CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

SEC Enforcement Activity: Public Companies and Subsidiaries

Midyear FY 2017 Update

ANALYSIS AND TRENDS

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NYU Pollack Center for Law & Business

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Executive Summary

This report analyzes data in the Securities Enforcement Empirical Database (SEED), a collaboration between the NYU Pollack Center for Law & Business and Cornerstone Research. SEED is a public online resource that provides data on SEC actions filed against defendants that are public companies traded on major U.S. exchanges and their subsidiaries. This report focuses on actions initiated from fiscal year 2010 through the first half of fiscal year 2017.[1]

Filings

- The SEC filed 44 new enforcement actions against public companies and their subsidiaries (public company–related defendants) in the first half of fiscal year 2017, in line with the number of actions brought in the first half of fiscal year 2016. (page 2)
- Despite recent criticism, the SEC continued to bring the vast majority of actions as administrative proceedings. (page 2)

Allegations

- Issuer Reporting and Disclosure continued to be the most frequent type of allegation against public company–related defendants. (page 3)

Monetary Settlements

- From FY 2010 through the first half of FY 2017, the top 10 monetary settlements imposed in public company–related actions totaled over $3.4 billion. (page 4)
- The largest monetary settlement in the first half of FY 2017 involved allegations related to Investment Advisor/Investment Companies. (page 4)

"We observed the SEC following similar enforcement trends for public company–related defendants in 2016 into the first half of fiscal 2017."

Stephen Choi
Murray and Kathleen Bring Professor of Law and
Director of the Pollack Center
New York University

Cooperation

- In the first half of FY 2017, 63 percent of public company–related defendants cooperated with the SEC. (page 6)

New Analysis: Industry

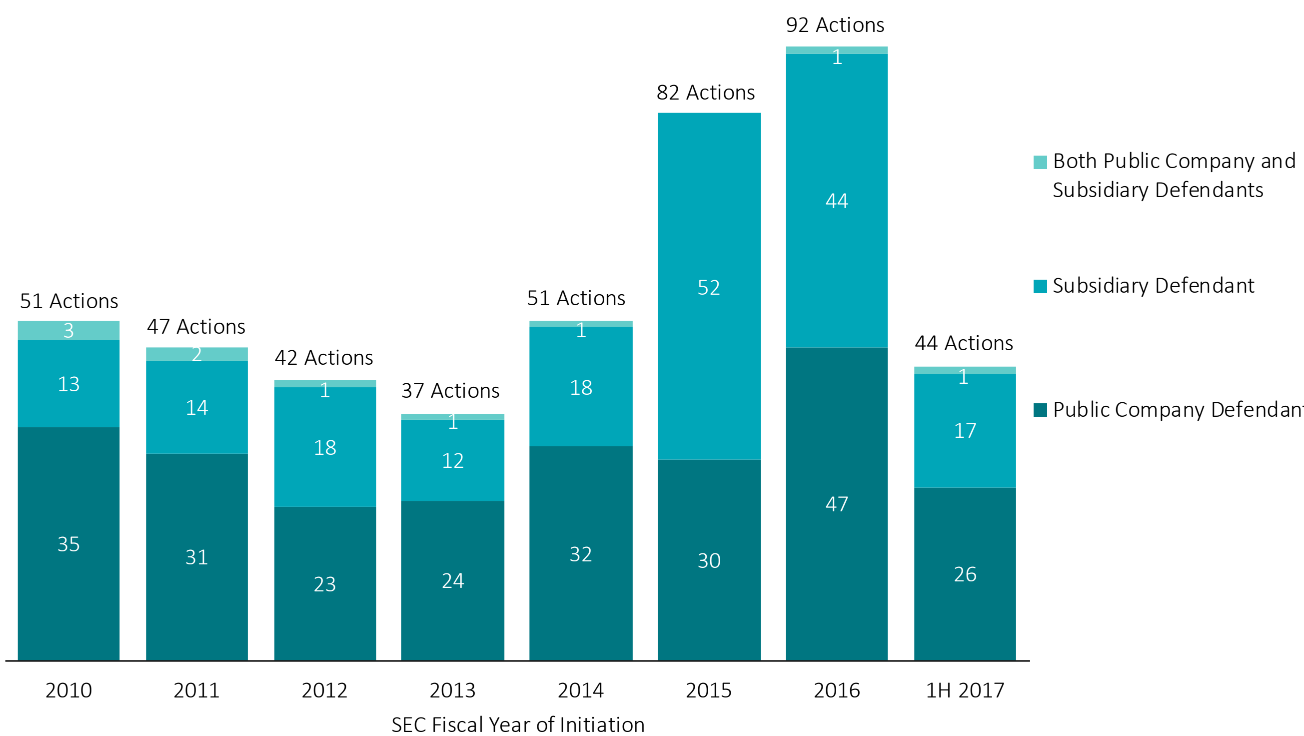
- Manufacturing accounted for 40 percent of public company–related defendants in the first half of FY 2017. (page 7)
- Finance, Insurance, and Real Estate was the second most common industry, representing 38 percent of public company–related defendants in the first half of FY 2017. (page 7)

Number of Filings

- The SEC filed 44 new enforcement actions against public companies and their subsidiaries in the first half of fiscal year 2017.
- Although the number of actions was in line with the past two fiscal years, the defendant mix returned to the pattern seen during FY 2010 through FY 2014. In the first half of FY 2017, almost 60 percent of actions were filed against public company defendants only, similar to the average of 63 percent from FY 2010 through FY 2014.
- Despite recent criticism of the SEC administrative forum, the SEC brought 91 percent of its actions against public company–related defendants as administrative proceedings in the first half of FY 2017.
- For actions filed in the first half of FY 2017, all public company–related defendants had concurrent settlements.

The 44 new actions in the first half of FY 2017 is similar to the number in the first half of FY 2016.

Figure 1: Public Company–Related SEC Actions
FY 2010–1H FY 2017



Source: Securities Enforcement Empirical Database (SEED)
Note: Relief defendants are not considered. First half fiscal year 2017 includes data available through March 2017.

Classification of Allegations

- Issuer Reporting and Disclosure continued to be the most frequent type of allegation against public company–related defendants in the first half of FY 2017, representing 45 percent of actions.
- The SEC remained focused on violations involving Investment Advisor/Investment Companies and the FCPA in the first half of FY 2017, accounting for 18 and 16 percent of actions, respectively.[2]
- There were no new actions related to Municipal Securities/Public Pensions allegations, a noticeable decrease from FY 2015 and FY 2016. This decline is consistent with the SEC's decision to stop pursuing new settlements under the Municipalities Continuing Disclosure Cooperation Initiative.[3]

Allegations in the first half of FY 2017 were concentrated in Issuer Reporting and Disclosure.

Figure 2: Heat Map of Allegations against Public Company–Related Defendants
FY 2010–1H FY 2017

		SEC Fiscal Year of Initiation							
Allegation Type	Average 2010–2016	2010	2011	2012	2013	2014	2015	2016	1H 2017
Issuer Reporting and Disclosure	36%	43%	32%	29%	49%	49%	22%	26%	45%
Investment Advisor/ Investment Companies	10%	6%	4%	10%	14%	10%	6%	21%	18%
Foreign Corrupt Practices Act	21%	24%	36%	24%	14%	14%	13%	20%	16%
Broker Dealer	11%	10%	13%	12%	0%	14%	13%	12%	11%
Municipal Securities/ Public Pensions	11%	4%	11%	10%	0%	4%	38%	9%	0%
Securities Offering	7%	6%	4%	10%	19%	4%	1%	9%	0%
Market Manipulation	2%	0%	0%	5%	5%	2%	0%	0%	0%
Other	4%	8%	0%	2%	0%	4%	6%	4%	9%
Number of Actions	57	51	47	42	37	51	82	92	44

Legend	0%	1–10%	11–20%	21–50%	51–100%

Source: Securities Enforcement Empirical Database (SEED)

Note: Relief defendants are not considered. Percentages may not add to 100 percent due to rounding. "Other" includes actions categorized by the SEC as "Other" or "Transfer Agent." First half fiscal year 2017 includes data available through March 2017.

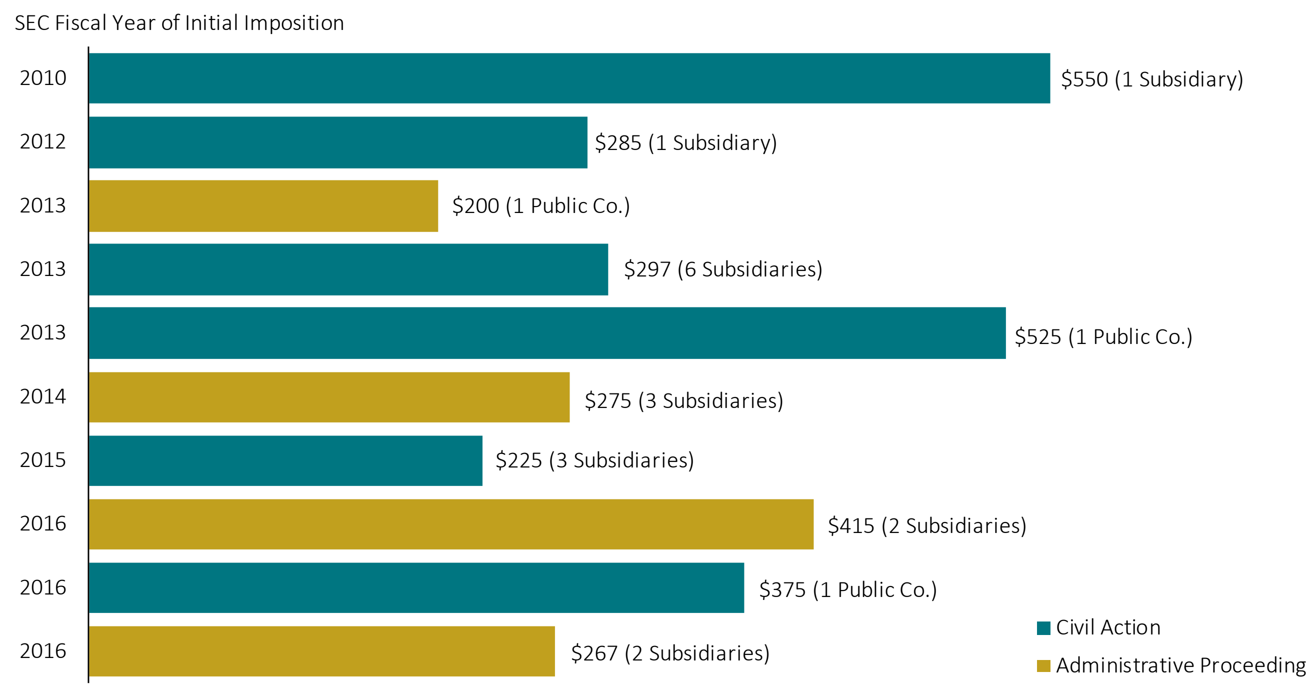
Monetary Settlements

- From FY 2010 through the first half of FY 2017, the top 10 monetary settlements imposed in public company–related actions totaled over $3.4 billion. Eight of the top 10 settlements involved financial institutions.
- None of the top 10 monetary settlements occurred in the first half of FY 2017.
- The 45 public company–related actions resolved in the first half of FY 2017 resulted in total monetary settlements of $783 million.[4]
- Three monetary settlements comprised 51 percent of the total monetary settlements in the first half of FY 2017.
- The largest monetary settlement was imposed in a case involving Investment Advisor/Investment Companies. The second largest included FCPA allegations and noted cooperation on behalf of the defendant. The third largest monetary settlement also involved FCPA allegations.

The largest monetary settlement in the first half of FY 2017 involved allegations related to Investment Advisor/Investment Companies.

Figure 3: Top 10 Monetary Settlements Imposed in Public Company–Related Actions
FY 2010–1H FY 2017

(Dollars in Millions)



Source: Securities Enforcement Empirical Database (SEED)

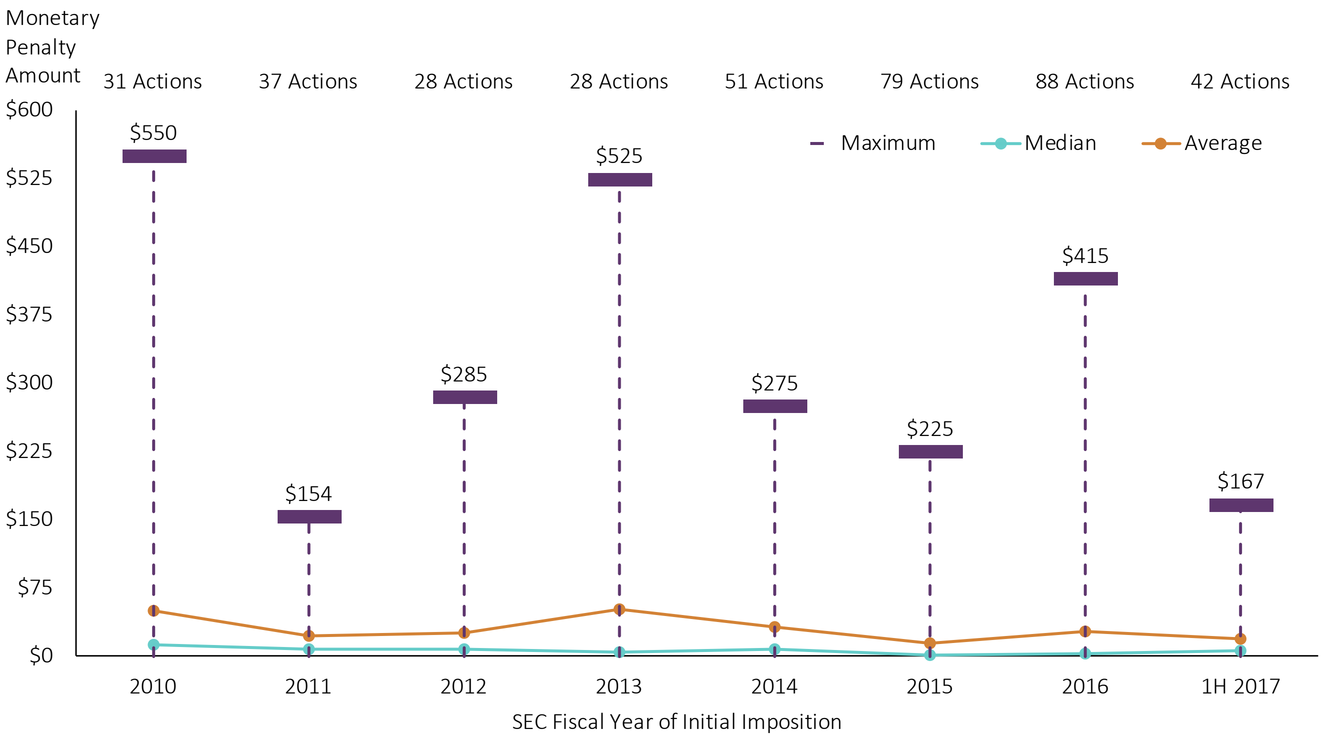
Note: Relief defendants are not considered. Total monetary settlements exclude monetary settlements imposed exclusively on individuals, nonpublic companies, and nonpublic subsidiaries. First half fiscal year 2017 includes data available through March 2017.

- For public company–related actions resolved in the first half of FY 2017, 93 percent had monetary penalties, approximately the same as in FY 2016 (95 percent).
- FCPA violation cases had six monetary settlements, over 40 percent of the $783 million total in the first half of FY 2017.
- The median monetary penalty for the first half of FY 2017 was $6.3 million, substantially higher than the median monetary penalties of $0.5 million and $3.1 million imposed by the SEC during FY 2015 and FY 2016, respectively.
- The only monetary settlement imposed in Municipal Securities/Public Pensions actions (filed prior to the first half of FY 2017) was $24.5 million. The maximum monetary settlement imposed on the same type of actions between FY 2014 and FY 2016 was $0.5 million.

In the first half of FY 2017, FCPA violations were over 40 percent of total monetary settlements.

Figure 4: Monetary Settlements Imposed in Public Company–Related Actions FY 2010–1H FY 2017

(Dollars in Millions)



Source: Securities Enforcement Empirical Database (SEED)

Note: Relief defendants are not considered. Total monetary settlements exclude monetary settlements imposed exclusively on individuals, nonpublic companies, and nonpublic subsidiaries. First half fiscal year 2017 includes data available through March 2017.

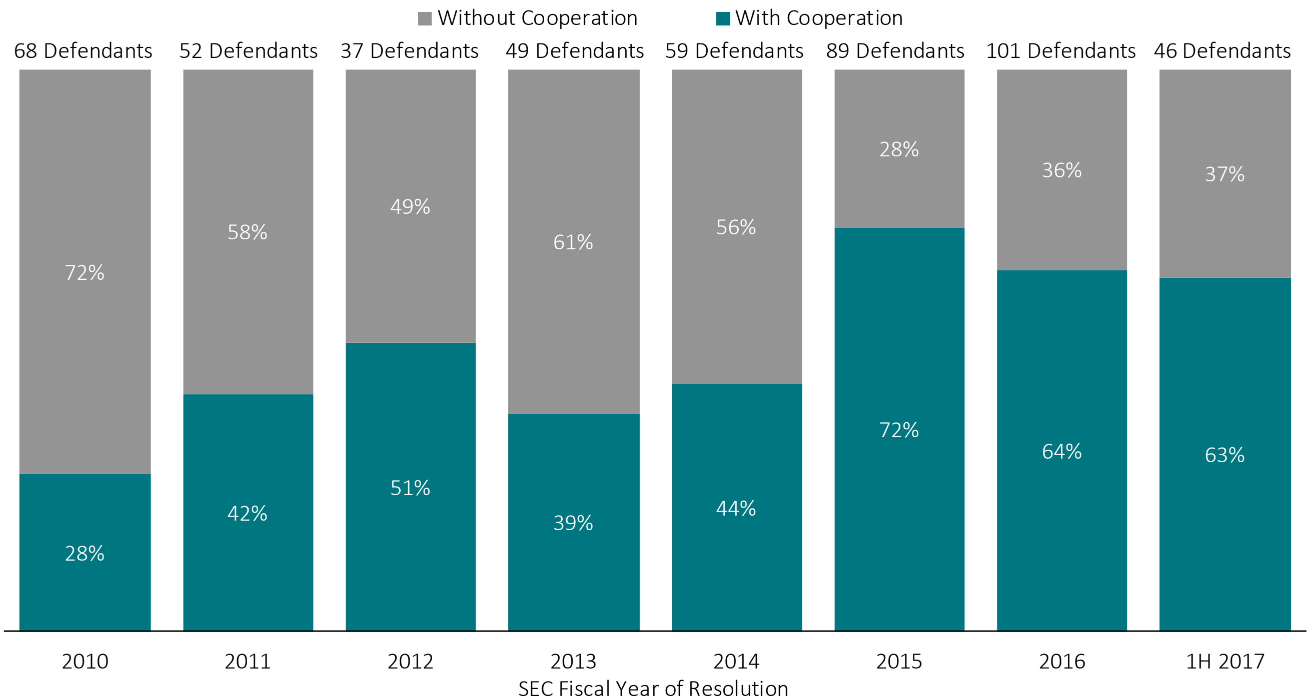
Cooperation Noted in Settlements

The SEC considers four factors when negotiating a settlement with a cooperating defendant: "self-policing, self-reporting, remediation, and cooperation."[5] SEED measures the latter three factors based on whether the SEC acknowledges voluntary reporting or explicitly mentions "remediation" or "cooperation" by the defendant in the settlement announcement.

- In the first half of FY 2017, 63 percent of public company–related defendants cooperated with the SEC, very similar to the 64 percent in FY 2016.
- The percentage of cooperating defendants in the first half of FY 2017 was the highest among FCPA actions, consistent with the SEC's focus on incentivizing cooperation in FCPA violations.[6]
- During the first half of FY 2017, 67 percent of the settlements with Issuer Reporting and Disclosure allegations involved cooperating public company–related defendants (14 of 21 defendants), compared to 35 percent in FY 2016 (8 of 23 defendants).

In the first half of FY 2017, the percentage of settlements with Issuer Reporting and Disclosure allegations involving cooperation was almost twice that of FY 2016.

Figure 5: Cooperation Noted in Settlements with Public Company–Related Defendants
FY 2010–1H FY 2017



Source: Securities Enforcement Empirical Database (SEED)

Note: Relief defendants are not considered. Actions resolved through trial are excluded. An action with cooperation indicates a defendant's cooperation with the SEC prior to the non-trial resolution of that action. The words "cooperation" or "remediation" must be mentioned in the document detailing the non-trial resolution, or the SEC must acknowledge voluntary reporting by the defendant. Settlements are counted at the defendant level. First half fiscal year 2017 includes data available through March 2017.

New Analysis: Industry

SEED now tracks the Standard Industrial Classification (SIC) codes of public company defendants and the publicly traded parent companies of subsidiary defendants. SIC codes are used by U.S. government agencies—including the SEC—to classify companies according to their principal type of business.

- In the first half of FY 2017, Manufacturing accounted for 40 percent of public company–related defendants, and Finance, Insurance, and Real Estate accounted for 38 percent.
- From FY 2011 to FY 2016, Finance, Insurance, and Real Estate was the most common industry for public company–related defendants. Most of these were Commercial Banks (37 percent of the industry) or Securities Brokers, Dealers & Flotation Companies (29 percent of the industry).
- Historically, Manufacturing ranks second, with Drug Manufacturing accounting for the most public company–related defendants within the industry (12 percent).

Manufacturing was the most common industry in the first half of FY 2017 with 40 percent of public company–related defendants, up from only 17 percent in FY 2016.

Figure 6: Heat Map of Industries of Public Company–Related Defendants
FY 2010–1H FY 2017

SIC Industry Division	Average 2010–2016	SEC Fiscal Year of Initiation 2010	2011	2012	2013	2014	2015	2016	1H 2017
Manufacturing	25%	42%	35%	28%	21%	17%	17%	17%	40%
Finance, Insurance, and Real Estate	53%	33%	37%	57%	58%	59%	63%	63%	38%
Transportation, Communications, Electric, Gas, and Sanitary Service	2%	0%	2%	4%	4%	0%	0%	4%	7%
Services	9%	20%	14%	7%	4%	10%	8%	3%	7%
Other	11%	5%	12%	4%	13%	14%	11%	14%	9%
Number of Defendants	65	55	51	46	52	59	87	103	45

Legend: 0% | 1–10% | 11–20% | 21–50% | 51–100%

Source: Securities Enforcement Empirical Database (SEED)

Note: Relief defendants are not considered. SIC industry divisions are as of the SEC enforcement action initiation date, or otherwise are as of the latest available date within the five-year period preceding the initiation. Subsidiary defendants are categorized according to the SIC industry division of their public parent company. "Other" contains all SIC industry divisions that were not in the top four by defendant count for the first half of fiscal year 2017. Percentages may not add to 100 percent due to rounding. First half fiscal year 2017 includes data available through March 2017.

Research Sample

- The Securities Enforcement Empirical Database (SEED), a collaboration between the NYU Pollack Center for Law & Business and Cornerstone Research, identifies 519 SEC enforcement actions initiated against 472 public company defendants and their subsidiaries between October 1, 2009, and March 31, 2017 (http://seed.law.nyu.edu).
- The sample used for the majority of this report is referred to as "enforcement actions initiated against public company–related defendants" and includes only those enforcement actions with public companies or their subsidiaries listed explicitly as defendants. The sample does not include cases where the allegations relate exclusively to delinquent filings. In addition, the sample excludes enforcement actions filed against individual defendants employed at either public companies or subsidiaries of public companies.
- Public companies are defined as those that traded on a major U.S. exchange as identified by the Center for Research in Security Prices (CRSP) at the time the enforcement action was initiated, or otherwise within the five-year period preceding the initiation. Thus, public companies that traded over-the-counter or on major non-U.S. exchanges are excluded, as are companies that did not become publicly traded until after the enforcement action was initiated.
- Subsidiaries are defined as those entities that had a publicly traded parent company at the time the enforcement action was initiated, or otherwise within the five-year period preceding the initiation. The public parent companies of subsidiaries were identified as those cited in the enforcement action document initiating proceedings when available, or those identified through SEC filings if no parent company was mentioned in the initial enforcement action document.

SEED provides easily searchable and verified data on SEC enforcement actions to researchers, counsel, and corporations.

Endnotes

[1] SEC fiscal years begin on October 1 of the prior year and end on September 30. SEC fiscal year 2010 through the first half of fiscal year 2017 spans October 1, 2009, to March 31, 2017.

[2] "Remarks to the Investor Advisory Committee," Mary Jo White, Chair, U.S. Securities and Exchange Commission, December 8, 2016, https://www.sec.gov/news/speech/white-remarks-iac-120816.html. "Keynote Speech, ACI's 33rd International Conference on the FCPA," Andrew Ceresney, Director, Division of Enforcement, U.S. Securities and Exchange Commission, November 30, 2016, https://www.sec.gov/news/speech/speech-ceresney-113016.html.

[3] "SEC Ends MCDC Settlements, Turns to Violators That Didn't Participate," *The Bond Buyer*, December 13, 2016, http://www.bondbuyer.com/news/washington-enforcement/sec-ends-mcdc-settlements-turns-to-violators-that-didnt-participate-1120326-1.html.

[4] Total monetary settlements include disgorgement, prejudgment interest, civil penalties, and other monetary penalties imposed in public company–related actions. Total monetary settlements exclude any monetary penalties imposed exclusively on individuals, nonpublic companies, and nonpublic subsidiaries.

[5] "The SEC's Cooperation Program: Reflections on Five Years of Experience," Andrew Ceresney, Director, Division of Enforcement, U.S. Securities and Exchange Commission, May 13, 2015, https://www.sec.gov/news/speech/sec-cooperation-program.html.

[6] "Keynote Speech, ACI's 33rd International Conference on the FCPA," Andrew Ceresney, Director, Division of Enforcement, U.S. Securities and Exchange Commission, November 30, 2016, https://www.sec.gov/news/speech/speech-ceresney-113016.html.

About the Authors

Stephen Choi

Murray and Kathleen Bring Professor of Law, School of Law, and Director, Pollack Center for Law & Business, New York University

Stephen Choi is a noted authority on SEC enforcement matters. He provides expert testimony before judges and juries and analyzes price impact, materiality, loss causation, securities disclosures and liability, and corporate governance. His research interests include empirical and theoretical analysis of securities litigation and SEC enforcement, corporate finance and governance, valuation, and financial institutions.

Sara E. Gilley

Principal, Cornerstone Research

Sara Gilley provides research and consulting services for complex commercial litigation. She has extensive experience consulting on securities litigation and white collar litigation in the United States and Canada. Her work on these matters includes class certification, materiality, loss causation, and damages. Ms. Gilley manages the firm's research related to SEC enforcement actions.

Heather Lazur

Senior Manager, Cornerstone Research

Heather Lazur provides consulting services in litigation involving economic and financial issues. She specializes in securities class actions and cases involving investment performance and strategy, valuation, mutual funds, and mortgage securities.

David F. Marcus

Senior Vice President, Cornerstone Research

David Marcus leads Cornerstone Research's finance practice. He has over 20 years of experience providing consulting services and expert testimony in litigation involving economic and financial issues. Dr. Marcus's primary areas of focus are securities litigation, valuation issues, cases involving financial institutions, and white collar litigation. His research has been published in the *Journal of Financial Economics*.

Anat Carmy-Wiechman

Associate Director, Pollack Center for Law & Business, New York University

Anat Carmy-Wiechman serves as the head of research for the Securities Enforcement Empirical Database (SEED). She has been a member of the SEED team since its founding in 2013, first as a Wagner Fellow, and then as the head of research. Prior to joining the Pollack Center, Ms. Carmy-Wiechman practiced law in New York and Israel. Her research interests include corporate law, empirical legal scholarship, law and finance, and securities regulation.

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