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2024 SEC Enforcement Results – Takeaways for Fund Managers

The Capital Commitment on **December 4, 2024**

On November 22, 2024, the SEC's Division of Enforcement announced its Enforcement Results for Fiscal Year 2024. Below are some key takeaways for fund managers:

- Total enforcement actions were down from recent years. The Commission brought 583 total enforcement actions in FY 2024, which represents a 25% decrease from FY 2023's 784 actions. The SEC filed 431 new standalone enforcement actions, representing a 14% decrease from the prior year (501).
- Notably, over 70 of the standalone actions in 2024 (12%) were recordkeeping cases arising from the SEC's off-channel sweeps.
- The SEC obtained orders and judgments for over $8.1 billion in disgorgement and penalties, the highest amount in its history, exceeding 2023's $4.9 billion and 2022's $6.4 billion. However, over half of this figure resulted from a $4.5 billion settlement involving Terraform Labs after a trial verdict (which may be ultimately uncollectable against the bankrupt entity).
- Sanjay Wadhwa, the SEC's Acting Director of Enforcement, recently commented that the numbers may not tell the entire story, and observed that the Division's robust enforcement over the past few years has fostered a better culture of compliance across the industry. Furthermore, he noted several actions where reduced or no penalties have been imposed against parties that self-reported and meaningfully cooperated.
- Overall, 23% of the SEC's actions this year involved either investment advisers or investment companies, slightly above last year's 18%. 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.
- The SEC emphasized its continued efforts involving off-channel recordkeeping, noting that it reached settlements with over 70 firms resulting in more than $600 million in civil penalties. Off-channel cases continued to comprise a large percentage of penalties ordered (in FY 2023 the SEC imposed $400 million in off-channel penalties, and in FY 2022, $1.2 billion). Notably, a number of the FY 2024 matters were brought against either stand-alone or dual-registered investment advisers under the recordkeeping provisions of the Advisers Act.

- With respect to material non-public information (MNPI), the Commission noted settlements with several investment advisers for failing to establish, maintain, or enforce policies and procedures reasonably designed to prevent the misuse of MNPI. The potential MNPI in these matters, none of which alleged insider trading, related to individual loan data underlying collateralized loan obligations, merger activity involving private equity portfolio companies, and information received through ad hoc creditors' committees. The SEC also highlighted its settlement involving disclosure of confidential information relating to "block trades."
- The SEC highlighted over a dozen cases against investment advisers for noncompliance with the Marketing Rule, including for violations relating to misleading or hypothetical performance, and testimonials or endorsements presented without required disclosures.
- Eleven institutional asset managers settled cases for failing to disclose securities holdings accurately on Form 13F, as part of an enforcement initiative relating to public disclosure of securities holdings and transactions.
- With respect to the SEC's Whistleblower Program, the Commission received a record number of whistleblower tips (24,000 tips). The SEC awarded $255 million in whistleblower awards, down from 2023's record $600 million in awards (which included a nearly $279 million payment to a single whistleblower). In addition, the SEC imposed a record $18 million penalty for a standalone violation of Rule 21F-17, which prohibits impediments to whistleblowing, and brought a series of additional cases under that rule based on language contained in customer and employee agreements.

Enforcement Actions Filed in Fiscal Years 2018 to 2024

Despite fewer total actions, the SEC has continued to actively pursue matters involving investment advisers, and SEC officials often note that private funds are a "substantive priority area" for the division. The SEC has faced considerable setbacks in the federal courts, who have rejected its aggressive slate of rulemaking affecting the private funds industry. However, the SEC still has substantial tools to identify, examine and investigate the principles it has espoused in its rulemaking—for example, focused on fiduciary obligations of private fund managers. In 2025, with a deregulatory administration in charge, rulemaking will generally be on hold, but we expect the SEC staff will continue to use its existing enforcement authority to focus on private fund manager practices.

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