

## 2024 Q2 Report

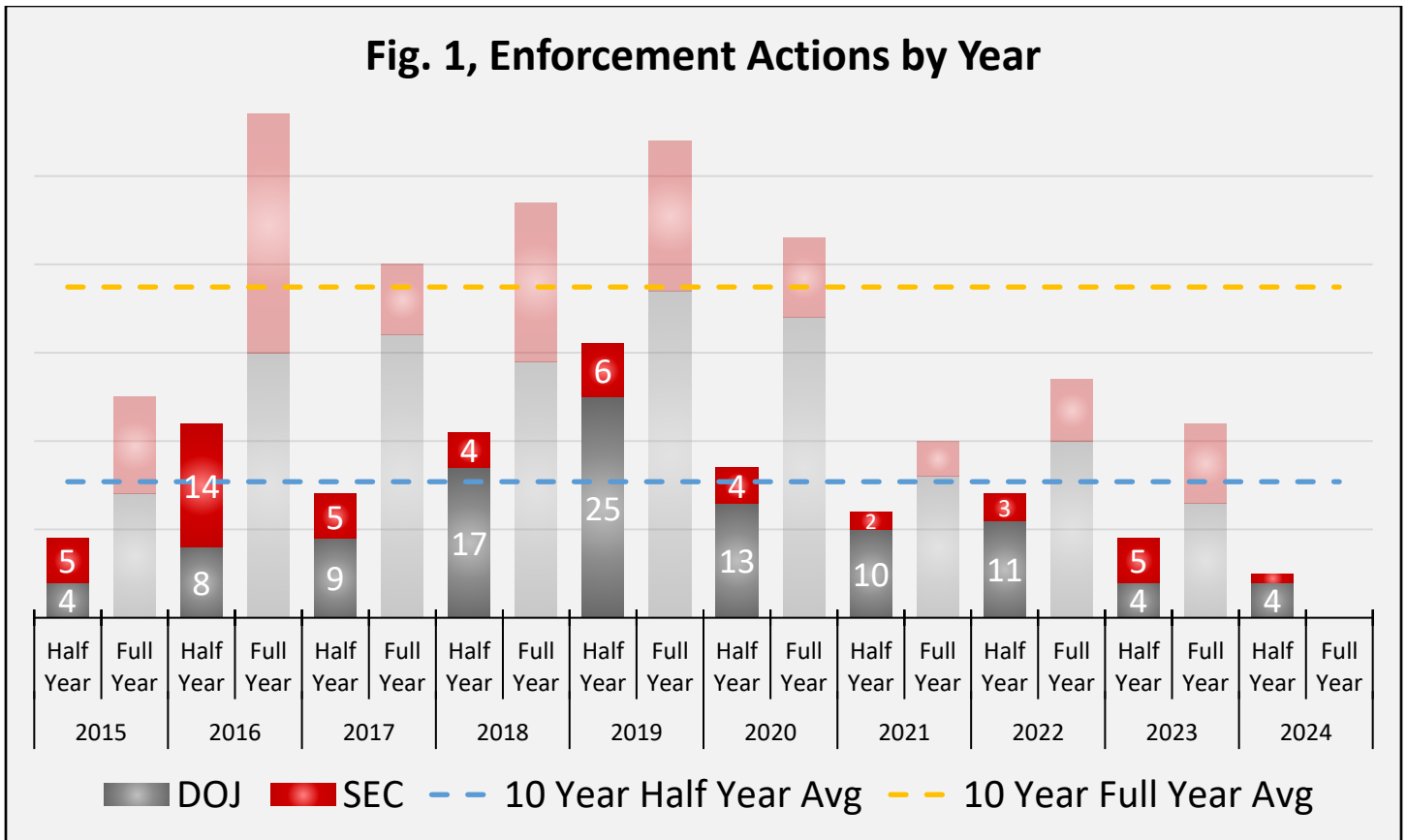
The FCPA Clearinghouse’s quarterly report provides an overview of some of the more notable trends and statistics in FCPA enforcement activity to emerge during the second quarter of 2024.

### **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.

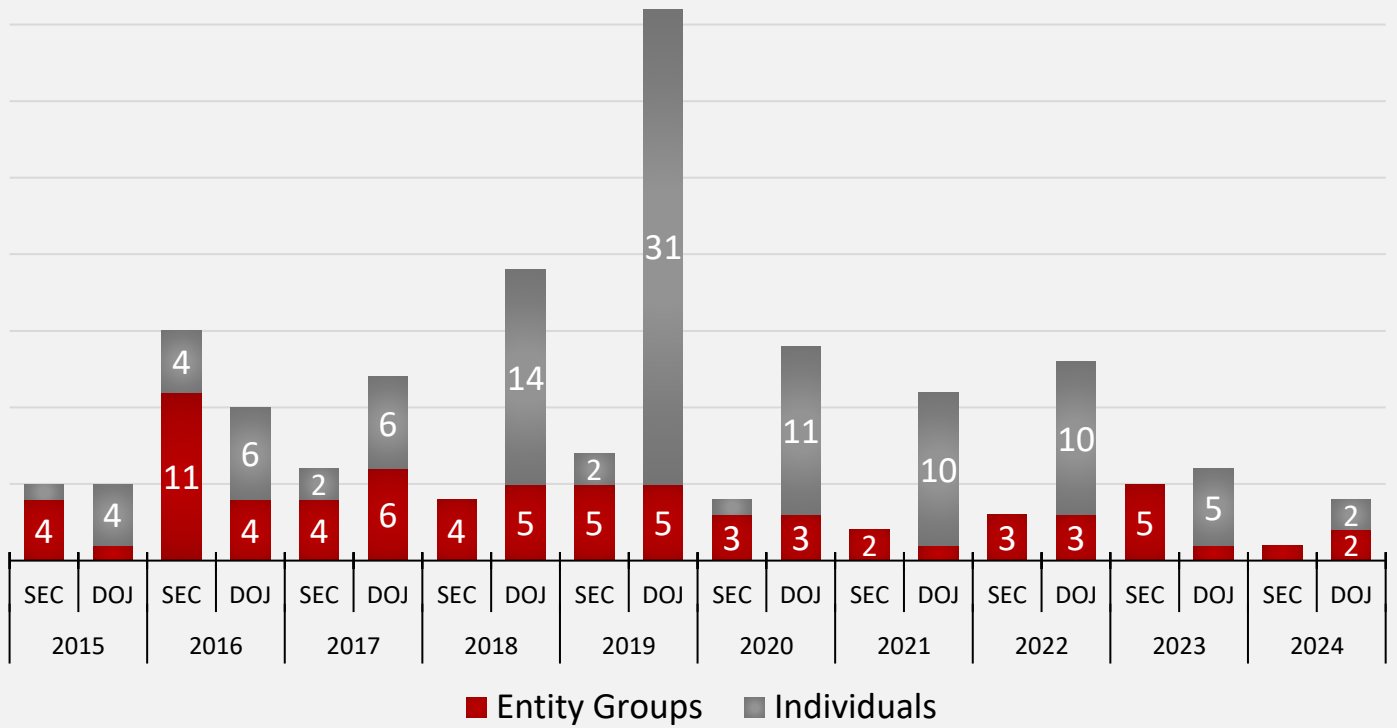
Neither the SEC nor the DOJ filed a new **[Enforcement Action](#)** in the second quarter of 2024, which is relatively rare. The last time a quarter passed without a single new enforcement action was in 2013, and before that, in 2003. Enforcement activity in the first six months of the year was the lowest recorded in almost two decades. If the level of enforcement activity seen through the first six months of 2024 continues through the rest of the year, 2024 will mark the fourth consecutive year of enforcement activity that falls well below the ten-year average. That said, Q2 numbers could increase if new cases that were originally filed under seal during the quarter are later made public. Figure 1 compares the level of enforcement activity between January and June with annual totals in each of the last ten years.

**Fig. 1, Enforcement Actions by Year**

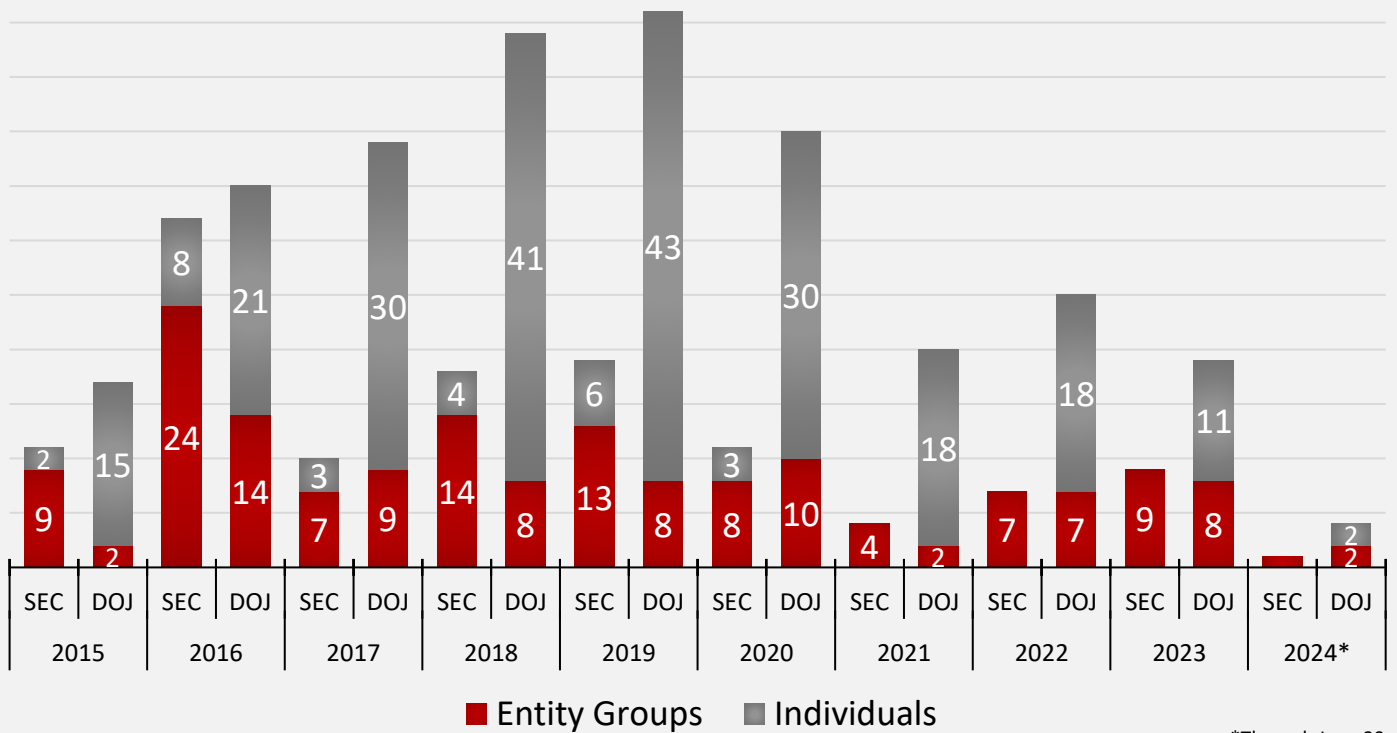


As the Clearinghouse has noted several times in prior quarterly reports, the decline in overall enforcement activity since 2020 can be attributed largely - although not exclusively - to a decline in the prosecution of individual defendants. The SEC has not sued an individual since 2020, and the last time the DOJ prosecuted so few individual defendants in the first half of the year was 2011. Collectively, the five companies and individuals charged with FCPA-related offenses this year represent the lowest number of defendants charged in the first six months of any year since 2006, when the DOJ charged two individuals and the SEC charged two companies. Figure 2 compares the number of individual and corporate defendants charged by the DOJ and SEC in the first six months of each of the last ten years. Figure 3 compares the number of individual and corporate defendants charged annually by the DOJ and SEC in each of the last ten years.

**Fig. 2, Entity and Indiv. per Year (Jan-Jun), All Claims**



**Fig. 3, Entity and Individuals per Year, All Claims**



\*Through June 30

## **Investigations**

U.S. authorities are currently investigating at least 32 different entity groups for possible FCPA violations. Last quarter, no companies disclosed a new FCPA-related [Investigation](#). According to information disclosed in SEC filings and charging and settlement documents, neither the DOJ nor the SEC concluded a publicly-disclosed investigation in the second quarter of 2024.

## **Pilot Program on Voluntary Self-Disclosures for Individuals**

On April 15, 2024, the DOJ initiated a new [pilot program](#) to encourage self-disclosure by individuals involved in certain types of criminal conduct, including violations of the FCPA. The pilot program follows the broad contours of the self-disclosure and cooperation provisions of the DOJ's Corporate Enforcement Policy but with additional elements specific to individual wrongdoing.

The DOJ outlined six criteria for culpable individuals to qualify for a non-prosecution agreement (NPA):

1. The disclosure must be original, non-public information not already known to the DOJ;
2. The disclosure must be voluntary, i.e. before any request, inquiry, or demand by the DOJ to the individual or their representative, where there is no preexisting obligation to report the information to DOJ, and in the absence of any government investigation;
3. The disclosure must be truthful and complete;
4. The individual must agree to cooperate fully and to substantially assist the DOJ in its investigation and prosecution of other individuals or entities which were equally or more responsible for the misconduct;
5. All profits associated with the criminal wrongdoing must be forfeited or disgorged; and
6. The individual cannot have engaged in any violent crime, cannot be the CEO or CFO of a company (independent of whether the company was connected to the wrongdoing), cannot be the leader of the scheme, cannot be a foreign or domestic government official (including any domestic law enforcement employees), and cannot have a prior felony conviction involving fraud or dishonesty.

The DOJ further stipulated that prosecutors retain the discretion to offer NPAs to individuals when appropriate, even when all the above criteria are not otherwise met, so long as those individuals come to the DOJ pursuant to the new pilot program.

The pilot program is designed to provide predictability and certainty by offering a pathway for culpable individuals to receive an NPA for coming forward with original information that might otherwise be difficult for the Department to obtain. The Department hopes to use this original information to help them identify and prosecute the most culpable individuals for corporate misconduct.

The introduction of this pilot program adds to the complex landscape of self-reporting credit. The DOJ and the U.S. Attorney's Offices have adopted corporate disclosure policies, and the U.S. Attorney's offices in the Southern District of New York and Northern District of California have instituted their own whistleblower programs to reward voluntary disclosures by individuals (though not in the FCPA context). These are in addition to similar voluntary disclosure and whistleblower policies at other regulatory agencies, including the SEC, the Commodity Futures Trading Commission, and the Department of Commerce. All these disclosure policies depend on the government receiving "original" information that is not otherwise known, which could pit individuals against companies in a race to be the first to disclose. Companies will have to continually assess the risk that the DOJ might be alerted to misconduct before the company knows about it or before it is ready to make its own disclosures to the government.

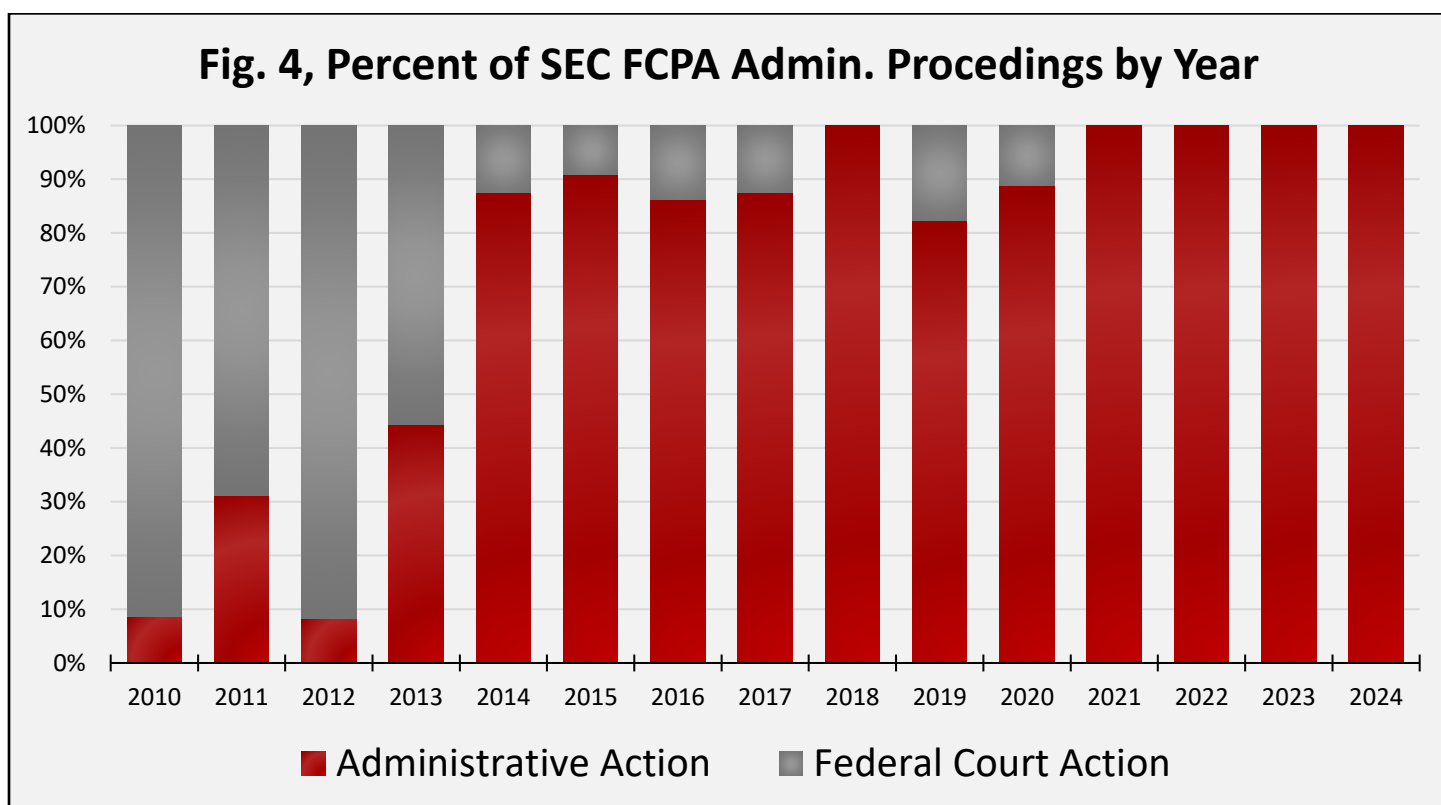
## **Jarkesy**

On June 27, the Supreme Court [weighed in](#) on the long-running dispute between George Jarkesy, Jr. and the SEC over the use of Administrative Law Judges (ALJ) to resolve securities fraud cases, which the

Clearinghouse has covered in [several previous quarterly reports](#). The case arrived at the Supreme Court after the Fifth Circuit Court of Appeals determined that the SEC ALJs were unconstitutional on three grounds: (1) they violated defendants' rights to a jury trial under the Seventh Amendment; (2) Congress improperly delegated power to the SEC when it allowed the agency to choose whether to litigate in federal court or an administrative tribunal; and (3) the ALJs were too insulated from executive supervision. The Supreme Court addressed only *Jarkesy's* right to a jury trial under the Seventh Amendment.

In a 6-3 decision split along familiar partisan lines, the Court held that under the Seventh Amendment, a defendant is entitled to a jury trial when the SEC seeks to impose civil penalties. The Court reasoned that the Seventh Amendment guarantees a civil jury right for suits at common law, and that the use of a civil penalty for the purpose of punishment or deterrence (instead of simple restitution) under securities law was fundamentally similar to a common law fraud lawsuit. Because the Court determined that the answer to the Seventh Amendment question resolved the case, it found no need to address the remaining issues.

Over the past few years, the SEC has brought the vast majority of FCPA cases in its administrative tribunals rather than in federal courts. Figure 4 shows the percentage of administrative and federal court proceedings filed by the SEC in each of the last 15 years.



The Supreme Court's *Jarkesy* ruling will limit the SEC's ability to proceed in an administrative forum against alleged wrongdoers, and it could lead to further attacks on administrative proceedings based on grounds not addressed in the ruling. One possible workaround for the SEC is to file administrative actions seeking other types of relief, such as disgorgement or injunctive relief, as the decision may not impact those proceedings. Although the full impact of the decision may not be known for quite some time, it is almost certain to have a significant impact on how the SEC enforces the FCPA.

### **Looking Ahead**

At least one company ([BIT Mining Ltd.](#)) has disclosed an accrual during the second quarter in anticipation of settling an FCPA-related investigation, but the company did not specify when it expected the resolution to

occur. Typically, FCPA-related investigations conclude within a few months of the disclosure of an accrual, but occasionally they conclude a year or more later.