



CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

SEC Enforcement Activity: Public Companies and Subsidiaries

Fiscal Year 2022 Update

ANALYSIS AND TRENDS

- Filings
- Allegations
- Enforcement Venue
- Settlements
- Admission of Guilt

Table of Contents

Executive Summary	1
Key Trends	2
Number of Filings	3
Allegations	4
Enforcement Venue	5
Settlements	6
Cooperation	6
Total Monetary Settlements	7
Disgorgement	8
Admission of Guilt	9
Research Sample	10
Endnotes	11
About the Authors	12

Table of Figures

Figure 1: Key Trends in Public Company and Subsidiary Actions	2
Figure 2: Public Company and Subsidiary Actions	3
Figure 3: Heat Map of Allegations against Public Companies and Subsidiaries	4
Figure 4: Public Company and Subsidiary Actions by Enforcement Venue	5
Figure 5: Public Company and Subsidiary Defendants—Monetary Settlements and Cooperation Noted	6
Figure 6: Monetary Settlements Imposed in Public Company and Subsidiary Actions	7
Figure 7: Breakdown of Total Monetary Settlements Imposed in Public Company and Subsidiary Actions	8
Figure 8: Admission of Guilt by Public Company and Subsidiary Defendants	9

Executive Summary

SEC enforcement activity against public company and subsidiary defendants increased in FY 2022 to 68 actions. The first full fiscal year of Chair Gensler's tenure also saw total monetary settlements imposed by the SEC in public company and subsidiary actions climb to \$2.8 billion. Monetary settlements were imposed on 97% of settling defendants. Both the total dollar amount and the percentage were the largest of any fiscal year in SEED.

Findings on public company and subsidiary defendants are based on data from the Securities Enforcement Empirical Database (SEED), a collaboration between the NYU Pollack Center for Law & Business and Cornerstone Research. SEED data cover FY 2010 through the present.¹

Public companies are defined as those that traded on a major U.S. exchange as identified by the Center for Research in Security Prices (CRSP) at the time the enforcement action was initiated or within the five-year period preceding the initiation.

Filings

- The SEC filed 68 actions against public companies and their subsidiaries in FY 2022, an increase of 28% from FY 2021. [\(page 3\)](#)
- The 28% increase in actions in Chair Gensler's first full fiscal year was higher than the 12% increase in the first fiscal year under Chair Clayton in FY 2018, but lower than the 38% increase in the first fiscal year under Chair White in FY 2014. [\(page 3\)](#)

Allegations

- Issuer Reporting and Disclosure continued to be the most common allegation type in FY 2022, accounting for 38% of actions. [\(page 4\)](#)
- For the first time since FY 2018, Broker Dealer allegations were the second most common in SEED. [\(page 4\)](#)

Enforcement Venue

- Despite ongoing challenges to the constitutionality of the SEC's use of administrative law judges (ALJs), the SEC continued to bring the majority of actions (88%) as administrative proceedings in FY 2022. [\(page 5\)](#)

Driven by actions involving Broker Dealer allegations, the number of defendants that settled in FY 2022 with admissions of guilt increased substantially.

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Enforcement Venue (cont.)

- Five actions against public companies and subsidiaries were litigated in FY 2022, more than the average of three over the prior five fiscal years. [\(page 5\)](#)

Settlements

- Of the 75 public company and subsidiary defendants that settled during FY 2022, 97% involved a monetary component, the highest percentage of any fiscal year in SEED. [\(page 6\)](#)
- Monetary settlements imposed in public company or subsidiary actions in FY 2022 reached \$2.8 billion, \$0.9 billion more than in FY 2021. [\(page 7\)](#)
- In FY 2022, 82% of total monetary settlements came from civil penalties and other penalties, the highest percentage in SEED. [\(page 8\)](#)
- Sixteen defendants had admissions of guilt in FY 2022, double the highest number in any prior fiscal year in SEED. [\(page 9\)](#)

Key Trends

Broker Dealer actions filed against public companies and subsidiaries in FY 2022 increased to 16 from three in FY 2021. The majority of defendants (76%) in these 16 actions had admissions of guilt.

Broker Dealer Actions

- The number of enforcement actions against public companies and subsidiaries with Broker Dealer allegations increased to 16, representing 24% of the 68 total actions in FY 2022. Both the number and share are the highest since FY 2018.
- The increase in Broker Dealer actions was driven in part by actions brought by the SEC on September 27, 2022, related to “widespread recordkeeping failures,” in which the SEC imposed more than \$1.1 billion in monetary settlements. The SEC also obtained admissions of guilt from all defendants involved in these actions.²
- Public company and subsidiary actions with Broker Dealer allegations in FY 2022 (including the 10 in SEED filed on September 27) had a substantially higher median total monetary settlement (\$125 million) than other types of actions in FY 2022 (\$6 million).
- The 16 admissions of guilt by public companies or subsidiaries in FY 2022 were all in Broker Dealer actions. The previous highest number of admissions of guilt in Broker Dealer actions in a fiscal year was seven.

Monetary Settlements

- Total monetary settlements in actions against public companies and subsidiaries increased to \$2.8 billion in FY 2022, the largest total in any fiscal year in SEED.
- The large monetary settlement total in public company and subsidiary actions is consistent with the record \$6.4 billion of total monetary settlements imposed by the SEC for *all* actions (not just public company and subsidiary actions) in FY 2022.³

EPS, COVID-19, and ESG-Related Actions

- The SEC filed its fourth action against public companies and subsidiaries under its Earnings Per Share (EPS) Initiative in FY 2022. This action involved Issuer Reporting and Disclosure allegations, similar to the three EPS Initiative actions filed prior to FY 2022.
- FY 2022 included the second COVID-19-related action in SEED, filed against a public company with Securities Offering allegations.
- The SEC filed four actions against public companies and subsidiaries related to ESG in FY 2022.

Figure 1: Key Trends in Public Company and Subsidiary Actions FY 2013–FY 2022

	FY 2013–FY 2021 Average	FY 2022 Broker Dealer Actions	FY 2022 Other Actions	FY 2022 Total
New Actions	68	16	52	68
Actions Filed as Administrative Proceedings	84%	100%	85%	88%
Defendants with Settlements Noting Cooperation	58%	92%	50%	63%
Defendants with Admissions of Guilt	4	16	0	16
Defendants with Monetary Settlements Imposed	92%	100%	96%	97%
Total Monetary Settlements Imposed by the SEC	\$1.7 billion	\$1.2 billion	\$1.5 billion	\$2.8 billion
Average Monetary Settlements Imposed by the SEC	\$29 million	\$77 million	\$30 million	\$42 million
Median Monetary Settlements Imposed by the SEC	\$3 million	\$125 million	\$6 million	\$9 million
Disgorgement and Prejudgment Interest Imposed by the SEC in Civil Actions	\$296 million	\$0	\$44 million	\$44 million

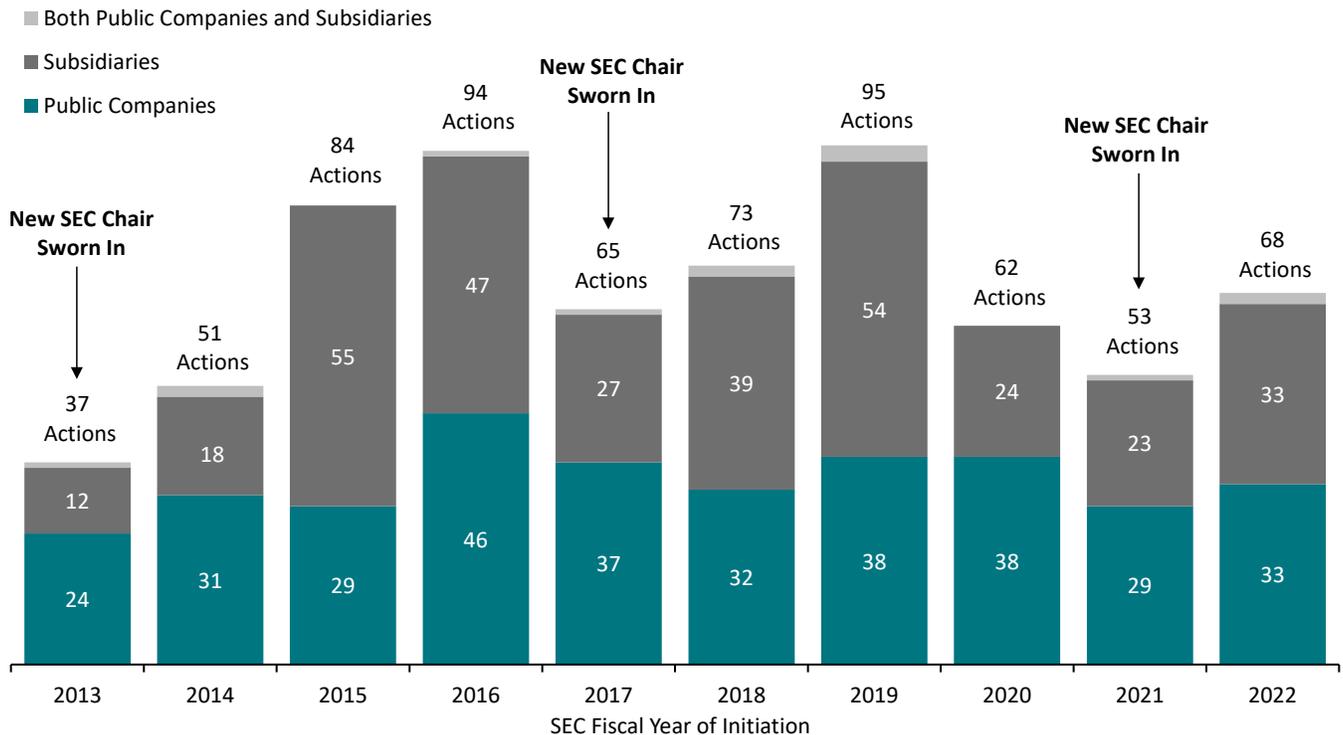
Number of Filings

- The SEC filed 68 actions against public companies and their subsidiaries in FY 2022, an increase of 28% from FY 2021. This exceeded the 6.5% increase in total standalone enforcement actions reported by the SEC.⁴
- On April 17, 2021, Gary Gensler was sworn in as the Chair of the SEC.⁵ Similar to the first full fiscal years after each of the prior two Chairs were sworn in (FY 2014 and FY 2018), SEED actions increased.
- The 28% increase in actions in Chair Gensler’s first full fiscal year was higher than the 12% increase for Chair Clayton in FY 2018, but lower than the 38% increase for Chair White in FY 2014.
- A subsidiary defendant was included in 51% of actions listed in SEED in FY 2022, slightly above the average of 48% from FY 2013 through FY 2021.
- The SEC filed more than three-quarters of the 68 public company and subsidiary actions in the second half of the fiscal year—including 27 actions (40%) in the last month of the fiscal year (September 2022), the most in the final month of any fiscal year in SEED.

68

Number of actions filed against public companies and subsidiaries in FY 2022, an increase of 28% from FY 2021.

Figure 2: Public Company and Subsidiary Actions FY 2013–FY 2022



Source: Securities Enforcement Empirical Database (SEED)

Note: Relief defendants are not considered.

Allegations

- Issuer Reporting and Disclosure has been the most common allegation type in eight of the last 10 fiscal years (including FY 2022). The share of Issuer Reporting and Disclosure actions fell relative to the FY 2021 share, accounting for 38% as opposed to 49% of actions.
- For the first time since FY 2018, Broker Dealer allegations were the second most common in SEED. Nearly 70% of the 16 Broker Dealer actions (11) were filed against financial institutions for recordkeeping failures.
- The number of actions involving Foreign Corrupt Practices Act (FCPA) allegations remained relatively low in 2022 with just six actions filed, compared to an average of 10 from FY 2013 through FY 2021.
- The share of Investment Adviser/Investment Company actions fell from the previous fiscal year, down to 15% of actions filed in FY 2022, the lowest percentage since FY 2015.

16

Number of actions involving Broker Dealer allegations in FY 2022, more than the average of nine actions from FY 2013 to FY 2021.

Figure 3: Heat Map of Allegations against Public Companies and Subsidiaries FY 2013–FY 2022

Allegation Type	SEC Fiscal Year of Initiation										
	Average 2013–2021	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Issuer Reporting and Disclosure	39%	49%	49%	23%	27%	40%	33%	29%	50%	49%	38%
Broker Dealer	12%	0%	14%	13%	12%	12%	26%	16%	10%	6%	24%
Investment Adviser/ Investment Company	19%	14%	10%	8%	20%	18%	18%	37%	23%	25%	15%
Foreign Corrupt Practices Act	14%	14%	14%	12%	19%	15%	14%	16%	11%	8%	9%
Public Finance Abuse	7%	0%	4%	38%	12%	0%	1%	1%	2%	4%	7%
Securities Offering	4%	19%	4%	0%	6%	0%	3%	1%	2%	2%	6%
Insider Trading	0%	0%	0%	0%	0%	0%	0%	0%	0%	2%	0%
Market Manipulation	2%	5%	2%	1%	0%	6%	1%	0%	2%	0%	0%
Other	4%	0%	4%	5%	4%	8%	4%	0%	2%	6%	1%
Number of Actions	68	37	51	84	94	65	73	95	62	53	68



Source: Securities Enforcement Empirical Database (SEED)

Note: Relief defendants are not considered. Percentages may not add to 100% due to rounding. “Public Finance Abuse” includes actions that were categorized by the SEC as “Municipal Securities and Public Pensions” prior to FY 2016. “Other” includes actions categorized by the SEC as “Other” or “Transfer Agent.”

Enforcement Venue

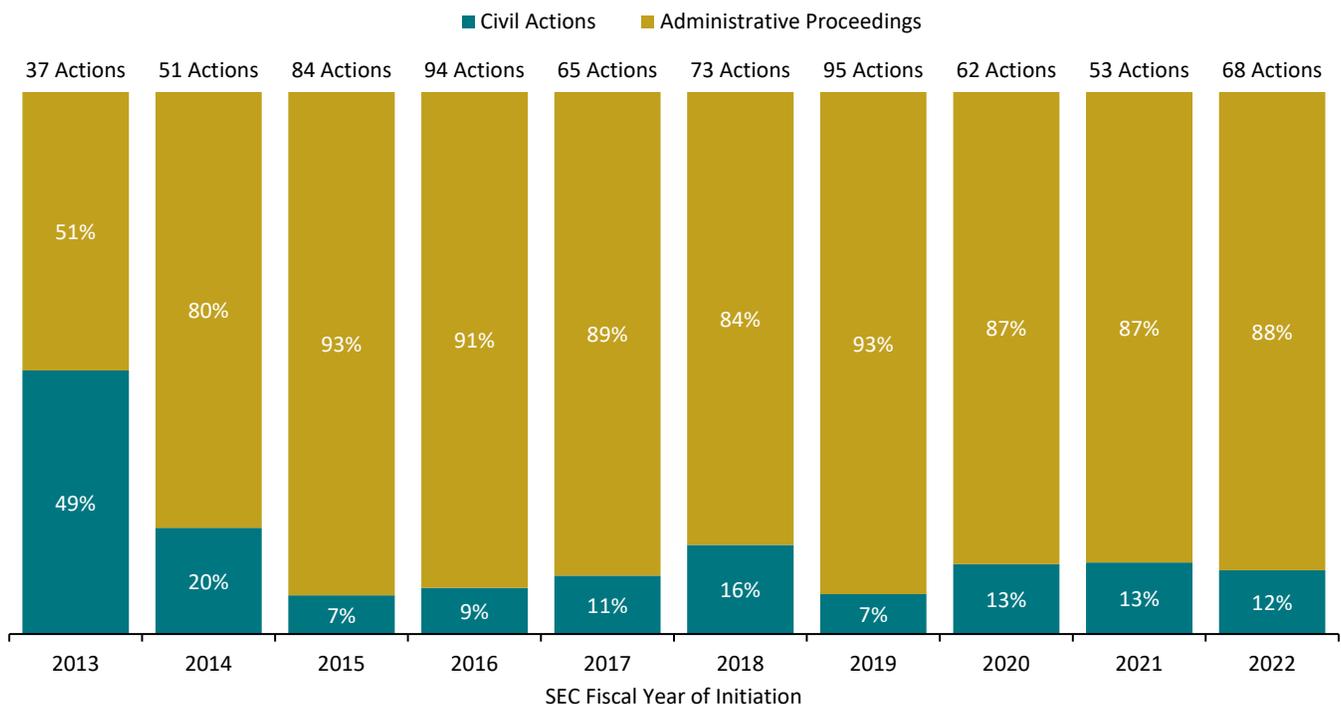
- In one matter, in May 2022, the SEC’s use of an administrative proceeding as opposed to filing a civil action was ruled unconstitutional by a Fifth Circuit panel.⁶
- Despite ongoing challenges to the constitutionality of the SEC’s use of ALJs, the SEC continued to bring the majority of actions (88%) as administrative proceedings in FY 2022.⁷
- The vast majority of public company and subsidiary actions (93%) in FY 2022 were filed and settled concurrently. Five actions were not filed and settled concurrently (referred to in this report as “litigated actions”) in FY 2022, more than the average of three over the prior five fiscal years.
- The increase in litigated actions is consistent with Chair Gensler’s statement that “more cases are being litigated and going to trial. We expect the number of litigated cases to continue to rise as Enforcement increasingly holds wrongdoers accountable with meaningful and, in some instances, escalating sanctions.”⁸

100%

Percentage of litigated actions in FY 2022 that were filed as civil actions.

- Four of the five litigated actions initiated in FY 2022 involved Issuer Reporting and Disclosure allegations.
- Like the prior six fiscal years (FY 2016–FY 2021), every litigated action in FY 2022 was filed as a civil action, rather than as an administrative proceeding.
- The percentage of civil actions litigated (63%) in FY 2022 was the second highest in SEED and higher than the average of 40% from FY 2013 to FY 2021.

Figure 4: Public Company and Subsidiary Actions by Enforcement Venue FY 2013–FY 2022



Source: Securities Enforcement Empirical Database (SEED)

Note: Relief defendants are not considered.

Settlements

Cooperation

The SEC considers four factors when negotiating a settlement with a cooperating defendant: “self-policing, self-reporting, remediation, and cooperation.”⁹ SEED measures the latter three factors as an indication of whether a public company or subsidiary defendant cooperated with the SEC based on whether the SEC acknowledges voluntary reporting or explicitly mentions “remediation” or “cooperation” by the defendant in the settlement announcement (collectively referred to in this report as “cooperation” or “cooperated”).

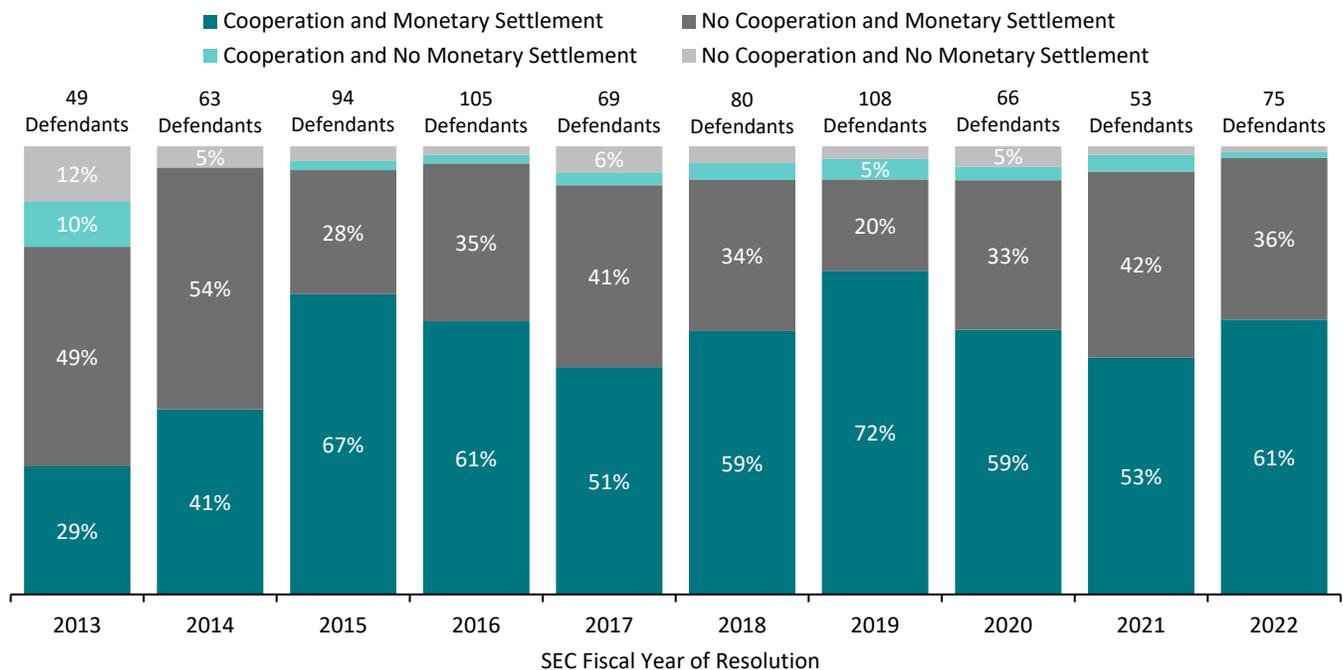
- The SEC noted cooperation by 63% of public company and subsidiary defendants in FY 2022, consistent with the average of 62% during the prior five fiscal years.
- Of the 75 public company and subsidiary defendants that settled during FY 2022, 97% involved a monetary settlement, the highest percentage of any fiscal year in SEED.

- Only 1% of public company and subsidiary defendants settled without cooperation noted and without a monetary component, the lowest percentage in any fiscal year in SEED.

3%

Percentage of public company and subsidiary defendants that settled during FY 2022 without a monetary component (regardless of whether cooperation was noted), the lowest percentage in any fiscal year in SEED.

Figure 5: Public Company and Subsidiary Defendants—Monetary Settlements and Cooperation Noted FY 2013–FY 2022



Source: Securities Enforcement Empirical Database (SEED)

Note: Settlements are counted at the defendant level. Relief defendants, individual defendants, and non-public company/non-subsidiary defendants are not considered. Defendants that did not settle, either because the action is ongoing or because the action was resolved through trial, are excluded. A defendant with cooperation indicates the defendant cooperated with the SEC prior to the non-trial resolution of that action. The words “cooperation” or “remediation” must be mentioned in the document detailing the non-trial resolution, or the SEC must acknowledge voluntary reporting by the defendant. Percentages may not add to 100% due to rounding.

Total Monetary Settlements

SEED includes data for monetary settlements imposed by the SEC on all types of defendants in public company and subsidiary actions: public companies, subsidiaries, individuals, and other entities.¹⁰

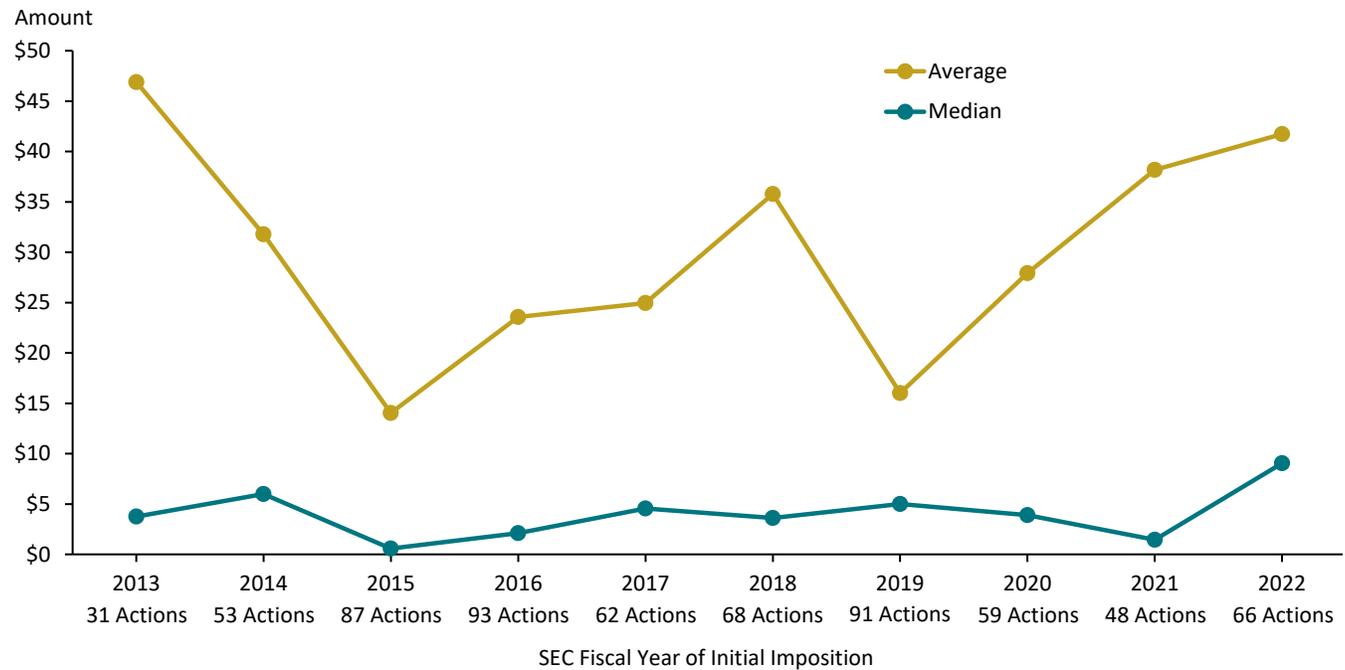
- Monetary settlements imposed in public company or subsidiary actions in FY 2022 reached \$2.8 billion, \$921 million more than in FY 2021 and \$321 million more than in any other fiscal year in SEED.
- This high total is consistent with the SEC’s public statements that “robust remedies” are an enforcement priority.¹¹
- The SEC imposed monetary settlements totaling \$1.2 billion against public broker-dealer subsidiaries due to recordkeeping failures in FY 2022. Those settlements represent 44% of total settlements in FY 2022.
- The median monetary settlement in FY 2022 was \$9 million, the largest in SEED.
- The FY 2022 average settlement was \$42 million, approximately \$13 million higher than the average of \$29 million from FY 2013 to FY 2021.
- This increased average monetary settlement was due to Broker Dealer actions. These actions had an average monetary settlement of \$77 million driven by the several \$125 million and \$50 million settlements in the recordkeeping failure actions.
- In contrast, the average monetary settlement in non-Broker Dealer actions fell from \$41 million in FY 2021 to \$30 million in FY 2022.

\$2.8 billion

Total monetary settlements in FY 2022, the largest amount in any fiscal year in SEED.

Figure 6: Monetary Settlements Imposed in Public Company and Subsidiary Actions FY 2013–FY 2022

(Dollars in millions)



Source: Securities Enforcement Empirical Database (SEED)

Note: Relief defendants are not considered. For actions where monetary settlements are not imposed on all defendants in the same fiscal year, actions are classified by the first fiscal year in which a monetary settlement was imposed. There are 18 actions for which not all defendants have settled. Total monetary settlements for those actions only include monetary settlements through September 30, 2022.

Disgorgement

- On January 1, 2021, in the National Defense Authorization Act, U.S. Congress expanded the SEC’s ability to pursue disgorgement in civil actions, increasing the statute of limitations to 10 years from the five years set by the U.S. Supreme Court in 2017.¹²
- Disgorgement and prejudgment interest imposed in FY 2022 decreased to \$507 million from \$839 million in the prior fiscal year. The FY 2022 amount was slightly more than half the FY 2013–FY 2021 average of \$925 million.
- The amount of disgorgement and prejudgment interest in civil actions in FY 2022 was \$44 million, lower than the average of \$296 million from FY 2013 to FY 2021.
- FY 2022 had the lowest percentage of actions with disgorgement and prejudgment interest as part of monetary settlements since FY 2015.

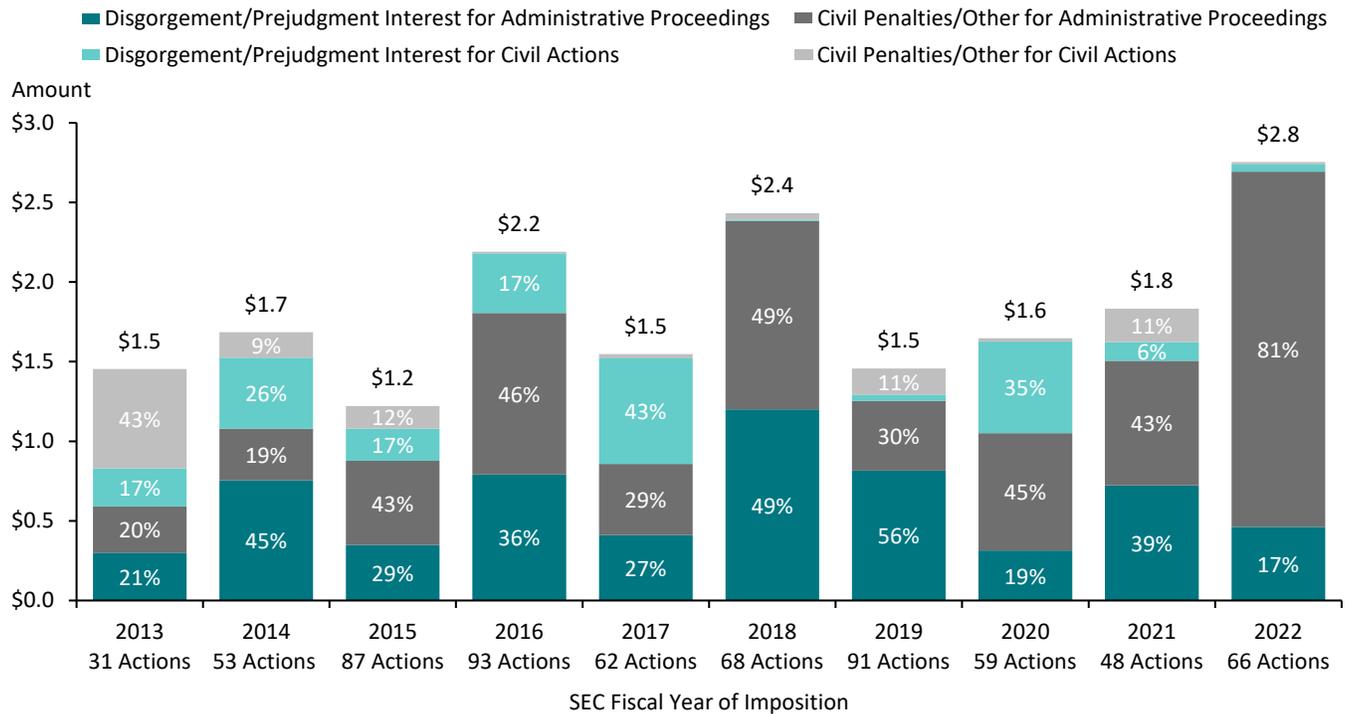
18%

Disgorgement and prejudgment interest as a percentage of total monetary settlements, the lowest percentage in any fiscal year in SEED.

- For administrative proceedings in FY 2022, 70% of actions only had civil penalties or other monetary penalties, substantially higher than the FY 2013–FY 2021 average of 58%.

Figure 7: Breakdown of Total Monetary Settlements Imposed in Public Company and Subsidiary Actions FY 2013–FY 2022

(Dollars in billions)



Source: Securities Enforcement Empirical Database (SEED)

Note: Relief defendants are not considered. For actions where monetary settlements are not imposed on all defendants in the same fiscal year, actions are classified by the first fiscal year in which a monetary settlement was imposed. There are 18 actions for which not all defendants have settled. Total monetary settlements for those actions only include monetary settlements through September 30, 2022. Percentages may not add up to 100% due to rounding.

Admission of Guilt

SEED includes data on admissions of guilt by public company and subsidiary defendants. SEED considers a defendant to have an admission of guilt if the admission is in the SEC action, as opposed to a parallel action.¹³

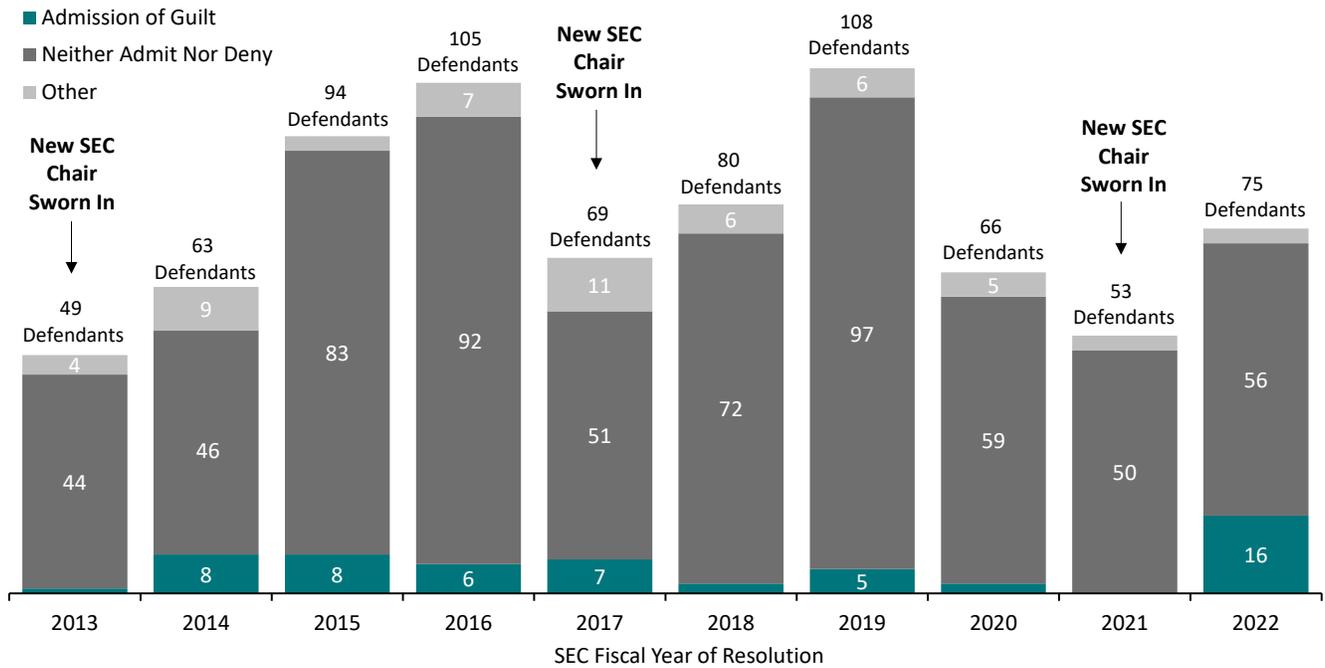
- The current SEC leadership has indicated that it “will seek admissions from wrongdoers in appropriate cases, where heightened accountability and acceptance of responsibility are in the public interest.”¹⁴
- Fifteen of the 16 public company or subsidiary defendants that had an admission of guilt were in actions announced on September 27, 2022, with Broker Dealer allegations in which defendants admitted to recordkeeping failures.¹⁵
- The other defendant with an admission of guilt was also in an action involving Broker Dealer allegations and recordkeeping failures. Across all 21 public companies and subsidiaries that settled Broker Dealer allegations in FY 2022, 76% of defendants had admissions of guilt.
- All admissions of guilt were in Broker Dealer allegation actions in FY 2022, higher than in FY 2013–FY 2021 where 62% of admissions of guilt were in Broker Dealer actions.

21%

Percentage of defendants that settled in FY 2022 with admissions of guilt, the highest percentage in any fiscal year in SEED.

- The 16 admissions of guilt in FY 2022 were double the highest number in any prior fiscal year in SEED and account for almost 30% of the total admissions of guilt (55) over the past 10 fiscal years (FY 2013–FY 2022).
- Admissions of guilt in the first approximately 18 months of Chair Gensler’s tenure are already higher than admissions during all of Chair Clayton’s tenure (nine) and over half the number of admissions during Chair White’s tenure (29). Chair Clayton’s and Chair White’s tenures each lasted more than 3.5 years.

Figure 8: Admission of Guilt by Public Company and Subsidiary Defendants FY 2013–FY 2022



Source: Securities Enforcement Empirical Database (SEED)

Note: Settlements are counted at the defendant level. Relief defendants, individual defendants, and non-public company/non-subsidiary defendants are not considered. Defendants that did not settle, either because the action is ongoing or because the action was resolved through trial, are excluded.

Research Sample

- The Securities Enforcement Empirical Database (SEED) is a collaboration between the NYU Pollack Center for Law & Business and Cornerstone Research. The analysis in this report is based on data identified by NYU and Cornerstone Research as of November 8, 2022 (<http://seed.law.nyu.edu>).
- SEED identifies 819 SEC enforcement actions initiated against 696 public companies and subsidiaries between October 1, 2009, and September 30, 2022.
- SEED identifies 329 individuals that are named defendants in the 819 actions initiated against public companies and subsidiaries between October 1, 2009, and September 30, 2022.
- The sample used for the majority of this report is referred to as “public company and subsidiary actions” and includes only those enforcement actions with public companies or their subsidiaries listed explicitly as defendants. The sample does not include cases where the allegations relate exclusively to delinquent filings.
- Public companies are defined as those that traded on a major U.S. exchange as identified by the Center for Research in Security Prices (CRSP) at the time the enforcement action was initiated, or otherwise within the five-year period preceding the initiation. Thus, public companies that traded over-the-counter or only on major non-U.S. exchanges are excluded, as are companies that did not become publicly traded until after the enforcement action was initiated.

SEED provides easily searchable and verified data on SEC enforcement actions to researchers, counsel, and corporations.

- Subsidiaries are defined as those entities that had a publicly traded parent company at the time the enforcement action was initiated, or otherwise within the five-year period preceding the initiation. The public parent companies of subsidiaries were identified as those cited in the enforcement action document initiating proceedings when available, or those identified through SEC filings if no parent company was mentioned in the initial enforcement action document.
- “Individuals” are defined as named defendants in actions against public companies or their subsidiaries.

Endnotes

- ¹ SEC fiscal years begin on October 1 of the prior year and end on September 30. SEC FY 2010 through FY 2022 spans October 1, 2009, to September 30, 2022.
- ² “SEC Charges 16 Wall Street Firms with Widespread Recordkeeping Failures,” U.S. Securities and Exchange Commission, September 27, 2022, <https://www.sec.gov/news/press-release/2022-174>.
- ³ “SEC Announces Enforcement Results for FY22,” U.S. Securities and Exchange Commission, November 15, 2022, <https://www.sec.gov/news/press-release/2022-206>.
- ⁴ “SEC Announces Enforcement Results for FY22,” U.S. Securities and Exchange Commission, November 15, 2022, <https://www.sec.gov/news/press-release/2022-206>.
- ⁵ “Gary Gensler Sworn in as Member of the SEC,” U.S. Securities and Exchange Commission, April 17, 2021, <https://www.sec.gov/news/press-release/2021-65>.
- ⁶ *Jarkesy et al. v. U.S. Securities and Exchange Commission*, No. 20-61007 (5th Cir. May 18, 2022).
- ⁷ Among the cases initiated in FY 2022, the percentage of actions brought as administrative proceedings increased slightly after the *Jarkesy* ruling, from 85% to 90% for cases filed after May 18, 2022.
- ⁸ Gary Gensler, Chair, U.S. Securities and Exchange Commission, “Testimony at Hearing before the Subcommittee on Financial Services and General Government U.S. House Appropriations Committee,” May 17, 2022, <https://www.sec.gov/news/testimony/gensler-testimony-fsgg-subcommittee>.
- ⁹ Andrew Ceresney, Director, Division of Enforcement, U.S. Securities and Exchange Commission, “The SEC’s Cooperation Program: Reflections on Five Years of Experience,” University of Texas School of Law’s Government Enforcement Institute, Dallas, TX, May 13, 2015, <https://www.sec.gov/news/speech/sec-cooperation-program.html> (emphasis in original omitted).
- ¹⁰ Total monetary settlements include disgorgement, prejudgment interest, civil penalties, and other monetary penalties imposed by the SEC in public company and subsidiary actions that were initiated in FY 2010 and later. For actions where monetary settlements are not imposed on all defendants in the same fiscal year, actions are classified by the first fiscal year in which a monetary settlement was imposed. There are 18 actions for which not all defendants have settled. Total monetary settlements for those actions only include monetary settlements through September 30, 2022.
- ¹¹ Gurbir Grewal, Director, Division of Enforcement, U.S. Securities and Exchange Commission, “Testimony on ‘Oversight of the SEC’s Division of Enforcement’ before the United States House of Representatives Committee on Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets,” July 21, 2022, <https://www.sec.gov/news/statement/grewal-statement-house-testimony-071922>. See also, e.g., “SEC Announces Enforcement Results for FY22,” U.S. Securities and Exchange Commission, November 15, 2022, <https://www.sec.gov/news/press-release/2022-206>.
- ¹² See, e.g., “A New Year’s Booster Shot: Congress Grants the SEC a Statutory Disgorgement Remedy and Extended Statute of Limitations,” *National Law Review*, January 4, 2021, <https://www.natlawreview.com/article/new-year-s-booster-shot-congress-grants-sec-statutory-disgorgement-remedy-and>.
- ¹³ SEED captures whether defendants had admissions of guilt or did not admit or deny the allegations. Defendants that do not fall into either of those categories typically have default judgments against them or consent to the entry of the resolution without specific language regarding the allegations.
- ¹⁴ Gurbir Grewal, Director, Division of Enforcement, U.S. Securities and Exchange Commission, “Testimony on ‘Oversight of the SEC’s Division of Enforcement’ before the United States House of Representatives Committee on Financial Services Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets,” July 21, 2022, <https://www.sec.gov/news/statement/grewal-statement-house-testimony-071922>.
- ¹⁵ “SEC Charges 16 Wall Street Firms with Widespread Recordkeeping Failures,” U.S. Securities and Exchange Commission, September 27, 2022, <https://www.sec.gov/news/press-release/2022-174>.

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Stephen Choi is a noted authority on SEC enforcement matters. He provides expert testimony before judges and juries and analyzes price impact, materiality, loss causation, securities disclosures and liability, and corporate governance. His research interests include empirical and theoretical analysis of securities litigation and SEC enforcement, corporate finance and governance, valuation, and financial institutions.

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The views expressed in this report are solely those of the authors, who are responsible for the content, and do not necessarily represent the views of the NYU Pollack Center for Law & Business or Cornerstone Research.

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