



SECURITIES AND EXCHANGE COMMISSION

Division of Enforcement Should Document Its Procedures for Generating Public Reports

Accessible Version

October 2019

Why GAO Did This Study

Enforcement supports SEC's mission by bringing civil and administrative actions against individuals and entities for fraud, financial and accounting irregularities and misstatements, and other misconduct. According to SEC, these enforcement actions serve as a deterrent against future wrongdoing. Since 2017, Enforcement has published an annual report that provides statistics on its enforcement activities and highlights its priorities for the coming year.

GAO was asked to examine SEC reporting of enforcement statistics. This report examines (1) the ways that enforcement statistics reporting changed over the last 10 years, and (2) policies and procedures for recording, reviewing, and reporting enforcement statistics. GAO reviewed SEC's internal policies, procedures, and manuals for recording, verifying, and reporting data. GAO also interviewed SEC officials and reviewed past SEC reports containing enforcement statistics.

What GAO Recommends

GAO recommends that SEC's Co-Directors of Enforcement develop written procedures for generating Enforcement's public reports, including procedures for compiling and verifying statistics used in the reports, and documenting their implementation. SEC agreed with the recommendation.

SECURITIES AND EXCHANGE COMMISSION

Division of Enforcement Should Document Its Procedures for Generating Public Reports

What GAO Found

Since 2009, the Division of Enforcement (Enforcement) in the Securities and Exchange Commission (SEC) has made modifications to its reporting of enforcement statistics, including by releasing a stand-alone annual report beginning in fiscal year 2017. The Enforcement Annual Report included additional data on enforcement statistics not previously reported and narratives about enforcement priorities and cases. Enforcement staff told us the annual report was created to increase transparency and provide more information and deeper context than previous reporting had provided.

Enforcement has written procedures for recording and verifying enforcement-related data (including on investigations and enforcement actions) in its central database. However, Enforcement does not have written procedures for generating its public reports (currently, the annual report), including for compiling and verifying the enforcement statistics used in the report. To produce the report, Enforcement staff told GAO that staff and officials hold meetings in which they determine which areas and accomplishments to highlight (see figure). Enforcement was not able to provide documentation demonstrating that the process it currently uses to prepare and review the report was implemented as intended. Developing written procedures for generating Enforcement's public reports and documenting their implementation would provide greater assurance that reported information is reliable and accurate, which is important to maintaining the division's credibility and public confidence in its efforts.

Production Process for the SEC Enforcement Annual Report, as Described by Enforcement Staff

Potential topics discussed throughout fiscal year and finalized at end of year.	Data requested and compiled	Enforcement statistics verified and added to draft report	Draft report reviewed for accuracy	Final confirmation and report published
	Enforcement data Financial penalty data			

Source: GAO analysis of interviews with Securities and Exchange Commission (SEC) staff. | GAO-20-47

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Abbreviations

CMS	case management specialist
Enforcement	Division of Enforcement
SEC	Securities and Exchange Commission

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October 28, 2019

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Mark R. Warner
United States Senate

The Securities and Exchange Commission (SEC) is responsible for overseeing the nation's securities markets. Within SEC, the Division of Enforcement (Enforcement) supports the agency's mission by bringing judicial enforcement actions and administrative proceedings against individuals and entities for fraud, financial and accounting irregularities and misstatements, and other misconduct. Enforcement has stated that it intends for its actions to protect investors and the markets, including by serving as a deterrent against future wrongdoing.

Data on Enforcement's activities in pursuit of its goals—or enforcement statistics—have been included in different published SEC reports since at least 2005. In fiscal year 2017, Enforcement developed and released a stand-alone annual report as part of an effort to measure effectiveness in achieving its objectives and to assist with the goal of deterring future wrongdoing.¹ According to SEC staff with whom we spoke, Enforcement's annual report is not required by statute; rather, Enforcement voluntarily publishes the report, which contains selected enforcement statistics and narratives about enforcement priorities and cases. Enforcement has noted limitations to evaluating the effectiveness of an enforcement program solely through the use of statistics, stating that the effectiveness of the program may be better assessed by looking at the nature, quality, and effects of enforcement actions.

You asked us to examine SEC policies and procedures relating to its reporting of enforcement statistics, including any year-to-year changes in its reporting. This initial report in response to the request (1) examines

¹The most recent annual report was for fiscal year 2018. See Securities and Exchange Commission, Division of Enforcement, *2018 Annual Report* (Washington, D.C.: Nov. 2, 2018).

Enforcement's policies and procedures for data collection and reporting and (2) describes changes since 2009 in SEC publications that include enforcement statistics.²

To examine policies and procedures related to enforcement statistics, we reviewed Enforcement's internal policies, procedures, and guides for inputting, reviewing, and outputting data. These included the internal guide for Enforcement's database and documentation on the responsibilities of case management specialists (CMS), who are the primary staff that enter and manage Enforcement data. We also conducted five interviews with Enforcement staff and interviewed SEC's Chief Operating Officer to understand internal guidelines and responsibilities.

To describe changes to SEC publications with enforcement statistics, we collected and reviewed past reports from 2009 through 2018 that included enforcement statistics and analyzed what changes occurred from year to year. These reports included Select SEC and Market Data reports from 2009 through 2017 and Enforcement's annual reports in 2017 and 2018. We reviewed other SEC reports that included enforcement-related information, such as the SEC Congressional Budget Justification and its Annual Performance Report. We also interviewed Enforcement staff to learn the purpose of the changes.

We conducted this performance audit from March 2019 to October 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

SEC is a federal agency responsible for protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. Among its efforts, SEC requires public companies to disclose meaningful financial and other information to the public, examines firms it regulates,

²We plan to conduct future work examining related topics, including SEC's development of performance measures.

and identifies and investigates potential violations of federal securities laws. Each year, SEC brings hundreds of enforcement actions—including judicial enforcement actions and administrative proceedings—against individuals and companies as a result of its investigations.³ Examples of actions taken in fiscal year 2018 include charges against a company that allegedly defrauded investors in a Ponzi scheme and charges against a bank for misconduct in its sales practices for certain financial products offered to retail investors.⁴ SEC’s responsibilities are divided among five divisions and 24 offices.

The Division of Enforcement conducts investigations of potential violations of federal securities laws. Enforcement recommends, when appropriate, that SEC bring enforcement actions, litigates these actions, negotiates settlements on behalf of SEC, and works with other law enforcement agencies to bring criminal cases when warranted. Enforcement is currently led by two co-directors who report to the Chairman. Enforcement staff operate from headquarters in Washington, D.C., and in 11 regional offices.

Enforcement maintains a database that tracks enforcement-related activities, including all cases from investigation through litigation, and is the source of statistics used in public reporting (see fig. 1). For tracking purposes, “case” encompasses all stages of a possible enforcement action, beginning either as a matter under inquiry or as an investigation.⁵ Some cases advance and become an enforcement action. Enforcement’s database includes all key case data other than data on financial penalties

³Judicial enforcement actions are legal proceedings initiated by SEC and filed in federal court. Administrative proceedings are heard, in the first instance, by an administrative law judge within SEC. Decisions by these administrative law judges can be appealed to the SEC Commissioners and the Commissioners’ decision can be appealed to a federal court of appeals. Violations that may lead to enforcement actions include manipulating the market prices of securities or violating broker-dealers’ responsibility to treat customers fairly.

⁴Division of Enforcement, *2018 Annual Report*.

⁵A matter under inquiry is an informal investigation and is typically opened when more information is needed to determine the merits of pursuing the issue. In determining whether to open an investigation, SEC staff evaluate whether and to what extent the investigation could address violative conduct.

and disgorgements, which SEC's Office of Financial Management stores and manages.⁶

Figure 1: Overview of Data Input and Reporting by SEC's Division of Enforcement



Source: GAO analysis of Securities and Exchange Commission (SEC) information. | GAO-20-47

Enforcement's CMS are responsible for recording key data into the database and conducting quality checks on the data throughout the investigative and litigation processes of a case. There are two groups of CMS: local CMS and national CMS, both of which can be located in SEC regional offices or at SEC headquarters. Local CMS in regional offices report to their regional managers but coordinate with the Enforcement Case Management and Systems Reporting Group. National CMS and local CMS at SEC headquarters report to the Case Management Systems and Reporting Group. National CMS have the responsibility of reviewing and verifying case data input by local CMS.

⁶SEC may assess financial penalties against individuals or entities as a way to address underlying misconduct. Disgorgement requires individuals or entities to give up profits or other gains illegally obtained.

SEC Has Written Procedures for Recording Enforcement Data but Not for Public Reporting of Enforcement Statistics

Enforcement Has Documented Procedures for Recording and Verifying Enforcement Data

Enforcement has documented procedures for recording and verifying enforcement-related data in its central database. More specifically, the Enforcement database user guide has step-by-step procedures for recording case data and clear descriptions of each data entry field. For example, the guide includes brief descriptions of primary classifications—or categories—used to describe the nature of the enforcement action (such as insider trading or delinquent filing).

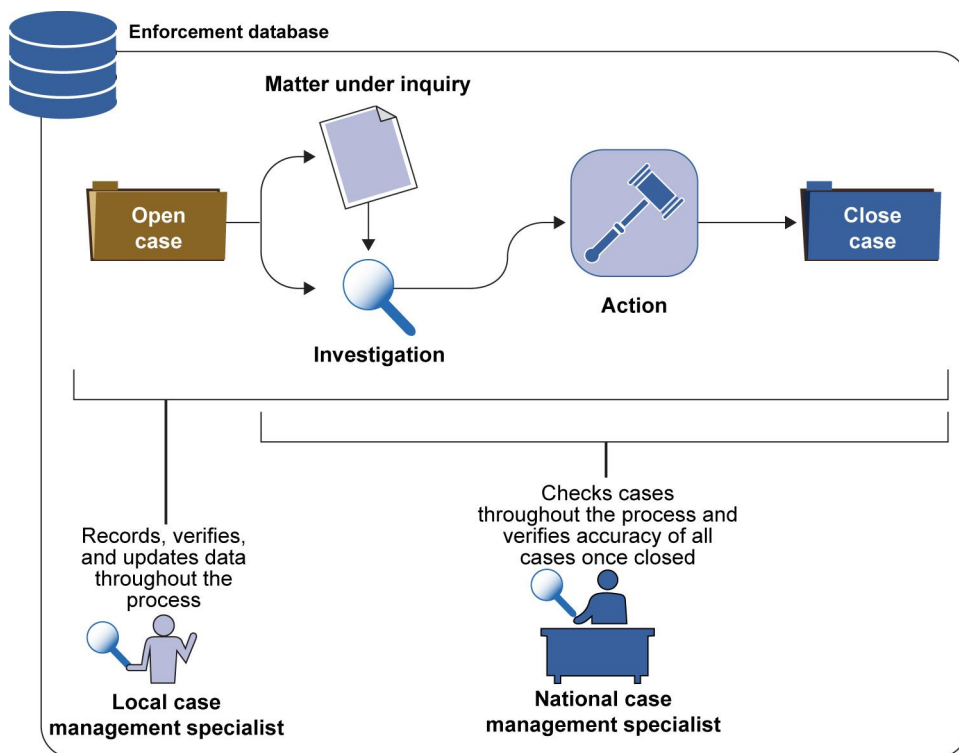
According to the database user guide and other SEC documentation, local CMS have the primary responsibility for recording most case data used in Enforcement metrics. Local CMS may assist with data recording in the opening of a case as a matter under inquiry or, if it is known the case will advance to the next stage, as an investigation. The user guide also states that local CMS are responsible for recording the advancement of a case from an investigation to an enforcement action. According to the user guide, CMS use information (generally, case documentation) received from the courts or SEC staff responsible for the case to create the action entry in the central database, including the primary classification for the action. CMS also facilitate closing completed cases in the database.

Enforcement procedures call for Enforcement staff to perform multiple data reviews for all information in the Enforcement database, according to Enforcement staff and the user guide.⁷ According to the user guide, local CMS review the accuracy of key case-related data recorded in the system at certain stages as a case proceeds (see fig. 2). The local CMS add case information by checking any new documentation, such as court filings. In addition to the review by the local CMS, national CMS also are

⁷We did not assess or verify SEC's data quality reviews or their effectiveness in ensuring the accuracy of enforcement data.

to review newly opened cases, as well as cases that have advanced to an investigation, changed from an investigation to an action, or closed. To do this, national CMS compare information recorded in the system against any primary documents related to the case, such as court documentation. Finally, Enforcement staff told us that they have an informal process whereby a group of attorneys in the Case Management and Systems Reporting Group review all primary classifications for enforcement actions.

Figure 2: Overview of the Data Recording and Verification Process of SEC's Division of Enforcement

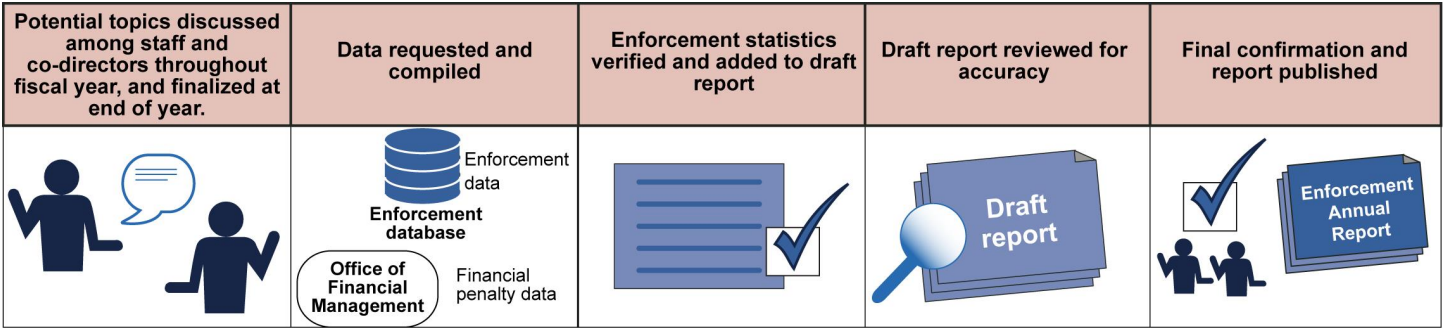


Source: GAO analysis of Securities and Exchange Commission (SEC) information. | GAO-20-47

Enforcement Does Not Have Documented Procedures for Generating Its Annual Report and Verifying the Statistics Used in It

Enforcement lacks written procedures for generating the Enforcement Annual Report, including for compiling and ensuring the accuracy of the statistics published within. Enforcement staff explained that they follow an informal process to generate the annual report, which includes steps to help ensure reliable reporting and detect and prevent errors (see fig. 3). However, Enforcement was unable to provide documentation of this process or of the implementation of the steps to help ensure accuracy.

Figure 3: Production Process for SEC’s Enforcement Annual Report, as Described by Enforcement Staff



Source: GAO analysis of interviews with Securities and Exchange Commission (SEC) staff. | GAO-20-47

According to staff, the process for generating the annual report includes selecting what statistics to include and what activities and accomplishments to describe in the report narrative. Specifically, Enforcement staff said that the division’s co-directors hold regular weekly meetings with their staff to discuss management of the division. Staff said program metrics and other measures may be discussed at these meetings, including the types of information and statistics that might be used in the Enforcement Annual Report. According to the staff, at the end of the fiscal year the co-directors determine what information and statistics the division will include in reports.⁸

Once decisions have been made about the annual report’s content, Enforcement staff told us a contractor uses software queries of the database to compile statistics for the report based on data parameters

⁸Enforcement has had two co-directors since 2017.

defined by Enforcement staff. An Enforcement staff member familiar with the data reviews the queries' output to verify accuracy, according to Enforcement staff. Staff then add the compiled statistics to the draft annual report.⁹

According to staff, the draft report is then sent to the Office of Public Affairs for formatting and publication. Enforcement staff stated that staff familiar with the data perform an additional check to ensure that no data values were mistyped or otherwise edited in the formatting process. Finally, the co-directors of Enforcement are to review the draft report. After they give a final approval, the annual report is published.

Control activities such as written procedures help ensure that operational processes are effective and actions are taken to address risks. In particular, federal internal control standards identify documentation—including documentation that demonstrates procedures are being implemented—as a necessary part of an effective internal control system and as a means to help detect and prevent errors.¹⁰

Enforcement staff stated that the division does not have written procedures for generating its annual report or documenting the implementation of review processes because the report is not required by law and is discretionary. The staff said they were confident about the reliability of report data because staff were familiar with enforcement data and the informal processes they currently use to verify accuracy. In contrast, Enforcement uses documented SEC guidelines for reviewing and verifying the data used to support performance metrics in the agency-wide SEC Annual Performance Report.¹¹

⁹The report also includes data provided by SEC's Office of Financial Management on financial disgorgements and penalties paid. We did not examine that office's policies and procedures for reviewing and verifying these data. Through a documented review process, Enforcement assists the Office of Financial Management in verifying the list of who has been ordered to pay penalties or disgorgement.

¹⁰GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

¹¹Office of Management and Budget Circular A-11 requires agencies to develop techniques to ensure the completeness and reliability of performance data in their annual performance plans and reports, and SEC has written procedures for this purpose. SEC most recently updated the guidelines in 2018.

Documenting written procedures for generating both Enforcement's annual report and the processes it uses to verify published statistics—including documentation that procedures were implemented—would provide Enforcement with greater assurance that staff follow necessary steps to help ensure the reliability and accuracy of reported information. Reliability and accuracy of information are important to maintaining the division's credibility and public confidence in its efforts. In addition, developing written procedures would better position Enforcement to manage risk associated with staff turnover and help ensure continuity of operations in its public reporting.

SEC Has Made Modifications to Its Reporting of Enforcement Statistics Since 2009

Since 2009, SEC has made changes to how it reports and presents enforcement or enforcement-related statistics, which are included in a number of reports (see table 1).¹² As previously discussed, we reviewed reports from 2009 through 2018 that included enforcement statistics.

Table 1: Securities and Exchange Commission (SEC) Reports That Include Enforcement Statistics, for Reports GAO Reviewed (2009–2018)

Report name	Description of report
Select SEC and Market Data	Published annually for fiscal years 2004–2017. Presented selected SEC financial information and enforcement statistics.
Enforcement Annual Report	Published since 2017. Includes selected enforcement statistics and narratives about enforcement priorities and cases.
SEC Congressional Budget Justification	Annual presentation to Congress that explains SEC's future budget request.

¹²The SEC Congressional Budget Justification, Annual Performance Plan, and Annual Performance Report have been packaged and released together since fiscal year 2013. In accordance with the GPRA Modernization Act of 2010, the Annual Performance Report reflects SEC's progress in achieving the goals established under SEC's Annual Performance Plan, and includes some performance-related metrics provided by Enforcement. Pub. Law No. 111-352, § 4, 124 Stat. 3871 (2011) (codified at 31 U.S.C. § 1116(b)).

Report name	Description of report
SEC Annual Performance Report	Compares SEC's performance goals with its performance results for the prior fiscal year. Includes performance-based metrics related to enforcement.

Source: GAO analysis of SEC information. | GAO-20-47

More specifically, SEC made the following changes to its public reporting of enforcement statistics, which include the creation of a stand-alone Enforcement Annual Report in 2017. Prior to 2017, Enforcement reported similar statistics in the annual Select SEC and Market Data Report.

- Definition of enforcement actions.** Enforcement staff told us that before 2013, the Select SEC and Market Data Reports changed little from year to year, with the previous year's report used as a template to create the next one.¹³ SEC adjusted its definition of enforcement actions in the 2013 report, and included notes explaining the change and providing what the number of enforcement actions would have been under the previous definition.¹⁴
- Presentation of enforcement statistics.** Enforcement staff said the Office of the Chief Operating Officer determined changes in presentation (such as the order of enforcement action classifications) in the Select SEC and Market Data Report. In 2015, Enforcement changed how the report presented summary data for enforcement actions. Previously, Enforcement counted enforcement actions as civil actions or administrative proceedings, but the fiscal year 2015 report separately identified and counted the proceedings as stand-alone (initial) or follow-on (after initial action). Enforcement staff said these

¹³The Select SEC and Market Data Reports before 2013 generally contained (1) highlights of aggregate statistics; (2) a summary of enforcement actions over the previous fiscal year by primary classification; (3) a full list of enforcement cases by program area over the previous fiscal year; and (4) counts of the investigations opened, closed, ongoing, or opened over the previous fiscal year.

¹⁴According to the 2013 Select SEC and Market Data Report, Enforcement adjusted its definition of enforcement actions to exclude 21(a) Reports and certain civil contempt matters. The 21(a) Reports describe the findings of an investigation, and are expressly authorized by Section 21(a) of the Securities and Exchange Act of 1934. 15 U.S.C. § 78u(a). According to SEC, they typically are used to advise the marketplace of SEC's view on an issue. According to SEC, although 21(a) Reports are recorded in Enforcement's database as actions, they are not civil or administrative actions, and there is no relief sought and no allegations of violations of the securities laws. The Enforcement database user guide also notes that it designates the reports as non-enforcement actions. This change decreased the total number of enforcement actions reported in that year from 686 to 676.

changes were made possible by better software that allowed for enhanced and expanded presentation of the data.

- **Enforcement Annual Report.** As previously mentioned, the Select SEC and Market Data Report was discontinued after the fiscal year 2017 report and the Enforcement Annual Report was first published in November 2017. The annual report included additional data tables of enforcement statistics not previously reported (some comparing statistics to the previous year) and narratives about enforcement priorities and cases. Enforcement staff told us the annual report was created to increase transparency and provide more information and deeper context than previous reporting had.

Conclusions

The SEC Division of Enforcement voluntarily issues an annual report that includes statistics and highlights significant enforcement actions and initiatives of the previous fiscal year. Enforcement has documented procedures and has designated staff to input and review enforcement-related data in its case-tracking system. However, the division does not have written procedures for generating its public reporting (currently, the annual report), including for compiling and verifying the report's statistics, or documenting that procedures were implemented as intended. Written procedures would help Enforcement ensure the reliability and accuracy of reported information, manage risk associated with staff turnover, and promote continuity of operations in its public reporting.

Recommendation for Executive Action

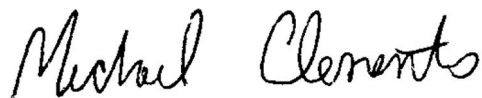
The Securities and Exchange Commission's Co-Directors of Enforcement should develop written procedures for generating Enforcement's public reports, including procedures for compiling and verifying statistics used in the reports and documenting their implementation. (Recommendation 1)

Agency Comments

We provided a draft of this report to SEC for review and comment. In written comments (reproduced in appendix I), SEC generally agreed with our findings and concurred with our recommendation. In addition, SEC provided technical comments, which we incorporated as appropriate.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Chairman of the Securities and Exchange Commission, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8678 or clementsm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix II.



Michael E. Clements
Director
Financial Markets and Community Investment

Appendix I: Comments from the Securities and Exchange Commission



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

October 11, 2019

Michael Clements
Director, Financial Markets and Community Investment
Government Accountability Office
411 G Street, NW
Washington, DC 20548

Dear Mr. Clements:

Thank you for the opportunity to respond to the draft report, "Division of Enforcement Should Document Its Procedures for Generating Public Reports." We appreciate our discussions with GAO on our processes for compiling and publishing the Enforcement Annual Report that supplements and gives context to information the agency provides in its annual reports.

The SEC's annual reports include enforcement metrics and the Enforcement Annual Report has consistently included certain of these metrics, while also highlighting the Division's activities and accomplishments for the specific year. As your report observes, we launched the Enforcement Annual Report in 2017 on our own accord. We undertook this effort to promote greater transparency into the Division's work, initiatives, and accomplishments, and how we and other senior Enforcement leaders assess the Division's effectiveness. In the 2017 and 2018 reports, we articulated five principles guiding the Division's assessment of its performance: (1) focus on the Main Street investor; (2) focus on individual accountability; (3) keep pace with technological change; (4) impose remedies that most effectively further enforcement goals; and (5) constantly assess the allocation of our resources. In addition, we included various quantitative metrics in our reports, among other information. As we have often emphasized, quantitative metrics—for example, the raw number of cases filed or the total amounts of fines and penalties assessed during a specific time period such as a single fiscal year—cannot adequately measure the effectiveness of an enforcement program. Indeed, we believe a singular focus on such metrics can result in misalignment of incentives and objectives.

Since we first published the report in 2017 and continuing to today as we prepare our 2019 Enforcement Annual Report, we have compiled the report's qualitative and quantitative information by undertaking a thorough process that promotes accuracy, precision, and transparency. Many of the key steps that we have employed in producing the Enforcement Annual Report and other public reports with enforcement data are described in your report. We will continue to carry out such rigorous processes when generating the Enforcement Annual Report and, per your recommendation, will memorialize them, to the extent they are not already documented.

**Appendix I: Comments from the Securities and
Exchange Commission**



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Thank you for the consideration that you and your staff have shown our division. If you require any additional information, please contact Holli Heiles Pandol, Director of Legislative and Intergovernmental Affairs, at (202) 551-2211.

Sincerely,

A handwritten signature in dark ink, appearing to read "Steph Avakian".

Stephanie Avakian
Co-Director, Division of Enforcement

A handwritten signature in dark ink, appearing to read "Steven Peikin".

Steven Peikin
Co-Director, Division of Enforcement

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

Michael E. Clements at (202) 512-8678 or clementsm@gao.gov

Staff Acknowledgments

In addition to the contact named above Kevin Averyt, John Forrester, (Assistant Directors), Jordan Anderson (Analyst in Charge), Tim Bober, Ryan Braun, Marc Molino, Kirsten Noethen, Barbara Roesmann, and Farrah Stone made key contributions to this report.

Appendix III: Accessible Data

Agency Comment Letter

Accessible Text for Appendix I Comments from the
Securities and Exchange Commission

Page 1

October 11, 2019

Michael Clements

Director, Financial Markets and Community Investment

Government Accountability Office

411 G Street, NW

Washington, DC 20548

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focus on individual accountability; (3) keep pace with technological change; (4) impose remedies that most effectively further enforcement goals; and (5) constantly assess the allocation of our resources . In addition, we included various quantitative metrics in our reports, among other information. As we have often emphasized, quantitative metrics—for example, the raw number of cases filed or the total amounts of fines and penalties assessed during a specific time period such as a single fiscal year—cannot adequately measure the effectiveness of an enforcement program. Indeed, we believe a singular focus on such metrics can result in misalignment of incentives and objectives.

Since we first published the report in 2017 and continuing to today as we prepare our 2019 Enforcement Annual Report, we have compiled the report's qualitative and quantitative information by undertaking a thorough process that promotes accuracy, precision, and transparency. Many of the key steps that we have employed in producing the Enforcement Annual Report and other public reports with enforcement data are described in your report. We will continue to carry out such rigorous processes when generating the Enforcement Annual Report and, per your recommendation, will memorialize them, to the extent they are not already documented.

Page 2

Thank you for the consideration that you and your staff have shown our division. If you require any additional information, please contact Holli Heiles Pandol, Director of Legislative and Intergovernmental Affairs, at (202) 551-2211.

Sincerely,

Stephanie Avakian

Co-Director, Division of Enforcement

Steven Peikin

Co-Director, Division of Enforcement

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