

2022 Q2 Report

The FCPA Clearinghouse’s quarterly report provides an overview of some of the more notable trends and statistics in FCPA enforcement activity to emerge during the second quarter of 2022.

Enforcement Statistics

There are a number of different ways to define FCPA enforcement activity and to count the number of new actions initiated each year. The FCPA Clearinghouse does not advocate one counting methodology over another, but instead presents the data in a number of different ways so that users can make their own informed judgments. Because our counting methodologies rely on defined terms (which are denoted below in bold), we make those definitions available at the “[Definitions](#)” tab of the [About Us](#) page.

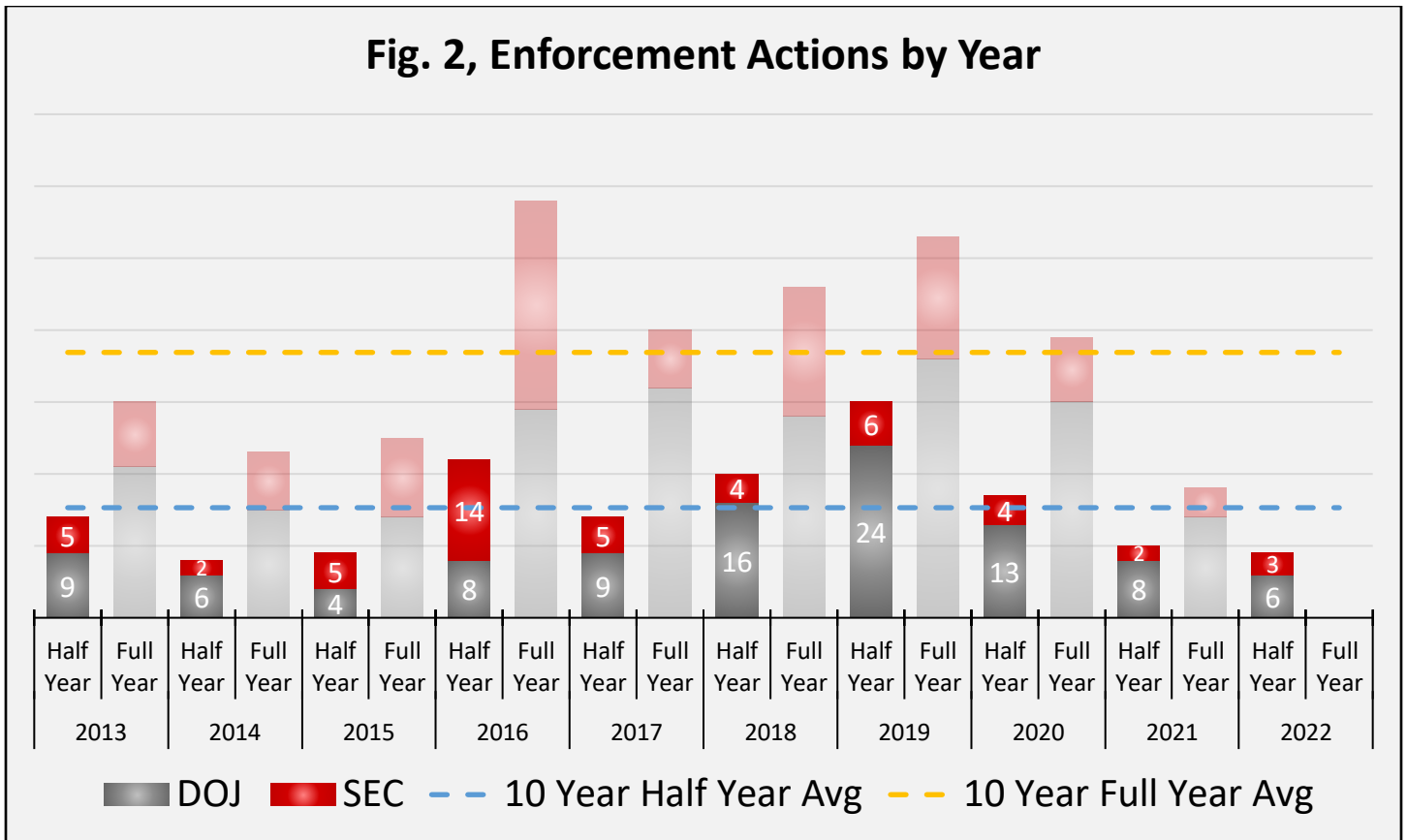
After more than a year of slow activity, corporate enforcement levels picked up slightly in the second quarter of 2022, with the DOJ and SEC each initiating two FCPA-related [Enforcement Actions](#). Figure 1 shows all enforcement actions filed, announced, or unsealed between April and June of 2022.

**Fig. 1, FCPA-Related Enforcement Actions
Initiated or Announced in Q2, 2022**

Case	Date Initiated	Date Announced/ Unsealed	Sanctions
U.S. v. Stericycle, Inc.	April 14	April 20	\$52,500,000
In the Matter of Stericycle, Inc.	April 20	April 20	\$28,184,240
U.S. v. Glencore International A.G.	May 24	May 24	\$700,707,365
In the Matter of Tenaris S.A.	June 2	June 2	\$78,100,338

Despite the recent uptick, enforcement activity through the first six months of 2022 remains below average when compared to the same period over the last ten years. The DOJ and SEC filed a total of nine enforcement actions between January and June of this year, compared to the ten-year average of 15. Below-average enforcement activity in the first half of the year is frequently correlated with below-average enforcement activity for the full year, which suggests that 2022 could be another slow year. Figure 2 compares the level of enforcement activity between January and June with annual totals in each of the last ten years.

Fig. 2, Enforcement Actions by Year



Joseph Baptiste and Roger Richard Boney Prosecution

DOJ prosecutors dropped the long running case against [Joseph Baptiste and Roger Richard Boney](#), two Haitian-American businessmen, in light of potentially exculpatory text messages discovered by the FBI. The text messages described phone calls between the FBI’s undercover agent and Boney and Baptiste. These phone calls were the subject of a 2019 motion to dismiss in which Baptiste and Boney argued that the FBI had destroyed exculpatory evidence when it failed to download recordings of the phone calls. The court denied that motion on the grounds that the deletion had been unintentional.

The DOJ initially filed the case in October 2017 solely against Baptiste (Boney was added as a defendant in October 2018), alleging violations of the FCPA, the Travel Act, and money laundering violations that allegedly began in November 2014 when undercover agents of the FBI, who purported to be potential investors in infrastructure projects in Haiti, were introduced to Baptiste and Boney. In June 2019, a jury convicted Baptiste on all charges and Boney on just the FCPA charge. However, the court overturned those convictions and ordered new trials in March 2020 due to Baptiste’s ineffective counsel, which prejudiced the trial against both defendants. Both Baptiste and Boney were awaiting the new trials when the FBI discovered the text messages.

This dismissal of Boney and Baptiste’s cases continues the dismal record of the DOJ in FCPA cases originating from FBI sting operations. Indeed, the DOJ has secured convictions against only three out of the 26 defendants it has charged in cases that the Clearinghouse can clearly identify as having stemmed from FBI stings. This 11.5 percent conviction rate compares with an almost 88.4 percent conviction rate against individuals when the case was not developed through an FBI sting. The DOJ has criminally charged 390 individual defendants since 1977, and the 88.4 percent conviction rate excludes the 26 defendants subject to FBI stings as well as the 86 defendants for whom no resolution has yet been reached.

Investigations

U.S. authorities are currently investigating at least 31 different entity groups for possible FCPA violations. Last quarter, one company first disclosed a new FCPA-related [Investigation](#), and one company disclosed that the SEC had joined the DOJ in an existing investigation. Figure 3 shows all entity groups that disclosed new FCPA investigations in the second quarter.

Fig. 3, New FCPA-Related Investigations Disclosed in Q2 2022

Company	Agencies Involved	Date Investigation Disclosed	Internal Investigation Disclosed?	Country/Region Investigated
Millicom International Cellular S.A.	DOJ	May 10	No	Guatemala
LM Ericsson Telephone Company	DOJ, SEC	June 9 (SEC) Oct 22, 2021 (DOJ)	Yes	Iraq

According to information disclosed in SEC filings and charging and settlement documents, the SEC concluded two publicly-disclosed investigations in the second quarter, and the DOJ concluded three. The SEC brought enforcement actions against [Stericycle, Inc.](#) and [Tenaris S.A.](#) The DOJ brought enforcement actions against Stericycle and [Glencore plc](#) and concluded its investigation into Tenaris without taking any further action.

Jarkesy and Cochran

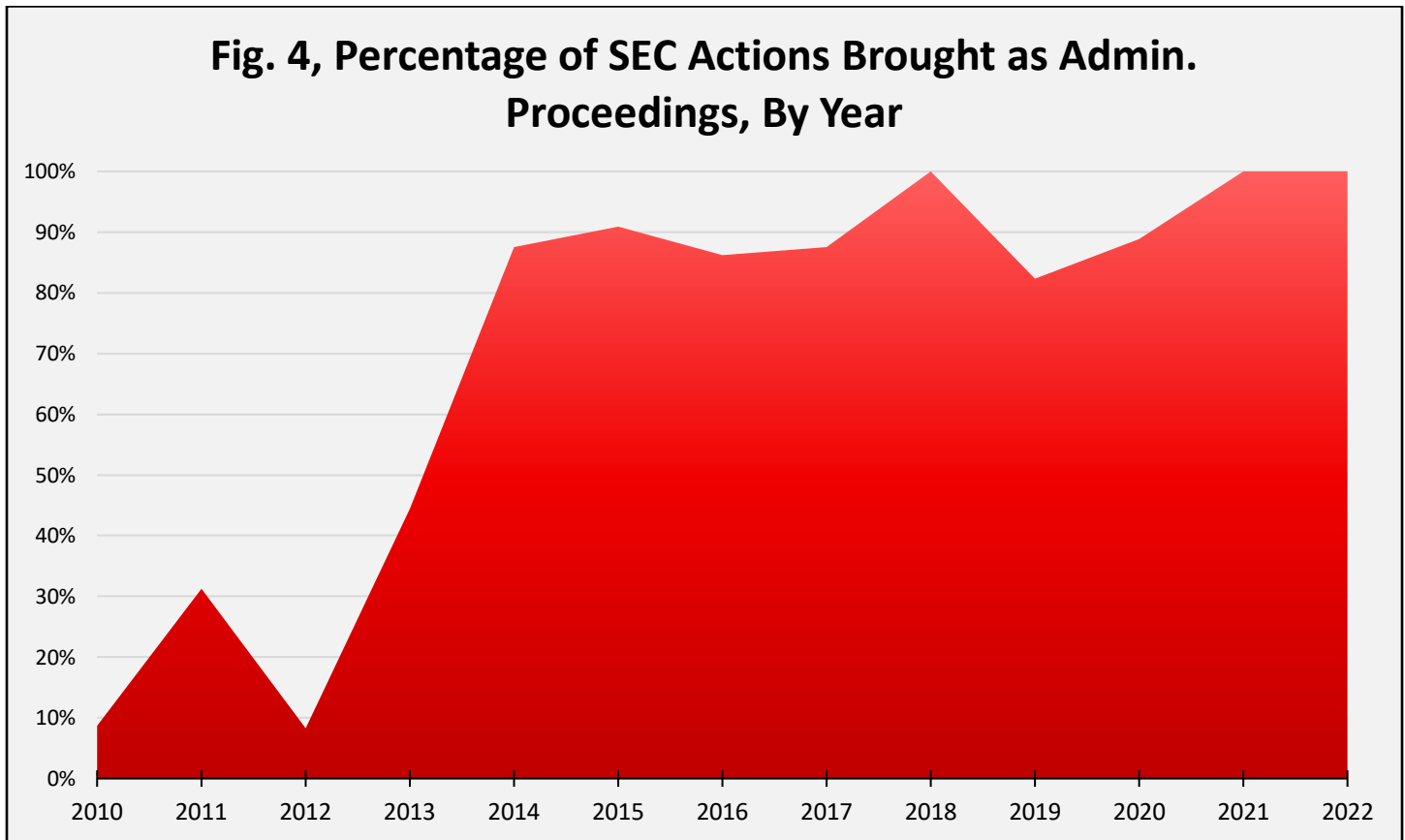
On May 18, 2022, the U.S. Court of Appeals for the Fifth Circuit in *Jarkesy v. SEC* issued a potentially far-reaching opinion concerning the SEC's use of administrative law judges (ALJs). In that opinion, the court held that SEC ALJs were unconstitutionally insulated from presidential removal, among other constitutional infirmities. Specifically, the court found that:

- (1) the SEC's in-house adjudication of Petitioners' case violated their Seventh Amendment right to a jury trial;
- (2) Congress unconstitutionally delegated legislative power to the SEC by failing to provide an intelligible principle by which the SEC would exercise the delegated power, in violation of Article I's vesting of "all" legislative power in Congress; and
- (3) statutory removal restrictions on SEC ALJs violate the Take Care Clause of Article II.

Jarkesy comes on the heels of another recent decision out of the Fifth Circuit, *Cochran v. SEC*, that could affect the use of administrative courts. On December 13, 2021, the court in *Cochran* held that district courts have jurisdiction to consider claims challenging the constitutionality of the SEC's ongoing administrative proceedings. Historically, respondents in administrative actions had to wait until after an adverse order from the administrative court before challenging that order in district court. The Fifth Circuit's opinion created a circuit split, with five other circuits adhering to the historical view. The Supreme Court has granted the SEC's petition for certiorari to review the case.

Though not FCPA cases, *Cochran* and *Jarkesy* could have significant implications for future FCPA enforcement. Although the SEC has statutory authority to bring FCPA enforcement actions in either federal or administrative courts, administrative actions in the FCPA context were rare prior to 2010 in large part because the SEC generally could not seek monetary penalties in those proceedings. That changed in 2010, when the Dodd-Frank Wall Street Reform Act granted the SEC authority to impose civil monetary penalties in administrative proceedings in which the SEC seeks a cease-and-desist order. Since passage of the Dodd-Frank Act, the SEC has filed the vast majority of FCPA enforcement actions in administrative court. Figure 4 shows

the percentage of total SEC actions filed in the administrative courts since the enactment of Dodd-Frank in 2010.



Cochran and *Jarkesy* may spur the SEC to rely less on administrative proceedings and to file even more of its cases in federal court. However, both cases deal with litigated administrative proceedings. To date, all FCPA enforcement actions brought as administrative proceedings have been negotiated resolutions in which the defendants have expressly admitted to the Commission’s jurisdiction, so the practical impact of *Cochran* and *Jarkesy* on FCPA enforcement may end up being minimal. Conversely, if the Supreme Court were to uphold the Fifth Circuit’s reasoning in either case, the very existence of the administrative courts could be called into question, which would necessarily affect how the SEC enforces the FCPA. At a minimum, *Cochran* and *Jarkesy* could limit the SEC’s options in bringing contested enforcement actions.

Looking Ahead

Last quarter, the Clearinghouse highlighted three companies that had disclosed accruals in anticipation of pending settlements. Two of those companies, Glencore and Stericycle, settled with the government in the second quarter. The investigation against the remaining company, [Honeywell International Inc.](#), remains ongoing. Honeywell disclosed in October 2021 that it had accrued \$160 million in anticipation of settling FCPA-related investigations, so a settlement appears likely sometime this year.