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SEC Revamps Its Division Of Enforcement With Specialized Units And Cooperation Agreements With Insiders

The [United States Securities and Exchange Commission](#) (“SEC” or the “Commission”) recently made changes that could affect the speed and efficiency with which investigations are handled and enforcement actions are brought. Stung with allegations of investigative failures in the wake of revelations regarding the Bernard Madoff Ponzi scheme, the SEC is centralizing its intake of tips, complaints and referrals. It is adding specialized “units” within its Division of Enforcement. It also announced an “Enforcement Cooperation Initiative,” indicating that it will be more receptive to making deals with insiders in order to better understand potential securities violations.

When the SEC gets involved in investigating allegations of securities violations, such as insider trading and false or misleading public filings, the investigation and subsequent lawsuit are handled by the Commission’s Division of Enforcement. Previously, the Division of Enforcement was rather loosely structured. Any enforcement attorney or staff member might be working on any number of different types of securities issues or within a variety of industries.

In January 2010, the SEC [announced](#) the formation of its new “Office of Market Intelligence.” This new office is responsible for the “collection, analysis, and monitoring of the hundreds of thousands of tips, complaints, and referrals that the SEC receives each year.” This is in response, at least in part, to the now well-known fact that the SEC had been tipped off about Madoff from several separate sources, but failed to “connect the dots” and to act in response. This new Office will be headed by Thomas A. Sporkin, the son of Stanley Sporkin, the well-known head of the SEC’s Division of Enforcement from 1974 to 1981, later the General Counsel of the CIA and a United States District Judge, now retired.

Further, the Division of Enforcement has also established several specialized “units” within the Division. The new units “will help provide the additional structure, resources, and expertise necessary for enforcement staff to keep pace with ever-changing markets and more comprehensively investigate cases involving complex products, markets, regulatory regimes, practices and transactions.” The new specialized units are:

- Asset Management – focusing on investment advisors, investment companies, hedge funds and other private equity funds.
- Market Abuse – concentrating on large-scale market abuses and complex manipulation schemes by institutional traders, market professionals, etc.
- Structured and New Products – analyzing complex derivatives, credit default swaps, collateralized debt obligations and securitized products.
- Foreign Corrupt Practices – focusing on violations of the Foreign Corrupt Practices Act, the law that generally prohibits U.S. corporations from paying bribes to foreign officials for corporate gain.
- Municipal Securities and Public Pensions – concentrating on the municipal securities market and public pensions.

The other major [announcement](#) in January 2010 was the establishment of the “Enforcement Cooperation Initiative.” Designed to entice corporate insiders and other individuals to come forward with needed information about securities violations, the SEC will consider entering into agreements with insiders. The Director of the Division of Enforcement called the new Initiative a “potential game-changer.” The agreements available will include:

- Cooperation Agreements – a written agreement that the insider would receive “credit” (*i.e.*, leniency) for providing substantial assistance to the SEC.
- Deferred Prosecution Agreements – that the SEC will take no action against an insider, so long as the insider cooperates to the SEC’s satisfaction.
- Non-prosecution Agreements – that the SEC will undertake no enforcement action against an insider in exchange for cooperation.

The choice of words in these agreements, specifically “Deferred Prosecution” and “Non-prosecution,” smacks of the criminal justice system. The SEC is not authorized to bring criminal prosecutions, although it often works in conjunction with the various United States Attorneys in coordinated cases. In that vein, as part of the “Enforcement Cooperation Initiative,” the SEC has also streamlined the process by which it can request that prosecutors provide insiders with immunity from criminal prosecution, to further facilitate their cooperation.

It is too early to tell if the new units and agreements with insiders will be effective in bringing speedier and better enforcement actions. We will continue to monitor developments and trends in enforcement actions and update as events warrant.

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