CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

SEC Enforcement Activity: Public Companies and Subsidiaries

Fiscal Year 2017 Update

ANALYSIS AND TRENDS

Filings

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NYU Pollack Center for Law & Business

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Executive Summary FY 2017

New enforcement actions against public companies and subsidiaries decreased by 33 percent in fiscal year 2017 compared to fiscal year 2016.[1] This report highlights findings based on data from the Securities Enforcement Empirical Database (SEED), a collaboration between the NYU Pollack Center for Law & Business and Cornerstone Research.

Filings

- The SEC filed 62 new enforcement actions against public companies and subsidiaries (public company–related defendants) in fiscal year 2017, a 33 percent decrease compared to fiscal year 2016. (page 3)
- There were 45 actions filed in the first half of FY 2017 but only 17 in the second half. The timing of this drop corresponds with leadership changes at the SEC. (page 3)

Allegations

- Issuer Reporting and Disclosure continued to be the most frequent type of allegation against public company–related defendants. (page 4)
- There were 10 FCPA actions filed against public company–related defendants in FY 2017, but only two were filed since February 2017. (page 4)

Industry

- Manufacturing defendants and Finance, Insurance, and Real Estate defendants were most commonly targeted in FY 2017 public company–related actions, accounting for 74 percent of all actions. (page 5)

Timing of Resolutions

- In FY 2017, 61 of the 62 actions filed were resolved on the same day they were initiated. (page 7)

We saw significant declines in several activity measures, including overall filings against public company and subsidiary defendants, in the second half of FY 2017 versus the first half.

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Cooperation

- The percentage of public company–related defendants that cooperated with the SEC declined in FY 2017. (page 8)

Monetary Settlements

- In FY 2017, the monetary settlements imposed in the 58 public company–related actions with settlements totaled $1.2 billion, almost all of it in the first half of the year. (page 9)
- The largest monetary settlement for public company–related actions in FY 2017 was $236 million and involved FCPA violations. (page 10)

Key Takeaways FY 2010 to FY 2017

- There were 45 actions filed against public company–related defendants in the first half of FY 2017 and 17 actions filed in the second half—the largest semiannual decrease within a fiscal year since SEED began tracking data (FY 2010).
- In contrast, during FY 2012 through FY 2016, the number of actions increased in the second half of the fiscal year.
- In the first half of FY 2017, 63 percent of public company–related defendants cooperated with the SEC, while only 32 percent cooperated in the second half.
- The second-half percentage is the lowest level of cooperation since the first half of FY 2013, when 18 percent of defendants cooperated with the SEC. The semiannual average from FY 2010 through the first half of FY 2017 is 50 percent.
- Total monetary settlements against public company–related defendants also declined from the first half of FY 2017 to the second half, from $1 billion to $196 million.
- Penalties in the second half of FY 2017 accounted for only 16 percent of total settlements for the fiscal year—the lowest percentage (and dollar amount) for any half year since SEED began tracking data (FY 2010).

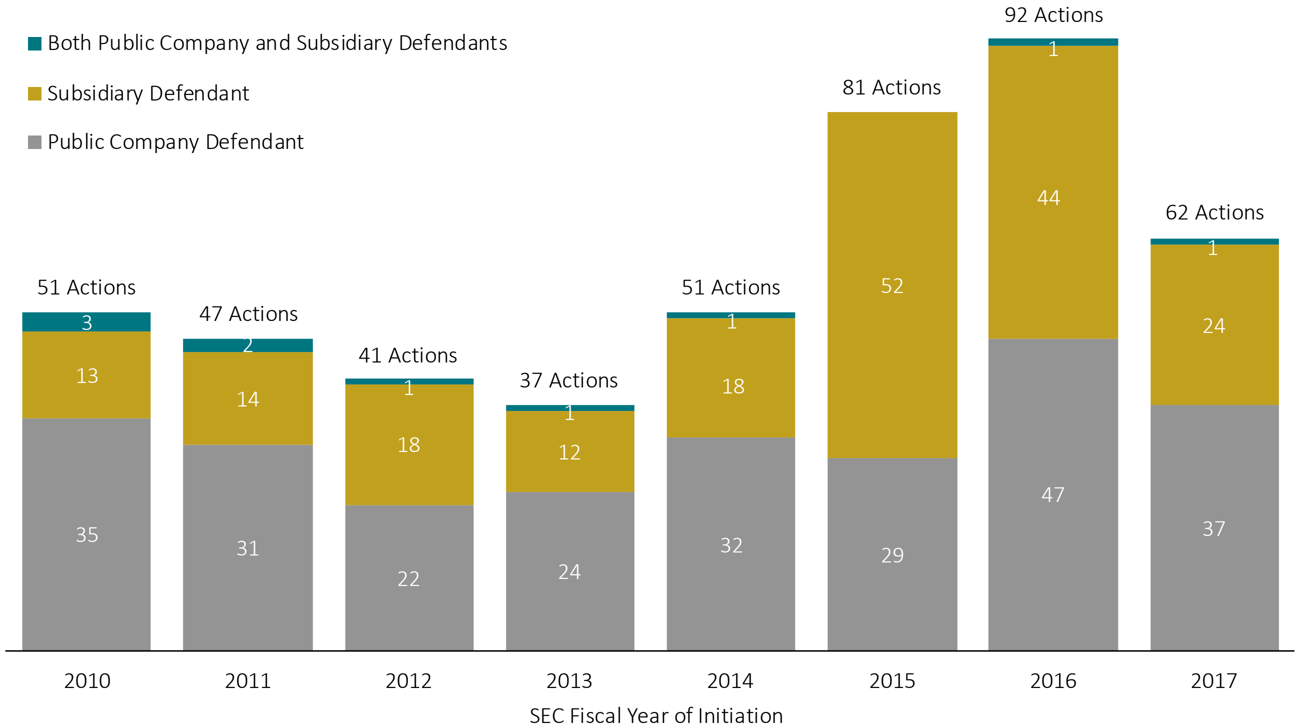
Actions filed against public company–related defendants declined in FY 2017 after three years of increases.

Number of Filings

- The SEC filed 62 new enforcement actions against public companies and subsidiaries in FY 2017.
- In the first half of FY 2017, the number of actions was on pace to match FY 2015 and FY 2016. In the second half of FY 2017, however, the number of actions declined dramatically.
- There were 45 actions filed in the first half of FY 2017 compared to 17 in the second half. The timing of the drop in public company–related filings corresponds with leadership changes at the SEC.[2]

The number of new enforcement actions declined 33 percent overall in FY 2017. From the first half to the second half, the decline was 62 percent.

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



Source: Securities Enforcement Empirical Database (SEED)
Note: Relief defendants are not considered.

Classification of Allegations

- The SEC continued to focus on Issuer Reporting and Disclosure allegations in FY 2017.[3] At 39 percent, it was the most frequent allegation type against public company–related defendants.
- There were 10 actions involving FCPA allegations in FY 2017. Since February 2017, however, only two actions with FCPA allegations have been filed against public company–related defendants. This decrease coincides with the departure of Kara Novaco Brockmeyer, who had served as chief of the SEC Enforcement Division's FCPA Unit since 2011.[4]
- Investment Advisor/Investment Companies allegations were the most frequent type in the second half of FY 2017. This is consistent with SEC Chair Jay Clayton's testimony that the Commission has increased its focus on registered entities and intends to focus more on investment professionals.[5]

Of the 10 FCPA actions filed in FY 2017, eight were filed in the first four months.

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

Allegation Type	SEC Fiscal Year of Initiation								
	Average 2010–2016	2010	2011	2012	2013	2014	2015	2016	2017
Issuer Reporting and Disclosure	36%	43%	32%	29%	49%	49%	23%	26%	39%
Investment Advisor/ Investment Companies	10%	6%	4%	10%	14%	10%	6%	21%	21%
Foreign Corrupt Practices Act	20%	24%	36%	24%	14%	14%	12%	20%	16%
Broker Dealer	10%	10%	13%	12%	0%	14%	12%	12%	13%
Securities Offering	7%	6%	4%	7%	19%	4%	1%	9%	5%
Municipal Securities/ Public Pensions	11%	4%	11%	10%	0%	4%	40%	9%	0%
Market Manipulation	2%	0%	0%	5%	5%	2%	0%	0%	0%
Other	3%	8%	0%	2%	0%	4%	5%	4%	6%
Number of Actions	57	51	47	41	37	51	81	92	62

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."

Industry

SEED classifies defendants by their Standard Industrial Classification (SIC) codes.

- In FY 2017, actions with public company–related defendants in the Finance, Insurance, and Real Estate division accounted for 42 percent of all public company–related actions. While this is a decrease from FY 2016, this industry division still accounts for the highest percentage of public company–related actions.
- Most actions against Finance, Insurance, and Real Estate defendants targeted Commercial Banks (50 percent) or Securities Brokers, Dealers & Flotation Companies (31 percent), consistent with historical trends.
- In FY 2017, the percentage of public company–related actions against Manufacturing defendants almost doubled from 18 percent to 32 percent.
- Manufacturing defendants spanned a diverse set of 14 SIC industry groups. Drugs manufacturers and Medical Instruments and Supplies manufacturers were the two most targeted groups in this industry division.

Actions against Manufacturing defendants and Finance, Insurance, and Real Estate defendants accounted for a combined 74 percent of public company–related actions in FY 2017.

Figure 3: Heat Map of Industries of Public Company–Related Defendants
FY 2010–FY 2017

SIC Industry Division	SEC Fiscal Year of Initiation								
	Average 2010–2016	2010	2011	2012	2013	2014	2015	2016	2017
Finance, Insurance, and Real Estate	49%	35%	34%	54%	46%	53%	63%	59%	42%
Manufacturing	27%	37%	36%	32%	27%	20%	17%	18%	32%
Services	10%	22%	15%	7%	5%	12%	9%	3%	8%
Transportation, Communications, Electric, Gas and Sanitary Service	2%	0%	2%	2%	5%	0%	0%	4%	6%
Other	12%	6%	13%	5%	16%	16%	11%	15%	11%
Number of Actions	57	51	47	41	37	51	81	92	62

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 action count for fiscal year 2017. Percentages may not add to 100 percent due to rounding.

- From FY 2010 through FY 2017, the most common allegation in public company–related actions (Issuer Reporting and Disclosure) was spread relatively consistently across Finance, Insurance, and Real Estate; Manufacturing; and Services defendants.
- Manufacturing defendants faced the majority of FCPA allegations (64 percent), while Finance, Insurance, and Real Estate defendants accounted for only 6 percent.

Finance, Insurance, and Real Estate defendants dominated every major allegation type except Issuer Reporting and Disclosure and FCPA.

Figure 4: Heat Map of Allegations against Public Company–Related Defendants by Industry
FY 2010–FY 2017

SIC Industry Division	Average by SIC Industry Division	Allegation Type							
		Issuer Reporting and Disclosure	Foreign Corrupt Practices Act	Investment Advisor/ Investment Companies	Municipal Securities/ Public Pensions	Broker Dealer	Securities Offering	Market Manipulation	Other
Finance, Insurance, and Real Estate	65%	24%	6%	91%	94%	98%	76%	80%	53%
Manufacturing	16%	34%	64%	4%	2%	0%	7%	0%	21%
Services	6%	18%	8%	4%	2%	2%	7%	0%	11%
Mining	3%	4%	12%	0%	0%	0%	0%	0%	5%
Other	9%	19%	10%	2%	2%	0%	10%	20%	11%
Total Number of Actions FY 2010–FY 2017	462	159	89	56	53	52	29	5	19

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

Source: Securities Enforcement Empirical Database (SEED)

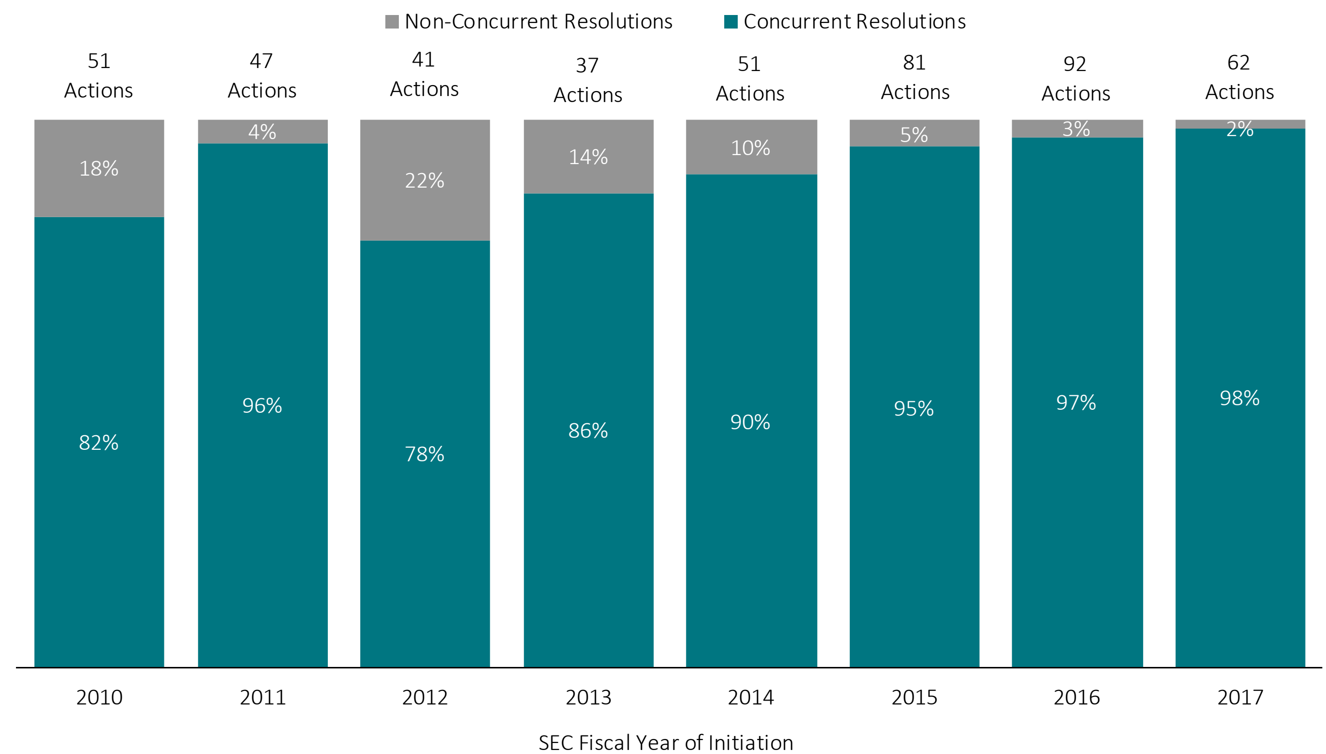
Note: Relief defendants are not considered. SIC industry divisions are as of the SEC enforcement action initiation date, or otherwise are as of the latest available date within the five-year period preceding the initiation. Subsidiary defendants are categorized according to the SIC industry division of their public parent company. “Other” SIC Industry Division contains all SIC industry divisions that were not in the top four by action count. “Other” Allegation Type includes actions categorized by the SEC as “Other” or “Transfer Agent.” Percentages may not add to 100 percent due to rounding.

Timing of Resolutions

- In FY 2017, 98 percent of public company–related defendants resolved SEC actions on the same day they were initiated (concurrent resolutions). The FY 2010–FY 2016 median was 90 percent.
- Historically, concurrent resolutions have been more common in administrative proceedings than civil actions. From FY 2010 to FY 2017, 98 percent of administrative proceedings had concurrent resolutions, whereas 77 percent of civil actions had concurrent resolutions.
- From FY 2010 through FY 2017, 32 actions (out of 462 actions) had non-concurrent resolutions, and six actions were unresolved as of the end of FY 2017. Two of the actions with non-concurrent resolutions were resolved at trial.
- The median time to resolution for the 32 actions with non-concurrent resolutions was 237 days.

The majority of non-concurrent resolutions involved Issuer Reporting and Disclosure allegations.

Figure 5: Timing of Resolutions for Actions with Public Company–Related Defendants
FY 2010–FY 2017



Source: Securities Enforcement Empirical Database (SEED)

Note: Relief defendants are not considered. Actions that are initiated and resolved on the same day are concurrent resolutions.

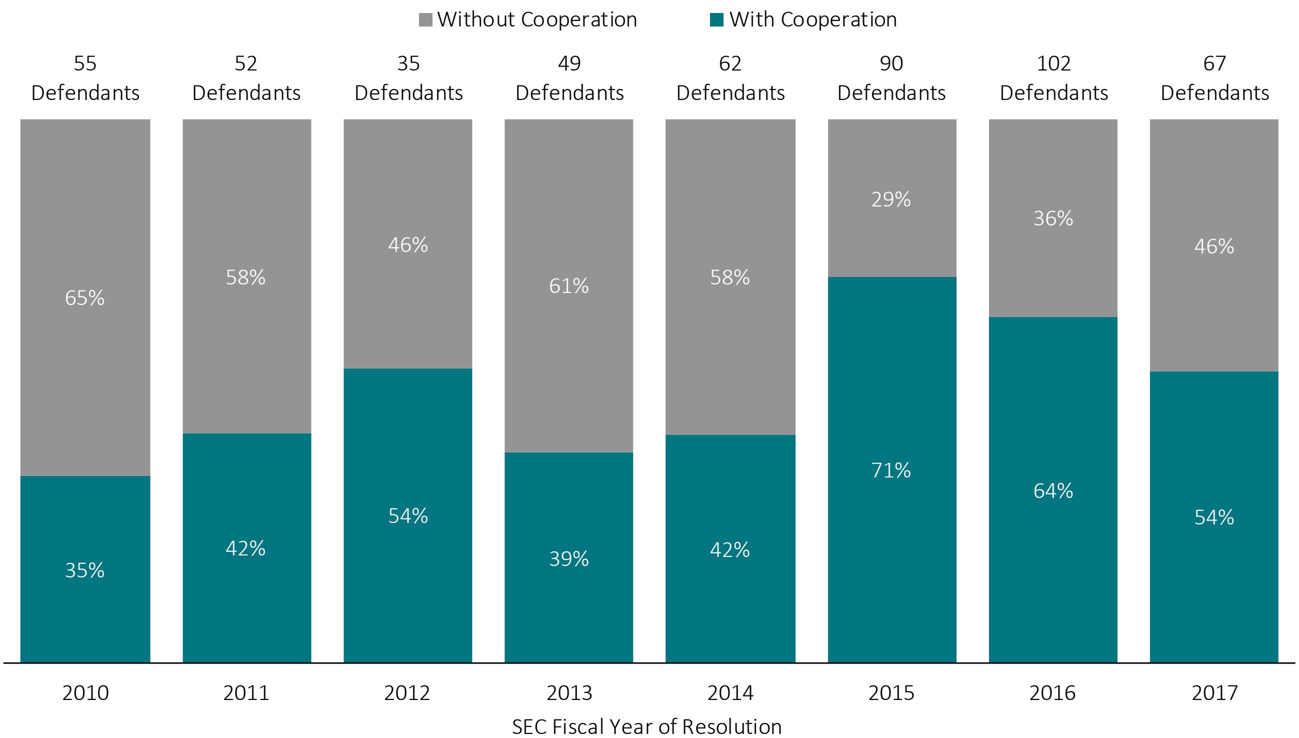
Cooperation Noted in Settlements

The SEC considers four factors when negotiating a settlement with a cooperating defendant: "self-policing, self-reporting, remediation, and cooperation."[6] SEED measures the latter three factors as an indication of whether a public company–related defendant cooperated with the SEC based on whether the SEC acknowledges voluntary reporting or explicitly mentions "remediation" or "cooperation" by the defendant in the settlement announcement.

- In FY 2017, 54 percent of public company–related defendants cooperated with the SEC, compared to FY 2015 (71 percent) and FY 2016 (64 percent).
- From FY 2010 to FY 2017, the percentage of cooperation was highest among defendants in the Services (60 percent); Manufacturing (58 percent); and Finance, Insurance, and Real Estate (52 percent) industries.
- Defendants cooperated most in actions involving allegations related to Municipal Securities/Public Pensions (87 percent) and FCPA violations (61 percent).

Between the first and second halves of FY 2017, the percentage of cooperation by public company–related defendants declined from 63 percent to 32 percent.

Figure 6: Cooperation Noted in Settlements with Public Company–Related Defendants
FY 2010–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.

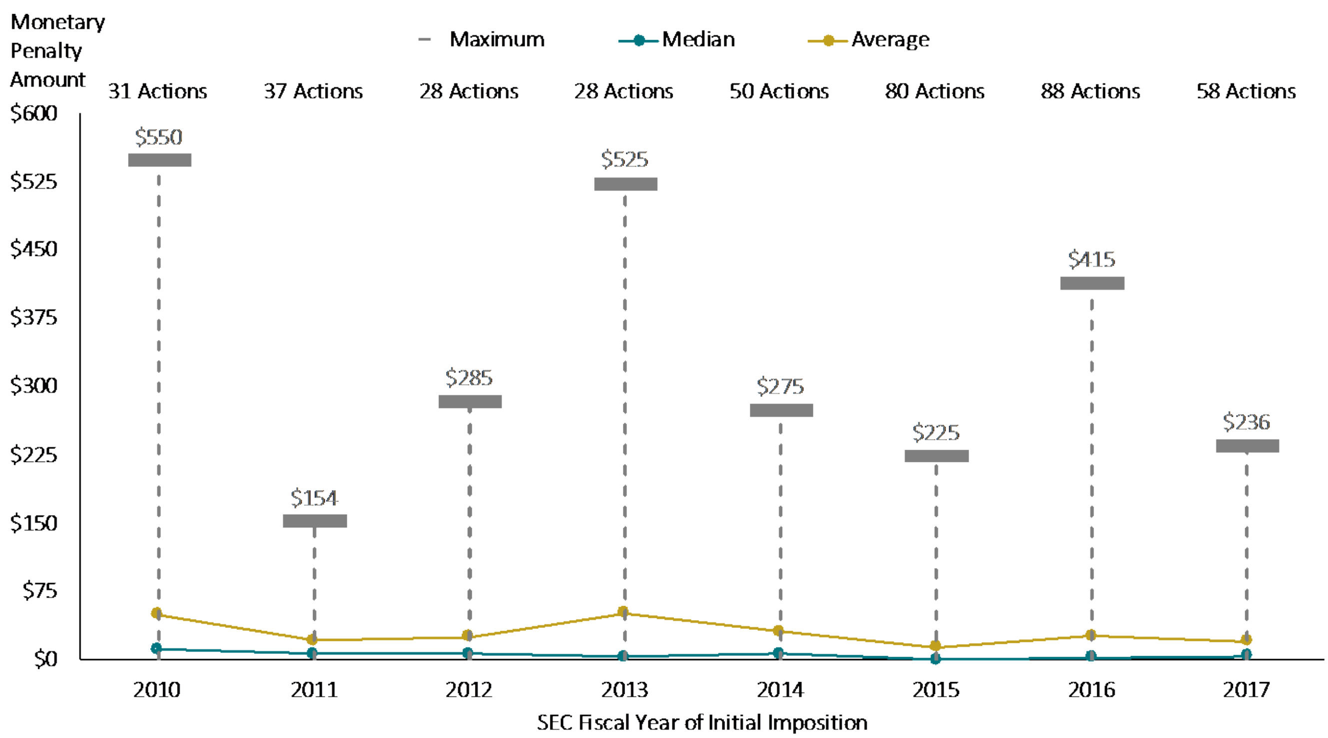
Monetary Settlements

- In FY 2017, the monetary settlements imposed in the 58 public company–related actions with settlements totaled $1.2 billion.[7]
- For public company–related actions resolved in FY 2017, 89 percent had monetary penalties. This was similar to the FY 2016 and FY 2015 figures of 96 percent and 95 percent, respectively.
- The percentage of resolved actions with monetary settlements dropped from the first half of FY 2017 (94 percent) to the second half (78 percent).
- The eight monetary settlements imposed in public company–related FCPA actions in the first half of FY 2017 totaled $567.4 million. The two monetary settlements involving FCPA violations in the second half of FY 2017 totaled only $42.2 million.[8]

Total monetary settlements declined from $1 billion in the first half of FY 2017 to $196 million in the second half.

Figure 7: Monetary Settlements Imposed in Public Company–Related Actions
FY 2010–FY 2017

(Dollars in Millions)



Source: Securities Enforcement Empirical Database (SEED)

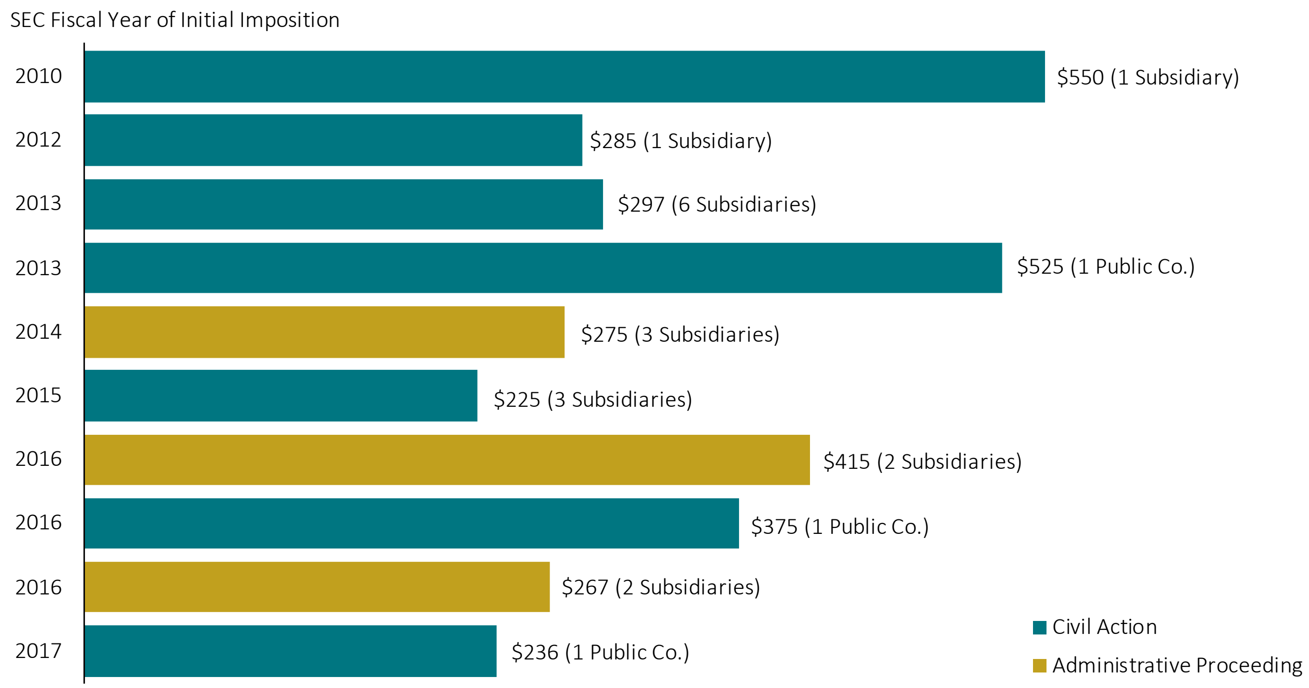
Note: Relief defendants are not considered. Total monetary settlements exclude monetary settlements imposed exclusively on individuals, nonpublic companies, and nonpublic subsidiaries.

- From FY 2010 through FY 2017, the top 10 monetary settlements imposed in public company–related actions accounted for almost a third of total penalties.
- The top 10 monetary settlements totaled over $3.4 billion. Seven of these involved financial institutions.
- Actions with non-concurrent resolutions were less likely to have monetary settlements. From FY 2010 through FY 2017, 71 percent of actions with non-concurrent resolutions had monetary settlements, compared to 88 percent of actions with concurrent resolutions.
- Eight of the top 10 settlements had concurrent resolutions. The two actions with non-concurrent resolutions had monetary settlements of $550 million (in FY 2010) and $225 million (in FY 2015).

The largest monetary settlement in FY 2017 was $236 million and involved FCPA violations.

Figure 8: Top 10 Monetary Settlements Imposed in Public Company–Related Actions
FY 2010–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.

Research Sample

- The Securities Enforcement Empirical Database (SEED), a collaboration between the NYU Pollack Center for Law & Business and Cornerstone Research, identifies 462 SEC enforcement actions initiated against 419 public company defendants and their subsidiaries between October 1, 2009, and September 30, 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 fiscal year 2017 spans October 1, 2009, to September 30, 2017.

2 "Jay Clayton Sworn in as Chairman of SEC," SEC Press Release 2017-94, May 4, 2017, https://www.sec.gov/news/press-release/2017-94; "Enforcement Director Andrew J. Ceresney to Leave SEC," SEC Press Release 2016-259, December 8, 2016, https://www.sec.gov/news/pressrelease/2016-259.html; "SEC Names Stephanie Avakian and Steven Peikin as Co-Directors of Enforcement," SEC Press Release 2017-113, June 8, 2017, https://www.sec.gov/news/press-release/2017-113; "Chief Economist and Division of Economic and Risk Analysis Director Mark Flannery to Leave SEC," SEC Press Release 2016-254, December 2, 2016, https://www.sec.gov/news/pressrelease/2016-254.html.

3 "The SEC Enforcement Division's Focus on Auditors and Auditing," Andrew Ceresney, Director, Division of Enforcement, U.S. Securities and Exchange Commission, September 22, 2016, https://www.sec.gov/news/speech/ceresney-enforcement-focus-on-auditors-and-auditing.html.

4 On November 2, 2017, the SEC named Charles Cain as the new chief of the FCPA Unit. Mr. Cain was the deputy chief of the FCPA Unit since 2011 and served as the Unit's acting chief following Ms. Brockmeyer's departure in April 2017. "Kara Novaco Brockmeyer, Chief of FCPA Unit, to Leave SEC After 17 Years of Service," SEC Press Release 2017-76, April 4, 2017, https://www.sec.gov/news/press-release/2017-76; "Charles Cain Named Chief of Foreign Corrupt Practices Unit," SEC Press Release 2017-206, November 2, 2017, https://www.sec.gov/news/press-release/2017-206.

5 "SEC Chairman Testifies about SEC's Direction and 2016 Cyberattack," October 3, 2017, http://www.lexissecuritiesmosaic.com/net/Blogwatch/Blogwatch.aspx?ID=31400.

6 "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.

7 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.

8 In the second half of 2017, there was a settlement for an action with FCPA allegations involving a company not traded on a major U.S. exchange and, thus, not included in SEED. The settlement with the SEC involved a monetary settlement of $457 million. The company also settled with the U.S. Department of Justice and the settlement included a monetary penalty of $508 million.

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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.

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The authors request that you reference the NYU Pollack Center for Law & Business and Cornerstone Research in any reprint of the information or figures included in this report.

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