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SEC's Enforcement Results for FY 2022 Reflect Robust Enforcement and Record-Breaking Penalties

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On November 15, the U.S. Securities and Exchange Commission (SEC) announced its enforcement results for fiscal year 2022, which featured the following key metrics:

Record-breaking $6.4 billion in money ordered: The total $6.439 billion in civil penalties, disgorgement, and pre-judgment interest ordered reflects the highest-ever total money ordered by the SEC in a single year, and a significant increase from the $3.8 billion total ordered in fiscal year 2021. Civil penalties were also at a record high, comprising nearly $4.2 billion of the total money ordered. Disgorgement, which accounted for $2.245 billion, decreased by 6% from the prior fiscal year. A total of $937 million was distributed to harmed investors — more than a $400 million increase from fiscal year 2021.

A 9% increase in actions filed: The SEC filed 760 total enforcement actions in fiscal year 2022, a 9% increase over fiscal year 2021. These included 462 new, or "standalone,"enforcement actions, a 6.5% increase from last year; 129 actions against issuers related to allegedly delinquent required filings with the SEC; and 169 "follow-on" administrative proceedings, stemming from criminal convictions, civil injunctions, or other orders.

Second-highest year in whistleblower awards: The SEC issued approximately $229 million in 103 whistleblower awards, making fiscal year 2022 the second-highest year in whistleblower awards, both in terms of dollar amounts and number of awards. The SEC's Whistleblower Program also received a record high number of whistleblower tips — more than 12,300 — in fiscal year 2022. The SEC demonstrated its commitment to protecting whistleblowers by both "vigorously safeguarding whistleblowers' anonymity" and pursuing enforcement actions against individuals or entities that impede or retaliate against whistleblowers.

The SEC's robust enforcement in fiscal year 2022 included actions that spanned a wide variety of subject areas and which aligned with the priority areas of enforcement previously announced by SEC leadership. The variety of priority areas included:

Financial fraud and issuer disclosure: The SEC emphasized the "high priority" placed on pursuing misconduct in connection with public company disclosure — "the bedrock of our securities market" — by issuers, auditors, and their employees. For example, the SEC charged the Boeing Company and its former CEO with misleading investors about the safety of Boeing's 737 MAX planes, following crashes in 2018 and 2019.

Gatekeepers: The SEC has brought enforcement actions against gatekeepers, including auditors, attorneys, and

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transfer agents for “failing to live up to their heightened trust and responsibility.” These actions included the largest penalty ever imposed by the SEC against an audit firm, following a settlement in which Ernst & Young LLP admitted that a significant number of its audit professionals cheated on the ethics portion of CPA exams and required continuing professional education courses.

Crypto: The SEC bolstered its efforts in the crypto asset securities space by nearly doubling the size of its Crypto Assets and Cyber Unit in 2022. Significant enforcement actions in this space included a first-of-its-kind action against a crypto lending platform, BlockFi Lending LLC, for violating the registration requirements of the Investment Company Act of 1940, and charges against 11 individuals for allegedly creating and promoting a fraudulent crypto pyramid and Ponzi scheme.

Cybersecurity: The SEC sought to reinforce the “critical importance” of firms’ compliance with recordkeeping and safeguarding customer information obligations by bringing actions against major firms for failure to comply with these obligations, including charges against J.P. Morgan Securities LLC, UBS Financial Services Inc., and TradeStation Securities, Inc., for allegedly violating the SEC’s Identity Theft Red Flags Rule (Regulation S-ID) based on purported insufficient policies and procedures designed to protect investors against identity theft.

Environmental, social, and governance (ESG) concerns: As investors increase their focus on ESG issues, so too has the SEC in its enforcement efforts. For example, the SEC charged BNY Mellon Investment Adviser, Inc. for allegedly making materially misleading statements and omissions concerning how ESG principles factored into investment decisions.

Private funds: With the significant increase of the amount of assets managed by private fund advisors in recent years, the SEC recognizes that certain features of private fund investment may lead to “certain recurring issues,”such as undisclosed conflicts of interest, fees and expenses, valuation, custody, and controls around material nonpublic information. Related enforcement actions included a settled action charging Allianz Global Investors U.S. LLC and three portfolio managers with a fraudulent scheme to conceal the downside risks of its complex options trading strategy, which caused billions of dollars in loss to more than 100 institutional investors.

As exemplified by these enforcement actions, the SEC continues to focus on individual accountability. In fiscal year 2022, more than two-thirds of the SEC’s standalone enforcement actions included charges against at least one individual. In an effort to ensure accountability from public company senior executives, the SEC charged several executives under Sarbanes-Oxley (SOX) 304 and ordered them to return bonuses and compensation even where they were not personally charged with the misconduct at their firms.

These results indicate the kinds of robust enforcement efforts that industry players should expect in 2023, which will be further informed by the 2023 priorities that the SEC’s Division of Examinations is expected to announce by early 2023. In addition to paying close attention to the enforcement themes and priority areas that have emerged, institutions should bear in mind the potential benefits that meaningful cooperation with the SEC may yield, including substantially limited, or no imposed civil penalties.

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