A GROUNDED THEORY ANALYSIS OF CIVIL AND ADMINISTRATIVE CASES
PURSUED BY THE SECURITY AND EXCHANGE COMMISSION

A Thesis
Presented to
The Faculty of the Department of Criminal Justice and Criminology
Sam Houston State University

In Partial Fulfillment
of the Requirements for the Degree of
Master of Arts

by
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August, 2021
A GROUNDED THEORY ANALYSIS OF CIVIL AND ADMINISTRATIVE CASES
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ABSTRACT

Caines, Matthew, *A grounded theory analysis of civil and administrative cases pursued by the Security and Exchange Commission*. Master of Arts (Criminal Justice and Criminology) August, 2021, Sam Houston State University, Huntsville, Texas.

In the midst of the Great Depression in the 1930s, the government took considerable actions in an attempt to control the questionable and troubling practices of business to help prevent a similar crisis from ever burdening the nation again. What it created was the Securities and Exchange Commission (“SEC”), which today continues to bear primary responsibility for the administration of securities laws and enforcement actions against violators. Moreover, the SEC has increasingly gained enforcement capacities over its lifespan. Today, it can not only impose professional bars on violators, but also force them to forfeit any ill-gotten gains and even pay monetary fines through civil and administrative proceedings. While not conventionally thought of as criminal, these white-collar offenses can have a tremendous and harmful impact on their victims and the larger market. This research used a grounded theory approach to explore themes across the way the SEC handles the violators it detects and pursues in these proceedings, while also examining a small number of cases that were dealt with in the criminal courts. Publicly available litigation releases available through the agency’s website were used. Overall, the SEC was observed to operate in a generally predictable and equitable manner in which most of those who are charged are ultimately sanctioned in some way. Particularly interesting interactions were observed between entities and sanctioning outcomes. A secondary objective was to compare the handling of cases by the SEC under the administrations of two presidents from different parties, George W. Bush, a Republican, and Barrack Obama, a Democrat. The two periods exhibited a good deal of
similarity, but also unexpectedly showed that more severe monetary penalties were imposed during the Bush administration. The thesis concludes with a discussion of limitations and policy implications.

KEY WORDS: White-collar crime, SEC, Litigation releases, Administrative proceedings
ACKNOWLEDGEMENTS

I would like to thank my entire committee members for providing useful feedback. I am especially grateful for Dr. Gerber’s time, insight, humor, and patience throughout the project. I am thankful for my family’s continued support throughout the process, especially that of my father. I also wish to acknowledge the help and guidance provided by Ms. Dianna Kim in the tedious task of formatting the citations of the referenced SEC cases.
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CHAPTER I

Introduction

Though it has maintained a somewhat overlooked position in criminal justice research, white-collar crime has a considerable impact on not only individuals, but the larger economy. Beyond mere monetary costs, victims of these offenses often suffer in ways similar both emotionally and physically to those who are harmed by more conventional forms of criminality (Golladay & Holtfreter, 2017; Payne, 2012; Perri, 2011). At the same time however, many victims of white-collar offenses are not even aware of their victimization (Friedrichs, 2007). These offenses can often be easily concealed or construed as routine, legal, business activity. Moreover, those who do may be unsure of what actions they should take and what authorities they should alert.

Tasked with preventing economic crimes in the United States and holding their perpetrators accountable is the Securities and Exchange Commission (“SEC”), a relatively small but nonetheless potent, federal agency that was created following the 1929 stock market crash (U.S. Securities and Exchange Commission [SEC] 2013). Its creation, though widely resisted by many in the financial industry, was aimed at addressing the questionable financial practices that lead to the Great Depression (Miller, 1979; SEC, 2013). Though, the agency has faced criticism both for taking too much and too little action, it has come to be accepted by those in the industry as well as respected for its clean reputation. The agency has also largely managed to avoid politicization thanks to its organizational structure in which no more than three of its five commissioners can belong to the same political party.
Although the SEC is composed of a number of divisions, perhaps the most well-known and well-analyzed is the Division of Enforcement, which is responsible for taking legal actions against individuals and organizations who violate securities laws. This enforcement has consistently been viewed by SEC leaders as the agency’s most important function (Bromberg et al., 2017). This should not come as a great surprise considering agency personnel’s notion of it as a law enforcement apparatus. Enforcement of securities laws can take several forms: criminal, civil, and administrative actions. Criminal actions, the most severe of remedies, can result in incarceration, supervision, and orders of restitution. These actions are not handled directly by SEC attorneys, but rather are handed over to Department of Justice litigators (Shapiro, 1984; SEC, 2013). The decision of what action to take, if any, is then out of the hands of SEC personnel.

Unlike criminal remedies, civil and administrative actions are handled directly by agency personnel throughout the process. The use and potency of both of these criminal courses of action have expanded considerably since the agency’s inception, and even over the past several decades (Liebmann, 2019; Rosenfeld, 2019). Civil actions are filed in federal district courts and can involve any combination of injunctions from future violations, professional bars, disgorgement of funds obtained in the course of illegal activity, and civil fines. Disgorgement and civil fines can often bring in sizeable sums of money, numbering into the millions of dollars in many cases. The use of such penalties can serve not only to rehabilitate victims, but also to deter future violations (Rosenfeld, 2019). This is particularly true for civil penalties, which only became available later in the 20th century (Choi & Pritchard, 2017). Administrative actions are heard before Administrative Law Judges and can involve penalties similar to those imposed in civil
proceedings. Previously these actions had been limited to cease and desist orders for parties that were registered with the agency (Choi & Pritchard, 2017; Rosenfeld, 2019). Their increased use over the past decade has come, to some extent, even at the expense of civil actions (Jones, 2015; Spunaugle, 2014). Today, in spite of a considerable amount of criticism, they continue to be used extensively and justified for their greater efficiency over other courses of action.

The agency itself has not been without its share of criticism, both from those advocating it should do more and those who say it is already more active than it ought to be. Beyond this, some fear that, rather than being the overseer of the financial market and its executives, it has instead become subservient to them (Cox & Thomas, 2018; DeHaan et al., 2015; Macey, 2010). Of particular relevance to the current study, questions have also been raised regarding the agency’s reporting of its enforcement actions. Critics have contended that the agency can count a single action multiple times, thereby artificially inflating the amount of money it collects, and of course, its own effectiveness (Macey, 2010; Velikonja, 2015). While such actions may not necessarily be intentional, the somewhat perverse incentives for the agency are difficult to deny. Indeed, with every financial catastrophe, the agency itself has benefited from new legislation expanding its breadth and authority (Karmel, 2005; Macey, 2010).

Recent legislation in the form of the Sarbanes-Oxley Act of 2002 and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 were both responses to financial turmoil that sought to ensure greater protection for consumers and the larger financial market. Many of the changes had direct impacts on the SEC, such as expanding the scope of who could be charged, in what setting, and how much they could be forced
to pay (Buckberg & Dunbar, 2007; Rakoff, 2014; Silberfarb, 2003; Velikonja, 2017a). Although the agency is largely apolitical, the presidential administration can play a role through not only the appointment of commissioners, but also through the actions of these commissioners and informal means. Recent research has shown that the agency is impacted by the individuals leading the agency (Rosenfeld, 2019; Velikonja, 2017b), but recent academic research on the president’s impact appears sorely lacking. Moe’s (1982) work did find that SEC behavior changes based on who is occupying the White House.

The research of Susan Shapiro was an important inspiration for the current project. Shapiro had the opportunity to directly observe the SEC and have access to its documents in the 1970s. This provided her with valuable resources to explore how white-collar violators were handled by the SEC, which was later published in detail in her 1984 book. Her research found that criminal actions are not frequently taken, but when they are, it is for the cases that are either most serious or about which little else can be done (Shapiro, 1984; Shapiro, 1985). These, among other findings, are further discussed in Chapter II. The present study follows in the footsteps of her work and can also be criticized for an overreliance on documents. Unlike Shapiro’s work, this study does not focus on criminal actions and is further limited in that only cases that have actually had legal action taken are included. Unlike Shapiro, the present work did not gain access to any non-public documents. The methodological approach of the present study is also different from Shapiro’s work, as well as that of other more recent researchers.

The current analysis utilizes a grounded theory approach of public SEC documents. Grounded theory is a unique form of analysis in that it does not rely on the traditional process of hypothesis formation, literature review, data collection, and
findings (Schroth, 2019). Instead, it instead relies on the concept that theory can be
discovered from, or grounded in, the data itself (Glaser & Strauss, 2017). Findings are
essentially made the moment the first piece of data is analyzed. The qualitative approach,
which was first introduced in the 1960s by Glaser and Strauss, uses inductive methods to
move through a series of stages in which hypotheses can be formulated and changed as
needed (Schroth, 2019). Coding is the first step in the process, in which key points are
identified. From the coded data, broader concepts are located by the researcher, who then
groups these concepts together into categories. This leads to the final stage, that of theory
presentation and findings, although theory formation has actually been ongoing
throughout the research process.

In keeping with Glasser and Strauss’s position that “all is data,” this project
analyzes litigation reports released by the SEC for the general public. Documents are one
medium that can be analyzed by grounded theory research (Bowen, 2009). When
analyzed, they are often done so in conjunction with other resources, such as interview
data, though this project is not novel in its sole reliance on documents for data. Although
these documents cannot be interacted with in the same manner as persons being
interviewed, they nonetheless offer some distinct advantages. In addition to their ease of
access, document analysis is archival research that does not have any impact on the topic
under study (Shapiro, 1984). Whereas a researcher that observes firsthand how an agency
operates on a daily basis may actually alter the way those under study behave, document
analysis comes with no such risk. Documents also provide a good opportunity to track
changes in organizations over time, as is done in the current study (Bowen, 2009).
The documents used in the present analysis come from the Securities and Exchange Commission’s online archives of litigation releases and administrative proceedings. The SEC pursues hundreds of cases each year and provides public releases of the agency’s various actions as well as information on case outcomes. Some of these releases, of which there are themselves several hundred each year, even go so far as to provide information on criminal cases that the agency itself did not pursue. Cases provide not only information on the actions taken by the agency, but also include information on the defendants and the alleged illicit activities. Cases in which a judgement is entered also provide information on what sanctions are imposed, and when these involve monetary penalties, the amount imposed.

This project aims to address important gaps in the research, which has traditionally taken positions in niche areas of agency activity and used only quantitative measures. While the current study will not be able to match the scope of Shapiro’s work several decades ago, it does aim to take a step in that direction, providing insight to an important, but often overlooked, law enforcement agency in a new millennium. Indeed, since the time of Shapiro’s work, the tools at the disposal of the agency have expanded considerably with greater abilities to impose monetary penalties on rule breakers. This analysis also seeks to discover differences, if any, between the presidential administrations of recent presidents from different political parties.

Chapter II presents a background of white-collar crime, the Securities and Exchange Commission and its operations, the impacts of new legislation and presidential administrations, Shapiro’s research on the agency, as well as agency effectiveness and criticisms of it. Chapter III discusses grounded theory methodology and how it is applied
to this project, the sample of cases, and how they were selected. Chapter IV presents the findings of the qualitative project. Finally, Chapter V provides a summary, as well as limitations, policy implications, and directions for future research.
CHAPTER II

Literature Review and Background

White-Collar Crime

The concept of White-Collar crime and attention paid to it by criminologists can largely trace its origins to Edwin Sutherland, who deserves much credit for his work many decades ago on this matter. Certainly, what we now define as white-collar crime had been occurring long before Sutherland was even alive. In fact, it has been occurring for thousands of years, to at least the time of Aristotle (Benson & Simpson, 2009). In addition to Classical Athens, the Bible, the Talmud, and somewhat more recently, Middle Age English common law, decry such moral wrongs as price fixing, among other exploitative business activities (Geis, 1988; Von Fritz & Kapp, 1950). The practice of regulating the market itself also dates back to ancient times (Friedrichs, 1996). Prior to Sutherland, Edward Alsworth Ross published *Sin and Society* in 1907; the work served as sociological academia’s first glimpse into the transgressions of the powerful (Wheeler & Rothman, 1981). Nonetheless, the topic had not received very much attention within the field of criminology until the past century, and perhaps it never would have if not for the work of Sutherland and those who followed him.

Unfortunately, as is the case with so many other criminal justice concepts, it is virtually impossible to arrive at a universally accepted definition of white-collar crime. Yet this problem seems to be most acutely felt within the realm of white-collar crime with its very wide array of terms that capture slightly different types of unethical behavior. While some definitions define the crime based on the offense, others focus on the offender. Though Sutherland maintained a focus on the privileged status of the actor,
the approach taken in the current study will reflect Shapiro’s position that we should “collar the crime not the criminal” (Shapiro, 1990).

Despite variations in definition, a wide array of offences that can be called white-collar or corporate crime often end up sharing similar features. These include links to legitimate business and occupation, acts perpetuated by relatively respectable people who are generally more educated than the average citizen, a motivation based largely in financial greed, and indeed, a generally different demographic makeup of offenders compared to those guilty of street crimes (Benson & Simpson, 2009). This can be attributed to differences in opportunity among actors; one need look no further than the relative scarcity of non-whites and females (and especially non-white females) who maintain positions of power in large corporations. It should come as little surprise then that a great majority of those convicted of white-collar crimes are, compared to street crime, more often older, white, and male (Benson & Kerley, 2000; Wheeler et al., 1988). Yet it is important to note that this demographic makeup holds especially true for such crimes as antitrust violation and securities fraud by individuals with very high net wealth, while crimes like embezzlement were committed much more frequently by females and individuals who actually were, based on the median values, in debt (Benson & Simpson, 2009; Wheeler et al., 1988). This can be viewed as an example of why definitional variations are more important than initial perceptions may suggest.

It is also important to understand that white-collar crime can be perpetuated by an individual or an organization. This, to some extent, sounds quite peculiar; undoubtedly, a corporation is composed of individuals, so it seems counterintuitive to see a corporation, which does not itself breathe or exist in a human sense, can be viewed as a criminal actor.
Legally, however, some organizations, namely corporations, have been treated as if they were natural persons. Practically speaking, organizations themselves must act through individuals or groups of individuals (Shover & Hochstetler, 2006). When a crime is defined as an “individual” white-collar crime, it is done exclusively or primarily for personal benefits by a person (Shover & Hochstetler, 2006). “Organizational” crime can be well defined as “illegal acts taken in accordance with operative organizational goals which do serious harm either physical or economic, to employees, consumers, or the general public” (Schrager & Short, 1978). The two categories need not be mutually exclusive as those involved in organizational crime may also benefit personally from actions that benefit their employer (Shover & Hochstetler, 2006). For example, an individual who helps the company improve its financial record by fabricating statements may be promoted to a position with a higher salary and other added benefits.

Important to a more wholesome understanding of white-collar crime is the implications it has for its victims. White-collar crimes are obviously different from traditional street crimes in many ways, though they share many elements as well, the less personal and ostentatious nature of the former does not lend itself as well to a focus on victims as the latter. Regrettably, this is an area that has traditionally experienced a relative dearth of research (Moore & Mills, 1990). Furthermore, many of those who are victims of white-collar crimes do not even know that they have been victimized (Friedrichs, 2007). This is especially regrettable in light of research suggesting that approximately 25 percent of households have been victims of white-collar crime (Huff et al., 2010).
While it may seem to defy conventional logic, there are actually many similarities, arguably more than differences, between white-collar crime victims and victims of traditional crime (Piquero, 2018). Several studies have found that corporate crime takes the form of physical, emotional, and behavioral harms for their victims, in addition to direct financial loss, and larger societal harms (Golladay & Holtfreter, 2017; Payne, 2012; Perri, 2011). Specifically, Golladay and Holtfreter (2017) found that the experiences of victimization for white-collar crime and street crime were almost identical. A 2011 article published in *Fraud Magazine* noted that numerous studies have revealed that fraud victims suffer the same, or even greater, trauma in comparison to victims of violent acts (Perri, 2011). A striking indication of white-collar crime’s harmfulness can be found in unsafe working conditions for employees in unsafe or unhealthy working environments. Reiman & Leighton (2017) suggest that the rate of death as a result of these poor conditions is four times higher than the murder rate in the United States. It should come as little surprise then that corporate crimes are high in dollar amounts. While it is difficult to measure precise losses from white-collar crime, yearly estimates range from 250 billion to one trillion dollars (Martínez, 2014; Rossoff et al., 1998; Stewart, 2015). The monetary loss suffered as a result of property crime are likely miniscule in comparison to that from white-collar crime, though prevalence rates of white-collar crime are lower than for both property and violent crimes (Reiman & Leighton, 2017; Truman & Langton, 2015).

Beyond harms suffered by individual victims, the larger economy may also be suffering thanks to white-collar crime. After all, the United States, as a mixed-market economy is based largely on competition as well as investment. It should be noted that
both individuals and companies experience financial loss at the hands of white-collar criminals. Businesses appear to actually experience victimization more frequently than individuals. Over a 24-month period, nearly half of the 5,000 businesses in one survey—47 percent—reported being victimized by fraud alone (PriceaterhouseCoopers, 2020). Lack of trust among potential investors is eroded by white-collar crime incidents, which can prove problematic to future economic growth in private business, an essential aspect of the modern capitalist-based economy (Kempa, 2010).

It appears that the public has become more cognizant of and sensitive to these detriments of white-collar crime; this is further evidenced by an increased punitive attitude toward it, though this is not a very new development. Indeed, several studies have indicated that the public generally highly condemns corporate crimes and many have found perceptions of it to be just as serious as many types forms of street crime (Cullen et al., 1982; Kane & Wall, 2006; Rebovich & Kane, 2002; Rebovich & Layne, 2000; Rosenmerkle, 2001). Other studies that looked at attitudes of punitiveness found support for harsh criminal sanctions for many types of white-collar crime (Cullen et al. 1983; Holtfreter, Van Slyke et al., 2008; Schoepfer, Carmichael, & Piquero, 2007). Findings of increased awareness of the victims of white-collar crime has also categorized the research in this area (Holland, 1995; Rebovich & Kane, 2002).

Based on the findings regarding the harms and perceptions surrounding white-collar crime, one would expect to see higher punishments and more safeguards to prevent its occurrence. Disappointingly, the perpetrators of white-collar crime who are dealt with in the criminal courts receive punishments categorized by prosecutorial leniency (Perri, 2011; Reiman & Leighton, 2017). The prosecution of organizations has proven difficult
since the time of the attempted Ford Pinto homicide prosecution decades ago. In addition to the fact that an organization, though sometimes granted the rights afforded to individuals, cannot actually be sentenced to prison, difficulties in locating blameworthiness also characterize such investigations. Those individual corporate offenders who receive conventional criminal sanctions tend to evade the most severe ones; being categorized by shorter periods of incarceration (Reiman & Leighton, 2017). While some notable cases stand out against this, such as those of Jeffrey Skilling and Bernie Madoff, these prove the exception rather than the rule (Reiman & Leighton, 2017). Furthermore, the most subtle cases of fraud are hardest to prove beyond a reasonable doubt (Levi, 2010). This high legal standard of the criminal case is an added barrier for prosecutors of violators in the criminal courts. The civil courts, with their lower burden of proof of preponderance of the evidence, present an attractive alternative. While the official penalties may not always be substantial, reputational costs, at times, can be. These costs can even be felt sans formal legal action. An example of this can be seen in the case of British drug firm British Bio, which lost 18 percent of its value after the firm’s head of research publicly made claims of “alleged misconduct” (Levi, 2010). Levi (2010) contends that the drop reflected the market’s perception that executives could not be trusted and that the products involved would not be as profitable as formerly anticipated.

Unfortunately, white-collar crime has been rather difficult to study quantitatively, leading scholars to rely largely on qualitative methods. Despite this, many criminologists have recognized the importance of analyzing it and have applied theoretical models to explain it (Benson & Simpson, 2009; Shover & Hochstetler, 2006). Various theoretical
frameworks have been used to explain white-collar crime. Sutherland himself suggested that differential association theory could explain this type of crime, as well as street crime. Other approaches, including anomie, labelling theory, organization theory, control theory, rational choice theory, and integrated theories have been suggested as well. The present study is unique from many previous works in that, rather than relying on a previous theory for hypothesis formation, it uses an inductive method of studying Securities and Exchange Commission enforcement data.

The Securities and Exchange Commission

The Securities and Exchange Commission was created by congress with the passage of the Securities Exchange Act of 1934 (SEC, 2013). This act, along with the Securities Act of 1933 were a response to the devastating 1929 stock market crash, which lead to enormous financial losses and the Great Depression (SEC, 2013). The two new pieces of legislation were aimed at restoring investor confidence, compelling public corporations to truthfully report information, and prioritizing the interests of investors over organizations and traders. Both were highly debated and fiercely resisted by officials from the banks and securities industry (Miller, 1979). Specific aspects of the 1934 Act involve prohibitions on insider trading and mandatory financial reporting for large companies. The 1934 Act gave the newly created SEC authority to oversee various aspects of the securities markets and ensure the new regulations were being followed.

These acts, and the agency they created, have persisted for decades as among the most critical aspects in the nation’s market regulation. The SEC is also responsible for such tasks as the creation and amendment of securities rules, the oversight of inspections of companies and of private regulatory entities, and the coordination among federal, state,
and foreign regulators (SEC, 2013). The agency has been credited by those in the securities industry for its restoration of public confidence in the securities industry (Friedrichs, 1996). Getting off to a strong start under its first several chairmen, the first couple of decades of the agency’s existence were characterized by its dismantling of the far-reaching public utility conglomerates into more regulatable entities (Friedrichs, 1996; Seligman, 1982). The 1950s were a comparatively dormant period while the 1960s involved the agency becoming a more of an activist agency with a new emphasis on enforcement (Pritchard, 2013). In the 1980s and 1990s, the imposition of punitive monetary sanctions became a new possible route of action, first in civil proceedings and later in administrative action; this trend has continued into the present thanks to recent financial scandals and crises (Choi & Pritchard, 2017).

The SEC is the main regulator of the securities market in the United States. However, the SEC is not the only agency responsible for the prevention of corporate crime. Over two dozen federal agencies have jurisdiction to investigate suspected white-collar criminals, and the distinctions between their boundaries is not always clear (Pence, 1986). Nonetheless, the agency has considerable oversight power over the securities market, having oversight over tens of thousands of entities. Its task is indeed quite formidable, the amount of money allocated to the agency is not even close to one percent of the value of the entire US securities market (Shapiro, 1984). Specifically, it also oversees numerous participants in the markets: broker-dealers, investment companies and advisers, clearing agencies, transfer agents, credit rating agencies, private fund advisers, municipal advisors, as well as participants in the derivatives markets and organizations such as the Public Company Accounting Oversight Board and Financial Industry
Regulatory Authority (SEC, 2020). Despite the many tasks and challenges as well as occasional failings, the agency has traditionally maintained a respected position and avoided internal scandal (Eaglesham, 2013). The agency has been characterized as small in terms of federal agencies (Shapiro, 1984). But in terms of its authority and breadth, it has also been termed a “super-agency” with few others rivaling it in such aspects (Hazen, 1979). With a mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, the agency has many roles and a number of means of achieving these goals (Friedrichs, 1996).

By its nature, the SEC is an independent federal agency that is largely insulated from politics. The organization is headed by the Chairman of the Commission, who serves as one of the five commissioners who oversee it (SEC, 2013). Each commissioner is appointed by the president to serve a five-year term, with the appointments made at staggered intervals. Importantly however, no more than three of the commissioners can belong to the same political party, preventing it from becoming dominated by the president’s party (SEC, 2020). Breaking down the organization further, there are approximately 4,600 staff members organized into five divisions and 24 offices operating in offices in Washington D.C. and 11 other regional offices (SEC, 2020). Though today the agency is dominated by attorneys, in the past the agency was composed of many industry experts and economists in addition to attorneys (Macey, 2010). At the same time, it appears to have less influenced by lawyers and paralyzing bureaucracy than other federal agencies (Macey, 2010).

One of these SEC divisions is the Division of Enforcement. The Division of Enforcement was not created until 1972, several decades after the SEC itself. This was a
consolidation of the Agency’s enforcement activities, which were previously dealt with by multiple divisions. Despite the division’s more delayed origin, enforcement has been described as the agency’s top priority (Bromberg et al., 2017). Approximately 1,400 SEC employees work in the division, which files about 800 enforcement actions each year (SEC, 2019). Over the past several decades, enforcement has been considered by nearly every agency chairman to be the SEC’s primary concern and saw it as a law enforcement agency (Katz, 2009). Today, the agency pursues securities violations at a rate far beyond other countries; compared to at least Germany and United Kingdom, the United States spends more money on enforcement, has more regulators, and maintains harsher penalties (Coffee, 2007; Jackson, 2007). The Securities and Exchange Commission is largely at the heart of this comparatively high level of enforcement. The SEC oversees administrative enforcement as well as the civil litigation that is heard in federal district courts.

Although the Commission does not handle criminal cases directly, it nonetheless will bring cases to the attention of the Department of Justice, which is ultimately responsible for criminal charges against defendants. Those being charged criminally may, and sometimes are, also litigated civilly and or administratively by the SEC. The DOJ has the final decision of whether or not to pursue legal actions against violators.

Civil Actions

Civil actions are filed by the SEC against violators in federal district courts. Defendants can be enjoined from future violations, be barred from engaging in certain professional activities, be forced to disgorge ill-gotten gains, and forced to pay civil penalties. Any combination or all of these routes may be taken. Civil penalties are monetary fines that the SEC imposes on organizations and individuals who breach
securities laws (Liebmann, 2019). These fines can range into the millions of dollars, making them the most formidable tool in the SEC’s arsenal. These civil penalties, along with disgorgement and industry bars have been widely used to combat white-collar crime (Liebmann, 2019).

When the SEC was first created, it did not actually have any authority to impose civil penalties (Rosenfeld, 2019). During Shapiro’s investigations, civil actions had been initiated in federal district courts by SEC staff and typically consisted of injunctive proceedings that, if successful, prevented the violators from breaching securities laws in the future (Shapiro, 1984). These injunctive proceedings were typically resolved by consent between the SEC and the entity involved (Shapiro, 1984). While some parts of the process still persist, over time, the SEC’s ability to use, and actual use of, these remedies has increased (Liebmann, 2019). In 1984, the SEC was first allowed to seek civil monetary penalties, when the Insider Trading Sanctions act allowed for treble damages to be sought in said cases (Choi & Pritchard, 2017). Prior to this, disgorgement, or the forfeiture of ill-gotten gains, and restitution to victims were sometimes used against violators, though penalties could not be imposed as they are today. Civil penalties as well as the Racketeer Influenced and Corrupt Organizations Act give enforcers a powerful tool to use against violators outside of the criminal courts, providing them with an alternative or auxiliary means of punishing offenders (Eitle, 2000). Over the past 20 years their use has become an increasingly important tool in the agency’s repertoire; today they are a staple of many enforcement actions (Rosenfeld, 2019). The large financial sums these penalties bring in have been justified by the agency as a deterrent against future offending (Rosenfeld, 2019).
Unfortunately, such proposed penalties will not have a deterrent impact on everyone, such as fines facing liquidation; such fines might only ultimately serve to create unemployment and decreased competition (Levi, 2010). These large figures also serve as a positive indication of the agency’s detection and enforcement activities.

Technically, these civil penalties exist as a form of restitution; as a means of rectifying a previous misdeed. These compensatory actions are not necessarily intended to be punitive; punishment rests in the purview of the criminal law. For the SEC, however, monetary penalties that arise out of civil, as well as administrative penalties, have at least some potential as a deterrent. Indeed, many civil sanctions, though they remain in a civil procedural setting, are punitive in nature, occupying a “middle ground” between the strictly civil and criminal laws (Mann, 1992). Because civil sanctions are not constrained by the higher burdens of criminal procedure, their imposition is cheaper and more efficient than criminal sanctions (Mann, 1992). Interestingly, these civil sanctions can sometimes be more severe than the parallel criminal sanctions imposed for the same conduct; this has become even more apparent with the considerable increase in the amount of money involved in these penalties (Mann, 1992).

Yet civil enforcement, like that of administrative as shall be seen, is not without some degree of controversy. As will be demonstrated, the agency typically pursues organizational, as opposed to individual, wrongdoers. As such, when civil penalties are assessed against organizational defendants that are public companies, the cost of the fines are felt not by the corporation’s executives, but by shareholders in the firm (Rosenfeld, 2019). These same individuals may have already been harmed by the company’s actions. For example, a company that has overstated earnings may have led to some individuals
overpaying for the price of stock; after the organization agrees to a civil monetary fine for
the misdeeds, these same individuals may once again be adversely impacted by a drop in
the company’s stock price and smaller dividends. Despite the potential adverse effects for
those who bore no responsibility for a corporation’s misdeeds, civil penalties have
become commonplace and routine for public companies (Rosenfeld, 2019).

**Administrative Proceedings**

The use of administrative proceedings, and the administrative law judges (‘‘ALJ’’)
who hear the cases, has expanded considerably in recent years. Whereas previously the
only sanction ALJs could impose was an order to stop an illegal practice, prohibit an
individual from associating with a regulated organization, or revoke an entity’s
registration with the SEC, the Securities Enforcement Remedies and Penny Stock Reform
Act of 1990 gave the agency authorization to pursue monetary penalties in administrative
proceedings (Choi & Pritchard, 2017; Rosenfeld, 2019). More recently, the Dodd–Frank
Wall Street Reform and Consumer Protection Act further expanded the agency’s ability
to impose monetary penalties. Civil penalties could be imposed on any individual, for any
provision of the securities laws, who can be fined amounts comparable to those in federal
courts (Rosenfeld, 2019). In the past, administrative proceedings had been limited to
those who were registered with the agency (Shapiro, 1984). The use of administrative
proceedings has frequently been justified for its greater efficiency over civil court
proceedings (Rakoff, 2014; Rosenfeld, 2019). These in-house proceedings have been
seen as giving the agency a distinct advantage over court actions. It therefore comes as
little surprise that the agency has been tremendously successful in these actions,
particularly compared to other enforcement approaches. Interestingly, their frequency of
use has even led some to believe that the SEC may move away from civil penalties entirely in favor of administrative actions (Jones, 2015; Spunaugle, 2014).

Interestingly, unlike federal district court judges, administrative law judges do not have the ability to base penalties on the pecuniary gains of the violator, rather the maximum penalties are to be based on “each act or omission” that violates or causes a violation of the securities law (Eisenberg, 2016). As such, a company that distributes false statements to thousands of stockholders could technically be fined an astronomical number of tens of billions of dollars. In practice, the ALJs have maintained a practical approach, avoiding a literal interpretation in favor of one that matches penalties to the magnitude of the securities offense (Eisenberg, 2016). While each of the ALJs in Eisenberg’s (2016) analysis took slightly different approaches to dealing with violators, a theme that emerged was the judges’ reliance on various methods to justify, as opposed to determine, the penalty’s dollar amount. Interestingly, administrative settlements in the SEC do not even have to be heard by ALJs, they can some directly from the Commission (Rosenfeld, 2019). Many administrative cases are also dealt with through summary dispositions that do not even involve in-person hearings (Platt, 2017). This approach was once uncommon but, like many of the newer methods, has been justified for its efficiency (Platt, 2017). For some of the reasons mentioned above, the use of administrative proceedings has been a particularly noted area among critics.

**Agency Effectiveness**

As the SEC was created in order to regulate the securities industry, it might seem that those being regulated would have been opposed to it. This has not entirely been the case, however. Regulated entities actually have shown a common interest in its success
and supported and cooperated with the agency (Moe, 1982). As the dialectical perspective suggests, regulatory laws are useful as they can improve public confidence and trust across the various organizations to promote better business relations. But if these regulations become more of a burden than a benefit, however, they are no longer useful and will be opposed. Unfortunately, businesses have a disproportionate impact on the law-making process; politicians themselves are frequently dependent on businesses for funding, support, and network connections (Friedrichs, 1996). Various hypotheses about a deeper impact of private industry on the agency are discussed further in the subsequent section.

The executive branch, of which the SEC is a part, is critical to the actualization of law; without its enforcement the laws themselves would be, for all intents and purposes, non-existent (Friedrichs, 1996). The Securities and Exchange Commission has largely obtained successful outcomes in its pursuit of rule violators. Not surprisingly, outcomes vary based on the means by which they are dealt with. In the fiscal year ending September 30, 2014, the SEC won 100 percent of its internal administrative hearings although it only won 61 percent of the cases it brought to trial in federal courts between September 2013 and September 2014 (Eaglesham, 2014; Rakoff, 2014). According to Velikonja, however, (2017a) the selected forum for hearing cases is not so considerable, using her methodology over an eight-year span of data, she found that federal district court judges ruled for the SEC and against defendants in 88 percent of cases, whereas ALJs ruled for the SEC in 90 percent of cases. Nonetheless, she recognizes a shift toward increased administrative utilization in 2014, with 37 percent of actions being taken in court and the remaining 63 percent administratively, with certain types of violations
being more likely than others to experience the change (Velikonja, 2015). Research by Choi and Pritchard (2017) suggests that this ability to choose what forum the agency uses has increased its ability to obtain settlements if nothing else.

The amount of the fines often varies from year to year, but consistently involve very large sums of money. In fiscal year 2018, the SEC imposed nearly four billion dollars in fines (Michaels, 2018). When looking at the absolute sums of money obtained, one must keep in mind that a few cases that involve very large cases skew the values; the mean value far exceeds the median year after year (Velikonja, 2017b). Bromberg et al. (2017) have noted that discerning between sanctions imposed administratively are actually not as straightforward as might be expected. For example, civil penalties can be imposed not only in civil cases, but also in administrative ones as well (Bromberg et al., 2017).

While success in these proceedings is generally positive, especially for those that are administrative in nature, one must keep in mind that many cases will inevitably not be dealt with in any official way. Moreover, the number of cases that are detected are likely only the tip of the iceberg of all illicit market activities going on. The true effects of SEC enforcement are virtually unknowable. Whether or not a sanction actually rises to the level to deter a potential violator is very difficult to measure, beyond this, an assessment of something as intangible as consumer confidence in the market is simply not possible.

There are also notable differences between entities against whom formal action is taken. Many of the actions taken by the SEC have been directed at organizational violators. The current regulatory approach involves an increased emphasis on corporate violators while a relative lack of individuals being charged by the agency has been
observed (Turk, 2017). In Rosenfeld’s (2019) analysis of cases from fiscal 2010 through 2018, individuals were charged in only a quarter of cases; in some industries this was even lower, with less than 13 percent of financial services cases involving individuals.

There appears to be good explanation for this from the SEC’s perspective. Bringing actions against organizational violators is typically much easier than against individuals (Velikonja, 2015). While individuals usually fight charges like ones that would bar them from the industry or suspend their ability to engage in certain operations, organizations are typically willing to agree to settle for financial penalties or other, less punitive, sanctions (Velikonja, 2015).

Interestingly, regulation violators do not always have to actually admit wrongdoing in settled cases (Winship & Robbennolt, 2018). Settlements in cases have become increasingly common. In fact, today, the majority of cases are filed as such; few actually proceed to trial (Rosenfeld, 2019). This is especially true for public companies, with over ninety percent be dealt with via settlement (Rosenfeld, 2019). Out of court settlements have indeed become an important aspect of the SEC’s more recent approach to enforcing the securities laws (Turk, 2017). This can be a convenient outcome nonetheless for both the agency and the violators, as the company under scrutiny does not have to make a public admission of improper behavior, while the agency collects, and it able to report, the money collected from the violators. Engaging in settlements with companies avoids the more stringent legal constraints of traditional enforcement (Turk, 2017). This practice of achieving regulation by deciding to settle with offenders often involves quickly moving from case to case and the imposition of fines reaching into the billions of dollars enforcement (Turk, 2017). Though settlements have been a facet of
administrative enforcement, they are unique from other enforcement approaches and, like Administrative Law Judges, have been questioned regarding the deleterious long-term effects they may have on regulation.

As will be further illustrated later, many of the more recent changes following national financial problems have ultimately empowered the SEC. The agency has also obtained increasing budgetary allotments in the wake of these issues. This has not necessarily appeared to translate into more effective agency performance; with a lack of evidence to support that budget increases meaningfully reduce securities market violations (Calhoun, 2016). While this also may reflect some type of agency capture, it may simply be the result of high financial incentives for law breakers that are simply not outweighed by agency deterrents (Calhoun, 2016). Others suggest that the SEC and other regulators, pressured for results and a need to legitimize themselves as responsive to social threats, often simply pursue the low-hanging fruit, cases that are relatively easily dealt with, but which may not be as harmful or complex as others (Levi, 2010; Rakoff, 2014). This position seems to make sense, not because the agency is not striving to be effective, but due to the recent pressures and likely greater degree of efficiency stemming from such an approach.

Criticism

Although the Securities and Exchange Commission has had an historically positive image, its activities, specifically in the realm of enforcement, have not been without critics. Such fault-finding has been increasingly noticeable in the wake of financial crises, particularly the Great Recession that began in the late 2000s. Recent arguments have criticized the agency’s inability to detect such large-scale swindlers
while focusing on smaller-scale offenders, inaccurate outcome reporting methods, and potential blemish of the agency from industry interference, among others.

Monetary penalties imposed by the agency have been criticized. The civil penalties have been criticized for poor procedural protections for defendants, insufficient severity of sanctions allowed, and a potential for socioeconomic bias, with the effectiveness of monetary sanctions limited to those who are able to pay them (Mann, 1992). The civil penalties have also been criticized for being outdated and inappropriate for certain types of violations (Liebmann, 2019). Others have contended that their increased use causes them to lose their stigma and become a routine part of doing business (Rosenfeld, 2019).

The use of Administrative Law Judges has also been called into question recently, most notably with regard to their Constitutionality (Jellum & Tincher, 2017). Their increased use has been met with considerable criticism (Velikonja, 2017a). Critics have also pointed out that summary judgements that are not even heard by the judges and reach a quick judgement without the defendant’s consent (Platt, 2017). These judges, and the practice of using them, has also been accused of being unfair to defendants, arbitrary, lacking predictability, and enormously discretionary in applying monetary penalties (Liebmann, 2019). Unlike civil penalties, there is of course only a need for approval by the Commission and not a court of law. However, research has shown that such criticisms may be unfounded (Eisenberg, 2016; Velikonja, 2017a). More recently, the SEC’s administrative procedures have undergone changes as a result of a Supreme Court decision (Protess, Gebeloff & Ivory 2018). Notably, a 2018 Supreme Court decision that administrative law judges are in fact “officers of the United States” subject to the
Constitution’s Appointments Clause, and as such cannot simply be appointed by SEC staff (Lucia v. SEC, 2018). As previously discussed, the SEC has often focused its attention on organizational defendants, and when it fines public companies, these penalties are often felt by the shareholders instead of the actual perpetrators (Rosenfeld, 2019). More alarmingly, research has found that organizations with political connections are, on average, not only less likely to be involved in agency enforcement actions, but to face lower penalties when they are fined (Correia, 2014).

Other factors appear to bias the way the agency goes about enforcing. Kedia and Rajgopal (2011) found that organizations located closer to SEC offices were more likely to be investigated by the commission. Moreover, these firms that are located closer to the agency and in areas with previous investigative and enforcement activity, and as such have greater insight into SEC enforcement approaches, are less likely to make subsequent changes to their financial statements due to accounting irregularities (Kedia & Rajgopal, 2011).

Though most critics agree that as an institution, the SEC and its staff are both professionally ambitious and ethically honest, some have criticized it for its reporting practices (Macey, 2010). In reviewing fifteen years of enforcement activities, Velikonja (2015) has asserted that the agency’s released statistics are inaccurate and unreliable. Critics contend that because the data is easily manipulated, fails to measure what it claims to, and in fact double and triple counts many of its actions, the reporting numbers regarding fines are artificially inflated and inherently flawed (Macey, 2010; Velikonja, 2015). These inaccuracies have the potential to continue ineffective practices and
overlook areas that need change, especially when the official reports are widely cited and accepted.

The agency is dependent on congress for its budget, but it is the agencies themselves, the SEC of course included, that chose the standards upon which they are ultimately assessed, allowing them to strive for standards that are easily attainable (Velikonja, 2015). If the agency does not meet performance standards, congress has the authorization to slash the agency’s budget, thus giving the agencies strong incentives to realize the goals that have been set or face negative changes (Velikonja, 2015). Macey (2010) suggests that the agency attempts to satisfy congress and public opinion by aiming for achievable objectives, pursuing high profile cases, and generally going after the entities that the public wants it to. These various motivations, which may not always produce the best results, must be considered when viewing the operations of the SEC. Rather than being corrupt, many actions that are viewed negatively are simply a rational response to the objectives at hand (Macey, 2010).

Although the agency is probably more transparent about its enforcement than other federal agencies, the way the agency makes its enforcement decisions is largely unknown (Shapiro, 1984; Velikonja, 2015). This has led to speculation from legal scholars as to what actually guides the agency’s litigation decisions. Whereas some have suggested that the SEC's prosecutions are politically motivated (Pritchard, 1999), others believe the agency works in the interests of the public by choosing to pursue only cases it believes it can win (Pritchard, 1999; Rose, 2008).

Agency capture, a phenomenon in which the regulating body is controlled by the industry it is charged with regulating, can also be a concern for the SEC. Interestingly,
the individuals responsible for leading the agency’s Enforcement Division have, in recent years, all have moved to positions as advisers in the banking industry (Macey, 2010). During the 1980s, division heads were almost always promoted from within; the approach had decisively shifted by the late 1990s in which division directors were increasingly brought in from the private sector (Cox & Thomas, 2018). A revolving door seems to exist for many agency personnel. For example, Mary Jo White had transferred back and forth between the public and private sectors prior to being appointed to the position of SEC Chair (Cox & Thomas, 2018). This is not necessarily unprecedented, however, during the agency’s foundation, administrators like Joseph P. Kennedy Sr. came from the industries that they were ultimately tasked with regulating.

Though of arguably less troubling than that for division heads charged with overseeing the agency, the rate of turnover for SEC attorneys is almost twice as high as for all attorneys from other government agencies (Macey, 2010). Yet one aspect that is concerning with regard to the agency’s attorneys is a recent finding by Pritchard and Choi (2017) that those attorneys who perform well at the agency are the more likely to leave it for the private sector. While these attorneys do not go on to become lobbyists as the revolving door hypothesis would suggest, their departure for private legal work still means that the SEC is not maintain its best and brightest personnel.1 Research has also found that SEC attorneys are motivated by future career prospects to pursue cases aggressively during their time at the agency (DeHaan et al., 2015). Yet for many, such movements between the agency and the industry are seen as important means for the

1 Also of concern, the authors found that although female attorneys early in their career are more likely to remain with the agency and perform just as well as male attorneys, these females are less likely to get a raise or promotion.
government to recruit attorneys with specialized market expertise (Cox & Thomas, 2018). Some have also criticized the aforementioned increase in attorneys within the organization for making the agency slow moving and less knowledgeable about the financial sector, which is increasingly problematic as the industry becomes ever more complex (Macey, 2010).

In addition to the agency capture hypothesis, the rent-seeking and market-expansion hypotheses have been used to explain the relationship between public regulators and private industry. The rent-seeking hypothesis suggests that government officials may be hired by future private-sector employers in order to use them in the future to lobby the agency in a way that will benefit their private employer. At least some evidence in support of the rent-seeking hypothesis has recently been found (DeHaan et al., 2015). The market-expansion hypothesis posits that the activities of market regulators are driven by attempts to increase demand for their expertise that they can provide to private-sector employers once they move on from their regulatory position.

Fortunately, such contentions of tarnished motivations for SEC regulators have not been supported beyond mere speculation. Since its inception, the agency has consistently maintained a clean reputation for objectivity and avoidance of scandal (Macey, 2010; Miller, 1979; Shapiro, 1984). Furthermore, the very structure of agency activity is conducive to unethical behavior. The daily activities of agency personnel are rather collaborative and subject to review at multiple levels of the organization, minimizing the likelihood of private-sector interference (Cox & Thomas, 2018). Additionally, there does not appear to be any evidence of revolving doors having a
detrimental impact on one of the most frequently pursued types of violations, misrepresentations (DeHaan et al., 2015).

Flaws in the agency’s enforcement practices have been pointed out. Rosenfeld (2017), in analyzing a new admissions policy at the Agency, suggests that despite its message of being a tough enforcer that values public accountability, the reality is quite different, with inconsistent enforcement and an intentional approach of accommodation. Nocera (2009) argues that the Division of Enforcement has not appropriately focused its attention on larger issues, devoting so much time on smaller-scale cases and actors that it has overlooked more harmful actors, such as Bernie Madoff. The enforcement division has been at the receiving end of some of the most intense criticism of the agency (Barnard, 2009).

Ironically however, crises and scandals, harmful as they are to the larger public, are often beneficial to the SEC, which is often bestowed more power and responsibility in response to them (Karmel, 2005; Macey, 2010). For example, the 2001 collapse of Enron in 2001 led to unprecedented budget and salary increases for the agency and its staff in the following years (Macey, 2010). Similarly, in the wake of the Great Recession the agency’s budget was greatly increases, as was its ability to deal with cases through internal administrative proceedings, rather than through court was expanded (Calhoun, 2016; Rakoff, 2014; Rosenfeld, 2019). Congress has consistently appeared content to meet the agency’s requests for more funds, having consistently increased the agency’s budget over the past decades (Calhoun, 2016). This lack of incentive for change, and in a sense, perverse incentives against becoming a more effective detection agency, could explain why the commission’s behavior never really shows improvement from one
financial crisis to the next (Macey, 2010). Though criticism of the agency takes various forms and is often rather complex, as Miller (1979) suggested decades ago but as can still be seen today, these can often be broken down into two categories, “those who believe the commission is not doing enough and those who think it is doing too much or acting without a sense of focus.”

**New Regulation for the 2000s**

One of the most prominent pieces of legislation that was enacted to prevent white-collar crime was the Sarbanes-Oxley Act. The act, which was passed in 2002 in the wake of such disasters as the Enron scandal, among others, was largely aimed at restoring public trust in the economy (Silberfarb, 2003). The more recent Dodd-Frank Wall Street Reform and Consumer Protection Act that came as a result of the 2008 financial crisis, as exemplified by its name, also follows the path of the Sarbanes-Oxley Act by attempting to maintain faith in the market (U.S. Commodities Future Trading Commission, n.d.).

The Sarbanes-Oxley Act was passed in 2002 in response to the corporate scandals of 2001 and 2002, including the Enron scandal (Silberfarb, 2003). Its goal was to restore public trust in the economy and public trust in the economy by creating harsh sanctions for white-collar criminals (Silberfarb, 2003). The act directed the Securities and Exchange Commission to enact civil remedies that plaintiffs can use against corporate officers (Silberfarb, 2003). In addition to increasing the utilization of incarceration for white-collar offenders, the act also includes the somewhat controversial measures of guidelines that limit judicial discretion and mandatory minimum sentencing. Sarbanes-Oxley has also increased the SEC’s use of disgorgement (Buckberg & Dunbar, 2007).
Recent research has actually shown a simultaneous increase in administrative proceedings and decrease in civil actions since the passage of Dodd-Frank (Choi & Pritchard, 2017). The legislation greatly, which aimed to reshape the nation’s regulatory position, impacted the agency’s enforcement discretion, allowing it to choose whether to bring actions in court or in administrative actions (Velikonja, 2017a). Unlike Sarbanes-Oxley, which received bipartisan support, Dodd-Frank was more controversial and voted on largely along party lines. As previously noted, the act allowed the SEC to expand its enforcement actions beyond only those registered with the agency. Their expanded use has been particularly notable against public companies, who, as a result of increased SEC leverage, appear more willing to cooperate with its investigations (Choi & Pritchard, 2017). Since the passage of Dodd-Frank, more contested actions have been filed in administrative settings, though this may reflect increased actions generally rather than greater use of this setting (Velikonja, 2017a). It does appear that the new law has allowed the agency to bring actions administratively that it would have otherwise not pursued at all (Choi & Pritchard, 2017). An interesting note that may have some impact on this analysis is that businesses are actually more likely to be regulated during times of economic prosperity than economic downturns (Vogel, 1989).

**Presidential Administration Impact**

The SEC is a part of the executive branch, which is responsible for the enforcement of laws and headed by the president. By its nature the SEC is largely apolitical, but this does not preclude the potential of administrative intrusion. The president is responsible for the appointment of commissioners who serve fixed terms. Despite the agency’s relatively unique position, very little empirical research could be
identified that explored the relationship between the presidency and the agency. Moe (1982) explored found that regulatory behavior, including that of the SEC, does change over presidential administrations. Presidents do manage to achieve a measure of partisan control even over independent commissions (Moe, 1982). Even though the president cannot personally appoint personnel beyond the Commissioners, those he does appoint may potentially be partisan toward the president and use their position to shape the agency as they, and the president, see fit (Moe, 1982). It might come as little surprise then that research has shown that the amount of money imposed with penalties varies based on who is the Chair of the agency (Rosenfeld, 2019; Velikonja, 2017b).

Unfortunately, beyond Moe’s (1982) work, which covered the period from the mid-1940s to the late 1970s, no other recent academic work on this particular subject could be identified. It seems logical to anticipate that if any differences do exist, the SEC will be more punitive during the Bush presidency in terms of monetary fines and number of cases pursued. This is based on the differing perspectives of the political parties. Whereas Democrats typically advocate for more government regulation as a means of safeguarding the economy and its various actors, Republicans often characterize regulation as inefficient. This is of course, a very broad statement, but voting on the Dodd-Frank Bill was quite partisan, with only three of the more moderate Republicans backing it in the Senate (U.S. Senate, n.d). Moreover, while the agency is not directly managed by the president, is headed by an individual appointed by the president. This individual, in turn, has a good deal of control over the agency and its enforcement objectives.
Shapiro’s Observation of SEC Actions

Susan Shapiro observed the operations of the SEC at its headquarters and one of its regional offices in 1976 and 1977. She also took a sample of about 500 cases that were initiated by the agency between 1948 and 1972. The research was developed and widely discussed in her 1985 book *Wayward Capitalists: Targets of the Securities and Exchange Commission*. Though the SEC and its abilities have changed since her time with the agency, a brief review is in order due to its bearing on the current project.

An overarching theme was that criminal actions are seldom taken against white-collar offenders. She also observed that over the sample period, enforcement activities were generally consistent. Because criminal actions were so infrequent, she ultimately doubled the sampling fraction for these cases. She coded the data both quantitatively and qualitatively, distinguishing between type of offense, action pursued, and outcome, among other factors. Misrepresentation was the most common type of violation (Shapiro, 1985). Many of the offenses were actually not very large in scope and size. Twenty percent involved only a single suspect, the median number of suspects per case was only three, and less than five percent of cases involved more than five actors (Shapiro, 1984). Generally, only a few victims were impacted, with most cases consisting of 26-50 victims and less than 10 percent having more than 500. Interestingly, many of the offenders had some sort of association with their victims; more cases in the sample were present in which the offender and victim were acquainted than those in which they were strangers (Shapiro, 1984).

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2 Shapiro samples one in eight cases that ended in criminal prosecution and one in every sixteen non-criminal cases.
Slightly more than half of the parties designated for criminal action by the SEC were ultimately prosecuted (Shapiro, 1985). In 15 percent of the investigations, no violations were found, more interestingly, 40 percent investigations were closed without formal action even though a violation was found (Shapiro, 1984). Decisions that were made by the five commissioners were made behind closed doors, and, during her time with the agency, resolved through consensus among them (Shapiro, 1984). The types of activities the violators were involved in ultimately played a role in their method of detection (Shapiro, 1984).

Less than half of all cases were ultimately convicted in criminal court, while in over ninety percent of all cases dealt with non-criminally, the defendants were found in violation (Shapiro, 1985). Interestingly, for 49 percent of the suspects found in violation, no formal action was taken at all (Shapiro, 1985). Civil action was the most common, followed by administrative, with criminal action being least used. Some cases were dealt with in a combination of, civil, administrative, and or criminal approaches, with a few even experiencing all three (Shapiro, 1984). Interestingly, the option of using civil or administrative proceedings leads to fewer violators escaping legal action but simultaneously means fewer are dealt with criminally (Shapiro, 1985).

The likelihood of formal action did increase along with offense seriousness, complexity, number of individuals involved, cost, and duration (Shapiro, 1985). Shorter offenses were typically less serious; over eight in ten offenses were still ongoing when detected. Older offenses were not pursued by the agency as it was perceived that little could be done to remedy the damages that had already been accomplished. Individuals who acted alone were relatively uncommon but were actually more likely to include
either criminal prosecution or no legal action at all (Shapiro, 1985). Class biases did not appear to be evident in the SEC decisions, though violators from different classes were dealt with somewhat differently based on their misdeeds (Shapiro, 1985). For organizations, a wider array of alternatives to criminal prosecution were available and often utilized. Corporations that were dealt with criminally typically only received fines, which were incredibly small, only about one percent of the total takeoff the illegal activities (Shapiro, 1985).
CHAPTER III

Methods

This study will utilize a grounded theory approach to analyze case outcomes of civil and administrative cases pursued by the Securities and Exchange Commission. While grounded theory can take a wide array of forms, it uses inductive methods to analyze data. Grounded theory traces its origins to the 1967 work of Barney Glaser and Anselm Strauss, who took a then-unorthodox approach in the realm of social science, the basic theme of which is the “discovery of theory from data,” in their book on the experiences of patients who are dying in hospitals (Glaser & Strauss, 2017; Schroth, 2019). They believed that theory does necessarily have to go through the traditional process of moving from hypothesis to, literature review, collection and analysis of data and only then finally realizing the results, but rather that it could be grounded in the data and research itself (Glaser & Strauss, 2017; Schroth, 2019).

Grounded theory begins by studying the data and asking, “what is happening?” (Charmaz, 2005). The researcher is expected to bring knowledge of the context and setting within which the events under study, and the objects of analysis themselves, are occurring (Charmaz, 2005). The task of analysis actually begins at the very outset, as soon as data starts being collected (Strauss & Corbin, 1990). Grounded theory, or the constant comparative method as Glaser and Strauss had initially called it, allows itself to constantly evolve and adapt over the course of the data’s analysis. Each piece of data can inform earlier data and give it new renderings (Charmaz, 2005). The analysis is a process that moves in a series of stages, each phase building on the next in order to arrive at a final culminating result (Strauss & Corbin, 1990). This allows for hypotheses that have
been developed to be refined until they adequately capture all of the data they are intended to explain.

As Charmaz (2005) succinctly explains, “grounded theory is a comparative method compares data with data, data with categories, and category with category.” Coding is the first stage of the process, during which the researcher locates the core components that allow the key data points to be gathered. While the method of coding eventually became an area of disagreement between Glasser and Strauss, although some contend that such differences do not generate notable differences between the results (Schroth, 2019). Coding is at the core of the grounded theory approach (Moghaddam, 2006). Open coding, which occurs at the beginning of the study, involves breaking down the data into units of meaning in order to conceptualize and label data (Moghaddam, 2006).

Concepts are developed from the coding of the data; these become the basic unit of analysis. After arriving at concepts, those concepts which explain similar actions or display similarities are to be grouped together to form categories (Strauss & Corbin, 1990).

Subsequently, the researcher is able to arrive at the theory stage for explanations that bring to light the objects of research (Schroth, 2019). Findings should be placed in the broader context in which they are occurring, with these ultimately being tied into the theory itself; hence it is important for the researcher to connect the background knowledge that was brought and apply it to the subsequent findings (Strauss & Corbin, 1990). The researcher is to use memos, or written records of analysis, throughout the whole process as a means of showing the theorizing that occurs throughout the process
(Strauss & Corbin, 1990). A focused grounded theory that focuses on meaning and processes should ultimately give insight to the larger object of study (Charmaz, 2005).

One of the mediums on which grounded theory can be applied is to documents. Documents present many advantages to the social science researcher, and the forms of analysis of them can take several forms. Notably, is the ease of access and the nonintrusive nature of document analysis; by analyzing documents the researcher is not in any way influencing the behavior of participants and potentially biasing the results. The same cannot be said for interviews and observation, which do not lack such reactivity (Bowen, 2009). Document analysis is well suited for qualitative studies such as this one; they can be used to provide revealing descriptions of programs, events, and organizations (Stake, 1995; Yin, 1994). Documents also provide a means of tracking change over time, as well as to corroborate evidence from other sources (Bowen, 2009).

While Shapiro’s work was criticized for her overreliance on archival document data, this does present a major limitation on the current study, which relies exclusively on such data. Even so, organizational and institutional documents have long been used in qualitative analyses (Bowen, 2009). Document analysis typically serves as a complement to other research methods, but it has also been used as the sole method of gathering data, particularly in situations in which it is the only feasible way of obtaining information (Bowen, 2009). Because a utilization of interview data with SEC agents is beyond the scope of the present study, it is limited to the analysis of documents released by the agency.

The analysis of documents involves a process of locating, selecting, making sense of, and synthesizing information within the documents; this data is ultimately organized
into categories through content analysis (Labuschagne, 2003). Bowen (2009) explains that “document analysis involves skimming (superficial examination), reading (thorough examination), and interpretation.” It is important that the reader consider the original purpose of the document as well as who its target audience is (Bowen, 2009).

Previous studies can also be used as a source of data, with the researcher able to focus on the description and interpretation rather than raw data (Bowen, 2009). As such, the work of Shapiro has been a key focus of the present work. This was done not only for the sake of reassessing if similar findings as were made several decades ago would still be seen today, but also because of her positioning as someone with first-hand knowledge of the organization and ability to provide insight that was otherwise not publicly available. Of course, it must be recognized that the operations of the agency as Shapiro encountered it may well have been different than would be seen had she explored it today.

This study uses a grounded theory approach to analyze themes across the litigation releases that are made publicly available by the Securities and Exchange Commission on the agency’s website. Specifically, the outcomes of civil and administrative cases are analyzed. All case outcomes are made publicly available by the agency, kept as archives, and listed by calendar year on its website. Cases are separated into those that are dealt with through civil litigation and those that are handled administratively. The sample periods of data are cases that were deal with in either of these ways in the years 2003 through 2006 and 2011 through 2014. In this period, 3,410 civil cases and 5,346 administrative cases were dealt with. For this project, every 20th case is analyzed, resulting in a sample of over 400 cases.
White-collar crime, despite the harms it causes to individual citizens and the market at large, has shown to be a rather difficult area in which to do research. Systematic empirical data sources are not easily obtainable, many victims do not even know of their victimization, and those who do are often unsure of who to contact or what to do when they have been. By the very nature of the cases brought to the SEC, the data is inherently biased. It may be that the most easily detectible or amateurish securities offenses are detected by the agency, while the more complex, subtle, and intelligent plots are not detected.

After detection, the SEC choses which cases to deal with and the manner in which that will be done. While this would be most expected for cases referred to the Department of Justice for Criminal prosecution, those cases requiring litigation in the civil courts may also show signs of selection bias. Moreover, if a violation has been clearly manifested, the SEC may not rake any formal action that would be reflected in the documents to be analyzed, rather, if it is a relatively minor violation or one which did not involve scienter, the agency may have simply communicated to the agency that the practice, if it is ongoing, be discontinued.

Another rationale for the methodological approach of the current study can be seen from prior research on the SEC. As Velikonja (2015) has illustrated, the quantitative validity of the SEC’s reporting is highly suspect. Whereas a quantitative methodology might appear to provide a clear-cut image in the enforcement approaches of the SEC, such data may include artificially inflated fine amounts, among other issues. This qualitative approach takes a more intimate, up close, look at the SEC and how it deals
with securities violators. Beyond this, it shows how the agency communicates its dealings to the public.

The primary goal of this research is to identify themes that emerge across the SEC enforcement actions. Specifically, the types of action taken against individual or organization violators, the size and power of them, the amount of the fine imposed, the rationale for the size of fines, frequency of enforcement against repeat offenders, method of detection, and type of offense, along with any other details that may emerge over the course of the analysis. A secondary goal of the research is to see if there are any differences between the presidential administrations of George W. Bush, a Republican, and Barrack Obama, a Democrat. Rather than analyzing data from the end of one presidency into the beginning of the next, the current project will rely on cases obtained from the middle four years of each of the aforementioned presidents’ terms. Both had been reelected and ultimately served a total of eight years in office. It is anticipated that action under the Obama administration would be more severe than that under President Bush, owing to the political ideologies of the parties with which each was affiliated. At the same time, there are several reasons why this is far from a forgone conclusion. Most notably, the SEC is a largely apolitical organization. Although the president has the power to appoint the agency’s chair and to use suggest particular enforcement approaches, two of the agency’s five commissioners must still belong to the opposite party, for the very purpose of making the agency more politically neutral.

Moreover, external factors can play a role. The sample periods of 2003 through 2006 and 2011 through 2014 were both rather interesting times in the country’s economic history. The former followed in the wake of Enron and other scandals and subsequently
the 2002 Sarbanes–Oxley Act, which was touted by President Bush as "the most far reaching reforms of American business practices since the time of Franklin Delano Roosevelt" (SEC). The latter period followed in the wake of the 2008 financial crises and subsequent legislation in the form of the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010.

In sum, this project uses a grounded theory methodology to locate themes across SEC enforcement data. The sample will consist of eight years of data, four from 2003 through 2006, and four from 2011 through 2014 as a means of identifying differences, if any between the administrations of presidents from different political parties. Using the constant comparative method of Glaser and Strauss, data collection will follow through the four stages of coding data, collecting them into concepts, grouping these into categories, and finally generating theory.
CHAPTER IV

Findings

This thesis used data from Securities and Exchange Commission cases. The releases are made publicly available by the agency on its website. While the focus of the project was a grounded theory analysis, rudimentary quantitative statistics are also presented. After a review of the types of cases analyzed, followed by a quantitative presentation of data, this section moves on to a report of the qualitative findings.

Cases included in the analysis came from two categories of the SEC’s public releases: Administrative Proceedings and Civil Litigation. After reading through the entire sample of cases, several basic themes became apparent. As anticipated, the releases for the administrative proceedings consisted entirely of administrative actions. Most cases involved either the scheduling of a hearing or the settlement of an action. Some cases did involve other actions, such as an extension of fine payment deadlines or the approval of disgorgement plans. In some instances, the proceedings followed a very predictable route and lacked any real variation. This was typical of cases where defunct entities had their SEC registration revoked. Overall however, there was still considerable variety in the types of cases included, especially with respect to the types of offenses for which the action was taken. Below is a breakdown of the types of cases included in the sample.

An interesting, though unanticipated, element of the sample was the presence of a small number of criminal cases. Though the criminal actions were not taken by the SEC, they involved activities or actors that had been dealt with by the SEC or who were allegedly involved in a significant white-collar violation. While these criminal cases were
included by the SEC among the litigation releases, they have been categorized separately here. It must be emphasized that all of the information and quantitative data pertaining to civil cases is limited strictly to civil actions and does not count any of the data from the criminal cases. Due to the small number of criminal cases, such quantitative breakdowns as were made for civil and administrative actions were not created for criminal actions.

Below is a breakdown of the types of cases included in the sample.

**Table 1**

*Breakdown of Case Types*

<table>
<thead>
<tr>
<th>Type of Action</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative</td>
<td>267</td>
</tr>
<tr>
<td>Civil</td>
<td>157</td>
</tr>
<tr>
<td>Criminal</td>
<td>12</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>436</strong></td>
</tr>
</tbody>
</table>

The civil litigation releases differed somewhat from the administrative proceeding. While the administrative cases tended to read more like court documents, the civil litigation releases were, on the whole, somewhat more similar to press releases. Importantly, these cases did not actually consist entirely of civil litigation cases, but also occasionally included some releases on criminal actions. Moreover, these cases were also more eclectic in nature in terms of the types of civil actions included, with a wide array manifesting themselves in the sample. Among these are releases on trials, restraining orders, and various types of judgements.

Both categories consisted of generally the same types of offenses and involved actions against both individuals and entities. Both involved the imposition of monetary penalties. It was not uncommon for other legal actions to be taken besides those in the
case at hand. That is, in many civil litigation cases it was indicated that administrative and or criminal actions were also being taken; many administrative cases similarly stated that civil and or criminal courses of action would be or had been taken. In both types, there was considerable variation in the amount of information provided. This was particularly true of the civil litigation releases. Whereas the amount of information in some cases was a single paragraph, in others it was more than a dozen pages. Thus, while some releases included only the most basic information, others went into extensive detail about the case and the parties involved. Many cases provided the specific court documents whereas others provided a mere summary on a webpage. This was more common for administrative cases. Many cases in both categories also provided links to cases or actions which had previously been taken against the parties in the case at hand. What was quite readily apparent was the lack of uniformity among the cases, not only in the expected terms of the types of action taken or the accused offenses, but most notably, in the presentation and communication of relevant information.

Descriptive Statistics/Quantitative Results

Quantitative descriptive statistics are presented below for both civil and administrative cases. It must again be stressed that many cases did not contain quantitative information, resulting in a rather small sample size relative to the total number of cases. This becomes more problematic when further breaking down the categories. Importantly, there was considerable variation within such categories as penalty amount, length of offense, and number of victims. As can be seen, median and average values are considerably different for several categories. This can be attributed to
the presence of a few cases with sizable values, and for some categories, the relatively small number of cases that provided relevant data.

**Table 2**

*Descriptive Statistics for Administrative Cases*

<table>
<thead>
<tr>
<th></th>
<th>Mean</th>
<th>Median</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Individuals</td>
<td>0.72</td>
<td>1</td>
</tr>
<tr>
<td>Number of Entities</td>
<td>1.34</td>
<td>0</td>
</tr>
<tr>
<td>Length (years)*</td>
<td>3.70</td>
<td>3</td>
</tr>
<tr>
<td>Victims*</td>
<td>562,547</td>
<td>32.5</td>
</tr>
<tr>
<td>Illegal Gains*</td>
<td>$1,923,521.87</td>
<td>$191,833.00</td>
</tr>
<tr>
<td>Disgorgement</td>
<td>$3,436,406.16</td>
<td>$241,157.26</td>
</tr>
<tr>
<td>Fine</td>
<td>$3,871,176.63</td>
<td>$100,000.00</td>
</tr>
</tbody>
</table>

**Table 3**

*Descriptive Statistics for Civil Cases*

<table>
<thead>
<tr>
<th></th>
<th>Mean</th>
<th>Median</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Individuals</td>
<td>1.54</td>
<td>1</td>
</tr>
<tr>
<td>Number of Entities</td>
<td>0.93</td>
<td>0.5</td>
</tr>
<tr>
<td>Length (years)</td>
<td>2.43</td>
<td>1.92</td>
</tr>
<tr>
<td>Victims</td>
<td>2,253</td>
<td>180</td>
</tr>
<tr>
<td>Illegal Gains</td>
<td>$25,266,220.24</td>
<td>$1,000,000.00</td>
</tr>
<tr>
<td>Disgorgement</td>
<td>$28,716,402.12</td>
<td>$819,295.50</td>
</tr>
<tr>
<td>Fine</td>
<td>$1,156,478.89</td>
<td>$200,000.00</td>
</tr>
</tbody>
</table>

*Note.* The sample size for offense length, number of victims, and illegal gains in Tables 2 and 3 was quite small, with the majority of cases not containing this information either because it was simply not included or because it was not applicable to the given violation.
The following tables present a categorical breakdown of the number of cases within civil and administrative cases that fall into each category. As these tables show more clearly, there were often only a small fraction of cases that provided relevant information on a given attribute.

**Table 4**

*Cost of Offense to Victims*

<table>
<thead>
<tr>
<th>Cost of Offense</th>
<th>Civil Cases</th>
<th>Administrative Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $5,000</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>$5,001 to $25,000</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>$25,001 to $100,000</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>$100,001 to $1,000,000</td>
<td>15</td>
<td>6</td>
</tr>
<tr>
<td>More than $1,000,000</td>
<td>24</td>
<td>12</td>
</tr>
<tr>
<td>Not Specified/Not Applicable</td>
<td>122</td>
<td>239</td>
</tr>
</tbody>
</table>

**Table 5**

*Dollar Amount of Fines Imposed*

<table>
<thead>
<tr>
<th>Fine Imposed</th>
<th>Civil Cases</th>
<th>Administrative Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $5,000</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>$5,001 to $25,000</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td>$25,001 to $100,000</td>
<td>13</td>
<td>14</td>
</tr>
<tr>
<td>$100,001 to $1,000,000</td>
<td>27</td>
<td>12</td>
</tr>
<tr>
<td>More than $1,000,000</td>
<td>13</td>
<td>7</td>
</tr>
<tr>
<td>To Be Announced</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>No Fine/Not Stated</td>
<td>103</td>
<td>228</td>
</tr>
</tbody>
</table>

*Note.* This does not count disgorgement.
Table 6

*Number of Victims*

<table>
<thead>
<tr>
<th>Number of Victims</th>
<th>Civil Cases</th>
<th>Administrative Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 or Fewer</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>6 to 25</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>26 to 100</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>101 to 500</td>
<td>10</td>
<td>2</td>
</tr>
<tr>
<td>More than 500</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>Not Specified/Applicable</td>
<td>140</td>
<td>251</td>
</tr>
</tbody>
</table>

Table 7

*Number of Offenders*

<table>
<thead>
<tr>
<th>Number of Offenders</th>
<th>Civil Cases</th>
<th>Administrative Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zero</td>
<td>7</td>
<td>98</td>
</tr>
<tr>
<td>One</td>
<td>99</td>
<td>116</td>
</tr>
<tr>
<td>Two</td>
<td>29</td>
<td>9</td>
</tr>
<tr>
<td>Tree to Five</td>
<td>16</td>
<td>1</td>
</tr>
<tr>
<td>Six or More</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Not Accounted For</td>
<td>17</td>
<td>40</td>
</tr>
</tbody>
</table>

*Note.* This counts only individual persons, entities are not included.

**Administrative Cases**

Administrative proceedings in this sample can be broken down into three different types: those in which a hearing is scheduled, those in which sanctions are imposed, and other cases. Table 8 presents a breakdown of the types of administrative cases that make up the sample.
Table 8

Breakdown by Type of Administrative Action

<table>
<thead>
<tr>
<th>Type of Action</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hearing Scheduled</td>
<td>54</td>
</tr>
<tr>
<td>Sanctions Imposed</td>
<td>174</td>
</tr>
<tr>
<td>Other</td>
<td>39</td>
</tr>
</tbody>
</table>

Sanctioning

In the majority of cases in administrative proceeding sample, sanctioning was imposed. Cases in the sanctioning category involve the imposition of penalties and conclusion of the administrative case, though civil or criminal actions may still be subsequently taken. It is important to note that in all 174 of the cases brought to a conclusion, some form of penalty was imposed; there were no cases in this sample in which the respondent was legally absolved of responsibility without a penalty. It is for this reason that there is no category for competed cases that resulted in no form of sanctioning. It is possible that a larger sample may have turned up cases wherein the respondent was not penalized in any way, but the results here of a 100 percent sanctioning rate favoring the SEC are generally consistent with prior research, albeit even more pronounced (Velikonja, 2017a). While the total absence of cases culminating without sanctions may seem somewhat odd from the conventional criminal justice perspective, it must be remembered that such proceedings are unique, being overseen by an Administrative Law Judge and taking place outside the realm of the traditional court system. The lower burden of proof the lack of severe consequences for most respondents, and the high frequency of cases that are resolved by consent or default also make these
cases somewhat distinct from other legal courses of action. These cases are often auxiliaries to more serious forms of legal ramifications. For some parties, they represent the final legal interaction for their violations, for others, more severe penalties and even criminal actions still loom on the horizon. Another interesting aspect of the vast majority of cases is the respondent’s ability to settle “without admitting or denying the findings.” Doing so provides benefits for both sides, as the SEC gets a relatively expedient outcome in its favor and the respondent does not have to admit to wrongdoing, thus opening him or herself up to future lawsuits (Bregant & Robbennolt, 2013). The option of settling without admitting or denying allegations recently became unavailable to respondents facing criminal charges, though it remains available for those facing civil actions (Bregant & Robbennolt, 2013).

Sanctioning in administrative cases may be as severe as monetary fines or as minor as an order to stop the activity. As with civil penalties, respondents in administrative cases cannot be sentenced to incarceration or any other punishments that restrict their personal liberties. Respondents may, however, lose their legal ability to practice in their professional line of work as a sanction for their misconduct. As can be seen in the table below, this was the most common outcome in administrative cases involving sanctions. While note specified in the table, 37 percent of cases involved a professional bar while 17 percent included a suspension.
Table 9

Percentage of Administrative Sanctioning Cases in which Each Penalty was Imposed

<table>
<thead>
<tr>
<th>Administrative Sanction</th>
<th>Percentage of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional Bar/Suspension</td>
<td>53%</td>
</tr>
<tr>
<td>Cease and Desist</td>
<td>29%</td>
</tr>
<tr>
<td>Censure</td>
<td>9%</td>
</tr>
<tr>
<td>Disgorgement</td>
<td>13%</td>
</tr>
<tr>
<td>Fine</td>
<td>22%</td>
</tr>
<tr>
<td>Revoked Registration</td>
<td>29%</td>
</tr>
</tbody>
</table>

*Note.* Percentages indicate the frequency of each penalty’s use among administrative cases involving a sanction. A single case could involve multiple penalty outcomes, thus the total of all percentages exceeds 100 percent.

The case of Stephen C. Jones presents an example of a case in which a professional bar was the most severe sanction handed down. Jones was a certified public accountant (CPA) as associated with the Dollar General Corporation, which failed to record millions of dollars in expenses (Jones, 2005). As the proceeding file stated:

> Respondent knowingly participated in and implemented a scheme to under-report Dollar General’s expenses in its Fiscal Year 1999, thus causing Dollar General’s earnings to be overstated.

> Respondent also knowingly assisted Dollar General to overstate its cash accounts (Jones, 2005).

Jones did not orchestrate this accounting violation in which expenses were passed on to the next year but did so at the request of Dollar General executives: “Respondent knew that this accounting treatment was improper, but he nevertheless followed the Controller’s instructions” (Jones, 2005). As is indicated in many other cases, Jones offered settlement which was accepted by the SEC (Jones, 2005). As a result, the commission ordered that Jones cease and desist from violations, and more notably, that...
He be “denied the privilege of appearing or practicing before the Commission as an accountant” (Jones, 2005). This is not a lifetime ban however, as the order provides that Jones can reapply for reinstatement after three years.

In most cases involving a professional bar, there was no fine or disgorgement ordered. This was not uniformly the case though, as the proceeding against Bruce J. Bates shows. Bates was a branch manager of Schneider, an SEC-registered broker-dealer. Bates was also tasked with supervising another associated individual’s activities: “Bates was the direct supervisor for Muth's day-to-day activities, and responsible, in part, for imposing special supervision on Muth” (Muth, 2004). Bates did not adequately supervise Muth, who made various “misrepresentations of material facts [to] numerous Schneider customers in several states,” in addition to other sales practice violations, over a five-month period (Muth, 2004). As the Commission’s release stated:

Bates failed reasonably to supervise Muth with a view to preventing Muth's violations of the federal securities laws by failing to follow the firm's procedures regarding heightened supervision of Muth, and by failing to respond to red flags relating to Muth's misconduct (Muth, 2004).

Bates offered settlement, which was accepted by the SEC. Accordingly, Bates was “barred from association with any broker or dealer with the right to reapply for association other than in a supervisory capacity after two years” (Muth, 2004). The Commission also decided to impose a civil penalty on Bates. The size of this penalty may have been larger but was limited by his inability to pay more:

Respondent shall pay a civil money penalty in the amount of $15,000 to the United States Treasury. Based upon Respondent's sworn representations in his Statement of Financial Condition dated January 7, 2004 and other documents submitted to the Commission, the Commission is not imposing a larger penalty against Bates (Muth, 2004).
The Commission also made provisions for the payment to be made in monthly instalments while cautioning that the Enforcement Division may, at any time, petition for a review to ensure that Bates was not misrepresenting his ability to pay (Muth, 2004).

In this case, the respondent was barred from some professional roles for two years but has ostensibly been permanently forbidden from acting in a supervisory role. Though not explicitly stated in the report, it appears that his failure in the role of supervisor played a role in the decision to not only impose a professional bar, but also to fine him. An interesting theme that became apparent and that was evident here was the SEC’s restraint in fining violators; the Commission does not impose fines larger than respondents can pay but rather selects amounts that it believes can and will actually be recovered.

Suspensions, like professional bars, prohibited individuals from practicing before the Commission in a particular professional role. In many cases, the length of the suspension was not specified in the report. The case of Steven J. Allan provides such an example, while also illustrating a case in which a criminal action took place prior to the administrative action. Allan was a CPA and acting CFO of a publicly traded company in the 1990s (Allan, 2005). As a result of an earlier 2003 criminal trial:

Allan was found guilty of three counts of fraud by wire communication and aiding and abetting such fraud…and two counts of falsifying books and records of a public company and lying to the company’s auditors (Allan, 2005).

He was subsequently sentenced to “40 months imprisonment in a federal penitentiary and…ordered to pay restitution” (Allan, 2005). Furthermore, the California Board of Accountancy revoked his CPA certification (Allan, 2005). The present proceeding concludes by suspending Allan:
In view of the foregoing, the Commission finds that Allan has been convicted of a felony...and that Allan’s license to practice as an accountant in California has been revoked. Accordingly, IT IS ORDERED that Steven J. Allan is forthwith suspended from appearing or practicing before the Commission (Allan, 2005).

Indeed, in the majority of the cases involving a suspension or professional bar, the respondent had previously been either convicted criminally or enjoined civilly, and in some cases, both. Such was the situation for James F. Turner II, who engaged in insider trading when he “traded on the basis of the material nonpublic information” in the securities of three entities and also “recommended that other friends and family members trade the same securities” (Turner, 2012). As a result of these 2008 trades, the respondent “generated gains of nearly $3.9 million” (Turner, 2012). Turner was charged criminally and, in 2011, entered a guilty plea in a US District Court (Turner, 2012). In 2012, he was “sentenced to a prison term of twelve months followed by three years of supervised release and ordered to pay a fine in the amount of $25,000” (Turner, 2012). Later that year, he consented to judgement in civil court in which he was enjoined from future violations; no other penalties appear to have been imposed in that case (Turner, 2012). Finally, in September 2012, the current administrative action concluded with Turner being “barred from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent” (Turner, 2012). Although provisions are made for his reapplication, the file does not specify how much time must pass before such a reapplication can be made.

Although most of the cases that did not involve an entity’s registration did culminate in some type of impactful penalty on the respondent in the form of a professional bar, suspension, fine, or disgorgement, or some combination of these, a few
cases were concluded with nothing more than an order to cease and desist. An example of this in which the respondent was an entity rather than an individual was the 2004 case of DT Industries Inc. The corporation is “a designer and manufacturer of automated production systems used to package, test and manufacture a variety of industrial and consumer products” (DT Indus., 2004). Its stock is registered with the SEC and has been listed on the NASDAQ since the 1990s (DT Indus., 2004). In the report, three other parties are listed as “relevant entities,” all of them being subsidiaries of DTI (DT Indus., 2004). Over the course of fiscal years 1997, 1998, 1999 and the first three quarters of fiscal year 2000, controllers at all three of these subsidiaries hid costs and caused an overstatement of net income by several million dollars (DT Indus., 2004). Ultimately, the SEC accepted the offer made by DTI and ordered that:

DTI cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Exchange Act and Rules 12b-20, 13a-1, 13a-13 and 13b2-1 thereunder (DT Industries, 2004).

No other penalties were imposed on the entity (DT Indus., 2004). Likewise, individuals in a few cases received similar penalties, in which they were ordered to cease and desist their illegal activity but were neither fined nor professionally suspended or barred from practice. Such cases were the exception rather than the rule, however.

Perhaps no other penalty that could be imposed by the SEC outside of the criminal courts was as severe as a fine. While disgorgement also involves a monetary payment, it represents a return of ill-gotten gains. A fine stands out as a form of sanction that causes a direct financial loss to the respondent. It would therefore seem logical therefore that this type of outcome would be reserved for the most serious types of violations. An important caveat to this is the simple fact that not all of the violations have
tangible victims to whom disgorgement can be allocated, such as in cases of insider trading.

A fine was imposed in 39 cases, slightly less than a quarter of all cases involving sanctioning. This proportion rises to just under one-third of cases when not counting cases involving only registration revocations. It appears clear that fines are a valuable tool that the SEC utilizes even in administrative proceedings. The dollar amount of these fines do vary considerably, but they tend to stand as a potent remedy for violations. Indeed, fines here ranged from a low of $15,000 to a high of $50 million. the average dollar amount of a fine imposed here was about $3.8 million. This value was heavily skewed by a few cases with large fines; only five of the cases involving fines actually imposed one of more than $500,000. The median value of $100,000 of a fine imposed is thus a more revealing value.

The case of Pilgrim Baxter & Associates, Ltd. (PBA), stands as one the two cases with a fine of $50 million imposed. This case also had the highest disgorgement amount ordered out of all of the administrative cases. The respondent was an entity registered with the SEC as an investment advisor and was a subsidiary of a London-based international financial services company (Pilgrim Baxter & Associates, 2004). Two individuals, Harold J. Baxter and Gary L. Pilgrim, who acted as officers of the entity were also named as relevant (Pilgrim Baxter & Associates, 2004). A related filing in Civil court was also filed against all three parties by the SEC. As the report stated, “at all times material to the allegations in the Order, PBA acted through its principals, Pilgrim and Baxter” (Pilgrim Baxter & Associates, 2004). Among the various violations or
questionable practices they engaged in were self-dealing, insider trading, misrepresentations, and market timing. As a result, Pilgrim and Baxter:

Reaped multimillion-dollar profits from the sale of PBA’s predecessor entity. Meanwhile, numerous small investors…experienced a decline in the value of their investments (Pilgrim Baxter & Associates, 2004).

In failing to disclose the potentially illegal activities of Pilgrim and Baxter, failing to maintain and enforce adequate controls, and making numerous untrue statements and omission of facts, the SEC found that PBA violated numerous sections of acts governing financial conduct (Pilgrim Baxter & Associates, 2004). Ultimately, several remedial actions were taken by PBA, including the appointment of new officers (Pilgrim Baxter & Associates, 2004). According to the release, these actions were considered in their decision to accept the offer submitted by PBA (Pilgrim Baxter & Associates, 2004). In addition to being censured and ordered to cease and desist, the respondent was ordered to “pay disgorgement in the total amount of $40,000,000 and a civil money penalty in the amount of $50,000,000, for a total payment of $90,000,000” (Pilgrim Baxter & Associates, 2004). The release went on to order the creation of a Fair Fund into which money from the respondent should go in order to potentially be distributed to victims (Pilgrim Baxter & Associates, 2004).

Most cases, of course, did not involve such substantial fines. The proceeding against Sharespost, Inc. and Greg B. Brogger is a case of a more typical fine. The case also serves as an example of one of the few cases where both an individual and entity were named as relevant.

Sharepost is a broker-dealer corporation not registered with SEC while Brogger is the entity’s founder and president (Sharepost, 2012). The seven-page release goes on to
detail the respondents’ activities, specifically how Brogger caused Sharepost to willfully violate laws against acting as a broker or dealer without being registered with the SEC (Sharepost, 2012). As was often the case, the respondents submitted offers of settlement which the SEC accepted. The administrative proceeding thus concludes with four orders:

A. Respondents cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act.

B. Respondent SharesPost is censured.

C. Respondent SharesPost shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $80,000 to the United States Treasury…

D. Respondent Brogger shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $20,000 to the United States Treasury… (Sharepost, 2012)

The manner in which payment is to be made is also specified. Both respondents are also warned that “if timely payment is not made, additional interest shall accrue” (Sharepost, 2012). This case also presents an example of censure being used. Censures were only used against entities and were used almost exclusively in cases where the entity was fined. As Table 9 showed, censures were seldom used. Similar to a cease and desist order, a censure does not have any meaningful immediate adverse effect on the respondent. A censure is merely a symbolic condemnation of the activity at hand. However, in fourteen of the fifteen cases in the sample where a censure was used, a fine was imposed on the respondent. The lone exception to this involved an entity which would have had to pay a fine if not for its inability to do so. Cases in which a censure was used often involved a failure to supervise the illegal activity of employees and in all cases involved at least one entity as a respondent.

As might be expected, the cases involving a fine typically involved offenses that are rather serious in nature, such as failure to supervise, insider trading, market
manipulation, and acts that had direct negative effects on tangible victims. Indeed, a failure to supervise employees was present in about a quarter of the cases involving a fine; of the seven cases with a fine of more than one million dollars, three of them involved a failure to supervise. Also of note, all seven of these cases involved at least one entity. Cases involving particularly unethical behavior, such as breaches of fiduciary duty, misappropriation of clients’ funds, and in one instance, bribery of foreign officials were also punished with fined.

Not all of these cases involved offenses that might normally be perceived as very serious; some of these cases involved no other offense beyond engaging in unregistered activities, such as acting as a broker without being registered with the SEC. A few also involved selling or buying securities illegally, such as during a period when such transactions were restricted. These types of offenses may have been the least serious out of all those involving fines, but even these violations can potentially have serious ramifications. Financial legislation is created for a reason. For example, a broker who is not registered with the SEC may have a history of financial misconduct that would have precluded his registration. Potential clients who do not know this may assume he is a trustworthy person, when in fact he is not. Registered entities allow investors to have access to information on the company’s management, products, services, and finances; a failure to register with the SEC is a common element of illegal activities (SEC, n.d.).

Interestingly, in only one of the 39 cases involving a fine was a civil or criminal course of action ostensibly undertaken. An important caveat to this is the simple fact that these actions may have been undertaken but not mentioned in the release. It is also possible that the criminal or civil actions have simply not yet been initiated at the time of
the release. In reviewing cases that did not involve a fine and were not merely the revocation of a defunct entity’s registration, a previous civil or criminal ruling (or both) against the respondent was commonplace. In 67 of the 85 cases of this type, or greater than three quarters, a criminal and or civil action had already been concluded against the respondent. It should also be noted that this group of cases almost always involved only a single individual. Only a few cases involved more than one individual or no individuals. Only six of these cases involved any entities with just a single case involving both an individual and an entity.

In just over half of the cases involving a fine, disgorgement was also ordered. There were only three cases in which disgorgement was ordered but a fine was not. The proceeding against Michael B. Johnson and his licensed public accounting firm Michael Johnson & Co., LLC, of which he was “manager and sole member” (Johnson, 2006). The firm audited and prepared another entity’s statements, during which time “an employee of Johnson & Co., under Johnson's supervision, made false entries to certain of Winners' accounts” (Johnson, 2006). These false entries resulted in a violation of Generally Accepted Accounting Principles, and specifically, an overstatement of assets and revenues (Johnson, 2006). As just one example:

Winners' December 31, 1999 financial statements, which Johnson and Johnson & Co. prepared and audited and that were filed with the Commission…materially overstated Winners' software asset by approximately $421,000, by improperly capitalizing operating expenses in the software asset account. This resulted in an overstatement of total assets by 416% (Johnson, 2006).

As a result of these violations, both parties were ordered to cease and desist from future violations, both were barred from practicing before the SEC for a four-year period, and the entity was ordered to pay disgorgement:
Respondent Johnson & Co. shall, within thirty (30) days of the entry of this Order, pay disgorgement of $10,250 and prejudgment interest of $6,248.86 for a total of $16,498.86 to the United States Treasury, representing unjust enrichment in the form of audit and other fees received from Winners while Respondents engaged in the conduct described above (Johnson, 2006).

As with fines, there was considerable variation in terms of the dollar amounts of disgorgement ordered. While eight of the twenty-two cases involved values of more than one million dollars, nine involved payment of less than $100,000. As previously mentioned, most of these cases also involved a fine. The case described above had the second-lowest amount of disgorgement ordered for any case that included it as a penalty.

Importantly, an order for disgorgement or for a fine does not necessarily mean that payment of it will be collected. Such an order does indicate a respondent’s ability to pay, however, at least at the time of the order, and the SEC’s ostensible expectation that such payment will be made.

One of the most frequent case outcomes was a revocation of registration. There were fifty of these cases in the sample. This sanction could only be imposed on entities. These cases were generally routine and similar to each other. These releases were typically only about two pages in length. Some releases involved only one entity while several others involved as many as seven. In nearly all of the cases the reason for the entity’s SEC registration being revoked was its failure to file required periodic reports with the Commission. Cases in which several entities were named usually involved ones that were alphabetically close to each other by name. It should also be noted that the release may have included more entities in the name of the filing than were actually dealt with in the present matter, ostensibly because all of those named were grouped together during the scheduling of a hearing phase if not earlier. In many instances, it was specified
in the release that the entity was no longer operational, as such many of the entities did not respond to the SEC filing and their case concluded with a default judgement. A 2011 proceeding involving five entities provides a typical example:

The Securities and Exchange Commission issued its Order Instituting Administrative Proceedings (OIP) on May 31, 2011…Respondents’ Answers were due June 21, 2011…To date, no Respondent has filed an Answer, and the time for filing has expired…Delta-Omega Technologies, Inc., Devlieg-Bullard, Inc., Digital Recording Corp., Double River Oil & Gas Co., and Drypers Corp. (collectively, Respondents) are in default for failing to file answers to the OIP or otherwise defend the proceeding (Delcott, 2011).

The report then dedicates a small paragraph to provide some background on each of the five entities. Indeed, all five of the entities in this case had reported net losses in their last financial filing and three had filed for bankruptcy (Delcott, 2011). All of the five had not made these filings for a considerable amount of time, with the most recent being Delta-Omega Technologies, Inc. in 2001(Delcott, 2011). The description of the entity which has not made a filing in the longest amount of time reads:

Digital Recording Corp. (CIK No. 318439) is a forfeited Delaware corporation located in Levelland, Texas, with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 1993, which reported a net loss of over $24,000 for the prior nine months (Delcott, 2011).

The case then went on with its conclusion:

In addition to repeated failures to file timely periodic reports, Respondents have failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations…Considering these delinquencies, it is necessary and appropriate for the protection of investors to revoke the registration of each class of registered securities of Respondents…IT IS ORDERED THAT, pursuant to Section 12(j) of the Securities
Exchange Act of 1934, the registrations of each class of registered securities of Delta-Omega Technologies, Inc., DevliegBullard, Inc., Digital Recording Corp., Double River Oil & Gas Co., and Drypers Corp. are hereby REVOKED (Delcott, 2011).

Such was the basic format of nearly all of the cases involving the revocation of registrations. In some cases, the SEC received a response from a representative of the named entity, but because most of them were effectively defunct, such a revocation was largely superfluous and simply consented to. In only one of these cases was an individual also included. This case, which involved a person who acted as principal for organization that he used to perpetrate a Ponzi scheme. In only one other case was a registration revoked simply for lack of periodic filings. In that case, the entity had knowingly made unsuitable sales to clients. Its officers were dealt with separately.

**Hearing**

Cases where a hearing is scheduled involve the initiation of administrative proceedings against a respondent, although prior actions in the criminal or civil realms may already have taken place or may be going on simultaneously. While cases in which a hearing was merely scheduled did not include sanctions, they can still provide some insight. They contained at least basic information on the parties and the type of violation and also sometimes included more details as well. They also may have included information on other legal actions that had also been taken against the violators. Even in

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3 A Ponzi scheme is an illegal activity in which investors receive funds through new investments rather than from financial gains. Ponzi schemes involve misrepresentations to prospective investors and misappropriation of invested funds. Perpetrators often promise unreasonably high returns with virtually no risk. Such schemes are not sustainable, requiring a constant supply of new investors. Though the term is sometimes used synonymously with pyramid schemes, the two frauds are slightly different, though generally similar. The ‘original’ Ponzi scheme was orchestrated by Carlo “Charles” Ponzi who operated a multi-million-dollar postage stamp speculation, which ultimately cost investors millions of dollars. Publicized case of Bernie Madoff and his massive multi-billion-dollar Ponzi scheme presents a contemporary example of this form of fraud. (SEC, n.d.)
the very basic cases with limited information, their usefulness comes in the form of providing insight into what types of activities are dealt with, or otherwise come to the attention of the SEC. Once again, it must be emphasized that it can be safely assumed that the vast majority—if not all—of these actions will result in sanctioning.

Just over forty percent of these cases involved an entity’s failure to file periodic reports as required by the SEC. Twenty-three of the remaining thirty-two cases involved some type of misrepresentation. Misappropriation, unregistered activities, and stock manipulation also appeared several times throughout these cases. Nineteen of the cases involved a prior action in civil court while six were dealt with in criminal court; of these, two cases involved both types of actions. The respondent was previously punished in some manner in all instances where an action was taken previously in either the civil or the criminal courts. Several cases specified a civil monetary penalty or a period of incarceration that was ordered as a result of the earlier action.

The case of Gregory L. Fears presents an example of an individual who was initially dealt with by the criminal legal system and was subsequently dealt with administratively. In fact, the “Commission entered an Order Instituting Public Administrative Proceedings…based upon Fears’ alleged twenty-two count criminal conviction” (Fears, 2003). At the time of this order, Fears was convicted but had not yet been sentenced, although some of the others who had been dealt with in the criminal courts and had a hearing ordered had already been sentenced. Over a nine-year period, Fears “acted as an investment adviser and was a control person, a 50% shareholder and, at various times, an officer and director” of two entities that were previously registered with the SEC as a broker-dealer and an investment advisory firm (Fears, 2003). While
acting in this capacity, and in order to profit of clients, Fears and his partner made misrepresentations and omissions of material facts to clients, targeting ones who would be particularly susceptible to unsuitable trades:

Fears recommended that a number of their unsophisticated and generally elderly advisory clients invest in World Capital Management, L.P., an unregistered hedge fund created by Fears and Smith and managed by Smith, who conducted high-risk securities trading in its account through World Securities (Fears, 2003).

Among the twenty-two charges on which Fears had been convicted in criminal court were investment advisory fraud, wire fraud, money laundering, loan fraud and criminal forfeiture (Fears, 2003). The release did not specify whether it was the FBI or some other agency that prosecuted this case, although the case was heard in a U.S. Federal District Court. The release concludes:

A hearing will be scheduled before an administrative law judge to determine whether the allegations contained in the Order are true, to provide Fears an opportunity to dispute these allegations, and to determine what sanctions, if any, are appropriate and in the public interest (Fears, 2003).

This was essentially the same closing language used in all of the cases of this type.

The case of Nicholas Rowe provides a somewhat unique example of a hearing order in which the respondent had previously been dealt with in civil court. In this case, Rowe was the owner of an investment adviser company that was registered with the SEC (Rowe, 2014). The respondent had “engaged in an investment strategy involving leveraged and inverse exchange traded funds that was unsuitable for their clients and made misrepresentations regarding the fees to be charged” (Rowe, 2014). In this unique case, the civil action was actually not taken by the SEC in federal court but in state court by the New Hampshire Bureau of Securities Regulation (Rowe, 2014). In that action,
Rowe was found to be in violation of New Hampshire law prohibiting investment advisers from engaging in unethical business practices” (Rowe, 2014). As a result of that action:

Rowe and Focus Capital were also ordered to cease and desist from violating New Hampshire RSA 421-B:3 and RSA 421-B:4 and were ordered to pay $20,000 (a $5,000 fine plus the costs of the investigation) and restitution (Rowe, 2014).

The SEC’s release goes on to state that administrative proceedings will be initiated to determine:

Whether the allegations set forth…are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and…What, if any, remedial action is appropriate in the public interest against Respondent (Rowe, 2014).

The document concludes by stating that a date for the hearing will be set and Rowe is to answer to these proceedings within 20 days (Rowe, 2014). Furthermore, if he “fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default” (Rowe, 2014). Finally, it states that an ALJ will an “initial decision no later than 210 days from the date of service of this Order” and that none of those involved in the investigation can “participate or advise in the decision of this matter” except as witnesses (Rowe, 2014).

Other

Cases that did not fit into either of these categories were classified as ‘other.’ Such cases were frequently technical in nature. Actions undertaken in these cases were disbursement plan proposals and deadline extensions, reinstatements for suspended parties, the finalization of earlier decisions, the appointment of fund managers and tax administrators, and minor corrections for earlier releases. Some of the cases were quite
similar to others of the same type, for example those in which an ALJ’s decision became final. Below is an example in which five entities, Community Alliance, Inc., Defi Global, Inc., Easy Energy, Inc., Industry Concept Holdings, Inc., and Transworld Benefits International, Inc. are named as respondents:

The time for filing a petition for review of the initial decision in this proceeding has expired. No such petition has been filed by [respondents], and the Commission has not chosen to review the decision on its own initiative. Accordingly…the initial decision of the administrative law judge has become the final decision of the Commission…The order contained in that decision is hereby declared effective…the registrations of each class of registered securities of [respondents] are revoked. (Cmty. Alliance, 2014).

Interestingly, these types of releases were totally absent in the first sample period but made up about a third of the cases in the second period. All but one pertained to entities, and all culminated with the revocation of securities registrations as cases described above in the sanctioning section.

As described earlier, many individuals were suspended or prohibited from practicing before the SEC as an outcome of their violation, with provisions made for their future reinstatement. Indeed, several of the cases in this category included applications for reinstatement by individuals. All of these resulted in the SEC granting this reinstatement. The June 2011 hearing for John Van Fleet provides a typical example. As the report states:

On June 2, 2005, John Van Fleet, CPA was denied the privilege of appearing or practicing before the Commission as an accountant as a result of settled public administrative proceedings instituted by the Commission… This order is issued in response to Van Fleet’s application for reinstatement to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission…The Commission’s
findings related to inflated earnings reported in Huntington’s financial statements filed with the Commission in annual reports for fiscal years 2001 and 2002. Huntington’s improper accounting allowed them to meet or exceed Wall Street analyst earnings per share expectations and to meet internal targets that determined the bonuses of senior management (Van Fleet, 2011).

An interesting aspect of this case was that Van Fleet was not applying to be reinstated as an independent accountant, rather, his future work will be subject to approval by an independent audit committee for any company that he works for (Van Fleet, 2011). The release further provides that if he seeks to resume work as an independent auditor, he will need to submit another application for that purpose. Until that time, he is still suspended from working as an independent accountant. The release proceeds to discuss his qualifications and reach a decision:

On the basis of information supplied, representations made, and undertakings agreed to by Van Fleet, it appears that he has complied with the terms of the June 2, 2005 order denying him the privilege of appearing or practicing before the Commission as an accountant, that no information has come to the attention of the Commission relating to his character, integrity, professional conduct or qualifications to practice before the Commission that would be a basis for adverse action against him…and that Van Fleet, by undertaking to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission…has shown good cause for reinstatement. Therefore, it is accordingly, ORDERED…that John Van Fleet, CPA is hereby reinstated to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission (Van Fleet, 2011).

Four similar cases were also present in the sample. Three of the others also involved individuals who were accountants while one case involved an attorney. Each one’s application was granted. There were no cases present in the sample in which an individual’s application of this sort was denied by the SEC.
One very unique case of this type, and indeed in the entire sample of cases, was that involving CBL Resources. This case could also have been categorized under the “hearing” category but has been categorized as “other” due to its peculiarity. This proceeding originated out of a registration form previously filed by the entity that sought to “register management’s common shares for resale in a $10,000 public offering” (CBL Res., 2014). Ironically, this led to the SEC investigating the entity and ultimately to initiating a hearing where it otherwise may not have. After investigating the entity, CBL Resources, Inc., and its ownership, the SEC found that:

Respondent’s Registration Statement includes untrue statements of material facts and omits to material facts necessary to make the statements contained therein not misleading. Among other things, Respondent stated that its executive officer and director controls Respondent when in fact Respondent is controlled and/or promoted by an undisclosed control person and/or promoter, who was previously charged with fraud…and barred from appearing before the Commission…Further, Respondent failed to disclose material agreements or proposed transactions with its undisclosed control person and/or promoter (CBL Res., 2014).

The respondent subsequently submitted a letter that sought to withdraw its initial request (CBL Res., 2014). The SEC warned CBL Resources that it should cooperate with the Commission’s investigation and withdraw this second letter, which it did not do (CBL Res., 2014). As such, Respondent’s seeking to withdraw its initial registration submission “constitutes a failure to cooperate with, refusal to permit, and obstruction of the staff’s examination” (CBL Res., 2014). The release then concluded by ordering and making provisions for a hearing before an ALJ (CBL Res., 2014).

Civil Cases

The array of cases in the civil litigation section was much more eclectic than that of the administrative proceedings. Even after moving criminal cases that were included
by the SEC among its litigation releases into its own category, the civil actions consisted of a wide array of different types of actions. This can be seen in Table 10, which presents a numeric breakdown of civil actions. Interestingly, even within a single release, multiple outcomes for the various parties could occur. While this was not a common occurrence, the presence of such instances complicates categorization. Also unlike the administrative releases, those in the civil litigation category tended to read more like the public information releases they were than like official court documents. While many cases in the administrative category were indeed court documents, few cases in this category even had an official document attached or linked.

Similar to the administrative releases, some cases merely indicated the initiation of proceedings. As with administrative cases, the majority of cases involved some form of judgement and or sanctioning. A notable difference that civil actions had from administrative ones was the increased prevalence of fines for those being sanctioned. Also of note is the fact that a small number of cases did involve a favorable outcome in the form of dismissal of charges for some defendants. The number of civil litigation cases in the sample was smaller than that of administrative cases.

It must be noted that a few of the cases used in the civil litigation cases appeared twice. That is, in some instances a case involved charges being filed against a defendant and later another case involved a judgement against that same person. This was not a frequent occurrence, nor does it influence the quantitative results. Indeed, any penalty such as a fine or disgorgement is only be imposed once and so cannot be double counted. The counting of background offense information has also been checked to ensure a given offense has not been counted twice. The only times such cases could be double counted
in any category is for the number of parties involved and for prior SEC actions. As the primary focus of this paper is qualitative in nature and these occurrences are so infrequent, repeated cases do not warrant enough concern for them to be eliminated.

**Table 10**

*Breakdown by Type of Civil Action*

<table>
<thead>
<tr>
<th>Type of Action</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charges Brought</td>
<td>30</td>
</tr>
<tr>
<td>Charges Brought with Emergency Action</td>
<td>14</td>
</tr>
<tr>
<td>Judgement/Sanctioning</td>
<td>92</td>
</tr>
<tr>
<td>Combination of Actions</td>
<td>5</td>
</tr>
<tr>
<td>Dismissed</td>
<td>1</td>
</tr>
<tr>
<td>Motion/Order to Show Cause</td>
<td>2</td>
</tr>
<tr>
<td>Preliminary Injunction</td>
<td>2</td>
</tr>
<tr>
<td>Trial Found in Favor of Defendant</td>
<td>2</td>
</tr>
<tr>
<td>Trial Found in Favor of SEC</td>
<td>1</td>
</tr>
<tr>
<td>Other Action</td>
<td>8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>157</strong></td>
</tr>
</tbody>
</table>

*Judgement/Sanctioning*

Unlike the administrative cases, sanctioning in cases of civil litigation took a variety of slightly different forms. Most cases that ended in judgements by consent, but others ended in default judgements and summary judgements. Additionally, some cases were final judgements or did not have a label attached to them. Beyond this, some cases concluded with a “resolution by consent” in which the sanctioning outcomes were agreed to by both the SEC and the defendant, but which would become official after approval by the court. Sanctions from these cases were still counted as sanctions. Finally, at least one
case included only the sanctions being imposed and did not actually include a judgement. Regardless of the specific type of judgement, within this category all of them resulted in some form of adverse outcome for the defendant.

Judgements by consent occupy a similar position to the vast majority of cases in the administrative category. Specifically, defendants in these cases were also able to “neither admit nor deny” the allegations. The SEC still received a favorable outcome in practice, nonetheless. There were 59 cases that culminated in a judgement by consent. Default judgements involved the Court’s granting of the penalties sought by the SEC based on a defendant’s failure to respond to the charges. Seven cases in this category were default judgements. Summary judgements involved a decision by the court in favor of the SEC without a full trial. There were four cases of this type here. A resolution by consent involved a settlement between the SEC and the defendant regarding the sanctioning. These cases were very much similar to judgements by consent but were only to become official once approved by the court. There were 13 cases of this nature. The remaining cases involved some form of sanctioning or a final judgement, or in one case a conclusion by both a default judgment and a judgement by consent. As these various cases did not specify the type of judgement and also because some could not be categorized as one, I did not create a table breaking down the frequency of each one’s use. This would have also been somewhat superfluous given the fact that some form of sanctioning resulted regardless of which was used. Furthermore, the type of judgement did not have a meaningful relationship with the type of penalty imposed; fines and disgorgement were used across the various types of judgement. It must also be noted that
the five cases in the “combination” category all included some form of judgement, but these cases were not included in this section.

As can be seen by Table 11, which presents the frequency of each sanction’s use, the most common type of penalty imposed in civil cases was an enjoinment. This penalty is in essence an order for a party to stop engaging in a certain conduct. As such, it is very much like a cease and desist order that is used in administrative cases. Interestingly, a cease and desist order was used in the civil court in a couple of civil cases. In most cases in which the defendant was enjoined, a monetary penalty or disgorgement was also ordered. Among the few cases that involved an enjoinment but did not also involve a fine or disgorgement, the defendant had either been previously dealt with in some severe form such as prison or an earlier fine, the decision on the amount of disgorgement or fine was upcoming, the defendant received a professional bar, or the defendant had engaged in a comparatively minor violation.

Table 11

Percentage of Civil Sanctioning Cases in which Each Penalty was Imposed

<table>
<thead>
<tr>
<th>Penalty</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enjoined</td>
<td>74%</td>
</tr>
<tr>
<td>Professional Bar/Suspension</td>
<td>28%</td>
</tr>
<tr>
<td>Disgorgement</td>
<td>62%</td>
</tr>
<tr>
<td>Fine</td>
<td>64%</td>
</tr>
</tbody>
</table>

Note. Percentages indicate the frequency of each penalty’s use among civil cases involving a sanction. A single case could involve multiple penalty outcomes, thus the total of all percentages exceeds 100 percent.
An example of a case involving an enjoinment but not a fine or disgorgement can be seen in that of Peter J. Webb. While acting as Vice President of Sales for Digital Lava, Inc., Webb inflated the entity’s revenues for one financial quarter, the third quarter of 2000:

Webb engaged in fraudulent sales practices to increase Digital Lava's revenue by 54% during Q3 2000, which resulted in Digital Lava reporting false financial information in its Form 10-Q for that quarter (Webb, 2003).

As the release states, simultaneous to the filing of charges, Webb settled the case (Webb, 2003). In this case of a judgement by consent, Webb “consented, without admitting or denying the allegations in the complaint, to the entry of a final judgment permanently enjoining him from future violations of the charged provisions” (Webb, 2003).

Professional bars and suspensions were used in slightly over a quarter of all cases, although far less frequently than in administrative cases. In nearly all of the cases in which a bar/suspension was imposed, the defendants were also enjoined. Brian J. Stucke’s civil case provides an example. Stucke served as Director of Compliance and Associate Vice President at National Century Financial Enterprises, Inc. (NCFE), a private corporation that collapsed, along with its subsidiaries:

Suddenly in October 2002 when investors discovered that the companies had hidden massive cash and collateral shortfalls from investors and auditors. The collapse caused investor losses exceeding $1 billion (Stucke, 2003).

Stucke had been a participant in a scheme to defraud those who had invested in securities of NCFE’s subsidiaries (Stucke, 2003). He engaged in a number of illegal and unethical activities:

Stucke aided other NCFE officials in concealing their fraud from trustees, investors, potential investors, and auditors by preparing the forms used to authorize improper advances made by other
NCFE officials; transferring funds between the subsidiaries' bank accounts to mask cash shortfalls of as much as $400 million; improperly using $101 million in proceeds from a new offering to cover existing reserve-account shortfalls; and creating and distributing false monthly investor reports to trustees, investors, potential investors, and auditors (Stucke, 2003).

The case serves as an example of a case in which a criminal action was also taken. Several cases also involved criminal actions, with defendants being at various stages of that process at the time of the civil release. In Stucke’s case, “the Commission filed its action at the same time that the U.S. Attorney's Office for the Southern District of Ohio unsealed a criminal information against Stucke” for the same activities (Stucke, 2003). Stucke consented to judgement that included three components:

Without admitting or denying the allegations in the complaint, Stucke consented to the entry of an order that: (1) permanently enjoins him from violating the antifraud provisions of the federal securities laws...(2) permanently bars him from serving as an officer or director of a public company; and (3) orders him to pay disgorgement, prejudgment interest, and a civil monetary penalty, with those amounts to be determined at a later hearing (Stucke, 2003).

In addition to receiving a lifetime professional bar and injunction, the defendant’s case was one of a handful that made provisions for a fine or disgorgement but refrained from stating the amount to be imposed. It is possible that a fine will be imposed in the criminal court, making a future fine by the SEC unnecessary. Notably, this case involved what was by far the largest amount of illegal gains/victim losses among all cases in the civil action category. The release concluded by stating that the SEC’s investigation remains ongoing against other parties related to NCFE’s activities (Stucke, 2003).

As seen in the table above, both disgorgement and fines were imposed much more frequently in civil cases than in administrative cases. In most cases in which disgorgement was used, a fine was also imposed. Several cases involving a fine did not
include disgorgement. As previously mentioned, there were four cases in which both a fine and disgorgement were left to be determined. These cases were not counted toward the percentages that appear in Table 11. The average dollar amount of disgorgement in this category was $2,985,832.84. Moreover, only four cases involved disgorgement of more than $10 million. A skewing effect from a few cases with large disgorgements can be seen by the fact that the median value of disgorgement ordered is $804,051.00. Many cases involved a comparatively small disgorgement; thirteen cases involved payments of less than $100,000. Fines involved less money than disgorgement having to be paid by defendants but even so remained sizable. The average dollar amount of a fine imposed was $1,156,478.89, while the median value was $200,000.00. The largest fine imposed was for $10 million, and this was done in two cases. The majority of fines were for values of less than one million dollars; eighteen cases involved fines of less than $100,000. It should be noted that in calculating the fine and disgorgement amounts, the amounts for all parties in each case were summed up. This was rather straightforward for cases involving only one party. But if for example a given case involved financial penalties of $100,000 for Party A and $50,000 for Party B, then the fine for the case would be counted as $150,000. In relation to disgorgement, it should be noted that any “prejudgment interest” imposed by the court was counted toward the value of disgorgement.

The judgement by consent against JB Oxford Holdings (JBOH) and three of its officers provides an example of a case with multiple defendants wherein both a fine and disgorgement were imposed. National Clearing Corporation (NCC), a subsidiary of JBOH was involved in illegal late trading and market timing, “engaged in a number of
deceptive practices to conceal its customers' fraudulent market timing,” and most notably “received approximately $1 million in compensation from the scheme while its customers reaped profits in excess of $8 million at the expense of long-term mutual fund shareholders” (JB Oxford Holdings, 2006). NCC and the three individuals entered into a judgement by consent with the SEC. As a result:

The final judgment against NCC permanently enjoins it from future violations…orders it to pay disgorgement of its ill-gotten gains in the amount of $1,035,324, plus prejudgment interest of $69,000; and orders it to pay a civil penalty of $1 million (JB Oxford Holdings, 2006).

The release went on to specify the penalties for each of the culpable officer:

James G. Lewis, age 40, of St. John, U.S. Virgin Islands, who was chief executive officer and president of NCC, and president and a member of the board of directors of JBOH…agreed to pay a $200,000 penalty, to be permanently enjoined from future violations…and to be barred from serving as an officer or director of a public company for five years. Lewis also consented to the issuance of an SEC order…that will bar him from association with any broker or dealer for at least five years.

Kraig L. Kibble, age 45, of Washington D.C., who was director of operations for NCC…agreed to pay a $50,000 penalty and to be enjoined from future violations…Kibble also consented to the issuance of an SEC order…that will bar him from association with any broker or dealer for at least four years.

James Y. Lin, age 46, of Rancho Palos Verdes, California, who was the vice president of correspondent services at NCC…agreed to pay a $35,000 penalty and to be permanently enjoined from future violations…Lin also consented to the issuance of an SEC order…that will bar him from association with any broker or dealer for at least three years (JB Oxford Holdings, 2006).

As can be seen here, the liable entity actually bore the greatest amount of the fine as well as the entirety of the disgorgement order. Even so, the individual officers were handed
sizable penalties. Ultimately, the total disgorgement to be paid was $1,104,324 while the total amount of civil fines was $1,285,000.

An example of case that concluded in a resolution by consent was that relating to Barry A. Bingham and Bingham Capital Management Corporation. This case involved one entity and one individual and unlike the previously discussed cases, concluded in a default judgement (Bingham, 2006). The release provided background on the nature of the violations, with the initial complaint alleging that:

From approximately April 2001 to November 2002, Bingham used misrepresentations and omissions of material fact to defraud at least 22 investors in Bingham Growth Partners, L.P. (Growth Partners), a hedge fund that Bingham created and managed through Capital Management, an unregistered investment adviser. Bingham offered and sold at least $1,826,218 of shares in the Fund, and at least $459,483 of these shares were offered and sold through Bingham's misrepresentations to investors about the Fund's past returns. Additionally, between July 2001 and November 2002, Bingham misappropriated approximately $141,637 in Growth Partners' assets, and by November 2002, the assets of Growth Partners had been wholly depleted by a combination of Bingham's trading losses and his misappropriations (Bingham, 2006).

Although the individual is closely associated with the entity bearing his name, the SEC imposed monetary sanctions against both of them. Interestingly, each was ordered to pay identical amounts. In addition to injunctions against each, “the Court also ordered each defendant to pay disgorgement, prejudgment interest and a civil penalty in the respective amounts of $1,011,795, $169,835 and $100,000” (Bingham, 2006). Thus, the total disgorgement from this case was $2,363,260, while the total fine here was $200,000.

**Charges Brought**

The second most numerous category of cases in numerical terms was that in which charges were brought. While the filing of charges by the SEC against a defendant
does not shed light on the outcome of the case, similar to administrative cases in which a hearing was scheduled, it can still provide some insight into the types of violations coming to the attention of the SEC that it ultimately decides to take legal action against. The types of violations for which penalties were sought were relatively wide-ranging in nature. Not surprisingly, misrepresentation was an element of about half of the cases. Several cases also involved the overstatement of income and misappropriation. Five of the 29 cases mentioned a related criminal action. In all of these cases, the criminal action was still in the earlier stages; none had yet involved findings of guilt or had progresses to the sentencing stage. Notably, all five involved violations that were relatively serious in nature, involving Ponzi schemes, insider trading, account hacking, and forgery. Only three of the cases made mention of an administrative action. These cases were at various points and did not all involve particularly injurious violations. There were no cases in which both a criminal and an administrative action had been initiated. Across all cases, the SEC noted that it was seeking enjoinments, fines, and where relevant, disgorgement and professional bars.

The case of Allen E. Weintraub and AWMS Acquisitions, Inc., d/b/a Sterling Global Holdings provides somewhat of a typical example of an instance in which the SEC filed civil charges in that it involved misrepresentation and there were no other types of actions filed against the defendant for the violation at hand. The Complaint “alleges that Weintraub and Sterling Global deceived the public by making false and misleading statements regarding Sterling Global’s ability to purchase and operate two public companies” (Weintraub, 2011). Specifically, Weintraub made emailed tender offers to purchase, with cash totaling over $4 billion, all “outstanding stock” of two separate
companies at “almost a 50% premium over each company's then current stock price” (Weintraub, 2011). The release continued:

In an effort to generate publicity, Weintraub emailed the purported tender offers to media outlets and financial investment research firms. In published media interviews, Weintraub boasted that he has 15 years experience buying distressed companies, that banks had agreed to finance the acquisitions, and that letters of credit could be readily provided.

Weintraub’s statements created the impression that Sterling Global's tender offers were legitimate and that the deals were capable of being completed; however, completion of either deal was impossible — Weinaub knew that neither he nor Sterling Global had any assets and that there were no agreements in place to finance the purported acquisitions. (Weintraub, 2011)

In addition to these misrepresentations, Weintraub and Sterling Global failed to disclose various pieces of material information about their own checkered histories. Specifically:

In a 2002 SEC enforcement action… the court entered a permanent injunction [against Weintraub and] barred him from acting as an officer and director of a public company and ordered him to pay disgorgement plus prejudgment interest of $930,000 and a civil penalty of $120,000.


Weintraub is on probation for his 2008 conviction.

Weintraub filed for personal bankruptcy in 2007 and still owes a non-dischargeable prior judgment in favor of the SEC in the amount of approximately $1,050,000.

In September 2010, the State of Florida’s Division of Corporations administratively dissolved Sterling Global for failure to file its required annual report. (Weintraub, 2011)

The release concludes by naming the specific securities violations the SEC is charging Weintraub and Sterling Global with and stating that:

The Commission requests that the court permanently enjoin Weintraub and Sterling Global from violating the antifraud and tender offer provisions of the federal securities laws, order them to pay disgorgement plus prejudgment interest, and impose a civil money penalty against them.
Following the summary of information on the webpage, in this instance, there was also a link to the more extensive full SEC complaint which spans 17 pages.

In addition to cases in which the SEC only filed charges, there were over a dozen cases in which charges were brought along with an emergency action. In nearly all of these cases, the SEC obtained a temporary asset freeze or restraining order against the defendants until further information on them and their potential illegal activities were brought to light. The acquisition of these asset freezes and or restraining orders are based on evidence presented to the court by the SEC that a violation of securities regulation is occurring. In the one case where an asset freeze or restraining order had not already been obtained, it was being sought by the SEC. In all of the cases, there was no outcome in addition to an asset freeze or restraining order; no penalties of any type were imposed on the defendants at this stage. The case of Pension Fund of America (PFA), LC, et al. is an example of a case wherein both a restraining order and an asset freeze were obtained by the SEC. The case named a total of four entities and two individuals as defendants. The March 2005 filing of charges was made because due to a fraudulent scheme that targeted Latin American investors:

The complaint alleges that from October 1999 to the present, PFA and its principals, Cornide and de la Riva, raised approximately $127 million from over 3,400 investors...through a network of over 500 sales agents in Central and South America, PFA promotes the investment as a "trust" plan, assuring prospective investors that their funds are secure because they are held and invested by large and well-established U.S. banks and broker-dealers who act as "trustees" or "custodians" of investors' funds. The offering materials provided to investors (available in Spanish and Portuguese) fail to disclose, however, that up to 90% of funds invested in The Liberty Trust – PFA's flagship program chosen by 85% of investors - are used to pay exorbitant commissions, an
"administrative fee" taken by PFA and other costs…Defendants have misrepresented their relationship with financial institutions and broker-dealers, and perpetuated those misrepresentations by creating false certificates bearing unauthorized seals. The Complaint alleges that Cornide and de la Riva have misappropriated at least $15 million of investors' funds for themselves (Pension Fund of Am., 2005).

On March 28, the SEC filed civil an emergency request to halt these illegal activities. The same day, a US District Court judge “issued temporary restraining orders, asset freezes and other relief against the defendants” in addition to appointing a receiver over all of the entities named in the proceeding (Pension Fund of Am., 2005). The release, which also includes a link to the full 18-page legal document, concludes by stating that the investigation is ongoing and that:

In addition to the emergency relief obtained on March 28, 2005, the Commission's civil action is seeking, among other things, preliminary and permanent injunctions, an order that the defendants disgorge all ill-gotten gains, with pre-judgment interest, and an order imposing civil money penalties (Pension Fund of Am., 2005).

Many cases also include a final acknowledgement by the SEC of any outside assistance, often this takes the form of any department involved in a parallel criminal investigation, such as a US District Attorney’s office. Uniquely, in this case which involved considerable activities outside of the US, the SEC stated that it “acknowledges the assistance in this case of the U.S. Department of Homeland Security's Bureau of Immigration and Customs Enforcement” (Pension Fund of Am., 2005).

Other

Although, as can be seen above, there were a variety of other types of actions besides those involving the filing of charges and judgements, these cases were relatively few in number and so will all be covered in this broad section. One notable type of
outcome that was not possible for administrative cases was a trial. Even so, only three cases in the sample involved a civil trial. The fact that there are few civil cases should not be particularly surprising given that most civil (and criminal) cases do not end up going to trial. More importantly, the SEC usually appears to have a sufficient amount of reliable evidence against the defendant, making resistance against the SEC largely futile in most cases. Interestingly, of the three cases that went to trial, two of them resulted in findings in favor of the defendant while only one found in favor of the SEC.

As there were so few of these notable cases, each will be briefly discussed. The only case that went to trial and found in favor of the SEC was that against Ran H. Furman. Furman had served as CFO of Island Pacific, and entity which the SEC had filed charges against in September of 2008 (Retail Pro, 2011). The complaint alleged that:

Island Pacific improperly recorded and reported $3.9 million in revenue from a sham transaction that was based on a License Agreement that had been altered by Furman, unbeknownst to the other party to the transaction (Retail Pro, 2011).

While the release did not provide very much information on the trial, it stated that:

On July 8, 2011, following a February 25, 2011 jury verdict in favor of the Commission and partial summary judgment granted in the Commission’s favor on November 18, 2009, the Honorable William Q. Hayes of the United States District Court for the Southern District of California issued a final judgment permanently enjoining Ran H. Furman…from violating the antifraud, books and records, lying to auditors, and certification provisions of the federal securities laws, prohibiting him for seven years from acting as an officer or director of a public company, and assessing a $75,000 civil penalty (Retail Pro, 2011).

The release went on to quote the court’s rationale for the decision:

The evidence presented at trial and on summary judgment demonstrates that Furman knowingly participated in and facilitated the alteration of the License Agreement, [engaged in] repeated violations of GAAP and the company’s revenue recognition policy, [participated in] the firing of
[a whistle-blowing company employee] and [made] repeated misrepresentations to the auditors”
which merited imposition of requested relief. The Court further concluded that “Furman played an
esential and knowing role in the securities law violations at issue.” (Retail Pro, 2011)

The release concluded by providing links to the completed judgements by consent against
two former CEOs of Island Pacific. Contrary to the criminal system in which a defendant
who goes to trial will likely receive a harsher penalty than he would have if he agreed to a
plea deal, the results from this trial do not seem to indicate a harsher outcome for the
defendant because he took his case to trial (Retail Pro, 2011). Indeed, though the cases
against both CEOs were not a part of the sample, a cursory review showed that these
individuals who both consented to judgements actually received larger fines than Furman,
though this can probably be explained by a greater level of attributed culpability (Retail
Pro, 2008; Schechter, 2008).

The release relating to John B. Lowy was only a single paragraph in length.
Oddly, the release from April 2003 states that the trial occurred in March 2001 (Lowy,
2003). As the release states, “the action related to the companies’ publicly claimed
acquisition of four Brazilian plantations in 1991 and their publicly reported value of over
five million dollars” (Lowy, 2003). Although the release stated that the judge who ruled
on the case issued a 58-page decision, this was not included on the SEC’s website,
though it was easily found through a Google search. In determining whether Lowy was
liable for making misrepresentations, Judge Seybert of the United States District Court
for the Eastern District of New York found, after a 10-day bench trial, “that the
Defendant, John B. Lowy was not reckless in his actions and omissions as the sole officer
of Security Asset Management, Inc., and counsel to, and shareholder in, Latin American

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4 Quotations and brackets are original from the SEC release.
Resources, Inc. (Lowy, 2003). As such, the case was dismissed without any penalties being imposed (Lowy, 2003).

The other case that went to trial but resulted in a ruling in favor of the defendant was that of Michael Rivers. In October of 2002, the SEC filed a complaint in the US District Court for the District of Minnesota against Michael Rivers as well as his broker and brokerage firm “alleging that they artificially increased the closing price of First Federal Capital Corporation common stock through "marking the close" transactions and thereby violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder” (Rivers, 2004). While the broker consented to an injunction, professional bar, and $50,000 civil penalty and the brokerage firm consented to a $100,000 civil fine, among other penalties, the action against Rivers ultimately went to trial (Rivers, 2004). Unlike the related parties, Rivers did not have sanctions imposed because:

After a three day trial, a jury returned a verdict in favor of defendant Michael Rivers finding that he did not violate Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder (Rivers, 2004).

It is particularly interesting that Rivers thus did not have to face an enjoinment, a professional bar, or a large fine while his associates did. While the release does not provide in-depth details about the case which may have shown greater culpability on the part of the other parties, the result nonetheless raises some rather pressing question. Specifically, would many other defendants avoid sanctions by taking their case to trial? Trials are riskier and more difficult to predict than a consent agreement. Furthermore, they inevitable necessitate a greater commitment of time and resources, and in instances where counsel is hired, can still be costly for the defendant even if not found liable. It is possible that vast majority of defendants consent to a judgement because they are ‘dead
to rights’ and allowing the case to be taken to trial would simply prolong the inevitable at an additional cost that could be avoided. The information in these cases do not permit a determination in this matter. Moreover, the small number of trials provide us with only a brief peek at this type of outcome.

Beyond the two cases that involved a dismissal of charges as a result of a civil trial, there was only one case in which civil charges were simply dismissed for a defendant. The SEC had previously initiated an action against Stand-By Systems, Inc., and Kenneth J. Palmer, but:

In a joint motion to dismiss the litigation, the parties advised the Court that the Commission had determined that in light of developments since the filing of its lawsuit, it should not continue to advance its claims against the defendants. The parties also advised the Court that in making its decision to seek the dismissal of the case, the Commission relied upon the representations of the defendants concerning their willingness, prior to any future offering of securities: (1) to adopt accounting procedures and policies recommended by a CPA to be retained by Standby, not unacceptable to the Commission staff; and (2) to submit all offering materials for review by securities counsel, not unacceptable to the Commission staff (Stand-By Sys., 2004). Although this seems like a logical conclusion to a case involving merely some form of accounting mistakes, or even a small fraud, a review of the SEC’s original complaint, which was not part of the sample, revealed that the fraud involved numerous misrepresentations to 144 investors and that Palmer misappropriated much of the $1.6 million raised into unauthorized personal expenditures (Stand-By Sys., 2004). The fact that this was the only case of this type in the entire sample adds to the already considerable peculiarity of the case. Notably, there did not appear to be any other actions taken against Palmer by the SEC, nor were any statements made in either release indicating criminal action against him.
Among the other cases among the litigation releases were preliminary injunctions and orders or motions to show cause. While preliminary injunctions maintain the current state of the defendant before a trial, orders or motions to show cause involve a justification for some course of action to be submitted to the court. While two cases involved the granting of an order to show cause, one involved an application by the SEC for an order to show cause. For example, in one case, which actually falls among the cases in which a combination of actions took place, both an order to show cause and a preliminary injunction occurred:

United States District Court for the Eastern District of California ordered defendants Edward Gray of Fresno, California, and his company, Metropolis Holdings, LLC, to show cause why they should not be held in contempt for failing to account for the funds that they raised from eleven investors worldwide in a fraudulent investment scheme. The Court simultaneously entered a preliminary injunction freezing Gray and Metropolis's financial assets for the duration of the case, including approximately $1.4 million held in ten accounts identified by the Commission (Metropolis Holdings, 2003).

The case went on to also summarize the defendants’ activities, the SEC’s actions, while also stating that the defendant was currently incarcerated while his criminal proceeding processes (Metropolis Holdings, 2003). At the time of the release, the SEC was continuing to seek a default judgement in the case due to the defendants’ failure to respond to its initial complaint (Metropolis Holdings, 2003).

Most of the cases in which a combination of actions took place involved the filing of charges and a judgement or resolution by consent. In these instances, charges would be filed against several defendants, with some of them agreeing to settle and others not choosing not to do so, at least at the time of the release. The SEC’s action against five officers that attempted to inflate earnings at their company over a period of over two and
a half years provides an example of this (Powell, 2006). Three of the defendants each consented to injunctions, professional bars, and disgorgement, although no monetary penalties were imposed against one and a lesser amount was imposed on another due to their inability to pay (Powell, 2006). For the other two defendants, the action is ongoing:

The Commission seeks from Mitchell and Scannell permanent injunctions, disgorgement of ill-gotten gains plus prejudgment interest, officer and director bars, and civil penalties (Powell, 2006).

One case in this category involved both a dismissal and a judgement by consent. In that case, the SEC “sought dismissal of its final claims for disgorgement and civil penalties in a civil injunctive action filed against Spiegel, Inc.” (Powell, 2006). The apparent reason for this dismissal was later pointed out in the release, though not specifically stated:

“Spiegel filed for bankruptcy shortly after the SEC’s action was filed” (Powell, 2006).

Several cases also involved some other type of action. These cases took a variety of forms, with none of them being logically placeable in another category. Among these releases were an order lifting an asset freeze, an order continuing an asset freeze, a clarification of a judge’s earlier order, an order for an attorney to surrender money that he obtained from clients involved in an illegal scheme, and a release stating that an appeals court had affirmed the judgement against a defendant who was actually also previously named as a defendant in one of the cases already covered in the sample.

**Criminal Cases**

An interesting aspect of the litigation releases made by the SEC was the inclusion of a small number of cases that involved actions taken in the criminal courts. White-collar offenders are seldom prosecuted in the criminal courts (Galvin & Simpson, 2019; Shapiro, 1984; Shapiro, 1985). A higher burden of proof, the difficulty in locating the
individual’s role in an organizational crime, and the higher class and financial status of offenders are among the most notable factors working simultaneously against prosecutors and to the benefit of securities violators facing criminal charges. The present study has likewise found the number of criminal actions against corporate offenders to be relatively small in comparison to other legal remedies examined. It is important to note that this is only based on a random sample of litigation releases.

This section was not originally intended but seemed appropriate given the unanticipated presence of several criminal actions in the SEC releases. It must again be emphasized that the decision to prosecute white-collar offenders does not rest with the SEC. Cases detected by and of interest to the SEC must be handed over to the Department of Justice for actual prosecution; the Justice Department maintains prosecutorial discretion over which cases it pursues criminally (Shapiro, 1984; SEC, 2013). As such, the findings from this section should not be viewed as a reflection of the policies and practices of the Securities and Exchange Commission.

Interestingly, while previous research has suggested that the white-collar offenders who do receive criminal sanctions often receive lenient ones (Perri, 2011; Reiman & Leighton, 2017), the present study found the sanctioning of these offenders to be relatively severe. In all but one of the cases involving a final case outcome of a decision/sentencing, an offender was sentenced to prison. The most severe sentence meted out was against Timothy Rafferty, who was involved with others in a multi-million-dollar misappropriation scheme with over two hundred victims (Uncommon Media Grp., 2006). Specifically, he was convicted on “charges of conspiracy to commit securities fraud, conspiracy to commit wire fraud and two substantive counts of wire
fraud” (Uncommon Media Grp., 2006). Rafferty was subsequently sentenced to 126 months of incarceration to be followed by three years of supervised release (Uncommon Media Grp., 2006). Beyond this, Rafferty was also ordered “to forfeit his interest in his primary residence - a $2.2 million home in Douglaston, N.Y.; a BMW sport utility vehicle; and up to $1.4 million in cash” (Uncommon Media Grp., 2006). Notably, the only other legal action that appears to have been taken against the defendant was an emergency action by the SEC freezing the illegal activities he was involved with; no mention is made of a civil or administrative action having been previously taken against him personally, although the entity consented to disgorgement and civil penalties in a non-criminal action previously taken by the SEC (Uncommon Media Grp., 2006).

The least severe sanction imposed was probation for one of three defendants in a release related to an entity’s “$60 million financial reporting fraud” (Rent-Way, 2003). While Conway, the “former president and CFO…was sentenced to 13 months in prison and 2 years of supervised release, and was ordered to pay a $20,000 fine” and Marini, the “former controller and CAO…was sentenced to 3 months in prison, 3 months of home detention, and 2 years of supervised release,” the third defendant did not receive a prison sentence (Rent-Way, 2003). Underwood, the “former vice president in charge of operations…was sentenced to 2 years’ probation and ordered to pay a $7,000 fine” (Rent-Way, 2003). Each plead guilty to slightly different offenses and were ostensibly sentenced based on their culpability (Rent-Way, 2003). It was also stated that both Marini and Underwood “cooperated in the investigations by the Department of Justice and the Commission” (Rent-Way, 2003). With the exception of Underwood, all of the nine other
specified individuals who were convicted in the sample were sentenced to at least some period of incarceration.

Many of these cases also noted the imposition of a fine at some point against the offender. Nearly all of the cases mentioned some form of previous action taken by the SEC against the individuals involved or the entity with which they were associated. In fact, two of twelve cases were related to an earlier case that was also present in the sample. Interestingly, in none of the cases did any of the defendants appear to be repeat criminal offenders, in other words it appears that the current action was their first interaction with the criminal justice system for a corporate offense. It also appears that all of the defendants were first time offenders, as all of the previous releases mentioned in the current cases were related to the case at hand. It is possible that defendants did have previous interactions with the SEC but that these are not mentioned, a more thorough review of the individuals’ records would be necessary to make such a determination. In some of the cases in the larger sample, mention was made of previous legal actions. No such statements were found in any of the criminal case releases. Unfortunately, this may simply be a result of the lack of uniformity across the releases as opposed to an intentional omission by the authors.

Importantly however, in five of the nine cases that involved a prison sentence the offender had in some way obstructed the justice process. One example of this was the case of John Collins, who plead guilty to obstruction of justice and wire fraud. The criminal action arose as a result of his willful violation of an SEC-imposed asset freeze. Collins was sentenced by a US District Court judge to “a term of 71 months in federal prison, plus three years supervised release, and ordered him to pay $290,000 in
restitution” (Collins, 2003). A somewhat unique example of this was the sentencing of James P. Connelly Jr in 2003 to a prison sentence of one to three years. Connelly, while acting as vice chairman of a mutual fund, had illegally allowed select investors to engage in market timing. The SEC took an administrative action against him, in which he was agreed to professional bars, a cease and desist order, and a $400,000 civil penalty (Connelly, 2004). This may have been the maximum extent of his punishment if not for his repeated attempts to tamper with evidence during the SEC’s investigation. Specifically, Connelly made “repeated efforts to tamper with an ongoing investigation.” Specifically, he had directed “subordinates to delete emails called for by subpoenas” and to lie to investigators in order to make himself appear less culpable (Connelly, 2004). The criminal action in this case was actually not prosecuted federally by the Department of Justice but rather in state court by the New York State Attorney General’s office. Connelly had been charged with the Tampering with Physical Evidence, which is a felony according to New York law. The reason why this case was prosecuted in a state court, rather than a federal court was never specified. It is possible that it was the result of greater resource availability at the time or experience with such cases by New York’s prosecutors (Connelly, 2004).

The single instance in which a case advanced to the judgement stage but did not result in a conviction and sentencing was the case of Mark Cuban’s alleged insider trading. As the brief release states, “after a three-week trial, a nine-person federal jury found Mark Cuban not liable for insider trading,” thus acquitting Cuban was of any wrongdoing (Cuban, 2013). In two of the other three cases, a criminal indictment was
handed down, while charges were filed in the final case. Of note, false statements were also made in one of the two cases that involved an indictment.

The sample of criminal cases mentioned is of course rather small. Indeed, the inclusion of criminal cases was not even an initial objective for this project. While the case descriptions often provided only limited information, one theme does appear evident: if you have been involved in some form of financial misconduct, the most severe form of punishment you will likely face is some sort of fine, however, if you then proceed to attempt to cover up the misconduct, such as by committing perjury, misleading SEC investigators, or tampering with evidence, you expose yourself not only to a financial penalty, but to a criminal conviction and incarceration.

**Themes Across Cases**

**The Role of Entities in Punishments**

Unsurprisingly, as was evidenced by the cases, many of the defendants were associated with an organization when they committed their offense. Individuals in an organization not only have access to a greater range of information and resources but may also present a greater level of legitimacy trustworthiness while being able to engage in illegal activity with a lower likelihood of legal ramifications than someone who is acting alone. There were, however, also individuals who were involved in ‘organizations’ that existed only on paper and in practice consisted only of themselves. Such was typically the case in the more stereotypical con-man cases in which investments are sold at unreasonably low prices with unrealistic returns on investment being promised. Although defendants were often involved in an organization, this did not necessarily mean that the entity would be included as a defendant. Often times, such as in cases of
insider trading, an individual would be associated with an entity, and indeed use this association for illegal activity, with the organization itself being totally uninvolved, and in no way complicit to, the unlawful activity. Even so, among civil cases in which either charges were filed, or a judgement was entered, at least one organization was named as a defendant in just over half of the cases.

The role of entities, at least as so far as they were actually listed as defendants, took on a rather interesting role when it came to sanctioning. Cases that were sanctioned in the administrative or civil realm with a fine tended to include at least one entity as a respondent. Moreover, entities were present in nearly all of the cases involving the largest fines. On the other hand, however, among cases in which a criminal action was mentioned in the release, entities were typically absent as respondents. While these rather conflicting findings were seen for both civil and administrative releases, they were most notable among administrative cases.

Among the 125 administrative cases that involved sanctioning for something other than only failing to file required reports, 39 cases involved the imposition of a fine. Among these, 26 involved at least one entity. Among the remaining 86 cases in which a fine was not imposed however, only seven cases involved an entity, while all of the remaining 79 cases did not. Thus, while 67 percent of cases in which a fine was imposed involved an entity, only eight percent of those in which a fine was not imposed named an entity as a respondent. Cases involving only a failure to file periodic reports were not included here because they were mundane and never involved a severe penalty, moreover, the entities involved were often defunct anyway. Although even if all 49 of
these cases, which all involved at least one entity, were counted, cases without a fine would still be less likely to involve an entity than those that did.

As a further note, the distribution of entities among cases involving a fine was not uniform; cases involving the highest fines in dollar amount regularly included organizations while those involving the lowest fines actually did not tend to have entities as respondents. Specifically, among the top 10 cases in dollar amount of fine, all ten cases involved at least an entity. Among the 21 cases involving a fine of $100,000 or more, all but 4 cases involved an entity. Things look rather different at the other end of the spectrum. Among the 12 cases involving fines of $50,000 or less, only 4 cases involved an entity.

The situation among civil cases was somewhat similar, although the distinction between cases in which a fine was and was not imposed was less dramatic, though this may be accounted for by the greater utilization of fines in civil cases. Among the 92 cases in which a sanction was imposed, 64 cases involved a fine while only 28 did not. Among the 59 cases that actually named a dollar amount for the fine, 30 of them involved at least one entity; among the five cases in which a fine was to be determined, three included at least one entity. Finally, of the 28 cases that did not involve a fine, only 6 involved an entity as a defendant. As such, 51% of cases that involved a fine named an entity as a respondent while 21% of cases that did not involve a fine included at least one entity. It should be noted that the few cases that involved a dismissal without sanctioning were not counted here.

A similar pattern to that of the administrative cases can also be seen in the distribution of entities across the dollar amounts of the fines imposed. Of the 13 highest
fines, those involving a dollar amount of one million dollars or more, at least one entity was named as a defendant in 11 cases. In the 18 cases with the lowest fines, those involving a fine of less than $100,000, only four cases involved an entity while the remaining 14 cases did not; of the eight cases involving a fine of $25,000 or less, only a single case involved an entity.

The outcomes surrounding criminal actions for organizations were quite different, however. It must be noted that criminal action, as defined here, does not necessarily involve a punishment. In many instances, the release only states that charges have been filed. Because the criminal action is occurring simultaneously, in many cases this is the most up-to-date information that can be provided in the release. Most cases involving a criminal action do state that a conviction was obtained, and many even provide information on sentencing. Criminal actions, even those in which nothing beyond the filing of charges is described, represent a step toward the most severe form of sanctioning available. Of the 267 administrative cases of all types, 34 stated that a criminal action had been taken. Amazingly, of these 34 cases, not a single one named an entity as a respondent. Regarding civil cases, 20 cases out of all 157 civil cases mentioned a criminal action. Unlike with administrative cases, there were cases that involved an entity as a named defendant, even so, this was a clear minority of cases, with only six of the 20 cases involving an entity. Although this proportion comes closer to the overall percentage of civil cases involving an entity, it is still sizably low.

Perhaps the most enlightening evidence of the lack of entities in criminal cases is provided by the releases that specifically involved criminal actions: of the twelve criminal cases, none involve an entity as a named defendant. Thus, entities are seldom
involved in criminal prosecution, although they are often the targets of fines, particularly the most financially severe ones. It is possible that some cases that did not mention a criminal action actually involved one. It is also possible that in some cases criminal actions were later taken only after the completion of administrative and civil proceedings. In either case, the high likelihood for fines and low likelihood of criminal actions for entities may be less dramatic than shown here.

Although these findings are contradictory, they might be explained by the burden of proof involved in the criminal cases compared to civil and administrative ones, along with the ability to locate criminal intent in singular individuals compared to organizations composed of dozens of individuals. As can be seen, cases involving an entity were more likely to involve the imposition of a fine than those not involving one. Entities that exist in the traditional sense typically have more resources at their disposal. It may be that the SEC is simply imposing fines against businesses because these entities can afford to pay them more easily than individuals. Perhaps attempting to impose such fines against individuals would lead to an increase in lengthy adversarial outcomes. The current outcome process may thus be a situation that provides acceptable results for both sides. By fining entities, the SEC is getting money as a sanction for a violation, while the individuals who actually caused the violation are still being held accountable but do not have to surrender any of their own money. As in cases in which the respondent or defendant consents without admitting or denying allegations, fining organizations may provide a win-win for all parties. The use of fines against entities remains somewhat surprising when considering the adverse impact they may have on stockholders. These
individuals may end up being harmed even more than those who actually caused the illegalities.

While the imposition of fines in cases involving entities can be considered surprising, the fact that entities were not typically involved in criminal actions seems less remarkable. Most criminal charges, after all, require an element of intent to commit an illegal act. While this intent may not be very difficult to prove at the individual level, when the object is a group of individuals, this intent can become difficult or impossible to locate. Indeed, an organization can make the claim that it was not the organization that decided to commit the violation, but a rogue individual who did so on his own accord. It must also be noted that an entity cannot be criminally punished in quite the same way as an individual. While an entity can be fined, it cannot be imprisoned. In the most extreme cases, it can be dissolved, the individual equivalent of an execution, but in this case also the innocent stockholder will be greatly harmed, perhaps losing a considerable amount of savings while the entity’s former CEO simply moves on to another entity’s lucrative board position. Unlike most individuals, entities will often have a team of premier attorneys at their disposal. The government’s decision to pursue a criminal case against an entity may well end up costing considerable time and resources, and not even result in a conviction.

Sanctioning Patterns

In general, sanctions typically, though not always, followed a logical pattern. Specifically, cases involving greater culpability and those that were damaging to victims or the market were punished relatively severely. Across case types, the actions of the SEC, and indeed agencies that pursued cases in the criminal courts, generally followed a
logical and expected pattern. Cases that involved high levels of culpability beyond mere negligence on the part of their perpetrators were frequently punished severely in the form of fines; in many instances, individual actors were also incarcerated. The punishment of Ponzi schemes and insider trading speaks to this. Both of these types of cases were consistently punished relatively severely. Ponzi schemes represent a potentially devastating loss to tangible victims. While insider trading does not necessarily have readily identifiable victims, it can diminish investor confidence in the market. In both types of activities, a willful, often complex, violation of law is made to the detriment of the broader system.

Though there were only a few civil cases which involved both a fine and previous criminal action, all involved either a Ponzi scheme, insider trading, or a kickback scheme. The case with the highest fine and a criminal action involved a Ponzi scheme perpetrated by an individual and his entity. In that case, Richard Dalton “raised approximately $17 million from 130 investors in 13 states” (Dalton, 2011). High returns were promised, but funds were ultimately used for Dalton’s personal benefit while earlier investors only received funds from the investments of new ones:

Dalton told investors they would receive annual profits ranging from 48% to 120% when, in fact, he was operating a Ponzi scheme, with new investors providing the funds for UCR’s profit payments to existing investors. The Court held that Dalton misappropriated investors’ funds and used at least $2.5 million for his personal benefit or for the benefit of family members (Dalton, 2011).

Dalton and his entity were ultimately ordered to pay a civil fine of $7,549,458, an amount representing the fourth highest fine among civil cases (Dalton, 2011). As the release
stated, Dalton, along with an individual who appears to be his wife, was also indicted for these actions by a federal grand jury in the District of Colorado (Dalton, 2011).

Among civil cases, those receiving the highest fines varied in the violations for which they were punished. Most of the violations did appear to have a relatively high level of culpability or detriment to the market, though others seemed a bit out of place, at least based on type of violation. Interestingly, the top three cases in terms of the dollar amount imposed appeared to involve violations that are not particularly problematic: overstating income, inflating finances, and engaging in unregistered sales. Upon closer review, these violations involved very large amounts of money. In both of the top cases in which a fine of $10 million was imposed, assets were inflated by approximately one billion dollars.

In the case of Satyam Computer Services Limited, an information technologies company based in India, the organization was charged with “fraudulently overstating the company’s revenue, income and cash balances by more than $1 billion over five years…representing half the company’s total assets.” (Satyam Comput. Servs. Ltd., 2011). The company’s former chairman described the maintenance of the massively inflated assets to be “like riding a tiger, not knowing how to get off without being eaten” (Satyam Comput. Servs. Ltd., 2011). In addition to the Indian government’s criminal and non-criminal actions, the SEC imposed the aforementioned fine and mandated improved internal controls (Satyam Comput. Servs. Ltd., 2011).

The other case in which a $10 million fine was imposed involved i2 Technologies, a Dallas, TX based “developer and marketer of enterprise supply chain software and management solutions” (i2 Technologies, 2004). Over a period of four years
and three quarters, i2 Technologies “misstated approximately $1 billion of software license revenues” (i2 Technologies, 2004). In addition to the fine, a nominal disgorgement of $1 and cease and desist order were also consented to (i2 Technologies, 2004). The third highest case involved fines for several individuals and their associated entities that ultimately totaled over $8 million, though the highest fine imposed on a single part was $2.73 million (Luna, 2014). This case involved a “multi-million dollar scheme to sell shares of Axis Technologies Group, Inc. stock in a public distribution without registration with the Commission” (Luna, 2014). There did not appear to be any misappropriation or any other elements that would have made this a Ponzi scheme, rather the fine and total disgorgement of just over $15 million was related solely to this unregistered offering (Luna, 2014).

Following these three cases, however, the rest of the cases with higher fines, and cases with fines in general, seem to be imposed against comparatively serious violations, namely insider trading, stock price manipulation, Ponzi schemes, and various forms of misrepresentation and misappropriation. Also among these cases were a handful of cases of unregistered activities or inaccurate financial reporting. Several cases that involved highly culpable violations, such as Ponzi schemes, did not involve a fine. This could be explained by the fact that these cases were dealt with in the criminal courts, with some form of sanctioning being imposed in that way. This punishment, when specifically mentioned, always involved either a restitution payment or a period of incarceration. Among these nine cases that involved criminal sanctioning but did not involve a fine, several involved misappropriation, stock market manipulation, insider trading, or a kickback scheme. In only one instances was a comparatively less detrimental violation
involved, that in which income was overstated. In this instance, in which an individual and no entity was involved, monetary penalties had been imposed criminally (Livesay, 2004). Incidentally, it appears that no other sanction was imposed criminally, making this the least severely sanctioned case out of the nine.

Among cases in which no fine or criminal action was taken, a few did involve disgorgement. While some of these involved comparatively more serious violations, such as Ponzi schemes and misappropriation, many of these cases did not involve a more severe penalty due to an inability to pay. Other cases were still not entirely completed. In at least one case, one of the least severe among these, two individuals had overstatement of income and were enjoined and ordered to pay disgorgement but were not fined (Fisher, 2003). In this case, in which some chargers were actually “voluntarily dismissed” by the SEC, the lack of a fine was not ostensibly due to a lack of ability to pay (Fisher, 2003).

For the handful of cases in which no fine, no criminal action, and no disgorgement was issued, and in which these penalties were neither to be determined later nor excluded due to a lack of ability to pay, violations were typically of a comparatively less detrimental nature. Indeed, among the six such cases, all involved some form of involvement in accounting misstatements, such as overstating income and inflating assets. The explanation for the relatively lenient sanctioning for such violations may be that such types of offenses do not necessarily have tangible victims. Accounting inconsistencies may ultimately involve victims when stockholders and employees believe that a company is financially solvent, but it is actually on the brink of total collapse. While the releases did not provide very much information on the amounts of money involved in these violations, they generally did not appear to be very serious in nature.
Evidence for this can be seen in the fact that among cases which included the length of time for which the violation was occurring, the period was rather small, likely allowing relatively little damage to be done. While one case involved a fraudulent scheme that lasted two years, the other two cases in which the length the offense was provided lasted only a few months.

Looking at SEC civil cases in which criminal legal action was also taken shows that the same general pattern can also be seen. As previously noted, many of these cases involved individuals who actively interfered with an investigation. Among those who did not, offenses were typically relatively serious in nature. Several cases involved misappropriation of assets, some of these being Ponzi schemes, one case involved market manipulation, and one case involved insider trading, though this latter case being the only one that culminated in a verdict of not guilty. What was perhaps the least serious case among the criminal actions was a case involving misrepresentations. Although this case did not appear to involve any misappropriation, it did go on for a five-year period and involved the defendant obtaining over $9 million on the bases of various lies (Webb, 2014). This case only involved an indictment and had not yet advanced to the sentencing stage, preventing a comparison to the other types of crimes. Comparison of sentencing severity across these cases is further complicated by the small number of cases, the lack of background information on victims and sums of money, and the relative lack of variation in types of offending and sentencing outcomes.

Administrative cases were generally punished in a similar way, with violations usually being punished according to their harmfulness. Among the cases that involved the imposition of a fine, and specifically those that involved a sizable fine, certain types of
violations once again emerged. Common violations were those involving losses to tangible victims, market manipulation, and insider trading. Also present were other highly unethical behaviors, such as interfering with an investigation and bribery; comparatively less serious violations, such as failure to supervise and overstating earning were also punished with sizable fines, however. These types of violations that are by comparison minor were punished with sizable fines in some case and no fines whatsoever in other cases.

In cases in which no fine was imposed but that involved a criminal punishment, the types of violations were particularly predictable. Here again, also present were cases that seemed to be punished more severely than appropriate. That some cases may have been punished relatively severely while other more serious cases were punished more leniently in the cases at present may simply reflect the criminal realm’s dealings with these controversial cases. As these cases were dealt with in the administrative realm, to draw such conclusions may be misguided, as severe sanctioning may occur later. Although it should be noted that many cases were also punished criminally prior to the sanctioning in the present cases.

Many of the more serious violations that were sanctioned in the administrative realm did not receive any fines, but this can be accounted for by the imposition of penalties elsewhere, namely in the criminal courts. Many cases were also dealt with in civil courts. All such cases resulted in at least an injunction, and possibly other penalties such as disgorgement, though many cases did not specify a penalty beyond the injunction.
Ultimately, there were only a relatively small number of administrative cases that did not involve either a fine, disgorgement, a civil action, or a criminal action. Unsurprisingly, the vast majority of these instances involved a failure to file required reports and resulted in nothing more than a registration revocation, often for entities that were already defunct anyway. Several other cases also involved violations that were relatively minor in nature, such as inaccurate financial reporting. A few cases involving a failure to supervise and prevent violations were also present. Interestingly, there were some cases that did involve relatively serious offenses that seemed to warrant a more severe sanction than that imposed in the immediate judgement. Examples of this can be seen in a case involving forgery, a case involving stock price manipulation, and two cases involving illegal trading. In the case pertaining to stock price manipulation, after purchasing a company and becoming its president, Jonathan Gilchrest:

engineered a reverse merger…and the issuance of six million unregistered shares of Meridian, at a deep discount, to [himself] and two entities he controlled…The combined effect of the reverse split, matched trades, and touting campaigns was that by April 1, 2008, the company’s share price rose from $1.00 to $3.75 – an increase of approximately 275%. In total, Gilchrist sold 229,661 (unregistered) shares, realizing gross profits of $692,146.38. Throughout the entire period at issue, no registration statement was in effect for the company’s securities (Gilchrist, 2013).

Despite the respondent’s high culpability and sizable gross profit, the only sanction imposed was a suspension from practicing before the SEC as an attorney, although his license to practice law had already been suspended anyway (Gilchrist, 2013). No other actions had been taken at the time of the ruling in either the civil or criminal realms. It is possible that these comparatively severe cases have simply not yet reached the point of
involvement in the civil or criminal courts but will be punished in these courts more severely in the future.

From a criminological perspective, the relatively severe punishment of these transgressors can serve a deterrent effect, both specifically, and generally. If an individual is caught making securities trades based on non-public information, he will likely have to disgorge any profit made and will probably be fined, with the severity of the fine being dependent on the amount of profit made from the illegal activity. Beyond the financial penalty, he may be prohibited from serving as an officer and, most notably, could even be sentenced to prison. Financial penalties and prison can serve as a deterrent from future violations for the particular defendant. Such penalties may also serve as a general deterrent against others who are considering engaging in the illegal activity. The general deterrent effect of sanctioning would be particularly important for a violation like insider trading. After all, insider trading can be engaged in more easily than many other types of corporate offenses, provided the individual is in a position to be aware of insider information in the first place.

As shown, the sanctioning of cases generally followed a relatively predictable pattern, though this was not always the case. Serious offenses, such as misappropriations, market manipulations, insider trading, and interference with investigations were often sanctioned severely. Offenses involving large amounts of monetary loss to victims or gains for violators were typically punished accordingly. Less severe sanctions, such as those not involving criminal sanctioning or severe fines, or even disgorgement, were meted out against comparatively less serious violations, such as those involving inaccurate financial statements and failure to register with the commission. Some cases
that seemed to warrant less severe sanction were punished severely. On the other hand, more serious violations were typically not dealt with leniently unless the violator was unable to pay monetary penalties. When a penalty deviated from what might be expected, it was more likely to take the form of a more, rather than less, severe punishment. These sanctions were certainly not perfectly uniform, perhaps detracting from the goal of general deterrence. Some cases that were punished with smaller penalties could have been punished more severely were not, and some that cases that were punished very severely could have involved smaller, yet still severe, penalties.

**Defendants are Not Punished Repeatedly for the Same Violation by the SEC**

Defendants and respondents are not punished the same way multiple times in different proceedings for the same violation. If, for example, an individual is forced to pay disgorgement and a fine in a civil proceeding, in an administrative proceeding he will not have a fine or disgorgement imposed but would likely only face a relatively minor sanction in that case, such as a cease-and-desist order or professional bar. Among civil and administrative proceedings, there were no cases in which a respondent who had previously been punished severely in the form of a fine or disgorgement was again imposed a fine. Likewise, among those who did have a fine or disgorgement imposed, none had previously had a sanction of this nature ordered.

For example, Mark Abide, who was being sanctioned in an administrative action, had previously been enjoined civilly for committing insider trading and overstating earnings while acting as a CPA in association with the infamous WorldCom (Abide, 2006). As a result of the civil action, Abide was ordered to pay a $57,947.22 civil penalty and $70,859.42 in disgorgement and interest; $57,947.22 representing the amount of
losses he avoided by engaging in the illegal activity (Abide, 2006). In the administrative action, no monetary penalty was imposed, though Abide was suspended from appearing or practicing before the SEC as an accountant (Abide, 2006).

Fewer examples could be found among civil cases in which a penalty had been imposed previously and none imposed in the case at hand, but one example is provided by that of Irving Paul David, a controller who had:

embezzled a total of approximately $47,529 from two affiliated registered investment companies: Consulting Group Capital Markets Funds, and Smith Barney World Funds Inc. for which he served as treasurer and controller, respectively (David, 2006).

After pleading guilty in a criminal case related to this activity, David was sentenced to one year of parole and ordered to pay $14,528 in restitution (David, 2006). Although the amount of restitution paid was not equal to that embezzled, no further financial penalty was sought. In the present civil case, David was enjoined and barred from various professional activities, though he was not financially sanctioned (David, 2006). Moreover, this release even specified that the lack of monetary penalties was a result of the earlier criminal sanctioning:

Based upon the restitution ordered against him in a parallel criminal case, no disgorgement was ordered, and no civil penalty was imposed, in the final judgment (David, 2006).

Once again, among civil cases, no instances were evident in which a defendant was financially punished twice for the same violation. As seen by the above example, such double penalties are intentionally avoided by the SEC.

An important caveat is that criminal punishment does not precisely follow these same patterns. That is, a defendant who has been fined may also be charged and sentenced to incarceration criminally. Relatedly, fines may be imposed in criminal cases
even after being imposed civilly or administratively by the SEC. Thus, while the SEC may intentionally avoid imposing fines multiple times for the same offense, the same does not appear to be the case in criminal cases that are prosecuted by the Department of Justice.

For example, Andrey Hicks had made various misrepresentations to prospective investors and may have subsequently misappropriated a portion of the $1.7 million he had obtained from 10 investors (Hicks, 2013). In a civil action pursued by the SEC, Hicks and his associated entity were ordered to:

- pay disgorgement of $2,481,004 and prejudgment interest of $31,054.39. In addition, Hicks was ordered to pay a civil penalty in the amount of $2,512,058.39, and Locust Offshore Management was ordered to pay a civil penalty in the amount of $2,512,058.39 (Hicks, 2013).

Hicks was also sanctioned in an administrative action, but this penalty did not appear to be financial in nature. In addition to these sanctions, the U.S. Attorneys for the District of Massachusetts also brought criminal charges related to his misconduct, charging him specifically with committing wire fraud, attempting to commit wire fraud, and aiding and abetting wire fraud, to which he plead guilty (Hicks, 2013). In addition to a 40-month prison sentence, Hicks was “ordered to pay $2.3 million in restitution and faces three years of supervised release upon completion of his prison term” (Hicks, 2013).

This case was unique in that it involved two separate financial penalties for the same original violation. It should be noted that only one of the distinct cases was pursued by the SEC. As seen by the civil and administrative cases, the SEC refrains from imposing a financial penalty more than once for the same violation. The imposition of repeated fines does not appear to be a common occurrence within the criminal courts, although the small sample of criminal cases precludes a better understanding of this topic.
As previously demonstrated, an individual who is currently incarcerated may also be subject to fines and disgorgement by the SEC provided these sanctions have not already been applied in the criminal courts. This should not come as a surprise, considering that many criminal sanctions for other types of offenses involve a fine along with incarceration. While there were few such cases, in incidents where a respondent criminally interferes with an investigation is a separate offense, and as such would become vulnerable to a distinct penalty.

A final related finding regarding financial penalties imposed by the SEC was that respondents are only made to pay fines and disgorgement that they can afford. As such, the amount ordered in civil and administrative cases is the amount that SEC expects to be collected from the respondent. Several cases involved situations in which the SEC would have imposed a financial penalty but did not, due to a respondent’s verified inability to pay. The civil case against Colin Nathanson and the entities he founded provides a good example. Nathanson had operated a Ponzi scheme in which he “raised $29.5 million from over 1800 investors nationwide through four fraudulent investment schemes” (Nathanson, 2004). Furthermore:

Nathanson used at least $1 million of investor funds to support his extravagant lifestyle, including three homes and payment of $346,500 in gambling-related debts. Finally, the Commission alleged that, in Ponzi-like fashion, Nathanson caused over $5 million of the $29.5 million raised to be paid to certain investors either as purported "returns" on their investments when, in fact, their investments were not profitable, or as purported returns of their principal (Nathanson, 2004). In addition to injunctions, Nathanson consented to the disgorgement of $4.7 million as well as much of his personal property, “including three parcels of land he owns in Orange County” (Nathanson, 2004). The defendant would also have had to pay an even larger
penalty but was not ordered to do so because he could not afford it. As stated in the release: “payment of the remainder of the $4.7 million is waived, based upon Nathanson's demonstrated inability to pay” (Nathanson, 2004). It is important to note that an inability to pay is verified by the SEC, and one cannot simply tell the Commission that they cannot pay and expect to have their payment waived. Furthermore, respondents appear to have to take a sworn oath of their financial condition, with those engaging in deception risking severe sanctioning if discovered. This was demonstrated in the case of John Powell, who lied about his inability to pay a financial penalty:

During the course of settlement discussions, the Commission staff stated that it would consider waiving a portion of the proposed amount of disgorgement and an additional money penalty if Powell was unable to pay the full amount. The Commission required Powell to submit sworn financial statements demonstrating his inability to pay. Powell submitted two sworn financial statements, dated January 2002 and July 2002. (Powell, 2003)

These statements were ultimately discovered to be deceptive of his true financial position, which was in fact much better than he had made it appear (Powell, 2003). As a result of his attempted deception of SEC investigators, Powell was indicted in criminal court (Powell, 2003).

**Other Findings**

In some instances, information that is not provided may be just as important and enlightening as that which is. One component that was notably absent from all of the releases was any input on the part of victims of these violations. While it is true that many of the violations did not have tangible victims, many of them did; several releases even provided an exact number of victims. Some cases provided more information on victims than others. A few cases specifically noted certain groups of victims who were
being targeted, such as African Americans and senior citizens (Ohana Int'l, 2004; Pittsford Cap. Income Partners, 2006). Information provided by victims may have been collected by the SEC at an earlier point and simply not included in the releases in order to make them more concise. According to the SEC, its agents do take information and interviews from victims, as such, it appears that this information is not included simply for the sake of brevity (SEC, 2017).

Another unsurprising feature across the case types was the prevalence of males in the cases. As can be seen by looking at the CEOs and boards of corporations in the United States, males are disproportionately present in the field of business relative to the population; this can be seen most poignantly among the positions with the most power and influence. As such, males simply have greater opportunities for gainful illegal activities. It is also worth noting that the vast majority of street criminals are males (Greenfield & Snell, 1999). Cases did not outright state the gender of respondents, but based on a simple cursory analysis of names, relatively few cases appeared that involved female names listed as defendants. Because of the small number of female defendants and the fact that many of the female defendants who were identified were at the charging rather than sanctioning stage, it was not possible to determine if their punishments differed meaningfully from those of their male counterparts, though this may provide an interesting direction for future research.

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5 Less than 10 percent of the CEOs of S&P 500 companies are females (Stych, 2021). On the other hand, the percentage of CEOs who are female went up more than one percentage point in 2020 and is expected to continue rising in 2021 and throughout the decade (Stych, 2021). Whether the increasing presence of females has an impact on the gender makeup of white-collar offenders may be a particularly fascinating avenue for future research.
One final theme that became apparent was that many of the individuals named in cases were repeat violators. Many cases that provided background on individuals detailed previous actions taken and sanctions imposed by the SEC, and even prior criminal convictions in some cases. It must be emphasized that these were not simply the result of a single violation being dealt with in various realms, but rather of distinct offenses that often occurred years apart. Whether the repeated sanctioning was an artifact of repeated violations alone or also of increased attention being paid to these individuals, it appears clear that many individuals against whom the SEC takes action can be considered ‘chronic offenders.’ While this term may seldom be applied to actors such as these who count themselves among society’s more privileged classes, they nonetheless bear considerable resemblance to the ‘career criminals’ of the streets.

**Presidential Administration**

The findings in relation to the actions of the SEC and DOJ during the presidential administrations of Republican George W. Bush and Democrat Barrack Obama showed a good deal of similarity between them, but also some unexpected differences. The most surprising differences were seen in administrative actions. More than 50 percent more administrative actions were undertaken under Obama in the sample than were during the period when George Bush was president. Although fewer cases were processed under the Bush administration, the financial penalties were strikingly larger. Most notably, the total amount of disgorgement ordered during the Bush administration was six times that ordered during the Obama presidency among cases in the sample. Both the values of the average and median of disgorgement during the Obama administration were also only a fraction of that during the period when Bush was president.
These differences were even greater when looking at fines. During the Obama administration, the sum of fines in the sample was just over $9.1 million, during the Bush presidency, this amount was over fifteen times higher at $141.8 million. The mean amount imposed in cases with a fine was likewise much greater under the Bush administration. While this may have been due to several cases in the Bush administration with very high fines, as was the case with disgorgement, even the median value is significantly larger during the Bush administration, at about five times that of cases during Obama presidency. While the percentage of cases in which a prior criminal or administrative action was not greatly different between the two administrations, for both types, a previous action was more likely under the Bush administration. Though cases during both administrations dealt with various serious offenses, the Bush administration dealt with a greater number of comparatively serious violations, while a large portion of the cases handled during the sample when Obama was president involved merely a failure to file periodic reports. This can potentially explain some of the large disparities in financial penalties.

Table 12

Administrative Monetary Penalties in Cases from Bush’s Presidency

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Table 13

*Administrative Monetary Penalties in Cases from Obama’s Presidency*

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</tr>
</thead>
<tbody>
<tr>
<td>Sum</td>
<td>$9,826,063.72</td>
<td>$9,165,888.62</td>
</tr>
<tr>
<td>Average</td>
<td>$818,838.64</td>
<td>$352,534.18</td>
</tr>
<tr>
<td>Median</td>
<td>$127,420.01</td>
<td>$80,500.00</td>
</tr>
</tbody>
</table>

While administrative cases showed considerable differences between the two presidencies, civil cases showed a good deal of similarity. Interestingly, in a reversal of the situation with administrative cases, among civil cases, there were actually 50 percent more civil cases in the sample which occurred during the Bush administration than under Obama. The total amount of disgorgement ordered under the Bush administration was about 70 percent greater than under Obama, though this should not be too much of a surprise given the greater number of cases. Also fascinating, however, was the finding that more money was ordered in the form of fines under Obama. Despite fewer cases, about 8 million dollars more in total more was ordered under this latter period. The average amount of a fine in cases in which one was imposed nearly doubled under Obama while the average amount of disgorgement actually went down considerably over this same period. As a testament to the general similarity between the two administrations, the median value of both disgorgement and fines was very similar; in both cases the amount was slightly higher under Obama. Comparable numbers of previous administrative and criminal actions were undertaken under each presidency, with more under Bush, in cases at hand that were being dealt with civilly. Relative to the number of cases, the frequency of both prior administrative and criminal actions was
remarkably similar across administrations. Broadly speaking, though fewer in number cases pursued under the Obama administration appeared to be somewhat more serious in nature, with a greater proportion of cases consisting of such activities as the orchestration of a Ponzi scheme and insider trading.

**Table 14**

*Civil Monetary Penalties in Cases from Bush’s Presidency*

<table>
<thead>
<tr>
<th></th>
<th>Disgorgement</th>
<th>Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sum</td>
<td>$107,879,653.3</td>
<td>$31,045,880.80</td>
</tr>
<tr>
<td>Average</td>
<td>$3,595,988.45</td>
<td>$862,385.58</td>
</tr>
<tr>
<td>Median</td>
<td>$819,295.50</td>
<td>$192,500.00</td>
</tr>
</tbody>
</table>

**Table 15**

*Civil Monetary Penalties in Cases from Obama’s Presidency*

<table>
<thead>
<tr>
<th></th>
<th>Disgorgement</th>
<th>Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sum</td>
<td>$63,761,669.74</td>
<td>$39,524,331.51</td>
</tr>
<tr>
<td>Average</td>
<td>$2,277,202.49</td>
<td>$1,520,166.60</td>
</tr>
<tr>
<td>Median</td>
<td>$868,553.49</td>
<td>$220,000.00</td>
</tr>
</tbody>
</table>

Finally, in terms of criminal cases, it is hard to draw any meaningful conclusions regarding punitiveness owing to the small number of cases. Interestingly, the criminal responses to white-collar generally appear more punitive under the Bush administration. Slightly more criminal cases were pursued and more cases involving sentencing were apparent during this period in the sample. Notably, while only two cases involved criminal sentencing during the Obama administration, six cases did so during the Bush presidency. The two harshest penalties in terms of prison length were imposed during the
Bush administration, although the only case involving supervised release was also in this period. The largest amount of restitution at $2.3 million was imposed during the Obama presidency, while another case from this period that had not yet advanced beyond the indictment stage was seeking $9 million in restitution. In both periods, most of the cases had previously also been dealt with in some way by the SEC. One interesting aspect of the cases being prosecuted criminally was that five of the cases during the Bush administration involved some form of interference with an investigation or attempted deception of agency staff; no such cases were present among the cases pursued under the Obama administration. Although these cases were not pursued by the SEC, these cases too demonstrate the generally similar response taken by federal prosecutors toward white-collar offenders. Though the specific actions do differ somewhat, in all three types of cases, responses did not appear to vary significantly in terms of outcome severity between the two presidential administrations.
CHAPTER V

Discussion

White-collar offending represents a serious problem to average citizens and the larger economic system. Despite its significant harms, this form of criminality has been largely overlooked by criminology in favor of the more visible crimes of the street. This thesis has attempted to shed additional light on the official response to white-collar offenders by analyzing cases that have been made publicly available by the Securities and Exchange Commission, which plays a critical role in the detection and sanctioning of financial violations in the United States.

An important theme of the literature has been the lack of a strong official response to white-collar offenders. While the SEC did tend to use appropriately severe sanctions to punish many violators, the relatively few criminal cases, and to a lesser extent, cases in which a criminal action had previously been taken made up only a minority of cases. It is true that many of the cases, such as a defunct company failing to file a report, would not have warranted criminal penalties. It is also true that organizations are very difficult to prosecute in criminal courts. Even so, many cases involving misappropriations and other offenses with tangible victims were punished with civil penalties only. While the sanctioning of such offenses in anyway shows that the system is in fact working as it should, these penalties may not be serving a strong deterrent effect, especially if violators are merely forced to return ill-gotten gains and given a small fine or not fined at all. The comparison to street criminals provides a striking example of punishment disparities. Whereas someone who commits larceny may expect a prison sentence, that same individual may expect nothing more than a fine if money is misappropriated during the
course of legitimate business. In both cases, the same basic action of theft has occurred, yet the offenders are different types of people.

Even so, for entities that operate according to a bottom line, the imposition of disgorgement, in which the illegal gains are lost, along with a potentially sizable fine, can serve a deterrent effect. If entities are aware that violators who are caught are punished in this relatively severe manner, they may be dissuaded from engaging in any potentially illegal activities. On the other hand, entities were often not dissolved completely or otherwise sanctioned in ways comparable to individuals. In addition to being impossible—after all an entity cannot be incarcerated—severe penalties can also be detrimental to the innocent shareholders. As such, sanctioning of entities can be a tricky task.

The official response to white-collar offending may thus be seen in a negative light from this perspective. That is only a part of the picture, however. The Securities and Exchange Commission cannot prosecute cases criminally, making any such action out of its control. What the agency can do is enforce the securities laws with the cases that come to its attention in a way that at least has the potential to deter or prevent other violations. As can be seen from cases in which sanctions are handed down, especially in civil cases, the SEC generally does punish violators relatively severely in the form of financial penalties. Those who are not fined are still sanctioned in some manner in nearly every case. It must also be kept in mind that the legal system in the US has had a long tradition of punishing white-collar offenders in these less punitive ways. Theft and other illegal actions that occur during the course of legitimate business has normally been punished through the civil realm. The punishment of these actions in the criminal realm has very much been the exception. The continued sanctioning of these violations largely in the
civil realm should therefore not be a surprise. On a more positive note, many cases did involve criminal actions and, more importantly, criminal punishments. Moreover, the individuals who were punished in this manner were frequently penalized severely in the form of incarceration.

Although a full comparison to Susan Shapiro’s (1984) research on the SEC in the 1980s cannot be made based on the more limited scope and access of this thesis, some conclusions can nonetheless be drawn. One notable difference is that criminal actions appear to be more common today than they were in her study. Moreover, cases dealt with criminally appeared to fair much more successfully in this sample than they did previously. Significantly, the SEC has apparently become more punitive in its response to violations, namely in terms of monetary penalties. Administrative actions have become more common than in her sampling period relative to civil cases. The rates of successful outcomes for the SEC, though already high in that sample, were even higher here. The use of multiple forms of legal action also did not appear to be as infrequent as in Shapiro’s (1984) sample. These differences should not come as a great surprise considering the increased policing power that has been bestowed upon the SEC, recent financial crises, elevated public awareness of perils of white-collar crime, and the other recent literature that has shown evidence of such trends. Indeed, the SEC has more teeth today than any time in its history. Even so, in terms of observable attributes, today’s SEC continues to exhibit many similarities to that of several decades ago. As with Shapiro’s (1984) work, the SEC continues to operate in a generally consistent manner, serious cases appear to be prioritized, and cases of misrepresentation are rather common.
It is possible that other illegal activities that are detected are not brought to court due to a lack of evidence. It is also likely that many violations are simply going undetected by the SEC and other law enforcement agencies. The “dark figure of crime” is well known for street crimes; it is only logical that a significant percentage of corporate offenses go undetected due to the more hidden nature of many violations and a smaller body to police them.

As the SEC has been observed to be continuing to operate largely in an equitable manner that is line with its objectives and insulated from executive politics, the policy implications from this project for the SEC itself are generally limited to its enforcement and reporting of civil and administrative cases. Specifically, the agency can further increase its transparency by providing more public information on the background of cases, and relatedly, provide explanations for why it chooses to certain courses of action in a given case or why deviations from typical procedures are made in certain cases. The agency also appears to have a good working relationship with other law enforcement and prosecutorial bodies; such relations should continue to be utilized and encouraged in the future both by the SEC and other federal as well as state agencies. Moving beyond the SEC, state level prosecutors may benefit from increased cooperation with the SEC in smaller scale cases when applicable.

While a punitive trend has been ongoing against the comparatively less costly crimes of the streets, the focus on crimes of the suites has generally lagged behind. This trend appears to be reversing with increased awareness of the detriments of violations committed by those in more esteemed economic positions, though criminal remedies were still observed to be the exception here. Moreover, if the trend toward increased
attention and punitiveness toward corporate offenders is to continue, it will have to be in that criminal realm. The SEC appears to be reaching its punitive limit in terms of the sanctions it can impose in the frequency and dollar amounts of fines. The next logical step would be for increased criminal action, something that is beyond the scope of the SEC. As such, the next step in enforcement would be to increase the Justice Department’s role in white-collar offenses, or more dramatically and less likely, to grant the SEC criminal prosecutorial ability.

The findings regarding the role of presidential administration were rather interesting. The SEC’s response to violations varied somewhat in an unexpected way based on the presidential administration during the periods examined. Though the types of violations pursued were generally similar, the number of cases did differ, and the sanctioning during Bush administration was actually more severe in terms of financial penalties imposed than during that of Democrat Barrack Obama. Criminal actions, typically undertaken by the Justice Department, another executive agency, appeared generally similar across the two periods. The differences may be explained by a greater number of more serious violations pursued during the Bush administration or, in terms of external factors, by a higher focus on accounting misconduct during this period. Any speculation on these differences must be made cautiously, owing to the wide array of factors also in play beyond the presidential administration, such as various factors internal to the SEC, legislation, and time. After all, the SEC was, by its very organization, designed to be isolated from political influences. At the same time, it must be kept in mind that the individuals heading the organization are selected by the president, giving the executive at least some degree of indirect control over the agency.
Though peer reviewed works were scarce, recent news articles have shed some light on the relationship between the president and the SEC. The general trend has been a decrease in fines during the Trump administration compared to that of Obama; changes in priorities have also been seen. Such findings are more in line than what was anticipated here. Analyses have found an initial drop in monetary enforcement under Trump, but this seems to have rebounded during his term. According to Liebmann (2019), though penalty amounts dropped during the Trump administration, the dollar amount of penalties imposed in 2017 was nearly twenty times that from the year 2000: $830 million compared to $43 million. Michaels (2018) found that in fiscal year 2018, the SEC imposed nearly $4 billion in fines in relation to just under 500 enforcement actions. This was an increase from the previous year—the first year under the Trump administration—in which the amount of money obtained from penalties was at its lowest point in four years (Michaels, 2018).

The president’s attitudes toward financial regulation can often be reflected in the presidentially appointed SEC chairperson. Under Jay Clayton, Trump’s selection for the position, financial regulation was generally loosened (Herbst-Bayliss et al., 2021). Specifically, a New York Times piece suggested the Trump administration shifted priorities away from enforcement and found a considerable drop-off in terms of penalties imposed (Protess, Gebeloff & Ivory 2018). The SEC questioned the validity of these results, maintaining that its enforcement activity has remained relatively consistent, saying that the current activity level “compares favorably with any period in the commission’s history” (Protess, Gebeloff & Ivory 2018).
Based on the findings of these authors, it appears there can be some ebb and flow within a single administration. How enforcement is conducted by the SEC relative to presidential administrations will continue to be an interesting–and also potentially controversial–topic for the foreseeable future. More recently, the President Biden appointed Gary Gensler, to head the SEC. Though Gensler spent much of his career as a Wall Street insider, he also has a reputation as a tough regulator (White, 2021). Moreover, one of his primary aims will likely be a tightening of regulation and increased emphasis on enforcement, as well as a focus on such Democratic concerns as climate change and social justice (Herbst-Bayliss et al., 2021). Contrasts between the SEC enforcement activities during the Trump and Biden presidencies could be an interesting topic to explore in a few year.

**Limitations**

This thesis was not without important limitations. Notably, the cases examined often provided only basic information on the parties involved; in many instances little or no background information was included on the respondents or the violations which lead to the SEC’s action. Unfortunately, this precluded both a richer qualitative analysis of the cases contained as well as the ability to draw a better quantitative picture of the violations. Relatedly, the sample was limited to public cases in which formal action was actually undertaken. Not included were investigations initiated by the SEC but ultimately dropped prior to official action. Whether or not, and in what ways, the cases in the sample differ from cases that did not advance to the charging stage thus remains unknown.
The cases included in the analysis were only a small portion of the total cases in which action was taken over the period of analysis. As such, the sample examined may have provided different results if all of the cases were included, though this would have vastly increased the project’s scope. It is also possible that different results might have been yielded if a different set of cases were included, such as if every 18th case were examined, rather than every 20th case. This is particularly true of quantitative results, which can be greatly altered by very high financial penalties and for information such as the number of victims and length of offense, due to the relatively few cases that included this information. Future research may address these shortcomings by conducting a more in-depth analysis of the SEC which includes access to cases that were ultimately not filed in courts, greater background information on the respondents and incidents, and interviews with SEC investigators, respondents, and victims.

Conclusion

This thesis has attempted to provide insight into the legal system’s response to the very serious, yet often-overlooked, type of crime that is white-collar offending by analyzing case releases that were made publicly available by the Securities and Exchange Commission. Although the majority of the cases analyzed were not processed in the criminal legal system, the analysis of violations that are technically not criminal in nature is rooted in Sutherland’s novel coverage of the topic from a criminological perspective. While the SEC is not the only government agency that addresses white-collar violations, due to its prominent role, it was selected as the topic of analysis here. While prior research has examined the SEC’s response to breaches of securities laws, the last identified project to closely examine the agency and its individual cases was conducted
several decades ago. In that time, the agency, the securities laws, and the ways cases are pursued have undergone changes.

The findings indicate that the SEC is continuing to operate in line with its founding objectives by sanctioning violators in a relatively consistent way with monetary penalties. Because the SEC itself can do no more than impose penalties that are financial in nature, its actions can be viewed as generally adequate in response to the violations it encounters. As seen, the responses of the SEC to white-collar violations are largely equitable yet firm. Saying nothing of a criminal response, the agency’s response has a deterrent effect for any future serious violators, who can expect to not only forfeit any ill-gotten gains, but also to pay a fine.

In addition to the SEC’s response, the wider official response to white-collar offenses in the form of criminal sanctioning was also apparent. It thus appears that white-collar violations are increasingly being regarded as important violations that require sanctioning when discovered. It must be noted however that both periods analyzed followed in the wake of two notable financial catalysts: the accounting scandal of such large corporations as Enron in the 2000s and the Great Recession of 2008. Whether the relatively punitive responses by the SEC in particular, and the broader criminal justice system that were evidenced here will continue or exist simply as an artifact of the attitudinal responses in the wake of these crises will be a task for future research to uncover.
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Dierenfeldt, R., Shadwick, J., & Caines, M. Re-framing the Ferguson effect: Strain and intra-racial violence in the age of the new media.

Conference Papers

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