

Gurbir Grewal Named as New Director of SEC Enforcement Division

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The Securities and Exchange Commission (SEC or Commission) announced that New Jersey Attorney General Gurbir Grewal will become the next director of its Enforcement Division (Division),^[1] after resigning his New Jersey's attorney general position on July 26. Grewal's appointment follows President Biden's April confirmation of Gary Gensler as the new SEC chairman.

In his new role, Grewal and his staff will oversee enforcement of federal securities laws to protect investors and maintain market integrity by conducting investigations into possible violations of the federal securities laws, by prosecuting the Commission's civil suits in federal court, and by handling the Commission's administrative proceedings.

Grewal comes to the Enforcement Division with significant prosecutorial experience and is expected to continue the Division's aggressive enforcement of financial crimes.^[2]

During the tenure of the prior co-directors of enforcement under the Trump administration — Stephanie Avakian and Steven Peikin — the Enforcement Division was extremely active. The Division brought more than 3,000 enforcement actions, obtained more than \$17 billion in financial remedies, awarded approximately \$3.6 billion to investors, and paid awards of approximately \$595 million to whistleblowers. Furthermore, despite the impact of COVID-19 and the temporary shutdown of the Enforcement Division's physical offices, the Enforcement Division had a record fiscal year in 2020. The Division brought 715 enforcement actions addressing a broad range of issues, including financial fraud; offering fraud; issuer disclosure and accounting violations; foreign Corrupt Practices Act violations; investment advisory issues; securities offerings; market manipulation; insider trading; and broker-dealer misconduct. In 2020, the Enforcement Division's Office of Market Intelligence also opened more than 150 COVID-19-related inquiries and investigations.^[3] Through these actions, the SEC obtained record-breaking monetary remedies in its enforcement actions in 2020 — with judgments and orders totaling approximately \$4.68 billion in disgorgement and penalties. The SEC also awarded a record \$175 million to 39 whistleblowers in 2020, for both the highest dollar amount and the highest number of individuals.^[4]

Investigations under Grewal's leadership will likely continue at least at current pace, if not increase, given the Biden administration's interest in aggressively addressing financial fraud. Furthermore, Chairman Gensler's prior regulatory focus and actions while at the Commodity Futures Trading Commission suggest that he will advance an investor protection agenda. As such, the Division will likely continue to pursue certain pandemic and recession-related enforcement trends from 2020, as well as focus on the challenges presented by fraud and manipulation of cryptocurrency. Also, the Division will probably focus on issues relating to environmental, social, and corporate

governance (ESG) disclosures, given the Biden administration's and Gensler's early focus on this area and the creation of an ESG task force within the Enforcement Division. In the coming year, the SEC may investigate whether certain entities have adequate policies in place to support their ESG disclosures. Furthermore, the Division is expected to continue to increase its reliance on whistleblowers consistent with its most recent trends.

In its 2020 Annual Report, the Enforcement Division noted a continued focus on accelerating the pace of investigations, expressing a desire to decrease the length of time it takes to bring financial fraud and issuer disclosure cases, while shortening the amount of time it takes to complete investigations and recommend enforcement actions.^[5] The SEC has already taken certain efforts in 2021 to quicken the pace of enforcement, announcing it would authorize senior officers in the Enforcement Division to issue “formal orders of investigation.”^[6]

Moreover, the Division expressed a continued focus on holding individuals accountable in enforcement actions. This continues a trend from 2020, where the SEC held individuals — including CEOs, CFOs, accountants, and auditors — accountable in approximately three out of four stand-alone enforcement actions. The Division further pledged to reward voluntary, timely, and meaningful cooperation from defendants.

Please do not hesitate to contact our Securities Investigations and Enforcement team with any questions regarding this alert or any action from the Enforcement Division.

[1] See <https://nj.gov/governor/news/news/562021/approved/20210629c.shtml>.

[2] Gurbir Grewal served in prosecutorial roles at the local, state, and federal level. Grewal served as New Jersey's attorney general since 2018, and prior to that role, he served as a Bergen County prosecutor. Grewal previously served as federal prosecutor in the Criminal Division of the U.S. Attorney's Office for the District of New Jersey (serving as chief of the Economic Crimes Unit) and in the Eastern District of New York from 2004 to 2007 (where he was assigned to the Business and Securities Fraud Unit). He served as lead prosecutor in the largest known data breach prosecution and other large financial fraud cases. Prior to working as a federal prosecutor, Grewal also worked in private practice, representing individuals and companies in government and internal investigations, criminal proceedings, and civil trials. Grewal graduated from the Georgetown University School of Foreign Service and the College of William & Mary, School of Law.

[3] See <https://www.sec.gov/files/enforcement-annual-report-2020.pdf>.

[4] See <https://corpgov.law.harvard.edu/2020/11/19/sec-division-of-enforcement-2020-annual-report/>.

[5] See <https://www.sec.gov/files/enforcement-annual-report-2020.pdf>.

[6] See <https://www.sec.gov/news/public-statement/lee-statement-empowering-enforcement-better-protect-investors>.

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