THE USE OF DATA ANALYTICS
IN ENFORCEMENT AND CORPORATE COMPLIANCE

AI and data analytics have captured the popular zeitgeist and its effect on regulatory enforcement and compliance is growing. This article addresses how regulators have used data analytics in enforcement actions to date, as well as how they hope to use technology in new ways to identify new potential enforcement cases. We also address how to incorporate data analytics into corporate compliance programs to detect misconduct and note some practical considerations to keep in mind when incorporating this technology into compliance programs.

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Currently, artificial intelligence ("AI") and data analytics are hot topics in almost any business sector. OpenAI's ChatGPT, the "fastest-growing consumer application in history"[1] and other AI-powered technology have captured the popular zeitgeist. Legal and Compliance personnel have various AI-related risks to manage, including that regulators have been using — and will continue to use — AI-powered data analytics to identify and develop enforcement actions. While these efforts have primarily focused on developing existing cases with extensive data, such as trading cases, regulators have indicated that they could use data analytics to identify potential new cases, including in Foreign Corrupt Practices Act ("FCPA") cases. Similarly, regulators appear now to expect companies that are using data analytics in their business to similarly use these tools in their compliance programs to identify or prevent misconduct. Where human resources may become less available and data more available, data

analytics may be able to help Boards, General Counsels, and Chief Compliance Officers bridge the gap.

In this article, we cover three key points relating to the use of data analytics in securities enforcement and compliance. First, we describe regulators' uses of this technology in enforcement actions and note how regulators have indicated they plan to use this technology in the future. Second, we suggest ways to incorporate data analytics into compliance programs to detect and identify misconduct. And third, we note practical considerations to keep in mind when incorporating this technology into corporate compliance programs.

REGULATORS' USES OF DATA ANALYTICS

Regulators have long used data analytics to build their cases. These techniques have typically been used to build the evidence in cases involving significant data, such as trading data. But leveraging this technology to identify new cases could present a meaningful shift in the enforcement landscape. Currently, regulators commonly rely on whistleblowers, other companion regulators in states or abroad, self-disclosure, and investigative journalism to identify potential misconduct.

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[1] Krystal Hu, *ChatGPT sets record for fastest-growing user base – analyst note*, REUTERS (Feb. 2, 2023), https://www.reuters.com/technology/chatgpt-sets-record-fastest-growing-user-base-analyst-note-2023-02-01/.

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