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The State of SEC Enforcement Heading into 2015

As the SEC Enforcement Division continued to refocus attention on public company reporting in 2014, it enlisted a more aggressive arsenal of enforcement tools. This sets the stage for a year in which companies are both increasingly likely to be subject to a SEC investigation and to face significant repercussions where the SEC determines to pursue an enforcement action.

By Marc J. Fagel

The close of 2014 saw the SEC's Division of Enforcement take a victory lap. Following the release of the statistics for the fiscal year ended September 30, Division Director Andrew Ceresney highlighted a few records—the largest number of enforcement actions brought in a single year (755); the largest total value of monetary sanctions awarded to the agency (over $4 billion); the largest number of cases taken to trial in recent history (30).[1] As Ceresney noted, numbers alone do not tell the whole story. And, it is in the details that one sees just how aggressive the Division has become in some respects, and how difficult the terrain is for individuals and entities caught in the crosshairs of a SEC investigation under the current administration.

The SEC has continued to release a steady flow of settlement agreements under which defendants are compelled to admit their legal violations. The Division has increased the number of litigated actions pursued in the administrative forum, where defendants enjoy far fewer discovery and other rights than in civil district court actions. The size of monetary sanctions and the length of industry bars continue to rise. And, the Division has been executing the Chair's "broken windows" policy, filing suit to enforce even minor, rarely-enforced provisions of the federal securities laws, often in broad sweeps targeting dozens of companies and individuals (a phenomenon which helps explain the record number of cases brought last year).

Substantively, the Division has maintained its focus on the investment advisor industry (particularly private fund managers), as well as brokers and financial institutions, with cases against advisers and brokers making up nearly 50 percent of the SEC's fiscal 2014 enforcement docket.[2] However, the Division's renewed scrutiny of financial reporting by public companies—which saw a significant slowdown in activity during the years of

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the financial crisis—continues its slow but steady return to the forefront, with several accounting fraud cases drawing headlines in recent months.

The Administrative Proceeding Explosion

One of the most significant developments in SEC enforcement is the SEC's growing use of administrative proceedings (APs) as an alternative to civil actions filed in federal court. As noted above, the SEC is litigating an increasing number of cases (arguably stemming in part from its hardline settlement demands), and the streamlined administrative proceeding process, with cases lasting months rather than years, helps the agency conserve limited resources. But the forum also can work to the disadvantage of defendants.

Among other things, there is little or no discovery in these proceedings, meaning there are no depositions and defendants are essentially limited to whatever evidence the enforcement staff collected during its investigation. Defendants who lose in front of the administrative law judge (employed by the SEC) face an uphill battle on appeal, with any appeal first heard by the SEC itself (i.e., the very Commissioners who originally voted to authorize the enforcement action), and only later by a federal court of appeals, which tends to be deferential to agency determinations.

The Division had a 100 percent success rate in administrative proceedings over the past twelve months.

Moreover, many believe these proceedings offer the Division of Enforcement a home court advantage. Indeed, a *Wall Street Journal* study this fall found the Division had a 100 percent success rate in administrative proceedings over the past twelve months—not exactly encouraging for parties choosing to litigate against the agency.[3] In contrast, as Ceresney noted in his November Speech, the Division has about an 80 percent success rate in litigated actions overall, suggesting far more trial losses for the agency in federal court.[4]

Notwithstanding pushback on these proceedings by the defense bar and some commentators, including Judge Rakoff of the Southern District of New York,[5] the SEC has stood by the continued use of the administrative forum. In his November Speech, Ceresney vigorously defended the fairness and utility of the administrative forum in a lengthy discourse, noting that the agency filed 43 percent of its litigated cases administratively in 2014 and had no intentions of reversing course. Indeed, in late 2014 the SEC took steps to prepare for the increased administrative caseload, adding two new administrative law judges, bringing the total to five.

Several parties to SEC administrative proceedings have sued the agency in federal court, alleging such proceedings, among other things, violate their Due Process rights; however, these challenges have been largely unsuccessful. In one recent ruling, a New York federal court dismissed the action, holding that while defense concerns about administrative proceedings may be legitimate, they needed to be resolved in the administrative proceeding itself—and, if unsuccessfully asserted there, on subsequent appeal of the administrative law judge's decision, rather than in a stand-alone injunctive action against the SEC.[6] Hence, while several similar cases remain pending, it appears that it could be some time—perhaps years—before an appropriate challenge to administrative proceedings becomes ripe for resolution. In the interim, parties to SEC investigations need to anticipate a growing likelihood that an enforcement action will be filed administratively, and prepare in advance for the abbreviated timeframe and limited discovery of such proceedings.

Sweeping Up "Broken Windows"

In late 2013, SEC Chair Mary Jo White proclaimed a "broken windows" strategy of enforcing

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even minor, frequently overlooked violations, underscoring that it was "important to pursue even the smallest infractions."[7] The Division of Enforcement made good on this commitment in the latter half of 2014, bringing a number of enforcement "sweeps" in which it simultaneously charged multiple companies and individuals with violations of non-fraud securities law provisions not historically viewed as high-priority by the agency. All told, 5 sweeps in the last few months entangled 80 defendants.

In September, the SEC charged 34 companies and individuals with failing to timely file personal securities transaction reports with the SEC.[8] Of the 34 respondents named in the orders, 33 settled the claims and agreed to pay financial penalties in the aggregate amount of $2.6 million. These securities law provisions—Sections 13(a) and 16(a) of the Exchange Act and related rules—had rarely been the subject of stand-alone enforcement actions in the past decade, typically appearing (if at all) as part of larger, more serious cases. But the SEC set out to highlight its focus on even lesser, unintentional violations, noting that "inadvertence is no defense to filing violations, and we will vigorously police these sorts of violations through streamlined actions."[9]

One week later, the Commission charged 19 investment advisory firms (and one individual trader) for violations of Rule 105 of Regulation M of the Exchange Act, which prohibits short-selling an equity security shortly before participating in an offering of the same security.[10] Each of the respondents agreed to settle the charges, cumulatively paying more than $9 million in disgorgement and penalties. This was the SEC's second Rule 105 sweep, following a prior action almost exactly one year earlier, which had netted an additional 23 firms.

In November, venturing into the muni bond arena, the SEC sanctioned 13 securities dealers for selling non-investment grade bonds issued by the Commonwealth of Puerto Rico to customers below the minimum denomination of the issue, in violation of Municipal Securities Rulemaking Board (MSRB) rules.[11] The sweep represented the SEC's first enforcement action under this MSRB provision. The firms paid penalties ranging from under $55,000 to $130,000.

Later that same week, the SEC initiated settled enforcement actions against 10 small public companies for failing to file a Form 8-K disclosing financing arrangements or other unregistered securities sales that had the effect of diluting the company's stock.[12] The companies agreed to pay penalties ranging from $25,000 to $50,000.

Participants in securities markets need to be attuned to compliance with even low-level, rarely-enforced securities regulations.

Finally, in December 2014, the SEC initiated settled proceedings against eight small accounting firms for violating auditor independence rules in connection with their audits of brokerage firm clients.[13] According to the SEC, the auditors also participated in the preparation of their respective clients' financial statements, improperly playing the role of both preparer and auditor. A total of $140,000 in penalties was assessed.

The Division of Enforcement clearly is enthusiastic about these sweeps, and is likely to initiate more in 2015. The cases give the SEC an opportunity to send a "message" about aggressive enforcement of the securities laws, even the low-level "broken windows" offenses championed by the Chair, while allowing the Division of Enforcement to announce record-breaking case filings without the same resource expenditures as individual investigations. Moreover, the sweeps put defendants in a difficult position; by focusing on strict-liability or negligence-based violations with limited defenses, and setting penalty thresholds that are significant but still lower than typical

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litigation costs, most defendants have little choice but to accept a settlement. Notably, at least one Commissioner has expressed some concern about the broken windows strategy, urging the agency to instead focus on higher priority issues.[14]

With no guidance as to where the next SEC sweep may land, participants in securities markets need to be attuned to compliance with even low-level, rarely-enforced securities regulations, complicating efforts to have a more risk-based compliance program prioritizing more serious issues.

Financial Fraud Is Back, Maybe…

A Rise in Financial Reporting Cases?

Since assuming their leadership positions in 2013, Chair White and Enforcement Director Ceresney have emphasized the agency's renewed focus on public company reporting. With resource-intensive financial crisis-related investigations largely wound down, the SEC has demonstrated an eagerness to expand its forays back into financial reporting matters, most notably with the creation of a dedicated Financial Reporting and Audit Task Force.[15] The SEC is now proactively looking for potential financial fraud, rather than waiting for self-reporting by issuers on the cusp of a restatement, and allocating resources to probing even the smallest companies and lesser violations. Of course, it is an open question whether there is a groundswell of fraud waiting to be found by the agency; the jury is still out on whether the dramatic decline in financial fraud cases in recent years reflected the SEC's failure to find them (perhaps due to a redirection of limited resources into other areas), or a reduction in misconduct by public companies (either because of improved practices in the years after Sarbanes-Oxley, or simply cyclical market forces that reduced the incentives for earnings management during a financial downturn).

It is too soon to judge the impact of the Division's new efforts. While the SEC reported a rise in the number of financial reporting cases filed in fiscal 2014,[16] a significant number of those cases derived from a single action filed by the SEC involving 20 related mining companies.[17] However, the sense among practitioners is that the agency is opening a growing number of financial reporting investigations. While the cases to date have been on the small end of the spectrum, and a far cry from the accounting scandals of the Enron/Worldcom era, there are some hints of larger cases on the horizon. For example, in the closing days of 2014, one public company disclosed that it had reached a tentative agreement with the SEC staff, still awaiting Commission approval, under which the company, without admitting wrongdoing, would pay a $190 million penalty. If approved, this would be a significant penalty for a non-FCPA, non-financial institution case.

The agency is opening a growing number of financial reporting investigations.

That said, the always-controversial issue of corporate penalties is likely to re-emerge as a point of contention. During the stock option backdating scandal several years ago, divisions arose among Commissioners as to whether assessing penalties against public companies was a necessary tool to deter fraud, or an unfair cost borne by the company's shareholders. The SEC adopted guidelines on corporate penalties in 2006 designed to provide greater rigor around the penalties, though some saw the guidelines as making it more difficult for the Enforcement staff to seek penalties at all.[18] The debate quieted down in recent years with the fall-off in public company fraud cases, but will undoubtedly return as more such cases are brought. Chair White is on record as defending such penalties, noting that "we must make aggressive use of our existing penalty authority, recognizing that meaningful monetary penalties—whether against companies

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or individuals—play a very important role in a strong enforcement program."[19] In contrast, Commissioner Piwowar, in an October 2014 speech, expressed concerns about corporate penalties, and urged at minimum closer adherence to the 2006 guidelines.[20] His fellow Republican appointee, Commissioner Gallagher, was even blunter, referring to corporate penalties as "shareholder penalties."[21]

Financial Fraud and Internal Controls Cases

The latter half of 2014 saw the SEC file a number of financial reporting cases, leveling charges ranging from scienter-based fraud to failures to maintain adequate internal controls, at times without clear guidance as to what drove the charging decision.[22] The most striking example of this can be seen in a pair of software company cases filed a day apart in September.

On September 24, the SEC filed a case against Silicon Valley software company Saba Software and two of its vice presidents, alleging that they had directed consultants in India to "pre-book" hours they had not worked to achieve their quarterly revenue targets and to "under-book" hours when they had overrun their budgets.[23] The SEC's administrative order included charges of fraud as well as falsification of books and records and overriding internal controls. Without admitting or denying the allegations, the company and the two individuals agreed to settle the matter by paying penalties of $1.75 million, $85,017, and $69,621 respectively. Notably, the SEC also filed a clawback action against the Company's CEO, requiring him to reimburse the company for $2.5 million in bonuses and stock sale proceeds, even though it did not charge him with any securities law violations. While Sarbanes-Oxley authorized the SEC to pursue such stand-alone clawback actions, and the courts have upheld the ability of the SEC to do so even in the absence of underlying charges,[24] such actions are exceedingly rare, pursued only a handful of times since the passage of SOX in 2002.

One day later, the SEC filed a similar action against an Arizona software company, JDA Software Group, alleging violations of the identical GAAP provisions based on the company's improper timing of revenue recognition.[25] Yet the *JDA Software* case resulted only in internal controls claims, and no charges were brought against individual corporate officers. (Notwithstanding the absence of fraud charges, the company still agreed to pay a $750,000 penalty, itself an indicator of the SEC's aggressive settlement stance even in non-fraud matters.) The respective Saba Software and JDA Software orders give little guidance as to why fraud charges were pursued by the SEC in the former case but not the latter (though the JDA order does call out the company's remedial actions and cooperation with the investigation).

The SEC also leveled fraud charges in another revenue recognition case. In August, the SEC filed charges against AirTouch Communications Inc. and its former CEO and CFO for recording as revenue approximately $1.24 million worth of inventory that was purported shipped to a company that agreed to store the products but had not purchased the inventory.[26] The case also serves as a prime example of the phenomenon discussed earlier: The SEC filed the action as a litigated administrative proceeding.

Likewise, the SEC saw an increased willingness to pursue stand-alone internal controls cases even absent fraud charges, whereas in the past the SEC might have opted to overlook such matters and focus its resources on more egregious violations. For example, in October, the SEC imposed sanctions of $150,000 on Great Lakes Dredge & Dock Corporation for recording as revenue pending change orders without sufficient proof of customer acceptance of the orders.[27] And, in December, the Commission brought settled charges against a bank holding company and its former CFO for improperly accounting for a deferred tax asset resulting in the entity materially understating its losses.[28]

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And, in a somewhat unusual hybrid case, the SEC charged the former CEO and CFO of Florida equipment company QSGI Inc. with fraud for making false statements about the adequacy of the company's internal controls.[29] According to the SEC, the executives misrepresented the scope of the CEO's participation in management's assessment of its internal controls, and withheld information about deficient inventory controls from the company's auditors. The SEC charged antifraud violations as well as bringing books and records and internal controls claims. The SEC settled with the CFO, and is litigating against the CEO (again, in an administrative proceeding rather than in federal court).

The SEC's filing of non-fraud internal controls actions drew some noteworthy criticism. In a rare move, SEC Commissioner Luis A. Aguilar issued a scathing public dissent from the SEC's vote to institute settled non-fraud proceedings against a public company's CFO. In the SEC's August case against the former CEO and CFO of Affiliated Computer Services, the agency alleged that the company improperly reported $124.5 million in revenue by having an equipment manufacturer re-direct pre-existing customer orders to the company, creating the appearance that ACS had been involved in the transactions.[30] Without admitting or denying the allegations, the executives agreed to collectively disgorge $569,327 in bonuses, and to each pay $52,000 in penalties. Commissioner Aguilar denounced the settlement with the CFO for failing to include fraud charges or to suspend him from appearing before the agency as an accountant under Rule 102(e).[31] Calling the conduct "egregious," Commissioner Aguilar contended that the agency's decision to bring only settled internal controls charges was "a wrist slap at best," and expressed concern that the case was "emblematic of a broader trend at the Commission where fraud charges—particularly non-scienter fraud charges—are warranted, but instead are downgraded to books and records and internal control charges."

Auditor Cases

While the SEC has stepped up its activity in the accounting fraud arena, the last six months saw just a few cases, primarily involving small accounting firms.

Auditor independence rules remained an ongoing priority for the SEC. As discussed earlier, in December 2014 the agency instituted an enforcement sweep against 8 accounting firms for preparing the financial statements of brokerage firms that they also audited. And earlier this year, the SEC initiated litigated administrative proceedings against a small public accounting firm for independence violations based on its audit of a broker-dealer which regularly traded the securities of a public company closely associated with the auditor.[32]

In October, in a continuation of its Operation Broken Gate (aimed at targeting auditors "who disregard their gatekeeper roles" by "violating professional standards"), the SEC sanctioned a Florida auditor for violating rules requiring lead audit partners to rotate off audit engagements after five years.[33] According to the SEC, the respondent installed as lead audit partner an employee who was not a certified public accountant, while continuing to perform those duties himself.

Audits of China-based companies and small oil-and-gas entities also continued to be a recurring enforcement theme. In July, the Commission instituted litigated proceedings against a Salt Lake City accounting firm and two of its partners, who served as the independent auditors of a China-based chicken company, for improperly relying on prior auditor's work without sufficient review and failing to implement procedures that would identify known risks.[34] In September, a sole-practitioner accountant settled with the Commission and agreed to no longer appear before the SEC for his alleged failures to exercise appropriate due professional care or professional

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skepticism when conducting audits of a small oil-and-gas company.[35] Among other things, the SEC faulted the auditor for performing an audit of two years' financial statements of two companies purchased by the issuer in less than two days. And in December, the SEC announced a settlement with a Hong Kong accounting firm and two of its accountants in connection with their audit of a China-based oil company, alleging that they had failed to take appropriate steps in their review of the company's related party transactions.[36] The firm agreed to pay a $75,000 penalty, and the two individuals agreed to pay penalties of $10,000 and $20,000 and to be barred from practicing before the SEC as accountants for three years.

Whistleblowers Cash In

The second half of 2014 featured several significant landmarks for the SEC's whistleblower program, offering critical reminders to companies of the risks posed by the post-Dodd-Frank bounty system. In September, the agency announced its largest whistleblower award since the program's 2012 inception—$30 million to be paid to a single individual.[37] This more than doubled 2013's previous record of $14 million. Because of the requirement that information about whistleblowers be kept confidential, the SEC did not disclose the nature of the case, but did note that the whistleblower lives outside the United States, and that the award could have been even higher but for the whistleblower's "unreasonable" delay in reporting the violations.[38]

The SEC also reported awards in two cases where the whistleblower had previously reported concerns internally, and reached out to the SEC only when the matter was not addressed by the company. In July, the SEC awarded $400,000 to a whistleblower, noting that "[t]he whistleblower had tried on several occasions and through several mechanisms to have the matter addressed internally at the company."[39] And in August, the SEC announced a $300,000 award to a whistleblower who "reported concerns of wrongdoing to appropriate personnel within the company," but "when the company took no action on the information within 120 days, the whistleblower reported the same information to the SEC."[40] Significantly, the latter case was the first award made to an employee serving an audit or compliance function at a company.

It does not appear that admissions have been limited to the most egregious securities law violations.

The SEC's 2014 Annual Report on the whistleblower program, issued in November, highlighted the continuing growth in importance of whistleblowers to the SEC. The number of whistleblower tips rose to 3,620 in fiscal 2014 from 3,238 the prior year.[41] Corporate disclosures and financials continued to be the leading category of complaints (at about 17 percent), aligning with the Division of Enforcement's growing focus on public company reporting cases.

Just Admit It

Finally, the SEC's policy of selectively seeking admissions of wrongdoing as a condition of settlement, implemented in mid-2013 in the wake of public (and judicial) criticism of the agency's long-standing policy of settling cases with defendants neither admitting nor denying the SEC's allegations, remains in full force. As promised by Enforcement Director Ceresney, admissions have been required infrequently, in just over a dozen cases to date, with the vast majority of SEC settlements continuing to be resolved on a neither-admit-nor-deny basis. However, contrary to earlier suggestions, it does not appear that admissions have been limited to the most egregious securities law violations. Indeed, in 2014, several of the world's largest financial institutions

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settled SEC actions with admissions of wrongdoing where the SEC did not allege scienter-based violations or even fraud.

It is thus difficult to predict in which cases the Division of Enforcement will demand party admissions. While egregiousness and investor harm may be factors, many of these settlements appear to involve situations where, as Ceresney has explained, "admissions would significantly enhance the deterrence message of the action."[42] As a practical matter, this appears to be based in part on the size and name-recognition of the settling party. One thing the Division has made clear, though, is that whether an admission will be required as part of the settlement is wholly at the discretion of the SEC and not subject to negotiation.[43]

The Year Ahead

2015 could be a difficult year for public companies and their executives and boards. The SEC is honing its focus on issuer reporting and accounting cases at the same time it is carving out increasingly aggressive tactics, from demanding admissions of wrongdoing to utilizing the administrative forum more frequently. Record-setting whistleblower awards further incentivize company insiders to report perceived misconduct to the government. Meanwhile, companies and individuals focused on enhanced compliance in high-risk areas in order to minimize potential fraud may still be on the hook for even minor, low level regulatory violations and targeted in a future enforcement sweep.

In such an environment, corporate actors need to assess the thoroughness and functioning of their internal controls and procedures. Even minor issues identified through internal compliance need to be remediated, and consideration must be given to revising policies to minimize the risk of recurrence. While no solution can entirely prevent fraud or technical violations from occurring, companies need to recognize the increasing risk of a whistleblower reporting the matter to the government, or the SEC identifying the issue through its increasingly-sophisticated data mining tools, and be prepared to demonstrate that the company had taken the issue seriously and taken appropriate steps to prevent future issues. Though not guaranteed to eliminate the risk of a potential enforcement action, such diligence may at minimum limit enforcement interest in pursuing the matter further.

Notes

1. Andrew Ceresney, Remarks to the American Bar Association's Business Law Section Fall Meeting (Nov. 21, 2014), available at *www.sec.gov/News/Speech/Detail/Speech/1370543515297*.
2. *See* Select SEC and Market Data 2014, available at *www.sec.gov/about/secstats2014.pdf*. Cases against broker-dealers and advisers represented about 46 percent of SEC enforcement actions, after backing out routine actions against issuers for late filings.
3. Jean Eaglesham, SEC is Steering More Trials To Judges It Appoints, Wall St. J. (Oct. 21, 2014).
4. *Supra* note 1. For an analysis of several high-profile SEC trial losses in late 2013 and early 2014, *see* Marc Fagel & Mary Kay Dunning, Implications of the SEC's Recent Trial Losses, Law360 (Feb. 5, 2014), available at *www.gibsondunn.com/publications/Pages/ImplicationsOfTheSECsRecentTrialLosses.aspx*.
5. In an August 2014 order approving the SEC's settlement with Citigroup (following the Second Circuit Court of Appeals' reversal of the court's initial rejection of the agreement), Judge Rakoff observed, the "Court of Appeals invites the SEC to avoid even the extremely modest review it leaves to the district court by proceeding on a solely administrative basis… One might wonder: from where does the constitutional warrant for such unchecked and unbalanced administrative power derive?" *SEC v. Citigroup Global Markets*, 11-cv-7387 (S.D.N.Y. Aug. 5, 2014) at 3 n.8.
6. *Wing F. Chau v. SEC*, 14-cv-1903 (S.D.N.Y. Dec. 11, 2014).
7. Chair Mary Jo White, Remarks at the Securities Enforcement Forum (Oct. 9, 2013), available at *www.sec.gov/News/Speech/Detail/Speech/1370539872100*.
8. SEC Press Release, SEC Announces Charges Against Corporate Insiders for Violating Laws Requiring Prompt Reporting of Transactions and Holdings (Sept. 10, 2014), available at *www.sec.gov/News/PressRelease/Detail/PressRelease/1370542904678*.
9. For our more in-depth analysis of this action, *see* Gibson Dunn, SEC Enforcement Actions Over Stock Transaction Reporting Obligations Offer Reminders for Public Companies and Their Insiders

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(Sept. 11, 2014), available at *www.gibsondunn.com/publications/Pages/SEC-Enforcement-Actions--Stock-Transaction-Reporting-Obligations--Reminders-for-Public-Companies.aspx.*

10. SEC Press Release, SEC Charges 23 Firms with Short Selling Violations in Crackdown on Potential Manipulation in Advance of Stock Offerings (Sept. 17, 2013), available at *www.sec.gov/News/PressRelease/Detail/PressRelease/1370539804376.*

11. SEC Press Release, SEC Sanctions13 Firms for Improper Sales of Puerto Rico Junk Bonds (Nov. 3, 2014), available at *www.sec.gov/News/PressRelease/Detail/PressRelease/1370543350368.*

12. SEC Press Release, SEC Sanctions 10 Companies for Disclosure Failures Surrounding Financing Deals and Stock Dilution (Nov. 5, 2014), available at *www.sec.gov/News/PressRelease/Detail/PressRelease/1370543368026.*

13. SEC Press Release, SEC Sanctions Eight Audit Firms for Violating Auditor Independence Rules (Dec. 8, 2014), available at *www.sec.gov/News/PressRelease/Detail/PressRelease/1370543608588.*

14. Commissioner Michael S. Piwowar, Remarks to the Securities Enforcement Forum 2014 (Oct. 14, 2014), available at *www.sec.gov/News/Speech/Detail/Speech/1370543156675.*

15. *See generally* Andrew Ceresney, Speech to American Law Institute (Sept. 19, 2013), available at *www.sec.gov/News/Speech/Detail/Speech/1370539845772.*

16. The SEC reported 99 issuer reporting cases in fiscal 2014 and 68 in 2013. Compare *supra* note 2 and Select SEC and Market Data, Fiscal 2013 (available at *www.sec.gov/about/secstats2013.pdf).*

17. SEC Press Release, SEC Seeks Stop Orders Against 20 Purported Mining Companies with Misleading Registration Statements (Feb. 3, 2014), available at *www.sec.gov/News/PressRelease/Detail/PressRelease/1370540716442.*

18. For a broader discussion of the penalty debate, *see* Sarah N. Lynch and Aruna Viswanatha, SEC Chair Says Big Fines Key to Attacking Wrongdoing, Reuters (Sept. 26, 2013).

19. Chair Mary Jo White, Deploying the Full Enforcement Arsenal, Council of Institutional Investors Fall Conference (Sept. 26, 2013), available at *www.sec.gov/News/Speech/Detail/Speech/1370539841202.*

20. *See supra*, note 15. Harkening back to the above discussion on administrative proceedings, Commissioner Piwowar expressed particular concern about seeking corporate penalties in the administrative forum, where administrative law judges may lack sufficient guidance as to how to set such penalties.

21. Commissioner Daniel M. Gallagher, Remarks at Columbia Law School Conference (Nov. 15, 2013), available at *www.sec.gov/News/Speech/Detail/Speech/1370540386071.*

22. For a review of cases from the first 6 months of 2014, *see* Marc J. Fagel, SEC Mid-Year Enforcement Update, Insights (Aug. 2014).

23. SEC Press Release, SEC Charges Software Company in Silicon Valley and Two Former Executives Behind Fraudulent Accounting Scheme (Sept. 24, 2014), available at *www.sec.gov/News/PressRelease/Detail/PressRelease/1370543035992*.

24. *See, e.g., SEC v. Baker*, 2012 U.S. Dist. LEXIS 161784 (W.D. Tex. Nov. 13, 2012).

25. SEC Press Release, SEC Charges Arizona-Based Software Company for Inadequate Accounting Controls Over Its Financial Reporting (Sept. 25, 2014), available at *www.sec.gov/News/PressRelease/Detail/PressRelease/1370543042731.*

26. SEC Press Release, California-Based Telecommunications Equipment Firm and Two Former Executives Charged in Revenue Recognition Scheme (Aug. 22, 2014), available at *http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542732440*.

27. *In the Matter of Great Lakes Dredge & Dock Corporation*, Admin. Proceeding File No. 3-16215 (Oct. 27, 2014), available at *www.sec.gov/litigation/admin/2014/34-73434.pdf*.

28. SEC Press Release, SEC Charges Virginia Beach-Based Bank Holding Company With Accounting Violations (Dec. 5, 2014) available at *www.sec.gov/News/PressRelease/Detail/PressRelease/1370543600510.*

29. SEC Press Release, SEC Charges Company CEO and Former CFO with Hiding Internal Controls Deficiencies and Violating Sarbanes-Oxley Requirements (July 30, 2014) available at *www.sec.gov/News/PressRelease/Detail/PressRelease/1370542561150.*

30. SEC Press Release, SEC Charges Two Information Technology Executives With Mischaracterizing Resale Transactions to Increase Revenue (Aug. 28, 2014), available at *www.sec.gov/News/PressRelease/Detail/PressRelease/1370542786775.*

31. Commissioner Luis A. Aguilar, *Dissenting Statement In the Matter of Lynn R. Blodgett and Kevin R. Kyser, CPA, Respondents* (Aug. 28, 2014), available at *www.sec.gov/News/PublicStmt/Detail/PublicStmt/1370542787855*.

32. *In the Matter of Mayer Hoffman McCann, P.C.*, Admin. Proceeding File No. 3-16171 (Sept. 25, 2014), available at *www.sec.gov/litigation/admin/2014/34-73224.pdf.*

33. SEC Press Release, SEC Sanctions Florida-Based Auditor for Circumventing Rules (Oct. 24, 2014), available at *www.sec.gov/News/PressRelease/Detail/PressRelease/1370543281121.*

34. *In the Matter of Child, Van Wagoner & Bradshaw*, Admin. Proceeding File No. 3-15965 (July 8, 2014), available at *www.sec.gov/litigation/admin/2014/34-72557.pdf.*

35. *In the Matter of Eugene M. Egeberg,III CPA*, Admin. Proceeding File No. 3-15680 (Sept. 4, 2014), available at *www.sec.gov/litigation/admin/2014/33-9637.pdf.*

36. SEC Imposes Sanctions Against Hong Kong-Based Firm and Two Accountants for Audit Failures (Dec. 17, 2014), available at *www.sec.gov/news/pressrelease/2014-284.html.*

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37. SEC Press Release, SEC Announces Largest-Ever Whistleblower Award (Sept. 22, 2014), available at *www.sec.gov/News/PressRelease/Detail/PressRelease/1370543011290.*

38. Order Determining Whistleblower Award Claim, Whistleblower Award Proceeding File No. 2014-10 (Sept. 22, 2014), available at *www.sec.gov/rules/other/2014/34-73174.pdf.*

39. SEC Press Release, SEC Announces Award for Whistleblower Who Reported Fraud to SEC After Company Failed to Address Issue Internally (July 31, 2014), available at *www.sec.gov/News/PressRelease/Detail/PressRelease/1370542578457.*

40. SEC Press Release, SEC Announces $300,000 Whistleblower Award to Audit and Compliance Professional Who Reported Company's Wrongdoing (Aug. 29, 2014), available at *www.sec.gov/News/PressRelease/Detail/PressRelease/1370542799812.*

41. 2014 Annual Report on the Dodd-Frank Whistleblower Program (Nov. 17, 2014), available at *www.sec.gov/about/offices/owb/annual-report-2014.pdf.*

42. *See supra* note 1.

43. *See* Yin Wilczek, Court Approves SEC No-Admit Deal With Analyst, Bloomberg BNA (Apr. 23, 2014).

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