

Securities Litigation + Enforcement Highlights From Q4 2023

January 22, 2024

Closing out 2023, Cooley's securities litigation + enforcement practice continued providing guidance to our clients on recent developments in securities law – with a particular focus during the fourth quarter on Securities and Exchange Commission (SEC) enforcement trends. Below is a roundup of key insights and developments from our team for Q4 2023.

Highlights

[Parallel SEC, FDA Regulatory Enforcement: What Life Sciences Companies Should Know](#)

While parallel enforcement by the SEC and the Food and Drug Administration (FDA) is not new, it appears to be gaining favor among regulators. Life sciences companies should be aware of this phenomenon and the interplay between the SEC and FDA regulatory regimes. Key takeaways include staying vigilant about compliance, understanding what's important to each set of regulators (and the potential exposure presented by various statutes), and anticipating enforcement strategies and the timing of parallel investigations.

[SEC Announces FY23 Enforcement Results – Record-Breaking Whistleblower Awards, Focus on Individual Accountability, Self-Reporting and Cooperation Credit](#)

In November 2023, the SEC announced its enforcement results for fiscal year 2023, reporting a 3% increase in enforcement actions from fiscal year 2022 and the second-highest amount of financial remedies in SEC history (\$4.9 billion). Last year also saw an all-time high of whistleblower tips and awards, as well as a focus on rewarding meaningful cooperation and self-disclosure, individual accountability, environmental, social and governance (ESG), and crypto.

[SEC Enforcement Director Discusses Priorities, Off-Channel Communications, Crypto and ESG](#)

Gurbir Grewal, director of the SEC's Division of Enforcement, discussed the SEC's current enforcement priorities at the 2023 Berkeley Fall Forum on Corporate Governance. Among other takeaways, Grewal made clear that the enforcement division has been busy. He also provided insight on the recent investigative sweep involving off-channel communications, shared the SEC's current thinking on cryptocurrency and digital assets, addressed developments in ESG, and discussed the SEC's focus on individual accountability.

[The 'State' of Delaware](#)

Delaware Court of Chancery Chancellor Kathaleen St. J. McCormick, Vice Chancellor Paul Fioravanti and leading litigators – including Cooley partner Shannon Eagan – shared their views on recent developments in Delaware law during a panel discussion. Catch up on what's been happening at the Court of Chancery, including its 'ever-increasing' caseload, earnout agreement disputes, cases involving valuing disclosure claims and attorneys' fees, and an uptick in *Caremark* cases, as well as 2023 amendments to the Delaware General Corporation Law.

[SEC Focuses on Whistleblower Protections in Employee Separation Agreements](#)

Recent SEC enforcement actions have zeroed in on whistleblower protections in employee separation agreements, with the SEC announcing settled charges against two companies in September 2023 alone. Is it time to take another look at your employee separation agreements and release forms?

Awards, recognitions and accolades

A team of Cooley securities litigation + enforcement lawyers once again earned a spot on The American Lawyer's Litigation Daily Litigator of the Week Runners-Up and Shout Outs list for their win for quantum computing hardware and software company IonQ:

- [Shoutout for securing a dismissal for IonQ](#)

Contributors

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