

# Highlights: SEC Division of Enforcement 2020 Annual Report

## WRITTEN BY

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### Who Needs to Know

Public companies and their directors and officers as well as brokers, dealers, investment advisors, investment companies and their associated persons.

### Why It Matters

The Securities and Exchange Commission (SEC) Division of Enforcement (Division) recently released its 2020 Annual Report, summarizing its efforts and achievements from its 2020 fiscal year. Despite the pandemic, the Division still accomplished a great deal. The Division saw an increase in the number of tips, complaints, and referrals triaged, as well as the number of inquiries and investigations opened. Additionally, the total amount of disgorgement and penalties ordered is the highest on record. The Division clearly responded well to the pandemic and continued with business more or less as usual.

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On November 2, the Securities and Exchange Commission (SEC) Division of Enforcement (Division) released its 2020 Annual Report, summarizing its efforts and achievements from its 2020 fiscal year. Like the rest of the world, the COVID-19 pandemic forced the Division to alter its operations and move enforcement efforts into home offices. Despite these changes, the Division still accomplished a great deal, bringing 715 enforcement actions; barring and/or suspending 477 market participants; suspending trading of 196 issuers; triaging approximately 23,650 tips, complaints, and referrals; opening 1,181 new inquiries and investigations; ordering approximately \$3.589 billion in disgorgement and \$1.091 billion in penalties; and obtaining 24 court-ordered asset freezes and numerous tailored undertakings. Although the total number of cases brought decreased from last year, the Division saw an increase in the number of tips, complaints, and referrals triaged, as well as the number of inquiries and investigations opened. Additionally, the total amount of disgorgement and penalties ordered is the highest on record.

Other significant highlights include:

- Of the 715 enforcement actions, 405 were standalone actions and concerned a range of substantive issues with percentage breakdowns as follows: 32% involved securities offerings, 21% involved investment advisory/company issues, 15% involved issuer reporting/accounting and auditing, 10% involved broker-dealers, 8% involved insider trading, 5% involved market manipulation, 3% involved public finance, 2% involved violations of the Foreign Corrupt Practices Act (FCPA), and the remainder involved a mix of miscellaneous matters. There was a large drop in the number of investment advisory/company and issuer reporting/accounting and auditing cases, as well as a smaller (but noticeable) drop in market manipulation and FCPA cases. However, the number of securities offerings cases notably increased.
- The Division accelerated its evaluation of whistleblower claims, issuing significantly more preliminary

determinations and ultimately awarding 39 individuals approximately \$175 million, the highest numbers in the program's history. The SEC also amended the rules governing the whistleblower program to provide more clarity and efficiency to the process by which whistleblower claims are handled.

- The Division formed the Coronavirus Steering Committee (Committee) to manage all matters related to COVID-19, and through this Committee, it actively sought to identify misconduct that stemmed from challenges associated with the pandemic. As a result, the Division opened more than 150 COVID-related inquiries and investigations, recommended several COVID-related fraud actions to the SEC, and proposed trading suspensions to the SEC that led to the suspension of two dozen issuers in March and April. The Division also issued an investor alert on February 4 (later updated on September 28), warning retail investors about potential COVID scams, and published a public statement on March 23, reiterating the importance of protecting material nonpublic information during the pandemic.
- The Division shortened the amount of time to complete investigations and recommend enforcement actions, setting a five-year best of 21.6 months as a median time to file. The Division received pressure to bring cases more quickly after the Supreme Court clarified that a five-year statute of limitations applies to the SEC's ability to collect disgorgement and penalties from wrongdoers.
- The SEC continued to reward cooperation in its investigations, which resulted in a reduced penalty for one company and no penalty at all for another.
- The Supreme Court's June 2020 decision in *SEC v. Liu* will impact the Division's actions in seeking penalties versus disgorgement going forward. *Liu* put certain limitations on disgorgement, holding that it should reflect net profits, have legitimate expenses generally backed out, and to grant disgorgement when it will be awarded to whomever was harmed by the misconduct at issue. As a result, the Division is considering recommending higher penalties in cases where the statutory scheme permits it and where it cannot obtain disgorgement.
- The Division continued to pursue entities for their misconduct, resulting in the SEC bringing actions against financial institutions, automobile and engine manufacturers, and technology, telecommunications, and pharmaceutical companies. The Division focused on identifying violations involving financial statement misstatements, corporate perquisites, non-GAAP metrics, and other accounting and disclosure violations, as well as violations involving "pre-release" of American Depositary Receipts, order routing practices, and the credit rating process.
- The Division also pursued individuals, with the SEC charging individuals in 72% of standalone enforcement actions — including those at the top of the corporate hierarchy, like CEOs, COOs, and CFOs, and gatekeepers, like accountants, attorneys, and auditors. Additionally, the Division focused on insider trading and trading based on misappropriated information, and in some cases, the Department of Justice coordinated with the SEC to bring parallel criminal actions.

From its Annual Report, the Division clearly responded well to the pandemic and continued with business more or less as usual. With a new administration coming on board in January, the SEC's and the Division's senior officials and priorities could change, making 2021 an interesting year.

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