# What the Research Tells Us: The SEC, CFTC, FINRA

It was a record year at the SEC, with 868 enforcement cases, up from 807 in 2015 and 755 the year before that: a reflection of former chair Mary Jo White's 'broken windows' policy, pursuing even minor infractions.

'An agency that…makes you feel like we are everywhere,' as she has put it.[1]

'Everywhere' includes an ever-widening range of cases, with the SEC breaking new ground as it has ramped up its activity:

- The first charges against a firm solely for failing to file suspicious activity reports (SAR).[2]
- Enforcement of new standards for municipal issuers and advisors created by the Dodd-Frank Act.[3]
- The first case against a private equity fund advisory group for acting as an unregistered broker.[4]
- A first case for auditor independence failures, predicated on close personal relationships with audit clients.[5]

Whether the broken-windows policy will continue under a new chair at the SEC and the new administration in the White House remains to be seen. There could be a retrenchment to its core focus on securities fraud. Nevertheless, the Trump Presidency's focus on national security should mean that AML continues to be a priority, and SEC's examination priorities[6] suggests a number of other areas will see increased activity. These include initiatives to assess risks to retail investors; a broadening of the ReTIRE initiative to designed to those with retirement accounts; an evaluation of money market funds' compliance with AML and the Regulation Systems Compliance and Integrity rule, as part of a focus on market-wide risks; and continuing examination of cyber security compliance procedures and controls, including testing implementation at broker-dealers and investment advisers.

## CFTC and FINRA

There will also be changes at the CFTC. It is among the few regulators that continued last year to be heavily occupied with benchmark manipulation cases. This included action and a $175 million penalty for attempted manipulation of the London Interbank Offered Rate (LIBOR) and European Tokyo Interbank Offered Rate (Euroyen TIBOR), as well as false reporting of the Euroyen TIBOR.[7]

1 https://www.sec.gov/news/speech/spch100913mjw
2 https://www.sec.gov/news/pressrelease/2016-102.html
3 https://www.sec.gov/news/speech/speech-ceresney-10132016.html
4 https://www.sec.gov/news/pressrelease/2016-100.html
5 https://www.sec.gov/news/pressrelease/2016-187.html
6 https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2017.pdf

Nevertheless, the resolution of such cases has seen the total value of penalties at the CFTC decline in 2016 to $748,000,000 in civil penalties (not counting $543 million in restitution and disgorgement orders), against $3.144 billion in 2015. The slowdown also allows the CFTC to look to other issues.

In this vein, the CFTC is demonstrating a new concern about insider trading and misappropriation of material non-public information, with two first-of-their kind actions charging employees of companies. It also brought its first federal court action against a swap dealer for failing to comply with the reporting requirements of Parts 43 and 45 of CFTC Regulations; and its first action under regulations imposing risk management program and supervision obligations for futures commission merchants.[8]

Finally, at FINRA the trend in fines has gone the other way, rising from $94 million in 2015 to $176 million in 2016. This is mainly due to a significant rise in the number of fines over $1 million, usually imposed on large firms with significant failures or reflecting FINRA's focus on key areas:

AML, including poor due diligence of high-risk customers and high-risk activities.

Reporting, with IT errors that affect large numbers of reporting events a particular concern.

Sales, and particularly complex products sold to retail investors without adequate understanding, share classes that are more expensive than identical lower-cost classes, and investments with an unusual degree of risk.

Nevertheless, as at the other regulators, the focus on individuals remains, with 27 cases over the year involving some type of sanction against a firm's compliance officer.

Top priorities this year, meanwhile, are likely to be driven by one of three factors: FINRA's own key areas of focus, which include senior investors, high-risk and recidivist brokers, and market manipulation; regulatory change in areas such as credit risk, with changes to margin requirements for cover under FINRA Rule 4210; and the rise of digital. Like the SEC, FINRA remains concerned by the cyber security risk to firms, and is also to review their compliance with supervisory and record-retention obligations with respect to social media and other electronic communications.

7 http://www.cftc.gov/PressRoom/PressReleases/pr7372-16
8 http://www.cftc.gov/PressRoom/PressReleases/pr7488-16