

# Client Alert

Securities Enforcement and Regulation

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## SEC Enforcement Fiscal Year 2024 Results – A Look Behind the Numbers

SEC Chair Gary Gensler announced November 21 that he will leave his post January 20, 2025. The next day, the SEC announced its enforcement results for fiscal year 2024, which ended September 30. This was the latest release of enforcement statistics following the end of a fiscal year in a decade. The numbers reflected a mixed result, with total enforcement actions of 583 representing a 26% decline from fiscal year 2023, while the total financial remedies of \$8.2 billion far exceeded the amounts in any prior fiscal year.

Here are a few observations from reviewing the statistics reported by the SEC:

**Case Numbers:** In foreshadowing the lower total number of enforcement actions and in discussing the Report after its release, the current Acting Director of Enforcement has appropriately encouraged observers to focus on the many accomplishments of the Division that are not measurable by the numbers. He also mentioned that enforcement activity in October 2024 (the first month of the SEC's new fiscal year 2025) was stronger than in any October in over two decades. Our quick review confirmed that the SEC initiated more than 2.5 times as many enforcement cases in October 2024 as it did in October 2023. But even if the October increase had been "pulled forward" into September and became part of the fiscal year 2024 results, the total number of enforcement actions in fiscal 2024 still would have been fewer than the totals in each of the last five years.

Financial Remedies:

**Overall Numbers:** Regarding the historic financial remedy recovery, context is important to understand the significance of that statistic and how it compares to prior years. In its Report, the SEC acknowledged that "Approximately 56 percent of the \$8.2 billion financial remedies ordered is attributable to a monetary judgment obtained following the SEC's jury

trial win against Terraform Labs and Do Kwon, who were charged with one of the largest securities frauds in U.S. history.” While significant, it leaves approximately \$3.6 billion in other total financial remedies for the year, which would result in a 27% decline from fiscal year 2023 (and would constitute the lowest total reported since before fiscal year 2019).

**Civil Monetary Penalties:** Included in the historically high monetary sanctions imposed in SEC enforcement actions were the \$600 million in civil penalties against more than 70 firms in “off-channel communications” cases in fiscal year 2024. Current Enforcement leaders have provided mixed messages about that category of cases lately, with some saying the sweep has ended and others saying the cases are about half-over. The fiscal year 2024 enforcement report states that, in total, the sweep “has resulted in charges against more than 100 firms and more than \$2 billion in penalties” since December 2021. Because it is unlikely that these FY24 settlements and litigation results will be repeated, one wonders what the civil monetary penalties will look like in FY25.

**Credit for Cooperation:** We were pleased to see continued credit for cooperation highlighted in the annual report, and to the extent the lower number of enforcement actions and/or lower dollar amounts in some cases reflect significant cooperation by investigated parties, that is certainly welcome news. We know from our own practices that market participants do expend tremendous resources in cooperating with the SEC, with those resources at times resulting in the SEC declining to bring any case at all, and it is appreciated to see the agency recognize that publicly wherever possible. Unfortunately, however, the agency has not developed a measurable way of demonstrating the extent of that cooperation credit, so unless that changes, anecdotal references are the best we can expect. And fiscal year 2024 also marked the sixth year in a row in which the SEC chose not to enter into a non-prosecution or deferred prosecution agreement, or to issue a Section 21(a) Report of Investigation.

**FCPA:** We noted that the SEC reported only two Foreign Corrupt Practices Act cases initiated in fiscal 2024, which the Report statistically shows as representing 0% of its total actions. FCPA cases have represented only 1-2% of total actions since 2018, but this was the first time the percentage dwindled to functionally zero. For a limited period post-COVID, we expected FCPA case numbers to dip due to the difficulty of conducting international investigations during a pandemic. But given companies’ cooperation, the DOJ’s FCPA program, the importance of the SEC’s whistleblower program to the SEC’s enforcement efforts, and the resurgence of international travel, we were surprised to see this unusual dip. However, this may be one area where the early fiscal 2025 statistics indicate a rebound: the SEC already has filed four significant FCPA cases since the end of fiscal 2024, including two last week.

**Jarkesy Impact:** The June 27, 2024, United States Supreme Court decision in *SEC v. Jarkesy*, which held that the Seventh Amendment entitles a defendant a right to a jury trial when the SEC seeks civil penalties for securities fraud, may be one reason for a slow-down in enforcement results for the fiscal year. The decision resulted in a pause in finalizing certain matters since the decision is understood to have prompted extensive internal review at the SEC to determine how best to proceed, including by drafting new language now required for settlements in administrative proceedings involving penalties waiving the right to jury trials and expressly citing to the *Jarkesy* decision.

The path forward for the fiscal year 2025 SEC Enforcement program is unclear until a new SEC Chair is confirmed. We expect, however, that the program will likely focus more on matters involving retail investor harm and clearcut violations, rather than “rulemaking by enforcement.” We also expect that recent civil monetary penalties against public companies and registrants may potentially be dialed back to previous levels that appear more reasonably related to the alleged underlying violations.

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