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SEC Annual Report Shows Record Enforcement of Asset Management Industry

Near the end of each year, the SEC's Enforcement Division publishes a report listing their past actions along with future priorities. They recently released their 2019 report and what stands out is last year's record enforcement of the asset management industry. We've summarized the most important parts of the report here.

Asset Management Enforcement

The Enforcement Division's report made it clear that they prioritized enforcement of the asset management industry in 2019. Compared to the year before, there was a further increase in enforcement actions (862 vs. 821). The number of market participants barred or suspended (595 vs. 550) increased, and nearly twice as many standalone enforcement actions were taken against investment advisers or investment companies (191 vs. 108) also illustrate the increased emphasis on enforcement in 2019.

Through these actions, the SEC received $4.3 billion in disgorgement and Civil Money Penalties, and distributed $1.2 billion to harmed investors, versus $800 million in fiscal year 2018. What makes this record enforcement even more notable is that the agency was closed for 35 days at the start of the year due to the federal government shutdown.

Given the recent lift in the SEC hiring freeze as well as more whistleblowing and self-reporting initiatives, this increased activity could continue in 2020.

Other Important 2019 Initiatives

Besides asset management enforcement, the SEC noted a few other initiatives and priorities for the past year.

Self-reporting from advisory firms – In 2018, the SEC's asset management division launched an initiative through which investment advisory firms could voluntarily self-report when they failed to disclose conflicts of interest for compensation from 12b-1 fees. Firms that came forward agreed to pay disgorgement plus prejudgment interest. In exchange, the Division would recommend not imposing civil penalties. Ninety-five advisory firms voluntarily came forward in 2019, and as a result, the SEC returned over $135 million in disgorgement to mutual fund investors.

Cyber-related misconduct – The SEC continued to prioritize investigating cyber-related misconduct, in particular the improper issuing of initial coins offerings (ICOs). In 2019, they filed their first charges for the unlawful promotion of an ICO.

Individual accountability – The annual report stressed the importance of individual accountability for enforcement and deterrence. In other words, the SEC will hold individual wrongdoers accountable rather than just their companies. Enforcement actions against individuals stayed roughly at the same pace as 2018, but the SEC emphasized that individual wrongdoers could include all employees, from C-suite down to "gatekeepers."

Focus for 2020

The SEC report also outlined four priorities for the upcoming year.

1) ***Coordination with criminal authorities*** – The Enforcement Division report noted that their civil actions may not be enough of a deterrence for serious bad actors, so they will continue to cooperate with other government authorities to bring criminal charges when needed.
2) ***Acceleration of the pace of investigations*** – In 2019, it took the Division on average 24 months to file an enforcement action after opening a case, and even longer for cases of financial fraud. They aim to accelerate this pace and point to examples, like the recent Nissan case, which was filed in 10 months, to show this is possible.
3) ***Improvement of the whistleblower claim process*** - The SEC received a record number of whistleblower claims in 2019 and noted how important these are to high-quality enforcement actions. They would like to increase how quickly they process, evaluate and pay out these whistleblower claims.
4) ***Increasing transparency for cooperation terms*** – When it comes to setting penalties, the SEC considers a firm or individual's cooperation during the process. However, the Division Report notes that there is not a clear rubric for how exactly cooperation will impact an outcome. They would like to make this more transparent going forward.

The SEC Enforcement Division is currently led by Co-Directors Stephanie Avakian and Steven Peikin. As they enter their third year together, it seems likely they will prioritize the same issues and continue building on these initiatives, including their focus on asset management.

Be on the lookout for our summary of the just-released SEC Office of Compliance Inspections and Examinations 2020 Examination Priorities which will be coming to your inbox soon.

In the meantime, please contact your Anchin Relationship Partner or Jeffrey Rosenthal at 212-840-3456 with any questions that you may have.

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