

SEC Prioritized Enforcement Sweeps As Cases Slowed In '24

By **Gerald Hodgkins, Linh Nguyen and Phoebe Yu** (December 4, 2024, 6:09 PM EST)

On Nov. 22, the U.S. Securities and Exchange Commission's Division of Enforcement announced its enforcement results for fiscal year 2024,[1] one day after Gary Gensler confirmed that he would be ending his tenure as chairman of the SEC on Inauguration Day.[2]

Former SEC Enforcement Director Gurbir Grewal departed from the agency about a month earlier.[3]

As another era of SEC enforcement ends, Gensler and Grewal cap off their enforcement legacies with a year of decreasing activity buttressed by some familiar enforcement sweeps.

Following three consecutive years of increasing activity,[4] this fiscal year marked the lowest number of cases the SEC has brought since Gensler assumed office in April 2021.[5]

Although the number of cases brought in fiscal year 2024 dropped, the SEC obtained orders for \$8.2 billion in financial remedies, the highest amount in SEC history.[6] To mix up a famous line from T.S. Eliot's poem, "The Hollow Men," the Gensler enforcement era ended with a bang and a whimper.

Fiscal Year 2024 Enforcement Results

In retrospect, the key characteristics of the SEC's enforcement program remained consistent throughout Gensler's tenure — obtaining large penalties from regulated entities through fairly standardized recordkeeping enforcement actions and an unwavering commitment to policing the markets for digital assets through its enforcement program.

In the past year, the SEC brought 431 standalone cases — defined as civil actions filed or administrative proceedings instituted, excluding Section 12(j) proceedings against delinquent filers and follow-on administrative proceedings to obtain suspensions and bars based on prior enforcement actions by the SEC or other agencies.

In the first, second and third quarters of fiscal year 2024, the SEC brought far fewer cases than in prior years. Notably, in the second quarter of fiscal year 2024, the SEC brought less than half the number of



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cases it brought in the second quarter of fiscal year 2023. However, the SEC significantly picked up its pace in the fourth quarter and brought 271 cases, over 63% of the total cases it brought this fiscal year.

SEC enforcement activity this past fiscal year was also notably dominated by what is now a ubiquitous aspect of its program — enforcement sweeps.[7]

This year, the actions brought through enforcement sweeps constituted 29% of all the standalone cases brought in 2024. No less than 124 enforcement actions were brought through one of the SEC's four enforcement sweeps in 2024 — (1) off-channel communications (55 cases); (2) beneficial ownership disclosure (36 cases); (3) marketing rule (17 cases); and (4) regulation best interest/Form CRS (16 cases).

Following the convention used by the Division of Enforcement, the 2024 enforcement cases are tracked in nine different categories. Here is a breakdown:

Category	FY 24 Cases	FY 24 % of Total	FY 23 Cases	FY 23 % of Total	% Change between FY 23 and FY 24	FY 22 Cases	FY 22 % of Total	% Change between FY 22 and FY 23
Securities Offering	94	22%	164	33%	-43%	106	23%	+55%
Investment Advisers / Investment Cos.	97	23%	86	17%	+13%	119	26%	-28%
Issuer Reporting / Audit & Accounting	49	11%	86	17%	-43%	76	17%	+13%
Broker-Dealer	61	14%	60	12%	+2%	46	10%	+30%
Other (Exchanges, NRSROs, Transfer Agents, Misc.)	63	15%	34	7%	+85%	15	3%	+127%
Insider Trading	34	8%	32	6%	+6%	43	9%	-26%
Market Manipulation	17	4%	22	4%	-23%	32	7%	-31%
FCPA	2	0%	11	2%	-82%	6	1%	+83%
Public Finance Abuse	14	3%	6	1%	+133%	19	4%	-68%
Category Total	431	100%	501	100%	-14%	462	100%	+8.5%
Follow-On Administrative Proceedings	97 ^[8]		162		-40%	169		-4%

Delinquent Filings	60 ^[9]	121	-50%	129	-6%
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Notable Trends

Recordkeeping Violations

Although the total number of cases brought by the SEC fell, investment advisers, broker-dealers, public finance abuse and Nationally Recognized Statistical Rating Organization, or NRSRO, cases increased, largely due to the SEC's ongoing sweep related to recordkeeping violations.

After decreasing from 119 cases in fiscal year 2022 to 86 cases in fiscal year 2023, investment adviser cases rebounded to 97 cases in fiscal year 2024.

Public finance abuse cases more than doubled from fiscal year 2023 to fiscal year 2024, after falling from 19 cases in fiscal year 2022 to six cases in fiscal year 2023.

The six cases brought against NRSROs were all related to recordkeeping violations. With only 10 credit rating agencies registered as NRSROs,^[10] the SEC arguably could and should have found and addressed these violations through its National Exam Program.

In December 2021, at Grewal's direction, the division launched a proactive initiative to ensure that regulated entities, including investment advisers, broker-dealers and credit rating agencies, complied with recordkeeping requirements.^[11]

In September 2022, the SEC announced that it had settled charges against 15 broker-dealers and one affiliated investment adviser for failures to maintain and preserve electronic communications.^[12]

In the following year, the SEC settled recordkeeping-related charges against 23 firms, an increase of 35% compared to fiscal year 2022.^[13] By the end of fiscal year 2023, the SEC had charged a total of 40 firms and ordered more than \$1.5 billion in penalties.^[14]

This fiscal year, the SEC settled recordkeeping-related charges against 74 firms, more than the total number of charges brought since the launch of the initiative in 2021, and more than triple the number of charges brought in fiscal year 2023.

Fiscal year 2024 was also the first year that the SEC has brought charges against municipal advisers for recordkeeping violations.^[15] The SEC's sweep of recordkeeping cases resulted in over \$600 million in civil penalties.

With regards to the one no-penalty resolution this past fiscal year, Grewal stated: "[T]he full benefits of cooperation are available in recordkeeping matters. ... [S]elf-reporting and prompt remedial efforts weighed heavily in the Enforcement Division's decision to recommend that the Commission not impose a penalty, which the Commission accepted."^[16]

In total, recordkeeping cases have resulted in more than \$2 billion in civil penalties since the initiative was launched in December 2021.

When assessing what penalty to recommend, the SEC considers the size of the firm and the regulated

parts of its business; the scope and scale of the violations; precedent; the firm's efforts to comply with recordkeeping obligations and to prevent off-channel communications; and whether the firm self-policed, self-reported, remediated or otherwise cooperated with the SEC's investigation.[17]

Securities Offering and Cryptocurrency

Securities offering cases dropped by 43% in fiscal year 2024 after rising by 55% from fiscal year 2022 to fiscal year 2023. Following a surge in offering fraud and cryptocurrency cases from fiscal year 2022 to fiscal year 2023, both offering fraud and cryptocurrency cases decreased significantly. In fiscal year 2024, the SEC brought 36% fewer offering fraud cases and 56% fewer cryptocurrency cases.

The lower number of cryptocurrency cases brought in fiscal year 2024 may not be illustrative of the SEC's focus and emphasis on pursuing cryptocurrency-related violations, however, because the SEC has brought several cases shortly after the fiscal year ended.

For example, on Oct. 9, the SEC announced fraud charges against three so-called market makers — ZM Quant, Gotbit and CLS Global — and nine individuals for engaging in schemes to manipulate the markets for a number of crypto-assets.[18] One day later, the SEC announced that it had charged Cumberland DRW for operating as an unregistered dealer in the crypto-asset markets.[19]

Additionally, the SEC brought several high-profile cryptocurrency cases in fiscal year 2024.

For example, in January, the SEC charged two individuals for their involvement in HyperFund, an allegedly fraudulent crypto-asset pyramid scheme that raised more than \$1.7 billion from investors.[20]

Then in June, the SEC announced that Terraform Labs PTE Ltd. and its founder, Do Kwon, had agreed to pay more than \$4.5 billion following a unanimous jury verdict holding them liable for fraud involving crypto-asset securities.[21]

The jury found that Terraform and Kwon had lied to victims about the false use of the Terraform blockchain to settle transactions and about the stability of UST, their crypto-asset security.[22]

Grewal stated:

Do Kwon and Terra orchestrated one of the largest securities frauds in U.S. history by, among other things, falsely claiming that they had achieved the Holy Grail of crypto: a non-illicit use case. As the jury found, that was a lie, as was their claim of creating an "algorithmic stablecoin." [23]

Under the new administration, the SEC is expected to shift the focus away from crypto enforcement, reflecting President-elect Donald Trump's promise to make the U.S. the "world capital of crypto."

The SEC also continued bringing affinity fraud cases, which it started putting increased focus on in fiscal year 2023.[24]

In March 2024, the SEC charged 17 individuals for their involvement in a \$300 million Ponzi scheme that targeted more than 40,000 predominantly Latino investors.[25]

In August, the SEC announced charges against NovaTech Ltd. and its principals and promoters for operating a fraudulent scheme that raised more than \$650 million in crypto-assets from more than 200,000 investors, including many in the Haitian-American community.[26]

Individual Accountability

In fiscal year 2024, the SEC charged individuals in 50% of stand-alone cases.

Despite emphasizing that "[c]harging individuals for securities law violations, where appropriate, is essential for accountability and deterrence and for enhancing public trust in the markets" and highlighting its enforcement actions against individuals in its press release announcing the SEC's fiscal year 2024 results,[27] the percentage of individuals charged in stand-alone cases has dropped every year since 2022.

In fiscal year 2022, the SEC charged individuals in 68% of stand-alone cases, and in fiscal year 2023, the percentage fell to 63%. This fiscal year, the percentage of individuals charged in stand-alone cases dropped in the following categories: investment advisers, insider trading, market manipulation and public finance abuse.

Penalties and Other Monetary Remedies

Total civil penalties and other monetary remedies were up from \$4.9 billion in fiscal year 2023 to \$8.2 billion in FY 2024, a 66% increase; \$4.5 billion, or 56%, of the total monetary remedies came from the SEC's jury trial win against Terraform and Do Kwon.[28]

Without this one case, total monetary recoveries would have been \$3.7 billion, 25% less than in fiscal year 2023.

Taking the increase of approximately \$210 million in civil penalties from the recordkeeping-related cases from fiscal year 2023 to fiscal year 2024 out of consideration, total monetary recoveries would have been under \$3.5 billion, 29% less than in fiscal year 2023.

In its annual reports, the SEC disclosed the following monetary recoveries in the past eight fiscal years:

	Disgorgement Plus Prejudgment Interest	Civil Penalties	Total
FY 2024	\$6,092,000,000	\$2,102,000,000	\$8,194,000,000
FY 2023	\$3,369,000,000	\$1,580,000,000	\$4,949,000,000
FY 2022	\$2,245,000,000	\$4,194,000,000	\$6,439,000,000
FY 2021	\$2,396,000,000	\$1,456,000,000	\$3,852,000,000
FY 2020	\$3,589,000,000	\$1,091,000,000	\$4,680,000,000
FY 2019	\$3,248,000,000	\$1,101,000,000	\$4,349,000,000
FY 2018	\$2,506,000,000	\$1,439,000,000	\$3,945,000,000

FY 2017 \$2,957,000,000 \$832,000,000 \$3,789,000,000

Conclusion

Since Gensler and Grewal assumed their respective offices in mid-2021, the SEC's enforcement activity has increased year after year, except this fiscal year, when the number of cases the SEC brought dropped by 14% compared to fiscal year 2023.

Although investment advisers, broker-dealers, public finance abuse and NRSRO cases were higher in fiscal year 2024 than in fiscal year 2023, if the increase in the SEC's sweeps from 2023 to 2024 was taken out of the equation, investment adviser cases would be 8% lower compared to last fiscal year, broker-dealer cases would be 27% lower, public finance abuse cases would be 50% lower, and NRSRO cases would be 50% lower.

Shortly after assuming the role of acting enforcement director, on Nov. 6, Sanjay Wadhwa stated at the SEC Enforcement Forum D.C.: "Numbers, of course, only tell one part of the story. They don't capture the full impact of the enforcement actions filed or the remedies obtained, either individually or cumulatively, in terms of investor protection or changing industry behavior." [29]

Throughout the Gensler era, the SEC dutifully pursued its mission of deterrence through high-impact one-off actions and sweeps of related cases. [30] The SEC also showed an earnest effort to demonstrate that individuals and entities who self-report and make sincere efforts to remediate will receive the benefits of cooperation, encouraging individuals and entities to be proactive and take accountability.

Continuing his remarks on Nov. 6, Wadhwa stated

I think the best measure of the success ... is how [an enforcement initiative] has changed industry behavior and spurred proactive compliance by market participants. We're seeing that in the number of firms that are improving their policies and procedures and implementing remedial measures. And we're seeing it in the number of firms that are self-reporting violations. Thanks to those improved efforts at compliance, countless investors will be protected from strengthened oversight of registered entities. [31]

Time will tell if Wadhwa was right.

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[1] SEC Announces Enforcement Results for Fiscal Year 2024, SEC Press Release (Nov. 22, 2024), <https://www.sec.gov/newsroom/press-releases/2024-186>.

[2] SEC Chair Gensler to Depart Agency on January 20, SEC Press Release (Nov. 21, 2024), <https://www.sec.gov/newsroom/press-releases/2024-182>.

[3] SEC Announces Departure of Enforcement Director Gurbir S. Grewal, SEC Press Release (Oct. 2, 2024), <https://www.sec.gov/newsroom/press-releases/2024-162>.

[4] See Gerald Hodgkins, Linh Nguyen & Phoebe Yu, Crypto, Audit Cases Dominate SEC's Enforcement Focus In '23 (Nov. 29, 2023), <https://www.law360.com/articles/1770426/crypto-audit-cases-dominate-sec-s-enforcement-focus-in-23>.

[5] See Gerald Hodgkins, Linh Nguyen & Margaret Shin, SEC Enforcement Numbers Show Shift to High-Impact Cases, Law360 (Nov. 30, 2022), <https://www.law360.com/articles/1553691/sec-enforcement-numbers-show-shift-to-high-impact-cases>.

[6] SEC Announces Enforcement Results for Fiscal Year 2024, *supra* note 1.

[7] An enforcement sweep is a series of ten or more similar cases in a single fiscal year designed to address the same problematic behavior across multiple actors.

[8] In our analysis, we counted 97 follow-on administrative proceedings compared to the 93 that the SEC reported.

[9] In our analysis, we counted 60 delinquent filings compared to the 59 that the SEC reported.

[10] Current NRSROs, SEC, <https://www.sec.gov/about/divisions-offices/office-credit-ratings/current-nrsros>.

[11] SEC Announces Departure of Enforcement Director Gurbir S. Grewal, *supra* note 3. See JPMorgan Admits to Widespread Recordkeeping Failures and Agrees to Pay \$125 Million Penalty to Resolve SEC Charges, SEC Press Release (Dec. 17, 2021), <https://www.sec.gov/newsroom/press-releases/2021-262>.

[12] SEC Charges 16 Wall Street Firms with Widespread Recordkeeping Failures, SEC Press Release (Sept. 27, 2022), <https://www.sec.gov/news/press-release/2022-174>.

[13] Gerald Hodgkins et al., *supra* note 4.

[14] Gary Gensler, "Partners of Honest Business and Prosecutors of Dishonesty": Remarks Before the 2023 Securities Enforcement Forum, SEC (Oct. 25, 2023), <https://www.sec.gov/news/speech/gensler-remarks-securities-enforcement-forum-102523>; Gurbir Grewal, Remarks at New York City Bar Association Compliance Institute, SEC (Oct. 24, 2023), <https://www.sec.gov/news/speech/grewal-remarks-nyc-bar-association-compliance-institute-102423>.

[15] Remarks at Securities Enforcement Forum D.C. 2024, SEC (Nov. 6, 2024), <https://www.sec.gov/newsroom/speeches-statements/wadhwa-remarks-securities-enforcement-forum-110624>.

[16] Advisory Firm Atom Investors, Charged with Recordkeeping Violations, Avoids Civil Penalty Because of Self-Reporting, Substantial Cooperation, and Prompt Remediation, SEC Press Release (Sep. 23,

2024), <https://www.sec.gov/newsroom/press-releases/2024-143>.

[17] Remarks at Securities Enforcement Forum D.C. 2024, *supra* note 15.

[18] SEC Charges Three So-Called Market Makers and Nine Individuals in Crackdown on Manipulation of Crypto Assets Offered and Sold as Securities, SEC Press Release (Oct. 9, 2024), <https://www.sec.gov/newsroom/press-releases/2024-166>.

[19] SEC Charges Cumberland DRW for Operating as an Unregistered Dealer in the Crypto Asset Markets, SEC Press Release (Oct. 10, 2024), <https://www.sec.gov/newsroom/press-releases/2024-169>.

[20] SEC Charges Founder of \$1.7 Billion "HyperFund" Crypto Pyramid Scheme and Top Promoter with Fraud, SEC Press Release (Jan. 29, 2024), <https://www.sec.gov/newsroom/press-releases/2024-11>.

[21] Terraform and Kwon to Pay \$4.5 Billion Following Fraud Verdict, SEC Press Release (Jun. 13, 2024), <https://www.sec.gov/newsroom/press-releases/2024-73>.

[22] *Id.*

[23] *Id.*

[24] Gerald Hodgkins et al., *supra* note 4.

[25] SEC Charges 17 Individuals in \$300 Million Crypto Asset Ponzi Scheme Targeting the Latino Community, SEC Press Release (Mar. 14, 2024), <https://www.sec.gov/newsroom/press-releases/2024-35>.

[26] SEC Charges NovaTech and its Principals and Promoters with \$650 Million Crypto Fraud, SEC Release (Aug. 12, 2024), <https://www.sec.gov/newsroom/press-releases/2024-95>.

[27] SEC Announces Enforcement Results for Fiscal Year 2024, *supra* note 1.

[28] Terraform and Kwon to Pay \$4.5 Billion Following Fraud Verdict, *supra* note 21.

[29] Remarks at Securities Enforcement Forum D.C. 2024, *supra* note 15.

[30] Gerald Hodgkins et al., *supra* note 4; Gerald Hodgkins et al., *supra* note 5.

[31] Remarks at Securities Enforcement Forum D.C. 2024, *supra* note 15.