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INCREASED USE OF BIG DATA IN SEC ENFORCEMENT

The SEC's new analytic tools, applied to massive data sets, have enabled the Commission to proactively identify and pursue a significantly increased number of enforcement actions in the last few years. Former chair Mary Jo White has praised the new methods as "transformative." The authors describe this development, the various data analytic programs the Commission now uses, and some recent cases brought as a result. They close with practice tips for counsel.

By Elizabeth P. Gray and Catherine E. Fata *

Since the establishment of the Securities and Exchange Committee in 1934, its mission has remained constant — to protect investors and, derivatively, the financial markets through regulation and, over time, enforcement of the federal securities laws. The SEC's methodologies for identifying and investigating financial misconduct crucial to achieving its mission have evolved over time. Until relatively recently, the SEC's Division of Enforcement generally investigated misconduct referred to them by third parties both within the agency, such as operating divisions, and outside of the agency, such as FINRA. But the introduction of "big data" has dramatically changed the way business is done at the SEC. By successfully harnessing the power of big data, the SEC has transformed its enforcement program to one in which it more proactively identifies problematic conduct and tests its market theories. The SEC now has at its fingertips the technology to rival the most sophisticated companies in the world. This has dramatically changed the way the SEC operates, and companies and corporations subject to their jurisdiction must take notice.

THE DAWNING OF A NEW ERA: INCREASED USE OF "BIG DATA"

Historically, the SEC's Division of Enforcement relied heavily on third parties as a source of investigations. Traditional sources of referrals were financial disclosures, whistleblowers, and self-regulatory organizations, such as FINRA. As recently as five years ago, the SEC was originating far fewer investigations,¹ but new technology — such as the Corporate Issuer Risk Assessment (CIRA) and technology within the Division of Enforcement's Analysis and Detection Center — has allowed the SEC to take an increasingly proactive approach to enforcement. Former SEC Chair Mary Jo White has lauded this new, data-driven approach as "transformative."² By frequently originating their own investigations, the SEC is not only less reliant on

¹ Mary Jo White, Chair, SEC, Speech at the New York University School of Law Program on Corporate Compliance and Enforcement: A New Model for SEC Enforcement: Producing Bold and Unrelenting Results (Nov. 18, 2016).

² *Id.*

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