SEC Enforcement
QUARTERLY

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NEWS

Questions on Constitutional Challenges to Administrative Proceedings May Be Resolved in 2016

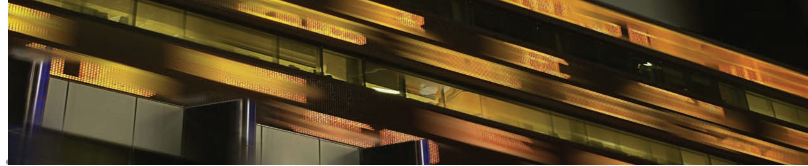
The enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) expanded the SEC's ability to use administrative proceedings to pursue enforcement actions. Since then, the SEC's use of such proceedings has grown. So too have complaints and concerns about their inherent fairness and legality.

Some of these complaints center on potential violations of equal protection, due process or the separation of powers. But the argument that garnered the most attention and traction in 2015 was the contention that administrative law judges (ALJs) have been appointed unconstitutionally. As discussed in a prior edition of the *SEC Enforcement Quarterly*, these constitutional challenges contend that the SEC's administrative proceedings are fatally flawed because the method by which the ALJs are appointed violates the Appointments Clause of the Constitution, which "vest[s] the appointment of such inferior officers…in the President alone, in the courts of law, or in the heads of departments." Challengers contend that ALJs are "inferior officers" and must be appointed by the Commission itself under the Appointments Clause.

Throughout 2015, parties raising these constitutional challenges did so in a variety of forums. As a result, the challenges have proceeded on parallel tracks. Before the SEC, respondents in administrative proceedings have challenged both the merits of the SEC's case against them and the constitutionality of the proceeding itself. At the same time, many of these parties went to federal court and made essentially the same argument about the unconstitutionality of the administrative proceedings, and asked the court to enjoin the SEC from bringing or maintaining an administrative enforcement action.

For the most part, federal courts have not reached the issue of potential constitutional defects in SEC administrative proceedings. Instead, because the challenges brought in federal court were brought by parties who are also respondents in administrative proceedings, federal judges first had to figure out whether they had jurisdiction to hear the dispute, or if the challenge was premature. That question has been answered in different ways by different courts.

In 2015, several district courts, as well as the Seventh Circuit and the D.C. Circuit, held that courts do not have jurisdiction to hear these arguments until and unless they are raised as part of the general judicial review process for administrative proceedings provided for in the federal securities laws. That is, these courts have ruled that respondents may challenge the constitutionality of the SEC's administrative proceedings in federal court only after both completing the administrative proceeding and then presenting the argument to the full Commission on direct review.



As Judge Srinivasan wrote for a unanimous panel of the D.C. Circuit in *Jarkesy v. SEC*, a respondent, "instead of obtaining judicial review of his challenges to the Commission's administrative proceedings now, can secure judicial review in a court of appeals when (and if) the proceeding culminates in a resolution against him." Citing a Seventh Circuit opinion in support, Judge Srinivasan explained that "[r]equiring Jarkesy to undergo the remainder of the proceeding, notwithstanding his threshold claim that it was wrongly initiated, aligns with how the law handles analogous claims in similar contexts." The other courts that have determined that they lack jurisdiction have likewise held that respondents may receive "meaningful judicial review" by following the general judicial review route provided by Congress.

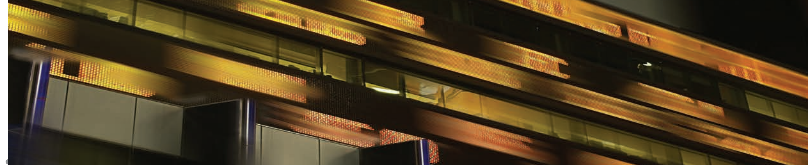
Two federal district judges, however, have reached a different conclusion. Judge May of the Northern District of Georgia, in the cases of *Hill v. SEC*, *Gray Financial v. SEC, Timbervest v. SEC* and *Ironridge v. SEC*, and Judge Berman of the Southern District of New York, in the case of *Duka v. SEC*, held that federal courts do have jurisdiction to hear these challenges immediately. Unlike the other courts, these judges concluded that there would be no meaningful judicial review if the respondents had to wait to have their challenges heard because, as Judge May explained in *Hill*, "Plaintiff's claims would be moot and his remedies foreclosed because the Court of Appeals cannot enjoin a proceeding which has already occurred." Consistent with that pronouncement, Judge May declined to issue an injunction in *Timbervest* because the administrative proceeding against Timbervest had already concluded. Eventual judicial review by an appellate court would not be meaningful, according to Judge Berman, because by then the court "would be unable to remedy the harm alleged by the Plaintiff in this Court, *i.e.*, the 'substantial litigation and resource burdens incurred during the administrative proceeding,' and the 'reputational harm' associated with her defending the Administrative Proceeding."

After making those determinations, both Judge Berman and Judge May concluded that the SEC's ALJs are likely appointed in an unconstitutional manner. Besides Timbervest, which is discussed below, these decisions are currently being appealed to the Second and Eleventh Circuits. *Hill* and *Gray Financial* have been consolidated for review and scheduled for argument before the Eleventh Circuit at the end of February. *Duka* is scheduled to be heard by the Second Circuit in early March.

While, to date, most of these cases have addressed threshold jurisdictional matters, in September, the SEC itself reached the merits of the constitutionality of the manner in which ALJs are appointed. Perhaps not surprisingly, the Commission, in the case of *In re: Raymond J. Lucia*, formally held that its ALJs are "mere employees" who therefore need not be appointed in a manner consistent with the Appointments Clause of the U.S. Constitution. The Commission has adhered to *Lucia* in two other opinions it issued last fall, *In re: Timbervest* (the administrative action that Judge May did not enjoin despite concluding that the ALJ who presided over the administrative proceeding was likely appointed unconstitutionally) and *In re: David Bandimere*. The respondents in *Lucia, Timbervest* and *Bandimere* have all appealed to federal circuit courts. The D.C. Circuit will hear both the *Lucia* and *Timbervest* appeals. In *Lucia*, briefing is scheduled to conclude in April, with oral argument likely taking place over the summer. The parties in *Timbervest* have proposed a schedule that would have briefs due in July. Bandimere appealed the Commission's ruling to the Tenth Circuit, with argument likely taking place in the fall.

All told, there is a chance that at least four of the 13 circuit courts will rule on the constitutionality of SEC administrative proceedings in 2016.

All told, there is a chance that at least four of the 13 circuit courts will rule on the constitutionality of SEC administrative proceedings in 2016. Any time the same issues are being raised in multiple cases in multiple circuits, there is a real possibility that the courts will split on the issue. Were that to occur, or were the circuit courts to agree that the SEC's administrative proceedings are constitutionally deficient, the issue would be ripe for the Supreme Court to take review and resolve the matter.



SEC Again Reports Record-Breaking Enforcement Figures for Fiscal Year 2015

The SEC's Division of Enforcement (Enforcement) again reported a record-breaking year in fiscal year (FY) 2015 on a number of fronts. In FY 2015, Enforcement brought 807 cases and garnered $4.2 billion in disgorgement and penalties, an increase over FY 2014, which saw 755 cases and $4.16 billion in penalties and disgorgement.

The trend toward administrative proceedings and away from federal district court actions also continued in FY 2015, with 507 of the 807 total actions brought through administrative proceedings. This marked a 23 percent increase over FY 2014. Enforcement also won all six of the cases brought to trial last year in federal district court.

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Among the firsts touted by Enforcement for FY 2015 was the first-ever action involving employee confidentiality agreements that allegedly impeded a potential whistleblower from communicating with the government. In that case, the SEC settled with KBR Inc. over charges that KBR violated Rule 21F-17 by requiring employees who were interviewed as part of internal investigations to sign confidentiality agreements that required the employees to obtain Legal Department approval before discussing the interview and its subject matter with anyone.

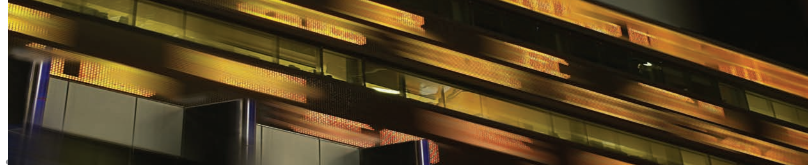
Other firsts in FY 2015 included the first action involving admissions by an auditing firm. In that case, BDO USA, LLP and five of its partners settled SEC charges alleging that they dismissed auditing red flags and issued false and misleading unqualified audit opinions about the financial statements of a staffing services company.

There were also firsts within tried-and-true areas of enforcement. Among these was Enforcement's first-ever action against a financial institution for alleged violation of the Foreign Corrupt Practices Act (FCPA). In that case, BNY Mellon was accused of providing internships to the family members of officials of a Middle Eastern sovereign wealth fund. The SEC alleged that family members who did not meet the rigorous hiring standards applied to other applicants were hired with the approval of senior BNY Mellon employees in an effort to influence foreign officials. Other firsts for Enforcement in FY 2015 included actions affecting private equity, market structure, municipal bonds, securities-based swaps, dark pool disclosures and credit ratings agencies.

These firsts came alongside technological innovations at the SEC. Enforcement saw an expansion of its arsenal of tools with the introduction of programs to analyze large swaths of data. In August, the SEC used these programs to charge 32 defendants worldwide in connection with an insider trading scheme of unprecedented scope set to profit from hacked nonpublic information. Charged with garnering nearly $100 million in illegal profits, the SEC froze more than $70 million throughout the course of the case and settled with two of the defendants for $30 million.

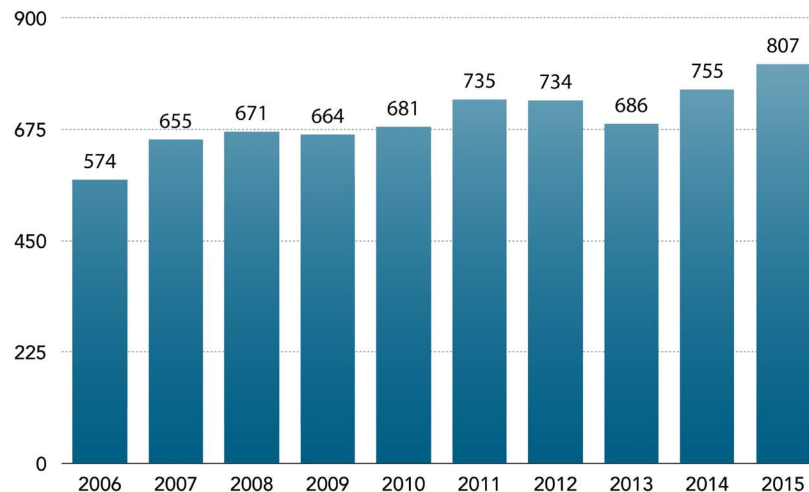
Consistent with its FY 2014 priorities, the SEC continued its sharp focus on the burgeoning areas of illegal broker-dealer and investment adviser practices, improper conduct by important market figures and financial reporting and accounting fraud.

Last year also saw the institution of collaboration between Enforcement staff and the economists of the Division of Economic Risk Analysis (DERA), as the SEC had predicted at the close of FY 2014. According to the SEC, this collaboration proved fruitful, with the two divisions working together on 120 new projects involving such topics as market manipulation, insider trading, structured products, accounting fraud and abusive practices by investment advisers and brokerage firms. For example, DERA used statistical analysis to determine whether the trades of an investment advisory firm were the result of sheer luck or illegal behavior, resulting in charges of cherry-picking, or the improper allocation of appreciating options trades to personal funds and depreciating options trades to customer accounts.



As FY 2015 drew to a close, the SEC established its enforcement priorities for FY 2016. In the new year, the SEC has its sights set on continued collaboration among its various divisions and offices to uncover frauds perpetrated on the market. Enforcement aims to continue its efforts to bring actions on an accelerated timetable to maximize deterrence. It also hopes to expand its use of technology to sift through large volumes of data containing insight into potential violations. Enforcement also aims to take a more methodical approach to bringing cases against firms for abusive trading.

2005–2014 SEC ENFORCEMENT ACTIONS



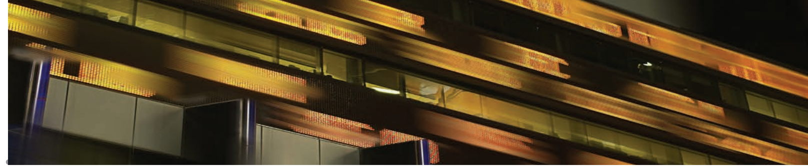
SEC's Annual Whistleblower Report Reveals Steady Increase in Complaints and Highlights SEC Policy Priorities

On November 16, 2015, the SEC's Office of the Whistleblower issued its annual report on the SEC's whistleblower program (the Whistleblower Report). As in previous years, the Whistleblower Report indicated a steady increase in complaints received from, and payments made to, whistleblowers. The Report also highlighted two Commission priorities: (1) pursuing companies that include language in confidentiality agreements that impedes a potential whistleblower from reporting to the SEC and (2) applying employer retaliation protections to employees who report potential securities violations to their employers but not to the Commission.

According to the Whistleblower Report, the SEC paid more than $37 million to eight whistleblowers during FY 2015 and issued final orders or preliminary determinations addressing more than 150 whistleblower award claims.

In FY 2015, the Commission received almost 4,000 whistleblower tips, an increase of more than 8 percent from the previous fiscal year and 30 percent more than FY 2012, the first year for which there is complete data. The tips came from all 50 states and 61 foreign countries. In a slight decline from the previous year, roughly 10 percent of all tips were of foreign origin. The most common categories of complaints remained corporate disclosure and financials (17.5 percent), offering fraud (15.6 percent) and manipulation (12.3 percent). All but two categories, manipulation and municipal securities and public pensions, saw an increase in tips.

According to the Whistleblower Report, the SEC paid more than $37 million to eight whistleblowers during FY 2015 and issued final orders or preliminary determinations addressing more than 150 whistleblower award claims. Several notable whistleblower awards were highlighted.



- As reported in a prior edition of the *SEC Enforcement Quarterly*, in April 2015, the SEC announced the maximum award payment in its first antiretaliation case. The SEC charged Paradigm Capital Management with removing the whistleblower from the whistleblower's then position, changing the whistleblower's job function, stripping the whistleblower of supervisory responsibilities and otherwise marginalizing the whistleblower. The whistleblower was awarded 30 percent of the money collected from Paradigm, amounting to over $600,000.
- Also in April 2015, the SEC for the first time used the "substantial injury" exception to reward a tip from a compliance professional. Compliance employees are generally excluded from award eligibility unless an exception applies. In this case, the SEC invoked the exception where the whistleblower has a "reasonable basis to believe that disclosure of the information to the Commission [was] necessary to prevent the relevant entity from engaging in conduct that [was] likely to cause substantial injury to the financial interests or property of the entity or investors."
- April 2015 also saw the SEC bring its first enforcement action against a company, KBR Inc., for including language in employee confidentiality agreements that impeded employees' ability to report potential wrongdoing in violation of Securities Exchange Act Rule 21F-17. The SEC did not find any instances in which a KBR employee was prevented from contacting the SEC about potential misconduct or in which KBR took action to impede such communication. Nonetheless, the SEC determined that confidentiality agreements that certain witnesses in an internal investigation were asked to sign were improper. KBR agreed to pay a $130,000 penalty and amend its confidentiality agreements to settle the matter.

On the topic of employer retaliation, the Whistleblower Report highlighted the SEC's efforts to further its interpretation of Dodd-Frank's antiretaliation provisions applying the provisions to employees who report potential securities violations internally to their employers but not to the SEC. The SEC views this interpretation as "critical" to its enforcement efforts and noted in the annual report that the SEC had "filed numerous *amicus curiae* briefs in private retaliation lawsuits to urge district courts and courts of appeal to…hold that individuals are entitled to employment retaliation protections if they report information of a possible securities violation internally at a publicly-traded company, regardless of whether they have separately reported the information to the SEC." For more information on this issue, please see this prior edition of the *SEC Enforcement Quarterly*.

Within this category of award recipients, approximately 80 percent of whistleblowers raised their concerns internally or knew compliance personnel were aware of violations before submitting information to the SEC.

The Whistleblower Report profiled several characteristics of the 22 whistleblowers who have received awards to date. Roughly half of those whistleblowers caused the SEC to open an investigation, while the other half provided information that "significantly contributed to an existing investigation." In addition, almost half of the whistleblowers were current or former employees of the company for which they reported wrongdoing. Within this category of award recipients, approximately 80 percent of whistleblowers raised their concerns internally or knew compliance personnel were aware of violations before submitting information to the SEC. Those who were not current or former employees generally obtained their information because they were investors who had been victims of fraud, professionals working in a related industry or individuals with a personal relationship with an alleged wrongdoer. Roughly 80 percent of award recipients did not submit information to the SEC anonymously.

Finally, the Whistleblower Report also discussed certain factors that the SEC considered to determine a whistleblower award. Among other factors, the whistleblower may receive a larger award if he or she first reported the violation internally within the company's own reporting channels. On the other hand, interfering with internal compliance systems or an unreasonable delay in reporting the violation to the SEC may decrease an award percentage. The annual report noted that roughly 20 percent of awards were reduced due to an unreasonable reporting delay.

On the day the Whistleblower Report was released, Senators Charles Grassley and Elizabeth Warren sent a letter to SEC Chair Mary Jo White requesting additional information regarding how promptly the SEC assesses tips received and how the agency responds to different types of tips. In 2013, the SEC's Office of Inspector General (SEC OIG) analyzed the whistleblower program and concluded that the SEC was generally prompt in responding to tips, but identified some outliers where significant time passed between submission, the staff's review and the designation of the whistleblower's case. As a result, the SEC OIG recommended that the SEC establish formalized performance standards for the program. In their letter, Grassley and Warren inquired as to the status of these proposed standards, stating "[t]he whistleblower program is an important tool in the SEC's efforts to combat securities fraud and almost three years have passed since the SEC OIG evaluation of this program." As of the publication of this edition of the *SEC Enforcement Quarterly*, the SEC had yet to publicly respond.

First Circuit Reverses Important SEC Decision on Primary Liability Under Antifraud Provisions

On December 8, 2015, the First Circuit dealt a blow to the SEC in vacating the Commission's opinion in *SEC v. Flannery*, which the SEC had used to announce a number of interpretations of law concerning primary liability under Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder. Although the First Circuit's decision is narrowly tailored to the facts in *Flannery* and, therefore, does not reach the SEC's continued use of its *Flannery* opinion as an interpretive tool, the First Circuit's decision is noteworthy for its holding regarding the connection between materiality and *scienter*.

The Commission's Flannery *opinion was considered particularly controversial because it adopted an extremely narrow interpretation of the Supreme Court's* Janus Capital Group v. First Derivative Traders *decision.*

In 2010, the SEC charged John Flannery, a former chief investment officer at a fund complex, and James Hopkins, a fund engineer, with violations of Section 17(a), Section 10(b) and Rule 10b-5, alleging they "engaged in a course of business and made material misrepresentations and omissions that misled investors" about two funds they managed that were invested in asset-backed securities (ABS). Specifically, the SEC alleged that Hopkins used a PowerPoint slide in presentations to investors in 2006 and 2007, titled "Typical Portfolio Exposures and Characteristics – Limited Duration Bond Strategy," that understated by a wide margin the percentage of fund assets in ABS relative to other asset classes. As for Flannery, the SEC alleged that he was involved in revising and/or sending two letters to investors indicating the risk profile of the fund was being reduced by selling certain assets and that "many judicious investors" were still on board with the fund, despite the fact that the sale of assets ultimately increased the fund's credit and liquidity risk and that some officials of the manager were liquidating their positions.

After an ALJ rejected the SEC's fraud claims against Flannery and Hopkins, the full Commission reversed the decision. As discussed in a previous edition of the [SEC Enforcement Quarterly](), the Commission found that Hopkins acted with *scienter* by recklessly disregarding the misrepresentations in the presentation slides in violation of Section 17(a)(1), Section 10(b) and Rule 10b-5. The Commission also found that Flannery violated Section 17(a)(3) because he acted negligently but not with *scienter*, as required for a violation of Rule 10b-5 and Sections 17(a)(1) and (2).

The Commission's *Flannery* opinion was considered particularly controversial because it adopted an extremely narrow interpretation of the Supreme Court's *Janus Capital Group v. First Derivative Traders* decision. In the opinion, the SEC opined that the *Janus* holding regarding who can be held primarily liable for "making" a misstatement under Rule 10b-5(b) does not apply to Rule 10b-5(a) or (c) and that one does not have to "make" a misstatement or engage in deceptive or manipulative conduct at all to be liable under any provision of Section 17(a). Based on this interpretation, the SEC was able to find that Flannery violated

Section 17(a) even though, under *Janus*, he would not have been liable for his role in the investor letters' misleading statements.

In vacating the Commission's decision and holding that the Commission's findings of liability were not supported by substantial evidence, the First Circuit concluded, regarding Hopkins's presentation slide, that the "marginal" materiality of the slide to a reasonable investor undercut the Commission's finding that Hopkins acted with *scienter* under Section 10(b): "If it is questionable whether a fact is material or its materiality is marginal, that tends to undercut the argument that defendants acted with the requisite intent or extreme recklessness in not disclosing the fact." Regarding Flannery, the First Circuit concluded that the Commission was simply wrong in finding that one of the investor letters was misleading. And because the SEC's own interpretation had conceded that multiple letters were required to show an "act or practice" under Section 17(a)(2), the court did not reach the other investor letter.

Although it remains to be seen how the First Circuit's decision will affect the SEC's use of its *Flannery* opinion as an interpretive tool, the case again demonstrates how the SEC and the federal courts can diverge when interpreting the federal securities laws. It also adds another wrinkle to the issues concerning the SEC's choice of administrative proceedings or the federal courts for bringing its enforcement actions.

Although it remains to be seen how the First Circuit's decision will affect the SEC's use of its Flannery *opinion as an interpretive tool, the case again demonstrates how the SEC and the federal courts can diverge when interpreting the federal securities laws.*

President Obama Announces Nominees to Replace Two Outgoing SEC Commissioners

On October 20, 2015, President Obama announced that he had nominated Lisa Fairfax, a George Washington University law professor, and Hester Peirce, a Senior Research Fellow at the Mercatus Center at George Mason University, to replace outgoing SEC Commissioners Luis Aguilar and Daniel Gallagher, respectively.

Both Fairfax and Peirce are members of the SEC's Investor Advisory Committee, which was created by Dodd-Frank and is intended to advise the SEC on regulatory priorities, the regulation of securities products, trading strategies, fee structures, the effectiveness of disclosure and initiatives to protect investor interests and promote investor confidence and the integrity of the securities marketplace.

Hester Peirce was nominated to replace Republican Commissioner Gallagher. Gallagher's term was slated to run until June 2016 but he announced his resignation in May 2015. Commissioner Gallagher had initially planned to remain on the Commission until his replacement was found, but in September he announced that his resignation would be effective October 2, 2015.

Prior to joining the Mercatus Center in 2012, Peirce served as Senior Counsel for the Minority Staff of the Senate Committee on Banking, Housing and Urban Affairs from 2008 to 2011. From 2000 to 2008, she worked at the SEC, first as a Staff Attorney in the Division of Investment Management from 2000 to 2004, then as Counsel to Commissioner Paul Atkins from 2004 to 2008. From 1998 to 2000, Peirce was in private practice. She is the editor of and a contributor to the 2012 book, *Dodd-Frank: What It Does and Why It's Flawed*. She received her B.A. from Case Western Reserve University and her J.D. from Yale Law School.

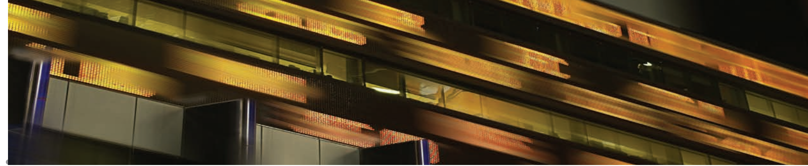
Lisa Fairfax was nominated to replace Democratic Commissioner Aguilar whose term as Commissioner expired in 2015. Fairfax is the Leroy Sorenson Merrifield Research Professor of Law and since 2009 has served on the Executive Board and as Director for Programs for the George Washington Center for Law, Economics and Finance at the law school. In 2006 and 2014, Fairfax was a Visiting Professor at the Georgetown University Law Center. Prior to joining George Washington University Law School, from 2000 to 2009, she held various positions at the University of Maryland School of Law. Between 1995 and 2000, Fairfax was in private practice. Among her relevant memberships and associations, she was a member of the National Adjudicatory Council of the Financial Industry Regulatory Authority from

2001 to 2008 and a member of its Nasdaq Market Regulation Committee from 2008 to 2012. She received her A.B. and J.D. from Harvard University.

The nominations of Fairfax and Peirce will have to be confirmed by the Senate. As of the publication of this edition of the *SEC Enforcement Quarterly*, a possible timetable for consideration of the confirmations has not been announced. If Fairfax and Peirce are confirmed, it would mark the first time that four of the five SEC Commissioners were women. Fairfax's confirmation would make her the third African-American Commissioner in SEC history.

RECENT SEC STAFF CHANGES

- On **October 2, 2015**, the SEC named Chyhe Becker as Associate Director in the Division of Economic and Risk Analysis (DERA). Becker assumes a new position in DERA created to reflect the significance of data-driven economic and statistical analysis in investigations and litigated cases. DERA has almost tripled in size in the past three years, from a staff of nine to 26, and has expanded to five regional offices.
- On **October 5, 2015**, the SEC announced Michael Liftik will become SEC Deputy Chief of Staff. Liftik replaced Erica Williams, who is leaving the agency. Liftick joins Nathaniel Stankard as the other Deputy Chief of Staff.
- On **October 20, 2015**, the SEC named Wenchi Hu and Christian Sabella as Associate Directors in the Division of Trading Markets' Office of Clearance and Settlement. As an Associate Director for Risk and Supervision, Hu will oversee supervision of registered clearing agencies, which has expanded to include firms that clear securities-based swaps. As Associate Director for Regulation, Sabella will lead a team that develops recommendations for SEC policy and rulemaking regarding clearing agencies, transfer agents, security-based swap data repositories and a variety of other financial market infrastructure.
- On **November 5, 2015**, the SEC announced that Bryan Bennett will lead the examination program in the SEC's Los Angeles office. In that role, Bennett will oversee a staff of approximately 60 examiners, accountants and attorneys who conduct the SEC's exam program in Southern California, Nevada, Arizona, Hawaii and Guam.
- On **November 12, 2015**, the SEC named Olivier Girod as Deputy Director of the Office of Support Operations. In that role, Girod will support building operations, records management, business management, security and FOIA services.
- On **November 12, 2015** the SEC announced that Marc Wyatt will serve as Director of the Office of Compliance Inspections and Examinations (OCIE). OCIE conducts the SEC's National Exam Program using a risk-based approach to review SEC-registered investment advisers, investment companies, broker-dealers, self-regulatory organizations, clearing agencies and transfer agents.
- On **November 13, 2015**, the SEC named Sanket J. Bulsara as Deputy General Counsel for Appellate Litigation and Adjudication. The SEC also announced that Michael A. Conley, who previously held that position, was appointed to be SEC Solicitor. The former SEC Solicitor, Jacob H. Stillman, will remain as a senior advisor to the Solicitor.
- On **November 30, 2015**, the SEC announced that Katherine K. Martin was named Associate Director in the Office of International Affairs. In this role, Martin will oversee the SEC's policy on cross-border regulatory matters and participate in multilateral standard-setting bodies and bilateral dialogues with foreign authorities.



FCPA FOCUS

The FCPA continues to be a high enforcement priority of the SEC. Here are some highlights of FCPA enforcement from the past quarter. For more information on the FCPA, please see [Sidley's Anti-Corruption Quarterly](#).

9/29/2015

Hyperdynamics Corp. settled charges with the SEC concerning alleged violations of the FCPA's books and records and internal controls provisions. Hyperdynamics paid a penalty of $75,000. The investigation related to public relations and lobbying expenses in the Republic of Guinea that were improperly supported.

9/30/2015

Andres Truppel, the former chief financial officer of Siemens Argentina, pleaded guilty to conspiring to pay $100 million in bribes to senior Argentine officials to secure and maintain a contract to provide national identity cards. He faces a maximum sentence of five years in prison. Charges against seven other individuals are pending. In 2008, Siemens and Siemens Argentina entered guilty pleas for violating the FCPA and agreed to pay fines of $448.5 million and $500,000, respectively.

10/02/2015

Canadian mining company Kinross Gold Corp. disclosed that it has received subpoenas from the Department of Justice (DOJ) and the SEC seeking information regarding improper payments and deficiencies in internal controls in the company's operations in West Africa.

10/05/15

SEC announced a settlement with Bristol-Myers Squibb. The company agreed to pay $14 million in penalties for conduct committed by its joint venture in China in which cash payments were given to healthcare providers in exchange for prescription sales.

10/09/2015

James Rama, a former employee of IAP Worldwide Services, was sentenced to 120 days in prison for conspiracy to violate the FCPA. IAP Worldwide entered into a non-prosecution agreement and paid over $7 million in June. Rama was given a substantial downward departure in his sentence for cooperating with authorities.

11/16/2015

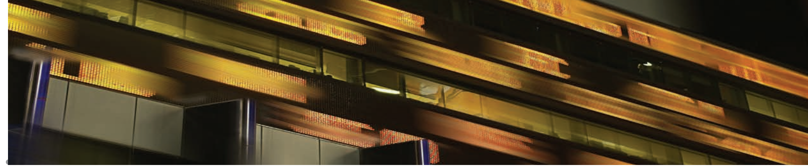
Deputy Attorney General Sally Yates announced that policy changes in DOJ's approach to investigating business organizations, outlined in a memorandum in September, had been incorporated into the U.S. Attorney's Manual.

11/30/2015

The first application for a deferred prosecution agreement by the UK Serious Fraud Office (SFO) was approved. Standard Bank plc agreed to pay more than $32 million, including $7 million in compensation to the Government of Tanzania and the SFO's reasonable costs for the investigation and resolution.

12/04/2015

Ernesto Lujan, a former managing partner at the Wall Street brokerage firm Direct Access Partners LLC, was sentenced to two years in prison for participating in a conspiracy to bribe officials at Venezuela's state-owned development bank. Lujan was also ordered to forfeit $18.5 million.



12/08/2015

Tomas Clarke, a former senior vice president at the Wall Street brokerage firm Direct Access Partners LLC, was sentenced to two years in prison for participating in a conspiracy to bribe officials at Venezuela's state-owned development bank. Clarke was ordered to forfeit $5.8 million.

12/10/2015

A Houston grand jury returned an indictment charging two individuals with conspiring to violate the FCPA by paying bribes to at least five officials of Petroleos de Venezuela S.A., Venezuela's state-owned and state-controlled oil company. Roberto Rincon, the president of Tradequip Services & Marine, an oil field supply company, was arrested in Houston on December 16, 2015. That same day, Abraham Shiera was arrested in Miami.

12/15/2015

A former Russian official residing in Maryland was sentenced to 48 months in prison and ordered to forfeit more than $2 million for conspiracy to commit money laundering in connection with an FCPA investigation. Vadim Mikerin worked for the subsidiary of a Russian state-owned energy company and received more than $2 million in payments to influence his decisions.

12/16/2015

A former regional director for SAP International was sentenced to 22 months in prison for his role in a scheme to bribe Panamanian officials to secure government contracts. Vicente Eduardo Garcia admitted using sham contracts and false invoices to disguise bribes to obtain software licenses and other technology contracts.

SECURITIES & DERIVATIVES ENFORCEMENT AND REGULATORY PRACTICE OF SIDLEY AUSTIN LLP

Sidley's Securities & Derivatives Enforcement and Regulatory group advises and defends clients in a wide range of securities- and derivatives-related matters. With more than 150 lawyers in 10 offices worldwide, we provide comprehensive regulatory, enforcement and litigation solutions in matters involving the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the Financial Industry Regulatory Authority (FINRA), self-regulatory organizations (SROs), state attorneys general and state securities regulators. Our team is distinctive in that it combines the strength of nationally recognized enforcement lawyers with the skills of equally prominent counseling lawyers. We work collaboratively to provide our clients with informed, efficient and effective representation.

Our team features many prominent practitioners and former officials from the SEC, FINRA and CFTC, as well as state regulators. Our lawyers include a former associate director of the SEC's Division of Enforcement, a former co-head of enforcement and associate regional director of the SEC's Northeast Regional Office, a former deputy director of the SEC's Division of Trading and Markets, a former SEC senior trial counsel, the former head of enforcement for FINRA and the former chief of the Massachusetts Securities Division. We also understand the "inside" perspective, as our team includes former general counsels of Charles Schwab and UBS Financial (Paine Webber).

Our team has earned acknowledgement in numerous industry publications, including being named in the 2011 *U.S. News–Best Lawyers* "Law Firm of the Year" for Securities Regulation. In its 2013 edition, *Chambers USA* ranked us among the best U.S. law firms for Securities. In a recent edition, that publication noted the firm's "well-regarded enforcement practice with a considerable depth of resources." Sources told that publication that our practice "is highly thought of for public company representations and advisory work."

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