

[Securities Regulation Daily Wrap Up, ENFORCEMENT—SEC's busy enforcement year nets record civil penalties, \(Nov. 16, 2022\)](#)

Securities Regulation Daily Wrap Up

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By [John Filar Atwood](#)

Division of Enforcement imposed \$4.2 billion in penalties in the 760 actions it brought in fiscal 2022.

The SEC's Enforcement Division released the numbers behind its busy fiscal 2022 and they show a nine percent increase in total enforcement actions and the recovery of \$6.4 billion in disgorgement and penalties. Among the 760 actions brought were 462 stand-alone actions, 129 cases for delinquent filings, and 169 follow-on proceedings seeking to bar or suspend individuals from various securities industry functions, according to the Division's [annual report](#).

The \$6.4 billion in civil penalties, disgorgement, and pre-judgment interest is the largest-ever annual total and a 68 percent increase over 2021's \$3.8 billion. The \$4.2 billion in civil penalties in fiscal 2022 also was an SEC record. Disgorgement dropped six percent year-over-year to \$2.2 billion.

Division Director Gurbir Grewal said that the staff worked with urgency to hold wrongdoers accountable in an attempt to deter future misconduct. He emphasized that the staff does not want to break enforcement records every year because it expects behaviors to change.

Grewal noted that it is the Division's intention that the penalties be large enough that they are not merely viewed as the cost of doing business. Industry watchdog Better Markets was encouraged by the rise in civil penalties but believes the Division did not go far enough.

A note of caution. Better Markets Legal Director Stephen Hall [said](#) that even impressive-sounding fines have to be measured against a company's bottom line. The fiscal 2022 penalties, though large in some cases, paled in comparison to the financial institutions' massive annual revenues and balance sheets, he stated.

Hall added that he was glad to see that the staff demanded and obtained some admissions of wrongdoing, including from big banks, but argued that admissions should be the baseline expectation and not the exception. He would like to see the SEC push for admissions in a much wider range of settlements.

The report highlights seminal cases from fiscal 2022, including those where the staff obtained admissions from the perpetrators. Among them was the recordkeeping case brought against JP Morgan Securities, 15 other broker-dealers, and one investment adviser in which the staff obtained admissions from all 17 parties.

In the JP Morgan case and others, the Division ordered tailored undertakings such as requiring firms to retain a compliance consultant to conduct comprehensive reviews of a firm's policies and procedures. According to the report, the Division employed tailored undertakings as potential roadmaps for compliance by other firms.

Cooperation credit. Better Markets also is skeptical of the staff's granting of cooperation credit, which it believes can dilute the deterrent effect of enforcement actions. The report includes a discussion of the staff's cooperation credit in which the Division defends its use of the strategy because meaningful cooperation can help expedite investigations and bring to light important evidence. The report describes cases against Headspin, ProPetro Holding and Baxter International in which the SEC reduced or eliminated penalties based on the cooperation and remedial efforts of the companies.

Individual accountability remained a pillar of the SEC's enforcement program in fiscal 2022. The report states that more than two-thirds of the stand-alone enforcement actions during the year involved at least one individual defendant or respondent including senior executives. High-profile cases involved charges against the former CEOs of Boeing and Eagle Bancorp and against the chief investment officer of Infinity Q Capital Management.

Whistleblower program. The whistleblower program is a key element of the Division's enforcement efforts and in fiscal 2022 the SEC issued 103 awards totaling \$229 million on a record 12,300 tips. The number of awards and dollar value were the second highest in the history of the program.

The SEC also worked to defend whistleblowers by pursuing companies and individuals that tried to impede or retaliate against them. That included an action against Brink's Co. for requiring certain employees to sign restrictive confidentiality agreements, and against another company that had illegally conditioned the return of investor money on the investors' signing agreements that prohibited them from reporting potential violations to law enforcement.

Hot topics. The report covers enforcement actions taken in certain high-interest areas such as crypto assets, cybersecurity and ESG. In 2022, the Division decided to add 20 positions to its crypto assets and cyber unit, nearly doubling its resourced in those areas.

Significant crypto cases in fiscal 2022 included the charges against BlockFi Lending for its failure to register the offer and sale of its retail crypto lending product, and against 11 individuals for creating and promoting Forsage, a fraudulent crypto pyramid and Ponzi scheme. The Division also brought an insider trading case against an individual at a crypto asset trading platform for tipping associates ahead of announcements regarding crypto asset securities that would be made available for trading on the platform.

Cybersecurity and compliance cases tended to center around failures by major firms to comply with their record-keeping obligations and duty to safeguard customer information, according to the report. The key takeaway from the cases is that firms must ensure that their policies and practices keep pace with technological developments, the report states.

Enforcement actions in the ESG space were generally based on principles concerning materiality, accuracy of disclosures, and fiduciary duty. The report highlights the action against BNY Mellon Investment Adviser for misleading statements and omissions about its consideration of ESG principles in making investment decisions for certain mutual funds, and the case against Vale S.A. for its allegedly false and misleading claims to local governments, communities, and investors about the safety of its dams prior to the collapse of the Brumadinho dam in Brazil.

Companies: JP Morgan Securities LLC; Headspin, Inc.; ProPetro Holding Corp.; Baxter International, Inc.; Boeing Co.; Eagle Bancorp; Infinity Q. Capital Management; Brink's Co.; BlockFi Lending LLC; BNY Mellon Investment Adviser, Inc.; Vale S.A.

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