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HOT TOPIC

SECURITIES AND COMMODITIES ENFORCEMENT

PANEL EXPERTS

Ellen M. Wheeler
Partner
Foley & Lardner LLP
T: +1 (312) 832 5197
E: ewheeler@foley.com

Ellen M. Wheeler is a partner and litigation attorney at Foley & Lardner LLP. She has represented clients in numerous cases ranging from securities class actions and regulatory enforcement actions to general commercial litigation, in which she has gained significant trial experience. Ms Wheeler is a member of the firm's securities enforcement and litigation, business litigation and dispute resolution, and securities, commodities and exchange regulation practices.

Ravi Nayer
Partner
Pinsent Masons LLP
T: +44 (0)20 7490 6972
E: ravi.nayer@pinsentmasons.com

Ravi Nayer is a financial services disputes partner at Pinsent Masons LLP and a qualified barrister. His core practice includes representing asset managers, insurers and pension funds in material commercial litigation arising from execution errors, licensing and other third-party disputes, creating joint defence and novel litigation cooperation agreements for institutions in order to share resources in the largest UK class actions, representation and advice around regulatory enforcement actions, the design of compensation schemes, and advising on governance policies and procedures relating to bondholder litigation and securities class actions.

Jonathan E. Richman
Partner
Proskauer Rose LLP
T: +1 (212) 969 3448
E: jerichman@proskauer.com

Jonathan E. Richman is a litigation partner at Proskauer Rose LLP. He is the immediate past co-head of the firm's securities litigation group and is currently co-head of the firm's asset management group. He has represented a variety of companies in securities class actions, shareholder derivative actions, internal investigations, SEC investigations, corporate governance, insider trading, directors and officers (D&O) insurance and related matters, many of which have involved non-US issuers.

Jack Yoskowitz
Litigation Partner
Seward & Kissel LLP
T: +1 (212) 574 1215
E: yoskowitz@sewkis.com

Jack Yoskowitz is a litigation partner at Seward & Kissel LLP where he specialises in complex commercial litigation and regulatory matters predominantly for financial services institutions and individuals. He has represented clients in enforcement proceedings brought by the Securities and Exchange Commission, FINRA and the CFTC for issues such as insider trading, anti-money laundering and spoofing.

CD: Could you provide an overview of the current securities and commodities enforcement landscape? What enforcement trends are evident in this space?

Wheeler: After several years of declining enforcement activity, and a substantial drop in 2017, the number of enforcement actions filed by the Commodity Futures Trading Commission (CFTC) increased significantly in 2018. During the fiscal year ended 30 September 2018, the CFTC filed 83 enforcement actions and imposed civil monetary penalties totalling $897m. Although not at the levels seen in 2011 and 2012, the 2018 numbers dwarf last years' numbers of 49 actions and $333m in penalties. Continuing a trend from last year, charges of retail fraud and manipulative conduct make up the largest categories of enforcement actions. There are significantly fewer charges of reporting and recordkeeping violations. The increase in enforcement activity at the CFTC is consistent with increases in activity at other commodity regulators, such as the National Futures Association and the CME Group. The Securities and Exchange Commission (SEC) saw only a modest increase in enforcement actions in fiscal year 2018. The number of enforcement actions increased from 754 actions in 2017 to 821 actions in 2018. The largest categories of enforcement actions are cases involving securities offerings and investment advisory issues – both of which increased significantly from the prior year.

Richman: An overview of the securities enforcement landscape depends, to some extent, on the perspective one adopts. According to the SEC's 2 November 2018 annual report, the fiscal year ended 30 September 2018 was a strong year for enforcement, with more enforcement actions filed and higher penalties obtained than in the prior fiscal year, despite a hiring freeze. The New York Times, however, published a 3 November 2018 article comparing the SEC's activities in the first 20 months of the Trump administration with those in the last 20 months of the Obama administration and found a 62 percent drop in penalties and disgorgement orders, a 72 percent decline in corporate penalties from the Department of Justice's (DOJ's) criminal prosecutions, and a 'lighter touch' toward the banking industry. The future will tell whether the Trump administration just needed some time to settle in, or whether the current SEC will wield a lighter touch than did its predecessor. The CFTC appears to be ramping up enforcement efforts, particularly on matters involving insider trading and cryptocurrencies.

Yoskowitz: In the US, the trend has been to focus on smaller companies that might have been overlooked in previous years and to offer more protection to the individual investor. This is evidenced by the fact that SEC regulatory examinations have become more 'enforcement' like, with similar types of questions you might see in an investigation, such as requesting investment theses for securities transactions, and referrals to the enforcement division earlier than ever. In terms of numbers of investigations, while it appeared in 2017 that the number of SEC enforcement actions was on the decline, with 754 enforcement outcomes in 2017 compared to 868 in 2016, the trend was reversed in 2018 with 821 enforcement outcomes and approximately $4bn in penalties and disgorgement through fiscal year end 20 September 2018. Similarly, the CFTC is reported to have brought significantly more actions in 2018 than the prior year, with higher penalties. Also, because the US Supreme Court has ruled definitively that the statute of limitations for SEC actions is five years, and this includes disgorgement as well as other penalties, there is pressure on the agency to close out investigations during that time period.

Nayer: Traditionally, US regulators have dominated the enforcement landscape. However, we have seen an increase in enforcement actions in other countries, such as the UK, and across new sectors. There are two trends that have been particularly notable. Firstly, technological developments, such as crypto-assets, have impacted recent global enforcement. The number of investigations globally has consequently increased. However, it should not be assumed that this has led to a parallel increase in fines. This suggests the trend for companies to be persuaded to do the right thing for customers and investors voluntarily. Secondly, regulators have placed an increased emphasis on individual accountability and they seem to be most willing to act where the interests of retail investors are affected. This is supported by the establishment of new regulatory frameworks, such as the Senior Managers and Certification Regime (SM&CR), as they are intended to make it easier to hold individuals to account.

CD: What types of fraudulent activity are most commonly being seen? Are there any areas which are particularly susceptible to fraud?

Richman: Cryptocurrencies are a hot new area. The SEC has announced its position that cryptocurrencies can constitute 'investment contracts' and can be regulated as securities if they meet the well-established 'Howey' test. The CFTC is also getting involved, and one commissioner has opined that developers of 'smart contracts' can be held liable for aiding and abetting violations of CFTC regulations in appropriate circumstances. Insider trading investigations continue, with new enforcement actions or settlements announced virtually every month. Environmental and other types of disclosures are also generating a lot of attention. In October 2018, a group of institutional investors, asset managers, state treasurers and others petitioned the SEC to mandate the standardised disclosure of environmental, social and governance (ESG) information by public companies. ESG concerns have taken on new significance as BlackRock and other large funds have called upon corporations to pay more attention to sustainability issues.

Yoskowitz: The SEC continues to focus on insider trading issues, with 51 cases being brought in 2018. The SEC is also particularly concerned about algorithmic trading. The areas that seem to be of concern are, is there really an algorithm at work and does it perform as investors have been told it would? And is there any manipulation of the algorithm by the traders themselves? The SEC and CFTC are both paying attention to cryptocurrencies, with the SEC concentrating on how initial coin offerings (ICOs) and token offerings are being conducted and whether such ICOs should be registered as securities offerings with all the relevant protections. For example, in September 2018, the SEC brought an enforcement action against TokenLot, an online platform that bought and sold digital assets, alleging that it was acting as an unregistered broker-dealer. Also, in September, a federal court in Massachusetts held that the CFTC has the power to prosecute fraud involving virtual currencies.

Nayer: In the UK, examples of the most common types of fraudulent activities include pension and loan scams, share fraud, 'boiler room' schemes and unauthorised collective investment schemes, as well as fraudulent binary options and the use of alternative banking platforms to conceal money movements in trading. Similarly, in the US, the SEC reports that common frauds include affinity fraud, binary options fraud, internet and social media fraud, microcap fraud, pre-IPO investment scams and Ponzi schemes, as well as fraudulently requesting advanced fees. In the UK and the US, older savers are seen as being especially at risk of fraud, particularly with the advent of ever more novel and unfamiliar technologies creating a greater risk of detriment. That is why regulators in these jurisdictions have prioritised their enforcement focus on areas including the protection of retirement savings and investments. For example, in the UK, as the over 55s are particularly at risk, the Financial Conduct Authority (FCA) has responded by including a goal to protect older savers from transfers which may have been advised against their best interests. Likewise, the SEC has responded by implementing initiatives such as ReTIRE to develop awareness around this area.

Wheeler: Given that both the SEC and the CFTC have identified protecting retail investors as an enforcement priority, it is not surprising that both securities and commodities regulators are pursuing fraud cases where retail investors are being directly impacted. For example, both the SEC and CFTC are pursuing actions involving allegedly fraudulent ICOs, Ponzi schemes and affinity fraud. The SEC has increased its focus on fraudulent misrepresentations by investment advisers and broker-dealers. The CFTC has been aggressively pursuing claims against forex dealers and precious metals dealers accused of engaging in illegal off-exchange transactions and other fraudulent activity. In terms of fraudulent activity impacting market integrity, the SEC continues to focus on insider trading, leaving the exchanges and other self-regulatory organisations to focus on market manipulation and disruptive trading. The CFTC and other commodities regulators have increased their efforts to combat spoofing and other manipulative or disruptive trading practices.

CD: How would you characterise the enforcement priorities of bodies such as the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC)? Where do they appear to be focusing their efforts?

Yoskowitz: The SEC continues to state that it wants to protect the 'Main Street investor'. Therefore, it will scrutinise the products that are offered to senior citizens and those saving for retirement. The SEC further stated that it will use risk-based assessments to evaluate which investment advisers should be examined. The SEC is going to closely examine mutual funds and exchange traded funds. It is also very focused on cryptocurrency and ensuring that any offerings comply with the securities laws. The agency is also concerned with cyber security and has requested, in examinations, the policies and procedures firms have in place and recently brought an action against Voya Financial Advisors, Inc. for violating the safeguards rule and identity theft red flags rule. The SEC also still has something of a 'broken windows' approach, although this is not as prominent as it was in previous years, with actions being brought for failure to file Form PF and violations of Regulation Sho. The CFTC, meanwhile, continues to look closely for incidents

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of spoofing and other market manipulation, as well as general fraud in the commodities markets. In early October, it charged an owner of a precious metals firm with defrauding its customers. Finally, both agencies have stated that they are promoting individual accountability, with the CFTC reporting that two thirds of its cases involved charges against individuals.

Wheeler: In its 2018 annual report, the CFTC identified the following enforcement priorities: preserving market integrity, protecting customers, promoting individual accountability and enhancing cooperation with other regulators and criminal authorities. These priorities are reflected in the CFTC's year-end statistics. For example, of the 83 enforcement actions filed during the 2018 fiscal year, 30 involved retail fraud and 31 involved manipulative conduct or other trade practice violations. The CFTC also reported that it charged individuals in two-thirds of its actions and it brought its highest number of actions filed in parallel with criminal authorities. The SEC also identified enforcement priorities in its 2018 Annual Report, namely, protecting retail investors, combating cyber threats and focusing on misconduct in connection with interactions between investment professionals and retail investors. These priorities are reflected in the SEC's year-end statistics.

Nayer: The SEC's priorities, as outlined by its new chairman, Jay Clayton, include a focus on Main Street investors, individual accountability, keeping pace with technological change, imposing sanctions that most effectively further enforcement goals, not least investment return and preventing the outflow of money to other jurisdictions, and assessing the allocation of the division's resources. With the creation of a retail strategy task force and a cyber unit, the SEC is focusing its efforts on using technology and data analytics to identify potential harm to retail investors and large-scale wrongdoing. The CFTC's priorities include anti-spoofing, virtual currency, keeping pace with technological innovation and cross-border enforcements. One of the CFTC's

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most notable actions was against Deutsche Bank for violations in swaps reporting obligations. Its efforts appear to be focused on creating more aggressive enforcement techniques. For example, in 2018, the CFTC brought the largest futures market criminal enforcement action in US history. As in the UK, regulators in the US regularly share information with the goal of more effective enforcement, both inside and outside of the jurisdiction.

Richman: The SEC's enforcement division announced three initiatives. First, the division has focused on protecting retail investors, rather than on large financial institutions. The division has addressed disclosures concerning fees, expenses and conflicts of interest for managed accounts, market manipulations and fraud involving unregistered offerings. Second, the division is focusing on cyber-related misconduct, including cryptocurrencies and failures in cyber security policies. Third, the division is focusing on 'individual accountability', and it charged individuals in more than 70 percent of its standalone enforcement actions. In the asset-management area, the SEC has focused on asset-valuation issues and allocations of expenses between managers and funds. Furthermore, SEC commissioner Robert Jackson recently announced the formation of a task force with Preet Bharara, the former US attorney for the Southern District of New York, to consider proposals for legislation on insider trading. The CFTC has expanded its own enforcement of insider-trading rules in the commodities field and created an insider-trading and information protection task force.

CD: How would you characterise the overall success of regulators as they seek to address alleged market manipulation and fraud?

Nayer: In the UK, between 2013 and 2017, market manipulation accounted for 10 percent of total penalties issued, with fraud at 8.7 percent. Contrastingly, in the US, 30.9 percent of the penalties accounted for fraud, and only 9.9 percent for market manipulation. This year, and since 2015, the number of open FCA enforcement investigations concerning market abuse has increased. It is difficult to know if this is due to more efficient enforcement and detection methods being employed, or simply, if more manipulation activity is being committed. In light of the alleged losses suffered by retail investors, the FCA's use of novel voluntary redress methodologies are becoming ever more prevalent in the face of the limitations of UK litigation procedures, and are a means to mitigate the risk of heavy fines and as part of the process of obtaining deferred prosecution agreements (DPAs). For example, in 2017, not only had the Serious Fraud Office (SFO) agreed a DPA with Tesco, but also, for the first time, the FCA used its powers under Section 384 of the FSMA to require a company to pay compensation to its investors for market abuse. Similarly, the SEC has been in involved in a number of recent high-profile cases in which it successfully brought enforcement proceedings relating to market manipulation and fraud. Recently, for example, the SEC charged a group of 10 individuals and 10 associated entities for their roles in lucrative market manipulation schemes which caused significant harm to retail investors.

Richman: Chasing fraud and manipulation always seems to be a catch-up game, as regulators often lack the resources and, perhaps, the devious imagination of fraudsters. The charges in SEC enforcement actions often, though not always, seem to have at least facial merit, but one never knows how many potentially meritorious actions are not being investigated or filed. A hiring freeze has left the SEC with 10 percent fewer investigative staff members than in the past, but, in fiscal year 2018, the enforcement division still managed to bring the second-highest number of actions in its history, in part through the increased use of sweeps and initiatives. The SEC and the CFTC do appear to have made a strong start on attacking fraud and manipulation in the newly emerging crypto arena, and the two agencies continue to pursue insider-trading cases with some vigour.

Wheeler: Generally speaking, the regulators tend to file enforcement actions where the respondent has already agreed to settle the charges or where the regulators are highly confident that they will win. In addition, we have little insight into the misconduct that the regulators are not identifying or pursuing – at least not until it is uncovered years later. As a result, it is difficult to evaluate the overall success of regulators in addressing market manipulation and fraud. That said, after years of struggling to prevail on manipulation claims, the CFTC has been able to take advantage of changes to its anti-manipulation framework brought by Dodd-Frank, and successfully brought many manipulation cases over the last two years. It is worth noting, however, that the CFTC's ability to pursue fraud claims in connection with the sale of a commodity, where there is no allegation of price manipulation or other futures market component, was successfully challenged by Monex Credit Co. in a federal district court in California.

Yoskowitz: While market manipulation and fraud will never be eliminated, regulators are very successful at finding and punishing wrongdoers. The SEC has an excellent record in winning insider trading cases, for example. And both the SEC and CFTC continue to add tools to their toolbox that aid in their efforts. The SEC's whistleblower programme has awarded more than $300m to whistleblowers since the programme began in 2011 and, according to the agency, tips from whistleblowers have resulted in more than $1bn in financial remedies. It awarded its highest ever award in March 2018, with two whistleblowers receiving nearly $50m. The

CFTC also touts its cooperation and self-reporting programme. Both regulators regularly make use of advanced data analytics that examine both market data to spot potential issues and, during the investigation phase, can sift through large amounts of communications and trading data.

CD: To what extent are technology-based enforcement tools assisting the identification and exploration of fraudulent activity? How effective is the use of data analytics to spot anomalies?

Richman: The SEC extensively uses technology-based enforcement tools. The SEC created the Division of Economic and Risk Analysis (DERA) in 2009 to integrate financial economics and data analytics into the SEC's work. DERA provides economic and statistical analyses, identifies issues, trends and innovations, develops tools to identify market risks that suggest potential securities-law violations, works with outside experts and manages data to support the SEC's work. DERA and other data-analytics groups within the SEC work with the enforcement division's Retail Strategy Task Force to identify issues affecting retail investors. The SEC also has other specialised units and hires industry experts, resulting in the increasing use of data analytics. Data analytics can be effective in spotting anomalies that suggest misconduct, but the technology arms race never ends. The SEC has resource constraints that sometimes put it at a disadvantage in relation to private actors intent on exploiting information and investors.

Wheeler: The SEC's enforcement division states that one of its guiding principles is keeping pace with technological change. In keeping with that principle, the division conducts data analysis to identify and pursue a wide array of misconduct, including insider trading, sale of unsuitable investments and cherry-picking schemes. The Financial Industry Regulatory Authority (FINRA) also uses data analytics to assist with enforcement, including identifying potential market manipulation. FINRA provides firms with 'report cards' that identify potential exceptions. On the commodities side, the CFTC and exchanges also use data analytics to identify market anomalies and manipulative or disruptive activity. In its 2018 annual report, the CFTC identified data analytics as a key initiative and reports that it moved its Market Surveillance Unit into the Division of Enforcement this year to reflect a 'data-centric approach'.

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Yoskowitz: Though no tool will be able to spot every instance of fraud, and schemes will constantly evolve, data analytics has become a critical tool available to regulators and in-house compliance programmes. The SEC regularly requests five years of trading data from investment firms in order that their software can review and look for issues. Large firms may have bespoke reports that look for instances of spoofing and other areas of market manipulation. Communications are regularly monitored and there are artificial intelligence (AI) searching programmes that can find instances of suspicious communications which might not otherwise be spotted.

Nayer: In the US, the SEC's Retail Strategy Task Force is considering how technology, such as text analytics and machine learning, can be applied to protect retail investors. The SEC has recently used these tools to detect fraudulent trading. Similarly, in light of the fact that the FCA receives over 500,000 scheduled regulatory reports from firms, as well as additional ad hoc reports, it has sought input from regulated firms in respect of how technology can help firms meet reporting requirements. Certainly, the quantitative analysis that data analytics provide has made it easier for regulators to identify non-compliance and determine enforcement priorities. We do, however, need to wait a little longer in order to assess the impact of the technological tools adopted by regulators and market participants. Their effects concerning enforcement figures are yet to be fully assessed.

CD: How have enforcement bodies been responding to the task of regulating markets such as cryptocurrencies and over-the-counter derivatives? How are such markets responding to the potential for a regulatory crackdown?

Nayer: Markets respond strongly, albeit rarely consistently, to the news surrounding the legal status and increased regulation of crypto-assets. The UK and US governments have asked regulators to adopt a stricter stance in light of widespread concerns that some investors are vulnerable or unaware of the risks surrounding these markets. Crypto-assets regulation is listed as a priority in the FCA's and SEC's annual performance and enforcement reports. At present, however, the FCA continues to assess the situation, choosing not to regulate crypto-assets as it does not consider them to be currencies or commodities under MiFID II. It has, however, published a warning about the risks of investing in crypto-asset derivative contracts and will no doubt continue to assess the benefit of intervention. This year, the UK government is due to publish a consultation aimed at assessing the most effective way of regulating exchange tokens, including, for example, Bitcoin, Ethereum and Litecoin, and related firms, such as exchanges. The SEC, on the other hand, provides that an assessment of whether a crypto-asset is a security or not depends on the characteristics of the particular asset. The CFTC has classified bitcoin as a commodity and any related fraud or manipulation is within its jurisdiction. The SEC has supported this classification.

Yoskowitz: Both the SEC and the CFTC have come out in force to regulate the free-wheeling world of cryptocurrencies. In September 2018, the same day the SEC brought its action against TokenLot, it also brought an action against Crypto Asset Management, a pooled investment fund formed for the purpose of investing in digital assets. The firm, the SEC alleges, violated the securities laws by, among other things, offering or selling unregistered securities. On 22 October 2018, the SEC suspended trading in the securities of a company after it allegedly made false statements about partnering with a claimed SEC-qualified custodian for use with cryptocurrency transactions. The company further claimed that it was conducting a token offering that was in accordance with SEC regulations. All of this has placed the markets in a bit of turmoil and clarification is needed. Fifteen members of Congress have asked SEC chairman Jay Clayton to clarify the agency's guidelines with regard to cryptocurrencies.

Wheeler: Regulators have been aggressively responding to the task of regulating virtual currency markets, while trying to balance the need for robust enforcement to protect investors against the risk of inhibiting innovation. The CFTC created its Virtual Currency Task Force, focusing on identifying and prosecuting misconduct in the virtual currency space. And, over the last year, the CFTC has filed multiple actions alleging fraudulent activity in connection with cryptocurrency, recently securing favourable court rulings, holding that cryptocurrencies are commodities. At the same time, the CFTC has created LabCFTC, which has been designed to make the CFTC more accessible to FinTech innovators, and to aid the CFTC in its understanding of new technologies. Likewise, the SEC's cyber unit, which became fully operational in 2018, has pursued numerous investigations and brought several actions involving digital assets and ICOs. Yet, in its 2018 annual report, the SEC acknowledged the "need to balance its mission to protect investors from the risk posed by fraud and registration violations against the risk of stifling innovation and legitimate capital formation".

Richman: The SEC has been addressing cryptocurrency issues and has filed enforcement actions involving unregistered crypto token issuers, unregistered broker-dealers, unregistered investment companies and unregistered exchanges. A newly created cyber unit focuses on crypto issues, and a 'crypto-czar' has been appointed within the enforcement division. Courts have also begun to confront these issues, with a handful of cases, so far, applying the SEC's construction of the Howey test to cryptocurrencies. The SEC is aware that its forays into the new world of cryptocurrencies have created concerns and uncertainties, and its enforcement co-director has said that the SEC is trying to strike a "balanced" approach by being proactive and working collaboratively with experts both within the agency and outside of it. The co-director also observed that a number of the SEC's actions have involved instances of fraud, rather than failures to abide by securities regulations. In non-fraud cases, the SEC has recognised the need to balance investor protection against "legitimate efforts to use new methods to raise capital".

CD: What advice would you offer to parties in terms of ensuring market participants are fulfilling reporting obligations and complying with core market principles?

Yoskowitz: It is very important to have a robust legal and compliance programme in place. Firms should review their policies and procedures and make sure that they are not simply using an off-the-shelf handbook, but one that is specific to their business. They should then ensure they are actually following those procedures and documenting that the procedures are being followed. Regulators want to see a document trail when they examine a business and not just assurances that things have been done correctly. Market participants should engage outside compliance and legal counsel where appropriate. They should not wait until there is an issue, but should engage them early in the process. Regulators are also concerned about firm culture and market participants should make sure that their employees know that wrongdoing will not be tolerated.

Wheeler: Most enforcement actions stem from one or more of the following factors. First, a failure to keep pace with technological change. For example, a firm may have a robust system to review emails, but fail to review instant messages or text messages. Or its method of calculating reportable positions is not keeping pace with new systems, resulting in inaccurate reporting. Second, a failure of compliance to keep pace with a firm's growth. In other words, the firm has not invested in the necessary personnel or technology in order to provide adequate supervision or ensure compliance with reporting obligations. The SEC recently announced an enforcement action against an investment adviser and its chief executive, where the CEO repeatedly

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rebuffed efforts from compliance personnel to secure additional resources for compliance. It is critical that compliance programmes keep pace with the firm's growth. Third, moving into a new area without fully understanding the regulatory landscape. Firms often make assumptions that strong knowledge of one area, such as commodities trading or US-based markets, will ensure knowledge and compliance in other areas, equities trading or European markets, for example.

Richman: While complying with traditional reporting obligations is always essential, several newer areas merit particular attention. The SEC updated its cyber security disclosure guidelines in February 2018 and issued a Section 21(a) report in October to inform issuers of cyber-related threats and the need to consider them in devising and maintaining internal accounting controls required by the securities laws. Staying on top of developments in ESG disclosures will be important, as issuers are being sued for allegedly inadequate disclosures of environmental risks, and as the SEC considers requests for standardised ESG disclosures. Anyone involved in the crypto area should pay attention to the SEC's announcements on what constitutes a security, and on the potential need to register crypto token issuers and exchanges. The SEC's new Strategic Hub for Innovation and Financial Technology provides a vehicle for market participants to engage with the SEC about financial-technology issues. And in the proxy realm, the division of corporate finance has issued a staff legal bulletin explaining its views on shareholder proposals.

Nayer: The increased emphasis, globally, on individual accountability has resulted in regulators such as the FCA encouraging a 'tone from the top' mantra to change compliance cultures within firms in order to help fulfil reporting obligations and to comply with market principles. This change is unlikely to succeed if organisations do not have the infrastructure in place to encourage their staff to communicate 'to the top'. This will need to be demonstrated by showing that methods to detect and prevent bad conduct and cultural synergies are prioritised alongside financial interests, such as when taking decisions to expand and consolidate businesses. Moreover, this infrastructure needs constant review. It will be necessary for market participants to work more closely with their HR teams to offer continued training on the relevant reporting obligations and principles. The SEC and CFTC have made it clear that they will identify and combat market abuse involving US markets, regardless of the jurisdiction in which they occur. Therefore, market participants should continue to carefully consider their approach to compliance by reference to their international footprints and evolving structures.

CD: How do you envisage the securities and commodities enforcement landscape evolving in the years ahead? To what extent should we expect to see an increasing number of global referrals to enforcement, for example?

Richman: One interesting question is the extent to which the SEC will attempt to enforce the US securities laws in matters involving extraterritorial elements. Ever since the Supreme Court's 2010 ruling in *Morrison v. National Australia Bank* that the US securities laws apply only to transactions in US-listed securities and to other domestic securities transactions, the protections of US law have become less available to non-US investors, and even to US investors who engage in non-US transactions. The 2010 Dodd-Frank Act purported to grant more leeway to the SEC and the DOJ, permitting global enforcement where a securities violation involves significant US conduct or injures US investors. But some litigants have contended that the Act did not succeed in expanding the government's enforcement reach. That question has not yet been definitively resolved, and the SEC has seemed reluctant to rely too heavily on Dodd-Frank's expansive language.

Nayer: As regulators continue to focus on individual accountability, we should, in theory, see more senior corporate executives held to account, particularly in respect of conduct that affects retail markets. We have already seen the FCA threaten large fines for those institutions that fail on SM&CR. Moreover, the rise in technological and cyber developments is likely to result in increased enforcement actions concerning the protection of confidential information and customer data, and the consequential resilience of financial services. In 2018, the SEC filed its first case against a public company for allegedly failing to report a data breach to investors. In the UK, it remains to be seen how the FCA and Information Commissioner's Office (ICO) will resolve matters between themselves when they both have jurisdiction, in particular following the increased jurisdiction for fines by the ICO, post-General Data Protection Regulation (GDPR) in Europe, and in light of the fact that there will often be a parallel breach of Principle 2 – the duty to exercise due skill, care and diligence.

Wheeler: It seems highly unlikely that there will be a significant decrease in enforcement activity in the near future. Rather, with the increase in virtual currency and digitalised assets, and the corresponding increased risk for fraudulent and manipulative activity, the need for robust enforcement is greater than ever. Moreover, this shift will also further blur geographic boundaries and we can expect to see more global cooperation and referrals. As the regulators continue to focus on fraud and manipulation, we can also expect to see more cooperation between securities and commodities regulators and criminal authorities. One interesting question is whether enforcement activity relating to public company reporting will continue to decline. If history is any guide, any such decline will be quickly reversed if and when we see another 'Enron-like' scandal.

Yoskowitz: Regulators are evolving along with the market. They have become more sophisticated over the years and have reacted faster to market developments such as cryptocurrency. Like private firms, they are developing task forces and are hiring people with expertise to help them understand the business landscape. Going forward, they will increasingly rely on data analytics and data mining to identify anomalies to investigate. There will be more global referrals to enforcement. The SEC and the FCA in the UK, for example, communicate regularly. And regulators will continue to attempt to extend their reach extraterritorially where they see foreign market participants touch the areas they police. Examinations will become more frequent and those examinations will focus more on issues that were regularly left to enforcement. CD