Morgan Lewis

REPORT

CURRENT DEVELOPMENTS IN SEC ENFORCEMENT

FOR PUBLIC COMPANIES AND A LOOK AHEAD

2024–2025

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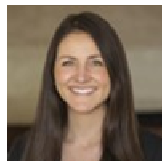

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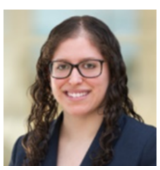

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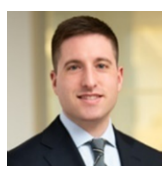

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CURRENT DEVELOPMENTS IN SEC ENFORCEMENT FOR PUBLIC COMPANIES AND A LOOK AHEAD

2024–2025

The US Securities and Exchange Commission (SEC) brought a number of notable enforcement proceedings against public companies in fiscal year 2024, which ended September 30, 2024, and into the first quarter of fiscal year 2025. We expect the SEC under the new administration to continue dedicating resources to enforcement investigations and actions in the public company space, with a particular focus on conduct that harms investors and a decreased emphasis on standalone internal controls violations. This report covers key takeaways and enforcement developments from the last year and a look ahead at what's to come in the SEC's FY 2025 and beyond.

The SEC filed 80 standalone actions against public companies and their subsidiaries in FY 2024. While this represents a 12% decrease from FY 2023, it should be noted that FY 2023 represented the third-highest of any fiscal year in terms of actions filed against public companies and subsidiaries, a sharp increase from FYs 2021 and 2022.[2] Moreover, standalone enforcement actions overall—rather than those specific to public companies—were down by a larger margin in FY 2024, falling from 501 in FY 2023 to 431 in FY 2024, and the lowest in a decade.[3]

Public company enforcement actions therefore comprised a significant portion of the SEC's docket, representing approximately 19% of all standalone enforcement actions brought in FY 2024.[4] Individuals (e.g., CEOs and CFOs) were charged in 50% of all standalone cases against public companies brought in FY 2024; this is down from 63% in FY 2023.[5]

Overall, the SEC obtained $8.2 billion in total monetary relief across all actions in FY 2024, the highest amount in SEC history. However, $4.5 billion (or 56% of the total monetary relief obtained) was attributable to the judgment following the SEC's jury trial win against Terraform Labs and Do Kwon.[6] Additionally, more than $600 million stemmed from settlements in the SEC's ongoing "off-channel communications" sweep (which in FY 2024 included 22 public companies and subsidiaries). Together these outliers comprised 62% of the total monetary relief obtained, and without them the SEC would have imposed in FY 2024 the lowest amount of monetary relief since FY 2013.[7]

As set forth below, enforcement activity against public companies focused on several key areas of interest for the SEC in 2024, including:

- Material Misstatements and Internal Controls Violations
- Cybersecurity
- Gatekeepers and Individual Liability
- Insider Trading and Material Nonpublic Information
- Sweep Investigations
- Foreign Corrupt Practices Act Violations

A Return to More Traditional Areas of Enforcement Focus

In 2024, the SEC placed a significant focus on more novel areas including environmental, social, and governance (ESG) related disclosures, standalone internal controls violations, insider trading, and sweeps that focused on, among other things, compliance with whistleblower protections and failures to file required forms. The SEC also brought a number of cases against public companies for disclosure violations across a variety of topics, and we expect that to continue throughout 2025 under the SEC's new leadership.

We expect to see a shift in remedies pursued, with penalties that are tied more closely to precedent and give shareholder harm significant weight, as well as an increased focus on individual accountability. This reshifting of priorities may be further driven by the SEC's loss in the *Jarkesy* case at the US Supreme Court (discussed in our June 2024 LawFlash), which the SEC itself appears to have viewed as significantly curtailing its ability to bring contested enforcement actions in its own administrative forum.[8]

PUBLIC COMPANY PENALTIES AND REMEDIES

The SEC utilized numerous remedies in matters involving public companies in FY 2024, including:

- **Civil Money Penalties:** In FY 2024, the SEC imposed approximately $1.5 billion in civil penalties against public companies and their subsidiaries, including $784 million in administrative proceeding settlements. Going forward, we anticipate a return to the SEC's 2006 statement on financial penalties as a guiding principle,[9] including disfavoring corporate issuer penalties when the penalties would be paid by shareholders who had been the principal victims of the violation. Paul Atkins, the incoming SEC Chair, served as a commissioner when the 2006 statement was issued, and we expect that when deciding whether to impose a penalty against a public company the SEC will once again focus on the central question of whether the violation provided an improper benefit to shareholders or whether the violation harmed shareholders.[10] We also anticipate that the SEC will place renewed emphasis on seeking penalties from individuals acting on behalf of public companies[11] and penalties will hew more closely to past precedent.

- **Disgorgement:** In FY 2024, the SEC obtained a total of $6.1 billion in disgorgement and prejudgment interest, the highest amount on record.[12] Of the SEC's total monetary relief obtained (the $8.2 billion previously noted), 15% was derived from disgorgement and prejudgment interest in civil actions brought against public companies and their subsidiaries.[13] During the last Republican administration, we saw distributions of disgorgement to harmed investors skyrocket from $158 million in 2015 to $1.07 billion in 2017.[14] In the coming administration, we expect to see disgorgement rise again as the focus on penalties decreases.

- **Officer and Director Bars and Rule 102(e) Proceedings:** The SEC obtained orders barring 124 individuals from serving as officers and directors of public companies in FY 2024, the second-highest number of officer and director (O&D) bars imposed in the last decade (the highest being FY 2023).[15] A number of these actions involved private companies or individuals who worked at public companies but never in an officer or director capacity. We expect to see the new administration be more targeted in its approach, tailoring remedies to the facts of each particular case. Further, in August 2024 the SEC dismissed a number of contested Rule 102(e) proceedings seeking to prohibit accountants, who allegedly failed to conduct proper audits, from appearing or practicing before the SEC.[16] It is likely that the US Supreme Court's decision in *SEC v. Jarkesy* (holding that certain of the SEC's administrative proceedings that are "legal in nature" violate the Seventh Amendment) was the impetus for dismissing these actions seeking Rule 102(e) bars, which can only be brought administratively. There has, however, been an increase in "conduct-based injunctions," which can be used to bar activity in a similar way to a Rule 102(e) bar, being brought in federal district courts, a trend that may continue.

- **Sarbanes-Oxley (SOX) 304 Clawbacks:** So-called "clawbacks"—requiring CEOs and CFOs to return certain incentive compensation when their companies issue accounting restatements due to misconduct—continue to make up only a small portion of monetary relief obtained by the SEC.[17] In recent years, senior officials at the SEC have publicly emphasized their views that the SEC may seek clawbacks even when executives did not themselves engage in wrongdoing and may seek to claw back all compensation those executives received (and not just the "fraud delta," or compensation that was allegedly inflated due to the reporting problem). We expect to see a return to a more conservative application of SOX 304 clawbacks, with an application only in matters where the SEC charges violations of the antifraud provisions and seeks to recover only the fraud delta.

- **Cooperation Credit:** In FY 2024, the SEC repeatedly emphasized the importance and benefits of "cooperating" with the SEC, including by self-policing, self-reporting, remediation, cooperation, and collaboration.[18] The enforcement numbers for FY 2024 reflect a similar focus on cooperation, with the orders in 75% of the settled actions against public companies referencing the respondent's cooperation, the highest level since FY 2019; further, 15% of public company respondents settled without any monetary penalty, the highest percentage since FY 2013.[19]

- **Independent Compliance Consultants:** A requirement to retain an independent compliance consultant (ICC) is often an aspect of SEC settlements, particularly in cases involving regulated entities such as broker-dealers and investment advisors. Historically, this remedy has rarely been imposed in cases involving public companies, and is usually targeted at regulated entities and their policies and procedures requirements under federal securities laws. In calendar year 2024, however, we saw several settlements ordering public companies to retain ICCs to review the companies' policies, procedures, and controls and implement the consultants' recommendations for improvements.[20] ICCs are typically an expensive undertaking, and while we expect the SEC to require public companies to retain them only sparingly, ICCs may be imposed going forward in certain circumstances where the SEC considers them necessary, such as instances where egregious issues involving a company's policies, procedures, and/or controls led to serious violations and an impact on investors.

PUBLIC COMPANY AREAS OF FOCUS AND A LOOK AHEAD

Material Misstatements and Internal Controls Violations

In FY 2024 the SEC continued to scrutinize whether public companies were providing investors with materially accurate information. A number of these cases involved charges of violations of the antifraud provisions of the federal securities laws as well as violations of the rules and regulations requiring that companies not issue materially misstated public filings. In these matters, the SEC also often charged companies with violating various rules related to internal controls, including those requiring certain internal accounting controls and controls related to the disclosure of information to investors. Additionally, in a number of proceedings, the SEC charged **only** internal controls violations, with no allegations of materially misleading disclosures or misstated financial reports. Going forward, we expect the SEC to continue to focus on disclosures to investors, but we expect a decrease in the number of actions that involve only violations of a company's internal controls without alleged harm to investors.

Matters Involving Violations of Generally Accepted Accounting Principles

The SEC brought a number of matters in FY 2024 involving allegations that companies' financial statements did not comply with Generally Accepted Accounting Principles (GAAP). Some of these matters included allegations of intentional misconduct designed to inflate revenue and manipulate guidance. Others, however, relied on a theory of negligence, such as allegations that relying on analyses that omitted key information meant a company knew or should have known that their disclosures were misleading.

For example, the SEC highlighted in its Enforcement Results for FY 2024 a matter involving numerous GAAP violations that arose from an alleged accounting fraud. The SEC laid out a long list of improper behavior including failure to identify related parties in an acquisition, improper accounting of assets, overstating revenue, and issuing false and misleading revenue guidance.[21] The SEC also alleged deficiencies in the company's internal controls and misstatements made regarding the effectiveness of its controls.

The SEC settled with the company, its former and current CEO, and former CFO, with the company agreeing to a $1.4 million penalty and to retain an ICC and the former CEO agreeing to $3.3 million in disgorgement and civil penalties for the individuals ranging from $75,000 to $200,000.[22] The SEC also imposed a 10-year O&D bar against the former CEO and imposed a two-year Rule 102(e) bar against the former CFO. Going forward, we expect the SEC will continue to maintain interest in GAAP violations, particularly those resulting from intentional misconduct. The SEC's trend in FY 2024 toward imposing bars and requiring companies to retain an ICC is discussed more fully above.

Non-GAAP Metrics and Other Disclosure Cases

The SEC pursued a broad range of other types of alleged disclosure violations in FY 2024. In particular, the SEC focused on disclosure of non-GAAP metrics—such as measures of performance, financial position, or cash flow—that are not required by GAAP to be calculated or included in financial statements.[23] The SEC has demonstrated an interest in disclosure of non-GAAP metrics that companies identify as "key" or otherwise hold out as important to investors, and requires that such metrics be accompanied with an appropriately clear and accurate description regarding how they are calculated.[24]

Last year, the SEC imposed a $1.5 million civil penalty on a public company that allegedly identified its number of monthly users as one of seven key operating and financial metrics and evidence of the company's success and value proposition, but misled investors in various public filings about how the metric was calculated.[25] According to the SEC, the company defined the metric, albeit at times inconsistently, as the number of users who had "engaged with" the website, but allegedly the numbers incorporated users who had been shown a pop-up for the website and had not actively interacted with it. The SEC criticized the company for allegedly failing to understand and provide clear disclosure for exactly how the metric was calculated and ensuring that the internal calculations were not inconsistent with public disclosures.

Beyond just financial metrics, the SEC also demonstrated an interest in other types of misstatements and inaccurate disclosures. This is exemplified by the SEC touting a $40 million settlement with a pharmaceutical company that the SEC alleged had misled investors regarding the results of its Alzheimer treatment clinical trial. Similar to other actions in FY 2024, the SEC did not limit its settlement to solely the company, but also settled charges with the former CEO, former SVP, and a consultant, imposing O&D bars and individual civil penalties.

Growing Interest in AI

Going forward, we also expect the SEC to focus more attention on public company disclosures regarding artificial intelligence. As discussed in our forthcoming report regarding Current Developments in SEC Enforcement for Broker-Dealers and Investment Advisers, the SEC last year brought AI-related actions in the investment adviser context. The SEC also brought an enforcement action against a private company for materially misleading statements about its professed AI capabilities[26] and filed a securities fraud case against the founder and CEO of a now-defunct AI recruitment startup for, among other things, making material misrepresentations about the company's use of AI.

These actions provide insight into where the SEC may turn next when looking at public companies' public statements and disclosures regarding their use of AI. Further, lessons can be gleaned from a recent SEC action against a public company for alleged "greenwashing," that is, making false, misleading, or inaccurate claims about a product's (or company's) environmental impacts or benefits. There, the SEC alleged that the company greenwashed its public statements by omitting material information about its product's environmental impact—information that allegedly would have allowed "investors to get the full picture." This action serves as a template for how "AI-washing" cases could move beyond just blatant falsity into the more exacting realm of materially incomplete disclosures.

Cybersecurity

In July 2024, the US District Court for the Southern District of New York dismissed nearly all of the SEC's claims against software company SolarWinds and its Chief Information Security Officer (CISO) in a case originally filed in October 2023, alleging violations stemming from a 2020 cyberattack.[27] The court held that large portions of the company's public statements were nonactionable corporate puffery, that all of the company's disclosures following the 2020 attack were not actionable, and that the alleged internal controls violations were not viable.[28]

Of note to other public companies, however, the only potential materially misleading statement that survived was related to statements made by the company on its public-facing website regarding its cybersecurity measures; the court held that this disclosure could form the basis for allegations of material misstatements to investors. For more on this decision, see our July 2024 Securities Enforcement Roundup.[29]

In June 2024, a month before the court's motion to dismiss ruling in *SolarWinds*, the SEC settled charges against a global provider of business communication and marketing services for alleged failures regarding its internal controls and related cybersecurity incidents.[30] The SEC noted that its appreciation for the company's proactive compliance was "reflected in the terms of [the] settlement"[31] and the imposition of a civil penalty was limited to no more than $2.125 million "based upon [the company's] cooperation."[32]

The SEC has since continued to charge companies with making materially misleading cybersecurity disclosures. In October 2024, the SEC announced charges against four public technology and software companies with deficient disclosures regarding cyber-intrusions related to those at issue in *SolarWinds*.[33] The four companies agreed to settle the charges by paying between $990,000 and $4 million per company in civil penalties.[34] The Republican commissioners issued a dissenting statement, arguing that the Commission was "playing Monday morning quarterback" by engaging in a hindsight review to argue that the companies' disclosures contained insufficient details, a preview of how this next administration may view cyber disclosures.[35]

Further, in December 2024 the SEC settled charges against another company for materially misleading statements regarding a cyberattack with the company agreeing to pay a $3.55 million civil penalty.[36] Notably, none of these matters included alleged violations of the SEC's new cyber disclosures rules and amendments for public companies that mandate disclosure of cybersecurity risk management, strategy, governance, and incident reporting, which became effective in September 2023 (as discussed in our August 2023 LawFlash).[37]

It remains to be seen how the SEC will apply these new rules in an enforcement context. Nevertheless, we expect that the SEC will continue to investigate public company disclosures and other possible violations following cyberattacks. We also anticipate, however, that any SEC actions will result only in situations involving significant adverse facts (such as the theft of very large amounts of sensitive customer data over a prolonged period, with significant warning signs that are disregarded) and only where the SEC believes it can allege materially misleading and fraudulent disclosures to investors.

"Gatekeepers" and Individual Liability

"Gatekeepers"—which include auditors, lawyers, and corporate executives who, in the SEC's view, play an important role in setting an appropriate tone at the top and encouraging compliance with the securities laws and regulations—are "often the first lines of defense against misconduct."[38]

The cases resolved this year suggest that the SEC will continue to focus on individuals in positions that provide them the ability to influence a public company's compliance processes and disclosures. For example, in 2024 the SEC charged the former CEO of a technology company in connection with a fraudulent scheme to overstate and misrepresent revenue in connection with two public offerings.[39] In the same action, the SEC charged the former CFO and former audit committee chair for failing to take appropriate action after learning of the alleged overstatements, misrepresentations, and concerns about revenue at issue.[40] The SEC's press release noted that "[t]his case should send an important signal to gatekeepers like CFOs and audit committee members that the SEC and the investing public expect responsible behavior when critical issues are brought to their attention."[41]

Similarly, in holding individual actors responsible for corporate wrongdoing, the SEC brought charges against a public company and its CEO and CFO for a variety of alleged fraudulent conduct.[42] For example, the SEC alleged that the company's CEO, with the assistance of the CFO, misappropriated approximately $3.4 million from the company through related-party transactions and otherwise, for the benefit of himself and his family, including to purchase and maintain a stable of luxury vehicles for personal use. The company agreed to pay a civil penalty of $3.9 million. The SEC separately filed a settled district court action against the CEO and CFO, who were ordered to pay civil penalties of $300,000 and $80,000, respectively, and agreed to O&D bars.[43] The CEO also agreed to a SOX 304 clawback of nearly $1 million.[44]

The SEC also levied significant penalties against other individuals last year, including CFOs and accountants. In particular, the SEC obtained a $125,000 civil penalty against a former CFO and former controller in connection with alleged revenue recognition-related violations.[45] The SEC's allegations against the controller highlight the SEC's intent on pursuing individuals who in the SEC's view played a role in the alleged fraudulent acts and also were in a position to influence the company's actions. The SEC alleged that the controller approved the revenue recognition for one transaction among several alleged by the SEC to be fraudulent.[46] The SEC also charged a former CFO for his alleged role in an accounting fraud involving his employer's workers' compensation expenses, which included a permanent bar from serving as a public company officer.[47] Two of these actions included SOX 304 clawbacks.

The SEC also focused on auditors in FY 2024, charging an audit firm and its owner for alleged "deliberate and systemic" failures to comply with the standards of the Public Company Accounting Oversight Board in its audits and reviews incorporated in more than 1,500 SEC filings.[48] In addition to permanent suspensions from appearing or practicing before the SEC, the defendants agreed to pay a combined $14 million in civil penalties.[49] The SEC's press release noted that the defendants "were responsible for one of the largest wholesale failures by gatekeepers in our financial markets."[50]

The SEC settled charges against another accounting firm in connection with its audits of the FTX crypto trading platform and for alleged auditor independence violations.[51] Specifically, the SEC alleged that from February 2021 to April 2022 the firm issued two audit reports for FTX that falsely misrepresented that the audits complied with Generally Accepted Auditing Standards.[52] The SEC separately alleged that between approximately December 2017 and October 2020 the firm improperly included indemnification provisions in engagement letters for more than 200 audits, reviews, and exams, and as a result was not independent from its clients, as required under the federal securities laws.[53] This action highlights the SEC's view of auditors as playing a critical role in protecting investors, and we expect the SEC to continue its focus on gatekeepers and individual liability in the years ahead.

Insider Trading and Material Nonpublic Information

Despite representing a relatively small subset of overall actions (6% of total actions and 8% of civil and standalone administrative proceedings), insider trading remained a priority for the SEC in FY 2024. Going forward, we expect the SEC to place a renewed focus on insider trading as an example of "back to basics" fraud under traditional insider trading theories. Some of the SEC's more notable cases and developments in FY 2024 include the following:

- **"Shadow Trading"** – In April 2024, the SEC obtained a favorable insider trading verdict in a jury trial in a first-of-its-kind action involving "shadow trading," a novel theory of insider trading involving transactions in stocks of issuers in the same industry or sector of a company about which the trader allegedly has insider information.[54] The *Panuwat* case involved the defendant's purchase of call options of a company allegedly using MNPI about his own company's impending acquisition—the linchpin for the SEC being the purported "market connection" between the two companies. Notably, Panuwat's employer's expansive insider trading policy prohibited trading in securities of **other** public companies, including competitors, while in possession of MNPI that could result in a personal benefit, or investing edge, to the employee.[55] In September, the US District Court for the Northern District of California denied Mr. Panuwat's motions for judgment as a matter of law and for a new trial, enjoined him from further violations of the securities laws, and ordered the maximum civil penalty (more than $320,000, three times Mr. Panuwat's trading profit).[56] While we do not expect the SEC to continue aggressively pursuing such novel insider trading theories in the years ahead, companies should continue to consider their specific risk profiles and revisit their insider trading policies and procedures with the *Panuwat* case in mind.

- **The SEC's Continued Use of Data Analytics Tools to Detect Potentially Suspicious Trading** – The following cases all originated with the SEC's Market Abuse Unit's Analysis and Detection Center, which uses data analytics to identify patterns of suspicious trading, demonstrating the SEC's continued use of sophisticated data analytics in 2024 and likely beyond:
  - *SEC v. Andre Wong*: On June 3, 2024, the SEC filed charges against a former executive of a public company for allegedly trading based on MNPI received from a colleague concerning their then-employer's impending acquisition of another company.[57] The case is currently pending in the US District Court for the Southern District of New York.
  - *SEC v. Philip Markin*: On September 19, 2024, the SEC announced that it had settled charges against one of five individuals allegedly part of an insider trading scheme concerning a tender offer for a pharmaceutical company.[58] According to the SEC, the defendant had been tipped by his cousin, who had received MNPI from a former romantic partner, an attorney who represented the acquiring company making the tender offer.[59]
  - *SEC v. Bryan Scott McMillan*: On September 26, 2024, the SEC filed charges against an individual who allegedly traded based on MNPI he received from his domestic partner concerning the impending acquisition of the medical technology company where his partner was employed.[60] The case is currently pending in the US District Court for the Northern District of Texas.
- **Rule 10b5-1 Trading Plans** – In June 2024, a jury awarded the US Department of Justice (DOJ) its first criminal conviction for insider trading premised solely on improper use of a Rule 10b5-1 trading plan, which permits corporate insiders (e.g., directors, officers) to set up a pre-established plan for selling or buying company stock so long as they meet certain criteria. Rule 10b5-1, a regulation adopted by the SEC in 2000 and recently amended in 2022,[61] provides an affirmative defense to an alleged violation of Rule 10b-5 (the operative rule prohibiting insider trading). Notably, the SEC had initiated parallel proceedings for the same conduct (which occurred before Rule 10b5-1 was amended), which were stayed while the DOJ case was pending. We expect the SEC will continue scrutinizing trading under plans implemented pursuant to Rule 10b5-1.

In light of the SEC's continued focus on insider trading, which we expect to continue under the new administration, and as we previously discussed in a December 2022 LawFlash[62] following the SEC's adoption of the amendments to the rule, public companies should examine their disclosure and insider trading policies and procedures, review training programs to ensure compliance with amended Rule 10b5-1 and ensure a robust system is in place for monitoring potential violations of disclosure and insider trading policies and procedures.

Sweeps

Once a tool used almost exclusively by the SEC's Division of Examination to police registrants, the Division of Enforcement has increasingly utilized issue-focused sweep investigations over the last few years, bringing heightened attention to recurring issues. In FY 2024, 38 actions were brought against public companies and subsidiaries as part of five sweeps, including for violations of whistleblower protection rules and failures to timely file beneficial ownership and insider transaction reports.[63] In the years ahead, we expect an approach that may result in cases in the same area, but with a decreased emphasis on large sweeps and high penalties.

Whistleblower Protections

FY 2024 was an active year for the SEC's Whistleblower Program, with more than 25,000 reported whistleblower tips and awards totaling more than $255 million.[64] Notably, whistleblowers providing tips to the SEC in FY 2024 were not solely company insiders. While 62% of award recipients were insiders, 38% were outside investors, potential investors, competitors, or market observers. Given the importance of whistleblowers to the SEC's Enforcement efforts, it is not surprising that the SEC took aggressive action in FY 2024 to provide whistleblowers with increased protection.

In FY 2024 the SEC brought 11 enforcement actions in connection with an enforcement sweep targeting violations of Rule 21F-17 of the Securities Exchange Act, which prohibits efforts to impede whistleblowers from communicating with the SEC about potential securities law violations.[65] This marked a notable increase from FY 2023, with more than double the number of actions brought in the previous fiscal year.[66] For example, the SEC reached settlements with seven public companies over the use of agreements that required employees to waive their rights to whistleblower monetary awards.[67]

While we have typically seen the SEC focus on violations of the whistleblower protection rule with respect to employee agreements, in FY 2024 the Commission also brought an action based on an entity's settlement agreements with its **clients**. As a result, all agreements with confidentiality provisions (e.g., employment agreements, settlement agreements, customer agreements, even internal employee manuals) are seemingly fair game if the SEC perceives such agreements impede the signing party's ability to directly contact the SEC. Looking ahead to the rest of FY 2025, we expect to continue to see enforcement actions regarding whistleblower protection, but reverting to a focus on agreements that contain clear impediments to reporting.

Beneficial Ownership and Insider Transaction Reports

In FY 2024, the SEC brought several actions against public companies and subsidiaries as part of a sweep investigation relating to failure to timely file and/or amend Section 13 and 16 filings, including beneficial ownership and insider transaction reports.[68] In September 2024, the SEC announced settlements with 13 investment firms, 10 individuals, and two public companies.[69] The two public companies were charged with contributing to the filing failures of certain of their directors and officers as well as failing to report filing delinquencies pursuant to Item 405 of Regulation S-K.[70] While we do not expect the new administration to place such an emphasis on filing deficiencies, public companies should remain aware of potential liability stemming from an associated individual's failure to timely report holdings and transactions.

Foreign Corrupt Practices Act Violations

FY 2024 was relatively quiet for Foreign Corrupt Practice Act (FCPA) enforcement with only two actions filed; however, the SEC did see a significant uptick in actions during the first quarter of FY 2025 with five actions filed.[71] A common thread across these cases was the failure of companies to maintain adequate internal controls, particularly concerning third-party intermediaries.[72] Whether through improper payments to foreign officials in exchange for contracts or the use of sham invoices to disguise bribes, these cases reveal persistent weaknesses in corporate compliance frameworks.[73] Notably, the SEC's focus on books-and-records violations underscores the importance of transparent financial documentation to prevent corruption.[74]

CONCLUSION

We expect the SEC to continue its focus on public companies and their subsidiaries, but under the new presidential administration the focus will likely shift "back to basics" and away from some of the more unique and novel issues that featured prominently in enforcement activity in 2024.

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[1] Through her previous role at the SEC, partner and co-author Carolyn Welshhans was with the agency when many of the matters discussed in this report were resolved, including direct involvement in certain of the matters. The issues and analysis in this report are based solely on information from publicly available sources.

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