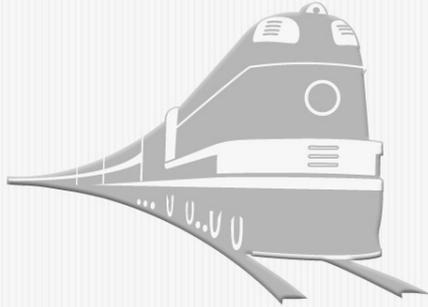


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SEC Enforcement: Hot Button Issues

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Trends in SEC Enforcement

- » SEC brought over 600 cases last year
 - 33% issuer
 - 14% broker-dealer
 - 10% securities offering
 - 8% delinquent filing
 - 7% insider trading (110 individuals charged)
 - 5 % market manipulation

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Trends in SEC Enforcement

- » Working Groups – Reflecting Commission priorities; coordination on policy and knowledge
 - Options backdating
 - Subprime credit
 - Hedge funds
 - Municipal securities

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Trends in SEC Enforcement

- » Other areas of focus
 - Foreign Corrupt Practices Act (FCPA)
 - » 12 cases in past year v. 15 over last 10 years
 - Insider trading
 - Executive compensation
 - Microcap fraud

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Trends in SEC/DOJ Cooperation

- » Continued coordination and cooperation between Securities and Exchange Commission (SEC) and Department of Justice (DOJ)
- » Options backdating and FCPA investigations and cases are illustrative
 - SEC and DOJ often conduct parallel investigations
 - Evidence may be shared
 - Joint witness interviews may be conducted
 - Resolution may or may not be coordinated

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Stock Option Backdating

- » The SEC has initiated more than 160 investigations into “options abuses”
- » As of October 2007, five of the companies under investigation had settled with the SEC
- » The SEC additionally filed civil charges against 25 former officers and directors
- » Parallel criminal investigations and proceedings
 - Brocade Communications Systems, Inc.
 - Comverse Technology, Inc.

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Foreign Corrupt Practices Act

- » The past two years have seen a significant rise in FCPA investigations by the SEC and DOJ
 - Proceedings against at least a dozen companies in 2007 and dozens of ongoing investigations
 - Aggressive enforcement is also apparent in the record penalties being assessed
 - » In April 2007, Baker Hughes agreed to pay the largest ever FCPA fine – \$44 million
 - » Subsidiaries of Vetco International agreed to pay a \$26 million criminal fine

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Foreign Corrupt Practices Act

- » Many recent settlements include an Oil-for-Food component
 - » Ingersoll Rand – Paying a total of over \$6.7 million in disgorgement and penalties for payments made in connection with the Oil-for-Food Program
 - » York International Corp. – included \$647,000 in bribes paid in connection with the Oil-for-Food Program

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Insider Trading, Hedge Funds

- » The Director of Enforcement recently stated that insider trading “appears to be rampant” among Wall Street securities professionals
- » The *Financial Times* reported that almost 60 percent of the 27 large mergers and acquisitions that took place between January and August 2007 were preceded by an unexplained spike in trading in the stock of the target company
 - *SEC v. Mitchel S. Guttenberg* (March 1, 2007) – 14 defendants in Wall Street insider trading ring
- » Hedge fund cases – insider trading and market manipulation

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Subprime Credit Investigations

- » Active investigations of financial institutions, rating agencies, issuers
- » As of Summer 2007, 12 investigations had already been instituted; chairman's working group out of home office
- » Investigating accounting irregularities, adequate disclosure, manipulation
- » *SEC v. Doral Financial Corporation*, 9/19/06

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SEC and Corporate Penalties

- » In January 2006, the SEC explained several factors that it will consider in deciding on the appropriateness of a penalty, including
 - Presence or absence of a direct benefit to the corporation as a result of the violation
 - Degree to which the penalty will recompense or further harm the injured shareholders
 - Presence or lack of remedial steps
 - Extent of cooperation

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Revised SEC Process for Determining Penalties

- » SEC commissioners were concerned that financial penalties were excessive
- » SEC Chairman Christopher Cox announced that enforcement staff members must seek approval from the agency's commissioners before negotiating a fine

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Cooperation with the SEC

- » Seaboard Factors are the SEC's criteria for deciding whether to credit a company's cooperation, including
 - Harm inflicted on investors
 - How misconduct was detected and by whom
 - Steps taken by company upon learning of misconduct
 - Independent investigation to "learn the truth"
 - Making the results of the investigation available to the SEC
 - Assurances that the conduct is unlikely to recur

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SEC Requests for Privilege Waiver

- » SEC Enforcement Director Linda Thomsen articulated agency policy (May 16, 2007)
 - Waiver “not a prerequisite” to obtaining credit for cooperation
 - Credit based on timeliness and usefulness of information provided
 - Distinguishes between facts and core attorney-client communications and attorney work product
- » SEC “will do our best” but may not be able to keep privileged information confidential once it is shared

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McNulty Memo

- » What does it mean for privilege waiver?
 - Lessens pressure to waive automatically
 - Waiver “is not a prerequisite” to be considered cooperative
 - Prosecutors can request a waiver only if there is a “legitimate need” and must obtain written authorization before making the request
 - Will the DOJ be any more reluctant to “request” a waiver under the new regime than under the Thompson memo regime?

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Value of Cooperation

- » Value of cooperation with criminal authorities
 - Outcomes best to worst
 - » No action
 - » Non-prosecution agreements
 - » Deferred prosecution agreements
 - » Charges
 - Issues regarding cooperation
 - » Costs in fines, forfeiture and fees
 - » Management issues
 - » Uncertainty of result
 - » Impacts in regulatory or civil proceedings

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