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SEC heightens compliance enforcement of public companies in 2022

By Chalon C. Young, Esq.

Chalon C. Young

Chalon C. Young (ccy@pietragallo.com) is an attorney for Pietragallo, Gordon, Alfano, Bosick & Raspanti LLP in Pittsburgh, Pennsylvania, USA. She has more than 20 years of experience in both civil and criminal litigation and has represented hundreds of clients in criminal defense cases at the state and federal levels.

- linkedin.com/in/chalon-young-esquire-18a08484/

With the appointment of Gurbir Grewal as enforcement director of the Securities and Exchange Commission (SEC), 2022 has, as expected, seen more stringent oversight into public companies. Grewal formerly served as attorney general of New Jersey until 2021. The SEC selected Grewal to be tougher on Wall Street than his predecessors.

Between 2019 and 2021, SEC enforcement actions against public companies dropped by nearly half due to the pandemic and changing leadership. Grewal, along with other top SEC officials, outlined a list of new priorities for the agency, many of which focus on deterrence against corporate misconduct. Five main types of SEC enforcement actions have taken center stage with the new administration and are expected to continue to be top priorities throughout the year and beyond. Here, we examine these five main types of enforcement actions.

First of its kind

The SEC launched a series of novel legal actions designed to deter misconduct, applying securities law in ways it has not done before. Thus far, these actions have included cases against an unregistered broker-dealer involving decentralized finance and a former biopharmaceutical executive for engaging in "shadow trading" by using confidential information about his own company to trade the stock of a rival firm. As the SEC continues to expand and strengthen its enforcement protocols, it is becoming increasingly difficult for individuals to successfully engage in corporate malfeasance.

Such enforcement actions will face unique challenges but are focused on combating breaches of confidentiality, breaches of fiduciary duty, and fraud. The purpose of such enforcement actions is to ensure that the reasonable investor has a level playing field. In a statement given at the Securities Enforcement Forum in May, Grewal commented on the importance of swift enforcement actions and deterrence, with the goal of restoring the public's trust. He stated, "An animating principle for me in this role has been to increase public confidence in our markets and government—to counter the declining trust in our institutions that we are experiencing. There is a perception among large segments of the population that corporate wrongdoers are not being held accountable and that there are two sets of rules: one for the big and powerful and another for everyone else. While there are many reasons for these beliefs and trends, delayed accountability does not help. That's why, since day one, I've been asking staff to look for ways in which to push the pace of our investigations. The public needs to know when they read a news story about corporate malfeasance that we will move quickly to investigate what happened and hold wrongdoers accountable, even in the most complex cases."[1]