

# The ACR Brief

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## SEC Enforcement Beyond the Numbers

While it is tempting to count SEC actions to measure enforcement, Stephanie Avakian, the Co-Director of the SEC's Division of Enforcement, warned last week that "[a]ny assessment that suggests our effectiveness should be measured solely based on the number of cases we bring over any particular period of time is misguided." In remarks delivered at the University of Texas, she emphasized that the focus should be on why the SEC is bringing certain actions and how those actions benefit investors.

The number of recent SEC cases has been affected by the ongoing government hiring freeze as well as the 2017 *Kokesh* decision which [limited the SEC's ability to pursue disgorgement](#). Indeed, a decrease in enforcement actions was foreshadowed in public comments by Avakian's Co-Director Steven Peikin last year when [he discussed the agency's reduced staff](#). Kyle DeYoung, a partner at Cadwalader, told me at the time that fewer actions were inevitable. "While the SEC will continue to have an active enforcement program, it is facing serious budget constraints and certain metrics – like the total number of enforcement actions – will almost certainly go down."

In the FCPA space, however, this year has seen some action: the SEC has brought nine corporate enforcement actions in industries as varied as [mining](#), [financial services](#), and [food and beverages](#). The [recent Sanofi case](#) is a reminder that the pharma industry in particular is still in the SEC's crosshairs despite a trail of previous enforcement actions.

Even in the absence of bribery charges, the SEC has not been afraid to use the accounting provisions to initiate actions, such as in the [Elbit case](#), emphasizing that those provisions are at the heart of the FCPA. Indeed, it was the books and records and accounting provisions that Judge Stanley Sporkin first [pushed for in the 1970s](#) when he was the head of the Enforcement Division.

An enforcement action, of course, is not the inevitable result of an investigation. This year, the SEC has declined to pursue a few cases publicly, such as Hertz and Sinovac Biotech, highlighting, like the DOJ, the benefits of [self-reporting](#) and [cooperation](#).

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