



## CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

# SEC Accounting and Auditing Enforcement Activity

Year in Review: FY 2023

### ANALYSIS AND TRENDS

By Year and Quarter Initiated

Number and Type of Respondents

Monetary Settlements

Non-Monetary Sanctions

Cooperation, Remedial Efforts, and Self-Reporting

# Table of Contents

Executive Summary	1
Actions by Year Initiated	2
Actions by Quarter Initiated	3
Actions Involving Non-U.S. Respondents	4
Actions Referring to Announced Restatements and/or Material Weaknesses in Internal Control	5
Allegations	6
Number and Type of Respondents	7
Monetary Settlements	9
Non-Monetary Sanctions	11
Cooperation, Remedial Efforts, and Self-Reporting	12
Research Sample and Data Sources	13
Endnotes	14
About the Authors	15

# Table of Figures

Figure 1: SEC Accounting and Auditing Actions and Settlements Summary Statistics	1
Figure 2: SEC Accounting and Auditing Actions by Year Initiated	2
Figure 3: SEC Accounting and Auditing Actions by Quarter Initiated	3
Figure 4: SEC Accounting and Auditing Actions Involving U.S. and Non-U.S. Respondents by Year Initiated	4
Figure 5: SEC Accounting and Auditing Actions Referring to Announcements of Restatements and/or Internal Control Weaknesses by Year Initiated	5
Figure 6: SEC Accounting and Auditing Actions Alleging Violations of Internal Accounting Controls and/or Revenue Recognition Violations by Year Initiated	6
Figure 7: Number of Respondents in SEC Accounting and Auditing Actions by Year Initiated	7
Figure 8: Type of Respondents in SEC Accounting and Auditing Actions by Year Initiated	8
Figure 9: Type of Individual Respondents in SEC Accounting and Auditing Actions by Year Initiated	8
Figure 10: Total Disgorgement, Prejudgment Interest, and Civil Penalty Amounts in Resolved SEC Accounting and Auditing Actions by Settlement Year	9
Figure 11: Monetary Settlements in Resolved SEC Accounting and Auditing Actions by Settlement Year	10
Figure 12: Non-Monetary Sanctions in Resolved SEC Accounting and Auditing Actions by Settlement Year	11
Figure 13: Cooperation, Remedial Efforts, and Self-Reporting Recognized by the SEC in Resolved SEC Accounting and Auditing Actions by Settlement Year	12

# Executive Summary

A notable uptick in accounting and auditing enforcement actions initiated by the SEC in the fourth quarter led to a 22% increase in such actions in FY 2023—far greater than the 8% increase in overall enforcement actions brought by the SEC in FY 2023.<sup>1</sup> Actions referring to announced restatements and/or material weaknesses in internal control remained at the highest level in recent years.

Although the SEC obtained its second-highest total monetary settlements during FY 2023,<sup>2</sup> monetary settlements for accounting and auditing enforcement actions dropped. Cooperation and remedial efforts continued to increase in FY 2023. However, cooperation led to no monetary settlement for only seven respondents (6%).

- The SEC initiated 83 accounting and auditing enforcement actions (“SEC actions” or “actions”) in fiscal year (FY) 2023.<sup>3</sup> (pages 2 and 7)
- More than half of all actions initiated in FY 2023 (44) were brought in the fourth quarter of the SEC’s fiscal year. The SEC initiated 28% of all actions in FY 2023 in September alone. (page 3)
- The number of actions in FY 2023 referring to announced restatements and/or material weaknesses in internal control (41) remained at the highest level in recent years. (page 5)
- At \$583 million, the FY 2023 monetary settlements were down 7% from FY 2022 and were 47% lower than the average of total monetary settlements in the prior five fiscal years. (pages 9 and 10)
- Civil penalties, as a percentage of total monetary settlements, declined in FY 2023 to their lowest level in recent years. (page 9)
- Non-monetary sanctions were imposed against 50% of the 68 individual respondents who settled in FY 2023, down from 62% in FY 2022. (page 11)
- Approximately 31% of the 68 individual respondents who settled in FY 2023 were prohibited from acting as an officer or director, while 25% were denied the privilege of appearing or practicing before the SEC as an accountant. (page 11)
- For 26% of the 119 respondents who settled actions in FY 2023, the SEC reported that it took into account the respondent’s self-reporting, cooperation, and/or remedial efforts as it set penalties and other remedies. (page 12)

Figure 1: SEC Accounting and Auditing Actions and Settlements Summary Statistics

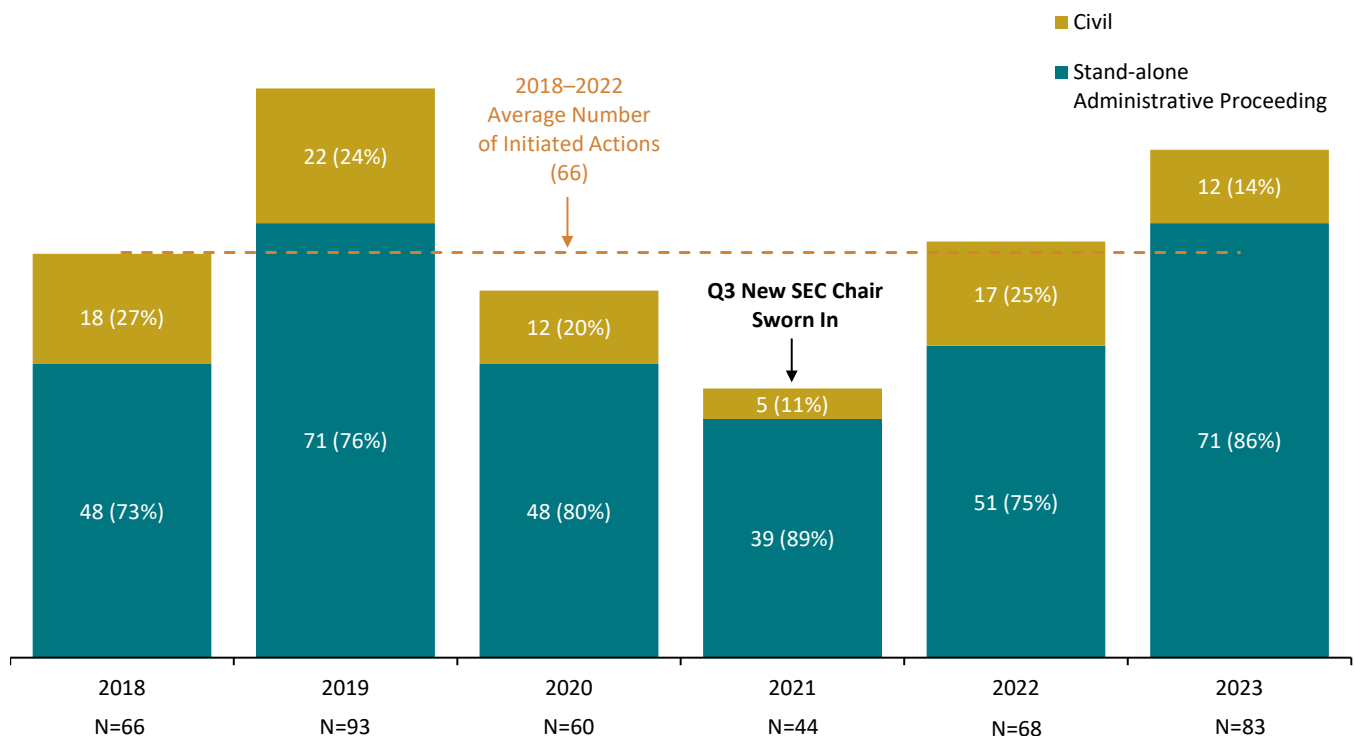
	FY 2018–FY 2022 Average	FY 2022	FY 2023
<b>New Actions</b>			
Number of Actions	66	68	83
Number of Individual Respondents	60	66	59
Number of Firm Respondents	44	37	52
<b>Settled Actions</b>			
Number of Respondents	97	90	119
Number of Respondents Fined	77	65	101
Percentage of Respondents Fined	79%	72%	85%
Total Settlements (\$ thousands)	\$1,108,323	\$624,695	\$583,259

# Actions by Year Initiated

- In FY 2023, the SEC initiated 83 accounting and auditing enforcement actions, 22% higher than the number of actions initiated in FY 2022 (68) and the highest number of actions initiated since FY 2019.
- Of the 83 actions initiated during FY 2023, 71 (86%) were administrative proceedings, up from 75% in FY 2022. All but five of the 71 administrative proceedings announced a concurrent settlement on the same day.
- The SEC also brought 12 civil actions against 25 respondents in FY 2023, a decrease from FY 2022 levels. As of the end of the fiscal year, civil actions against more than half (14) of those respondents remained open.
- During the second full year of Chair Gensler's administration,<sup>4</sup> both the number of initiated actions (83) and the increase from the prior year (22%) were lower than in the second full year of Chair Clayton's administration (93 actions representing a 41% increase from the prior year).<sup>5</sup>

*The 22% increase in accounting and auditing enforcement actions outpaced the 8% increase in original actions initiated by the SEC overall in FY 2023.<sup>1</sup>*

Figure 2: SEC Accounting and Auditing Actions by Year Initiated FY 2018–FY 2023



Source: Cornerstone Research; [www.sec.gov](https://www.sec.gov)

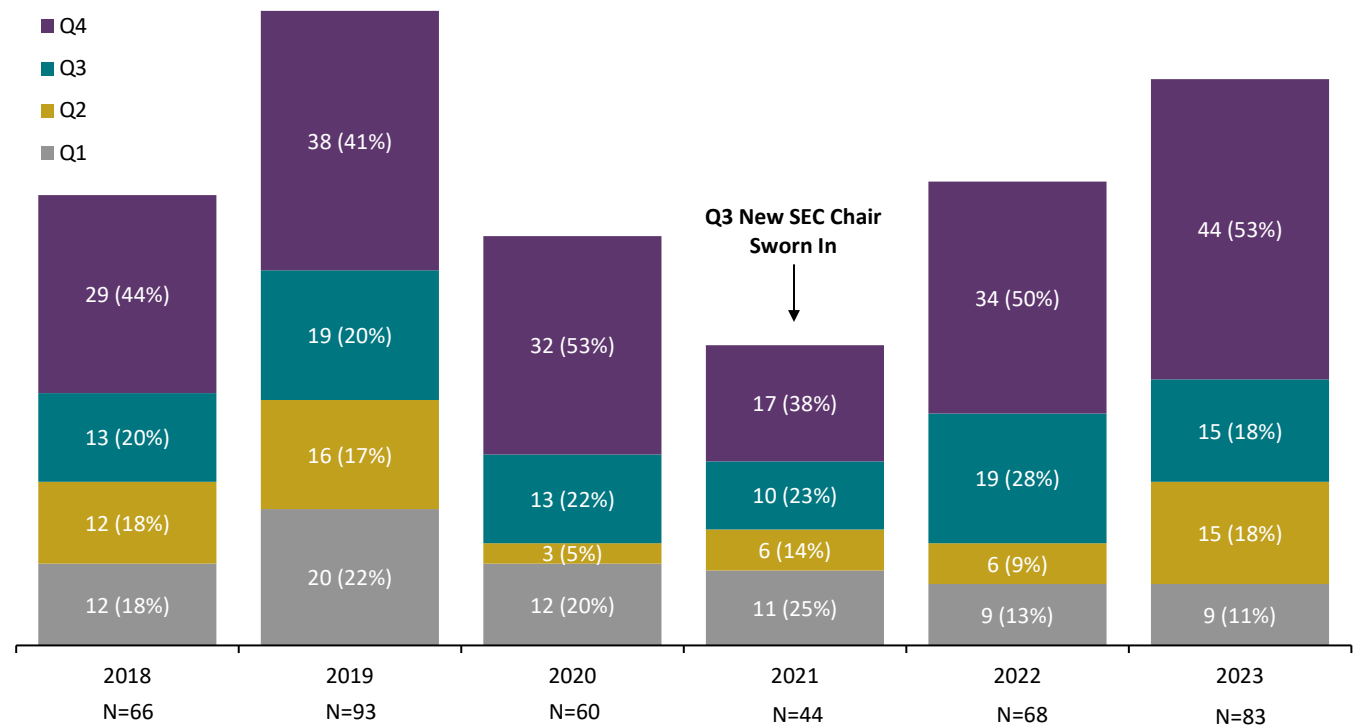
Note: “Year Initiated” is the fiscal year in which an administrative proceeding was instituted or a civil action complaint was filed. Gary Gensler was sworn in as Chair of the SEC on April 17, 2021 (<https://www.sec.gov/news/press-release/2021-65>). See [Research Sample and Data Sources](#) for additional information.

# Actions by Quarter Initiated

*The 44 actions initiated by the SEC in the fourth quarter of FY 2023 represented the highest number of initiated actions in a single quarter in recent years.*

- The SEC brought over half of its FY 2023 actions in the fourth quarter of its fiscal year, up from the FY 2018–FY 2022 average of 45%.
- The SEC initiated 23 actions in September, the last month of the fiscal year. The actions initiated in September represented 28% of the FY 2023 total.
- The vast majority of actions initiated in the fourth quarter (86%) were administrative proceedings, all but one of which announced concurrent settlements on the same day.
- The proportion of actions initiated across the second and third quarters of the SEC’s fiscal year in FY 2023 (36%) was consistent with the FY 2018–FY 2022 average (35%).
- In the second quarter, the SEC initiated the first action brought in FY 2023 against an auditor and his firm for allegedly deficient audits of a company operating in the FinTech and cryptocurrency space.<sup>6</sup> It also initiated five COVID-19-related actions in FY 2023, with the first action brought in the third quarter.<sup>7</sup>

Figure 3: SEC Accounting and Auditing Actions by Quarter Initiated FY 2018–FY 2023



Source: Cornerstone Research; [www.sec.gov](https://www.sec.gov)

Note: “Quarter Initiated” is the fiscal quarter in which an administrative proceeding was instituted or a civil action complaint was filed. Gary Gensler was sworn in as Chair of the SEC on April 17, 2021 (<https://www.sec.gov/news/press-release/2021-65>). See [Research Sample and Data Sources](#) for additional information.

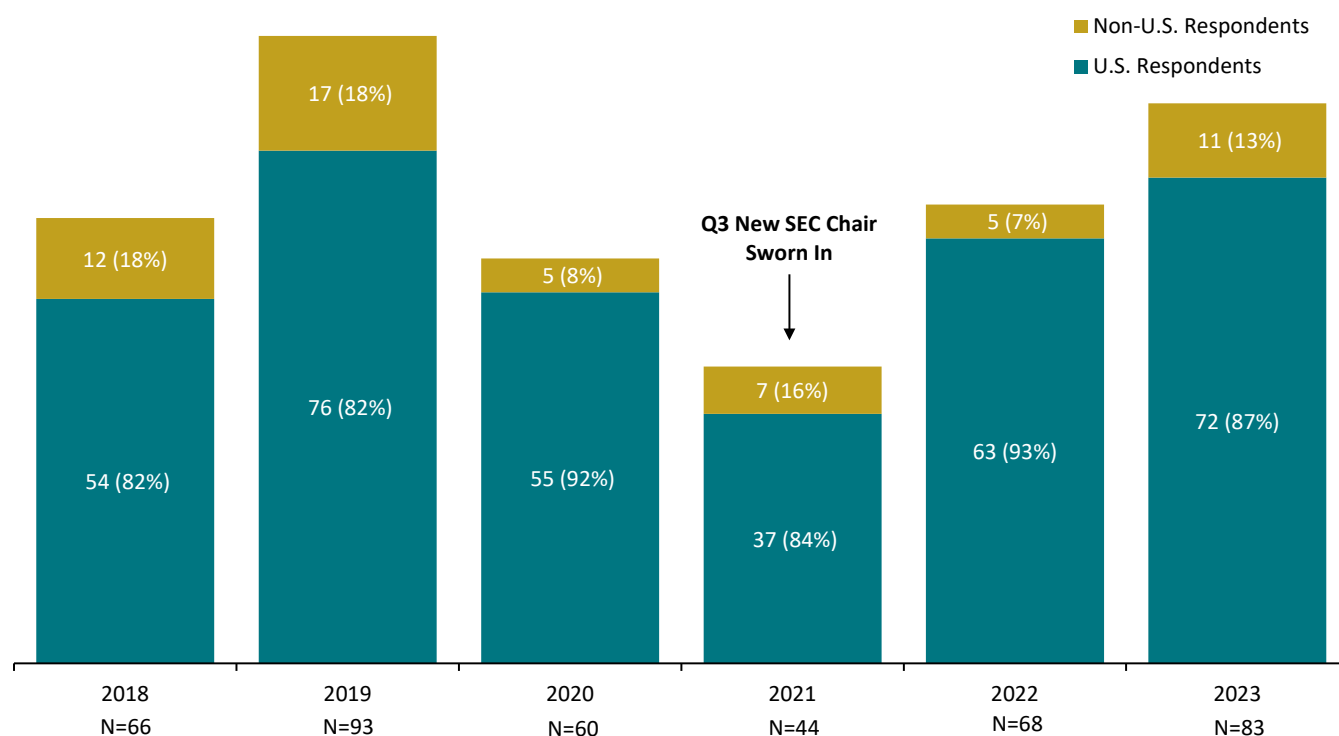
# Actions Involving Non-U.S. Respondents

- In FY 2023, the SEC initiated 11 actions against non-U.S. respondents, higher than the average of nine actions per year from FY 2018 to FY 2022. There were 18 respondents involved in the non-U.S. actions in FY 2023, an increase from the FY 2018–FY 2022 average (15).
- Ten of the actions initiated in FY 2023 (with a total of 15 respondents) were settled during FY 2023, while the remaining action (with three respondents) remained open at the end of the fiscal year.
- During FY 2023, the SEC brought actions involving respondents in Canada, the Netherlands, Ireland, the United Kingdom, Singapore, and China.

*The number of actions initiated by the SEC against non-U.S. respondents rebounded to historical levels in FY 2023.*

- Since FY 2018, the SEC has brought 57 actions involving respondents in countries outside the United States. The most non-U.S. actions were brought against respondents in Canada (nine), the United Kingdom (seven), Japan (five), and Germany (five).

Figure 4: SEC Accounting and Auditing Actions Involving U.S. and Non-U.S. Respondents by Year Initiated FY 2018–FY 2023



Source: Cornerstone Research; [www.sec.gov](https://www.sec.gov)

Note: “Year Initiated” is the fiscal year in which an administrative proceeding was instituted or a civil action complaint was filed. Actions involving firm respondents are classified as actions involving non-U.S. respondents if (1) there is a single firm respondent and the firm is headquartered outside the U.S.; or (2) there are multiple firm respondents and (a) all of the firm respondents are headquartered outside the U.S., or (b) one or more of the firm respondents are headquartered outside the U.S. and the alleged violations occurred outside the U.S. Actions involving only individual respondents are classified as actions involving non-U.S. respondents if (1) the individuals are licensed or reside outside the U.S., and (2) the alleged violations occurred outside the U.S. Gary Gensler was sworn in as Chair of the SEC on April 17, 2021 (<https://www.sec.gov/news/press-release/2021-65>). See [Research Sample and Data Sources](#) for additional information.

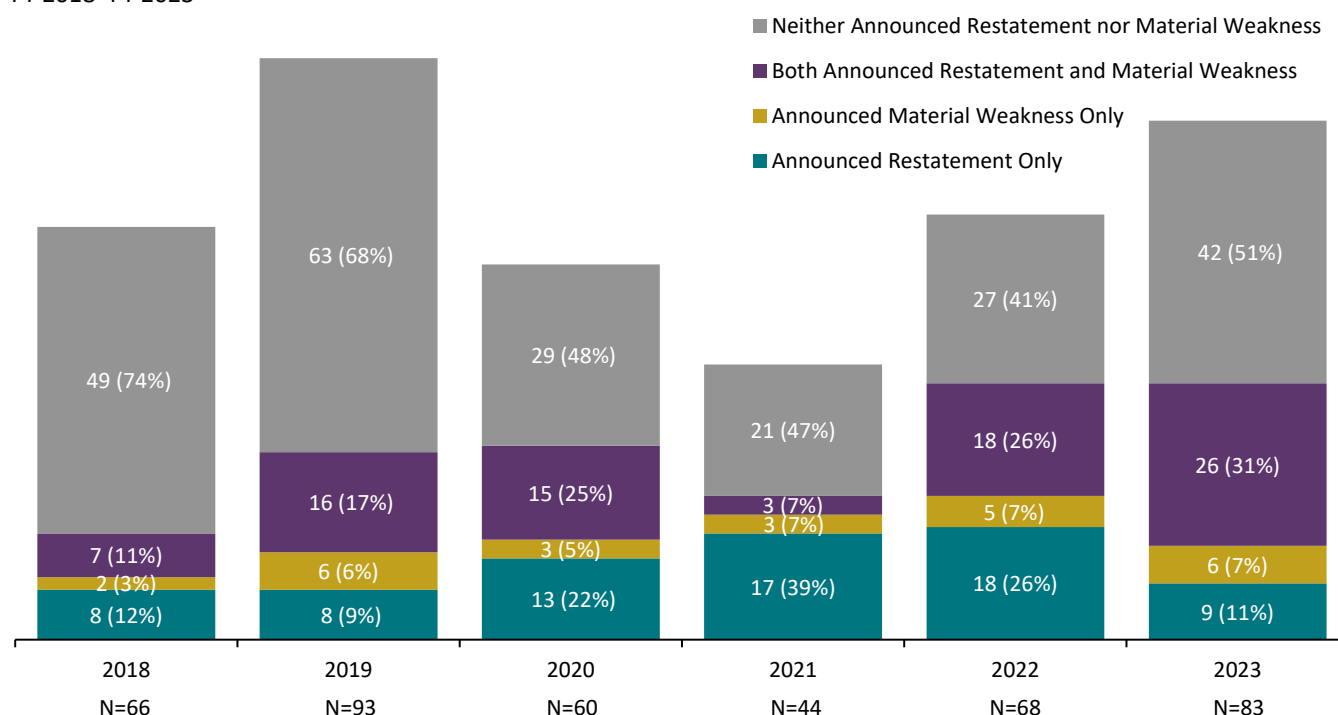
# Actions Referring to Announced Restatements and/or Material Weaknesses in Internal Control

- Of the 83 actions initiated in FY 2023, 35 referred to announced restatements of financial statements, and 32 referred to announcements of material weaknesses in internal control.
- The percentage of FY 2023 initiated actions referring to both an announced restatement and material weakness in internal control (31%) reached its highest level in recent years.

*Actions referring to announced restatements and/or material weaknesses in internal control remained at 41—the highest number in recent years.*

- Of the 35 actions referring to restatements in FY 2023, 17 alleged improper revenue recognition (49%). This was a decline over the prior fiscal year when 25 of the 36 actions (69%) referring to a restatement also alleged improper revenue recognition.

Figure 5: SEC Accounting and Auditing Actions Referring to Announcements of Restatements and/or Internal Control Weaknesses by Year Initiated  
FY 2018–FY 2023



Source: Cornerstone Research; [www.sec.gov](http://www.sec.gov)

Note: “Year Initiated” is the fiscal year in which an administrative proceeding was instituted or a civil action complaint was filed. Actions “referring to announcements of restatements” are actions that refer to an announcement that a company will restate, may restate, or has unreliable financial statements in the order instituting an administrative proceeding or the complaint in a civil action. Actions “referring to announcements of material weaknesses in internal control” are actions that refer to an announcement that the company has a material weakness in internal control in the order instituting an administrative proceeding or the complaint in a civil action. See [Research Sample and Data Sources](#) for additional information.



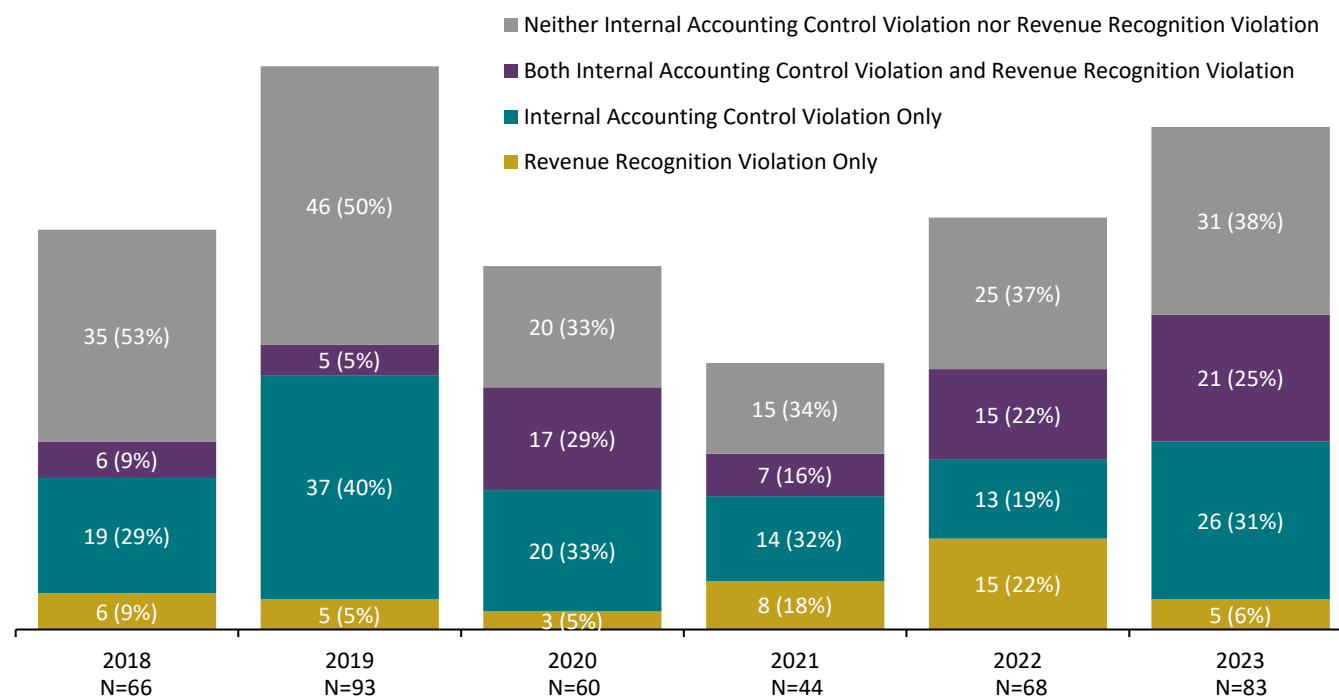
# Allegations

- The most common allegations in actions initiated in FY 2023 related to a company's revenue recognition and internal accounting controls. One or both violations were alleged in 63% of FY 2023 actions.
- One action was initiated in FY 2023 as part of the SEC's continuing Earnings Per Share (EPS) Initiative against a firm and its CFO for improper earnings management. This was the fifth action imposed in connection with the EPS Initiative since its inception in 2020.<sup>8</sup>
- In FY 2023, 56% of actions alleged violations of internal accounting controls, up from 41% in FY 2021 and above the FY 2018–FY 2022 average of 47%. In FY 2023, 21 actions alleged violations of both internal accounting controls and disclosure controls and procedures, the highest level in recent years.

*The number of actions alleging violations of internal accounting controls increased to its highest level since FY 2020.*

- The SEC initiated four actions in FY 2023 alleging violations of auditor independence, down from five such actions initiated in FY 2022.
- In FY 2023, only three actions alleged violation of Section 304 of the Sarbanes-Oxley Act of 2002 (the "clawback" provision). This was a sharp decrease from nine such actions initiated in FY 2022 and below the yearly average of five actions initiated in FY 2018–FY 2022.<sup>9</sup>

**Figure 6: SEC Accounting and Auditing Actions Alleging Violations of Internal Accounting Controls and/or Revenue Recognition Violations by Year Initiated FY 2018–FY 2023**



Source: Cornerstone Research; [www.sec.gov](http://www.sec.gov)

Note: "Year Initiated" is the fiscal year in which an administrative proceeding was instituted or a civil action complaint was filed. Actions alleging violations of internal accounting controls and disclosure controls and procedures are actions where the SEC alleges that respondents violated or caused to violate Section 13(b)(2)(B) and Rule 13a-15 of the Securities Exchange Act of 1934, respectively. See [Research Sample and Data Sources](#) for additional information.

# Number and Type of Respondents

- Less than half of the SEC actions initiated in FY 2023 involved individual respondents only (42%), an almost equal percentage involved firm respondents only (41%), and the remainder involved both individuals and firms (17%).
- In FY 2023, the proportion of actions involving individuals only (42%) decreased from FY 2022 (53%) but was slightly higher than the FY 2018–FY 2022 average (39%).
- From April 17, 2021, when Chair Gensler was sworn in, through the end of FY 2023, approximately 44% of actions were initiated against individual respondents only. In comparison, 35% of the actions initiated during the Clayton administration involved individual respondents only.<sup>10</sup>
- There were 111 total respondents in the actions initiated by the SEC in FY 2023, a slight increase from the 103 respondents in FY 2022 and the average number of respondents (104) from FY 2018 through FY 2022.
- The number of SEC registrants and related individuals involved as respondents in SEC actions (89) increased in FY 2023 by 22% from FY 2022 (73), and was higher than the FY 2018–FY 2022 average (79).

*The proportion of SEC actions against individual respondents decreased in FY 2023, but was still above levels seen during the Clayton administration.<sup>11</sup>*

- The number of auditor and audit firm respondents involved in SEC actions in FY 2023 (22) declined to a level lower than the FY 2018–FY 2022 average (25).
- Of the 59 individual respondents involved in SEC actions in FY 2023, 14 were auditors and 45 were associated with SEC registrants.
- Nearly half (46%) of the individual respondents involved in SEC actions in FY 2023 were CEO or CFO at the time of the alleged wrongdoing.
- Of the 45 individuals associated with SEC registrants, 17 were members of the board of directors, 12 of whom were also CEOs.
- Approximately one-third of individual respondents involved in SEC actions in FY 2023 (20) were Certified Public Accountants (CPAs).

Figure 7: Number of Respondents in SEC Accounting and Auditing Actions by Year Initiated

	FY 2018–FY 2022		FY 2022		FY 2023	
	Average	Share	Number	Share	Number	Share
<b>Number of Actions</b>						
Individual(s) only	26	39%	36	53%	35	42%
Firm(s) only	27	41%	19	28%	34	41%
Firm(s) and Individual(s)	13	20%	13	19%	14	17%
<b>Total</b>	<b>66</b>	<b>100%</b>	<b>68</b>	<b>100%</b>	<b>83</b>	<b>100%</b>
<b>Number of Respondents</b>						
Individuals	60	57%	66	64%	59	53%
Firms	44	43%	37	36%	52	47%
<b>Total</b>	<b>104</b>	<b>100%</b>	<b>103</b>	<b>100%</b>	<b>111</b>	<b>100%</b>

Source: Cornerstone Research; [www.sec.gov](http://www.sec.gov)

Note: “Year Initiated” is the fiscal year in which an administrative proceeding was instituted or a civil action complaint was filed. An action may involve one or more respondent. See [Research Sample and Data Sources](#) for additional information.

Figure 8: Type of Respondents in SEC Accounting and Auditing Actions by Year Initiated  
FY 2018–FY 2023

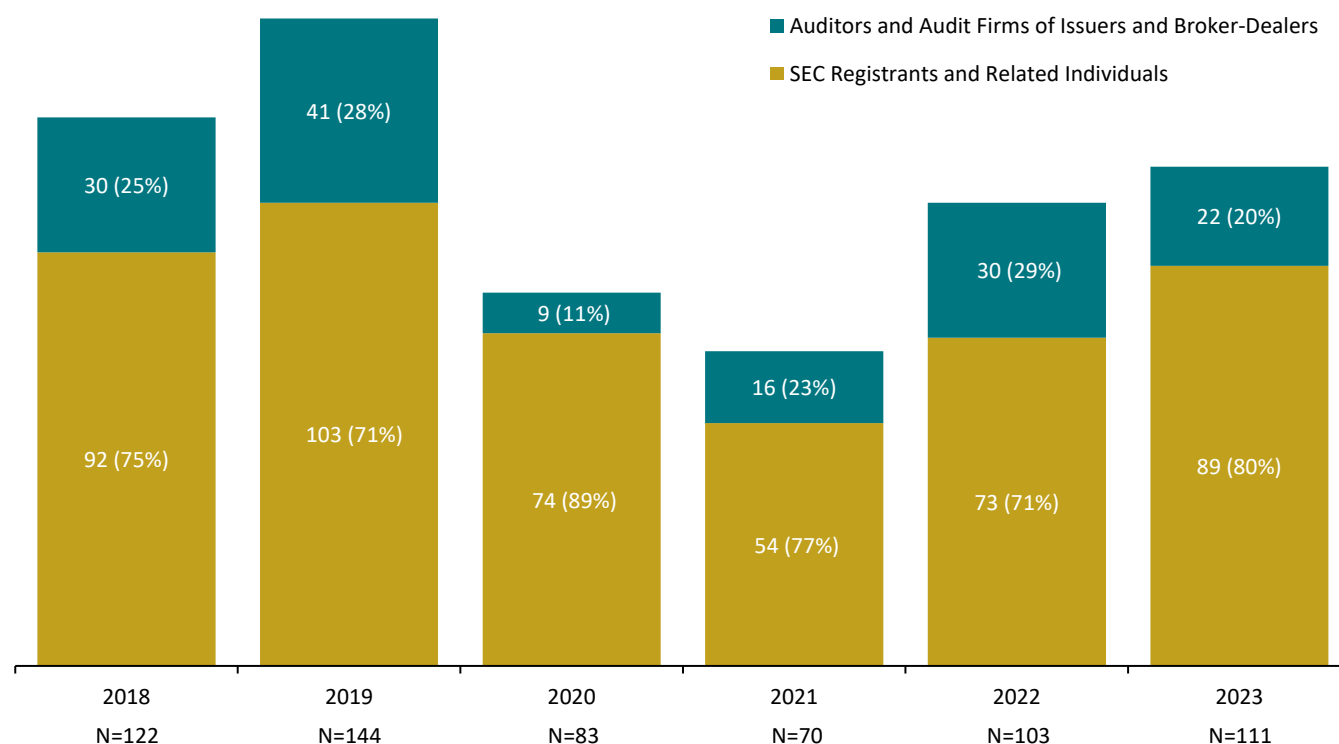
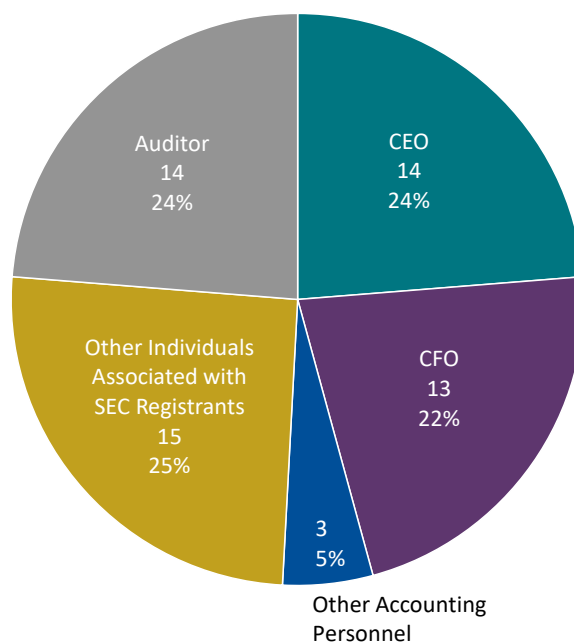


Figure 9: Type of Individual Respondents in SEC Accounting and Auditing Actions by Year Initiated  
FY 2023



Source: Cornerstone Research; [www.sec.gov](http://www.sec.gov)

Note: “Year Initiated” is the fiscal year in which an administrative proceeding was instituted or a civil action complaint was filed. Respondents’ positions at the time of the alleged wrongdoing are based on the job titles mentioned in the administrative order or complaint. “Other Accounting Personnel” include Chief Accounting Officer, Controller, and other accounting-related positions. “Other Individuals Associated with SEC Registrants” include individuals employed by an SEC registrant, including consulting accounting firms. See [Research Sample and Data Sources](#) for additional information.

# Monetary Settlements

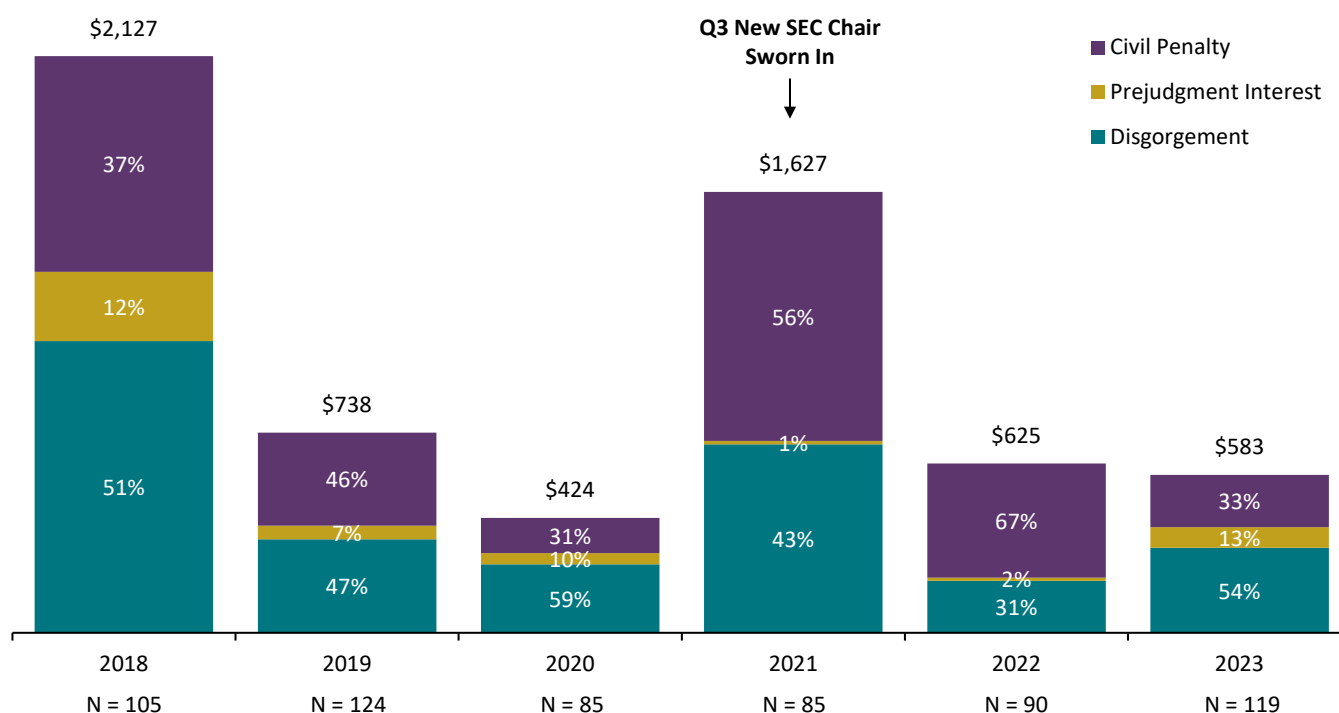
- In FY 2023, 119 respondents settled with the SEC.
- The SEC imposed monetary settlements on 101 of the 119 respondents, totaling \$583 million.
- Civil penalties in FY 2023 accounted for 33% of total monetary settlements, while disgorgement and prejudgment interest accounted for 67%.
- Prejudgment interest accounted for 13% of total monetary settlements, the highest in recent years.

*For the first year since FY 2020, civil penalties comprised less than half of total monetary settlements.*

- In FY 2023, actions against 18 (15%) of the 119 respondents were resolved by the SEC without imposing monetary settlements, down from 28% in FY 2022.

**Figure 10: Total Disgorgement, Prejudgment Interest, and Civil Penalty Amounts in Resolved SEC Accounting and Auditing Actions by Settlement Year  
FY 2018–FY 2023**

(Dollars in millions)



Source: Cornerstone Research; [www.sec.gov](https://www.sec.gov)

Note: “Settlement Year” is the fiscal year in which respondents settled with the SEC. Settlements include all actions settled or otherwise resolved during the fiscal year, regardless of when the action was initiated. Monetary settlements include penalties, disgorgement, and prejudgment interest. Reimbursement amounts of previously awarded compensation by individual respondents are excluded from monetary settlements. Gary Gensler was sworn in as Chair of the SEC on April 17, 2021 (<https://www.sec.gov/news/press-release/2021-65>). See [Research Sample and Data Sources](#) for additional information.

- Monetary settlements against firms totaled approximately \$533 million, roughly \$88 million lower than in FY 2022.
- Monetary settlements against individuals totaled approximately \$50 million.
- The median monetary settlement for individual respondents was \$75,000—higher than both the \$63,000 median in FY 2022 and the \$53,000 median in the FY 2018–FY 2022 period.

*FY 2023 monetary settlements decreased by nearly 7% from FY 2022 and were 47% lower than the average of total monetary settlements in FY 2018–FY 2022.*

**Figure 11: Monetary Settlements in Resolved SEC Accounting and Auditing Actions by Settlement Year**

(Dollars in thousands)

	FY 2018–FY 2022 Average		FY 2022		FY 2023	
	Individuals	Firms	Individuals	Firms	Individuals	Firms
Total Respondents in Resolved Actions	54	43	58	32	68	51
Respondents Fined	42	35	38	27	58	43
Average Settlement	\$610	\$31,284	\$106	\$22,988	\$866	\$12,396
Median Settlement Over the Period	\$53	\$1,500	\$63	\$2,000	\$75	\$3,500
Max Settlement Over the Period	\$43,700	\$1,786,674	\$482	\$261,194	\$13,277	\$103,618
<b>Total Settlements</b>	<b>\$25,882</b>	<b>\$1,082,441</b>	<b>\$4,027</b>	<b>\$620,668</b>	<b>\$50,237</b>	<b>\$533,022</b>

Source: Cornerstone Research; www.sec.gov

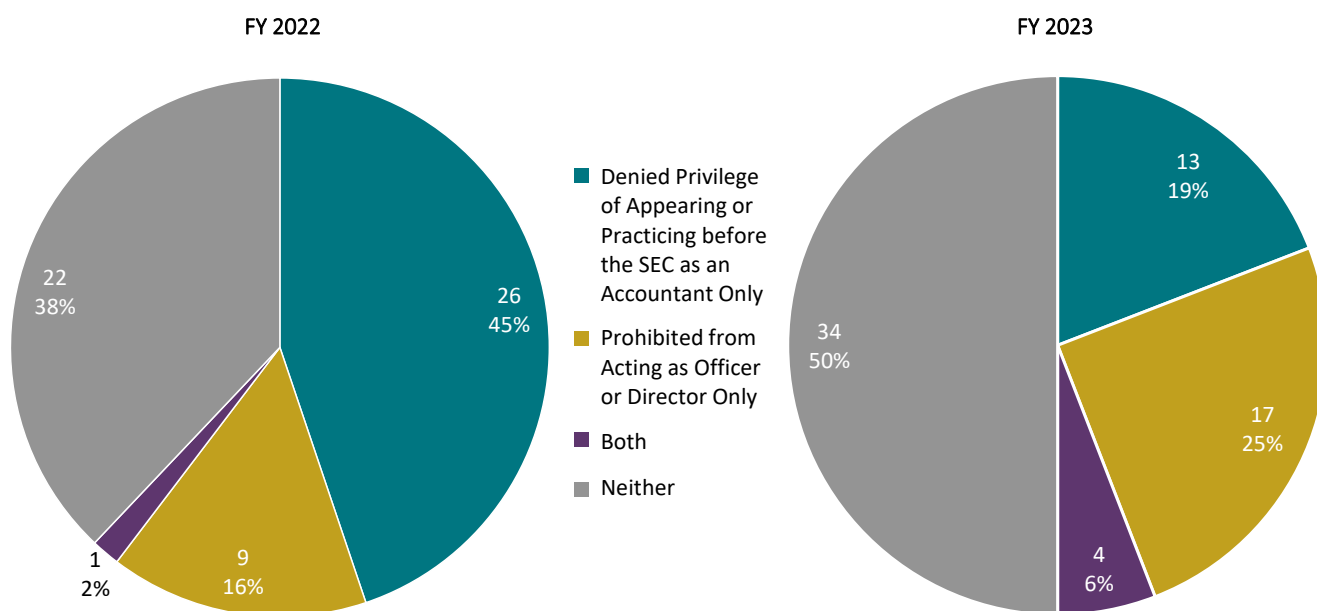
Note: “Settlement Year” is the fiscal year in which respondents settled the charges with the SEC. Settlements include all actions settled or otherwise resolved during the fiscal year, regardless of when the action was initiated. Monetary settlements include penalties, disgorgement, and prejudgment interest. Reimbursement amounts of previously awarded compensation by individual respondents are excluded from monetary settlements. See [Research Sample and Data Sources](#) for additional information.

# Non-Monetary Sanctions

- In addition to monetary settlements, the SEC imposes non-monetary sanctions on individual and firm respondents (e.g., officer and director bars, requirement to retain an independent consultant).
- Of the 68 individual respondents who settled in FY 2023, 25% (17) were denied the privilege of appearing or practicing before the SEC as an accountant. For four of the 17 individuals, the privilege was suspended permanently, while for the remaining 11 individuals the privilege was suspended for an average of 2.7 years.
- Of the 68 individual respondents who settled in FY 2022, 34 (50%) were prohibited from acting as an officer or director and/or denied the privilege of appearing or practicing before the SEC as an accountant, down from 62% of the individual respondents who settled in FY 2022.
- In FY 2023, 31% (21) of the 68 individual respondents who settled were prohibited by the SEC to act as an officer or a director of a registrant. For 12 of the 21 individuals, the bar was permanent, while the remaining nine individuals were barred for 5.3 years, on average.

*Officer and director bars imposed on individual respondents who settled in FY 2023 increased to 31%, from 18% in FY 2022.<sup>12</sup>*

Figure 12: Non-Monetary Sanctions in Resolved SEC Accounting and Auditing Actions by Settlement Year FY 2022 and FY 2023



Source: Cornerstone Research; [www.sec.gov](http://www.sec.gov)

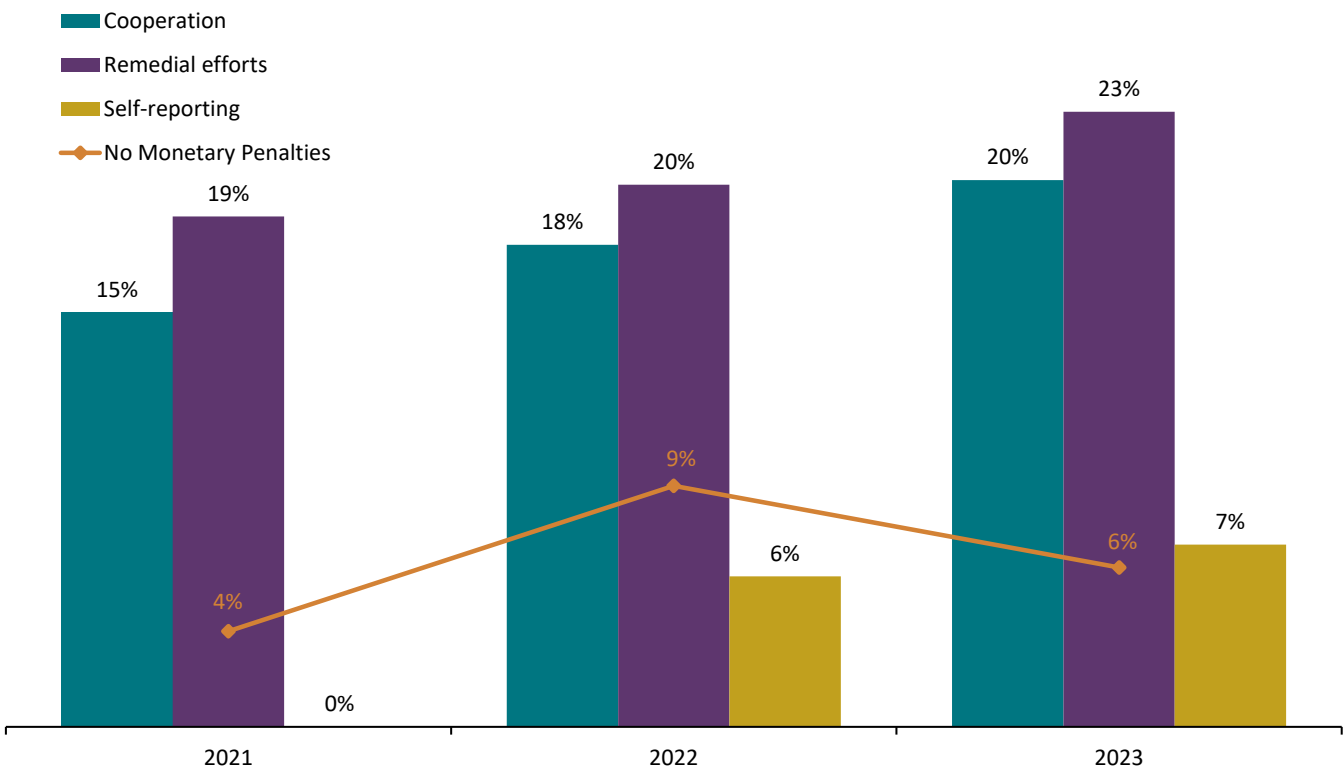
Note: "Settlement Year" is the fiscal year in which respondents settled the charges with the SEC. Settlements here include all actions settled or otherwise resolved during the fiscal year against individual respondents, regardless of when the action was initiated. Non-monetary sanctions (i.e., officer and director bars and/or suspensions to appear or practice as an accountant before the SEC) are imposed against individual respondents. See [Research Sample and Data Sources](#) for additional information.

# Cooperation, Remedial Efforts, and Self-Reporting

- The SEC acknowledged that 26% (29 firms and two individuals) of the 119 respondents who settled in FY 2023 offered cooperation, undertook remedial efforts, and/or self-reported to the SEC, up from 24% in FY 2022.
- Cooperation, remedial efforts, and/or self-reporting by seven respondents resulted in no monetary settlements. The SEC also did not impose any non-monetary sanctions on five of these seven respondents.

*Cooperation, remedial efforts, and/or self-reporting continued to increase in FY 2023, while the proportion of respondents who settled with the SEC without receiving any monetary settlement decreased from FY 2022.*

Figure 13: Cooperation, Remedial Efforts, and Self-Reporting Recognized by the SEC in Resolved SEC Accounting and Auditing Actions by Settlement Year  
FY 2021–FY 2023



Source: Cornerstone Research; [www.sec.gov](http://www.sec.gov)

Note: “Settlement Year” is the fiscal year in which respondents settled the charges with the SEC. Settlements include all actions settled or otherwise resolved during the fiscal year, regardless of when the action was initiated. See [Research Sample](#) and [Data Sources](#) for additional information.

# Research Sample and Data Sources

- Accounting and auditing enforcement actions include (1) Accounting and Auditing Enforcement Releases (AAERs) available on the SEC’s website at <https://www.sec.gov>, and (2) actions that are classified as “Issuer Reporting and Disclosure” or “Issuer Reporting / Audit & Accounting” in the Annual Reports of the SEC’s Division of Enforcement and that contain accounting- or auditing-related allegations.
- The sample includes civil actions and stand-alone administrative proceedings (collectively, “original actions”) as indicated in the Annual Reports of the SEC’s Division of Enforcement, while it excludes other actions such as follow-on administrative proceedings.
- For actions brought against auditors or audit firms, the research sample excludes actions unrelated to the performance of an audit or the firm’s system of quality control.
- For administrative proceedings, settlements include those reported in orders concerning both litigated and settled administrative proceedings instituted by the SEC, available at <https://www.sec.gov/litigation/admin>. For civil actions, settlements include those reported in the case dockets.
- SEC fiscal years begin on October 1 of the prior year and end on September 30.



# Endnotes

- <sup>1</sup> “SEC Announces Enforcement Results for Fiscal Year 2023,” SEC Press Release, November 14, 2023, <https://www.sec.gov/news/press-release/2023-234> (“The Securities and Exchange Commission today announced that it filed 784 total enforcement actions in fiscal year 2023, a 3 percent increase over fiscal year 2022, including 501 original, or ‘stand-alone,’ enforcement actions, an 8 percent increase over the prior fiscal year.”).
- <sup>2</sup> *Ibid.* (“In fiscal year 2023, the SEC obtained orders for \$4.949 billion in financial remedies, the second highest amount in SEC history, after the record-setting financial remedies ordered in fiscal year 2022. The financial remedies comprised \$3.369 billion in disgorgement and prejudgment interest and \$1.580 billion in civil penalties. Both the disgorgement and civil penalties ordered were the second highest amounts on record. The SEC also obtained orders barring 133 individuals from serving as officers and directors of public companies, the highest number of officer and director bars obtained in a decade.”).
- <sup>3</sup> SEC fiscal years begin on October 1 of the prior year and end on September 30. FY 2023 spans October 1, 2022, to September 30, 2023.
- <sup>4</sup> Gary Gensler was sworn in as Chair of the SEC on April 17, 2021. See “Gary Gensler Sworn in as Member of the SEC,” SEC Press Release, April 17, 2021, <https://www.sec.gov/news/press-release/2021-65>.
- <sup>5</sup> Jay Clayton was sworn in as Chair of the SEC on May 4, 2017. See “Jay Clayton Sworn in as Chairman of SEC,” SEC Press Release, May 4, 2017, <https://www.sec.gov/news/press-release/2017-94>.
- <sup>6</sup> “SEC Institutes Administrative Proceedings against Auditor for Deficient Audits over Three-Year Period,” SEC Press Release, February 8, 2023, <https://www.sec.gov/enforce/34-96852-s>.
- <sup>7</sup> “SEC Charges Microcap Company and Its Executive with Fraud,” SEC Litigation Release, May 15, 2023, <https://www.sec.gov/litigation/litreleases/lr-25726>.
- <sup>8</sup> “SEC Charges Gentex and Chief Financial Officer in Connection with EPS Initiative,” SEC Press Release, February 7, 2023, <https://www.sec.gov/enforce/34-96819-s> (“The Securities and Exchange Commission today announced charges against Gentex Corporation for financial reporting, books-and-records, and internal accounting controls violations arising out of the company’s accounting for its executive and employee bonus compensation programs. The SEC also announced charges against Kevin Nash, Gentex’s Chief Financial Officer, for related violations. These actions arise from the Division of Enforcement’s Earnings Per Share (‘EPS’) Initiative, which utilizes risk-based data analytics to uncover potential accounting and disclosure violations caused by, among other things, earnings management practices.”). See also “Atlanta-Based Pest Control Company, Former CFO Charged with Improper Earnings Management,” SEC Press Release, April 18, 2022, <https://www.sec.gov/news/press-release/2022-64> (“This is the fourth action and the highest penalty to date against an issuer in connection with the Division of Enforcement’s highly successful and continuing EPS Initiative, which uses data analytics to uncover hard-to-detect accounting and disclosure violations by public companies,” said Gurbir S. Grewal, Director of the SEC’s Division of Enforcement. “The SEC staff’s ever-increasing sophistication with data made today’s action possible and underscores that we will continue to pursue public companies that lack adequate accounting controls and engage in improper earnings management practices.”).
- <sup>9</sup> Gary Gensler, “‘They Are Merely the Agents’: Prepared Remarks before the American Bar Association,” December 7, 2023, <https://www.sec.gov/news/speech/gensler-prepared-remarks-american-bar-association-231207>. See also Gurbir S. Grewal, Director, Division of Enforcement, “Remarks at New York City Bar Association Compliance Institute,” October 24, 2023, <https://www.sec.gov/news/speech/grewal-remarks-nyc-bar-association-compliance-institute-102423>; Gurbir S. Grewal, Director, Division of Enforcement, “Remarks at Securities Enforcement Forum,” November 15, 2022, <https://www.sec.gov/news/speech/grewal-speech-securities-enforcement-forum-111522>. Director Grewal stated that, “to ensure accountability from senior executives at public companies and incentivize them to prevent misconduct at their firms, . . . the Commission employed another tool in fiscal year 2022 and used Sarbanes-Oxley 304 to require several executives to return bonuses and compensation following misconduct at their firms, even though the executives were not personally charged with the underlying misconduct.” In FY 2022, approximately \$3.6 million in incentive compensation was returned.
- <sup>10</sup> Jay Clayton was sworn in as the SEC Chair on May 4, 2017, and departed on December 23, 2020. See “Jay Clayton Sworn in as Chairman of SEC,” SEC Press Release, May 4, 2017, <https://www.sec.gov/news/press-release/2017-94>; “Statement of SEC Chairman Jay Clayton Regarding the Conclusion of His Tenure,” SEC, December 23, 2020, <https://www.sec.gov/news/public-statement/clayton-2020-12-23>. In the period between December 24, 2020, and April 16, 2021, the SEC initiated seven accounting and auditing actions, of which five were against individual respondents. If the period between December 24, 2020, and April 16, 2021, is considered part of the Clayton administration, 36% of the actions initiated during the Clayton administration involved individual respondents only.
- <sup>11</sup> The SEC identified individual accountability as a “key priority area” and a “pillar of the SEC’s enforcement program” in its announcements of enforcement results for FY 2021, FY 2022, and FY 2023. See “SEC Announces Enforcement Results for FY 2021,” SEC Press Release, November 18, 2021, <https://www.sec.gov/news/press-release/2021-238> (“Other examples of enforcement actions in key priority areas include [] Holding Individuals Accountable”); “SEC Announces Enforcement Results for FY 2022,” SEC Press Release, November 15, 2022, <https://www.sec.gov/news/press-release/2022-206> (“Individual accountability is a pillar of the SEC’s enforcement program.”); “SEC Announces Enforcement Results for Fiscal Year 2023,” SEC Press Release, November 14, 2023, <https://www.sec.gov/news/press-release/2023-234> (“Individual accountability remains a pillar of the SEC’s enforcement program.”).
- <sup>12</sup> Gary Gensler, “‘Partners of Honest Business and Prosecutors of Dishonesty’: Remarks before the 2023 Securities Enforcement Forum,” October 25, 2023, <https://www.sec.gov/news/speech/gensler-remarks-securities-enforcement-forum-102523> (“Accountability includes protecting the public by barring individuals—whether from practicing before the SEC, association bars, or otherwise. Last year, we obtained 133 bars on individuals from serving as officers and directors—our highest in a decade.”).

# About the Authors

## **Elaine M. Harwood, Ph.D., CPA, CFF**

Elaine Harwood is a senior vice president in Cornerstone Research's Los Angeles office. She consults to clients and works with experts on litigation, complex enforcement matters brought by the SEC and Public Company Accounting Oversight Board (PCAOB), and corporate investigations. She is an expert on financial accounting, financial reporting, and auditing. Dr. Harwood has served for more than 23 years as a consultant and expert on a wide range of liability and damages issues. She is a certified public accountant (CPA) and is certified in financial forensics (CFF) by the AICPA. In 2023, she was one of just four women named to Who's Who Legal's (WWL's) inaugural list of Thought Leaders USA – Investigations Forensic Accountants. WWL has also recognized her in the legal investigations space as a Global Leader Consulting Expert – Forensic Accountants. In addition, Women We Admire named Dr. Harwood to its list of the Top 50 Women Leaders of Los Angeles for 2023.

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Steve McBride is a principal in Cornerstone Research's Washington, DC, office and co-head of the firm's accounting practice. He focuses on financial reporting and auditing issues arising in litigation, internal investigations, and regulatory enforcement actions. Mr. McBride also consults on matters involving corporate governance, valuation, and capital markets. Mr. McBride has extensive expertise on the application of Generally Accepted Accounting Principles (GAAP) to accounting and disclosure issues in a range of transactions. These include revenue recognition, loss contingencies, business combinations, segment reporting, impairment, and fair value measurement. Mr. McBride has also evaluated the design and effectiveness of Internal Controls over Financial Reporting (ICFR), and audit and review procedures for compliance with Generally Accepted Auditing Standards (GAAS) and Public Company Accounting Oversight Board (PCAOB) standards.

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