CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

SEC Enforcement Activity: Public Companies and Subsidiaries

Fiscal Year 2021 Update

ANALYSIS AND TRENDS

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New: Admission of Guilt

NYU Pollack Center for Law & Business

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Executive Summary

For the second year in a row, the number of SEC actions filed against public company and subsidiary defendants declined. The 53 public company and subsidiary actions in FY 2021 represented a drop of 15% from FY 2020 and was the lowest total in seven years. Despite this decrease, SEC monetary settlements in these actions totaled $1.8 billion, in line with the FY 2012–FY 2020 average of $1.6 billion.

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.

For the first time in 10 years, there were no public company or subsidiary defendants with admissions of guilt in FY 2021.

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Filings

- The SEC filed 53 actions against public companies and subsidiaries in FY 2021, the lowest number since FY 2014. (page 3)
- The decrease in actions in FY 2021 from FY 2020 is consistent with the trend seen in 2013 and 2017, other years in which a new SEC Chair was sworn in. (page 3)

Allegations

- Issuer Reporting and Disclosure allegations were the primary allegation type in 51% of public company and subsidiary actions in FY 2021. (page 4)
- Foreign Corrupt Practices Act actions accounted for only 8% of all actions against public companies and subsidiaries in FY 2021, the lowest percentage in the years tracked by SEED. (page 4)

Enforcement Venue

- The majority of actions continued to be brought as administrative proceedings in FY 2021, with 87% (46 actions) brought in that venue. (page 5)
- The six actions (all civil actions) in FY 2021 without concurrent resolutions is the highest number since FY 2012. (page 5)

Settlements

- The SEC noted cooperation by 58% of public company and subsidiary defendants in actions settled in FY 2021, consistent with the FY 2012–FY 2020 average. (page 6)
- The median monetary settlement in FY 2021 was $1 million, lower than the average median of $4 million from FY 2012 to FY 2020. (page 7)
- Of the $1.8 billion in monetary settlements imposed on public companies and subsidiaries in FY 2021, $835 million (46%) came from disgorgement and prejudgment interest. The average from FY 2012 through FY 2020 was $877 million (55% of total monetary settlements). (page 8)
- The number public company and subsidiary defendants with admissions of guilt decreased in each of the past two years, from five in FY 2019, to two in FY 2020, to zero in FY 2021. (page 9)

Key Trends

Enforcement actions filed against public companies and subsidiaries slowed in FY 2021 to 53 as the COVID-19 pandemic continued and the SEC transitioned to a new Chair. Issuer Reporting and Disclosure allegations accounted for the majority (51%) of public company and subsidiary actions in FY 2021.

- New actions against public companies and subsidiaries slowed to 53 actions, the lowest number since 2014. This is also 15% lower than FY 2020 and 32% lower than the average over the prior five fiscal years.
- Similar to FY 2020, Issuer Reporting and Disclosure allegations were the most common allegation type against public companies and subsidiaries in FY 2021, accounting for more than half of all FY 2021 actions.
- In public company and subsidiary actions resolved in FY 2021, 46% of defendants in actions with Issuer Reporting and Disclosure allegations had settlements noting cooperation, compared to 71% of defendants in actions with other allegations.
- The median monetary settlement in FY 2021 was $1 million, less than one-third of the average median from FY 2012 to FY 2020 and the lowest median since FY 2015.
- In FY 2021, the SEC filed five actions related to COVID-19, including the first COVID-19-related action against a public company or subsidiary.[2]
- One action with a public company or subsidiary defendant was filed against a special purpose acquisition company (SPAC) in FY 2021, the first action against a SPAC in SEED. Actions against companies that have gone public through a SPAC have been filed in prior years, but the SPACs themselves were not named as defendants in those matters.
- The SEC filed three cybersecurity actions against public companies and subsidiaries in FY 2021.
- In FY 2021, the SEC filed one action under its EPS initiative, bringing the total number of actions under the initiative to three.[3]

Figure 1: Key Trends in Public Company and Subsidiary Actions
FY 2012–FY 2021

	FY 2012–FY 2020 *Average*	FY 2021 Issuer Reporting and Disclosure Actions	FY 2021 Other Actions	**FY 2021** ***Total***
New Actions	67	27	26	**53**
Actions Filed as Administrative Proceedings	79%	81%	92%	**87%**
Defendants with Settlements Noting Cooperation	58%	46%	71%	**58%**
Defendants with Monetary Settlements Imposed	91%	89%	100%	**94%**
Average Monetary Settlements Imposed by the SEC	$27 million	$29 million	$47 million	**$38 million**
Median Monetary Settlements Imposed by the SEC	$4 million	$1 million	$1 million	**$1 million**
Disgorgement and Prejudgment Interest Imposed by the SEC in Civil Actions	$326 million	$113 million	$0	**$113 million**

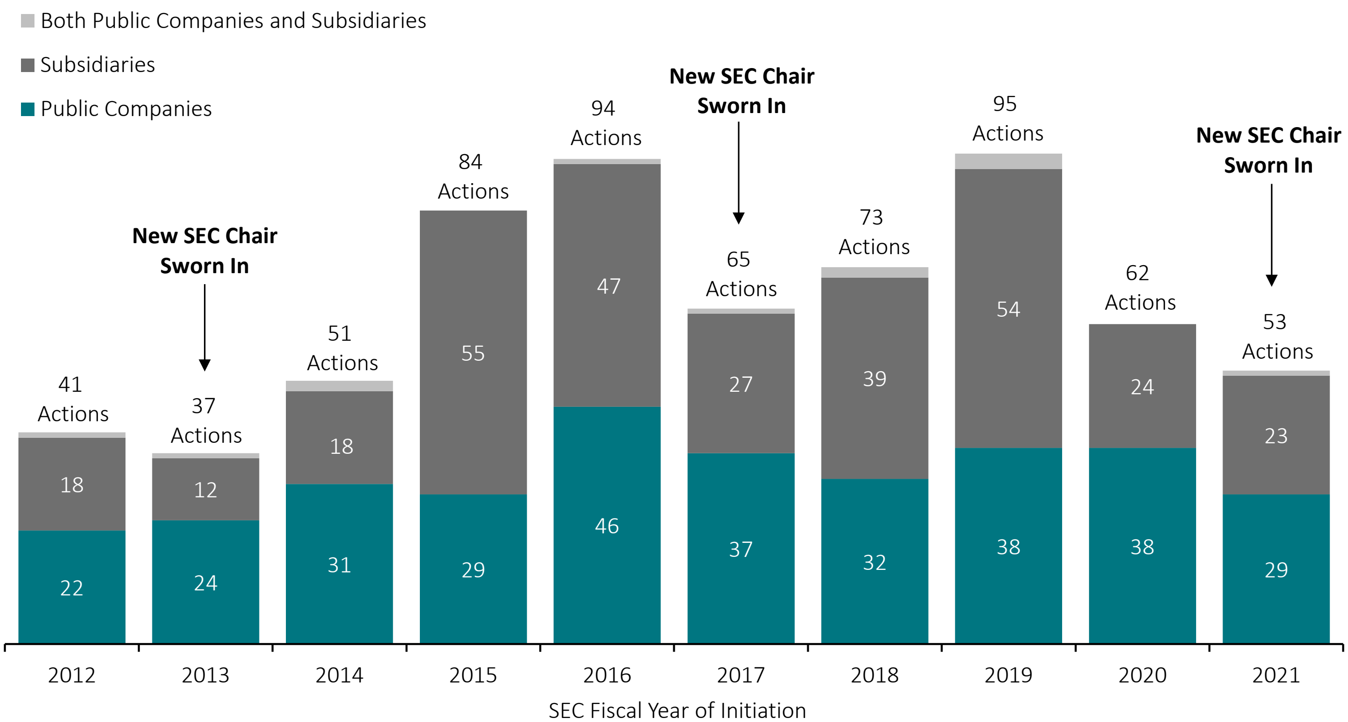
Number of Filings

- The SEC filed 53 public company and subsidiary actions in FY 2021, nine fewer than in FY 2020 and the lowest in any fiscal year since FY 2014. Of these, 45% (24 actions) were filed in the first half of the fiscal year.
- On April 17, 2021, Gary Gensler was sworn in as the Chair of the SEC.[4]
- Similar to FY 2021, SEED actions decreased in other years in which a new SEC Chair was sworn in (FY 2013 and FY 2017).[5]
- A subsidiary defendant was included in 45% of all actions in FY 2021, in line with the average of 48% from FY 2012 through FY 2020.
- The SEC filed eight actions in the last month of the fiscal year (September 2021). This was lower than the last month of FY 2019 (22 actions) and FY 2020 (20 actions), as well as the September average of 14 actions in FY 2012–FY 2020.
- The first action in SEED against a SPAC was filed in FY 2021, although there are SPAC-related actions in SEED filed against companies that have gone public through a SPAC as early as FY 2013.

53

Number of actions filed against public companies and subsidiaries in FY 2021, the lowest number since FY 2014.

Figure 2: Public Company and Subsidiary Actions
FY 2012–FY 2021



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. FY 2021 was the first year that Issuer Reporting and Disclosure accounted for the majority (51%) of public company and subsidiary actions filed.
- Investment Adviser/Investment Company actions accounted for 26% of public company and subsidiary actions in FY 2021. This was the third year in a row in which Investment Adviser/Investment Company actions accounted for more than 20% of actions.
- Foreign Corrupt Practices Act actions accounted for 8% of all actions against public companies and subsidiaries in FY 2021, the only time this percentage has been below 10% in the years tracked by SEED.
- In FY 2021, there were only two Broker Dealer actions (4%), continuing a decrease in share of actions since FY 2018, and the lowest number of actions since FY 2013 when there were zero.
- One Insider Trading action was filed in FY 2021, the first such action in SEED.

51%

Percentage of actions involving Issuer Reporting and Disclosure allegations—the first time more than half of the actions were of the same allegation type.

Figure 3: Heat Map of Allegations against Public Companies and Subsidiaries
FY 2012–FY 2021

Allegation Type	SEC Fiscal Year of Initiation										
	Average 2012–2020	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Issuer Reporting and Disclosure	37%	32%	49%	49%	23%	27%	40%	33%	29%	50%	51%
Investment Adviser/ Investment Company	17%	10%	14%	10%	8%	20%	18%	18%	37%	23%	26%
Foreign Corrupt Practices Act	15%	24%	14%	14%	12%	19%	15%	14%	16%	11%	8%
Broker Dealer	12%	10%	0%	14%	13%	12%	12%	26%	16%	10%	4%
Public Finance Abuse	8%	10%	0%	4%	38%	12%	0%	1%	1%	2%	4%
Securities Offering	5%	7%	19%	4%	0%	6%	0%	3%	1%	2%	2%
Insider Trading	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	2%
Market Manipulation	3%	5%	5%	2%	1%	0%	6%	1%	0%	2%	0%
Other	3%	2%	0%	4%	5%	4%	8%	4%	0%	2%	4%
Number of Actions	67	41	37	51	84	94	65	73	95	62	53

0% | 1–10% | 11–20% | 21–50% | 51–100%

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

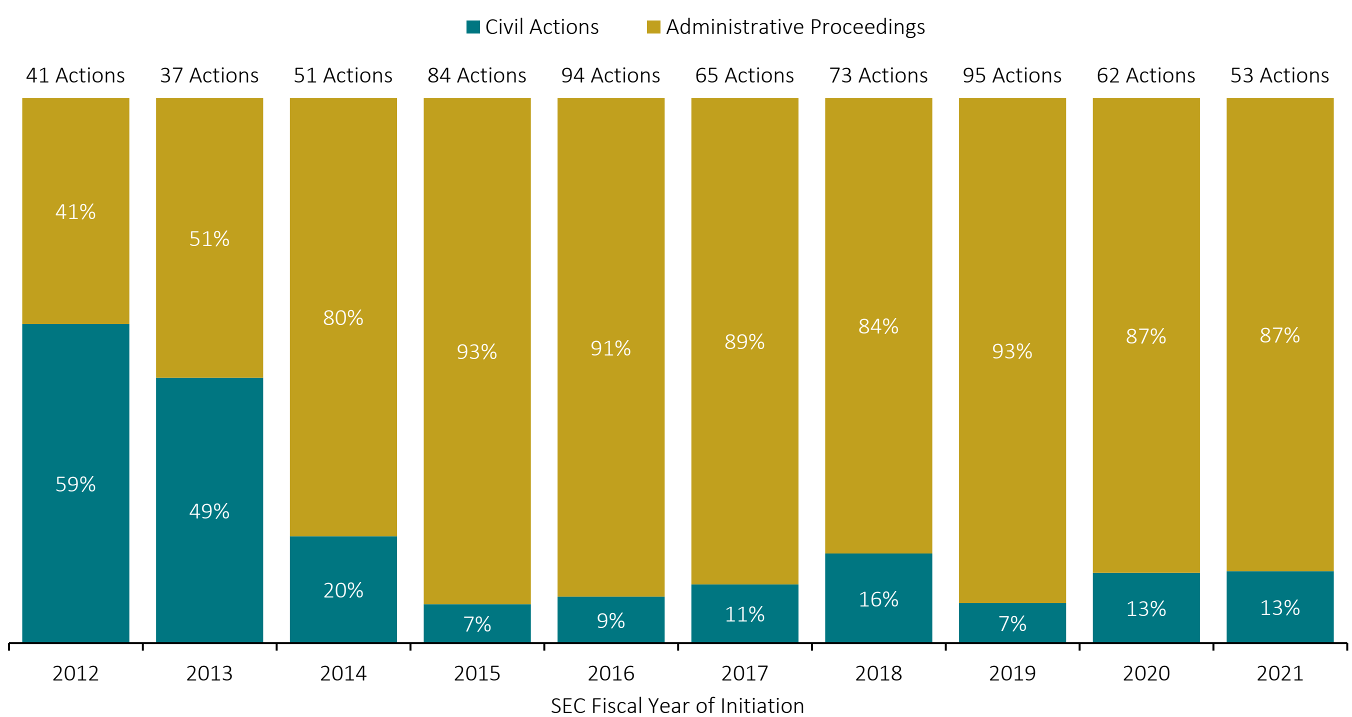
- The majority of actions continued to be brought as administrative proceedings in FY 2021, with 87% (46 actions) brought in that venue, higher than the FY 2012–FY 2020 average of 79%, but consistent with the last five fiscal years' average of 89%.
- For all actions brought as administrative proceedings in FY 2021, the action and resolution were announced concurrently, consistent with the average of 98% from FY 2012 through FY 2020.
- Unlike administrative proceedings, only one of the seven civil actions (14%) had a concurrent resolution in FY 2021, lower than the average of 66% from FY 2012 through FY 2020.

14% vs. 100%

Percentages of civil actions and administrative proceedings, respectively, with concurrent resolutions.

- The six actions (all civil actions) in FY 2021 without concurrent resolutions is the highest number since FY 2012, when 10 actions (eight civil actions and two administrative proceedings) did not have concurrent resolutions.

Figure 4: Public Company and Subsidiary Actions by Enforcement Venue
FY 2012–FY 2021



Source: Securities Enforcement Empirical Database (SEED)
Note: Relief defendants are not considered.

Settlements

Cooperation

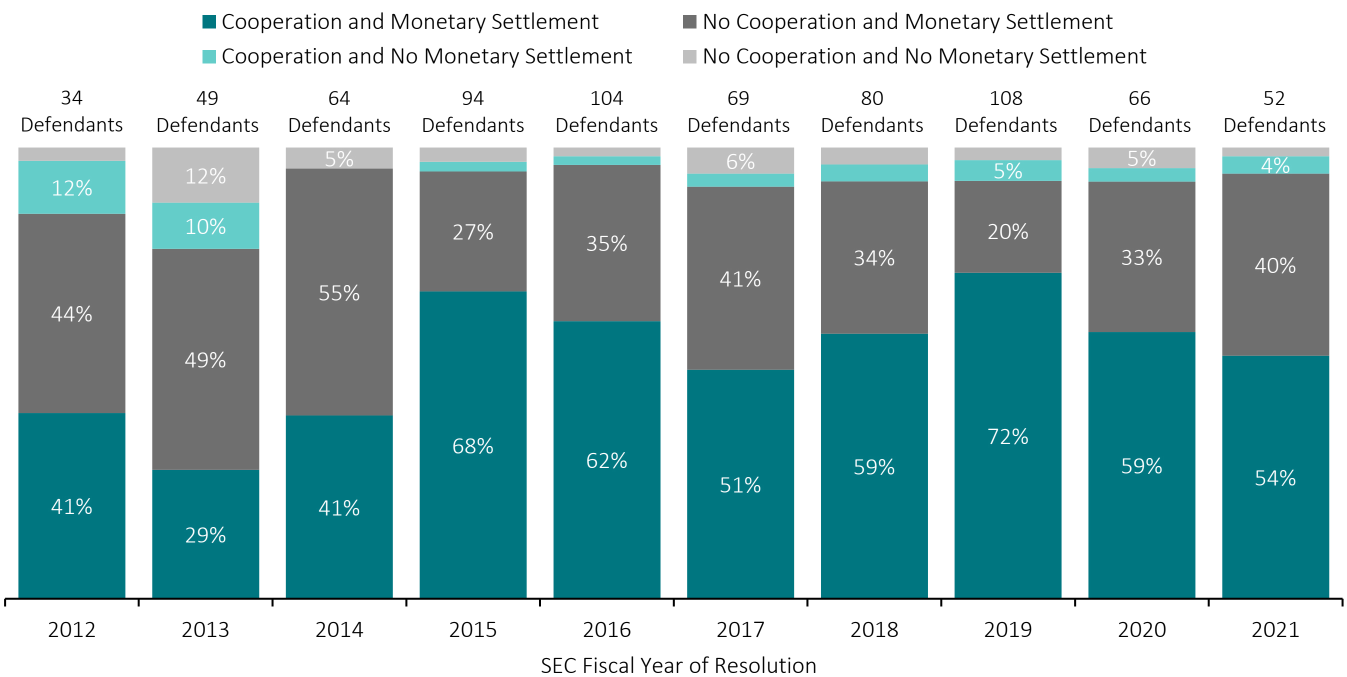
The SEC considers four factors when negotiating a settlement with a cooperating defendant: "self-policing, self-reporting, remediation, and cooperation."[6] SEED measures the latter three factors as an indication of whether a public company or subsidiary defendant cooperated with the SEC based on whether 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 58% of public company and subsidiary defendants in actions settled in FY 2021, consistent with the average of 58% from FY 2012 through FY 2020.
- In FY 2021, 40% of defendants that settled had monetary settlements and no cooperation noted, the highest percentage since FY 2017.
- Continuing a trend from prior years, 94% of settlements involved monetary penalties. In the past 10 fiscal years, only FY 2012 and FY 2013 had less than 90% of settlements involving monetary penalties.

40%

Percentage of settling defendants in FY 2021 where no cooperation was noted and involved monetary settlements, seven percentage points higher than the prior fiscal year.

Figure 5: Public Company and Subsidiary Defendants—Monetary Settlements and Cooperation Noted FY 2012–FY 2021



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.[7]

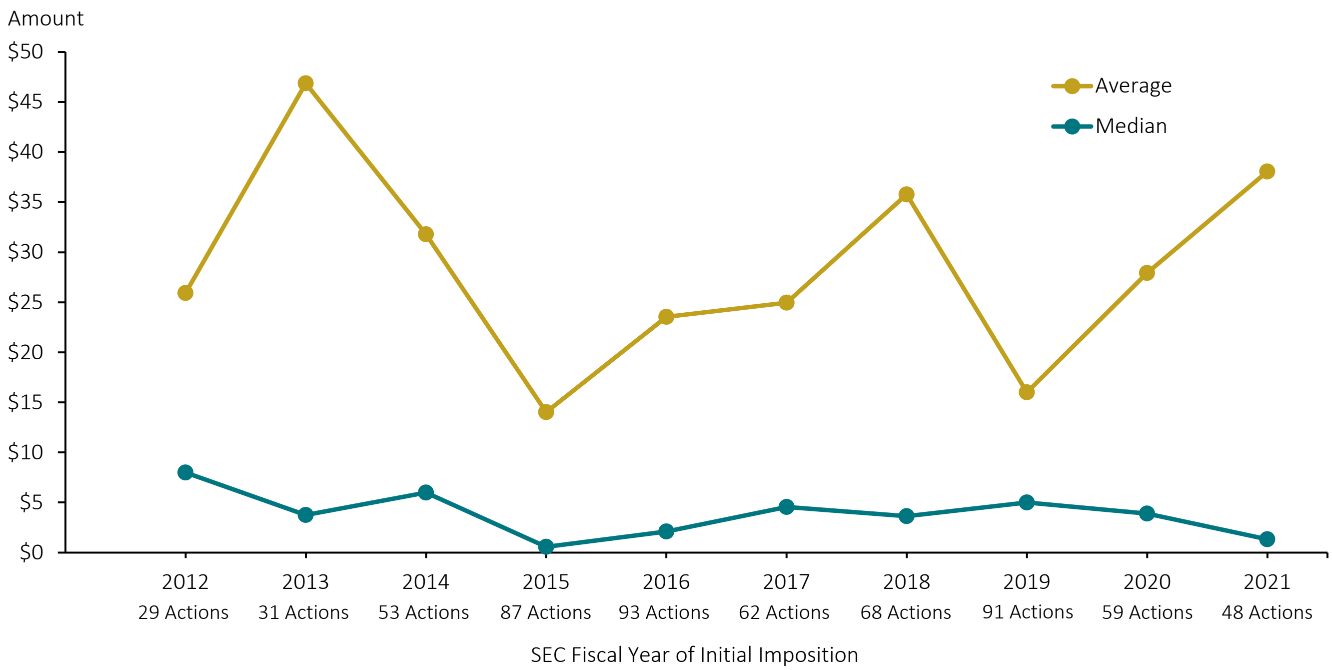
- Monetary settlements imposed in public company or subsidiary actions in FY 2021 totaled $1.8 billion, similar to average annual monetary settlements of $1.6 billion for FY 2012–FY 2020.
- Of actions with resolutions in FY 2021, 6% did not include a monetary settlement. For those that did include a monetary settlement, the average monetary settlement was $38 million, up $10 million from an average of $28 million in FY 2020. The average in FY 2021 was driven by one settlement of $1 billion.
- The median monetary settlement in FY 2021 was $1 million, lower than the average median of $4 million from FY 2012 to FY 2020.
- The second-largest monetary settlement in a public company or subsidiary action in SEED was imposed in FY 2021. This monetary settlement was in an action involving Foreign Corrupt Practices Act violations.

$1 million

Median monetary settlement in FY 2021, the lowest median monetary settlement since FY 2015.

Figure 6: Monetary Settlements Imposed in Public Company and Subsidiary Actions
FY 2012–FY 2021

(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 13 actions for which not all defendants have settled. Total monetary settlements for those actions only include monetary settlements through September 30, 2021.

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.[8]
- Of the $1.8 billion in monetary settlements imposed on public companies and subsidiaries in FY 2021, $835 million (46%) came from disgorgement and prejudgment interest. The remaining $992 million (54%) came from civil penalties and other monetary settlements.
- Administrative proceedings accounted for 87% ($723 million) of the disgorgement and prejudgment interest in monetary settlements in FY 2021. This is higher than the average of 58% from FY 2012 through FY 2020.

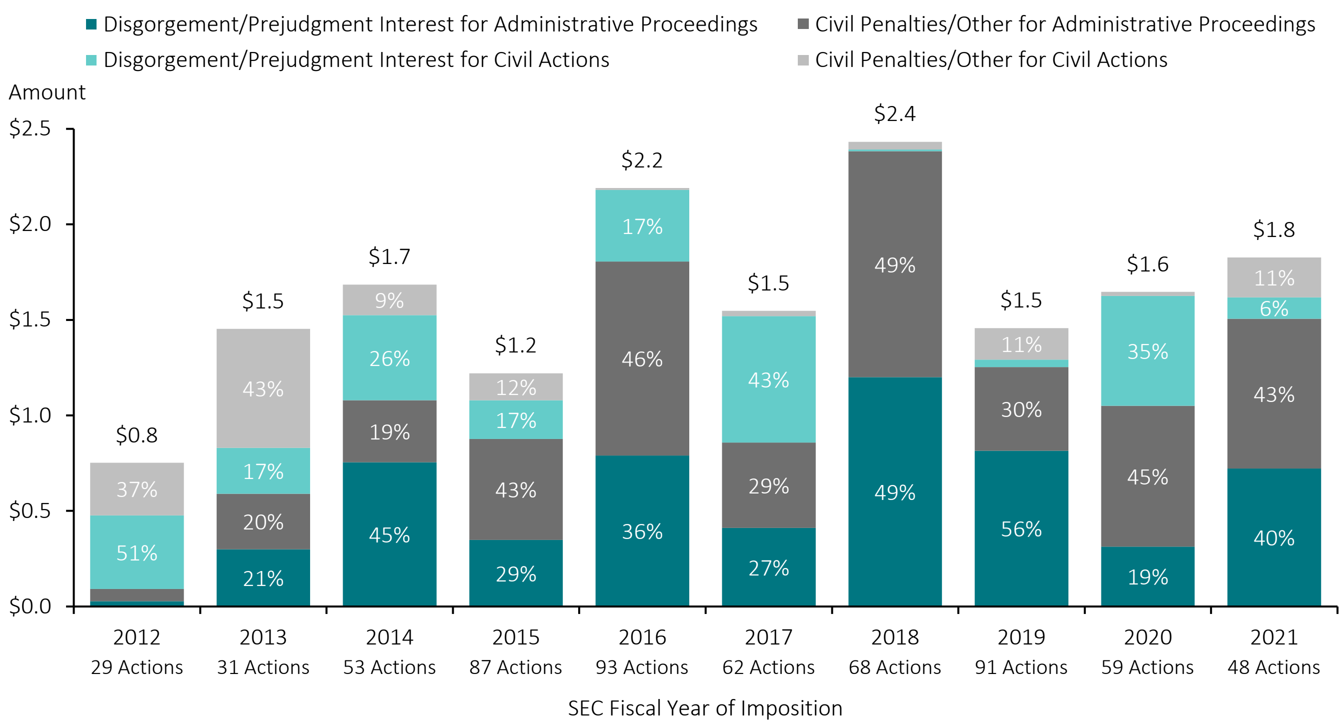
46%

Percentage of total monetary settlements imposed in FY 2021 from disgorgement and prejudgment interest, the lowest share since 2015.

- Disgorgement and prejudgment interest in civil actions was $113 million in FY 2021 (6% of total monetary settlements), the third-lowest total in SEED ($39.9 million in FY 2019, and $8.5 million in FY 2018).

Figure 7: Breakdown of Total Monetary Settlements Imposed in Public Company and Subsidiary Actions
FY 2012–FY 2021

(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 13 actions for which not all defendants have settled. Total monetary settlements for those actions only include monetary settlements through September 30, 2021. 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.[9]

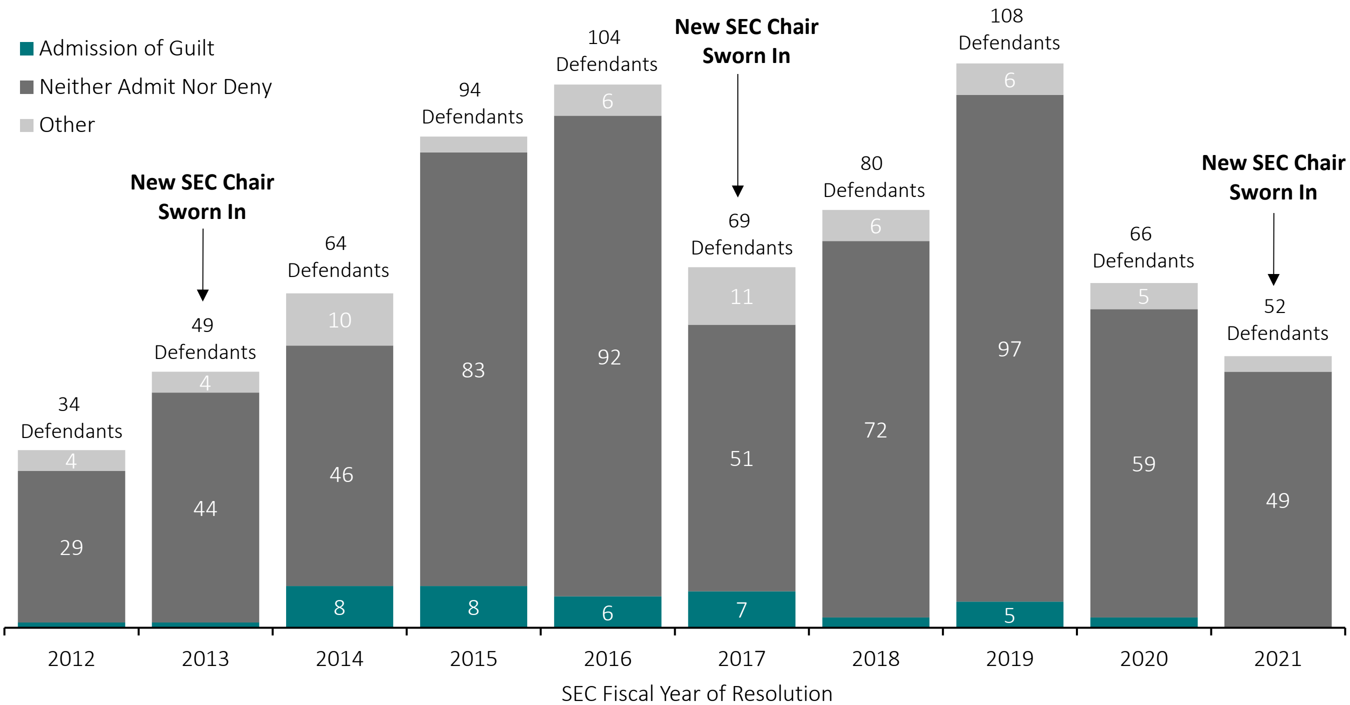
- The current SEC leadership has indicated that it "will, in appropriate circumstances, be requiring admissions in cases where heightened accountability and acceptance of responsibility are in the public interest."[10]
- For the first time since FY 2011, there were no public company or subsidiary defendants with admissions of guilt in FY 2021.
- Under Chair Jay Clayton's leadership, nine public company or subsidiary defendants had admissions of guilt, lower than the 29 under Chair Mary Jo White's leadership when the SEC "require[d] companies to accept liability in certain cases."[11]

9% vs. 3%

Percentages of public company and subsidiary defendants with admissions of guilt in FY 2014–FY 2017 and FY 2018–FY 2021, respectively.

- The number of public company and subsidiary defendants with admissions of guilt decreased in each of the past two years, from five in FY 2019, to two in FY 2020, to zero in FY 2021.

Figure 8: Admission of Guilt by Public Company and Subsidiary Defendants
FY 2012–FY 2021



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, 2021 (http://seed.law.nyu.edu).
- SEED identifies 751 SEC enforcement actions initiated against 646 public companies and subsidiaries between October 1, 2009, and September 30, 2021.
- SEED identifies 312 individuals that are named defendants in the 751 actions initiated against public companies and subsidiaries between October 1, 2009, and September 30, 2021.
- The sample used for the majority of this report is referred to as "actions initiated against public companies and subsidiaries" 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 individuals who are named as 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 fiscal year 2010 through fiscal year 2021 spans October 1, 2009, to September 30, 2021.

[2] “SEC Coronavirus (COVID-19) Response,” U.S. Securities and Exchange Commission, https://www.sec.gov/sec-coronavirus-covid-19-response, accessed November 9, 2021.

[3] See, e.g., “Division of Enforcement Annual Report 2020,” U.S. Securities and Exchange Commission, November 2, 2020, p. 9, https://www.sec.gov/files/enforcement-annual-report-2020.pdf; “SEC Charges Healthcare Services Company and CFO for Failing to Accurately Report Loss Contingencies as part of Continuing EPS Initiative,” August 24, 2021, https://www.sec.gov/news/press-release/2021-162.

[4] “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.

[5] “Mary Jo White Sworn in as Chair of SEC,” U.S. Securities and Exchange Commission, April 10, 2013, https://www.sec.gov/news/press-release/2013-2013-56htm; “Jay Clayton Sworn in as Chairman of SEC,” U.S. Securities and Exchange Commission, May 4, 2017, https://www.sec.gov/news/press-release/2017-94.

[6] Andrew Ceresney, Director, Division of Enforcement, U.S. Securities and Exchange Commission, “The SEC’s Cooperation Program: Reflections on Five Years of Experience” (Speech, 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).

[7] 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 13 actions for which not all defendants have settled. Total monetary settlements for those actions only include monetary settlements through September 30, 2021.

[8] See, e.g., “US Congress Affirms and Expands SEC’s Disgorgement Authority in Annual Defense Spending Bill,” Latham & Watkins Client Alert, January 4, 2021, https://www.lw.com/thoughtLeadership/US-Congress-Affirms-and-Expands-SECs-Disgorgement-Authority-in-Annual-Defense-Spending-Bill.

[9] 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.

[10] Gurbir Grewal, Director, Division of Enforcement, U.S. Securities and Exchange Commission, “Remarks at SEC Speaks 2021” (Speech, October 13, 2021), https://www.sec.gov/news/speech/grewal-sec-speaks-101321.

[11] Jean Eaglesham and Andrew Ackerman, “SEC Seeks Admissions of Fault,” *Wall Street Journal*, June 18, 2013, https://www.wsj.com/articles/SB10001424127887324021104578553931876196990.

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The authors request that you reference the NYU Pollack Center for Law & Business and Cornerstone Research in any reprint of the information or figures included in this report.

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