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SEC ENFORCEMENT TRENDS FOR PRIVATE FUND MANAGERS

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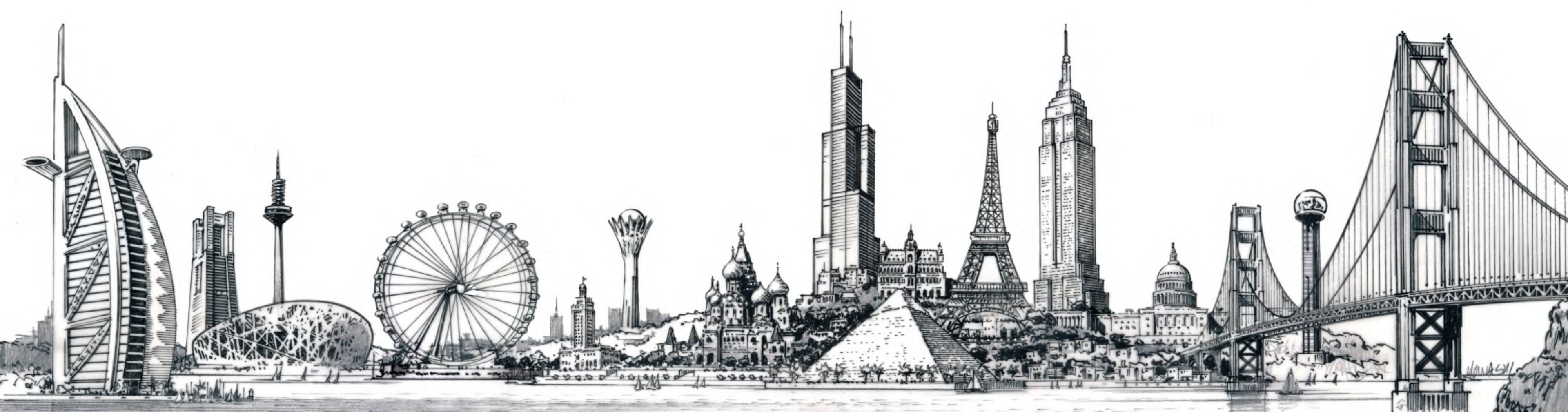

Agenda

- SEC Enforcement Developments
- Notable Enforcement Cases/Trends
- 2018 Regulatory Priorities
- Hot Topics

SEC Enforcement Developments 2017

- New Commission/Staff: Personnel is policy
- Protecting retail investors is "Principle 1"
- Individual accountability
- Cybersecurity
- *Kokesh* (five-year statute of limitations)
- *Lucia v. SEC* (appointment of administrative law judges)

Use of Data and Quantitative Analysis

- Continued Use of Data to Detect Violations
  - Enforcement's own Center for Risk and Quantitative Analytics participated in a number of enforcement actions, and leveraged analytics and new technologies to evaluate marked data and other available information to assess the scope and depth of potential violations.
  - Division of Economic and Risk Analysis continues to participate in driving data analysis as a means of identifying violative conduct, particularly in connection with regulated entities.
  - OCIE has created its own Office of Risk and Strategy to leverage and better use data analytics in the examination context and identify matters for referral to Enforcement.
  - Focus on technology and development of data analytics tools may help the SEC to consider more complex trading, including algorithmic and other technology-based strategies and vehicles.

2017 SEC Enforcement Statistics

- 754 cases brought, a 6.5% decrease from FY 2016
  - According to the SEC, 446 of these cases were independent actions for securities laws violations, and the balance were delinquent filing cases or administrative actions seeking bars based on injunctions or criminal convictions
- $3.7 billion in penalties and disgorgement, a decrease of approximately a half-billion dollars from FY 2016

2017 SEC Enforcement Statistics

Type of Case	Number of Independent Actions	Percentage
Issuer Reporting/Audit and Accounting	95	21%
Securities Offering	94	21%
Investment Advisers/Investment Companies	82	18%
Broker-Dealer	53	12%
Market Manipulation	41	9%
Insider Trading	41	9%
Public Finance Abuse	17	4%
FCPA	13	3%
Miscellaneous	7	2%
Transfer Agent	3	1%

2017 SEC Statistics Whistleblower Program

- In FY 2017, the SEC's Office of the Whistleblower received 4,484 tips, complaints, or referrals (TCRs)
  - Increase of 266 (or approximately 6%) from FY 2016
  - Most significant areas for TCRs: corporate disclosure and financials (21.3%); offering fraud (16.9%); and manipulation (10.4%)
  - Tips from every state (highest numbers from California, New York, Texas, Florida, and New Jersey); highest number of non-US tips came from the UK, Canada, and Australia
- Last year, the SEC paid nearly $50 million in awards to 12 whistleblowers
  - More than $20 million paid to one individual, the third-highest award in the history of the program

– SEC announced largest-lever whistleblower award ($50m shared between two individuals, with a third receiving more than $33m) on March 19, 2018

Notable SEC Cases from 2017

- Fees and Expenses
  - Improper allocation based on organizational documents
  - Failure to obtain LPAC consent
  - Allocation between funds
  - Broken-deal expenses
  - Calculation of management fees and expenses

Notable SEC Cases from 2017

- Disclosure
  - Related-party transactions
  - Forgivable loans and brokerage benefits
  - Misrepresentation of investment strategy
- Insider Trading/Material Non Public Information
  - Sharing of confidential information
  - Misuse of material nonpublic information from research firms
- Suitability
  - Recommendations of unsuitable investments to public investors

Notable SEC Cases from 2017

- Anti-Money Laundering
  - Suspicious activity reporting
- Valuation
  - Fixed income investments
  - Private companies
- Allocation of Investments
  - Proprietary or personal accounts

Notable SEC Cases from 2017

- Registration
  - Integration of exempt reporting advisers
- Advertising
  - Misrepresentation of performance
- Compliance Programs
  - Outsourced CCOs

SEC Regulatory Priorities for 2018

- Focus remains on retail investors
- Implications for private fund managers
  - Fees and expenses disclosures
  - Accuracy of fee calculations, including related valuation
  - Private fund advisers with high concentration of investors that invest for retail clients (e.g., non-profits and public institutions)
  - Municipal advisors and underwriters
  - Fixed income order execution
  - Cryptocurrency; initial coin offerings; blockchain
  - Cybersecurity
  - Anti-money laundering

Hot Topics

- Custody – inadvertent custody guidance
- DOL Fiduciary Rule
- Involvement with cryptoassets
- Cybersecurity
- Performance advertisements
- Cross-trading

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