SEC Focuses on Holding Gatekeepers Accountable

Mary Jo White became Chair of the Securities and Exchange Commission (SEC) in April 2013. Chair White and her staff emphasize the agency's focus on holding gatekeepers accountable for the important roles they play in financial markets and the tools at their disposal to do so. Chair White announced, "Gatekeepers that fail to comply with professional standards put investors at risk due to the possibility of undetected fraud or other financial misstatements."[1]

Further stressing the agency's position, in September 2013 during her speech to the Council of Institutional Investors in Chicago Chair White expressed, "Individuals tempted to commit wrongdoing must understand that they risk it all if they do not play by the rules. When people fear for their own reputations, careers or pocketbooks, they tend to stay in line."[2]

The focus shifts to the individuals serving in the role of gatekeeper rather than the companies they represent. The message was reiterated in early December 2015, in Chair White's keynote address at the 2015 AICPA National Conference. Gatekeepers as her audience, she stated the responsibilities financial statement preparers, auditors, audit committees, standard setters and regulators have when she said, "If there is even one weak link in the financial reporting chain, investors and the integrity of our markets suffer." In the same keynote address, Chair White cited recent enforcement actions against 57 individuals and 19 firms including national audit firms and an audit committee chair. You can find the full text of her speech here.

The Department of Justice (DOJ) supports the SEC's focus on individual wrongdoing. Sally Quillian Yates, Deputy Attorney General in her recently issued Yates Memo, outlined "six key steps" to strengthen federal prosecutors' and investigators' pursuit of individual corporate wrongdoing.[3]

Six Key Steps Summarized:

1. To be eligible for any cooperation credit, corporations must provide to the DOJ all relevant facts about the individuals involved in corporate misconduct.
2. Both criminal and civil corporate investigations should focus on individuals from the inception of the investigation.
3. Criminal and civil attorneys handling corporate investigations should be in routine communication with one another.
4. Absent extraordinary circumstances, no corporate resolution will provide protection from criminal or civil liability for any individuals.
5. Corporate cases should not be resolved without a clear plan to resolve related individual cases before the statute of limitations expires, and declinations as to individuals in such cases must be memorialized.
6. Civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual's ability to pay.

Chair White stated, in what has become known as the "Broken Window Policy", that it is important to pursue even the smallest infractions. With the DOJ and SEC aligned and no infraction too small, it is likely we will continue to see individuals and gatekeepers in the crosshairs of the DOJ and SEC, as well as an increase in enforcement trends against them.

[1] SEC Accomplishments, April 2013 – 2015, Protecting Investors and Our Markets Through Rigorous Oversight, Vigorous Enforcement, and Transformative Rulemaking. http://www.sec.gov/spotlight/sec-accomplishments-2015.shtml

[2] SEC Chief Says Enforcement Will Target Individuals' Misconduct First, Los Angeles Times, September 26, 2013, Stuart Pfiefer http://articles.latimes.com/2013/sep/26/business/la-fi-mo-sec-must-target-individuals-as-well-as-companies-white-says-20130926

[3] Sally Quillian Yates, Individual Accountability for Corporate Wrongdoing, Department of Justice http://www.justice.gov/dag/file/769036/download