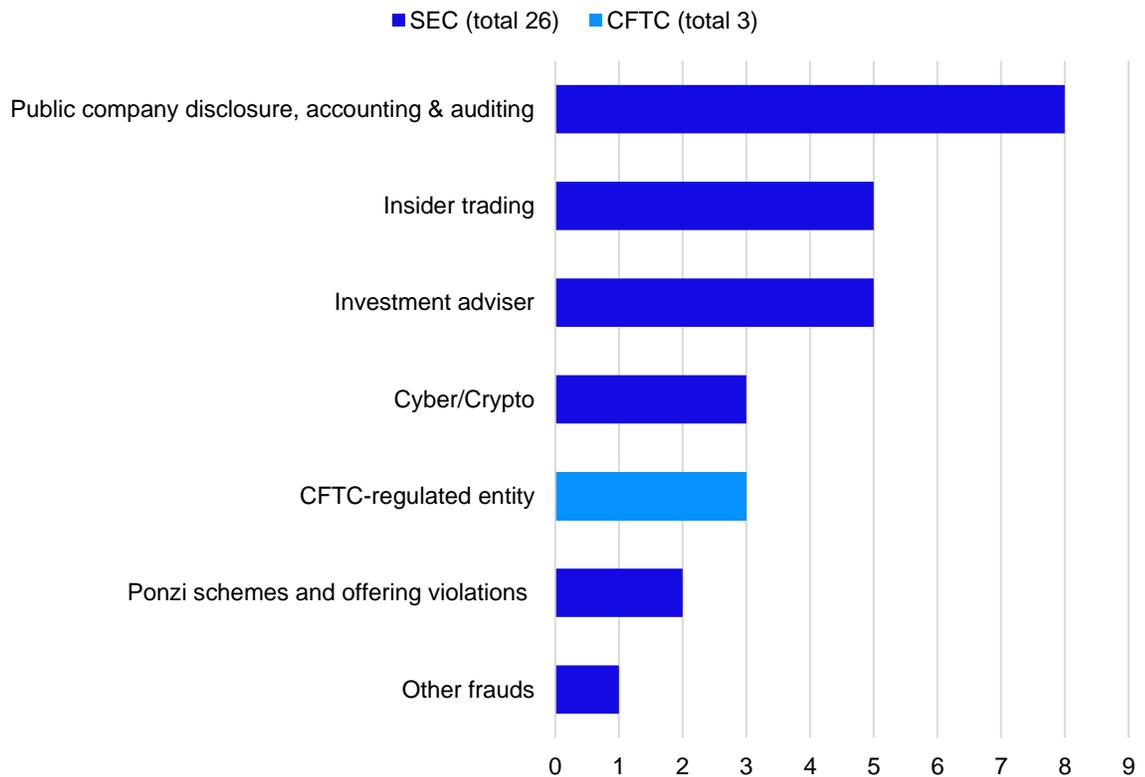


February and March 2024

In February and March 2024, the SEC filed 26 actions, against a combined total of 65 defendants and respondents, and the CFTC filed three actions against a combined total of six defendants and respondents. (These figures exclude follow-on actions, bars and suspensions.) The SEC actions include insider trading, crypto matters and public company disclosures.

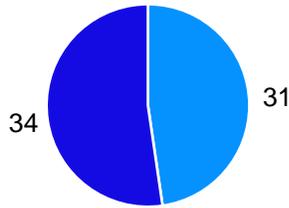
## Actions initiated by the SEC and CFTC in February and March 2024

Number of actions, by matter type



Types of defendants/respondents

SEC (total 65)



CFTC (total 6)



■ Individuals    ■ Corporate entities

## Insider trading

### SEC brings insider trading action against energy company’s former board member and associates

#### SEC v. Roy N. Cook, et al. (E.D. Wis. Mar. 12, 2024)

The SEC brought and settled claims against five individuals for alleged use of material nonpublic information (MNPI) to trade in Tallgrass Energy LP prior to the announcement of its acquisition.

According to the SEC, a director of Tallgrass Energy, Roy Cook, learned that Blackstone planned to acquire all of the public shares of Tallgrass Energy at a premium one month before the plan was made public. Cook then allegedly shared the information with four of his friends, each of whom purchased shares or call options in Tallgrass Energy. Cook also purchased shares in the company. Collectively, they earned over \$700,000 in profits as a result of these trades.

Cook agreed to a civil penalty of \$801,742, disgorgement of his trading profits, and an officer and director bar. The four individuals who allegedly received and traded on MNPI from Cook have each agreed to settlements that require them to pay a civil penalty equal to their trading profits (ranging from \$13,520 to \$463,000) and disgorge all trading profits. In total, the five individuals agreed to pay over \$2.2 million in penalties and disgorgement.

[SEC press release](#) | [SEC complaint](#)

### SEC wins jury trial in shadow insider trading case

#### SEC v. Matthew Panuwat (N.D. Cal. August 17, 2021, contested)

On April 5, 2024, after an eight-day trial, a jury found a former employee of Medivation, Inc. liable for insider trading based on his misappropriation of MNPI.

Specifically, the SEC alleged that the former head of business development learned MNPI regarding the acquisition of Medivation by a large pharmaceutical company. Medivation’s insider trading policy, which the former employee had signed, prohibited employees from using MNPI to trade in other securities. The former employee then purchased short-term, out-of-the-money call options on Incyte Corporation, a similarly sized biopharmaceutical company, with the expectation that the stock price would rise after news of Medivation’s acquisition became public. This case was an effort to extend the misappropriation theory of insider trading to cover trading in the securities of a company based on MNPI about the acquisition of a different, economically similar company. We previously discussed this case in a [client update](#) when it survived a motion to dismiss and in a previous iteration of this [newsletter](#) when it survived a motion for summary judgment.

[SEC press release](#) | [SEC complaint](#)

## SEC brings insider trading action against founder of tech startup

### SEC v. Andreas Bechtolsheim (N.D. Cal. Mar. 26, 2024, settled)

The SEC brought and settled claims against the founder, Chief Architect, and former chairman of Arista Networks, Inc. for allegedly using MNPI to profit from trading in shares of another company.

According to the SEC, Arista had a longstanding relationship with another multinational technology company, which consulted the founder on a potential acquisition of a highspeed optical interconnect product manufacturer at a premium. Based on this information, the founder allegedly purchased call options in the manufacturing company's shares using the accounts of a relative and an associate, generating profits of over \$400,000.

To settle the claims, the founder agreed to a civil penalty of \$923,470 and a five-year officer and director bar.

[SEC press release](#) | [SEC complaint](#)

## Broker-dealer

### SEC settles another set of off-channel communications actions

#### In the matter of Certain Broker-Dealer Practices (A.P. Feb. 9, 2024, settled)

The SEC brought and settled claims against five broker-dealers, seven dually registered broker-dealers and investment advisers, and four affiliated investment advisers at eight separate firms for alleged violations of the recordkeeping provisions and failure to supervise.

The orders find that the firms' employees used off-channel communication methods to discuss the business of their employers, investment recommendations (either made or proposed to be made), and/or investment advice (either given or proposed to be given). The orders also find that the firms did not maintain or preserve these off-channel communications.

The Companies agreed to pay over \$81 million in combined penalties to settle the claims. One firm self-reported and agreed to pay a penalty of \$1.25 million, while the seven other settling firms agreed to penalties of between \$8 million and \$16.5 million. The firms also agreed to hire independent compliance consultants to perform reviews of their policies and procedures relating to electronic records on personal devices and their frameworks addressing employee non-compliance with those policies and procedures.

[SEC press release](#) | [SEC order 1](#) | [SEC order 2](#) | [SEC order 3](#) | [SEC order 4](#) | [SEC order 5](#) | [SEC order 6](#) | [SEC order 7](#) | [SEC order 8](#)

### SEC settles actions for failure to comply with Reg BI

#### In the matter of TIAA-CREF Individual & Institutional Services, LLC (A.P. Feb. 16, 2024, settled)

The SEC brought and settled claims against a registered broker-dealer subsidiary of TIAA for alleged violations of Regulation Best Interest (Reg BI) in connection with recommendations made to retail customers who opened IRAs.

According to the SEC, the IRAs presented customers with a primary menu of affiliated investments, including TIAA mutual funds, and provided access to a wider variety of funds, ETFs, stocks, and bonds through a separate, optional window. The investments available in the separate window were allegedly substantially the same but with waived investment minimums. According to the SEC, the broker-dealer did not disclose that substantially equivalent, lower-cost share classes of affiliate funds were available through the separate window or the conflicts this created.

To settle the claims, the company agreed to pay a civil monetary penalty of \$1,250,000 and \$1,040,138.91 in disgorgement and prejudgment interest.

[SEC press release](#) | [SEC order](#)

## Public company disclosures

### SEC settles action for undisclosed payments to executive's family members

#### **In the Matter of Cloopen Group Holding Limited (A.P. Feb. 6, 2024, settled)**

The SEC brought and settled claims against a China-based provider of cloud communications products and services for alleged accounting fraud.

According to the SEC, two former senior managers at the company designed a scheme to prematurely recognize revenue on service contracts before the work had been completed or, in a few instances, had begun. This alleged scheme resulted in the overstatement of the company's financial results in the second and third quarters of 2021 and its revenue guidance for the fourth quarter of 2021. These accounting errors were discovered by the company's external auditor, prompting the Company to launch an internal investigation. Within a few days of hiring outside counsel to conduct the investigation, the company self-reported the errors to the SEC.

The SEC declined to impose civil penalties, noting the company's self-reporting, substantial cooperation, and remediation. With respect to the Company's cooperation, the SEC highlighted that the company provided the Staff with detailed explanations of at-issue customer transactions and their impact, summaries of interviews of foreign witnesses, and translations of certain key documents. With respect to remediation, the SEC highlighted the company's formation of an independent special committee to investigate the errors, termination of involved employees, reorganization or removal of departments involved in the conduct, enhancement of its internal accounting controls and retraining of certain personnel, recruitment of personnel with expertise in U.S. GAAP, and claw back of bonus compensation from certain executives.

[SEC press release](#) | [SEC order](#)

### SEC settles action for misleading investors and violation of auditor independence standards

#### **In the Matter of Lordstown Motors Corp. (A.P. Feb. 29, 2024, settled); In the Matter of Clark Schaefer Hackett & Co. (A.P. Feb. 29, 2024, settled)**

The SEC brought and settled claims against an electric vehicle startup and its auditors for allegedly making misleading statements to investors and for violating auditor independence standards, respectively.

According to the SEC, the company made claims that overstated the number of pre-orders it had from companies that operate commercial vehicle fleets and also failed to disclose supply chain issues that would delay production beyond the timeline it initially promised. The SEC alleges that the company's misleading statements obscured the reality of its financial condition and interfered with investors' ability to make informed decisions.

In a related action, the SEC alleged that the company's auditor failed to follow independence standards set by the SEC and the Public Company Accounting Oversight Board. According to the SEC, the auditor provided non-audit bookkeeping and financial statement services during its audit of the company's financial statements when it was private, and then audited those same financial statements again when it went public via a SPAC merger. According to the SEC, because it had already prepared the financial statements, the auditor was not independent.

The SEC ordered the company to pay disgorgement in the amount of \$25.5 million, to be deemed satisfied by payments in that amount to resolve pending investor class actions. The auditor agreed to pay disgorgement

of \$27,822, prejudgment interest of \$3,059 and a civil monetary penalty of \$50,000, and to certain undertakings to improve its policies and procedures.

[SEC press release](#) | [SEC order 1](#) | [SEC order 2](#)

## **SEC settles action with footwear company for undisclosed related party transactions**

### **In the Matter of Sketchers U.S.A., Inc. (A.P. Mar. 7, 2024, settled)**

The SEC brought and settled claims against a footwear company for alleged failure to disclose payments made to executives and their immediate family members and loans to executives.

According to the SEC, the company failed to comply with related person transaction disclosure requirements when it did not report that three family members of executives were either employed by or had a consulting relationship with the company. The SEC also alleged that the company failed to disclose loans that two executives received for personal expenses that had not yet been reimbursed.

The company agreed to pay a \$1.25 million civil penalty.

[SEC press release](#) | [SEC order](#)

## **CFTC actions**

### **CFTC settles off-channel communications actions**

#### **In the Matter of U.S. Bank N.A. (A.P. Mar. 19, 2024, settled)**

#### **In the Matter of Oppenheimer & Co. Inc. (A.P. Mar. 19, 2024, settled)**

The CFTC brought and settled claims against a swap dealer and an introducing broker for alleged violations of the recordkeeping provisions and failure to supervise. The two firms settled related violations with the SEC on February 9, 2024.

The orders find that the firms' employees used off-channel communication methods, such as text messaging and WhatsApp, for business discussions in violation of the firms' policies and procedures. The orders also find that the firms did not maintain or preserve these communications, failed to maintain adequate internal controls in connection with unapproved communication methods, and failed to diligently supervise their employees.

The swap dealer and introducing broker agreed to pay civil penalties of \$6 million and \$1 million, respectively. The firms also agreed to perform reviews of their policies and procedures relating to electronic records on personal devices and their frameworks to address employee non-compliance with those policies and procedures.

[CFTC press release](#) | [CFTC order 1](#) | [CFTC order 2](#)

### **CFTC brings action against KuCoin digital asset exchange**

#### **CFTC v. MEK Global Limited, et al. (A.P. Mar. 26, 2024, contested)**

The CFTC brought an action against three entities that operated a centralized digital asset exchange for alleged violations of the Commodity Exchange Act.

The CFTC alleges the asset exchange handled off-exchange commodity futures transactions and leveraged, margined, or financed retail commodity transactions. The asset exchange also allegedly operated without

registering as a future commission merchant when required to and failed to adequately supervise these activities. The CFTC further alleges that the asset exchange allowed the trading or processing of swaps without registering as a swap exchange facility or a designated contract market, and also failed to put in place an effective customer identification program.

The CFTC complaint seeks permanent injunctions, civil penalties, restitution, and disgorgement. In a separate criminal action, the U.S. Attorney's Office for the Southern District of New York also brought claims against the three entities.

[CFTC press release](#) | [CFTC complaint](#)

## SEC, CFTC announcements

### CFTC awards whistleblower award of \$1.25 million

The CFTC announced an award to a whistleblower who reported misconduct to the CFTC after first reporting it to their employer. The whistleblower award was for approximately \$1.25 million.

[CFTC press release](#)

### SEC names new Director of the Division of Investment Management

The SEC announced that William Birdthistle, the Director of the Division of Investment Management, is leaving the agency. Natasha Vij Greiner, who most recently served as Deputy Director of the Division of Exams, will replace Birdthistle as Director.

[SEC press release](#)

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your usual Davis Polk contact.

Greg D. Andres	+1 212 450 4724	<a href="mailto:greg.andres@davispolk.com">greg.andres@davispolk.com</a>
Uzo Asonye	+1 202 962 7057	<a href="mailto:uzo.asonye@davispolk.com">uzo.asonye@davispolk.com</a>
Martine M. Beamon	+1 212 450 4262	<a href="mailto:martine.beamon@davispolk.com">martine.beamon@davispolk.com</a>
Robert A. Cohen	+1 202 962 7047	<a href="mailto:robert.cohen@davispolk.com">robert.cohen@davispolk.com</a>
Daniel S. Kahn	+1 202 962 7140	<a href="mailto:daniel.kahn@davispolk.com">daniel.kahn@davispolk.com</a>
Tatiana R. Martins	+1 212 450 4085	<a href="mailto:tatiana.martins@davispolk.com">tatiana.martins@davispolk.com</a>
Fiona R. Moran	+1 202 962 7137	<a href="mailto:fiona.moran@davispolk.com">fiona.moran@davispolk.com</a>
Stefani Johnson Myrick	+1 202 962 7165	<a href="mailto:stefani.myrick@davispolk.com">stefani.myrick@davispolk.com</a>
Paul J. Nathanson	+1 202 962 7055	<a href="mailto:paul.nathanson@davispolk.com">paul.nathanson@davispolk.com</a>
Fuad Rana	+1 202 962 7053	<a href="mailto:fuad.rana@davispolk.com">fuad.rana@davispolk.com</a>

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