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## WHITE PAPER

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### SEC Enforcement in Financial Reporting and Disclosure: 2023 Year-End Update

We are pleased to present our latest update on financial reporting and issuer disclosure enforcement activity. This *White Paper* primarily focuses on the U.S. Securities and Exchange Commission's ("SEC") enforcement activity during the second half of 2023.

## INTRODUCTION

The SEC’s Division of Enforcement (the “Division”) continued its aggressive enforcement of the federal securities laws in fiscal year (“FY”) 2023, announcing that it returned \$930 million to investors and filed a total of 784 enforcement actions—a 3% increase over FY 2022.<sup>1</sup> The Division secured nearly \$5 billion in disgorgement and penalties, representing the second highest total of financial remedies ordered in SEC history, although a marked decline from 2022’s record of \$6.4 billion.<sup>2</sup> The Division continued to illustrate its commitment to protecting whistleblowers through increased whistleblower awards and multiple enforcement cases alleging actions taken to impede whistleblowers. And the SEC continued to pursue the aggressive regulatory agenda that has characterized the tenure of SEC Chair Gary Gensler.

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## ENFORCEMENT YEAR IN REVIEW

Last year proved to be yet another milestone year for the Division. Chair Gensler described the Division as a “cop on the beat,” which Division Director Gurbir Grewal instructed to act with “a sense of urgency, using all the tools in [its] toolkit.”<sup>3</sup> Indeed, the SEC’s Whistleblower Program emerged as a particularly prominent tool in the Division’s FY 2023 toolkit, as discussed below.

The 784 actions filed in 2023 reflect the SEC’s continued commitment to vigorously enforcing the securities laws. These 784 actions included 501 “stand-alone” actions, representing an 8% increase over FY 2022—over 40% of which involved litigated

charges. The Division also brought 121 actions against issuers who allegedly failed to comply with SEC filing requirements, and 162 “follow-on” administrative proceedings seeking to bar individuals subject to criminal conviction, civil injunction, or other orders from unfettered participation in the securities markets.<sup>4</sup>

Importantly, FY 2023 marked a return to the historical trend of disgorgement outweighing civil penalties—implying that the departure from this norm in 2022 was an outlier. The SEC assessed nearly \$3.4 billion in disgorgement and prejudgment interest and \$1.6 billion in civil penalties in FY 2023.<sup>5</sup>

### ENFORCEMENT ACTIONS FILED IN FISCAL YEARS 2018 TO 2023

	FY 2023	FY 2022	FY 2021	FY 2020	FY 2019	FY 2018
Standalone Enforcement Actions	501	462	434	405	526	490
Follow-On Admin. Proceedings	162	169	143	180	210	210
Delinquent Filings	121	129	120	130	126	121
<b>Total Actions</b>	<b>784</b>	<b>760</b>	<b>697</b>	<b>715</b>	<b>862</b>	<b>821</b>

TOTAL MONEY ORDERED (IN MILLIONS)						
	FY 2023	FY 2022	FY 2021	FY 2020	FY 2019	FY 2018
Penalties	\$1,580	\$4,194	\$1,456	\$1,091	\$1,101	\$1,439
Disgorgement	\$3,369	\$2,245	\$2,395	\$3,588	\$3,248	\$2,506
<b>Total</b>	<b>\$4,949</b>	<b>\$6,439</b>	<b>\$3,852</b>	<b>\$4,680</b>	<b>\$4,349</b>	<b>\$3,945</b>

However, while FY 2023 offered the second highest recovery amount in the past five years, the total monies ordered (including civil penalties, disgorgement, and prejudgment interest) declined by more than 20% over FY 2022.

This decline in monetary settlements may correlate to the SEC's continued commitment to rewarding meaningful cooperation with significantly reduced (or zero) monetary penalties.<sup>6</sup> In FY 2023, the SEC credited cooperation in cases brought against public issuers, private companies, and advisory firms, and in matters involving a range of violations (e.g., material misstatements, recordkeeping violations, undisclosed perquisites, and violations of whistleblower protection rules).<sup>7</sup> The SEC emphasized this commitment by announcing in a series of press releases that no civil penalties were ordered against certain defendants in FY 2023 as a direct result of their cooperation.<sup>8</sup> In other cases, the SEC ordered substantially lower penalties to settle charges against defendants who self-reported violations.<sup>9</sup>

## FOCUS ON WHISTLEBLOWERS

The SEC's commitment to relying on whistleblowers and protecting them from retaliation continues. The SEC received over 18,000 tips from whistleblowers in FY 2023, nearly 50% more than FY 2022.<sup>10</sup> The Division also broke its record for amounts paid to whistleblowers in a single year, distributing approximately \$600 million in total awards, including a \$279 million award—the largest such award in SEC history.<sup>11</sup> Because whistleblower awards are determined as a proportion of monetary recoveries, the continued growth of whistleblower awards shows that the Division increasingly relies on whistleblowers to identify and strengthen its investigations.

Given that reliance, it is not surprising that whistleblower protection remains an enforcement priority. The Division brought five enforcement actions charging companies with violating Rule 21F-17's prohibition on taking actions that impede individuals from communicating directly with the SEC about possible securities laws violations in fiscal year 2023; and January 2024 saw another settled action against a registered entity. The settlements involved both public and private companies of varying sizes, each of which was alleged to have committed a single, stand-alone Rule 21F-17 violation, with penalties ranging from \$225,000 for a small, privately held company to more than \$10 million in actions involving registered entities. Notably, the SEC only identified a single former employee in one of these cases who was "initially discouraged" from communicating with the SEC about potential misconduct.

Nevertheless, as these enforcement actions demonstrate, the SEC remains committed to protecting whistleblowers; and companies large and small should regularly review all of their agreements—employment, severance, confidentiality, customer, and third-party—and related policies to ensure that they expressly permit communication with SEC staff, without prior company approval, and do not otherwise discourage such communication or limit the ability of employees or customers to receive monetary awards from the government.

## EXPANDED REPORTING AND DISCLOSURE REGULATIONS

The SEC's enforcement activity goes hand-in-hand with its rulemaking activity, and the second half of 2023 saw the following significant regulatory developments unfold:

- **Cybersecurity Disclosure Rules.** On July 26, 2023, the SEC adopted final rules to enhance the disclosure requirements of material cybersecurity incidents for public companies and foreign private issuers. Specifically, the new rules require registrants to disclose material aspects of cybersecurity incidents within four business days of determining that a cybersecurity incident is material, as well as to disclose annually material information regarding cybersecurity risk management, strategy, and governance practices. Gensler announced that while “many public companies provide cybersecurity disclosure to investors . . . companies and investors alike [will] benefit if this disclosure were made in a more consistent, comparable, and decision-useful way.”<sup>12</sup> For additional information, see Jones Day’s Commentary, *SEC Adopts Rules on Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure*.
  - **Beneficial Ownership Rules.** On October 10, 2023, the SEC adopted rule amendments governing beneficial ownership reporting under Sections 13(d) and 13(g) of the Exchange Act.<sup>13</sup> The amendments accelerate Schedule 13G filing deadlines, including beneficial ownership report filings (which deadlines differ based on the type of filer) and the initial Schedule 13D filing, which must be filed within 5 business days under the amended rules. The amendments also require filers to use a structured, machine-readable data language for Schedule 13D and Schedule 13G forms. Additionally, the SEC’s adopting release clarifies certain Schedule 13D disclosure requirements with respect to derivative securities, and provides updated guidance regarding the legal standard for determining whether two or more persons constitute a “group” to satisfy the beneficial ownership threshold. For additional information, see Jones Day’s Commentary, *SEC Adopts Amendments to the Beneficial Ownership Rules*.
  - **Short Sale Reporting Rules.** On October 13, 2023, the SEC adopted Final Rule 13f-2, which requires institutional investment managers to report short position data to the SEC for public dissemination.<sup>14</sup> Gensler explained that this rule “addresses Congress’s mandate” under Section 929X of the Dodd-Frank Act to make certain short sale data publicly available, “and improves upon existing sources of short sale-related data in the equity markets. Given past market events, it’s important for the Commission and the public to know more about short sale activity in the equity markets, especially in times of stress or volatility.” The SEC also adopted a related amendment to the National Market System Plan governing the consolidated audit trail (“CAT”). The amendment will require CAT reporting firms to indicate when a reported short sale claims the bona fide market making exception allowed under Rule 203(b)(2)(iii) of Regulation SHO. In December 2023, associations representing institutional investment managers filed a petition for review with the Fifth Circuit Court of Appeals challenging both of these rules.
  - **Share Repurchase Rules.** In May 2023, the SEC adopted the Share Repurchase Disclosure Modernization Rules (“Share Repurchase Rules”).<sup>15</sup> On October 31, 2023, with Jones Day representing the plaintiffs, the U.S. Court of Appeals for the Fifth Circuit found that the SEC violated the Administrative Procedure Act when it adopted the Share Repurchase Rules. Specifically, the court determined that the SEC acted “arbitrarily and capriciously . . . when it failed to respond to [the Chamber of Commerce’s] comments and failed to conduct a proper cost-benefit analysis” in adopting the final rules.<sup>16</sup> The court instructed the SEC to remedy certain deficiencies within 30 days and, when it failed to do so, the Fifth Circuit vacated the rules.<sup>17</sup> Since the new rules are no longer binding, public companies will not need to comply with the updated disclosure requirements, which included quarterly disclosure of repurchase activity, certain officer and director share transactions, and, for domestic issuers, information regarding repurchase plans. However, companies will need to ensure continued compliance with repurchase rules in effect prior to May 2023, which are still valid.
  - **Climate-Related Disclosure.** The SEC has again delayed the projected timeline to release its long-awaited and highly controversial climate-related disclosure rules, which it initially expected to finalize in March 2022.<sup>18</sup> The SEC now expects to release its final rules enhancing disclosure requirements for certain climate-related emissions and risk management practices in April 2024.<sup>19</sup>
- The SEC’s aggressive rulemaking shows no sign of slowing down. The SEC has previewed that it expects to finalize its climate-related disclosure rules and rules governing special purpose acquisition companies in early 2024. And the expected rule proposals include disclosures related to corporate board

diversity, the prospects of which were bolstered in 2023 when the Fifth Circuit upheld Nasdaq's board diversity rule.

## ENFORCEMENT REVIEW

The SEC continued to emphasize financial reporting and issuer disclosure enforcement, noting that “[a]ccurate disclosures by public companies are foundational to the securities markets.”<sup>20</sup> Accordingly, the SEC brought several significant cases against public companies and their executives involving fraud, accounting misstatements, and deficient controls.<sup>21</sup> In fact, cases primarily classified as “Issuer Reporting/Audit & Accounting” constituted 17% of the standalone actions and 14% of the total actions brought by the SEC in FY 2023, which broadly matches the percentages in recent years.<sup>22</sup>

The balance of this *White Paper* recaps several notable enforcement actions in the areas of financial reporting and issuer disclosure during the second half of 2023. Unless otherwise indicated in the summary, the SEC resolved each of the matters below on a “neither admit nor deny” basis.

## FINANCIAL REPORTING

- On July 3, 2023, the SEC announced settled proceedings against a California-based manufacturer of “smart” windows and litigated proceedings against its former CFO for allegedly failing to disclose \$28 million in projected liabilities stemming from a defect in the windows. According to the SEC, from December 2020 to May 2021, the company disclosed between \$22 million-\$25 million in warranty liabilities when the total projected liability disclosed should have been between \$48 million-\$53 million. Accordingly, the SEC alleged that the company materially misstated its warranty liability for fiscal years 2019 and 2020 and the first quarter of 2021. Moreover, the SEC alleged that the former CFO approved the liability amounts to be disclosed, knowing that those amounts were understated.

The SEC thus alleged that the company violated Sections 17(a)(2) and (a)(3) of the Securities Act of 1933 (“Securities Act”) as well as the internal controls, proxy statement, books and records, and reporting provisions of the Securities

Exchange Act of 1934 (“Exchange Act”). To settle the claims against it, the company agreed to cease and desist from future violations of the securities laws. In light of the company's substantial cooperation, self-reporting, and remedial undertakings, the SEC declined to seek financial remedies from the company. The SEC's complaint against the former CFO, filed in the Northern District of California, alleges that the former CFO violated Section 17(a)(3) of the Securities Act, Section 14(a) of the Exchange Act, and Exchange Act Rules 14a-9 and 13b2-1. The SEC seeks permanent injunctions, civil penalties, and an officer and director bar.<sup>23</sup>

- On July 3, 2023, the SEC announced settled proceedings against a financial technology company for the company's alleged filing of materially inaccurate annual reports. According to the SEC, the company took impairment losses on certain assets that should have been impaired earlier, and in larger amounts. The SEC also alleged that the company had material weaknesses in its internal controls stemming from an inability to retain accounting personnel with sufficient expertise in SEC and GAAP reporting requirements. Accordingly, the SEC alleged that the company violated Sections 17(a)(2) and (a)(3) of the Securities Act and the internal controls and reporting provisions of the Exchange Act. The company agreed to entry of a cease-and-desist order, to pay a \$1.65 million civil penalty, and to retain an independent compliance consultant to review the company's internal accounting controls and internal control over financial reporting.<sup>24</sup>
- On August 15, 2023, the SEC announced settled proceedings against a bank holding company and its former CFO regarding the company's alleged failure to timely recognize and account for impairment issues with respect to several large loans. As a result, according to the SEC, the alleged misstatements materially impacted the bank's reported income for numerous periods between December 2017 and December 2020. Accordingly, the SEC alleged that the company violated Sections 17(a)(2) and (a)(3) of the Securities Act and the internal controls and reporting provisions of the Exchange Act. The SEC further alleged that the former CFO caused the company's violations. The bank and its former CFO consented to entry of cease-and-desist orders and to pay civil penalties of \$350,000 and \$40,000, respectively.<sup>25</sup>



- On August 30, 2023, the SEC announced settled proceedings against a renewable energy company for its alleged financial reporting, accounting, and controls failures that required a multi-year restatement. According to the SEC, between 2018 and 2020, the company failed to properly classify and present certain costs as cost of revenue; failed to properly account for its right-of-use assets and lease liabilities for certain sale-leaseback transactions; and failed to properly estimate loss accruals for extended-maintenance contracts. The company's restatement also allegedly identified a material weakness in internal control over financial reporting and ineffective disclosure controls and procedures. Accordingly, the SEC alleged that the company violated the financial reporting and internal controls provisions of the Exchange Act. The company agreed to entry of a cease-and-desist order, to pay a \$1.25 million civil penalty, and to comply with undertakings concerning remediation of its weaknesses in financial reporting and disclosure controls.<sup>26</sup>
- On September 6, 2023, the SEC announced settled proceedings against an engineering and construction firm related to the accounting on two lump sum engineering, procurement, and construction projects. The SEC alleged the company violated the reporting, books and records, and internal controls provisions of the Exchange Act. Five current and former officers and employees also agreed to settle charges relating to the company's violations. The company consented to entry of a cease-and-desist order and to pay a \$14.5 million civil penalty. The individuals also consented to cease-and-desist orders and to pay civil penalties ranging from \$15,000 to \$25,000. In reaching the settlement, the SEC considered the company's cooperation with SEC Staff and remedial acts undertaken by the company.<sup>27</sup>
- On September 25, 2023, the SEC announced settled proceedings against an IT service management company stemming from the company's alleged failure to disclose material information about unsupported adjustments the company made in several filings, which allegedly increased the company's reported operating income by 15% in three quarters from 2019 to 2020. According to the SEC, the company was unable to reconcile a persistent discrepancy between actual expenses and expected expenses and knew that it lacked sufficient information necessary to accurately report certain expenses. Nonetheless, the company allegedly made unsupported adjustments of more than \$35 million. The SEC thus alleged that the company violated Sections 17(a)(2) and (a)(3) of the Securities Act; and the reporting, books and records, and internal control provisions of the Exchange Act. The company agreed to entry of a cease-and-desist order. According to the SEC, no civil penalty was warranted because of the company's self-reporting, substantial cooperation, and extensive remediation.<sup>28</sup>
- On September 28, 2023, the SEC brought settled proceedings against a Chinese holding company for allegedly violating the periodic reporting, books and records, and internal accounting controls provisions of the federal securities laws. According to the SEC, the company discovered that certain contracts within a particular sector of the business were forged. As a result of the forged contracts, the company's net income and net revenues for the first three quarters of fiscal year 2020 were allegedly misstated by \$26.6 million and \$86.1 million, respectively. The SEC thus alleged that the company violated the reporting, books and records, and internal controls provisions of the Exchange Act. The company agreed to entry of a cease-and-desist order and to pay a \$1.25 million civil penalty.<sup>29</sup>
- On September 28, 2023, the SEC filed a litigated civil action in the Southern District of New York against the former Chief Commercial Officer ("CCO"), controller, and CFO of a New York-based telecommunications company for engaging in fraudulent revenue recognition practices. According to the SEC, from 2018 through mid-2019, the former associates engaged in a fraudulent scheme to recognize revenue from the company's customers' non-binding purchase orders for services, despite knowing that the customers had not yet committed to paying for the services. The improper revenue recognition scheme allegedly allowed the company to materially overstate its revenue by \$12 million for fiscal year 2018 and by \$27 million for the first half of 2019. The complaint alleges the former CCO and CFO violated the antifraud provisions of the Securities Act and the Exchange Act and the reporting provisions of the Exchange Act. The complaint also alleges that the former CFO lied to the company's auditors, signed false certifications, and violated SOX 304 by failing to reimburse the company for

equity-based incentive compensation. In a separate, settled proceeding, the former controller agreed to entry of a cease-and-desist order, a permanent officer and director bar, an order prohibiting him from practicing as an accountant before the SEC, and future proceedings to determine appropriate monetary relief.<sup>30</sup> The telecommunications company previously settled with the SEC in 2021.

- On September 29, 2023, the SEC filed settled proceedings against a Georgia-based consumer products company and its former CEO for allegedly misleading investors about the company's core sales growth. According to the SEC, in 2016 and 2017, the company and its former CEO engaged in practices that increased the company's publicly disclosed core sales growth to announce "strong" results in quarters which the company actually underperformed. The SEC thus alleged that the company and its CEO violated reporting provisions of the Securities Exchange Act of 1934, antifraud provisions of the Securities Act of 1933, and Rule 100(b) of Regulation G. The company and CEO agreed to entry of cease-and-desist orders and to pay civil penalties of \$12.5 million and \$110,000, respectively.<sup>31</sup>
- On December 18, 2023, the SEC filed a litigated action in the United States District Court for the Southern District of New York against an individual and three companies for which he serves as CEO in connection with an alleged multi-year scheme to inflate the financial performance metrics of these companies and key operating subsidiaries to defraud investors worldwide. The SEC alleges that since at least 2019, the individual spearheaded a scheme to fabricate financial statements and other documents of the three entities and their Nigerian operating subsidiaries. The complaint further alleges that the individual made and caused the entities to make material misrepresentations about their business operations and financial success in press releases, periodic SEC filings, and other public statements. For instance, one of the companies' fiscal year 2022 Form 10-K filed in March 2023 reported a cash and cash equivalent balance of \$461.7 million in its subsidiary's bank accounts. In reality, those same bank accounts allegedly had a combined balance of less than \$50 as of the end of fiscal year 2022. Moreover, the defendants also allegedly fabricated the customer relationships that formed the basis of their purported businesses. Finally, the SEC alleges that the individual and the entities he controls as CEO have

fraudulently obtained hundreds of millions in money or property through these schemes, and that the individual has used these funds for his personal benefit, including purchases of luxury cars and travel on private jets, as well as an attempt to acquire an English Football Club Premier League team, among other things.

The complaint alleges that the individual and all three companies violated the anti-fraud provisions of the Securities Act and the Exchange Act. It also alleges violations of the reporting, books and records, and internal controls provisions of the Exchange Act by two of the companies and the individual. It also alleges that the individual lied to auditors, engaged in insider trading, and failed to file Forms 4 disclosing the sales of millions of shares of one of the companies for which he was the ultimate beneficial owner. The SEC seeks permanent injunctive relief, disgorgement of ill-gotten gains and prejudgment interest, civil penalties, and the return, pursuant to Section 304 of the Sarbanes-Oxley Act, of bonuses and profits obtained by the individual from sales of stock of the companies. The SEC also seeks an order prohibiting the individual from acting as an officer or director of a public company or from participating in the offering of any penny stock.<sup>32</sup>

- On December 22, 2023, the SEC announced settled proceedings against a publicly traded energy company, its former CEO, and its former chief strategy officer/interim CEO. According to the SEC, before and after going public through a special purpose acquisition transaction, the company allegedly misstated between 30 percent and 80 percent of its revenues from 2018 through early 2021 in SEC filings related to the offer and sale of up to \$500 million of securities. According to the SEC, the company created false invoices to support inflating revenues from its oil facilities by over \$70 million over three years, and the current and former officers knew or were reckless in not knowing of the alleged fraud. Additionally, the SEC alleges that the company provided these false invoices to its auditors to conceal the inflated revenue.

In April 2023, the company announced a restatement of its audited financial statements from 2018 through 2020. The SEC thus alleged that the company and the current and former officers violated the antifraud provisions of the Securities Act and the Exchange Act and the proxy

statement, reporting, and books and records provisions of the Exchange Act. The company agreed to entry of a cease-and-desist order and to pay a \$5 million civil penalty. The current and former officers each agreed to entry of cease-and-desist orders, to pay \$100,000 civil penalties, and to permanent officer and director bars.<sup>33</sup>

## ISSUER DISCLOSURE

- On August 15, 2023, the SEC announced settled proceedings against a diversified holding company, its executive chairman/former CEO, and its former CFO/current CEO in connection with allegedly misleading disclosures and alleged recordkeeping and internal controls violations from 2016 to 2021. According to the SEC, the company made materially false and misleading statements regarding the company's new crypto asset mining business and a \$50 million purchase order that was received from a related party the company owned. The SEC also alleged the company had internal controls weaknesses beginning in June 2017, failed to make related-person disclosures from 2016-2021, and engaged in improper accounting in relation to certain investments.

Accordingly, the SEC alleged that the company violated Sections 17(a)(2) and (a)(3) of the Securities Act and the proxy statement, reporting, books and records, and internal controls provisions of the Exchange Act. The SEC further alleged that the executive chairman/former CEO caused the company's violations and violated Exchange Act Rule 13b2-1. Finally, the SEC alleged that the former CFO/current CEO violated Exchange Act Rule 13b2-1 and caused the company's violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B). The company, its executive chairman/former CEO, and its former CFO/current CEO all agreed to entry of cease-and-desist orders and to pay civil penalties of \$700,000, \$150,000, and \$20,720, respectively. The executive chairman/former CEO also agreed to pay disgorgement of \$75,000 with prejudgment interest of \$10,504.<sup>34</sup>

- On September 26, 2023, the SEC filed a settled complaint in the Eastern District of Texas against a cybersecurity company for allegedly making false and misleading statements regarding the company's purported success in the marketing of a cybersecurity product and about the terms of

multiple contracts. The SEC alleges that, from May 2020 to May 2021, the company made materially false and misleading statements in interviews, earnings calls, press releases, and other public statements. The SEC alleged that the company violated the antifraud provisions of the Securities Act and the Exchange Act and the reporting provisions of the Exchange Act. The company consented to a permanent injunction without financial relief.<sup>35</sup>

- On September 27, 2023, the SEC filed a settled civil action in the Western District of New York against a New York-based company that builds hydrogen fuel cell electric vehicles ("FCEV"s), its former CEO, and the former managing director of the company's subsidiary. According to the SEC, the company misrepresented the status of its relationships with potential customers and suppliers to create the false appearance that sales transactions were imminent. The SEC also alleges that the company falsely stated that it made its first FCEV delivery in July 2021, published a misleading video regarding the FCEV's ability to run on hydrogen power, and falsely reported that it sold 87 FCEVs in 2021 when it, in fact, sold none that year.

According to the SEC, the former CEO was responsible for the alleged misstatements concerning the customer and supplier relationships, and the former managing director was responsible for the alleged misstatements regarding the delivery and certain sales of FCEVs. Accordingly, the SEC alleged that the company and the individuals violated various antifraud, books and records, internal controls, reporting, and proxy solicitation provisions of the federal securities laws. The company, its former CEO, and the former managing director consented to entry of permanent injunctions and to pay civil penalties of \$25 million, \$100,000, and \$200,000, respectfully.<sup>36</sup> The former CEO and the former managing director also agreed to five-year and 10-year officer and director bars, respectively.

- On October 31, 2023, the SEC filed a litigated civil action in the Southern District of New York against a software company and its chief information security officer ("CISO") for fraud and internal controls failures related to allegedly known cybersecurity vulnerabilities. According to the SEC, until the company's 2020 announcement that it was the target of a massive cyberattack, the company allegedly understated its known cybersecurity risks and overstated



its cybersecurity practices. For example, the company allegedly disclosed only generic and hypothetical risks at a time when the company and the CISO knew of specific deficiencies in the company's cybersecurity practices as well as the increasingly elevated risks the company faced at the same time. The complaint also alleges that the company's CISO was aware of these risks and failed to resolve or raise them further within the company. The SEC thus

alleges that the company violated the antifraud provisions of the Securities Act and Exchange Act and the reporting and the books and records provisions of the Exchange Act. The SEC alleges the CISO aided and abetted the company's violations of the securities laws. The complaint seeks permanent injunctive relief, disgorgement with prejudice interest, civil penalties, and an officer and director bar against the CISO.<sup>37</sup>

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## ENDNOTES

- 1 SEC Press Release No. 2023-234
- 2 U.S. Securities & Exch. Comm'n, *Addendum To Division Of Enforcement Press Release Fiscal Year 2023* (Nov. 14, 2023)
- 3 SEC Press Release No. 2023-234
- 4 U.S. Securities & Exch. Comm'n, *Addendum To Division Of Enforcement Press Release Fiscal Year 2023* (Nov. 14, 2023)
- 5 *Id.*
- 6 Gurbir Grewal, Director, Division of Enforcement, U.S. Securities & Exch. Comm'n, *Remarks at Securities Enforcement Forum* (Nov. 15, 2022)
- 7 SEC Press Release No. 2023-234
- 8 See SEC Press Release No. 2023-195; SEC Press Release No. 2023-111; SEC Press Release No. 2023-126; SEC Press Release No. 2023-4
- 9 SEC Press Release No. 2023-234
- 10 U.S. Securities & Exch. Comm'n, *Addendum To Division Of Enforcement Press Release Fiscal Year 2023* (Nov. 14, 2023)
- 11 SEC Press Release No. 2023-234
- 12 SEC Press Release No. 2023-139
- 13 SEC Press Release No. 2023-219
- 14 SEC Press Release No. 2023-221
- 15 U.S. Securities & Exch. Comm'n, *Announcement Regarding Share Repurchase Disclosure Modernization Rule* (Nov. 22, 2023)
- 16 *U.S. Chamber of Com. v. SEC*, 85 F.4th 760 (5th Cir. 2023)
- 17 *U.S. Chamber of Com. v. SEC*, No. 23-60255, 2023 WL 8747399, at \*1-2 (5th Cir. Dec. 19, 2023)
- 18 U.S. Securities & Exch. Comm'n, Final Rule Stage, *Climate Change Disclosure*, 3235-AM87 (Dec. 6, 2023)
- 19 *Id.*
- 20 SEC Press Release No. 2023-234
- 21 SEC, *Addendum To Division Of Enforcement Press Release Fiscal Year 2023* (Nov. 14, 2023)
- 22 *Id.*
- 23 SEC Press Release No. 2023-126
- 24 SEC Press Release No. 3-21511
- 25 Exchange Act Release No. 98132
- 26 SEC Press Release No. 3-21588
- 27 SEC Press Release No. 2023-170
- 28 SEC Press Release No. 2023-195
- 29 Exchange Act Release No. 98611
- 30 SEC Press Release No. 2023-205
- 31 SEC Press Release No. 2023-210
- 32 Litigation Release No. 25913
- 33 SEC Press Release No. 2023-256
- 34 SEC Press Release No. 3-21561
- 35 Litigation Release No. 25854
- 36 Litigation Release No. 25855
- 37 Litigation Release No. 25887

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