KPMG

Regulatory Alert

Regulatory Insights

April 2024

SEC Speaks: Recap of 2023 Actions

KPMG Insights:

— ***Record Enforcement:*** *A total of 784 enforcement actions representing a 3% increase over the prior fiscal year, and financial remedies of close to $5 billion.*

— ***Whistleblower Power:*** *Highest amount awarded in one year at nearly $600 million and highest number of whistleblower tips received in one year at more than 18,000 (and 50% higher than the prior record).*

— ***Upcoming Exam Focus:*** *Expect increasing focus on Compliance investment, T+1 compliance, execution transparency and fee transparency; Expect more risk alerts and outreach.*

The Securities and Exchange Commission (SEC) participates in the SEC Speaks 2024 event (having declined in 2023). Key areas covered include:

Enforcement. The SEC Division of Enforcement highlights Fiscal Year 2023 enforcement activities:

— Filing 784 total enforcement actions (a 3 percent increase over the prior fiscal year).

— Securing "financial remedies" close to $5 billion (the second greatest amount in the SEC's history). (*Note:* this sum includes approximately $3.37 billion in disgorgement and prejudgment interest, and roughly $1.6 billion in civil penalties).

— Barring 133 individuals from serving as officers and directors of public companies (the highest number in a decade).

— Issuing nearly $600 million in whistleblower awards (the highest amount awarded in one year) with more than 18,000 whistleblower tips received (the most ever in one year and 50 percent higher than the prior record set in FY 2022).

— Distributing $930 million to "harmed investors" (the second consecutive year with more than $900 million).

— Charging nearly 60 firms under recordkeeping rules since December 2021 (with over $1.7 billion in penalties).

The SEC further outlines the agency's approach to penalties in relation to two ongoing enforcement initiatives – recordkeeping and the amended marketing rule – adding that "self-reporting is the factor most likely to significantly lower the penalty we recommend."

Examinations. The SEC Division of Examination notes:

— **Compliance Department Investment:** The importance of strong compliance, resiliency, and adaptability for enhancing investor protection and market stability. The SEC stresses that compliance departments must have the proper resources and support to meet regulatory responsibilities and that it is important for companies to be incentivized to make these investments to "ensure their compliance programs continue to offer appropriate assistance and guidance to their firms, and strong protection to investors".

— **Risk Alerts/Outreach:** Intent is to increase issuances of risk alerts and change industry and investor outreach.

Rulemakings. The SEC Chair states, "we have an obligation to update the rules of the road, always with an eye toward promoting trust as well as efficiency, competition, and liquidity in the markets." Rulemaking highlights include:

— **T+1:** As the securities market is set to transition to a T+1 settlement cycle, the SEC encourages market participants to prepare for the May 28, 2024 compliance date (see related KPMG Regulatory Alert here and here).

— **Execution Transparency**: The SEC final rule requires large broker-dealers with more than 100,000 customers to disclose execution quality (see related KPMG Regulatory Alert here).

— **Regulation NMS:** Actions include rules addressing minimum tick size, the definition of "round lot", and volume-based transaction rebates and fees (see related KPMG Regulatory Alert here).

— **Best Execution:** The SEC states that a best execution standard is central to the agency's mandate to protect investors and made more important given the rapid developments in the markets (see related KPMG Regulatory Alert here).

— **Definition of "Exchange":** Following on from a 2022 proposed rule, the SEC states that **"**ensuring that such exchange-like platforms follow our exchange-specific rules could benefit investors and markets alike."

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