



*Summary of the SEC's Division  
of Enforcement's Activity  
for the Fiscal Year Ended  
September 30, 2021*

ANNUAL REPORT 2021

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### *Introduction and Our Objective*

We are pleased to present you with our summary of the U.S. Securities and Exchange Commission’s (“SEC,” “Commission”) Division of Enforcement’s results for the fiscal year ended September 30, 2021.

As an independent consulting firm with financial and accounting expertise, we are committed to contributing thought leadership and relevant research regarding financial reporting matters that will assist our clients in today’s fast-paced and demanding market. This report is just one example of how we intend to fulfill this commitment.

The Division of Enforcement at the U.S. Securities and Exchange Commission is a law enforcement agency established to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. As such, the actions they take and releases they issue provide very useful interpretations and applications of the securities laws.

For those involved in financial reporting, the SEC’s enforcement results concerning civil litigation and administrative actions that are identified as related to “accounting and auditing” are of particular importance. Our objective is to summarize and report on the major items disclosed in the SEC’s annual enforcement results, while also providing useful insights that the readers of our report will find valuable.

We welcome your comments and feedback, especially requests for any additional analysis you would find helpful.

Floyd Advisory  
DECEMBER 2021

# Highlights:

- The SEC filed 697 actions in FY 2021, surpassing FY 2020 for the least number of releases in a year since FY 2013. Although the SEC has not commented on the historically low volume, we suspect the COVID-19 pandemic continues to play a role in the limited activity.
- The SEC ramped up activity against emerging threats in the cryptocurrency market. These actions taken by the SEC were primarily related to registration and antifraud violations.
- In response to the rise of “meme stocks” and the increased risk of retail investors making investment decisions based on social media posts, the SEC suspended the trading of select securities with suspicious trading and social media activity. The Commission also took action against individuals and entities making fraudulent claims on social media.
- The streamlined whistleblower claim process established in FY 2020 yielded a record number of individuals awarded, dollars awarded, claims processed, and tips received. The Commission issued more awards in FY 2021 than in all prior years combined, dating back to the inception of the Dodd-Frank Whistleblower Program in 2011.

## OUR PROCESS AND METHODOLOGY

*At the end of each fiscal year, the Commission summarizes its enforcement actions, including Accounting and Auditing Enforcement Releases (“AAERs”), and highlights a few of its most significant achievements and key initiatives.*

*To meet our objective of summarizing the major items undertaken by the SEC in FY 2021, we reviewed the SEC’s press release on the Division of Enforcement’s activity in FY 2021, the 2021 Annual Report to Congress on the SEC’s Whistleblower Program, and select releases identified and disclosed by the SEC, all of which can be found on the SEC’s website, [www.sec.gov](http://www.sec.gov).*

*As part of our review, we gathered information and key facts, identified common attributes, noted trends, and observed material events.*

# Highlights from the SEC’s Annual Reporting for the Twelve Months Ended September 30, 2021

*The SEC Reported a Decrease in Total Enforcement Actions but Posted an Increase in Standalone Enforcement Actions*

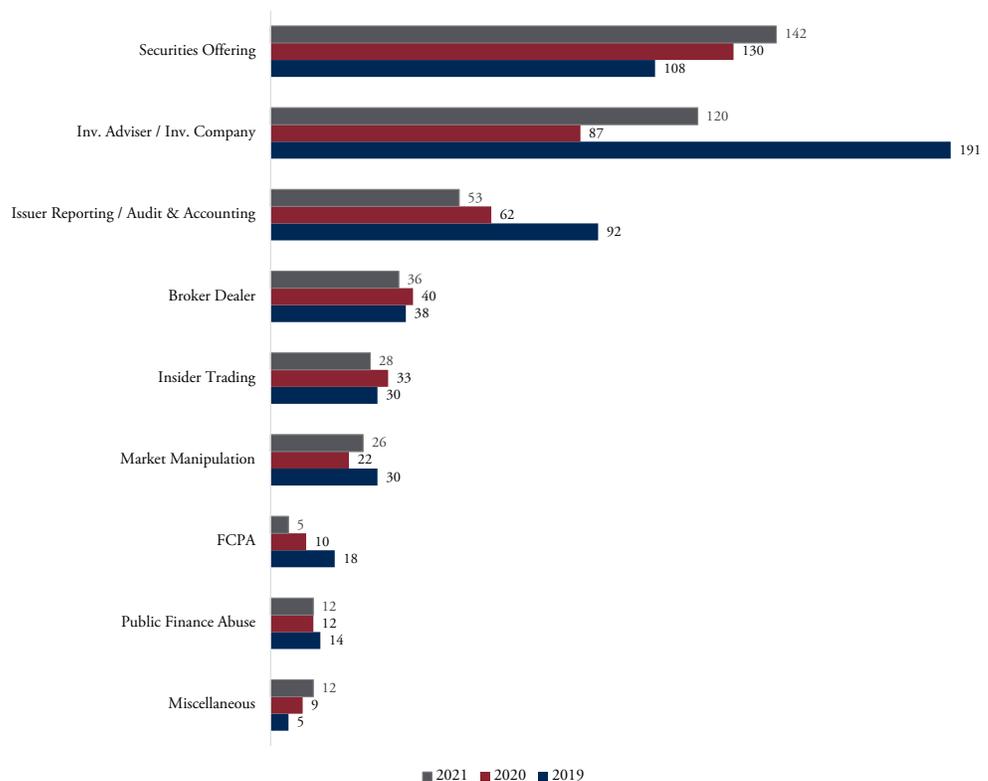
The SEC filed 697 enforcement actions in FY 2021, constituting a 3% decrease in the number of actions filed when compared to FY 2020 and representing the lowest number of actions filed since FY 2013, when the Commission filed 676 actions. Of the total enforcement actions, 434 were standalone actions (i.e., actions related to new matters). Of significance, 70% of the Commission’s standalone enforcement actions in FY 2021 resulted in charges against one or more individuals, including numerous CEOs, CFOs, accountants, auditors, and other gatekeepers.

While the total number of enforcement actions decreased from the prior year, the number of standalone enforcement actions increased by 7%. The increase in standalone actions, despite the decrease in overall actions, may indicate that the Commission prioritized quality over quantity in its FY 2021 enforcement activity. A review of the types of enforcement actions taken by the Division of Enforcement in FY 2021 suggests that the Commission placed increased scrutiny on investment adviser and investment company violations, which increased by 38% from FY 2020 and accounted for 28% of the total standalone enforcement actions for the year. Additionally, enforcement actions related to securities offering violations increased by 9% from FY 2020 and accounted for 33% of the total standalone enforcement actions for the year. On the other hand, issuer reporting and audit & accounting actions decreased by 15% in FY 2021, representing the lowest number of actions filed in this category since FY 2016, possibly highlighting a shift in the Commission’s near-term focus.

“This year has seen a number of critically important and first-of-their-kind enforcement actions, as well as record-breaking achievements for our whistleblower program, which we expect will lead to even more successful actions in the future. Undeterred by the challenges of the pandemic, the dedicated public servants in the Enforcement Division have continued to overcome obstacles to bring these cases that protect investors and promote market integrity.”

Gurbir S. Grewal, Director of the SEC’s Division of Enforcement, SEC Announces Enforcement Results for FY 2021

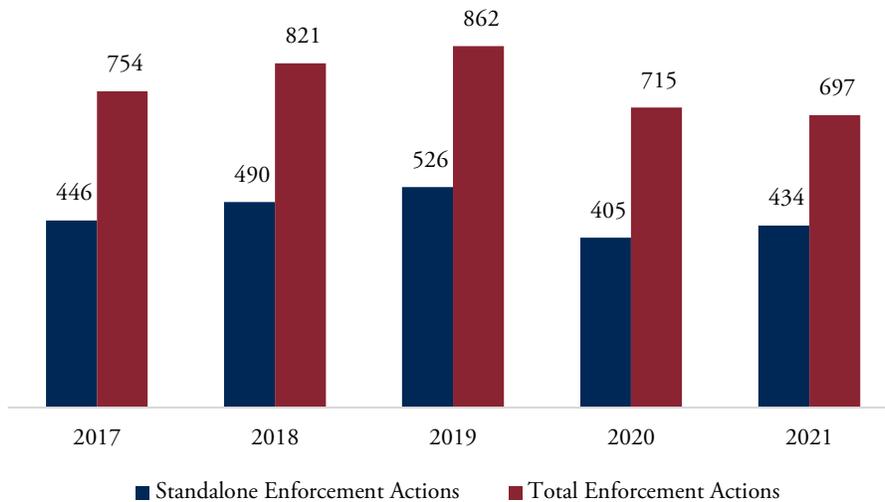
**Standalone Enforcement Actions by Classification  
FY 2019 to FY 2021**



Standalone Enforcement Actions										
Classification	FY 2021		FY 2020		FY 2019		FY 2018		FY 2017	
	#	%	#	%	#	%	#	%	#	%
Securities Offering	142	33%	130	32%	108	21%	121	25%	94	21%
Inv. Adviser / Inv. Company	120	28%	87	21%	191	36%	108	22%	82	18%
Issuer Reporting / Audit & Accounting	53	12%	62	15%	92	17%	79	16%	95	21%
Broker Dealer	36	8%	40	10%	38	7%	63	13%	53	12%
Insider Trading	28	6%	33	8%	30	6%	51	10%	41	9%
Market Manipulation	26	6%	22	5%	30	6%	32	7%	41	9%
FCPA	5	1%	10	2%	18	3%	13	3%	13	3%
Public Finance Abuse	12	3%	12	3%	14	3%	15	3%	17	4%
Miscellaneous	12	3%	9	2%	5	1%	8	2%	10	2%
<b>Totals</b>	<b>434</b>	<b>100%</b>	<b>405</b>	<b>100%</b>	<b>526</b>	<b>100%</b>	<b>490</b>	<b>100%</b>	<b>446</b>	<b>100%</b>

As previously set forth, there was a 7% increase in standalone enforcement actions in FY 2021 as compared to FY 2020 despite a 3% decrease in total enforcement actions. Following a sustained increase in the number of filed enforcement actions between FY 2017 and FY 2019, the number of enforcement actions began declining in FY 2020. FY 2021 represents the lowest number of enforcement actions filed by the SEC since FY 2013. Given the timing and the diminishing rate at which enforcement actions declined during FY 2020 and FY 2021, it is likely that the decrease is at least partially attributable to ongoing COVID-related uncertainties and challenges.

### Total SEC Enforcement Actions for the Years Ended September 30,



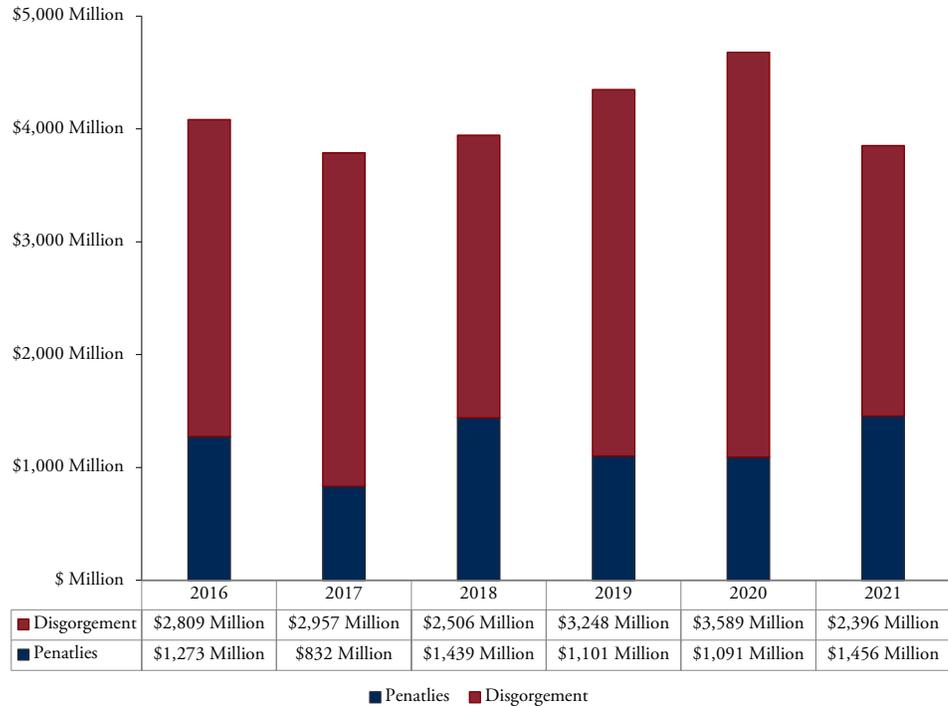
### SEC Monetary Remedies Decline After Record-Breaking FY 2020

In FY 2021, the Commission ordered monetary relief totaling \$3.9 billion, representing an approximate 18% decrease from FY 2020. Within the Commission's actions and proceedings, parties were ordered to pay approximately \$2.4 billion in disgorgement of ill-gotten gains and the SEC imposed \$1.5 billion in penalties, resulting in a \$0.8 billion decrease in monetary relief from FY 2020. The Commission also returned approximately \$521 million to harmed investors, representing a 13% decrease from FY 2020.

**“The SEC’s Enforcement Division is the cop on the beat for America’s securities laws. As these results show, we go after misconduct wherever we find it in the financial system, holding individuals and companies accountable, without fear or favor, across the \$100-plus trillion capital markets we oversee.”**

Gary Gensler, Chair of the SEC, SEC Announces Enforcement Results for FY 2021

### Penalties and Disgorgements Ordered FY 2016 to FY 2021



**“We will aggressively pursue and hold accountable those who engage in misconduct in the digital asset space.”**

Lara Shalov Mehraban, Associate Regional Director of the SEC’s New York Regional Office, SEC Press Release 2021-172, dated 09/01/2021

### *The SEC Prioritized Cryptocurrency Enforcement Actions in FY 2021*

Throughout FY 2021, the Commission focused its efforts on investigating violations related to digital asset securities, also known as cryptocurrencies (i.e., digital coins and tokens).

Bringing enforcement actions against entities and individuals offering unregistered digital asset securities was one of the key focus areas of the Commission. For example, the Commission filed action against a global online crypto lending platform, its founder, its top US promoter, and its affiliated company for luring retail investors into investing \$2 billion in a fraudulent and unregistered offering of investments in a program involving digital assets. Similarly, in December 2020, the Commission charged an enterprise blockchain company and two of its executives with raising \$1.3 billion through an unregistered, ongoing digital asset securities offering that began in 2013.

Another focus area of the Commission was the enforcement of antifraud laws for digital asset securities. In February 2021, the Commission charged a founder and primary US-based promoter with an \$11 million unregistered initial coin offering (ICO) of their digital asset security. In addition to the registration violation, the founder, promoter, and an employee of the promoter were charged with making fraudulent statements and disseminating fraudulent information to the investing public. The SEC’s complaint alleges the fraudulent claims made by these individuals concerned the size, liquidity, security, and independent rating of their bitcoin exchange, the delivery method of the tokens, the platform on which the tokens would be traded, and the use of the invested funds. Per Kristina Littman, Chief of the SEC Enforcement Division’s Cyber Unit, “[t]he conduct alleged in this action was a blatant attempt to victimize those interested in digital asset technology and these defendants should be held accountable.”<sup>1</sup>

Further, the Commission’s enforcement actions extended beyond digital asset security issuers to commentators and fund managers. For example, the Commission charged the operators of a website that profiled offerings of digital assets with unlawful touting for failing to disclose the compensation it received from issuers of the profiled digital assets.

<sup>1</sup> SEC Press Release 2021-22, dated 02/01/2021

In a separate instance, the Commission filed an emergency action and obtained an order imposing an asset freeze and other emergency relief against a US-based investment firm and its affiliated companies. The actions taken by the Commission were in response to these firms defrauding investors by misleading them to believe their money was being invested solely in cryptocurrency trading, while the fund director and companies used the investment proceeds for personal purposes and other high-risk investments.

### *The SEC Acted to Protect Investors from Market Manipulation Via Social Media in FY 2021*

In late FY 2020 and early FY 2021, the market experienced the rise of “meme stocks.” A meme stock refers to shares of a company that gains a viral following online through social media platforms and online forums, such as Reddit. As a result, meme stock owners can influence the price of shares through coordinated efforts, such as initiating a short squeeze. Notable meme stocks during FY 2020 and 2021 include, but are not limited to, the following: GameStop Corp (NYSE: GME), AMC Entertainment Holdings, Inc. (NYSE: AMC), and Clover Health Investments Corp (NYSE: CLOV).

In early FY 2021, the Commission suspended trading in over two dozen securities due to suspicious trading activity and social media activity that indicated the securities may have been targets of social media attempts to artificially increase the stock price. In many cases, the securities had increased trading activity and volatility despite the issuers not filing any new information with the SEC or OTC markets for over a year.

The Commission also brought action against individuals for manipulating the meme stock options market. For example, the Commission charged two individuals with engaging in a fraudulent scheme that collected liquidity rebates from exchanges by wash trading certain meme stock options. The traders took advantage of “maker-taker” programs offered by exchanges by trading options of the stocks with themselves. Under a maker-taker program, a trade order that is sent to an exchange and executes against a subsequently received order generates liquidity and a rebate from the exchange. The traders wash traded far out-of-the-money put options, which they believed would be easier to trade against themselves because of the heightened public interest in meme stocks and the related inflated stock prices would make put options less attractive. In addition to generating a combined \$720,000 of ill-gotten liquidity-rebates, the wash trading scheme allegedly impacted the market as it skewed the trading volume of option trading contracts and induced other traders to trade in otherwise illiquid options contracts.

In addition to meme stocks, the Commission also focused on protecting investors from the dissemination of fraudulent information on social media. In March 2021, the Commission executed an emergency asset freeze and fraud charges against a trader who used a social media platform to spread false information about a defunct company, while secretly profiting by selling his own holdings of said company’s stock. The trader’s fraudulent tweets resulted in the company’s stock price increasing over 4,000% in a matter of days, prior to the trader selling his shares for profits totaling over \$929,000.

In response to the increased risk of investors relying on social media posts when making investment decisions, the Commission released an investor alert entitled “Thinking About Investing in the Latest Hot Stock?” in January 2021 that addresses the significant risks of short-term trading based on social media trends.

### *New Areas of Enforcement*

In FY 2021, the Commission filed enforcement actions across several new areas, including a number of first-of-their-class actions. Summaries of select new actions are included below.

**“Full and honest disclosure remains the cornerstone of our securities laws – no matter what technologies are used to offer and sell those securities. This allows investors to make informed decisions and prevents issuers from misleading the public about business operations.”**

Daniel Michael, Chief of the SEC Enforcement Division’s Complex Financial Instruments Unit, SEC Press Release 2021-145, dated 08/06/2021

The Commission initiated its first enforcement action involving alleged securities violations on the dark web by charging an individual with the exchange of fabricated, material, nonpublic information on bitcoin shared on an insider trading forum. The Commission noted it has dedicated resources and technology to the ongoing pursuit of securities law violators on the dark web.

The Commission also initiated its first case involving securities using decentralized finance (“DeFi”) technology. DeFi is a software system written on blockchain that enables buyers, sellers, lenders, and borrowers to interact peer-to-peer or with a software-based middleman (i.e., a digital exchange) rather than with a traditional bank or brokerage firm. Unlike a bank or brokerage firm, DeFi does not require participants to provide identification information, such as a government-issued ID or social security number. In August 2021, the Commission charged a blockchain-based financial services company and its two owners for the unregistered sale of more than \$30 million of two digital tokens using smart contracts and DeFi technology. Further, the Commission charged the respondents with defrauding investors by misrepresenting the operations of the company and the company’s ability to make principal and interest payments for the redemption of their tokens. In response to the Commission’s order, the respondents funded the smart contracts so that the holders of one of the tokens could redeem their principal and interest and consented to a cease-and-desist order that included \$12.85 million in disgorgement and \$250,000 in penalties.

“This case illustrates risks inherent to SPAC transactions, as those who stand to earn significant profits from a SPAC merger may conduct inadequate due diligence and mislead investors... Today’s actions will prevent the wrongdoers from benefitting at the expense of investors and help to better align the incentives of parties to a SPAC transaction with those of investors relying on truthful information to make investment decisions.”

Gary Gensler, Chair of the SEC,  
SEC Press Release 2021-124, dated  
07/13/2021

### *Other Key Areas of Enforcement*

Enforcement actions brought by the Commission in FY 2021 also included combating emerging threats in the special purpose acquisition company (“SPAC”) space. For example, the Commission charged a SPAC, its sponsor, its CEO, its proposed merger target, an early-stage space transportation company, and the founder and former CEO of the merger target for misleading claims. Per the settled SEC order, the merger target and its founder repeatedly told investors that it had successfully tested its propulsion technology in space when, in fact, their sole in-space test failed. Further, the order found that the merger target and its founder misrepresented the extent to which national security concerns involving the founder undermined the merger target’s ability to secure governmental licenses necessary to the company’s operations. The order also charged the SPAC for failing to conduct adequate due diligence and for filing registration and proxy statements that included inaccurate representations made by the merger target and its founder. The Commission’s actions did not halt the proposed \$200 million merger, however, the SEC ensured investors had complete and accurate information when voting on the proposed merger. Per Anita B. Brandy, Associate Director of the SEC’s Division of Enforcement, “[o]ur litigation against [the founder] demonstrates our commitment to holding individuals accountable for their statements to investors, which are of particular concern when they are aimed at improperly capitalizing on public interest in popular investment vehicles such as SPACs.”<sup>2</sup>

Another area of focus for the Commission in FY 2021 was the investigation of affinity fraud. Alka Patel, Associate Regional Director of the SEC’s Los Angeles Regional Office, noted that affinity fraud is particularly harmful to retail investors as wrongdoers can prey on the trust of members of their communities. During FY 2021, the Commission brought actions against individuals and entities that defrauded current and retired police officers and fire fighters as well as members of the South Asian American, Orthodox Jewish, and Venezuelan American communities. In each of the aforementioned fraud schemes, the Commission is seeking disgorgement, prejudgment interest, and civil penalties and/or financial penalties against the defendants.

The SEC also cracked down on insider trading in FY 2021. For example, in August 2021 the Commission charged three former subscription streaming service software engineers and two close associates with generating over \$3 million in illegal profits by trading on material nonpublic information regarding increased subscriptions in advance of earnings releases from 2016 through 2019.

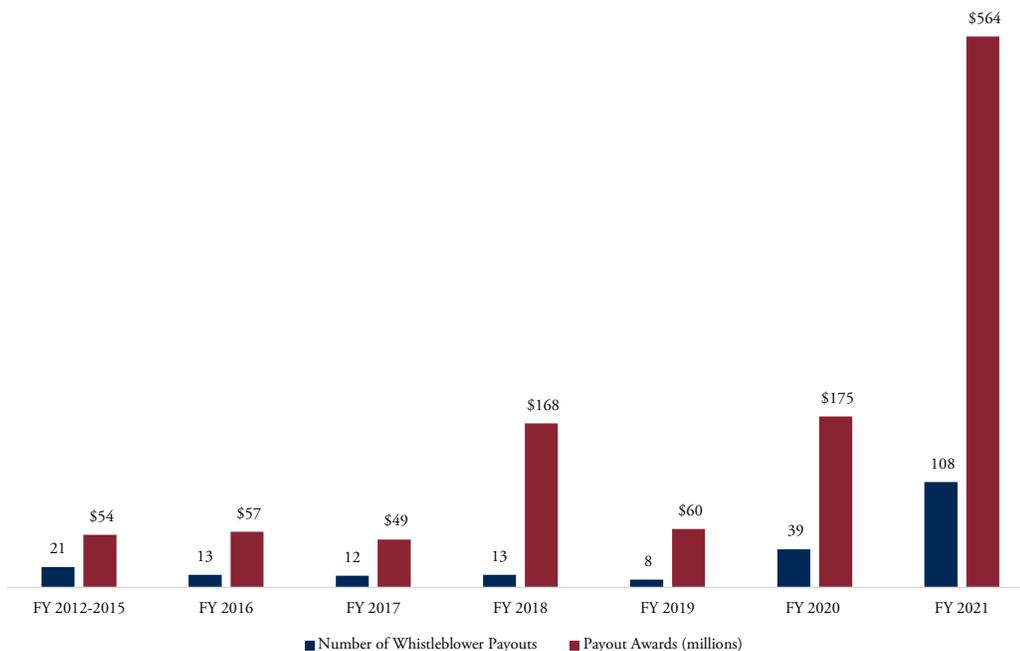
<sup>2</sup> SEC Press Release 2021-124, dated 07/13/2021

# Highlights from the SEC's 2021 Annual Report to Congress on the Whistleblower Program

## *Record-Breaking Accomplishments for the SEC's Whistleblower Program*

For the SEC's Office of the Whistleblower ("OWB"), FY 2021 was a record year. The number of individuals who received an award in 2021 account for approximately 50% of all individuals awarded since the inception of the program in 2011. The Commission's efforts, which began in 2020, to streamline whistleblower claims continue to yield sizable results, including record numbers of individuals awarded, dollars awarded, claims processed, and tips received. In FY 2021 alone, the Commission issued approximately \$564 million in awards to 108 individuals, crossing the \$1 billion threshold of total amounts awarded since the program's inception. Of note, FY 2021 also represented the highest dollar amount awarded in the program's history, exceeding FY 2020, the previous record year, by approximately \$389 million. Furthermore, the Commission issued more awards in FY 2021 than in all prior years combined. Among its new milestones, the Commission issued the second largest award since the program's inception in FY 2021 by awarding \$110 million to a single whistleblower in September 2021. Additionally, in April 2021, the Commission issued another significant award of \$50 million that was split between joint whistleblowers who submitted their tip through the same counsel and provided substantively identical whistleblower award applications.

### Dodd-Frank Whistleblower Program - Historical Awards



Since the program's inception, the SEC has received over 52,400 tips and allegations through its whistleblower hotline. In fact, in FY 2021, the SEC received a record-breaking number of whistleblower tips – 12,200 – which constitutes a 67% increase from FY 2020, the previous record year, and a more than 300% increase since the beginning of the program.

**“These large awards underscore the Commission’s commitment to rewarding whistleblowers who provide specific and detailed information that plays a significant role in the success of the agency’s enforcement actions.”**

2021 Annual Report to Congress on the Whistleblower Program

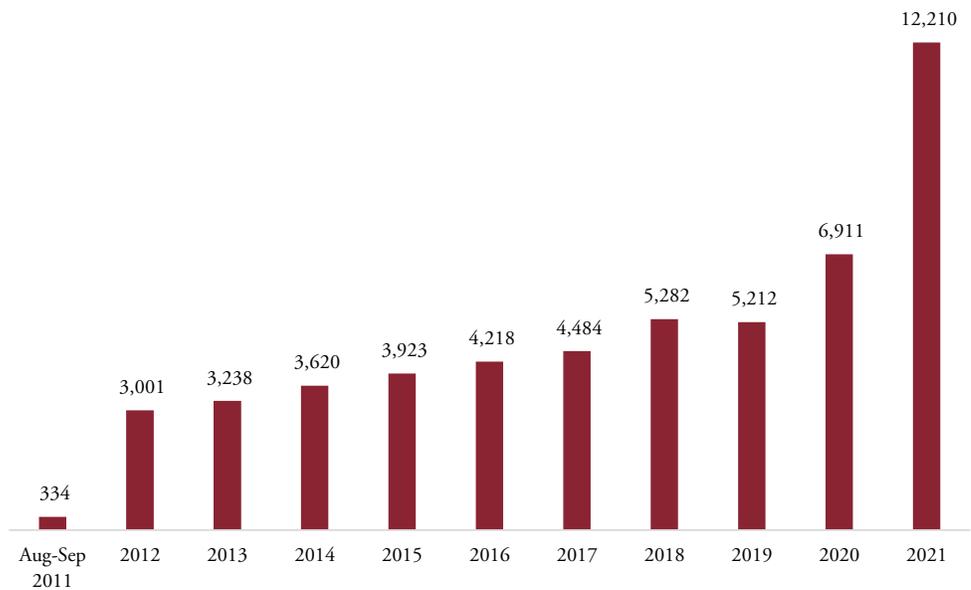
Per the SEC, the record number of claims processed and dollars awarded in FY 2021 is directly attributable to the Commission’s adoption of Whistleblower Rule Amendments in December 2020. Certain of these amendments increased efficiencies around the review and processing of whistleblower claims. For example, the Commission expedited award determinations by adopting a presumption that sets awards at the maximum 30% of monetary sanctions collected for awards under \$5 million, which is applicable in most cases. Prior to the amendment, awards for less than \$5 million could range from 10% to 30% of sanctions collected. The Commission also shortened its timeline for providing initial responses to claimants by adopting a new summary disposition process for straightforward denials. The summary disposition process can be used in circumstances such as untimely submission of an award application, submission of a tip that is noncompliant with the manner prescribed by the Commission, and claims that do not involve new or novel issues. Further, the Commission adopted a provision that enables it to bar claimants who submit three or more frivolous award claims. Historically, the OWB observed that a small cohort of claimants abused the program by applying for dozens or hundreds of awards even though their information was not reasonably connected to the covered action for which they applied. Such bars increase efficiency by conserving resources for only meritorious whistleblowers.

**“The success of the Commission’s whistleblower program in landmark FY 2021 demonstrates that it is a vital component of the Commission’s enforcement efforts.”**

2021 Annual Report to Congress on the Whistleblower Program

In addition to improving efficiency, the Whistleblower Rule Amendments also further incentivized the whistleblower community to submit tips. For example, the amendments provide the Commission with the authority to make awards to meritorious whistleblowers for their efforts and contributions to other types of successful, related actions, such as Deferred Prosecution Agreements (“DPAs”) and Non-Prosecution Agreements (“NPAs”) entered into by the Department of Justice. In FY 2021, the Commission awarded over \$117 million to whistleblowers in connection with four DPAs and NPAs.

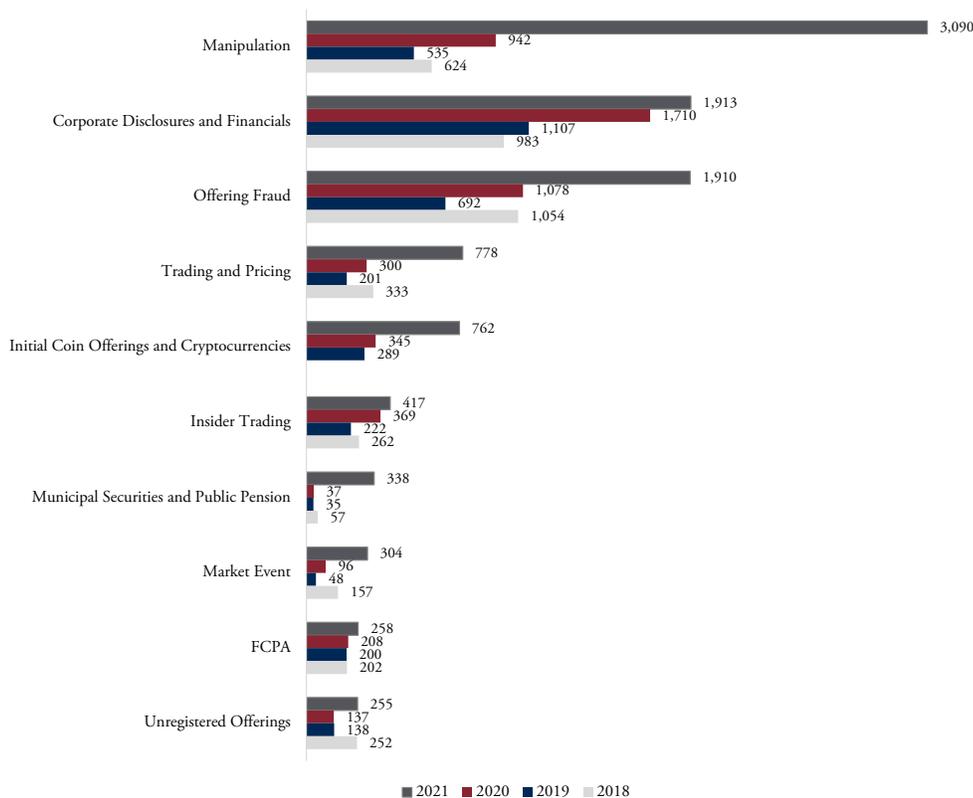
### Whistleblower Allegations for the Years Ended September 30,



Given the increased incentive to submit tips (e.g., the adoption of the 30% presumption, the ability to receive awards for related actions, and the expedited award timeline), it appears the Whistleblower Rule Amendments drove the FY 2021 spike in whistleblower tips. We will continue to monitor and report on this trend in FY 2022.

The types of misconduct reported by whistleblowers in FY 2021 were consistent with prior years in which manipulation, corporate disclosures and financials, and offerings fraud ranked as the three highest allegation types, accounting for 25%, 16%, and 16% of all allegations, respectively. In contrast to prior years, the number of manipulation-related whistleblower tips increased by 228% from 942 tips in FY 2020 to 3,090 tips in FY 2021. Also of note, allegations regarding initial coin offerings and cryptocurrencies, a category added by the SEC in 2018, now comprises approximately 6% of all tips.

### Whistleblower Tips by Allegation Type Comparison for the Years Ended September 30,



In FY 2021, the Commission continued its efforts to protect whistleblowers. For example, the Commission initiated actions against companies that disseminated communications (e.g., compliance manuals, compliance trainings, and termination or separation agreements) to employees that prohibited communicating directly with the Commission and/or permitted retaliation against known whistleblowers.

**“Supporting investigations into retaliation and attempts to impede reporting continues to be a high priority for OWB to ensure that whistleblowers feel comfortable and safe reporting to the Commission without fear of reprisal.”**

2021 Annual Report to Congress on the Whistleblower Program

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#### **ACKNOWLEDGEMENT**

We wish to acknowledge the valuable contribution to this analysis by Jamie Xie and Rebecca Nardi.

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#### **ABOUT Floyd Advisory**

Floyd Advisory is a consulting firm providing financial and accounting expertise in areas of SEC reporting, transaction advisory, investigations and compliance, litigation services, as well as business strategy and valuation.

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