

# SEC Releases Fiscal Year 2022 Enforcement Results

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On November 15, 2022, the Securities and Exchange Commission (the “SEC” or the “Commission”) released its results summarizing its enforcement actions in fiscal year 2022. FY 2022 marked an aggressive year for the SEC. It filed 760 enforcement actions, including 462 “stand-alone” actions. The SEC’s active year included 129 actions against issuers who failed to make required filings with the SEC, as well as 169 “follow-on” administrative proceedings. The Commission recovered \$6.4 billion in penalties, representing the highest amount in the past decade and an increase of \$2.6 billion over last year. Of the penalties recovered, \$4.2 billion were civil penalties (an increase of 287% over FY 2021), and the remaining \$2.2 billion were disgorgements (a decrease of about 6.25% over FY 2021). The uptick in civil penalties was driven, in part, by a combined \$1.235 billion in penalties imposed against broker dealers and an adviser stemming from a Wall Street sweep investigating work-related communications conducted on employees’ personal devices.

Leadership from the SEC’s Enforcement Division has suggested that the Commission would continue to pursue recordkeeping violations, along with actions against individuals, in order to encourage firms to change behaviors and prioritize compliance. For example, Enforcement Division Director Gurbir Grewal stated that the Commission imposed large penalties as a “deterrent effect.” Other actions in which the SEC imposed significant penalties include a \$100 million penalty against an audit firm for, among other things, failing to prevent its employees from cheating on the ethics components of CPA exams; a \$1 billion penalty against an investment group for misleading investors regarding the downside risks of its investment strategy; and a \$200 million penalty against a bank for the overissuance of securities.

Individual accountability was described as a “pillar of the SEC’s enforcement program,” as the SEC reflected on the past fiscal year. Over 66% of the SEC’s stand-alone enforcement actions included at least one individual defendant or respondent. Individuals were charged for, among other things, making materially misleading public statements about business operations or overvaluing investment assets. Notably, even where an individual was not charged with misconduct, the SEC has charged executives under Section 304 of the Sarbanes-Oxley Act to return bonuses and compensation after misconduct at their firms.

The SEC received over 12,300 whistleblower tips in FY 2022 and issued approximately \$229 million in 103 awards. This represents a decrease from the \$564 million awarded in FY 2021; however, FY 2022 is still the SEC’s second-highest year in terms of dollar amounts and number of awards. The SEC reiterated its commitment to safeguarding whistleblower anonymity and pursuing individuals or entities who retaliate against whistleblowers.

Areas on which the SEC remains focused include crypto assets and securities, cybersecurity, ESG disclosures and private funds:

- The SEC announced plans in FY 2022 to bolster its Crypto Assets and Cyber unit with an additional 20 staff positions, and this unit brought actions against crypto firms for violating the Investment Company Act, for promoting a Ponzi scheme, and for insider trading.
- The Commission’s cybersecurity efforts focused on actions relating to record-keeping and customer information obligations.
- Responding to increased public attention to ESG issues, the SEC brought enforcement actions related to misrepresentations in connection with ESG principles in investment considerations or business operations.

- Private fund actions remain a priority due to recurring issues, including “undisclosed conflicts of interest, fees and expenses, valuation, custody, and controls around material nonpublic information.” The SEC’s actions in FY 2022 were designed to combat those issues.

The SEC also reiterated its interest in charging gatekeepers, e.g., lawyers and auditors, who “fail[] to live up to their heightened trust and responsibility.” The Commission highlighted the benefits of “meaningful cooperation” in a few cases in which it did not impose civil penalties (or substantially limited civil penalties) where a company under investigation helped expedite the investigation, adopted significant remedial measures, and self-reported the conduct.

The SEC’s full enforcement statistics can be found at: <https://www.sec.gov/news/press-release/2022-206>. Please contact Vedder Price attorneys **Brooke E. Conner** at [bconner@vedderprice.com](mailto:bconner@vedderprice.com), **Rachel T. Copenhaver** at [rcopenhaver@vedderprice.com](mailto:rcopenhaver@vedderprice.com), **Junaid A. Zubairi** at [jzubairi@vedderprice.com](mailto:jzubairi@vedderprice.com), **Eric Hyla** at [ehyla@vedderprice.com](mailto:ehyla@vedderprice.com), or any Vedder Price attorney with whom you have worked with any questions.

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