Chairman Clayton already said on this issue except to express my agreement with his characterization of the Division as nimble in its response to the ICO explosion. One of the more notable cases the Commission filed was an emergency action against Telegram alleging that its unregistered offering of digital tokens violated the federal securities laws. After the court granted the Commission's motion for a preliminary injunction halting the offering,[28] the Commission reached a settlement whereby Telegram agreed to return more than $1.2 billion to investors.[29]

Finally, a critical part of our program continues to be seeking to deter wrongdoing by holding individuals accountable – which we do in roughly 70% of cases over time. We have pursued charges against individuals for misconduct across the spectrum of the securities markets, including registered individuals, executives at all levels of the corporate hierarchy, including CEOs, CFOs and other high-ranking executives, as well as gatekeepers such as accountants, auditors, and attorneys. In many of the cases I mentioned earlier, the Commission acted against C-suite executives and gatekeepers, including in the Tesla, Theranos, Valeant, Walgreens, and Volkswagen actions, as well as in many other cases.

Part II – New Approaches and Increasing Efficiency and Effectiveness

Next, I would like to discuss ways in which we identified and made changes within the Division. Among other things, we created initiatives to protect retail investors, made changes to increase efficiency, took steps to maximize our use of resources, messaged the benefits of cooperation, and in some cases designed tailored remedies.

Financial Fraud

Our focus on financial fraud and issuer disclosure cases resulted in some significant changes in how we approach identifying and investigating potential misconduct. Our proactive efforts to identify cases has employed a variety of research, approaches, internal and external tools, and other information sets. We routinely look at all public information about an issuer – statements made by a company or its officers, in filings, during investor presentations, in tweets or blogposts; related commentary by others

including analysts, shorts, competitors, shareholders – to develop a deep understanding of the company's reporting environment and industry. This is not a low cost investment, but it has provided substantial value in identifying potential financial fraud.

Further, in appropriate cases, we are employing strategies to streamline these investigations in an effort to substantially accelerate the pace of our investigations. This has come through a purposeful effort by our investigative teams to efficiently triage issues, increase staffing, make more targeted requests at the outset, substantively engage early with relevant parties, and leverage cooperation. We have already seen some success in our acceleration efforts and expect to see those successes continue in the near and long term.

Retail Investors

Another area of innovation is our initiatives to protect retail investors. Consistent with the priorities outlined by Chairman Clayton, we focused closely on ways to protect retail investors and return money to those harmed by wrongdoers. We encouraged the staff to think strategically and creatively about areas in which retail investors could be taken advantage of. Folks came up with many ideas that we explored – some of our efforts addressed problems we knew about and others looked for problems we didn't know about. I'll give you two examples.

First is our Share Class Selection Disclosure Initiative. To take on a problem we knew about and had already brought several cases addressing, we created a self-reporting initiative focused on the recurring problem of advisers failing to disclose conflicts of interest associated with the selection of fee-paying mutual fund share classes when a lower- or no-cost share class of the same mutual fund was available. Under the initiative, we agreed to recommend standardized settlement terms for firms that self-reported these failures. Ultimately, this initiative resulted in the SEC ordering nearly 100 investment advisory firms that voluntarily self-reported to the Division to return nearly $140 million to investors.[30]

We also developed a number of targeted initiatives to address conduct affecting vulnerable investor groups. An example is our part of the Commission's Teachers' Initiative that Chairman Clayton referred to earlier. Here we looked for potential issues that we didn't know about in the administration of teacher retirement plans. As part of that effort, we have been examining how third-party administrators and their affiliates choose and recommend investment options. Flowing from that, the Commission recently charged Valic Financial Advisors for failing to disclose that its parent company paid a for-profit company owned by the Florida K-12 teachers' unions to promote Valic's products and services to those teachers.[31] As part of resolving this matter, Valic agreed to cap advisory fees for certain groups of teachers in Valic programs, which will result in significant ongoing savings for thousands of teachers.

Internal Processes

Next, what internal changes did we make to increase efficiency? Two areas of strategic focus where we have made significant improvements are in our Distributions Group and the Whistleblower Program.

Distributing money to harmed investors is a core component of achieving our investor protection mission. We have spent a great deal of resources and energy on supporting and continuing to build our Distributions Group, including by closely evaluating how to create and implement efficiencies in the process. We added resources, including by temporarily detailing staff from other parts of the Division and moving the group into our Trial Unit where it has access to the Unit's resources. Investors have

reaped the benefit. Over the last three years, we have put $3.3 billion back into the hands of harmed investors. Indeed, last fiscal year alone, we distributed nearly $1.2 billion. We take great pride in the work of our Distributions team.

We are also very proud of the improvements we have made to Whistleblower Program. This program is critically important to the SEC and to the Enforcement Division. It is important to reward whistleblowers and to do it timely. Since the enactment of the program in 2011, whistleblower tips have resulted in numerous high-quality enforcement actions and whistleblowers have been awarded roughly $520 million. Given the success of this program, we have been flooded with increasing numbers of quality tips as well as with claims for awards. In an effort to further increase our timeliness, we re-evaluated the entire process for considering awards and then implemented changes to make the process substantially more efficient, including by leveraging other resources of the Division. We have already seen a substantial increase in the rate at which whistleblower claims are evaluated and awards are issued. So far this fiscal year, the Commission has made 25 awards totaling approximately $133 million. This represents a more than 100% increase in the number of awards issued in a single year as compared to the next-highest year.

Resource Allocation

Another important area of focus has been resource allocation. We start with the truism that, for every matter we are working on, there is something we are not working on. So we have to select cases that are likely to have the most meaningful impact for investors and the markets. We have tried to bring rigor and discipline to case selection, leaving to the Commission's Office of Compliance, Inspections and Examinations (OCIE) conduct that we felt was more appropriately handled through the exam process. This does not mean that misconduct is going unaddressed – to the contrary, OCIE addresses many problems through the deficiency letter and related process, which can be a more efficient use of the Commission's resources. This has enabled us – the Commission broadly – to cover more ground and more effectively address issues of investor protection and market integrity.

Second, we took steps to use our resources most efficiently and effectively. One example of this is the Share Class Initiative I discussed earlier. Share class cases had been taking us on average 22 ½ months to bring and we had dozens of investigations in the pipeline. The self-reporting approach we developed was designed to fix the problem and quickly get money back to investors. Another example was to issue public statements to the market about areas of concern to the Enforcement Division. Being transparent about our concerns can effectively impact behavior. For example, in 2017, together with OCIE, we issued a public statement urging caution about the potentially unlawful promotion of ICOs by celebrities and others. Almost immediately afterward, the anecdotal evidence we saw suggested a dramatic decline in the number of celebrity endorsements of ICOs. And as recently as six months ago, in response to the market volatility in the wake of COVID-19, we issued a statement emphasizing the importance of maintaining market integrity and following corporate controls and procedures.[32]

Finally, a third thing we did to maximize resource allocation was to try to shorten the amount of time it takes to complete investigations and bring cases. Earlier I mentioned some specific strategies we are using in financial fraud investigations. More broadly, we have been employing strategies to assess facts and make decisions sooner, and to take steps to achieve resolutions more quickly.

And we have achieved tangible success. The Commission brought its action against Elon Musk just seven weeks after the tweet that was the subject of the case.[33] More recently, the Commission

charged the co-chair of the unsecured creditors committee in the Neiman Marcus bankruptcy proceedings, alleging that he abused his position on the committee to attempt to benefit a management firm that he founded.[34] The Commission filed its action within five weeks of the alleged misconduct. These are extraordinary examples of where we have moved quickly, but we have also made strides shortening our other investigations[35] and we expect to see more improvement in this regard going forward.

Credit for Cooperation

We have also focused on rewarding and messaging the benefits of cooperation. We recognize the value in providing greater transparency into how the Commission considers and weighs cooperation credit – meaningful cooperation can substantially accelerate an investigation, which is in everyone's interest. We have tried to message more clearly the benefits of cooperation and in a number of instances the Commission has provided that information in its orders. A good illustration of this is a case the Commission brought against PPG Industries. In a settled financial fraud action, the Commission chose not to impose a civil penalty against PPG in recognition of its prompt self-reporting, extensive cooperation, and implementation of remedial measures immediately upon learning of the improper conduct for which it was charged.[36] We recognize the value in communicating such examples of meaningful cooperation and we will continue to look for opportunities to improve our messaging in this area.

Remedies

Finally, I would like to mention our effort to think creatively about appropriate remedies. An example of this is the settlement with Tesla and Elon Musk. One part of the settlement imposed a set of comprehensive undertakings that required Mr. Musk to resign as Chairman and Tesla to add two new independent directors to its board and adopt mandatory controls and procedures to oversee Mr. Musk's public communications about the company.[37] These undertakings addressed the specific risks in the case – the potential harm to investors caused by Mr. Musk's communication practices and a lack of sufficient oversight and control of those communications.

There are a number of other cases with similarly tailored remedies, including the Commission's cases against former Theranos CEO Elizabeth Holmes,[38] the Options Clearing Corporation,[39] and KPMG.[40]

Part III – Success In The Face Of Challenge

So that gives a sense of some of what Steve and I set out to do, that is, investigate and recommend to the Commission impactful cases and second, make strategic changes to our structure and some of the ways we investigate. I am proud of how much we accomplished, and particularly proud of those accomplishments, as I will discuss in a moment, in light of the extraordinary challenges we faced. These include three Supreme Court decisions, a government shutdown, and, of course, a global pandemic. Each of these challenges has required us to adjust to the circumstances – to adapt quickly; to change our thinking; and to find a new path forward.

Lucia v. SEC

In *Lucia v. SEC*, the Supreme Court held that SEC administrative law judges were "officers" pursuant to Article II of the Constitution and needed to be appointed by the president or the head of department

– in this case the Commission.[41] The Court also clarified that the appropriate remedy was a new hearing before a different ALJ or the Commission itself.[42] Accordingly, the Commission ordered that respondents in cases that were pending before an ALJ or the Commission on appeal from an ALJ initial decision be provided with the opportunity for a new hearing before an ALJ who had not participated in the matter previously. I cannot stress enough the impact this had on the Division. We had to make decisions about roughly 200 cases that were remanded – 200 returned cases that our investigators and litigators had to turn back to – and some of these cases were more than a decade old. We pulled together a team of experienced trial lawyers to evaluate, triage, and make recommendations regarding each case. Some cases needed to be re-tried by entirely new trial teams who were pulled from active investigations and litigations. As you might imagine, this required significant effort and resource allocation.

Kokesh v. SEC

Let me turn next to *Kokesh*. In *Kokesh v. SEC*, the Supreme Court held that the five-year statute of limitations in 28 USC Section 2462 applies to disgorgement orders sought by the Commission.[43] By our estimate, this caused the Commission to forgo approximately $1.1 billion dollars in disgorgement in filed cases. It also required us to reevaluate how we addressed disgorgement in active investigations and in settlements and litigation. Again we put together a group from Enforcement and the Office of the General Counsel to consider our overall approach to disgorgement outside the context of a specific case and reevaluate those practices in light of the Supreme Court's discussion. We made a number of changes as a result of this effort across all of the Division's cases – regardless of whether they increased or decreased the amount of disgorgement. *Kokesh* also stated in a footnote that "[n]othing in this opinion should be interpreted as an opinion on whether courts possess authority to order disgorgement in SEC enforcement proceedings or on whether courts have properly applied disgorgement principles in this context."[44] In the aftermath, we faced a lot of collateral attacks on the Commission's ability to seek disgorgement following *Kokesh.* Ultimately, not a single court ruled against us. The approach that we adopted following *Kokesh* anticipated many aspects of the decision the Court issued two years later, which brings me to the next big decision.

Liu v. SEC

Earlier this year the Supreme Court decided the *Liu* case. First, this was a great decision for us and it underscores what we've asserted from the beginning – that disgorgement is available to the Commission in its enforcement actions. But it also imposed limitations and left some open questions. While the Court held that disgorgement should reflect net profits, it also held that "legitimate" expenses should generally be backed out.[45] The Court also emphasized the importance of returning disgorged funds to harmed investors.[46]

Once again, we are dedicating resources to evaluating the impact of this decision and how the questions the Court left open will affect us going forward. As a result, you should expect to see some changes in the balance between the penalties and disgorgement that we seek and recommend to the Commission. Penalties may be higher in some cases where the statutory scheme permits us to do so. We will make our recommendations consistent with the Court's decision. But we will also seek the relief necessary to achieve our mission of protecting investors and maintaining market integrity.

Resources (again)

In other challenges, in 2019, after a multi-year hiring freeze, we faced a near complete cessation of activity resulting from the 35-day lapse in appropriations. Of course the effect of the government shutdown was not limited to those 35 days. There was a ripple effect that stalled investigations for much longer than the five weeks we were out of the office. But as soon as we were able, the Enforcement staff made up for lost time.

By the end of that fiscal year, the Commission had filed 862 enforcement actions and obtained $4.3 billion in financial remedies – record financial remedies and a near-record number of enforcement actions. In fact, the Commission was exactly 7 cases shy of filing its highest number of cases in a single year – a number previously reached in a year with a full 365 days and when the Division had roughly 150 more people.

Covid-19

Finally, this past year, we have faced the biggest and most unexpected challenge of all. Since mid-March, the entire Division has been working from home. Like everyone else, we have faced serious concerns about our health and safety and that of our families, and have had to balance our work against additional responsibilities at home. I could not be more impressed with how the staff responded.

We reacted promptly to threats presented by Covid-19, as well as the ensuing dynamic market conditions. Starting in February 2020, the Commission began suspending trading in the securities of companies that claimed to have developed treatments for the coronavirus where there were questions regarding the accuracy and adequacy of information in the marketplace. So far we have suspended trading in 36 issuers, with 24 of those in in March and April alone, followed shortly thereafter by five Covid-19 related fraud actions. In recent months, the suspicious conduct has dropped off dramatically, which can fairly be attributed to the speed with which we acted to address this conduct and which deterred others from repeating it and harming additional investors. Further, we have been inundated with more than 13,000 tips, complaints, and referrals since mid-March – this represents a 64% increase over the same period last year.

More broadly, the Coronavirus Steering Committee that we formed in March continues to coordinate scores of investigations relating to a wide variety of potential misconduct, including microcap fraud, insider trading, and financial fraud and issuer disclosure misconduct. Since mid-March, the Division has opened nearly 150 Covid-related inquiries or investigations.

And of course we have faced significant challenges to our regular portfolio of ongoing investigations and litigations. Many investigations required more time and attention for various reasons, including difficulties stemming from limitations on in-person activity, such as slowed document productions and delays in testimony. Even so, since mid-March, the Commission has filed more than 325 new enforcement actions.

But most impressive is how the staff continued to protect the securities markets from kitchens and living rooms while at the same time being caregivers and teachers and juggling video calls with all manner of chaos in the background. These are unprecedented circumstances and the staff acted in unprecedented ways to respond to all of the challenges we faced. I remain hopeful that all we have done during these most difficult of times will be viewed as a success – an example of what citizens and

government should do in a crisis. I could not be more proud of the women and men of the Enforcement Division.

Conclusion

So, back to where I started. As we wrap up this fiscal year, I can say for sure that this year will not look like last year. Or the year before. It can't. We spent half the year enveloped by a pandemic. But what we accomplished was extraordinary. And, from my perspective, the Enforcement Division's response to this crisis is a stark illustration of why statistics can never present a real, full picture of the nature or effectiveness of an enforcement program.

So, as I look back upon these last 3 plus years since I was fortunate enough to be appointed to what I often call the best job in Washington, it is clear to me that we have been and continue to be committed to a strong, aggressive enforcement program that has overcome challenges to do its part to protect investors and maintain fair, orderly, and efficient markets.

Steve and I were fortunate to begin our tenure together on the back of a historically strong enforcement program. Our predecessors left the Division in a great place and we were able to build on their success. The changes Steve and I introduced improved on a good thing and they will leave the Division stronger. But I echo what Chairman Clayton said at the outset – the strength and effectiveness of this enforcement program is a function of the people in it – and I know that they will continue to work tirelessly to protect investors and preserve the integrity of our markets. The Division was strong before we got here and it will remain strong long after we've moved on.

---

[1] The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication or statement by any of its employees. The views expressed herein are those of the author and do not necessarily reflect the views of the Commission or of the author's colleagues on the staff of the Commission.

[2] Press Release 2018-41, Theranos, CEO Holmes, and Former President Balwani Charged With Massive Fraud (Mar. 14, 2018), *available at* https://www.sec.gov/news/press-release/2018-41.

[3] Administrative Proceeding File No. 3-18965, SEC Charges Hertz with Inaccurate Financial Reporting and Other Failures (Feb. 1, 2019), *available at* https://www.sec.gov/enforce/33-10601-s.

[4] Press Release 2017-120, SEC Charges Oil and Gas Company and Top Finance Executives with Accounting Fraud (June 28, 2017), *available at* https://www.sec.gov/news/press-release/2017-120.

[5] Press Release 2020-38, Wells Fargo to Pay $500 Million for Misleading Investors About the Success of Its Largest Business Unit (Feb. 21, 2020), *available at* https://www.sec.gov/news/press-release/2020-38.

[6] Press Release 2019-196, Automaker to Pay $40 Million for Misleading Investors (Sept. 27, 2019), *available at* https://www.sec.gov/news/press-release/2019-196.

[7] Press Release 2020-169, Pharmaceutical Company and Former Executives Charged With Misleading Financial Disclosures (July 31, 2020), *available at* https://www.sec.gov/news/press-release/2020-169.

[8] Press Release 2018-220, SEC Charges Walgreens and Two Former Executives With Misleading Investors About Forecasted Earnings Goal (Sept. 28, 2018), https://www.sec.gov/news/press-release/2018-220.

[9] Press Release 2019-140, Facebook to Pay $100 Million for Misleading Investors About the Risks It Faced From Misuse of User Data (July 24, 2019), *available at* https://www.sec.gov/news/press-release/2019-140.

[10] Press Release 2019-194, Mylan to Pay $30 Million for Disclosure and Accounting Failure Relating to EpiPen (Sept. 27, 2019), *available at* https://www.sec.gov/news/press-release/2019-194.

[11] Press Release 2019-183, SEC Charges Nissan, Former CEO, and Former Director with Fraudulently Concealing from Investors More than $140 Million of Compensation and Retirement Benefits (Sept. 23, 2019), *available at* https://www.sec.gov/news/press-release/2019-183.

[12] Press Release 2019-34, SEC Charges Volkswagen, Former CEO With Defrauding Bond Investors During

"Clean Diesel" Emissions Fraud (March 14, 2019), available at https://www.sec.gov/news/press-release/2019-34.

[13] Press Release 2019-95, KPMG Paying $50 Million Penalty for Illicit Use of PCAOB Data and Cheating on Training Exams (June 17, 2019), *available at* https://www.sec.gov/news/press-release/2019-95.

[14] Press Release 2020-29, ABN AMRO Clearing Chicago Charged With Improper Handling of ADRs (Feb. 6, 2020), *available at* https://www.sec.gov/news/press-release/2020-29.

[15] Press Release 2020-43, SEC Charges Wells Fargo In Connection With Investment Recommendation Practices (Feb. 27, 2020), *available at* https://www.sec.gov/news/press-release/2020-43.

[16] Press Release 2018-108, Merrill Lynch Admits to Misleading Customers about Trading Venues; Will Pay $42 Million Penalty to Settle Charges (June 19, 2018), *available at* https://www.sec.gov/news/press-release/2018-108.

[17] Press Release 2018-31, NYSE to Pay $14 Million Penalty for Multiple Violations (Mar. 16, 2018), *available at* https://www.sec.gov/news/press-release/2018-31.

[18] Press Release 2019-171, SEC and CFTC Charge Options Clearing Corp. With Failing to Establish and Maintain Adequate Risk Management Policies (Sept. 4, 2019), *available at* https://www.sec.gov/news/press-release/2019-171.

[19] Litigation Release No. 24649, SEC Obtains Asset Freeze and Charges Banker and Trader in International Insider Trading Scheme (Oct. 18, 2019), *available at* https://www.sec.gov/litigation/litreleases/2019/lr24649.htm; Litigation Release No. 24650, SEC Charges Two Bankers and Trader in Serial International Insider Trading Scheme (Oct. 22, 2019), *available at* https://www.sec.gov/litigation/litreleases/2019/lr24650.htm; Litigation Release No. 24761, SEC Charges Two Additional Traders in International Insider Trading Scheme (Mar. 3, 2020), *available at* https://www.sec.gov/litigation/litreleases/2020/lr24761.htm.

[20] Press Release 2018-151, SEC Charges U.S. Congressman and Others With Insider Trading (Aug. 8, 2018), *available at* https://www.sec.gov/news/press-release/2018-151.

[21] Press Release 2019-1, SEC Brings Charges in EDGAR Hacking Case (Jan. 15, 2019), *available at* https://www.sec.gov/news/press-release/2019-1.

[22] Press Release 2020-144, SEC Charges Novartis AG with FCPA Violations (June 25, 2020), *available at* https://www.sec.gov/news/press-release/2020-144.

[23]Press Release 2019-254, SEC Charges Multinational Telecommunications Company with FCPA Violations (Dec. 6, 2019), *available at* https://www.sec.gov/news/press-release/2019-254.

[24] Press Release 2017-171, Telecommunications Company Paying $965 Million for FCPA Violations (Sept. 21, 2017), *available at* https://www.sec.gov/news/press-release/2017-171.

[25] Press Release 2017-235, SEC Charges Operators of $1.2 Billion Ponzi Scheme Targeting Main Street Investors (Dec. 21, 2017), *available at* https://www.sec.gov/news/press-release/2017-235.

[26] Press Release 2019-3, Court Orders $1 Billion Judgment Against Operators of Woodbridge Ponzi Scheme Targeting Retail Investors, *available at* https://www.sec.gov/news/press-release/2019-3.

[27] According to PricewaterhouseCoopers, in 2016, ICOs raised $252 million. By 2018, that number was $19.7 billion. *See* PricewaterhouseCoopers's 6th ICO/STO Report: A Strategic Perspective (Spring 2020), *available at* https://www.pwc.com/ee/et/publications/pub/Strategy&_ICO_STO_Study_Version_Spring_2020.pdf.

[28] *See SEC v. Telegram Group Inc. and TON Issuer Inc.*, 448 F.Supp.3d 352 (S.D.N.Y. 2020).

[29] Press Release 2020-146, Telegram to Return $1.2 Billion to Investors and Pay $18.5 Million Penalty to Settle SEC Charges (June 26, 2020), *available at* https://www.sec.gov/news/press-release/2020-146.

[30] Press Release 2020-90, SEC Orders Three Self-Reporting Advisory Firms to Reimburse Investors (Apr. 17, 2020), *available at* https://www.sec.gov/news/press-release/2020-90.

[31] Press Release 2020-164, SEC Charges VALIC Financial Advisors with Failing to Disclose Payments to Promote Services to Florida Educators (July 28, 2020), *available at* https://www.sec.gov/news/press-release/2020-164.

[32] Public Statement, Statement from Stephanie Avakian and Steven Peikin, Co-Directors of the SEC's Division of Enforcement, Regarding Market Integrity (Mar. 23, 2020), *available at* https://www.sec.gov/news/public-statement/statement-enforcement-co-directors-market-integrity.

[33] Press Release 2018-219, Elon Musk Charged with Securities Fraud for Misleading Tweets (Sept. 27, 2018), *available at* https://www.sec.gov/news/press-release/2018-219.

[34] Press Release 2020-203, SEC Charges Fund Manager for Fraud in Securities Offering in Neiman Marcus Bankruptcy (Sept. 3, 2020), *available at* https://www.sec.gov/news/press-release/2020-203.

[35] *See, e.g.*, Press Release 2020-127, Insurance Company Settles SEC Charges for Failing to Disclose Executive Perks, *available at* https://www.sec.gov/news/press-release/2020-127 (filed within 15 months of case opening); Press Release 2019-183, SEC Charges Nissan, Former CEO, and Former Director with Fraudulently Concealing from Investors More than $140 Million of Compensation and Retirement Benefits (Sept. 23, 2019), *available at* https://www.sec.gov/news/press-release/2019-183 (filed within 10 months of case opening).

[36] Administrative Proceeding File No. 3-19532, SEC Charges PPG Industries with Fraudulent Financial Reporting (Sept. 26, 2019), *available at* https://www.sec.gov/enforce/33-10701-s.

[37] Press Release 2018-226, Elon Musk Settles SEC Fraud Charges; Tesla Charged With and Resolves Securities Law Charge (Sept. 29, 2018), *available at* https://www.sec.gov/news/press-release/2018-226.

[38] *See* Press Release 2018-41, *supra* note 2.

[39] *See* Press Release 2019-171, *supra* note 18.

[40] *See* Press Release 2019-95, *supra* note 13.

[41] *See Lucia v. SEC*, 138 S.Ct. 2044, 2055 (2018).

[42] *See id.*

[43] *See Kokesh v. SEC*, 137 S. Ct. 1635, 1639 (2017).

[44] *Id.* at 1642, n.3.

[45] *See Liu v. SEC*, 140 S.Ct. 1936, 1945-6 (2020).

[46] *See id.* at 1948.