Securities Industry and Financial Markets Association

SIFMA-Bates Group's Leaders & Experts Forum:
Successfully Managing Regulatory Investigations and Enforcement Matters in the New Regulatory Landscape and Big Data-Driven Age

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Regulatory Investigations and Enforcement Priorities, Investigations & Responses*

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* This outline was drafted by Ben A. Indek, Zoe Rosenthal and Ariel Gursky of Morgan, Lewis and Bockius LLP. As noted below, certain information appearing in this outline was created for previous SIFMA C&L Society Seminars, other events or publications. This outline does not represent the views of the other panelists or their organizations. The information herein is current as of January 19, 2017.

I. Introduction

A. With the constantly changing regulatory environment, it is important for both in-house and outside counsel to stay abreast of the latest developments in the enforcement area. These areas include: regulatory priorities and focus; self-reporting; internal and external communications concerning regulatory matters; use of experts; parallel proceedings; SEC waivers; and, litigation/settlement considerations. Each of these topics is discussed below.

II. 2017 Regulatory Priorities and Focus

FINRA

A. Each year, FINRA publishes its Annual Regulatory and Examination and Priorities Letter ("Priorities Letter"). The letter describes the areas FINRA intends to focus on during the coming year.[1]

B. This was the first Priorities Letter issued under the leadership of the new FINRA President and CEO, Robert Cook. In addition to introducing this year's publication, Cook's cover letter describes two steps FINRA plans to take in the upcoming year: (1) publishing common examination findings; and (2) developing new resources and tools for small firms.

C. FINRA's 2017 regulatory and examination priorities include:

1. High-risk and Recidivist Brokers

2. Sales Practices

    a. Senior Investors

    b. Product Suitability and Concentration

    c. Excessive and Short-term Trading of Long-term Products

    d. Outside Business Activities and Private Securities Transactions

    e. Social Media and Electronic Communications Retention Supervision

3. Financial Risks

[1] *See* 2017 Regulatory and Examination Priorities Letter (Jan. 4, 2007), http://www.finra.org/industry/2017-regulatory-and-examination-priorities-letter.

a. Liquidity Risk

b. Financial Risk Management

c. Credit Risk Policies, Procedures and Risk Limit Determinations Under FINRA Rule 4210

4. Operational Risks

a. Cybersecurity

b. Supervisory Controls Testing

c. Customer Protection/Segregation of Client Assets

d. Regulation SHO – Close Out and Easy to Borrow

e. Anti-Money Laundering and Suspicious Activity Monitoring

f. Municipal Advisor Registration

5. Market Integrity

a. Manipulation

b. Best Execution

c. Audit Trail Reporting Early Remediation Initiative and Expansion

d. Tick Size Pilot

e. Market Access Rule

f. Trading Examinations

g. Fixed Income Securities Surveillance Program

SEC

D. Each year, the SEC announces its Office of Compliance Inspections and Examinations' ("OCIE") priorities. This year the priorities focus on three thematic areas: (1) protecting retail

investors; (2) risks specific to elderly and retiring investors; and (3) assessing market-wide risks.[2]

E. OCIE's specific priorities in 2017 include:

1. Protecting Retail Investors

    a. Electronic Investment Advice

    b. Wrap Fee Programs

    c. Exchange-Traded Funds ("ETFs")

    d. Never-Before Examined Investment Advisers

    e. Recidivist Representatives and their Employers

    f. Multi-Branch Advisers

    g. Share Class Selection

2. Focusing on Senior Investors and Retirement Investments

    a. ReTIRE Initiative

    b. Public Pension Advisers

    c. Senior Investors

3. Assessing Market-Wide Risks

    a. Money Market Funds

    b. Payment for Order Flow

    c. Clearing Agencies

    d. Inspections of FINRA's Operations and Regulatory Programs

    e. Regulation Systems Compliance and Integrity

    f. Cybersecurity

    g. National Securities Exchange

[2] *See* SEC Office of Compliance Inspections and Examinations, Examination Priorities for 2017 (Jan. 12, 2017), https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2017.pdf.

h. Anti-Money Laundering

4. Other Initiatives

a. Municipal Advisors

b. Transfer Agents

c. Private Fund Advisers

III. Investigation Practice Insights and Self-Disclosure – Benefits & Risks

A. Overview of FINRA Rule 4530

1. Rule 4530(b): Self-Reporting of Internal Conclusions

a. "Each member shall promptly report to FINRA, but in any event not later than 30 calendar days, after the member has concluded or reasonably should have concluded that an associated person or the member itself has violated any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body or self-regulatory organization."

b. Guidance Note:

i. The 30 day clock does not begin while a firm is "still in the process of gathering the available facts, it is not in a position to conclude, or reasonably conclude, whether a reportable violation occurred," but a firm "cannot intentionally or negligently delay the fact-finding state . . . ."[3]

2. Scope of the Rule

a. FINRA guidance states that firms are not required to report every instance of noncompliant conduct. Rather, broker-dealers must report violative conduct by a firm that:

[3] Rule 4530(b) FAQs

i. Has widespread or potential widespread impact to the firm, its customers or the markets; or

ii. Arises from a material failure of the firm's systems, policies or practices involving numerous customers, multiple errors or significant dollar amounts.[4]

b. Guidance Note:

i. FINRA acknowledges that there may be cases where a firm subjects its associated persons to remedial action but nevertheless concludes that no report is required.[5]

3. Reasonable Person Standard

a. Rule 4530(b) requires reporting not only when the firm "concluded" but also when the firm "reasonably should have concluded" that the covered conduct occurred.[6]

b. FINRA applies a "reasonable person" standard to determine whether a violation should have been reported: If a reasonable person, considering available facts, would have concluded that a violation occurred, then the matter is reportable.[7]

4. Procedures

a. According to FINRA, a firm's Rule 4530(b) procedures should:

i. Provide a protocol for escalating violations and potential violations.

ii. Clearly identify the person(s) responsible for determining whether a violation has occurred, and seniority of such person.

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[4] Rule 4530(b) Supplementary Material .01

[5] Regulatory Notice 11-32

[6] Regulatory Notice 11-32

[7] Regulatory Notice 11-06

iii. Provide a protocol for 4530(b) reporting to FINRA within 30 calendar days.

B. Extraordinary Cooperation

1. Regulatory Notice 08-70

a. FINRA has advised the industry that certain types of actions by firms may directly influence the outcome of an investigation. This concept is called "extraordinary cooperation."

2. The types of extraordinary cooperation that could result in credit being given to a firm include self-reporting violations *before* a regulator becomes aware of the issue.[8]

3. FINRA will consider giving credit for self-reporting that is "prompt, detailed, complete and straightforward" and goes "significantly beyond the requirements of the rule," (e.g., a "detailed account of the discovered conduct and an offer to explain" with more detail).[9]

4. In addition to self-reporting, in FINRA's view, extraordinary cooperation can also be demonstrated by the following actions:

a. Taking steps to correct deficient procedures and systems;

b. Offering restitution to customers; and

c. Providing substantial assistance to FINRA's investigation.[10]

5. Credit for extraordinary cooperation may be reflected in several ways, including:

a. A reduction in the fine imposed on a firm.

b. Not requiring a company to undertake certain remedial steps.

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[8] Regulatory Notice 08-70

[9] Regulatory Notices 08-70 & 11-32

[10] Regulatory Notice 08-70

c. Referring to a firm's cooperation in the settlement document and/or press release.

C. FINRA Enforcement Actions – Examples of Credit for Self-Reporting

1. December 2012 – A firm receives mention in the "Other Factors" section of FINRA's Acceptance, Waiver and Consent ("AWC") for its self-reporting.

a. "In determining the appropriate sanctions, FINRA considered that the Firm self-reported the paper order pricing issue, undertook an internal review of the issues related to the mutual fund pricing, implemented changes to its policies and procedures and commenced restitution to the affected customers…"

2. January 2013 – A firm receives "extraordinary cooperation" credit in FINRA settlement for self-reporting and taking other steps regarding deficiencies in Blue Sheet reporting, prospectus delivery, research report disclosures and text message retention over several years.

a. After describing various actions taken by the firm, FINRA stated that "in light of its extraordinary cooperation, [the firm] has received a reduced fine."

3. March 2014 – A firm receives credit in the "Other Factors" section of FINRA's AWC for its self-reporting.

a. "FINRA acknowledges that [a firm] self-reported the issues described herein in March 2012, undertook an internal review of its supervisory policies, procedures, and systems relating to these issues, and subjected e-mails that had not been reviewed to review. The sanctions below reflect the credit that [the firm= has been given for self-reporting these issues and providing the information obtained as a result of its internal review to FINRA."

4. July 2015

a. In a matter involving significant OATS violations, the AWC stated that in determining the sanction, FINRA took into account that the company self-reported the matter and *"undertook steps to remediate the issues and conducted a broader review of its OATS reporting, which led the firm to further identify and*

report to Market Regulation staff additional OATS reporting issues. The firm also provided substantial assistance to Market Regulation staff, including providing the staff with data quantifying its OATS reporting issues."

5. December 2015

    a. A firm self-reported certain Blue Sheet violations. In determining the sanction, FINRA stated that it took into account the firm's self-report and that the firm had *"detected the violations, initiated internal reviews upon discovery of the violations, identified the cause of the violations, and engaged in remediation."*

6. July & October 2015

    a. In a series of cases in July and October 2015, involving firms' failures to waive mutual fund sales charges for eligible charitable organizations and retirement accounts, FINRA did not impose *any* fines. Rather, FINRA ordered the firms, each of which self-reported the issue, to provide millions of dollars in restitution to affected customers. In doing so, FINRA stated in the press release announcing one set of cases that "*cooperation credit was granted to those firms that were proactive in identifying and remediating instances where their customers did not receive applicable discounts."*

7. August 2016

    a. A firm self-reported certain OATs violations. In determining the sanction, FINRA stated that it took into account the firm's self-report and *"remedial steps taken by the firm, including enhancements to some of its supervisory systems."*

8. December 2016 – A firm receives credit for "extraordinary cooperation" in the "Other Factors" section of FINRA's AWC

    a. "FINRA recognized [a firm's] extraordinary cooperation by (1) self-reporting three of its problems . . . and (2) substantially assisting FINRA with its investigation . . ."

IV. Managing Internal Stakeholder and Regulator Communications

A. Considerations in communicating the status, risks, and strategy of a regulatory investigation internally:

1. What form should the communications take (i.e., oral vs. memorandum)?

2. The content/details of such communications.

B. Considerations in communicating with regulators:

1. Whether to raise certain issues above the staff attorney level to senior staff (e.g., policy issues, or potentially burdensome or sensitive document requests).

2. Memorializing communications with regulators in writing on key issues.

V. Information Gathering: Use of Experts and Consultants, Privacy and Privilege Issues[11]

A. Privilege Issues

1. Expert communications with counsel are protected from discovery in litigation, except to the extent that communications:

a. Relate to the expert's compensation,

b. Identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed, or

c. Identify assumptions that the party's attorney provided and that the expert relied upon in forming the opinions.[12]

2. However, communications between an expert and others, including the client or other experts, are not protected by Fed. R. Civ. P. 26(b)(4)(c).

3. Best Practices

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[11] The content in this section was derived from an April 6, 2016 training session delivered by David I. Miller and Timothy J. Stephens of Morgan, Lewis & Bockius for the firm's litigators.

[12] *See* Fed. R. Civ. P. 26(b)(4)(c).

a. Ensure that communications are managed to preserve privileges.

i. Attorney-client privilege may be asserted in communications directly between attorneys and experts where the communications were made to assist counsel in providing legal advice to a client.

ii. Work product protection applies to work generated by the expert/consultant in anticipation of litigation.

b. Be mindful of what information the expert receives or is generating. Issues to consider:

i. Is the expert/consultant generating notes? Do they reflect the confidences of the client?

ii. Is the expert/consultant generating data that is both helpful and unhelpful?

iii. Consider what would be disclosed if privileges were waived.

iv. Consider what would be disclosed if the client wanted to retain the expert in later litigation.

v. Potential waiver issues may exist in disclosing attorney-client communications/strategy to an expert/consultant.

VI. Handling Parallel Proceedings[13]

A. One incident, such as a customer complaint or a press report, can spark multiple investigations by the SEC, SROs and/or state regulators.

1. The SEC Enforcement Manual directs SEC staff to consider "[whether] the matter would present an opportunity to pursue priority interests shared by other law enforcement agencies on a coordinated basis."[14]

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13 The content in this section was derived from the "Private Client Regulatory Enforcement" presentation made at the 2016 SIFMA C&L Annual Seminar, in which Ms. Marquardt and Ms. Merrill participated.

14 SEC Manual § 2.1.1.

2. On the other hand, in some cases involving more than one regulatory inquiry, it may be possible to convince one regulator to defer its investigation, at least pending the outcome of an investigation by another regulator.

3. Strategize regarding whether and how to seek a deferral.

   a. Which regulator is likely to give the client the fairest shake?

   b. Seek such a deferral early, before the relevant regulator has invested large amounts of time and resources into the inquiry.

   c. If the regulator will not defer, consider requesting that the various regulators minimize duplication, e.g., focus on different issues and/or accept documents previously produced to the other regulator.

B. Consider factors unique to the different regulators

1. The SROs.

   a. FINRA and other SROs can bring charges based on alleged violation of ethical standards.[15]

   b. Although FINRA and SROs lack subpoena power, failure by a member firm or its employees to cooperate during an SRO investigation may result in independent violations.

   c. SROs do not recognize a witness's right to assert the Fifth Amendment privilege against self-incrimination during investigations or disciplinary proceedings. Courts and the SEC have generally upheld this principle absent compelling evidence that the SRO is acting jointly with or at the direction of a state actor in an investigation.[16] Counsel should also consider whether all necessary witnesses are within the SRO's

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15 *See* FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade).

16 See, e.g., U.S. v. Solomon, 509 F.2d 863, 872 (2d Cir. 1975) (finding that interrogation by the NYSE was not equivalent to interrogation by the U.S. government as to trigger the privilege against self-incrimination); In re Justin Ficken, Exchange Act Release No. 54,699 (Nov. 3, 2006); DOE v. Coniglione, C10000140 (May 14, 2001) (finding a violation of NASD Rule 8210 and Conduct Rule 2110 for asserting Fifth Amendment privilege during an NASDR interview).

jurisdiction and, if not, whether they are likely to appear voluntarily.

2. The states.

a. State investigations may not follow the formal procedures common to SEC and SRO investigations, and states sometimes have broader statutory provisions (*e.g.*, the New York Martin Act) that may encompass the conduct under investigation.

3. Some states have more than one office that handles securities investigations.

C. Counsel should get a clear understanding of the organizational structure within each state as well as current state politics to better understand how best to deal with state investigations. Consider hiring counsel familiar with state process and personnel.

VII. Litigation/Settlement Considerations; Waivers and Admissions; Penalties and Sanctions

A. Litigation/Settlement Considerations:

1. Settlement considerations:

a. Potentially lower financial costs of settlement.

b. Potentially less publicity associated with a settlement, as opposed to the publicity of a complaint, trial, and verdict, etc.

c. Ability to put the matter behind the firm.

d. Are more advantageous settlement terms available to the firm through an amicable resolution?

2. Litigation considerations:

a. Are the facts of the matter disputed?

b. Are important policy issues or principles at stake?

c. Potential reputational risks of litigating with a firm's primary regulator.

d. Distraction to the business in preparing for and trying a case.

e. Ongoing publicity associated with a complaint, trial, verdict, appeal, etc.

f. Is the SEC demanding an admission?

B. Collateral Consequences: Disqualifications, Exemptions & Waivers[17]

1. Regulatory and criminal actions can result in disqualifications pursuant to certain federal securities laws, including:

a. Rule 405 under the Securities Act of 1933 (the "WKSI" disqualification if the defendant is a public company or has a public company parent).

b. Section 9(a) of the Investment Company Act of 1940 (prohibition on providing certain services to registered investment companies).

c. Rule 206(4)-3 under the Investment Advisers Act of 1940 (prohibition on the payment of solicitor's fees to disqualified persons).

d. "Statutory disqualification" pursuant to Section 3(a)(39) of the Securities Exchange Act of 1934.

2. SEC Waivers

a. The SEC has the authority to waive certain disqualifications that would otherwise prohibit individuals or entities from engaging in particular business activities or relying on certain exemptions.

b. The affected company or individual must demonstrate "good cause" that a waiver should be granted.

i. Commissioner Daniel M. Gallagher (Feb. 13, 2015): "[I]ndividuals and entities that are found – or deemed, by virtue of a settlement – to have committed certain bad acts are potentially subject to a variety of disqualifications prohibiting them from engaging in business activities or from relying on exemptions that otherwise would be available to them.

[17] Content in this section is derived from a 2016 presentation created by Rani Doyle, David Sirignano and Amy Natterson Kroll of Morgan, Lewis & Bockius LLP, entitled "Trading and Investment Practices Affecting Hedge Funds."

Depending on the facts and circumstances, the Commission may choose to waive such a disqualification. Factors considered by the Commission in deciding whether to waive a disqualification include, among others, the types of individuals and entities involved in the misconduct, whether the misconduct was 'willful,' whether the misconduct resulted in a violation of the anti-fraud provisions of the securities laws, the duration of the conduct, and any remedial steps taken."[18]

c. This has been a contentious issue among commissioners:

i. Chair Mary Jo White – Mar. 12, 2015 speech: "My bottom line is that as we have been doing, we must carefully scrutinize each waiver decision, faithfully apply the applicable legal standards and always keep in mind the purpose of the inquiry – to determine whether the entity or individual, going forward, can engage responsibly and lawfully in the activity at issue in the particular disqualification. If the answer is "no" at the end of that analysis, we should deny the waiver, no matter the size of the institution or consequences. But waivers were never intended to be, and we should not use them as, an additional enforcement tool designed to address misconduct or as an unjustified mechanism for deterring misconduct."[19]

ii. Dissenting Statement – Commissioner Kara M. Stein – May 21, 2015: "It is troubling enough to consistently grant waivers for criminal misconduct. It is an order of magnitude more troubling to refuse to enforce our own explicit requirements for such waivers. [The type of] recidivism and repeated criminal misconduct

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[18] Commissioner Daniel M. Gallagher, Why is the SEC Wavering on Waivers? Remarks at the 37th Annual Conference on Securities Regulation and Business Law (Feb. 13, 2015), https://www.sec.gov/news/speech/021315-spc-cdmg.html.

[19] Chair Mary Jo White, Remarks at the Corporate Counsel Institute, Georgetown University (March 12, 2015), https://www.sec.gov/news/speech/031215-spch-cmjw.html.

[seen in recent cases where waivers were granted] should lead to revocations of prior waivers, not the granting of a whole new set of waivers. We have the tools, and with the tools the responsibility, to empower those at the top of these institutions to create meaningful cultural shifts, yet we refuse to use them."[20]

iii. Statement on Enhancing the Commission's Waiver Process - Commissioner Luis A. Aguilar - Aug. 27, 2015: "I urge the Commission to consider revising its waiver review process so that both the Commission and the public have greater insight into the entire process, particularly for waivers that are handled by delegated authority." This statement also called for the use of "conditional waivers."[21]

C. Requirement of Admissions in Some Settlements[22]

1. The idea that a settling defendant might have to admit to anything was, until the last several years, unheard of in SEC practice. However, this issue changed quickly, thanks to an initial push from Judge Jed Rakoff, of the U.S. District Court for the Southern District of New York, and to a more aggressive Division of Enforcement.

a. First, in November 2011, Judge Rakoff refused to enter an order approving a settlement reached by the SEC and Citigroup. The SEC had filed a complaint against Citigroup alleging claims arising out of the structuring and marketing of a largely synthetic collateralized debt obligation. Shortly after the filing, the SEC filed a proposed Consent Judgment,

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20 Commissioner Kara M. Stein, Dissenting Statement Regarding Certain Waivers Granted by the Commission for Certain Entities Pleading Guilty to Criminal Charges Involving Manipulation of Foreign Exchange Rates (May 21, 2015), https://www.sec.gov/news/statement/stein-waivers-granted-dissenting-statement.html.

21 Commissioner Luis A. Aguilar, Public Statement: Enhancing the Commission's Waiver Process (Aug. 27, 2015), https://www.sec.gov/news/statement/aguilar-enhancing-commissions-waiver-process.html.

22 Content in this section is derived from two publications by Morgan Lewis & Bockius LLP: "Select Broker-Dealer Enforcement Cases and Developments – 2014 Year in Review" and "2015 Year in Review – Select SEC and FINRA Developments and Enforcement Cases."

reflecting the parties' settlement. Subsequently, the district court issued an order declining to approve the Consent Judgment. In his written opinion, Judge Rakoff stated that he was without an evidentiary basis to determine reasonableness, fairness, adequacy, or whether the settlement was in the public's interest.[23] Both the SEC and Citigroup appealed.

b. In August 2014, the United States Court of Appeals for the Second Circuit vacated and remanded Judge Rakoff's refusal to approve the parties' settlement.[24] The Second Circuit held that Judge Rakoff had applied an incorrect legal standard for evaluating the parties' settlement.[25] The Court of Appeals further opined that it is an abuse of discretion for a court to require the SEC to establish the "truth" of allegations against a settling defendant as a precondition of settlement, noting that, "[t]rials are primarily about the truth. Consent decrees are primarily about pragmatism."[26]

c. As the Citigroup case was playing out in the courts, in June 2013, in a significant departure from past practice, Chair White announced that the SEC would begin requiring admissions of facts and misconduct from defendants as a condition of settlement in cases where there was a heightened need for public accountability. While she predicted that most cases would continue to settle with the defendants neither admitting nor denying the allegations of wrongdoing, the SEC would begin to require admissions as a condition of settlement in cases involving egregious intentional misconduct, substantial harm to investors, or serious risk to the markets.

2. This shift in the SEC's settlement policy altered the monetary risk/benefit calculus of settling a matter with the Commission and requires a settling party to factor in the impact of admissions on collateral actions. For regulated entities and individuals, an SEC demand for admissions also reframes

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23 *See SEC v. Citigroup Global Mkts, Inc.*, 827 F. Supp.2d 328, 335 (S.D.N.Y. 2011).

24 *See SEC v. Citigroup Global Mkts., Inc.*, 752 F.3d 285 (2014).

25 *Id.*

26 *Id.* at 295.

the issue of the advisability of litigating against one's primary regulator.

3. SEC Director of Enforcement Andrew Ceresney has stated that admissions will be considered in certain types of cases, including those where large numbers of investors were harmed, where the markets or investors were placed at significant risk, where the wrongdoer posed a particular future threat to investors or the markets, where the defendant engaged in unlawful obstruction of the Commission's processes, or where admissions would significantly enhance the deterrence message of the action.[27]

4. In May 2015, Director Ceresney noted that the Commission had obtained admissions in certain settlements after proceedings had been commenced, rather than solely as an element of a settled action.[28]

5. In June 2015, Chair White stated that admissions can bring about "greater public accountability and that public accountability can boost investors' confidence and serve as a stronger deterrent."[29] As such, she stated that she anticipated the program to "continue to evolve and grow."[30]

6. In November 2016, Chair White discussed the "transformative impact" of the admissions policy:

    a. To that date, the SEC had obtained admissions from 77 defendants and respondents – 30 individuals and 47 entities.

    b. Chair White noted that the SEC does not accept "'no admit, no deny' settlements where a defendant has

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27 *See* Director Andrew Ceresney, Remarks to the American Bar Association's Business Law Section Fall Meeting, Washington, DC (Nov. 21, 2014), http://www.sec.gov/News/Speech/Detail/Speech/1370543515297#.VH3b-GxOU6Y.

28 *See* Director Andrew Ceresney, Keynote Speech at New York City Bar 4th Annual White Collar Institute, Washington, DC (May 12, 2015), http://www.sec.gov/news/speech/ceresney-nyc-bar-4th-white-collar-key-note.html#_ftnref22.

29 *See* Chair Mary Jo White. Remarks Before the SEC Historical Society, Washington, DC (June 4, 2015), http://www.sec.gov/news/speech/remarks-before-the-sec-historical-society.html.

30 *Id.*

been found guilty or admitted relevant facts in a proceeding involving other criminal or civil authorities," of which there have been dozens.

c. Since initiating the policy, the SEC has "obtained admissions from a broad spectrum of important market participants – financial institutions, broker-dealers, audit firms, and individuals, and in both scienter-based and nonscienter-based cases."

d. Chair White stated that "[i]n another measure of the impact of our new admissions protocol, other civil financial regulators are following our lead and are beginning to require admissions in some of their cases, thus strengthening the impact of civil law enforcement generally."

D. Penalties and Sanctions

1. SEC Fiscal Year 2016 Enforcement Results[31]

a. Total Actions: 868

i. Independent or Standalone Enforcement Actions: 548

ii. Follow-on Administrative Proceeding: 195

iii. Delinquent Filings: 125

b. Disgorgement and Penalties Ordered: Over $4 billion (compared with $4.19 billion in FY 2015 and $4.16 billion in FY 2014)

c. Record number of cases involving investment advisers and investment companies (160 total cases; 98 stand-alone cases).

2. As of the date of this outline, FINRA had not yet announced its 2016 enforcement results.

[31] SEC Announces Enforcement Results for FY 2016 (Oct. 11, 2016), https://www.sec.gov/news/pressrelease/2016-212.html.