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ISSUER REPORTING AND DISCLOSURE: THE STATE OF SEC ENFORCEMENT

Taking their cue from the SEC's 2018 Annual Report, the authors discuss how the SEC's changing priorities have resulted in a decline in issuer reporting and disclosure cases. They find that while such cases may no longer be a top priority, certain types remain important. And they suggest that a variety of factors — apart from shifting SEC priorities — may be responsible for part of the decline.

By David Woodcock and Alexandra Stanley *

Issuer reporting and disclosure enforcement actions have been a key component of the Securities and Exchange Commission's enforcement program for much of the agency's history. That remains true today, but these types of actions do not appear to be as big a focus as they have been in the past. This stems in part from the change in priorities between the current SEC chairman and his predecessor, although that explanation is only part of the story.

The agenda under the prior chairman of the SEC, Mary Jo White, derived from her experience as a criminal prosecutor with a “broken windows” theory of law enforcement.¹ Under this theory, the Enforcement Division pursued “even the smallest infractions” and investigated “all types of wrongdoing . . . such as control failures, negligence-based offenses, and even violations

of prophylactic rules with no intent requirement.”² This resulted in a sizeable increase in the number of enforcement actions and the amounts collected in penalties and disgorgement.³ It also resulted in the creation of a task force devoted to financial reporting and audit with the goal of increasing the number of issuer reporting and disclosure actions brought by the Commission.⁴

¹ For a discussion of the prosecutorial approach under Chair White see David Woodcock and Allison Fuller, *A Prosecutor's Approach to SEC Enforcement (And What it Means for Smaller Companies)*, 49 Securities and Commodities Regulation (Jan. 6, 2016).

² Mary Jo White, SEC Chair, Remarks at the Securities Enforcement Forum, Washington D.C. (Oct. 9, 2013), <https://www.sec.gov/news/speech/spch100913mjw>.

³ Press Release, SEC Announces Enforcement Results for FY 2016 (Oct. 11, 2016) (announcing that the SEC filed 868 enforcement actions, a new annual high) <https://www.sec.gov/news/pressrelease/2016-212.html>; Press Release, SEC Announces Enforcement Results For FY 2015 (Oct. 22, 2015) (announcing \$ 4.19 billion in disgorgement and penalties) <https://www.sec.gov/news/pressrelease/2015-245.html>.

⁴ Press Release, SEC Announces Enforcement Initiatives to Combat Financial Reporting and Microcap Fraud and Enhance Risk Analysis (July 2, 2013) <https://www.sec.gov/news/press-release/2013-2013-121htm>.

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