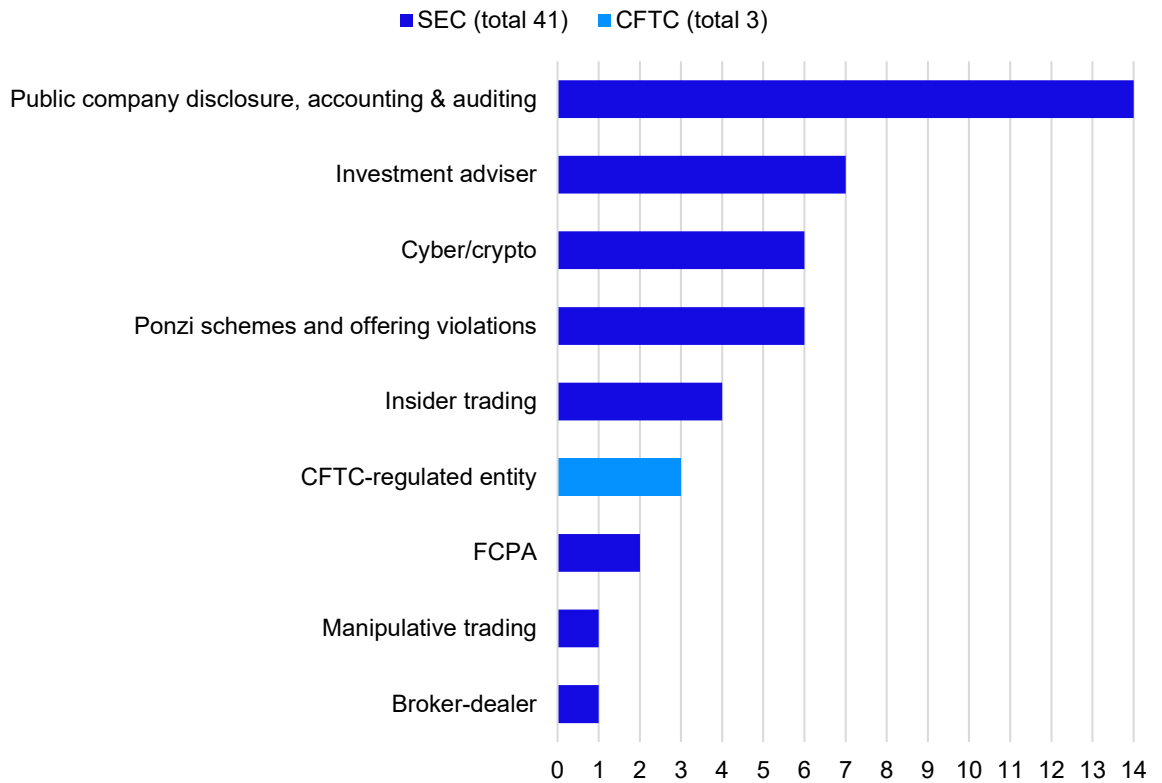


October 2024

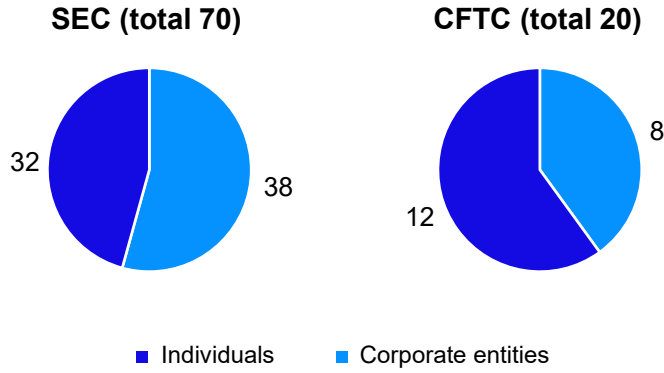
In this edition of the newsletter, we discuss enforcement developments at the agencies in October 2024. The SEC filed 41 actions and the CFTC filed three, against a combined total of 90 defendants and respondents. (These figures exclude follow-on actions, bars and suspensions.) The SEC actions include investment adviser violations, FCPA violations, and public company disclosures.

## Actions initiated by the SEC and CFTC in October 2024

Number of actions, by matter type



Types of defendants/respondents



FCPA

SEC settles FCPA action against aerospace and defense company

In the Matter of RTX Corporation (A.P., Oct. 16, 2024, settled)

The SEC brought and settled claims against an aerospace and defense company for an alleged bribery scheme to secure military contracts.

According to the SEC, the company directed more than \$30 million to a Qatari representative who was engaged on a success-fee arrangement, did not have prior experience in military contracting, and was a relative of the Qatari Emir. The company allegedly failed to obtain documentation of services performed by the agent and made unsupported payments. The alleged conduct began approximately twenty years ago and persisted after some employees raised concerns regarding corruption risks. The company also allegedly used sham subcontractors to direct approximately \$2 million to members of the Qatari military and other government officials in order to obtain defense contracts.

The company agreed to pay disgorgement and prejudgment interest totaling approximately \$49 million and a civil penalty of \$75 million, \$22.5 million of which will be offset by a criminal fine in a parallel criminal action. The company also agreed to engage an independent compliance monitor.

[SEC press release](#) | [SEC order](#)

Cybersecurity

SEC settles cases regarding cybersecurity disclosures

October 22, 2024

The SEC brought and settled claims against four current and former public companies that were victims of the SolarWinds hack for allegedly making materially misleading disclosures regarding cybersecurity and the impact of the intrusions.

As discussed our client [update](#), the companies allegedly learned that the actor behind the hack had gained access to their systems without authorization, but minimized the impact, scope, and severity of the intrusions in public disclosures. The SEC alleges one company described its cybersecurity risks as hypothetical despite the intrusion, while another referred to the attack accessing a limited number of emails when the threat actor had also accessed at least 145 files in the company's cloud sharing environment. The other companies described cyber intrusions in general, rather than specific, terms or failed to disclose the nature of the hacked credentials. The SEC also alleged that one of the companies had deficient disclosure controls and

procedures because its incident response did not require cybersecurity personnel to escalate information about cybersecurity incidents to disclosure decision-makers.

The companies agreed to pay nearly \$7 million combined in civil penalties to settle the claims.

SEC Commissioners Hester Peirce and Mark Uyeda issued a dissenting statement, providing their view that each of the companies had given investors sufficient material information. The Commissioners cautioned that companies' disclosure of immaterial facts to investors because they are concerned the Commission may second-guess their approach could divert investor attention and result in mispricing securities.

[SEC press release](#) | [SEC order 1](#) | [SEC order 2](#) | [SEC order 3](#) | [SEC order 4](#)

## Investment adviser

### SEC settles claims against individuals and companies for misrepresentations about the use of AI

#### **In the Matter of Rimar Capital USA, Inc., Rimar Capital, LLC, Itai Royi Liptz, and Clifford Todd Boro (A.P. Oct. 10, 2024)**

The SEC brought and settled claims against a trading advisory firm, investment advisor, the entities' owner, and a board member for so called "AI washing."

According to the SEC, the owner and CEO of the companies, along with a board member, raised approximately \$4 million dollars from investors to develop what they claimed was an AI-driven securities trading platform. In reality, the platform did not have the AI-powered capabilities promised. According to the SEC, the entities and individuals also made misrepresentations regarding the firm's assets under management and investment returns.

The company's owner and CEO agreed to pay disgorgement and prejudgment interest of \$213,611 and a civil penalty of \$250,000, and also agreed to an investment company and associational bar. The board member agreed to pay a civil penalty of \$60,000.

[SEC press release](#) | [SEC order](#)

### SEC settles claims against investment advisor for misrepresentations of ESG status

#### **In the Matter of Wisdomtree Asset Management, Inc. (A.P. Oct. 21, 2024)**

The SEC brought and settled claims against an investment adviser for alleged misstatements and compliance failures relating to execution of an investment strategy purported to incorporate environmental, social, and governance ("ESG") factors.

According to the SEC, the firm advised three exchange-traded funds that it marketed as incorporating ESG factors. The SEC alleges the firm misstated to the funds' boards of trustees and investors that the funds' investment model would screen out securities of companies involved in tobacco and fossil fuels. According to the SEC, the funds' screening process did not identify all securities of companies involved in coal mining and transportation, natural gas extraction and distribution, and retail sale of tobacco and the model failed to exclude these types of companies. The SEC also alleges that the investment adviser failed to adopt and implement adequate policies and procedures regarding the ESG investment process.

The firm agreed to pay \$4 million in civil penalties to settle the claims.

[SEC press release](#) | [SEC order](#)

**CFTC settles another action for swap reporting violations**

On October 1, 2023, the CFTC announced a settlement with a registered swap dealer in connection with the agency's ongoing swap data reporting sweep.

The CFTC alleged that the swap dealer failed to timely or properly report millions of swap transactions. These alleged failures included misreports due to the use of a duplicate swap identifier, incorrect primary economic terms and time stamps, and errors in connection with continuation of data reporting.

The swap dealer agreed to pay \$4 million in penalties to settle the claims in a resolution including admissions. The CFTC acknowledged the swap dealer's substantial cooperation and remediation, noting that this cooperation was recognized in the form of a reduced civil penalty.

Commissioner Caroline D. Pham issued a statement that she was pleased that the CFTC provided cooperation credit to the swap dealer, noting that this approach represents "a more normal and rational approach to enforcement actions for operational or technical issues with no misconduct, harm to clients, or financial losses." Commissioner Pham then stated that the CFTC's approach to swap data reporting cases since 2023 had been excessively punitive and out of step with the agency's mission to prevent fraud, manipulation, and market abuse. Finally, her statement focused on a potential swap dealer examination program.

[CFTC press release 1](#) | [CFTC press release 2](#) | [CFTC order](#)

**SEC, CFTC announcements****SEC names acting Director of the Division of Enforcement**

The SEC announced on October 2, 2024 that Gurbir S. Grewal, Director of the Division of Enforcement, is leaving the agency. Sanjay Wadhwa replaced Grewal as acting Director and Sam Waldon is now acting Deputy Director.

[SEC press release](#)

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your usual Davis Polk contact.

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