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SEC ENFORCEMENT SWEEPS: IMPLICATIONS FOR AGENCY AND INDUSTRY

The SEC is increasingly conducting sweep investigations to address market conduct. In the past 18 months, the SEC has instituted enforcement actions arising from five different enforcement sweeps involving at least 65 respondents and more than \$1 billion in related penalties. These actions are typically focused on violations of strict liability or negligence-based provisions by market participants directly regulated by the SEC. The SEC's use of enforcement sweeps presents benefits and risks for both the agency and respondents.

By Adam Aderton and Melissa Taustine *

The Securities and Exchange Commission is increasingly relying on enforcement sweeps to institute multiple similar enforcement actions quickly and simultaneously. Since 2021, the SEC has instituted at least 65 enforcement actions as a result of at least five high-profile sweeps and has imposed well over \$1 billion in related penalties. The sweeps involved a variety of alleged violations ranging from recordkeeping failures and pay-to-play violations to insufficient identity theft prevention practices.

Top SEC leadership has described its purpose behind, and its perceived benefit of, the SEC's use of sweep investigations. On November 2, 2022, SEC Chair Gary Gensler lauded a recent sweep investigation, noting that he hoped it would “send[] a message to other registrants” and that the SEC will continue to “use sweeps, initiatives, and undertakings to shape market behavior.”¹ Similarly, in remarks on November 15,

2022, Enforcement Director Gurbir Grewal opined on the impact the SEC's recent recordkeeping sweep had on the industry:

When 17 major Wall Street firms are fined in excess of [] 1.2 billion dollars, required to admit their failures, engage consultants and implement safeguards to prevent future violations, not only do those firms improve their culture and practices, but other financial services firms take note and do so as well, the media takes notice, and important to trust-building, the investing public sees accountability.²

footnote continued from previous column...

<https://www.sec.gov/news/speech/gensler-remarks-practising-law-institute-110222>.

¹ “*The Law and Its Effective Administration*,” *Remarks Before the Practising Law Institute's 54th Annual Institute on Securities Regulation*, Chair Gary Gensler (Nov. 2, 2022),

² *Remarks at Securities Enforcement Forum*, Director Gurbir S. Grewal (Nov. 15, 2022), <https://www.sec.gov/news/speech/grewal-speech-securities-enforcement-forum-111522>.

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