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SEC Releases FY 2017 Enforcement Results: Maintaining Focus on Individual Accountability and Investment Advisers

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Last night, the SEC announced its enforcement results for the Fiscal Year 2017, accompanied by a report from the Co-Directors of its Division of Enforcement. While the total number of actions was down slightly from 2016, the percentage of those cases involving investment advisers or investment companies – 18% – remained consistent, and amounted to over 80 cases. Similarly, insider trading cases remained about 9% of the actions filed. The Annual Report specifically highlighted cases where large investment advisers allegedly charged undisclosed or inappropriate fees to clients, focusing on the fiduciary duties advisers owe to clients. The SEC also noted a case it settled with a large fund adviser, alleging misleading performance marketing and valuation concerns. As we have previously noted, we expect continued SEC attention in the unicorn and startup field relating to valuation and performance during FY 2018.

The results indicate that individual accountability is front and center for the agency's enforcement staff. With 73% of the Commission's standalone actions including charges against individuals, Co-Directors of the Enforcement Division asserted that "pursuing individuals has continued to be the rule, not the exception."

Further, the SEC has highlighted its work protecting retail or “Main Street” investors. Based on our interactions with senior SEC staff, this focus on protecting Main Street extends to funds that manage pension and retirement fund investments.

A new development at the end of FY 2017 was the creation of the specialized Cyber Unit, focusing on computer hacking, distributed ledger technology and other cyber-related threats. Fund managers with exposure to ICOs or distributed ledger technology should prepare themselves—those issuers may face increasing regulatory scrutiny which might impact the value of those investments. For example, the SEC just recently obtained an asset freeze in a case involving allegedly fraudulent ICOs. In addition, the use of alternative data sources is likely to be a focus, particularly in situations where the Enforcement Division suspects that potential material nonpublic information is being used or shared.

Yearly data from 2014 through 2017 is summarized in the table below:

Fiscal Year	2014	2015	2016	2017
Independent/Standalone Actions	413	507	548	446
Follow-on Administrative Proceedings (i.e., SEC Proceedings initiated following conviction or injunction in District Court)	232	168	195	196
Delinquent Filings	110	132	125	112
Total Actions	755	807	868	754
Disgorgement and Penalties Ordered	$4.16 billion	$4.19 billion	$4.08 billion	$3.79 billion