

Increase of Penalties and Disgorgement Ordered in SEC Enforcement Actions

By: Jiali Yang, LL.M Candidate 2019 | November 6, 2018

The Enforcement Division of the SEC issued its [annual report of fiscal 2018](#) on November 2. According to the report, the total amount of disgorgement and penalties ordered over 821 enforcement actions reached \$3.945 billion in fiscal 2018, which is a slight increase as compared with last year's figure of \$3.789 billion.

Among the total 821 SEC enforcement actions, 490 were "stand alone" actions while the remaining were "follow on" proceedings and delinquent filings. The 490 standalone enforcement actions cover mainly securities offerings and investment advisory issues, as well as issuer reporting, accounting and auditing.

SEC chairman Jay Clayton [praised](#) the effectiveness of the Enforcement Division's efforts to "deter bad conduct and remedy harm to investors."

A single case involving a bribery in Petroleo Brasileiro S.A., a Brazilian state-controlled energy company accounts for a relatively high percentage in the total amount of penalties and disgorgement. The oil company was fined \$933 million in disgorgement and prejudgment and \$853 million in penalty for "[misleading U.S. investors by filing false financial statements.](#)"

In the report, the guiding principle of the Enforcement Division is "individual accountability," with 72% of all standalone actions concerning the misconduct of individuals. The rationale behind the focus is that individuals such as CEOs and directors often control the institution's actions. More violations can be prevented by imposing individual liability for the institutional violation and fraud. One of the most high-profile case was [the settlement between the SEC, Tesla and the company's CEO](#) over a securities fraud charge based on Elon Musk's misleading tweets. Pursuant to the settlement, Elon Musk cannot act as Tesla's Chairman for at least in three years. Tesla must establish "controls and procedures to oversee Musk's communications."

Cyber-related misconduct was also highlighted in the annual report. Twenty standalone enforcement actions involving cyber-related misconduct were brought in fiscal 2019 and more than 225 investigations are in progress. Despite the absence of rules specifically targeted at digital assets and ICOs, the SEC is showing assertiveness in regulating fraud and registration violations. Considering crypto-assets are a market innovation, the SEC is trying to find a balance between protecting retail investors and without stifling innovation.

