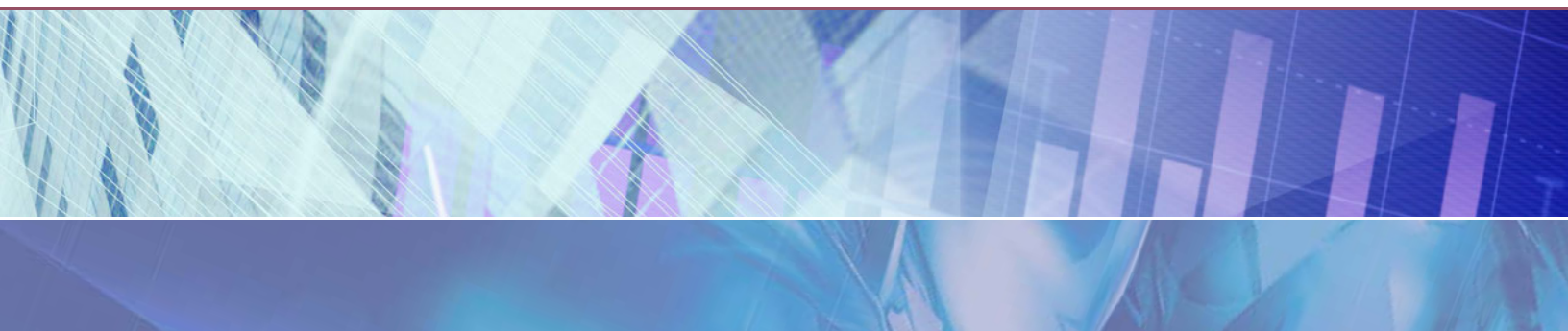


SEC Enforcement Activity against Public Companies and Their Subsidiaries

Fiscal Year 2016 Update



ANALYSIS AND TRENDS

Filings

Allegations

Enforcement Venues

Settlement Timing

Monetary Settlements

New Analysis: Cooperation

The Securities Enforcement Empirical Database (SEED)

SEED tracks and records information for SEC enforcement actions initiated against public companies and their subsidiaries (public company–related defendants), since October 1, 2009. With easily searchable and verified data, SEED offers insights to counsel, corporations, and researchers on multiyear trends and enforcement priorities.

<http://seed.law.nyu.edu>

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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 between fiscal years 2010 and 2016.¹

KEY TAKEAWAYS FROM FY 2016

Filings

- The 92 actions brought against public company–related defendants was the highest number for any fiscal year in SEED. [\(page 4\)](#)
- Of all independent actions, 17 percent were against public company–related defendants. [\(page 3\)](#)

Allegations

- Issuer Reporting and Disclosure remained the most common allegation, accounting for 26 percent of public company–related actions. [\(page 5\)](#)
- Actions with Investment Advisor/Investment Companies allegations surpassed the total for the previous three years combined. [\(page 5\)](#)

Outcomes

- All but three public company–related defendants settled concurrently with the filing of the action. [\(page 7\)](#)
- Three of the top ten monetary settlements were reached, with two requiring admission of guilt. [\(page 8\)](#)

New Analysis: Cooperation

- The SEC noted cooperation by public company–related defendants in 55 percent of the settlements. [\(page 9\)](#)

“The increase in actions where the SEC notes defendant cooperation corresponds with the rise in administrative proceedings from 2010 to 2016.”

Stephen Choi

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

KEY TRENDS

KEY TAKEAWAYS FROM FY 2010 TO FY 2016

- Independent actions have increased annually over the past four fiscal years, growing 61 percent from 341 in FY 2013 to 548 in FY 2016. [\(page 3\)](#)
- The growth in actions against public company–related defendants outpaced the overall growth in independent actions during FY 2013 through FY 2016. [\(page 4\)](#)
- Consistent with the SEC’s stated focus,² Issuer Reporting and Disclosure has been the top allegation type in public company–related actions for five of the past seven fiscal years. [\(page 5\)](#)
- Between FY 2010 and FY 2016, 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. [\(page 8\)](#)
- The percentage of defendants that cooperated with the SEC while negotiating a settlement more than doubled from FY 2010 to FY 2016. [\(page 9\)](#)
- Since FY 2013, settlements noting cooperation have increased in administrative proceedings and decreased in civil actions. [\(page 10\)](#)

“The SEC remained focused on its stated objectives, with the majority of cases involving issuer reporting, FCPA violations, or investment advisors.”

David Marcus

Senior Vice President
Cornerstone Research

NUMBER OF FILINGS

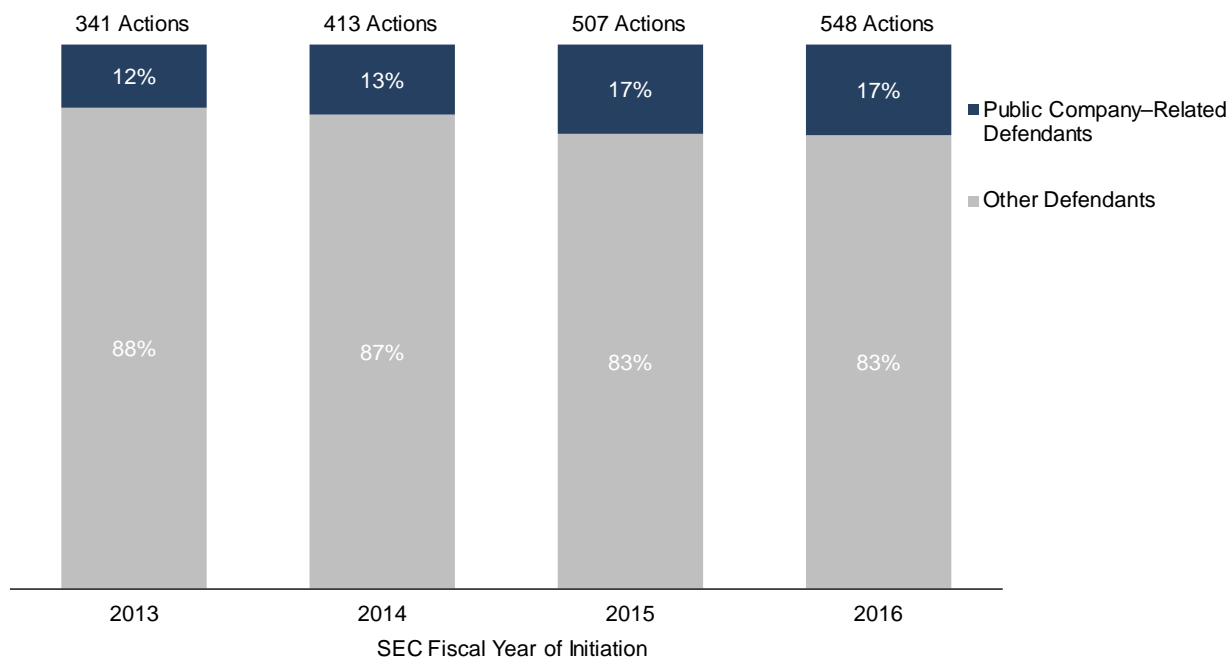
The SEC reports the number of enforcement actions filed on an annual basis. The Commission identifies the number of actions filed as independent or stand-alone enforcement actions, follow-on administrative proceedings, or delinquent filing actions. SEED currently covers independent enforcement actions that are filed against public companies or subsidiaries of public companies. Collectively these defendants are referred to as public company–related defendants. Actions involving one or more public company–related defendant are referred to as public company–related actions.³

Public company–related actions accounted for 17 percent of independent actions in FY 2016.

KEY FINDINGS

- The SEC filed a record total 868 actions in FY 2016, including a record 548 independent enforcement actions.
- Independent actions against all defendants have increased annually over the past four fiscal years, growing 61 percent from 341 in FY 2013 to 548 in FY 2016.
- The proportion of independent actions targeting public company–related defendants increased from 12 percent in FY 2013 to 17 percent in FY 2016.

**FIGURE 1: ALL INDEPENDENT SEC ACTIONS
FY 2013–FY 2016**



Source: Securities Enforcement Empirical Database (SEED); SEC Press Release 2016-212; SEC Press Release 2015-245

Note: Relief defendants are not considered.

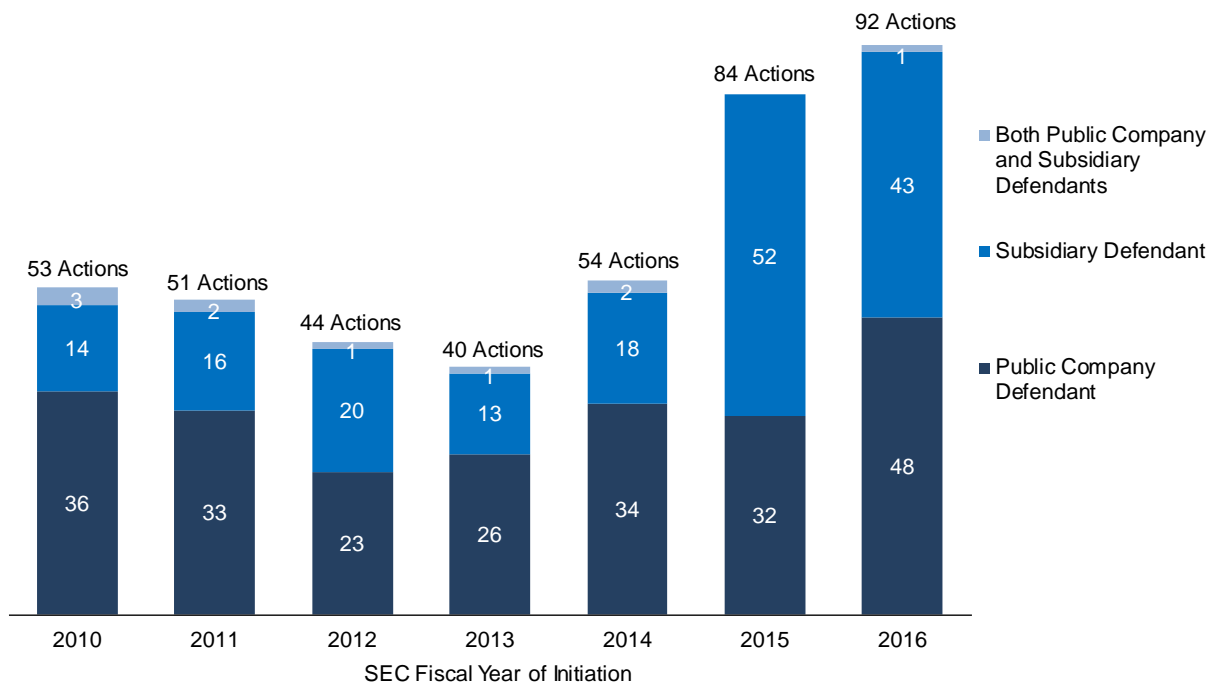
NUMBER OF FILINGS *continued*

KEY FINDINGS

- The total number of independent actions initiated against public company–related defendants continued an upward trajectory in FY 2016 after a dramatic increase in FY 2015. Public company–related actions in FY 2016 were up 10 percent from FY 2015.
- The SEC initiated 49 actions against public company defendants in FY 2016, an increase of 53 percent over the prior fiscal year and 46 percent over the FY 2010 to FY 2015 median.
- The growth in actions against public company–related defendants outpaced the overall growth in independent actions during FY 2013 through FY 2016. While independent actions grew 61 percent (Figure 1), public company–related actions increased 130 percent.

In FY 2016, actions against public company–related defendants reached the highest level in SEED to date.

**FIGURE 2: PUBLIC COMPANY–RELATED SEC ACTIONS
FY 2010–FY 2016**



Source: Securities Enforcement Empirical Database (SEED)

Note: Relief defendants are not considered.

CLASSIFICATION OF ALLEGATIONS

KEY FINDINGS

- Issuer Reporting and Disclosure remained the most frequent type of allegation against public company–related defendants in FY 2016, accounting for 26 percent.
- In FY 2016, the SEC increased its focus on Investment Advisor/Investment Companies violations, bringing “the most ever cases involving investment advisers or investment companies.”⁴ The 19 actions against these public company–related defendants in FY 2016 surpassed the combined total (17) for the prior three fiscal years.
- Municipal Securities/Public Pensions allegations declined from 38 percent in FY 2015 to 9 percent in FY 2016. This decrease is attributable to the SEC’s shift in focus from public company–related underwriters to nonpublic municipal issuers in the cases brought under the Municipalities Continuing Disclosure Cooperation Initiative.⁵

Investment Advisor/
Investment
Companies
allegations doubled
in FY 2016 relative
to the FY 2010 to
FY 2015 average.

FIGURE 3: HEAT MAP OF ALLEGATIONS AGAINST PUBLIC COMPANY–RELATED DEFENDANTS FY 2010–FY 2016

Allegation Type	Average 2010–2015	2010	2011	2012	2013	2014	2015	2016
Issuer Reporting and Disclosure	36%	40%	31%	27%	48%	50%	21%	26%
Investment Advisor/ Investment Companies	10%	9%	6%	14%	15%	9%	7%	21%
Foreign Corrupt Practices Act	20%	23%	33%	23%	13%	13%	13%	20%
Broker Dealer	11%	11%	14%	11%	3%	13%	13%	11%
Securities Offering	7%	6%	4%	9%	18%	4%	1%	10%
Municipal Securities/ Public Pensions	11%	4%	10%	9%	0%	4%	38%	9%
Other	3%	8%	0%	2%	0%	4%	6%	3%
Transfer Agent	0%	0%	0%	0%	0%	0%	0%	1%
Market Manipulation	3%	0%	2%	5%	5%	4%	0%	0%
Number of Actions	54	53	51	44	40	54	84	92

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

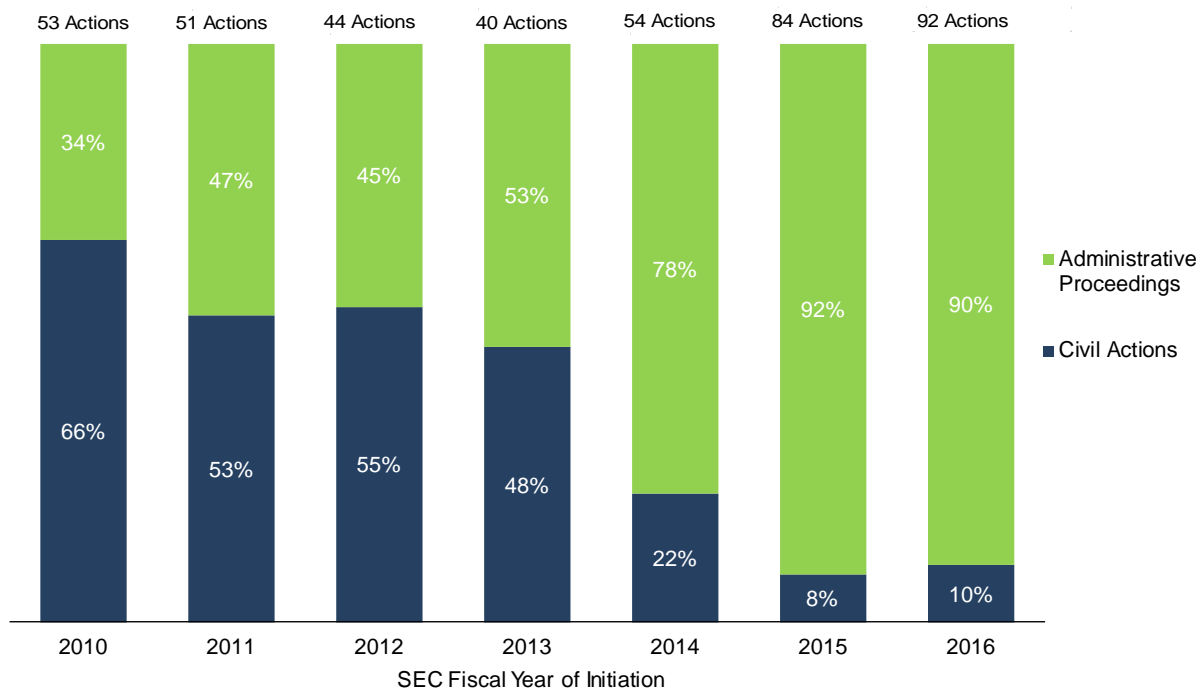
ENFORCEMENT VENUE

KEY FINDINGS

- Following the passage of Dodd-Frank in 2010, the SEC has noticeably accelerated the rate at which it brings actions against public company–related defendants as administrative proceedings.
- The SEC continued to use its administrative proceeding forum for the vast majority of the independent actions in FY 2016.
- The SEC brought 83 independent actions (90 percent) against public company–related defendants as administrative proceedings in FY 2016.

The SEC continued to favor the administrative proceeding forum in FY 2016.

FIGURE 4: PUBLIC COMPANY–RELATED ACTIONS BY ENFORCEMENT VENUE FY 2010–FY 2016



Source: Securities Enforcement Empirical Database (SEED)

Note: Relief defendants are not considered. Percentages may not add to 100 percent due to rounding.

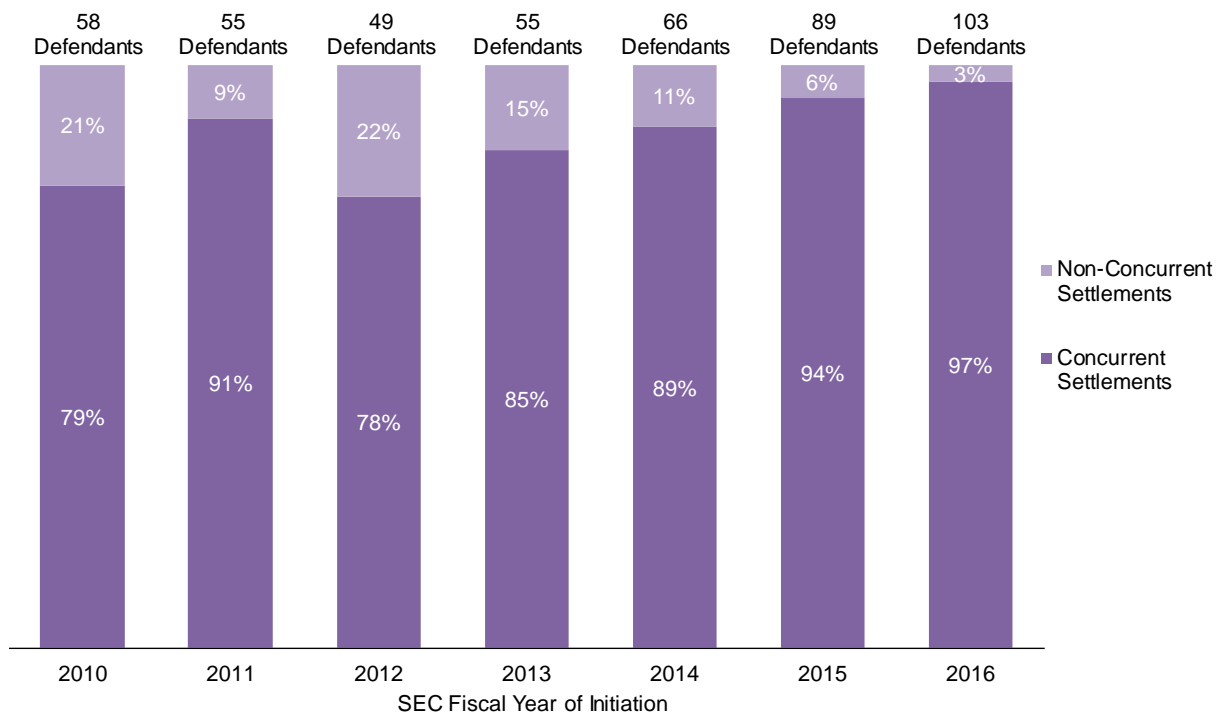
TIMING OF SETTLEMENT

KEY FINDINGS

- In FY 2016, 97 percent of public company–related defendants resolved SEC actions on the same day they were initiated (concurrent settlements). The FY 2010–FY 2015 median was 87 percent.
- Historically, concurrent settlements have been more common in administrative proceedings than civil actions. In FY 2016, all settlements against public company–related defendants in administrative proceedings occurred concurrently, while all but three settlements in civil actions occurred concurrently.
- The overall FY 2016 increase in concurrent settlements was largely driven by civil actions. While concurrent settlements in administrative proceedings remained consistent with historical trends, concurrent settlements in civil actions were 67 percent in FY 2016 relative to 43 percent in the prior fiscal year.

In FY 2016, all but three public company–related defendants settled concurrently with the filing of the action.

**FIGURE 5: SETTLEMENT TIMING FOR PUBLIC COMPANY–RELATED DEFENDANTS
FY 2010–FY 2016**



Source: Securities Enforcement Empirical Database (SEED)

Note: Relief defendants are not considered. A concurrent settlement indicates that an action was initiated and resolved on the same day. Settlements are counted at the defendant level.

MONETARY SETTLEMENTS

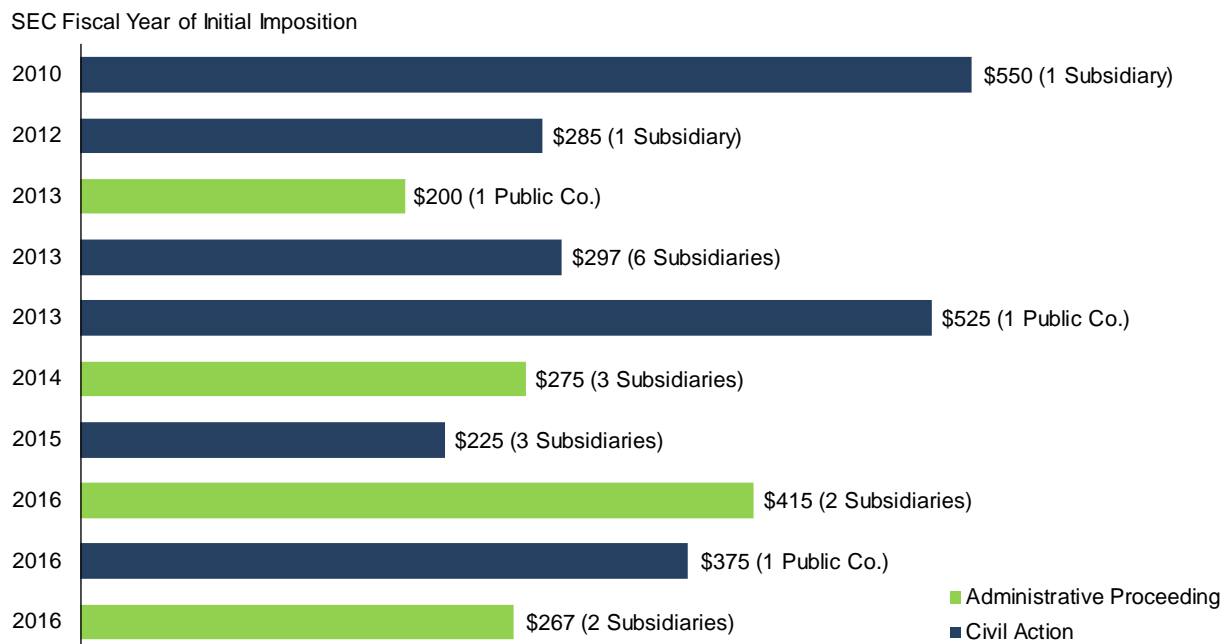
KEY FINDINGS

- Between FY 2010 and FY 2016, 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.
- The three largest monetary settlements in FY 2016 public company–related actions accounted for over \$1 billion of the \$4 billion total monetary settlements ordered by the SEC during that fiscal year.⁶
- Two of the three FY 2016 public company–related settlements in the top 10 involved admissions of guilt. This marked a shift from prior years. Defendants in five of the seven actions before FY 2016 settled “without admitting or denying the allegations.”
- Two of the three FY 2016 public company–related settlements in the top 10 noted “cooperation” on behalf of the defendant(s). This also marked a shift from prior years, in which only one of the top monetary settlements noted “cooperation.”

Three of the 10 largest monetary settlements in public company–related actions were reached in FY 2016, with two requiring admission of guilt.

FIGURE 6: TOP 10 MONETARY SETTLEMENTS IMPOSED IN PUBLIC COMPANY–RELATED ACTIONS

FY 2010–FY 2016
(Dollars in Millions)



Source: Securities Enforcement Empirical Database (SEED)

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

COOPERATION NOTED IN SETTLEMENTS

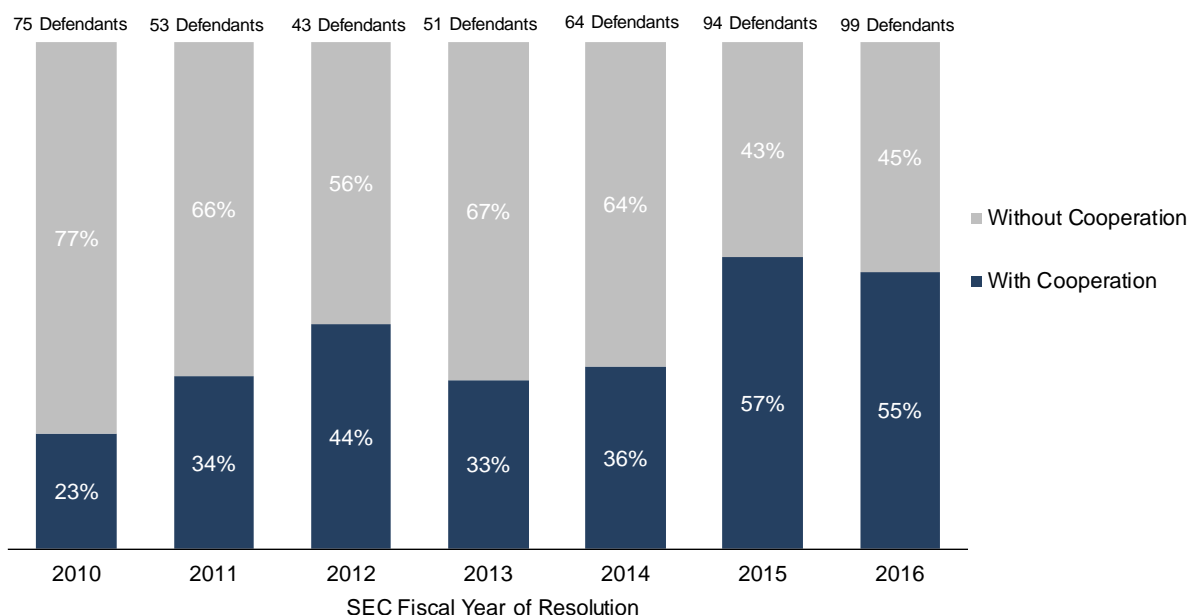
While the SEC has granted defendants credit for cooperation since 2001, it announced a formal cooperation initiative in January 2010.⁷ The Commission considers four broad factors when negotiating a settlement with a cooperating defendant: “self-policing, self-reporting, remediation, and cooperation.”⁸ SEED measures the fourth factor, cooperation, based on whether the SEC explicitly mentions “cooperation” in the settlement announcement.

KEY FINDINGS

- Stated cooperation by public company–related defendants has more than doubled since the announcement of the formal cooperation initiative. In FY 2016, 55 percent of settlements with public company–related defendants noted cooperation, compared to only 23 percent in FY 2010.
- The rise in settlements noting cooperation corresponds with the SEC’s increased use of the administrative proceeding forum (Figure 4).

Cooperation by public company–related defendants has more than doubled from FY 2010 to FY 2016.

FIGURE 7: COOPERATION NOTED IN SETTLEMENTS WITH PUBLIC COMPANY–RELATED DEFENDANTS FY 2010–FY 2016



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 word “cooperation” must be mentioned in the document detailing the non-trial resolution. Settlements are counted at the defendant level.

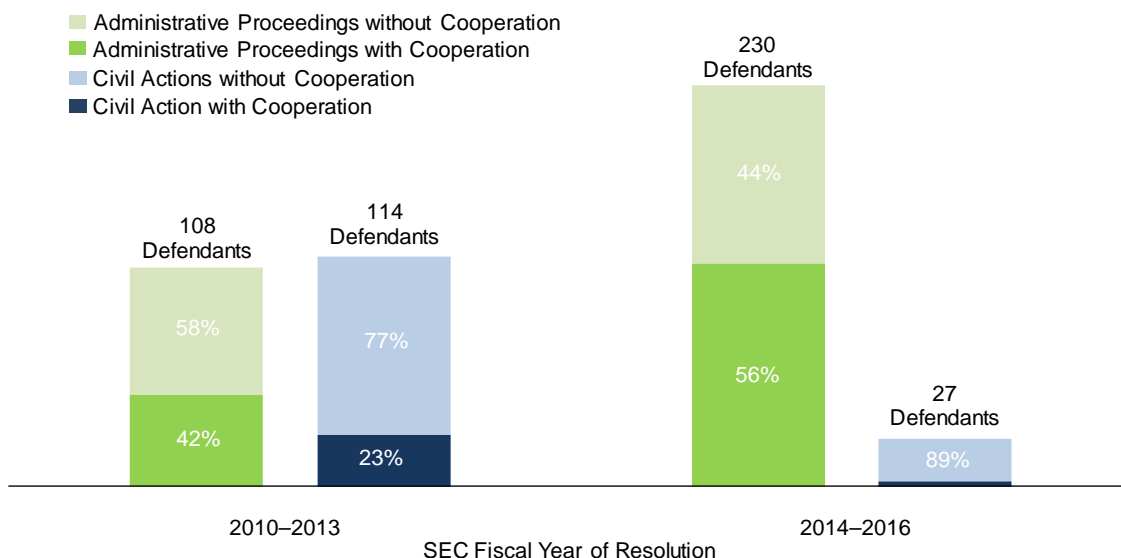
COOPERATION NOTED IN SETTLEMENTS *continued*

KEY FINDINGS

- In resolved actions against public company–related defendants, the SEC more frequently noted cooperation in administrative proceedings than in civil actions. This disparity has increased noticeably beginning in FY 2014, the approximate midpoint of the time period analyzed in SEED.
- During FY 2010 to FY 2013, 49 percent of public company–related defendants that settled were facing administrative proceedings. The SEC noted cooperation in 42 percent of these settlements.
- From FY 2014 to FY 2016, 89 percent of settling public company–related defendants were charged in administrative proceedings. The SEC noted cooperation in 56 percent of these settlements.

Since FY 2013, settlements noting cooperation have increased in administrative proceedings and decreased in civil actions.

FIGURE 8: COOPERATION NOTED IN SETTLEMENTS WITH PUBLIC COMPANY–RELATED DEFENDANTS BY ENFORCEMENT VENUE FY 2010–FY 2016



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 word “cooperation” must be mentioned in the document detailing the non-trial resolution. Settlements are counted at the defendant level.

RESEARCH SAMPLE

- The [Securities Enforcement Empirical Database \(SEED\)](http://seed.law.nyu.edu), a collaboration between the NYU Pollack Center for Law & Business and Cornerstone Research, identifies 418 SEC enforcement actions initiated against 400 public company defendants and their subsidiaries between October 1, 2009, and September 30, 2016 (<http://seed.law.nyu.edu>).
- The sample used for the majority of this report is referred to as “enforcement actions initiated against public company and related subsidiary 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 does not include enforcement actions filed against individual defendants employed at either public companies or subsidiaries of public companies.
- Public companies are defined as those that trade on a major U.S. exchange as identified by CRSP; thus, public companies that trade OTC are excluded.

SEED provides easily searchable and verified data on SEC enforcement 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 years 2010 to 2016 span October 1, 2009, to September 30, 2016.
- ² “SEC Announces Enforcement Results for FY 2016,” U.S. Securities and Exchange Commission Press Release, October 11, 2016, <https://www.sec.gov/news/pressrelease/2016-212.html> (SEC Press Release 2016-212).
- ³ SEED captures the public company defendants included in the Center for Research in Security Prices (CRSP) U.S. Stock Database and subsidiary company defendants of public companies included in CRSP. CRSP includes data from the NYSE, NYSE MKT, NASDAQ, and NYSE Arca stock exchanges. Only information from publicly available documents released by the SEC (e.g., litigation releases, Administrative Law Judge orders, press releases, etc.) and resolution information from court orders (for civil actions) are included in SEED.
- ⁴ SEC Press Release 2016-212.
- ⁵ See, e.g., “SEC Completes Muni-Underwriter Enforcement Sweep,” U.S. Securities and Exchange Commission Press Release, February 2, 2016, <https://www.sec.gov/news/pressrelease/2016-18.html>. See also “SEC Charges 71 Municipal Issuers in Muni Bond Disclosure Initiative,” U.S. Securities and Exchange Commission Press Release, August 24, 2016, <https://www.sec.gov/news/pressrelease/2016-166.html>.
- ⁶ SEC Press Release 2016-212.
- ⁷ “The SEC’s Cooperation Program: Reflections on Five Years of Experience,” U.S. Securities and Exchange Commission, Speech by Andrew Ceresney, May 13, 2015, <https://www.sec.gov/news/speech/sec-cooperation-program.html> (Ceresney May 2015 Speech).
- ⁸ Ceresney May 2015 Speech.

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The views expressed in this report are solely those of the authors, who are responsible for the content, and do not necessarily represent the views of the NYU Pollack Center for Law & Business or Cornerstone Research.

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