



GOVERNANCE & ACCOUNTABILITY INSTITUTE'S

TO THE POINT™



Timely News, Insights & Perspectives on Corporate Sustainability, Responsibility & Citizenship

November 2017

Governance & Accountability Institute shares timely news, insights and perspectives with corporate managers in key topic areas:

- Corporate Citizenship,
- Corporate Responsibility,
- Corporate Sustainability,
- Community Affairs, and
- Sustainable Investing.

To the Point! is a fee-based educational resource for corporate executives and managers distributed each month with periodic brief updates for critical items.

Published by
Governance &
Accountability Institute, Inc.
New York, New York

Researchers, Consultants & Strategists

Tel 646.430.8230
Email info@ga-institute.com
Web www.ga-institute.com

Educational Materials -
Contents Copyright © 2017-2018
by Governance &
Accountability Institute, Inc.
ALL RIGHTS RESERVED

Please contact us for
reprint or academic use:
info@ga-institute.com

WHERE WILL THE SEC ENFORCERS BE CONCENTRATING THEIR EFFORTS? The Enforcement Division S-p-e-l-l-s It Out

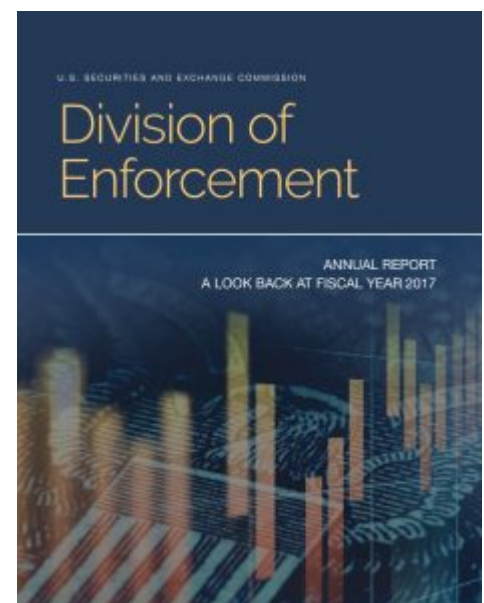
Issue 4.4

The designated watchdog by Federal law for securities-related fraud is the Securities & Exchange Commission (SEC). At times, critics claim that the Commission's enforcement activities are at a "lull" and at

other times there is criticism that the agency goes overboard in pursuing real or suspected violations, quite often on the part of corporations. Bloomberg LP in August 2017 published a BNA opinion piece that "...the SEC is strong and has its swagger back..."



November 15, 2017 — The Enforcement Division of the Securities & Exchange Commission set out 2017 and 2018 priorities in a report issued today. There are five core principles that guide enforcement decision-making identified:





The goals of the Division are to protect investors, deter misconduct, punish wrongdoers and keep the U.S. capital markets the safest and strongest in the world.

- Focusing on Main Street investors.
- Focusing on Individual (persons') accountability.
- Keeping pace with technology changes.
- Imposing sanctions that most effectively further enforcement goals.
- Constantly assessing the allocation of resources.

SEC reports that the Commission brought a diverse mix of 754 enforcement actions, including 466 “standalone” actions — this returned more than one billion U.S. dollars to “harmed” investors.

The standalone cases involved investment advisory issues, securities offerings, and issuer reporting & accounting and auditing issues. About 10% of cases involved market manipulation; 10%, insider trading, and 10%, broker-dealers.

In all, there was US\$3.8 billion in disgorgements and penalties.

Muscle: Bloomberg LP reports that there are 1,400 professionals working in enforcement at the SEC, working with a \$1.8 billion budget, part of which is provided by fees on stock trades.

In September 2017 SEC announced two new enforcement initiatives to combat cyber-based threats and protect retail customers.

The Cyber Unit will focus on such things as:

- Market manipulation schemes, including spreading false information through social media.
- Hacking (to get to non-disclosed material information at companies).
- “Violations” involving distribution ledger technology and initial coin offerings.
- Misconduct using the “dark web.”
- Intruding into retail brokerage accounts.
- Threats to trading platforms and critical capital market infrastructure.

Co-director of the SEC Enforcement Division **Stephanie Avakian** said in September: “Cyber-related threats and misconduct are among the greatest risks facing investors and the securities industry. The new Cyber Unit will enhance SEC’s ability to detect and investigate cyber threats through increasing expertise in an area of critical national importance.”

ON THE RETAIL SIDE

The new **Retail Strategy Task Force** is developing proactive, targeted initiatives to identify conduct that may/does impact “Main Street” retail investors. This includes sales of “unsuitable” structured products for sales to retail investors, especially micro-cap “pump and dump” schemes.



RECENT CASES — 2017 TRACK RECORD

In 2017, SEC brought actions against a number of companies related to violations of the **Foreign Corrupt Practices Act (FCPA)**. These included:



- Telia (Sweden telecom)
- Halliburton
- Och-Ziff (two executives, Michael Cohen and Vanja Baros)
- Orthofix International (Texas, medical device company)
- SQM (Sociedad Quimica y Minera de Chile S.A.)
- Biomet (Indiana, medical device)
- Cadbury Limited/Mondelez International

FCPA Enforcements in 2016 were extensive and included such firms as:

- Teva Pharmaceutical
- JP Morgan
- Embraer
- GlaxoSmithKline
- Anheuser Busch InBev
- AstraZeneca
- Johnson Controls
- Novartis AG
- SAP SE

SEC Sanctions to date in the year 2017 for FCPA violations and a variety of compliance issues included such identified organizations as:

- Barclays Capital (largest sanction of the year, at \$97 million)
- Calvert Investment Management
- BlackRock Fund Advisors
- Credit Suisse Securities USA
- Voya Financial Advisors
- Morgan Stanley Smith Barney





- Citigroup Global Markets
- Bank of New York Mellon
- MagnaChip Semiconductor
- William Blair Company
- Galena Biopharma
- Lime Energy Company
- Quantum Energy
- Allergan Inc
- Biomet
- L3 Technologies

Observers say SEC is on track for a record year in enforcement actions.

RESOURCES

Details for FCPA enforcement cases back to the year 1978 (the start of enforcement) are available at:

<https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>

There is an independent log compiled by the Labaton Sucharow Law Firm of various types of SEC Sanctions, tracking monetary sanctions in excess of \$1 million at:

<https://www.secwhistlebloweradvocate.com/program/sec-enforcement/sanctions-database/>

This firm encourages “SEC Whistleblower Advocates” to connect with the firm — especially “senior executives” providing tips for enforcement actions. The firm claims that the practice leader (Jordan A. Thomas) was a principal architect of the SEC Whistleblower Program. There’s an interview with him at:

<http://ww2.cfo.com/regulation/2017/08/ex-sec-attorney-raps-wsj-report-enforcement-activity/>

The Bloomberg BNA opinion piece by authors Brad Bennett, Alex Bourelly and Bridget M. Moore of the Baker Botts Washington DC office is at: <https://www.bna.com/2017-sec-enforcement-n73014463392/>

