BETTER MARKETS

SEC REPORT

The SEC'S Enforcement Program Has to Start Meaningfully Punishing Individuals

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INTRODUCTION

The importance of the SEC's enforcement program to protecting the hard-earned money of investors, the integrity of the capital markets they invest in, and the importance of those markets to our economy, jobs, and growth cannot be overstated. For example, in fiscal year 2023, the SEC sued to stop a Ponzi scheme perpetrated against 1,500 investors through an unregistered securities offering targeting Haitian-Americans; it charged eight social media influencers in a $100 million scheme to manipulate the market by promoting stock to enrich themselves; and it obtained a $12.5 million civil penalty after a company lied to investors about its sales growth in its public reports. These are just some recent examples of SEC enforcement actions.

The SEC's job with respect to enforcement is critical to two overriding social and economic priorities of the American people. First, protecting investors from fraudsters gives Americans the confidence they need to put some of their money in the markets for important life goals like buying a home, sending children to college, and having a secure retirement. Second, money invested in our markets is what enables companies to be founded, funded, and grow, which creates the jobs and economic growth that result in wealth creation and rising standards of living. That's called capital formation, which the SEC is mandated to promote.

Being well-regulated and well-policed by the SEC are key reasons the United States has the deepest, broadest, and most liquid markets in the world and why America has a dynamic, growing economy—often the envy of the world. It's why investors from around the globe, who could choose to invest anywhere, often send their hard-earned money to invest in the U.S. capital markets. The SEC is the cop on the beat, and effective enforcement benefits all Americans.

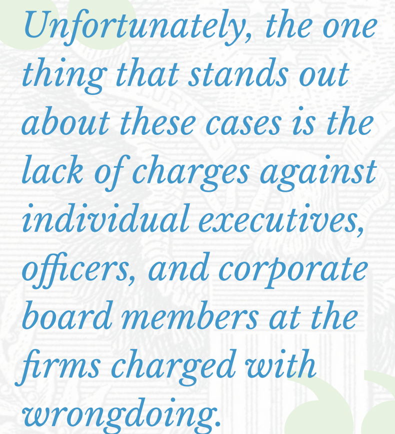
"Credible oversight and enforcement can increase the risk of detection of wrongdoing and may discourage wrongdoers from engaging in irresponsible risk taking in the financial services sector."[1] The SEC's impressive enforcement results in fiscal year 2023 certainly contributed to credible oversight and enforcement of the federal securities laws. The SEC brought important cases and obtained meaningful relief. But the credibility of its enforcement program would be enhanced further if the SEC pursued individual wrongdoers in the cases it itself touts.

This report discusses some of the enforcement actions that the SEC highlighted in announcing its enforcement results for fiscal year 2023 (FY 2023). Although the SEC's FY 2023 enforcement report had a section discussing its crypto cases, the majority of the enforcement report discussed other enforcement priorities, and this report does the same. As Chair Gensler recently stated, despite what people may think based on media coverage, the SEC does not spend the majority of its time on crypto. However, as Better Markets' has reported elsewhere, the SEC's crypto enforcement record is impressive and unfortunately warranted given the recidivist lawless crypto industry's business model of breaking the law and ripping off investors.

[1] Dr. Joe McGrath, *Why Do Good People Do Bad Things? A Multi-Level Analysis of Individual, Organizational, and Structural Causes of White-Collar Crime*, 43 SEATTLE U. L. REV. 525, 547 (2020).

SEC enforcement focuses on a wide range of violations of the federal securities laws, from defrauding investors to unregistered offerings to impeding whistleblowers. The SEC must vigorously enforce all the provisions of the federal securities laws to punish, disincentivize, and deter misconduct. Indeed, the "primary purpose of the SEC's enforcement activity is deterrence."[2]

The SEC's enforcement results for FY 2023 should significantly deter lawbreaking. The SEC filed 784 total enforcement actions and obtained orders for almost $5 billion in financial remedies. The SEC characterized these actions as "spann[ing] the securities industry," from billion-dollar frauds to microcap offering abuses. The cases also involved "diverse market participants, from public companies and investment firms to gatekeepers and social media influencers." And the cases showcased all the ways in which the SEC uses its authority "to protect investors and promote market integrity." Below, we discuss some of the cases that the SEC highlighted, and the importance of the securities laws that were broken in those cases. The cases reveal the SEC's commitment to holding securities law violators accountable.



Unfortunately, the one thing that stands out about these cases is the lack of charges against individual executives, officers, and corporate board members at the firms charged with wrongdoing. The SEC's practice of prioritizing charges against the biggest corporations and not the individuals responsible for and profiting from the lawbreaking at those firms is longstanding.

> "[An] empirical analysis of SEC civil and administrative enforcement data from 2005-2007 found that individuals in big firms fare better in enforcement actions than those in smaller firms because (1) the actions taken against large entities are less likely to be accompanied by enforcement actions against individuals, and (2) because individuals at big firms face less punitive sanctions."[3]

This analysis concluded that the SEC "'demonstrates a systematic lack of action against individual violators in high profile cases.'"[4] Since that time and under Chair Gensler, the SEC has made progress, but the SEC still has a lot of work to do before it can credibly claim to be doing what must be done to not only punish but also deter lawbreaking. As discussed below, although the cases that the SEC itself highlighted in its FY 2023 enforcement report will help deter future violations of numerous important provisions of the federal securities laws, most of the cases did not involve charges against the individuals responsible for the violations.

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[2] Urska Velikonja, *Public Compensation for Private Harm: Evidence from the SEC's Fair Funds Distributions*, 67 STAN. L. REV. 331, 359 (2015).

[3] McGrath, 43 SEATTLE U. L. REV. at 548 (citing Stavros Gadinis, *The SEC and the Financial Industry: Evidence from Enforcement Against Broker-Dealers*, 67 BUS. LAW. 679, 728 (2012)).

[4] *Id.* (quoting Stavros, 67 BUS. LAW. at 683).

SELECT CASES HIGHLIGHTED IN THE FY 2023 ENFORCEMENT REPORT

Significant Monetary Relief

The FY 2023 enforcement report starts by stating that the SEC brought cases "imposing robust financial remedies against major companies in actions that addressed a wide range of securities laws violations." As three examples, the report cites a civil judgment against Danske Bank ordering it to pay a $178.6 million civil penalty for misleading investors about the internal controls it had as part of its anti-money laundering compliance program; a civil judgement against Vale S.A. ordering it to pay $55.9 million in disgorgement, prejudgment interest, and civil penalties for allegedly assuring investors that all of its dams were certified as stable despite a dam not meeting internationally-recognized safety standards prior to a collapse that killed 270 people; and an order against ABB Ltd. in which ABB agreed to pay a $75 million penalty to resolve charges arising out of an alleged bribery scheme. The SEC was right to highlight these cases because all three cases involved conduct that must be punished and deterred.

The significant monetary relief obtained in these cases serves to emphasize the gravity of the violations. The "cornerstone" of a strong anti-money laundering compliance program is "the adoption and implementation of internal controls,"[5] and so misleading investors about a company's internal controls threatens investors and the markets. Corporations must be "forthright about ESG risk," and must be held accountable when they are not, because "ESG disasters can shatter a company's reputation and market value."[6] And the SEC must enforce its authority to sanction companies for bribery because bribery "is now seen as something that is directly related to issues that a reasonable investor might consider."[7] The large financial sanctions ordered in these cases alert potential wrongdoers that the SEC will vigorously prosecute misconduct involving these types of violations of the federal securities laws.

Although the SEC was right to pursue companies that committed anti-money laundering, ESG, and bribery violations, it must also charge the individuals who did the actual lawbreaking as well as the executives and supervisors who are responsible for ensuring that such lawbreaking does not happen.

Nonetheless, in not one of the cases did the SEC charge individuals. The reality is that "[p]eople, not companies, commit crimes, but more often than not, companies, not people, pay the price."[8] This "failure to hold individuals accountable in cases of corporate malfeasance generates an accountability gap that undermines deterrence."[9] Although the SEC was right to pursue companies that committed anti-money laundering, ESG, and bribery violations, it must also charge the individuals who did the actual lawbreaking as well as the executives and supervisors who are responsible for ensuring that such lawbreaking does not happen.

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[5] *Policy Statement on Obtaining and Retaining Beneficial Ownership Information for Anti-Money Laundering Purposes*, Exchange Act Release No. 61651, 2010 WL 750751, at *2 (Mar. 5, 2010).

[6] James J. Park, *ESG Securities Fraud*, 58 WAKE FOREST L. REV. 1149, 1201 (2023).

[7] Rachel Chambers and Jena Martin, *Reimagining Corporate Accountability: Moving Beyond Human Rights Due Diligence*, 18 N.Y.U. J.L. & BUS. 773, 811 (2022).

[8] Gregroy M. Gilchrist, *Individual Accountability for Corporate Crime*, 34 GA. ST. U. L. REV. 335, 337 (2018).

[9] *Id.* at 335.

Oversight of the Securities Industry

This juxtaposition of bringing tremendously important cases but not holding individuals accountable is seen throughout the cases discussed in the FY 2023 enforcement report. The report touts “a series of actions targeting misconduct that undermined [the SEC’s] ability to effectively regulate the securities industry.” The cases involved a $7 million civil penalty against Citadel Securities for violating a provision of Regulation SHO requiring broker-dealers to mark sale orders as long, short, or short exempt; a $6 million civil penalty against Goldman Sachs for failing to provide complete and accurate “blue sheet” data to the SEC; and a $6 million civil penalty against Merrill Lynch for failing to file Suspicious Activity Reports (SARs).

These cases highlight significant failures by major market participants. The requirement that broker-dealers mark sale orders as long, short, or short exempt is designed to aid in ensuring compliance with Regulation SHO, which provides the regulatory framework governing short sales.[10] Blue sheet data provided to the SEC contains detailed execution information that “facilitate[s] investigations . . . particularly in the areas of insider trading and market manipulation,” and enables the SEC “to acquire information about the activities of large traders.”[11] And SARs are “an important source of information about financial misconduct,” with “‘the best ones contain[ing] allegations of wrongdoing that are described clearly and comprehensively, but also concisely.’”[12] Holding firms liable for failing to comply with these important information requirements furthers investor protection and the welfare of our markets.

Again, however, the SEC did not charge any individuals in these cases. The SEC would have even greater success in deterring these types of violations if it charged not just the firms but the individuals responsible for the firms’ violations. Holding individuals accountable for their actions would “bolster the deterrent effect of SEC enforcement and fulfill societal notions of justice by punishing the people who were directly responsible for the alleged misconduct.”[13]

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Destroying Evidence

The report also highlights the agreement of 25 advisory firms, broker-dealers, and/or credit rating agencies to pay combined civil penalties totaling more than $400 million to settle charges that they violated the recordkeeping requirements of the federal securities laws. “Recordkeeping” doesn’t sound so bad, but the law requires securities companies to maintain records of communications so that the SEC can investigate lawbreaking. If those communications are not kept as required by law—if the company destroys them or “fails to maintain” them—then the SEC’s ability to detect and punish

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[10] *Amendments to Regulation SHO*, Exchange Act Release No. 58775, 2008 WL 4567305, at *1 (Oct. 14, 2008); *Short Sales, Exchange Act Release* No. 50103, 2004 WL 1697019, at *23 (July 28, 2004).

[11] *Order Approving the National Market System Plan Governing the Consolidated Audit Trail*, Exchange Act Release No. 79318, 2016 WL 11469637, at *200 (Nov. 15, 2016).

[12] Stavros Gadinis and Colby Mangels, *Collaborative Gatekeepers*, 73 WASH. & LEE L. REV. 797, 877-78 (2016) (quoting Andrew Ceresney, Remarks at SIFMA’s 2015 Anti-Money Laundering and Financial Crimes Conference, Feb 25, 2015, http://www.sec.gov/news/speech/022515-spchc.html).

[13] Julian J.Z. Polaris, *Backstop Ambiguity: A Proposal for Balancing Specificity and Ambiguity in Financial Regulation*, 33 YALE L. & POL’Y REV. 231, 258 (2014).

lawbreaking is much more difficult if not impossible. Thus, failure to keep records is really a polite way of saying someone might have destroyed evidence.

Note that, again, these cases involved major market participants. Wells Fargo, HSBC, and Scotia Capital were among the firms that agreed to settle charges that they violated the recordkeeping requirements. Wells Fargo's settlement involved a $125 million civil penalty.

These cases are undoubtedly significant, as the recordkeeping requirements of the federal securities laws "are a familiar and important element of the Commission's approach to investment adviser and broker-dealer regulation."[14] The complexity of the securities business makes "accurate and comprehensive recordkeeping vital to the financial well-being of" broker-dealers and investment advisers "and, as a result, investors and the securities markets."[15] So the recordkeeping requirements "are an important part of managing systemic risk in the industry."[16]

Nonetheless, none of those settled cases involved charges against individuals, let alone required that any individuals at the settling firms pay monetary sanctions. These cases, which involved the firms' use of WhatsApp, Signal, and other messaging platforms for "off-channel" communications, were part of a broader crackdown into the industry's failure to maintain and preserve electronic communications by using personal devices. That crackdown will have the maximum impact only if individuals at the wrongdoing firms face enforcement actions.

The Marketing Rule

Similarly, the report discusses an enforcement initiative to investigate noncompliance with the SEC's "Marketing Rule," which basically says that it is illegal for investment advisers to mislead people. The report notes that the SEC charged nine investment advisers with improperly advertising a hypothetical performance to mass audiences on their websites. The firms agreed to pay civil penalties totaling $850,000 combined to settle the charges. The Commission separately charged a FinTech investment adviser for using misleading hypothetical performance metrics in advertisements. That adviser settled the charges by agreeing to pay over $1 million.

These cases were hugely important as they marked the first enforcement actions for violating the "Marketing Rule." In adopting the Marketing Rule in 2020, the Commission imposed restrictions on the use of hypothetical performance in investment adviser advertisements due to the "high risk of misleading investors."[17] As the Commission stated in bringing the enforcement actions, the cases served "as a warning for all advisers to ensure compliance."

Still, as with the "off-channel" communications cases, none of the Marketing Rule cases involved charges against individuals. Yet the case against the FinTech adviser involved claims of an annualized return of 2,700 percent. The "warning" that such cases send to advisers would be much more effective if the SEC charged the responsible individuals too.

[14] *Registration of Municipal Advisors*, Exchange Act Release No. 63576, 2010 WL 5167676, at *100 (Dec. 20, 2010).

[15] *Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f)*, Exchange Act Release No. 44238, 2001 WL 436246, at *7 (May 1, 2001).

[16] *Id.*

[17] *Investment Adviser Marketing*, Advisers Act Release No. 5653, 2020 WL 7701393, at *93 (Dec. 22, 2020).

Interfering with Whistleblowers

The report also highlights the enforcement actions the SEC took "to protect whistleblowers' rights and ability to report potential securities law violations to the SEC." The SEC's whistleblower program is critically important to the SEC because it identifies lawbreaking that by definition would not otherwise have been known to the SEC. It has been wildly successful in protecting investors, markets, and capital formation (indeed, a Better Markets' report calls it a "$6 billion success story"), but it requires companies to not interfere with or retaliate against whistleblowers. The SEC's whistleblower rules provide that no person may take any action

> "to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement . . . with respect to such communications."[18]

The SEC brought five actions enforcing this provision in FY 2023. One firm agreed to pay a $10 million civil penalty to settle charges that it required employees to sign agreements prohibiting the disclosure of confidential corporate information to third parties, without an exception for potential SEC whistleblowers, and that it required departing employees to sign releases affirming that they had not filed any complaints with any government agency. The $10 million penalty was a record for a standalone violation of the provision against impeding whistleblowing. In light of the importance of the SEC's whistleblower program, such large fines are essential to show that preventing companies from impeding whistleblowing is a priority for the SEC.

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The impact of these cases would be more pronounced, however, if the SEC charged individuals as well as firms. The case that resulted in a $10 million penalty did not involve charges against any individual despite the SEC's order stating that at least one former firm employee "was initially discouraged from communicating with Commission staff about potential violations of securities laws due to" the firm's contractual provisions. Indeed, of the five cases the Commission brought in FY 2023 for impeding whistleblowing, only one involved charges against an individual. In that case, the firm agreed to pay a $2 million civil penalty to settle the charges.[19] The individual settled the charges by paying a $50,000 civil penalty.[20] Deterring violations of the provision against impeding whistleblowing requires that the individuals responsible for a firm's violative conduct receive sanctions commensurate with the firm's.

Cybersecurity

The report states further that the SEC "has been vigilant in ensuring that market participants reasonably disclose material cybersecurity risks and incidents." It cites two cases that it brought in FY 2023. The first involved charges against Virtu for allegedly making false and misleading statements and omissions regarding information barriers to prevent the misuse of sensitive customer information. The second involved a settlement with Blackbaud Inc., a software company, for making misleading disclosures about a ransomware attack that impacted more than 13,000 customers. Blackbaud paid $3 million to settle the charges.

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[18] 17 C.F.R. § 240.21F-17.

[19] *Gaia, Inc.*, Exchange Act Release No. 97548, 2023 WL 3644535, at *7 (May 23, 2023).

[20] *Id.* at *8.

Both cases emphasize the importance of safeguarding sensitive customer information. "Tight controls on access to sensitive client information are a first line of defense against misuse of that information."[21] And investors need "timely and reliable information" regarding companies' cybersecurity because "the costs and adverse consequences of cybersecurity incidents to companies are increasing."[22] The Commission cannot countenance misleading disclosures about cybersecurity incidents because the "reporting of material cybersecurity incidents to investors [is] critical to investor protection and well-functioning, orderly, and efficient markets."[23] Holding firms accountable when they fail to comply with their cybersecurity responsibilities is increasingly important as cybersecurity risks continue to materialize.

This accountability would be even more effective if the Commission held individual actors liable. Yet in neither cybersecurity case cited in the FY 2023 enforcement report did the Commission charge or sanction an individual. Indeed, when the SEC brought its case against SolarWinds and its Chief Information Security Officer at the beginning of FY 2024 for overstating SolarWinds's cybersecurity practices and understating its risks, it was the first SEC cybersecurity case in which an individual was charged. The SEC deserves credit for bringing the case, as it stands for the proposition that "what companies and their employees say and do, or fail to do, matters" with respect to cybersecurity. The SEC needs to bring more cases holding not just companies but the individuals responsible for cybersecurity failures accountable. Only by doing so will the SEC send a message that companies *and their executives* "will be held accountable for failing to take adequate steps to protect their systems and data."

Stopping Bribery and Corruption

The report further highlights the SEC's commitment to enforcing the Foreign Corrupt Practices Act (FCPA) "against issuers of securities traded in the U.S. that engage in bribery and other corrupt practices abroad." In addition to the ABB case discussed above, the report cites charges against Amsterdam-based medical supplier Koninklijke Philips N.V. for conduct to influence hospital officials in China to draft tenders to favor Philip's products. Philips paid $62 million in civil penalties, disgorgement, and prejudgment interest to settle the charges. The report also cites charges against North Carolina-based global chemical company Albemarle Corporation for allegedly using agents that paid bribes to obtain contracts in Vietnam, India, and Indonesia. Albemarle paid over $100 million in disgorgement and prejudgment interest to settle the charges.

The SEC needs to bring cases under the FCPA because the FCPA is "an increasingly important tool in the ongoing fight against corruption worldwide."[24] And unlike "the vast majority of the securities laws that the SEC enforces," the FCPA prohibits behavior rather than simply requires disclosure.[25] "Thus, the FCPA provides the SEC with a powerful tool to combat bribery in a much more effective way than a mere disclosure-based regime."[26]

[21] *Investment Advisers Code of Ethics*, Advisers Act Release No. 2209, 2004 WL 101345, at *3 (Jan. 20, 2004).

[22] *Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure*, Exchange Act Release No. 97989, 2023 WL 4764026, at *3 (July 26, 2023).

[23] *Id.* at *20.

[24] Steven Peikin, Reflections on the Past, Present, and Future of the SEC's Enforcement of the Foreign Corrupt Practices Act, Speech Before the New York University School of Law (Nov. 9, 2017), https://www.sec.gov/news/speech/speech-peikin-2017-11-09.

[25] Chambers and Martin, 18 N.Y.U. J.L. & BUS. at 811-12.

[26] *Id.* at 812-13.

The SEC's enforcement of the FCPA's anti-bribery provisions would be even more effective if it included charges against the responsible individuals in its cases. But it has usually declined to do so. In 2018, the SEC resolved 14 FCPA "enforcement actions against issuers (which of course can only act through real human beings). Yet . . . not one of these enforcement actions" resulted "in any related FCPA enforcement actions against company employees."[27] Five years later, in 2023, the SEC resolved 11 FCPA actions. Again, none—not the FCPA cases cited in the FY 2023 enforcement report nor the other FCPA cases that the SEC brought last year—involved charges against individuals. Although the SEC has at times expressed its commitment to bringing FCPA actions against individuals,[28] "actions speak louder than words,"[29] and its actions scream that individuals involved in bribery and corruption outlawed by the FCPA simply do not have to worry that the SEC will punish them personally. That is a terrible message to send. Not only will it not deter lawbreaking, but it probably actually incentivizes lawbreaking, given that only the company, if caught, will pay a penalty years down the road.

CONCLUSION

The preceding discussion shows that the longstanding view "that the SEC is more likely to sue companies than to sue individuals within those companies" remains true.[30] This is understandable in many respects:

> "Bringing an enforcement action against a firm is usually considerably easier than bringing one against individuals. Individuals tend to fight charges, in particular those that give rise to temporary or permanent suspensions or bars from the industry, whereas the firm generally settles for financial penalties or less."[31]

Firms are also more likely to settle because "fines paid by individual defendants are likely to come from their own pockets," whereas corporations "quickly settle cases by paying with their shareholders' money."[32]

The problem is that "an enforcement system directed against individual perpetrators will deter fraud more effectively than a system based on enterprise liability."[33] In "the absence of individual accountability," companies may treat "fines as the costs of doing business and might thereby be more inclined to take risks when the probability of detection and the expected fine are insufficient to outweigh the anticipated gain."[34] But "substituting civil fines against individuals" for fines against corporations "might be enough to rouse the scruples of a CEO or CFO."[35]

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[27] Mike Koehler, *Foreign Corrupt Practices Act Enforcement and Related Development*s, 89 MISS. L. J. 227, 253 (2020) (emphasis in original).

[28] Peiken, *supra note* 24

[29] Koehler, 89 MISS. L.J. at 254.

[30] Jonathan R. Macey, *The Distorting Incentives Facing the U.S. Securities and Exchange Commission*, 33 HARV. J.L. & PUB. POL'Y 639, 651 (2010).

[31] Urska Velikonja, *Reporting Agency Performance: Behind the SEC's Enforcement Statistics*, 101 CORNELL L. REV. 901, 930 (2016).

[32] Macey, 33 HARV. J.L. & PUB. POL'Y at 652.

[33] William W. Bratton and Michael L. Wachter, *The Political Economy of Fraud on the Market*, 160 U. PA. L. REV. 69, 75 (2011).

[34] Sharon Oded, *Coughing Up Executives or Rolling the Dice? Individual Accountability for Corporate Corruption*, 35 YALE L. & POL'Y REV. 49, 73 (2016).

[35] Bratton and Wachter, 160 U. PA. L. REV. at 75.

The SEC deserves credit for not just bringing the important cases discussed in its FY 2023 enforcement report but also publicizing them. Making "law enforcement visible" will increase deterrence because "individuals tend to judge the likelihood of uncertain events (such as getting caught for a crime) by how available such instances are to the human mind."[36] The SEC's FY 2023 enforcement report shows that it will pursue cases involving a broad range of misconduct committed by corporations and market participants. This should encourage compliance with the numerous important provisions of the federal securities laws designed to protect investors and the public interest. The SEC would be in an even better position to secure that compliance if it pursued charges against the responsible individuals in its highest profile cases.

This is important for the everyday policing of the capital markets, where respect for the law must be increased and the perception that individuals (particularly at large firms) can get away with lawbreaking must be decreased. Meaningfully punishing and deterring companies ***and*** individuals is key to making that a reality. However, there's also another important reason to do this: when people in the capital markets believe that there is no meaningful personal penalty to breaking the law, lawbreaking increases. That can become pervasive and contribute to systemic risk. That's what happened in the years before the catastrophic financial crash of 2008.

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Although the 2008 financial crisis had many causes,[37] one was that the "level of supervision and oversight by regulatory authorities was low, and individuals in large institutions were unlikely to be punished severely and very unlikely to be prosecuted."[38] Only one person "of any seniority [was] prosecuted for any role in the financial crisis of 2008, and even then, some have suggested that he was, at best, a middle manager at Credit Suisse."[39]

The SEC has made progress in this area since the financial crisis. Nonetheless, the SEC still has work to do. There are too many examples of SEC action that would be considered to be "consistent with the preferential treatment given . . . to big Wall Street firms and their officials who were accused of misconduct prior to the financial crisis."[40] The SEC must hold individual actors accountable if it is to prevent a recurrence of the conduct that led to that crisis. "If deterrence really is the enforcement objective, future initiatives must . . . target[] the individuals" responsible for corporate behavior rather than just the corporations themselves.[41]

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[36] Christine Jolls, Cass R. Sunstein, and Richard Thaler, *A Behavioral Approach to Law and Economics*, 50 STAN. L. REV. 1471, 1538 (1998).

[37] *See* Better Markets, *The Cost of the Crisis: $20 Trillion and Counting*, at 70-87, https://bettermarkets.org/sites/default/files/Better%20Markets%20-%20Cost%20of%20the%20Crisis.pdf.

[38] McGrath, 43 SEATTLE U. L. REV. at 551.

[39] *Id.* at 550 (discussing the case of Kareem Serageldin).

[40] Arthur E. Wilmarth, Jr., *Turning a Blind Eye: Why Washington Keeps Giving in to Wall Street*, 81 U. CIN. L. REV. 1283, 1389 (2013).

[41] William W. Bratton and Adam J. Levitin, *A Tale of Two Markets: Regulation and Innovation in Post-Crisis Mortgage and Structured Finance Markets*, 2020 U. ILL. L. REV. 47, 90 (2020).

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