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SEC Update

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Each year the U.S. Securities and Exchange Commission ("SEC") publishes an annual report card of sorts called the Agency Financial Report (the "Report"). This document provides a glimpse at what the SEC considers important and where it is devoting its resources. The full Report for Fiscal Year 2017 as well as a message from Chairman Clayton is available at https://www.sec.gov/reports-and-publications/annual-reports/sec-2017-agency-financial-report.[1]

We thought it helpful to share some of the highlights contained in the Report. Currently, the SEC employs approximately 4,600 full time employees and oversees over 26,000 market participants, including 12,000 registered investment advisers managing more than $70 trillion in assets (triple the 2001 level). The SEC also oversees about 10,000 mutual funds and exchange traded funds, 4,000 broker dealers and 650 mutual advisers.[2]

In 2017, the SEC invested over half of its budgetary resources in its enforcement and examination programs.[3] The SEC obtained judgments and orders totaling $3.8 billion in penalties and disgorgements, and returned over $1 billion to harmed investors. The agency also awarded over $50 million to twelve whistleblowers.[4] That is quite an incentive to bring potential wrongdoing to the SEC's attention.

The Report provides that the SEC examined 15% of investment advisers, or approximately 1,800 managers, and is on track for an increase of 5% during 2018.[5] Chairman Clayton expects to increase examination coverage of investment advisers over the next several years "in light of continuing changes in the markets."[6] For perspective, in 2012, the SEC examined just 8% of investment advisers.

We thought it noteworthy that the SEC brought insider trading charges against 100 parties during the year.[7] This continues to be a high priority. Investors will often not wait for a conviction to redeem. Even

[1] The Division of Enforcement also publishes an Annual Report which is available at https://www.sec.gov/files/enforcement-annual-report-2017.pdf.
[2] Report p. 13 and 118.
[3] Report p. 16.
[4] Report p. 18.
[5] Report p. 18 and 119.
[6] Report p. 119.
[7] Report p. 17.

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if an individual or fund is ultimately exonerated, the associated investment business will often fail. SAC Capital's odyssey, as depicted in Sheelah Kolhatkar's excellent book ***Black Edge***, is truly an outlier.

Another noteworthy trend is the SEC's continued push to enhance its technological edge to spot "patterns and relationships that might warrant further inquiry."[8] Key technology initiatives include expanding data analytics tools; improving the examination program through risk assessment and surveillance tools; and enhancing systems that support the enforcement program.[9] The Tips, Complaints, and Referrals ("TCR") system will also receive upgrades.

In other news, Chairman Jay Clayton (Independent) and Commissioners Dr. Michael Piwowar (Republican) and Kara Stein (Democrat) may soon be joined by SEC nominees Hester Peirce and Robert Jackson bringing the Commission to full strength—Five Commissioners. Democrat Robert Jackson is a professor at Columbia Law School with an interest in activist shareholder disclosure and is the Director of the Program on Corporate Law and Policy at Columbia. Republican Hester Peirce, critical of the Dodd-Frank Act, is a senior research fellow at George Mason University's Mercatus Center. No more than three Commissioners may belong to the same political party. The nominees must be approved by the full Senate before taking office.

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[8] Report p. 22.
[9] Report p. 120.