

IS THE SEC POISED TO BRING MORE ADMINISTRATIVE ENFORCEMENT ACTIONS IN WAKE OF INSIDER TRADING TRIAL COURT LOSSES?

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In recent remarks, SEC Enforcement Director Andrew Ceresney said the SEC may pursue more insider trading actions administratively. The statements came in the wake of several recent trial losses by the FCC in insider trading cases. Insider trading administrative proceedings have been rare, but the 2010 Dodd-Frank Act enhanced the SEC's administrative enforcement powers by allowing the SEC to obtain monetary penalties against individuals in administrative proceedings, making administrative actions against insider trading more attractive. While Ceresney stressed that the trend towards more administrative enforcement proceedings was not in reaction to the SEC's recent insider trading trial court losses, it signals a shift in venue that potentially could give the SEC procedural advantages, including expedited proceedings, discovery limitations and no option for a jury. Ceresney said the decision on whether to pursue an action in court or administratively would be made on a case-by-case basis and include an analysis of whether the SEC believes it could obtain treble damages, which are not available administratively. Taken in connection with recent statements that the SEC is exploring new theories of liability, including under previously-obscure Section 20(b) of the Securities Exchange Act of 1934, we can expect the SEC to continue to seek new avenues to prosecute insider trading actions.

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