AN EMPIRICAL STUDY OF ADMISSIONS IN SEC SETTLEMENTS

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Transparency and accountability were the announced aims of the Securities and Exchange Commission ("SEC") as it unveiled a new policy of requiring some enforcement targets to admit wrongdoing when they settled with the agency. The SEC had come under fire for allowing targets to settle with the agency without admitting or denying wrongdoing. Critics, including prominent judges, put pressure on the agency to require admissions as a way to hold wrongdoers accountable, particularly in the long aftermath of the 2007–2008 financial crisis. In response, the agency announced a policy change in 2013: roughly speaking, it would require admissions when doing so would further public accountability. The empirical study reported in this Article explores how the agency has implemented this policy. We identify and analyze SEC settlements in court and administrative proceedings announced during SEC fiscal years 2010 through 2017 that required any type of admission of wrongdoing from the settling target. The data set includes the full text of the underlying agreements between the SEC and the target. The resulting number of settlements including admissions is low. A few of these settlements were in high-profile cases, but many were against individuals rather than entities and resulted in low or no monetary sanctions. The numbers, however, do not tell the whole story. We examine the text of the agreements to provide a more nuanced picture, revealing the prominent role of factual admissions, but also identifying admissions of wrongdoing, legal violations, and scienter.

TABLE OF CONTENTS

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INTRODUCTION

In 2012, a trader based in London made a bet. A very big bet. And ultimately a losing bet. The size of the loss—six billion dollars—earned him the nickname "the London Whale." Multiple civil authorities pursued both the trader and the bank: the SEC, Office of the Comptroller of the Currency ("OCC"), U.S. Commodity Futures Trading Commission ("CFTC"), Federal Reserve, and U.K. Serious Fraud Office.[1] The parties ultimately resolved the matter in the way that over 90% of these matters are resolved: by settlement.[2] A key part of the settlement negotiation was whether the bank—JPMorgan—had to admit that it did something wrong. In this particular instance, the SEC and other agencies did something quite unusual. As part of the settlement, they required the bank to admit that it violated the securities laws and to admit to certain facts. Newspaper reports

1. SEC Press Release 2013-187, JPMorgan Chase Agrees to Pay $200 Million and Admits Wrongdoing to Settle SEC Charges (Sept. 19, 2013), https://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539819965; SEC Release No. 34-70458 (Sept. 19, 2013), *In re* JPMorgan Chase, Order Instituting Cease-and-Desist Proceedings, https://www.sec.gov/litigation/admin/2013/34-70458.pdf; CFTC Press Release pr6737-13, CFTC Files and Settles Charges Against JPMorgan Chase Bank, N.A., for Violating Prohibition on Manipulative Conduct In Connection with "London Whale" Swaps Trades (Oct. 16, 2013), http://www.cftc.gov/PressRoom/PressReleases/pr6737-13.

2. SEC Press Release 2013-187, *supra* note 1; SEC Release No. 34-70458, *supra* note 1; CFTC Press Release pr6737-13, *supra* note 1; *see also Examining the Settlement Practices of U.S. Financial Regulators: Hearing Before the Comm. on Fin. Servs.*, 112th Cong. 7, 10 & 12 (2012) (statement of Scott G. Alvarez, Gen. Counsel, Board of Governors of the Federal Reserve System; statement of Richard J. Osterman Jr., Deputy Gen. Counsel, Federal Deposit Insurance Corporation; statement of Daniel P. Stipano, Deputy Chief Counsel, Office of the Comptroller of the Currency), http://financialservices.house.gov/uploadedfiles/112-128.pdf.

pointed to the "rare admission of wrongdoing" and the "significant symbolic victory" these admissions gave regulators.[3]

The London Whale matter was one high-profile example of changing policy at the SEC. SEC leadership declared that the settlement was "about transparency and accountability" and that the bank's admissions were "a key component in that message."[4] Under fire, the agency shifted from a longstanding policy that allowed enforcement targets to settle without admitting or denying wrongdoing, to a new approach that put admissions back on the negotiating table.[5] Under the new approach, announced in September 2013, the SEC began to seek admissions where there was "a special need for public accountability and acceptance of responsibility."[6] In the months following the London Whale settlement and the announcement of the shift in its approach to admissions, SEC leadership pointed to the "transformative impact" of the agency's new policy.[7]

How transformative was the SEC's new approach to admissions? The empirical study reported in this Article connects the SEC's announced policy with its practice by identifying whether and when targets have admitted wrongdoing. We identify and analyze all SEC settlements reached in court and administrative proceedings announced during SEC fiscal years 2010 through 2017 that required any type of admission of wrongdoing from the settling target. Importantly, the data set includes the full text of the underlying agreements between the SEC and the target.

Much of SEC enforcement is negotiated behind closed doors. And the information that is generated in these SEC proceedings is difficult to see in the aggregate.[8] The study reported here provides a view of how the SEC has

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3. *See, e.g.*, Dina ElBoghdady & Danielle Douglas, *JPMorgan Agrees to Fine, Admits Legal Violations*, WASH. POST, Sept. 20, 2013, at A15.

4. George Canellos, *Statement on SEC Enforcement Action Against JPMorgan*, SEC (Sept. 19, 2013), https://www.sec.gov/news/public-statement/canellos-statement-9-19-13 ("[T]he SEC required JPMorgan to admit the facts in the SEC's order—and acknowledge that it broke the law—because JPMorgan's egregious breakdowns in controls and governance put its millions of shareholders at risk and resulted in inaccurate public filings.").

5. *See infra* Part I. A detailed history, as well as an examination of the implications of admissions of wrongdoing in a wide range of civil enforcement agencies beyond the SEC, can be found in Verity Winship & Jennifer K. Robbennolt, *Admissions of Guilt in Civil Enforcement*, 101 MINN. L. REV. 101 (2018), https://ssrn.com/abstract=2942279.

6. Mary Jo White, Chair, SEC, Deploying the Full Enforcement Arsenal (Sept. 26, 2013) [hereinafter Deploying the Full Enforcement Arsenal], http://www.sec.gov/News/Speech/Detail/Speech/1370539841202.

7. Mary Jo White, Chair, SEC, A New Model for SEC Enforcement: Producing Bold and Unrelenting Results (Nov. 18, 2016) [hereinafter A New Model for SEC Enforcement], https://www.sec.gov/news/speech/chair-white-speech-new-york-university-111816.html#ednref26.

8. That said, it is worth noting that studies like ours are in part made possible by the recent movement of the SEC to make its litigation and press releases easily available

implemented its admissions policy and helps to evaluate prominent critiques of agency practice. The data also establish a baseline for identifying shifts in enforcement practice and policy that might otherwise be difficult to identify. The time frame of the agreements examined covers both the announced shifts in the SEC's approach to admissions and the full tenure of Mary Jo White as the SEC Chair from April 2013 until 2017.[9]

By identifying and analyzing the underlying terms that appear in the final settlement agreements, we are able to more closely examine the nuances of the admissions made. Our analysis goes beyond the summaries of these agreements that the SEC provides in its press and litigation releases. Moreover, we break down the umbrella term *admissions of wrongdoing* to identify precisely what targets admit, including facts, general and specific legal violations, and scienter. The study is also designed to provide scholars and those involved in agency negotiations with a comprehensive list of settlements that include admissions as well as concrete examples of the types of provisions at issue.

We begin in Part I by outlining the evolution of the SEC's policy on admissions of wrongdoing. In particular, we describe how the SEC's policy of allowing settlements that "neither admit nor deny" allegations has been modified over time. In Part II, we report our study of admissions in settlements with the SEC. We describe the methodology of our study, including a description of the data, and then turn to the study's results. We use our data to address a series of questions: To what extent has the SEC required admissions? In what types of cases have admissions been required? Against individuals? Against legal entities? What kind of admissions has the agency required? Admissions of fact? Admissions of legal violations? Admissions of scienter? Finally, in Part III we identify some of the implications of this study for agency policy going forward. The appendix provides a comprehensive list of the SEC settlements we identified that required an admission during the time period of the study (SEC's FY2010 to FY2017).

I. SEC POLICY ON REQUIRING ADMISSIONS OF WRONGDOING

The SEC settles most of its enforcement matters.[10] Effective enforcement, therefore, depends in significant part on the agency's settlement policies and negotiation practices. One controversial piece of the settlement negotiation is

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on its webpage and increasingly to provide links to complaints and administrative orders (although less so to court orders).

9. *Biography: Mary Jo White*, SEC, https://www.sec.gov/biography/white-mary-jo.

10. *See, e.g.*, STEPHEN CHOI ET AL., CORNERSTONE RES., SEC ENFORCEMENT ACTIVITY AGAINST PUBLIC COMPANIES AND THEIR SUBSIDIARIES: FISCAL YEAR 2016 UPDATE 7 (2016), https://www.cornerstone.com/Publications/Reports/SEC-Enforcement-Activity-Against-Public-Company-Defendants-2016. This Article uses the term *settlement* to describe agreements between the SEC and targets that resolve enforcement matters. The form and label for the document varies depending in part on whether it was entered by a court or an administrative law judge. The category of settlement encompasses all of these documents, including consent decrees, consent orders, and administrative orders. The term *target* includes both defendants and respondents.

whether and when targets admit wrongdoing. The SEC long allowed targets to settle enforcement actions without making any admissions. In the early 1970s, the agency modified this "no admissions" policy to prevent targets from simultaneously settling and denying the allegations. Wanting to "avoid creating . . . an impression that a decree is being entered or a sanction imposed, when the conduct alleged did not, in fact, occur," the agency adopted a formal policy requiring targets to specify that they "neither admit nor deny" the allegations.[11] Silence was not allowed. The SEC announced that it would treat "refusal to admit the allegations" as "equivalent to a denial" unless the settling target explicitly stated that "he neither admits nor denies the allegations."[12]

Pressure on the policy to seek "no admit, no deny" settlements began to build in the early 2000s. Although earlier critiques exist,[13] litigation in the aftermath of the 2007 financial crisis put very public pressure on the SEC. In particular, federal trial court judge Jed Rakoff rejected a settlement between the SEC and Citigroup in 2011, in part because Citigroup did not make any admissions of fact or responsibility.[14] The Judge called the SEC's policy of not requiring admissions "hallowed by history, but not by reason,"[15] and lamented that the lack of any admission "deprives the Court of even the most minimal assurance that the substantial injunctive relief it is being asked to impose has any basis in fact."[16] Although ultimately reversed by the Second Circuit,[17] the trial-court decision seems to have contributed to the public salience of the agency's admissions policies. Newspapers reported on developments in the Citigroup case in particular, but also tracked broader changes in SEC policy.[18]

The SEC's official policy began to change in 2012 when the then-Director of the Division of Enforcement, Robert Khuzami, announced the first modification to the SEC's approach to admissions. Under the new policy, the agency would stop allowing settlements in which a target "neither admitted nor denied" allegations when the target had also settled a criminal action or been

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11. SEC Release Nos. 33-5337, 34-9882, 35-17781, IA-352 (1972) (amending 17 C.F.R. § 202.5(e)).

12. 17 C.F.R. § 202.5(e) (2018).

13. *See, e.g.*, SEC v. Vitesse Semiconductor Corp., 771 F. Supp. 2d 304, 309 (S.D.N.Y. 2011) ("[H]ere an agency of the United States is saying, in effect, 'Although we claim that these defendants have done terrible things, they refuse to admit it and we do not propose to prove it, but will simply resort to gagging their right to deny it.'"); John Rothchild, *On the Money: How to Say You're Sorry*, TIME, June 20, 1994, at 51.

14. SEC v. Citigroup Global Markets Inc., 827 F. Supp. 2d 328, 332 (S.D.N.Y. 2011).

15. *Id.*

16. *Id.*

17. SEC v. Citigroup Global Markets Inc., 673 F.3d 158, 163 (2d Cir. 2012).

18. *See, e.g.*, David S. Hilzenrath, *Judge Rebukes SEC on Citigroup Deal*, WASH. POST, Nov. 29, 2011, at A1 (noting that Rakoff "slammed the SEC for following its standard practice of allowing defendants to settle charges without admitting or denying wrongdoing"); Sarah N. Lynch & Tim Dobbyn, *SEC Chief Defends 'Neither Admit Nor Deny' But Will Review*, REUTERS (May 7, 2013), http://www.reuters.com/article/us-sec-settlement-idUSBRE94612F20130507.

criminally convicted for the same conduct.[19] The new policy did "not require admissions or adjudications of fact beyond those already made in criminal cases."[20] Instead, it "eliminate[d] language that may be construed as inconsistent with admissions or findings that have already been made in the criminal cases."[21] The presence of former prosecutors—including Khuzami—in the SEC's Division of Enforcement leadership and the agency itself may have influenced the SEC's policy about requiring admissions of wrongdoing in these cases.[22] Criminal authorities generally require admissions, even when matters are resolved by non-prosecution agreements, deferred prosecution agreements, or pleas.[23]

A further change to SEC admissions policy came in September 2013. In a speech she gave a few months after beginning her tenure as SEC Chair, Mary Jo White announced that the agency would require admissions in an expanded category of cases where there was "a special need for public accountability and acceptance of responsibility."[24] She identified four categories of enforcement settings in which "admissions might be appropriate":

> Cases where a large number of investors have been harmed or the conduct was otherwise egregious.

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19. Robert Khuzami, *Public Statement by SEC Staff: Recent Policy Change*, SEC (Jan. 7, 2012), http://www.sec.gov/News/PublicStmt/Detail/PublicStmt/1365171489600#.UpZUfZG-9jQ.

20. *Id.*

21. *Id.*

22. *See Khuzami Will Lead SEC Enforcement*, WALL ST. J. (Feb. 20, 2009, 12:01 AM), https://www.wsj.com/articles/SB123508426606527305 (describing his background as a federal prosecutor); Deploying the Full Enforcement Arsenal, *supra* note 6 ("[M]uch of my thinking on this issue [of requiring admissions] was shaped by the time I spent in the criminal arena . . . ."). *See generally* Miriam H. Baer, *Choosing Punishment*, 92 B.U. L. REV. 577, 610–11 (2012) (describing changes made to the SEC under Khuzami that "rema[d]e the enforcement division in the image of a local prosecutor's office").

23. Samuel W. Buell, *Liability and Admissions of Wrongdoing in Public Enforcement of Law*, 81 U. CIN. L. REV. 505, 506 (2013); U.S. DEP'T OF JUSTICE, U.S. ATTORNEYS' MANUAL 9-28.1500 (2015), https://www.justice.gov/usam/title-9-criminal; *see also* Cindy R. Alexander & Mark A. Cohen, *The Evolution of Corporate Criminal Settlements: An Empirical Perspective on Non-Prosecution, Deferred Prosecution, and Plea Agreements*, 52 AM. CRIM. L. REV. 537, 587 & tbl.12 (2015); Brandon L. Garrett, *Corporate Confessions*, 30 CARDOZO L. REV. 917, 921–22 (2008); Brandon L. Garrett, *Why Plea Bargains Are Not Confessions*, 57 WM. & MARY L. REV. 1415, 1417 (2016). The hesitance of prosecutors and courts to accept agreements in criminal cases that do not admit wrongdoing is based on the same concerns that troubled Judge Rakoff in the *Citigroup* case: they are uneasy about the legitimacy of accepting a guilty plea that is not supported by either a jury finding of culpability or equivalent admissions by the defendant. *See* Stephanos Bibas, *Harmonizing Substantive Criminal Law Values and Criminal Procedure: The Case of* Alford *and Nolo Contendere Pleas*, 88 CORNELL L. REV. 1361, 1386–87 (2003); Buell, *supra*, at 508.

24. Deploying the Full Enforcement Arsenal, *supra* note 6; *see* James B. Stewart, *S.E.C. Has a Message for Firms Not Used to Admitting Guilt*, N.Y. TIMES (June 21, 2013), http://www.nytimes.com/2013/06/22/business/secs-new-chief-promises-tougher-line-on-cases.

> Cases where the conduct posed a significant risk to the market or investors.
>
> Cases where admissions would aid investors deciding whether to deal with a particular party in the future.
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> Cases where reciting unambiguous facts would send an important message to the market about a particular case.[25]

The SEC retained discretion to choose whether and when to require admissions. After a few initial high-profile settlements containing admissions—including in the London Whale matter—then-Chair White claimed in November 2016 that the "admissions policy instituted in 2013 has begun to transform the meaning and impact of many of [the SEC's] settlements."[26] She heralded the "Transformative Impact" of the agency's new approach to admissions.[27]

Critics quickly pointed to failings in implementation. Scathing letters and reports pointed to three main failings: (1) few settlements containing admissions;[28] (2) the targeting of small entities or individuals rather than large financial institutions (a variation on the "too big to jail" critique of the failure to pursue big banks post-financial crisis);[29] and (3) admission of facts, but not of legal violations or intent.[30] Senator Elizabeth Warren's critique pointed to the low number of settlements that included admissions, but also said that the SEC's record was "even worse than those numbers suggest" because most "required only a broad admission of facts specified by the SEC rather than requiring that these firms admit to violations of specific securities laws."[31]

How well-founded are these critiques, and how has the SEC used its discretion since the announced policy change? The agency's implementation of its new policy is the subject of the next part, which reports the results of our empirical study.

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25. Deploying the Full Enforcement Arsenal, *supra* note 6.

26. A New Model for SEC Enforcement, *supra* note 7.

27. *Id.*

28. OFFICE OF SEN. ELIZABETH WARREN, RIGGED JUSTICE 2016: HOW WEAK ENFORCEMENT LETS CORPORATE OFFENDERS OFF EASY 1 (Jan. 2016), https://www.warren.senate.gov/files/documents/Rigged_Justice_2016.pdf; Letter from Elizabeth Warren, U.S. Senator, to Mary Jo White, Chair, U.S. Sec. & Exch. Comm'n (June 2, 2015), http://www.warren.senate.gov/files/documents/2015-6-2_Warren_letter_to_SEC.pdf.

29. OFFICE OF SEN. ELIZABETH WARREN, *supra* note 28, at 1–2; Matt Taibbi, *SEC: Taking on Big Firms is "Tempting," But We Prefer Picking on Little Guys*, ROLLING STONE (May 30, 2012), http://www.rollingstone.com/politics/news/sec-taking-on-big-firms-is-tempting-but-we-prefer-whaling-on-little-guys-20120530.

30. Stephen Gandel, *Did the SEC Let JPMorgan Off the Hook?*, FORTUNE (Sep. 20, 2013), http://fortune.com/2013/09/20/did-the-sec-let-jpmorgan-off-the-hook/ (calling factual admissions "the weakest admission of guilt as [sic] possible").

31. OFFICE OF SEN. ELIZABETH WARREN, *supra* note 28, at 1–2.

II. STUDY OF SEC ADMISSIONS PRACTICES

The policy change announced by the SEC in 2013 essentially declared that the SEC would *sometimes* require admissions, guided by a few broad, nonbinding principles. It left the decision to require admissions in particular cases to the agency's discretion. How has the agency exercised that discretion? This part reports an empirical study designed to shed some light on that and related questions. Using SEC public releases announcing settlements and the underlying settlement agreements, this study explores the settlements in which the SEC has required admissions during the period encompassing the announced policy changes.

The empirical literature on SEC admissions has been limited and primarily features case studies or series of case studies.[32] Some aggregate information is available from the agency itself.[33] The agency reports, however, lack specifics, and we are not aware of any study that has taken a comprehensive look at the text of the settlement agreements to identify the particular admissions obtained.

A. Methodology

1. Data

We gathered information from settlement agreements that were announced in an SEC press release, litigation release, or administrative proceeding (any of which will be referred to as a "public release") between October 1, 2009 and September 30, 2017.[34] The start and end dates track the SEC's fiscal year,

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32. *See, e.g.*, Jason E. Siegel, Note, *Admit It! Corporate Admissions of Wrongdoing in SEC Settlements: Evaluating Collateral Estoppel Effects*, 103 GEO. L.J. 433 (2015) (identifying eight settlements in which the SEC required admissions from 2012 to 2014). One recent article has examined admissions from late 2013 through early 2017. *See generally* David Rosenfeld, *Admissions in SEC Enforcement Cases: The Revolution That Wasn't*, 103 IOWA L. REV. 113 (2017).

33. In a November 2016 speech, then-SEC Chair White pointed to admissions from 77 enforcement targets, consisting of 30 individuals and 47 entities. A New Model for SEC Enforcement, *supra* note 7; *see also* SEC Press Release 2016-279, Enforcement Director Andrew J. Ceresney to Leave SEC (Dec. 8, 2016), https://www.sec.gov/news/pressrelease/2016-259.html ("Since the admissions policy was instituted, the Commission has obtained admissions from approximately 80 parties.").

34. The announcement and agreement dates often coincided. All but 3 of the 84 settlements announced in press or litigation releases were announced within the same SEC fiscal year, with 41 of these publicly announced on the same day the agreement was entered and 24 more announced within 60 days. We did not identify associated press or litigation releases for the remaining settlements, although some of them were described in SEC News Digests.

which runs through September 30 of each year.[35] These data, therefore, comprise settlements announced in SEC fiscal years 2010 through 2017.[36]

These eight years cover a period starting before Judge Rakoff rejected the Citigroup settlement, through the SEC's formal policy changes, and through the last full fiscal year for which data was available at the time of data collection. Included in this period is Mary Jo White's term as SEC Chair: April 2013 until early 2017.[37] In this sense, our data can serve as a baseline from which to understand the agency's policies going forward and as leadership changes. The time period studied also tracks the shifts in the SEC's policy about obtaining admissions—particularly from a policy in which targets "neither admitted nor

35. *See, e.g.*, SEC, AGENCY FINANCIAL REPORT: FISCAL YEAR 2017, at 64 (2017), https://www.sec.gov/files/sec-2017-agency-financial-report.pdf.

36. We assigned each settlement to a fiscal year based on the date of the SEC's public release. This included one case that was announced in FY2011 that had been entered into in FY2010. *See* SEC Litig. Release No. 21755 (Nov. 23, 2010), SEC Secures Settlement with Ohio Man Who Received Funds Misappropriated from Elderly Clients of Crossroads Financial Planning, Inc., https://www.sec.gov/litigation/litreleases/2010/lr21755.htm. It also included one case announced in FY2016, but not entered into until later in calendar year 2016 (FY2017). SEC Press Release 2016-152, SEC: State Street Misled Custody Clients About Prices for Foreign Currency Exchange Trades (July 26, 2016), https://www.sec.gov/news/pressrelease/2016-152.html. For administrative proceedings that did not have an associated press or litigation release, we assigned each settlement to a fiscal year based on the date of the settlement.

We also included a settlement that was announced during our time frame but ultimately rejected by a reviewing court. SEC Litig. Release No. 23282 (June 11, 2015), Texas Lawyer Admits to Conducting Fraudulent Offering, https://www.sec.gov/litigation/litreleases/2015/lr23282.htm (discussing the settlement of Aquaphex Total Water Resources & Gregory Jones). Although two settlements relating to the *Newman* insider-trading case were announced and described as containing admissions, the associated settlement agreements we identified did not include admissions (possibly because the court judgments were vacated). *See* SEC Litig. Release No. 22691 (Apr. 30, 2013), SEC v. Adondakis, Civ. No. 12-cv-0409 (HB) (S.D.N.Y.) (stating that Spyridon "Sam" Adondakis admitted to insider trading as a condition to his settlement with the SEC); SEC Litig. Release No. 22650 (Mar. 19, 2013), SEC v. Sigma Capital Management, LLC, Civ. No. 13-cv-1740, https://www.sec.gov/litigation/litreleases/2013/lr22650.htm ("[Jon] Horvath agreed to a settlement earlier this month in which he admitted liability."); SEC Press Release No. 2013-42, SEC Charges Hedge Fund Firm Sigma Capital with Insider Trading (Mar. 15, 2013), https://www.sec.gov/news/press-release/2013-2013-42htm. Similarly, although a settlement with Darren Goodrich was announced and described as containing admissions, the underlying settlement agreement did not include admissions. SEC Litig. Release No. 23736 (Feb. 1, 2017), Market Maker Settles Charges in Fraudulent Pump-and Dump Scheme, https://www.sec.gov/litigation/litreleases/2017/lr23736.htm; Consent of Defendant Darren Goodrich, SEC v. DelPresto, No. 2:15-cv-08656-JLL-DEA (D.N.J. Jan. 31, 2017). Accordingly, we did not include these three cases in our count.

37. *Biography: Mary Jo White*, *supra* note 9.

denied" allegations to a policy under which the SEC sometimes seeks admissions to further the agency's goal of "demand[ing] accountability."[38]

We relied on the SEC's public releases to identify settlements of both court and administrative proceedings that contain admissions. The settlements were identified by searching SEC litigation releases, press releases, and administrative proceedings for announcements of settlements that included some sort of admission.[39] Our study accordingly captures administrative settlements regardless of whether the agency issued a related press or litigation release. It captures settlements of court cases only when they were publicly announced in an SEC press or litigation release, or identified in SEC annual reports, public statements, speeches, or testimony. These public releases, however, are useful for identifying settlements that contain admissions because they are a routine part of the SEC's enforcement. When an enforcement action is resolved, the practice is to announce the resolution in a numbered release—either a litigation release, administrative proceeding, or press release.[40] Moreover, after the public scrutiny of its admissions policy and practice, particularly the highly publicized critique by Judge Rakoff in 2011, the SEC may have incentives to publicize admissions it obtains, particularly in large matters.

Our search identified settlements in which the agency used affirmative language about whether or not something was admitted. Accordingly, it did not capture settlements in which the agency simply omitted the "neither admit nor deny" language. Our data, therefore, may not fully reflect the effects of the SEC's 2012 announcement that it would omit this language where there were parallel criminal admissions or pleas.[41] It does, however, capture settlements in which the agency used affirmative language about admissions including, for example, settlements that detailed the admissions that the target made in a parallel criminal plea.[42]

After identifying the settlement through the agency's public release, we collected the underlying settlement agreement and any other relevant documents

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38. Deploying the Full Enforcement Arsenal, *supra* note 6. *See generally* AM. BAR ASS'N SEC. LITIG., THE SEC'S NEW SETTLEMENT POLICY: IT IS A WHOLE NEW WORLD (2014), https://www.americanbar.org/content/dam/aba/administrative/litigation/materials/2014_sac/2014_sac/the_sec_new_settlement.authcheckdam.pdf; Stewart, *supra* note 24.

39. We searched SEC litigation releases, press releases, and administrative proceedings on Lexis Securities Mosaic for <admit OR admission OR admitted>. This search picked up other variants of this admission language such as *admits* and *admitting*. We also reviewed SEC annual reports, public statements, speeches, and testimony for reports of settlements that contained admissions, as well as prior case studies and other literature.

40. *See, e.g.*, Harvey L. Pitt & Karen L. Shapiro, *Securities Regulation by Enforcement: A Look Ahead at the Next Decade*, 7 YALE. J. ON REG. 149, 185 (1990) (former SEC commissioner notes that a Litigation Release is issued "every time the agency takes or commences formal enforcement action").

41. *See* Khuzami, *supra* note 19.

42. *See, e.g.*, Consent of Defendant Kurt S. Hovan to Entry of Final Judgment at 1, SEC v. Hovan, No. 3:11-cv-04795-RS (N.D. Cal. Nov. 16, 2012).

referred to in the agreement.[43] By looking at the underlying agreements rather than the bare-bones descriptions provided in the releases, we were able to examine the specific language of the relevant provisions.

To provide context for our results, we also extended our search of litigation releases, press releases, and administrative proceedings for admissions to years prior to the SEC policy changes. We reviewed these public releases from October 1, 2000 through September 30, 2009 (SEC FY2001–FY2009) to identify any settlements that contained admissions.[44]

2. Review

For each agreement, we identified any parts of the document in which a target admitted facts, admitted having violated the law generally, or admitted having violated a specific provision of the law. We separately identified any parts of the agreement in which a target admitted to having a particular state of mind. In addition, we identified any language in the agreement that prohibited denial. Our definition of *admission* was inclusive, identifying any instance in which a target made an admission. We included, for instance, bare-bones factual admissions as well as more extensive statements. The differences among these factual admissions form part of our analysis of the results,[45] but we did not engage in this line-drawing as part of the initial identification of admissions. Accordingly, it is worth noting that our study does not necessarily replicate the SEC's internal numbers.

When reviewing the agreements, we separately identified as "follow-on actions," administrative proceedings that impose additional sanctions following a guilty plea or conviction in a separate criminal proceeding or an injunction against the target that the SEC obtained in court.[46] For example, a follow-on

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43. In only three cases were we unable to locate a separate relevant document that was incorporated into the settlement agreement by reference. In one instance, the settlement agreement provides that "Respondents admit . . . (ii) the facts set forth in Section VI.A-C of the Offer [of Settlement] and incorporated by reference herein." SEC Release No. 33-9757, Admin. Proc. File No. 3-16000 (Apr. 23, 2015), *In re* Houston Am. Energy Corp, Order Instituting Administrative Cease-and-Desist Proceedings § II, https://www.sec.gov/litigation/admin/2015/33-9757.pdf. We were unable to locate this offer of settlement. Similarly, we were unable to obtain the plea agreement for Richard A. Hansen that his settlement with the SEC cross-referenced. *See* SEC v. Hansen, No. 2:10-cv-05050-JHS (E.D. Pa. Oct. 4, 2011) (Final Judgment as to Defendant Richard A. Hansen). We did, however, locate the Information, which described the counts to which Hansen pled guilty. In a final instance, the target admitted "the facts contained in Annex A." Consent of Defendant Simonia de Cassia Silva at 1, SEC v. Tropikgadget FZE et al., No. 1:15-cv-10543-ADB (D. Mass. May 13, 2016). We were unable to obtain this Annex.

44. As with our main search, we searched SEC litigation releases, press releases, and administrative proceedings on Lexis Securities Mosaic for <admit OR admission OR admitted>, which also picked up variants such as *admits* and *admitting*.

45. *See infra* Section II.B.2.

46. Christian J. Mixter, *Defending an SEC Administrative Proceeding*, SL085 ALI-ABA 107, 109 (2006) (defining "follow-on A.P.s" as those "in which the only issue is whether an already-existing injunction or criminal conviction against the respondent should lead to a further sanction such as revocation or suspension of a license"). These are often

administrative proceeding will bar the target from working in the securities industry or appearing before the SEC as a lawyer or an auditor.[47] In recent reports of agency enforcement action, the SEC has separately labeled and reported follow-on administrative proceedings, differentiating them from those that were civil actions or "stand-alone" administrative proceedings.[48] Our search identified settlements of follow-on actions because they included admissions to the separate guilty pleas or SEC injunctions associated with the follow-on proceedings. So, for example, a settlement with an investment advisor who had been convicted of a crime and sent to prison included language admitting the paragraph that described his criminal conviction.[49] These follow-on settlements are not included in our analysis.[50]

We also excluded admissions that were limited to the target's status. Some settlements included language admitting the paragraphs that described the type of business entity, whether the entity was registered, the position and role of an individual target within the entity, the geographic location of the entity, or some combination of these. For example, one such settlement was entered "without

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pursuant to § 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(b) (2016), or the Investment Advisors Act of 1940 § 203(f), 15 U.S.C. § 80b-3(f) (2016), or SEC Rule of Practice 102(e), 17 C.F.R. § 201.102(e) (2018), which provides for "[s]uspension and disbarment" of attorneys and other licensed professionals.

47. *See, e.g.*, SEC Release No. IA-3918, Admin. Proc. File No. 3-16103 (Sept. 12, 2014), *In re* Mueller, Order Instituting Administrative Proceedings § IV.2, https://www.sec.gov/litigation/admin/2014/ia-3918.pdf. *See generally* Urska Velikonja, *Reporting Agency Performance: Behind the SEC's Enforcement Statistics*, 101 CORNELL L. REV. 901, 928–29 (2016).

48. *See, e.g.*, SEC, SELECT SEC AND MARKET DATA, FISCAL 2016, at 3–23 (2017), https://www.sec.gov/files/2017-03/secstats2016.pdf.

49. *See* SEC Release No. IA-3918, *supra* note 47, § II ("Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent admits . . . the findings contained in Section III.2. below."); *id.* § III.2 ("On November 1, 2010, Mueller pled guilty to one count of securities fraud . . . , a class three felony, one count of theft of $15,000 or more . . . . On December 6, 2010, a judgment in the criminal case was entered against Mueller. Mueller was sentenced to 40 years in prison and ordered to pay $74,223,803.94 in restitution."); *id.* ("[I]t is hereby ORDERED pursuant to Section 203(f) of the Advisers Act that Respondent Mueller be, and hereby is barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.").

50. We exclude these follow-on actions in part to avoid double counting, because by definition follow-on actions are connected to a separate matter in which the underlying conduct is considered. *See* Velikonja, *supra* note 47. The identified admissions also commonly include language to limit their use to proceedings with the Commission. *See, e.g.*, SEC Release No. 34-78682, Admin. Proc. File No. 3-17505 (Aug. 25, 2016), *In re* Kuhn, Order Instituting Administrative Proceedings, § II, https://www.sec.gov/litigation/admin/2016/34-78682.pdf ("Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent admits . . . the findings contained in paragraphs III.2 and III.4 below . . . .").

admitting or denying" anything with the exception of this paragraph: "At all relevant times, Respondent MMR, located in Wichita, Kansas, was registered with the Commission as a broker–dealer."[51] We identified few instances of these status admissions within our timeframe (FY2010–FY2017).[52] Based on our review, this structure seems to have been a somewhat more common practice in the earlier period (FY2001–FY2009).[53] These status admissions are not included in our analysis.[54]

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51. SEC Release No. 33-9217, Admin. Proc. File No. 3-14163 (June 8, 2011), *In re* MMR Investment Bankers, LLC, Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order § III, https://www.sec.gov/litigation/admin/2011/33-9217.pdf.

52. We identified five settlements in FY2011, all relating to the same underlying conduct, that admitted descriptions of status only. *See* SEC Release No. 33-9217, *supra* note 51; SEC Release No. 33-9218, Admin. Proc. File No. 3-14163 (June 8, 2011), *In re* MMR Investment Bankers, LLC, Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order § III, https://www.sec.gov/litigation/admin/2011/33-9218.pdf (Settlement of William G. Martin, Jr.); SEC Release No. 33-9219, Admin. Proc. File No. 3-14163 (June 8, 2011), *In re* MMR Investment Bankers, LLC, Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order § III, https://www.sec.gov/litigation/admin/2011/33-9219.pdf (Settlement of Eugene R. Rankin); SEC Release No. 33-9220, Admin. Proc. File No. 3-14163 (June 8, 2011), *In re* MMR Investment Bankers, LLC, Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order § III, https://www.sec.gov/litigation/admin/2011/33-9220.pdf (Settlement of John A. Hubert); SEC Release No. 33-9221, Admin. Proc. File No. 3-14163 (June 8, 2011), *In re* MMR Investment Bankers, LLC, Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order § III, https://www.sec.gov/litigation/admin/2011/33-9221.pdf (Settlement of Aaron D. Fimerita).

53. *See, e.g.*, SEC Release No. 33-8120, Admin. Proc. File No. 3-10860 (Aug. 9, 2002), *In re* Kunes, Order Making Findings and Imposing Cease-and-Desist Order § III, https://www.sec.gov/litigation/admin/33-8120.htm ("Kunes resides in Fort Pierce, Florida and is a consultant for start-up manufacturing companies that intend to use environmentally friendly technologies. He conducts his consulting work under the trade name of Earthworks International, which is not a separate legal entity."); SEC Release No. 34-44911, Admin. Proc. File No. 3-10616 (Oct. 5, 2001), *In re* Arete Industries, Inc., Order Instituting Proceedings, Making Findings and Imposing a Cease-and-Desist Order § III, https://www.sec.gov/litigation/admin/34-44911.htm (admitting that "Arete is a publicly-held Colorado corporation with its executive offices located in Boulder, Colorado. At all relevant times, the company was required to file periodic reports with the Commission."); SEC Release No. 34-43450, Admin. Proc. File No. 3-9906 (Oct. 17, 2000), *In re* Ameen, Order Making Findings and Imposing Remedial Sanctions as to Bruce W. Bertsch § II.A, https://www.sec.gov/litigation/admin/34-43450.htm ("Primeline Securities Corp. ("Primeline") is a broker–dealer registered with the Commission pursuant to § 15(b) of the Exchange Act since December 20, 1984 (File No. 8-32899). It operated on an introducing and fully-disclosed basis, with its principal place of business in Wichita, Kansas. It ceased operations on December 16, 1997 and is currently being liquidated through SIPC. Bertsch, age 46, resides in the Wichita area and served as Primeline's chief operations officer. At all times relevant to this matter, Bertsch was chief assistant to Primeline's president with responsibility to handle compliance matters.").

54. Our assessment of admissions also does not include jurisdictional admissions: recurring language in which the target "admits the Commission's jurisdiction

For each stand-alone agreement, we collected additional information. We recorded the date of the SEC's announcement of the settlement, the date of the agreement, and the SEC fiscal year for each. We used Lexis Securities Mosaic to record additional information about the type of target, the type of alleged violation, and the sanctions imposed.[55]

We identified parallel actions by reviewing the text of the underlying settlement documents; reviewing the public release about the stand-alone settlements that required admissions, which often referenced simultaneous or prior parallel action;[56] searching a database of criminal non-prosecution agreements and

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over it and the subject matter of these proceedings." *See, e.g.*, SEC Release No. 34-71128, Admin. Proc. File No. 3-15654 (Dec. 18, 2013), *In re* G-Trade Services LLC, Order Instituting Administrative Cease-and-Desist Proceedings § II, https://www.sec.gov/litigation/admin/2013/34-71128.pdf.

Finally, our assessment of admissions also excludes admissions that were expressly included only "for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code." SEC Release No. 33-10210, Admin. Proc. File No. 3-17545 (Sept. 16, 2016), *In re* Fusion Pharm, Inc., Order Instituting Administrative Cease-and-Desist Proceedings § IV, https://www.sec.gov/litigation/admin/2016/33-10210.pdf ("It is further Ordered that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent . . . ."). These provisions seem to be aimed at preventing settling targets from discharging in bankruptcy debts for disgorgement interest, civil penalties, or "other amounts." *Id*. Section 523(a)(19) of the Bankruptcy Code was introduced as part of the Sarbanes-Oxley Act and its aim was to prevent securities fraudsters from using bankruptcy to evade payment. S. REP. NO. 107-146, at 10 (2002) ("Current bankruptcy law may permit wrongdoers to discharge their obligations under court judgments or settlements based on securities fraud and securities law violations. This loophole in the law should be closed.").

55. For those settlements that Lexis Securities Mosaic did not report a sanction amount, we cross-checked the settlements themselves and recorded any monetary sanction agreed to by the parties.

56. *See, e.g.*, SEC Press Release No. 2013-266, SEC Charges ConvergEx Subsidiaries with Fraud for Deceiving Customers About Commissions (Dec. 18, 2013), https://www.sec.gov/news/press-release/2013-266 ("In a parallel action, the Department of Justice announced criminal charges against ConvergEx Group, a brokerage subsidiary, and the two former employees. To resolve those charges, ConvergEx Group has agreed to pay $43.8 million in criminal penalties and restitution."); SEC Press Release No. 2013-187, JPMorgan Chase Agrees to Pay $200 Million and Admits Wrongdoing to Settle SEC Charges (Sept. 19, 2013), https://www.sec.gov/news/press-release/2013-187 (noting that "[a]s part of a coordinated global settlement, three other agencies also announced settlements with JPMorgan today: the U.K. Financial Conduct Authority, the Federal Reserve, and the Office of the Comptroller of the Currency").

deferred prosecution agreements;[57] and searching databases of private securities class-action litigation.[58]

B. Results

1. Admissions: Settlements and Targets

We identified 96 separate stand-alone settlements announced during SEC fiscal years 2010 through 2017 in which enforcement targets made admissions.[59] The stand-alone settlements involved admissions made by 123 separate targets,[60] including 58 individuals and 65 entities. A variety of different types of entities made admissions: 22 broker–dealers, 20 investment advisors, 19 companies, 8 banks, 7 accounting firms, 5 investment banks, 1 investment trust, and 1 municipal corporate authority.[61] Of these settlements, 50 (52%) were resolved in administrative proceedings and 46 (48%) were resolved in court.[62] These stand-alone settlements are listed in the Appendix.

While we primarily focused on settlements and targets, it is worth noting that the same event or conduct sometimes resulted in multiple settlements that contained admissions. For example, in 2013, the SEC resolved an action against ConvergEx for deceptively routing trades through offshore affiliates to boost customer fees.[63] Also in 2013, the SEC reached three separate settlements based on the same underlying conduct. These settlements contained admissions from five targets: three brokerage subsidiaries and two employees.[64] A few years later, the

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57. Brandon L. Garrett & Jon Ashley, *Corporate Prosecutions Registry*, U. VA. SCH. L. LIBRARY, http://lib.law.virginia.edu/Garrett/corporate-prosecution-registry/index.html (last updated Jan. 9, 2018) (collecting NPAs and DPAs for federal organizational prosecutions in the United States since 1990).

58. We searched the Stanford Securities Class Action Clearinghouse, http://securities.stanford.edu/filings.html, for filings against the target, then reviewed the filings to identify whether conduct overlapped with the relevant SEC settlement.

59. As noted above, agreements in follow-on actions, agreements containing only admissions made solely for the purposes of jurisdiction or bankruptcy, and agreements in which the admissions were only as to status are not included in our analysis. *See supra* notes 50 & 54.

60. If individuals or entities were targets in multiple matters with distinct underlying facts, we counted them as separate targets for each matter.

61. Several targets were designated as more than one type of entity; totals, therefore, sum to more (83) than the total number of entities (65). We used the Lexis Securities Mosaic entity classifications.

62. The ratio of administrative settlements containing admissions to court settlements containing admissions is, therefore, approximately 1.1 to 1. The same comparison for enforcement filings, as reported by the SEC, was 2.8 to 1 for FY2016 and 2.9 to 1 for FY2015. *See* SEC, SELECT SEC AND MARKET DATA FISCAL 2015, at 3 tbl.2 (2016) [hereinafter SELECT SEC AND MARKET DATA FISCAL 2015], https://www.sec.gov/files/secstats2015.pdf; SELECT SEC AND MARKET DATA FISCAL 2016, *supra* note 48, at 3 tbl.2.

63. SEC Press Release No. 2013-266, *supra* note 56.

64. *Id.* (noting that "[t]hese subsidiaries of ConvergEx Group agreed to pay more than $107 million and admit wrongdoing to settle the SEC's charges. The former

SEC reached a separate settlement, containing an admission, with a ConvergEx subsidiary's CEO, based on the same underlying conduct.[65] As a result, when our results are grouped into matters (related actions for the same underlying conduct), we find that the 96 settlement agreements comprise 72 matters.[66]

Twenty (21%) of the stand-alone settlements included additional language prohibiting denial of the allegations.[67]

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employees, Jonathan Daspin and Thomas Lekargeren, also agreed to admit and settle the charges against them.").

65. SEC Press Release No. 2015-27, SEC Charges Former Brokerage CEO for His Role in Fraudulent Scheme (Feb. 10, 2015), https://www.sec.gov/news/pressrelease/2015-27.html; Consent of Defendant Craig S. Lax, SEC v. Lax, No. 2:15-cv-01079-WHW-CLW (D.N.J. Feb. 10, 2015). The SEC also pursued a court case against a CEO of one of the subsidiaries, which was ongoing as of August 2017. *See* SEC v. Blumberg, No. 2:14-cv-04962-KM-MAH (D.N.J. filed Aug. 7, 2014); SEC Press Release No. 2014-160, SEC Charges Former CEO of ConvergEx Subsidiary in Scheme to Deceive Customers About Trading Fees (Aug. 7, 2014), https://www.sec.gov/news/press-release/2014-160.

66. For example, SEC actions against Falcone, Harbinger, and Jenson are related (one matter), but resulted in two settlements that included admissions and involved five targets. *See* SEC Press Release No. 2014-149, Harbinger's Former Chief Operating Officer Agrees to Settle Charges for Assisting Hedge Fund Scheme (July 28, 2014), https://www.sec.gov/news/press-release/2014-149; SEC Press Release No. 2013-159, Philip Falcone and Harbinger Capital Agree to Settlement (Aug. 19, 2013), https://www.sec.gov/news/press-release/2013-159.

67. The agreements in many of these cases included this language:

> The [targets] understand and agree to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy 'not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaints or order for proceedings.".' As part of the [targets'] agreement to comply with the terms of Section 202.5(e), the [targets]: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaints or creating the impression that the complaints are without factual basis; (ii) will not make or permit to be made any public statement to the effect that the [targets] do not admit the allegations of the complaints, or that this Consent contains no admission of the allegations; and (iii) upon the filing of this Consent, the [targets] hereby withdraw any papers filed in this action to the extent that they deny any allegation in the complaints.

See, e.g., Consent of Peter A. Jenson, SEC v. Harbinger Capital Partners LLC; Philip A. Falcone; and Peter A. Jenson, No. 12-cv-5028 (PAC) ¶ 11 (July 11, 2014), https://www.sec.gov/litigation/litreleases/2014/consent-pr2014-149.pdf; SEC Release No. 34-73294, Admin. Proc. File No. 3-16186 (Oct. 3, 2014), *In re Jenson*, Order Instituting Administrative Cease-and-Desist Proceedings. *See also, e.g.*, Consent of Defendants Philip A. Falcone; Harbinger Capital Partners LLC; Harbinger Capital Partners Offshore Manager, LLC; and Harbinger Capital Partners Special Situations GP, LLC, SEC v. Falcone, No. 1:12-cv-05027 and SEC v. Harbinger Capital Partners LLC, No. 1:12-cv-05028 (S.D.N.Y. Aug. 16, 2013); Consent of Defendant Aquaphex Total Water Solutions, LLC and Gregory

The 96 stand-alone settlements involved a variety of different types of underlying conduct as classified by Lexis Securities Mosaic. The underlying violations were related to disclosure or misrepresentation (61 settlements), sale of securities (37 settlements), broker–dealer or investment advisor (35 settlements), misappropriation or improper compensation (18 settlements), accounting or auditing (9 settlements), failure to make required filings (3 settlements), and procedural or obstruction of justice (2 settlements). Settlements could be classified as involving more than one type of violation; totals, therefore, sum to more (173) than the total number of settlements (96).

Combined, the 96 stand-alone settlements resulted in over $2 billion in disgorgement and civil penalties.[68] This included over $1.2 billion in civil penalties and over $800 million in disgorgement of illegal profits.[69] The individual settlements, however, ranged in size from six settlements in which no civil penalties or disgorgement were obtained[70] to seven settlements that each involved

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G. Jones at 4, SEC v. Aquaphex Total Water Solutions, LLC, No. 4:15-cv-00438 (N.D. Tex. June 10, 2015); Consent of Defendant Craig S. Lax, *supra* note 65, at 5; Consent of Defendant Katsuichi Fusamae at 4, SEC v. Fusamae, No. 1:15-cv-03142 (N.D. Ill. Jan. 20, 2015); Consent of Defendant Chih Hsuan "Kiki" Lin and Relief Defendant USA Trade Group Inc. at 5–6, SEC v. CKB168 Holdings Ltd., No. 1:13-cv-05584-RRM-RLM (E.D.N.Y. Jan. 8, 2015); Consent of Defendant Rayla Melchor Santos at 5–6, SEC v. CKB168 Holdings Ltd., No. 1:13-cv-05584-RRM-RLM (E.D.N.Y. Jan. 8, 2015).

Other agreements include similar language, but agree only "(i) not to take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or creating the impression that the Complaint is without factual basis; and (ii) that upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaints." Consent of Defendant Mark A. Lefkowitz at 4–5, SEC v. Lefkowitz, No. 8:12-cv-01210-MSS-MAP (M.D. Fla. July 11, 2014); Consent of Defendant Henry A. Condron at 5, SEC v. Leszczynski, No. 1:12-cv-07488-JFK-KNF (S.D.N.Y. Nov. 25, 2013), Consent of Defendant Benjamin Chouchane at 5, SEC v. Leszczynski, No. 1:12-cv-07488-JFK-KNF (S.D.N.Y. Nov. 11, 2013); Consent of Defendant Marek Leszczynski at 5, SEC v. Leszczynski, No. 1:12-cv-07488-JFK-KNF (S.D.N.Y. Oct. 18, 2013); Consent of Defendant Julie M. Jarvis at 4, SEC v. Jarvis, No. 2:09-cv-00269 (S.D. Oh. Nov. 6, 2009); Consent of Defendant Crossroads Financial Planning, Inc., SEC v. Jarvis, 2:09-cv-00269 (S.D. Oh. Nov. 6, 2009).

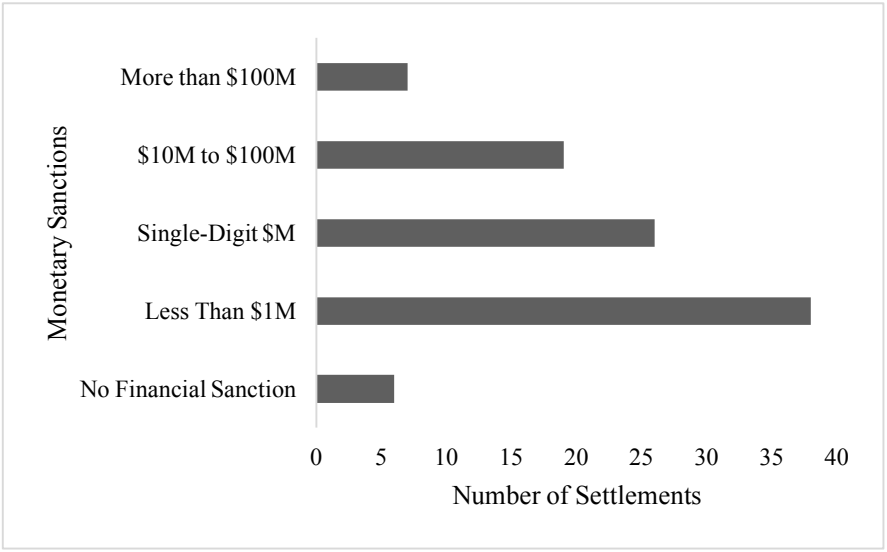
68. For each settlement, we calculated the total amount of monetary sanction by summing the amounts listed for civil penalties, disgorgement, and prejudgment interest. These figures do not include nonmonetary sanctions such as suspension, censure, or injunctive relief.

69. Our figures for disgorgement include the amounts reported for disgorgement along with any prejudgment interest. In total, the 96 stand-alone settlements required settling targets to disgorge $839,460,881 in illegal profits and interest. Total monetary sanctions were $2,088,684,627 with a mean of $21,757,132 and a median of $1,546,064. Total civil penalties were $1,244,223,746, with a mean of $13,378,750 and a median of $175,000. As some settlements involved multiple targets, these figures are per settlement rather than per target.

70. This includes, however, two settlements in a matter in which restitution was ordered in a parallel criminal action. In that matter, involving an investment advisor and her firm, the SEC settlements did not include monetary sanctions. Consent of Defendant Julie

more than $100 million in disgorgement and penalties. Figure 1 shows how the total monetary sanctions obtained were distributed within this range.

FIGURE 1: Monetary Sanctions: Civil Penalties & Disgorgement



NOTE: Number of settlements in which the target or targets agreed to pay monetary sanctions in the given range. This does not include nonmonetary sanctions such as suspension, censure, or injunctive relief.

The civil penalties obtained in these settlements ranged from $0 to a penalty of $358 million assessed against Merrill Lynch.[71] There were 35 settlements in which no civil penalty was obtained[72] and 3 settlements in which the SEC obtained a civil penalty that was greater than $100 million. The illegal profits disgorged in the settlements ranged from $0 (32 settlements) to close to $150 million.[73]

M. Jarvis, *supra* note 67; Consent of Defendant Crossroads Financial Planning, Inc., *supra* note 67. But restitution in the amount of $2,663,681.44 was ordered as part of a related criminal action. SEC Litig. Release No. 21352 (Dec. 23, 2009), SEC Secures Settlement with Ohio Investment Adviser Who Defrauded Elderly Clients, https://www.sec.gov/litigation/litreleases/2009/lr21352.htm. Our figures for monetary sanctions include only amounts ordered in the civil settlements themselves.

71. SEC Release No. 34-78141, Admin. Proc. File No. 3-17312 (June 23, 2016), *In re* Merrill Lynch, Pierce, Fenner & Smith Inc., Order Instituting Administrative and Cease-and-Desist Proceedings § V, https://www.sec.gov/litigation/admin/2016/34-78141.pdf.

72. This includes the six settlements in which neither a civil penalty nor disgorgement of illicit profits were assessed.

73. Credit Suisse Group agreed to disgorge $146,511,014 in illegal profits and interest as part of its settlement with the SEC. SEC Release No. 34-71593, Admin. Proc. File No. 3-15763 (Feb. 21, 2014), *In re* Credit Suisse Group AG, Order Instituting Administrative and Cease-And-Desist Proceedings, § IV, https://www.sec.gov/litigation/admin/2014/34-71593.pdf.

Table 1 lists the settlements in which the largest (over $100 million in disgorgement and penalties) monetary settlements were made. Table 2 lists the settlements in which the smallest (less than $1 million in disgorgement and penalties) monetary settlements were made. It is worth noting that all seven of the largest settlements involved one or more entities as targets and five of the six settlements in which no financial assessment was made were with individual targets. Similarly, of the 44 settlements with the smallest monetary sanctions, 38 (86%) were settlements in which the settling target was an individual.[74] Only seven of these small settlements (16%) involved an entity as one of the settling targets.

TABLE 1: Largest Monetary Sanctions in Settlements With Admissions—More than $100 Million

Target	Monetary Sanction
Merill Lynch, Pierce, Fenner & Smith Incorporated; Merrill Lynch Professional Clearing Corp.	$415,000,000
JPMorgan Chase Bank, N.A.; J.P. Morgan Securities LLC	$266,815,000
JPMorgan Chase	$200,000,000
Credit Suisse Group AG	$196,511,014
State Street Bank & Trust Co.	$167,369,417
The Bank of New York Mellon	$163,022,207
G-Trade Services LLC; ConvergEx Global Markets Limited; ConvergEx Execution Solutions LLC	$107,424,429

NOTE: Monetary sanction includes the total amount of disgorgement, prejudgment interest, and civil penalties agreed to in the settlement.

74. Some of these settlements against individuals were in matters that involved other settlements against entities. *See, e.g.*, Consent of Defendant Craig S. Lax, *supra* note 65; SEC Litig. Release No. 21755 (Nov. 23, 2010), SEC Secures Settlement with Ohio Man Who Received Funds Misappropriated from Elderly Clients of Crossroads Financial Planning, Inc., https://www.sec.gov/litigation/litreleases/2010/lr21755.htm; SEC Release No. 34-73294, Admin. Proc. File No. 3-16186 (Oct. 3, 2014), *In re* Jenson, Order Instituting Administrative Cease-and-Desist Proceedings.

TABLE 2: Smallest Monetary Sanctions in Settlements With Admissions—Less than $1 Million

Target	Monetary Sanction
Michael A. Horowitz	$850,749
Kenneth T. Robinson	$845,235
Michael C. French	$794,609
Craig S. Lax	$783,297
John W. Rafal	$577,298
Matthew H. Kluger	$516,510
Steven J. Muehler; Alternatives Securities Markets Group Corp.; Blue Coast Securities Corp. dba GlobalCrowdTV, Inc. and Blue Coast Banc	$414,582
Sean C. Cooper	$402,236
Brian D. Jorgenson & Sean T. Stokke (jointly)	$400,000
The Port Authority of New York and New Jersey	$400,000
Marwood Group Research, LLC	$375,000
Joseph H. Craft	$348,708
Herman Ronnie Young, Jr. d/b/a Race Cycler	$342,510
Richard Bruce Moore	$341,491
TPG Advisors LLC d/b/a The Phillips Group Advisors; Larry M. Phillips	$328,438
Henry A. Condron	$207,675
Peter A. Jenson	$200,000
Geovani Nascimento Bento & Priscilla Bento (jointly)	$150,816
Sage Advisory Group LLC; Benjamin Lee Grant	$150,000
Simonia de Cassia Silva	$144,870
Kurt S. Hovan	$140,000
John J. Masiz	$120,000
Thomas Lekargeren	$117,042
Steven Labriola	$98,963
Dennis Arthur Somaio & Elaine Amaral Somaio (jointly)	$98,671
Kenneth Manzo	$95,766

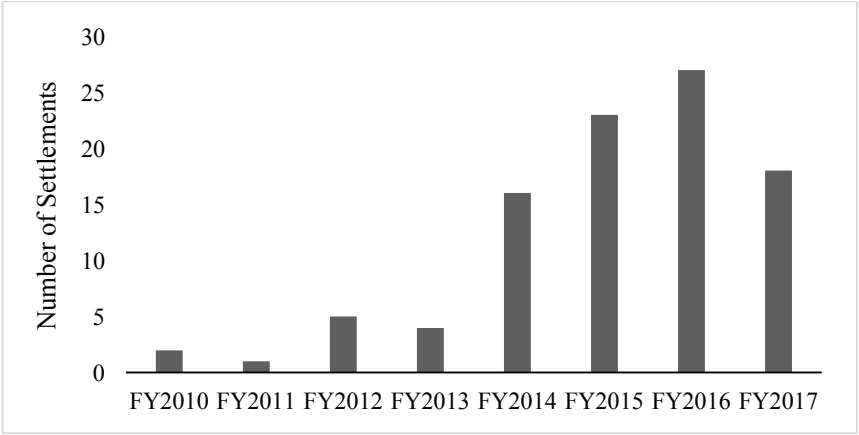
Target	Monetary Sanction
Vinicius Romulo Aguiar & Thais Utino Aguiar (jointly)	$71,894
John Simpson	$70,000
Richard A. Hansen	$63,038
Christopher Kelly	$60,000
Steve Pappas	$50,000
Reid S. Johnson	$45,000
Undiscovered Equities, Inc.; Kevin T. McKnight	$22,500
Julio G. Cruz	$3,232
Julie M. Jarvis	$0
Crossroads Financial Planning, Inc.	$0
Katsuichi Fusamae	$0
Mark A. Lefkowitz	$0
Rayla Melchor Santos	$0
Steven C. Watson	$0

NOTE: Monetary sanction includes the total amount of disgorgement, prejudgment interest, and civil penalties agreed to in the settlement.

Next, we examined these settlements over time. Figure 2 shows the number of settlements announced in each fiscal year in which a target made an admission. Figure 3 shows the number of targets that made admissions in each fiscal year. There were two settlements involving admissions in SEC FY2010 and one such settlement in FY2011. Only five settlements in FY2012 and four settlements in FY2013 included admissions. More admissions were obtained in SEC FYs 2014–2017. The SEC obtained admissions in 16 settlements from 19 targets in FY2014; 23 settlements from 31 targets in FY2015; 27 settlements from 34 targets in FY2016; and 18 settlements from 24 targets in FY2017.[75]

75. The number of targets is the number of targets that made an admission. In some matters, only some of the targets made an admission, while others entered settlement without admitting or denying anything, or continued to trial. For example, broker Michael A. Horowitz ultimately made admissions when he settled allegations that he defrauded terminally ill patients. *See* SEC Press Release No. 2014-153, Architect of Variable Annuities Scheme Agrees to Pay $850,000, Admit Wrongdoing, and Be Barred From Securities Industry (July 31, 2014), https://www.sec.gov/news/press-release/2014-153. The other targets involved in the underlying conduct also settled with the SEC, but without admitting or denying the findings. *See* SEC Release Nos. 33-9620, 34-72729, IA-3884, IC-31195, Admin. Proc. File No. 3-15790 (July 31, 2014), *In re* Horowitz, Ordering Making Findings and Imposing Remedial Sanctions . . . as to Michael A. Horowitz; SEC Press Release No. 2014-50, SEC Announces Charges Against Brokers, Adviser, and Others

FIGURE 2: Admissions Over Time—Settlements



NOTE: SEC fiscal years run from Oct. 1 through Sept. 30. Settlements are those announced within a fiscal year. One settlement that was agreed to by the SEC and the enforcement targets, but rejected by the court is included in FY2015.

More than 87% (84/96) of the settlements involving admissions during this period came *after* September 26, 2013. That is, they came after Chair White's announcement that the SEC would sometimes seek admissions.[76] Two of the earlier settlements were entered in the weeks leading up to that announcement, including the London Whale matter on September 19, 2013.[77]

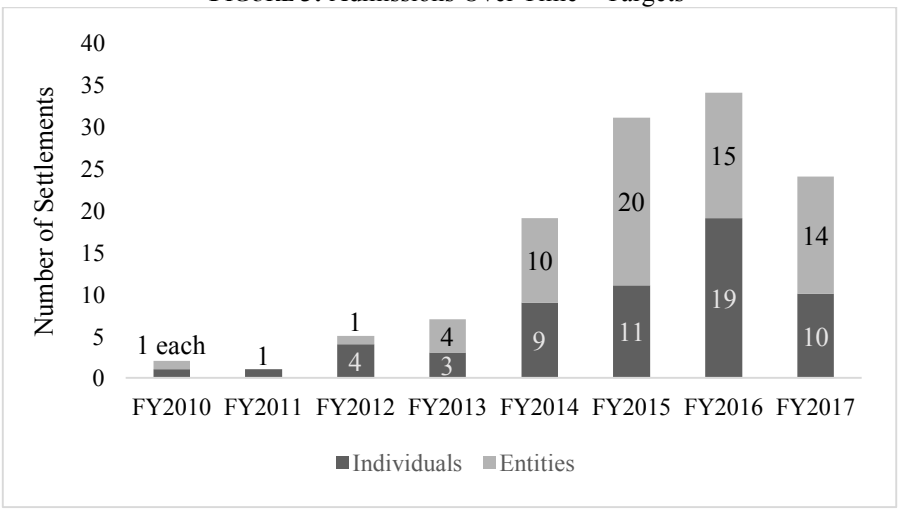
Involved in Variable Annuities Scheme to Profit From Terminally Ill (Mar. 13, 2014), https://www.sec.gov/news/press-release/2014-50.

Some defendants continued to trial rather than settle at all, let alone with admissions. *See* SEC v. Blumberg, No.2:14-cv-04962-KM-MAH (D.N.J. filed Aug. 7, 2014) (continuing to trial in SEC action against ConvergEx, while other defendants settled with admissions); SEC v. Present, No.1:14-cv-14692-LTS (D. Mass. filed Dec. 22, 2014) (same, in action against F-Squared Investments).

76. Deploying the Full Enforcement Arsenal, *supra* note 6.

77. The other was the settlement with Falcone and various Harbinger Capital entities, which was entered on Aug. 16, 2013. Consent of Defendants Philip A. Falcone; Harbinger Capital Partners (HCP) LLC; HCP Offshore Manager, LLC & HCP Special Situations GP, LLC, *supra* note 67.

FIGURE 3: Admissions Over Time—Targets



NOTE: SEC fiscal years run from Oct. 1 through Sept. 30. Settlements are those announced within a fiscal year. Some settlements involved more than one target. One settlement that was agreed to by the SEC and the enforcement targets, but rejected by the court is included in FY2015 (two targets: one individual and one entity).

Our review of settlements containing admissions from FY2001 to FY2009 provides a baseline for comparison. The SEC's policy during this period was to allow settlement "without admitting or denying" any allegations.[78] Nonetheless, we identified 18 settlements involving 18 targets in 15 matters that included admissions that were announced during this earlier period.[79] Of these,

78. *See supra* Part I.

79. These numbers do not include settlements in which targets admitted only to the fact that a prior proceeding or conviction had taken place. These tended to be follow-ons that imposed a bar or suspension based on an earlier finding or plea to misconduct, but several included an additional penalty or other remedy. *See, e.g.*, SEC Release No. 33-7980, Admin. Proc. File No. 3-9187 (June 1, 2001), *In re* Carmel Equity Partners, Order Making Findings and Imposing Remedial Sanctions and Cease-and-Desist Order Against Respondent Kelsey Vadeventer § II, https://www.sec.gov/litigation/admin/33-7980.htm (admitting status and the fact of a prior conviction, while imposing an industry bar, an "obey the law" injunction, and disgorgement). One settlement admitted a prior action as a basis for new penalties for recidivism. *See* SEC Release 34-46039, Admin. Proc. File No. 3-10793 (June 6, 2002), *In re* Josephthal & Co., Inc., Order Instituting Proceedings, Making Findings, and Imposing Remedial Sanctions § II, https://www.sec.gov/litigation/admin/34-46039.htm (admitting that the NYSE had censured and fined the company and had made findings of failure to supervise). One SEC public release described a settlement in which the target had admitted only the fact of a prior action as being "without admitting or denying the Commission's substantive findings." *See* SEC Litig. Release No. 18873 (Sept. 9, 2004), SEC Settles Insider Trading Charges Filed Against Husband of Law Firm Secretary and Against New Jersey Businessman, https://www.sec.gov/litigation/litreleases/lr18873.htm; *see also* SEC Release No. 34-50334, Admin. Proc. File No. 3-11638 (Sept. 9, 2004), *In re* Gallucci, Order Instituting Administrative Proceedings § III, https://www.sec.gov/litigation/admin/34-50334.htm (admitting the paragraph that identified

seven settlements containing admissions were announced in FY2001; six in FY2002; three in FY2003; one in FY2004; one in FY2005; and none from FY2006 through FY2009.[80]

In half (9/18) of these settlements, a target corporation admitted that it had not made required SEC filings, which resulted in revoked registration of their common stock.[81] Many of these targets simply admitted that the company was required to make filings, had failed to do so, and thus had "failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder."[82] One settlement, however, included a more fulsome admission of wrongdoing. The admission provided that "Las Vegas Entertainment failed to comply with Sections 10(b)" and other specific provisions of the securities laws "in that [it] materially

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the prior court action and noting that it had enjoined him from further violations of particular provisions of the securities laws).

80. The fiscal year reflects the date a settlement was announced in a public release. Four of the settlements that were announced in FY2001 related to a single matter (*Stricoff*) and the underlying agreements were entered into before FY2001.

81. For a description of delinquent filing proceedings, see SEC Press Release No. 2006-21, SEC Revokes Securities Registrations of Twenty-Five Delinquent Issuers (Feb. 15, 2006), https://www.sec.gov/news/press/2006-21.htm.

82. SEC Release No. 34-46497, Admin. Proc. File No. 3-10889 (Sept. 13, 2002), *In re* of Adrien Arpel, Inc., Order Instituting Proceeding, Making Findings and Revoking Registration § III, https://www.sec.gov/litigation/admin/34-46497.htm; *see also* SEC Litig. Release No. 16891 (Feb. 8, 2001), Securities and Exchange Commission v. Biosonics, Inc., No. 01-cv-00307 (D.DC) (filed Feb. 7, 2017), http://www.sec.gov/litigation/litreleases/lr16891.htm; Consent and Undertaking of Biosonics, Inc. at 1–2, SEC v. Biosonics, Inc., No. 1:01-cv-00307-TPJ (D.D.C. Jan. 30, 2001); SEC Release No. 34-48170, Admin. Proc. File No. 3-11177 (July 14, 2003), *In re* Carnegie Int'l Corp., Order Instituting Administrative Proceedings, Making Findings and Revoking Registration of Common Stock § III, https://www.sec.gov/litigation/admin/34-48170.htm; SEC Release No. 34-46283, Admin. Proc. File No. 3-10853 (July 30, 2002), *In re* NewCom, Inc., Order Instituting Proceedings, Making Findings and Revoking Registration of Common Stock § III, https://www.sec.gov/litigation/admin/34-46283.htm; SEC Release No. 33-8075, Admin. Proc. File No. 3-10737 (Mar. 25, 2002), *In re* First Florida Comm., Inc., Order Instituting Proceedings, Making Findings and Revoking Registration of Common Stock § III, https://www.sec.gov/litigation/admin/33-8075.htm; SEC Release No. 34-44531, Admin. Proc. File No. 3-10531 (July 10, 2001), *In re* Uniquest, Inc., Order Instituting Proceedings, Making Findings and Revoking Registration of Common Stock § III, https://www.sec.gov/litigation/admin/34-44531.htm; SEC Release No. 34-44346, Admin. Proc. File No. 3-10490 (May 24, 2001), *In re* Prime Capital Corp., Order Instituting Proceedings, Making Findings and Revoking Registration of Common Stock § III, https://www.sec.gov/litigation/admin/34-44346.htm. *Cf.* SEC Release No. 34-46271, Admin. Proc. File No. 3-10846 (July 26, 2002), *In re* Tradamax Group, Inc., Order Instituting Proceedings, Making Findings and Revoking Registration of Common Stock § III, https://www.sec.gov/litigation/admin/34-46271.htm (admitting failure to file, but not admitting paragraphs that described the resulting legal violation or characterized earlier filings as "false and misleading").

misrepresented its financial position" by, among other things, "report[ing] a $3 million phony gold certificate on its balance sheet."[83]

The other half of these settlements (9/18) contained admissions made by individuals. Six of these settlements were in insider trading actions. Most of these insider trading targets simply "admitted the allegations in the complaint."[84] In one variation of this, a target reportedly "admitted all allegations in the Commission's complaint that were consistent with his guilty plea in the parallel criminal proceeding."[85] In one settlement that did not involve insider trading, the target—"the mastermind of a massive international Ponzi scheme"—"admitted that foreign nationals . . . continued to raise investor funds in connection with the Vavasseur program . . . and further admitted that various foreign banks have been used in furtherance of the fraud."[86] The remaining admissions involved failure to supervise or manipulation of stock prices.[87]

In addition to comparing SEC practices in the earlier period, a useful way to contextualize the FY2010–FY2017 data is to look at the SEC's overall settlement practices during this period. Settlements with admissions amount to

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83. SEC Release No. 34-46626, Admin. Proc. File No. 3-10914 (Oct. 9, 2002), *In re* Las Vegas Entertainment Network, Inc., Order Instituting Proceedings, Making Findings and Revoking Registration of Common Stock § III, https://www.sec.gov/litigation/admin/34-46626.htm.

84. *See, e.g.*, SEC Litig. Release No. 17330 (Jan. 22, 2002), Civil and Criminal Insider Trading Charges Filed in Connection with Acquisition of Times Mirror by Tribute Company, http://www.sec.gov/litigation/litreleases/lr17330.htm; *see also* SEC v. Wooten III, No. 2:02-cv-00581-TJH-FMO, at 1 (C.D. Cal. Jan. 23, 2002) (Judgment of Permanent Injunction Against Defendant Daniel J. Wooten III); SEC Litig. Release No. 16890 (Feb. 7, 2001), Final Judgments Entered in Insider Trading Case, Receiver Appointed to Administer Plan for the Distribution of Disgorged Funds, https://www.sec.gov/litigation/litreleases/lr16890.htm ("Each defendant admitted the alleged violations . . . ."); Consent of Daniel M. Porush at 1, SEC v. Stricoff, No. 1:97-cv-08183 (S.D.N.Y. Feb. 3, 2000) ("Daniel M. Porush admits the allegations of the Complaint"); Consent of Alan M. Stricoff at 1, SEC v. Stricoff, No. 1:97-cv-08183 (S.D.N.Y. Nov. 12, 1999) ("Alan M. Stricoff admits the allegations of the Complaint").

85. SEC Litig. Release No. 17176 (Oct. 10, 2001), *SEC v. Brett S. Henderson & Richard F. Randall*, N.D. Cal Civil Action No. Cal. 99-cv-3677 PJH, https://www.sec.gov/litigation/litreleases/lr17176.htm.

86. SEC Litig. Release No. 18198 (June 20, 2003), Court Enters $130 Million Judgment Against Charlottesville, Virginia Securities Swindler, Also Enters Judgments Against Family Members, https://www.sec.gov/litigation/litreleases/lr18198.htm. We did not obtain the underlying Consent and Stipulation.

87. *See* SEC Release No. 33-8500, Admin. Proc. File No. 3-10229 (Oct. 29, 2004), *In re* Piazza, Order Making Findings, Imposing Remedial Sanctions . . . as to William F. Palla § III, https://www.sec.gov/litigation/admin/33-8500.htm (admitting that "[b]y participating in a scheme to manipulate the price of [the company's] stock, Palla willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder"); SEC Release No. 34-48968, Admin. Proc. File No. 3-11161 (Dec. 22, 2003), *In re* Platt, Order Making Findings and Imposing Remedial Sanctions as to Richard M. Ohlhaber, https://www.sec.gov/litigation/admin/34-48968.htm (admitting failure to supervise brokers).

approximately 2.6% (84/3184) of filed enforcement actions from FY2014 to FY2017—a period that runs from after the SEC's policy announcement at the end of September 2013 to the last fiscal year of this study.[88] We use the number of enforcement actions *filed* in a particular fiscal year as an indicator of enforcement activity and its variation over the time period because the SEC does not report the total number of settlements, but generally reports filings instead.[89] It is also worth noting that the SEC numbers for enforcement actions filed include follow-on actions, which the SEC did not separately report until the last years of our study.[90] If follow-ons were excluded from the totals, the percentages for settlements with admissions during this period would be slightly higher. We can calculate these percentages for FY2014 through FY2017: settlements with admissions amount to approximately 3.1% (16/523) of *stand-alone* enforcement actions filed in FY2014, 3.6% (23/639) in FY2015, 4.0% (27/673) in FY2016, and 3.2% (18/558) in FY2017.[91]

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88. Admissions containing settlements were 2.1% (16/755) of filed enforcement actions in FY2014, 2.9% (23/807) in FY2015, 3.1% (27/868) in FY2016, and 2.4% (18/754) in FY2017. For totals of filed enforcement actions, *see* SEC, SELECT SEC & MARKET DATA FISCAL 2014, at 3 tbl.2 (2015) [hereinafter SELECT SEC & MARKET DATA FISCAL 2014], https://www.sec.gov/files/secstats2014.pdf; SELECT SEC & MARKET DATA FISCAL 2015, *supra* note 62; SELECT SEC & MARKET DATA FISCAL 2016, *supra* note 48; DIV. OF ENF'T, SEC, ANNUAL REPORT: A LOOK BACK AT FISCAL YEAR 2017, at 6 (2017), https://www.sec.gov/files/enforcement-annual-report-2017.pdf. Settlements with admissions were 0.6% (4/676) of the total number of enforcement actions filed in FY2013. SEC, SELECT SEC & MARKET DATA FISCAL 2013, at 3 tbl.2 (2014) [hereinafter SELECT SEC & MARKET DATA FISCAL 2013], https://www.sec.gov/files/secstats2013.pdf. The SEC also reported the number of defendants and respondents ("targets") in filed enforcement actions, so we can compare the number of targets that made an admission to the number of targets of filed actions: FY2014 was 1.2% (19/1561), FY2015 was 3.8% (31/807), and FY2016 was 2.0% (34/1700). SELECT SEC & MARKET DATA FISCAL 2014, *supra*; SELECT SEC & MARKET DATA FISCAL 2015, *supra* note 62; SELECT SEC & MARKET DATA FISCAL 2016, *supra* note 48. We do not have the information about targets for FY2017.

89. We also use the number of filed enforcement actions because identifying the total number of settlements is beyond the scope of our study and is not consistently reported by the agency or third-party sources during the time period of our study.

90. Starting in FY2015, the agency differentiated among civil actions, stand-alone administrative proceedings, and follow-on administrative proceedings in its annual reports. Because we have excluded follow-on actions from our count of admissions, we can use the first two categories (civil actions and stand-alone administrative proceedings) for comparison for FY2015–FY2017. *See* SELECT SEC & MARKET DATA FISCAL 2015, *supra* note 62; SELECT SEC & MARKET DATA FISCAL 2016, *supra* note 48; DIV. OF ENF'T, SEC, *supra* note 88. In a press release announcing FY2016 enforcement results, the SEC provided this breakdown going back to FY2014 as well, and also separately reported delinquent filings. SEC Press Release No. 2016-212, SEC Announces Enforcement Results for FY2016 (Oct. 11, 2016), https://www.sec.gov/news/pressrelease/2016-212.html. For a detailed analysis of the SEC's reporting practices, see Velikonja, *supra* note 47.

91. The percentage is even higher if the delinquent filings are excluded. These are actions in which the SEC revokes registration for securities if a company has failed to make required filings and are aimed at preventing misuse of shell companies. *See* Velikonja, *supra* note 47, at 940–41. When follow-on actions and delinquent filings are excluded, the

One could certainly quibble about what comparison to draw and how to measure it. Instead of using total filings, we could approximate the number of settlements per year by looking at historical rates of resolution and assuming that these resolutions were primarily by settlement.[92] The SEC has historically reported a resolution percentage of approximately 92%.[93] If we apply that to our figures of filed actions in FY2014 to FY2017, settlements that contain admissions amount to 2.9% (84/2929) of the estimated number of settlements entered in that period. The main takeaway—regardless of the methodology—is that the percentage of settlements that contain admissions is low.

2. Facts vs. Legal Violation

All but one of the settlements that made admissions included admission of facts. In the single settlement that did not admit facts, the target admitted that

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percentage of settlements with admissions was 3.9% (16/413) in FY2014, 4.5% (23/507) in FY2015, 4.9% (27/548) in FY2016, and 4.0% (18/446) in FY2017. SEC Press Release No. 2016-212, *supra* note 90; DIV. OF ENF'T, SEC, *supra* note 88; *see also* Velikonja, *supra* note 47, at tbl.3B (recalculating reported SEC statistics).

92. There is precedent for conflating resolution with settlement. National Economic Research Associates, Inc. ("NERA"), which maintained a proprietary database to analyze SEC settlement trends through the end of FY2012, explicitly identified settlements as all resolved matters (settlements and judgments). The rationale was that "cases resolved" was a reasonable proxy for settlement because "the vast majority of cases are settled." JORGE BAEZ ET AL., NAT'L ECON. RES. ASSOC., INC., SEC SETTLEMENT TRENDS: 2H12 UPDATE 2 (2013), http://www.nera.com/content/dam/nera/publications/archive2/PUB_SEC_Trends_Update_2H12_0113_final.pdf.

93. SEC, IN BRIEF: FY 2013 CONGRESSIONAL JUSTIFICATION 26 (2012), https://www.sec.gov/files/secfy13congbudgjust.pdf (reporting the "[p]ercentage of enforcement actions resolved" for FY2007-FY2011); SEC, FY 2011 PERFORMANCE AND ACCOUNTABILITY REPORT 2, 13, 61, app. at 189–203 (2011) [hereinafter FY 2011 PERFORMANCE AND ACCOUNTABILITY REPORT], https://www.sec.gov/about/secpar/secpar2011.pdf#mission (reporting the "[p]ercentage of enforcement actions successfully resolved" for FY2007–FY2011). Several caveats are worth noting: these data do not cover our whole time period, and what the SEC called in FY2011 "percentage of enforcement actions successfully resolved" is any "favorable outcome for the SEC" including "through litigation, a settlement, or the issuance of a default judgment" and is measured "on a per-defendant basis" rather than per settlement or matter. FY 2011 PERFORMANCE AND ACCOUNTABILITY REPORT, *supra*, at 61. Moreover, to the extent that resolution rates are calculated as a percent of resolutions within a fiscal year, there may be a time lag between filing and resolution, so that the enforcement actions filed in a particular fiscal year are not necessarily those that are resolved during that fiscal year.

Nonetheless, the use of a figure between 90% and 100% has additional support. Comparing NERA's counts of settlements based on their proprietary database with the SEC reports of filed actions, 91% of filed actions were resolved (670 "settlements"/735 filed actions) in FY 2011 and 97% (714 "settlements"/734 filed actions) in FY2012. *Compare* DR. ELAINE BUCKBERG ET AL., NAT'L ECON. RES. ASSOC., INC., SEC SETTLEMENT TRENDS: 2H11 UPDATE 5 (2012), http://www.nera.com/content/dam/nera/publications/archive2/PUB_SEC_Trends_2H11_0612.pdf, *with* FY 2011 PERFORMANCE AND ACCOUNTABILITY REPORT, *supra*; SEC, SELECT SEC & MARKET DATA FISCAL 2012, at 3 tbl.2 (2013) [hereinafter SELECT SEC & MARKET DATA FISCAL 2012], https://www.sec.gov/files/secstats2012.pdf.

his conduct violated § 17(a)(2) and (a)(3) of the Securities Act of 1933, but did not admit any underlying facts.[94] In most cases, the target admitted to a set of facts as described in one or more sections or paragraphs in the settlement document or as described in a separate appendix or annex. In a few cases, the target admitted to the facts as alleged in the complaint or in an offer of settlement. In several additional cases, the target admitted to the facts as set forth in an agreement in another action.[95] For example, in its settlement with the SEC, Standard Bank admitted to the admissions contained in the deferred prosecution agreement that it had entered into with the U.K. Serious Fraud Office.[96] Similarly, in its settlement with the SEC, Goldman, Sachs & Co. admitted the facts as provided in a Consent Order entered into with the Commonwealth of Massachusetts Securities Division.[97] Other targets admitted the findings or admissions made in prior plea agreements.[98] In three cases, a transcript of the plea colloquy was referenced and attached to the settlement.[99]

The facts admitted ranged widely. Two settlements in one matter simply admitted the conclusions of a hearing officer.[100] Several briefly summarized the

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94. Consent of Defendant John J. Masiz at 1, SEC v. Biochemics, Inc, No. 1:12-cv-12324-MLW (D. Mass. June 30, 2017).

95. *See, e.g.*, SEC Release No. 33-9981, Admin. Proc. File No. 3-16973 (Nov. 30, 2015), *In re* Standard Bank PLC, Order Instituting Cease-and-Desist Proceedings § IV, https://www.sec.gov/litigation/admin/2015/33-9981.pdf.

96. *Id.*; Press Release, Serious Fraud Office, SFO agrees first UK DPA with Standard Bank (Nov. 30, 2015), https://www.sfo.gov.uk/2015/11/30/sfo-agrees-first-uk-dpa-with-standard-bank/ (reporting and providing links to the statement of facts and other underlying documents).

97. SEC Release No. 34-66791, Admin. Proc. File No. 3-14845 (Apr. 12, 2012), *In re* Goldman, Sachs & Co., Order Instituting Administrative and Cease-and-Desist Proceedings § II, https://www.sec.gov/litigation/admin/2012/34-66791.pdf.

98. *See, e.g.*, SEC v. Hansen, No. 2:10-cv-05050-JHS, at 1 (E.D. Pa. Oct. 4, 2011) (Final Judgment as to Defendant Richard A. Hansen); Consent of Defendant Mark A. Lefkowitz, *supra* note 67, at 1; Consent of Defendant Henry A. Condron, *supra* note 67, at 1; Consent of Defendant Benjamin Chouchane, *supra* note 67, at 1; Consent of Defendant Marek Leszczynski, *supra* note 67, at 1; Consent of Defendant Kurt S. Hovan to Entry of Final Judgment, *supra* note 42, at 1.

99. *See* Consent of Defendant Matthew H. Kluger at 1, SEC v. Kluger, No. 2:11-cv-01936-KSH-PS (D.N.J. March 28, 2012); Consent of Defendant Garrett D. Bauer at 1, SEC v. Kluger, No. 2:11-cv-01936-KSH-PS (D.N.J. Mar. 26, 2012); Consent of Defendant Kenneth T. Robinson at 1, SEC v. Robinson, No. 2:12-cv-02438 (D.N.J. Mar. 13, 2012).

100. SEC Release No. IA-4273, Admin. Proc. File No. 3-16223 (Nov. 19, 2015), *In re* Sands Brothers Asset Management, LLC, Order Making Findings and Imposing Penalties, Remedial Sanctions and a Cease-and-Desist Order § III, https://www.sec.gov/litigation/admin/2015/ia-4273.pdf; SEC Release No. IA-4274, Admin. Pro. File No. 3-16223 (Nov. 19, 2015), *In re* Sands Brothers Asset Management, LLC, Order Making Findings and Imposing Penalties, Remedial Sanctions and a Cease-and-Desist Order as to Christopher Kelly § III, https://www.sec.gov/litigation/admin/2015/ia-4274.pdf.

admissions made in a plea agreement.[101] In some cases, a transcript of the plea colloquy in a related criminal case was attached as an Exhibit to the settlement.[102] Many settlements included extensive factual admissions that detailed the underlying conduct.[103]

Forty-nine (51%) of the settlements included general admissions that the target or targets violated the law.[104] These admissions largely took the form of the target "acknowledg[ing] that its conduct violated the federal securities laws."[105]

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101. *See, e.g.*, Consent of Defendant Cheongwha "Heywood" Chang and Relief Defendants HTC Consulting LLC and Arcadia Business Consulting Inc. at 1–3, SEC v. CKB168 Holdings Ltd., No. 1:13-cv-05584-RRM-RLM (E.D.N.Y. Apr. 15, 2016); Consent of Defendant Toni Tong Chen at 1–3, SEC v. CKB168 Holdings Ltd., No. 1:13-cv-05584-RRM-RLM (E.D.N.Y. Apr. 15, 2016); Consent of Defendant Brian D. Jorgenson at 1–3, SEC v. Jorgenson, No. 2:13-cv-02275-JLR (W.D. Wash. Dec. 11, 2014); Consent of Defendant Sean T. Stokke at 1–3, SEC v. Jorgenson, No. 2:13-cv-02275-JLR (W.D. Wash. Dec. 4, 2014); Consent of Defendant Henry A. Condron, *supra* note 67, at 1–2; Consent of Defendant Benjamin Chouchane, *supra* note 67, at 1–2; Consent of Defendant Marek Leszczynski, *supra* note 67, at 1–2; Consent of Defendant Kurt S. Hovan to Entry of Final Judgment, *supra* note 42, at 1.

102. *See, e.g.*, Consent of Defendant Matthew H. Kluger, *supra* note 99, app. at 7–39; Consent of Defendant Garrett D. Bauer, *supra* note 99, app. at 8–31; Consent of Defendant Kenneth T. Robinson, *supra* note 99, app. at 8–39.

103. *See, e.g.*, SEC Release No. IA-3988, Admin. Proc. File No. 3-16325 (Dec. 22, 2014), *In re* F-Squared Investments, Inc., Appendix A to Order Instituting Administrative Cease-and-Desist Proceedings § III, https://www.sec.gov/litigation/admin/2014/ia-3988.pdf; Final Consent Judgment as to Defendants Philip A. Falcone; Harbinger Capital Partners LLC; Harbinger Capital Partners Offshore Manager, LLC; and Harbinger Capital Partners Special Situations GP, LLC, *supra* note 67.

104. There were several targets who pled guilty in a separate criminal action and agreed to a settlement with the SEC that recited facts that were admitted in that plea ("In connection with that plea, Defendant admitted that . . . ."). We did not count these targets as having admitted a legal violation in the settlement with the SEC because they did not specifically admit a legal violation in the settlement itself. *See, e.g.*, Consent of Defendant Cheongwha "Heywood" Chang and Relief Defendants HTC Consulting LLC and Arcadia Business Consulting Inc., *supra* note 101, at 1–3; Consent of Defendant Toni Tong Chen, *supra* note 101, at 1–3; Consent of Defendant Brian D. Jorgenson, *supra* note 101; Consent of Defendant Mark A. Lefkowitz, *supra* note 67, at 1; Consent of Defendant Sean T. Stokke, *supra* note 101; Consent of Defendant Henry A. Condron, *supra* note 67, at 1–2; Consent of Defendant Benjamin Chouchane, *supra* note 67, at 1; Consent of Defendant Marek Leszczynski, *supra* note 67, at 1–2; Consent of Defendant Kurt S. Hovan to Entry of Final Judgment, *supra* note 42, at 1; Consent of Defendant Matthew H. Kluger, *supra* note 99; Consent of Defendant Garrett D. Bauer, *supra* note 99; Consent of Defendant Kenneth T. Robinson, *supra* note 99.

105. A notable exception is ONTARIO SEC. COMM'N, IN THE MATTER OF RICHARD BRUCE MOORE, SETTLEMENT AGREEMENT BETWEEN STAFF OF THE ONTARIO SECURITIES COMMISSION AND RICHARD BRUCE MOORE 6–7 (2013), http://www.osc.gov.on.ca/documents/en/Proceedings-SET/set_20130408_moorerb.pdf ("Moore's conduct involving the purchase of securities of Tomkins as outlined above fell below the standard of behaviour expected from someone in Moore's position and given his extensive experience in the capital markets industry.").

Twenty-three settlements (24%) went beyond a general acknowledgment that the target violated the law to include admissions that the target or targets violated one or more *specific* legal provisions. Consider a few examples in which targets admitted specific legal violations:

- As a result of the conduct described above, Respondents violated Section 17(b) of the Securities Act.[106]
- During this time, G-Trade, CGM Limited, and others violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 10b-5 thereunder by . . .[107]
- EEP's unregistered offer and sale of securities in the U.S. violated Sections 5(a) and 5(c) of the Securities Act.[108]

In 2 of these 23 settlements, the targets admitted only that a Hearing Officer determined that the target had violated a specific legal provision.[109]

Ten agreements included both a general statement that the target violated the law *and* an admission that a specific legal provision had been violated. Thus, there were 62 settlements in which the target admitted to either a generic legal violation, a specific legal violation, or both. These agreements represent 65% of the 96 settlements identified. Interestingly, every settlement containing admissions that was announced in FY2017 included an admission of either a general or specific legal violation.

3. Scienter

Fifty of the settlements included admissions about a target's state of mind. These agreements represent 52% of the 96 settlements identified.

Most commonly, targets in this category admitted being *aware of* or having *knowledge of* particular facts (34 settlements; 68% of settlements which admitted state of mind; 35% of all settlements).[110] Consider a few examples in which targets made these sorts of admissions:

- As of this time, JPMorgan Senior Management and CIO management knew that the SCP traders' marks were $275 million greater than

106. SEC Release No. 33-9757, *supra* note 43, § III.

107. Consent of Defendant Craig S. Lax, *supra* note 65, at 8.

108. SEC Release No. 33-10093, Admin. Proc. File No. 3-17281 (June 8, 2016), *In re* Ethiopian Elect. Power, Order Instituting Administrative Cease-and-Desist Proceedings § III, https://www.sec.gov/litigation/admin/2016/33-10093.pdf.

109. SEC Release No. IA-4273, *supra* note 100; SEC Release No. IA-4274, *supra* note 100.

110. Some agreements fell into more than one of these categories. A target might, for example, admit to particular knowledge *and* to having acted recklessly. Therefore, the numbers sum to more than 50.

independent mid-market prices computed by CIO-VCG based on a combination of broker quotes and data from consensus pricing services.[111]

- For example, the PowerPoint represented: (a) that the loan "must only be made as a 'last resort,'" when Falcone knew that he had other potential options; and (b) that the loan would be "in the best interests of the lender," when Falcone knew that SSF did not have separate representation to protect SSF's interests.[112]
- Jenson, with knowledge of Falcone's and Harbinger's violations in connection with the loan, substantially assisted these violations.[113]
- He knew his representations to investors regarding the use of investors' funds were false.[114]
- Oppenheimer knew or should have known that Gibraltar's Form W-8BEN was false. . . . Oppenheimer also knew or should have known that it could not rely on the Form W-8BEN.[115]
- SSGM was aware that it executed Indirect FX transactions, at rates established consistent with paragraphs 3 and 4 above, and generally did not disclose this process to clients.[116]
- Johnson knew, or was reckless in not knowing, that his conduct would substantially assist TPGS's violations of the Custody [Compliance] Rule, and knew, or should have known, that his conduct would cause these violations.[117]

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111. SEC Release No. 34-70458, Admin. Proc. File No. 3-15507 (Sept. 19, 2013), *In re* JPMorgan Chase & Co., Order Instituting Administrative Cease-and-Desist Proceedings § III, https://www.sec.gov/litigation/admin/2013/34-70458.pdf.

112. Final Consent Judgment as to Defendants Philip A. Falcone; Harbinger Capital Partners LLC; Harbinger Capital Partners Offshore Manager, LLC; and Harbinger Capital Partners Special Situations GP, LLC, *supra* note 67, at 5.

113. SEC Release No. 34-73294, *supra* note 74, § III.

114. SEC v. Heinz, No. 2:13-cv-00753-DS, at 4–5 (D. Utah Apr. 28, 2014) (Final Judgment as to Defendants Steven B. Heinz and S.B. Heinz & Associates, Inc.).

115. SEC Release No. 33-9711, Admin. Proc. File No. 3-16361 (Jan. 27, 2015), *In re* Oppenheimer & Co. Inc., Order Instituting Administrative Cease-and-Desist Proceedings § III, https://www.sec.gov/litigation/admin/2015/33-9711.pdf.

116. SEC Release No. IC-32390, Admin. Proc. File No. 3-17720 (Dec. 12, 2016), *In re* State Street Bank & Trust Co., Order Instituting Administrative and Cease-and-Desist Proceedings, at Annex A, https://www.sec.gov/litigation/admin/2016/ic-32390.pdf.

117. SEC Release No. 34-77625, Admin. Proc. File No. 3-16730 (Apr. 14, 2016), *In re* Johnson, Order Instituting Administrative Cease-and-Desist Proceedings § III, https://www.sec.gov/litigation/admin/2016/34-77625.pdf. Two of the settlements that admitted awareness involved awareness of a relevant *rule* rather than some other underlying fact. SEC Release No. 34-73681, Admin. Proc. File No. 3-16288 (Nov. 25, 2014), *In re* HSBC Private Bank (Suisse), SA, Order Instituting Administrative Cease-and-Desist Proceedings § III, https://www.sec.gov/litigation/admin/2014/34-73681.pdf ("[T]hroughout the period in question, Respondent was aware of the broker–dealer and investment adviser registration requirements related to the provision of cross-border broker–dealer and

Targets in four settlements (8% of settlements which admitted state of mind; 4% of all settlements) admitted to having acted *negligently*. Some examples of this type of admission include the following:

- Stifel and Noack acted negligently by making material misstatements and omissions to the School Districts and by failing adequately to investigate the appropriateness of the CDO investments.[118]
- Mata, Kayatta, Wealth Advisors, and Lifetime University knew, or were reckless or negligent in not knowing, that these misrepresentations and omissions were false and misleading when made.[119]

Targets in 18 settlements admitted to having acted *recklessly* (36% of settlements which admitted state of mind; 19% of all settlements). These admissions generally provided as follows: "In connection with the violation described in the foregoing Admissions, [target's] actions were, at a minimum, reckless."[120] In one instance, the target admitted having acted recklessly, while specifically denying knowing or willful conduct: "Defendant hereby admits that material factual allegations in the Second Amended Complaint are true, except that Defendant only admits that he acted recklessly, but not knowingly or willfully, in connection with those allegations."[121]

Other targets that admitted to a particular state of mind admitted to having engaged in *willful* or *intentional* conduct or to having acted *with scienter* (19 settlements; 38% of settlements which admitted state of mind; 20% of all

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investment advisory services to U.S. clients."); SEC Release No. 34-73652, Admin. Proc. File No. 3-15913 (Nov. 10, 2014), *In re* Wedbush Securities Inc., Order Instituting Administrative Cease-and-Desist Proceedings, at Annex A, https://www.sec.gov/litigation/admin/2014/34-73652.pdf ("Wedbush was aware of the requirements set forth in Rule 15c3-5 when they became effective.").

118. SEC v. Stifel, Nicolaus & Co., Inc. at 12, No. 2:11-cv-00755-CNC, at 12 (E.D. Wisc. Dec. 6, 2016) (Final Judgment as to Defendants Stifel Nicolaus & Company, Incorporated and David W. Noack).

119. Consent to Entry of Final Judgment by Paul Mata at 20, SEC v. Mata, No. 5:15-cv-01792-VAP-KK (C.D. Cal. June 16, 2016).

120. SEC Release No. IA-4063, Admin. Proc. File No. 3-116130 (April 16, 2015), *In re* Cooper, Order Instituting Administrative Cease-and-Desist Proceedings, at Annex A, https://www.sec.gov/litigation/admin/2015/ia-4063.pdf; SEC Release No. IA-3988, *supra* note 103, § III; SEC Release No. 33-9620, Admin. Proc. File No. 3-15790 (July 31, 2014), *In re* Horowitz, Order Instituting Administrative Cease-and-Desist Proceedings, at Annex A, https://www.sec.gov/litigation/admin/2014/33-9620.pdf. The others were substantially similar. *See* Consent of Defendant Aquaphex Total Water Solutions, LLC and Gregory G. Jones, *supra* note 67, at 8; Final Consent Judgment as to Defendants Philip A. Falcone; Harbinger Capital Partners LLC; Harbinger Capital Partners Offshore Manager, LLC; and Harbinger Capital Partners Special Situations GP, LLC, *supra* note 67, at 13; Consent of Defendant Chih Hsuan "Kiki" Lin and Relief Defendant USA Trade Group Inc., *supra* note 67, Annex A at 2; Consent of Defendant Rayla Melchor Santos, *supra* note 67, Annex A at 11.

121. Consent of Defendant Sidney M. Field at 2, SEC v. Medical Capital Holdings, Inc., No. 8:09-cv-00818-DOC-RNB (C.D. Cal. Jan. 13, 2016).

settlements). Many of the admissions of willfulness[122] provided as follows: "As a result of the conduct described above, [target] willfully violated [specific legal provision]."[123] Other examples include the following:

- Therefore, Credit Suisse willfully violated Section 17(a) of the Exchange Act and Exchange Act Rule 17a-4(j) [17a25], which require . . . .[124]
- Johnson willfully aided and abetted and caused these Custody Rule violations, as well as TPGS's violations of the Compliance Rule, and TPGS and Johnson willfully made materially false representations in TPGS's Forms ADV filed from 2010 through 2012.[125]

In two of these settlements, the targets admitted only that a "Hearing Officer determined" that the target had acted willfully, rather than directly admitting that fact themselves.[126]

Examples of language by which targets admitted to having had particular *intent*[127] include the following:

- Defendant entered into an agreement with CEO, Company A, and others to knowingly, and with the intent to defraud, execute a scheme to defraud

122. 12 settlements; 24% of settlements which admitted state of mind; 13% of all settlements.

123. SEC Release 34-77525, Admin. Proc. File No. 3-17194 (Apr. 5, 2016), *In re* Pappas, Order Instituting Administrative and Cease-and-Desist Proceedings § III, https://www.sec.gov/litigation/admin/2016/34-77525.pdf ("As a result of the conduct described above, Pappas willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder, which . . . ."); SEC Release No. 34-75083, Admin. Proc. File No. 3-16567 (June 1, 2015), *In re* Merrill Lynch, Pierce, Fenner & Smith Inc. § III, https://www.sec.gov/litigation/admin/2015/34-75083.pdf ("As a result of the conduct described above, Merrill willfully violated Rule 203(b) of Regulation SHO."); SEC Release No. 34-73681, *supra* note 117, § III ("As a result of the conduct described above, Respondent willfully violated Exchange Act Section 15(a) and Advisers Act Section 203(a)."); SEC Release No. 34-71435, Admin. Proc. File No. 3-15702 (Jan. 29, 2014), *In re* Scottrade, Inc., Order Instituting Administrative Cease-and-Desist Proceedings § III, https://www.sec.gov/litigation/admin/2014/34-71435.pdf ("As a result of the conduct described above, Scottrade willfully violated Section 17(a) of the Exchange Act and Exchange Act Rule 17a-4(j) [Rule 17a-25] [17a-4(f)(3)(v)] by . . . .").

124. SEC Release No. 34-75922, Admin. Proc. File No. 3-16835 (Sept. 28, 2015), *In re* Credit Suisse Securities (USA) LLC, Order Instituting Administrative Cease-and-Desist Proceedings § III, https://www.sec.gov/litigation/admin/2015/34-75992.pdf.

125. SEC Release No. 34-77625, Admin. Proc. File No. 3-16730 (Apr. 14, 2016), *In re* Johnson, Order Instituting Administrative Cease-and-Desist Proceedings § III, https://www.sec.gov/litigation/admin/2016/34-77625.pdf.

126. SEC Release No. IA-4273, *supra* note 100; SEC Rel. No. IA-4274, *supra* note 100.

127. Five settlements; 10% of settlements which admitted state of mind; 5% of all settlements.

shareholders and other people in connection with a security of Company A.[128]

- In connection with that plea, defendant Kurt Hovan admitted that: (1) he knowingly participated in, devised, or intended to devise a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or by the omission of material facts; (2) the statements made or facts omitted as part of the scheme were material; (3) he acted with the intent to defraud; and (4) he used, or caused to be used, the mails to carry out or to attempt to carry out an essential part of the scheme.[129]
- Both ST's CEO (BA) and SS intended this 1% fee promised to EGMA to induce a senior representative or senior representatives of the GOT to perform a relevant function improperly, namely by that representative(s) showing favour to SB and ST in their bid to secure their joint role and fees on the financing transaction.[130]
- Defendant provided the material, nonpublic information he learned from working at Microsoft to Stokke with the intent that Stokke would trade in securities on behalf of Defendant and himself.[131]

Finally, the settlements that admitted that the target acted with scienter indicated that the target "with scienter, directly or indirectly, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities, as described in this Complaint," had engaged in particular wrongful conduct.[132]

Of the 50 settlements that included an admission about state of mind, 7 were settlements with both an individual and one or more entities; 16 involved just entities; 27 involved just an individual.[133]

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128. Consent of Defendant Mark A. Lefkowitz, *supra* note 67, at 11 (also admitting that "[d]efendant entered into the agreement knowing of its object and intending to help accomplish it").

129. Consent of Defendant Kurt S. Hovan to Entry of Final Judgment, *supra* note 42, at 1.

130. Statement of Facts, Serious Fraud Office v. Standard Bank PLC [Nov. 30, 2015] EWHC (QB) U20150854, https://files.skadden.com/sites%2Fdefault%2Ffiles%2Fckeditorfiles%2FICBC_Standard_Bank_PLC_SFO_Statement_of_Facts.pdf.

131. Consent of Defendant Brian D. Jorgenson, *supra* note 101, at 2.

132. Two settlements; 4% of settlements that admitted state of mind; 2% of all settlements. Amended Complaint at 10–11, SEC v. Jarvis, No. 2:09-cv-00269 (S.D. Oh. Oct. 22, 2009); Consent of Defendant Julie M. Jarvis, *supra* note 67, ¶ 2 (admitting to the allegations in the amended complaint); Consent of Defendant Crossroads Financial Planning, Inc., *supra* note 67, ¶ 2 (same).

133. Some of these settlements against individuals were in matters that involved other settlements against entities. *See, e.g.*, SEC Release No. 34-73294, *supra* note 67; SEC Rel. No. IA-4274, *supra* note 100.

4. Parallel Actions

Parallel actions are legal actions that involve the same underlying conduct and the same or overlapping targets, but that are brought by different enforcement entities or private litigants.[134] They are relevant to understanding SEC admissions policy in a few ways. First, the agency's announced policy changes specifically link the SEC's approach to admissions in a particular case to the resolution in parallel actions: the 2012 policy change considered criminal convictions or pleas in deciding whether to allow settlement "without admitting or denying" wrongdoing.[135] Second, one of the main concerns about admissions articulated by defendants and regulators is the impact of an admission in parallel actions, particularly in class actions brought by private litigants.[136] Third, to the extent that the aim of requiring admissions is to signal increased accountability to the targets and public, several studies suggest that this is particularly important where the target has already admitted wrongdoing in some form.[137]

To determine factual overlap, we used a standard similar to that announced in the 2012 SEC admissions policy shift: that there was "a parallel criminal conviction (by plea or verdict) or criminal NPA/DPA" that involved "factual or legal claims that overlap to some degree with the factual or legal claims set out in the Commission's complaint or OIP."[138] The numbers include only overlapping targets. They capture, for example, the SEC's settlement with Jefferies LLC for failing to supervise its employees on the mortgage-backed securities desk during the financial crisis[139] because Jefferies LLC (same target) entered into a non-prosecution agreement with the U.S. Attorney's Office for the same conduct.[140] We also count the SEC's settlement with ConvergEx, in which some

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134. *See, e.g.*, ROGER M. ADELMAN ET AL., THE SECURITIES ENFORCEMENT MANUAL: TACTICS AND STRATEGIES 400 (2d ed. 2007).

135. Khuzami, *supra* note 19. For "parallel (i) criminal convictions or (ii) NPAs or DPAs that include admissions or acknowledgements of criminal conduct," the "'neither admit nor deny' language" would be deleted from the settlement documents. *Id.*

136. *See Examining the Settlement Practices of U.S. Financial Regulators: Hearing Before the Comm. on Fin. Servs.*, 112th Cong. 1–2 (2012) (statement of Chairman Spencer Bachus), http://financialservices.house.gov/uploadedfiles/112-128.pdf (opening the hearings with the comment that allowing "neither admit nor deny" settlements "allows the defendant to avoid providing ammunition to private plaintiffs in suits related to the same conduct").

137. *See* Winship & Robbennolt, *supra* note 5.

138. Khuzami, *supra* note 19.

139. SEC Release No. 34-71695, Admin. Proc. File No. 3-15785 (Mar. 12, 2014), *In re* Jefferies LLC, Order Instituting Administrative Proceedings § III, https://www.sec.gov/litigation/admin/2014/34-71695.pdf.

140. Non-Prosecution Agreement from U.S. Att'y D. Conn., to Jefferies LLC (Jan. 29, 2014), https://www.justice.gov/sites/default/files/usao-ct/legacy/2014/03/12/JEFFERIES%20NPA.pdf. Although the NPA was signed in January, the criminal and SEC settlements were announced on the same day a few months later. Press Release, U.S. Att'y D. Conn., Jefferies LLC Agrees To Pay $25 Million Related To Fraudulent Rmbs Trading Activity (Mar. 12, 2014), https://www.justice.gov/usao-ct/pr/jefferies-llc-agrees-pay-25-million-related-fraudulent-rmbs-trading-activity.

but not all the admitting targets in the SEC's actions also resolved criminal actions.[141]

Table 3 shows the stand-alone settlements that involved one or more parallel actions. Of the 96 stand-alone settlements, there were 24 settlements (25%) in which at least one of the admitting targets also settled or was indicted in a criminal action. Several of these settlements involved the same underlying events, so these 24 settlements involved only 15 separate matters. These criminal actions were resolved through guilty pleas (including one plea agreement with an organizational defendant), non-prosecution agreements, and deferred prosecution agreements (including one with U.K. authorities).

TABLE 3: Parallel Actions

	Type of Parallel Action		
Target	**Criminal Action**	**Civil Government Action**	**Private Securities Class Action**
Julie M. Jarvis	X		
Kenneth T. Robinson	X		
Garrett D. Bauer	X		
Matthew H. Kluger	X		
Richard A. Hansen	X		
Goldman Sachs		X	
Kurt Hovan	X		
Richard Bruce Moore		X	
JPMorgan Chase		X	X
Marek Leszczynski	X		
Benjamin Chouchane	X		
Henry A. Condron	X		

141. SEC Press Release No. 2013-266, *supra* note 56; Press Release No. 13-1328, Dep't of Justice, Convergex Group Subsidiary and Two Employees Plead Guilty to Securities and Wire Fraud Charges (Dec. 18, 2013), https://www.justice.gov/opa/pr/convergex-group-subsidiary-and-two-employees-plead-guilty-securities-and-wire-fraud-charges.

	Type of Parallel Action		
Target	**Criminal Action**	**Civil Government Action**	**Private Securities Class Action**
Jonathan Samuel Daspin	X		
Thomas Lekargeren	X		
G-Trade Services LLC; ConvergEx Global Markets Limited; ConvergEx Execution Solutions LLC	X		
Credit Suisse Group AG	X	X	
Jefferies LLC	X		
Bank of America Corporation			X
Mark A. Lefkowitz	X		
Sean T. Stokke	X		
Brian D. Jorgenson	X		
Chih Hauan "Kiki" Lin	X		
Standard & Poor's Ratings Services		X	
Oppenheimer & Co. Inc.		X	
Steven C. Watson	X		
Standard Bank PLC	X		
JPMorgan Chase Bank, N.A.; J.P. Morgan Securities LLC		X	
Barclays Capital Inc.		X	
Cheongwha "Heywood" Chang	X		
Toni Tong Chen	X		
The Bank of New York Mellon		X	X

	Type of Parallel Action		
Target	**Criminal Action**	**Civil Government Action**	**Private Securities Class Action**
Steven J. Muehler; Alternative Securities Markets Group Corp.; Blue Coast Securities Corp. dba GlobalCrowdTV, Inc. and Blue Coast Banc		X	
Vinicius Omoulo Aguir		X	
Geovani Nascimento Bento		X	
Priscilla Bento		X	
State Street Bank & Trust Co.		X	X
Bank Leumi le-Israel B.M.; Leumi Private Bank; Bank Leumi (Luxembourg) S.A.	X		
Deutsche Bank Securities, Inc.		X	
John W. Rafal	X		
Orthofix International N.V.			X
Sanderley Rodrigues de Vasconcelos			X
Joseph H. Craft			X
Steven Labriola			X

NOTE: Settlements with parallel actions involving the same underlying conduct and the same or overlapping target brought by other enforcement entities or private litigants. Settlements are listed in chronological order. Case and public release numbers for each settlement are reported in the Appendix.

All of the parallel criminal actions resulted in admissions. The plea agreement with one organizational defendant provided that "[t]he defendant will plead guilty because the defendant is in fact guilty of the charged offense."[142] It also stipulated that the defendant admitted the facts in the associated Statement of Facts, and that "those facts establish guilt of the offense charged beyond a

142. Plea Agreement ¶ 2, U.S. v. Credit Suisse AG, No. 1:14-CR-188 (May 19, 2014), http://lib.law.virginia.edu/Garrett/corporate-prosecution-registry/agreements/credit-suisse_2014.pdf.

reasonable doubt."[143] One NPA provided that the defendant "admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents set forth in the Statement of Facts . . . and that the facts described . . . are true and accurate."[144] The defendant also agreed not to "make any public statement in litigation or otherwise contradicting the acceptance of responsibility" reflected by these admissions.[145] Admissions were also made in the DPA that Standard Bank entered into with the U.K. Serious Fraud Office. Indeed, in the associated SEC settlement, Standard Bank admitted to exactly what it had admitted in the U.K. matter, simply incorporating the Statement of Facts from that other action.[146]

The SEC's reported numbers of "criminal actions related to conduct under investigation by the SEC" can give a rough context for these figures. For FY2014 to FY2016, the total number of related criminal investigations was 370, with a mean of 123 per year.[147] This number reflects investigations rather than criminal pleas or convictions, so is not directly comparable, but may suggest that the SEC is not seeking admissions in all instances of parallel criminal actions.

Other parallel actions include those by civil government authorities other than the SEC. We identified 15 (16%) of the 96 stand-alone settlements in which at least one of the admitting targets was also subject to actions brought by other civil government authorities.[148] Only one of these also had a criminal parallel action. The civil authorities involved in these parallel actions varied, and included state securities regulators, state attorneys general, Canadian securities regulators, the Department of Justice Civil Division, U.S. Department of Labor, CFTC, the Financial Crimes Enforcement Network, and others. Some of these enforcement actions by other civil government authorities were resolved without separate admissions.[149] Others, however, included admissions of fact and legal violation.[150]

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143. *Id.*

144. Non-Prosecution Agreement, *supra* note 140 (announced Mar. 12, 2014, at the same time as the SEC settlement).

145. *Id.*

146. SEC Release No. 33-9981, *supra* note 95; Press Release, Serious Fraud Office, *supra* note 96.

147. SEC, FISCAL YEAR 2016 ANNUAL PERFORMANCE REPORT AND FISCAL YEAR 2018 CONGRESSIONAL BUDGET JUSTIFICATION ANNUAL PERFORMANCE PLAN 39 tbl.2.3.4 (2017), https://www.sec.gov/files/secfy18congbudgjust.pdf.

148. As noted above, to identify parallel civil government actions, we relied primarily on SEC public releases and the underlying settlement agreements. We were accordingly more likely to capture prior or simultaneous civil government actions.

149. Consent Order Pursuant to Banking Law § 44-a, N.Y. State Dep't of Fin. Servs., In the Matter of Credit Suisse AG (May 19, 2014), http://www.dfs.ny.gov/about/ea/ea140519.pdf (imposing a money penalty and not independently requiring admissions, but noting the admissions in the related criminal matter and SEC settlement); Written Agreement Between JPMorgan Chase & Co. and Board of Governors of the Federal Reserve System, Docket No. 13-031-CMP-HC (Sept. 18, 2013), https://www.federalreserve.gov/newsevents/pressreleases/files/enf20130919a.pdf

150. *See, e.g.*, U.S. Treasury Dep't, Financial Crimes Enf't Network, *In re* Oppenheimer & Co., Inc., No. 2015-01, (Jan. 26, 2015) (Assessment of Civil Money

In a striking example of a fulsome admission, the Bank of New York Mellon ("BNYM") prefaced its admissions in a civil settlement with the U.S. Attorney's Office with the following language: "BNYM admits, acknowledges *and accepts responsibility* for the following conduct . . . ."[151] Interestingly, it was not necessarily the customary practice of these agencies to obtain admissions, perhaps suggesting that the interaction among regulators may affect admissions practices.[152]

We also identified eight settlements (8%) that were associated with a private securities class action or actions.[153] Again, we identified those actions that arose out of the same or overlapping factual or legal claims, where an admitting target was also subject to a parallel private action. Unlike in the criminal context, here we were concerned with filings rather than settlements. In the criminal context, the question is whether the resolution of a parallel criminal action—and usually an associated admission—affects whether the SEC settlement contains admissions. In contrast, the presence of parallel private actions serves to indicate whether targets risk having admissions made in the SEC proceeding used in an associated private action.

These numbers do not provide a full account of collateral consequences. These data do not indicate the type and scope of admissions, which affect the extent to which plaintiffs can use the admissions in associated litigation.[154] Because we have focused on overlapping targets, they also do not reflect the use of admissions by one SEC target in related actions involving distinct targets. One

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Penalty) ("Oppenheimer admits to the facts set forth below and that its conduct violated the [Bank Secrecy Act]."), https://www.fincen.gov/sites/default/files/shared/Oppenheimer_Assessment_20150126.pdf; Order Instituting Proceedings, *In re* JPMorgan Chase Bank, N.A., CFTC No. 16-05, 2015 WL 9268695 (Dec. 18, 2015), http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfjpmorganorder121815.pdf ("Respondent admits to the facts set forth in Section III.D and acknowledges that the conduct set forth in Section III.D violated the CEA and/or related Regulations."); Settlement Agreement, N.Y. Att'y Gen., Investor Protection Bureau, *In re* Barclays PLC (Jan. 29, 2015), https://ag.ny.gov/pdfs/2016.2.1_Final_Signed_Barclays_Settlement_Agreement.pdf ("In order to resolve the Litigation, Barclays admits the facts set forth in Section III . . . and acknowledges that its conduct violated the federal securities laws.").

151. *See* United States v. Bank of New York Mellon, No. 11-cv 06969 (LAK), at 3 (Mar. 19, 2015) (stipulation and order of settlement and dismissal) (emphasis added).

152. *See Examining the Settlement Practices of U.S. Financial Regulators: Hearing Before the Comm. on Fin. Servs.*, 112th Cong. 1–2 (2012), http://financialservices.house.gov/uploadedfiles/112-128.pdf; Winship & Robbennolt, *supra* note 5. *Cf.* A New Model for SEC Enforcement, *supra* note 7 (pointing to "other civil financial regulators"—the CFTC and the CFPB—who were "following [the SEC's] lead" by "beginning to require admissions in some of their cases").

153. Our search was limited to securities class actions, so does not reflect other types of related private litigation.

154. Paul Radvany, *The SEC Adds a New Weapon: How Does the New Admission Requirement Change the Landscape?*, 15 CARDOZO J. OF CONFLICT RESOLUTION 665, 696–98 (2014).

anecdotal example is the use of the admissions that Michael C. French made in an SEC action. French had been the attorney for the (former) billionaire Wyly brothers and admitted in his settlement with the SEC that he had participated in hiding trades offshore.[155] These admissions were reportedly used in the trial against the Wyly brothers, prompting one of the brothers to point to French's "deal with the devil"—apparently the SEC.[156]

Another aspect of these agreements that may affect their impact on parallel proceedings is the inclusion of so-called collateral estoppel language.[157] Some of the admissions in these stand-alone settlements included language limiting their use in actions that did not involve the SEC. Specifically, eight settlements introduced the admissions in this way:

> *Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party*, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it, the subject matter of these proceedings, and [the facts set forth in Annex A which are admitted], [target] consents to the entry of this Order . . . .[158]

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155. *See generally* SEC Press Release No. 2010-137, SEC Charges Corporate Insider Brothers with Fraud (July 29, 2010), https://www.sec.gov/news/press/2010/2010-137.htm ("The Wyly brothers reaped more than $550 million in undisclosed gains while sitting on corporate boards by trading stock in those public companies through hidden entities located in foreign jurisdictions.").

156. Max Stendahl, *Wyly Says SEC Star Witness Made 'Deal With The Devil'*, LAW360 (Apr. 30, 2014, 2:41 PM), https://www.law360.com/articles/533185; Joseph Guinto, *Sam Wyly's Biggest Enemy: How an Obscure Lawyer Brought Down One of the Wealthiest Families in Dallas*, D MAGAZINE (Jan. 2015), https://www.dmagazine.com/publications/d-magazine/2015/january/sam-wyly-biggest-enemy-lawyer/ ("Whatever his reasons for turning, French's decision was critical to the SEC's winning case. His admission of guilt and suggestion that the Wylys had improperly controlled their trusts came up repeatedly in the trial against the Wylys. On the witness stand, Sam said, 'Mr. French made his deal with the devil.'").

157. Danné L. Johnson, *SEC Settlement: Agency Self-Interest or Public Interest*, 12 FORDHAM J. CORP. & FIN. L. 627, 650 (2007). This article—written by former SEC Branch Chief, Senior Counsel, and Staff Attorney in the Division of Enforcement—notes that settlements of administrative SEC actions "contain[] what has become known as the collateral estoppel language" and that "[t]he required language of the respondent(s) when settling an Administrative Proceeding is: 'Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party.'" *Id.*

158. SEC Release No. 34-66791, *supra* note 97, § II (emphasis added); SEC Release No. IC-32151, Admin. Proc. File No. 3-17286 (June 13, 2016), *In re* Bank of N.Y. Mellon, Order Instituting Administrative and Cease-and-Desist Proceedings § II, https://www.sec.gov/litigation/admin/2016/ic-32151.pdf; SEC Release No. IC-32390, *supra* note 116, § II; SEC Release No. 33-9981, *supra* note 95, § II; SEC Release No. IA-4273, *supra* note 100, § II; SEC Release No. IA-4274, *supra* note 100, § II; SEC Release No. 33-9757, *supra* note 43, § II; SEC Release No. 33-9705, Admin. Proc. File No. 3-16348 (Jan. 21, 2015), *In re* Standard & Poor's Ratings Servs., Order Instituting Administrative

All of the settlements that used this language resolved administrative proceedings. This language or similar phrasing is designed to limit the consequences of SEC settlements by restricting the use of findings in parallel proceedings.[159] In one matter pursued by both the SEC and the Ontario Securities Commission, the Canadian settlement included a variation on this collateral estoppel language: it restricted the use of admissions to the Ontario proceeding and "any other regulatory proceeding commenced by a securities regulatory authority."[160]

III. IMPLICATIONS

What is the connection between what the SEC does and what it says? How does the SEC's practice of requiring admissions line up with its announced policy shifts—from allowing settlement without admission or denial, to omitting this language when a target pleads guilty or is convicted in a parallel criminal action, to asking for admissions where there was "a special need for public accountability and acceptance of responsibility."[161] In this Part, we use the results of our study to assess the SEC's approach to admissions in relation to the agency's own stated goals. To do so, we examine the numbers and pattern of admissions over time, the types of matters and targets for which the SEC obtained admissions, and the types of admissions (factual, legal, state-of-mind) that the SEC obtained. In the process, we consider the three main failings in implementation pointed to by critics: few admissions, small targets, and admissions to facts but not legal violations.

A. Numbers and Patterns of Admissions Over Time

No matter how you count, the resulting number of settlements that contain admissions and even the (slightly) larger number of targets is low. Indeed, the rate at which the SEC has obtained admissions generally approximates the percentage that critics pointed to as inadequate—that is, 3.6% (19/520) between June 2013 and September 2014.[162] The distribution of settlements containing admissions over time, and particularly the concentration of such settlements in the

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and Cease-and-Desist Proceedings § II, https://www.sec.gov/litigation/admin/2015/33-9705.pdf.

159. *See* ADELMAN ET AL., *supra* note 134, at 244 (noting that settlements generally protect against the admission of commission findings in a settled proceeding in parallel proceedings by including language such as "[r]espondent, solely for the purpose of these proceedings . . . consents to the issuance of this order"); Johnson, *supra* note 157, at 650.

160. ONTARIO SEC. COMM'N, *supra* note 105.

161. Deploying the Full Enforcement Arsenal, *supra* note 6; *see* Stewart, *supra* note 24; *see also* Mary Jo White, Chair, SEC, Chairman's Address at SEC Speaks 2014 (Feb. 21, 2014), http://www.sec.gov/News/Speech/Detail/Speech/1370540822127#_ftnref14 ("[admissions of guilt provide] a greater measure of public accountability, which, in turn, can bolster the public's confidence in the strength and credibility of law enforcement, and the safety of our markets").

162. Letter from Elizabeth Warren, U.S. Senator, to Mary Jo White, Chair, U.S. Sec. & Exch. Comm'n, at 5 (June 2, 2015), http://www.warren.senate.gov/files/documents/2015-6-2_Warren_letter_to_SEC.pdf.

years following the 2013 announcement of the SEC's new approach, mirrors the policy change. These data confirm that "neither admit nor deny" settlements were indeed the norm during the years just prior to the announced policy shift. However, particularly when taken with our review of the earlier period (FY2001–FY2009), they also suggest that some settlements contained admissions even when they were not part of an announced policy—i.e., the baseline rate of admissions was not zero.

Only eight settlements containing admissions were announced between the announced policy about admissions in parallel criminal actions and the more general change in approach announced in 2013.[163] Our study, however, was not designed to identify settlements that simply eliminated the "without admitting or denying" language, a possibility that the 2012 policy shift seemed to contemplate.[164] But the years FY2014 through FY2017 saw a modest uptick in the number of admissions.

It is important to note that our study focuses on the final settlements that were reached between the SEC and enforcement targets. We, therefore, have identified and described the end result of the settlement negotiations. Our data do not address how announced changes in admissions policy might have altered the negotiations that took place behind closed doors and that led to these agreements. Our data cannot tell us, for example, if the SEC was able to negotiate trade-offs in other cases for taking admissions *off* the table. Our data also do not reflect any trade-offs that might have been made when the SEC negotiated the resolution of multiple enforcement actions with the same target.[165] The data also do not capture

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163. Consent of Defendants Philip A. Falcone; Harbinger Capital Partners LLC; Harbinger Capital Partners Offshore Manager, LLC; and Harbinger Capital Partners Special Situations GP, LLC, *supra* note 67; SEC Release No. 34-70458, *supra* note 111; SEC Release No. 34-66791, *supra* note 97; SEC Litig. Release No. 22674 (Apr. 16, 2013), SEC Charges Former Investment Banker with Insider Trading, https://www.sec.gov/litigation/litreleases/2013/lr22674.htm; SEC Litig. Release No. 22605 (Jan. 30, 2013), Court Enters Final Judgments, By Consent, https://www.sec.gov/litigation/litreleases/2013/lr22605.htm; SEC Press Release No. 2012-77, Attorney, Wall Street Trader, and Middleman Settle SEC Charges in $32 Million Insider Trading Case (Apr. 25, 2012), https://www.sec.gov/news/press-release/2012-2012-77htm (announcing Kenneth T. Robinson's settlement with the SEC for $845,000); *id.* (announcing Garrett D. Bauer's settlement with the SEC for $31.6 million); *id.* (announcing Matthew H. Kluger's settlement with the SEC for $516,000); SEC Press Release 2012-61, SEC Charges Goldman, Sachs & Co. Lacked Adequate Policies and Procedures for Research "Huddles" (Apr. 12, 2012).

164. Khuzami, *supra* note 19 (noting that the new policy did "not require admissions or adjudications of fact beyond those already made in criminal cases, but eliminate[d] language ["neither admit nor deny"] that may be construed as inconsistent with admissions or finding that have already been made in the criminal cases").

165. For example, in a single press release the SEC announced three orders instituting settled administrative proceedings with Standard & Poor's. In only one of these did Standard & Poor's "ma[k]e certain admissions." SEC Press Release No. 2015-10, SEC Announces Charges Against Standard & Poor's for Fraudulent Ratings Misconduct (Jan. 21, 2015), https://www.sec.gov/news/pressrelease/2015-10.html.

the effect of a changed admissions policy on a target's decision about whether to settle or to go to trial. The SEC has pointed to at least one matter in which the target rejected settlement and chose to go to trial, rather than make an admission.[166]

B. Types of Matters and Targets

The type of matter about which and the type of target from which the SEC obtains admissions both relate to the agency's announced goals and to prominent critiques. The characteristics of the matter or the target provide some measure of the significance of the case—that is, a sense of whether the most egregious cases are the ones in which admissions are sought, as one factor in the 2013 policy suggested.[167] Concern over the types of matters and targets for which the SEC obtained admissions grows out of the context in which this policy was announced and implemented. These critiques reflect the sense that after the financial crisis big banks and other corporations were escaping punishment.[168] These concerns also reflect the specific context in which the SEC's prior approach to admissions was scrutinized: in the *Citigroup* case, as it worked its way through the courts and into the newspapers, and during the 2012 congressional hearings on settlement practices of financial regulators more generally. Gauging the significance of the cases in which admissions have been required can also provide a sense of the public salience such cases are likely to have—that "symbolic victory" that newspapers pointed to after JPMorgan admitted to facts and wrongdoing in the London Whale matter.[169]

One criticism of the SEC's admissions practices has been that the agency has targeted the little guy—individuals rather than entities and smaller entities rather than large entities, especially large financial institutions.[170] Overall (for FY2010 through FY2017), 123 targets made admissions, including 58 individuals

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166. *See* A New Model for SEC Enforcement, *supra* note 7 (reporting that a 2016 case against the City of Miami went to trial "primarily because the City would not accept admissions").

167. Deploying the Full Enforcement Arsenal, *supra* note 6 (considering requiring admissions when "a large number of investors have been harmed or the conduct was otherwise egregious").

168. *See Examining the Settlement Practices of U.S. Financial Regulators: Hearing Before the Comm. on Fin. Servs.*, 112th Cong. (2012), http://financialservices.house.gov/uploadedfiles/112-128.pdf.

169. *See, e.g.*, ElBoghdady & Douglas, *supra* note 3. *Cf.* Mark C. Suchman, *Managing Legitimacy: Strategic and Institutional Approaches*, 20 ACAD. MGMT. REV. 571, 592 (1995) ("accumulat[ing] a record of technical success" with "attention-grabbing 'demonstration events' can provide lasting validation for procedures, structures, and personnel").

170. Taibbi, *supra* note 29 ("In the last year or so I've heard from several attorneys who represent smaller clients who tell me they're flabbergasted, watching the S.E.C. give the Chases, Goldmans, and Citigroups free ride after free ride while their pockmarked little clients at fledgling public companies get served the whole regulatory meal for minor disclosure violations—even cases that simply involve bad paperwork, where money isn't even stolen.").

and 65 entities. In other words, 47% of the admitting targets were individuals and 53% were entities. The balance between individuals and entities in SEC enforcement actions more generally is not reported.[171] What is available suggests that entities make up a greater proportion of the admitters as compared to their representation as targets, but each of the bases for comparison has limitations.[172] Where entities were targeted, the type of entity varied. As noted above, organizational targets included 22 broker–dealers, 20 investment advisors, 19 companies, 8 banks, 7 accounting firms, 5 investment banks, 1 investment trust, and 1 municipal corporate authority.[173]

The SEC has also been criticized for targeting low-level violations for settlements with admissions—for pursuing "cases that simply involve bad paperwork"[174] or that are "low-profile" cases or "garden-variety frauds."[175] One set of settlements provides anecdotal evidence: in four of the settlements that included admissions (4%), targets settled charges that they failed to provide complete and accurate trading data ("blue sheet" data) to the SEC because of computer coding and human errors.[176] On the other hand, other enforcement actions that resulted in

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171. *See* Velikonja, *supra* note 47, at 975 (noting that the SEC has faced criticism for foregoing individual enforcement in favor of pursuing entities, but has not provided the data needed to evaluate these critiques).

172. Data about the balance between individuals and entities is available from NERA for the first two years of our study period: individuals were the targets in 71% (473 of 670) of the settlements NERA reported for FY2011 and 75% (537 of 714 for FY2012). JORGE BAEZ ET AL., *supra* note 92 at 1; DR. ELAINE BUCKBERG ET AL., *supra* note 93, at 5. However, these data are from earlier years than the bulk of admissions. Moreover, as noted above, NERA includes any resolution by settlement or judgment in its counts of settlements and also includes follow-on actions, which may be predominantly against individuals. *See supra* notes 92–93; *see also* Velikonja, *supra* note 47, at 975 (pointing to "a considerable amount of evidence" that counters the critique that the SEC undertargets individuals in favor of entities) (citing Michael Klausner & Jason Hegland, *SEC Practice in Targeting and Penalizing Individual Defendants*, HARV. L. SCH. F. ON CORP. GOVERNANCE & FIN. REG. (Sept. 3, 2013), http://corpgov.law.harvard.edu/2013/09/03/sec-practice-in-targeting-and-penalizing-individual-defendants/; Urska Velikonja, *Public Compensation for Private Harm: Evidence from the SEC's Fair Fund Distributions*, 67 STAN. L. REV. 331, 376, 382 tbl.6 (2015) (showing that individuals pay fines more often than firms in cases that give rise to a fair fund distribution)).

173. *See supra* note 61 and accompanying text. Totals sum to more than the total number of entities because some targets were designated as more than one entity type.

174. Taibbi, *supra* note 29.

175. Carmen Germaine, *SEC's Thinking Still a Mystery After Merrill Lynch Megadeal*, LAW360 (June 23, 2016, 10:49 PM), https://www.law360.com/articles/810453/sec-s-thinking-still-a-mystery-after-merrill-lynch-megadeal.

176. SEC Press Release No. 2016-138, SEC: Citigroup Provided Incomplete Blue Sheet Data for 15 Years (July 12, 2016), https://www.sec.gov/news/pressrelease/2016-138.html; SEC Press Release No. 2015-214, Credit Suisse to Pay $4.25 Million and Admits to Providing Deficient "Blue Sheet" Trading Data (Sept. 28, 2015), https://www.sec.gov/news/pressrelease/2015-214.html; SEC Press Release No. 2015-145, OZ Management LP Admits Providing Inaccurate Data, Impacting Brokers' Records and "Blue Sheets" (July 14, 2015), https://www.sec.gov/news/pressrelease/2015-145.html; SEC Press Release No. 2014-17, Scottrade Agrees to Pay $2.5 Million and Admits Providing

admissions could be characterized as high-profile in one way or another. This includes actions against promotors of massive pyramid schemes targeting Asian and Latino communities (Tropikgadget/Wings Network and TelexFREE),[177] a settlement relating to a widely reported merger fight over Allergan,[178] and even what was reported as the "most sordid insider trading scandal ever."[179]

To the extent that the concern with types of matters and targets is a proxy for whether the SEC is targeting unimportant cases and unimportant targets for admissions, we can look to other measurements as well. Monetary penalties are one of the most reported measures of agency performance, second only to the number of enforcement matters brought.[180] SEC press releases and other announcements often highlight the amounts that the target has agreed to pay.[181] In this context, monetary sanctions may be treated as a measure of case significance. We look at the monetary sanctions (penalties, disgorgement, and prejudgment interest) in settlements containing admissions. Of the 96 stand-alone settlements, 44 (46%) were under $1 million total monetary sanctions. On the other hand, a Cornerstone study identified the top ten SEC settlements with public companies—measured by penalty amount—from FY2010 to FY2016.[182] Of these ten settlements, seven required admissions of some sort.[183]

Flawed "Blue Sheet" Trading Data (Jan. 29, 2014), https://www.sec.gov/news/press-release/2014-17. *See generally* DIV. OF ENF'T, SEC, SEC ENFORCEMENT MANUAL 34–35 (2017) ("Bluesheeting is the process by which the SEC requests and obtains trading data from the broker–dealer community.").

177. *See* SEC Litig. Release 23846 (May 25, 2017), SEC Obtains Final Judgment Ordering Promoter of Pyramid Scheme to Pay Over $1.8 Million, https://www.sec.gov/litigation/litreleases/2017/lr23846.htm; SEC Litig. Release 23548 (May 27, 2016), SEC Obtains Final Judgment Against Massachusetts-Based Promoter of Pyramid Scheme Targeting Latino Communities, https://www.sec.gov/litigation/litreleases/2016/lr23548.htm; *see also* SEC Litig. Release 23594 (July 8, 2016), Two Defendants Settle Charges That They Participated in Pyramid Scheme Targeting Asian-American Community, https://www.sec.gov/litigation/litreleases/2016/lr23594.htm.

178. SEC Press Release No. 2017-16, Allergan Paying $15 Million Penalty for Disclosure Failures During Merger Talks (Jan. 17, 2017), https://www.sec.gov/news/pressrelease/2017-16.html.

179. John Carney, *The Most Sordid Insider Trading Scandal Ever*, CNBC (Feb. 11, 2011, 10:20 AM), https://www.cnbc.com/id/41530918 (describing the case involving Richard Hansen because of the use of ashleymadison.com to get information to generate tips); *see also* Dennis K. Berman, *Insider Affair: An SEC Trial of the Heart*, WALL ST. J. (July 28, 2009, 11:59 PM), https://www.wsj.com/articles/SB124873671770285097.

180. *See* Velikonja, *supra* note 47, at 933, 947–49.

181. *See, e.g.*, SEC Press Release No. 2015-214, *supra* note 176; SEC Press Release No. 2015-245, SEC Announces Enforcement Results for FY 2015 (Oct. 22, 2015), https://www.sec.gov/news/pressrelease/2015-245.html (announcing the total of disgorgement and penalties that the SEC obtained).

182. CORNERSTONE RES., SEC ENFORCEMENT ACTIVITY AGAINST PUBLIC COMPANIES AND THEIR SUBSIDIARIES: FISCAL YEAR 2016 UPDATE 8 (2016), https://www.cornerstone.com/Publications/Reports/SEC-Enforcement-Activity-Against-Public-Company-Defendants-2016.

183. *Id.*

Another measure of case importance might be the degree to which the SEC publicized the settlement and the admissions it contained. The SEC highlighted the role of admissions in resolving the London Whale matter by detailing admitted facts in the press release. It also accompanied the press release with a formal statement from the SEC's co-director of enforcement that described the admissions as "a key component" in the case's core message about "transparency and accountability."[184] This approach contrasts with examples from later in our study's time period, when there were instances in which the underlying SEC settlement included an admission but the agency did not issue a press release or a litigation release at all. The lack of public announcement in these cases might be connected to the perceived importance and public salience of the underlying matter.

C. Types of Admissions

Admitting targets always made factual admissions in some form, with only one exception.[185] These factual admissions were sometimes accompanied by admissions that the target had violated the law and sometimes included admissions about the target's state of mind. In many ways, this pattern is not surprising. Enforcement targets may be hesitant or even unwilling to admit having violated the law or having acted intentionally or recklessly.[186] It may be more realistic, therefore, for the agency to successfully negotiate admissions about the basic facts than to negotiate these more extensive admissions.

In some ways, factual admissions are a relatively weak form of admission. Victims and observers often have a particular desire for transgressors to take responsibility for having acted wrongfully.[187] And, one of the agency's stated goals is to obtain admissions when there is "a special need for public accountability and acceptance of responsibility."[188] Something seems to be

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184. SEC Press Release No. 2013-187, JPMorgan Chase Agrees to Pay $200 Million and Admits Wrongdoing to Settle SEC Charges (Sept. 19, 2013), https://www.sec.gov/news/press-release/2013-187; Canellos, *supra* note 4.

185. *See supra* note 94 and accompanying text.

186. Reluctance to make these more robust admissions often results from concerns about collateral consequences. There are also other barriers to making such admissions of wrongdoing. *See generally* CAROL TAVRIS & ELLIOT ARONSON, MISTAKES WERE MADE (BUT NOT BY ME): WHY WE JUSTIFY FOOLISH BELIEFS, BAD DECISIONS, AND HURTFUL ACTS (2007); Jennifer K. Robbennolt & Jean Sternlight, *Behavioral Legal Ethics*, 45 ARIZ. ST. L.J. 1107 (2013).

187. *See, e.g.*, Gillian K. Hadfield, *Framing the Choice Between Cash and the Courthouse: Experiences With the 9/11 Compensation Fund*, 42 L. & SOC'Y REV. 645, 661 (2008); Gerald B. Hickson et al., *Factors that Prompted Families to File Medical Malpractice Claims Following Perinatal Injuries*, 267 J. AMER. MED. ASS'N 1359, 1361 (1992); Jennifer K. Robbennolt, *Apologies and Legal Settlement: An Empirical Examination*, 102 MICH. L. REV. 460 (2003) [hereinafter *Apologies and Legal Settlement*]; Jennifer K. Robbennolt, *Apologies and Settlement Levers*, 3 J. EMPIRICAL LEGAL STUD. 333 (2006) [hereinafter *Settlement Levers*]; Charles Vincent et al., *Why Do People Sue Doctors? A Study of Patients and Relatives Taking Legal Action*, 343 LANCET 1609, 1612 (1994).

188. Deploying the Full Enforcement Arsenal, *supra* note 6.

missing, therefore, when the target simply admits to particular underlying facts. Taking responsibility by admitting violation of the law or scienter communicates more clearly that the target understands the wrongfulness of the underlying behavior, may be an effective way of signaling accountability to the public, and may make it more likely that the target will undertake to reform the practices that led to the violations.[189] The statement in BNYM's civil settlement with the U.S. Attorney's Office that it "admits, acknowledges *and accepts responsibility* for the following conduct" is notable in this regard.[190] But it was the exception rather than the rule.

At the same time, as we have pointed out elsewhere, even settlements that lack any admissions are accompanied by detailed factual allegations in the complaint or other documents.[191] Admissions and the form they take will clearly make a difference for related legal actions. But to the extent that the audience for these announcements goes beyond the targets and lawyers themselves, it is unclear whether people differentiate between detailed allegations of facts that are not formally admitted and those that the target admits.

It is also the case that even basic factual admissions are important. The agency may, therefore, be fulfilling important goals in eliciting factual admissions. Factual admissions have practical functions, allowing the regulator or criminal authority to enforce the agreement more easily and to prevent the target from denying the conduct.[192] The factual admissions also potentially provide information that can be used in actions against others who have engaged in similar conduct.[193] Factual admissions also have a function in relation to the public accountability to which regulators point. Victims and observers often desire an explanation of what happened to cause the harm.[194] It is important, therefore, that

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189. *See* Nicole Gillespie & Graham Dietz, *Trust Repair After an Organization-Level Failure*, 34 ACAD. MGMT. REV. 127, 140 (2009) (internal citations omitted); Daryl Koehn, *When Saying "I'm Sorry" Isn't Good Enough: The Ethics of Corporate Apologies*, 23 BUS. ETHICS Q. 239, 246 (2013) (internal citations omitted); Pfarrer et al., *After the Fall: Reintegrating the Corrupt Organization*, 33 ACADEMY MGMT J. 730 (2008); *Apologies and Legal Settlement*, *supra* note 187; *Settlement Levers*, *supra* note 187; Fred Rosner et al., *Disclosure and Prevention of Medical Errors*, 160 ARCHIVES INTERNAL MED. 2089 (2000); Steven J. Scher & John M. Darley, *How Effective Are the Things People Say to Apologize? Effects of the Realization of the Apology Speech Act*, 26 J. PSYCHOLINGUISTIC RES. 127, 129–30 (1997); *see also* Buell, *supra* note 23, at 513.

190. *See* United States v. Bank of N.Y. Mellon, 11-cv 06969 (LAK), at 3 (S.D.N.Y. Mar. 19, 2015) (Stipulation and Order of Settlement and Dismissal) (emphasis added).

191. *See* Winship & Robbennolt, *supra* note 5, at 15.

192. U.S. DEP'T OF JUSTICE, U.S. ATTORNEY'S MANUAL 9-28.1500(B) (1997) https://www.justice.gov/usam/usam-9-28000-principles-federal-prosecution-business-organizations ("[T]here should be placed upon the record a sufficient factual basis for the plea to prevent later corporate assertions of innocence.").

193. Brandon L. Garrett, *Corporate Confessions*, 30 CARDOZO L. REV. 917, 923–24 (2008).

194. *E.g.*, SUSAN F. HIRSCH, IN THE MOMENT OF GREATEST CALAMITY: TERRORISM, GRIEF, AND A VICTIM'S QUEST FOR JUSTICE 11 (2006); Thomas H. Gallagher et

factual admissions contribute to establishing an agreed upon and public account of the underlying facts.

Some of the admissions made by targets were problematic in this regard. In two settlements, for example, the targets admitted only that a "Hearing Officer [had] determined" particular violations, rather than articulating the factual basis for the enforcement action.[195] And in one settlement, the target admitted having violated the law, but did not admit any underlying facts.[196]

On the other hand, in many of the settlements containing admissions, the admitted facts are recounted in great detail within the body of the settlement or in extensive appendices or annexes. To have this sort of shared or collective account of what happened—one that the target acknowledges—is valuable. Even when the target does not specifically admit to a legal violation or scienter—and even if there is not complete agreement on the meaning of the admissions[197]—establishing some underlying factual basis for the settlement can contribute to a sense that the administrative process is legitimate,[198] addressing the concerns that Judge Rakoff

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al., *Patients' and Physicians' Attitudes Regarding the Disclosure of Medical Errors*, 289 JAMA 1001, 1001 (2003); Hadfield, *supra* note 187; Hickson et al., *supra* note 187, at 1361; Roy J. Lewicki et al., *An Exploration of the Structure of Effective Apologies*, 9 NEGOT. & CONFLICT MGMT. RES. 177, 180–81 (2016); Vincent et al., *supra* note 187, at 1611–12; *see also* E. Allan Lind et al., *The Winding Road from Employee to Complainant: Situational and Psychological Determinants of Wrongful-Termination Claims*, 45 ADMIN. SCI. Q. 557 (2000). *See generally* John C. Shaw et al., *To Justify or Excuse? A Meta-Analytic Review of the Effects of Explanations*, 88 J. APPLIED PSYCHOL. 444 (2003) (reporting a meta-analysis finding that explanations influence justice perceptions).

195. SEC Release No. IA-4273, *supra* note 100; SEC Release No. IA-4274, *supra* note 100, at 3.

196. Consent of Defendant John J. Masiz, *supra* note 94, at 1.

197. In one case that admitted facts and acknowledged violation of the securities laws, the SEC characterized the target, The Port Authority of New York and New Jersey, as having "admitted wrongdoing," but the Port Authority contested the SEC's characterization and argued that it had admitted only to "negligent conduct." Daniel Geiger, *Port Authority Disputes SEC Claim That It Admitted Wrongdoing in $400,000 Settlement,* CRAIN'S N.Y. BUS. BLOGS: RED WRAP (Jan. 11, 2017, 11:32 AM), http://www.crainsnewyork.com/article/20170111/BLOGS03/170119971/port-authority-claims-it-never-admitted-wrongdoing-in-400000-settlement-over-the-diversion-of-funds-to-new-jersey-state-projects-like-the-pulaski-skyway ("The SEC claimed that by paying the fine, the Port Authority admitted wrongdoing, but the bi-state agency fired back in a letter to the SEC that it only admitted 'negligent conduct.'").

198. *See* Reinhard Bachmann et al., *Repairing Trust in Organizations and Institutions: Toward a Conceptual Framework*, 36 ORG. STUD.1123, 1125 (2015) (internal citations omitted); Buell, *supra* note 23, at 510 ("There is something troubling about a public enforcement action that ends with a conclusion of 'maybe he (they) did it, maybe he (they) didn't, but he's (they are) paying a price for it in any event.").

raised in the *Citigroup* case.[199] In addition, acknowledging problematic facts can be an important first step toward reform.[200]

CONCLUSION

Whether and when enforcement targets admit wrongdoing has been in and out of the public spotlight since the 2007–2008 financial crisis, when it seemed to be tied up in frustrations that wrongdoers—especially banks and corporations—were getting off too lightly.[201] Critics called for admissions, confession, and apology.[202] Rebukes from newspapers and judges pushed the SEC to change its approach to admissions.[203] In response, the agency announced a policy change in 2013. Roughly speaking, under the new policy, the SEC would require enforcement targets to make admissions when doing so would further public accountability.[204] It heralded the transformative impact of the agency's new policy, and highlighted the key role of admissions in transparency and accountability.[205]

Transformative is a difficult standard to meet. The results of our study suggest that there was an uptick in the number of settlements that contain admissions following the changes in SEC policy. The story becomes more complex when the types of admissions are considered. Factual admissions appeared in all but one of the settlements we identified, and these factual admissions have a role both in related legal actions and in providing a public account. These admissions, however, varied widely in their scope. Moreover, a closer look at the underlying agreements identifies some admissions of wrongdoing, knowledge, and recklessness. It is hard, however, to conclude that the new approach has been a transformation if that means large numbers of targets in big cases admitting wrongdoing. There is room, in other words, for more admissions across the board, but also for more symbolic victories in high-profile cases.

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199. *See supra* notes 14–16 and accompanying text.

200. *See generally* Bachmann, *supra* note 198; Buell, *supra* note 23, at 513; Koehn, *supra* note 189, at 258.

201. *See Examining the Settlement Practices of U.S. Financial Regulators: Hearing Before the Comm. on Fin. Servs.*, 112th Cong. 1–2 (2012), http://financialservices.house.gov/uploadedfiles/112-128.pdf.

202. *E.g.*, Marc S. Raspanti et al., *The SEC's New Admissions Policy Means Sometimes Having to Say You're Sorry*, CHAMPION, Sept.–Oct. 25, at 16; Andrew Tangel & Jim Puzzanghera, *SEC's Mary Jo White Wants Companies to Fess Up*, L.A. TIMES, (Jan. 1, 2014), http://articles.latimes.com/2014/jan/01/business/la-fi-sec-white-20140102.

203. Winship & Robbennolt, *supra* note 5, at 24–25.

204. Deploying the Full Enforcement Arsenal, *supra* note 6.

205. *Id.*; Canellos, *supra* note 4.

APPENDIX: SEC SETTLEMENTS OBTAINING ADMISSIONS (FY2010 TO FY2017)

Target	ID #	Public Release Date	Target Type	Factual Admission	Legal Admission	Monetary Sanction
Julie M. Jarvis[a]	Case No. 2:09CV269	FY2010	Individual	Yes	Yes	—
Crossroads Financial Planning, Inc.[a]	Case No. 2:09CV269	FY2010	Entity	Yes	Yes	—
John Simpson[a]	Case No. 2:09CV269 Litigation Release No. 21755	FY2011	Individual	Yes	No	$70,000
Kenneth T. Robinson[b]	Case No. 2:11-cv-01936-KSH-PS Press Release No. 2012-77	FY2012	Individual	Yes	No	$845,235
Garrett D. Bauer[b]	Case No. 2:11-cv-01936-KSH-PS Press Release No. 2012-77	FY2012	Individual	Yes	No	$31,671,931
Matthew H. Kluger[b]	Case No. 2:11-cv-01936-KSH-PS Press Release No. 2012-77	FY2012	Individual	Yes	No	$516,510
Richard A. Hansen	Case 2:10-cv-05050-JHS Litigation Release No. 22112	FY2012	Individual	Yes	N/A	$63,038
Goldman Sachs & Co.	Release No. 34-66791 File No. 3-14845 Press Release 2012-61	FY2012	Entity	Yes	No	$22,000,000

Target	ID #	Public Release Date	Target Type	Factual Admission	Legal Admission	Monetary Sanction
Kurt S. Hovan	Case 3:11-cv-04795-RS Litigation Release No. 22605	FY2013	Individual	Yes	No	$140,000
Richard Bruce Moore	Case 1:13-cv-02514-HB Litigation Release No. 22674	FY2013	Individual	Yes	Yes	$341,491
Philip A. Falcone; Harbinger Capital Partners LLC; HCP Offshore Manager, LLC; HCP Special Situations GP[c]	Case 1:12-cv-05027-PAC Case:1:12-cv-05028-PAC Press Release No. 2013-159 Litigation Release No. 22831A	FY2013	Individual/ Entity	Yes	No	$17,520,714
JPMorgan Chase	Release No. 34-70458, Accounting and Auditing Enforcement-3490 File No. 3-15507 Press Release No. 2013-187	FY2013	Entity	Yes	No	$200,000,000
Marek Leszczynski[d]	Case 12 Civ. 7488 (JFK) Litigation Release No. 22912	FY2014	Individual	Yes	No	$1,500,000
Benjamin Chouchane[d]	Case 12 Civ. 7488 (JFK) Litigation Release No. 22912	FY2014	Individual	Yes	No	$2,449,577

Target	ID #	Public Release Date	Target Type	Factual Admission	Legal Admission	Monetary Sanction
Henry A. Condron[d]	Case 12 Civ. 7488 (JFK) Litigation Release No. 22912	FY2014	Individual	Yes	No	$207,675
Jonathan Samuel Daspin[e]	Release Nos. 34-71126, IC-30838 File No. 3-15652 Press Release No. 2013-266	FY2014	Individual	Yes	Yes	$1,111,550
Thomas Lekargeren[e]	Release Nos. 34-71127, IC-30839 File No. 3-15653 Press Release No. 2013-266	FY2014	Individual	Yes	Yes	$117,042
G-Trade Services LLC; ConvergEx Global Markets Limited; ConvergEx Execution Solutions LLC[e]	Release Nos. 34-71128, IA-3744 File No. 3-15654 Press Release No. 2013-266	FY2014	Entity	Yes	Yes	$107,424,429
Scottrade, Inc.	Release No. 34-71435 File No. 3-15702 Press Release No. 2014-17	FY2014	Entity	Yes	Yes	$2,500,000
Credit Suisse Group AG	Release Nos. 34-71593, IA-3782 File No. 3-15763 Press Release No. 2014-39	FY2014	Entity	Yes	Yes	$196,511,014

Target	ID #	Public Release Date	Target Type	Factual Admission	Legal Admission	Monetary Sanction
Jefferies LLC	Release No. 34-71695 File No. 3-15785 Press Release No. 2014-48	FY2014	Entity	Yes	No	$8,693,319
Michael C. French	Case No. 1:10-cv-05760-SAS	FY2014	Individual	Yes	No	$794,609
Lions Gate Entertainment Corp.	Release No. 34-71717 File No. 3-15791 Press Release No. 2014-51	FY2014	Entity	Yes	Yes	$7,500,000
Steven B. Heinz; S.B. Heinz & Associates, Inc.	Civil No.: 2:13-cv-00753 Litigation Release No. 22998	FY2014	Individual/ Entity	Yes	No	$3,656,676
Peter A. Jenson[c]	Release Nos. 34-73294, Accounting and Auditing Enforcement-3589 File No. 3-16186 Press Release No. 2014-149	FY2014	Individual	Yes	Yes	$200,000
Michael A. Horowitz	Release Nos. 33-9620, 34-72729, IA-3884, IC-31195 File No. 3-15790 Press Release No. 2014-153	FY2014	Individual	Yes	Yes	$850,749

Target	ID #	Public Release Date	Target Type	Factual Admission	Legal Admission	Monetary Sanction
Bank of America Corporation	Release No. 34-72888 File No. 3-16028 Press Release No. 2014-172	FY2014	Entity	Yes	Yes	$20,000,000
Wells Fargo Advisors, LLC	Release Nos. 34-73175, IA-3928 File No. 3-16153 Press Release No. 2014-207	FY2014	Entity	Yes	No	$5,000,000
Mark A. Lefkowitz	Case 8:12-cv-01210-MSS-MAP Litigation Release No. 23206	FY2015	Individual	Yes	No	—
Wedbush Securities Inc.	Release Nos. 34-73652, IA-3971 File No. 3-15913 Press Release No. 2014-263	FY2015	Entity	Yes	Yes	$2,447,043
HSBC Private Bank (Suisse), SA	Release Nos. 34-73681, IA-3973 File No. 3-16288 Press Release No. 2014-266	FY2015	Entity	Yes	Yes	$12,538,736
Sean T. Stokke[f]	Case No. 2:13-cv-02275-JLR Litigation Release No. 23261	FY2015	Individual	Yes	No	$413,256[1]
Brian D. Jorgenson[f]	Case No. 2:13-cv-02275-JLR Litigation Release No. 23261	FY2015	Individual	Yes	No	$413,256[1]

Target	ID #	Public Release Date	Target Type	Factual Admission	Legal Admission	Monetary Sanction
F-Squared Investments, Inc.	Release Nos. IA-3988, IC-31393 File No. 3-16325 Press Release No. 2014-289	FY2015	Entity	Yes	No	$35,000,000
Rayla Melchor Santos[g]	Case 1:13-cv-05584-RRM-RLM Litigation Release No. 23306	FY2015	Individual	Yes	Yes	—
Chih Hsuan "Kiki" Lin[g]	Case 1:13-cv-05584-RRM-RLM Litigation Release No. 23306	FY2015	Individual	Yes	Yes	$3,640,348
Katsuichi Fusamae	Case 1:15-cv-03142 Press Release 2016-65 Litigation Release 23237	FY2015	Individual	Yes	Yes	—
Standard & Poor's Ratings Services	Release Nos. 33-9705, 34-74104 File No. 3-16348 Press Release No. 2015-10	FY2015	Entity	Yes	No	$42,000,000
Oppenheimer & Co. Inc.	Release Nos. 33-9711, 34-74141, Accounting and Auditing Enforcement-3621 File No. 3-16361 Press Release No. 2015-14	FY2015	Entity	Yes	Yes	$10,000,000

Target	ID #	Public Release Date	Target Type	Factual Admission	Legal Admission	Monetary Sanction
BDO China Dahua CPA Co., Ltd.; Deloitte Touche Tohmatsu Certified Public Accountants Ltd.; Ernst & Young Hua Ming LLP; KPMG Huazhen (Special General Partnership); PricewaterhouseCoopers Zhong Tian CPAs Limited	Release Nos. 34-74217, Accounting and Auditing Enforcement-3627 File Nos. 3-14872, 3-15116 Press Release No. 2015-25	FY2015	Entity	Yes	No	$2,000,000
Craig S. Lax[e]	Case 2:15-cv-01079-WHW-CLW Press Release No. 2015-27 Litigation Release No. 23194	FY2015	Individual	Yes	Yes	$783,297
Sage Advisory Group LLC; Benjamin Lee Grant	Case No. 1:11-cv-11538-GAO Litigation Release No. 23273	FY2015	Individual/ Entity	Yes	Yes	$150,000
Sean C. Cooper	Release Nos. IA-4063, IC-31554 File No. 3-16130	FY2015	Individual	Yes	Yes	$402,326

Target	ID #	Public Release Date	Target Type	Factual Admission	Legal Admission	Monetary Sanction
Undiscovered Equities, Inc.; Kevin T. McKnight	Release No. 33-9757 File No. 3-16000	FY2015	Individual/ Entity	Yes	Yes	$22,500
Merrill Lynch, Pierce, Fenner & Smith Incorporated; Merrill Lynch Professional Clearing Corp.	Release No. 34-75083 File No. 3-16567 Press Release No. 2015-105	FY2015	Entity	Yes	Yes	$10,900,810
Aquaphex Total Water Solutions; Gregory G. Jones*	Civil Action No. 4:15-cv-438 Litigation Release No. 23282	FY2015*	Individual/ Entity	Yes	Yes	$1,776,534
Julio G. Cruz[h]	Case No. 1:15-cv-10543-ADB Litigation Release No. 23351	FY2015	Individual	Yes	Yes	$3,232
OZ Management, LP	Release No. 34-75445 File No. 3-16686 Press Release No. 2015-145	FY2015	Entity	Yes	No	$4,493,427
ITG Inc.; Alter Net Securities, Inc.	Release Nos. 33-9887, 34-75672 File No. 3-16742 Press Release No. 2015-164	FY2015	Entity	Yes	No	$20,337,836

Target	ID #	Public Release Date	Target Type	Factual Admission	Legal Admission	Monetary Sanction
BDO USA, LLP	Release Nos. 34-75862, Accounting and Auditing Enforcement-3692 File No. 3-16800 Press Release No. 2015-184	FY2015	Entity	Yes	No	$2,112,000
Credit Suisse Securities (USA) LLC	Release No. 34-75992 File No. 3-16835 Press Release No. 2015-214	FY2015	Entity	Yes	Yes	$4,250,000
Steven C. Watson	Case No.1:15-cv-13868-ADB Litigation Release No. 23408	FY2015	Individual	Yes	Yes	—
Sands Brothers Asset Management, LLC; Steven Sands; Martin Sands[i]	Release No. IA-4273 File No. 3-16223 Press Release 2015-262	FY2016	Individual/ Entity	Yes	Yes	$1,000,000
Christopher Kelly[i]	Release No. IA-4274 File No. 3-16223 Press Release 2015-262	FY2016	Individual	Yes	Yes	$60,000
Marwood Group Research, LLC	Release Nos. 34-76512, IA-4279 File No. 3-16970 Press Release No. 2015-266	FY2016	Entity	Yes	No	$375,000

Target	ID #	Public Release Date	Target Type	Factual Admission	Legal Admission	Monetary Sanction
Standard Bank PLC	Release No. 33-9981 File No. 3-16973 Press Release No. 2015-268	FY2016	Entity	Yes	No	$12,600,000
Grant Thornton, LLP	Release Nos. 34-76536, Accounting and Auditing Enforcement-3718 File No. 3-16976 Press Release No. 2015-272	FY2016	Entity	Yes	Yes	$4,536,570
JPMorgan Chase Bank, N.A.; J.P. Morgan Securities LLC	Release Nos. 33-9992, 34-76694, IA-4295 File No. 3-17008 Press Release No. 2015-283	FY2016	Entity	Yes	No	$266,815,000
Sidney M. Field	Case No. 8:09-cv-00818-DOC-RNB	FY2016	Individual	Yes	Yes	$15,962,049
Barclays Capital Inc.	Release Nos. 33-10010, 34-77001 File No. 3-17077 Press Release No. 2016-16	FY2016	Entity	Yes	Yes	$35,000,000
Steve Pappas	Release No. 34-77525 File No. 3-17194	FY2016	Individual	Yes	Yes	$50,000

Target	ID #	Public Release Date	Target Type	Factual Admission	Legal Admission	Monetary Sanction
Reid S. Johnson	Release Nos. 34-77625, IA-4368, IC-32073 File No. 3-16730	FY2016	Individual	Yes	Yes	$45,000
Cheongwha "Heywood" Chang[g]	Case No. 1:13-cv-05584-RRM-RLM Litigation Release No. 23594	FY2016	Individual	Yes	No	$2,101,950[2]
Toni Tong Chen[g]	Case No. 1:13-cv-05584-RRM-RLM Litigation Release No. 23594	FY2016	Individual	Yes	No	$2,101,950[2]
Simonia de Cassia Silva[h]	Case No. 1:15-cv-10543-ADB Litigation Release No. 23548	FY2016	Individual	Yes	N/A	$144,870
Ethiopian Electric Power	Release No. 33-10093 File No. 3-17281 Press Release No. 2016-113	FY2016	Entity	Yes	Yes	$6,448,855
The Bank of New York Mellon	Release No. IC-32151 File No. 3-17286	FY2016	Entity	Yes	No	$163,022,207
Paul Mata	Case No. 5:15-cv-01792-VAP-KK	FY2016	Individual	Yes	Yes	$15,748,831

Target	ID #	Public Release Date	Target Type	Factual Admission	Legal Admission	Monetary Sanction
Steven J. Muehler; Alternative Securities Markets Group Corp.; Blue Coast Securities Corp. dba GlobalCrowdTV, Inc. and Blue Coast Banc	Release No. 34-78118 File No. 3-16836	FY2016	Individual/ Entity	Yes	Yes	$414,582
Merrill Lynch, Pierce, Fenner & Smith Incorporated; Merrill Lynch Professional Clearing Corp.	Release No. 34-78141 File No. 3-17312	FY2016	Entity	Yes	No	$415,000,000
Citigroup Global Markets, Inc.	Release No. 34-78291 File No. 3-17338 Press Release No. 2016-138	FY2016	Entity	Yes	No	$7,000,000
Vinicius Romulo Aguiar[h]	Case No. 1:15-cv-10543-ADB Litigation Release No. 23647	FY2016	Individual	Yes	Yes	$71,894[3]
Thais Utino Aguiar[h]	Case No. 1:15-cv-10543-ADB Litigation Release No. 23647	FY2016	Individual	Yes	Yes	$71,894[3]

Target	ID #	Public Release Date	Target Type	Factual Admission	Legal Admission	Monetary Sanction
Geovani Nascimento Bento[h]	Case No. 1:15-cv-10543-ADB Litigation Release No. 23647	FY2016	Individual	Yes	Yes	$150,816[4]
Priscilla Bento[h]	Case No. 1:15-cv-10543-ADB Litigation Release No. 23647	FY2016	Individual	Yes	Yes	$150,816[4]
Dennis Arthur Somaio[h]	Case No. 1:15-cv-10543-ADB Litigation Release No. 23647	FY2016	Individual	Yes	Yes	$98,671[5]
Elaine Amaral Somaio[h]	Case No. 1:15-cv-10543-ADB Litigation Release No. 23647	FY2016	Individual	Yes	Yes	$98,671[5]
State Street Bank & Trust Co.	Release No. IC-32390 File No. 3-17720 Press Release No. 2016-152	FY2016	Entity	Yes	No	$167,369,417
Credit Suisse AG	Release Nos. 33-10229, 34-79044 File No. 3-17617 Press Release No. 2016-210	FY2017	Entity	Yes	Yes	$90,000,000
Bank Leumi le-Israel B.M.; Leumi Private Bank; Bank Leumi (Luxembourg) S.A.	Release Nos. 34-79113, IA-4555 File No. 3-17631 Press Release No. 2016-220	FY2017	Entity	Yes	Yes	$1,592,128

Target	ID #	Public Release Date	Target Type	Factual Admission	Legal Admission	Monetary Sanction
Harrison Schumacher; Quantum Energy LLC; Quaneco LLC	Case No. 2:15-cv-06388-DDP-RAO Litigation Release No. 23758	FY2017	Individual/ Entity	Yes	Yes	$13,507,016
Herman Ronnie Young, Jr. d/b/a Race Cycler	Case No. 1:17-cv-00243-JMC Litigation Release No. 23729	FY2017	Individual	Yes	Yes	$342,510
Stifel, Nicolaus & Co., Inc.; David W. Noack	Case No. 11-CV-755 Litigation Release No. 23700	FY2017	Individual/ Entity	Yes	Yes	$24,600,000
Deutsche Bank Securities, Inc.	Release Nos. 33-10272, 34-79576, IA-4590 File No. 3-17730 Press Release No. 2016-264	FY2017	Entity	Yes	Yes	$18,500,000
Kenneth Manzo	Case No. 17 Civ. 403 (SJF) (GRB) Press Release No. 2017-33	FY2017	Individual	Yes	Yes	$95,766
John W. Rafal	Release Nos. 34-79755; IA-4601, IC-32416 File No. 3-17760 Press Release No. 2017-3	FY2017	Individual	Yes	Yes	$577,298
The Port Authority of New York and New Jersey	Release No. 33-10278 File No. 3-17763 Press Release No. 2017-4	FY2017	Entity	Yes	Yes	$400,000

Target	ID #	Public Release Date	Target Type	Factual Admission	Legal Admission	Monetary Sanction
Allergan, Inc.	Release No. 34-79814 File No. 3-17790 Press Release No. 2017-16	FY2017	Entity	Yes	Yes	$15,000,000
Orthofix International N.V.	Release Nos. 33-10281, 34-79815, Accounting and Auditing Enforcement-3845 File No. 3-17791 Press Release No. 2017-18	FY2017	Entity	Yes	Yes	$8,250,000
Orthofix International N.V.	Release Nos. 34-79828, Accounting and Auditing Enforcement-3851 File No. 3-17800	FY2017	Entity	Yes	Yes	$6,119,375
Morgan Stanley Smith Barney, LLC	Release No. IA-4649 File No. 3-17845 Press Release No. 2017-46	FY2017	Entity	Yes	Yes	$8,000,000
Sanderley Rodrigues de Vasconcelos[j]	Case No. 1:14-civ-11858-NMG Litigation Release No. 23846	FY2017	Individual	Yes	Yes	$1,831,808
Joseph H. Craft[j]	Case No. 1:14-civ-11858-NMG Litigation Release No. 23933	FY2017	Individual	Yes	Yes	$348,708

Target	ID #	Public Release Date	Target Type	Factual Admission	Legal Admission	Monetary Sanction
Steven Labriola[j]	Case No. 1:14-civ-11858-NMG Litigation Release No. 23880	FY2017	Individual	Yes	Yes	$98,963
John J. Masiz	Case No. 1:12-cv-12324-MLW Litigation Release No. 23917	FY2017	Individual	No	Yes	$120,000
TPG Advisors LLC d/b/a The Phillips Group Advisors; Larry M. Phillips	Release Nos. 34-79568, IA-4588, IC-32394 File No. 3-17217	FY2017	Individual/ Entity	Yes	Yes	$328,438

NOTES: Settlements with the SEC that were announced during Fiscal Years 2010 through 2017 and that contained admissions. Fiscal Year was determined based on the date of the SEC's public announcement of the settlement. Settlements with the same alphanumeric superscripts are related to the same underlying matter. Monetary sanction includes any civil penalties, disgorgement, and prejudgment interest. Monetary sanctions with the same numerical superscripts were imposed jointly on targets in separate settlements.

* The settlement in this case was agreed to by the SEC and the target, but ultimately rejected by the court.