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2023 SEC Enforcement Results – Takeaways for Fund Managers

The Capital Commitment on **November 20, 2023**

On November 14, 2023, the SEC's Division of Enforcement announced its Enforcement Results for Fiscal Year 2023. Below are some key takeaways for fund managers:

- The Commission brought 760 total enforcement actions in FY 2023, which represents a 3% increase over FY 2022. The SEC also filed 501 new standalone enforcement actions, representing an 8% increase over the prior year.
- The SEC obtained orders and judgments for over $4.9 billion in disgorgement and penalties, the second highest amount in its history. This number was second only to last year's $6.4 billion (which notably included several sizable settlements against large broker-dealers in the SEC's off-channel messaging sweep).
- Overall, 18% of the SEC's actions this year involved either investment advisers or investment companies, which is roughly in line with last year's 23%. Over the past eight years, actions involving investment advisers/investment companies have consistently comprised the highest or next highest percentage of total SEC matters by category.
- With respect to the SEC's Whistleblower Program, the Commission set several noteworthy records this year. Namely, the SEC received a record number of whistleblower tips, awarded a record number of whistleblower awards, and awarded the largest ever award of nearly $279 million to a single whistleblower. In addition, the SEC imposed a record-high $10 million penalty against a private fund manager for violations under Rule 21F-17, which prohibits impediments to whistleblowing.
- The SEC highlighted its "initiative investigating noncompliance with the Marketing Rule," which resulted in nine investment advisers being charged with violations relating to hypothetical performance.
- The SEC emphasized several high-profile actions involving recordkeeping, reporting and other compliance related violations "targeting misconduct that undermines its effective oversight of the securities industry." The SEC imposed significant civil penalties in these actions against regulated entities and issuers despite the absence of any allegations of investor harm.

- The SEC further highlighted multiple enforcement actions addressing ESG issues, including cases involving misstatements made during the marketing of ESG-branded investment products.
- The SEC came down especially hard on crypto-related matters this year, filing charges against a host of crypto exchanges, lending/staking products, and other intermediaries. The SEC brought several high-profile litigated matters that will challenge the scope of its regulatory authority in the crypto space. This is part of a growing willingness on the part of the SEC to litigate matters when necessary. More than 40 percent of the standalone matters for FY 2023 were filed in whole or in part as litigated actions, against both entities and individuals.

These results demonstrate an SEC that has been active on the enforcement front. The SEC's Enforcement Director noted earlier this year that private funds were a "substantive priority area" for the division, specifically noting concerns about potential conflicts of interest and fee and expense issues. Moreover, in over the past two years the SEC has pushed an aggressive slate of rulemaking affecting the private funds industry that impose new restrictions and arm regulators with additional tools to identify, exam and investigate market practices. As 2024 begins, we expect to see more scrutiny of private fund managers, as the SEC takes steps to enforce the new rules and the principles it has espoused in its rulemaking—for example, focused on fiduciary obligations of private fund managers.

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