

2023 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 2023.

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.

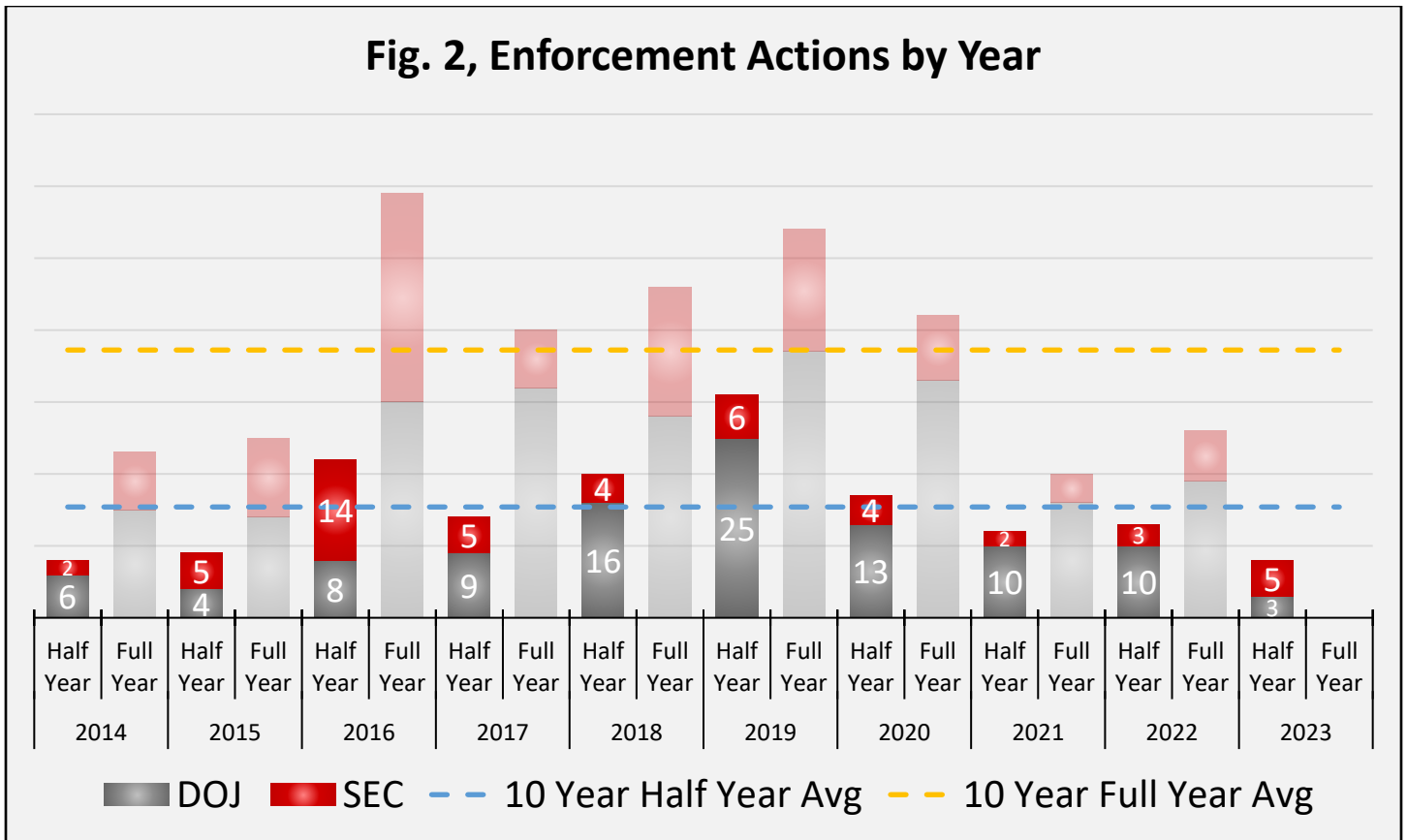
Enforcement activity in the second quarter of 2023 is the lowest in a decade, with the SEC initiating three FCPA-related [Enforcement Actions](#) and the DOJ initiating no new actions. Figure 1 shows all enforcement actions filed, announced, or unsealed between April and June of 2023.

**Fig. 1, FCPA-Related Enforcement Actions
Initiated or Announced in Q2, 2023**

Case	Date Initiated	Date Announced/ Unsealed	Sanctions
In the Matter of Frank’s International N.V.	April 26	April 26	\$7,998,721
In the Matter of Koninklijke Philips N.V.	May 11	May 11	\$62,173,803
In the Matter of Gartner, Inc.	May 26	May 26	\$2,456,764

The DOJ and SEC filed a total of eight enforcement actions in the first half of this year, compared to the ten-year average of 15. If enforcement activity remains at this level throughout the rest of the year, then 2023 could be the third consecutive year with enforcement activity that falls below the ten-year average. The low levels of enforcement activity in recent years represents a steep decline from the peak enforcement levels seen between 2016 and 2020. 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



The decline in overall enforcement activity can be attributed largely - although not exclusively - to a decline in criminal prosecutions of individual defendants. Between January and June of 2023, the DOJ charged four individual defendants with FCPA-related violations, which is the lowest level of individual criminal prosecutions in this six-month period since 2015. While the SEC has never brought more than a handful of enforcement actions against individual defendants in any given year, the Commission has notably not charged a single individual since 2020. Figure 3 compares the number of individual and corporate defendants charged by both the DOJ and SEC in the first six months of each of the last ten years. Figure 4 compares the number of individual and corporate defendants charged by both the DOJ and SEC in each of the last ten years.

Fig. 3, Entity and Indiv. per Year (Jan-Jun), All Claims

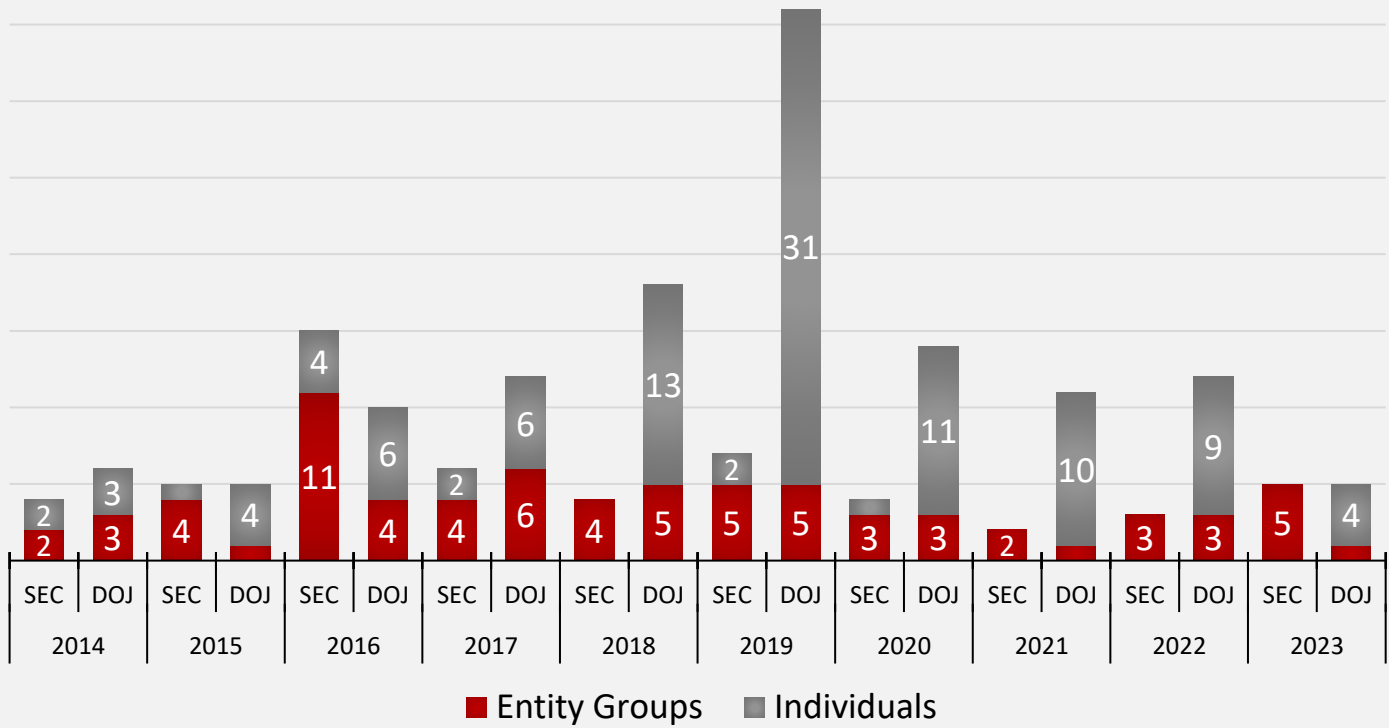
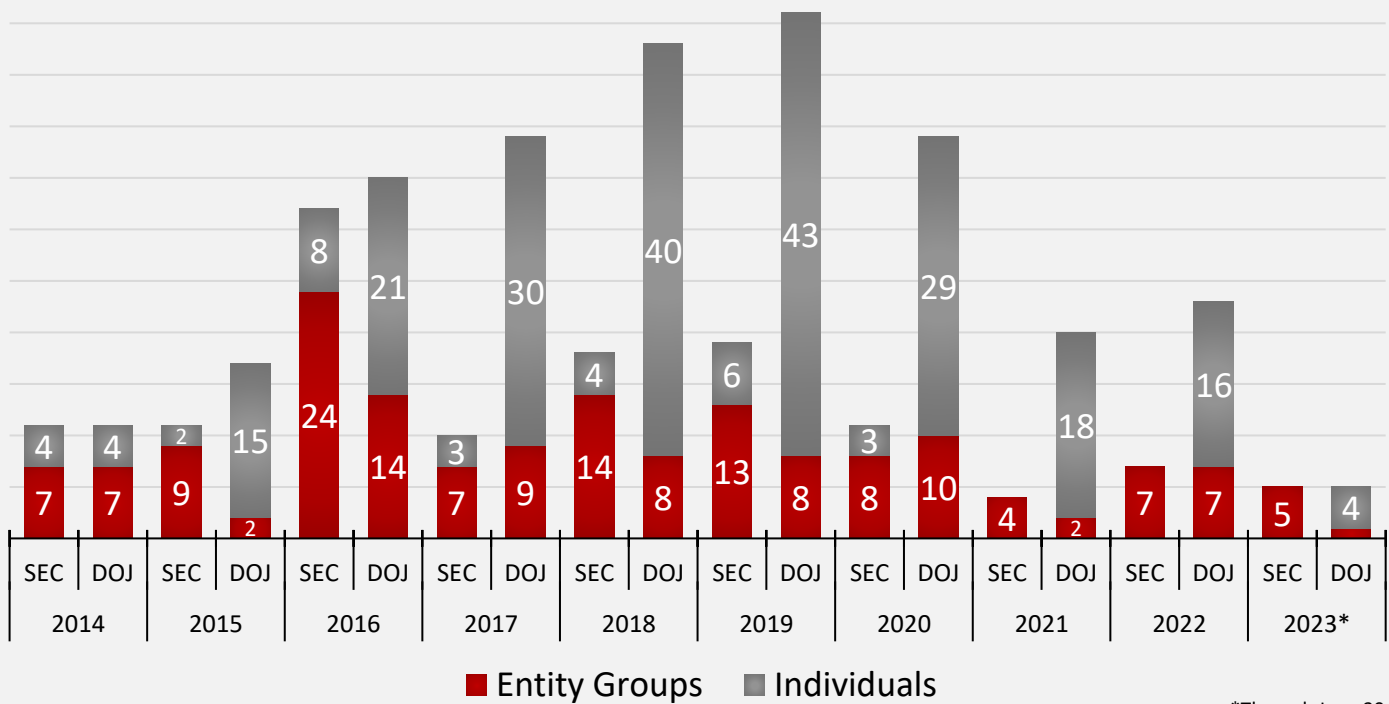


Fig. 4, Entity and Individuals per Year, All Claims



*Through June 30

Investigations

U.S. authorities are currently investigating at least 35 different entity groups for possible FCPA violations. Last quarter, two companies first disclosed new FCPA-related [Investigations](#). Though little is known about the investigations at this early stage, both companies have previously been subject to FCPA-related enforcement actions. Figure 5 shows all entity groups that disclosed new FCPA-related investigations in the second quarter of 2023.

Fig. 5, New FCPA-Related Investigations Disclosed in Q2 2023				
Company	Agencies Involved	Date Investigation Disclosed	Internal Investigation Disclosed?	Country/Region Investigated
Stryker Corporation	DOJ, SEC	May 2	Yes	Undisclosed
Pfizer Inc.	DOJ	May 10	No	Mexico

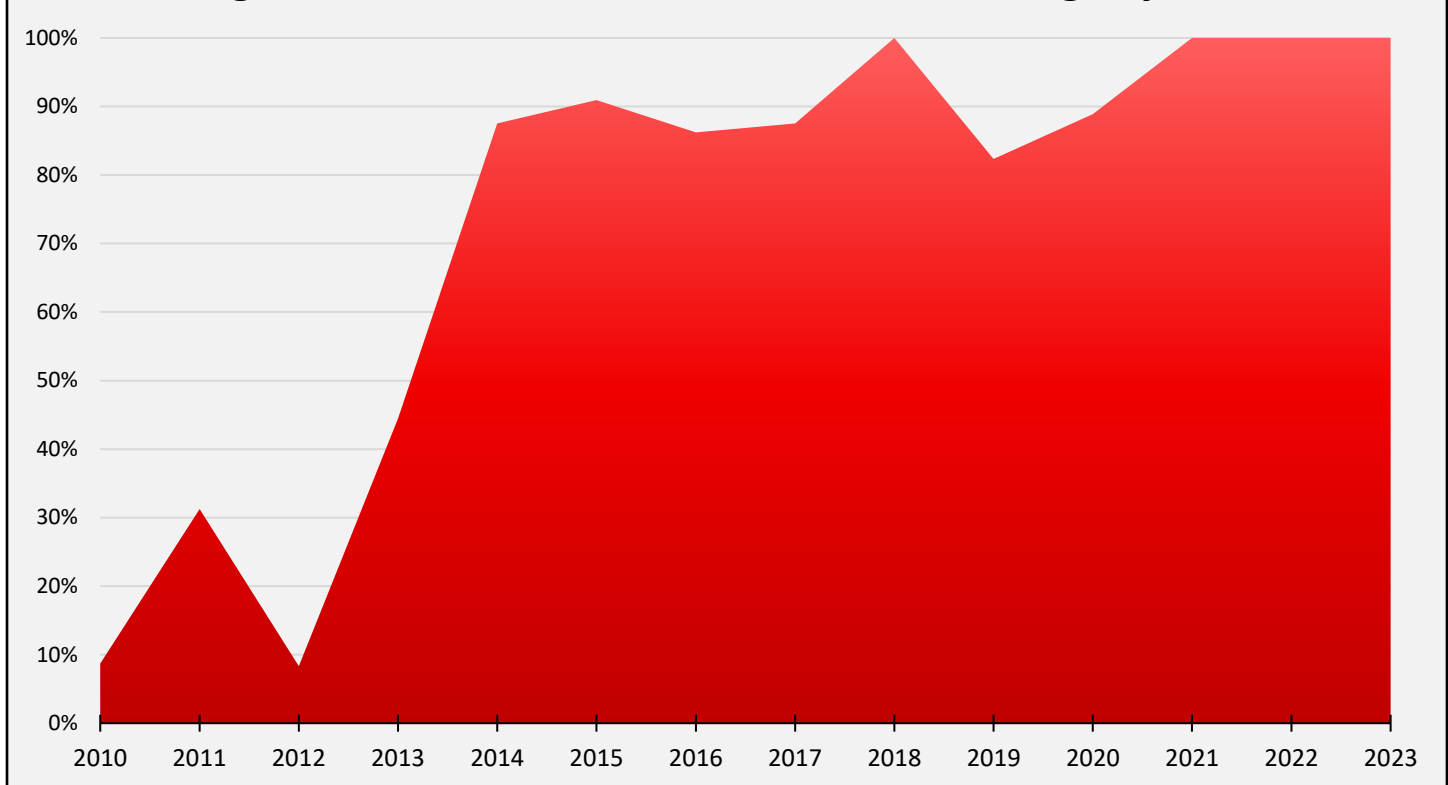
According to information disclosed in SEC filings and charging and settlement documents, the SEC concluded one publicly-disclosed investigation in the second quarter of 2023, bringing an enforcement action against [Gartner, Inc.](#) The DOJ did not conclude any publicly-disclosed investigations during that time.

Attacks on SEC Administrative Courts

On April 14, 2023, the U.S. Supreme Court [affirmed](#) the Court of Appeals for the Fifth Circuit's decision in [Cochran v. SEC](#), holding that district courts retain jurisdiction to consider claims challenging the constitutionality of the SEC's ongoing administrative proceedings without first having to wait for an adverse order from the administrative court. The decision permits companies and individuals to bring their constitutional challenges against the SEC directly in federal court rather than proceeding through the administrative process. The case will now head back to the federal district court, which will decide the constitutionality of the SEC's administrative law judges (ALJs).

The *Cochran* decision comes at a time when the SEC relies heavily on its in-house administrative courts to adjudicate FCPA cases. 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. Following the passage of the Dodd-Frank Act in 2010, the SEC obtained the 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 switched from filing the majority of FCPA enforcement actions in federal court to bringing the overwhelming majority in administrative court. In fact, the SEC has not filed a single FCPA enforcement action in federal court since 2020. Figure 5 shows the percentage of all SEC actions filed as administrative proceedings since enactment of the Dodd-Frank Act.

Fig. 5, Percent of SEC FCPA Admin. Proceedings by Year



Given that SEC administrative actions alleging FCPA-related violations are generally filed and settled concurrently, the immediate impact of the Supreme Court's ruling in *Cochran* may be limited. More important will be the Court's ruling on the underlying question of the constitutionality of the SEC's administrative process, which could come in the form of a later appeal in *Cochran* or in the granting of a petition for certiorari in [Jarkesy v. SEC](#). In *Jarkesy*, the Fifth Circuit held that administrative proceedings before the SEC violated the Petitioners' Seventh Amendment right to a jury, that Congress had violated the non-delegation doctrine by allowing the SEC to choose the forum for enforcement without guidance, and that the ALJs were unconstitutionally insulated from the President's removal power. Although the Supreme Court has yet to take up *Jarkesy*, the SEC has filed a petition for review with the Court that may be granted in the future.

In a further knock to the perceived fairness of the SEC's administrative court system, the SEC [announced on April 5, 2022](#), that it had identified a "control deficiency" that gave enforcement staff access to certain adjudicatory memoranda meant for Commission officials who were ruling on those cases. The enforcement and in-house ruling arms of the SEC are supposed to be walled off from each other to avoid prejudicing respondents in the administrative proceedings. The SEC initiated an internal review to assess the scope and potential impact of the control deficiency and on [June 2, 2023, announced](#) that the investigation found no evidence that improper access had impacted the staff investigating and prosecuting the cases or the commission's decision-making in the matters. Nevertheless, the SEC decided to [dismiss the 42 pending proceedings](#) that were impacted by the improper access. While it is impossible to say with absolute certainty, based on descriptions of the affected proceedings provided in the June 2 statement, it does not appear that any of the dismissed proceedings were FCPA-related.

Looking Ahead

At least one company ([Clear Channel Outdoor Holdings, Inc.](#)) has disclosed accruals in anticipation of settling FCPA-related investigations. Additionally, and as noted above, the SEC has petitioned the Supreme Court for a writ of certiorari in the *Jarkesy v. SEC* case decided last year in the Fifth Circuit Court of Appeals, which we

covered in depth in our [Q2 report](#) from last year. If the Supreme Court takes the case and upholds the Fifth Circuit's holding, the SEC's reliance on administrative courts to resolve FCPA actions could be significantly impacted.