

Mapping Misconduct:

An Overview of Significant SEC Enforcement Actions Since the Passage of the Sarbanes-Oxley Act of 2002

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Introduction

In 2010, in response to a long series of corporate scandals that eroded both shareholder value and public faith in our markets, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act, one of the most sweeping financial reform efforts since the Great Depression. A key provision of the Dodd-Frank Act was the charge given to the Securities and Exchange Commission (SEC) to create a whistleblower program.

Finalized and formally implemented in August 2011, the [SEC Whistleblower Program](#) permits anonymous reporting and provides significant [employment protections](#) and [monetary awards](#) to individuals who provide the SEC with original information about possible violations of federal securities laws. Eligible whistleblowers will receive 10-30% of the monetary sanctions collected as a result of successful enforcement actions in which SEC sanctions exceed \$1 million.

Since launching the nation's first practice exclusively focused on protecting and advocating for SEC whistleblowers, Labaton Sucharow has dedicated significant time to helping responsible organizations establish cultures of integrity and supporting courageous whistleblowers reporting possible securities violations—without personal or professional regrets.

Our deep commitment to education, investor protection and corporate reform is demonstrated by the launch of a first-of-its-kind [SEC Sanctions Database](#). This resource – created as a service to our clients and the public at large -- provides valuable information about SEC enforcement actions involving six of the most common violations – Offering Fraud, Trading & Pricing, Foreign Corrupt Practices Act (FCPA), Municipal Securities, Financial Fraud and Market Manipulation. Our data is derived from an analysis of SEC enforcement actions since the enactment of the Sarbanes-Oxley Act in 2002 through September 30, 2012, where monetary sanctions exceeded \$1 million, the minimum eligibility threshold for the SEC Whistleblower Program.


This report highlights some of the many interesting findings from our analysis and presents regional statistics and data compiled through independent surveys of the American public and the US & UK financial services industry. We supplement this data with statistics from the FY2011 Annual Report of the SEC Office of the Whistleblower.

For five decades, Labaton Sucharow has been dedicated to investor protection and corporate governance reform. With the launch of our innovative database tool and this analysis, we underscore – again and in practice—our deep commitment to *inform, advocate and reform*.

The sheer size, diversity and number of SEC enforcement actions in excess of \$1 million demonstrate the enormous investor protection potential of the SEC Whistleblower Program.

Key Facts & Figures

- Of the six [common securities violations](#) we examined in performing our analysis, which are defined and discussed in the following section, the SEC successfully prosecuted 457 enforcement actions where the monetary sanctions exceeded \$1 million;
- Approximately 10% of these actions involved corporate defendants in foreign jurisdictions;
- More than 61% of the cases involving corporate defendants in foreign jurisdictions occurred in the last five years;
- Two-thirds of all actions surveyed involved corporate defendants in the United States;
- In actions involving US corporate defendants, nearly 15% of these enforcement actions resulted in orders for monetary relief in excess of \$50 million;
- Of the 307 actions involving corporate defendants in the US, 36% were prosecuted in the Northeast region of the United States. This was followed by the Southern region (32%); the Western region (25%); and the Midwestern region (7%);¹
- Offering Fraud was the most common violation, representing approximately 40% of all enforcement actions in the data set. This was followed by Financial Fraud (31%); FCPA (12%); Market Manipulation (9%); Trading & Pricing (6%); and Municipal Securities Fraud (2%);
- More than 90% of all FCPA actions were brought within the last five years;
- Individuals – as differentiated from corporate defendants – have played a major role in significant securities cases, representing approximately 22% of all actions in the data set. Corporate defendants were involved in 27% of actions; and just over half of all actions in our analysis combined both corporate and individual defendants; and
- Approximately 57% of all enforcement actions included in the data set occurred within the last five years.



\$37,418,050,258

The aggregate value of monetary relief from major enforcement actions in 2008 involving the six violations we studied.

¹ Regional identifiers were applied only to actions that involved corporate defendants. Enforcement actions involving individuals have not been mapped due to the unreliability of such data.

Understanding Common Securities Violations

Offering Fraud

Offering Fraud generally occurs when an individual (or group of individuals) makes misrepresentations and/or omissions of material fact to potential investors in a new company. An example of this type of fraud is when individuals contact potential investors and attempt to induce them to invest in a new, unknown company by making false claims about the company. Another example is when the securities being sold are not properly registered with the SEC, another violation of the securities laws. Another common type of Offering Fraud is a Ponzi scheme, in which investors are paid returns from their own money or from the money invested by subsequent investors, rather than from actual profit earned by the enterprise. The operator of the scheme induces new investments by offering to pay abnormally high returns or paying existing investors unusually consistent returns.

Trading and Pricing

Trading and Pricing violations involve any number of trading techniques that are illegal under federal securities laws. These include:

- **Market timing/late trading:** This occurs when a mutual fund permits certain customers to purchase shares in the fund after trading has closed for the day. Because mutual fund prices are set once a day, a customer that purchases after trading is closed can do so at that day's price and not at the following day's price.
- **Wash Trades:** Similar to churning, in the securities context, wash trades involve the selling and repurchase of the same security for the purpose of generating activity and increasing the price.
- **Marking the Close:** Buying or selling a stock near the close of the day's trading in order to affect the closing price.
- **Front running:** The buying or selling of a security knowing that another investor is about to make a trade that will influence the price of the security. An example is buying stock in Company A knowing that another investor is about to make a very large purchase of the same stock, causing its price to increase.

Foreign Corrupt Practices Act (FCPA)

The FCPA prohibits the offer, payment, or promise to pay money or anything of value—i.e., a bribe—to any foreign official in an effort to win or retain business from that foreign official's government. It is not a violation of the FCPA, however, if (i) the payments are legal under the written laws of the country in which the payments are made; or (ii) the payment is a reasonable expenditure directly related to the conducting of business with a foreign government.

Market Manipulation

Market Manipulation is interference with the free and fair operation of the market by engaging in transactions that create or maintain an artificial price for a security. Some examples of Market Manipulation include:

- **Churning:** Churning is the placing of both buy and sell orders for the same security at about the same price. The purpose is to create the appearance of increased activity in the buying and selling of the security, thereby increasing its price.
- **Pooling:** An agreement among a group of people delegating authority to a single manager to trade in a specific stock, for a specific period of time, and then to share in the resulting profits or losses.
- **Pump and Dump:** Owners of a security spread false information causing the price of the security to increase (aka the pump). When the price of the security increases based on these false rumors, the owners who spread the false information sell off their shares, making a profit (aka the dump).

Financial Fraud

Financial Fraud occurs when false or misleading financial statements are filed with the SEC in either a company's registration statement, prospectus, or as part of the company's periodic filings required under the Exchange Act. This type of fraud often occurs when a company uses accounting tricks to increase the reported earnings and revenues for a particular reporting period. Another common Financial Fraud is when companies engage in manipulative business transactions that have the effect of altering revenues, expenses, earnings, and/or losses for a reporting period. Sometimes these transactions, while legal themselves, are used unlawfully. Financial fraud can also occur when a company fails to speak truthfully when discussing its financial results. An example is a company that (accurately) reports increased revenues for a relevant reporting period, but fails to also disclose that the increased revenue is due to a one-time event and not a general increase in sales.

Municipal Securities Fraud

Municipal Securities are debt securities issued by state and local governments in the United States, and are generally used to fund items such as infrastructure, schools, libraries, and general municipal expenditures. Dealers in municipal securities are required to disclose material information about the securities to investors and, as with any security, are prohibited from making false or misleading statements of material fact, or omitting to state any material facts, in connection with the offer, purchase, or sale of any municipal security. Thus, a failure to comply with these laws in connection with the purchase or sale of municipal securities would constitute a securities violation subject to SEC enforcement jurisdiction.

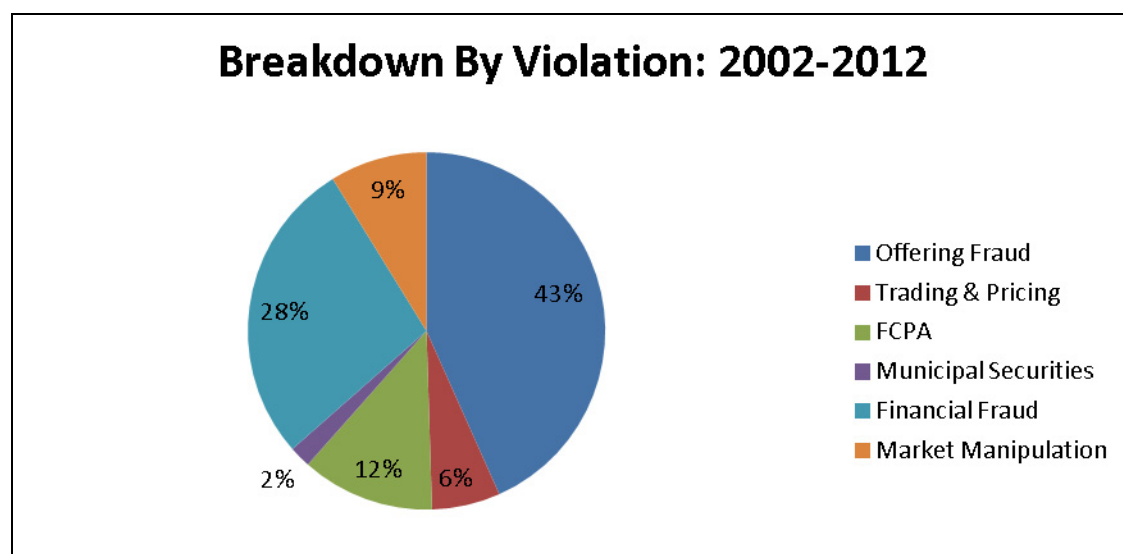
Historical Overview of Enforcement Actions

Monetary Sanctions

From 2003 to 2011, the full calendar years in our data set, the SEC brought 419 enforcement actions --involving the six common securities violations where the monetary sanctions met the \$1 million threshold -- to successful conclusion, with aggregate monetary relief for injured investors in excess of \$65 billion.

Year	# of Actions With Sanctions >\$1 Million	Aggregate Value
2003	37	\$2,940,891,653
2004	38	\$1,521,363,764
2005	42	\$2,159,567,965
2006	38	\$2,422,495,204
2007	47	\$792,765,091
2008	42	\$37,418,050,258
2009	53	\$14,477,924,177
2010	60	\$2,267,535,642
2011	62	\$1,534,320,397

Common Securities Violations



As noted in the table below, of the enforcement actions examined herein, we see that a significant percentage of actions were announced during the last five years. In fact, with the exception of cases involving Market Manipulation, the majority of actions in the other areas of focus were announced during 2007-2012. These remarkable upticks in activity likely reflect larger SEC budgets, enforcement priorities, and an increase in various forms of misconduct.

Violation	Actions During 2007-2012
Offering Fraud	54.6%
Trading & Pricing	57.7%
FCPA	90.7%
Municipal Securities Fraud	85.7%
Financial Fraud	51.4%
Market Manipulation	44.2%

Foreign Jurisdictions

A common misconception is that federal securities violations can only be perpetrated on US soil, or by resident subsidiaries of foreign entities. This is not the case. In fact, of the 457 enforcement actions we analyzed, more than 10% represented federal securities violations perpetrated by corporate defendants from foreign jurisdictions.² Nearly 62% of the actions involving foreign defendant companies were announced within the last five years. Other highlights of enforcement actions involving foreign jurisdictions include:

- 47% of actions involved corporate defendants, while 53% represented actions in which the named defendants included corporate entities and individuals.
- Approximately 62% of these actions were announced in the last 5 years.
- The most common violations involving foreign defendants involved the FCPA (36%), Offering Fraud (30%) and Financial Fraud (23%).
- The SEC has recovered more than \$1.6 billion in monetary sanctions in connection with enforcement actions involving foreign defendants. In approximately 17% of these cases, monetary damages exceeded \$50 million.

² Interestingly, according to the 2011 Annual Report of the SEC Whistleblower Office, the same percentage (10%) of whistleblower submissions originated from foreign jurisdictions.

Mapping Misconduct Stateside: Looking Back, Looking Ahead³

Of the 457 actions announced since the passage of the Sarbanes-Oxley Act through the close of the SEC's current fiscal year – September 30, 2012 – where monetary relief exceeded \$1 million, 307 actions involved US corporate defendants. The data on these historic enforcement actions is enlightening on its own. However, it is particularly valuable to view this data alongside recent research conducted on misconduct in the workplace.

Whether examining attitudes toward misconduct broadly or specifically by geographic region, our recent [survey](#) of financial services industry professionals reveals startling insights by this critically important commercial sector.⁴ Another independent analysis, the *2012 Ethics & Action Survey: Voices Carry*, a survey of the American public, offers a fascinating barometer of Americans' feelings toward workplace misconduct, the economic crisis and much-needed reform.⁵ Together, these survey results establish credible connections between attitudes toward workplace misconduct and the actual enforcement activity within the United States.

Highlights from our survey of financial services professionals include:

- 22% of survey respondents feel financial sector professionals may need to engage in unethical or illegal conduct in order to be successful.
- 15% would use insider information to make \$10 million if there was no chance of getting caught.
- 51% believe the SEC is ineffective at detecting, investigating and prosecuting securities violations.
- 28% believe compensation plans can create pressure to compromise ethical standards or violate the law.
- 22% have personally observed or had first-hand knowledge of wrongdoing in the workplace.
- 95% would report wrongdoing if they could do so with protections and incentives such as those offered under the SEC Whistleblower Program, namely if reports of misconduct could be made anonymously, with protections from retaliation and with potential for a monetary award.

³We remind readers that enforcement actions involving individuals have not been assigned an address due to the unreliability of such data. As such, when we refer to US regions, we refer only to those actions involving corporate defendants.

⁴Populus conducted 250 online interviews in the UK and 250 in the US with senior individuals within the financial sector. For the complete report of the survey, please see [here](#).

⁵In August 2012, ORC International conducted more than 1000 telephone interviews of individuals 18 years of age or older living in the continental United States. For the complete report of the survey, please click [here](#).

Key figures from our second annual *Ethics & Action Survey: Voices Carry* include:

- 54% of Americans have personally observed or have first-hand knowledge of wrongdoing in the workplace.
- 18% of Americans believe that their employer values bottom line profits more than ethical conduct.
- 81% of Americans do not believe the government has done enough to stop corporate wrongdoing.
- 63% of Americans believe government should allocate more dollars to financial regulators and law enforcement to combat corporate wrongdoing.
- 84% of Americans have a positive perception of individuals who report illegal or unethical conduct.
- 83% of Americans would report wrongdoing with protections and incentives such as those offered by the SEC Whistleblower Program.

These attitudes toward misconduct are particularly interesting in light of the SEC's historical enforcement activity in the United States. For example:

- 14.6% of enforcement actions involving US corporate defendants resulted in monetary sanctions in excess of \$50 million. Regionally, this breaks out as follows:
 - Northeast – 62%
 - West – 18%
 - South – 18%
 - Midwest – 2%
- 66% of the actions involved both corporate and individual defendants, while 34% involved solely corporate defendants.
- The breakdown of securities violations in these actions was as follows:
 - Offering Fraud – 43%
 - Financial Fraud – 28%
 - FCPA – 12%
 - Market Manipulation – 9%
 - Trading & Pricing – 6%
 - Municipal Securities Fraud – 2%

US Regions in Focus: Northeastern US

Across the board, our research indicates that the Northeast region of the United States is a hotbed of unethical conduct, of significant concern both on its own and compared to other jurisdictions within the US.

- 30% of financial services professionals in the Northeast feel that in the current financial environment, industry professionals may need to engage in unethical or illegal conduct to be successful. This figure was significantly higher than other regions.
- One in five professionals in the Northeast would use insider information to make \$10 million if they could get away with it.
- While 80% of professionals in the Northeast believe their employers have strong ethical values, the percentage is much higher in other regions.
- Along similar lines, one-third of professionals in the Northeast believe their compensation/bonus package can create pressure to compromise ethical standards or violate the law. This figure was five points higher than the national average and significantly higher than the figures for the South and West.

Interestingly, 32% of respondents from the Northeast believe that the SEC is an effective watchdog, six points higher than the national average and a full 12% higher than individuals in the Western US. Perhaps this belief is understandable. Indeed, the Northeast region was home to nearly one-quarter of all the SEC enforcement actions surveyed, which translates into 35% of the enforcement actions involving US corporate defendants. This is the highest concentration of SEC enforcement activity among all regions surveyed.

Regional enforcement highlights include:

- Enforcement actions involving corporate defendants in the Northeast have resulted in more than \$46 billion in monetary sanctions:
 - More than 20% of significant actions in the Northeast resulted in monetary sanctions over \$50 million.
 - The largest order of monetary relief - more than \$22 billion - was levied against UBS Securities in 2008.
- 55% of the enforcement actions involved both corporate and individual defendants, while 45% involved solely corporate defendants.

65% of Americans in the Northeast feel government should allocate more dollars to regulators and law enforcement to combat corporate wrongdoing

*2012 Ethics & Action Survey:
Voices Carry*

- The breakdown of securities violations in the Northeast was as follows:
 - Offering Fraud – 27%
 - Financial Fraud – 40%
 - FCPA – 13%
 - Market Manipulation – 7%
 - Trading & Pricing – 9%
 - Municipal Securities Fraud – 4%

What's the prognosis? Just as the Northeast region has historically high enforcement activity, we expect to see a significant uptick in whistleblower submissions as the program gains more traction and recognition. Thus far, of the 215 whistleblower submissions made to the SEC in FY 2011 (which designated a particular state in the United States), 23% originated from the Northeastern United States. It is important to note that individual states within the region generated comparatively high submissions – New York, for instance, had the 2nd highest submission rate in the nation. We anticipate that as larger awards are announced, particularly in the financial services sector which is entrenched in the Northeast, whistleblower activity will increase, along with more high value enforcement actions.

US Regions in Focus: Southern US

Using the regional designations set forth by the census bureau, the South is an interesting study. It incorporates many states, some with serious and longstanding records of misconduct, and some with few, if any, significant securities violations. In terms of a 'regional attitude' toward workplace misconduct, our survey of the financial sector proffered interesting findings:

- 14% of financial services professionals in the South feel that in the current financial environment, industry professionals may need to engage in unethical or illegal conduct to be successful. This figure was the lowest of all regions in the United States.
- 14% of professionals in the South would use insider information to make \$10 million if they could get away with it. This statistic is on par with the national average, but significantly higher than the Midwest (8%).
- 95% of industry professionals in the South believe their employers have strong ethical values, a full 9 points above the national average and the highest figure among all regions surveyed.
- Of note, while 26% of professionals in the South believe their compensation/bonus package can create pressure to compromise ethical standards or violate the law,

**82% of Americans
in the South feel the
government has not
done enough to root
out corporate
wrongdoing.**

*2012 Ethics & Action Survey:
Voices Carry*

which is lower than the national average, 23% of professionals in the South felt *other* pressure to compromise ethical stands or break the law. This is the highest percentage of all regions surveyed and four points above the national average.

- 21% of respondents had personally observed or had first-hand knowledge of misconduct at work. This figure is on par with the national average and similar across regions.

While professionals from the South had a high degree of faith in their employers, this confidence does not extend to the SEC. A full 9 points above the national average, 60% of respondents from the South believe the SEC is ineffective in detecting, investigating and prosecuting securities violations.

Is this belief well founded? Probably not. The South was home to 21% of all the enforcement actions surveyed, which translates to 32% of the enforcement actions involving US corporate defendants. Regional highlights include:

- Enforcement actions involving corporate defendants in the South have resulted in nearly \$13 billion in monetary sanctions:
 - The largest monetary sanction - \$400 million – was levied against Fannie Mae in 2006.
 - Of the enforcement actions in the South, 10% resulted in monetary sanctions over \$50 million.
- 70% of the enforcement actions involved both corporate and individual defendants, while 30% involved solely corporate defendants.
- The breakdown of securities violations in the South was as follows:
 - Offering Fraud – 60%
 - Financial Fraud – 15%
 - FCPA – 15%
 - Market Manipulation – 6%
 - Trading & Pricing – 2%
 - Municipal Securities Fraud – 1%

60% of financial services professionals in the South believe the SEC is ineffective.

...

32% of the nation's major SEC actions over the last decade were in the South.

(Hm.)

Looking ahead, we hope to see continued efforts to protect investors and the public at large. While the South includes states with relatively high instances of significant securities violations, namely Florida and Texas, it also significantly outpaced other regions with respect to whistleblower submissions to the SEC. The Agency's Annual Report from the Office of the Whistleblower indicates that 38% of all submissions came from the South, with Florida, Texas and Maryland standing out for high whistleblower activity.

US Regions in Focus: Midwestern US

Despite a high concentration of Fortune 500 companies and a large geographic expanse, whether assessing attitudes toward workplace misconduct, or significant enforcement activity, the Midwest generally scores better than other regions in the United States. “Better,” however, is a matter of degrees. There are still significant areas of exposure and concern. For instance, regional data from our financial services survey found the following:

- 19% of financial services professionals in the Midwest feel that in the current financial environment, industry professionals may need to engage in unethical or illegal conduct to be successful. This figure was slightly lower than the national average (22%).
- 8% of professionals in the Midwest would use insider information to make \$10 million if they could get away with it. This is the lowest figure of all regions surveyed and nearly half the national average.
- While 89% of respondents from the Midwest felt their employer had strong ethical values, slightly higher than the national average, 44% found it likely that their competitors have engaged in unethical or illegal activity to be successful – the highest among all regions surveyed.

Exactly on par with the national average and showing greater confidence than both the South and West, 26% of respondents from the Midwest felt the SEC is an effective watchdog. This was interesting given the comparatively small concentration of significant enforcement actions in the region.

The Midwest was home to nearly 5% of all the enforcement actions surveyed, which translates into approximately 7% of the enforcement actions involving US corporate defendants. Of the US regions surveyed, the Midwest has the lowest concentration of significant SEC enforcement actions. Regional highlights include:

- Enforcement actions involving corporate defendants in the Midwest have resulted in nearly \$500 million in monetary sanctions:
 - The largest monetary sanction in the region – more than \$125 million – was in connection with an offering fraud matter involving various corporate and individual defendants.
 - The matter highlighted above was the only enforcement action in the Midwest resulting in monetary relief over \$50 million.
- 73% of the enforcement actions involved both corporate and individual defendants, while 27% involved solely corporate defendants
- The breakdown of securities violations in the Midwest was as follows:
 - Offering Fraud – 41%
 - Financial Fraud – 41%
 - FCPA – 9%
 - Market Manipulation – 5%
 - Trading & Pricing – 5%

While the SEC Office of the Whistleblower received the fewest submissions from the Midwest – 13% of the tips received – there has, traditionally, been far less significant enforcement activity in the region. We do note that there were some surprising outliers; despite the fact that Illinois is home to numerous major conglomerates, the highest number of regional whistleblower tips came from Missouri and Ohio, twice the number that came from Illinois.

US Regions in Focus: Western US

Based on census groupings, the West is a large region and includes states – California, chiefly – with significant enforcement activity. In terms of perception, too, our research indicates that there is much work to be done to reform attitudes toward misconduct.

- More than one in five financial services professionals in the Western United States feel that in the current financial environment, industry professionals may need to engage in unethical or illegal conduct to be successful. This figure was on par with the national average, but higher than the Midwest and South.
- 16% of professionals in the West would use insider information to make \$10 million if they could get away with it, slightly ahead of the national average.
- Respondents from the Western US indicate a higher awareness of misconduct at work than any other region, with 24% having personally witnessed or possessing first-hand knowledge of misconduct.
- Financial industry professionals from the Western US also have the least confidence in the SEC to detect, investigate and prosecute securities violations, with an astonishing 61% of respondents believing the agency is “ineffective.” This is a full 10 points higher than the national average and 17 points higher than the Northeast.

68% of Americans in the West believe illegal or unethical conduct was a key driver of the current economic crisis.

*2012 Ethics & Action Survey:
Voices Carry*

Regional enforcement highlights include:

- The West was home to nearly 17% of all the enforcement actions surveyed, which translates into one-quarter of the enforcement actions involving US corporate defendants.
- Enforcement actions involving corporate defendants in the West have resulted in more than \$2.8 billion in monetary sanctions:
 - The largest monetary sanction in the region - \$715 million – was levied against corporate and individual defendants in the 2005 action involving Adelphia Communications.
 - Of the enforcement actions in the West, 10.5% resulted in monetary sanctions over \$50 million.

- 76% of the enforcement actions involved both corporate and individual defendants, while 24% involved solely corporate defendants.
- The breakdown of securities violations in the West was as follows:
 - Offering Fraud – 46%
 - Financial Fraud – 21%
 - FCPA – 8%
 - Market Manipulation – 16%
 - Trading & Pricing – 8%
 - Municipal Securities Fraud – 1%

In its Annual Report of the Whistleblower Program from FY2011, the SEC received 26% of all whistleblower submissions from the Western United States. Notably, California generated far more submissions than any other state – 16% of all submissions presented to the SEC. Given the high degree of awareness of misconduct at work, we hope that residents of the West continue to show a continued interest in speaking out against wrongdoing.

Enforcement on the Ground: Examining Select US States

California

Of the historical SEC enforcement actions involving US corporate defendants, nearly 17% were prosecuted in California, where actions collectively resulted in more than \$976 million in monetary sanctions. California has one of the highest concentrations of enforcement activity in the nation.

Key statistics include:

- Two-thirds of enforcement actions in California involved both corporate and individual violators.
- As we see across the board, most SEC enforcement actions in California resulted in monetary sanctions between \$1 million to \$10 million. However, the big cases were really big. In fact, while only three cases exceeded the \$50 million threshold in sanctions, each of those actions exceeded \$100 million in sanctions.
- The largest sanction involving a corporate defendant in California since the passage of Sarbanes-Oxley (in one of the six common violations surveyed), was levied against the AXA Rosenberg Group in 2011. That financial fraud matter resulted in fines and penalties of \$242 million.
- Offering Fraud was the most common cause of action (44%), followed by Financial Fraud (26%).
- More than half of the enforcement actions – 54% - were announced in the last five years. Those actions collectively resulted in more than \$593 million.

As California has a high degree of significant SEC enforcement actions, so too has the state shown a high degree of SEC whistleblower activity. In fact, according to the data the SEC released for 2011, California originated more SEC whistleblower submissions than any state in the nation; representing slightly more than 10% of all submissions and 16% of the submissions generated in US states.

Connecticut

Of the historical SEC enforcement actions involving US corporate defendants, 2% were prosecuted in Connecticut, where actions collectively resulted in more than \$177 million in monetary sanctions.

Key statistics include:

- With one exception, monetary relief ordered in cases involving Connecticut companies was higher than other regions, with most actions ordering monetary relief in excess of \$5 million.
- The largest monetary sanction in our data set involving a corporate defendant in Connecticut was levied against American Skandia Investment Services in 2009, a trading and pricing matter that resulted in fines and penalties of \$68 million.
- More than half of the actions in Connecticut involved Financial Fraud.
- More than two-thirds of the enforcement actions were announced in the last five years.

While Connecticut ranked 14th of the US states generating whistleblower submissions to the SEC in FY2011, its percentage of submissions (2%) is exactly on par with its historic SEC enforcement activity. However, as regulators continue to focus on the hedge fund industry – Connecticut has one of the nation’s highest concentrations of hedge funds and investments managed by hedge funds – it is certainly possible to see an uptick in SEC enforcement activity in the months and years ahead.

Florida

Drilling down further into our data set, of the 307 enforcement actions involving corporate defendants in the US, 11% were prosecuted in Florida, representing an aggregate recovery in excess of \$356 million.

Key statistics include:

- Most significant enforcement actions in Florida involved both corporate and individual violators; in fact, only three cases solely involved corporate entities.

- Despite the high degree of enforcement activity, the lion's share of monetary sanctions fell within the \$1 million to \$10 million range. Only one action, dating back to 2006, resulted in monetary sanctions greater than \$50 million.
- Offering Fraud was the most common cause of action (79% of cases), followed by Market Manipulation (15%). Over the last 10 years, there was only one significant FCPA matter and one involving Financial Fraud.

Not only does Florida see a high degree of SEC enforcement activity, data from the FY2011 Annual Report of the SEC Office of the Whistleblower revealed that of the 35 states generating whistleblower submissions, Florida ranked 3rd. We anticipate that this trend will continue and expect to see a significant number of whistleblower submissions in the days ahead.

Georgia

Unlike its neighbor to the South, Georgia had a relatively low number of SEC enforcement actions, representing 2% of the 307 enforcement actions involving corporate defendants in the US.

Key statistics include:

- The aggregate value of monetary relief ordered by the SEC in matters involving defendants in Georgia was more than \$69 million.
- Most actions in Georgia resulted in comparatively low orders of monetary relief, generally in the \$1-\$5 million range.
- The largest monetary sanction, \$20 million, was levied against Scientific-Atlanta in 2006.

While Georgia has not had a particularly high concentration of enforcement activity, it has a fair share of SEC whistleblowers. Data from the FY2011 Annual Report of the SEC Office of the Whistleblower revealed that of the 35 states generating whistleblower submissions, Georgia tied for the 8th position.

Illinois

Of the historical SEC enforcement actions involving US corporate defendants, about 1% were prosecuted in Illinois, which actions collectively resulted in more than \$64 million in monetary sanctions.

Key statistics include:

- No actions resulted in monetary sanctions greater than \$50 million. The total monetary sanctions for the state of Illinois totaled \$64 million.

- Offering Fraud was the most common cause of action (50%) with only one each of Trading and Pricing Fraud and FCPA Fraud.

Despite a high concentration of major public companies, including a number that do business internationally, Illinois has a low incidence of significant enforcement activity. Along similar lines, SEC data from FY2011 indicated that the state generated just 4 whistleblower submissions. This is not surprising given the fact that the Midwest had the lowest concentration of whistleblower submissions as a region, and a very low percentage of major SEC enforcement activity. While the number of submissions will surely grow when the SEC releases whistleblower data for the full year FY2012, we anticipate that the Midwest generally, and Illinois in particular, will continue to account for a comparatively low percentage of future enforcement actions and whistleblower activity.

Massachusetts

Of the 307 enforcement actions involving corporate defendants in the US, only about 3% were prosecuted in Massachusetts, representing an aggregate recovery in excess of \$541 million.

Key statistics include:

- Two-thirds of enforcement actions in Massachusetts involved both corporate and individual violators.
- Financial Fraud was the most common cause of action (44%), followed by Offering Fraud (33%).
- Only two cases exceeded the \$50 million threshold in sanctions, and one of those actions exceeded \$100 million. That matter resulted in fines and penalties of \$375 million.

Will whistleblowers serve as a meaningful deterrent in Massachusetts? It's hard to say. Measured against other states, it didn't have a particularly high concentration of whistleblower submissions based on the SEC's data from 2011, ranking 11th. But neither did Massachusetts have a high number of significant enforcement actions over the prior decade. What we do know is that the state is home to a number of financial services organizations and we anticipate an increase in submissions when the SEC Office of the Whistleblower releases its full-year data accounting for whistleblower submissions for FY2012.

New Jersey

Of the historical SEC enforcement actions involving US corporate defendants, approximately 4% were prosecuted in New Jersey, with actions collectively resulting in more than \$204 million in monetary sanctions.

Key statistics include:

- No actions in New Jersey resulted in monetary sanctions in excess of \$50 million.
- Both Financial Fraud and FCPA were the most common cause of action at 38% each.
- The enforcement actions in New Jersey were almost equal with 53% involving both corporate and individual violators and 46% involving only corporate defendants.

With its proximity to Wall Street and as home to many large public companies that operate internationally, New Jersey has, historically, seen a fair share of significant enforcement actions. Underscoring the connection between historic misconduct and current whistleblower activity, New Jersey also had a number of whistleblower submissions from FY2011 – nearly 4% of the US states' submissions as reported by the SEC.

New York

With its high concentration of financial services firms and Fortune 500 companies, it is not surprising that compared to the rest of the country, New York is home to more – and the most significant - SEC violations. In fact, of the 457 actions in our data set, more than 13% originated in New York. When examining just those actions involving US corporate defendants, the share of actions generated in New York leaps to more than 21%. Those matters alone resulted in SEC orders of monetary relief in excess of \$45 billion.

Key statistics include:

- Over the last decade, much of the monetary relief ordered by the SEC arose from settlements with major financial institutions in connection with the sale of auction rate securities. Indeed, more than \$35 billion reflected liquidity returned to investors in connection with these enforcement actions.
- Enforcement activity is on the rise, with nearly 65% of the actions in our data set having been announced within the last five years.
- Unlike other “hot states” where Offering Fraud was the most common federal securities violation (of those six causes of action we surveyed), in New York, the most common violation – the root of more than half of the enforcement actions in the state - involved Financial Fraud. Offering Fraud was the second most common cause of action.
- The largest action in New York for the period under review was in connection with the 2008 auction rate securities settlement with UBS securities for \$22 billion.

Snitches on Wall Street? In our recent pulse-taking of the American people, [Ethics & Action Survey: Voices Carry](#), we found that 84% of Americans have a favorable view of individuals who report illegal or unethical conduct and 83% would blow the whistle given the protections and incentives available under the SEC Whistleblower Program. These attitudes are certainly

present in New York, which generated more whistleblower submissions than any state other than California according to data from the FY2011 Annual Report of the SEC Office of the Whistleblower. As more awards are announced and the program is more widely recognized, we expect to see a significant uptick in submissions from the New York area.

Ohio

Of the historical SEC enforcement actions involving US corporate defendants, 2% were prosecuted in Ohio. While this is a relatively low number, the aggregate monetary relief ordered by the SEC in these actions is significant, at more than \$207 million.

Key statistics include:

- Most of the actions in Ohio involved both corporate and individual defendants.
- Offering Fraud and Financial Fraud were the sole causes of action in the significant enforcement actions prosecuted in Ohio.
- The largest order for monetary relief, more than \$125 million, involved a 2004 Offering Fraud.

While Ohio had a comparatively low incidence of significant enforcement activity, it tied for 6th with Missouri when examining US states generating whistleblower submissions to the SEC in FY2011. This is an interesting outlier insofar as the Midwest had the lowest concentration of whistleblower submissions as a region.

Pennsylvania

Of the historical SEC enforcement actions involving US corporate defendants, 4% were prosecuted in Pennsylvania, where actions collectively resulted in more than \$177 million in monetary sanctions.

Key statistics include:

- Most actions in Pennsylvania involved both corporate and individual defendants.
- Enforcement activity has been relatively consistent during the period we examined, with slightly more than half of the significant actions occurring during the last 5 years.
- More than half of the significant actions in Pennsylvania resulted in monetary relief penalties in excess of \$10 million.
- The largest monetary sanction, \$51 million, was levied against a large group of corporate and individual defendants in connection with an Offering Fraud matter announced in 2009.

SEC data from FY2011 indicated that Pennsylvania is in the upper tier of US states generating whistleblower submissions, in a three-way tie for 9th position.

Texas

Of the historical SEC enforcement actions involving US corporate defendants, nearly 9% were prosecuted in Texas, where actions collectively resulted in more than \$490 million in monetary sanctions.

Key statistics include:

- Two-thirds of enforcement actions in Texas involved both corporate and individual violators.
- As we see across the board, most SEC enforcement actions in Texas resulted in monetary sanctions between \$1 million to \$10 million. While only two cases exceeded the \$50 million threshold in sanctions, each of those actions exceeded \$100 million in sanctions.
- The largest sanction involving a corporate defendant in Texas since the passage of Sarbanes-Oxley (in one of the six common violations surveyed), was levied against KBR, Inc. That matter resulted in fines and penalties of \$177 million.
- Offering Fraud was the most common cause of action (48%), followed by FCPA (33%).
- More than half of the enforcement actions – 55% - were announced in the last five years. Those actions collectively resulted in more than \$365 million.

As Texas has a high degree of significant SEC enforcement actions, so too has the state shown a high degree of SEC whistleblower activity. In fact, according to the data the SEC released for 2011, Texas generated 8% of the submissions from US states.

Washington

Of the historical SEC enforcement actions involving US corporate defendants, only 1% were prosecuted in the state of Washington.

Key statistics include:

- All of the actions in Washington involved both individual and corporate defendants.
- The most significant actions in Washington both related to a Market Manipulation involving Seattle-based software company AbsoluteFuture.com, with combined orders exceeding \$35 million.
- Other actions in Washington resulted in relatively low sanctions, both less than \$2.5 million.

What can we expect looking ahead? Hopefully more of the same. Despite a high concentration of major companies in virtually every industry, Washington has a low number of significant federal securities matters. And, mirroring its 1% of the enforcement actions involving US corporate defendants, SEC data from FY2011 indicated that Washington generated 1% of the whistleblower submissions from US states.

Washington DC – Metropolitan Area

Of the historical SEC enforcement actions involving US corporate defendants, nearly 3% were prosecuted in the DC metro area, including Maryland, DC and Virginia, where actions collectively resulted in more than \$533 million in monetary sanctions.

Key statistics include:

- Financial Fraud was the most common cause of action (50%), followed by Offering Fraud (38%). And there was only one significant FCPA matter occurring in 2010.
- Only two actions resulted in monetary sanctions greater than \$50 million. Only one action, dating back to 2006, resulted in monetary sanctions greater than \$100 million. That matter resulted in fines and penalties of \$400 million.
- Just over 60% of enforcement actions in the Metro DC area involved both corporate and individual violators.
- Most enforcement actions in the DC Metro area occurred in the state of Virginia (62%).

What can we expect looking ahead? That's a tricky analysis. The DC metropolitan area generated nearly 7% of the whistleblower submissions from US states, according to SEC data from FY2011. The lion's share of these came from Maryland, which ranked 5th of all states generating whistleblower submissions. This is also interesting given that Maryland has not witnessed a particularly high number of enforcement actions historically. Given the large number of commuters within and between the metropolitan DC area, we believe this region is best looked at in its entirety. We must keep in mind that as home to the SEC, the metro DC area likely has a higher recognition of the whistleblower program. One thing is for certain, it will be interesting to see how these numbers pan out in the future.

Methodology

All information assembled in Labaton Sucharow's Annual SEC Sanctions Report and SEC Sanctions Database was derived from the SEC's public announcements of successful enforcement actions with monetary sanctions exceeding \$1 million. Data was culled from enforcement actions announced between July 29, 2002 through September 30, 2012 in the areas of Offering Fraud, Trading & Pricing, Foreign Corrupt Practices Act, Municipal Securities, Financial Fraud and Market Manipulation. While some actions may involve multiple violations and may be characterized in different ways, we used our discretion to categorize the cases by type of violation. To establish regional identifiers, we assigned cases, using the location of the primary corporate defendant, to one of the following regions (as employed by the Census Bureau): South, West, Midwest and Northeast. Regional identifiers were only used for enforcement actions involving corporate defendants. The information contained in this database does not reflect monetary sanctions secured by other law enforcement and regulatory organizations in related enforcement actions. There also was no attempt to identify and aggregate past SEC enforcement actions that may have arisen out of the same nucleus of operative facts in order to meet the \$1,000,000 monetary sanctions threshold which is now permitted by [Rule 21F-4\(d\)](#). We note that the numbering of percentages can occasionally be off by a tenth of a percentage point due to the amounts being rounded.

Disclaimer

Labaton Sucharow's Annual SEC Sanctions Report and SEC Sanctions Database do not provide legal advice. These resources are intended for general informational purposes only. Please be advised that legal advice cannot be given without full consideration of all the unique facts and circumstances associated with your situation and the possible violations you wish to report.

Past monetary sanctions are not necessarily indicative of what future monetary sanctions will be in any particular case. Each SEC enforcement action is unique and there are numerous factors that contribute to the monetary sanction determination.

While every effort was made to ensure the accuracy of the information presented in the annual report and database, Labaton Sucharow cannot guarantee the accuracy of the information contained herein or the information contained in referenced SEC releases. We are not responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on information published in this resource.

About Us

Labaton Sucharow was the first law firm in the country to establish a practice exclusively focused on protecting and advocating for whistleblowers who report possible violations of the federal securities laws. Led by [Jordan A. Thomas](#), a former Assistant Director and Assistant Chief Litigation Counsel in the Enforcement Division who played a leadership role in the development of the SEC Whistleblower Program, our practice leverages unparalleled [securities litigation](#) expertise and a world-class team of investigators, financial analysts and forensic accountants, many of whom call upon significant experience in federal and state law enforcement.

One of the nation's premier investor protection law firms, Labaton Sucharow has been a champion of investor and consumer rights for more than 50 years, seeking recovery of losses and corporate governance reforms to protect institutional investors, businesses and consumers. With offices in New York City and Wilmington, Delaware, the firm is a leader in its core areas of practice in complex securities, antitrust, M&A, derivative and shareholder rights litigations. The firm has been recognized for its excellence by the court and peers, as well as the leading legal directories. More information about the firm is available at www.labaton.com.