

Accounting Firm Quarterly Update

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Presidential and SEC Transitions Continue

The ongoing presidential transition continues to spell change for the Securities and Exchange Commission (SEC). On February 17, 2025, the Department of Government Efficiency (DOGE) [created an X account](#) to solicit public input “on finding and fixing waste, fraud, and abuse relating to the Securities and Exchange Commission.” Based on DOGE’s work with other agencies, steps may include laying off newly hired SEC employees, eliminating regional offices, or merging departments that perform similar functions. As an initial step, the SEC on February 21, 2025 notified Regional Directors in its 10 regional offices that their roles would be eliminated.

In other transition developments, the SEC: (1) [announced](#) on February 20, 2025 the creation of the Cyber and Emerging Technologies Unit (CETU) to focus on “cyber-related misconduct” and “protect[ing] retail investors from bad actors in the emerging technologies space”; and (2) on March 10, 2025, issued a [final rule](#) revoking the Director of Enforcement’s authority to issue formal orders of investigation, as a “result of the commission’s experience with its nonpublic investigations” and “to more closely align the commission’s use of its investigative resources with commission priorities.”

On April 21, 2025 Paul Atkins was sworn in as SEC Chair, which should lead to additional personnel and policy developments.



SEC Abandons Defense of Climate Rule

On March 27, 2025, the SEC [voted](#) to cease defending its climate-related disclosure rule in pending litigation. The rule, adopted in March 2024, would have required significant additional disclosure regarding climate risks and greenhouse gas emissions, but was challenged in court in multiple actions that were consolidated as *Iowa v. SEC*, currently pending before the Eighth Circuit. Acting Chairman Mark T. Uyeda, who opposed the adoption of the rule, had [announced](#) on February 11 that he had directed the staff to request that the Eighth Circuit delay oral arguments in the case pending the Commission’s reconsideration of its position. That announcement had drawn a [statement](#) from Commissioner Caroline Crenshaw that same day defending the climate-related disclosure rule and criticizing the Chairman’s decision to stop defending it in court.

Ninth Circuit Considers First Amendment Challenge to SEC’s Gag Rule

A Ninth Circuit panel recently heard a First Amendment challenge to the SEC’s “gag rule,” which prohibits settling parties from denying allegations against them. The challenge, *Powell v. SEC*, was brought in the Ninth Circuit by the New Civil Liberties Alliance (NCLA) in 2024 after the SEC denied NCLA’s petition to revise the rule. With amicus support from the U.S. Chamber of Commerce, NCLA argues that the gag rule violates both the First Amendment and the Administrative Procedure Act. During oral arguments on February 13, 2025 the parties debated whether the gag rule suppresses free speech, whether it reflects a voluntary agreement between the SEC and the settling parties, and whether it provides a benefit to the public.

AICPA Seeks Comment on Alternative Practice Structures

On March 10, 2025, the Alternative Practice Structures Task Force of the American Institute of Certified Public Accountants' (AICPA) Professional Ethics Executive Committee (PEEC) announced it is seeking comment on its [preliminary conclusions and interpretation options](#) regarding revisions to independence rules related to alternative practice structures. The Task Force was launched two years ago to look into issues raised by the increase in private equity investment in accounting firms. The task force is accepting comments through June 15, 2025; at some point after that, it will release an exposure draft of rule changes for public comment.

CPAB Amends Rules to Increase Disclosure of Inspection Results

In March 2025, the Canadian Public Accountancy Board (CPAB) approved two new changes to its rules. First, CPAB now has the ability to publish individual firm inspection reports. Reports for 2025 inspections are expected to be published in the first quarter of 2026. Audit firms will not be permitted to publish or extract any portion of a CPAB inspection report without CPAB's consent. Second, the reporting of file-specific inspection results to audit committees under CPAB's Protocol is now mandatory, although most firms registered with CPAB already voluntarily participate in this disclosure.



Supreme Court Distinguishes Between False and Misleading Statements

The Supreme Court, on March 21, 2025, held that 18 U.S.C. § 1014, which makes it a crime to make knowingly false statements to the Federal Deposit Insurance Corporation, only applies to *false* statements, not merely *misleading* statements. See *Thompson v. United States*, 604 U.S. ___. In its ruling, the Court reversed a decision by the Seventh Circuit upholding the conviction of former Chicago alderman Patrick Daley

Thompson, grandson and nephew of former Chicago mayors Richard J. Daley and Richard M. Daley. Writing for the Court, Chief Justice Roberts explained that the statute does not use the word “misleading,” even though other federal criminal laws do use the word “misleading” where Congress wanted them to apply to both false and misleading statements.

Second Circuit Applies Crime-Fraud Exception to Overcome Attorney-Client Privilege

On February 7, 2025, the Second Circuit ruled that a former public company CEO could not prevent the disclosure of certain communications with his outside counsel because those communications fell under the crime-fraud exception to attorney-client privilege in *In re Two Grand Jury Subpoenas Dated Sep. 13, 2023*. The former CEO is the subject of an ongoing grand jury investigation into a potential criminal scheme to circumvent the company's accounting controls by hiding agreements for the company to settle sexual harassment claims made against him by two former employees. The former CEO negotiated the settlements using an outside law firm and did not report them to the company, despite two internal controls requiring that "significant" contracts be reviewed by the company's Legal department and disclosed to the Accounting department.

The Second Circuit explained that, to invoke the crime-fraud exception, the party seeking disclosure must demonstrate there is probable cause "(1) that the client communication or attorney work product in question was itself in furtherance of the crime or fraud and (2) to believe that the particular communication with counsel or attorney work product was intended in some way to facilitate or to conceal the criminal activity." The Second Circuit held that sufficient probable cause existed to believe that the attorney-client communications at issue were structured and intended to conceal the settlement agreements from the company.

Texas Supreme Court Adopts Anti-Fracturing Rule

On February 21, 2025, the Texas Supreme Court unanimously adopted the anti-fracturing rule, confirming that plaintiffs cannot use artful pleading—for example, recasting professional negligence claims as fraud or breach of fiduciary duty claims—to gain a litigation advantage. In *Pitts v. Rivas*, a home builder and real estate developer sued his accountants, alleging they improperly prepared his financial statements and asserting claims for professional negligence, fraud, breach of fiduciary duty, and breach of contract. The accountants argued that the professional negligence claim was time barred, and that the plaintiff had advanced the fraud and breach of fiduciary duty claims merely to plead around the time-barred professional negligence claim, so those claims were also time barred.

After the court of appeals held that the fraud and breach of fiduciary duty claims survived because plaintiffs alleged additional misconduct and acts beyond the scope of the

parties' written agreements, the Texas Supreme Court reversed. The Court ruled that the anti-fracturing rule applies even if the professional services at issue are outside the scope of a written contract. As the Court explained, "if the crux or gravamen of the plaintiff's claim is a complaint about the quality of professional services provided by the defendant, then the claim will be treated as one for professional negligence even if the petition also attempts to repackage the allegations under the banner of additional claims."

The Court's express adoption of the anti-fracturing rule, which had been applied in Texas courts of appeals for decades, should make it easier for defendants to winnow artfully pleaded claims earlier in litigation. For more detailed information, please refer to Gibson Dunn's recent [client alert](#).

EU Proposes Simplified Rules Regarding Sustainability Reporting

In February, the European Commission adopted a package of proposals to simplify and postpone the EU's Corporate Sustainability Reporting Directive (CSRD) and Corporate Sustainability Due Diligence Directive (CSDDD). The [Postponement Directive](#) remains to be transposed into national law by the EU member states, which must occur by December 31, 2025. The Directive postpones the CSRD by two years, so that companies report in 2028 regarding 2027 activities; and postpones the CSDDD by one year, also to 2028. The Amendment Directive reduces the scope and burden of the CSRD in substance, including by removing most companies from its scope and simplifying reporting requirements. Gibson Dunn's [client alert](#) provides more details.

Other Recent SEC and PCAOB Regulatory and Enforcement Developments

- On April 1, 2025, the PCAOB released its [Annual Report](#). In this year's report, the Board touted improvements in its inspection program, increased resources for smaller firms, and its standard setting and enforcement efforts.
- At a forum on March 18, 2025, Board Member Christina Ho [gave](#) a "low grade" to the PCAOB's standard setting due to a loss of focus on audit quality. She also criticized its inspection and enforcement programs.

Regulatory

- In the first quarter of 2025, the PCAOB slowed what had been an aggressive [rulemaking agenda](#). On February 11, 2025, the Board withdrew its Firm Reporting and Firm and Engagement Metrics proposals. The Board has also apparently shelved its proposed rule on Noncompliance with Laws and Regulations, Rel. No. 2023-003; although it hosted a roundtable discussion on its proposal on March 6, 2024, the PCAOB has taken no action on this proposal since and simply states that it expects to act on the proposal in 2025.

Enforcement

- On February 19, 2025, the SEC [announced](#) it had obtained final judgments against three defendants alleged to have participated in a fraudulent scheme to manipulate the revenue of a medical care service provider. The SEC alleged that the defendants improperly recorded revenue adjustments to hit key financial metric targets and misled the company's auditor by creating false documents. In total, the defendants were required to pay approximately \$64,000 in reimbursement to the company, approximately \$89,000 in disgorgement and prejudgment interest, and civil penalties of \$140,000.

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