SEC Enforcement Activity Against Public Company Defendants

Fiscal Years 2010–2015

ANALYSIS AND TRENDS

Filings
Allegations
Venues
Settlements
Monetary Penalties
Disgorgements

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EXECUTIVE SUMMARY

This report analyzes data in the Securities Enforcement Empirical Database (SEED), a collaboration between the NYU Pollack Center for Law & Business and Cornerstone Research. SEED is an online resource that provides data on SEC actions filed against defendants that are public companies traded on major U.S. exchanges.[1] This report focuses on actions initiated between fiscal years 2010 and 2015.[2]

- The number of new SEC enforcement actions rose, from 681 in FY 2010 to 807 in FY 2015. This increase was fueled by a record level of independent actions. In contrast, the percentage of follow-on administrative proceedings decreased between FY 2013 and FY 2015. The number and percentage of actions against public company defendants has remained relatively constant. (pages 3–4)

- Alleged violations of either Issuer Reporting and Disclosure provisions of the securities laws or the Foreign Corrupt Practices Act (FCPA) accounted for 85 percent of the SEC actions filed against public company defendants in FY 2015. (page 5)

- The Commission's increased use of administrative proceedings for enforcements against public company defendants is taking place against the backdrop of a growing number of constitutional challenges to the SEC's in-house actions. (page 6)

- In FY 2015, more than 80 percent of public company defendants settled concurrently with the filing of the action. Concurrent settlements in civil actions dropped substantially while concurrent settlements in administrative proceedings increased. (pages 7–8)

- Total monetary penalties and disgorgements imposed on public company defendants dropped from $1,254 million in FY 2014 to $547 million in FY 2015. (page 9)

- Following the passage of the 2010 Dodd-Frank Act, which enabled the SEC to seek monetary penalties against an array of defendants in administrative proceedings, the majority of large penalties and disgorgements imposed on public company defendants have occurred in administrative proceeding cases. (page 10)

"The recent disparity in concurrent settlements between different enforcement venues appears to be driven by the Commission's expanded use of administrative proceedings."

Stephen Choi
Murray and Kathleen Bring Professor of Law and Director of the Pollack Center
New York University

KEY TRENDS

- The total number of SEC enforcement actions in FY 2015 represented a 7 percent increase compared to the preceding record-breaking fiscal year (2014),[3] and was 10 percent above the median for fiscal years 2010 through 2015. (page 3)

- From FY 2010 to FY 2015, the majority of actions against public company defendants involved either Issuer Reporting and Disclosure or FCPA violations. (page 5)

- The SEC increasingly favored its administrative forum for public company defendants—the proportion of actions brought as administrative proceedings more than tripled from 21 percent in FY 2010 to 76 percent in FY 2015. (page 6)

- Although actions against public company defendants accounted for an average of 4 percent of the total number of SEC actions during FY 2010 through FY 2015, the public company defendants in these actions accounted for more than 18 percent of all SEC monetary penalties and disgorgements imposed over the same period.[4] (page 9)

- The top 10 monetary penalties and disgorgements imposed on public company defendants from FY 2010 through FY 2015 accounted for almost 55 percent of the total collected by the SEC from public company defendants. (page 10)

"After the SEC announced a new initiative aimed at preventing and detecting improper financial reporting, the majority of cases against public company defendants in recent years have focused on these concerns."

David Marcus
Senior Vice President
Cornerstone Research

NUMBER OF FILINGS

KEY FINDINGS

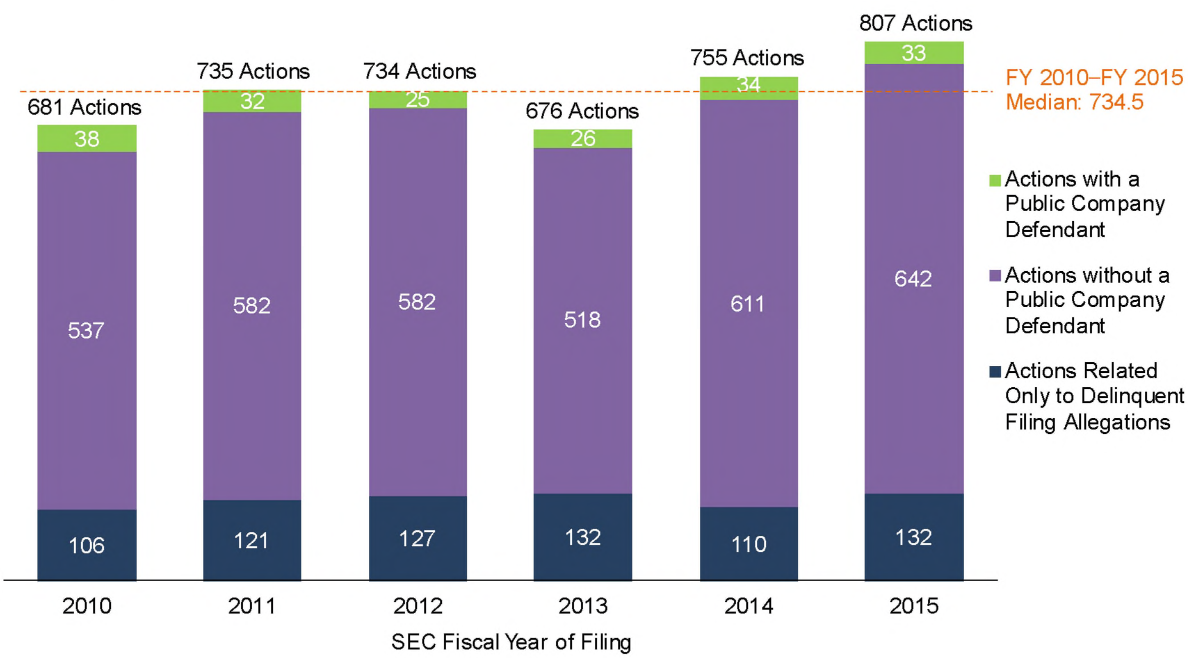
- The total number of enforcement actions initiated by the SEC generally increased over the past six fiscal years. During this period, the SEC initiated a median of 735 actions per year with the total number of enforcement actions trending upward beginning in FY 2014 to a record 807 actions in FY 2015.

- FY 2015 represented a 7 percent increase compared to the preceding fiscal year (2014), and was 10 percent above the FY 2010 through FY 2015 median.

- While the number of SEC enforcement actions has increased overall since FY 2010, the number of actions against public company defendants remained relatively stable.

The SEC brought a record number of enforcement actions in FY 2015.

FIGURE 1: **ANNUAL NUMBER OF SEC ACTIONS FILED**
FY 2010–FY 2015



Source: Securities Enforcement Empirical Database (SEED); SEC Press Release 2015-245; Select SEC and Market Data Reports for Fiscal Years 2010, 2011, and 2012
Note: Relief defendants and nonpublic subsidiaries are not considered public company defendants.

NUMBER OF FILINGS *continued*

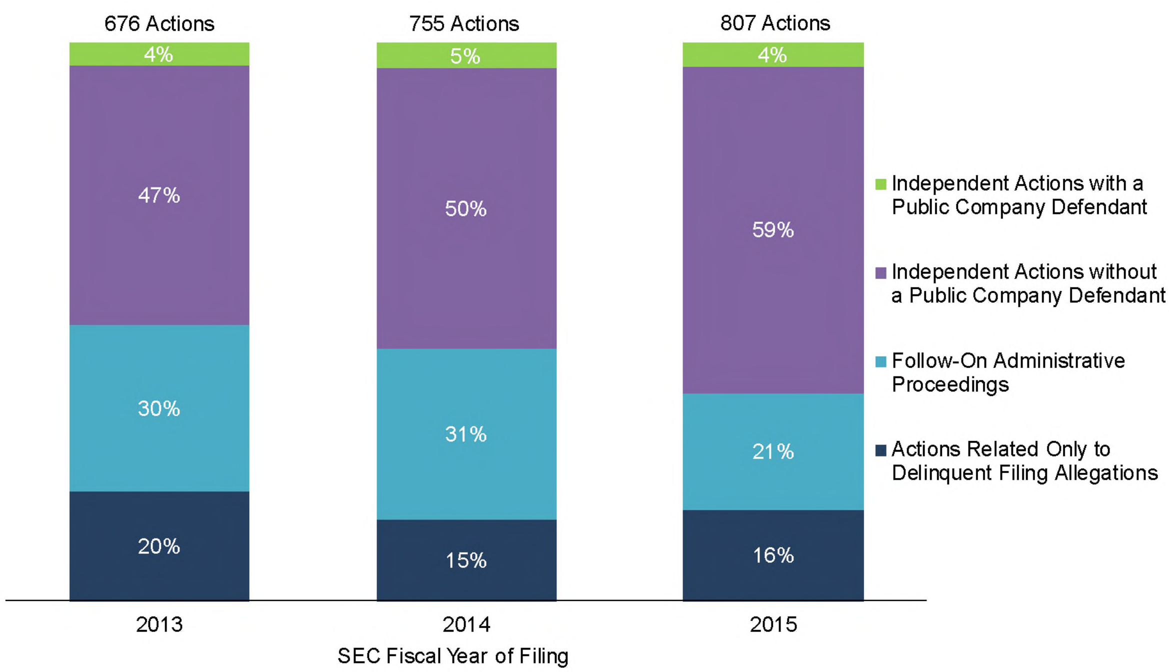
In FY 2015, for the first time the SEC divided its reported enforcement actions into three categories: (1) independent enforcement actions, (2) follow-on administrative proceedings, and (3) delinquent SEC filings.[5] Follow-on administrative proceedings are actions used to impose additional sanctions against individuals, such as bars from practicing, based on prior litigated misconduct.[6] The SEC filed "independent actions" for "violations of the federal securities laws"—that is, actions that were not delinquent filings or follow-on administrative proceedings.[7]

Independent actions made up almost two-thirds of enforcement filings in FY 2015.

KEY FINDINGS

- The increase in the number of SEC actions from 676 in FY 2013 to 807 in FY 2015 was fueled by an increase in the number of independent actions, which rose to a record high of 507 in FY 2015.[8] In FY 2015, independent actions comprised 63 percent of enforcement actions filed.
- At the same time, the proportion of follow-on administrative proceedings decreased from 30 percent of FY 2013 enforcement actions to 21 percent in FY 2015.
- During fiscal years 2005–2012 the number of independent enforcement actions reported by the SEC ranged from 318 to 445.[9]

FIGURE 2: **BREAKDOWN OF SEC ACTIONS BY FISCAL YEAR OF FILING**
FY 2013–FY 2015



Source: Securities Enforcement Empirical Database (SEED); SEC Press Release 2015-245

Note: Percentages may not add to 100 percent due to rounding. Relief defendants and nonpublic subsidiaries are not considered public company defendants.

CLASSIFICATION OF ALLEGATIONS

KEY FINDINGS

- Allegations against public company defendants since FY 2010 have concentrated on purported violations of Issuer Reporting and Disclosure provisions of the securities laws and the FCPA. Together these accounted for at least 85 percent of actions in five of the past six fiscal years.
- Cases involving Issuer Reporting and Disclosure violations increased sharply following the July 2013 announcement of a new SEC initiative aimed at preventing and identifying improper or fraudulent financial reporting.[10] In FY 2013 through FY 2015, these cases on average represented more than 65 percent of public company defendant actions.
- FCPA cases reached more than 50 percent in FY 2011. In FY 2015, the percentage of actions with public company defendants facing FCPA allegations was consistent with the average level of the preceding five years (33 percent).

Issuer Reporting and Disclosure and FCPA allegations comprised the vast majority of actions against public company defendants.

FIGURE 3: **HEAT MAP OF ALLEGATIONS AGAINST PUBLIC COMPANY DEFENDANTS FY 2010–FY 2015**

Allegation Type	Average 2010–2014	2010	2011	2012	2013	2014	2015
Issuer Reporting and Disclosure	57%	47%	44%	48%	73%	74%	52%
Foreign Corrupt Practices Act	33%	32%	53%	40%	19%	21%	33%
Other	2%	5%	0%	4%	0%	0%	6%
Investment Advisor/ Investment Companies	2%	11%	0%	0%	0%	0%	3%
Market Manipulation	1%	0%	3%	4%	0%	0%	3%
Broker Dealer	1%	0%	0%	0%	4%	3%	3%
Securities Offering	3%	5%	0%	4%	4%	0%	0%
Municipal Securities/ Public Pensions	1%	0%	0%	0%	0%	3%	0%
Insider Trading	0%	0%	0%	0%	0%	0%	0%
Number of Actions	31	38	32	25	26	34	33

Legend	0%	1–10%	11–20%	21–50%	51–100%

Source: Securities Enforcement Empirical Database (SEED)

Note: Other includes actions categorized by the SEC as Other. Relief defendants and nonpublic subsidiaries are not considered public company defendants.

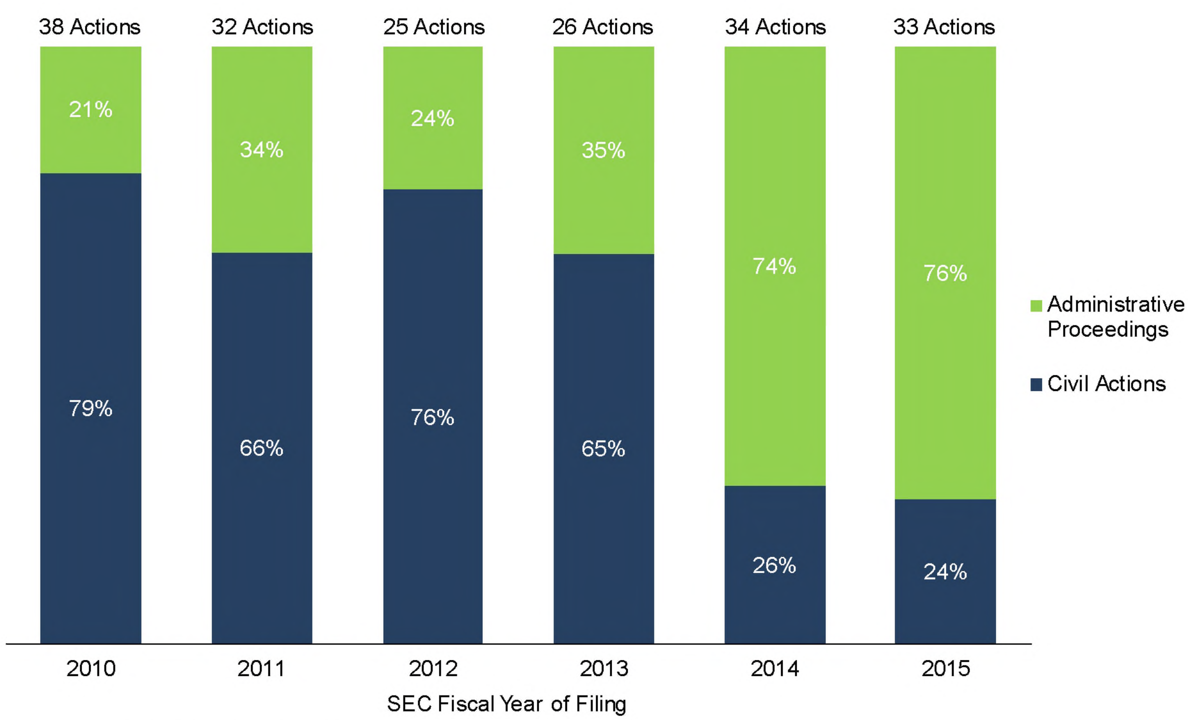
ENFORCEMENT VENUE

KEY FINDINGS

- For fiscal years 2010 through 2013, the SEC brought more than 65 percent of its actions against public company defendants in civil court.
- FY 2014 and FY 2015 saw a dramatic shift in the enforcement venue for public company defendants—the SEC's venue of choice became its administrative court. At the same time, scrutiny surrounding the constitutionality of the SEC's in-house court increased.[11]
- In FY 2015, the SEC brought 76 percent of its actions against public company defendants as administrative proceedings.

Recent years have seen a dramatic shift in the enforcement venues for public company defendants.

FIGURE 4: **DISTRIBUTION OF PUBLIC COMPANY ACTIONS BY ENFORCEMENT VENUE FY 2010–FY 2015**



Source: Securities Enforcement Empirical Database (SEED)

Note: Relief defendants and nonpublic subsidiaries are not considered public company defendants.

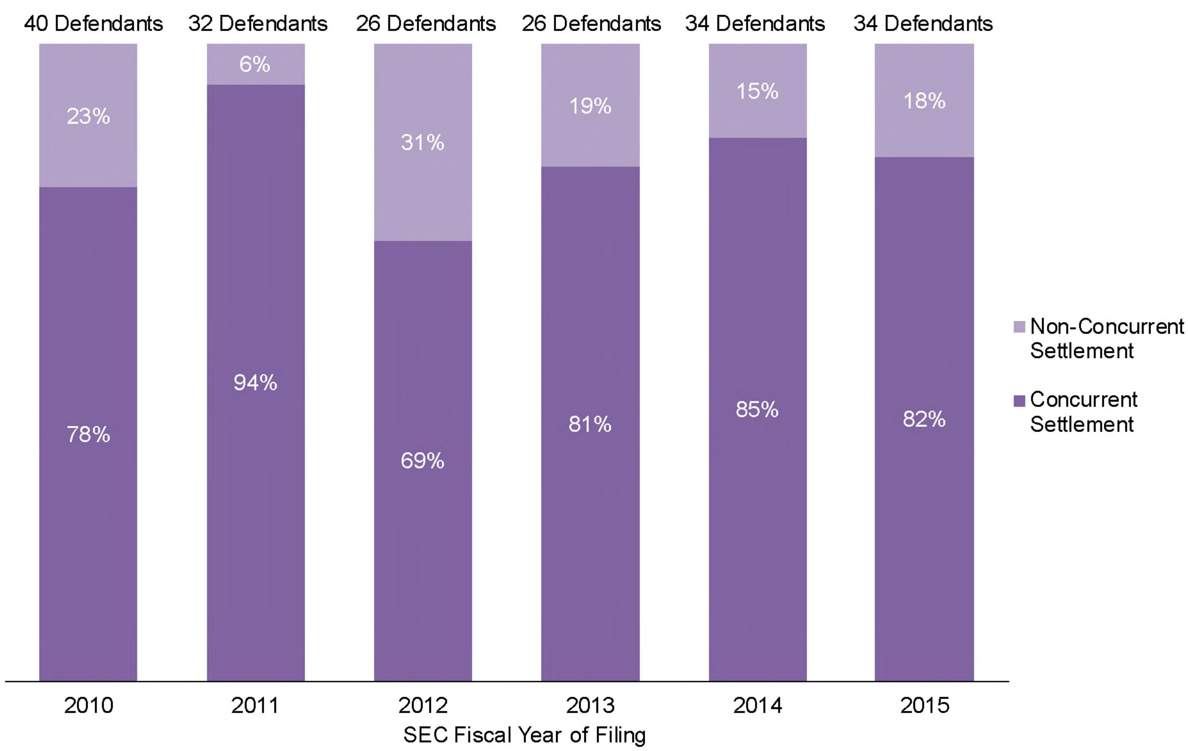
TIMING OF SETTLEMENT

KEY FINDINGS

- In FY 2015, 82 percent of public company defendants resolved SEC actions on the same day that they were initiated (concurrent settlements). These concurrent settlements range from a low of 69 percent in FY 2012 to a high of 94 percent in FY 2011.
- Concurrent settlements are often the result of SEC investigations that last months or years before the Commission initiates an enforcement action. In FY 2014, for example, the average time between when the SEC opened an investigation and commenced an enforcement action was 21 months.[12]

The vast majority of public company defendants settle concurrently with the filing of the action.

FIGURE 5: **SETTLEMENT TIMING FOR PUBLIC COMPANY DEFENDANTS**
FY 2010–FY 2015



Source: Securities Enforcement Empirical Database (SEED)

Note: The numbers above each bar represent the number of public company defendants in SEC actions each year. Percentages may not add to 100 percent due to rounding. A concurrent settlement indicates that an action was initiated and resolved on the same day. Settlement statistics are calculated at the defendant level for each case. Relief defendants and nonpublic subsidiaries are not considered public company defendants.

TIMING OF SETTLEMENT *continued*

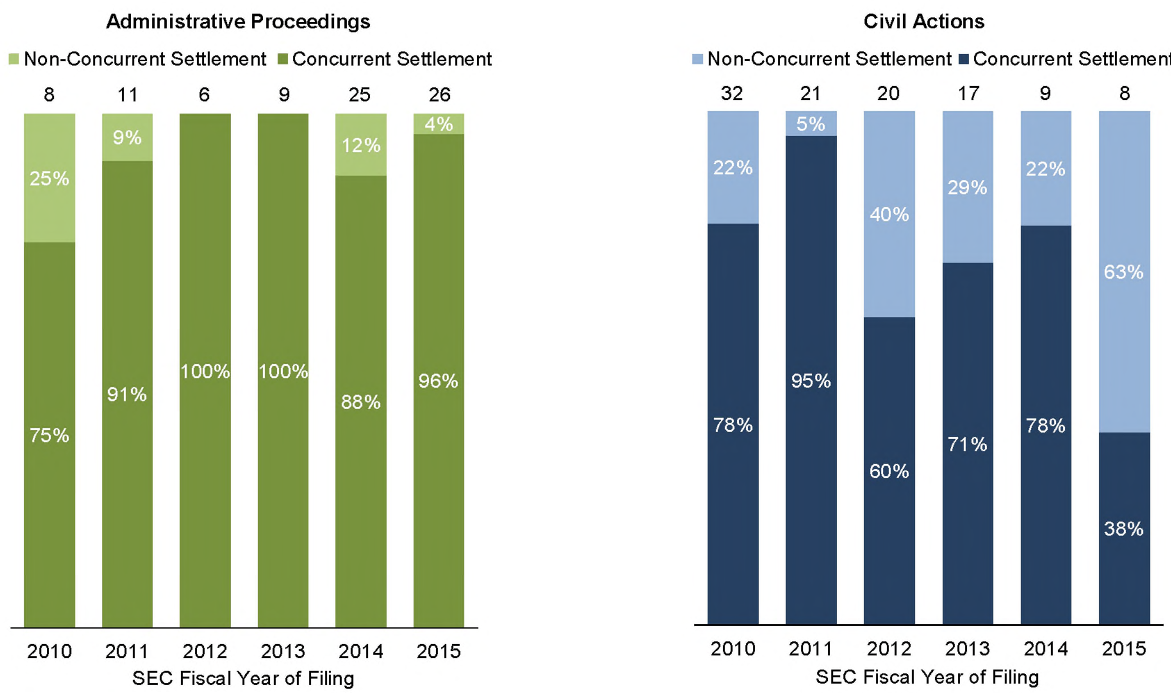
KEY FINDINGS

- When settlement timing is analyzed by enforcement venue, two divergent trends emerged over the past six fiscal years for public company defendants.
  - The vast majority of administrative proceedings have concurrent settlements. In both FY 2012 and FY 2013, 100 percent of these public company defendants had concurrent settlements.
  - The fraction of public company defendants in civil actions with concurrent settlements has generally decreased over time. Whereas in FY 2010 the proportion of public company defendants with concurrent settlements was approximately the same in both civil actions and administrative proceedings, the percentage in civil actions dropped to only 38 percent by FY 2015.
- The recent disparity in concurrent settlements across venues coincided with the SEC's expanded use of administrative proceedings. According to Andrew Ceresney, the Director of the SEC Division of Enforcement: "The vast majority of the uptick in the numbers of actions we have brought as administrative proceedings are settled actions."[13]

The percentage of public company defendants in civil actions settling concurrently dropped dramatically in FY 2015.

FIGURE 6: **SETTLEMENT TIMING FOR PUBLIC COMPANY DEFENDANTS IN ADMINISTRATIVE PROCEEDINGS AND CIVIL ACTIONS**

FY 2010–FY 2015



Source: Securities Enforcement Empirical Database (SEED)

Note: The numbers above each bar represent the number of public company defendants in SEC actions each year. Percentages may not add to 100 percent due to rounding. A concurrent settlement indicates that an action was initiated and resolved on the same day. Settlement statistics are calculated at the defendant level for each case. Relief defendants and nonpublic subsidiaries are not considered public company defendants.

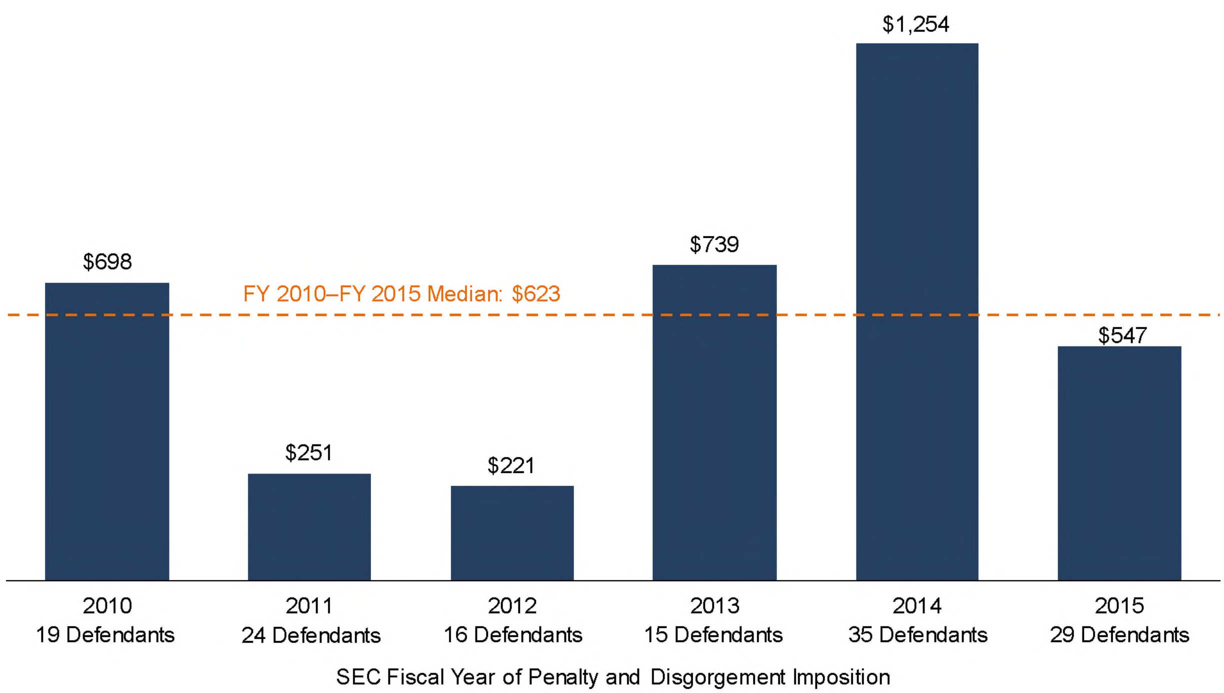
MONETARY PENALTIES AND DISGORGEMENTS

KEY FINDINGS

- During FY 2010 through FY 2015, the SEC imposed $3.7 billion in monetary penalties and disgorgements[14, 15] on public company defendants.[16]
- Although actions against public company defendants accounted for an average of 4 percent of actions during FY 2010 through FY 2015, the public company defendants in these actions accounted for more than 18 percent of all SEC monetary penalties and disgorgements imposed over the same period.[17]
- The large increase in FY 2014 monetary penalties and disgorgements imposed against public company defendants was driven by administrative proceedings against four defendants, which together accounted for more than 65 percent of the FY 2014 total dollar amount.

Public company defendants paid a larger share of penalties and disgorgements relative to their share of the total number of actions.

FIGURE 7: **TOTAL MONETARY PENALTIES AND DISGORGEMENTS IMPOSED ON PUBLIC COMPANY DEFENDANTS**
FY 2010–FY 2015
(Dollars in Millions)



Source: Securities Enforcement Empirical Database (SEED)

Note: Total monetary penalties and disgorgements exclude monetary penalties and disgorgements shared by multiple defendants. Relief defendants and nonpublic subsidiaries are not considered public company defendants.

MONETARY PENALTIES AND DISGORGEMENTS *continued*

KEY FINDINGS

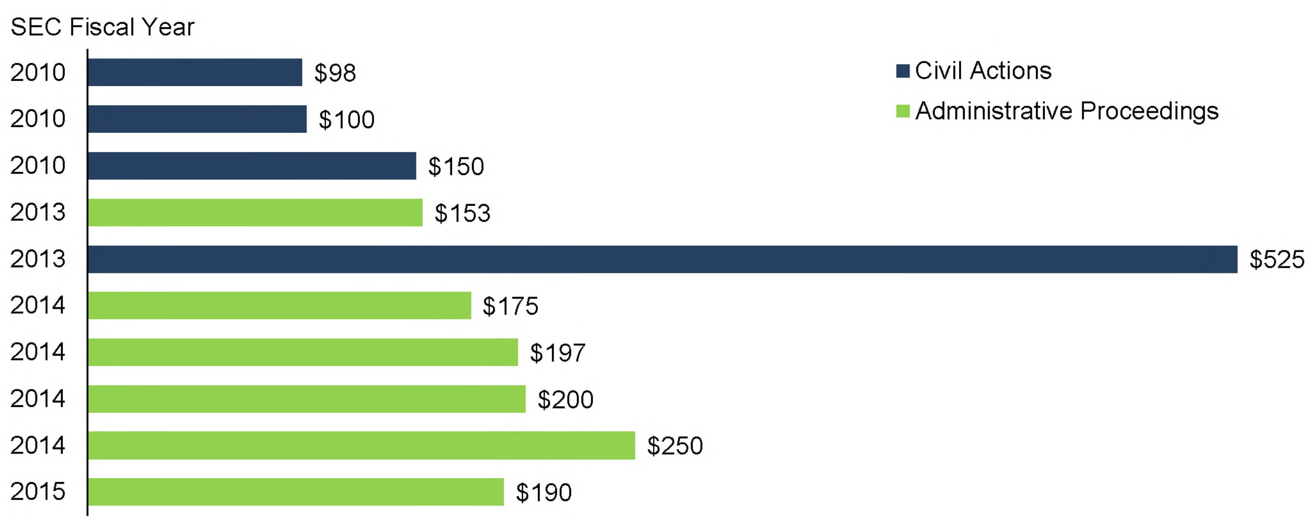
- Over the last six fiscal years, the SEC imposed penalties and disgorgements of approximately $100 million or more on 10 public company defendants, accounting for almost 55 percent of the monetary total sought by the SEC from public company defendants.
- The passage of the 2010 Dodd-Frank Act enabled the SEC to seek monetary penalties against an array of defendants in administrative proceedings, and was followed by a shift in enforcement venue for cases resulting in the largest penalties and disgorgements imposed on public company defendants.
  - In FY 2010, penalties and disgorgements of approximately $100 million or more were all imposed in civil actions.
  - From FY 2013 through FY 2015, penalties and disgorgements of $100 million or more were imposed primarily in administrative proceedings.
- The largest penalty and disgorgement imposed against a public company defendant in the last six fiscal years was $525 million in FY 2013. The case involved alleged violations of Issuer Reporting and Disclosure provisions of the securities laws by an oil and gas company.

Since FY 2010, the majority of the large penalties and disgorgements against public company defendants occurred in administrative proceedings.

FIGURE 8: **TOP 10 MONETARY PENALTIES AND DISGORGEMENTS IMPOSED ON PUBLIC COMPANY DEFENDANTS**

FY 2010–FY 2015

(Dollars in Millions)



Source: Securities Enforcement Empirical Database (SEED)

Note: Total penalties and disgorgements exclude monetary penalties and disgorgements shared by multiple defendants. Relief defendants and nonpublic subsidiaries are not considered public company defendants.

RESEARCH SAMPLE

- The Securities Enforcement Empirical Database (SEED), a collaboration between the NYU Pollack Center for Law & Business and Cornerstone Research, identifies 188 SEC enforcement actions initiated against 184 public company defendants between October 1, 2009, and September 30, 2015 (http://seed.law.nyu.edu).

- The sample used for the majority of this report is referred to as "enforcement actions filed against public company defendants" and includes only those enforcement actions with public companies listed explicitly as defendants facing allegations that are not exclusively related to delinquent filings. The sample does not include enforcement actions filed against individual defendants employed at public companies or enforcement actions filed against nonpublic subsidiaries.

- Public companies are defined as those that trade on a major U.S. exchange as identified by CRSP, thus, public companies that trade OTC and nonpublic subsidiaries are excluded.

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

ENDNOTES

[1] SEED captures the public company defendants included in the Center for Research in Security Prices (CRSP) U.S. Stock Database. CRSP includes data from the NYSE, NYSE MKT, NASDAQ, and NYSE Arca stock exchanges. Only information from publicly available documents released by the SEC (e.g., litigation releases, ALJ orders, press releases, etc.) and resolution information from court orders (for civil actions) are included in the database.

[2] SEC fiscal years begin on October 1 of the prior year and end on September 30. SEC fiscal years 2010 to 2015 span October 1, 2009, to September 30, 2015.

[3] "SEC's FY 2014 Enforcement Actions Span Securities Industry and Include First-Ever Cases," U.S. Securities and Exchange Commission Press Release, October 16, 2014, http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370543184660.

[4] "SEC Announces Enforcement Results for FY 2015," U.S. Securities and Exchange Commission Press Release, October 22, 2015, http://www.sec.gov/news/pressrelease/2015-245.html (SEC Press Release 2015-245); "Year-By-Year Monetary Sanctions in SEC Enforcement Actions," U.S. Securities and Exchange Commission, http://www.sec.gov/news/newsroom/images/enfstats2.pdf.

[5] SEC Press Release 2015-245.

[6] See, e.g., SEC Press Release 2015-245; see also *The Securities Enforcement Manual,* 2nd ed. (American Bar Association, 2007), p. 379.

[7] SEC Press Release 2015-245.

[8] SEC Press Release 2015-245.

[9] SEC Press Release 2015-245.

[10] On July 2, 2013, the SEC announced the launch of its Financial Reporting and Audit Task Force. The primary goals of the task force are "fraud detection and increased prosecution of violations involving false or misleading financial statements and disclosures." See "SEC Announces Enforcement Initiatives to Combat Financial Reporting and Microcap Fraud and Enhance Risk Analysis," U.S. Securities and Exchange Commission Press Release, July 2, 2013, http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171624975.

[11] See, e.g., Peter J. Henning, "Constitutional Challenges to S.E.C.'s Use of In-House Judges," *New York Times*, October 5, 2015, http://www.nytimes.com/2015/10/06/business/dealbook/constitutional-challenges-to-secs-use-of-in-house-judges.html; Peter J. Henning, "A Small Step in Changing S.E.C. Administrative Proceedings," *New York Times*, September 28, 2015, http://www.nytimes.com/2015/09/29/business/dealbook/a-small-step-in-changing-sec-administrative-proceedings.html?_r=0.

[12] "FY 2014 Annual Performance Report and FY 2016 Annual Performance Plan," U.S. Securities and Exchange Commission, https://www.sec.gov/about/reports/sec-fy2014-fy2016-annual-performance.pdf.

[13] Andrew Ceresney, Director, SEC Division of Enforcement, "Keynote Speech at New York City Bar 4th Annual White Collar Institute," May 12, 2015, http://www.sec.gov/news/speech/ceresney-nyc-bar-4th-white-collar-key-note.html.

[14] SEED captures monetary penalties and disgorgements disclosed in SEC enforcement action documents: administrative proceedings, ALJ orders, litigation releases, press releases, and complaints. For civil actions, SEED also captures monetary penalties and disgorgements reported in court orders. If neither the SEC nor the court order reported a monetary penalty or disgorgement obtained by the SEC in an enforcement action, the monetary penalty or disgorgement amount would be excluded from the figures and statistics.

[15] Monetary penalties and disgorgements are calculated on a defendant and action basis and are counted in the fiscal year in which they are imposed. Monetary penalties and disgorgements are calculated as the total monetary penalty and disgorgement amount, if disclosed, or otherwise as the sum of all disclosed monetary penalties and disgorgements. Monetary penalties and disgorgements imposed on nonpublic subsidiaries are not included. In the event that multiple SEC documents contain monetary penalty and disgorgement information for the same defendant and case, calculations are based on the most recent document. In the event that two documents were released on the same day, calculations are based on the document with the highest figures.

[16] Note that this calculation excludes monetary penalties and disgorgements that are shared between individual defendants and public company defendants.

[17] SEC Press Release 2015-245; "Year-By-Year Monetary Sanctions in SEC Enforcement Actions," U.S. Securities and Exchange Commission, http://www.sec.gov/news/newsroom/images/enfstats2.pdf.

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The authors acknowledge the research efforts and significant contributions of their colleagues at New York University and Cornerstone Research.

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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About Cornerstone Research

Cornerstone Research provides economic and financial consulting and expert testimony in all phases of complex litigation and regulatory proceedings. The firm works with an extensive network of prominent faculty and industry practitioners to identify the best-qualified expert for each assignment. Cornerstone Research has earned a reputation for consistent high quality and effectiveness by delivering rigorous, state-of-the-art analysis for over 25 years. The firm has 600 staff and offices in Boston, Chicago, London, Los Angeles, Menlo Park, New York, San Francisco, and Washington.