

SEC Enforcement Activity against Public Companies and Their Subsidiaries

Midyear FY 2016 Update



ANALYSIS AND TRENDS

Filings

Allegations

Enforcement Venues

Settlement Timing

Monetary Settlements

TABLE OF CONTENTS

- Executive Summary 1
- Number of Filings 2
 - Figure 1: Number of SEC Actions Filed against Public Company and Related Subsidiary Defendants 2
- Classification of Allegations 3
 - Figure 2: Heat Map of Allegations against Public Company and Related Subsidiary Defendants 3
- Enforcement Venue 4
 - Figure 3: Public Company and Related Subsidiary Actions by Enforcement Venue 4
- Timing of Settlement 5
 - Figure 4: Settlement Timing for Public Company and Related Subsidiary Defendants 5
- Monetary Settlements 6
 - Figure 5: Top 10 Monetary Settlements Imposed on Public Company and Related Subsidiary Defendants 6
- Research Sample 7
- Endnotes 8
- About the Authors 9

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.¹ This report focuses on actions initiated between fiscal year 2010 and the first half of fiscal year 2016.²

- Actions against public company defendants have been relatively stable over the past six fiscal years, while actions against public company subsidiary defendants (related subsidiary defendants) rose in FY 2015 and the first half of FY 2016. ([page 2](#))
- The majority of enforcement actions against related subsidiary defendants focus on financial services firms. The data show that the SEC has brought charges against subsidiaries of financial firms more often than the publicly traded parent company. ([page 2](#))
- In FY 2015 and the first half of FY 2016, actions against public company and related subsidiary defendants with Municipal Securities/Public Pension allegations increased, while the share of cases alleging violations of Issuer Reporting and Disclosure provisions declined compared with the previous five fiscal years. ([page 3](#))
- The SEC continued to use its administrative proceeding forum in the vast majority of the actions analyzed. In the first half of FY 2016, the SEC brought 88 percent of actions against public company and related subsidiary defendants as administrative proceedings. ([page 4](#))
- In the first half of FY 2016, 98 percent of public company and related subsidiary defendants resolved SEC actions on the same day they were initiated. ([page 5](#))
- Between FY 2010 and the first half of FY 2016, the top 10 monetary settlements by public company and related subsidiary defendants ranged from \$175 million to \$550 million. Seven of these occurred in administrative proceedings, while three were in civil actions. ([page 6](#))

“SEED’s expansion to include subsidiaries of public companies has almost doubled the number of enforcement actions in the database.”

Stephen Choi

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

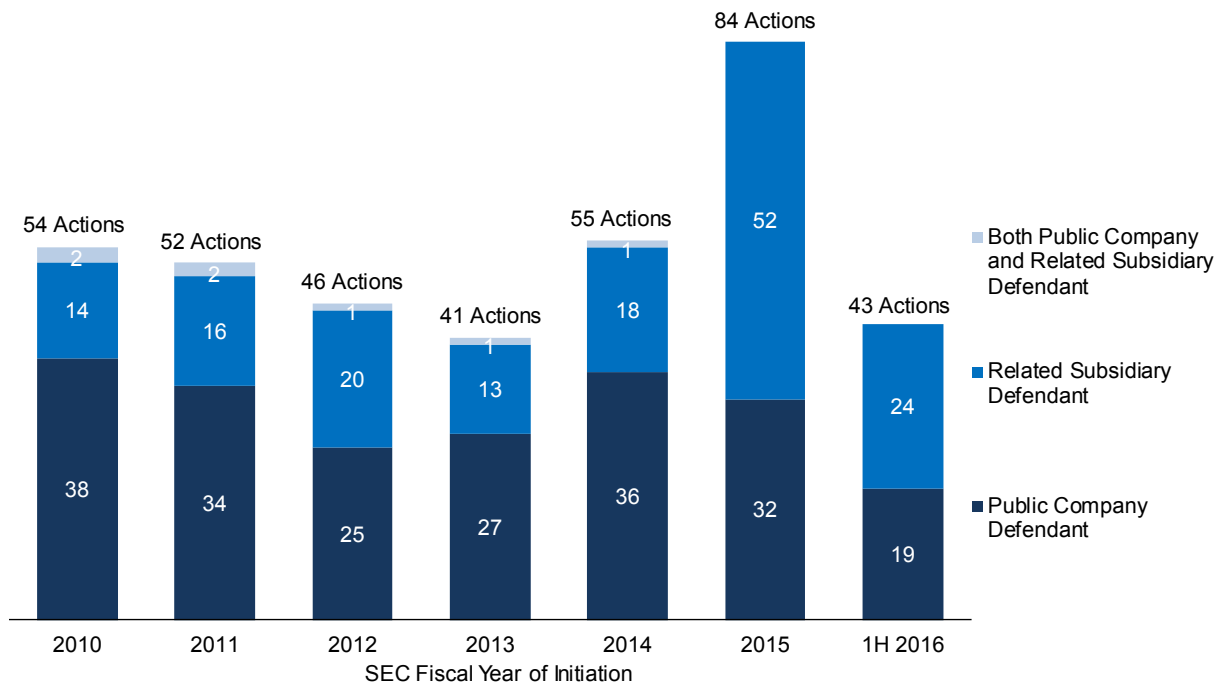
NUMBER OF FILINGS

KEY FINDINGS

- In FY 2015, the spike in actions against related subsidiary defendants resulted in a dramatic increase in the total number of enforcement actions initiated against public company defendants and related subsidiary defendants. There were 52 actions with a related subsidiary defendant in FY 2015 compared to an average of 18 actions each year between FY 2010 and FY 2014.
- From FY 2010 through FY 2014, the SEC filed twice as many actions against public company defendants as against related subsidiary defendants. In FY 2015 and the first half of FY 2016, however, there were 49 percent more actions brought against related subsidiary defendants.
- The majority of enforcement actions against related subsidiary defendants focus on financial services firms. The data show that the SEC has brought charges against subsidiaries of financial firms more often than the publicly traded parent company of financial firms.

Actions against related subsidiary defendants nearly tripled in FY 2015 and continued to make up the majority of SEED actions in the first half of FY 2016.

**FIGURE 1: NUMBER OF SEC ACTIONS FILED AGAINST PUBLIC COMPANY AND RELATED SUBSIDIARY DEFENDANTS
FY 2010–1H FY 2016**



Source: Securities Enforcement Empirical Database (SEED)

Note: Relief defendants are not considered. First half fiscal year 2016 includes data available through March 2016.

CLASSIFICATION OF ALLEGATIONS

KEY FINDINGS

- The most common allegations against public company and related subsidiary defendants were violations of Issuer Reporting and Disclosure provisions of securities laws, and Foreign Corrupt Practices Act (FCPA) violations. However, the share of cases with Issuer Reporting and Disclosure allegations declined in FY 2015 and the first half of FY 2016.
- In FY 2015 and so far in FY 2016, the SEC greatly increased the number of actions it brought with Municipal Securities/Public Pensions allegations—32 in FY 2015 and seven in the first half of FY 2016 compared to an annual average of three between FY 2010 and FY 2014. This stark increase has been primarily driven by the SEC’s Municipalities Continuing Disclosure Cooperation initiative and is consistent with the SEC’s stated priority for FY 2015 and FY 2016 of a “continued focus on . . . municipal securities.”³
- In the first half of FY 2016, there was a near-even split among Issuer Reporting and Disclosure, FCPA, Investment Advisor/Investment Companies, and Municipal Securities/Public Pensions allegations.

Actions with Municipal Securities/Public Pensions allegations increased in FY 2015 and so far in FY 2016 compared to prior years.

**FIGURE 2: HEAT MAP OF ALLEGATIONS AGAINST PUBLIC COMPANY AND RELATED SUBSIDIARY DEFENDANTS
FY 2010–1H FY 2016**

Allegation Type	Average 2010–2015	2010	2011	2012	2013	2014	2015	1H 2016
Issuer Reporting and Disclosure	36%	39%	31%	30%	46%	51%	21%	23%
Foreign Corrupt Practices Act	20%	22%	35%	22%	15%	13%	13%	19%
Investment Advisor/Investment Companies	10%	9%	6%	13%	15%	9%	7%	19%
Municipal Securities/Public Pensions	11%	4%	10%	9%	0%	4%	38%	16%
Broker Dealer	11%	11%	13%	11%	2%	13%	13%	12%
Securities Offering	7%	7%	4%	9%	17%	4%	1%	12%
Other	3%	7%	0%	2%	0%	4%	6%	0%
Market Manipulation	2%	0%	2%	4%	5%	4%	0%	0%
Insider Trading	0%	0%	0%	0%	0%	0%	0%	0%
Number of Actions	55	54	52	46	41	55	84	43

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. First half fiscal year 2016 includes data available through March 2016. Other includes actions categorized by the SEC as Other.

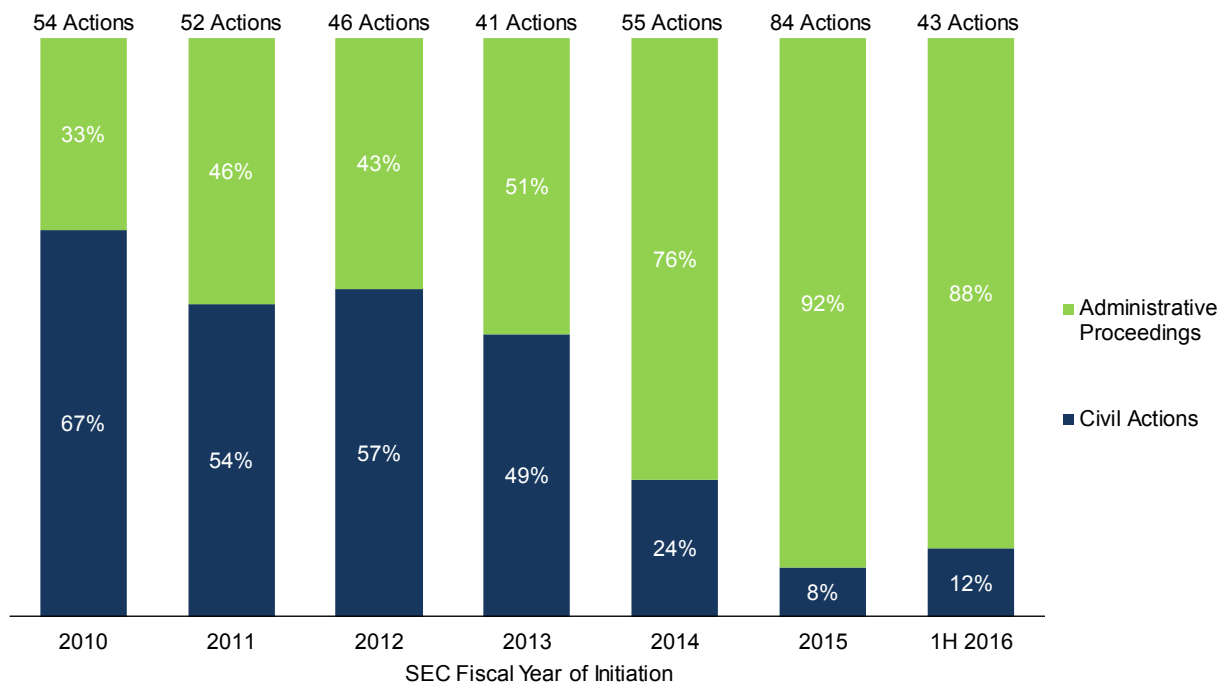
ENFORCEMENT VENUE

KEY FINDINGS

- The SEC continued to use its administrative proceeding forum in the vast majority of its actions. In the first half of FY 2016, the SEC brought 88 percent of actions against public company defendants and related subsidiary defendants as administrative proceedings.
- The previous report, [SEC Enforcement Activity against Public Company Defendants: Fiscal Years 2010–2015](#), showed that actions against public company defendants were mostly brought as civil actions prior to FY 2014.⁴ In FY 2015 and the first half of FY 2016, 78 percent of actions against public company defendants were brought as administrative proceedings.
- Unlike public company defendants, prior to FY 2014 the SEC typically brought the majority of actions against related subsidiary defendants as administrative proceedings. In FY 2015 and the first half of FY 2016, this trend continued with the SEC bringing all but one of the 76 actions against related subsidiary defendants as administrative proceedings.

The SEC’s shift toward using the administrative proceeding forum continued in the first half of FY 2016.

FIGURE 3: PUBLIC COMPANY AND RELATED SUBSIDIARY ACTIONS BY ENFORCEMENT VENUE FY 2010–1H FY 2016



Source: Securities Enforcement Empirical Database (SEED)

Note: Relief defendants are not considered. First half fiscal year 2016 includes data available through March 2016.

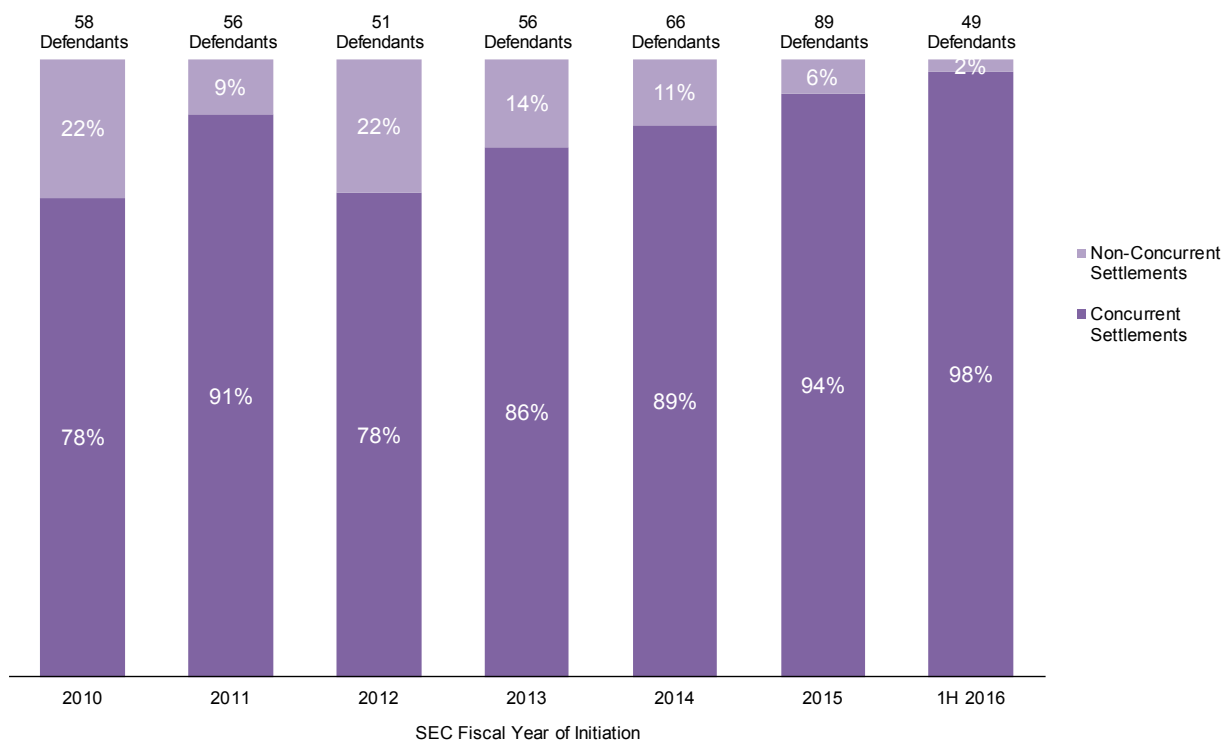
TIMING OF SETTLEMENT

KEY FINDINGS

- In the first half of FY 2016, 98 percent of public company and related subsidiary defendants resolved SEC actions on the same day they were initiated (concurrent settlements). This was an increase from 94 percent in FY 2015 and the FY 2010–FY 2014 average of 84 percent.
- Historically, concurrent settlements are more common in administrative proceedings than civil actions. In the first half of FY 2016, all settlements against public company and related subsidiary defendants in administrative proceedings occurred concurrently, while four of the five settlements in civil actions occurred concurrently.
- Consistent with the SEC’s increased use of administrative proceedings and the prevalence of concurrent settlements for administrative proceedings, the percentage of actions with concurrent settlements has increased over time.

In the first half of FY 2016, all but one settlement in SEED occurred concurrently with the filing of the action.

**FIGURE 4: SETTLEMENT TIMING FOR PUBLIC COMPANY AND RELATED SUBSIDIARY DEFENDANTS
FY 2010–1H 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. First half fiscal year 2016 includes data available through March 2016.

MONETARY SETTLEMENTS

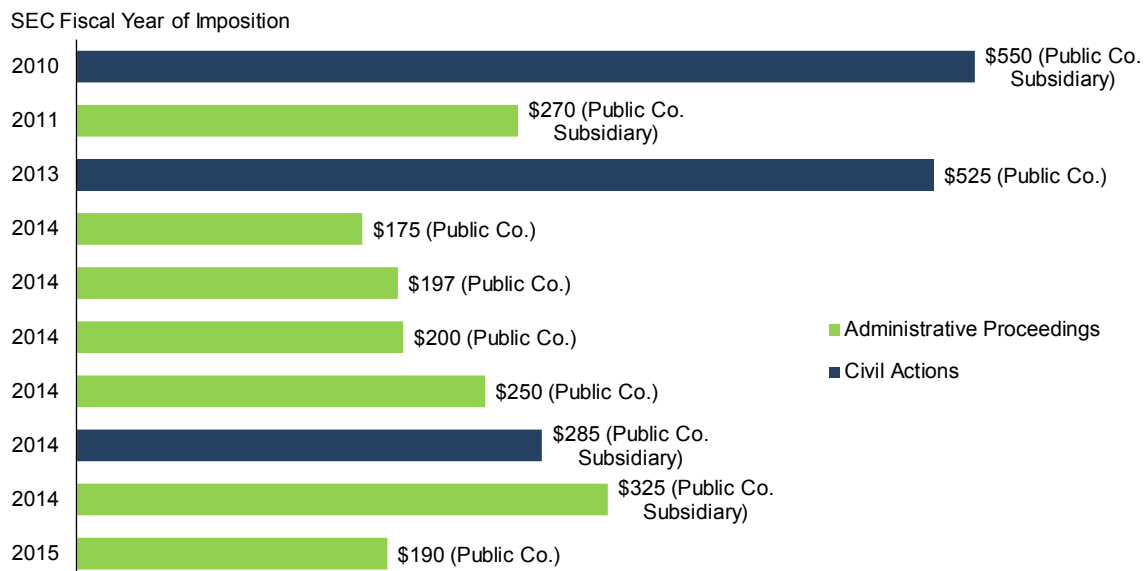
KEY FINDINGS

- Between FY 2010 and the first half of FY 2016, the top 10 monetary penalties and disgorgements imposed by the SEC on public company and related subsidiary defendants were all greater than or equal to \$175 million each, imposed on six public company defendants and four related subsidiary defendants.
- The largest monetary SEC settlement since FY 2010 was for \$550 million by a subsidiary of a public financial services company in a matter involving Broker-Dealer allegations. The next largest monetary settlement was for \$525 million by a public oil and gas company in FY 2013 for alleged violations of Issuer Reporting and Disclosure provisions of the securities laws.
- The average and median monetary settlements by public company and related subsidiary defendants during FY 2010 through the first half of FY 2016 were \$24 million and \$5 million, respectively.
- There were 22 monetary settlements in the first half of FY 2016 by public company defendants and 20 settlements by related subsidiary defendants. These settlements ranged from \$20,000 to \$80 million.

All monetary settlements with public company and related subsidiary defendants in the first half of FY 2016 were less than or equal to \$80 million each.

FIGURE 5: TOP 10 MONETARY SETTLEMENTS IMPOSED ON PUBLIC COMPANY AND RELATED SUBSIDIARY DEFENDANTS FY 2010–1H FY 2016

(Dollars in Millions)



Source: Securities Enforcement Empirical Database (SEED)

Note: Relief defendants are not considered. Total penalties and disgorgements exclude monetary penalties and disgorgements shared by multiple defendants. First half fiscal year 2016 includes data available through March 2016.

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 375 SEC enforcement actions initiated against 364 public company defendants and their subsidiaries between October 1, 2009, and March 31, 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 facing allegations that are not exclusively related to delinquent filings. 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 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 the database.
- ² SEC fiscal years begin on October 1 of the prior year and end on September 30. SEC fiscal years 2010 to 2015 span October 1, 2009, to September 30, 2015. The first half of fiscal year 2016 spans October 1, 2015, to March 31, 2016.
- ³ “Agency Financial Report, Fiscal Year 2014,” U.S. Securities and Exchange Commission, <https://www.sec.gov/about/secpar/secafr2014.pdf>; “Agency Financial Report, Fiscal Year 2015,” U.S. Securities and Exchange Commission, <https://www.sec.gov/about/secpar/secafr2015.pdf>; “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>.
- ⁴ [*SEC Enforcement Activity against Public Company Defendants: Fiscal Years 2010–2015*](#), NYU Pollack Center for Law & Business and Cornerstone Research, 2016.

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 provides 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*.

The authors acknowledge the research efforts and significant contributions of their colleagues at New York University and Cornerstone Research.

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.

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.

Please direct any questions to:

Sara Gilley
Cornerstone Research
312.345.7377
sgilley@cornerstone.com

David Marcus
Cornerstone Research
617.927.3050
dmarcus@cornerstone.com

About the NYU Pollack Center for Law & Business

Established in 1997, the NYU Pollack Center for Law & Business is a joint venture of the NYU School of Law and the Stern School of Business. Its mission is to enrich the teaching curriculum at both schools in areas where law and business intersect; to facilitate professional interaction and academic research by faculty who share an interest in the structure, regulation, and function of the market economy; and to contribute to the public welfare by supporting scholarship that assists governmental and private policymakers in their pursuit of enhanced business productivity.

About Cornerstone Research

Cornerstone Research provides economic and financial consulting and expert testimony in all phases of complex litigation and regulatory proceedings. The firm works with an extensive network of prominent faculty and industry practitioners to identify the best-qualified expert for each assignment. Cornerstone Research has earned a reputation for consistent high quality and effectiveness by delivering rigorous, state-of-the-art analysis for over 25 years. The firm has 600 staff and offices in Boston, Chicago, London, Los Angeles, New York, San Francisco, Silicon Valley, and Washington