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SECURITIES ENFORCEMENT 2014 YEAR-END REVIEW

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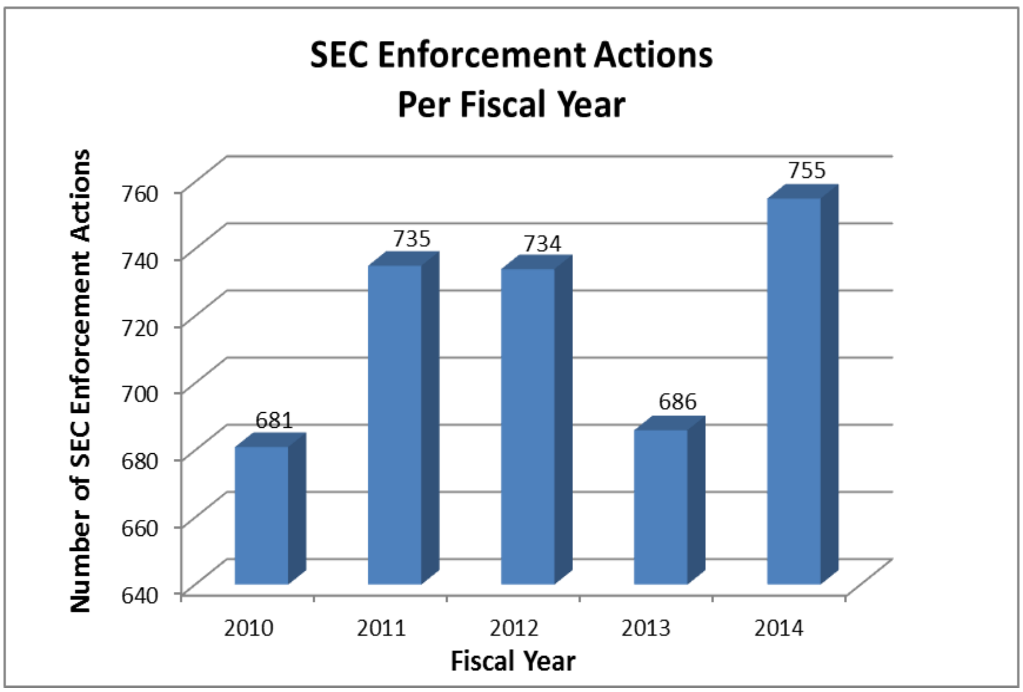
I. Introduction

Fiscal year 2014 proved to be another eventful and record-breaking year for the Division of Enforcement (Enforcement Division) of the United States Securities and Exchange Commission (SEC or the Commission). Indeed, the Commission recently described the fiscal year that ended in September (*i.e.*, FY2014) as a "very strong year" for enforcement, and by certain measures it certainly was.[1] This description of the SEC's performance and approach, however, is not without controversy as various aspects of the SEC's enforcement approach have been criticized in some quarters, including by certain of the SEC's own commissioners.



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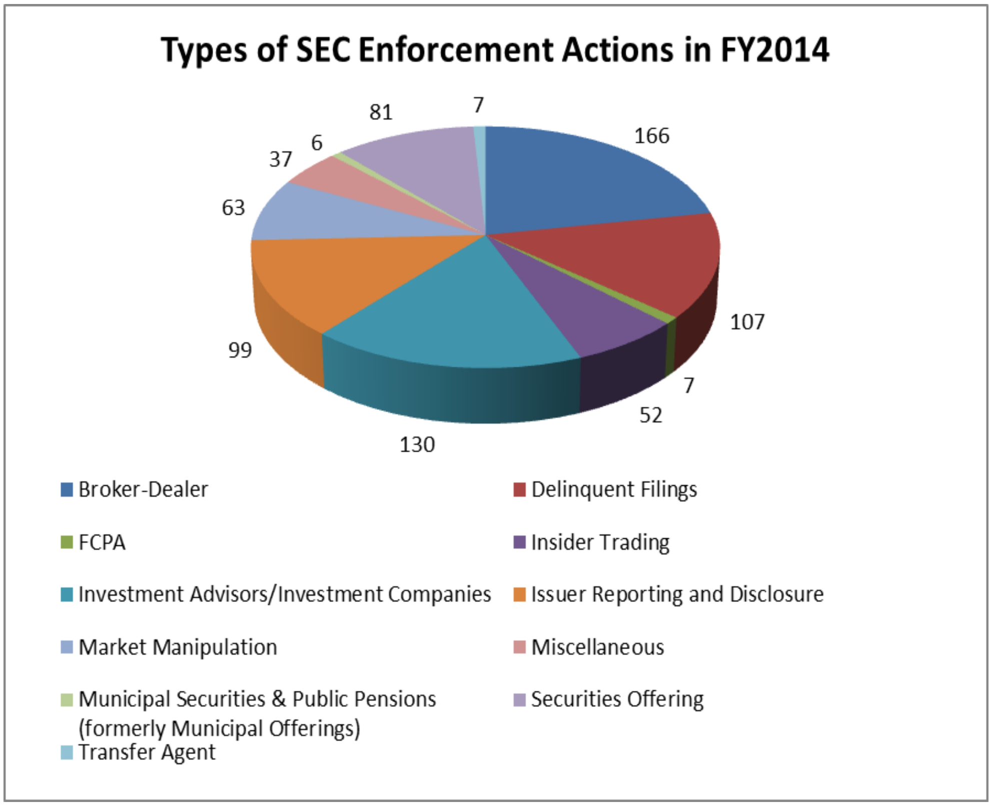
In FY2014, as illustrated, the SEC filed 755 enforcement actions, an all-time record. This means that the SEC filed 69 more enforcement actions in FY2014 than in FY2013 (when it filed 686 actions) and 21 more actions in FY2014 than in FY2012 (when it filed 734 actions). The increase reflects the continued implementation of SEC Chair Mary Jo White's controversial "Broken Windows" enforcement philosophy.



The breakdown of cases among the Enforcement Division's enumerated subject matter areas remained relatively stable in FY2014. Five categories of SEC actions showed an increase in year-over-year filings. Cases related to issuer reporting and disclosure increased significantly in FY2014, up 45% when compared to FY2013. Cases related to market manipulation and broker-dealers also increased 26% and 37%, respectively. Insider trading cases increased by 18%, while FCPA cases increased from five to seven in total, a 40% increase. Meanwhile, some categories of cases decreased, with the number of enforcement actions related to delinquent filings and securities offerings experiencing the steepest declines at 19% and 9%, respectively. Cases involving investment advisors also declined by 7%, dropping from 140 to 130 in total.

Among the 755 enforcement actions filed in FY2014 were numerous first-ever cases. For example, in February, the SEC filed its first enforcement action against a private equity firm regarding allocation of fees and expenses.[2] In June, the SEC brought its first-ever enforcement action under the anti-retaliation provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) against a hedge fund that allegedly retaliated against a whistleblower.[3] Additionally, in September, the SEC brought its first enforcement action against a broker-dealer for failing to protect a client's material non-public information.[4]

Moreover, in FY2014, civil penalties and disgorgement were at a record high. The SEC obtained $4.16 billion in disgorgement and civil penalties, which was up from $3.4 and $3.1 billion in disgorgement and penalties during FY2013 and FY2012, respectively. According to Chair White, "[t]he innovative use of technology – enhanced use of data and quantitative analysis – was instrumental in detecting misconduct and contributed to the Enforcement Division's success in bringing quality actions that resulted in stiff monetary sanctions."[5]

There were, however, some trends in 2014, including the SEC's increasing use of administrative proceedings, the continued demand for admissions in selected cases and the SEC's approach to insider trading, that has been described as controversial.

In this publication, we discuss certain of the trends and highlights of the SEC Enforcement Division's record in 2014, as well as the policy and priority shifts these cases represent.

II. Selected Enforcement Division Developments

A. Aggressive Use of Litigated Administrative Proceedings

Taking full advantage of its expanded authority under Dodd-Frank, the SEC continued its trend of increasingly selecting the SEC's administrative courts (as opposed to US federal courts) as its preferred forum for litigating alleged violations of the federal securities laws against companies and individuals. As Chief of the Enforcement Division's Foreign Corrupt Practices Act (FCPA) Unit Kara Brockmeyer recently noted, the SEC's widespread use of administrative proceedings may be "the new normal."[6]

Historically, the SEC could bring administrative actions only against regulated entities and individuals, and the only types of relief available were industry bars and expulsion from various associations. But over the last several decades, culminating with Dodd-Frank, Congress has granted the SEC more remedial powers in administrative actions. Now, not only can the SEC bring cease-and-desist actions (which function much like civil injunctions), the SEC can also seek disgorgement and civil penalties. Additionally, the SEC can bring administrative proceedings against *any* person (as opposed to just regulated persons) for violations of the federal securities laws.

In FY2014, 43% of the SEC's litigated enforcement actions (*i.e.*, actions that were filed without a concurrent settlement) were filed as administrative proceedings.[7] Perhaps even more striking than the total number of litigated administrative proceedings that have been filed are the types of proceedings that are now being brought. Fully seizing its new power, the SEC is now bringing administrative proceedings against unregulated persons for everything from offering fraud to insider trading.[8] Indeed, in 2014, the SEC filed at least six insider trading cases as litigated administrative proceedings, several of which are described below.[9] Apparently, in recognition of the fact that this trend is here to stay, in June 2014, the SEC announced that it had hired additional staff for its Office of Administrative Law Judges.[10]

In our *Securities Enforcement 2014 Mid-Year Review*, we noted that several respondents in SEC administrative proceedings have filed injunctive actions in federal district court challenging the SEC's practice.[11] In the second half of 2014, the number of defense lawyers, judges and others voicing significant concerns about the SEC's increasing use of administrative courts has only grown.[12] Of note, in August, Judge Jed Rakoff of the United States District Court for the Southern District of New York described the SEC's administrative power as "unchecked and unbalanced."[13] Indeed, in a November 5, 2014 speech to the PLI Securities Regulation Institute, Judge Rakoff cautioned: "[W]hat you have here are broad anti-fraud provisions, critical to the transparency of the securities markets, that have historically been construed and elaborated by the federal courts but that, under Dodd-Frank, could increasingly be construed and interpreted by the [SEC's] administrative law judges if the [SEC] chose to bring its more significant cases in that forum. Whatever one might say about the [SEC's] quasi-judicial functions, this is unlikely, I submit, to lead to as balanced, careful and impartial interpretations as would result from having those cases brought in federal court."[14]

Administrative proceedings can involve difficult procedural hurdles for defendants litigating against the SEC. For example, administrative proceedings are conducted at a "rocket docket" speed, typically allowing only a few months from the institution of the proceeding to trial because rulings must generally be issued no later than 300 days after the institution of proceedings.[15] Discovery available to defendants in administrative proceedings is limited, as the SEC rules do not allow for interrogatories, requests for admission, or depositions.[16] Furthermore, respondents have no right to a jury trial, and the appeal of an administrative law judge's decision is heard by the Commission itself.[17] These hurdles led Judge Rakoff to describe the SEC's FY2014 impressive 100% win rate in administrative proceedings as "hardly surprising."[18] At the same time, certain of these procedural hurdles equally impact both sides. Indeed, on December 15, 2014, the SEC dropped a high profile administrative proceeding less than six months after having initiated it because the discovery procedures did not permit the SEC to gather foreign discovery necessary for litigation.[19] It is possible that a number of factors contributed to the Enforcement Division's decision to seek the proceeding's dismissal, but had the matter been filed in federal court, the SEC could have used the Hague Convention on Evidence to seek the testimony it claims to have required.

The SEC rejects criticisms of its own administrative proceedings.[20] Andrew Ceresney, Director of the Enforcement Division, described administrative proceedings as "very fair" with "extensive procedural protections,"[21] and as "eminently proper, appropriate and fair to respondents."[22] Enforcement Director Ceresney further explained that the SEC is "using administrative proceedings more extensively because they offer a streamlined process with sophisticated fact finders,"[23] rather than to get a "home-court advantage." Somewhat echoing Director Ceresney's views, Judge Lewis Kaplan of the Southern District of New York recently dismissed a lawsuit that challenged the constitutionality of the SEC's administrative proceedings.[24] While not necessarily passing on the propriety of the SEC's choice of forum, Judge Kaplan wrote, "this court's jurisdiction is not an escape hatch for litigants to delay or derail an administrative action when statutory channels of review [namely, an appeal of an Administrative Law Judge's decision to the Commission and ultimately to the United States Court of Appeals] are entirely adequate."[25]

The legal disputes over the propriety of the SEC's increased use of administrative proceedings is sure to continue in 2015, as evidenced by the fact that a new constitutional challenge was filed on January 2, 2015.[26] We expect to see an intensifying debate in 2015 as the administrative proceedings filed last year work their way through the SEC's administrative process.

B. Admission of Liability in Settled Cases

In June 2013, when the SEC announced its new policy of seeking admissions of liability in selected cases, it stated that it will seek admissions (1) where the misconduct harmed large numbers of investors or placed investors or the market at risk of potentially serious harm; (2) where the allegedly violative conduct was egregious and intentional; and (3) where the defendant engaged in an unlawful obstruction of the Commission's investigative processes.[27] In 2014, the SEC provided no additional guidance for when admissions will be required from defendants, leaving observers to ascertain what they can from the limited body of cases where admissions have been sought. During the second half of 2014, the SEC obtained admissions in seven cases, bringing the total number of admissions of liability cases to 12. But deciphering a clear pattern from these cases remains a challenge. At this rate (and without more SEC guidance), it could take years for clear patterns to emerge regarding when the SEC will seek an admission against a defendant.

On July 11, 2014, the SEC filed a settled civil injunctive action against Peter A. Jenson, the former Chief Operating Officer at Harbinger Capital Partners LLC.[28] Jenson was charged with aiding and abetting Harbinger Capital's owner, Philip A. Falcone, in an alleged fraud in violation of Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder and Sections 206(1), (2) and (4) of the Investment Advisers Act of 1940 (Advisers Act) and Rule 206(4)-8 thereunder, by misappropriating $113.2 million from a hedge fund. Jenson settled the SEC's charges by admitting to executing the loan agreement and other transaction documents that allowed Falcone to borrow the funds to pay personal state and federal taxes, and acknowledging that his conduct violated the federal securities laws.[29] Jenson was barred from working in the securities industry and to be suspended from practicing as an accountant on behalf of any publicly-traded company or other entity regulated by the SEC for two years. Given that the SEC had previously required admissions of wrongdoing from Falcone and Harbinger in a separate settlement, this settlement added little to the guidance on when admissions will be required.

On July 31, 2014, the SEC filed settled administrative proceedings against Michael A. Horowitz, a broker from Los Angeles, in which Horowitz admitted to locking his customers into highly illiquid, long-term investment vehicles. The SEC found that Horowitz violated Section 17(a) of the Securities Act of 1933 (Securities Act), as well as Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder.[30] The SEC also found that he violated Section 17(a) of the Exchange Act and Rules 17a-3(a)(6) and (17) thereunder. Horowitz agreed to cease and desist from further violations of the federal securities laws, to be barred from association with a broker, dealer, or investment advisor, and to be barred from participating in a penny stock offering. Horowitz also agreed to pay disgorgement of $347,724, prejudgment interest of $103,025 and a civil penalty of $400,000, totaling $850,749. In requiring an admission, the SEC seemed to focus on the scheme's purportedly egregious nature, as the SEC claimed it was "designed to profit from the imminent deaths of the terminally ill."

On August 21, 2014, the SEC filed settled administrative proceedings against a major financial institution that, in alleged violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder, purportedly failed to inform investors during the financial crisis about known uncertainties to future income from the financial institution's exposure to repurchase claims on mortgage loans. The financial institution's "admission of wrongdoing," according to the SEC, provided "an additional level of accountability for its violation of the federal securities laws." The financial institution agreed to pay $245 million (consisting of disgorgement of $109.22 million, prejudgment interest of $6.62 million and civil penalties of $129.22 million) as part of a global settlement that resolved this and other proceedings filed by the SEC in 2013 related to a Residential Mortgage-Backed Security (RMBS) offering. The financial institution also consented to a permanent injunction against future violations of Section 5 of the Securities Act (which requires all issuers to register their non-exempt securities with the SEC), and Sections 17(a)(2) and 17(a)(3) of the Securities Act.

On September 22, 2014, the SEC filed settled administrative proceedings against Wells Fargo Advisors, LLC (Wells Fargo) in which Wells Fargo admitted to the SEC's findings and acknowledged that its conduct violated the federal securities laws.[31] The SEC found that Wells Fargo violated Sections 204A and 204(a) of the Advisers Act (which require investment advisors to establish, maintain and enforce policies and procedures reasonably designed to prevent the misuse of material non-public information, and provide that all records of an investment advisor are subject to SEC examination, respectively), as well as Sections 15(g) and 17(b) of the Exchange Act (which impose the same obligations on broker-dealers). Also, the SEC found that Wells Fargo violated Section 17(a) of the Exchange Act and Rule 17a-4(j) thereunder, which requires broker-dealers to promptly furnish to the SEC copies of their records. To settle the enforcement action, Wells Fargo agreed to pay a $5 million penalty, to retain an independent consultant to review its policies and procedures and to cease and desist from further violations. The SEC alleged that Wells Fargo improperly delayed the investigation by originally withholding certain documents concerning the trades in question, which may have impacted the amount of the penalty and the decision to seek an admission. Indeed, the SEC separately sued the compliance officer who allegedly obstructed the Commission's investigation.

On November 20, 2014, Wedbush Securities, Inc. (Wedbush) agreed to settle an SEC enforcement action by admitting wrongdoing in connection with allegations that Wedbush violated the "Market Access Rule" set forth in Rule 15c3-5 of the Exchange Act, which requires broker-dealers to maintain risk controls to ensure compliance with all regulations pertaining to market access, including the prevention of trades by unauthorized customers. In only the second such enforcement action since the Market Access Rule's adoption in 2010, the SEC alleged that Wedbush willfully violated the Market Access Rule by failing to implement adequate risk controls and allowing thousands of anonymous overseas traders to access the US financial markets through its systems.[32] In a settled administrative proceeding, Wedbush admitted to the alleged facts and acknowledged that its conduct violated the federal securities laws. Wedbush agreed to pay a $2.44 million penalty and agreed to retain an independent consultant to conduct a comprehensive review of its current compliance controls and procedures.

On November 25, 2014, the SEC filed a settled administrative proceeding against HSBC Private Bank (Suisse), S.A. (HSBC Private Bank) for providing brokerage and advisory services to US customers before registering with the SEC as a broker-dealer or investment advisor.[33] Allegedly, HSBC Private Bank realized approximately $5.72 million in revenue through its US cross-border securities business activities from 2003 to 2011 in a purportedly willful violation of Section 15(a) of the Exchange Act and Section 203(a) of the Advisers Act. To settle the SEC's allegations, HSBC Private Bank admitted to the alleged facts, acknowledged that its conduct violated the federal securities laws, accepted a cease-and-desist order and agreed to pay $12.5 million, consisting of $5,723,193 in disgorgement, $4,215,543 in prejudgment interest and a $2.6 million civil penalty.

Finally, on December 22, 2014, the investment management firm F-Squared Investments, Inc. (F-Squared) admitted the SEC's allegations and acknowledged that its conduct violated the federal securities laws, namely Sections 204, 206 and 207 of the Advisers Act and Rules 2042(a)(16), 206(4)1(a)(5), 206(4)7 and 206(4)8 thereunder. In this settled administrative proceeding, the SEC alleged that F-Squared made false and misleading statements in marketing its proprietary, algorithm-based exchange-traded fund (ETF) strategy called "AlphaSector." Specifically, the SEC alleged that F-Squared falsely advertised "a successful seven-year track record," when the strategy had not existed for that amount of time, and made false statements concerning the product's methodology. To settle, F-Squared admitted liability, agreed to a cease-and-desist order, retained an independent compliance consultant and agreed to pay $35 million (consisting of $30 million in disgorgement and a civil penalty of $5 million). Remarking on the settlement, Enforcement Director Ceresney said that "[i]nvestors must be able to trust that performance advertisements are accurate."[34] The SEC seemed to focus on the allegedly flagrant nature of the misstatements, noting that F-Squared not only touted "a track record they presented as real when it was merely hypothetical, but the hypothetical calculations also were substantially inflated." Separately, the SEC instituted a civil injunctive action in the District of Massachusetts against F-Squared's CEO, Howard Present, for making false and misleading statements to investors. The litigation is pending.

Although some of the admissions obtained in 2014 appear to track the factors articulated in the SEC's 2013 announcement (*e.g.*, Wells Fargo's alleged non-compliance with the SEC investigation), the 2014 cases do not appear to shed more light on when the SEC will insist on an admission of wrongdoing. One is largely left to speculate as to what made the SEC conclude that these cases were particularly egregious as compared to the hundreds of other cases brought by the SEC each year. But the fact that the SEC secured an admission in only 12 cases in FY2014 highlights that seeking admissions remains the exception. And at this rate (and without more guidance), it could take some time for clear guidance to emerge as to when the SEC will seek admissions.

C. Update on the SEC's Whistleblower Program

Chair White touts the SEC's Office of the Whistleblower (Whistleblower Program) as "enormously successful," remarking that it has led to an increase in SEC enforcement actions.[35] In FY2014, the SEC issued nine whistleblowers awards (more than all previous years combined), totaling over $31 million.[36] Two of the awards from 2014 are of particular note.

First, on August 29, 2014, the SEC announced the first award given to a company employee working in an internal audit or compliance role.[37] Allegedly, the employee reported the potential securities violation internally and then reported the violation to the SEC allegedly after the company failed to take appropriate action in response to the report. There has long been some concern about whether the Whistleblower Program could lead to droves of whistleblower reports by internal audit and compliance personnel second-guessing company judgments and this $300,000 award could indeed accelerate the pace.[38]

Second, on September 22, 2014, the SEC announced a record $30 million award to a non-US resident whistleblower who reported an ongoing fraud that, according to the Commission, would "have been very difficult to detect."[39] The record $30 million award was twice as large as the SEC's previous largest award (a $14 million award announced in September 2013). The $30 million award was particularly noteworthy because the Second Circuit had recently held that the anti-retaliation provision in Section 922 of Dodd-Frank does not apply to certain tipsters outside of the United States.[40] On August 14, 2014, the Second Circuit Court of Appeals, in *Liu v. Siemens AG*, ruled that the Dodd-Frank whistleblower protections do not apply to foreign workers employed abroad by foreign corporations. The plaintiff in *Liu*, a citizen and resident of Taiwan, was employed abroad at a Chinese subsidiary of the German corporation, Siemens AG, when he was allegedly fired for reporting improper payments to foreign officials, first internally and then to the SEC. Liu sued his former employer, alleging that it had violated the whistleblower anti-retaliation provision of Dodd-Frank. The Second Circuit concluded that US laws are presumed to apply only within the United States, that Congress did not intend for the Dodd-Frank whistleblower protection provision to have extraterritorial application and that Siemens' listing of shares on the New York Stock Exchange was insufficient to overcome the presumption against extraterritoriality. Notwithstanding the Second Circuit's ruling, the SEC's $30 million award reflects the SEC's contrary view that foreign whistleblowers are eligible for awards under the Dodd-Frank whistleblower provisions.

Also, FY2014 saw the SEC file its first enforcement action under the whistleblower anti-retaliation provisions of Dodd-Frank. On June 16, 2014, the SEC filed a settled administrative proceeding against a hedge fund advisory firm, Paradigm Capital Management, Inc. (Paradigm Capital), and its owner, Candace King Weir.[41] The SEC accused Paradigm Capital of retaliating against its former head trader, who had reported to the SEC certain transactions that allegedly violated Sections 206(3) and 207 of the Advisers Act. After learning of its employee's report to the SEC, Paradigm allegedly removed him from his position, changed his job function from head trader to a full-time compliance assistant, stripped him of his supervisory responsibilities and otherwise marginalized him (even without reducing the trader's salary), ultimately forcing the whistleblower to resign from the company. Without admitting or denying the allegations, Paradigm and Weir agreed to cease and desist from future violations and to pay $2.2 million to settle the retaliation (and other) charges.

In addition, the number of whistleblower tips being submitted to the SEC continues to rise. Indeed, in FY2014, the SEC received 3,620 tips, from all 50 states and 60 foreign countries.[42] This reflected an increase from 3,238 in FY2013 and 3,001 in FY2012. As we reported in our *SEC Enforcement Year In Review 2013*, it remains unclear how many of the tips received by the SEC are generating successful investigations. Although Chair White has said that the tips have "yielded very significant information on very serious securities fraud,"[43] the full picture of the Whistleblower Program's effectiveness will likely become more apparent in the years to come.

In the meantime, other court cases are also shaping the parameters of the SEC's Whistleblower Program. For example, on May 27, 2014, the Southern District of New York ordered the SEC to turn over an anonymous informant's tip, the identity of the informant's lawyer and other documents to defendant Yorkville Advisors, LLC (a hedge fund that the SEC was suing for allegedly overvaluing its investments).[44] The SEC asserted the so-called informant privilege in arguing that it should not have to disclose the information. However, the court found that the SEC had waived any such privilege and that the so-called informant privilege only protects the informant's identity, so "it is difficult to understand how it can be invoked with respect to a tip that the SEC claims came from an anonymous source."[45] Moreover, on December 11, 2014, the SEC filed an amicus brief in the United States Court of Appeals for the Third Circuit requesting that the Third Circuit apply Dodd-Frank's whistleblower protections to employees who only report violations internally.[46] The plaintiff, Mikael Safarian, claimed that he was terminated by American DG Energy, Inc. after he called his superiors' attention to the company's alleged double-billing of customers. The district court dismissed Safarian's claim, ruling that a whistleblower must go outside of the company and report information to the SEC to be eligible for Dodd-Frank's protections, an interpretation with which the SEC disagrees. Courts are currently split on this question. For example, the Fifth Circuit held that a whistleblower must report to the SEC in order for the anti-retaliation provisions of Dodd-Frank to apply.[47] However, at least one district court has disagreed, applying the anti-retaliation provisions of Dodd-Frank even when the relevant report was filed internally and not with the SEC.[48] We expect additional appellate review in 2015.

D. Public Dissent Among SEC Commissioners Over the Commission's Enforcement Program

In 2014, more than one SEC Commissioner voiced dissenting views regarding the SEC's enforcement approach, a relatively rare practice highlighting current divisions among the Commissioners.

The first such dissent came in August 2014 when Commissioner Luis Aguilar publicly challenged what he described as a lack of conviction at the SEC to seek severe penalties.[49] Specifically, Commissioner Aguilar issued a public dissent from a settlement in which he questioned the SEC's decision to charge a particular defendant with "only" a books-and-record-keeping violation and to impose "only" a $208,595 civil penalty. In Commissioner Aguilar's view, the SEC should have charged Kevin Kyser, the former CFO of Affiliated Computer Services, Inc. (a company that allegedly overstated its income by $125 million in 2009), with fraud and sought stronger penalties. Rather than basing his opinion on the SEC's enforcement policy generally, Commissioner Aguilar's dissent expressed a fundamental disagreement with the level of charges mandated by his reading of the facts as set forth in the SEC's own order. Commissioner Aguilar wrote: "[W]hen these accountants engage in fraudulent misconduct, the Commission *must* be willing to charge fraud and *must* not hesitate to suspend the accountant from appearing or practicing before the Commission. This is true regardless of whether the fraudulent misconduct involves *scienter*." Even though Commissioner Aguilar's view did not prevail in this case and the Commission ultimately agreed to a "lesser" settlement with Kyser, such a public dissent highlights the challenge that defendants may face in convincing the full Commission to approve non-fraud settlements, especially when there is even a scintilla of evidence supporting a finding of scienter. As the SEC feels increasing pressure to hold gatekeepers to a high standard, it may increasingly trend toward Commissioner Aguilar's view.

A few months later, Commissioners Daniel Gallagher and Michael Piwowar issued a joint dissent from another Commission action. Specifically, they argued against the SEC's recommendation to set up a fair fund and to distribute $600 million to investors in an insider-trading case, *SEC v. CR Intrinsic Investors*. This type of dispute has deep roots in terms of whether the SEC's primary focus should be on deterrence or victim recovery. The SEC's current approach seems to be to seek to achieve both wherever permitted. According to Commissioners Gallagher and Piwowar, it will be incredibly difficult and expensive to identify and compensate the victims in the *CR Intrinsic* matter, and "[t]he only guaranteed winners will be administrators who distribute the fair fund and class-action lawyers who will take a significant cut of any funds paid to their clients."[50] But the SEC appears to be increasingly hesitant to forego establishing a fair fund where there are identifiable victims and losses.

Finally, in an October 2014 speech to the Securities Enforcement Forum, Commissioner Piwowar criticized the SEC's approach of pursuing both big and small violations of the federal securities laws (*i.e.*, Chair White's "Broken Windows" policy). Prosecuting technical violations may have, in Commissioner Piwowar's words, "unnecessarily shackled" economic activity in the United States.[51] Commissioner Piwowar stated: "If every rule is a priority, then no rule is a priority."[52]

While debate and disagreement among Commissioners over enforcement priorities and on specific cases naturally occurs, the SEC has a long tradition of keeping the profound majority of these disagreements in-house. That may be increasingly difficult in the midst of heightened partisanship in Washington.

E. Enforcement Actions Under Section 20(b) of the Exchange Act

In its 2011 ruling in *Janus Capital*, the Supreme Court held (in relevant part) that only a person who *makes* a false statement can be liable for fraud under Section 10b-5(b) of the Exchange Act. The Supreme Court, however, left open the possibility that persons who violate the securities laws "by means of another person" could be held liable under Section 20(b) of the Exchange Act for misstatements they themselves did not "make."[53] Since *Janus*, SEC officials have stated that it was only a matter of when, not if, the SEC would file a lawsuit under Section 20(b) of the Exchange Act and, in 2014, that prediction came to pass with the SEC filing several cases that included claims under Section 20(b) of the Exchange Act.

On July 18, 2014, the SEC instituted a civil enforcement action in the Southern District of New York against Christopher Plummer, alleging that Plummer partnered with the CEO of two failing companies, CytoGenix, Inc. and "Company A," to violate the federal securities laws.[54] The SEC alleged that Plummer caused these companies to issue multiple press releases that falsely portrayed their value. In addition to other violations, the SEC claimed that Plummer violated Section 20(b) of the Exchange Act by "directly or indirectly and knowingly or recklessly, engag[ing] in acts through or by means of [the companies] that would have been unlawful for Plummer himself to do."[55] Plummer has yet to respond to the complaint and the SEC is expected to seek a default judgment.[56]

Alleging that the defendants acted through others to make fraudulent statements, on August 4, 2014, the SEC instituted administrative proceedings against Houston American Energy Corp. (HAEC) and its CEO, John F. Terwilliger, Jr., that included allegations under Section 20(b) of the Exchange Act.[57] The "other persons" allegedly include a stock promoter called Undiscovered Equities, Inc., an unidentified investment bank that marketed the securities to its clients and an unidentified investment analyst.[58] No specific allegation was made that these other persons were controlled by HAEC or were aware that their statements were false. A hearing before an administrative law judge was scheduled for January 12, 2015.[59]

On November 3, 2014, the SEC instituted enforcement proceedings in the United States District Court for the Northern District of Georgia against two Canadian citizens for violating Section 20(b) of the Exchange Act. The SEC alleged that the defendants engaged in a pump-and-dump scheme involving shares in a coal mining company.[60] The SEC's Section 20(b) of the Exchange Act claim rests on the defendants' alleged "commissioning, funding, and arranging" for the distribution of false information through research and promotional reports authored by third parties.[61] The SEC is seeking permanent injunctions, disgorgement and civil monetary penalties.

While a May 2014 case from the Fourth Circuit called into question whether *Janus* applies outside of the private litigation context,[62] we believe the better interpretation is that *Janus* clearly applies to SEC enforcement proceedings, as numerous cases have already held.[63] Accordingly, assuming these Section 20(b) cases progress in litigation, they could lead to additional guidance on how Section 20(b) of the Exchange Act will be interpreted and whether it could provide a lasting enforcement tool for the SEC to work around the limitations implied by *Janus*.

F. Focus on the Disclosure Obligations of Municipalities

As we discussed in our *Securities Enforcement 2014 Mid-Year Review*, on March 10, 2014, the Enforcement Division announced the Municipalities Continuing Disclosure Cooperation (MCDC) Initiative to encourage municipal issuers and underwriters to self-report violations of Rule 15c2-12 of the Exchange Act in exchange for "favorable settlement terms."[64] The terms are offered for self-reporting inaccurate statements in bond offerings about prior compliance with disclosure obligations. Since the Initiative's enactment, the SEC has seen a high degree of participation by issuers and underwriters.[65] However, the SEC staff has indicated that it will vigorously pursue issuers and underwriters that elect not to participate in this program.[66] While the offer applies to a fairly narrow category of misconduct, this initiative is already having an impact.

The SEC instituted its first settled administrative proceeding as part of the MCDC Initiative on July 8, 2014 against Kings Canyon Joint Unified School District (Kings Canyon), alleging that Kings Canyon had violated Section 17(a)(2) of the Securities Act. According to the SEC, Kings Canyon obligated itself in connection with three municipal bond offerings between 2006 and 2007 to disclose annually certain financial information, operating data and event notices. In November 2010, Kings Canyon stated in yet another public bond offering that, during the prior five years, it had complied in all material respects with its disclosure obligations. This, however, was not accurate, according to the SEC, because Kings Canyon had allegedly violated Rule 15c2-12 of the Exchange Act during the prior five years. Kings Canyon settled the Commission's action by consenting to an order to cease and desist from committing or causing any future violations of Section 17(a) of the Securities Act and agreed to, among other things, adopt written policies for its continuing disclosure obligations.[67]

On August 11, 2014, the Commission filed settled administrative proceedings against the State of Kansas for allegedly failing to disclose a multi-billion dollar pension liability in its bond offering documents, which the SEC concluded created a repayment risk for investors in those bonds.[68] These allegations are similar to the allegations filed against the State of New Jersey in 2010[69] and the State of Illinois in 2013[70] for disclosures that allegedly failed to disclose that the states' pension systems were significantly underfunded. As those states had before it, Kansas (without admitting or denying liability) consented to an order requiring it to cease and desist from committing future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and to adopt new policies and procedures that will improve its disclosures concerning pension liabilities.

Relatedly, the Office of Compliance Inspections and Examinations (OCIE) launched a two-year examination initiative in August 2014 that is directed at municipal advisors. Municipal advisors are newly regulated by the SEC pursuant to rules promulgated under Dodd-Frank and OCIE will examine the advisors' compliance with fiduciary duties to clients; recordkeeping obligations; and compliance with other rules pertaining to disclosure, fair dealing, supervision and employee qualifications and training. OCIE will no doubt coordinate closely with the Enforcement Division in the event that potential violations of the federal securities laws are identified.

G. Enforcement Sweeps

One of the byproducts of the SEC's "Broken Windows" policy is that the Enforcement Division initiates enforcement sweeps predicated on non-scienter or negligence based technical violations against multiple defendants at the same time. These sweep cases are often brought to send a signal to the industry that every area of the federal securities laws is worth enforcing and that the SEC is always watching. The SEC filed five enforcement sweeps in the second half of 2014, ensnaring about 80 corporate and individual defendants.

On September 10, 2014, the SEC charged six publicly-traded companies, and 28 officers, directors and major shareholders with failing to timely report information about their personal holdings and transactions in company securities.[71] Sections 13(a) and 16(a) of the Exchange Act and related rules require certain company insiders to report such transactions to the SEC, but these provisions had rarely been pursued as stand-alone enforcements in recent years. The SEC said that it used quantitative data sources and algorithms to identify these insiders, who allegedly filed their required disclosures weeks, months and sometimes years late. Remarking on the charges, Enforcement Director Ceresney said, "Officers, directors, major shareholders, and issuers should all take note: inadvertence is no defense to filing violations, and we will vigorously police these sorts of violations through streamlined actions." Of the 34 respondents named in the orders, 33 of them settled the claims and agreed to pay penalties in the aggregate amount of $2.6 million.

Less than one week later, on September 16, the SEC charged 19 investment advisory and private equity firms and one individual trader for participating in the public offering of particular stocks after short-selling them within a restricted period.[72] Rule 105 of Regulation M of the Exchange Act typically prohibits firms or individuals from short-selling a stock within five business days of participating in an offering for that same stock.[73] The SEC instituted settled administrative proceedings against each respondent for Rule 105 violations, cumulatively collecting more than $9 million in disgorgement and penalties. This was the SEC's second Rule 105 sweep since announcing an enforcement initiative in this area last year, when a prior sweep resulted in charges against 23 firms.[74]

On November 3, 2014, the SEC sanctioned 13 securities dealers for allegedly violating Municipal Securities Rulemaking Board Rule G-15(f), the first enforcement actions under the rule.[75] Rule G-15(f) establishes minimum-denomination requirements for non-investment grade municipal bonds, with the aim of minimizing purchases by retail customers. In this case, the SEC alleged that the dealers sold higher-risk bonds issued by the Commonwealth of Puerto Rico to customers below the minimum denomination of the issue, in violation of the rule. In a press release, the SEC remarked that it conducts "frequent surveillance of trading in the municipal bond market and will penalize abuses that threaten retail investors." Each firm agreed to settle the SEC's charges (without admitting or denying liability) and pay penalties ranging from $54,000 to $130,000, for a cumulative total of $883,200.

On November 5, 2014, the SEC initiated settled enforcement proceedings against ten public companies for allegedly violating Section 13(a) of the Exchange Act and related rules, which require companies to disclose transactions resulting in the dilution of their stock.[76] The SEC alleged that the respondents failed to file a Form 8-K to inform investors that they had entered transactions or financing arrangements resulting in the sale of new common stock constituting at least five percent of outstanding shares. To settle the allegations (without admitting or denying liability), the companies agreed to pay penalties ranging from $25,000 to $50,000, for a cumulative total of $350,000.

Finally, as discussed in greater detail below, on December 8, 2014, the SEC initiated settled proceedings against eight small accounting firms for allegedly violating auditor independence rules by simultaneously preparing financial statements and audit services to their broker-dealer clients.[77] The SEC alleged that the accounting firms did not remain properly independent of their broker-dealer clients, under criteria established by Rule 2-01(c)(4)(i) of Regulation S-X (which Rule 17a-5 of the Exchange Act makes applicable to the audits of broker-dealer financial statements). The accounting firms agreed to settle the allegations by collectively paying $140,000 in penalties.

These enforcement sweeps are likely to continue into 2015, as they provide the SEC with an efficient way to pursue its "Broken Windows" policy. Although the SEC has not given any guidance as to which violations will be singled out for such sweeps, these cases demonstrate that securities-markets participants should not assume any rule is too minor for the attention of the Enforcement Division.

III. Selected Significant Judicial Developments

As we discussed in our *Securities Enforcement 2014 Mid-Year Review*, the first half of 2014 saw several significant judicial developments impacting the work of the Enforcement Division, including the Supreme Court's decisions in *Chadbourne & Parke LLP v. Troice* and *Halliburton Co. v. Erica P. John Fund, Inc*. and the Eleventh Circuit's decision in *United States v. Esquenazi*. In the second half of 2014, federal courts have continued to shape and influence the work of the Enforcement Division. We discuss certain of these cases below.

A. The Second Circuit Narrows Scope of Remote Tippee Liability in Landmark Insider Trading Decision

On December 10, 2014, a unanimous panel of the Second Circuit Court of Appeals issued a decision in *United States v. Newman* that vacates the criminal convictions of two hedge fund portfolio managers, Todd Newman (who was represented by Shearman & Sterling LLP) and Anthony Chiasson.[78] This decision provides much needed clarity to the contours of remote tippee liability for criminal insider trading actions and will also have considerable implications on the SEC's enforcement actions.

The defendants in *Newman* were two remote tippees who were three or four steps removed from the alleged source of the inside information and who argued at trial that they had no basis to know how the information had been obtained. The Second Circuit dismissed the criminal charges, finding (i) that the jury instructions were flawed because, contrary to the Supreme Court's ruling in *Dirks v. SEC*, 463 US 646 (1983), the instructions did not require the government to establish that the defendants knew that the original insiders had provided the inside information in breach of a fiduciary duty *in exchange for a personal benefit*; and (ii) the evidence was insufficient to establish that the information had been provided in exchange for a personal benefit within the meaning of *Dirks*, let alone that the defendants knew of the personal benefit. In arriving at this decision, the Second Circuit concluded that, to find a tippee criminally liable for insider trading, federal prosecutors must prove all of the following elements: (i) the insider had a fiduciary duty; (ii) the insider breached that duty by disclosing confidential information to a tippee; (iii) the tip was made in exchange for a personal benefit, meaning a benefit "of some consequence"; (iv) the tippee knew of the tipper's breach (*i.e.*, the tippee knew the information was confidential and divulged for a personal benefit); and (v) the tippee nevertheless used that information to make a trade.

Following the decision, Chair White opined that "[the Second Circuit] took . . . an overly narrow view of the insider trading law and that is a concern."[79] Indeed, while the SEC of course has a lower burden of proof than federal prosecutors, the decision could still have a significant impact on SEC enforcement actions. The most significant impact of the *Newman* decision on SEC insider trading actions will likely be the ruling as to what constitutes a "personal benefit," a holding that should apply equally in criminal and civil insider trading cases.

The "personal benefit" element in classical insider trading cases had in essence become an after-thought in recent years for the SEC and federal prosecutors alike, as they argued that a personal benefit could be inferred from the personal relationship between a tipper and tippee.[80] In *Newman*, for example, the government argued that the personal benefit element was established by showing that the insiders were "friends" with the tippees or had received "career advice." That was not enough, said the Second Circuit. "While our case law at times emphasizes language from *Dirks* indicating that the tipper's gain need not be *immediately* pecuniary, it does not erode the fundamental insight that, in order to form the basis for a fraudulent breach, the personal benefit received in exchange for confidential information must be of some consequence. . . . [a]n inference [of a benefit] is impermissible in the absence of proof of a meaningfully close personal relationship that generates an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature."[81]

On January 23, 2015, the US Department of Justice (Justice Department) filed a petition in *Newman* for a rehearing *en banc*, arguing that the Second Circuit panel erred in how it defined the "personal benefit" requirement. That petition remains pending. Moreover, the Justice Department has already taken the position in another insider trading case that the impact of *Newman* should be limited to insider trading cases brought under the "classical theory" of insider trading, rather than "misappropriation" cases, because a personal benefit has not traditionally been required in misappropriation cases. Neither of these questions is settled as of publication. Accordingly, it remains to be seen how the *Newman* decision and any subsequent judicial developments will affect the enforcement priorities of the Justice Department and the SEC.

B. Supreme Court Update

1. Whitman v. United States

On November 10, 2014, the United States Supreme Court denied hedge fund founder Douglas Whitman's petition for *certiorari* over his criminal conviction for insider trading.[82] While the decision to deny *certiorari* was not particularly noteworthy (and is of no precedential value), Justices Scalia and Thomas issued a rare comment that accompanied the denial of *certiorari* that, if taken to its logical conclusion, could have a significant impact on the level of deference granted to agencies, such as the SEC, when interpreting the statutes they enforce.

The issue arose because the Second Circuit upheld Whitman's 2012 conviction for insider trading. In doing so, the *Whitman* court referenced a prior Second Circuit decision in which the court had held that a defendant engages in insider trading in violation of Section 10(b) of the Exchange Act when he trades "while in knowing possession of non-public information material to those trades,"[83] a standard derived from the SEC's interpretation of Section 10(b) under Rule 10b5-1. In Justice Scalia's note attached to the denial of *certiorari*, Justice Scalia, with Justice Thomas joining, noted that the case raised the related question of whether "a court owe[s] deference to an executive agency's interpretation of a law that contemplates both criminal and administrative enforcement."[84] Justice Scalia suggested that federal administrators may be taking advantage of ambiguities in the federal laws to "in effect create (and uncreate) new crimes at will, so long as they do not roam beyond ambiguities that the laws contain." But deferring to agency interpretations of laws that contemplate criminal enforcement could "upend ordinary principles of interpretation," Justice Scalia added, because "[t]he rule of lenity requires interpreters to resolve ambiguity in criminal laws in favor of defendants." Deferring to an agency's "expansive views of these statutes," Justice Scalia stated, would "turn their normal construction upside-down, replacing the doctrine of lenity with a doctrine of severity."[85] According to Justice Scalia, "Congress cannot, through ambiguity, effectively leave [its] function [to define crimes and fix punishments] to the courts or to administrative bureaucracy."[86]

Since Justice Scalia's note has no precedential value, it is unclear how Justice Scalia or the other Justices would rule on such an issue if properly presented to the Supreme Court. Nevertheless, it undoubtedly raises an interesting question as to the amount of deference owed to the SEC (or any other administrative agency) when interpreting statutes – such as Section 10(b) of the Exchange Act – that carry both civil and criminal penalties. Indeed, if a future case were to present this question and the Supreme Court were to adopt Justice Scalia's suggested reasoning, it could drastically limit the SEC's ability to shape the laws that it is charged with enforcing (particularly where a statute carries criminal penalties). Furthermore, because this logic would not be limited to insider trading, such a position could have a far-reaching impact on virtually all of the federal securities laws. Indeed, it seems to question the notion of *Chevron* deference to agency interpretation.

2. *Esquenazi v. United States*

On October 6, 2014, the United States Supreme Court denied a *writ of certiorari* for Joel Esquenazi and Carlos Rodriguez, two ex-executives of Terra Telecommunications Corp., who were convicted of bribing officials at a Haitian state-owned telecom company under the FCPA.[87]

As discussed in our *Securities Enforcement 2014 Mid-Year Review*, on May 16, 2014, the Eleventh Circuit issued an important decision of first impression on the definition of "government instrumentality" and who qualifies as a "foreign official" for the purposes of the FCPA.[88] In *United States v. Esquenazi*, Joel Esquenazi and Carlos Rodriguez were appealing from conspiracy, FCPA, wire fraud and money laundering convictions for bribing officials at the state-owned Telecommunications D'Haiti, S.A.M. (Teleco), which provides telecommunications services in Haiti.[89] Esquenazi and Rodriguez argued that the bribed officials were not "foreign officials" under the FCPA because Teleco was not part of a foreign government but rather a commercial enterprise, which could not qualify as an "instrumentality" of a foreign government.

Rejecting Esquenazi's and Rodriguez's arguments, the Eleventh Circuit instead embraced a broad definition of "government instrumentality" by defining a government instrumentality as (i) an entity controlled by the government of a foreign country that (ii) performs a function the controlling government treats as its own.[90] The Eleventh Circuit further listed a non-exhaustive set of factors to consider in assessing the "control" and "function" elements.[91] Following its newly adopted definition, the Eleventh Circuit affirmed the convictions and determined that Teleco was indeed an instrumentality of the Haitian government, being controlled by the Haitian government and performing a function that Haiti treated as its own.

The Eleventh Circuit's decision and the Supreme Court's denial of *certiorari* vindicate (at least for now) the view long held by the SEC (and the Justice Department). For further discussion of *Esquenazi*, please see our publication titled, *FCPA Digest: Recent Trends and Patterns in the Enforcement of the Foreign Corrupt Practices Act.*

IV. SEC Trial Update

The SEC's trial record for 2014 remained mixed and reflected a considerable slowdown in high-profile trials from 2013. As noted in our *Securities Enforcement 2014 Mid-Year Review*, in the first half of 2014, the SEC won two federal court trials (including the *Wyly* fraud case), had four trial losses and had four mixed verdicts.[92] In the second half of 2014, the SEC had four outright trial victories, one loss (the *Wyly* insider trading case) and no mixed verdicts, bringing the 2014 totals to five outright trial victories, four losses and five mixed verdicts (if we treat the two divergent verdicts involving the Wyly brothers, discussed below, as a single mixed result).[93]

A. Trial Wins

On August 8, 2014, the SEC won an outright victory when a jury in the United States District Court for the Middle District of Florida found Edward W. Hayter liable for orchestrating a pump-and-dump scheme in violation of Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.[94] The SEC alleged that Hayter pumped up the price of the stock of BIH Corporation (BIH) in 2008 and 2009 by releasing false information about BIH's operations, stock and dividends, even going so far as to create a fictitious experienced businessman who purportedly ran BIH.[95] As part of the scheme, Hayter and his associate Wayne Burmaster Jr. allegedly distributed BIH's stock illegally to various entities, which then dumped more than $1 million of BIH stock and divided the sales proceeds. The SEC sued Hayter and several others in 2010. The Middle District of Florida entered default judgments against all other defendants, leaving Hayter as the sole defendant at trial. Following the four-day trial and verdict in the SEC's favor on all counts, Enforcement Director Ceresney called it "yet another victory in the Commission's multi-pronged approach to combating microcap fraud."[96]

Less than a week after its victory against Hayter, on August 13, 2014, the SEC prevailed again at trial when a jury in the United States District Court for the District of Massachusetts found Benjamin Lee Grant and his advisory firm, Sage Advisory Group LLC (Sage), liable for fraud.[97] The SEC alleged that Grant lied to his brokerage customers to induce them to transfer their assets to Sage. Grant had previously been a registered representative of broker-dealer Wedbush, where he handled customer accounts totaling over $100 million in assets. After Grant resigned from Wedbush in September 2005, he allegedly falsely informed his former Wedbush customers that their accounts were being moved to Sage at the suggestion of their investment advisor who was no longer willing to manage their assets at Wedbush. Grant also allegedly informed his clients that the fee arrangement would change from a 1% management fee plus commissions to a 2% wrap fee, while allegedly failing to inform his clients that the switch to Sage would result in significant savings that flowed directly to Grant and Sage. These savings purportedly enabled Grant to more than double his own compensation. On August 13, 2014, after deliberating for two hours, the jury found that Grant and Sage violated Sections 204A and 206(1), (2) and (4) of the Advisers Act and Rules 204A-1 and 206(4)-7 thereunder. Enforcement Director Ceresney stated that this case "sends an important message to investment advisors that they must put the needs of their clients before their own. When brokers decide to convert their business to an investment advisory firm and want customers to follow them, they owe a duty of full and fair disclosure to those prospective advisory clients."[98] The court will later determine what sanctions to impose against the defendants.

On October 14, 2014, the SEC scored yet another trial victory when a federal jury in the United States District Court for the Eastern District of New York found the former chairman and co-founder of an internet company, iShopNoMarkup.com (iShop), liable for securities fraud and illegal sale of unregistered securities.[99] The SEC alleged that the defendant, Anthony M. Knight, and others conducted a fraudulent securities offering scheme during 1999 and 2000 that defrauded over 350 investors. The SEC charged that iShop "distributed offering memoranda and other documents to investors that misrepresented, and failed to disclose, material information about iShop's business operations," while Knight and others "made oral misrepresentations to investors to persuade them to invest in iShop stock." Also, the SEC alleged that iShop failed to file a registration statement for the sale of these securities. Ultimately, the Eastern District of New York entered default judgments against all defendants except Knight, leaving Knight as the sole remaining defendant for trial. The jury found that Knight violated Sections 5(a), 5(c) and 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The SEC is seeking an injunction, disgorgement, prejudgment interest, civil monetary penalties and an officer and director bar. Judge Denis Hurley, who presided over the trial, will determine the remedies and sanctions to be imposed against Knight.

On November 7, 2014, a jury in the United States District Court for the District of New Mexico returned a favorable verdict for the SEC in a misappropriation case against Santa Fe businessman, Charles Kokesh.[100] The SEC alleged that Kokesh misappropriated $45 million of his investor funds by improperly taking the money out of four business development companies to pay fees and expenses to himself and others involved in his investment funds, in violation of Section 37 of the Investment Company Act of 1940 (Investment Company Act) or, in the alternative, Section 57 of the Investment Company Act, Sections 13(a) and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-13 and 14a-9 thereunder, and Sections 205, 206(1) and 206(2) of the Advisers Act.[101] Sections 37 and 57 of the Investment Company Act cover larceny and embezzlement and unlawful transactions with certain affiliates, respectively. Section 13 of the Exchange Act pertains to the reporting and recording provision, and Sections 205 and 206 of the Advisers Act address prohibited investment advisory contracts and prohibited transactions for investment advisors. Kokesh allegedly hid reimbursements he arranged to be paid to himself by providing misleading proxy statements to investors and filing false reports with the SEC on behalf of the investment vehicles.

B. Trial Loss

As we discussed in our *Securities Enforcement 2014 Mid-Year Review*, the SEC won a major trial victory on May 12, 2014 against the Wyly brothers. However, about two months later, on July 10, 2014, the SEC also lost an insider trading trial against the Wyly brothers.[102]

Judge Shira Scheindlin of the Southern District of New York dismissed the SEC's insider trading claim against Sam Wyly and the estate of his late brother, Charles Wyly, Jr., following a bench trial, concluding that the SEC had failed to prove that the Wyly brothers traded on material non-public information.[103] The SEC argued that the Wyly brothers traded on material non-public information concerning the sale of Sterling Software, Inc. (Sterling Software), a software company controlled by the Wyly brothers. In October 1999, the Wyly brothers allegedly executed a swap deal to give them control of two million shares of Sterling Software. The SEC argued that by the summer of 1999, the brothers (who served as chairman and vice-chairman of Sterling Software at that time) had already decided to sell the company, and they traded on that advance knowledge when they engineered the sale of Sterling Software at a premium in November 1999. Judge Scheindlin concluded, however, that the Wylys' "desire" to sell Sterling Software in the summer of 1999 was not material as a matter of law and could not form the basis of insider trading liability. Critically, the court found no evidence that the Wyly brothers approached any necessary third party about selling Sterling Software before entering into the swap transactions in October. Accepting the SEC's theory, the court concluded, "would mean extending the definition of materiality to cover the thought process and personal desires of any director or shareholder with substantial control over a company," which the court was unwilling to do.[104]

In sharp contrast to its federal court trial record, it has been reported that, in FY2014, the SEC won all six of its contested administrative proceedings that were tried to verdict.[105] However, Enforcement Director Ceresney has emphatically stated that the increased use of administrative actions is not "a response to our losing jury trials."[106]

C. Wyly Judgment

While we generally do not report on judgments obtained post-trial, the judgment award following the SEC's trial win against the Wyly brothers in *Wyly I* merits particular attention.

On September 25, 2014, the Southern District of New York ordered the Wyly brothers to pay one of the largest penalties ever imposed on individual defendants in an SEC case.[107] As noted above, in May 2014 a jury found Sam Wyly and the estate of Charles Wyly, Jr. liable for fraud over the concealment of their control over offshore trusts that sold shares of four public companies for which they were board members.[108] Judge Scheindlin ordered the Wyly brothers to pay $187.7 million in disgorgement and an undetermined amount of prejudgment interest for the entire period of fraud to be calculated at the lower of the average LIBOR or IRS underpayment rate for each year, taking into account that the SEC was at least partially responsible for the delay in litigation.[109] According to Judge Scheindlin, the total amount awarded, including prejudgment interest, will be between $300 and $400 million dollars.[110] This "staggering" award, Judge Scheindlin noted, equals approximately ten percent of the total penalties and disgorgement ordered in SEC enforcement cases nationwide last year.[111]

What is particularly interesting about the award is that Judge Scheindlin calculated the amount of disgorgement by reference to the taxes avoided by the Wylys, even though the IRS has sole jurisdiction to collect unpaid taxes. The court rejected the Wyly brothers' argument that such an approach to disgorgement was beyond the SEC's statutory authority, finding that the relief was both authorized and equitable. Following an additional three-day hearing, on December 19, 2014, Judge Scheindlin concluded that the remedy imposed by the September 25 order was the best measure of the Wyly brothers' ill-gotten gains.[112] However, in the December 19 order, Judge Scheindlin also provided an alternative disgorgement calculation based on trading profits, which Judge Scheindlin stated would be imposed only "in the event that a higher court disagrees with the measure of disgorgement imposed by the September 25 Order." Judge Scheindlin awarded prejudgment interest "calculated at the lower of the average LIBOR or IRS underpayment rate for each year, beginning at the end of the Fraud Period [(*i.e.*, February 23, 2005)]" for each of the four public companies for which the Wylys served as board members.[113] Based on the court's alternative disgorgement measure, the SEC calculated a total disgorgement amount of $174,967,561 ($122,574,381 in ill-gotten gains and $52,393,180 in prejudgment interest).[114]

V. Selected Significant Investigations and Cases

As we discussed above, the SEC filed an all-time record number of 755 cases in FY2014. We highlight below some of the more important and novel of the 755 cases filed in 2014.

A. Insider Trading

As noted above, the two most significant developments in the SEC's enforcement of insider trading laws from 2014 were the *Newman* decision and the number of cases that have been brought as administrative proceedings. But those were hardly the only developments, as insider trading remains a priority for the SEC. In FY2014, the SEC brought 52 insider trading enforcement actions, an increase from the 44 filed in FY2013.[115] Indeed, the SEC's activity level in this area shows no sign of fading. Below are selected highlights from the second half of the year.

1. *Insider Tipping Cases*

On July 11, 2014, the SEC filed a civil injunctive action in the District of Massachusetts against a group of golfing friends – Eric McPhail, Douglas Parigian, John Gilmartin, Douglas Clapp, James Drohen, John Drohen and Jamie Meadows for alleged insider trading. The SEC claimed that McPhail repeatedly obtained material non-public information about expected earnings, contracts and other major pending corporate developments at American Superconductor Corporation, a Massachusetts-based wind energy technology company, from a corporate insider who was also a member of the country club. Allegedly, McPhail and his co-defendants traded on material non-public information, earning profits in excess of $554,000. The case is ongoing for McPhail, Parigian, and Meadows, but Gilmartin, Clapp and the Drohens have settled the claims against them. Without admitting or denying the Commission's allegations, Gilmartin, Clapp, and the Drohens consented to the entry of judgments permanently enjoining them from future violations of the federal securities laws and ordering that each defendant pay disgorgement of between $8,972 and $23,713, as well as penalties equal to their respective disgorgement awards and prejudgment interest.[116]

On August 18, 2014, the SEC initiated a civil injunctive action in the District of Massachusetts against Patrick O'Neill, a former senior vice president at Eastern Bank, and his friend, Robert Bray, for alleged insider trading. O'Neill purportedly learned through his job responsibilities that Eastern Bank planned to acquire Wainwright Bank & Trust Company, and O'Neill tipped Bray, who traded on the information for a profit of $300,000. While the SEC action is ongoing, O'Neill pled guilty on December 4, 2014 to related criminal charges brought by the US Attorney for the District of Massachusetts.[117]

On October 28, 2014, the SEC settled insider trading allegations against Rajarengan "Rengan" Rajaratnam, the former hedge fund manager who, on July 8, 2014, was acquitted of criminal insider trading charges in the first insider trading loss in recent years for the US Attorney's Office for the Southern District of New York. Both the US Attorney's Office and the SEC had alleged that Rengan participated in the "insider trading scheme" perpetrated by his brother, Raj Rajaratnam, which the SEC alleged resulted in nearly $100 million in illicit gains. Rengan's acquittal obviously had a different impact on the SEC, given its lower burden of proof. Indeed, notwithstanding his acquittal in the criminal case, Rengan agreed to pay $372,264.42 in disgorgement, $96,714.27 in prejudgment interest and a $372,264.42 civil penalty for a total of $843,243.11 to settle the SEC's claims. Rengan further agreed to be barred from association with any investment advisor, broker-dealer or transfer agent for at least five years. He neither admitted nor denied liability.[118]

Additional developments may also be forthcoming in the SEC's long-stayed administrative proceedings against Steven Cohen of SAC Capital Advisors, L.P. (SAC Capital Advisors). In its July 19, 2013 Order Initiating Proceedings against Cohen, the SEC alleged that the hedge fund manager failed to supervise (among others) Michael Steinberg and Mathew Martoma, both of whom were convicted of insider trading in connection with their trading activities at SAC Capital Advisors and its subsidiaries. The thrust of the SEC claims is that Cohen should have been prompted to investigate the sources of the purportedly "highly suspicious information" that Cohen received from Steinberg and Martoma.[119] However, the administrative law judge assigned to the matter has repeatedly agreed to federal prosecutors' requests that the action be stayed pending the outcome of the *Newman* appeal discussed above, stating that the outcome of the appeal may have a bearing on an appeal from the conviction of Michael Steinberg and, as a result, on the charges the SEC has brought against Cohen. In light of the recent Second Circuit ruling in *Newman*, Steinberg will likely argue that *Newman* requires that his conviction be vacated, and Cohen may argue that the decision has still broader implications. At this point, it remains to be seen how, if at all, the SEC will adjust its proceedings against Cohen in light of *Newman*, but the decision will likely make the Commission's case more difficult to prove.

2. *Misappropriation by Third-Party Service Providers*

The SEC also brought a number of misappropriation cases in which non-public company information was allegedly shared or traded on by third-party service providers.

On July 22, 2014, the SEC filed a settled civil injunctive action in the Southern District of New York against Cedric Cañas Maillard, a former high-ranking official at a financial institution, for allegedly trading on non-public information concerning the plans of BHP Billiton, a client of the financial institution, to acquire Potash Corporation. Cañas and a friend, Julio Marín, allegedly made illicit profits of $917,239 and $43,566 respectively. Under the terms of the settlement, without admitting or denying liability, Cañas agreed to pay $960,806 in disgorgement and a $960,806 civil penalty for a total of $1,921,612, and agreed to be permanently enjoined from violating Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder.[120] Litigation against Marín continues. Notably, another former analyst from the same financial institution, Juan Jose Fernández García, settled related insider trading charges on April 25, 2011, paying more than $576,033 in disgorgement of illicit profits and a civil penalty of $50,000 for a total of $626,033.[121]

On August 26, 2014, the SEC filed a civil injunctive action in the Southern District of New York against Michael Anthony Dupre Lucarelli, a director of market intelligence at a New York investor relations firm, for allegedly trading on material non-public information gleaned from his clients' draft press releases. According to the SEC, Lucarelli routinely reviewed and executed trades based on clients' draft press releases, making almost $1 million in illicit profits.[122] To avoid detection, Lucarelli allegedly concealed the nature of his employment on trading account applications. The US Attorney for the Southern District of New York brought parallel charges against Lucarelli, including 13 counts of insider trading, which remain pending.[123]

Similarly, on September 19, 2014, the SEC filed a civil injunctive action in the District of New Jersey against Frank Tamayo for purportedly acting as a middleman between Vladimir Eydelman, a stockbroker, and Steven Metro, a managing clerk at the New York office of a large international law firm. Earlier in the year, on March 19, 2014, the SEC had instituted enforcement action against Eydelman and Metro. As noted in our *Securities Enforcement 2014 Mid-Year Review*, the SEC alleged that the three men perpetrated a $5.6 million insider trading scheme involving illegal tips shared via napkins or post-it notes at Grand Central Terminal.[124] Tamayo is alleged to have received material non-public information about 13 corporate deals involving the law firm's clients and to have tipped Eydelman, who used the information to trade for himself, Tamayo and other customers.[125] The US Attorney for the District of New Jersey filed parallel criminal charges against Tamayo on September 19, 2014, having previously filed parallel criminal charges against Metro and Eydelman on March 19, 2014.

3. *Trading In Advance of Market-Moving Events*

On September 30, 2014, the SEC instituted administrative proceedings against Filip Szymik and Jordan Peixoto. Allegedly, Szymik and Peixoto traded on material, non-public information concerning the plans of Bill Ackman, founder of Pershing Square Management L.P. (Pershing Square), to announce that he believed Herbalife to be a pyramid scheme and was shorting the stock. The SEC alleged that Szymik learned of Ackman's plans from his roommate, a Pershing Square analyst, and then proceeded to pass on the information to Peixoto. The SEC claimed that Peixoto bought put options in Herbalife in advance of Ackman's announcement based on this tip, which he later sold for $47,100 in profits. Without admitting or denying liability, Szymik settled the SEC's allegations by agreeing to cease and desist from further violations of the federal securities laws and to pay a $47,100 civil penalty. But Peixoto was prepared to litigate until the SEC voluntarily dismissed the charges on December 15, 2014.

While the SEC's allegations against Peixoto could be construed as a straightforward case of trading on secret, "market-moving information," it is unclear what duty the SEC claimed Peixoto breached by trading on this allegedly inside information, as there was no allegation that Peixoto agreed to keep the information confidential. Moreover, there was no allegation that the Pershing Square analyst had provided the information in exchange for any personal benefit. Indeed, the SEC stated that its decision to dismiss the proceedings was due to the absence of two key witnesses; counsel for Peixoto, however, suggested the Second Circuit's ruling in *Newman* may have been the determinative factor, as the SEC had not alleged with any specificity what personal benefit the Pershing Square analyst received in exchange for tipping Szymik.[126] Notably, Peixoto (who was not a registered person) had also brought suit against the SEC to enjoin the administrative proceeding against him, arguing that the SEC's administrative proceeding violated his constitutional due process and equal protection rights, but that claim is now moot.[127]

B. Financial Reporting Fraud

Financial reporting fraud was a key enforcement priority for the SEC in FY2014 with the Commission adopting new methods for identifying and investigating potential wrongdoing in this area. In total, the SEC brought 99 financial fraud cases in FY2014, a 46% increase on cases brought in FY2013. On October 1, 2014, Chair White credited the significant jump in financial reporting fraud enforcement to the Task Force's "new approaches and efforts," including the use of "new sources of data on financial reporting" and "innovative analytical tools to more quickly identify potential issues in financial statements and disclosures."[128] Many of the financial reporting fraud cases filed in FY2014, however, appear to be fairly straightforward cases similar to those in prior years, and many reflect the conclusion of long-standing investigations.

For example, on July 30, 2014, the SEC instituted administrative proceedings against the CEO, Marc Sherman, and the CFO, Edward Cummings, of Florida-based QSGI Inc. (QSGI) for alleged accounting fraud and internal controls violations. The SEC claimed that Sherman and Cummings certified, in a management report accompanying QSGI's FY2008 annual report, that (1) Sherman participated in a managerial assessment of internal controls even though he had not and (2) all significant deficiencies in those controls were disclosed to outside auditors even though they were not. Sherman and Cummings were charged with violating Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-4, 13b2-1 and 13b2-2 thereunder, and for causing QSGI to violate Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. Cummings, without admitting or denying liability, agreed to a $23,000 civil penalty, a five-year ban on practicing as a public accountant and a five-year ban on acting as an officer or director of a publicly-traded company. Sherman's case remains pending.[129]

Less than a week later, the SEC instituted administrative proceedings against HAEC and its CEO, John Terwilliger, for allegedly making false representations in HAEC's SEC filings in 2009 and 2010. HAEC, the SEC alleged, improperly valued its interests in a Colombian exploration concession at more than $100 per share. This valuation allegedly contributed to HAEC's success in a $13 million public offering and a 400% increase in HAEC's stock price. The SEC alleged that HAEC and Terwilliger thus violated Sections 10(b) and 20(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 17(a) of the Securities Act. Relatedly, the SEC instituted civil administrative proceedings against stock promoter Kevin McKnight and his company, Undiscovered Equities Inc., alleging violations of Section 17(b) of the Securities Act for disseminating HAEC's purportedly fraudulent claims. These proceedings are ongoing.[130]

On August 22, 2014, the SEC instituted administrative proceedings against AirTouch Communications Inc. (AirTouch), a telecommunications equipment company, Hideyuki Kanakubo, its former President and CEO and Jerome Kaiser, its former CFO. The SEC alleged that in the third quarter of 2012, Kanakubo and Kaiser caused AirTouch to improperly recognize over $1 million in revenue based on inventory that had been shipped to a warehouse for storage.[131] The SEC further alleged that AirTouch and Kanakubo defrauded an investor into giving a $2 million loan based on the same allegedly fraudulent representations. The proceedings, in which the defendants are charged with violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, are ongoing.[132]

On September 24, 2014, the SEC instituted settled administrative proceedings against Saba Software, Inc. (Saba Software), a technology consulting company, and Saba Software Vice Presidents, Sajeev Menon and Patrick Farrell. According to the SEC, Farrell and Menon purportedly oversaw a massive financial reporting fraud at Saba Software under which employees were directed to falsely report hours worked so that the company would achieve quarterly revenue and margin targets. The SEC alleged that Menon directed consultants to pre-charge time to their timesheets and that Farrell directed them to "eat" their hours when the firm's budget had been overrun. Without admitting or denying liability, both Farrell and Menon agreed to cease and desist from committing or causing future violations of relevant provisions of the securities laws. Farrell agreed to pay disgorgement of $31,832, prejudgment interest of $3,185 and a penalty of $50,000 for a total of $85,017. Menon agreed to pay disgorgement of $17,875, prejudgment interest of $1,746 and a civil penalty of $50,000 for a total of $69,621. Also, Saba Software, without admitting or denying liability, agreed to pay a civil penalty of $1.75 million. In a separate action settled on the same day, Saba Software CEO Babak "Bobby" Yazdani, although not charged with misconduct, was ordered to reimburse the company $2.5 million in bonuses and stock profits received while the alleged accounting fraud was ongoing.[133]

On September 25, 2014, the SEC instituted settled administrative proceedings against JDS Software Group Inc. (JDS) for allegedly failing to properly recognize and report revenue from certain software license agreements sold to customers. According to the SEC's allegations, JDS's internal accounting controls failed to consider information needed for determining "vendor specific objective evidence of fair value," a critical component of revenue recognition for software companies that determines the proper timing of recognizing revenue under software licensing agreements. The SEC alleged that due to this flaw in JDS's controls, some of JDS's financial statements for 2008 to 2011 were materially overstated. Without admitting or denying liability, JDS agreed to a civil penalty of $750,000.[134]

Finally, on October 27, 2014, the SEC instituted settled administrative proceedings against Great Lakes Dredge & Dock Corporation (Great Lakes) for allegedly misstating revenue during the second and third quarters of 2012. According to the SEC's allegations, Great Lakes' internal controls failed to properly treat pending transactions, causing transactions to prematurely appear as though final. This practice purportedly caused Great Lakes to overstate its revenue for two consecutive quarters. Without admitting or denying liability for its purported violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, Great Lakes agreed to pay a civil penalty of $150,000 and consented to the entry of a cease-and-desist order.[135]

Each of these cases seemingly reflects both traditional theories and traditional investigative techniques. But regardless of whether these and other cases filed in 2014 were novel, it is clear that the SEC will continue to enhance its abilities to investigate financial reporting fraud, and it will remain a focal point of the SEC's enforcement priorities in 2015.

C. Auditor Independence

In 2014, the SEC showed increased focus on enforcement of auditor independence rules. The Commission's general standard for auditor independence is that an auditor's independence is impaired if the auditor is not, or a reasonable investor with knowledge of all the facts and circumstances would conclude that the auditor is not, capable of exercising objective and impartial judgment on all issues within the audit engagement.[136] Independence can be threatened by issues such as conflicts of interest, self-auditing, provision of non-audit services (including bookkeeping and financial information system design and other prohibited services) and relationships, including direct or indirect business relationships. As demonstrated below, the Commission has been dedicated to enforcing these rules aggressively, working cooperatively with other agencies as necessary.

On July 14, 2014, the SEC instituted a settled administrative proceeding against Ernst & Young LLP (Ernst & Young) for allegedly violating the auditor independence rules. The SEC claimed that an Ernst & Young subsidiary, Washington Council EY, engaged in lobbying activities for two of Ernst & Young's auditing clients, notwithstanding that Ernst & Young repeatedly represented that it was "independent" in audit reports issued on the clients' financial statements, which were included or incorporated by reference in public filings with the SEC. Without admitting or denying liability, Ernst & Young agreed to a cease-and-desist order, censure and $4.07 million in sanctions, including $1.24 million in disgorgement, $351,925.98 in prejudgment interest and a civil penalty of $2.48 million for a total of $4.1 million. The order noted that in determining the sanctions, the SEC took into consideration Ernst & Young's cooperation with the SEC and its remedial efforts, including the issuance of new guidance restricting legislative advisory activity.[137]

On October 24, 2014, the SEC instituted settled administrative proceedings against Berman & Company, P.A. (Berman & Company) and Elliot Berman, CPA, for violating Section 10A(j) of the Exchange Act, which prohibits a lead partner for the audit of a public company from performing lead audit services for the same company for more than five consecutive fiscal years. According to the SEC, after serving as the lead partner for the audit of an undisclosed company for five years, Berman allegedly attempted to circumvent the rule by installing an employee of Berman & Company as lead partner for the audit, notwithstanding that the employee was not a certified public accountant or otherwise qualified to lead an audit. After installing this mock lead partner, Berman allegedly continued to perform many lead audit partner functions for the issuer. Without admitting or denying the SEC's findings, Berman agreed to pay a civil penalty of $15,000 and was suspended for at least one year from practicing as an accountant on behalf of any publicly-traded company or other entity regulated by the SEC.[138]

On December 8, 2014, the SEC instituted separate settled administrative proceedings against eight audit firms for providing audit services to firms for whom they had allegedly participated in preparing financial statements.[139] The eight firms named are: (i) BKD LLP, based in Springfield, MO; (ii) Boros & Farrington Accountancy Corporation, based in San Diego, CA; (iii) Brace & Associates PLLC, based in Londonderry, NH; (iv) Robert Cooper & Company CPA PC, based in Chicago, IL; (v) Lally & Co. LLC, based in Pittsburgh, PA; (vi) Lerner & Sipkin CPAs LLP, based in

New York, NY; (vii) OUM & Co. LLP, based in San Francisco, CA; and (viii) Joseph Yafeh CPA Inc., based in Los Angeles, CA.

The SEC's order as to each firm stated that, among other things, the firms failed to satisfy the auditor independence mandate pursuant to Rule 2-01(c)(4)(i) of Regulation S-X, which prevents an auditor from providing bookkeeping services to an audit client, and engaged in improper professional conduct in violation of Exchange Act Section 4C(a)(2) and Rule 102(e)(1)(ii) of the Commission's Rules of Practice, which provide the SEC with the authority to censure any person from appearing or practicing before the Commission. The SEC, through separate orders, further censured each firm and required the firms – none of which admitted or denied liability – to cease and desist from committing and causing violations of Section 17(a) of the Exchange Act and Rule 17a-5 thereunder. The firms agreed to pay an aggregate of $140,000 in civil penalties (ranging from no civil penalty for one firm to a $55,000 penalty for another) and also agreed to undertake a series of remedial actions, including implementing proper policies to ensure their compliance with auditor independence requirements. Stephen L. Cohen, Associate Director of the Enforcement Division, commented on the settlements by noting that "[a]uditors must vigilantly safeguard their independence and stay current on the applicable requirements under the rules." The SEC's announcement was coordinated with an announcement by the Public Company Accounting Oversight Board (PCAOB) concerning settled disciplinary actions brought by the PCAOB against seven different audit firms for similar conduct and describing such conduct as a "textbook example of an impairment of independence."[140]

D. Foreign Corrupt Practices Act

The SEC and the Justice Department brought ten FCPA enforcement actions against corporations and instituted FCPA-related charges against 14 individuals in 2014. Indeed, 2014 generated the second highest corporate penalty total in history, despite the fact that the total number of corporate enforcement actions remained roughly the same as 2013. The corporate penalty total of $1.566 billion was largely a result of six large prosecutions involving the Justice Department, including those against Alstom S.A. ($772 million), Alcoa World Alumina LLC ($384 million), Avon Products, Inc. (Avon) ($135 million), HP ($108 million), Marubeni Corporation ($88 million), and Bio-Rad Laboratories Inc. (Bio-Rad) ($55 million). Meanwhile, the SEC's stand-alone cases were at the lower end of the spectrum in terms of penalty totals: Layne Christensen Company (Layne Christensen) ($5.1 million); Bruker Corporation (Bruker) ($2.4 million); and Smith & Wesson Holding Corporation (Smith & Wesson) ($2.0 million).

Even more significant may be the fact that the SEC brought only one FCPA action against an individual in 2014 (*In re Timms*, discussed below), which may reflect an implicit acknowledgment of the difficulties it has had in successfully instituting enforcement actions against individuals for violating the FCPA. There is also an increasing tendency by the SEC to use administrative proceedings in lieu of federal court actions, as evidenced by the fact that six of the seven corporate FCPA civil enforcement actions in 2014 were brought as administrative proceedings.

1. Actions Against Corporations

The SEC instituted settled administrative proceedings against Smith & Wesson on July 28, 2014 for allegedly making illicit payments to foreign officials when trying to win contracts to supply firearm products to military and law enforcement agencies in Pakistan, Indonesia, and other countries. Smith & Wesson allegedly made illegal payments and gifts in the forms of firearms to a police department in Pakistan and cash payments to Indonesian officials under the guise of firearm lab testing payments. The SEC order found that Smith & Wesson violated the anti-bribery, internal controls, and books-and-records provisions of the Exchange Act. Without admitting or denying liability, Smith & Wesson agreed to pay $107,852 in disgorgement, $21,040 in prejudgment interest and a civil penalty of $1.9 million, for a total of $2.03 million.[141]

On October 27, 2014, the SEC instituted settled administrative proceedings against Layne Christensen for allegedly violating the FCPA by making improper payments to foreign officials in various African countries to obtain beneficial treatment and to reduce its tax liability. Layne Christensen, a water management, construction and drilling company, purportedly made nearly $800,000 in cash transfers from subsidiaries in Australia and Africa to foreign officials in Mali, Guinea and the Democratic Republic of Congo to reduce tax liability and avoid penalties for delinquent payment. This allegedly resulted in tax savings of over $3.2 million and allowed for border entry for the company's employees and equipment, as well as allowing the company to secure work permits. The SEC claimed that the bribes were falsely recorded as legal fees and commissions, and thus found that Layne Christensen violated Sections 13(b)(2)(A) and 13(b)(2)(B), as well as Section 30A of the Exchange Act. Without admitting or denying liability, Layne Christensen agreed to pay $3,893,472.42 in disgorgement, $858,720 in prejudgment interest and a $375,000 civil penalty for a total of $5,126,192.42. The SEC stated that Layne Christensen's extensive cooperation, through self-reporting and assistance with the SEC's investigation procedures, was credited by the SEC when determining the appropriate remedy.[142]

On November 3, 2014, the SEC instituted settled administrative proceedings against Bio-Rad, a clinical diagnostic and life science company, for allegedly violating the FCPA when its subsidiaries allegedly made improper payments to foreign officials in Russia, Vietnam and Thailand to secure contracts. The SEC alleged that Bio-Rad lacked sufficient internal controls to prevent and detect almost $7.5 million in purported bribes recorded as legitimate business expenses over a five-year period and that Bio-Rad employees communicated to foreign officials through alias emails, providing payments to fake foreign agents with no ability to perform the purported services. Without admitting or denying the SEC's allegations, Bio-Rad agreed to pay $35.1 million in disgorgement and $5.6 million in prejudgment interest for a total of $40.7 million.[143] Bio-Rad also agreed to pay a $14.35 million criminal fine to the Justice Department. In total, Bio-Rad agreed to pay $55 million to settle with the SEC and the Justice Department. Bio-Rad must also report its FCPA compliance to the SEC for a period of two years.[144]

On December 15, 2014, the SEC filed settled administrative proceedings against Bruker for allegedly violating the FCPA by providing non-business-related travel and payments to Chinese government officials in an effort to secure business contracts. The SEC order alleged that the global manufacturer of scientific instruments lacked sufficient internal controls to prevent and detect nearly $230,000 in purportedly improper payments from its China-based offices, later recording these expenses as legitimate business and marketing expenses when, in fact, the payments were used in "collaboration" agreements involving state-owned entities and as reimbursements for leisure travel following business-related travel for the company. The payments allegedly aided in securing contracts resulting in nearly $1.7 million in profits from sales. While Bruker neither admitted nor denied liability, it agreed to pay $1,714,852 in disgorgement, $310,117 in prejudgment interest and a $375,000 civil penalty for a total of $2,399,969. Again, the SEC stated that it considered Bruker's self-reporting and significant remedial acts in determining the appropriate settlement.[145]

On December 17, 2014, the SEC sued Avon in the Southern District of New York for violations of the FCPA's books and records and internal controls provisions. According to the SEC's allegations, Avon failed to detect and prevent illicit payments to Chinese government officials made by its Chinese subsidiary, Avon Products (China) Co. Ltd. (Avon China). Allegedly, Avon China made $8 million in illicit payments to Chinese government officials in the form of gifts, cash, travel and entertainment to obtain the first direct selling business license in China, a license which allowed Avon China to be among the first to test China's newly promulgated direct selling regulations, and the receipt of which bolstered Avon China's corporate image in China. Avon China's purportedly improper payments were allegedly concealed through false and inaccurate records, including the recording of illicit payments to government officials as employee business expenses or as payments to third-party vendors. Even more, the SEC alleged that although an Avon internal audit team reported potential issues to Avon executives, remedial measures were not implemented. Instead, Avon China's books and records were simply incorporated into those of Avon without addressing and resolving the compliance issues raised by the internal audit team. To resolve these charges, Avon agreed to retain an FCPA compliance monitor for a period of 18 months and to pay $52,850,000 in disgorgement and $14,515,013.13 in prejudgment interest for total payments of over $67.36 million. Avon agreed to resolve a parallel criminal investigation brought against it by the Justice Department by entering into a deferred prosecution agreement (DPA) in which Avon agreed to pay $67 million in criminal fines. Pursuant to the same DPA, Avon China pled guilty to conspiring to violate the accounting provisions of the FCPA. Together, Avon paid $134 million to resolve the SEC and the Justice Department investigations.[146]

2. *Actions Against Individuals*

On November 17, 2014, the SEC instituted settled administrative proceedings against Stephen Timms and Yasser Ramahi, two former Dubai-based employees of FLIR Systems, Inc. (FLIR Systems) for allegedly violating the FCPA by hosting Saudi government officials on a "world tour" to secure business for FLIR Systems. Allegedly, Timms and Ramahi, in an effort to secure business, traveled to Saudi Arabia in 2009 and provided Saudi government officials with luxury watches (and later embarked on an expensed "world tour" of personal travel with the officials) before and after Timms and Ramahi visited the company's US facilities for an equipment inspection. The SEC claimed that when questioned by FLIR's finance department about the expense, Timms and Ramahi obtained false invoices in an effort to conceal the illicit gifts. Both men were accused of violating Section 30A of the Exchange Act (the anti-bribery provisions) and Section 13(b)(5) and Rule 13(b)(2-1) of the Exchange Act (the books and records and internal controls provisions). Timms and Ramahi, without admitting or denying the SEC's findings, agreed to pay penalties of $50,000 and $20,000 respectively.[147]

Potentially of greater significance was the culmination of the SEC's case against Mark A. Jackson and James J. Ruehlen, executives of Noble Corporation (Noble). The SEC charged the oil drilling corporation's executives on February 24, 2012, in the Southern District of Texas, with anti-bribery violations for purportedly bribing Nigerian government officials, and the case appeared likely to be the SEC's first FCPA case to go to trial in recent years. The SEC alleged that the defendants bribed Nigerian officials to process false paperwork purporting to show the import and export of oil rigs to and from Nigeria. The SEC claimed the false documents were designed to help Noble save the money and time that would have been incurred by importing and exporting the rigs under new permits. In July 2014, however, on the eve of trial, the SEC agreed to settle the charges on terms notably favorable to the defendants. Under the terms of the settlement, Jackson and Ruehlen agreed to be enjoined from aiding and abetting violations of the Exchange Act's books-and-records and internal controls provisions, but they neither admitted nor denied liability and did not pay any monetary penalties or disgorgement. One of the interesting aspects of the case was that the allegedly illicit payments were recorded as "facilitating payments," a characterization the SEC disputed as merely an effort to hide the illicit nature of the payments. Had the case gone to trial, a judicial opinion on what constitutes a facilitating payment could have been a welcome addition to the growing body of judicial opinions interpreting the FCPA.[148]

According to Enforcement Director Ceresney, the fact that the SEC brought fewer FCPA enforcement actions against individuals in 2014 is not indicative of a shift in the SEC's attention away from this area. Indeed, despite the recent dearth of prosecutions against individuals this year, Enforcement Director Ceresney has stated that "actions against individuals have the largest deterrent impact," as they successfully promote individual accountability, and the SEC expects to bring more FCPA cases against individuals in 2015.[149] For a more complete discussion of the civil and criminal FCPA enforcement actions brought in 2014, please see our publication, *FCPA Digest: Recent Trends and Patterns in the Enforcement of the Foreign Corrupt Practices Act*.[150]

E. Investment Advisors

2014 was a year of firsts for the SEC in connection with its efforts to uncover purported misconduct by investment advisors. As reported in our *Securities Enforcement 2014 Mid-Year Review*, the SEC brought its first-ever action under the investment advisor "pay-to-play" rule as well as the Commission's first-ever action focused on fees and expenses charged by a private equity firm. The latter half of 2014 has seen similar efforts from the SEC, with additional cases focused on the misallocation of expenses, conflicts of interest and compliance with the custody rule, in addition to more routine investor fraud cases.

On August 26, 2014, the SEC instituted administrative proceedings against PageOne Financial Inc. (PageOne) and its principal registered investment advisor, Edgar R. Page, for violations of Sections 206(1) and (2) of the Advisers Act, which prohibit fraudulent conduct by an investment advisor, and Section 207 of the Advisers Act, which makes it unlawful to make a material false statement in any registration application filed with the SEC. From 2009 to 2011, Page and PageOne allegedly concealed serious conflicts from their clients, including that one of PageOne's undisclosed fund managers was purportedly acquiring a 49% stake in PageOne, and also that Page had agreed to raise millions of dollars for PageOne from his advisory clients. PageOne and Page also allegedly materially misrepresented payments made to Page in PageOne's Form ADV, the form used by investment advisors to register with the SEC. The case is ongoing and a prehearing is currently scheduled for February 2, 2015.[151]

On August 28, 2014, the SEC instituted settled administrative proceedings against Structured Portfolio Management, LLC, SPM Jr., LLC and SPV IV, LLC for purportedly failing to adopt written compliance policies reasonably designed to prevent violations of the Advisers Act. Allegedly, as a result of these failures, an unnamed trader was able to trade the same securities across three hedge funds and engage in improper allocations among the funds. Without admitting or denying liability, the respondents agreed to cease and desist from violating relevant provisions of the Advisers Act, to pay a civil penalty of $300,000 and to retain an independent compliance consultant to conduct a review of respondents' policies and procedures.[152] This is only one of many compliance-related cases brought by the SEC in 2014, an area of keen focus for the SEC.

On September 2, 2014, the SEC initiated administrative proceedings against Robare Group Ltd. (Robare Group), a Houston-based investment advisory firm, for purportedly violating the conflict of interest rules. The SEC alleged that Robare Group and its co-owner, Mark Robare, violated Sections 206(1) and 206(2) of the Advisers Act when they recommended that clients invest in certain mutual funds without disclosing that Robare Group was receiving compensation from the broker offering the mutual funds. The SEC claimed that, as a result of this agreement, Robare Group received approximately $440,000 in payments from the mutual funds from 2005 through 2013. Jack Jones, Jr., Robare Group's co-owner, allegedly aided and abetted these violations. The SEC further alleged that Robare Group, Robare and Jones each willfully violated Section 207 of the Advisers Act, which provides that it is unlawful to make any untrue statement of a material fact in any registration application or report filed with the Commission or to willfully omit to state in any such application or report any material fact which is required to be stated therein. The case, which is ongoing, reflects the Commission's Division of Investment Management's efforts to shed more light on undisclosed compensation arrangements between investment advisors and brokers.[153]

On September 17, 2014, the SEC instituted administrative proceedings against WestEnd Capital Management LLC (WestEnd Capital) and former hedge fund manager, Sean C. Cooper. Allegedly, from 2010 to 2012, Cooper improperly withdrew more than $320,000 in purported "management fees" from a hedge fund he managed for WestEnd Capital, using the funds to purchase a Porsche and remodel his multi-million dollar home. Without admitting or denying liability, WestEnd Capital consented to the entry of a cease-and-desist order, to retain a compliance consultant and to pay a civil penalty of $150,000. The SEC's case against Cooper is ongoing.[154]

On September 18, 2014, the SEC charged Strategic Capital Group LLC (Strategic Capital), an investment advisory firm, with allegedly engaging in hundreds of "principal" transactions without making disclosures to, or obtaining appropriate consents from, clients as required under the Advisors Act. "Principal" transactions, or transactions in which the firm directly or through an affiliated broker-dealer buys a security from a client account or sells a security to a client, must be disclosed in writing with informed consent from the client. Without admitting or denying guilt, Strategic Capital agreed to cease and desist from committing or causing violations of the Advisers Act. Additionally, Strategic Capital agreed to pay $368,459 in disgorgement, $17,831 in prejudgment interest and a civil penalty of $200,000 for a total of $586,290. Strategic Capital's CEO, N. Gary Price, was charged separately on similar allegations and agreed to pay a $50,000 penalty to settle the charges against him.[155]

One of the more interesting cases of the year was a case against Lincolnshire Management (Lincolnshire), an investment advisory firm and private equity fund manager, concerning the purported misallocation of expenses. On September 22, 2014, the SEC initiated settled administrative proceedings against Lincolnshire for allegedly breaching its fiduciary duty to two of the private equity funds it managed. Allegedly, Lincolnshire integrated two private portfolio companies that were owned by two separate Lincolnshire-advised funds. Although an expense allocation policy was set in place as part of the integration to allocate each company's fees and expenses based on a *pro rata* share of revenues, the SEC alleged that the policy was not always followed and was not always appropriate. For example, the SEC alleged that in some instances shared expenses were misallocated and undocumented, resulting in one company paying more than its purported fair share of expenses that benefited both companies. In other instances, the SEC claimed that expenses for employees who performed work that benefited both companies were not allocated as required. Notably, the SEC did not claim that Lincolnshire's methods of allocating expenses consistently favored one fund over the other. Nevertheless, the SEC claimed that Lincolnshire breached its fiduciary duties to *both* funds and failed to adopt written policies reasonably designed to prevent these violations. Lincolnshire consented to the entry of an order finding that it violated the anti-fraud provisions of Sections 206(2) and 206(4) of the Advisers Act. Without admitting or denying liability, Lincolnshire agreed to cease and desist from committing future violations and to pay $2,308,112 in settlement consisting of $1.5 million in disgorgement, $358,112 in prejudgment interest and $450,000 in civil penalties.[156] This case, and the line-item-by-line-item manner in which the SEC challenged Lincolnshire's expense allocation decisions, is a reminder of how seriously the SEC takes these issues and the fact that good faith allocation of expenses is often insufficient.

On October 29, 2014, the SEC initiated administrative proceedings under Sections 203(e), 203(f) and 203(k) of the Advisers Act against Sands Brothers Asset Management LLC (Sands Brothers) and its three top officials, Steven Sands, Martin Sands and Christopher Kelly, for purportedly failing to comply with the custody rule, a rule that requires firms to follow certain procedures when they have control or access to client money or services. For example, under the custody rule, advisory firms with custody of private fund assets must distribute audited financial statements to investors within 120 days of the end of the fiscal year. According to the SEC's allegations, Sands Brothers (which had previously been sanctioned by the SEC for custody rule violations) was at least 40 days late in distributing audited financial statements to investors for fiscal year 2010; in 2011, audited financial statements for the same funds were delivered anywhere from six months to eight months late; and in 2012, the statements were three months late.[157] The proceedings are ongoing.[158]

Other cases were less novel, but still serve as an important reminder of the SEC's current focus on investment advisors. For example, on September 25, 2014, the SEC filed a civil injunctive action in the United States District Court for the Middle District of Florida, charging Wealth Strategy Partners, LC (Wealth Strategy) (and its principal, Harvey Altholtz) and Stevens Resource Group, LLC (Stevens Resource) (and its principal, George Stevens) with fraudulently selling securities in two investment funds. Allegedly, the Stealth Fund, LLLP and the Adamas Fund, LLLP together raised approximately $30.8 million from investors between 2007 and 2009, all while failing to disclose crucial interdependencies between the Stealth Fund, LLLP and Altholtz's personal finances, and making misstatements and omissions regarding the financial condition of some of the funds' portfolio companies. The SEC's complaint alleges that Wealth Strategy, Harvey Altholtz, Stevens Resource and George Stevens violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 17(a) of the Securities Act, and Section 206(4) and Rule 206(4)-8 of the Advisers Act. The complaint seeks permanent injunctions, disgorgement, prejudgment interest and civil penalties against all defendants, and officer-and-director bars against Altholtz and Stevens. Stevens and Stevens Resource have agreed to settle the case against them by consenting to the relief requested in the complaint, with amounts to be determined by the court.[159] Litigation remains ongoing as to Altholtz and Wealth Strategy.

On July 3, 2014, the SEC entered a settlement order involving Chariot Advisors, LLC (Chariot Advisors), a registered investment advisor, and its former owner, Elliott L. Shifman, in connection with purported misstatements and omissions about Chariot Advisors' ability to run an algorithmic currency trading strategy. Allegedly, in 2009, Chariot Advisors launched a new fund called Chariot Fund, which purported to use technical currency trading analysis and, in various presentations and written submissions, Shifman stated that Chariot Advisors would use algorithmic currency trading for the fund. However, according to the SEC, neither Chariot Advisors nor Shifman had an algorithm or model in place to conduct such currency trading. Chariot Advisors and Shifman both consented to orders finding that Chariot Advisors violated Section 15(c) of the Investment Company Act and that Shifman aided and abetted the violation of Section 15(c) of the Investment Company Act.[160] Under the settlement order, both agreed to cease-and-desist from future violations of the relevant provisions of the Investment Company Act, and Shifman agreed to a 12-month bar from association with any broker or similar body, serving or acting as an employee, officer, director or member of an investment advisor, and participating in a penny stock offering. Shifman must also pay a civil penalty of $50,000.

On July 17, 2014, the SEC instituted settled administrative proceedings against Lakeside Capital Management (Lakeside Capital) and its owner, Dennis H. Daugs, for allegedly misusing client assets in violation of Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 thereunder. The SEC claimed that, with his investment advisory firm, Daugs used assets from the portfolio of a senior citizen to fund $3.1 million in personal loans without obtaining her consent. Daugs purportedly liquidated $2.15 million in securities in his client's portfolio to generate a cash transfer into his own escrow account to purchase a ski home and misused $950,000 from her portfolio in a similar way to purchase a vintage automobile. The SEC claimed that he also improperly directed an investment fund managed by his firm to make over $4.5 million in loans and investment purchases to facilitate personal real estate deals and to settle claims against disgruntled Lakeside Capital clients. Without admitting or denying the findings, Lakeside Capital and Daugs agreed to settle the SEC's charges by paying more than $590,000, which includes $340,000 in disgorgement and prejudgment interest to the individual client and investment fund and a $250,000 civil penalty. Daugs will be barred from the securities industry for five years, and his firm will wind down its operations.[161]

On August 5, 2014, the SEC issued an initial decision in administrative proceedings against J. S. Oliver Capital Management, L.P. (J. S. Oliver) and Ian O. Mausner, J. S. Oliver's president.[162] The decision stems from an August 2013 order instituting administrative cease-and-desist proceedings alleging that J. S. Oliver and Mausner engaged in schemes in violation of the antifraud provisions, including 'cherry-picking' favorable trades for J. S. Oliver's affiliated hedge fund clients to the detriment of other, disfavored client accounts. The order also alleged the misuse of client commission credits called 'soft dollars' for personal expenses, rather than fiduciary expenses, including paying for rent and payments under a divorce agreement for Mausner. The SEC charged violations of Securities Act Section 17(a), Exchange Act Section 10(b), Exchange Act Rule 10b-5, Advisers Act Sections 206(1), 206(2), 206(4), and 207 and Advisers Act Rule 206(4)-8. The decision assesses a civil penalty of $14,975,000 for J. S. Oliver and $3,040,000 for Mausner. J. S. Oliver and Mausner were also ordered to disgorge, jointly and severally, $1,367,440 plus prejudgment interest, for a total of $19,382,440 to be paid to the SEC.[163]

On August 8, 2014, the SEC filed a civil injunctive action in the Northern District of Illinois against Alliance Investment Management Limited (AIM), a Bahamas-based brokerage firm, and Julian Brown, AIM's president, for alleged violations of Section 17(a) of the Securities Act, Section 10(b) and Rule 10b-5 of the Exchange Act, as well as aiding and abetting violations of the federal securities laws, including Section 209(d) of the Advisers Act. According to the SEC's complaint, Brown and AIM purported to be the "custodians" for assets under the management of Nikolai Battoo, a hedge fund manager who allegedly defrauded investors of $400 million worldwide by claiming to achieve exceptional returns while, in reality, Battoo was suffering huge losses and misappropriated at least $45 million. According to the allegations, AIM and Brown provided false account statements for Battoo and transferred money to Battoo at his direction.[164] The case against Brown and AIM is ongoing.

On October 9, 2014, the SEC filed a civil injunctive action in the Middle District of Pennsylvania against Dennis Wright, formerly a registered representative with AXA Advisors, LLC based in Lewistown, Pennsylvania, enjoining him from violating Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act. Wright allegedly misappropriated more than $1.5 million from at least 28 customers by falsely representing to investors that he would invest their funds in securities with high returns when, in fact, the SEC claims Wright was using customer funds for his personal expenses. Furthermore, the SEC alleged that Wright concealed this purported fraud by providing his customers with falsified account statements. Wright was ordered to disgorge gains of $1,533,416.33 and prejudgment interest of $490,618.77, totaling $2,024,035, which will be deemed satisfied by the entry of an order of restitution in a parallel criminal action in the Middle District of Pennsylvania. In a related SEC administrative proceeding, Wright, without admitting or denying liability, consented to an order permanently enjoining him from violating the federal securities laws and permanently barring Wright from association with any broker, dealer or related investment advisor.[165]

F. Broker-Dealers

The SEC brought a total of 166 broker-dealer related cases in FY2014, an increase from the 121 cases brought in the Commission's FY2013. The enforcement actions ranged from fraudulent transactions, to compliance failures, to books-and-records violations.

On July 25, 2014, the SEC filed a civil injunctive action in the Eastern District of New York against International Stock Transfer Inc. (IST), a registered transfer agent and its owner, Cecil Franklin Speight, for alleged abuses of the transfer agent function by purportedly creating and issuing fake securities certificates to domestic and international investors. According to the SEC, investors thought they were buying high-yield investments and discounted stock, but instead received counterfeit bond and stock certificates. The SEC accused Speight and IST of violating antifraud provisions of the federal securities laws, including Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act and the books-and-records provisions under Section 17(a)(3) of the Exchange Act. Without admitting or denying liability, Speight and IST settled the action by agreeing to be permanently enjoined from future violations of the federal securities laws, and to disgorge all ill-gotten gains and pay prejudgment interest and penalties as determined by the court. The US Attorney for the Eastern District of New York has also announced criminal charges against Speight.[166]

On August 8, 2014, the SEC instituted administrative proceedings against Crucible Capital Group, Inc. (Crucible Capital), a New York brokerage firm, and its founder Charles "Chuck" Moore, for allegedly violating net capital requirements and falsifying records to conceal capital deficiencies. The net capital rule requires US broker-dealers to maintain "net capital" (*i.e.*, capital in excess of liabilities) in specified amounts that are determined by the types of business conducted by the broker-dealer. However, the SEC claims that Crucible Capital fell far below these requirements by failing to appropriately report liabilities. According to the SEC, Moore purportedly obstructed the SEC's examination by intentionally giving the SEC falsified documents in an effort to hide Crucible Capital's capital deficiencies. The pending administrative proceeding will determine appropriate remedial action, if any, and whether to impose financial penalties.[167] The US Attorney's Office for the Southern District of New York has announced criminal charges against Moore for allegedly obstructing the SEC's investigation.

On August 14, 2014, the SEC instituted administrative proceedings against Linkbrokers Derivatives LLC (Linkbrokers), a New York-based brokerage firm, for allegedly taking secret profits of over $18 million from customers through hidden markups and markdowns of trades. In over 36,000 transactions between 2005 and

2009, representatives of Linkbrokers purportedly pretended to charge low commission fees, but in fact took fees up to ten-times greater than the stated fees by misstating prices to customers in violation of Section 15(c)(1) of the Exchange Act. Without admitting or denying liability, Linkbrokers consented to a settlement and agreed to pay $14 million in disgorgement. Linkbrokers also ceased acting as a broker-dealer in April 2013 and agreed to withdraw its registration. The SEC has settled with Benjamin Chouchane, Marek Leszczynski and Henry Condron, all former brokers at Linkbrokers, for their roles in the alleged wrongdoing. Relatedly, Chouchane, Leszczynski and Condron have pled guilty to criminal charges in the Southern District of New York for securities fraud and conspiracy to commit securities fraud. The SEC's litigation against Gregory Reyftmann, a former broker at Linkbrokers, is ongoing.[168]

In a case that could have broader implications for compliance functions of broker dealers, on October 9, 2014, the SEC settled an administrative proceeding against two subsidiaries of E*TRADE Financial Corporation (E*TRADE) (specifically, E*TRADE Securities and E*TRADE Capital Markets, now known as G1 Execution Services), alleging violations of Sections 5(a) and 5(c) of the Securities Act. According to the SEC, E*TRADE Securities and E*TRADE Capital Markets sold billions of penny stock shares for customers from March 2007 to April 2011 while ignoring red flags that the offerings were conducted without an applicable exemption from the registration requirements of the federal securities law. Specifically, the SEC alleged that when customers deposited large quantities of newly-issued, unregistered penny stocks from little-known issuers, the E*TRADE subsidiaries relied on the customers' statements that these stocks were freely tradable without performing a searching inquiry to be reasonably certain that such exemptions applied. As a result, the SEC claimed that unregistered shares were improperly traded, and investors were subject to the risks of trading in improperly unregistered securities. Without admitting or denying liability, E*TRADE Securities and G1 Execution Services agreed to settle the SEC charges by paying over $2.5 million, consisting of $1,402,850 in disgorgement, $182,166 in prejudgment interest and a civil penalty of $1,000,000.[169] The two firms also agreed to be censured and consented to the order requiring them to cease and desist from committing or causing any future violations of the registration provisions of the Securities Act.[170]

On October 15, 2014, in a case related to allegations for which Wells Fargo agreed to pay the SEC a $5 million civil penalty (described above), the SEC instituted administrative proceedings against Judy K. Wolf, a compliance officer at Wells Fargo, alleging that Wolf willfully aided and abetted and caused Wells Fargo to violate Section 17(a) of the Exchange Act and Rule 17a-4(j) promulgated thereunder, as well as Rule 204(a) of the Advisers Act.[171] The SEC contends that Wolf was responsible for "look back" reviews to identify suspicious trades and to determine whether the trades were based on material non-public information, and alleged that, after the SEC charged an employee at Wells Fargo with insider trading, Wolf altered a document to create the perception that her investigation into the incident was more in-depth than it had been.[172] Wolf is litigating the claim. This case and others that the SEC brought against compliance officers earlier in 2014 underscore the fact that the Enforcement Division remains more willing than ever to sue compliance employees who have participated in alleged misconduct and/or wholly failed to implement or supervise policies and procedures.[173]

With the June 1, 2014 amendments to the SEC's broker-dealer annual reporting, audit and notification requirements – which include new standards for broker-dealer audits and mandatory examinations by the Commission or a broker-dealer's designated examining authority – the Commission will likely maintain or increase its enforcement activity in this area in 2015.[174]

G. Market Structure

As reported in our *Securities Enforcement 2014 Mid-Year Review*, the SEC pursued issues presented by high-frequency trading and other market structure issues throughout the year, but the Enforcement Division's cases in this area primarily focused on high-tech versions of fairly routine violations. As Chair White explained, "[w]hen high frequency traders cross the line and engage in fraud we will pursue them as we do with anyone who manipulates the markets."[175]

For example, on October 16, 2014, in what marked the SEC's first high-frequency trading manipulation case, the SEC settled administrative proceedings against Athena Capital Research (Athena), a New York-based high frequency trading firm, for engaging in a practice known as "marking the close," where stocks are bought or sold near the close of trading to affect the closing price, in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The SEC alleged that Athena, although a relatively small firm, was able to dominate the market for certain stocks by placing massive orders near the end of the trading day to artificially inflate the market price, forcing the stock price to close in Athena's favor. Without admitting or denying liability, Athena agreed to pay a $1 million civil penalty and to cease and desist from future violations of the federal securities laws. Commenting on Athena's actions, Enforcement Director Ceresney said that "[t]raders today can certainly use complex algorithms and take advantage of cutting-edge technology, but what happened here was fraud." Enforcement Director Ceresney added that "[t]his action should send a clear message that the Commission and its Division of Enforcement have the expertise to investigate and charge even the most sophisticated fraudulent algorithmic trading strategies."[176]

On December 10, 2014, the SEC instituted settled administrative proceedings against a major broker-dealer for allegedly violating the Market Access Rule by purportedly failing to uphold credit limits for a customer firm purportedly engaged in allegedly fraudulent trading of certain technology securities. According to the SEC, the broker-dealer lacked the risk management controls necessary to prevent a trader from entering orders that exceeded pre-set daily trading thresholds established for the broker-dealer by the trader's firm. The SEC found that the broker-dealer violated Rule 15c3-5 of the Exchange Act. Without admitting or denying the liability, the firm consented to the order and agreed to a penalty of $4 million.

H. Cases Involving Chinese Companies

The SEC's Cross-Border Working Group's focus on China, while at times seeming to wane, continues to result in new cases. On September 29, 2014, the SEC filed a civil injunctive action in the District Court for the District of Columbia alleging that China Valves Technology, Inc. (China Valves), its chairman Siping Fang, its former CEO Jianbao Wang and its CFO Renrui Tang, misled investors regarding the details of a proposed acquisition. According to the complaint, the defendants intentionally misled investors about China Valves' 2010 acquisition of Watts Valve Changsha Co., Ltd. by allegedly misstating or failing to disclose certain facts about the acquisition, including the purchase price, the parties to the transaction and FCPA issues presented by the acquisition. The complaint alleges violations of Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 10b-5(b), 12b-20, 13a-1, 13a-11 and 13a-13 promulgated thereunder. The SEC separately suspended trading in China Valves stock and brought administrative proceedings under Section 12(j) of the Exchange Act to delist the company. The litigation is ongoing.[177] Meanwhile, the SEC's prior cases involving Chinese companies continue to wind their way through the courts, resulting in judgments against companies and individuals alike.[178]

I. Financial Crisis Cases

As the SEC continues to wind down its work in this area, the second half of 2014 saw one more case of note. On July 24, 2014, the SEC instituted settled administrative proceedings against a large financial institution and several of its subsidiaries for purportedly misleading investors in a pair of RMBS securitizations that the firms sponsored, underwrote and issued. The allegations in this case, which center around purportedly faulty disclosures regarding RMBS, essentially mimic allegations brought by the SEC in similar cases. The SEC charged the firm with negligence-based violations under Sections 17(a)(2) and (3) of the Securities Act, rather than fraud-based charges under Section 17(a)(1) or Section 10(b) of the Exchange Act. Thus, this and similar RMBS cases that preceded it could provide a model for future defendants seeking to negotiate neutral language in proposed settled orders and complaints with the SEC. Without admitting or denying liability, the firm agreed to pay $160,627,852 in disgorgement, $17,995,437 in prejudgment interest and $96,376,711 in civil penalty, totaling $275 million.

VI. Conclusion

The SEC's Enforcement Division has continued its aggressive focus on policing the securities markets and professionals. Recently, the SEC stated that its enforcement priorities for 2015 include complex financial products, gatekeepers, financial reporting, market structure, insider trading, investment advisors and private funds, and municipal securities.[179] Accordingly, we expect that 2015 will largely continue the trends we have highlighted here.

[1] SEC Press Release, SEC's FY 2014 Enforcement Actions Span Securities Industry and Include First-Ever Cases, Rel. No. 2014-230 (Oct. 16, 2014).

[2] SEC Press Release, SEC Announces Charges Against Arizona-Based Private Equity Fund Manager in Expense Misallocation Scheme, Rel. No. 2014-41 (Feb. 25, 2014).

[3] *In the Matter of Paradigm Capital Management, Inc.*, Admin. Proc. File No. 3-15930 (June 16, 2014) (order instituting cease-and-desist proceedings).

[4] SEC Press Release, Wells Fargo Advisors Admits Failing to Maintain Controls and Producing Altered Document, Agrees to Pay $5 Million Penalty, Rel. No. 2014-207 (Sept. 22, 2014).

[5] SEC Press Release, SEC's FY 2014 Enforcement Actions Span Securities Industry and Include First-Ever Cases, Rel. No. 2014-230 (Oct. 16, 2014).

[6] *See* Jean Eaglesham, *SEC Is Steering More Trials to Judges It Appoints*, Wall St. J., Oct. 21, 2014, http://www.wsj.com/articles/sec-is-steering-more-trials-to-judges-it-appoints-1413849590.

[7] SEC Division of Enforcement Director Andrew Ceresney, Remarks to the American Bar Association's Business Law Section Fall Meeting (Nov. 21, 2014).

[8] Yin Wilczek, *SEC to Pursue More Insider Trading Cases in Administrative Forum, Director Says*, Bloomberg BNA, June 13, 2014, http://www.bna.com/sec-pursue-insider-n17179891282/.

[9] *In the Matter of Richard O'Leary*, Admin. Proc. File No. 3-16166 (Sept. 25, 2014) (order instituting administrative and cease-and-desist proceedings); *In the Matter of George T. Bolan, Jr.*, Admin. Proc. File No. 3-16178 (Sept. 29, 2014) (order instituting administrative and cease-and-desist proceedings); *In the Matter of Filip Szymik*, Admin. Proc. File No. 3-16183 (Sept. 30, 2014) (order instituting cease-and-desist proceedings); *In the Matter of Jordan Peixoto*, Admin. Proc. File No. 3-16184 (Sept. 30, 2014) (order instituting cease-and-desist proceedings); *In the Matter of Steven Durrelle Williams*, Civil Action No. 3-16246 (Nov. 4, 2014) (order instituting cease-and-desist proceedings); *In the Matter of Michael S. Geist*, Admin. Proc. File No. 3-16269 (Nov. 12, 2014) (order instituting cease-and-desist proceedings).

[10] SEC Press Release, SEC Announces New Hires in the Office of Administrative Law Judges, Rel. No. 2014-129 (June 30, 2014).

[11] *See* Securities Enforcement 2014 Mid-Year Review, Shearman & Sterling, p. 13 (July 2014) (citing *Chau v. SEC*, US District Court, S.D.N.Y., No. 14-1903).

[12] *See Stilwell et al. v. SEC*, US District Court, S.D.N.Y., No. 14-07931 (alleging that ALJs are Article II "officers" that may only be separated from presidential supervision and removal by one layer of tenure protection); *Peixoto v. SEC*, US District Court, S.D.N.Y, No. 14-08364.

[13] *See, e.g.*, *SEC v. Citigroup Global Mkts., Inc.*, No. 11-cv-7387, 2014 WL 3827497, at *1 n.8 (S.D.N.Y. Aug. 5, 2014); Ed Beeson, *Rakoff Blasts SEC's Growing Reliance on In-House Court*, Law360, Nov. 5, 2014, http://www.law360.com/articles/593644/rakoff-blasts-sec-s-growing-reliance-on-in-house-court.

[14] US Judge Jed Rakoff, "IS THE S.E.C. BECOMING A LAW UNTO ITSELF?", Speech to PLI Securities Regulation Institute (Nov. 5, 2014) (transcript available at http://assets.law360news.com/0593000/593644/Sec.Reg.Inst.final.pdf).

[15] SEC Rules of Practice, 17 C.F.R. § 201.360.

[16] *See id.* § 201.230-201.234.

17 *See generally id.* § 201.400-201.490.

18 US Judge Jed Rakoff, "IS THE S.E.C. BECOMING A LAW UNTO ITSELF?", Speech to PLI Securities Regulation Institute (Nov. 5, 2014) (transcript available at http://assets.law360news.com/0593000/593644/Sec.Reg.Inst.final.pdf).

19 Scott Flaherty, *SEC Drops Insider Trading Case over Herbalife Short*, Litigation Daily, Dec. 15, 2014, http://www.litigationdaily.com/id=1202679166932/SEC-Drops-Insider-Trading-Case-over-Herbalife-Short?slreturn=20150007202820.

20 Stephanie Russell-Kraft, *Ceresney Rebuts Rakoff's Critique of SEC Admin. Actions*, Law360, Nov. 7, 2014, http://www.law360.com/articles/594489/ceresney-rebuts-rakoff-s-critique-of-sec-admin-actions.

21 Jean Eaglesham, *SEC Is Steering More Trials to Judges It Appoints*, Wall St. J., Oct. 21, 2014, http://www.wsj.com/articles/sec-is-steering-more-trials-to-judges-it-appoints-1413849590.

22 Cara Salvatore, *Ceresney Defends SEC's Use Of Internal Adjudication*, Law360, Nov. 21, 2014, http://www.law360.com/articles/598679/ceresney-defends-sec-s-use-of-internal-adjudication.

23 Jean Eaglesham, *SEC Is Steering More Trials to Judges It Appoints*, Wall St. J., Oct. 21, 2014, http://www.wsj.com/articles/sec-is-steering-more-trials-to-judges-it-appoints-1413849590.

24 *Chau v. SEC*, No. 14-cv-1903, 2014 WL 6984236 (S.D.N.Y. Dec. 11, 2014).

25 *Id.* at *6.

26 *Bebo v. SEC*, No. 15-cv-00003, 2015 WL 40470 (E.D. Wis., Jan. 2, 2015).

27 Journal Reports, *Where the SEC Action Will Be; Mary Jo White on what changes she expects at the Securities and Exchange Commission*, Wall St. J., June 23, 2013; James B. Stewart, *The SEC Has a Message for Firms Not Used to Admitting Guilt*, N.Y. Times, June 22, 2013, at B1.

28 SEC Press Release, Harbinger's Former Chief Operating Officer Agrees to Settle Charges for Assisting Hedge Fund Scheme, Rel. No. 2014-149 (July 28, 2014).

29 Final Consent Judgment as to Defendant Peter A. Jenson, *SEC v. Harbinger Capital Partners LLC; Philip A. Falcone; and Peter A. Jenson*, 12 Civ. 5028 (PAC) ECF Case (S.D.N.Y.).

30 SEC Press Release, Architect of Variable Annuities Scheme Agrees to Pay $850,000, Admit Wrongdoing, and Be Barred From Securities Industry, Rel. No. 2014-153 (July 31, 2014).

31 SEC Press Release, Wells Fargo Advisors Admits Failing to Maintain Controls and Producing Altered Document, Agrees to Pay $5 Million Penalty, Rel. No. 2014-207 (Sept. 22, 2014).

32 *In the matter of Wedbush Securities Inc., Jeffrey Bell, and Christina Fillhart*, Admin. Proc. File No. 3-15913 (Nov. 20, 2014) (order making findings and imposing remedial sanctions and a cease-and-desist order).

33 *In Re HSBC Private Bank (Suisse), S.A.*, Admin. Proc. File No. 3-16288 (Nov. 25, 2014) (order instituting administrative and cease-and-desist proceedings).

34 SEC Press Release, SEC Charges Investment Manager F-Squared and Former CEO With Making False Performance Claims, Rel. No. 2014-289 (Dec. 22, 2014).

35 For more information about the SEC's Office of the Whistleblower, visit http://www.sec.gov/whistleblower. Barbara Schecter, *SEC Chair Mary Jo White Praises "Enormously Successful" Whistleblower Program*, Financial Post, Oct. 16, 2014, http://business.financialpost.com/2014/10/16/sec-chair-mary-jo-white-praises-enormously-successful-whistleblower-program/.

[36] 2014 Annual Report to Congress, SEC Office of the Whistleblower, http://www.sec.gov/about/offices/owb/annual-report-2014.pdf.

[37] SEC Press Release, SEC Announces $300,000 Whistleblower Award to Audit and Compliance Professional Who Reported Company's Wrongdoing, Rel. No. 2014-180 (Aug. 29, 2014).

[38] The Office of the Whistleblower has dealt with abuse in 2014. The claims review staff evaluated an unnamed individual under Section 21F of the Exchange Act and Rule 21F-10 thereunder and, in May 2014, found that the individual "knowingly and willfully made false, fictitious or fraudulent statements and representations to the Commission over a course of years and continues to do so." The individual had submitted a WB-APP (which is a form application for a whistleblower award) in response to every Notice of Covered Action issued by the Office of the Whistleblower to date. The staff found that this "unceasing submission of baseless claims has harmed the rights of legitimate whistleblowers" and deemed the individual ineligible to receive an award for any pending or future claims. *See* SEC Final Order, May 12, 2014, https://www.sec.gov/about/offices/owb/orders/owb-multiple-final-051214.pdf.

[39] SEC Press Release, SEC Announces Largest-Ever Whistleblower Award, Rel. No. 2014-206 (Sept. 22, 2014).

[40] *Liu Meng-Lin v. Siemens AG*, 763 F.3d 175 (2d Cir. 2014). In reaching this decision, the Second Circuit found no indication that "Congress intended the anti-retaliation provision to regulate the relationships between foreign employers and their foreign employees working outside the United States." *Id.* at 176.

[41] *In the Matter of Paradigm Capital Management, Inc.*, Admin. Proc. File No. 3-15930 (June 16, 2014) (order instituting cease-and-desist proceedings).

[42] 2014 Annual Report to Congress on the Dodd-Frank Whistleblower Program, SEC Office of the Whistleblower, http://www.sec.gov/about/offices/owb/annual-report-2014.pdf.

[43] Barbara Schecter, *SEC chair Mary Jo White Praises "Enormously Successful" Whistleblower Program*, Financial Post, Oct. 16, 2014, http://business.financialpost.com/2014/10/16/sec-chair-mary-jo-white-praises-enormously-successful-whistleblower-program/.

[44] *SEC v. Yorkville Advisors, LLC*, 12 Civ. 7728 (S.D.N.Y. May 27, 2014) (order compelling production of documents).

[45] *Id*. at 30.

[46] Amicus Brief, *Safarian v. American DG Energy, Inc.*, No. 14-2734 (3d Cir. Dec. 11, 2014).

[47] *Asadi v. G.E. Energy (USA) LLC*, No. 12-20522 slip op. (5th Cir. July 17, 2013).

[48] *Khazin v. TD Ameritrade Holding Corp.*, No. 13-4149 slip op. (D.N.J. Mar. 11, 2014).

[49] SEC Public Statement, Dissenting Statement In the Matter of Lynn R. Blodgett and Kevin R. Kyser, CPA, Respondents (Aug. 28, 2014), http://www.sec.gov/News/PublicStmt/Detail/PublicStmt/1370542787855.

[50] Daniel M. Gallagher and Michael S. Piwowar, *Dissenting from an SEC Windfall for Lawyers*, Wall St. J., Nov. 10, 2014, http://www.wsj.com/articles/daniel-m-gallagher-and-michael-s-piwowar-dissenting-from-an-sec-windfall-for-lawyers-1415665948.

[51] Commissioner Michael S. Piwowar, Remarks to the Securities Enforcement Forum 2014, (Oct. 14, 2014) (transcript available at http://www.sec.gov/News/Speech/Detail/Speech/1370543156675).

[52] Commissioner Michael S. Piwowar, Remarks to the Securities Enforcement Forum 2014, (Oct. 14, 2014) (transcript available at http://www.sec.gov/News/Speech/Detail/Speech/1370543156675).

[53] *Janus Capital Group, Inc. v. First Derivative Traders*, 131 S. Ct. 2296 (2011).

[54] SEC Litigation Release, *Securities and Exchange Commission v. Christopher Plummer, Lex M. Cowsert, and CytoGenix, Inc.*, Civil Action No. 14-CV-5441 (LTS), Litig. Rel. No. 23047 (July 18, 2014).

[55] Complaint, *SEC v. Plummer, et al.*, No. 14-cv-5441 (S.D.N.Y. July 18, 2014).

[56] *SEC v. Plummer, et al.*, No. 14-cv-5441 (S.D.N.Y. Dec. 4, 2014) (order on motion to adjourn conference).

[57] SEC Press Release, SEC Announces Oil-and-Gas Fraud Charges Against Houston-Based Company and CEO, Rel. No. 2014-158 (Aug. 4, 2014).

[58] *See In the Matter of Houston American Energy Corp., John F. Terwilliger, Jr., Undiscovered Equities Inc., and Kevin T. McKnight*, Admin. Proc. File No. 3-16000 (Aug. 4, 2014) (order instituting cease-and-desist proceedings).

[59] *In the Matter of Houston American Energy Corp., John F. Terwilliger, Jr., Undiscovered Equities Inc., and Kevin T. McKnight*, Admin. Proc. File No. 3-16000 (Oct. 6, 2014) (prehearing orders).

[60] SEC Press Release, SEC Charges Two Canadian Citizens with Penny Stock Fraud Involving Tennessee Coal Mining Company, Rel. No. 2014-247 (Nov. 3, 2014).

[61] Complaint, *SEC v. Bruce D. Strebinger, et al.*, No. 2014-cv-03533 (Ga. N. Dist. Ct., Nov. 3, 2014).

[62] *Prousalis v. Moore*, No. 13-6814, slip op. (4th Cir. May 7, 2014).

[63] *See, e.g.*, *SEC v. Kelly*, 817 F. Supp. 2d 340 (S.D.N.Y. 2011); *SEC v. Sentinel Mgmt. Group*., 2012 WL 85573 (N.D. Ill. Mar. 30, 2012).

[64] SEC Press Release, SEC Launches Enforcement Cooperation Initiative for Municipal Issuers and Underwriters, Rel. No. 2014-46 (Mar. 10, 2014). In July 2014, the Enforcement Division made changes to the MCDC Initiative. First, the Enforcement Division extended the deadline to self-report from September 10, 2014 to December 1, 2014 for issuers, yet maintained the original deadline of September 10 for underwriters. The deadline was extended to accommodate difficulties that issuers faced when accessing filings that pre-dated the Electronic Municipal Market Access ("EMMA") system. Second, to encourage participation from smaller underwriters, the Division instituted a tiered approach to civil penalty caps based on firm size. SEC Press Release, SEC Enforcement Division Modifies Municipalities Disclosure Initiative, Rel. No. 2014-156 (July 31, 2014).

[65] SEC Press Release, SEC Enforcement Division Modifies Municipalities Disclosure Initiative, Rel. No. 2014-156 (July 31, 2014).

[66] SEC Press Release, SEC Launches Enforcement Cooperation Initiative for Municipal Issuers and Underwriters, Rel. No. 2014-46 (Mar. 10, 2014).

[67] SEC Press Release, SEC Charges California School District with Misleading Investors, Rel. No. 2014-133 (July 8, 2014).

[68] SEC Press Release, SEC Charges Kansas for Understating Municipal Bond Exposure to Underfunded Pension Liability, Rel. No. 2014-164 (Aug. 11, 2014).

[69] SEC Press Release, SEC Charges State of New Jersey for Fraudulent Municipal Bond Offerings, Rel. No. 2010-152 (Aug. 18, 2010).

[70] SEC Press Release, SEC Charges Illinois for Misleading Pension Disclosures, Rel. No. 2013-37 (Mar. 11, 2013).

[71] SEC Press Release, SEC Announces Charges Against Corporate Insiders for Violating Laws Requiring Prompt Reporting of Transactions and Holdings, Rel. No. 2014-190 (Sept. 10, 2014).

[72] SEC Press Release, SEC Sanctions 19 Firms and Individual Trader for Short Selling Violations in Advance of Stock Offerings, Rel. No. 2014-195 (Sept. 16, 2014).

[73] 17 C.F.R. § 242.105.

[74] SEC Press Release, SEC Charges 23 Firms with Short Selling Violations in Crackdown on Potential Manipulation in Advance of Stock Offerings, Rel. No. 2013-182 (Sept. 17, 2013).

[75] SEC Press Release, SEC Sanctions 13 Firms for Improper Sales of Puerto Rico Junk Bonds, Rel. No. 2014-246 (Nov. 3, 2014).

[76] SEC Press Release, SEC Sanctions 10 Companies for Disclosure Failures Surrounding Financing Deals and Stock Dilution, Rel. No. 2014-248 (Nov. 5, 2014).

[77] SEC Press Release, SEC Sanctions Eight Audit Firms for Violating Auditor Independence Rules, Rel. No. 2014-272 (Dec. 8, 2014).

[78] *United States v. Newman*, Nos. 13-1837-cr; 13-1917-cr, slip op. (2d Cir., Dec. 10, 2014).

[79] Ed Beeson, *SEC's White Calls 2nd Circ. Insider Ruling "Overly Narrow"*, Law360 (Dec. 11, 2014), http://www.law360.com/articles/603894/sec-s-white-calls-2nd-circ-insider-ruling-overly-narrow.

[80] *See, e.g.*, Complaint, *SEC v. Spyridon Adondakis, et al.*, No. 2012-cv-0409 (S.D.N.Y., Jan. 18, 2012).

[81] *Id.* at 22.

[82] Denial of Petition for Writ of Certiorari, *Whitman v. United States*, 135 S. Ct. 352 (2014) (No. 14-29).

[83] *United States v. Whitman*, 555 Fed. App'x 98, 107 (2d Cir. 2014) (quoting *United States v. Royer*, 549 F.3d 886, 899 (2d Cir. 2008).

[84] Denial of Petition for Writ of Certiorari, *Whitman v. United States*, 135 S. Ct. 352, 353 (2014) (No. 14-29).

[85] *Id.* (quoting *Crandon v. United States*, 494 US 152, 178 (1990) (Scalia, J., concurring in judgment) (quotation marks and alterations removed).

[86] *Id.* at 354.

[87] *Esquenazi v. United States*, 135 S. Ct. 293 (2014).

[88] *United States v. Esquenazi*, 752 F.3d 912 (11th Cir. 2014).

[89] *Id*. at 916.

[90] *Id*. at 921-23.

[91] *Id*. at 927.

[92] *See also* Bruce Carlton, *SEC Trial Scorecard Update: SEC Loses Second Trial in Seven Days*, Compliance Week, June 10, 2014, http://www.complianceweek.com/blogs/enforcement-action/sec-trial-scorecard-update-sec-loses-second-trial-in-seven-days.

[93] *See* Bruce Carlton, *Final SEC Scorecard for FY 2014: SEC Posts 5-7-5 Record in 17 Trials*, Compliance Week, Nov. 26, 2014, http://www.complianceweek.com/blogs/enforcement-action/final-sec-trial-scorecard-for-fy-2014-sec-posts-5-7-5-record-in-17-trials; Bruce Carlton, *2015 SEC Trial Scorecard Update: Agency is Undefeated After Two Trials*, Compliance Week, Nov. 30, 2014, http://www.complianceweek.com/blogs/enforcement-action/2015-sec-trial-scorecard-update-agency-is-undefeated-after-two-trials.

[94] SEC Litigation Release, Jury Finds Orchestrator of Microcap Stock Pump-and-Dump Scheme Liable in SEC Enforcement Case, Litig. Rel. No. 23604 (Aug. 11, 2014); SEC Litigation Release, *Securities and Exchange Commission v. BIH Corporation, et al.*, Civil Action No. 2:10-CV-577-FTM-29DNF (M.D. FL) (September 20, 2010), Litig. Rel. No. 21656 (Sept. 20, 2010).

[95] SEC Litigation Release, Jury Finds Orchestrator of Microcap Stock Pump-and-Dump Scheme Liable in SEC Enforcement Case, Litig. Rel. No. 23604 (Aug. 11, 2014).

[96] SEC Public Statement, Statement on Jury Verdict in Florida Federal Court Following Trial Against Orchestrator of Pump-and-Dump Scheme (Aug. 8, 2014), http://www.sec.gov/News/PublicStmt/Detail/PublicStmt/1370542613633.

[97] SEC Litigation Release, Jury Returns Verdict Against Massachusetts Investment Adviser in SEC Fraud Case, Litig. Rel. No. 23066 (Aug. 13, 2014).

[98] SEC Public Statement, Statement on Favorable Jury Verdict Against Investment Adviser (Aug. 13, 2014), http://www.sec.gov/News/PublicStmt/Detail/PublicStmt/1370542641720.

[99] SEC Litigation Release, Jury Finds Anthony M. Knight, Former Chairman of a Failed Internet Startup, Liable for Securities Fraud and Illegal Sale of Unregistered Securities, Litig. Rel. No. 23112 (Oct. 15, 2014).

[100] Kat Greene, *Jury Finds NM Businessman Liable in $35M SEC Suit*, Law360, Nov. 7, 2014, http://www.law360.com/articles/594761/jury-finds-nm-businessman-liable-in-35m-sec-suit.

[101] *Id.*; SEC Litigation Release, SEC Charges New Mexico Man with Misappropriating $45 Million Dollars, Litig. Rel. No. 21264 (Oct. 28, 2009).

[102] The insider trading claim was not tried to the jury along with the SEC's fraud claims against the Wylys because the SEC was time-barred from seeking civil penalties for this claim. *See* Opinion and Order, *SEC v. Wyly*, No. 1:10-cv-05760-SAS, Dkt. 405, at 2 (July 10, 2014).

[103] *Id.* at 26-27.

[104] *Id.* at 26-27.

[105] Jean Eaglesham, *SEC Is Steering More Trials to Judges It Appoints*, Wall St. J., Oct. 21, 2014, http://www.wsj.com/articles/sec-is-steering-more-trials-to-judges-it-appoints-1413849590.

[106] Jean Eaglesham, *CFTC Turns Toward Administrative Judges*, Wall St. J., Nov. 9, 2014, http://www.wsj.com/articles/cftc-turns-toward-administrative-judges-1415573398.

[107] Joseph Ax & Nate Raymond, *US SEC wins hundreds of millions in Wyly fraud case*, Reuters, Sept. 25, 2014, http://www.reuters.com/article/2014/09/25/us-sec-wyly-idUSKCN0HK24O20140925.

[108] *SEC v. Wyly, et al.*, No. 10-cv-05760 (S.D.N.Y. May 12, 2014).

[109] Opinion and Order, *SEC v. Wyly, et al.*, No. 10-cv-5760-SAS, Dkt. 476, at 76 (S.D.N.Y. Sept. 25, 2014).

[110] *Id.* at 78 n.242.

[111] *Id.* at 78 & n.242.

[112] Opinion and Order, *SEC v. Wyly, et al.*, No. 10-cv-5760-SAS, Dkt. 563, at 6 (S.D.N.Y. Dec. 19, 2014).

[113] *Id.* at 55.

[114] Notice of Plaintiff Securities and Exchange Commission's Recalculations of Ill-Gotten Gains and Pre-Judgment Interest, *SEC v. Wyly, et al.*, No. 10-cv-5760-SAS, Dkt. 572 (S.D.N.Y. Jan. 9, 2015).

[115] US Securities and Exchange Commission, Agency Financial Report FY 2014, at 22; US Securities and Exchange Commission, Agency Financial Report FY 2013, at 19.

[116] SEC Press Release, SEC Charges Group of Amateur Golfers in Insider Trading Ring, Rel. No. 2014-134 (July 11, 2014).

[117] SEC Litigation Release, *Securities and Exchange Commission v. O'Neill*, 1:14-cv-13381, Litig. Rel. No. 23070 (Aug. 18, 2014).

[118] SEC Litigation Release, *Securities and Exchange Commission v. Rajarengan*, Civil Action No. 13-CV-1894 (S.D.N.Y.) (JGK), Litig. Rel. No. 23128 (Nov. 5, 2014).

[119] SEC Press Release, SEC Charges Steven A. Cohen With Failing to Supervise Portfolio Managers and Prevent Insider Trading, Rel. No. 2013-129 (July 19, 2014).

[120] SEC Litigation Release, Spanish Trader Agrees to Pay Disgorgement and a Penalty to Settle Insider Trading Case, Litig. Rel. No. 23048 (July 22, 2014).

[121] SEC Press Release, Former Banco Santander Analyst Agrees to Settle Insider Trading Charges, Rel. No. 2011-98 (Apr. 25, 2011).

[122] SEC Litigation Release, *Securities and Exchange Commission v. Michael Anthony Dupre Lucarelli,* Civil Action No. 14-Civ-6933 (NRB) (S.D.N.Y.), Litig. Rel. No. 23074 (Aug. 26, 2014).

[123] *See also* SEC Press Release, SEC Charges Investor Relations Executive With Insider Trading While Preparing Clients' Press Releases, Rel. No. 2014-142 (July 22, 2014).

[124] SEC Litigation Release, SEC Charges Brooklyn Man for Facilitating Insider Trading Scheme Via Post-It Notes At Grand Central Terminal, Litig. Rel. No. 23089 (Sept. 22, 2014).

[125] For additional insider trading cases, *see* SEC Litigation Release, SEC Charges IT Employee At Law Firm with Insider Trading Ahead of Merger Announcements, Litig. Rel. No. 23086 (Sept. 17, 2014); SEC Litigation Release, *Securities and Exchange Commission v. Kevin McGrath*, Civil Action No. 14-Civ-5483 (GBD) (S.D.N.Y.), Litig. Rel. No. 23049 (July 22, 2014); SEC Litigation Release, SEC Charges New York Investment Professional with Insider Trading, Litig. Rel. No. 22858 (Oct. 29, 2013); SEC Press Release, SEC Charges Atlanta-Based Accountant With Insider Trading on Confidential Information From Client, Rel. No. 2014-166 (Aug. 14, 2014); SEC Litigation Release, SEC Charges New Jersey-Based Hedge Fund Manager with Insider Trading in Carter's Stock, Litig. Rel. No. 23118 (Oct. 24, 2014); SEC Litigation Release, *Securities and Exchange Commission v. Moshe Manoah and Blair G. Schlossberg*, Civil Action No. 8:14-cv-01973-JSM-MAP (M.D. Fla.), Litig. Rel. No. 23069 (Aug. 15, 2014); SEC Litigation Release, *Securities and Exchange Commission v. William E. Redmond, Jr., and Stefano Signorastri*, Civil Action No. 14-CV-9278 (S.D.N.Y.), Litig. Rel. No. 23138 (Nov. 21, 2014); SEC Litigation Release, Boston-Area Defendant in SEC Insider Trading Case Faces Criminal Charges, Litig. Rel. No. 23131 (Nov. 14, 2014); SEC Litigation Release, SEC Charges Former Solutia Executive with Insider Trading, Litig. Rel. No. 23142 (Nov. 25, 2014); SEC Litigation Release, Boston-Area Defendant in SEC Insider Trading Case Pleads Guilty to Criminal Charges, Litig. Rel. No. 23150 (Dec. 5, 2014); SEC Litigation Release, Court Enters Final Judgment Against Former Chairman of Home Diagnostics, Inc., George H. Holley for Insider Trading; SEC Also Charges Holley's Cousin in Insider Trading Scheme, Litig. Rel. No. 23153 (Dec. 9, 2014); SEC Litigation Release, Former Ameriprise Fund Manager Settles SEC Insider Trading Case, Litig. Rel. No. 23151 (Dec. 8, 2014); SEC Litigation Release, Court Orders Former Managing Director of the NASDAQ Stock Market to Disgorge More Than $898,000 in Insider Trading Profits, Litig. Rel. No. 23156 (Dec. 12, 2014).

[126] James Sterngold, *Charges Dropped After Insider-Trading Ruling*, Wall St. J., Dec. 15, 2014, http://www.wsj.com/articles/charges-dropped-after-insider-trading-ruling-1418689195.

[127] *Peixoto v. Securities and Exchange Commission*, 14-CV-8364 (S.D.N.Y. Oct. 20, 2014). For additional insider trading cases brought by the SEC, *see* SEC Litigation Release, SEC Charges Former Pharmaceutical Company Executive and Friend with Insider Trading, Litig. Rel. No. 23125 (Oct. 31, 2014); SEC Litigation Release, SEC Charges New Jersey Man in Insider Trading Case Involving Pharmaceutical Companies, Litig. Rel. No. 23119 (Oct. 27, 2014); SEC Litigation Release, SEC Obtains Summary Judgment Against Defendants in Securities Fraud Involving Biopharmaceutical Company, Litig. Rel. No. 23114 (Oct. 15, 2014). The SEC and the US Attorney for the District of Massachusetts both secured a number of judgments related to kickback schemes. *See* SEC Litigation Release, Judgments Entered Against Company and Former CEO in Securities Kickback Scheme, Litig. Rel. No. 23078 (Sept. 4, 2014); SEC Litigation Release, Judgment Entered Against Former CEO in Securities Kickback Scheme, Litig. Rel. No. 23082 (Sept. 12, 2014). *See also* SEC Litigation Release, Judgments Entered Against Company and CEO in Securities Kickback Scheme, Litig. Rel. No. 23127 (Nov. 4, 2014).

[128] Mary Jo White, The Challenge of Coverage, Accountability and Deterrence in Global Enforcement (Oct. 1, 2014) (transcript available at http://www.sec.gov/News/Speech/Detail/Speech/1370543090864#.VImdaDHF_QJ).

[129] SEC Press Release, SEC Charges Company CEO and Former CFO With Hiding Internal Controls Deficiencies and Violating Sarbanes-Oxley Requirements, Rel. No. 2014-152 (July 30, 2014).

[130] SEC Press Release, SEC Announces Oil-and-Gas Fraud Charges Against Houston-Based Company and CEO, Rel. No. 2014-158 (Aug. 4, 2014).

[131] SEC Press Release, California-Based Telecommunications Equipment Firm and Two Former Executives Charged in Revenue Recognition Scheme, Rel. No. 2014-173 (Aug. 22, 2014).

[132] For additional cases involving financial reporting and auditing, *see Securities and Exchange Commission v. Steven R. Markusen, et al.*, Civil Action No. 14-cv-3395 (D. Minn. Sept. 8, 2014). For cases involving fraudulent offers and sales cases, *see* SEC Litigation Release, SEC Charges L.A.-Based Immigration Attorneys with Defrauding Investors Seeking US Residency, Litig. Rel. No. 23077 (Sept. 3, 2014); SEC Litigation Release, SEC Charges Tyson D. Williams and Stanley D. Parrish with Violations of the Federal Securities Laws, Litig. Rel. No. 23042 (July 11, 2014); SEC Litigation Release, Florida-Based Attorney Ordered to Pay Nearly $4 Million in Court Judgment of Prime Bank Investment Scheme Case, Litig. Rel. No. 23044 (July 15, 2014); SEC Litigation Release, SEC Charges M. "Shi" Shailendra with Defrauding Investors, Litig. Rel. No. 23055 (Aug. 1, 2014); SEC Litigation Release, SEC Charges a Self-Proclaimed Ordained Minister in Georgia and His Company with a Fraudulent Offering of Securities, Litig. Rel. No. 23054 (Aug. 1, 2014); SEC Litigation Release, Former Cleveland-Area Investment Promoter Oscar F. Villarreal Indicted, Litig. Rel. No. 23102 (Oct. 1, 2014); SEC Litigation Release, SEC Charges Company and Four Individuals Behind Pump-And-Dump Scheme Touting Technology to End Fracking, Litig. Rel. No. 23072 (Aug. 21, 2014); SEC Litigation Release, SEC Charges Colorado Resident with Offering Fraud Involving Smart-Phone App Technology, Litig. Rel. No. 23071 (Aug. 19, 2014); SEC Litigation Release, Jury Finds Orchestrator of Microcap Stock Pump-And-Dump Scheme Liable in SEC Enforcement Case, Rel. No. 23064 (Aug. 11, 2014; SEC Litigation Release, SEC Charges California Lawyer and Two Massachusetts Men Behind Scheme to Manipulate Stock of Sports Ticket Broker, Litig. Rel. No. 23129 (Nov. 7, 2014); SEC Litigation Release, *Securities and Exchange Commission v. MSGI Technology Solutions, Inc., and J. Jeremy Barbera*, Civil Action No. 14-CV-5820 (S.D.N.Y.), Litig. Rel. No. 23052 (July 29, 2014); SEC Litigation Release, Judgment Entered Against Former Chief Financial Officer of China-Based Company in Fraudulent Scheme Involving Purported Web Services Business, Litig. Rel. No. 23116 (Oct. 21, 2014); SEC Litigation Release, *Securities and Exchange Commission v. Erick Laszlo Mathe and Ashif Jiwa*, Civil Action No. 14-CV-23573-GAYLES/TURNOFF (S.D. FL.), Litig. Rel. No. 23094 (Sept. 29, 2014); SEC Litigation Release, SEC Charges Ddbo Consulting, Inc., Calpacific Equity Group, LLC, and Principals with Fraud and Registration Violations, Litig. Rel. No. 23083 (Sept. 15, 2014); SEC Litigation Release, Court Imposes Officer and Director Bar, Injunction and Monetary Sanctions Against Minneapolis Attorney Based on Fraud Verdict, Litig. Rel. No. 23036 (July 2, 2014); SEC Litigation Release, SEC Charges Texas Brothers in Fraudulent "Shell-Factory" Scheme and Suspends Trading in Four Companies They Controlled, Litig. Rel. No. 23124 (Oct. 31, 2014); SEC Litigation Release, SEC Charges New Orleans Oil-and-Gas Company with Fraudulent Stock Manipulation, Litig. Rel. No. 23158 (Dec. 15, 2014); SEC Litigation Release, California Attorney Indicted for Securities Fraud in Scheme to Manipulate Stock of Sports Ticket Broker, Litig. Rel. No. 23154 (Dec. 9, 2014); SEC Litigation Release, SEC

Charges Principals of a Texas Oil and Gas Company with Conducting a Fraudulent Offering, and Charges Seller with Acting as an Unregistered Broker, Litig. Rel. No. 23144 (Nov. 26, 2014).

133 SEC Press Release, SEC Charges Software Company in Silicon Valley and Two Former Executives Behind Fraudulent Accounting Scheme, Rel. No. 2014-214 (Sept. 24, 2014).

134 SEC Press Release, SEC Charges Arizona-Based Software Company for Inadequate Internal Accounting Controls Over Its Financial Reporting, Rel. No. 2014-216 (Sept. 25, 2014).

135 *In the Matter of Great Lakes Dredge & Dock Corporation*, Admin. Proc. File No. 3-16215 (Oct. 27, 2014) (order instituting cease-and-desist proceedings).

136 Securities and Exchange Commission Final Rule, 17 C.F.R. §§ 210 and 240 (Feb. 5, 2001), *available at* http://www.sec.gov/rules/final/33-7919.htm.

137 SEC Press Release, SEC Charges Ernst & Young With Violating Auditor Independence Rules in Lobbying Activities, Rel. No. 2014-136 (July 14, 2014).

138 SEC Press Release, SEC Sanctions Florida-Based Auditor for Circumventing Rules, Rel. No. 2014-239 (Oct. 24, 2014).

139 *See* SEC Press Release, SEC Sanctions Eight Audit Firms for Violating Auditor Independence Rules, Rel. No. 2014-272 (Dec. 8, 2014).

140 *Id.*; Public Company Accounting Oversight Board, *PCAOB Announces Settled Disciplinary Orders Against Seven Audit Firms for Independence Violations When Auditing Broker-Dealers*, Dec. 8, 2014, http://pcaobus.org/news/Releases/Pages/12082014_Enforcement.aspx.

141 SEC Press Release, SEC Charges Smith & Wesson With FCPA Violations, Rel. No. 2014-148 (July 28, 2014).

142 SEC Press Release, SEC Charges Texas-Based Layne Christensen Company with FCPA Violations, Rel. No. 2014-240 (Oct. 27, 2014).

143 *In the Matter of Bio-Rad Laboratories, Inc.*, Admin. Proc. File No. 3-16231 (Nov. 3, 2014) (order instituting cease-and-desist proceedings).

144 SEC Press Release, SEC Charges California-Based Bio-Rad Laboratories With FCPA Violations, Rel. No. 2014-245 (Nov. 3, 2014).

145 SEC Press Release, SEC Charges Massachusetts-Based Scientific Instruments Manufacturer with FCPA Violations, Rel. No. 2014-280 (Dec. 15, 2014).

146 SEC Press Release, SEC Charges Avon With FCPA Violations, Rel. No. 2014-285 (Dec. 17, 2014).

147 SEC Press Release, SEC Sanctions Two Former Defense Contractor Employees for FCPA Violations, Rel. No. 2014-257 (Nov. 17, 2014).

148 The SEC was also forced to drop charges against three former executives at Magyar Telekom, Elek Straub, Andras Balogh, and Tamas Morvai, for allegedly bribing Montenegrin officials in 2005. Unable to bring a case based on those charges, the Commission is now pursuing similar charges that Straub, Balogh, and Morvai bribed government officials in Macedonia to thwart competition against Magyar Telekom.

149 Speech, Andrew Ceresney, Remarks at 31st International Conference on the Foreign Corrupt Practices Act (Nov. 19, 2014) (transcript available at http://www.sec.gov/News/Speech/Detail/Speech/1370543493598).

150 This publication, as well as other FCPA resources, can be found at http://fcpa.shearman.com/.

[151] *In the Matter of Edgar R. Page and Pageone Financial Inc.*, Admin Proc. File No. 3-16037 (Sept. 29, 2014) (order setting prehearing schedule).

[152] *In the Matter of Structured Portfolio Management, L.L.C., et al.*, Admin. Proc. File No. 3-16046 (Aug. 28, 2014) (order instituting administrative and cease-and-desist proceedings).

[153] *In the Matter of The Robare Group, Ltd., Mark L. Robare, and Jack L. Jones Jr.*, Admin. Proc. File No. 3-16047 (Sept. 2, 2014) (order instituting administrative and cease-and-desist proceedings).

[154] SEC Press Release, Former Hedge Fund Manager in Bay Area Charged With Taking Excess Management Fees to Make Lavish Purchases, Rel. No. 2014-200 (Sept. 17, 2014).

[155] SEC Press Release, SEC Charges Tacoma, Wash.-Area Firm for Undisclosed Principal Transactions and Misleading Performance Advertisements, Rel. No. 2014-201 (Sept. 18, 2014).

[156] SEC Press Release, SEC Charges New York-Based Private Equity Fund Adviser With Misallocation Of Portfolio Company Expenses, Rel. No. 2014-205 (Sept. 22, 2014). The SEC has also brought similar charges in the broker-dealer context. *See* SEC Press Release, SEC Announces Charges Against N.Y.-Based Brokerage Firm and Founder Despite Attempts to Mislead Examiners, Rel. No. 2014-162 (Aug. 8, 2014).

[157] SEC Press Release, SEC Announces Charges Against Investment Advisory Firm and Top Officials for Custody Rule Violations, Rel. No. 2014-242 (Oct. 29, 2014).

[158] For additional cases brought by the SEC targeting investment advisors, *see* SEC Litigation Release, *Securities and Exchange Commission v. Sage Advisory Group, LLC and Benjamin Lee Grant*, Litig. Rel. No. 23066 (Aug. 13, 2014); SEC Litigation Release, Indiana Forex Trader Settles SEC Fraud Charges, Litig. Rel. No. 23060 (Aug. 7, 2014); SEC Litigation Release, San Francisco Bay Area Real Estate Fund Managers Settle Fraud Claims, Litig. Rel. No. 23059 (Aug. 4, 2014); SEC Litigation Release, SEC Obtains an Officer and Director Bar and Over $1.5 Million in Disgorgement and Penalties from Chicago Area Investment Adviser and Its Owner for Fraud, Litig. Rel. No. 23045 (July 16, 2014); SEC Litigation Release, *Securities and Exchange Commission v. The Estate of Vincent James Saviano and Palmetto Investments LLC*, Litig. Rel. No. 23109 (Oct. 9, 2014); SEC Press Release, SEC Charges Virginia-Based Broker With Stealing Funds From Elderly Customers, Rel. No. 2014-155 (July 31, 2014); SEC Litigation Release, SEC Charges Texas Brothers in Fraudulent "Shell-Factory" Scheme and Suspends Trading in Four Companies They Controlled, Litig. Rel. No. 23124 (Oct. 31, 2014); SEC Press Release, SEC Charges Seattle Firm and Owner With Misusing Client Assets for Vacation Home and Vintage Automobile, Rel. No. 2014-138 (Jul. 17, 2014) and *In the Matter of Michael A. Horowitz and Moshe Marc Cohen*, Admin. Proc. File No. 3-15790 (July 31, 2014) (order making findings and imposing remedial sanctions and a cease-and-desist order). The SEC also brought charges against AIC, Inc. and Community Bankers Securities, LLC in connection with its purported offering fraud scheme directed at the elderly. *See* SEC Litigation Release, SEC Obtains Final Judgments Against All Defendants and Relief Defendants, Securing Permanent Injunctions and Nearly $70 Million in Disgorgement, Prejudgment Interest, and Civil Penalties, Litig. Rel. No. 23062 (Aug. 8, 2014); SEC Litigation Release, *Securities and Exchange Commission v. Eric W. Johnson*, Civil Action No. 1:14-cv-08825, Litig. Rel. No. 23130 (Nov. 12, 2014); SEC Litigation Release, SEC Files Subpoena Enforcement Action Against John Puglisi, Progressive Capital Solutions LLC, and Others, Litig. Rel. No. 23105 (Oct. 6, 2014); SEC Litigation Release, *Securities and Exchange Commission v. Bill C. (Billy) Crafton*, Civil Action No. 3:14-cv-02916-DMS-JLB, Litig. Rel. No. 23155 (Dec. 11, 2014); SEC Press Release, SEC Charges Corporate Attorney and Wife With Insider Trading on Client's Confidential Information, Rel. No. 2014-290 (Dec. 22, 2014); SEC Litigation Release, *Securities and Exchange Commission v. Levi Lindemann*, Civil Action No. 0:14-cv-04834-PJS-JJK, Litig. Rel. No. 23146 (Dec. 2, 2014); SEC Litigation Release, SEC Charges California Resident with Fraudulent Sales of Stock, Litig. Rel. No. 23145 (Dec. 2, 2014); SEC Litigation Release, SEC Charges Business Owner and Stockbroker in Maryland-Based Offering Fraud, Litig. Rel. No. 23132 (Nov. 14, 2014); SEC Litigation Release, Jeremy Fisher Sentenced to 30 Months for Offering Fraud, Litig. Rel. No. 23139 (Nov. 24, 2014); SEC Litigation Release, Court Enters Judgments Against Former Massachusetts-Based Boiler Room Operator and His Companies, as Indicted by Grand Jury, Litig. Rel. No. 23140 (Nov. 24, 2014).

[159] SEC Litigation Release, SEC Charges General Partner and Investment Advisers to the Stealth and Adamas Funds with Fraud, Litig. Rel. No. 23098 (Sept. 30, 2014).

[160] *In the matter of Chariot Advisors, LLC and Elliott L. Shifman*, Admin. Proc. File No. 3-15433 (July 3, 2014) (order making findings and imposing remedial sanctions).

[161] SEC Press Release, SEC Charges Seattle Firm and Owner With Misusing Client Assets for Vacation Home and Vintage Automobile, Rel. No. 2014-138 (July 17, 2014).

[162] *In the Matter of J.S. Oliver Capital Management, L.P., Ian O. Mausner and Douglas F. Drennan*, Admin. Proc. File No. 3-15446 (Aug. 5, 2014) (initial decision).

[163] *In the Matter of J.S. Oliver Capital Management, L.P., Ian O. Mausner and Douglas F. Drennan*, Admin. Proc. File No. 3-15446 (Oct. 7, 2014) (order granting petition for review and scheduling briefs).

[164] SEC Press Release, SEC Charges Bahamas-Based Brokerage Firm and President With Facilitating Fraudulent Scheme by Hedge Fund Manager, Rel. No. 2014-163 (Aug. 8, 2014).

[165] SEC Litigation Release, Final Judgment and Administrative Order Entered Against Pennsylvania-Based Registered Representative Who Stole Funds from Customers, Litig. Rel. No. 23115 (Oct. 17, 2014).

[166] SEC Press Release, SEC Charges Florida-Based Transfer Agent and Owner with Defrauding Investors, Rel. No. 2014-146 (July 24, 2014).

[167] SEC Press Release, SEC Announces Charges Against N.Y.-Based Brokerage Firm and Founder Despite Attempts to Mislead Examiners, Rel. No. 2014-162 (Aug. 8, 2014).

[168] SEC Press Release, SEC Charges N.Y.-Based Brokerage Firm With Overcharging Customers in $18 Million Scheme, Rel. No. 2014-167 (Aug. 14, 2014).

[169] *In the Matter of E*TRADE Securities, LLC and G1 Execution Services, LLC*, Admin. Proc. File No. 3-16192, at 10 (Oct. 9, 2014) (order instituting administrative and cease-and-desist proceedings).

[170] SEC Press Release, SEC Charges Current and Former E*TRADE Subsidiaries with Improperly Selling Penny Stocks Through Unregistered Offerings, Rel. No. 2014-225 (Oct. 9, 2014).

[171] SEC Press Release, SEC Announces Enforcement Action Against Former Wells Fargo Advisors Compliance Officer for Altering Documents, Rel. No. 2014-228 (Oct. 15, 2014).

[172] SEC Press Release, Wells Fargo Advisors Admits Failing to Maintain Controls and Producing Altered Document, Agrees to Pay $5 Million Penalty, Rel. No. 2014-207 (Sep. 22, 2014).

[173] For additional broker-dealer or transfer agents cases brought by the SEC, *see* SEC Litigation Release, SEC Charges California-Based Broker with Stealing Money from Accounts, Litig. Rel. No. 23058 (Aug. 4, 2014); SEC Litigation Release, *SEC v. Abraxas J. Discala, Marc E. Wexler, Matthew A. Bell, Craig L. Josephberg, and Ira Shapiro*, Civil Action No. 14-cv-4346 (E.D.N.Y.), Litig. Rel. No. 23046 (July 17, 2014); SEC Litigation Release, SEC Charges Former CEO of Convergex Subsidiary in Scheme to Deceive Customers About Trading Fees, Litig. Rel. No. 23061 (Aug. 7, 2014); SEC Litigation Release, SEC Charges Florida-Based Transfer Agent and Owner with Scheming Investors, Litig. Rel. No. 23050 (July 24, 2014); SEC Litigation Release, Court Enters Permanent Injunction Against Owner of Illinois-Based Transfer Agent, Litig. Rel. No. 23043 (July 11, 2014); SEC Litigation Release, Court Enters Judgment Against Unregistered Broker for Role in Investment Scheme Involving Purported Alzheimer's Treatment, Litig. Rel. No. 23057 (Aug. 1, 2014); SEC Press Release, SEC Charges Five Traders with Short Selling Violations, Rel. No. 2014-131 (July 2, 2014); SEC Litigation Release, Federal Court Grants SEC’s Motion for Summary Judgment and Enters Final Judgment Against Atlanta-Area Registered Representative Blake Richards for Securities Fraud Violations, Litig. Rel. No. 23075 (Aug. 28, 2014); SEC Litigation Release, SEC Charges Virginia-Based

Broker with Stealing Funds from Elderly Customers, Litig. Rel. No. 23053 (July 31, 2014); SEC Litigation Release, SEC Charges Stock Promoter with Market Manipulation, Litig. Rel. No. 23157 (Dec. 15, 2014).

[174] Securities and Exchange Commission Final Rule, 17 C.F.R. §§ 240 and 249 (June 1, 2014), *available at* http://www.sec.gov/rules/final/2013/34-70073.pdf.

[175] SEC Press Release, SEC Charges New York-Based High Frequency Trading Firm With Fraudulent Trading to Manipulate Closing Prices, Rel. No. 2014-229 (Oct. 16, 2014).

[176] SEC Press Release, SEC Charges New York-Based High Frequency Trading Firm With Fraudulent Trading to Manipulate Closing Prices, Rel. No. 2014-229 (Oct. 16, 2014).

[177] SEC Litigation Release, SEC Charges China Valves Technology, Inc. and Three Senior Officers with Fraud, Litig. Rel. No. 23096 (Sept. 29, 2014).

[178] *See*, *e.g.*, SEC Litigation Release, *Securities and Exchange Commission v. eAdGear, Inc.*, *et al.*, Civil Action No. 14-cv-04294-RS (US District Court for the Northern District of California), Litig. Rel. No. 23120 (Oct. 28, 2014); SEC Litigation Release, Judgment Entered Against Former Chief Financial Officer of China-Based Company in Fraudulent Scheme Involving Purported Web Services Business, Litig. Rel. No. 23116 (Oct. 21, 2014).

[179] US Securities & Exchange Commission, *Agency Financial Report, Fiscal Year 2014*, p. 40, *available at* http://www.sec.gov/about/secpar/secafr2014.pdf.

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