INSIGHTS

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SECURITIES ENFORCEMENT

SEC Enforcement in the Latter Half of 2015

The second half of 2016 saw a number of significant SEC enforcement actions involving public company reporting and auditors. Key trends also continued.

By Marc J. Fagel

From at least a numerical standpoint, 2015 was a particularly productive year for the Securities and Exchange Commission's Division of Enforcement. For the government fiscal year ended September 30, the SEC filed 807 enforcement actions, a 7 percent rise over fiscal 2014.[1] Perhaps acknowledging past criticism of the use of such statistics[2]—which include more routine matters such as delinquent filings by public companies and follow-on sanctions proceedings against previously-charged securities professionals—the SEC for the first time this year broke down the numbers further, reporting 507 "independent actions for violations of the federal securities laws." Compared to 413 independent actions in 2014, this represents a sizable leap in new enforcement actions over the past year. Indeed, by this measure, the number of new actions in fiscal 2015 was 50 percent higher than the 341 filed in 2013.

As has been the case since Chair Mary Jo White and Division of Enforcement Division Director Andrew Ceresney took the reins in 2013, the Division predominantly touted the growth in activity involving public company reporting. However, while the growing number of such cases was notable, most remain on the smaller side. More significant were the number of cases against auditors, including not just individual accountants but large audit firms. Since the collapse of Arthur Andersen, the SEC rarely has brought cases against large audit firms (aside from cases alleging auditor independence violations), but the past few months saw several significant cases, made even more dramatic by settlement terms requiring some firms to admit wrongdoing.

Before addressing significant enforcement actions involving public company reporting and auditors from the past six months, we take note of several overarching themes drawn from the SEC's enforcement program—not surprisingly, most of which have been dominant issues for the past few years.

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Key Trends

Administrative Proceedings Remain in the Spotlight

While the SEC's increased use of in-house administrative proceedings in lieu of federal courts for litigated enforcement actions has been one of the key SEC trends of recent years, the latter half of 2015 saw some significant developments which could turn back the tide, or at least begin the process of addressing some of the bar's concerns.

Litigants have continued to push back on administrative proceedings, and while most judicial challenges have proven unsuccessful, several recent court decisions have required the Commission to halt its administrative proceedings on the basis that the manner in which the agency's administrative law judges (ALJs) are appointed likely is unconstitutional under the Appointments Clause of the U.S. Constitution.

Judge May in the Northern District of Georgia held in June that SEC ALJs are inferior officers whose appointments likely contravene the Appointments Clause because they are not appointed by the President, a department head, or the Judiciary.[3] Judge May's decision prompted Judge Berman in the Southern District of New York to request additional briefing from the government on this issue in *Duka v. SEC*, and in August, unpersuaded by the government's arguments, Judge Berman also issued an order enjoining the administrative proceeding in that case.[4] In addition, Judge May issued another preliminary injunction halting the pending proceeding in *Gray Financial Group v. SEC*.[5]

The SEC has given no indication that it will back down on this issue. Instead, the SEC recently disagreed with the findings in *Hill*, *Gray*, and *Duka* and, in a pair of challenges to ALJ initial decisions, held that SEC ALJs are not inferior officers and therefore are not subject to Appointments Clause requirements.[6] The Commission also appealed the decisions in Georgia and New York to the Eleventh and Second Circuits, respectively. The *Gray* and *Hill* cases, which have been consolidated in the Eleventh Circuit, are scheduled for oral argument in February 2016, while briefs are still being filed in the *Duka* case in the Second Circuit.

Nonetheless, the Commission has fended off most of the constitutional challenges by arguing that federal district courts lack jurisdiction to review such challenges pending the conclusion of the Commission's administrative proceeding. Most recently, the Commission prevailed on such arguments in the Seventh Circuit and the D.C. Circuit, which both issued opinions finding that the Commission has exclusive jurisdiction over constitutional claims throughout the entirety of the administrative process.[7]

Given the multiple pending challenges to the legality of its administrative proceedings, the SEC appears to be pulling back somewhat. An October 2015 Wall Street Journal report found that the SEC has reversed course in recent months, filing the vast majority of litigated cases in federal court.[8] According to the report, the SEC filed 11 percent of its litigated actions instituted between July and September 2015 administratively, compared to 40 percent during the same period in 2014.

The controversy surrounding these administrative proceedings did generate one positive outcome. In recognition of the growing concerns regarding the fairness of the SEC's administrative process, the SEC announced in September that it had voted to propose amendments to rules governing its administrative process.[9] The proposed amendments include the following:

- For complex cases, an administrative hearing could be scheduled up to eight months following the service of the order instituting proceedings, doubling the current deadline of four months. The amended rule also would

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run the deadline for the issuance of an initial decision from the time that the post-hearing briefing or briefing of dispositive motions has been completed, rather than from the date of service of the order instituting proceedings.

- The proposed changes would permit three depositions (for single-respondent cases) or five depositions (for multiple-respondent cases) per side, regardless of whether the witness provided testimony in the course of the staff's investigation. In contrast, the current rules allow depositions only where a witness is unable to testify at the administrative hearing.
- The Commission proposes to tighten up admissibility rules, which currently exclude all evidence that is irrelevant, immaterial, or unduly repetitive, to also exclude evidence that is "unreliable." However, the Commission would still allow hearsay evidence if it is relevant, material, and bears satisfactory indicia of reliability so that its use is fair.
- The Commission proposes changes to its procedures for appeal, including narrowing the information required in a petition for review.
- The proposed changes include an amendment aimed at limiting the amount of time the Commission is permitted to issue a decision following an appeal of an ALJ's initial decision. Specifically, a decision by the Commission ordinarily will be issued within eight months from the completion of briefing on the petition for review, application for review, or remand order. If the Commission determines that the complexity of the issues presented in an appeal warrant additional time, the decision of the Commission may be issued within ten months of the completion of briefing. However, the amendments would contain a provision permitting the Commission to extend this time period as it deems appropriate in its discretion.
- In a separate proposed amendment, the Commission has indicated its intent to amend Rule 151(a) to require electronic filings rather than filings in paper or by facsimile.

While representing a recognition of some of the concerns raised by litigants over the fairness of administrative proceedings, the proposed amendments still do not afford respondents the same rights and protections as those provided to defendants in federal court actions. Commenters from the bar have encouraged the Commission, among other things, to expand the rights and protections afforded to respondents in relation to the timing of proceedings and the scope of discovery.[10]

Other Litigation Developments

The latter half of 2015 also saw courts chide or step in to curb other aggressive enforcement practices by the SEC—intervention that, in one instance, even drew praise from SEC Commissioners.

In July, the U.S. Court of Appeals for the D.C. Circuit ruled the SEC could not retroactively apply certain remedial provisions of the Dodd-Frank Act to conduct that preceded Dodd-Frank's passage in 2010.[11] The court ruled that the SEC could not bar the defendants from associating with municipal advisors or certain statistical rating organizations because these remedial provisions of the law did not apply to conduct that occurred before the Act's passage. Following this ruling, SEC Commissioners Michael S. Piwowar and Daniel M. Gallagher (the latter of whom has since left the agency), who routinely had dissented from SEC actions authorizing such relief, issued a statement saying that they were "pleased with the Court's holding, which vindicates our vocal opposition to ... retroactive collateral bars since we joined the Commission."[12] These Commissioners called on the SEC to "take appropriate action to address all impermissibly retroactive collateral bars that have been misapplied since the enactment of Dodd-Frank."

Then, in November, a judge in the Southern District of New York upbraided the SEC for the way the agency obtained a freeze order on the assets of a Cayman Islands bank that subsequently collapsed.[13] U.S. District Judge William H.

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Pauley III issued a freeze order in February for $88 million held by Cayman Islands-based Caledonian Bank Ltd. and Panama-based brokerage Verdmont Capital SA, relying on the SEC's representation that the entities sold penny stocks of four companies that amounted to a sham "pump-and-dump" fraud scheme. Caledonian, which maintained that it merely acted as a broker for the transactions at issue, said the asset freeze triggered a run on the bank and sought bankruptcy protection within days of the freeze order. The SEC subsequently revised its allegations to say that Verdmont merely acted as a broker for others. In a lengthy order, Judge Pauley wrote that the SEC's "bureaucratic siloing and missed opportunities" resulted in "significant collateral damage, including the collapse of a Cayman Islands financial institution." The case, Judge Pauley added, "offers fertile ground for agency self-examination."

Of course, the SEC also received some good news from the courts. In July, the D.C. Circuit ruled that a provision of Dodd-Frank requiring the SEC to bring a claim against a respondent within 180 days after issuing a Wells notice advising of the agency's intent to do so did not create a jurisdictional bar.[14] In this particular case, the SEC filed charges on the 187th day after issuing a Wells notice. The D.C. Circuit concluded that the 180-day rule did not act as a statute of limitations; rather, the court accepted the SEC's position that the provision was "intended to operate as an internal-timing directive, designed to compel [the] staff to complete investigations, examinations, and inspections in a timely matter."

Whistleblower Claims Rise

The SEC's post-Dodd-Frank whistleblower program has continued to grow in significance. According to the agency's annual whistleblower report, the SEC received almost 4,000 whistleblowing tips in fiscal year 2015, up 8 percent from fiscal year 2014 and 30 percent since fiscal year 2012.[15] Further, the SEC paid out the most it has to date in a single year, distributing more than $37 million to eight whistleblowers (though the lion's share of that resulted from $30 million awarded to a single individual in September 2014). Since the program's inception in 2011, the SEC has made 22 total payouts exceeding $54 million. As in past years, the single largest category of tips fell under the category "Corporate Disclosures and Financials" (followed closely by offering frauds and market manipulation claims). California far outstripped all other states as a source of tips (646, with New York generating 261 and Florida and Texas contributing 220 each).

On July 17, the SEC announced the payment of its third highest award to date, $3 million, to a company insider.[16] As with past awards, confidentiality restrictions limited the amount of information shared by the SEC, which noted only that the whistleblower "comprehensively laid out the fraudulent scheme which otherwise would have been very difficult for investigators to detect."

In November, a "former investment firm employee" received more than $325,000 for similarly providing information that allowed the staff to open an investigation that led to a successful enforcement action.[17] However, the SEC noted that the whistleblower would have been entitled to receive more, but waited until after leaving the firm to report the activity and thus the award had been reduced.

Finally, public reports suggest the possibility of another record-breaking award in the near future. In late December, a law firm announced that its client tipped off the SEC about a major case which resulted in a $267 million SEC settlement announced earlier that month (discussed below).[18] With statutory awards ranging from 10-30 percent of any sums recovered by the agency, such a payout would be quite dramatic. However, the SEC first would need to determine that the whistleblower provided it with unique and useful information that contributed to the enforcement action and is otherwise eligible to collect.

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SEC Demands More Admissions

The SEC in 2013 revisited its long-standing policy of allowing defendants to settle cases without admitting wrongdoing.[19] Although neither-admit-nor-deny settlements are still the norm, the SEC has continued to roll out a handful of settlements which include party admissions, with perhaps a few dozen such settlements to date. In a significant development, the SEC extracted admissions from two large audit firms in cases involving public company audits, further evidence of the Division of Enforcement's increasingly aggressive stance in accounting and disclosure cases.

Other settlements drawing admissions of wrongdoing in recent months have arisen in varying contexts, including investment adviser, broker-dealer and insider trading actions, with the types of defendants conceding liability ranging from individuals to small firms to some of the largest financial institutions charged by the agency. Perhaps most notably, many of these cases did not involve fraud charges. While early statements by the SEC staff suggested that admissions primarily would be sought in particularly egregious cases, many (if not most) of the recent cases involving admissions arose in the context of alleged violations of more technical or compliance-oriented securities regulations. For examples, several cases involved alleged failures of securities registrants to provide complete "blue sheet" trading data to the agency staff in connection with ongoing investigations. Other cases involved compliance procedures alleged to be insufficient to prevent insider trading.

If there is any common theme to recent settlements, it is the absence of any discernible pattern to the cases. As such, parties and their counsel remain largely in the dark as to whether an investigation is likely to lead to a demand from the Division of Enforcement for an admission as a condition of settlement.

Sweeps and "Broken Windows"

The Division of Enforcement continued to pursue its "broken windows" strategy of prosecuting either lesser non-fraud violations or serious but smaller cases with enforcement "sweeps" targeting multiple defendants. Early in her tenure, Chair Mary Jo White pledged to "pursue even the smallest infractions," typically resulting in charges against multiple companies and individuals for violations of securities law provisions that the agency historically viewed as lower priority.[20] In the latter half of 2015, three SEC sweeps alone snared about 50 defendants, with the SEC focusing its sights on both recurring violations and emerging areas of interest.

In July, the SEC charged 34 defendants with fraud, manipulative trading, touting, and registration violations in connection with alleged market manipulation schemes involving microcap stocks, or stocks issued by entities with a market capitalization of between $50 million and $300 million.[21] The action targeted both domestic and foreign entities and their principals, as well as myriad penny stock promoters. While microcap fraud has long been an area of emphasis for the Division of Enforcement, the investigations can be resource-intensive while often netting smaller operators, and the agency thus has increasingly turned to broad sweeps against larger groups of market participants.

In October, the SEC charged six firms with violations of Rule 105 of Regulation M, which prohibits a firm from participating in a public stock offering within five business days of the firm selling short those same stocks.[22] This was the third sweep for Rule 105 violations conducted by the SEC in as many years as part of its Rule 105 Initiative, a "zero tolerance" approach to Rule 105 infractions over even *de minimis* trading profits. Each of the six defendants agreed to settle the SEC's charges and pay a combined total of more than $2.5 million in disgorgement, interest, and penalties. In addition, one defendant was subject

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to a conduct-based order prohibiting it from participating in secondary offerings for a period of one year, based on the firm's previously having been ensnared in the SEC's 2013 Rule 105 sweep. In touting the effectiveness of its sweep strategy, the SEC reported that in the fiscal year following the SEC's announcement of the Rule 105 Initiative, Rule 105 infractions fell by 90 percent compared to the six years preceding the initiative.

Finally, in December, the SEC brought a number of actions against lawyers and law firms involved in the offering of EB-5 investments.[23] Under the federal government's EB-5 Immigrant Investor Program, foreign investors can seek a path to U.S. residency by investing in certain job-creating U.S. projects. According to the SEC, a number of American lawyers (in New York, New Jersey, Texas, Florida, and California) improperly acted as unregistered brokers through their roles in arranging for the investments, most significantly by receiving commissions for each new investor they brought in and by facilitating the transactions. One attorney was further charged with fraud for failing to disclose commissions he was receiving. While several of the lawyers are litigating, most agreed to settle, paying disgorgement and penalties.

Public Company Reporting and Accounting Cases

Financial Fraud Cases

The majority of recent SEC financial reporting cases involved improper revenue recognition practices. For example, in September the SEC sued four former officers (including the CEO and CFO) of a mobile fueling company for overstating revenues by overcharging customers for undelivered fuel and unauthorized fuel surcharges.[24] The SEC alleged that, by recognizing revenue from this overbilling, the company was able to appear profitable when it was actually operating at a net loss. The case remains ongoing.

The SEC also brought a series of revenue recognition cases against now-defunct Internet-based public companies. In September, the SEC announced proceedings against two executives of an online video content services company, alleging that they recognized revenues for undelivered sales and used off-the-book company funds to pay for customer receivables in order to boost the company's reported revenue.[25] During the same month, the SEC filed a complaint against two former executives of a now-bankrupt Internet services company for fabricating up to 99 percent of its revenues by executing sham transactions with fake customers.[26] Both cases remain ongoing.

The SEC brought several fraud actions for improper corporate disclosures.

In addition to traditional revenue recognition cases, the SEC brought several fraud actions for improper corporate disclosures. One such case involved concealment of executive perks and compensation, where the SEC alleged that a company misled investors by failing to report nearly a half-million dollars' worth of executive perks that included the use of private jets, new cars, and sports memberships.[27] Without admitting or denying the allegations, the company and its executives settled the case, with the company agreeing to pay a $700,000 penalty and the executives agreeing to pay between $30,000 and $150,000 for their roles in the concealment. Perhaps most notably, the SEC charged the company's former audit committee chair for, in the words of the SEC, "substitut[ing] his wrong interpretation of SEC rules for the views of experts the company had hired."

The SEC also filed actions for companies' failure to properly record and disclose corporate assets. In August, the SEC brought litigated

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fraud charges against Miller Energy Resources and its former CEO for overstating the value of the company's oil and gas property acquisitions.[28] Rather than report the fair market value of the properties under GAAP, the SEC alleged that the company improperly based its valuations on a reserve report that that did not reflect the fair value of the assets. The SEC claimed that, in doing so, the company inflated the value of the properties by more than $400 million. The SEC also charged the company's outside audit firm and the audit partner on the engagement with fraud. An administrative proceeding in the matter is pending.

In one of several cases that appear to be stragglers from the agency's work in the wake of the mortgage meltdown, the SEC settled charges against a real estate development company and several former executives and accounting directors for failing to properly account for declining real estate values during the financial crisis.[29] The SEC alleged that the company failed to take necessary write-downs on properties it held. The company agreed to pay a $2.75 million civil penalty, and the individual defendants agreed to civil penalties and disgorgement. Similarly, the SEC charged bank holding company Trinity Capital Corp. and five current and former executives with misrepresenting the value of the bank's loan portfolio to investors by failing to downgrade and impair delinquent loans that would not be repaid in full.[30] Without admitting or denying the allegations, Trinity Capital reached a settlement with the staff which included a $1.5 million penalty. The staff noted as a factor in the settlement Trinity Capital's continued cooperation in ongoing investigative efforts. Three former executives also settled similar charges with the SEC, and the matter is ongoing with respect to the other defendants.

In September, the SEC brought a settled action against online consumer finance company Bankrate for manipulating the company's revenues in order to meet analyst expectations.[31] The SEC claimed that after executives received preliminary reports showing that the company would not meet market expectations, they used fraudulent accounting practices to inflate revenues and avoid booking expenses, thereby overstating net income. Without making any admissions, Bankrate and one former executive agreed to $15 million and $180,000 settlements, respectively. The SEC's proceedings against the company's CFO and another former executive remain ongoing.

The SEC continued the trend of pursuing a number of stand-alone internal controls actions.

Finally, the SEC secured large civil penalties against China-based advertising company Focus Media Holdings and its former CEO for accounting fraud in connection with an alleged management buy-out scheme and subsequent acquisition.[32] The SEC alleged that the company dramatically understated the company's valuation in connection with a management buy-out. In March 2010, Focus Media reported a management buy-out of its online advertising unit based on a total company valuation of $35 million. Less than five months later, the company announced that a private equity firm had agreed to acquire a controlling interest in the company, for a purchase price based on a total company valuation of $200 million. Without admitting or denying the allegations, Focus Media agreed to pay a $35 million civil penalty. Its former CEO also agreed to a settlement including $20 million in civil penalties and disgorgement.

Internal Controls

While many of the matters discussed above included an internal controls violation component, the SEC also continued the trend of pursuing a number of stand-alone internal controls actions which did not allege fraud.

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In September, Florida-based clothing retailer Stein Mart settled charges that it materially misstated its pre-tax income in certain quarterly filings.[33] According to the SEC, the company had a practice of offering merchandise at a permanent discount, but instead of carrying the merchandise from quarter-to-quarter at its discounted price, Stein Mart did not take the markdowns on its inventory until the quarter in which the merchandise sold. As a result, the company continually overstated its income. The company agreed to pay an $800,000 penalty to settle the charges, with the SEC noting steps the company had taken to enhance internal controls and retain additional accounting personnel.

Also in September, the SEC brought settled administrative proceedings against website developer Idle Media and its CEO for numerous reporting, books and records, and internal control violations after the company restated its financial statements multiple times from August 2012 through December 2013.[34] The SEC found that the company failed to record revenue and expenses generated by a subsidiary, and then rather than correcting the errors, improperly consolidated the subsidiary as a variable interest entity. Ultimately, Idle Media issued three restatements before all of the subsidiary's revenue and expenses were accounted for properly. Idle Media and its CEO each agreed to pay a $50,000 penalty.

The SEC also filed several internal controls-related cases in the mortgage space. In August, the SEC brought charges against a mortgage foreclosure processing company and its CFO for prematurely recognizing revenues from incomplete foreclosure files.[35] The SEC charged a number of books and records and internal controls charges against the defendants, both of whom settled, and the CFO agreed to pay a $50,000 civil penalty. The SEC also brought charges against a home loan servicing company for failing to maintain adequate internal controls concerning related-party transactions.[36] The company, Home Loan Servicing Solutions, agreed to pay a $1.5 million penalty after its chairman approved certain related party transactions with another entity where he also served as chairman. The SEC order found that the company had no written procedures or policies regarding recusals and that the chairman had approved many transactions between the companies. The SEC also found that the company used an improper methodology to value its primary asset.

Auditor and Accountant Cases

As noted earlier, the latter half of 2015 found the SEC bringing a number of cases against public company auditors, including several cases charging large audit firms.

In September, the SEC charged audit firm BDO for dismissing red flags and issuing false and misleading unqualified audit opinions about the financial statements of a staffing services company it audited.[37] The SEC also charged five of the firm's partners for their roles in the audit, including the engagement partner and concurring reviewer, as well as three consulting partners in the firm's regional and national practice groups. According to the SEC, the audit client had provided conflicting stories about missing cash and suspicious circumstances around its repayment. (The SEC also filed separate charges against the former chairman and two former CEOs of the client.) BDO agreed to admit wrongdoing, disgorge certain audit fees of approximately $600,000, and pay a $1.5 million penalty. The five individual auditors also agreed to settlements, without admitting or denying the allegations, which included various penalties and suspensions.

Similarly, a few months later the SEC charged Grant Thornton and two of its audit partners for allegedly ignoring red flags in the course of auditing two separate companies from 2009 to 2011.[38] (The SEC previously charged former company executives from both companies with various accounting and disclosure violations.) According to the SEC, Grant Thornton and its audit partners relied too heavily on management representations and did not exercise the appropriate

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levels of professional skepticism during their audit activities. Grant Thornton agreed to forfeit approximately $1.5 million in audit fees and pay a $3 million penalty, while the two audit partners, without admitting the allegations, agreed to pay penalties of $10,000 and $2,500 along with five-year and two-year bars, respectively.

Continuing to doggedly pursue claims of auditor independence violations, the SEC brought settled actions against Deloitte and Grant Thornton. In the first case, the SEC charged that Deloitte violated auditor independence rules by having its consulting affiliate maintain a business relationship with a trustee serving on the boards and audit committees of three funds it audited.[39] The firm agreed to pay more than $1 million without admitting or denying the allegations. In the second case, the SEC alleged that two Grant Thornton entities—based in Australia and India—violated auditor independence by allowing two Grant Thornton Mauritius (located in a small island nation in the Indian Ocean) partners to serve on the board of Mauritius-based subsidiaries of companies that were Grant Thornton audit clients, and performing non-audit services prohibited under the SEC's auditor independence rules.[40] The various entities involved agreed to disgorge various audit fees and to pay penalties totaling more than $350,000 without admitting or denying the allegations.

In August, the SEC charged Johnson Lambert LLP and one of its partners with improper professional conduct during the course of auditing several insurance entities that focused on so-called "captive insurance" products that were marketed to high-net-worth individuals and small business owners.[41] According to the SEC, the firm was aware that the clients' prior auditor had issued a qualified audit opinion in the prior year due to its inability to obtain sufficient evidence regarding the existence and valuation of certain investment assets, which were the majority of the entities' assets. According to the SEC, Johnson Lambert assembled an engagement team that lacked experience auditing alternative investments, and the engagement team failed to perform sufficient substantive procedures to address the risks identified in the prior audit. The defendants agreed to settle the charges by adopting a comprehensive internal compliance program, including the retention of an expert consultant and the submission of remediation effort reports to the Commission.

The SEC pursued a pair of cases involving falsifying of records by auditors.

Finally, the SEC pursued a pair of cases involving falsifying of records by auditors. The SEC brought charges against a Florida-based CPA for issuing bogus audit opinions, including charges of back-dating phony work papers once he learned he was the subject of an SEC investigation.[42] The SEC charged that the CPA performed deficient audits and quarterly reviews for eight publicly traded companies, and issued false and misleading audit opinions for the same. The CPA consented to an order prohibiting him from practicing before the Commission, and agreed to pay disgorgement and penalties of approximately $150,000. The Commission also charged five accountants and two audit firms with similar violations after the SEC determined the firms skipped mandatory quality reviews for their audits and performed deficient quality reviews for audits done by another firm.[43] To cover up these deficiencies, one of the accountants was alleged to have falsified and backdated audit documents. The parties agreed to practice bars of varying lengths and agreed to pay penalties and disgorgement totaling more than $100,000.

Conclusion

In his first public statement of 2016, Enforcement Division Director Andrew Ceresney reaffirmed that the Division viewed financial reporting cases as a top priority. Ceresney noted that, in the past few years, the SEC has more

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than doubled the number of enforcement actions it brought in the issuer reporting and disclosure area, notwithstanding the relatively small number of restatements since a decade earlier.[44] He further emphasized the agency's particular focus on gatekeepers such as auditors and audit committee members, and touted the SEC's enhanced efforts to proactively detect improper financial reporting. With a number of new and ongoing investigations underway, we can expect a steady flow of financial reporting enforcement actions in the months ahead.

Notes

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2. For an interpretation of SEC enforcement statistics, *see* Marc Fagel, What the SEC Enforcement Stats Really Tell Us, Law360 (March 3, 2015), available at *www.gibsondunn.com/publications/Documents/Fagel-What-The-SEC-Enforcement-Stats-Really-Tell-Us-Law360-3.3.2015.pdf.*

3. *Hill v. SEC,* No. 1:15-cv-01801-LMM, at *34 (Dist. Ga. June 8, 2015).

4. *Duka v. SEC*, No. 1:15-cv-003570RMB, 2015 WL 4940083, at *2 (S.D.N.Y. Aug. 12, 2015).

5. *Gray Financial Group v. SEC,* No. 1:15-cv-00492-LMM, at *13-14 (Dist. Ga. Aug. 4, 2015).

6. *See In re Raymond J. Lucia Cos.*, Admin. Proc. File No. 3-15006 (Sept. 3, 2015), available at *www.sec.gov/litigation/opinions/2015/34-75837.pdf; In re Timbervest et al*., Admin. Proc. File No. 3-15519 (Sept. 17, 2015), available at *www.sec.gov/litigation/opinions/2015/ia-4197.pdf.*

7. *See Bebo v. S.E.C.,* 799 F.3d 765 (7th Cir. 2015); *Jarkesy v. S.E.C.*, 803 F.3d 9 (D.C. Cir. 2015).

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9. SEC Press Release, SEC Proposed Changes to Amend Rules Governing Administrative Proceedings (Sept. 24, 2015), *www.sec.gov/news/pressrelease/2015-209.html*. For more on the topic, *see also* Gibson Dunn, SEC Moves in the Right Direction (Sept. 28, 2015), available at *www.gibsondunn.com/publications/Pages/SEC-Proposed-Amendments-to-Rules-Governing-Administrative-Proceedings.aspx.*

10. *See, e.g.,* Comments on Proposed Amendments to the Commission's Rules of Practice, filed by Theodore B. Olsen, Gibson, Dunn & Crutcher, LLP, available at *www.sec.gov/comments/s7-18-15/s71815-8.pdf*.

11. *Koch et al. v. SEC*, No. 14-1134 (D.C. Cir. July 14, 2015).

12. Commissioners D. Gallagher and M. Piwowar, Statement on Decision of the D.C. Circuit on Retroactive Collateral Bars (July 22, 2015), available at *www.sec.gov/news/statement/statement-decision-dc-circuit--retroactive-collate.html.*

13. SEC v. Caledonian Bank Ltd., No. 15cv894 (S.D.N.Y. Nov. 10, 2015).

14. Montford and Co., Inc. v. SEC, No. 14-1126 (D.C. Cir. July. 10, 2015).

15. SEC, 2015 Annual Report to Congress on the Dodd-Frank Whistleblower Program, available at *www.sec.gov/whistleblower/reportspubs/annual-reports/owb-annual-report-2015.pdf.*

16. SEC Press Release, SEC Pays More than $3 Million to Whistleblower (July 17, 2015), available at *www.sec.gov/news/pressrelease/2015-150.html.*

17. SEC Press Release, SEC Announces Whistleblower Award of More Than $325,000 (November 4, 2015), available at *www.sec.gov/news/pressrelease/2015-252.html.*

18. Ed Beeson, Labaton Chases Whistleblower Record in JPMorgan Case, Law360 (Dec. 18, 2015).

19. Marc Fagel, The SEC's Troubling New Policy Requiring Admissions, Bloomberg BNA (June 24, 2013), available at *www.gibsondunn.com/publications/Documents/Fagel-SECs-Troubling-New-Policy-Requiring-Admissions.pdf*.

20. Chair Mary Jo White, Remarks at the Securities Enforcement Forum (Oct. 9, 2013), available at *www.sec.gov/News/Speech/Detail/Speech/1370539872100.*

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22. SEC Press Release, SEC Charges Six Firms for Short Selling Violations in Advance of Stock Offerings (Oct. 14, 2015), available at *www.sec.gov/news/pressrelease/2015-239.html.*

23. SEC Press Release, Lawyers Offered EB-5 Investments as Unregistered Brokers (Dec. 7, 2015), available at *www.sec.gov/news/pressrelease/2015-274.html.*

24. SEC Press Release, SEC Charges Former Officers of SMF Energy with Fraud (Sept. 25, 2015), available at *www.sec.gov/news/pressrelease/2015-210.html*.

25. SEC Press Release, SEC Charges Video Management Company Executives with Accounting Fraud (Sept. 8, 2015), available at *www.sec.gov/news/pressrelease/2015-183.html*.

26. SEC Press Release, SEC Charges Executives for Defrauding Investors in Financial Fraud Scheme (Sept. 30, 2015), available at *www.sec.gov/news/pressrelease/2015-224.html*.

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