

# Accounting Firm Quarterly Update

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# SEC Voluntarily Stays Climate-Disclosure Rules Pending Appellate Review

On April 4, 2024, the SEC issued an order voluntarily staying its recently adopted rule amendments requiring registrants to provide certain climate-related disclosures. The [order](#) came in response to a March 21, 2024 decision by the United States Court of Appeals for the Eighth Circuit to consolidate for review several cases challenging the rule amendments that had been filed in multiple federal courts. Thus, as the SEC explained in its order, it has chosen “to exercise its discretion to stay the Final Rules pending the completion of the judicial review of the consolidated Eighth Circuit petitions.” Despite its voluntary stay,

the SEC “is not departing from its view that the Final Rules are consistent with applicable law and within the Commission’s long-standing authority to require the disclosure of information important to investors in making investment and voting decisions,” and will thus “continue vigorously defending the Final Rules’ validity in court.”

For a more detailed analysis of the SEC’s Final Rules, please see Gibson Dunn’s [client alert](#) on this matter (issued before the recent litigation).

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## PCAOB Issues Proposed Rules on Firm Reporting

On April 9, 2024, the PCAOB issued two proposals that would substantially increase the volume and broaden the scope of information that registered firms are required to report. The [Firm and Engagement Metrics](#) proposal identifies 11 categories of information that would be required to be reported at the engagement level on Form AP and/or at the firm level on a new proposed annual Form FM. These categories—including auditor workload, involvement of audit partners and managers, and restatement history—are metrics that the PCAOB considers to

shed light, at least to some extent, on audit quality. The [Firm Reporting](#) proposal would expand the information reported on Forms 2 and 3 (and would add a new Form QCPP) to capture additional information regarding firms’ governance, finances, and significant events. Although the PCAOB touted the proposals as providing useful information to investors and other stakeholders, the profession could have significant concerns about multiple of these items.

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## SolarWinds Moves to Dismiss SEC Amended Complaint

On February 16, 2024, the SEC amended its complaint against SolarWinds Corp. in which it claims that the company and its Chief Information Security Officer lacked requisite internal controls and committed fraud by failing to warn the public of known cybersecurity risks and vulnerabilities. The amended complaint asserts the same claim as the SEC’s initial complaint filed in October 2023, but alleges significant additional facts in support of each claim—the amended complaint is 112 pages, compared to the initial complaint’s 68 pages.

In response, SolarWinds moved on March 22, 2024 to dismiss the amended complaint, asserting that “[t]he case is

fundamentally flawed and should be dismissed in its entirety.” This is the second round of motion-to-dismiss briefing thus far in the case, with the SEC’s amended complaint coming before any ruling by the court on SolarWinds’s motion to dismiss the initial complaint. This round, just as the last, is accompanied by several briefs *amici curiae* supporting SolarWinds’s position, filed by Chief Information Security Officers and Cybersecurity Organizations, a group of more than 50 cybersecurity leaders at major corporations, and the Chamber of Commerce of the United States, among others.

# Alabama Federal Court Declares Corporate Transparency Act Unconstitutional

On March 1, 2024, a federal court in the Northern District of Alabama issued a summary judgment order declaring the Corporate Transparency Act (CTA) unconstitutional and imposing an injunction in favor of plaintiffs the National Small Business Association (NSBA) and Isaac Winkles, an individual member of the NSBA. The action challenged the CTA's constitutionality on a number of grounds, and the court agreed that the CTA exceeds the enumerated powers of Congress. The court declined, however, to address plaintiffs' other arguments, namely that the CTA violates the First, Fourth, and Fifth Amendments to the Constitution.

The CTA was enacted in 2021 as part of the Anti-Money Laundering Act of 2020 and seeks to establish a national registry

of "beneficial owners" of reporting companies with the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) in an effort to deter and better detect financial crimes such as tax fraud and money laundering. According to FinCEN, which has appealed the court's order, the effect of the March 1, 2024 ruling means only that it is enjoined from enforcing the CTA against the plaintiffs. While the appeal is pending, FinCEN has [stated](#) that it will "continue to implement the Corporate Transparency Act as required by Congress, while complying with the court's order." Another case challenging the CTA has been filed in the Western District of Michigan.

For more detailed analysis and background information on this case, please see Gibson Dunn's [client alert](#) on this matter.

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## SEC Adopts Final Rules Relating to SPACs

On January 24, 2024, the SEC adopted new rules and amendments relating to special purpose acquisition companies (SPACs), designed to "enhance disclosures and provide additional investor protection in initial public offerings" by SPACs and subsequent transactions between SPACs and target companies (de-SPAC transactions). The adopted rules are thematically similar with the initially proposed rules from 2020, but with certain differences taking into account comments

received. In a [statement](#), Chair Gary Gensler stated that the new rules "will help protect investors by addressing information asymmetries, misleading information, and conflicts of interest in SPAC and de-SPAC transactions."

For more detailed analysis and background information on this case, please see Gibson Dunn's [client alert](#) on this matter.

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## House Oversight Committee Examines PCAOB Treatment of China-Based Firms

On March 13, 2024, House Committee on Oversight and Accountability Chairman James Comer [announced](#) the Committee would conduct oversight of the Public Company Accounting Oversight Board's (PCAOB) inspections and investigations of China-based accounting firms. In [correspondence](#) with the PCAOB announcing the Committee's

oversight, Congressman Comer stated, "The Committee is concerned with unnecessary risk to American investors arising from unreliable and questionable financial informations for companies based in the [People's Republic of China]." The Committee will accordingly review "how PCAOB applies federal law with respect to audit firms of PRC-based companies."

# PCAOB Proposes New Rule on False or Misleading Statements Concerning PCAOB Registration and Oversight

On February 27, 2024, the PCAOB issued for public comment a [proposal](#) for a new PCAOB Rule 2400, *False or Misleading Statements Concerning PCAOB Registration and Oversight*. The rule would prohibit materially false or misleading statements regarding the nature of a firm’s oversight by the PCAOB, and would characterize certain types of statements as presumptively prohibited. In its [release](#), the PCAOB characterized the problem it seeks to solve by noting that, “[c]urrently, nearly half of the firms registered with the PCAOB do not engage in any audit-

related work for issuers or broker dealers that is subject to PCAOB oversight,” but some of those firms nonetheless “promote their PCAOB registration in a manner that could lead investors and other market participants to mistakenly think that their work is subject to PCAOB oversight.” The proposal would also provide the PCAOB with a process to manage the withdrawal of registered firms that fail for two consecutive years to pay annual fees and file annual reports. The comment period closed on April 12, 2024.

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## PCAOB Reopens Comment Period and Holds Roundtable on NOCLAR Proposal

On February 26, 2024, the PCAOB reopened the period for public comment on its proposal to amend PCAOB auditing standards related to the auditor’s responsibility to consider a company’s noncompliance with laws and regulations (NOCLAR), until March 18, 2024. In addition to receiving and posting a number of additional comment letters, the PCAOB also posted summaries of Board Member Christina Ho’s meetings with certain stakeholders about the proposal.

In the meantime, the PCAOB held a public virtual roundtable regarding its NOCLAR proposal on March 6, 2024, stating in

its announcing [release](#) that “[t]he objective of the [roundtable](#) is to obtain additional insight from commenters, stakeholders, and experts as the PCAOB’s staff works toward a final recommendation to the Board.” The all-day roundtable featured panelists including academics, lawyers, and accounting and auditing practitioners.

For more background and detailed analysis of the NOCLAR proposal, please see Gibson Dunn’s [client alert](#) on this matter.

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## NCLA Sues PCAOB Claiming Unconstitutional Disciplinary Proceedings

On March 5, 2024, the New Civil Liberties Alliance (NCLA), a nonprofit legal group, filed a [complaint](#) in a Tennessee federal court challenging the PCAOB’s enforcement proceedings. The NCLA represents an anonymous accountant against whom the PCAOB has instituted disciplinary proceedings. The complaint asserts that the “Board’s investigative, prosecutorial, and

pseudo-judicial adjudicative powers are massive and largely unchecked,” and asks the court to issue an injunction banning the PCAOB from continuing to engage in “its unlawful and unconstitutional disciplinary proceedings.” The Tennessee case joins another action filed by NCLA in [Texas](#) (since transferred to Washington, DC) challenging the PCAOB.

# SEC Commissioner Speaks on Materiality and Engagement with the SEC

On March 7, 2024, SEC Commissioner Hester Peirce gave [remarks](#) at a meeting of the SEC Investor Advisory Committee, in which she not only expressed her disapproval with the March 6, 2024 climate-disclosure rule (currently stayed by the Commission, as discussed above) as not being “based in materiality,” but emphasized more generally the importance of a “regime rooted in materiality.” Quoting her own statement from the prior day, Commissioner Peirce argued that “[m]oving away

from materiality, or changing it to allow for the consideration of non-economic interests ... ‘could trigger a hodgepodge of requirements tailored to meet the demands of a vast and ever-expanding panoply of special interests.’”

In April, Peirce also discussed in remarks at SEC Speaks the SEC’s “reduction in genuine engagement with the public,” including the reduced incentives to consult with the SEC Staff.

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## Illinois Appellate Court Issues Verein Ruling in Legal Malpractice Action

On February 14, 2024, an Illinois Appellate Court [ruled](#) that the law firm Baker McKenzie, which is structured as a verein, must face a lawsuit by plaintiff Lehram Capital Investments in the United States for legal malpractice based on conduct by lawyers in Baker’s former Moscow office. The law firm had sought to have the action dismissed for lack of jurisdiction, arguing that the action must be brought in Moscow (later London, following Russia’s invasion of Ukraine) due to the firm’s Russian and U.S.

offices existing as separate entities. Affirming the trial court’s decision to deny Baker’s motion to dismiss, the majority cited the firm’s code of business conduct, which states, “We are one firm. What one of us does, all of us do,” among the evidence that was “sufficient to support, for the limited purposes of the *forum non conveniens* motion, plaintiffs’ allegations regarding the legal unity of liability of all the defendants.”

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## Southern District Rules That PCAOB Inspection Information Is Not “Property”

On February 20, 2024, a judge in the Southern District of New York ruled in [two separate](#) cases that PCAOB inspection information does not qualify as “property” within the meaning of 18 U.S.C. § 1343, and thus its misuse cannot form the basis for a wire fraud conviction. The rulings were based on the Second Circuit’s holding in *United States v. Blaszcak*, 55 F.4th

230 (2d Cir. 2022), which concerned alleged misappropriation of regulatory information from the Centers for Medicare and Medicaid Services. The court’s rulings meant that the convictions of two former KPMG partners related to the acquisition of PCAOB inspection information were vacated.

# Other Recent SEC and PCAOB Enforcement and Regulatory Developments

## PCAOB Events

- On April 11, 2024, the PCAOB released its [Annual Report for 2023](#). The report touted the PCAOB's aggressive rulemaking and standard-setting activity, enhanced inspection reports, and historically large enforcement penalties.
- On April 15, 2024, the PCAOB named Christine Gunia the Director of the Division of Registration and Inspections. Gunia was named to the position on an Acting basis after prior Director George Botic's elevation to the Board in October 2023.

## Enforcement

- On April 10, 2024, the PCAOB announced [three further actions](#) against non-U.S. members of large accounting networks in connection with its continuing sweep investigation into improper conduct connected to internal firm training programs. The three actions include one imposing a \$25 million fine, the largest in the PCAOB's history.
- Other PCAOB enforcement actions in the first quarter related to sweeps or prior areas of focus included further [actions](#) arising out of the audit committee communications sweep, multiple [actions](#) announced on March 28, 2024 relating to alleged Form AP and documentation violations, and [sanctions](#) against a firm for quality control violations in connection with SPAC audits.
- The PCAOB's significant enforcement fines were also reflected in two matters announced on March 28, 2024 relating to [independence](#) (\$2.75 million penalty) and [Form 3 filings](#) (\$600,000 penalty), respectively. The proceedings closely followed, however, a PCAOB [action](#) on March 20, 2024 against three auditors at a large China-based firm imposing relatively moderate penalties of between \$25,000 and \$75,000 in connection with alleged violations of auditing standards in an FY 2017 audit of a Chinese issuer, though two of the auditors also received one-year bars from associating with a registered firm.
- On February 29, 2024, the SEC instituted settled enforcement proceedings against electric vehicle maker [Lordstown Motors Corp.](#) and its auditor, [Clark Schaefer Hackett](#), alleging that the company made materially false and misleading statements to investors during a SPAC merger, and that CSH violated applicable independence rules.

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