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Federal Enforcement Forum: SEC Enforcement Statistics FY 2022

The Commission filed its annual tabulation of Enforcement statistics in a Release dated November 15, 2022 (here). The array of statistic compiled in FY 2022 provides insight into the work of the Enforcement Division over the past year. Key topics include: 1) the number of cases initiated; 2) the areas of concentration; 3) trials; and 4) cooperation.

The number of cases filed for the year is always a key focus. At the same time, it is well recognized that the number of cases is not true measure of the effectiveness of an enforcement program although it is important. In fiscal 2022 there were 462 new or "stand alone" cases filed.

The 462 standalone cases filed in FY 2022 is the third largest number of actions in a fiscal year over the past six years, according to the Release: 1) FY 201 – 526 filed; 2) FY 2018 490 filed; 3) FY 2022 – 462 filed; 4) FY 2017 – 446 filed; 5) FY 2021 – 434 filed; and 6) FY 2020 – 405 filed.

A second important metric is the areas of concentration or focus. Stated differently, this metric looks at the type of cases being filed. Here a table lists the primary classification of the actions brought. The table lists 13 areas in which a total of 231 actions were initiated.

Most of the actions classified in the table fall into five areas: 1) Securities offerings, 87 cases; 2) insider trading, 36; 3) investment advisers, 34; 4) market manipulation, 30; and 5) issuer reporting/audit and accounting, 19. Together these five areas account for 206 of the 231 actions listed in the table.

The Release also discusses under the heading of "Substantive Breadth and Depth" areas in which cases were brought. Those included: 1) Financial fraud and disclosure; 2) gatekeepers; 3) auditors; 4) lawyers; 5) crypto; 6) cybersecurity and compliance; 7) ESG; 8) regulated entities and associated individuals; 9) market abuse; 10) complex products; 11) public finance; and 12) Foreign Corrupt Practices Act. Read together with the classifications listed above, it is apparent that the program cut a wide path.

Related Capabilities

- Securities & Financial Services Litigation & Enforcement
- Government Enforcement & Corporate Investigations
- Corporate Governance & Compliance

A third area discussed in the Release tabulates the number of cases that actually went to trial during the year. As with most prosecutorial agencies, only a small number of Commission actions went to trial. Last year the agency tried 15 cases to verdict, prevailing in 12. This is the largest number of cases tried to verdict in a decade, according to the Release. The number does not include the nine actions resolved on summary in favor of the Commission.

Cooperation is another important area. The agency has long urged those involved in Commission investigations and litigations to cooperate with it. The Release cites four cases to illustrate the impact of cooperation: Headspin, Inc, a corporate fraud case; ProPetro Holding, an executive perks case; and Baxter International, an action centered on misstated revenue. In the first three cases no penalty was imposed; in the fourth a reduced penalty was imposed.

Comment

The task of SEC enforcement cannot be over stated – attempting to effectively police the most significant securities markets in the world as it fosters confidence and trust in investors from Main Street to Wall Street. The Release paints a picture of a vibrant, successful enforcement program. It initiated a significant number of new enforcement cases, recovered significant amounts of ill-gotten gains, and imposed billions of dollars in penalties not just as punishment but a warning to others.

Perhaps the key point of the report is the breath, depth and reach of the program, illustrated by case cites scattered through the Release. Those cases include: the actions against JPMorgan Securities and others for failing to preserve important records; the case charging EY for egregious, repeated ethical lapses; the action against Boeing for misleading everyone on key safety issues regarding its airplanes; and the action against Deloitte for its significant audit failure with its China based affiliates which left investors at risk. Each of these cases and many others illustrate not just the complexity of the issues faced daily by the Division but the scope and reach of its work.

Finally, every program can and should be constantly reviewed for improvement. Cooperation is a key issue as the Release recognizes. Despite repeated calls for cooperation over the years, the Release points only to four cases of hundreds where three firms were not penalized, and another received a reduced fine. While those are just examples, and in probably there are others which may include individuals, more in this area should be better. A successful cooperation program should facilitate the work of the division. Accordingly, strengthening the program and adding more certainty for those who chose to, for example, self-report and cooperate; that should encourage issuers and individuals to work closer with the agency and help build that program, aiding the efforts of the Division of Enforcement.