

Morgan Lewis

SEC and FINRA
2010 Year in Review

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Agenda

- SEC
 - Statistics
 - Key enforcement developments
 - Themes from key cases
 - 2011 enforcement priorities
- FINRA
 - Changes in the enforcement program
 - Statistics
 - Themes from key cases
 - 2011 enforcement priorities

2010 Highlights: SEC Statistics

- FY 2010 was a busy time for enforcement at the SEC:
 - 531 formal investigations opened (versus 496 in FY 2009)
 - 681 cases (versus 664)
 - 70 actions against broker-dealers (36% decrease)
 - 53 insider trading cases (versus 37)
 - 139 criminal actions relating to SEC cases (slight decrease)
 - 37 emergency orders and 57 asset freezes (down from prior year)
 - \$1.03 billion in fines (up 200%)
 - \$1.82 billion in disgorgement orders (down \$189 million)

2010 Highlights: SEC Key Enforcement Developments

- Key enforcement developments included:
 - Completion of comprehensive review and reorganization
 - *Flattened management structure*
 - *Office of Market Intelligence – FBI agent embedded*
 - Leadership, staffing and cases brought by specialized units
 - *New leaders*
 - *Fully staffed*
 - *Bringing actions*
 - Cooperation initiatives announced/used
 - Enhanced enforcement powers and remedies through Dodd-Frank
 - *Aiding and abetting, control person liability, collateral bars*
 - *Civil penalties in cease-and-desist cases, clawback provision*
 - *Whistleblower program*
 - *Information Sharing*

2010 Highlights: SEC Cases

- SEC actions:
 - Continued focus on insider trading on Wall Street
 - *More cases and defendants*
 - *Several expert network actions to date*
 - *Criminal collaboration and new investigation techniques*
 - Emphasis on individual liability
 - Broker-dealer and manager supervision
 - Cooperation credit

2011 SEC Enforcement Priorities

- Municipal securities offerings and transactions (retail focus)
- Insider trading by Wall Street professionals
- Valuation of and disclosures relating to subprime securities
- Failure to supervise by firms and individual managers
- Marketing and sale of CDOs and other complex derivative products, including reverse convertible notes, auto-callable notes, principal protected notes and total return swaps
- High frequency and other trading practices (including layering, spoofing, quote stuffing, abusive co-location and data latency arbitrage, etc.)
- Residential mortgage backed securitizations and foreclosure practices

2010 Highlights: FINRA

- New leadership
- Targeted examination letters/task forces
- On-site investigations
- FINRA assumption of surveillance/enforcement from NYSE Regulation
- Access to FINRA AWCs
- Encryption of information provided to FINRA

2010 Highlights: FINRA Statistics

- FINRA's enforcement activity increased last year
 - 1,310 new disciplinary actions filed (up 13% over 2009)
 - 1,178 formal cases resolved (versus 1,090)
 - 288 individuals barred (versus 383)
 - 428 individuals suspended (versus 363)
 - \$41.1 million in fines* (versus \$47.6 million)
 - \$8 million in restitution to investors*

**Statistics through November 30, 2010*

2010 Highlights: FINRA Statistics

Fine Range	2008	2009	2010
\$100,001 to \$250,000	45	34	27
\$250,001 to \$500,000	10	20	13
\$500,001 to \$750,000	4	6	7
\$750,001 to \$1,000,000	2	3	3
\$1,000,001 to \$1,500,000	2	4	1
\$1,500,001 or more	0	6	2
Total	63	73	53

2010 Highlights: FINRA Cases

- FINRA actions:
 - Supervision
 - Retail sales of CMOs, RCNs and CDs
 - Anti-money laundering
 - Error accounts
 - Form U-4 reporting
 - Operational cases

2011 FINRA Enforcement Priorities

- Ponzi schemes and other frauds
- Fixed income trading and sales
- Municipal securities transactions
- Exotic products
- Principal protected notes
- Reverse convertibles
- Chasing yield
- Equity indexed annuities and variable annuities
- Auction rate securities
- Day trading
- Life settlements
- Proprietary trading
- Regulation D
- Illegal distributions of stock and related penny stock scams
- Stock-for-cash programs

Q&A



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