

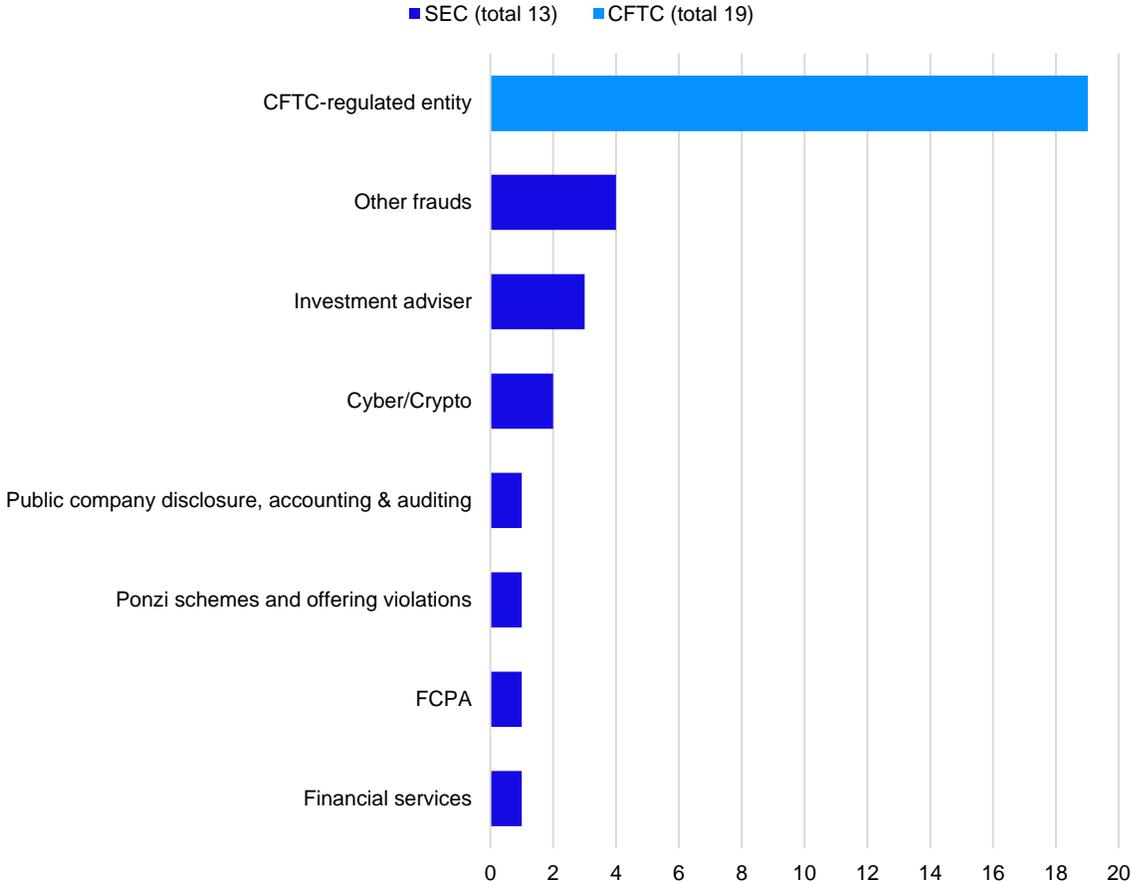
SEC & CFTC Enforcement Update

April 2023

In April 2023, the SEC filed 13 actions and the CFTC filed 19,¹ against a combined total of 47 defendants and respondents. (These figures exclude follow-on actions, bars and suspensions.) The actions include matters related to crypto and investment services, among others.

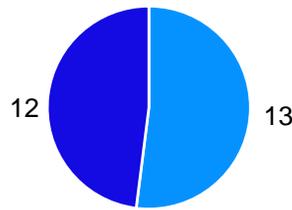
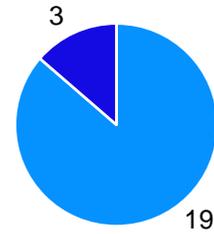
Actions initiated by the SEC and CFTC in April 2023

Number of actions, by matter type



¹ 14 of the CFTC's 19 enforcement actions are complaints filed against 14 entities for allegedly fraudulently claiming to be registered with the CFTC.

Types of defendants/respondents

SEC (total 25)**CFTC (total 22)**

■ Individuals ■ Corporate entities

Investment adviser

SEC settles action with asset management company and founder

In the Matter of Chatham Asset Management, LLC, et al. (A.P. Apr. 3, 2023, settled)

The SEC brought and settled claims against an asset management company, registered as an investment adviser, and its founder. The SEC alleged that the Company and its founder engaged in transactions that resulted in one fund selling certain debt securities and a different fund purchasing the same debt securities through various broker-dealers. These trades were alleged to have been used to address portfolio constraints, meet investor redemptions, and allocate capital inflows and outflows. According to the SEC, the prices of these debt securities increased at a significantly higher rate than the prices of similar securities. The SEC further alleged that the Company and its founder used pricing data based, in part, on the trading prices of these securities to calculate the net asset values of client funds' holdings. The net asset values of the Company's clients were therefore higher, which in turn resulted in higher fees charged to the clients.

Without admitting or denying the findings, the Company and its founder agreed to pay \$11 million in disgorgement and around \$3.4 million in prejudgment interest to settle the action. The Company also agreed to pay civil penalties of \$4,400,000, and the founder agreed to pay \$600,000.

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

Crypto

SEC brings suit over alleged unregistered crypto assets

SEC v. Bittrex, Inc., et al. (W.D. Wash. Apr. 17, 2023, contested)

The SEC filed a contested action against a crypto asset trading platform, its co-founder and former CEO, and its foreign affiliate based on allegations that the parties operated as an unregistered securities exchange, broker, and clearing agency. According to the SEC, from 2017 to 2022 the platform facilitated the buying and selling of crypto assets, allegedly earning nearly \$1.3 billion in revenues from the transactions, while also serving as a broker, exchange, and clearing agency. The SEC asserts that the platform was required to register its activities with the agency but failed to do so. Of note, the complaint also alleges that the platform actively sought to evade scrutiny from the SEC, for example by instructing crypto asset issuers to delete from their offering and marketing material "investment-related terms," including "price predications" and "expectation of profit."

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

CFTC settles with swap dealer over Business Conduct Standards violation**In the Matter of Mizuho Capital Markets LLC (A.P. Apr. 25, 2023, settled)**

The CFTC settled claims against a New York-based provisionally registered swap dealer for alleged trade practice violations. The CFTC's order alleges that the swap dealer executed certain foreign exchange forward transactions, known as "deal-contingent FX forwards," in violation of the Swap Dealer Business Conduct Standards in the Commodity Exchange Act (CEA) and CFTC regulations. According to the order, while engaging in certain of these transactions, the swap dealer engaged in a "pre-heading" process whereby it would trade through multiple price levels in the minutes or seconds before providing the spot exchange rate to the client. This practice, as alleged by the order, moved the spot exchange rate against the client and caused the client to acquire the currency they sought at a rate less favorable than might otherwise have been available. The swap dealer agreed to pay \$1.8 million in restitution and a \$5 million civil monetary penalty.

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

CFTC brings suit involving trade allocations**CFTC v. Systematic Alpha Management, LLC, et al. (S.D. Fla. Apr. 24, 2023, contested)**

The CFTC brought a contested action against a commodity trading adviser/commodity pool operator, as well as its owner, regarding its method of allocating trades between customer accounts and certain proprietary trading accounts owned by entities and that were controlled by or benefitting the owner or members of the owner's family. Specifically, the Complaint alleges that the Company and its owner allocated these trades from two commodity pools and four managed accounts. The Complaint further states that these trades disproportionately favored the proprietary accounts at the expense of the customer accounts, causing them to incur a disproportionate share of the trading losses. Additionally, the CFTC alleges that the Company and its owner made misrepresentations to customers in its private placement memoranda, trading advisory agreements, and other marketing materials and solicitations. According to the CFTC, the Company and its owner generated at least \$1,451,599 in total trading profits as a result of the scheme.

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

CFTC brings actions against 14 entities for fraudulent registration claims**In the Matter of Betatradeoptions.com (A.P. Apr. 21, 2023, contested)****In the Matter of Bitfinmarket.com (A.P. Apr. 21, 2023, contested)****In the Matter of Bit Block FXtrades (A.P. Apr. 21, 2023, contested)****In the Matter of Bit Trading (A.P. Apr. 21, 2023, contested)****In the Matter of Cross Trade FX (A.P. Apr. 21, 2023, contested)****In the Matter of Fast Option Subdivision (A.P. Apr. 21, 2023, contested)****In the Matter of Garantitrademiness.com (A.P. Apr. 21, 2023, contested)****In the Matter of Garantitrademinex.net (A.P. Apr. 21, 2023, contested)****In the Matter of Instantearners247.com (A.P. Apr. 21, 2023, contested)****In the Matter of Prime Finance Network (A.P. Apr. 21, 2023, contested)****In the Matter of Sparkleswhite.com (A.P. Apr. 21, 2023, contested)****In the Matter of TFX Trading (A.P. Apr. 21, 2023, contested)****In the Matter of Trust Pay Market (A.P. Apr. 21, 2023, contested)****In the Matter of Voltfxtrade (A.P. Apr. 21, 2023, contested)**

The CFTC brought serial actions against 14 entities based in the United Kingdom, Sweden, North Dakota, New York, California, and Arkansas for fraudulently claiming that they were registered as futures commission merchants and retail foreign exchanges. The CFTC alleges that since at least January 2023, the entities falsely claimed to be registered with the CFTC and members of the National Futures Association ("NFA"), including by claiming to have identical NFA identification numbers.

SEC, CFTC announcements

SEC names new Director of Fort Worth Regional Office

The SEC announced that Eric R. Werner has been named Regional Director of the Fort Worth Regional Office. Werner is currently the Acting Co-Regional Director and previously served as the Associate Regional Director of Enforcement in the Fort Worth office.

[SEC press release](#)

SEC announces Deborah J. Jeffrey as Inspector General

The SEC announced the appointment of Deborah J. Jeffrey as Inspector General. Jeffrey is currently the Inspector General of AmeriCorps.

[SEC press release](#)

CFTC announces new Executive Director

The CFTC announced that Jeffrey Sutton will serve as the agency's Executive Director.

[CFTC 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.

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