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SEC Settlement Trends: 1H12 Update

SEC's Emphasis on Individual Accountability Drives Settlement Pace Toward Seven-Year High

By Dr. James A. Overdahl and Dr. Elaine Buckberg*

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Insight in Economics™

NERA has developed a proprietary database of settlements and judgments in Securities and Exchange Commission (SEC) enforcement actions since the passage of the Sarbanes-Oxley Act ("SOX") by reviewing every litigation release and administrative proceeding document published since July 21, 2002. This paper provides an update on trends in the number of settlements and settlement values in fiscal year 2012 ("FY12").

1H12 Highlights

- The SEC is on pace to settle with more defendants in FY12 than it has in any year since FY05.
- This increase is being driven by heightened settlement activity with individuals, particularly for allegations related to insider trading and Ponzi schemes; the SEC is on pace for a record number of insider trading settlements in FY12.
- The median settlement value with individuals continued to follow the upward path observed since FY10, while the median value of settlements with companies declined after reaching a record value in FY11.
- The largest settlements in 1H12 are the highly publicized settlements with Citigroup Global Markets, Inc. ($285 million), still under appeal after being rejected by Judge Jed Rakoff, and Raj Rajaratnam ($92.8 million).

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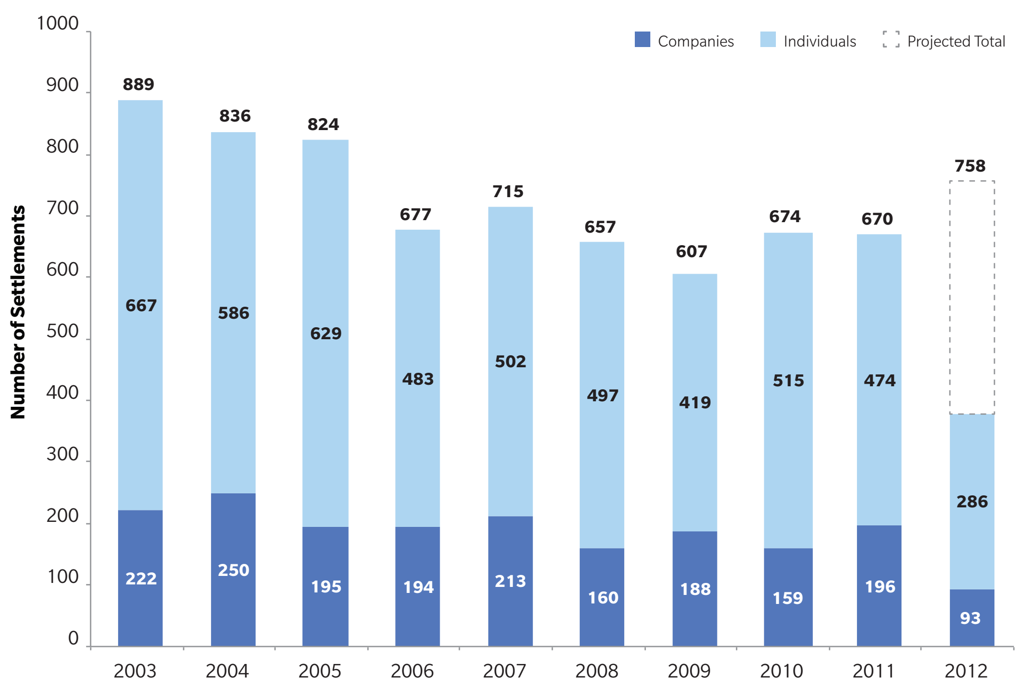
Trends in the Number of Settlements

The SEC's promise to hold more individuals accountable was realized in 1H12 in a 20% jump in the number of SEC settlements with individuals. The SEC settled 286 cases with individuals in the first half of this year, putting it on pace for 572 settlements in FY12, which would be the most since 2005. This marks a shift from the end of fiscal 2011, when we reported that the SEC's promise to hold more individuals accountable was borne out in the value, but not in the number, of settlements with individuals.

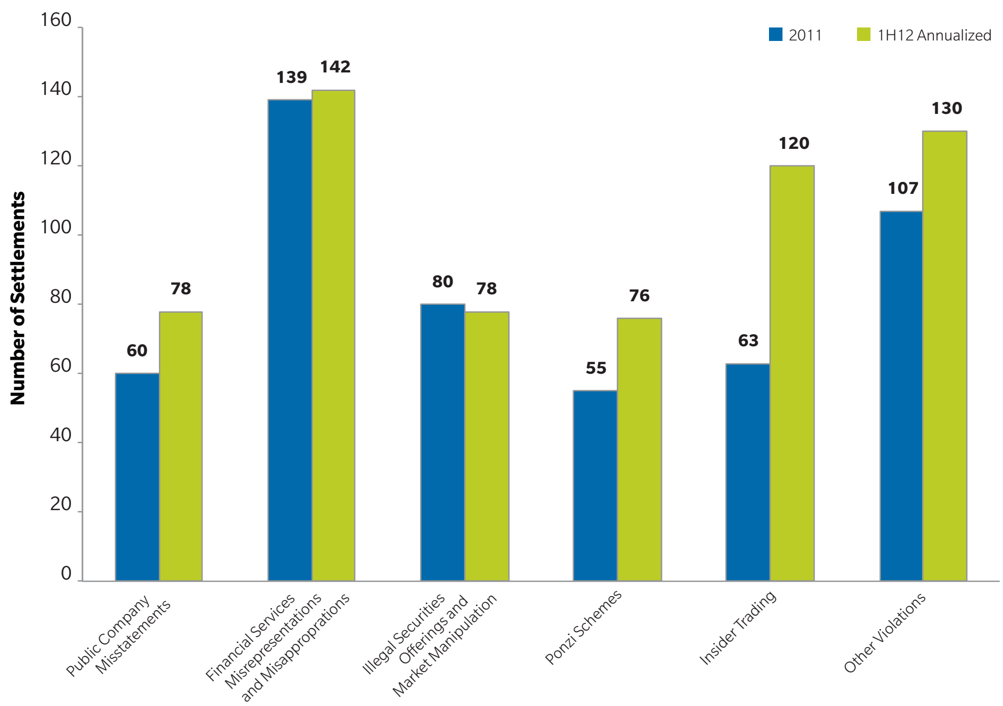
Total SEC settlements are also up, but the increase is entirely explained by the rise in settlements with individuals. The SEC settled with 379 defendants in 1H12, putting it on pace for 758 settlements in FY12. This would constitute a 13% increase from the SEC's 670 settlements in 2011 and would constitute the most annual settlements since 2005. The pace of settlements with companies is down slightly, with 93 settlements, consistent with an annual pace of 186, as compared with 196 in FY11 (see Exhibit 1).

Exhibit 1. **On Pace for Largest Number of Settlements since 2005**



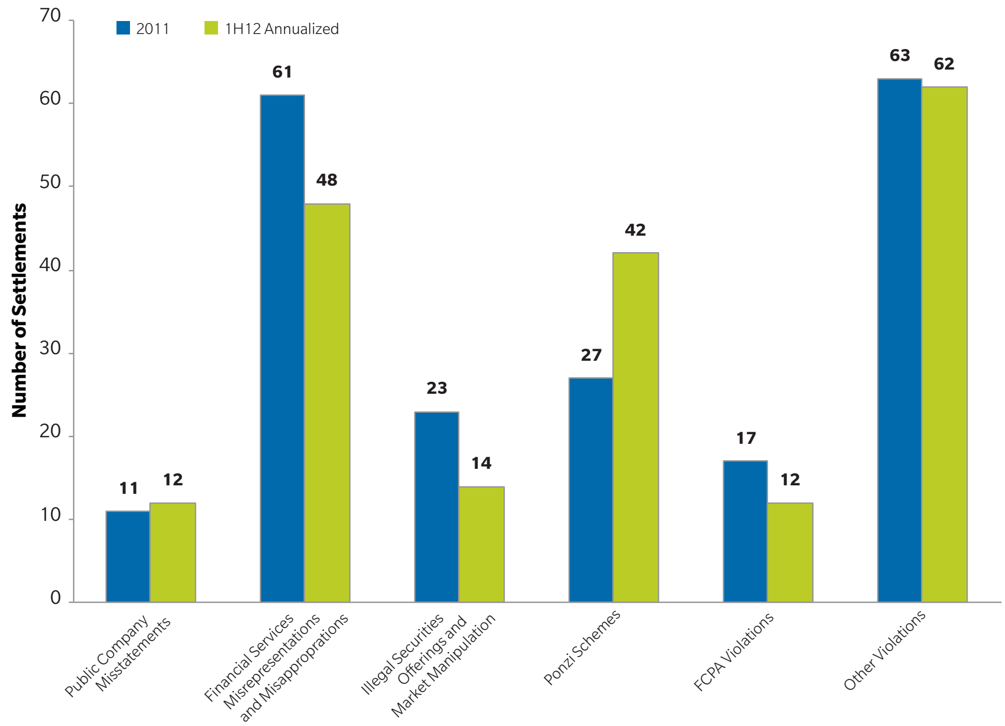
The increase in individual settlements is driven primarily by allegations relating to insider trading. The increase from 63 insider trading settlements in FY11 to an annualized number of 120 projected for FY12 accounts for over half of the observed increase in settlements in 2012.[1] The SEC also increased its settlement activity with individuals in matters relating to Ponzi schemes. Settlements with individuals relating to public company misstatements rose to an annualized pace of 78 settlements, up from a low of 60 in 2011, but still well below the 91 settlements in 2010 (see Exhibit 2).

Exhibit 2. **Settlements with Individuals for Insider Trading, Ponzi Schemes, and Public Company Misrepresentations Have Increased**



Settlements with companies related to Ponzi schemes increased from 27 in FY11 to a projected 42 in FY12. However, this increase was more than offset by decreases in settlement activity relating to misrepresentations to customers and misappropriation of funds by financial services firms, FCPA violations, and illegal securities offerings and market manipulation (see Exhibit 3).

Exhibit 3. **Settlements with Companies: Increase in Ponzi Scheme Settlements Offset by Decreased Activity in Other Categories**



Top Settlements

The 10 largest settlements for the first half of fiscal year 2012 range in value from $285.0 million to $13.4 million, as detailed in Exhibit 4.[2] The highest value settlement of 1H12 was the $285 million settlement with Citigroup Global Markets, Inc., announced on October 19, 2011. As we discuss in detail below, the settlement is still under appeal after its initial rejection by Judge Jed Rakoff. The SEC alleged that Citigroup materially misled investors by marketing a $1 billion CDO while failing to disclose that Citigroup had a short position against the offering and that Citigroup had selected the assets comprising the CDO. Various individuals and other corporations affiliated with the CDO offering also agreed to settle charges with the SEC in related administrative actions. If it is ultimately allowed to stand, it would be the 12th largest settlement with the SEC in the post-SOX era.

In another highly-publicized settlement, the SEC obtained a $92.8 million civil penalty in November 2011, against Raj Rajaratnam of Galleon Management, LP for insider trading violations. This civil penalty joins over $60 million in criminal fines and disgorgement, along with 11 years of imprisonment, assessed by the Justice Department in the parallel criminal case. Mr. Rajaratnam was accused of trading on material, non-public information obtained through paid networks of informants. The SEC's investigation of Mr. Rajaratnam has spawned dozens of settlements and ongoing investigations against individuals associated with the scheme.

In December 2011, Magyar Telecom, the largest telecommunications provider in Hungary, and its parent company, Deutsche Telekom, settled charges with the SEC for a total of $95 million, alleging violations of the Foreign Corrupt Practices Act (FCPA) in Macedonia and Montenegro. The SEC claimed that Magyar senior executives used sham consulting and marketing arrangements to pay bribes to government officials in both countries in order to block the issuance of licenses to potential competitors and to secure regulatory approval for a corporate takeover. Deutsche Telekom was charged with internal control violations in failing to adequately oversee the actions of its subsidiary.

In the fourth largest action of 1H12, George David Gordon, an Oklahoma attorney, was ordered by the Court to pay over $50 million in disgorgement, prejudgment interest, and civil penalties for stock price manipulation, penny stock fraud, and illegal securities offerings. According to the SEC, Mr. Gordon assisted in reverse mergers and the improper issuance/transfer of purportedly unrestricted stock; issued fraudulent legal opinion letters regarding the tradability of stock; and arranged with the other primary members of the scheme to engage in coordinated trading.

Exhibit 4. **10 Largest Settlements in Fiscal Year 2012 to Date**

	Settling Defendant	Date of SEC Announcement	Amount ($MM)	Type of Allegation
1	Citigroup Global Markets Inc. (Citigroup)	10/19/11	$285.00	Financial Services Misrepresentations to Customers
2	Raj Rajaratnam, Galleon Management, LP	11/08/11	92.81	Insider Trading
3	Magyar Telekom	12/29/11	90.80	FCPA
4	George David Gordon, attorney	02/16/12	50.51	Market Manipulation
5	Wachovia Bank N.A.	12/08/11	46.08	Trading Violations
6	Pentagon Capital Management[1]	03/30/12	42.05	Market Timing/Late Trading
7	GE Funding Capital Market Services	12/23/11	24.90	Market Manipulation
8	MAAA Trust[1]	12/22/11	24.75	Insider Trading
9	Aon Corporation	12/20/11	14.55	FCPA
10	Joseph F. Skowron III, Portfolio Manager, FrontPoint Partners, LLC	11/17/11	13.37	Insider Trading

Notes and Sources:

1 Settlements that included a jointly liable individual.

Trends in Settlement Values

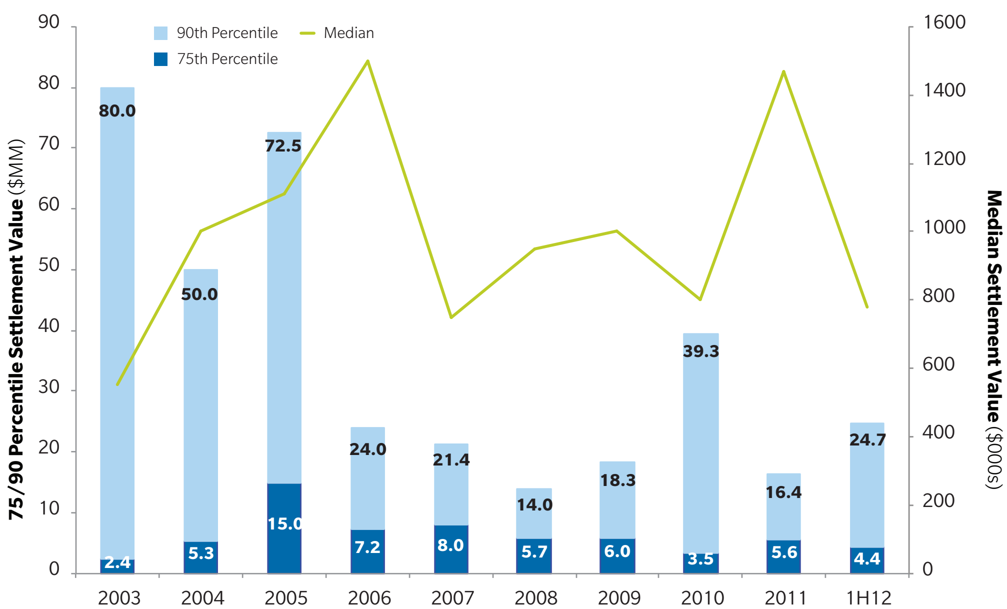
More than one-third of settlements carry zero monetary penalty. As shown in Exhibit 5, the percentage of non-zero settlements with companies rose to 66.7%, up from 61.7% in FY11 and an average of 56% over FY03-10. The percentage of non-zero settlements with individuals was 60.1%, up from 54.9% in FY11, but consistent with the FY03-10 average of 60.7%. Our calculations of mean and median settlements include only non-zero settlements.

Exhibit 5. **Proportion of Non-zero Settlements**

	FY03 - FY10	FY11	FY12
Company	56.2%	61.7%	66.7%
Individual	60.7%	54.9%	60.1%

The median value of settlements with companies declined from $1.5 million in FY11 to $0.8 million in 1H12, in line with the range of values observed in FY07 through FY10. The 75th percentile settlement value declined from $5.6 million in FY 11 to $4.4 million in 1H12, while the 90th percentile settlement value increased from $16.4 million in FY11 to $24.7 million in 1H12. With the exception of FY10 (when the 75th percentile value was lower and the 90th percentile value was higher), these values are within the range we have observed since FY08 (see Exhibit 6).

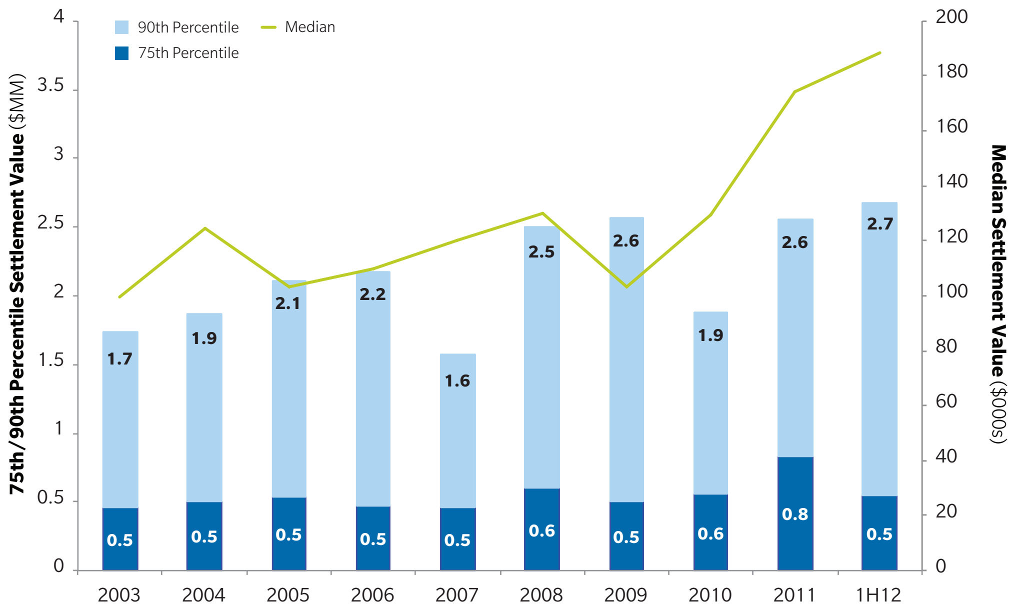
Exhibit 6. **Settlements by Companies: Median Value Falls from FY11 High to Historical Levels**



Note: $0 Settlements have been excluded from the calculations.

The median value of settlements with individuals continues its upward trend, having increased in each of the past three fiscal years, and now stands at $190,000. The 75th percentile value decreased from $0.8 million in FY11 to $0.5 million in 1H12, while the 90th percentile value increased slightly from $2.6 million in FY11 to $2.7 million in 1H12 (see Exhibit 7).

Exhibit 7. **Settlements with Individuals: Median Value Continues Recent Upward Trend**



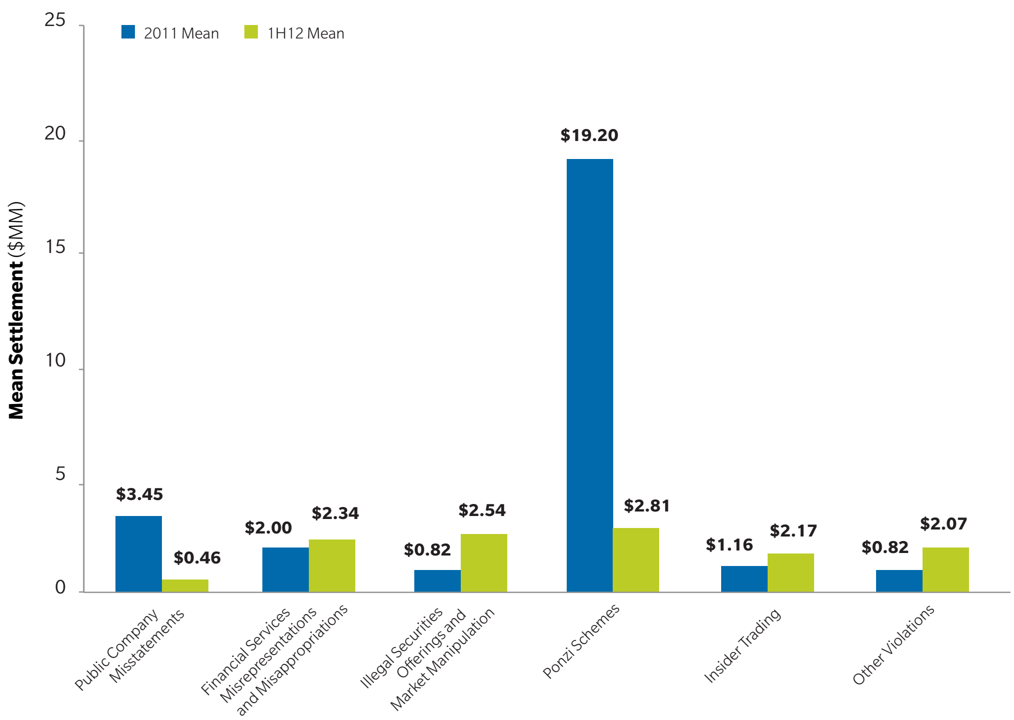
Note: $0 Settlements have been excluded from the calculations.

Average values for settlements with companies generally rose, with the notable exception of Ponzi schemes, where the average value decreased from $4.8 million to $1.1 million. While the SEC is on pace to reach fewer company settlements for FCPA violations in FY12, the average value rose sharply, from $11.9 million in FY11 to $20.8 million in 1H12 (see Exhibit 8). We discuss recent FCPA settlements in more detail below.

Average settlement values with individuals increased for three of the five largest categories of allegations, but decreased sharply for Ponzi schemes and public company misrepresentations (see Exhibit 9). The high value of the mean Ponzi scheme settlement in FY11 is due in large part to the $310 million settlement with Milowe Allen Brost and Gary Allen Sorenson, the SEC's largest settlement that year.

Exhibit 8. **Settlements with Companies: Average Settlement Values Increased for Several Categories but Decreased for Ponzi Schemes**

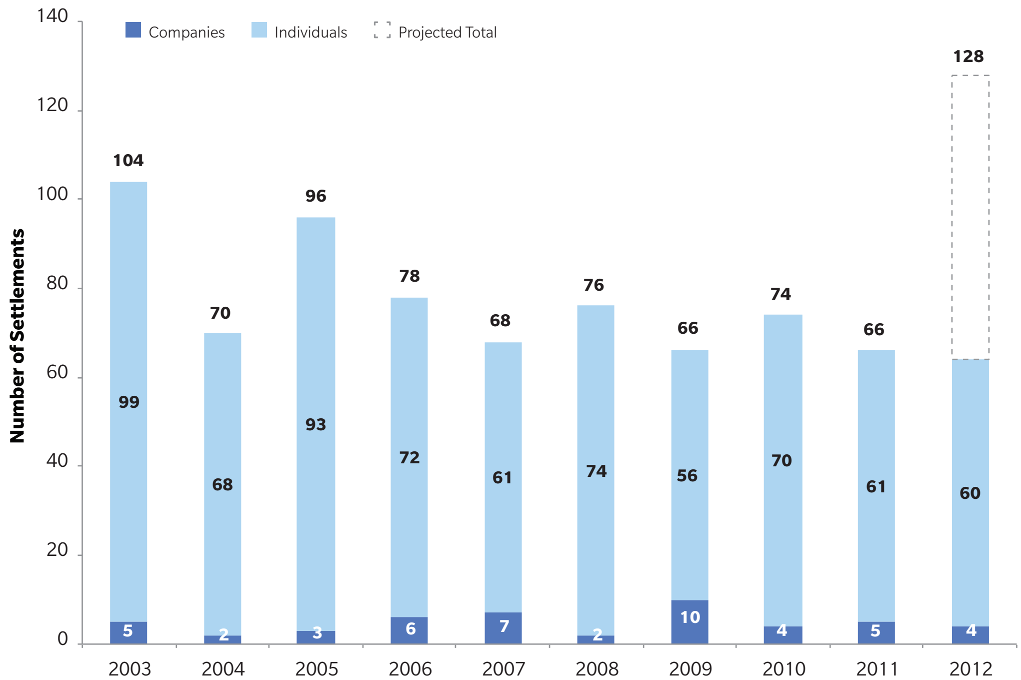
Exhibit 9. **Settlements with Individuals: Average Settlements for Ponzi Schemes and Public Company Misrepresentations Dropped Sharply, while Increasing for Other Categories**



Insider Trading

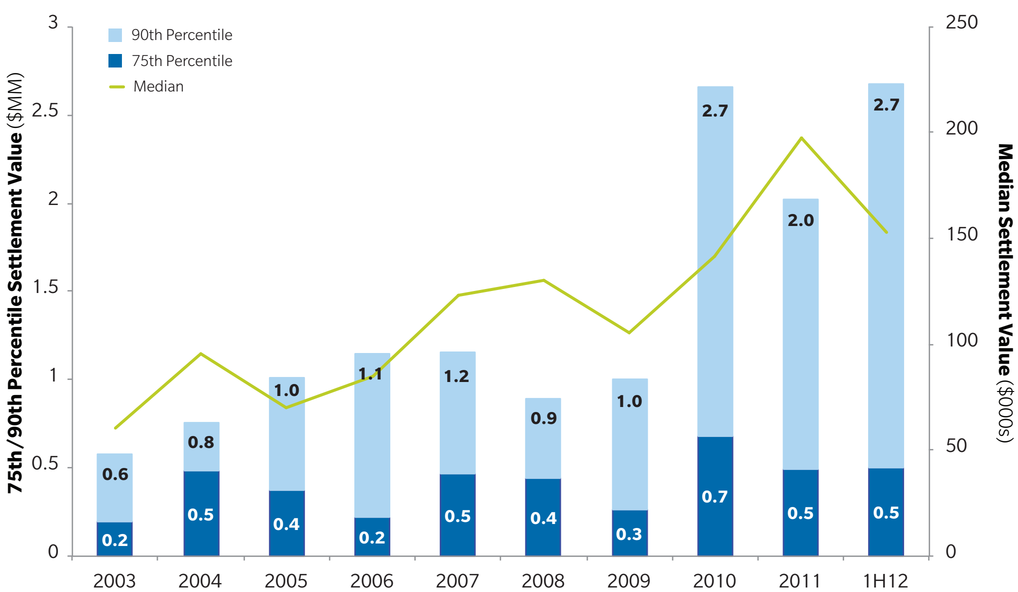
In the wake of the $92.8 million settlement with Galleon hedge fund manager Raj Rajaratnam announced in November 2011, the SEC is on pace to settle insider trading allegations with a record number of individuals in FY12. As Exhibit 10 reports, the SEC settled with 60 individuals and four companies in 1H12, putting it just below the full-year totals of the previous several years.

Exhibit 10. **Insider Trading Settlements with Individuals on Pace for Record-Breaking Year**



Historical settlement values with individuals for insider trading indicate a regime change beginning in FY10. While the median settlement value decreased from $197,000 in FY11 to $153,000 in 1H12, the median, 75th, and 90th percentile settlement values have all been higher in every year since FY10 than they were in any previous year. These values, coupled with the record-breaking number of settlements reached in 1H12, demonstrate the increasing importance of insider trading in the SEC's enforcement activities (see Exhibit 11).

Exhibit 11. **Insider Trading Settlement Values with Individuals Increased after 2009**



Note: $0 Settlements have been excluded from the calculations.

FCPA Violations

The SEC settled allegations related to FCPA violations with six companies in 1H12, behind the pace set in FY11, when it settled with a total of 17 companies.

Exhibit 12 provides details and values for the six FCPA settlements reached by the SEC in 1H12, which ranged in value from $3.8 million to $90.8 million. The $90.8 million settlement with Magyar Telekom for bribes allegedly paid to the governments of Montenegro and Macedonia is the third-largest settlement reached by the SEC in 1H12. Magyar's parent company, Deutsche Telekom, also settled for $4.4 million, for failure to oversee its subsidiary.

Exhibit 12. **FCPA Violations: Settlements with Companies in 1H12**

Company	Date of SEC Announcement	Amount ($)	Country	Alleged Violation Description
Magyar Telekom	12/29/11	90,800,000	Macedonia and Montenegro	*Senior executives paid bribes to secure government contracts and regulatory approval.*
Aon Corporation	12/20/11	14,545,020	Various	*Improper payments to third-party facilitators to obtain contracts and a favorable business climate.*
Biomet Inc.	03/26/12	5,575,731	Argentina, Brazil, and China	*Kickbacks paid to government-employed physician-customers of biomedical devices.*
Smith & Nephew PLC	02/06/12	5,426,799	Greece	*Sham "marketing" payments re-routed to public doctors as kickbacks for purchases.*
Deutsche Telekom	12/29/11	4,360,000	Macedonia and Montenegro	*Failure to oversee subsidiary Magyar Telekom and improper books and records.*
Watts Water Technologies, Inc.	10/13/11	3,776,606	China	*Bribes paid to state-owned "design institutes" to recommend Watts valves for public-financed construction projects.*

One effect of recent SEC actions related to FCPA enforcement has been for corporations to devote more resources to ensuring compliance with FCPA rules.[3] A recent survey of corporate compliance officers found that more than half of the survey respondents reported increasing their budgets for anti-bribery compliance.[4] While increased compliance, all else equal, should reduce the number of FCPA violations in the future, the new whistle-blower rule and increased government emphasis on FCPA enforcement may result in more detection, making the trend in future settlements uncertain.

Recent Developments Potentially Affecting SEC Settlements

Having described the current state of SEC settlements above, we now turn to two current issues whose resolution may affect future settlements. The ultimate resolution of Judge Rakoff's rejection of the SEC's settlement with Citigroup, currently under appeal, will have important ramifications for the "neither-admit-nor-deny" policy that has historically been a part of many settlements. The Jumpstart Our Business Startups (JOBS) Act, meanwhile, may reduce the scope of the SEC's powers to enter into settlements related to unregistered securities offerings.

Challenges to the SEC's "Neither-Admit-Nor-Deny" Policy

Although the appeal is still pending, there have been several developments relating to Judge Rakoff's refusal in November 2011 to approve a proposed settlement between the SEC and Citigroup Global Markets, Inc., which we discussed in our last report.[5] In that ruling, the judge criticized the SEC's practice of settling enforcement actions on a "neither-admit-nor-deny" basis. By avoiding an admission of wrongdoing, defendants reduce their vulnerability to findings of liability in related, private civil litigation and to the accompanying increased legal and settlement costs. Requiring an admission of wrongdoing in SEC settlements would potentially result in corporate defendants being less willing to settle, resulting in fewer settlements and more cases resolved at trial. The SEC appealed Judge Rakoff's decision on the grounds that "the district court committed legal error by announcing a new and unprecedented standard..." and Citigroup joined the SEC in its arguments.[6]

On March 15, 2012, the Court of Appeals for the Second Circuit in New York ruled in a procedural decision that the SEC and Citigroup were likely to succeed in their appeal. In a unanimous decision, the court said with respect to the "neither-admit-nor-deny" portion of the case that "[w]e question the district court's apparent view that the public interest is disserved by an agency that does not require the defendant's admission of liability. Requiring such an admission would in most cases undermine any chance for compromise."[7] In addition, with respect to the SEC's settlement policy, the appeals court said that the district court decision "does not appear to have given deference to the S.E.C.'s judgment on wholly discretionary matters of policy."

Judge Rakoff's refusal to approve the Citigroup settlement was based on more than the issue of the SEC's "neither-admit-nor-deny" settlement policy. He also questioned whether the court had been provided with sufficient facts to assess the adequacy and fairness of the proposed settlement terms given the seriousness of the allegations. The judge stated that "...the proposed Consent Judgment does not serve the public interest, because it asks the Court to employ its power and assert its authority when it does not know the facts."

In another development, on May 14, 2012, the SEC filed its brief related to its appeal.[8] In addition, other groups have filed *amicus curiae* briefs supporting the proposed settlement, including the Securities Industry and Financial Markets Association[9] and the Business Roundtable.[10] An *amicus curiae* brief supporting Judge Rakoff's decision was filed by the Occupy Wall Street—Alternative Banking Group.[11]

The arguments contained in the SEC's brief were also presented at a House Financial Services Committee hearing on the settlement practices of financial regulators on May 17, 2012. In his testimony at the hearing, SEC Director of Enforcement Robert Khuzami stated that "neither-admit-nor-deny" language is "common not just across federal financial agencies, but across federal agencies more generally, and serve(s) the critical enforcement goals of accountability, deterrence, investor protection, and compensation to harmed investors."[12] Mr. Khuzami noted that while many federal agencies negotiate settlements containing "no admit" provisions, the SEC's policy contains the additional provision not permitting denials of wrongdoing in settled enforcement actions.

Mr. Khuzami also argued that if defendants were required to admit wrongdoing as a condition of settlement there would be far fewer settlements because of the increased risks to defendants of increased civil and criminal liability resulting from such admissions. Mr. Khuzami added that "[w]hile some assert admissions may provide marginally increased accountability, the fact is that requiring admissions as a condition of settlement would likely result in longer delays before victims are compensated, dilution of the deterrent impact of sanctions imposed because of the passage of time, and the expenditure of significant SEC resources that could instead be spent stopping the next fraud."

Resolving more cases at trial could deplete resources used to deter other misconduct. In the past year the SEC has been litigating 90 cases, an increase of more than 50%.[13] However, in his testimony, Mr. Khuzami argued that devoting resources to maintaining a credible trial threat is also important for the SEC in reaching settlement agreements. "If you don't have a legitimate trial threat, if you don't communicate to the targets of your investigation that you are prepared to go to trial, then you can be exploited." Mr. Khuzami added that "Defendants will simply hold out for a softer settlement and not fear the alternative."

Mr. Khuzami's testimony also referenced a review by senior Division of Enforcement staff of the SEC's "neither-admit-nor-deny" policy and recent modifications to that policy. These modifications include changes to policy with respect to settlements where there is a parallel criminal proceeding. In this case, which is likely to affect only a small number of settlements, the SEC will no longer include "neither-admit-nor-deny" language in settlements for cases involving criminal convictions where a defendant has admitted violations of the criminal law.[14] Director Khuzami stated that the new policy would eliminate language that may be construed as inconsistent with admissions or findings that have already been made in parallel criminal proceedings. The policy change does not affect settlements that do not involve criminal convictions or admissions of criminal law violations.

Mr. Khuzami's testimony also provided insight into the Division of Enforcement's approach to recommending settlement to SEC commissioners. In general, the Division will recommend settlement only when the settlement agreement is within the range of outcomes that could reasonably be expected through litigation. Mr. Khuzami listed factors that the Division considers when evaluating proposed settlements. These factors include:

1) the strength of the evidence and the potential defenses;
2) the delay in returning funds to harmed investors caused by litigation; and
3) the resources required for trial, including the opportunity costs of litigating rather than devoting those resources to investigating other cases.

Mr. Khuzami stated that the Division's approach to settlement is aimed at achieving the goals of accountability, deterrence, investor protection, and compensation to harmed investors.

In summary, the appeal by the SEC and Citigroup Global Markets of Judge Rakoff's decision remains unresolved. Although requiring an admission of wrongdoing to settle SEC enforcement actions would potentially reduce the incentive for defendants to agree to settlements, the likelihood of either the courts or Congress requiring such an admission has diminished since we last wrote.

The JOBS Act and Cases Involving Unregistered Offerings

Whereas certain provisions of the Dodd-Frank Act could potentially expand the scope of the SEC's enforcement activities, the JOBS Act, passed in April, could potentially reduce the scope of the SEC's enforcement activities related to certain unregistered offerings. In this section we provide a brief overview of the JOBS Act's main features before addressing how SEC enforcement activities may be affected.[15]

The stated goal of the JOBS Act is to "cut away the red tape that prevents too many rapidly growing startup companies from raising capital and going public.[16] Title I of the JOBS Act creates a new category of issuer called an emerging growth company (EGC). To qualify as an EGC, a company must have less than $1 billion in gross revenue during the most recently completed fiscal year. An EGC classification entitles issuers to reduced disclosure obligations and less burdensome regulatory standards than those faced by non-EGCs when issuing securities. Rather than having its initial registration made immediately available to the public, an EGC may file a draft IPO registration statement with the SEC for a confidential review as long as a public filing is made with the SEC at least 21 days prior to the roadshow for the offering. Rather than providing three years of audited financial statements prior to an IPO, EGCs need only provide two years of audited financial statements in their initial registration statement. EGCs also have a phase-in period of up to five years following their IPO before they must fully comply with public reporting requirements. An EGC is exempt from Section 404(b) of SOX and is exempt from any future standard the Public Company Accounting Oversight Board (PCAOB) may issue relating to the auditor's reporting model or mandating audit firm rotation.

All offerings of securities must be either (1) registered with the SEC or (2) exempt from registration. Regulation D (Reg D) of the Securities Act of 1933 includes three exemptions from registration. Title II of the JOBS Act includes a number of provisions aimed at modifying and easing some restrictions on exempt offerings. In particular, the JOBS Act requires the SEC to eliminate restrictions on general solicitations and general advertising in private placements under Rule 506 of Reg D, provided that the securities are sold only to accredited investors and (under Rule 144A offerings) that the issuer reasonably believes that all buyers are qualified institutional buyers (QIBs). Under this provision, general solicitation and general advertising will not cause private capital-raising under Rule 506 of Reg D to cross the line into becoming a public offering.

Title III of the JOBS Act also creates an offering exemption for the raising of capital through a method known as "crowdfunding," that is, the raising capital in limited (small) amounts from a large number of investors. Limits on investor participation will vary according to the income or net worth of the investor. The aggregate amount of securities sold to investors through this exemption is limited to $1,000,000 over 12 months. In addition, the offering must be conducted through a broker or funding portal.[17]

Other portions of the JOBS Act raise the reporting and registration thresholds for exempt offerings. For example, Titles V and VI raise the registration threshold for companies from 500 shareholders and $10 million in assets to 2,000 shareholders (or 500 shareholders who are not accredited investors) and $10 million in assets.

The potential impact of the JOBS Act on SEC enforcement activities will depend on the specific rules crafted by the SEC to implement the Act. These rules are supposed to be proposed within 90 days of the Act's enactment, which would mean a July 4, 2012 deadline. The JOBS Act aims to promote capital formation by reducing regulatory requirements on companies raising capital, particularly for private companies. Although the Act does not eliminate anti-fraud rules, it exempts some issuers from public reporting obligations and registration obligations. Over the past three years, settlements of SEC actions related to alleged violations of the rules governing offerings has accounted for approximately 15% of all SEC settlements.[18] Some subset of these illegal offering settlements may not have been regarded as illegal had the JOBS Act exemptions been in place at the time. Once the rules are finalized, we will analyze past settlements to see how many would have been exempt under the JOBS Act and provide a better idea of the potential impact of the JOBS Act on SEC enforcement activities and settlements.

Notes

[1] We discuss insider trading settlements in further detail below.

[2] In this paper, 1H12 refers to the first half of the SEC and federal fiscal year 2012, which began on October 1, 2011. References to settlements in other years also refer to the fiscal year.

[3] For a description of the SEC's role in FCPA enforcement, see "FCPA Settlements: It's a Small World After All," by Raymund Wong and Patrick Conroy, http://www.nera.com/extImage/Pub_FCPA_Settlements_0109_Final2.pdf.

[4] Kroll Advisory Solutions, "2012 FCPA Benchmarking Report," p. 10.

[5] *United States Sec. & Exch. Comm'n v. Citigroup Global Markets Inc.*, No. 11 Civ. 7387 (JSR)., 2011 WL 5903733 (S.D.N.Y. Nov. 28, 2011).

[6] See: http://sec.gov/nes/press/2011/2011-265.htm.

[7] *United States Sec. & Exch. Comm'n v. Citigroup Global Markets Inc.*, 673 F. 3d 158, 165 (2d Cir. 2012).

[8] Brief of the Sec. & Exch. Comm'n, Appellant/Petitioner, *United States Sec. & Exch. Comm'n v. Cirtigroup Global Markets Inc.*, No. 11-5227 (2d Cir. May 14, 2012).

[9] Brief of *Amicus Curiae* Securities Industry and Financial Markets Ass'n. in Support of Appellants, *United States Sec. & Exch. Comm'n v. Citigroup Global Markets Inc.*, No. 11-5227 (2d Cir. May 21, 2012).

[10] Brief for Business Roundtable as *Amicus Curiae* in Support of Appellants, *United States Sec. & Exch. Comm'n v. Citigroup Global Markets Inc.*, No. 11-5227 (2d Cir. Jan. 12, 2012).

[11] Proposed Brief of *Amicus Curiae* Occupy Wall Street-Alternative Banking Group in Support of the Public Interest and Against Appellant and Appellee, *United States Sec. & Exch. Comm'n v. Citigroup Global Markets Inc.*, No. 11-5227 (2d Cir. May 22, 2012).

[12] Robert Khuzami, testimony on "Examining the Settlement Practices of U.S. Financial Regulators," http://www.sec.gov/news/testimony/2012/ts051712rk.htm.

[13] See "SEC Trials increase 50 Percent as Execs Fight Lawsuits," *Bloomberg*, May 22, 2012.

[14] See http://www.sec.gov/news/speech/2012/spch010712rsk.htm.

[15] More thorough overviews of the JOBS Act have been written by Jeffrey W. Rubin, "The JOBS Act: An Overview—What Every Business Lawyer Should Know," *Business Law Today*, May 25, 2012, http://americanbar.org/buslaw/blt/content/2012/05/article-01-rubin.shtml. See also Elizabeth M. Dunshee and David M. Lynn, "The JOBS Act: Easing Exempt Offering Restrictions," *Business Law Today*, May 25, 2012, http://americanbar.org/buslaw/blt/content/2012/05/article-02-dunshee.shtml.

[16] See President Barack Obama before a Joint Session of Congress, September 8, 2011, available at http://www.whitehouse.gov/the-press-office/2011/09/08/address-president-joint-session-congress.

[17] The term "funding portal" means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others as defined in section 3(a)(80) of the Securities Exchange Act of 1934.

[18] Source: NERA settlement database.

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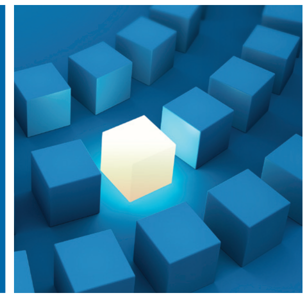

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