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SEC Enforcement's Third Quarter: More Cases, Broader Reach

Introduction

The Commission frequently increases the rate at enforcement actions are filed in advance of the September 30th fiscal year end. That fiscal year end is followed by Congressional budget hearings where statistics are at least one measure of performance. Yet filing over 120 enforcement actions as the Government fiscal year end approached roughly approximated the number of cases brought in the earlier two quarters of the year, clearly suggesting a push to increase the number of filings.

The push and number of cases may, however, also reflect a possible shift in the enforcement program focus. During the third quarter for the first time in years more administrative proceedings were filed than federal court cases. In addition, a review of the cases suggests that the focus was broader with, for example, more financial fraud actions and cases involving market professionals being filed. These points will have to be carefully assessed by compliance professionals to ensure a proper focus.

Statistics

The following table depicts the leading categories of cases as a percentage of the total actions filed during the period.

Offering fraud	33.6%
Manipulation	16%
Insider trading	9%
Unregistered broker	8%
Misappropriation	7%

Grouping the actions by defendant/respondent provides a different assessment as shown below.

Microcap fraud	30%
Investment advisers	23%
Broker-dealers	21%
Financial fraud	11%
Insider trading	9%
Crypto assets	5%
FCPA	3%

Select cases

Examples of the cases are set forth below, grouped by category.

Offering fraud

SEC v. Karlsson, Civil Action No. 20-civ-04615 (E.D.N.Y. Filed Sept. 29, 2020) names as defendants Roger Nils-Jonas Karlsson who describes himself as a System Analysis Manager. Over a period of about seven years, beginning in late 2012, Defendants marketed an investment called a Pre Funned Reversed Pension Plan that claimed to be the first such instrument. The instrument was supposedly developed by world class economists and had "huge" payouts tied to the value of gold. At least 2,200 investors acquired interests in Eastern Metals. The initial payment was $99. In the last 18 months about $3.5 million in digital assets were transferred to Defendants. The complaint alleges violations of Securities Act Sections 5(a), 5(c) and 17(a)(1) & (3) and Exchange Act Section 10(b). The case is pending. *See* Lit. Rel. No. 24932 (Sept. 30, 2020)

SEC v. Rogas, Civil Action No. 20 cv 7628 (S.D.N.Y. Filed Sept. 17, 2020) is an action which names the founder of NS8 FP, LLC as a defendant. NS8 is a privately held high tech company founded by Adam Roges. In 2019, and again in 2020, Mr. Roges defraud investors purchasing shares of the firm. The scheme was implemented by altering the firm's bank records to show millions of dollars in revenue. Those records were then furnished to the company which used them to prepare financial statements for the offerings. Mr. Rogas took steps to conceal his fraudulent acts but was persistent. In 2019 he continued the fraud after being questioned by a representative for an investor. He also continued to furnish false information to the company after being contacted by the staff. About $123 million was raised in the two offerings. The complaint alleges violations of Securities Act Section 17(a) and Exchange Act Section 10(b). The case is pending. *See* Lit. Rel. No. 24905 (Sept. 18, 2020).

SEC v. Coggins, Civil Action No. 70-cv-23444 (S.D. Fla. Unsealed August 26, 2020) is an action which names as defendants David C. Coggins and Coral Gables Asset Management LLC, an investment adviser he controlled. Beginning in 2015 Defendants solicited investors using a series of lies about the nature of the investments, how the money would be invested and the performance of the funds. While about $1.85 million was raised, a substantial portion of the investor money was misappropriated. The portion that was invested performed poorly. The complaint alleges violations of Securities Act Section 17(a), Exchange Act Section 10)(b), and Advisers Act Sections 201(1), 206(2) and 206(4). The case is pending. *See* Lit. Rel. No. 24877 (August 26, 2020).

Disclosure

In the Matter of Fiat Chrysler Automobiles N.V., Adm. Proc. File No. 3-20092 (Sept. 28, 2020) is a proceeding naming the auto manufacturer as a respondent. In early 2016, following the action brought against a German auto firm for circumventing environmental limitations on emissions with a "defeat mechanism," the firm disclosed the results of an internal inquiry focused on the same issue. While the disclosures stated the findings of the inquiry that no defeat mechanism was used, it failed to state that the investigation was limited and that the EPA and California Air Resources Board engineers had raised concerns about certain of its engines. The Order alleges violations of Exchange Act Section 13(a). To resolve the proceedings Respondent consented to the entry of a cease and desist order based on the section cited. The firm will also pay a penalty of $9.5 million. A fair fund will be created.

Internal controls

In the Matter of Kroll Bond Rating Agency, LLC, Adm. Proc. File No. 3-20096 (Sept. 29, 2020) names the rating agency as a respondent. The firm's internal controls relating to its rating of conduit/fusion commercial mortgage backed securities had deficiencies. Those issues resulted in material weaknesses in its internal control structure. The firm established procedures to determine credit ratings for the instruments which permitted the use of professional judgment to make adjustment. Unfortunately, the system failed to include any analytical method for determining the applicability of, the magnitude of, or recording the rational for the adjustments. The firm failed to detect or prevent the omissions. The Kroll's written procedures from 2012 to 2017 also permitted the adjustments made to be done on a portfolio basis rather than by property. The Order alleges violations of Exchange Act Section 15E(e)(3)(A). To resolve the proceedings the firm consented to the entry of a cease and desist order based on the section cited and a censure. The firm will also pay a penalty of $1,250,000 which will be transferred to the U.S. Treasury. *See also In the Matter of Kroll Bond Rating Agency, LLC,* Adm. Proc. File No. 3-20097 (Sept. 29, 2020)(base on a failure to establish and maintain policies and procedures re if CLO combination notes will default; resolved with a cease and desist order based on Rule 17g-8(b)(1) of Exchange Act, a censure, a series of undertakings, payment of $160,000 in disgorgement, $4,836.33 in prejudgment interest and a penalty of $600,000). A fair fund was created.

Manipulation

In the Matter of J.P. Morgan Securities LLC, Adm. Proc. File No. 3-20094 (Sept. 29, 2020). The Order alleges that over series of months from April 2015 to January 2016 certain traders at the firm engaged in manipulative trading in the secondary market of U.S. Treasury cash securities. On one side of a trade orders would be entered that were bona fide. On the other trades were placed that were not bonified but were designed to either raise or depress the price. The non-bonified trades were generally cancelled. The Order alleges violations of Securities Act Section 17(a)(3). To resolve the proceedings the firm acknowledged that its conduct violated the federal securities laws, consented to the entry of a cease and desist order based on the section cited in the order and to a censure. The firm will pay a civil penalty of $25 million and disgorgement of $10 million. The penalty and disgorgement will be satisfied by amounts paid in the parallel DOJ and CFTC actions.

Insider trading

SEC v. Sheinfeld, Civil Action No. 20-civ-01692 (M.D. Pa. Filed Sept. 17, 2020) is an action which names as a defendant Steven J. Sheinfeld, a 20 year employee of Rite Aid Corp. who implements their code of ethics. The case centers around a planned merger of Rite Aid and Walgreens Boots Alliance, Inc. which was scheduled to close on January 17, 2017. Prior to that date Defendamt learned while working on a special project at work that the deal would likely not close on time. In fact, the deal did not close and the stock dropped about 13%. Just prior to the announcement that it would not close Defendant sold all of his shares, avoiding a loss of about $140,000. He also sold firm shares held in the accounts of relatives, avowing over $15,000 in losses. The complaint alleges violations of Exchange Act Section 10(b). The case is pending. *See* Lit. Rel. No. 24903 (Sept. 17, 2020).

SEC v. Kelly, Civil Action No. 1:20-cv-04449 (E.D.N.Y. Filed Sept. 23, 2020) is an action which names as a defendant Edward T. Kelly, the retired controller of Aceto Corporation. After Mr. Kelly retired the firm had financial difficulties. In March 2018 Mr. Kelly was brought in to aid the firm. After determining that the company had financial issues, he sold all of his firm shares and exercised his stock options and sold those shares. By trading while in possession of inside information, and after the facts were disclosed, he avoided losses of over $85,000. The complaint alleges violations of Exchange Act Section 10(b). To resolve the action Mr. Kelly consented to the entry of a permanent injunction based on the section cited in the complaint. He also agreed to the entry of an order that bars him from serving as an officer or director of a public company and to pay a penalty of $170,228. *See* Lit. Rel. No. 24912 (Sept. 23, 2020).

SEC v. Yang, Civil Action No. 1:29-cv-04427 (E.D.N.Y. Filed Sept. 21, 2020). Yinghang "James" Yang and Yuanbiao Chen, respectively, the Senior Index Manager of Company and his friend, a manager at a sushi restaurant, are defendants in the action. Mr. Yang has held his position since September 2018. In that position he helped manage the firm's Indexes. He also served on the Index Committee during which there were discussions regarding the components of the various indexes. The firm had confidentiality procedures in place to protect their information as Mr. Yang knew. Prior to the commencement of the scheme, Mr. Chen opened a Brokerage Account at Broker. Mr. Chen informed the brokerage that he had five years of experience in trading options. He executed an agreement that would permit trading options through the new account. Over a period of just over four months, beginning on June 24, 2019, Defendants purchased options in the shares of fourteen stocks shortly prior to the time the Company made additions or deletions from those Indexes. Following the announcement by Company of either the addition or deletion of stocks from an Index, Defendants closed the transactions. The trades were placed while in possession of material, non-public information about the actions to be taken for various securities with regard to being added or deleted from the Indexes of Company. Defendants placed the trades in Brokerage Account with computers using IP addresses at three locations. One was Mr. Yang's home. A second was the Company. A third was at Mr. Chen's place of employment. The transactions netted illegal trading profits of $912,082. The profits were divided by the two men. The complaint alleges violation of Exchange Act Section 10(b). The case is pending. *See* Lit. Rel. No. 24909 (Sept. 22, 2020). [1]

False statements

In the Matter of Alan J. Kau, Adm. Proc. File No. 3-20052 (Sept. 23, 2020) is an action centered on the bankruptcy of the firm for which Mr. Kau once served as President, Worthington Energy, Inc. In 2018 Mr. Lau signed off on a fraudulent Disclosure Statement Describing Debtor's Joint Plan of Reorganization and Debtor's Joint Plan of Reorganization as a Chapter 11 prepackaged plan. The materials were filed with the U.S. Bankruptcy Court for the Southern District of California. The materials were included in the plan of reorganization. The Order alleges violations of Securities Act Section 17(a) and Exchange Act Section 10(b). To resolve the proceedings Respondent consented to the entry of a cease and desist order based on the sections cited in the Order. He also agreed to the entry of an officer-director bar and a penny stock bar with a right to apply for reentry after two years. In addition, he will pay a penalty of $15,000 that will be forwarded to the U.S. Treasury. *See also In the Matter of Daniel C. Masters,* Adm. Proc. File No. 3-20051 (Sept. 23, 2020)(action based on the same facts against the attorney involved; resolved with a cease and desist order based on the same sections and an officer and director bar, a penny stock bar and the revocation of his right to appear and practice before the Commission as an attorney; he will also pay a penalty of $50,000 that will be transferred to the U.S. Treasury).

In the Matter of BorgWarner Inc., Adm. Proc. File No. 3-19932 (August 26, 2020) is an action which names the firm as a defendant. Over the years the firm has been named as a defendant in asbestos related personal injury suits. From 2012 through the fourth quarter of 2016 the company failed to estimate its incurred but not reported liabilities for future asbestos claims. The company did note that future claims were probable but claimed the amount could not be estimated. In fact, the firm made little effort and failed to conduct the proper analysis. In the fourth quarter of 2016 however, it recorded a pre-tax $703.6 million charge for those claims but identified the amount as a charge resulting from a change of estimate. In 2018 the firm acknowledged that was an error and did a restatement. The firm noted that it had failed to report a material weakness in its internal controls over financial reporting. The Order alleges violations of Exchange Act Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B. To resolve the proceedings the firm consented to the entry of a cease and desist order based on the sections cited in the Order. It also agreed to pay a penalty of $950,000 which will be transferred to the Treasury subject to Exchange Act Section 21F(g)(3).

In the Matter of Valeant Pharmaceuticals International, Inc., Adm. Proc. File No. 3-19899 (July 31, 2020). The Quebec based pharmaceutical firm has shares listed on the TSX in Toronto and the NYS. In 2014 and 2015 the firm was pursuing a growth by acquisition strategy. Part of the firm's strategy centered on its relation with Philidor Rx Services LLC, a licensed pharmacy formed in early 2013. Valent acquired an option to purchase the pharmacy in mid-December 2014. The relationship was terminated on October 30, 2015 following extensive media reports discussing the relation. By the end of the third quarter of 2014 Valeant obtained a $75 million order from Philidor. The order included one-time special pricing deal and exceeded Philidor's credit limit. Valeant then approved a $70 million credit increase despite the fact that a large receivable with an overdue balance was outstanding. In early December 2014, Valeant received a $130 million order from Philidor which required another credit increase that was granted without following the usual procedures. When Valeant reported its results for the quarters ended September 30, 2014 through September 30, 2015 the disclosures were misleading since the impact of the Philidor arrangements was not disclosed. Indeed, Valeant did not disclose the requisite information about Philidor in the MD&A section of its quarterly reports on Form 10Q and annual report on Form 10K. In the second quarter of 2015 the firm recorded revenue for price appreciation credits received under its Distribution Service Agreements with wholesalers. Under these agreements, Valeant offset distribution fees owed to wholesalers with credits for price increases on its products held by wholesales in inventory. In June 2015 Valeant recorded about $110 million in net price appreciation revenue through a 500% price increase on one drug. The entire amount of the increase was erroneously attributed as revenue to numerous products. Four months later the firm made an investor presentation regarding Philidor following which the firm restated its financial statements. The firm also disclosed the existence of the price appreciation agreements for the first time. It did not disclose the impact from those clauses earned in 2015 on certain GAAP and non-GAAP measures. The Order alleges violations of Securities Act Sections 17(a)(2) and (3), and Exchange Act Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) and certain related rules. Respondent resolved the proceedings, consenting to the entry of a cease and desist order based on the sections and rules cited in the Order. The firm cooperated with the investigation and engaged in certain remedial acts. Respondent agreed to pay a penalty of $45 million. The money will go to a fair fund. *See also In the Matter of J. Michael Pearson*, Adm. Proc. File No. 3-19900 (July 31, 2020)(CEO and COB of the firm; resolved similar charges with consent to a cease and desist order based on the same sections and, in addition, SOX Section 304(a); paid penalty of $250,000); *In the Matter of Howard B. Schiller*, Adm. Proc. File No. 3-19901 (July 31, 2020)(Ex. V.P. and CFO; resolved with a consent to a cease and desist order based on same sections as in the forgoing proceeding; and payment of $100,000 penalty); *In the Matter of Tanya R. Carro, CPA*, Adm. Proc. File No. 3-

19902 (July 31, 2020)(controller of firm; resolved with a consent to a cease and desist order based on the same sections as above (Order include Rule 102(e)), an order denying her the privilege of appearing and practicing before the Commission as an accountant with the right to reapply after one year; and the payment of a penalty in the amount of $75,000).

Investment advisers

SEC v. Boucher, Civil Action No. 20CV1650 (S.D.Ca. Filed August 25, 2020) is an action which names as defendants Mark J. Boucher and his firm, Strategic Wealth Advisor Group Services Inc. Mr. Boucher worked for Investment Adviser A from 2010 through 2016 and Investment Adviser B from 2016 through 2019. The firm was a state registered investment adviser in 2019. The complaint is based on three multi-year frauds in which Mr. Boucher misappropriated over $2 million in client funds. While working for Advisers A and B Defendant Boucher defrauded Client A by misappropriating almost $700,000 from her advisory accounts. A variety of deceptive conduct was used including forging checks and even withdrawing funds on margin where he wanted more cash than was available. In addition, about $60,000 was misappropriated from Client B's advisory accounts by wiring sale proceeds from the account using a phone call in which Mr. Boucher impersonated the client. After Client C passed away Mr. Boucher misappropriated about $1.5 million from the trust accounts by moving the funds to his personal accounts. He also took steps to conceal his actions from the firms and later the staff during the investigation. The complaint alleges violations of Securities Act Section 17(a), Exchange Act Section 10(b) and Advisers Act Sections 206(1) and 206(2). The case is pending. *See* Lit. Rel. No. 24875 (August 25, 2020).

In the Matter of Hancock Whitney Investment Services, Inc., Adm. Proc. File No. 3-20074 (Sept. 25, 2020) is a proceeding which names as a respondent the registered investment adviser. This action centers on the failure of the adviser to properly inform its clients about the conflict that arise from the payment of certain fees on some shares acquired, held or sold for clients. First, over a three-year period the firm failed to advise its clients when buying, recommending a hold or selling fund shares that paid 12b-1 fees. Second, the same conflict arose with respect to certain money fund interests. Neither conflict was properly disclosed. The firm agreed to implement certain undertakings and took a series of remedial actions. The Order alleges violations of Advisers Act Section 206(2) and 206(4). Respondent consented to the entry of a cease and desist order based on the sections cited in the Order and to a censure. Respondent will also pay disgorgement, prejudgment interest and a civil penalty totaling $2,337,792.08 as follows: disgorgement of $1,651,686.59, prejudgment interest of $286,105.79 and a penalty of $400,000. A fair fund is created.

Brokers

In the Matter of Interactive Brokers LLC, Adm. Proc. File No. 3-199-7 (August 10, 2020). Interactive Brokers is a Greenwich, Connecticut Commission registered broker-dealer whose ultimate parent is a public company. The firm acts as a retail and clearing broker. The firm does not engage in proprietary trading. The firm's clients did engage in a number of transactions involving microcap securities. For example, Interactive Brokers accepted deposits for about 3,800 microcap securities during the period here. Yet the firm's business in this area involved only a small number of customers. Ten customers, for example, had net sales of over 4.7 billion shares of U.S. microcap securities involving about $27.6 million. Personnel at the firm were trained to monitor for "red flags" that might indicate money laundering or terrorists financing activities as part of its AML compliance program. Nevertheless, the firm failed to investigate or

file a SAR in connection with a number of suspicious transactions involving the deposit, sale and withdrawal of funds over a short period of time. Specifically, the firm failed to investigate 78 such transactions even when they represented a substantial percentage of the daily trading volume for a particular security or the shares had been subject previously to a trading suspension. These transactions involved at least $100,000 was involved. The firm also ignored other red flags. For example, a sample of 309 issuers found 58 instances where customer sales represented at least 90% of the daily trading volume. In addition, 126 instances were identified where the customer sales constitute at least 70% of the daily trading volume. Interactive Brokers took no action. Finally, in three instances during the period the broker failed to timely file a SAR where it identified red flags which included the fact that the customers had previously violated the securities or other criminal laws. While the firm did restrict the trading of those customers, no SAR was filed. The Order concluded that the firm violated Section 17(a) of the Exchange Act and Rule 17a-8 which requires broker-dealers registered with the Commission to comply with the reporting, record-keeping requirements of the Bank Secrecy Act and the related regulations promulgated by the Financial Crimes Enforcement Network or FinCEN.In resolving the action here Interactive Brokers took certain remedial steps. The firm consented to the entry of a cease and desist order based on the section and rule cited and to a censure. The firm also agreed to pay a civil penalty of $11.5 million. *See also In the Matter of: Interactive Brokers LLC,* CFTC Docket. 20-25 (August 10, 2020)(Interactive Brokers agreed to pay a penalty of $12 million for AML violations). The firm also agreed to pay $15 million to settle similar charges with FINRA.

In the Matter of Franklin Advisers, Inc. Adm. Proc. File No. 3-19854 (July 2, 2020). Two firms are named as Respondents in the Order, Franklin Advisers, Inc., or FAV, and Franklin Templeton Investments Corp. or FTIC. The former is a registered investment adviser. The latter is a subsidiary of Franklin Resources, Inc., Toronto, also a registered investment adviser. The proceedings here center on Section 12(d)(1)(A) of the Investment Company Act which, generally, limits an investment firm's ownership interests in other investment companies. Over an eleven month period, beginning in December 2014, the Allocation Funds (a particular series of Templeton funds) and eight LifeSmart Retirement Target Date Funds (another series) purchased shares of three ETFs each of which is a registered unaffiliated investment company. FAV sought to rely on Section 12(d)(1)(F) to exceed the limits of Section 12(d)(1)(A)(iii). The former permits a registered investment company to invest in unaffiliated investment companies in excess of certain limits if the acquiring company and its affiliates do not own more than 3% of the outstanding shares of the acquired company. The latter prohibits the purchase when the "acquisitions results in the acquired company and all other investment companies having an aggregate value of more than 10% of the total assets of the acquiring company" – a pyramiding limitation. The provisions of 12(d)(1)(F) could not be relied on, however, since FAV's aggregate purchases of the three ETFs caused the Franklin Funds to exceed the firm wide 3% ownership limits of Section 12(d)(1)(F) for each ETF. At the time of the transactions FAV was responsible for implementing written policies and procedures designed to ensure compliance with the sections cited above. In late November 2015 the compliance department discovered the breach of the statutory limits. The client positions were reduced, generating losses of over $2.1 million for ETF No. 1 and gains of over $3.7 and $4.7 million for ETFS Nos. 2 and 3 respectively. FAV assessed the situation and decided not to reimburse the losses. That determination created an undisclosed conflict and was contrary to its disclosed policies and procedures that required reimbursement. There was no disclosure until mid 2016. The Order alleged violations of Investment Company Act Section 12(d)(1)(A) and Advisers Act Sections 206(2) and 206(4). After the Commission's investigation began Franklin Funds' board fully reimbursed the losses of the Allocation Funds, including interest. Respondents each resolved the proceedings following certain remedial steps. FAV consented to the entry of a cease and desist order based on the

sections cited and a censure. FTIC also consented to the entry of a cease and desist order but only one based on the Investment Company Section cited. FAV also agreed to pay a penalty of $250,000 while FTIC will pay $75,000.

Auditors

In the Matter of Brian Dee Matlock, CPA, Adm. Proc. File No. 3-19914 (August 13, 2020) is a proceeding which names as a respondent the engagement partner from audit firm Rothstein, Kass & Co., P.C. on the audit of Breitling Energy Corp., Inc. During the audit of a two-year period ended December 31, 2013 Respondents became aware that Breitling's predecessor, Breitling Oil and Gas Corporation, was misrepresenting its business model to investors who were purchasing oil and gas interests sold by the firm and inflating the returns. Respondents also became aware that certain procedures designed to safeguard investor funds were not being implemented. No action was taken. The order alleges violations of Exchange Act Section 10A(b)(1)(A)(i) and Rule 2-02(b)(1) of Regulation X. To resolve the proceedings Respondent consented to the entry of a cease and desist order based on the section and rule cited in the Order. He is also denied the privilege of appearing and practicing before the Commission as an accountant but may apply for re-instatement after one year.

Muni bonds

In the Matter of William W. Welsh, Adm. Proc. File No. 3-19998 (Sept. 14, 2020) is a proceedings which names Mr. Welsh, a registered representative at a municipal bond firm, Roosevelt & Cross, Inc. Over a three year period, beginning in March 2020, Respondent violated the purchase and sale rules for new issue municipal bond offering by selling to those who were "flippers," who bought the bonds out of the required order and then immediately resold them. In addition, over a two-year period, beginning in January 2014, Respondent purchase bonds from flipper for the account of Roosevelt. The Order alleges violations of Exchange Act Sections 15(a)(1), 15B(c)(1) and MSRB Rules G-11 and G-17. To resolve the proceedings Respondent consented to the entry of a cease and desist order based on the Sections and Rules cited and to a censure. The firm was also suspended for a period of six months. In addition it will pay a penalty of $25,000 of which $5,000 will be transferred to the MSRB and $20,000 to the U.S. Treasury, *See also In the Matter of Thomas Vigorito,* Adm. Proc. File No. 3-19997 (Sept. 14, 2020) (proceeding against representative at Roosevelt based on conduct similar to that detailed above; resolved with a cease and desist order based on same Sections and Rules as above; a suspension from the securities business and from any penny stock offering for 12 months; and the payment of a penalty of $40,000, of which $8,571.43 will be transferred to the MSRB and the balanced to the U.S. Treasury).

The Foreign Corrupt Practices Act

In the Matter of World Acceptance Corporation, Adm. Proc. File No. 3-19905 (August 6, 2020). World Acceptance Corporation is a consumer loan firm based in Greenville, South Carolina. The firm sold its one wholly owned subsidiary, WAC Mexico, effective July 1, 2018. The subsidiary had two lines of business. One focused on small loans made directly to consumers. The other centered on loans to federal government employees. Prior to that sale the subsidiary WAC Mexico engaged in a bribery scheme that began in late 2010 and ended in mid-2017. It involved loans to government employees. There were advantages to these loans for the firm which included a reduced collection risk and greater job security for the borrower. The loan contracts were extended to government and union officials. Bribes were paid to induce the officials to

enter into the loan agreements. During the term of the agreements additional payments were made. Approximately $4.1 million in bribe payments were made to government officials and union officials in cash and by depositing the funds in a bank account or into an account of a friend. About $1.5 million was paid to government and union officials while $480,000 went to third party intermediaries who used the funds to pay government and union officials. The records are insufficient to determine how the remaining $1.5 million was distributed. The firm also had inaccurate books and records and insufficient internal controls to detect or prevent the bribery. The Order alleges violations of Exchange Act Sections 30A, 13(b)(2)(A) and 13(b)(2)(B). To resolve the proceedings the firm consented to the entry of a cease and desist order based on the sections cited in the Order. In addition, WAC agreed to pay disgorgement of $17,826.000, prejudgment interest of $1,900,000 and penalties of $2million. The funds will be transferred to the general fund of the U.S. Treasury subject to Exchange Act section 21F(g)(3).

Conclusion

The Commission filed a large number of cases in the third quarter of the calendar year or the fourth quarter of the Government fiscal year. That number, coupled with the shift in venue and the increased variety of actions as illustrated by the select cases cited above, presents a challenge for those seeking to establish an effective compliance program.

Nevertheless, it is clear that can be done. Establishing an effective compliance program begins with a careful risk assessment. For those who might be in the path of the SEC – public companies, private firms and registered entities to cite a few – that might begin with analyzing the type of actions brought by the enforcement division and carefully considering the risks of the business. Coupling that analysis with a proactive approach and a careful evaluation of the factors cited in the U.S. Sentencing Guidelines can create for the firm the predicate for an effective compliance program. That program can help the firm avoid a call or subpoena for the Commission’s Enforcement Division. And, if that program is properly established and a call or subpoena still arrives, it should be the first line of defense.